NEPAL’S ROAD TO FEDERALISM
From the Perspective of Grassroots Democracy

Damodar Adhikari
NEPAL’S ROAD TO FEDERALISM
From the Perspective of Grassroots Democracy

Damodar Adhikari
Author’s note

The book, which is in your hand, is the product of a long academic journey from doctoral to post-doctoral research work. My previous book ‘Towards Local Democracy in Nepal: Power and Participation in District Development Planning in Nepal’ was published by the SPRING Centre, University of Dortmund (now Technical University of Dortmund, Germany) in 2006 on behalf of their international university network.

For some time, I have intended to update the politico-administrative context of the book and add a few chapters on federalism. However, when I started working on it with the guidance of Prof. Dr. Karsten Zimmermann, Head of the Department and Dean of the Faculty at the TU, Dortmund, I realized that updating the older book, published in 2006, is not easy. Some of its chapters are no longer relevant in the dynamic political and administrative context of Nepal as it exists today. I discussed these concerns with Dr. Zimmerman and decided to write a different book. I must mention that some parts of the current book, especially the theoretical discourse related to decentralization and democratic governance, are updated and included from the previous work. Other chapters are entirely new. The result is a more up to date and inclusive account of the federal experience and the way forward for the country.

The book aims to support policy makers, development workers, researchers and the general public in understanding the new federal structures, multi-level governance and their functions, and cooperative relationship with reference to contemporary literatures and the experience of other federal countries. I sincerely believe that the book will contribute to enhancing the conceptual understanding and key elements of federalism together with useful insights from the case studies presented in the book. It is my hope that the book will help government officials and other stakeholders to lead the experiment in federalism in the desired direction and implement it effectively. It is also expected that the book will contribute to institutionalize the federal system in favor of fostering grassroots democracy, strengthening and utilizing the social capital of Nepal, improving service delivery, and harmonizing the relationship among different levels of governments in the long run.

Completing the book could not have been possible without the guidance, support and inspiration of several scholars from Nepal and abroad. I cannot name everyone individually here due to the sheer number of people who helped me. I, therefore, would like to acknowledge their contributions collectively. A number of colleagues and officials working at different levels of the government contributed by sharing their observations, experiences and learning. They also emphasized the need for such a book for the federal process to be successful in Nepal. I am indebted to all of them.

I am immensely grateful to my mentor and professor Dr. Karsten Zimmermann for his academic guidance and support during and after my stay in the TU Dortmund, Germany. He generously reviewed the manuscript and provided invaluable comments before I could finalize the book. I would also like to acknowledge the support of German Academic...
Exchange Service (DAAD) for carrying out extensive research for this book. I would like to appreciate the contribution of my colleague Mr. Prahlad Ghimire for his enthusiastic support to give final shape of the book. Finally, I would like to thank Dr. BP Giri for his editorial advice and support during the preparation of the manuscript of the book.

I am equally indebted to Dr. Eric M. Johnson, Director of Research, Governance and Economic Development Division and my supervisor at Research Triangle Institute (RTI) and Dr. Richard Reithinger, Vice President of Global Health Division, RTI for their encouragement, support and guidance throughout the research period. Finally, I am grateful to Mr. Paul Weisenfeld, Executive Vice President and Dr. E. Wayne Holden, President, RTI International for providing me a Professional Development Award (PDA) and sabbatical leave to carry out the research and writing for this book. I feel very proud and honored to be a staff member of RTI International for 13 years (2006-2019) in my career in different capacities.

Damodar Adhikari, PhD
Kathmandu, Nepal
Foreword

Damodar Adhikari’s book, Nepal’s Road to Federalism: From the Perspective of Grassroots Democracy, is both timely and necessary. RTI International was pleased to support it, and to have Damodar as an employee for the past 13 years. This book reflects the core mission of RTI: to improve the human condition by turning knowledge into practice. Damodar’s book provides knowledge that is well researched and carefully presented, from within Nepal, and in analysis of case studies from abroad. It then applies that knowledge and makes recommendations for practice. This is what RTI is all about.

It is my hope that policy makers, development partners, donors, researchers, practitioners, and local leaders will read it, and use it to improve the human condition in Nepal. As Damodar notes, Nepal has made progress in fighting poverty and improving lives, despite periods of conflict, political uncertainty, and cataclysmic natural disasters.

It now has enshrined and embarked on a promising, devolved political structure that gives more power to local areas and better reflects Nepal’s economic, geographic, and ethnic diversity. In some ways, these changes came ‘overnight,’ as Damodar notes – and are in need of careful consideration, roll-out, and continued study. In other ways, they are more than 100 years in the making and reflect deep Nepalese cultural and political histories.

I am confident that this book will aid in the recent and longer journey and should be the touchstone for further research and analysis along the way. Congratulations to Damodar, and all the best wishes to him and the Nepalese people from their RTI family.

We look forward to continued work and progress in Nepal.

Eric Johnson, PhD
Director of Research, RTI International
Preface

Scholars working in the field of democratic governance see a world-wide trend towards decentralization and hopes are great that decentralization and devolution will help solve a range of societal problems, such as democratic deficit, lack of efficient and effective public service delivery and unbalanced regional development. Depending on the implementation and the overall institutional design of the system, decentralization may offer a lot of benefits but at the same time weaken the coordination of public policy across different levels of government. In fact, seen from a functional perspective, the modernization of the state often takes shape in the form of regionalization, decentralization or administrative de-concentration. But decentralization has taken place in different forms in different societies and it happens rarely that empowerment of subnational or local levels goes hand in hand with administrative decentralization (i.e. strengthening the administrative or financial capacity of local governments).

In many cases, decentralization is not accompanied by adequate financing. Decentralization may enhance the political or administrative autonomy of local governments but is often driven by austerity measures in the post-crisis consolidation stage. As countries as diverse as Germany, Canada or Brazil demonstrate, there seems to be no optimal design of federal systems and decentralization schemes. The outcome and purpose often depend on the political and cultural history of the state under reform. And of course, size matters as well.

In this context, some scholars point to the virtues of asymmetric decentralization as an alternative. Asymmetric treatment of subnational governments may help countries to avoid conflicts that may arise when fiscal equalization or regional development policies are at stake. This, in turn, may provoke resistance of lower developed regions and raise issues of subsidiarity or question the value of the unitary state. Federalism as well as decentralization are not effective and legitimate per se. Their successful transfer and implementation depend very much on the political culture of the state under reform.

Against this background, the present book by Damodar Adhikari gives very relevant insights into the current reform of Nepal’s state organization. It’s a valuable contribution to the debate about the virtues of decentralization in the Global South that will hopefully find a big group of readers.

Damodar is a SPRING Global Scholar, educated at TU Dortmund’s Faculty of Spatial Planning. It has been a great pleasure to meet him and discuss the pros and cons of federalism and decentralization.

Prof. Karsten Zimmermann
Technical University, Dortmund, Germany
Abstract

After 12 years of armed conflict and another decade of political uncertainty, Nepal recently moved from a century long centralized system of governance to a more decentralized, cooperative federal system. The 2007 Interim Constitution transformed Nepal into a Federal Democratic Republic. In September 2015, a new constitution written by the Constituent Assembly in its second attempt, was promulgated, which recognizes Nepal as a secular, inclusive, multi-ethnic and federal country.

The federal system is clearly defined in the new Constitution of 2015. The Constitution established a federal structure with multi-level governance consisting of three spheres of government – Federal (sangh), State/Province (pradesh) and Local Level (palika). Each sphere of government has exclusive power in some areas and concurrent powers in others. All levels are expected to work in harmony as per the constitutional principles of cooperation, coordination and coexistence.

The country is at an early stage of implementing its federal structure, creating and adjusting its institutions and aligning staff at different levels. The process has accelerated after the elections at all three levels of government – which were completed in 2017 and 2018 in phases. However, the country has been facing a number of challenges to implement federalism mainly due to the centralized mind-set of leaders and bureaucrats, unitary organizational structure, and legal framework. Service delivery mechanisms at different levels have been seriously disrupted and access to and quality of services have also been deteriorated during the transition phase of federalism, largely due to confusion in roles and responsibilities among different spheres of government, staff adjustment and transfer, new provincial government set up in place for the first time, and resistance to transfer of authority and resources from the center to provincial and local level governments.

This book focuses on selected critical issues and challenges that are vital to the success of the federal system of government and which need timely attention to establish a functional federal system. These issues and challenges are prioritized and chosen from a long list that have emerged in the context of the implementation of the cooperative type of federalism in Nepal. The main issues and challenges that are analyzed in this book include: (a) Overlap and confusion in functions and responsibilities; (b) Service delivery interruptions; (c) Intergovernmental relation and cooperation; (d) Policy, institutional and legal framework; (e) Resource mobilization and financial autonomy; and (f) Participatory planning, budgeting and implementation at local level.

It is notable, in case of Nepal, that transition to the federal system is not the product of a long evolutionary process but a part of the grassroots-led reaction to the century-long centralized system. Therefore, the federalization process does not have a specific evolutionary path and learning experience in the country-specific political, cultural and administrative context. For instance, no one thought it was necessary to conduct a background study on the scientific basis of the federal system as a part of the preparation
for its implementation nor was there any common understanding and shared vision among major political parties about what it was and how it was to be implemented. Federalism came into effect almost overnight together with the new constitution without any preparation for transition management. Therefore, Nepal's federalism process is vulnerable, and it can be derailed, manipulated and influenced by interest groups during the period of implementation if it is not managed effectively toward the desired direction as envisioned in the new constitution.

This book includes three case studies (Germany, Brazil and South Africa) that have the potential to convey some lessons that can potentially benefit Nepal's federalism process. These case studies have been analyzed from the perspective of exploring and drawing useful lessons for Nepal. The experience of case countries and lessons are included on the second last section of the book. The book also includes some experiences and lessons from the decentralization process of other countries.

Looking at the federal systems around the world, it can be said that every federal system has its own organic rules and practices. The federal system has been shaped by the socio-cultural and political context of each country as well as its history. Constitutional culture and the rule of law tradition are dominant factors for determining the institutional structure and character. Every federal system is in developmental mode on a continuous basis; as a result, there are many hybrid models of federalism and one is not fully comparable with another. In recent decades, constitutional recognition of local governance and strengthening of grassroots democracy through it by utilizing the local social capital has become a new phenomenon in the federalist world.

In a nutshell, this book aims to contribute to Nepal’s nation-building process firstly by discussing key issues and challenges that have emerged in the federalism process. Secondly, it offers some key insights and lessons from other countries from which Nepal can learn to adapt a more devolved federal system. Thus, grassroots democracy can be fostered in the future creating a solid foundation for more a democratic, prosperous and resilient society. This might be the first research-based book to specifically address the key issues and challenges of federalism in a comparative basis since the introduction of federalization in Nepal. It also intends to contribute to the existing body of knowledge by documenting and offering Nepal’s decentralization experience, federal constitutional provisions, its practice and learning.
Table of contents

Author’s note ........................................................................................................................................ i
Foreword ........................................................................................................................................ iii
Preface ........................................................................................................................................... v
Abstract .......................................................................................................................................... vii
Table of contents ........................................................................................................................... ix
List of tables ................................................................................................................................... xii
List of figures ................................................................................................................................... xii
List of annexes ............................................................................................................................. xiii
List of acronyms and abbreviations ......................................................................................... xiv

PART 1: INTRODUCTION

1 Introduction........................................................................................................................................3
   1.1 Context, background and purpose .....................................................................................3
   1.2 Research methodology and approaches .........................................................................4
   1.3 Primary focus and target readers ....................................................................................6
   1.4 Structure of the book ........................................................................................................7

PART 2: THEORETICAL DISCOURSE

2 Decentralization: the soul of federalism .....................................................................................11
   2.1 The principles of subsidiarity ............................................................................................ 11
   2.2 Decentralization: developing a common understanding ............................................. 13
   2.3 Fiscal decentralization: concept and relevance ............................................................. 22
   2.4 The balance between centralization and decentralization ........................................... 30
   2.5 Decentralization: implementation perspectives ............................................................. 33

3 Democratic governance: managing public affairs collectively ........................................... 34
   3.1 Definition of governance .................................................................................................. 34
   3.2 Advantage of democratic governance ............................................................................. 36
   3.3 Democratic principles and assessment criteria ............................................................. 37
   3.4 Rationality and power: challenges to modern democracy ........................................... 42

4 Participation and grassroots democracy .................................................................................. 44
   4.1 Democracy and sharing of power through participation ............................................. 44
   4.2 Citizen participation and inclusive democracy .............................................................. 46
PART 4: CASE STUDIES OF SELECTED FEDERAL COUNTRIES

10 Case studies of selected federal countries ............................................................ 133
10.1 Federal Republic of Germany ................................................................. 133
10.2 Federative Republic of Brazil ................................................................. 145
10.3 Republic of South Africa (RSA) ............................................................... 153

11 Discussion and analysis ............................................................................... 166
11.1 The local government’s role in federal systems: a global phenomenon .... 166
11.2 Comparison between case countries ....................................................... 168

PART 5: CONCLUSION AND RECOMMENDATIONS

12 Conclusion and recommendations ............................................................... 175
12.1 Lessons from Nepal’s efforts ................................................................. 175
12.2 Summary of lessons from case studies ................................................... 178
12.3 Concluding remarks .............................................................................. 180

Bibliography ........................................................................................................ 182
Annexes .................................................................................................................. 188
List of tables

Table 2.1 Origin of decentralization as driving forces ................................................ 17
Table 2.2 Types of decentralization and basic components ........................................ 20
Table 2.3 Four pillars of fiscal decentralization .......................................................... 24
Table 2.4 Advantages and disadvantages of transfer instruments................................ 26
Table 3.1 Democratic values, requirements and institutional means .......................... 38
Table 4.1 Modes of citizen participation ................................................................. 47
Table 4.2 Citizen voice and organizational responsiveness ........................................ 49
Table 4.3 Citizen participation - the enabling and constraining factors .................... 50
Table 4.4 Citizen participation - enabling and constraining contextual factors ...... 51
Table 4.5 Advantages and disadvantages of lower levels of local governments ...... 56
Table 5.1 Models of governance system and main features ........................................ 57
Table 5.2 Obstacles of planning from below .............................................................. 60
Table 5.3 Shift of planning practices ....................................................................... 63
Table 6.1 Some unitary and federal states ............................................................... 70
Table 6.2 Multi-level governance in selected European countries .......................... 71
Table 7.1 Number of users groups in various sectors ............................................... 86
Table 8.1 Summary of decentralization experiences and efforts (1960-1989) ....... 92
Table 9.1 Distribution of power and functions ....................................................... 111
Table 9.2 Tax and non-tax power of spheres of government .................................. 118
Table 9.3 Distribution of royalties of natural resources .......................................... 119
Table 9.4 Fourteen-step annual planning and budgeting process ......................... 125
Table 10.1 General country features of federations .............................................. 133

List of figures

Figure 1.1 Research methodology .........................................................................6
Figure 3.1 Democracy assessment framework .................................................... 40
Figure 3.2 The ‘what,’ ‘how’ and ‘why’ of democratic governance ....................... 42
Figure 4.1 Ladder of participation ................................................................. 48
Figure 7.1 Dimensions of social capital ........................................................... 78
Figure 9.1 Annual planning and budgeting process .......................................... 127
Figure 9.2 Annual budgeting process ............................................................... 128
Figure 10.1 Multi-level governance in Germany .............................................. 138
List of annexes

Annex 1: Schedule-5: List of federal power .......................................................... 188
Annex 2: Schedule-6: List of state/province power .............................................. 190
Annex 3: Schedule-7: List of concurrent powers of federation and state .............. 191
Annex 4: Schedule-8: List of local level power ...................................................... 192
Annex 5: Schedule-9: List of concurrent power of federation, state & local level .. 193
Annex 6: Constitutional arrangements for inter-governmental relations ............. 194
Annex 7: Article 59: Fiscal powers of different spheres of government ............... 196
Annex 8: Article 60: Distribution of sources of revenues ..................................... 197
Annex 9: Functions and powers of NNRFC ......................................................... 198
**List of acronyms and abbreviations**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>CBOs</td>
<td>Community Based Organizations</td>
</tr>
<tr>
<td>CDF</td>
<td>Constituency Development Fund</td>
</tr>
<tr>
<td>CEMR</td>
<td>Council of European Municipalities and Regions</td>
</tr>
<tr>
<td>CIAA</td>
<td>Commission for the Investigation of Abuse of Authority</td>
</tr>
<tr>
<td>CLGF</td>
<td>Commonwealth Local Government Forum</td>
</tr>
<tr>
<td>COGTA</td>
<td>Department of Cooperative Governance and Traditional Affairs</td>
</tr>
<tr>
<td>COR</td>
<td>The Committee of the Regions of European Union (EU)</td>
</tr>
<tr>
<td>DDC(s)</td>
<td>District Development Committee(s)</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FUGs</td>
<td>Forest User Groups</td>
</tr>
<tr>
<td>GoN</td>
<td>Government of Nepal</td>
</tr>
<tr>
<td>IDS</td>
<td>Institute of Development Studies</td>
</tr>
<tr>
<td>IFRI</td>
<td>International Forestry Resources and Institutions</td>
</tr>
<tr>
<td>IOG</td>
<td>Institute of Governance</td>
</tr>
<tr>
<td>LB</td>
<td>Local Bodies (DDC, VDC, Municipality)</td>
</tr>
<tr>
<td>LBMC</td>
<td>Law Books Management Committee</td>
</tr>
<tr>
<td>LDO</td>
<td>Local Development Officer</td>
</tr>
<tr>
<td>LGOA</td>
<td>Local Government Operations Act</td>
</tr>
<tr>
<td>LIDPP</td>
<td>Local Infrastructure Development Partnership Program</td>
</tr>
<tr>
<td>LSGA</td>
<td>Local Self-Governance Act</td>
</tr>
<tr>
<td>LSGR</td>
<td>Local Self-Governance Regulation</td>
</tr>
<tr>
<td>MLD</td>
<td>Ministry of Local Development</td>
</tr>
<tr>
<td>MoF</td>
<td>Ministry of Finance</td>
</tr>
<tr>
<td>MoFAGA</td>
<td>Ministry of Federal Affairs and General Administration</td>
</tr>
<tr>
<td>MoFALD</td>
<td>Ministry of Federal Affairs and Local Development</td>
</tr>
<tr>
<td>MoLJPA</td>
<td>Ministry of Law, Justice and Parliamentary Affairs</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>NLC</td>
<td>Nepal Law Commission</td>
</tr>
<tr>
<td>NNRFNC</td>
<td>National Natural Resources and Fiscal Commission of Nepal</td>
</tr>
<tr>
<td>NPC</td>
<td>National Planning Commission</td>
</tr>
<tr>
<td>NRs/Rs.</td>
<td>Nepalese Rupees</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Cooperation and Development</td>
</tr>
<tr>
<td>PDO</td>
<td>Panchayat Development Officer</td>
</tr>
<tr>
<td>SALGA</td>
<td>South African Local Government Association</td>
</tr>
<tr>
<td>ULCG</td>
<td>United Cities and Local Governments</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>USSR</td>
<td>Union of Soviet Socialist Republics (former)</td>
</tr>
<tr>
<td>VDC</td>
<td>Village Development Committee</td>
</tr>
<tr>
<td>WB</td>
<td>The World Bank</td>
</tr>
</tbody>
</table>
PART 1: INTRODUCTION
1 Introduction

1.1 Context, background and purpose

After 12 years of armed conflict and another decade of political uncertainty, Nepal moved from a century-long centralized system to a more decentralized, cooperative federal system of governance since the enactment of the new constitution in 3rd September 2015.

Nepal did not have an elected government for more than a decade. Despite the decade-long armed conflict and political instability, Nepal progressed well in terms of decreasing the incidence of multidimensional poverty in the country. It has decreased significantly in recent years. It has gone down from 59 percent in 2006 to 39 percent in 2011 and further to 29 percent in 2014 with statistically significant progress across all ten indicators used in the recent multidimensional poverty survey. The survey shows that 28.6 percent of Nepal’s population is still multi-dimensionally poor (NPC/GoN, 2018).

The Maoist armed conflict started in 1996 and was officially ended in 2006 with the Comprehensive Peace Agreement (CPA). Election of the first Constituent Assembly (CA) took place on April 10, 2008, and the Assembly was tasked with writing a new constitution, while it also acted as the interim legislature for a term of two years (May 28, 2008 to May 27, 2010, then extended for another two years). It was expected to come up with the new constitution at the end of this period ending the long political transition. Unfortunately, political conflicts and disagreements among political parties spiraled up and led to the extension and finally the re-election of the Constituent Assembly. Many people believe that the first Constituent Assembly (CA) failed to write the constitution due to power games and the interests of external forces as they sought to influence the agendas of the political parties.

The second CA election took place on 19 November 2013 and political conflicts among parties continued till the devastating earthquakes of 25 April and 12 May 2015. After these earthquakes, the major political parties came together and promulgated the new constitution in 20 September 2015. The federal system is clearly defined in the new constitution of 2015. The new constitution recognizes Nepal as a secular, inclusive, multi-ethnic and federal country.

According to the new constitutional provisions, Nepal initiated the federalism process by dividing the country into seven provinces and a total of 753 local level government units. The election of local level government bodies was completed after a hiatus of 15 years in three phases on 14 May, 28 June, and 18 September 2017 respectively. Then the election of federal and provincial level took place in two phases on 26 November and 7 December 2017. The 2017 election was the first one to take place after the decade long political transition in the country.

The process of federalization has been accelerated after the election of all three spheres of government (local, provincial and national). Thus, Nepal is at the early stage of implementing its federal structure, creating and adjusting its institutions and aligning
public service staff at different levels. The country, however, has been muddling through
the process and it is facing a number of issues and challenges, mainly generated by the
feudal mindset of the leaders and bureaucrats, a unitary organizational structure, and
centralized legal frameworks.

It is important to note that Nepal’s federalism is not the product of its own evolutionary
process, but a part of the political reaction to a century-long centralized system spurred,
as some believe, by the interest of external forces. Earlier, the country had tried to
decentralize the public affairs, but it was done in piece meal basis and was considered
largely ineffective. Therefore, the federalization process does not have a context-specific
evolutionary path, in-country experience and learning.

There was neither any background study conducted on the scientific basis of federalism
as a part of a preparation for its implementation, nor was there any common understanding
and shared vision among major political parties on this important issue. Federalism came
into effect almost overnight together with the new constitution without giving any time
for a smooth transition. Therefore, Nepal's federalism process is vulnerable, which could
be derailed, manipulated and influenced by different interest groups during the period of
implementation.

This book focuses on a few critical issues and challenges that have been surfacing over
the course of implementing the federal system (2015-2019) based on its new
constitutional provisions. The issues and challenges discussed in this book are critical to
manage the transition and establish a functional federal democratic system in the country.
These issues and challenges have been chosen from a long list that have emerged in the
context of the implementation of the federal system in Nepal. The book also includes
three case studies from Germany, Brazil and South Africa that have the potential to
convey some lessons that could benefit Nepal's federalism process.

The author sincerely believes that this book will contribute to the understanding of the
concept and key elements of decentralization, democratic governance and the federal
system in general with some useful lessons from the case studies elaborated in the book.
It is also expected that the book will help government officials and other stakeholders to
lead the federalism process in the desired direction. Additionally, the book will contribute
to knowledge about how to institutionalize the federal system in favor of fostering
grassroots democracy, utilizing and strengthening the social capital of Nepali society,
improving service delivery, and harmonizing the relationship among different levels of
the government in the long run.

1.2  Research methodology and approaches

The following are the research methods and approaches that were used to come up with
the argument and findings of the book.

1.  Media monitoring and document review: National daily newspapers were reviewed
to learn about the emerging federalism related issues and challenges. These issues and
challenges were noted, compiled, consolidated, prioritized and grouped under broad
categories. Causes and linkages of these issues and challenges were also identified to establish a logic and their potential implications. Available federalism related documents were also reviewed, and these issues and challenges were interfaced, compared and further validated before proceeding for analysis.

2. **Consultation with stakeholders:** Before finalizing the issues and challenge for further research, concerned officials at federal¹, provincial² and local levels³ were consulted and issues and challenges were further discussed with them to collect their views and also learn about progress updates on their efforts in addressing or resolving the issues and challenges.

3. **Field observation and consultation:** A few urban and rural municipalities and two provinces were visited to observe their work and service delivery process. Interactions were held with concerned officials on random basis who were available during the visits. Based on the above steps, a conceptual framework was prepared for discussion with the mentor and for literature review and desk research.

4. **Literature review and desk research:** The conceptual framework was discussed with the mentor and desk research was carried out with his guidance in the Technical University Dortmund, Germany (August - September 2018). The primary purpose of desk research was to review federalism related literatures in general and specific to other countries’ constitutional provisions and experiences in implementing federalism that may have the potential to offer some learnings to Nepal. The review process was focused on Nepal’s key federalism-related challenges (together with devolution) so that some learning points can be drawn.

5. **Focus group discussion:** Two focus group discussions were carried out in remote part of the Province 5 (in November 2018) to discuss critical issues that are directly related to people’s day to day life, which include service delivery, tax related issues, transparency and responsiveness of local government, engagement during the planning and budgeting process.

6. **Key informant interview:** A few federal, provincial and local government officials were contacted for semi-structured interviews. These interviews were focused on collecting their perspectives and their efforts to address emerging issues during the implementation of federalism.

7. **Organization of information, interpretation and analysis:** Information generated and validated from each step above were documented and validated on regular basis. Finally, all information compiled were organized, interpreted and analyzed that finally led to new book chapters.

In a nutshell, Figure 1.1 illustrates the overall research methodology and approaches.

¹ Federal and national level are inter-changeably used to denote the federal or national level government.
² The word 'state' and 'province' are used inter-changeably to denote the same – subnational government.
³ Local level, local government unit or municipality mean the same, which are used inter-changeably in the book.
1.3 Primary focus and target readers

The main focus of this book is about the socio-politico-economy of Nepal. The inter-relationship and dynamics of power and participation are the central theoretical concerns of the book. The author believes that the relevance of contemporary theories and concepts reviewed in the book are useful for the current changing context of Nepal. The key literatures related to decentralization, democracy, planning, power and participation are reviewed extensively, which is expected to contribute in strengthening the theoretical and conceptual understanding of political cadres, researchers, policy makers and development workers who are directly or indirectly engaged in or affected by the evolutionary process of federalism in Nepal.

As the parliament is processing a series of legal frameworks to transform the governance system from unitary to federal structure, power negotiation process is gradually reaching the point of complexity. The main challenge remains that power from the central government has to be shifted to provincial (subnational) and local government levels that will ultimately affect political, administrative and social life. However, there is ambiguity in the conceptual understanding of decentralization and federalism, participation and grassroots democracy, which are fundamental to prepare the legal and institutional frameworks. More specifically, the conflicts between different models of decentralization...
– de-concentration versus political decentralization that determines, ultimately, the dynamics of power and participation.

Since participation encourages sharing of power, it, in turn, may challenge the functions and responsibilities of elected representatives and also functioning of bureaucrats. Therefore, it does not take place easily in practice. This explains why participation and sharing of power are the central questions of governance in a society like that of Nepal. Meanwhile, largely because political leaders harbor a conception of a representative type of democracy with a centralized mindset, they may hold a feeling that stakeholders interfere and challenge them over managing public affairs, which they have already secured through election.

In Nepal, there are frequent arguments to the effect that devolution is an old-fashioned concept and federalism is the new and better one, a ‘panacea’ to solve all political problems in the country. Contrarily, existing literature, research and experience of other countries do not support these arguments. If anything, the scientific discourse suggests that, broadly speaking, devolution is the spirit and federalism is the structure. There are some countries in the world that are federal but are not decentralized up to the local government’s level (e.g. Australia, and India in terms of local governance until 74th constitutional amendment) and dictatorial in practice (the Russian Federation). It further justifies that there is a need for better understanding to support the federal system for its success in Nepal.

As the federal system is new for Nepal and it is unique in its ‘hybrid’ form, therefore, Nepali people and their institutions have a limited understanding about the new federal structure. In general, this book aims to focus on devolution within the structure of the federal system, especially local government units, their functions and responsibilities.

In a nutshell, this book aims to contribute to Nepal’s nation-building process firstly by discussing key issues and challenges that have emerged in the federalism process. Secondly, it offers insights and lessons from other countries so that Nepal can learn to adapt and develop a more devolved federal system. Thus, grassroots democracy can be fostered in the future creating a solid foundation for a more democratic and resilient society. Probably, this might be the first research-based book to specifically address key issues and challenges since the introduction of federalization in Nepal.

It may also contribute to the existing body of knowledge by documenting and offering Nepal’s decentralization experience, federal constitutional provisions, its practice and learning.

1.4 Structure of the book

The main body of the book is composed of five main divisions and twelve chapters or sections.

Part one (chapter 1) is the general introductory section of the book. It includes context, background, the purpose of the book and research methodology and approaches.
Part two (chapters 2-6) includes theoretical discourse related to decentralization as the soul of the federal system and as a key governance approach in the democratic system. This part also includes theoretical and practical perspectives of federalism, key features and parameters of the democratic system, local government’s role in a participatory grassroots democracy, multi-level governance with examples from the governance systems of developing and developed countries.

Part three (chapters 7-9) is about Nepal. It includes the discussion of social capital, which is an untapped resource that has a great potential to manage public goods and foster grassroots democracy. In this part, Nepal’s efforts of decentralization are discussed from a historical perspective to new federal constitutional settings and multi-level governance. The role of local government in the federal context and key emerging issues and challenges are also discussed in detail in this part.

Part four (chapters 10-11) includes case studies of three countries that have the potential to offer some experience and lessons to Nepal’s federalism process. These include Federal Republic of Germany, Federal Republic of Brazil and the Republic of South Africa.

Part five (chapter 12) is the final one, which presents conclusion and recommendations based on Nepal’s own federal experience and also from the analysis of the case studies of the above three countries.
PART 2: THEORETICAL DISCOURSE
2 Decentralization: the soul of federalism

There is a worldwide trend in favor of political and administrative reform toward more decentralization and toward establishing democratic governance. In this process, there have been waves of reforms to shift decision-making power away from the central level to closer to the level where people live (IDS, 2004). These waves of reforms have gained further maturity since 1990s. The recent phenomenon not only includes aspects of bringing power closer to the people, but also important dimension of sharing power for a responsive and accountable government leading to the establishment of grassroots democracy (Adhikari D., 2006).

Decentralization from a democratic perspective presents unique opportunities to invoke the right of the citizens to engage themselves in local decision-making processes and participate in planning, budgeting and management of development activities to improve their living condition and shape their daily life (IDS, 2004). In fact, the global trend is both a part of the democratization process and a political reaction to the failures of centralized models of political system, administration, planning and management. Therefore, recent decades have increasingly seen that people have been seeking active roles in shaping the institutions around them from a more democratic perspective (Adhikari D., 2006). Emergence of civil society, media and professional organizations and academia also have contributed shaping the process since 1990s.

There are no uniform models or taxonomies of decentralization worldwide. The term ‘decentralization’ itself embraces a variety of concepts and understanding in a country and context-specific manner. Decentralization, in simple terms, is a strategy through which decision-making power, responsibilities and financial means are devolved to the lower level, preferably close to the citizens. Authority, responsibility and financial means can be devolved to the regional and/or local governments and/or quasi-independent government organizations as well as the private sector, too. Therefore, it is a complex multifaceted concept and a political strategy. Decentralization is a strategy, but not an end and it is a highly politics-dependent process (Adhikari D., 2006).

In summary, the broad objective underlying decentralization is to bring government closer to the people with a view to empowering them to exercise democratic rights, hold government units accountable and make service delivery equitable, effective and efficient.

2.1 The principles of subsidiarity

It is commonly believed that decentralization originated in the principles of subsidiarity. The principle delineates boundary-appropriateness of authorities and helps determine which level of government has to perform what kind of tasks in a decentralized system. In practical terms, the subsidiarity principle comes handy in recognizing the appropriate level of management and bringing responsibilities, authorities and resources to that level (Adhikari D., 2006). Lowest possible level and close to the general citizen is the starting point and it is also considered better so that decisions are taken close to where the problems arise.
The subsidiarity principle suggests that government services should be provided at the lowest possible level of government that is capable of efficiently providing the same. This principle results in a situation where, as much as possible, the area where the benefits of a government service are felt coincides with the government boundaries at each level of government (Boex, 2004).

The subsidiarity principle suggests that three types of functions are best performed or funded by the central government. They are: (a) Provision of public goods and services that benefit the entire nation; (b) Income redistribution or equity, social aid and policies; and (c) Government activities that involve spillover or ‘externalities’ between districts.

The principle of subsidiarity has been widely adopted in Europe and beyond. In political debates in the USA it has been regarded, especially by more conservative commentators, as representing “an aspect of the original theory of American federalism which held that state governments will be more responsive than the national government to the public will [and] better informed about local circumstances” (Ryan & Woods, 2015).

In the past few decades, the principle has become incorporated into the political, economic and public administration understandings of decentralization. Kim (2008 in Ryan, 2015) fuses the normative principle with existing decentralization theory and synthesizes this as federalism (Ryan & Woods, 2015):

The subsidiarity principle and decentralization in federalism should produce the optimal allocation of resources and consequently maximize welfare.

In the Australian context, Fenna and Hollander (2013 in Ryan, 2015) similarly see the fusion of the two as granting federalism a stronger values or normative base (Ryan & Woods, 2015):

Subsidiarity is a normative concept, one expressing the view that governance arrangements ought to be organised in as thoroughly devolved a manner as possible. This is the principle that underlies the principle of federalism and it is justified on the basis of values that federalism helps preserve or benefits it can deliver.

The EU looked toward subsidiarity as an organizing principle from the mid-1970s and it was incorporated into the 1992 Treaty of Maastricht as a guideline for further European integration. Within the Maastricht Treaty, the principle is expressed as follows (Ryan & Woods, 2015):

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member-States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.
Taking the historical and current context into consideration, Vischer (2001 in Ryan, 2015) suggests the following issues to consider when focusing on subsidiarity as a principle of governance.

a. Application of the principle is closely associated with particular areas of law, such as the constitutional law.

b. Consideration of the principle draws attention to the (central) government, the individual, and the mediating structures which are bulwarks against government authority. Subsidiarity calls both for the recognition of mediating structures and for their empowerment.

c. Subsidiarity places greater value on mediating structures than it does on mega structures, but this implies that any policy that purports to apply the principle needs to draw a meaningful distinction between the two. The role of corporations is particularly salient here, since they may function as mega structures as they increase in size and power.

d. Subsidiarity mandates the localization of societal problem-solving, including the obligation to ensure that individuals are equipped to participate fully in collective decision-making regarding issues that affect them and their communities.

The principle of subsidiarity is an overarching principle to determine the governmental functions in need of decentralization. It is very clear, however, that ‘capacity’ always comes into controversy in deciding the functions to decentralize. The World Bank proposes the following design principles to be observed for a successful decentralization (World Bank, 2004). These are: (a) clear assignment of functions supported by financial means; (b) informed decision-making; (c) adherence to local priorities; and (d) accountability.

2.2 Decentralization: developing a common understanding

There are two different meanings of decentralization in the Anglo-Saxon and French traditions (Ouedraogo, 2003):

In Anglo-Saxon tradition, decentralization means a broad political process consisting of devolution of resources and powers of the central state to local or private decision-making bodies.

In this view, the local players are local state institutions, communities, NGOs, cooperatives, voluntary associations and the private sector. The French tradition, on the other hand, has a more legalistic understanding of decentralization (Ouedraogo, 2003):

State recognition of the existence of autonomous local governments endowed with specific competencies and managed by autonomous bodies. Understood in this way, decentralization means recognizing the state and only involves governmental players at the local level (local government, public enterprise, etc.).
Smoke presents decentralization as an ambiguous concept which refers both to a system and to a process. Smoke (2003) notes that:

As a system, decentralization means a decentralized system of government [...] in which a substantial share of power is granted to local, provincial or regional government. As a process, decentralization means the process by which one moves from a centralized to a decentralized system of government.

Inferentially, decentralization is a comprehensive state strategy of bringing decision-making power from the center or region to a position closer to the citizen where they can use such power improving their living condition. In the context of developing countries, the notion of decentralization is to improve the political and administrative set up and increase the effectiveness and efficiency of service delivery and overall governance system. It is a long-term political process which passes through a series of political and administrative resistance, challenges and barriers. Hence it takes longer time to stabilize, to be fully functional and become effective and efficient in practice.

The World Bank (2004) suggests the following five conditions as equally important for successful decentralization:

1. The decentralization framework must link, at the margin, local financing and fiscal authority to the service provision responsibilities and functions of the local government so that local politicians can bear the costs of their decisions and deliver on their promises.
2. The local community must be informed about the costs of services and service delivery options involved and the resource envelope and its sources so that the decisions they make are meaningful.
3. There must be a mechanism by which the community can express its preferences in a way that is binding on the politicians so that there is a credible incentive for people to participate.
4. There must be a system of accountability that relies on public and transparent information which enables the community to effectively monitor the performance of the local government and react appropriately to that performance so that politicians and local officials have an incentive to be responsive.
5. The instruments of decentralization – the legal and institutional framework, the structure of service delivery responsibilities and the intergovernmental fiscal system – are designed to support the political objectives.

In addition to the above conditions, public control of budget formulation is a very important aspect in designing a decentralization policy and establishing an institutional mechanism to translate it into action.

Smoke (2003) refers to a variety of trade-offs involved in designing decentralization and recommend that it "must be tailored according to the priority goals and circumstances of"
each country.” Some political, social and economic aspects must be carefully analyzed first before designing any decentralization policy instrument or establishing any decentralized mechanism. Political, financial, administrative, and service delivery systems come as basic ingredients of decentralization, which means that these have to be analyzed properly to understand the status of decentralization. In addition, the specific context and different types of decentralization should be distinguished because they have different characteristics, policy implications, and conditions for success (World Bank, 2004).

2.2.1 Rationale and driving forces of decentralization

This chapter discusses the central question ‘Why decentralize?’ from administrative, political, social and economic perspectives.

Decentralization means bringing administrative efficiency and welfare

Decentralization is a keyword that carries multiple meanings and creates multiple effects. Decentralization creates two immediate effects at the local level. Firstly, increased decentralization of decision-making authorities accelerates the democratization process at the local level by involving key stakeholders (including the local people) in a governance system. This makes local leaders more accountable to the local people. Secondly, in a decentralized system, discussion and decisions take place in the middle of reality so that practical solutions could be determined in a very context-specific manner. Thirdly, it offers more power to individual citizens to bring decision into their favor or that of the community. Fourthly, it enhances effectiveness and efficiency in the delivery of public goods and services. Decentralization is a democratic process that opens the door for alternative ideas and locally crafted practical solutions; it increases effectiveness and efficiency in public affairs by satisfying a wider range of stakeholders. It also helps improve the administrative bottlenecks in decision-making that are often caused by central government’s control.

The World Bank argues (World Bank, 2004):

In some countries, decentralization may create a geographical focus at the local level for coordinating national, state, provincial, district, and local programs more effectively and can provide better opportunities for participation by local residents in decision-making. Decentralization may lead to more creative, innovative and responsive programs by allowing local ‘experimentation’. It can also increase political stability and national unity by allowing citizens to better control public programs at the local level. Institutionalists tend to regard the state as a benign and rational actor, responsive to political pressure. In this sense, they stand very much in the tradition of Auguste Comte, who thought that social scientists should offer their knowledge to the rules of nations.
Decentralization from equality perspective

Decentralization is not only a political and administrative strategy, but also a welfare and efficiency strategy. It ensures welfare of citizens by ensuring the best possible adaptation to local needs and utilizing local resources with greater interests of local stakeholders recognizing as active development partners, not as passive recipients. Where decentralization is practiced in its true spirit, it strengthens local democracy and helps ensuring equality through addressing local needs and increasing access to service delivery system.

Generally, in a centralized system, the central government often provides a standard set of public goods and services across the entire national territory, which may not address the crux of the local problem. Thus, the central governments are not able to respond to variations in preferences grounded in multiple conditions and realities. Furthermore, Boex (2004) argues:

> Highly centralized governance can result in a situation in which the central government will accommodate the public service needs of the capital city (where the central government officials reside) but fail to provide substantial public services outside the large urban areas.

Alternatively, the World Bank (2004) argues:

> Decentralization can help national government ministries reach larger numbers of local areas with services; allow greater political representation for diverse political, ethnic, religious, and cultural groups in decision-making; and relieve top managers in central ministries of ‘routine’ tasks to concentrate on policy.

Decentralization as democratization process: the political perspective

Internal and external contexts drive the political process towards decentralization. Politically, emerging aspirations of people towards more local autonomy and self-governance as a part of the democratization process lead to political decentralization. Geographical, ecological and cultural diversities, administrative failure and poor accessibility are other elements of the internal context that lead to decentralization. The external context as a driving force for decentralization includes widespread effects of globalization, democratization and human rights movements. External forces could play an effective role through different means, including bilateral and multilateral donors’ interests, their conditionality and expanding communication networks.

Ebel (2002) outlines the origin of decentralization in different groups of countries (Table 2.1):
Table 2.1 Origin of decentralization as driving forces

<table>
<thead>
<tr>
<th>Region</th>
<th>The origin of decentralization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developed countries</td>
<td>- to reorganise the government in order to provide public goods and services cost effectively in the &quot;post-welfare state&quot; era</td>
</tr>
<tr>
<td>Developing countries</td>
<td>- to escape from the traps of ineffective and inefficient governance</td>
</tr>
<tr>
<td></td>
<td>- to escape from macro-economic instability and inadequate economic growth</td>
</tr>
<tr>
<td></td>
<td>- to address political pressure from the people for democratization</td>
</tr>
<tr>
<td></td>
<td>- to address the advocacy of donors</td>
</tr>
<tr>
<td>Transitional countries</td>
<td>- to transform from a socialist system to market economy and democracy</td>
</tr>
</tbody>
</table>

Source: Adapted from Ebel, 2002

Evidently, the pursuit of decentralization is globally widespread, both in the north and south. However, underlying causes or driving forces of decentralization largely vary owing to the political and socio-economic context of the particular country. Furthermore, in the case of developing and transitional countries, donors are also one of the driving forces and key players of decentralization, in addition to the driving forces (Ebel, 2002).

The World Bank justify decentralization from both administrative as well as political perspectives although efficiency is associated with it (World Bank, 2004):

> Although politics is the driving force behind decentralization in most countries, fortunately, decentralization may be one of those instances where good politics and good economics may serve the same end. The political objectives to increase political responsiveness and participation at the local level can coincide with the economic objectives of better decisions about the use of public resources and increased willingness to pay for local services.

Evidence shows that most of the decentralization processes that have taken place in the past decade have been motivated by political concerns towards democratization. For example, in Latin America (IDS, 2005):

> Decentralization has been an essential part of the democratization process as discredited autocratic central regimes are replaced by elected governments operating under new constitutions. In Africa, the spread of multi-party political systems is creating demand for more local voice in decision-making. In some countries such as Ethiopia, decentralization has been a response to pressures from regional or ethnic groups for more control or participation in the political process. In fact, decentralization represents a desperate attempt to keep the country together in the face of these pressures by granting more autonomy to all localities or by forging 'asymmetrical federations.'
In some African countries, decentralization took place as an outcome of long civil wars, (e.g. Mozambique and Uganda). In these countries, decentralization opened political opportunities and promoted greater participation of a wider range of stakeholders including former warring factions in the local governance system (IDS, 2005):

The transition economies of the former socialist states have also massively decentralized as the old central apparatus crumbled. In many countries, decentralization simply has happened in the absence of any meaningful alternative governance structure to provide local government services. In some cases (particularly in East Asia) decentralization appears to be motivated by the need to improve service delivery to large populations and the recognition of the limitations of central administration.

By bringing the elected government closer to the citizenry, decentralization allows the community to participate more effectively in local affairs, gain experience in democratic practice and hold local leaders increasingly accountable for decisions affecting their lives. Thus, local decisions can be tailored to local needs to improve service delivery and thereby increase the legitimacy of the democratic system. Smith, a prolific writer on decentralization, describes the following as benefits of decentralization (IDS, 2004):

1. Political education of the masses in terms of their role in political debate in electing political representatives and customizing the policies, plans and budgets.
2. Training political leadership in creating a seedbed for political perspectives. This helps leaders to develop skills in policymaking and shaping party politics in a more democratic manner.
3. Wider participation in formal politics secures political stability. Political activities like voting and actively supporting a political party strengthen trust and legitimacy in government which help create social harmony.
4. Political equality for greater political participation, reducing the likelihood of the concentration of power and broadening its distribution to poor and marginalized groups in the society.
5. Decentralization helps enhance the degree of accountability of political representatives at the local level. It is easy to assure because local leaders are more accessible to the local people. For example, voting at local elections is a unique mechanism to express their satisfaction or dissatisfaction in relation to the performance of their representatives.
6. Responsiveness of government can be improved because local representatives are best placed to know the exact nature of local needs and how they can be met in an effective and efficient manner.
2.2.2 Decentralization and devolution: political power makes the difference

Decentralization and devolution are two words which are often understood and treated as equivalent of each other in many contexts. It is, however, important to distinguish the differences between them. While decentralization can be defined as the relocation of administrative functions away from a central location, devolution is defined as the relocation of power away from a central location. Of course, the term “devolution” is more politically charged than decentralization in generic terms. In this sense, power can be equated with the capacity or authority to contribute to decision-making. While decentralization and devolution may occur at the same time, it is quite possible to decentralize administrative functions without devolving the power to local authorities to make meaningful decisions.

There are important distinctions to be made between different forms of decentralization. A traditionally defined category of decentralization is described below, which can take into four forms:

1. **De-concentration** of functions is a process of shifting decision-making power from the central government departments to local level. However, it is shifted "within the central government structure: from central government officials in the capital to central government officials that are located outside the capital, at the regional or local level. Thus, in essence, in the de-concentration system all decision-making authority remains within the central government structure" (Boex, 2004).

2. **Delegation** of authority is the process of shifting responsibilities to semi-autonomous government bodies or third party organizations to perform specific functions. In this model, the central government does not entirely control but such bodies or organizations are ultimately fully accountable to the central government.

3. **Devolution** of power and resources to local governments: "It is a process of shifting responsibilities for government functions and expenditures from the central government to subnational (regional and/or local) governments in which subnational governments are granted substantive decision-making authority” (Boex, 2004).

4. **Transfer of functions** refers to the process of transferring specific government functions to NGOs and/or to the private sector players.

These general categories have also been described in a variety of contemporary literatures. The World Bank (2004) explains decentralization by dividing it into four categories - political, administrative, fiscal and market decentralization. Nevertheless, there are similarities in the basic categories even as there is a clear overlap between different forms of decentralization explained by different authors. Boex (2004) described decentralization in three different categorizes with their basic components (Table 2.2).
Table 2.2  Types of decentralization and basic components

<table>
<thead>
<tr>
<th>Types of decentralization</th>
<th>Basic components</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political decentralization</td>
<td>- Structure and scope of public sector</td>
</tr>
<tr>
<td></td>
<td>- Political and electoral mechanism</td>
</tr>
<tr>
<td></td>
<td>- Role of civil society in governance</td>
</tr>
<tr>
<td>Administrative decentralization</td>
<td>- Control over local civil service</td>
</tr>
<tr>
<td></td>
<td>- Local regulatory framework</td>
</tr>
<tr>
<td></td>
<td>- Subnational financial management</td>
</tr>
<tr>
<td>Fiscal decentralization</td>
<td>- Expenditure responsibilities</td>
</tr>
<tr>
<td></td>
<td>- Revenue assignments</td>
</tr>
<tr>
<td></td>
<td>- Intergovernmental fiscal transfer</td>
</tr>
<tr>
<td></td>
<td>- Subnational debt and borrowing</td>
</tr>
</tbody>
</table>

Source: Boex, 2004

Among the categories of decentralization described above, political and fiscal decentralization are closely related to the subject matters. These are discussed in detail in the following paragraphs.

2.2.3  Political decentralization and democratic local governance

Political decentralization refers to the transfer of policy-making and legislative powers from the central government to autonomous subnational assemblies and local councils that have been democratically elected in their respective constituencies. Political decentralization aims at giving elected representatives more decision-making power so that they can be more accountable to their constituents. The decentralized system, in this context, can also support the democratization process by giving general citizens, or their representatives, more influence in the formulation and implementation of policies. Political decentralization encourages public decisions to be made with greater participation or engagement of stakeholders. Consequently, well-informed participation increases the degree of relevance in decision-making to address the diverse interests of the society rather than decisions made at central level.

