

# **Functioning of Local and Provincial Governments in Nepal**

**Periodic Report - 4  
April, 2019**

**DEMOCRACY  
RESOURCE CENTER**

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## **Acknowledgement**

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## **List of Acronyms**

CAO	Chief Administrative Officer
DAO	District Administration Office
DDC	District Development Committee
DRCN	Democracy Resource Center Nepal
ECN	Election Commission of Nepal
EDCU	Education Development and Coordination Unit
EIA	Environment Impact Assessment
FARC	Federal Administrative Restructuring Committee
JC	Judicial Committee
LGA	Act Relating to Operation of Local Government
MoFAGA	Ministry of Federal Affairs and General Administration
NCP	Nepal Communist Party
NRA	National Reconstruction Authority
RJPN	Rashtriya Janata Party Nepal
RWDC	Rural Woman Development Center
SAEWRCC	Sustainable Agriculture or Environment and Water Resource Conservation Center
SMC	School Management Committee
SSFN	Sanghiya Samajvadi Forum Nepal
VDC	Village Development Committee

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## 1. Introduction

Since January 2018, Democracy Resource Center Nepal (DRCN) has been observing and reporting on the functioning of provincial and local governments in Nepal. This is the fourth periodic report from the two rounds of reporting. The first round was conducted between January and July of 2018, and the second round was undertaken from August 2018 to March 2019.<sup>1</sup> DRCN's research involves two major components: a) systematic observation of the progress made and challenges faced by local and provincial governments in the new federal structure, and, b) identification of key trends and issues emerging during the implementation of federalism.

The first two reports identified that inadequate staffing and infrastructure, lack of technical capacity of elected representatives, and lack of clarity regarding constitutional jurisdictions affected local governments' early functioning. Provincial governments faced even bigger challenges due to the absence of essential institutions at the provincial level, and lack of federal framework laws necessary to enact important provincial legislations. The third report pointed out some progress made by local governments, particularly in areas of planning and service delivery, as elected representatives became more familiar with their roles and responsibilities. The legal and jurisdictional challenges, however, remained unresolved and continued to affect the functioning of both local and provincial governments negatively. The federal government had not introduced key framework legislations, and staffing shortage was yet to be addressed through the employee integration process. Representatives of local and provincial governments expected that commitments made by the federal government during the 'Inter-Province Council' meeting on December 9-10, 2018 as well as other legislations being deliberated in the federal ministries and the federal parliament would address outstanding gaps and challenges.

This report includes findings from DRCN's observation across all seven provinces between December 2018 and March 2019. DRCN research was qualitative and structured around a team of analysts in Kathmandu and field researchers based in the provinces. DRCN met elected representatives, officials, political representatives, journalists, citizens, civil society leaders and representatives of different social organizations. During this reporting period, DRCN field teams visited 47 local units in 23 districts across all seven provinces, meeting and interacting with 555 provincial and local level stakeholders in the process. DRCN also conducted focused studies on various themes including service delivery in health and education sectors, transparency and accountability measures at the local level, and relationship between the three governments. This publication is accompanied by a separate thematic report assessing the nature of relationships between local, provincial and federal governments. Considering privacy and sensitivity issues, in some specific cases DRCN has redacted details like names of respondents and local units.

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<sup>1</sup> DRCN's previous reports on the functioning of local and province governments are available in English and Nepali on DRCN website at: <http://democracyresource.org/observation-of-local-and-provincial-governments/>

## 2. Functioning of Provincial Governments

In February 2019, all the provincial governments completed their first year in office. As completely new structures, all the provincial governments assumed office without previous experience and necessary institutions in place. The early state of their functioning was therefore understandably more challenging than that of local governments. In the first year, all provinces formed councils of ministers on the basis of Article 168 of the Constitution, comprising a maximum of seven ministers as recommended by the Federal Administrative Restructuring Committee (FARC).<sup>2</sup> The size of provinces differed in terms of population and geography, resulting in a variance in the number of members in the provincial assemblies.<sup>3</sup> In terms of political representation, Nepal Communist Party (NCP) enjoyed outright majority governments in six of the seven provinces, while Rashtriya Janata Party Nepal (RJPN) and Sanghiya Samajvadi Forum Nepal (SSFN) formed a coalition government in Province 2. Throughout the first year, all provinces experienced common challenges including lack of staff and infrastructure, inadequate legislations to facilitate the establishment of provincial institutions, poor technical capacity, and ineffective coordination with the federal and local governments. As reported by DRCN since January 2018, provinces spent their first year legislating operational and procedural laws with limited progress in planning and budget implementation.

### 2.1 Provincial Assembly and Legislative Functions

In the first year, each provincial assembly conducted two parliamentary sessions and enacted operational and procedural laws, including a limited number of legislations on matters of their exclusive jurisdiction. They could not enact laws on provincial policing and service commissions because of a lack of essential federal legislation.<sup>4</sup> The bills for these laws were either drafted or registered in the provincial assemblies, but provinces stopped further deliberations, awaiting necessary framework laws to be passed by the federal parliament. Representatives of provincial governments continued to complain that the federal government did not show enough urgency for timely legislation of such framework laws.

There were concerns about the quality of laws passed by the provinces. Rushed processes, inadequate consultations with stakeholders, and insufficient expertise in the legislation process were cited as the most common challenges in lawmaking. “We might have made procedural and legal errors because we had to pass many laws within a short period of time,” a provincial assembly

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<sup>2</sup> All but two provinces formed complete cabinets with seven ministers and one Chief Minister. In Province 5 and Province 1, the cabinets included six and five ministers respectively. Province 2 and Sudurpaschim Province also appointed state ministers.

