

# Nepal Observer

An internet journal irregularly published by Nepal Research  
Issue 57, May 4, 2019

ISSN 2626-2924

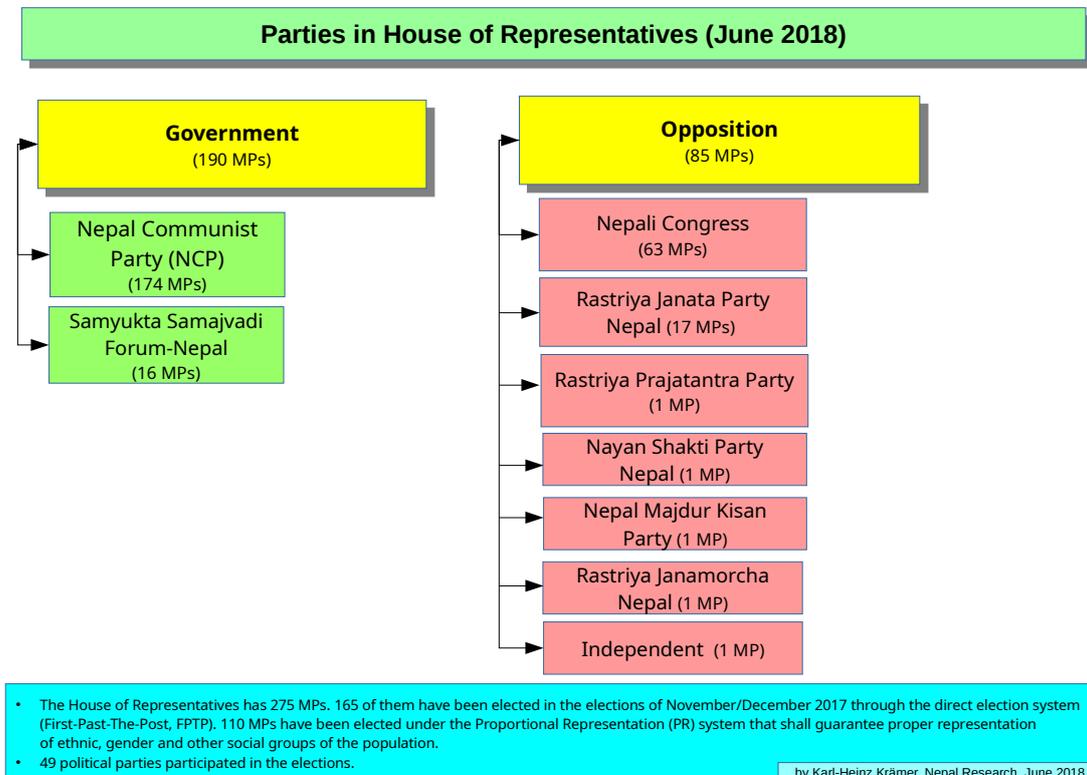
## Democracy and the Rule of Law in Federal Nepal

Lecture on the Nepal Day of the German-Nepal Friendship Association, 4 May 2019

By Karl-Heinz Krämer

In view of the limited time frame, I will restrict myself to a few aspects of this very complex topic. Please understand in advance that I cannot consider many other very important matters. I am well aware of this inadequacy.

My aim is to give an overview of the political developments since the last Nepal Day. I would like to start with a short analysis of the government's work. I will also talk about the development of the federal state, the human rights situation and the ongoing issue of corruption. I would also like to mention the opposition. Last but not least, I will briefly discuss four conflicts in which I see a serious threat to the secular and federal republic, which is still in its early stages. As I see the role of the media in modern Nepal in a predominantly positive light, contrary to the government's view, I have decided to underline my presentation with a few cartoons rather than listing headlines.



Let's start with the government. Based on the November/December 2017 election results, Khadga Prasad Sharma Oli was elected Prime Minister by an overwhelming majority on February 15, 2018. The disciplined electoral alliance of his CPN-UML with the Maoist Centre had given the two left parties an almost two thirds majority in the House of Representatives. In May last year, these parties formally merged into a single party, the Nepal Communist Party (NCP). With the Federal Socialist Forum, a collection of ethnic and Madheshi parties, a government partner was found who perfected the two thirds majority. The second Tarai party in parliament, the Rastriya Janata Party Nepal (RJPN), also supported the government for some time without officially joining it. Negotiations are currently underway to merge the Baburam Bhattarai's Nayan Shakti Party with the Federal Socialist Forum, the RJPN and the Janamukti Party. This could create a third force that would have about half as many MPs in the House of Representatives as the main opposition Nepali Congress (NC).

In view of its large parliamentary majority, the NCP government cannot actually be overthrown from outside, which could be a good basis for political stability that has been lacking for so long. But problems can arise from within the party itself. These include, for example, the Prime Minister's extremely weak performance in his first year in office, the competition from his co-chairman Pushpa Kamal Dahal and, in particular, the fact that the two left-wing parties were united only from the top and that there can still be no evidence of a socially inclusive party. Although the party has recently asserted that the merger has now been completed at all levels, there are doubts about it. A real unity still does not characterise the NCP.