Political decentralization is often associated with pluralistic politics and representative government systems and thus often requires constitutional or statutory reforms, the development of pluralistic political parties, the strengthening of legislatures, creation of local political units and the encouragement of effective public interest groups (World Bank, 2004). Political decentralization leads to establishing local governance systems that enable local governments to involve key partners including civil society organizations and the private sector in governance related activities. Simultaneously, communities and their organizations are empowered to become equal partners in local governance and development process. Meshack (1992) summarizes the following as fundamental characteristics of political decentralization.

1. Local units are autonomous, independent and clearly perceived as separate levels of government over which the central authorities exercise little control.
2. Local governments are clear and legally recognized geographical boundaries within which they exercise authority and perform public functions.

3. Local governments have corporate status and the power to secure resources to perform their functions.

4. Local governments are perceived by local citizens as organizations providing services that satisfy their needs and as government units over which they have some influence.

5. There exists an arrangement which allows for reciprocal, mutually beneficial and coordinated relationships between central and local government.

Many contemporary literatures emphasize the autonomy of regional or local governments. Unnecessary interference needs to be prevented, but full autonomy of regional or local government is not easy in practice and might turn out to be counterproductive. Subsidiarity principle also recognizes roles of different levels of government. Therefore, inter-dependency, rather than full autonomy is critical for effective functioning of multi-level government.

Political decentralization strengthens the capacity and degree of legitimacy of local governments with its basic features of ensuring greater participation of stakeholders. McLean (2002) notes the following as necessary conditions for political decentralization: (a) subnational governments are democratically elected at fixed intervals (e.g. every five years) and cannot be arbitrarily formed or disbanded (e.g. as allowed under 73rd/74th Constitutional Amendments in India); (b) clearly defined jurisdictions within which local governments can ‘legislate’ and provide services; (c) clearly delegated powers and functions of local governments; and (d) legal, political, and functional space.

2.2.4 Decentralization as governance approach

In recent political economy debates, decentralization is not only considered as a strategic response to address the pitfalls or the failure of centralized public systems, but it is popular as an important governance approach. Being a governance approach, it requires a participatory process to better respond to the needs and priorities of local residents and an accountable government agency (Grindle, 2009):

The rhetoric and theory of decentralization promise better governance and deeper democracy as public officials are held more directly accountable for their actions and as citizens become more engaged in local affairs.

It is applicable especially in developing countries who have a history of highly centralized government. The motive of decentralization in these countries is to improve service delivery, especially in remote and small communities far from capital cities, but, in reality, decentralization gradually helps improve the overall quality of governance.

In Going Local, an unprecedented study of the effects of decentralization on thirty Mexican municipalities, Grindle (2009) describes how local governments respond when they are assigned new responsibilities and resources under decentralization policies. She argues that the benefits of decentralization regularly predicted by economists, political scientists, and management specialists are not inevitable. Rather they are strongly
influenced by the quality of local leadership and politics (Grindle, 2009). Simply devolving authority may not bring desired results as there are other critical factors that determine the success. Therefore, decentralization is a long-term process towards public sector reform. It needs a long-term vision, supportive attitude and in-built capacity building program on a regular basis that can lead to structural reform in the long run.

Experiences of African and other countries also show that "there is a high risk of failure as expectations are high and success is dependent on good central coordination, stringent process management and continuous political willingness to implement the reform" (Kroes & Baumer, 2016).

The experience of decades-long decentralization in a number of countries shows that often decentralization processes are put into motion without the necessary arrangements, especially the institutional aspects and the fiscal decentralization. If these are not managed as a parallel process, shifting tasks and responsibilities to the local level does not bring desired results, rather it leaves local governments with increasing financial obligations, which lead to local budget deficits than to a stable revenue base. Local budget authority as a part of fiscal decentralization is, therefore, an essential precondition for any successful decentralization. Otherwise, subnational governments will remain highly dependent on national budget decisions and allocation, constantly demanding financial support instead of being able to establish a functioning revenue and expenditure management (Kroes & Baumer, 2016).

2.3 Fiscal decentralization: concept and relevance

Specifically, fiscal decentralization deals with how the government is organized at different levels and how they are financed to carry out their decentralized functions. In other words, fiscal decentralization is understood as inter-governmental fiscal relations that study how different levels of government act and interact with each other on fiscal issues with reference to their functions and responsibilities.

The fiscal devolution of tax and spending powers to subnational and local levels of government has become one of the most popular policy prescriptions in countries all across the world. Fiscal decentralization arguably improves government efficiency because it enhances responsiveness to local policy issues and incentivizes fiscal discipline. However, critics suggest that central control over local spending is necessary to equalize fiscal outcomes between prosperous and deprived areas (Alonso & Andrews, 2019).

Fiscal decentralization has emerged as a focus of public sector reform in many developing countries, where decentralization could not succeed due to funding gaps. It suggests that fiscal decentralization is an integral part of the overall decentralization. It has been evolving more and more as a strategy to institutionalize and sustain political decentralization when most of the decentralization schemes in developing countries failed to match decentralized functions to the financial capacity. It also became as a strategy to address the persistent problem of 'mandates without funds' (Adhikari D., 2006).
Generally, fiscal decentralization is justified from the perspective of efficiency. However, there are no uniform practices in managing central and decentralized functions. The government sector is highly centralized in small developed countries (such as the Netherlands) as well as in many formally socialist transitional countries (such as Ukraine) as well as developing countries like Malawi (Boex, 2004). Boex (2004) further highlights the problem in developing and transitional countries:

Voter preferences are not as readily translated into budget outcomes as in industrial countries and where allocation of local resources is often severely constrained by central government controls.

Findings of a recent study suggests that decentralization is positively related to productive efficiency and there is a negative relationship between socio-economic deprivation and efficiency. Further analysis reveals that deprivation weakens the positive decentralization-efficiency relationship, calling into question simplistic proposals for fiscal decentralization (Alonso & Andrews, 2019).

2.3.1 Pre-condition for fiscal decentralization

Fiscal decentralization is a process of devolving fiscal decision-making powers and management responsibilities to local levels of government with accountability mechanisms. The most important pre-requisite for fiscal decentralization is a devolved governmental system. The devolved governmental system implicitly assumes that local governments have a certain degree of fiscal discretion and autonomy and that local governments are primarily accountable to their local constituents. It is important to note here that de-concentrating and delegation both make the local level accountable to the center in spite of being accountable to the local populace that they serve (Boex, 2004):

Thus, an important pre-condition of fiscal decentralization is political decentralization, which aims to bring down political power by establishing subnational government bodies that have a corporate character and autonomy. They should be able to hold property, generate revenue and incur expenditures and are politically accountable to the local electorate.

2.3.2 The four pillars of fiscal decentralization

As discussed above, fiscal decentralization is an integral part of political decentering or any type of democratic governance, from unitary to federal structure. As Boex (2001) argues:

Fiscal decentralization is relevant to all countries, regardless of whether they are unitary countries, federal countries or confederations. Of course, the political and legislative context varies within each of these groups. In a unitary country, all sub-national governments are subordinate to the central government while the central government has absolute authority over sub-national governments in a unitary
state even as the sub-national government exists solely at the discretion of the central government. In federal countries, the federal constitution defines the power relationship between the different levels of government.

Boex (2001) gives further example that fiscal decentralization is becoming an important reform agenda not only in large countries (like Russia and Indonesia), but also in small countries (like Latvia, Malawi and Surinam) as well as in developed countries. It suggests that fiscal decentralization is one of the important issues in developed, developing and transitional economies. However, the effect of fiscal decentralization varies greatly with the country specific context, political system and intended objectives (Adhikari D., 2006).

There are four key elements of fiscal decentralization, usually called ‘four pillars’ or ‘building blocks’ of fiscal decentralization’ (Boex, 2001). See Table 2.3.

<table>
<thead>
<tr>
<th>Building blocks or pillars</th>
<th>Assessment criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expenditure responsibilities</td>
<td>The assignment of expenditure responsibilities: the functions and expenditure responsibilities of each level of government are assessed under this pillar.</td>
</tr>
<tr>
<td>Revenue assignments</td>
<td>Assignment of tax sources: subnational governments are assigned certain expenditure responsibilities; tax or non-tax revenue sources are made available to subnational governments in order to provide them with resources.</td>
</tr>
<tr>
<td>Intergovernmental fiscal transfers</td>
<td>Intergovernmental fiscal transfers: in addition to assigning revenue sources, central government may provide regional and local governments with additional resources through a system of intergovernmental fiscal transfers or grants.</td>
</tr>
<tr>
<td>Subnational borrowing</td>
<td>Subnational deficits, borrowing and debt: if subnational governments do not carefully balance their annual expenditures with revenues and transfers, this will result in subnational deficits and the incurrence of debt. Since this would have important ramifications for national macroeconomic conditions, central governments often require subnational governments to balance their budgets or tightly regulate their ability to hold debt.</td>
</tr>
</tbody>
</table>

Source: Boex, 2001

**a. Expenditure responsibilities**

The principle of subsidiarity is applicable in determining the level of task or functions and expenditure responsibilities as described earlier. According to Boex, "It is important to recognize that the assignment of expenditure responsibility actually has a multi-dimensional component: expenditure responsibility is often broken down into the responsibility to provide, finance, and regulate a certain government function" (Boex, 2001).
b. Revenue assignments

Once the expenditure responsibilities are determined, then the second key question which crops up is: who gets what resources to perform expenditure responsibilities? Obviously, the fundamental determinant of the revenue assignment is the expenditure responsibilities. It is important that the finance should follow functions. It is also important to consider which revenue sources are suitable to subnational or local government to fulfill their expenditure responsibilities. For example, some taxes are better suited to assign for local government while others are better for national government. Thus, it is important that the local taxes, which are assigned to local or subnational government should be easy to administer and should not conflict with the jurisdictions. In addition to this, Boex (2001) recommends that it is preferable if local taxes are related somehow to benefits received by local residents. He also recommends giving some degree of revenue discretion in order to get full benefit out of fiscal decentralization reforms. Ironically, "central governments often seem unwilling to provide any degree of real revenue autonomy to subnational governments. In these cases, inter-governmental fiscal transfers become necessary to ensure that subnational government have adequate revenues to fulfill their expenditure responsibilities."

c. Inter-governmental fiscal transfer

This is often considered the third pillar of fiscal decentralization or intergovernmental fiscal relations. It constitutes "the cornerstone of subnational government financing in most developing and transition countries" (Bahl, 2001). Since many local governments are highly dependent on the central level in most developing countries, inter-government transfer becomes important element of fiscal decentralization in these countries.

The term ‘transfer’ refers to a number of different public financing instruments including grants, subsidies, and sharing of tax revenues between central and local governments. The contemporary literature on public finance suggests that there are three main economic rationales for intergovernmental transfers. They are (Shrestha, 2002): (a) to close the fiscal gap arising out of mismatch between expenditure responsibilities and revenue assignments to subnational governments; (b) to address the variations in fiscal capacity or expenditure needs among jurisdictions; and (c) to stimulate local government spending on services that generates significant externalities.

Transfer can also be used to encourage specific activities of national priority at subnational or local levels and to stimulate local tax efforts. Theoretically, the transfer system should neither encourage nor discourage tax efforts of subnational or local governments (Shrestha, 2002).

Bahl (2001) outlined the following generally accepted rationales of intergovernmental fiscal transfers: (a) improving the vertical balance of the system of intergovernmental relations; (b) improving the horizontal fiscal balance of the system of intergovernmental relations (equalization); (c) compensating for the presence of spillover or ‘externalities’ between jurisdictions in the provisions of regional or local public services; (d) funding
national priorities or ‘merit goods’; and (e) administrative justifications for intergovernmental transfers.

Commenting on the issue Boex (2001) observes, "unfortunately, despite many good fiscal policy applications for inter-governmental transfers, in practice transfers are often used simply for a political reason: to assure central government control over local government activities." The above justifications and rationales, however, are not properly internalized in the majority of transitional and developing countries. They adopt inter-governmental transfers for less justifiable reasons, if not for ‘bad reasons’ (Boex, 2001). These ‘bad reasons’ include: (a) to discourage local autonomy in many ways including in the name of enforcing uniformity; (b) to send out the impression that local governments are less transparent, more biased and more corrupt; and (c) ultimately to offload the central government’s budgetary deficit on local governments.

Briefly, since revenue assignment often does not provide sufficient revenues to finance regional or local government’s expenditure responsibilities, inter-governmental transfers are often necessary to ensure revenue adequacy. The transfer can be conditional or unconditional in the form of program grants and other allocations (Table 2.4).

More importantly, transfer does not only fulfill the resource gaps of local governments but it can also be used as an important policy instrument to address a variety of policy objectives. However, "no single transfer instrument can achieve all objectives" (Shrestha, 2002). Each type of transfer has its own effects, advantages and disadvantages. Therefore, first, transfer instruments have to be assessed carefully and each instrument has to be used on a complementary basis so that advantages and disadvantages can be somehow balanced. These advantages and disadvantages and best-suited conditions are summarized in Table 2.4.

Table 2.4 Advantages and disadvantages of transfer instruments

<table>
<thead>
<tr>
<th>Types of fiscal transfers</th>
<th>Best suited conditions/usefulness &amp; advantages</th>
<th>General restrictions by rule and disadvantages</th>
</tr>
</thead>
</table>
| Shared taxes (derivation basis or formula distribution) | - Promotes revenue stability.  
- Maintains fiscal autonomy of local government. | - If there is no revenue autonomy at the local level, there might be higher chances of having less tax collection efforts. |
| General-purpose grants (unconditional) | - For inter-jurisdictional equalization.  
- For the provision of significant local government discretion. | - Promotes dependency of local governments to central level.  
- Discourages the mobilization of local fiscal potentials. |
| Conditional grants (with or without matching) | - Helpful in simulating spending by local governments in national priority sectors, or  
- For preventing local governments from sub-optimal funding in particular activities. | - Limits fiscal discretion of local governments.  
- Affects the allocation decisions of the local governments. |
<table>
<thead>
<tr>
<th>Types of fiscal transfers</th>
<th>Best suited conditions/ usefulness &amp; advantages</th>
<th>General restrictions by rule and disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost reimbursement (full or partial) grant</td>
<td>- Useful when the central level relies on local level to implement certain national policies that are outside normal devolved expenditures to the local government.</td>
<td>- Restricts the discretion of the local government.</td>
</tr>
<tr>
<td>Ad hoc or ex-post grants (covering deficits at the end by transferring or converting loan into transfer, etc.)</td>
<td>- Serve as instrument for the central government to buy favours. - Increase political clientele, or - Enhance political influence and power over jurisdictions. - Sometimes it is necessary in emergency, like disaster management.</td>
<td>- Unpredictable for subnational planning and budgeting. - Hardly results in efficient allocation of resources by the local governments. - Planning for emergency may give good excuse for political manipulation on regular basis.</td>
</tr>
</tbody>
</table>

Source: Adapted from Shrestha, 2002 and Bahl et al., 2001

As it has been discussed above, questions of design and implementation of inter-governmental fiscal transfers is very complicated and they are highly dependent on the policy goal of the central level government. The designing of a grant and complying with it subsequently becomes more complex when the government lacks a clear policy goal and strategic directions. It becomes even more complicated in a situation when there is no clear vision or strategy with respect to the hard choices between macroeconomic stability versus promotion of local fiscal autonomy, expenditure priorities of central level versus local preferences, and central political power versus broad-based local governance in the country.

Transfer design principles: Bahl (2001) agree that choosing the transfer method and structuring the transfer program is ultimately a ‘political choice.’ However, he suggests that the design of transfer mechanism should be guided by sound economic principles. He further prescribe the following principles:

a. Adequacy: adequate resources should be made available to local governments to achieve their policy objectives.

b. Local autonomy: the transfer system should preserve local autonomy – preferably unconditional in nature – and should leave increased flexibility and discretion authority to subnational and local governments.

c. Equity and fairness: the transfer system should support fair allocation and enhance equity by providing balancing or equalization grants to local governments with lower tax capacity and greater fiscal needs.
d. **Predictable and stable**: the transfer should be predictable in a ‘dynamic sense’ and it should be stable over a period of years. This can be done by using a clear indicator-based formula.

e. **Simplicity and transparency**: it should be, to the extent possible, simple and transparent by limiting objectives and pursuing one-policy objectives with each transfer program and by simplifying formula to make it understandable to stakeholders. It will avoid policy ambiguity and minimize political manipulation.

f. **Incentive compatibility**: it should not create negative motivation to local revenue mobilization and should not help induce inefficient expenditure choices.

g. **Avoid sudden large changes**: this is more important during the introductory phase of transfer schemes. Any changes in the design should not strive to cut the arms of subnational and local governments.

In the next step, Boex (2001) describes two important dimensions of intergovernmental transfers as basic rules as follows:

1. Determining the size of the divisible pool between the central, subnational and local governments (vertical fiscal balance). It ensures a balance between the fiscal needs and resources available to different levels of government.

2. The distribution of the divisible pool among local governments (horizontal fiscal balance). It ensures fiscal balance in resource allocation between government units at the same level and funding specific national priorities or to counteract the effect of inter-regional spillovers or externalities.

Boex (2001) prescribes adequacy of resources as one of the principles, but in reality, available funds are not always considered adequate even in developed countries. It is very subjective and may bring controversy in practice.

d. **Subnational borrowing**

Subnational borrowing is the fourth and final pillar of fiscal decentralization. When the subnational and local government’s fiscal balance does not appear to be achievable through the three pillars discussed above, then subnational borrowing comes as the final alternative. There are a number of factors that play a vital role in subnational borrowing such as the credibility of regional and local governments who receive the debt, rate of return of the investment and repayment capacity, etc.

Subnational borrowing is one of the pillars of fiscal decentralization; however, it is a very critical option. The loan might be used for consumption or it can be invested in an unproductive sector. In such cases, subnational or local governments easily go bankrupt. Therefore, borrowing is generally restricted only for selected productive sectors even in developed countries like Germany.
Potential dangers of fiscal decentralization

There are some arguments against fiscal decentralization that highlight the potential dangers of fiscal decentralization. These include: (a) possibilities of macro-economic instability; (b) promotion of inequality between the regions, urban and rural areas; (c) discouragement of national unity; (d) politicization of fiscal instruments which could lead to policy manipulation; and (e) it might also lead to regional autonomy before leading to regional independence at the cost of national unity, etc.

These arguments are not very convincing in comparison to the arguments raised in favor of fiscal decentralization. These possible pitfalls could be managed through policy clarity, adjustments and appropriation. However, it is clear from the discussion above that fiscal decentralization is not only limited to the political issues. It has serious implications for both the political environment and the financial system of the country. These implications and potential dangers have to be seriously considered from the beginning of policy design.

To encapsulate, fiscal decentralization is a process of moving accountable government closer to the people in a more material term. It brings high chances of resource mobilization at the local level (Bahl, 2001), encourages local financial management innovations and promotes local initiatives and accountability. Fiscal decentralization, as discussed above, is directly linked with political decentralization. However, it is closely entangled with other policy areas such as national macroeconomic policy, tax policy and tax administration and local governance system.

2.3.3 Implementation rules of fiscal decentralization

Both political and fiscal decentralization processes should go together in a synchronized form so that functions, funds and functionaries can be properly balanced. In this context, Bahl (2001) prescribes the following rules for fiscal decentralization for the successful implementation:

1. Inter-governmental fiscal relations or fiscal decentralization must be considered as a comprehensive system which means "all of the pieces must fit together."

2. "Finance follows function." Firstly, expenditure assignments have to be fixed following the functions and then revenues should be assigned in amount that will correspond to the expenditure needs.

3. "Begin fiscal decentralization with a strong central ability to monitor." In this context, the central monitoring system should be sound enough to monitor the accounting system, fiscal analysis and quantitative monitoring and evaluation.

4. "One system will not fit the urban and rural sectors." Subnational government’s capacity varies in different aspects across urban and rural areas in particular. This demands that the fiscal decentralization design should recognize and address these differences.

5. Fiscal decentralization requires significant taxing powers at lower levels of governments. Importantly "urban local governments must have some taxing powers."
6. The central government must respect and follow its commitment to decentralization by following the rules.

7. "Keep it simple." Local governments, in general, cannot handle complex intergovernmental fiscal arrangements. Therefore, it should be easily understandable and manageable by local governments. "Precision in tax administration and grant distribution is probably not possible in most cases."

8. Grants and shared taxes must play an important role in almost any decentralized fiscal system in a developing or transitional country. Transfers may be designed as more centralized or more decentralized.

9. There is an intra-province dimension to inter-governmental fiscal relations, which should be taken into account in designing the system.

10. "Impose a hard budget constraint." If there is fiscal deficit at regional or local government, it should not be fulfilled by the central government in order to maintain fiscal discipline and accountability.

11. It should be recognized that "inter-governmental systems are always in transition." This should be considered in planning and designing the system.

12. Fiscal decentralization is a very popular policy in developing and transitional countries. For decentralization to succeed, "there must be a champion of decentralization (internally) who clearly understands the costs and benefits of establishing such intergovernmental fiscal relations as a system."

2.4 The balance between centralization and decentralization

2.4.1 The role of the government at the central level

Boex (2001) places his argument that in the context of balancing centralization and decentralization of power:

[...] regional and local government cannot be completely autonomous from the central government because they need to operate within the larger public sector. As such, sub-national governments should act within the legal and administrative framework established by the higher-level government.

In a similar vein, Fung (2004) argues that autonomy is not problem-free:

Local autonomy often encounters its own difficulties. Liabilities such as parochialism, lack of expertise and resource constraints may impair the problem solving and administrative capabilities of local organizations relative to centralized forms. Such pathologies may not be intrinsic to empowered participation and deliberation. Rather the extent to which such criticisms apply may depend upon the details of the institutions that render the abstract notions of deliberation, participation, and empowerment into concrete
practices. In particular, the devolution of authority to autonomous local bodies is frequently taken to be natural institutional form of participatory democracy.

There are two distinct senses of autonomy. First, autonomy entails independence from central power or central authority. Second, it stresses the capacity of local actors to accomplish their own ends (Fung, 2004). Fung further explains:

[...] a more perplexing problem with local independence is that groups may lack the wherewithal, goodwill, or motivation to come together as the professionals and residents. Group differences, elite captures or domination by particular factions, and lack of innovativeness all adversely affect local autonomy, when autonomy is understood as capacity rather than license.

Fung (2004) proposes a mechanism of ‘accountable autonomy’ for maintaining central relation with local bodies. He further argues that the mechanism of ‘accountable autonomy’ can reduce internal obstacles and safeguards both as part of local processes and substantive outcomes. In order to ensure that local authorities utilize their discretionary latitude constructively, outside bodies need to monitor the relevant outcomes. Accountable autonomy offers a model for public agencies to better interact with local citizens that stands in favor of local democracy and community control on both conceptual and institutional dimensions. The model emphasizes the positive and constructive face of autonomy. Fung further highlights two important general functions of central authority as follows: (a) to provide various kinds of support needed for local autonomous authorities or groups to accomplish their ends; and (b) to hold local authorities or groups accountable to the effective and democratic use of their discretionary latitude (Fung, 2004).

There is the need of external guidance to subnational or local level and some kind of supervision or monitoring by the higher-level authorities. Somewhat paradoxically, realizing autonomy requires the sensitive application of external guidance, support and constraints. When fractions inside a group dominate or paralyze planning processes, outsiders can step in to break through jams and thus enable the group to better accomplish its ends (Fung, 2004).

2.4.2 The dangers of decentralization

It has been widely realized that public sector needs vital improvements not only to increase its effectiveness and efficiency but also to support and promote decentralization and promotion of local democracy.

Decentralization, however, is not a panacea for all public sector problems as all of us wish. It does have some potential challenges and its own disadvantages to be managed properly (World Bank, 2004):
a. Decentralization may not always be efficient, especially for standardized, routine, network-based services.

b. It can result in the loss of economies of scale and control over scarce financial resources by the central government.

c. Decentralization may create challenges to macro-economic stability at the national level.

d. Weak administrative or technical capacity at local levels may result in services being delivered less efficiently and effectively in some areas of the country.

e. Administrative responsibilities may be transferred to local levels without considering adequate financial resources and making equitable distribution or more difficult provision of services.

f. Decentralization can sometimes make coordination of national policies more complex and may allow functions to be captured by local elites.

g. Decentralization may increase the level of complexity in center-local relations and establishing linkage between plans and programs at different levels.

h. There is a possibility of creating a situation of distrust between public and private sectors which may lead to undermining of cooperation at the local level.

i. There might be instances of certain groups getting favours and thus delivering of public goods and services may become subject to nepotism. This is more likely to happen at the beginning of decentralization process.

McLean (2002) notes the following dangers of decentralization that have to be observed seriously, or else they may impede further decentralization, create delays and obstruct the rationalization of the democratic system:

1. Chances of elite capture by ethnic, racial or social groups and corruption.

2. Opaque decision-making, which includes: (a) seemingly arbitrary decisions that affect upwards and downwards accountability; (b) constituents, villagers, and communities not able to hold representatives accountable (due to incomplete information); (c) patronage politics (excessive discretion to reward friends and punish rivals); and (d) civil servants may feel compromised frequently.

2.4.3 The balance between centralization and decentralization

As discussed above, centralization and decentralization have their own advantages and disadvantages. Since these are not “either-or” conditions, an appropriate balance between centralization and decentralization is essential for the effective and efficient functioning of the government at all levels.

Central governments often need to retain some stewardship-related functions and responsibilities, even to implement decentralization policies successfully. It includes legal and policymaking, financing, monitory and macro-economic stability and supervisory roles lined with capacity building of local level governments. These are
important roles to keep for central or national levels while decentralizing the functions and responsibilities to the lower level of government. The central level has the implicit role of creating and maintaining enabling policy environment that allow subnational and local units and other stakeholders to take part in governance activities with increased enthusiasm and innovations.

Furthermore, the central level has the role of strengthening the capacity of local institutions to take the responsibility for new or decentralized functions. In addition, the success of decentralization frequently depends heavily on training for both national and local officials in decentralized administration, democratic behavior and culture. Capacity strengthening activities are often required not only for local governments, but also for key partner institutions such as private enterprises and local non-governmental groups in participatory planning, local financing and management of decentralized functions.

Maintaining equality in the availability of resources, providing opportunities and distribution of equal benefits throughout the country and maintaining quality of services fall under the responsibility of the central level. The central level maintains these aspects using different policy instruments like equalization grants and other similar measures.

2.5 Decentralization: implementation perspectives

Putting the decentralization principles into practice is not that simple and straightforward. Long history and specific context shape the policy and institutional instruments including decentralization and democratic governance. Rondinelli (2002) argues:

Most governments in developing countries decentralize through de-concentration or delegation. [...] Through delegation, central government transfer responsibility for decision-making and administration of public functions such as education or health services to semi-autonomous organizations not wholly controlled by the central government, but ultimately accountable to it.

The World Bank cautions researchers to be careful when it comes to comparing the effects of decentralization. It emphasizes that the success of decentralization is dependent on its design, which further depends on the country-specific political structure and administrative issues. Consequently, the impact of decentralization will also differ depending on the type of decentralization taking place and the objectives of decentralization. It is important to introduce consistency in any discussion of decentralization to avoid ‘comparing apples and oranges’ and to ensure that we can draw lessons where applicable (World Bank, 2004).

Many contemporary authors emphasize the integrated approach and practical aspects of decentralization to bear desired fruits. In many developing countries, generally, political reforms are found ambitious and dis-aligned with existing systems and procedures. When the time comes for implementation, the centralized mindset of government officials plays an important role and the results of reform gradually fade up. Therefore, political reform
should focus in reforming the existing systems and procedures, following the fundamentals of the process. In-country reflection and learning are vital for further improvements.

Decentralization is not new in both developed and developing countries. Recent studies show that it has produced mixed results, particularly in terms of poverty reduction, improving service delivery and overall good governance. There are multiple factors that determine the success of decentralization in terms of improving service delivery, responsiveness and accountability leading to overall grassroots democracy. Among other factors, a country’s socio-politico context, institutional setup (both formal and informal) and mindset of political leaderships determines its success. Its success is also highly dependent on the internal democratic practices within main political parties.

In developed countries such as Germany, decentralization is still considered and has been continuously fostered as one of the main strategies of its overall development and foundation of grassroots democracy. Nevertheless, the concept is still significant, and it will continue to help shaping the development process (Kroes & Baumer, 2016).

Decentralization is a long-term and non-linear public sector reform process. Its success is dependent on many political, administrative, social and cultural factors. Research confirms that the outcome of the process cannot be duplicated but some common variables co-determine whether the process leads to good governance and improved democracy (Kroes & Baumer, 2016).

3 Democratic governance: managing public affairs collectively

This chapter includes the conceptual understanding of governance, assessment criteria of measuring democratic systems and some challenges of modern democracy.

3.1 Definition of governance

Development was seen to be a state-led activity until early 1980s. Public sector was the dominant employer and public affairs were managed mainly through administration and development through planning frameworks. Therefore, strengthening public administration was the focus of what is today commonly called ‘governance reform.’ Today’s governance debates grew out of concerns with the democratization process, on the one hand, and the implementation of economic reform programs that were part of an overall economic liberalization agenda in developing countries, on the other hand. Therefore, the broad concept of governance carries both democratic features and development agenda with other stakeholders (other than government) as a part of the process.

The World Bank defines governance as the manner in which power is exercised in the management of a country’s political, economic, natural and social resources. The World Bank has identified three distinct aspects of governance: 1) the form of political regime; 2) the process by which authority is exercised in the management of a country’s economic
and social resources for development; and 3) the capacity of governments to design, formulate and implement policies and discharge functions (Fukuda-Parr, 2002).

The UNDP views governance as the exercise of economic, political and administrative authority to manage a country’s affairs at all levels. It comprises mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences (Fukuda-Parr, 2002).

The Institute of Governance (IOG), Ottawa describes governance as comprising the institutions, processes and conventions in a society which determines how power is exercised, how important decisions affecting society are made and how various interests are accorded a place in such decisions (Fukuda-Parr, 2002). Governance has become more dynamic political process in recent decades. Beyond increasing the collaborative capacity and intelligence of the public sector in general, it is moving toward paradigm shifts, beyond the public sector domain. It can be characterized by areas of weakness transitioning into areas of strength. The following are the broad types of shifts within governance that have taken place in recent decades (MacArthur Foundation, 2013):

From deliberation to collaboration: when barriers to collaboration are broken down, problems can be solved by a wider range of stakeholders and experts, rather than simply relying on the abilities of designated government employees and agencies.

From centralized to decentralized: moving beyond a push or broadcast culture, the use of technology can involve more voices in the governance process.

From faith-based to evidence-based: rather than placing a premium on ‘intuition’ or experience, an information-rich, experimental governance culture can lead to improved decision making.

From uniform/entrenched to diverse/iterative: leveraging new voices, acting on new ideas and breaking up inertia can make government less homogenous and allow for more experimentation and trial-and-error.

From closed to open: instead of the government existing as separate from the governed, an open, inclusive system will not only lead to more transparency and accountability, it will also increase government effectiveness by involving more people in problem-solving.

From intermediary to platform: by taking away its responsibility for curating and allocating all information, the government can become lighter and more agile, while creating an infrastructure that permits citizens to utilize public resources beyond ways strictly prescribed by the government.

To summarize, governance is an innovative and decentralized process of managing public affairs at all levels in which power or authority is exercised in a collaborative manner. The state, democratic institutions, private sector and civil society articulate their interests based on evidence, mediate their differences, and exercise their legal rights and obligations to achieve shared goals and objectives. Governance holds a holistic and
democratic perspective, and it is a continuing process through which conflicting or
diverse interests are accommodated and cooperative actions are taken to manage the
affairs of common interests. Key democratic features such as participation, transparency,
responsiveness and accountability are built-in in the governance concept and process.

3.2 Advantage of democratic governance

Fukuda-Parr and Ponzio (2002) note:

Democratic governance needs to be underpinned by a political regime that guarantees civil and political liberties as human rights and that ensures participation of people and accountability of decision makers.

They further advocate for a meaningful devolution of authority to local units of governance that are accessible and accountable to the local citizenry which enjoy full political rights and liberty (McGee, 2003). Contemporary literature highlights the following distinct advantages of democratic governance over authoritarian regimes (Cheema, Shabbir G & Maguire, 2002) and (Fukuda-Parr, 2002):

1. Democracies are better able to manage conflicts and avoid violent political change because they provide opportunities for the people to voice their grievances through the institutional process and participate in the political process of the country.

2. Democracies also contribute to political stability and the status of human security because of open space for political contest that allows for a more peaceful resolution of conflict. There is some evidence from the years between 1950 and 1990 that riots and demonstrations were more frequent in democratic countries, but these were much less destabilizing than in dictatorships. Dictatorships are also more prone to war at some point in time. They have, for example, experienced war every 12 years compared with every 21 years in democracies.

3. Democracies are better able to avoid threats to human survival because of checks and balances by the opposition parties, uncensored criticism of public policies and the fear of being voted out of office.

4. The democratic system increases citizens’ access to public goods and services. Democracies lead to greater awareness of social development concerns including health, education and the rights of women and minorities. This helps and makes governance more efficient and responsive to local needs.

5. Through the local government structures, democratic governance makes it possible to distribute resources in an equitable, transparent and accountable way.

6. Democratic governance can also reduce income disparities and provide equal opportunities by protecting the rights of minorities from the ‘tyranny of the majority.’ National institutions, affirmative action and legal standards are all tools of democratic governance that can help resolve income disparities among communities or help encourage more women to participate in the political process.
Democratic institutions and democratic processes give enough space to the people to have their voice heard through formal and informal mechanisms. Moreover, an open competition for power leaves politicians more likely to respond to the needs of ordinary people. The important assumption behind democratic local governance is that local governments are familiar with local circumstances and they can better mobilize local stakeholders for common benefits. This leaves them in best position to equitably distribute the benefits of public resources. However, Fukuda-Parr and Ponzio (2002) argue that it is not easy to translate this ideal situation not only in young democracies but also in established democracies. They explain the two main reasons behind this. Firstly, corruption and elite capture undermine democratic institutions. The second reason is inadequate access of common people to democratic institutions.

Fukuda-Parr and Ponzio (2002) further argue:

> Democratic realists say that this is to be expected of representative democracy which above all is a system of political competition and not one intended exclusively to empower citizens. But that neglects two other features of democracy: participation and accountability.

They suggest the following features of democratic governance (Fukuda-Parr, 2002). In their view, democratic governance:

- responds to peoples’ priorities, is about more than people having the right to vote. It must be about strengthening voice and power through democratic politics and institutions that make participation and public accountability cut through elite control of institutions.
- gives priority to poor peoples’ economic interests (through affirmative actions), is not only about institutions and rules that promote efficiency but also ensures fairness and social justice.

It is important to note that the debate of good governance in recent days is more related to improving and reforming the functioning of democratic institutions, including the 'deepening of democracy', strengthening responsiveness and accountability, and exploring more active and creative roles for non-state actors (ibid). Strong democracies rely very much on institutional strengths which are also vital to sustain the economic development and the efficient functioning of markets. The disastrous experience of the former USSR can be taken as an example in this connection (Blunt, 2002).

### 3.3 Democratic principles and assessment criteria

Molutsi (2002) argues that democracy should be defined by its basic principles or values and how it works in practice. He proposed two-fold democratic principles: (a) popular control over public decision making and decision makers; and b) equality between citizens in the exercise of that control.
These are the principles that democrats in all times and places have struggled for while retaining popular control over public decisions even as they fight for an end of the monopoly of the elite in decision-making and reaping its benefits, overcoming obstacles surrounding gender, ethnicity, religion, language, class, wealth with a view to equalize the exercise of citizenship rights.

Molutsi (2002) argues:

Democracy is thus not an all-or nothing affair, but a matter of degree to which the people can have their influence over public policy and policymakers while enjoying equal treatment and having their voices heard equally. The democratic principles outlined above are broad, therefore, require to be specified more precisely in the context of a system of representative government in which the people assign the right to decide public policy to their representatives on their own behalf.

Molutsi further describes different sets of mediating values (Table 3.1) that are necessary through which these democratic principles are realized in practice. These values include the values of participation, authorization, representativeness, accountability, transparency, responsiveness and solidarity.

<table>
<thead>
<tr>
<th>Democratic values</th>
<th>Requirements</th>
<th>Institutional means of realization</th>
</tr>
</thead>
</table>
| Participation     | - Rights to participate  
- Capacities/resources to participate  
- Agencies for participation  
- Participatory culture | - Civil and political rights system  
- Economic and social rights  
- Elections, parties, NGOs  
- Education for citizenship |
| Authorization      | - Validation of constitution  
- Choice of office holders/programs  
- Control of elected over non-elected executive personnel | - Referenda  
- Free and fair elections  
- Systems of subordination to elected officials |
| Representation     | - Legislature representative of main currents of popular opinion  
- All public institutions representative of social composition of electorate | - Electoral and party system  
- Anti-discrimination laws  
- Affirmative action policies |
| Accountability     | - Clear lines of accountability, legal, financial, political, to ensure effective and honest performance civil service and judicial integrity | - Rule of law, separation powers  
- Independent auditing process  
- Legally enforceable standards  
- Strong parliament, scrutiny powers |
Democratic values | Requirements | Institutional means of realization
---|---|---
Transparency | - Government open to legislative and public scrutiny | - Freedom of information legislation
 | - Independent media |  
Responsiveness | - Accessibility of government to electors and different sections of public opinion in policy formation, implementation and service delivery | - Systematic and open procedures of public consultation
 | - Effective legal redress | - Local government close to people
Solidarity | - Tolerance of diversity at home | - Civil and human rights education
 | - Support for democratic governments and popular democratic struggles abroad | - International human rights law
 | - UN and other agencies | - International NGOs

Source: Molutsi, 2002

In Table 3.1, the first column lists the main mediating values that are derived from two democratic principles – such as popular control and equality (as discussed above). The second column spells out the specific requirements for these values to be effective in the light of reality and practice. The third column lists the typical institutions through which these requirements (outlined in column two) can be met in a system of representative government in a particular country.

According to Molutsi (2002), based on these values, representative governments derive their democratic character, and these values can be used, in turn, to assess how democratically the institutions work in practice. Thus, it is Molutsi who has provided basic criteria for assessing democratic institutions in the light of democratic principles and values.

Cheema and Maguire (2002) argue that democracy is a question of degree, not an all-or-nothing situation which a country has or do not have. Therefore, the notion of assessment process is to be framed in a comparative model (How much? How far? etc.). They propose a framework for assessing democracy along with broad categories of key indicators (Figure 3.1). As they explain the assessment framework, “it begins with the rights of the citizen, then deals with the representativeness and accountability of government and the different aspects of civil society before concluding with international dimensions of democracy.”

Molutsi further argues that it is important for government and other local and international actors continuing strengthening democracy and entrench good governance. “After a decade, however, progress in democratization in new and restored democracies shows fewer prospects than was initially expected. Research shows stagnation and distortion in elections; political parties and general management of new regimes show a lack of democratic values but stronger elements of electoral authoritarianism and dominant power politics” (Molutsi, 2002). Molutsi further adds:
The issue of inclusiveness, participation and partnership, sustainability and process orientation are critical for a successful process of democratization. What is most required in new and restored democracies today is more dialogue between leaders and their people and indeed with other stakeholders. Only dialogue will translate the constitutional provisions and institutional frameworks of democracy into culture and practice.

**Figure 3.1 Democracy assessment framework**

Note: VH=very high, H=high, M=medium, L=low, VL=very low; Source: Cheema, Shabbir G & Maguire, 2002

**Political representatives and people’s interests**

Cheema and Maguire (2002) explain the following four reasons of representing the interests of people by representative governments: (a) the public spirit of those who offer themselves for public service; (b) the use of their vote by citizens to select candidates with identical interests and devotion to public service while in office; (c) citizens’ use of their votes to remove those "who would stray from the path of virtue"; and (d) the separation of government powers through a system of checks and balances in such ways that, together, they end up acting in the people’s best interest.

However, making the claim of representing people’s interest is a highly controversial issue in practice. How does one make sure that political freedom and electoral participation of the people ensures true representation of the people? The question which arises then, is what is the best political system in which political representatives truly represent the citizen’s voice?
Cheema and Maguire (2002) argue:

...though democracy is still more conducive to representation than other types of regimes, institutional reforms and innovations can promote a more inclusive democracy - a form of government in which needs and demands of the poor, minorities, and other disadvantaged groups are adequately represented. There is no guarantee that democratic development moves in only one direction and there is much to suggest that all political systems (including democracies, liberal or otherwise) become rigid, corrupt and unresponsive in the absence of periodic reform and renewal.

Cheema and Maguire (2002) conclude:

Democratic governance is the best system to ensure citizen participation in decision-making because it demands the participation of the citizens in selecting their leaders and holding them accountable. It also provides local governance and civil society mechanisms through which citizens can voice their concerns; make decisions at a local level and inform their elected representatives of pressing issues.

To summarize, there are three major argumentative elements which have to be kept in mind when studying or evaluating democratic governance – "the what, the how and the why." 'What' includes the democratic governance together with its institutions, processes and practices; ‘how’ is focused on the key principles of democracy as a form of governance; and ‘why’ governance includes internal and external factors that influence the development and consolidation of democracy (Cheema, Shabbir G & Maguire, 2002).

Figure 3.2 captures these three dynamic interchanges between the factors that comprise and affect the quality and nature of democratic governance. It makes it easier to understand democratic governance and its different components as described by Cheema and Maguire (2002) above.

Figure 3.2 shows the following key elements and their inter-linkages between the factors that comprise and affect the quality and nature of democratic governance.

1. What makes up democratic governance? It includes institutions, processes and practices.
2. How is governance democratic? It emphasizes the key principles of democracy as a form of governance.
3. Why does governance become democratic? It includes internal and external factors that influence the development and consolidation of democracy.
3.4 Rationality and power: challenges to modern democracy

Flyvbjerg (1998), in his detailed empirical study ‘Rationality and Power’ which was carried out in the Danish town of Aalborg, finds a number of pragmatic propositions about the relationship between what he calls ‘real rationality’ and ‘power.’ He uncovers the ‘real history’ and ‘effective truth’ of how ‘rationality’ and ‘power’ interact with each other and shape planning decisions and their future in the long run. He redefines the relationship between rationality and power from a very practical perspective: "rationality is context-dependent, and the context of rationality is power. Power blurs the dividing line between rationality and rationalization. Rationalization presented as rationality is shown to be a principal strategy in the exercise of power."

In reality, according to Flyvbjerg (1998), how power operates is not guided by the ‘enlightenment ideals’ but by a context-specific situation. He further explains "rationality as context-dependent" and as it relates to modernity and modern democracy, he emphasizes reality that the focus of modernity should not be on "what should be done," but in reorienting towards "what is actually done." In such a way, "we obtain a better grasp – less idealistic, more grounded – of what modernity and modern democracy are and what kind of strategies and tactics may help change them for the better." Flyvbjerg (1998) notes:

Power has a rationality that rationality does not know, whereas rationality does not have a power that power does not know. [...] This asymmetry between rationality and power forms a basic weakness of modernity and of modern democracy, a weakness that needs to be reassessed in light of the context-dependent nature of rationality, taking a point of departure in thinkers like Machiavelli, Nietzsche and Foucault.
Location of power is an important element of politics and democracy. Flyvbjerg explains that, however, it is not easy to locate power centers while regulation, too, is equally complex. Most importantly, how power is exercised determines who wields the power, as he describes: "It is not simply localized in ‘centers’ nor is it something one can effectively ‘possess’ and regulate by law. The central question, in addition to who has power and why they have it, is how power is exercised" (Flyvbjerg, 1998):

The relationships between rationality and power and their complex dynamics are connected with the effectiveness of democracy. Modern democracy as strong on democratic ideals but weak on their realization. In this context, how to make democracy work in modernity is the emerging challenge. In response, democracy is a result of consistent efforts not only in the new democracies, but also in old democracies like in Denmark. [...] Democracy is not something a society ‘gets’; democracy must be fought for each and every day in concrete instances, even long after democracy is first constituted in a society. If citizens do not engage in this fight, there will be no democracy.

From the perspective of power, the strengths of modernity and democracy are knowledge and rationality. However, in terms of power relations, both are very fragile. Because "Power has a clear tendency to dominate rationality in the dynamic and overlapping relationship between the two" (ibid).

Flyvbjerg further explains the serious challenges of modernity and democracy:

Modernity relies on rationality as the main means for making democracy work. But if the interrelationships between rationality and power are even remotely close to the asymmetrical relationship depicted above [...] then rationality is such a weak form of power that democracy [is] built on.

Rationality and power have context-dependent asymmetric relationships. They are the core of politics and planning. Flyvbjerg’s propositions, as described above, summarize the fundamental weakness of modernity, modern politics, administration and planning.

However, Flyvbjerg shares his findings based on the empirical testing in the Aalborg case, which shows that the constitutional arrangement and institutional reform do not necessarily solve the problem fully in practical terms. He notes:

Whereas constitution writing, and institutional reform may often be essential to democratic development, the idea that such reform alters practices is hypothesis, not an axiom. The problem with many advocates of institutional reform is that they reverse the axiom and the hypothesis: they take for granted that which should be subjected to empirical and historical test. In Aalborg, such testing showed us that even the police – supposedly the guard of the law – refused to
follow and enforce the constitutional principles institutionalists rely upon to promote democracy, not to speak of the many other actors in the case who again and again, for personal and group advantage, violated the principles of democratic behavior they were supposed to honor as civil servants, politicians, and citizens in one of the oldest democracies in the world.

He further mentions how officials cross the democratic principle for personal and group advantage. In fact,

...political actors are experts at judging how far a democratic constitution can be bent and used, or simply ignored, in non-democratic ways. Such findings demonstrate that the question of how existing constitutions and their associated institutions can be utilized more democratically may frequently be more pressing than the question as to how to establish more democratic constitutions and institutions as such.

Flyvbjerg concludes that the focus of modernity and modern democracy has always been "what should be done," on normative rationality, which does not help democracy to flourish. He suggests a need for reorientation and rethinking about what is said about modernity and democracy these days from the perspective of the interplay of rationality and power in modern politics, administration, and planning. He further emphasizes that instead of thinking of modernity and democracy as rational means for dissolving power, we need to see them as practical attempts at regulating power and domination. When we do this, we obtain a better grasp of what modernity and democracy are in practice and what it takes to change them for the better (Flyvbjerg, 1998).

4 Participation and grassroots democracy

4.1 Democracy and sharing of power through participation

Participation is a method of sharing power with different stakeholders through their engagement in the governance process. If power is not shared properly, there is no real participation. However, participation in a broader term conveys different meanings to different persons and it is highly context dependent. This section covers the following major dimensions of participation:

Participation in a democratic system: It is called participatory democracy in simple terms. Decision-making through democratic exercises including free and fair elections, legislative control, sharing of political power through different democratic institutions are the basic elements of participatory democracy. In such system, people take part in the decision-making process through elections. This is what in general terms Western societies widely understand as democracy and participation. However, such situation in a true sense does not exist in most developing countries.
Participation of civil society organizations: Civil society organizations, media, private sector organizations, NGOs, community-based organizations, including participation of the citizens in governance-related affairs particularly at the local level.

The first dimension of participation denotes the macro-level perspectives of democracy. It is more formal and provides a political as well as institutional framework of democratic governance at national, subnational and local levels. The second dimension of participation operates under the institutional framework given by participatory democracy. It can be any form of social capital, both formal and informal.

Participation and decentralization: interwoven concepts

Participation is the basic feature of any form of democratic government. With the advancement of the globalization process and increasing consciousness of freedom, human rights and democratic values have been creating increasing pressures for greater participation in public affairs. Consequently, the role of the state in the economic, political and social domains, as well as the concept of public management has been changing in many ways. There have been growing governance concerns in which the state, the private sector and civil society have important roles to play in the promotion of democracy and development. Therefore, collaboration and partnerships among development partners are essential in many areas to advance democratic and development goals of the state (UN, 2002).

Participation and decentralization are closely related concepts and have a theoretical and functional relationship. Successful decentralization requires participation at its core. Proximity of local government to constituents enables them to respond better to local needs, be transparent and accountable in development activities. Furthermore, the process of decentralization can itself enhance the opportunities for participation by placing more power and resources at the more easily influenced levels of government. In a political environment having poor traditions of citizen participation, decentralization can be an important first step in creating regular and predictable opportunities for citizen-state interaction. Local government responsiveness, one of the key rationales for decentralization, cannot be realized when there are no mechanisms for transferring information between the local government and its constituents (World Bank, 2004).

