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## Implementation of Federalism in Nepal: The Devil is in the Detail

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**Abstract** *After a long period of instability, Nepal adopted a new Constitution in 2015, creating a multiparty federal republic. Previously Nepal had been a unitary state, albeit with a long period of political instability and insurgencies. In 2017 the two competing communist parties merged to form the ruling Nepal Communist Party (NCP), which operated with a 2/3rd majority in the House of Representatives. The implementation of federalism has been slow and uneven. Despite assurances to the contrary, the government's response to the COVID-19 pandemic has been lacking, with Constitutional obligations ignored. The machinations of the then Prime Minister have exacerbated this, apparently supported by the President to overcome constitutional norms to keep the Prime Minister in power. The paper analyses the devolution of powers to the provincial and local levels described in the constitution. There have been successes and failures. There appeared to be a concerted effort from the federal parliament and some in the bureaucracy to continue to centralize power. This early inaction has hindered its response to the pandemic. Of even*

*more concern is the then prime minister's role as he sought to maintain his hold on power by ignoring the provisions of the Constitution.*

**Keywords** Federalism, Governance, Devolution of Powers, Constitutionalism, Party Politics, Democracy, COVID-19 Pandemic

## 1. Introduction

Nepal commenced its slow transition to democracy in 1951.<sup>1</sup> Whilst there were many changes over the next 40 years, “[t]he gap between expectations and achievements was perhaps the single most important factor that brought the Panchayat system to its knees in 1990 and then drove the system that replaced it into crisis”.<sup>2</sup> There were two people’s movements.<sup>3</sup> Jana Andolan I, occurred in the 1990s and led to the change from from a one-party state with an autocratic monarch to a multiparty democracy with the king in a figurehead king role.<sup>4</sup> Jana Andolan II, in 2006-2007, resulted in the monarchy being abolished.<sup>5</sup>

During Jana Andolan II, “historically marginalized groups around the country increasingly pressed for their inclusion in politics and government

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<sup>1</sup> Whelpton, John. *A History of Nepal*. (Cambridge: Cambridge University Press, 2020), pp. 86-121.

<sup>2</sup> Whelpton, p. 154.

<sup>3</sup> Manandhar, Narayan. "Are We Poised for Jana Andolan III?" *Kathmandu Post*, January 14 (2021) <<https://kathmandupost.com/columns/2021/01/14/are-we-poised-for-jana-andolan-iii>>, para. 3.

<sup>4</sup> Manandhar

<sup>5</sup> Manandhar

institutions".<sup>6</sup> Issues related to "identity, dignity, and social, cultural and language rights".<sup>7</sup> The interim constitution ignored federalism, and significant protests erupted.<sup>8</sup> Ultimately the constitution included federalism with the provincial boundaries based on viability and identity as the main factors.<sup>9</sup>

Since 2017 the country has struggling to implement federalism. The party which ruled until July 2021 was unstable under an autocratic prime minister. Politicians and public servants at the centre appeared not to understand fully the operation of a federal system. Some, including the then Prime Minister, clearly preferred a centralized system.<sup>10</sup> Since early 2020, Nepal has faced the ravages of COVID-19.

There are only 30 federations out of the 195 countries worldwide, yet they represent around 40% of the world's population.<sup>11</sup> There are several characteristics of a federal system. Federal systems have at least two levels of government.<sup>12</sup> There must be the provision of processes and mechanisms by which the second level of government can be included in decision-making at the centre.<sup>13</sup> A third

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<sup>6</sup> Dhungel, Surya, and Phillip Gonzalez. "Nepal (Federal Democratic Republic of Nepal): From a Centralized Monarchy to a Federal Democratic Republic." In *The Forum of Federations Handbook of Federal Countries 2020*, edited by Ann Griffiths, Rupak Chattopadhyay, John Light and Carl Stieren, 237-254. (London: Palgrave Macmillan, 2020), p. 240.

<sup>7</sup> Dhungel & Gonzalez

<sup>8</sup> Dhungel & Gonzalez

<sup>9</sup> Dhungel & Gonzalez

<sup>10</sup> Bhattarai. D. 2020. "Democracy under Attack in Nepal." *myRepublica*, December 21 (2020). <https://myrepublica.nagariknetwork.com/news/democracy-under-attack-in-nepal/>, para. 10-14.

<sup>11</sup> "What is Federalism?" Media Release, *IDEA International*, August 27, (2020). <<https://www.idea.int/news-media/media/what-federalism>>, para. 2-3.

<sup>12</sup> *Ibid.*, para.10.

<sup>13</sup> *Ibid.*, para 20.

characteristic is that powers and responsibilities of the different levels of government are prescribed in a constitution.<sup>14</sup>

Democratic federations can be considered in a continuum from the concept of “coming together” at one end of the spectrum to “holding together” at the other.<sup>15</sup> The parties of the “coming together” federations were relatively autonomous and combined to pool sovereignty but retain individual identities.<sup>16</sup> Examples include Australia, Switzerland and the United States. “Holding together” federations are those formed to preserve the country's unity by devolution of defined powers to the sub-national administrative units.<sup>17</sup> In this case, examples are Belgium, India and Spain. In light of its troubled recent past and concern about equity and representation, Nepal adopted the “holding together” model as its pathway to federalism.<sup>18</sup> Such an approach has ongoing implications for the structure of responsibilities of the three levels of government.

According to the Constitution the State of Nepal is “an independent, indivisible, sovereign, secular, inclusive, democratic, socialism-oriented, federal democratic republican state”.<sup>19</sup> The relevant clauses of the Constitution will be discussed later in this paper.

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<sup>14</sup> *Ibid.*, para 25.

<sup>15</sup> Stepan, Alfred. "Federalism and Democracy: Beyond the U.S. Model." *Journal of Democracy* 10, No. 4 (1999): 9-34.

<sup>16</sup> Stepan

<sup>17</sup> Stepan, pp. 22-23.

<sup>18</sup> Kyle, Jordan, and Danielle Resnick. *Nepal's 2072 Federal Constitution: Implications for the Governance of the Agricultural Sector*. International Food Policy Research Institute. (December 16, 2020). <https://www.ifpri.org/publication/nepals-2072-federal-constitution-implications-governance-agricultural-sector>

<sup>19</sup> *Constitution of Nepal*, art. 4(1).

