

The International Election Observation Mission of the Asian Network for Free Elections to the Federal Republic of Nepal's 2017 Provincial and National Assembly Elections

STUDY MISSION REPORT



An Analysis of Campaign Finance and CSO Operations in the 2017 Elections

The 2017 International Election Observation Mission (IEOM) of the Asian Network for Free Elections (ANFREL) to the Federal Republic of Nepal's Provincial and National Parliament Elections

Final Report

Published by:

The Asian Network for Free Elections (ANFREL) 105 Suthisarnwinichai Road Samsennok, Huai Khwang Bangkok 10320, Thailand

Tel: (+66 2) 2773627 Email: anfrel@anfrel.org

www.anfrel.org

Bangkok, February 2018

Written by Kristina Uy Gadaingan, Karel Jiaan Galang, Damaso Magbual, Ichal Supriadi, and Chandanie Watawala

Edited by Damaso Magbual and George Rothschild

This report was reviewed and approved for publication by ANFREL. This report reflects the holistic assessment of the International Election Observation Mission. No individuals and institutions acting on behalf of the organization, or any of the mission's donors should be held liable for the assessments and information included in this report as it may not reflect their stance. Reproduction and sharing of this document and its contents is authorized provided that ANFREL is acknowledged as its source.

MISSION PROFILE

The Asian Network for Free Elections (ANFREL), continuing its efforts to support the democratization process in Nepal, deployed a five-member study team of international election observers to undertake an independent assessment of key components of the electoral process during Nepal's 2017 House of Representatives and Provincial Assembly Elections.

The team launched their study mission upon arrival in Kathmandu on 21 November 2017 and concluded on 10 December 2017. The mission's aims were to contribute to the strengthening of Nepal's electoral process and overall promotion of democracy; to enhance the cooperation of international and domestic observation groups by exploring possible areas for collaboration and future engagements; and to provide recommendations based on the most significant issues affecting the overall credibility and integrity of the electoral process.

The study team focused its work on assessing two electoral components, campaign finance and the role of election monitoring groups. Owing to the limited number of team members that ANFREL was able to deploy, an initial assessment of Nepal's context was undertaken in order to determine the electoral issues on which the team could have the most impact.

The elections generally preceded peacefully and smoothly, although not free from procedural glitches that can be limited in the future through capacity building efforts by the election management body.

The first big issue that the team examined is campaign finance, since it may be easier to address it now while the nation is still in the process of political transition and willing to make adjustments so that money does not come to define its electoral politics. To that end, the study team reviewed the existing legal framework governing campaign finance for the House of Representatives and Provincial Assembly elections and examined actual practices of candidates and political parties and enforcement by relevant authorities.

The other issue that the team focused on is the role of election monitoring groups and other civil society organizations, since they can play a very important role in democracy building. The team delved into the dynamics of existing electoral monitoring groups to assess how they respond to challenges that may hinder democratic progress in Nepal. In particular, the team tried to identify their strengths and their ability to overcome obstacles, including overcoming divisiveness among them, to achieve the common goal of nation building.

The mission observed in 6 provinces, 20 districts, and 62 polling stations. During these visits, the mission was able to meet with various individuals, including 28 national and district officers of the Election Commission of Nepal, returning officers, and district police officers; 14 political party leaders and candidates; 36 members of civil society organizations and election monitoring groups; 6 members of the media; 5 representatives of international organizations; 5 academic experts; and voters from different villages.

During the 20-day study mission, the team collected data for analysis by employing the following methodology: review of literature, key informant interviews, and field observation. Official documents that have no official translation into English were translated by the team's group of interpreters.

BACKGROUND

It has been less than a decade since Nepal transitioned to become a republic. Although there has been notable progress in democracy-building and state-building during that time, the country remains in transition and continues to face challenges in strengthening its electoral system.

The elections of members of Nepal's House of Representatives and members of Provincial Assemblies are the first to take place since the promulgation of the 2015 Constitution. The elections, held in two phases (phase I on November 26 and phase II on December 7), were conducted to comply with the requirement of the Constitution to seat a new parliament before 21 January 2018.

Nepali voters chose 275 members for the House of Representatives in a mixed system: 60% were chosen through a first-past-the-post system, while 40% were elected through a proportional representation system. Voters also elected members of the seven (7) provincial assemblies, the first since Nepal became a Federal Republic.

There were high hopes that these elections would put an end to the political instability that has gripped the nation for almost a decade. The Election Commission of Nepal (ECN) made the necessary preparations to successfully hold the elections, and national observers lent their support to the holding of free and fair elections by monitoring the overall electoral process.

SUMMARY OF FINDINGS

The general election environment was perceived to be peaceful, with no major incidents that could affect the overall integrity of the results observed. Electoral preparations by the ECN were carried out effectively and smoothly, including deployment of polling staff, security personnel, and polling materials.

The ANFREL observers noted general optimism among the voters they met. However, some observers found that there was insufficient voter education carried out by the Election Commission and other stakeholders such as the media and civil society organizations. Most electoral awareness programs were carried out by political party cadres during their door-to-door campaigns. One result of lackluster voter education efforts was that voters, especially those needing assistance, were often observed to have insufficient knowledge of the voting process. In some cases, polling staff did not allow family members to assist voters who were elderly or who were persons with disabilities (PWD) but instead took it upon themselves to assign someone to aid such voters.

Interestingly, the team noticed that there were a lot of elderly persons casting votes but seemingly far less participation by young people. The team ascertained that one of the key reasons for lack of participation by the young is that many young people are working overseas, outside the constituencies where they are registered to vote, or, in many cases, simply giving up on the electoral process. The lack of participation by young people is a significant concern and needs serious attention if Nepal's young democracy is to endure.

The ANFREL observers witnessed a vibrant engagement among civil society observers. However, given the polarized nature of Nepali society, issues of CSO cooperation emerged which may prove to be a hindrance to the growth and development of these organizations. Perceptions of partiality, donor preferences and limited resources all affected how these civil society actors interacted with

each other and impacted the conduct of election monitoring and the performance of key tasks such as campaign finance audits and voter education. This undoubtedly had a profound effect on the electoral process, which was characterized by a low level of voter awareness and a lack of transparency with respect to campaign finance.