Democracy as primary vehicle

In recent years, the world has witnessed the popularity of democracy as the "primary vehicle for the fulfilment of individual aspirations, the articulation of interests and the nurturing of civil society" (Cheema, Shabbir G & Maguire, 2002). The consolidation of democracy, as Juan Linz and Alfred Stepan (Cheema, Shabbir G & Maguire, 2002) argue, demands the existence of five inter-related conditions as follows: (a) a free and lively civil society; (b) a relatively autonomous and valued political society; (c) the rule of law to guarantee citizens’ freedoms and independent associational life; (d) a functioning state bureaucracy which can be used by the democratic government; and (e) an institutionalized economic society.
There are two fundamental underlying rationales of democracy which, of course, are equality and liberty. They add that certain minimum conditions must be met in order for a system to be labelled as ‘democratic.’ These include, among others, and in no particular order, respect for human rights and the rule of law, collective deliberation, freedom of choice and participation and representative and accountable government (Cheema, Shabbir G & Maguire, 2002).

Democracy is generally understood to denote a system of government, the distribution of power within that system and the grounded rules of and values inherent in the process. Democratization, in turn, is understood to be the process whereby democratic institutions, practices and beliefs are inbuilt and/or strengthened in a society. This includes fostering the participation of citizens in the democratic process. Participation can be ensured through formal mechanisms such as elections or through informal mechanisms such as engagement of civil society organizations (Cheema, Shabbir G & Maguire, 2002).

### 4.2 Citizen participation and inclusive democracy

There are two dominant opinions in the contemporary literature in favor of direct citizen participation in governance affairs in the context of democratic political environment.

One of the strongest arguments in favor of direct participation of the citizen in governance activities is that it contributes to promoting democracy by making government more responsive in ways far more effective than the traditional form of representative democracy (IDS, 2005). Another argument for participation is the citizens’ fundamental right. Here the right to participate in governance is seen as a premise rather than a favor provided by the government. It allows citizens to claim further rights and entitlements. In this respect, citizen participation becomes more than a technical fix as it helps effective delivery of public goods and services with a more sustainable impact. Citizens can engage in governance activities directly or indirectly backing the voice of larger population that more likely is excluded in formal political affairs. Thus, direct citizen participation in governance promotes a healthy and inclusive democracy in ways far more effective than the traditional forms of representative democracy.

Participation in governance increases the degree of accountability of responsible authorities towards the local people (McGee, 2003):

> In several of the countries studied, [...] accountability mechanisms, introduced through law are serving as important vehicles for enhancing representative democracy. Ability to demand and exercise accountability implies power. The right to demand and the capacity and willingness to respond to calls for accountability assumes relations of power. Indeed, the very function of accountability is to ensure that those that wield power on behalf of others are answerable for their conduct. [...] these power relations are in a state of flux, reflecting the contested basis of relations between the state, civil society and market actors.
Edwards discusses accountability in relation to particular forms of democracy (McGee, 2003):

Accountability to a constituency [...] is the ‘bedrock’ of representative democracy, requiring formal procedures like elections to ensure that decisions are fairly reached. On the other hand, voicing an opinion is the bedrock of participatory democracy (we used to call it freedom of speech) and those who speak out do not need to be formally representative of a constituency.

Promotion of citizen participation, however, is not achieved in the absence of a necessary policy framework, political freedom and appropriate functional mechanisms in place by which citizens can effectively influence governments to develop responsive policies, and to implement responsive programs and services (IDS, 2005).

The role of political parties and civil society in participatory democracy

Political parties and civil society both play vital roles in deepening participation and democracy. Political parties are important vehicles responsible for articulating and aggregating the diverse needs and demands of the society. Political parties compete for political power and have the ability to directly translate these diverse demands into public policy. Ideally, political parties develop positions on a wide range of issues and approach those from an ideological standpoint. Thus, vibrant political parties are the key to effective citizen participation, multi-party system and democratic governance.

Civil society organizations, which connect individuals with the public realm and the state are the key to democratic governance. They can play vital roles in promoting democracy in many ways. Firstly, these represent different voices, perspectives and values in a pluralist society. Secondly, civil societies can provide checks and balance to government power and monitor social abuses and these can offer opportunities for people to develop their strengths and capacities. Thirdly, civil society organizations are often issue based so that they can act as stimulating forces for positive social change (Cheema, Shabbir G & Maguire, 2002).

To summarize, citizen participation in public affairs is a must to make the public sector more effective, efficient, accountable and furthermore, to operationalize the democratization process in the long run.

Different modes of citizen participation

Participation can be divided into broad categories based on the degree of participation (Table 4.1).

<table>
<thead>
<tr>
<th>Table 4.1 Modes of citizen participation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Modes</strong></td>
</tr>
<tr>
<td><strong>Consultation:</strong></td>
</tr>
<tr>
<td>Starting point</td>
</tr>
</tbody>
</table>

A fairly standard ladder of participation adapted from Arnstein (1969) is presented in Figure 4.1 and distinguishes the intensities of participation.

**Figure 4.1 Ladder of participation**

In all different categories discussed above (matrix and ladder), there are three basic levels or categories of participation – indirect participation (starting point) and direct participation (middle level) leading towards joint action and ownership (highest level).

In the specific context of citizen participation in the processes of policy-making or political decision-making, the basic ladder can be elaborated to show what forms information-sharing, consultation, joint decision-making, and initiation and control by stakeholders might assume in that particular context. Firstly, what is referred to as ‘participation’ sometimes consists of no more than the provision of information by one actor to others, and often consists of one actor consulting others on their views without any obligation to incorporate the views being expressed. Secondly, the power relations
between participants or stakeholders and the politically transformative potential of their interaction differ considerably between one level of intensity and another (McGee, 2003).

To summarize, meaningful participation of citizens in the decision-making process can only be ensured when citizens deepen their engagement in the process to the extent that they are respected, and their needs are translated into tangible outputs and outcomes which directly affect their lives.

4.3 Enabling and constraining factors of citizen participation

Citizen participation: greater voice and effective responsiveness

For a meaningful participation in local governance, it is equally important that there should be an appropriate mechanism that encourages greater voice initiatives, on the one hand, and effective responsiveness in public institutions, on the other. Olowu (2003) prescribes necessary conditions for effective citizen voicing and effective responsiveness of the local government (Table 4.2).

Table 4.2 Citizen voice and organizational responsiveness

<table>
<thead>
<tr>
<th>Conditions for effective citizen voice initiatives</th>
<th>Conditions for effective responsiveness of local government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broad membership base and alliance with middle class elite groups</td>
<td>Internal champions/reform entrepreneurs</td>
</tr>
<tr>
<td>Technical knowledge</td>
<td>External pressure</td>
</tr>
<tr>
<td>Knowledge of official policy discourses and of effective alternatives</td>
<td>Vertical strategies – commitment of top leadership to reform</td>
</tr>
<tr>
<td>Publicity – ability to effectively utilise the media</td>
<td>Incentive systems rewarding participatory processes and client focus</td>
</tr>
<tr>
<td>Lots of time and starting from small</td>
<td>Involvement of street-level bureaucrats in policymaking and planning of service delivery</td>
</tr>
<tr>
<td>Social capital – where trust and mutual support has been built</td>
<td>Involvement of external actors in local monitoring systems</td>
</tr>
<tr>
<td>Horizontal coalitions with other bodies</td>
<td>Linking agency income to performance – users fees, bonuses etc.</td>
</tr>
<tr>
<td>Formal standing in policymaking arenas and in oversight agencies</td>
<td>Investment in attitudinal change</td>
</tr>
<tr>
<td>Statutory rights to know and rights to redress</td>
<td>-</td>
</tr>
</tbody>
</table>

Source: Olowu, 2003

Citizen participation: enabling and constraining factors from legal perspective

McGee (2003) concludes the research carried out in twenty-two different south and north countries that legal framework, among others, is very critical to promote citizen
participation. They describe different enabling and constraining characteristics from the perspective of a legal framework (Table 4.3).

<table>
<thead>
<tr>
<th>Enabling characteristics of legal framework</th>
<th>Constraining characteristics of legal framework</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promulgated in response to demand from below and with citizen inputs.</td>
<td>Imposed from above without a ground swell of popular demand and overly inspired by prevalent international discourses and tendencies to the neglect of home-grown discourses and in-country or regional aspirations and sources of inspiration.</td>
</tr>
<tr>
<td>Seeks to strengthen and improve institutions of representative democracy by better representation of those with least voice, better quality of representation and performance and by complementing with mechanisms of participatory democracy.</td>
<td>Seeks only to make the institutions of representative democracy work better and not to challenge these or extend governance relationships beyond them.</td>
</tr>
<tr>
<td>Recognizes people and civil society organizations as citizens with rights, including the right to participate in governance and auxiliary rights.</td>
<td>Treats people and civil society organizations as relatively passive subjects to be engaged with only in non-binding consultations at a relatively late stage of decision-making.</td>
</tr>
<tr>
<td>Builds accountability measures that ensure representatives can be recalled and government actors held to account for poor performance.</td>
<td>No accountability measures or measures that are impracticable in real life situations.</td>
</tr>
<tr>
<td>Provides for or contemplates in future a significant degree of fiscal decentralization and citizen participation in fiscal processes as both an incentive to citizens to participate in local governance and assurance that local government can allocate resources to participatory processes.</td>
<td>Centralised power retained over fiscal matters – revenue-raising and allocation – or no participation envisaged in them contradicting spirit of decentralization and citizen participation and reducing incentives for citizen involvement in local governance.</td>
</tr>
<tr>
<td>Law(s) accompanied by set of operational guidelines, policies or capacity strengthening measures to ensure that the relevant actors are enabled to apply them.</td>
<td>Excessive reliance on laws and on a legalistic approach to the neglect of operational guidelines or the provision of practical support and capacity building for implementation.</td>
</tr>
</tbody>
</table>

Source: McGee, 2003
Citizen participation: contextual factors

Despite the legislative framework, there are some contextual factors (historic and cultural setting, the nature and background of the actors, etc.) that are critical to the citizen participation. These factors, as McGee (2003) note, are summarized in Table 4.4.

<table>
<thead>
<tr>
<th>Enabling features of context</th>
<th>Constraining features of context</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apart from, disposition &amp; commitment from above to participation, a strong demand from citizens and civil society actors from below implies a relatively mature and strong – or strengthening – civil society.</td>
<td>Weak, immature or inexperienced civil society and government with weak commitment to participation in local governance.</td>
</tr>
<tr>
<td>Advanced process of political, administrative and fiscal decentralization.</td>
<td>Limited or early-days decentralization of all kinds or tightly restricted fiscal decentralization.</td>
</tr>
<tr>
<td>Relatively open, trusting relationship between citizens and state.</td>
<td>State-civil society relations marked by mutual mistrust and lack of familiarity as in the immediate wake of authoritarian regime.</td>
</tr>
<tr>
<td>Discourses of participation, governance, decentralization and democracy locally derived or from elsewhere, strongly appropriated and adapted to national setting.</td>
<td>Discourses of participation, governance, decentralization and democracy borrowed wholesale with no attempt to translate and adapt for the national context.</td>
</tr>
<tr>
<td>Existence of progressive political parties with their roots in democratization movements and/or social movements and strong commitment to internal representativeness &amp; transparency and to participatory democracy.</td>
<td>No political parties (as in 'no-party' states) or limited freedom for political opposition parties which tends to favour conservatism and preclude pressure on government for change of a progressive sort.</td>
</tr>
<tr>
<td>A culture of 'bureaucratic hygiene,' openness and transparency including information disclosure policy and measures of active disclosure.</td>
<td>A culture of corruption and/or lack of transparency which generate resistance to opening up governance processes to scrutiny or interference.</td>
</tr>
<tr>
<td>Other laws and policies which are supportive of, or at least consistent with participation legislation.</td>
<td>Contradictions between participation, legislation and other laws and policies or incomplete legislation leading to ambiguities and stalemates in implementation.</td>
</tr>
<tr>
<td>Ongoing momentum for and commitment to movement along the spectrum from elite towards participatory democracy.</td>
<td>Political transition (e.g. from authoritarian regime to elite democracy) - seen by government and/or civil society as finite process.</td>
</tr>
<tr>
<td>Opportunities for experimentation, adaptation and innovation within and outside the spaces provided by legal framework, by state and non-state actors.</td>
<td>No space for experimentation or innovation through excessively tight and restrictive framework.</td>
</tr>
</tbody>
</table>

Source: McGee, 2003
Evidently, it is clear from the conceptual discussion presented above that participation in governance, which is recently being used, denotes a much wider meaning than the traditional political participation. Participation in a governance context means accepting citizen’s greater influence in day-to-day governance activities which affect their life directly or indirectly. Therefore, it is much broader and inclusive than the traditionally defined political participation, which was limited, in most cases, to voting rights.

Healey prescribes collaborative planning as a tool to promote citizen participation and inclusive democratization process with greater accountability (Healey, 1997). Then a question which comes up here is: which type of political or governance system is most favorable to the best involvement of people in governance activities? The following sections discuss these critical issues.

4.4 Citizen participation: direct versus representative democracy

Different forms of democracy determine their associated sets of actors and their role also differs based on the modalities which have direct implications on the degree of citizen participation and the power sharing. While both direct or participatory democracy and electoral (representative) democracy are needed, if politics is to function in the public interest, participatory democracy is the 'natural territory' of NGOs whereas representative democracy is the natural territory of governments (McGee, 2003). These distinct identifications no doubt partially explain the gradual and hesitant character of progress towards enhancing democracy as a whole, or democratic local governance more specifically, by rendering it more participatory (McGee, 2003).

Contemporary literatures emphasize direct democracy as the most favorable political system for better citizen participation. Direct democracy is also often considered the purest form of democracy and it is contrasted with representative democracy. Representative democracy offers citizens less control over governance than other forms. Direct democracy as a whole offers a greater control over governance than representative democracy, but certain forms of it offer them other advantages too (McGee, 2003). Thus, in a direct democracy, there are concerns for a much wider involvement of citizens in decision-making through different mechanisms than other forms of democratic system.

McGee (2003) also agrees that participatory democracy involve citizens in decision-making and deliberation processes although they do not usually lead to formal and final decisions. Some argue that participatory democracy is better than representative democracy in revealing people's preferences.

Participation: from political science to development management

Participation is not only a term that relates to political science, but it is also a hotly contested term in development discourse in many respects. As McGee (2003) states, "it is increasingly recognized that the term encapsulates a wide range of approaches from methodological tools to political philosophies." In this context, the term 'participation' is used to refer to a large range of social and political interactions (McGee, 2003).
Similarly, Molutsi further argues that strengthening democratic institutions and fostering a participatory approach to governance are seen by many development practitioners as important tools to promote social and economic development and to enable a country to manage emerging global, national and local issues. In this context, the importance of promoting dialogue and partnerships between the government, the private sector and civil society is gaining growing consensus (Molutsi, 2002).

Political development in recent decades shows that democracy is the best form of government that has been almost universally accepted. Many governments in developing countries have crafted and adopted some of the world’s best constitutions. The growing challenge now, however, is how to translate the constitutional provisions into institutional and legal frameworks. More importantly, the growing challenge is to translate public declarations into democratic culture and practice (Molutsi, 2002). McGee argues that most opportunities for citizen participation in local governance arise in the contexts of democratic decentralization. In this context, decentralization is a strong political strategy to translate public declarations into reality.

**Participation in non-institutionalized democracies**

As discussed above, almost all writers who advocate citizen participation in governance present the concept in a noble form; however, it is not that simple in practice particularly in a young democracies. Citizen participation in practice is determined by many critical factors associated directly with power. Therefore, true participation does not take place as easily in reality as it is presented above in the theoretical discourse. The following key aspects influence the level of participation by citizens in the process of governance.

1. A political system that allows democratic practices and ensures the existence of democratic institutions closer to people is critical for the sharing of power and effective participation. Decentralization of power, which is most likely absorbed by intermediate levels of government or by powerful stakeholders while trickling down to the grassroots level is something the system needs to discourage.

2. Historical factors, social norms and values, the level of consciousness of democratic rights are very influential in a participatory democracy. Socio-economic conditions also a matter for effective participation because they imply unequal power relations that directly impede the capacity to engage in public life.

Any theory of participation, however, especially in non-institutionalized democracies and countries where unequal social relations and uneven institutional environments exist, is more like a cosmetic concept and it can be manipulated by politicians and elite groups. Therefore, in such places it may take many years to institutionalize the democratic system and practice.

**4.5 Local government's role in fostering participatory democracy**

On one hand, democratic local governments serve as vehicles which ferry the fruit of democracy; on the other hand, they play a vital role in promoting democracy at the local level through different means. These include greater engagement of citizens in
governance activities, sharing of power among key stakeholders through participation, respecting and promoting the culture of basic human rights, maintaining transparency and accountability and promoting partnership and collaborative management of common affairs.

Fukuda-Parr and Ponzio (2002) has recommended the following actions to be taken by local governments to foster citizen’s participation at the local level which are at the core of the effective functioning of local or grassroots democracy:

1. Joint action between the government and civil society actors in governance tasks: for example, instituting a participatory planning processes at a local level.
2. Accountability: citizens holding their elected officials accountable as representatives of their views.
3. Citizen's participation in decision making which has traditionally been the business of government officials, or in some cases – whether explicitly or implicitly – donor and creditor agencies.
4. Transparency and information sharing provision through different means such as websites, regular publications and notice boards, broadcasting by local radio stations and television, etc.

McGee (2003) recommend the following approaches for the local governance to be fully effective. These include conclusions of a comparative study carried out while focusing on legal frameworks of a number of Latin American, South Asian, African, South East Asian and twenty-two northern countries:

1. Strengthening and improvement of the institutions of representative democracy by making them more representative and more responsible to less powerful sections of the population. Cases cited are – from India (73rd and 74th constitutional amendments of 1992 concerning broadening the democratic base of the local tier of government and Panchayat Raj institutions respectively) and Uganda (1995 Constitution, Article 78, which guarantees one parliamentary seat per district for women and allows the Parliament to provide representation for people with disabilities, youth and other disadvantaged groups).
2. The second approach is the strengthening and improving of representative democracy by enhancing the quality of representation by enabling citizens to hold their representatives accountable for their performance. Examples cited are from Uganda and the Philippines where people have the right of recall of elected representatives, as provided in the constitution.
3. A third approach is the complementing of representative democracy with more direct forms of citizen participation in governance through the promotion of more entry-points and interfaces to civil society actors to operate in governance space and processes beyond the confines of existing representative institutions. Examples are citizen assemblies in India and Indonesia.
4. Another approach is the promotion of laws or policies having more government outreach into civil society spaces and processes. Holding of public deliberation and consultations of the kind recommended by many of the northern country governments serve here as examples.

4.6 Bringing local government closer to the people

The size and structure of local government are debatable issues. Some believe that large governments are better equipped to meet the demands of the basic community – and in some cases – the demands of the entire region. However, according to Olowu, "many countries ... are beginning to understand that large size may stimulate inter-ethnic conflict and widen the distance between citizens and local governments." At the same time, some countries are learning that it is unnecessary to have a large size in order to take advantage of the scale. This can be done through contracting and joint production of services (Olowu, 2003).

Olowu (2003) further highlights advantages and disadvantages of multiple tiers of local government. He notes:

> It is also possible to create several tiers of local authorities which may improve local political connections but that requires additional fiscal and human resources. A recent South Africa consolidation is intended to improve class and racial integration, but it will also increase the distance between the government and the people, as the Nigerians realized when they undertook reforms in 1976. In such cases, efforts can be made to create sub-local government entities, but they may not be able to effectively link communities and local governments. Uganda’s solution was to create five local government tiers. This may maximize participation, but it could waste scarce resources and be cumbersome in terms of how to share responsibilities and resources among local levels.

There are different trends with regard to different levels and structures of local government. Boex (2004) refers to a scenario when many countries followed the path of making a very small unit of local government at the initial stage of decentralization reform. The process was driven primarily by political reasons, as it was an attempt to ‘optimize’ the capacity of local governments. It has resulted into too small a unit of local government to be viable for planning and to carry out governance activities at the local level. Having only two levels (center and local), there are many complications associated with this structure in terms of resource sharing and coordination between central–local and local–local entities.

How ‘low’ should the level of local governments be is a debatable and politically sensitive topic. There are both advantages and disadvantages (Table 4.5) to be considered during the reform process in this regard.
Table 4.5 Advantages and disadvantages of lower levels of local governments

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>It achieves more homogeneous jurisdictions at the lower level.</td>
<td>Fragmentation ignores the economies of scale in provision and administration: technical inefficiency.</td>
</tr>
<tr>
<td>A better match in provision areas for goods with small benefit areas</td>
<td>May decrease scope of economies in administering public goods: technical inefficiency.</td>
</tr>
<tr>
<td>improves allocative efficiency.</td>
<td></td>
</tr>
<tr>
<td>More competition between local governments increases in administrative</td>
<td>Less vertical accountability.</td>
</tr>
<tr>
<td>efficiency.</td>
<td></td>
</tr>
<tr>
<td>Government remains closer to the people: increased political participation</td>
<td>Too many government tiers increase information costs, reduce participation,</td>
</tr>
<tr>
<td>and better-informed consumer of local public goods.</td>
<td>transparency and accountability.</td>
</tr>
</tbody>
</table>

Source: Boex, 2004

In recent years, many countries have merged their lower level of governments. The rationale for merging local government units is to enhance revenue and planning viability and to reduce administrative expenses to gain better efficiency. As Boex (2004) states, "as a part of the process of decentralization, some countries have merged smaller municipalities to establish local entities with the minimum of staffing and financial capacity necessary to provide the needed public services in the local communities, e.g. the Netherlands" (ibid). However, decreasing the number of local governments or merging them with each other is a politically sensitive issue to be considered for its costs and benefits before making any decision about it.

The functions of local government and inter-dependencies among different levels of government differ widely among the EU member countries due to differences in the role of the public sector, level of decentralization and governance practices.

5 Participatory planning and local governance

Participatory planning is an important approach of democratic governance, which in a modern sense, emphasizes knowledgeable reasoning and argumentation. A planning approach to governance encourages adopting a particular way of thinking, an organizational style and development of a distinctive and expressive, communicative culture through which activities are conducted in transparent, responsive and accountable manner (Healey, 1997). Since representative democracy and pluralist democracy are closely related to this study, their features, advantages and problems are summarized in Table 5.1.
Table 5.1  Models of governance system and main features

1. Representative democracy: idealized model of a democratic state
- Representative democracy assumes that elected governments have the legitimacy to make policies. Thus, governments are created on behalf of and at the service of the people as electors.
- The task of politicians, assisted by their officials – both administrators and experts – is to articulate the ‘public interest’ on any issue, and to develop government action to achieve that interest.
- The officials are answerable to the politicians, and the politicians are answerable to the people through the mechanism of election. Governance is focused on the formal government institutions.
- This model encourages governance styles which emphasise either the legal-administrative rule-bound behaviour, which Max Weber describes, or the more flexible discretionary judgement of officials of the British system.
- This model could work well in a relatively homogeneous society with limited cultural diversity. It fits with European post-war ideas about a modern managed economy and a welfare state.

Problems of this model
- The central problem for the model is that its practice is different from theory. Politicians and officials are subject to all kinds of influences in all areas of governance work and practice have shifted towards another model. The model has now been widely challenged.
- The model encourages the development of hierarchically structured bureaucracies, focused around technical and administrative expertise in which officials justify their actions and decisions upwards to their seniors and the politicians to whom these are accountable rather than outwards to the people.
- A more fundamental conceptual criticism is that politicians cannot aggregate our interests in any meaningful way or on every issue as interests are too diverse. Furthermore, officials cannot ‘know enough’ about issues and concerns to advise politicians.
- Representative democracy is a way for citizens to exert power indirectly and their satisfaction with it will depend on the effectiveness, probity and the degree of accountability of the chosen representatives. The reliance on the selection of representatives by a majority in an election means that even with low levels of citizens’ involvement this model satisfies its restricted purpose.
- Growing interest in ‘public participation’ in local spatial planning since the 1960s is the evidence of attempts to overcome the weaknesses of the representative model. However, involving the public in articulating ‘the public interest’ overlaps with the roles and responsibilities of political representatives, thus they feel participation to be a challenge for their power.

2. Pluralist democracy
- The significance of a diversity of interests is recognised in a pluralist democracy. It presupposes a society composed of many different groups with different interests all competing to define the agenda for the actions of governments.
- Politicians get elected through the ballot box. In practice, their task is less to articulate public interest on behalf of society than to arbitrate between the interests of the different groups.
- The style of such system combines a ‘politics of voice’ with the language of legal discourse.
- It encourages groups to articulate their concerns in adversarial forms as fixed interests and preferences. Such adversarial positions do not make for smooth planning processes. In the US, the introduction of strategic planning systems has arisen in a few states to try to reduce the scale of conflict over individual issues.

- This involves a shift to developing policy reasoning in advance of regulatory decisions, rather than probing it in costly legal arenas after decision has been made. This shifts the emphasis from pluralist competition and argument over projects to consensus-building practices over strategy.

**Problems of this model**
- In governance cultures with a pluralist form, planning processes either become absorbed into a mediation process, or planners become involved in the competition arguing for particular qualities, values and interests. Mediation process thus raises the problems of ethics and legitimacy.

Source: Adapted from Healey, 1997 and McGee 2003

Healey (1997) proposes the following approaches towards minimizing the key governance problems associated with different models, the issue of inclusion in particular.

**Criteria-driven approach:** Healey argues that the "criterion-driven approach evolves within contemporary attempts to realize a neo-liberal approach to the market and social behavior in contemporary societies." Government responsiveness is increased through different mechanisms such as 'Citizen Charters' and the like. The degree of responsiveness of the government is measured through the performance. "It also offers great attractions as a way of breaking away from the bureaucratic bastions inherited from the past" (ibid).

**Entrepreneurial consensus:** Healey argues that the idea of entrepreneurial consensus that "builds on the reality of local alliances with developmental agendas and can be considered a form of local corporatism." It underlines many of the partnership-building activities and encourages building consensus among key regional and local stakeholders. It can be considered as a deliberate effort in horizontal networks building (ibid). However, the biggest challenge for such network and alliances lies in the ability of key players to become both "knowledge-rich and inter-culturally-sensitive" (ibid).

**Inclusionary argumentation:** This promotes participatory discursive democracy in a practical way by emphasizing a collaborative consensus building process with strong inclusionary intentions. According to Haley, "This approach seeks to widen out governance effort to include all those with a stake in a locality in both strategy formation and policy delivery" (ibid). However, true participation, consensus building, and argumentation involve a massive amount of time, patience and consistent effort. It is not that easy in such a busy society. Quick strategic action might not be possible when it comes to tapping the opportunities. Thus, the costs of participatory democracy could be high if not efficient in the process.
Democracy as empowered participation

Fung (2004) has different perspectives and sees democracy as a ‘reform strategy’ for administrative reform, institutional design, mechanisms of effectiveness and sources of fairness. He presents his argument as ‘empowered participation’ as overarching, democracy-rooted and effective public sector reform strategy.

Fung (2004) places his core argument as follows:

Troubled public agencies such as urban police departments and school systems can become more responsive, fair, innovative, and effective by incorporating empowered participation and deliberation into their governance structures. The experiences suggest several ways in which neighborhood participation and devolution might improve the quality of public action compared to centralized agencies. Foremost, centralized programs may be effective in some places and under some circumstances but not others. Decentralization, by contrast, allows localities to formulate solutions tailored to their particular needs or preferences.

Fung (2004) further claims that:

……empowered participation [...] takes its inspiration from the traditions of civic engagement and participatory democracy rather than public-management techniques or competitive markets. Empowered participation and other reform models that spring from democratic roots therefore merit serious exploration and consideration alongside the prevalent choice between hierarchies and markets.

The devolution process gradually promotes local democracy and encourages local residents, communities, and local officials "to imagine and implement innovations that depart from conventional wisdom and routine and are therefore unlikely to come from the central office" (ibid). Local knowledge can be useful for the betterment of local people "that may not be systematically available to or easily usable by centralized organizations" and devolution encourages local civil officials to be more accountable. "Proponents of participatory decision-making in local democratic forms favor local autonomy to centralized authority in part because they fear that central power tends to encroach on local prerogatives, to crowd out civic initiative and engagement, and to disregard crucial local knowledge" (Fung, 2004).

5.1 Planning from below or planning from above?

The concept of planning from below or above is a subject of long-standing debate in planning discussions. Positive and negative aspects of both approaches are discussed in the following paragraphs in search of finding an appropriate balance between both approaches.
Planning from below

Basically speaking, planning from below is based on the philosophy of developing institutions to enable them to address felt needs to improve the situation at the local level. Planning from below (bottom-up planning) helps local institutions to be capable of mobilizing natural, human and institutional resources so as to satisfy the pressing needs of the people. When local institutions plan at the local level, they generally address the most pressing needs and they have a tendency to mobilize local resources as much as possible instead of depending on regional or central level. Planning from below is one of the ways which can help the poor to have a share in the utilization of national resources for their development (Meshack, 1992).

Such a planning arrangement provides opportunity for the local institutions (including people) to develop their capability of managing local economy and community life through the help of planning as instruments (Meshack, 1992). He describes the following obstacles of planning from below (Table 5.2).

<table>
<thead>
<tr>
<th>Major obstacles</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political constraints</td>
<td>Weak political commitment, elite control on planning and resistance of central bureaucracies are the major constraints of the bottom-up planning process. Government resources are politically distributed.</td>
</tr>
<tr>
<td>Administrative and operational constraints</td>
<td>Administrative values, interests, motivation and interpersonal relationships fall under this category, which are mostly not conducive to planning from below.</td>
</tr>
<tr>
<td>The laws and the interpretation of laws</td>
<td>The laws enacted to establish local government determine its powers and functions. It determines the modality of decentralization (de-concentration, delegation or devolution) and ultimately shape the local government.</td>
</tr>
</tbody>
</table>

Source: Meshack, 1992

Meshack (1992) highlights the general constraints of bottom-up planning (Table 5.2); however, he undermines the human factor, which is the most critical factor of planning. It is a fact that in developing countries, many government employees are well trained, but performance is not measured in a result-based manner and they are also under paid. The horizontal and vertical structures of planning are not properly integrated and supported by a reliable information base. These factors, together with the centralized tradition of planning and development are coupled with the dominance of the sectoral approach to planning. These cast a negative effect on bottom-up planning (Meshack, 1992).

Planning from above

Planning from above mostly takes place in technocratically dominated planning practices. It has its roots in a "neo-classical economic theory and its rational manifestation in the growth center concept" (Maeshack, 1992). The development concept, supported by the planning from above approach, is based on external demands and innovations as the
generator of development. According to the same author, "planning from above was introduced in most developing countries in the 1950s as a means of providing rational and coherent policies for using scarce resources effectively to promote rapid growth in industrial output" (Meshack, 1992). Arguments in favor of central planning were mostly for national integration and for rapid transformation and development (Meshack, 1992). In this argument, planning controlled by central authorities was considered an effective integrated approach for rapid social transformation.

Planning from above or below: finding proper balance

In both approaches, planning is narrowly defined and considered as an isolated exercise focusing on planning as a systematic exercise. Most crucial elements of planning and development, including political aspects of democratic process, local initiatives, community ownership and sustainability, are not properly considered in these arguments. From a holistic viewpoint, planning is an important part of the democratic process and an instrument of effective governance.

Meshack (1992) notes:

[...] experiences gained as a result of the abuse of economic planning from above have acted as a valuable encouragement to find better ways to achieve development which emphasizes social justice. It has broadened the approach to development to include not only the improvement in material and social well-being of the society as a whole, but also the need to reform the institutional framework. An example is access to education, health and welfare facilities and greater political participation in the national decision-making process. This can be possible only when the concept of planning from below is adopted.

......it is important to stress that there must be clear demarcation between areas where the local authority can exercise full autonomy and where not there must be legal justification and reasons on the grounds of efficiency what the center should control a certain local government action. If such checks are not made, then the local councils lose relative autonomy in decision-making.

To summarize, there must be a proper balance between bottom-up and top-down planning. In recent years, local planning has come to be seen as a part of the democratic exercise and the plan is a political document. Thus, both processes and outcomes of planning are embedded in the political realm. Clear decentralization legislation and supportive attitude of the central level are necessary to institutionalize and strengthen the bottom-up planning in a more balanced way. In this context, however, Meshack shares frustrating experiences in the African context: "Many studies of local government in Africa have concluded that the central agencies have not been willing to support decentralization" (Meshack, 1992).
5.2 Participatory planning: people-centric democratic exercise

Going by a general sense in the policy analysis tradition, planning is understood as a style of governance. Conceptually, however, participatory planning is closer to governance approach that demands active engagement of stakeholders in the affairs of common concerns. It is a dynamic process that actively involves stakeholders in an accountable manner. It is generally carried out in or near the area requiring such planning. In what could be the attributes of an inclusionary democratic process, participatory planning fosters democratic values and cultures at the grassroots level. As local people are engaged as active players, it leads to the development of a sense of ownership in development activities to sustain their operation and benefits. It helps increase transparency and accountability in planning and programming activities.

Participatory planning is based on dialogues between and among stakeholders. It is a process-oriented approach which blends the expertise of planners with experiential knowledge of local citizens. In the process, both types of knowledge are combined and transformed into collective actions. In a way, it is a social learning process, which treats development as a sociological process. It helps create enthusiasm in the community that leads implementation to be effective and efficient.

The concept of participatory planning is based on the philosophy that people in general have the following inherent aims: (a) they seek knowledge to enable them to improve their own situation; (b) they desire freedom in which they can engage in a productive activity; and (c) they wish to organise themselves in autonomous social groupings in order to gain access to quality services, to acquire social security and to exercise their rights.

Decentralization encourages stakeholder participation in the affairs of the state in a more responsible and organized manner. It enables planning to be defined in a much broader sense than a simple development tool and technocratic exercise. Once stakeholder participation is achieved in a true sense, planning becomes a discursive social process to accomplish expected results driving towards a desired future. At this stage, decision-making depends not only on formal structures but also on an established practice. Furthermore, it allows a range of people in diverse institutional relations to come together to make plans and develop strategies for managing local life and territories.

The need to consider planning as part of a political process and the starting point of participatory planning was realized only in the late 1970s. Thereafter, it gradually gained popularity as a part of grassroots democracy.

Communicative focus in planning

Forester (1993) explains how policy analysis, planning, and public administration are interlinked from a theoretical standpoint. Specifically, he advocates planning from more practical and communicative perspectives as ‘communicative action.’ He further explains ‘communicative action’ as a move from technical or instrumental expertise to a socio-political, practically sensitive and process-oriented exercise.
Healey (1997) further emphasizes the communicative approach of planning in following terms:

Communicative approach in planning theory captured the notion of planning strategies, policies and their implementation as active processes of social construction, that is, the human invention.

Table 5.3 summarizes the changing planning features that show a shift away from the instrumental to a more practical and communicative approach (Forester, 1993)

<table>
<thead>
<tr>
<th>Instrumental</th>
<th>to</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processing information</td>
<td>Shaping attention</td>
</tr>
<tr>
<td>Problem solving</td>
<td>Problem reformulating</td>
</tr>
<tr>
<td>Seeking detachment to future objectivity</td>
<td>Seeking criticism to check bias and misrepresentation</td>
</tr>
<tr>
<td>Gathering facts</td>
<td>Addressing significance: gathering facts that matter and interact</td>
</tr>
<tr>
<td>Treating participation as a source of obstruction</td>
<td>Treating participation as an opportunity to improve analysis</td>
</tr>
<tr>
<td>Information decisions</td>
<td>Organising attention to formulate and clarify possibilities</td>
</tr>
<tr>
<td>Supply a single product, a document with ‘answers’</td>
<td>Developing a process of questioning possibilities, shaping responses and engagement</td>
</tr>
<tr>
<td>Reinforcing political dependency of affected persons</td>
<td>Fostering meaningful political participation and autonomy</td>
</tr>
<tr>
<td>Passing on ‘solutions’</td>
<td>Fostering policy and design criticism, argument, and political discourse</td>
</tr>
<tr>
<td>Abstracting from social relations</td>
<td>Reproducing social and political relations</td>
</tr>
</tbody>
</table>

Source: Forester, 1993

According to Forester (1993), “planning and policy analysis practices as communicative action provide a conceptual (and researchable) bridge” from different perspectives: (a) analysis to implementation (via the shaping of attention); (b) information to organization (via the shaping and reproduction of political identity); (c) cognition to action (via the claims-making structure of communicative action); and (d) analysis of abstract meaning to pragmatic assessment of practical professional activity.

Sharing of power through collaboration

The notion of collaboration is a process or mechanism of sharing power which takes place in a diverse or multi-stakeholder world. Collaboration helps bringing a holistic view to
the agenda and helps develop mutual confidence and trust between and among stakeholders and helps building social capital in the communities. Effective collaboration does not take place unless responsibilities and power are shared among partners with a clear role definition, good communication, close coordination and continued interaction. A precondition for collaboration is mutual interest, shared vision, trust and understanding among stakeholders which are the motivating factors of collaboration, too.

To briefly encapsulate the discussion, it is now widely understood and agreed that planning is an interactive process that is undertaken in economic, political and social contexts. It is not a purely technical process. It took more than three decades for the researchers to realize that planning is an interactive political and social process. Thus, the scope and perspective of planning that evolved since the 1990s have been gradually streamlined with democratization process. These changing features of planning were accelerated with the global wave of the public sector reform through decentralization. Such dynamism opened up avenues and exposed different institutions in multiple realities in dealing with public affairs in decentralized contexts.

**The changing role of government**

There are a number of different ideas defending the role of government. Governance, as a collective management of common affairs, involves not only government institutions involved in the management of public affairs but also all formal and informal institutions as stakeholders.

Healey (1997) refers to planning and its agencies in the governance context:

> As a government activity undertaking regulatory work in highly contested contexts, spatial and land use planning agencies are at the sharp end of many of these pressures. [...] so far, governance has been discussed as a general process, the management of collective affairs. But any governance effort embraces both policy development and the delivery of programs; on the one hand, the articulation of the purposes of governance and the making of strategic decisions about directions and key actions, and on the other, the organization of programs to deliver what has been agreed upon. Policy and planning are terms used to describe particular styles of governance activity and may also focus attention on their content. Politics, administration and management are used to describe governance activity.

**The changing role of planners in a participatory planning context**

As the functions of state and government have been changing over the years, the role and functions of planners, too, have changed accordingly. In this new context, planners have become process facilitators more so than the providers of technical expertise.

Traditional planners prefer using development and planning jargons to demonstrate that they are well trained and qualified and also superior to the locals. However, planners as
facilitators have to avoid such jargons as much as possible since "the more jargon [there is] in planning, the less public understanding, accessibility and possibility of meaningful action or participation." Furthermore, collaborative planners demonstrate more patience, multi-cultural competency and a sense of respect for all ethnic and cultural groups than do traditional planners (Healey, 1997).

5.3 Politics and planning

Rondinelli (2002) sees planning and implementation are pure political processes. According to him, all plans ultimately reflect political statements and all attempts to implement them are political acts. The pretension that planners and administrators are objective or neutral is ‘naïve.’ One way or another, they reflect the political will.

In many cases planners have to deal with politicians who try to influence the planners for official or private reasons and local elites try to gain maximum benefit from the development activities (often at the cost of the rural poor). There are also power struggles within the planner’s own organization, which he or she has to deal with (Schall, 1994).

Power and political relationships are distorted in countries where international agencies are in a dominant position in the development business, mostly in countries with weak economies. In these places, local and national politics, priority setting, and decision-making become distorted due to excessive influence by outside actors. In the developing countries where a democratic government does not exist, the ruling elite often makes decisions and the administration simply carries out the ruling elite’s decisions. In these countries, planning and politics are not interactive enough and not mutually integrated. Furthermore, "most politicians in these countries are only interested in getting quick results and are, as such, not interested in the planner’s long-range strategies which are based on some form of comprehensive analysis" (Schall, 1994).

In summary, planning is a participatory political process. Decision making is a part of political process; however, planners also help rationalize decision-making based on evidence and backed up by sound principles. On the whole, though, planners in developing countries, where planning is not an institutionalized practice and not seen as a part of the democratic exercise, have a limited role in the legitimation of political power through evidence-based rationality. In most cases, ruling elites together with development partners and vested interest groups often monopolize development activities at the cost of the poor. In reality, planners do not have enough authority and resources to plan where politicians dominate decisions and give little attention to planning exercises. In these cases, the planners often have to generate power through access to information, analysis and rationalization. Such power is usually generated through expertise and used through collective platforms such as participatory planning exercises, conferences, meetings, and interactions. Since such power is highly dependent on individual initiatives, trait and ability. These initiatives help shape planning as a democratic practice in the long run.
6 Federal system: theoretical understanding and practices

This chapter outlines a general overview of existing theoretical understanding related to federalism, its definition, types and different dimensions.

6.1 Theoretical understanding of federalism, features and dimensions

There are many interrelated arguments in support of decentralization and federalism than a single robust theoretical base. Therefore, theoretical literature on federalism and decentralization is vast, while a handful of relatively general, abstract claims appear again and again (Gerring, 2007).

Contemporary literature on the subject outlines some features of normative theory of democratic federalism. Each of these mechanisms should have repercussions for a wide range of public policies but they are not limited to the policies of a specific type (Gerring, 2007) and (HLR, 2017). These include a) federal constitutional structure, b) competition among subnational governments, c) fiscal federalism, d) veto points, e) accountability, f) the size and levels of government, g) territory, h) political devolution, i) pluralistic political parties, and j) clear lines of sovereignty.

No democratic country has moved from the constitutional status of federalism to its contrary, unitarism (Gerring, 2007). As a consequence, most large democracies (calculated either in population and/or land area) are now constitutionally federal and the number is increasing gradually. Indeed, over 56 percent of the world’s democratic citizens (those living in states with multi-party competition) live in federal polities at the outset of the twenty-first century (Gerring, 2007). The federalist countries include some of the largest countries, such as the USA, Canada, India, and Brazil, as well as smaller countries such as Switzerland and the Federate States of Micronesia.

The promise of federalism, however, lies in how its inherent principle of ‘divided’ and ‘shared rule’ can meet the challenge of diversity. This is evident in a wide range of settings including established unitary system countries, such as the United Kingdom and Italy. Devolution marked a historic development in the UK, allowing for an important degree of self-government for Scotland, Wales, and Northern Ireland (Hueglin & Fenna, 2015). Belgium tried to solve the ethnic problem by establishing a federal government.

6.2 Federalism and federation: definition, origins and types

Federalism is a system of government in which the power, resources and responsibilities are divided between a central or national authority and various constituent units in the constitution of the country. These constituent units are called different names in different countries. For example: States – India, USA; Länder - Germany; Provinces – Canada; Cantons – Switzerland; and Republics – Russia.

The term ‘federalism’ is derived from the Latin word ‘foedus’ (ORE, 2018), which means an ‘alliance’ or ‘treaty’ in English. Federalism means forming a federal state and cooperating within the entity thus formed: several states enter into an alliance to form one
single all-encompassing state structure (federation, confederation), whilst, to a certain extent, maintaining their own characteristics as federal states or constituent states (Reuter, 2009). The term ‘federalism’ has normally been used interchangeably with the term ‘federation.’ There is, however, an important conceptual distinction between these two terms. Federalism, as a normative concept, has two essential aspects: autonomy and union. In simple form, the autonomy aspect refers to self-government and about making self-rule possible for the constituent units. The union aspect is a reference to the co-management of the whole society and about the desire of the people and politics to come together and function collectively for a common purpose (Fessha, 2010).

With the notion of multi-level government that it embodies, federalism, therefore, seeks to accommodate both aspects – the existence of one and, at the same time, powerful motives to be united for certain purposes and of deep-rooted motives of autonomous regional governments for other purposes. Therefore, federalism is about a critical balance between both ‘self-rule’ and ‘shared rule’ (Fessha, 2010).

As a normative concept, federalism represents an organizing principle that prescribes the adoption of institutional arrangements that we generically refer to as federal political systems, a descriptive term that encompasses a range of possible kinds of unions, federacies, associated states, league and cross-border functional authorities (Fessha, 2010). The term ‘federation’ refers to a "specific species within the genus of federal political system" (Watts, 2003), which was first invented by the founding fathers of the United States of America at the city of Philadelphia in 1787. As the tangible institutional reality of the federal principle, federation includes structures, institutions and techniques, which serve to translate the federal idea into an institutional reality. The problem, however, is that the federations themselves vary extensively. Therefore, certain states that consider themselves as a federation does not mean that they, in fact, are federations, which does not help explain the concept in this regard (Fessha, 2010).

A federation or a federal state is a type of sovereign state characterized by a union of partially self-governing states or regions united by a national or federal government. In a federation, the self-governing status of the component states is typically constitutionally entrenched and may not be altered by a unilateral decision of the national or federal government (Bin, 2011). Fundamentally, federalism is way of sharing of power between different spheres of government, preferably in a multi-level governance pattern with adequate accountability mechanisms.

There are different types of federalism; however, it can be broadly categorized as follows: 
(a) Dual federalism: This type is considered as an old model of federalism. In this model, federal union and states are considered to be equal with separate powers and responsibilities. However, the federal government holds more power than the states (e.g. USA). (b) Cooperative federalism: Federal and subnational entities share power and responsibilities and cooperate with each together to accomplish their responsibilities (Germany, South Africa, etc.).
Federalism is also categorized in terms of integrated and disintegrated types, as follows: 
(a) Integrated: The states or the parts of the country are combined together to form a complete single nation (e.g. Germany, South Africa); and (b) Disintegrated or divided: One single country is divided into states or provinces (e.g. United States, Canada)

From a system standpoint and administrative perspective, there are different types of federal governments (Bin, 2011): (a) Presidential federalism: e.g. the United States; (b) Executive federalism: e.g. Australia and Canada; and (c) Administrative Federalism: e.g. Germany and Austria.

There is also another classification proposed by Hueglin & Fenna (2015): (a) Parliamentary federalism: e.g. Germany, Canada, India, and Nepal; and (b) Presidential federalism: United States, Brazil, Mexico, Argentina, Venezuela, and Nigeria.

In the above categories, American federalism remains the classical model. German federalism is considered a prime model of integrated and administrative federalism. Spain is not a federation in the classical sense and does not describe itself officially as ‘federal.’ However, a number of constitutional safeguards suggest that it is a federation in nature (Hueglin & Fenna, 2015). The South African federalism is also very close to the German model in some respects, but it has its own additional features.

In all types of federalism, political power is assigned to the federal, the subnational and the local governments either by provision of a constitution or by judicial interpretation. In some countries, the federal or national government has a broader arena of power and less decentralized as is in the case of the Russian Federation, UAE, Australia and Nigeria. While in others, such as in the United States, the federal government has a limited and specifically defined role to play. The US Federal Government has the following specific powers: a) to levy taxes, b) declare war, c) regulate interstate affairs, and d) foreign commerce. In addition, the constitution gives the federal government the implied power to pass any law ‘necessary and proper’ for the execution of its express powers (Bin, 2011), which is more vague than specific. In this case, there is a challenge that it can be interpreted differently and expanded as per the need of the federal government.

Generally, federal or central level governments are made responsible for external relations, defense and macro-economic policy. Local government bodies (commonly called municipalities) often independently manage municipal services and property; carry out planning and budgeting at municipal level; ensure the protection of public order; and solve local level issues of local importance. One of the common features of the federal system is the multi-level governance around the world – distributed mostly between two to three levels.

It is sometimes difficult to determine the levels of federalism. Some authors categorize South Africa as a quasi-federalist country, whereas others consider it a modern form of federalism. Another example is Malaysia, which some authors describe as a ‘minimalist federalism.’ What makes it minimalist and what makes it maximalist is also a controversial discussion (Fessha, 2010).
There are, however, a minimum set of elements and features that characterize any genuine federation. These are (Fessha, 2010):

a. At least two orders or spheres or levels of governmental units: federal, regional or provincial or the state.

b. Each sphere of government acting directly on behalf of their citizens, thus allowing self-rule for the constituent units.

c. Each sphere of government enjoys separate power or competencies allocated to each sphere via a written constitution – although they may have concurrent or shared powers.

d. The constitutional division of power between the levels of government cannot be amended unilaterally by either level of government.

e. Federations also provide for a shared rule in the form of provision for the representation of regional views within the federal policymaking institutions. This is usually addressed in the form of a bicameral legislature with the second chamber usually representing the constituent units.

f. Devolution and fiscal federalism are built-in together with functions, power and responsibilities.

g. Institutional mechanisms for intergovernmental cooperation are provisioned in the constitution.

Looking at the federal systems around the world, it can be concluded that every federal system has its own organic rules and practices. Each federal system has been shaped by specific socio-cultural and political contexts as well as specific histories. Constitutional culture and the rule of law tradition are dominant factors for determining the institutional structure and character. Every federal system is in a developmental mode on a continuous basis, therefore, there are many hybrid emerging models of federalism and one is not comparable with another. In recent decades, the constitutional recognition of local governance and strengthening grassroots democracy through it by utilizing the social capital is a new phenomenon in the federalist world.

