ESCAPING POLITICAL DEADLOCK:
NEPAL'S CARETAKER CABINET 2013 – 2014

Leon Schreiber drafted this case study based on interviews conducted in Kathmandu, Nepal, in February 2016.

This series focuses on cabinet management in unity governments. It profiles challenges and offers ideas for improving effectiveness. The cases provide food for thought only. Most are mixed successes and present significant unresolved problems.

SYNOPSIS

In early 2013, six years after the end of a devastating civil war that claimed 17,000 lives and displaced an estimated 100,000 people, the Himalayan nation of Nepal faced the prospect of renewed violence. A 2006 peace accord between an insurgent Maoist political movement and traditional political parties called for ending Nepal's 239-year-old monarchy and creating a new democratic system. But disputes over power sharing led to the failure of four successive coalition governments and slowed the effort to negotiate and enact a new constitution. In May 2012, the deadlock resulted in the dissolution of the elected legislature, which had also been serving as a constituent assembly. It was crucial to hold fresh elections. But when political parties were unable to agree on the formation of a coalition government for steering the country toward that goal, leaders of the four main political blocs, including the Maoists, agreed to set up a caretaker government under Khil Raj Regmi, the sitting chief justice of the Supreme Court and head of the country's judiciary. Regmi and his team of technocratic ministers strengthened cabinet decision-making procedures, agreed on a shared governance agenda, and worked closely with both the election commission of Nepal and political parties to plan elections for a new constituent assembly. Despite concerns about having the same person in charge of both the executive and judicial branches at the same time, the caretaker cabinet succeeded in holding credible elections that put Nepal back on track toward a new constitution.

INTRODUCTION

On February 16, 2013, Nepal's Supreme Court chief justice, Khil Raj Regmi, 63, received an extraordinary request. For months, political parties had struggled to create a transitional unity government in the form of a cabinet that could help the country conclude negotiations over a new constitution and oversee the budget and basic services. Having exhausted many other options, the parties decided to approach the chief justice with an offer to lead a caretaker cabinet—an approach Bangladesh had used in 1990.

Recalling the occasion, Regmi said, "They approached me personally to head the government and to conduct the election in a free, fair, and impartial manner. However, I tried to convince them that leading the government is the duty of political parties and that it is usually not appropriate for the judicial branch to take on executive responsibilities."

Regmi had reason to be cautious. The political impasse had deep roots in a conflict that had claimed about 17,000 lives[1] and displaced an estimated 100,000 people in the course of a decade.[2] Nepal's civil war had started in 1996, when the Unified Communist Party of Nepal (Maoist) launched an insurgency to oust the country's constitutional monarchy. The party leaders aimed to abolish privilege and improve the lives of the poor through a single-party system modeled on Mao Zedong's Cultural Revolution in China.[3]

During the conflict, a democracy movement also emerged, voicing its own hopes for political change. In April 2006, opposition to King Gyanendra Shah crystallized, culminating in a November 2006 peace accord between the Maoists and other political parties. Democratic elections in April 2008 created a constituent assembly tasked with creating a new constitution for the fledgling republic while also fulfilling the functions of a legislature.

Crafting a stable coalition to run the interim transitional government proved difficult. The Maoists won a plurality of the votes in the 2008 election, capturing 229 of the 601 seats in the assembly; and the traditional establishment parties—the Nepali Congress (NC) and the Communist Party of Nepal (Unified Marxist–Leninist, or UML)—won 115 and 108 seats, respectively.[4] Because no party held a majority, a coalition among political parties was necessary in order to form a government. From 2008 to 2012, Nepal had four different prime ministers heading four different coalition cabinets (one of which had consisted of 22 different parties).

Drafting the new constitution proved an insurmountable challenge under the circumstances. The issues raised by constitutional questions contributed to the instability among and within the parties, which in turn made agreement still more difficult. Unable to agree on terms, Nepal's constituent assembly was dissolved on May 27, 2012, in accordance with an earlier Supreme Court ruling.

The move plunged the country into a constitutional crisis that could be resolved only through fresh elections. But animosity ran so deep that the parties were unable to form a government to even organize the elections.

After months of deadlock and disagreement, the only option left was to create a nonpolitical interim government that would hold new elections. Krishna Hachhethu, a professor of political science at Tribhuvan University in Kathmandu, explained that given "the deep level of distrust [between the different parties], the idea of a chief justice–led cabinet was the middle ground for both sides."

Desperate to find a way out of the political impasse, party leaders approached the chief justice again, declining to take Regmi's original "no" for an answer. They tried to improve their offer by giving the chief justice greater authority to appoint his own cabinet officers and by proposing to extend the election timeline from June, less than four months hence, to November.[5]

After twice rebuffing those requests, in early March 2013 Regmi reached an agreement with the political parties to lead an interim cabinet. It was ultimately the scale of the crisis the country faced that convinced him to accept the offer, he said. "They approached me with this very critical situation, [with] no clear path to form the government. There was a constitutional crisis with no way out. We also had to pass a budget and bring the election law . . . There were so many difficulties."

The question was, how to succeed where his political predecessors had failed.