<sup>3</sup> All provinces have unicameral legislatures and consist of: 93 members in Province 1, 107 in Province 2, 110 in Province 3, 60 in Gandaki Province, 87 in Province 5, 40 in Karnali Province, and 53 in Sudurpaschim Province. Further details are available at: <http://www.election.gov.np/ecn/uploads/userfiles/ElectionResultBook/PA2074.pdf>

<sup>4</sup> As previously reported by DRCN, Province 2 decided to enact the law on provincial police despite federal government’s objection. The law was yet to be implemented as the federal law needed for the management and coordination of the provincial police was not passed.



member in Gandaki Province conceded. Respondents pointed to the need for greater deliberation and consultation and stressed the need for increased capacity of lawmakers through regular trainings.

**Table 1: Status of Legislation in Provinces<sup>5</sup>**

Provinces	Acts Passed	Bills registered or under deliberation in the parliament	Bills approved by the provincial cabinet
Sudurpaschim	17	4	23
Karnali	18	3	24
Province 5	14	16	35
Gandaki	21	4	5
Province 3	24	4	10
Province 2	16	11	15
Province 1	23	7	13

Representatives in all provinces expressed that they did not have requisite laws to implement plans and policies. Although provincial governments made secondary legislations (regulations, by-laws, procedures, directives and guidelines) to implement the budget, they were limited in number. Officials at the Province 1 Education Directorate expressed that the relevant ministry prioritized bringing plans and policies rather than enacting requisite laws. Assembly members in Sudurpaschim and Karnali provinces complained that their provincial government did not provide them enough businesses, which they said limited the scope of assembly functions. Provincial members said they were increasingly more aware about their roles and responsibilities, and better understood the lawmaking processes. Initially, only the Ministry for Internal Affairs and Law and legislative committee in the assembly were involved in the lawmaking processes. But more recently other ministries and assembly committees were also involved.

## 2.2 Shortage of Employees

The delay in integration of civil employees resulted in all provinces operating without essential staff. Provincial governments were unhappy with the federal government for both the delay in employee integration, as well as the lack of consultation during the process. “We [the provincial government] do not know who is being appointed or who is being transferred,” a minister in Province 3 said. “This has created a lack of trust between the employees and the government, and resulted in frequent transfers [of the employees], affecting our important daily functions.” Representatives of the provincial governments argued that a long-term solution to address the inadequate numbers of employees would be for the provinces to set up their own public service commissions and recruit their own employees. “The ongoing [employee integration] process is not a permanent solution. The federal government should promptly pass legislation which will pave the way for provinces to recruit their own employees,” a high-level representative of Province 2 government argued. The federal government approved the Act Relating to Employee Integration, after much delay, in December

<sup>5</sup> The table includes acts and bills passed and registered in the provincial assemblies until March 15, 2019.

2018. Despite the federal government's commitment to complete the integration process within the same month, provinces were reporting that they were still short of the required number of employees.<sup>6</sup> According to estimates from the MoFAGA, there was an overall shortage of 40,000 employees nationally, and the seven provinces were still short by 8,476 employees – 37% less than the officially approved positions.<sup>7</sup> The federal government, despite its prior commitments, did not pass the law relating to the public service commission – which would have paved way for the provinces to establish their own public service commissions to recruit required employees – in the 2018 - 2019 winter session of the federal parliament.

## 2.3 Institutions, Planning and Implementation

Provinces were operating without key institutions and line agencies to implement their plans and programs. They started setting up institutions like agriculture knowledge centers, health directorates, and other service-specific offices. In its annual progress report, Karnali Province claimed that it had established a total of 108 provincial offices across various sectors. Province 1 established 155 offices and institutions and undertook initiatives to promote agriculture and tourism. These institutions were, however, yet to function effectively. “The Agriculture Knowledge Center, which is situated in Ramechhap, called for grant proposals from individual farmers to receive improved seeds. But, the farmers did not understand the process. They were also required to travel for days to reach the knowledge center,” a local elected representative in Dolakha expressed his dissatisfaction at the knowledge center's lack of coordination with the local governments.

Provincial governments presented annual budgets mobilizing internal revenue sources and federal grants, and carried out fiscal planning and prioritization. In absence of required laws, staff, and institutions, all provinces struggled to implement their budgets, with capital expenditure figures reported in the single digits into the second quarter of the fiscal year.<sup>8</sup> Despite these challenges, provinces started setting up limited sectoral offices and undertook initiatives in the social sector. The Province 2 government, for example, started implementing a province-wide campaign – *Beti padhao*, *beti bachao* – to promote girl-child education and women's empowerment. Under the campaign, insurance and scholarship schemes were set up across the province. Similarly, the Province 3 government allocated NPR 50 million towards the welfare of highly marginalized groups like the Thamis in Kalinchowk Rural Municipality in Dolakha. Karnali Province decided to provide rebuilding assistance of NPR 500,000 to each household destroyed by fire in Palata Rural Municipality in Kalikot.

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<sup>6</sup> For example, only 1312 of the required 2364 positions (56%) were filled in Karnali Province, while only 2120 of the 3882 required employees (55%) were available in Province 1.

<sup>7</sup> Bimal Khatiwada. 2019. “Employee integration: still a shortage of 40000” (In Nepali). 29 March. Available at: <https://www.kantipurdaily.com/news/2019/03/29/155382430390956616.html>

<sup>8</sup> Republica. 2018. “Provincial governments struggle to boost capital expenditure”. 18 December. Available at: <https://myrepublica.nagariknetwork.com/news/provincial-govts-struggle-to-boost-capital-expenditure/>

Representatives of provincial governments conceded that they were not able to implement projects that they wished for and pointed to various legal and technical limitations in the first year, but they expressed confidence that they would be more effective in coming years. “It is not that we have not achieved anything in the first year. From drafting important laws to setting up institutions and preparing detailed plans, we have created a strong platform to implement projects effectively in the future,” a minister in Province 5 said.

## **2.4 Name, Capital and Official Languages**

Finalizing the name of the province, location of the permanent capital, and official languages was contentious in four of the seven provinces, with only Karnali Province, Gandaki Province, and Sudurpaschim Province having chosen their names and capitals. In Karnali Province and Gandaki Province, there was no major opposition, but Sudurpaschim Province’s choice of Godavari as the capital drew major protests from the opposition parties in the parliament, and from sections of the civil society. The decision was also challenged in the Supreme Court.