6.3 Are federal countries necessarily decentralized and democratic?

Federalism and decentralization

A federal country does not mean that it is necessarily decentralized by design or default. Centralization and decentralization are likewise to be found in both unitary and federal countries. In Germany, most legislative powers are concentrated at the national level and, for this reason, Germany has been called a ‘unitary federal state’ (Hueglin & Fenna, 2015). By comparison, Canada is a notably decentralized federation. Provincial governments have aggressively resisted any erosion of their constitutional powers. Switzerland has likewise resisted centralization to an unusual extent (Hueglin & Fenna, 2015).

The Russian Federation, Nigeria, Australia, and UAE are considered to be very centralized federal countries. Australia also has a very weak local government system. In
Europe, France is unitary and it is considered a centralized country, keeping the administration of the regional departments under national supervision (Hueglin & Fenna, 2015), whereas Italy is unitary but well known as a decentralized country. Similarly, Spain is not officially described as federal, but it has critical components as in a federal country.

There are some contrasting cases between unitary and federal countries (Table 6.1).

<table>
<thead>
<tr>
<th>Unitary States</th>
<th>Unitary States</th>
<th>Unitary States</th>
<th>Unitary States</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Kingdom</td>
<td>United States</td>
<td>Italy</td>
<td>Spain$^4$</td>
</tr>
<tr>
<td>France</td>
<td>Germany</td>
<td>New Zealand</td>
<td>Australia</td>
</tr>
<tr>
<td>Sweden</td>
<td>Switzerland</td>
<td>Chile</td>
<td>Brazil</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Belgium</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 6.1 Some unitary and federal states

Source: Hueglin & Fenna, 2015

The above table presents very contrasting examples of countries that have adopted both unitary and federal systems of government. There is no shortcut formula to determine the appropriate unitary or federal systems. It is determined largely by the history of the country and its social, political and cultural factors including diversity composition, equity situation and many others. However, to be successful in any form of governance, both types need a devolved and accountable system, process or mechanism to be responsive to local needs and a better service delivery at the best possible level.

Typically, the federal system holds the promise of striking a balance between unity and diversity through a combination of divided and shared rule. The most profound expression of this balance can be found in the principle of subsidiarity (Hueglin & Fenna, 2015). The root of decentralization also goes back to the principle of subsidiarity. Therefore, devolution, being a form of political decentralization, is the spirit of any federal system in a democratic setting. Federalism is an obvious and promising institutional response to the challenge of unity and diversity. Federalism allows for flexible solutions to complex situations of overlapping jurisdiction and contested sovereignty (Hueglin & Fenna, 2015).

In summary, federal systems are distinguished from unitary states by their constitutional division of powers and their determination to pursue a balanced institutional response to the challenge of unity and diversity. The federal systems are differentiated from confederations by the way in which member states have relinquished their constitutional primacy or sovereignty. Similarly, federal as well as unitary systems can be described as centralized or decentralized according to the actual distribution and allocation of powers (Hueglin & Fenna, 2015).

$^4$ Spain is such an interesting case, there is an extensive literature on the subject, with authors who argue that it effectively is a federal state, but for others is a decentralized unitary country.
Federalism and democracy

Is there democracy in a centralized federal system? It is a difficult question to answer. As discussed above, both scenarios and examples can be seen from around the world. How democracy and federalism are interrelated is a very controversial and ideological discussion.

Even though an overly centralized federal system by design, Australia is considered as a democratic country. By comparison, centralization in Malaysia is associated with the lack of democracy. While formally established as a federation with a bicameral legislature consisting of a House of Representatives and a Senate, the country has a semi-authoritarian structure skewed in favor of the Malay ethnic majority, which uses the structures of federalism for central political control (Hueglin & Fenna, 2015).

6.4 Multi-level governance in federal and unitary countries

Multi-level governance is one of the important features of a decentralized federal system. In most federations there are two to three levels, but there are no established standards. Old federations mostly have only two levels or the third level is not well recognized in the constitution (e.g. USA and Australia).

Federalism has at its heart a binary relationship between the central government and its constituent units. In some federal countries (e.g. Canada, Australia and Germany), the local government is treated as a subordinate unit of upper level constituent units and it operates with delegated powers as in the unitary system, where local government boundaries are periodically reshuffled and where the actions of local government are always liable to be overridden by provincial, state or Länder governments (Hueglin & Fenna, 2015).

There are different levels of government in the European Union countries that vary in size, number and levels from country to country. Some country examples are presented below (Table 6.2).

Table 6.2 Multi-level governance in selected European countries

<table>
<thead>
<tr>
<th>Country</th>
<th>State/Regional government</th>
<th>Intermediate level</th>
<th>Local level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Country</td>
<td>State/Regional government</td>
<td>Intermediate level</td>
<td>Local level</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------</td>
<td>--------------------</td>
<td>-------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>295 (2016)</td>
<td>11,313 (2016) of which</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2,060 are Kreisfreie Städte (Cities)</td>
</tr>
<tr>
<td>Italy (unitary)</td>
<td>20 Regione</td>
<td>95 (1996)</td>
<td>8,066 (1996) Comuni</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Provincia</td>
<td>8,094 (2012), 8,006 (2016)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>100 Provincia</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2016)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>10 Metropolitan</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>cities (2016)</td>
<td></td>
</tr>
<tr>
<td>Luxembourg</td>
<td>0</td>
<td>0</td>
<td>118 (1996) Communes</td>
</tr>
<tr>
<td>(unitary)</td>
<td></td>
<td></td>
<td>106 (2012), 105 (2016)</td>
</tr>
<tr>
<td>The Netherlands (unitary)</td>
<td>0</td>
<td>12 Provinces</td>
<td>633 (1996) Municipalities (Gemeenten)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>418 (2012), 390 (2016)</td>
</tr>
<tr>
<td>Spain (unitary)</td>
<td>17 Regions</td>
<td>0</td>
<td>8,169 (2012) Municipios</td>
</tr>
<tr>
<td>Sweden</td>
<td>0</td>
<td>11 County Councils (Landstig), 9 Regions (2016)</td>
<td>288 (1996) Municipalities (Kommuner)</td>
</tr>
<tr>
<td>(unitary)</td>
<td></td>
<td></td>
<td>290 (2016)</td>
</tr>
<tr>
<td>Switzerland</td>
<td>0</td>
<td>26 (2016 - 6 half-</td>
<td>2,551 (2012) Municipalities</td>
</tr>
<tr>
<td>(federal)</td>
<td></td>
<td>cantons and 20</td>
<td>2,324 (2016)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>cantons)</td>
<td></td>
</tr>
<tr>
<td>UK (unitary)</td>
<td>4</td>
<td>0</td>
<td>482 (1996) Local authorities</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>433 (2012), 419 (2016)</td>
</tr>
</tbody>
</table>

Source: COR, 1996 and CEMR, 2016

As presented in the above table, the number, structure and levels of government differ considerably among the European countries, both unitary and federal. In France there are more than 36,000 Communes at the local level. Similarly, Italy and Spain have more than 8,000 local governments and Germany has more than 16,000 Gemeinden (municipalities) at the grassroots level. Luxembourg, Spain, UK and Austria do not have intermediate local government, but others have it.

There are both unitary and federal political systems in Europe. Germany, Austria, Switzerland and Belgium are federal countries. The Länder (states) in Germany, for example, have their own parliaments and independent judicial systems. In Germany, local government units are the construct of states. Thus, the Table 6.2 demonstrates the
differences in political and administrative structures and subnational governments. It also presents that a subnational government’s scope, functions, responsibilities, and financial capacity largely vary with different structures and levels in European countries.

The basic units of local government nearest to the citizen are city, town, commune, or village. Local governments in the EU countries vary considerably in size beginning from less than 1,000 to over 500,000 inhabitants. In France and Spain, many municipalities have fewer than 1,000 inhabitants, whereas 100,000 inhabitants are the minimum size for English municipalities, and many have populations of more than 500,000 (COR, 1996).

In almost all countries, political restructuring and reform has been a continuous process since their establishment. In Germany, significant reforms in the structure of local government took place during the 1960s and 1970s. In former West Germany, the number of municipalities was reduced by almost 50 percent (from over 20,000 to almost 10,000). At present, the average population in municipalities in former West Germany is 7,500. However, such restructuring did not take place in former East Germany and therefore there are 75,000 municipalities and the average population of municipalities is approximately 2,000. Thus, population size in the municipalities varies quite significantly (ibid). There is a general trend of merging and reducing the number of local government units in most of these countries presented above.
PART 3: NEPAL–FROM DECENTRALIZATION TO A FEDERAL SYSTEM
7 Social capital in Nepal

The purpose of including the concept of social capital in this book, which is primarily focused on political economy, has twofold. First, it seeks to elaborate the association of social capital with local political process, community development and self-help initiatives in the Nepali societies for centuries. Second, it seeks to inspire and utilize the strengths of prevailing social capital by further promoting volunteerism, sustainable development and strengthening grassroots democracy in the long run. The author believes that there is an enormous potential for social capital in Nepal that is underutilized at the moment.

After the implementation of the new constitution of Nepal in 2015, there is an increased level of fear among the political elite that successful past models of power devolution could be threatened and diminished by the new federal system. As Thakali et al. (2018) state:

In a great irony, the rapid devolution of power and authority to provincial and local level government under Nepal’s new constitution may inadvertently undermine the very contributions some of the country’s most devolved, participatory and democratic institutions have made to both conservation and development.

Also, in recent decades, social capital has been rapidly gaining its profile in the international development discourse. Internationally, the theory of social capital has been used to promote the idea that associational life is a resource for better government performance (Harrison, 2002). However, in the Nepali context the scope of social capital is much broader, and it includes the spirit of self-help, volunteerism, taking ownership of local development activities and inherent appreciation of culture and heritage. A few cases that demonstrate the different dimensions of social capital, which have drawn some international attention also, have been discussed here in this chapter with related conceptual discourse for better understanding.

7.1 Social capital and its relevance to governance

Social capital, as commonly referred to in contemporary literature, is the capacity of community, social organizations or social groups to act in good faith with a sense of responsibility for their well-being. The most cited reference for social capital is Putnam et al. (1993). Social capital, in its organic form, describes trust, social networks, formal and informal relations in society.

In broader terms, social capital has two major dimensions: cognitive and structural. Both dimensions are influenced by macro level factors (Figure 7.1): rule of law, types of regime, legal framework, level of participation in the policymaking process and level of decentralization (Claridge, 2004).
As an evolving concept in international development, social capital rapidly gained popularity in association with the rights-based approach to governance, particularly in association with participation, empowerment and inclusive democracy. After Putnam et al., there are an increasing number of leading advocates of social capital in participatory governance.

Rondinelli (Rondinelli, 2002) refers to social capital in the context of globalization and argues:

> [W]hile globalization facilitates the development of civil society organizations, promoting a robust network of social and civic institutions - commonly referred to as 'social capital' - seems to be essential in most countries for the effective operation of markets, national competitiveness and economic growth. Social capital has powerful consequences because civic networks and norms ease the dilemmas of collective action by institutionalizing social interaction and reducing opportunism by fostering norms of social reciprocity and social trust and by facilitating political and economic transactions. Well-developed networks of civil institutions also amplify the flows of information and help
transmit knowledge of people’s reputation that lower economic and social transaction costs. They offer channels for reliable political, economic and social collaboration.

Institutions of civil society can make a powerful contribution to life support systems. Especially in countries where civil networks are not recognized and encouraged, social capital tend to decay or gradually evaporate. Civic organizations can help offset or mitigate adverse effects of market weakness and market failures. Institutions of civil society also play crucial roles in providing functions and services that the market cannot offer. They have especially strong impacts on economic, political and social development when they work in cooperation with each other, the government and the private sector (Rondinelli, 2002). The concept of social capital has entered the discourse on international development and its use has expanded greatly in 1990s, but it remains an ambiguous term (Carroll, 2001).

Many scholars define social capital simply as a set of informal values or norms shared among members of a group that permit cooperation among them but they warn that the sharing of values and norms does not automatically produce social capital (Blunt, 2002). Trust is unanimously agreed as the overarching principle of forming and mobilizing social capital by contemporary political scientists and scholars. But trust can only be embedded through the observable response of unobserved cooperation. Such cooperation has to be anarchic, i.e. unsupervised and unregulated. Social inclusion is critical to effective social mobilization. Inclusionary approach is a process which never ends but requires constant effort (O'Riordan, 1999). Ostrom compares and contrasts four distinct aspects or features of physical and social capital (Ostrom, 2000):

First, social capital does not wear out with use, but rather with disuse. Social capital may, in fact, improve with use as long as participants continue to keep prior commitments and maintain reciprocity and trust.

Second, social capital is not easy to find, observe and measure, as is physical capital. The presence of physical capital is usually obvious to external onlookers. For example, health centers, schools and roads are simple to see. Social capital, by contrast, is invisible unless serious efforts are made to inquire about the ways in which individuals organize themselves and rights and duties that guide their behavior.

Third, social capital is harder than physical capital to construct through external interventions. For example, a donor can provide the funds to hire contractors to build a road or line an irrigation canal. Building sufficient social capital, however, to make an infrastructure operate efficiently, requires knowledge of local practices that may differ radically from place to place. Organizational structures that facilitate the operation of physical capital in one setting may be counterproductive in another. Local knowledge is essential to building effective social capital.

Fourth, national and regional governmental institutions strongly affect the level and type of social capital available to individuals to pursue long-term development efforts.
It is important that social capital be taken seriously, which is an essential complement to the concepts of natural, physical, and human capital. Just as we have come to recognize that building roads and irrigation projects or providing education and training are not sufficient by themselves to enhance the economic and political growth of developing societies, similarly, social capital alone is not sufficient for development. Social capital can be used for beneficial or harmful ends or it will simply dissipate. While all forms of capital are essential for development, none of them are sufficient in and of themselves. Social capital shares some fundamental attributes with other forms of capital while it presents some attributes that differ. We need a much better understanding of how social capital is constituted and transformed over time (Ostrom, 2000).

7.2 Fundamental dimensions of social capital

Contemporary writers and experts agree that social capital consists of two to four fundamental dimensions. Most of them explained that trust, social norms and membership of social networks are most important dimensions of social capital (Putnam, 1994). Because of connectedness and effective cooperation, social capital helps to reduce the cost of actions.

Social capital lowers the transaction cost of working together (Pretty, 2003). According to Pretty (2003), four features of social capital are: a) relations of trust, b) reciprocity and exchanges, c) common rules, norms and sanctions, and d) connectedness in networks and groups. Trust building is an important component of success in collective resource management. Trust may be derived from various sources. Similarly, reciprocity plays a vital role in enabling trust between individuals, groups or communities; however, it takes time to build such valued relationships of reciprocity and trust (Poudel & Johnson, 2014).

Bourdieu (1985) explains two elements of social capital: first, social relationships that allow individuals to claim access to resources possessed by their associates and, second, the amount and quality of those resources (Bourdieu, 1985).

The following four fundamental principles of social capital are commonly agreed on by contemporary writers, all of which point toward empowerment as the common outcome of these principles: (a) trust: mutual trust both in face-to-face relationships and in institutions; (b) mutual agreement on rules and sanctions; (c) reciprocity and exchange as a basis of any nurturing social relationship; and (d) linkages or networks amongst social or community organizations.

Fung (2004) agrees that Putnam has developed "the most prominent and articulated contemporary version of social capital." In his study of Italian regional governments, Putnam argues that the performance of democratic institutions largely depends on social capital. In his view, the mechanism that connects social capital with democratic performance is what he calls "generalized reciprocity" (Fung, 2004). The author further says that "Generalized reciprocity contributes to democratic governance in two ways. First, citizens will comply with the requirements of democratic government more often, make sure that others comply, and so help solve pervasive free-rider problems: "people
who trust their fellow citizens […] serve more readily on juries, […] comply more fully
with their tax obligations […] are less likely to lie, cheat, or steal, and are more likely to
respect the rights of others”. Second, generalized reciprocity enables citizens in part
because they can overcome free-rider problems to demand accountability from
governments and to sanction them when they fail to perform”. Accordingly, proponents
of social capital thesis have generally argued for the following elements: (a) greater stocks
of social capital; (b) increase the quality of democratic governance; and (c) some sets of
democratic political institutions.

Collective action is a primacy of social mobilization, which comes from the bottom. In
this term, the participatory planning approach is closer to the social mobilization concept.

7.3 Social capital: a backbone of Nepali society

The concepts of power and democracy have been extensively studied at the global,
national and local levels and within institutions including states, international
organizations and political parties. However, the interplay of those concepts in the context
of social capital and community movements are given far less attention in Nepal and
elsewhere.

Nepali citizens embody vibrant social capital by their long tradition in one form or
another. As in other South Asian countries, ‘family’ as an established institution has
played an instrumental role in tackling social issues and social development process
through social capital formation and self-help initiatives at community levels.

A notable recent example can be taken from the period of absence of elected political
representatives during the Maoist insurgency and political transition thereafter (2002-
2016). In the absence of an elected local government, community groups and civil society
organizations played an active role at the community level. Self-help initiatives and social
mobilization efforts sprang up to fill some gaps in political representation. Thus, some
form of participatory processes, though not much organized, continued to function at local
level.

Traditionally, the institutional and social fabric was very vibrant at the local level in Nepal
though these are evaporating in the recent political and social contexts. Nepali societies
have a long tradition of community level governance practices, particularly famous in
natural resource management (like forestry, water and irrigation management) and
maintaining culture and heritage. There are various forms of such social capital that exist
in Nepali society for a long-time and that are still vibrant in some sectors, natural resource
management and social sectors, in particular. The concept has been used in its various
contexts and it provides many examples of the role of social capital at institutional levels
and in community development initiatives. Traditionally, in the absence of government,
some forms of social capital were practiced managing the communities. Elinor Ostrom
(1990) found these practices vibrant in managing traditional irrigation systems and she
called it a useful practice to manage “governing the commons.”
Social norms, values and entrepreneurship that encompass mutual trust, social relationship, mutual understanding and self-help initiatives have been vibrant at community levels in Nepal. These are the fundamental features of social capital as discussed in the contemporary development literature, as presented above.

Nepali society has been rich in voluntary social organizations for a long time. Traditional social institutions include *Guthi, Samaj*, or other associations were guided by locality and ethnicity. These institutions are still vibrant and play a role in some ethnic societies. *Thakali, Gurung* and *Newar* communities still demonstrate ties with such vehicles of association. The social norms and rules that were outlined centuries ago are still obeyed and they continue to integrate the communities and promote collective well-being with mutual cooperation. In some of these societies, people choose their leaders (for 1-3 years) in a democratic manner either through election or on a consensus basis. Most of the social issues are sorted out in these societies through cooperative mechanisms. These long-standing social and institutional practices, which are part of social fabric, have indirectly contributed to develop an in-built desire for local self-governance in Nepal.

### 7.4 Social capital and management of public affairs

Traditionally, Nepali people prefer to be engaged in community affairs and in many ethnic communities; there are examples of self-rule and self-managed public properties with a minimum government and other external support. Some examples of these initiatives include school construction movement and rural road networks created in 1950s and 1960s, where public sector support was almost non-existent during that time. A series of other examples can be found in different sectors, which include management practices of traditional irrigation with unwritten social rules and norms, drinking water schemes managed by user committees, schools and forests managed by communities through local management committees and so on. However, due to government expansion and the inflow of outside support, volunteerism in the community has been depleting over the time.

Organizing community groups as a form of network generates trust and norms of reciprocity which, in turn, are useful to resolve problems through collective actions. Thus, social capital can be induced and sustained through group processes. Social capital strengthens with the maturity of groups and it is less likely to reverse, i.e. the more mature the groups are, the more likely they are to be sustainable (Adhikari K. P., 2006). The social capital gained its importance in the context of participatory democracy. The concept of ‘civil society’ engagement has played a central role in the recent global debate and it has been considered, in some cases, the preconditions for participatory democracy and democratization process in the modern form of democracy.

Generally, governments in the developing world, knowingly or unknowingly, believe in western models of democracy and underestimate the value of traditional knowledge and social practices. Instead, they have promoted civil society organizations as a vehicle of participatory local development. However, these organizations are not grounded on the principles of social capital but are seen as new politically or socially motivated advocacy groups.
Civil society organizations in Nepal are not legally defined, but in practice, these include community-based organizations (CBOs), non-governmental organizations (NGOs), consumer groups and traditional organizations. The number of NGOs and CBOs has increased in a geometrical trend after the restoration of multi-party democracy in 1990s. Increasingly, they are wielding a great deal of influence in shaping the democratic culture, bottom-up participatory planning and in modelling decentralized governance. The Local Self-governance Act (LSGA) of 1999 and other legal frameworks promoted the role of civil society organizations in the local governance process. Engagement and promotion of civil society organizations were recognized by law and adapted as one of the principles of decentralization. Moreover, local governments were encouraged to involve and strengthen civil society organizations and provide a role for them in local development and governance process in general.

7.5 Social capital in Nepal: a successful and failed cases

In recent years, collective action and efforts that seek to build trust, develop new norms, and help form groups have become increasingly common in local development activities. Participatory resource management programs that are built on the principle of social capital have been very successful in sectors such as forestry, conservation, irrigation, water management, community hydro-power, and watershed management. Some of these practices are presented below, as examples.

7.5.1 Nepal’s social and cultural practice: Guthi

Guthi system is one of the most vibrant examples of non-governmental social institutions existing in Nepal, especially among Kathmandu Valley’s Newar communities, for centuries. These social institutions help preserve and maintain cultural heritage, operationalize festivals and rituals, and support the overall socio-economic order in the society. Each Guthi has its own strict unwritten norms and rules that have been transferred from one generation to another. An important aspect of the Guthi system is the provision of land endowment to sustain Guthi practices.

A Guthi is a social organization, or a trust, that is completely owned by the people who manage specific cultural, social and religious activities through the income generated from its land holdings and endowment funds. It is a unique institution that has withstood the test of time spanning centuries. For hundreds of years, the Guthis have been carrying out daily worship and rituals at hundreds of temples without a break, apart from managing their upkeep and associated festivals. A Guthi is also a philanthropic body that maintains public shelters, stone water spouts and irrigation canals, to name a few, while carrying out different services to the community (THT, 2019).

Presently, many of such Guthi institutions have disintegrated due to various reasons. Major reasons include nationalization of Guthi lands and overtaking Guthi functions by the government agencies. However, this system is still the backbone for the continuity of most festivals, rituals, and traditional practices in the Kathmandu Valley and some other townships of the country.
Recently, the government of Nepal tabled a bill in the Parliament that intended to fundamentally change the century long Guthi system and the structure of landownership associated with it. Thousands of people came out on the streets and demonstrated against the government demanding to scrap off the Guthi [trust] bill arguing it was brought by the government to destroy the cultural identity and heritage of the country and to capture Guthi lands to benefit certain vested interests (June 2019). After continuous protests on the streets for over a week, the government decided to withdraw the bill from the national assembly. The example showed the strength of people power to push back against misguided government efforts to dismantle a social institution that has sustained important cultural practices over the centuries.

7.5.2 Farmer Managed Irrigation Systems (FMIS)

Nepal has a long history of managing irrigation systems by farmers (FMIS) themselves through user groups or associations. These user groups and related associations are still functional and vibrant in many parts of the country. They have their own norms and rules to operate as a part of their social system.

Out of the total irrigated area in Nepal, almost 70 percent falls under farmer managed irrigation systems. The history of FMIS is long and it is an active social institution with democratic values. The farmers of the community own the irrigation systems and operate and manage the resources on their own. They evolve the rules and regulations on their own and implement them with consensus within the community (Pradhan, 2000). Ostrom (1990) in her famous book Governing the Commons presented Nepali societies’ traditional practices of creating and successfully utilizing social capital in a variety of ways, particularly in the context of managing the community irrigation system by farmers themselves. She presents an analysis of how a group of farmers overcomes the common problem of free ride, how it creates rules to allocate incentives and benefits, how it manages the cost of building and operating its own irrigation system. Empirical evidence derived from a study of 150 irrigation systems in Nepal supports her conclusion that it is an effective social organization, which works by mobilizing the norms of social capital (Ostrom, 1990).

7.5.3 Community-based forestry management through user groups

Nepal, through the Forest Act of 1993, became a leading country to enact a progressive legislation allowing local communities to take full control of government forest patches under community forestry program. The Forest Act 1993 and Regulations, 1995 allowed local communities to organize as Community Forest User Groups (CFUGs). They are legally recognized as self-governed local organizations for the management, conservation, and utilization of forests in their communities.

The concept of a user group in forestry is a revolutionary, empowering and democratic approach to manage the common property. It is not only limited to managing the forest, but also strengthening grassroots institutions through a democratic process and earn revenues for community needs. Villagers, who live near the forest, identify the forest users and form a user committee from their members. Thus villagers who depend on the
forest for their livelihoods are organized into a Community Forestry User Group (CFUG) and are entitled to manage and utilize part(s) of accessible national forests as community forests following their operational plan approved by the District Forestry Office (Ojha, 2007).

The CFUGs have different layers of networks – from village to the national level. Its national level network is called the Federation of Community Forestry Users, Nepal (FECOFUN). Currently, a total of 22,266 community forest user groups are associated under the FECOFUN. These user groups have been conserving about 2,236,270 hectares of forest in almost all the districts of the country (FECOFUN, 2019). Government forestry staff facilitate and work as catalysts to ensure the representation of all interest groups within a forest user group, but they are not supposed to interfere directly in forest user groups and user committees.

Community-based forest management has been popular and effective in Nepal and it comprises 96 percent of the forest under different community-based management regimes (Poudel & Johnson, 2014). Though there are some structural and equity issues, the majority of the community-based forest resource management efforts are working effectively and efficiently, particularly in the foothills and hilly regions of Nepal.

In recent years, the Terai region is also gaining momentum in community forestry, especially near the protected areas like national parks and wildlife reserves (Poudel & Johnson, 2014). The Nepali experience of forest management shows that the local people, through their social capital, can successfully manage forests without a legal public authority present in their community. To achieve this, it is important to recognize and manage community needs and to provide appropriate means, systems and participatory procedures. It is equally important to encourage and utilize indigenous knowledge and skills. In Nepali social setting, local institutional arrangements reflecting local indigenous norms, values and practices, are often present in different forms.

A recent study led by the University of Manchester finds that Nepal’s community forestry has contributed to a 37 percent relative reduction in deforestation and a 4.3 percent reduction in poverty. According to the study, in the mid-hill regions of the country, where forests are mostly managed by local communities, the benefits in the form of reduced deforestation and poverty were reported higher (Oldekop, 2019).

A study of social capital in the local governance of forests from seven countries, including Nepal, finds that different measures of social capital have a measurable effect on the condition of forests. Taken together, there is strong evidence that social capital matters to forest conditions, regardless of national government policy (Gibson, Williams, & Ostrom, 1999).

Another famous study led by E. Ostrom on 18 forests in the middle hill region of central and eastern Nepal came up with interesting findings. It found that there is no statistical relationship between location and ethnic heterogeneity with collective action, but there is a weak relationship between wealth heterogeneity and collective action. Formal designation in managing forest does not necessarily make a difference. The study found that monitoring by users themselves is consistently important. It also found that there is a strong statistical relationship between regular monitoring and forest density: controlling
for formal organization, dependence on forest, and social capital. "One, when collective action is high, when forest users themselves monitor regularly, forest conditions get better; and when local groups have long-term rights and can harvest from a forest, they protect its conditions more... Having rights does not mean taking all; if they have no rights at all, why will they have interest in protecting their resources? The crucial problem is how to match forests with the interests of the people, the communities and the environment." A study conducted in 100 IFRI forests in 14 countries also found similar results as follows (Ostrom, 2010):

a. When local user groups have the right to harvest from the forest, they are more likely to engage in monitoring. This finding seems counterintuitive to many policy analysts – giving the right to harvest from a forest may actually improve forest conditions. But those who have long-term rights do monitor to be sure that most users are cooperating.

b. There are no panaceas, and there is a need to match forest governance arrangements to the local ecology, social setting, traditions, economy, and interests of forest users.

A number of recent in-country studies focusing on social capital also highlighted the positive aspects of social capital in Nepali societies. A study carried out in 2010 found that the traditional local governance process itself is an effective and sustainable model of service delivery at the local level. The study highlighted the urgency and need of further building local governance systems on its own rich social capital, values, and positive community practices, which are sustainable and less dependent on the government agencies (Adhikari D., 2010).

### 7.5.4 User groups: Good concept, but badly implemented in the construction sector

The concept of user groups originated from the concept of social capital, which has been successful in the community irrigation system, conservation and forestry sectors as discussed above. Since 1980s, user groups have been legally recognized as primary mechanisms to implement most of the local development activities in almost all areas. According to government statistics, there are over 328,100 user groups in different sectors active across the country (Table 7.1).

#### Table 7.1 Number of user groups in various sectors

<table>
<thead>
<tr>
<th>Sectors</th>
<th>No. of user groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drinking water</td>
<td>41,000</td>
</tr>
<tr>
<td>Irrigation and water-induced disaster management</td>
<td>30,000</td>
</tr>
<tr>
<td>Forest</td>
<td>30,000</td>
</tr>
<tr>
<td>Buffer zone</td>
<td>200</td>
</tr>
<tr>
<td>Soil conservation, agriculture and livestock</td>
<td>1,000</td>
</tr>
<tr>
<td>Local level governments</td>
<td>225,900</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>20,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>328,100</strong></td>
</tr>
</tbody>
</table>

Source: OAG, Nepal, 2018
Of them, some 225,900 user groups are under various local government units. Out of the total 328,100, over 100,000 users groups that are permanent in nature, have been spending significant amount of government budget for various development activities each year (OAG, Nepal, 2018).

Various laws have been passed to allow bigger projects to involve user committees in their implementation and the trend is on rise. Current legal provision allows to carry out development projects up to the worth of Rs. 10 million with the participation of local users. However, experience shows that the use of this mechanism in local development activities beyond irrigation and forestry and few other sectors have not been entirely successful (OAG, Nepal, 2018). In some cases, user groups became a safe platform to mask corruption, abuse the tax system and fulfil political interests in recent years.

A few key reasons that drove their failure are: (a) Political manipulation in the formation and management of user groups or committees in which political cadres are selected as members, instead of real users with the aim of manipulating the funds, abusing tax laws and making illegal income; (b) Failure on the part of concerned government agencies to monitor their activities; (c) Absence of punishment for corrupt user committee members; and (d) Absence of political and social accountability systems in practice.

Due to a corrupt institutional mechanism and failure on the part of concerned government agencies to monitor the activities of users’ groups, there has been an increase in the misuse of national budget amounting to over billions of rupees each year.

The Office of the Auditor General (OAG) and the Commission for the Investigation of Abuse of Authority (CIAA) have been raising serious concerns following the gross misuse of funds allocated in the name of a mushrooming number of user groups to carry out various local development projects and other regional and national development activities. According to government officials, around 20 to 30 percent of complaints relating to the user groups are related to corruption and irregularities while using the funds allocated to such groups. It is estimated that over Rs. 100 billion is grossly misused and pocketed by political party leaders and village elites each year in the name of users group. A large number of complaints over the misuse of fund are currently pending at the CIAA (OAG, Nepal, 2018).

7.5.5 Summary

Experiences around the world in implementing different models of participatory democracy and local governance show that each model has been developed on the country’s specific socio-political context, cultural norms, values and political framework (Adhikari D., 2006). Organizing communities in groups to lead and manage public goods and services of common interests has been practiced in Nepal for long. It has been successful in the irrigation and forestry sectors, as discussed above.

While the institutional aspects of social capital are well recognized and practiced in local development initiatives, its organic aspects have never been promoted at the national level and made an integral part of local democracy. In practice, these aspects have been super-
imposed by political interests and largely dominated by vested groups in recent years. The useful concept of social capital has also been abused during implementation and made as a platform of corruption by political parties and interest groups, in the construction sector, in particular.

Community based organizations such as community forest user groups, buffer zone management groups, and conservation area management groups have achieved remarkable success and serve as examples. These also contributed to strengthen participatory and inclusive grassroots democracy. While the new constitution has provisions to promote inclusive, participatory and democratic rights, many powers exercised by existing community-based organizations are at risk of being ‘pulled up’ to the local government or the provincial level, where governance structures are in their infancy and enabling resources remain weak (Thakali, Peniston, Basnet, & Shrestha, 2018).

The failed experiences of politically induced user groups show that politically patronized user groups or committees tend to be more corrupt than self-organized and socially accountable user groups or committees. It is also observed that modernization drive and government intervention ignoring the social infrastructure tend to create more dependency on the government or outside funding for operation and maintenance of public goods at the community level, thus leading to unsustainable results.

Despite all corrupt practices, the grassroots level local government units in particular are still highly respected and valued by the local communities. This is very positive factor that create foundation for democratic governance to flourish in Nepal (Adhikari D., 2006). In Nepal, rural and traditional urban communities believe in collective action through which they are proactively engaged in local development and community governance process. In this setting, trusting the community is vital and such trust is the foundation of any model of participatory development. It can be built as a breeding ground for grassroots-level democracy in Nepal. Therefore, political and social accountability with reliance on social capital are valuable aspects of sustainable local development and grassroots democracy in Nepal.

8 Decentralization in Nepal

Nepal is a diverse country in terms of cultural, linguistic, ethnic and religious diversity. The country faced political, social, and economic changes and challenges for past decades. On the one hand, it has a long history of economic, political and social inequality that has had a negative impact on the issue of service delivery for the general population, and marginal groups in particular, and in the practice of democratic process. On the other hand, it has had a long history of social engagement at the community level, which has been the backbone of its social fabric as discussed above.
8.1 Driving forces of decentralization in Nepal

It is generally claimed that Nepal has four-five decades long experience in decentralized governance. However, the concept of decentralization and participatory development does not have a long history in serious terms. While decentralization topped the agenda of administrative reform over decades in Nepal, it was, however, missing its substance. Why did this happen for such a long time? The answer is not straightforward or easily clear. The reasons include historical, political, administrative, socio-economic as well as cultural factors that are summarized below.

8.1.1 Internal factors

Internal geo-societal realities

Nepal is a very diverse country with an uneven distribution of population. Settlements are scattered in the northern mountain region, the hills and small valleys and the southern plain, which is called the Terai region. It is nearly impossible to manage state affairs centrally in such a diverse geographical setting which is further complicated by multi-ethnic and multi-cultural social realities. This sharpens the need for decentralization of state affairs in the country.

Failure of the centralized governance system

A centralized system with its ‘one-size-fits-all approach’ has not been able to adequately respond to the development challenges of Nepal. Furthermore, service delivery cost is very high when it is handled from the center because of scattered settlements and poor accessibility issues. It is obvious that the centralized system has failed to equitably deliver public services at the local level.

Democratic desire and popular movements

Democratization was the major driving force behind the political movement of the 1990s. Existing political forces were either allied with the democratization movement or were opposed to it. Decentralization was taken as a part of a broader democratic framework (macro perspective) while emphasis was laid on shifting the responsibility for development from center to periphery from a formal institutional perspective.

The popular movement of 1990 made ordinary people aware of their fundamental human and political rights. Moreover, it emboldened them to demand their right to self-governance as a part of local democracy and as a means to practice their sovereignty. After 1990s, the country gradually recognized decentralization as a prime governance approach and a vehicle to establish democratic practices at the local level so that fruits of democracy can be equally accessed by the general public.

Social exclusion and conflicts

Nepal, as discussed above, is a country of great ethnic and cultural diversity. Nepali people are very proud of their unity as well as their ethnic, geographical, religious and cultural diversity.
Historically, access to political, economic and administrative opportunities has not been equal for all social groups. There was hope in the 1990s that equal access to opportunity would be promoted under multi-party democracy. However, political leadership was not able to give proper attention to inclusive democratic practices and service delivery mechanisms. It was widely believed at the time, which proved to be false later, that the Maoist insurgency emerged primarily on the ground of rampant poverty and associated inclusion issues.

Many of the political movements in Nepal were largely associated with dissatisfaction toward and reaction against a centralized system, poor service delivery and governance, exclusive democratic practices, growing unemployment and mass poverty.

### 8.1.2 External factors

#### Changing role of the government: global phenomenon

The changing global political climate has encouraged Nepal to strengthen its local governments with more power and resources. As people become more educated and better informed through improved communications, they start to express their desires to bring the control of government functions closer to their neighborhoods.

#### Role of development partners and rapid growth of civil society organizations

After 1990, civil society organizations started to grow very rapidly in Nepal. This trend, together with the external development partners’ inclination in favor of powerful local government units in a more decentralized atmosphere, has played a vital role for the rise of decentralization movement in Nepal.

### 8.2 Decentralization and multi-level governance (1846-1989)

This section reviews and summarizes the decentralization and multi-level governance efforts that took place in Nepal in the past. It also includes decentralization efforts from an evolutionary perspective: from the historical autocratic era to modern democratic practices. Historical perspective is summarized and current efforts toward decentralization are discussed in the later part in detail.

#### Highly centralized autocratic rule: Rana oligarchy (1846-1949)

Nepal’s history of successive autocratic and centralist regimes spanning more than two centuries goes back to the year 1768 when Prithvi Narayan Shah unified the scattered small principalities into a modern nation. The Shah monarchs ruled with absolute power till 15 September 1846 when Jung Bahadur Rana rose to the ranks of the county’s prime minister and took over the executive functions of the regime. What followed was the rise of an absolute Rana prime ministerial oligarchy that lasted for 104 years with a succession of kings virtually imprisoned in their palace. There was no representative government and the rule of law while successive Rana prime ministers controlled the entire state affairs. The monarchs were just a ‘rubber stamp’ having no political, administrative or ruling powers at all.
Transitional period of democracy (1950-1960)

The autocratic Rana oligarchy was abolished in 1950. While much remains to be achieved, the overall policy of the successive regimes since 1950 has been supportive of the concept of decentralization.

The country had no institutional and legal basis or groundwork when it saw the advent of democracy in 1950. Slowly but surely, Nepal has created a legal and administrative framework over the years. The first parliamentary elections were held in 1958. The Nepali Congress, a centrist political outfit, swept the polls with a two-thirds majority before legendary B.P. Koirala became the first popularly elected Prime Minister. However, King Mahendra took over power, banned political parties and introduced the Panchayat system within less than two years.

In the 1950s, two Acts were promulgated to establish local government units and they were the Municipality Act of 1953 and the Village Act of 1956.

Party-less Panchayat regime (1960-1989)

The year 1960 saw King Mahendra seizing power and dissolving parliament, suspending the constitution and banning multi-party politics before throwing the elected leaders behind bars.

The year 1962 saw a new constitution which promoted a non-party system of councils known as ‘Panchayat’ under which the king exercised power in an undisputed manner. The first election of the Rastriya Panchayat (parliament) was held in 1963 under an autocratic regime. The king was placed above the constitution, wielding executive, legislative and judicial powers. The period was marked by highly centralized political, financial and administrative authority. The Village Panchayat Act of 1961 and the Town Panchayat Act of 1962 replaced the existing Village Panchayat Act and Municipality Act, respectively.

In the Panchayat era, the king directly ruled the country heading the Panchayat system in a very centralized fashion. Decentralization was one of the reform agendas of the administrative system, while political parties were under a ban. The role of local bodies was confined to implementing the central level’s decisions. Thus, they were more like obedient subordinates to the central authorities.

A series of commissions and high-level committees were formed, and several national periodic plans were prepared (more than nine), but the recommendations were never implemented in a true manner. Thus, it is obvious that the series of efforts were essentially a propaganda tool to impress the domestic political environment and international communities. Decentralization efforts were mostly utilized as administrative tactics to manage power at the local level.

Central level organizations were extended down to the grassroots level. Service delivery was managed through sectoral service centers at the sub-district (Ilaka) level. Suffice it to say that the Panchayat period saw different forms of administrative decentralization with delegation and de-concentration of limited administrative authority at the local level.
Over the past six decades, Nepal has formulated and implemented several decentralization and local acts\(^5\) and regulations.\(^6\) The primary objective of these efforts was to encourage people’s participation, improve access to service delivery and strengthen ownership in the local governance systems (MoFAGA/GiZ, 2018). A number of high-level committees were formed to address the issue of decentralization and local governance. These efforts are summarized in Table 8.1.

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1963</td>
<td>High Level Administrative Power Decentralization Commission</td>
</tr>
<tr>
<td></td>
<td>The Commission gave four principle-based recommendations for the</td>
</tr>
<tr>
<td></td>
<td>devolution of authority and functions based on the following principles:</td>
</tr>
<tr>
<td></td>
<td>- Those authorities that need good information on local realities to take</td>
</tr>
<tr>
<td></td>
<td>decisions.</td>
</tr>
<tr>
<td></td>
<td>- Those functions that help reduce distance for general people to get public</td>
</tr>
<tr>
<td></td>
<td>services from the government institutions.</td>
</tr>
<tr>
<td></td>
<td>- Those authorities that need to be used according to the wishes of the</td>
</tr>
<tr>
<td></td>
<td>people.</td>
</tr>
<tr>
<td></td>
<td>- Those functions which need greater public participation to carry out.</td>
</tr>
<tr>
<td>1965</td>
<td>Decentralization Plan: Prepared to implement the recommendations of</td>
</tr>
<tr>
<td></td>
<td>High-Level Administrative Power Decentralization Commission</td>
</tr>
<tr>
<td></td>
<td>This was a twelve-year plan divided into the following phases:</td>
</tr>
<tr>
<td></td>
<td>First phase:</td>
</tr>
<tr>
<td></td>
<td>- Basic legal and administrative arrangement to dissolve the position</td>
</tr>
<tr>
<td></td>
<td>of Bada Hakim (District Magistrate).</td>
</tr>
<tr>
<td></td>
<td>- Recommendation to create 75 administrative districts and 14 Zonal</td>
</tr>
<tr>
<td></td>
<td>Commissioners' Offices.</td>
</tr>
<tr>
<td></td>
<td>Second phase:</td>
</tr>
<tr>
<td></td>
<td>Personnel and other necessary arrangements for decentralization of</td>
</tr>
<tr>
<td></td>
<td>basic development functions to local bodies.</td>
</tr>
<tr>
<td></td>
<td>Third phase:</td>
</tr>
<tr>
<td></td>
<td>Decentralization/delegation of authority (agriculture, health,</td>
</tr>
<tr>
<td></td>
<td>education, cottage industries, supply, etc.) and decentralization of</td>
</tr>
<tr>
<td></td>
<td>financial arrangements: Panchayat development and land tax scheme.</td>
</tr>
</tbody>
</table>

\(^5\) Acts included Gram Panchayat Acts 2006, 2013, 2018 (Bikram Sambat-BS); Village Development Committee Acts 2047, 2048 (BS); Nepal Province Nagar Panchayat Act 2006 (BS); Nepal Province Municipality Act 2009 (BS); Nagar Panchayat Act 2019 (BS); Municipality Acts 2047, 2048 (BS); District Panchayat Act 2019 (BS); District Development Committee Acts 2047, 2048 (BS); Zonal Panchayat Act 2019 (BS); Zonal Sabha Act 2024 and 2035 (BS); Decentralization Act 2039 (BS); and Local Self Governance Act 2055 (BS).

\(^6\) Regulations include Village Panchayat Regulation 2020 (BS); Gaun Sabha Regulation 2026 (BS); Village Development Committee Regulation 2050 (BS); Municipality Panchayat Regulation 2020 (BS); Municipality Regulation 2049 (BS); District Panchayat Regulation 2020 (BS); District Development Committee Regulation 2049 (BS); Decentralization Regulation 2041 (BS); Local Self Governance Regulation 2056 (BS); and Local Finance Administration Body Regulation 2056 (BS).
<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
</table>
| 1965 | **Local Administration Act**  
- Existing 35 districts were dissolved, and 75 administrative districts and 14 Zonal Offices were formed.  
- The position of *Bada Hakim* was dissolved and the positions of Zonal Commissioner (*Anchaladhish*) in each zone and Chief District Officer (CDO) in each district were created. The CDO was assigned to work as the Secretary of *District Panchayat*. |
| 1967 | **Decentralization Committee**  
- It recommended delineated authority to be delegated to *District Panchayats*.  
- It defined relationship between Chief District Officer (CDO) and *District Panchayat*. |
| 1968 | **Administrative Reform Commission**  
It was focused more on administrative reform addressing little administrative decentralization. |
| 1969 | **Decentralization Committee**  
It gave different recommendations to improve decentralization policy and initiated administrative reform. |
| 1971 | **Local Administration Act**  
- Creation of a Panchayat Development Officer (PDO) position for development affairs, implementation of *District Panchayat*’s decisions related to development and coordination.  
- Maintaining law and order were assigned to Chief District Officers (CDOs). |
| 1974 | **District Administration Plan**  
- Start of integrated district administration: all district offices were kept under the District Administration Office as branch offices.  
- Institutional development of *Village Panchayats* - arrangement of Multiple Development Worker cum Village Panchayat Secretary. |
| 1975 | **Administrative Reform Commission**  
- It was mandated to prepare detailed reform agendas for administrative reform.  
- Based on its recommendation, integrated *Panchayat* development was initiated in 1978. |
| 1980 | **Establishment of Ministry of Local Development**  
- Introduction of the concept of consumers or users committee.  
- Establishment of service centres at sub-district level for delivery of services.  
- Arrangement of Local Development Officer (LDO, previously known as PDO) as Chief Development Coordinator cum Secretary of *District Panchayat*.  
- Design and implementation of integrated rural development projects. |
<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
</table>
| 1981 | *Decentralization Sub-Committee and Higher-Level Decentralization Sub-Committee*  
Both sub-committees identified problems related to decentralization and provided recommendations to solve the problems of decentralization and local development. |
| 1982 | *Decentralization Act*  
It reorganised district level line agencies as branches of *District Panchayat Secretariat*.  
It was focused on administrative decentralization, but not on the political side of decentralization. Thus, the Act followed the de-concentration model and delegated functional responsibilities to the districts, as it was initially envisioned to be the first comprehensive effort towards decentralization. |
| 1984 | *Decentralization Regulations*  
It was formulated after two years of Decentralization Act 1982 to implement the same Act. |

Source: Adhikari, D., 2006

Table 8.1 gives the impression that Nepal has more than four decades-long history of decentralization. However, it is not that long in terms of the implementation of really meaningful decentralization practices. Successive years have seen a series of efforts forming several committees and commissions and the drafting of several plans with recommendations. In fact, the authorities formed either a commission or a committee in every two to three years.

### 8.3 Restoration of multi-party system in 1990s

It must be mentioned that the multi-party democracy was not fully put into practice in Nepal before 1990. While it was introduced for the first time in 1950-1951, it was, however, soon derailed without creating any institutional foundation which could leave room for democracy except for the fact that the nation saw a constitution in 1958. Dhungel (2004), however, notes that the provisions of 1958 constitution were silent on decentralization.

The year 1990 saw the restoration of multiparty democracy following a popular movement. Since 1990s, decentralization has become a key political and development theme. The new constitution, which was the third constitution in the series, upheld the policy of decentralization apart from setting the pace for political, administrative and public sector reforms. The new constitution considers decentralization as a primary strategy to ensure the involvement of the people in the governance practice and install democracy and development down to the grassroots level.

#### 8.3.1 The Constitution of the Kingdom of Nepal, 1990

The Constitution of the Kingdom of Nepal, 1990 was the product of a popular movement that restored democratic pluralism and people's sovereignty. The Constitution reintroduced democratic rule, recognizing the rights of the people, practice political rights and to
participate in affairs related to their own life. The Constitution has enshrined a decentralized system of governance as a guiding principle of the state policy. It clearly emphasized decentralization as a means to ensure optimal participation of the people in governance so that they could enjoy the benefits of democracy. From the constitutional point of view, however, the status of local government was in a weak position from the point of view of decentralized local governance.

8.3.2 The political and administrative system

Nepal remained a unitary state for centuries. The country practiced parliamentary democracy\(^7\) with a constitutional monarch as provisioned in the 1990 Constitution. The government was accountable to the parliament, which consisted of two houses. The lower house was called the House of Representatives with 205 members, who were elected largely by the people in every five years. The upper house was the National Assembly, with a total of 60 members. Among them, 15 members were elected by the Electoral College consisting of the Chairs and Deputy Chairs of Village Development Committees (VDCs), Mayors and Deputy Mayors of Municipalities, Presidents, Vice Presidents and Members of District Development Committee (DDCs). Similarly, 35 members (including at least three women) were elected by the Electoral College of members of the House of Representatives and nominees of the constitutional King (10 members).

During this time, Nepal had a two-tier local government system. District level (first tier) local government was called the DDC and the lower tiers were village and municipal levels. These entities were known as VDC and Municipality of different levels, respectively.

