

## Agreement for Elections, Confusion in Election Government

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Sharp differences over formation of new government and holding elections along with mutual distrust and suspicion remained among the main political parties. Ruling United Democratic Coalition demanded election by June and asked congress, UML and other parties to join prime minister Baburam Bhattarai's government, but the parties maintained that it was not possible to form an election government under Bhattarai. The opposition parties privately took the suggestion by the ruling coalition to form a government under independent individual if not under Bhattarai as another ruse to extend the government. Opposition parties also suspected that the different proposal by UCPN (M) and the government as a ploy to extend the government. However, after the President Ram Baran Yadav stopped extending the deadline for formation of a new government and the possibility of a consensus diminished, the opposition parties resorted to protests.

On January 2, prime minister Bhattarai proposed an alternative of forming government under an independent person if his leadership was not acceptable. Opposition parties termed the proposal as political dishonesty and a ruse to extend his government. The next day, Dahal in his meeting with the President proposed an independent person for prime minister. Dahal asserted that there was no consensus on Koirala. A meeting of Congress and UML rejected the UCPN (M) proposal to form government under an independent person, concluded that it was a conspiracy not to hold elections in May, and stressed on removing the government through protests.

As the parties were focused on their own agenda, the President expedited discussions. His push for consensus in separate and group meetings with the leaders resulted in nought. The President consulted with four senior leaders on January 5. After the leaders committed to holding elections in May or June, the President extended the deadline again for 5 days. However, there was no consensus. Then in his meeting on January 11 with parties represented in the former CA, President Yadav stressed on a way for a minimum consensus, decision-making process to guarantee CA elections to promulgate a new constitution, and formation of a Council of Ministers through consensus.

After there was no consensus even after extending the deadline for nine times, the political parties themselves began to raise questions. After January 15, the President stopped the process of extending the deadline. On the same day, the Office of the President stated that it would give continuity to process under article 38(1) of the Interim Constitution after what it termed the commitment expressed by leaders and representative of the parties represented in the former CA to select prime minister and form Council of Ministers based on consensus. Without giving a deadline, the President had informally stressed on consensus within seven days and holding elections in June. Some commented this move as backtracking by the President. However, presidential press advisor Rajendra Dahal stated that the President had moved neither forward or backward at any time and had remained with the parties for a way out. The President was also in trouble as there was no consensus even though he had been extending the deadline since November 23.

The President was left with two alternatives after the possibility of a consensus through dialogue or removing the government through protests was slim: to continue to press the parties for consensus or take steps himself. The President stressed on the first alternative for consensus among parties. UML concluded that the President should take steps based on the majority of the parties represented in the former CA instead of consensus. Congress vice-president Ram Chandra Poudel asked the President to be active. In addition, there were calls for the President to intervene. Congress president Sushil Koirala suggested the President to take steps as protector of the constitution. He said that as UCPN (M) was trying to act unilaterally, the President should protect the constitution and play a role in seeking a way out for political and constitutional complexity. The President responded that he did not want to invite controversy and he was doing as per the constitution and it is the role of the parties to find a way out.

**Government and opposition both in the streets:** The parties engaged in dialogues for consensus had always threatened of protests finally decided to go for protests on January 15, and announced that they would start from Dailekh. On the same the day, the ruling coalition also decided to mobilise cadres and hold rallies to raise and strengthen the agenda of reviving the former CA and to make the policies and programme of the coalition more effective. Thus, it was seen that both the government and the opposition was in completion to hit the streets. On January 19, opposition parties started their protests from Dailekh. Even though UCPN (M) leaders were going for district conventions, the opposition parties became more aggressive towards the government. Congress president Koirala warned that UCPN (M) would suffer the fate of Ranas, king, and panchayat regimes.

In the meantime, opposition parties announced that they would not let prime minister Bhattarai go to Dailekh. Despite this, prime minister reached Dailekh on January 23. There was a clash between cadres of ruling coalition and opposition parties, and both sides presented themselves aggressively. Maoist chairperson Dahal accused them of being frightened when they had threatened to finish the Maoists off. Prime minister Bhattarai stated that by not allowing the programme to be held, the opposition had made a mockery of democracy. He also stated that with this incident the democracy of Congress and UML is actually fascist. UML leader Nepal was more aggressive, reminding the Maoist leadership that the state should not be used against people for UCPN (M) and asked Dahal and Bhattarai to keep in mind the court in Hague.

As the opposition parties were holding programmes in different parts of the country, the ruling coalition held a people-awareness programme in Kathmandu on January 30. Coalition coordinator Dahal warned that the opposition would suffer big loss if there were no consensus on holding elections within May. While both ruling coalition and opposition parties were in protest mood, CPN (M) concluded that both sides were protesting for power and clarified that it would a start separate movement.

