

Derailed Peace Process: Steps for Resolution

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Right from the beginning of my Nepal studies some thirty years ago, there have been areas I have been particularly interested in: politics in general, constitutional law, human rights, the question of inclusion of disadvantaged sections of society (janajati groups, dalits, madhesis, women in general), and the conception of historiography. Of course, the rise and downfall of democracy after 1990 and the Maoist insurgency have become focus points of my studies in recent years, but I always try to understand and explain the issues, developments, standpoints and statements from the before mentioned aspects. The main players behind the current crisis – the leaders of the political parties, the Maoists as well as the king and his army – can only be understood against the background of Nepali history, which is not the glorious history of the current elite with the king at its top as it is explained in the history books, but the opposite, i.e. the history of the disadvantaged and excluded masses. People rarely learn from history, and Nepal is no exception from this lapse. The problem is that Nepal's affairs are still so elite dominated in every respect. It has only been after the democratization of 1990 that the masses slowly started to articulate themselves and fight for the rights. This, I think, has been the greatest outcome of the 1990 movement.

Let me explain this a bit by the example of the self-understanding of monarchy (I choose this political player as it is the most conservative institution and because it has to play a key function for the solution of the current crisis; of course, the party politicians have learnt little as well after the foundation of political parties in the late 1940s). All of Nepal's kings up to Gyanendra have claimed that the Nepali monarchy has always done and is still doing everything only for the prosperity of the people. Everybody who has studied a bit of world history knows that this is nonsense. All monarchs in history have first thought of themselves; they have done everything to extend their influence, their power, their wealth. Why should the Nepali monarchy be the only exception from this rule? Look into history (not into that of the school-books but into the so far not really written history of the disadvantaged and not participated masses) and find the prove. These masses are not the people the monarchy and the school-books have been talking or writing about. On the contrary, they have been the victims of royal politics ever since the process of unification of the country was started (only !!) some 250 years ago (This shall not question the necessity of unification in the 18th century; without this unification Nepal would never have survived as an independent state).

Another aspect of this non-inclusive system has been its extreme centralization. There are parts of the country (the far and the mid western hill area, the northern Himalayan region as well as parts of the Tarai that have been extremely neglected. There are some intellectual thinkers who take the exclusion of the Bahun and Chhetri castes of the far and mid western hill area as a proof that the claim of the janajati organizations that their ethnic groups are excluded is wrong. The truth is that both arguments are correct: The ethnic groups have been excluded because of their ethnicity, the Hindu castes of western Nepal have been excluded because of their

area of habitation. There are hardly any ethnic groups in this area which is the traditional homeland of the Hindu population.

The fact that greater sections of society are excluded has nothing to do with religious affiliation. Instead, it has been the fabrication of elite circles around the ruling Shah family who, instead of being proud to be descendants of the Khas and Magar population, that had been settling in western Nepal for thousands of years, constructed their origin from high caste families in foreign India. What a nonsense! This has been part of the misuse of religion to install a highly stratified system of society in support of the ruling circles around the Shah monarchy. It has introduced exclusion and jealousy into the Nepali society, and with growing consciousness and rights awareness it has become part of the reasons for resistance after 1990.

Another example for the misuse of religion for power political reasons has been the definition of the state as a Hindu state. Significantly, it has only been after the intrusion of democratic ideas that the monarchy found it necessary to define the state in this way. The 1950s were a time of struggle between young but weak political parties and the traditional institution of monarchy. The latter more and more got the upper hand and for the first time defined Nepal as a Hindu state with the panchayat constitution of 1962. It has been one of the greatest shortcomings of the 1990 constitution that it kept up this definition. The confusing arguments of leading politicians and partly also of intellectuals prove that they misunderstand this term or at least pretend to do so. The religious affiliation of the king is of minor importance in this context.

What the political players in Nepal have to learn and to admit is the fact that the internal profit of unification has gone to a very small section of society. Only this small section were the people, the citizens. The democratization of 1990, despite a lot of constitutional and legal shortcomings, has made the so far excluded masses to citizens as well, but neither monarchy (especially Gyanendra) nor party politicians (who are mainly made up of the traditional male elite circles) have learnt this lesson so far. The exclusionary royal system that has been transferred on the unified state by the Shah monarchy and their elite supporters is one of the main reasons for the dissatisfaction of the masses that has been used by the Maoists when they prepared their insurgency in 1995/6.

