

EMERGING ISSUES OF CONFLICT IN FEDERALIZED NEPAL



RESEARCH REPORT

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Research Report

November 2019



ASIAN ACADEMY
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Emerging Issues of Conflict in Federalized Context in Nepal

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FOR PEACE RESEARCH AND DEVELOPMENT

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FOREWORD

The research 'Emerging Issues of Conflict in Federalized Context in Nepal' has aimed at identifying the issues related to the implementation of the federal restructuring in the country. The research is an outcome of the desk review and field level interviews and focus group discussions in nine districts namely Ilam, Jhapa, Morang, Dhanusha, Mahottari, Makawanpur, Surkhet, Kailali and Rukum West, as well as drawings from a national level interaction held in Kathmandu to disseminate and validate the findings from the field.

Asian Academy for Peace, Research and Development (Asian Peace Academy) expresses its sincere gratitude to Kurve Wustrow, Centre for Training and Networking in Non-violence Actions and Civil Society Platform for Peacebuilding and Statebuilding (CSPPS) for their support to undertake this research.

A team of researchers collected and analysed the information to draw findings of the study. Therefore, the research is a collaborative effort of the researchers and field level supporting hands. I would like to thank Mr. Rabindra Bhattarai for leading the research team for the field, analysing data and writing the research report. I would like to thank research team member Ms. Rita Shrestha Bhadra for field level data collection as well as supporting with generating further secondary information. I would like to thank Mr Tulasi Ram Nepal and Shiva K Dhungana for their input as research advisors from the time of the research design to finalization of the report. I would also like to thank Mr. Hari Bahadur Karki for his support in the course of collection of information. I would also thank members of Collaborative Learning Circle (CLC) for their inputs during the design of the research and finalization of the tools.

Total 23 key informants and 37 FGD participants from civil society, media, political parties and government agencies provided the needed information and facilitated the field level data collection in the nine study districts. The report is based on their opinion, interpretation, observation, analysis, suggestions and specific data shared with the research team. Therefore, they deserve special

credit as without their support it would not have been possible. I would like to pay my sincerest gratitude to all participants for providing information and their opinion related to this research. Mr. Raju Shrestha, Morang, Mr. Bishnu Bahadur Karki from Mahottari, Ms. Gita Koirala, Surkhet and Mr. Taparaj Josi, Kailali have supported a lot in facilitating and carrying out district level interviews and interactions. I am indebted for their kind support. Finally, I would like to thank all who involved in the process and provided support directly or indirectly to bring this report published in this shape.

This research tries to explore the conflict between three levels of government in Nepal. As the federal system is new to our country, we need to understand the issues of conflict/contention between the three layers of government and address them through coordinated approach for successful and effective implementation of federal system. As mentioned before, the research intends to identify and share those pain points among concerned stakeholders and encourage all level of leadership as well as other concerned stakeholders to develop collaborative strategies to overcome those pain points and ensure smooth implementation of the new model of governance in the country. We request all concerned individuals and agencies to go through the analysis and recommendations to apply them in practice.

Thank you

Sharad Chandra Neupane
Executive Director

ACRONYMS AND ABBREVIATIONS

AJAR	Access to Justice and Advocacy of Rights.
APN	Annapurna Post Nepal
BNH	British-Nepalese History
CEIDP	Commission on Investigation of Enforced Disappeared Persons
CIAA	Commission for the Investigation of Abuse of Authority
CPA	Comprehensive Peace Accord
CPN	Communist Party of Nepal
CPN-UML	Communist Party of Nepal Unified Marxist Leninist
CPP	Community Police Partnership
CSPPS	Civil Society Platform for Peacebuilding & Statebuilding
DFO	District Forest Officer
DIR	Department of Inland Revenue
FGD	Focus Group Discussion
FM	Frequency Modulation
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
ICTJ	International Centre for Transitional Justice
ILRR	Institute for Legal Research and Resource
KII	Key Informant Interview
LBMB	Law Book Management Board
NAN	National Assembly of Nepal

NG	Nepal Gazette
NHRC	National Human Rights Commission
NLC	Nepal Law Commission
NMA	Nepal Medical Association
NMC	Nepal Medical Council
NP	Nepal Police
NPC	National Planning Commission
NTDC	Nepal Tea Development Corporation
OLK	Online Khabar
PTI	Press Trust of India
SC	Supreme Court
SDG	Sustainable Development Goal
SPA	Seven Parties Alliance
THT	The Himalayan Times
TKP	The Kathmandu Post
TRC	Truth and Reconciliation Commission
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nation
USIP	United States Institute of Peace

EXECUTIVE SUMMARY

With the restoration of parliamentary democracy with Constitutional Monarchy in 1990, people expected rapid social, political and economic development in the country. However, the political transition did not fulfil people's expectation, rather continued unequal treatment of citizens. Consequently, this culminated into the start of a political armed rebellion within the first six year of this change. In February 1996, the then CPN-Maoist launched a 'People's War' that lasted for a decade. It took lives of more than 13,000 citizens along with economic loss worth of billions before the Maoist rebels and the mainstream political parties came to an agreement to jointly work for building peace and institutionalizing republican democracy in the country. The cessation of the decade-long armed conflict through the ceasefire agreement followed by 12 Point-Agreement paved the way for declaring Nepal as a federal democratic republic and promulgation of the Constitution of Nepal 2015 through the historic Constituent Assembly.

The federal restructuring broadly aims at furthering peace and institutionalizing democracy through good governance and devolution of power to local level. As part of the state restructuring, many laws and policies are already put in place and many are under formulation. The three levels of governments are elected through the general election in 2017 and are mandated to lead the governance of their respective functionalities. However, there are still a few disenchantments among different social groups, such as that of Madhesi community, that need to be addressed. These unaddressed residues of the past armed conflicts, unitary mind-sets and working culture within the state functionalities at the federal level, and unpredicted anomalies observed in newly elected government authorities are contributing to the emergence of conflict/contention between the three levels of government.

In order to shed light on the above-mentioned issue, Asian Academy for Peace, Research and Development carried out a research on the current dynamics of the three levels of government in the newly

established federal structure. The data collection for this research was carried out with the help of desk review, legal and policy content analysis, key informant interviews and focus group discussions.

Federalism in a diverse and heterogeneous society like Nepal stands to gain from this new system of governance as time passes by. There have already been some good examples where local governments are identifying their development priorities and articulating development vision for their constituencies and executing them efficiently. However, we are in the early stage of implementing federalism in Nepal and it might take few more years to see the full benefits of federal restructuring.

Localization of the Sustainable Development Goal (SDG) 16 stipulates to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels is a significant agenda for Government of Nepal to ensure peace, justice and strong institutions in present context of public governance. Being an active member of international community, Nepal is working towards social transformation by implementing peace, human rights and development as parts of its international obligations.

Fifteenth National Plan 2019-2024 aims for guarantee of peace and security for development and prosperity with complete human safety. Federal, provincial and local governments are furthering their respective periodic plans and annual programs to materialize the above targets of localizing sustainable development agenda.

There are some evidence of attempting to address past conflict and grievances by devolving power to provincial and local governments. The Constitution has segregated State power to Federation, Province and Local Level. However, there are reports of controversies in exercising power as well as addressing the past conflicts despite the constitutional provision that the Federation, Provincial and Local Level maintain relations on the principles of cooperation, co-existence and coordination.

Examples of Federal - Provincial conflict are the judicial remedies invoked by Province 2; some other Local Governments and citizens particularly on disputes of jurisdictions, controlling of resources and expenditures being made under public funds. Within such ground, the study derived following findings:

Factors for Sustaining Peace

- Current political stability with majority government at federal and 6 of the seven provinces is fostering a sense of peace and justice in society at large.
- Government of Nepal and other state agencies have subscribed agenda of promoting peace and justice as a priority issue.
- Citizen-friendly justice, security and service delivery mechanisms are proactively working for a fair and objective oriented outputs that drive general people to seek solutions through formal mechanisms that motivate people for peaceful solutions to conflict.

Distribution of Power in Restructured State

- Constitutional segregation of state power among federation, province and local level is not clear and exclusive enough for rolling out mandates at different levels.
- Federal legislations hardly recognize the role of provinces in fulfilling and realizing the fundamental entitlements of citizens.
- Local governments are legislatively empowered enough to govern their territories and deliver services to their constituencies. The overwhelming delegation of service delivery to the local government may be challenging to fulfil given the resource constraints.
- The Constitution and prevailing laws provide negligible judicial authority to provinces and the role of provincial government in sustaining peace is more or less non-existent.

- Judicial committees are entrusted to dispense justice at local level are inconsistent with the principle of independent, impartial and competent tribunal.

Governance Controversies

- Public trust over the state-machinery and functionaries is lost due to continuity of the immoral and corrupt practices by high level state officials and people have no confidence that commitment of good governance would be achieved by such mess in the state functionaries.
- Federal government tends to act without giving due consideration to the jurisdiction of the provinces.
- Conflict of interest between the implementers and the beneficiaries in terms of the implementation of fundamental entitlements in particular continues further.

Conflict between Federation and Provinces

- Federal government is gradually tending toward adopting its previous centralized authority exercising approach ignoring the exclusive jurisdiction of the provinces against the constitutional spirit of co-existence, collaboration and coordination. Underestimation of the role of provinces and encroachment of provincial jurisdiction may weaken the federal system.

Disputes between Federation and Local Level

- Federal bureaucracy and employees are performing their functions with centralized mentality subscribing highhandedness and desirous to withdrawal of the power back to central authorities undermining constitutional segregation of state-power.

Public Dissention to Federalized State

- General people still hold trust and faith to the restructured federal state mechanism with a hope towards improved safety, security and fairer governance. However, impunity, taxation

and weak service delivery are leading to dissatisfaction and frustrations.

- Citizens' resonance and resentment are amplified by reluctance of state-power holders in proactive service delivery and haphazard multiple taxation giving rooms for suspecting more misuse of public resources for personal benefits of the powerholders.

Reflection on Community Conflict

- Communities are stabilizing toward more peaceful environment as residue of past conflicts are reduced. Community conflicts in different forms are undeniably exist in society, increased access to justice mechanisms may address minimizing further potential harms to be borne in community.

The study also found that there is indication of state commitment on localizing peace and development in line with SDGs. Mistrust, confusion and disagreements amongst the federal, provincial and local governments exist deeply in mind-sets and attitudes rather than laws and system. The federal government is unable to ensure smooth relationships between three levels of government. Recognition of the provincial governments among citizens is also minimal due to absence of their ineffective service delivery.

Despite government initiatives on curbing corruption and irregularities, erosion of governments' trust and suspicion on the rule of law and democratic values is increasing. The government's failure to respond to public disappointments and increasing public frustration is contributing sporadic protest and violent actions over the year. Government is not effectively addressing the competitive interests of diverse groups and sects. Avenues for settlement of community conflicts have increased, however, majority of the conflicts are caused because of inefficient, ineffective and insensitive service delivery of the government.

Based on the findings and the conclusion drawn above, the research furnishes following recommendations:

- The three levels of government should recognize peace and justice as priority agenda of governance and development initiatives.
- The three levels of government should come forward to resolve differences, with a win-win approach of dispute resolution rather than seeking judicial remedy.
- Federal government should take pro-active initiative to respect and adhere to the Part 20 of the constitution and operate on the principles of cooperation, collaboration, coexistence and coordination
- The federal government should promptly and effectively overcome insensitive and sluggish modus-operandi in terms of resolving the past conflicts and their consequences.
- The federal government should initiate a pre-legislation discussion with concerned stakeholders while preparing any bills that might have implications to the fundamental entitlements of the citizens or group of people.
- Provincial and local governments should take lead in delivering services to the people promptly and effectively with generous dispositions.

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Chapter - One

INTRODUCTION

1.1 Introduction

Nepal has become a federal state with the promulgation of the Constitution of Nepal in 2015. As a fresh starter of republic federal state, it has successfully completed elections of the local, provincial and federal governments in 2017. The elections have assured a political stability with legislatures and executives of all three levels are elected for five years. The federal restructuring is aimed at furthering peace, institutionalizing democracy and promoting good governance. Since the political and structural transformation has taken place following a decade long armed conflict, residues are yet to be addressed including reparation and redressal to the victims and holding the perpetrators accountable through transitional justice mechanisms.

As part of the state restructuring, many laws and policies are in place, many are under formulation and many others are yet to be drafted at federal, provincial and local levels. As the federal system is new to Nepal, and the existing laws and policies need to be amended in line with the local context, some laws and policies have created conflicts between the three levels of the government. The prevailing working tradition accustomed in a centralized and unitary system of governance and the mind-set of the functionaries has also created institutional conflicts around structural hierarchy, exercise of power and jurisdictions and devolution of authorities. Further, the heightened expectations of the people from the newly elected representatives on the one hand, and the overwhelming devolution of power to the elected governments, on the other, might have created a tendency among elected representatives to divert the benefits within their constituencies only ignoring others' concerns.

The Federal Government, having two thirds majority in the Parliament after unification of two major political parties shows

tendency of not giving enough attention to the opposition parties. This also suggests that there is potential of increased difference in political concord and increased disenchantment among political stakeholders. A clear example of this is the declaration of another People's War by a fraction of former Communist Party of Nepal (CPN), Maoist led by Netra Bikram Chand (Biplav).

These all tendencies infer an existence, or potential conflicts at different levels. And, these trends and tendencies are developed between the levels of government as well as political parties with potential conflicts. Potential conflicts and clashes may lead to obstructions in smooth operation of the system and give rooms for rise of socio-political conflicts in the country.

Considering the potential emergence of institutional conflicts between federal, provincial and local governments and the general public perceptions stemming this tendency, observation and critical analysis of dynamics between three levels of government are felt necessary. On this background, Asian Academy for Peace, Research and Development, in collaboration with Collaborative Learning Circle (CLC)¹ carried out a research on the current status of the prevalent relationships and conflict dynamics in the context of federalization. This research, carried out during June 2019 to November 2019, presents an analysis of the conflict dynamics in relation to implementation of federal structure of governance system in Nepal. This report assesses the status of conflict and give reflections on highly disputed issues and conflicts of present context.

1.2 Objective

The objective of the study is to tracing out the perceived state of peace and conflict in the federalized context in Nepal. In order to

1 Collaborative Learning Circle (CLC) is an informal network of peacebuilding actors from Nepali civil society and also part of country team of Civil Society Platform for Peacebuilding and Statebuilding (CSPPS).

achieve the objective, the study has aimed at attaining answers to the following questions:

- What are the opportunities in the present constitution, laws and practices and local capacity leading to sustainable peace in society?
- What are the challenges in the present constitution and federal laws and current practices leading to potential conflicts among federal, provincial and local authorities?
- What are the issues that are under public discourse that indicate increased socio-political conflicts among the political actors?

1.3 Methodology of the Research

Mixed method of data collection was applied for this study. Desk review, survey content analysis, Key Informant Interviews (KIIs) and Focus Group Discussions (FGDs) were used as data collection techniques. Desk review was used for reviewing the background information and assessing and summarizing the constitution making process, federalization and power sharing framework in terms of separation of power (legislative, executive and judicial) and segregation of power (federal, provincial and local governments). The study team developed a set of qualitative and quantitative questions for data collection as guided by the literature/desk review.