Local Bodies Act 1991

Three separate Acts, namely District Development Committee Act, Municipality Act, and Village Development Committee Act were passed by the parliament in 1991. However, these legal arrangements were highly criticized by opposition parties, emerging civil society organizations, external development partners and intellectuals. These were criticized for the following reasons (Adhikari D., 2006).

a. The principle of local self-governance was not explicitly taken into account and local government institutions were still perceived and or practiced as extended hands of the central government, not as genuine local governments.
b. Not enough local autonomy was guaranteed by the law.
c. Not enough expenditure and taxing power were devolved.
d. The disadvantaged sections of the society, civil society members, NGOs and private sector players were not brought into the local governance framework as per the principles of pluralistic decentralized governance.

\(^7\) It has to be noted that there was no elected parliament in Nepal since mid-2002 and the constitutional monarch seized the power in his hands and declared a state of emergency on 1 February, 2005. Later the constitutional course was restored through the political revolution instead of constitutional provisions.
The Local Self-Governance Act (LSGA), 1999 and Regulations

Despite the weaknesses the LSGA of 1999 was considered a landmark legislation insofar as it was a maiden attempt at enhancing the administrative and fiscal powers of the local governments. The Act recognized the principles of devolution of power and it emphasized the establishment of democratic local governance.

The LSGA, 1999 enhanced autonomy and provided a greater role to local bodies in matters of governance. Unfortunately, regular and timely elections of local bodies could not be held due to political circumstances. The LSGA had ambiguities and inadequacies on the sharing of powers and responsibilities between different governing units, but it had the potential for a far-reaching decentralization. This aim could not be attained due to the political vacuum created by lack of timely elections at the local level and bureaucratic and political resistance to devolve/deconcentrate central level functions.

**The key features the LSGA, 1999**

The following were the key features of the LSGA, 1999 (LBMC, 1999).

- Conceptual recognition of the local self-governance system.
- Unified Act for all levels of local governments (district, village and municipality).
- Recognition of Village Development Committees (VDCs), a grassroots level local body, as local government.
- Extended expenditure responsibilities and provision of revenue-sharing among different levels of government.
- Local taxation and subnational borrowing authority (with central level’s approval).
f. Provision of permanent Local Bodies Fiscal Commission (LBFC).
g. Recognition of association of local bodies.
h. Conceptual recognition of local service system.
i. Provisions of criteria for opening sectoral sections by District Development Committees (DDCs) and municipalities to replace line agencies.
j. Institutional arrangement of the Decentralization Implementation and Monitoring Committee and its working committee.
k. Participatory local planning process as a mandatory provision.
l. Mandatory provision of formulating long-term vision and development policy, medium term (periodic) plan and long-term sectoral master plans.

Despite all legal arrangements made in the LSGA, its implementation was rather weak, and it was largely resisted by the sectoral and technical ministries.

Summary

In the 1990s, the country started moving towards a democratic system of governance by introducing decentralization and multi-level governance. Efforts were made to accelerate decentralization process to change the structures and power relations between levels of government and among key stakeholders. Introduction of Local Self-governance Act 1999 and Regulations, 2000 were first steps toward institutionalizing participatory and multi-level governance. However, implementation process did not get the time to be effective as such efforts were obstructed due to the armed Maoist conflict that started on 13 February 1996, which officially ended only on 21 November, 2006.

8.4 Maoist insurgency and political deadlock (1996-2006)

The Maoist conflict marked a catastrophic period in the history of Nepal killing more than 17,000 and displacing millions of people. The growing conflict and the absence of elective representatives in local government units were the foremost challenges during this time in the path of participatory local governance. Nepal’s immature decentralization process was recentralized with the absence of elected local officials in mid-July 2002. It was justified with reference to the political conflict, democratic transition and other reasons offered by the main political parties. The royal coup of 1 February 2005 totally centralized the political power again.

The major challenge to decentralization process in Nepal has been the centralized mindset and culture of the political parties characterized by weak internal democracy (Adhikari D., 2006). Thus, participatory governance did not get adequate time to take roots and mature in the country.

The 12-year long Maoist armed conflict was started primarily on the ground of extreme exploitation, poverty, corruption and inequality; however, when the Maoists came to occupy leadership positions in government, Nepali people realized that these were meant only as political slogans to capture power. Indeed, the leaders who led the insurgency
proved to be the most corrupt and unethical political cadre probably in the history of Nepal. The insurgency embroiled Nepal in an armed conflict from 1996-2006, killing the highest number of people in its history, mostly the poor.

Top Maoist leaders operated the insurgency mostly by finding shelters in India. India played a decisive role during the time. Muni (2012) has stated “the alliance between the Maoists and the mainstream parties was greatly facilitated and influenced by India. In this role, India gradually changed its position from that of supporting the monarchy against the parties to marginalizing the monarchy. In doing so, India acted indirectly but in concert with other members of the international community to nudge Nepali political players to forge alliances, mobilize people, and carry the movement to its conclusion” (Muni, 2012).

“The transition of Nepal’s Maoist insurgency into a peaceful democratic movement in 2006 has been one of the most remarkable developments in the history of efforts to resolve communist rebellions peacefully. It was remarkable in the sense that a left extremist insurgency was joining hands with bourgeois parliamentary parties (as the communists usually call them) to resolve a decade long violent conflict has rarely been achieved” (Muni, 2012).

9 Nepal’s road to federalism

9.1 Emergence of federal thinking

As discussed above, the local elections held in 1992 and 1997 were disrupted in the wake of the dissolution of local bodies by the government in 2002; therefore, there were no elected government bodies at the local level until 2017. Two political movements of 1990 and 2006 and the Comprehensive Peace Accord (CPA) signed in 22 November 2006 resulted in the overthrow of the monarchy but could not really settle other burning political challenges.

It was a hard period to agree on new constitution toward establishing democratic government. After 2006, there were several attempts to come up with a new constitution, but these efforts were not successful until the two devastating earthquakes of April-May 2015, which killed about 9,000 people. On a positive note, these earthquakes compelled the political parties to finalize the new constitution in 20 September 2015.

The new constitution of Nepal did not satisfy the Terai/Madhes-based regional parties, which were clearly backed by India. India had its own strategic interests, therefore, it wanted to have influential role in some fundamental aspects of the contents of the new constitution. Its expectation was raised, probably, due to its deciding role in bringing the Maoist and mainstream political parties together through 12-points agreement, which was signed in 22 November 2005 in New Delhi with Indian government’s explicit blessings.

“India, together with other members of the international community, played a role to marginalize the monarchy” (Muni, 2012). It was obvious that the Indian government was not happy with the new constitution being drafted and which was announced in 20
September 2015. Immediately after the approval and announcement of the new constitution, India imposed a blockade in the entire southern border for more than six months using Tarai-based political parties. As a result, Nepali people of the present generation faced a serious crisis due to severe shortage of food, basic medicines, and fuel. It created a severe humanitarian crisis especially at a time when Nepali people were suffering in the wake of a series of devastating earthquakes.

The demand of federalism was neither a part of the agenda of 12-point agreement signed by major political parties including the Maoists in New Delhi, India, nor was it a part of the demand of 2005-2006 movement and the content of the peace agreement. It was raised by the Maoists in some instances during their movement, but it was not a prominent demand. In fact, the demand for a federal restructuring of the country emerged for the first time during the Terai movement of 2007-2008. Therefore, many people including the intellectuals and academics believe that the demand was probably instigated by external forces.

In fact, people felt frustrated due to the failure of a century-long Kathmandu-centric system, feudal behavior of mainstream political parties, weak service delivery and growing inequality in the country. Therefore, the demand of federalism must have been driven by the desire of local-self-governance, improved service delivery, true political and economic empowerment of people through participatory grassroots democracy.


It is the first constitution written by the Constituent Assembly (CA) in Nepal's history. Earlier, the country had promulgated six governing acts or constitutions at different times (1948, 1951, 1959, 1962, 1990 and 2007). After the enactment of the 2015 constitution, the country became a federal democratic republic thus breaking the 240 years history of the kingdom and ending the unitary system.

The Constitution was drafted by the Second Constituent Assembly (elected in November 2013) following the failure of the first Constitutional Assembly, which was elected in April 2008. The first Constituent Assembly could not sort out the agenda mainly related to federalism due to serious differences among the political parties on key issues related to the names, numbers and the character of proposed federal units along with questions about sovereignty and national integrity.

A few fringe leftist and rightist parties still oppose federalism, arguing that it may create deep divisions in the country leading to challenges to the country’s sovereignty and national integrity and it may ultimately lead the country to disappear altogether. Many people still suspect the sustainability of the federal system largely due to the huge tax and financial burden created by the unnecessarily large number of elected officials at different levels in the federal system.

As Nepal finally introduced the federal structure in its new constitution in 20 September 2015, the challenge now is to use federalism as a prime political and administrative structure as an opportunity for prudently promoting inclusive, participatory, and responsive
governance in the interest of peace, equitable economic prosperity and social well-being of the Nepali people (Sharma & Thapa, 2011). Currently, the country is divided into seven states or provinces\(^8\) and 753 local government units. A bicameral parliamentary system is provisioned at the center with two federal houses and a unicameral parliamentary system in each province. A mixed electoral system has been adopted with direct election of 60 percent of representatives and proportional representation (40%).

The Constitution has established strong provisions in support of women and representation of marginalized groups. The number of elected representatives at the local level can be taken as an example, where a total of 14,339 positions (41%) are held by women. Apart from women’s representation, there is significant improvement in the representation of Dalits, Janajatis (29.3%) and Madhesis in the parliament and other elected bodies (Adhikari B., 2019).

**9.3 Constitutional provisions of multi-level governance**

Nepal adopted a three-tiered federal structure with federal, state/provincial and local governments, as is common to most federal countries in the world. All spheres\(^9\) or orders of government are constitutionally recognized, with executive and legislative power and functions. Not only federal but provincial and local governments can also make laws in the areas of their constitutional mandate or competencies.

Furthermore, the local government derives its judiciary functions with a limited scope defined by the Local Government Operations Act 2017, which is not always the case in many federal system countries. It is also a controversial issue from the point of view of the principle of separation of powers between the executive and judicial branches of the government.

**9.3.1 Federal level**

The federal government, commonly called the Government of Nepal (GoN), has exclusive powers in 35 matters as per the Schedule 5 of the Constitution (Annex 1), concurrent powers with Provinces in 25 matters as specified in Schedule 7 (Annex 3) and concurrent powers with provinces and local governments in 15 matters and residual powers in constitutionally provisioned areas as specified in Schedule 9 (Annex 5). The Prime Minister is the executive chief of the country. The ceremonial President is the head of the state.

The Federal Parliament of Nepal is the supreme legislative body of Nepal. It is a bicameral federal legislature with the National Assembly, the upper house, whose 59 members are elected for a 6-year term. Among the 59, three members are nominated by the President (one each from woman, Dalit and differently abled groups). The remaining 56 are elected from seven provinces in equal numbers (eight from each).

\(^8\) State and province have been used interchangeably to indicate the same - subnational level government of Nepal.

\(^9\) The word spheres, orders or levels are used interchangeably in this book to mean the same.
The members of House of Representatives, the lower house, are elected for a 5-year term. They are elected through a mixed system: 165 from single-seat constituencies and 110 from the proportional party list. The total number of representatives is 275.

On the judiciary side, the Constitution envisions a Supreme Court composed of a Chief Justice and a maximum number of 20 Justices. There are High Courts (currently 16) at least one in each Province with a Chief Judge and other Judges as specified by the federal law(s). At the district level, there are District Courts in all 77 districts.

### 9.3.2 Provincial level

Schedule 4 of the new constitution provides for seven provinces by grouping existing districts; two districts (Nawalparasi and Rukum) were split into four, thus adding two more districts to the total of 75 (now 77). It was obvious that these two districts were split for the benefit of the ruling parties. The seven provinces replaced the previous administrative divisions of 14 Zones and five Development Regions.

The new Constitution of Nepal lists exclusive provincial competencies in 21 matters in Schedule 6 (Annex 2) and 25 concurrent powers with the federal government (Annex 3) and concurrent powers with the federal and local governments in 15 matters (Annex 5). The provincial structure includes a Chief of Province, who is a ceremonial figurehead, s/he works as a representative of the federal government and is appointed by the President upon recommendation of the Cabinet. The Chief Minister is the executive chief of the Province with seven ministries.

According to Article 176 of the Constitution, the State/Provincial Assembly is unicameral. Sixty percent of its members are elected through direct election and forty percent through a proportional representation (PR) system. The term in office for the Provincial Assembly members is five years, except when the Assembly is dissolved earlier. There is a total of 550 Provincial Assembly members in all seven provinces.

The elected provincial level government with constitutional recognition is a new practice in Nepal’s history. Under the unitary system, Nepal was divided into five Development Regions and 14 Administrative Zones covering all ecological reasons for administrative and development purposes. However, the development purpose of regional divisions was not effectively implemented. After the implementation of the new constitution in 2015, the country was divided into seven provinces and dominant political debates and struggles were around ethnic division versus viability, capacity and development potential. At the end, political negotiation among parties was the single deciding criteria leading to the adoption of a mixed or hybrid model in different areas.

The geographical area and population size of the new provinces vary greatly, which is a result of a difficult political negotiation. In terms of population share, Province 3 has the highest population (22%), whereas Province s holds the lowest population share (5.4%), however, it has the largest geographical area. Province 4 has the lowest multidimensional poor population (5%), Province 6 has second lowest (8%), and Province 3 has 9%. Province 2 has the highest incidence of poverty (35%), which, however, has the most
productive land and the industrial sector with easy access to trade routes (NPC/GoN, 2018).

9.3.3 Local level

Local elected bodies became defunct in 2002 due to the government’s inability to hold periodic elections. The Maoist insurgency was offered as the main reason although there were additional causes. The local government bodies were administered from mid-July 2002 to 2017 by the central government employees with the support of an all-party alliance in the background but without any accountability mechanism in place. Such lack of accountability mechanism in decision making process, with no opposition during this period promoted rampant corruption at the community levels. Only with the new constitution adopted in 2015 and subsequent elections held in 2017 have the local governments reestablished their mandate after a 15-year break.

Local government units (Palikas or municipalities) in Nepal have extensive executive, legislative and some judiciary roles and responsibilities (Nepal Law Commission, 2017). The judicial role (Deputy Chair or Deputy Mayor as the Coordinator of a Judicial Committee with two other members) is an exceptional provision, which is not a common practice in other federal countries. The Judicial Committee can settle the cases that are brought before it through adjudication in 13 subjects and it can settle dispute through mediation in 11 subjects as per the Local Government Operations Act 2017 (Section 8, Clause 46 to 53). The focus of such judiciary function is on the mediation process, but it is very controversial from the point of view of the principle of separation of powers.


9.4 Constitutional provisions for intergovernmental relations

Part 20 (Articles 231-237) of the Constitution of Nepal, 2015 has provisioned different arrangements for the relation between federal, state/provincial and local level governments, in both legislative and executive aspects. These include:

Legislative interrelations between federation and states/provinces (Article 231): It explains the territorial applicability of the Federal Law and the State Law.

Relations between federal, state and local levels (Article 232): It explains the principles of relations between the Center, States, and the Local level, to be based on the principles of cooperation, co-existence and coordination.

Relations between States (Article 233): It explains mutual cooperation and the duty of the States or Provinces to render assistance in the execution of legal provisions or judicial and administrative decisions of another state, exchange of information and mutual assistance.
Inter-State Council (Article 234): This Article makes provision for an Inter-State/Province Council (IPC) to settle political disputes that may arise between the federal level and the states and/or between states. Composition of the Inter-State Council is as follows: (a) Prime Minister - Chairperson; (b) Minister for Home Affairs of the Government of Nepal- Member; (c) Minister for Finance of the Government of Nepal - Member; and (d) Chief Ministers of the concerned States - Members.

The Inter-State/Province Council (IPC) may meet as required and may invite to its meeting a Minister of the Government of Nepal and a Minister of the concerned State who is responsible for the matter under dispute and a concerned expert. The rules and procedures of the meeting of the Inter-State Council are determined by the Council itself. The functioning and current status of the Council is discussed in Chapter 9.9.3 (Intergovernmental Relation and Cooperation).

Coordination between the federal, state and Local level (article 235)

The Constitution states that the federal parliament will make necessary laws in order to maintain coordination between the federal, state and local levels. The State Assembly may maintain coordination between the state and village bodies or municipalities and settle political disputes, if any, that have arisen in coordination with the concerned village body, municipality and the District Coordination Committee. The processes and procedures for the settlement of disputes under Clause 2 are provided in the state law. The status of law-making provision and its proposed structure are discussed below in 9.9.3.

Inter-state trade (article 236)

The Constitution prohibits any State or Province to obstruct the carriage of goods or extension of services to another State or Province or Local level or to the carriage of goods or extension of services to any State/Province or to the Local Level. It also prohibits them from levying tax, fee or any financial charge thereon or to make any kind of discrimination on the carriage or extension of such services or goods across state borders.

9.5 Constitutional provisions for financial autonomy

Articles 59 and 60 of the Constitution makes provision for the financial powers and distribution of the sources of revenue between different spheres of government (Annex 7 and Annex 8).

The federal, provincial/state and local levels can make laws, policies and prepare an annual budget and plans to apply to their respective jurisdictions remaining within the national framework. The federal government has the special privilege to make national policies, standards and laws on any of the matters enumerated in the concurrent functions and other areas of financial powers as to be applicable also to the provincial/state levels.

The federal, provincial/state and local level are allowed to prepare a budget for their respective levels within the given timeframe as specified by the federal law. Equitable distribution of benefits derived from the use of natural resources or development are
assured to the federal, provincial/state and local levels by the Constitution. Certain portions of benefits are distributed, pursuant to the law, in forms of royalty, services or goods to the project-affected regions and local communities.

Only the federal government has the power to obtain foreign assistance and also to borrow loans, especially for macro-economic stability of the country. Other details (budget deficits, fiscal discipline, etc.) are also defined by the federal law.

Article 60 of the Constitution provisions for the distribution of the sources of revenues giving such power to federal, state and local level governments to impose taxes and collect revenues on matters falling within their respective jurisdictions (Annex 8). The federal government makes provisions for the equitable distribution of the collected revenue to the federal, state and local level. However, the amount of fiscal transfer receivable by the state/province and local levels is recommended by the National Natural Resources and Fiscal Commission (NNRFC), which is an independent constitutional body.

There are arrangements for sharing revenues by each sphere or level of government as follows:

a. The Government of Nepal (GoN) distributes, on the basis of the need of expenditure and revenue capacity, fiscal equalization grants to the state/province and local level.

b. Each state/province distributes, in accordance with the state/province law, fiscal equalization grants out of the grants received from the Government of Nepal (GoN) and revenues collected from its sources, on the basis of the need of expenditure and revenue capacity of Local Level.

c. Provisions relating to distribution of conditional grants, complementary grants or special grants for other purposes are provided by the Government of Nepal from the Federal Consolidated Fund as provided for in the federal law.

The distribution of revenues between the Federal, State/Province and Local Level governments are made in a balanced and transparent manner. Article 60 also specifies the need for a Federal Act covering the following matters: (a) distribution of revenues and the autonomy of the State and Local Level; (b) services to be rendered by the State and the Local Level to the people; (c) financial powers of each level of government; (d) capacity to collect revenues; (e) revenue potentiality and use; (f) support for development works; (g) reduction of regional imbalances, poverty and inequality, end of deprivation; (h) assistance to be made in the performance of contingent works; and (i) fulfilment of temporary needs.

**National Natural Resources and Fiscal Commission of Nepal (NNRFC)**

The Constitution of 2015 (Article 250 and 251) provisioned a powerful constitutional body, National Natural Resources and Fiscal Commission of Nepal (NNRFC), consisting of a maximum of five members including a chairperson. The President appoints the chairperson and members of NNRFC upon the recommendation of the Constitutional Council. The term of office of the chairperson and members of the Commission is six
years from the date of the appointment. Article 251 provisioned the NNRFC’s functions, duties and powers, which are included in the Annex 9.

The NNRFC is one of the most important bodies on whose effectiveness the success of federalism depends. It is responsible for laying down a broad framework for the distribution of natural resources among federal, province and local levels. It is also responsible for reforms in revenue mobilization and expenditure at three tiers of the government.

### 9.6 Role and place of the local government in the federal context

In 2016, a 9-member Local Level Restructuring Commission (LLRC) was formed as per the constitutional provision. Based on the report of LLRC, the GoN restructured existing local bodies and came up with 293 urban municipalities (including metropolitan and sub-metropolitan) and 460 rural municipalities, altogether 753 local governments in the seven provinces.

The existing local bodies (Municipalities, Village Development Committees and District Development Committees) were restructured by the LLRC. During the restructuring process, 3,915 VDCs and 293 municipalities (six metropolitan cities, 10 sub-metropolitan cities and 277 municipalities) across the country were merged and or fragmented to come out with a total of 753 municipalities. The former District Development Committees (DDCs) were replaced by 77 new District Coordination Committees (DCCs) with very limited authority assigned to them (coordination and monitoring functions only). At present (28 July 2019), there are 6 metropolitan cities, 11 sub-metropolitan cities, 276 (urban) municipalities, and 460 rural municipalities (Gaunpalikas). These government units are known as the Local Level in Nepal. A total of 6,743 wards are formed under these 753 local levels (2018). Local elections were completed at all local government units in 2017 and these units have started to function since then.

There are different types of local government units in Nepal, which are categorized based on their population, geographical size and other parameters – metropolitan, sub-metropolitan, rural and urban municipalities (commonly called Palika to indicate all in Nepali language). The size and shape of municipalities vary enormously largely due to the country’s terrain, population distribution, ethnicity and other factors. They range mega-city metropolitan municipalities to rural municipalities.

In case of local government provisions in Nepal, they are not only developmental institutions but also important vehicles of participatory local democracy. Adhikari B. (2019) argues that the transformation that the country is passing through has two clearly important aspects. The first aspect is the dynamism that the recreation of an accountable form of government and the participatory framework have given to the local people after the inertia of many years. While the first aspect gives vitality to the people empowered by the new constitution, the second provides autonomy and self-government, which must be respected by both the federal and provincial governments. The combined effect of this
transformation provides further impetus for democratization, equality, inclusive 

economic development and human rights (Adhikari B., 2019).

During the last two years, the federal or national government has played a crucial, 
although somewhat rushed, role in establishing local governments, creating model laws 
for their consideration and changing the federal government's own rules of the game to 
adjust to the new constitution (Adhikari B., 2019). One of the milestone laws that was 
approved was the Local Government Operation Act 2017.

**Local Government Operation Act (LGOA), 2074 (2017)**

The Local Government Operation Act (LGOA) came into effect on 15 October 2017. 
There are three important objectives which are clearly spelled out in the preamble of the 
Act: a) provide quality services by promoting participatory approach, ensuring 
transparency and accountability, thus strengthening cooperation, coexistence and 
coordination among federal, provincial and local levels; b) strengthen grassroots 
democracy that promotes equality, inclusiveness and distributes the fruits of democracy 
ensuring rule of law and sustainability; and c) develop local leadership quality and 
strengthen local governance by exercising and institutionalizing legislative, executive and 
judicial authorities at the local level.

The LGOA provides statutory rights to local government units to manage and provide 
basic services that include drinking water, electricity, housing, roads, agriculture, 
sanitation, health, education, entertainment, disaster management, environmental 
protection, culture and much more. The Act also makes provision for some judicial and 
law enforcement authority. The Act covered the management of transparency, 
accountability, grievance handling, inclusive planning, fiscal planning, the monitoring of 
public services and citizen outreach.

The Act addresses the need for gender and social inclusion provisions at the local level. 
However, there is a complication in the application of the legal provisions, as the local 
governments lack basic infrastructure, capacity to formulate local level bylaws, develop 
rules and regulations, prioritize and distribute of resources, manage judiciary, and law 
enforcement provisions (MoFAGA/GiZ, 2018). The LGOA keeps open the option to 
merge rural or urban municipalities by majority votes in their Assemblies or Councils.

**9.7 Elections according to the new constitution**

The Constitution of 2015 recognizes Nepal as a secular, inclusive, multi-ethnic and 
federal country. Nepal adopted a federal system, which is different from the Western 
model of federalism. It can be called ‘hybrid’ federalism due to its consideration of 
ethnicity along with territorial and other viability factors (Wollmann, 2003). The 
Constitution recognized the local government units as the main points contact for service 
delivery and governance, making them an integral part of the federal system with clear 
constitutional provisions (Annex 4 and Annex 5).
The new constitution led to the election of all layers of governments: local, provincial and federal levels. It makes provision for a strong local government structure, with a significant role in basic service delivery, tax collection and the management of natural resources and local environment. There are 753 local government units and seven provincial governments.

Local government elections were held in three phases (14 May, 28 June, and 18 September 2017) – a first in 15 years. The election ended a long transition period at the local level during which local bodies were managed by civil servants and civil society organizations, often through informal cooperation with political parties. Provincial and federal level parliamentary elections were held on 26 November and 7 December 2017, formally marking the end of long uncertainties and political deadlock.

9.8 Transition to federalism: opportunities and overarching challenges

9.8.1 Opportunities

The implementation of the 2015 constitution, created a number of opportunities for promoting participatory and inclusive democracy. People are hopeful that the new federal system will offer greater accountability, transparency, equality and efficacy by bring the government closer to the people through the new local and provincial-level governments.

Nepal has been undergoing significant structural changes in both the political and administrative spheres. The country is at an early stage of implementing its federal structure, creating and adjusting its institutions and aligning staff at different levels.

The constitution stipulates that the federal, provincial and local government units be based on the values of cooperation, coexistence and coordination in the context of an inclusive, secular, federal democratic republic. Foremost among these changes is the transition to a decentralized federal structure that devolves greater authority to seven provinces and the 753 municipalities across the country. This has significant implications across all sectors and governance levels.

Through constitution making and completing all elections, Nepal has created valuable opportunities. These are critical and have to effectively manage the transformation process, which accelerated after the election at all levels. It is not an easy task and the process to restructure the country from a century long unitary system to a three-tiered multi-level governance system. Still the ongoing federalization process has a long way to go in terms of developing and/or amending more than 300 legal frameworks, rules and regulations and to adjust the new political and administrative structures. At the same time, decades-long unitary and centralized institutions (ministries, developments and centers) are being reformed to make them compatible with the federal context.

In the new federal structures, provinces and the local government have many opportunities for decentralized governance and grass-roots democracy to flourish. As Nepal was governed under a highly centralized system for long, there is a possibility that national and local politics with a centralized mindset may continue to dominate and
obstruct the process. As Nepal frequently experienced in the past, the federal government and the national bureaucracy may remain highly resistant to devolve their authority and resources to lower levels. In this case, the political elites may take advantage of these conditions and manipulate the process at all levels, possibly leading to recentralization in the practice of the federal system. Some such symptoms have already been evident during the process of eliminating district level line agencies and adjusting civil servants at all levels of government. A few technical ministries, especially health and education, have resisted the dismissal of their district offices thus avoiding the devolution of authority and resources to the local levels as per constitutional provisions.

The current government has a two-third majority in the federal parliament and also has majority votes in six out of seven provinces. It creates a stable and conducive political environment in which the ruling party has the potential to institutionalize the federal system and strengthen national unity among diverse population groups. Its success at creating enduring laws and institutions will have a major impact on the future stability of the political system, its resilience, capacity leading to the prosperity of the country.

Nepal entered into the federal system of government from the first day of the implementation of new constitution. No transitional plan was prepared for the smooth transitioning from the unitary system to the federal system except for a few deadlines that were mentioned in the new constitution for amending fundamental rights related laws (by 19 September 2018) and conflicting laws to be amended within one year of parliamentary process (by 4 March 2019). The parliament was successful in meeting the deadlines for amending the laws. However, the parliament did not get much time to discuss the laws due to the time pressure created by hard deadlines. The issue of staff adjustment became politicized, therefore, the government was forced to spend more time in assigning the civil servants to different levels of government. A few line ministries, education, home affairs and health in particular, have tried to continue federal level domination.

9.8.2 The overarching challenge: lack of internal democracy in political parties

One of the major challenges of any decentralized governance including federalism in Nepal is the centralized and feudal mindset of political leaders, who are groomed in their weak internal democratic practices in their own party for long, and they have not improved much ever since the restoration of multi-party democracy in 1990s.

All political parties in the past tried to replicate similar practices within the public sphere. Therefore, Nepal’s federalism process is also very likely to be practiced in a similar way. Thapa and Sharma (2011) argue:

Nepal’s case is problematic. Its established image of democracy has declined to the level closer to the top-down, centralized and hierarchical institution of almost exclusively small groups of politicians who expect to achieve their objectives through fairly open networks of people that increasingly impinge upon government. Federalism cannot be analyzed in terms of a dichotomy of decentralization and centralization.
Majority of party positions are filled by appointment procedures favoring loyalists regardless of popularity, competency and contribution in party politics. Unfortunately, there is no established and fair election system adopted by any political parties in Nepal yet.

9.8.3 Conflict of interests of law makers at federal and provincial levels

A few recent examples include organized lobbying by lawmakers for continuation and increase in the amount for the controversial Constituency Development Fund (CDF), previously called Local Infrastructure Development Partnership Program (LIDPP). Every year, when the Ministry of Finance starts preparing the national budget for the new fiscal year (including 2018-19 and 2019-20), lawmakers from all political parties start lobbying for the continuation and geometrical increase in the amount of such discretionary funds, which are under full control of the lawmakers. The fund is spent in the lawmaker’s constituency in a project that the lawmaker selects without any criteria or procedure. The LIDPP/CDF has been practiced in Nepal for last few years, but the experience of such parallel funding has not been transparent, harmonized and positive.

Most importantly, the provision of LIDPP/CDF violates the key democratic principle of separation of powers by giving the executive function to the legislature. There is a potential conflict of interest in continuing LIDPP/CDF and a possible conflict between the local government and provincial government (Manandhar, 2019). The LIDPP/CDF has been a headache for the Ministry of Finance every year during the budget negotiation process in the parliament.

The CDF has regressive effect on development as it divides scarce resources equally between constituencies, not taking into consideration the need and potentiality for a meaningful outcome. A number of studies have confirmed that project selection under LIDPP/CDF is often driven by political interest rather than benefiting the poor and disadvantaged communities (Manandhar, 2019). Another example is recent lobbying by lawmakers and ministers (and even the Prime Minister) to directly allocate federal level budget to a number of small programs/projects in their own constituencies. Such practices do not help federalization process to institutionalize.

The Finance Minister announced in his budget speech on 29 May 2019 that he will increase the LIDPP/CDP fund from Rs. 40 million to Rs. 60 million despite continuous people’s protest against it. In the next fiscal year, a member of the Federal Parliament will get Rs. 60 million to spend in their constituency in various infrastructure development projects of their choice. On the one hand, transparency and accountability of this fund have been in question from the beginning. On the other hand, the fund exists is parallel to provincial and local government funding, which undermines the principle of decentralization and multi-level governance. Such public funding under the authority of a single person and its potential for misuse has created a demand for similar funding scheme at the provincial level, too. In fact, one province already started this practice last year and others are likely to introduce such malpractices in coming years. Clearly, it is against the principle of the separation of powers and the spirit of federalism.
In a nutshell, lack of internal democracy in party politics and the centralized mindset of political leaders are two overarching challenges of Nepal’s devolution process and the federal system that continues to affect every aspect of our political and administrative system and life of Nepali citizens.

9.9 **Discussion on the key emerging issues and challenges**

This section includes discussion on the key challenges that Nepal has been facing during the course of implementing the federal system, particularly after the elections of representatives at federal, provincial and local levels.

Naturally, it may take some time to gain experience and momentum by local and provincial-level governments to be effective. On the short-term, the implementation of federalism has created numerous issues and challenges as existing structures and institutions need to be re-organized, which involve: (a) amendment of existing laws to ensure all new laws are brought into conformity with the new constitution; (b) reorganization of organizational structure; (c) re-alignment of public servants; (d) systems and procedures development; and (e) re-orientation and capacity development.

In this context, there are issues and challenges that have emerged at the initial stage of implementation of the new constitution. These key issues and challenges have been grouped under the following five broad areas for discussion and analysis. These are considered to be critical for the successful implementation of the federal system in Nepal.

9.9.1 **Overlap and confusion in functions and responsibilities**

Usually, constitutional provisions are kept deliberately broad, often ambiguous; at times they may appear contradictory and inevitably incomplete. Nepal is not an exception in this respect. This constitutional ambiguity and high numbers of concurrent rights owed to the citizens give space to each sphere of government to come up with its own interpretation of what is due or proper in a particular situation. If these interpretations are not managed carefully, they may lead to conflict and jeopardize the constitutional spirit of cooperative federalism.

Table 9.1 summarizes the functions and responsibilities of three orders/spheres of governments as per the Constitution in Nepal. The number of concurrent powers of provincial government with the federal and local level governments (40) is double the number of its exclusive powers (21). Similarly, the number of concurrent powers of federal government (50) is also much higher than its exclusive powers (35). Such higher number of concurrent powers than exclusive powers is the major source of confusion and conflicts between different spheres of government. Furthermore, there are also duplications and overlaps in a number of exclusive powers, especially in major service delivery areas, which lead to service delivery interruption leading to blame games. Such constitutional confusion needs to be sorted out as soon possible either through the legislative process or by other means. It also justifies for the creation of an effective mechanism for intergovernmental coordination. If not sorted out, these issues may lead to a serious political conflict, weakening accountability and interrupting service delivery.
Table 9.1 Distribution of power and functions

<table>
<thead>
<tr>
<th></th>
<th>Federal government (Government of Nepal) (Schedule 5)</th>
<th>Provincial government (Seven Provinces/States) (Schedule 6)</th>
<th>Local Level (753 Local government units) (Schedule 8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exclusive power in</td>
<td>Exclusive power in 35 matters</td>
<td>Exclusive power in 21 matters</td>
<td>Exclusive power in 22 matters</td>
</tr>
<tr>
<td>Concurrent power with</td>
<td>Concurrent power with Federal Government in 25 matters</td>
<td>Concurrent power with Federal and Provincial Governments in 15 matters</td>
<td></td>
</tr>
<tr>
<td>Provinces in 25 matters</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concurrent power with</td>
<td>Concurrent power with Federal and Local Level in 15 matters</td>
<td>Metropolitan Cities 6, Sub-Metros-11; Municipalities-276 Gaunpalikas (Rural municipalities) – 460</td>
<td></td>
</tr>
<tr>
<td>Provinces and Local</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Level in 15 matters</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Residual power - -

Number of activities according to functional unbounding report

<table>
<thead>
<tr>
<th></th>
<th>Federal government</th>
<th>Provincial government</th>
<th>Local Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>755</td>
<td>480</td>
<td>320</td>
<td></td>
</tr>
</tbody>
</table>


9.9.2 Service delivery interruptions

Delivery of basic services started being interrupted in remote rural areas since the Maoist armed conflict and an absence of elected officials in local bodies. The main reasons for service interruption were due to the absence of service providers and acute shortage of supplies which has continued due to one reason and another. Such service interruptions at grassroots level have affected the poor and marginalized groups that have been severely deprived of basic public services than others for a long time. Such service interruption continued even until the transition period (i.e. until 2017 elections). Due to weak responsiveness and poor delivery system, many public institutions lost their reputation and legitimacy until new elections were held. After the elections, local government units have started operating as per the new constitutional provisions. People’s hope, expectation and enthusiasm have been revived to a large extent as a result.

The new constitution has empowered local government units and they are made responsible for delivering basic services in many areas. The Ward has been determined as the lowest point of service delivery, but it is not a governance unit. However, there is an increasing tendency being observed in many municipalities, where the Ward Chairpersons are seeking a different role, probably being inspired by the Constituency Development Fund managed by the Members of Parliament. Such tendency may lead to the conflict of interests. The Ward Chairpersons enjoy a legislative and policymaking role being member of the municipal board and Assembly/Council member, respectively.

The time between now and the start of the implementation of the Constitution is a very short period for any scientific assessment of policy effects and outcomes so it is not fair to criticize newly formed local government units for their performance. Therefore,
preliminary observations are discussed here with the notion of supporting them to perform better in the future and fulfil their constitutional duties as accountable democratic institutions. In this sense, many changes have been observed at the grassroots level in Nepal that clearly indicate that there are some positive scenarios being developed after the election.

The service delivery system as such has not improved significantly, rather it has been further disrupted and quality of services deteriorated due to several factors such as task shifting from central and district agencies to provinces and local government units, re-channeling of budgetary allocations, the absence of systems and procedures in place (especially in technical areas), capacity limitations, lack of service providers, arising confusion in roles and responsibilities and conflict between different levels of government and so on.

People at the receiving end have been continuously facing difficulties in accessing health, education, agriculture, and other basic services. The quality of available services is also frequently questioned. It is largely due to the transitional phase to federalism. Other reasons include staff adjustment and transfer.

Provincial level government is a new practice in the history of Nepal. There is no such institutional setup and experience of running an intermediate level of government. The constitution authorized functions and responsibilities to the provincial level government. After the election, the government started arranging some basic infrastructure, such as legal and organization framework, office space for all ministries and parliaments, logistics and staff arrangements and so on. Naturally, some issues (legislative arrangement, for example) took longer to complete their preparatory work to function.

The main sources of service delivery interruption are: a) overlap and confusion in functions and responsibilities among different levels of government; b) resistance to devolution process with highly centralized mindset; c) delays in delineation of functions through new laws compatible to the new constitution; d) incompatibles with unitary organizational structure; e) weak cross-sectoral coordination; f) weak governance and sector focus, and lack of social accountability mechanisms, and g) weak participatory planning and budgeting practices, which is indeed against the spirit of grassroots democracy and constitutional provisions.

In case of basic service delivery interruption, some basic infrastructures are also not available. For example, basic drugs and commodities, systems and procedures and service providers have been lacking at service delivery points in all provinces. It is largely due to supply chain interruption, absence of health worker and budgetary constraints. In this situation, on the one hand, no one is ready to accept responsibility for all levels of government agencies, rather they are blaming each other. On the other hand, the budget that was channelized through the Ministry of Social Development at the provincial level, was not released in a timely manner or managed for a specified purpose. In some cases, the budget was transferred timely but used for other purposes other than health services.
The poor and marginalized groups are more affected by service delivery disruption, which is also indicated in the recent national governance survey (NASC, 2018).

It is also observed that there are serious problems in decision making, planning and prioritization process at the local level, who are responsible for basic service delivery. Participatory planning and budgeting process, which Nepal practiced for two decades, have been overtaken by party politics. According to the LGOA 2017, participatory planning process is mandatory for local government units; however, it was observed in many places that the process was not done properly. Thus meaningful participation of stakeholders has not been practiced at community and local government levels, which are important and legally mandatory mechanisms to make the local government responsive and accountable. Both elected officials and civil servants need more orientation, training and capacity building support to continue delivering services with the new constitutional spirit, so that grassroots-level democracy gradually takes root.

**9.9.3 Intergovernmental Relation and Cooperation**

Federalism tends to institutionalize the division of powers. It is normally expected in the federal system that different levels of government are likely to create circumstances that may lead to the creation of inter-governmental disputes, which are almost inevitable. It is, therefore, necessary that federal government establish mechanisms for the peaceful adjudicating of disputes and further strengthen and institutionalize the federal system. Therefore, there is a need for intergovernmental arrangements for cooperation and collaboration.

The division of powers and functions between federal, provincial and local levels as spelled out in Schedule 5 through 9 of the Constitution lack clarity and precision in some areas (Annex 1, Annex 2, Annex 3, Annex 4 and Annex 5). On the one hand, a full constitutional recognition of three spheres of government may promote innovation and enhance the partnership approach to be effective at all levels. On the other hand, structural relationship between the three spheres of government may create complexity, competition and duplication in practice. The size and authority devolved to local government units may create competitive feeling with the provincial government for authority and resources. A clear definition of roles and responsibilities and functional and effective platform to enhance cooperation may help avoid such scenarios.

Article 232 of the Constitution of Nepal specifies the relations between the federal, province and local level governments to be based on the principles of cooperation, co-existence and coordination. To operationalize these constitutional provisions and address related issues, the constitution has provisioned the following institutional platform for inter-governmental cooperation.

**Inter-Province Council (IPC)**

Article 234 of the Constitution has a provision for resolving disputes between the federal and provincial governments through a mechanism of Inter-Provincial Council, which is to be chaired by the Prime Minister (GoN, 2015).
The following is the structure of the Inter-Province Council (IPC): (a) the Prime Minister – Chair; (b) the Minister of Home Affairs of the Government of Nepal – Member; (c) the Minister for Finance of the Government of Nepal – Member; and (d) the Chief Ministers of the concerned Province – Member.

As per the constitutional provision, the IPC may meet as required. It may invite other GoN Ministers and also Ministers of the concerned Province, who is responsible for the matter of dispute. If needed, constitutional experts also can be invited. The rules and procedures of the meeting of IPC are determined by the Council.

It took a long time to call the first meeting of IPC after forming the government at federal and provincial levels. The first meeting was scheduled for 9 September 2018. To prepare on the part of the provincial government and agree on the key issues to be discussed in the first IPC meeting, the Chief Minister of Gandaki Province proactively convened a conclave of six chief ministers in Pokhara on the eve of the first IPC meeting (6 September 2018). The Prime Minister, however, was not happy with it, which led to the deferral of the first IPC meeting by at least three months.

Finally, nine months after the elections, the IPC met for the first time on 8 December 2018. The two-day meeting between the Prime Minister and seven Chief Ministers (from across the country) was an important milestone in the evolution of federalism in Nepal. In past nine months, frictions and tensions between the federal government and provincial governments have come to the fore numerous times. It was expected that such teething problems would have been taken care of by utilizing the institutional mechanism provisioned by the constitution. Now there is a need to continue the initiative so as to address the challenges related to federalism.

The historic meeting provided the opportunity for the Chief Ministers to open up and apprise the Prime Minister of immediate challenges. It also provided the opportunity to the Prime Minister talk directly with the Chief Ministers and discuss the ways to address impending challenges.

The Chief Ministers raised the following major issues and grievances during the meeting (THT, 2018): (a) lack of staff hampering in the smooth functioning of their governments; (b) budgetary constraints and confusion in tax imposition authorities; (c) lack of basic infrastructure in the provinces; and (d) lack of a legal framework for the smooth operation of provincial governments. The Chief Ministers also complained that the federal government should have already completed the formulation of basic laws that were still not in place. They also raised the issue of projects that were handed over to provinces earlier but had now been withdrawn by the federal government to be executed under the federal authority.

The two-day IPC meeting concluded with the formation of a Task Force to prepare an action plan within a week to address the issues and challenges discussed during the first meeting. The Task Force was headed by the Federal Home Minister and its members included Federal Finance Minister, Federal Minister for Federal Affairs, and the Chief Ministers of Provinces 2 and 5. Chief Secretary of the federal government acted as its Member Secretary.
First of all, the Task Force was asked to look into lawmaking as a first priority. The Constitution has clearly specified in Article 304 that all laws that are inconsistent with the Constitution will be null and void after one year since the first parliamentary session (i.e. by 4 March 2019). New laws needed to be written to fill the void left by this automatic nullification.

The Task Force was given the terms of reference and asked to discuss issues under consideration and recommend an action plan for the federal government, provincial governments and local governments along with the categorization of laws/subjects, responsible agency and timeline. The Task Force was also asked to suggest that lawmakers seek support from experts and civil society members to make the process more participatory and effective. Dialogue between the drafters and representatives of concerned stakeholders was a must. That apart, the other major responsibility on the shoulders of the Task Force was to recommend the formation of National Natural Resources and Fiscal Commission (NNRFC), which is the prime body that develops a formula of resource collection and distribution among the federal, provincial and local levels. Therefore, in its recommendation, the Task Force was also asked to suggest ways to make the Commission include experts on federalism, taxation and administration. Additionally, the Task Force was authorized to include in its report some sort of mechanism to ensure that IPC meetings are held regularly – once every three months – and also when necessary. The Task Force submitted its report to the Prime Minister; however, it has not been made public.

The next round of IPC meeting was held on 26 April 2019, which was organized to discuss budget allocations for the fiscal year 2019-20 as the government was preparing the annual budget statement for the fiscal year 2019-20. It was reported that, at the meeting, the Chief Ministers complained that the federal government had not provided sufficient resources for them (Pahilopost, 2019).

The Constitution has provisioned the IPC to deal with issues that have the potential of escalating conflict in the context of federal-province relations. It is the Prime Minister who presides over the forum and helps resolve any conflicting issues. Importantly, the Prime Minister must regularize the operations of the Council and foster it as an institution that can handle the teething problems of federalization.

The Local Level government is not directly represented in the Council although it also faces issues that should be able to reach this forum for necessary consideration. The constitutional position is that the issues related to friction between local governments within a province are to be handled by the provincial assembly. This might mean that a committee within the assembly will discuss the issues and offer recommendations to the full house or the provincial government. Even the status of an observer could be considered. Legally speaking, nothing restricts the federal government from providing for this arrangement under its lawmaking power (Adhikari, B., 2019).

The same issue comes up in the case of the National Natural Resources and Fiscal Commission (NNRFC). The Constitution created the Commission to perform many
essential, independent roles in determining the detailed basis and modality for the
distribution of revenues out of the federal consolidated fund amongst the federal,
provincial and local governments. Among other things, the Commission is required to
make recommendations about equalization grants to be provided to the provincial and
local governments, conditional grants, norms/standards and situation of infrastructures,
the distribution of revenues between the provincial and local governments, revenue
collection, ceiling of internal loans, potential disputes, environmental impact assessment,
mobilization of natural resources and distribution of revenues. To a great extent, the
success of federalism in Nepal will depend on the efficiency, impartiality and justice of
the Commission’s decision-making (Adhikari B., 2019).

Coordination Council (proposed)

Amid dispute among federal, provincial and local governments related to power sharing,
taxation, infrastructure building, drafting of laws and other administrative issues, the
federal government has come up with a new legislation (draft) to address such problems.

As per Article 235 (1) of the Constitution, the federal government recently drafted a new
legislation to establish a Coordination Council to be led by the Prime Minister to address
the coordination problem between different spheres of governments. The Article states
that the federal Parliament shall make necessary laws to maintain coordination between
the federal, provincial and local levels. It also explains that the Provincial Assembly may
maintain coordination between the province and municipalities and settle any political
disputes that arise in coordination with the concerned municipalities and district
coordination committees.

According to the draft legislation, the Prime Minister-led Coordination Council will
comprise the representation of Home, Finance and Law Ministers from the federal
government, the Chief Ministers of seven provinces, Vice Chair of National Planning
Commission and representatives of three local government associations, namely,
National Association of Rural Municipality in Nepal (NARMIN), Municipal Association
of Nepal (MuAN) and the Association of DCCs.

There is also a provision of nominating few members by the Prime Minister with at least
two female members. There is also provisions that the Council meeting will be held at
least once a year. It is expected to be a vibrant platform to meet all levels of government
on regular basis, share their problems and issues, discuss on possible solutions that would
reduce tension between the three tiers of government.

The provincial level government is new for Nepal and is still in its formative stages. It
has been taking shape gradually, as this is an entirely new structure for Nepal. It is
expected that the provinces will grow stronger in the near future when they start
concentrating on strategic and policy issues, prioritize major provincial plans and
priorities and start cooperating and partnering with local government units and federal
government institutions.
Over the past year, federal level authorities have often tried to continue holding their power in the federal context and resisted devolving resources and critical functions to lower level governments. They may have perceived the transfer of power as a loss to their authority as in a zero-sum game. There is some resentment prevailing in the provincial level government over the authority of local level. The concurrent power is always an issue that has led to resistance and conflict, thus there is a need for an effective cooperation mechanism between different spheres of government. It is expected that the Coordination Council, once it is made functional, will resolve coordination issues and strengthen collaborative efforts.

**Inter-governmental Fiscal Council (IFC)**

The Inter-governmental Fiscal Management Act 2017 (Section 9, Clause 33) provisions for the Inter-governmental Fiscal Council (IFC) to consult and coordinate with three spheres of government on matters related to inter-governmental finance. The composition is as follows: (a) the Finance Minister, Government of Nepal (federal level) - Coordinator; (b) the Finance Minister, provincial governments - Members; (c) two persons, including one female, from each province, representing Mayors and Deputy Mayors of the Municipalities as recommended by each Province/State - Members; (d) three persons, including one female, from among financial experts nominated by the Federal Finance Ministry - Member; and (e) the Secretary of the Finance Ministry - Member-Secretary.

The Council met two or three times (until July 2019) since its establishment to discuss issues related to tax collection, revenue sharing and budget formulation at provincial and local levels. The meeting was organized amid rising tensions on tax collection at provincial and local levels.