THE CHALLENGE

For Nepal, political instability was nothing new. Khimlal Devkota, a lawyer and Maoist member of the constituent assembly, pointed out that "in 70 years, no single government in Nepal completed its tenure." Following the 2008 election, the first two cabinets (one led by the Maoists, the second by the UML) each lasted only nine months. The third, also headed by a UML prime minister, was in office for only six months.

Similarly, the cabinet of Maoist prime minister Baburam Bhattarai was just nine months old when Bhattarai announced the dissolution of the constituent assembly. Describing himself as "dejected" and "saddened," in a midnight address on May 27, 2012, Bhattarai told his countrymen that after four years of trying, rival political parties had missed that day's deadline for reaching agreement on the terms of a new constitution.[6] Amid political deadlock and without an elected legislature, the future looked uncertain for a country still recovering from a devastating civil war and raised the fear that Nepal was becoming a failed state.[7]

The only way to assuage that fear was to organize fresh elections for a new constituent assembly. But such a step required that Prime Minister Bhattarai's holdover cabinet and rival political parties find a way to escape deadlock. Party leaders still could not agree on how to adjust procedures, and they continued to impugn one another's motives. While Bhattarai's Maoist party insisted that the elections be organized by the holdover Maoist-led

cabinet, the opposition NC and UML wanted to constitute a new cabinet under their leadership to run the elections.

After seven months of argument, during which the Maoist party split in two, Bhattarai formed a task force to explore solutions. Each of the country's four main political blocs—including the governing cabinet coalition of Maoists and the Samyukta Loktantrik Madhesi Morcha (SLMM, an alliance of four parties representing the interests of the Madhesi people of Nepal's southern plains) and the opposition, led by the NC and UML—had two members on the task force.

An interim constitution adopted in 2007 as a stopgap measure stipulated that a formal vote in the "legislature-parliament" could be avoided if parties reached a "political understanding" regarding who should lead the council of ministers.[8]

Devkota said the discord forced the parties to look "outside the political environment" for a solution. "If you are not able to agree within the parties, then we're compelled to go out of the parties," he said. In the wake of the failure to reach consensus on a political coalition government, the task force decided the country needed some type of independent caretaker cabinet to break the political deadlock.

A caretaker government would still have to overcome challenges that had blocked progress since 2008, however. First, previous coalition cabinets had been large and unwieldy, and the division of ministerial portfolios among ministers from different parties had always been a source of discord. To incorporate coalition partners, prime ministers had expanded the cabinet: Bhattarai's council of ministers had 49 members, 27 of whom attended cabinet meetings regularly. Reducing the number could improve coordination, but it also might breed opposition.

Second, although previous coalition cabinets had drafted "common minimum programs" to guide their policy positions, the agendas contained hundreds of points and were rarely adhered to. To be effective, the caretaker government had to isolate a few concrete goals it could accomplish in its short time in office.

Third, implementation of government priorities had weakened as prime ministers struggled to accommodate the demands of partners in the coalition governments. Trilochan Upreti, who was a ministerial secretary during all four cabinets under the first constituent assembly, said the prime minister had little power, even though the parliament was modeled on the Westminster system. The constant need to accommodate multiple coalition partners paralyzed some parts of the public service.

Fourth, the cabinet's authority had diminished because most decision making took place through informal deals among party leaders, Devkota said. Upreti explained that often, "informal meetings had already decided, and the formal [cabinet] meeting only declared the decision." Because the cabinet was

little more than a rubber stamp, the organization lacked the strong internal procedures required for making and implementing decisions.

FRAMING A RESPONSE

In approaching Regmi, the task force sought to ease some of the managerial and policy challenges. Initially, the group had looked for a civil society leader to head the interim cabinet, but negotiators failed to agree on a candidate. The task force then considered 12 former chief justices for the position of caretaker prime minister but again could not agree. According to Devkota, retired chief justices typically formed *political* affiliations that created roadblocks to consideration for what was supposed to be a *nonpolitical* position.

The task force then turned to the sitting chief justice for the primary reason that "the position of [serving as] chief justice was a single post," Devkota recalled, so there was no need for negotiators to argue through an extensive list of candidates and qualifications.

The idea of a chief justice–led cabinet was reinforced by the experience of nearby Bangladesh, where a sitting chief justice had led a caretaker government in 1990 to organize elections. Devkota further said that William Howard Taft had served as president and chief justice of the United States in the early 1900s (although Taft had not served in both roles at once, as Regmi would do).

The task force sought to tailor a solution that would fit the local context. Even though the group studied the Bangladeshi experience with a chief justice–led caretaker government as a potential model, the task force did not copy it without changes. Specifically, whereas Bangladesh's caretaker cabinet reserved an important role for the military, the Nepali task force explicitly resolved to avoid military involvement because of lingering distrust between the army's old guard and newly integrated Maoist fighters.

Top political leaders responded favorably to the notion of a chief justice–led cabinet. Devkota explained that Regmi "was seen as neutral" by the leadership of the four political blocs. In addition, the chief justice had organizational experience because the head of the Supreme Court in Nepal also was the administrative head of the entire judicial branch of government.

