
NEPAL IN 2002

Emergency and Resurrection of Royal Power

Karl-Heinz Krämer

Abstract

Under a nine-month state of emergency amid civil war, violence escalated and the human rights situation deteriorated. Dissent over extension of the emergency, and personal aversions between Prime Minister Sher Bahadur Deuba and party president Girija Prasad Koirala, led to a split in the ruling Nepali Congress Party. King Gyanendra dissolved the House of Representatives on the recommendation of the prime minister and called new elections for November 13. Gyanendra dismissed Deuba on October 4, as Deuba proved unable to hold the elections in time. The king assumed executive powers himself, nominated a new council of ministers, and delayed elections for an uncertain time.

Nepal faced further setbacks on the political front in 2002. Civil war continued despite the state of emergency declared on November 26, 2001. The war was accompanied by a wide-ranging disregard of human rights, the dissolution of Parliament, the replacement of the democratically elected local bodies by government officials, a split in the Nepali Congress (NC) Party, and the delay of general elections originally scheduled for November 13, 2002. Finally, King Gyanendra released the government of Prime Minister Sher Bahadur Deuba and assumed executive powers. For Nepalis, all hopes were set on another dialogue with participation of the political parties, the king, and the insurgent Communist Party of Nepal (Maoist).

State of Emergency

The state of emergency had originally been imposed according to Article 115 of the Constitution by a corresponding declaration by King Gyanendra. It

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was approved by the House of Representatives on February 21 with the overwhelming majority of 194 versus 7 votes, and became valid for a period of six months from the date of issuance, i.e., until May 26.

In the beginning, the army seemed to be more than a match for the Maoist insurgents, but it soon became clear that the military would not be able to defeat the rebels decisively. On the contrary, democracy and human rights suffered badly under the state of emergency. At the same time, Nepal's economy was on the verge of ruin. As tourists stayed away, tourism, a most important economic resource, dried up.

Though more than 3,000 Maoists were killed after the imposition of the state of emergency, there were, time and again, heavy losses for the security forces as well. In addition, the Maoists changed their tactics. More and more, they attacked public institutions and property, e.g., airports, power stations, telecommunications facilities, administrative buildings, bridges, water pipes, and so forth. A growing number of attacks was made inside the Kathmandu valley. This meant that more civilians were affected by the Maoist insurgency than before. The senseless killing and destruction contradicted the people-oriented ideals expressed in many of the Maoists' original demands. These demands were related to nationalism, public well-being, and people's living conditions and standards. Most of the demands corresponded to the state policies as prescribed by Article 26 of the Constitution. There were only a few revolutionary demands such as the abolition of monarchy and its replacement by a republic, together with calls for a new constitution drafted by a generally elected constituent assembly.

As a reaction, there was a decline of sympathy for the Maoists, especially in intellectual circles, but also among the impoverished masses. When the Maoists called for another *Nepal bandh* (a complete standstill of public life throughout the kingdom) in early April, at a time when 250,000 students were trying to pass their SLC (school leaving certificate) examination, there was an outcry from all sections of society. As a result, the Maoists postponed the *bandh* to the end of April, though even then it received little response.

Up to the end of October 2002, a total of 5,111 Maoists had been killed. But a high price was paid for the visible and statistical successes of the army and police, because more than 1,189 security forces and 773 civilians had also lost their lives in six and a half years of clashes, according to official figures. Just since the imposition of emergency in November 2001, another 4,366 persons have been killed.¹ The share of civilians killed may have been even higher, as deliberate killings of suspected Maoists were nothing unusual. In a special report in early April 2002, Amnesty International expressed

1. *Kathmandu Post*, November 1, 2002.

fears that there may have been many civilian casualties among those counted as Maoists killed.²

The already bad situation for human rights in Nepal had worsened dramatically with the declaration of emergency, because many fundamental laws were suspended. All cases that were claimed by the security forces to be connected with the Maoist insurgency were to be dealt with by a special court. Within a few weeks, thousands of people were detained by the security forces, with no access to legal remedy. Neither army nor government was bothered by the fact that even under the emergency law, this was only allowed for up to three months. Often, the families of detainees were not informed about their whereabouts, and Amnesty International and other human rights organizations found out that many of these prisoners had been tortured in custody, some even killed. There has never been any investigation into such cases. Sometimes, the government even used the emergency regulations in cases that had nothing to do with the Maoist insurgency, e.g., when ethnic activists demanded greater rights to use their mother tongues.

