

# Nepal Observer

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## A country between power politics, corruption and Corona fears - And what about the constitution?<sup>1</sup>

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When Khadga Prasad Sharma Oli was elected Prime Minister on 15 February 2018, there was great hope that Nepal would finally find political stability in the face of a narrow two-thirds parliamentary majority. Oli raised hopes for a major boost to the country's development, even though it was clear that many of his promises were utopian and could not possibly be realised in the time announced. Another important promise Oli made was that he would fight any kind of corruption and that he would not tolerate such corruption especially within his government and administration.

A good two years after the superior election victory of the Nepal Communist Party (NCP) in the parliamentary and provincial elections, the reality looks different. No progress has been made in concluding the peace process that has been underway since 2006. Urgently needed laws to implement the federal state are not being passed. Fundamental rights, such as freedom of expression, information and media freedom, are being restricted. Corruption and criminal offences are on the rise among the government and elected representatives of the people. Laws are largely waved through parliament in the form in which they are introduced by the government without sufficient discussion. The constitution usually even prescribes feedback from the public.

### Peace process

The peace process, which has been underway since 2006, has not come to a conclusion because neither the ruling party nor the already very weak opposition party, the Nepali Congress, nor the army leadership are interested in coming to terms with the crimes committed during the Maoist insurgency (1996-2006). The Nepalese state has set up two commissions - the Truth and Reconciliation Commission (TRC) and the Commission of Investigation on Enforced Disappeared Persons (CIEDP) - to collect and investigate the victims' complaints in this regard. Apart from the fact that these commissions have not been given sufficient staff, resources and time from the beginning, the state's entire approach to them shows that there can be no doubt that these commissions are not intended to bring justice to the victims.

There are two aspects alone that prove this: The legal basis created for the work of the commissions is not based on international law, but on the interests of possible former perpetrators. The key word is reconciliation instead of justice. Both Nepal's Supreme Court and the United Nations Human Rights Council in Geneva had therefore called on the government to change the legal basis of these commissions. It was also criticised that the decisions on the legal basis as well as on the procedures and, in particular, the staffing of the commission are made by persons who in part belong to the circle of potential perpetrators. In such circumstances, how is justice to be created for the victims? After an interruption of almost a year, new Commissioners for the two Commissions were finally appointed in January 2020, again without adequate consultation and

1 An earlier German version of this article is going to be published in the journal Südasiens 40,1

participation of victims' representatives and without changing the legal framework. In the district of Rolpa alone, which was part of the original core area of the Maoist uprising, 34 of the original 132 submissions to CIEDP have now disappeared without trace. Obviously there are political forces here that are very keen on this.

### **Crime and corruption**

The everyday behaviour of leading politicians also illustrates the proximity of politics and crime. Persons against whom legal proceedings for serious crimes are underway are nominated as candidates in elections and then sworn in as parliamentarians. Others are promoted to leading positions, especially in the security forces. A striking recent example is the nomination and election of Agni Sapkota (NCP) as Speaker of Parliament by the ruling party, despite a murder case being brought against him. Such an approach does not fit in with any democratic constitutional state. Politicians in the executive branch simply do not feel bound by judicial verdicts and processes. The idea of separation of powers is unknown to politicians.



*Agni Sapkota after being elected as new Speaker of Parliament (Kathmandu Post, 8 February 2020)*

At the beginning of October 2019, Krishna Bahadur Mahara (NCP), the then Speaker of the House of Representatives, was arrested after a female staff member of parliament known to him had reported him to the police for attempted rape. The woman later stated that she had been forced by the police to report the incident. In February 2020, Mahara was acquitted by the District Court in Kathmandu. A detailed statement of the reasons for the verdict is still pending, but no proceedings were initiated against the woman for possible false testimony.

A few days later, Gokul Baskota, Minister of Communications and Information Technology and Prime Minister Oli's closest confidant in the Cabinet, was forced to resign after audio recordings of a telephone conversation suggested that the minister was involved in corruption attempts in connection with the award of a contract to build a security printing centre. Baskota had previously distinguished itself as Oli's main henchman in the suppression of the press and social media.

