



## INNOVATIONS FOR SUCCESSFUL SOCIETIES

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### MANAGING THE POLITICAL AND PRACTICAL: NEPAL'S CONSTITUENT ASSEMBLY ELECTIONS, 2006 - 2008

#### SYNOPSIS

Appointed chairman of Nepal's Election Commission in October 2006, Bhojraj Pokharel faced an uphill battle. One month after his appointment, a peace agreement between major political parties and Maoist rebels ended a 10-year conflict and set the stage for elections to a Constituent Assembly that would write a new constitution. An interim government would choose a new electoral system and set the rules for the contest. With the Maoists threatening to resume hostilities if the elections did not take place on schedule, Pokharel, a former civil servant with no previous experience managing elections, had to work quickly. His main goal was to ensure the elections were maximally inclusive, free of fraud and peaceful so as to avoid giving the parties reason to pull out of the electoral process or boycott the results and send the country back into chaos. Pokharel worked closely with the interim government, providing valuable information and counsel on electoral rules and requirements. He oversaw the updating of voter lists, hired poll workers and helped assemble a special police service. Political squabbling forced the commission to delay the elections twice, yet as the chief architect of the process, Pokharel managed to keep the parties engaged. In April 2008, Nepalese citizens finally went to the polls. Although there was violence during the campaign period and on election day, as well as reports of voting irregularities, the election strengthened the fragile peace. The Maoists joined the government, and democratically elected representatives began the difficult task of drawing up a new constitution. In 2012, the peace continued to hold even though persistent disagreements in the Constituent Assembly had stymied efforts to produce a constitution.

*Michael Scharff drafted this case study based on interviews conducted in Kathmandu, Nepal, in December 2010 and using an interview conducted by Rushda Majeed in July 2011. Case published in June 2012. Most ISS case studies rest on large numbers of interviews. This case study was informed in large part by an interview with Bhojraj Pokharel, who served as chief election commissioner of the Election Commission of Nepal from 2006 to 2008.*

## INTRODUCTION

Seated in the living room of his home in Kathmandu, Bhojraj Pokharel, former chief election commissioner of the Election Commission of Nepal, offered advice to future generations and to his counterparts in other countries. “The key thing for any election is ensuring the credibility of the election commission and the people behind it,” he said. “The commission must be consultative in the process, it must listen to the people, it must be totally transparent, and it should be maximally inclusive.”

From July 2006 to April 2008, Pokharel had faced one of the greatest challenges anyone in his role could encounter. Nepal’s transitional government had decided to redraft the country’s constitution as part of a peace process, and it asked him to run a Constituent Assembly election in a bitterly divided country that was just emerging from war. When Pokharel started, no electoral rules were in place, many of the people who would compete for office had no experience with party politics, and few trained election workers said they were willing to staff polls in insecure rural areas.

A series of events had triggered the election. A decade-long Maoist insurgency had killed more than 14,000 people and displaced over 200,000 in a country of 27.1 million. In February 2005, King Gyanendra Shah, who had served as head of state in Nepal’s parliamentary monarchy, abolished the country’s interim government, removed the prime minister and declared martial law. (The interim government was one of many the king had formed to replace the Parliament, which he had dissolved in 2002 following a political uproar over the government’s handling of the conflict.) Because they could no longer organize openly, leaders of major political parties fled to India, where they formed a coalition called the Seven Party Alliance. Meanwhile, violent street protests flared in the

capital, Kathmandu, and in cities and towns across the country.

Working in self-imposed exile, leaders of the political parties grew increasingly eager to resolve the crisis, because ordinary Nepalese demanded a return to peace and normalcy. Achieving that goal meant ending the insurgency by the Maoists, who demanded a significant role in writing a new constitution. “For us to put down our arms and come to the peace process, we wanted to see elections to a Constituent Assembly” that would create the constitution, said Ekraj Bhandari, a senior figure in the Maoists’ political party, the Unified Communist Party of Nepal (Maoist).

The Seven Party Alliance and the Maoists agreed to hold elections for a Constituent Assembly when the parties returned to Kathmandu. That opportunity came in April 2006, when the king, unable to quell violent street protests, reinstated the House of Representatives (formerly the Parliament’s popularly elected Lower House), and agreed to hand over executive powers to a government formed by the Seven Party Alliance and led by Prime Minister Girija Prasad Koirala, a veteran politician and member of the Nepali Congress Party, the dominant political party in the reinstated House.

In mid-2006, anticipating elections for a Constituent Assembly, which would exercise legislative power while writing the new constitution, Koirala began to think about who could lead Nepal’s election commission. He needed someone who was trustworthy and could restore the commission’s credibility.

Koirala chose for the role Bhojraj Pokharel, a respected former civil servant. Pokharel had held a number of senior government posts and had demonstrated the ability to organize and lead teams and to deliver on tasks. At Koirala’s urging, the House of Representatives named the 52-year-old Pokharel to the post of chief election commissioner in October 2006.

“The ultimate goal of the election was to address the conflict by bringing the Maoists into the democratic electoral process,” Pokharel recalled about the challenge he faced. The prospect of lasting peace hinged on whether his commission could deliver a credible vote in an atmosphere of suspicion and uncertainty.