The talks between the government and the rebels have failed twice because of several reasons. There must be a willingness to intellectual revolution from all political players. So far, I see hardly any of the established political leaders who is really ready to such fundamental changes. There is still a great difference between their verbal claims and what they do. For example, look into the election manifestos that have been published by the different parties three times in the 1990s. The so important question of inclusion and exclusion that is responsible for dissatisfaction and resistance in modern Nepal is hardly mentioned in these manifestos, and if it is mentioned then you can see from the formulation that the leading politicians have never thought about what they had been writing; there were no ideas how to change the wrong status quo; there were no attempts to look into the socio-historical origins of the crisis. Latest after the elections they forgot everything that had to do with these aspects.

This also becomes clear from the two rounds of dialogues that took place. In the first dialogue in 2001, the government of Sher Bahadur Deuba was still an elected one. Deuba started powerfully into the dialogue with great illusions but without a real program. The Maoists, on the other side had a clear agenda that had to do with all

those things I have mentioned in the beginning. This Maoist agenda shook the fundamentals not only of the constitution but also of the established system of non-participation and non-inclusion. Forced by his own party elite as well as by that of the other parties, Deuba had to set up preconditions that collided with the revolutionary mind of the Maoists.

The second dialogue took place after the royal take-over. Lokendra Bahadur Chand already missed the legitimacy to hold talks. He was a mere puppet of the king and could not discuss on the Maoist agenda. When he tried to get the dialogue on with some concessions to the Maoists in the second round of talks, he faced strong opposition from the king's army. At this moment, he was politically dead and he was replaced by another royal puppet, Surya Bahadur Thapa. The latter introduced a government agenda in the third round of talks, but this agenda had nothing to do with the main demands of the Maoists; its formulation was vague and remembered the hollow words of panchayat times respectively the election manifestos of the parties of the 1990s. Under such circumstances the dialogue could only fail once again.

Currently, it is the task of the Deuba government to find a solution to the conflict. Deuba's government may be made up of party politicians but it is nevertheless in the same dilemma as the two previous governments. It has not got its mandate from the people but from the monarch who is striving for greater powers. With a king who holds all powers but does nothing and only observes how one after the other government fails, it is very difficult to believe in a short term solution of the conflict.

Perspectives

Nepal has six options to end the current messed up situation. The most obvious would be an immediate truce and talks with the Maoist rebels. The final result of such talks should be a comprise and adequate inclusion of the Maoist demands and their integration into the revised political system. But such a kind of procedure is extremely unlikely. The government does not have the authority for binding agreements with the Maoists. The latter are fully aware of this fact and only want to negotiate directly with the single person who has grabbed all power, King Gyanendra. The king, on the other hand, obviously has no interest in such direct talks with the Maoists because he must be afraid that such kind of dialogue will end in a drastic limitation of his powers.

The opposite of such a peaceful solution would be a military one. This kind of solution is favoured by the king and his army as well as supported from outside by the US government which regards the Nepali Maoists as integral part of international terrorism who, they think, should only be fought by force. But a short-term solution of this kind is absolutely unthinkable; most experts even believe that it is impossible at all. The consequence of this way of forceful solution would be an irresponsible prolongation of the suffering of the Nepali people, the death of thousands of other citizens and the complete economic collapse of the country.

The third possible way could be the holding of parliamentary elections. This is what the current government, especially prime minister Deuba, stands for. This makes no wonder since after its foreseeable failure to hold talks with the Maoists, this government can only stay in power if it is able to hold general elections before May 2005. This had been Deuba's mandate when he was installed by King Gyanendra last year. But free and fair elections are absolutely unthinkable in the current situation. In other words, Deuba's government is already doomed to fail.

A fourth way could be the reinstatement of the parliament that had been dissolved by King Gyanendra in May 2002 on recommendation of the then prime minister Sher

Bahadur Deuba, by the way a step that was guided by Deuba's endeavour to hold on power. Such a reinstatement of the parliament would definitely be the most democratic solution, because it would also immediately end the problem the country is facing from a power striving monarch. The peace process, new parliamentary elections with participation of the Maoists and necessary constitutional changes, in whatever way, would then be the task of parliamentarians that had been elected by the people in 1999. By the way, the reinstatement of the parliament would already have been the only rightful way on the basis of article 127 of the constitution in October 2002, because it would have been the only chance to leave sovereignty in the hands of the people. King Gyanendra has rejected this way in October 2002 and it is to be expected that he will do so again. Besides, one must also keep in mind that the 1999 parliament before its dissolution had not been able to bring peace to the country. So, without fundamental changes in mind and attitude, a reinstated parliament will not change much.

