

# Nepal Observer

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## Re-escalation in the Tarai: the danger of the failed state

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In Maleth, Saptari district, on March 6, a bloody incident occurred in which five people were killed by targeted police shooting and numerous others were injured. This renewed escalation was almost to be expected in the face of extreme political tensions in the light of the local elections scheduled for May 2017. The shock is all the deeper as the police have once again proved their disrespect for human rights.

### Failure of constitutional assemblies

In order to make the political background of the escalation understandable, one has to go a little bit back in times. After the end of the Maoist insurgency and the royal coup in April 2006, all major parties had vowed to create a new, inclusive Nepal that was to be built on the cornerstones of democracy, secularism, federalism and equal rights and opportunities for all citizens of the country. The basis was a new constitution, to be created by a constituent assembly (CA), which was to be elected by the people of the country in a democratic process. A special electoral procedure should ensure, that all the social groups of the country were adequately represented in this assembly and were able to participate in the decision about the new constitution freely and without the influence from their parties. They should therefore represent their social groups rather than their political parties.

This scheme did not advance as planned as everybody knows. It became therefore necessary to elect such an assembly twice. About halfway through the first CA it became clear that for the leaders of the major parties, all male Tagadharis, particularly Bahuns, the proposals of the committees of the CA went too far and they saw their own privileges and positions at risk. They therefore prevented the discussion of these proposals within the CA and henceforth only quarrelled among each other over the contentious issues of the new constitution, accompanied by endless and ruthless struggles for executive power, which traditionally promised more or less unimpeded access to the state funds.

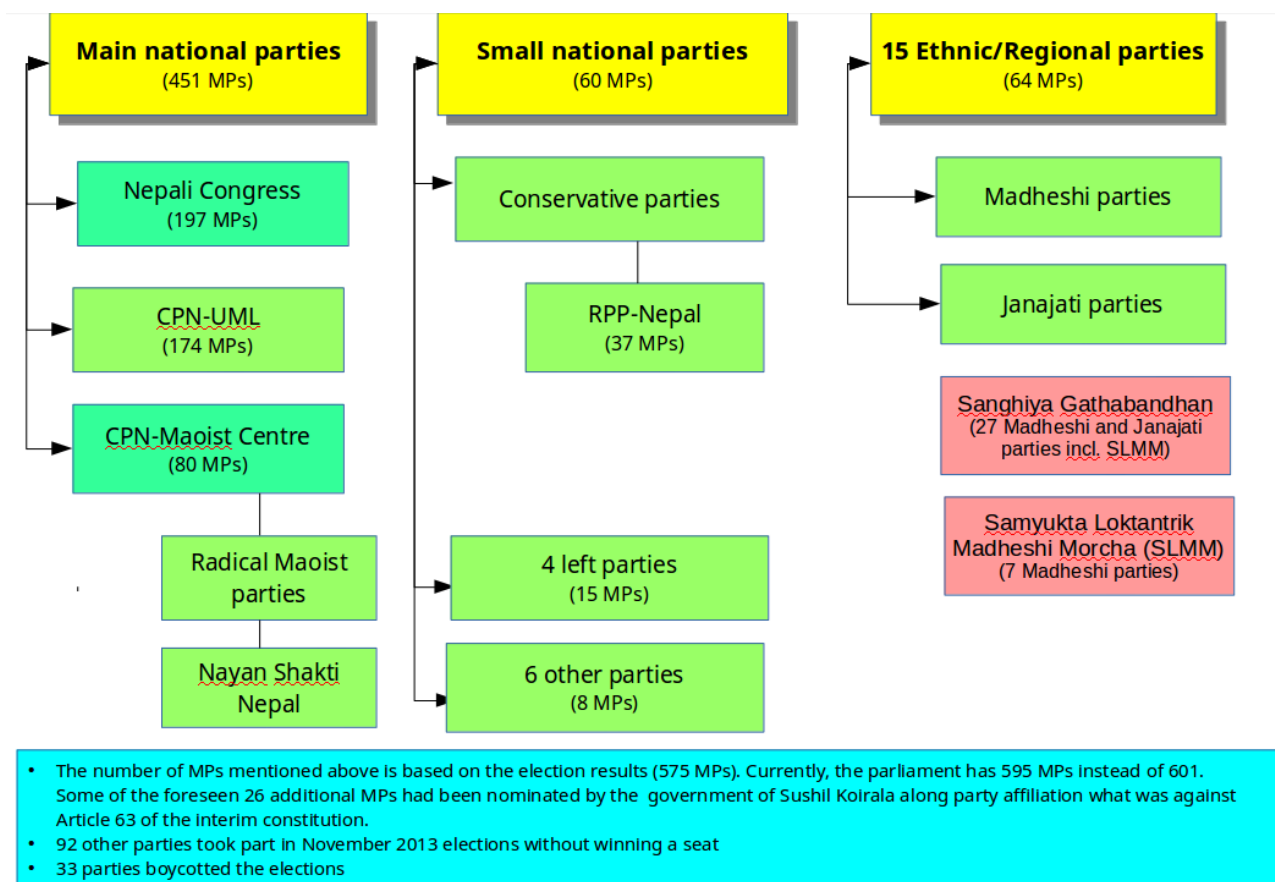
Thus, the first CA failed in 2012, and after initial progress the second CA, elected in November 2013, got in great troubles as well, when the most critical issues, such as the formation of the federal state, were discussed among the party leaders. In this situation, Nepal was shaken by heavy earthquakes in April and May 2015. The unprepared and overchallenged politicians disappeared completely for some days. It was only when the resentment of the population grew louder, that they realised that they had to do something to divert attention from the consequences of the earthquakes.

