

## NEPAL 2013-14: BREAKING THE POLITICAL IMPASSE

*Enrica Garzilli*

Asiatica Association  
garzilli@asiatica.org

### 1. *Introduction*

In 2014, Nepal was headed towards a resolution of the problems that caused the political and constitutional impasse of 2012 and 2013. The first Constituent Assembly resolved on May 28, 2012, before drafting the new Constitution, to replace the interim Constitution of 2007. This brought the country to a political deadlock. In March 2013, Prime Minister Baburam Bhattarai stepped down to facilitate the election process of the second Constituent Assembly. Chief Justice Khil Raj Regmi was appointed to serve as *de facto* prime minister and to form a new government. The results of the election – which was held in November 2013 – saw the emergence of the Nepali Congress as the leading party, closely followed by the Communist Party of Nepal (Unified Marxist–Leninist), and this brought the country to another period of political deadlock. In February 2014, a new coalition government was formed under the new Prime Minister, Sushil Koirala, who replaced Regmi, ending the political impasse. Koirala established, as his main task, the drafting of the Constitution. On November 27, at a press briefing at the end of the SAARC summit, he said that the Nepali parties were trying to find a consensus in order to promulgate the Constitution by January 22, 2015. Other key goals of the Koirala government were economic development and completing the peace process through the investigation and persecution of human rights abusers during the civil war (1996-2006). During the first half of 2014, following the election of the second Constituent Assembly, Nepal's economy stabilised. New input for development also resulted from improved relations with India. In his two visits to the country in 2014, Indian Prime Minister Narendra Modi signed important economic agreements to develop Nepal's hydropower potential and to buy electricity to help tackle India's energy shortages, and also provided Nepal with a \$1 billion line of credit for various development purposes.

## 2. *An Ongoing Political Impasse*

The political deadlock which paralysed the Federal Democratic Republic of Nepal due to the lack of a Constitution and ongoing quarrels between the parties continued during the first months of 2013.<sup>1</sup> As has been rightly noted, Nepal's political parties «have been unable to agree even on a regular annual budget».<sup>2</sup>

The 1<sup>st</sup> Nepalese Constituent Assembly, which was elected in May 2008, had the task of writing a new Constitution and acting as the interim legislature. However, the Parliament did not succeed in its mission to draft a new Constitution, and eventually, Prime Minister Baburam Bhattarai dissolved the Constituent Assembly on May 28, 2012. The major points of disagreement were whether the government should be central or federal, and the division of regions. The Maoists parties and those that represent the Madhesi people (who inhabit the Terai region) demanded a federation of single-ethnicity states, while the Nepali Congress and the Communist Party of Nepal (Unified Marxist–Leninist) demanded a smaller number of states based on multiple ethnicities.

Dr. Baburam Bhattarai, of the Unified Communist Party of Nepal (Maoist), one of the key players in the Maoist insurgency and the 35th Prime Minister, serving from August 2011 to March 2013, had scheduled the 2<sup>nd</sup> Nepalese Constituent Assembly elections for November 22, 2012, but the vote was put off by the Election Commission. Once again, the country was without a functional government and without a Constitution. The two mainstream political parties, namely, the Communist Party of Nepal (Unified Marxist–Leninist) and the Nepali Congress, had long quarrelled about conducting an election under the authority of Bhattarai. The dispute between the parties twice led to a postponement of the elections. Nepal was and is still ruled under an Interim Constitution.<sup>3</sup>

In March 2013, Bhattarai agreed to step down to ease the election process, and all of the major parties agreed to form an interim government led by the Chief Justice of the Supreme Court, Khil Raj Regmi, and a council of ministers chosen by him, although the interim Constitution does not allow for a provisional government led by a Chief Justice. The appointment raised many doubts in the country. First, the parties were criticised for not working together to build democracy and to draft the Constitution, but instead being driven by their obsession with power. Doubts were raised about bringing a judicial figure into the political domain. Moreover, Regmi's appointment was proposed by Pushpa Kamal Dahal, also known as Prachan-

<sup>1</sup> Enrica Garzilli, 'Nepal, stallo politico e lentezze nella realizzazione del processo di pace e di riconciliazione', *Asia Maior* 2012, pp. 213-221.

<sup>2</sup> 'Steep political odds face mountainous Nepal', *Al Jazeera*, 20 February 2013 (<http://www.aljazeera.com/indepth/features/2013/02/2013220121352455298.html>).