In 2017, there was an apparent decline in the number of campaign activities compared to previous elections. Most political parties and candidates lamented that the legal expenditure limits were unrealistic and did not reflect actual campaign needs. Consequently, most of the political parties' activities focused on door-to-door campaigns. Furthermore, despite existing mechanisms requiring political parties and candidates to submit reports of campaign expenditures, there is no mechanism to check the accuracy of the reports and, moreover, enforcement of rules is at best lax, thereby undermining transparency. This whole area of campaign finance is one of the areas that needs review by all stakeholders so that useful campaign finance reforms can be pursued.

Electoral Issue 1

CAMPAIGN FINANCE IN NEPAL

Initially, the study mission planned to assess the larger issue of political financing in Nepal. However, given the constraints on the mission (including its size, the duration of the study, and the limited data available), the team decided to focus its efforts on campaign finance.

"Political financing" refers to all money used in the political process; in particular, it refers to the use of money to fund activities of political parties, candidates, and related bodies for electoral campaigns, internal party development activities, and activities carried out outside the campaign period. ¹

"Campaign finance" refers specifically to the use of money to advance the candidacy of a political candidate or political party in an electoral process. It can refer to both the amounts of contributions and the expenditures made during a campaign. Most campaign expenditures are used for such things as travel, conduct of public rallies, printing of posters, and media advertisements.



Women participating in a party's campaign in Morang District in Province 1

Regulating campaign finance is a critical component for ensuring the integrity of an electoral process. Sound policies and effective enforcement of laws help provide a level playing field, thus giving a chance even to political parties and candidates with fewer resources to contest fairly and squarely. Good policies and effective enforcement also fight corrupt practices by requiring political parties and candidates to be transparent with the monies they raise and spend. Regulations in each country may differ, but the best ones require the disclosure of sources of funding, amounts of contributions by each contributor, lists of expenditures, and limits on contributions and expenditures. The ultimate goals of regulating campaign finance are to prevent money from defining the outcome of an election, promoting transparency, and curbing corruption.

At an Asian stakeholders' forum organized by ANFREL in 2012, civil society and electoral management bodies from across Asia, including Nepal, endorsed what is now known as the Bangkok Declaration on Free and Fair Elections. The document became a tool used by Asian observers to address common electoral issues while also advancing the rule of law and respecting cultures, traditional laws, and customs of the many people who live in Asia.

The declaration affirmed that: "Fair elections demand that there be adequate oversight of campaign finance. Governments and lawmakers must ensure that there exists a rigorous legal framework that

¹ International IDEA (2014). Funding of Political Parties and Election Campaigns. A Handbook on Political Finance. Stolhom, Sweden.

fairly regulates political donations and campaign expenditures and allows for transparency of donations and expenditures.

Even where strong laws exist to oversee campaign finance, implementation can be lax, partial or ineffective. EMBs and governments must ensure that the laws are fully and fairly implemented, monitored and enforced. It is essential that violators be punished for their actions in accordance with the law."

The Legal Framework

Campaign finance law is an anti-corruption measure that prevents or at least restricts the ability of the very wealthy to buy their way into public office. In Nepal, a number of legal instruments set forth the rules and mechanisms applicable to campaign finance in races for the House of Representatives and Provincial Assemblies. Among these are the Crime and Offences Act, the House of Representatives Elections Act, the State Assembly Elections Act, the Political Party Act, and the Code of Conduct.

The Election Commission has also been given by the House of Representatives Act (2017) and the State of Assembly Act (2017) the power to formulate and enforce directives related to the provisions of the laws, including those related to campaign finance.

Below is a matrix featuring the salient features of the various laws and ECN directives that aim to regulate campaign finance:

Laws / ECN Directives	Salient features
Crime and Offences Act	 Details what are allowable and unallowable acts for political parties and candidates, in terms of receiving and spending money during elections Authorizes the Election Commission to set the ceiling for campaign expenditures and allows ECN to impose fines for violations Sets out the provision that no political party or candidate may spend beyond the limits/ceilings specified by the Commission Authorizes the Commission to impose a fine not exceeding 25,000 rupees on any person violating acts prohibited during election propagation (eg. Sec. 24 (2): "No handbill shall be stuck or cause to be stuck or no writing or painting shall be put on any religious, archaeological, historical, governmental, private, public building, monument or wall or structure for the purpose of election propagation") Imposes a fine on political parties or candidates exceeding the ceilings, with the fine being equal to the amount of such prohibited expense Requires submission of reports of income and expenses (by political parties or candidates) incurred during an

election Authorizes the ECN to impose a fine not exceeding 15,000 rupees on a political party or candidate who does not submit the required report **House of Representatives** Requires candidates running in a first-past-the-post **Elections Act, 2017** (FPTP) election to deposit a sum of 10,000 rupees Requires political parties submitting a closed list of candidates for the proportional representation election to deposit a sum of 50,000 rupees Authorizes the ECN to set limits on the amounts a candidate may spend in a FPTP election and which a political party may spend in a PR election Requires parties or candidates to maintain the records of all expenses incurred during the election period following the format prescribed by the ECN Requires submission of a statement of campaign expenses to the commission or an office prescribed by the commission within 35 days of the declaration of results Authorizes the ECN to impose fines on parties or candidates who fail to submit details of campaign expenses by the deadline, subject to prevailing laws Disqualifies candidates who are "an incumbent officebearer of the Government of Nepal or State Government or any organization owned or controlled by, or receiving grants from, the Government of Nepal State government subject receiving remuneration" State Assembly Act, 2017 Requires candidates running in a FPTP election to deposit a sum of 5,000 rupees Requires political parties submitting a closed list of candidates for a PR election to deposit a sum of 25,000 rupees Authorizes the ECN to set limits on the amounts candidate may spend in a FPTP election and which a party may spend in a PR election Requires parties or candidates to maintain records of all expenses incurred during the election period following the format prescribed by the ECN Requires submission of a statement of campaign expenses to the commission or an office prescribed by the commission within 35 days of the declaration of results Authorizes the ECN to impose fines on parties or candidates who fail to submit details of campaign expenses by the deadline, subject to prevailing laws Disqualifies candidates who are "an incumbent officebearer of the Government of Nepal or State

