

## Commentary

### **THE LOKMAN SAGA: HOW CITIZENS, PARLIAMENT, AND THE JUDICIARY CHALLENGED THE ABUSE OF NEPAL'S ANTI-CORRUPTION WATCHDOG BY ITS CHIEF**

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This commentary intends to initiate a discussion on the pervasive nature of corruption in the Nepali state and polity by unpacking a national scandal involving Commission for Investigation of Abuse of Authority (CIAA), a strong constitutional watchdog solely dedicated to control of corruption in Nepal.<sup>1</sup> Referred to as the Commission for Elimination of Abuse of Authority during the Panchayat era, this agency lost some of its standing in the 1990s when it was stripped of the power to make the final decision on corruption cases, the latter having been shifted to the judiciary. The new constitution of 2015 has preserved most of its clout and categorically states that CIAA has the power to investigate and prosecute any official<sup>2</sup> in public service of any rank, both on duty and after retirement, who is suspected of engaging

<sup>1</sup> The author was the *de facto* coordinator of Solidarity for Dr. KC Alliance and wrote much of the articles related to the issue in print and online media outlets as part of the campaign to oust Lokman Singh Karki from CIAA for many months in 2073 v.s. This is, however, a rather dispassionate chronicle of the tenure of Karki and written some time after his downfall. Rather than to smear or blame any one person for the sorry state of governance in Nepal, the author's intention is to begin a meaningful dialogue about the tampering of various state institutions, mainly by politicians in Nepal, and to look for a way out of the mess of misgovernance in which Nepal remains mired to date.

<sup>2</sup> There are special provisions on whether CIAA can investigate officials of two public bodies: Nepal army and the judiciary. Section 239 (2) of the constitution states that CIAA can investigate “those officials who have been impeached under section 101 [this includes the judges too], the judges relieved from the post by Judicial Council and the army personnel who have been discharged from duty by action under the Army Act.”

in corrupt practices. Along with two other constitutional bodies—Election Commission and Public Service Commission—CIAA has been envisioned as an important pillar of democracy looking into accountability within the organs of the state.

The watchdog is an autonomous body with authority to investigate and prosecute any official in public service, including the prime minister. The commissioners within the watchdog, on the other hand, can be potentially held to account, in case of wrongdoings, only by the parliament, which retains the power to impeach and remove them from the post after acquiring a two-thirds majority. The underlying intention was that everyone in the executive branch of the government should be held accountable and that CIAA should be allowed to work with minimum interference from other branches of the state. This kind of autonomy, however, comes with a caveat: politicians with executive duties as well as those in the parliament decide the appointees in constitutional bodies, including CIAA.<sup>3</sup> Thus, in practice, politicians at the helm can still manipulate and potentially cripple the watchdog. Not surprisingly, CIAA's functions were severely jeopardized for more than three years between January 2010 and May 2013 with all the posts of commissioners vacant; the post of chief commissioner being vacant from May 2009 itself. Meanwhile, an attempt by the then government to appoint the chiefs of different commissions including CIAA was successfully thwarted by the opposition leader through a legal challenge in April 2010 (República 2010). It was in this environment of chaos and impunity that Lokman Singh Karki, a former chief secretary, was appointed to the long vacant post of chief commissioner on May 8, 2013.

Rather than making CIAA a true watchdog as envisioned in the constitution, Karki's appointment brought a series of controversies into CIAA. The period of more than three years when Karki headed CIAA was a stark reminder of how a vital constitutional body constituted to uphold the rule of law and ensure accountability can be abused to sabotage and subvert them. This commentary will first examine a number of instances in which the constitutional watchdog under Karki clearly overstepped its constitutional jurisdiction to indulge in acts that spoiled the image of CIAA as

<sup>3</sup> The Constitutional Council, which recommends the names of the persons to be appointed to the constitutional posts, includes the prime minister, the speaker, the deputy speaker, the chairman of the national assembly and the leader of the main opposition party.

an impartial watchdog. Then it will look into how those acts by CIAA under Karki sabotaged the overall environment of accountability in the country. It will also analyze how Karki manipulated and abused the CIAA machinery for gains of his family members while nearly paralyzing the vital regulatory bodies as well as jeopardizing the quality of health care system in the country.

To understand why Karki behaved the way he did, it is crucial to understand the context and background in which he was appointed. The second part of this commentary is on the controversies surrounding his appointment. The third and last part delves into Karki's downfall. Having been ushered into an immensely advantageous position as CIAA Chief Commissioner, Karki was later suspended and then unceremoniously ousted from his post. Two central parts of the state—the parliament, which suspended him, and the Supreme Court, which disqualified and dismissed him—were instrumental in his ouster. Further, it was a citizen-led activism directed individually against Karki that had stirred these bodies into action, which makes this an especially interesting case study in terms of unpacking the intertwining between state and society in contemporary Nepal.

The following are the questions that this commentary focuses on: Is corruption flourishing in Nepal because the constitutional watchdog meant for its control is tampered with and rendered ineffectual by political leadership? Alternatively, is the constitutional vision of enforcing accountability through a single unelected body flawed to begin with? If that is the case, why not leave democratic accountability to function for itself? How can a situation in which the anti-corruption body itself is manipulated or plainly abused for subversion of the rule of law be prevented? How can the near total impunity resulting from the collusion of officials at different organs of the state be replaced by a situation of healthy checks and balances among them? While I shall attempt to find answers to some of these questions in the following sections, the remaining questions necessitate a sustained discourse, of which this commentary intends to serve as a beginning.

## **CIAA Under Lokman Singh Karki**

*Exceeding the Brief of CIAA: Karki's Involvement in Illicit Property Deals and Interference in Medical Education*

On July 29, 2016, *Kāntipur* daily published an explosive front-page story on an illicit transaction of shares of a company between two private parties

that was facilitated by Karki (B. Baniya 2016). As the proposed transaction of shares of Gokarna Resort between the erstwhile Malaysian-owned company and Yeti Holidays Pvt. Ltd. contravened the initial lease contract between the former and the then Department of Royal Property, it had been languishing for a long time at the Nepal Trust Office, the new post-monarchy body responsible for managing the property belonging to formal royals in Nepal. But after Karki facilitated a meeting among the private parties and Trust officials, the deal was sealed. Interestingly, one of the most damning paper trails proving Karki's indulgence in illicit activities was the letter written by CIAA to Nepal Trust Office on February 7, 2014, a day after the above meeting, which specifically mentions that "the deliberations were made in presence of his honor, chief commissioner [of CIAA]." That means Karki abused his position to manipulate or influence the decision of a government body in a case involving financial transaction between two private parties. Constitutionally, he was supposed to find out precisely such lapses on part of any government official, investigate and prosecute him or her by establishing guilt.

Besides exceeding his brief as the head of the country's anti-corruption watchdog, Karki's tendency to make and break rules and even undermine institutions for the benefits of his relatives was another consistent feature of his tenure at CIAA. A month after Karki's appointment, CIAA made a policy decision that the cases of fake academic certificates of government employees who have left the job should henceforth be referred to CIAA rather than being sent to boards or universities for verification. What drew attention of people about this innocuous-sounding decision was that Karki's niece, Sachi Karki, was precisely under such investigation even though she had left the job at a public institution. Indeed, she was under investigation by CIAA before Karki's appointment, and after her refusal to appear at the commission for inquiry, CIAA had published a public notice in *Gorkhāpatra* on December 2, 2012, asking her to appear at the commission within thirty-five days (S. Sharma 2016).

When Sachi Karki indeed appeared at CIAA, it was not within thirty-five days but after months, on June 14, 2013. By then, Lokman Singh Karki was at the helm in CIAA and the new policy decision about referring such cases of fake academic certificates to CIAA shielded her from any unfavorable decision on the matter from the university or board. With that groundwork done, she sought acquittal from CIAA and got it promptly. The two other

family members who benefited from Karki's similarly unprofessional conduct are in the lucrative field of medical education, each owning a private medical college, Kathmandu-based Kist Medical College and Biratnagar-based Birat Medical College (Neupane and Sapkota 2016). While Kathmandu University's vice-chancellor was replaced to facilitate opening of Birat (owned by Karki's nephew Gyanendra Man Singh Karki), Kist (owned by his brother Bal Man Singh Karki) was granted as many as sixty seats more than its existing quota for the 2013/2014 academic session of MBBS program. It should be noted that each seat costed millions of rupees, hence bringing the amount of corruption to be estimated around 240 million rupees as calculated by a newspaper editor (Ameet Dhakal 2016a). The body which was supposed to make the decision about seat allocation, namely Nepal Medical Council (NMC), was transformed into a spectator, as its meetings were limited to signing a minute that had been prepared "outside" and sent there later for formality (Mishra 2014).<sup>4</sup> Jyoti Baniya, the then NMC member who had leaked this news to *Kāntipur* later testified in the court that CIAA Chief Karki was involved not only in promoting the business of his family members but also in seeking to create a syndicate by deliberately sabotaging rival businesses (J. Baniya 2016).