<sup>3</sup> *Interim Constitution of Nepal 2007* ([http://www.worldstatesmen.org/Nepal\\_Interim\\_Constitution2007.pdf](http://www.worldstatesmen.org/Nepal_Interim_Constitution2007.pdf)).

da, the Chairman of the Unified Communist Party of Nepal (Maoist), an ex-leader of the guerrilla war against the royal government, who served as Prime Minister from 2008 to 2009. Because the idea to appoint the Chief Justice to the role of interim Prime Minister came from Prachanda, this raised some suspicion that the move was part of a Maoist conspiracy to co-opt the judiciary. According to an editorial published in the *Nepali Times*, «[i]t was a proposal by one party that wanted to remove the last remaining hurdle in its quest for absolute power. After dissolving the assembly, buying into media, coopting the police, appeasing the army, infiltrating the bureaucracy, only the Supreme Court was standing in the way».<sup>4</sup> Voices were raised to comment that the Chief Justice should not have accepted the proposal, as it was «ethically wrong».<sup>5</sup>

After a mechanism was proposed to oversee his government until the day of the election of the new Constituent Assembly-cum-Parliament, Regmi, too, expressed reservations about heading the interim government unless he could have a free hand in choosing his ministers. It was also proposed that, if the interim government failed to hold the election by the first week of June, it would be dissolved. Regmi's fear was that he would only be used as a proxy to endorse the decisions made by the main parties. Every political force and the civil society agreed on the need for fresh elections for a new Constituent Assembly to finally draft the Constitution, but this time, on some solid basis of agreement, which could lead to a result shared by the majority of the parties that had emerged in the first election. The three main parties were the Unified Communist Party of Nepal (Maoist) – which originated out of the fusion, in 2009, of the Communist Party of Nepal (Maoist) and the Communist Party of Nepal (Unity Centre-Masal) – followed in the second position by the Nepali Congress, and in the third position, by the Communist Party of Nepal (Unified Marxist-Leninist). Elections for the sake of elections that were to be held on June 21, 2013 would not solve the matter; and it would be better to give the new Chairman of the Interim Election Council, namely, PM Khil Raj Regmi, enough time to organise free and fair voting, even if it occurred later in the year.

### 3. *New Interim Government: Chief Judge Khil Raj Regmi's Appointment as Chairman*

The quarrels between the parties and the impossibility of drafting the new Constitution caused widespread disillusionment among the Nepali people against the main political parties and their leaders. According to a Himalmedia Public Opinion Poll 2013 which was carried out over a period of one week in mid-February in 38 districts for a total of 3,508

<sup>4</sup> 'Electing to go for elections', *Nepali Times*, 22-28 February 2013.

<sup>5</sup> Daman Nath Dhungana, former Parliament speaker, as reported in 'Steep political odds face mountainous Nepal', *Al Jazeera*, 20 February 2013.

respondents, reflecting the proportionality of Nepal's ethnicities, geography, gender, age, and literacy, 61,1% of the respondents thought that democracy was under threat, and 39,4% of the respondents thought that the major reason was the wrangling among political parties. Of the disputes among the parties, 15% of the respondents assigned responsibility to the Unified Communist Party of Nepal (Maoist), led by Chairman Pushpa Kamal Dahal, and 9,1% indicated foreign interference (85,3% indicating meddling from India). More than half of the respondents did not trust the party leaders, and 10,19% wanted to have an independent candidate.<sup>6</sup> It was time for the political leadership to take action.

Despite the criticism of the Nepal Bar Association and the protests of a dozen fringe political parties, which on June 14 called a general strike in the Kathmandu Valley to protest against the formation of the government under a chief justice, the major parties finally agreed on the name of the chairman of the Interim Election Council. This agreement was part of an 11-point deal reached by the Unified Communist Party of Nepal (Maoist), the Nepali Congress, the Communist Party of Nepal (Unified Marxist-Leninist) and the United Democratic Madhesi Front. The last group mentioned was a coalition composed of three Madhesh-based political parties, the Madhesi Jana Adhikar Forum, Nepal (also called the Madhesi People's Rights Forum, Nepal), and two minor parties: the Tarai-Madhesh Loktantrik Party and the Sadbhavana Party. The parties also agreed to hold the election on June 21, or to postpone the date until November in case of a lack of agreement.

On March 14, 2013, Chief Judge of the Supreme Court Khil Raj Regmi was sworn in by President Ram Baran Yadav, the 1<sup>st</sup> President of Nepal (serving from July 2008 and still incumbent). Regmi's service as Chief Justice of the Supreme Court was unanimously considered beyond reproach; however, his capacity as a leader was doubted because of his failure to appoint judges in the Supreme Court during his 22 months as head of the Judicial Council, and his legal reconciliatory approach was considered a weak point.<sup>7</sup> Regmi was charged with leading a new interim government and supervising the elections, to be held in three months, by June 21, 2013, and he became *de facto* prime minister. This brought the impasse between the four main political parties to an end.<sup>8</sup>

Foreign countries, including the UK, India, China, Switzerland, and the USA, welcomed the agreement among the four major political parties.

<sup>6</sup> 'A wide open field', *Nepali Times*, 15-21 March 2013.

<sup>7</sup> 'CJ Regmi sworn in as chairman of interim election council', *The Himalayan Times*, 14 March 2013

(<http://www.thehimalayantimes.com/fullNews.php?headline=CJ+Regmi+sworn+in+as+chairman+of+interim+election+council+&NewsID=369313>).

<sup>8</sup> As noted above, in March 2013, the four main parties were, in order of importance, the Unified Communist Party of Nepal (Maoist), the Nepali Congress, the Communist Party of Nepal (Unified Marxist-Leninist), and the United Democratic Madhesi Front.