	Government or any organization owned or controlled by, or receiving grants from the Government of Nepal or State government subject to receiving remuneration"
Political Party Act	 Requires maintenance of a separate party fund, comprised of the amounts received from each member (as a membership fee), voluntary financial contributions, funds collected by a party from a program it has organized, amounts received from the sale of publications and movable or immovable property, interest accrued on deposits in the party's bank account, and regular contributions from members Allows voluntary financial contributions from a Nepali citizen or corporate body Prohibits parties from receiving financial contributions from any agency or office of the Government of Nepal, a provincial government or a local government, a corporate body under full or partial ownership or control of the Nepal Government, public owned shares, any government or community university or school or academic institution, national and international nongovernmental organizations, foreign governments or organizations or persons, undisclosed persons or organizations, and other organizations specified by the Commission Requires all financial assistance exceeding the amount of 25,000 rupees to be made through banking cheques or banking transfers Requires disclosure of sources of financial assistance Requires parties to maintain actual accounts of their income and expenditure records Requires parties to have their accounts audited within 6 months of the completion of the fiscal year by an auditor licensed according to the law and to submit the audit report to ECN within 1 month thereafter
Code of Conduct	 Requires candidates and political parties to open separate accounts in a bank or financial institution for the purpose of election expenditures and transactions Requires candidates and political parties to abide by the allowable expenditure limits set by the Commission Requires candidates and political parties that receive donations of more than 5,000 rupees to be coursed through a bank or financial institution Requires candidates and political parties to furnish all details of election expenditures to the District Election Office or the Commission within the timeframe provided for by the ECN; original bills or receipts may be required should the ECN find the details of a report unsatisfactory Details the allowable number of vehicles or

	 motorcycles that may be used Provides a code of conduct in relation to campaigning using media, providing that political parties campaigning through radio or TV may broadcast a message a maximum of four times in the "interval of at least one hour in 24 hours," and that each message must be limited to 1 minute Details the allowable size when publishing campaign material in newspapers Provides templates for applications to be submitted to a Returning Officer for approval of use of a vehicle Provides for the creation of a monitoring mechanism by the ECN to implement the Code of Conduct Provides that punishments for violations of the Code of Conduct shall be imposed pursuant to the Election Commission Act
The Election Commission Act	 Gives power to adopt and enforce a Code of Conduct to the ECN Allows the ECN to specify ceilings of election expenses Authorizes the ECN to receive submissions of details of election expenses of candidates and political parties. The ECN provides the format and requires parties and candidates to submit reports within 30 days after the date of publication of final election results Provides the ECN the authority to punish any person exceeding the ceilings specified by the ECN. The ECN may punish a political party or candidate with a fine which is equal to the election expenses made by such person or the ceiling of expenses specified by ECN, whichever is higher
House of the Representatives and Provincial Assembly Member Election Ordinance 2074 (2017), schedule 91	 Provides for expenditure limits of 2.5 million rupees for candidates for the house of representatives, and 1.5 million rupees for candidates for provincial assembly Provides for maximum expenditures for each allowable item. The items include: payment for a copy of electoral roll, motor vehicle/ horse rental, campaign materials, transportation, mass rallies, print and electronic media, office operations, cadre operations, and miscellaneous Provides for the template (for FPTP candidates and political parties contesting PR races) to use when submitting election expenditure reports

Based on the House of the Representatives and Provincial Assembly Member Election Ordinance 2074 (2017), schedule 91, the ECN has provided a reporting form that candidates or political parties must complete to detail their election expenses and submit 30/35 days after the election. The form contains eleven expenditure items with their corresponding limits. While the form requires that a candidate detail how much money was spent for a campaign, it does not require information about the sources of money raised. Political parties, however, do not report their non-campaign expenses

30 or 35 days after a campaign. Instead, they are only required to submit those expenses in semi-annual audited reports.

As should be apparent, there is a discrepancy regarding the reporting deadlines. In the House of Representatives and State Assemblies Elections acts, the requirement is for candidates and political parties to submit campaign expense reports within 35 days of the declaration of results. However, in the Election Commission Act, the requirement for submission is within 30 days after the announcement of results.

Campaign Finance in Nepal since 2015

For the local elections held in May - June 2017, the Election Observation Committee of Nepal conducted a study on campaign finance. In its final report, it stated that there was a dramatic increase in spending in the local elections compared to previous elections.

However, the ANFREL study team, which observed the pre-election situation in 20 districts in 6 provinces where it interviewed key stakeholders, found a decline in campaign activities compared to the past.

Most campaign activities in 2017 were door-to-door campaigns by political party cadres who used the occasions to conduct voter education as well.

Although the team had intended to identify which category or campaign activity was the object of the most spending by political parties and candidates, the lack of available reports to date has prevented that. The public report version of this study report will be updated once data and information for such an assessment become available.

However, a majority of respondents interviewed agreed that the spending ceilings were unrealistic for candidates to carry out their campaign activities. The ceiling of 2.5 million rupees for HOR candidates, and 1.5 million rupees for SA candidates, were also inconsistent with other ECN directives. One example is that ECN allows the use of a helicopter. However, one officer from a major political party noted that "The CoC allows a campaigner to rent a helicopter to reach remote areas. But helicopter rental costs as much as \$ 2,000 per hour. That expense item alone will exhaust the allowable limit".

It should be noted that some respondents believe that the decrease in public assemblies and rallies also significantly reduced cases of violence.

Expenditure Limits

Expenditure limits apply mainly to campaign periods. Setting the limits serves as an anti-corruption measure that decreases the abuse of financial resources in politics. More importantly, such limits serve to level the playing field so that candidates with fewer resources are able to compete fairly.

Expenditures include any expenses that a candidate or political party incurs during the election period. On the reporting form provided by the ECN, the allowable expenses as well as their corresponding limits are enumerated. These are the goods, services, facilities, staff, transportation, and local advertising that the candidates employ in the course of the campaign.

Compliance and Enforcement

Admittedly, it is difficult to monitor compliance, particularly regarding contributions. However, mandating requirements for creation and preservation of a 'paper trail' could greatly increase the ability to track expenses and monitor compliance.

