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Intergovernmental Fiscal Relations in a Federal Nepal

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Abstract

This paper focuses on intergovernmental relations (IGR) in Nepal, the world's newest federal nation, through a descriptive account of its political, financial, and administrative aspects. It also depicts the major achievements and challenges seen during implementation. The Constitution lists the exclusive and concurrent powers of the federal, provincial, and local governments, and it calls for coordination and cooperation with each other in exercising these powers. Some problems have arisen while exercising these powers among three tiers of government, but from the perspective of intergovernmental coordination and cooperation, there are no significant problems in Nepal's federalism. However, in order to strengthen the implementation of federalism in Nepal, there is a need for regular and intensive discussions and interaction between the federal, provincial, and local governments.

Keywords: federalism, intergovernmental relationships, federal, provincial and local governments

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1. Introduction

The basic aspect of federalism is the division of state power and authority between the various levels of government (i.e., federal, provincial, and local). In the federal system of governance, the political, administrative, economic, judicial, and other functional responsibilities of the country are divided among the various levels of government. The main basis of federalism is the diversity of units within a federation. Countries that are demographically and geographically small or large, economically rich or poor, etc., have adopted the federal governance system. Like other federal countries, the state power in Nepal is divided into different spheres of government—specifically, federal, provincial, and local government levels. As the state power is shared among the levels of government, there is a need for closer ties between these spheres of government on issues related to the implementation of functional responsibilities.

A positive aspect of Nepal's federalism is that the basic principle of intergovernmental relations (IGR) is elaborated in the Constitution itself. Regarding the theoretical definition of IGR, Poirier and Saunders (2015) state that it is integral to every federal system, regardless of differences of history, geography, constitutional framework, and legal culture, distribution of competences or resources, and federal design. IGR may involve any or all arms of government—legislatures, executives, courts, and quasi-autonomous agencies; it may be formalized through constitutional or legislative provisions. Equally, however, IGR encompass a variety of informal models of collaborations and cooperation. As they say, Nepal's intergovernmental level relations are constitutional, legal, formal, informal, etc. In line with the Poirier and Saunders statement, Watts (2003) writes about various aspects and importance of IGR. As he states, intergovernmental interdependence within federations has two important dimensions. First, there are the vertical relations between governments of different orders, i.e., federal-provincial relations, provincial-

local relations, and federal-local relations. Increasingly such vertical relationships within federations may also involve supra-federation organizations (e.g., the European Union) or other countries. A second dimension is the horizontal relationships of different governments within the same sphere, such as inter-provincial or inter-local relations. Typically, in federations, both kinds of intergovernmental relations have been important. Within each of these two dimensions, intergovernmental relations may involve all the governmental units within a federation or regional groupings of governments.

Based on these definitions, it is clearly argued that intergovernmental relations are the processes, structures, rules, and institutions of interactions between the three spheres of government. In the context of Nepal, the intergovernmental relationship between the spheres of government is the process of maintaining policy harmony between the different governmental interactions: federal with provincials and locals; provincials with other provincials and locals; locals with other locals.

Part 20 of the Constitution of Nepal highlights the provision of intergovernmental relations. Article 232 of this part states that “the relations between the Federation, Provinces, and Local level shall be based on the principles of cooperation, co-existence and coordination.” According to this spirit of the Constitution, it can be said that coordination and cooperation have been emphasized in the Nepalese federalism. The intention of the Constitution is that the federalism of Nepal can be made successful only by working together. There is no alternative to strengthening intergovernmental coordination and cooperation in Nepal.

The remaining sections of this paper are as follows. The second section contains a brief account of Nepal's geography and demographic situations. Functional and revenue-raising powers and intergovernmental transfers are elaborated in the third section. The fourth section is the most

important; this section discusses the political, economic, administrative, and planning areas of intergovernmental relationships. The fifth section describes institutional arrangements for intergovernmental relations—10 different institutional structures, including Inter-Provincial Council, are briefly discussed. The sixth section discusses some of the major achievements, and the seventh discusses the areas of problems. The last section deals with future guidelines.

2. Demographic and Political Setting

Nepal has just upgraded to a lower-middle-income country from a low-income country¹; however, the per capita income is only USD 1090. The population comprises 26 million² people, spread over 147,516³ square kilometers (Table 1). Situated in South Asia, it is also known as the land of Mt. Everest, the highest peak of the world and the birthplace of the Buddha.⁴ It has a diverse topography and climate. Kathmandu is the capital and the largest metropolitan city in Nepal. Nepal is a multiethnic country with 125 castes and ethnic groups. As a first language, 123 different languages are spoken in Nepal, with Nepali as the official language. Agriculture is the main source of the economy, and it comprises about 27 percent of the country's gross domestic product (GDP). Around 20 percent of people live below the poverty line.⁵

¹ According to the details made public by the World Bank on July 1, 2020, Nepal has been upgraded from a low-income country to lower-middle-income country (blogs.worldbank.org/opendata/new-world-bank-country-classifications-income-level-2020-2021#). As the Bank writes, as of July 1, 2019, Nepal's per capita income was USD 960, while as of July 1, 2020 the income has risen to USD 1,090. Comparing to the neighboring countries of China, India, Sri Lanka, etc. Nepal's per capita income is still very low.

² At the time of the 2011 population census, Nepal had a population of 26,494,504. However, as per the estimates of the Central Bureau of the Statistics, it crossed 30 million in June 2020. As of July 6, 2020, Nepal's population is 30,011,025.

³ In May 2020, Nepal released revised political and administrative map and has included 335 sq. km of additional land in the map. With this, Nepal has now an area of 147,516 sq. km. According to the Department of Survey the earlier version of Nepal's map was issued in 1975, it covered an area of 147,181 sq. km.

⁴ Buddhism is the fourth largest religion in the world, being the majority religion of many countries like China.

⁵ 15th Plan, National Planning Commission, Government of Nepal.

Following the declaration of the Federal Republic in 2006, the elections for the Constituent Assembly (C.A.) were held in 2008. The first meeting of Assembly abolished the 240-year-long monarchy. However, there were many disturbances during the period of C.A. These disturbances included frequent changes in the government, nationalist movements with demands of regional and ethnic states, etc. All these factors caused the C.A. to fail in drafting the Constitution and resulted in its dissolution without the Constitution in 2012.⁶ Initially, the C.A. term was for two years, and then it extended for another two years. However, it failed to promulgate the Constitution even after the four-year period. The second election for the C.A. was held in 2013. The second C.A. was able to promulgate a federal democratic republic constitution with a 90-percent majority in September 2015. The Constitution divided Nepal into seven provinces, named as numbers, and the respective provincial assemblies were given authority to settle the naming issues. As of July 2020, only four provinces have named their provinces. Likewise, following the constitutional provisions and upon the recommendation of the Local Level Restructuring Commission, around 3,500 existing local bodies were restructured into 753 new local-level units.⁷ The elections for the local, provincial and federal levels of governments were held in 2017, and the new system is now in its three years of operations. The Nepal Communist Party emerged as the ruling party with a strong majority at the federal level, as well as six of the seven provinces.

⁶ The first CA was dissolved due to impasse on the number and naming of provinces as well.

⁷ Previously there were 3,157 Village Development Committees (VDC) and 217 municipalities. The government reduced the number of rural jurisdictions from 3,157 to 460. However, the number of municipalities increased from 217 to 293. Currently, the rural jurisdictions are referred to as GauPalika (Rural Municipality). Further, based on the population size, municipalities are also classified in three categories: Metropolitan (larger municipality), Sub-metropolitan (medium size) and Municipality (smaller size). In pre-federalization period, local governments were referred to as "Local Bodies". However, after federalization it is referred to as "Local levels". Whatever the local bodies or the local levels, they are actually the local governments. The only difference is in the labels.