As stressed by the US Embassy's statement congratulating the Nepalese people, the agreement on a Chief Justice-led government was «a complex and challenging process and we commend the parties for their willingness to make the compromises necessary to achieve this important political milestone».<sup>9</sup>

Besides the appointment of Regmi, the top leaders of the four major political parties who signed the 11-point deal also agreed on two other key issues: forming a Truth and Reconciliation Commission to provide transitional justice and updating the voters' list before the polls. Regmi's main political task was to hold the elections, and in his first speech, he urged all parties and the civil society to cooperate in the process. Despite being criticised as a weak leader, his nonpartisan status actually helped the country to head towards elections.

Immediately after being appointed, Regmi included two former bureaucrats in the Cabinet, and five days after his election, he included eight more ministers and allotted them portfolios, after the High-Level Political Committee Coordinator agreed on their names. A few days after his appointment, in fact, Regmi had set up a High-level Political Committee to help the Interim Election Council. The eight-member committee has two each from the four major political parties, Unified Communist Party of Nepal (Maoist), Nepali Congress, Communist Party of Nepal (Unified Marxist–Leninist) and United Democratic Madhesi Front. It was presided over by the Chairman of UCPN-Maoist Pushpa Kamal Dahal. There was a major effort to overcome the difficulties that had brought the country to a political and constitutional crisis.<sup>10</sup> The first Cabinet chaired by Regmi pledged to hold free, fair and inclusive elections in June in order to reflect the will of the Nepalese people. The Cabinet requested the political parties who had opposed Regmi's election to get engaged in the Constituent Assembly elections, and it appealed to civil society and the media to create a favourable environment for the elections.

#### 4. *The Second Constituent Assembly and the New Government*

On June 13, 2013, the Interim Election Government formed in March and headed by Chief Justice Khil Raj Regmi announced that the election of the new Constituent Assembly, a unicameral body tasked with drafting a new Constitution and serving as the country's Parliament, would occur on November 19, 2013. The lack of a political consensus had forced a deadline extension from the planned June 2013 election.

<sup>9</sup> 'India, China, US laud CJ govt deal', *Ekantipur*, 14 March 2014 (<http://www.ekantipur.com/2013/03/15/top-story/india-china-us-laud-cj-govt-deal/368455.html>).

<sup>10</sup> Enrica Garzilli, 'Nepal, stallo politico e lentezze nella realizzazione del processo di pace e di riconciliazione', *Asia Maior 2012*, pp. 213-221.

Out of the 139 political parties registered in May at the Nepal Election Commission, 76 were new ones, a sure signal that the democratic debate was florid. They did not exist during the first Constituent Election of May 28, 2008. However, despite the support of the four major political parties, there was still no consensus on the November elections. The new Communist Party of Nepal (Maoist), a new party formed in 2012 from a split from the Unified Communist Party of Nepal (Maoist) and holding the same name as the Communist Party of Nepal (Maoist), merged into the Unified Communist Party of Nepal (Maoist), did not register in the Election Commission, saying that the election was not possible under the current political situation. An alliance of 33 smaller political parties led by Mohan Baidya, the Chairman of the Communist Party of Nepal (Maoist), issued a statement declaring that «the Government was unconstitutional as it was formed through an unconstitutional Presidential decree and holding an election on the basis of such a decree is akin to pushing the country towards further crisis».<sup>11</sup> They wanted a party-led government and wanted to postpone the elections.

The Terai groups advocating Terai separatism and Madhesi self-determination declared their agenda, endorsing an eight-point course of action aimed at disrupting the Constituent Assembly polls. The problem of the inclusion of the marginalised Terai groups in the constitutional process and the number of ethnicity-based regions have been present in Nepal since the beginning of the democratic debate regarding drafting a new Constitution to replace the interim Constitution of 2007.<sup>12</sup>

In August, the monarchist Rastriya Prajatantra Party Nepal announced the launch of a nationwide signature campaign in October to demand the return of the monarchy. There were strikes and violent protests by the opposition parties in the months before the elections, and all of the electoral constituencies along the 1,700 Km border with India were kept under special surveillance in view of the elections.<sup>13</sup>

Some 12,21 million people from 102 castes and ethnic groups, speaking 92 languages, voted in the second Constituent Assembly. The Assembly was enlarged to 601 seats to ensure the highest degree of participation of the parties by instituting a 60/40 ratio for proportional and first-past-the-post representations. A total of 30 parties and 2 independents were represented. The Nepali Congress, which had been the second party in the first elections, emerged as the largest party, winning 105 of the 240

<sup>11</sup> S. Binodkumar Singh, 'Nepal: Moving towards elections – analysis', *Eurasia-review*, 15 July 2013 (<http://www.eurasia-review.com/15072013-nepal-moving-towards-elections-analysis/>).

<sup>12</sup> Enrica Garzilli, 'Nepal, la difficile costruzione della nazione: un paese senza Costituzione e un Parlamento senza Primo ministro', *Asia Maior* 2010, pp. 161-179.

