

NEPAL

Electoral Laws, Administration and Management Review Report



राष्ट्रिय निर्वाचन पर्यवेक्षण समिति (नियोक्त)
National Election Observation Committee (NEOC)

Table of Contents

Preface

Acronyms

Section 1: General Introduction to Electoral Education	1
1. Introduction	1
2. Electoral System in Nepal's context	11
3. Electoral Administration	12
4. Appointment of Commissioners in Nepal	19
5. Constituency Delineation Commission Nepal	22
6. Electoral Registry in Nepal	22
7. Major Challenges	24
8. Electoral Training in Nepal	26
9. Registration of Political Parties in Nepal	28
10. Voting Process and Counting in Nepal	30
11. Elections and Technology in Nepal	34
12. Conclusion	39
Section 2: Constitutional & Legal Provisions: Review on Nepalese Electoral System	41
1. Constitutional Provisions	41
1.1 Constitutional law-2004	41
1.2 Nepal's Interim Governance Statute, 2007	41
1.3 Constitution of the Kingdom of Nepal, 2015	41
- First parliamentary Elections, 2015	
- The Panchayat Election	
1.4 Constitution of Nepal 2019	42
• Popular Movement 2046	
1.5 Constitution of the Kingdom of Nepal, 2047	43
• General Elections 2048	
• Local Election 2049	
• Mid-Term Polls 2051	
• Local Election 2053	
• General Election 2056	
• Municipal Election 2063	
• Interim Constitution of Nepal, 2063 (First Amendment)	
• Interim Constitution of Nepal, 2063 (Third Amendment)	
2. Elections Laws, Regulations and Directives	54
3. Election Campaign: Code of Conduct	57

Electoral Laws, Administration And Management Review Report

Editor	:	Dr. Gopal Krishna Siwakoti
Advisors	:	Surya Prasad Shrestha Prof. Kapil Shrestha Bhawani Prasad Kharel
Researchers	:	Dr. Chandra Kanta Gyawali Shree Krishna Subedi Rana Bahadur Thebe
Special Contribution	:	Diana Garcia Alcupilla Jakub Smutny
Translator	:	Rabin Subedi
Assistance	:	Bikal Shrestha Deepika Naidu Narendra Ghimire Binod Kumar Vishwakarma Gita Bista
Publisher	:	National Election Observation Committee (NEOC)
Year of Publication	:	2013
No. of Copies	:	250
Copyright©	:	NEOC
Financial Assistance	:	European Union (EU)
Layout/design	:	Unigraphics, Tel.: 01 691 2152
Printing	:	Ganga Jamuna Press Pvt. Ltd., Tel.: 01 438 6934

Section 3: International Standards	61
1. Electoral Framework and International Norms	61
2. Election Audit	64
3. Election Management: A Human Rights Lens	64
4. Free Elections: Voter Roll to Voter's Role	65
5. Election and Democracy at Domestic Context	67
Section 4: Electoral Disputes Resolution	73
1. Mechanisms of Electoral Dispute Resolution	73
2. Domestic Mechanism and EDR	78
Section 5: Future Direction	82
1. New CA Election: Status and Intricacies	82
2. Conclusion	84
Reference	88
Annexes:	91
Annex 1 : The Interim Constitution of Nepal: Part 7- Constituent Assembly	91
Annex 2 : Act Relating to Electoral Rolls, 2063	96
Annex 3 : The Election Commission Act, 2063	106
Annex 4 : Election Offences and Punishment Act, 2063	117
Annex 5 : The Constituent Assembly Court Act, 2064	125
Annex 6 : Political Party Registration Rule, 2063	130
Annex 7 : Regulation Relating to Election of the Members of Constituent Assembly, 2064	135
Annex 8 : Rules Relating to Electoral Rolls, 2063	149
Annex 9 : Electoral Systems of the World	159
Annex 10 : The Full Text of the 11-Point Agreement	164
NEOC-Central Executive Committee	166

Section 1

General introduction to Electoral System

1. Introduction

Electoral systems convert the vote of people into political decision and representations. One of the fundamental elements of competitive multiparty system and democracy is periodic elections based on adult franchise. As democracy signifies rule of the people, electoral systems are the democratic methods of and from choosing representatives of people, which enables right to elect their representatives by themselves. Elections that are taking place periodically are called periodic elections. As a matter of fact, the electoral system is the foundation as well as strength of democracy. It is obvious that a legal system is always looking for enhancing and maintaining democratic choices¹.

The general understanding of democracy is a representative democracy that prevails in almost all the countries around the world, particularly it is more visible in the (so called) democratic countries. As it is well known to all, representative democracy implies in popular authority, which can be expressed through the process of voting through periodic elections. Hence, modern democratic state has to guarantee universal adult suffrage. Moreover, democracy and the authority of the government are derived solely from the consent of people. The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.²

While the electoral system relies on voting in which various ballot systems and ballot counting systems are adopted, most of such systems may be categorized as either proportional or majoritarian. The proportional system is practiced as party-list proportional representation and additional member system, whereas the majoritarian system is practiced as First-Past-the-Post (FPTP) (relative majority) and absolute majority. Many countries have introduced electoral reform movements, which advocate various systems of conducting elections such as approval voting, single transferable vote, instant runoff voting or a Condorcet method. In some of the countries, these methods of elections are also gaining popularity; however, unfortunately, the counting methods are traditional as sometimes this method deduces the importance of democracy.³ While openness and accountability are usually considered cornerstones of a democratic system, the act of casting a vote and the content of a voter's ballot are usually an important exception. The secret ballot is a relatively modern development, but it is now considered crucial in most free and fair elections, as it limits the effectiveness of intimidation.

So as to conduct free and fair elections, all the democratic countries have a provision of an independent election commission, which generally does remain as a constitutional body. The major responsibility of such commission is to conduct free and fair elections. The appointment procedures of the Chief Commissioner and other commissioners are independent.

1.1 Definition of Electoral System

As stated above, elections are the democratic methods of choosing representatives of the people, and the motive of every kind of election is to assure representation of people. The methods of election can be adopted as direct or indirect. Generally direct or indirect methods may be developed and practiced in accordance with the political culture of a country. However, both means, direct and indirect, are considered as essential part of democracy. In the present context, democracy means representative democracy. Periodic elections are bedrock of any democratic system of government. In any democratic system of government, periodic elections are assured. The participation of people is guaranteed in the function of states by means of right to vote and elected representatives.

Notwithstanding, democracy underlines the rule of majority, it also includes representation of the minority in the proportional representation on the basis of population that comes within the framework of electoral system. Elections should be free, fair and reliable. Hence, the definition of electoral system includes periodic elections on the basis of adult franchise, the right to participate in elections and in the conduct of state affairs. It includes registration

¹ Britannica Concise Encyclopedia: www.answer.com/library-cite/10232584.

² United States Information Agency, *What is Democracy?*, 1991, p. 16

³ en.wikipedia.org/wiki/Election_Process_in_the_Philippines