Although the task force favored naming Regmi to the position, an obstacle remained. The interim constitution stipulated that the prime minister had to be a member of parliament. Because there was no legislature in place, the holdover cabinet had to amend the constitution itself in order to adopt the task force recommendation. After consulting with legal experts, the task force drew up a document outlining the constitutional changes that were required. The cabinet passed the changes, and the president approved them.

Regmi was appointed on March 14 by President Ram Baran Yadav, who served as a figurehead and had little official power. Underscoring Regmi's

temporary status, his official title was chairman of the cabinet rather than prime minister.

The decision to set up a caretaker government headed by Regmi did not please everyone. The newly formed Communist Party of Nepal–Maoist (CPN-M)—the faction that had broken away from the original Maoist party in 2012—along with 33 fringe parties refused to participate in elections organized by the new caretaker cabinet. The CPN-M alliance regarded creation of the caretaker cabinet as a ploy by elements in neighboring India to influence the outcome of Nepal's new constituent assembly elections.[9]

The Nepal bar association initially called on Regmi to decline the offer to lead the caretaker government on the ground that such a move violated the principle of the separation of powers between the executive and the judiciary.[10] When Regmi accepted the appointment anyway, three former Nepali Supreme Court justices joined the bar association's call for Regmi to resign as chief justice.[11] The International Commission of Jurists, a human rights organization composed of 60 eminent jurists from around the world, echoed the stance in a statement released on the day Regmi was appointed. The group said Regmi "should not keep his position on the Supreme Court after he was appointed today as the country's interim prime minister so as to preserve the independence of the judiciary and the rule of law."[12]

Regmi responded that the constitutional changes developed by the task force clearly stipulated that only the sitting chief justice was empowered to lead the caretaker government. "If I resign from the post of chief justice, I will no longer remain as the cabinet chairman, which in turn could lead to new constitutional complexities," Regmi argued.[13] He also pointed out that the agreement that made him chairman of the cabinet required him to be "disassociated from judicial tasks" throughout his tenure as head of the executive.[14] With Regmi effectively recusing himself from the judiciary (but refusing to formally resign), one of his senior colleagues on the Supreme Court, Damodar Prasad Sharma, was appointed as acting chief justice.

The task force deal stipulated that Regmi's term would end either upon the election of a new government or, failing that, in December 2013. Potential fears about Regmi's staying in office beyond that deadline were assuaged because his term as chief justice was set to expire soon afterward. And because the constitutional changes allowed him to lead the executive only as long as he was the incumbent chief justice, there was a built-in time limit to Regmi's chairmanship.

Further, the task force agreement stipulated that the cabinet would have 10 ministers, drawn from the ranks of Nepal's retired secretaries—the ministry heads who were the highest-ranking members of the civil service. Although those offices were nominally nonpolitical, in practice secretaries often were perceived to have informal political connections. Regmi would have to choose carefully.

Despite some dissent, the country finally mapped a way out of the political deadlock. It was now up to chairman Regmi to lay the groundwork for a second round of constitution-making efforts, including the election of a new constituent assembly. To make a caretaker cabinet work, Regmi had to devise structures and practices that would improve coordination and make it easy for people from different parts of the political spectrum to work together.

GETTING DOWN TO WORK

Regmi first needed to convene and manage a functional cabinet capable of purposefully steering Nepal out of its political and constitutional quagmire. This step required appointing a team of capable ministers, strengthening cabinet procedures and the chairman's decision-making authority, ensuring that the cabinet would be the primary locus of decision making, and adhering to a clear governance agenda. In turn, improving cabinet functionality would contribute to the caretaker government's ultimate aim of organizing fair and credible elections for a new constituent assembly.

Creating the caretaker cabinet

The agreement between the chief justice and the four major political blocs represented on the task force formally granted Regmi final say over the appointment of 10 cabinet ministers, all of them drawn from the pool of retired secretaries. On the same day the president appointed him as chairman of the council of ministers, Regmi appointed former chief cabinet secretary Madhav Ghimire to lead the powerful home affairs and foreign ministries, and former deputy chairman of the law reform commission Hari Prasad Neupane as law, justice, and labor minister. In subsequent days, he filled the remaining eight cabinet posts.

Although he had final say over the appointments, Regmi stressed that he consulted closely with the four political party leaders before appointing the eight other ministers. Consultation took the form of "a verbal and informal understanding that the parties [would] recommend" the names of potential ministers, Devkota said. In the end, Regmi said he had a basket list of names and chose from those on the list. The final cabinet included Regmi, the two ministers directly appointed by him, and two ministers recommended by each of the four negotiating parties.[15]

Regmi's 10 cabinet members each became responsible for two or three different portfolios. Regmi, who decided on allocation of the portfolios, made himself personally responsible for the powerful defense ministry even though the country's president was nominally head of the armed forces. With his two direct appointees in charge of the critical home, foreign, and justice portfolios, he assigned one of the NC's nominees, Shankar Prasad Koirala, to lead the important, finance ministry.[16]

Cabinet coordination

With the council of ministers in place, Regmi worked closely with chief cabinet secretary Leela Mani Paudyal and with Krishna Hari Banskota, secretary in the prime minister's office and deputy cabinet secretary, to enhance the cabinet's efficiency. The secretaries decided to enforce cabinet rules that had existed on paper for a long time but had not always gotten implemented. Two sets of documents, both of which were strictly confidential and not available for public scrutiny, spelled out the functions of different portfolios and the procedures whereby policy proposals should be introduced and decided on by the cabinet.