## THE CHALLENGE

The Seven Party Alliance and the Maoists formally signed a peace agreement a month later, in November 2006. The pact stipulated that voters would go to the polls within seven months. It also set up a process for devising an interim constitution that would specify electoral rules and set a specific election date. To reach those decisions, however, the parties in the reinstated House had to figure out a way to work with the Maoists’ political leadership, because the Maoists had no elected representatives. Pokharel hoped the House would make these decisions quickly so that he could focus his attention on updating voter registration lists, recruiting and training poll workers, and ensuring the safety of voters, candidates and election materials.

As he moved into his office at the election commission in late 2006, Pokharel realized the immensity of the challenges he confronted. He said his greatest fear was that the parties would find reason to boycott the results. For example, if the election commission fell short in its preparations and some citizens were disenfranchised or if candidates or voters were harmed or intimidated, the electoral process could crumble. Moreover, if the commission exercised its authority too stringently and penalized or disqualified candidates for breaking rules, parties might withdraw in protest.

Pokharel’s commission would have to ensure the process was inclusive, free of fraud and peaceful—without discouraging voter or candidate participation. “Being able to hold the election in such a manner that all political parties would be

happy and would own the outcome of the election—this was an uphill task,” said Minendra Rijal, a member of the Nepali Congress Party. “They [the election commission] had their hands full.”

### *Political challenges*

The critical decisions about electoral rules and election dates were slow to materialize. The Maoists and the various parties represented in the House found it hard to iron out their differences in developing an interim constitution. Each party, including the Maoists, wanted an electoral arrangement that best positioned it for victory.

Past parliamentary elections in Nepal had relied exclusively on the first-past-the-post system, whereby seats in particular constituencies went to the top vote getters. The Nepali Congress Party, the largest member of the Seven Party Alliance, was the most outspoken in favor of the system because the party enjoyed strong support across many constituencies. The Maoists and other smaller political parties, which often drew their support from historically marginalized groups, favored a proportional representation system under which the entire country was a single electoral constituency. “The Maoists are structured such that they get support from different castes, ethnic groups and indigenous people,” said Ayodhi Yadav, one of the election commissioners. The marginalized groups rarely constituted a majority in a given constituency and tended to vote for different parties. Therefore, a proportional representation system would assure them greater influence in the legislature, compared with a first-past-the-post system. “That’s why the Maoist party prioritized the proportional ballot,” said Yadav.

There are two types of proportional representation systems. In a closed-list proportional representation system, voters cast ballots for parties rather than specific candidates. Each party is allotted seats based on the

percentage of nationwide votes it receives. It is then up to the party to fill the seats with candidates from lists that are drawn up in advance of election day. In an open-list proportional representation system, voters indicate preference for a particular candidate on a list the party has formulated before the voting begins. At that early stage in the planning process, the political parties in Nepal had not yet decided which type of proportional system to use.

Another political challenge the commission faced was that not all politicians supported the peace agreement, even within the same party. Although top political leaders and most ordinary Nepalese favored peace, many junior politicians were less enthusiastic and viewed the elections as unfairly legitimizing the Maoists. Those differences threatened to undermine the parties' commitment to the elections.

#### *Practical problems*

Beyond politics, the commission faced an array of practical problems in its effort to manage the election. As the parties debated the electoral rules in the House and moved toward passage of enabling legislation, Pokharel looked ahead to some of the steps the commission would have to take before the elections, such as updating the voter registration list and hiring poll workers. These were steps that election commissions everywhere had to take, yet Pokharel's commission confronted several unique challenges.

First, the voter registration list was incomplete and out-of-date. The election commission had last updated the list a few months before the signing of the 2006 peace agreement, and the insurgency had prevented election officials from traveling to some parts of the country at the time. Had officials been able to travel unimpeded, they would have found that many voters had fled to the relative safety of larger towns and cities.

Finding unbiased poll workers was a second challenge. The fighting had displaced local government officials who traditionally served at poll stations and had bred divisions and mistrust throughout Nepal. Pokharel worried that political feuding over the workers' neutrality could create a flashpoint.

A third challenge involved logistics. Nepal's varied topography, coupled with extreme weather patterns, would make reaching voters and transporting election staff and materials difficult and potentially hazardous.

Security during the campaign period and the polling process presented a fourth challenge. Technically, the commission was not responsible for the safety of voters and candidates. That job fell to the Ministry of Home Affairs, which oversaw the police, even though the military had most of the know-how. In past elections, contrary to the practice in many countries, the army had aided in the movement of election supplies and personnel. This time, the military was mostly out of the picture because the peace agreement restricted army troops from leaving their bases during the election period, which had technically already begun in October 2006 when the parties set the June 2007 date for the contest and which would last until the commission announced the results. As a quid pro quo, Maoist fighters were to surrender their weapons and report to containment camps, where they would remain until after the elections, when the new government could decide how to integrate them with the army. Under the terms that emerged from the peace process, the army could support only a few tasks, such as escorting high-level personnel.