But the overwhelming majority also has its downsides. PM Oli has to put up with the justified accusation of authoritarianism. It turns out that he wants to keep the entire state apparatus firmly under his personal control and that of his party. Besides, the sometimes hours-long blocking of roads and airports, when used by leading politicians, is a detached and downright arrogant behaviour, which was taken over from the former monarchy and which labels the frustrated citizens and tourists as second-class people.

### Government's most urgent tasks

I would like to mention two of the outstanding tasks of this government.



[Source: [https://de.wikipedia.org/wiki/Datei:Provinces\\_of\\_Nepal\\_german\\_2018.svg](https://de.wikipedia.org/wiki/Datei:Provinces_of_Nepal_german_2018.svg)]

(Federal State): First of all, there is the federal state. The elections at the end of 2017 gave politics new legitimacy, but they alone do not mean that Nepal now has a federal system. This would have required the immediate creation of the legal foundations, which has largely been neglected until now. The new constitution provides a detailed catalogue of the responsibilities of the three levels of the federal system (central level, provinces, local level), but at the same time it also mentions many overlaps. This should have been clarified.

Even more serious is the continuing lack of clarity about the distribution of resources. For example, inappropriate double taxation has repeatedly occurred, or the provincial and local levels still face decisions by the central level that, according to the constitution, actually fall within the competence of the lower level. The latter often does not have the necessary funds to fulfil the tasks provided for by the constitution. Above all, there is a lack of continuous dialogue between the three levels. The national level continues to see itself as fully empowered to issue directives.

The outside observer even has doubts as to whether the leaders of the national level are still behind the federal system that they praised as the country's future system after the royal putsch in 2006. Not even the names of the provinces and the names of their respective capitals, which should have been determined by the provincial assemblies by August 2018 at the latest, have yet been determined for all the provinces. If one looks at what the elected provincial assemblies have achieved so far, it is not much more than nothing. The recent threat by Pushpa Kamal Dahal, co-chair of the NCP, to overthrow the government of Province 2 (the only province in which the NCP does not have a majority) suggests that Nepal's leading politicians have not understood the principle of federalism.

The idea of federalism was based in particular on the demands of ethnic and Madhesi groups for greater inclusion and decentralisation. Virtually nothing of this has been implemented to date. This bears the danger of further increasing dissatisfaction among large sections of the population.

(Post-earthquake reconstruction): The second task of the government I would like to mention here is post-earthquake reconstruction. Just now, the fourth anniversary of the severe earthquake of 2015 has passed. Reconstruction is still extremely slow. The Reconstruction Agency (NRA), like all the country's institutions, is politically staffed and has proved to be incompetent since its creation. It has just announced that a further 3.5 billion euros will be needed for reconstruction, i.e. roughly as much as the international community has already pledged as aid in 2015, of which only a part has been called up to date. Only a portion of the aid of Rs. 300,000 intended for the affected families has still been received by the people. Those who did not want to continue living in emergency shelters had to borrow expensive money. At the same time, the inflation rate over the past four years has caused construction costs to rise by an additional 20 percent. The latter applies to all still unfinished construction measures, including in particular numerous destroyed cultural monuments.

## **Human rights**

(Transitional Justice): Today, I have to speak in particular about the human rights situation, which has deteriorated significantly under the NCP government. Justice for the victims of the 10-year conflict would have been another priority task for the government, a process in which all governments have failed since 2006. A reappraisal of the crimes committed during the civil war is clearly not intended. The commissions set up for this purpose years ago lack legal basis, resources, staff and time; their new appointments have been on the ropes for weeks. Repeatedly offered international support is strictly rejected as external interference in internal Nepalese affairs. But the perpetrators of the past sit in government, parties, authorities, security forces etc. and now want to provide justice for the victims. What can we expect?

(Freedom of the media and information): The Oli government has been particularly negative in curtailing the fundamental right to freedom of information and expression. Freedom of the media and freedom of demonstration have been drastically restricted. Criticism of the Prime Minister and the government, including through social media, is threatened with punishment (example: a man was arrested because he showed the PM a black flag and was only released after 10 days after

the SC intervened). At the same time, the political parties (and this applies to all of them) cover up and court criminal elements. Convicted criminals or people accused of participating in crimes are given party functions, nominated as candidates in elections and even sworn in as “people’s representatives” in parliaments.

(Fundamental rights/women’s rights): In this context, there are other fundamental rights to which insufficient respect is paid. In particular, women’s rights continue to be severely restricted in Nepal, which remains an extremely patriarchal country. Against the background that the male leaders of Nepal refuse to accept women as fully equal citizens, a highly differentiated citizenship law has been created, which continues to this day the traditional discrimination against women and their children, if the father does not have full Nepalese citizenship, including countless discriminations. The annual human rights report of the American Department of State speaks of well over 5 million people in the country without citizenship.

Even the rights enshrined in the constitution and subordinate laws for better participation of women are simply disregarded, for example by the ruling NCP in appointing the functionaries after the merger of the two left parties. Violence against women is rampant, at least the media report about it intensively, but their prosecution is often politically prevented.