Banskota explained that the policy process began in the ministries, which were "independent and free to prepare [any proposal]." After consideration by various public and policy experts, proposals made their way to the top of the ministry, where the secretary compiled the document to adhere to a standard format. The first section dealt with the background of the policy choice; the second discussed the outcome of ministerial and public consultations; the third set forth the ministry's specific policy recommendation; and the fourth provided a summary. The secretary then submitted the proposal to the cabinet.

The first stop for all proposals was the cabinet secretariat, where the chief secretary's responsibility was to read them closely. "If the chief secretary feels a proposal needs some explanation, that secretary can ask the relevant minister and secretary to explain the motive and impact," Banskota said. Once the chief secretary was satisfied, he explained the proposal to Regmi for approval to be included on the cabinet agenda, followed by the proposal's distribution to all ministers. The cabinet secretary then consulted with Regmi to schedule cabinet meetings, which were usually held once a week.

Cabinet meetings became more professional and businesslike than those of previous coalition governments mainly because of the people involved. Upreti noted that "they were bureaucrats who worked 30, 35, or 40 years" and "they knew the demarcation line and to what extent they could go" in developing and evaluating policy proposals.

The difference was particularly noticeable when it came to the authority of the chairman to make decisions. Banskota pointed out that "when the chief justice was chair of the council of ministers, the situation was the complete reverse" from the weakness that had characterized coalition cabinets. Whereas recommendations by coalition prime ministers often had resulted in "ministers from other parties resisting the suggestion and instead [requesting] something different . . . if the chief justice suggested the implementation of a specific program to a minister, the minister would respond enthusiastically at the opportunity. There was a very collaborative atmosphere . . . it was a complete U-turn."

Operational gains occurred despite the fact that no significant changes were made to the written rules and procedures. Regmi said the improvement reflected the fact that "all the cabinet members had administrative experience." And even though the group focused on "very openly discussing the issues" at meetings, Regmi stressed that "in a parliamentary cabinet system, the authority goes to the prime minister." Whereas that authority often got diluted in coalition cabinets, Regmi was adamant about having the final say over policy decisions during the caretaker period.

Six cabinet committees reviewed proposals that required special evaluations. When referring a matter to a specific committee, Banskota said, "cabinet will give two types of authority: either [it will empower] the committee itself to make a decision, or cabinet will ask the committee to come with a recommendation to cabinet." He added that only in cases when "the proposals were very technical, [the cabinet] would send it to the committee to look into the nitty-gritty." Those practices helped channel decision making back into the cabinet instead of into the informal networks that had come to dominate under earlier governments.

As the cabinet took on more and more responsibility, meetings "sometimes took five hours," Banskota said, compared with two hours previously. He viewed the additional meeting time as a positive development because ministers were "giving more supportive advice on technical points. They were also very relaxed and didn't have other responsibilities."

Overall, Banskota said, the caretaker ministers took cabinet meetings "seriously . . . and they liked staying longer. The thinking and attitude were very different."

Political liaison

To establish a link to political representatives, Regmi began to work with an expanded version of the interparty task force that had created his government. The task force morphed into a high-level political committee that had eight members, including top leaders from the Maoists, UML, NC, and SLMM alliance. The chairmanship rotated on a monthly basis.

The committee was "formed with a purpose of assisting and facilitating the government to take decisions on the issues of a political nature,"[17] the *Kathmandu Post* reported in March 2013. Regmi explained that "in cabinet we formed a three-member political committee [that] was always in touch with the political parties" through the task force's political group.

Defining the caretaker agenda

By working with the political committee, Regmi hoped to address another crucial issue: developing a common understanding of the caretaker cabinet's governance mandate and which issues the cabinet should avoid. Regmi made it clear that "our mandate is just to hold the constituent assembly election," Banskota said. "We are not a government for making

development in our country. We are not responsible for better economic growth or increasing diplomatic relations. We have a very limited mandate. The politicians gave us just one mandate, and that is to hold free and fair elections."

In addition to taking sensitive issues to the high-level political committee, the government limited its attention mainly to short-term management issues and choices that had little impact beyond its term in office.

A 2014 report by the Nepal chapter of Transparency International found that the caretaker cabinet had made 212 major decisions in the months after it was appointed, including "19 high-level appointments, dozens of policy decisions, 13 financial decisions [and the] formation of five commissions."[18] The Regmi government also successfully passed a new budget in July 2013 that was lauded for increasing investment in education, health, and social security by more than 40%.[19]

But at the same time there were complaints from the Maoists that the interim government had overstepped its mandate by adopting a full annual budget with new policies and programs.[20]

**Creating the Caretaker Cabinet:
The 11-Point Agreement**

On March 13, 2013, the four political blocs represented on the task force formally adopted an 11-point agreement on the creation of the caretaker cabinet. The agreement contained provisions related to:

1. The structure, duties, and term of office of the election government
2. Formation of the high-level political committee and mandate
3. The constituent assembly members and tenure
4. The voter list
5. Procedures to remove [constitutional obstacles]
6. Provisions related to elections
7. Appointments to the Supreme Court and constitutional bodies
8. Ownership of the work accomplished by the dissolved constituent assembly
9. Remaining tasks of the peace process
10. Citizenship issues
11. Local elections

(Full document: http://aceproject.org/electoral-advice/archive/questions/replies/207090914/285703754/tr-eng-four-party-agreement-full-text-p-13-mar.pdf.)