The commission had to tread carefully and hope that political parties would discourage violence, that backers of various causes and candidates would show restraint, and that ethnic unrest in the Terai region—an area in the south of

Nepal that was the home of many ethnic minority groups—would not reignite to complicate the election process.

Pokharel had four other election commissioners he could turn to for help in navigating those challenges: Dolakh Bahadur Gurung was a long-serving election commission official; Neel Kantha Uprety was also a veteran commission staffer and chief architect of the voter registration system the commission had instituted in the early 1990s; Usha Nepal was a career civil servant; and Ayodhi Prasad Yadav held a doctorate in economics and had been a teacher for roughly two decades.

The head of state selected the commissioners on the recommendation of the Constitutional Council, which comprised the prime minister, chief justice, speaker of Parliament, leader of the opposition party in Parliament, and chairman of the Upper House of Parliament. The king had earlier abolished the Upper House of Parliament, so in reality, the Constitutional Council in 2006 did not consist of a chairman of the Upper House of Parliament. The council recommended one name from each of the three political parties that held the largest number of seats in the reinstated House. The council consulted with the Maoist leadership in selecting a fourth name. The full House then appointed the commissioners based on the council's recommendations.

### FRAMING A RESPONSE

One of Pokharel's first moves as chief election commissioner was to invite a wide cross section of the population—including civil society leaders, members of the academic community, and representatives from youth groups—to voice their opinions on how the elections should proceed. "I asked for their views," Pokharel said. "What type of electoral system do you want? How do you want to see these elections conducted? What are your major concerns about this election?" Notably, the chief election

commissioner invited the media to all of these sessions. "The consultations helped to build our credibility because the public knew what we were trying to do," Pokharel said.

Pokharel recalled that everyone he consulted recognized that successful elections were important for peace, but there was little agreement on which rules should govern the contest. This became clear to him when, after just a few days on the job, he realized that the House had made little progress on the interim constitution, without which the elections could not proceed. "There was no dialogue among the political leaders," he said. "Nobody was taking the initiative, so I decided that I would try to bring the political leaders together."

In the first major test of his tenure, Pokharel used his position as head of the election commission to engage the political parties and help move the constitution drafting process forward. The decision was unusual for a person in his position; election commissioners typically have rule books to follow, and they try to avoid involvement in the politics of electoral design. But in October 2006, no such rule book existed in Nepal, and failure of the electoral process could open the way for renewed bloodshed.

Pokharel first reached out to the Maoist leaders, because they were relative newcomers to the political process and because he knew little about their intentions and motivations. "I had to consult first with the Maoists, to understand them and to know their moods," he said. Because the Maoists did not have seats in the reinstated House, their party was disadvantaged from the start. Pokharel figured that if he could understand the Maoists' vision for the conduct of the elections, he could determine how to bring their leaders into a sustained discussion with the other political parties, so that their views were represented in the final legislation.

Deepening his involvement in the political sphere, Pokharel worked to bring together the Maoists and representatives in an informal

atmosphere that would facilitate discussion. In November 2006, he created what he called the All-Party Committee at the election commission. The committee served a dual purpose. First, it created an unofficial forum for party representatives to discuss and debate election-law proposals and to identify common ground. It also gave the commissioners a chance to weigh in on the debate. “All of the commissioners were sitting together with all of the political parties,” recalled Election Commissioner Yadav. He said the commission would give its stamp of approval to the tentative agreements reached in the committee. Those agreements, in the form of draft rules, then went to the House for debate and for inclusion in the interim constitution.

Second, the All-Party Committee helped Pokharel manage expectations. Pokharel recalled that in late 2006, the Maoists were eager to move ahead with the election and had trouble understanding why the commission needed months to prepare. “It was hard to make them [the Maoists] understand what are the processes, what are the mechanisms, and why we need time,” Pokharel said.

In January 2007, the House voted in favor of an interim constitution that reaffirmed what the parties had agreed to in the November 2006 peace agreement, which called for using a mixed electoral system. Voters would simultaneously cast two ballots: one in a first-past-the-post format and the other using the proportional representation design. The interim constitution also set the number of House seats up for grabs: 205 would be chosen through the first-past-the-post method, 204 would be selected through the proportional representation system, and 16 would be appointed by the Cabinet after the election took place. The Cabinet appointments ensured the then majority Nepali Congress Party a minimum representation in the new Assembly, although the party’s chances for winning a significant number of seats were never a doubt in anyone’s mind.

Significantly, the interim constitution dissolved the reinstated House and formed a new

interim legislature that consisted of 330 members, including all the representatives of the old House as well as new members appointed by the Seven Party Alliance and the Maoists. The interim constitution also stated that the prime minister would replace the king as head of state and that the king would have no role in state affairs.

Pokharel had hoped the passage of the interim constitution would end the political squabbling and allow him to move forward with preparations for election day. But the interim constitution failed to address certain major points. For example, the document did not specify whether parties had to submit open lists or closed lists to the election commission for the proportional representation side of the vote.

Pokharel attributed the absence of such critical election-related details in the interim constitution to the inexperience of the political parties, which had never before had to deal with such complex issues. Nepal’s first democratic elections had taken place in 1991, and since then, the parties had always relied on a first-past-the-post system.

