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Oli's coup d'état, version II

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What at first sight sounded like a relinquishment of power by Oli on 20 May 2021 quickly turned out to be another attempt by the prime minister to hold on to power with ministerial posts despite the unfavourable result for him of the by-election to the National Assembly and the clear decision of the Supreme Court on the unconstitutionality of the reappointment of former Maoists who had defected to the UML. This was exacerbated by the call from the president, who was completely in Oli's thrall, to propose an alternative prime minister within less than 24 hours.

First step of the coup: call for the formation of an alternative government

The fact is that Oli had the audacity to get the President to take her step by invoking Article 76 (5). But Article 76 (5) cannot be invoked by the government for taking any steps. It is merely a provision of the Constitution if the incumbent Prime Minister loses the necessary second vote of confidence in the House of Representatives within 30 days on the basis of Article 76 (3 and 4) and is thus deemed to be voted out standing.

Oli had to realise on 20 May that he would hardly be able to manipulate opposition forces in such a way that he would receive the necessary majority of 136 votes in the second confidence motion in the House of Representatives required within 30 days. The fact that the dissident faction of the CPN-UML led by Madhav Kumar Nepal and Jhala Nath Khanal voted against the UML's candidate, former top Maoist politician Ram Bahadur Tapa, in the National Assembly by-election on 20 May probably contributed to this conclusion.

Both Oli's and Bhandari's actions should therefore be seen as another deliberate breach of the constitution. There have already been 13 petitions filed in the Supreme Court on this. Obviously, the two assumed that the opposition would not be able to agree on a common alternative candidate for the post of prime minister within such a short time.

However, this calculation by Oli and Bhandari did not seem to work. At noon on 21 May, the opposition parties or factions agreed on Sher Bahadur Deuba (leader of the Nepali Congress) as a common candidate. The NC, CPN-MC, Nepal/Khanal faction of the CPN-UML and the Bhattarai/Yadav faction of the JSPN collected 149 signatures, which would have been sufficient for Oli to be voted out.

This list of signatures was handed over to the President. Among those who delivered the list was Madhav Kumar Nepal, the main leader of the dissident faction of the CPN-UML. However, shortly before the opposition, KP Oli appeared before the President and declared that he had the support of 153 MPs, including all the MPs of the UML dissident group and the JSPN, which was verifiably a lie in this form. Although there were voices from the opposition UML faction around Madhav Kumar Nepal and Jhala Nath Khanal that raised some doubts about the correctness of the opposition's signature list, it is certain that the majority of the Nepal/Khanal faction was behind the opposition proposal. The same was true for JSP faction led by Upendra Yadav and Baburam Bhattarai. Finally, unlike the opposition, Oli could not present a list of signatures. Had Oli really known that 153 members of the House of Representatives were behind him, he could have easily asked for the necessary second vote of confidence. The very fact that he did not do so suggests that his numbers were faked. It also became known that Oli had initially tried to persuade the opposition to put him

back in charge of a joint national government. (<https://thehimalayantimes.com/nepal/before-heading-to-prez-oli-urged-opposition-to-let-him-lead-national-govt>)

The renewed machinations of Oli and Bhandari at a time when the entire leadership of the country was supposed to be trying to deal with the pandemic situation had obviously been the straw that broke the camel's back. This explains not only the opposition's sudden willingness to cooperate on a joint PM candidate, but also the fact that parallel calls had been made for the impeachment of the president.

According to Article 61 of the Constitution, the president has only two named duties: She is to work for the promotion of national unity and she is to respect and protect the Constitution. But this is precisely what Bidya Devi Bhandari has not done. Instead, she has gone along with every one of Oli's now numerous breaches of the constitution and the law, standing on her feet and without any qualms. She has thus made herself a compliant tool of Oli's policies aimed exclusively at maintaining his own power. In this sense, she was a servant of Oli and not of the people.

To initiate impeachment proceedings, Article 101 (1) would first need the votes of a quarter of the members of the House of Representatives. However, impeachment would then require the votes of two-thirds of the members of both houses of parliament. It is difficult to judge whether the majority ratios are sufficient for this. For the time being, I would attach more symbolic significance to the threat of such a procedure.

