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INFORME

**NEPAL (FEDERAL DEMOCRATIC REPUBLIC OF NEPAL) - FROM A
CENTRALIZED MONARCHY TO A FEDERAL DEMOCRATIC REPUBLIC¹****por Surya Dhungel**

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Cuadernos Manuel Giménez Abad, nr. 25.DOI: <https://doi.org/10.47919/FMGA.CM23.0101>**ABSTRACT**

On 20 September 2015, the Second Constituent Assembly promulgated Nepal's federal constitution, officially becoming the Federal Democratic Republic of Nepal. With this, Nepal became the most recent country to adopt a federal system of government and join the federal group of states. This moment marked a significant shift towards achieving an equitable governance structure, following decades of struggle and conflict for many ethnic and political communities striving towards a democratic and inclusive foundation for Nepal. This text analyses the history and development of federalism in Nepal and the constitutional provisions relating to federalism.

Keywords: Nepal, Federalism, Constitution, decentralization**RESUMEN**

El 20 de septiembre de 2015, la Segunda Asamblea Constituyente promulgó la Constitución federal de Nepal, convirtiéndose oficialmente en la República Democrática Federal de Nepal. Con ello, Nepal se convirtió en el país que más recientemente ha adoptado un sistema federal de gobierno y se ha unido al grupo federal de Estados. Este momento marcó un cambio significativo hacia la consecución de una estructura de gobierno equitativa, tras décadas de lucha y conflicto para muchas comunidades étnicas y políticas que luchaban por una base democrática e integradora para Nepal. Este texto analiza la historia y el desarrollo del federalismo en Nepal y las disposiciones constitucionales relativas al federalismo.

Palabras clave: Nepal, Federalismo, Constitución, descentralización

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I. HISTORY AND DEVELOPMENT OF FEDERALISM

In Nepal, federalism grew out of public support for efforts to provide greater political and economic powers to address divisions and ultimately a manner by which to govern Nepal equitably. Federalism was considered a suitable governance structure for the country of 29 million people² in light of the diverse array of features such as caste, ethnicity, religion and economic development among the myriad of communities and regions across the country.

The origin of federalism in Nepal is tied to the development of decentralization, though its origins are not altruistic. Decentralization was first considered and employed because of its facility to propagate a facade of power-sharing by elites. In what was then a monarchy, devolution in Nepal began in the 1960s.

Fearful of the accelerating disappearance of hereditary monarchs, the King of Nepal used devolution as a strategy to cover up his intention to impose direct rule in the emerging parliamentary democracy. This episode of devolution was used to secure power by King Mahendra, who dissolved Parliament and seized direct control in 1961. This was devolution in name only, although the intervention helped to establish five development regions, 14 zones and 75 districts, village *panchayat* and municipalities, the basis of Nepal's new administrative structure (Malagodi, 2013). This *panchayat* administrative structure corresponded to the four tiers of the state's representative institutions (Rose; Fisher, 1970: 53).

Previous to this, Nepal was under the rule of the hereditary Shah monarchy and Rana oligarchy. The Shah monarchy rose to power proceeding the mediaeval period with the unification of the western and eastern kingdoms by King Prithvi Narayan Shah, who annexed Kathmandu, Patan and Bhadgaon in Kathmandu valley, uniting Nepal from 1768 (Malagodi, 2018). In 1846, Jang Bahadur Rana took over as Prime Minister in an administrative coup of sorts that usurped power from the Shah monarchy and established the hereditary rule of the Ranas as Prime Ministers for 104 years, with the Shah kings reduced to figure heads (Pradhan, 1991). It was during this period that exclusion began to be used as a tool to solidify the hegemonic rule of elites, (Hofer, 1979) establishing a system which codified the ethnic discrimination and exclusion that has dominated social and political life since then.

The restoration of democracy in 1990 by King Birendra, under pressure from the pro-democracy movement (known in Nepal as *Jana Andolan I*), lifted the 1960 ban on political parties and installed Nepal's first democratic constitution, establishing multi-party democracy under a constitutional monarchy. This began the long march towards greater representation for minorities and demands for a political system capable of reflecting Nepal's diversity and providing greater equality across the country.