<sup>13</sup> 'Nepal strike shuts down capital Kathmandu', *BBC News Asia*, 12 September 2013 (<http://www.bbc.com/news/world-asia-24059900>); 'Nepal opposition supporters held in pre-poll violence', *BBC News Asia*, 12 November 2013 (<http://www.bbc.com/news/world-asia-24911119>).

seats of the first-past-the-post seats and 91 proportional seats, for a total of 196 seats. It was closely followed by the Communist Party of Nepal (Unified Marxist-Leninist), which won a total of 175 seats. The Unified Communist Party of Nepal (Maoist) had a total of 80 seats, and the Rastriya Prajatantra Party Nepal received 24 seats. In November, Pushpa Kamal Dahal, the Chairman of the Unified Communist Party of Nepal (Maoist), demanded that the vote counting be stopped, claiming elections fraud, and asked for an independent investigation, refusing to participate in the Constituent Assembly if his demands were not met. The Election Commission, however, ruled out a revote or recount.<sup>14</sup>

The election manifesto released by the Nepali Congress in October stated that a new Constitution was to be drafted within a year of the election and that it would establish multiparty competition, periodic elections, separation of powers, press freedom, a transparent and inclusive governing system, a federal structure, including two provinces in the southern plains or Terai, and a focus on the economic development of the country.

The elections brought the country to another period of political deadlock because no party had won a clear majority, although, in December, the Unified Communist Party of Nepal (Maoist) agreed to join the Constituent Assembly and to participate in writing the final chapters of the Constitution.

The results of the elections showed that the forces that have been fighting for an identity-based federalism, namely, the Unified Communist Party of Nepal (Maoist) and the Madhesi parties, had been defeated, although they had been confirmed as significant forces. The Terai, or Madhesh, region begins at the Indian border and includes the southernmost part of the intensively farmed Gangetic Plain. The region is the breadbasket of the country and is the main link between Nepal and its biggest trading partner, India. The Madhesi parties wanted a single and separate province spanning the southern third of the country from east to west. However, in the elections, the Nepali Congress emerged as the strongest force in the Madesh, although the party had always opposed ethnicity-based federalism, warning that it could lead to conflicts between the various ethnic groups.

On February 10, the Chairman of the Nepali Congress, Sushil Koirala, a member of the party since 1955, was elected Prime Minister by the Constituent Assembly, ending months of political crisis. He secured 405 votes, although 148 representatives of the Unified Communist Party of Nepal (Maoist), the Rastriya Prajatantra Party-Nepal and some small parties in the Maoist-led alliance voted against him. Regmi resigned as interim prime minister and as chief justice, because the Nepal Bar Association said that he could no longer serve as chief justice.

Koirala was known as a «clean politician» with a reputation for having an austere lifestyle, and there was a large echo in the country when he said

<sup>14</sup> 'Vote fraud is claimed by Maoists in Nepal', *The New York Times*, 21 November 2013.

that he could list just three mobile phones as his assets, as he did not possess land, houses, financial investments or even a bank account. His main task was to bring the country to stability. He pledged to give the nation a new federal democratic Constitution and to use all of its resources for economic development. After long negotiations with the Communist Party of Nepal (Unified Marxist-Leninist), the second largest party in the Constituent Assembly, to ensure the strongest possible support to draft the Constitution, at the end of February, Koirala formed a new coalition government of 21 ministers from the Nepali Congress and the Communist Party of Nepal (Unified Marxist-Leninist). The new government was criticised because, despite electoral promises to include women, and ethnic and linguistic minorities, only two ministers were women, both from Terai, and none were from the far west, the poorest area of the country. The major tasks of the new government, besides drafting the new Constitution, were holding local body elections to vote for local people's representatives, which had been delayed for 16 years, and completing the peace process, including the formation of the Truth and Reconciliation Commission and the Commission on the Disappeared to provide transitional justice.<sup>15</sup> In March, a 145-point common minimum programme of the coalition government, a 13-point ethical code of conduct for the ministers - including the prime minister - to ensure austerity and good governance, and a 10-point method for running the administration in a transparent way, were announced. The programme was a commitment of the ruling parties to complete the political process and to improve the economy. In August, the Chief Election Commissioner, Neel Kantha Uprety, said that the Election Commission was ready to conduct the local body elections within the next three months, only after the political parties arrived at a consensus, adding that the system of local body elections was more complicated than that of the Constituent Assembly elections.<sup>16</sup>

### 5. *New Hopes for the Economy*

The Nepali economy stabilised during the first half of 2014, following the election of the new Constituent Assembly, which reduced the political uncertainty. Economic growth, however, was slow, although it was projected to recover to 4¾ percent in 2013/14, from below 4% the year before, supported by agriculture, increased fiscal spending, and continued strong remittance inflows.<sup>17</sup>

<sup>15</sup> S. Chandrasekharan, 'Nepal: Why all this fuss over local elections?: Update no. 294', *South Asia Analysis Group*, 20 March 2014 (<http://www.southasiaanalysis.org/node/1481>).