The demographic, economic, social, and other characteristics of the provinces are reported in Table 1. The table shows that the Bagmati province comprises the largest population. On the other end, the Karnali province has the lowest population at only 6 percent. However, this province comprises the largest geographical area, 22 percent. In terms of local government units, Province One has the largest number, 137. The Karnali province includes the lowest number at 79. In terms of the number of provincial Assembly is concerned, the Bagmati province has the highest at 110 members; the Karnali province has the smallest number of constituent local governments. Table 1 also reports the share of provincial GDP in total national GDP. The Central Bureau of Statistics has estimated that the GDP of Nepal for 2019-20 will reach only around USD 37 billion. After apportioning this figure on a provincial basis, the Bagmati province accounts for one-third of 35.84 percent. However, the Karnali province contributes the lowest share of only 4.27 percent. In terms of the literacy rate, the Bagmati province and Province Two represent the highest and the lowest cases, respectively. Further, in terms of electrification, Karnali and Sudur-Paschim fall below the national average of 90 percent. Since the formation of the provincial governments in 2017, all provincial governments have executed three full budgets so far. On June 15, 2020, all the provincial governments passed their budgets for the fiscal year 2020-21. In terms of the size of their budgets, the Bagmati province represented the largest figure. The details presented here show that, like other federal countries, provinces of Nepal are diverse in nature.

Table 1. Some Statistical Details of Nepalese Provinces

Province	Population	Total area	Local governments	Provincial assembly members	Share in national GDP (2019-20) ⁸	Literacy rate (above 15 years) ⁹	Population with access to electricity ¹⁰	Provincial Budget (2020-21) ¹¹
	,000 (%)	Sq.km	number	number	%	%	%	US \$ (,000)
One	4,535 (17)	25,905 (18)	137	93	15.82	64.0	86.3	340,833
Two	5,404 (20)	9,661 (7)	136	107	13.78	40.0	87.3	279,674
Bagmati	5,529 (21)	20,300 (14)	119	110	35.84	69.0	95.8	428,562
Gandaki	2,404 (9)	22,585 (15)	85	60	8.90	67.0	87.5	290,351
Five	4,499 (17)	17,318 (12)	109	87	14.18	58.0	89.1	302,938
Karnali	1,570 (6)	31,873 (22)	79	40	4.27	52.0	27.7	281,178
Sudur-Paschim	2,553 (10)	19,874 (13)	88	53	7.21	54.0	67.3	278,178
Nepal	26,495	1,47,516	753	550	100	58.0	90.0	2,201,712

Note: Numbers in parentheses indicate percentage.

3. Functional and Revenue-Raising Powers and Intergovernmental Transfers

The Constitution refers to spheres of competence as: a) exclusively federal functions; b) exclusively provincial functions; c) exclusively local functions; d) concurrent functions of federal and provincial governments; and e) concurrent functions of federal, provincial, and local governments. In its schedules, the Constitution assigns power and functional responsibilities to the federal, provincial, and local governments. There are 35 tasks on the federal list, 21 tasks under the provincial list, 22 tasks of local government list, 25 tasks under concurrent list of federal and provincial, and 15 tasks under concurrent of federal, provincial, and local. Table 2 includes some of the exclusive and concurrent powers assigned to the federal, provincial, and local governments. A detailed assignment of powers in the Constitution is included at the Annex.

⁸ As per Economic Survey of FY 2019/20 published by the Ministry of Finance, the GDP of Nepal has reached Rs. 3,767 billion.

⁹ 15th plan, National Planning Commission.

¹⁰ 15th plan, National Planning Commission.

¹¹ In aggregated provincial budgets, the shares of grants and revenue sharing are 38 % and 23 % respectively. Another 22% was accounted for by the cash balance of previous fiscal year i.e. unspent budget. Further, own-source revenues and loans contributed 14 % and 3 % respectively. As per the exchange rate of July 3, 2020, the conversation rate, 1 USD equals 120 Nepali Rupees.

Table 2. Exclusive and Concurrent Powers to Federal, Provincial, and Local Government

	Exclusive Powers	Concurrent Powers	
		Federal and Provincial	Federal, Provincial, and Local
Federal	Defense, central planning, currency, foreign affairs, citizenship, passport, etc. (Schedule 5)	Civil and criminal procedure, supply and distribution of essential goods, population management, social security, casino, etc. (Schedule 7)	Cooperatives, education, health, agriculture, irrigation, mines, minerals, disaster management, environment, forest, personal events, archaeology, motor vehicle permits, etc. (Schedule 9)
Provincial	Provincial police administration, provincial civil service, higher education, provincial-level development activities such as electricity, irrigation, roads, land management, etc. (Schedule 6)		
Local	Town Police, management of local services, basic and secondary education, basic health, local roads, drinking water, etc. (Schedule 8)		

Source: Constitution of Nepal

Many functional responsibilities assigned to the federal, provincial, and local governments have been overlapped and duplicated within the spheres of governments. In order to avoid confusion, overlapping, and duplication between federal, provincial, and local governments, each function needs to be clear. In order to follow the ‘finance follows the function’ principle, the respective roles of functions need to be made clear. “Who will do what” is the essence of the functional assignment. Based on ‘subsidiarity’¹² and other principles such as policy, regulation, financing, provision, and production of goods and services, an unbundling exercise was carried out. This unbundling¹³ exercise is the foundation of Nepal's federalism. Most of the federal and sub-federal (provincial and local governments) level’s laws and regulations have been made based on these exercises.

Table 3 includes revenue-raising powers of the federal and sub-federal level governments, where the federal government still retains the major revenue headings. In Nepal’s federalism, functional

¹²The “subsidiarity” principle states that functions should be assigned to the lowest level of government competent to provide efficient delivery of services.

¹³ Province 5 Chief Minister Mr. Shankar Pokharel told this writer that, “If there were no such analysis, there would have been a tussle between the federal, provincial and the local governments. All our sectoral laws are based on this analysis.”

responsibilities have been constitutionally devolved to the sub-federal levels; however, revenue-raising powers are still centralized.¹⁴

Furthermore, Table 3 shows that some of the revenue-raising powers at the provinces and local levels are the same where powers are overlapped and repeated. To solve this problem, a single tax administration system has been followed. This means that one level of government collects and distributes it to the other. For example, provincial governments collect vehicle tax and share 40 percent to their local governments.

¹⁴ In overall tax revenue collection, VAT makes a lion contribution of 30.88 percent followed by Customs and other import duties (19.52 percent), Payable by enterprises and corporations (15.47 percent) and Excise (15.14 percent) respectively. Further, the share of taxes on use of goods and permission to use goods is 3.52 percent. The cumulative share of these five taxes is around 85 percent. Simply, as per the Constitution, these five tax headings were designated as exclusive revenue-raising powers of federal government. Further, federal government also retains a greater share from the non-tax headings as well (Devkota, 2017).

Table 3. Revenue-Raising Powers Assigned to Federal, Provincial and Local Governments

	Federal	Provincial	Local
A. Tax Revenue	(1) Custom Duty (2) Excise Duty (3) Value Added Tax (4) Corporate Income Tax (5) Personal Income Tax (6) Remuneration Tax	(1) House and Land Registration Fee (2) Vehicle Tax (3) Entertainment Tax (4) Advertisement Tax (5) Tax on Agricultural Income	(1) Property Tax (2) House Rent Tax (3) House and Land Registration Fee (4) Vehicle Tax (5) Land Tax (Land Revenue) (6) Entertainment Tax (7) Advertisement Tax (8) Business Tax
B. Non-Tax Revenue	(1) Passport Fee (2) Visa Fee (3) Tourism Fee (4) Service Fee (5) Gambling/Lottery, Casino (6) Fines and Penalties	(1) Service Fee (2) Tourism Fee (3) Fines and Penalties	(1) Service Fee (2) Tourism Fee (3) Fines and Penalty
C. Other Revenue	(1) Other tax and nontax raised/levied according to federal and other prevailing laws.	(1) Other tax and nontax raised/levied according to the provincial law and other prevailing laws on the provincial jurisdiction.	(1) Other tax and nontax raised/levied according to the local law and other prevailing laws on the local government level jurisdiction.

Source: Constitution of Nepal, as quoted in the Intergovernmental Fiscal Arrangement Act, 2017.

