



**EUROPEAN UNION  
ELECTION OBSERVATION MISSION**

# **FINAL REPORT**

## **NEPAL**



### **House of Representatives and Provincial Assembly Elections**

**26 November and 7 December 2017**



*European Union Election Observation Missions are independent from the European Union institutions. The information and views set out in this report are those of the author(s) and do not necessarily reflect the official opinion of the European Union. Neither the European Union institutions and bodies nor any person acting on their behalf may be held responsible for the use which may be made of the information contained therein.*

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***The final report is available in English and Nepali; only the English version is official***

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## LIST OF ABBREVIATIONS

<b>BSP</b>	Bibeksheel Sajha Party
<b>CAC</b>	Convention against Corruption
<b>CDC</b>	Constituency Delimitation Commission
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination against Women
<b>CERD</b>	Convention on the Elimination of All Forms of Racial Discrimination
<b>CPA</b>	Comprehensive Peace Agreement (2006)
<b>CPN-MC</b>	Communist Party of Nepal-Maoist Centre
<b>CPN-UML</b>	Communist Party of Nepal-Unified Marxist-Leninist
<b>CRO</b>	Chief Returning Officer
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>CSO</b>	Civil Society Organisation
<b>DRCN</b>	Democracy Resource Center Nepal
<b>ECN</b>	Election Commission of Nepal
<b>EMB</b>	Election Management Body
<b>EU EOM</b>	European Union Election Observation Mission
<b>FEMBoSA</b>	Forum of Election Management Bodies of South Asia
<b>FNJ</b>	Federation of Nepali Journalists
<b>FPTP</b>	First-Past-the-Post
<b>GEOC</b>	General Election Observation Committee
<b>GoN</b>	Government of Nepal
<b>IC</b>	Interim Constitution
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>IED</b>	Improvised explosive device
<b>LTO</b>	long-term observer
<b>MFA</b>	Ministry of Foreign Affairs
<b>MHA</b>	Ministry of Home Affairs
<b>MoU</b>	Memorandum of Understanding
<b>NC</b>	Nepali Congress
<b>NEOC</b>	National Election Observation Committee
<b>NGO</b>	Non-governmental organisation
<b>NMKP</b>	Nepal Majdur Kisan Party (Nepal Workers and Peasants Party)
<b>NSPN</b>	Naya Shakti
<b>PCN</b>	Press Council of Nepal
<b>PR</b>	Proportional Representation
<b>RJPN</b>	Rastriya Janata Party Nepal
<b>RO</b>	Returning Officer
<b>RPP</b>	Rastriya Prajatantra Party
<b>RPP-P</b>	Rastriya Prajatantra Party-Prajatantrik
<b>SSF-N</b>	Sanghiya Samajbadi Forum-Nepal
<b>STO</b>	short-term observer
<b>TCC</b>	The Carter Center
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNDP/ESP</b>	United Nations Development Program/ Electoral Support Project

## I. EXECUTIVE SUMMARY

- The 26 November and 7 December elections to the House of Representatives and the seven provincial assemblies represented a key milestone in the implementation of the 2015 Constitution. Following an invitation from the Government and the Election Commission of Nepal (ECN), a European Union Election Observation Mission (EU EOM) was deployed to Nepal from 25 October 2017 to 3 January 2018. The Mission was led by Chief Observer Željana Zovko, a Member of the European Parliament (MEP) from Croatia. In total, the mission deployed over 100 observers from all 28 EU member states, as well as from Norway and Switzerland, in all seven provinces, to assess the entire electoral process in accordance with international and regional commitments and standards for elections, as well as the laws of Nepal.
- The outgoing parliament derived from the Constituent Assembly elected in 2013. The new Constitution, of 20 September 2015, was responded to by months of protests and a blockade of border crossings with India, led principally by Madhesi groups. A vote of no-confidence led to the resignation of the then prime minister, K.P. Oli, of the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML). In August 2016, the Communist Party of Nepal-Maoist Centre (CPN-MC) and the Nepali Congress (NC) formed a government. As per their agreement, the Maoist chairman, Pushpa Kamal Dahal, led the government until May 2017 after which Sher Bahadur Deuba of the NC became prime minister. In anticipation of the elections, the political situation took a new turn with the formation of the left alliance between the CPN-UML and the CPN-MC on 3 October 2017.
- The new Constitution required a new set of elections, which commenced with the first local elections in 20 years, concluded in September 2017. The new cycle of legislative elections came to an end with the 7 February 2018 indirect election of the National Assembly, the second house of the bicameral Federal Parliament. This created essential foundations of the new structures of local, provincial and federal levels of government. The local elections and the National Assembly elections, were not observed by the EU EOM.
- The House of Representatives is comprised of 275 members, elected through a mixed electoral system. One hundred and sixty-five members are elected in a first-past-the-post (FPTP) system, consisting of one member each from 165 constituencies, amounting to 60% of total membership. The remaining 40% of members, 110 individuals, are elected by proportional representation (PR) where the entire country is a single constituency.
- Elections to establish the new provincial assemblies, seven in all, were conducted together with the House of Representatives elections. The electoral system for the provincial assemblies is also mixed, with the same 60/40% divide between FPTP and PR representation. Voters were, accordingly, entitled to cast a total of four votes for the House of Representatives and provincial assemblies together.
- The legal framework provides a good basis for the conduct of elections which comply with the international standards which have been subscribed to by Nepal. Regrettably, a great deal of the body of electoral law was enacted less than three months before the elections, with several directives being published less than three weeks before the elections. The legislation for the election of the National Assembly was passed by ordinance only on 29 December 2017.
- Political freedoms, including association, assembly and expression, were well-respected in the law and in practice. There were no restrictions on the right to stand for election. Political freedom was, however, disrupted by a series of violent attacks on candidates and campaign events. Between 7 November and 7 December, more than 150 violent incidents occurred throughout Nepal, principally with the use of improvised explosive devices.
- The electoral system, in a constitutionally mandated effort to promote gender and social inclusion, is designed, in part, on the basis of proportional inclusion. The quotas which applied to the PR elections for the House of Representatives provided (50%) for women, Dalit (13.8%), Adivasi Janajati (28.7%), Khas Arya

(31.2%), Madhesi (15.3%), Tharu (6.6%) and Muslim (4.4%). The Provincial Assemblies PR Directive set out detailed quotas for each of the seven provincial assemblies, determined by the demographic composition of the particular provinces. The design of the PR quota system, which also includes well-represented social groups, such as the Khas Arya, among the groups for inclusion, is arguably in contravention of international standards on equality, as affirmative action measures are foreseen only as a means to promote equality.

- The Election Commission of Nepal (ECN) performed its duties impartially and competently, generally enjoying the confidence of stakeholders. There was, however, a lack of transparency in the work of the ECN. There was no mechanism for regular consultations with political parties, civil society and observers at the central level. Decisions, internal rules of procedure, and voter registration data by administrative unit and constituency were not publicly available. The ECN failed to publish critical information on polling centre turnout and invalid votes. In addition, procedural weaknesses exist, particularly with regard to the reconciliation of ballots, which is detrimental to transparency, making the process vulnerable to abuse.
- The ECN succeeded with their logistical preparations, as well as with the operational aspects of conducting the elections in two phases, despite a tight timeframe, which was exacerbated by a late adoption of the necessary legislation and difficult geographical conditions. A notable exception, however, was the very late publication of essential polling and counting directives. Issues of design and printing of the four ballots were the cause of much confusion and ultimately impacted on the number of invalid votes. Oversight of the work of the temporarily-appointed returning officers by the ECN was inadequate. The reluctance of the ECN to exercise its oversight powers led to the inconsistent application of legislation, particularly regarding the access of observers to counting centres.
- A voter registration drive, which ended in August 2017, resulted in 1.37 million new registrants. The final voter list included 15,427,936 voters, an estimated 90 per cent of the total voting-age population. The right to vote was extensively circumscribed as at least half a million potential voters, namely election officials and security personnel on election duties, were denied the opportunity to vote. Around 170,000 young people who turned 18 between the registration deadline and the election days were not permitted by law to register. Furthermore, the requirements to transfer voter registration are overly restrictive.
- The Constituency Delimitation Commission completed its work in just 42 days by August 2017, using the 2011 census data. Equal suffrage has not been fully provided for, as great differences exist between the numbers of registered voters per FPTP constituency.
- The Constitution of Nepal expresses a strong recognition of the rights of persons to form and operate political parties. A well-conducted candidate nomination process was completed on 19 November. The ECN published the list of all candidates on its website. In total, there were 1,945 candidates running for 165 FPTP House of Representatives seats and 3,238 candidates running for 330 FPTP provincial assembly seats. Forty-nine political parties submitted closed lists, comprising 2,273 candidates for the 110 PR seats for the House of Representatives. Forty-one parties submitted 172 closed lists with 3,712 candidates for the total of 220 PR seats in the seven provincial assemblies.
- Despite significant effort, voter education by the ECN and other stakeholders was insufficient and in some areas non-existent. This was particularly worrying given the complexity of these elections where voters were casting four votes on three ballots.
- The ECN, in consultation with political parties, introduced a legally binding and highly detailed Election Code of Conduct. Extensive power was conferred on the ECN to punish transgressions of the Code, including by fines and disqualification. Electoral law confers power on the ECN to regulate financial expenditure for campaign purposes. The shortage of information available to the public and the poor enforcement of disclosure rules together undermined the transparency of and accountability for campaign finance. Although vote-buying is explicitly prohibited in the Code and in legislation, allegations that both

cash and in-kind gifts were given to voters circulated widely. However not a single prosecution for vote-buying was initiated.

- The Constitution of Nepal, 2015, provides for freedom of expression and freedom of communication and information, subject to some reasonable restrictions. The media environment during the election campaign period was generally free, although a few cases of limitations on the freedom of expression and the freedom of the press were observed. Eleven journalists were subject to preventive detention. Monitoring of 13 national media outlets by the EU EOM revealed a reasonably balanced coverage by public and private broadcasters and newspapers, with only the national radio station, Radio Nepal, allocating a disproportionate amount of airtime in favour of the NC.
- The EU EOM's media monitoring results show that the NC was the party spending most money on advertising on TV with a 29% share of all political advertisements aired by the four TV channels monitored, while the CPN-UML procured the largest amount of both airtime on radio (31%) as well as space in the newspapers (37%) monitored. The NC was found to be the most active party on social media (Facebook and Twitter), followed by the CPN-UML and the CPN-MC.
- There is an extensive catalogue of electoral offences in the law, ranging from activities during the campaign period to actions during polling and counting. There were just a few instances of individuals being charged with electoral offences. The ECN has an extensive jurisdiction to adjudicate upon complaints and appeals. The ECN dealt with complaints in a largely informal manner, requesting that those in violation cease and desist from the behaviour complained of. Fewer than 100 formal complaints were submitted. Extensive sanctions, including disqualification, were available, but they were not imposed. The lack of enforcement undermined the integrity of the Code of Conduct, and indeed of the ECN itself.
- A new Constitutional Bench of the Supreme Court was established in September 2017 with full original and exclusive jurisdiction to try disputes. Subsequent to the elections just seven petitions were submitted which challenged results, while two cases challenged the apportionment of PR seats. None of the cases was successful at the time of writing. A few cases were submitted prior to polling day, which challenged the decisions of the ECN, including on the printing of ballot papers, the representation of persons with disabilities in the PR closed lists; the low numbers of women likely to be elected; and the denial of temporary voting rights to civil servants. Failure to proceed to a full hearing in any of the election-related cases effectively amounted to the denial of a timely and effective remedy to the aggrieved parties.
- Polling took place at 19,809 polling centres across the country. Over 100 EU observers observed the opening, voting and closing processes at 633 polling centres in 61 districts within all seven provinces. Despite the fact that the conduct of polling in 89% of polling centres visited was assessed positively, as good or very good, there was an assessment of bad or very bad conduct of polling recorded in 11% of the centres visited. Irregularities which impacted upon the credibility of the polling process in these centres where the assessment was negative included: lack of secrecy of the vote; excessive assisted voting, with assistance often being provided by unauthorised persons to voters who appeared to be able to mark the ballots unaided; people voting together behind the voting screen; voters voting on behalf of others; and interference with the work of the polling staff.
- Disappointingly, EU observers were denied access to 22 polling centres and were seriously restricted in their observation in 29 polling centres. During nine days of the counting process, EU observers were denied full access to counting centres on 51 occasions in 20 districts across the country. The most pronounced problems with access were reported in Kailali, Kanchanpur, Lalitpur, Gorkha, Sunsari, Palpa and Bhaktapur districts.
- Between 8 and 16 December, EU observers submitted 142 counting observation forms from 40 districts where they had full access to observe. Overall, in the counting centres where EU observers had full access, the counting was conducted in a transparent manner. However, the prescribed procedures were frequently

not followed, including the critical procedure related to the reconciliation of ballot papers. Commendably, the ECN was publishing online progressive and final constituency-wide results for all four elections.

- The announcement of the number of seats won by political parties in the House of Representatives was much-delayed. Due to the constitutional requirement that at least one third of the total number of members elected from each political party represented in the Federal Parliament must be women, the ECN had to wait until the results of the National Assembly elections were determined before finalising the distribution of seats. The ECN announced the winners of the FPTP House of Representatives and provincial assembly elections immediately after counting was completed. The names of members elected under the PR system to the seven provincial assemblies were announced on 17 January and to the House of Representatives on 14 February 2018. While the previous Constituent Assembly was composed of 30 parties, in these elections only five parties met the 3% threshold to gain seats under the PR system in the House of Representatives. Only six women were elected from the 165 FPTP constituencies, all of whom represent the left alliance.
- Of the 275 House of Representatives seats, the CPN-UML won 121, the NC 63, the CPN-MC 53, the Rastriya Janata Party Nepal (RJPN) 17 and the Sanghiya Samajbadi Forum-Nepal (SSF-N) 16 seats. The Rastriya Prajatantra Party (RPP), the Naya Shakti (NSPN), the Rastriya Janamorcha and the Nepal Majdur Kisan Party (NMKP) obtained one seat each. One independent candidate, a member of the CPN-MC politburo, won a seat.
- The provincial assembly results resemble those of the House of Representatives. The CPN-UML received the largest number of votes in all provinces, except Province 2. The CPN-MC and the NC obtained the second and third largest number of votes overall. The RJPN and the SSF-N won together in Province 2, but also obtained seats in Provinces 1, 5 and 7. Another eight parties are represented in the different provincial assemblies.

The EU EOM offers a set of recommendations for future electoral reform based on observations, analysis and discussion with a range of stakeholders. The aim is to enhance aspects of the electoral process in order to improve the realisation of the fundamental rights of individuals and groups, as provided for in the international and regional commitments to democratic elections applicable to Nepal. In this regard, 29 recommendations are offered, for consideration and action, to the Government of Nepal, the ECN, political parties and civil society. Discussion on implementation of all recommendations should be undertaken as expeditiously as possible, in order to address the issues in a timely manner.

Priority action should be given to the following recommendations:

1. Review the impact of the quota system on the ethnic composition of the House of Representatives and provincial assemblies. Remove the Khas Arya from the groups included. Ensure that measures of affirmative action apply only to groups which are the subject of negative discrimination.
2. Transparency of the ECN to be enhanced by regular consultations with stakeholders, and timely publication of all information of public interest.
3. Extensive voter education to be launched sufficiently in advance of elections, in all languages used in Nepal.
4. FPTP constituency boundaries to be reviewed in order to ensure more equal suffrage.
5. Voter registration transfer requirements to be relaxed to allow those resident in rented accommodation and informal settlements to transfer their voter registration.



6. Responsible authorities, the ECN and the Nepal Police, should enforce the law in a comprehensive manner in order to eradicate vote-buying.
7. The elaboration of a less restrictive electoral code of conduct, including provisions for allocation of free airtime to political parties/candidates in the public media, would contribute to a freer campaign environment and would increase the amount of information and messages received by voters from electoral contestants.
8. Administrative procedures should be introduced which accord priority over other business to election-related cases filed with the Supreme Court.
9. Transparency of the results process to be enhanced by swift publication of polling centre turnout data and constituency counting tables, as well as by distribution of copies of the constituency counting tables to party and candidate agents.
10. Meaningful reconciliation at the polling and counting centre levels to be introduced in the directives including procedures on quarantine in case of discrepancy and audit in case of implausible turnout.

## II. INTRODUCTION

Following an invitation from the Government and Election Commission of Nepal (ECN), a European Union Election Observation Mission (EU EOM) was deployed to Nepal from 25 October 2017 to 3 January 2018. The Mission was led by Chief Observer Željana Zovko, a Member of the European Parliament (MEP) from Croatia. The mission comprised ten core team analysts in Kathmandu, 38 long-term observers (LTOs) and 44 short-term observers (STOs) who were deployed in all seven provinces to assess the entire electoral process in accordance with international and regional commitments and standards for elections, as well as the laws of Nepal. A delegation of seven MEPs led by Neena Gill CBE, as well as diplomatic staff of EU member state embassies in Nepal, joined the mission for both phases of the election. In total, the mission was composed of over 100 observers from all 28 EU member states, as well as from Norway and Switzerland.

The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation commemorated at the United Nations in October 2005. This report presents a detailed assessment of the findings of the EU EOM on the various stages of the electoral process, and, based on these findings, includes a series of recommendations for the improvement of future electoral processes.

The EU EOM expresses its appreciation to the Government of Nepal, the ECN, political parties, civil society, media, as well as the people of Nepal, for their cooperation and assistance in the course of the observation mission. The EU EOM is grateful to the Delegation of the European Union to Nepal and the European Union member states' diplomatic missions accredited to Nepal for their support throughout.

## III. POLITICAL BACKGROUND

The elections, held on 26 November and 7 December 2017, to the House of Representatives as well as to the seven provincial assemblies represented a key milestone in the implementation of the Constitution promulgated in September 2015. Local elections, concluded in September 2017, were a first step in the realisation of the new structure of local, provincial and federal levels of government. The Federal Parliament of Nepal became bicameral following the election of the National Assembly on 7 February 2018.

The CPA, signed by the Communist Party of Nepal – Maoist (CPN-M)<sup>1</sup> and the Government of Nepal in 2006, put an end to the Maoist insurgency and concluded a decade of civil war. Elections to a Constituent Assembly were held in 2008 and the CPN-M emerged as the largest party, followed by the Nepali Congress (NC) and the Communist Party of Nepal–Unified Marxist-Leninist (CPN-UML). In May 2008, the Constituent Assembly abolished the monarchy, ending 240 years of royal rule, and Nepal became a republic. The Constituent Assembly, charged with drafting a new Constitution, was unable to achieve consensus within its mandate, and new Constituent Assembly elections were held in 2013. The NC obtained the largest number of seats, followed by the CPN-UML, while the Maoists became the third largest party.

The new Constitution was promulgated on 20 September 2015, after which the Constituent Assembly turned into a parliament. The promulgation of the Constitution took place amidst political turmoil and was followed by months of protests by Madhesi and other historically marginalised groups, who demanded the government amend the Constitution to honour past agreements on inclusion and federalism. There were disagreements on electoral representation in terms of affirmative action (identity-based quotas), the boundaries of the new provinces, constituency delimitation and issues related to citizenship. In September 2015, the United Democratic Madhesi Front (UDMF), an umbrella group of Madhesi parties that emerged in 2007, initiated a 135 day-long blockade of the border with India. This ended in February 2016, without Madhesi demands for a constitutional amendment being addressed.

After the promulgation of the Constitution, the chairman of the CPN-UML, K.P. Oli, became prime minister with the support of the Communist Party of Nepal–Maoist Centre (CPN-MC),<sup>2</sup> the Rastriya Prajatantra Party (RPP), Madhesi parties, and other minor parties. Following the national crisis that emerged after the Madhesi protests, a vote of no-confidence was tabled before Parliament which led to the resignation of the prime minister. The CPN-MC formed a government with the NC in August 2016. In adherence to a ‘gentlemen’s agreement’, the Maoist chairman, Pushpa Kamal Dahal "Prachanda", led the government until May 2017. Sher Bahadur Deuba of the NC became prime minister in June 2017.

The government was mandated to conduct the first electoral cycle after the promulgation of the new Constitution, including the first local elections in 20 years. Following protests by Madhes-based parties, the local elections were split into three phases according to provinces, and were concluded in September 2017.

Since the conclusion of the CPA in 2006, three major parties have alternated in holding power: the NC, the CPN-UML and the CPN-MC. The NC, led by Prime Minister Sher Bahadur Deuba, is the oldest party in Nepal, founded in 1946. In the House of Representatives and provincial assembly elections the party led the democratic alliance. The CPN-UML was formed in 1991 and, together with the NC, played a major role in the establishment of democracy and in the peace negotiations with the Maoists. Led by Khadga Prasad (K.P.) Oli since 2014, the party promotes a largely nationalistic platform and obtained the best results in the 2017 local elections. The CPN-MC is the third largest party in Nepal. Formerly known as Communist Party of Nepal (Maoist) during the war, the party remains under the same wartime leadership of Pushpa Kamal Dahal. The CPN-MC emerged with the best results in the 2008 Constituent Assembly election. The party aligned with the CPN-UML in the left alliance with whom they shared a common manifesto.

None of these parties ever obtained an absolute majority in Parliament, resulting in a succession of varied coalition governments. Furthermore, groups in the Terai emerged to promote the rights of the Madhesi population. Since 2007, these groups have merged and split as political parties. At present, the Sanghiya

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<sup>1</sup> Some Maoist factions were not satisfied with the outcome of the peace agreement and split from the CPN (M) forming new communist parties. In 2009 some of these reunited with the mother party. Subsequently, the Communist Party of Nepal changed name to Unified Communist Party of Nepal (Maoist) abbreviated UCPN (M).

<sup>2</sup> In May 2016, UCPN (M) changed its name for the second time when other splinter Maoist parties merged with the party. It since became the Communist Party of Nepal (Maoist-Centre) or the CPN-MC.

Samajbadi Forum-Nepal (SSF-N) and the Rastriya Janata Party Nepal (RJPN) represent these political forces and have their stronghold in the Terai.

For the first time since the establishment of the multiparty system, political parties formed electoral alliances for the House of Representatives and provincial assemblies, and agreed to coordinate the fielding of candidates for the first-past-the post (FPTP) elections. The catalyst for this change was the creation of the left alliance between the CPN-UML and the CPN-MC on 3 October 2017. Following the creation of this alliance, other political parties reacted by forging their own alliances. While the left alliance was a national alliance, the other alliances were based on local seat-allocation agreements.

The left alliance emerged as a solid political force in the electoral process. The CPN-MC and the CPN-UML successfully split 163 of the 165 constituencies<sup>3</sup> in a 60:40 ratio in favour of the CPN-UML for the House of Representatives, and established local alliances with the Rastriya Janamorcha in Pyuthan and the Rastriya Prajatantra Party (RPP) in Jhapa.<sup>4</sup> A similar agreement was made for provincial assembly seats. The CPN-UML and the CPN-MC ran the elections under a common campaign manifesto in alignment with their declared intention to merge into a single party after the elections.

The NC presented candidates in 153 of the 165 constituencies for the House of Representatives. The party created a democratic alliance with the two pro-monarchy parties, the Rastriya Prajatantra Party (RPP) and the Rastriya Prajatantra Party-Prajatantrik (RPP-P), as well as the Naya Shakti (NSPN). The democratic alliance was the result of a seat-allocation agreement applied only in some of the constituencies where the different parties fielded candidates. In the districts where the democratic alliance had an agreement, these parties campaigned together. The RJPN and the SSF-N agreed to split constituencies in the Madhesi-stronghold of Province 2 so that only one party presented a candidate in any given constituency.<sup>5</sup> The NC agreed to not put forward candidates in the constituencies where RJPN and SSF-N leaders contested.

The ECN did not announce the complete results of the House of Representative and provincial assembly elections at the same time. The FPTP House of Representatives and provincial assembly elections results were announced immediately after counting was completed. The names of members elected under the PR system to the seven provincial assemblies were announced on 17 January and to the House of Representatives on 14 February 2018.

Of the 275 House of Representatives seats, the CPN-UML won 121, the NC 63, the CPN-MC 53, the RJPN 17 and the SSF-N 16 seats. The Rastriya Prajatantra Party (RPP), the Naya Shakti (NSPN), the Rastriya Janamorcha and the Nepal Majdur Kisan Party (NMKP) obtained one seat each. One independent candidate, a member of the CPN-MC politburo, won a seat.

The provincial assembly results reflect those of the House of Representatives, with the two communist parties obtaining the largest number of votes in six out of seven provinces. The CPN-UML received the largest number of votes in all provinces, except Province 2, alone receiving approximately half of the total number of seats. The CPN-MC and the NC obtained the second and third largest number of votes overall. The RJPN and the SSF-N won together in Province 2, but also obtained seats in Provinces 1, 5 and 7. Another eight parties are represented in the different provincial assemblies, with Province 3 being the most politically diverse with eight political parties sharing the 110 seats.<sup>6</sup>

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<sup>3</sup> 103 CPN-UML and 60 CPN-MC.

<sup>4</sup> At the national level, RPP was part of the democratic alliance; in Jhapa, however, the party did not agree with the seat allocation imposed by the NC and decided to join the left alliance in one constituency in Jhapa.

<sup>5</sup> Both the SSF-N and the RJPN presented candidates in constituencies outside of province 2, where no seat-allocation agreement was taken.

<sup>6</sup> Province 1: CPN-UML 51 seats, CPN-MC 15 seats, NC 21 seats, SSF-N 3 seats, RPP 1 seat, Sanghiya Democratic National Forum (SDNF) 1 seat, and Independent 1 seat (total 93 seats). Province 2: CPN-UML 21 seats, CPN-MC 11 seats, NC 19 seats, SSF-N 29 seats, RJPN 25 seats, Nepal Federal Socialist Party 1 seat, and Independent 1 seat (total 107 seats). Province 3: CPN-UML 58 seats, CPN-MC 23 seats, NC 21 seats, BSP 3 seats, NMKP 2 seats, NSPN 1 seat, RPP 1 seat, and RPP-P 1 seat (total 110 seats). Province 4: CPN-UML 27 seats, CPN-MC 12 seats, NC 15 seats, Rastriya

## IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

### A. International Principles and Commitments

Nepal is a State Party to most of the international legal instruments which apply to human rights and the conduct of elections. The instruments which it has ratified include the International Covenant on Civil and Political Rights (State Party since 1991); the Convention on the Elimination of All Forms of Discrimination against Women (1991); the Convention on the Elimination of All Forms of Racial Discrimination (1971); the International Covenant on Economic, Social and Cultural Rights (1991); the Convention on the Rights of the Child (1990); and the Convention on the Rights of Persons with Disabilities (2010). Nepal ratified the UN Convention against Corruption in 2011, and the ILO Convention 169, the Indigenous and Tribal Peoples' Convention, in 2007.