<sup>16</sup> 'Local polls in 3 months if parties agree: Uprety', *Ekantipur*, 11 August 2014 (<http://www.ekantipur.com/2014/08/11/top-story/local-polls-in-3-months-if-parties-agree-uprety/393447.html>).

<sup>17</sup> International Monetary Fund, Press Release No. 14/346, 16 July 2014

Great expectations for economic growth resulted from the first and second visits of Indian Prime Minister Modi to Nepal. Kathmandu hosted, on November 26-27, the 18<sup>th</sup> summit of the South Asian Association for Regional Cooperation (SAARC) «Deeper Integration for Peace and Prosperity». The hope was that India, the biggest state and the largest economy among the eight member states, would take special responsibility, not only to make the summit a success, but «to invest more in its own bordering areas of Uttar Pradesh, North Bihar, North Bengal, Tripura, and Assam so that the local populations of Nepal, Bhutan, and Bangladesh don't view India as a country of the fourth world» in terms of infrastructure, especially roads, railways, health services, and education.<sup>18</sup> The first priority of SAARC was, in fact, economic integration, although the outcome was considered disappointing.<sup>19</sup> The Agreement for the Regulation of Passenger and Cargo Vehicular Traffic, and the SAARC Regional Agreement on Railways, which would improve trade, regional tourism and interaction between the eight state members, were stalled for three months because Pakistan held back.<sup>20</sup> The SAARC Framework Agreement for Energy Cooperation (Electricity) was signed. According to the independent newspaper, *Kathmandu Post*, one of the largest in the country, the role played by Koirala to facilitate the bilateral talks between India and Pakistan, which brought Modi and the Prime Minister of Pakistan, Nawaz Sharif, to agree to sign the Framework Agreement on Energy Cooperation and to commit to signing the two other pacts within three months, was a big diplomatic success.<sup>21</sup> More importantly, the day before the beginning of the summit, Nepal and India signed a deal to build a \$1-billion hydropower plant. The deal allows India's state-owned company, Satluj Jal Vidyut Nigam, to construct a 900-megawatt hydropower project on Nepal's Arun river, with electricity expected to be generated starting in 2021. Both Nepal and India suffer from electricity shortages and blackouts. Nepal will receive about 22% of the power generated for free, while the remainder will be exported to India.

This was the second deal on hydropower projects. During the first visit of PM Narendra Modi to Nepal at the beginning of August, Nepal and India had agreed to sign an agreement that would allow the exchange of electricity generated from hydroelectric projects in Nepal. A big project that would be beneficial for both countries was signed by India and Nepal in September: the Upper Karnali Hydropower Project. Slated for completion in 2021, it will be the largest hydroelectric power station in Nepal, using the water from the Karnali River to generate electricity to export to India.

On October 21, a historic Power Trade Agreement (PTA) was signed to increase cooperation in the field of transmission interconnection, grid

(<http://www.imf.org/external/np/sec/pr/2014/pr14346.htm>).

<sup>18</sup> 'Great expectations', *Kathmandu Post*, 25 November 2014.

<sup>19</sup> Sharmadha Srinivasan, 'SAARC summit debriefing', *The Diplomat*, 2 December 2014 (<http://thediplomat.com/2014/12/saarc-summit-debriefing>).

<sup>20</sup> 'Thirty-six-point Kathmandu Declaration', *Kathmandu Post*, 27 November 2014.

<sup>21</sup> 'PM breaks Indo-Pak stalemate', *Kathmandu Post*, 27 November 2014.

connectivity and power trade, paving the way for the free trade of power between the two countries, to encourage and facilitate investments in the power sector, to explore new areas of cooperation and to monitor the progress in those areas by establishing two joint working groups.<sup>22</sup>

During his visit in August, Modi announced \$1 billion NRs as a concessional line of credit to Nepal for various development purposes and an «HTT» (meaning highways, I-ways and transways) formula for the development of the country.<sup>23</sup> He also pledged to expedite the long delayed project to build a 41-km Amlekhgunj (Nepal)-Raxaul (Bihar) petroleum pipeline, which would later be extended to Kathmandu. The formal talks began at the end of August, but in November, they could not be finalised due to disagreements on the technical and financial implementation.

Before the SAARC summit 2005, activists called the «People's SAARC» issued a 24-point declaration stressing that the SAARC leaders should also include the rights of migrants and the creation of support mechanisms for stranded migrants and migrants in need in the agenda.<sup>24</sup> Migrant workers from Nepal bring back 30% of Nepal's GDP at a high human cost due to dubious recruitment agencies, which in some cases, are backed by transnational organised crime. Standard contracts and minimum wages in South Asian countries would reduce the influence of trafficking organisations.

In a press briefing at the end of the SAARC summit, Prime Minister Koirala clarified that Modi, who, two days before had said that the preliminary Constitution should be drafted in agreement, was not pushing Nepali leaders to reach an understanding in order to promulgate a new Constitution in consensus, because the process was up to Nepal. He underlined, however, that the parties were indeed trying to find a consensus to promulgate the Constitution by the January 22 deadline.