The research also used relevant news/articles in mass media (broadsheets and online media, in particular) which reported incidences/cases of conflicts among the different levels of the government. In general, the public information relevant to the subject matters, particularly contained in laws and government policy documents, of federal, provincial and local governments to the period of study carried out are also taken into note for the contextualization. Similarly, reported writ petitions filed by the local or provincial authority in the Constitutional Bench of the Supreme Court of Nepal are surveyed and cases of contentious issues are assessed.

Available noted contentious cases having legally questioned by authorities in terms of jurisdictions and delegation of legal authorities are discussed. Some of the cases that deemed relevant in the course of assessment dealt under the judicial review of high courts are also assessed and deliberated. While assessing those, special focus is given to seek answers to the central issue of the dispute/conflict. Additionally, legal/constitutional confusions are also explored together with possibility of resolving problems (the point of possible settlement).

Key Informants Interviews (KII) were done with 23 people of governmental and non-governmental institutions working at federal, provincial and local level. Officials of relevant ministries of government at federal and provincial level including Chief Attorney, ministers, and officials of the Gaunpalikas and Municipalities including Chairpersons, Vice Chairpersons, Mayors and Deputy Mayors, legal advisors and some of the executive officials. Civil society members and community people, having access to the government authorities in terms of seeking services and registering their grievances, were also consulted and interviewed. Interviewees include from Ilam, Jhapa, Morang, Dhanusa, Mahottari, Makawanpur, Rukum Pashchim, Surkhet and Kailali districts. A common tool of data collection for the study, semi-structured checklist was used to explore particular contexts and meanings constructed by specific individuals or groups through open-ended questionnaires reflecting the research objective.

Interviews were conducted ensuring a free and frank conversational approach to allow them to respond to the queries. Rules of interviews including confidentiality, consent taking and informing their freedom to deny answering specific questions or quitting the interview at any stage of the interview were followed. The following questions were used as guiding checklist for the interviews:

1. How have you observed the overall condition of peace in Nepali society in the present context of restructured state?
2. Have you observed the implementation of federal system is playing a specific role to sustain peace?

3. What are the legal powers and duties trusted to province and local levels to make peace sustainable?
4. What have you found the specific roles played by province and local level to make peace sustainable?
5. What is understood as conflict in the closer communities?
6. Are you aware of/have you taken into note about the incidents of conflicts in our society?
7. Have you observed any conflict surfaced about the dispersal of scope/jurisdiction, resources or powers among the three levels of government?
8. How are they addressed such conflicts after surfaced?
9. Which of the conflicts that you indicate are in expressed or open form and which are hidden?
10. What types of conflicts are seen as risky to make situation violent or more tensed? How and why?
11. To what extent these conflicts have affected society at national/provincial/local level as to your observation?
12. What impacts are caused by the conflicts among the governments in the society or community? (Such as: good effects, bad effects, strengths/obstructions in development activities, tensions that could be extended to future)
13. What types of persons/groups are found engaged in the conflicts at community level?

Focus Group Discussions (FGDs) were conducted with 37 people in six districts covering a range of stakeholders (both duty bearers and right holders) including academia, development workers, social workers, political cadres, local government officials, journalists, and community leaders. Participants of the FGDs were asked to discuss: an overall condition of peace in Nepali society in the present context of restructured state; specific roles played by present

federal system to sustain peace, specifically by province and local governments; and legal power and duties trusted to province and local levels to make peace sustainable. Similarly, they were asked common understanding of participants on community conflicts and notable incidents they have observed; their observation on conflicts on dispersal of scope/jurisdiction, resources or powers among the three levels of the government; discourses on conflicts surfaced and hidden and views and observations on pro-violence or disruptive conflicts. Additionally, observation on effects of conflict to society at national/provincial/local level; observed impacts caused by the conflicts among the governments in the society or community; and types of persons/groups engaged in the conflicts at community level were also discussed.

1.4 Operational Definitions

This research has aimed at looking relationship between state and citizens at individual and group level in terms of gauging the situation of peace and conflict, both formal and informal toward peace promotion and addressing conflict and challenges attached to them. For this, following terms are used with following meaning in particular:

- Conflict:** A serious and protracted disagreement or argument that arise due to incompatible interests and desires.
- Power:** Public authority to discharge accountability and state-responsibilities under public governance.
- Functions:** Operation of state-apparatus to serve the need of people with the resources receiving from and distributing to people, dispense justice and ensure safety.
- Structure:** The arrangement of and relationships between the parts or elements of state-machinery operative to resource sharing, enforcement, empowerment, and jurisdictional or mandate clarity.

Chapter - Two

HISTORICAL CONTEXT

2.1 Historical Context of Conflict in Nepal

Written records exist from about the fifth century AD denoting Nepal as an independent state. Nepal has been independent sovereign state throughout the history (ILRR 1999: 07). As a nation-state, blessed with an incredible diversity of natural beauty and an opulence of cultural varieties, Nepal's socio-political system was driven by federal monarchy, unitary monarchy, oligarchy, and constitutional monarchy until 2006 under composite SANATAN² conscience under Bon/Pon³, Shakta⁴, Shaiva⁵, Kirat⁶, Yuma⁷, Buddhist⁸ and Vaishnava⁹ cultural values.

Gopal, Mahispal, Kirat, Lichchhavi/Thakuri, Khas, Shakya, Magar, Sen, Shah Dynasties ruled Nepal's present area during the long history. Nepal faced, Internal and international warfare in different eras. As different then countries of Indian sub-continent were invaded by British Empire, Nepal's feudal states were breaking down and Prithvinarayan Shah, King of feudal state Gorkha initiated an internal war to unify Nepal and to be head of a nation-state. In

-
- 2 It refers to an eternal practice of virtuous conducts as core value of life irrespective of creedal distinctions between the faith-bearers' different dharma.
 - 3 An indigenous religion practiced in Dolpa, Mustang and other mountain regions of Nepal. The believers and practitioners of this religion consider that life is produced naturally and they worship natural phenomenon with spirit of co-existence of different faith holders (Prabhat, 2070: 249).
 - 4 The spiritual tradition worships the Supreme power as the Divine Mother - Shakti or Devi in trans-Himalayan region from Kailash to Bhramaputra with belief of tantras.
 - 5 The spiritual tradition worshipping Lord Shiva as eternal and divinely power.
 - 6 Spiritual tradition worshipping nature considering Samba as the supreme divine power.
 - 7 Yuma is a faith subscribed by Limbu ethnicity of Eastern Nepal regarding Samba as creator.
 - 8 Believers and followers of Buddha.
 - 9 Believers and followers of God Vishnu who is considered as the governing power.

the, course of unification, the war between Nepal and Sikkim took place for the disputed land of Limbuwan existed in the east of Arun River. Nepal also fought war with Tibet following the unification. The issue was trade but Nepal faced it for protection of national integrity and the war ended as friendly treaty signed on 02 June 1789.

The war launched by British East India Company aimed at capturing Nepal sustained for years. Treaty of Sugauli, (March 4, 1816), between the chiefs of Nepal and the British-India Governments, ended the Anglo-Nepal (Gurkha) War (1814–16). By treaty, Nepal renounced all claim to the disputed Terai, or lowland country, and ceded its conquests west of the Kali River and extending to the Sutlej River. Nepal remained independent, but it received a British resident with the status of an ambassador to an independent country rather than of the controlling agent of the supreme government in an Indian state (BNH, 2019).

“On 12 September 1846, Jung Bahadur Rana established a dynasty of Rana hereditary Prime Ministers who ruled Nepal until establishment of democracy in 1951” (ILRR, 1999:08). During the Rana period, Nepali rulers maintained cordial relationship with the British-India. The extension of Indian railway system close to Indo-Nepal boarder in the plane area facilitated export growth in timber and agricultural products; however, with the opening of alternative trade routes to Tibet such as Gangtok, Sikkim (1902) by British-India, Nepal soon lost its geo-strategic prominence in the trans-Himalayan trade. The increasing patterns of consuming goods made in India by Nepali consumers curtailed the growth of cottage industries in Nepal (Whelpton 1997, Mahat 2005, Basnett 2009: 15) leading to further curtailment of modernization of traditional Nepali products and industrialization process and “the exhaustion of primitive available agricultural technology led to gradual decrease in agricultural growth” (Lohani 1973, Basnett 2009: 15).

The anti-Rana movement in Nepal can be traced to 1940s. The Nepali politicians exiled to India had formed the ‘All India Nepali National Congress’ and ‘All India Gorkha Congress’ and were

united to establish democracy in Nepal and had secretly recruited a 'fighting force' called the 'Jana Mukti Sena' (People's Liberation Army). Jana Mukti Sena, composed of people of all backgrounds with participation of people from women and minority ethnic groups such as Dalits, Gurungs and Tamang. In a series of armed attack, Jana Mukti Sena was able to capture seven major cities in the eastern part of Nepal (Whelpton 1997, Mahat 2005, Basnett 2009: 16). This fighting for democracy not only marked the beginning of politicization of grievances and mobilization of mass support but also as a precursor to future underground armed revolutionary acts.

On February 7, 1951, the Rana regime officially came to an end with the 'Delhi Compromise' agreeing to a new Constitution to be framed and implemented by Constituent Assembly. About a decade following the dawn of democracy went with democratic experiment marred with political instability and in 1960, then Constitutional Monarch, King Mahendra assumed all state and executive authority through a palace coup and established a Party-less Panchayat Regime.

During Rana and Panchayat rulings, several internal political conflicts took place resulting in assassination of people and violence, however, repressed by the rulers in the name of ruling. Following 1951, organized dissenting socio-political protests happened in 1962-63, 1971-72, 1980-81, 1985-86 and 1990 some in violent forms and some in non-violent forms. By 1990 People's Movement, Party-less Panchayat System was overthrown and Multi-Party Parliamentary System with Constitutional Monarchy was established. Most of these conflicts were resolved in political compromises for power-sharing with continuity of ignoring the justice to victims. Though some of the so called, ad hoc Commissions of Inquiries were formed, for example Mallik Commission (1990), in the name of investigating the atrocities resulted from the state suppression during the protests and demonstrations, none of the recommendations of their reports were materialized against the perpetrators to provide justice to the victims.

With the restoration of democracy in 1990, people were expectant of steady improvements in various sectors particularly infrastructure, health, education, transportation, employments and access to justice. Political partiality by the ruling party against the general people particularly those who were subscribers of left political ideology observed escalated.

Both ruling Nepali Congress and main opposition Communist Party of Nepal Unified Marxist and Leninist experienced inter and intra party factionalism for a decade or more. Thus, recurrent political instability represented by various configurations and downfalls of coalition governments leading to destabilizing democratic institutions. State mechanism not only become unable to address diverging aspirations and expectations of deprived people but also subjected them to further violence, injustice and intolerances.

In February 1996, a left-wing political front named United People's Front (later it became Communist Party of Nepal - Maoist) submitted a 40-point demand to the then His Majesty's Government of Nepal led by Prime Minister Sher Bahadur Deuba (Nepali Congress Party). The Front gave a 15-day ultimatum to fulfil the demands and warned of pursuing a 'People's War', otherwise. The government ignored its demands did not bother to respond to the Front. The Front launched the 'People's War' that sustained till 2006.

For centuries, Nepal was a monolithic, feudalistic, autocratic, authoritarian, centralised and closed state (Thapa, 2003; Karki and Seddon, 2003; Misra, 2004; Kumar, 2004; and Upreti, 2004a cited in Upreti, 2006). The state governing system in the entire history of modern Nepal was orchestrated by cajoling, threat of suppression and use of coercive power by the state (Hutt, 2004; and Kumar, 2004 cited in Upreti, 2006).

A vast majority of people felt that they were excluded from public governance and deprived of their fundamental entitlements to a citizen of a state and treated as subjects instead of citizens. Rampant poverty, endless repression, systematic and deliberate exclusion, severe social (caste, gender, and ethnic) discriminations, and greater injustice structured the causative background and fuelling elements for the armed conflict and chaos.

The 'People's War' remained radically a violent insurgency resulted in taking lives of more than 13,000 people and billions of rupees of property, however, challenged state-political regime. The circumstances pushed Nepal to a sustained armed conflict between insurgents and government in a tension of displacing regime and maintaining state status quo. The armed conflict implied in to collapse of economy, dysfunctional bureaucracy, erosion of trust in public services and security and 'severely shaken the existing political structures and governance system established by the 1990's political change' (Upreti, 2006: 22).

During the insurgency, Nepal faced unprecedented crisis as a combined outcome of failure of governance, democratic leadership and absence of culture of addressing conflicts through dialogue and effective non-violent measures including extraordinary ambition of exercising political power centres. In this situation Constitutional Monarch, King Gyanendra Shah, who came to the throne following the assassination of King Birendra's family, dissolved the House of Representatives in February 2003 'imposed a three-month state of emergency, dismissed Prime Minister Sher Bahadur Deuba and appointed himself as the Chairman of the Council of Ministers. Leaders of political parties were detained or kept under house arrest' (UN OHCHR 2012: 223).

This event created a conducive environment for the rebel Communist Party of Nepal (CPN) Maoist and the major political parties in the parliament, the Seven Parties Alliance (SPA), mainly, Nepali Congress and Communist Party of Nepal Unified Marxist and Leninist (CPN-UML) to initiate a dialogue to seek political solutions.

By the course of visits, meetings and political discourses through public fora including media, they come to a common understanding of uprooting the Monarchy and establishing a negotiated Democratic Republic in Nepal. On 22 November 2005, the SPA signed a 12-point agreement with CPN-Maoist in New Delhi, as a roadmap for resolving the People's war and restoring parliamentary democracy in Nepal.

The SPA launched a nationwide pro-democracy people's movement on 06 April 2006, with the support of then underground CPN-Maoist. After the 19 days people's movement, King Gyanendra reinstated the House of Representatives. SPA accepted the reinstatement of Parliament on 24 April 2006. With this development, CPN-Maoist declared a three-months long unilateral ceasefire on 26 April 2006, agreeing to peace talks with key demands to write a new constitution through the election of Constituent Assembly.

Girija Prasad Koirala, Chairperson of Nepali Congress became the Prime Minister on 28 April 2006. The government called a joint meeting of the House of Representatives and the National Assembly on 30 April 2006, which unanimously passed a resolution to hold the election of the Constituent Assembly to write a new Constitution. On 03 May 2006, the government declared a ceasefire, removed the terrorist tag imposed on the CPN-Maoist and invited them for peace talks (Relief, 2011). The decade long armed insurgency and the reciprocal hostility from the government formally ended on 21 November 2006.

Chapter - Three

CURRENT DYNAMICS

3.1 Present Dynamics of Streamlining Sustainable Peace

Nepal's road to sustainable peace starts with the end of 'Peoples' War' in 2006, with formal signing of the Comprehensive Peace Accord (CPA) between the Government of Nepal and the then CPN - Maoist. It promised to 'end the existing centralized and unitary state', which would be replaced by an 'inclusive, democratic progressive system.' (CPA 2006, Art 3.5), but did not mention federalism as the main agenda. Rather, the peace agreement envisaged preferential treatment of disadvantaged groups through quotas ('reservations') and electoral laws as the principal instrument for creating an 'inclusive system' and enumerated the marginalized groups 'women, Dalits, indigenous community, Madhesis, oppressed, ignored and minority communities, and backward regions' such as Karnali region. These categories were also given privileged recognition in the 2007 Interim Constitution, which specifically affirmed rights of these groups to participate in state structures proportionally to their population size inclusion (Art 21), as well as positive discrimination to achieve social and economic rights (Art 33(d) and Art 35 (19) (Suhrke 2014: 05) ensuring inclusive participation of women and marginalized groups such as Dalits, Tharus, Muslims, Madhesi and janajatis, not to mention women, who have share of at least 33% representation in all elected organs of the state.

