Nepal Observer

An internet journal irregularly published by Nepal Research

Issue 22, September 10, 2014

Politics of government and opposition and the rule of law?

by Karl-Heinz Krämer

(This article has been written for Think South Asia at South Asia Democratic Forum, Brussels)

Almost ten months after the election to a second Constituent Assembly (CA) is Nepal once again in a serious domestic crisis. Various aspects play a special role: the ineffectiveness and disunity of the government, the lack of competence and the health problems of the Prime Minister, the disregard of the interim constitution and corresponding decisions of the Supreme Court (SC) by government and opposition, the oligarchic approach of the party leaders, the renewed non-participation of traditionally marginalized groups in society and the violation of their legitimate concerns, lack of political will to overcome differences on the contentious core areas of the new Constitution, the inability of the predominantly male high caste leaders to move away from the single ethnic identity of the central state, the preference of impunity for perpetrators of crimes from the time of the Maoist insurgency against the aspect of justice for the victims, the continued neglect of the local political level, the rampant nepotism and corruption of politicians, non-appointments to commissions and offices, the party-internal turf wars of fractions, the uncontrolled violence against women in society, etc. Some of these points are subsequently discussed.

Weakness of the government of Prime Minister Koirala

26 MPs were still missing when the second CA first met on 22 January this year. According to the Interim Constitution they should already have been nominated by the interim government of Khil Raj Regmi. Nevertheless, this still incomplete CA on February 10, 2014 elected the Chairman of the Nepali Congress (NC) as new Prime Minister after something difficult coalition talks between NC and CPN-UML. Thus, the political power in Nepal was democratically legitimized for the first time since the failure of the first CA in May 2012.

Besides the two major parties is also the fourth-largest party in the CA, the right-wing RPP-Nepal (RPP-N) of Kamal Thapa, part of the government, though this rarely becomes obvious. This RPP-N, that faces fierce factional fighting, opposes the creation of a federal state and advocates a return to monarchy and Hindu state. The coalition with such a party seems somehow strange, since NC and CPN-UML allegedly have fundamentally different views.

In the following weeks and months, the government with its skimpy two-thirds majority in the CA, that also functions as parliament, adopted a series of laws with which the numerous constitutional and statutory violations that had been committed by the politicians of the major parties in 2013 to conduct the elections for a second CA, were subsequently legitimized. Constitutionally, this was certainly a very questionable approach, especially since a more constitutional procedure would have been possible in 2013. Most of these subsequent legitimation measures were endorsed by the leading opposition party, the UCPN-M, which, alike, had been involved in the procedure in 2013.

From the outset, the government of Prime Minister Koirala proved as little decisive and got nowhere fast. First, it took more than two weeks before the coalition partner CPN-UML sent its

ministers into the race. To date, six ministries are still vacant. Sushil Koirala has always been a party man in the first place, who has never held public office. This inexperience is clearly visible in all his activities.

Half of the diplomatic missions of Nepal is without ambassadors, partly for over a year. Many government bodies and commissions are still not occupied, including the National Human Rights Commission (NHRC). The consequence is that many envisaged and partly urgently needed reforms cannot be tackled.

In addition, Koirala was already in poor health when he took office. In summer, he was diagnosed with lung cancer. For medical treatment he spent weeks in New York and also after his return to Nepal he continue to severe health problems. Overall, he he did not see his work desk for two months, and in this such critical period of Nepalese history.

Koirala's inactivity applies not only to his mandate as prime minister, but also to his role as chairman of the NC. Important party committees are vacant for months and upcoming congresses of sub-organizations of the party are postponed time and again. If Koirala really once takes a decision, whether as Prime Minister, whether as party chairman, then he mostly does so without consultation of the coalition partners or of other factions within his party.