The analysis of the revenue assignment reveals that the Constitution assigns most of the revenue-raising powers to the federal government. However, this does not mean that the federal government uses all the revenue on its own. This revenue goes to the provincial and local government levels through the fiscal transfer channel. In this context, Article 60 (2) of Constitution states that “The Government of Nepal shall make necessary arrangements for the equitable distribution of the revenue generated by it from its sources, between the federal, province and the local level entities.” According to this arrangement, the provincial and local governments receive four grants, namely: fiscal equalization, conditional, special, and matching. In addition to these four grants, the provincial and local governments have a legal provision to receive 15/15 percent fiscal resources from VAT and Excise Duty from domestic production under the heading of ‘Revenue Sharing.’ Similarly, the province and local levels get 25/25 percent royalty from natural resources. These natural resources include mountaineering,

hydropower, forest, minerals, etc. The Constitution also provides for a National Natural Resources and Fiscal Commission (NNRFC) to manage fiscal transfers. The NNRFC has already been formed and is working within the scope given by the Constitution. However, full-time office bearers have not been nominated in the two years since the Commission was formed in 2018.

The sub-federal levels have their own autonomy to utilize the resources received from fiscal equalization grants and revenue sharing headings. They can spend according to their needs and priority. However, other grants do not have such provisions. Moreover, they have to spend in the same area and sectors for which the grant is received. For example, the conditional grant transferred to the local government level includes the salary and other allowance of about 80 percent of schoolteachers. The demand at the provincial and local government levels is that the fiscal equalization grant should be increased.

The detail of the fiscal transfers to the provincial and local governments in FY 2019-20 and 2020-21 is presented in Table 4. As per the table, the provincial and local governments had received 30 percent of the total federal budget in FY 2019-20. In FY 2020-21, they have received about 33 percent. It seems that provincial and local governments have received a figure of one-third of the federal budget. It reveals the vertical share of fiscal transfer is satisfactory.

The ratio of fiscal transfer to GDP decreased in FY 2020-21 has compared to FY 2019-20. In FY 2020-21, the numeric figure of the federal budget was Rs. 1,532 billion. Due to COVID-19, the numeric size of the federal budget declines to Rs. 1,474 billion in FY 2020-21. The size of the federal budget has decreased compared to the previous year. However, the estimated size of the

GDP has been increased.¹⁵ Although the fiscal transfer ratio has decreased in proportion to the GDP in 2020-21, the numeric figure of transfers to the sub-federal level has increased from Rs. 464 billion (FY 2019-20) to Rs. 485 billion in FY 2020-21. In fact, 11 to 12 percent of GDP received by the sub-federal levels in Nepal as fiscal transfers is much higher than in most of the federal countries.¹⁶ However, it is equally important to adopt the principle that finance follows the function in the transfers as well.

Table 4. Intergovernmental Transfers: Vertical Shares (Rs, billion and percentage)

	Provincial		Local		Sub-federal total	
	2019-20	2020-21	2019-20	2020-21	2019-20	2020-21
Fiscal equalization grant	55.3	55.19	89.95	90.5	145.25	145.69
Conditional grant	44.55	36.35	124	161	168.55	197.35
Special grant	5	3.14	5	6.83	10	9.97
Matching grant	5	5.19	5	4.78	10	9.97
Revenue sharing	65	61.07	65	61.07	130	122.14
Total	175	161	289	324	464	485
Percent of the federal budget	11.41	10.92	18.86	21.99	30.27	32.91
Percent of GDP	4.64	3.72	7.67	7.48	12.31	11.20

Source: Government of Nepal, Ministry of Finance, National Natural Resources and Fiscal Commission, and National Planning Commission.

4. Various Aspects of Intergovernmental Relationships

Nepal moved from a unitary to a federal governance system through a new constitution enacted in September 2015. The Constitution spells out three tiers of government. The Constitution clearly outlines the authority of the three levels of government in its Schedules 5, 6, 7, 8, and 9.

¹⁵ The Central Bureau of Statistics (CBS) estimates that the 2019-20 GDP will be Rs. 3,767 billion. The CBS has not yet estimated the GDP for FY 2020-21. However, for the GDP estimation for the FY 2020-21, the economic growth and inflation rate were considered at 5 percent and 7 percent, respectively. Although the Government of Nepal estimates that, the economic growth rate will be 7 percent in 2020-21. The projection of IMF is around 5 percent. The IMF estimation is considered for the GDP estimation. The inflation estimates derive from the government.

¹⁶ According to the Government Finance Statistics (GFS) portal on the IMF E-Library, in terms of federal transfers as a share of GDP, Nepal is only second to Belgium, where federal transfers were over 14 percent of GDP and over half of the federal budget as of 2018.

The schedules outline the exclusive and concurrent list of functions of each tier of government. The Constitution visualizes a non-hierarchic relationship between the three levels of government, as mentioned by the principle in Article 232 of the Constitution. The Constitution spells out the spheres of government as autonomous (exclusive functional assignments) and interdependent upon each other through shared concurrent functions. The Constitution provides the sub-federal units extensive powers to prepare an annual budget, formulate and implement laws, policies, and plans on any matters within their respective jurisdictions (Art. 59). As stipulated in Article 232 of the Constitution, Nepalese federalism is based on principles of cooperation, coexistence, and coordination. The following section highlights the political, administrative, and economic interrelationships between different levels of governments in Nepal.

Constitutional and Political Interrelationships

The federal parliament in Nepal is composed of the House of Representatives (Lower House) and the National Assembly (Upper House). Out of 275 members in the Lower House, 165 come from the first-past-the-post electoral system, and the rest comes through the proportional electoral system. Under the proportional system, the representation is ensured for women, backward regions, backward caste, and indigenous groups, etc. The Upper House consists of 59 members. Out of these, 56 come from an electoral college composed of provincial parliamentary members and chiefs and deputy chiefs of local government representatives. Regardless of the size of population, eight members represent each province. The Constitution has ensured at least one-third of women representatives in the provincial and federal parliaments.¹⁷ Constitutionally, almost all parliamentarians in the Upper House represent the sub-federal governments. However,

¹⁷ The same provision is also applicable for the Local Government as well. Currently, the Local Level assemblies have 35,041 elected representatives. Among them 41% are women. Further, out of the total number of representatives, around 20% are accounted for by the Dalit women - the most deprived caste and ethnicity groups in Nepal.

based on the experience of three years of implementation of federalism, the Upper House has not yet seriously advocated for the powers of the provincial and local governments.

The Constitution has the provision of the Inter-Provincial Council (Art. 234) to settle political disputes raised between the federal and provincial governments and among provinces as well.

The Council chairs by the Prime Minister (See Section 5 for more details). One important part of the Constitution is that the federal parliament designs intergovernmental coordination law in order to maintain coordination between the spheres of government (Art. 235). The federal parliament endorsed the bill on June 23, 2020.¹⁸ Similar to the federal parliament, the provincial parliament has the authority to draft a coordination law to settle political disputes between the provincial and local government levels and between local governments. As of July 2020, no provinces have enacted this law. In fact, all the provinces were waiting for federal interrelationships law. Now that this federal law has been adopted, all the provinces can be expected to make such a law soon.

The Constitution also has the provision to form a constitutional bench in the Supreme Court (Art. 137) in the case of disputes over constitutional jurisdiction between the various spheres of government (Section 5 briefly analyzes this issue).

The Constitution has given state power to the sub-federal governments and established the relationship between the federal levels as non-hierarchical. However, like in a hierarchical order, the federal government has powers to give necessary directions on national interest and on matters relating to coordination between the provinces, and it is the duty of the province to abide

¹⁸ The approved bill comprises the basis of inter-governmental relationships between the spheres of government, guidelines to prepare legal documents, policy and planning, a basis for drafting laws for exclusive and concurrent powers, formation of the National Coordination Committee, Sectoral committees, settlements of inter-governmental disputes, etc.

by such directions. In case of not following the direction, the federal government shall suspend or dissolve the provincial parliament and provincial government for a period of six months (Art. 232). Moreover, the federal government may directly, or through the provincial government, give necessary directives to the local governments. As per the Constitution, the local government must mandatorily follow the directives.

