

The Interrelationship between Three Levels of Governments

in Nepal's Federal Structure

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The Interrelationship between Three Levels of Governments in Nepal's Federal Structure

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Kumaripati, Lalitpur

Phone: 01-5537552

Email: info@democracyresource.org

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List of Acronyms

DAO	:	District Administration Office
DCC	:	District Coordination Committee
EDCU	:	Education Development and Coordination Units
MoFAGA	:	Ministry of Federal Affairs and General Administration
MuAN	:	Municipal Association of Nepal
NARMIN	:	National Association of Rural Municipalities in Nepal
NC	:	The Nepali Congress
NCP	:	Nepal Communist Party
NNRFC	:	National Natural Resources and Fiscal Commission

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Democracy Resource Center Nepal

Kumaripati, Lalitpur

1. Introduction

The Constitution of Nepal adopted in 2015 ended the unitary and centralized system of governance. In its place, it established a federal structure that distributed legislative and executive powers among three governmental levels: local, provincial and federal. The Constitution authorizes all three levels to legislate, formulate plans and policies, and mobilize resources within jurisdictions delineated to them. Schedules 5 to 9 of the Constitution delineate the exclusive and concurrent responsibilities and authorities of three levels of governments. Article 232 of the Constitution states that relations between federal, provincial and local governments shall be based on the principles of cooperation, co-existence and coordination. Therefore, the successful adoption of federalism requires effective and efficient interrelationships between three levels of governments.

Since the 2017 elections, three levels of governments have been executing their duties. All three levels of government – but the federal government in particular – face the burden of transforming the legal, administrative, political and fiscal structures established under the unitary system into a federal system. Many uncertainties and ambiguities have surfaced during this process. Such ambiguities appear primarily in relation to the distribution of resources, jurisdictions of three levels of governments, law making, employee integration, and the administrative management of provincial and local governments. This research analyzes the progress made in the process of implementing constitutional provisions and federalism and the interrelationship between the federal, provincial and local governments.

2. Research Objective and Methodology

Democracy Resource Center Nepal (DRCN) has been studying various aspects on the implementation of federalism since three levels of governments began functioning. It has also been conducting field based studies at the provincial and local levels and publishing periodic reports on their functioning. This report is a continuation of the same series of studies and focuses

on the interrelationship between three levels of governments. This report analyzes the experiences of three levels of governments in the process of executing their respective constitutional responsibilities; and the uncertainties and ambiguities amidst which local and provincial governments continue to function. It also indicates the direction the implementation of federalism is currently moving towards. This report attempts to analyze various issues like constitutional provisions, the legal structure, policy arrangements, changes in laws and regulations, and provisions regarding fiscal management among others and the ambiguities seen therein.

Information for this study was collected from both primary and secondary sources. Jurisdictions mentioned in the Constitution and provisions listed therein were also analyzed. This report studied various laws relating to the functioning of the federal, provincial and local governments, including the *Act Relating to Operation of Local Governments, 2017*; *Administration of Justice Act, 2016*; *Employee Integration Act, 2018*; *Act Relating to National Natural Resources and Fiscal Commission Act, 2017*; *Intergovernmental Fiscal Arrangement Act, 2017*; *Nepal Government (Allocation of Business) Rules, 2018*; and other relevant laws. Similarly, the report also studied laws and other documents issued by provincial and local governments. Information and details received from interlocutors at the province and local levels during field studies have also been analyzed here. This report also utilizes articles and news published in various newspapers and media outlets.

3. State Restructuring

Federalism and state restructuring entered mainstream conversations after the success of the political movement of 2006, but the demand for federalism was not new. In 1951, immediately after the end of Rana rule, the Tarai Congress, a Madhesh-centric political party, had raised the issue of federalism.¹ In 1990, following

¹ After 1950s, during the Panchayat era and in the decade after 1990, some practices like the district, zone and development region were adopted to decentralize the unitary and centralized government structure. In 1999, the Local Self Governance Act

the People's Movement that ended the Panchayat era, Nepal Sadbhavana Party, another Madhesh-centric political party, had once more raised the issue of federalism. Simultaneously, other parties enjoying regional influence like Rashtriya Janamukti Party, along with other indigenous groups, demanded that regional, linguistic and ethnic diversity be addressed through restructuring.² Thus, various political parties and groups led political protests and movements at various times. Eventually, after the success of the political movements of 2005-6, all the political parties accepted the demand for state restructuring. An amendment to the *Interim Constitution of Nepal, 2007* institutionalized federalism after the Madhesh Movement. A provision was made to determine the number, border and shared authorities of autonomous provinces through a Constituent Assembly as a means to address the demands of indigenous groups, Madheshi and other backward communities.

The first and the second constituent assemblies debated at length the basis for determining levels, units and borders of the new federal structure. But no consensus emerged among political parties even right up to the moment the new Constitution was promulgated. Among various committees that were functional during the constitution writing process, the Committee on State Restructuring and Distribution of State Power was given the responsibility of determining the federal structure, determining borders and names for federal units, distributing authorities among various levels of governments, and creating provisions to resolve disputes that may arise between units at different levels of governments. This committee, in its draft, proposed to create the primary structure of Nepal as a federation in three levels – the federal, the provincial, and the local.³ It resolved many disputed issues through a simple majority vote. Madheshi parties and various

gave local institutions like the erstwhile municipalities, village development committees and district development committees some additional rights. But these efforts were not enough to assuage the dissatisfaction of the various communities toward the state.

² Khanal, Krishna. 2017. Federal Discourse. *Accord (Two Steps Forward and One Step Back: The Nepal's Peace Process)* 26: 75-79; Thapa, Deepak. 2017. Mapping Federalism in Nepal. *Accord (Two Steps Forward and One Step Back: The Nepal's Peace Process)* 26: 80-87.

³ This Committee had proposed the delineation of 14 provinces, along with their capitals. For details regarding the processes,

ethnicity based organizations had mostly protested on the border delineation of proposed provinces. Eventually, in 2015 the second Constituent Assembly issued the new Constitution amid debates, conflicts, and disagreement, and protests against the provision for three levels of governments. In accordance to the Constitution, seven provinces and 753 local units were created with new borders.⁴ Provinces were created – with the exception of the division of the erstwhile districts of Rukum and Nawalparasi – by amalgamating existing districts, whereas erstwhile municipalities and village development committees were amalgamated to create the new local units.

4. Constitutional Aspects of Nepal's Federalism

Constitution is the fundamental law for federalism and there are some important aspects of Nepal's federal Constitution. Firstly, Schedules 5 to 9 of the Constitution delineates the jurisdiction of three levels of governments. Schedule 5 allocates 35 areas of exclusive jurisdiction to the federal government; Schedule 6 allocates 21 to provincial governments; and Schedule 8 allocates 22 to local governments. Similarly, Schedule 7 lists 25 concurrent jurisdictions between the federal and provincial governments; and Schedule 9 lists 15 concurrent jurisdictions between the federal, provincial and local governments. According to these Schedules in the Constitution, after including both exclusive and concurrent jurisdictions, the federal government can legislate on 75 issues; provincial governments can legislate on 61 issues; and local governments can legislate on 37 issues.⁵ *The Constitution of Nepal* (Article 58), while providing a detailed list of jurisdictions, retains residual rights with the federal government.⁶

debates and achievements regarding constitution writing, see Martin Chautari Policy Papers 1, 2, 3, 4, 5.

⁴ DRCN. 2015. *Nepal's Contested Constitution and Recommendations for Moving Forward: Policy Brief*. Lalitpur: DRCN.

⁵ *The Constitution of Nepal*, Schedule 5–9.

⁶ The practice of including the elaborate jurisdictions of various levels of governments in the constitution itself was started by the United States of America. The constitutions of India and South

Second, since federalism is a novel practice in Nepal, no historical or constitutional precedents exist. Federalism is being implemented on the basis of prevailing laws, and new laws are being made by the

legislature at three different levels of governments. Provincial and local governments had to legislate many new laws during their initial years. They experienced numerous challenges and ambiguities.

Table 1: Classification of similar jurisdictions of the federal, provincial and local governments*

S.N.	Exclusive jurisdiction of federal government, Schedule 5	Exclusive jurisdiction of provincial government, Schedule 6	Exclusive jurisdiction of local government, Schedule 8	Concurrent jurisdictions of federal and provincial governments, Schedule 7	Concurrent jurisdictions of federal, provincial and local governments, Schedule 9
1	Service fee	Service fees	Service fee		Service fee
2	Penalty	Penalty	Penalty		Penalty
3	Radio	Radio			
4	Tourism fee		Tourism fee		Tourism fee
5	Health services	Health services	Basic health and sanitation		Health
6		Management of lands		Land policies and laws relating thereto	
7	Mines excavation	Exploration and management of mines	Industries and mines and physical infrastructures	Protection of mines and minerals	Mines and Minerals
8	National forest policies	National forests within the province	Utilization of forests, mountains, forest conservation areas and waters stretching in inter-State form		Forest
9			Basic and secondary education		Education
10			Disaster management		Disaster management
11	Cooperatives regulation	Cooperative institutions	Cooperatives	Cooperatives	Cooperatives
12		Agriculture and livestock development	Agriculture and animal husbandry		Agriculture
13		Irrigation and water supply services	Water Supply	Water supply and sanitation	Water supply

* This classification does not mention all the rights of three levels of governments. A similar classification was also done in DRCN's Second Periodic Report.

Africa, too, list the jurisdictions of various levels of governments. The Constitution of the United States of America mentions only the exclusive jurisdictions of the federal government and gives the residual rights to state governments.

A lack of prior experience in the law making among provincial lawmakers also limited the provincial and local governments' ability to exercise rights within their jurisdictions.

Third, jurisdictions listed in the Schedules of the Constitution are sometimes in conflict with each other (See Table 1). For example, ‘Radio’ and ‘Health Services’ are listed under the exclusive jurisdictions of both the provincial and federal levels, and ‘Cooperative Institutions’ is listed under the exclusive jurisdictions of both the local and provincial levels. ‘Penalty’ and ‘Service fee’ fall under the exclusive jurisdictions of all three levels of governments. Also, some issues listed as the exclusive jurisdiction of one level of government are also listed under concurrent jurisdictions. For example, ‘Disaster Management’ and ‘Drinking Water’ are listed under the exclusive jurisdictions of local governments, while also listed under the concurrent jurisdictions of the federal, provincial and local levels.

Also, jurisdictions similar to those granted to one level of government have been listed either as the exclusive jurisdiction of another level of government, or divided into concurrent jurisdictions between other governments. Local and federal governments have exclusive jurisdiction over ‘Drinking Water’ while ‘Irrigation and Drinking Water’ falls under the exclusive jurisdiction of provincial governments, and federal and provincial governments concurrently exercise authority over ‘Drinking Water and Sanitation’. Therefore, there is a high probability of conflicts arising between different levels of governments with respect to the utilization of these rights, and may also affect the ability of provincial and local governments to enact new laws.

Fourth, the Constitution gives supremacy to laws created by the federal legislature. Article 133 (1) of the Constitution states that if any provincial law is inconsistent with a federal law, or if any local law is inconsistent with a provincial or federal law, such a law or a part of such a law will become void. Along with this, with respect to concurrent jurisdictions, the Constitution requires provinces to make laws that do not contradict federal laws, and for local governments to make laws that do not contradict provincial or federal laws.⁷ Because of this, there is ambiguity regarding the exercise of authorities by the other two levels of governments if they contravene federal authorities, and also in exercising constitutionally designated concurrent authorities between various governments.

⁷ *The Constitution of Nepal*, Article 57.