9.9.4 Resource mobilization and revenue sharing

Financial adequacy, capacity and autonomy are the key determinants of effective multi-level government systems, in particular at the local government level. In case of Nepal, responsibilities of the three spheres of government were not delineated based on the expenditure need, capacity and financial adequacy at each level. The financial potentiality and capacity of local government units in urban and rural areas show great variation. Local government units in rural and geographically difficult areas face the challenge of high cost index with multiple barriers. Therefore, they are largely reliant on transfer from the provincial and federal government. Autonomy and their revenue generating efficiency are critical to meet the local government’s ever-increasing service delivery need, which are their constitutional obligations.

To implement the Constitutional provisions of Article 60, the Inter-Governmental Financial Management Act 2074 made legal provisions for four types of Grants (Section 4, Clause 8-11) to be transferred as follows:

**Fiscal equalization grants:** This grant is provided by the Government of Nepal based on the expenditure needs and resource potential of provincial and local government, as per the recommendation of the National Natural Resources and Fiscal Commission.
(NNRFC). The provincial government also provides similar grants to the local level\(^{10}\) based on the local level’s expenditure needs and revenue potential by adding their own revenue as per the provincial law and the recommendations of NNRFC.

**Conditional grants:** This type of grant is earmarked for specific programs, projects or activities to be implemented by the provincial and local level governments as per the schedule of the Constitution (Annex 2, Annex 3, Annex 4 and Annex 5). The national or federal government can impose conditions for the lower tiers of the government to use this type of grant.

**Matching grants:** This grant is transferred to the local or provincial/state\(^{11}\) government to match the resource gap for the projects they may initiate. This is a demand-based transfer and demand has to be put in a form of proposal well ahead of the national budget preparation with specified details.

**Special grants:** This grant is transferred for a specific purpose for specific local or provincial/state governments. This grant does not have a blanket use mandate. Its purpose includes a) basic social sector services such as education, health, drinking water; b) projects that promote balanced development; and c) projects focused to support marginalized groups through economic, social and programs.

The Inter-governmental Fiscal Management Act 2074 (2017) specified the tax and non-tax-based revenue raising power of federal, provincial and local governments. However, the provincial and local level governments have to prepare laws to implement these powers (MoLJPA, 2017). The following table gives details about revenue and tax powers of each spheres of government as provisioned by the Act (Table 9.2).

**Table 9.2 Tax and non-tax power of spheres of government**

<table>
<thead>
<tr>
<th></th>
<th>Federal (related to Clause 3 (1) of the Act)</th>
<th>Province/State (related to Clause 3 (2) of the Act)</th>
<th>Local level (related to Clause 3 (3) of the Act)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>a. Tax</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customs duty</td>
<td>Housing and land registration fees</td>
<td>Property tax</td>
<td></td>
</tr>
<tr>
<td>Excise duty</td>
<td>Motor vehicle tax</td>
<td>House rent tax</td>
<td></td>
</tr>
<tr>
<td>Value added tax</td>
<td>Entertainment tax</td>
<td>House &amp; land registration fees</td>
<td></td>
</tr>
<tr>
<td>Corporate income tax</td>
<td>Advertisement tax</td>
<td>Motor vehicle tax</td>
<td></td>
</tr>
<tr>
<td>Individual income tax</td>
<td>Agro-income tax</td>
<td>Land tax</td>
<td></td>
</tr>
<tr>
<td>Remuneration tax</td>
<td></td>
<td>Entertainment tax</td>
<td></td>
</tr>
<tr>
<td>Other charges, fees</td>
<td></td>
<td>Advertisement tax</td>
<td></td>
</tr>
<tr>
<td>and penalties</td>
<td></td>
<td>Business tax</td>
<td></td>
</tr>
</tbody>
</table>

\(^{10}\) The terms “local level”, “local government” or municipalities are used interchangeably in this book to denote the same.

\(^{11}\) The terms ‘state’ and ‘provincial government’ are used interchangeably to denote the same – subnational government.
b. Non-Tax

<table>
<thead>
<tr>
<th>Description</th>
<th>Federal (related to Clause 3 (1) of the Act)</th>
<th>Province/State (related to Clause 3 (2) of the Act)</th>
<th>Local level (related to Clause 3 (3) of the Act)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passport fee</td>
<td>Service charge/fee</td>
<td>Service charge/fee</td>
<td></td>
</tr>
<tr>
<td>Visa fee</td>
<td>Tourism fee</td>
<td>Tourism fee</td>
<td></td>
</tr>
<tr>
<td>Tourism fee</td>
<td>Penalty</td>
<td>Penalties</td>
<td></td>
</tr>
<tr>
<td>Service charges</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gambling, lottery, casino</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

c. Others

<table>
<thead>
<tr>
<th>Description</th>
<th>Federal (related to Clause 3 (1) of the Act)</th>
<th>Province/State (related to Clause 3 (2) of the Act)</th>
<th>Local level (related to Clause 3 (3) of the Act)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other taxes and non-taxes imposed as per the federal law and other prevailing laws.</td>
<td>Other taxes and non-taxes imposed as per the provincial law and other prevailing laws within the provincial jurisdiction.</td>
<td>Other taxes and non-taxes imposed as per local law and other prevailing laws within the jurisdiction of the local level.</td>
<td></td>
</tr>
</tbody>
</table>

Source: The Inter-governmental Fiscal Management Act 2074 (2017)

Value-added tax and excise duty (from domestic production) are shared among different spheres of governments as follows (Clause 3, Inter-governmental Fiscal Management Act): Government of Nepal (federal): 70 percent; Province and Local Level 15 percent each.

The following table gives the share of royalties of Natural Resources of each level of government (related to Clause 7 (2)).

<table>
<thead>
<tr>
<th>Description</th>
<th>National government</th>
<th>Related province/state</th>
<th>Related local level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mountaineering</td>
<td>50</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Electricity</td>
<td>50</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Forest</td>
<td>50</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Mining and minerals</td>
<td>50</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td>Water and other natural resources</td>
<td>50</td>
<td>25</td>
<td>25</td>
</tr>
</tbody>
</table>

Note: (1) Nepal government, in recommendation of NRNRC, can divide the income based on impact and equity principles; (2) The rate can be reviewed in every five years and can be changes by publishing notice in the Nepal Gazette.

The following are the issues and challenges related to fiscal autonomy and resource mobilization.
1. The NNRFC has not been fully formed yet. Currently (July 2019) it has a Chairperson with a secretary and other support staff. Therefore, its functions have been affected severely. A few revenue distribution parameters have been developed but are not scientifically established to be effective. The NNRFC’s systems and procedures are still under construction. It is also notable that the Prime Minister made a commitment in the first IPC meeting to fill all NNRFC’s positions within a month’s time.

2. The federal treasury is under pressure because of confusion, overlapping in authorities and weak revenue mobilization capacity of provinces and rural municipalities.

3. There are some duplications observed in resource mobilization at federal, provincial as well as local levels. It is largely due to the unwillingness of federal agencies to transfer the programs and projects to lower spheres of the governments.

4. There is a rapid increase in federal government expenditure in such areas as national security and defense, retirement fund and pension, social security and recurrent expenditure.

5. In the absence of an effective evidence-based planning and macro perspective in project selection and implementation at all levels, scared resources are being distributed based on ad hoc and popular decisions, but without any consideration of planning or management principles. Therefore, it is difficult to assess the expenditure needs of each level of government, exact results, effectiveness, equity and efficiency of investments.

6. Some parallel funding (even at the increased level) that are still being continued in the fiscal year 2019-20, which are against the spirit of federalism and constitutional provisions. These include: the continuation of the Constituency Development Fund (see 9.8.3 and 9.9.5) and inclusion of hundreds of small projects in the federal budget that clearly fall under the jurisdiction of either provincial government or local government. Such manipulative provisions and funding decisions at the federal level not only challenge the federalism spirit but also jeopardize participatory planning and budgeting practices that Nepal has been practicing for longtime.

9.9.5 Policies, institutional and legal frameworks

Initially, the federal level ministries prepared a series of model laws, procedures and directives to facilitate the operations of local and provincial governments, which were very helpful at the beginning and served the initial purpose. Now these instruments need to be modified so that the spirit of democratic governance and federalism can be institutionalized by the elected governments in a real sense. On the one hand, national frameworks, policies, norms and standards are important instruments that need to be prepared in a timely manner to facilitate the provincial and local governments to be effective. On the other hand, these frameworks articulate the federal government's priorities that can guide and assist provincial and local governments to determine their pathways within their executive or legislative competencies.

Fundamentally, the federal government's slow pace in establishing national policies in key areas, drafting of new legal frameworks, amending existing laws for provincial and
local businesses, and delay in adjusting civil servants in all levels have severely affected the operations and work of provincial and local governments (Adhikari B., 2019).

The federal government has faced the pressure of meeting the constitutional deadline for preparing appropriate laws related to the areas mentioned in the Constitution - Schedule 7 (list of concurrent jurisdictions between province and federal levels, Annex 3) and Schedule 9 (list of concurrent jurisdictions among province, local and federal levels, Annex 5). Under these areas, the federal government needs to amend or formulate more than 300 laws. A little over 100 laws have been formulated so far (February - March 2019). The government has made changes in other 197 laws by just changing some phrases through amendment to Some Nepal Acts. A recent study by the Ministry of Law has shown that the government needs to formulate new laws in 36 areas. Likewise, it also needs to further change some phrases in 164 additional subjects. All of these need to be completed by 4 March 2019, as per the constitutional deadline.

The third session of the Federal Parliament – made up of the House of Representatives (the lower house) and the National Assembly (the upper house) – passed a total of 16 bills, including two amendment bills, and scrapped old laws that contradicted the new constitution within its constitutionally mandated deadline (4 March 2019), which marks the completion of one year of the first meeting of the federal parliament. The government amended many of the existing laws to align them with the new constitution as a first priority. The passage of these amendment bills also paved the way for the government to implement the Constitution.

The federal government is under great pressure and it is struggling even now with at least two and half dozen bills currently being considered in either house of the federal parliament (Adhikari B., 2019). Due to the pressure of the situation and constitutional deadlines, the government has pushed these measures without first clearing vital policy issues, which would have significant implications for the proposed and discussed laws. In an important sense, provincial and local governments have been dismayed to see they could not exercise their powers when enabling laws remain to be passed by the parliament, a situation that does not give them a role in explicit terms (Adhikari B., 2019).

Despite the effort of the federal government to reform public administration to comply with the new structure, during the last two years, the bureaucracy of the unitary system is still in place with almost no change in its status and functioning (Adhikari B., 2019). Recently (8 February 2019) the Parliament has passed the Civil Servant Adjustment Bill, which was previously brought by the government as Ordinance (December 2018). This is one of the milestones toward federalizing the bureaucracy, which is an important legal instrument to reform the bureaucracy at all levels of government. However, during the initial implementation of the Act, a majority of civil servants preferred to stay at the federal level and very few have offered to work at local government levels. A negligible number is willing to go to remote parts of the country.
The winter session of the federal parliament, which is also called the bills session, failed to pass some important bills until the end of the session (24 March 2019). These include Nepal Citizenship Bill, Peace and Security Bill, Federal Civil Servant Bill, Nepal Police and Provincial Bill, Provincial Public Commission Bill and Nepal Police Integration Bill. These draft legislation may be passed only in the forthcoming session of the parliament. In the absence of these federal level legal frameworks and national standards, provincial governments have not been able to formulate their own provincial level enabling laws and establish institutions like Provincial Public Service Commissions and others. Therefore, the provinces have warned the federal government continuously blaming that Kathmandu is unwilling to share the constitutional rights with the provincial government.

Centralized mindset and recentralization practices

Almost four years into the promulgation of a constitution that enshrined a federal setup and paved way for the devolution of power, provincial governments blamed the federal government for its centralized mindset preventing the provincial governments from exercising their constitutional rights. Provisions in the proposed Police Bill and the Bill to Maintain Peace and Security have also been contested by some lawmakers in the federal parliament, claiming that they pose a serious threat to federalism.

Such confrontation with the federal level government is likely to flare up, if provincial governments try to seek a legal recourse to exercise their constitutional rights in case Kathmandu fails to address their demands. According to provincial authorities, their concerns are over security issues - including the attempt to curtail their rights to deploy police for peace and security, continuing district level structures including the district administration offices, which the Constitution does not recognize, and attempts to give extra powers to Chief District Officers.

Together with the National Association of Rural Municipalities in Nepal (NARMIN), the Municipality Association of Nepal (MuAN), has also submitted a memorandum to Prime Minister few months back. The memorandum, prepared after a two-day long discussion, says the federal government is preparing laws infringing upon 22 rights guaranteed by the constitution exclusively for the local level. Even local governments are expressing their dissatisfaction at the federal government’s attempt to keep intact district structures (sectoral line agencies and others).

The local administrations have expressed concerns that the federal government is trying to control the administration of teachers and manage physical infrastructure of secondary schools despite clear constitutional provisions that say that the local level is responsible for the management of education up to the secondary level.

A weak civil law tradition, the absence of democratic practice and a centralized culture in political parties and the persistent centralized mindset of political leaders are the most vital challenges of federal system in Nepal. This has been reflected in all levels of government, not only limited to the federal level. The federal government’s role has not been a model to support the spirit of the Constitution. The following examples of education and health sectors demonstrate persistent resistance on the part of the federal
authorities to devolve authority for a successful implementation of federalism process. These are outlined below to illustrate the situation.

**Dismissal or alignment of district line agencies**

On 17 July 2018, Government of Nepal scrapped 18 district level line agencies and other district level offices that were under the central level and handed over responsibilities of those offices to local governments. The district offices that were scrapped were: District Education Office, District Public Health Office, District Agriculture Development Office, District Veterinary Office, District Technical Office, District Welfare Committee, Peace Committee, District Water Supply Office, Urban Development Division Office, District Sports Office, District Irrigation Office, District Hospital, District Forestry Office, Women and Children’s Welfare Office, Cottage and Small Industries Office, District Soil Conservation Office and District Cooperative Office (THT, 2018).

Arrangement were made to deal all related issues by concerned local government units through their separate desks. It was also mentioned that the decision to do away with these district offices was a part of the process of institutionalizing federalism in the country. It was also announced that the federal level would limit its functions at district level and oversee only seven different types of district offices, namely, 1) District Administration Office, 2) District Police Office, 3) Survey Office, 4) Land Revenue Office, 5) District Treasury Office, 6) Office of District Attorney, and 7) Postal Office.

**Re-opening of district line agencies after few months**

Few months later, Ministry of Education, Science and Technology re-opened district level units in all districts under the Chief District Officer. The notion of re-opening such unit was to continue exercising its authority which was previously exercised by the District Education Office. The federal government also has barred them from formulating laws needed to manage school education. This decision was criticized by the local government units as it violates the spirit of federalism and constitutional division of power.

On 23 April 2019, the Government of Nepal decided and announced to recruit teachers to fill around 13,000 vacant positions in public schools on its own, which constitutionally falls under the responsibility of local government units. It has further intensified the ongoing tussle between the federal and local governments after the former decided to recruit teachers on its own, ignoring repeated calls from the latter to get that authority.

Another example of the same mindset is reflected in the fact that the Centre for Education and Human Resource Development (CEHRD), under the Ministry of Education, Science and Technology, recently asked its subordinate offices in the districts to hire teachers on contractual basis in open positions (Ghimire, 2019).

The local governments have taken the federal government’s move as a breach of their constitutional authority and an attempt to continue its previous monopoly on power at every level of government. Issuing a joint statement (below), the Municipal Association of Nepal (MuAN) and the National Association of Rural Municipalities of Nepal
(NARMIN), the umbrella bodies of local governments, have reminded the federal government the spirit of the Constitution of Nepal as follows.

Though the statute gives explicit authority to the local governments to manage school education up to the secondary level, the federal government has breached it by trying to appoint temporary teachers on its own. The federal government is repeatedly taking steps to undermine the constitutional authority of the local governments. We will continue to pressure the federal government to respect our constitutional authority.

Schedule 8 of the statute gives the local government’s an explicit authority to manage school education, which means that local governments are free to hire and fire teachers, develop curricula and to hold examinations up to the twelfth grade (NLC, 2015). The federal government has, however, taken a number of steps to curtail their authority. Officials at Centre for Education and Human Resources Development (CHERD) say that as the existing laws authorize the federal government to appoint teachers at the local level, they worked accordingly. The spokesperson for the CHERD asked the local governments to wait until necessary laws are in place. The local governments, however, argued that as all laws that are inconsistent with the spirit of constitution have become invalid to the extent of such inconsistency by 4 March 2019, there is no legal hurdle for the local governments to exercise their power to make such appointments. Article 304 of the Constitution says that any law that is inconsistent with the Constitution will be invalid to the extent of such inconsistency one year after the first meeting of the federal parliament (Ghimire, 2019). In a similar breach of the spirit of the Constitution, the Ministry of Health and Population also revived District Public Health Offices (DPHOs) in all districts a few months after their dismissal.

In addition, there are many other examples that show that there is a strong tendency to re-centralize authority against the spirit and principles of federalism as clearly provisioned in the country’s new constitution. These are: a) increase and continuation of controversial Constituency Development Fund to elected members of parliament from 40 million to 60 million by the Ministry of Finance (FY 2019-20) despite criticism and protest; and b) inclusion of hundreds of small projects in the federal budget to please the members of parliament who were lobbying for such projects; however, such projects should be under the jurisdiction of provincial and local government units (MoF, 2018).

**District Coordination Committee (DCC)**

Local Government Operations Act 2017 provisioned for another institution – DCC to replace the previous DDC, a district level local government unit, before the new constitutional provisions. There is no recognition and role of the DCC in the new constitution; however, the Local Government Operations Act (LGOA) made a provision for it, which created an institutional caveat for the devolution process. The DCCs, however, are given a very limited role of coordination and monitoring within the district.
The District Coordination Committee is elected by the District Assembly, which consists of the Chair and Deputy Chairs of all rural municipalities and Mayors and Deputy Mayors of all urban municipalities within the district. Nine members are elected for a term of five years by the District Assembly including, one Head, one Deputy Head, at least three women and at least one person from Dalit or minority communities. The DCC does not have taxing authority; however, there is a possibility that it may continue acting as previous DDCs, with a patronized support from the federal government.

**9.9.6 Participatory planning, budgeting and implementation at the local level**

In theory, participatory planning, budgeting and management of development activities makes it possible to explore and utilize local knowledge, skills and other potentials and also increases local ownership. If it is done correctly, it will strengthen social accountability and integrate governance with service delivery system leading to better grassroots-level democracy in the long run.

Following the World Development Report in 2004, there is a growing recognition that both technical and governance elements are necessary facets for strengthening public service delivery. "Social accountability actions aim to improve service delivery, citizen empowerment, and/or governance" (Wetterberg, Brinkerhoff, & Hertz, 2016). Planning as part of governance process has a political aspect and there is a challenge to keep the process neutral with social accountability mechanisms in place in the context of party-based elections at the local level. It is further complicated in a system where there is no effective monitoring and supervision and performance review practices. Therefore, there is always an uneasy balance between political bias, autonomy and control.

Nepal practiced a participatory planning and budgeting process for many years starting in 1990s. The process was followed by engaging CBOs, NGOs and other stakeholders as a customary practice even in the absence of elected local government from mid-2002 to 2017-2018. A 14-step process was followed as mandated by the LSGA, 1999 (Table 9.4).

**Table 9.4 Fourteen-step annual planning and budgeting process**

<table>
<thead>
<tr>
<th>Step</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Preparatory Phase</strong></td>
<td></td>
</tr>
<tr>
<td>1. Providing general guidance, planning directives and budget estimation (ceiling) for the next fiscal year (which starts from mid-July) by central level planning authorities (MLD, sectoral Ministries and NPC).</td>
<td>Mid-November</td>
</tr>
<tr>
<td>2. Review of guidelines, planning directives and budget estimation (ceiling) by DDC elected officials, chief of sectoral line agencies.</td>
<td>Third week of November</td>
</tr>
<tr>
<td>Step</td>
<td>Deadline</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>----------------------------</td>
</tr>
<tr>
<td>3. Planning workshop at district level to disseminate information:</td>
<td>End of November</td>
</tr>
<tr>
<td>policies, estimation of resources, planning instruction, etc.</td>
<td></td>
</tr>
<tr>
<td>Participants: DDC officials, chief of sectoral line agencies,</td>
<td></td>
</tr>
<tr>
<td>representatives of district level financial institutions,</td>
<td></td>
</tr>
<tr>
<td>representative of District Chamber of Commerce and Industry,</td>
<td></td>
</tr>
<tr>
<td>representative of NGOs, Chair and Vice Chair of all VDCs,</td>
<td></td>
</tr>
<tr>
<td>VDC Secretaries.</td>
<td></td>
</tr>
<tr>
<td><strong>VDC Level Planning: Preparation of Village Development Plan</strong></td>
<td></td>
</tr>
<tr>
<td>4. VDC meeting: Review of planning instruction and analysis of</td>
<td>Second week of December</td>
</tr>
<tr>
<td>resources for programs and projects to be carried out in</td>
<td></td>
</tr>
<tr>
<td>ward/settlement level by VDC.</td>
<td></td>
</tr>
<tr>
<td>5. Settlement level planning workshop: identification, assessment,</td>
<td>Third week of December</td>
</tr>
<tr>
<td>and prioritization of projects and development activities and</td>
<td></td>
</tr>
<tr>
<td>propose it to VDC through Ward Committee.</td>
<td></td>
</tr>
<tr>
<td>6. Ward Committee meeting (sub-VDC level): Prioritization of</td>
<td>End of December</td>
</tr>
<tr>
<td>projects and activities received from settlement level.</td>
<td></td>
</tr>
<tr>
<td>7. VDC meeting: Preparation of integrated list of projects</td>
<td>First week of January</td>
</tr>
<tr>
<td>coming from different wards (9), prioritize, and budget allocation.</td>
<td></td>
</tr>
<tr>
<td>8. Village Council meeting: among the proposals of settlement</td>
<td>Second week of January</td>
</tr>
<tr>
<td>level planning exercise, approval of program and projects and</td>
<td></td>
</tr>
<tr>
<td>prepare prioritized list of requests to be forwarded to DDC</td>
<td></td>
</tr>
<tr>
<td>through Ilaka/sub-district level planning workshop.</td>
<td></td>
</tr>
<tr>
<td><strong>District Planning: Preparation of District Development Plan</strong></td>
<td></td>
</tr>
<tr>
<td>9. Ilaka/Sub-district level planning workshop: Prioritize plans</td>
<td>First week of February</td>
</tr>
<tr>
<td>and programs proposed by VDCs and Municipalities.</td>
<td></td>
</tr>
<tr>
<td>10. Sectoral Planning Committee meeting at district level:</td>
<td>Second week of February</td>
</tr>
<tr>
<td>Prioritize sectoral programs identified by VDCs and</td>
<td></td>
</tr>
<tr>
<td>Municipalities.</td>
<td></td>
</tr>
<tr>
<td>11. Integrated Plan Formulation Committee meeting at district</td>
<td>Third week of February</td>
</tr>
<tr>
<td>level: Assess, analyse and synchronize sectoral plans and</td>
<td></td>
</tr>
<tr>
<td>programs in order to avoid duplication and promote synergic</td>
<td></td>
</tr>
<tr>
<td>linkages.</td>
<td></td>
</tr>
<tr>
<td>12. District Development Committee (DDC) meeting: Assess district</td>
<td>First week of March</td>
</tr>
<tr>
<td>development plan in relation to central level’s planning</td>
<td></td>
</tr>
<tr>
<td>instructions, guidelines, district policy and guiding</td>
<td></td>
</tr>
<tr>
<td>principles, resource and poverty maps, etc., and prioritize and</td>
<td></td>
</tr>
<tr>
<td>approve district development plan. Prepare prioritized list of</td>
<td></td>
</tr>
<tr>
<td>programs and projects to request the central level.</td>
<td></td>
</tr>
</tbody>
</table>
The planning process was bottom-up, which provided avenues to civil society organizations and stakeholders to engage in the planning and budgeting process. It was practiced for almost two decades in Nepal. It gained popularity over the period.

The new Local Government Operations Act 2017 embedded the principles and provisions of participatory planning process. It has been made mandatory to all types of municipalities; however, during the practice, it has been observed that these processes were not followed properly and the planning and budgeting processes were highly dominated by political interests in many municipalities (at least for FY 2018-19 and FY 2019-20). There is no supervisory and compliance mechanism for such provisions; therefore, there is a possibility of the continuation of violation of such rules and processes. It may contribute to the fading out of the benefit of participatory planning and budgeting process. This powerful process was introduced in late 1990s and early 2000s as a platform for voicing by local people. The following is the seven-step annual planning and budgeting process, as provided by the current provisions (Figure 9.1).

**Figure 9.1 Annual planning and budgeting process**

<table>
<thead>
<tr>
<th>Step</th>
<th>Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td>13. District Council meeting: Review, discuss and approve district development plan.</td>
<td>Second week of March</td>
</tr>
<tr>
<td>14. Forward the district development plan to MLD, NPC and sectoral ministries and departments to allocate budget accordingly and establish planning linkages with regional and national level plans and programs.</td>
<td>End of March</td>
</tr>
</tbody>
</table>

*Source: Local Self Governance Act 1999 and Regulations 2000*

Prepared based on the Guidelines for Plan and Budget Formulation at the Local Level, 2017, MoFALD and Inter-governmental Fiscal Management Act 2074.
On the one hand, the administrative order and legal provisions emphasize participatory planning and budget process. On the other hand, these participatory processes or steps are not spelled out clearly in the LOGA 2017. The Act mentions that municipalities should consult local academicians, experts, experienced professionals, marginalized groups, Dalits, senior citizens and other stakeholders during the planning and implementation process.

The Inter-governmental Financial Management Act 2017 clearly makes provision for the steps and timeframe for budgetary process at federal, provincial and local levels. The budgetary process looks very top down (Figure 9.2), which is quite opposite to the previous provisions of LSGA 1999.

**Figure 9.2 Annual budgeting process**

STEP 1 (Mid-January)
Provincial and local level present projections of income and expenditure of next fiscal year to the federal Finance Ministry

STEP 2 (Mid-March)
GON in consultation with NNRFC gives ceiling of revenue sharing & equalization grant for next fiscal year to provincial and local level

STEP 3 (Mid-April)
Provincial governments in consultation with NNRFC give details of next fiscal year’s grants to local level

STEP 6 (3rd week of June)
Local levels present next fiscal year’s budget to their respective Councils

STEP 5 (Mid-June)
Finance Minister of provincial government presents next fiscal year’s budget to the Provincial Parliament

STEP 4 (Mid-April)
Finance Minister of federal level presents next fiscal year’s budget to the Parliament

Source: Author’s construct, 2019

The above figure outlines different steps of planning and budgeting process at national, provincial and local levels, as specified by the Inter-governmental Financial Management, Act 2074 (2017). It specifies strict timeframes for each step. It gives the impression that the planning and budgeting process is top-down, instead of bottom-up as Nepal practiced earlier (see 14-steps planning process in Table 9.4 above).

**Engagement of stakeholders in local governance process are important**

Engagement of community groups and local people in the local governance process, planning and monitoring process in particular is important to maintain the responsiveness of the providers and address local needs. It is also believed that the participatory process may strengthens human relation and respect the dignity of citizens. This can be a pillar upon which successful participatory democracy stands and thrives. With the current situation of polarized party politics in Nepal, there is a need to emphasize participatory

---

14 The timeframe is given according to the Nepali calendar in the Act. The timeframe quoted in this figure is converted into English calendar, therefore are tentative, not exact dates.
approaches to minimize elite capture. The needs of marginalized groups need to be attended to more than that of party cadres. The participatory process builds not only local ownership but also strengthens grassroots democracy.

The Indonesian experience shows that if citizen engagement and provider responsiveness are neglected, there is a risk of falling back into old patterns and losing the hard-won momentum for service improvements (Wetterberg, Brinkerhoff, & Hertz, 2016).

**Direct budget allocation to lawmakers is spoiling the spirit of federalism**

One of the beauties of the new constitution is an autonomous and powerful local government. However, continuing and increasing significant amounts of federal budget given to the Members of Parliament (from Rs. 40 million to 60 million in FY 2019-20) has been spoiling the spirit of federalism, participatory planning and also limiting the spirit of the autonomy of provincial and local government units. Following the federal government’s path, the Karnali Province passed the budget for FY 2019-20 (on 14 July 2019) with the provision of huge discretionary funds allocated to the members of provincial parliament, which is extraordinarily high (Rs. 150 million for each provincial parliament member).

All other provincial governments have followed the suit of the federal government and provided direct budget allocations to lawmakers, ranging from six million to 30 million (FY 2019-20). Province 2, moving a step ahead of the federal government, will provide Rs. 10 million to every provincial parliament member elected under the proportional representation system. In total, it is a significant amount, which becomes nine percent of the total provincial budget.

Such discretionary funds allocated to each member of the parliament have created multiple implications: weaken the legislative function, raise serious accountability issues and promote corruption. Furthermore, it may gradually weaken the federal, provincial and local government institutions. It is against the spirit of the Constitution, federal system and grassroots democracy.
PART 4: CASE STUDIES OF SELECTED FEDERAL COUNTRIES
10 Case studies of selected federal countries

The selection of case studies was inspired and guided by various considerations, particularly the following: (a) a cooperative federal system in practice; (b) local government units are autonomous and made responsible for basic service delivery functions; and (c) governance structure in the federal system from which Nepal can potentially learn lessons. Based on these criteria, three countries, namely, Germany, Brazil and South Africa were selected to study and elaborate as case studies.

From these selected case studies, it is expected that one can learn lessons in following aspects: (a) spheres of government, local government structure, their competencies and practices; (b) common issues and challenges of the federal systems; (c) cooperation mechanism in multi-level governance settings; and (d) intergovernmental relation and sharing of resources among spheres of governments.

Overview of the federal systems

The country case studies that are discussed below vary greatly in geography, population size, and wealth (Table 10.1).

<table>
<thead>
<tr>
<th>Descriptions</th>
<th>Germany</th>
<th>Brazil</th>
<th>South Africa</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geographic size (million sq./km.)</td>
<td>0.35</td>
<td>8.5</td>
<td>1.2</td>
</tr>
<tr>
<td>Population (million)</td>
<td>82</td>
<td>193</td>
<td>49.97</td>
</tr>
<tr>
<td>GDP per capita (USD, 2012-14)</td>
<td>46,268</td>
<td>11,208</td>
<td>6,618</td>
</tr>
<tr>
<td>Constituent units15 (territorial units)</td>
<td>16 (Länder)</td>
<td>27 (Provinces)</td>
<td>17 (Provinces and urban metropolitan cities)</td>
</tr>
</tbody>
</table>

Source: Poirier & Saunders, 2015

10.1 Federal Republic of Germany

The Federal Republic of Germany is a democratic, and federal welfare country (Article 20 of the Basic Law and Federal legislation Article 50 GG). The Basic Law of 1949 (Grundgesetz für die Bundesrepublik Deutschland) is the constitution of the country. The German federal system is setup by the Basic Law, which was reformed in 2006 and 2009 (recent amendments). Its federal system is integrated, and it is based on the principle of cooperative federalism.

15 It does not include all forms of associated territories in the list, but only territorial division that either are formally constituent units or enjoy a very similar defacto status, for example, in case of South Africa, provinces and federal district (9) and urban metropolitan cities (8) are included.
10.1.1 Political structure

This country is an interesting case for the study of federalism as it is emerging as a model, especially after the unification with East Germany and recent reforms of 2006 (Parker, 2015). The South African system is also strongly influenced by the German federal system. However, the German discussion of federalism is very complex to interpret and understand due to its complex mechanism for cooperation, fiscal equalization and party politics in particular.

Historically, the German confederation or alliance existed since the 18th century. While political and administrative functions in recent decades have been continuously strengthened, elements of local administration have continued to be ‘integrated’ into the federal and state government administration (Reuter, 2009). The German federal system is based far more on relatively detailed written constitutional principles than is the federal system in the United States, which has evolved in reaction to political and economic developments in a long, often difficult and discontinuous historical process in which the Supreme Court has played a key role. Germany, like most European countries, has a well-established parliamentary system with the typical array of rights and liberties associated with all recognized and well-functioning democracies (Gunlicks, 2003). It is a federal parliamentary democracy. Like other parliamentary democratic systems, it follows the separation of powers in three branches, as described below.

Executive

The executive power is vested in the Cabinet chaired by the Federal Chancellor. Principally, the executive power is jointly exercised by the President and the Chancellor. But the Presidential function is essentially symbolic with limited reserve powers, and most executive powers are vested in the Chancellor. The Chancellor can be removed by the Bundestag, if it has agreed on a successor and ‘constructive vote of no confidence’ (Parker, 2015).

Legislative

The German parliament is a bicameral legislature that consists of the elected Bundestag (lower house) and appointed Bundesrat (upper house), representing the Länder (16 states) at the national level. The Bundestag has the most sweeping legislative authority; however, the Bundesrat has a veto power on legislations for which the Länder have concurrent powers or for which they must administer federal regulations. In this way, check and balance have been maintained in the German legislative system. The government of the Länder has similar provisions as that of the national parliament, with the principal exception that they are all unicameral (Parker, 2015).

Judiciary

The judiciary is independent with extensive responsibilities. Federal law delineates the structure of the judiciary, but most courts are administered by the Länder law. The most important judicial body is the Federal Constitutional Court. The court of last appeal is the Federal Court of Justice.
The Basic Law enshrines the country as a parliamentary republic, with a bicameral federal legislature. The principle of responsible government is the central theme of the system, similar to parliamentary democracies in the British tradition. Germany, however, departs from the British model in a couple of notable ways. One, as a republic, Germany’s head of state is the Federal President as opposed to a monarch or their representative in the British or commonwealth tradition. However, unlike France or the United States, Germany’s president plays a symbolic role and rarely exercises power independently similar to the role of the monarch in the UK and other Commonwealth countries. Germany’s second chamber, the Bundesrat, serves as a chamber of subnational representation, and includes direct representatives of the state governments with veto power. This structure causes the Bundesrat to play two roles in the German parliament. One is as the customary ‘check and balance’ against the decisions of popular representation in the lower house. The other is a conduit for the interest of the States/Länder to be expressed within the national and European politics and legislation (Parker, 2015). This is an important intergovernmental arrangement at the legislative level in Germany.

The lower house of the federal parliament, the Bundestag, serves as the chamber of popular representation. Election takes place every four years and 598 members are elected in the system of mixed proportional representation. Half of the members are elected in local constituencies known as direct mandates while the remaining 299 are drawn from party lists and allocated proportionally based on popular vote totals (Parker, 2015).

What is interesting about this arrangement is that, unlike some other systems of proportional representation, it does not simply add power to the national party organizations. The rules and organizations for the candidates pursuing direct mandates are determined by the party organization at the Länder level, while party lists are determined by national leadership. These arrangements give both the state and national arms of political parties an important role in elections to the Bundestag and adds an element of federalism even to the elections in the lower house. In contrast, the Bundesrat or Federal Council is explicitly a chamber for federalism and representation of subnational interests. Germany’s Bundesrat is often held up as an archetype for intrastate federalism, as it allows for the direct participation of the Länder governments in the federal legislative process. Delegates are chosen by the government of each Land and are generally member of the cabinet. Senior bureaucrats are also often participate in committees but they cannot vote in the plenary sessions. As such, the Bundesrat is a ‘continuous body’ - members change as governments at the state level change or choose to replace their representatives (Parker, 2015). However, the members who represent Länder government cannot act as independent voters. They have to vote as per the instruction of their Länder government all together in block. They are not permitted to split their vote.

Unlike in the American or Australian Senates, the German Länder do not have equal representation in the Bundesrat. Rather, each Land has guaranteed three votes (minimum) with additional votes granted for passing certain population thresholds; state/Land with more than two million citizens get four votes, those over six million get five, and any over seven million receive six votes (Parker, 2015).
Legislative responsibilities between federal government and the 16 Länder are divided into both exclusive powers and concurrent powers. The exclusive power of the federal government includes defence, foreign affairs, immigration, transportation, communication and currency standards. Areas of concurrent powers or fused responsibility include civil law, public welfare, spatial planning, regional economic development and agricultural reform. Areas in the exclusive jurisdiction of the Länder include public education, universities, law enforcement, church affairs, local government and cultural activities. Article 30 of the Basic Law states that "Except as otherwise provided or permitted by the Basic Law, the exercise of state powers and the discharge of state functions is the matter for the Länder" (Tomusch, Christian et al., 2018).

10.1.2 Multi-level governance

In the EU context, Germany has five distinct legally independent political levels. From top to bottom, they are: (a) the European Union: as the association of various European countries (super-state level); (b) federal Republic of Germany: as a nation state with constitutional sovereignty; (c) the 16 Länder: as subnational government; (d) districts: regional branches of Land Governments; and (e) counties, towns and municipalities: local government units (second and first tier local government).

The Federal Republic of Germany is a country with fairly high level of devolution with democratic values with a strong local government system in practice. Although the modern German federation is relatively new, Germany’s experience with the concept of divided sovereignty is much more extensive (Parker, 2015). The present existing system of sharing political, economic and financial power between the different levels of government is based on a long history even within the former kingdoms. After World War II, following a fully centralized dictatorship under Hitler, the four allied powers more or less forced the country to re-establish a system of states to decentralize political power with the notion of preventing the government becoming too powerful again (Kroes & Baumer, 2016). Thus, Germany brings a long history and experience of multi-level governance, as various forms of multi-level governance have been the norm since its long historical time. It looks complex for the outsiders, especially at the local level government (counties, cities, and municipalities), but it is functioning quite well for a long time.

Constitutionally, the German federal system is made up of two tiers, the Federal and the State (Länder) level. The local government is not an additional tier of the system, but it belongs to the State Constitution and business. Each State (Land) has its own local government legislation under the State Constitution, which defines the structure and competency of local government units. States can frame the structure of their local government units under the general principle of subsidiarity or local autonomy, which is guaranteed in Article 28 of the Basic Law. Thus, Article 28 unites local government throughout the country by its basic principles.

Federal level

The federal government in Germany is called the Bund. German federalism is popularly known and characterized by strong cooperation between the federal, the state, and the
local levels (Politikverflechtung\textsuperscript{16}). There is both horizontal and vertical political integration, which are highly valued and practiced in German federalism recognizing the fact that multi-faced problems could not be resolved by only one level of government, so more levels need to be engaged and they need to cooperate with each other jointly. This cooperative system is quite sensitive and sophisticated, but such practice strengthens collaboration and interdependence among different levels of government in the long run.

The federal level has most of the legislative and policymaking responsibilities or competences. At the same time, policy implementation and administration are mainly the responsibilities of the states, which in turn delegate most of these functions to local authorities. Unlike other federal countries, this functional cooperation implies that the federal level has only a limited number of field offices of their own (Wollmann, 2003). Therefore, the German federal system is also called as administrative or integrated federalism by many authors.

**State (Land) level**

After unification between East Germany (5 states) and West Germany in 1990, the country has a total of 16 states known as Länder\textsuperscript{17}, including the three city states of Hamburg, Bremen and Berlin. Germany remains the most populous country in the European Union, with the largest economy (Parker, 2015). According to Basic Law, all legislative and administrative functions are assigned to the Länder, except for those under exclusive competency of the federal government.

The present functions and responsibilities of the federal, state and municipal level were reformed by amending the Basic Law on 28 August 2006 (Föderalismusreform I), which came into effect from 1 September 2006. It represents the most comprehensive amendment of the Basic Law so far. It clarified the functions and responsibilities and also includes newly transferred responsibilities to the Länder.

The dominance of the Länder in administering federal laws furnishes them with dual influence and they are the key players in national politics and administration. At the stage of implementation, the Länder exercise their own authority and responsibility (Lhotta & Blumenthal, 2015). The Länder have wide-ranging responsibilities, which include education (including universities), internal administration, regional economic development, public welfare and health, culture, environmental protection, public order and local government affairs. Local government functions are defined by the Land, therefore, they vary considerably from one Land to another. However, they usually include both mandatory and optional functions. Mandatory functions for district include secondary roads, public transport, spatial planning, fire protection, nature and landscape, hospitals, education (secondary schools), etc. For municipalities, they include local roads, town planning, housing, sewerage, waterways, education (primary schools), recreational areas and social

\textsuperscript{16} interwoven politics  
\textsuperscript{17} Singular – Länder (state), plural Länder (states)
and youth welfare. Optional functions include cultural activities, economic development, tourism, local public transport, sports and leisure, etc. (ULCG and OECD, 2016).

**Subnational level**

There is a multi-tier system within the subnational level (Figure 10.1). Below the Länder level, the government is composed of counties (Landkreise) as the second tier of local government and county free cities (Kreisfreie Städte\(^{18}\)), and at the lower level, municipalities (Gemeinde) including cities or Städte (ULCG and OECD, 2016).

**Figure 10.1 Multi-level governance in Germany**

Across Germany, there are a total of 295 counties (Kreise) and the 11,313 municipalities (Gemeinden), which are the lowest level of official territorial division in Germany (2016). This is most commonly known as the third level of territorial division, ranking after the Land.

**County (Kreise) and county-free cities (Kreisfreie Städte)**

The counties are administrative tiers with elected councils and elected presidents (ULCG and OECD, 2016). At the regional level, the districts (government office of the region or Bezirksregierung, with appointed president) are extended hands of Land (state) to support the Land in implementing their programs and they deliver services on behalf of the Land. The districts also play a supervisory role over constituent municipalities on behalf of the Land (Kramer, 2005). The counties, in contrast, are part of local-self-government (second tier) and have responsibility, among others, for maintenance of secondary roads, waste management, public transport, school buildings, and tourism. County councils are directly elected, and their powers are derived from Land legislation and delegations from Land and municipalities from that part of the county. Sometimes, the counties are seen as seizing municipal functions due to financial necessity and scope of work. Some large cities have the same status as counties and are referred to as county-free cities, i.e. they are not part of a county (Kreisfreie Städte) (Kramer, 2005).

\(^{18}\) These are cities with dual status.
The counties also support municipalities in multiple ways. The counties (Kreise) consist of a number of municipalities (Gemeinden\textsuperscript{19}) with the function of providing services more effectively and efficiently through better coordination, collaboration and pooling of resources and expertise. The counties also have a coordination function that, due to the nature of the function, a municipality may perform effectively and efficiently on its own, e.g. water services (Kramer, 2005). There are also a number of functional inter-municipal associations. A municipality can join or establish partnership with these associations as per their need, willingness and understanding. Participating municipalities (with associations) may delegate specific functions (e.g. planning, transport, fire services, waste disposal etc.) to these associations by written agreement, which are regarded as public entities.

**Municipalities (Gemeinden)**

The Basic Law of 1949 continues the traditional recognition of the role of local government in the federal system in Germany, as Article 28 outlines (Kramer, 2005):

The Municipality shall be guaranteed the right to manage all the affairs of the local community on their own responsibility within the limits set by law......The right to self-government shall include responsibility for financial matters. The local government have the power to levy trade taxes according to the rates for assessment determined by them.

Municipalities, however, are not incorporated as a third level in Germany’s governmental system, but rather they are a part of Land administration, as described above. Thus, there is no direct legal and working relationship between the federation and the municipalities. Supervisions of the municipalities is exclusively the task of the Länder authorities. Following recent trends, the municipalities are being strongly influenced by federal policies (Kramer, 2005).

The Basic Law requires that counties and municipalities be democratically governed and entrenches the right to local self-governance. Municipalities are constitutionally and legally independent local government institutions. They are in-charge of their own administration and planning, and they also carry out delegated tasks for the federations and the Länder, as needed. The municipality delivers wide range of public services to their residents. The municipal administration is not subject to the specialist and programmatic supervision from the Land administration, but only to its legal supervision in particular for urban development. The federation itself also has no direct supervisory rights with regard to municipalities (Kramer, 2005).

While the Länder governments can introduce their own legislative initiatives in the federal arena via the Bundesrat, the municipalities cannot participate formally in the legislative procedure of the federation; at best, they appear as lobbying groups, for example, through the German Conference of Municipal Authorities (Kramer, 2005). The

\textsuperscript{19} Singular Gemeinde (municipality), plural Gemeinden (municipalities).
local government as self-governing body according to the principle of subsidiarity, is constitutionally guaranteed, but their functions and responsibilities are determined and governed by their Land government. Therefore, their organizational structure and functions varies from one Land to another. Several municipal and even county merger policies were carried out by the Länder over the last decades, and more recently, in Saxony-Anhalt for example. Overall, the number of German municipalities has decreased by one-third between 1990 and 2016 (ULCG and OECD, 2016).

10.1.3 Intergovernmental coordination

European integration has had a major impact on the European countries’ political and administrative structure including intergovernmental relations, policy process and other governance aspects. Intergovernmental coordination mechanism in Germany is very complex and delicate. Germany has a relatively high degree of overlap and shared responsibilities between the federal government and the Länder (Parker, 2015). There are numerous cooperation mechanisms between the Länder and the federal government and among the Länder themselves. Only major mechanisms are discussed here for our purpose.

Broadly speaking, the intergovernmental coordination mechanisms are built-in and practiced at administrative and political levels, including the election process and party politics. Vertical and horizontal coordination mechanisms are established to strengthen collaborative efforts – to exchange information, resolve practical problems and cross-boundary cooperation. These can be either temporary or permanent in nature. Horizontal cooperation between and among the Länder is said to take place at a kind of extra-constitutional ‘third level’ between the federation and the Länder (Gunlicks, 2003). The political party coordination in Germany is more frequent than territorial coordination but it performs a structuring instead of a substantial function during the coordination process. However, the findings suggest that the allocation of power is more important than party political composition in explaining variation between sectoral ministerial conferences (Yvonne, 2018).

Bundesrat

At the legislative level, the Bundesrat is the central institutional platform for intergovernmental relations and cooperation. It consists of representative from the Länder governments who do not enjoy a free mandate but are bound by the decisions of their respective Land government. The Länder governments, thus, play a crucial role in national politics through the Bundesrat (Lhotta & Blumenthal, 2015).

Formal and informal mechanisms

There are two types of mechanisms for intergovernmental coordination – indirect and direct. The mechanism at the political level is more indirect. For example, the rules and organizations for the candidates pursuing direct mandates are determined by the party organization at the Länder level, while the party lists are determined by national leadership. This arrangements gives the state and national arms of political parties an
important role in elections to the Bundestag and adds an element of federalism even to elections in the lower house (Parker, 2015).

**Sectoral Coordination Mechanism**

The second type of mechanisms are more direct or formal. These formal mechanisms include Intergovernmental Council, which comprise 18 sectoral ministerial conferences and the prime ministerial conference as apex organization for the purpose. It takes place about every three months to consider common demands on the federation, and subject ministers in the Länder meet regularly to consider a wide variety of themes, including drafting legislation (Gunlicks, 2003). They complement the Bundesrat as institutions of intergovernmental relations in the German system of cooperative federalism deal with matters of shared rule as well as self-rule (Yvonne, 2018).

There are other intergovernmental forums (at least twenty), which bring together ministries from among the Länder – one for every major (even minor) policy area (Parker, 2015). The sectoral coordination mainly takes place at an early stage of the coordination process and is able to solve a bulk of coordination problems by drawing on expert knowledge, information exchange and coordination.

**Agreements**

Germany also has another important mechanism of signing intergovernmental agreements. There are two types of such agreements (Parker, 2015):

1. Executive Agreements (*Verwaltungsabkommen*), which are the negotiations between Prime Ministers and Ministers of the Länder. It does not require direct engagement of the legislatures. In the 45 years (between 1950 and 1995), 40 such agreements have been signed at a rate of less than one agreement per year.

2. Intergovernmental Contracts or Agreements (*Intraföderale Staatsverträge*), which are treaties between Länder. Once negotiated, they involve the passage of a law by all the signatories.

The second mechanism, which is more horizontal, has become common in recent years as a best-known legal instrument for cooperation. It can be useful when competency related issues cannot be resolved through the national legislative process, or such issues are not necessarily applicable to all states.

**10.1.4 Fiscal arrangements and autonomy**

From the beginning of the Federal Republic, the size, population, and economic power of the Länder have varied significantly. This asymmetric mechanism has made fiscal federalism a bone of contention because making use of their competences requires financial resources for the Länder and, therefore, a sophisticated system of collective taxes and redistributing them have been practiced in Germany (Lhotta & Blumenthal, 2015). However, the Länder and federal governments are constitutionally required to remain fiscally independent and autonomous. Local government system also includes fiscal autonomy.
The federal government has exclusive power over customs matters and fiscal monopolies, income tax is concurrent and the Länder can legislate on local excise taxes and local land taxes. The Constitution allows for ‘joint tasks’ programs between the federal government and the Länder. Under these programs, decisions on public investment projects are taken jointly and the federal pays for 50 percent or more of the cost of investments.