The Federalist agenda occupied central stage once the parliament was re-established and the then CPN - Maoist entered into the parliament. Despite the removal of the Monarchy as the Head of the State, declaration of the Country as Federal Democratic Republic and the subsequent election of Constituent Assembly, Nepal failed to promulgate the Constitution within mandated time frame. It paved way for formation of interim government, that was headed by the Chief Justice of Nepal and the election of the second constituent Assembly took place. Ultimately, in 2015, the Constitution of Federal Democratic Republic of Nepal promulgated and marked some of

the important milestones in the political transition in Nepal.

Further, the provision of mandatory 33 percent representation of women in parliament and other local government bodies marked another significant achievement in enhancing women's rights and their participation in political and governance process. The election of Parliament, 7 Provincial Assemblies and the 753 local governments provided an opportunity for citizens to elect their representatives and decide their development priorities locally and execute them through locally driven process as opposed to centrally driven approach from the past.

Indeed, federalism has many benefits for the strengthening and promoting inclusive socio-economic development in the country. One of the most important points of federalism in sharing the power between federal and provincial governments, and spreading the federal government's power among three branches that serve as a check and balance to each other. The form of federalism, where power is shared with provincial governments, and where the federal government is separated into three branches, serves as a means to make sure that all power is not centralized into a single person or group of people, since excessive power among a single group tends to be corrupting, thus ensuring greater citizen participation.

It is believed that the devolution of power at different levels of governance enhances efficiency of the government. Future creation of locally rooted policies and laws that work better in local context there will be increased ownership of the local community and thus enhancing the local government's ability to find solutions to their own problems.

Similarly, the federal system and structure also provides state/local governments the opportunity to do some innovation in law and policy formulation, thus people centric, locally rooted laws and policies for better results and improved governance. This will make state and local governance more responsive and accountable to their citizens allowing easy access to elected representatives and policy makers.

Thus, with these positive aspects of Federalism in a diverse and heterogeneous society, Nepal stands to gain from this new system of governance as time passes by. There have already been some good examples where local governments are identifying their development priorities and articulating development vision for their local government or state and executing them efficiently. However, we are in the early state of implementing federalism in Nepal, it might take few more years to see the benefits of federal restructuring in Nepal.

To achieve peace, justice and inclusion, it is important to implement lasting solutions to reduce violence, deliver justice, combat corruption and ensure inclusive participation at all times. Freedom to express views, in private and in public, must be guaranteed. People must be able to contribute to decisions that affect their lives. Laws and policies must be applied without any form of discrimination. Disputes need to be resolved through functioning political and justice systems. National and local institutions must be accountable and need to be in place to deliver basic services to families and communities equitably and without the need for bribes.

Crimes including homicides, trafficking and other organized crimes, as well as discriminatory laws or practices undermines the citizen's safety. Armed violence and insecurity have a destructive impact on a country's development, affecting economic growth and often resulting in long-standing grievances among communities. Violence, in all its forms, has a pervasive impact on societies. Violence affects children's health, development and well-being, and their ability to thrive. It causes trauma and weakens social inclusion. Lack of access to justice means that conflicts remain unresolved and people cannot obtain protection and redress. Institutions that do not function according to legitimate laws are prone to arbitrariness and abuse of power, and less capable of delivering public services to everyone. To exclude and to discriminate not only violates human rights, but also causes resentment and animosity, and could give rise to violence (SDGs 2017).

United Nations 2030 Agenda for Sustainable Development has set of 17 Sustainable Development Goals (SDGs) to end poverty, fight inequality and injustice, and tackle climate change by 2030. Localization of the SDG 16 that stipulates to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels is a significant agenda for Government of Nepal to ensure PEACE, JUSTICE AND STRONG INSTITUTIONS in present context of public governance. As an active member of international community, Nepal has agreed its peaceful social transformation by implementing peace, human rights and development under international obligation.

“The major targets for SDG 16 include ending death from violent conflict, violence against women, and violence against children, improve transparency and accountability score from a scale of 3 at present to 5, and good governance scale from (-) 0.78 to 2.0 in a scale of -2.5 to 2.5. The 2030 targets also include eliminating marriage before the age of 18 years, 100 percent birth registration, 80 percent voter turnout in elections, and access to justice for all” (NPC, 2017: v).

Fifteenth National Plan 2019-2024 aims at complete guarantee of peace and security for development and prosperity with the complete human safety; promoting sustainable peace by controlling social turmoil, conflict, crime and violence; adopting peace-friendly development system; and to promote competence of the security agencies (NPC, 2019: 292). The plan intends to promote sustainable peace through upholding law, social justice and conflict management (NPC, 2019: 293). Further, the plan desires to end impunity and to ensure independent, impartial, accessible, competent and trustworthy justice system (NPC, 2019: 306). Federal, provincial and local governments are furthering their respective periodic plans and annual programs to materialize the above targets of localizing sustainable development agenda.

Most of the federal level state institutions have set their periodic strategies to make their role effective in concern sector of public

governance and delivery of services. For example, Supreme Court has adopted its fourth five-year strategic plan 2019-2024 having its vision “to ensure justice for all” with mission of “dispensing fair and impartial justice on the basis of Constitution, laws and recognized principles of justice” aiming at “swift and quality dispensation of justice, promotion of access to justice, promotion of judicial good governance, strengthened court management, and promotion of public faith and trust to the judiciary” (SC 2019: 143-148).

Similarly, Nepal Police, as a principal agency for maintaining internal law and order, prevent and control violence and crimes, has been aiming at “fair police service devoted to nation committed to protection of human rights by establishing peace in society through effective crime control and investigation guided by fundamentals of rule of law”. Nepal police has prioritized to be legal strictness against organized and heinous crimes and inhuman treatments to women and children, professionalism of police, citizens-friendly service, zero tolerance to corruption and malpractices within institution, and police institution as a guard of good governance (NP 2019).

Nepal Police has initiated a comprehensive campaign in terms of preventing crime and maintaining order at community level by endeavouring a Community Police Partnership. Launched on 18 October 2018, this program is spread a in short period. The police have been working closely with 753 local governments of 77 districts. Under this 23860 Citizen-Police Committees are active as there are 750 Partnership Committees activated at Palika level, 6377 at Ward level, 7972 at Cluster level, 8684 at Schools. Orientation to community people on law and order issues, citizen-police sanitary campaign, community programs, school level orientation and interaction, anti-ragging campaign and public hearing, community patrolling, and media campaigns and mobilized more than 8 million people across Nepal (CPP 2019).

Under the Constitutional provision and mandated by the Local Government Operation Act 2074 BS, Judicial Committees are established and operational in 753 Local Governments. The

Committees are mandated to settle disputes between the citizens through mediation and adjudication as the Chapter 8 (Section 46 to 53) of the Act has detailed the jurisdiction and procedures to be adopted (LBMB 2019: 115-120). These committees have been accessible avenues for the people at their door-steps to seek remedy and resolve petty cases of household, neighbouring and family disputes and are assistive to community conflict settlement.

There are some indications of attempting to address past conflict grievances. An example could be resolving the issues of landownership transfer endorsed by then 'People's Government and failure of the registration of such transfer by the current government system. The Government authorities are recognising the land registration done by 'People's Regime (JANASATTA)' of CPN-Maoist during the armed conflicts situation. EKantipur (2019B) reported that Chandra Bahadur Khatri of Ward No 08 of Banphikot Gaunpalika of Rukum-West District had bought land with Man Bahadur KC of the same in the year 1996-97.

The land ownership transfer registration at Office of Land Revenue Office, Rukum could not take place for a long time but was registered before then 'People's Regime'. Recently, Man Bahadur KC who is a Ward Chairperson now handed over the formal ownership of the land legally to Chandra Bahadur Khatri.

Many people like Khatri are formally registering their land brought during the self-declared regime of Maoist through the Land Revenue Office This process is being facilitated by Local Government. The Gaunpalika has organized a land registration camp and within three days 294 households took benefit of this campaign and registered their land in Land Revenue office. In Banphikot Gaunpalika, among 456 plots of contested land, 154 plots are still in the process of being registered with the new owner (EKantipur 2019B).

3.2 State Restructuring and the Constitution of Nepal 2015

A Comprehensive Peace Accord (CPA) was agreed and signed by Government of Nepal and the then Communist Party of Nepal (Maoist) on 21 November 2006. CPA was committed to adopt an interim constitution and hold elections to the Constituent Assembly,

among others. The Accord's concentration was at political, economic, social transformation and conflict management in Nepal. The Accord has desired "to adopt a political system that fully abides by the universally accepted principles of fundamental human rights, multiparty competitive democratic system, sovereignty of the people and supremacy of the people, constitutional balance and control, rule of law, social justice, equality, independent judiciary, periodic elections, monitoring by civil society, complete press freedom, people's right to information, transparency and accountability in the activities of political parties, people's participation, impartial, competent, and clean bureaucracy(Clause 3.4)"; and "to carry out an inclusive, democratic and progressive restructuring of the state by ending the current centralized and unitary form of the governance to address the problems related to women, Dalit, indigenous people, Janajatis, Madhesi, neglected and minority communities and backward regions by ending discrimination based on class, caste, language, gender, culture, religion, and region (Clause 3.5)" (LBMB, 2013: 93).

Interim parliament and government inclusive of CPN-Maoist were formed on 15 January 2013 and an Interim Constitution of Nepal 2007 was promulgated under political consensus. The Interim Constitution remained in force and facilitated the formation of constitution assembly, management of Maoist Militias, drafting and promulgating of New Constitution and articulation of, and agreement on Federal restructuring of the country, among others.

During the period of 2007 to 2015 the country faced many socio-political upheavals with new forms of conflicts and the interim governments attempted to address them through political agreement. As one of such major coping measures, the Constituent Assembly on 29 May 2008 made an amendment to the Interim Constitution and inserted in its preamble "having Nepal declared as a federal democratic republic state ending Monarchy legitimately" (LBMB, 2013:01). The Constituent Assembly on 18 September 2015 gave a final fine tune of a new Constitution and on 20 September 2015 a new Constitution, titled "the Constitution of Nepal" was adopted enforced with immediate effect.

The Constitution reaffirmed Nepal as an independent nation-state with full people's sovereignty, autonomy and self-rule. Social and cultural solidarity, tolerance and harmony, unity and diversity of multi-ethnic, multi-lingual, multi-cultural national identity of Nepali people endorsed. The Constitution committed to end "all forms of discriminations and oppressions created by feudalistic, autocratic, centralised unitary system of governance" (LBMB, 2015: 01). As agenda of peace was a core issue of whole course of peace process and state restructuring in Nepal since the seizure of armed conflict by signing of a peace accord, the Constitution kept the agenda of peace as crucial issue for implementation as a furtherance of post-conflict initiatives. The preamble of the Constitution stated "We, the Sovereign People of Nepal, ... Do hereby pass and promulgate this Constitution, through the Constituent Assembly, in order to fulfil the *aspirations for sustainable peace*, good governance, development and prosperity *through the federal ... system of governance*" (LBMB, 2015: 01-02).

3.2.1 Segregation of State Authorities under the new Constitution

All state apparatuses are required to establish public welfare system of governance ensuring rule of law, human rights, gender equality, proportional representation, and social justice. Operation of the state apparatuses is believed to protect life, property and liberties of people with equality as well as vitality of freedom, national integrity and to consolidate a federal democratic republican system by maintaining relations between the federal units on the basis of cooperative federalism with local autonomy and decentralization. Elimination of all forms of discrimination, exploitation and injustice to develop socio-cultural values substantiated on national pride along with respect of discipline, dignity and harmony as well as national unity with social cohesion. The spirit of social cohesion to be uplifted and uphold by the status apparatuses are envisioned by the Directives Principles, Policies and State Obligations enumerated in Articles 49-54 of the Constitution.

Fifth Part of the Constitution sets the structure of state and distributes the state power in three layers with the federation, the provinces and the local level (Article 56.1). The three levels exercise state authority in accordance with the Constitution and laws. The three levels are believed to establish and protect an egalitarian Nepali society based on pluralism and equality, inclusive representation and identity. Despite many concurrent jurisdictions, Article 57 of the Constitution distributes exclusive power each to federation, province and local level governments as follows:

Federation	Province	Local
<ol style="list-style-type: none"> 1. Defence and military <ol style="list-style-type: none"> (a) National unity and territorial integrity (b) National security 2. War and defence 3. Arms & ammunitions Production Control 4. Central Police, Armed Police Force, National intelligence and investigation, Peace, Security 5. Central planning, central bank, finance, monetary and banking policies; foreign grants, aid and loans 6. Foreign and diplomatic affairs, international relations and United Nations 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 	<ol style="list-style-type: none"> 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, FM, 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 	<ol style="list-style-type: none"> 1. Town police 2. Cooperative institutions 3. Operation of FM 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

Federation	Province	Local
<p>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</p> <p>10. Federal civil service, judicial service and other government services</p> <p>11. Policies relating to conservation and multiple uses of water resources</p> <p>12. Inland and inter-state electricity transmission lines</p> <p>13. Central statistics</p> <p>14. Central level large electricity, irrigation and other projects</p> <p>15. Central universities, central level academies, universities standards and regulation, central libraries</p> <p>16. Health policies, health services, health standards, quality and monitoring, national or specialized service providing hospitals, traditional treatment services and communicable disease control</p> <p>17. Special structure of local governance</p>	<p>7. State level electricity, irrigation and water supply services, navigation</p> <p>8. State universities, higher education, libraries, museums</p> <p>9. Health services</p> <p>10. Matters relating to the State Assembly, State Council of Ministers</p> <p>11. Intra-State trade</p> <p>12. State highways</p> <p>13. State bureau of investigation</p> <p>14. Physical management and other necessary matters of State governmental offices</p> <p>15. State Public Service Commission</p> <p>16. Management of lands, land records</p> <p>17. Exploration and management of mines</p> <p>18. Protection and use of languages, scripts, cultures, fine arts and religions</p> <p>19. Use of forests and waters and management of environment within the state</p> <p>20. Agriculture and livestock development, factories, industrialization, trade, business, transportation</p>	<p>10. Local market management, environment protection and biodiversity</p> <p>11. Local roads, rural roads, agro-roads, irrigation</p> <p>12. Management of Village Assembly, Municipal Assembly, District Assembly, local courts, mediation and arbitration</p> <p>13. Local records management</p> <p>14. Distribution of house and land ownership certificates</p> <p>15. Agriculture and animal husbandry, agro-products management, animal health, cooperatives</p> <p>16. Management of senior citizens, persons with disabilities and the incapacitated</p> <p>17. Collection of statistics of the unemployed</p> <p>18. Management, operation and control of agricultural extension</p> <p>19. Water supply, small hydropower projects, alternative energy</p> <p>20. Disaster management</p> <p>21. Protection of watersheds, wildlife, mines and minerals</p>

Federation	Province	Local
<p>18. International trade, exchange, port, quarantine 19. Civil aviation, international airports 19. Civil aviation, international airports 20. National transportation policies, management of railways and national highways 21. Administration of justice 22. Citizenship, passport, visa, immigration 23. Atomic energy, air space and astronomy 24. Intellectual property 25. Measurement 26. Mines excavation 27. 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 31. Security printing 32. Social security and poverty alleviation 33. Bodies of national importance 34. Archaeological and ancient monumental sites 35. Residual powers</p>	<p>21. Management of trusts (Guthi)</p>	<p>22. Protection and development of languages, cultures and fine arts</p>

According to Clauses 1, 2 and 3 of the Article 57 of the Constitution, the above power is exclusively vested to federation, province and local governments respectively. The Constitution has foreseen that for exercising powers mentioned above, the three levels of governments should collaborate with each other as they have concurrent jurisdictions for exercising powers.