In 2016, the Federalism Implementation and Restructuring Directive Committee was formed under the leadership of the prime minister in order to clarify the division of responsibilities between the federal, provincial and local levels and to address complications inherent in the Constitution. The Committee studied the Schedules 5–9 of the Constitution and prepared the Unbundling Report which was then endorsed by the Council of Ministers. To some extent, this report was helpful in clarifying issues regarding the implementation of federalism and the interrelationship between three levels of governments.⁸ But, despite its attempts, the report was not able to completely resolve the constitutional complications. For example, it lent some clarity regarding ‘basic and secondary education’, listed as an exclusive jurisdiction of local governments, but failed to delineate the jurisdiction of local governments as pertaining to Annex 9 that lists education as a concurrent right. Instead, the determination of measures for the management of secondary school teachers, and the regulation and management of Class 10 examinations were not listed as jurisdiction of local governments but as exclusive jurisdiction of provincial governments.

Because Schedules in the Constitution list the rights of any one government also as the rights of another level of government, the interrelationship between three levels of governments is affected. Furthermore, instead of independently making laws within one’s exclusive jurisdiction, governments must depend upon other levels to make laws. For example, although ‘Management of land’ is under the exclusive jurisdiction of provincial governments, ‘Land policies and laws relating thereto’ is listed as a concurrent jurisdiction between the federal and provincial governments. Therefore, exercising the rights granted by Schedules 7 and 9 of the Constitution will require governments to adopt the spirit of cooperation, coexistence and coordination as envisioned by Article 232 of the Constitution. The federal government especially has to cooperate with provincial and local governments when making laws pertaining to concurrent jurisdictions if the interrelationship between three levels of governments are to be made effective and efficient.

⁸ DRCN. 2019. *Formation and functioning of Provincial Institutions in the Federal Structure*. Lalitpur: DRCN

Fifth, federalism in Nepal envisions the judiciary as a unitary structure. Three levels of governments have the authority to legislate and implement laws, but the judiciary, the third organ of the state, tasked with interpreting and resolving conflicts regarding legislation made by the three levels, is unitary in structure. Albeit, the 16 erstwhile Appellate Courts have been replaced by seven High Courts at the provincial level and temporary benches of the high courts along with other courts have been established across the country. There is no local or provincial oversight over the main functions of judicial administration, appointments within the judiciary, and procedures and laws. The judicial structure remains entirely unitary and centralized.

4.1 Constitutional Bench

After the promulgation of the Administration of *Justice Act, 2016*; high courts and a few new branches under them were added to the federal structure. District courts were established in two new districts. Additionally, as per the provisions in the Constitution, a Constitutional Bench was formed under the Supreme Court.⁹

The Constitution of Nepal established a Constitutional Bench for the first time in Nepal's judicial history. The Constitutional Bench bears the responsibility of testing the validity of laws that are made at the local, provincial and federal levels. Additionally, the Constitutional Bench deliberates jurisdictional conflicts that arise between the federal and provincial levels, between provinces, between provincial and local levels, and between local levels to deliver the final adjudication. If significant debates arise regarding interpretation of the Constitution, the Constitutional Bench also has a role to provide the final judgment on them. It is clear that the functioning of the Constitutional Bench and its decisions will directly affect the practice of federalism in Nepal. However, it has not delivered a verdict on such conflicts yet. Therefore, it is yet to be seen what influence it will have upon the interrelationship between different levels of government.

⁹ *The Constitution of Nepal*, Article 137.

Cases have begun to arrive at the Constitutional Bench. On August 1, 2019, the Province 2 Ministry of Industry, Tourism, Forests and Environment moved the Supreme Court against the federal government's decision to bring the Sagarnath Forestry Development Project of Province 2 under its jurisdiction. The same petitioner filed a separate case alleging that the *Forest Act, 2019* as passed by the federal government infringed upon the forest-related rights constitutionally guaranteed to provinces. Representatives from other provinces expressed their solidarity with the issues raised by this writ.¹⁰ Both of these cases, as of July 2020, were under consideration at the Constitutional Bench at the Supreme Court. There are a few other cases under consideration at the court regarding the jurisdictions of the three levels of government, most of which concern education.

A case filed on March 4, 2018 at the Supreme Court by the mayor of Dhulikhel Municipality, who is also the chairperson of Municipal Association of Nepal (MuAN), is also under consideration at the Constitutional Bench. It alleges that the federal government issued unilateral laws, directives and circulars to local governments and that the federal government neglected to observe the spirit of cooperation, coexistence and coordination in accordance with Article 232 of the Constitution. Therefore, it is clear that the Constitutional Bench will have a significant role in implementing federalism and in defining the interrelationship between three levels of governments. Since the Bench's decisions on the ongoing cases will determine the way forward for federalism and the interrelationship between three levels of governments, it is imperative that these cases be decided with utmost expediency.

4.2 Law Making at Provincial and Local Levels

It is necessary for the federal, provincial and local governments to enact new laws in order to fulfil their responsibilities, but new legislation is not being passed

¹⁰ Pradhan, Tika R. 2019. On a Collision Course? Legal Battle Likely to Intensify Between Provinces and Kathmandu. Available at <https://kathmandupost.com/national/2019/08/03/on-a-collision-course-sub-national-governments-likely-to-file-cases-in-court-against-federal-government>; accessed on June 25, 2020.

at a desirable rate due to the complexity surrounding the sharing of jurisdictions. The federal, provincial and local governments have been enacting new laws within their exclusive jurisdictions, but many provincial and local governments have been unable to make laws on some issues falling within their exclusive jurisdictions due to an absence of relevant federal laws. Although the Constitution provides that, in theory, each level of government is free to legislate on areas within their exclusive jurisdictions, this has not been the case in practice. In earlier findings, DRCN reported that local governments were awaiting education related federal laws to enact laws on education, while provincial governments were also awaiting federal laws in order to legislate on police administration and civil service.¹¹ Furthermore, the lack of federal laws on concurrent jurisdictions has resulted in a notable absence of enthusiasm among provincial and local governments to make their own laws.

However, a few provinces and local governments have made laws within concurrent jurisdictions without contradicting federal laws. “We have enacted the Cooperatives Act in accordance with the model of lists of concurrent jurisdictions provided by the federal government. We have been implementing it, with the caveat that it will be nullified if adjudicated to be in conflict with existing laws,” a representative of Lekbeshi Municipality in Surkhet said. Similarly, an official at the Putalibazar Municipality in Syangja said, “We have passed the Education Act and the Cooperatives Act. We cannot neglect the task of legislating just because federal and provincial laws have not been enacted. We have our duties. If our laws happen to conflict with federal or provincial laws, we can always amend them.” Gandaki Province has also begun legislating issues within their concurrent jurisdictions. According to an under-secretary at the Office of the Chief Minister and Council of Ministers, the plan is to continue to legislate in accordance with federal guidelines and to amend laws if necessary for which a Law Drafting and Suggestions Taskforce was established under the Chief Attorney of the Province.

¹¹ DRCN. 2020. *School Education and Local Government*. Lalitpur: DRCN; DRCN. 2020. *Formation and Functioning of Provincial Institutions in the Federal Structure*. Lalitpur: DRCN.

A representative of MuAN said that although basic and secondary education falls under the exclusive jurisdiction of local governments, since the federal government has not passed the Education Act, it has become challenging for locally elected representatives to fulfil their duties such as appointing teachers, school management, and making local curricula. According to a representative of Gurbhakot Municipality in Surkhet, although registration of land falls under the exclusive jurisdiction of the province, since the province has not created relevant laws, many citizens in the municipality still lack documentation proving their land ownership. The representative stressed the need, even at the minimum, for a procedure. The Constitution provides local governments with the authority to distribute land ownership certificates. However, according to locally elected representatives, since existing laws related to land and land acquisition have not been amended, local governments are unable to do anything.

Similar issues were also seen at the province level. Due to the federal government’s failure to enact laws on the civil service, provincial governments have not been able to issue laws. Even if a province forms its civil service commission, it is incapable of recruiting employees. A chief attorney said that this has made it difficult to run the province’s administration. A secretary at the Province 2 Office of the Chief Minister and the Cabinet of Ministers said that the federal government – although it had provided some assistance by issuing model laws – had created impediments by failing to enact laws within concurrent jurisdictions. The secretary asserted, “Instead of enacting laws within concurrent jurisdiction in order to improve the interrelationship between three levels of governments, the federal government does not want provincial governments moving ahead independently.” Province 2 issued the *Act Relating to the Management of Provincial Police Service, 2018* before the relevant federal law was passed. A previous DRCN report had indicated that this action resulted in distance and distrust between Province 2 and the federal government.¹²

Under the previous structure, the district office was responsible for registering and managing organizations and associations, small and cottage industries, and other

¹² DRCN. 2019. *Functioning of Local and Provincial Governments in Nepal*. Periodic Report 3, p. 4. Lalitpur: DRCN.

industries. This responsibility has shifted to provincial and local governments, and they have established offices and branches for this purpose. But, according to elected representatives at the local level, the lack of coordination on legal matters between governments has resulted in the duplication of the registration process for organizations and industries, and service seekers are bearing the brunt of it. According to the chief administrative officer of a local unit in Karnali Province, the Cottage and Small Industries Office is within municipalities but the provincial government is also maintaining similar offices in districts. The officer also said that it is difficult to work since the provincial office has not transferred necessary documents to local governments and service seekers are therefore forced to pay parallel fees for the same service. A nearly identical example was found in Province 5 too. Province 5 passed a law to allow organizations to be registered at the Ministry of Internal Affairs and Law, but the District Administration Office (DAO) in Rukum-East sent a correspondence to the federal Ministry of Home Affairs, asserting that organizations may be registered only with the DAO. After this correspondence, the federal Ministry of Home Affairs sent a circular on November 4, 2019 to all DAOs across the country stating that the Schedules 5–9 of the Constitution contain no mention of ‘organizations’ and that according to the Constitution all residual powers reside with the federal government. The circular from the federal Ministry of Home Affairs states that ‘since the relevant district administration offices have been exercising that right of the federal government, let them continue to exercise such rights.’¹³ These examples clearly show that there has not been proper coordination between three levels of governments when enacting and utilizing laws.

All provinces have passed laws regarding the operation of rural municipality or municipality assemblies as per the Constitution. These laws have helped to establish clarity regarding legislative authorities and processes at the local level. Additionally, provinces have been attempting to coordinate and assist local governments on law-making. For example, Province 1 tried to conduct separate programs by allocating

¹³ Circular sent by Government of Nepal, Ministry of Home Affairs to all district administration offices ‘Regarding Organizations’. 2019, registration number 352.

budgets with the intention of coordinating with local governments on law making while Province 5 had included in its Plans and Programs for 2020 a plan to provide necessary suggestions to local governments by collecting, documenting and analyzing laws passed by all the local governments. Gandaki Province formed a Law Drafting Facilitation Committee under the coordination of the chief attorney in order to increase the capacity of local governments in drafting new laws, and through it, carried out training programs incorporating practical exercises on drafting new laws for locally elected representatives and officials at all local units within the province.

However, questions have been raised regarding some of the provisions contained in new laws drafted by provinces for their local level. Some representatives of local governments said that laws for the local level had been issued by federal and provincial governments without any cooperation or coordination. A deputy mayor in Province 2 doubted if the implementation of such laws would be effective, adding that such laws did not take into account local circumstances. An official at Lalbandi Municipality in Sarlahi also expressed similar concerns. She explained the issue through an example, “The law made by the Province on agricultural subsidies provides subsidies amounting to NPR 50 thousand to poor farmers, but to obtain the subsidy a farmer must possess at least 10 *kaththas* of agricultural land. From where will a poor farmer in the Tarai acquire 10 *kaththas* of agricultural land?”