Indeed, the impunity created by Karki's patronage was such that the medical colleges of his family members were openly defying the regulatory bodies, namely Nepal Medical Council and universities. One example made sensational news coverage: In Kist Medical College, owned by Karki's brother Bal Man Singh, some students who had been asked by the college to pay much higher fees than those stipulated by the government went on to secretly record a conversation with college authorities to later leak it in media outlets (S. Sharma 2015). By the time this report came out in public media, the issue had already reached the judiciary, and the Supreme Court had already asked the government to strictly enforce the fee structure (Mishra 2015).

<sup>4</sup> The report on NMC meetings rubber-stamping the decision minutes already prepared "outside" NMC appeared as the front-page story in *Kāntipur* on September 16, 2014. That report does not name Karki or CIAA. But when Jyoti Baniya, on whose quotes the *Kāntipur* report was based, submitted a detailed reply to the Supreme Court on February 9, 2015, to defend himself in a case filed by CIAA, he elaborated the role of Karki and CIAA on the affair along with other corroborating documentary evidences. Many of those documents are included in the annex of Kshetry (2017a).

In another incident, NMC was bogged down by CIAA on two ways: on the one hand, many members of the council—some of them vocal critics of CIAA’s interference at NMC—were indiscriminately prosecuted, only to be acquitted by the court eventually (República 2017). The *Kāntipur* report about NMC’s minutes (Mishra 2014) was one of the earliest materials bringing some transparency to the demoralized and nearly crippled state of NMC. But as testified in the court by Jyoti Baniya, the then prosecuted member of NMC, the very act of whistle blowing was the reason behind his prosecution by CIAA later.<sup>5</sup> On the other hand, the CIAA had inserted itself illegitimately in the process of usual decision-making of the council. While there is no public documentary evidence of council minutes being prepared inside CIAA, there are some paper trails that do show how CIAA was acting as a “parallel government.” For example, in a letter dated August 15, 2014, CIAA wrote to NMC “giving permission” to “conduct inspection for the purpose of granting permission for MBBS program” in Birat Medical College in Biratnagar and Devdaha Medical College in Rupandehi. Here, CIAA had inserted itself into the process of granting affiliation to a private medical college, and it was no coincidence that one of the medical colleges was owned by a family member of the CIAA chief. Further, it was revealed later that another letter dated December 1, 2013, had more specifically instructed NMC to “make arrangement for admission of students” (see Kshetry 2017a).

The dislocation caused by CIAA’s interference in Institute of Medicine (IOM), another important regulatory body, was equally illustrative. Rakesh Shrivastav, the then dean of IOM who had steadfastly tried to implement the fee structure and merit-based admission in private medical colleges affiliated with it, was forced to resign from the post on February 5, 2016. He confided to his colleagues that he had been forced to resign after undue pressure of private medical colleges, through CIAA, to abandon enforcing government directives on student admission (Dahal 2016). With the regulatory bodies nearly paralyzed, the dividend of impunity was reaped by all private medical colleges in the country, which seemed happy to disregard government instructions as well as the court order to admit students on a merit basis by taking stipulated fees (Shrestha 2015). While these instances personally

<sup>5</sup> Here, the reply submitted to the court by Baniya has special significance because, with that reply, he was eventually acquitted by the apex court in the case. The same pattern also holds true for other people forcefully pursued by Karki at the time, such as Shambhu Thapa.

implicated Karki, much responsibility for other embarrassing ventures of CIAA under his leadership were also related to his individual conduct. One such instance of the constitutional watchdog's indulgence in a petty issue beyond its jurisdiction was CIAA's repeated instructions to CTEVT (Council for Technical Education and Vocational Training) to give affiliation to a nursing college (Kshetry 2017b).

*Indiscriminate Prosecution: An Attempt to Suppress Dissent with Fear*

On February 27, 2015, Dilip Raj Sharma, the Chief Investigation Director at National Investigation Department (NID), wrote a clandestine letter to Lokman Singh Karki, stating that the former had attached with it the "personal and financial details" of 195 people in a 406-page document. Significantly, the document contained details of "42 leaders and cadres of political parties, 62 serving higher level bureaucrats including the secretaries and 53 serving and retired officials of security forces" (Rawal 2016). The list of those 195 people is not publicly available now, but the leaked letter itself indicates that the list is apparently indiscriminate and likely included those within and outside the legal jurisdiction of CIAA, including the main leaders and cadres of political parties and those who did not even hold a public post.

A plain reading of the letter makes it clear that not only the direction to spy on those people was given personally by Karki, the cache of documents was sent by the NID official to be "personally delivered to the chief commissioner" and not to the CIAA as an institution, as would be expected. The erstwhile practice at CIAA before Karki's appointment was that only the full body meeting of the commission decided on whom to investigate for suspicion of "having property disproportionate to legitimate income" (Rawal 2016). When there was difference of opinion among the commissioners, a simple majority would decide the matter and even the chief commissioner could not prevail over such a decision. In this case, however, the whole affair was a secret between Karki and Raj Narayan Pathak, another controversial commissioner considered close to the former, with the whole matter never coming to the full body meeting (Rawal 2016). This was illustrative of Karki's disregard for prudence and due process while functioning as the CIAA chief.

There is nothing wrong *per se* in the CIAA chiefs attempt to investigate a large number of politicians and bureaucrats. Indeed, the process of holding public officials accountable precisely involves a fair and impartial

investigation of their conduct. But the problem with the NID letter was that the institutional safeguards against the abuse of authority by CIAA commissioners themselves, such as the provision of making decisions through full body meeting only, were dismantled and a disregard for CIAA's constitutional mandate was visible in specifying the set of people to be investigated as "leaders and cadres of political parties" rather than those who held public posts. The fact that not a single politician mumbled a word against this revelation—potentially indiscriminate spying on "leaders and cadres of political parties" in particular—when a mainstream weekly magazine *Nepal* made this the cover story on May 8, 2016, shows the reluctance of the political class to risk displeasing an increasingly assertive CIAA at this time. It is then only logical that no one would react to the revelation that Karki was doing away with the due process at CIAA established by his predecessors. It was much later, after the agitation against Karki gained momentum, that those revelations came to light and gained significance.

*Hounding of Critics and Disabling Interference  
in Other State Organs and in Academia*

On September 6, 2013, the Department of Revenue Investigation (DRI) raided six business firms in Kathmandu. Among them was a law firm owned by senior advocate Shambhu Thapa (Kharel and Thapa 2013). Eventually, it was established that the raid resulted from a directive by CIAA where they sent a letter to the firm on the day of the raid itself. As mentioned in a pointed verdict issued by the Supreme Court on January 11, 2016, DRI had raided Thapa's firm without any prior investigation that established that there had been tax evasion in the first place. Interestingly, the same verdict mentioned that when SC asked DRI to clarify why it had raided Thapa's firm (after Thapa moved to SC against DRI), DRI failed to mention if Thapa's firm had cleared the tax in the previous financial year, even though Thapa had furnished evidence to the court that he did. Taking these matters into consideration, the SC's verdict not only asked both CIAA and DRI to respect dignity and confidentiality of those under investigation but also cautioned them against interfering in areas beyond their jurisdiction, while emphasizing that CIAA must do bare minimum investigation before resorting to harsh measures such as raiding private property (G. Khadka 2016).

On December 22, 2014, CIAA filed a case against Nepal Medical Council (NMC) members, including Jyoti Baniya (2016). Before the Special Court



acquitted all of them on March 2, 2016, they had gone through a pattern of ordeals that had been routine for people prosecuted by CIAA. As Baniya testified in the court, he as well as his family members had received death threats delivered through telephone as well as direct meetings. Indeed, the hostile party was so brazen that the reasons behind the threats were not hidden. He was hounded because he had written a note of dissent in NMC's decision to allot 135 seats to Kist Medical College, the one belonging to Karki's brother.