Nepal has a three tiered system of governance consisting of the central government seven States/Provinces and 753 Municipalities.<sup>20</sup> Criteria for the designation of different designations of municipalities are set out in the *Local Government Operation Act*.<sup>21</sup> Demographic data used in establishing the municipality and ward boundaries were those of the 2011 decennial census.<sup>22</sup>

Municipalities are designated as a municipality, sub-metropolis or metropolis based on geomorphology, population, average domestic income, infrastructure facilities, and standard of services.<sup>23</sup> The minimum population criterion for a municipality is ten thousand in the Himalayan region of the mountainous district, forty thousand in the hilly area of the mountain district and in [the] hilly district, and fifty thousand in the inner Madhesh, at least seventy-five thousand in the Tarai and at least one hundred thousand in the districts within Kathmandu valley.<sup>24</sup>

Whilst not stated explicitly in the Act, a rural municipality (the official name in English and *gaunpalika* in Nepali) is a municipality that does not meet the minimum criteria for a municipality. The formation of 753 local government organizations was recommended by the Local Level Restructuring Recommendation Commission.<sup>25</sup> There are six metropolitan cities, including three in the Kathmandu valley conurbation of Kathmandu, Lalitpur and Bhaktapur; 11 sub-metropolitan cities, 276 municipalities and 460 rural municipalities. In 2017

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<sup>20</sup> Pradhan, Krishna Man. "Local Government: Constitutional Vision and Present Practice." *Research Nepal Journal of Development Studies* 2, No. 2 (2019): 109-128. <https://doi.org/10.3126/rnjds.v2i2.29284>.

<sup>21</sup> *Local Government Operation Act*.

<sup>22</sup> *National Population and Housing Census 2011*.

<sup>23</sup> *Local Government Operation Act*. art. 8.

<sup>24</sup> *Ibid.*, art 8(1).

<sup>25</sup> Pradhan, "Local Government," p. 119.

this resulted in the election of around 37,000 representations.<sup>26</sup> In the light of the inclusive provisions of the Constitution, the election resulted in around 15,000 being women and/or Dalits.<sup>27</sup>

In 2019 the Ministry of Federal Affairs further classified the local units (*see* Table 1) based on suitable infrastructure and social development.<sup>28</sup> Sixty-one municipalities and 319 rural municipalities are in remote or very remote locations, mainly in Nepal's hilly and mountainous areas. The determining factors included:

Availability of transport facilities (standard and regularity of road and air transport facilities), distance from the province capital, distance from the district headquarters, availability of education facilities at the local level, access to telecommunications and electricity facilities, status of health, human development index and geographical locations.<sup>29</sup>

**TABLE 1.** Classification of local government units based on infrastructure and social development status<sup>30</sup>

Classification	Type	Local Government Unit	
		Municipality	Rural Municipality
Grade 'A'	Very remote	17	145
Grade 'B'	Remote	44	174

<sup>26</sup> *Ibid*

<sup>27</sup> *Ibid.*

<sup>28</sup> Samiti, Rastriya. "Government Groups Local Federal Units into Four Categories." *Kathmandu Post*, January 5 (2019). <https://kathmandupost.com/national/2019/01/05/government-groups-local-federal-units-into-four-categories>, para. 1.

<sup>29</sup> Simiti., para. 4.

<sup>30</sup> Samiti; "List of gaunpalikas of Nepal." Last Modified 18 January 2021. [https://www.wikiwand.com/en/List\\_of\\_gaunpalikas\\_of\\_Nepal](https://www.wikiwand.com/en/List_of_gaunpalikas_of_Nepal).

Classification	Type	Local Government Unit	
		Municipality	Rural Municipality
Grade 'C'	Fairly accessible	134	141
Grade 'D'	Accessible	98	0
Total		293	460

As will be seen in the remainder of the paper, one cannot but agree with the following statement in the Prologue to *Battles of the New Republic*:

This is the story of how managing political change is always more difficult than the act of bringing it about. . . . Ultimately, it is a story of society and a nation grappling with the fundamental political question of who ought to exercise power, to what end, and for whose benefit.<sup>31</sup>

According to Dhungel and Gonzalez the major impediments to the delivery of essential services and a significant development agenda at all levels of government:

. . . is mainly due to lack of federal experience and in part due to the ruling Nepal Communist Party's dominant position in the federal Parliament, plus six out of seven provinces and a majority of local government bodies, which makes the government defensive against attacks by opposition parties and the media.<sup>32</sup>

<sup>31</sup> *Ibid.*, xxvi.

<sup>32</sup> Dhungel & Gonzalez, "Nepal," p. 251.

This paper considers the implementation of federalism in Nepal from three perspectives: the Constitution, implementation of Federalism, and governance during the implementation process.

## 2. Method

Documentary research methods are used in this paper to investigate the devolution of roles and responsibilities from the centre during the implementation of federalism in Nepal. The authors analyzed the Constitution and applicable legislation. In addition they have sourced commentary from all available documents, including newspapers and online sources, to present information as fresh as possible.

The first author was based in Kathmandu from January 2019 to March 2020 and was a close observer of the implementation of federalism during that critical period. The observations were tested against contemporary sources such as the English language newspapers, which usually included opinion pieces by subject matter experts including academics, and political and military commentators.

## 3. Results

Before undertaking a detailed analysis of the issues surrounding the implementation process at the province and local levels, it is vital to understand the provisions of the Constitution and the enabling legislation. As a point of clarification, in Nepal, the Federation means the central government. The second tier is the states which are actually called provinces, and the third tier is the local level consists of the village or municipal assemblies. The term “State” means the Republic or the second tier of the Federation, depending on context.



## A. Constitutional Provisions

The Constitution commenced on 20 September 2015.<sup>33</sup> The powers vested in the Federation (centre) are listed in Schedule 5;<sup>34</sup> those vested in a State (called Provinces) are listed in Schedule 6;<sup>35</sup> and the concurrent powers of the Federation and the State are listed in Schedule 7.<sup>36</sup> The powers of the local level are listed in Schedule 8.<sup>37</sup> Concurrent powers of the Federation, State and Local Levels are listed in Schedule 9.<sup>38</sup> Where there are concurrent powers, any law enacted at a lower level must be consistent with that enacted at a higher level and shall be invalid to the extent of any inconsistency.<sup>39</sup> Residual powers (i.e. those not included in the Constitution or its Schedules) vest in the Federation.<sup>40</sup> It is interesting to note that Schedule 5 is three pages long, and each of Schedules 6, 7, 8 and 9 are two pages long. They each contain lists without any additional clarifications, which one might have expected for such a significant redistribution of power. On the other hand, there are very detailed instructions covering three pages on making the National Flag of Nepal.<sup>41</sup>

In order to coordinate between the village bodies and municipalities within a district, the Constitution mandates the establishment of a District Coordination elected by a District Assembly.<sup>42</sup> The relations between the levels are to “be based

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<sup>33</sup> *Constitution of Nepal*.