The restriction of press freedom and the right to information under the emergency proved to be fatal. The Nepalese media and the human rights activists became muzzled and suffered under reprisals, detentions, and tortures. Nepal's population had hardly any access to impartial information on the situation and events, under the state of emergency. Even renowned newspapers like *Kantipur* faced pressure from the government whenever they published statements by Maoist leaders.

Prime Minister Deuba's politics of militant Maoist suppression found support abroad, most of all in Western countries such as the United States and the United Kingdom. Both countries saw the Maoist insurgency as an integral part of global terrorism, as defined by American President George Bush after the September 11, 2001, attacks on the World Trade Center in New York. But when the end of the six-month emergency period approached, it became clear that Prime Minister Deuba would not find the two-thirds majority necessary for a further extension of the emergency in Parliament. All opposition parties were against it and there was greater dissent even within Deuba's own Nepali Congress, especially from the camp of his predecessor as prime minister and party president, Girija Prasad Koirala, who made clear that he wanted to become prime minister again at any price. As Koirala claimed that the government had to bow to the party line, Deuba on May 22, 2002, asked King Gyanendra to dissolve the House of Representatives and to hold new parliamentary elections on November 13, applying Article 53(4) of

2. "Nepal: A Spiralling Human Rights Crisis," Amnesty International, AI-index: ASA 31/016/2002, 04/04/2002, <<http://web.amnesty.org/ai.nsf/recent/asa310162002>>.

the Constitution.³ The king followed the recommendations of the prime minister.

This move of Deuba's not only created a government crisis over the extension of emergency, it also led to the deepest crisis of the 55-year-old NC and finally caused a formal split in the party. For years, such splits had been avoided, despite the continuing power struggle between the old leaders Koirala and Krishna Prasad Bhattarai. Since being deposed as prime minister in March 2000, Bhattarai had supported Deuba. Koirala, who never had been in favor of a dialogue with the Maoists before, suddenly called for talks and an end of the emergency. This was after his successor Deuba abandoned his original route of balance and dialogue and took up the hard line Koirala had tried in vain to implement when he was prime minister himself.

A lot of dirty linen was washed in public during the next months within the estranged NC camps. First, Koirala expelled Deuba from the party. The latter called a party convention that deposed Koirala as party president and replaced all Central Working Committee (CWC) members nominated by Koirala.⁴ Koirala declared this illegal and was confirmed in his stand by a meeting of the CWC summoned by him, in which two-thirds of the elected members took part.⁵ That there were further rifts within the Koirala camp became clear when his niece Shailaja Acharya asked Koirala to give way to a younger generation of party leaders, i.e., her own.

No Parliament, No Elected Local Bodies

The dissolution of Parliament meant that 2002 would have had to become a year of elections despite the poor situation of law and order in Nepal. The five-year terms of the local bodies ended in mid-July. A rumored delay of these elections was confirmed by the government only at the last minute. But instead of extending the term of the elected bodies for some months, the government ordered their dissolution and replacement by officials. This caused a storm of protests not only from opposition parties⁶ and civil society

3. This constitutional article is seen as a last resort for prime ministers whose political standing is in danger. It has been used by Nepalese prime ministers several times since 1990. In all these cases, there have been constitutional challenges at the Supreme Court, but the latter's decisions have been inconsistent.

4. The CWC is the party's inner sanctum of power. According to the NC constitution, only half the members of the CWC are to be elected by the party convention, while the others are nominated by the party president. In the weeks before the escalation, Koirala had replaced all nominated members belonging to Deuba's camp with his own men.

5. This was about the strength of the Koirala camp at the time when the CWC members were elected by the party convention in 2000.

6. The Communist Party of Nepal (Unified Marxist-Leninist) (CPN [UML]) especially, which had overwhelmingly won the previous local elections in 1997, saw this as a political intrigue in the runup to parliamentary elections.

but also from a number of donor countries, which partly stopped their local development projects. Instead of holding the local elections together with the parliamentary elections in November, as had been called for from different sides with a view to cost saving, the government set the date for the local elections as April 4, 2003.

So parliamentary elections remained the outstanding political goal for late 2002. But the political parties prepared slowly for these elections, because there were still quite a number of uncertainties besides the questionable security situation caused by the Maoist insurgency. The Supreme Court and Election Commission increased the uncertainty by delaying their respective decisions on the constitutionality of the dissolution of Parliament, over the question of which one of the two NC groups was to be recognized as the original NC.

