

Legitimation for a new beginning

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The abrupt end of the Constituent Assembly (CA) has been caused by the irresponsible behaviour of failed party leaders. The Supreme Court (SC) had decided in November 2011 that another extension of the CA beyond May 27, 2012, would be unconstitutional. Against the background that the dissent of the party leaders over the federal setup could not be solved within a short span of time, all politicians should have used the last weeks before May 27 to discuss and decide what should happen after the unavoidable failure of the CA. At that time, the CA was still functioning soundly as a parliament. By mutual agreement of all parties, at least the bigger ones, this parliament could have passed the changes of the interim constitution that were necessary to hold elections for a new CA. Such new elections had already been one of the recommendations of the SC in November 2011. After May 27, the CA had no longer any legitimation. It is nonsense if oppositional politicians now accuse PM Bhattarai to be mainly responsible for the dissolution of the CA. His statement of May 27 only described the actual status of the CA. All party leaders have been responsible because they have grabbed the task to write the new constitution which was the exclusive right of the inclusively elected CA according to the interim constitution of 2007. The party leaders have thus prevented the timely writing of the constitution.

The chaos that has been caused by the irresponsible behaviour of the party leaders is enormous. President Ram Baran Yadav has correctly stated that the government of Baburam Bhattarai is only a caretaker one. But it must be remembered that the legitimation of President Yadav is based on his election by the CA as well, i.e. he is also only a caretaker president. Nevertheless, I think these are the smallest problems.

In view of the massive flood of protests by the opposition, of which now also the CPN-M of Mohan Baidya is a part, one could think Bhattarai should resign and all problems would be solved. But the opposite is true. Bhattarai's legitimation is based

on his democratic election by the parliament. Since there is no parliament now, it is not possible to elect a new PM if Bhattarai resigns. Nepal would not only be without a legislative assembly but also without an executive. This cannot be in the interest of the country. The leaders of the opposition parties behave as if they had drunk in legitimation with the mother's milk. Nepal is currently in a situation in which the leaders of the political parties don't have more legitimation than any other citizen.

If the current problems shall be solved, Nepal must not begin with the resignation of the caretaker government and the illegitimate nomination of a new government by party leaders who themselves lack every kind of legitimation for this step. Only elections for a new CA by the people can meet the requirements for the elections of a new government and a new president.

Because of the already mentioned irresponsibility of the party leaders, Nepal is really in a dilemma. The interim constitution of 2007 is still valid. It provides only one election for a CA, and this took place in April 2008. To elect a new CA as it also has been recommended by the SC in November 2011, several passages of the constitution as well as the election law have to be changed. But these changes cannot be introduced without a functioning CA/parliament. To introduce the necessary changes by ordinances of the caretaker government that are signed by the caretaker president also smells of illegitimacy and will definitely lead to further conflict between the parties and politicians.

What remains? The best way to leave the dilemma behind would be to revive the dissolved CA for a very short time and with the only task to introduce the necessary legal changes. To avoid complications, the cooperation with the SC is advisable. While entering into this procedure, the big parties, including the Madhesi Front, must find a consensus about what shall how be changed and when new elections shall take place. The latter has to be coordinated with the Election Commission as well. All these preconditions can only be fulfilled with good intentions and rationality from the side of the party leaders. As soon as these preconditions are fulfilled, the necessary constitutional and legal changes can be passed within a few hours and the CA will be dissolved again. Preparations for the election of a new CA could start immediately.

I think this sounds rational and easy. Nevertheless there are many doubts that the feuding party leaders will take up this way since they are traditionally stubborn and do not want to deviate a single inch from their narrow-minded points of view. Some of them, especially from the NC, in all seriousness have even demanded to hold elections for a parliament instead of a new CA. But the interim constitution gives absolutely no room for such procedure. Besides it would shatter the greatest achievement of the 2008 election, the inclusive composition of the parliament. All parties, including the Maoist one, have more or less failed in the past when election candidates had to be selected in an inclusive way. This has to do with the fact that all parties have grave shortcomings in respect to democratic structures and procedures.

The inclusive composition of the CA was guaranteed by the proportional election system of 2008, not by the FPTP system. So, the former should even be extended in future. But the constitutional changes must also provide rules which guarantee that the new inclusive CA can also work effectively. For this, it must be ensured that the party leaders

are not allowed to influence the elected CA members with regard to the writing of the new constitution once again; this must be the task of the CA and not that of possibly not elected party leaders. To avoid the mistakes of the dissolved CA, it will be necessary that all defeated candidates are excluded from active participation in the constitution writing process. The party leaders can only demand their MPs to follow the party line as long as the CA functions as parliament. But the writing of the new constitution must be the exclusive task and right of the CA.

I see this as the only legitimate way to evade the current dilemma and not to repeat the mistakes of the past. It's time that the failed party leaders go for such legitimate solution. By doing so, they must understand and accept that their power will be limited in the long run.

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