### B. Electoral Legislation

The legal framework relating to the House of Representatives and provincial assembly elections is to be found spread across a range of legal instruments, including, principally, the Constitution of Nepal, 2015, and the two separate but similar acts, the Election of Members to the House of Representatives Act, 2017, and the Election of Members to the Provincial (State) Assembly Act, 2017. Other relevant legislation includes the Election Commission Act, 2017, the Electoral Rolls Act, 2017, the Election (Offences and Punishment) Act, 2017, and the Political Party Act, 2017. In addition to all of this enabling legislation for the elections, a vast array of subsidiary legislation was introduced in the form of regulations, directives and other forms of instruction from the ECN. A binding Election Code of Conduct, 2017, was also promulgated.

While the Constitution of Nepal had been promulgated in September 2015, a great deal of the body of electoral law was enacted less than three months before the elections, with several directives being published less than three weeks before the elections. As a consequence of this haste, there were many inconsistencies between the various strands of legislation, with legal instruments amending earlier instruments in order to ensure compliance with principal legislation. There were some instances, such as the rules on PR, where details omitted in the principal legislation were provided subsequently in subsidiary legislation.<sup>7</sup> Overall, this meant that there was very little time for appraisal or dissemination of the law. International best practice is that electoral law should be settled preferably one year in advance of an election. This ensures that the law is certain and that stakeholders have ample time to become acquainted with it.

The legal framework provides a good basis for the conduct of elections which comply with the international standards which have been subscribed to by Nepal. These standards require that citizens have the right to vote and to be elected in genuine periodic elections, conducted on the basis of universal and equal suffrage, to be held by secret ballot, guaranteeing the free expression of the will of the voters. There were no significant restrictions on the right to stand for election, either for independent candidates or for members of political parties. Candidates were, however, required to be 25 years of age to contest the elections, a limitation which, while permissible under international law, is arguably unnecessary. An amendment to the law since the last Constituent Assembly elections has enhanced the link between the candidate and the voter, as a prohibition on running for election in more than one constituency has been introduced.

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Janamorcha 3 seats, NSPN 2 seats, and independent 1 seat (total 60 seats). Province 5: CPN-UML 41 seats, CPN-MC 20 seats, NC 19 seats, SSF-N 5 seats, RJPN 1 seat, and Rastriya Janamorcha 1 seat (total 87 seats). Province 6: CPN-UML 20 seats, CPN-MC 13 seats, NC 6 seats, and RPP 1 seat (total 40 seats). Province 7: CPN-UML 25 seats, CPN-MC 14 seats, NC 12 seats, and RJPN 2 seats (total 53 seats).

<sup>7</sup> Quotas for "backward" regions and for persons with disabilities were omitted from initial legislation and added subsequently; the PR quota was initially made applicable to all parties, despite the 10% exclusionary rule, which was subsequently amended.

The right to vote was also well protected, with the exception being the denial of voting rights by law to “persons of unsound mind”, which amounts to a violation of the Convention on the Rights of Persons with Disabilities. The secrecy of the ballot was also denied to persons with disabilities as there were no facilities, such as tactile ballot guides, to facilitate independent voting. The entitlement to equal suffrage was undermined by the fact that the weight of the vote differed widely between different constituencies, as the number of registered voters in constituencies diverged widely. On a positive note, provision is made by law for “temporary voters”, individuals, such as election officials, prisoners and residents of geriatric homes, who are away from their place of registration and may vote in PR elections, but the FPTP vote is denied to this segment of the electorate. Despite this legal provision for temporary voters, they were not able to vote this time.

The right to vote is extended to citizens. The legal basis for the acquisition of citizenship, however, is flawed and in violation of international law. The principal deficiency is to be found in Article 11 of the Constitution, which discriminates on the grounds of sex and therefore violates the Convention of the Elimination of All Forms of Discrimination against Women. Nepalese women do not have the same rights to transfer citizenship to foreign spouses as do Nepalese men. This therefore denies access to citizenship to many who would otherwise be entitled to this status, and there is a consequent deprivation of the right to vote and to stand for election for those affected.

Political freedoms, including association, assembly and expression, were well-respected in the law and in practice. Political freedom was, however, disrupted by those who engaged in violent attacks during the election period. Preventive detention, provided for in the Constitution and in legislation, was utilised to restrict the activities of those who were perceived to be a threat to public security. The arrest of eleven journalists, as well as of some Madhesi activists advocating spoiling the ballot, appeared to amount to arbitrary detention as the intention could appear to be to suppress political dissent and the expression of opposition to the elections. The journalists and other non-violent activists were released without charge subsequent to the elections.

### **C. The Electoral System**

The Constitution states that Nepal is an independent, indivisible, sovereign, secular, inclusive, federal democratic republican state. All sovereign power is vested in the people of Nepal. There are three powers of government set out in the Constitution, the executive power vested in the Council of Ministers; the legislative power vested in the Federal Parliament, comprised of the National Assembly and the House of Representatives; and the judicial power vested in the courts. The structure of the state is comprised of three basic levels: federal, provincial and local, with powers of the state divided accordingly.

The House of Representatives, the lower of the bicameral houses of the new Federal Parliament, is comprised of 275 members, elected through a mixed electoral system. One hundred and sixty-five members are elected in a first-past-the-post (FPTP) system, consisting of one member each from 165 constituencies, amounting to 60% of total membership. The remaining 40% of members, 110 individuals, are elected by PR where the entire country is a single constituency. Elections to establish the new provincial assemblies, seven in all, were conducted together with the House of Representatives elections. The electoral system for the provincial assemblies is also mixed, with the same 60/40% divide between FPTP and PR representation. Voters were, accordingly, entitled to cast a total of four votes, one for each of the separate systems for the House of Representatives, and one for each of the separate systems for the provincial assemblies. A Results Divisor Method, as set out in Schedule 2 of the House of Representatives Election Act 2017, is used to establish a quotient and allocate the number of seats to each party under the PR system.

The Constitution, in Article 84, sets out the general principles of the electoral system for the House of Representatives, which also impact on the National Assembly. It aspires to the election of at least one third female members to the Federal Parliament as a whole. Political parties are obliged to include at least one third women within their overall representation in the Federal Parliament. Article 176 of the Constitution sets out a similar rule for the provincial assemblies, also requiring that one third of the total members representing any political party in a provincial assembly must be female.

The PR elections, for both the House of Representatives and provincial assemblies, are subject to complex quota requirements for the representation of Dalit, indigenous peoples, Khas Arya, Madhesi, Tharu, Muslims and backward regions. These groups (or clusters in Nepali parlance) are to be nominated by parties on the basis of population, with geography and territorial balance also to be taken into account. Persons with disabilities must also be included, but without a requirement that this inclusion be proportional to population. Christians are not included, despite comprising 1.4% of the population. The Constitution is silent on the operation of the quota system, but the House of Representatives and the provincial assembly election acts, as well as subsidiary legislation, set out rules for these elections. While the provisions in the Constitution are absolute in relation to women, and are echoed thus in the legislation, the legislation provides that the quota rules are to be complied with “to the extent possible” by parties which secure less than 10% of the PR seats. The level of compliance is therefore not clearly defined for smaller parties, but the ECN attempted to apply the quota rules without exception.

The Constitution also contains provisions on social justice in Article 42 which confer the right to participate in State bodies on various historically marginalised and disadvantaged groups. Article 18, on the right to equality, also makes provision for affirmative action for certain poor and marginalised groups. There is an inconsistency between the constitutional provisions on equality and social justice, on the one hand, and those on the electoral system, on the other side. The design of the PR quota system, which includes the Khas Arya<sup>8</sup> among the groups for inclusion, has the consequence of actually enhancing the participation of elite social groups within the legislatures, increasing their dominance. The equality provisions refer only to indigent Khas Arya, but this qualification is not contained in the electoral provision. This is arguably in contravention of international standards on equality, as, under the Convention on the Elimination of All Forms of Discrimination against Women<sup>9</sup> and the Convention on the Elimination of All Forms of Racial Discrimination,<sup>10</sup> affirmative action measures are foreseen only as a means to promote equality.

## V. ELECTION ADMINISTRATION

The Election Commission of Nepal (ECN) is a permanent constitutional body with extensive executive and regulatory powers, mandated to organise elections in Nepal. It is composed of a chief election commissioner and four election commissioners. The commissioners are appointed by the president for a single six-year term, after the recommendation of the Constitutional Council<sup>11</sup> is endorsed by the Parliamentary Hearings Special Committee.<sup>12</sup> The constitutional provision aimed at achieving political independence of the ECN is rather weak, as it only requires prospective commissioners not to be members of political parties immediately before their appointment. However, the existing mechanism for the appointment of the commissioners provides for cross-party consensus. The ECN performed its duties impartially and competently, generally enjoying the confidence of stakeholders.

<sup>8</sup> Constitution of Nepal, Art. 84 (2) Khas Arya means the Kshetri, Brahmin, Thakuri, Sanyasi (Dashami) community

<sup>9</sup> CEDAW Art. 4 legalises special measures for the promotion of equality between men and women

<sup>10</sup> CERD Art. 1 (4) and Art. 2 (2) legalises special measures to promote the equality of ethnic groups requiring protection.

<sup>11</sup> The six-member Council should consist of the Prime Minister, Chief Justice, Speaker, Deputy Speaker and Leader of the opposition in the House of Representatives, and Chairperson of the National Assembly. Currently there are only five members as the National Assembly is yet to be elected.

<sup>12</sup> The 15-member cross-party parliamentary committee was formed in June 2016 after lengthy political deliberations.

There was, however, a lack of transparency in the work of the ECN. Decisions of the ECN and minutes of their meetings were not published systematically. Internal rules of procedure, a comprehensive electoral calendar, and consolidated voter registration data by administrative unit and constituency were not publicly available. The ECN did not publish critical information on polling centre turnout. Importantly, there was no mechanism for regular consultations with political parties, civil society and observers at the central level, although engagement with stakeholders at the district level was better.

Oversight of the work of the temporarily-appointed returning officers by the ECN was inadequate. The returning officers played a key role in the conduct of candidate nomination, polling and counting at the constituency level. While the law stipulates that they are subject to the direction of the ECN, decision-making was in reality often left to the discretion of the returning officers due to their seniority as judges. This reluctance of the ECN to exercise its powers led to the inconsistent application of legislation, particularly regarding the access of observers to counting centres.

Sufficient resources were allocated for these elections. The ECN, as of 5 January, claimed to have spent in total NPR 5.62 billion (€46 million).<sup>13</sup> This amount excludes security expenses, which reached around NPR 10 billion (€82 million). The total cost of these elections could therefore reach NPR 15.7 billion (€129 million) or NPR 1,020(€8.4) per registered voter.

The ECN managed to conduct the elections in two phases, despite the date for the election having been set by the government just 97 days before the first election day. This created a tight timeframe for the conduct of elections, exacerbated by the late adoption of the necessary legislation. Issues of design and printing of the four ballots were the cause of much confusion and ultimately impacted on the number of invalid votes. To ease the burden of printing, the ECN initially decided to print the two ballots for both FPTP elections together on a single sheet of paper, and likewise for the two PR ballots. An intervention of the Supreme Court led to the separation of the FPTP ballots on two different sheets of paper, while the two PR ballots remained on a single sheet of paper, as they had been already printed.<sup>14</sup>

Ensuing logistical problems<sup>15</sup> and difficult geographical and weather conditions further complicated preparations. Nevertheless, all technical preparations were completed on time for both election days. A notable exception, however, was the very late publication of essential polling and counting directives, less than two weeks before, respectively, the first election day and the start of the counting. Thus, stakeholders, and political party and candidate agents in particular, had limited time to familiarise themselves with the procedures for these critical parts of the process. In addition, the quality of the training of polling staff varied and it was assessed to be poor by some EU observer teams. There was no systematic training conducted for the counting staff.

The polling and counting directives included a number of safeguards aimed at ensuring the credibility of the process. These included the mandatory presentation of a government-issued photographic ID card, a voter list with colour photographs, and access for agents and observers. However procedural weaknesses persist, particularly in regard to reconciliation of ballots, which is detrimental to transparency, making the process vulnerable to potential abuse by political contenders.

There was no meaningful reconciliation between the number of voters who were marked in the voter list, the number of used ballots and the number of ballots found in the ballot box. The polling officer had to

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<sup>13</sup> According to the ECN, this figure could rise once a few remaining payments are made.

<sup>14</sup> Furthermore, the ballots contained election symbols without any names. The PR ballots were printed, and symbols allocated to the parties based on their early expressions of interest to participate in the elections. For the House of Representatives, only 49 of 88 parties eventually submitted their lists and, there were therefore 39 symbols belonging to parties which did not participate.

<sup>15</sup> The introduction of the third ballot delayed voter education, the finalisation of the polling and counting directives, and the training of staff. An extra ballot box had to be provided to each polling centre, as well as an additional member of staff.

record the number of received, unused, issued and invalidated (returned blank, found outside the ballot box etc.) ballots. However, there was no requirement to count the number of voters marked off in the voter list and to compare it with the number of used, i.e. issued, plus invalidated, ballots. At the counting centres, the total number of ballots found in each ballot box should have been recorded, but no matching of this figure with the polling centre data on issued ballots minus invalidated ballots was foreseen, nor was there any procedure on how to proceed in case of discrepancy. The directives also lacked a mechanism for the auditing of polling centres with implausibly high or low turnout figures.

The determination of valid votes is not aligned with international good practice, i.e. all ballot papers that show the clear intention of the voter are considered valid. As per existing legislation, a vote is considered valid only if it is marked with the swastika stamp. Any other way of marking the ballot paper, such as thumb printing or using a pen, invalidates the vote.

The new online accreditation system for observers was cumbersome. Citing security concerns, the ECN imposed unreasonable restrictions on observers, limiting their deployment to only one province. This went beyond the requirements stipulated in the accreditation procedures and hampered the work of both domestic and international observers.

## VI. DELIMITATION OF CONSTITUENCIES

The Constituency Delimitation Commission completed its work in a very short period of just 42 days in July and August 2017, using the rather outdated 2011 National Population and Census data. Equal suffrage has not been fully provided for, as great differences exist between the numbers of registered voters per FPTP constituency. The largest federal FPTP constituency has nearly 26 times more voters than the smallest one.<sup>16</sup> Eighty-seven of the 165 federal constituencies (53%) deviate by more than 15% from the national average of 93,503 voters per federal constituency. Similar disparities exist for all seven provincial assemblies.<sup>17</sup> The principal cause of these inequalities is the constitutional requirement for at least one federal constituency in each of the 77 districts, irrespective of population.

## VII. VOTER REGISTRATION

Any Nepalese citizen, who had reached the age of 18 years on the day the elections were announced, 21 August 2017, who had been issued with a citizenship certificate and who was a permanent resident of any electoral constituency, was entitled to register for these elections. Each registered voter is entitled to receive a voter identification card to prove his/her eligibility on election day.

The ECN has the overall responsibility to maintain the biometric voter register. Voter registration is active and continuous and takes place at district election offices. Following pressure from political parties, the ECN set up extra registration facilities in 753 newly-established local units between 30 July and 20 August. This effort resulted in 1.37 million new registrants, representing an increase of 9.8% on the number registered for local elections.

The ECN produced 2.2 million voter identification cards for newly registered and transferred voters, and for those who applied for the replacement of damaged or lost cards. The cards were distributed at polling centres on 24-25 November (first phase) and 5-6 December (second phase). However, as in the 2017 local elections, many cards remained uncollected and so, on 25 November, the ECN again allowed registered

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<sup>16</sup> Ramechhap-1 has 152,559 registered voters and Manang-1 5,881.

<sup>17</sup> In Province 1 43%, in Province 2 20%, in Province 3 74%, in Province 4 58%, in Province 5 46%, in Province 6 71% and in Province 7 31% of the provincial FPTP constituencies deviate by more than 15% from the provincial average number of registered voters per provincial constituency.



voters to vote during both phases of the elections using any valid government-issued photographic ID document, such as a citizenship certificate, driving licence or passport. This last-minute decision appeared to be well communicated to polling centre staff. There were no problems reported in this regard.

The full voter list, with a breakdown per polling centre,<sup>18</sup> was accessible online and voters with access to the internet could verify their registration status and polling centre address either through the ECN website or a mobile application. The final voter list included 15,427,936 voters, an estimated 90 per cent of the total voting-age population. However, the actual registration rate is lower, as there is no effective system in place for the removal of deceased persons from the list. The removal is left entirely to the initiative of the deceased person's family members who have no incentive to report this information to the ECN. There appears to be a slight under-registration of women in the final voter register as they represent only 49.6% of the registered voters, while according to the 2011 National Population and Housing Census data they represent 51.5% of the total population.

The right to vote was extensively circumscribed during these elections as at least half a million potential voters, or three per cent of the total electorate, namely election officials and security personnel on election duties, prisoners and residents of old age homes, were denied the opportunity to vote. This was particularly egregious as these groups are foreseen in the law as temporary voters who may be permitted to vote in the proportional representation elections. The ECN failed to vindicate their rights.

Around 170,000 young people who turned 18 between the registration deadline of 21 August and the election days were not able to register due to the legal requirement to be 18 on the day of registration. Furthermore, the requirements to transfer voter registration are overly restrictive.<sup>19</sup> A voter who wants to transfer registration to another location must provide evidence of permanent residence in the new place by means such as a migration certificate, land ownership and building completion certificate, electricity bill, or marriage certificate in case of women. Therefore, voters staying in rented premises or informal settlements cannot transfer their registration.

An estimated 2-3 million Nepalese, primarily men, working abroad are another large group of the population that was unlikely to be able to vote. There was no out-of-country voting and travelling home to vote is rather costly. Also, many Nepalese living and working in Kathmandu and in other urban centres, without permanent residence in these places, might not have been able to travel home to their place of origin where they are registered to vote, due to the long distances and high costs involved.

Possession of a citizenship certificate is a prerequisite to be registered as a voter. However, the definition of citizenship and the securing of certificates is a highly sensitive issue. This is particularly so in the Terai with the Madhesi community reporting administrative difficulties, as well as legal obstacles, in obtaining these documents. According to a 2015 study by the Forum for Women, Law and Development,<sup>20</sup> the projected number of the eligible population without proof of citizenship is alarmingly high, at 5.4 million or 24% of the eligible population aged 16 and above.

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<sup>18</sup> The polling centres, however, were not grouped by administrative units and constituencies.

<sup>19</sup> In 2017 only 35,057 voters, or 0.2% of the total electorate, transferred their registration.

<sup>20</sup> <http://fwld.org/wp-content/uploads/2016/06/Acquisition-of-Citizenship-Certificate-in-Nepal-Estimation-and-Projection.pdf>

## VIII. REGISTRATION OF POLITICAL PARTIES AND CANDIDATE NOMINATION

### A. Registration of Political Parties

The Constitution of Nepal expresses a strong recognition of the rights of persons to form and operate political parties. This flows from the very beginning of the document, in the Preamble, throughout the Constitution. The general human right to freedom in Article 17 includes an explicit statement of the freedom of every citizen to form a political party. This freedom may be restricted if it is used to undermine the unity of Nepal or to undermine in any way harmonious relations between ethnic, religious and other social groups. Political parties are also not permitted to advocate the achievement of a single-party state in their policies.

The responsibility for the registration of political parties rests with the ECN. Parties must be democratic in their internal operations, must foster inclusion, and must comply with many other rules of operation set out in the Act Relating to Political Parties, 2017. This Act makes it relatively easy to form a political party, liberalised from previous legal rules. There is a requirement that a party must have at least 500 supporters to register as a party. The ease of formation of political parties has resulted in a total number of 124 political parties registered with the ECN at present. It had been 130, but some have merged.

### B. Candidate Nomination

A candidate has to meet the following qualifications: be a Nepalese citizen, a registered voter, at least 25 years of age, not ineligible under federal law, and not holding an office of profit.<sup>21</sup> For provincial assembly candidates, there is an additional requirement to be a registered voter in the pertinent province. Candidates and political parties must deposit candidacy fees which are refundable if the candidate secures at least 10 per cent of the valid votes, and the political party at least one proportional representation seat.<sup>22</sup>

Given the complexity of compiling the PR closed list, the ECN provided assistance to political parties for the compilation of their closed lists, including the mandatory numbers of women and of several social and ethnic groups. The quotas which applied to the PR elections for the House of Representatives were for women (50%), Dalit (13.8%), Adivasi Janajati (28.7%), Khas Arya (31.2%), Madhesi (15.3%), Tharu (6.6%) and Muslim (4.4%). The Provincial Assemblies PR Directive set out the detailed quotas for each of the seven provincial assemblies, determined by the demographic composition of the particular provinces.

The candidate nomination process was completed on 19 November. The ECN published the list of all candidates on its website. In total, there were 1,945 candidates running for 165 FPTP House of Representatives seats and 3,238 candidates running for 330 FPTP provincial assembly seats. Forty-nine political parties submitted closed lists, comprising 2,273 candidates for the 110 PR seats for the House of Representatives. Forty-one parties submitted 172 closed lists with 3,712 candidates for the total of 220 PR seats in the seven provincial assemblies. In general, the candidate nomination process proceeded smoothly, with only one disputed disqualification being challenged in the Supreme Court, where the objection to the disqualification was not accepted.

The system for allocating election symbols and for ordering the symbols on the ballot papers discriminates against independent candidates, and non-parliamentary and new political parties. Independent FPTP

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<sup>21</sup> Office of profit means any position other than a position to be filled by an election or nomination, for which a remuneration or economic benefit is paid out of a government fund.

<sup>22</sup> The candidacy fee was 10,000 Nepalese rupees (NPR) for the FPTP candidates and NPR 50,000 for the PR closed list for elections to the House of Representatives, and NPR 5,000 for the FPTP candidates and NPR 25,000 for the PR closed list for the provincial assembly elections. The fee was reduced by half for women, Dalit, marginalised communities and financially-weak candidates.

candidates were allocated their election symbols only one month before election day.<sup>23</sup> This seriously limited their ability to campaign effectively, given that ballot papers did not include the name or photograph of a candidate. Furthermore, they had to choose the symbol from a limited number of symbols pre-selected and approved by the ECN. The symbols on all three ballot papers were ordered according to the strength of political parties' representation in the outgoing Parliament. The symbols of non-parliamentary and new political parties or independent candidates only followed after them.

## IX. CIVIC AND VOTER EDUCATION

Despite serious efforts, voter education by the ECN and other stakeholders was insufficient and, in some areas, non-existent. The ECN publicly stated that, due to operational challenges arising from printing the additional FPTP ballot, it would not have enough time for effective voter education. This was particularly worrying given the complexity of these elections where voters were casting four votes on three ballots. Around 20,000 voter educators, one per polling centre, were recruited, trained and dispatched to the field late, allowing only 15 days for their door-to-door visits ahead of the first-phase election day. Furthermore, these grassroots voter educators were mostly state employees who could be involved in voter education activities only after their regular job duties. In some areas, EU observers also reported a lack of voter education material as well as its absence in local languages. Both main indicators of the quality of the voter education – turnout and rate of invalid votes – deteriorated as compared to the 2013 Constituent Assembly elections.

Article 25 of the International Covenant on Civil and Political Rights provides that citizens should be able to take part in the conduct of public affairs. This has been interpreted as meaning that barriers such as illiteracy and poverty must not obstruct political participation. Alongside voter education, civic education is important to ensure that citizens participate in elections in a meaningful way. Electoral malpractices, such as vote-buying, have hindered the development of notions of accountability of elected representatives to the electorate. Civic education can foster a broader understanding of the election process as well as of the new federal structure and institutions. Broad civic education programmes are crucial to informing citizens of their political rights and on the role of their elected representatives.

## X. CAMPAIGN ENVIRONMENT

Political freedoms, including association, assembly and expression, were well-respected in the law and in practice, despite of a series of violent attacks on candidates and campaign events. From 7 November to 7 December, more than 150 violent incidents occurred throughout Nepal, particularly in Provinces 1 and 3. The number of incidents increased leading up to the two election days.

Attacks with improvised explosive devices (IEDs) targeted 34 candidates from the left alliance and 34 candidates from the NC, as well as eight candidates from other political parties. These included attacks on rallies of Prime Minister Deuba and the chairpersons of the CPN-UML and of the CPN-MC. On 4 December, former Minister of Health, Gagan Thapa, an NC candidate, was injured by an IED while door-to-door canvassing in Kathmandu. There were 29 attacks on polling centres and election offices. Forty-eight IEDs targeted public venues, including two police stations in Saptari and Kailali districts. Fifty-one people were injured during these attacks. On 29 November, a temporary police officer died from injuries after an IED exploded near the venue of a NC event in Dang district, which Prime Minister Deuba was scheduled to attend.

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<sup>23</sup> The FPTP candidates nominated by political parties used traditional, often well-known party symbols. Even the newly established parties, and thus also their FPTP candidates, were allocated the symbols at least 40 days earlier than the independent candidates.

Almost 1,000 people were held in preventive detention during the electoral period on allegations of disrupting the elections. There was little public opposition to this practice, apart from some protest at the arrest of Madhesi activist C.K. Raut on election day. Relations between political parties were generally peaceful in all parts of the country, with political rivalries expressed within the campaign messages. Incidents of sporadic clashes were, however, reported.

Political parties started mobilising their supporters after the announcement of the date of the elections, and campaigning was invigorated by the filing of nominations on 22 October for the first phase of the elections, and on 2 November for the second phase. While there was broad freedom to campaign, the Election Code of Conduct prescribed an extensive catalogue of rules restraining candidates and political parties in their campaign activities, while also prescribing spending limits. The requirements stipulate that, among other things, election symbols may not be displayed on t-shirts and caps, and that posters and flags must be limited in size. Political parties largely respected the minor requirements and expressed their satisfaction with the restraints which reduced campaign spending expectations. However, the more serious aspects of the Code, such as limits on campaign expenditure, were not as well respected.