The Constitution has functional lists of exclusive and concurrent power for the spheres of government. The federal government and provinces can determine the process and procedures of forming their laws. However, local governments must follow the law-making process provided by their provincial government (Art. 226). The meeting procedures and rules of local government level assembly, the formation of committees, and facilities receivable by members of the local government levels shall be based on provincial laws (Art. 227). In fact, Articles 226 and 227 of the Constitution link the relationship between the provincial and the local government levels.

Furthermore, one province should assist in the execution of legal provisions or judicial and administrative decisions or orders of another province. A province may exchange information and consult with another province on matters of common concern and interest, coordinate with each other on their activities and legislations, and extend mutual assistance. Similarly, a province shall, in accordance with its provincial law, provide equal security, treatment, and facility to residents of another province (Art. 233).

Likewise, as per the Local Government Operation Act 2017, the federal government can change the name, center, demarcation, and number of wards¹⁹ at the local government level on the

¹⁹ Each local government is further divided into five to 35 wards, making a total of 6,743 wards in Nepal. A ward is the smallest local government unit.

recommendations of the respective provincial government. For this, the meeting of the concerned local government level assembly must pass by a two-thirds vote and send it to the federal government through the provincial government.²⁰ The Local Government Act also has the provision of forming the Provincial Coordination Council. The Council is a formal legal mechanism to facilitate planning and budgeting issues between provincial and local governments. Further details on this council is provided in Section 5.

Administrative and Planning Interrelationships

The Constitution has a provision to provide necessary mechanisms for the delivery of services at the provincial and local government levels. For this, the federal government arranged for the delivery of services by carrying out adjustments of the employees serving in the government services at the provincial and local government level (Art. 302).

Embracing this spirit of the Constitution, the federal government had enacted the Employees Adjustment Act 2017 and integrated about 100,000 existing civil servants into new roles at the federal, provincial, and local government levels. Accordingly, 45 percent of the employees have been integrated at the local government level and 15 percent at the provincial level. Given the functional assignments, the number of employees should have increased at the sub-federal levels. There are complaints that many employees have been integrated at the federal level. At the sub-federal levels, there is a widespread problem of staff shortage.

As per the Constitution, each provincial government can create a Provincial Public Service Commission. The functions, duties, and powers of the Commission shall be as provided in the Provincial Law. However, the federal parliament can determine grounds and standards for the

²⁰ By July 2020, the federal government has changed 62 local governments' centers, 18 local governments' names, and 22 local governments' name and center.

Commission (Art. 244). Based on federal standards, all provinces have designed their laws, and as of July 2020, six provinces have created the Provincial Public Service Commission. This Commission will fill the needs for provincial and local government level staff. The Local Government Operation Act also stipulates that in the permanent post of local government level, only the candidates selected and recommended by the Provincial Service Commission can be appointed.

Many have praised Nepal's provision of having permanent staff at the local government level through the Provincial Public Service Commission. However, in the changed context, the Federal Civil Service Act²¹ has not yet been passed by the full Bench of Federal Parliament, so the Civil Service Acts of the provinces have not been drafted. Provincial Public Service Commissions have not been able to function due to the absence of the Provincial Civil Service Act. In fact, the provinces are in favor of drafting the Provincial Civil Service Act in line with the basic norms, standards, recognition, and provisions of the Federal Civil Service Act.

In terms of planning linkages, the local government level has the provision to align its plan/programs with the federal and provincial levels. As per this, the local government level may develop and implement periodic (multi-year), annual, strategic, and sectoral medium-term

²¹ The Federal Civil Service Bill was under consideration in the 'State Affairs and Good Governance Committee' of the House of Representatives of the federal parliament for almost two years. The bill had been in the committee of the federal parliament for a long time due to disagreement on whether the employees who have been adjusted to the provincial and local government level can return to the federal civil service, the age limit of the employees, whether the provincial and local government Chief Administrative Officers belong to the federal civil service, how many reservations to make for different disadvantaged communities, etc. After two years of squabbling, the committee approved the bill on 28th June, 2020. The bill was passed by making the chief secretary of the provinces part of the federal government while allowing the secretaries of the sectoral ministries of the province and the chief executive officers of the local governments to be recruited through the provincial public service commission. However, the federal government is of the view that the chief administrative officer at the local government level should be sent by the federal government. There is confusion as to whether the bill passed by the committee will go to the full bench of the parliament or not. As the current session of parliament ends on July 2, 2020, the future of the bill remains unclear.

development plans in pursuance to the policy, target, goal, time limitation, and process of the federal and provincial governments.

The local government level may operate and manage any plan or project in a joint investment of the federal and provincial governments or in a public-private partnership model. Moreover, the local government level shall coordinate, facilitate, and support the implementation of federal and provincial projects. Further, the federal and provincial governments should support the local government level in various planning and budgeting aspects such as to provide the guidelines, including a budget ceiling on national and provincial priorities and standards prior to the beginning of the process of formulation of the annual plan, dissolve parallel office at the jurisdiction of local-level units, operate the projects and programs in coordination with the local-level units, draft and send model laws as per the need of local-level units, support the enforcement of the decision of the local-level units, carry out necessary tasks for the empowerment of the local government, etc.

There is a problem of coordination and cooperation between the federal and the provincial governments in planning, implementation, and monitoring. However, the practice of convening the chief ministers of the provinces in the National Development Action Committee chaired by the Prime Minister has started (details are elaborated in Section 5).

Fiscal Interrelationships

As far as the fiscal interrelationship is concerned, the federal government makes necessary policies, standards, and laws on the matters related to concurrent lists and other areas of financial powers as to be applicable also for the provinces (Art. 59). The deadline for submission of budget by the provinces and local government levels are provided in federal law. The federal government has the power to obtain foreign assistance and borrow loans. For the sub-federal

governments, they have to take permission from the federal government. The budget deficit and other aspects fiscal discipline of the provincial and local governments shall be regulated in the federal law. The Constitution and other laws provide for the implementation of federal laws at the provincial and local governments level in relation to financial discipline and transparency.

The Provincial and local governments can receive the amounts of fiscal transfers based on the recommendation of the National Natural Resource and Fiscal Commission (NNRFC). The federal government shall provide fiscal equalization grants to the provincial and local governments on the basis of expenditure need and revenue capacity. Similar to the federal government, the provincial government shall also provide a fiscal equalization grant to the local government. In addition to the fiscal equalization grant, the provincial and local governments can also receive conditional, matching, and special grants. The Constitution has a provision of distributing revenue to the sub-federal governments in a balanced and transparent manner. All these constitutional provisions are included in the Intergovernmental Fiscal Arrangement Act, 2017 (IGFA). The NNRFC can play a proactive role in establishing transparency in the allocation of grants based on the experience of similar institutions in other federal countries (Yilmaz and Zahir, 2020).

Most of the revenue-raising powers of the provincial and local governments have been duplicated. For example, land registration fees, vehicle tax, tourism service fees, advertisement tax, and entertainment tax are included in the exclusive lists for both the province and local levels at the Constitution. To avoid this duplication, the IGFA act has a provision for a single tax administration system. This means that one tier of government collects revenue and shares it with another. For example, the local government collects land registration fees, advertisement tax and entertainment tax and transfers a 40-percent share to the provincial government.

Similarly, the provincial government collects vehicle tax and transfers 40-percent shares to the local government. The provincial government fixes the base and rate of all these taxes.

The other areas of fiscal interrelationships include a provision that the local government may levy tax by law on matters falling within its domain without prejudice to national economic policies, carriage of goods and services, capital and labor market, and the neighboring provincial or local governments level (Art. 228). Similarly, it is prohibited to make any kind of obstruction to the carriage of goods or extension of services by a provincial or local government level to another provincial or local government level or to levy tax, fee or charge thereon or to make any kind of discrimination on the carriage or extension of such services or goods (Art. 236).

The expenditure assignment in Nepalese federalism is constitutionally devolved; however, the revenue assignment is highly centralized. To meet the fiscal need of the sub-federal levels, the IGFA Act also has the provision of sharing the VAT and excise duty collected from domestic products. Out of the total divisible pool collected from revenues from these headings, the provincial and local government level, each gets 15/15 percent. Similarly, provincial and local government levels, each receive 25/25 percent from the royalties collected from the natural resources. The IGFA Act also has a provision to form an Inter-Governmental Fiscal Council forum. The Council discusses issues including financial management between three levels of government and draws consensus.