## Constitution by the top politicians

Only the very highest level of party politicians therefore got it together and declared that the new constitution would be adopted within a few weeks. Suddenly all the differences, that had seemed unbridgeable, were fading. The top politicians of the three major parties and the leader of one of the Madheshi parties, who had disowned in 2007 from the Nepali Congress, agreed on a constitutional draft within a few weeks. This was first presented to the CA and released as a draft for a discussion among the entire population. However, the deadline set for possible entries was so short that only people with internet access in the urban areas had a real chance to read the proposal and raise objections.

After minor changes, the proposal of the party leaders was presented for discussion and vote. It was found that a considerable number of changes were requested on the part of MPs from the traditionally excluded groups, whose situation was to be decisively improved by the new constitution and who should therefore speak for their respective groups. In order to prevent this, the party leaders instructed their lawmakers to vote according to their party orders. Already proposed amendments had to be withdrawn to a large extent. All votes were made by show of hands, so that potential dissidents were immediately noticed.

In this way, the adoption of the new constitution became a farce. The approach was not only undemocratic, it also violated the requirements and intentions of the transitional constitution, which was the legal basis for the renewal process. Almost all previous agreements of the state with leaders of the traditionally excluded groups were rejected. The product, the new constitution, even contained numerous retrograde steps compared to the transitional constitution, although the goal had actually been vice versa. In the end, the new constitution was more likely to secure the interests and privileges of the traditional male Tagadhari elite rather than to integrate the ever-neglected concerns of the excluded groups - Janajatis, Madheshis, Dalits, Muslims and women from all groups.



(Political parties in 2017, K.-H. Krämer)

## **Border blockades 2015/16**

Already during the forced adoption of the constitution there were massive protests against the project of the top politicians, particularly in the Tarai. After the adoption of the constitution on 20 September 2015, the conflict escalated. There were massive demonstrations and clashes between protesters, especially Madheshis and Tharus on the one side, and security forces on the other side throughout the Tarai. According to official data, 50 people were killed. The demonstrators erected road blocks on the border crossings already on Indian territory. As a result, there were significant shortages of supply throughout the country, especially in the conurbations of the Kathmandu Valley and the Tarai.