Although vote-buying is explicitly prohibited in the Code, allegations that both cash and in-kind gifts were given to voters circulated widely. The Code of Conduct also imposed a period of campaign silence. While this silent period was largely respected both for the first and second phases of polling, EU observers noted exceptions, with some door-to-door campaign activities.

During the early weeks of the campaign, posters and billboards were largely absent, with the campaign gradually becoming more visible. Door-to-door campaigning and the holding of street meetings, where candidates explained their programmes and answered questions from voters, were the most common forms of campaign activity. From the second half of November the three major parties held rallies on a larger scale which were attended by the national party leaders. The EU EOM observed 120 campaign events in all seven provinces, 15 for phase 1 and 105 for phase 2. Of these, 47 were organised by the left alliance and 37 by the NC, plus seven by other parties from the democratic alliance. EU observers were present at seven events of the Bibeksheel Sajha Party (BSP), four of the RPP, four of the NMKP, three of the RJPN and three of the SSF-N, as well as one shared event of the two Madhesi parties. In addition, two events of the Rastriya Janamorcha were observed, along with one of each of the following parties: the Communist Party of Nepal-Marxist Leninist, the Mongol National Organisation and the Deshbhakta Janaganatantrik Morcha. The mission also observed two independent candidates carrying out one campaign activity each. House of Representatives and provincial assembly candidates largely conducted their campaigning jointly, holding both door-to-door activities and meetings.

The electoral alliances shaped the campaign environment. The CPN-UML and the CPN-MC conducted common campaign activities all over the country and supported each other as part of the left alliance. In Jhapa and Pyuthan, the RPP and the Rastriya Janamorcha joined the left alliance campaign. The chairpersons of the two parties, Pushpa Kamal Dahal and K.P. Oli, as well as other prominent leaders of the two parties, held joint nationwide tours in both phase 1 and phase 2 districts.

Similarly, the Nepali Congress leadership supported the party's candidates throughout the country, as well as other candidates within the democratic alliance. Prime Minister Deuba, president of the Nepali Congress, held an extensive nationwide campaign tour visiting phase 1 and phase 2 districts. In constituencies where there was a seat-allocation agreement within the democratic alliance, the NC was campaigning alongside the other party. In the Madhesi stronghold of Province 2, the SSF-N and the RJPN,

supported each other according to their election alliance and common agenda. During the final days of the campaign, large rallies attended by the leadership of the two parties took place in Province 2.

The left-democratic alliance divide shaped the campaign messages. The NC portrayed itself as the only promoter of democracy in Nepal. The elections were presented as a referendum between democracy and communism. NC candidates often made comparisons with South and North Korea and defined the communist parties as “dictators”. References to the violence committed by the Maoists during the war were also made. The left alliance campaign was centred on development programmes with references to their common manifesto. Some of their candidates’ speeches referred to NC accusations and countered them with examples of what the CPN-UML and the CPN-MC had done for the people and for Nepali democracy. Towards the end of the campaign, the tone of the speeches became more negative, with both alliances constantly underlining their opponents’ shortcomings.

The RJPN and the SSF-N were very active in the Terai, particularly in Province 2. The promotion of the rights of the Madhesi population and their demand for a constitutional amendment were at the centre of their campaigns. Reference was also made to their political opponents, who were portrayed as responsible for the marginalisation of the Madhesi population and the lack of development of the Terai.

## **XI. CAMPAIGN FINANCE**

The legal rules governing the raising and expenditure of campaign finance are to be found across several legal instruments. The Act Relating to Political Parties, 2017, sets out the principal rules on the funding of political parties. Eligible sources of funding include membership fees, money raised from programmes, and voluntary contributions from citizens and corporate bodies. Donations from the Government of Nepal, from public bodies and from foreign entities are prohibited. Bank accounts must be maintained for party monies, and contributions exceeding NPR 25,000 (€205) must be channelled through the banking system, along with disclosure of the identity of the donor.

The Election Commission Act confers power on the ECN to regulate the expenditure of political parties and candidates for campaign purposes. The ceilings for political parties are determined by the number of candidates fielded in their closed lists under the PR system. In this context, every party was free to spend up to NPR 200,000 (€1,639) per PR candidate seeking a seat to the House of Representatives and up to NPR 150,000 (€1,229) per PR candidate running for a seat in a provincial assembly. These limits are substantial when compared to limits applied in other countries in the region, particularly in light of the gross national income of the various countries.<sup>24</sup>

Individual candidates are allowed to raise their own campaign funds, which favours candidates with greater financial means, while financial support may also be received from their respective parties. The spending limits fixed by the ECN for individual candidates running under the FPTP electoral system differed depending upon whether the election was to the House of Representatives or to a provincial assembly. The limit was NPR 2,500,000 (€20,491) for a candidate for the House of Representatives and NPR 1,500,000 (€12,295) for a provincial assembly. Further limits applied to the spending for all elections in that, by a notice published in the Gazette on 6 October 2017, the ECN set specific limits for various items of expenditure such as transportation, promotional materials and administrative costs.

Campaign spending was further regulated within the Code of Conduct which applied more onerous

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<sup>24</sup> Nepal had a gross national income per capita in 2016 of €2,100 (World Bank data) and a limit for the House of Representatives of €20,491. By comparison, Bangladesh with a GNI of €3,159 had a limit of €15,267; Bhutan GNI €6,726, limit €1,707; the Maldives GNI €9,976, limit €6,500; Pakistan GNI € 4,651, limit €12,225. Limits are higher in India, and there are no limits in Afghanistan and Sri Lanka.

transparency measures than have applied in the past. The Code required that candidates and political parties had to open separate bank accounts for all election-related transactions. All donations in excess of NPR 5,000 (€40) had to be made to the bank account, and income and expenditure was required to be documented, with all records maintained for inspection by the ECN if required. During the campaign period, the ECN formed a committee to monitor election expenditure. This committee assessed the situation based on information from disclosures to the ECN of expenditure by candidates and from ECN monitors deployed in every constituency to monitor election expenses at the local level.

The ECN has on its website a comprehensive template for the reporting of political party income and expenditure. This template encompasses detailed annexes, per category of income and expenditure, which parties are required to fill in. This reporting process aims to facilitate the submission of data by political parties and the maintenance of their respective records by the ECN.<sup>25</sup> However, this reporting template is not applicable to candidates. Progress made in this field followed the outcome of the fifth meeting of the Forum of Election Management Bodies of South Asia (FEMBoSA), which was held in Kathmandu in 2014, attended by representatives of election management bodies from all member states of the South Asian Association for Regional Cooperation.

One of the outcomes of this meeting was the adoption of a resolution stating that campaign finance would be embedded in FEMBoSA's future work.<sup>26</sup> An action item, namely the undertaking of a campaign finance study by the ECN, was included in the five-year Strategic Plan of the ECN.<sup>27</sup> This study has not yet been conducted.

Regarding disclosure, the Election Commission Act requires that political parties and candidates must submit details of their election expenses to the ECN within 30 days of the publication of the final results of the election. The Act further provides for the imposition of fines, equal to the campaign expenses incurred by the party or candidate, in the case of failure to submit the necessary information within the 30-day period. The ECN also has the power to impose sanctions for the failure to submit any reports, including monetary penalties and disqualifications from running for an election for a period of up to six years. Where the ECN determines that spending has been undertaken for illegal purposes, then the voiding of an election is possible. The ECN imposed fines of NPR 1,500 (€12) on some contestants after the 2013 elections<sup>28</sup> for their failure to submit reports.

There is no obligation on the ECN to make any public disclosure of the statements of account of election expenses which have been submitted by candidates and political parties. The candidates and parties, however, may be required to publish the information themselves, upon the instruction of the ECN. The Act Relating to Political Parties requires that political parties must have their accounts of income and expenditure audited within six months of the completion of each fiscal year. There is an obligation to submit these accounts to the ECN, as the registrar of political parties, and an additional obligation on parties to publish their accounts within one month of the submission to the ECN. Again, the ECN does not have any role in publishing these accounts. A provision<sup>29</sup> in the previous Political Parties' Act of 2002, which required that the ECN published a comprehensive report of parties' financial statements, is no longer contained in the legal framework currently in force.

The shortage of information available to the public undermines the transparency of and accountability for campaign finance, resulting in a failure to comply with Article 7(3) of the UN Convention against Corruption, ratified by Nepal in 2011. However, the main challenge encountered during the campaign period related to

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<sup>25</sup> ECN 2016 Annual Report, page 53

<sup>26</sup> ECN 2015 Annual Report, page 27 & 81, Resolution's article-3a

<sup>27</sup> ECN Five Year Strategic Plan (2015-2019) & Two-Year Action Plan (2017-2019), page 49 (English version)

<sup>28</sup> ECN 2015 Annual Report, page 46

<sup>29</sup> Political Parties' Act 2058 (2002), Section 13.

spending for unlawful purposes. Vote-buying is clearly proscribed and criminalised by law, as the giving of cash and all forms of gifts to voters is prohibited in the Election (Offences and Punishment) Act, 2017. Fines of up to NPR 50,000 (€409), or imprisonment for up to one year, or both, apply to cases of exerting undue influence over voters. Vote-buying was also explicitly prohibited in the Code of Conduct. The investigative competence is shared between the ECN and the Chief of the District Police, while the decision to prosecute such offences rests with district attorneys and, finally, the Attorney General. Allegations circulated during the election campaign that both cash and in-kind gifts were given to voters. However not a single prosecution for vote-buying was initiated.

## **XII. MEDIA AND ELECTIONS**

### **A. Media Environment**

The media sector in Nepal is very active and diverse. After the enactment of the National Broadcasting Act in 1993, which allowed the private sector to invest in national media, a large number of media houses were established around the country. This resulted in pluralism and an enhanced degree of freedom of expression. Nepali media currently operate in an environment generally considered to be free. Nevertheless, some media interlocutors question the independence of the press at local level, stating that most of the media outlets in the districts are affiliated to political parties. Additional challenges, such as job insecurity, low salaries<sup>30</sup> and harassment that may lead to self-censorship, persist, especially in rural areas. The Federation of Nepali Journalists (FNJ) registered a total of 73 violations of freedom of the press in the period May 2016-May 2017. The 2017 World Press Freedom Index from Reporters Without Borders ranks Nepal in position 100 of 179 (an improvement of five places compared to 2016).

Radio remains the most widespread and effective means of communication nationwide. Over 73 per cent of the Nepalese population with access to any form of media listens to the radio. Although some 753 radio stations are officially registered with the Press Council of Nepal (PCN), only 505 (315 community radio stations and 190 commercial radio stations) are currently on air. Community radios are considered as relatively neutral and offer a more balanced coverage of news in comparison to the FM commercial radio stations. Similarly, Nepal has a very high ratio of newspapers per capita, with 3,865 publications registered with the PCN, but only some 960 currently in circulation. Regular distribution of newspapers is restricted mainly to the Kathmandu Valley, which accounts for more than 85 per cent of the market, and the other main urban areas. TV is also viewed mainly in urban areas, principally due to a lack of electricity in rural areas. However, as a result of the new direct-to-home broadcasting system, commercial television has expanded to rural areas in recent years. There are 16 TV channels officially registered with the PCN and currently operating in the country.

The Government of Nepal controls several media outlets, including the state broadcasters Radio Nepal and Nepal TV (channels 1 and 2), the newspaper company Gorkhapatra Sansthan (which publishes newspapers both in Nepali – Gorkhapatra, and English – The Rising Nepal), and the national news agency Rashtriya Samachar Samiti. Although in practice these media have become far more independent since the return to democracy, they are still subject to government control.

On the private side, the main media group is Kantipur Publications, which runs six publications (including the daily newspapers, Kantipur in Nepali, and the Kathmandu Post in English), one FM radio station (Kantipur FM) and a national TV network (Kantipur TV). Other relevant private media groups in the country are International Media Network Nepal (The Himalayan Times); Himal Media (Nepali Times, Himal Khabarpatrika, Himal South Asia), Nepal Republic Media (Naagarik Dainik, Republica) and Nepal News Network (Annapurna Post, AP1 TV, Annanote.com and Annapurna Today magazine).

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<sup>30</sup> The Minimum Wage Fixation Committee has recommended a nominal of 19,500 NPR (€160) as minimum salary for Nepalese journalists, but the majority of them are below that figure.

Internet penetration is 54.3% of the territory of Nepal.<sup>31</sup> The online media sector has expanded very fast in recent years and many news websites are owned or managed by well-established journalists. Some 700 online media currently operate in the country. Most of them are mainstream media with independent editorial lines and are not affiliated to political parties. A number of journalists previously working in the print media have reportedly moved over to the online media where they are able to work more freely and with less political pressure or risk of intimidation. Social media has also become a common source of information of late. The most popular social media in Nepal are Facebook (8 million users) and Twitter (3.2 million users).<sup>32</sup>

## B. Legal Framework for the Media

The Constitution of Nepal, 2015, provides for freedom of expression and freedom of communication and information, subject to some reasonable restrictions. There have been no changes to the media legal framework since the promulgation of the Constitution. According to the FNJ, the Constitution meets international standards on freedom of expression and information; nevertheless, the existing media laws do not always meet those standards.

There are nine principal statutes<sup>33</sup> which regulate the media in Nepal, providing for licensing, registration and programme standards. In June 2016, the government adopted the new Mass Communication Policy that foresees the adoption of 11 new laws or amendments to already existing media laws. The new regulations foreseen will include a law for a new and independent media regulatory authority, a law on a public service broadcaster and a law for the regulation of online media. This media policy is currently under scrutiny by an implementation recommendation committee responsible for reviewing the texts before their legal enforcement. Although the deadline for the implementation committee to conclude its work was January 2018, members of the committee confirmed to the EU EOM that an extension of this deadline was likely. The new media laws are expected to be in force by the end of 2018. The adoption of new media laws will represent a positive development for the media environment.

The newly established federal system also brings a new scenario to the Nepali media landscape. As with the national legislation, any future provincial legislation on media matters will have to respect the constitutional provisions on freedom of expression.

The main statutory law for broadcasters in Nepal is the National Broadcasting Act, 1993, which includes provisions on licensing, as well as requirements to provide accurate and impartial programming. A Right to Information Act was adopted in July 2007, providing for active disclosure of information by public bodies and the creation of an independent National Information Commission. The Act has, however, been poorly implemented in many areas, with public bodies still lacking information officers and the government continuing to refuse to disclose certain information. Provisions that do not meet international standards, such as potential prison sentences for libel and slander, still exist in law, although sentencing for slander is currently an unusual practice in Nepal.

A new Journalist Code of Conduct was enforced in 2016 by the PCN, with the consent of the FNJ. This code establishes the principles of journalism, as well as the duties and responsibilities of local journalists. Likewise, and due to the recent proliferation of online media, the Government of Nepal, on 13 June 2016, issued the "Online Media Operation Directives". The first version of this text, very unpopular among the local media, was amended and implemented by the Ministry of Information and Communication on 20

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<sup>31</sup> Management Information System (MIS) report of the Nepal Telecommunication Authority 2017.

<sup>32</sup> "The use of social media and its impacts", study by Freedom Forum, February 2017.

<sup>33</sup> Radio Act (1957), Libel and Slander Act (1959), National News Agency Act (1962), Gorkhapatra Corporation Act (1963), Press and Publication Act (1991), Press Council Act (1992), The National Broadcasting Act (1993), Working Journalists Act (1993, amended in 2007) and Right to Information Act (2007).



March 2017. Still questioned in some of its provisions by the representatives of the sector, these new directives are a temporary regulation until the new law on online media is finalised and comes into force. Moreover, the directives are only applicable to online media officially registered with the PCN. Any other online media operating in the country without the official authorisation of the PCN is currently regulated by the Electronic Transactions Act (2008), which includes some provisions contrary to international commitments on freedom of expression. According to the Electronic Transactions Act, any person publishing on the internet *“any material considered to be contrary to the public morality or decent behaviour or any types of materials which may spread hate or jealousy against anyone”* shall be liable to sanctions of up to five years in prison.

The Press Council of Nepal is the only regulatory body responsible for elaborating and enforcing the code of conduct for journalism in Nepal and for prohibiting interference with the freedom of press and journalism. It evaluates and categorises the media on an annual basis according to their compliance with the code of conduct. Defined in the Press Council Act, 1992, as an autonomous body, the members of the council are, however, formally appointed by the government, thus risking compromising the independence of the institution. Currently led by the former vice-chairman of the institution, due to the removal of the previous chairman,<sup>34</sup> the council consists of 12 members elected for a four-year term (including the chairperson of the FNJ, the Director-General of the Department of Press and Information and nine representatives of the media sector). According to its powers and duties, the council is responsible for taking necessary actions, upon receipt of a complaint, when contraventions of the code of conduct are detected. However, the PCN is generally perceived among the media sector to be weak and ineffective in implementing such duties.

At the same time, the FNJ, an umbrella organisation representing journalists in Nepal, has the task of protecting freedom of the press and freedom of expression in the country, as well as the protection of the professional interests of Nepalese journalists. The FNJ has 13,000 members and branches in all 77 districts of Nepal.

In addition to the PCN and the FNJ, there are also some non-governmental media institutions in Nepal, such as the Association of Community Radio Broadcasters, responsible for regulating all community radio stations operating in the country, and the Broadcasting Association for Nepal, which regulates commercial radio stations.

### C. Legal Framework for Campaign Coverage

Besides the regulations mentioned above, the only regulation governing media coverage of the 2017 elections was the Election Code of Conduct issued by the ECN. According to this Code of Conduct, during the election campaign period, the media was expected to remain impartial, avoid using language that could cause social disruption, and give priority to news and information relating to voter education. The code also required the media to give equal opportunities to political parties and candidates. However, and differing from the practice in previous elections, the code did not include provisions for the allocation of free airtime to parties and candidates in the government media (Radio Nepal and Nepal TV).

Similarly, the Code of Conduct included very restrictive provisions on the diffusion of parties' and candidates' propaganda in the media, limiting each party or candidate to only one advertisement (size 7"x7") to be published per day in only one newspaper, and up to just four advertisements a day, of a maximum duration of one minute, to be aired on TV and radio stations. These restrictive provisions were strongly criticised by the Nepal Media Society (NMS).<sup>35</sup> The ECN limited itself to warning the media to abide by the Election Code in a press release of 28 November. According to the NMS, it is the “sovereign and

<sup>34</sup> Former chairman of the PCN and member of the CPN-MC, Bhawani Baral, was removed from his position on 15 August 2015, only three months after his nomination, accused by NC advocates of “incapability” to chair the PCN. The current acting chairman of the PCN, Kishor Shrestha, is a representative of the CPN-UML.

<sup>35</sup> The NMS is an umbrella organisation of private publications and TV broadcasters.

constitutional right” of media outlets to publish or broadcast advertisements, as well as the right of voters to be informed through the media.

Specific provisions for social media were also put in place by the electoral code, calling upon the media to avoid publishing, broadcasting or disseminating baseless information in favour of or against candidates or political parties.

#### **D. EU EOM Media monitoring**

The media environment during the election campaign period was generally free, although a few cases of limitations on the freedom of expression and the freedom of the press were observed. Eleven journalists were subject to preventive detention, allegedly due to a perceived threat to public security and the electoral process. Several media institutions like the FNJ, the International Federation of Journalists and Freedom Forum strongly condemned these arrests and asked for the immediate release of the journalists detained<sup>36</sup>. Likewise, on 29 November journalist Navraj Poudyal, working for UK FM radio station, suffered injuries after the explosion of an IED in Udaypur district while he was covering campaign activities of the NC. Cases of journalists being attacked or threatened during the election campaign period were also reported in Manang, Kailali and Khotang districts.

During the electoral campaign period, media in general provided a diverse platform for political parties to present their messages to voters across the country. Although electoral coverage focused mainly on campaign activities by the NC, the CPN-UML and the CPN-MC, public and private media also provided, to a lesser degree, coverage of smaller parties. In a welcome initiative, some community radio stations at district level offered free-of-charge airtime to candidates to present their manifestos. Nevertheless, private radio stations at district level are widely perceived to be politically inclined. Political parties and candidates also campaigned actively and in an appropriate manner through social media, and any misuse of this platform was attributable to supporters rather than to officials. Some local journalists also used their personal Facebook or Twitter accounts to sensitise voters and to question parties and candidates.

From 6 November to 4 December 2017, the EU EOM conducted a media monitoring exercise in order to assess whether political parties and candidates obtained equitable access to the media and whether the media abided by rules and regulations for media coverage during the election campaign period. A team of six local media monitors, trained in quantitative and qualitative analysis, monitored a representative sample of 13 media outlets with a nationwide reach reflecting Nepal’s media landscape. This sample included the state-owned media Nepal TV, Radio Nepal and Gorkhapatra newspaper, as well as the private media Kantipur TV, Image TV, Avenues TV, Kantipur FM, Ujyaalo FM, CIN Radio, Kantipur Daily, Naagarik, Naya Patrika and The Himalayan Times.

Findings of the monitoring revealed a generally balanced coverage by public and private broadcasters and newspapers, with a reasonably proportionate distribution of airtime and space among the three main parties. The monitored content was all news and election-related information. Overall, this was mainly presented in a neutral tone. Only the national radio station, Radio Nepal, showed unbalanced coverage in favour of the NC (39% of total airtime) to the detriment of the CPN-MC (20% of total airtime) and the CPN-UML (24% of total airtime). The remaining media monitored by the EU EOM showed, in general, a fair degree of impartiality in their electoral coverage. Results of the 13 media monitored by the EU EOM are available in Annex III.

Regarding political party/candidate advertising in the media, the EU EOM’s media monitoring results reflect that the NC was the party spending most money on TV (29% of all political advertisements aired by the four TV channels monitored by the mission), while the CPN-UML was the party buying the largest amount of

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<sup>36</sup> By mid-December all journalists were released, most of them on bail of 5,000 NPR (€40) each. By the time of reporting no evidence justifying these detentions had been produced by the local authorities.

airtime (31%) and space (37%) on the radio stations and in the newspapers monitored. Likewise, and according to the findings of the mission, the NC was the most active party on social media (Facebook and Twitter), followed by the CPN-UML and the CPN-MC

The EU EOM observed violations of the Code of Conduct by the NC, the CPN-UML, the RPP, the RPP-P, the BSP, the PLGP, the APMP, the ERPP-D<sup>37</sup> and independent candidates in eight different media (Kantipur Radio, Ujyaalo FM, Kantipur TV, Image TV, Avenues TV, Naagarik, Naya Patrika and Kantipur newspaper). The violations were mainly due to advertisements exceeding the maximum size/duration established by the ECN and/or the dissemination of advertisements more times than allowed by the ECN. Likewise, in contravention of instructions published by the ECN on 28 November, online media MyRepublica published, on 7 and 8 December 2017, opinion polls forecasting electoral winners at the district level. However, and despite all the violations observed, the ECN asked for clarifications, from both the media and political parties concerned, only in regard to two violations by the CPN-UML and the RPP<sup>38</sup>. Similarly, no clarifications or actions were sought or taken by the ECN regarding the 52 cases of the violation of the campaign silence periods by 31 different media outlets, according to reports produced by the regulatory body, the PCN.

On 3 December 2017, the CPN-UML questioned the impartiality of a voter education programme produced by the ECN and asked for action to be taken against Ila Sharma, the election commissioner in charge of voter education. According to the CPN-UML, one of the episodes of the programme, named “Election Quiz” and aired on 10 different TV stations, included several questions relating to NC candidates. The ECN replied to the accusations by giving assurances that similar questions relating to leaders of all major political parties were also included in different episodes of the programme. Although the EU EOM confirmed the explanations provided by the ECN and did not consider the programme to be biased, it is important to mention that naming political parties/candidates in a voter education programme, or including information about electoral contestants in voter education materials, is against good international practices.

### **XIII. DOMESTIC AND INTERNATIONAL OBSERVERS**

Several domestic observer organisations deployed a considerable number of observers, contributing to the transparency of the electoral process. Three groups – National Election Observation Committee (NEOC), General Election Observation Committee (GEOC) and Sankalpa – deployed a total of 1,400 observers on 26 November and 4,000 observers on 7 December. They coordinated activities closely and issued a joint statement after both election days.

Although they issued joint statements, all quantitative assessment was based on the data reported by NEOC observers. The overall quantitative assessment of both polling days was very positive. It should be noted, however, that the checklist used by NEOC observers did not include questions which were likely to result in a less-than-positive assessment, questions such as whether voters were casting the ballots in secrecy or whether there was any interference in the work of the polling staff.

The three organisations also observed the counting process and they did not report any problems with access to counting centres. However, the extent of their counting observation appeared to be rather limited, as the EU observers reported a presence of NEOC, GEOC or Sankalpa observers in only 18% of the constituency counting centres observed. The main shortcomings in the electoral process identified by the

<sup>37</sup> PLGP: Pragatisheel Loktantrik Gathabandhan Party; APMP: Aamul Paribartan Masiya Party; ERPP-D: Ekikrit Rastriya Prajatantrik Party-Democratic

<sup>38</sup> On 24 November 2017 (campaign silence period of first phase of elections) the ECN sought clarifications from RPP-N chairman, Kamal Thapa, for allegedly publicising his party and himself in Facebook. On 28 November 2017 the ECN sought clarifications from the CPN-UML and the daily newspapers Kantipur, Annapurna Post, Naya Patrika, Naagarik and Rajdhani for publishing in the same day an advertisement featuring the CPN-UML candidate K.P. Sharma Oli.

three domestic observer groups include a lack of adherence to, and enforcement of, the Code of Conduct, inadequate voter education, disenfranchisement of polling staff, security personnel and observers, and confusing and complicated counting procedures.

Another domestic observer organisation, Democracy Resource Center – Nepal, deployed a small number of long-term observers, focusing on qualitative reporting on the election process.

Apart from the EU EOM, the only other international election observation mission was from The Carter Center. The mission was led by former Deputy Prime Minister of Thailand, Dr Surakiart Sathirathai, and former U.S. Ambassador, Peter Burleigh. A core team of five experts was based in Kathmandu, and 14 long-term observers in seven mobile teams covered all seven provinces. For the second phase of elections, the mission was joined by 32 short-term observers. The Carter Center issued a preliminary statement on 9 December and a post-election statement on 21 December. The preliminary findings presented in both statements are concurrent with the EU EOM preliminary statement.