On April 22, 2016, CIAA arrested journalist and activist Kanak Mani Dixit from Lalitpur (The Kathmandu Post 2016a). A statement that was subsequently released claimed that Dixit was arrested according to CIAA Act 2048 for "his defiance and non-cooperation" in its investigation "despite repeated notice to appear before the commission." Dixit was released on May 2 after the Supreme Court overturned an earlier lower court order allowing CIAA to detain him for ten days (The Himalayan Times 2017). Dixit, suffering from high blood pressure, spent most of those ten days in the intensive care unit (ICU) of Bir Hospital, but CIAA had its own way of showing contempt to the law of the land: despite earlier specific court orders that allowed family members and lawyers to meet people like Dixit without hindrance, his lawyers were prevented from meeting him (Onlinekhabar 2016). Dr. Govinda KC, the veteran activist doctor, also recalls that when he tried to enter the ICU to meet Dixit, a scuffle nearly broke with the guarding police officer who had "specific order not to allow anyone in." After Dr. KC challenged the police in-charge to "either let him in or call [CIAA Chief] Karki here to explain" why he was not allowed to visit, the former called his higher up and let him meet Dixit.<sup>6</sup>

While Baniya was a whistleblower about CIAA's subjugation of NMC, Thapa and Dixit were among the most vocal opponents of the appointment of Karki at CIAA and had lobbied strongly against it (Dixit 2016). Besides, Dixit had commented on Karki's daughters' marriage inside CIAA premises, tweeting "CIAA Chief Lokman Singh Karki's daughter's wedding looks like abuse of authority to me" (B. Sharma 2015). Karki had needed the help of DRI to harass Shambhu Thapa as the latter held no public office, but Dixit chaired Sajha Yatayat, the public cooperative bus company, technically bringing him within the jurisdiction of CIAA. In Baniya's case, his brief stint as an NMC member was both cause of and excuse for prosecution by CIAA.

<sup>6</sup> Conversation with Dr. Govinda KC; May 8, 2016.

The indiscriminate prosecution of people, however, was not limited to critics of CIAA. The other prominent target of CIAA under Karki was academic institution. CIAA had raided Purbanchal University (PU), Mid-western University (MWU), Tribhuvan University and Mahendra Sanskrit University within a span of few weeks. Of these, PU and MWU were left without top staffers after officials, including vice-chancellors (VCs), were dragged to the court on charges of corruption, leading to their suspension. Similarly, CIAA had raided thirteen central departments of TU and seized all their documents (The Kathmandu Post 2014). By the time Padam Devkota, one of the two suspended VCs, was acquitted by court in January 2016, he had lived with the stigma of “corrupt” official for nearly one and a half years (República 2016a). Maheshwor Man Shrestha, the other suspended vice-chancellor, was luckier, being acquitted earlier in April 2015 (Edusanjal 2015).

According to Jyoti Baniya (2016), all sixteen people prosecuted along with him went through depression. Apparently, the motive of such a blatant attack by the constitutional watchdog on the prosecuted citizens was twofold. First was to sow terror in the minds of the victims so that they would not speak up about the atrocities of CIAA fearing further retribution. This conclusion can be easily reached by the fact that none of those prosecuted by CIAA, with a handful of exceptions like Kanak Mani Dixit, were ready to speak up about the harassment they faced, even after acquittal from the court as long as Karki was in power. Some powerful firsthand accounts of how the stigma of a “corrupt” individual devastated his or her social life and disturbed the psychology of the children in the household were published only after suspension of Karki from the post (Nepal 2016).

Kedar Bhakta Mathema, the former VC of TU, who had given a hard-hitting keynote speech at the Nepal Literature Festival 2017 deploring the evolving culture of silence among the educated and the privileged in Nepal (Mathema 2017), was particularly disturbed by the reality in which citizens as eminent as university VCs were silenced into submission after being wrongly convicted. Some VCs confided to Mathema that they were not even given a pen and paper while being incarcerated in the shabby prison cells in the CIAA premises, a measure of how determined CIAA under Karki was to break the spirits of people it hounded.<sup>7</sup> The second motive of such offensiveness on

<sup>7</sup> Conversation with Kedar Bhakta Mathema; May 20, 2016.

the part of CIAA was to elicit statements from the victims that justified the acts of CIAA. The more victims pleaded guilty regardless of their guilt or innocence, the higher would be the success rate of CIAA while prosecuting people in the court. At least four Armed Police Force (APF) officers testified in the court that they were forced to sign false statements due to physical and mental torture inflicted upon them during CIAA detention (Sapkota 2017).

*CIAA Moves Counter to National Interest*

On June 11, 2016, Radheshyam Adhikari, senior advocate, Member of Parliament (MP) and chairperson of Parliament Regulation Drafting Committee, gave a public lecture in Kathmandu. He raised an important and troubling question: Why was it that none of the [living] heads of APF escaped prosecution by CIAA? Wasn't it a systemic failure on the part of the state? He then counter-posed another question: With such a heavy-handed drive of CIAA that has gone to the extent of crippling institutions like vital security forces in the country, why does corruption flourish so badly with the country plummeting ever lower in the ranking of Corruption Perception Index, for example? (Adhikari 2016).

On its issue dated February 12-18, 2017, *Himāl Khabarpatrikā* ran a cover story on why Karki unduly targeted APF officials. It details the drama around prosecution of Inspector Generals of APF. On December 21, 2015, the then chief of APF, Kosh Raj Onta, was called to CIAA for inquiry on the charges of procuring instruments for the police force using “fake bills” and was asked to deposit 100 million rupees. Six days later, on December 27, three former chiefs of APF were called through telephone around 3 p.m. and asked for huge sums as deposits immediately: 80 million rupees from Sanat Basnet, ten million from Shailendra Shrestha and seven million from Basu Dev Oli. They were threatened with imprisonment in case they failed to deposit the amounts within hours. All of them rushed to gather and deposit the sums and escaped immediate imprisonment that day. But the actual inquiry by CIAA on the case started a whole week later, proving that the order to deposit a huge sum within hours was an intimidation tactic. Eventually, a junior officer of the rank of District Superintendent of Nepal Police would summon them for inquiry as many as ten times, thoroughly humiliating them in the process (Sapkota 2017).

The *Himāl* report traces the roots of Karki's vendetta against APF in the soured relationship between the latter and India. On December 17, 2015,

a week before the government suspended the then chief of APF Kosh Raj Onta, Indian embassy in Kathmandu had written a letter to Onta, which was a blatant breach of protocol. The letter contained India's strong displeasure towards "the prolonged detention of and criminal-like behavior to the [India's] SSB [Sashastra Seema Bal or Armed Border Force] personnel by the APF." Twelve days before that, thirteen personnel of SSB had been briefly detained by APF after they entered the Nepali territory. The APF was founded in Nepal in 2001 amid a growing Maoist insurgency, which began in 1996, and threatened to spiral out of control within years.<sup>8</sup> After the end of insurgency in 2006, the force has been given various responsibilities over time, including that of border security. The *Himāl* report tried to establish the link between Karki's vengeful attack on APF as an institution and India's displeasure with APF over the latter's activities in Tarai region bordering India. In light of multiple corroborating evidences presented in the report, that connection seems to be rather solid. While I cannot delve much deeper into Karki's India connection here, we shall briefly touch on the issue in the final section of this article.

Now, it will be prudent to briefly touch another issue which shows Karki's predilection to harm public interest for private ends. In a 2005 report in *Nepali Times*, it was concluded that Nepal Telecom (NT), the public telecommunication service provider, was being sacrificed for the benefit of an upcoming private company. Even as 110 thousand prepaid mobiles were blocked for more than six months purportedly for security reasons, the army's public relations office clarified that it had nothing to do with the act and it was up to ministry [of information and communication] and Nepal Telecom to reopen the services. The minister of information and communication, Tanka Dhakal, and the secretary, Lokman Singh Karki, on the other hand were happy to attend the soft launch of Spice Cell (the predecessor of Ncell), the then upcoming private mobile operator, on August 9, 2015, even though both had mysteriously failed to attend the launching of Nepal Telecom's CDMA wireless network on July 7. Ironically, Karki, as secretary at the line ministry, was the chairman of Nepal Telecom (Gaunle 2005).

Suspicion about Karki's malafide intent on crippling NT to benefit its rival became even more striking when, after his appointment at CIAA, he intervened in a crucial initiative of NT and halted it. NT, after a decade-

<sup>8</sup> See the official website of Armed Police Force, Nepal: [www.apf.gov.np/pages/introduction](http://www.apf.gov.np/pages/introduction).

long attempt to bring a strategic partner to uplift its services and be more competitive, was in the final stage of appointing one consultant out of six that had applied for the purpose in March 2014 (República 2016b). Then, CIAA intervened and choked the process in the name of investigating irregularities, but the investigation did not produce a conclusion. Instead, soon after Karki was suspended from his post, CIAA gave green signal to NT to proceed with the process and the latter decided to move ahead. As NT lost nearly two years in keeping with this investigation, its market share and revenue shrunk unnecessarily (The Kathmandu Post 2016b).