As a result, there is a crisis both in the government and in his own party today. The CPN-UML is becoming increasingly annoyed because significant points of the coalition agreement are easily dismissed as unimportant by Koirala. Worth mentioning here is the re-legitimisation of President Ram Baran Yadav by the second CA, which is also considered necessary by almost all legal experts. In his own party, it is especially Sher Bahadur Deuba, who played a mostly inglorious role in the failed political system of 1990, who would like to replace Koirala as Prime Minister and party leader today rather than tomorrow. Koirala looks like a lame duck, though there is currently no real alternative to this government. There is no time for a change in government, if Nepal still wants to finalize the new constitution. Ultimately, the latter is not to be prepared and adopted by the government but by the CA.

Unpredictable opposition

We have to distinguish between a parliamentary and a non-parliamentary opposition. The biggest party of the parliamentary opposition is the UCPN-M. It occasionally forms alliances with a number of smaller regional or ethnic parties by identifying itself with their concerns. Besides, there are small or smallest right, left, regional and ethnic parties.

The extra-parliamentary opposition is the camp of those 33 parties led by the CPN-M, the radical Maoist party of Mohan Baidya, that boycotted the elections of November 19 last year. Baidya wants to prevent a new constitution that is adopted by the second CA. Instead, he suggests a round table of all parties that should then take charge of writing the new constitution.

Pushpa Kamal Dahal, chairman of the UCPN-M, has repeatedly tried to participate the CPN-M in the work on the new constitution. He, either, made himself strong for Baidya's demand for a round table or he tried to push the reunification of UCPN-M and CPN-M. As it became clear in early September that the deadline for the elimination of all differences on the new constitution could not be met, the three major parties agreed on actually holding such a round table conference, probably before September 19.

Dahal's latest attempt aims at a revival of the High Level Political Committee (HLPC), a committee of the leaders of the major parties, as it exercised the real executive power in the time of the transitional government of Khil Raj Regmi in 2013. Apart from the fact that the HLPC even then violated the interim constitution and the rule of law, is such institution absolutely unnecessary today. Firstly, there is a democratically elected parliament and a legitimate elected government, on the other hand, is there the Political Dialogue and Consensus Committee (PDCC) within the CA, that is responsible for the elimination of differences in constitutional affairs: It is led by Dahal's intraparty rival Baburam Bhattarai. NC and CPN-UML have nevertheless signalled to be ready to form such HLPC, but they want to

limit this to the three major parties, what sounds like oligarchy. But Dahal disagrees with this suggestion of NC and CPN-UML. He would like to participate the CPN-M and Madheshi parties from the Tarai, all this, of course, under his chairmanship. Dahal's demand for an HLPC exactly burst into the growing crisis, when it became clear that the envisaged date of adoption of the new Constitution, January 22, 2015, would not be met.

Work on the new constitution

After the first meeting of the new CA on January 22, 2014, the leaders had declared that the new constitution would be adopted within one year. To achieve this, a detailed timetable was set up for the constitution drafting process. The compliance with this schedule was not a major problem as long as this was only about the work-up of the agreements of the first CA. A consensus to less contentious issues of the new constitution could be found relatively quickly as well. But the time schedule left less than four weeks for a compromise on those parts of the constitution that could not be cleared at the time of the first CA, i.e. the issues that finally led to the failure of the first CA. An agreement should have been reached in this respect until September 6, if the plan to adopt the constitution on 22 January of the next year, actually should be observed. This target has been missed now.

Among the most controversial areas, for example, is the question whether Nepal in future should have a presidential or a parliamentary system of government. In general, the parties disagree on task, status and election of the President. The design of the parliament is controversial as well. It currently seems that the party leaders probably want to agree on a two-chamber parliament. The Lower House shall have 235 deputies, of which 118 are to be determined by a direct ballot system. The remaining 117 members of the Lower House are to be determined by proportional representation lists (PR). In the elections for both CAs, the PR lists had to make sure, that all major social groups were reasonably well represented in the CA. The now envisaged system would reduce the number of MPs elected through the PR lists from 60 percent to hardly 50 percent. In any case, the PR system had already been misused by the high caste party elites in the elections to the second CA for the introduction of relatives and other clients of top politicians.