Lifting the ban on political parties provided the opportunity for political representation. There were 44 political parties that registered with the Election Commission. Three of these parties demanded federalism: the Nepal Rastriya Jana-Jati Party demanded federalism based on ethnicity; the Sadvanaban Party wanted federalism for the autonomy of the Tarai region; and the Nepal Rastriya Jana Mukti Morcha pushed for administrative federalism (Bhattachan, 2003). From this beginning, federalism gained wider traction as an alternate governance option, with the possibility of

2. Central Intelligence Agency (CIA), World Factbook, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>

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addressing Nepal's political and economic grievances as well as its ethnic and cultural diversity. Although federalism had many detractors, its political support was growing.

In 1996, a small leftist party, the Communist Party of Nepal (Maoist), began an armed rebellion against the government. The insurgency expanded across the country, attacking police posts and other government bases. In total, more than 13,000 people were killed during the decade long conflict. The insurgents' grievances centered on demands for greater participation in the political process, identity, power-sharing and decentralization. Federalism became a governance option that was linked to principles of self-rule and shared-rule.

In 1999, the *Local Self-Governance Act* and subsequent Local Self Governance Regulations in 2000 (Government of Nepal, 1998) offered local bodies a legal framework for finance and other development. The District Development Committees (DDCs) at the district level and Village/Town Development Committees (VDCs/TDCs) at the village or town level) were created to carry out responsibilities such as sectoral devolution and resource mobilization (Bahadur Thapa, Sharma, 2011). While the legislation in theory provided far-reaching powers for local governments to address service delivery needs, the central government failed to hand over sufficient financial resources so that these powers could be exercised locally. The act also prescribed the mandatory allocation of 20% of seats at the village level to women, and provisions for the nomination of women and disadvantaged groups in the executive committees at the village and district level. Again, however, elections never materialized and as such neither did the provisions for women and marginalized communities. What emerged from this episode was greater awareness and impetus among local communities to realize these rights and provisions. This was a significant development towards greater social and economic empowerment and equality, the genie was out of the bottle, and federalism became increasingly tied to these demands (Malagodi, 2018). In February 2005, citing the elected government's inability to end the insurgency, the King took power in a coup supported by the army. This created a triangular conflict among the 'democratic' political parties, the Maoists and the military-backed monarchy. Just over a year later, a second mass uprising, led by a joint alliance of the democratic parties and the Maoists, and known as *Jana Andolan II*, forced the King to relinquish direct rule. This triggered a peace process among the mainstream parties and the Maoists, with a ceasefire agreement signed in May 2006 and a Comprehensive Peace Accord signed in November of the same year. An interim government was created and the Parliament was temporarily reinstated until new elections could be held.

At the same time as the peace process was unfolding, historically marginalized groups around the country increasingly pressed for their rights and for inclusion in politics and in government institutions. Issues related to identity, dignity, and social, cultural and language rights played a significant role in the country's political transition.

When enacting the interim constitution of Nepal, federalism was again ignored and a major protest in Terai by the *Madhesi* population erupted. This led the government and all the political parties to amend the interim constitution and insert federalism. Throughout the First Constituent Assembly the structure of the federal state remained the crucial item on the agenda and the assembly was dissolved without delivering the constitution.

The issues centered around the number of provinces and how best to address all demands for ethnic federalism and political accommodation. There was considerable and at times violent protest around the construction of the provincial boundaries. The main question was what would be the rationale for creating boundaries, were they to be based on ethnic lines or another basis? It was decided to use identity and viability

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as the main factors, and these two considerations taken in unison determined the boundaries of provinces. Thus, federal Nepal emerged with seven provinces.

II. CONSTITUTIONAL PROVISIONS RELATING TO FEDERALISM

Nepal's new federal constitution was promulgated by the first elected President at a function organized by the Constituent Assembly on 20 September 2015. It enshrines the concept of limited government regulated through multi-order federal constitutionalism. It also assigns specific powers to the different orders of government. Notions of 'self-rule' and 'shared-rule', which are the core of federal systems, are entrenched throughout the constitutional provisions. They are clearly reflected in the constitutional competences enumerated in the three exclusive lists and two concurrent lists as well (Schedules 5-9), while residual powers rest with the national government.

The new federal constitution (Nepal's seventh), introduced six major changes to governance structure: republicanism; secularism; mixed member proportional representation as the electoral process in both the national parliament and the provinces; multi-level federalism; inclusivity and parliamentary democracy. In designing the constitution, the framers drew on the constitutional arrangements of both established federations (such as the United States, Canada, Germany and Australia) as well as those from recent federations and multi-level systems (South Africa, Pakistan and Spain). Central to the constitutional framers' mindset was providing for minority rights and freedoms and better counteracting the effect of corruption.