## Shortcomings of political parties

What is the perspective? The already very authoritarian Prime Minister Oli just had to undergo a second kidney transplant. The doctors say that he will be able to resume his full duties in 6-12 months at the earliest. After only 12 days in hospital, Oli returned to the seat of government in Baluwatar in mid-March and tried to pretend that he could immediately resume his official duties in full. Quickly, however, things became quieter around him and the deputy prime minister Ishwar Pokharel led from now on the cabinet meetings.

On 26 March Oli had to return to the Teaching Hospital of Tribhuvan University, where the kidney transplant had been conducted, due to a high heart rate, but was discharged the next day. All this does not prevent him from holding on to his post. However, since the old guard of party leaders has failed several times and in all parties no chance is given to a younger and socially inclusive generation of politicians, alternatives are hardly in sight, according to the unanimous opinion of representatives of the NTTP Institute (Nepal Transition To Peace), with whom I was recently able to speak in Nepal.



*PM Oli after his release from hospital (Kathmandu Post, 14 March 2020)*

All parties are dominated by predominantly male Bahuns (Brahmins), who make up only about six percent of the total population, and are divided into several factions. A better inclusion of the Janajatis (ethnic groups), Madheshis (Indian-born population of the southern lowlands), Dalits and especially women is still not in sight. Power struggles within the party between a few party leaders largely prevent a demand-oriented policy.

## Constitution and rule of law

The realisation of the constitution adopted in 2015 is making only slow progress. In particular, the implementation of the federal structures and their legal regulations is difficult. Even such trivial things as the naming of the seven provinces, which according to the constitution should have been completed by August 2018 at the latest, remain controversial in some cases. Provinces 1, 2 and 5 still have no name. The background is also that the predominantly high-cast male politicians want

to avoid any ethnic or historical reference when naming them. The provincial names Bagmati (3), Gandaki (4), Karnali (6) and Sudur Paschim (7, Far Western), which have been assigned so far, all have a geographical reference.

Leaders are not interested in the principles of the rule of law. For example, at the beginning of March, one third of the members of the National Assembly were newly elected on the basis of a two-year cycle. This 59-member second chamber of parliament is intended to represent the provinces and the local level at the national one. The Constitution stipulates that three of these 59 MPs are to be nominated by the President on a proposal from the Government. The latter is required to take into account only persons from under-represented social groups or deserving public figures. The outgoing nominated member of the National Assembly was Dr. Yubaraj Khatiwada, the current Minister of Finance, a former Governor of the State Bank. Prime Minister Oli would have liked to nominate him again, but met with opposition from his co-chairman Pushpa Kamal Dahal, who insisted on nominating Bam Dev Gautam. He is a male Bahun, i.e. a member of an overrepresented minority, who has distinguished himself in the past by being repeatedly rejected by voters in elections, including the parliamentary elections of 2017. Another "merit" is that in 1998 he split the then CPN-UML out of personal striving for power, thus preventing a clear victory for this party in the parliamentary elections of 1999. The internal party dispute continues. Although Oli has again made Khatiwada Minister of Finance, this is only possible for a non-member of parliament for a period of six months.

Patriarchal thinking also continues to play a major role. Thus, Article 10 of the new constitution guarantees all citizens the right to Nepalese citizenship. However, a distinction is made between citizenship based on descent and so-called naturalised citizenship. Previously, the right to Nepalese citizenship on the basis of descent required the father to be a Nepalese citizen. Now, Article 11 (2) states that any person is entitled to full Nepalese citizenship if his or her father or mother were Nepalese citizens at the time of birth.

Nevertheless, gender discrimination has not really ended. For example, Article 11 (5) states that a person born of a Nepalese mother whose father's origin is unknown shall first receive Nepalese citizenship on the basis of descent. However, if it later turns out that the father is a foreigner, the original unrestricted Nepalese citizenship is withdrawn and converted into a naturalised citizenship.