The fifth way would be the worst Nepal could go. This way would be the final restoration of absolute royal powers with support of his army, a step that very much reminds of December 1960. Royal aides-de-camp like Mohammad Mohsin and the former pseudo communist and later chairman of the Raj Parishad, Keshar Jang Rayamajhi, have repeatedly called for such a royal role in recent weeks. This fifth way of solution would throw the country into civil war and it would finally lead to the end of monarchy in Nepal.

Within the sixth way, the king again has to play a very decisive role, though it is opposite to what I have just mentioned before. Whenever there is discussion on a decisive role of the king in Nepal, the experts think of the fifth way. Those who have an extremely conservative thinking, especially the circles around the palace whose benefit or downfall depends upon the power of the king, try to describe the return of the monarchy into absolute power as the only solution; they claim that democracy of the western type has totally failed in Nepal. The masses who have suffered from the absolute royal system that has ruled over Nepal for more than 200 years as well as the party elites who have profited from the 1990 system are afraid that Nepal will fall back into the middle age system. Along the sixth way, it will be the decisive role of the king to concede that the traditional royal system has been responsible for most of Nepal's problems. As compensation for what his forefathers have done and to what he himself has returned on October 4, 2002, King Gyanendra must start to work for the people as it is his task according to the constitution of 1990, and not for the survival of the institution of monarchy. King Gyanendra is the only one who currently has the power to sit together with the Maoists at the negotiation table. Peace is only the first step that has to be followed by fundamental political and social changes in practise and in mind. The king must be ready to hand over sovereignty and all powers to the people. The army, which should protect the people, currently only protects the monarchy. The Maoists, on the other hand, fight the army because they want to bring about the downfall of the monarchy. In between are those who suffer most, the people, those who should be protected by the security forces and for whom the Maoists claim to fight. So, after bringing peace the people oriented solution of the conflict must be brought under the control of the people and their representatives, the parties have to fundamentally democratized, the election system has to be changed to make it representative, the basic definitions of the state must be changed to make inclusion of all sections of society possible, especially the definition as Hindu state has to be deleted, there must be positive discrimination of all those sections of society that have been disadvantaged under the royal Hindu system for centuries,

the royal power and position has to be comprehensively cut, and King Gyanendra will have to accept all this or even better recommend this in the discussions that will have to follow the peace agreement with the Maoists. This is the only way I see for Nepal to evade her current crisis.

Constitutional discussions

The constitution and its future is not only part of the basic Maoist demands but it is also very intensely discussed in party political and civil society circles. There is hardly anything left from the 1990 constitution. The people have lost their sovereignty; the parliament is abolished and there is no indication that the king who has grasped power does have any real interest to hold elections in the near future; there is no legitimate government that is responsible to elected representatives of the people; there is not even any chance of participation and control by the people at the local level. So, what kind of democracy is to be preserved? Which constitution has to be safeguarded? The constitution of 1990 is dead and cannot be revived. Every return to this constitution would mean a sanctioning of its misuse by party politicians and king. There must be a new constitution that is able to prevent such misuse and breach of the constitution in future and that, at the same time, guaranties a better participation of so far disadvantaged sections of society and, thus, contributes to a mitigation of the numerous reasons that have led to the current crisis.

This does not mean that the new constitution has to be totally different from the previous one. It is not the democratic structure as such that has failed in Nepal but rather the problems have arisen from the way this system has been used and interpreted. There is one great advantage today compared to 1990. Under the *panchayat* constitution, sovereignty had been vested in the king. This was why the 1990 constitution had to be promulgated by the king; he was the only one who could change the system as long as the institution of monarchy remained alive. King Gyanendra may now again behave as if he is still sovereign, but constitutionally he is not. This means that the new constitution can and should be written and promulgated by the people, and this should already be made clear in the preamble.