It took until August 6 before the Supreme Court confirmed the correctness of the dissolution of the House of Representatives, calling it a political decision and the right of the prime minister, and thus contradicting earlier Supreme Court decisions. The Election Commission took almost three months to issue a preliminary decision on the NC. On September 16, it declared Koirala's group to be the official NC, and thus allowed to take part in the elections under this name and with the traditional NC election symbol of a tree. In Nepal, with high illiteracy, parties are identified according to their election symbols, so the tree symbol has always been identified with the NC. The Election Commission asked Deuba to register his own group under a new party name. Deuba chose the name "Nepali Congress (Democratic)" and, after discussion, opted for a water jar (*kalash*) as its symbol.

Amidst growing concern over the miserable law and order situation, the Election Commission on September 28 decided to hold the elections in six phases between November and January 10, 2003. One day later, it became clear after talks between the government and representatives of the other parties that the general elections would be postponed for some months. There was mutual agreement that an all-party government would be installed as an interim solution. It was to be the main task of this interim government to find a peaceful way out of the militant conflict by initiating another dialogue with the Maoist insurgents. Only days earlier, the Maoist leaders had repeatedly offered such talks to the government, prompting Prime Minister Deuba to change his mind and leave the path of violent suppression of the insurgency.

Active Monarchy

Parallel to the decline of democratic institutions, Nepal faced an enhanced valuation of the role of the monarchy, which had almost been eliminated by the palace massacre of June 1, 2001. King Gyanendra, who during the preceding year had had a hard time regaining the people's trust in the institution

of monarchy because of suspicions over his possible involvement in the massacre, had been asked not only by conservative forces but also by parts of the intelligentsia to play a more active role in Nepalese politics. This obviously coincided with his own intentions.

When Prime Minister Deuba approached the king to delay the elections with reference to Article 127 of the Constitution,⁷ Gyanendra on October 4, 2002, assumed executive powers and dismissed the Deuba government, calling the prime minister incompetent to conduct general elections. One week later, the king, disregarding the suggestions of the political parties, nominated a nine-member “clean” cabinet with Lokendra Bahadur Chand, a well-known monarchist, as prime minister. This council of ministers was expanded to 22 members on November 18.

Both royal steps were unconstitutional and challenged the sovereignty of the people as well as the constitutional separation of powers. Public opinion on these steps differed, with most of the political parties harshly criticizing the royal procedure as a danger for the survival of democracy and constitutional rule. Others hailed the king, and blamed both Maoists and party politicians for the deep political crisis of the country.

Nepal’s crisis worsened toward the end of the year. Now there are three opposing forces in the country: the Maoists, the main political parties, and the palace/army combination. Both government and Maoists reiterated their willingness for peace talks several times, but little progress occurred until the end of the year. The government, installed by King Gyanendra in October, proved unable both to initiate a dialogue with the Maoists and open up a perspective for parliamentary as well as local elections. Prime Minister Chand only got support from those parties that were involved in the government while both the Nepali Congress groups, the CPN (UML), and the minor left parties turned to the streets and pressed the king to revoke his unconstitutional steps. They even called for a *bandh* on January 3, 2003, when the king planned to organize a big rally in support of the monarchy.

The trend toward a more conservative political system became obvious. For example, ministers talked about the return to a partyless system on the local level or a change in the composition of the National Defence Council. The latter is a constitutional body that has to decide on the mobilization of the army. Currently, the Council is made up of the prime minister, the de-

7. Article 127 gives the king the power to remove difficulties that arise in connection with the implementation of Nepal’s Constitution. Constitutional experts regard this as an executive function, i.e., the fundamental rules of executive procedures must be observed. In other words, the king can only act on the advice and recommendation and with the consent of the Council of Ministers. See Surya P. S. Dhungel, Bipin Adhikari, B. P. Bhandari, and Chris Murgatroyd, *Commentary on the Nepalese Constitution* (Kathmandu: DeLF, 1998), p. 679.

fence minister, and the highest general, and suggestions now circulate to bring it under the control of the king and crown prince.

The international community is worried about developments in Nepal and even offers cooperation to solve the problem. The U.N., the European Union, and Scandinavian nations have already offered to play a mediating role, though they make clear that they prefer a constitutional monarch in a parliamentary democracy. They also criticize the escalating human rights violations.

When Parliament was dissolved and elections could not be held in time, Nepal had been brought into a situation that could not be solved on the basis of the Constitution. By resorting to Article 127, King Gyanendra could have either reinstated Parliament or delayed elections for some months. Both steps would also have been unconstitutional but they would have left sovereignty with the people and executive powers in the hands of an elected government. The future will prove whether the king's way leads to an end of the Maoist insurgency and to the restoration of democracy, as now promised by Gyanendra, or whether there has been another royal coup, similar to that of his father Mahendra, in December 1960.