As before, foreign wives of Nepalese men are to receive naturalised Nepalese citizenship without any problems if they so wish. The new constitution is silent on the possibility of foreign men married to Nepalese women acquiring Nepalese citizenship. Here again the patriarchal way of thinking becomes clear: The woman is only limitedly an independent being. If she marries, her membership in her own family ends and she becomes a member of the husband's family. If the man is a foreigner, the woman is no longer really Nepalese. The unrestricted right to citizenship continues to be held by men only. As a result of these state laws, there are now a large number of people in Nepal without official citizenship; the US Department of State, in its recently published report on the human rights situation mentions six million of the over-fifteen-year-olds. Recently, the government talked about forcing pregnant women to marry the father of the child growing in the womb, a human rights nonsense that can only come from extremely patriarchal thinking. There can only be one solution: The children of Nepalese women or men are entitled to unrestricted Nepalese citizenship; a possibly different nationality of the father of the child may not play any role at all.

### **Lack of social inclusion**

Although the transitional constitution and subordinate laws guarantee basic economic and social rights, the vast majority of Nepalese still do not have access to adequate food, clothing, shelter, health care and employment. Development policy and planning have not sufficiently identified the root causes of poverty (inequality, social exclusion, discrimination). Despite certain improvements, there is still a long way to go before the right to development and consumer protection, the rights of sexual minorities and people with disabilities and the right to information, for example, can be achieved.

Although the Hindu state has been abolished, its basic structures still underlie the ways of thinking of the high-caste male elite. This is also reflected in some articles of the new constitution and in subordinate laws, with the result that economic, social and cultural rights of traditionally discriminated population groups are still restricted. As a result of traditional practices (notions of ritual impurity in connection with menstruation and child birth, marriage of children, accusations of witchcraft), the human rights of women are not respected in many respects. A comprehensive legal framework to combat violence against women and human trafficking is lacking; existing laws are insufficiently implemented. In addition, human rights and women's rights activists are exposed to threats and violence by the police and by private individuals whose actions are primarily aimed at compensating the victims. However, there is a high degree of impunity with regard to the acts committed.

Traditionally excluded groups - Janajatis, Dalits, Madhesis, Muslims and women in general - continue to face massive discrimination. Legally prescribed quota systems in the filling of leading positions in state and politics are generally disregarded by the male party elites. The fact that after the new constitution came into force, the offices of president, speaker of parliament and chief justice were filled by women is deceptive in that women hardly appear in the executive sector, which is decisive for power. Even the excuse that there are not enough qualified women for the posts to be filled is constructed. On the one hand, the then preferred men constantly prove how unqualified they are too, on the other hand this suggests the claim of the ruling elite that only male Bahuns are really qualified for leading tasks in state, administration and politics. How different is it to explain, for example, that more than half of the current Council of Ministers are male Bahuns? Why was Dr. Shiva Maya Tumbahangphe, the deputy speaker of the parliament until then and a graduate political scientist, who belongs to the Limbu ethnic group, not considered qualified for the position of speaker of the parliament? Why was preference given instead to a person whose lawfulness is in doubt? Why, when new posts are to be filled, are four out of five people proposed regularly male Bahuns?



*Shiva Maya Tumbahangphe during her time as Deputy Speaker of Parliament (The Kathmandu Post, 12 January 2020)*

Nepal is fortunate to be a multi-ethnic state, home to many cultures, religions, ethnicities and languages. Pride and national identity should be based on this diversity. Unfortunately, Nepal is still

far from this. Even the claim of great tolerance, which was already popular in Shah times, is misleading. On the one hand, it has never really existed, but on the other hand the term tolerance also expresses a certain feeling of superiority of a group. It was always meant that the ruling elite was supposedly tolerant of the otherness of other groups by tolerating this otherness. But this otherness is not an aspect to be tolerated, but a fundamental right.