Despite efforts to coordinate and to define the caretaker mandate carefully, it remained difficult to define which issues fell within the cabinet's purview, given its uncertain powers and its short time frame. Without a formal document that defined the cabinet's mandate, Regmi relied on his ministers to filter the issues and identify matters that were appropriate.

Regmi said the caretaker cabinet focused on "regular work that is essential—like budgeting, planning, and monetary policy—things that are very necessary to running the country." In the end, the cabinet adopted a rule of thumb: "If it could not be done within a short period, we did not enter into those issues."

The effect of this limited mandate was clearly visible in executive appointments. Although an established public service commission was responsible for hiring civil servants below the level of secretary, the cabinet appointed managers to state-owned

enterprises and government agencies. Upreti said that "exceptionally few" such appointments were made during the Regmi government. "Ambassador positions were vacant; they did not appoint a single ambassador," he said.

Banskota explained the reasoning: "If we appoint someone, the tenure would go for five years. But what if the next government didn't like those appointments? So, let's forget about this appointment. When the next elected government comes, it will recruit people."

Preparing for elections

Enabling a return to elected government was the main goal of the Regmi cabinet. Even though the creation of a coherent caretaker cabinet provided some much-needed stability, Regmi's team faced the tough task of arranging and overseeing fair and credible elections. The first step was to stabilize Nepal's election commission. Political paralysis had made it impossible to fill vacant posts. As a result, by the end of 2012, the commission's board was operating with only two of the requisite five commissioners.[21]

Regmi acted quickly. Three days after the caretaker government was constituted, the cabinet recommended the reappointment of the two incumbent commissioners and submitted a list of three additional names to President Yadav for endorsement. In a reflection of the urgency of the situation, the president appointed the five election commissioners on March 24, just six days after the caretaker cabinet was formed.

The cabinet also worked to provide the commission with political support by referring contested issues to the high-level political committee. The committee's main task was to resolve disagreements among the four parties regarding a new law to guide the conduct of the elections. The caretaker cabinet referred the Constituent Assembly Member Act 2013 to the high-level committee immediately after the committee's formation. Differences of opinion centered on whether there should be a 1% threshold to limit the number of fringe parties in the new constituent assembly and whether those convicted of serious crimes should be allowed to run for office. The NC and UML supported the proposals; the Maoists and SLMM opposed them.[22]

Despite the cabinet's efforts to engineer a political solution to the deadlock, the high-level committee ultimately failed to reach consensus. The dispute was resolved only after the committee officially missed the cabinet deadline for reaching a decision, forcing Regmi to rule on the controversial provisions. In mid-June, the chairman announced that the 1% threshold had been scrapped, whereas the ban on convicted criminals would stand. He also informed the country that because of the delay in settling the dispute, the election would again be postponed. It was officially rescheduled to take place in November from its original date in June.[23]

With legal provisions finally in place, it was up to the election commission to implement them. The person appointed by the president to

lead the commission was Neel Kantha Uprety, a UK-trained computer scientist with more than 20 years of experience in working at the Nepali election commission. Uprety had previously served as acting chairperson of the commission and regarded his experience in working on the first constituent assembly election in 2008 as particularly important. "Very few countries had had that experience," he said. "Elections for a constituent assembly are normally not done twice in any country." Uprety was determined to learn from this unique situation in order to improve upon the conduct of the 2008 election.

Problems with the voters roll in 2008 led the European Union's observer mission to recommend "a comprehensive review of the voter register . . .The modernization of the civil registry and the introduction of a secure national-identification-card scheme are essential to improve the quality of the voter register for future elections."[24] Updating the voters roll with biometric data and rolling out identity cards in a national campaign were the commission's main objectives during its first few months in office.

But as the impasse over the electoral law had demonstrated, the commission faced a tough task. Uprety said that in some ways, the atmosphere in the country was more challenging than in the lead-up to the 2008 election. After four years of watching the first constituent assembly fail, voters were asking, "Why should we have another election? You stayed there for four years and you did not do the work," Uprety said. Skepticism among the public made it even more important for the commission to operate in a neutral and professional manner.

The election commission introduced a forum that actively involved all stakeholders in the preparatory process. Uprety pointed out that commission members held formally structured "deliberations and discussions within the commission with political parties, civil society representatives, senior government officials, and the international community. They were all closely involved throughout the entire process." Uprety said it was "this participatory approach [that] made it possible to gear up for the election."

In addition to this *formal* forum for engagement, the commission worked with the cabinet on an *informal* basis. "When a problem came [up], we telephoned them," Uprety said. In more serious cases, "we used to go directly to the prime minister's office, [where] we met with him as well as the home, finance, and general administration ministers." Uprety lauded the cabinet's support in the areas of resources, staffing, and security. He emphasized that "the government was constituted for the sake of conducting elections. So they were there to provide complete support of the electoral process. Whatever we were asking for, they were providing us [with] and fully supporting us."