<sup>34</sup> *Ibid.*, art. 57(1).

<sup>35</sup> *Ibid.*, art. 57(2).

<sup>36</sup> *Ibid.*, art. 57(3).

<sup>37</sup> *Ibid.*, art. 57(4).

<sup>38</sup> *Ibid.*, art. 57(5).

<sup>39</sup> *Ibid.*, art. 57(6)-(7).

<sup>40</sup> *Ibid.*, art. 58.

<sup>41</sup> *Ibid.*, Schedule 1.

<sup>42</sup> *Ibid.*, art. 220.

on the principles of cooperation, co-existence and coordination”.<sup>43</sup> One of the significant roles of the Federal Parliament is required to make necessary laws for coordination between the three levels.<sup>44</sup> State Assemblies may maintain coordination between the State and Village Bodies or Municipalities and settle political disputes that have arisen, in coordination with the concerned Village Body, Municipality and the District Coordination Committee.<sup>45</sup> See Table 2 outlines the devolved powers Constitution concerning the provision of services.

**TABLE 2.** Devolved powers under the Constitution – Provision of services

Function	Federal Power	State Power	Concurrent Powers of Federation and State	Local Level Power	Concurrent Powers of Federation, State & Local Level
<b>Civil service</b>					
Federal civil service, judicial service and other government services	X				
State civil service and other government services		X			
State Public Service Commission		X			
Management of Local Services				X	
<b>Regulation of professions</b>					
Legal profession, auditing, engineering,			X		

<sup>43</sup> *Ibid.*, art. 232(1).

<sup>44</sup> *Ibid.*, art. 235(1).

<sup>45</sup> *Ibid.*, art. 235(2).

Function	Federal Power	State Power	Concurrent Powers of Federation and State	Local Level Power	Concurrent Powers of Federation, State & Local Level
medicines, Ayurvedic medicines, veterinary, Amchi [Tibetan traditional medicine] and other professions					
<b>Education</b>					
Central universities, central level academies, universities standards and regulation, central libraries	X				
State universities, higher education, libraries, museums		X			
Basic and secondary education				X	
Education, health and newspapers					X
<b>Health</b>					
Health policies, health services, health standards, quality and monitoring, national or specialized service providing hospitals, traditional treatment services and communicable disease control	X				
Health services		X			
Basic health and sanitation				X	
Health					X
<b>Transport</b>					
National transportation policies, management of railways and national highways	X				
State highways		X			
Local roads, rural roads, agro-roads, irrigation				X	

Function	Federal Power	State Power	Concurrent Powers of Federation and State	Local Level Power	Concurrent Powers of Federation, State & Local Level
<b>Disaster management</b>					
Disaster management					X

Source: Compiled by the authors from Schedules 5 to 9 of the Constitution of Nepal.

Any law inconsistent with the Constitution shall be “invalid to the extent of such inconsistency, after one year of the date on which the first session of the Federal Parliament set forth in this Constitution is held”.<sup>46</sup> Article 304 has been interpreted broadly. “While the government officials say the one-year deadline was for the amendment of Acts that contradict with the Constitution, some legal experts maintained that the deadline was for drafting or revising all the Acts to ensure implementation of the constitution”.<sup>47</sup> However, a strict reading of the Article appears to require neither action.

Three hundred and thirty-nine Acts were in effect at the time of promulgation of the Constitution, of which the Ministry of Law and Justice identified that 174 required to be replaced or amended.<sup>48</sup> The Ministry of Law and

<sup>46</sup> *Ibid.*, art. 304(1).

<sup>47</sup> Ghimire, Binod. "Parliament Fails to Meet Constitutional Deadline to Amend Some Laws Inconsistent with Statute." *Kathmandu Post*, March 3, (2019). <https://kathmandupost.com/national/2019/03/03/parliament-misses-deadline-to-amend-laws-inconsistent-with-constitution>, para. 13.

<sup>48</sup> *Ibid.*, para. 11

Justice took on the review role as the other line ministries were tardy in undertaking the task. In mid-2018, an analysis by Paudel and Sapkota found that a number of pieces of legislation enacted by the new parliament were deficient.<sup>49</sup> These included laws at variance with the Constitution, legal provisions in conflict with each other, laws not in the spirit of the Constitution, laws inconsistent with the jurisdiction allocations in the Constitution, and ambiguity in the application of the Constitutional principles.<sup>50</sup> They recommended that additional work is required to ensure that there is a common understanding between all levels of the federation; ensure that the mechanisms to resolve disputes between the various levels of government are clear and unambiguous; similarly, drafting of laws at all three levels must reflect the principles of shared rule and self-rule and be in accord with the principles of collaboration, co-existence and coordination.<sup>51</sup> They identified that there were at least 36,000 people's representatives across all three levels of the federation, and these representatives must have a common understanding of the provisions of the Constitution.<sup>52</sup>

Of grave concern, it was not until July 2020 that the bill covering inter-governmental relations was passed by both houses of Parliament and entered into force.<sup>53</sup> The preamble to the Act states that:

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<sup>49</sup> Paudel, Balananda, and Krishna Sapkota. 2018. *Local Levels in Federalism: Constitutional Provisions and the State of Implementation*. (Kathmandu: Swatantra Nagarik Sanjal, 2018).

<sup>50</sup> Paudel & Sapkota.

<sup>51</sup> Paudel & Sapkota, p. 25.

<sup>52</sup> Paudel & Sapkota, p. 26.

<sup>53</sup> Adhikari, Bishnu, and Parshuram Upadhyaya. "Inter-government Relations Bill: A Mixed Bag of Optimism For Subnational Governments." *New Spotlight* 14, No. 2 online July 17, (2020). <https://www.spotlightnepal.com/2020/07/17/inter-government-relations-bill-mixed-bag-optimism-subnational-governments/>, para. 1.