All seven provinces passed laws stipulating that elected representatives at the local level may draw remuneration, but in November 2019 the Supreme Court rules that excepting Province 1, the other six provinces had passed laws that were in conflict with the Constitution, and voided the relevant laws.¹⁴ After this, some local level representatives told DRCN that the Supreme Court had made the ruling because the provinces had created such laws without consulting them. “Although elected representatives were receiving salaries and benefits in accordance to provincial laws, that has stopped since the Supreme Court was moved

¹⁴ Province 1 enacted a law in accordance with Article 227 of the Constitution to provide ‘facilities’ to elected representatives, but other provinces made laws to provide ‘remuneration’, which was contrary to the spirit of the Constitution.

on the issue. There was no real consultation during the process of creating that law. Such benefits are needed – it is not right for provincial representatives to receive such benefits while we are deprived,” said an elected representative from Lekbeshi Municipality in Karnali Province.

Elected representatives at the local level also complained that the circulars and directives sent by the federal government to local governments limited local needs and the constitutional rights of local governments. Through their press release dated March 31, 2019, the National Association of Rural Municipalities in Nepal (NARMIN) and MuAN called the federal government’s attention to the fact that it was not allowing local governments to function independently on issues like education, health, forests and industries. The press release requested the federal government to cease interfering through federal laws in areas under the exclusive jurisdiction of local governments; to delineate policies, measures and share concurrent jurisdictions; and, to move forward in accordance with the principles of coordination and cooperation between all three levels of governments.¹⁵

Although a few provinces and local governments passed laws on areas of concurrent jurisdictions even before relevant federal laws were made, most provincial and local governments are awaiting federal laws. The fact that the federal government does not appear inclined to enact laws on areas of concurrent jurisdiction and the absence of cooperation and coordination between different levels of governments on similar areas of jurisdiction appears to add challenges to law making. Provinces and local governments have not been able to create an adequate number of laws owing to constitutional complications and federal negligence.

5. Role of Political Parties in Implementing Federalism

An inquiry into roles of political parties and the manner in which they have adapted to three-tiers of federalism

¹⁵ Joint press release of Municipal Association of Nepal and National Association of Rural Municipalities in Nepal on March 1, 2019.

helps in determining the direction in which federalism is moving. Political parties institutionalized federalism and state restructuring into the Constitution, elevating them from mere political issues. Consequently, the Constitution was promulgated in 2015 with a three-tier federal structure. It was promulgated amidst disagreement and protests by Madhesh-centric parties regarding provisions in the Constitution and provincial border delineation. Eventually, the implementation of federalism found some steam after political parties participated in elections and formed governments at all three levels.¹⁶ Although all political parties have in theory accepted the Constitution, they have not yet restructured their internal organization to adapt to the new federal structure. There seems to be confusion regarding whether they should retain the old structure, or if they should move into a new structure. The delay in adapting to the federal structure and in selecting new leadership seems to point to the lack of an institutional decision-making structure. This has also affected the implementation of federalism.

Although the Nepal Communist Party (NCP) has given some individuals responsibilities regarding provinces and local units nearly two years after the unification, had not appointed officials to various party organizations.¹⁷ In a situation where the erstwhile structure is largely inactive and the new structure does not have people appointed to all the necessary levels, it is natural that decision-making is in limbo and largely concentrated with a few influential individuals. The fact that the organizational structure of the unified party remained inactive for such a long time affected the functioning of both the party and the government. Top leadership and their influential groups have become stronger, which has devalued rules and processes within the party organization and the functioning

¹⁶ Local level elections were carried out over three phases in 2017. The first phase was held on May 14, the second on June 28 and the third on September 18. Nepal Communist Party (Viplab group) had completely boycotted the elections while Rashtriya Janata Party, which boycotted the first two phases, participated in the phase 3 elections carried out in Province 2.

¹⁷ Nepal, Fanindra. Nepal ekata prakriyaka 21 mahina: mukhya kaam sakiapani ajhai chhan banki dherai kaam. Available at <https://ratopati.com/story/116817/2020/2/4/cpn>; accessed on June 25, 2020. and, Setopati. 2076 B.S. Organizational unification of CPN by April 22 after truce between Oli and Nepal. Available at <https://www.setopati.net/political/144121>; accessed on May 14, 2020.

of the government. Even the top leadership in the party itself raised objections, saying that the NCP leadership is no longer working in accordance with its organizational processes and procedures, and that it is centered on specific individuals.¹⁸ This situation has affected coordination between the NCP and three levels of governments. Overall, the NCP is disoriented in its effort to manage the federal structure.

Nepali Congress (NC), another major political party, has also failed to institutionalize its organizational procedures and processes. It has also been delaying the appointment of officials to its organizations at various levels.¹⁹ Leadership at various levels of the NC allege its top leadership of defying processes and procedures, failing to adopt the party's memorandum as required by the Constitution, and being lost in factional tussles.²⁰ The party has also been confined to the role of a weak opposition party as a result of the elections for three levels of governments. These two reasons have made the NC's role in the implementation of federalism ineffective.²¹

Similarly, the Madhesh-centric political parties, which had major roles in establishing federalism through political agitation, passed through a process of internal rifts and tussles. Since 2008, Madheshi political parties continued to ensure political representation in their regions by winning elections. But, the organization, mentality and exercise within Madheshi political parties remained centralized. They have also indulged in

repeated games of unification and division.²² Although Madheshi political parties have been in the government at one time and in the opposition at another time, they seem confused regarding the institutionalization of federalism. Although they have raised the issue of amending the provisions in the Constitution with which they disagree, parliamentary arithmetic has weakened their voices. Rashtriya Janamorchha, raising the agenda of repealing federalism, is in an even weaker position. The few political parties that arose as an expression of dissatisfaction with existing political parties enjoy very limited influence. Overall, political forces claiming ownership of federalism appear weakened.

Political parties are mostly directed by centralized processes and individuals. Province-level members reported that central-level leadership influence or the party issues whip when important province-level decisions are being made. During the process of naming Bagmati Province and determining the province capital, the center-level leadership of both NCP and NC forced their decisions upon the province-level leadership of the party.²³ This action was criticized as being against the spirit of the Constitution and an infringement upon the autonomy of the provincial government.²⁴ When it comes to decision-making at all three levels, the influence of a small set of individuals has devalued the organization and processes of political parties, and has weakened the political forces that led to the foundation of federalism.

Since federalism is a new system for Nepal, there must be a wide and adequate debate on it. Political parties could have played effective roles in explaining the importance of federalism and in removing misconceptions regarding federalism. But this has not been the case. Some citizens have doubts about federalism. During this research, many respondents stated that they had not felt the presence of their provincial government, and had pointed out that the provincial level was 'unnecessary'. At the local

¹⁸ Pradhan, Tika R. 2019. Ruling Party Says Unification Concludes, but Leaders See More Challenges. Available at <https://kathmandupost.com/politics/2019/04/23/ruling-party-says-unification-concludes-but-leaders-see-more-challenges>; accessed on July 5, 2020.

¹⁹ Rajbanshi, Niranjana. 2018. Kangres kamjor bannuka paanch karan. Available at <https://www.bbc.com/nepali/news-46246794>; accessed on May 12, 2020.

²⁰ Rajbanshi, Niranjana. 2018. Kangres kamjor bannuka paanch karan. Available at <https://www.bbc.com/nepali/news-46246794>; accessed on May 12, 2020. Niraula, Bikram. 2020. Sher Bahadur Deuwa: Nepali kangreska sabhapati bhanchhan, 'partyko nirnaya sabaile mannuparchh. Available at <https://www.bbc.com/nepali/news-50963690>; accessed on May 12, 2020.

²¹ Pradhan, Tika R. 2019. A Weak Opposition is Only Emboldening the Ruling Party. Available at <https://kathmandupost.com/politics/2019/12/30/a-weak-opposition-is-only-emboldening-the-ruling-party>; accessed on June 25, 2020.

²² Jha, Nabin, 2018. Sanghiya Abhyasma Madhesh. Available at <http://annapurnapost.com/news/118088>; accessed on May 12, 2020.

²³ DRCN. 2020. *Functioning of, and Participation in, Provincial Assemblies*, p. 18. Lalitpur: DRCN.

²⁴ Giri, Anil and Bista, Pratap. 2019. NCP's Decision to Impose Name and Capital of Province 3 is Unconstitutional, Experts Say. Available at <https://tkpo.st/2MC1Hm>; accessed on June 25, 2020.

level, too, citizens had repeatedly said, “Elected local representatives had become unbridled horses.” Political party leaders and cadres at the local level said that they had not really been able to keep their elected representatives accountable. According to a NC representative from Sudurpashchim Province, there had not been consultations between the party and its elected representatives at the local level. The NC representative had complained that if they approached elected representatives for consultations on behalf of the party, they would ‘make enemies’ and that their intentions would be ‘misconstrued’.

There are indications that the failure of political leadership in providing a clear direction to federalism has resulted in the bureaucracy expanding its influence. When political parties which played a role in establishing federalism take the back seat and when the bureaucracy which had been functioning for a long time under a centralized structure expands its influence, the results expected of federalism may be difficult to obtain. The structure of the bureaucracy at the federal level was made ‘large and inefficient’. Following the process of employees’ integration, there were an inadequate number of employees at all levels. The provincial or local levels were not the choice of a majority of senior officials.²⁵ Since those positions were not attractive to senior officials, it resulted in a lack of employees at the provincial and local levels. Instead of being a restructuring of the bureaucracy as envisioned under the federal structure, it merely became an exercise in the ‘management’ of existing employees. A political analyst asserted that the political leadership and the bureaucracy have become partners in an effort to fulfil each other’s interests, and that the Civil Service Act that was supposed to be enacted by the federal government has been delayed entirely because of the vested interest of the bureaucracy.²⁶

As the role of political parties weakens, there is increasing suspicion that there are ongoing efforts to bring important resources under the control of the federal government, and that ultimately a

‘centralized federalism’ or a ‘federalism’ that exists only in name but functions for all intent and purposes as a ‘centralized state’ is becoming developed.²⁷ Representatives of provincial governments have time and again accused the federal government of trying to limit, through various tactics, the rights granted to the province and local levels. All the large political parties have been studying the current transition since it began and are aware of all the changes that have happened. Since the People’s Movement of 2005-06, there were widespread demands for the inclusion of women, dalits, janajatis, and other marginalized communities in every part of the state and in the party mechanisms, yet political parties themselves appear illiberal in their internal practice of inclusion. Although, political transformations have resulted in the implementation of federalism in Nepal, the benefits of federalism have not reached minority and marginalized communities. Overall, political parties continue to dillydally in adapting their organizational structures to the new federal structure, which has affected the implementation of federalism.

6. Administrative Aspects and Employee Management

Restructuring of the erstwhile centralized bureaucratic structure according to the spirit of federalism was an important component in the new federal set up. During the transition period, the initial management of administration was largely dominated by the federal level with the limited involvement of provincial and local governments. It was a challenging task to create a new organizational structure by retooling an administrative structure long accustomed to a unitary system. From an administrative point of view,

²⁵ DRCN. 2019. *Formation and Functioning of Provincial Institutions in the Federal Structure*, p. 7. Lalitpur: DRCN.

²⁶ Khanal, Krishna, 2020. Nijamati sewa vidheyakma khelbad kina? Available at <https://www.nayapatrikadaily.com/news-details/38972/2020-03-18>; accessed on March 18, 2020.