The other areas of fiscal relationship include the following. The provincial and local governments 1) should follow the federal economic and fiscal policies, 2) their income should be deposited at the consolidated fund, 3) whatever the grants they receive should follow the federal guidelines for the expenditures, 4) the classification and accounting of the income and expenditures should be based on the federal laws, 5) they shall prepare a periodic statement of

income and expenditures in a framework as prescribed by the federal government and 6) they should submit to the Federal Finance Ministry the quarterly statement of its income and expenditures within 30 days from the date of completion of that period, etc.

5. Institutional Arrangements for Intergovernmental Relations

The positive aspect of Nepal's federalism is that institutions for intergovernmental coordination have been created constitutionally and legally. The role of these institutions is important to strengthen the relationship between various tiers of government. A brief description of these institutions is as follows.

- 1. Constitutional Bench:** Article 137 of the Constitution provides for the formation of a Constitutional Bench in the Supreme Court to resolve disputes between the federal and the provinces, between different provinces, between provincial and local governments, and between different local governments. The Bench consists of the Chief Justice of the Supreme Court and four other judges appointed by the Chief Justice on the recommendation of the Judicial Council. The Bench has the sole right to define constitutional delineation of functions of different spheres of government.²²
- 2. Inter-Provincial Council:** The Constitution includes a provision for an Inter-Provincial Council, which is a dispute resolution body between the federal and provincial governments or between different provincial governments (Article 234). The Prime Minister chairs the Council. The Finance Minister, Home Minister and Chief Ministers of the provinces are members of the Council. Nine months after the provincial elections, the first Inter-Provincial Council (IPC) meeting was held in December 2018. The meeting approved a detailed 'Federalism Implementation Action Plan' including 29 different thematic areas.²³ The first council meeting was an important milestone for the implementation of federalism in Nepal. The IPC is the key constitutional body for managing intergovernmental relations between Federal and provincial governments.

²² For the first time, in August 2018, the government of Province Two filed a writ petition at the Supreme Court against the federal government, accusing it of capturing some forests in the province. The constitutional bench of the Supreme Court in December 2019 decided in favor of the provincial government and ordered the federal government to leave the forest under provincial jurisdiction.

²³ These include: reviewing organizational structures of provinces, handing over the remaining organizational structures to the province, scrapping the remaining regional offices and directorates of the federal agencies and transferring the physical assets to the respective province, completing the staff adjustment process, providing the building or land or other physical assets being used by the ministries/agencies to the province, drafting laws related to the inter-coordination between the federal, provincial, and the local levels, drafting law on basis and criteria for the formation of the Provincial Civil Service Commission and Civil Service Act, forming the National Natural Resources and Fiscal Commission, preparing expenditure reporting system for the provincial and local level and implementing it, etc.

However, the chief ministers have complained that most of the 29 points of the IPC decisions on the federalism implementation plan have not been implemented yet.

- 3. Provincial Coordination Council:** This is an important forum for intergovernmental relations as it facilitates planning and budgeting issues between provincial and local governments. The Chief Minister chairs the Council, and all provincial ministers, secretaries, and mayors and deputy mayors of local governments are members of the Council. Earlier, this provision was in the Local Government Operation Act, 2017. The Intergovernmental Coordination Law of 2019, recently²⁴ approved by the federal parliament, has scrapped this provision from the Local Government Operation Act and replaced it with the same provision in the new law. The provision for the Council is included in the Intergovernmental Coordination Law as this arrangement is expected to be more practical and effective.
- 4. National Natural Resources and Fiscal Commission:** Articles 250 and 251 of the Constitution include the provision of the National Natural Resources and Fiscal Commission. The main responsibility of the Commission is to deliver on tasks related to the fiscal transfer system. However, it also has a responsibility to make suggestions in case of disputes between different spheres of government over the use of natural resources.
- 5. District Coordination Committee:** Article 220 of the Constitution includes the provision for District Coordination Committee (DCC) responsible for delivering developmental coordination between various spheres of government working in the districts.²⁵ Although the Constitution has assigned the role of coordination to the DCC,²⁶ this institution has not been able to function properly due to the lack of financial and economic powers.
- 6. Intergovernmental Fiscal Council:** The Intergovernmental Fiscal Arrangement Act (2017) includes a platform for discussion on financial matters between the spheres of government. The Council membership includes the Federal Finance Minister, Provincial Finance Ministers, 14 representatives from local governments, and three experts nominated by the federal government. The Council is a common forum to discuss fiscal issues between the federal, provincial, and local governments.

²⁴ The law was registered in the Parliament in April 2019. However, it was approved only in June 2020.

²⁵ Districts have a role to play in Nepal's political, administrative, security, and other spheres. The structure of the provinces are based at the district level. Elections to the federal parliament and provincial parliaments have also been held based organized at the district level. Before the country came to federalism, the districts had an even bigger role. The districts headquarter had a large structure of government offices and security apparatus. With the advent of federalism, these structures have now shifted to the provincial and local government levels. There are 77 districts in Nepal.

²⁶ In the former unitary system, there were two types of local government: 1) Village Development Committees (VDC, also known as Rural Municipalities) and municipalities; and 2) District Development Committees (DDC). The VDCs worked in rural areas and municipalities in urban areas. All these three types of bodies were given financial and other economic rights through the Local Self Government Act. The DDCs had a big role in the overall development of districts. In the new federal structure, the structure and scope of work of rural and urban municipalities have not changed so far beyond reducing their total number through amalgamation. However, the DDCs have been removed. In its place, DCCs were created. Their responsibility is to coordinate with other level of governments. It has no financial powers. Its administrative expenses are being borne by the provincial and federal governments.

- 7. National Coordination Committee:** The Intergovernmental Coordination law of 2019 includes the provision for a National Coordination Committee. The Committee manages coordination between various spheres of government. The key task of the Committee includes formulating laws and policies between the spheres of government on concurrent powers, coordinating issues of national interest, maintaining uniformity in service delivery, etc. The Prime Minister chairs the Committee.
- 8. Sectoral Committee:** The Intergovernmental Coordination Law 2019 also includes a provision for Sectoral Committees. The main purpose of the Committee is to work jointly and coordinate in different thematic areas between the three tiers of government. It is also called a ministerial-level council.
- 9. National Development Action Committee:** This is a traditionally constituted apex body for monitoring and evaluation of development policy and programs. The Prime Minister chairs the Committee. The Committee comprises all ministers, planning commission authorities, and government secretaries. The committee meeting is organized on a quarterly basis. It has been standard practice to invite provincial chief ministers in the meeting.
- 10. Local Government Associations:** Local Government Associations are traditionally organized institutions in the local government sector for discussing common issues, including local government powers. Currently, Nepal has three types²⁷ of local government associations.

6. Key Achievements in Intergovernmental Relationships

A three-tier government with constitutional delineation in a federal setup is a completely new experience for Nepal. In order to avoid any dispute between the various governments, including the exercise of jurisdiction, work has been done to expand the jurisdiction in the schedules of the Constitution. This section discusses the major achievements in intergovernmental relationships. Section 4 also discusses the achievements of intergovernmental relationships. However, some of the achievements are discussed in detail in the following portion.

²⁷ They include: Municipal Association of Nepal (MuAN), National Association of Rural Municipalities in Nepal (NARMIN) and Association of District Coordination Committees of Nepal (ADCCN)

Unbundling Exercise and Formulation of Laws

The Constitution lists exclusive and concurrent powers for the three levels of government. These powers were elaborated through an unbundling exercise carried out to resolve possible disputes between the governments. Based on this unbundling exercise, the division of work responsibilities of the Council of Ministers of the federal and provincial governments (Allocation of Business Rules), Intergovernmental Fiscal Arrangement Act 2017; Local Government Operation Act 2017, etc. have been prepared. All federal and sub-federal government acts and legal documents have been made based on this unbundling exercise. The foundation for the implementation of federalism in Nepal has been laid easily due to this exercise. In fact, the functions have been broken down into different sub-functions. Altogether 1,795 functions have been identified in which 870, 565, and 360 activities are assigned to the federal, provincial, and local governments, respectively.