Part 20 of the Constitution sets provisions for maintaining interrelationships between federation, province and local level. They are trusted to maintain their relationship on the basis of “principles of cooperation, co-existence and coordination” (LBMB, 2015: 150). However, Government of Nepal may give necessary directions to Council of Ministers of the provinces on matters to be coordinated between provinces.

Having their autonomy within their territory, the provinces have to render assistance or exchange assistance for execution of legal, judicial and administrative provisions of the others in own jurisdictions.

There is an Inter-Province Council chaired by Prime Minister and comprised up of Minister for Finance, Minister of Home Affairs and Chief Minister of concerned province to settle political disputes arising between federation and province(s) and between provinces. Coordination between federation, province and local level is to be maintained as provided by federal law. To settle the political disputes between local and province, Provincial Assembly is trusted to maintain coordination.

The Constitution has provided a formal judicial mechanism to settle jurisdictional disputes between federation and province, between provinces, between province and local level and between local levels. Article 137 provides a Constitutional Bench in the Supreme Court which bench is comprised of four other judges and a Chief Justice.

Though the Constitution has not expressly conferred powers to judicially resolve the disputes between federation, province and local governmental entities concerning powers of governance

and jurisdictions, High Courts also enter into the judicial dispute settlements through their writ jurisdictions. A High Court has power to issue necessary and appropriate orders including issuing writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto under Article 144 of the Constitution.

3.2.2 Additional Delegation of Obligations by Federal Laws

Federal legislature legislated and enacted 11 new federal laws and amended six existed laws for implementing fundamental entitlements of the Constitution. Exercising Article 47 of the Constitution requires such enactments to be within three years from the enactment of the Constitution. Similarly, the federal legislature legislated Local Government Operation Act 2074 to authorize and obligate local governments to govern their respective territories in line with the constitutional settings. The delegation of authorities and obligations to the province and local governments under these laws may be highlighted as follows:

Federal Act	Section	Province Government	Local Government
Act Related to Land 2021 BS	5		Collection of land revenue of the land of eradicated landlord agent-ship.
	21		Authority to sell the land received or seized under the Act.
Environment Protection Act 2053 BS	10	Consulting to declare environment protection zone	Consulting to declare environment protection zone
	13	Funding Environment Protection Fund	Funding Environment Protection Fund
Act Related to Rights of the Persons with Disabilities 2074	4		Issuing/granting Identity Card to disable persons
	30	Funding to rehabilitation centre	Funding to rehabilitation centre
	30	Funding to rehabilitation centre	Funding to rehabilitation centre

Federal Act	Section	Province Government	Local Government
	41/42	Province Level Committee to implement the necessary programs on rights of the disabled persons	Local Coordination Committee for the welfare and protection of disable persons
	43		Functions, power and duties of Coordination Committee: Implement/cause implemented the program; Develop/construct/cause development/construction of disable-friendly structures; & Maintain/update records of disabled persons
	45	Obligations to implement and cause implementation of rights of the persons with disabilities	Obligations to implement and cause implementation of rights of the persons with disabilities
Consumers Protection Act 2075	27	Market Monitoring Committee to supervise and monitor supplies of goods and services, price, quality and purity	Market Monitoring Committee to supervise and monitor supplies of goods and services, price, quality and purity
Public Health Service Act 2075	21.7/8	Licensing, monitoring, evaluating and monitoring health service institution	Licensing, monitoring, evaluating and monitoring health service institution
	24	To offer school health service in collaboration with educational institutions	To offer school health service in collaboration with educational institutions
	28	Finance to Health Fund	Finance to Health Fund
	47	Special social security and programs for women, children, adolescents, Dalit, Martyrs' family and other prescribed target groups	Special social security and programs for women, children, adolescents, Dalit, Martyrs' family and other prescribed target groups

Federal Act	Section	Province Government	Local Government
Right to Housing Act 2075	9		Data collection and Identification of persons and families to be provided housing facilities
	10		Issuance of Identity Cards
	13	Provide temporary housing for the persons and families displaced by disaster Rehabilitate to the original places	Provide temporary housing for the persons and families displaced by disaster Rehabilitate to the original places
	14	Provide resettlement facilities for person or family displaced by disaster	Provide resettlement facilities for person or family displaced by disaster
	19	Develop Integrated Habitation	Develop Integrated Habitation
	22	Monitoring of housing facilities	Monitoring of housing facilities
Right to Food and Food Sovereignty Act 2075	4	Prevention of famine and hunger	Prevention of famine and hunger
	5		Identification of target households
	6		Issuance of food support identity card
	7	Provide free of cost food support to the households of specific nature	Provide free of cost food support to the households of specific nature
	17		Sustainable management of agriculturally cultivable land
	34/36	Provincial food Council to protect, promote and fulfil the rights in accordance with the Act at province level	Food Coordination Committee to protect and promote right to food, food security, and right to food sovereignty and to make accessible food supplies and distribution at local level.

Federal Act	Section	Province Government	Local Government
Social Security Act 2075	16/17 18		Issue Identity Card to the persons who are eligible to obtain social security allowance;
			Distribute social security allowance in accordance with identity card; Maintain social security records; Report to Government of Nepal and Province Government details of the distribution of social security allowance annually.
Children Act 2075	60	Provincial Child Rights Committee	Local Child Right Committee
	64		Causing implementation of child rights

The Local Government Operations Act 2074 has specified certain roles of obligations to the local governments. There are no rooms for power delegation to the province level governments. The Act serves as national thematic and procedural authorization for exercising power by local governments.

The Act reiterates that Village Counties (Gaunpalikas) and Municipalities have sole governance power as mentioned in Schedule 8 of the Constitution. The Act elaborates further, the power in detail with coverage of regulating cooperatives; FM radio; local taxes, service charges and tariff; management of local services; local statistics and record collection; local development projects; Basic and secondary education; basic health and sanitary services; local market management, environmental protection and biodiversity; local roads, village road access, agro-road and irrigation; local records management; land ownership certificate distribution; agriculture and livestock, agro-product management, and veterinary cooperatives; management of senior citizens, persons with disabilities and incapable people; unemployment statistical collection; agriculture expansion management, operation and

control; drinking water, small hydroelectricity projects, alternative energy; disaster management; preservation of watershed, wildlife, mine and minerals; and preservation and development of language, culture and arts.

Subject to federal and provincial laws, local bodies are also authorized to act for the development of sports and regulation over sports organizations; register and regulate papers; register, license and regulate health institution and clinic; levy royalties and tourist fee; maintain records of the biodiversity; manage social security; vital event registration and local record management; archaeological preservation and reconstruction; housing arrangement for landless people; promotion of disability and gender-friendly transportation; registration, renewal and regulation of civil/nongovernmental organizations; operating metro-transport; development of information technology at local level; and register, promote and regulate small and cottage industries.

3.3 Controversial Issues Dealing with the Grievances of the Past Armed Conflict

Whole state restructuring and functioning of the empowered local governments are still in nascent stage and the Provincial Governments sprouting ones. Most of the government officials, especially in the rural areas and among the women leaders, the functioning of the local government has not been as effective as people have expected. Further, lack of legal provisions to smoothly operating the federal system and the lack of clarity, confusion, at times, disputes among central, provincial and local government authorities about their jurisdiction and authority has posed challenges in streamlining the sustainability of the Federal system in Nepal. Aftermath the formation of stable governments at three levels and in the early stage of implementing federalism to benefit people with structural changes, despite above positive reflections towards furtherance of peace and to address conflicts at all levels, some issues led the governance into the controversies.

The peace process and implementation of the federal system of governance is moving forward slowly without major challenges.

However, no political settlement is perfect in a diverse and heterogeneous society like Nepal. The Communist Party of Nepal (CPN) formed after the merger of two major political parties CPN-UML and CPN - Maoist has a comfortable majority in the parliament with 63% of the total members. Despite the comfortable majority in the parliament, governance process and the implementation of the constitution and the peace process has not been highly effective.

In the political front, there has been some section of the population is still holding grievances against the government and some of the provisions of the Constitution. One of the major factions which is not satisfied with the current constitutional provisions are the Madhes-based political parties, which are constantly fighting for the amendment of the provisions of citizenship in the constitution. There have been multiple rounds of political protest (some of them violent ones) with major casualties among local people as well as police personnel. The government is paying lip service for the constitutional amendments, but has not fulfilled its promise yet. Further, Dr CK Raut, a Madhes-based rebel leader, was launching a campaign in the name of Alliance for Independent Madhes by demanding a (so-called) separate Madhes State. However, with continuous dialogue between the Alliance and the Government, the government was able to sign an Eleven Points Agreement with the Alliance on March 2019 after which the alliance withdrew its demand of separate state. He and his group have already entered into the mainstream political process and are already taking participation in the election of a few places of provincial and local government structures.

Similarly, the indigenous Tharu community is also not happy as they claim that the current constitution does not give equal rights to them. The climax of this dissatisfaction culminated into the death of seven police personnel, including an SSP, and a two-year baby on 24 August 2015 by the protesters affiliated to Tharu Struggle committee. However, this has been one-off incident and it has not sparked further violence.

Further to this, a breakaway faction of the CPN - Maoist, known as CPN- Maoist (Biplav), led by Netra Bikram Chand (Biplav) has

started the armed struggle in a similar fashion that the CPN-Maoist led by Prachanda during 1996 onwards. However, there doesn't seem to be widespread public support for this faction, and they are focusing on collecting extortion from different people and planting locally made bombs at different government, and private properties to create a sense of terror among people and make their presence felt by the state and the citizen. There were a few efforts of dialogue between the government and the Biplav group for bringing them into the mainstream politics, but the efforts never materialized. After the failure of the dialogue, the government also took a hardline stance and launched nationwide arrest (and killing) campaign against the members of the Biplav group.

According to The Republica National Daily, Nepal Police has arrested 540 leaders and cadres of 'Biplav' group. They have been arrested from different places of the country so far from Mid-April 2018 on the charge of their involvement in violent activities. Police also seized different documents including donation letter pad, pamphlet against the government, and document to organize arms training from the arrestees as well as cache of arms and ammunitions over the past one year or so. Further to this, the security forces, especially the police, are also going out of the judicial way and carrying out extrajudicial killings of suspected supports or cadres of Biplav group, which has drawn attention of National and international media, governments and human rights activities/organizations.

The reportedly police encounter of Biplav group's Sarlahi District In-charge Kumar Poudel has been one of the hotly debated incidents in the last few months as National Human Rights Commission (NHRC), many other national and international human rights organizations have gathered enough evidence to prove it as an extrajudicial killing and are demanding impartial and independent investigation and bring the perpetrators to justice. However, the government has not acted on these demands, along with the recommendation of the NHRC, indicating that the incident took place with the blessing of the senior police officials and the Ministry of Home Affairs.

The NHRC, after having the investigation of the case, claimed that he did not die in the encounter rather killed by the police and, on

22 October 2019, recommended the government to suspend three police officials directly involved in the killing and conduct a fresh, “independent” and “impartial” investigation. The NHRC has stated that the special police team mobilized by Police Headquarters in coordination with Province 2 police used excessive force in firing nine bullets. Although police stated that they opened fire in self-defence during an encounter, the NHRC said the nature of the incident and the evidence collected from the site suggested that Paudel was taken under control before they shot him dead (Republica, 2019).

However, in the course of this aggressive approach, the government seems to have weakened the Biplav group as evidenced by the surrender of many district leaders and decreasing incidence of violence by this group in the recent months.

Another slow progress in bringing Nepal’s peace process is the delay in the delivery of transitional justice. Despite signing the Comprehensive Peace Accord (CPA) in 2006, the issue of truth and reconciliation was also in the shadow of the larger political process. There was a growing argument on how to deal with the atrocities caused by the Maoists and the state security agencies, especially the Nepali Army, which was even severe in nature and numbers, as compared to that of the Maoists. Thus, progress therefore came slowly. It is only in 2015, the Truth and Reconciliation Commission (TRC) and the Commission on Investigation of Enforced Disappeared Persons (CEIDP) established. The TRC and the CEIDP had been envisioned in the CPA as well as the Interim Constitution promulgated in 2007, but creating the two commissions had stalled in the years of political stalemate and judicial wrangling over whether the guilty could be given amnesty (USIP 2017).

Even when the commissions were formed, there is too much debate, disagreement and fighting among the members of the commissions that their terms expired without making any breakthrough in the TRC process. Currently the commissions are without their members and there is a political negotiation going on between the government and the main opposition party which is not leading to

any conclusion as both sides failed to agree on the names of the members to these commissions.

The TRC reports that it has collected nearly sixty thousand complaints, which include allegations of torture, rape, and murder by both security forces and Maoists. The CEIDP has received almost three thousand complaints of cases of disappearances (Pandey 2017). The number of complaints suggests a continuing hunger for the truth and accountability. Many victims' families are skeptical of the ability of either commission to deliver justice. The provisions of the CPA were good, but the political parties have been defining the process [of establishing the TRC and CEIDP] and to their advantage and the commission does not have the ability to proceed independently with political party cadres being appointed as members of those commission (ICTJ 2016).

Transitional justice has been a historical legacy for the present federal government to be addressed. However, the government is being criticized for its inaction in this regard. In April 2019, United Nations expressed serious concerns over the selection process of new leadership in the transitional justice commissions. In July 2019 Amnesty International, International Commission of Jurists (ICJ), Human Rights Watch, and TRIAL International asked Nepal to adopt a consultative and transparent appointment process, ensure the amendment is in line with international human rights standards and with the Supreme Court ruling, and come up with a plan to take the transitional justice process forward (TKP 2019B).

After being elected in 2018, Prime Minister K. P. Oli had promised that the legal framework governing the transitional justice process would be brought into conformity with Nepal's international human rights law obligations, just as the Supreme Court had repeatedly directed. However, the rights groups say the government never amended the law, and instead pushed forward—without adequate consultation—the establishment of a committee that would recommend appointments to the transitional justice bodies. People at large have felt that there is failure of the government to deliver on its commitment to ensuring truth, justice and reparations for the

victims of conflict shows a dismaying disregard for the protection of human rights and not settling the past conflicts. The government has not shown will resolving the transitional justice issues in a way that all aspects of past conflicts would be creatively resolved pacifying the resentments of the conflict-affected people.

There are increasing cases of corruption and mal-governance at the federal, provincial and local levels. This is also caused by two things. First, the election of the local governance and parliament took place after almost two decades and there were many new faces in the elected bodies who have very little idea of policies, rules and governance. This was further exacerbated by the election of a large number of women, Dalits and other marginalized groups of people through reservation provision, who have very little knowledge of governance, policies and laws because of lack of education and capacity building opportunities to perform their duties.

