

# Nepal Observer

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## Do absolute majorities endanger democracy and human rights?<sup>1</sup>

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Last year's elections to the House of Representatives gave the two major communist parties an almost two-thirds majority thanks to a skilful and disciplined electoral alliance. The formal merger of the two left parties to form the Nepal Communist Party (NCP) in May 2018 further underpinned this dominance. Apart from pure Tarai Province 2, where a coalition government of two Tarai parties controls the provincial assembly, the NCP has a solid majority in all other six provincial assemblies. The merger also meant that the NCP now dominates most local units. Such power control by a single party has not yet existed in democratized Nepal. Rather, after 1990 there was usually a lack of absolute majorities, which made coalition governments at the central level necessary. And the political parties could not cope with this situation at all, as the country's recent history shows.

Even the formation of the left-wing electoral platform had not turned out to be quite easy. In particular, the significant reduction of the available election mandates was a major point of contention, but was ultimately handled in a surprisingly disciplined manner by the two party leaders. This was a prerequisite for the overwhelming success of the Left Alliance in direct elections.

### Lack of constitutional and federal state implementation

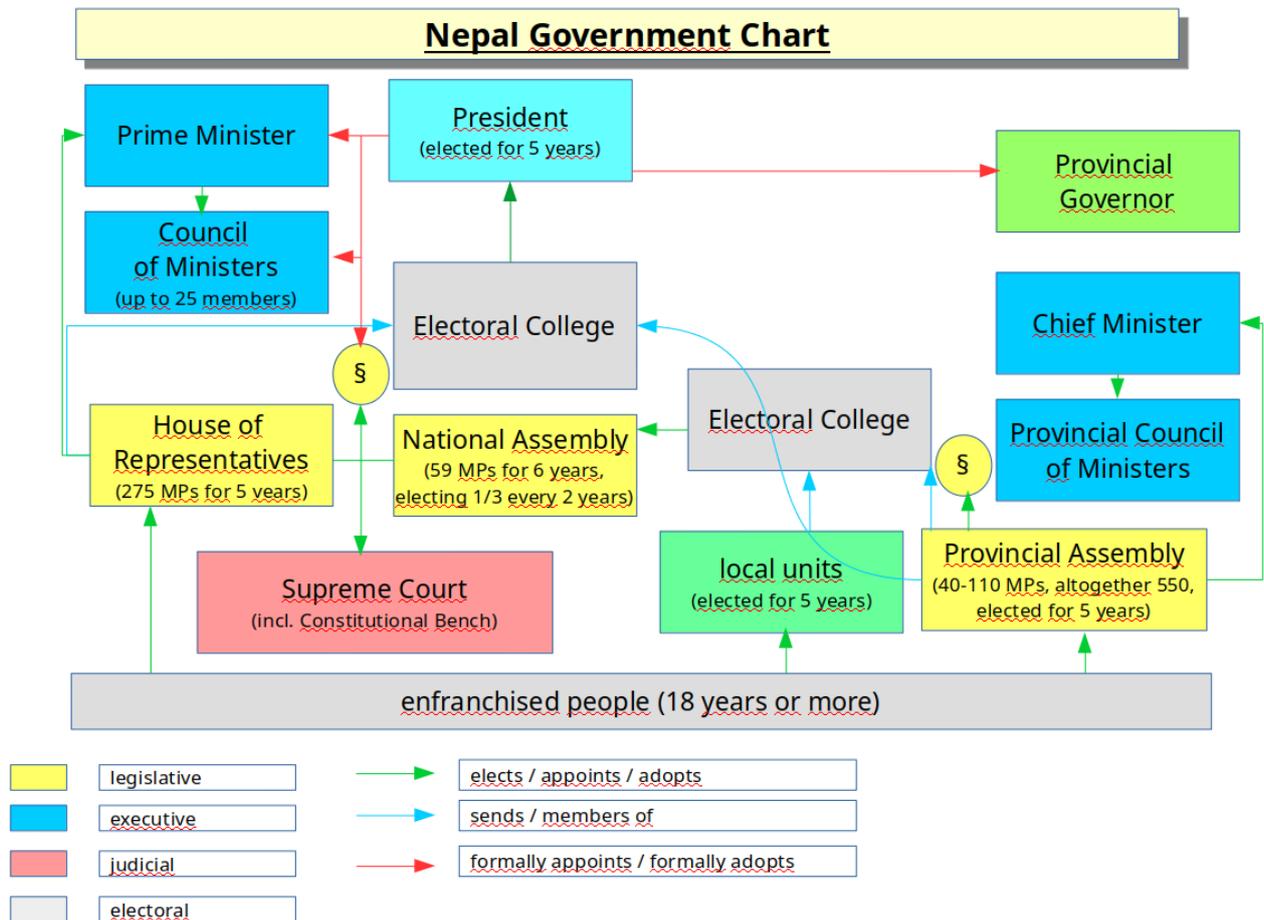
After the elections, there were high hopes for a stabilisation of Nepalese politics. All parties had gone into the election campaigns with big words and promises, of course also the left, which got now the government order. Many of the statements in the election campaign were made without any of the politicians who applied even knowing what tasks would await them and, in particular, what resources would be available in the exercise of the future office.

