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Prime Minister Oli is undermining the constitution: Rule of law and democracy at stake

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After months of intra-party power struggles, Prime Minister KP Oli, with the cooperation of President Bidya Devi Bhandari, dissolved the House of Representatives of Parliament on 20 December 2020 and called new elections for April and May 2021. The constitutionality of this action is not apparent at first glance. The Supreme Court is dealing with the case. Protests and demonstrations dominate the streets almost daily despite Covid-19. While Oli constantly tries to interfere in the court proceedings, the top politicians of the other parties vacillate between protests against the breach of the constitution and their own ambitions for power in case of early new elections.

Khadga Prasad Sharma Oli: a failed prime minister

When KP Sharma Oli was elected prime minister in February 2018 under Article 76 (2) of the constitution, he had the strongest parliamentary majority that any government had possessed since democratisation in 1990. This backing was further consolidated when his party, the Communist Party of Nepal - Unified Marxist Leninist (CPN-UML) merged with the Communist Party of Nepal - Maoist Centre (CPN-MC) to form the Nepal Communist Party (NCP) in May 2018. The party not only had a slim two-thirds majority in the House of Representatives, but also clear absolute majorities in six of the seven provincial assemblies.



Police attack peaceful demonstrators from academia and civil society (Source: The Himalayan Times, 25 January 2021)

repeatedly allowed corrupt practices even in his own cabinet and prevented prosecution. Posts throughout the public sector were not allocated on the basis of competence and aspects of social inclusion, but exclusively in the form of nepotism.

These would have been ideal conditions for the rapid implementation of the outstanding conditions of the constitution, the consolidation of the young democratic and federal system and the rapid and purposeful development of the country. However, Oli's promises, some of which seemed utopian and impossible to realise, quickly turned out to be slogans and airborne constructs that were not meant seriously.

It very quickly became clear that Oli was exclusively concerned with personal political power, the satisfaction of his clientele and unrestricted access to state coffers. Even serious health problems, culminating in a second kidney transplant, did not stop him. While the prime minister claimed not to tolerate corruption of any kind, he has since

By August 2018 at the latest, the names of all provinces and their respective capitals should have been decided. As of January 2021, this has still not been done for three provinces. Most of the constitutional

bodies envisaged have not been filled or have been incomplete since the constitution was adopted in September 2015, although Oli has now been prime minister for the second time since then. These constitutional bodies are supposed to help traditionally excluded social groups in particular to participate more in shaping the state.

But the commissions would of course also be capable of influencing government policy and therefore had to be deliberately prevented by Oli. His continuous suppression and denial of basic human rights fits in with this. The citizens' right to information and freedom of expression is fundamentally not recognised by Oli. In this context, freedom of the press and the right to demonstrate have been repeatedly restricted. People who criticised Oli's misguided policies via social media and occasionally expressed this satirically via cartoons have also been arrested.



Civil society protest in Kathmandu (Source: The Kathmandu Post, 25 January 2021)

The Oli government can also be accused of complete failure in the fight against the pandemic. Even the radical lockdown of spring was half-hearted and did not take into account the economic and social needs of the people. In the meantime, there is hardly any testing. The figures disseminated by the government are a farce. According to them, Nepal is a country where, despite government inaction, infection and death rates are falling daily. The proclaimed figures suggest a security that does not exist. People are becoming increasingly careless.

Power struggles in the ruling party

It is easily overlooked that the merger of the two left parties in May 2018 was done only superficially and from the top down. All posts and functions to be allocated were given precisely according to original party affiliation and a percentage arrangement; competence never played a role. In 2020, the continuing differences within the NCP became increasingly clear. At the top of the party, the lines had not been running along the original parties for some time. Among the top politicians in particular, some switched sides. KP Oli increasingly became the focus of controversy. Not only did he refuse to hand over the office to Pushpa Kamal Dahal at mid-term, as agreed in a 2018 "gentlemen's agreement", he was notable for excessive levels

of incompetence and an authoritarian approach. In principle, he saw no duties of a prime minister, only rights. A head of government did not have to abide by the constitution and the laws anyway, he thought. He was never interested in legally binding judgments of the Supreme Court. The same applied to findings and demands of constitutional bodies such as the National Human Rights Commission (NHRC) and the Commission to Investigate Abuse of Authority (CIAA).