In reality, fiscal power is heavily tilted toward the federal government and there exist significant constraints on the ability of states and local government to levy and create taxes. In particular, the general fiscal framework is adopted at the federal level and states must comply with it.

**Fiscal autonomy in multi-level governance setting**

The German Basic Law recognized and protected the fiscal autonomy of municipalities. The municipalities’ autonomous spending power cannot be infringed by the Länder governments (Steytler, 2005). The local government is a significant order of government. Germany has one of the highest levels of fiscal decentralization in the EU countries. Subnational governments manage 46 percent of the total government expenditures (2013) due to their considerable responsibilities. Of the total, the Länder manage (28%) and municipalities (18%). These shares of expenditures are quite stable between Fiscal Year 2000 to 2013. The German system seeks to ensure that funding distribution and executive responsibilities are clearly defined (Alcidi, 2012).

Rules for shared taxes between the federal government and the Länder are precisely determined by the Basic Law. Income tax revenue – reduced by a share for the municipalities - and corporation tax are shared equally. Additionally, 75 percent of VAT revenues are redistributed across the Länder to ensure a uniform standard of living across the country as provisioned in the Article 106 of the Basic Law (Alcidi, 2012).

A municipality has the power to levy trade taxes as frontline public agency and then share it with the federal and Länder governments, who are entitled to a portion of this revenue. Both property tax – a significant source of income – and local excise taxes fall under the domain of municipalities. Apart from the taxes raised, a municipality is also entitled to a specific share of the revenue from income tax and general sales tax on the basis of the taxes paid by its citizens (Kramer, 2005). Generally, the local government raises about a quarter of its revenue from trade and property taxes. The remaining three-quarters of the local government income come from its share of income and general sales tax revenue, and its portion of the Länder’s share of the joint taxes. Länder, though their constitutions, usually guarantee sufficient financial resources to perform duties delegated to local governments, however, this does not apply to duties which the local government must execute (mandatory functions) as a part of their self-government duties.

Recent GDP and public expenditure data show that the German subnational governments (SNGs) are key economic and social players. Their share in GDP and public spending were above the OECD average (respectively, 16.6% and 40.0%). SNGs are also main

---

21 SNG denotes States (Länder), Kreise, and Gemeinden all together (11,510).
employers in the public sector, accounting for more than three-quarter of total public staff spending. SNG role in investment is also significant: SNG share in public investment is 10 percentage points above the OECD average (of 58.5%), and even when only federations are considered (60.2%). However, the share of SNG investment in GDP is significantly below the OECD average of 1.8 percent (ULCG and OECD, 2016).

The Länder accounted for 63% of SNG expenditure in 2013. Within the local sector, municipalities account for the greatest part of local spending. Compared to OECD unitary countries, spending responsibilities of local governments in Germany are significantly lower both in terms of current and capital expenditure. Social protection, general public services and education are the three main areas of spending, weighing similarly. They are followed by economic affairs and transport (ULCG and OECD, 2016).

The Länder’s primary areas of expenditures are general public services, education and social protection. Local government’s spending goes primarily to social protection, general public services, education and economic affairs and transportation services. SNGs are responsible for the large majority of overall public spending in the areas of security and public order, environment, housing and community amenities, recreation and culture and education (ULCG and OECD, 2016).

Grants and subsidies: Besides tax equalization, there are horizontal equalization transfers to Länder, aimed at reaching equal public services in all regions. Länder with lower-than-average fiscal capacity are compensated through federal transfers. In addition, specific transfers are made to reflect certain needs of the Länder, to finance joint tasks or for specific purposes. At the local level, there is no direct federal grant to local governments, only state grants. They represent a significant source of revenue and comprise general, compensation, investment and specific grants.

Other revenues: Other revenues, in particular user charges and fees paid by local citizens and corporations as users of local public services, are a significant source for SNGs, especially for local governments.

Debts: Balanced structural budget provisions and a ‘debt brake rule’ were introduced in 2011 at the federal and Länder levels following the 2009 constitutional reform. After a period of transition, it will take full effect in 2020 for the states. The rule calls for structurally balanced budgets for the Länder. Local governments must balance their budgets and have borrowing restrictions, determined by each state. Commonly, local governments may borrow to fund capital investment with the approval of the supervisory authority. German SNG debt, as a percentage of GDP and public debt, are above OECD averages, the Länder accounting for around 80 percent of the SNG debt. In 2013, debt included exclusively loans and bonds in equal proportion. Municipal borrowing is only under the form of loans while bonds represent around 60 percent of outstanding debt for Länder.

Equalization mechanisms

The equalization mechanism that involves the Federation and the Länder is one of the strongest in Europe. The aim of the system is to guarantee each Länder to cover their
necessary expenditures and to ensure equivalent living conditions throughout Germany (Alcidi, 2012).

The system involves three levels: primary horizontal equalization between the Länder, secondary horizontal equalization within the Länder, and finally vertical equalization by supplementary federal grants. At the first level a maximum of 25% of the Länder share of VAT goes to those Länder with below average revenue from income tax, corporation tax and Länder tax. The second step further equalizes fiscal capacity at the Länder level. In the third step, supplementary grants are provided by the Federation to those Länder with subpar fiscal capacity. Thus, the variance of fiscal capacity across the Länder is considerably reduced (Alcidi, 2012).

Within Länder a separate equalization mechanism also affects municipalities. As between Bund and Länder, equalization within the Länder is not only vertical but also horizontal, with wealthier municipalities having to contribute (Alcidi, 2012). Thus, the fiscal redistribution systems, which is unique, allow to ensure comparable living conditions throughout the country, which is relatively better in Germany and few other European countries. Fiscal system in Germany, however, is very complex and sometimes puts constraints on the state level institutions. Fiscal burden to better off states became very heavy following the reunification with East Germany.

10.1.5 Special features

The Basic Law of Germany clearly defines its system of cooperative federalism with clear roles and responsibilities in most issues. Germany’s system was built mainly to avoid the weakness of the Weimar Republic, in other words, to prevent the possibility of returning back to dictatorship again. Therefore, framers of the constitution have succeeded in creating a stable democracy with a relatively high level of devolution. Therefore, there are some constitutional safeguards for democratic systems to continue functioning and to create a stable political system. These safeguards include the following:

a. Federal nature of system cannot be changed.

b. Fundamental rights are guaranteed in the Constitution.

c. Länder are free to organize themselves but must respect basic democratic principles.

d. Each Land has its own state constitution which stipulates the organization of their governments.

e. Undemocratic and extremist parties can be outlawed.

f. Certain fundamental principles enumerated in the Basic Law cannot be suppressed.

g. The Chancellor is given clear central authority.

h. Chancellor can only be removed with a ‘constructive vote of no confidence’.

i. Parties must gather at least 5 percent of the votes to be represented in the parliament.

j. Bundesrat members are not elected but selected by the Länder.
10.2 Federative Republic of Brazil

Brazil is the largest and one of the growing economies in South America. It was known for its wider inequality earlier, however, it has sharply declined over the period. The income Gini-coefficient, which peaked up at 0.63 in 1991, has steadily declined since then and was 0.50 in 2013. Income inequality and poverty levels are still high, however, unevenly distributed throughout the country. Critiques say that the country’s centralization of revenue collection and homogeneous policy may have led such income inequality in the country (Arretche, 2015).

Brazil is a federal republic country with presidential system. Referring to its history, the country has been a federal country for more than a century, but in different forms. Federalism was incorporated in the Constitution of 1988 (Bin, 2011).

Brazil has a three-tiered federal system. The municipalities are not the creation of the state, but constitutionally guaranteed self-governing bodies. They also enjoy considerable policymaking authority (Hueglin & Fenna, 2015). The Constitution has detailed provisions governing the subnational jurisdiction, and revenue, and the Constitution maintained its tradition to straighten the municipal government vis-à-vis the state government (Bin, 2011).

It has 26 states and one Federal District (distrito federal) and 5,570 municipalities (July 2018). Thus, total number of subnational government (SNG), which include both state (26) and municipalities (5,570), and the total become 5,597. More than 85 percent Brazilian people live in urban areas. The federal, state, and local governments obtained their respective autonomy from the 1988. The 26 States and the Federal District have their own constitution (ULCG and OECD, 2016). There is no intermediate level government between state and municipal level.

10.2.1 Political structure

The federal, state, and local governments obtained their respective autonomy from the 1988 Constitution. The Constitution defines federalism as a combination of federal government, 26 states and the Federal District, and municipalities and city authorities. Each level of government has its directly elected executives, so all levels are run under the presidential system. Their respective legislative assemblies are elected directly for four-year term. Only the federal legislature is bicameral, the state and local legislatures are unicameral (Arretche, 2015). Party whip is commonly practiced in Brazilian legislative process.

In Brazil, the municipalities are not under the state, which is not the case in most federations. They are rather granted the status of a part of the federal entities, at the same level as the states. They are governed by an organic law, which must comply with federal and state constitutions. There are wider gaps in the size (geographical area and population), social and economic indicators among municipalities, but all Brazilian municipalities enjoy the same legal status (ULCG and OECD, 2016).
Executive

Executive power is vested in a President elected by popular vote for a five-year mandate. The President is very powerful in Brazil. S/he has power to appoint about 48,000 positions; s/he can use a line item veto, impound appropriated funds, issue decrees and provisional measures, initiate legislation and enact laws. S/he appoints ministers and decides on the structure of the cabinet. There is a common practice that the President takes account of representation of different regions while appointing ministers.

Legislative

The country has a bicameral legislative body. Legislative power is exercised by the National Congress (Congresso Nacional) with 513 members, comprising of the Chamber of Deputies (Câmara dos Deputados) and the Federal Senate (Senado Federal) with 81 members composed of three representatives from each state and the Federal District. The Senate is the upper house of the National Congress, it serves eight-year terms. Election of Senate takes place in every four years, alternating between one third (27) and the remaining two-thirds (54) of the seats. Senators are directly elected by popular votes of the residents of each state (Rosenn, 2015).

The Chamber of Deputies (lower house of the National Congress) represents the resident of each state, and its members are elected for a four-year term by a system of proportional representation. Seats are allocated proportionally based on population (minimum of 8 to maximum of 70 seats). The election of the Chamber of Deputies takes place in every four years.

The Congress meets every year in two sessions of four and half months each. States are also guaranteed a minimum number of deputies and large states are underrepresented in the Chamber. Congress has full veto power over the budget, it may issue legislative decrees not subject to presidential veto, can override a presidential veto with absolute majority, and must approve all international agreements.

Judiciary

It is composed of federal, state and municipal courts. The Federal Supreme Court has eleven judges, they are appointed by the President and must be approved by absolute majority of the Senate. The Federal Supreme Court decides on constitutionality of law. It can issue a warrant of injunction to ensure rights guaranteed by the Constitution, but not regulated by law. It can decide on matters of constitutionality without waiting from appeals to come through the federal courts (Arretche, 2015).

10.2.2 Multi-level governance

Brazil adopted the system of multi-level governance with full constitutional autonomy. The local government system is considered as one of the most decentralized among federal countries. Unlike to most of other federal countries, states in Brazil have freedom to unite, divide or form new state(s).
The Brazilian federations became substantially integrated, although each order of government has its own dependent civil service. Shared rule and self-rule are combined in such a way that, on one hand, national or federal government’s regulatory powers exert a strong influence on constituent unit’s agenda and policies while, on the other hand, the same constituent units retain autonomy either to innovate upon federal-led programs or to launch their own policy innovations. As a result, intergovernmental relations pervade the country’s political life (Arretche, 2015).

Federal level

The federal level performs a redistributive, policymaking and regulatory role, leaving subnational governments to perform an important role as policy makers and implementers of decentralized policies (Arretche, 2015). The federal government is responsible for almost all policy matters, foreign affairs, defense, monetary systems, trade, and social and economic policies. The Brazilian system gives concurrent powers to federal, state and municipal governments in many sectors. However, the federal level can use its superior political and fiscal resources to become dominant in any field it chooses (Rosenn, 2015).

The constitution determines which activities are to be performed or regulated exclusively by the federal level, and which are the responsibility of municipalities. As for the states, they may carry out all functions that are not explicitly foreclosed to them under the constitution. There is no clear division of responsibilities in a number of areas, such as health care, education, social security, welfare, agriculture and food distribution, environmental protection, sanitation and housing, tourism, etc. With few exceptions (e.g. defense), responsibilities are shared, with frequent overlaps of responsibilities across levels of government. A few competencies are mostly or exclusively devolved to the municipalities; those related to the provision of public services of local interest (public transport, early childhood and primary education programs, and public health services) and the management of urban planning (ULCG and OECD, 2016).

State level

The 26 states and the Federal District have their own constitution, which must respect fundamental principles of the Federal Constitution. State legislatures are unicameral. Governors are elected by popular vote. States are the electoral districts of both houses. States are divided into municipalities (municipios) headed by a Mayor and a Municipal Council (Rosenn, 2015). State governments are responsible for education, health, maintaining state highways, low-cost housing, public infrastructure, telephone companies and transit police. Both state and municipal governments are responsible for water, sewerage and waste management.

Some scholars argue that the states in Brazil have been increasingly marginalized in the federation. States have also undergone important fiscal losses. The role of municipalities in policy delivery has voided the states’ role in many policy areas. Governors do not seem to have the influence they exert in other federations. Nonetheless, there is evidence that when governors undertake initiatives to either coordinate or collaborate with their own municipalities, it makes a significant difference on policy outputs (Arretche, 2015). This
shows the value and importance of coordination and collaboration in Brazilian policy and governance context.

Both states and municipalities are significant economic and social actors. They represent a large share of public spending (above the OECD average) and have important spending responsibilities in key sectors. The share of staff expenditure in public staff expenditure and in SNG expenditure is above the OECD average. The SNGs also play a significant role in public investment (ULCG and OECD, 2016).

**Municipal level**

As mentioned above, the municipalities are not a creation of the states and are not governed by them as it is the case in most federations (e.g. Germany). They are granted the status of federal entities, at the same level as the states and are governed by an organic law, which must comply with federal and state laws. Municipalities are subdivided into several districts (around 8,000 in total), which are de-concentrated municipal localities (ULCG and OECD, 2016).

There are great discrepancies in the geographical size or area and population, and social and economic indicators among the subnational jurisdictions. All Brazilian municipalities, however, enjoy the same legal status. In 2015, 17 municipalities had more than one million inhabitants, representing 22 percent of population; 44 percent of municipalities had less than 10,000 inhabitants on average and are home of 6.3 percent of the population (ULCG and OECD, 2016).

**10.2.3 Intergovernmental coordination**

Brazil is usually described as a highly devolved federal country, given that the 1988 Federal Constitution entitles state and local government to collect and spend large share of total revenues. The Constitution guarantees the local governments to be autonomous constitutional units (Arretche, 2015).

Brazil also may technically be described as a ‘dual federal system’ in the sense that each of the three orders of government is constitutionally recognized and has their own legislative and executive branches, including its own civil service. Nonetheless, service provisions are largely integrated, meaning that the vast majority of policies require cooperation between these all spheres of governments. Furthermore, federally prescribed policies and legal frameworks strongly affect how the state and local government do their business and implement the policies and programs under their competencies for which they are responsible (Arretche, 2015).

Article 21 of the Constitution lists twenty-five areas under federal legislative competence and includes a number of policies that state and local government must execute. These include urban infrastructure, telecommunication, urban development, and public transport. This means that both the federal and state and local government are entitled to initiate legislation in all these areas, but by complying the federal one (Rosenn, 2015) and (Arretche, 2015).
Article 22 lists the areas under the exclusive authority of the federal government. It comprises twenty-nine items, including areas in which implementation also lies with states and municipalities. Similarly, Article 23 and 24 lists areas of common competence and concurrent legislation. They include health and welfare, research and science, housing, public transit, environment, education, pensions, and youth welfare. In case of conflict, the federal law has priority. Although the Article 25 assigns all residual power to the states, the impact of the article is limited, given the range of powers granted to the federal level. Indeed, except for the creation of metropolitan regions and public safety, no policy area is exclusively assigned to constituent units in the Constitution (Arretche, 2015).

This means that the federal level can initiate legislation in almost all areas of public policy. Thus, on the one hand, the Brazilian federal structure looks dualistic, on the other hand, the functions are integrated, which demands effective coordination among all spheres of government. In such a complicated context, intergovernmental coordination becomes very crucial for the successful operation of all spheres of governments.

**Legislative mechanisms**

Both the lower and upper houses are coequal. Both function as partial substitutes for other forms of intergovernmental relations. As Brazil has dominant civil law culture, political issues also tend to get translated into legislative initiatives. The federal executive is entitled to initiate legislation and veto bills approved by the Congress. The President also enjoys an exclusive legislative initiative in relation to the annual budget. As a result, the executive exerts a major influence on decision making by the Congress (Arretche, 2015).

Policy lobbying works to large extent in Brazilian federal context. For example, Mayors are organized into three national organizations, namely, a) Brazilian Municipality Association; b) National Confederation of Municipalities; and c) National Front of Mayors. Since 1998, they have been organizing a yearly national march of Mayors toward Brasilia, the Federal District. The purpose of the march is to inform federal legislators about municipal issues to be addressed (Arretche, 2015). However, State Governors do not have such established organizations for policy lobbying purpose yet. They rather use to lobby through Mayors (indirect) or knock the door of court for judicial review. It is also called ‘judicialization of politics’ in Brazil. Laws are also produced by the federal executive using its policy-specific regulatory power, spending power and its administrative capabilities (Arretche, 2015).

In summary, there are various direct and indirect legislative mechanisms of intergovernmental cooperation in Brazil. The effectiveness varies on policy-specific issues, their historical background as well as the fiscal arrangements associated with it.

**Executive mechanisms**

In Brazil, intergovernmental cooperation mechanism at executive level has not been well institutionalized as in other federal countries. There is no established official forum for regular meetings between the federal, state and municipal governments except the
National Council for Taxation Policy, which meets regularly and is active. Participants of this Council are secretaries of all states, federal ministries and other agencies who are engaged in tax related policies (Arretche, 2015).

Meetings between the president and all governors are rare. Such meetings are seen as exceptional events reserved for special issues, particularly since nearly all are convened by the president convened. Negotiations over proposed federal bills and subnational fiscal issues, including borrowing authorization, tend to be the most common topic of these meetings (Arretche, 2015). However, there are several informal and lobbying practices both at political and administrative levels, initiated more by municipalities than states.

The federal level government has a strong hand in both fiscal and policymaking process. It also means that the federal government has the power to undertake initiatives to coordinate the actions of constituent units around nationwide goals, which is part of the compliance of politically independent units. Rules for the representation and voice of the constituent units, however, varies considerably accordingly to policy area, ranging from observer status in meetings to fully institutionalized participation (Arretche, 2015). Success of federally led coordination effort largely depends on institutional mechanisms, where state and municipalities represent their interests regardless of party interference. The federal president meets frequently with both mayors and governors, but more frequent with mayors.

**Agreements**

There are numerous agreements signed between different levels of governments or agencies (vertical, horizontal, bilateral and multi-lateral) that are either related to policy and or operations. These agreements clarify roles and responsibilities of the signing parties. By constitutional requirements, all such agreements have to be published in the official gazette of the signing signatories. Therefore, these agreements are formal instruments and also, they are subject to judicial review process. There are rare cases of verbal agreements.

Such a large number of formal agreements can be explained partly by the large number of subnational governments and agencies, but mostly by the long ‘civil law tradition’ of the country. Every form of formal cooperation requires a signed agreement between the participating parties, even if these parties are two independent departments of the same government order. A number of them aim at establishing the terms of joint-service delivery or at extending the services of one constituent unit to another (Arretche, 2015). Only the executive branch of government (not the legislative) use agreements as formal tool of inter-governmental cooperation. However, due to the number of such agreements, there are increased levels of burden to prepare and administer such a huge number of agreements.

**10.2.4 Fiscal arrangements and autonomy**

The overall trend in Brazil is toward greater devolution of power and revenues to states and municipalities. The federal level makes most of the policy decisions, determines the
tax and revenue rates, however, tax collection is done by all levels of governments, mostly the states and federal agencies.

There are different revenue sources, which are collected by different orders of government and distributed back to them by the federal government. The following are the major categories:

**Tax:** Tax bases are defined by the Congress and there is limited tax authority vested with state and municipal governments.

**Shared revenues:** With a few exceptions, federal transfers are the main source of revenues for state and local governments. Through this instrument, the federal level aims to reduce horizontal revenue inequality.

**Conditional transfer:** Some of such transfer can be equal to all states and municipalities and some of them can be different. It can be different based on sectoral policies that may have set the criteria or earmark criteria. Earmarked transfers are mainly expended in national programs, particularly in social sectors. They tend to increase over the time.

**Negotiated transfer:** This is a less significant source of revenue, which can be distributed by means of unilateral acts.

The Constitution has allocated a substantial amount of taxes and compulsory transfers to state and municipal governments. For this reason, subnational governments’ access to constitutionally guaranteed revenue amount is larger in Brazil than in most other Latin American countries. Tax revenue and other locally generated revenue (tariffs and fees, property income) represent 65 percent of subnational governments’ revenue while grants and subsidies account for 35 percent (ULCG and OECD, 2016).

Taxation powers are shared by the federal, state and municipal levels of government. It is estimated that the federal government’s share of fiscal revenue represents approximately 36 percent of all revenues, the states’ share 41 percent and the municipalities 23 percent. All federal transfers to the states and municipalities range from 5.54 percent to 6.12 percent of the GDP between 2002 and 2009. Subnational level governments’ compliance with the rules attached to the transfers is monitored both by state-level accounting agencies and by the Union Accounting Agency (Arretche, 2015).

In addition, states and municipalities can use the following sources (ULCG and OECD, 2016):

**Debt:** There is a provision for debt, but it is rather restricted and largely regulated. After several defaults by subnational governments (SNGs) in the 1990’s, the federal government enacted in 1997 a deal for the restructuring of state debt. It was further followed up in 2000 by the adoption of the Fiscal Responsibility Law (*Lei de Responsabilidade Fiscal* Finanças Publicas Municipais) to prevent states and municipalities from running excessive budget deficits. It introduced borrowing restrictions and spending constraints (including limits on staff expenditure) and imposed public reporting on key fiscal indicators.
Other revenues: State and municipalities also have other types of income sources like user charges and fees (hospital services, transportation services, sale of goods, inspection services, etc.), return on financial investments, rents and dividends paid on municipal properties and industrial and agricultural activities, economic contributions on electricity services and royalties coming from the use of natural resources (oil and gas, minerals, and water).

The main source of revenue at the state level is sales taxes. Municipalities have four taxes of their own (including property and service taxes) and can perceive fees and betterment taxes. Municipalities receive state and federal transfer and enjoy a great deal of latitude in spending. Grants with 'strings attached' are limited by the 1988 Constitution.

Both states and municipalities are significant economic and social actors. They represent a large share of public spending (above the OECD average) and have important spending responsibilities in key sectors. The share of staff expenditure in public staff expenditure and in SNG expenditure is above the OECD average. SNGs also play a significant role in public investment (ULCG and OECD, 2016).

Apart from special charges (e.g. refinancing and public debt service and constitutional and legal transfers) which represent an important share of state expenditure, main spending areas at the state level are social security, education and health. At the municipal level, the main spending areas are education, health, administration and urbanism. Spending on education and health is regulated by laws which establish minimum standards (ULCG and OECD, 2016).

10.2.5 Special features

Brazilian constitutional provisions are different than many other federal countries. A few special features are as follows:

a. The Constitution was adopted following a participatory methodology with public hearings held on all sections.

b. The Constitution makes extensive provisions regarding social rights.

c. Policymaking and regulating are the primary functions of federal level government. These policies are uniform throughout the country. These constitutional arrangements may discourage local innovation and limit local autonomy.

d. The Constitution can be amended by an absolute majority (three fifth) of Congress in joint session.

e. The system is flexible and provides a great deal of autonomy to the states and municipalities.

f. Larger states are under-represented at the national level.

g. The existence of numerous concurrent powers brings ambiguities. To resolve this issue and strengthen intergovernmental cooperation, a lot of agreements are signed every year, which are subject to judiciary review.

h. Brazil has a long and dominant ‘civil law tradition’. 
10.3 Republic of South Africa (RSA)

10.3.1 Political structure

South Africa is a democratic republic with a devolved system of governance. The country has a parliamentary presidential system. Political structure is far more like a devolved unitary system than a federal one; however, there are strong elements of federalism in the Constitution and also in practice. Therefore, some political analysts describe South Africa’s system as a quasi-federal or integrated federal or unitary federal system.

The South African Constitution established a centralized, ‘integrationist’ form of federalism comprising three democratically elected spheres of government. The national government has wide-ranging legislative and executive authority and control over the policy arena and major fiscal and tax instruments. The provincial and local level governments have original powers but their autonomy is limited to specific areas of competencies defined in the Constitution and further restricted by the national government’s power to regulate their conduct and, in certain circumstances, intervene in their affairs (Powell, 2015). The Constitution of the Republic of South Africa Act 1996 (Article 41) defines its governance structure as cooperative with three spheres of government (national, provincial and local). Three branches of the government are separate according to the principle of separation of power.

Executive

Executive authority is vested in a President as head of the state and the government. The President is indirectly elected by the National Assembly for a period of five years and is usually the leader of the largest represented party.

Some of the President’s powers include assenting to and signing bills, appointing commissions of enquiry, and calling a national referendum. She/he appoints the Deputy President and ministers mostly from among the members of the National Assembly. The President can also appoint ministers from outside the Assembly, but it is limited only to two Ministers.

Legislative

Legislative authority is vested in the Parliament, which is bicameral, composed of the National Assembly (lower house – 400 seats) and the National Council of Provinces (upper house – 90 seats). The National Assembly members are elected by popular vote under a system of proportional representation and serve five-year terms. Assembly members are allocated using a proportional representation system with closed lists of one national and nine provincial lists. The National Council of Provinces is composed of 10 members elected by each of the nine provincial legislatures to serve for five-year terms.

The National Assembly has the most sweeping legislative authority. It can amend the Constitution, pass legislation, and assign any of its legislative powers (except the power to amend the Constitution) to any legislative body in another order of government. The
National Council of Provinces can participate in amending the Constitution, pass certain legislation, and consider legislation passed by the National Assembly.

**Judiciary**

Judicial authority is vested in the courts which are independent and subject only to the Constitution and the law. Judiciary system is composed of the Constitutional Court, Supreme Court of Appeals, High Courts and Magistrates’ Courts.

The Constitutional Court is the highest court in all constitutional matters, which was inspired by the German model (Powell, 2015). The Supreme Court is the highest court of appeal except in constitutional matters.

There is also a formal recognition of customary law together with common law. Both are subject to a Bill of Rights that includes social, economic, and cultural rights, which all spheres of government must take positive action to ‘progressively realize’ (Powell, 2015).

### 10.3.2 Multi-level governance

The republic has three spheres of government – national, provincial and local – which are distinct but interrelated and integrated in their functions. These all are constitutionally recognised as spheres of government (not layers or orders) and the local government system has been continuously developed and strengthened since its establishment, from racist institutions (during colonial time) to more developmental, inclusive and democratic institutions in recent years.

The 1996 Constitution upgraded the status of local government as a sphere of government from third tier of the government alongside with the national and provincial government, which removed the existing absolute control of provincial and national government. However, the supervisory and intervening power of provincial government over municipal government does exit in case of violating constitutional or legislative provisions.

In the chapter on Cooperative Government, the Constitution provides that:

> In the Republic, government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated.

The word ‘sphere’ was a deliberate deviation from the term ‘tier’ used in the 1993 Constitution, in the attempt to move away from the notion of hierarchy (Steytler, 2005). Especially, after implementation of the Local Government Transitional Act of 2003, the local government institutions have been used as an important institutional and developmental vehicle for the integration of racially divided society and for the equitable redistribution of resources.

In the lengthy chapter on local government, the Constitution provides that the local sphere consists of municipalities covering the entire country and that a municipality "has the right to govern, on its own initiative, the local government affairs of its community, as
provided for in the Constitution.” The aspect of local self-government is defined more as developmental in its purpose in the Constitution and the municipalities have administrative and legislative power with regard to 38 listed functional areas (Steytler, 2005).

National level

The South African central level government is called the national government. Almost all policy functions fall under the responsibilities of the national government. Its exclusive functions include national defense, the criminal justice system (safety and security, courts), higher education, water and energy sources, home affairs and the collection of national taxes. The Constitution confers functional areas of responsibility to national, provincial and local government as set out in Schedules 4 and 5 of the Constitution. Residual powers lie with the national level government.

Schedule 4 (Part A) of the Constitution lists functional areas of concurrent national and provincial legislative competencies. These include indigenous forests, agriculture, airports (other than international and national airports), animal control and diseases, casinos and gambling, consumer protection, disaster management, education (excluding tertiary level), environment, health services, housing, industrial promotion, public transport, police, pollution control, public works, tourism, trade, vehicle licensing, welfare services, etc.

Provincial level

Following the adoption of the 1993 Interim Constitution, the number of provinces increased from four to nine. Some of the critiques say that provinces in South Africa are not given much power and authorities. While the future shape and form (and even existence) of provinces are debated, local government is seen as an indispensable feature of the state structure (Steytler, 2005).

The executive power of a province is vested in the Premier of that province and Provincial Executive Councils. The Premier is elected by a provincial legislature from among its members. The Premier’s powers include assenting to and signing Bills, referring a Bill back to the Provincial Legislature for reconsideration of its constitutionality, referring a Bill to the Constitutional Court for a decision on its constitutionality, appointing commissions of enquiry and calling a referendum in the province in accordance with national legislation. S/he appoints no fewer than five and no more than 10 members from among the members of the Provincial Legislature to form the Executive Council.

The legislative power of a province is vested in its Provincial Legislature. The Provincial Legislatures may vary in size from 30 to 80 members depending on the population of the province. Provincial elections are also held, under a list system of proportional representation. A provincial legislature may pass or amend a constitution for its province and pass legislation for its province.

Schedule 5 (Part A) of the Constitution lists areas of exclusive provincial legislative competencies. These include abattoirs, ambulance services, libraries, museums other than
national, liquor licenses, provincial planning, provincial sport, provincial roads and traffic, local government supervision etc.

Provincial boundaries are not coextensive with ethnic group territories, although in fact each province is home to a dominant cultural linguistic group, and ethnic representation is a political factor in the provincial government. The provinces differ greatly in size, population, development, geography, wealth, resources, and levels of poverty. Poverty and inequality are highest in provinces that incorporated former apartheid homelands or large rural areas (Powell, 2015).

Local level

The constitutional provisions clearly state that the aims of local governance are to provide democratic and accountable government for local communities, to ensure the services for communities, and to promote social and economic development (Article 152).

Municipalities are the local level government units. Local government is enshrined in Chapter 7 of the Constitution adopted in 1996. It is further supported by Chapter 3, entitled ‘The Principles of Cooperative Government’, and Chapter 13, which focuses on local government finance. Executive and legislative authority of a municipality both vested in the Municipal Council. The executive authority is usually delegated to an Executive Committee or the Executive Mayor.

Municipal Council’s functions include passing of by-laws, approval of budgets, imposition of rates and other taxes, levies and duties, and the raising of loans (Steytler, 2005). Schedule 4 (Part B) lists local government matters, which include air pollution, building regulations, child care facilities, electricity and gas reticulation, firefighting services, local tourism, municipal airports, municipal planning, municipal health services, municipal public transport, municipal public works, storm water management systems, water and sanitation services etc.

The local sphere consists of three categories of municipality: single-tier metropolitan municipalities in urban areas and a two-tier system of district and local municipalities, covering both urban and rural areas, which share legislative and executive authority for their area.

Urban metropolitan municipalities (total 8 as of 2018) are large (single-tier council) areas encompassing urban populations and often including a major city and surrounding towns. They perform all 38 functions as listed in the Constitution.

District municipalities (total 44 as of 2018) are the first-tier local authorities covering larger jurisdictions in both rural and urban areas. They work in partnership with the smaller second-tier authorities, known as local municipalities, within their jurisdiction.

Local municipalities (total 226 as of 2018) are the second-tier authorities within the District Municipality jurisdiction, which provide a range of local functions. They are classified into four types depending how many local authority functions they perform: type four (containing large urban areas) average 24 functions, type three (small towns)
average 20 functions, type two (rural with small towns) average 18 functions and type one (rural with no towns) average 11 functions (CLGF, 2019).

The institutional arrangements of local government in South Africa have been driven by two concerns. The first is the de-racialization of local authorities into democratic institutions and the second is to establish of viable institutions of self-government that could redistribute resource equitably. The resultant institutions – metropolitan, district and local municipalities – have a profound impact on the place and role of local government in the South African decentralized system of government (Steytler, 2005).

The integration process of local government units is ongoing, and it resulted in a drastic reduction of municipalities from more than 1,000 before 1990 to 830 just after 1993, and now further down to 278 following the 2011 municipal election. Metropolitan municipalities (category A) are found in urban areas and have a single-tier form. The other local governments are found in areas which are primarily rural and have a two-tier organization: district municipalities (category C), the main division of provinces, which are in turn subdivided into local municipalities (category B). The latter share authority with the district municipality under which they fall. Metropolitan and local municipalities are also divided into wards (4,277 as of 2011), with each ward electing a Councilor to the Municipal Council (ULCG and OECD, 2016).

Municipalities functions include the provision of basic services (water and sanitation, electricity distribution, refuse removal), storm water management, municipal transport and roads, community services (parks, sport and recreation, street lighting). Local and provincial governments provide free or subsidized services for poor households (ULCG and OECD, 2016).

**District municipalities**

Initially, the District Municipality’s objectives were two-fold: first, redistributing resources within a district according to the need; and second, assist and capacitate local municipalities to provide and sustain services in their areas.

The Constitutional Court also clarified District Municipalities’ role as coordinating functions. They were not established to be the primary service provider. However, the Municipal Structures Amendment Act of 2000, transformed the district municipality from a coordinator to a regular end-user service provider of water, electricity, wastewater and sewage disposal systems and municipal health services, if they are capable of delivering these services. If not, the national minister of provincial and local government may shift the functions back to local municipalities. Although local municipalities can collectively control the district council – 60 percent of the District Councilors are indirectly elected by the constituent Local Councils – Districts are often seen as being in competition with Local Councils for resources and power. These complex set of institutional arrangements often complicate their functions and political issues dominate those of service delivery (Steytler, 2005).

Few key features of South African multi-level governance have been discussed below.
1. Supervisory roles of national and provincial government

One of the key features of South African government system is the supervisory role of national and provincial government over municipalities, which is not the case in most of other federal system. This constitutional arrangement also indicates that South African system is more like a devolved or integrated system than federal system of governance.

Both national and provincial level government – separately or jointly can supervise the municipalities. The supervisory function entails the establishment and structuring of municipalities, regulating the exercise of their competencies, monitoring the exercise of those competencies and, in certain circumstances, intervening in municipalities. Provinces are specifically entrusted in the Constitution with the task of monitoring local government units to ensure that they remain within their legislative framework when exercising their powers and functions. For the purpose, municipalities are imposed extensive reporting duties to provinces. With a national emphasis on fiscal discipline, the National Treasury is increasingly playing a prominent role in scrutinizing municipal finance (Steytler, 2005).

Following the supervisory and monitoring duties, the national and provincial governments also have constitutional obligation to ‘support and strengthen the capacity’ of local governments to effectively manage their functions and duties. For the purpose, the provinces use conditional grants from national government to provide institutional and capacity building support. In practice, however, provinces are finding it difficult to perform their supervisory functions effectively due to lack of any effective financial stick or carrot to keep municipalities in line, and second, monitoring and support of metros are largely beyond the reach and capacity of provinces. There are some positive aspects of supervisory roles of national and provincial government. First, it helps each sphere of government to understand each other closely and also understand the general governance situation, problems and challenges. Second, it provides mechanism to interact each other that may lead to strengthen interdependency and harmonized intergovernmental relations in the long run (Steytler, 2005).

In 2008 the Department of Provincial and Local Government (DPLG) became the Department of Cooperative Governance and Traditional Affairs (COGTA). The COGTA currently has two departments under the one minister: the Department of Cooperative Governance (DCG) and the Department of Traditional Affairs (DTA), and has two main functions: a) to develop national policies and legislation with regard to South Africa’s provinces and local government, and monitor the implementation of such policies and legislation; and b) to support provinces and local government in fulfilling their constitutional and legal obligations. The COGTA (under its previous name DPLG) has published local government municipal performance regulations, which came into effect since 2006 (CLGF, 2019).

Following the significant decentralization process undertaken with the Constitution (of 1996), provinces and municipalities have become active and key economic and social actors, reflected by the level of their expenditure in GDP and public spending, which is
well above the OECD average (being at the level of countries such as the USA, Germany or Spain). They employ a large share of public staff, especially in the provinces, and are key investors, both at provincial and municipal levels (ULCG and OECD, 2016).

At the subnational level, the main spending areas are education, economic affairs and transport, health and general public services. Health, education, and social development services account for over three-quarter of provincial spending. These are labor-intensive services and as a result, around 60 percent of provincial budgets are allocated to employees’ compensation (ULCG and OECD, 2016).

In the 2013/14 financial year, local government expenditure was nine percent of total government expenditure. Government grants, followed by service charges, are the largest source of operating revenue for local authorities, whose responsibilities range from public health and utility provision to transportation and waste management. Partnerships are encouraged and promoted between municipalities and traditional councils (CLGF, 2019).

2. Women’s representation

The Municipal Structures Act of 1998 encourages political parties to provision an equal numbers of women and men as candidates. As a result, following the 2016 local elections, women constituted 41.2 percent of Councilors, up from 38.4 percent in 2011 and 40 percent in 2006, which were in turn a significant increase on the results of 2000 (29%) and 1995 (19%). This increase is due to the number of women Councilors appointed via proportional representation (party lists), which has increased from 43 percent in 2011 to 48 percent in 2016 (CLGF, 2019).

3. Mechanisms for community engagement

The Constitution places an obligation on the local government to encourage the engagement of communities and community organizations in matters of local government. Municipal Structures Act 1998 sets clear guidelines for Ward Committees. Section 72 of the Act states that the objective of a Ward Committee is to strengthen participatory democracy at local government level. The Municipal Systems Act 2000 emphasized on the participatory approaches with the following provisions:

…………encourage the involvement of the local community and to consult the community about the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider.

The establishment of Ward Committees is an established instrument of public participation in South Africa. Additionally, another most common structure established by municipalities to interact with the community (apart from Ward Committees) is the Integrated Development Planning (IDP) Forums. The IDP Forums are established specifically with the objective of engaging communities in the planning and review process of the municipality’s Integrated Development Plan. Community Development Worker (CDW) programs are another mechanism aimed at assisting local communities in accessing government services and in meeting their needs (CLGF, 2019).
Traditional leaders are specifically accommodated in South Africa’s governance system. Chapter 12 of the Constitution as well as the Traditional Leadership and Governance Framework Act (TLGFA) 2003 entrench traditional leadership in the governance of South Africa. It also specifically provides platform for partnership between the institution of traditional leadership and municipalities. The Municipal Structures Act 1998 provisions for ex-officio participation of traditional leaders in Municipal Councils (CLGF, 2019).

4. The South African Local Government Association (SALGA)

The South African Local Government Association (SALGA) is recognized by the Local Government Act 1997 and its role is enshrined in Section 63 of the Constitution. The SALGA plays key role as representative of local government in the legislative processes of all spheres of government, and in intergovernmental processes. The 1997 Act allows local government to nominate up to ten part-time representatives to the National Council of Provinces and to further nominate two representatives to the Financial and Fiscal Commission, which advises the treasury on budgetary issues. Nine provincial local government associations which are the chapters of SALGA are also recognized by the Organized Local Government Act 1997 (CLGF, 2019).

10.3.3 Intergovernmental coordination

The following constitutional provisions of South African Constitution demand for intergovernmental relationship between the three spheres of government.

1. The government is constituted as national, provincial and local spheres of government that are distinctive, interdependent and interrelated [section 40(1)].

2. Functional areas of concurrent national and provincial legislative competence and exclusive provincial legislative competence are listed in schedules 4 and 5 respectively.

3. A municipality has executive authority in respect of, and has the right to administer, the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and any other matter assigned to it by national or provincial legislation [Section 156(1)]. They also have the authority to make and administer by-laws for the effective administration of matters assigned to it, and to impose rates, taxes and surcharges for the services provided.

There are relatively higher level of overlaps in competencies (third position after Germany and Australia) of different levels of government in South Africa (Parker, 2015), especially in policy and program areas. To manage such higher-level overlaps, better functioning coordination mechanism need to be established and function effectively. For the purpose, in South Africa, intergovernmental relations (IGR) between the three spheres of government are highly formalized, centralized and hierarchical, but there are also significant opportunities for IGR based on informality, inclusiveness, consultation, and pragmatic devolution. This duality is best described as the ‘corporatization’ of intergovernmental relations, which reflects the dominance of national government exercised through the devolved system of government (Powell, 2015).
Principles of cooperative government set out in chapter three of the Constitution prescribe standards for intergovernmental conduct that bind the three spheres to work together to pursue the common good effectively. However, the highly centralized and hierarchical nature of government is reproduced and patterned in intergovernmental relations among the three orders. Both tendencies are reinforced by the dominance of a single party, the African National Congress (ANC). The ANC sees the role of the state as ‘developmental’ and ‘interventionist’ – that is, as an instrument to transform society and the economy to promote the aspirations and wellbeing of the black majority, which continues to suffer the effects of apartheid (Powell, 2015).

One of the unique features of the South African Constitution is that it clearly feels the need and provides clear institutional arrangements for intergovernmental relationship in the national legislation accordingly. The following four features of the constitutional framework have a direct bearing but varying degree of influence on the conduct of intergovernmental relationship (Powell, 2015).

**Principle of cooperative governance:** The Constitution sets out general principles of cooperative government that bind the three spheres of government to conduct IGR in ways that foster friendly relations, fair dealing transparent conduct, coordinated action, and coherent government for the country. Further, they must take positive steps to resolve IGR disputes, and to resolve through court action to resolve dispute only when their best efforts to do so have failed. These principles aim to protect the integrity of each government as a distinctive sphere of government while promoting ‘integrated’ government for the country as a whole.

**National Council of Provinces (NCOP):** This is the second chamber of Parliament, which represents the interests of the nine provinces and the local government in national lawmaking process. The NCOP requires special voting majorities for constitutional amendments, which protects the constitutional status and integrity of the provincial and local level governments. As a full partner in the system of cooperative government, the municipalities also participate in the NCOP, but they do not have voting power.

**Mandatory IGR legislation:** The Constitution requires the parliament to enact legislation to establish institutions to facilitate IGR and provide mechanisms to resolve disputes. The Intergovernmental Relations Framework Act (IGR Act), passed by the Parliament in 2005, fulfils the constitutional requirements. It established the main IGR institutions at the executive level in all three spheres.

**The Constitutional Court:** This is “the highest court on constitutional matters” and has exclusive jurisdiction to ‘decide disputes’ between the spheres of government (Powell, 2015).

Section 41 of the Constitution requires the three spheres of government to consult and inform one another on issues of common concern. For the purpose, number of executive intergovernmental instruments have been developed at national and provincial level. But most of them are non-statutory. These include the following (CLGF, 2019):
**Presidential Coordination Council (PCC):** Comprising the president, the Minister of Cooperative Governance and Traditional Affairs (COGTA) and Provincial Premiers, with SALGA by invitation.

**Local Government Budget Forum:** National government ministers, representatives from SALGA, and one representative from each of the provincial local government associations.

**Forum of South African Directors General (FOSAD):** National and provincial Directors General of all ministries. The FOSAD is chaired by the presidency Director General and is organized much like a ‘cabinet committee cluster.’

**MinMecs (intergovernmental forums),** based on national sector departments with overlapping competencies.

**Premier Coordinating Forums:** These exist within each provincial government and report both upwards to the PCC and downwards to all 46 Mayoral Forums.

**Mayoral Forums:** They are also known as District Intergovernmental Relations Forums; these provide a supportive mechanism for district municipalities to engage with intergovernmental issues. The District Mayors rationalize and coordinate local structures, ensure that there is a district-wide development vision informed by local IDPs, and monitor national and provincial sector commitments.

In addition, COGTA has developed an intergovernmental relations toolkit consisting of a number of educational and informational publications, and a series of case-studies. Informal intergovernmental relations forums have also been formed along sectoral lines, consisting of national ministers and provincial members of Executive Committees. The SALGA represents where local government interests are involved.

In practice, intergovernmental relations among national, provincial and local executives occur frequently, and despite being strongly vertical in character, these relations are surprisingly consultative in nature. There are no voting procedures in the executive IGR structure. Consensus seeking is the usual practice in the executive IGR, but ‘decisions’ of IGR structures have no legal status as executive action unless they are endorsed – in a parallel fashion – but the executives of the orders affected (Powell, 2015).

**Intergovernmental agreements**

There are at least four types of agreements that have been in practice in the conduct of IGR: (a) Delivery Agreements: This was introduced in 2009 as an innovation, and it is applicable to all ministerial portfolios; (b) Intergovernmental Protocols: This is provisioned in the IGR Act; (c) Memorandum of Understanding (MoU): it is generally used when non-state parties are involved (e.g. private business or civil society organizations); and (d) Service Delivery Agreements: this is often used when delegated functions are to be performed by another spheres of government.
In general, IGRs between the spheres of government are not based on a contractual model that creates binding obligations on the parties through consent. Implementation protocols and other types of IGR agreements are intended to promote political and administrative certainty on common national priorities, not to reduce the IGR to legal contractual obligations. In cases of agency relations, however, agreements are contractual in nature and create binding obligations, at least presumptively (Powell, 2015).

10.3.4 Fiscal arrangements and autonomy

South Africa has a highly centralized intergovernmental fiscal system. The national government has exclusive control over the major tax instruments, revenue collection, and division of revenue between spheres of governments. It has wide powers to regulate subnational fiscal powers, borrowing, budgeting and financial management. With the Financial and Fiscal Commission (FFC), it determines the equitable share formula for apportioning revenue between provinces and municipalities. The intergovernmental fiscal relations are determined using the following main instruments (Powell, 2015).

1. **Medium-term expenditure framework and budget process**: There is well-defined in which both national and provincial departments are engaged together.

2. **Ministers’ Committee on the Budget**: This is a special inter-ministerial cabinet committee chaired by the finance minister, who prepares a draft budget and division of revenue for cabinet approval.

3. **Budget Council**: This is a statutory IGR structure that comprises the finance minister, which is a powerful institution that has a broad influence on national policy.

4. **Budget Forum**: This is the local government counterpart of the Budget Council. It includes organized local government and provincial ministers responsible for local government.

**Revenue structure**

The following are the main sources of revenue (ULCG and OECD, 2016).

**Grants and subsidies**: Transfers to provinces and local governments are made through the equitable share and conditional grants:

1. The local government equitable shares (LGES) are determined by formulas that take into account demographic and developmental factors. They represent 80 percent of provincial transfers and around 45 percent of municipal transfers but are higher in rural municipalities which have lower tax revenue raising potential.

2. Conditional grants are designed to achieve specific objectives, and provinces and municipalities must fulfill certain conditions to receive them. Almost half of municipal conditional grants are targeted at municipal infrastructure with 25 percent going to ‘urban settlements development’ and 16 percent for public transport infrastructure. Main conditional grants in the provinces are targeted at human settlements development, comprehensive HIV/AIDS, national tertiary services (hospitals), provincial roads and education.
The ‘local government equitable share’ (LGES) formula and allocation was first introduced in the FY 1998/99. The size of the LGES grant takes into account each area’s fiscal capacity, fiscal efficiency, developmental needs, extent of poverty and backlogs. The LGES grant is the largest national transfer to municipalities and has experienced a rapid growth over the last decade, largely due to increases in the allocations for indigent households (ULCG and OECD, 2016).

Unconditional transfers to local government were estimated at 59.4 percent of all transfers to local government in 2012/13 and consist of the LGES (47.9%) and the general fuel levy sharing with metropolitan municipalities (11.5%). In 2012/13, total conditional and indirect transfers amounted to 40.6 percent, made up of conditional grants from the national budget (34.7%) and indirect transfers from the national budget (5.9%) (CLGF, 2019).

In practice, provincial and municipal service delivery budgets are heavily funded through intergovernmental transfers that are weighted according to national priorities, and both levels of government expend considerable time and effort on implementing national policy (Powell, 2015).