But where could the parties turn for help in figuring out these details? As he had seen in forming the All-Party Committee to help reconcile differences regarding the interim constitution, Pokharel saw the need to play an active role. He knew his staff members had the necessary knowledge, and he decided he had to involve his commission directly in the brewing political debate. “To manage post conflict elections, sometimes election commissioners have to cross the traditional boundaries,” said Pokharel of the unconventional role his commission played.

Pokharel called on election expert Kåre Vollan to help resolve some of the problematic issues. Vollan was seconded to the commission from the Norwegian embassy through the United Nations Development Programme. The U.N., along with a number of international government donors and nongovernmental organizations, provided material, technical and financial assistance for the commission, contributing

roughly half of the total US\$40 million cost of the elections.

As January 2007 came to a close, Pokharel weighed his options. On one hand, by involving the commission in the political process, the commission's experts could help the parties understand the complex electoral design. But on the other hand, the highly partisan atmosphere could stall the debate, just as it had before the parties finally passed the interim constitution. Pokharel had to do more than just prod the parties behind closed doors. He knew that the citizens were overwhelmingly in favor of the elections as a means to bring about peace. He decided to pressure the parties to reach agreement on the outstanding electoral rules by publicly declaring that he would be forced to postpone the elections if the parties could not reach a consensus.

Meanwhile, Pokharel began to think about how to guarantee that the elections were maximally inclusive, transparent and secure. Ensuring the accuracy and completeness of voter lists, hiring qualified poll workers, and figuring out a way to transport election materials and staff safely were top priorities.

## GETTING DOWN TO WORK

In late January 2007, the reinstated House had just passed the interim constitution, and although the document lacked crucial details about the election, it did provide sufficient guidance on some aspects—such as the minimum voting age—for Pokharel to begin making preparations for the planned June election. (The parties had agreed that anyone at least 18 years of age by December 2006 could register to vote.) Pokharel said the logical starting point was the voter list.

### *Voter registration*

Before the commission could begin updating the list of eligible voters, it first had to print guidelines and registration forms. Time was short, and Pokharel arranged to use printing

presses at newspaper and textbook publishing facilities.

The commission then assigned to its district election committees, which it had created earlier as a way to shift some work from the commission headquarters to local areas, the job of hiring people to serve as registration agents. The chief district officer chaired each committee, and its members were the local development officer, district education officer, district woman development officer and district election officer, the last serving as the group's secretary. Pokharel initially had thought that officials from the Ministry of Local Development who worked at the village level might handle individual voter registration, but the war had displaced local government officials, and there were not nearly enough people to fill the needs. "Because of the security situation, the staff were either in the district headquarters, in the capital, Kathmandu, or in the major urban cities," Pokharel said.

To fill the staffing gap, Pokharel said, he considered recruiting teachers, adding that despite the prolonged conflict, "with few exceptions [teachers] were still working in the community." Pokharel said the advantage of hiring teachers was that educators knew the people in their villages and in theory were well positioned to ensure only qualified individuals registered to vote. But the teachers union had historically supported Nepal's Unified-Marxist Leninist Party, and politicians initially balked when Pokharel floated the idea. After debating the issue for about a week, the legislators realized there were few other options. They agreed that teachers could serve as registration agents on the condition that they not be deployed to the communities where they lived, thus negating one of the major advantages of hiring teachers in the first place.

The chief district officer, appointed by the central government as head administrative officer in a district—an independent administrative unit, similar to a state—chaired a five-person team that

recruited a certain number of teachers based on the size of each district. Each team held informal consultations with the political parties at the district level to ensure agreement on which teachers were selected. Disagreements were ironed out in negotiations.

The commission invited voters to check whether their names appeared on the 2006 voter registry, which the commission posted at each district office. Those who found that their names were missing could register by presenting the registration officer with some form of government documentation. But under its tight deadline, the commission could not do much to eliminate or delete people who were double-registered. “The exercise was really just focused on getting people added to the roll,” said Uprety, an election commissioner who was also chief architect of the voter registration system the commission had instituted in the early 1990s.

Uprety said registrants could file formal complaints with the election commission if they discovered that people listed on the roll should not have been there. In most cases, the individuals in question had either moved or died. However, Uprety said the commission received few complaints, which he attributed to the lengthy appeals process that entailed producing supporting evidence, something most voters had little interest in following through with.

What the commission did do, however, was to create a supplementary voter list for people who were not in their normal places of residence.

The primary list covered the majority of Nepalese citizens who lived in their permanent areas. The supplementary list covered voters who were away from their normal places of residence, including government employees—many of whom were posted to areas that were not their places of residence; army personnel relegated to barracks; Maoist army personnel in containment; and prisoners. Those listed on the supplementary roll were permitted to vote only in the proportional

representation race and not in the first-past-the-post contest. This arrangement ensured that the permanent residents in any constituency exercised sole discretion over who their constituent representative was.