*Rhetoric vs Reality: The Gap between Karki's  
Self-projection and Media's Portrayal*

Something unusual happened on February 11, 2015, on the occasion of 24th anniversary of CIAA's establishment. During this official program that was broadcast live on the national television, the prime minister, the executive head of the country, and the president, the ceremonial head of the state, spoke at the program, but instead of departing after their addresses, they both waited in the stage for another half an hour listening to a rambling speech by Chief Commissioner Lokman Singh Karki full of crude gestures and characteristically patronizing tone about the need to check corruption (Kumar 2015). The brazenness of breach in protocol in the official program was alarming, but what was even more unfortunate was that, judging from the media coverage on this, only few seemed to notice it or be bothered by it. Indeed, the way this program was conducted epitomized the functioning style of Karki at CIAA throughout his tenure. When Karki converted CIAA premises into a venue for his daughter's wedding on February 26, 2015, deploying civil servants and police personnel for his private function and blocking the road outside the CIAA premises (B. Sharma 2015), the outrage was mostly limited to social media and a chosen few newspapers.

As more time passed with Karki at CIAA's helm, however, things began to change. On December 1, 2015, *Kāntipur* daily published a stinging editorial titled "CIAA forgetting its duty" alleging that the commission had resorted to "practicing parallel governance by directing other government bodies, passing verdicts and decisions like that of court or parliamentary committees" while "thoroughly failing in its constitutional duty of investigating and prosecuting [corrupt] people." Further, the editorial said that the deeds of CIAA had "raised suspicion whether it was helping the suspects to destroy

evidence by leaking information that should have been confidential” (Kantipur 2015). On the same day, CIAA retaliated with a press release titled “Kantipur’s yellow journalism gone too far” but without substantively addressing any of the allegations made in *Kāntipur* editorial (CIAA 2015). The press release went on to harshly criticize *Kāntipur*’s earlier report that had indirectly alleged Karki and CIAA of patronizing the chief of Nepal Oil Corporation who had allegedly indulged in black-market trade of petroleum in the midst of a severe fuel crisis in the country.

What was even more egregious about Karki’s performance throughout his shortened tenure, however, was his unwillingness to call the Maoist Party about allegations that it had embezzled up to ten billion rupees of money allocated for its combatants (The Kathmandu Post 2012). According to a columnist who alleged that Nepal’s peace negotiators had sought an easy and quick access to peace by buying it rather than building it, a reporter had credibly calculated the amount swindled to be not less than three billion, a still mammoth figure in a country with meager resources (Manandhar 2012). The reluctance of CIAA under Karki to pursue the case of cantonment corruption became even more significant in a context in which the then acting chief of CIAA and Karki’s immediate predecessor had told in public that CIAA had been closely pursuing the case of fund mismanagement by the Maoist leaders (The Kathmandu Post 2012). This reluctance also stood out because CIAA routinely publicized the cases of catching petty bribe-takers. It was thus no wonder that, for Karki to burnish his image as an anti-corruption crusader, he had to resort to unusual methods of publicity. One such method was, according to a leaked letter dated July 25, 2014, making it mandatory for CIAA staff throughout its offices to “like and make positive comments” on the CIAA website and social media accounts (Kshetry 2017b). The letter contained a directive after the “wave of likes and comments after earlier directive” had waned over time. The heads of different departments under CIAA had been directed to strictly enforce this directive.

### **How Karki was Appointed**

Karki had been recommended for the post of CIAA chief by a contentious decision by the Constitutional Council on May 5, 2013 (Himal Khabarpatrika 2013). But the recommendation was not usual and it immediately drew ire and scorn of the citizenry. Having been appointed under-secretary at the then palace secretariat in 1984 through royal edict, Karki had joined civil service

in 1990 after the reinstatement of democracy in Nepal. By the time Nepal saw another pro-democracy movement in 2006, Karki had reached the apex of bureaucracy in the country as the cabinet's chief secretary and played an important role in suppressing the movement against the tyrannical rule of King Gyanendra. The post-movement government had sacked him from the post and decided to disqualify him from holding any public position in the future "for using state apparatus against the pro-democratic protesters" (Rai 2016).

While many saw the resurrection of a discredited pro-monarchy bureaucrat as an affront to infant democracy in the country, others were worried that his credentials that plainly lacked the constitutional requirement of high moral ground would fail to give ethical image to CIAA, thus bringing a huge hurdle in advancing accountability in the country. He was accused of amassing property through illegal means, including a gold smuggling case, during his tenure as the director general at the Department of Customs (Adhikari 2013). On December 24, 1994, the RA-410 inbound plane from Hong Kong was found to be carrying 10 kg of gold and 150 kg of silver. The smuggled precious metals were caught at the Tribhuvan International Airport (TIA) but eventually were lost. Karki, as the director general of the Department of Customs, was investigated and prosecuted by the then CIAA along with the chief of customs at TIA. Karki was acquitted by the Appellate Court but the case was then taken to the Supreme Court. Karki was again acquitted by the Supreme Court on May 26, 1999, but the media then noted that, while the case was proceeding, the justice who would decide on the matter was spotted in a religious ceremony at Karki's home in Biratnagar (Pokharel 2013).

The drama around Karki's appointment was particularly illustrative of the way important appointments are made by politicians running the show in the country in Nepal. He was appointed to CIAA when there was a non-party bureaucratic government in Kathmandu but his name was recommended by a so-called "high level mechanism" composed of all four major political parties in the country. Thus, he was the candidate by consensus among all the major political forces in the country, despite his track record being plainly unsuitable for the job. Here a brief background of the bureaucratic government is relevant.

The collapse of the first Constituent Assembly (CA) in May 2012 failing to draft a constitution created a huge constitutional void in the country, even

though the Interim Constitution of 2007 was nominally in place. With the CA, which also functioned as the legislative parliament, gone, the government led by Baburam Bhattarai that was elected by the CA practically lost its legitimacy. New elections were the only way out, but amid the deep sense of frustration and disillusionment in people and acrimonious relationship between various political forces, that was much easier said than done. In this backdrop, the highly unnatural idea of handing the helm of the executive to the sitting chief justice of the country went from discussion to implementation. The new government led by the then Chief Justice Khil Raj Regmi took shape, with the mandate to hold elections. As the events unfolded, the Regmi government held the second CA elections successfully on November 19, 2013, and handed power over to the elected government.

Here comes the special role played by the Regmi government in Karki's appointment. The three days between Karki's recommendation as CIAA chief on May 5, 2013, and his swearing in on May 8 saw vigorous protest from citizens. Even the two main parties, Nepali Congress (NC) and Communist Party of Nepal (Unified Marxist-Leninist) or CPN-UML, vacillated on their decisions, some of the latter's leaders even resorting to hunger strike demanding Karki's name not be recommended for the post (Satyal 2016a). For most people for whom the memories of brutal suppression of People's Movement of 2006 were fresh, the idea of rewarding one of the architects of that suppression with a sensitive constitutional responsibility was revolting.

As late as the evening of May 7, to the last visitors who went to meet him, Ram Baran Yadav, the president of the country, had assured that he was in no way going to proceed with such an outright unpopular thing as swearing Karki as the CIAA chief (Dixit 2016). But in an inexplicable about-turn, Yadav held the swearing-in ceremony for Karki early in the morning next day, and by the office time on May 8, Karki was the sitting chief commissioner at CIAA (The Kathmandu Post 2013).

There are many theories as to what changed the mind of Nepal's president that fateful day. The most plausible of those is this: according to Kanak Mani Dixit, among the last visitors of the president's residence on May 7 and eventual target of Karki's wrath:

The president, who was displeased by the recommendation of Karki's name [for the post of CIAA chief commissioner], was under severe pressure [to appoint him] from the South. And [head of both the



executive and judiciary] Khilaraj Regmi went himself to Shital Niwas to tell the president that he would be unable to hold the elections as planned if Karki was not appointed. [President] Yadav could not withstand this pressure and Karki ended up being appointed. (Dixit 2016)

This inference by Dixit, though, remains to be independently verified till date. But the continued silence of both Regmi and Yadav on the matter even after years of retirement from their posts makes it unlikely that they had a more savory cause or logic to appoint Karki to the post at that time.