#### **XIV. PARTICIPATION OF WOMEN AND LGBTI**

The equality of women is a fundamental principle in the Constitution, with extensive affirmative action provided for to address historical and societal discrimination. The Constitution requires that at least one third of the total number of members elected from each political party to the Federal Parliament must be women. An overall imperative, that one third of the legislature should be comprised of women, applied to the provincial assemblies as well as to the Federal Parliament.

Powerful social and cultural barriers to female leadership, including patriarchal attitudes, prevail in Nepalese society. The Political Party Act requires that at least one third of the members at the committee levels of political parties should be women. However not a single leader of a major political party is female, while very low numbers of women were nominated by political parties to compete in the FPTP elections.

Women comprised just 146 of the 1,944 candidates for the House of Representatives, amounting to 7.5% of the total; while for the provincial assemblies there were just 240 female candidates from 3,238 candidates, amounting to 7.4% of the total. Of these, just six women were elected from the 165 FPTP constituencies for the House of Representatives, while 17 women were elected to the 330 FPTP seats in the seven provincial assemblies. Parties were bound to nominate at least 50% women in their PR closed lists. Apart from the PR quotas, however, support is needed to enable women to assume roles of political representation.

Women were also under-represented in the conduct of the elections. Of the 633 polling centres visited during voting by EU observers, polling officers in 12% of cases were women. During counting, just three of the 128 returning officers encountered by the EU EOM were women. It is clear that gender mainstreaming has not yet been well realised in the recruitment practice of the ECN, which is reflective of the broader inclusion of women in the civil service and the judiciary, as it is from amongst these groups that election officials are drawn.

A Supreme Court decision in 2007 gave legal recognition to the existence of a third gender, permitting people in Nepal to self-identify as male, female or “other”. The Constitution has built upon this, including “gender and sexual minorities” as being among the groups who have the right to participate in state bodies on the grounds of proportional inclusion. A total of 167 people identified themselves as third gender in registering to vote. The Supreme Court, in a series of decisions, has instructed the government to ensure

that citizenship certificates can be amended to reflect the gender designation of choice. Change of name on the certificate is not readily available however, leaving third gender individuals with birth names which do not reflect their identity. Electoral law requires that candidates must register under their legal name on the citizenship certificate. This poses some difficulty for candidates who must campaign under an identity differing from that with which they live, as was the case for one third-gender candidate included in a closed list by birth name.

## **XV. PARTICIPATION OF PERSONS WITH DISABILITIES**

In May 2010 Nepal acceded to the Convention on the Rights of Persons with Disabilities. The Rights Relating to Persons with Disabilities Act, a piece of legislation which is intended to give effect to the Convention in domestic law, was enacted on 15 October 2017. Not in force for these elections, this legislation provides strong protection for the rights of political participation of persons with disabilities, including explicit rights both to vote and to stand for election. The legislation obliges the Government of Nepal to make appropriate provisions to ensure that the polling process and polling materials are accessible and understandable to persons with disabilities.

Electoral legislation prevailing at the time of the elections failed to fully comply with the obligations in the disability law in the sphere of voting rights. The parallel electoral Acts for both the House of Representatives and the provincial assemblies did not create any entitlements to accessible polling stations or to voter education materials which meet the varied needs of persons with disabilities. EU observers noted that, in only 73% of polling centres visited, the polling centre was accessible to voters with reduced mobility. Once inside the polling centre, EU observers further noted that, in 16% of cases, the layout of the polling centre was unsuitable for voters with reduced mobility.

There was also no provision for tactile ballot guides, compromising the secrecy of the ballot. The legislation did make provision for assisted voting, but this was explicit only for voters with a visual impairment or physical disability, omitting aural and intellectual disabilities. In addition, the law permitted only family members or polling staff to assist in voting, while international best practice<sup>39</sup> indicates that this should be a person of the voter's choosing. Section 23 (2) (a) of the Electoral Rolls Act, 2017 states that persons "of unsound mind" shall not be entitled to vote. This represents a breach of the Convention on the Rights of Persons with Disabilities, the interpretation of which has been to prohibit such restrictions.

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<sup>39</sup> CRPD Art. 29 (a)(iii) guarantees free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice.

## **ELECTORAL JUSTICE**

### **A. Electoral Offences**

There is an extensive catalogue of electoral offences in the law, ranging from activities during the campaign period to actions during polling and counting. The principal source of law is the Election (Offences and Punishment) Act, 2017. This prohibits a wide variety of practices, including obstruction of the election, voting by non-Nepalese, carrying weapons, and defacing election-related materials. There are also restraints on propaganda which undermines the sovereignty, territory or national unity of Nepal, or which incites hatred between religions, castes, regions or cultures. Cash may not be given to voters, and gifts or meals may not be provided to voters either. There are also detailed limitations in the Act on the type of campaigning which may be conducted, and a 48-hour silence period in advance of the election is mandated.

The Election Commission published a notice in April 2017 designating the Chief of the District Police as the person who should investigate the more serious offences under this Act. A government notice, published in the Nepal Gazette on 4 May 2017, designated the District Courts as the courts to deal with electoral offences. The ECN also has an investigatory and oversight role in the matter of less serious electoral offences.

Further rules on the conduct of the election campaign were to be found in the Election Code of Conduct, which had been drafted in consultation with political parties and which was applicable only during the campaign period. This Code provided for monitoring mechanisms which were established within the ECN at constituency and national levels to look into complaints of violations of the Code.

This instrument applied very broadly to political parties and to candidates, as well as to NGOs, the media, and even to individual citizens. It restricted the freedom of political expression, as it forbade the public display of election symbols and political party logos on t-shirts, caps and other forms of clothing, as well as limiting the public display of flags and banners. Advertisements on the radio and in the print media were heavily restricted. In addition, the Code provided that public resources could not be used for campaign purposes. The Code required that the ECN approve of many routine items of governmental activity during the campaign period, including foreign travel and the movement of staff between districts. More than 2,000 applications for such permission were made to the ECN while the campaign was taking place. Just under 100 complaints of violations of the Code were made to the ECN, and, to the knowledge of the EOM, no sanction was imposed in any case.

There were just a few instances of individuals being charged with electoral offences. These arose from attempts to capture ballot boxes in the constituency of Rukum West. There were many instances of persons being arrested under the ordinary criminal law arising from violent incidents related to the elections, charged as ordinary crimes.

### **B. Complaints and Appeals**

The ECN has an extensive jurisdiction to adjudicate upon complaints and appeals related to the conduct of the election. This legislative mandate extends to determining and resolving complaints at every stage of the electoral process, that is, complaints relating to the registration of voters, the nomination process, the campaign, and polling and counting. It has the power to make decisions and to impose penalties. An Election Dispute Resolution Directive, which allowed for the formation of an election dispute resolution committee and set out procedures to be followed in the adjudication of complaints, was published less than three weeks before the elections.

Challenges to nominations were possible, but few were made. Once closed lists of PR candidates were finalised, the list was published along with a notice inviting objections within a period of seven days. The

rules of standing allowed any voter to file such an objection. The rules of standing in relation to FPTP candidates were narrower, limited to candidates, with the time left to the determination of the ECN. While the practice was that objections to candidates were considered as they were received, it is important that there be a meaningful opportunity for all those concerned to be able to make objections.

The ECN scrutinised nominations and disqualified fewer than ten candidates. Only a single decision to disqualify was disputed, with the aggrieved candidate filing a case with the Supreme Court. On the face of it, the disqualification was a valid interpretation of the law which prohibited individuals with certain criminal convictions from running for election. The application to quash the decision of the ECN was not granted by the Supreme Court so the disqualification was respected.

Complaints regarding violations of campaign rules were also within the jurisdiction of the ECN. EU observers across the country were informed that, in many districts, respect for the Code of Conduct was, in general, much better than during previous elections. Observers nonetheless also reported extensive minor violations, in the form of posters and flags in excess of limits permitted. The media also reported on many allegations of violations, some of a more serious nature including allegations of abuse of public office. The ECN dealt with the complaints in a largely informal manner, requesting that those in violation cease and desist from the behaviour complained of. Fewer than 100 formal complaints were submitted. Extensive sanctions, including disqualification, were available, but they were not imposed.

The lack of enforcement undermined the integrity of the Code of Conduct, and indeed of the ECN itself. It is unclear whether the failure of enforcement was due to a lack of capacity or to the absence of the political will for such an undertaking on the part of the ECN. It is also arguable that the conferring of extensive quasi-judicial powers on an election management body (EMB) is inappropriate, as sometimes the EMB may itself be the subject of the complaints. While it is clear that the ECN must continue to exercise extensive administrative decision-making powers, the designation of a new forum for electoral dispute resolution might restore credibility and strength to the electoral infrastructure.

### **C. Election Petitions**

A new Constitutional Bench of the Supreme Court was created under the Constitution of 2015 and was established in September 2017. This bench has full original and exclusive jurisdiction to try disputes relating to the election of members of the Federal Parliament and of the provincial assemblies. The procedures for the operation of the Constitutional Bench are governed by the Supreme Court (Constitutional Bench Operation) Regulation, 2015. Its decisions are final, without any possibility of appeal. The Election (Offences and Punishment) Act provides that there is a 15-day period within which a case may be filed by a candidate to challenge results, seeking either a recount or the invalidation of an election. The regulations for the elections to both the House of Representatives and the provincial assemblies provide for a 35-day period. Subsequent to the elections just seven petitions were submitted which challenged FPTP results, while two additional cases challenged the apportionment rules for PR seats. None of the cases was successful at the time of writing.

The Constitution establishes a very broad jurisdiction for the Supreme Court to address any matter of fundamental rights which is brought before it by way of public interest litigation. The court (not sitting as the Constitutional Bench) received many petitions filed in relation to various aspects of electoral law and the operations of the ECN during the campaign period, as well as some cases filed in relation to the allocation of seats prior to the final declaration of election results.

The cases submitted prior to polling day included several which challenged the decisions of the ECN to print the two PR ballots for the House of Representatives and provincial assembly elections on a single sheet of

paper, similar for the two FPTP ballots. Other cases concerned the representation of persons with disabilities in the PR closed lists; the low numbers of women likely to be elected; the denial of temporary voting rights to civil servants; and the lawfulness of the PR provisions to be applicable to parties winning less than 10% of the votes. Not a single one of these cases proceeded to a full hearing prior to the election. During the course of an interim hearing on the FPTP ballot papers, the Supreme Court indicated that the ECN should consider the matter of printing the ballots on separate sheets of paper. There was no interpretation of the law delivered nor order made. Nonetheless, a contempt of court motion was subsequently filed in this matter, and the ECN proceeded to print separate ballot papers to avoid a finding of contempt.

The failure to proceed to a full hearing in any of the election-related cases effectively amounted to the denial of a timely and effective remedy to the aggrieved parties. The Supreme Court has a great backlog of cases awaiting adjudication, close of 20,000 at the date of the election. A dedicated electoral tribunal, with jurisdiction over electoral disputes, may serve to mitigate such delay in the future.

Prior to the declaration of provincial assembly PR results, two cases were submitted to the Supreme Court challenging various aspects of the allocation of seats within the closed lists according to the relevant provincial quotas. Neither case was successful, and the ECN proceeded to distribute the seats according to the law.

An attempt was made to file another case which was rejected by the Supreme Court. This concerned the decision of the ECN not to deliver a certificate of election to the nominee of a successful FPTP House of Representatives candidate, who was unwilling to appear in person due to the existence of a warrant for his arrest.

## **XVI. ELECTION DAY AND ANNOUNCEMENT OF THE RESULTS**

### **A. Opening and Voting**

In total, polling took place at 19,809 polling centres across the country. On 26 November and 7 December, over 100 EU observers observed the opening, voting and closing processes at 633 polling centres in 61 districts within all seven provinces. Despite presenting the ECN-issued observer accreditation cards, which granted unhindered access to polling and counting centres, EU observers were denied access to 22 polling centres and were seriously restricted in their observation in 29 polling centres.

Opening was observed in 72 polling centres. Only 14 of them opened on time, while the remaining 58 opened with a delay of less than an hour. Even though the conduct of voting in 89% of polling centres visited was assessed positively, as good or very good, there was an assessment of bad or very bad conduct of polling recorded in 11% of the centres visited. Irregularities which impacted upon the credibility of the polling process, in these centres where the assessment was negative, included: lack of secrecy of the vote; excessive assisted voting, with assistance often being provided by unauthorised persons to voters who appeared to be able to mark the ballots unaided; people voting together behind the voting screen; voters voting on behalf of others; and interference with the work of the polling staff mainly by political party and candidate agents conducting non-authorised voter identification inside the polling centres.

Voters were not always marking their ballots in secrecy in 13% of polling centres visited. Instances of more than one voter behind the voting screen, and voting on behalf of others, were observed, respectively, in 14% and 11% of the polling centres visited. Interference with the work of the polling staff was observed in 20% of the polling centres observed. Political party and candidate agents were present in all, and domestic



observers in one third, of the polling centres visited. Closing was observed in 72 polling centres. It appeared to be the least problematic part of the election days, with all but three overall assessments being positive.

EU observers reported that the handover of sealed ballot boxes and other sensitive material by polling officers to returning officers was well organised despite, at times, there being lengthy queues and waiting times. Ballots from the first phase of elections were to be counted only after the second phase of elections. Security arrangements at the storage facilities in the first-phase election districts were adequate. Party and candidate agents were allowed to remain at or near the storage locations to monitor the custody of the ballot boxes from 26 November until the counting commenced on 7 December. However, due to ballots and boxes being damaged in violent attacks, the ECN had to conduct re-polling in two polling centres in Rukum West district and two polling centres in Arghakhanchi district on 1 and 9 December respectively.

## **B. Counting and Tabulation**

The counting of votes started initially in the phase one districts on 7 December at 5 pm, after polling was completed for the second phase of elections. During nine days of the counting process, EU observers were denied full access to counting centres on 51 occasions in 20 districts across the country. The most pronounced problems with access were reported in Kailali, Kanchanpur, Lalitpur, Gorkha, Sunsari, Palpa and Bhaktapur districts. The EU EOM informed the ECN on a daily basis about the districts with denied access, but the situation improved in only three districts (Baglung, Jhapa and Palpa).

Between 8 and 16 December, EU observers submitted 142 counting observation forms from 40 districts where they had full access to observe. Overall, in the counting centres where EU observers had full access, the counting was conducted in a transparent manner. However, the prescribed procedures were frequently not followed, including the critical procedure related to the reconciliation of ballot papers. In addition, 51 qualitative reports from 20 districts were submitted for observations where observers were denied full access. Party agents were present in all but one counting centre observed and they reportedly had full access, even in the counting centres where EU observers were denied access. The main procedural irregularity reported was that, before mixing the ballot papers from two or more polling centres together, the number of ballot papers in each ballot box was counted in only 12% of the counting centres observed. This practice precluded even a minimal possibility to detect any potential cases of more votes being present in the ballot box than ballots issued to voters at the polling centre. Furthermore, valid/invalid votes were not always determined in accordance with the rules in 21% of instances, and agents could not always see clearly the voter's choice on each ballot counted in 19% of the counting centres observed.

The counting process was suspended in four constituencies (Kathmandu 5, Sunsari 3, Syangja 2 and Tanahu 2A) due to problems such as a discrepancy between the number of ballots found in the ballot box and the number of ballots issued at the polling centre, ballots with counterfoils found in the ballot box, and allegations of ballot box capture by party cadres. However, reportedly all problems were resolved at the local level and the counting process was completed in all the above constituencies.

Commendably, the ECN published online progressive and final constituency-wide results for all four elections. The counting of the FPTP and PR votes was completed on 13 and 17 December respectively, i.e. within 10 days.

The tabulation of the PR federal and provincial constituency results took place at the ECN tabulation centre in Kathmandu. Scanned copies of the federal constituency results forms were received electronically from the respective constituency counting centres and results were entered into the database independently by four data entry clerks. The final results were announced by the PR returning officer (ECN secretary) only after all 165 original hard-copy constituency results forms were delivered to the tabulation centre.

The level of access to the tabulation centre varied: during the first visit on 14 December the EU team had full access to observe the process and receive all relevant information, while on 15 and 16 December the team was politely asked to leave without receiving any explanation. The ECN did not provide any official information on the progress of the PR vote tabulation.

### C. Announcement of Election Results

The voter turnout for both phases, calculated by the EU EOM based on the total number of votes cast in the House of Representatives FPTP elections, was 69%. The lowest turnout was recorded in Udayapur 2 constituency (54%) and the highest in Dolpa constituency (84%). The ECN did not publish any comprehensive information on the voter turnout.

The fact that ballot papers from various polling centres were mixed and counted together centrally means that there are no results available from individual polling centres. Consequently, polling centre turnout data appears to offer the only available tool for any meaningful scrutiny of the polling process. The failure of the ECN to publish the data on the turnout at individual polling centres therefore constitutes an abridgement in the oversight of the integrity of the polls.<sup>40</sup> Furthermore, the ECN neither publishes, nor provides party and candidate agents with, copies of the comprehensive constituency results forms, i.e. counting tables.

On 13 December, the ECN announced that the total number of invalid votes in the FPTP federal and provincial elections reached 5.18%. This figure is identical to the one calculated by the EU EOM based on the results data published on the ECN website. EU EOM calculations also show that the lowest rate of invalid votes was recorded in Manang constituency (0.4%) and the highest in Rupandehi 4 constituency (10%). In 40 out of the 165 federal FPTP constituencies, the number of invalid votes was higher than the margin of victory between the winner and the runner-up. In the most extreme case, in Humla federal constituency, the number of invalid votes was more than 24 times higher than the margin of victory.

On 14 December, the ECN, without any explanation, stopped publishing the total number of votes cast in the progressive PR results, thus precluding the possibility of independently calculating the percentage of invalid PR votes. However, the EU EOM was able to make its own calculations using the previously published data from FPTP results, assuming that the difference between the number of votes cast for federal FPTP elections and PR elections was negligible. The rate of invalid PR votes was very high, 9.9% for the federal and 14.8% for the provincial elections.<sup>41</sup> These figures appear to indicate that a sizeable number of voters did not fully understand the concept of casting four votes on three ballot papers, while there may also have been some deliberate spoiling of ballot papers for political reasons, particularly in Province 2.

All House of Representatives and provincial assembly FPTP elections results were announced locally by the respective constituency returning officers by 13 December and winning candidates received official certificates. However, the announcement of the official PR results<sup>42</sup> was rather delayed. Six days after completing the count, on 22 December, the ECN announced the number of PR seats won by political parties in each of the seven provincial assemblies. On 17 January 2018 it finally announced the names of members elected under the PR system to the seven provincial assemblies.

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<sup>40</sup> An article published in the Kathmandu Post on 29 November alleged large-scale proxy voting in Bajura district where many men are reportedly away from home working in foreign countries. There were no EU observers deployed in Bajura district. <http://kathmandupost.ekantipur.com/news/2017-11-29/proxy-voting-blamed-for-highest-turnout.html>

<sup>41</sup> Particularly in Province 2, the Alliance for Independent Madhesh led by C.K. Raut advocated deliberate invalidation of ballots.

<sup>42</sup> As the ECN published online the total number of votes secured by parties in the House of Representatives and provincial assembly PR elections, it was possible to unofficially calculate the number of PR seats won by parties in the House of Representatives and seven provincial assemblies. Such calculations were publicly available soon after completion of the PR votes count.

The delay in announcement of the number of PR seats won by political parties in the House of Representatives was much longer. The ECN maintained that, due to the constitutional requirement that at least one third of the total number of members elected from each political party represented in the Federal Parliament must be women, they had to wait until the results of the National Assembly elections were determined before finalising the distribution of seats. The ECN eventually announced the number of PR seats won by five political parties in the House of Representatives on 9 February and the names of members elected under the PR system on 14 February 2018. The PR House of Representatives and provincial assembly seats were allocated to the parties which secured at least 3% and 1.5% of the valid votes respectively, and the required quotas were then implemented.

## **XVII. POST-ELECTION DAY DEVELOPMENTS**

The House of Representatives and provincial assembly elections have reshaped the political landscape of Nepal. The previous Constituent Assembly was composed of 30 parties and two independent candidates, whereas, of the 49 parties which took part in the 2017 elections, only nine will be represented in the new parliament,<sup>43</sup> as well as one independent candidate. Only five of these parties met the 3% threshold to gain seats under the PR system in the House of Representatives. Just six women were elected from the 165 FPTP constituencies, all of whom represent the left alliance.

The left alliance of the CPN-UML and the CPN-MC obtained the most seats in the House of Representatives FPTP elections, with a total of 116 seats out of 165, with 80 and 36 seats respectively. The two parties ran on two separate lists for the PR election: the CPN-UML obtained the highest results with 33.2% of the valid votes, while the CPN-MC scored 13.7%. The RPP and the Rastriya Janamorcha, allied with the left alliance in only two constituencies, both won seats in the FPTP elections.<sup>44</sup> The CPN-UML attained 121 seats (46% of the total) and the CPN-MC 53 seats (19%) from a total of 275 seats in the House of Representatives. Therefore, the CPN-UML alone was 17 seats short of a simple majority, while the CPN-UML and CPN-MC combined were 10 seats short of the two-thirds majority required to amend the Constitution.

The Nepali Congress (NC) obtained the second-best result in the PR election to the House of Representatives, with 32.8% of the total votes. The party achieved almost the same outcome as the CPN-UML, whereas in FPTP the party had only 23 representatives elected, almost one fourth of the result of the CPN-UML. The NC is the second largest party in the House of Representatives, with 63 seats, which corresponds to 23% of the total number. Only one of the parties allied with the NC within the democratic alliance, the Naya Shakti, obtained a seat: its leader, former Prime Minister Baburam Bhattarai, was elected in Gorkha.

The third and fourth best results were attained by the RJPN and the SSF-N respectively, in both the FPTP and the PR elections to the House of Representatives. The two parties formed a coalition for the Madhesi stronghold of Province 2 where they secured 11 and 10 seats respectively (from 32 seats). They both received 4.9% of the PR votes, which corresponds to six seats each. Together with the two communist parties and the NC, the RJPN and the SSF-N are the only parties which met the 3% threshold required to gain seats under the PR system.

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<sup>43</sup> The Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML), the Communist Party of Nepal-Maoist Centre (CPN-MC), the Nepali Congress (NC), the Sanghiya Samajbadi Forum-Nepal (SSF-N), the Rastriya Janata Party Nepal (RJPN), the Nepal Majdur Kisan Party (NMKP), the Rastriya Prajatantra Party (RPP), the Naya Shakti (NSPN) and the Rastriya Janamorcha.

<sup>44</sup> The Rastriya Prajatantra Party joined the left alliance in Jhapa-1, as in other constituencies they had a seat-sharing agreement with the democratic alliance.

In the FPTP election, the ultra-leftist Nepal Majdur Kisan Party (NMKP) attained one seat in its stronghold of Bhaktapur. In addition, Chhaka Bahadur Lama, a member of the CPN-MC politburo who did not obtain a nomination from the left alliance, was elected as an independent candidate in Humla.

The provincial assembly results reflect those of the House of Representatives, with the two communist parties obtaining the largest number of votes in six out of seven provinces. The CPN-UML received the largest number of votes in all provinces, except Province 2, receiving by itself approximately half of the total number of seats. The CPN-MC and the NC obtained the second and third largest number of votes overall. The RJPN and the SSF-N won together in Province 2, but also obtained seats in Provinces 1, 5 and 7. Another eight parties are represented in the different provincial assemblies, with Province 3 being the most politically diverse with eight political parties sharing the 110 seats.<sup>45</sup>

### **National Assembly**

The announcement of the PR seat allocations for the House of Representatives and, consequently, the formation of the lower house, were delayed due to a political impasse around the elections to the National Assembly. Article 84 of the Constitution creates a quota of one third women which applies to the Federal Parliament as a whole. The ECN decided that the results for the House of Representatives could not be determined in isolation from the results for the National Assembly, interpreting the quota as a legal impediment to an allocation of seats before the number of women elected to the National Assembly was known.

Legislation to provide for the elections to the National Assembly had been tabled in parliament, but was not enacted prior to the dissolution of the house. The government then submitted to the president for her assent an ordinance to provide for the elections, a process which took two months to complete. The length of time involved was due to differences in opinion as to the electoral system to be employed, with the original bill tabled in parliament having included a simple majority FPTP voting system, while the ordinance contained a single transferable vote system. The NC supported the transferable vote while the CPN-UML opposed this. On 29 December, President Bidya Devi Bhandari assented to the Election of the Members of the National Assembly Ordinance.

### **Roundtable**

Prior to departure, the EU EOM invited key electoral stakeholders to a roundtable discussion on selected recommendations for possible improvements of several aspects of the electoral legal framework and the electoral process, particularly with respect to compliance with international commitments, standards and best practice. The election roundtable was attended by leaders and representatives of political parties, including the SSF-N president, representatives of the Election Commission of Nepal, the National Human Rights Commission and the National Law Commission, as well as representatives of the media and civil society, including domestic observer organisations.

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<sup>45</sup> Province 1: CPN-UML 51 seats, CPN-MC 15 seats, NC 21 seats, SSF-N 3 seats, RPP 1 seat, Sanghiya Democratic National Forum (SDNF) 1 seat, and Independent 1 seat (total 93 seats). Province 2: CPN-UML 21 seats, CPN-MC 11 seats, NC 19 seats, SSF-N 29 seats, RJPN 25 seats, Nepal Federal Socialist Party 1 seat, and Independent 1 seat (total 107 seats). Province 3: CPN-UML 58 seats, CPN-MC 23 seats, NC 21 seats, BSP 3 seats, NMKP 2 seats, NSPN 1 seat, RPP 1 seat, and RPP-P 1 seat (total 110 seats). Province 4: CPN-UML 27 seats, CPN-MC 12 seats, NC 15 seats, Rastriya Janamorcha 3 seats, NSPN 2 seats, and independent 1 seat (total 60 seats). Province 5: CPN-UML 41 seats, CPN-MC 20 seats, NC 19 seats, SSF-N 5 seats, RJPN 1 seat, and Rastriya Janamorcha 1 seat (total 87 seats). Province 6: CPN-UML 20 seats, CPN-MC 13 seats, NC 6 seats, and RPP 1 seat (total 40 seats). Province 7: CPN-UML 25 seats, CPN-MC 14 seats, NC 12 seats, and RJPN 2 seats (total 53 seats).