Whereas, it is expedient to make necessary arrangements for managing the interrelations of the Federation, Province and Local Level in the exercise of their state authority as per the Constitution of Nepal based on the principles of cooperativeness, co-existence, coordination and mutual cooperation in order for strengthening the pluralism based competitive multiparty federal democratic republican governance system adopted by the country.<sup>54</sup>

## B. Implementation of Federalism

A 2018 study reported on group discussions at three rural municipalities and found that the local levels were facing problems including insufficient laws, staff, infrastructure and mobilization of economic resources.<sup>55</sup> It was also noted that there was a poor linkage between the local levels and provinces, due to insufficient laws. The local units also faced challenges from lack of sound leadership, poorly trained staff and poor performance.<sup>56</sup> There are also significant differences in power structures between the central government and government staff.<sup>57</sup> Central government staff benefit from the trappings of state power and resources.<sup>58</sup> Local staff are also concerned about favouritism and nepotism in employment.<sup>59</sup> The government enacted the *Employees Adjustment Act* to allow it to re-allocate and

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<sup>54</sup> *Federation, Province and Local Level Act, Preamble.*

<sup>55</sup> Chaudhary, Deepak "The Decentralization, Devolution and Local Governance Practices in Nepal: The Emerging Challenges and Concerns." *Journal of Political Science* XIX (2019): 43-64. doi: 10.3126/jps.v19i0.26698.

<sup>56</sup> Chaudhary.

<sup>57</sup> Acharya, Keshav. "The Capacity of Local Governments in Nepal: From Government to Governance and Governability?" *Asia Pacific Journal of Public Administration* 40, No. 3 (2018):186-197. doi: <https://doi.org/10.1080/23276665.2018.1525842>.

<sup>58</sup> Acharya, p. 191.

<sup>59</sup> Acharya.

transfer civil servants across central, provincial and local levels.<sup>60</sup>

A mid-term review of the Strategic Partnership on Sub-national Governance Program in 2019 enumerated problems addressed by the program.<sup>61</sup> There was a vague understanding of the role and function of each of the levels of government.<sup>62</sup> The result was poor-quality decision-making; decision-making processes, planning and budgeting were inefficient and ad hoc; policy decisions are based on lack of data and evidence; limited participation in design, monitoring and evaluation of programs; and limited technical capacity.<sup>63</sup>

By mid-2020, there had been little improvement. Improvements were still required in policy reform; re-allocation of responsibilities in funding, budgeting and fiscal transfers; employee management and capacity development.<sup>64</sup> Firstly, it requires a common understanding of the constitutional powers and functions of the three tiers of government.<sup>65</sup> Policies and laws require review to ensure that they conform to the requirements and spirit of the constitution and the enabling legislation on the assignment of functions need to be prioritized and entered into force.<sup>66</sup> A further report recommended the adoption of bottom-up planning, budgeting and program to prevent duplication and redundancy.<sup>67</sup> There was “a tendency to replicate similar projects and programs at each level, sometimes all three or at least two levels allocate a budget for the same program or projects”.<sup>68</sup> It also emphasized that the respective levels must “receive adequately trained and

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<sup>60</sup> *Employee Adjustment Act.*

<sup>61</sup> *Supporting Strong, Effective and Inclusive Sub-National Governments.*

<sup>62</sup> *Ibid.*, p. 5.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*, p. 6.

<sup>65</sup> *Ibid.*, p. 29.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Assignment of Functions.*

<sup>68</sup> *Ibid.*, p. 82.

capable human resources and have the necessary capacity for their execution”.<sup>69</sup> Each level of government must equip its “institutions with the necessary technical, physical and financial capabilities to sequence priorities, build a shared understanding among key stakeholders, and enable them to perform entrusted functions, timely and effectively”.<sup>70</sup> To further complicate matters, Nepal sits at equal 117 (eq.) out of 180 countries with a score of 33 out of 100 on the Corruption Perception Index 2020.<sup>71</sup>

## **C. Federalism capacity needs assessment**

A federalism capacity needs assessment was released in July 2019.<sup>72</sup> The assessment was undertaken through structured interviews across all seven provinces.<sup>73</sup> All 17 metropolitan and sub-metropolitan cities and a stratified sample of 98 municipalities and rural municipalities were administered a 300-question survey.<sup>74</sup> At the time of their survey, many high-skilled positions such as engineers, lawyers and accountants at the local level remained vacant at the local level.<sup>75</sup> The vacancy rate for engineers was almost half nationwide and over two-thirds in metropolitan cities.<sup>76</sup> Vacancy rates in provincial public administration positions ranged between one quarter to one-half of approved positions.<sup>77</sup> This left

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<sup>69</sup> *Ibid.*, p. 106.

<sup>70</sup> *Ibid.*, pp. 107-08.

<sup>71</sup> *Corruption Perceptions Index 2020*, p. 3.

<sup>72</sup> *Capacity Needs Assessment*.

<sup>73</sup> *Ibid.* para. 22.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*, para. 29.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*, para. 31.



around 1,000 vacant positions.<sup>78</sup> The Report recommended that an action plan be developed to complete the needs-capacity gap in appointments.<sup>79</sup> A national/provincial plan and institutional arrangement for training and capacity building should be functioning as soon as possible.<sup>80</sup> It also recommended that:

[T]he assignment of expenditure responsibilities to provincial and local governments should be revisited and made clearer in terms of which level of government should have responsibilities for which functions. To the extent possible, the number of concurrent functions should be reduced, and the functions that appear on more than one exclusive list should be eliminated.<sup>81</sup>

## D. Political realities

Nepal has struggled for years for “democracy and its institutionalization”, but it appears to have joined the global trend of a democracy in recession.<sup>82</sup> As a result, civil liberty has declined with “pervasive corruption at all levels and complete disregard for democratic norms and institutions”.<sup>83</sup> During the first author’s sojourn in Nepal in 2019 and early 2020, there was a significant ambivalence towards devolution within the government and the bureaucracy. This perception was obtained by personal observations, which were confirmed from widespread press reports.

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<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*, para. 47.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*, para. 47.

<sup>82</sup> Bhattarai, "Democracy under Attack," para. 10.