## 6. *Completing the Peace Process: The Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014*

Nepal's success in writing a new Constitution also depends on how it handles the issue of providing justice for victims of the civil war. Since the end of the conflict, the investigation and prosecution of abusers of human rights during the war has been a key point of discussion in the country. The 11-point deal among the four major parties, which led to the appointment of Regmi, included forming a Truth and Reconciliation Commission to investigate human rights violations, such as torture, en-

<sup>22</sup> *Agreement between the government of Nepal and the government of the Republic of India on electric power trade, cross-border transmission, interconnection and grid connectivity* ([http://www.moen.gov.np/pdf\\_files/PTA-English-21-Oct-2014.pdf](http://www.moen.gov.np/pdf_files/PTA-English-21-Oct-2014.pdf)).

<sup>23</sup> 'PM Narendra Modi announces \$1 billion credit to Nepal', *India Today*, 3 August 2014.

<sup>24</sup> 'People's SAARC 2014 – Declaration', *Forum Asia*, 25 November 2014 (<http://www.forum-asia.org/?p=18092>).

forced disappearance, extrajudicial killings and crimes against humanity, which took place during the conflict, to provide transitional justice, and to give one Colonel and two Lt Colonel posts to the Maoist combatants who had been integrated into the Nepali Army. The Truth and Reconciliation Commission was already planned by the Comprehensive Peace Agreement of 2006. One of the main problems the country faced in 2006, after the end of the 10-year-long civil war, was the integration of the ex-Maoist combatants of the People's Liberation Army, Nepal, the armed wing of the Communist Party of Nepal (Maoist) led by Pushpa Kamal Dahal (who later served as Prime Minister from August 2008 to May 2009), into the national Nepal Army or into civil society.<sup>25</sup>

In 2013, the government had issued a Truth and Reconciliation Commission Ordinance (TRC) with the duty to prohibit potential amnesties for serious crimes as a political deal, without meeting the minimum international standards required. The discourse on the TRC bill had been focused on either the prosecution or amnesty for war time crimes, and the political infighting focused on the question of impunity. The arrest in the United Kingdom of Col. Kumar Lama in January 2013 on allegations of torture during the Nepali civil war was an embarrassing incident for Nepal, while foreign peacekeeping missions denied positions to prominent Nepalese generals.<sup>26</sup>

In January 2, 2014, the Supreme Court rejected the ordinance introduced by then Prime Minister Baburam Bhattarai in 2013, following pressure from the Nepal Army and the Unified Communist Party of Nepal (Maoist), granting a de facto amnesty, even to those involved in serious human rights violations. The Supreme Court passed the directive to restructure the Commission under pressure from the international community to ensure that the transitional justice mechanisms meet established international standards. However, in March, the 110<sup>th</sup> session of the Human Rights Committee pointed out the slow progress of the country in its reforms, in ensuring justice to the victims of various forms of human rights violations, in ensuring the distribution of citizenship certificates without any legal hassles, and in curbing the corporal punishment and killing of women in the name of witchcraft. The ill-treatment of Tibetan refugees living in Nepal was also mentioned in the meeting.<sup>27</sup>

On the occasion of the International Right to Truth Day of March 25, the National Victims Alliance (NVA) pressed the government to unveil the truth regarding the disappeared persons, forming an all-powerful and im-

<sup>25</sup> *Ibid.*, p. 214.

<sup>26</sup> 'Nepal's Colonel Kumar Lama charged in UK with torture', *BBC News UK*, 5 January 2013 (<http://www.bbc.com/news/world-asia-20914282>).

<sup>27</sup> 'Transitional justice mechanisms under UN scrutiny', *My Republica*, 22 March 2014 ([http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=71375](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=71375)).

partial Truth and Reconciliation Commission and a Commission on Disappeared, to punish the perpetrators of human rights violations and to implement the Supreme Court's order on transitional justice. Making the status of disappeared citizens public to ensure the right to truth, providing medical treatment to injured and physically impaired persons, and distributing identity cards to victims of the war were among the series of demands.<sup>28</sup>

In 2012, according to the Ministry of Peace and Reconstruction, Relief and Reconstruction Unit, Ganesh Prasad Upadhyay, some 17,800 people died during the civil war. In 2014, some 850 cases of enforced disappearance were registered and were under investigation by the Nepal Human Rights Commission, and over 3,000 cases of severe human rights abuse were registered.<sup>29</sup> During the 10-year conflict, civilians were targeted for extrajudicial killings and torture by both state security services and rebels. Women were caught in the violence between police and the Royal Nepalese Army, and in the violence and forced recruitment by Maoists. Rape became a gendered weapon and an instrument of retaliation and political repression.<sup>30</sup>

The fear shared by the international humanitarian organisations, NGOs and the relatives of victims was that abusers, especially those in political positions after the war, would enjoy impunity. According to the 2013 report by Amnesty International, in the previous four years, successive governments had withdrawn hundreds of criminal cases against individuals accused of serious offences, including murder, citing the Comprehensive Peace Agreement concluded between the Government of Nepal and The Communist Party of Nepal (Maoist), dated November 21, 2006, which called for the withdrawal of cases brought against individuals «due to political reasons».<sup>31</sup>

The ruling of the Supreme Court of Nepal on January 2014 overturned the 2013 Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission by forming a separate Truth and Reconciliation Commission and Disappearance Commission to ensure their effective implementation, making suspects of gross human rights violations ineligible and reducing the discretionary power of the Attorney General to decide on prosecution. However, the ruling was considerably criticised by the Office of the United Nations High Commissioner for Human Rights and national

<sup>28</sup> 'Conflict victims appeal to the state to come clean', *The Himalayan Times*, 25 March 2014 (<http://www.thehimalayantimes.com/fullNews.php?headline=Conflict+victim+appeal+to+the+state+to+come+clean&NewsID=409723>).