While addressing a convention of district leaders, UCPN (M) leaders were very aggressive. UCPN (M) chairperson Dahal warned that if there was no election by the last week of May, all the past agreements would be torn. Congress and UML warned that UCPN (M) would itself be finished if it threatened the country and people. CPN (M), which had splintered from UCPN (M), held its convention in Kathmandu in the second week of January. After the convention, Vaidya warned of raising arms if forced to do so.

## **Constitutional issues in the shadows**

***Election Commission without office bearers:*** The Election Commission tasked with holding elections was left without office bearers. Though there is a provision of five commissioners including the chief commissioner, after the chief commissioner Dolakh Bahadur Gurung and commissioner Ayodhi Prasad Ojha retired at the end of their 6-year term, the Commission was left without any commissioners. As there was no consensus among the parties which could amend the Interim Constitution, the Election Commission came to be without office bearers.

***Decreasing justices at the Supreme Court:*** There should be 14 justices including the Chief Justice at the Supreme Court. However, the number decreased due to the provision of parliamentary hearing when there is no parliament. After the term of the temporary justice Prakash Wosti was over on January 21, only the Chief Justice Khil Raj Regmi and Justices Damodar Prasad Sharma, Ramkumar Prasad Shah, Kalyan Shrestha, Girish Chandra Lal, and Sushila Karki remain. Right now, there are more than 15,000 pending cases at the Supreme Court. Similarly, the number of judges at the Special Court to look into corruption cases also decreased. The chair of the Special Court retired in early December. After judge Om Prakash Mishra was transferred to Rajbiraj Court, Judge Kedar Prasad Chalise is the only one and he is not allowed to decide upon certain cases on his own. There are 148 cases in the Special Court, out of which 137 are corruption cases, 9 of money laundering, and three appeal cases. A single judge cannot issue orders or decide upon cases.

## **Cases of lawlessness**

***Resurrection of armed conflict-era violence:*** During this period, two events related to human rights, lawlessness, and press freedom were in the news: first, arrest of Colonel Kumar Lama in the United Kingdom, and second, arrest of people involved in the murder of journalist Dekendra Thapa. This paved the way for discussion on issues of lawlessness and transitional justice violation of human rights during the conflict.

**a) Arrest of Lama:** Nepal Army Colonel Kumar Lama was working as a senior military liaison officer in UN mission in Southern Sudan. He was arrested in the UK when he was there to meet his family. He was arrested from East Sussex on January 3 on allegations of torturing prisoners. A district court had ruled that he had illegally detained 38-year-old Janak Bahadur Raut for 17 days and tortured him in his capacity as the commander of security forces fighting the Maoists. The government objected to his arrest. The Ministry of Foreign Affairs called UK ambassador to Nepal John Tucknott to express its objection over Lama's arrest. Political parties including UCPN (M), Congress, UML, CPN (M), Rastriya Janashakti Party, Rastriya Prajatantra Party protested Lama's arrest. Nepal Army expressed its regret over the arrest. While the government and the political parties were stressing on his release, Westminster Magistrate's Court issued an order to keep him in custody for 20 days for investigation.

Event	Government	UCPN (M)	Nepali Congress	UML	Others
Arrest of Lama	Submitted a protest note to the UK ambassador to Nepal; Arrest was	It is wrong and gives a wrong signal. The country has to unite against this.	Arrest without any evidence or information and based on alleged tortures	The arrest is regrettable and unfortunate when Nepal is going through a political transition.	the Army expressed its regret; Rastriya Janashakti Party,

	against international laws and principles of sovereign countries		cannot be acceptable to a sovereign country		Rastriya Prajatantra Party and others protest the arrest
Dekendra Thapa murder case	act of reviving conflict-era events, which will disrupt the peace process; neither the courts nor the police can investigate the violence of the armed conflict	conflict-era violence should be investigated only after formation of the Truth and Reconciliation Commission	the order by the head of the government to stop the investigation is mockery of rule of law	warns the government as it objects to the attempts by the prime minister to undermine investigation into the murder of journalist Thapa and institutionalisation of lawlessness and political crime	arrest of its party members in the name of conflict-era cases by Dailekh District Court and arrest by police in the villages has terrorise the people (CPN (M))