Below are some examples of 'paper trails':

- ✓ When candidates or parties buy airtime on TV or radio or space in a broadsheet, a contract is concluded between the buyer (candidate/political party) and the seller (the media outfit).
- √ When services are purchased, such as rentals for vehicles, a service agreement is entered into.
- ✓ When goods, supplies, or materials are ordered, a 'sales invoice' is issued by the business establishment.
- ✓ When a contributor wire transfers an amount to a candidate or political party, an acknowledgement receipt is issued to the drawer (if done online) or a receipt is issued if the transaction is done at a bank. Similarly, when a bank deposit is made in favor of a candidate or political party, a bank deposit copy is issued to the depositor.



A campaign being held in a market in Biratnagar

From the above, it apparent that there are requirements that the ECN could adopt to monitor compliance. First and foremost, the ECN should seriously consider requiring candidates and political parties and business establishments to submit copies of contracts, invoices, and bank receipts. This is a practice followed in many countries. It can be done in Nepal.

In addition, based on interviews carried out by the study team with Chief Returning Officers, political party officers, local observers, and security personnel, it appears that there are no formal complaints recorded for violations of campaign finance rules. Indeed, most respondents, including Chief Returning Officers, stated that they have yet to receive the post-election expense reports of candidates and parties, and, furthermore, there seems to be no process in place to check the accuracy of the reports once they are submitted.

Also, minor violations were noticed by stakeholders. Among them were the use of un-allowable sizes of flags, multi-colored printing of manifestos, and the like. Setting of standards and specifications for campaign materials evens out the playing field. But because such violations were considered minor, there were apparently no penalties imposed on erring parties or candidates. ECN officers, however, pointed to the immediate correction of such problems through deployment of security personnel to remove illegal posters before formal written complaints were filed.

Recommendations

1. There should be a review of the current limits/ ceilings to reflect the reality of the needs of political parties and candidates in carrying out campaigns.

There is general agreement that the ceilings on expenditures set by the ECN are unreasonably low. An expenditure limit is effective only if it is reasonable. It must not be too low and it must not be too high. A reasonable amount takes into account the various activities of a campaign necessary for the candidate to reach out to the voters to deliver the campaign's message.

2. Limits on expenditures should be derived through a methodical process

As pointed out by respondents, the same limits apply in all constituencies regardless of geographical size or number of voters. Therefore, when reviewing the limits, policy makers should consider the size of the constituency and set limits for each constituency based on the number of voters (for example: \$1 per voter in a constituency; thus, for 500 voters, the limit would be \$500) and the geographical circumstances of the constituency. Amounts could also be adjusted to reflect changes to the consumer price index to reflect changing spending realities.

3. Efforts are needed to raising political awareness among political parties and the people

The importance of raising awareness among political parties and the voters cannot be overemphasized. It is important for the parties to understand the need for leveling the playing field, while the voters need to know how campaign finance may directly affect public service and governance, thus affecting their quality of living. It is important that voter education campaigns focus not only on the voting process but also educate voters on related electoral issues in order to develop a more empowered citizenry able to help in monitoring the performance of the candidates.

4. To enhance monitoring and enforcement of campaign finance law, the ECN should require parties and candidates to create and maintain a paper trail of all individual contributions in excess of a certain amount and all individual expenditures in excess of an amount set and agreed upon by political parties and stakeholders.

The rationale for such a recommendation is explained at length above.

5. Public Funding of Political Parties should be considered

Nepal's political party system should also consider adopting public funding for political parties. Public funding refers to funding provided for by the state to finance the campaign spending of political parties. In some countries, states provide full support as in the case of South Korea, while others provide state subsidies, as is the case in Taiwan. In both systems, a set of criteria needs to be met in order for parties to qualify for full funding or subsidies, as the case may be (e.g., imposing vote thresholds, performance).

Public funding is meant to provide the resources for party building, to promote transparency and accountability in the sourcing of expenditures of the party for internal development and for campaign funds, and lastly to level the playing field.

Public funding is a state investment in democracy. It helps enhance the capability of parties to research, educate, and advocate for their respective agendas, thereby strengthening political parties and helping them become mature democratic institutions.

Electoral Issue 2

CSO PERFORMANCE DURING THE 2017 PROVINCIAL AND FEDERAL ELECTIONS

During the 20-day course of the observation mission, ANFREL was able to meet members of civil society hailing from various sectors of society -- youth, human rights activists, environmentalists², and security experts – which fielded observers and conducted election monitoring activities. The presence of observers during elections, both domestic and international, is now widely accepted and a measure of the importance of the electoral process. In the case of Nepal, civil society has not only played a crucial part in the country's democratization, but, more importantly, it has been crucial in shaping contemporary Nepal, a nation with a rich history and culture.

The Election Commission of Nepal has accredited 53 domestic civil society organizations, 48 of which deployed monitors last year, for a total of 10,046 accredited election observers. The three largest election observer groups -- Nepal Election Observation Committee (NEOC), SANKALPA, and General Election Observation Committee (GEOC) – operated under a single banner and together deployed a force of 4,000 observers, or two-fifths of the total number of election observers. Other CSOs which were able to field more than 300 election monitors each include Hamro Election Nepal, Nepal Human Rights Association, Informal Sector Service Center, News Club of Nepal, and the Election Observation Committee Nepal (EOC)³.

ANFREL witnessed a very vibrant culture of participation, with the active involvement of civil society actors in election-related activities like voter education, voter list audits, and deployment of election observers on the polling dates. The breadth of activities these groups were able to perform indicates awareness and expertise of the many facets of the electoral process and familiarity with international election observation norms for everything from the pre-election activities to post-election work. This level of understanding can only have been achieved with deep involvement in the democratization process in the country.

Nepali civil society has also had a close working relationship with international donors and organizations. Prior to the 1990's, international institutions directly supported government projects and policies, overshadowing the significance of civil society organizations. With the establishment of the constitutional monarchy and the start of the democratization process, donors started to realize the capacity of Nepal's civil society to implement development projects. This resulted in the establishment of close relationships between international organizations and the domestic groups through which they funneled resources to aid in Nepal's development.⁴ Consequently, there is today a significant presence of international donors and institutions in the country, which was on display as

² According to data gathered from the Election Commission of Nepal (see Appendix 1 and 2)

³ See Appendix 2 for number of observers each of the 53 organizations deployed

⁴ Bhandari, M. (May 2014). Civil Society and Non-Governmental Organizations (NGOs) movements in Nepal in terms of Social Transformation. *The Pacific Journal of Science and Technology.* Volume 15, Number 1. Retrieved from researchgate.net.

various international organizations supported the two-phase Federal and Provincial Elections in the country.