<sup>83</sup> *Ibid.*

In 2018, a number of enabling Acts passed by the national parliament apparently conflicted with the Constitution.<sup>84</sup> This indicated that the centre sought to maintain excessive legislative control over the states and local levels contrary to the Constitution. Two of the examples identified by Paudel and Sapkota and confirmed and investigated by the authors are:

- 1) The preamble to the *Intergovernmental Fiscal Arrangement Act* states that the Act “has been made to provide necessary provisions regarding revenue rights, revenue sharing, grants, loans, budget arrangements, public expenditures, and fiscal discipline of the Government of Nepal, the state and local levels”.<sup>85</sup> The implication is that the *Government of Nepal* is only at the federal level. In contrast, the Constitution is quite explicit that the main structure of the Federal Democratic Republic of Nepal consists of three levels consisting of the Federation, the State and the Local level.<sup>86</sup> Each of these levels exercises “the power of [the] State of Nepal pursuant to this Constitution and law”.<sup>87</sup> Another, occurs in Schedule 4 of the Act dealing with the distribution of the royalties from natural resources, where Note 1 appears to allocate a role to the District Coordination Committee in the allocation and distribution of royalties.<sup>88</sup> The Constitution clarifies that this is a role for the Federation, State and Local level.<sup>89</sup> Nowhere is a District Coordination Committee given the constitutional right to make laws, operate a consolidated fund or allocate funds.

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<sup>84</sup> Paudel and Sapkota, *Local Levels in Federalism*.

<sup>85</sup> *Intergovernmental Fiscal Arrangement Act*, Preamble

<sup>86</sup> *Constitution of Nepal*, art. 56(1)

<sup>87</sup> *Ibid.*, art. 56(2)

<sup>88</sup> *Federation, Province and Local Level Act*, Schedule 4, Note 1

<sup>89</sup> *Constitution of Nepal*, art. 59(4).

- 2) The Constitution allocates basic and secondary education to the jurisdiction of the local level.<sup>90</sup> The *Local Government Operation Act*, however, omits *secondary education* from the list of the levels of education for which it has the responsibility for the “formulation, implementation, monitoring, evaluation and regulation of policies, laws, standards and plans”.<sup>91</sup> This is even though the title of art 11 (2)(h) being “Basic and secondary education”.<sup>92</sup>

As of December 2020, over 250 cases had been filed in the Constitutional Court (Ghimire 2020).<sup>93</sup> Many of the cases were related to the devolution of power. Ghimire interviewed experts on federalism.<sup>94</sup> They considered that the Inter-Provincial Council led by the prime minister should be convened to resolve such issues in preference to using writ positions to the Constitutional Court.<sup>95</sup> The Council is established under art. 234 of the Constitution<sup>96</sup> and the *Federation, Province and Local Level (coordination and inter-relations) Act*.<sup>97</sup>

## E. Governance

On 24 May 2021, the authors received the following e-mail from Sanjay Maharjan in Kathmandu:

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<sup>90</sup> *Ibid.*, Schedule 8.

<sup>91</sup> *Local Government Operation Act*, art. 11(2)(h)(1).

<sup>92</sup> *Ibid.*, art. 11(2)(h).

<sup>93</sup> Ghimire, "Power Sharing Cases Pile Up," para. 18.

<sup>94</sup> *Ibid.*, para. 7-19.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Constitution of Nepal*, art. 234

<sup>97</sup> *Federation, Province and Local Level Act*, ch. 4.

I hope everything is well with you and I hope you are doing well. . . I am tested positive and the situation in Nepal is hell, I don't have any job at the moment. It is not easy for me to survive at this moment and our political party is fighting for the post. Our system sucks. Many people are dying day by day because of Covid. I am afraid if something serious happens to me during a positive case. I will be unable to get treatment I can't afford and it's hard to get emergency beds. Fighting for my life with Covid I will get in touch with you if I am alive.

A few weeks later, Sanjay contacted us to say he was recovering but was struggling because of the government's lack of work or support.

For whatever reason, there seem to be a continuing series of failures of governance. Whilst the Constitution envisions a high level of coordination between the three tiers of government, it was lacking during the COVID-19 pandemic.<sup>98</sup> The provincial and local governments had Constitutional responsibility.<sup>99</sup> Nevertheless, the central government gave responsibility to District Administration Offices which were part of the previous centralized state and were still accountable to the federal government and not to the provincial and local levels.<sup>100</sup> As the provincial and local governments lack adequate health infrastructure, they are still dependent on the federal health ministry.<sup>101</sup>

From March 2020 until at least August 2021, Nepal entered into a series of lockdowns that affected much of the population, particularly those in the Kathmandu valley. Informal businesses account for 50% of businesses and are the

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<sup>98</sup> Bhattarai, "Five Eventful Years," para. 1.

<sup>99</sup> *Constitution of Nepal*, Schedule, 6, item 9; Schedule 8 item 9

<sup>100</sup> Bhattarai, "Five Eventful Years," para. 1.

<sup>101</sup> *Ibid.*

primary source of income for most of the labour force.<sup>102</sup> Urban informal sector workers are more vulnerable than rural workers to the impact of COVID-19 and the resulting economic downturn. Rural workers had the advantage of being able to fall back on subsistence farming. “Most informal firms operate with limited savings, and owners may face the difficult choice of staying home and facing starvation during the lockdown or running their business and risking infection”.<sup>103</sup> Staff in both the accommodation and tourism sectors are casual mostly with salary restricted to the hours worked. The most impoverished workers are the estimated 30,000 street vendors in the Kathmandu Valley.<sup>104</sup> Of this group, there are around 3,000 hawkers selling vegetables and around the same number selling fruit.<sup>105</sup> The governments at all levels failed to provide adequate support for those affected. The Federal government continued with its political machinations whilst the less well off members of the suffered during the closures due to the pandemic. For example, the Prime Minister Employment Program suffered from poor implementation, wide discrepancies in pay, imbalance of benefits with partial policies and regulations between the formal and informal sectors.<sup>106</sup>

Nepal has had a National Planning Commission since 1956, and it continued under the Dubea government in August 2021.<sup>107</sup> The Commission is not recognized under the 2015 Constitution. The National Natural Resource and Fiscal Commission is the responsible agency under Part 26 of the Constitution.<sup>108</sup> The role of the Natural Resource and Fiscal Commission is to determine the basis and

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<sup>102</sup> "Covid-19 Impact," para. 6.

<sup>103</sup> *Ibid.*

<sup>104</sup> Ojha, "Kathmandu's Street Vendors," para. 14.

<sup>105</sup> Ojha, "Ban on Roadside Vending."

<sup>106</sup> Khadka, "Plights of Nepali Informal Workers," para. 7.

<sup>107</sup> Wagle, "Central Planning Versus Federalism," para. 1-5.

<sup>108</sup> *Constitution of Nepal*, pt. 6.

modality for fiscal equalization between the three levels of government.<sup>109</sup> The Planning Commission is centralizing the planning function, whereas the planning function belongs to all three levels of government as specified in the Schedules to the Constitution.<sup>110</sup> Hence the need for fiscal equalization.