The commission began the process of updating the voter lists on 23 January 2007. Officials initially set a 60-day deadline for collecting names in the field. Yet no sooner had the update begun than officers encountered harsh weather in northern parts of the country, preventing them from reaching villages in 16 of the country’s 75 districts. “These are the Himalayan areas where you have snow,” said Uprety, referring to the areas the teams could not reach. “So we excluded those areas until the snow started melting.”

To update the lists, local government officials brought the names to the district level, where commission staff added them to a computer database and then transferred the information onto portable disks. District officials then brought the disks to the committee’s headquarters in Kathmandu.

By early April, the commission finished its scheduled registration update. Election officials then visited the districts they had been unable to reach earlier. By the end of April 2007, the commission had created a new registry that added about 5 million names to the overall voter list. Still, certain transient classes of people living in urban environments—particularly students, businesspeople and internally displaced persons—had been left off the voter registration lists. And despite their protests, the commission did not redo the registration because of the limited time left before the contest.

#### *Political wrangling continues*

In mid-February, while the voter registration exercise continued, Pokharel brought together the leaders of the political parties and made clear that they needed to settle quickly on unsettled aspects

of the electoral system such as whether to have an open list or a closed list for the proportional representation race. He pledged to implement their decisions, but he reminded them that he had the authority to cancel or postpone the June elections if he were left with too little time to prepare for the vote. He told the party leaders they had two weeks to complete the required legislation.

When Pokharel's deadline passed with no action by the legislature, Pokharel turned up the heat. He called the leaders back to his office, and he also invited Prime Minister Koirala and representatives of the media. He wanted the public to know that it was inaction on the part of the politicians, not the election commission, that was risking a delay in the elections. Tapping publicity and popular pressure as part of his strategy for bringing people together, Pokharel recalled that he had told the parties on live television: "Today you have to tell the Nepalese people the truth about whether you intend to have the election in June or not... Don't deceive the people. In public, you are saying that the election will be conducted in June, but in reality, you are not doing any preparation."

The two-week deadline came and went. By March 2007, the parties still had not reached agreement on significant parts of the legislation. The elections were scheduled to take place in just a few months. Growing increasingly frustrated, Pokharel said he would be forced to postpone the elections if he did not receive the legislation in seven days. The new one-week deadline was supposed to compel the parties to come to quick agreement.

With only days to go until the end-of-the-week deadline, Pokharel was publicly exhorting the parties to get the job done. But privately he had begun to engage more directly with them, hoping a direct approach might result in a greater level of understanding and cooperation. "I had continuous private dialogue with all the key

leaders," he said. "I was warning, I was suggesting. I was giving feedback. I was showing them the incentives and disincentives of timely elections. I was using all of the tactics and tools to bring them for June election."

But the one-week deadline passed and gridlock continued. It was then, Pokharel said, that "I realized that politically, the country was not prepared for elections." He declared the commission was unable to carry out its duties in time for the June vote, and he postponed the election until November, at the end of the rainy season but before winter. At the same time, he asserted that if the government wanted the election to go well, all election-related legislative matters had to be settled at least 110 days before the date of the rescheduled contest. He based the time estimate on how long it would take to (1) develop the civic education materials that would explain how to vote, (2) mobilize people from different parts of the country to conduct the election and (3) make other necessary preparations.

The parties remained divided over whether to use open lists or closed lists on the proportional side of the ballot and how to implement the interim constitution's requirement that at least one-third of candidates to the Constituent Assembly be women. Raju Man Singh Malla, joint secretary at the Ministry of Law, Justice and Constituent Assembly, who assisted the commission in drafting bylaws, recalled that ensuring female representation was "a real challenge, in particular because it [the interim constitution] did not bind the parties into picking a certain number of woman candidates from their lists."

Minendra Rijal of the Nepali Congress Party noted that the parties were eager to expand the quota system to include not only women but also people from disadvantaged groups, including the Madhesis, a term for the minority groups living in the southern Terai region of Nepal. "They [the

minority groups] felt that they were marginalized and did not have a rightful voice in the government,” Rijal said. “They wanted to have a say, and we wanted to guarantee that by devising an electoral system that ensured their representation in the Constituent Assembly.”

After much debate, the parties decided to use closed lists and agreed in principle to the idea of adhering to specific quotas when selecting from the lists.

To design an effective quota system, the legislators needed accurate data on the sizes and populations of the minority groups. Aware that the paucity of data was contributing to the political logjam, Pokharel instructed U.N. elections expert Vollan to try his hand at finding the data. “I relied on scientific articles like U.N. reports. Nobody questioned the figures from these papers,” Vollan said. The data proved crucial. Vollan proposed concrete quota percentages for specific groups. The groups were: women; Dalits—members of the lowest castes, traditionally referred to as *untouchables*; other oppressed castes and indigenous ethnic groups; backward regions; Madhesis; and a category defined as *other groups* to capture any remaining disadvantaged segments not included in the previous groupings.

Politicians now had actual percentages to use in their deliberations. Rijal, a statistician by training, did his own calculation of the quotas, which came out close to what Vollan had proposed. On 14 June, the interim legislature finally voted on the specific quota percentages Rijal had devised. So while the political parties were able to pick from anywhere on their lists in the proportional contest, they had to make certain the candidates they chose fulfilled the quota requirements.

