

Nepal Observer

An internet journal irregularly published by Nepal Research

Issue 80, February 3, 2023

ISSN 2626-2924

Lack of rule of law, unconstitutionality and infighting among top politicians: what about political stability?

By Karl-Heinz Krämer

Nepal's politicians are bringing the country closer to the abyss, but the judiciary is also eagerly helping. There is hardly any rule of law left. Everything is ultimately dictated by the lust for power of the ageing and long since failed so-called top politicians, who continue to consider themselves indispensable despite the devastating verdict of the voters. But even the young, supposedly alternative parties, in which many of the voters expressed their confidence in the recent parliamentary elections, are not really proving to be an alternative, but instead contribute to the maintenance of power of the eternally same top politicians. Governments led by Dahal, Oli or Deuba have sufficiently proven that they are not suitable. The country needs a fundamental new beginning with a younger and socially inclusive generation of politicians.

What kind of state is this anyway? There is a new prime minister who not long ago declared himself responsible for the deaths of 5,000 people during the time of the uprising, from which, of course, he draws no consequences. The string-puller in the background of the new government preferred to subvert the constitution, parliament and the rule of law less than two years ago rather than accept his democratic ouster. In the end, he had to be removed from office by the Supreme Court.

Road to the new government

The NC leader stubbornly insisted on his claim to government after the elections, although the voters denied the governing alliance the necessary majority despite the manipulative voting behaviour. SB Deuba has thus not only pushed his own party to political oblivion, but he has opened the way for the present chaotic government in the first place. As icing on the cake, he then forced his party's MPs to express confidence in the government, thus depriving the country of an opposition. The NC is not an opposition party, no matter what some of its politicians claim.

And what kind of government is this anyway? The post of prime minister has gone to a party that received just 11 per cent of the electoral vote, almost 19 per cent less than just 14 years earlier. The fact that the CPN (MC) still won 32 seats is only thanks to the electoral alliance with the NC and other parties, which did not field their own candidates in a number of constituencies and asked their voters to vote for the Maoist candidate instead. They were, after all, in an electoral alliance geared towards the continuation of the previous government.

PK Dahal was in it by hook or crook for the post of Prime Minister. He knew it would be his last chance to become head of government for a third time. His age and the decline of his party in the last 14 years did not allow for any other verdict. SB Deuba, on the other hand, wanted to retain the post of Prime Minister at all costs, although he had failed to live up to expectations in all his previous terms. This situation was an opportunity for KP Oli to return to power. In 2021, Dahal and defectors from his own CPN (UML) had rightly declared Oli unacceptable. For them, Oli was a kind of untouchable at that time. How quickly all this was forgotten, at least by Dahal.

So Oli let his own machinations play out. Dahal was lured with the post of prime minister. This was worth everything to him. After two and a half years, this office is then to pass to Oli, however this is to be legally

accomplished. But Oli always finds a solution for this, even if it is an illegal one.

Parties in the government

In any case, several parties had to be involved in the government to secure the necessary votes of at least 138 MPs. So in the run-up to the formation of the government, Dahal, Oli and Deuba dug for the support of the smaller parties. Dahal and Oli managed to get the Rastriya Swatantra Party (RSP, 20 MPs) and the Rastriya Prajatantra Party (RPP, 14 MPs) on their side. Thus, a possible governing alliance of CPN (MC), CPN (UML), RSP and RPP had the sufficient number of 144 MPs. When PK Dahal, who was then appointed prime minister, asked the necessary vote of confidence in parliament, he received the support of almost all MPs. Only the two MPs from Nepal Majdur Kisan Party (NMKP) and Rastriya Janamorcha spoke against it. The opposition, so important for a democracy, was abolished.

The above four parties are currently involved in Dahal's Council of Ministers. The composition seems extremely strange. The once revolutionary Maoists, who a few years ago managed to abolish the monarchy and the Hindu state and to declare Nepal a secular and federal republic by means of a ten-year bloody uprising with around 17,000 deaths, are sitting at the government table with the RPP, the collective camp of the former non-party royal Panchayat system. Although the RPP had also voted in 2008 to abolish the monarchy and the Hindu state, it has long wanted nothing more to do with this. Both in its election manifesto and when forming the government, the RPP had declared that it favoured a return to the Hindu state and monarchy. It describes monarchy as an essential component of democracy, a philosophy that hardly anyone understands. In the elections, the RPP was supported by just 5.5 per cent of the electorate, i.e. only about one in twenty voters, although it must be assumed that many of these voters only wanted to express their displeasure with the major parties and the infighting of their top politicians. Moreover, Article 274 declares the sovereignty of the people to be inviolable, which is called into question in the event of a return to monarchy. It must also be doubted that the parliament in its current composition does not really represent the people. In any case, it does not reflect Nepal's multicultural and multiethnic society. The politicians have ensured this with their manipulations and social exclusions in the nomination of candidates in the recent elections.