Regarding policy laws, dozens of laws are needed to implement federalism. Initially, the Ministry of Law had identified gaps in federal law in at least 110 subjects, provincial laws in 22 subjects, and local law in six subjects for the implementation of federalism. Almost all of these laws have been drafted. According to the Ministry of Law, Justice and Parliamentary Affairs, around 14 dozen federal laws have been enacted since the commencement of federalism. Further, around 300 laws have been prepared in seven provinces. The federal government has also assisted in formulating the necessary model laws for the sub-federal levels.

Restructuring of Institutional Structures and Staff Management

With the transfer of constitutional powers and responsibilities to the sub-federal levels, new organizational structure and staffing of government services have been determined.

Accordingly,²⁸ the federal government will now have 22 ministries, a three-tier system of courts, 13 constitutional bodies, 58 departmental bodies, and 1,091 other offices. In the case of provincial institutions, seven ministries, one provincial assembly, one Provincial Treasury “Controller’s Office,” seven directorates, and 676 other offices have been established in each province. Similarly, the organizational structure of 753 local-level units has been approved by classifying the local government level into seven types. The work of integrating the existing manpower of the civil service at the federal, provincial, and local government levels on the basis of approved organizational structure and personnel has been almost completed. Accordingly, there will be 48,606 employees at the federal level, 22,297 employees at the provincial level, and 67,719 employees at the local government level. A total of 138,622 positions have been fixed. Out of these approved posts, 39,960 employees have been adjusted at the federal level, 13,821 at the provincial level, and 31,710 employees have been adjusted at the local government level. Staff adjustment has already set a direction. The provincial and local governments, in accordance with the law, can now hire to fulfill the shortage of staff. The work on the formation of Province Public Service Commissions has moved forward. The federal government has posted senior-level joint secretaries at the provincial level.

In the previous unitary system, most of the senior-level officials were unwilling to leave the capital city. At present, there are about 100 secretaries and joint secretaries at the provincial level alone. High-ranking employees have also reached the local government level. The direct link between a large number of high-ranking employees going to the provincial and local government

²⁸ A Publication of Federal Government One Year Booklet, published by OPMCM (2018) and Economic Survey, 2018-19 (MOF).

levels is also an indication that many powers and responsibilities have been shifted to the sub-federal levels.

Implementation of Fiscal Federalism

The Constitution provides for responsibilities at the provincial and local government levels, including revenue-raising powers, fiscal transfers, and borrowing. Regarding fiscal transfers, the provincial and local governments have been receiving all the four types of grants stated in the Constitution: fiscal equalization, conditional, special, and matching grants. Similarly, the provincial and local governments have also been receiving revenue sharing from VAT and Excise duty and royalty from natural resources.

The Constitution provides for a National Natural Resources and Fiscal Commission as a constitutional body to work in the field of fiscal transfers. The Commission has been formed and has started its work. Not only the federal government but also the provincial governments have made fiscal transfers to the local government level. Similarly, sharing of 15/15 percent of VAT and excise duty on domestic production, 25/25 percent of natural resource royalty to be received by the provincial and local government level has been enacted and implemented. The federal government has started the practice of fiscal transfers to the provincial and local governments on formula. There is an arrangement for the provincial and local governments to receive the amount of revenue sharing by the 15th day of each month. Similarly, to manage the budget deficit at the province and local level, internal loans can be mobilized in such a way that borrowing does not exceed 12 percent of the total amount received from internal revenue and revenue sharing.

According to federal law, the time for presenting the budget at the provincial and local governments will be in accordance with federal law. Accordingly, the provincial governments

have to submit the budget to their respective assemblies by June 15 and the local governments by June 25. This arrangement has come to the implementation level.

Similarly, when preparing the details of public expenditures, all the governments have to prepare a Medium-term Expenditure Framework, including the projection of expenditure in the three fiscal years. This arrangement has been implemented. A system of accounting has been developed according to the concept of a single treasury fund to manage and integrate the expenditure system of the provincial government in a manner consistent with the accounting and financial reporting system of the federal government. The Office of the Provincial Comptroller General Office has been formed in all the provinces. The public expenditure management method has been made transparent.

Provision of Intergovernmental Relationships Agencies

Article 234 of the Constitution provides for an Inter-Provincial Council chaired by the Prime Minister for resolving political disputes between the federal and the provincial governments and between sub-federal governments. The first meeting held on December 8, 2018, had resulted in a 29-point roadmap for the implementation of federalism. Similarly, the Intergovernmental Fiscal Arrangement Act, 2017, provides for an Intergovernmental Fiscal Council under the chairmanship of the Finance Minister of the Government of Nepal to consult and coordinate intergovernmental fiscal management between the three levels of government. Its meeting has been held four times so far. Similarly, policy coherence in the work to be done at the provincial and local government levels, a strategic partnership in planning management, use of common jurisdiction, there is a legal provision of the Provincial Coordinating Council under the coordination of the Chief Minister. So far, the meeting concerned almost all provinces have met three times. In addition, there are other similar institutions. The federal government is of the

view that in such a short period of implementation of federalism, there is a cordial political, economic, and other relationship between the three levels of government.

7. Some Issues in Intergovernmental Relationships

It has been just three years since Nepal entered into a federal governance system in practice. It is a new experience for Nepal. There are some problems and confusion, as many tasks have to be done in a short time. The following are some of the problems and ambiguities in the intergovernmental relationship between the federal and sub-federal governments.

Staffing at Sub-federal Governments

The biggest grievances of the provincial and local governments are related to the lack of adequate staff. Similarly, the existing employees are not qualified and capable, and they are increasingly accountable only to the federal government. Some employees are suffering from the mentality of forced adjustment by the center rather than restraint. The Chief Ministers at the provincial governments have complained that the federal government has not consulted with the provinces while transferring and posting the employees.

In fact, the work responsibilities at the provincial and local government levels were devalued. Moreover, no serious attention was paid to the fact that the ward level of the local government units plays a very important role in service delivery. Analysis of powers and responsibilities in Nepal's federalism reveals a pyramid-like structure. The local government needs more resources. However, when the institutional structure was transformed, more structures than necessary were kept at the federal level.

Heavy Institutional Structures at the Federal Level

As per the Constitution, the federal government will mainly work in the areas of national policy, foreign relations, national security and currency, inter-provincial plans and programs, inter-provincial coordination, and monitoring and evaluation. The local government level is responsible for local infrastructure development and service delivery, and the provincial government is responsible for building provincial development and strengthening ties between the federal and local government levels. The federal government should not set up its own structure on the issue of clear jurisdiction at the provincial and local government levels. Responsibility should be transferred to the sub-federal levels.

According to the spirit of the Constitution, the federal government has the responsibility to transfer the financial resources and institutional structures to the sub-federal levels. However, the report of the Public Expenditure Review Commission 2019, states that the federal government has unnecessarily entered the jurisdiction of the sub-federal levels. Similarly, the report also includes details of about two dozen federal government departments operating in the jurisdiction of the sub-federal levels. The report also details that the ministries and agencies of the federal government have 60 percent more employees than required.

Expensive Federalism

More than half of the constitutional responsibilities have gone to the provincial and local government levels. However, there are complaints at the provincial and local government levels that unnecessary over-organized structures have been formed at the center. Even in the previous unitary system, different studies have suggested that no more than 18 ministries were needed at the central level. Now there are 22 ministries and more than five dozen departments and directorates.

There are more ministries, departments, and share of staff at the federal level than necessary. Provincial and local government officials have complained that this is not right, and the resources have been spent against the spirit of federalism. According to the spirit of the Constitution, the expenditures at the top should be decreased, and the expenditures at the bottom should be increased. However, the sub-federal government is of the view that it has become easier for those who create the illusion that federalism has become expensive due to unnecessary increasing of expenditures.

Law Formulation and Its Implementation

On many issues, the provincial and local government levels are still awaiting federal laws and standards. The law on federal civil service has been under consideration in the federal parliament for more than two years. As this law has not been finalized, the provincial civil service act has not been enacted yet. Although the Provincial Public Service Commissions have been formed, they have not been able to function properly without the act.