In 2020, tensions between Oli and Dahal increased. Pushpa Kamal Dahal, who cooperated more and more closely with Madhav Kumar Nepal, tried to persuade Oli to relinquish one of the two posts, prime minister and co-chair of the party, but Oli repeatedly managed to stall for time and get his head out of the noose through machinations and agreements that were obviously never really meant seriously. The majority relations in the two highest levels of the party played a major role in this. The highest body of the NCP was the Standing Committee, which included seven other men besides the two party leaders, Oli and Dahal. In all, there were seven Bahuns, one Chhetri and one Newar Chhetri. Two camps aligned to Oli and Dahal respectively emerged, each with four politicians. The ninth person, Bam Dev Gautam, played the tongues in the scales, changing camps as he saw fit for his own benefit.

The balance of power was different in the second highest body of the NCP, the Central Committee. Here, the camp of Pushpa Kamal Dahal and Madhav Kumar Nepal had a majority for some time. This was reason enough for Oli 2020 to repeatedly avoid convening the Central Committee. If this was not possible, Oli was usually able to cite health problems or other important appointments that made his appearance impossible. Frequent talks between the two NCP chairpersons also failed to resolve the differences. If nothing else helped, Oli made concessions, but he never intended to stick to them in the first place.

Escalation in the NCP

The dispute between the two party leaders and thus the crisis in the party came to a head when Dahal presented a political document to the party secretariat on 13 November in which he accused Oli of failure across the board. Oli countered with his own document on 28 November, accusing Dahal of serious party damage. He demanded that Dahal withdraw his document, which the latter refused to do, especially since most of the accusations made in it could hardly be refuted factually.

At the same time, pressure on Nepal increased at the international level. In the run-up to the Universal Periodic Review (UPR), which took place in January 2021, UN circles pointed out Nepal's persistent failure to address human rights violations, although the government had repeatedly promised to do so. Among other things, this concerned the constitutional bodies that remain unstaffed or understaffed five years after their adoption. No fewer than 46 posts in 11 constitutional bodies were to be filled.

To alleviate this pressure, Oli finally decided in early December to fill the vacancies, a task for the Constitutional Council to decide. But this council had also been incomplete for a long time. Moreover, some members refused to show up for the meetings Oli had scheduled. So the Council did not have a quorum.

Therefore, on 15 December, Oli decided to change the rules laid down in the Constitution and the Constitutional Council Act by an ordinance immediately signed by the President. Accordingly, Oli could now have decisions made in this council by a simple majority, a clear breach of the constitution. The outcry from all sides was also great at this point, so that Oli supposedly agreed to withdraw the ordinance again. In reality, however, he had probably never thought of it. There is no other explanation for the fact that the ordinance had still not been withdrawn on 20 December, when Oli had the members of the Constitutional Council who had appeared fill the vacant positions of the constitutional bodies according to his wishes.

Dissolution of parliament and scheduling of new elections

A situation had thus been reached within the NCP in which KP Oli no longer had a majority behind him, at least in the two highest bodies. Oli therefore decided on 20 December 2020, with the help of President Bidya Devi Bhandari, who was in his thrall, to dissolve the House of Representatives and call new elections, invoking Articles 76 (7) and 85 of the Constitution.

Article 85 declares that Parliament will remain in office for five years unless dissolved earlier. Possible grounds for such dissolution are not mentioned. Furthermore, reasons for a possible extension of the term of

office are still cited. The provisions were taken almost verbatim from the 1990 Constitution. Article 85 in its current form is only clearly related to the term of office of the House of Representatives. The latter was correctly and democratically elected by the people at the end of 2017 and should thus not be re-elected until the end of 2022.



Hundreds of thousands followed the Dahal Nepal faction's call for street demonstrations against Oli's coup on 22 January (Source: The Kathmandu Post, 22 January 2021)

Article 76 (7) refers to the election of a prime minister in the case of unclear majorities and a vote of confidence then required within 30 days. Since Oli's CPN-UML did not have a parliamentary majority when he was elected in February 2018, he was not elected prime minister under Article 76 (1), but under Article 76 (2). In the vote of confidence required within 30 days, two-thirds of MPs confirmed his nomination in March 2018. Had the House of Representatives not confirmed him in office, he could have then asked the President to dissolve the House of Representatives under Article 76 (7), but only if no one else in the House could prove a majority.