Several international election observers were also present during this period. They coordinated closely with the domestic election observation groups with regard to monitoring the various steps in the electoral process. Among those present were the Carter Center, the Delegation of the European Union, and the Asian Network for Free Elections.⁵ Furthermore, international aid agencies and donors also supported the role played by civil society in Nepal during the elections – most of them supporting several organizations at the same time--which encouraged collaboration and relationships among various civil society groups.

To evaluate the behavior of the civil society organizations during the two phases of the elections, ANFREL conducted interviews of leaders and members of civil society organizations representing a wide spectrum of sectors, organization sizes and operational modalities. In addition, the ANFREL team also reviewed literature and contemporary news regarding the history and dynamics of civil society and the operation of domestic CSOs.

The following analysis aims to point out strengths and challenges of CSO operations with the hope of strengthening and further cultivating the culture of active participation in the country.

Election monitoring activities and specialization

In the data obtained from the Election Commission of Nepal (ECN), there were 53 organizations accredited to observe the elections. Of these organizations, 48 organizations were able to deploy observers in the field. Undoubtedly, the coverage of observers in the provinces was comprehensive, penetrating even the most remote areas.

The National Election Observation Committee (NEOC) commanded a force of 2,432 observers⁶, consisting of 1,895 short-term observers, 521 long-term observers, and 16 special national observers. In the case of Baglung District in Province 4 alone, NEOC was able to deploy two (2) long-term observers stationed in the most crucial wards/villages two months prior to the elections, and 20 short-term observers covered the entire district a few weeks prior to the first phase of elections.⁷ While NEOC has the capacity to monitor elections on its own, its capability was further enhanced by conducting its election monitoring efforts together with the Women's Alliance for Peace, Justice and Democracy (SANKALPA) and the General Election Observation Committee (GEOC) – the organizations which fielded the second and third largest numbers of observers for last year's elections. Together, these three organizations were able to mobilize a joint force of 4,000 strong or almost ½ of the entire observer population.

15

⁵ Refer to Appendix 1 for the number of observers each international organization deployed

⁶ According to NEC records, which include only accredited observers, and excludes volunteers who served other purposes.

⁷ According to NEOC representative in the Baglung.

NEOC and GEOC are the two foremost Nepali civil society organizations established for the purpose of monitoring the conduct of elections and lobbying for electoral reforms. These two organizations are coalitions of various civil society organizations which have extensive knowledge and experience with grassroots voter education, election monitoring, and advocacy



Leaders of NEOC, GEOC, and SANKALPA conducts a post-election press conference in Kathmandu

relating to electoral reform. SANKALPA, on the other hand, is a coalition of women's rights organizations which promotes women's participation in governance. According to the interviews conducted with the leaders of the three organizations, the universal norms respecting suffrage and human rights serve as the backbone of the election observation activities they perform. Another influential organization, the Election Observation Committee (EOC), conducted similar activities.

Generally, election observation groups perform monitoring efforts in the country through the deployment of election observers in the localities to gather data on the electoral environment, the electoral process, and the conduct of campaigns, among other things. ANFREL observers were able to meet representatives of these groups in the field to discuss their methodologies, including their deployment modalities. These observation groups essentially use the same observation methods and sometimes share the same tools. Overlaps in deployment areas have been observed, especially in crucial areas such as Kathmandu, Pokhara, Biratnagar, Nepalgunj, Janakpur, and Dhading, where a dense concentration of observers was observed.

The similarities in observation methodologies is most evident in the information gathering and dissemination efforts which the various organizations conducted. The alliance of NEOC-GEOC-SANKALPA was the most visible, and their press conferences were the best attended. All three organizations joined in issuing news releases, although they established independent call centers to gather reports from their respective observers in the field. Other election monitoring groups such as Informal Sector Service Center (INSEC), the Election Observation Committee (EOC), and Democracy and Election Concern Nepal (DECON) also performed similar election observation deployment efforts but in a more limited or focused manner.

When ANFREL asked the various groups about the activities they conduct during election period, groups focusing on election and human rights monitoring such as the Collective Campaign for Peace (COCAP), Campaign for Human Rights and Social Transformation (CAHURAST), and Collective Youth Campaign (CYC) were able to explain the specific activities they undertake in relation to elections. Newly established groups and those which have limited manpower and resources seemed unable to expound the scope of their activities and responded by saying they conduct "election monitoring and deployment of observers."

In essence, the groups which deployed election observers did so to comprehensively monitor the electoral process and the electoral environment. The sophistication of election monitoring in the country is evident from the presence of specialized and focused groups such as COCAP, which conducted violence and gender equality monitoring, and CYC which performed activities tailored for youth. While election observation itself was well performed, other aspects of civil society engagement such as the voter education⁸ and monitoring campaign finance⁹ were neglected.

Resources, coordination, and efficiency

Donor support is crucial for ensuring the implementation of election observation activities. Nepali civil society organizations have three primary means of support – contributions by the private sector, government aid, and foreign grants. While it is legal for Nepali CSOs to utilize funding from all three types of sources, most election monitoring organizations obtain foreign grants, and, to a limited extent, government support¹⁰.

According to interviews with various CSO leaders, there was initially a proposal for at least 10 major civil society organizations to join together to conduct election monitoring activities. However, due to limited resources, the collaboration did not materialize. Ultimately, only seven (7) organizations were able to get funding from foreign entities. NEOC, GEOC and SANKALPA received funds from the Norwegian Embassy in Nepal for the deployment of domestic observers. In addition, NEOC was also able to obtain funds from USAID through the National Democratic Institute (NDI) for the establishment of its call center and for hiring a consultant. EOC was able to obtain a grant from The Asia Foundation in Nepal for conducting its domestic monitoring. SCOPE, on the other hand, is unique in its position as the only organization supported by the Nepali Government in their voter education efforts.

