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Nepal's politicians and the rule of law

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On March 30, 2016, the EU and India published a joint statement after a summit meeting in Brussels. Point 17 of this statement was related to the situation in Nepal. The EU and India pledged continued support to Nepal in its reconstruction efforts following the devastating earthquakes in 2015, including capacity building and long term development. But they also agreed on the need for a lasting and inclusive constitutional settlement in Nepal that will address the remaining constitutional issues in a time bound manner, and promote political stability and economic growth.

Nobody referred to the promised continued support offer to Nepal, but Nepalese government vehemently offended the critics in the constitutional procedure. The Ministry of Foreign Affairs verbally claimed: "The EU-India joint statement not only hurts the sentiments of the people of Nepal but also defies the fundamental principle of non-interference in internal affairs of a country. The constitution of Nepal was democratically drafted accommodating aspirations of the people of Nepal"

Two things in this statement are misleading or even wrong. First, many people have been dissatisfied with different parts and regulations of the new constitution and the way it has been written. These sections of society have definitely not been hurt by the EU/India statement but they may even feel happy about this support of their own critics.

Secondly, it is unbelievable that MoFA claims the new constitution has been democratically drafted and accommodates the aspirations of the people. The latter is always a problem as the aspirations have been very diversified in this multi-ethnic, multi-cultural, multi-religious and multi-lingual state with its long history of non-inclusive unitary politics. Those participated in politics and other spheres of public life naturally had the interest to preserve their status and privileges as far as possible while underrepresented sections of society like women, Janajati, Madhesi, Dalits and Muslims anticipated fundamental changes as they had been promised by the traditional political Tagadhari elite time and again after 2006.

This brings us to the lie within the MoFA statement. Many principles that had to be followed while drafting the new constitution had been fixed by the Interim Constitution (IC) of 2007 and several agreements between the political parties among themselves as well as with the Nepali state. In a democratic state, political parties are bound to respect the rule of law. In this case was the interim constitution the basic law, that had to be obeyed by the government, the elected Constituent Assembly (CA) and all other political activists. Under the rule of law, it is the fundamental duty of the Supreme Court to interpret the constitution and subordinate laws and to safeguard the strict obedience of this constitution by the state executive and legislative.

The interim constitution had prescribed that the new constitution had to be drafted by the inclusively elected CA, not by the leaders of the big political parties. The latter are all part of the traditional political elite of male Tagadharis, especially Bahuns. By nature, their interests collided with the interests of the underrepresented groups of society. This is why the IC demanded that the CA had to be elected inclusively with respect to all sections of society and

that this inclusive assembly had to discuss and draft the new constitution as the foundation of an inclusive, secular and federal republic of Nepal.

The disregard of constitutional rules already started with the selection of candidates for the CA elections that according to article 63 of the IC had to reflect the composition of society in respect to the FPTP system as well. The parties violated against this article in 2013 even more than in 2008. Latest after the committees of CA I concluded their suggestions for the new constitution at the turn of the year 2009/10, the leaders of the big parties seized the task of discussing and drafting of the constitution from the elected members of the CA.

This disregard of constitutional prescriptions was continued under CA II as well. And this misconduct was committed by all the three big parties without much difference. Nevertheless, was a new constitution not in sight, when the big earthquakes happened in spring 2015. The top leaders of the three parties forgot their differences of opinion on many issues of the new constitution only after they recognised that their public image declined dramatically because of their total failure after the earthquakes.

So, they openly placed themselves as overlords of the country, disregarded all constitutional rulings and prior agreement and even told the Supreme Court to shut up when it criticised their unconstitutional procedure on the new constitution claiming this was a political affair in which the SC not had to intervene. In a democratic state is the decision of the SC a binding law that has to be respected by executive and legislative, but obviously not so in Nepal.

Along these lines has the new constitution been drafted by a handful of traditional male leaders. The following discussion of this draft by the general public was a farce as the majority of the people did not get the chance to have their say. Not even the representatives of the traditionally excluded sections of society within the CA were allowed to suggest necessary changes of the draft but had to follow the voting order of their party leaders. Besides, the voting was not secret so that everybody could recognise dissenting MPs. Yes, MoFA, this constitution was democratically drafted, indeed!

The consequences of this continued disregard of the rule of law by government and leading politicians are well known. To hold the whole state as hostage and causing much suffering to the people, as was the reaction of the angry Madhesi groups in the Tarai, was not the right way, and also the support and extension of this blockade by India was reprehensible and a violation of international law against the suffering people of Nepal. But primarily responsible for all this have the leading politicians and their non-understanding of democratic rules, their duties and the needs of the country. How else can be explained that they still deny justice to the victims of the conflict, that they do nothing for the reconstruction of the country, that they hardly invest in urgent development projects as planned in the budget and that they still favour committed criminals and corrupt persons among the top leaders of their parties? Secularism is once again under discussion. Federalism only exists on paper and has hardly been discussed after the promulgation of the new constitution. The country is still ruled by the same old circles of male Tagadharis that have failed time and again. Many other things could be mentioned as well. The rule of law looks different. Failed politicians like Nepal's top political leaders have to be criticised for all this from inside and from outside of the country in support of the sentiments of the majority of the people of Nepal.