India tolerated the blockades on its territory, which gave the Nepalese politicians and media an opportunity to speak of an Indian economic blockade. The blockade, which lasted for more than four months, badly affected the people, the economy and the nature of the country. The blockade was only lifted after Nepal's politicians were able to bring themselves to a minimal constitutional change at the end of January 2016, but this was not more than a waste paper and did not take into account the concerns of the excluded groups. Doubtless, India supported the demonstrating groups of the Tarai, which of course was an interference in the internal affairs of Nepal. But that did not hide the fact that the real cause lay with the country's top politicians.

## **Promised constitutional change**

As the general dissatisfaction with the government led by Khadka Prasad Sharma Oli (CPN-UML) grew in the course of 2016, the smaller coalition partner CPN-MC abandoned the Oli government and sought a coalition government with the Nepali Congress (NC). Sher Bahadur Deuba, the chairman of the NC, also wanted to become Prime Minister again. After 1995 he had failed miserably only three times. Pushpa Kamal Dahal, chairman of the CPN-MC, was only willing to form a coalition with the NC, when he again became prime minister first. So, it was agreed that a coalition government of the NC and CPN-MC should for the first nine months be headed by Dahal, before then Deuba would become prime minister for another nine months. By 20 January 2018 at least, according to the constitution, elections must have been carried out at all levels of the state - local level, federal provinces and central level.

But for the election of a government from NC and CPN-MC the number of deputies of these parties in the parliament was not sufficient. Thus, the leaders of the two parties were lobbying some other parties, especially the Madheshi and Janajati parties that were represented in Parliament. They agreed to a constitutional change which would take into account the most urgent demands of these groups. On the basis of these agreements, the ethnic and regional parties therefore elected the current government of Prime Minister Pushpa Kamal Dahal in early August 2016. However, they rejected direct participation in his government, since in the past they had always had so many negative experiences with such promises made by the major parties.

Their scepticism soon proved justified when the government parties, after repeated insistence on the part of the Madheshi and Janajati parties, were actually preparing to submit a draft amendment to the constitution. Since a constitutional amendment required a two-thirds majority in parliament, the government also needed at least a part of the voices of the now oppositional CPN-UML. But UML chairman Oli rejected this request strictly. He declared that the constitution is quite excellent, fulfilling all the requirements of a democratic constitution and offered all people of the country the same opportunities. It would only be necessary to implement it, actually something that the CPN-UML, when it was in power, completely neglected. Instead of a constitutional amendment, it demanded to hold local elections first.

To push this demand through, the CPN-UML blocked parliament's work for weeks, and at the very least prevented any motion for constitutional changes, let alone their discussion. Oli repeatedly stated that a constitutional amendment, as demanded by representatives of the disadvantaged groups, was contrary to national interests and could not therefore be discussed in parliament. In other words, Oli decided what national interests are and what not, what at all national means in Nepal, and that the concerns of disadvantaged and partly excluded groups were definitely not national interests. He, Oli, and his party would have to decide this, not the elected representatives of the people. This attitude became equivalent to a bankruptcy of democratic principles.

On the other side were the parties of the National Alliance (NA), that also included the parties of the UDMF (United Democratic Madheshi Front), in other words the Madheshi and Janajati parties. They also remained relentless in their attitude and declared that there would be no local elections unless the constitution was amended and the concerns of the Madheshis and Janajatis were taken into account.

### **Local elections before / instead of constitutional change**

In this situation the government had to decide for one of the two sides and this was once again the major party CPN-UML. This was not so much a question of content, but rather the preservation of power. There were also politicians who were opposed to the proposed constitutional change within the two great governmental parties, especially in the NC. The option of early local elections, which is actually welcomed by all the people of Nepal, was an opportunity to refrain from the revision of the constitution. In the end, the government established local elections for May 14, 2017, and tried to put off the parties of the NA once again. The latter, however, were not prepared to do so, declaring their own choice to prevent local elections at any cost before a constitutional change.