<sup>29</sup> 'Nepal's renewed hope for truth and reconciliation', *Irin: Humanitarian News and Analysis*, 17 February 2014 (<http://www.irinnews.org/report/99662/nepal-apos-renewed-hope-for-truth-and-reconciliation>).

<sup>30</sup> Enrica Garzilli, 'The interplay between gender, religion and politics, and the new violence against women in Nepal', Johannes Dragsback Schmidt and Torsten Rodel Berg (Eds.) *Gender, Social Change and the Media: Perspectives from Nepal*, Jaipur (India): Rawat Publications, 2012, pp. 25-88.

<sup>31</sup> *Nepal: The search for justice*, Amnesty International Publications, 2013, pp. 7-8 ([http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AI\\_Nepal\\_HRC108.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AI_Nepal_HRC108.pdf)).

and international NGOs for its failure to comply with international legal standards.<sup>32</sup> The ordinance was partially changed by the Supreme Court by establishing the two commissions, enacting new laws excluding the possibility of amnesty for serious human rights violations, and criminalising serious human rights violations as specific offences within domestic law. Under the recommendation of the Supreme Court, an Expert Task Force was formed that included Government officials, human rights lawyers, victims and conflict experts, to assist with the drafting of a new law. However, the Expert Task Force only had some two weeks to meet, deliberate and draft its recommendations before the Bill was passed.

The Bill was passed by Nepal's Parliament on 25 April 2014 as the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014. It was promulgated into law on May 21, despite the previous political opposition of the Unified Communist Party of Nepal (Maoist), who dissented on a comprehensive investigation of war crimes on the grounds that all war-era cases were political in nature and that punishing the perpetrators would not help to maintain peace in society and would not allow a new Constitution to be drafted if the questions of truth and reconciliation remained unsettled.

The Bill, based on a consensus between the major three parties, the Nepali Congress, the Communist Party of Nepal (Unified Marxist-Leninist) and the Unified Communist Party of Nepal (Maoist), was supported by all of the parties, excluding smaller parties, such as the Rastriya Prajatantra Party Nepal, whose Chairman Kamal Thapa remarked that the Truth and Reconciliation Commission, as it was envisioned, would pardon the perpetrators involved in serious crimes committed during the war era.<sup>33</sup> With the Bill, «there has been some effort to implement the recommendations of the Supreme Court, with the creation of two separate commissions, the inclusion of safeguards to enable the participation of vulnerable witnesses, the incorporation of a system for institutional reform and, importantly, a commitment to establish a Special Court to adjudicate conflict era abuses».<sup>34</sup> Nevertheless, the Bill presented flawed provisions, allowing amnesty for crimes committed under international law and gross violations of human rights. It was also criticised for failing to define key terms, such as «serious violation of human rights», «act of disappearing a person» and «reparation» in accordance with international

<sup>32</sup> 'Nepal: Truth and reconciliation law betrays victims', *Human Rights Watch*, 22 March 2013 (<http://www.hrw.org/node/114432>).

<sup>33</sup> 'TRC will pardon perpetrators of serious crimes: Kamal Thapa', *Ekantipur*, 26 April 2014 (<http://www.ekantipur.com/2014/04/26/top-story/trc-will-pardon-perpetrators-of-serious-crimes-kamal-thapa/388799.html>).

<sup>34</sup> Alison Bisset, *Transitional justice in Nepal. The Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act 2014*, (Bingham Centre Working Paper 2014/07), London: Bingham Centre for the Rule of Law, BIICL, September 2014, p. 8 ([http://binghamcentre.biicl.org/documents/334\\_nepal\\_update\\_-\\_bisset.pdf](http://binghamcentre.biicl.org/documents/334_nepal_update_-_bisset.pdf)).

law, and for the power of the Commission to reconcile victims and perpetrators without the consent of the parties involved. The Bill did not comply with international law and standards on transitional justice, and the International Commission of Jurists made a series of recommendations to the government of Nepal to amend the problematic points, while Human Rights Watch asked the government to act immediately to fix crucial flaws.<sup>35</sup> Nevertheless, despite the problematic points, the Bill is a big step towards providing justice to victims of the civil war and towards settling one of the main remaining questions that has constituted an obstacle to the reconstruction process of the country.