In March 2021, there have no been airmail services from Nepal for one year.<sup>111</sup> Officials blamed this because they had a contract with Thai Airways that temporarily suspended flights to Kathmandu due to the COVID-19 pandemic. Thai subsequently entered into bankruptcy protection, and the Nepali officials claimed they were, therefore, unable to contract with any other airline. Finally, on 29 June 2021, the government announced that they had replaced Thai Airways with the national carrier.<sup>112</sup> During the whole period, international courier services companies continued to operate.

One of the key achievements has been at the local level. Even in 2021, Nepal is still recovering from the 2015 earthquake. Local governments have become the first point of contact between citizens and the state.<sup>113</sup> What is particularly significant is that officials responsible for building inspections and construction permits are now at the ward level. Similarly, complaints such as those challenging assessments and grant-beneficiary lists can be registered at the ward level, where once they had to be lodged at the district headquarters.

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<sup>109</sup> *Ibid.* art. 252.

<sup>110</sup> Wagle, "Central Planning Versus Federalism," para. 8.

<sup>111</sup> Bajracharya, "Outbound Postal Service."

<sup>112</sup> "NAC Replaces Thai Airways."

<sup>113</sup> Binayak "Political Transition and Earthquake Recovery."

## F. Politics, the Supreme Court and the President

There are constitutional checks and balances among the judiciary, executive and legislature. However, it is claimed that “there have been systematic efforts to disturb this balance and to minimize the autonomy of constitutional commissions”.<sup>114</sup>

On 21 December 2020, following leadership tensions within the ruling Nepal Communist Party (NCP), Prime Minister KP Sharma Oli recommended the dissolution of the House of Representatives.<sup>115</sup> The President approved the recommendation pursuant to art. 76(1), art. 76(7) and art. 85 of the Constitution.<sup>116</sup> Art. 76(1) empowers the President “to appoint the leader of a parliamentary party that commands a majority in the House of Representatives as the Prime Minister”. The relevance of this article to the matter of dissolution of the House is questionable. Article 76(7) refers to the case where the Prime Minister has failed to obtain a vote of confidence, or a Prime Minister cannot be appointed. Neither of these conditions applied in this case - there had been no vote of confidence, and there was an incumbent Prime Minister. It did, however, require an election to be held within six months of the House dissolution. Article 85 sets the term of the House of Representatives at five years unless dissolved earlier. On first reading, it appears that the President was in error in accepting the Prime Minister’s recommendation.

Protests followed.<sup>117</sup> The dissolution of the House was referred to a full bench of the Constitutional Court.<sup>118</sup> On 23 February 2021, the full bench ruled

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<sup>114</sup> Bhattarai, "Five Eventful Years," para. 25

<sup>115</sup> Pradhan and Ghimire, "President Dissolves House."

<sup>116</sup> Ghimire and Pradhan, "Has Oli Accepted the Constitution Has Flaws?," para. 10.

<sup>117</sup> "Protests Erupt across the Country."

<sup>118</sup> "In a Landmark Verdict."

that the House dissolution was unconstitutional, and the government was ordered to convene the House within 13 days.<sup>119</sup>

At this stage, it is crucial to understand Section 76 of the Constitution concerning the appointment of the Prime Minister. The process depends on the composition of the House of Representatives. The President acts according to the following steps in the Constitution of Nepal until a leader can be appointed:

- 1) If the leader of a political party commands a majority in the House of Representatives, that person is appointed Prime Minister (s. 76(1)).
- 2) If the leader of a political party commands the support in the House of Representatives with two or more parties, that person is appointed Prime Minister (s. 76(2)).
- 3) If a leader appointed under s. 76(2) fails to obtain a vote of confidence within 30 days under s. 76(5), the leader of the party with the highest number of members in the House is appointed Prime Minister (s. 76(3));
- 4) If a leader appointed under s. 76(3) fails to obtain a vote of confidence within 30 days under s 76(5), any member who presents a ground on which they can obtain a vote of confidence in the House is appointed Prime Minister (s. 76(5)); and
- 5) If a leader appointed under s. 76(5) fails to obtain a vote of confidence within 30 days, the President, on the recommendation of the Prime Minister dissolves the House and appoints a date for an election (s. 76(7)).

In a further shock to the government in April 2021, the Court annulled the merger of the Communist Party of Nepal (Unified Marxist–Leninist), the former party of Prime Oli and the Communist Party of Nepal (Maoist Centre).<sup>120</sup> The parties had merged in May 2018 to form the Nepal Communist Party (NCP)

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<sup>119</sup> *Ibid.*

<sup>120</sup> Pradhan, "The (NCP) Party's Over."



(Pradhan 2021).<sup>121</sup> The Court ruled that the parties return to their status as before their merger. At the time of the Court decision, the merged party held a nearly 2/3<sup>rd</sup> majority in the House of Representatives. The logic for annulling the merger rather than allowing the merged organization to change its name from the Communist Party of Nepal is unclear. The Prime Minister Oli's number of seats was reduced from 174 to 121, with the remainder going back to the CPN (Maoist Centre). The implications were severe. There were concerns about the governance style of the Prime Minister amongst most of the members of the former Communist Party of Nepal (Maoist Centre) as well as within a section of the former members Communist Party of Nepal (Unified Marxist–Leninist).<sup>122</sup>

The Government became more and more dysfunctional as the Prime Minister sought to hold on to power. Political manoeuvring and dubious actions by both the Prime Minister and the President continued.<sup>123</sup> Around midnight on 21 May, the Prime Minister held a Cabinet meeting that recommended the dissolution of the House. The President acceded to the request soon thereafter. Again their interpretation of Article 76 was the trigger, and the parties petitioned the Supreme Court.<sup>124</sup> On 12 April, the Constitutional Bench overturned the decision to dissolve the House.<sup>125</sup> Somewhat unexpectedly, the court issued a mandamus order to the President to appoint the Nepali Congress Party President, Sher Bahadur Deuba as the new prime minister as per Article 76 (5) of the Constitution by 5 pm the next day. Deuba had made a claim to the President on the afternoon of 21 May that he had the written support of sufficient members to

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<sup>121</sup> *Ibid.*, para. 4.

<sup>122</sup> "Madhav Kumar Nepal Appeals."

<sup>123</sup> "Opposition Alliance Files Petition."

<sup>124</sup> Manandhar, "Back in Court."