So, if the new constitution is written by the people, it will be a further precondition that all sections of society are equally participated in the body that will have to do this job of writing a new constitution. This brings us to the question if a constituent assembly is the best way for this purpose. To answer this question, let's look back again to 1990. The then constitution was framed by a circle of judicial experts that had been nominated by the self-claimed representatives of the people, i.e. the leaders of the Nepali Congress and the communist parties of the then United Left Front, as well as by representatives of the king. Those party leaders had never been elected by the people. Almost all of them came from the social circles that have been dominating Nepal's political parties since the late 1940s. There was not a single woman included, nor representatives of the Dalits, the Janajatis (with the exception of some high caste Newars), and the Madhesis. The general people had only the chance to send their own suggestions to the constitutional commission. Vishwanath Upadhyaya, chairman of this commission, later claimed that more than 90% of the suggestions presented by the general public (i.e. by all those who did not have a direct say in the formulation of the constitution) had to do with social and cultural issues, and thus they would be irrelevant for the formulation of a democratic constitution.

History has proved within a very short time that this typical Bahun view has had disastrous consequences. Nepal is a multiethnic, multilingual (both conceded by article 4 of the constitution), multicultural and multireligious (both denied by the constitution) country with often overlapping identities. Non-participation, discrimination, exclusion and suppression on the basis of these four social realities have been a significant feature ever since Nepal's unification process started in 1743. They are still present in the political, social and economical everyday life of the country. Democracy, equality and participation are only possible if these realities are no longer denied, and if Nepal gets a constitutional and legal system that prevents the continuation of this inappropriate state. In part, this will not be possible without positive discrimination of the currently most disadvantaged groups of society. The often strange discussion of this aspect, that has been very intensively discussed in the media in recent times, have proved that not only the politicians have to change their mind but also greater sections of the civil society. A western kind of democracy does not work in Nepal without adequate consideration of the specific historical, social and economic features of the country.

Nepal, a failed state?

Nepal is in a dilemma. The democratic system that has been introduced in 1990 has failed: The monarchy has left its constitutional role and seized power; the political parties have not developed along democratic lines and have often misused their powers; the parliaments that had been elected by the people have not been able to introduce urgent legal reforms; the numerous governments have all failed because of personal interests and corruption; the opposition within and without parliament (with the outstanding example of the Maoists) has disregarded democratic rules and fundamental human rights and has broken the constitution in different ways; the local level may have been upgraded by the Local Development Act of 1999 but there have been no elections on the basis of this law so far (!!); the overtaxed judiciary, that itself is extremely dominated by male Bahuns, has come to a number of politically influenced and contradicting decisions and it has not enough contributed to break up the traditional structures that hinder the general participation of the people.

In this sense, one could be tempted into calling Nepal a failed state. But by doing so, one would fail to appreciate that the introduction of democracy in the early 1990s also has had positive effects. In this context, I would first call the fundamental rights that have more or less been well defined and guaranteed by the constitution. This has been the precondition that over the years many individuals and disadvantaged groups could fight for their rights. Many national and international human rights organizations have used this constitutional catalogue of fundamental rights for their valuable work, even though they still have a hard time with the government as well as with the Maoists.

I also see a very positive development from the point of the media. This has also to do with the guarantee of the freedom of opinion and expression as well as with the press and publication right, which are both part of the just mentioned fundamental rights. Today, the journalists are afraid neither of state nor of Maoist oppression and intimidation. This gives good hope for the influence and further development of civil society in Nepal.

Finally, I would like to mention the education system which has come under heavy attack, especially from the Maoist side. Structurally, such critics may be reasonable and necessary, but in the way in which they are pushed forward by the Maoists, i.e.

by constant school strikes that mean a total prevention of education for the youth, they cannot lead to a solution. Besides, these protests disregard the positive developments that have taken place in the field of education after 1990. The better and broader education of the masses has become the backing of growing resistance against the traditional establishment.

So, I will not yet call Nepal a failed state, despite all the above mentioned malaise. The power and state forces (government, political parties, monarchy and army, opposition including the Maoists, judiciary) are constantly marching in a more and more negative way, but even small changes in their approach could again turn the development towards the positive. So, one should not give up hopes. A people oriented mediation by the UN would definitely accelerate this process. But my hope is even greater in regard to civil society. The media that are not owned by the government are more or less on the right way, even though there is still a number of papers that work against this process and uncritically accept and idealize the status quo. Also, a number of NGOs that work for the protection of human rights or for the rights of disadvantaged groups have done very positive work. Their peaceful procedure shows the only possible way that can lead to the development of Nepali society. I still would welcome a greater public appearance of academic circles, though a lot has changed in this respect in recent years, too.