The new constitution contains numerous provisions for better inclusion and participation of traditionally excluded social groups (Janajati, Madheshi, Dalits, Muslims and women in general). However, the composition of the government, parliaments, party leaders and virtually all public institutions continues to speak a distinctly different language.

By the way, the law on the National Human Rights Commission (NHRC) is also under discussion in these days. A government bill aims to have the Commission monitored by the government. This would turn its task upside down. Apart from that, all the governments of recent years have paid little attention to the reports and directives of the NHRC. Nepal’s handling of fundamental human rights still does not match its status as an elected member of the UN Human Rights Council (2018-2020).

## **Corruption**

Corruption, the containment of which was a declared goal of PM Oli, is becoming increasingly widespread. Although well-known personalities are more often convicted of corruption (striking example: the head of the anti-corruption authority; this makes you speechless!), these people can then buy themselves out again with a small amount of the money evaded as bail. On the positive side, I would like to classify the relevant reports and comments in the media, even though, however, the political pressure on these media becomes clear as well. (Example: A journalist from Pokhara was recently arrested and brought to Kathmandu, because he had proved the corruption behaviour of a leading businessman by investigative journalism and had reported about it in his newspaper.)

## **Opposition**

Let’s come to opposition. In the national parliament it consists almost exclusively of the Nepali Congress. In numerical terms, this party is clearly inferior to the NCP, but in the course of the past year the NCP has repeatedly provided it with a steep template for constructive opposition work. Unfortunately, the NC has disregarded this and for more than a year now has preferred to deal with self-destruction.

This is due to the squad of old party leaders, who have all repeatedly failed miserably in the past, but continue to cling to their posts vigorously. A prime example is the party chairman, Sher Bahadur Deuba, who has already failed four times as prime minister. He is already in his mid-70s and, despite everything, is firmly convinced that the future of the party is inextricably linked to his person. There are some hopeful younger politicians within the party who could help the NC to regain a better reputation. Ultimately, the NC lost the 2017 elections in a landslide only through the

direct election system and because of the electoral alliance of the then two left-wing parties. The party was not that far behind in the second votes.

### **State integrity**

(CK Raut): Finally, I would like to briefly address four issues which pose a threat to internal security and the constitutional foundations of the state. On the one hand, there are independence aspirations in the Tarai, as they have been expressed for years by Dr. Chandra Kanta Raut. So far this has been done rather verbally and not militantly, but Raut has been arrested repeatedly, even under previous governments. In March, PM Oli reached an agreement with Raut, the content of which is controversial. Oli sees this as Raut giving in, while the latter talks of Oli's agreeing to a referendum on the independence of the Tarai. Significantly, immediately after this agreement, Raut founded a new Tarai party called the Janamat Party, referendum party. The further development remains to be seen.

(Hindu state): Similarly unconstitutional and threatening are the demands for a return to Hindu state and monarchy. Such demands have been made for years by the various factions of the National Democratic Party (NDP), the assembly of the politicians of the former non-party Panchayat system, (and of course occasionally by the deposed King Gyanendra), without this leading to any arrests. The NDP was only able to secure about 2% of the second votes in the elections, which does not support its demand. It is worrying, however, that a very large number of the leading politicians of the main opposition party Nepali Congress are now calling for a referendum on this issue as well, including their Secretary General. But with a renewed link between state and religion, the rights of the traditionally excluded groups would again be reset to the level of 1990 at most. The entire Maoist uprising and its few striking achievements would become meaningless in one stroke. But Nepal is a multi-ethnic, multicultural and multi-religious state, which was only gradually accepted after 1990. Secularism, which was still denied in the 1990 constitution, is therefore a prerequisite for the country's peaceful future and must not be called into question.

(CPN): The Communist Party of Nepal (CPN), the remaining radical wing of the Maoist party under its leader Netra Bikram Chand, is directed not only against these two movements, but also against the constitution in its present form. This party had already attracted attention in the elections at the end of 2017 through militant attacks, which it has recently intensified again. The Oli government is not only prosecuting these crimes, but has now outlawed the entire party. This approach is very controversial among constitutional experts. We know from our own country that it is not easy to legally ban a radical political party. In any case, hundreds of CPN politicians have been arrested in recent weeks; the number of attacks has decreased. But even the beginnings of the Maoist movement were militantly suppressed by the state in 1995 (then under PM Deuba), as you know, it didn't do any good.

(Foreign policy): Finally, I think a few foreign policy remarks are appropriate. Until a few years ago, Nepal was extremely oriented towards its southern neighbour India. This has changed dramatically with the rapidly growing interest of China and its global policy (let me just mention the Road & Belt Initiative). Nepal is thus opening up new opportunities, but the country must manage the balancing act between its own independence and neutrality on the one hand and excessive dependence on one of its two major neighbours on the other. What the latter can mean has been demonstrated in the past in various economic blockades by India. The third factor that has recently come into play more strongly is the US, which is pushing for Nepal's participation in the Indo-Pacific security alliance. The latter, however, is based primarily on American interests and also differs from India's interests. I think Nepal should, in the sense of "Nepal first", preserve its own independence through friendly and balanced relations with both major neighbours and not allow itself to be drawn into the American-Chinese rivalries.