<sup>125</sup> "Court Orders President."

be able to gain a vote of confidence in the House, but this was not accepted by the President.<sup>126</sup>

On 18 July, Deuba won a vote of confidence in the House of Representatives, ensuring he will lead the government for a year and a half until the next elections.<sup>127</sup> A total of 165 members voted in his favour and 83 against. Even as many as 22 lawmakers of former prime minister Oli's party voted in favour of Deuba. This was the fifth time that Deuba had been appointed as Prime Minister. His previous terms were 1995-1997, 2001-2002, 2004-2005 and June-December 2017. A former Speaker, Taranath Ranabhat, is reported as saying that "[i]t is in the hands of Deuba to better the future of the country and the party at the same".<sup>128</sup>

Unfortunately, this did stop the political machinations. Three weeks since taking the oath of office, the new Prime Minister had not been able to expand his Cabinet.<sup>129</sup> Whilst rebel lawmakers within the CPN-UML loyal to Madhav Kumar Nepal voted against the previous Prime Minister and supported Deuba as Prime Minister, they remained uncommitted as to whether they would join the new government. Whilst this does not affect the stability of the government, it does affect its efficiency in the handover. Finally, a coalition government was formed of all of the parties opposed to the Oli faction of the CPN-UML. At the time of writing in January 2020 the government has remained stable but the Oli faction continues to disrupt parliamentary proceedings.

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<sup>126</sup> *Ibid.*

<sup>127</sup> Ghimire, "Deuba Set to Govern."

<sup>128</sup> *Ibid.*, para. 38.

<sup>129</sup> Giri, "Nepal Helped Deuba."

## 4. Discussion

The Preamble to the Constitution implies that all forms of discrimination and oppression were “created by the feudalistic, autocratic, centralized, unitary system of governance”.<sup>130</sup> The aim of the Constitution was to “fulfil the aspirations for sustainable peace, good governance, development and prosperity through the federal, democratic, republican, system of governance”.<sup>131</sup> *To date, these aims have not been achieved. This section will be discussed in terms of the constitution, implementation of federalism and governance.*

### A. Constitution

#### 1) Devolution of Powers

The Constitution has several deficiencies. The main issue is the devolution of roles and responsibilities from the centre to the other two levels of government. The deficiencies started with the drafting of the Schedules to the Constitution, namely: Schedule 5 – List of Federal Powers, Schedule 6 – List of State Power, Schedule 7 – List of Concurrent Powers of Federation and State, Schedule 8 – List of Local Power, and Schedule 8 – List of Concurrent Powers of Federation, State and Local Level. The authors consider that these Schedules were poorly drafted and often ambiguous, presumably because of the urgency to draft a Constitution to prevent further internal conflict.

Rather than prepare simple Schedules, the drafters of the Constitution should have provided greater clarity by amplifying each of the powers to ensure that there is no duplication. A further example of the problem is that of health which is particularly relevant during the current pandemic:

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<sup>130</sup> *Constitution of Nepal*, Preamble para. 4

<sup>131</sup> *Ibid.*, para. 7.

- a. **Federal matter** - Health policies, health services, health standards, quality and monitoring, national or specialized service providing hospitals, traditional treatment services and communicable disease control;<sup>132</sup>
- b. **State matter** – Health services;<sup>133</sup>
- c. **Concurrent Federal and State matter** – nil;
- d. **Local matter** – Basic health and sanitation;<sup>134</sup> and
- e. **Concurrent Federation, State and Local matter** – Health.<sup>135</sup>

Who, then, is responsible for what aspects of health policy? All power must be exercised in accordance with the Constitution<sup>136</sup> and Federal law for powers exercised by the Federation;<sup>137</sup> State laws for State powers; and Local laws for Local powers.<sup>138</sup> If the powers are concurrent, each level can legislate.<sup>139</sup> However, if the law conflicts with that of the higher level, then that part “which is inconsistent with the Federal law shall be invalid to the extent of such inconsistency”.<sup>140</sup> Such conflicts could generate potential issues that might need to be resolved by the Supreme Court.<sup>141</sup>

An alternative approach could have been to devolve the responsibility for legislating for the roles and responsibilities of the Local Government to the State level. The Constitution could then have mandated what powers were to be

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<sup>132</sup> *Ibid.*, schedule 5 item 16.

<sup>133</sup> *Ibid.*, schedule 6 item 9.

<sup>134</sup> *Ibid.*, schedule 8 item 9.

<sup>135</sup> *Ibid.*, schedule 9 item 3.

<sup>136</sup> *Ibid.*, art. 57.

<sup>137</sup> *Ibid.*, art. 57(1).

<sup>138</sup> *Ibid.*, art. 57(3).

<sup>139</sup> *Ibid.*, art. 57(5).

<sup>140</sup> *Ibid.*, art. 57(6)-(7).

<sup>141</sup> *Ibid.*, art. 128.

devolved to the Local Level. India legislated such an approach in the Seventy-fourth Amendment to their Constitution (Indian Constitution 2015, pt. IXA).<sup>142</sup>

## 2) *Parliamentary Committees*

The Constitution allows either House of the Federal Parliament to form committees “as provided for in the Federal law”.<sup>143</sup> Each House can frame its own rules to conduct its business.<sup>144</sup> The current Rules of Procedures require that after a bill has been submitted to the House, there is a discussion on its principles and it is either sent to the relevant parliamentary committee or for more comprehensive public consultation.<sup>145</sup> It considers the bill and any proposed amendments and forwards a report to the House, which can either accept or reject the report. If the House accepts the report, it can accept the bill and send it to the other House.

Several issues have arisen with the Committee system. Federalism is a new concept, and many of the members of parliament are new to the parliament. Pradhan has identified that committees rarely seek technical support from experts on the content and drafting of bills; members rarely study the bills in detail; amendments tend to move amendments proposals without adequate study or rationale with most amendments related to language and grammar; finally, the “political parties are not active in coordinating amendment proposals”.<sup>146</sup>

In the House of Representatives: 14% of the members have completed secondary education or less; 15% higher secondary education; 64% university

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<sup>142</sup> *Constitution of India*, pt. IXA.

<sup>143</sup> *Constitution of Nepal*, art. 97.

<sup>144</sup> *Ibid.*, art. 104(1).

<sup>145</sup> Pradhan, “Law-Making,” para. 5.