The issue of name was mostly contested in Province 1, with sections of the civil society and some members of parliament representing major ethnic groups like the Rais and Limbus demanding the name of the province to reflect their identities. In Province 2, both the name of the province and the choice of official language remained hotly contested with opinions also divided on whether or not Hindi should be recognized as one of the official languages. The issue of the location of the capital was most pressing in Province 3, where the report submitted by a special committee was challenged in the court, thereby halting the formal process. And in Province 5, respondents said that solving the issue of the location of the permanent capital was “beyond the capacity of the provincial government”. Members of the Provincial Assembly were divided over their preference for Butwal and Dang, and according to local observers, neither side could garner the two-thirds majority required to choose a permanent capital. The issue of naming a capital was complicated because the political leaders and assembly members at the federal and province level were lobbying for the capital to be located closer to their respective constituencies. The residents and businesses in prospective locations for the capital were also actively pressurizing the assembly members to name their city as the capital.

## **3. Functioning of Local Governments**

Local governments were undertaking their basic functions of delivering public services and conducting the tasks of planning and budget implementation. Meetings of the local executives were held regularly, and ranged between one to three meetings. Shortage of staff, particularly insufficient number of ward secretaries and technical employees like engineers and sub-engineers, was hindering the functioning at both municipal and ward offices. The employee integration process was yet to be completed and there were widespread concerns that employees preferred not to be appointed to certain local units, particularly in the rural hilly and interior Tarai regions. Employees, on the other

hand, expressed confusion about where they would be transferred. Elected representatives were also concerned about the frequent transfers of federal employees from local governments, particularly that of Chief Administrative Officers (CAO).<sup>9</sup> Many ward offices were functioning from rented and temporary office spaces.

### **3.1 Lawmaking by Local Governments**

Barring a few exceptions, local governments were conducting regular assembly meetings as dictated by the LGA.<sup>10</sup> Through these meetings, local governments passed various laws. Of the local units visited, Rautamai Rural Municipality in Udaypur had passed 33 laws, while Ekdara Rural Municipality in Mahottari had only legislated two laws. An official cited busy schedules and lack of legal expertise for the failure to pass enough laws. As previously reported by DRCN, local governments made laws on the basis of model laws provided by the Ministry of Federal Affairs and General Administration (MoFAGA). While this was still the case, some local units were also enacting laws on their own. For example, Belaka Municipality in Udaypur passed its ‘Agriculture Act’ with help of local experts. Journalists and civil society members in local units visited by DRCN said that the local governments making their own laws was a positive outcome of the new federal structure, but expressed their concerns that lawmaking process lacked requisite consultation and deliberations.

#### **Case Study 1: Law on agriculture and land use passed by municipality**

In 2018, Belaka Municipality in Udaypur passed a law on agriculture and land use policy. The Agriculture Act 2018 covered a range of issues and aimed to increase farm productivity, form farmers groups, provide financial and technical assistance, ensure easy access to markets, modernize agriculture, and establish processing facilities. Divided into nine sections, the Act defined categories of farmers (small/marginal, medium and commercial farmers) based on the ownership of land, dependency on agriculture, and use of labor and agricultural tools. The municipality would encourage employment in agriculture, facilitate the use of locally available resources, and discourage the use of insecticides and pesticides. The Act contained provisions for special assistance to poor and marginalized groups including women, dalit, and other ethnic groups, who were either landless or had small landholdings. Improving accessibility to information, knowledge sharing among farmers and groups, providing grants, financial assistance and crop insurance, storage, processing and market facility, establishing corpus fund and coordinating with other government and non-government organizations in agriculture and land use were other additional features included in the Act.

Local representatives continued to face multiple challenges in lawmaking, including lack of legal expertise, jurisdictional ambiguity, and absence of requisite federal framework laws. Some laws

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<sup>9</sup> Cases of CAOs being transferred more than two times in a local government were common across the visited local units. In Ghodaghodi Municipality, Kailali, 10 CAOs were transferred since the local government assumed office.

<sup>10</sup> In one local unit in Mahottari district, ward chairs did not allow to conduct the assembly meeting alleging that the Chairperson and the Vice-Chairperson failed to make the details of expenses public. Similarly in another local unit in Dhanusha, one representative said that the meeting was postponed because they did not have sufficient employees.

drafted by local governments, particularly in education, became contentious. For example, in Rajapur Municipality in Bardiya, the 'Education Procedure' which allowed the Municipality to scrap school management committees (SMCs) and authorized the wards to manage schools, was challenged in the court. Former members of the SMC who moved the court argued that the law violated existing federal laws on education. Representatives of local governments expressed that they stopped drafting education-related laws anticipating such conflicts with existing laws.<sup>11</sup> "If we formulate an 'Education Act,' we might get dragged to court and the court will likely rule against it," Vice-Chair of Yangworak Rural Municipality in Panchthar argued.

### **3.2 Public Service Delivery**

Under the new federal structure, local units are empowered with important legislative and executive functions and are the main units of service delivery. Local governments took initiatives to provide basic services and undertook various administrative tasks. Vital registrations, distribution of social security benefits, and making recommendations were common functions of the local governments. Local governments passed operational and procedural laws but were yet to make important laws specific to sectoral service delivery. Agriculture was one of the important sectoral offices transferred to the local governments. Local initiatives in agriculture included agricultural modernization programs, declaration of agricultural product pocket-areas, establishment of nurseries and model farms, distribution of seeds and fruit saplings, and providing financial assistance in the form of loans and grants to farmers.