As the first of the big parties, the CPN-UML picked up the election campaign and called for a major election campaign exactly there, where most of the parties were at home that had been antagonised by the UML for weeks by hook or crook, namely the Tarai. A greater provocation would have hardly been possible. Eventual conflicts were not only accepted, but formally challenged.

The fact that the escalation was so harsh, however, was also thanks to the security forces. The police once again demonstrated that they have not yet learned to respect and uphold the rights and dignity of the people. At least the bloody riots in the Tarai of 2015 with fifty dead, which also bore the chief debt to the police, ought to have been remembered. Targeted head shots on at most rock-armed demonstrators are nothing but murder. Probably, there will be talk about conspiracies soon, as it is normal in Nepal. But it must be assumed that the true causes had to do with the reckless striving for power by incompetent politicians, who have failed for almost three decades to bring Nepal under the rule of law, that also defines the rights and duties of the security forces.

In response to the politicians' just mentioned behaviour, Oli and his party saw themselves as helpless victims, accusing the two major government parties of literally murdering the leaders of the CPN-UML ([The Kathmandu Post, March 10, 2017](#)). Such slogans are wholly unfit for politicians claiming to be statesmen. At best, they are suitable to fuel moods and speed up further confrontations. The campaign of the CPN-UML in the Tarai is equivalent to a provocation. Oli knows this. Nevertheless, he will proceed in this way.

The UML was blocked in the Saptari district by upset, but unarmed protesters, victims of the targeted shots were not the activists of the UML, but those demonstrators. If the Madheshi and Janajati parties prevent a democratic election campaign of the CPN-UML by massive demonstrations, the UML rightly declares this to be undemocratic and unlawful. If Oli and his party, however, prevent any democratic discussion of the legitimate demands of these groups in parliament, then the UML claims that its action would be lawful and correspond to national interests. This is obviously a disturbed view of what is national and what is lawful and who at all is allowed to do anything in Nepal. In other words, the

thinking of the UML leaders is deeply rooted in non-inclusive social structures that actually were to be abolished by the new constitution.

### **Retention of power**

At the latest after the escalation in the Tarai, the NA parties that had helped to bring the current government to power had indicated that they might withdraw their support from the government and they did so in mid-March. This would probably mean the end of the Dahal government. Consequently, it was time for Prime Minister Pushpa Kamal Dahal to look for alternatives if he wanted to remain in power. On March 9, he was able to win the support of the now reunited RPP-Nepal, which he had tried to get for a longer time. Since its reunion with the RPP, that already had two ministers in the cabinet, in November 2016, the RPP-Nepal has 37 MPs. The chairman of this party, Kamal Thapa, has now become the third deputy prime minister (!) of the Dahal government and is responsible for federal affairs and local development. He already had this portfolio in the Oli government besides the ministry of foreign affairs.

The recent, by the way unconstitutional, extension of the Council of Ministers can only be seen as a climax of irrationality. Kamal Thapa, like no other politician in Nepal, represents the policy that has been battled by the Maoists in a bloody war for ten years, and that is to be finally abolished by the renewal process of the country according to the common commitment of all the major parties of 2006. Thapa, however, continues to advocate a return to monarchy and Hindu state. He is against secularism and federalism. And for the second time within a year and a half, this man is given the task of looking after the further development of the federal system, even though this is exactly what he wants to prevent.

If, for example, Dr. CK Raut demands verbally and without militancy a separate Tarai state, then this is certainly contrary to the constitution and falls under the concept of separatism. But it is nothing more than a free expression of opinion that is part of the fundamental rights of every Nepali citizen, no matter how one is related to Raut's propositions. Raut is constantly arrested for his verbal statements, often for weeks. Kamal Thapa, with his explanations, is equally clear against the unanimous statements of the two constitutions, that have served as a legal basis since January 2007. In principle, Thapa wants to undo the few positive achievements that are actually still more on the paper than they were implemented: The abolition of monarchy and Hindu state, secularism and the federal state, that has hitherto been merely indicated. Nevertheless, Thapa is not contradicted by the great parties and he is not arrested, in contrast to Raut. Instead, he is everywhere courted and flooded with appointments. At the same time, one should not forget that he has had a great political responsibility for the about 20 deaths and thousands of injured people of the 2006 popular movement, during which he had called the police to a particularly hard penetration as the Minister of Interior of the revolting king.