By early August, the commission had registered 11.7 million of Nepal's estimated 15.4 million eligible voters[25] and made progress in preparing to roll

out biometric identification cards to all registered voters before the November polls.

But just when it appeared that the country was firmly on a path toward electing a new constituent assembly, other challenges emerged. In alliance with 33 other disaffected parties, the breakaway CPN-M Maoist faction had refused to participate in preparations for the election and now issued increasingly vocal threats to disrupt the polls. The CPN-M regarded as illegitimate the caretaker government's role in preparing the election.[26]

The government's initial response was to attempt to bring the CPN-M-led alliance into negotiations. After twice declining invitations for talks from the cabinet and the high-level committee, the party's leaders finally agreed to meet with the government in early August. But negotiations broke down after three rounds of talks, with the CPN-M insisting that Regmi step down and that the November election be postponed.[27] When the government refused to meet the demands, the CPN-M-led bloc confirmed its intention to disrupt the constituent assembly elections.[28] A month before the polls, the group declared that "all purpose of negotiation" with the government had "ended."[29] It launched a nationwide campaign to collect funds to finance its effort to sabotage the process.[30]

The CPN-M-led alliance intimidated voters and officials at registration locations and stole equipment used for capturing voters' biometric data.[31] The CPN-M also enforced sporadic transport strikes against the registration process and vandalized property belonging to people who defied the strikes.[32] As election day approached, a CPN-M state committee member was arrested for a bomb attack on a public bus that seriously injured nine people.[33]

The failure of negotiations to prevent CPN-M obstructionism further increased the pressure on the election commission. For Uprety, the CPN-M-led alliance became the biggest worry. "They were creating problems and not allowing us to prepare the elections or the voter roll or to conduct [staff] training . . . They were trying to destroy the situation . . . We were also very much worried that they would not allow voters to go to the polling centers [by] physically preventing them [and] threatening them." Although Uprety said the commission remained "very flexible to allow [the CPN-M] to register before the program is finalized," the party's refusal to do so meant the government had to take steps to prevent violence at the polls.

The commission began training 250,000 staff and 150,000 security officials for possible disruptions leading up to election day. The deliberate involvement of a wide range of government and civil stakeholders helped prepare people for courses of action in the event of trouble while also helping identify suitable community members to serve as micromonitors during the preparatory process and up to the polling day. The purpose behind the deployment of micromonitors was to make sure that disruptions and acts of intimidation "were reported directly to the election commission . .

. so that it could take actions immediately," Uprety said. On November 11, eight days before the election, the CPN-M launched "a general strike for 10 days so that nothing could move to the polling centers and no staff could be deployed," he said.

Although stricter security measures included the deployment of 100,000 security agents—including the army—to safeguard voting venues, the strike forced the commission to delay the distribution of biometric voter identification cards.

During the preceding months, the commission had worked to update the voters roll so it would include photographs of all registered voters. According to Uprety, the plan also called for distributing identification cards with voters' photographs printed on the front "so they could be compared with the electoral roll at the polling center." In response to the CPN-M's threats, the commission delayed the nationwide distribution of the cards until three days before the election. The commission reasoned that the delay would reduce the chance that the CPN-M could undermine the elections by confiscating the cards from voters.

The plan paid off on election day. Uprety said that ensuring access to the identity cards "really helped grow the confidence of the people; they came in big numbers." Whereas previous elections featured voter turnout of "60 to 63%, this time we had almost 80% turnout," he added. Despite the fact that a bomb blast injured three people and that, according to Uprety, "there were more than 400 suspected improvised explosive devices and fake bombs found across the country" on election day, the enhanced security training and monitoring procedures helped prevent fatalities.[34]

In addition to the measures the government took to secure the polls, Uprety gave "most of the credit to the collective wisdom of the people" for defying attempts to disrupt the election. After the public's initial despondency over the failure of the first constituent assembly, "people realized that if we united and participated, we can pressurize and send better representatives to the constituent assembly so the constitution can be written. They thought, 'We must go for election.'"

The result, Uprety said, was that the public "was not listening to the threats and intimidations by striking CPN-M groups; it was a kind of psychological war between people participating in the democratic electoral process and those trying to disrupt it . . . People collectively wanted to participate, so they did in a big way."

OVERCOMING OBSTACLES

Despite the cabinet's contribution to the success of the elections and its improved policy decision making, defining the mandate of the chief justice–led government in the absence of legislative oversight remained a challenge throughout that government's time in office. Although the power the political parties vested in Regmi enabled the caretaker government to

overcome the country's political deadlock, it also ignited controversy whenever a group felt aggrieved by a decision.

One episode in particular illustrated that the amount of constitutional authority conferred upon the caretaker cabinet, combined with the lack of an elected legislature, left the country with few effective mechanisms to hold the cabinet accountable for its decisions. The instance was the caretaker cabinet's appointment of Lokman Singh Karki as leader of the country's anticorruption watchdog, a commission that investigated abuse of authority. The position had been vacant for more than six years, but the appointment would last beyond the caretaker government's term in office; and Regmi himself had tried to limit his cabinet's work to activities that would not usurp the decision-making authority of the next elected government.