With Karki's appointment, the backlash against his critics was swift. Protesters in the street were attacked ruthlessly by the police and the intellectuals advocating against his appointment were being vetted, ironically, even before his formal swearing in on the morning of May 8, 2013 (Dixit 2016). Twenty people from Human Rights and Peace Society were arrested from the southern gates of Singh Durbar on May 8 itself, including its founding president, Krishna Pahadi. The Society's subsequent satyagraha protests on May 10, 15 and 22 met with increasingly brutal behavior by the police. Despite this, their protest spread to other districts: Kanchanpur, Chitwan, Jhapa, Nuwakot, Makwanpur, Dang, Morang, Myagdi and Parsa (HURPES 2013).

Among the political parties, while NC and CPN-UML leaders were apparently embarrassed by Karki's appointment, Maoists were rather unperturbed by the protests against Karki's appointment. Indeed, the then Maoist leader Baburam Bhattarai went on to mildly praise Karki while justifying the recommendation of his name for the chief commissioner at CIAA (Satyal 2016a). With the threat of investigation on cantonment corruption by CIAA ever present, it was assumed that the Maoists had struck some deal with Karki to avoid investigations. Indeed, the Maoist supremo would go on later to confide to his party that an "understanding had been reached" with Karki on the matter (B. Sharma 2016b). This was the clearest case of two sides agreeing to whitewash one another's sins while making CIAA the tool of such a blatant subversion of the rule of law.

The attempt by politicians to appoint compliant and even colluding persons at CIAA is not something new. During the mid-1990s, when Janardan Lal Mallik was about to retire as the CIAA chief commissioner, the then commissioner Radha Raman Upadhyaya was eager to reach the top post. Girija Prasad Koirala, the then prime minister, however, recommended

former secretary Ramesh Jung Thapa for the post. The palace, meanwhile, obstructed the appointment citing that the Koirala government, having been reduced to caretaker status after calling mid-term elections, better leave the job of appointment for the new elected government. After the elections, as Koirala's party lost and the erstwhile opposition party CPN-UML formed the government, Upadhyaya, the sitting commissioner of CIAA, went on to attend the office-taking ceremony of Bharat Mohan Adhikari, the new finance minister. Eventually, he was rewarded with the post of chief commissioner at CIAA (Rawal 2015).

What we have been exploring in this article, however, is an entirely different ball game. The fact that politicians would choose somebody with an image tarnished on account of both financial impropriety as well as human rights violations so soon after the cabinet's decision to "disqualify" him "from any public post in the future" was unthinkable for most in Nepal until it actually happened. When observed in the context of Nepal's leading politicians' relentless tendency to fill state institutions—including the police and the judiciary—with either people loyal to their respective parties or individuals ready to collude with the party bosses often to the detriment of the institutions and the larger public, though, the appointment of Karki makes perfect sense (Kshetry 2016a).

## **The Undoing of Lokman**

### *Street Activism and Satyagraha: Making the Unthinkable Possible*

Three months after assuming office in 2013, Karki gave an important interview to BBC Nepali Service. When asked about the issue of cantonment corruption, he said, "I consulted concerned investigators. They have informed me that the investigation [into cantonment corruption] is now at its final stage. No stone will be left unturned. Nobody will be spared from prosecution regardless [of] his/her position" (B. Sharma 2016b). The issue would again be a matter of intense discussion after more than three years, in September 2016. In a hastily organized press conference on September 16, the CIAA spokesman declared that an intensive investigation was undergoing on the matter and went on to repeat on September 22 that "our investigative officers are looking into related documents available with CIAA regarding the case, if we find any inadequacy in them, we will seek further details from concerned ministries and offices" (The Kathmandu Post 2016c). By

this time, the image of Karki had been badly tarnished. Besides, the fact that CIAA actively ignored the cantonment corruption case for more than three years made a statement much stronger than the verbal claims made by CIAA spokesperson that day. Some developments between those two dates are illustrative of Karki's fall from grace.

The first ever powerful public rebuke of Karki's performance at CIAA was made by journalist Bijay Kumar on February 15, 2015. In a piece titled "Is the chief administrator above our republic?" he disparaged Karki for the latter's blunder on Twitter. Responding to a tweet coming from a fake account created in the name of Bijay Kumar, Karki had assailed him in three consecutive tweets: 1) "I am surprised to find that journo Bijay Kumar Pandey has spread rumors that he refused Bhupal Man Singh Pragya Puraskar" (an award established in the name of Karki's father); 2) "Bhupal Man Singh Pragya Parishad has never decided to award Pandey and he is not qualified for the award"; 3) "I request him to avoid spreading falsehood for cheap popularity. I condemn such deplorable act" (Kumar 2015). Bijay Kumar strongly condemned the fact that, besides failing to fact-check the rumor spread in his name, Karki had abused the Twitter account with the logo of CIAA to assail someone on an issue related to an award set up in his father's name, which had nothing to do with CIAA as an institution. He also challenged Karki to come to a live television program with him so that he can show Karki the proverbial "big fish" (meaning people indulged in massive corruption) which Karki pledged to catch but never did in reality.

Twelve days later, on February 27, the news about wedding of Karki's daughter at the CIAA premises caused a modest uproar on social media. But a process of sustained challenge to Karki's reign would start nearly a month later when Dr. Govinda KC initiated his fifth hunger strike on March 22, 2015. The fifth demand in his list was this:

The affiliation given to two medical colleges by KU [Kathmandu University], which is against the past agreements and cabinet decision, should be withdrawn and the KU officials involved in this should be punished. Also, as the CIAA Chief Commissioner has been alleged to have illegitimately pressurizing KU officials for affiliation, he should be investigated and if found guilty, should be punished according to law. (Kshetry 2017c)

The background was, obviously, the blatant interference of Lokman Singh Karki in bodies regulating medical education which had culminated in hasty affiliation to one of his family members' medical colleges, as discussed in the first section of this commentary.

Besides deepening the media scrutiny on Karki's interference with the regulatory bodies, this challenge by Dr. KC started a lasting altercation between the two public personalities. While Karki had propelled himself, though with questionable legitimacy, to the constitutional responsibility of punishing corrupt people and promoting good governance, Dr. KC had a different advantage. Known for selfless service as an orthopedic surgeon in Kathmandu-based Tribhuvan University (TU) Teaching Hospital, shunning private practice and leading a simple life, he had for decades traveled to almost all districts of Nepal, conducting free health camps and training the local health workers in basic orthopedic care. In times of natural disasters like earthquakes and typhoons, he had traveled to places as far away as Haiti, Myanmar, Philippines, Pakistan and India as a volunteer and done hundreds of surgeries to save lives (Baral 2016). With this credibility, he had galvanized Nepal's informed citizens around the cause of reforming medical education and health system in the country so that the quality of health care was no longer compromised for vested interests and it was affordable and accessible for all throughout the country (S. Pandey 2016). With even the commissioners at anti-corruption watchdog fighting for spoils of a compromised medical education rather than checking corruption and ensuring quality, it was natural that his demands fell on deaf ears and he had to resort to repeated hunger strikes.

To address the demand, the agreement between the government's negotiating team and Dr. KC included this point: "Regarding letter of intent, affiliation, extended program, student admission, seat allocation and fees for medical education, an inquiry commission headed by former Appellate court justice will be formed within seven days to investigate the acts of TU, KU and NMC. The recommendations of the commission will be promptly implemented" (Kshetry 2017c). Even though the part referring to the CIAA chief commissioner was understandably omitted from the agreement, it left the option of investigating the former's involvement in or tampering of bodies like KU and NMC.

The public altercation between *Kāntipur* daily and CIAA that took place on December 1, 2015, as mentioned earlier, came in the midst of lingering

public perception that Karki, in contrast to his grandiose proclamations about cleansing corruption, was going too soft on corrupt people in the country, deepening the environment of impunity that has been the norm in Nepal for decades. That particular editorial came in the backdrop of widespread disenchantment among people amid intensifying crisis in the aftermath of a devastating earthquake and a protracted border blockade by India that followed promulgation of the constitution in September that year. Reading between the lines of the editorial makes it clear that CIAA had not only failed to pursue specific cases of corruption but it had lost its way in its stated mission of promoting accountability. Karki, accustomed to dodging criticism by hounding critics rather than silencing them with diligence at work, resorted to the easy way of retaliating through an accusatory press release rather than giving a measured response. That attitude, however, did not help him burnish his image any more.