²⁷ Malaysia, India and Nigeria are examples of centralized federal states where although there is a ‘federal government’ according to their constitutions, the central government has a strong presence. Some studies conclude that in countries that are socially, politically and economically backward, the ethnic and regional diversity, relative poverty, weak administrative capacity and level of political leadership lead to a relatively weak implementation of the federal structure. Mawhood, Philip. 1984. The Politics of Survival: Federal States in the Third World. *International Political Science Review* 5(4): 521-531.

provincial governments started from zero while local governments started with a weak administrative structure. Employees were required immediately to provide services, so the *Employees Integration Act, 2018* was enacted in accordance to the constitutional provision of integrating employees into the federal, provincial and local governments.²⁸ The Organization and Management Survey Committee was then established and as per the recommendations of the committee, the Government of Nepal approved the organizational structure and employee quotas for all three levels of governments.²⁹

Unfortunately, the employee integration process was full of confusion and controversies from the very onset. On one hand, the federal government maintained total control over the process, while on the other hand, there was a total lack of preparation and clarity. After the Employee Integration Act enacted in 2017 become controversial, it was repealed and an ordinance was issued. This was also repealed before the *Employee Integration Act, 2018* was eventually passed, resulting in delay of the overall process.³⁰ The Organization and Management Survey Committee approved 48,409 employees at the federal level, 22,297 at the provincial level, and 66,908 at the local levels. Representatives of provincial governments and some analysts raised the point that this lopsided structure where 35 percent of the employees remained with the federal government while the seven newly instituted provincial governments received only 16 percent of the employees would increase the federal government's powers and that it was not in line with the spirit of the Constitution.³¹ There were also widespread complaints that employees working in a particular service category had been deployed to another service category under provincial or local governments, resulting in difficulties for employees.

²⁸ *The Constitution of Nepal* 2015, Article 302.

²⁹ The committee formed under the coordination of the secretary of the federal Ministry of Federal Affairs and General Administration comprised assistant secretaries of various other ministries. DRCN. 2019. *Formation and Functioning of Provincial Institutions in the Federal Structure*, p. 5. Lalitpur: DRCN.

³⁰ DRCN. 2019. *Formation and Functioning of Provincial Institutions in the Federal Structure*, p. 7. Lalitpur: DRCN.

³¹ DRCN. 2019. *Formation and Functioning of Provincial Institutions in the Federal Structure*. Lalitpur: DRCN.

Initially, the organizational structure and employee management of local governments was mired in confusion. It took the federal government nearly a year after its formation to pass the Employees Integration Act. Both local and provincial governments explained the delay by the federal government in employees and organizational restructuring as a reluctance on the part of the latter. The functioning of the provinces, which are absolutely new structures, were the most affected. The rift of mistrust in the relationship between the federal and the provincial governments widened.³² Although, after much delay, the Ministry of Federal Affairs and General Administration (MoFAGA) officially declared on March 28, 2019 that the employees integration process had ended, field research conducted by DRCN in the following months showed that problems associated with integration persisted at provincial and local levels. This continued to have an effect on important provincial and local government tasks like law making and the implementation of policies and programs.

The experience of elected representatives at local and province levels suggested that the employee integration process was faulty and that employees deployed by the federal government were accountable only to the federal government. "Most employees deployed to the province come here reluctantly, and within a few months, seek to be transferred elsewhere. Such employees have no attachment to their duties," a member of the Bagmati Province Assembly said. Province 2 saw a lot of complaints about employees deployed to the province who were reluctant to take up their new positions, and even if they did arrive to work there, would not help with the work. A minister from Province 2 alleged that some high-level employees were knowingly being unhelpful instead of implementing the decisions of the provincial government. He said, "While providing consent during discussion on the rationale of the Act Related to Provincial Police, the secretary refused to sign documents under the incitement of the federal government." Province 2, claiming that the federal government had failed to provide it with necessary employees even after repeated requests, passed a

³² DRCN. 2019. *Formation and Functioning of Provincial Institutions in the Federal Structure*. Lalitpur: DRCN.

Case Study 1: Provisions for and challenges in employee integration

Article 244(3) of the Constitution provides that provincial civil service commissions should follow frameworks and standards that are in accordance with federal laws. But, these frameworks and standards have not been created. Hence, the federal government integrated employees from the federal service into provincial and local governments to fill vacancies and manage employees.

The *Employees Integration Act, 2018* attempted to manage employees at provincial and local levels primarily in two ways. First, by integrating employees in the federal government service (formed under *Civil Service Act, 1993*; *Nepal Health Service Act, 1997*; and *Act Relating to Legislative Parliament, 2008*) into provincial and local institutions in accordance with procedures and processes determined by the Act. Second, by creating provisions for deploying federal employees to provincial or local governments for a specific period.

Applications for integration indicating their preferences were called from employees. Although the basis for integration is specified in Section 8 of the Act, the integration was mostly done according to preferences and priorities of concerned employees. Attempts were made to attract employees to integrate into local and provincial governments by promoting them up a level or adding to their grade. However, only a few employees compared to the numbers required chose to integrate into local and provincial governments. Reasons given for their reluctance included the provision in the Act that employees from the federal civil service would continue to be appointed as the chief secretary to the province and secretaries to provincial ministries, and chief administrative officers to local levels, until relevant laws were created.* In fact, apart from the exception of a very few employees who chose integration because of the provision to appoint first class gazetted officers from the federal civil service as secretaries at provincial ministries, no first class gazetted officers from the federal civil service chose integration into provincial and local governments.

The federal government's attempt to manage employees at the provincial level by integrating or deploying employees until provincial governments form their civil service commissions in accordance with the Constitution and provincial laws can be taken positively. However, there is a glaring lack of preparation and clarity regarding the standards and processes for integration. Since the Act on integration only came after a failed initial Act in 2017 followed by a failed ordinance, provincial and local governments were deprived of necessary employees for two years after the elections that led to their formation. Apart from this, the fact that the integration process could not remain without its share of controversies and the fact that not enough employees were attracted to it seems to have affected not only the functioning of the local and provincial governments, but also the morale of employees. Since the federal parliament still has not created the laws needed for provinces to follow to establish their civil service commissions even after two years, provinces have been deprived of the opportunity to appoint the employees they require, which has further complicated the functioning of provincial governments.

** This provision appears temporary according to the Section 11 (3) of the Act. According to the Act, once the provincial government fills appointments to the position of provincial ministry secretaries, the position of provincial ministry secretaries automatically becomes part of the Provincial Civil Service.*

law on November 26, 2018, making it possible for it to hire employees on contract. The chief minister of Province 2 stated that the law had to be passed under duress because important development work had stalled due to an absence of employees.³³ According

to a representative of the Karnali Province Planning Commission, there is no sense of ownership towards provincial governments among employees deployed to the province because the federal government has kept them under its control. The representative asserted that employees carry a mentality that says "I am an employee of the federal government – why should I listen to the province?" and that such a mentality has

³³ Onlinekhabar. Pradesh 2 maa karaar karmachari bharnasambandhi vidheyak parit. Available at <https://www.onlinekhabar.com/2018/11/722585>; accessed on May 12, 2020.

made it difficult for provincial ministries and their offices to function.

Similarly, the functioning of many local governments across the seven provinces were affected because of the frequent transfer of employees by the federal government. The chairperson of a rural municipality in Karnali Province said, “Local governments are also the government, but employees who are accountable to the federal government do not like being bound by the rules and policies of the local government. Employees for service delivery need to be deployed after taking account of available resources, but here, employees have been deployed haphazardly. There are no specialist employees. Therefore, in many instances, we are working through employees hired on contracts.”

6.1 Challenges Related to Transfer of Organizational Structures

Another important aspect in the implementation of federalism was the process of transferring district-level, zonal and regional offices hitherto functioning under the center in the unitary system to local and provincial governments. On one hand, there was an absence of clear policies and adequate preparations, and on the other hand, adequate cooperation with provincial and local governments had not been possible. Therefore, this process, too, remained rife with confusion and challenges.

These challenges intensified especially around the issue of transferring offices in the health and education sectors. For example, the federal government had initially decided to convert the erstwhile District Public Health Office into 35 Health Offices. But, when complaints were raised that requiring an office to oversee health issues in two or more districts resulted in managerial challenges, the decision was overturned. It was then decided that there would be Health Offices in each of the 77 districts under the Health Directorate within the Ministry of Social Development of each province.³⁴ Similarly, the erstwhile education offices were initially subsumed into DAOs, but when this

³⁴ Provincial Public Health Office Proposed in All 77 Districts. Available at <https://myrepublica.nagariknetwork.com/news/>

decision was met with widespread criticism, they were reestablished in every district as the Education Development and Coordination Units (EDCU) under the federal government. Numerous conflicts occurred between local governments and the EDCUs regarding the appointment of teachers and other important issues.³⁵ Representatives of local governments would insist that they had the constitutional right to manage education while representatives of the district-level EDCUs and the federal government asserted that decisions passed by local governments would not be valid as the federal Education Act had not yet been passed. Important statistics from the past remained with district offices which also affected policymaking at the local level. “The erstwhile district education offices had conducted the 8th-grade district-level examinations, and the details remain with the district. If citizens require important education-related documents, they still have to come to the district office,” said an official at the Udayapur District EDCU in Province 1.

Provinces failed to hold adequate consultations with local governments when establishing new offices, resulting in a lack of clarity on who would do what and in duplication of programs. In every province, there were complaints that although offices of directorate in the education, agriculture and health sectors now came under the province, the fact that employees there remained accountable to the federal government had resulted in ‘a broken chain of command.’ There were also examples of difficulties faced by provincial governments in implementing their policies and programs due to a lack of necessary structure and employees. In the 2018/19 fiscal year, lacking its own structure and human resources, the Province 1 Ministry of Social Development had to construct physical infrastructure like drinking water supplies, laboratories and libraries in schools through the district-level EDCU.

There were also controversies between provincial institutions and local governments over the use of erstwhile district office buildings and physical infrastructure. In Khotang, when the provincial

provincial-public-health-office-proposed-in-all-77-districts/; accessed on December 19, 2019

³⁵ DRCN. 2020. *School Education and Local Government*. Lalitpur: DRCN.

government decided to use the buildings of the erstwhile district level Agriculture, Education, Women and Child Development and other offices, Diktel Majhuwagadhi Municipality had asserted its claim over those buildings. A similar issue was also seen in Baglung of Gandaki Province. A representative of Baglung Municipality said, “The Province has used a building in our municipality to establish the Agricultural Knowledge Center without coordinating with us.” The new provincial office, established without adequate preparation or coordination, had not been able to function effectively. “Local governments are themselves a government – the provincial government does not have the authority to tell it to do this or that. Since the local government is not accountable to the provincial government, it has been difficult to coordinate,” the head of an Agricultural Knowledge Center established in Province 1 said.

Local governments were made suspicious by the establishment of provincial offices without clarity of jurisdiction and adequate coordination, and saw them as competitors. Authority over the budget was also at the center of the complicated interrelationship between provincial offices and local governments. Some locally elected representatives claimed that they should have authority over the budgets pertaining to provincial plans. The chairperson of a rural municipality in Solukhumbu said, “In accordance with the spirit of federalism, development projects should be under the leadership of elected representatives. Provincial offices without the presence of elected representatives have no legitimacy. Programs that are implemented without coordination with us will not be acceptable to us.”

Representatives of provincial governments expressed the opinion that there are clear provisions regarding projects to be implemented by provincial offices and local governments, and that this would gradually become clearer. A Province 1 minister said, “Local governments are tasked with implementing projects under various fiscal grants. Beyond that, the projects included in the Red Book will be implemented by provincial offices.” He asserted that local governments who were already failing at implementing many of their own programs are not capable of implementing additional provincial government programs.

7. Aspects Related to Fiscal Federalism

In a federal structure, governments at every level have the authority to mobilize revenue within designated headings and sectors. Revenue mobilization authorities of each government, intergovernmental fiscal arrangements, and provisions on public expenditure provide necessary resources for each level of government to fulfill their expenditure responsibilities. Fiscal federalism is the overall structure encompassing these issues and is imperative in a federal system. There is an imbalance between revenue mobilization authorities and expenditure responsibilities of three levels of governments in Nepal’s federal structure.