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*Nel 2014 il Nepal si è avviato alla soluzione dei problemi che avevano causato l'impasse politica e costituzionale dei due anni precedenti. La prima Assemblea Costituente si è sciolta il 28 maggio 2012, prima di redigere la nuova Costituzione che avrebbe sostituito quella ad interim del 2007. Questo ha portato il paese a uno stallo, sbloccato solo dalle dimissioni del primo ministro Baburam Bhattarai, a cui è succeduto il presidente della Corte Suprema, Khil Raj Regmi. Le elezioni della seconda Assemblea Costituente, che si sono tenute a novembre 2013, hanno visto emergere come primo partito il Nepali Congress, seguito con uno scarto di pochi voti dal Communist Party of Nepal (Unified Marxist-Leninist). Questo ha portato a un altro periodo di impasse politica, risolto nel febbraio 2014 con la formazione di un nuovo governo di coalizione guidato da Sushil Koirala. Il principale obiettivo di Koirala è stato quello di redigere la Costituzione. Il 27 novembre, alla conferenza stampa in chiusura dei lavori del summit dei leader della SAARC, Koirala ha dichiarato che i partiti nepalesi stavano cercando di arrivare ad un accordo generale per promulgare la Costituzione entro il 22 gennaio 2015. Altri due obiettivi chiave del governo Koirala sono stati lo sviluppo dell'economia e la conclusione del processo di pace seguito alla guerra civile del 1996-2006 attraverso il definitivo accertamento delle responsabilità dei crimini di guerra la messa sotto processo dei responsabili.*

*Durante la prima metà del 2014, a seguito dell'elezione della seconda Assemblea Costituente, l'economia del Nepal si è stabilizzata. Un ruolo chiave nel miglioramento della situazione economica è stato rivestito dall'India. Nelle sue due visite al paese, il nuovo primo ministro indiano, Narendra Modi, ha firmato due importanti accordi per sviluppare l'enorme potenziale idroelettrico del Nepal, comprando l'elettricità per far parzialmente fronte alla carenza energetica dell'India. Modi ha anche aperto una linea di credito al Nepal di un miliardo di dollari, destinati a finanziare vari altri progetti di sviluppo.*

<sup>35</sup> International Commission of Jurists, *Justice denied: The 2014 Commission on Investigation of Disappeared Persons, Truth and Reconciliation Act* (<http://icj.wpengine.net/dna-cdn.com/wp-content/uploads/2014/05/Nepal-TRC-Act-Briefing-Paper.pdf>); 'Nepal: Fix flawed Truth, Reconciliation Act', *Human Rights Watch*, 8 July 2014 (<http://www.hrw.org/news/2014/07/08/nepal-fix-flawed-truth-reconciliation-act>).

SRI LANKA 2014: LA CONTINUAZIONE DEL REGIME AUTORITARIO  
E LA CRESCENTE INSODDISFAZIONE POPOLARE

*Danila Berloff*

Asia Maior - An Italian think tank on Asia  
dberloff@tiscali.it

### 1. *Introduzione*

Lo Sri Lanka ha visto, durante il 2014, il perdurare delle dinamiche che hanno caratterizzato lo scenario politico e sociale del paese dalla fine al conflitto civile, nel 2009. In particolare, il supremo potere politico ha continuato ad essere esercitato dal presidente Mahinda Rajapaksa (il cui vero nome è Percy Mahendra Rajapaksa). Eletto presidente per una prima volta nel novembre 2005 e rieletto per la seconda volta consecutiva nel gennaio 2010, Mahinda Rajapaksa ha continuato a guidare il governo della *United People's Freedom Alliance* (UPFA), dotato di un'ampissima maggioranza parlamentare. A sua volta, questa maggioranza parlamentare era espressione della popolazione sinhala, ovvero l'etnia di maggioranza nello Sri Lanka, grata al presidente per avere condotto il paese fuori dalla guerra civile, tramite l'annientamento delle Tigri Tamil (Liberation Tigers of Tamil Eelam, LTTE),

Tuttavia, nel corso di questi nove anni, si è assistito, da un lato, all'instaurazione di un clima politico repressivo e autoritario, dall'altro all'incapacità dell'amministrazione singalese di attuare politiche in grado di riconciliare i vari gruppi etnici presenti nell'isola. Il presidente Rajapaksa, infatti, è riuscito a concentrare vasti poteri su di sé e sulla propria cerchia familiare, piegando alla sua volontà l'autorità giudiziaria ed modificando la costituzione tramite l'emanazione del 18° emendamento. Quest'ultimo, la cui legalità è stata duramente contestata, ha permesso a Rajapaksa di attribuire alla figura del presidente nuovi poteri e di abrogare il limite di due mandati, rendendo così possibile la sua rielezione. Nel corso del 2014, si è assistito, pertanto, all'attuazione di politiche volte ad accrescere il livello di militarizzazione dell'apparato statale e a soffocare le espressioni della società civile. Tale tendenza è stata inoltre legittimata in una certa misura dalla presunta riorganizzazione delle Tigri Tamil, paventata durante la prima metà dell'anno.

Nonostante che il presidente avesse in passato governato con pugno di ferro, durante il 2014, per la prima volta, sono emersi alcuni segnali