The rampant corruption among political circle and increasing disenchantment deepening in the public perception is derailing the peace process and fading the hope of people. Acute influence of government by business-mafia and hunger of political and elected leaders and the bureaucrats are few key factors to lead into this direction. Nepal is going through a severe problem of corruption that is impeding the development and institutionalizing democracy and bringing the peace process to a logical conclusion.

Gopal Parajuli, 27th Chief Justice of Nepal, was removed from his post by the Judicial Council on 14 March 2019 citing forgery and fake certificates. The Judicial Council wrote, stating that he was no more the Chief Justice of Nepal, as he had already reached the retirement age on 5 August 2017 (THT 2018). His removal not only indicated that there are serious irregularities in the governance, but also questioned the quality of Nepal's judicial appointment and its implication on fair, impartial, independent administration of justice.

Raj Narayan Pathak, a commissioner at the Commission for Investigation of Abuse of Authority (CIAA), resigned from his post after being embroiled in a controversy for allegedly receiving a

bribe of NRs 78 million to settle a dispute regarding an engineering college. CIAA initiated probe against him.

The Commission has filed corruption case against the suspended Director General of Inland Revenue Department Chudamani Sharma at the Special Court in January 2018 claiming that Sharma had disproportionate asset worth NRs 42.95 million as the source of income was not disclosed for the amount (TKP 2019A). However, he was released on bail and the case never moved forward.

Following the elections of three levels of government, many criminal incidents were reported to police and many were investigated, prosecuted and brought to justice in a professional manner. However, some criminal cases have raised questions to the competence of Nepal Police and its crime control and investigation. Nirmala Panta, a 13-year-old girl from Kanchanpur, Nepal, was found raped and murdered in a sugarcane field near her home on July 27, 2018, after she had gone missing the day before. Several people were arrested in connection the rape and murder and a few police officials were suspended. Its already more than a year of the heinous crime was committed and police is yet to book perpetrators involved in the crime. Spotlight (2019) reported “Minister of Home Affairs Ram Bahadur Thapa said that such crime used to happen in the past also indicating apathy of the minister towards rape and murder”.

The issue of Lalita Residence land, naming it as Baluwatar Land Grab Scam became a national issue. A probe committee formed by the government under former secretary Sharada Prasad Trital has called the cabinet decisions illegal and recommended their revocation. The committee had submitted the report to the government in December 2018 concluding that the land transferred to individuals belonged to the government. The committee had advised the government to ask the Central Investigation Bureau (CIB) of Nepal Police to investigate how ownership of the land was transferred to individuals and investigate the state of such government land across the country. CPN General Secretary Bishnu Paudel has been dragged in the scam as eight annas (255 square

meters) of the land (plot number 309 and 3015) was registered to his son's name. Some CPN leaders, citing the then Prime Minister Madhav Kumar Nepal, have told the online news portal Setopati (www.setopati.com) that Paudel facilitated cabinet decisions to provide grounds for the land grab and had even arranged donation of NRs. 40 million to the party in return for the decisions. Former Chief Commissioner of the Commission for Investigation of Abuse of Authority (CIAA) Deep Bahadur Basnet had given statement in relation to the Baluwatar land grab (Setopati, 2019).

Constituent Assembly after being converted into Legislative Parliament passed National Criminal Code, Criminal Procedure Code and Sentencing Act which came into effect by 17 August 2018. These laws decriminalized some of the crimes, criminalized some new conducts and rearranged punishments and procedural aspects of criminal justice system. Enforcement of particular new criminalization on issues related to press, medical negligence and incitement of suicide came into the public controversies.

The Nepal Medical Association (NMA), an umbrella organisation of doctors, had handed a petition containing 6,000 signatures and aprons of protesting doctors to the Nepal Medical Council (NMC) and halted all medical services, except emergency, to protest criminalisation of medical negligence in the new penal code with demanding amendment (THT 2019).

Journalists demanded changes to criminal codes arguing the codes undermine freedom of speech and expression. "Press freedom groups say the language of the laws is broad enough to be used as a tool to attack journalists and deter them from doing their work. The four sections on privacy and defamation decree sentences of up to three years in prison and \$260 in fines" (APN 2019).

Responding to medical and media sectors protest and demand, the government formed taskforce for recommending amendments and the results thereto awaited. Medical doctors and media people felt that there could be misuse of the legal provisions against professionals. These issues have created divided public opinions on the matter related to criminalization and penalization.

Public Service Commission (PSC), under the recommendation of federal government, issued vacancy announcement to fulfil 9,000 plus civil service positions for various local governments in July 2019. Various organisations representing indigenous ethnic communities protested the vacancy notice claiming it disrespected the sentiments of social inclusion as envisioned in the Constitution. They argue that the Commission has failed to reserve seats for various ethnic groups as adequately as demanded by the Civil Service Act.

Earlier, the State Affairs and Good Governance Committee of Parliament had directed the Commission to cancel the notice on the same grounds, but the Commission had not heeded it. Later, the Supreme Court had allowed the Commission to continue the ongoing recruitment process (OLK 2019).

Guthi, a traditional social organization of indigenous Newar community, practiced in Nepal since the Licchavi era, exists with its own purpose, and their functions governed by the internal rules. It is a system of associations formed by groups of people for the Gods, the living and the dead and all activities concerning these three themes were carried out by the members of the Guthis. Government of Nepal sponsored a “Guthi Bill” and tabled in the Upper House with a view of abolishing certain Guthis. A proposal on annulment of the bill tabled by Minister for Land Reforms Padma Aryal was endorsed unanimously at the National Assembly, the upper house of the Parliament. Fearing that the government’s move could jeopardise tradition, the ethnic communities, particularly Newars, staged weeks-long protests demanding the scrapping of the Bill. Government responding the protest, on 25 June 2019 formally withdrew the Bill from the National Assembly (PTI 2019).

3.4 Political and Jurisdictional Conflicts between the Three Levels of Government

Despite ensuring constitutional provision that the federation, provincial and local level maintain relations on the principles of cooperation, co-existence and coordination (Article 132), framers of the Constitution have officially recognized the potential conflicts

between the three levels of governance particularly in terms of exercising jurisdictional power. Article 137 provides Constitutional Bench in the Supreme Court and allows the Bench “to originally try and settle” the cases of “disputes relating to jurisdiction between the federal and a province, between provinces, between a province and a local level and between local levels” (LBMB, 2015: 93).

The mind sets denying autonomy of the provincial and local governments by the federal authorities and officials are reflected in many instances. An example could be denial of empowering Provinces in hiring and appointing human resources in terms of adjustment and management of the government employees. The legislative parliament passed a National Civil Code 2074 BS in October 2017. Part 2 of the Code provides law on Person and Chapter 2 of this kept provision on ‘Legal Person’, i.e., corporate personality. Section 44 of the Code under this Chapter provides all governmental authorities including ... (B) Government of Nepal, ... (G) Provincial Government... and other organizations legal personality ipso facto and Section 42 (6) (D) granted power to appoint necessary employees for performing function of such entities but to bar the provincial government in appointing employees a proviso was put stating “but the commission, organization or body pursuant to Clause (G) of Section 44 may not appoint any employee” (LBMB 2017: 13). The bar was withdrawn only in the April of year 2019 by the Act of Amending Some Nepal Acts related to National Codes, 2075.

3.4.1 Disputes between Federation and Provinces

Federal government, the government of Nepal, on 06 June 2019 created a public company named Forest Corporation Limited having merged the Timber Corporation of Nepal and Sagarnath Forest Development Project. Sagarnath Forest is located in the Province 2. Schedule 6 of the Constitution has itemized “Use of forests and waters and management of environment within the province” (item 19) as sole jurisdiction of Province pursuant to Article 57 (2) of the Constitution. The Forest Project was already assumed under the provincial Government by the decision of Council of Ministers of the

Province No. 2 four months earlier and the federal government was informed as well. Forest Minister of Province No. 2 Mr. Ramnaresh Raya argued that the decision of the federal government to merge and register the new company is an interference in the authority of the Province (Kantipur 2019). Ministry of Industry, Tourism, Forest and Environment of Province 2 authorized its Assistant Land Conservation Officer Mr. Bechan Kumar Mahato to initiate for constitutional remedy against this federal invasion.

On 08 August 2019, Mr. Mahato submitted a petition to the Supreme Court asking issuance of writ of including certiorari and mandamus against Government of Nepal, Office of Prime Minister and Council of Ministers; Government of Nepal, Ministry of Forest and Environment; The Timber Corporation of Nepal, and Office of the Company Registrar. The petition claims that “in the item number 19 of the Schedule 6 of the Constitution, it has been mentioned national forests under the list of sole authoritative jurisdiction of provincial government, human resources engaged in them, the structures and responsibilities of the protection of the forests have been vested to Provincial Government” (076-WC-0001, 2019: Para 2). The petition argues that the merger of Sagarnath Forest Development Project contravenes the Constitution and Forest Act as well. The petition has demanded to declare ultra-virus (void) the decision of the federal government merging Sagarnath Forest Development Project and The Timber Corporation of Nepal and registering as Forest Corporation Limited from its origin, i.e., 06 June 2019. Respondents of the cases are in course of submitting written responses, and case is under judicial consideration of Constitutional Bench of the Supreme Court.

Similarly, Province No. 2 has also raised another issue of federal encroachment in the provincial jurisdiction. Mr. Bechan Chaudhary, Assistant Forest and Land Protection Officer of Ministry of Industry, Tourism, Forest and Environment, on behalf of Province No 2, has submitted a writ petition to the Supreme Court asking declare void the Forest Act 2076 BS. By the enforcement of this new forest law District Forest Officers (DFO) are withdrawn back under the federal government, prior to its enactment they were under the provincial

governments. However, the Division Forest Office which is to be headed by the DFO are still under provincial governments and the Act has created a paradoxical situation that the office is under province and the head of the same is under federal government. Item 19 of the Schedule 6 of the Constitution has included national forests within the Province fall to the authority of Province. Province No. 2 has taken this as an unconstitutional take-over of provincial authority. The writ petition claims that Section 2 (h), 7(1), 9(1), 11 (3), 14(1), 18(2) (3) (6), 19 (1), 23 (2), 28(1), 30(1) (65(1), 67 (1) and 80(1). These provisions grant heavy authorities to the DFOs that they would act defying provincial authorities. "Government of Province No 2 has been time to time making public its dissatisfactions claiming that provincial jurisdiction is being encroached by the policy, decision and laws forwarded by the Federation" (EKantipur 2019A).

Ministry of Physical Infrastructures and Transportation of the federal government has prepared a draft bill naming Kathmandu Valley Public Transportation (Management) Authority Bill 2076. The bill was brought on 06 August 2019 before the National Assembly, the upper house of the parliament. The then Federal Minister Raghurir Mahaseth tabled it on 10 August and it was discussed in general at the house on 14 August 2019. Relevant Committee discussed the bill on 21 August 2019 (NAN, 2019) and it is under consideration of the legislative process in federal parliament.

The bill proposes an establishment of Kathmandu Valley Public Transportation Authority to make public transportation of Kathmandu accessible, simple, easy, trustworthy, cost effective and secured for the passengers (Section 3, NAN, 2019). The bill envisions a Unified Transportation System in Kathmandu Valley under the control of the federal authority. The bill empowers the authority to prepare short-term and long-term plan and strategy related to public transportation; to operate and manage public transportation; to develop a unified transportation system appropriate for Kathmandu Valley; to develop a cash-free electronic fare system in the public transportation vehicles; to collect, maintain and update public transport information and to enhance the quality of public transportation among others.

Section 7 of the Bill provides a council of the authority under the chairpersonship of Mayor of Kathmandu Metropolitan City and places Mayor of Lalitpur Metropolitan City as vice chairperson. It keeps Mayor of Bhaktapur Municipality, Joint Secretary of the Ministry, Director General of Department of Road, Joint Secretary of the relevant ministry of provincial government, chief of the Metropolitan Traffic Police Division, and others as members.

Item 20 of the Schedule 6 of the Constitution keeps “transportation” as sole jurisdiction of Provincial Government and in item 20 of the Schedule 5 limits Federal Government to “national transportation policies”. Interestingly, the term “transportation” does not exist in the Schedule 7, the concurrent jurisdiction of the Federation and Province.

Following the parliamentary process of the bill in August 2019, Province -3 Chief Minister Dor Mani Poudel met the Prime Minister and Speakers of House of Representatives and Chairperson of the National Assembly to draw their attention on the jurisdictional issues of the Transportation System and termed the proposed bill as interference to the authority of the Province. Similarly, Provincial Minister of Law and Internal Affairs, Shalikram Jamkattel drew attention of the Federal Minister of Law, Justice and Parliamentary Affairs Bhanubhakta Dhakal on the matter (Interview with Chief Attorney of Province 3, on 27 September 2019).

These were verbal communications to let the federal authorities dissenting the legislation process at federal parliament on the matters that the Constitution has vested solely to the Province and to inform them that the legislation process undertaken at the federal level is interference of sole jurisdiction of the Province. However, to date this issue has not been a point of debate or dispute in the correspondence between Province and Federation in writings.

3.4.2 Disputes between Federation and Local Level

Many local governments and federal governments have synchronized their role in accordance with Constitution and laws. However, there are conflicts between them in terms of assignment

of employees, resource allocations and other issues of governance. Many of such conflicts are not surfaced to the public notice and attention. Very few cases are surfaced as disputes/conflicts.

“Basic and secondary education” is kept as exclusive power of the local government by the item 8 of the Schedule 8 of the Constitution. Basic education means “school education from class one to class eight” (LBMB 2018: 217) and secondary education means “education from class nine to twelve or equivalent” (LBMB 2018: 218). Section 6 of the Compulsory and Free Education Act 2075 BS says the compulsory basic education shall be provided by the province through local governance and Section 20 of the same Act guarantees that secondary level education shall be free. Item 2 of the Schedule 9 of the Constitution keeps education as concurrent power of federation, provincial and local governments.

Despite these constitutional and statutory arrangement, the federal government has not yet replaced or amended the Education Act 2028 BS which keeps the Regional Directorate and District Education Office as an active entity and provides regulations and control over the whole educational system. Section 16H of the Act provides transfer of teacher on the desire of application of the teacher before the District Education Office and District Education Officer may transfer such teachers (NLC 2019: 42).

Government employees and educational human resources including teachers of the basic education level are not seen much willingly happy to work under provincial and local governments, rather preferring to remain under Federation. An example could be the case between Dilli Bahadur Khulal et al vs District Administration Office, Education Development and Coordination Unit, Solukhumbu et al. Thulung Dudhkosi Gaunpalika of Solukhumbu district passed Dudhkosi Education Act 2075 BS and transferred nine teachers including Dilli Bahadur Khulal Basnet within its territory. The transferred teachers denied to be transferred by the Local Government and filled petition before Supreme Court on 31 May 2019 against the County and District Administration Office, Education Development and Coordination Unit Solukhumbu. They

invoked that the Education Act 2028 BS and Education Regulations 2059 BS were effective under Article 304 (1) of the Constitution of Nepal and transfer of teacher may be done by federal authority, i.e., District Administration office, Education Development and Coordination Unit (Summary of the petition of the case 075-WO-1217).

An order keeping the matter in status quo was issued on 09 June 2019 by Supreme Court summoning the respondents for discussion to decide interim order as demanded by the petitioners. A hearing took place on 18 June 2019 concerning status quo interim order and Division Bench denied for the continuation of interim order as it found the transfer of those 9 teachers was consistent with the provision of Section 24 (1) of the Thulung Dudhkosi Education Act 2075 BS and there was no irreparable loss to be borne by the petitioners by the transfer (Division Bench Order in 075-WO-1217). The case is yet in judicial consideration under writ jurisdiction.