**b) Journalist Dekendra murder case:** As there were debates for and against the Lama's arrest, Dailekh police arrested five alleged perpetrators involved in the murder of journalists Dekendra Thapa. Those arrested are 45-year-old Laxmi Gharti Magar from Dwari-1, 60-year-old Jaya Bahadur Shahi from Rani-1, 42-year-old Bir Bahadur KC from Baluwatar-7, 41-year-old Nirak Bahadur Gharti Magar from Baluwatar-9, and 50-year-old Hira Lal Pun from Dwari-3. All are supporters for CPN (M) except for Bir Bahadur KC. The Dailekh police arrested them based on the complaint filed by Thapa's wife Laxmi. Journalist Thapa was murdered six years ago. He was abducted on June 26, 2004 and murdered on August 11, 2004. CPN (M) protested the arrest on the same day itself. After two days, prime minister Bhattarai stated that events from the conflict era should be dealt with by Truth and Reconciliation Commission. Immediately, he pressurised the police to stop the investigation. Until then, the police had only taken statement from Laxmi Gharti Magar. Prime minister's statement and press tactics was widely opposed by the Federation of Nepali Journalists (FNJ), organisations, and political parties. Accusing the government of trying to protect the accused, FNJ, Press Chautari Nepal, Nepal Press Union and others protested in various places. The protests led by journalists were also supported by Congress, UML, and leaders of civil society.

As the protests were continuing, Attorney General Mukti Pradhan issued an order not to take the investigation further. He gave direct orders to Dailekh district attorney and police in a letter. After the office of the Attorney General issued a written order, taking statements from the accused stopped. Nepal Bar Association opposed this. In addition, a writ was filed in the Supreme Court. The Court issued an interim order on January 15 to not obstruct the investigation despite the government attempts. FNJ also withdrew its protests after the investigations resumed. In the meantime, representative of the European Union met UCPN (M) chair Dahal and prime minister Bhattarai and drew their attention to the issue of protecting the accuseds in the journalist Thapa case.

**Movement against violence:** There were movements to end violence against women in the capital and various places in the country. Political parties, NGOs, rights activists and people from various professions participated in the Occupy Baluwatar movement in front of the residence of

the prime minister in Baluwatar. There was pressure upon the government after one after another cases of violence against women appeared in the news media. The government formed a committee to monitor violence against women with prime minister's office secretary Rajuman Singh Malla as coordinator. The government also initiated process to punish the guilty. In the immigration case, it initiated prosecution against immigration officer Somnath Khanal and police constable and suspended section officers Tika Pokharel and Ram Prasad Koirala. In Shiba Hasami case in Bardiya, the police arrested Babu Khan, Hasina Hasami, and Siddha Hasami for investigation. Anti-government protests continued despite the promise by the government to prosecute guilty as recommended by reports.

### **Conclusion:**

After the governing collation and opposition came to the streets to challenge the other, politics of confrontation became common. It was focused on the tension between the governing coalition not willing to leave the government and the opposition not joining the present government. In the meantime, the President stated that he would act within the constitution and stressed on the major parties to seek a consensus; however, there was no political way out. There was political confusion after there was no consensus and slim possibility of toppling the government through street protests. The President stopped extending the deadlines, which gave the impression that he was backing down and this saved him from further controversy. Though the stress was on politics of consensus but Congress and UCPN (M) refused to accept each other's leadership, and search for an independent person and other alternatives began. This gave the impression that the political parties are not capable of managing the political conflict. With UCPN (M) leaders becoming belligerent aimed at its seventh general convention and the reaction of Congress-UML leaders further terrorised the people. The election at any cost was emphasised by the President and other parties. However, there were not serious about the vacancies in the Election Commission. It does not look like the election government will be formed soon.

### **Major political developments**

**January 2:** Prime minister Baburam Bhattarai proposes to seek an alternative if UCPN (M) and Congress cannot accept each other's leadership.

**January 3:** Emergency meeting of Congress Central Working Committee concludes that prime minister Bhattarai's proposal is a ruse to not hold election in May.

**January 4:** Meeting of UML standing committee decides to refuse UCPN (M) proposal to form government under an independent person.

**January 5:** The President extends by five days the deadline to form a national consensus government.

**January 9:** Seventh convention of CPN (M) starts in the capital.

**January 10:** The President extends until January 14 the deadline to select a consensus prime minister. The Election Commission without office bearers.

**January 11:** The President invites an all-party meeting and stresses on finding consensus on minimum issues and holding elections to draft a new constitution.

**January 15:** The President holds a meeting with leaders of the parties represented in the dissolved CA. Extension of deadline for new prime minister ends.

**January 16:** Meeting of Congress officials decides to mobilise all resources for a movement to provide an outlet from the present constitutional and political crisis.

**January 17:** Opposition parties start anti-government street protests from Dailekh.

**January 30:** The ruling collation holds a people-awareness rally in the capital.