The manner in which donors select organizations as recipients of funds can have a tremendous effect on the dynamics within the domestic CSO community. In the case of the NEOC-GEOC-SANKALPA collaboration, a common donor played a big part in facilitating cooperation among three organizations distinct in membership, identity, approach and focus. The unified effort resulted in synergy among the three groups from the leadership to the grassroots. At a meeting with various representatives of these three organizations on the ground, ANFREL learned that those deployed in Beshisahar, Pokhara, Biratnagar, and Janakpur were conducting regular coordination, as well as sharing observation tools and resources and dividing up the areas of deployment.

⁸ Only three such groups we interviewed indicated that voter education is a primary part of their activities – Environment, Peace, Security and Social Justice Center (SCOPE Nepal) with the support of the Election Commission, Collective Youth Campaign (CYC), and Nepal Voters' Rights Forum

⁹ Nepal Voters' Rights Forum conducted "consultations" on how to improve campaign financing, and National Professional Initiatives focused on this aspect of elections as well, but we were not able to secure interviews with them. EOC has conducted and published studies funded by The Asia Foundation (TAF) on campaign finance.

¹⁰ The only case we found of a CSO getting government support is that of SCOPE Nepal, to which the Nepali government gave funds for voter education. The extent of support was not clarified.

The vibrancy of CSO engagement in Nepal was observable in the wide spectrum of observers seeking accreditation from the Election Commission of Nepal. The variety of organizations, coming from different backgrounds with varying centers of focus, proved to be an asset to the unified working group. For example, GEOC, which counts among its members lawyers and legal aid groups, could concentrate on the legal framework and therefore monitor compliance with the law. Other organizations were able to add value to a unified organization by bringing their particular areas of focus and expertise, with SANKALPA, for example, promoting women's rights while monitoring women's participation in the elections.

Notwithstanding the vibrancy of civil society in Nepal, additional synergy is greatly needed. For example, as many as 20% of ballots were spoiled (potentially calling into question the results of the balloting), yet this could have been a much lower figure had there been significant efforts before the elections to educate the voters. Unfortunately, the Election Commission simply cannot perform that task alone as it does not have the necessary personnel to do so. Hence, a unified civil society could have significantly reduced the level of spoiled ballots if one or two more of the 53 organizations, in addition to SCOPE, had concentrated its efforts on voter education.

Moreover, in many polling stations, there were two or more observers from different groups observing the polls, yet there were several polling stations that were not covered by any observers. A unified working group could have produced much better coverage. With so many organizations sharing in the proverbial pie, some essential tasks were unfortunately neglected as most organizations concentrated on their own priorities, too often performing similar tasks. Posters showing "How to vote" or "How to mark the ballot" would have greatly aided voters, especially considering the new ballot design in a new electoral system¹¹. It appears that only one of the 53 organizations focused on monitoring electoral violence. While it is generally agreed that the current election was much more peaceful than those in the recent past, still the occasional incidence of violence is a cause for concern. Again, a group could have been tasked to investigate the cases of violence — causes, perpetrators, red flags, etc. An analysis of these could surely help minimize violence in future elections.

Thus, ANFREL believes that creating synergy among various CSOs is advantageous for several reasons:

Cost efficiency. Supporting one organization of 10,000 members is more cost effective than maintaining ten organizations of 1,000 members each. By way of example, the per-unit cost of printing 10,000 copies of one manual is much cheaper than printing ten different manuals with 1,000 copies each.

Coverage. One indicator of the success of a domestic observation group is the organization's ability to cover as much area as possible. Too often duplications are experienced when several organizations are working independently of each other. This is avoided when these organizations

¹¹ The media likewise did not do any voter education campaign as one editor of an English daily said, "We are a business concern. Voter education is a task of the Election Commission. If they pay for a space in our broadsheet, we can accommodate their placement for a voter education campaign."

work together. This duplication is illustrated by the fact that while NEOC-GEOC-SANKALPA conducted joint activities, they also established three different "call centers."

Uniformity. Together, the different organizations can be guided by one set of rules and one observation methodology, resulting in one common assessment and avoiding conflicting evaluations. From a review of previous reports and news releases of the major Nepali organizations, it became apparent that most observation findings were uniform, but there were some glaring inconsistencies, which hurts the credibility of the election observation process.



 $\label{eq:members} \mbox{Members of ANFREL and TAF meet with CSO representatives in Lamjung District}$

A number of civil society organizations admitted that they would be willing to work together as one group if that were the only option given to them. In fact, it appears that some said publicly that they were willing to work together while clandestinely still trying to obtain separate funding for their respective organizations. And as each organization got separate

funding, it withdrew from the consortium. It appears that seven (7) of the 53 received funds leaving 46 to fend for themselves. They too sought accreditation from the Election Commission; however, they were not able to develop programs to constitute meaningful electoral participation.

Donors have a vital role to play in bringing together various groups to pursue a common goal of promoting a transparent and credible election. They should, therefore, agree to support only a unified group, but, unfortunately, they sometimes try to outdo one other by providing funds to some favored groups. Hence, election observation could be strengthened:

- 1. if donors understood that synergy works in election observation; that resources are not unlimited; that resources can best be utilized when they pour them into one single effort by a unified group;
- 2. if donors kept always in mind that the goal of a program supporting election observers is to help bring about a credible election, one that citizens see as legitimate because it is conducted in accordance with "the rules of the game";
- 3. if donors avoid prioritizing "image building" when extending funds. They must never lose sight of the ultimate objective of election observation: that an election be accepted as legitimate and binding by the citizenry because it has been demonstrated to the voters that it has been conducted freely and fairly. Meeting this objective will ensure political stability, which is necessary for the pursuit of goals for an emerging and developing democracy like Nepal.

Hence, if, in the future, donors agree to support only one coalition or consortium, then the 53 organizations may well agree to work as one. The alternative is for them to be on their own, in which case a donor's resources might best be utilized on other meaningful endeavors.

The ECN, as the regulator of electoral processes in the country, also has a role in contributing to the existing dynamics among the CSOs. One important aspect which the ECN overlooked in the electoral conduct is the absence of proper mechanism on accreditation of election monitors. Of the 53 organizations, there were five organizations accredited which were not able to deploy a single observer, and whose activities are unclear. This indicates that the ECN requires only minimal requirements which do not include the scrutiny of the nature of activities and engagement of the civil society actors. Indeed, none of the organizations which applied for accreditation were rejected.