Schedule 8 of the Constitution which is a sole jurisdiction of Local Government covers House Rental Tax as itemized in item 4. Similarly, Section 57 of the Local Government Operation Act 2074 provides “if any person or organization lends building, house, shop, garage, store, hut, roof, factory, land or pound fully or partly in rent, Gaunpalika or Municipality shall impose rental tax on such amount of rent” (LBMB, 2019: 122). Biratnagar Metropolitan City of Morang District of Province No. 1 found that Inland Revenue Office Biratnagar was collecting house rent tax despite above provisions. A company had submitted rupees 5400.00 as house rent tax to the Inland Revenue Office on with deposit slip no: 5974503 as deposited to Rastriya Banijya Bank on the account number 1000200010000 of the Inland Revenue Office. Metropolitan City asked the Inland Revenue Office Biratnagar, it was collecting house rent taxes in any form. The Revenue Office did not respond to the quarry of Metropolitan City Office.

Metropolitan City decided to initiate a legal remedy and authorized its Deputy Mayor to further the proceeding. Deputy Mayor, Indira Karki filed a writ petition before High Court Biratnagar demanding

issuance of writ of mandamus including the prohibition against the Inland Revenue Office Biratnagar in collecting house rent taxes in particular. The Court on 09 June 2019 issued a show cause notice to the Revenue Office and asked to provide written response. The Court also issued an interim order to not collect house rent taxes.

Inland revenue Office responded to the Court that the Office has been collecting income taxes applicable on the institutional house rent based on the decision made by the Government of Nepal, Council of Ministers dated 26 March 2018, not the individual house rental taxes as local tax to be collected by the local level.

The Decision of the Government of Nepal, Council of Ministers dated 26 March 2018 limited the scope of collecting rental taxes of the local governments to natural person and as to it corporate legal person's rental taxes would not be collected by local government. It is stated in the decision that "local levels shall collect house rent tax from natural person... and Inland Revenue Office shall not collect income taxes arisen by such rents..." (DIR, 2018). Having extended interpretation of the decision, Government of Nepal, Ministry of Finance issued a notice stating "... Local Level to collect house-rent tax... and Inland Revenue Office to collect income tax applicable to rental income..." (NG, 2018).

The High Court Biratnagar, concluded the case and held that income tax collection is jurisdiction of the federal government as per the Constitution and laws and rental taxes are the jurisdiction of Local Governments accordingly. In the disputed case the Court found collecting income tax by Inland Revenue Office. Regarding the decision of the Government of Nepal, Council of Ministers dated 26 March 2018 that limits the scope of rental tax to only natural person, the Court held that such issue is not found the decision is challenged by anyone including the petitioner (Para 12, 075-WO-0359, 2019).

The Government of Nepal (then His Majesty's Government), in 2000 privatized public corporations and Nepal Tea Development Corporation (NTDC). The tea gardens located in Ilam and Jhapa Districts under the management of the Corporation were leased to Sanghai Company for 50 years. Mechi highway which passes Kanyam

Tea Garden of Ilam and as the road was constructed following the plantation of tea in that garden there were bushes of tea within 30 metres as well even though that span was registered in the name of the highway. Following the completion of the elections, Suryodaya Municipality of Ilam intended to broaden the road span but Sanghai Company opposed stating that the bushes were planted before the road construction and it was sole property of Company. Municipality initiated to broaden the road as it was a public highway's land and there was need to broaden the road to ease traffic.

Sanghai Company went to the High Court Biratnagar, Ilam Bench asking an order of the prohibition of the work being carried out by the Municipality. The Court quashed the petition of the Company stating that the land that the Municipality was broadening the road of a public property of broader public use and could not be left for the benefit of the Company only on the ground that the tea plantation of the particular area was prior to road construction.

The Constitution of Nepal has specified land tax or land revenue as sole jurisdiction of Local Governments. The lands where the tea gardens of NTDC located are in the areas of three Local Governments of Ilam District and two of Jhapa District. Having the territorial jurisdiction on land tax three Municipalities of Ilam District, i.e., Ilam, Kanyam and Mai have been asking to pay land tax/land revenue with the Sanghai Company, but the Company is denying to pay tax to Local Governments. The Company is arguing that the Company and previous sole government (Central) had entered into the agreement of lease. Present power segregation under new Constitution might not have any effect to the agreement made in past retroactively and local government may not impose and obtain land revenue. Land revenue is sole jurisdiction of local government at present and there is no system of collecting land revenue by the federation. The company is running without paying any revenue or tax of the land occupied by the tea gardens (Interview with R. B. Rai, Mayor of Suryodaya Municipality of Ilam).

The Municipal Assembly of Ilam Municipality has passed a proposal to ask the federal government to bring back the Ilam Tea Garden withdrawing the lease with Sanghai Company and had expressed

its willingness and commitment to manage the Garden and factory itself. However, “the federal government did not respond to the municipal request” (Interview with Mr. Thakur Shrestha, Spokesperson of Ilam Municipality).

Federal government is not sufficiently cooperating and collaborating to cause the company paying local taxes. Therefore, there is confusion that whether the federal government recognizes the claims made by the company or neglecting to cooperate the local governments viewing that the revenue generated by such tax would come to the disposal of the federal government.

3.5 Public Dissention on Restructured State Jurisdictions

Advocate Lokendra Bahadur Oli submitted a petition before Supreme Court on 18 August 2019 opposing the provincial legislations of the Province -2, Province -3, Gandaki Province, Province -5, Karnali Province and Far Western Province those have provided for granting monthly salary to the elected officials and members of the Local Level. The petitioner claimed that these provinces have legislated provincial laws that allows facilities, among others including salary, to the officials and members of the Local Level and the salaries that have been included in the legislations are unconstitutional.

Laws of these six provinces include provisions of both monthly salary and facilities but the provincial law of the similar kind legislated by Province -1 includes only facilities not the salary. The Petitioner demanded annulment of the salary part of the legislation (Para 4.C, 076-WC-0002A, 2019).

Supreme Court asked respondent provinces and the respondents responded most commonly that the Province is constitutionally authorized to legislate laws for granting facilities to the officials and members of the Local Level. The exercise of this jurisdiction is in accordance with Article 220 (8) and Article 227 of the Constitution of Nepal (2015) and requested the Court to retain the legal provisions those are consistent to the Constitution (Para 4, 076-WC-0002B, 2019; (Para 1 B and D, 076-WC-0002C, 2019).

Constitutional Bench of Supreme Court on 18 October 2019 concluded the case giving final verdict. The Court held that the

Constitution has used the terms remuneration and facilities with different denotations and Article 220 (8) and 227 includes only the term “facilities” not remuneration. Therefore, the provision of the provincial laws that provide “remuneration” for the Local Levels officials and member is void due to inconsistency to the Constitution. Quoting the petitioner Advocate Oli, Thahakhabar (2019), mentioned about the verdict that “all the schedules of the provisions made in Service and Facilities Acts passed by the Provincial Assemblies, except the Assembly of province 1, are annulled by the judgement of the Constitutional Bench as they contradicted with Articles 220 (8) and 227”.

Article 236 of the Constitution of Nepal provides: “Notwithstanding anything contained elsewhere in this Constitution, it is prohibited to make any kind of obstruction to the carriage of the goods or extension of services by provincial or local Level to another province or to the carriage of the goods or extension of service to any province or local level or to levy tax, fee or charges thereon or to make any kind of discrimination on the carriage or extension of such services or goods” (LBMB,2015: 152).

Province 1, 3 and Karnali Province by their Financial Bills, 2075 allowed District Coordination Committees to impose intra-district trade transfer taxes. Government of Nepal, Council of Ministers concluded such taxes are unconstitutional by its decision on 20 July 2018 and the Ministry of Finance of the federal government issued circulars to the provincial and local governments to stop implementation of such taxes (Para 2, 075-WO-0052A, 2019).

However, District Coordination Committee Sunsari levied trade transfer tax and continued to collect. Panchu Chaudhary, a farmer of Sunsari District who exports agro products to neighbouring districts, did not agree to pay such unconstitutional levy but was compelled to pay and went to the High Court, Biratnagar asking the Court to ban the tax collection through issuance of Writ of Mandamus including certiorari against Ministry of Financial Affairs and Planning of Province No. 1, Birantnagar and Office of the District Coordination Committee Sunsari, Inaruwa.

As the Court issued show cause notice to the concerned Ministry of Province No. 1, Birantnagar, the ministry responded that the District Coordination Committees implemented not the trade transfer tax but sales tax as provided by Financial Act 2075 of the Province No. 1. Government of Nepal is not an authority to examine the Constitutionality of provincial laws that are legislated under Constitution and impose prohibition in implementation of such laws. As the District Coordination Committee implemented provincial laws only Writ may not be issues as demanded. Such jurisdictional issues may only be raised before Constitutional Bench under Article 137 of the Constitution of Nepal. Therefore, the petition itself be quashed (Para 4-6, 075-WO-0052B, 2019).

The High Court Biratnagar, quashed the petition on the ground that the taxes are levied under Financial Act 2075 legislated by the Provincial Legislature and unconstitutionality of such law could not be examined under the jurisdiction of the Court (Interview with Chief Attorney of Province No. 1).

As Rukum District was divided into Purbi Rukum and Rukum Pashchim during the federalization process and Purbi Rukum fell into Province 5, while Rukum Paschim fell into province 6. Government of Nepal, Council of Ministers declared Rukumkot as Purbi Rukum's headquarters by its decision of 13 October 2017. Most of the District Offices including District Court, Administration and Police were established and operated there (Para 02, 074-WO-0482, 2018A).

On 25 January 2018, the Government of Nepal prescribed Ward No 12 of Putha Uttarganga Gaunpalika as Headquarters of Purbi Rukum District and seed of conflict was planted. Local people of Sisne Gaunpalika were annoyed by the later decision of the Government as Ganesh Hamal at al. of the village submitted a petition before the Supreme Court demanding to confirm Rukumkot as district headquarters having annulled the later decision of the Government of Nepal and asked to issue writ of Mandamus including Certiorari against the Government of Nepal (Para 08, 074-WO-0482, 2018A).

Government of Nepal, Office of the Prime Minister and Council of Ministers have responded to a show cause notice of the Supreme Court to this case and argued that the petition is to be quashed and the decision of the Government of Nepal dated 25 January 2018 as the decision was made under the sole authority of the Government of Nepal as mandated by Clause 2 of the Section 3 of the Local Administration Act 2028 BS (Para 03, 074-WO-0482, 2018B).

In this dispute, 28 local people of Putha Uttarganga Gaunpalika have also submitted a petition asking the Court to include them in the proceedings including hearing of this case as they are concerned and would be affected by the decision of the Court in the matter. They have demanded with the Court to endorse the decision of the Government of Nepal held on 25 January 2018 as it was constitutionally valid one (Para 05, 074-WO-0482, 2018C).

3.6 Public Perceptions on Peace and Conflict Situation

In order to gauge overall condition of peace in Nepali society in present context of post State-restructure and governance at large by the three levels of federalized governments as mentioned in above methodology, research fieldworks were carried out. The information gathered through the KIIs and FGDs display the following circumstances at present at different levels:

3.6.1 Public perception on state of peace in the present context of federalized governance

Though Nepal is said to be of a socialist orientation, there are conflicts among the interest groups particularly on public policies of health and education. People feel comfort and safe in general; however, despairs, feeling of decline of normal peace situation, and indication of latent conflicts are in gradual rise. Civil society actors perceive that society is stable but external actors are trying to disturb and instigate conflicts. Communities are not able to access the State resources properly. There is lack of good coordination and collaboration between governments and people. The disappointments of people towards political leadership is increasing. Local government services are tedious. Local police are

not responsive in cases of violence in the community, especially when women are victimized. There is less coordination between local and provincial government. There is conflict at policy and laws for example there is no clarity on which government authorities are authorized to collect tax.

People have increased scales of demands and the government is inept to fulfil. There is no clear role on use of police forces (federal or province or local). The leadership lacks clear 'vision' and planning to sustain peace. Mistrusts and sense of revelry between civil servants and elected representatives indicate intra-functionary conflicts. However, corruption is institutionalized and means of compromise between these two layers of government functionary. Coordination between local, provincial and federal governments is weak. Feeling of lordship within elected representative is threat to institutionalization of democracy.

The causes behind this include:

- Lack of accountable and efficient delivery of the services at local level. The sense of mastership is dominant yet in the service providing sectors;
- Excess hopes raised in people by the political commitments made by the federal government and the political parties in power;
- Governments fail in ensuring law and order situation and prevent and control criminal activities, particularly violent crimes;
- None or weak performance to address, manage, redress and reconcile the residuals of past armed conflict and other forms of surfaced and hidden conflicts among various sects of Nepali society;
- System is federal but the mentality of the governments (political leadership as well as the bureaucracy therein) is centralized;
- Lack of clarity in power and resource sharing and coordination and synchronization of performance of different levels of governments;
- Rampant corrupt practices and corruptions;

- Over-emphasis on physical construction and less service deliveries; and
- Anti-federalist interest centers and groups desire agitating roles.

3.6.2 Public perception on the role of government structures to sustain peace

Fundamental rights in the constitution provides safeguards to vulnerable and marginalized people including Dalit, women, children, senior citizens and other specific community groups and their implementation at local level is significant shift in delivery of services to people. Federal government initiated dialogues with rebel groups aimed at disarming them. Local Judicial Committees has been instrumental to address some disputes and this has played role in preventing some higher scale conflicts.

However, insensitivity and sluggishness of the federal government responding to past conflict(s) and their consequences shows that the government is not serious for prevention of potential conflicts that may be fuelled by the dissatisfactory circumstances and frustrations.

3.6.3 Legal power and duties trusted to provincial and local governments

No power and duties are entrusted to Province for sustaining peace. Therefore, there is confusion on the role of the provincial government in terms of promoting peace. Province is considered to be dealing only for developmental activities but its role for promotion of social justice, peace and social cohesion is ignored legally in programming and action. However, through periodic planning process, Provinces are taking some initiatives toward playing roles for sustaining peace and devising reparative program for conflict victims and awareness raising. These roles are taken as role of implementing the constitution and one of the constituent element desired by the constitution for society is peace.

Provincial government is considered constitutionally autonomous but federal government is not willing to recognize the autonomy of province and control imposed to the provincial government.

Establishment and operation of the provincial governments symbolize and represent real federal system and local governments are really implementers than governing state-authorities.

The judicial power given by the constitution to local level to have judicial committee for mediation and adjudication of some cases is in violation of principal of judicial competency including formal/academic qualification of law and justice. This has invited lack of trust and feeling of indifference in people to give respect to it as desired by its judicial designation.

Local level is trusted to deliver services effectively for making social justice accessible and to address local disputes and conflicts. This indicates that local level is viewed to be contributing for sustaining peace. Conflict affected people are given some concessions in some government charges.

3..6.4 Community perceptions on state of conflict

Most of the people in community understand conflict as violent fights and the hostility between state and rebellion groups. In general people perceive violence when there is fearful environment with potential human casualty due to hostilities. Limited people understand power tensions and legal disputes as conflict. There is also perception among people that conflict means hostilities based on ideological orientation, race, caste, religion, language and geographical differences such as Pahadi and Madhesi. Presently people feel more safe and peaceful environment following the completion of general elections that surfaced many contentious issues.