## XVIII. RECOMMENDATIONS

The EU EOM offers a set of recommendations for future electoral reform based on observations, analysis and discussion with a range of stakeholders. The aim is to enhance aspects of the electoral process in order to improve the realisation of the fundamental rights of individuals and groups, as provided for in the international and regional commitments to democratic elections applicable to Nepal. In this regard, 29 recommendations are offered, for consideration and action, to the Government of Nepal, the ECN, political parties and civil society. Discussion on implementation of all recommendations should be undertaken as expeditiously as possible, in order to address the issues in a timely manner. Priority recommendations are listed in bold.

### Legal Framework

1. Electoral law should be fully elaborated, with all necessary procedures set out, and in force preferably a year in advance of elections. Amendments, necessary to improve the law, and agreed to by all stakeholders, may exceptionally be made.
2. It would be advisable to review electoral legal instruments to identify inconsistencies between them. Consolidation of the rules on PR and on campaign finance, and of other rules, would also be useful.
3. **Review the impact of the quota system on the ethnic composition of the House of Representatives and provincial assemblies. Remove the Khas Arya from the groups included. Ensure that measures of affirmative action apply only to groups which are the subject of negative discrimination.**
4. Ensure that the laws on citizenship are gender neutral and equal both in form and application.
5. Review the legal provisions which allow for preventive detention to ensure compliance with international standards, particularly the standards against arbitrary arrest and detention.

### Election Administration

6. **Transparency of the ECN to be enhanced by regular consultations with stakeholders, and timely publication of all information of public interest.**
7. The ECN to exercise management power over Chief/Returning Officers as per existing legal provisions, and enforcing consistent application of the directives.
8. **Extensive voter education to be launched sufficiently in advance of elections, in all languages used in Nepal.**
9. Ballot papers for each election race to be printed on a separate sheet of paper, and including only the symbols and names of contesting parties and candidates.
10. Full and unhindered access for all observers to be ensured in the legislation.
11. **FPTP constituency boundaries to be reviewed in order to ensure more equal suffrage.**

### Voter Registration

12. **Voter registration transfer requirements to be relaxed to allow those resident in rented accommodation and informal settlements to transfer their voter registration.**

13. Citizens to be allowed to register to vote if they turn 18 by election day.
14. Arrangements to be made for temporary voters to vote in both FPTP and PR elections.
15. Audit of voter register to be conducted, aimed at removing deceased voters.

### **Campaign and Political Parties**

16. Extensive and continuous civic education is needed to ensure that all citizens are informed of their rights as citizens and as voters. Programmes aimed at indigenous peoples, provided in their languages, should also be developed and implemented.

### **Campaign Finance**

17. **Responsible authorities, the ECN and the Nepal Police, should enforce the law in a comprehensive manner in order to eradicate vote-buying.**
18. The ECN should publish political party and individual candidate statements of income and expenditure on their website.
19. Upon violation of campaign finance regulations, the ECN could consider the imposition of the full range of sanctions provided for by law. Instances of campaign expenses made in excess of permitted limits should also be sanctioned accordingly.

### **Media**

20. Strengthen the independence of the media regulatory authority, the Press Council of Nepal (PCN).
21. The enactment of a new law on online media, in line with national and international commitments on freedom of expression, would contribute to a proper regulation of this media sector.
22. **The elaboration of a less restrictive electoral code of conduct, including provisions for allocation of free airtime to political parties/candidates in the public media, would contribute to a freer campaign environment and would increase the amount of information and messages received by voters from electoral contestants.**
23. The ECN to involve more community radio stations in the dissemination of civic and voter education materials to increase its effectiveness, especially at district level.

### **Participation of Women**

24. Develop capacity building programmes to support women to assume leadership in political life. Foster a women's caucus in legislative bodies. The ECN, as the registrar of political parties, could seek annual reports from parties on progress in achieving diversity and equality within party structures.

## Electoral Justice

25. **Administrative procedures should be introduced which accord priority over other business to election-related cases filed with the Supreme Court.**
26. Disseminate information on complaints procedures more widely. Encourage formal application of the Code of Conduct through the application of available sanctions. Reduce breadth of restriction in Code of Conduct. Confer adjudication and enforcement powers in serious cases on a specialised electoral dispute resolution body.

## Polling, Counting and Tabulation

27. **Transparency of the results process to be enhanced by swift publication of polling centre turnout data and constituency counting tables, as well as by distribution of copies of the constituency counting tables to party and candidate agents.**
28. **Meaningful reconciliation at the polling and counting centre levels to be introduced in the directives including procedures on quarantine in case of discrepancy and audit in case of implausible turnout.**
29. Determination of valid votes to be aligned with international good practice – if the intention of the voter is clear, the vote should be valid.

## ANNEX I Table of Recommendations

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
<b>LEGAL FRAMEWORK</b>					
<b>1.</b> <b># IV.B</b>	The House of Representatives Election Act and the Provincial Assemblies Election Act were both enacted less than three months before the elections. Some directives were published as late as two weeks prior to the elections.	Electoral law should be fully elaborated, with all necessary procedures set out, and in force preferably a year in advance of elections. Amendments, necessary to improve the law, and agreed to by all stakeholders, may exceptionally be made.	No specific change to the legal framework, but any amendments needed to be made ought to be made within the next four years, but preferably as soon as possible.	Federal Parliament	Good practice; Principle of legal certainty and predictability: UN Human Rights Council Resolution 19/36 (A/HRC/RES/19/36, 2012) 16 (c) [The Human Rights Council] “calls upon States to make continuous efforts to strengthen the rule of law and promote democracy by: ...c) Ensuring that a sufficient degree of legal certainty and predictability is provided...”.
<b>2.</b> <b># IV.B</b>	The law is fragmented across a wide range of legal instruments. One example of this is the rules for the proportional inclusion quotas, which are contained in the Constitution, in statutes, and in delegated legislation. Campaign finance rules, similarly, are to be found in statutes as well as in the Code of Conduct. There are also some inconsistencies between laws, an example of which is the different periods for bringing challenges to election results contained in statutes and in the Supreme Court Regulation.	It would be advisable to review electoral legal instruments to identify inconsistencies between them. Consolidation of the rules on PR and on campaign finance, and of other rules, would also be useful.	Consolidate the legal instruments creating the electoral framework into fewer legal instruments.	Federal Parliament	Rule of Law: Universal Declaration of Human Rights, Preamble Declaration of the high-level meeting of the General Assembly on the rule of law at national and international levels. Principle of legal certainty: UN Human Rights Council Resolution 19/36 (A/HRC/RES/19/36, 2012) 16 (c).



NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
3. # IV.C	The PR system has the consequence of enhancing the participation of the Khas Arya in the legislature. This contravenes international standards on equality. Affirmative action measures should not be used to justify a system which has the impact of aggravating ethnic and gender inequality.	Review the impact of the quota system on the ethnic composition of the House of Representatives and provincial assemblies. Remove the Khas Arya from the groups included. Ensure that measures of affirmative action apply only to groups which are the subject of negative discrimination.	Amend Article 84 of the Constitution.	Federal Parliament	Equality: Convention on the Elimination of All Forms of Racial Discrimination: Article 2 (2): <i>"States Parties shall, when the circumstances so warrant, take ... special and concrete measures to ensure the adequate development and protection of certain racial groups ... for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms".</i> These measures shall in no case en tail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
4. #IV.B	Constitutional provisions on citizenship discriminate on the grounds of sex. Nepalese women do not have the same rights to pass on citizenship to foreign spouses as do Nepalese men. This denies access to citizenship to many who are entitled to it, therefore depriving them of the political rights to vote and to stand for election.	Ensure that the laws on citizenship are gender neutral and equal both in form and application.	Amend Article 11 of the Constitution to remove discrimination on the grounds of sex.	Federal Parliament	The equal right of women & men to enjoyment of all... political rights. International Covenant on Civil & Political Rights (ICCPR) Article 3: <i>"The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights"</i> .
5. #IV.B	Around 1,000 people were arrested and held in preventive detention during the electoral period. While some arrests were based on cogent evidence, other arrests appeared to be intended to suppress political dissent and to stifle the expression of views opposed to the elections or calling for spoilt ballots.	Review the legal provisions which allow for preventive detention to ensure compliance with international standards, particularly the standards against arbitrary arrest and detention.	Amend laws allowing for preventive detention, to remove the possibility of arbitrary arrest, by requiring an evidential basis for arrest.	Federal Parliament	Right to liberty: ICCPR Article 9.1 Freedom of expression: ICCPR Article 19

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
<b>ELECTION ADMINISTRATION</b>					
6. #V	The ECN currently does not publish its decisions, full voter registration data, polling centre turnout, data on invalid votes, results forms, campaign finance statements, electoral calendar etc.	<b>Transparency of the ECN to be enhanced by regular consultations with stakeholders, and timely publication of all information of public interest.</b>	None	ECN	Transparency: Convention against Corruption (UNCAC): Articles 7.4 and 10 ICCPR General Comment 34, paragraphs 18 and 19
7. #V	While the law stipulates that the Returning Officers (ROs) are subject to the direction of the ECN, decision-making was often left to the discretion of ROs. This reluctance of the ECN to exercise its powers led to the inconsistent application of legislation, including regarding access of observers.	The ECN to exercise management power over Chief/Returning Officers as per existing legal provisions, and enforcing consistent application of the directives.	None	ECN	Independent electoral Authority. ICCPR General Comment 25, paragraph 20: “...supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws”.
8. #IX	Voter education ahead of the elections was assessed by all stakeholders to be insufficient.	<b>Extensive voter education to be launched sufficiently in advance of elections, in all languages used in Nepal.</b>	None	Government of Nepal, ECN, Civil Society Organisations (CSOs)	Informed community: ICCPR General Comment 25, paragraph 11 and 12 “Voter education and registration campaigns are necessary”. (p11) “Information and materials about voting should be available in minority languages”. (p12)

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
9. #V	Two PR ballots printed on a single sheet of paper were likely one of the main reasons behind the high number of invalid votes in the PR elections. The ballots contained only symbols and no names of party or candidates. PR ballots contained many symbols of parties which were <u>not</u> contesting the elections.	Ballot papers for each election race to be printed on a separate sheet of paper, and including only the symbols and names of contesting parties and candidates.	None	ECN	Good practice: Ballot papers are designed as simply as possible.
10. #V, XVII.A,B	The legislation does not explicitly provide observers with full and unhindered access. This led to numerous cases of denied full access to polling and counting centres.	Full and unhindered access for all observers to be ensured in the legislation.	Amend the House of Representatives and Provincial Assembly Elections Acts.	Federal Parliament, ECN	Independent scrutiny: ICCPR General Comment 25, paragraph 20 “There should be independent scrutiny of the voting and counting process and access to judicial review or other equivalent process so that electors have confidence in the security of the ballot and the counting of the votes”. (p20)
11. #VI	Currently there are great differences in the number of registered voters per federal and provincial constituency.	<b>FPTP constituency boundaries to be reviewed in order to ensure more equal suffrage.</b>	Constitutional amendment.	Federal Parliament, Constituency Delimitation Commission	Equal suffrage : ICCPR Article 25 ICCPR General Comment 25, paragraph 21 “The vote of one elector should be equal to the vote of another”.

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
<b>VOTER REGISTRATION</b>					
12. #VII	Currently, a voter can transfer the registration only if s/he has a permanent residence in the new location. The permanent residency requires the ownership of the property.	<b>Voter registration transfer requirements to be relaxed to allow those resident in rented accommodation and informal settlements to transfer their voter registration.</b>	Amend the Electoral Rolls Acts.	Federal Parliament, ECN	Universal suffrage: ICCP Article 25 ICCP General Comment 25, paragraph 11 <i>"States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed. If residence requirements apply to registration, they must be reasonable".</i>
13. #VII	Currently, people can register only if they are 18 on or before the day of registration. Therefore, those who turned 18 between the registration deadline (21 August) and election days were not able to register and vote.	Citizens to be allowed to register to vote if they turn 18 by election day.	Amend the Electoral Rolls Acts.	Federal Parliament, ECN	Universal suffrage: ICCP Article 25 ICCP General Comment 25, paragraph 11

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
14. #VII	The ECN failed to make arrangements for the temporary voters (election and security personnel on election duties, prisoners and residents of old age homes) to vote. The law currently allows these voters to vote only in PR elections.	Arrangements to be made for temporary voters to vote in both FPTP and PR elections.	Amend the Electoral Rolls Acts.	ECN	Universal suffrage: ICCPR Article 25 ICCPR General Comment 25, paragraph 11
15. #VII	Currently, the removal of deceased persons from the register is left entirely to the initiative of the deceased person's family members who have no incentive to report this information to the ECN.	Audit of voter register to be conducted, aimed at removing deceased voters.	None	ECN	Universal suffrage: ICCPR Article 25 ICCPR General Comment 25, paragraph 11

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
<b>POLITICAL PARTIES AND CAMPAIGN ENVIRONMENT</b>					
16. #XVIII	The high number of invalid votes in these elections, as well as the practice of vote-buying, reveal the need for civic education. Also, these elections inaugurated the new federal structure of Nepal composed of new governmental bodies. There is therefore a need to establish civic education programmes to explain the new federal structure and processes to allow citizens to fully exercise their rights.	Extensive and continuous civic education is needed to ensure that all citizens are informed of their rights as citizens and as voters. Programmes aimed at indigenous peoples, provided in their languages, should also be developed and implemented.	None	ECN, National Human Rights Commission, Madhesi Commission, Tharu Commission, Muslim Commission, National Dalit Commission, National Women's Commission, National Inclusion Commission, Ministry of Education, CSOs, political parties	ICCPR General Comment 25 UNCAC Article 13 (in reference to measures to fight against vote-buying) CERD/C/64/CO/5 (CERD, 2004), Nepal, paragraph 17 (in reference to indigenous people) UN Declaration on the Rights of Indigenous Peoples, Article 5 (in reference to indigenous people)

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
<b>CAMPAIGN FINANCE</b>					
17. #XI	Despite being prohibited by law, vote-buying remained an illegal malpractice during the campaign period. While a few arrests took place, enforcement and prosecution is almost non-existent.	<b>Responsible authorities, the ECN and the Nepal Police, should enforce the law in a comprehensive manner in order to eradicate vote-buying.</b>	None	ECN, Nepal Police, District Attorneys and the Attorney General	ICCPR General Comment 25 paragraph 11 <i>"Any abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced"</i> . UNCAC, Article 7
18. #XI	While obligations to disclose political party and campaign finances rest with political parties, an additional disclosure by the ECN would enhance public access to this information.	The ECN should publish political party and individual candidate statements of income and expenditure on their website.	Amend the Election Commission Act and the Election (Offences and Punishment) Act.	Federal Parliament	Transparency in the funding of electoral stakeholders: UNCAC Article 7, paragraph 3



NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
19. #XI	Despite the existence of sanctions for violation of campaign finance regulations, sanctions imposed to date have been minor. The Election Commission Act 2073 provides for fines equal to the election expenses incurred in cases of failure of parties and candidates to submit their expense statements within the deadline (Section 26, subsection 1). The ECN fined parties and candidates sums of NPR 1,500 (€12) for failure to submit reports after the 2013 elections.	Upon violation of campaign finance regulations, the ECN could consider the imposition of the full range of sanctions provided for by law. Instances of campaign expenses made in excess of permitted limits should also be sanctioned accordingly.	None	ECN	Transparency in the funding of electoral stakeholders: ICCP Article 25 (b) ICCP General Comment 25, paragraph 19 UNCAC Article 7, paragraph 3 2015 New Delhi Declaration, paragraph B.9
<b>MEDIA</b>					
20. #XII	The members of the media regulatory body, the Press Council of Nepal (PCN), are currently appointed by the government, compromising the independence of the institution.	Strengthen the independence of the media regulatory authority, the Press Council of Nepal (PCN).	Amend the Press Council Act, 1992.	Federal Parliament	Independence of media regulatory bodies ICCP General Comment 34, paragraph 39 Joint declaration on key challenges to media freedom by rapporteurs of the UN, the OSCE, the OAS and the ACHPR – 2010 Joint declaration on the diversity of broadcasting by rapporteurs of the UN, the OSCE, the OAS and the ACHPR – 2007

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
21. #XII	Online media in Nepal are currently regulated by a provisional text (Online Media Operation Directives, 2017) and the Electronic Transactions Act (2008), which include provisions contrary to international commitments on freedom of expression.	The enactment of a new law on online media, in line with national and international commitments on freedom of expression, would contribute to a proper regulation of this media sector.	Enforcement of a law on online media.	Federal Parliament	Freedom of expression and freedom of information: ICCPR Article 19
22. #XII	Differing from previous electoral codes, the Election Code of Conduct for the 2017 House of Representatives and Provincial Assembly Elections did not include an allocation of free airtime for political parties/candidates in the public media. Similarly, the electoral code included very restrictive provisions on the diffusion of parties' and candidates' propaganda in the media.	<b>The elaboration of a less restrictive electoral code of conduct, including provisions for allocation of free airtime to political parties/candidates in the public media, would contribute to a freer campaign environment and would increase the amount of information and messages received by voters from electoral contestants.</b>	Revision of Chapter 5 of Election Code of Conduct (and its third amendment).	ECN	Right to information; Public service role of state-owned media: ICCPR General Comment 34, paragraph 13 Joint Statement on the Media and Elections by rapporteurs of the UN, the OSCE, the OAS and the ACHPR - 2009
23. #XII	The ECN's voter education strategy targeted mainly commercial radio and TV stations at the national level, leaving community radio stations as less of a priority.	The ECN to involve more community radio stations in the dissemination of civic and voter education materials to increase its effectiveness, especially at district level.	None	ECN	ICCPR General Comment 25, paragraph 11 (necessity of voter education to ensure effective exercise of Article 25 by an informed community)

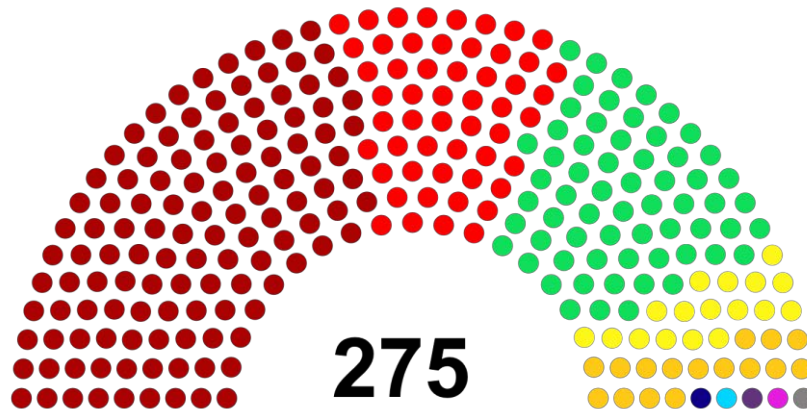
NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
<b>PARTICIPATION OF WOMEN</b>					
24. #XIV	Women are under-represented in leadership roles in political life.	Develop capacity building programmes to support women to assume leadership in political life. Foster a women's caucus in legislative bodies. The ECN, as the registrar of political parties, could seek annual reports from parties on progress in achieving diversity and equality within party structures.	None	CSO, The National Women's Commission, ECN;	Equal Participation of Women in Political Life: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Article 7
<b>ELECTORAL JUSTICE</b>					
25. #XVI. B	The Supreme Court, which received several election-related cases, did not adjudicate upon the cases in a timely and effective manner.	<b>Administrative procedures should be introduced which accord priority over other business to election-related cases filed with the Supreme Court.</b>	Amend the Supreme Court Rules to create procedures for the speedy determination of electoral disputes.	Federal Parliament	Right to an effective remedy: ICCPR Article 2.3 Universal Declaration of Human Rights: Article 8

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
<b>POLLING, COUNTING AND TABULATION</b>					
#XVI.B 26.	There were countless violations of the Election Code of Conduct, with only around 100 being the subject of formal complaints. The ECN dealt with complaints informally and did not impose sanctions. There was no deterrent effect and no enforcement.	Disseminate information on complaints procedures more widely. Encourage formal application of the Code of Conduct through the application of available sanctions. Reduce breadth of restriction in Code of Conduct. Confer adjudication and enforcement powers in serious cases on a specialised electoral dispute resolution body.	Amend the Election (Offences and Punishment) Act to designate a specific judicial body to adjudicate upon electoral disputes.	Federal Parliament	Rule of Law: Universal Declaration of Human Rights, Preamble: <i>"It is essential... that human rights should be protected by the rule of law"</i> . The Rule of Law has been interpreted as requiring that breaches of rules are controlled.
#XVII.C 27.	Currently, the ECN neither publishes nor provides agents with polling centre turnout data or copies of the constituency results forms. In the absence of polling centre results, polling centre turnout data appears to offer the only available tool for any meaningful scrutiny of the polling process.	Transparency of the results process to be enhanced by swift publication of polling centre turnout data and constituency counting tables, as well as by distribution of copies of the constituency counting tables to party and candidate agents.	None	ECN	Transparency: UNCAC Articles 7.4 and 10 ICCPR General Comment 34, paragraph 18 and 19
#V, XVII.B 28.	There is no requirement to compare the number of voters marked in the voter list with the number of ballot papers used (issued plus invalidated) at the polling centre. There is also no requirement to compare the number of ballots found in the ballot box at the counting centre with the polling centre reconciliation data.	Meaningful reconciliation at the polling and counting centre levels to be introduced in the directives including procedures on quarantine in case of discrepancy and audit in case of implausible turnout.	None	ECN	Security of the ballot boxes and independent scrutiny: ICCPR General Comment 25, paragraph 20

NO.	CONTEXT	RECOMMENDATION	SUGGESTED CHANGE IN LEGAL FRAMEWORK	RESPONSIBLE INSTITUTION	RELEVANT INTERNATIONAL / REGIONAL PRINCIPLE / COMMITMENT
29. #V	Currently the vote is valid only if it is marked with the swastika stamp. Any other way of marking the ballot, such as thumb printing, invalidates the vote.	Determination of valid votes to be aligned with international good practice – if the intention of the voter is clear, the vote should be valid.	Primary legislation (amendment in the House of Representatives and Provisional Assemblies Elections Acts).	Federal Parliament, ECN	Free expression of the will of the electors: ICCPR Article 25 ICCPR General Comment 25, paragraph 19 and 21

## ANNEX II Election Results

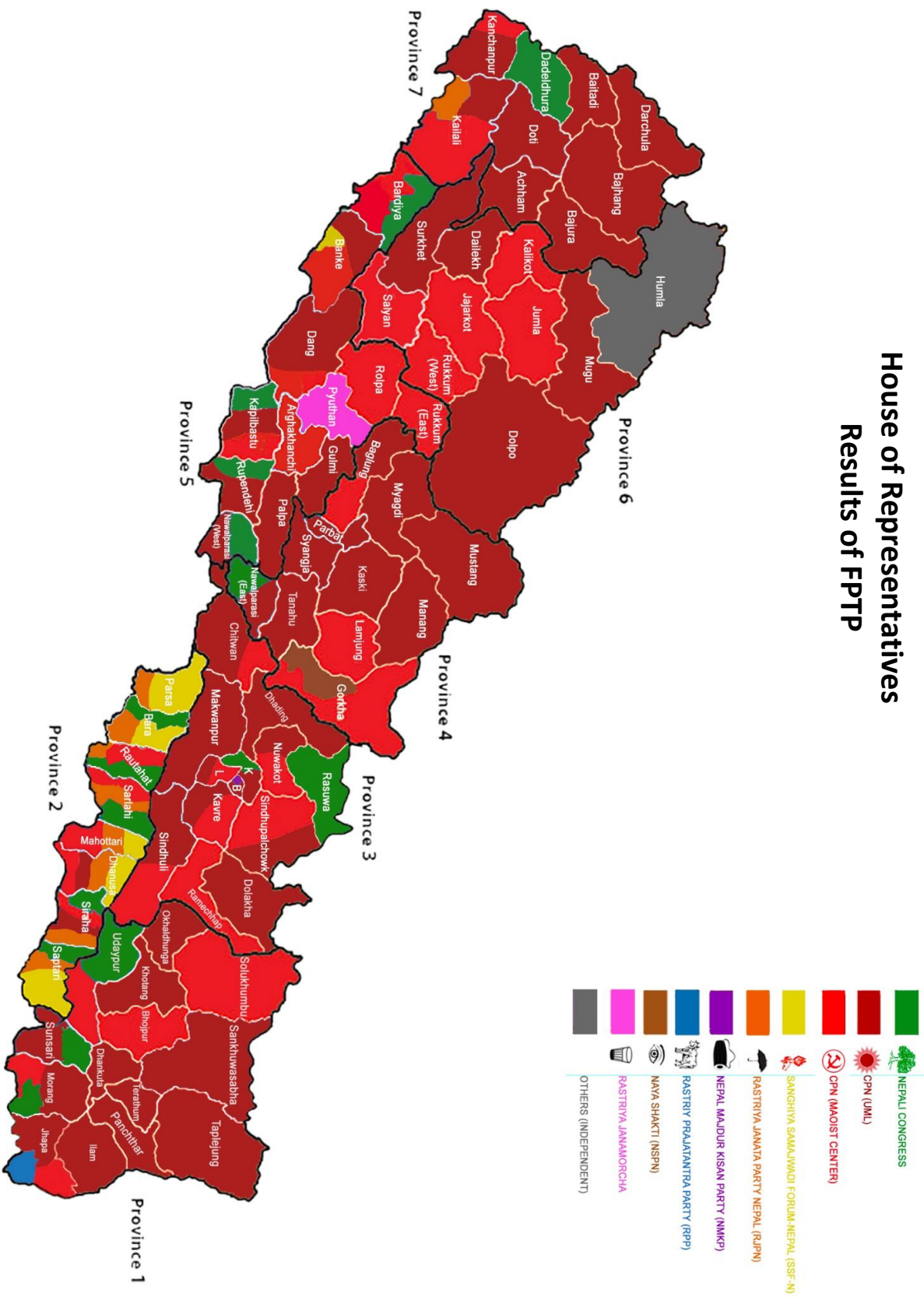
### HOUSE OF REPRESENTATIVES SEAT ALLOCATION PER POLITICAL PARTY



#### Political Parties

Parties	FPTP	PR	TOTAL
CPN-UML	80	41	121
NC	23	40	63
CPN-MC	36	17	53
SSF-N	10	6	16
RJPN	11	6	17
NSPN	1	0	1
RPP	1	0	1
NMKP	1	0	1
Rastriya Janamorcha	1	0	1
Independent	1	0	1
<b>TOTAL</b>	<b>165</b>	<b>110</b>	<b>275</b>