Education was another important sector transferred to the local governments. The LGA grants the local governments authority to manage and monitor basic and secondary level education in local units.<sup>12</sup> Local governments passed laws for monitoring schools, recruitment and transfer of teachers, and management of school committees. In multiple cases, decisions by local governments triggered conflicts.<sup>13</sup> Following such contestations, erstwhile District Education Office, which was supposed to be dissolved after the transfer of authority to local units, was reintroduced as the Education Development and Coordination Unit (ECDU), placed under the District Administration Office (DAO). The federal government also issued a circular urging the local governments to coordinate with the ECDU before making important laws and decisions. Representatives of local governments perceived this development as an attempt by the federal government to undermine their authority. Despite such legal hurdles, local governments took initiatives like monitoring schools, organizing teacher-training programs, conducting examinations, and providing scholarship to selected groups of people.

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<sup>11</sup> Article 304 of the Constitution: "All the laws in force at the time of commencement of this Constitution shall continue to be in force until repealed or amended."

<sup>12</sup> Section 11 of the LGA.

<sup>13</sup> Conflicts emerged among local government, district level authorities, teachers' unions, school management committees, and the federal government over the issues relating to lawmaking, teacher recruitments and transfers, and school mergers, among others.

## Case Study 2: Community-driven waste management initiated

Waling Municipality in Syangja formed a Waste Management Committee at the municipal-level, recognizing the need for citizen involvement in solid waste management. The municipality also formed sub-committees at settlement and ward-levels. A total of about 200 sub-committees and 36 cleanliness committees were formed. For the collection and segregation of the waste, the municipality involved an organization where a few workers were employed to collect and segregate the waste within the municipality. The municipality also allocated about NPR 2 million for building a collection and segregation site. Two other organizations were involved for the generation of biogas from disposed waste. A member of the committee reported that the segregation of waste was relatively difficult due to people's habit of mixing all kinds of wastes in the same bin despite being provided separate bins for biodegradable and non-biodegradable items. "I am taking the lead for this initiative and people are gradually learning to segregate the waste materials," said the Mayor. He also reported that the municipality had initiated the process to purchase and recycle plastic waste to prepare plastic bitumen for use in road construction.

In the health sector, local governments were providing financial assistance to citizens with chronic health problems, setting up new birthing centers, conducting mobile health camps, and introducing ambulance services, among others. The transition of health offices in local units was cumbersome with representatives and health officials reporting confusion and lack of clarity regarding new responsibilities. Initially, all the 75 district health offices were dissolved, but within six months they were reinstated in 35 districts and kept under the provincial health directorates. One health office was set up to look after two to three districts. For example, in Province 1, there were six health offices looking after 14 districts.<sup>14</sup> Even before these offices became fully functional, the federal government decided to establish health offices in all districts. Respondents said such drastic changes and unclear transition caused confusion, and impacted service delivery.

### 3.3 Planning, Budget Implementation, and Accountability

DRCN previously reported 'confusion and uncertainties' in the first fiscal year, immediately after assuming office, as elected representatives were unfamiliar with the new system and had to carry out planning in a rushed manner without adequate consultations with and participation of the public. Local governments were required to submit their annual budgets by June 24, 2018 but just over half of them – 387 out of 753 – met the given deadline. There were also reports that many local governments were yet to present and approve their annual budgets even into the second quarter of the fiscal year.<sup>15</sup>

Local representatives claimed that their familiarity with the process of planning, budget allocation, and implementation improved, and therefore they were following due processes during annual

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<sup>14</sup> These health offices were established in Morang (for Jhapa, Morang and Sunsari), Dhankuta (for Dhankuta and Bhojpur), Tehrathum (for Tehrathum and Sankhuwasabha), Udaypur (for Udaypur and Khotang), and Okhaldhunga (for Solukhumbu and Okhaldhunga).

<sup>15</sup> Prithvi Man Shrestha. 2018. "Four dozen local units yet to present budget". 13 November. Available at: <http://kathmandupost.ekantipur.com/news/2018-11-13/four-dozen-local-units-yet-to-present-budget.html>

planning. Citizens and civil society members, however, complained that the settlement-level meetings lacked wider participation and consultation.<sup>16</sup> Other challenges included lack of transparency in implementation of projects through user committees, misallocation of budgets to the local units by federal and province governments, and lack of adequate technical employees (sub-engineers and engineers).

## **Planning and Budget Allocation**

Development of physical infrastructure in general and road construction in particular continued to be the major priority of the local governments. Representatives in local units visited by DRCN also listed development of agriculture, health, education, and local tourism as other important priorities. Despite elected representatives claiming that they prioritized budgets based on settlement-level and ward-level meetings, ward-level representatives and citizens often complained that such meetings were not participatory and that influential individuals in the local units took most of the decisions.

### **Case Study 3: Ward chairs frustrated with limited executive rights**

A circular sent by the MoFAGA to all local government chairs and CAOs on March 13, 2018, citing Section 73 of the LGA, made it compulsory for local governments to make payments on expenses through a single account (Local Consolidated Fund), including the expenses to be made by wards while implementing the plans and projects. This prohibited the wards from opening their own bank accounts, and they had to take the CAO's approval before making any payment. The ward chairs regularly complained that they were not granted any financial or executive right, which they said limited their ability to function effectively. Even though the provisions in LGA and the circular were meant to limit unaccounted expenses, it was seen as limiting the authority of the ward level representatives.

“Ward chairs do not even have as much power as the former Village Development Committee (VDC) secretaries,” a ward chair in Baglung Municipality in Baglung said. Previous local units were restructured and consolidated to form new local units. Current local units comprise multiple VDCs, with a VDC generally turned into a ward. VDCs were previously run by VDC secretaries assigned from the central government and enjoyed significant executive and financial authorities. “We have no rights to decide plans and projects for our own wards,” a ward chair in Diktal Rupakot Majhuwagadhi Municipality in Khotang complained, adding, “The mayor and deputy mayor decide everything.” Two wards in Chautara Sangachokgadhi Municipality in Sindhupalchok allocated 1 lakh each for disaster management fund but since they couldn't open their own bank accounts, the money had to be immediately spent. The wards therefore had to divert the funds which they spent on buying an ambulance and purchasing disaster relief materials.