The RSP's participation in government also gives cause for wonder. Wasn't this party formed to counter the power struggles and machinations of the eternally same, but long since failed, top politicians? The RSP could have tipped the scales. Their MP votes were badly needed. The party could have used this to finally insist on a generational change in the major parties. Instead, it is now ensuring that the power of failing politicians and their eternal wrangling for power can continue on an even worse scale.

To cap it all, RSP party leader Rabi Lamichhane was also guilty of a serious violation of the law when he contested the elections without possessing Nepali citizenship and later assumed the post of Home Minister in the Dahal government. Was he so naive that he thought this was unnecessary? And why did the Election Commission not check this before the elections? After all, the allegations have been there for some time. In view of these allegations, PK Dahal should also have checked this before appointing Lamichhane as Home Minister.

So it was only on 27 January that the Supreme Court (SC) found Lamichhane guilty of contesting the elections without holding Nepali citizenship. This is truly not a trivial offence, even though two days later he was given citizenship again within a few minutes. It should be remembered in this context that millions of people in Nepal have been waiting in vain for their citizenship documents, in some cases for decades, especially those from the Dalit and Madheshi communities.

Lamichhane lost his parliamentary mandate, his post as Minister of Home Affairs and Deputy Prime Minister, the parliamentary chairmanship of his party and the presidency of the RSP as a result of the court verdict. The latter was immediately returned to him by his party after he regained his Nepali citizenship. The situation is different with his MP status. His voting without citizenship was a serious offence. He can be prosecuted for this. According to the parliamentary statutes, he can possibly be denied a new mandate as an MP in both houses of parliament.

However, this does not seem to prevent Lamichhane from working towards reappointment as Home Affairs Minister and Deputy Prime Minister. He has the support of KP Oli, who in the past has not been very strict

about the interpretation of legal statutes. PK Dahal is more reluctant, but the reason may be his realisation that KP Oli has been dominating this government for a long time and that Dahal is well on his way to becoming a puppet at Oli's mercy.

Another party involved in the government is CK Raut's Janamat Party (JP, 6 MPs). Raut has long advocated an independent Madheshi state in Nepal's Tarai, which of course also contradicts the constitution. In 2019, the then Prime Minister KP Oli entered into an agreement with Raut, which, according to Oli, included Raut distancing himself from his separatist aspirations. This was countered by the fact that Raut immediately formed his Janamat Party, which, as the name suggests, wants to achieve the creation of a Tarai state not through militancy but through a referendum. Until recently, Raut was considered a kind of untouchable by the established parties, but today his party is courted by the major parties, as it is supposed to help secure the power of the old heads.

Another party initially sympathetic to the government is the Nagarik Unmukti Party (NUP, 3 MPs). This party, also still new, is not dominated by male Khas Arya as much as the other parties. The party was officially registered only in January 2022. The initiator was Resham Chaudhary, who is currently serving a life sentence. He is considered one of the main accused for the Tikapur riots, in which eight policemen and a child were murdered in 2015. Chaudhary was elected to the House of Representatives in 2017, although he was officially in hiding. He later surrendered to the authorities. His appeal against his conviction and its rejection by the Dipayal High Court has been pending in the Supreme Court for some time.

The NUP tried to use its surprisingly good election result and the burning interest of the major parties in electoral participation to get Resham Chaudhary released from prison by pardon. Both the Deuba government, which was struggling for survival, and later the Dahal government, which was looking for supporters, were not averse to the idea, although a pardon is legally ruled out in the case of capital offences. Thus, NUP participation in the government was also critical because of the proximity of politics and crime. In the end, the NUP, which had also run as an alternative, opted for the opposition bench after all. But criminals seem to be attracted to this party. One of the three recently elected MPs, for example, stood as a candidate even though he had been sentenced to six months' imprisonment for an offence about ten years ago and had since evaded the penal system unhindered. Only a few days ago, he was arrested under public pressure.

In general, a more or less close proximity between politics and crime has been observed for a long time in all parties. Some glaring cases were mentioned above. The tendency of politicians to disregard the constitution and laws is also a major problem. The judiciary would actually have the task of ensuring orderly conditions here, but is completely overwhelmed with the large number of cases to be tried. The understaffing of the courts also plays an important role in this, for which politicians in turn bear a special responsibility. However, the sometimes questionable actions of the judiciary, such as those of the then Chief Justice in 2021/22, should not go unmentioned. Judgments are also occasionally incomprehensible. The most recent example is the release of an athlete suspected of rape, who was released on bail despite the ongoing trial and immediately rehabilitated by his sports association as if he had been acquitted. No wonder then that politicians are repeatedly guilty of contempt of court with impunity, such as KP Oli, who to this day refuses to recognise his 2021 Supreme Court deposition as lawful.

In any case, the sometimes blatant differences between the current governing parties make it clear that the Dahal government is on very shaky ground. Demands from the small parties involved, but also from KP Oli, are difficult for Prime Minister Dahal to meet. This is probably the toll that Dahal has to pay for his boundless quest for power. For Nepal, this ultimately means that much-needed political stabilisation is not in sight. Is any politician at all concerned about Nepal's image in the eyes of the world?