In many federations and quasi-federal systems that emerged in the post WWII era, the local level of government is constitutionally recognized. This is the case in India, South Africa, Pakistan and Ethiopia. Nepal followed this course in its constitution as well. This provision ensures that this key partner in federal governance is protected and has legal provisions so that it can discharge its powers allocated. Chief among these is the provision of services for the local communities and citizens it represents. Nepal now has three distinct spheres of government.

The Constitution of Nepal distributes powers across its spheres of government in Articles 57 (1-5) and 60, and in turn enumerates these powers in Schedules 5-9. Schedule 5 lists those powers residing with the federal government. Schedule 6 lists provincial powers and Schedule 8 lists powers of local governments. Next, Schedule 7 lists concurrent powers of the provinces and federal government, and Schedule 9 lists concurrent powers of all three federal entities.

Nepal has a two-chamber central Parliament. The House of Representatives has 275 members elected for a five-year term, 165 from single-seat constituencies through the first-past-the-post (FPTP) electoral system and 110 from a proportional party list. The House of Representatives acts as the house of the people, and its primary functions, as in any democratic Parliament, include legislative, supervisory and executive (such as government formation, financial and budgetary, and diplomatic) functions. Additional independent and autonomous institutions have been created for judicial and ombudsman-like special functions.

The National Assembly is the upper house of the bicameral federal Parliament. The composition and powers of both the House of Representatives and the National Assembly are established by Parts 8 and 9 of the constitution. The National Assembly has 59 members elected for six-year terms on a rotating basis, such that the term of one-third of the members expires every two years. Of the 59 members three members are nominated by the President on recommendation of the government. The

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remaining 56 are elected equally from the seven provinces by an electoral college of each province (eight each) including three females, one *Dalit* and one from disabled groups (Constitution of Nepal, Article 86(2)).

The role of the Assembly is, first, to act as the representative body of the seven provincial houses in order to ensure shared-rule of the federation. Second, it complements the core functions of the House of Representatives and ensures the concept of parliamentary checks and balances for strengthening the quality of legislation as well as restraining the excesses of the numerically dominant House of Representatives. Third, it contributes to the appointment and removal processes of high-level authorities of the state, including President, Vice-President, Justices of the Supreme Court and constitutional watchdog institutions. Impeachment of the President and Vice-President, and the Joint Parliament Hearing Committee for the appointment of Supreme Court Justices and Members of Constitutional Bodies are examples where the role of the National Assembly in fostering parliamentary constitutionalism is significant (Constitution of Nepal, Articles 101(1) (2) and 292, Clauses 25 and 26 of Joint Parliamentary Procedure Rules, 2018). Last, it provides input in matters related to the approval of international treaties and national referendum (Articles 275 and 279).

After the first parliamentary elections held in 2017, the newly elected federal houses passed three parliamentary rules of procedure in 2018 replacing the interim rules. The procedures to enable both the federal houses to carry out their functions are elaborated in the three-core parliamentary rules of procedure: House of Representative Rules, 2018; National Assembly Rules, 2018; and the Federal Parliament Joint Meeting and Joint Committee (Working Procedure) Rules, 2018.

Federal features for ensuring shared-rule are distinctly reflected in the constitution amendment process (Constitution of Nepal, Article 274), Declaration of Emergency process (Article 273) and monitoring of the implementation of the Directive Principles and State Policies (Article 54). While a resolution for constitutional amendment involving any changes in provincial borders or in the provincial competency list under Schedule 6 is tabled in a federal house, consent of the concerned provinces is required. Similarly, approval of both chambers of the federal Parliament is essential in the emergency declaration or endorsement process. A joint parliamentary monitoring committee has to be constituted to ensure the implementation of positive rights of the citizens under the Part 4 (Articles 49-54) of the constitution and Chap. 6 of the Joint Parliamentary Rules, 2018.

There are a number of significant features that stand out as unique to Nepal's federation. One such feature is a direct constitutional mandate. Sovereign state authority (legislative, executive, judicial and financial) is based exclusively and concurrently in the constitution for all autonomous federal entities (Constitution of Nepal, Articles 56-60, Schedules 5-9). The authority granted there applies vertically-from the central government level to the provincial government level to the municipal level. And such authority also applies horizontally-for interprovincial relations and inter-municipal relations. The residual power rests with the central government (Article 58).