Multiple and higher taxes have caused frustration and irritation in people towards the state. Federal government is exercising like the previous centralized authority and undermining the role of the province particularly. The role of the province is not visible as desired by the people and this has led to a proliferation of whim that there is no need of the province level. There are conflicts between federal, province and local level governments on innumerable issues; however, these all (intra/inter government conflicts) are hidden due to the governments are of same single party. The conflict on

resource allocation is on the top of the conflicts. There are conflicts between the policy leadership and bureaucratic leadership in the governments on interests and power.

There is anti-ruling sentiment in the people which is deeply rooted since long course of political movements. This easily raise antagonism with the state even in small issues and that may fuel anti-state protests creating public safety issues. Political (armed rebellion), ethnic and religious issues are deemed prone to potential of violence and tensions. They have affected society in general but the conflicts between the governments have not much impacts over general society but that have caused some disturbances in the development and services to be received by the people. Detest among the public is increased as they are not receiving services that commensurate the taxes they are paying for. Extremist centres and anti-democratic groups, who were in power previously are more active to aggravate the circumstance to make it more conflict-prone. Divisions within dominant political parties also instigate conflicts.

Political stability is in crisis in reality because of the failure of the governments to formulate programs to reduce conflicts, thereby leads peace to vulnerability. As the issues are not prioritized aiming at addressing the needs of the communities, the situation allows for potential conflicts further. Governments are desirous to be populist through media. Dissatisfactions are yet self-restrained but unemployment and injustice in the community may give rise to violence in the communities.

Leaders are tempted for luxuries by consuming more public resources naming them as their facilities and this has increased despair and anguish. Consequently, people are being alienated and losing hopes and interests. There is general public tendency of expecting from the federal rather than provincial and local governments, which could also be instrumental to address needs. If the perception of “province is not necessary”, spread and deepen, there efforts of disempowering Province may come into force. Such actions may further intensity the conflict between Federation and Province governments.

3.6.5 Scales and orientations of conflict

The conflicts existed amongst people at large in different aspects previously (prior new constitutional setup) but are deescalated presently. There are differences and conflicts between federal, province and local governments in terms of employee mobilization and jurisdiction and that are causing potential of conflict in holding powers. Some of the examples are i) taking back some of ownership of the zonal hospitals by the federal government from provincial government (Koshi, Bheri, Narayani hospitals); and ii) merger of Sagarnath Forest and Nepal Timber Corporation by federal government. Provincial governments have observed that due to over-exploitation of the natural resources by local governments, environmental risks are in rise but no role to control is entrusted to the province.

Respondents have a common perception that the cases of violent crimes and incidents of violence against women, children and marginalized communities indicates prevalence of violence and fear in the community. Political transition continues apathetically to resolve past conflicts including justice and reparations is a crucial issue that may trigger armed conflicts further as rebel force may come into rise. There are both legitimate and illegitimate forms of conflicts. There is are hidden conflicts in people at large on the themes such as republic, secularism, governance and federalism. Disorganized mobs are in rise and organizing in political tone, hence, Maoist (Biplav) and Limbuwan may resort violent conflicts.

Despite the federal restructuring, political leadership is highly centralized and centralized form of political power may not be effective to deliver federal structure. Therefore, there is need of federalization of the political leadership and transformation of leadership from authoritative to more law-abiding and democratic. Intra-party conflicts may make the political environment fragile leading to insecurities and peace may be endangered at any time. Religious, ethnic and fundamentalist ideological conflicts may arise in the context of fragility if the governance would not be sound enough. Rebel, interest of neighbourhood country, royalists (pro-monarchy forces) and geo-ethnic groups are potential triggering

factors for conflict. Some of the conflict highlighted by respondents are as follows:

Open
<p>Sagarnath Forest issue (between federal government and Province 2)</p> <p>Official language of province (Maithili vs Hindi) amongst political parties in Province 2</p> <p>Teacher Transfer, Education (between federal and local governments)</p> <p>Health services (between federal and provincial governments)</p> <p>Implementation of proportional inclusionary state operation</p>
Hidden
<p>Disagreement of the Tharu Community against the charge brought to Tharu leader and they desire immunity;</p> <p>The donation terror by the Communist Party of Nepal (Biplav);</p> <p>Race-wise provinces such as Limbuwan, Tharu;</p> <p>Factional politics in the parties</p> <p>Religion in public</p> <p>Conflict might arise in Bheri diversion project. Behri jalbidut is going to be built at Karnali Province but electricity will be generated in and distributed by Province No. 5</p> <p>Employees underestimate the knowledge and capability of governance of the political officials of the Provincial and Local Governments, there is cold-war type conflict between the elected officials and the employees</p> <p>Frustration among people with the service delivery of all layers of government. National level leaders of few political parties trying to push Tharu community for conflict. The dividers are caste, religion.</p>
Surface
<p>Multiple taxation (people vs Governments)</p> <p>Conflicts on fetching resources between provinces and between two municipalities in Karnali Province; an example is conflict between Salyan and Jajarkot for resources.</p> <p>Conflict between Dhangadhi and Godawari Municipality on the use of river-based resources.</p> <p>Appointments and other regulation of employees;</p> <p>Police and administration arrangement (between Federation and Province);</p> <p>Implementation of inclusive policies (reservations).</p>

Chapter -Four

AN ASSESSMENT OF EMERGING ISSUES

4.1 Assessment of the State of Conflict

This section presents the state of peace and conflict situation that has been reflected in the earlier section with different perspectives surfaced through literature review and information collected during the research. Based on the assessment, reflections are presented as findings of the research.

4.1.1 Sustaining peace

The election of federal, provincial and local level has given stability in governance structures as the Federal and provincial governments enjoy absolute majority of one political party and the current government is expected to complete its full term of five years without any problem. This has happened after many years in Nepal's political history.

***Finding 1:** Current stability of politics with majority governments is fostering a sense of peace and justice in society at large.*

The Constitution of Nepal 2015 in its preamble and in other parts including directive principles of state presents its desire to promote peaceful and inclusive sustainable development, provide access to justice for all and build effective, accountable and inclusive state institutions at all levels. The federal Government of Nepal has expressed its full commitment in localization of Sustainable Development Goals (SDGs) for facilitating Nepal's peaceful transformation.

Aiming at ending violent conflict, preventing violence against women, and children, improving the transparency and accountability score from a scale of 3 at present to 5, and good governance scale from (-) 0.78 to 2.0 in a scale of -2.5 to 2.5. The 2030 targets also include eliminating marriage before the age of 18 years, 100 percent birth registration, 80 percent voter turnout

in elections, and access to justice for all citizens regardless of their identity proves that Nepal is seriously committed to the agenda of peace and justice. Peace and justice have become core agenda of development and are included in the periodic national plan and strategic programs.

***Finding 2:** Government of Nepal and other state agencies have subscribed agenda of promoting peace and justice as their performance and thus have given importance to them as priority issue.*

The Judiciary, Nepal Police and Local Judicial Committees are implementing peace, justice and security agenda as envisaged by the Fifteenth National Plan (2019 - 2024). Judicial commitment of fair and impartial dispensation justice and judicial good governance enhances the hope of the people. The new initiatives taken by Nepal Police as Community Police Partnership seems to be a cornerstone to rebuild community- police relationships and this may contribute reducing community level conflict, increase in crime reporting and community cooperation for proper investigation of the crime that, in turn, is expected to enhance police's professional integrity.

Fundamental rights in the constitution provides safeguards to vulnerable and marginalized people including Dalit, women, children, senior citizens and other minority groups and their effective implementation at local level is a significant shift in delivering services to the citizen. Federal government initiated dialogues with armed groups aimed to disarming them and ring them back to mainstream political system. The provision of Judicial Committees have provided people an avenue for dispute settlement and they have been instrumental to address some disputes, thereby playing a role in preventing conflict from escalation and being violent.

***Finding 3:** Citizen-friendly justice, security and service delivery mechanisms may proactively work in a free and fair manner that increases trust among general people to seek solutions in the conflicts through states official mechanism and hence push for peaceful solution seeking tendencies.*

However, insensitivity and sluggishness of the Federal Government responding the past conflicts and their consequences show that the Government is not serious for prevention of potential conflicts that may be fuelled by the dissatisfactory circumstances and frustrations that have been accumulated in people.

4.1.2 Distribution of power in restructured state

The Constitution of Nepal 2015 has reaffirmed Nepal's national integrity with people's sovereignty aimed at ending all forms of discriminations and oppressions sustained by previous feudalistic, autocratic, centralised unitary system. The Constitution keeps the agenda of peace as a core issue of implementation. The Constitution subscribes public spirit of fulfilling the aspirations for sustainable peace, good governance, development and prosperity through the federal system.

The power sharing between three levels are exclusive. However, there are confusions created by the provisions in different sections. For example, Local level has powers to manage and maintain City Police (Nagar Prahari) and if this power is to be exercised by Gaunpalika what name they would give for their police? Some lists are over descriptive in the schedule of the Constitution and some are itemised only by a word that creates confusion. For example, item 20 of Schedule 5 give federal government to formulate national transportation policy and item 20 of the Schedule 6 exclusively gives transportation as a whole to the Province. Tension may arise in such situation in implementation.

Finding 4: Segregation of State Power to federation, province and local level by the Constitution is not clear and exclusive enough for rolling out mandates at different levels.

Federal Government legislated laws to materialize the fundamental entitlements of the citizens enshrined in the Constitution and 11 separate laws were legislated and six existing laws were amended for this. Though these legislations were brought after the federal structures came into operation, these laws undermine the role of Provincial Government. Province is given role to finance the

institution or entrust to be operated by either Federal or Local level. For example, responsibility of environmental protection would be trusted more to the Provincial Government, but in the amendment of Environment Protection Act 2053, Province is given consultative role only and to declare environmental protection zone and to offer financial resource to environment protection fund operated by federation.

Finding 5: Federal legislations hardly recognize the role of the Provinces in fulfilling and realizing the fundamental entitlements of the citizens.

Role of local government in service delivery to the people including fulfilling and realizing their fundamental rights is recognized by federal legislation. Further, Local Government Operation Act 2074 has authorized and obligated local governments to ensure governance and delivery of public services in their respective territories in line with the constitutional settings. The Act reiterates that Gaunpalikas and Municipalities have sole governance power as mentioned in Schedule 8 of the Constitution and provides procedural pathways as well. Local Governments are also authorized to act for including regulate newspapers and periodical publications; register, license and regulate health institution and clinic; levy royalties and tourist fee; maintain records of the biodiversity; manage social security; vital event registration and local record management; archaeological preservation and reconstruction; housing arrangement for landless people; promotion of disability and gender-friendly transportation; registration, renewal and regulation of civil/nongovernmental organizations; operating metro-transport; development of information technology at local level; and register, promote and regulate small and cottage industries.

Finding 6: Local governments are legislatively empowered enough to govern their territories and deliver services to their constituencies that are rendered by federal government as well. The overwhelming delegation of onus of service delivery may be challenging for them to fulfil in given resource constraints.

Provincial governments have played roles to sustain peace insignificantly, if not at all. Though even in the course of federalization, Provinces were considered to act for developmental initiatives and role of the Province on promotion of social justice, peace and social cohesion was ignored, provinces would have taken initiative to contribute peace and justice by amplifying developmental programs by synchronising them with agenda of peace and harmony. As informed by KII and FGD participants, provinces are through periodic planning process, taking some initiatives toward playing roles for sustaining peace and devising reparative programs for conflict victims and awareness raising.

Finding 7A: *The constitution and prevailing laws provide negligible judiciary authority to Provinces and the role of provincial government in sustaining peace is more or less non-existent.*

Finding 7B: *Judicial Committee at Local Government level, which are entrusted to dispense justice at local level, is inconsistent with the principle of independent, impartial and competent tribunal.*

Constitutionally, provincial government is considered as autonomous entity. However, the federal government is reluctant to recognize the autonomy of province and there is always control of federal government over the provincial government. The Constitution has trusted the province to take care of Province Police Administration and Peace, provincial civil and other services, land management shows that civil law jurisdiction fall under province. However, civil procedure is listed within the concurrent jurisdiction of Federation and Province. National Civil Code 2074 as well as National Civil Procedural Code 2074 have given no rooms for province to play role in administering civil justice. Thus, role of Province in justice sector is highly misjudged.

The formation of judicial committee and exercise of judicial power by the Constitution to local government to settle selected civil cases is in violation of principal of judicial competency including formal/academic qualification of law and justice. The convenor and its members are elected politically without having necessary judicial skills and qualification or experience. Article 126 of the

Constitution states “Power(s) relating to justice in Nepal shall be exercised by courts and other judicial bodies in accordance with this Constitution, other laws and the recognized principles of justice” (LBMB 2015: 87).

By the virtue of the wording of this Article, the authorities exercising judicial power require sufficient competency in interpretation of statutes. The current breed of elected officials (with a few exceptions) do not have sufficient skills and qualification. Article 14 of United Nations International Covenant on Civil and Political Rights (ICCPR) requires “In the determination of ... any of rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” (AJAR 2009: 14). Similar provision is incorporated in the Article 20 of the Constitution which states: “Every person shall have right to fair trial by independent, impartial and competence court or judicial bodies” (LBMB 2015: 15).

To be elected as Vice Chairperson/Deputy Mayor or Executive Member of Local Government, political leaders do not need any formal education/qualification, who after winning the election are designated as the convenor and members of judicial committee and are authorized to deliver justice based on the spirit of said Article and notion of independent and competent tribunal. This, has invited erosion of trust and indifference among people towards judicial committee. Nevertheless, local government is trusted to deliver service effectively for making social justice accessible to all. This indicates that local level is constitutionally expected to contribute towards sustaining peace.

4.1.3 Governance controversies

Following the election of local governments, some of the high-level state functionaries came to the public scrutiny of holding their position unethically and immorally as it did not fit to the public decorum of the positions. The dismissal of the then Chief Justice Gopal Parajuli, resignation of Raj Narayan Pathak, then commissioner at the Commission for Investigation of Abuse of Authority after embroiled in a controversy for allegedly receiving

a bribe, charge of corruptions to the Director General of Inland Revenue Department Chudamani Sharma indicated that there is corrupt people at high level state-functionaries. The failure of proper and timely investigation of the some criminal cases due to apathy of supervisory political authority and compromise reached with professional sectors such as medical doctors and journalists to inactivate the implementation new criminalization and penalization without amending the provisions of law has undermined governments commitment toward rule of law, intolerances against corruptions, criminal acts and immoral practices by influential section of society. This led general people to perceive that laws are imposed only to powerless section of the populations.

***Finding 8:** Public trust over the state-machinery and functionaries is lost due to continuity of the immoral and corrupt practices by high level state officials and people have no confidence that commitment of good governance would be achieved by such mess in the state functionaries.*

The vacancy announcement by the Public Service Commission for recruiting civil servants at various Local Governments was one of the key disputes surfaced at the beginning of the implementation of new Constitution. The directives issued by the Parliamentary Committee on State Affairs and Good Governance to Public Service Commission, and relationship of provision of the Article 42 that guarantees the inclusive participation of diverse sectors in the state-machinery as well as in employment opportunities have indicated that there are differences in taking the meaning of inclusion among the implementing authorities and civil interest groups.