The top politicians of the parties, who in 2015 had more or less pushed through the new constitution over the heads of the deputies of their parties, obviously took the view that the elections at all three levels of the new political system would implement the new constitution as prescribed on January 20, 2018. Many consultants and experts had long stressed that the necessary laws on the federal state had to be passed before elections could be held. There was also a lack of a concrete regulation of responsibilities. Although the new Constitution provides for a broad division of tasks, it also identifies a number of areas in which different levels of the federal system compete with each other. In particular, legislators seem to have little or no awareness of the issue of the fiscal allocation of resources.

But there was also a whole series of organisational things about which the politicians, despite concrete constitutional regulations, had given little thought or knowingly disregarded the requirements of the constitution. This includes, for example, setting up the administration in the new provincial and local units, including staff and premises. In part, this had to do with the fact that the top politicians simply excluded the design of the federal state from the adoption of the new

1 A German version of this article is going to be published in nepal-i 118, Journal of the Nepal-German Friendship Association, in October 2018

constitution, which by the way, was a blatant violation of the transitional constitution on the basis of which the new constitution should have been drafted. The names of the provinces and their future capitals were to be determined by the elected provincial assemblies within six months of their first meeting.



by Karl-Heinz Krämer, Nepal Research, June 2018

The problem was exacerbated by the fact that the government of Sher Bahadur Deuba (Nepali Congress, NC), the predecessor of today's government, made various provisional decisions only after it had long since been voted out of office because of the election results. These included, for example, the establishment of provisional provincial capitals and the appointment of governors to represent the central government in the seven provinces. The fact that the NC government, which had been voted out of office, nominated only members and sympathizers for the latter offices further aggravated the situation.

### Dwindling hope of stability

Nevertheless, many observers had expected that the new government would use its large parliamentary majority to speed up the numerous failures of previous governments. In mid-September 2018, the Oli government was in office for seven months. In terms of duration, this corresponds roughly to the entire term of office of the predecessor government of Sher Bahadur Deuba. The latter had been criticized as completely inactive and incompetent. But the Deuba government did not even have a coalition majority in parliament after its last coalition partner NCP-MC, the former Maoists around Pushpa Kamal Dahal, changed sides in the run-up to the elections.

Prime Minister K.P. Oli has now achieved the parliamentary majority that had been missing for so long and was so urgently needed. It should not have been a problem to pass the missing laws and

amendments quickly in the national parliament, to decide the names and provincial capitals in the provincial assemblies, to provide provinces and local units with competent and sufficient personnel and to create the necessary premises as well as the infrastructure of the middle and lower level of the federal system.

However, one cannot avoid the impression that more or less nothing has been set in motion in this respect so far. The new government is pulverizing the opportunity for a policy that is stable and geared to systematic development thanks to the majority situation through inactivity, incompetence and the setting of wrong priorities. Instead of focusing on the urgent needs of the country and its people, the Oli government tried to score points with utopian future projects and an intensification of foreign policy. Like his predecessor Deuba, Oli believes he can solve problems by instructing ministers in his cabinet to remedy certain grievances in whatever way. It is not uncommon for him to disregard the competences changed by the federal system, for example when it comes to the repair of inner-city roads. It is not only in this context that doubts arise about the understanding of federalism and the willingness to implement it.



The seven federal provinces and their current names (Source: Wikipedia, 800px-Nepal\_adm\_location\_map.svg.png)

All the omissions of the previous governments - one must not forget in this context that all governments since the adoption of the Constitution have at least involved essential elements of today's government - are continued by the Oli government. At the same time, new problems are created by curtailing fundamental rights and pushing through projects already initiated by previous governments, such as the fundamental revision of criminal and civil law or the introduction of a "National Integrity Policy", from above in an unfinished form. It is no coincidence that Oli has been accused for weeks of abusing the majority to impose authoritarian measures.