In the multi-ethnic state of Nepal, it must not be a matter of tolerance towards non-Hindus, non-Nepali native speakers or non-males, for example, but of equality and recognition of all social groups, in short, of inclusion. After the end of the Maoist insurgency, the creation of an inclusive, secular and federal republic was promised. The country is still far from this.

### **The corona virus and its effects**

The corona virus is also increasingly keeping Nepal on its toes. Politicians and administrators are finding it difficult to deal with the situation appropriately, but they are not alone. The situation is similar in most countries of the world. There have been a number of suspected cases in recent weeks, but the results of the investigations have all been negative, with the exception of a single, healed case of a 31-year-old student who returned from Wuhan in January. In the meantime (27 March) three cases of infection have already been reported.



*Disinfecting travellers arriving at Tribhuvan International Airport in Kathmandu (The Kathmandu Post, 13 March 2020)*

Nevertheless, the fear of the virus appearing in Nepal is more than justified, not only because of its immediate vicinity to China, but also because of international travel. The cooperation between China and Nepal has increased in recent years. China is involved in a whole range of major development projects, such as power stations and airports. For this reason, many Chinese professionals are in Nepal, commuting between Nepal and their home country. How should this be dealt with? Recently, 71 Chinese workers involved in the construction of the new regional international airport in Pokhara were quarantined on their return, despite having been issued health certificates in China. The number of Chinese tourists has also increased dramatically. Here, China is in the process of overtaking India as the leader.

On the other hand, there are also more and more Nepalis who are in China for professional

reasons or to study. In Wuhan alone, the centre of the epidemic outbreak, 175 Nepalis stayed. After long hesitation, they were evacuated to Nepal in mid-February by order of the Nepalese government. Here, too, all examinations during the subsequent 14-day quarantine were negative.

The people's concern is based in particular on the distrust of their own government and administration. Verbally, the authorities claim to have everything under control. In practice, however, all the precautions taken so far have proved to be rather lax. At Kathmandu airport, for example, a health counter was set up in the corridor immediately before passport control, but at the beginning of February, not even travellers who had just arrived from China were checked there. When my wife and I arrived from Istanbul two weeks later, the counter was unmanned.

Nepal has a total of 129 border crossings with India and China. In mid-March, we were told that 41 of these would now be equipped with health checkpoints. India, for its part, wanted to close the smaller border crossings to Nepal completely for the time being; border crossings by travellers from third countries were completely banned.

Very hesitantly, the government has set up a few quarantine centres, which may be sufficient for a few suspicious cases. But even there the authorities are not aware of the seriousness of the situation. Thus, a man suspected of having the disease was not prevented from leaving the quarantine station in Kathmandu and going to his home province, where he went to the quarantine centre there. Fortunately, this case also proved to be negative.

In a next step, the government called on people to avoid mass gatherings, wash their hands thoroughly and disinfect them, cancelled meetings and other events and urged people not to participate in cultural festivals such as Holi, sometimes with limited success. Then the government ordered a nationwide closure of schools; the end-of-year exams were also postponed indefinitely. The parliament was also closed for an initial week.

### **Total shutdown of the country**

Starting on 24 March, the government finally ordered a complete nationwide shutdown of all public life for initially one week, almost simultaneously with the announcement of further positively tested corona cases. The country was completely sealed off from the outside world. All international air traffic was banned. Border crossings with India and China have been closed, not only to foreigners but also to Nepalese citizens. This happened at a time when a similar closure was under way in India. Many Nepalis staying in India gathered tightly together in front of the closed border posts. As restrictive measures were also taken in the main destination countries of labour migration because of the corona pandemic, many Nepalese migrants tried to return to their homeland. However, this too was no longer possible due to the suspension of air traffic. Legal experts described the quasi-exile of Nepalese citizens as a serious violation of the constitution and fundamental rights. On 25 March, however, the Supreme Court, which was called upon to clarify the matter, refused to issue an interim order against the government measure. Nevertheless, the government allowed the people waiting at the border crossings to enter the country and placed them in quarantine camps.