Similarly, there is a legal provision that the federal government should formulate the principles and standards related to the formation, operation, management, conditions, and facilities of local services. Problems have been seen at the provincial and local government level in the absence of federal law on issues related to concurrent powers such as education, health, agriculture, roads, drinking water, cooperatives, minerals, social security, and squatters. The federal government has not been able to approve the intergovernmental coordination law in a timely manner. Since this law has just been passed from the federal parliament, there will probably be no problem in this regard.

Plan Selection and Implementation

The biggest problem currently faced by three tiers of government is the formulation and implementation of the plan. Officials of most of the provincial governments have complained that small-scale projects have been sent to the provincial levels without any consultation with them. Further, the local government has complained that the federal and provincial governments are sending various programs and projects without coordination and cooperation with them.

In the pre-federalization period, the planning process began at the settlement level and ended at the National Planning Commission and Ministry of Finance. Officials of the National Planning Commission and local government level are of the view that there is a breakup of the 14th step the participatory planning process followed in the previous unitary system. In fact, there is a lack of planning coherence between the federal and sub-federal governments.

In the previous unitary system, the local government budget came first. The Government of Nepal used to bring the budget later in line with the local government budget. The planning and budgeting system was organized from the bottom to top. In the new setup, the federal budget comes first, then the provincial budget, and finally, the local government budget. There is a need to involve the planning and budgeting system from the bottom up. This method has created some problems.

Work Responsibilities and Revenue-raising Powers

In the general analysis of the Constitution, more than 30 percent of the responsibilities of the previous unitary system is now with the provincial governments. However, the chief ministers of the provincial governments are of the opinion that they do not have even a 10-percent revenue-raising authority to fulfill those responsibilities. They also expressed dissatisfaction over the

overlap between the powers of the local government with the revenue-raising powers of the provincial government.

Some of the revenue-raising powers of both the provincial and local governments are in the list of exclusive powers. These lists include vehicle tax, land registration, entertainment tax, advertising tax, tourism fee, etc. The provincial governments have complained that the revenue collected from entertainment tax, advertisement tax, tourism fee, etc. has not been properly deposited in the provincial treasury. Further, the provincial is of the view that the Constitution has been written with the mentality that the provinces should not be given too many powers.

Centralized Mindset

Constitutionally three tiers of government are practiced in Nepal. However, the concern of sub-federal governments is that they are treated as subordinates of the federal government. In the pre-federalization period, the local governments had exercised decentralized powers. The officials of sub-federal governments have complained that even though the Constitution has given the right to state power, there has been no change in the previous mindset towards the sub-federal levels. They are concerned that the centralized mindset has not changed yet.

Further, the provincial and local governments have complained about the continuation of the controversial Local Infrastructure Development Partnership Program (Parliamentary Development Fund).²⁹ This program has created problems not only at the local government but

²⁹ The program started from Rs. 200,000 per constituency in 1994. The figure reached Rs. 60 million per constituency in the fiscal year 2019-20. There is widespread opposition to this program of selecting and implementing programs and projects on the basis of proposals from elected parliamentarians. In the past, there was opposition to this program even though there were no elected representative at the local government level for about 20 years. As the country has moved to federalism and elected representatives emerged at the sub-federal levels, voices were raised everywhere that the program should be scrapped. However, even during COVID-19's challenges, the government did not abolish it.

also at the provincial level. Even provinces, with very limited internal resources, have started other programs only after ensuring the budget for this program. Due to COVID-19, there was a good opportunity to remove this program, but this program is now in danger of going on indefinitely.

Transfer of Assets and Liabilities

According to the Local Government Operation Act, the sectoral ministries of the Government of Nepal have to transfer the assets, liabilities, and budget to their respective subordinate bodies within six months based on the powers vested in the local government level. They have complained that the federal government has not handed over these resources to the local government even after three years of issuance of the Local Government Act. Similarly, the provincial governments have complained that the federal government has not easily transferred the physical infrastructure, assets, and other responsibilities within the jurisdiction of the provinces.

Land Acquisition and Industrial Investment

The Constitution has given the authority over manufacturing, industrialization, trade, etc. to the provincial governments. The Chief Ministers at the provincial governments have complained that the provincial governments do not have the capacity to provide land to investors to run their businesses even though they have public land. Their opinion is that the federal government should be repeatedly defeated for land acquisition, but the federal government has not addressed it properly.

Creation of Parallel Organizational Structures

The officials of local government have argued that the federal and the provincial governments have set up parallel offices in the districts in conflict with the powers of the local government level. These offices include the Education Development and Coordination Unit, Division Forest Office, Agricultural Knowledge Center, Animal Husbandry Expert Center, Urban Development and Building Office, Health Office, etc. They are outraged that the authority of the district has reached the local government, but the formation of parallel offices by the federal and provincial governments in the district is against the spirit of federalism.

The Functioning of Intergovernmental Coordinating Institutions

There is a constitutional arrangement of Inter-Provincial Council chaired by the Prime Minister to resolve the political disputes between the federal and the provincial governments and between provincial governments. The Constitution provides for the chief ministers of all the provinces to be its members.

Similarly, the Intergovernmental Fiscal Arrangement Act has the provision of an Intergovernmental Fiscal Council. The Council, chaired by the Minister of Finance of the Government of Nepal, resolves issues related to financial transfer and revenue sharing. The finance ministers of all the provinces are members of this Council.

Similarly, there is a legal provision for a Provincial Coordinating Council chaired by the Chief Minister for mutual coordination on strategic partnership, use of common jurisdiction, utilization, and distribution of natural resources in the planning management of the provincial and local government levels. The provincial governments have complained that the Inter-Province Council and the Intergovernmental Fiscal Council have not been very active. Similarly,

there are complaints from the local government that the Provincial Coordinating Council has not been able to solve the problems of the provincial and local government levels. Similarly, the inability to promulgate inter-level coordination law for a long time has also created some problems.

8. The Way Forward

Nepal is one of the youngest federal countries in the world. The Constitution provides for three levels of government: federal, provincial, and local. The lists of powers of these governments are provided in the schedules of the Constitution.

Within a short period, the country has achieved much in terms of federalism implementation. Some the visible achievements include the exercise in unbundling of functions, formulation of rules and regulations, adjustment of staff, and the implementation of fiscal federalism. Despite this, there are various problems in the inter-governmental relationships between the federal and sub-federal governments. In this context, it is necessary to take necessary actions and reforms to strengthen the intergovernmental relationships.

The federal government maintains a very large institutional structure and civil service. This should be reduced as recommended by the Public Expenditure Review Commission. The organization structures and the number of civil staff should be efficient at the provincial and local government levels. Further, it is necessary to create a working environment for the provincial Public Service Commissions as well. For the successful implementation of federalism, the federal government should be agile and more responsive. The main responsibility of the federal level should be to provide internal and external resources for the development plans formulated by the sub-federal levels, to streamline their management, and to strengthen the capacity for both levels. Regarding the selection and implementation of the plan, it is necessary

for the federal government to establish the habit of implementing the national scale projects of strategic and far-reaching importance, inter-local government projects by the provincial government, and rest by the local government level.

Further, it is necessary to establish in law that one level of government should not enter the jurisdiction of another level. In the same way, it is necessary for one level of government to accept the existence and responsibilities of the other levels. For this, it is necessary for the intergovernmental institutions (Inter-Province Council, Intergovernmental Fiscal Council, and the Provincial Coordinating Council) to be continuously active. In order for these organizations to function, it is necessary to form a working committee with a permanent secretariat.

If these organizations are continuously active, the problems in the areas of staff management, law formulation, plan selection and implementation, property transfer, etc. will be solved gradually. Problems are solved according to the number of meetings and discussions held at the provincial and local government levels. Similarly, regular discussions and interactions between the federal government and the provincial government are also necessary.