## House of Representatives Results of FPTP

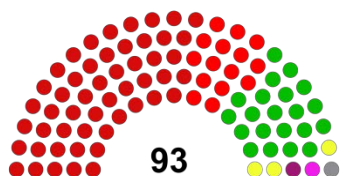




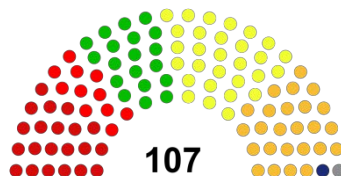
## Provincial Assembly

### SEAT ALLOCATION PER PROVINCE AND PER POLITICAL PARTY

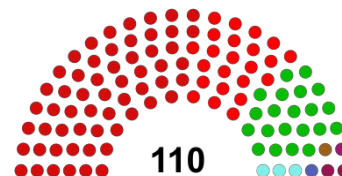
Province 1



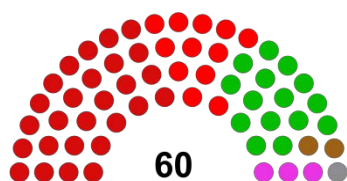
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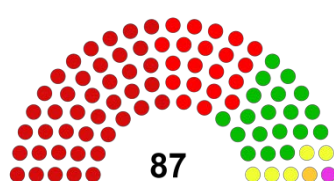
Province 3



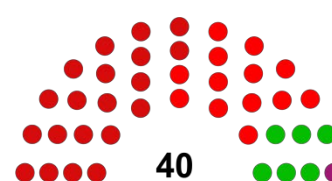
Province 4



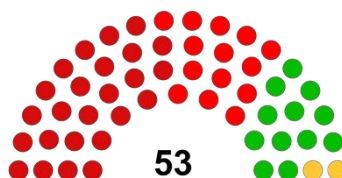
Province 5



Province 6



Province 7



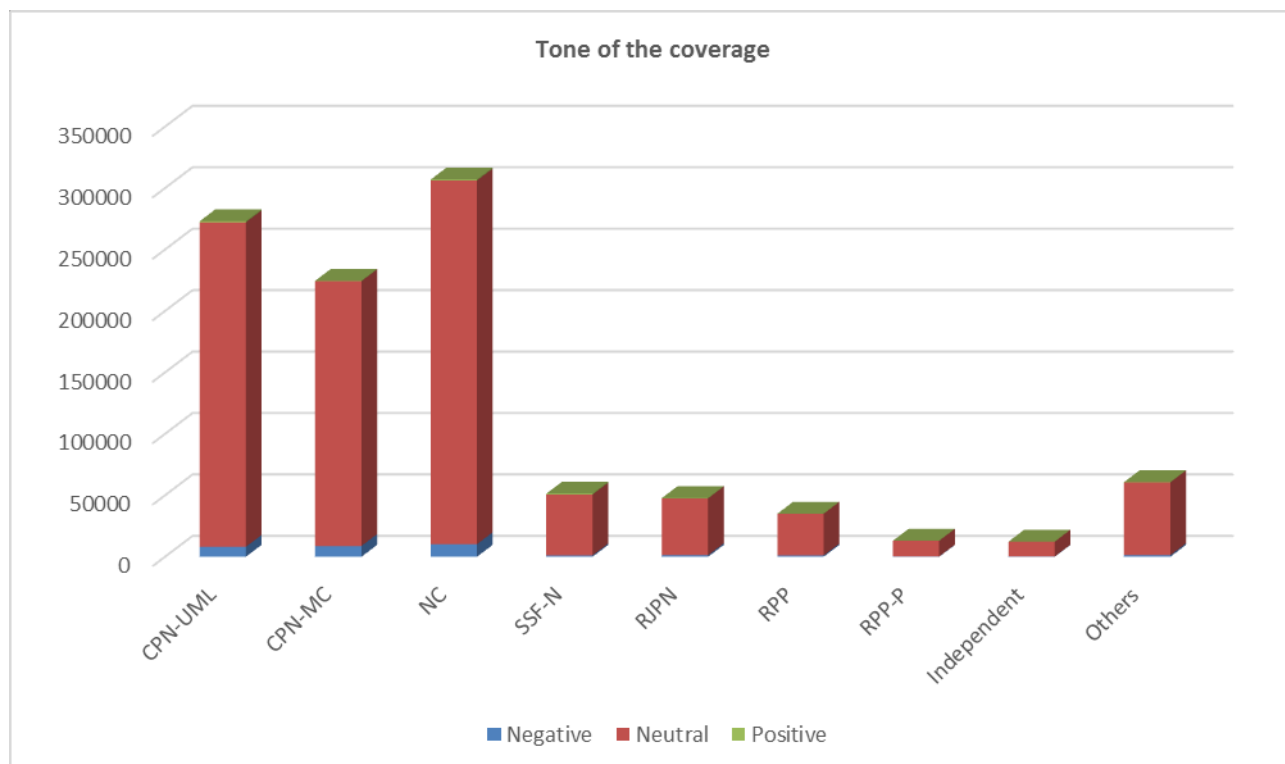
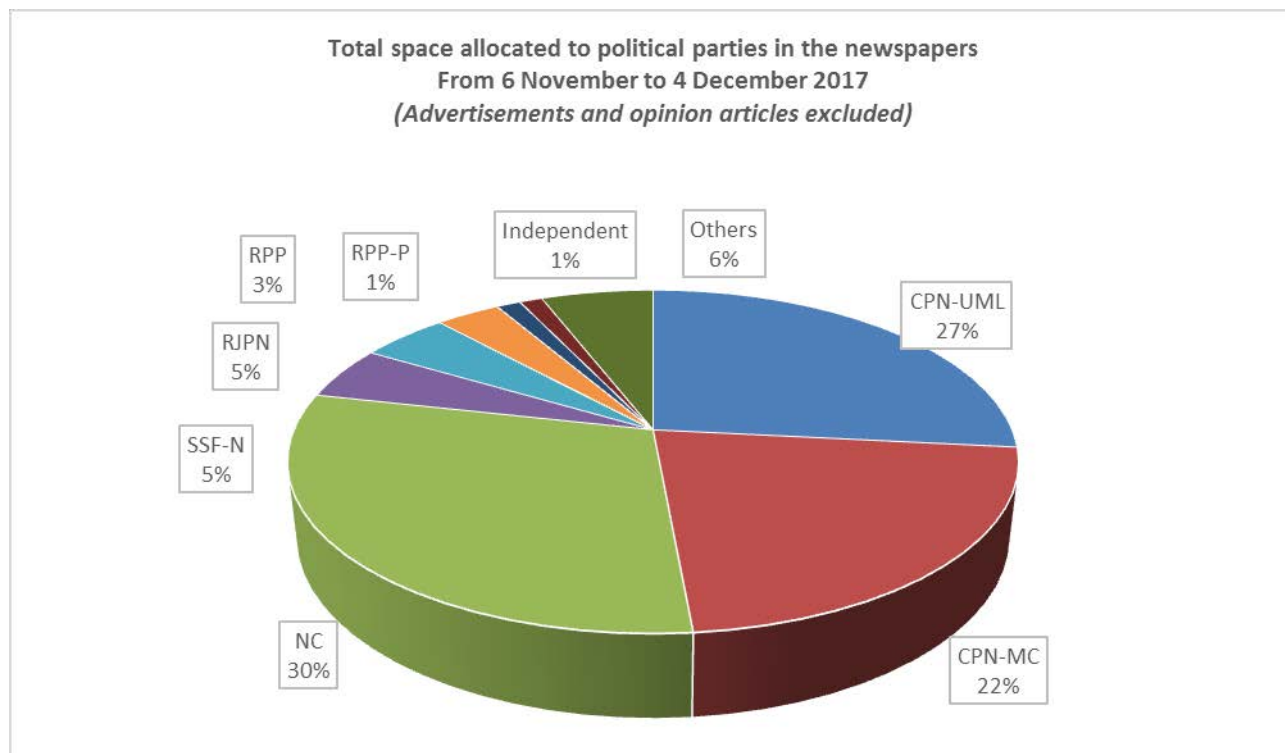
### Political Parties

Political Parties	Province 1	Province 2	Province 3	Province 4	Province 5	Province 6	Province 7
CPN-UML	51	21	58	27	41	20	25
CPN-MC	15	11	23	12	20	13	14
NC	21	19	21	15	19	6	12
SSF-N	3	29			5		
RJPN		25			1		2
RPP	1		1			1	
RPP-P			1				
NSPN				2			
BSP			3				
NMKP			2				
Rastriya Janamorcha				3	1		
Sanghiya Democratic National Forum	1	1					
Independent	1	1		1			
<b>TOTAL</b>	<b>93</b>	<b>107</b>	<b>110</b>	<b>60</b>	<b>87</b>	<b>40</b>	<b>53</b>



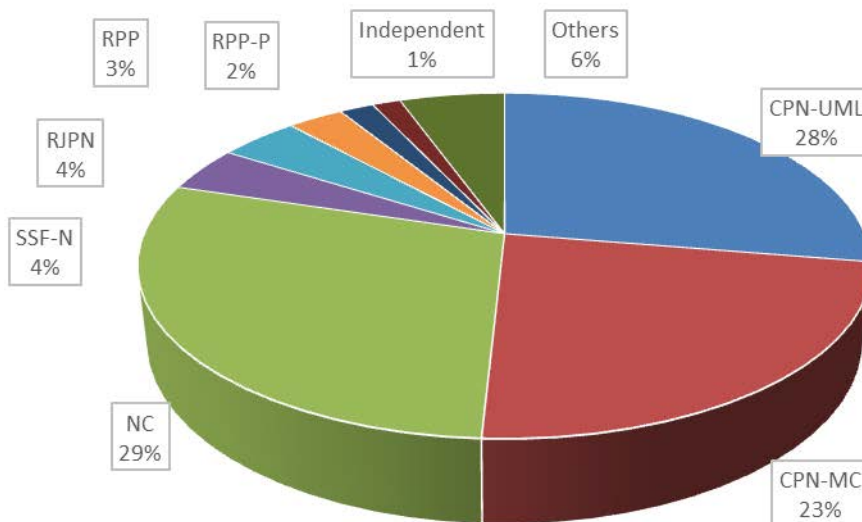
## ANNEX III Media Monitoring Results

### NEWSPAPERS

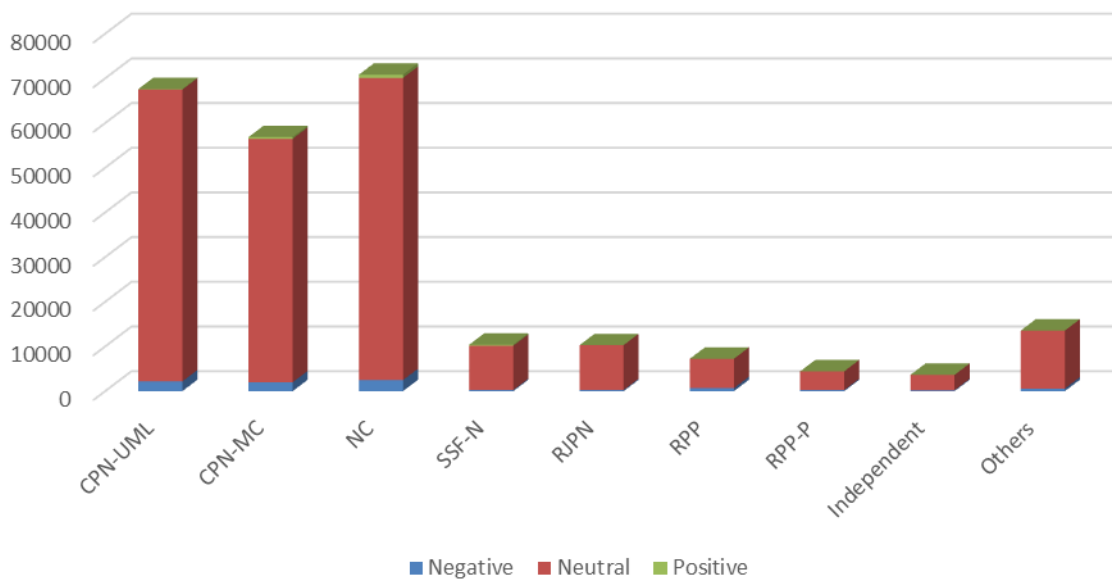


## GORKAPHATRA NEWSPAPER

Total space allocated to political parties in Gorkhapatra  
 From 6 November to 4 December 2017  
 (Advertisements and opinion articles excluded)

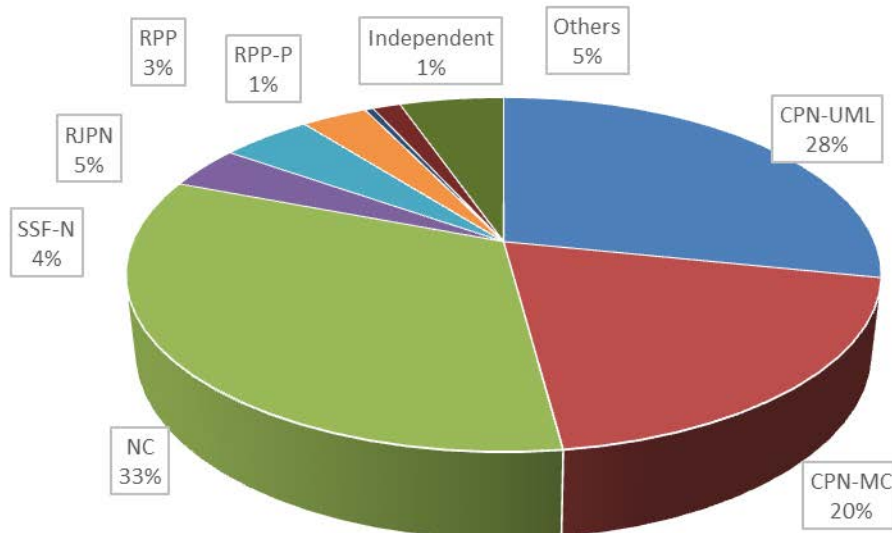


Tone of the coverage

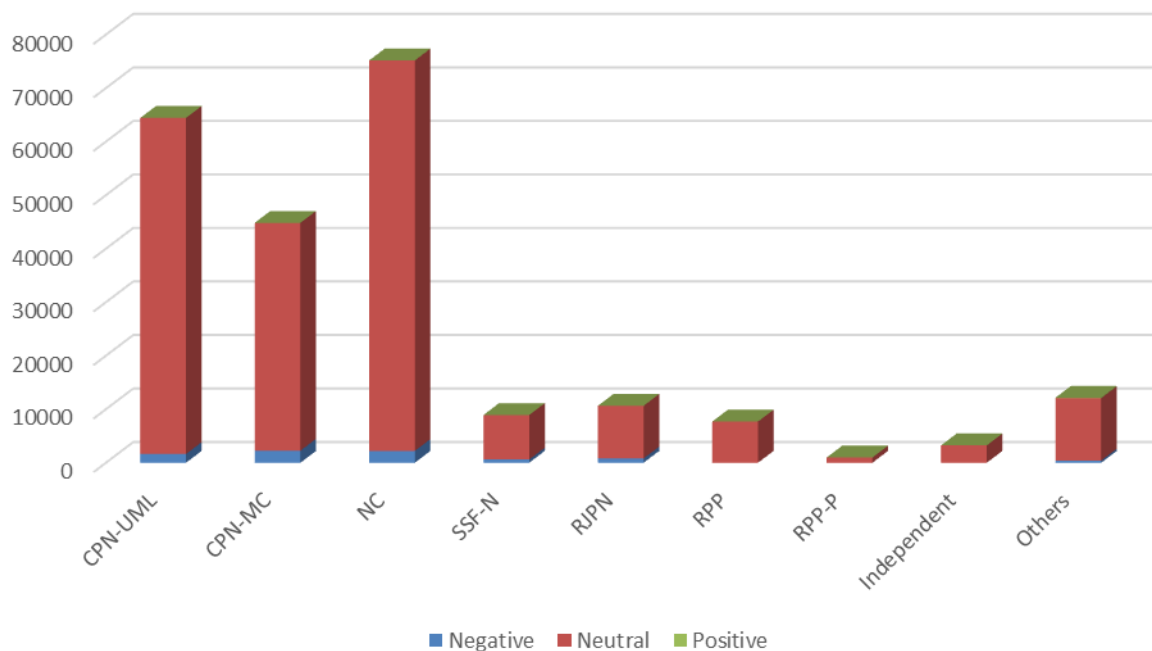


## KANTIPUR NEWSPAPER

Total space allocated to political parties in Kantipur  
 From 6 November to 4 December 2017  
 (Advertisements and opinion articles excluded)

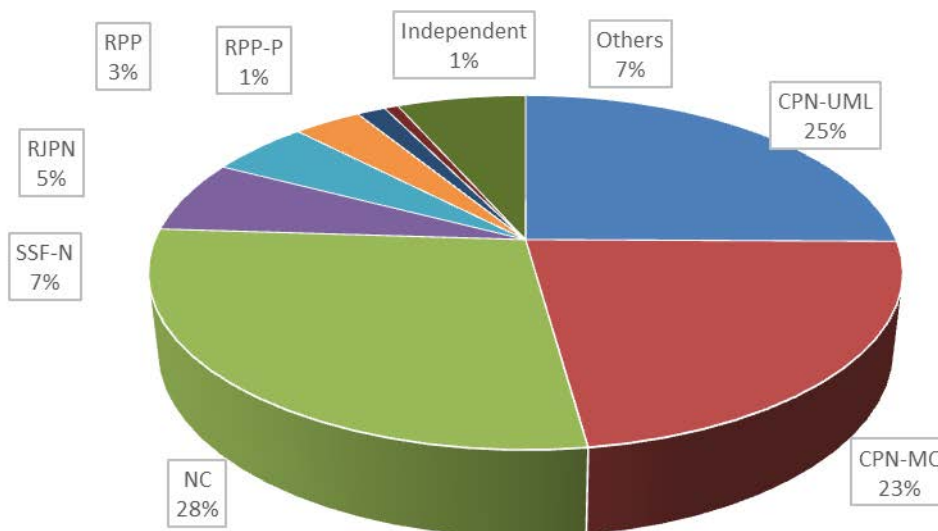


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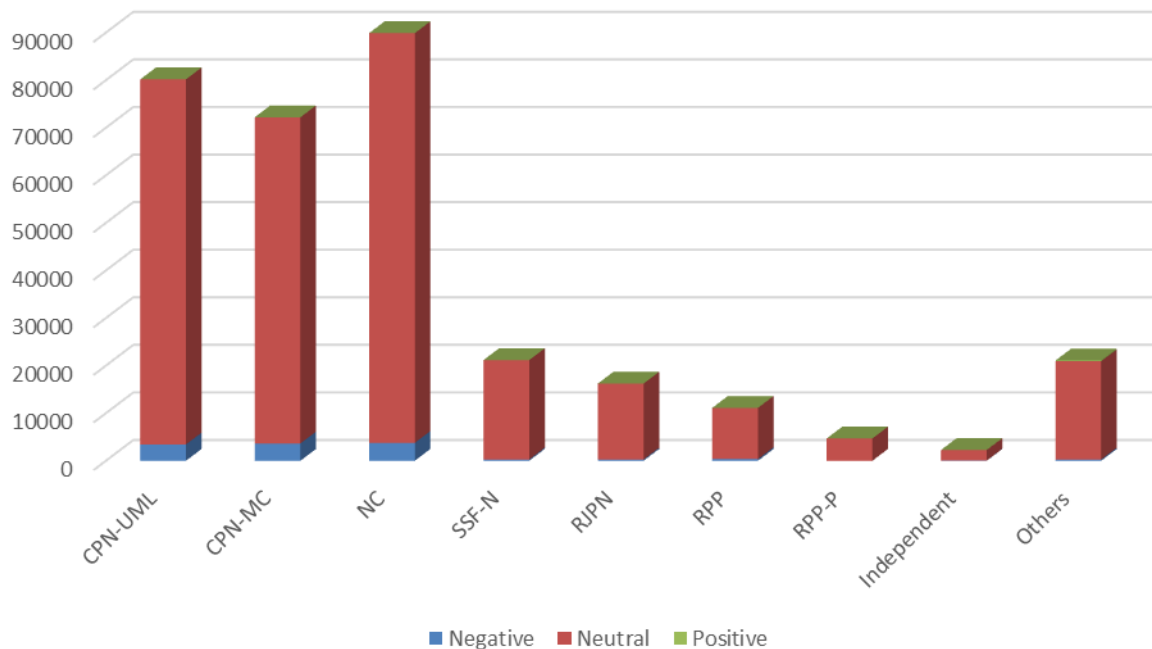


## NAAGARIK NEWSPAPER

Total space allocated to political parties in Naagarik  
 From 6 November to 4 December 2017  
 (Advertisements and opinion articles excluded)

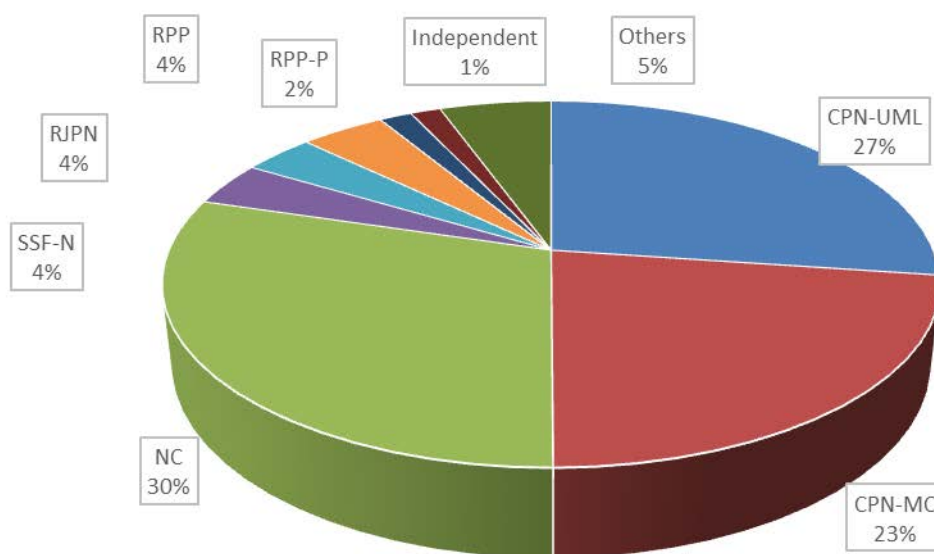


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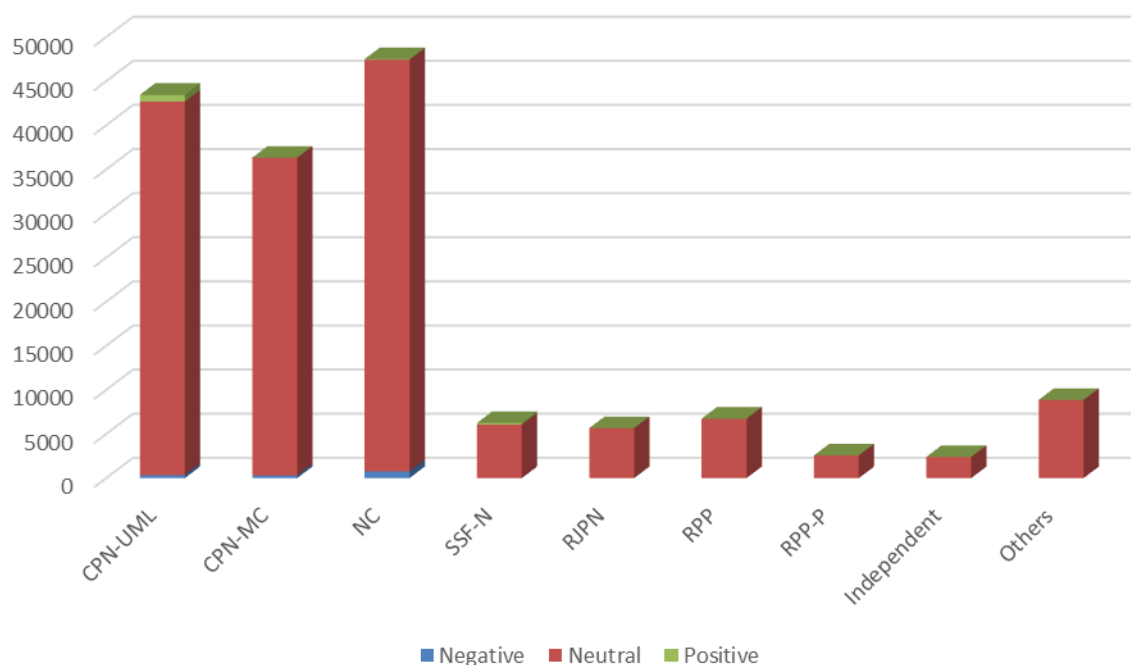


## NAYA PATRIKA NEWSPAPER

Total space allocated to political parties in Naya Patrika  
 From 6 November to 4 December 2017  
 (Advertisements and opinion articles excluded)