While electoral processes should be inclusive in all aspects, these processes should also be guided by proper procedures and thresholds to be observed in order to provide structure, organization, and eliminate confusion. The ECN should consider additional procedures such as in-person interviews of CSOs seeking accreditation in order to gain a better understanding of the proposed programs of the different election monitoring organizations. A more thorough accreditation procedure may encourage the different independent groups to coalesce, thus reducing overlaps. Applying the concept of synergy, one way or another, the various organizations will realize that by collaborating on creating a comprehensive action plan for monitoring the elections, accreditation can be achieved easier and in a more organized manner.

Lessons learned

Nepal is among the most politically polarized societies in Asia, with most people gravitating to either centrist or leftist ideologies and actors. This is also visible in the dynamics within the NGO community, which results in an environment where habits of cooperation, solidarity, public spiritedness and trust are harder to instill. In the interviews conducted by ANFREL, all organization leaders expressed their desire to conduct joint activities, but they felt they were hindered by several factors.

Most civil society organizations claim that they represent various causes and are not merely engaged in election observation. For instance, GEOC is only GEOC during the election period but it is actually the Nepal Law Society, concerned with legal issues, between elections. Similarly, SANKALPA is a women's organization working for the empowerment of women by promoting women's rights. Each individual organization does not want to lose its identity when it joins a big group. Their members take pride in their respective organizations and too often believe theirs is superior to other organizations. Thus, each organization would want to spend its own funds as it sees proper according to its needs.

Thus, civil society organizations have interests of their own and are not totally unselfish entities. Among CSO leaders, there are some who openly admitted that their interests coincide with those of a political party. This has been an open secret within Nepali civil society which, as might be expected, has led to distrust, jealousy, internal rivalries and overall divisiveness.

These are just a few lessons learned from working independently of each other. The potential for accomplishment working together is tremendous.

Recommendations

- 1. CSOs should be encouraged to talk to each other. One hindrance to proper cooperation among CSOs is the fact that none of them have taken the lead in starting the conversation. A healthy cooperation among organizations can only be achieved through collaboration and proper planning. While some organizations did indeed collaborate, it was on a limited basis, and was driven by donor demands, as in the case of NEOC-GEOC-SANKALPA. Network organizations also have the capacity to foster more cooperation among its member organizations, as in the case of INSEC. One way to promote collaboration is to establish a forum among CSOs where they can freely discuss targets, activities and projects on which they can work together.
- 2. The ECN should establish a more thorough accreditation process. As the election management body, the ECN should promote meaningful participation by ensuring that stakeholders such as CSOs actually contribute to the process in an organized manner. While accrediting organizations helps in promoting transparency, accreditation should require as a prerequisite a showing of responsibility and accountability. The ECN should set thresholds and benchmarks on accrediting civil society organizations which are based on merit and proposed programs which organizations should present before the management body.
- 3. Donors should promote more programs which incorporate collaborative elements. In the context of polarized societies like Nepal, development agencies and international actors play a key role in establishing connections among domestic stakeholders, and this role is much more crucial in young democracies. Development organizations should take into account the effect of how the flow of resources affects the relationships among the different stakeholders.
- 4. The civil society should conduct an exercise to explore the capacities, limitations and future engagements of an election monitoring alliance among the different organizations. One impact of a polarization in a society is the lack of dialogue among the different sectors, and this is evident in the situation of the civil society in Nepal. While most organizations have expressed that the only way to move forward it through collaboration, none of the various organizations have taken the initiative to catalyze the conversation. One way to address this is for a neutral, reputable organization to step in and convene a CSO congress. The congress will aim to explore the potentiality of a unified election monitoring effort; whose members specialize in the different aspects of election monitoring. The group will need to be guided on the strengths and possible challenges of each organization and the civil society as a whole. This will help the various groups understand and interact each other, building trust and paths for collaborations.

APPENDIX 1: List of International Organizations

No.	Name of the International Observer	No. of observers	No. of Interpreters
1	European Union	112	63
2	The Carter Center	64	33
3	ANFREL	5	4
4	Pasquale Viola (Individual Italian)	1	0
5	Venket Ramana Rao Adoni (Individual Indian)	1	0
	Total	183	100

APPENDIX 2: List of Domestic Organizations

	Name of the CSOs	Short- term Observers	Long- term observers	Special Nat'l Observers	Total
1	National Election Observation Committee (NEOC)	1895	521	16	2432
2	Sankalpa-Women's Alliance for Peace, Justice and Democracy	833	9	0	842
3	General Election Observation Committee (GEOC)	709	5	12	726
4	Hamro Election Nepal	443	216	2	661
5	Nepal Human Rights Association	538	9	2	549
6	Informal Sector Service Center	443	34	2	479
7	News Club of Nepal	238	113	0	351
8	Election Observation Committee/Nepal(EOC)	292	20	1	313
9	Nepal Jesis	246	26	1	273
10	Human Rights and Peace Society	199	64	6	269
11	Youth Alliance for Election Campaign	207	24	3	234
12	Democracy and Election Concern Nepal (Decon)	69	133	10	212

13	Nepal Bar Association	196	14	0	210
14	NGO Federation Nepal	162	0	2	164
15	Human Rights and Peace Foundation	110	48	0	158
16	Collective Campaign for Peace (COCAP)	122	14	3	139
17	Scholar Student Council, Nepal	119	18	0	137
18	National Federation of Disabled Nepal	122	3	0	125
19	National Professional Initiatives	109	14	0	123
20	Samuhik Abhiyan	121	0	0	121
21	Campaign for Human Rights and Social Transformation Nepal (CAHURAST)	106	9	5	120
22	National Youth Federation Nepal(NYFN)	114	0	0	114
23	Nepal Voters Rights Forum	100	7	0	107
24	Human Rights and Peace Concern Society	94	6	0	100
25	Srijanshil Akikrit Digo Bikas Samaj	80	16	1	97
26	National Human Rights Concern Center, Nepal	83	1	0	84
27	Nagarik Anugaman Samaj	51	14	2	67
28	Nation Building Forum Nepal	66	0	0	66
29	Samabeshi Foundation	54	9	0	63
30	Nepal Folk Culture Research Academy	53	7	0	60
31	Democracy Resource Center Nepal(DRC)	44	16	0	60
32	Sagarmatha Tribeni Community Center	49	9	0	58
33	Concern for Children and Environment Nepal (Concern-Nepal)	36	16	0	52
34	Environment, Peace, Security and Social Justice Center(SCOPE Nepal)	25	20	4	49
35	Rual Accountability and coordination Center (RACE Nepal)	46	0	0	46