In terms of fiscal resources of the sub-federal levels, it is the constitutional right of the provincial and local government to receive resources through fiscal transfers. Since the revenue-raising powers are centralized, the basic spirit of the Constitution is to compensate the revenue gap through fiscal transfers. At the same time, the provincial and local government levels need to broaden their revenue range as well. In fiscal transfers, it is necessary to gradually reduce the conditional grant and increase the unconditional grant (fiscal equalization). Finally, there is a general complaint that the people's hopes have not yet been met, nor trust obtained, in this new system of government. In order to address the grievances of the people, it is necessary to have

constructive discussions among all the stakeholders for the successful implementation of federalism.

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Annex

Table A1. Functional Responsibilities of Federal, Provincial and Local Governments

Federal (F)	Provincial (P)	F/P Concurrent	Local (L)	F/P/L
<p>1. Related to defense and army a) Protection of national unity and territorial integrity b) Related to national security</p> <p>2. Central police, armed police force, national intelligence and investigation, peace, and security</p> <p>3. Central planning, central bank, financial policy, currency and banking, monetary policy, foreign grants, aids, and loan.</p> <p>4. Monitoring and regulation of telecommunication, central telecom, radio frequency distribution, television, and postal service</p> <p>5 Customs, excise-duty, value added tax (VAT), corporate income tax, individual income tax, tax on remuneration, passport fee, visa fee, tourism fee, service charge, penalties, and fines</p> <p>6. Federal civil service, judicial service, and other government services</p> <p>7. Policies and criteria related protection and multi-dimensional use of water resources</p> <p>8. International and inter-provincial electricity transmission lines</p> <p>9. Central statistics (national and international standards and qualities)</p> <p>10. Central level mega projects for electricity, irrigation, and other projects</p> <p>11. Central university, central level academies, university standard and regulation, central library</p> <p>12. Central health policy (setting standard, quality and monitoring of the health services, national/special service provider hospitals, traditional treatment services, control of communicable diseases</p> <p>13. Federal legislature, federal executive, local level affairs, special structures</p> <p>14. International trades, exchange, ports, and quarantines</p> <p>15. Civil aviation, international airports</p> <p>16. Foreign and diplomatic affairs, international relations and related to United Nations</p> <p>17. International treaties and agreements, extradition, mutual legal assistance and international border, international border river</p> <p>18. National transport policy, train, and national highways management</p> <p>19. Laws related to Supreme Court, High Courts, District Courts and Judicial Administration</p> <p>20. Citizenship, passport, visa, and immigration</p>	<p>1. Provincial police administration as well as law and order</p> <p>2. Banks and operation of financial institutions according to the policy of Nepal Rastra Bank, cooperatives, and foreign grants and aids with consent from the center</p> <p>3. Radio, FM, television operation</p> <p>4. Land and house registration fee, vehicle tax, entertainment tax, advertisement tax, tax on tourism and agricultural income, service charge and penalties and fines</p> <p>5. Provincial civil service, and other government services</p> <p>6. Provincial statistics</p> <p>7. Provincial level electricity, irrigation projects, drinking water, transport</p> <p>8. Provincial level university, higher education, libraries, and museums</p> <p>9. Health service</p> <p>10. Related to Provincial Assembly, provincial cabinet</p> <p>11. Trade/Business within the province</p> <p>12. Provincial highways</p> <p>13. Provincial investigation bureau</p> <p>14. Infrastructure management and other necessary matters of provincial government offices</p> <p>15. Provincial public service commission</p>	<p>1. Criminal and civil work procedures and evidence and oath of office (legal recognition, public act and records and judicial process)</p> <p>2. Supply, distribution, price control, standard and monitoring of essential goods and services</p> <p>3. Preventive detention, jail, and custody management on the matters of national security and management of law and orders</p> <p>4. Transfer of accused as well according those in custody and jail from one province to other.</p> <p>5. Laws related to family affairs (marriage, property transfer, divorce, endangered, orphan, adopted child, successors, and joint family).</p> <p>6. Receiving property, acquisition, and creation of rights</p> <p>7. Matters related to contracts, cooperatives, collaborations, and agencies</p> <p>8. Matters related to bankruptcy and insolvency</p> <p>9. Medicine and pesticides</p> <p>10. Planning, family planning and population management</p> <p>11. Matters related to social security and employment, trade union, resolution of industrial disputes, labor rights and disputes</p>	<p>1. Municipal police</p> <p>2. Cooperatives</p> <p>3 FM operation</p> <p>4 Local tax (property tax, house rent tax, fee on registration of houses and land, vehicle tax), service fee, tourism fee, advertisement tax, business tax, land tax (land revenue), fines, entertainment tax</p> <p>5. Management of local services</p> <p>6. Local statistics and record keeping</p> <p>7. Local development projects and programs</p> <p>8. Basic and secondary education</p> <p>9. Basic health and sanitation</p> <p>10. Management of local markets, environment conservation and biological diversity</p> <p>11. Local roads, rural roads, agriculture roads, irrigation</p> <p>12. Village assembly, Municipal Assembly, district assembly, local courts, dispute settlement and mediation</p> <p>13. Management of local records</p> <p>14. Distribution of land, building ownership certificates</p> <p>15. Farming and livestock, agriculture production management, livestock health, cooperative</p> <p>16. Management of senior citizens, people with physical</p>	<p>1. Cooperatives</p> <p>2. Education, Health and Newspapers/Magazines</p> <p>3. Health</p> <p>4. Agriculture</p> <p>5. Services like electricity, drinking water, irrigation</p> <p>6. Service fee, registration fee, fine, tourism fee and royalty received from natural resources</p> <p>7. Forest, wildlife, birds, water use, environment, ecology, and biodiversity</p> <p>8. Mines and minerals</p> <p>9. Disaster management</p> <p>10. Social security and poverty alleviation</p> <p>11. Registration of personal incidents, birth, death, marriage, and statistics</p> <p>12. Archaeology, ancient monuments, and museums</p> <p>13. Management of landless</p> <p>14. Royalty received from natural resources</p> <p>15. Permission for vehicle</p>

Federal (F)	Provincial (P)	F/P Concurrent	Local (L)	F/P/L
21. Nuclear energy, atmosphere, and space related 22. Intellectual property (including patent, design, copy right) 23. War and defense 24. Factory and production of arms and ammunitions 25. Standards and metrology Constitution of Nepal 2015, Unofficial English Translation - 153 - Serial Number Subjects 26. Mining, exploration 27. National and international ecology management, national parks, wildlife reserves and wetlands, national forest policy, carbon services 28. Insurance policy, securities, cooperative regulations 29. Land use policy, housing development policy, tourism policy, environment adaptation 30. Formulating criminal and civil laws 31. Security press 32. Social security and poverty alleviation 33. Constitutional bodies and commissions of national importance 34. Ancient monuments and places of archaeological importance 35. Issues not listed in the federation, province and local level power or concurrent level power lists, along with other issues not mentioned in this Constitution and law	16. Land management, record-keeping of the land 17. Exploration and management of mines 18. Protection and use of language, culture, script, fine arts, and religion 19. Management of national forest, water resources and ecology within the province 20. Agriculture and livestock development, factories, industrialization, business, transportation 21. Guthi (community trust/endowment) management Constitution of Nepal 2015	12. Medical, legal, audit, engineering, ayurved, veterinary services, Amchi and other professions 13. Province border rivers, waterways, environment protection, biodiversity 14. Related to mass communication 15. Industries and minerals and infrastructures 16. Casino, lottery 17. Natural and man-made disaster preparedness, rescue, relief, and rehabilitation 18. Tourism, drinking water and sanitation 19. Movies, cinema halls and sports 20. Insurance operation and management 21. Poverty alleviation and industrialization 22. Scientific research, science and technology and human resource development 23. Inter-provincial forest, wildlife, birds, mountains, national parks, and water uses 24. Land policy and related legal provisions 25. Employment and aid to unemployed	disability and disabled 17. Collection of statistics of unemployed people 18. Management, operation, and control of agriculture extension 19. Drinking water, small electricity projects, alternative energy 20. Disaster management 21. Conservation of Watershed, wetland, wildlife, mines, and minerals 22. Preservation and development of language, culture, and fine arts	

Source: Constitution of Nepal, as quoted by Devkota, Sharma and Raghunandan (2015).