The federal government has retained most of the important sources of revenue and raises between 80 and 85 percent of total public revenue.³⁶ However, a large portion of the expenditure responsibilities were given to local and provincial governments, creating a (vertical) fiscal imbalance. Provincial and local governments are dependent upon fiscal transfers from the federal government to carry out their expenditure responsibilities. There are developmental variations between different provinces and local units, and there is an imbalance in their capacity to mobilize revenue. This indicates that there are also (horizontal) fiscal imbalances between provinces and local governments.

National Natural Resources and Fiscal Commission (NNRFC) was established as the constitutional commission tasked with correcting both kinds of fiscal imbalances and distributing public revenue and other state resources equitably.³⁷ The commission defines

³⁶ The World Bank. 2017. *Nepal Development Update: Fiscal Architecture for Federal Nepal*, 2017. p. 19. Washington D.C.: World Bank Group.

³⁷ According to Article 251 of the Constitution, the function of the Commission is mainly to determine the detailed structure for revenue sharing between three levels of governments; to make recommendations regarding equalization grant to be transferred to provincial and local governments out of the transfers from the federal consolidated fund; to conduct research and studies to prepare the basis for conditional grants given to provincial and local governments; to recommend methods to improve revenue collection and spending responsibilities of three levels of governments; recommend limits for internal loans that three levels of governments may undertake; determine and recommend shares in investment and returns of three levels of governments while

its role as the ‘custodian’ of fiscal federalism and as ‘a constitutional commission established for the institutionalization of fiscal federalism.’³⁸ Although the commission is established as a permanent constitutional commission for the implementation of fiscal federalism, it is required to operate according to federal laws. The federal government has so far enacted two laws to implement fiscal federalism. The *National Natural Resources and Fiscal Commission Act, 2017* was issued to determine the duties, functions and rights of the commission. Whereas, the *Intergovernmental Fiscal Management Act, 2017* was enacted in order to outline revenue-related authorities of the federal, provincial and local governments and to determine provisions for revenue sharing, inter-governmental grants, loans, budgetary management, public expenditure and fiscal discipline. The commission has been implementing fiscal federalism on the basis of these two laws. However, these laws have affected the functioning of the commission. Provision in these laws have failed to ensure the equitable distribution of fiscal and natural resources as envisioned by the Constitution. (See Case Study 2). The effectiveness of the commission has also been restricted by the delay shown by the Constitutional Council in appointing officials to the Commission. Raising the same issue, the first report by the commission mentions, “Although, as per the Constitution, the five-member commission headed by a chairperson should have fulfilled its duty with urgency, only the chairperson has so far been appointed to the commission, and the functioning of the commission will be facilitated by the appointment of the rest of the officials.” The chairperson to the commission was appointed a long time after the promulgation of the Constitution following demands made at the first meeting of the Inter-Province Council.

In this context, the following section discusses the fiscal imbalance between three levels of governments, between local units, and between provinces. It also

mobilizing natural resources; and conduct research and studies to provide suggestions to resolve through coordinated cooperation conflicts arising during the redistribution of natural resources among three levels of governments.

³⁸ National Natural Resources and Fiscal Commission. 2019. *First Annual Report of the National Natural Resources and Fiscal Commission, 2019*. Kathmandu: National Natural Resources and Fiscal Commission.

looks at attempts that have been made to redress the imbalance, developments in the budgetary processes, implementation across three levels of governments, and associated challenges.

7.1 Vertical Fiscal Imbalance

Although provincial and local governments received limited authority to mobilize revenues, there has been a considerable increase in the fiscal transfer reaching local governments since the implementation of federalism. Before federalism, less than 10 percent of the total national revenue went to local institutions but now, the combined share of the provincial and local governments is nearly 40 percent.³⁹ Similarly, the share of local and provincial governments in the total national expenditure has also increased.⁴⁰ In some federal nations, the percentage of total revenues that go to each unit of government is predetermined, but that is not the practice in Nepal. The Constitution does not give the NNRF the authority to determine the share allocated to particular levels of government. Although the commission has been studying the amount each of the different levels requires to carry out their functions, this study has not concluded. Such a study could form the basis for determining the amounts required by each of the different levels to fulfill their functions. At the moment, even though there is a general awareness that fiscal imbalances exist, the precise nature of such imbalances remains to be determined.

The federal government has been distributing around 40 percent of revenues to provincial and local governments through fiscal transfers. An official at the federal ministry claimed that there was little chance of this increasing in the future. “With respect of current levels of revenue mobilization, the costs that the federal government must bear – like loans and interests,

³⁹ In the fiscal year 2018/19, local levels and provinces had received 40 percent of the total revenue of the federal government. International Alert. 2020. *FISCAL FEDERALISM: An analysis of its initial implementation in Nepal*, Federalism in Nepal. Volume 6. Available <https://www.international-alert.org/sites/default/files/Nepal-Federalism-Vol6-EN-2019.pdf>; accessed on June 5, 2020.

⁴⁰ The World Bank. 2017. *Nepal Development Update: Fiscal Architecture for Federal Nepal, 2017*, p. 19. Washington D.C.: World Bank Group.

salaries and stipends, commitments made according to international treaties, etc., require on average at least between 50 and 60 percent of total revenues,” he claimed. An official at the NNRFC, commenting on the same issue, asserted, “We can only make claims on the amount remaining after the federal government has fulfilled its fiscal obligations. Representatives of local and provincial governments demand that the commission specify a fixed percentage of revenue to flow from the federal government to the local and provincial governments, but the commission does not have such an authority.” His statement means that the federal government independently determines its expenses, and only then transfers the remaining amount to provincial and local governments.

The budget expenditure and implementation of provincial and local governments also appears weak.⁴¹ “Since this is a new system, there are not enough skilled, qualified and capable employees. Elected representatives are no better – unwilling to adapt to change and unclear about methods and systems. Budget implementation is bound to remain weak under such circumstances,” a chief administrative officer of a municipality in Karnali Province said. Since provincial and local governments remain unable to spend allocated budgets, it is unlikely that the federal government will increase the size of their fiscal transfer any time soon. However, elected representatives in provinces and local units insist that the budget allocated for them is inadequate and that the federal government should increase the size of the fiscal transfer. “The federal government has given local governments rights and budgets, but the rights and budgets are inadequate in comparison to demands and expectations at the local level,” a chief administration officer at a municipality in Gandaki Province said. Furthermore, once authorities on concurrent and exclusive jurisdictions are fully transferred to local and provincial levels, it is clear that the demand to increase their share of the fiscal transfer will further increase.

In conclusion, first – there has not been a thorough analysis on how much, and of what nature verticle,

⁴¹ The World Bank. 2019. South Asia Chief Economist Office and Macroeconomics, Trade and Investment Global Practice. *Making (De)centralization Work*. Washington D.C.: World Bank Group.

fiscal imbalances exist at and between three levels of governments. Second – although it is the jurisdiction of the NNRFC to redress such imbalances, its authority is restricted by federal laws. Therefore, it does not seem conceivable that in the future, if a local or provincial level requires additional funds, the NNRFC will be able to compel the federal government to fulfil additional fiscal needs. If conflicts around this issue arise between the federal, provincial and local levels, it appears that a political tussle over the role of the commission in addressing such conflicts will grow in prominence. This will not be in accordance with the principal of cooperative federalism.

7.2 Horizontal Fiscal Imbalance between Provinces and Local Governments

There is an imbalance between local governments across the country in terms of revenue mobilization capacity and their level of development. Similarly, fiscal imbalance exists between provinces as well. Over the past decade, the entire revenue generated from Karnali Province was 0.24 percent of the total national revenue, while Bagmati Province and Province 2 generated 52 and 30 percent respectively. A similar imbalance is seen in terms of expenditure – over the past decade, the share of Karnali and Sudurpashchim provinces were at 5.5 and 4.7 percent respectively of the total national expenditure, while Bagmati Province spent 58.4 percent.⁴² Such imbalances exist not only in the fiscal sector, but also in socio-economic conditions, in human development and levels of poverty.

The Constitution contains provisions for equalization grants and revenue sharing to redress such financial imbalances. The NNRFC utilizes various indices to determine these two mediums of fiscal transfer (See tables). Stakeholders and experts claim that the fiscal transfer process is transparent because it uses a specific procedure. “It is not only our claim that the procedure being used currently is extremely robust – other experts have also testified to its strength,”

⁴² NRB. 2018. *Fiscal Imbalance in Nepal's Federalism: An Empirical Analysis*. *Economic Review*. Volume 30-1. Kathmandu: Nepal Rastra Bank.

an official at the NNRFC said. But, despite that, he suggested that the procedure may be a bit complex for elected representatives to grasp. However, there were not a lot of questions raised by local governments regarding the procedures. But, representatives of some local governments had compared the fiscal transfer amount they received to that received by neighboring units and raised a few concerns. A representative of the NARMIN said, “A rural municipality chairperson had asked why another local unit which was much smaller [in terms of population and area] than theirs had received larger grants. We informed the NNRFC. They explained various indices and procedures. The chairperson was satisfied with the explanation received.” Such examples also indicate that elected representatives do not yet have a clear understanding of the new structure and procedures.

Although there are no conflicts between local governments at the present, an expert at NNRFC expressed the concern that controversies may arise regarding which basis between population and area should be given more preference. The current formula for revenue sharing gives 70 percent weightage to population and demography while area receives 15 percent weightage (See tables 1 and 2). Elected representatives of various local governments also expressed their dissatisfactions regarding this. ‘Geography should be considered the main basis of the fiscal transfer processes. A remote district like Bajhang cannot be compared to other districts,’ the Mayor of Jay Prithvi Municipality in Bajhang asserted. Municipalities with large populations were dissatisfied at receiving similar amounts in fiscal transfers as compared to neighboring municipalities with smaller populations and nearby rural municipalities. “There is not a huge difference between the budgets received by municipalities and rural municipalities, but since municipalities have larger populations, their needs are also larger. It is important to understand this. But, budgets are inadequate for all local units,” the chief administrative officer of a municipality in Karnali Province asserted.

Table 2: Basis of revenue sharing⁴³

No	Basis	Province	Local
1	Population and Demography	70	70
2	Area	15	15
3	Human Development Index	5	5
4	Least Development Index	10	10
	Total	100	100

Table 3: Basis and format for the recommendation of fiscal equalization grant⁴⁴

Local level		Province Level	
Basis	Weightage (%)	Basis	Weightage (%)
Difference between expenditure responsibilities and revenue mobilization capacity	70	Service Cost Index	70
Human Poverty Index	15	Multidimensional poverty index	15
Socioeconomic Inequality Index	5	Socioeconomic Inequality Index	15
Infrastructure Index	10	Infrastructure Index	10

⁴³ National Natural Resources and Fiscal Commission. 2019. *First annual publication of the National Natural Resources and Fiscal Commission*, p. 31. Kathmandu: National Natural Resources and Fiscal Commission.

⁴⁴ National Natural Resources and Fiscal Commission. 2019. *First annual publication of the National Natural Resources and Fiscal Commission*, p. 35. Kathmandu: National Natural Resources and Fiscal Commission.

Case Study 2: The basis for the jurisdiction of the National Natural Resources and Fiscal Commission and the sharing of state resources

The Constitution provides each of three levels of governments fiscal rights as listed in its schedules and gives them authority to levy taxes and collect revenues in their respective areas of fiscal jurisdiction. Section 3(5) of *Inter-Governmental Fiscal Management Act, 2017* states that provincial and local governments should levy taxes without adversely affecting national policy, free movement of goods and services, capital and labor markets, and neighboring provincial and local levels. However, attempts have been made to limit the areas of exclusive jurisdiction available to provincial and local governments when levying taxes.