### **Power, not content**

The cooperation with Kamal Thapa once again makes it clear that Nepal's politicians are not concerned with content at all. The access to power associated with access to inexhaustible funds, is the only interest of the leading politicians, no matter from which party. Promises to other groups or parties, whether written or verbal, will not be implemented anyway, as Dahal's promise towards the NA parties of August 2016 has once again proved. Who shall believe in these politicians or even trust them at all?

In this connection, the two major problem areas which have been unresolved for years are also to be mentioned. The victims of the ten-year Maoist insurgency and the royal coup continue to wait for justice. The leading politicians, however, have no interest whatsoever in the latter. They only want to

remain unmolested, no matter on which side they stood during the conflict and which responsibility they have to bear. It is enough for them to occasionally give the impression that they care.

The second problem area concerns the reconstruction following the heavy earthquakes of 2015. Here, the inaction and disinterest of the leading politicians is similar to the conflict resolution. There is only interest in functions and positions that can be given to party officials. After that, they are usually not very interested in the implementation and effectiveness by these mostly incompetent persons in charge. Verbally, the politicians come down generously and announce every kind of aid. But the affected people do not get much and if at all, then at snail's pace.

### **How can Nepal escape this misery?**

Nepal's leading politicians after 1990 have all failed, some of them several times. None of those who have pushed themselves into positions of power has fulfilled his task satisfactorily. There is not only a relentless struggle between the various parties, but also within them. Cleavages, almost divisions and mergers are a daily fare. None of the larger parties has been spared. It is never a question of content. The real reason is always the fighting for power by certain so-called leaders (in the Nepali: *neta*) who do not really deserve this title.

Here is another example. In 2016, Baburam Bhattarai split from the Maoist party and founded a new party, Nayan Shakti Nepal. Recently, he has been working closely with the NA parties. It did not take long, however, and there arose differences within his new party. Obviously there are many in this circle as well, that are concerned with the preservation of traditional structures. They, too, have probably only hoped to gain access to posts and funds over this new party that had not been fulfilled before by the Maoist party according to their expectations. In a closer cooperation with traditionally excluded groups, this hope can hardly be fulfilled from their point of view now.

Deepak Thapa of Social Science Baha ([The Kathmandu Post, March 9, 2017](#)) has suggested that the apparently not co-operative party leaders should use the help of an independent mediator. Something similar had already been tried in vain in the past, but it would perhaps be the only way out now, if Nepal does not want to stand as a failed state soon.

In the period in which the transition process has to be concluded as prescribed by the new constitution, i.e. until 20 January 2018, this will not be possible. It is important not to start with some cosmetic changes, but with the main cause of the unrest of the last one and a half years, the new constitution. Surya Subedi of the University of Leeds, one of the world's leading legal scholars on Nepal, has described this constitution as "a hotchpotch and adopted without building a consensus among the major political forces within the country" ([Kantipur, March 9, 2017](#)).

In contrast to the demand of the CPN-UML and now also to the strategy of the government parties, a fundamental revision of the constitution must take place, that reflects the concerns and interests of all social groups, as the transitional constitution had prescribed. A major component of this comprehensive constitutional change must also be the well conceived and complete structuring of the federal state. All concerns, that poison the harmony of the Nepalis in the long run, must be discharged once and for all. In other words, the inclusive secular and federal republic must be the inviolable fundamental ideal of the state, that must never be questioned again.

It is only when the Constitution has been ironed out in this way that further steps can be taken: administrative creation of the federal provinces, restructuring of the local level (that just already has been done but is still discussed) and elections on all three levels of the system. On the basis of a cleanly designed constitution, the latter should no longer represent a major problem.