On June 17, 2016, *Setopati* online carried an explosive opinion piece as its headline story. Barely a month and a half after he was released from CIAA's custody as a result of court order, journalist and activist Kanak Mani Dixit wrote the piece openly claiming that Karki was a corrupt person "implanted" to a sensitive post in Nepal on the behest of intelligence agencies of India and was working under a grand design to undermine sovereignty of the country by dismantling its crucial institutions (Dixit 2016). That was the first frontal attack of its kind against Karki. With that, Karki's India connection—which had been rumored for long (Bhandari 2013)—came to the surface forcefully and added a new dimension to the whole saga.

Nine days later, on June 26, Dr. Govinda KC, declared that he would begin his eighth fast unto death from July 10 if his demands were not fulfilled (Nepali Times 2016). Prominently, the demands included impeachment of Karki by the parliament. This was, in fact, a simple re-wording of the demand he had put forward a year earlier, but the word "impeachment" was enough to wreak havoc in Karki's world and CIAA was prompt in retaliation: within hours it published a press release demanding psychiatric treatment of Dr. KC, accusing him of "being surrounded by corrupt people" and running a "hollow and sponsored campaign" (Kshetry 2017b). The backlash against Karki, especially in the social media, was so swift that CIAA was forced to withdraw the statement and publish an edited version that omitted the term "psychiatric" but left the part of demanding treatment of Dr. KC intact (CIAA 2016). The ground was now set for an epic clash between the two

contrasting personalities in the country. Looking back, it was also the point when Karki's popular legitimacy took a nosedive.

When Dr. KC eventually started his hunger strike on July 10, 2016, his crusade was now in uncharted territory as he was demanding impeachment of the chief of the country's anti-corruption watchdog. Whether and how to hold Karki accountable fell entirely within the jurisdiction of the parliament, but none of the political parties represented in the parliament had mumbled a word against him all along. The past successes of Dr. KC in forcing government to fulfill the demands did not mean much this time around as the watchdog was constitutionally insulated from any action by the executive. With Dr. KC already on strike, an editor of a Kathmandu newspaper went on to proclaim in a column for Indian newspaper that Dr. KC was going to lose "either health or face" this time around by dragging the chief of constitutional watchdog to the controversy (Ghimire 2016).

With the executive unable to do anything and no political party in the legislature parliament willing to confront Karki, Dr. KC's battle against him seemed unwinnable at first glance. But in this void a new and potent voice from civil society emerged: Solidarity for Dr. KC Alliance (República 2016c). Most prominent among its core component was the then Bibeksheel Nepali, an unconventional political party mainly composed of young people. Naturally, they had not been in Nepali public sphere and politics for long and hence had lesser fear of Karki in the form of retaliation by CIAA under him, unlike the conventional political parties whose leaders had a lot to fear in case Karki retaliated by investigating them on charges of corruption. The others included a host of social organizations, medical student bodies, some professional organizations, social media groups and a myriad of individual campaigners whose frustration with the dysfunctional system and whose faith in Dr. KC converged at the point.

As the political parties kept silent on the matter, the Alliance, in coordination with Dr. KC, continued piling pressure on both CIAA and the political parties by regularly protesting in Maitighar Mandala. Along the way, it repeatedly approached CIAA asking for Karki's property details (The Kathmandu Post 2016d), even organized a series of public interactions inviting parliamentarians and other political leaders and lobbied with the parliamentarians for initiating the impeachment process against Karki. It is noteworthy that the Alliance would later on be able to collect enough signatures to register a proposal of impeachment against Karki in the

parliament, even though the proposal never materialized as the two large parties intervened with their own impeachment proposals in the meantime (Kshetry 2016b). Surendra Chaudhary, one member of the parliament, even came to the street programs organized by the Alliance to support Dr. KC (The Kathmandu Post 2016e). A host of writers and public intellectuals, including Chaitanya Mishra, Pratyoush Onta, Khagendra Sangroula, Kapil Shrestha and Dr. Saroj Dhital, attended and spoke on some of the street programs (Kshetry 2016b). Meanwhile, the Alliance also created and circulated a dossier on Karki's wrongdoings.<sup>9</sup>

*Media's Decisive Push, Parliament's Acknowledgment  
and the Dignified End of Hunger Strike*

The first week after the beginning of Dr. KC's hunger strike on July 10, 2016, saw a modest media coverage. But by second week, the floodgates were open and the leading media outlets in the country, *Kāntipur* daily and *Setopati* online, led the way with a flurry of exposes, news coverage and op-ed pieces excoriating Karki. They also covered the events organized by the Alliance well and amplified the voice from the street. One mere look at the titles of the news reports exposing Karki's wrongdoings, published in *Kāntipur* Daily between July 19 and 29, makes it clear why public outrage against Karki snowballed during that period, even though politicians and MPs kept themselves aloof from the issue:

- July 19: CIAA tactics about medical colleges: Investigation but no prosecution (Gyawali 2016a)
- July 20: CIAA: Punishing the innocent and rewarding the culprits (Gyawali 2016b)
- July 20: CIAA's written directive for affiliation of nursing college (along with the letter) [Shrestha 2016]
- July 22: CIAA interferes in Nepal Medical Council (Kantipur 2016a)
- July 22: CIAA orders visa for Israeli citizen alleged of illegal activities (Gyawali 2016c)
- July 23: Entrance exam controlled by CIAA, the topper is the son of exam controller (Gyawali 2016d)

<sup>9</sup> Available online at [www.bitly.com/loottantra](http://www.bitly.com/loottantra).

- July 28: 9 instances where CIAA interfered in medical education (Gyawali 2016e)
- July 29: The controversial share transaction of Gokarna Resort after Karki's direction (B. Baniya 2016)

Before that, Ameet Dhakal, the editor of *Setopati*, had written a hard-hitting op-ed piece on July 10, the day Dr. KC started the hunger strike, titled “It’s politicians, not Lokman on the hot seat” (Dhakal 2016a). The next day, *Setopati* carried the crucial story on how Karki manipulated the whole system to the extent of making a policy decision from CIAA just to shield his niece from punishment for using fake certificate for a government job (B. Sharma 2016a). A year earlier, on August 30, 2015, *Setopati* had published an explosive CIJ (Centre for Investigative Journalism) report following a sting operation detailing the complicity of Nepal Medical Council and the judiciary with private medical colleges in a mammoth racket that ensured many more seats for the colleges than they were qualified for. In that sting operation, an official of a private medical college had mentioned that the “brother of Bal Man Singh Karki” [i.e., Lokman Singh Karki] had “increased the seats” [of Kist Medical College] (Poudel 2015). Such reports and sporadic pieces in *Setopati*—especially those by Ameet Dhakal, Kanak Mani Dixit and this author—along with occasional news reports and editorials in *Kāntipur*—had kept the issue of Karki’s wrongdoings alive throughout the year (see, Ameet Dhakal 2016b; Dixit 2016; Kshetry 2016c), but that was incomparable to the barrage of reports and op-eds now carried in each of these two leading media outlets, also accompanied by other online portals and newspapers, around the eighth hunger strike of Dr. KC.

With public momentum gathering against Karki, politicians faced the risk of losing popularity and political legitimacy and hence were forced to break their silence. On the ninth day of Dr. KC’s hunger strike, on July 18, members of the parliament’s Social Justice and Human Rights Committee went to visit Dr. KC and showed concern for his deteriorating health (J. Pandey 2016). On July 20, the President called the Health Minister Ram Janam Chaudhary and inquired about Dr. KC’s health (Kantipur 2016b). The next day, the former chief secretary and anti-corruption campaigner Lila Mani Paudyal wrote a scathing piece titled “The government better wake up in time” in *Kāntipur* demanding prompt fulfillment of Dr. KC’s demands (Paudyal 2016). Finally, on July 21, the parliament was forced



to formally acknowledge Dr. KC's hunger strike as well as his demand to impeach Karki. A proposal of public importance, calling the parliament to discuss Dr. KC's demands, including Karki's impeachment, was registered in parliament by Nepali Congress leader Gagan Thapa. The proposal not only demanded a deep and fair investigation by parliament on the accusations against Karki but also reminded that "it [the investigation] could lead to necessary action [against the accused] as per the existing constitutional provisions" (Neupane 2016).