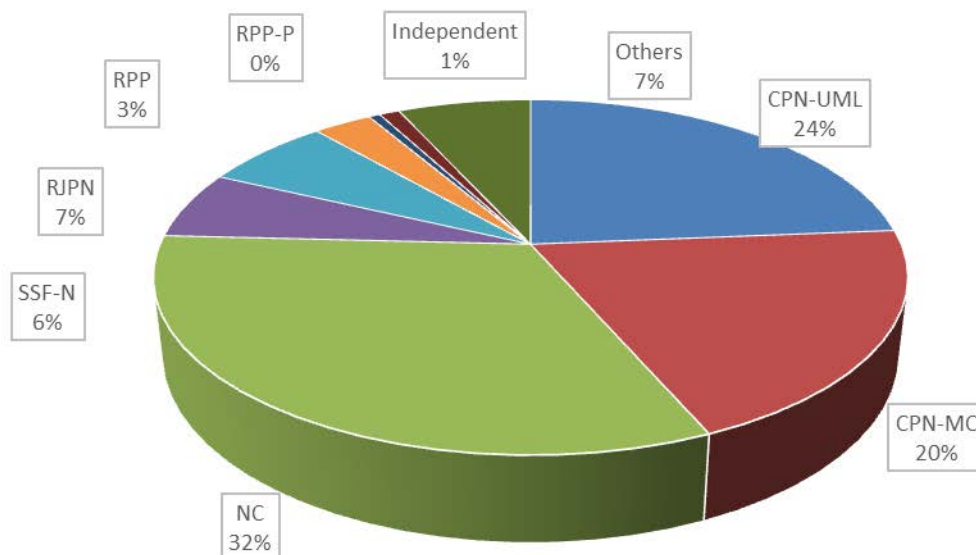


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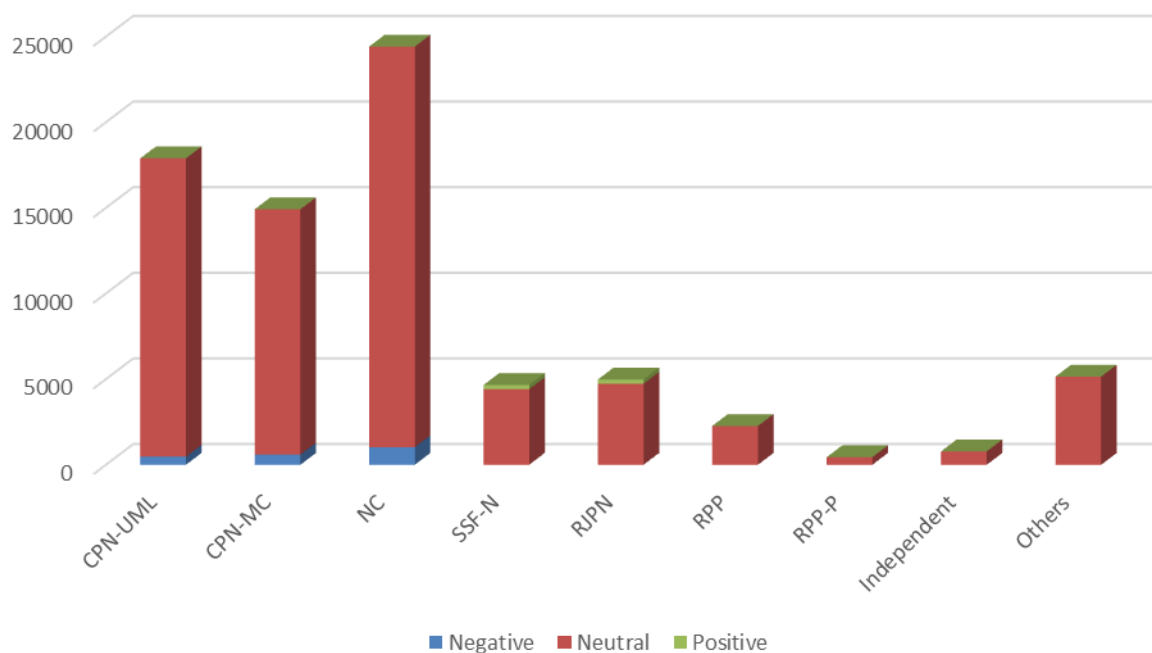


## THE HIMALAYAN TIMES

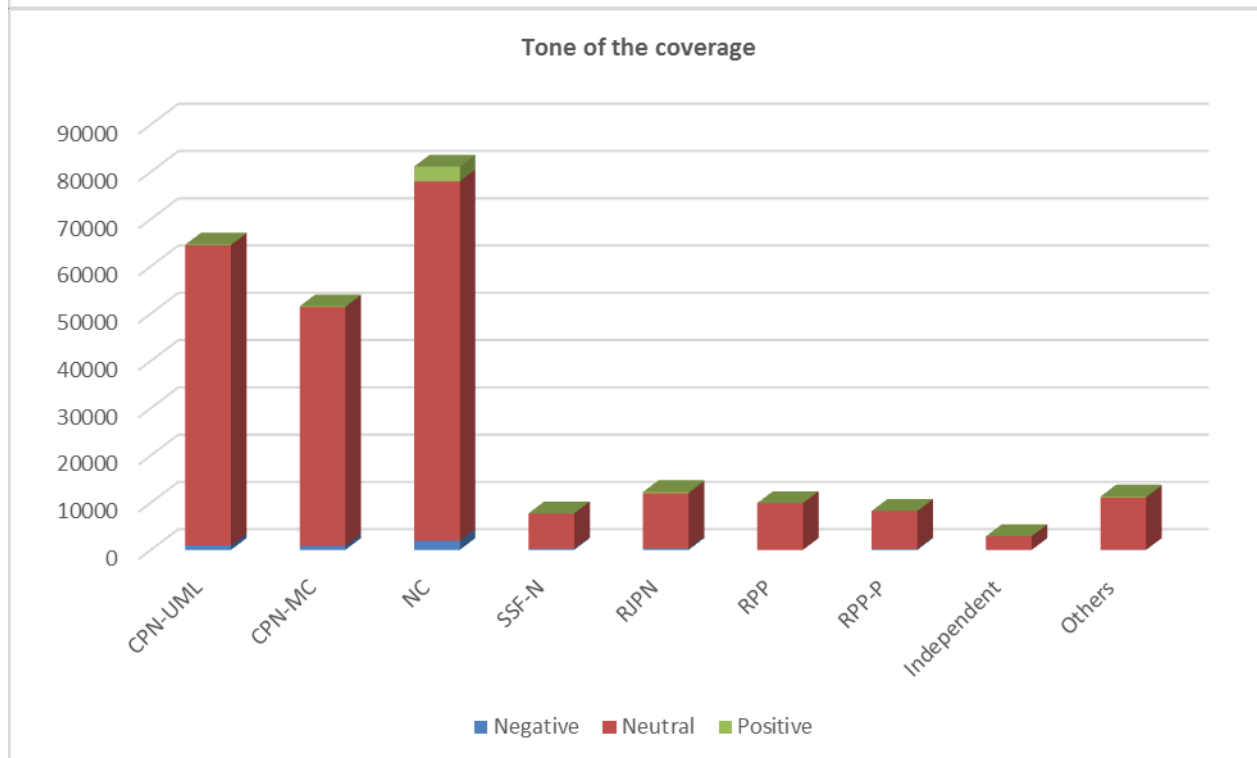
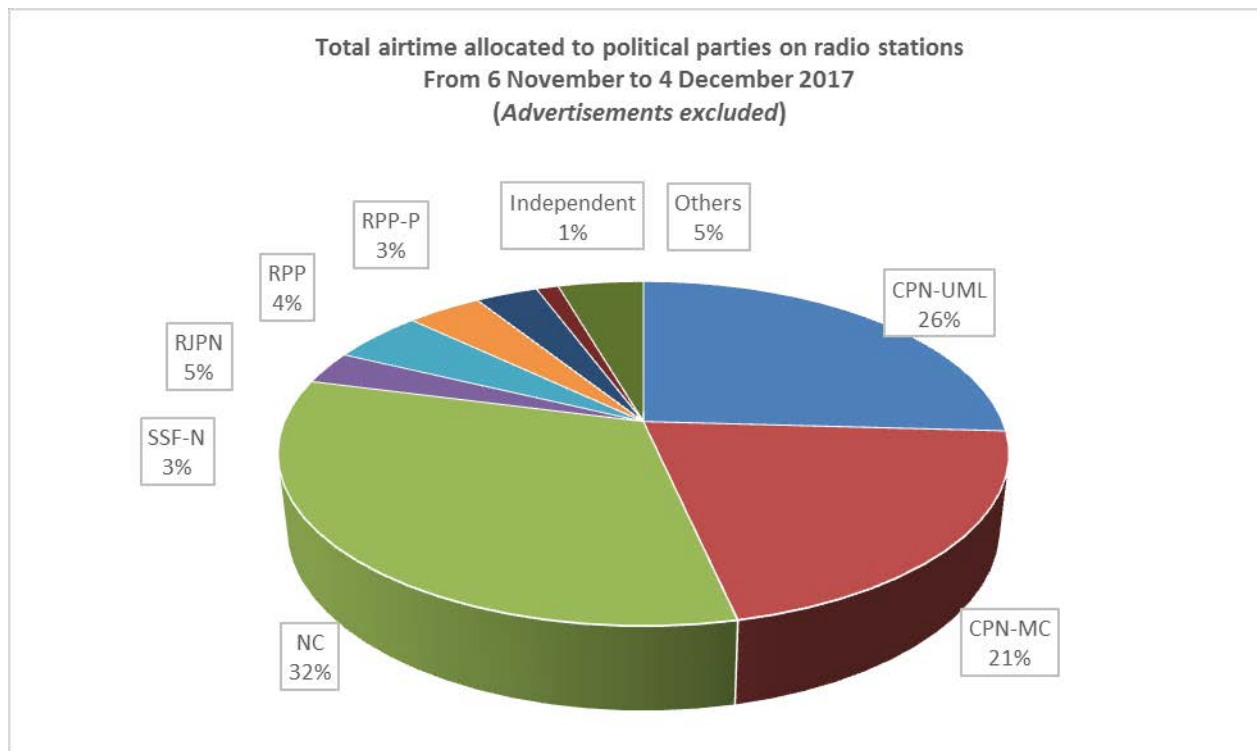
Total space allocated to political parties in The Himalayan Times  
 From 6 November to 4 December 2017  
 (Advertisements and opinion articles excluded)



Tone of the coverage

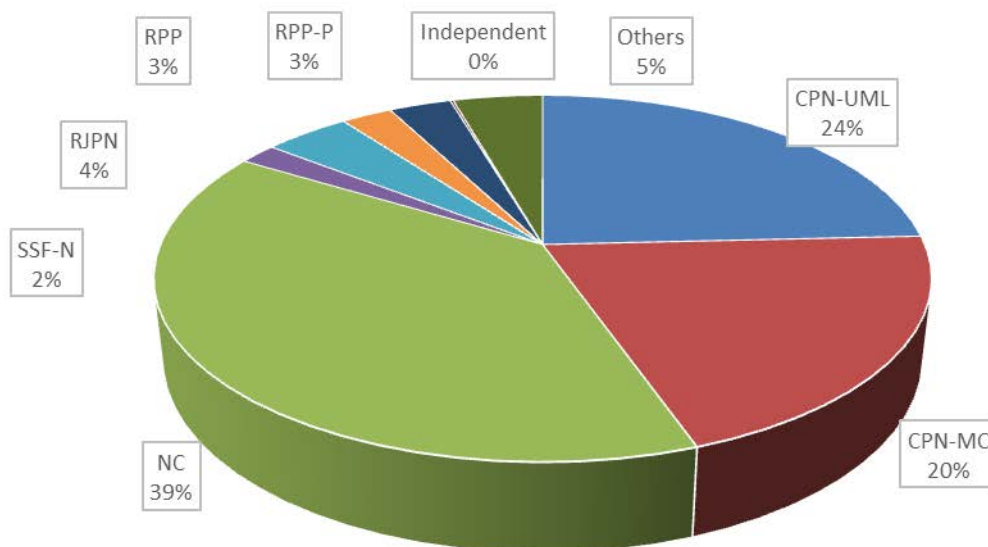


## RADIO STATIONS

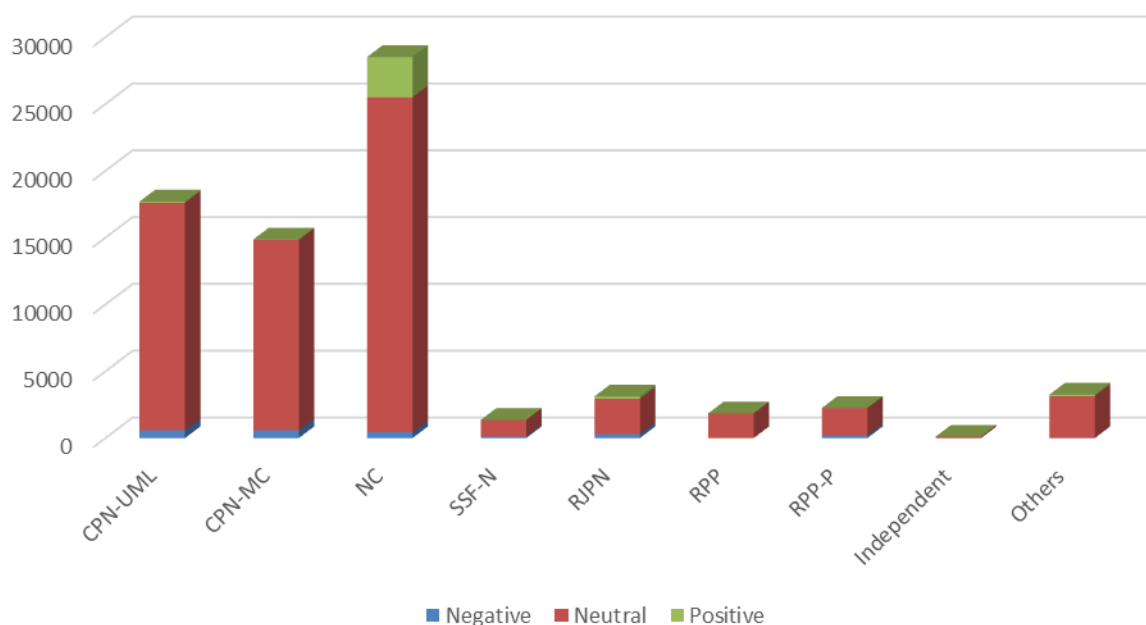


## RADIO NEPAL

Total airtime allocated to political parties on Radio Nepal  
 From 6 November to 4 December 2017  
 (Advertisements excluded)



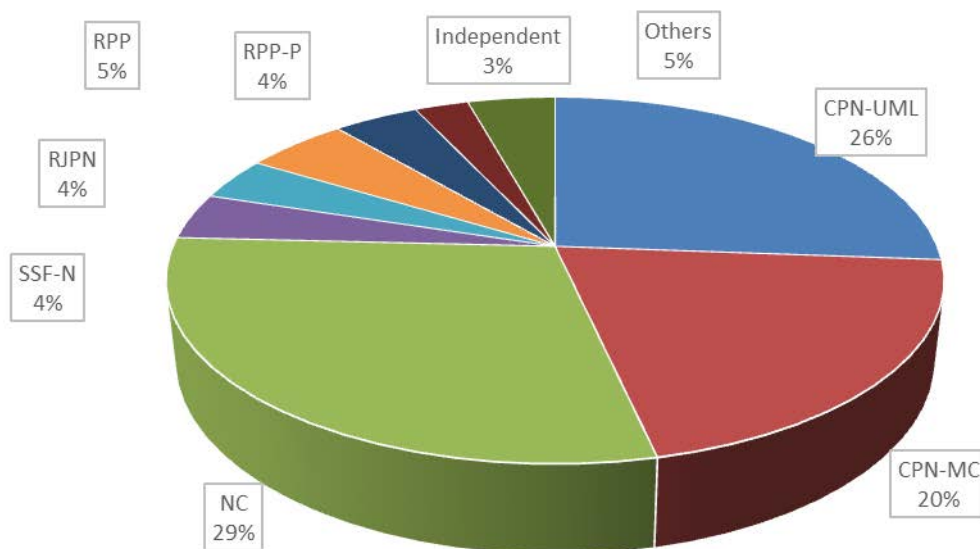
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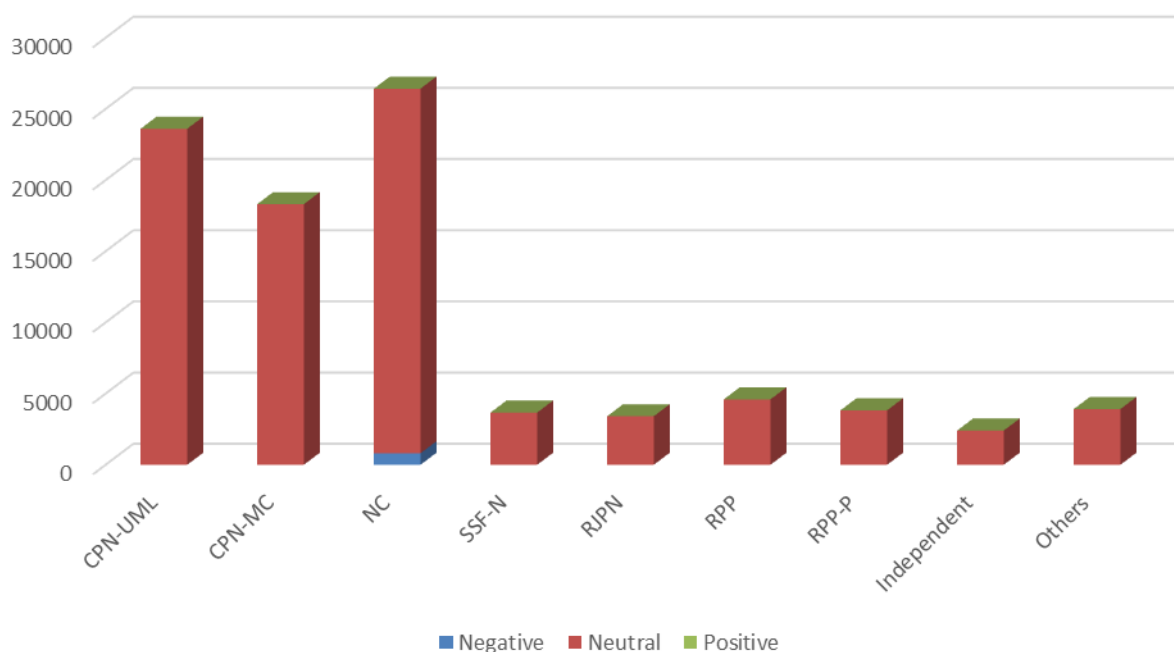


## KANTIPUR RADIO

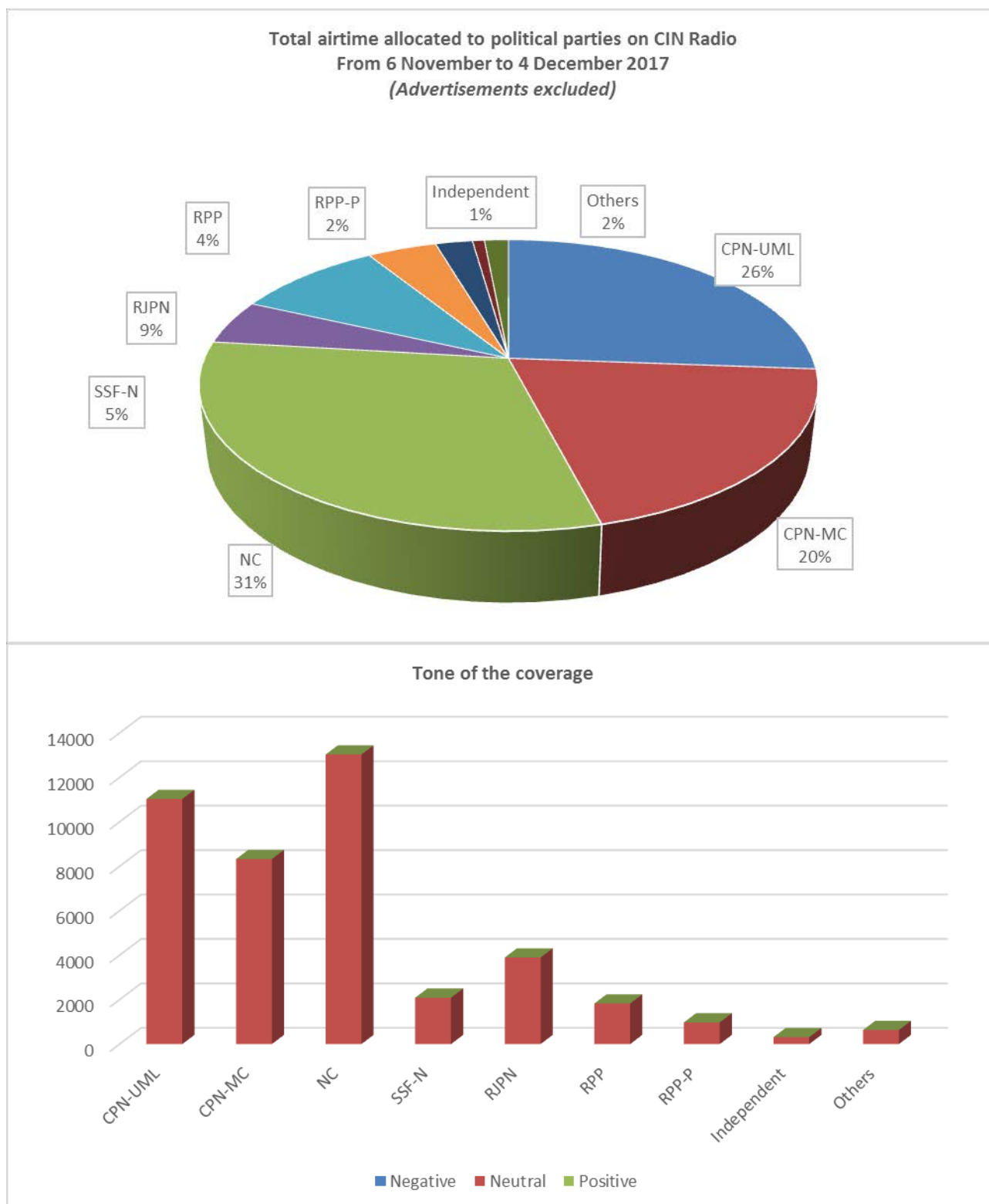
Total airtime allocated to political parties on Kantipur Radio  
 From 6 November to 4 December 2017  
 (Advertisements excluded)