Karki was a controversial figure who had served as chief cabinet secretary during King Gyanendra Shah's rule in the mid-2000s. A 2007 government commission had implicated him in the suppression of the 2006 democracy movement, and other complaints against him included the introduction of a restrictive media ordinance.[35]

Regmi went ahead with the appointment on recommendations by the four major political blocs represented in the high-level political committee of the task force—despite concerns on the parts of some of his ministers.

The move did not sit well with members of civil society or with some of the party leaders who had been left out of the decision-making process and who accused the caretaker cabinet of overstepping its authority by making a sensitive, long-term appointment.[36] The governments of Germany, the United Kingdom, Switzerland, France, and Norway also objected, adding that they would reduce assistance to Nepal.[37] Two separate petitions were also filed with the Supreme Court, opposing Karki's appointment.[38] The CPN-M said the appointment had been designed to protect corrupt politicians, and it reiterated its call for Regmi's "unconstitutional government" to resign.[39]

In spite of the strident opposition to the Karki decision, the constitutional mandate assigned to the caretaker cabinet by a large majority of political parties meant that "opposition parties . . . could not obstruct implementation."[40] The caretaker cabinet remained steadfast in its defiance of the criticism, and a ruling by the Supreme Court—without Regmi's direct involvement in the case—ultimately affirmed the appointment.

ASSESSING RESULTS

The constituent assembly elections concluded the mandate of the caretaker government. But the Regmi cabinet remained in place for another three months, as political parties negotiated the formation of a new coalition cabinet based on results of the second constituent assembly election. Following the eventual conclusion of a coalition deal, Regmi simultaneously resigned as chief justice of the Supreme Court and as chairman of the interim council of ministers on February 11, 2014.[41] Nearly two years after

dissolution of the first constituent assembly, Nepal was set to have an elected government again.

The November 2013 election jolted the political scene. The Nepali Congress became the dominant party by increasing its number of seats in the constituent assembly to 196 from 115. The Unified Marxist–Leninist Communist Party of Nepal became the second-largest party in the assembly, with 175 seats, up from 108. And the Maoists, which had been the biggest party after the 2008 election, dropped to third position, with only 80 seats.

On the same day Regmi resigned, a so-called Grand Coalition cabinet composed of NC and UML ministers was sworn in. The new government, led by the NC's Sushil Koirala, controlled almost two-thirds of the seats in the new assembly. In April 2014, the coalition exceeded the two-thirds mark—the threshold required to pass a new constitution—when two smaller parties joined.

Despite initial claims—later withdrawn—of electoral fraud by the Maoists,[42] national and international observers widely praised the conduct of the polls. Former US president Jimmy Carter, whose nonprofit Carter Center had been engaged in Nepal's political transition since 2004, said, "This election is better than the last one. I am very proud of this."[43]

The European Union's observer mission similarly concluded that "voting was conducted in an orderly and generally calm atmosphere. Polling procedures were followed consistently . . . and the performance of polling staff mostly assessed to be good."[44]

The caretaker cabinet had succeeded in fulfilling its core mandate of organizing free and credible elections. However, its inability to integrate the CPN-M and its 33 allied parties into the electoral process represented the Regmi cabinet's most significant failure. The EU noted that this "constituted one of the biggest political challenges in the electoral process."[45]

Professor Hachhethu said that "in terms of free and fair elections, [the caretaker cabinet] was unmatchable . . . It broke all previous records in terms of peace, order, freeness, and fairness. This was the best [election]. If the story had to repeat [itself], I would always be for nonparty, impartial government."

Uprety, head of the election commission, praised the Regmi government for enabling the organization to conduct successful voting in the face of significant crosscurrents. "The religion of political parties in an emerging democracy like Nepal is to win the election in any way they can—by hook or by crook," he said. "In the end, the elections of 2013 were successful because of good management by the election commission as well as support by the apolitical government, which was formed with the sole purpose of supporting elections."

In comparing the caretaker cabinet's governance record with its predecessors, Upreti, who was a secretary during all four cabinets under the first constituent assembly, said it was generally "far better in terms of good

governance." In late 2014, a spokesperson for the country's anticorruption watchdog, Shreedhar Sapkota, agreed that the perception of the "bureaucrat-led government's" record was better than that of its political predecessors. He added that "ministers in the . . . Khil Raj Regmi–led government were relatively cleaner."[46] But in December 2015, six ministers in the caretaker cabinet were summoned to appear before the commission for an investigation of abuse of authority in relation to allegations that they had acquired property illegally. The allegations were controversial, with claims that the Karki-led commission was using the allegations to silence members of the caretaker cabinet that had opposed his appointment.[47]

Upreti emphasized that in examining the interim government's performance, "the limitation we have to understand is that it was responsible only to hold the election and to carry out day-to-day administration."

Akhilesh Upadhyay, editor in chief of the *Kathmandu Post*, agreed that this limited mandate, combined with the fact that the caretaker cabinet had held office for just 11 months, made assessing the Regmi cabinet's governance record "more gray than black and white."