Article 60(1) of the Constitution provides the federal government the authority to levy taxes and collect revenues in areas of shared jurisdiction. Similarly, Article 59(2) of the Constitution allows the federal government to create 'policies, measures and laws' pertaining to areas of concurrent jurisdictions and other areas of fiscal jurisdictions that may also apply to the provincial level.

The Constitution provides for the equitable redistribution of revenues collected by the federal government. But, Section 6(4) of the *Inter-Government Fiscal Management Act, 2017* allows for Value Added Tax and revenue collected from internal production to be collected in a fund to share with provinces and local unit in accordance with the structures and basis determined by the NNRFC. This framework and basis must be determined in accordance with Section 15 of the *National Natural Resources and Fiscal Commission Act, 2017*. But, according to Article 251(1)(a) of the Constitution, such frameworks and basis have to be prepared by the Commission itself. Because such frameworks and basis are reviewed only after a period of five years, the Commission is conducting an intense study before preparing them.

Royalty

The Constitution provides for the equitable redistribution of dividends derived from the use or development of natural resources by the federal, provincial and local governments. Article 251 (1)(h) of the Constitution provides that shares in the dividends should be determined according to the basis recommended by the Commission. Section 7 and Schedule 4 of the *Inter-Governmental Fiscal Management Act, 2017* specifies the percentages for the sharing of royalties received from the use of natural resources. The fact that the Schedule on one side specifies the percentages while on the other side the Commission has been given the responsibility of recommending the size of shares makes it contradictory. The Commission faces the challenge of balancing this issue.

Article 59(4) of the Constitution requires the distribution of dividends obtained from the use or development of natural resources by the federal, provincial or local governments to local communities and areas affected by the project in the form of royalties, services or goods. But Section 7 of the *Inter-Governmental Fiscal Management Act, 2017* only mentions that the dividends will be distributed to relevant provincial and local governments. The Act contains no mention of redistributing dividends to local communities and areas affected by the project in the form of royalties, services or goods. The Constitution and the Act do not provide the basis to assert that 'local communities and areas affected by the project' only means relevant provincial and local governments. Therefore, this has created confusions. Additionally, although royalties are mentioned, the Act is silent on the redistribution of goods and services.

Fiscal Transfer

Although the Constitution mentions that provincial and local governments will receive fiscal transfers in amounts recommended by the commission, the Act only mentions that the commission will determine the 'basis and framework' for redistribution. Apart from this, the Act only mentions the fiscal equalization grant and conditional grant. The Constitution states that the amount for all types of fiscal transfers should follow the recommendation of the commission.

7.3 Budget and its Implementation at Three Levels

The Constitution requires the federal government to present estimates of its revenue and expenditure for the next fiscal year before the federal parliament on Jeth 15 (End-May) of each year. Once the budget for the federal government is presented, budgets for the provincial and local governments follow on Asar 1 (Mid-June) and Asar 10 (End-June) respectively. In each fiscal year, some local governments could not pass their annual budgets due to a failure to hold assembly meetings. According to an official at the federal Ministry of Finance, there have been attempts to discourage those local governments by holding the transfer of federal grants. However, in successive fiscal years it seems that the number has been reduced to a few. Previously, DRCN research reports indicated that local governments had failed to pass their budgets due to their inability to audit and approve the previous year's expenditure bills, an escalation in conflicts among elected representatives, and due to the absence and frequent transfer of employees like the chief administrative officer and accountants.⁴⁵ Although provinces formulated their budgets on time, implementation of the budget appears to be weak. Out of seven provinces, three provinces had failed to spend even half their budget.⁴⁶

Attempts at Reducing the Duplication of Projects

When duplication of projects at the federal, provincial and local levels were noticed, concerns were raised at the Province Coordination Council and the Fiscal Council. To address this issue, the National Planning Commission implemented the *Standards Relating to the Classification and Sharing of Development Programs and Projects Falling under the Responsibilities of Federal, Provincial and Local Levels, 2019*. Similarly, federal ministries have also introduced measures to

stop projects from being duplicated across three levels. For example, the federal Ministry of Water Supply and Sanitation issued a statement that the federal, provincial and local levels would implement programs considering mountain, hill and Tarai regions on the basis of population.⁴⁷ Similarly, attempts have been made at the provincial level to avoid duplication by maintaining a project bank. Despite these efforts, budget continue to be allocated for the implementation of projects of the same nature across all three levels of governments.

The fact that jurisdictions are unclear in the Constitution and the federal government has failed to enact federal laws necessary to facilitate the functioning of provincial and local governments makes it difficult for them to determine their specific responsibilities. For example, the Constitution includes drinking water within the exclusive jurisdiction of local governments and among the concurrent jurisdictions of the federal, provincial and local governments. Amidst this confusion, the federal government further divided projects into three levels according to the scale of the project. Federal ministries often point to these confusions and uncertainties to retain their authority over the planning and its implementation of these projects that belong under the jurisdictions of the provincial and local governments. A representative of MuAN asserted that this arose from the federal government's inability to trust local governments. "Representatives of the federal government suspect that elected local representatives will indulge in corruption if programming authority is given to the local level. This problem has been observed in some local units. Because of this thinking, the federal government has attempted to curtail the rights of the local level [repeatedly through various laws and directives]," she said.

Practice of Requesting Projects from Federal and Provincial Governments

Representatives of many local governments asserted that the budget preparation process was backwards.

⁴⁵ DRCN. 2019. *Functioning of Local and Provincial Governments in Nepal*. Periodic Report 4. Lalitpur: DRCN.

⁴⁶ The World Bank. 2019. South Asia Chief Economist Office and Macroeconomics, Trade and Investment Global Practice. *Making (De) centralization Work*. Washington D.C.: World Bank Group.

⁴⁷ Press release by Government of Nepal, Ministry of Drinking Water Supply. Available at https://mows.gov.np/wp-content/uploads/2019/07/_-1.pdf; accessed on June 25, 2020.

According to them, if local level budgets were formulated first, followed by provincial budgets, and then finally the federal budget, the federal and provincial governments could allocate supplementary budgets for programs inadequately funded by local governments. However, it is impossible to do this since local level budgets depend on federal and provincial grants. “The elected representatives’ inexperience about the new system is also a reason behind this assertion. In the old system, local units selected programs and sent them to the central government, which would then allocate budgets. But now, both the programs selection and budget allocation processes happen within the local level,” a representative of NARMIN said. Similarly, instead of debating the process, basis and methods for conducting fiscal transfers, local governments have continued the practice of requesting federal and provincial government representatives to provide budgets for their projects, as was the practice before federalism. Many local governments were maintaining lists of unfunded programs in their budget books under the heading, ‘Programs requested from federal and provincial governments.’

Local governments have the autonomy to introduce policies and programs, and implement them. But they continue to request for budgets from the federal and provincial governments for expensive and large programs. It was reported that such requests depend – beyond the formal structure of fiscal transfer – upon individual and party access and influence. The mayor of a municipality in Sunsari claimed that the federal and provincial governments bring programs on the basis of their party’s biases. The chief administrative officer of the same municipality asserted that the municipality had failed to receive programs from provincial and federal governments because the municipality’s mayor and deputy mayor, who are from a different party than those in the federal and provincial governments, had failed to maintain cordial relationships and lobby with the federal and provincial governments. In contrast, the chairperson of a rural municipality in Rupandehi said that programs from both the federal and provincial governments were being implemented in his local unit. There were some 20 provincial programs being implemented in the local unit about which the rural municipality did not have any formal information. The federal government, too, has allocated culvert-

building programs, some of them costing up to NPR 200,000. ‘This local unit has a Sanghiya Samajwadi Forum Nepal (SSFN) government, so both the federal and provincial governments have been knowingly implementing programs to attract votes to defeat the party in the next election,’ the chairperson alleged. Such examples indicate that party biases may dominate the federal and provincial governments’ process of allocating budgets and programs to the local level when clarity regarding policy or structure is absent.

Project Implementation

Local governments are established as governments at the grassroots level responsible for implementing projects and programs. Since federal and provincial governments lack institutions required to implement all of their programs at the local level, local governments have to implement their programs. But, instead of sending such programs to local governments through conditional grants released at the start of the fiscal year, it was found that provincial governments sent correspondence in the middle of the fiscal year delegating expenditure authority to implement the programs. A mayor from Bagmati Province, indicating such an example, said, “The provincial Ministry of Economic Affairs and Planning sent us a drinking water project worth NPR five million without any consultation and towards the end of the fiscal year. Although it came late in the fiscal year, we did not want to lose the project. So, we formed a consumer group and drafted a contract agreement – but we did not know who would sign it on behalf of the provincial government. We only learned later that the project should have been implemented through the Drinking Water Office that had previously been under the federal government.”

The federal government was also found to be implementing projects by delegating expenditure authority in the middle of the fiscal year. In the fiscal year 2018/19, of the total funds received by local governments, about 15 percent were funds sent by the federal government delegating expenditure authority.⁴⁸

⁴⁸ Financial details of the local levels for the fiscal year 2018/19.

Aathbiskot Municipality in Rukum-West, pointing to such problems, had included the issue in its challenges in implementing policies and programs in 2018/19 – “Provincial and federal governments have sent projects delegating expenditure authority at the end of the fiscal year instead of the beginning. It is not possible to implement programs by the end of the year without completing the call for tender process, which leads to the projects being hurriedly implemented and does not yield expected results. In such cases, there is also the possibility of irregularities in implementing such budgets.” Even under the old system, the practice of delegating expenditure authority at the middle or towards the end of the fiscal year was prevalent. But, such a practice raises concerns about the efficiency of project implementation. Also, implementing such unanticipated programs has a negative effect upon public service delivery, transparency in fiscal management, and accountability.

Many elected local representatives reported that projects were implemented in local units without any coordination with the concerned local governments. These complaints involved the notion that provincial governments may not implement programs in their areas without informing them, and that the provincial government was trying to compete with the local government by establishing parallel institutions to implement its programs. The station manager of an FM radio station in Rupandehi said, “[In the greater Butwal area], the federal government was supposed to begin constructing a ring-road, but the project was abandoned. Provincial and local governments were supposed to study the project estimates and technical aspects together with the local government evaluating the Initial Environmental Assessment. But before local governments could complete the assessment, the provincial government began implementing the project.” The mayor of a municipality in Rupandehi, commenting on a similar issue, said, “The provincial government holds the erroneous notion that local governments fall under it. The provincial government cannot give directives to local governments. The provincial government’s erroneous notions regarding budgets and programs have made cooperation impossible. Within our municipality, the province is constructing five different roads on its own. We have not been included in the process. We have begun

regulating the construction of those roads, saying that we must also have a role in them.” This makes it clear that there is a lack of coordination between the provincial and local levels when implementing provincial projects.

Representatives of provincial governments accepted that there were shortcomings in coordination and cooperation. The head of the Agricultural Knowledge Center in Sudurpashchim Province said, “There is no policy-level coordination with local governments, and personal coordination is not really effective. It would be better if the federal government could establish coordination through policy decisions. Coordination is a two-way effort; we cannot be subservient to them. In terms of program implementation, we are required to obtain a recommendation from the local government, but if the officials there refuse to give it, it is not compulsory.” An official at the Agriculture Development Office in Dailekh, responded to the allegation that the provincial government was attempting to compete with the local level by saying, “Provincial institutions work as the bridge between the provincial government and local governments. We hold multiple consultations to ensure that there is no duplication of work.”

Overall, an atmosphere of mutual respect between the provincial and local governments does not seem to have developed. Although there is some coordination aimed at avoiding duplication of efforts, there is a lack of a long-term plan to ensure cooperation between local units and provinces regarding the implementation of provincial policies and programs.

