

## Nepali politicians: Their misunderstanding of democracy, legitimacy and the rule of law

by Tsak Sherpa

About four and half years ago, the people of Nepal finished the unconstitutional rule of then King Gyanendra by an impressive nationwide movement. Civil society, i.e. the people, not political parties had been responsible for this most revolutionary event in Nepal's history. They had protested on the streets against the royal putsch for more than one year. They had pressed the political parties and the Maoists to join hands against the insurgent monarchy, to end the ten years old Maoist insurgency, and to build up a new Nepal that should be based on peace, stability and prosperity. The people's demands during the April 2006 movement had been very clear: They wanted the end of the insurgent monarchy in the same way as they wished an end of the Maoist insurgency; they wanted a durable peace with a new democratic system that should be based on the equal inclusion and participation of all sections and groups of society; and, finally, they wanted that this system change should be introduced and legitimised by an elected constituent assembly.

What has been reached after Gyanendra stepped down from power in April 2006 can be summed up in a few sentences. Gyanendra gave the power back into the hands of party politicians and reinstated the parliament that had been elected in 1999 for a period of five years. In other words neither party politicians nor parliamentarians had any legitimacy for their regained power positions in 2006. So, this could only be an interim solution. Nevertheless, the politicians made some good progress in the beginning. They formed an interim government under Prime Minister Girija Prasad Koirala, the reinstated parliament passed a number of laws to improve the participation and rights of disadvantaged sections of society like the women. A fundamental peace agreement with the CPN-Maoist was signed in November 2006. It served as basis for a new interim constitution that was implemented on 15 January 2007 with participation of the Maoists. The latter joined the new interim parliament, that was formed on the very same day, and they also joined the government in April 2007. Finally, in April 2008 and after two delays, elections for a constituent assembly took place, i.e. the interim process got a legitimate basis.

But the beginning of 2007 was also the time when the politicians more and more forgot their good in-

tentions. To mention only one example: There had been no elections for the new interim parliament of January 2007; all MPs had to be nominated by the party leaders. Instead of following the principles of the people's demands of April 2006 by nominating members from all sections of society, as it had also been prescribed by the reinstated interim parliament in summer 2006, all the old established parties of the 1990 system stuck to their candidates that had been elected in 1999; and this had been predominantly male Bahuns and some other so-called high Hindu caste members. They not even tried to apply the aspect of inclusion in respect to the MPs they were allowed to nominate in addition. Positive was only the procedure of the CPN-Maoist that had not been part of the 1999 parliament and, thus, had to nominate totally new MPs. They tried to respect the aspect of inclusion and, e.g., nominated 40% female members. This obviously later had influence upon the positive support for this party by the voters in the elections for the constituent assembly.

Besides, the cooperation between the different parties, including the CPN-Maoist, became more and more complicated in 2007. There was still great distrust. The Maoists had problems to mend their ways of behaviour, give up their violent practices and respect the rule of law, while the leaders of the other parties also refused to accept the agreements they had signed before. Fundamental mistakes were made right in the beginning. For example, the integration and rehabilitation of the former People's Liberation Army (PLA) of the Maoists should have been one of the priority tasks of the interim government that was formed in January 2007 under PM Girija Prasad Koirala according to peace agreement and interim constitution. A limitation of the number of persons that have to be reintegrated or rehabilitated was nowhere mentioned as it was also not mentioned that they all have to be integrated into the army. But these exactly have become the terms of discussions very soon.

None of the governments since January 2007 has ever tried to implement the agreements concerning the PLA fighters and discussions have even been intensified in recent months. Obviously, there are strong intentions from conservative minded political sections that try to prevent each and every kind of integration or rehabilitation of the

former PLA fighters, though these people know very well that there will be no chance for endurable peace and a new Nepal without it. This leads to the conclusion that these conservative sections are not really interested in such fundamental changes that are urgent in Nepal.

Another early fundamental mistake that has not been eliminated so far is the continued state of impunity that is encouraged by the government, the political parties and the army leadership. Numerous crimes have been committed by both parties in conflict, Maoists and state, during the ten years of insurgency and three and a half years of royal putsch. Especially the years after the mobilization of the army against the Maoists insurgents in November 2001 have been characterized by numerous human rights violations like murder, abduction, disappearance, expropriation, expulsion, etc. More than 1.000 persons alone that have been disappeared by the army are still missing. Without an investigation into the capital crimes and the punishment of the responsible persons the people of Nepal will never get justice.

This brings me to the current state of democracy and legitimacy. All political parties of the country have great problems with the implementation of internal democratic structures, inclusion and participation. There are parties like the Nepali Congress and the CPN-UML, whose roots go back to the late 1940s, that claim to be the true and only democratic parties. But democracy means "rule of the people", i.e. those in political offices have to be elected by the people. In the same way have all functionaries of the parties to be elected by the party basis, nominations have no place in democracy. And, of course, is it a precondition for all democratic parties that they are open to all sections of society, that they are not dominated by special sections of society or even families, and that the party program includes the interests and demands of all social sections of the multiethnic and multicultural state of Nepal.

The reality is totally different. For more than 60 years, the leadership of the bigger parties has remained in the hands of male members of some extended families that predominately belong to Bahun and some Chhetri castes. members of other social groups and women are still exceptions. Under the royal Panchayat system, male Chhetris had a stronger influence but this has totally changed in favour of male Bahuns after political power went into the hands of the political parties after 1990.

What this means in practice may be best explained by the Nepali Congress. Since its earliest days, this party has been dominated by one Bahun family, i.e. the extended Koirala family. After the death of its charismatic leader B.P. Koirala in 1982, leader-

ship was vacant for some years but political parties were outlawed either. When political power went into the hands of the parties in 1990 the star of his half-brother Girija Prasad Koirala rose. The latter has been one of the outstanding politicians after 1990 but he would have served his party as well as his country better if he had democratized state and party. Till his death in 2010, he tried to hold everything under his control giving power positions predominantly to members for his extended family circles. Some examples only: 30 of the 240 NC candidates in the elections for the constituent assembly in April 2010 belonged to the extended Koirala family. When his health deteriorated, he tried everything to push his daughter as well as other relatives to leading position in state and party.

But what has been mentioned for the Nepali Congress is true for other parties as well. The result of the elections for the constituent assembly has proved the great political awareness of the people. They knew which parties and politicians were mainly responsible for the failure of the 1990 system, and so they rejected them in the elections. Most of all, this effected politicians from the Nepali Congress and the CPN-UML. But this had no consequence for the influence of these politicians and parties. They have become PM, Deputy PM, ministers, etc. They still decide the politics of their parties; they order the elected representatives of the people how they have to vote in the constituent assembly that also serves as parliament. This is not democracy but unchanged oligarchy. Leading representatives of the state are not legitimized by the people.

The CPN-Maoist may also still not be fully inclusive and their leadership level may be dominated by High Hill Hindu castes as well, but most of them are legitimized through the elections. Their leading role in the peace and reconstruction process has been legitimized by the electorate. The process of renewal has no future without their active participation. Their statements and behaviour may sometimes be irritating, but it is not true that they are most responsible for the delay of the peace and constitution writing process as it is claimed by leaders of the Nepali Congress and the conservative wing of the CPN-UML around K.P. Oli. On the contrary, they have very often made concessions to keep the process running, and I hardly remember any situation when such concessions were made by the other two big parties. The latter should be aware that any split of the CPN-Maoist over too many of such concessions may harm the peace process. This would not be in the interest of the disadvantaged and so far not included masses but only serve traditional elites that still dominate decisive party positions.