Second step of the coup: renewed dissolution of the House of Representatives

The changed situation on the afternoon of 21 May had dramatically altered the situation once again. With the presentation of a joint alternative opposition candidate for prime minister, Oli's power was in danger of collapsing. At the same time, the president also faced possible impeachment. Thus, Bidya Devi Bhandari, after receiving the opposition's list of signatures, declared that she would scrupulously examine both proposals and then decide. But in reality, preparations for the second part of the coup attempt were already underway.

At midnight, KP Oli had his Council of Ministers decide to dissolve the House of Representatives again, this time invoking Article 76 (7). His personal president Bidya Devi Bhandari immediately signed this decision. New elections must be held within six months according to the Constitution - a law otherwise hardly observed by Oli - and were therefore set for 12 and 19 November. This would guarantee Oli another six undisturbed months in office, during which he could do as he pleased without parliament. Necessary laws and other decisions would be signed by the president in the form of ordinances without any problems. Already on 18 May, Oli had philosophised about enacting the upcoming annual budget by ordinance, since he had abruptly ended the session of the House of Representatives and thus prevented the budget from being discussed and passed by parliament, the deadline being 29 May. (<https://kathmandupost.com/politics/2021/05/18/oli-mulling-budget-through-ordinance-as-his-vote-of-confidence-in-parliament-remains-pending>)

The renewed dissolution of parliament by Oli and Bhandari can hardly be surpassed in audacity. After the first dissolution of the House of Representatives on 20 December 2020, the Supreme Court had made it unmistakably clear to the Prime Minister on 23 February that such an action was unconstitutional, that he did not have the right to dissolve parliament at any time for the sake of maintaining his personal power. Express reference was made to the specific rules and procedures of Article 76 of the Constitution.

That he should have resigned because of this gross breach of the constitution did not occur to Oli. Not even the withdrawal of confidence by the members of the House of Representatives on 10 May was a reason for him to give up power. All opposition leaders, who are also primarily concerned with personal power and not with the country and its people, accommodated him with their inability to cooperate. However, Oli felt compelled to take action after it became increasingly unlikely, despite all attempts at manipulation, that he would be able to get the necessary number of 136 MPs behind him for the second vote of confidence due within 30 days.

When the above-mentioned and also unconstitutional attempt to appoint an alternative prime minister, whom he would prefer to be himself again, threatened to fail, Oli again decided to dissolve the House of Representatives despite the clear ruling of the Supreme Court.

At this point, a look at Article 76 of the Constitution is once again in order. Article 76 (7), now cited by Oli and Bhandari, comes into play only when all the previously mentioned options under this article have been unsuccessful. Specifically and in relation to the present case, this paragraph only applies when a Prime Minister, as in the present case of Oli, is appointed by the President solely on the basis of being the leader of the strongest party in the House of Representatives, but cannot successfully survive a vote of confidence within 30 days and is thus voted out.

In addition, Article 76 (5) provides that the opposition can then nominate an alternative candidate for Prime Minister, as was done on 21 May. The president has to appoint this alternative candidate as prime minister, but the latter also has to take a vote of confidence in parliament within 30 days. Only when all this has failed may the Council of Ministers then in office ask the President to dissolve the House of Representatives and set dates for new elections within six months.

Article 76 of the constitution is absolutely clear and leaves the prime minister and president no room for interpretation. In the government-owned newspaper Rising Nepal, however, Oli declares himself to be quasi above the constitution. He had realised that the opposition's sole aim was to force him out of office. This has left him no time to deal with urgent matters such as fighting the pandemic. The opposition has destabilised the country for a year. It has prevented both the government and the parliament from functioning effectively. Therefore, in order to save time, he had to act now in contradiction to the procedures of Article 76 (<https://risingnepaldaily.com/main-news/i-paved-the-way-for-alternative-govt-pm>). You cannot twist facts any more than this. This is Hindu political thinking and action at its purest. (<https://english.khabarhub.com/2021/18/183600/>)