Another thorny issue arose in short order. The Maoists had never signed the interim constitution but had grudgingly accepted the document to enable the process to move forward.

As the summer began, the Maoists told the government they no longer accepted the mixed-member electoral system and instead wanted a fully proportional system. When most representatives refused to consider the change, gridlock ensued. Pokharel watched as his 110-day deadline slipped away.

In September, the frustrated Maoists pulled out of the interim government and threatened to disrupt the November election if the leading parties did not meet their demands. Pokharel said that as soon as the Maoists withdrew, he “warned the prime minister and the government” to “start negotiating with the Maoists” immediately. He stressed to the government, “If you delay, if you lose a single hour, the November elections will not be possible.”

In October, hours before the deadline for parties to submit their candidate lists, Pokharel received a phone call from the prime minister. The head of state urged Pokharel to postpone the nomination deadline for one week while the parties tried to work out a compromise with the Maoists. Pokharel at first balked at the request because he did not think the government could resolve the matter in seven days. He also feared the election commission’s credibility would suffer if it were seen bending the rules and then having to postpone the elections again. The next morning, he received an official request from the Cabinet for a one-week extension. A written request coming directly from the Cabinet held more weight because it signified, publicly, that it was the government that was requesting more time. Pokharel agreed to five days. “My priority was to be flexible, to compromise,” Pokharel said. But after five days, the parties still had not reached agreement with the Maoists. Pokharel postponed the elections for a second time and set the new date for April 2008, after winter.

In December, representatives agreed to revise the electoral system, and the Maoists rejoined the government. Although the original plan for

electing candidates through both the first-past-the-post and proportional electoral systems remained intact, the revision called for a significantly larger Constituent Assembly, with numbers heavily tilted toward the proportional side, which the Maoists favored. The revised system called for 335 representatives elected through the proportional representation system, an increase of 95, while the number chosen through the first-past-the-post system remained at 240. Additionally, the Cabinet would nominate 26 members.

#### *Hiring and training poll workers*

In January 2008, for the first time since signing the peace agreement, the parties agreed on all aspects of the electoral system. Because Pokharel now knew the exact electoral system that his commission would implement, he could begin to hire and train poll workers. He could also make security arrangements.

The electoral rules mandated that no voter should have to travel more than five kilometers to vote and return home. Based on the estimated time for each voter to cast a ballot and on the assumption that the polls would be open for eight hours, the commission set the maximum number of voters per polling place at 1,000. The commission estimated the number of eligible voters at roughly 17.6 million. Given those numbers, Pokharel calculated he needed about 20,000 polling places and 234,000 poll workers.

Then Pokharel pondered the best way to hire qualified poll workers. Because of its limited staffing, the commission could not recruit every worker individually. Pokharel decided the commission would hire and train one person, called a returning officer, for each of the country's 240 electoral constituencies. Then the returning officers in turn would hire and train poll workers for their constituencies. Returning officers were drawn from the legal sector and included judges, public prosecutors and legal assistants such as

clerks or paralegals. Pokharel explained that the returning officers had credibility because they came from the independent judiciary: "Generally, they are considered neutral."

The returning officers identified two categories of poll workers: presiding officers—top-level people in the civil service, teachers and some employees working for government corporations—and assistant presiding officers, usually junior officials from the first category. Each presiding officer oversaw operations at a polling place, while assistant presiding officers checked voters' identifications and distributed ballots. The commission gave presiding officers the authority to hire local workers to perform the most basic of duties at polling places, like marking voters' fingers with indelible ink to prevent repeat voting.

Training followed a cascading system that sped the process and ensured consistency. The commission trained master trainers in Kathmandu. Five or six professional trainers from each district were summoned to Kathmandu and received instruction from the master trainers. The professional trainers then returned to their districts and trained district staff, who trained presiding officers, who then trained assistant presiding officers and the very lowest-level staff. Within about one month, all staff had received training.

In a move meant to assure voters that the government fully backed the elections and was attuned to the needs of voters, Pokharel persuaded all of the government's ministers to send their permanent secretaries to the commission. Starting in early March 2008, the commission gathered the permanent secretaries at headquarters, assigned each a set of districts, and instructed them to spend the remaining time before election day—now less than a month away—meeting with voters and commission staff in their districts. "My aim was to increase people's confidence about the electoral process,

which I thought would happen if they saw that the big boss was in their districts,” Pokharel said. The fact that the permanent secretaries were career civil servants and not political appointees contributed to their acceptance as neutral observers of the electoral proceedings.

### *Election security*

As election day loomed, the question on everyone’s mind was not whether there would be violence but how bad the violence would be. “The international community was concerned about security, the voters were concerned about security, and the candidates were concerned about security,” recalled Pokharel.

The election commission pleaded with the parties not to resort to violence. “We had many meetings with the political party candidates, with the big leaders, including the prime minister and the supreme leader of the Maoists,” recalled Yadav, an election commissioner. “We requested them to maintain the peace and order.” But Yadav and his fellow commissioners knew that their appeals alone would not ensure the peace would hold in a fractured society accustomed to conflict. Insulating the contest from violence would require a robust plan of action.