In the mean time, the controversy around the interference in entrance exams at Kathmandu University intensified.<sup>10</sup> The controversy had come out in public with the June 26 report in *The Kathmandu Post* (Gautam 2016) and intensified with the news on July 5 about the resignation of Kedar Bhakta Mathema, the former VC of TU, from KU senate, protesting CIAA's interference (The Kathmandu Post 2016f). With the July 23 *Kāntipur* story on the same issue and snowballing public opinion against Karki, the parliament was forced to act on the matter and the parliamentary committee overseeing governance issues decided to summon Karki and other CIAA commissioners for questioning on the issue on July 26 (Gyawali 2016f). In this context, Solidarity for Dr. KC Alliance organized a massive rally in Kathmandu on July 23 (Angad Dhakal 2016). By that time, protests in Dr. KC's support were reported from many cities outside Kathmandu as well as from abroad in the US, Australia and New Zealand (Shah 2016; N. Khadka 2016; Kantipur 2016c).

With the parliament now at least acknowledging that it would look into Karki's conduct, Dr. KC ended his hunger strike on July 25 with most of his other demands fulfilled. At the end of those eventful two weeks, Karki had lost popular legitimacy as the head of anti-corruption watchdog, even though his position as CIAA chief commissioner was technically as secure as ever. Even after ending his hunger strike, Dr. KC kept writing and advocating for Karki's ouster and the momentum against Karki was not entirely dissipated. On August 17, Transparency International Nepal went on to acknowledge through a statement that the "agencies responsible for corruption control

<sup>10</sup> In an unprecedented act, CIAA had reportedly taken over the entrance examination for postgraduate courses in medicine citing "possibilities of irregularities." More details on this issue are available in my *Samaj Adhyayan* article (see Kshetry 2017a).

were being weakened and controversial” in Nepal, “making it hard to check corruption” (Kantipur 2016d; see also Transparency International 2016).

*Judiciary: The Battleground where Karki Ultimately Lost his Fight*

The decision of Constitutional Council made on May 5, 2013, which recommended Karki’s name for CIAA Chief Commissioner, makes for an interesting reading. Besides mentioning that Karki was technically qualified for the post according to Nepal’s Interim Constitution, 2007, it states that “[Karki’s] honesty, past performance and professional experience is enough for him to qualify for the post” (Satyal 2016b). Advocate Om Aryal, however, had moved to SC as early as March 20 challenging Karki’s qualification for the post after the high-level political mechanism had recommended Karki’s name to the Constitutional Council on March 17 (for detailed timeline on judicial proceedings explained in this section, see the annex). Two days later, a SC bench of Sushila Karki stayed the recommendation pending final decision on the matter. The subsequent April 29 decision of a bench of justices Brishesh Chandra Lal and Tarka Raj Bhatta, however, dismissed the writ, thus paving way for his appointment (Satyal 2016c). Between the constitutional council’s May 5 decision to recommend Karki’s name and Karki’s swearing in on May 8, Aryal moved to SC again challenging the recommendation, but his writ was not registered. His writ was eventually registered with supplementary application on May 12, but when the verdict came about a year and a half later on October 9, 2014, a bench of justices Gopal Parajuli and Om Prakash Mishra passed a verdict in favor of Karki and quashed the writ (Satyal 2016c).

Between that date and September 16, 2016, when a full bench of Chief Justice (CJ) Sushila Karki and justices Sapana Pradhan Malla and Bishwambhar Prasad Shrestha ordered the review of Karki’s appointment, the judicial challenge to Karki’s continuation as CIAA chief was largely forgotten because reopening a settled verdict for review is rare in judicial history anywhere. That kind of review leading to reversal of a sensitive earlier verdict is even rarer. Thus, Karki could have felt secure all along after the October 9 verdict, but apparently he did not. As the media and the public was finally compelled to get along with CIAA under Karki, he was eager to preempt the last potential legal challenge to his reign at CIAA. For this, he needed to open the case of his appointment in judiciary one more time and

get the writ against him quashed once again so that it could be closed forever with no constitutional provision of legal revival of the case.

It was in this pretext that a series of bizarre-looking incidents took place in Nepal's Supreme Court. On June 22, 2015, a person called Ram Maya Lamichhane moved to SC challenging the October 9 verdict quashing Om Aryal's writ petition against Karki's appointment. According to a meticulous and well-researched multi-part report published in Nepali online portal pahilopost.com, that was a ploy to usurp the opportunity of Aryal to get his writ petition revived in the future and closing the matter forever when the court was still led by the chief justice favorable to Karki (Satyal 2016a; 2016b; 2016c).

This interpretation is corroborated by the fact that a day after trying to purportedly fight Aryal's cause and failing to do so because of a vigilant assistant registrar Nahakul Subedi who did not register her application outright, Lamichhane knocked the doors of Chief Justice Ram Kumar Prasad Sah himself. Sah, in turn, asked Subedi to "act on the application within an hour." Thrown into a dilemma because the existing guidelines did not explicitly mention the way out in such anomalous cases, Subedi resorted to a clause in the Supreme Court directive which stated that in case of unforeseen situation like this, one in his position had "the right to use his/her conscience to decide" on the matter. He did exactly that while passing a two-page order reiterating the right of Om Aryal to pursue his case. By neither registering nor blocking the application but merely "acting on it" through the order as asked by the CJ, he pre-empted the option of Lamichhane moving to the bench and either pursuing the case (in case it was registered) or challenging the assistant registrar's action (in case it was blocked) [Satyal 2016c].

Before pahilopost.com did the multi-part story on the matter starting on September 22, 2016, the part of Ram Maya Lamichhane was missing from media coverage as nearly everyone believed that the judicial challenge to Karki's appointment was no longer an option. As quoted in the story, even Om Aryal was in no mood to reopen the case until he was informed by the officials in the SC about the drama created by Ram Maya Lamichhane there. As Nahakul Subedi had ingeniously saved the option of Aryal moving to the SC with the case, the latter duly moved to the SC on November 26, 2015. By this time, however, Ram Kumar Prasad Sah had retired and the SC's helms were in the hands of Kalyan Shrestha. Sushila Karki, who had stayed Karki's appointment a year and a half earlier, was in line to be CJ after Shrestha. The

forebodings of Damodar Prasad Sharma, the CJ preceding Sah, were now about to come true; he had reportedly advised Karki before retiring that as the chapter of his legal fight was yet to close, he better close it forever when Sah was still there at the SC's leadership. Otherwise, he said, "Who knows what will happen later?" (Satyal 2016c).

With the September 16 verdict to review the case of Karki's appointment, suddenly the prospects of Karki's term ending prematurely seemed more realistic than ever. Even though the barrage of negative media coverage during Dr. KC's hunger strike had caused a precipitous fall in Karki's popular legitimacy, his legal standing as the chief commissioner of CIAA was unchanged. This did not change by the fact that people were now more openly criticizing Karki and Dr. KC kept writing articles and threatening with another hunger strike in case Karki was not impeached. In this pretext, the decision of the court to review Karki's appointment raised hope among the campaigners fighting for Karki's ouster and apparently caused panic on the other side. Two days after the verdict came out, Karki flew to Canada on a nineteen-day leave (Giri 2016), but he came back to Nepal only on October 19, nearly a month later. In the meanwhile, the court's attempt to deliver summons to him were repeatedly obstructed on October 5 and 6, causing a storm of protests from angry citizens on social media and elsewhere (Rai 2016). By this time, political parties had been spectators to the whole affair for too long as the popular discontent towards their handling of the whole Lokman affair simmered. While CIAA's September 16 statement indicating that it was pursuing cantonment corruption case had irked the Maoist party, Karki's blatant insult of the judiciary and the popular backlash against it might have triggered the decisive action by the parties on October 19: With 157 MPs from the ruling Maoist party and the main opposition CPN-UML registering impeachment motion against him in the parliament, Karki was officially suspended from his post (Pradhan 2016). When a full bench of justices Ishwor Raj Khatiwada, Ananda Mohan Bhattarai and Anil Kumar Sinha ruled that Karki did not hold the "high moral character" required to lead the CIAA and did not meet the criteria set to head the constitutional body and annulled his appointment on a landmark January 8, 2017 verdict, a dark era finally ended in the fight for accountability in Nepal (Giri 2017).

## Conclusion

If institution-building is a tough job anywhere, it is doubly so in a country like Nepal where the commitment of political leadership towards the sanctity of those institutions is shallow and easily overruled by their vested interests. Indeed, even the so-called “mature and prosperous” democracies in the Western world are now discovering that dismantling apparently sound democratic institutions is much easier than it was once thought. With relentless tampering and distortion from the beginning, as is the case in underdeveloped countries like Nepal, however, those institutions become inherently weak and dysfunctional and can be abused with relative ease. The fate of anti corruption institution, CIAA, in Nepal can serve as an index case of how potentially vital institutions designed for ensuring accountability can be abused to serve the opposite end.