So what this has to do with the present dissolution of parliament is incomprehensible. There is no discernible provision in the constitution that a prime minister can send the representatives elected by the people home early for the sheer personal sake of retaining power. The Prime Minister has been appointed by the elected representatives of the people and is responsible to them. That he can send the people's representatives home again if he is afraid that they might withdraw their confidence in him sounds absurd.

Conclusion: Prime Minister Oli has lost the support of many MPs of his party and thus probably the parliamentary majority. The logical democratic options would have been either his resignation or at least a vote of confidence in parliament. However, KP Oli and Bidya Devi Bhandari have deliberately tried to reinterpret the constitution in their personal interest. This attempt is reprehensible and should have legal consequences. It is to be expected and hoped that the Supreme Court's judgement will confirm this assessment. Its investigations are still ongoing at the end of January 2021.

Conduct of the parties: Question of constitutionality or own ambitions for power

The first reaction of the NCP faction of Pushpa Kamal Dahal and Madhav Kumar Nepal, but also of all other parties represented in parliament, was an outcry of indignation against this constitutional breach. In addition to constitutional petitions before the Supreme Court, there are mass demonstrations almost daily in all areas of the country. But the actions of the opposition parties have also raised many doubts about the sincerity of the outrage.

The demand is always made that the dissolution of parliament must be reversed, that the Supreme Court must declare it unconstitutional. But it also becomes clear that many top politicians are primarily concerned with the personal question of power. They are asking themselves which is the quickest way to succeed Oli. The strategies are different.

The Dahal-Nepal faction of the NCP is trying to achieve its goal by pushing for a split in the party, by excluding Oli and his intra-party supporters, and by ensuring that the Election Commission recognises only their faction as the true NCP. Oli, for his part, is trying to counter this claim with the same means. Despite the ongoing court case, he continuously claims that the dissolution of parliament and new elections are constitutional and pushes ahead with the preparations for the elections. The Election Commission thwarted the bid of both factions on 24 January when it proved that both were in violation of their own party statutes as well as the Political Parties Act. For the Election Commission, therefore, there is still only one NCP with a dual leadership.

Meanwhile, the Nepali Congress (NC), the main opposition party, is divided. Although the NC is also organising nationwide protests for the reinstatement of parliament down to all local units, opinions diverge at the top of the party. The NC also has several factions whose ageing leaders continue to see themselves as the future of the country. Party president Sher Bahadur Deuba (75) is desperate to become prime minister for a fifth time and is therefore primarily speculating on a success for his party in the new elections. His intra-party rival Ram Chandra Paudel (76) is obviously more in favour of the reinstatement of parliament through a Supreme Court ruling to that effect.

A complete abolition of the federal system introduced in 2015 is advocated by the diehards of the National Democratic Party (NDP), who currently have only one member in the House of Representatives. They want to use the chaos caused by Oli and the other party politicians to return to the Hindu state and monarchy, i.e. to the root sources of Nepal's permanent political crisis.

Prospects: Re-establishment of parliament, question of parliamentary majorities, new elections

The damage done by Oli and the other top politicians is great, no matter what the Supreme Court ultimately decides. If it declares Oli's and Bhandari's actions to be legal, Nepal's politicians will be guaranteed a legal vacuum in the long term, in which they do not have to abide by the constitution and subordinate laws, in order to maintain their personal power. In principle, the 2015 constitution would be dead after only five years.

If the Supreme Court decides that Oli's actions are unconstitutional, there are several aspects to consider. Would Oli's and Bhandari's actions possibly have to be considered a coup? If so, there would be an urgent question of personal political and legal implications for both of them.

As a consequence of the restoration of the House of Representatives, a new government would have to be elected. However, the split in the NCP has made majority options difficult. Coalition governments, which already did not work between 1995 and 1999, are likely to become necessary. In the end, it is possible that new elections would have to be held early.

What I see as even more serious, however, is the fact that all the old top politicians have failed, in some cases several times, and yet consider themselves indispensable. It is an inherent feature of Nepali party politics that its leaders only make way when they drop dead. But if Nepal's path to socially inclusive democracy and development is to succeed, the old party leaders must finally step down and give way to a younger generation. Nepal has no prospects with the current generation of top politicians, even if they themselves see things differently.

Text notes:

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