Local governments allocated budget to wards in two main ways: either allocating equal amounts to all wards, or determining the amount based on population and geographic considerations. Ward representatives complained that the budget allocation lacked proper logic and processes. “While

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<sup>16</sup> The planning process involves organizing settlement and ward-level meetings, seeking project proposals and requests from citizens, collecting and prioritizing plans and projects at the ward-level, and then forwarding those to the municipal executive for finalization by the municipal assembly.

allocating budgets to wards, population was given 40 percent weightage and geography was given 60 percent. Such a formula for allocating budget [to the wards] is unfair because my ward contains the commercial area and we raise a much larger share of the revenue compared to other wards. We should have been allocated a larger budget,” a ward chair in Ghodaghodi Municipality in Kailali argued. Another ward chair in Naumule Rural Municipality in Dailekh complained that his ward was more remote and required larger amounts to carry out even small development projects. Ward representatives complained that their wards were not allotted enough budgets, with some alleging the budget allocation process of being politically biased. The issue of budget allocation to wards was left completely to the local governments, but the representatives were in disagreement about the ‘fair principle’ through which it was to be carried out.

## **Implementation**

Nepal’s capital expenditure has been consistently lower than the budgeted amount, with remaining amounts freezing at the end of each fiscal year. The new federal structure – with significant powers given to the local governments to make plans, prepare budgets and implement projects – was expected to increase capital expenditure. The inability to spend through the fiscal year in the past had led to year-end rush, which fell during the monsoon season. Local governments took initiatives to ensure the timely completion of projects, and increase capital expenditure, but problems still persisted. Officials in Tulsipur Sub-Metropolitan City and Rapti Rural Municipality in Dang and Baglung Municipality in Baglung stated that they had set a deadline by which agreements were to be signed.<sup>17</sup> To ensure the quality of the roads being built, Tinau Rural Municipality in Palpa and Yangworak Rural Municipality in Panchthar made it compulsory to build side structures like drainage, gabion walls and retaining walls. Local units visited decreased the number of projects from the past fiscal year. For example Khwolasothar Rural Municipality in Lamjung reduced the number of projects from 200 to 90 while Tinau Rural Municipality reduced them from 400 to 250 projects.

As previously reported, widespread concerns remained regarding projects implemented through user committees. One such key challenge was the lack of contribution by the beneficiaries, who were required to contribute anywhere from 0 to 40 percent of the project cost in the local units visited. “The provision of mandatory contribution is only limited to paper; not all people can afford it,” the Chairperson of Ganyapdhura Rural Municipality in Dadeldhura said. An official in Tinau Rural Municipality alleged that user committees were producing fake documents and bills to secure the beneficiary contribution. Journalists and officials also alleged that user committees were politicized and used by key officials to appease their supporters. DRCN also heard multiple allegations where user committees had sub-contracted projects to third parties for lower amounts. Technical officials involved in monitoring projects expressed that even when the work done by user committees was below par in quality, it was difficult to monitor their work because influential representatives often awarded such projects.

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<sup>17</sup> Such deadlines were set around midpoint of the fiscal year (December and January) in Rapti Rural Municipality in Dang, and Baglung Municipality in Baglung, and around April-May in Tulsipur Sub-Metropolitan City in Dang.



## Transparency, Accountability, and Monitoring

There were growing concerns that local level planning and implementation of projects lacked robust accountability and transparency measures. The issues ranged from failing to ensure even basic aspects of transparency like publishing the details of income and expenditure to allegations of foul play, corruption and politicization in budget planning, implementation, and monitoring. Ward-level representatives complained about irregularities during finalizing of projects, implementation and monitoring. In some local units like Diktel Rupakot Majhuwagadi Municipality in Khotang, the opposition party had formed ‘shadow governments’ to ensure accountability at the local level. As previously reported, civil society organizations in some local units were demanding greater accountability and transparency.<sup>18</sup> Corruption cases were filed by social organizations and individuals against local governments in Rajgarh Municipality and Hanuman Kankalini Municipality in Saptari. Such civil society involvement in ensuring accountability at the local level was very limited.

### Case Study 4: Irregularities reported in multiple local units

One Rural Municipality in Saptari was yet to pass its annual budget for fiscal year 2018/2019 by January 2019. The deadline for finalizing the budget was June 2018. Representatives alleged that the Chairperson had not made public the income and expenditure details for the past fiscal year. The Rural Municipality also had not conducted ward and settlement-level meetings to collect plans. “The Chairperson decides the plans with the help of the ward chairs from his own party, so why should I conduct the settlement and ward meetings to collect plans?” a Ward Chair of the Rural Municipality questioned. Similar lack of transparency was also reported in other local units of Saptari, Bara, and Mahottari districts. Such reported irregularities included the unit chiefs not making the financial details public and finalizing plans and policies without holding required meetings with the ward and municipal-level representatives. The unit chiefs were also accused of financial corruption while allocating budgets, awarding projects, and making procurements.

Local governments used various information technologies like websites – and in a few cases, separate mobile apps – social media, text messages, and radio and television programs to disseminate information and decisions. Many local units, however, did not maintain or update their official websites. Information help desks were set up and information officers were appointed. Local units in Dang district also appointed media coordinators, whose job was to disseminate information through television and radio programs. As previously reported, elected representatives, mostly ward committee members, were also used as important for two-way communication channels between local governments and their citizens. Citizens and representatives of civil society complained that public hearings lacked effectiveness and were conducted only to meet the formalities.<sup>19</sup> “Citizens are

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<sup>18</sup> Organizations like Rural Woman Development Center (RWDC) in Dang and Sustainable Agriculture or Environment and Water Resource Conservation Center (SAEWCC) in Dailekh were such organizations demanding greater transparency from the local governments.