There is little evidence that the caretaker cabinet's enhanced decision-making practices were sustained. The three-month wrangling over cabinet positions that followed the return to elected government after the 2013 elections provided an early indication that Nepal was returning to politics as usual.[48] After eventually more than doubling the size of the cabinet to accommodate the coalition, the new, NC-led government committed itself to the promulgation of a new constitution within one year. But discord within the coalition contributed to a missed deadline, and instead, on the deadline day of January 20, 2015, Nepal's political disharmony erupted into a full-scale brawl as rival members of the constituent assembly physically attacked each other in the legislature building.[49]

It was only after a devastating earthquake in April 2015 killed almost 9,000 people and plunged the country into a humanitarian crisis that political parties could agree on a new constitution. But adoption of the constitution on September 20, 2015, spawned widespread protests against the document's purported discrimination against Madhesi groups. The protests and a subsequent blockade of the Indian border claimed more than 50 lives and worsened the postearthquake humanitarian crisis in the country.[50]

REFLECTIONS

The creation of a stable technocratic caretaker cabinet with sufficient authority to organize fresh elections enabled Nepal to escape from the political deadlock that threatened to derail preparation of a new democratic constitution. But the effect was partially to undercut those same democratic norms, setting a precedent that violated important principles, including the separation of powers vital for executive accountability.

Despite the caretaker cabinet's success in holding free and fair elections in a fraught political context, Sunil Pokharel, secretary-general of the Nepal bar association, insisted that the decision to appoint the sitting chief justice to lead the executive "was a massive setback for Nepali politics and judiciary." Even though Regmi had in practice recused himself from the Supreme Court while serving as chairman of the cabinet, Pokharel said that "with this decision, the independence of the judiciary was compromised because the same person was in two positions."

Pokharel's critique paralleled that of the newly formed, dissident Communist Party of Nepal–Maoist (CPN-M), whose leaders asked, "How is the Regmi government different from any partyless or autocratic government, when he enjoys complete authority as the executive, legislative and judiciary head?"[51]

The question was what a better alternative might look like for a country in circumstances like Nepal's. Extensive political party fragmentation, deep distrust among leaders, and the conspicuous absence of a legislature limited alternatives available in other settings. For example, although Tunisia confronted the first two of those circumstances in 2010, its caretaker government, formed on the recommendation of civil society leaders, was authorized by a sitting legislature that doubled as a constituent assembly. The same legislature, under a new, supermajority decision rule, subsequently reviewed legislative proposals from the caretaker government and also retained the authority to call votes to oust ministers. By contrast, Nepal lacked civil society groups capable of wielding equivalent power over political parties, and its legislature had dissolved. Planning ahead to provide a constitutional way out in advance of deadlines could have helped avert the situation. Regmi's resignation from the post of chief justice simultaneously with his take-up of the position of cabinet chairman would have eased—but not solved—the important problems critics perceived.

TIMELINE

1990: In what later became known as the first democracy movement, a popular uprising leads to restoration of the multiparty constitutional monarchy. The power of the monarchy is limited, but Nepal remains a Hindu kingdom. Radical left-wing groups reject the constitution.

1996: The Maoists launch a People's War in opposition to Nepal's constitutional monarchy.

May 2002: The prime minister, with support from the monarchy, dissolves the parliament.

February 2005: King Gyanendra Shah assumes direct executive power. Under a state of emergency, he arrests political leaders and stifles civil liberties.

October 2005: The Maoists declare that their immediate goal is to make Nepal a democratic republic, with monarchy and feudalism becoming the principal enemies.

November 22, 2005: A 12-point agreement is signed in Delhi between the Seven Party Alliance representing the political establishment and the Maoists to fight autocratic monarchy.

April 2006: The second popular democracy movement forces the king to reinstate the parliament. A cease-fire is declared between the government and Maoist forces.

November 21, 2006: A comprehensive peace agreement declares the end of the civil war and outlines a road map toward constituent assembly elections.

January 15, 2007: The Maoists are included in an interim parliament, and an interim constitution is promulgated.

April 10, 2008: Constituent assembly elections are held, with the Maoists emerging as the largest party.

May 28, 2008: The constituent assembly holds its first sitting, wherein the monarchy is abolished and Nepal is declared a federal democratic republic.

July 2008: The Nepali Congress general secretary, Ram Baran Yadav, is elected by the constituent assembly as Nepal's first president.

August 2008: Maoist chairman Pushpa Kamal Dahal (commonly known as Prachanda) is elected first prime minister of the republic.

May 3, 2009: Prachanda resigns following a controversy over the sacking of the army chief.

May 25, 2009: Communist Party of Nepal (Unified Marxist–Leninist, or UML) leader Madhav Kumar Nepal is elected prime minister.

May 28, 2010: The constituent assembly's two-year term is extended by one year. Prime Minister Nepal resigns.

February 2011: Jhalanath Khanal of the UML is elected prime minister.

May 2011: The constituent assembly's term is extended for three months. Prime Minister Khanal resigns.

August 28, 2011: Baburam Bhattarai of the Maoists becomes prime minister.

May 25, 2012: The Supreme Court forbids any further extensions to the constituent assembly's term.

May 27, 2012: The first constituent assembly is dissolved.

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