All this is certainly connected with the fundamental way of thinking of Nepal's power politics. "Ministers or Prime Ministers of Nepal are always surrounded by cronies and cadres. These chatting supporters, whose main purpose is to land contracts or to promote or release someone from prison, do not speak critically of the government and instead keep it misinformed over and

over again."<sup>2</sup> This may also be an educational problem for the political elite. Today's ruling class was born around 1950, at a time when there were hardly any opportunities for further education for circles outside the Rana and Shah families, and this changed only hesitantly in the 1950s and 1960s. These politicians can't help it, but one often gets the impression that they can neither read nor listen. It is no coincidence that there are only a few well-founded publications or newspaper articles from the political elite. At best, they give interviews in which they do not have to write anything and thus do not have to commit themselves to a verifiable statement and interpretation.

### **Weak opposition policy**

The Oli government's policy also benefits from a blatantly weak opposition. The only noteworthy opposition party is the NC, which has hardly been able to cast any weight of votes since the elections. While the NC continues to criticize the government's policies, its arguments sound hollow given that when the party was in power itself, it made the same mistakes and showed the same lack of interest as the current government.

Within the party, the NC carries a heavy legacy. To the outside world, the party has often pretended to be united. However, since its founding years, the party has repeatedly distinguished itself by factions within the party that flock around certain leaders who are endowed with great and sometimes ruthless striving for power. Charismatic politicians such as B.P. Koirala were rare, and even he had not been free of such ambitions.

The NC's disaster in last year's elections was only partly due to the disciplined behaviour of the communist parties and the overweight of the direct election system. Of course, it was also due to the party's poor and misguided policies and its power-hungry leadership guard. What is shocking is that these politicians do not want to accept that the NC urgently needs a fresh start, with an unspent, young generation of politicians. Despite his renewed failure - he has only just failed miserably as prime minister for the fourth time - party leader Deuba is clinging to his post and those who want to challenge him are those politicians who were jointly responsible for driving the cart into the mud in such a way. In the NC, as in the NCP, the young generation is not given any real chance.

The NC's task in the next five years is likely to be that of an opposition party. If the NC wants to use this task sensibly in order to score points in the next elections, it can only do so through a generation of politicians who are not responsible for the party's mistakes and failure in the past.

### **Utopian projects instead of urgently needed developments**

The NCP has applied for the government mandate and received the same from the electorate for its pompous promises. Now, this government must also deliver. Its tasks, and all politicians of the party should have been aware of this, are numerous, alongside the implementation of federalism: To push for the reconstruction of the country after the earthquakes, which has been completely inadequate so far, to improve and expand the infrastructure in the interests of the people, to guarantee the right to food and work, to create jobs in the country and to reduce labour migration, to promote the economy and reduce the trade deficit, to conclude the peace process and to ensure justice for the victims, to respect the rule of law and the separation of powers, to strengthen freedom of the press and freedom of expression and other fundamental human rights, combating violence against women and the legal and social discrimination of the female sex, eradicating Chhauapadi crimes and other archaic practices and ways of thinking, appropriate and equal participation of Dalits and other traditionally disadvantaged social groups, developing and improving health and education systems, combating corruption and dissolving syndicates, separating state and religion in the sense of true secularism, constructive cooperation with Nepalese NGOs to promote the country's development. This list could be continued almost endlessly.

2 Mahabir Paudyal, República, 6 September 2018

People's criticism these days is directed in particular at the fact that the government has not yet tackled most of these issues, or has tackled them in a contrary way. Prime Minister Oli seems to be absorbed in a dream world in which railways run from north and south to Kathmandu, Nepal also gets access to the Indian Ocean via waterways and the distant Chinese ports are used for overseas trade. These may be things we can think about in the long term, but they can only be achieved in the very distant future. Let us take Nepal's connection to the Tibet railway as an example. A team of Chinese experts has evaluated the possibilities on the ground and speaks of a construction period on Nepalese territory of at least nine years and costs of more than two billion euros. Everyone knows that even this will not be enough in the end.