7.4 Inter-Municipal Coordination on Project Implementation

Section 26 of the *Act Relating to Operation of Local Governments, 2017* provides that a local government may enter into partnerships, agreements or co-management with other local governments in 14 different areas when implementing its programs. Some local governments were found to be cooperating accordingly. Three rural municipalities in Rupandehi pooled resources to purchase fire engines, according

to a representative of Sainamaina Municipality. In the same district, four local governments, including Butwal Municipality, planned to construct a common dumping site and generate electricity by processing waste. Similarly, Devchuli Municipality and Bulingtar Rural Municipality of Nawalparasi-East agreed to promote tourism to the top of Devchuli hill which straddles the border between them. The mayor of Devchuli

Municipality and the chairperson of Bulingtar Rural Municipality said that Devchuli Municipality would provide drinking water infrastructure for the project while Bulingtar Rural Municipality would construct a road to the site. Similarly, according to the chairperson of Gulmi Darbar Rural Municipality in Gulmi, a culvert was being constructed with the joint investment of Gulmi Darbar Rural Municipality and Chhatrakot

Case Study 3: Inter-governmental coordination in the sale and management of riverine materials

Riverine materials have become a major source of revenue for local governments and conflicts have arisen around the issue. In the previous structure, the District Development Committee sold the stone, gravel and sand excavated from its area, and gave between 35 and 50 percent of the proceeds to the related village development committee or municipality. But, under the federal structure, the *Act Relating to Operation of Local Government, 2017* gives local governments the authority to collect and sell riverine material, and the province the authority to determine the sales price and processes. Of the amount collected from the sales, 60 percent remains with the local level while the province receives the remaining 40 percent. The local government is responsible for studying the environmental impact in detail and submitting an Initial Environmental Examination report to the District Coordination Committee (DCC) to obtain the necessary permissions. Thus, the collection, sales and regulation of riverine materials like stones, gravel and sand, and the redistribution of the money collected is managed through coordination between these three entities. But, problems have emerged regarding intergovernmental cooperation on this issue.

Many local governments were not working in accordance with procedures established by provinces. An employee of Tinau Rural Municipality in Province 5 said that it was the only rural municipality in all of Palpa to deposit earnings from the sale of its riverine materials into the Province's divisible fund. If media reports are to be accepted, it is apparent that other local governments in the Province have not followed provincial procedures and have not redistributed revenues with the Province.* The same employee also informed that it was difficult to adhere to the procedure prepared by the Province. He said, "The District Coordination Committee and provincial government say that riverine materials must be sequestered before selling it on. This makes the material more expensive for the consumer – and there is no place to sequester the material." He asserted that the system was not practical, and that local units should not be viewed through the same lens.

Inefficiency in regulation and control has led to widespread illegal excavation of materials, which is resulting in a loss of revenue that should come to the state.** There were conflicts between DCCs tasked with regulation and local governments. Representatives of a local government in Nawalparasi-West claimed that the DCC had tried to give directives to the local government and that the DCC had been impeding the timely excavation of riverine materials. On the other hand, according to a DCC chief in Province 5, "Local governments are becoming corrupt. There is extreme corruption in the use of riverine materials. We have been tasked with regulation, but we are not allowed to take any action. We have become silent bystanders."

* Navayug correspondent. Pradesh 3 ko 49 sthaniya tahale pradeshlaaii bujhaenan rajashwa. Available at <https://www.nawayug.com/?p=23959>; accessed on May 12, 2020.

** Gyawali, Dipak. Pradesh ra sthaniya sarkarbichko dwandwale arbaunko rajashwa gumdai. Available at <https://www.himalkhabar.com/news/10768>; accessed on May 12, 2020.

Rural Municipality. Gulmi Darbar Rural Municipality had allocated a budget of NPR 400,000 and Chhatrakot Rural Municipality had allocated NPR 300,000 towards this project. According to an administrative officer in Gaidakot Municipality of Nawalparasi-East, Devchuli, Gaidakot and Kawasoti municipalities were cooperating to construct a ring road, for which the initial survey work had been completed.

Elected representatives reported that there had been formal and informal coordination between other local governments too, and that such coordination was vital. According to the Mayor of Gurbhakot Municipality in Surkhet, “Two or more local governments may be connected through issues like social customs, physical infrastructure projects and natural resources. Inter-municipal relations are important for their management, protection and promotion. At the moment, coordination is limited to interpersonal coordination at the leadership level as the need arises. But, it would be beneficial in the long term to institutionalize this through formal channels.” Similarly, the chief administrative officer of Lekbeshi Municipality in Surkhet said that inter-municipal coordination was being carried out on the basis of mutual understanding but that there was no documented system as such, and gave this example, “A bridge is being constructed in Ramghat to connect two local units. It will be constructed with 40 percent funds from the province and 60 percent from local governments. Costs have been divided evenly between the two local governments.”

8. Inter-governmental Coordination

In a federal system, various frameworks and mechanisms are needed to keep the interrelationship between governments efficient and effective. Relations are established between governments through both formal and informal channels. The Constitution and prevailing laws define and direct formal relations while meetings, assemblies and other forms of contact result in informal relations. Also, the relationship between governments in a federal structure is either cooperative or conflicting in nature. A cooperative relationship derives from consent-based decision-making, coordination and

interaction while a conflicting relationship is the result of competition, control and oppression.⁴⁹

The Constitution provides some formal structures for the establishment of effective inter-government relations. Article 234 envisions an Inter-Province Council to address political conflicts arising between the federal government and provincial governments, and between two or more provincial governments. Section 105 of the *Act Relating to Operation of Local Government, 2017* allows for the Province Coordination Council to coordinate on various issues related to the functioning of provincial and local governments. The federal parliament has passed the *Act Relating to the Management of Interrelationship and Coordination between the Federation, Province and Local Level, 2020* in the month of July 2020, which is expected to provide greater clarity on the functional responsibility of three tiers of governments. The implementation of this law as per the spirit of the Constitution would facilitate the healthy relationship between three tiers of governments.

8.1 Inter-Province Council

The Inter-Province Council was formed – as provided by the Constitution – under the chairmanship of the Prime Minister, and has already held three meetings. The council comprises the home minister of the federal government, the finance minister of the federal government, and the seven provincial chief ministers. This council is provided for in the Constitution with the aim of resolving conflicts that may arise between the federal and provincial governments, and among provinces.

Although the main responsibility of the Inter-Province Council is to resolve political disagreements, its meetings have also been used to direct the implementation of federalism. At the council’s first meeting held on December 9, 2018, chief ministers of provincial governments had complained about the reluctance of the federal government in implementing

⁴⁹ International IDEA and Institute for Autonomy and Governance. 2019. *Federal Systems, Intergovernmental Relations and Federated Regions: Charter Change Issues Brief No. 5.*

federalism. A committee was formed with the federal Home Minister as the coordinator to address these complaints, and the committee prepared a 29-point working plan.⁵⁰ The working plan included a wide array of issues pertaining to the implementation of federalism and set an ambitious deadline for accomplishing all the tasks by mid-April of 2019.⁵¹ The plan included tasks like the enactment of federal laws on employee integration, education, federal civil service commission, police, and the formation of the fiscal commission, etc. Most of those tasks were not accomplished within the stipulated timeframe. Quite a few still have not been accomplished. The federal government bears most of the responsibilities with respect to the tasks included in the working plan. Some issues have gained priority in subsequent meetings of the council. An employee at the Province Coordination Division under the Prime Minister and Council of Minister's Office informed DRCN that meetings of the council have been working towards raising various issues related to provinces and to create synergy between the annual policies, programs, projects and budgets of three levels of governments.

Decisions taken by the Inter-Province Council are important in institutionalizing federalism. But the performance of the federal government in implementation has been disappointing. Examples show that the federal government is attempting to establish its superiority in its relationship with provincial governments. Six out of the seven chief ministers attended a meeting of their own two days before the first official meeting of the Council. They prepared a nine-point demand to present before the prime minister. But the prime minister, upset by the chief ministers' demands and their separate meeting, cancelled the meeting of the council. Then, only after a delay of three months, the council could finally sit for its first meeting.⁵² The fact that the prime minister,

in his capacity as the chairperson of the council, would cancel its meeting indicates that the implementation of federalism is not his priority. In such a context, questions arise about how effective the Inter-Provincial Council can be in addressing political conflicts.

8.2 Province Coordination Council

Section 105 of the Act Relating to Operation of Local Government 2017 provides for a Province Coordination Council in every province under the coordination of the chief minister of the province. It comprises provincial ministers, chief secretaries, secretaries, heads and deputy heads of district coordination committees of the province, chairpersons and deputy chairpersons of rural municipalities, and mayors and deputy mayors of municipalities, with the secretary of the ministry responsible for local level acts as the member secretary of the council. The aim of these councils is to synergize the policies of provincial and local governments, create strategic cooperation on project management, utilization of concurrent jurisdiction, and coordinate the utilization and sharing of natural resources.⁵³ Every province has held at least two meetings of such councils so far. From such meetings, Province 1, Gandaki Province, Province 5 and Sudurpashchim Province have already made the procedures for the council's meetings. Their procedures focus mostly on the operation and management of council meetings. Each province has also issued common commitments through this council.

These councils passed various decisions such as to regularly share plans and programs on budgets and fiscal management which they have passed with each other. Through these council meetings local governments also shared their experiences and achievements in policy making to the provincial governments. Local governments also called for the attention of the federal government towards conditional grants from the federal government as they had very small budgets and areas of implementation, which would make the results of implementing programs under these grants less effective. Among

⁵⁰ DRCN. 2019. *Functioning of Local and Provincial Governments in Nepal*. Periodic Report 3. Lalitpur: DRCN.

⁵¹ Sapkota, Rewati. 2018. PM, Chief Ministers Endorse Plan to Implement Federalism. Available at <https://thehimalayantimes.com/nepal/prime-minister-chief-ministers-endorse-plan-to-implement-federalism/>; accessed on July 5, 2020.

⁵² Bhatta, Lokendra 2018. Antar-pradesh parishad baithak bolaaun pradhanmantriko almal, mukhyamantriharu bhanchhan – hamra haat baandhie. Available at <http://www.ratopati.com/story/67379>; accessed on May 12, 2020.

⁵³ Act Relating to Operation of Local Government 2017, Section 105.

other decisions made by councils were decisions to not interfere in each other's jurisdictions while determining rates and types of taxes, to not impose parallel taxes, and to make available shares in revenue hitherto not mutually shared, etc. Recognizing that provincial and local governments cannot enact laws within areas of concurrent jurisdiction until the federal government passes the necessary laws, the councils decided to send suggestions to the federal government to make laws that clearly delineate the rights of provincial and the local governments within the areas of concurrent jurisdictions. Most of the decisions taken by various provincial coordination councils were similar in nature.

With respect to administrative aspects, the councils have taken decisions on issues like contacting provincial civil service commissions to fill unoccupied positions at provincial and local levels, requesting the province to immediately pass the Local Civil Service Act essential for local governments, and requesting the province to facilitate the administration of service delivery. Apart from these, other major decisions were to give DCCs the responsibility of monitoring and regulating development and construction projects, and service delivery being operated and implemented at the local level; resolving conflicts related to natural resources and heritage sites; establishing a contact unit at the respective Office of the Chief Minister and Council of Minister to coordinate between provincial and local levels; and to appoint contact persons in every provincial ministry.