<sup>146</sup> *Ibid.*, para. 9.

graduates; with 7% unstated qualifications. In the National Assembly: 29% of the members have completed secondary education or less; 26% higher secondary education; 42% university graduates; 3% unstated qualifications.<sup>147</sup> Lack of education would not appear, then, to be a factor in the current issues in the Committee system.

There are several other possible factors. The members have come from various ideological positions, from Marxist-Leninists, Maoists to the Nepali Congress (a social democratic party); from high-caste Hindus to Dalits and persons of tribal backgrounds.<sup>148</sup> There would also be various understandings of parliamentary democracy and a possible lack of understanding of federalism. The drafting of legislation commences with the line Ministry followed by review in the Ministry of Law, Justice and Parliamentary Affairs to ensure that the drafting is correct and in accord with the Constitution.<sup>149</sup> Obviously, the Supreme Court can rule on the constitutionality of a law.<sup>150</sup> A more efficacious solution would be for the Secretariat to increase the size of the staff seconded to each of the Committees and include a legal officer with legal drafting experience. Before secondment, the staff should receive an extensive briefing on the principles of federalism as defined in the Constitution.

### **3) Implementation**

Unsurprisingly, implementation remains a significant challenge. The transitional provisions are included in the Constitution. The two key provisions are:

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<sup>147</sup> *Federal Parliament of Nepal*.

<sup>148</sup> *Ibid*.

<sup>149</sup> Ghimire, "Ministry Finds 174."

<sup>150</sup> *Constitution of Nepal*, art. 128.

- a. The Government is to make necessary provisions for the delivery of services at the State and Local levels, including the adjustment of staffing levels (art. 302);<sup>151</sup> and
- b. Existing laws remain in force until repealed or amended. After one year from the first day of sitting of the Federal Parliament, any law inconsistent with the Constitution will be “invalid to the extent of such inconsistency” (art. 304).<sup>152</sup>

Whilst it is not stated explicitly, it is clear that the drafters of the Constitution expected/“hoped” that implementation would take around 3 to 4 years.<sup>153</sup> Even with the best will in the world, such a time frame would be almost impossible to achieve. With Nepal’s state of development, centralized bureaucracy, and inexperienced government, such a time frame would have been impossible to achieve from the beginning.

A key impediment to implementation has been the role of the bureaucracy. This was apparent to the first author during 2019 as the team sought to develop appropriate roles for the Department to which it was an advisor. In the early part of the year, there was an apparent lack of understanding of federalism, even at senior management levels. Gradually this changed as staff were guided by senior staff of the overarching Ministry.

The Prime Minister had been on the record as saying that the province and local levels were units of the federal government.<sup>154</sup> Acharya and Zafarullah noted that the bureaucracy had been chided for “rent-seeking behaviour, status-oriented outlook, undeniable loyalty to political parties and for sheltering themselves from

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<sup>151</sup> *Ibid.*, art. 302.

<sup>152</sup> *Ibid.*, art. 304.

<sup>153</sup> Calculated from the date of the commencement of the Constitution on 20 September 2015 to the first sitting of the House.

<sup>154</sup> “PM Must Correct Claims.”

control and accountability regime".<sup>155</sup> With a lack of guidance from the Prime Minister, it is no surprise that the draft legislation tended to remain focused on a primary role for the centre at the expense of the other two levels of government.

The drafters of the Constitution had clearly overlooked the significant logistics associated with allocating facilities and suitably trained staff, particularly at the local level. Many rural municipalities are isolated and, therefore, not a desirable location for personnel, particularly those from Kathmandu. Unfortunately, it would be doubtful that many positions could be filled locally. The remainder of this section will focus on the local level as the provincials are in a much better position to obtain suitably qualified and experienced staff.

Skill levels across the various local government units will be quite variable. There is a need for basic training followed by continuing professional development. An important initiative would be to facilitate and support the establishment of groupings of municipalities based on geography. Such groupings would help them to share resources, develop a coordinated approach to issues and coordinate responses in the case of the smaller rural and urban municipalities. Institutional strengthening will be a long-term requirement and could be provided by the centre, the province or outsourced. A short-term consultancy would be of limited value.

#### **4) Governance**

The greatest failure during the first three years of the implementation of federalism was under the stewardship of the government under Prime Minister Oli. Dinesh Bhattarai, a former Nepali diplomat and foreign policy expert, promoted the view that:

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<sup>155</sup> Acharya and Zafarullah, "Institutionalising Federalism," 159.



In the 2017 elections, KP Oli made nationalism party's main election plank, and won elections by close to two thirds majority . . . he has worked to sabotage the institutionalization of hard-won democratic process. PM excessively politicized nascent democratic institutions, and he was highly selective in investigation of corruption cases.<sup>156</sup>

What became clear is that Prime Minister became more autocratic over time. His approach saw centralism preferred over federalism, autocracy preferred over democracy and politics preferred over policy. Could this have been avoided? That is a difficult question to answer considering the attitude of the Prime Minister. Can this be avoided in the future? Several actions should be undertaken. It appears that there was a lack of understanding of the Constitution, including the operation of a federation. There is also a lack of understanding of the separation of powers between the legislature, executive and judiciary.

Most importantly, the President must be apolitical and not be involved in any party politics. Whilst the President must take the advice of the Prime Minister, this does not apply if the advice of the Prime Minister is contrary to the Constitution. It should not be expected that the President or Prime Minister is a Constitutional expert. They should both have access to independent Constitutional lawyers to advise on Constitutional issues. Each Parliamentary Committee should also have a legal officer attached on a continuing basis.

The bureaucracy should also be apolitical so that it can provide independent advice. If this is not possible, they should, at least, not participate in party politics. Senior bureaucrats must be fully versed in the Constitutional requirements of a

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<sup>156</sup> Bhattarai, "Democracy under Attack," para. 11.

federal system. They must refine from overreach and not impinge on the exclusive rights of the other two levels. The key is cooperative federalism. Any assistance should be offered and not imposed. There will be many opportunities for assistance, especially at the local level. Whilst oversight is required over the operation of all three levels of government; it should not be overly onerous or result in unnecessary duplication.

## **5. Conclusion**

The road to a stable federation in Nepal has been rocky, compounded by the COVID-19 pandemic. The timetable for implementation was far too short. Politicians, officials, political parties appeared to lack a clear understanding of federalism and the need for clear enabling legislation and the degree of institutional strengthening required at the provincial and local levels to provide the foundations of a vibrant federal republic.

## **6. Declaration of Conflicting Interests**

The authors state that there is no conflict of interest in the publication of this article.

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