	Total	8528	1446	72	10046
53	Prerana Support Group for Participatory Development	0	0	0	0
52	National Tigers	0	0	0	0
51	Gaurishankar Youth Group for Accountability, Dolakha	0	0	0	0
50	Youth Center for Social Uplift	0	0	0	0
49	Humanitarian Organization for People and Ecology (Hope Nepal)	0	0	0	0
48	Multipurpose Research Development and Model	0	0	0	0
47	Alliance for Election Observation Nepal	5	0	0	5
46	Senior Citizen Service Center	17	0	0	17
45	Loktantra and Bikaska lagi Sahakarya	27	0	0	27
44	Community Development Forum, Tinthana	28	0	0	28
43	Forum for Human Rights and Public Health	28	0	0	28
42	Center for Women Upliftment, Barhabise	31	0	0	31
41	Sachetana Foundation Nepal	36	0	0	36
40	Samsadhan Sashaktikaran Samaj	40	0	0	40
39	National Federation of UNESCO Clubs, Centers and Associations Nepal	21	20	0	41
38	Janadhikar Abhiyan Nepal	42	0	0	42
37	Nepal Journalist and Writers Society	44	0	0	44
36	Active Forum for Human Rights Awareness	35	11	0	46

APPENDIX 3: List of ANFREL Observers

No.	Name of the Observer	Country
1	Damaso G. Magbual/Mr	Philippines
2	Ichal Supriadi/ Mr	Indonesia
3	Chandanie Watawala/Mrs	Sri Lanka
4	Karel J Galang/ Mr	Philippines
5	Kristina Uy Gadaingan/Ms	Philippines

APPENDIX 4: List of Provinces and Districts Observed

Province	Districts	# Polling Centers Observed
Province 1	Morang, Sunsari,	
Province 2	Dhanusha, Sarlahi, Mahhotari	16
Province 3	Ramenchap, Charikot, and Dolakha, Kathmandu, and Dhading, Lalitpur, Bhaktapur	19
Province 4	Baglung, Kaski, Lamjung, and Myagdi	11
Province 5	Bardiya, Banke,	16
Province 7	Kailali	

APPENDIX 5: Mission Launch Press Release

Anfrel deploys monitoring team to Nepal's two-phase elections

For Immediate Release Kathmandu, Nepal November 23, 2017

The Asian Network for Free Elections (Anfrel) is glad to once again engage with the people of Nepal through the deployment of election assessors in the country starting today. This focused short-term observation mission will assess the conduct of the two-phase elections which will be held on November 27 and December 7, from the campaigning to the tabulation of election results.

A delegation of 5 independent election assessors representing three Asian countries, led by Anfrel Board Member Mr. Damaso Magbual of the Philippines, will be meeting with the election management body, domestic civil society organizations, political parties, and the media.

The focused mission will analyze developments in the electoral system since the implementation of the country's new legal framework and will provide recommendations on how to strengthen it. More importantly, the mission will closely coordinate with election monitoring groups to find ways on building up collaborations to ensure democratic elections.

The mission's assessment will be based on the Nepal's existing laws, and will take into account accepted norms of electoral conduct and human rights, as well as the organization's existing tools such as the Bangkok Declaration on Free and Fair Elections, the Dili Indicators of Democratic Elections, and the Bali Commitment on Transparent Elections. The mission's observers will be guided by the Declaration of Principles for International Election Observation and the Code of Conduct for Election Observers set by the Election Commission of Nepal.

Anfrel, formed in 1997, is a regional network of 23 election monitoring organizations from all over Asia. Anfrel has a long history of engagement in Nepal, the earliest being in 1999, and has sent election observation missions in the country in 2008 and 2013 which are considered the critical junctures the country's political development.

Through this mission, Anfrel expresses its solidarity with the Nepalese people in this important political process. The mission hopes to see elections which respects the fundamental human rights, and is held in a peaceful and inclusive atmosphere.

For more information, please contact Ms. Chandanie Watawala at chandanie@anfrel.org or 9803656823.

APPENDIX 6: Post-election Preliminary Statement

9 December 2017 Kathmandu, Nepal For Immediate Release

PRELIMINARY STATEMENT

ANFREL congratulates Nepal for the successful two-phase elections

The Asian Network for Free Elections (ANFREL) congratulates the people of Nepal for the successful holding of the historic 2017 House of Representatives and Provincial Assembly Elections. It is the first to take place since the promulgation of the 2015 Constitution which marked the final stage of the peace process after a decade-long of civil war in the country.

We applaud the Election Commission of Nepal (ECN) for the generally peaceful and smooth management of the elections. The polling officers, security agents, and all election staff deserve to be recognized for their hard work.

We wish to compliment all political parties and candidates for the important role they played in this democratic exercise.

We congratulate the civil society for their involvement in the electoral process, especially the election observer groups, for their efforts and contributions in monitoring the various aspects of the elections. The findings and recommendations based on professional observation work of all election monitoring groups, domestic and international, will be of great value to the advancement of electoral democracy in Nepal. We encourage stakeholders in Nepal to foster a spirit of camaraderie and cooperation as the country builds and strengthens its democratic institutions.

"We hope that this important electoral process brought the Nepalis a renewed sense of hope and enthusiasm in building stronger and more credible democratic processes," said Mr. Damaso Magbual, ANFREL Spokesperson and Head of the 2017 Nepal Mission.

We hope that the ongoing counting process will be completed efficiently and without delay. ANFREL urges ECN to remain transparent throughout the process of counting and to resolve complaints in a fair and timely manner. We also appeal to all candidates to uphold the rule of law and direct all complaints and disputes to ECN or to relevant authorities.

ANFREL deployed a five-member study team to undertake an independent assessment of key thematic areas concerning the electoral process. The team launched their study mission upon arrival in Kathmandu in 21 November 2017 until 10 December 2017. A final statement based on the results of its study will be published after the completion of the counting process.

For further information, please feel free to contact Ms. Chandanie Watawala at chandanie@anfrel.org