Responsibility for election security fell to Nepal’s civilian police (who did not carry weapons) and armed police. Neither group had much experience with election duties. Each district had a security committee, which comprised local security officials and district civil servants. Arjun Jung Shahi, a senior superintendent of police, and other senior officials at the Ministry of Home Affairs, which had oversight of all security services, asked each district security committee to submit a request for police personnel based on the perceived sensitivity of the polling places in the committees’ respective districts. The committees forwarded their recommendations to a central committee at the ministry’s headquarters. The central committee

calculated that 100,000 police personnel were needed, but the ministry had only about 30,000 civilian police and 10,000 armed police at its disposal. That left a vacuum of nearly 60,000 security personnel.

To bolster the police service, the ministry set out to hire tens of thousands of temporary police. One month before the April 2008 election, the ministry ran recruiting advertisements in local newspapers. The ministry required only that applicants hold valid high school diplomas. Some of the hires were retired police and army officers. Jaya Khanal, who as joint secretary of the Ministry of Home Affairs held a senior leadership role in the recruitment process, recalled that the civilian and armed police gave the temporary hires about 15 days of training in maintaining law and order. To ensure discipline, temporary hires were always deployed alongside civil and armed units. Although the temporary police were no match for armed insurgent groups, the Ministry of Home Affairs hoped their presence would boost voters’ confidence and help dampen violence.

### **OVERCOMING OBSTACLES**

As sporadic violence broke out during the campaign period, concern revolved around whether the election would rekindle broader fighting. Armed groups in the Terai region, as well as the Maoists’ youth group (called the Young Communist League) and supporters of political parties, all incited trouble. For example, a clash between Maoist supporters and a Nepali Congress Party candidate escorted by the Nepali police and army left seven people dead and 12 injured. A candidate from an independent party was shot and killed by unknown assailants in Sarlahi district. And a candidate from the Unified Marxist-Leninist Party was killed in Kaski district. Authorities reported more than 80 people were injured in 23 separate pre-election incidents in Dhading district. Only the eastern Terai districts of Saptari and Sunsari

outnumbered Dhading in terms of the total number of pre-election violent incidents, with 26 and 24, respectively.<sup>1</sup>

Given the unstable security situation, Pokharel had to ensure that the commission could safely transport crucial materials before and after the contest. For example, ahead of election day, the commission had to deliver ballot papers and associated materials, including bylaws and voter lists, to the polling places, but armed groups and criminal gangs were active on some of the country's highways.

In areas designated too dangerous to drive through, the commission relied on a mix of Nepali Army and private helicopters to ferry the materials. But that approach had limitations and risked deviating from previous agreements between the parties on the use of military personnel in the electoral process. The army had only a few helicopters, and commission staff struggled to persuade private helicopter operators, many of which ran tour companies, to rent their aircraft. In most instances, the commission delivered materials over land by armed convoy to districts where security officials worried about threats but where the danger was not so great as to require an airlift.

The commission sent election supplies to the district headquarters, where the poll workers had gathered for training one week before the April 2008 elections began. Once the training concluded, the poll workers then carted the materials back to their individual polling places. Some polling places were so remote that it took staff members up to a week to reach them on foot from district headquarters. The returning officers were responsible for working with their poll workers to devise a plan for transporting the ballot boxes and associated materials safely. "They sat together and planned the whole process," recalled Election Commissioner Uprety. "They discussed issues like 'this location is so many days' walking

distance, so we have to train these people now and send them today."

While the commission took steps to plan for the safe transport of election materials, some election workers felt that the commission had not adequately ensured that the staff would be protected from attack. Just days before the polls opened, election staff refused to report for duty in the Terai region. The workers said that insurgent groups in the Terai had threatened them and their families. Pokharel urged the workers to fulfill their commitments, but they pushed back. "They threatened to resign en masse if we compelled them to go," Pokharel said. With so little time and with security plans already made, the commission's options were limited. Pokharel issued a decree giving the returning officers, as well as the presiding officers who were still willing to work, the authority to hire teachers. Pokharel recalled that the teachers "told me that I did the right thing." Would-be troublemakers, said Pokharel, were deterred by the fact that the teachers, who knew the community well, might recognize them.

To protect the election staff and materials further, Pokharel persuaded the government to ban public and private transportation, which had the effect of limiting the movement of criminals and armed groups on election day. The government declared that only vehicles directly involved in the election process were allowed on the roads. Voters had to walk to their designated polling places, all of which were within two and a half kilometers of their homes.

After the polls closed, commission staff sealed each ballot box. The commission permitted political party representatives to travel with the boxes to the district headquarters, where returning officers monitored the count. "The collection of the ballot boxes... looked like a marriage procession, with all this stuff and so many people," said Pokharel. It took some

commission staff nearly a week to carry the boxes to the district offices. Staff worried they might be targeted and had to take precautions. In one instance, officials from 16 polling centers that were near one another and about a three-day walk from the district headquarters moved together so that there was sufficient police protection. Another precautionary procedure surrounded the announcement of results. During past elections, large crowds had gathered outside the district offices. To reduce tensions in the absence of information during the 2008 count, local officials announced the results after every three boxes were counted.