**Tax revenue:** Provinces are allowed to raise certain taxes, levies and duties but their ability to do so is very limited. The bulk of their tax revenue comes from motor vehicle licenses and casino taxes. Municipalities collect local taxes and exercise total control over their tax base. The principle tax is property rates (reformed in 2014). However, District Municipalities do not collect property taxes, which creates significant disparities in the municipal tax base.

**Debt:** Generally, provinces are not allowed to incur debt - or can only in small amounts. Section 230 of the Constitution empowers municipalities to borrow, but the Municipal Finance Management Act 2003 regulates such borrowing powers. They can borrow from credit markets to fund capital expenditure (golden rule). In 2013, loans and bonds represented respectively 35 percent and 10 percent of SNG outstanding debt while commercial debts (‘other accounts payable’) accounted for 53 percent of subnational government debt. In 2004, the City of Johannesburg was the first South African metropolitan city to enter the bond market, followed by the City of Cape Town in 2008 and, most recently, by Ekurhuleni in 2010 (ULCG and OECD, 2016).

**Other revenues:** Municipalities raise an important share of their revenue in the form of service or user charges (water, sanitation, electricity, and garbage collection services). The share of these revenues is low in rural and small municipalities.

**Local government expenditure**

The share of national revenues allocated to local government was 8.8 percent in 2012/13, up from 6.3 percent in 2006/07. In 2010/11 local government’s share of national revenues was 7.9 percent. This compares to a share of 48.5 percent for national departments and 43.6 percent for provinces. However, national transfers to local government have consistently
grown faster than total government expenditure. Each sphere of government has the right to determine its own budget and also the responsibility to comply with it. Municipalities are responsible for the remuneration of Councilors and personnel. At an aggregate level, about 30 percent of the total municipal operating budget is spent on the remuneration of personnel. The Municipal Fiscal Powers and Functions Act 2007 regulates the exercise by municipalities of their power to impose surcharges or fees for services provided under Section 229 (1) (a) of the Constitution and provides for the authorization of taxes, levies and duties that municipalities may impose under Section 229 (1) (b) of the Constitution. Section 229 of the Constitution provides that municipalities may impose rates on property and surcharges or fees for services provided by the municipality or on behalf of the municipality. It also provides that a municipality may impose other taxes, levies and duties if authorized by a national legislation. Municipalities may charge for the services they provide in the form of service charges and administration fees (CLGF, 2019).

10.3.5 Special features

a. The Constitution of South Africa is considered one of the most progressive with hybrid federal systems.

b. The Constitution has a Bill of Rights that makes extensive provisions regarding personal and social rights.

c. The Constitutional amendment requires a two thirds majority of members in the National Assembly and at least six of the nine provinces in the National Council of Provinces.

d. The three spheres of government – national, provincial and local – are distinctive, interdependent and interrelated and are bound by principles of cooperative government enshrined in the Constitution.

e. The Constitution recognizes the institution, status and role of traditional leadership.

f. There are mechanisms for regulating the work of provincial and local governments, but the national government cannot simply abolish any of them, nor can it unilaterally change the nature of a particular province or municipality.

g. The position of provinces is further entrenched by the provision that South African upper house of parliament, the National Council of Provinces, which is indirectly elected by the provincial legislatures. The support of the majority of provinces is required for any legislation to be passed. Similarly, constitutional amendments also require support from at least six provinces.

h. The Constitution also prescribes that provincial and local government are entitled to an ‘equitable’ share of nationally raised revenue.

i. Both the constitution and the enabling legislation are very comprehensive in coverage of democracy, governance and public finance principles.

j. The publication of the division of revenue and medium-term expenditure framework (with three-year budgets) enhances predictability and transparency of revenues and intergovernmental transfers.
k. The legislations are not easy to implement due to a relatively young democratic system with capacity gaps at the local and provincial levels.

l. Compliance with the legislation is difficult to track because monitoring and evaluation are not sufficiently well-developed at national and provincial government levels.

m. There is a lack of accountability at the provincial level due to limited revenue-raising powers.

11 Discussion and analysis

This section includes arguments that are focused on the issues and challenges that the case study countries including Nepal have been facing during the implementation of federalism in recent years. Directly or indirectly, the discussions above are summarized in this section, focusing around the response to the following questions:

a. Do all federal countries have the constitutional entrenchment of local government units in their constitutions? Does the constitutional provision of local government safeguard and promote grassroots democracy?

b. Is the federal system a better devolved system than the unitary system?

c. Does the country’s social, political and value system and context matter to determine federal system and run the system effectively?

d. What are the necessary mechanisms that help and promote multi-level governance and enhance cooperative federalism?

11.1 The local government’s role in federal systems: a global phenomenon

Politically, the local government is the level of government closest to the people. It is, therefore, important to include local government in the political system to mobilize people to participate in the political process and addressing the issues related to their daily lives (Kramer, 2005). The constitutional recognition of local government as a tier or sphere of government in the federal systems is a recent phenomenon. It plays a very important role from the perspective of grassroots democracy to take root and sustain as a foundation of democratic culture in the country as a whole.

The local government was not well recognized in the constitutions of the older federations. The US Constitution 1787, the first federal constitution of the modern era, did not include local government as a sphere of government. The federal constitution still does not recognize the local government at all, and the states are constituted as unitary political systems in the US. Since the 19th century, municipalities, counties and townships in the US have enjoyed increasing levels self-governing autonomy under the state constitutions or laws, varying from state to state. Still, they are always liable to change at the discretion of state legislators (Hueglin & Fenna, 2015). The Swiss Constitution of 1848 also did not recognize the local government. The local government was constitutionally recognized only in 1999 in Switzerland. The Australian Federal
Constitution of 1901 was also silent on this provision – making local government a creature of state power (Steytler, 2005).

The constitutional provision of local government appeared only after the Second World War, often coinciding with the return to democratic rule. The first was the Constitution of the Federal Republic of Germany of 1949 (Steytler, 2005). Brazil also established a constitutional provision of strong local self-government in its 1988 constitution, after returning to civilian rule. India also adapted local government provisions through its 73rd and 74th amendment in 1992, which was mainly prompted by developmental concerns, not to promote grassroots democracy as its primary objective. However, the scope, function and autonomy of the local government are dependent to the state government as in case of the United States (Steytler, 2005).

In recent years, South African Constitution of 1996 adopted both democratic and developmental aspects of local self-government system with extensive constitutional provisions together with ‘integrated approach’ of federalism, which is a new model. In Canada, constitutional recognition of the local government still remains on the political agenda under discussion (Steytler, 2005). The local government in Canada is marked primarily by a constitutionally entrenched subordination of municipalities to provinces that affects every aspect of their activities. The municipal government was created initially in Canada primarily as an instrument for service delivery rather than as a level of democratic government. Provincial governments, having been given the constitutional power to define municipal responsibilities, have used municipal governments as a means of fulfilling provincial objectives (Lazar & Seal, 2005).

The Australian local governments are still weak, and they are acknowledged in state constitutions, but without any guarantees with regard to power or autonomy. Therefore, municipalities in Australia are often said as confined to “roads, rubbish and rates” (Steytler, 2005). Australia recognizes the value of local governments both from developmental and democratic perspectives, therefore, the government is still trying to empower their local governments. Australia attempted twice for constitutional amendment to recognize the local government in the Federal Constitution but both attempts have failed.

Although Italy is not a federal country, state power is increasingly devolved to local government units to strengthen grassroots democracy and promote local development. Italy’s law and practice regarding local government show that there is no difference in essence between its system and decentralized Spain, where local government powers are not listed in the Constitution but are devolved by higher levels to local levels. In contrast, the Indian Constitutions lists the power of local governments (through its 73rd and 74th amendment) but they are still dependent on budgetary allocation by the state governments (Steytler, 2005).

Partisan functioning in the federal parliament in both in South Africa and Brazil is significantly high. Election of the local government officials in many European countries takes place based on party politics (e.g. Germany, Spain, Austria, Italy), whereas municipal
election has to be on a strictly non-partisan basis in the US, Canada and Australia (Steytler, 2005).

The South African local government has, from a comparative perspective, closest ties with the central government. A highly formalized system of intergovernmental relations has emerged through a variety of forums and processes. Local government has been included in the most forums and relates directly with the national government (Steytler, 2005). The Brazilian local government also are more tied up with the federal government through a number of institutional platforms. However, it is not the case in Germany, where structure, functions and responsibilities of local governments vary from state to state. Local governments are the creation of the state constitution and subject to the supervision of the state. However, their autonomy is guaranteed by the Basic Law of 1949 (i.e., the Constitution). There are very weak linkages between local governments with the federal government in Germany. However, it is gradually increasing in some cases.

It is interesting and worthy to note especially in ethnically diverse countries where there is debate about whether or not to delineate territories of subnational government based on ethnicity or not. Provincial boundaries are not found to be coextensive with ethnic group territories in any of the case countries discussed above. Rather, ethnic representation is a political factor in provincial government in South Africa, but not the territories (Powell, 2015).

11.2 Comparison between case countries

11.2.1 Constitutional recognition of local governments and their functions

South Africa’s system of decentralization is conceptualized as a three-cornered hat: the three spheres of government are ‘distinctive’ in their powers, ‘interrelated’ in a hierarchy of supervisory powers, and ‘interdependent’ to perform the task of government in a cooperative manner. Indeed, within the system of cooperative government prescribed in the Constitution, local government is reserved a place in both national and provincial decision-making process. Local government has, thus, been well institutionalized both in the constitution and legislation (Steytler, 2005). Brazil has a dominant civil law culture and Germany has a constitutional culture (Arretche, 2015), which are important elements for any political system to get success.

Brazil’s Constitution recognizes the autonomy of local governments as equal to other levels of government. Local governments in Brazil are well recognized in the federal constitution. They are not the creation of the state and they do not function under the state, which is not the case in other federal systems. However, in Germany, local governments are created by the state constitution, but not by the federal constitution. The federal constitution internalizes and guarantees the principle of subsidiarity.

A strong local government system in Brazil not only helped diffuse some of the vestiges of regional power and corruption, it has also allowed the federal government to implement trans-territorial and functional schemes for inter-governmental cooperation in such policy
areas as fiscal management, health, education, and regional development. Completing the institutional design of Brazilian federalism as in other federations, this evolution of cooperative federalism points to a promising future that may eventually strike the right balance between diversity and unity in the country (Hueglin & Fenna, 2015).

Nepal’s local government is close to the South African and Brazilian models in terms of constitutional provisions, competencies, spheres of government, internalizing the concept of self-governance and inter-linkages between provincial and national governments. What Nepal lacks, in comparison, is the constitutionally given supervisory role of provincial government to local government. In this particular aspect, Brazil’s case is similar to Nepal’s. The state does not have supervisory role in Brazil. However, in Germany, local governments are the creation of the state and they can supervise local governments. In Germany, local government’s functional linkage with federal level has been weak and insignificant.

Both in South Africa and Brazil, the province and the state have struggled to find their clear roles to play effectively and they are often found marginalized in one way or another. However, the state’s role in Germany is much stronger and established, which is not comparable to any of the case discussed above.

One of the key features of the South African system is the constitutional provision of extensive supervision. Both provincial and local governments in South Africa are well recognized in the Constitution as spheres of government, but both are subject to the supervision by upper level governments. Province (in South Africa) can supervise and intervene when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation (Article 139). There is a supervisory framework that covers all aspects of local government functions. This function can be exercised by province or jointly by both the national and provincial government to municipalities.

In Germany also, the state can supervise local government’s functions. Germany has a district level, as extended hand of the state level government. But it works in some collaborative projects and also in the areas that are devolved-up by municipalities.

Provinces in Nepal are not much focused like in South Africa but are guided by different principles. Unlike in South Africa, which has painful history of racial discrimination, in Nepal provincial government is a new practice in its history. The composition of the National Council of Provinces (NCOP) in South Africa and the National Assembly in Nepal are similar with the exception that Nepal’s constitutional provision includes three additional members for inclusiveness purpose in addition to equal representation of provinces. The municipalities of South Africa have a non-voting right of participation in the National Council of Provinces (NCOP), which is not the case in Nepal.

Local governments in Nepal can exercise executive, legislative and judicial powers, which is not the case in other countries such as South Africa, where local governments have administrative and legislative power only. Judicial functions are not the case in many other countries at the local government level. The judicial power to local government in
Nepal can be debated as a controversial issue from the perspective of the separation of powers.

The constitutional provision of local government units in Nepal has provided space for a respectful identity, a sense of stakeholders and relatively viable local governments in terms of planning and local administration. In general, people at local level are enthusiastic after the completion of local elections and feel that it is their own neighborhood government. Community-based organizations are expected to be valued and engaged in local governance affairs as there are enormous opportunities to manage their day-to-day affairs by themselves, however it has not been evident yet.

11.2.2 Institutional mechanisms for intergovernmental cooperation

Functioning institutions for inter-governmental relations are vital to promote collaboration and functional interdependencies among different spheres or levels of government. This is one of the key institutional mechanisms that that plays critical role in successful operations of federal system in any country.

In recent years, metropolitan areas have gradually become a powerful center of politics. These centers also serve as focal points for inter-governmental relations within the federal states and as a result of local, subnational or national initiatives. “The metropolitan scale emerged as a contested political space for public policy-making. These inter-governmental relations within states are as relevant for the success of metropolitan governance as local politics” (Zimmermann, 2018). Based on the discussions in the case studies above, there is no single model institution for intergovernmental relations.

Germany developed an enduring system of cooperative federalism that emphasized coordination between different levels of governments (Parker, 2015). "Federal states such as Germany show innovative and stable patterns with regard to solving the problems of metropolitan areas" (Zimmermann, 2018). The federal government is responsible for those matters that absolutely must be regulated in a uniform manner in the interests of the people. The federal tier of government should, however, restrict its actions to this specific role, for all other matters should be regulated by the constituent member states. As a consequence, while many aspects in a federal system are harmonized, a range of other areas are not covered by uniform provisions. Unity in diversity is the underlying principle of the federal system in Germany (Reuter, 2009).

Efficiency in policymaking at the federal level and its implementation is an open-ended debate in Brazil. Analysts in Brazil would accept that there is a trade-off between nationwide policy efficiency and subnational autonomy. Another interpretation is that policy decisions-making in Brazil is not affected by ‘joint-decision traps.’ Nevertheless, the autonomy of constituent units can lead to innovation (Arretche, 2015). There are both pros and cons. In fact, innovations can be found in the local context, but within the framework of national policies. Participatory budget and pro-poor income policies are Brazil’s best-known locally launched policies, a number of under-studied innovations are effective as well (Arretche, 2015). The Brazilian system of centralized policymaking, and decentralized implementation may have its own benefits in the country-specific context,
as this has been working quite well. More formally institutionalized platforms of cooperation can be the next step to further improve the system.

The South African system of integrated federalism presents a new dimension and experience in the federal system. In South Africa, the overarching constitutional principles of cooperative government together with higher level of concurrent functions are taken as opportunities for functional integration and inter-dependencies between different spheres of government. However, the same arrangement can be problematic if there is no functional inter-governmental mechanism in place. Nepal can be an exemplary case in both dimensions in the long run.

The South African system, on the one hand, provides for the constitutional division of powers and independence among the three spheres of government. On the other hand, majority of powers and functions are allocated concurrently to national and provincial governments. On the fiscal side, the bulk of the revenue generating and distribution powers rest with the national government, while province and local government are engaged in the decision-making process through a number of constitutional and executive-level institutional arrangements. The National Council of Provinces in South Africa play a vital role in protecting the interest and autonomy of subnational governments, which is a straightforward and unique feature.

South Africa has established an institutional architecture for intergovernmental relations (IGR), which in general look hierarchical and executive centered. These have evolved dynamically since 1996 and worked well, if not always effective. The main lines of IGR engagement are well established. Increased formalization has made the key points of contact between government more predictable (Powell, 2015).

Most of the Intergovernmental Agreements are in the form of contract in Brazil and subject to the judiciary review. It might be due to the country’s long civil law tradition and experience of a century-long federal system. Whereas in South Africa, most of the agreements are not in the contractual form (except with those outside of government agencies), but in the form of an understanding to implement national policies and programs.

11.2.3 Socio-politico and historical context

The federal system is very challenging to institutionalize in a country that has a long-rooted centralized system and where political parties and leadership do not have a democratic mindset and credentials in internal party politics. In other words, the context and the historic roots highly influence the federal governmental system.

Experience of other countries also shows that constitutional and civil-law traditions are important determinants of success for any political system. "Germany, for example, has had more or less independent principalities in its history with already more or less political decision-making power. After the totalitarian dictatorship of the Third Reich the new constitution of the Federal Republic of Germany picked up this old historical system of decentralizing governmental power and ever since, the German national government and the Länder share political power again. Despite this rather deep-seated federalism,
the discussion on the best and fairest distribution of competences and the related public resources is still ongoing” (Kroes & Baumer, 2016).

The nature and structure of federalism in Germany, Brazil and South Africa are deeply rooted and guided by their social, political, value system and historical context. Therefore, they are not easily comparable; however, there are some common elements and constitutional arrangements. These include: (a) constitutional and legal provisions of spheres or levels of government, their functions and responsibilities; (b) institutional provisions for intergovernmental cooperation; (c) a critical balance between autonomy and integration among different spheres of government. In other words, balance between ‘self-rule’ and ‘shared-rule’; (d) policy functions and delivery functions of government; (e) arrangements for engagement of communities and traditional organizations at local governance process; (f) a critical balance between centralization and decentralization through policy and integration process; and (g) supervisory power of each level of government for checks and balances, and for strengthening legal compliance.
PART 5: CONCLUSION AND RECOMMENDATIONS
12 Conclusion and recommendations

12.1 Lessons from Nepal’s efforts

Nepal has been trying to decentralize governance under different regimes; however, it has been difficult to assess, measure and track results under each regime. The country suffered from the instability in political and administrative systems for long period, which did not allow for a sustained effort to lead to effective results. The following is the summary of lessons that Nepal has learned over the period.

1. Nepal’s recent experiences with the establishment of local governments, created in 1990s, shows that the process of empowering the local level and making them capable, effective and efficient is not linear and straightforward (MoFAGA/GiZ, 2018). A relatively progressive Local Self-Governance Act was enacted in 1999 but implementation did not get much time and they remained with absence of elected officials due the armed conflict since mid-July 2002.

2. Various positive practices and trends observed in the past at grassroots level are important to continue to strengthen grassroots democracy. It include recognition and engagement of civic actors and private sector (community groups, NGOs, private enterprises, media, etc.) in decision-making processes at local level, particularly in planning and budgeting process. These can be titled as part of a ‘cooperative democracy’ or ‘governing as governance’. These practices are to be continued and further strengthened even more in the federal system as the federal system is considered to be more devolved and democratic in general. These practices contribute positively in shaping the status and future of the democracy. Therefore, learning and continuation of participatory governance efforts are vital for democratic process to take root in the long run.

3. Nepal’s successful examples of utilizing social capital (community forest user groups, buffer zone management groups, and conservation area management groups), which have achieved remarkable success in effective biodiversity and natural resource management. It also contributed to strengthen the foundation of participatory grassroots democracy. These initiatives can be further promoted and presented as examples of Nepal’s constitutional commitment to promote participatory and inclusive grassroots democracy in the federal system. However, Nepal needs to be careful in the federal setting that the powers exercised traditionally by these community-based organizations may be at risk of being ‘pulled up’ to the local government or at the provincial level, where governance structures are in their infancy and enabling resources remain weak (Thakali, Peniston, Basnet, & Shrestha, 2018). These tendencies have already emerged in drafting the new forestry law, which needs to be tracked back.

4. Nepal did quite well in terms of reducing multi-dimensional poverty even during the absence of elected local government for more than a decade. Much of the credit may go to the utilization of social capital through the social mobilization process. The
mobilization was linked with participatory planning and budgeting process at the local level since 1990s, which continued even during the period of absence of elected local governments. It resulted positively in many aspects of local development and local governance. To keep up the momentum, Nepal needs ongoing efforts and committed political leadership in coming years from the national level to the local level with major investment in the social sectors, health and education in particular (NPC/GoN, 2018). It is also important to continue social mobilization and participatory planning and budgeting process to continue to design service delivery programs, increasing access to services and improving delivery especially to poor and marginalized population.

5. The political or administrative system of Nepal has recognized, but not properly utilized, the social capital at the institutional level. Its inherent potential for strengthening grassroots democracy and sustainable development have not been harnessed yet. As a result, the dominant role of political cadre, public institutions and growing individualistic thinking have been pushing such social capital to the corner, especially after the recent local level elections.

6. A study conducted in the local governance setting in Nepal came up with some interesting findings, which are still valid in the new federal context (Adhikari D., 2006). The study finds: (a) Local institutional fabric and respect to democratic institutions at a grassroots level are vibrant in Nepal, providing solid foundations for democratic institutions to work effectively and sustainably. (b) Participatory planning and representative democracy do not blend well in Nepali context. Indeed, it is difficult to bring them together on practical grounds. Bottom-up participation in planning requires sharing power with stakeholders, which needs open-minded officials having internalized democratic values. (c) Power and resources do not trickle down easily to the grassroots level in the context of the centralized mindset of political parties. Therefore, Nepal’s decentralization process is vulnerable and prone to manipulation and recentralization.

7. There is no internal democratic practice within almost all political parties in Nepal. In fact, a similar mindset dominates Nepali administrative and political system in general. The lack of internal democracy in party politics and the centralized mindset of political leaders are the overarching challenge to Nepal’s devolution process and the federal system that affect every aspect of political and administrative as well as social life of Nepali citizens. In this context, civil society organizations, media and academia need to play important role in opinion formation and to lobby in favor of democracy and devolved federal system in the country.

8. Nepal’s governance structure has more concurrent powers than exclusive powers at federal and provincial levels. Furthermore, there is also some duplication in exclusive powers, which are vaguely mentioned under three different levels of power. This can potentially be a major source of intergovernmental conflict, if not resolved through intergovernmental institutional mechanisms. It is very difficult to change the list of exclusive and concurrent powers, which needs constitutional amendment with the agreements of all concerned levels of governments, as the Constitution itself puts the
pre-condition for amendments. Therefore, there is an urgency of sorting out related issues and constitutional challenges as soon as possible so that functional clarity and accountability can be established properly at all levels. In this process, engagement of representative of all level’s government is must. In case of duplication in exclusive powers between different levels of government, it should be discussed and resolved based on the principle of subsidiarity.

9. There is an urgency of establishing a functional institutional mechanism for intergovernmental relations as soon as possible. As of now, there is no such mechanism established to coordinate and harmonize the relation between provincial and local level governments yet. The draft legislation tabled recently in the parliament may have proposed such mechanism, but it takes time to pass the legislation. Ad hoc or informal mechanism can be developed and workout to strengthen collaboration until the legislative process is completed.

10. The federal system of governance, in general, is considered to be more devolved with clear functions and responsibilities so that accountability system can be established at different levels of governance. Engagement of local communities, civil society organizations (CSOs) and other stakeholders at local governance affairs such as planning and budgeting, monitoring and evaluation and policy issues are vital for local ownership, effective implementation and grassroots democratic practices. However, the key legal frameworks that came into effect after the new constitution have not provisioned for such participatory process as mandatory, rather only in suggestive tone in the Local Government Operations Act 2017. The Intergovernmental Fiscal Management Act clearly provisions for a strong top-down approach of budgeting process.

Nepal successfully practiced participatory and bottom-up planning and budgeting process for nearly two decades which was very popular over the years at local level. However, its positive aspects and learning have not been carried out in the legal frameworks under the federal system. There is a clear need to adapt the participatory approach in the local governance process with adequate legal provisions, which will have the following benefits: (a) Nepal’s learning and successful practices will be further built in the federal context to lead forward; (b) The current tendency of elite and political capture in decision making and resource mobilization can be minimized with increased level of transparency and engagement of stakeholders; (c) With the revival of participatory platforms, local people and marginalized groups can voice through these mechanisms together with the support of community-based organizations and other advocacy groups; (d) Local development activities and service delivery can be more responsive, effective, efficient and equitable with accountable manner.

11. There is no clear mechanism in the Constitution with regard to the authority of supervision and monitoring of local government practices and also of provinces by the national government. Planning and budgeting process and formats used in municipalities and provinces are very different and incomparable. These need to be standardized as soon as possible. The situation creates an increased level of challenges
to compile data at provincial or national level and analyze them properly. More importantly, compliance of the implementation of legislative provisions is difficult to track at present because of above reasons.

12. Monitoring and evaluation standards and processes need to be sufficiently developed with measurable indicators at all levels, which are vital to keep the federalism process on track and strengthen the rule of law in the country.

12.2 Summary of lessons from case studies

The following are the summary of lessons that are drawn from the case studies presented above.

1. There is a global trend that federal systems are moving from a dual system of government (central-state or provincial) to an institutionalized multi-level governance setting, specifically moving toward strong local governance system. Constitutional recognition is important but is not itself sufficient. To establish true local self-government, it has to be practiced with participatory approaches, not only embedded in the mindset of political leaders and bureaucrats (Steytler, 2005).

2. Brazil’s century-long experience of the federal system and strong local governance and South Africa’s recent experiment with developmental as well as democratic local government offer valuable perspectives and learning that could be useful for Nepal and other countries. The case of Germany, an established and much more devolved tradition, also offers a lot of insights for Nepal.

3. The growth of strong local government will require the redefinition of the role and function of provinces/states. International experience indicates that the relationship between municipalities (and metropolitan municipalities in particular) does not need to be a zero-sum game. The allocation of powers and functions to municipalities need not be at the expense of provinces/states. Often strong local government is good for the province or state government. What is required, however, is clearly defined complementary roles for each sphere of government (Steytler, 2005).

4. Local autonomy without financial self-sufficiency is not feasible. Crucial to financial autonomy is access to progressive taxes. International experience shows that property taxes are static and cannot be the principal source of local revenue (Steytler, 2005).

5. Because local government is crucial in the development and well-being of any country, it cannot be left to its own devices. Supervision is vital but an appropriate balance between supervision and autonomy should be struck (Steytler, 2005). The supervisory functions of provinces to municipalities in South African system is very delicate. The outcomes are highly dependent to their practice. On the one hand, if not practiced carefully, it may limit the scope of self-governance and autonomy. On the other hand, it may also create conflict between province and municipal government, thus limiting the constitutional spirit of cooperative federalism.

6. As important trend in multi-level governance is the emergence of metropolitan government. As is the case in many developing countries, South African cities face
two realities: they have become the home of an ever-increasing number of poor and unemployed and, at the same time, they are the places of hope for economic development (Steytler, 2005). This presents a growing challenge in all federal countries discussed earlier, except Germany.

7. Once local government becomes a player at the national/federal level, organized local government becomes an important vehicle for communication. The experience in South Africa indicates that the demand to be an effective player at the national level places considerable strain on the resources of organized local government.

8. Brazil’s case shows that the country has maintained a balance between decentralization and centralization within the federal system. On the one hand, legislative competencies of federal level, particularly the policy functions, together with the partisan functioning of the Congress, explain the centralization. On the other hand, the country has been quite successfully practicing the decentralized revenues systems – state and municipalities are entitled to receive a significant amount of shared revenues. Subnational units are in the lead position with implementation responsibilities, including many of the service delivery functions. Local government are the main providers of the most important public services. The structure and experience of South Africa are also similar in this respect. This can be a good lesson for Nepal too.

9. In Brazil, local governments have influential role in policymaking process at federal level through cadre-based party system (indirectly) and through the membership of the federation (direct). Local governments are very important players mainly because they are full members of the federation and the main providers of the most important public services.

10. The case of South African cooperative governance can be relevant for Nepal. On the one hand, the Constitution recognizes three spheres of government – national, provincial and local – which are distinct and independent to large extent. On the other hand, all spheres of government are integrated and interrelated in their functions and delivery mechanism. Cooperation is compulsory for all spheres to be effective in practice.

11. The supervisory function of national and provincial government is part of a special arrangement in South Africa. Nepal can learn useful lessons in this aspect, as well. Firstly, the supervisory role is criticized as it may limit provincial and local government autonomy. Secondly, this provision has multiple benefits as it helps maintain an integrated approach and strengthens the capacity of each spheres of government to maintain the spirit of constitutional provisions and to ensure the implementation of national priority programs effectively.

12. Revenue sharing at vertical and horizontal levels is a common practice in devolved or federal countries, which strengthens mutual cooperation between different levels or spheres of government in the long run. However, it is more sophisticated in some countries (e.g. Germany) and relatively simple in some countries (e.g. South Africa). It takes some time to become mature and gain efficiencies. Therefore, it is better to
start with the simple revenue-sharing system before moving gradually toward a more sophisticated system.

13. Another feature of South African local government is its tiers and responsibilities, which look quite complicated and could be linked with their capacity. The provinces have the responsibility of strengthening the capacity of municipalities. Thus, supervision, capacity and autonomy are tied-up in their case.

14. Another important feature of South African practice, from which Nepal can also learn, includes formal platforms and mandatory provisions of engaging local communities and traditional groups in local governance affairs, which intend to strengthen social capital and grassroots democracy with proper voicing and accountable mechanisms.

15. Having three spheres of government – each with a degree of autonomy – makes for complex relationships. It may also adversely impact the effectiveness and efficiency of government. These problems are shared by most federal countries (Steytler, 2005). Therefore, there is a need of effective institutional mechanism to maintain and balance the spirit of ‘self-rule’ and ‘shared-rule’ and promote cooperative federalism.

12.3 Concluding remarks

In summary, it can be concluded that political decentralization or devolution is a precondition for the success of any type of federal system. Centralized federalism does not lead a country to the desired direction and also does not solve the political issues of diversity and unity. The mindset of political leadership is an important determining factor for the successful implementation of a federal system of governance.

Clear constitutional provisions and functional institutional arrangements for intergovernmental cooperation are vital for cooperative federalism to succeed and institutionalize the system. In other words, intergovernmental cooperation is an institutional fabric, which connects all levels of government so that cooperation becomes possible at the practical level. It is an important ongoing process in the federal system at various levels of government and administration. If intergovernmental mechanism fails to be effective, then there are possibilities of political dispute over the division of power that may lead to serious divisions and political crisis.

Regular engagement of stakeholders and communities in local governance process are important factors for local government units to be response, transparent and accountable. Regular consultation in policy and other critical issues, participatory planning and budgeting, monitoring and evaluation are important mechanisms to link local government units with the communities and also with the individuals. It also makes it possible to utilize and strengthen the social capital that exists in Nepali communities since long. These practices, once they are matured and institutionalized, can lead to strengthen grassroots democracy in a real sense.

Theoretically, the federal system is more a devolved and accountable system where both ‘shared-rule’ and ‘self-rule’ interplay important roles, but these should be properly balanced through constitutional, institutional and political instruments and practices.
accountedly. It is important to resolve the issues of overlap and confusion in functional
delineation. If functions and responsibilities are not clear enough, the accountability
system cannot function well, and the government cannot deliver effectively, efficiently
and equitably. These are especially important in a cooperative federal system to work
properly. Institutionalizing devolved system by balancing both ‘self-rules’ and ‘shared-
rules’ within the structure of government at all levels, especially in countries with
predominant history of centralized system, is very challenging and complex. It is a non-
linear and time-consuming political process that needs a long-term vision, commitment
and continuous effort by all actors including its people. Its success is largely determined
by the historical, socio-cultural and political practices, more importantly the mindset of
political leadership.

Accountable institutional arrangements at all spheres of government are critical,
which are important vehicles of the success of federal system. It is more crucial in the
context of long history of centralized system in place, where both mindset and
institutional setup are not much supportive of democratic practices and accountable
institutions at appropriate levels.

The capacity of each sphere of government is another important and sometime
controversial aspect for successful federal system. Particularly, the capacity of each
sphere of government to cooperate and collaborate with each other is critically important.
Integration in national interest and related key policy areas, respect to the country,
fundamental rights of the people, and participatory grassroots democracy lead to the
successful implementation of the federal system. A lack of such capacity can be the reason
to blame each other and it can serve as an excuse to recentralize power. In this context, it
should be noted that capacity is strengthened by practicing power devolution with
stakeholders and it may take time to all spheres of government. However, recentralization
cannot be justified with a lack in capacity and it should not be the solution. Finally, a
country’s constitutional and civil law traditions also play an important role in
institutionalizing the federal system in any country.
Bibliography


Bahl, R. et al. (2001, January 10). Intergovernmental Transfers in Developing and Transitional Countries: Principles and Practice. Retrieved from Andrew Young School of Policy Studies, Georgia State University, Atlanta: www.isp-aysps.gsu.edu/fprc


Annexes

Annex 1: Schedule-5: List of federal power

(Relating to Clause (1) of Article 57, and Article 109)

1. Defence and military: (a) Protection of national unity and territorial integrity (b) National security
2. War and defence
3. Arms and ammunitions factories and production
4. Central police, armed police force, national intelligence and investigation, peace, security
5. Central planning, central bank, finance policies, monetary and banking policies, foreign grants, aid and loans
6. Foreign and diplomatic affairs, international relations and United Nations related matters
7. International treaties or agreements, extradition, mutual legal assistance and international borders, international boundary rivers
8. Telecommunications, allocation of radio frequency, radio, television and postal matters
9. Customs, excise-duty, value-added tax, corporate income tax, individual income tax, remuneration tax, passport fee, visa fee, tourism fee, service charge and fee, penalty
10. Federal civil service, judicial service and other government services
11. Policies relating to conservation and multiple uses of water resources
12. Inland and inter-State electricity transmission lines
13. Central statistics (national and international standards and quality)
14. Central level large electricity, irrigation and other projects
15. Central universities, central level academies, universities standards and regulation, central libraries
16. Health policies, health services, health standards, quality and monitoring, national or specialised service providing hospitals, traditional treatment services and communicable disease control
17. Federal Parliament, Federal Executive, Local Level related affairs, special structure
18. International trade, exchange, port, quarantine
19. Civil aviation, international airports
20. National transportation policies, management of railways and national highways
21. Laws relating to the Supreme Court, High Courts, District Courts and administration of justice
22. Citizenship, passport, visa, immigration
23. Atomic energy, air space and astronomy
24. Intellectual property (including patents, designs, trademarks and copyrights)
25. Measurement
26. Mines excavation
27. National and international environment management, national parks, wildlife reserves and wetlands, national forest policies, carbon services
28. Insurance policies, securities, cooperatives regulation
29. Land use policies, human settlement development policies, tourism policies, environment adaptation
30. Criminal and civil laws making
31. Security printing
32. Social security and poverty alleviation
33. Constitutional Bodies, commissions of national importance
34. Sites of archaeological importance and ancient monuments
35. Any matter not enumerated in the lists of federal powers, province powers and local level powers or in the concurrent list and any matter not specified in this Constitution and in the federal laws
Annex 2: Schedule-6: List of state/province power

(Relating to clause (2) of Article 57, clause (4) of Article 162, Article 197, clause (3) of Article 231, clause (7) of Article 232, clause (4) of Article 274 and clause (4) of Article 296)

1. State police administration and peace and order
2. Operation of banks and financial institutions in accordance with the policies of Nepal Rastra Bank, cooperative institutions, foreign grants and assistance with the consent of the Centre
3. Operation of Radio, F.M., television
4. House and land registration fee, motor vehicle tax, entertainment tax, advertisement tax, tourism, agro-income tax, service charge, fee, penalty
5. State civil service and other government services
6. State statistics
7. State level electricity, irrigation and water supply services, navigation
8. State universities, higher education, libraries, and museums
9. Health services
10. Matters relating to the State Assembly, State Council of Ministers
11. Intra-State trade
12. State highways
13. State bureau of investigation
14. Physical management and other necessary matters of State governmental offices
15. State Public Service Commission
16. Management of lands, land records
17. Exploration and management of mines
18. Protection and use of languages, scripts, cultures, fine arts and religions
19. Use of forests and waters and management of environment within the State
20. Agriculture and livestock development, factories, industrialization, trade, business, transportation
21. Management of trusts (Guthi)
Annex 3: Schedule-7: List of concurrent powers of federation and state

(Relating to clause (3) of Articles 57, Article 109, clause (4) of Article 162, and Article 197)

1. Civil and criminal procedure, evidence and oaths (legal recognition, public acts and records, and judicial proceedings)
2. Supply, distribution, price control, quality and monitoring of essential goods and services
3. Preventive detention for reasons connected with the security of the country, prison and detention management, and maintenance of peace and order
4. Transfer of accused persons, detainees and prisoners from one State to another State
5. Laws relating to family affairs (marriage, transfer of property, divorce, persons on the verge of extinction, orphan, adoption, succession and joint family)
6. Acquisition, requisitioning of property and creation of right in property
7. Contracts, cooperatives, partnership and agency related matters
8. Matters relating to bankruptcy and insolvency
9. Drugs and pesticides
10. Planning, family planning and population management
11. Social security and employment, trade unions, settlement of industrial disputes, labor rights and disputes related matters
12. Legal profession, auditing, engineering, medicines, Ayurvedic medicines, veterinary, Amchi and other professions
13. State boundary river, waterways, environment protection, biological diversity
14. Matters related to means of communication
15. Industries and mines and physical infrastructures
16. Casino and lottery
17. Early preparedness for, rescue, relief and rehabilitation from, natural and man-made calamities
18. Tourism, water supply and sanitation
19. Motion pictures, cinema halls and sports
20. Insurance business operation and management
21. Poverty alleviation and industrialization
22. Scientific research, science and technology and human resources development
23. Utilization of forests, mountains, forest conservation areas and waters stretching in inter-State form
24. Land policies and laws relating thereto
25. Employment and unemployment aid
Annex 4: Schedule-8: List of local level power

(Relating to clause (4) of Article 57, clause (2) of Article 214, clause (2) of Article 221 and clause (1) of Article 226)

1. Town police
2. Cooperation institutions
3. Operation of FM radio
4. Local taxes (wealth tax, house rent tax, land and building registration fee, motor vehicle tax), service charge, fee, tourism fee, advertisement tax, business tax, land tax (land revenue), penalty, entertainment tax, land revenue collection
5. Management of the local services
6. Collection of local statistics and records
7. Local level development plans and projects
8. Basic and secondary education
9. Basic health and sanitation
10. Local market management, environment protection and bio-diversity
11. Local roads, rural roads, agro-roads, irrigation
12. Management of Village Assembly, Municipal Assembly, District Assembly, local courts, mediation and arbitration
13. Local records management
14. Distribution of house and land ownership certificates
15. Agriculture and animal husbandry, agro-products management, animal health, cooperatives
16. Management of senior citizens, persons with disabilities and the incapacitated
17. Collection of statistics of the unemployed
18. Management, operation and control of agricultural extension
19. Water supply, small hydropower projects, alternative energy
20. Disaster management
21. Protection of watersheds, wildlife, mines and minerals
22. Protection and development of languages, cultures and fine arts
Annex 5: Schedule-9: List of concurrent power of federation, state & local level

(Relating to clause (5) of Article 57, Article 109, clause (4) of Article 162, Article 197, clause (2) of Article 214, clause (2) of Article 221, and clause (1) of Article 226)

1. Cooperatives
2. Education, health and newspapers
3. Health
4. Agriculture
5. Services such as electricity, water supply, irrigation
6. Service fee, charge, penalty and royalty from natural resources,
7. Forests, wildlife, birds, water uses, environment, ecology and biodiversity
8. Mines and minerals
9. Disaster management
10. Social security and poverty alleviation
11. Personal events, births, deaths, marriages and statistics
12. Archaeology, ancient monuments and museums
13. Landless squatter management
14. Royalty from natural resources
15. Motor vehicle permits
Annex 6: Constitutional arrangements for inter-governmental relations

The Constitution of Nepal, 2015 provisioned the following arrangements for intergovernmental relation among different spheres of governments.

Legislative interrelations between federation and states/provinces (Article 231)

1. The Federal Law may be made to be applicable to the whole of, or, if required, to any part of, the territory of Nepal.
2. A State law may be made to be applicable to the whole of, or as required, to any part of the territory of the State.
3. If two or more States make a request to the Government of Nepal to make laws on any matter enumerated in Schedule-6, the Federal Parliament may make necessary laws. Such laws shall be applicable only to the concerned States.

Relations between federation, state and local level (Article 232)

1. The relations between the Federation, States, and Local level shall be based on the principles of cooperation, coexistence and coordination.
2. The Government of Nepal may, pursuant to this Constitution and the Federal Law, give necessary directions to any State Council of Ministers on matters of national importance and on matters to be coordinated between the States, and it shall be the duty of the concerned State Council of Ministers to abide by such directions.
3. If any such type of act as may seriously undermine the sovereignty, territorial integrity, nationality or independence of Nepal is carried out in any State, the President may, as required, warn such State Council of Ministers, suspend or dissolve the State Council of Ministers and the State Assembly for a period not exceeding six months.
4. Any suspension or dissolution of any State Council of Ministers and State Assembly made pursuant to clause (3) must get ratified by a two-thirds majority of the total number of the then members of the Federal Parliament within 35 days.
5. If dissolution made pursuant to clause (3) is ratified by the Federal Parliament, election to the State Assembly shall be held in such State within six months. Provided that such suspension or dissolution shall ipso facto be invalid if it is not ratified by the Federal Parliament.
6. The Federal ruling shall apply to such State during the period of such suspension if the suspension made pursuant to clause (3) is ratified pursuant to clause (4) and until election to the State Assembly is held pursuant to clause (5).
7. During the continuance of the Federal rule, the Federal Parliament may make laws with respect to any matter enumerated in the List contained in Schedule-6. Such laws shall continue to exist until repealed by other laws made by the concerned State Assembly.
8. The Government of Nepal may, directly or through the State Government, render necessary assistance to, and give necessary directives to, any Village Executive or Municipal Executive, pursuant to this Constitution and the Federal law. It shall be the duty of the Village Executive or Municipal Executive to abide by such directives.
Relations between states (Article 233)

1. One State shall render assistance in the execution of legal provisions or judicial and administrative decisions or orders of another State.

2. A State may exchange information and consult with another State on matters of common concern and interest, coordinate each other on their activities and legislations and extend mutual assistance.

3. A State shall, in accordance with its State law, provide equal security, treatment and facility to residents of another State.

Inter-State Council (Article 234)

1. There shall be an Inter-State Council as follows to settle political disputes arising between the Federation and a State and between States: (a) Prime Minister – chairperson; (b) Minister for Home Affairs of the Government of Nepal – member; (c) Minister for Finance of the Government of Nepal – member; and (d) Chief Ministers of the concerned States – member.

2. The Inter-State Council may meet as required; (3) The Inter-State Council may invite to its meeting a Minister of the Government of Nepal and a Minister of the concerned State who is responsible for the matter of dispute and a concerned expert; (4) The rules of procedures of the meeting of the Inter-State Council shall be as determined by the Council itself.

Coordination between federation, state and local level (Article 235)

1. The Federal Parliament shall make necessary laws in order to maintain coordination between the Federation, State and Local level.

2. The State Assembly may maintain coordination between the State and Village Bodies or Municipalities and settle political disputes, if any, that have arisen, in coordination with the concerned Village Body, Municipality and the District Coordination Committee.

3. The processes and procedures for the settlement of disputes under clause (2) shall be as provided for in the State law.

Inter-state trade (Article 236)

Notwithstanding anything contained elsewhere in this Constitution, it is prohibited to make any kind of obstruction to the carriage of goods or extension of services by a State or Local level to another State or Local level or to the carriage of goods or extension of services to any State or Local Level or to levy tax, fee or charge thereon or to make any kind of discrimination on the carriage or extension of such services or goods.

Not to affect jurisdiction of Constitutional Bench of Supreme Court (Article 237)

Nothing contained in this Part shall affect the jurisdiction of the Constitutional Bench of the Supreme Court under Article 137.
Annex 7: Article 59: Fiscal powers of different spheres of government

The Article 59 of the Constitution of Nepal provisions the financial powers of different spheres of governments as follows:

1. The Federation, State and Local level shall make laws, make annual budget, decisions, formulate and implement policies and plans on any matters related to financial powers within their respective jurisdictions.

2. The Federation may so make necessary policies, standards and laws on any of the matters enumerated in the Concurrent List and other areas of financial powers as to be applicable also to the States.

3. The Federation, State and Local level shall make budget of their respective levels, and the time for submission of budget by the State and Local Level shall be as provided for in the Federal law.

4. The Federation, State and Local Level shall provide for the equitable distribution of benefits derived from the use of natural resources or development. Certain portions of such benefits shall be distributed, pursuant to law, in forms of royalty, services or goods to the project affected regions and local communities.

5. If, in utilizing natural resources, the local community desires to make investment therein, the Federation, State and Local Level shall accord priority to such investment in such portion as provided bylaw on the basis of the nature and size of such investment.

6. The Government of Nepal shall have power to obtain foreign assistance and borrow loans. Such assistance or loans shall be so obtained or borrowed as to have macro-economic stability of the country.

7. Provisions relating to the management of budget deficits and other fiscal discipline of the Federation, State and Local Level shall be as provided for in the Federal law.
Annex 8: Article 60: Distribution of sources of revenues

The Article 60 of the Constitution of Nepal provisions the distribution of sources of revenue as follows:

1. The Federation, State and Local Level may impose taxes on matters falling within their respective jurisdiction and collect revenue from these sources. Provided that provisions relating to the imposition of taxes and collection of revenue on matters that fall within the Concurrent list and on matters that are not included in the list of any level shall be as determined by the Government of Nepal.

2. The Government of Nepal shall make provisions for the equitable distribution of the collected revenue to the Federation, State and Local Level.

3. The amount of fiscal transfer receivable by the State and Local level shall be as recommended by the National Natural Resources and Fiscal Commission.

4. The Government of Nepal shall, on the basis of the need of expenditure and revenue capacity, distribute fiscal equalization grants to the State and Local Level.

5. Each State shall, in accordance with the State law, distribute fiscal equalization grants out of the grants received from the Government of Nepal and revenues collected from its sources, on the basis of the need of expenditure and revenue capacity of its subordinate Local Level.

6. Provisions relating to distribution of conditional grants, complementary grants or special grants for other purposes to be provided by the Government of Nepal from the Federal Consolidated Fund shall be as provided for in the Federal law.

7. Distribution of revenues between the Federal, State and Local Level shall be made in a balanced and transparent manner.

8. A Federal Act on the distribution of revenues shall be made having regard to the national policies, national requirements, autonomy of the State and Local Levels, services to be rendered by the State and the Local Level to the people and financial powers granted to them, capacity to collect revenues, potentiality and use of revenues, assistance to be made in development works, reduction of regional imbalances, poverty and inequality, end of deprivation, and assistance to be made in the performance of contingent works and fulfilment of temporary needs.
Annex 9: Functions and powers of NNRFC

(Related to Article 250 and 251, Constitution of Nepal)

1. Determine detailed basis and modality for the distribution of revenues to the federal, provincial and local governments out of the Federal Consolidated Fund in accordance with the constitutional and legal provisions.

2. Recommend equalization grants to be provided to the province and local governments out of the Federal Consolidated Fund.

3. Carry out study and research activities and prepare parameters for conditional grants to be provided to the three spheres of governments in accordance with national policies and programs, norms/standards and situation of infrastructures.

4. Determine the detailed basis and modality for the distribution of revenues to all three spheres of government.

5. Recommend measures to meet expenditures of the federal, provincial and local governments, and to reform revenue collection.

6. Analyze macroeconomic indicators and recommend ceiling of internal loans that the federal, provincial and local governments can borrow.

7. Review the bases for the distribution between the federal, provincial and local governments of revenues and recommend for revision.


9. Carry out study and research activities to resolve possible disputes that may arise between the federation and the provinces, between provinces, between a province and a local level, and between local levels, and make suggestions to act in a coordinated manner for the prevention of such disputes.

10. Carry out necessary study and research activities about environmental impact assessment required in the course of distribution of natural resources and make recommendations to the Government of Nepal.
Damodar Adhikari holds a Doctor of Philosophy in Decentralized Governance from the Technical University of Dortmund, Germany. Prior to completing his doctoral work, he received a joint Masters in Regional Development Planning and Management from the School of Urban and Regional Planning (SURP), University of the Philippines and the Faculty of Spatial Planning, TU Dortmund, Germany. In addition, he holds a Master’s degree in Public Administration from Tribhuvan University, Nepal.

Dr. Adhikari brings more than 30 years of experience in design, management and implementation of development programs from grassroots to the national level. He is an expert in local governance, public policy, sector reform and systems strengthening, and possesses significant expertise in planning and management, translation of evidence to policy and planning, decentralization, federalism, and capacity-building in Nepal and elsewhere in Asia.

Dr. Adhikari’s work is focused on fostering capacity building and managing reforms to improve governance and increase access to and utilization of public services through innovative approaches. He is experienced in strengthening transparency, oversight and public accountability. He worked as an expert in health policy and planning, health systems strengthening and local health governance at RTI International and other institutions for more than 13 years in different capacities.