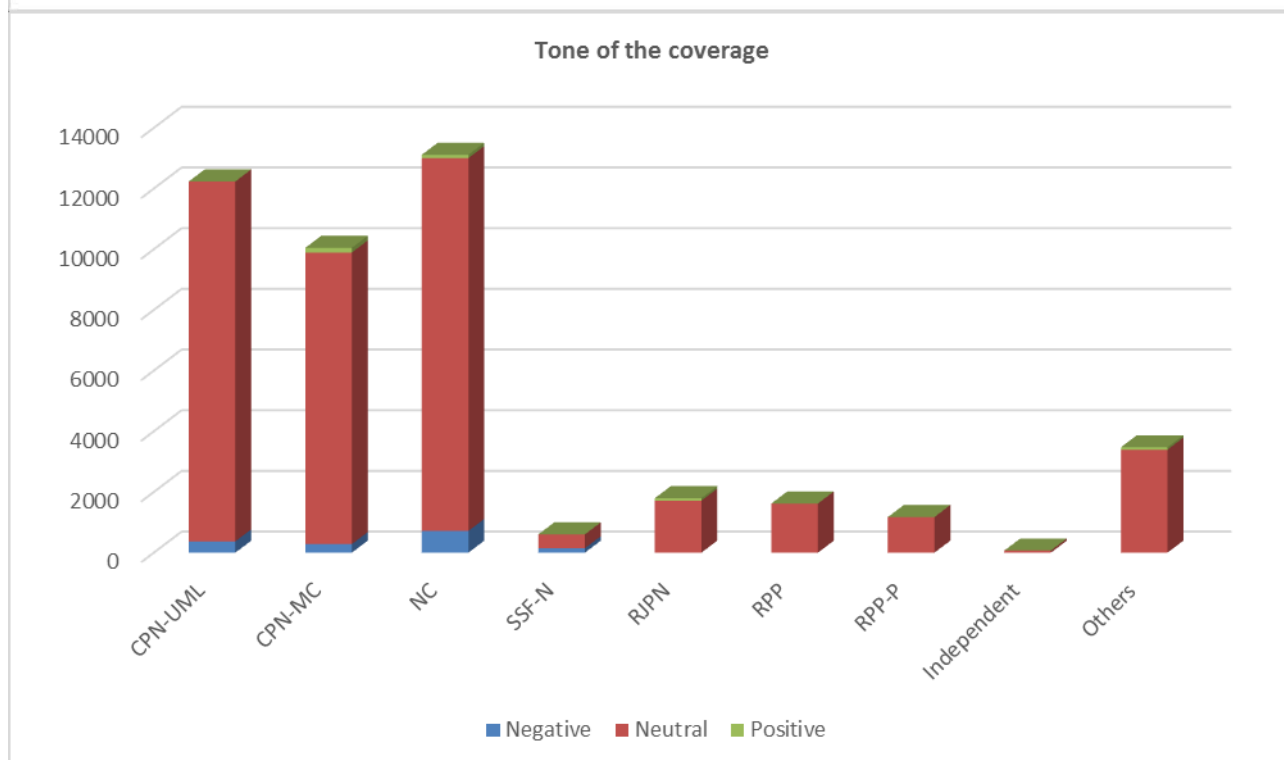
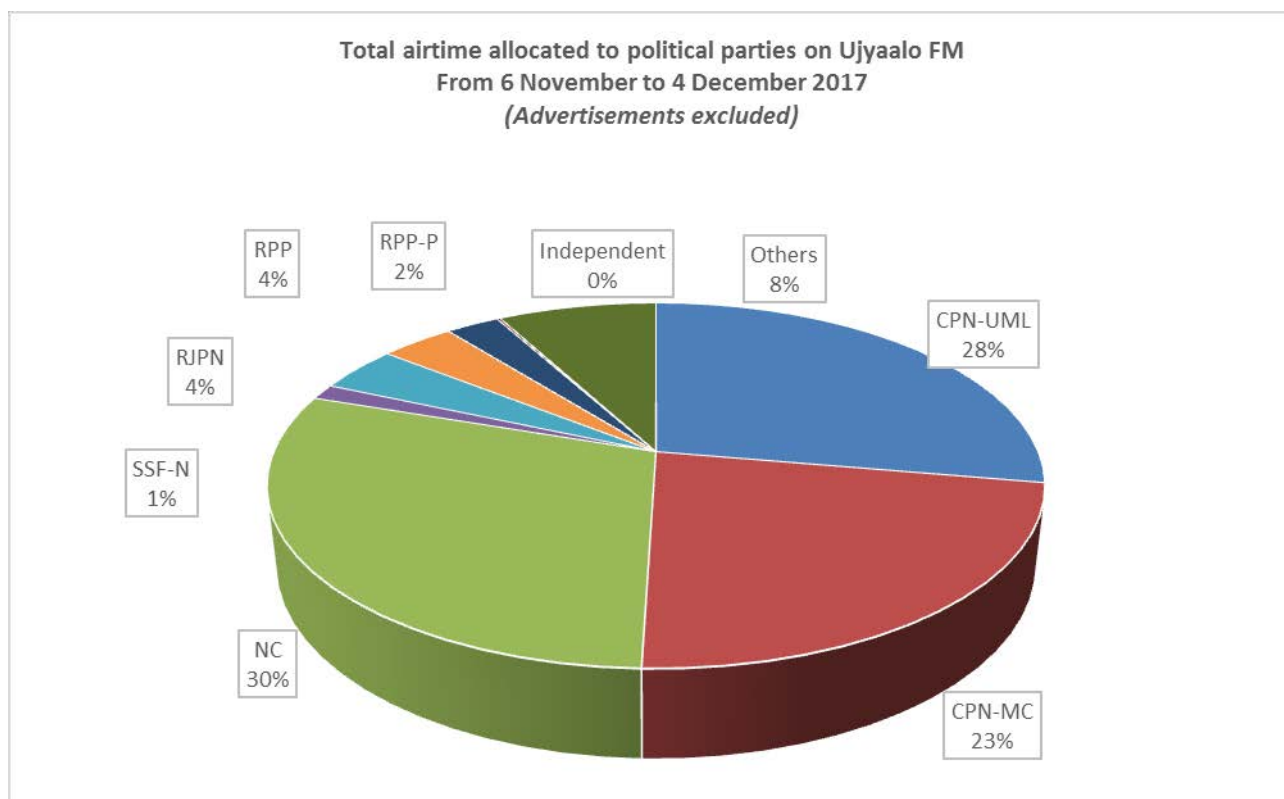
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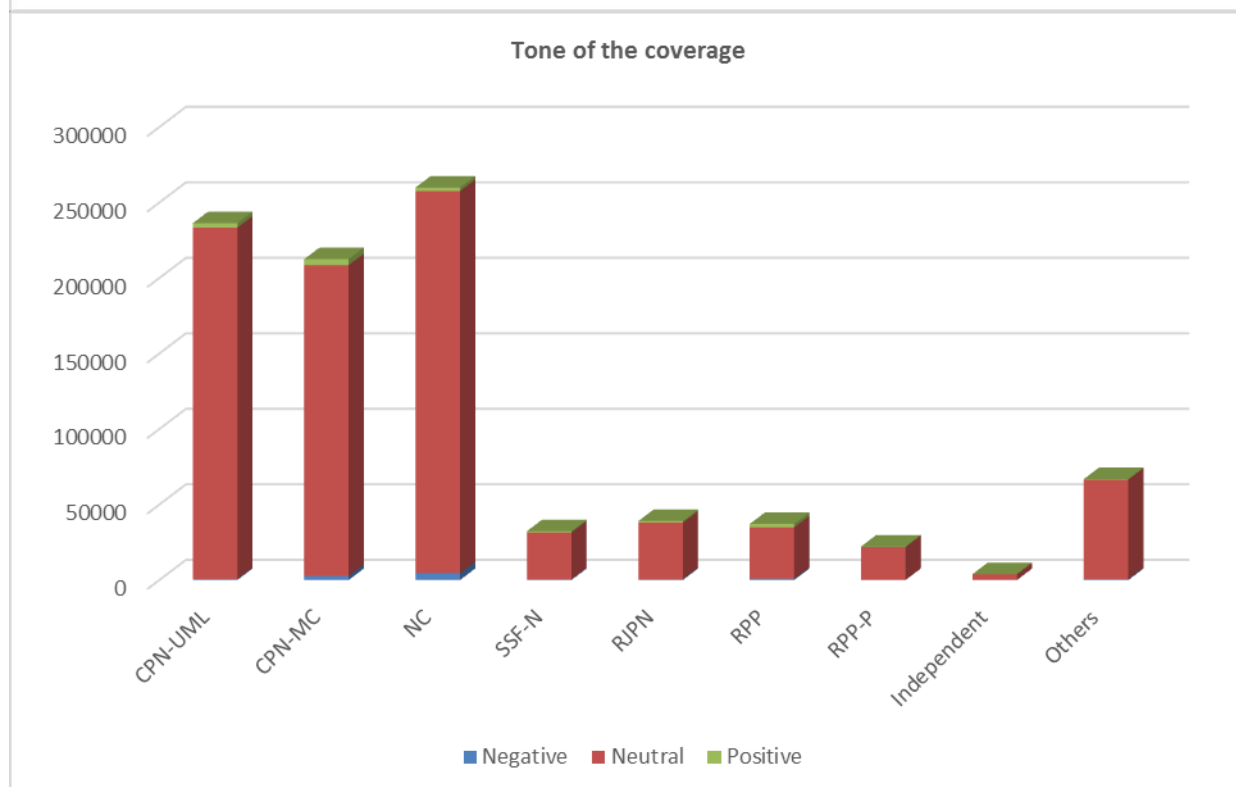
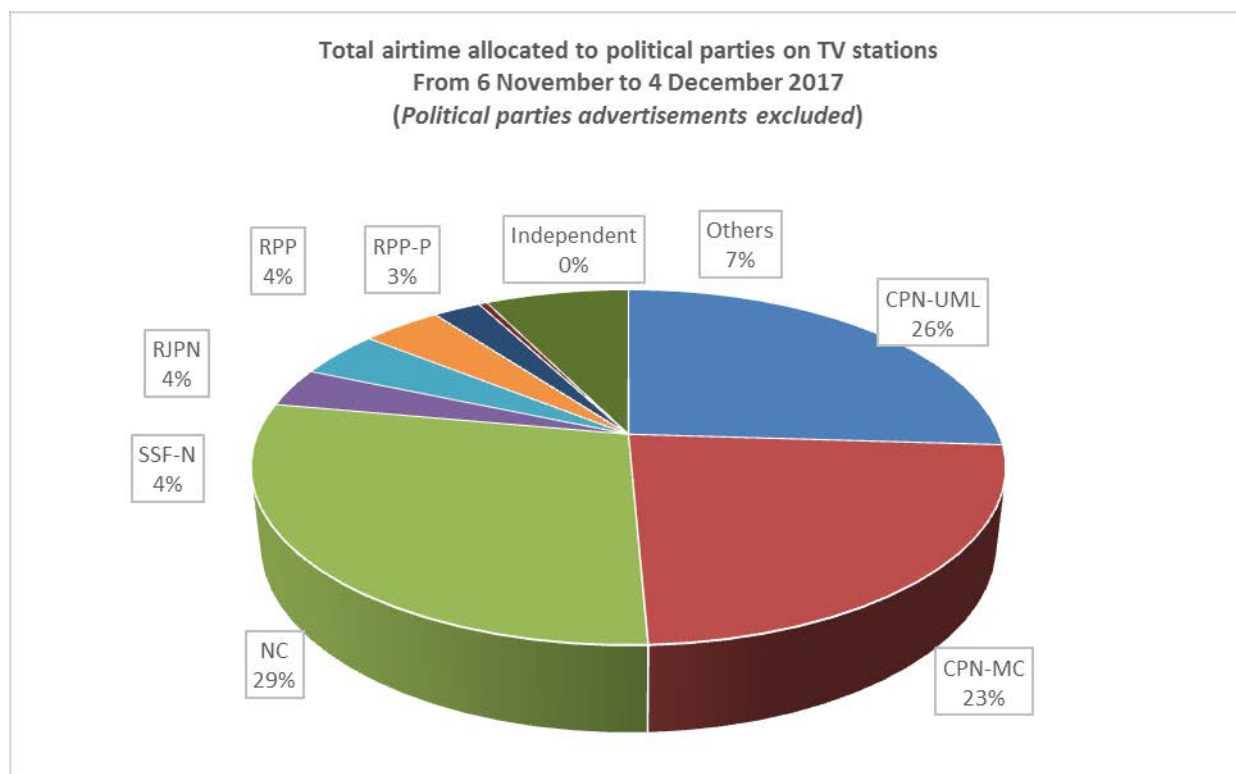
## CIN RADIO



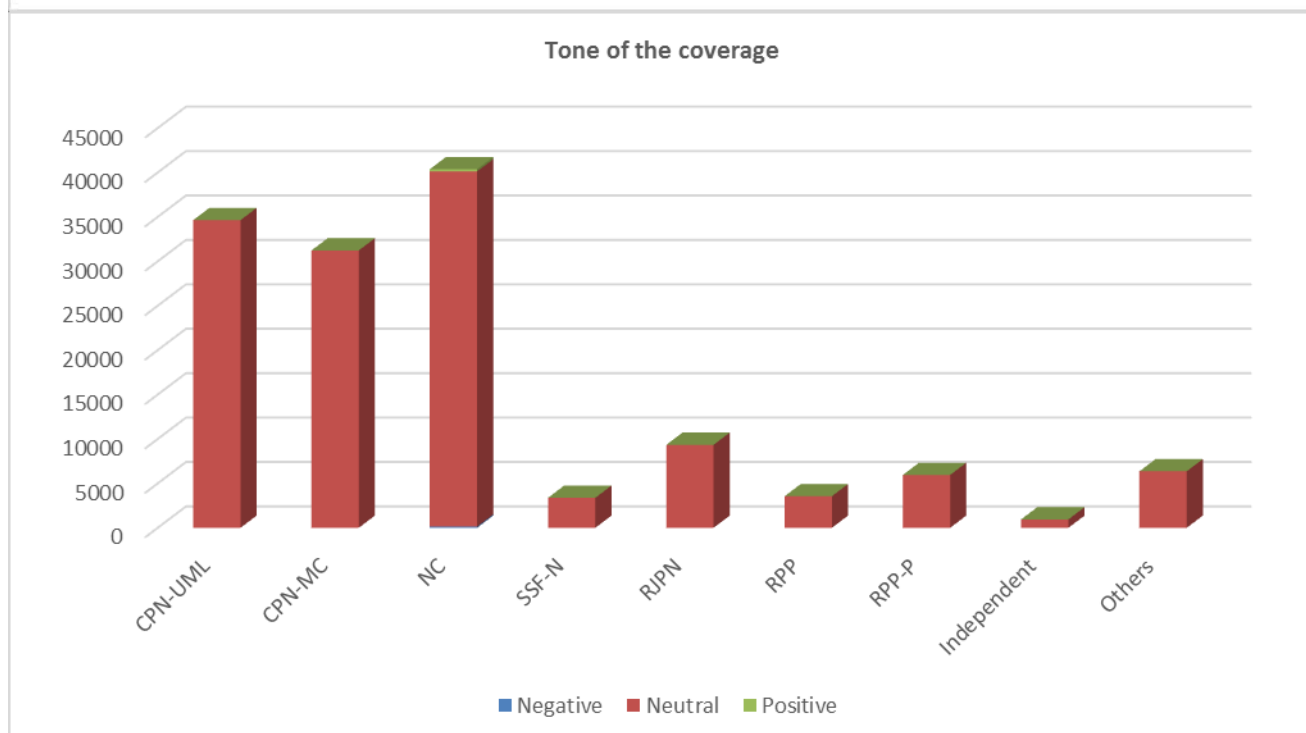
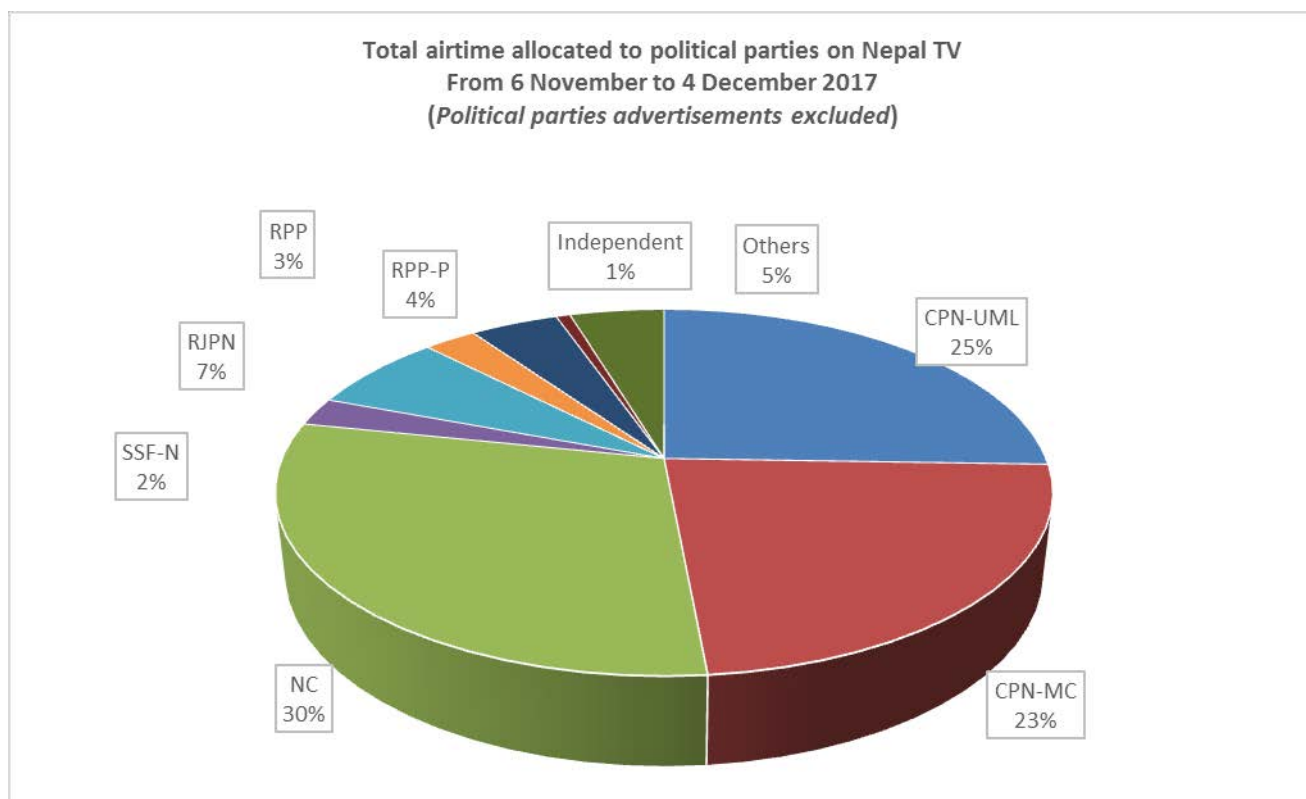
## UJYAALO FM



## TV STATIONS

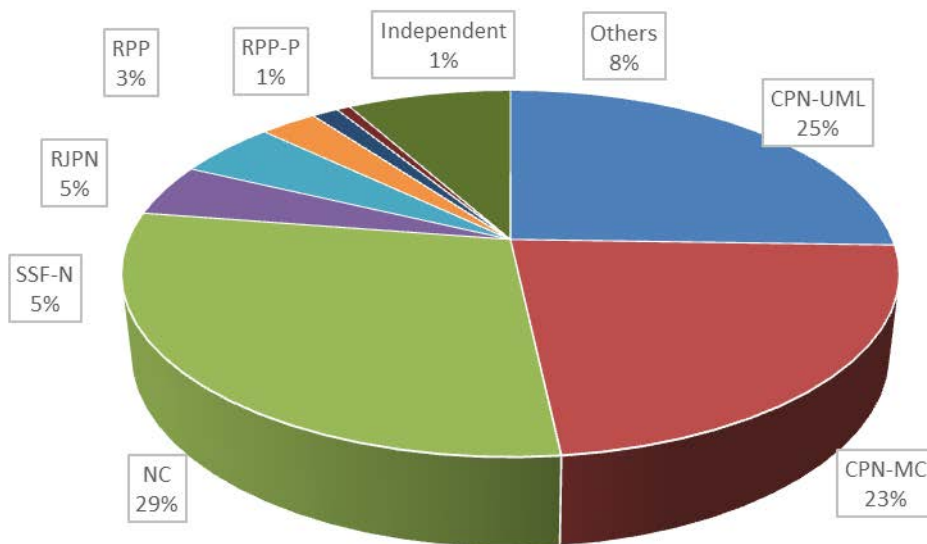


## NEPAL TV

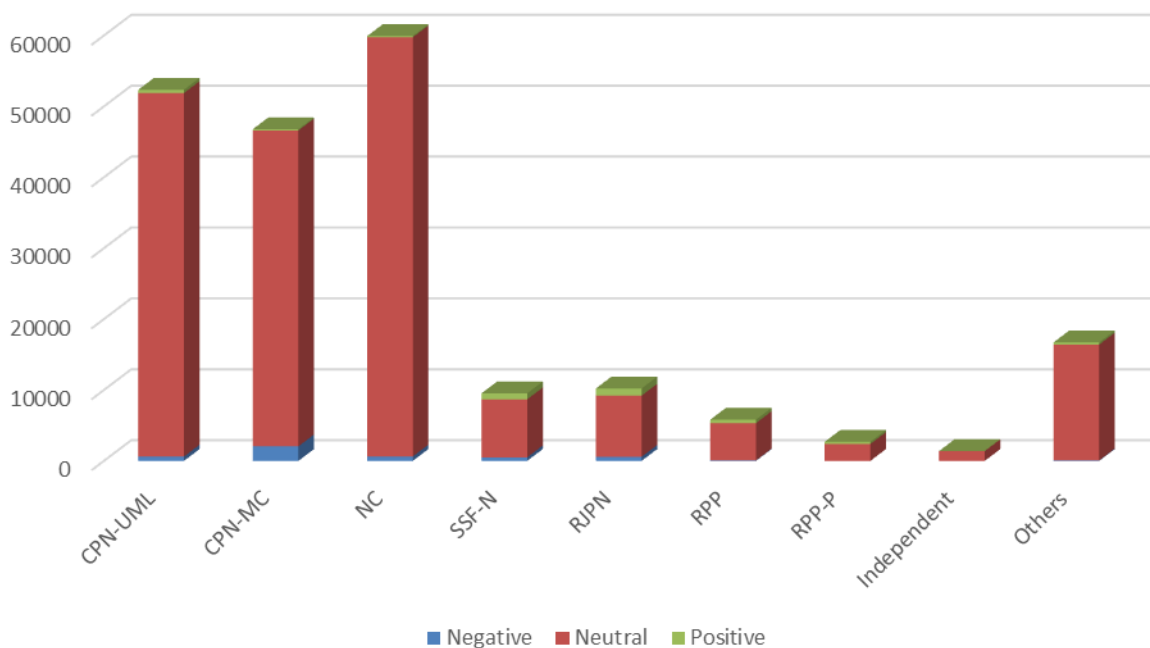


## KANTIPUR TV

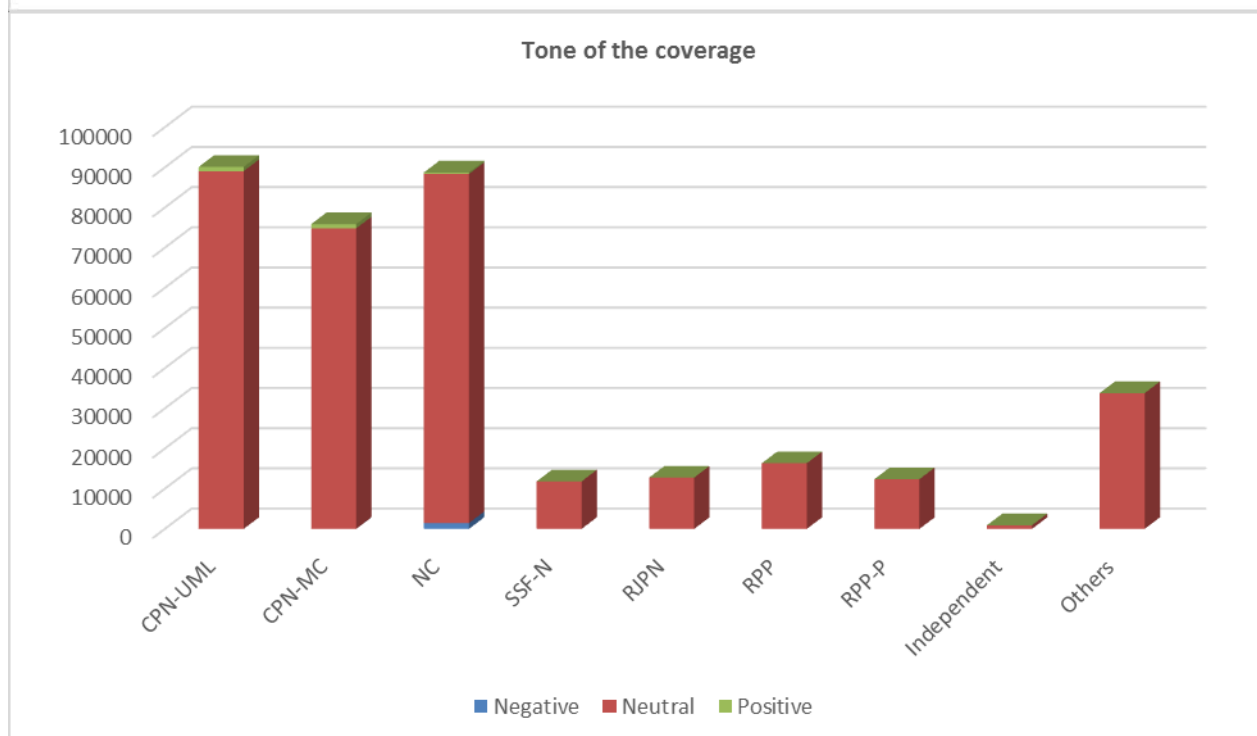
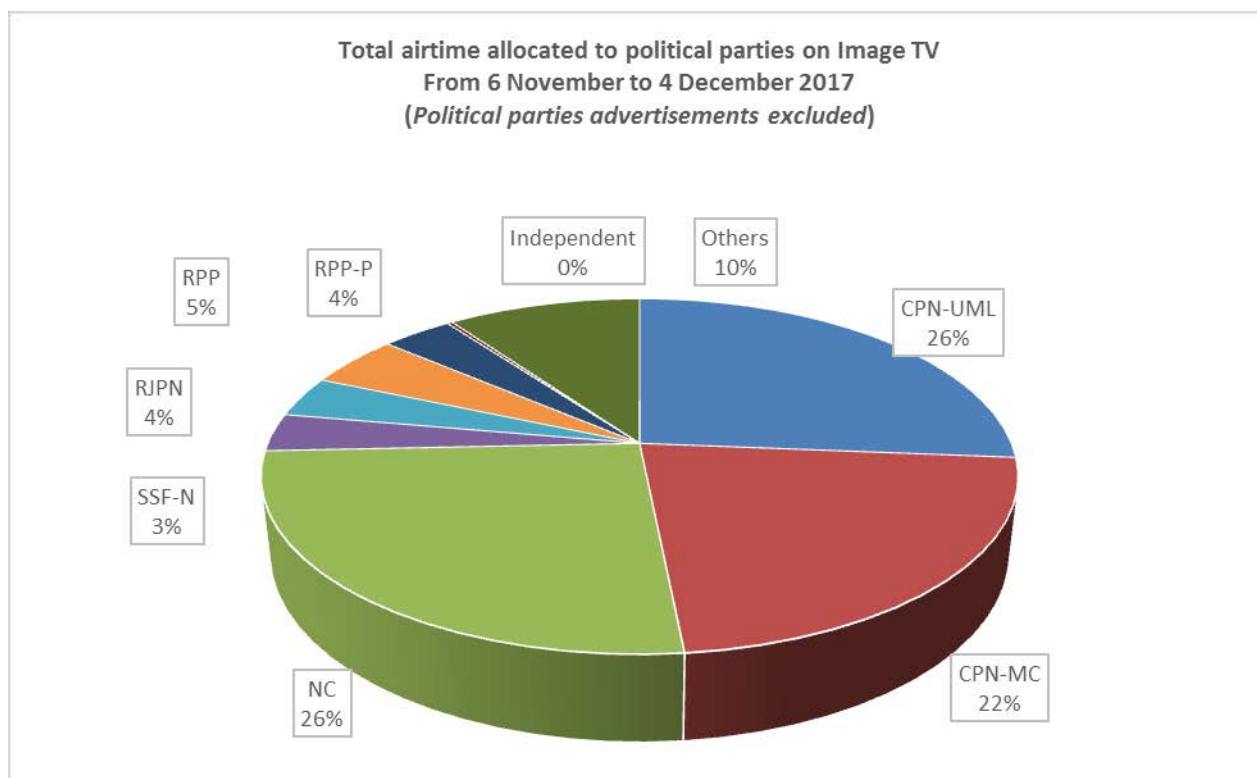
Total airtime allocated to political parties on Kantipur TV  
 From 6 November to 4 December 2017  
 (Political parties advertisements excluded)



Tone of the coverage

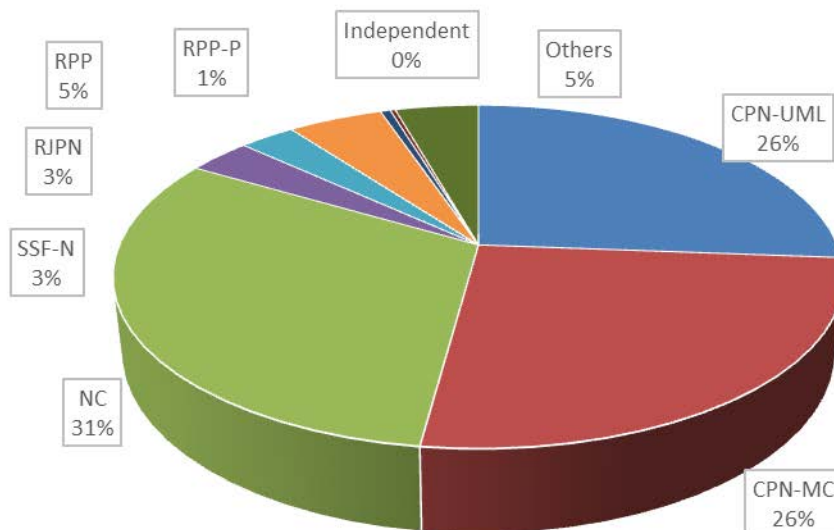


## IMAGE TV



## AVENUES TV

Total airtime allocated to political parties on Avenues TV  
 From 6 November to 4 December 2017  
 (Political parties advertisements excluded)



Tone of the coverage