Therefore, local self-government bodies are fully autonomous and have their sources of power in the constitution itself, further elaborated by the *Local Government Operation Act, 2017*. Separate chapters deal with the respective level of governments and institutions, and fiscal autonomy is also more or less envisaged. Local bodies are accountable to the constitution, to applicable laws and to the constituents electing them, not to any provincial authorities.

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A second feature is Nepal's presidential model. While the federal government (Prime Ministerial Cabinet and bicameral legislature) and seven provincial governments (Chief Ministerial Cabinet and unicameral house) are parliamentary and accountable to their respective houses, the 753 local governments (categorized as village municipalities, urban municipalities, metropolitan and sub-metropolitan cities) are presidential and directly elected from the people for a five-year term. Village Chiefs and municipality Mayors and the Cabinet (executives), including the Assemblies (legislative wings), cannot be removed from their offices once they are elected. The methods of a 'no confidence motion' 'or a recall' do not exist at the local government level.

Third, there are mixed electoral processes for the federal entities. Both the first-past-the-post (FPTP) and Proportional Representation (PR) electoral systems are utilized for federal and provincial legislatures. For the local legislatures (Assemblies), a different inclusive approach has been devised with primacy of the FPTP system.

A fourth feature is blended authority. The village Chief or Mayor of the municipality is not only Chief Executive of the local government, but s/ he is the head (i.e., chair/or speaker) of the local legislature as well. Moreover, the deputy village Chief or deputy Mayor heads a three-member judicial committee, a dispute settlement quasi-judicial entity. Such a blended power structure at the local level that combines executive, legislative and judicial authorities in powerful local executive heads and deputy heads is not only unique but also risky. The risk is that it goes against the notion of the separation of power and the rule of law. In addition to service delivery and local development responsibilities, including competencies spelled out in the federal scheme (Constitution of Nepal, Schedules 5-9), such blended power gives the local authorities significant responsibility and wide-ranging powers. Added to these tasks are fiscal and resource-related institutional responsibilities as the third entity of government. Adequate support mechanisms to build capacity to enable the local bodies to perform their allocated functions and duties have to be devised by the federal architects to ensure these powers are realized and effectively implemented.

A fifth significant feature is Nepal's inter-governmental relations structure, which incorporates all three spheres of government. A separate chapter of the constitution (Chap. 20) on inter-governmental relations offers guidance to Nepal's inter-governmental needs. Nepal has 761 (1 federal, 7 provincial and 753 local) vertical and horizontal governments which are fully autonomous and constitutionally empowered.

Frictions are bound to arise from overlapping competencies and operationalizing institutional responsibilities, including competitiveness on resource identification and claims among all government entities. To address this, the constitution enshrines principles for the cooperation, collaboration, coexistence and coordination of inter-governmental arrangements among the federation, provinces and local bodies (Constitution of Nepal, Article 232). This is a significant provision, and one with the potential to enshrine these principles into practice. Further formalizing the structure of inter-governmental relations which are unfolding in Nepal will support this aspiration of cooperation, collaboration, coexistence and coordination.

To that end, the role and functions of the inter-governmental relations body, the Inter-Provincial Council (IPC), are outlined in the constitution under Section 234 (1). This section outlines the leadership of the IPC and offers some guidance on the rationale and purpose of this body. The constitution states that the IPC shall 'settle disputes of political nature between the Federation and Province and among the Provinces' (Constitution of Nepal, Art. 234(1)). Meetings of this body are to be held as 'may be necessary' (Art. 234 (2)), while procedures concerning the council are self-determined. This leaves room for this body to establish itself and its functions, though there are

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structural gaps that must be filled to support the functions of the IPC. Establishing regular interaction among the spheres of government across all jurisdictions provides strong conditions for a more cooperative approach to governance.

To date, the Inter-Provincial Council headed by the Prime Minister and consisting of provincial Chief Ministers has met only a few times. Establishing this constitutional body through which the transmission of information and settling of disputes between spheres is important (Constitution of Nepal, Article 234 (1)). But building its credibility as a true dispute-resolving mechanism will require substantive political effort and compromise, and go a long way to realizing the 'federal spirit' of Nepal.