CIAA, which came to existence in its present form after the change of 1990, was largely a sleepy institution—employing mostly retired bureaucrats as commissioners (Rawal 2015)—before the raids during Suryanath Upadhyay’s tenure as the chief commissioner made headlines in the media (B. Sharma 2016b). As if to deliberately subdue the institution after a spell of hope was sparked, however, the political class in the country chose to leave it without commissioners for years after the retirement of Upadhyay and his team. For more than three years, the function of CIAA was jeopardized as it was manned by bureaucrats with limited powers.

The irony is that some of the most high-profile cases investigated by CIAA leading to successful prosecution in the court occurred during the so-called “leaderless” phase in the watchdog’s life. It was in June 2011 when the CIAA was led by secretary Bhagawati Kafle that CIAA prosecuted 34 police officers, including three successive police chiefs or Inspector Generals in the infamous case known as “Sudan scam” in which as much as 280 million rupees was embezzled (The Kathmandu Post 2011). In a final SC verdict on April 30, 2017, the three former police chiefs—Om Bikram Rana, Hem Bahadur Gurung and Ramesh C. Thakuri—were all awarded jail sentences (Sharma 2017).

Significantly, the then CIAA was bitterly criticized for not doing enough in the case by letting politicians (home ministers) and the home secretary off the hook (Sharma 2011). This is the indicator of how much expectation rests on CIAA as an institution responsible for promoting accountability in the country. That whole concept of CIAA holding public officials accountable

was, however, inverted top-down during the tenure of Lokman Singh Karki: now it was the CIAA commissioners who had to be endlessly scrutinized for scrupulousness of their deeds. As scandals and criticisms mounted, CIAA under Karki proceeded to muzzle the critics and resorted to altercation with the media critical towards him instead of mending its ways.

With this, we can proceed to briefly answer the three questions posed at the beginning of this article. First, despite its immense potential as the watchdog promoting accountability in the country, CIAA in Nepal has been miserably underperforming because of unsavory meddling and tampering by the political class. The acts of keeping the watchdog vacant for years and then appointing Karki to the post of chief commissioner were both cynical and cunning attempts by politicians to avoid a situation in which they could be held accountable. While Karki might have overstepped their red line later during his shortened tenure, it is inconceivable that he became consensus candidate of all parties—given his background and baggage from the past—at the time of his appointment for no reason. An understanding that CIAA would not touch upon major corruption cases involving the top leaders of all four parties, merely a speculation at the time of appointment, was to be proved true as he proceeded to work at CIAA.

Second, unless the engine of democratic accountability starts working reasonably well, it is not realistic to expect a watchdog like CIAA to cleanse the system from top down. It is now safe to state that asking a watchdog like CIAA to look after the wrongdoings of tens of thousands of people holding public posts—starting from a village-level official and all the way up to the prime minister—was bound to create distortions. For accountability at all levels, there is no substitute for a truly competitive and participatory democratic process which rewards efficient and honest political officials and punishes the crooked ones. Duly elected and accountable political officials at all levels can then scrutinize the deeds of their unelected counterparts in the bureaucracy. A body like CIAA can then supplement the process by specifically scrutinizing the higher officials who may feel that they are free to do as they wish after reaching the apex of power.

Third, on the issue of how to avoid the situation in which the anti-corruption watchdog itself is abused as a tool of corruption, subversion of rule of law and potentially revenge, the Lokman affair has many lessons to teach. So long as the political environment of the country remains unchanged, with the top leaders of all parties equally and collectively determined to avoid

accountability for themselves, a body like CIAA remains as susceptible as now for all kinds of abuse. On how to avoid that in the future, the process of Karki's ouster has many things to teach.

As indicated earlier, the three sides—parliament, the judiciary and citizen activists—played their own roles in Karki's ouster, but their involvement was by no means symmetrical or consistent. Citizen activism started when the court case was dormant, the media was quiescent and the parties and parliament were indifferent towards Karki's performance at CIAA. As satyagraha and street protest from citizens triggered a flurry of media coverage indicting Karki, individual politicians and even the parliament were forced to acknowledge the problem with Karki's performance at CIAA but were still unwilling to do anything meaningful. The court eventually played its role by deciding to review Karki's appointment, and this made him vulnerable and forced him to declare that he was pursuing certain high-profile corruption case in a belated and unsuccessful bid to burnish his image as anti-corruption crusader. That threat, along with steadily building public resentment against Karki that peaked with his obstruction of judicial proceedings, forced the two main parties in the parliament to suspend him through impeachment proceedings. Eventually, the decisive blow was given by the judiciary in dismissing him.

It is now hard to imagine how events would have unfolded in case any of the three links had been missing. But the synergistic action of the three sides made the once unthinkable thing possible and a protest that began from a small number of citizens culminated in the ouster of a powerful chief of the constitutional watchdog who had been abusing the latter to establish a parallel state. Eternal vigilance and prompt action from committed citizens is thus mandatory if the wrongdoings from people holding powerful public posts are to be prevented. For an over-all improvement in accountability in the country, re-establishment of sound democratic practice at all levels is mandatory. If that is aided by vigilant citizenry and professional judiciary, much better governance can be expected in a country like Nepal.

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article. It would have been impossible to unseat the powerful chief of the constitutional body (and consequently to write this) without the exemplary contribution by some luminaries in Nepal's civil society, such as Dr. Govinda KC and Kedar Bhakta Mathema. The role of Sushila Karki, the audacious chief justice, and her team at the Supreme Court was unparalleled in ensuring justice in the whole saga, and in letting people like me to go back to work, reflect and write, after months of campaigning. The few politicians who stood out during the testing times have been named in this article. The thousands of people who came to streets during those months demanding a better-governed country deserve more proper documentation of their role in making history. Two anonymous readers provided extensive comments on previous drafts. Finally, it was Mallika Shakya who took the pain of laboriously remolding this article into a more scholarly format from the magazine-like format in which it was originally written.

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<sup>11</sup> Of note, for media reports and articles, references for both print and online versions are given where available. The online version contains more information and documents than the printed version.



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### Biographical note

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## Annex: Timeline of Judicial Proceedings in the Case Related to Appointment of Lokman Singh Karki

<b>2013</b>	
March 17	High-level political committee recommends Karki's name for CIAA.
March 20	Advocate Om Aryal moves to SC challenging HLPC's recommendation.
March 22	A SC bench of Sushila Karki stays the recommendation.
April 29	SC bench of Brisesh Chandra Lal and Tarka Raj Bhatta rules that Karki faces no barrier for appointment at CIAA.
May 5	Constitutional Council recommends Karki's name for CIAA chief commissioner.
May 6	Om Aryal moves to SC challenging the recommendation; his petition is rejected.
May 8	Karki is sworn in as CIAA chief commissioner.
May 10	Aryal moves to SC again; SC overturns the rejection and orders registration of the writ.
May 12	Aryal's writ gets registered along with supplementary application.
<b>2014</b>	
September 24	SC bench of Gopal Parajuli and Om Prakash Mishra quashes the writ petition against Karki's appointment.
<b>2015</b>	
June 22	Ram Maya Lamichhane goes to SC challenging the October 9 SC decision to quash Om Aryal's petition.
June 23	Om Aryal is informed by court officials about the Ram Maya Lamichhane's attempt to "fight for him."
June 23	Lamichhane knocks CJ Ram Kumar Prasad Sah's door with the application. Sah asks assistant-registrar Nahakul Subedi to "act on the application in one hour."
June 23	Nahakul Subedi neither registers nor blocks the application but passes a two-page order reminding Lamichhane that, as the original applicant, Om Aryal retains the right to challenge the quashing of his petition.
November 25	Om Aryal moves again to SC asking review of his petition.

<b>2016</b>	
March 1	Judicial council recommends the names of eleven judges to be appointed at the SC.
August 1	The eleven judges take oath and are formally appointed at SC.
September 16	A full bench of CJ Sushila Karki and justices Sapana Pradhan Malla and Bishwambhar Prasad Shrestha orders the review of Karki's appointment.
September 16	CIAA spokesperson says that the investigation on cantonment corruption was being resumed.
September 21	Court summons Karki to appear within fifteen days in court.
October 5, 6	Court staff are obstructed from pasting the summons in Karki's house gates; later successfully pasted on October 19.
October 19	Nepal's parliament proceeds with impeachment motion against Karki, suspending him from the post.
<b>2017</b>	
January 8	Karki is disqualified and dismissed from the post by the SC.