<sup>19</sup> LGA 78(5) (5) provisions that the rural municipality and municipality shall conduct regular public hearings and social audits to ensure transparency, accountability and responsiveness at the local level.

not engaged enough to attend such public hearings and they take it as burden,” a journalist in Rajapur Municipality in Bardiya, said.

### **Case Study 5: District Coordination Committee (DCC) looking for concrete roles**

After more than one year of assuming office, members of the DCC across the country were still looking for clarity and relevance regarding their responsibilities. Article 220 of the Constitution broadly defines DCC’s roles as the coordinating and monitoring unit of local governments within the district, but members complained that their roles were not clearly defined. “We are asked to monitor local projects, but we don’t have any authority to take or recommend actions,” a DCC Chair in Province 1 said. None of the laws at federal and provincial levels provided clear terms of reference and procedures to follow for the DCC, with the exception of some directives by MoFAGA and provincial governments. For example, MoFAGA issued several circulars investing DCCs with additional authority, including approving the Environment Impact Assessment (EIA) conducted by local governments. Journalists and civil-society members acknowledged that the DCC required greater jurisdictional clarity, especially with regards to how their monitoring of local government activities could be made more result-oriented, thereby ensuring that irregularities in local governments were addressed effectively.

As mandated by the LGA, monitoring committees were formed in local units under the leadership of deputy mayors or vice-chairpersons. There were complaints by some female deputy mayors and vice-chairpersons that their male counterparts undermined their monitoring responsibilities. In one local unit in Panchthar, the Deputy Mayor made it compulsory for the user committees to write a letter requesting for monitoring of the projects. She said, “I want to make sure that people know that the deputy mayor [and not the mayor] heads the monitoring committee.” Respondents were also critical of the provisions regarding monitoring committees. “The same people who are involved in choosing and implementing projects are also responsible for monitoring them. This is a wrong practice,” a journalist in Dailekh argued. Representatives in local units like Ghodaghodi Municipality in Kailali claimed that they deducted money from projects that did not have satisfactory monitoring results. For monitoring ward-level projects, separate committees were formed under the leadership of ward chairs. There were concerns that such committees lacked technical capacity and required essential staff to monitor projects effectively.

## **3.4 Taxation and Revenue**

Previous DRCN reports highlighted tax increase in local units and a negative perception of such ‘arbitrary’ tax increases, with federal government issuing instructions to stop taxation under various headings. In recent times, DRCN noted that tax rates and policies had been revised in multiple local units. In some other cases, representatives claimed that they refrained from increasing tax rates fearing protests from the citizens. Contrary to the claims made by local representatives, there were still inconsistent trends, and lack of clarity around tax and revenue jurisdictions created new conflicts. There were cases of protests against tax increases in Baglung Municipality in Baglung, Rautamai Rural Municipality in Udaypur, and Tulsipur Sub-Metropolitan City in Dang. In Tulsipur Sub-Metropolitan City alone, there were more than 30 reported court cases against various tax

increases. Representatives in some local units claimed that they were more focused on enforcing existing taxes rather than increasing rates. “People do not have a habit of paying taxes. Now the local government is enforcing taxes properly and people think taxes have been raised,” argued a political leader in Madhya Nepal Municipality in Lamjung.

Common sources of internal revenue for local governments included service charges, charges on recommendations and vital registrations, royalties on river-based materials (rocks, crushed stones, and sand), revenue from local ponds, land and property tax, and business registration tax. Representatives from multiple local units complained that they did not have enough sources for internal revenue. “We do not have sources of internal revenue because 70 percent of the land is unregistered and we do not have large markets,” the Mayor of Belaka Municipality in Udayapur said. Royalties from river-based materials became particularly contentious because of jurisdictional ambiguities.

### **3.5 Inclusion and Empowerment**

In all 6743 wards of 753 local units, a total of 35,041 representatives were elected, out of which men and women constituted 59% (20,689) and 41% (14,352) respectively.<sup>20</sup> The electoral representation of women in local governments is historically significant. The high number of women representatives was due to the mandatory provisions for women members at the ward-level. Male elected representatives dominated the key posts with 97 percent of mayors and chairpersons. Women comprised about 93 percent of deputy mayors and vice-chairpersons. However, less than 1 percent of ward chairpersons elected to unreserved seats were women: 61 out of 6,743. The mandatory provision of reserved category for two women members at the ward-level significantly increased the proportion of women and dalit women members, a combined 38% of the total. But only about 2 percent of women were elected from the open category to ward member positions. Despite very few women elected from non-reserved positions, local-level respondents perceived the formal involvement of a large number of women in local governance as a major step towards greater inclusion.

While the high number of women represented at the local level was perceived to be positive, it was yet to translate into meaningful participation at decision-making levels. A small section of women leaders, particularly those in the deputy mayor or vice-chairperson positions, expressed that their education and prior leadership experience had helped them to be assertive in their roles and responsibilities. Deputy mayors and vice-chairpersons in multiple local units including Tinahu Rural Municipality in Palpa, Jeetpur Simara Sub-Metropolitan City in Bara and Yangorak Rural Municipality in Panchthar expressed that they influenced important decisions during annual planning and on issues of social development of women and marginalized groups.

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<sup>20</sup> All the information about the election results are available on the official Election Commission of Nepal (ECN) website at: <http://www.election.gov.np/ecn/uploads/userfiles/ElectionResultBook/LocalLevel>

### **Case Study 6: Landless families to be provided with land grants**

For the current fiscal year, Tamakoshi Rural Municipality in Dolakha allocated NPR 15 million for programs related to social services and promoting inclusion. Of the amount, the municipality allocated NPR 1 million to buy land for landless households. The municipality was collecting application from landless households through ward offices and, after validating their applications to buy them land worth at most NPR 150 thousand. The municipality expected the total number of landless households to not exceed 20. The Chairperson stated that additional funds would be provided from other unspent headings if required. Such households living on unregistered lands did not qualify for the recovery assistance provided by National Reconstruction Authority (NRA), even though their houses were damaged by the 2015 earthquakes.