Although a variety of decisions were made by councils, most elected local representatives questioned the utility of such decisions. Both elected representatives and officials at the local level complained that council meetings were irregular, that the meetings were more like crowded fairs, that not all elected local representatives received the opportunity to present their concerns at these meetings, that often the meetings felt as if representatives were present there only to listen to the provincial government, and that the decisions of the council were seldom implemented. An official at Bheriganga Municipality in Surkhet said, "There is no utility to the meetings of the Province Coordination Council – it is just an excuse to meet. It should have become a forum for exchanging views on problems faced by every local unit in the province, but it has failed to do so. And issues raised at the council seldom

translate into action." Representatives of Bulingtar Rural Municipality in Nawarparasi-East and Tinau Rural Municipality in Palpa shared that although they would attend meetings of the councils, representatives of provincial governments would put forth their views and leave without listening to local representatives.

Local representatives held the opinion that although the council's aim is to coordinate between the province and its local units to resolve mutual misunderstandings, it had failed at achieving anything substantial. An elected representative of Arjunchaupari Rural Municipality in Syangja revealed the fact that although the Province Coordination Council is supposed to meet three times a year, it managed to only meet three times over two years. She said, "We have presented our issues at council meetings. We have demanded the mandatory appointment of a legal counsel to the judicial council of every rural municipality. But we do not know when our demand will be addressed." A deputy secretary at the Office of the Chief Minister and Council of Ministers of Bagmati Province also revealed that although various decisions were taken and resolutions were issued during the second meeting of the council, they had not been implemented.

Some elected local representatives asserted that the chance of concerns being addressed at Province Coordination Council meetings were minimal since there were no opportunities to openly express issues, and that it was easier to get work done at the provincial level through informal meetings and contacts. "If a local level has any complaints for the provincial government, elected local representatives do not sit around waiting for Council meetings – they go directly to the provincial government and express their concerns," a representative of MuAN said. She added, "There is bound to be a political connection between elected representatives at the local and provincial levels. Therefore, if there are any issues regarding budgets and project formation, or in their implementation, they solve it politically."

Province Coordination Councils have become limited to passing decisions, they have not been able to issue substantial measures, procedures or guidelines on the interrelationship between local and provincial levels. Although, through council decisions, DCCs have been given the authority to resolve political conflicts arising

between two or more local governments, many elected local representatives said that it would not be effective since DCCs lack any legal basis or resources.

8.3 District Coordination Committee

Article 220 of the Constitution provides for the formation in each district a District Coordination Committee (DCC) elected from among the chiefs and deputy chiefs of all the local governments within that district. The Article provides the DCC with the responsibility of coordinating between local levels in the district; regulating development work; and coordinating between offices of the federal and provincial governments in the district and the local level. The DCC can play an important role in resolving misunderstandings that may arise between local governments and offices of the federal and provincial governments or between multiple local governments. However, DRCN found confusion regarding the actual role of the DCC among members of the DCC itself, and among many others.⁵⁴ The DCC lacks resources, laws and the authority to implement its decisions, because of which questions have been raised about the effectiveness of its roles.⁵⁵ “There is nothing for us to do. We come to the office, sign the attendance, go home. Sometimes, when there are conflicts regarding contracts for sand, stone or gravel, local governments wish the DCC would address the conflict. We look into the issues in such circumstances,” an official at the Kanchanpur DCC said. Similarly, a representative of the Lekbeshi Municipality in Surkhet said that although, recently in Karnali Pradesh, a Province Coordination Council meeting discussed having the DCC monitor projects being implemented by local governments, it was not effective because the DCC lacked relevant resources.

DCCs were found to be regulating issues like development work, budget implementation and mining of natural resources by local governments. But complaints were heard that such regulations were

not appreciated by local governments, and that even if irregularities were found, the DCC lacked any executive authority to take actions. This made the regulation ineffective. It was found that there were even conflicts between some DCCs and local governments (See: Case Study 3). According to DCC representatives, local level representatives question the authority of DCC as ‘the fourth level of government’ while also complaining of not being able to complete their functions on time due to lack of assistance from the DCC. However, examples were found of the DCC resolving conflicts between local governments, or of attempting to resolve such conflicts. The DCC resolved conflicts between Mahakali Municipality and Bhimdutta Municipality of Sudurpashchim Province arising due to issues surrounding the utilization of stone, gravel and sand from the Mahakali River along their mutual border. The DCC was also found to have been involved in requisitioning and studying maps and conducting dialogues to resolve a debate regarding the ownership of the Gadbijula Lake falling between Laljhadi Rural Municipality and Krishnapur Rural Municipality of the same province. In Bagmati Province, the conflict regarding taxes on the Chandragiri Hills cable car being operated in Kathmandu was also resolved by the DCC.

A look at decisions made by Province Coordination Councils and programs and projects of provinces shows that provinces are planning to develop DCCs as effective regulating and coordination units. Provinces were found to have issued laws, procedures and budgets to clarify roles and authorities of DCCs. For example, Province 1 and Sudurpashchim Province had issued laws related to their DCCs while Bagmati Province had issued a regulation and a procedure related to its DCCs. However, even at the province-level, questions were raised regarding the political relevance and role of DCCs. Province 5 had raised the issue as one of a problem in and challenge to the implementation of federalism, saying, “The DCC, which is formed in accordance with Article 220 of *The Constitution of Nepal*, appears to lack any political definition in relation to three levels of federalism, and therefore it appears necessary to amend the Constitution to address the rights of the said Committee.”⁵⁶ Appropriate discussion, coordination and decision-making between

⁵⁴ DRCN. 2019. *Functioning of Local and Provincial Governments in Nepal*. Periodic Report 4, p. 11. Lalitpur: DRCN.

⁵⁵ Basnet, Laxmi. 2019. Fursadila Jisasa. Available at <http://nepalihimal.com/article/18111>; accessed on May 11, 2020

⁵⁶ Province Government, Province 5, Office of the Chief Minister and Cabinet of Ministers. 2076 B.S. *Two years of*

three levels of governments regarding rights, roles and political status of the DCC is necessary.

9. Conclusion and Recommendations

9.1 Conclusion

After the federal restructuring, three levels of governments were created in Nepal. Whereas the provincial set-up is entirely new, local governments were formed by restructuring the erstwhile local units. The Constitution separates the exclusive and concurrent jurisdictions for the three levels, while residual rights rests with the federal government. But, in many instances, lists for exclusive and concurrent jurisdictions are unclear or in conflict with each other. Therefore, it is not easy for laws to be enacted at local and provincial levels – especially when it pertains to areas of concurrent jurisdiction. Although the Constitution establishes the supremacy of federal laws, the federal government has failed to issue important structural laws even four years after the promulgation of the Constitution. Therefore, the provincial and local governments continue to carry out more functions in areas transferred to them by the federal government and less within their areas of jurisdiction.

Along with the transfer of structures hitherto under the federal government, employee integration was done to facilitate the administrative management of provincial and local governments. Although the integration process addressed the lack of employees in the provincial and local governments to some extent, a shortage of key personnel persists. Whereas functions of governance have largely shifted to local and provincial levels, the federal government retains the largest share of employees. Since the federal government appoints heads of provincial ministries and chief administrative officers at the local level, senior employees did not choose to be integrated into the provincial or local level. When chief employees at provincial and local levels are appointed by the federal government, their loyalties seem to reside with the

establishment of the Province, Province 5. Butwal: Office of the Chief Minister and Cabinet of Ministers.

federal government. Frequent transfer of employees by the federal government has also affected the functioning of local governments and provincial ministries. The NNRF, envisioned to implement fiscal federalism, was established and has been determining the basis and framework for fiscal transfers based on specific processes and indices. But laws enacted to implement fiscal federalism continue to restrict the jurisdiction of the commission. Those laws have become hindrances toward an equitable redistribution of revenue and state resources in a manner envisioned by the Constitution.

The dominance of the federal government – with its constitutional legal supremacy and residual rights – is clearly seen in the process of implementing federalism. The effect is seen in the budgeting process and project implementation across three levels of governments. Instead of utilizing the formal mechanism for fiscal transfer to fully transfer rights to local and provincial governments, the federal government has been implementing small and large projects alike through the local level by granting spending authority. In parallel, smooth relations between provincial and local levels are also absent. Although some attempts have been made to avoid duplication in programming, both levels have been thinking of themselves as autonomous, and of each other as competitors.

Inter-governmental structures have been established to manage the relationship between three levels. Structures like the Inter-Province Council and Province Coordination Council have played positive roles in the implementation of federalism. Through the Inter-Provincial Council, provincial governments have been able to put pressure on the federal government to make the process of implementing federalism more effective. But, the fact that the federal government has reneged from honoring its commitments made before the council has made the body weak and ineffective.

The Province Coordination Council has become an appropriate forum for the exchange of information between local and provincial levels regarding their functions and accompanying challenges. However, this council, with too many members in the form of elected representatives, appears incapable of becoming a space for nuanced dialogue that is required for policy-level cooperation and coordination between the two levels. Because of these challenges, the existing

inter-governmental structures are unable to establish a cooperative relationship between three levels of governments. Consequently, the implementation of federalism is moving forward based solely on the evaluation and decisions made by the federal government. As the political leadership at the federal level continues to fail in providing a clear direction for federalism, the working style and practices from the centralized system continue to dominate the federal structure.

9.2 Recommendations

For the Federal Government

- Since the jurisdictions of three governments as listed in the Constitution are unclear and in conflict with each other, clarity must be established regarding them. It is imperative for the federal government to coordinate with provincial and local governments to enact laws within areas of concurrent jurisdictions.
- Laws related to natural resources must be enacted to guarantee the National Natural Resources and Fiscal Commission the autonomy to determine the basis and structure for equitable redistribution of state resources between three levels.
- Instead of implementing projects by delegating expenditure authority to local governments at the middle or end of a fiscal year, it is necessary to send projects for implementation at the beginning of the year through conditional, matching or special grants. The responsibility of project selection should be transferred to provincial and local levels, and the priority of the federal government should be on issues related to overall policy formation and specification of standards.
- The Inter-Province Council must be utilized to resolve conflicts between provinces or between a province and the federal government, and

its decisions must be followed by the federal government with urgency.

- Provisions related to fiscal federalism and other provisions and systems created to promote coordination and cooperation between three levels of governments should be simple, clear, and comprehensible to elected representatives at every level.

For Provincial Governments

- Instead of awaiting federal framework laws in areas of concurrent jurisdiction, provincial governments can legislate and implement in accordance with the spirit of the Constitution. Provincial governments should begin enacting and implementing laws pertaining to their jurisdictions with determination and confidence.
- Specific work-plans should be created and implemented through extensive consultations to establish long-term policy-level coordination with local governments.
- Regular meetings of the Province Coordination Council must be held; efficient representational sub-committees in order to facilitate nuanced discussions on issues with local governments must be established, regular discussions of the sub-committee must be held and decisions must be passed through council meetings. Such decisions must be disseminated to all local governments.

For Local Governments

- Initiate consultations with the federal and provincial governments on policy-level coordination.
- Reject the practice of requesting projects from the federal government on the basis of personal and political contact and instead demand that the federal

and provincial government utilize relevant structures for the equitable redistribution of state resources.

- Hold informal meetings with neighboring local governments to exchange experiences or discuss challenges instead of awaiting meetings of the Province Coordination Council. Raise serious issues encountered during such informal meetings at council meetings.

For the Supreme Court

- Cases related to federalism, the jurisdictions of three levels of governments, and their interrelationship should be adjudicated with urgency.

For Political Parties

- Since the political parties have an important role to play in providing a direction for federalism, it is imperative for all political parties to remove misconceptions regarding federalism among their leaders, cadres and constituents at provincial and local levels.
- It is necessary to restructure party organizations and structures in accordance with federalism and the spirit of the Constitution. Party structures must be given completion in order to move away from a centralized and individual-centric working culture towards establishing a culture based on rules and processes.