In the inland, the closure of the country meant a total paralysis of public life. It was no longer possible to travel by public roads and soon also by domestic airways. People were urged not to leave their homes any more. Urgently needed supplies and visits to doctors, pharmacies and banks were still allowed. The same applied to the shipment of goods, but the transport of goods from India, on which Nepal is still extremely dependent, came to a virtual standstill due to the closure of the border crossings and the simultaneous internal Indian blockade.

People were encouraged to do their work from home if at all possible. Some of the pupils, especially those who were supposed to take their final exams after the 12th grade in these days, were offered exercises via the Internet, which meant that the young people living in rural areas were again discriminated against because the Internet did not really exist there.

The police massively controlled the compliance with the government orders. Many private cars were taken out of the streets because they had violated the ordered measures. In many cases, however, the police also punished behaviour that fell under the exceptions. One of the first victims

of the shutdown was the local agricultural market. Due to the disrupted transport facilities, the products can no longer be transported to the markets and consumers.

Another side effect was that the shutdown led to a drastic restriction of the freedom of information. In view of the restriction of freedom of movement, including for journalists, many media were no longer able to fulfil their task. Numerous smaller weekly newspapers therefore stopped publishing immediately, while the larger publishing houses initially appeared with significantly reduced volumes. On 27 March, the Kantipur publishing house declared that it would also completely discontinue its newspaper editions for the next days.

Some 26.000 foreign citizens were also stuck in Nepal and could no longer travel back to their home countries. With regard to possible expiration of residence permits, the government was accommodating. Subsequently, several Western embassies entered into dialogue with the government in order to evacuate the foreigners from the country by means of approved special flights. On 27th March, 305 foreigners, mainly French and Germans, were evacuated on a special Qatar Airways flight.



*Tourists stranded in Mustang (Khabarhub, 27 March 2020)*

But what will happen if, despite all these drastic measures, the number of cases does not stop at a few and a corona virus epidemic really does occur in Nepal? We have discussed this with some people in Nepal. Basically, such a development is regarded as extremely dangerous. The government and administration are not trusted to be able to cope with such an escalation. This would fail not only because of the abilities of the authorities, but also because of the lack of equipment of hospitals, medicines and personnel.

The economic consequences are also enormous. Food imports are in principle no longer possible, although the government has now reopened two border crossings with China for the movement of goods. Thus the government declares that there is no reason for supply fears. But in Nepal, too,



people see things differently and are stockpiling supplies. Some traders take advantage of this and demand sharply increased prices. The government is trying to take action against this, but it seems difficult.

Even worse are the travel restrictions. Several million Nepalis work as migrant workers in other countries, particularly in the Gulf, Malaysia, India, South Korea and Japan. Many of these countries are themselves severely affected by the virus and are adopting protective measures. Qatar, for example, even before the total closure of Nepal, stopped the entry of migrant workers until further notice. Around 40,000 Nepalis are said to have been on home leave in Nepal at this time. Many migrants are likely to lose their jobs and a lot of money in this situation.



*Empty streets in Kathmandu's tourist hub Thamel (Kantipur, 14 March 2020)*

The so widely announced Visit Nepal Year 2020 must be declared a failure, even if the government has not officially expressed this so far. The number of incoming tourists in February alone has decreased by 21 percent compared to February of the previous year. At the beginning of March, Nepal stopped issuing entry visas on arrival at Kathmandu airport for nationals from the countries particularly affected (initially China, Iran, Italy, South Korea and Japan). On 9 March, this rule was extended to France, Spain and Germany. On 14 March, visa issuance at the airport was completely suspended. From 24 March onwards, tourism was finally stopped as part of the lockdown measures. It is needless to mention that all mountaineering expeditions for the spring were also cancelled. Instead of a hoped-for economic boost, Nepal will now have to expect heavy financial setbacks and job losses in 2020, especially in the areas of tourism and aviation.

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