As in the first CA, the design of the federal state is the most serious problem. It turns out that the attitude of the parties has remained unchanged in this regard since the dissolution of the first CA. This is not surprising, because this topic has not received any attention after May 2012. At that time there was a lack of ability to compromise a number of basic issues as the number, the border lines and the names of the future federal provinces. Besides, the attention to ethnic factors played a major role. These differences exist even today.

Unmistakably, the safeguard of the interests and privileges of the male-dominated state elite that is composed of members of a few castes, is to the fore. Fears are fanned that the future federal provinces probably may have relative majorities of traditionally disadvantaged and marginalized ethnic groups and cultures. It is said that this would endanger the unity of the country and lead to the emergence of separatist movements.

Such fears are promoted by misinterpretation of ethnic interests and demands. The fact is that the current centralized unitary state has been created about 250 years ago by the military subjugation of numerous small states and areas inhabited by larger ethnic groups. This unitary state has been identified exclusively with the culture and language of a few so-called high Hindu castes of the hills, whose prominent position was further strengthened by a modification of the caste system and enshrined in the laws of the country. All other groups in society had and have to this day not approximately equal opportunities in this system.

Nepal today is not only in its entirety a multiethnic, multilingual and multicultural country, but also all future federal constituent states will have these aspects, no matter how their names may be and and how their borders are drawn. The current state elite paints the spectre of so-called "single ethnic identity based federal states" on the wall and denies that the existing system is a "single ethnic identity based central state". It is with reference to this thinking that the current state elite speaks of endangering national aspects and criteria.

The design of the federal state will be crucial for the future of the country. It has to be struck between economic rationality and better social inclusion and integration. How the parties want to manage this balancing act, is not visible at the moment. Definitely, this task will not be solved within the self-imposed time frame. It requires intensive participation of traditionally excluded groups. Such inclusion, however, is also not in sight, although it is one of the key messages of the interim constitution. But who of the leading party politician really cares about the contents of the interim constitution?

Continued disregard for the Interim Constitution

Even the last two and a half years of the first CA were characterized by disregard of the interim constitution. According to this interim constitution, the new constitution has to be drafted, discussed and adopted by the democratically elected and inclusively composed CA. By no later than early 2010, the leaders of the major parties seized this task. The proposals on the new constitution that had been drawn up by the first CA were never discussed.

With the second CA, political leaders set up where they left off in dispute in May 2012. Not the proposals of the first CA, but the former agreements of the high-caste leaders were now accepted as the achievements of the first CA. Unlike the first CA, further clarification of the differences lies with the male leaders of the three major parties right from the beginning. This elite more or less lacks understanding of the concerns of the great mass of traditionally marginalized groups in society who make up at least 85 percent of the total population. But according to the Interim Constitution should the inclusion of traditionally excluded groups be one of the main concerns of the new constitution.

If a particular evidence for such continued disregard of constitutional principles was needed, then the recent actions of the major parties in the attempt to nominate the missing 26 deputies of the CA would be perhaps the best example. The Interim Constitution provides that these seats will go to members of non-represented minorities or to well-deserved persons of civil society, all without party affiliation. The SC had redefined this a few months ago and also pointed out that no person should be nominated who has previously competed as direct candidate or has been on the PR lists.

Of course, the political leaders once again decided for a violation of the interim constitution and shared these 26 seats according to the election results to the parties: 9 for the NC, 8 for the CPN-UML, 4 for the UCPN-M, 1 for the RPP-N and 4 for smaller parties. So far, only NC, CPN-UML and RPP-N have nominated their representatives. Nepotism once again was not neglected. Several close relatives of the leaders of these parties may call themselves deputies now. There has been massive criticism from media and civil society against this renewed violation of the constitution. But just as loud was also the criticism of political leaders from NC and CPN-UML, claiming that not enough seats had been reserved for their respective party circles. So different is the view of democracy and the rule of law by public and politicians.