A separate chapter of the constitution (Chap. 20), on inter-governmental relations, offers sufficient space to benefit from others' experiences and apply lessons to Nepal's needs. The role of the District Coordination Committee (DCC) as outlined in the Constitution of Nepal, Article 220 is fourfold, but the *Local Government Operation Act* 2017 adds more responsibilities through Sections 92-96 further expanding the DCC's role. The key tasks as specified in Article 220 include: coordinate between the village and urban municipalities within the district; monitor development and construction works; coordinate the federal and provincial offices with village and urban municipalities and perform other functions as provided for by provincial laws.

Although responsibility to deal with provincial and local differences appears quite innovative, such bodies will add complexity to inter governmental relations and dispute resolution. This is set forth under Constitution of Nepal, Article 235(4) where the Provincial Assembly is directed to coordinate with the District Coordination Committee to 'establish coordination between the Province and Village Council or Municipality and to settle disputes, if any, of political nature'.

Therefore, much depends on the nature of problems, political leaders and the effectiveness of local leaders as to how policy implementation and disputes will be settled. This innovation will be strengthened with institutionalizing this mechanism and setting clear meeting timeframes that provide grounds for these political and policy levers to take root in the fluid political landscape. Even the responsibility of identifying a development agenda and monitoring of civil-society-conducted development work entrusted by the *Local Government Act* appear problematic if not handled carefully.

Similarly, granting voting rights to local village Chiefs and Mayors to elect members of the federal upper house (the National Assembly), as a part of shared-rule was designed to involve local bodies in the central level policy dialogue. Although legislative, executive and political mechanisms are envisaged to facilitate inter-governmental relations in the constitution itself, the ultimate authority to help resolve constitutional issues and other legal disputes is, however, found in the reformed judiciary. The new justice system specifically introduced at the apex a final dispute-resolution and constitutional interpretation mechanism in the form of a Constitutional Court (named special 'Constitutional Bench' of the Supreme Court) as a compromise. Added to the extraordinary jurisdiction of the Constitutional Bench was its power to examine both the constitutionality as well as legality of any legislation in question and also to resolve issues related to complex inter-governmental relations. Such issues are mostly political in nature and may drag the independent judiciary into the political thicket, resulting in controversies.

A sixth feature is inclusivity and pluralism. Inclusivity and democratic pluralism are two major conceptual as well as institutional devices created under the federal governance structure in order to mitigate discrimination and ensure 'unity in diversity', one of the core values of a multi-order government system. Space for women to get political

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representation and leadership has been provided by the constitution. One-third of each party's members elected to the National Assembly must be women. Should any party not achieve this quota, enough women must be chosen from that party's party list of candidates and the same number of men above them in the list must step down—Article 84(8), Constitution of Nepal. At the leadership level, a woman must be either President or Vice-President and either Speaker or deputy Speaker. At the local bodies, a woman must be Mayor or deputy Mayor.

Thus the Constitution ensures gender balance both in political decision making and electoral representation. As a result, increased participation of women from all caste groups was observed at the recent local-level elections. Additional arrangements for women's participation and minimum representation of marginalized or minority groups have also been made at the local executive and legislative level in the form of quotas.

The word 'pluralism' has been used only in Article 74 of the Constitution of Nepal in the context of the 'form of governance' which is in principle applicable at each level of the federal government entity. However, the added impetus of political, legal, societal and institutional pluralism has been granted pervasively through lists of competencies (Schedule 5-9), newly added commissions (as watchdog institutions) and provisions to create specially protected autonomous areas (Articles 56 (5), 57, 283 and 306). A pluralistic approach has been considered in forming the three member judicial committee, which, as noted, is a quasi-judicial body at the local level headed by the deputy Mayor (Constitution of Nepal, Articles 217). Since nearly 80% of the elected deputy Mayors in 753 municipalities are women, its role as a local dispute settlement body with enormous powers has become significant, and at times controversial. Application of judicial reasoning and the minimum norms of judicial process are expected by law (Sections 46-53 of the *Local Government Operation Act*) from the committee members. The members are elected local representatives of one party or the other, and their knowledge of, and commitment to, law may be questionable. These judicial committee members require extensive training. Even then the risks of change in membership every five years make it an unstable body.

The seventh feature is the notion of fixed tenure. All elected representatives at federal institutions, except the National Assembly members (one third of whom face election every two years), are elected for a five-year fixed term. They can be removed before the expiry of their tenure either through voluntary resignation, party defection, legal disqualification, vote of no confidence motion (PM and CM) and impeachment, or through dissolution of the respective houses (federal or provincial) (Articles 87, 169).