People, on the other hand, are concerned about obvious things. They want food, schools, hospitals, work, repaired roads and bridges, protection against the annual monsoon consequences, social security, combating crime and corruption, security for life and limb, etc. There is a lot of discontent building up and there is only hope that the government will finally understand this and that its misguided policies will not give some extremist groups a boost.



Reality of Nepalese roads, here river crossing of the Karnali Highway (Source: República, 5 September 2018)

### **Violation of constitution and fundamental human rights**

One of these organizations is the Communist Party of Nepal (CPN), the most important of the remaining Maoist hardliner groups, with its leader Netra Bikram Chand. In the run-up to and during last year's parliamentary elections, this party repeatedly made an appearance with attacks in which, in addition to property damage, there were also deaths and injuries. The aim of the CPN was to prevent the elections. There were no significant liabilities at that time.

But now it is also a phenomenon of modern Nepalese history that parties declared illegal and acting against the state were rarely prosecuted by the state. This was already the case with the then banned parties during the absolutist royal Panchayat system and the situation was similar during the ten-year Maoist "people's war".

The Oli government made hints of a delicate change in these days when it arrested the CPN spokesperson, Khadga Bahadur Bishwokarma, among others, for disturbances in connection with extortion of funds. In the past, such extortion of funds by entrepreneurs and private individuals was a common practice of left-wing extremist political parties in particular for the purpose of self-financing. The Supreme Court repeatedly ordered the release of Bishwokarma for lack of evidence, but this did not prevent the government from arresting him again in front of the courthouse.

This was a clear disregard for the court and the separation of powers. The government's behaviour has a long tradition in that it seamlessly follows on from similar behaviours of previous governments. Nepal's executive does not want to understand that a Supreme Court decision means applicable law and that the government must bow to such decisions.

While the Bishwokarma incident caused little discontent among the population, the government took a whole series of decisions, some in the form of bills or even passed laws, which led to sustained public protests. These included, for example, the National Integrity Policy proposed by Deuba and now taken up again by Oli, the elaboration of which led to massive protests by NGOs and INGOs and which, if implemented in this form, will make the work of NGOs more difficult in the long term.

The widespread ban on political demonstrations near the government quarter also led to protests. Demonstrations shall only be allowed where the politicians do not see the demonstrators. Many people saw this as a restriction of their fundamental right to freedom of expression. Demonstrators were repeatedly arrested for targeted violations.

Parts of the heavily revised Criminal and Civil Code (Muluki Ain) were criticised particularly severely. The media in particular saw the freedom of the press as threatened if they were no longer allowed to report in an unhindered way on politicians and to print statements that contradicted the government's opinion. Government pressure also affected the social media. One person, e.g., was arrested for distributing a pejorative cartoon of Prime Minister Oli on Facebook.



Demonstrating doctors in Kathmandu (Source: Kathmandu Post, 3 September 2018)

Another heavily criticized aspect of the new criminal code is the classification of negligent behaviour in the health care system. Doctors basically see themselves classified as criminals when they make treatment errors. In the past, the relatives of patients have often rioted in connection with deaths during medical treatment.

### **Perspective of NCP and NCP government**

This is certainly not a very positive analysis of the first 200 days of the Oli government. Should the bad habit of changing government every few months possibly continue? Given the majority, this government can hardly be overthrown from the outside. If it should fall, then this must be initiated from within its own party.

In this context, the first question is how united the NCP will be after the merger of the two communist parties. What is certain is that the merger took place from the top of both parties. The further down the party hierarchy we go, the less the unification process has been completed so far. At the moment the party leadership is trying to create uniform institutions there as well, but it still has major problems with this. Ultimately, this is also and primarily a question of cadre power and function at all party levels.

Even at the top, the process was not easy. One can still not be sure of the unity. Initially, for example, Pushpa Kamal Dahal, the former leader of the Maoist party, was extremely active and wanted to push through a change in the office of prime minister after two and a half years, but was only able to ensure that the NCP now has a double leadership with him and Oli. Not much has been heard from him for weeks. Now, in the face of public criticism, he is making his voice heard more clearly and is talking about forthcoming changes in government, but without getting concrete. At the same time, he visited the two major neighbouring countries, India and China, without having a government function or a clear agenda.

Given the short life of the previous government, it would be invaluable for the political stability of Nepal if a government finally survived the full five-year term of office. This will only be possible, however, if the Oli government finally recalls its actual tasks, does them quickly and rationally, and refrains from restricting basic human rights and oppressing civil society.