### ASSESSING RESULTS

Four people were killed on election day, including an independent candidate who was shot in the evening by unidentified killers. Despite the violence, the International Crisis Group, a global nongovernmental organization, noted that the number of violent incidents and deaths was “far fewer than in previous elections.”<sup>2</sup>

When the commission announced the election results roughly two weeks later, voters learned that the Maoists had won 220 seats, the largest bloc in the Constituent Assembly, while the Nepali Congress Party had secured 110 seats, the second-largest bloc. The Communist Party of Nepal was third, with 103 seats. The Maoists’ performance in the polls surprised nearly everyone<sup>3</sup>: the leading political parties had wrongly predicted that the Maoists’ lack of experience and untested organizational skills would hamper their ability to win votes.

Voter turnout was 61.7% on the first-past-the-post ballot and 63.3% on the proportional representation ballot, with wide regional and local variations.<sup>4</sup> (The difference in percentage points between the two ballots was due largely to the fact that people listed on the temporary voter lists were allowed to vote only in the proportional representation race.) The figures were slightly

lower than in past general elections—with voter turnout at 61.86% in 1994 and 65.79% in 1999—and possibly reflections of the threat of violence and intimidation from Madhesi militant groups and Maoist supporters.<sup>5</sup>

International observers said that all of the major parties used unscrupulous tactics to try to boost their vote counts. The fraudulent activity in general was much subtler than attacks on ballot boxes and therefore difficult to spot. The commission ordered repolling at 106 polling places, which represented a tiny fraction of the overall 20,866 polling places. Of those 106 polling places, 77 were in Surkhet-1 district, where voting had to be suspended after a Communist Party of Nepal candidate died.<sup>6</sup> Notwithstanding the accusations of voting irregularities, the commission registered just 64 complaints about incidents on election day or during the count, and all were resolved.<sup>7</sup>

### REFLECTIONS

Bhojraj Pokharel, Nepal’s chief election commissioner, said that despite his efforts, he felt nervous on the eve of the April 2008 contest. “I was afraid,” he said. “But being the responsible person, I could not admit this.”

Reflecting on his tenure, Pokharel said that one of the first decisions he took as commissioner was also one of his most significant. In January 2007, political debate had stalled, and he faced the prospect of having to postpone the June elections. Pokharel said of his decision to intervene directly in the political debate: “Someone needed to be proactive. So I took that chore.” Although election commissions generally try to avoid being dragged into political debate in order to protect their publicly neutral image, Pokharel viewed his situation differently. “If I had waited silently and let the political actors, the government, finish their agenda, maybe during my tenure I could not have seen the elections,” he said.

Laxman Bhattarai, who served as joint

secretary at the election commission at the time of the 2008 vote, said the commission's consultations with a wide range of groups had contributed to the successful outcome. "Nobody could raise the issue that the election commission had not consulted with them," Bhattarai said. "No political party could say that we did not call them, consult them, register their ideas and put their suggestions into practice."

By bringing the political parties together to talk, Pokharel's commission helped move the electoral process forward and in so doing struck a delicate balance between enforcing rules in the name of a transparent contest and letting some things slide. "We thought, 'Let this process go ahead, because if we [the election commission] try to squeeze too hard, it may be difficult for us to conduct the elections,'" said Neel Kantha Uprety, an election commissioner.

Pokharel said that listening to voters helped his commission strike the right balance when designing policies and taught the commission that a one-size-fits-all approach to election management does not work and that local customs and practices must be taken into account. For example, after a female leader from a Madhesi party expressed concern to Pokharel that some women would find it offensive for a male to touch them, Pokharel decided that only woman poll workers would mark voters' fingers with indelible ink.

Yet notwithstanding the commission's attempts to promote a transparent and inclusive contest, it is difficult to assess the exact contribution of the commission's actions to the end result. No one knows what might have happened had Pokharel and the commission acted differently. If the commission had not kept the parties in conversation with each other, stringently enforced regulations and taken other steps to build an inclusive election, violence might have escalated.

For his part, Pokharel knew the process would be imperfect at best, but he understood that a successful outcome was absolutely necessary to enable Nepal to move beyond decades of conflict and unrest. "The Constituent Assembly election was regarded as one of the key components of the peace process, and the feeling among the population was that this election would bring peace, stability and development to the country," he said. "There was no sense in holding the election without the Maoists. Thus it was inevitable that compromise would be necessary in the various steps of the election process to achieve the larger goal."

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<sup>1</sup> "Election and Political Violence in Nepal: Final Report, November 26, 2007, to April 30, 2008." Democracy and Election Alliance Nepal (DEAN), Kathmandu, 19 June 2008.

<sup>2</sup> "Nepal's Election: A Peaceful Revolution?" International Crisis Group, 3 July 2008.

<sup>3</sup> "Nepal: The Rocky Red Road." Rabindra Mishra, BBC Nepali Service, 22 April 2008.

<sup>4</sup> "Nepal's Election: A Peaceful Revolution?" International Crisis Group, 3 July 2008.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

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