However, in the case of local entities, no elected member or authority (including Mayor and ward chairman) can be removed at any stage by any means except their voluntary resignation. Local bodies cannot be dissolved like the federal Parliament or provincial legislature on any grounds, nor is there a provision for recall or suspension for breach of discipline or political inaction. In this sense, the local bodies are politically as well as constitutionally more stable and stronger than higher entities.

This raises a serious question as to how to hold leaders accountable to prevent malfeasance by local representatives. What happens if local authorities do not follow the constitution or go against the advice of the central government? There is no specific legal deterrence to mitigate these potential actions. Only fiscal or administrative tools—fiscal 'sticks' for noncooperation—are left in the hands of provincial and national governments to enforce accountability and sound practices.

The final feature is fiscal autonomy. Extensive fiscal autonomy, resource mobilization and management responsibilities are entrusted to the local bodies by the constitution.

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Power to levy taxes (revenues) is another area that demands discipline and coordination. Building administrative capacity and the skills of planning and managing budgets, however, continue to be a challenge for the local leadership. The use of technology in managing information has to be seriously considered to manage a modern city that generates revenue and wisely uses it.

Federalism and well –entrenched strong local self– government system are a blessing as they bring government closer to the people. They can also help in local development and prompt service delivery. The system could also be a curse, however, if it is mishandled and fosters divisions in society. Multi-layer federalism is very complex to manage, especially in a small country with so much diversity. Hence challenges are enormous but certainly manageable if wisely engineered and implemented.

One more element of the constitution relating to federalism that needs to be discussed is the judicial system. The constitution enumerates three tiers of the court system, a Supreme Court, High Courts and District Courts. Article 128 (2) of the Constitution of Nepal states that the Supreme Court will have the final power to interpret the constitution and final voice on law in Nepal. In addition to the Chief Justice, the Supreme Court of Nepal has a maximum of 20 other Justices (Art. 129 (1)).

The constitution established High Courts in each of the seven provinces and the Supreme Court with a five-member Constitutional Bench at the apex of Nepal's judicial system as well. Establishing the compatibility and role of the various judicial institutions, including the appointment procedure, is an ongoing process in Nepal's shift to federalism. Although the judiciary is hierarchically unified like the Canadian and Indian judicial systems, the blending of the Constitutional Bench at the Supreme Court and creation of a High Court in each of the provinces have given an impression of a move towards a Constitutional Court similar to the civil law judiciary, and judicial federalization. Even the District Courts at the lowest level have been made very powerful with appellate jurisdiction to hear cases decided by all tribunals and administrative bodies, including 753 Local Judicial Committees, at the district level. The power of judicial review as well as extension to hear public interest litigation (PIL) granted to the High Court at par with the Supreme Court, makes the justice system accessible at the grassroots in tune with the federalization process.

Increasing volumes of cases are pouring in to the Supreme Court under the fundamental rights chapter (Constitution of Nepal, Art. 46) of the constitution. There are other PIL cases through Articles 133 and 137 related to constitutionality and federal disputes, especially legal issues involving conflicting competencies as well. These are overwhelmingly burdening the apex court in Nepal. Even the minor cases of political disputes over naming the provinces and selecting provincial and municipality capitals are being filed at the Supreme Court under public interest litigation and Articles 133 and 137. Conceptual and institutional knowledge gaps and absence of experience of federalism in the centuries-old unitary system at all levels, including in the justice system, are bound to pose monumental challenges. This certainly demands sharing of experiences and exposure to other federal democratic systems.

III. RECENT POLITICAL DYNAMICS

Transitioning from a unitary to a federal system is a tremendous and complex challenge. With the successful conclusion of fair and free elections at all federal levels, the country is entering into a new phase. The aspiration to facilitate economic empowerment, create governance through self-rule/ shared-rule and manage diversity

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by progressively eliminating existing societal discriminations is finally taking shape in federal Nepal.

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There are, however, significant challenges of various kinds that lie ahead and will need to be addressed to realize the benefits of federalism and for the provincial and local spheres to take hold. First the governments must provide much-needed and long-awaited rights and services. In a polity with limited experience in formulating and implementing federal laws and federal administrative functions, these needs must be addressed in order to mitigate the enduring legacy of discrimination and ensure social justice.