Participation of women representatives at the ward-level was highly limited, with dalit women members expressing that they were excluded and their voices ignored. “We just attend meetings and sign the documents presented to us,” a dalit woman member of Parwanipur Rural Municipality in Bara said. Despite limited influence, many women members said they learned a great deal from attending meetings and trainings. “With increased exposure and experience, I feel I can contribute to help my community,” a woman member representing a janajati community in Yangworak Rural Municipality in Panchthar said.

### **3.6 Conflicts**

Local governments witnessed multiple conflicts in their early functioning. Conflicts emerged between local governments on jurisdictional matters, claims of authority over revenue generation, and tax collection from river-based materials, among others. Conflicts also emerged between mayors or deputy mayors and chairpersons or vice-chairpersons, between elected representatives and government employees, between wards and municipalities or rural municipalities, and between civil service employees from federal government and locally recruited employees.

### **Case Study 7: Local governments in conflict with banks over branch locations**

In Udaypur, conflicts emerged between commercial bank branches and the local governments in Belaka Municipality and Rautamai Rural Municipality. In Rautamai Rural Municipality, a private commercial bank opened its branch in Murkuchi Bazaar instead of the rural municipality center. The new location, according to elected representatives, was convenient for two wards only. The local government asked the bank authorities to shift the location. Bank authorities claimed that the volume of financial transactions and business activities were higher in Murkuchi Bazaar, and therefore it was logical to have the bank branch there. Unable to resolve this issue, Rautamai Rural Municipality decided not to use the bank’s services and chose a different bank in the district headquarters for its operations. In Belaka Municipality, too, the local government did not carry out transactions with the commercial bank branch because the bank did not agree to lend to the local citizens on the municipality’s guarantee – a term put forth by the Mayor. Due to this conflict, the municipality was still carrying out banking transactions from another bank branch in the district headquarters.

Personal and professional differences between elected representatives and employees led to lack of mutual trust which affected their functioning, and in many cases resulted in frequent transfers of CAOs. Disputes also emerged between mayors and deputy mayors, and between chairpersons and vice-chairpersons, and among ward-level elected representatives over services, benefits and jurisdictions, and between different categories of government employees over ranks and positions. In some extreme cases, the conflict between elected representatives escalated to the personal and familial level.

### **Case Study 8: Local unit divided by prolonged conflict over municipality center**

More than a year after the case moved to the Supreme Court, the conflict over the center of Thulibheri Municipality in Dolpa still remained unresolved at the time of this report. The first municipal council meeting on July 15, 2017 had shifted the municipal center from Dunai (Ward 3) to Juphal (Ward 7), a decision approved by the federal government on February 26, 2018. The Deputy Mayor and ward chairs who opposed the decision alleged that they were not included in the decision, and that their signatures were forged. On March 19, 2018 they filed a petition with the Supreme Court asking to overturn the Municipality's decision. Local youth and ward members padlocked the municipality office in Dunai on 28 February, 2018, after which office materials were transferred to Juphal. Dunai residents then called for an indefinite strike, shutting down the market for one week. The prolonged conflict severely affected the service delivery of the municipality. Since the beginning of the conflict, the Deputy Mayor and other representatives who wanted Dunai as the municipality center had not assumed their major responsibilities or attended executive meetings called by the Mayor. A representative stated that the meetings conducted by the mayor lacked the necessary quorum and therefore the decisions made were not legal. The Work-Completion Regulation passed by the municipal assembly, however, provisioned that if the required number of members did not attend two consecutive executive meetings, the number attending the third meeting would constitute the quorum. Meanwhile, despite multiple hearings, the Supreme Court was yet to reach a verdict.

## **3.7 Judicial Committee**

As per Article 217 of the Constitution, all the municipalities and rural municipalities were mandated to constitute a three member Judicial Committee (JC), under the coordination of the Vice-chairperson or Deputy Mayor.<sup>21</sup> This quasi-judicial body of the local governments was tasked with settling local disputes. As previously reported by DRCN, there were early concerns regarding the neutrality of politically elected bodies at settling disputes. In the initial months, JC members across the local units reported that they lacked clarity over their roles and responsibilities, legal issues, and technical expertise to settle the cases. In more recent months, DRCN noted that JC members had become more confident and had gained better clarity over their roles and responsibilities in mediating disputes through continued experience and trainings they had received. The level of confidence, enthusiasm and ability to take initiatives also depended on past leadership experiences, and the educational qualification of women deputy mayors or vice-chairpersons.

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<sup>21</sup> Except one local unit in Bara, all local units visited by DRCN had already constituted JCs and started receiving disputes and mediating them, but some of them were yet to function.

The number of cases received depended on accessibility to the municipal centers, level of awareness, traditional dispute settlement mechanisms, and citizens' trust in JCs. In many cases people still preferred more conventional institutions of justice delivery, such as the police and the district courts. The Deputy Mayor of Jeetpur Simara Municipality in Bara said that there was a growing level of awareness about JCs after municipality-led promotion initiatives. Similarly, JC members often cited the lack of office space to hear cases, lack of legal experts, and inadequate knowledge of record keeping and documentation as impacting their performances. Local governments were coping with these problems with limited staff and resources, assigning multiple roles to the available staff for registering and documenting cases, carrying out mediation in their office spaces, and in some cases appointing legal experts on contractual basis.

Local governments started forming ward-level mediation committees and preparing a list of mediators at the ward and municipal levels as provisioned by LGA. In Madhya Nepal Municipality in Lamjung, one of the wards settled about 10 disputes through ward-level mediation. Local governments faced problems in constituting ward-level mediation committees and making a list of mediators for two main reasons: lack of availability of qualified individuals, and lack of incentives for mediators.<sup>22</sup> Such difficulties in recruiting mediators were reported in local units like Rapti Rural Municipality in Dang, Madhya Nepal Municipality in Lamjung, and Tinau Rural Municipality in Rupandehi. In some cases, JC members sought help from local unit chairs, while there were cases where the chairs intervened in resolving disputes. Such interventions compromised JCs' ability to deliver impartial decisions.