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Cross-party dialogue to build a cooperative and collaborative political atmosphere must not be undermined, as the multi-layer federal system will not be effective in the absence of coordination. Mitigating divisive psychological implications and ensuring 'unity in diversity' should be the prime motto in a multi-ethnic and multi-cultural society. This demands accommodation of all sections of society within the spirit of pluralistic democracy and social justice.

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The hidden pain of *Madhesi*, *Janajati* and *Dalit* movements can be addressed through local governance mechanisms if implemented open heartedly. This is related to legitimacy of the constitution as well-people must accept their self made supreme laws of the land. The denial of the *Madhesi* political parties to sign the final draft of the constitution before its promulgation in September 2015 still continues to be a burning issue. They have been asking for a constitutional amendments to accommodate their grievances relating to provincial boundaries and number of provinces based on ethnicity and demography. Reflections of that demand appear every year in their protests while celebrating September 20 as Constitution Day.

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In due course, local government institutions will emerge stronger under the new constitutional framework. As a result, the uneasy competing role of provinces vis-a-vis local bodies is bound to surface, as noted in other young federations like South Africa. Hence, balancing the relations of weak regional governments with powerful local governments will be an ongoing challenge. However, in this implementation phase, the role of the provinces is crucial to establishing the effective federal practice and spirit with all entities as equal partners.

Under the present federal constitution, institutional friction is expected to occur, especially political and financial, and this is bound to trouble elected representatives during the initial implementation period. Dynamic, flexible and visionary leadership will be required for Nepal if federalism is to work effectively in the interest of the country. A regularized process of free and fair elections will support this and in turn provide new skillful and competent leadership and help institutionalize the federal system.

The passage of the democratic federal constitution began the process towards the realization of the aspirations of so many in Nepal. There have been some victories in the past few years:

- the establishment of peace,
- political stability,
- enhanced human rights,
- the rule of law,
- the increased representation of women and marginalized groups,
- a growing respect for constitutionalism and federal practices.

These all signal a momentous opportunity in Nepal as it strives to implement its federalism.

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However, the elected provincial governments have made numerous unfulfillable promises to the people without assessing their own capacity to create the institutional and logistic tools to realize the powers stated in the competence's lists. Constraints of resources and their inability to prepare and mobilize annual budgets further add challenges to their self created ambitious development agendas. The absence of supporting administrative mechanisms and security apparatus has led to conflict between the provincial governments and the central government. Concerns expressed by the Prime Minister and federal Ministers at meetings in the provinces have ended several times in blame games.

The central government and other federal entities have been unable to deliver minimum essential services to the people and initiate any significant development agenda. This 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.

For government failures, blame is occasionally given by anti-federalists to the federal system itself. Differences that manifested themselves during the unity process of two leading Communist Parties have also led to challenges. Added to this is the Prime Minister's deteriorating health and the tendency of government authorities and party leaders to travel abroad. The internal problems of the weak opposition party (Nepali Congress) have meant that it has not been able to put pressure on the government and ruling party to make them responsive and accountable to the people and Parliament which is totally under the ruling party's control. *Madhesi* parties, which have their government in Province 2, also have gotten lost in provincial matters. They have not been able to utilize the opportunity of the federal system to promote the interests of their provincial people. They still need to demonstrate the ability to put pressure on the federal government for support in the development of the province.

Despite these constraints and deficiencies in federal governance, the nascent federation in Nepal is slowly moving ahead in a positive direction, and the institutional system is progressively getting rooted. Peace has virtually been restored in the country, with the exception of the last hitch of the peace process. The issue of transitional justice is still alive as the victims of the armed insurgency and child soldiers feel that justice has not been done and they have been totally ignored. Perpetrators of serious crimes have still not been brought to justice.

The promise of ensuring transitional justice through a Truth and Reconciliation Commission (TRC) and investigation of disappeared people from the Maoist insurgency, as included in the Comprehensive Peace Accord (2006) and the Interim Constitution (2007), has not been fulfilled for over 13 years now. This means that the truth about the armed insurgency is likely to be buried in the graves of those brutally killed or disappeared. The risk of the revival of conflict due to the incomplete peace process, despite successful promulgation of the new post-conflict constitution, still exists and the need for justice continues to be raised by victims and their families and the international community, including many peace and human rights experts.

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