## **4. Conclusion and Recommendations**

### **4.1 Conclusion**

Local and provincial governments assumed office and started operating under the federal structure over a year ago. In the early stage of their implementation, local governments started carrying out their major tasks of drafting laws, providing basic services, making annual plans, and implementing local projects. Local governments had relatively greater clarity about their jurisdictions and were also aided by existing and functional institutions. This was reflected in their ability to undertake some important initiatives, particularly in providing basic services. However, questions emerged on the nature and quality of local-level planning and implementation, and absence of robust accountability measures. As completely new structures, activities of the provincial governments were limited to legislation of operational laws, establishment of basic institutions, and preparation and implementation of annual budgets. Provincial institutions were not fully functional and laws enacted were largely procedural, which did not provide province governments with enough opportunities to

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<sup>22</sup> According to Nepal's Mediation Act, 2011, a person has to fulfill certain eligibility criteria to be a mediator: at least 25 years of age, educational qualification of Bachelor level, and relevant mediation training.

implement their plans and programs. It was reflected in the meager capital expenditure by every province.

Both local and provincial governments faced major challenges in their early functioning. These included absence of framework legislation required for implementation of laws on matters of shared jurisdiction, shortages of essential employees, and deficit of trust and coordination among the three governments. Local and provincial governments pointed to the federal government for delaying the legislation of vital federal laws and failing to consult the local and provincial governments on important matters of lawmaking, planning, and budget allocation. The relationship between the provinces and the federal government was particularly difficult, and high-level representatives of provinces were publicly critical of the federal government. The December 2018 Inter-Province Council meeting between all the Chief Ministers and the Prime Minister concluded with a 29-point commitment from the federal government to complete all the outstanding tasks, including legislation of key federal laws and completing the process of employee integration.

The 2018/2019 winter session of the federal parliament, however, failed to enact key laws on federal policing and public service commissions, which would have allowed the provinces to set up their own police forces and recruit their own employees. Similarly, the process of employee integration was yet to ensure availability of required employees in the provinces and the local governments even after multiple deadlines set by the federal government itself. With the implementation of federalism facing major legal and technical challenges in the early stage, the federal government now must ensure that the forthcoming legislations provide for earnest devolution of both fiscal and political authorities by adequately consulting local and provincial governments in matters of important policy legislations and fiscal planning.

## **4.2 Recommendations**

*To the federal government:*

- Enact laws to address coordination and communication challenges among the three governments, ensuring participation of local and provincial governments in the process.
- Follow a set timeline and prior commitments to pass outstanding framework legislations to allow provincial and local governments to make and implement laws on issues of shared jurisdiction.
- Address the issue of employee shortage by completing the integration process and facilitating the establishment of provincial service commissions. Involve provincial and local governments on management and transfer of key employees including CDOs and CAOs.
- Seek formal and regular consultations from local and provincial governments on matters of planning, revenue sharing and budget implementation.

*To the provincial governments:*

- Pursue wider consensus and deliberation to finalize the name, location of the permanent capital, and official languages.
- Conduct parliamentary sessions regularly and enact laws relating to implementation of annual plans and programs.
- Ensure regular meeting of the Province Coordination Council and establish formal channels of communication with local governments and consult them on matters of legislation, annual planning and budget implementation.
- Coordinate with the local governments while implementing programs through provincial institutions to avoid confusion and duplication.

*To the local governments:*

- Ensure greater involvement of ward-level representatives in participatory planning and project implementation.
- Make public hearings and social audits regular and share the findings publicly.
- Give adequate priority and allocate proportionate budget to the development of the social sector.
- Provide regular trainings to the elected representatives and government employees. Coordinate with the provincial and federal governments, and civil society organizations, for long-term capacity development.



## Annex I: List of local units covered

Team	Districts	Local Units
Biratnagar	Khotang	Diktel Rupakot Majhuwagadi M, Sakela RM
	Panchthar	Phidim M, Yangworak RM
	Sunsari	Ramdhuni M, Harinagar RM
	Udaypur	Belaka M, Rautamai RM
Janakpur	Bara	Jeetpur-Simara SM, Parwanipur RM
	Dhanusa	Shahidnagar M
	Mahottari	Jaleswor M, Ekdara RM
	Makwanpur	Bagmati RM
	Parsa	Birgunj Me, Paterwa Sugauli RM
	Saptari	Hanumannagar Kankalini M, Shambhunath M, Kanchanrup M, Rajgarh RM, Rupani RM
	Siraha	Dhangadhimai M, Lahan M
Pokhara	Baglung	Baglung M, Beni M, Tara Khola RM
	Dang	Tulsipur SM, Rapti RM
	Kaski	Pokhara Me
	Lamjung	Madhya Nepal M, Khwolasothar RM
	Palpa	Tansen M, Tinau RM
	Rupandehi	Butwal SM, Suddhodhan RM
	Syangja	Waling M
Dhangadhi	Bardia	Rajapur M, Geruwa RM
	Dadeldhura	Amargadhi M, Gyanapdhura RM
	Dailekh	Narayan M, Dungeshwar RM, Guras RM, Naumule RM
	Kailali	Dhangadhi SM, Ghodaghodi M
	Surkhet	Bheriganga M

*Note: Me = Metropolitan City, SM = Sub-Metropolitan City, M = Municipality, RM = Rural Municipality*

## **Annex 2: List of field researchers**

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Founded in September 2014, Democracy Resource Center Nepal (DRCN) contributes to the understanding of Nepal's political process and society through objective and critical research and reporting. DRCN has previously researched on constitution making process, local governance restructuring, post-earthquake impact and recovery efforts, and election observation. DRCN is currently conducting a nationwide observation on the functioning of local and provincial governments under a federal structure.

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