Sponsoring Guthi Bill in the federal parliament by Government of Nepal overlooking and intervening the exclusive authority of the province (itemised in item 21 of the exclusive jurisdiction of the province in Schedule of the Constitution, and protests of people against the bill indicated that the Government is not consulting the stakeholders while legislating new laws and hear public say.

Finding 9A: Federal government intends to act without giving due consideration to the jurisdiction of the Provinces.

Finding 9B: Conflict of interest between the implementers and the beneficiaries in terms of the implementation of fundamental entitlements in particular continues further.

The state power used in fake encounters are allegedly excessive and ignore human rights. Apathy of the government to investigate alleged human rights violence and misuse of state powers indicate government's insincerity towards core human rights. Fundamental rights in the constitution provides safeguards to vulnerable and marginalized people including Dalit, women, children, senior citizens and other specific community groups and their implementation at local level is significant shift in service delivery. However, insensitivity and sluggishness of the Federal Government responding the past conflicts and their consequences shows government's impassive in prevention of potential conflicts that might be arisen by dissatisfactions and frustrations.

The conflicts between governments in employee mobilization and jurisdictional issues of services (health and education in particular) and resources indicate potential of power tensions between Federation, Province and Local Levels. Conflicts on fetching resources between Provinces and between municipalities in Karnali Province and Province No.5, on official language in Province No 2, Bheri diversion project (between Karnali Province and Province No. 5) and between Dhangadhi and Godawari Municipalities indicate potentiality of escalation.

4.1.4 Conflict between federation and provinces

The Constitution grants use of forests and waters and management of environment within its territory to the Province as exclusive jurisdiction. Incorporation of Forest Corporation Limited as a merger of Timber Corporation of Nepal and Sagarnath Forest Development Project showed withdrawal of this power to federation, however, the case is under judicial consideration and may come with an amicable solution. Similarly, Constitution exclusively authorize the Province to handle all matters in terms of transportation and

Guthi. However, the Federation is intending to handle these by self. Assigning civil servant seems facing similar fate.

FGD and KII participants have perceived that there are conflicts between the Federation and the Provinces in several matters and are not surfaced clearly as the governments of the both levels are hold and dictated by the elected people who are of the same political party. Further, they have also observed that a public opinion arguing re-instating unitary system, particularly needlessness of the Provinces is being subscribed dominantly by people at large.

***Finding 10:** Federal government is gradually tending toward adopting its previous centralized authority exercising approach ignoring the exclusive jurisdiction of the Provinces against the Constitutional spirit of co-existence, collaboration and coordination. Underestimation of the role of Provinces and encroachment of provincial jurisdiction by Federal government may instigate people including local power holders demanding dismissal of Province Level Government Structures leading to weakened federal system.*

4.1.5 Disputes between federation and local level

Many local governments and federal governments have synchronized their role in accordance with Constitution and laws. However, there are conflicts between federal government and local governments in terms of assignment of employees, resource allocations and other issues of governance. Many of such conflicts are not surfaced to the public notice and attention. Very few cases are surfaced as disputes/conflicts. Schedule 8 of the Constitution has itemised basic and secondary education, house rent taxes and land revenues as exclusive jurisdiction of the Local Government. Despite this the Federal Government is yet deemed hesitant to transfer the power and resources to Local Governments that have been previously hold by central agencies.

The continuity of the District Education Development Unit as central representative, disrespects of exercise of power by Local Governments over teachers by the teachers and educational officials, administrative withdrawal of collection of rental tax from

corporate personality, and denial of paying land revenues to the Local Government by Privatized Public Corporations including Nepal Tea Development Corporation and indifference of the Federal Government in causing them to pay taxes to Local Government demonstrate intention of continuity of exercise of power by previous centralized structural authorities and limit and withdraw back some of the power vested in Local Governments to federal authority. There is lesser desire of the federal level to collaborate with Local Governments even within their constitutional ambit.

Finding 11: Federal bureaucracy and employees at policy as well as at implementation level are performing their functions with centralized mentality subscribing highhandedness and desirous to withdrawal of the power back to central authorities undermining constitutional segregation of state power.

4.1.6 Public dissent to federalized state

Despite comfort and safety felt by people in general compared to past, loss of hope and feeling of decline of normal peace situation, and latent conflicts are in gradual rise in the people. Lack of fair and accountable services with efficiency combined with sense of ruling than senses of delivery in the public service providers of all levels, unattainable hopes given to people in the electoral campaigning, failure in ensuring law and order situation by sufficient and effective preventive initiative program and by curbing criminal activities have driven to such situation.

None or weak performance to address, manage, redress and reconcile the residuals of past armed conflict and other forms of surfaced and hidden conflicts among various sects of Nepali society, continuity of centralized mentality, lack of efforts on synchronization of performance of different levels of governments, rampant corrupt practices and corruptions, over-emphasis on infrastructural development than to service deliveries, and agitating roles of anti-federalist interest centres and groups are pushing people to dissatisfaction and frustrations.

***Finding 12:** General people still hold trust and faith to the restructured federal state mechanism with hope towards improved safety, security and fairer governance; however, impunity, taxation and weak service delivery are leading into dissatisfaction and frustrations.*

People are wearied with multiple and arbitrary taxation. Government focus to infrastructural development is perceived by the people as a strategy of taking private gain (commission) by the development actors, particularly the Local Governments. Expending public resources in purchase of expensive vehicles for the comfort and luxuries of state functionaries and incredible increase or additions to remunerations and allowances elected officials has contributed to build public view stronger that the politically elected and appointments are for their secured personal enrichment than contributing society benevolently.

Petition filed by advocate Lokendra Bahadur Oli against the provincial legislations those giving rooms granting monthly salary to the elected officials and members of the Local Level represents above public resentment. Supreme Court, though it annulled the provisions on the grounds of its jurisdiction of testing constitutionality of laws, has indicated endorsement to the public resentment.

***Finding 13:** Citizens' resonance and resentment are amplified by reluctance of State-power holders in proactive service delivery and haphazard multiple taxation giving rooms for suspecting more misuse of public resources for personal benefits of the powerholders.*

Headquarters' location dispute of Purbi Rukum, protests for crime investigations, anti-corruption demonstration by civil society groups are indication of dissention of people to the federal governance.

4.1.7 Reflection on community conflict

Even after passing a long period of community conflict management schemes implemented by governmental as well as non-

governmental institutions, understanding of the conflict is unclear for people. Community yet understand conflict as violent fights and the hostility between state and rebellion groups. Perceiving violence only for fearful environment with potential human casualty due to hostilities is still a public knowledge that majority people subscribe. Hostilities based on ideological orientation, race, caste, religion, language and differences of geographical origin also refer as conflict for some people.

As indicated by KII and FGDs, residues of past conflicts at community level are de-escalated; however, the cases of violent crimes and incidents of violence against women, children and weaker section of community people indicate that there is prevalence of violence and fear. Likewise, there is lack of full confidence of safety and security in community. Frustration among general people is in rise due to weak service delivery made by all layers of government. Further, the dividing lines created on the basis of caste, ethnicity, geographic origin and religion may excite for conflict in the community.

Natural resources such as water supply (drinking and irrigation) are insufficient to fulfil the need of community people and conflicts are in rise in community due to such causes. Prevalence of dowry, domestic violence, polygamy, child marriage witchcraft, discriminations, alcohol consumption induces conflicts that increases feelings of insecurity among the community people. Increased women's participation, increased voicing against injustice and violence and availability of involvement in micro-financial and economic activities is helpful to promote communication and share information to address community level conflict and accessing justice.

Finding 14: *Communities are stabilizing toward more peaceful environment as residue of past conflicts are reduced. Community conflicts in different forms are undeniably exist in society, increased access to justice mechanisms may address minimizing further potential harms to be borne in community.*

Chapter - Five

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions and Recommendations

This section presents brief conclusions and recommendations derived from the findings.

5.1.1 Conclusions

The analysis and the findings drawn in the preceding chapters suggest that political stability prevails in the nation compared to past. The stability has promoted a sense of safety and security among citizens leading to a peaceful society. Constitutional provisions, legal frameworks and development priorities of the state indicate that there is state commitment to localize peace in line with Sustainable Development Goals.

However, there are mistrusts, confusions and disagreements amongst the federal, provincial and local governments. Problems are more in mentalities and mind-sets rather than laws and system. There are many issues that indicate towards potential conflict between three layers of government in relation to exercise their constitutional authority. The governments are taking course of judicial remedies instead of bringing them under inter-governmental relationships coordination mechanisms. It infers that Federal Government is paying less attention to ensure smooth relationship between Federation, Province and Local level in accordance with the provisions of Part 20 of the Constitution.

Inefficient and insufficient attention of the government in addressing past conflicts in terms of holding perpetrators accountable, ending impunity and redressing the victims with reparations has been one of the crucial issues that may give room to revival of the conflicts in different forms and levels.

Though the country is already operating under the federal structure, there is still centralized mentalities among the federal government

stakeholders. There is very weak recognition of Provincial government among citizen as provincial government are unable to effectively deliver services to their constituencies in the lack of proper mechanisms, lack of civil servants and legal framework to support their authority provided by the Constitution.

There are some indications of government initiatives on curbing corruption. However, there are many controversies and disputes resulting into the erosion of trust towards government and suspicion among people towards the rule of law and democratic values.

The government's failure to respond to the public disenchantment and increasing public frustration may be exploited by certain groups to ignite another cycle of conflict or violence in the country. A greater challenge for all levels of current government is ensuring the balance of the competitive rights of various interest groups and sects.

Avenues for the settlement of community level conflicts are increased, however, many conflicts are unresolved due to inefficient, ineffective and insensitive service delivery mechanism and processes. Therefore, it is important for local government to ensure effective service delivery at local level as guided by the spirit and provisions of the constitution to fulfil and maintain the fundamental entitlements of the citizen.

5.1.2 Recommendations

On the basis of the research findings, following recommendations are furnished for concerned stakeholders to consider:

- The three levels of Government should recognize peace and justice as priority agenda of their initiatives of governance and development priorities.
- The three levels of Government should come forward to resolve tensions, differences, and confusions between them with a win-win approach rather than seeking judicial remedy. Judicial remedy should be considered as the last option, if dialogue and

discussion fail to bring consensus. Federal Government should take pro-active initiative to respect and adhere to the Part 20 of the Constitution so that the three levels of government operate on the principles of cooperation, collaboration, coexistence and coordination

- The Federal government should promptly and effectively overcome insensitive and sluggish modus-operandi in terms of resolving past conflicts and their consequences. Truth and reconciliation process, justice and reparations should be materialized as quickly as possible.
- Federal Government should take prompt actions for investigating and punishing all allegations of the abuse of power and corruption including embezzlements, fraudulent practices, construction of inferior quality public infrastructures and delayed performance of authorities and the contractors.
- Attempting implementation of constitutional provisions without prior-consultation would give ground for public dissention and agitation. Therefore, Government should initiate a pre-legislation discussion with concerned stakeholders while preparing any bills that have implications to the fundamental entitlements of citizens.
- Improved delivery of the services by the authorities at citizen's doorsteps would not only ease citizens in accessing justice and participating in peacebuilding endeavors but also helps prevention potential conflicts at community level. Therefore, Provincial and Local Governments should take lead in delivering services promptly and effectively with generous dispositions.

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ANNEXES

ANNEX 1: List of KIIs Participants

SN	Name	Address	Profession
1.	Dilli Karki	Biratnagar - 07, Morang	Lawyering
2.	Hemraj Panta	Biratnagar - 07, Morang	Lawyering
3.	Subodhraj Pyakurel	Biratnagar , Morang	Government Official
4.	Chudamani Acharya	Biratnagar, Morang	Government Attorney
5.	Hikmat Karki	Biratnagar, Morang	Politics
6.	Vijaya Pratap Singh	Janakpurdham, Dhanusa	Lawyering
7.	Sharada Devi Thapa	Bardibas -1, Mahottari	Politics
8.	Rita Kumari Mishra	Janakpurdham, Dhanusa	Politics
9.	Kulananda Upadhyaya	Dhangadi, Kailali	Chief Govt. Attorney
10.	Laxmi Satgauwa Tharu	Kailali Village County Kailali	Politics
11.	Ganesh Kathayat	Dhangadi, Kailali	Lawyer
12.	Urmila Chaudhari	Dhangadi, Kailali	Mediator
13.	Om Prasad Thapalia	Hetauda, Makawanpur	Chief Govt. Attorney
14.	Ran Bahadur Rai	Suryodaya Municipality, Ilam	Mayor
15.	Thakur Shrestha	Ilam Municipality, Ilam	Spokesperson
16.	Bhusan Manandhar	Office of Chief Attorney of Karnali Province, Surkhet	Government Official
17.	Mohan Maya Dahal (Bhandari)	Birendranagar, Surkhet	Politics
18.	Basanta Kumar Biswakarma	Birendranagar, Surkhet	Civil society actor
19.	Nrip Bahadur Od	Dhangadi, Kailali, Sudurpashchim Province	Politics
20.	Dirgha Raj Upadhyaya	Dhangadi Kailaii, Sudurpashchim Province	Journalist
21.	Devi Ram Gautam	Musikot, Rukum, Karnali Province	Mayor
22.	Dr Nawaraj Gautam	Musikot, Rukum, Karnali Province	Lawyer
23.	Taparaj Joshi	Dhangadhi	Youth activist

ANNEX 2: List of FGDs Participants**Biratnagar Morang**

SN	Name	Address	Profession
1.	Sonu Kumar Dass	Biratnagar - 06, Morang	Journalist
2.	Dinesh Shrestha	Biratnagar - 10, Morang	Social Activist
3.	Mahaprasad Khatiwada	Biratnagar - 07, Morang	Jornalist
4.	Chandra Upadhyaya	Biratnagar - 01, Morang	University Teacher
5.	Dilli Prasai	Biratnagar - 01, Morang	University Teacher
6.	Parbat Rai	PG Campus	University Teacher
7.	Raju Shrestha	Biratnagar - 06, Morang	RTI Activist
8.	Bhog Narayan Shaha	Biratnagar - 06, Morang	Banker

Bardibas, Mahottari

SN	Name	Address	Profession
1.	Bishnu Karki	Mithila 11, Dhanusa	Lawyering
2.	Madhav Kafle	Bardibas -3, Mahottari	Political cadre, CPN
3.	Mahesh Jha	Bardibas -14, Mahottari	Political cadre, NC
4.	Lilamani Acharya	Bardibas -1, Mahottari	Co-operative Campaigner
5.	Chudamani Pokharel	Bardibas -1, Mahottari	Politics
6.	Dependera Parajuli	Bardibas -2, Mahottari	Consumer Forum
7.	Santa Pariyar	Bardibas -1, Mahottari	Political cadre, CPN
8.	Chandra Bd Biswakarma	Bardibas -4, Mahottari	Politics

Hetauda, Makawanpur

SN	Name	Address	Positions
1.	Rameshwor Prasad Yadav	Adarsha Kotwal, Bara	Local Representatives
2.	Mahendra Giri Sanyasi	Adarsha Kotwal, Bara	Local Representatives
3.	Kameshwor Prasad Yadav	Adarsha Kotwal, Bara	Local Representatives
4.	Noor Alam Baadshah	Radio Baadal 89 FM, Bara	Media Person

SN	Name	Address	Positions
5.	Karna Bahadur Pakhrin	Bhimphedi, Makawanpur	Ward Member
6.	Baliram Prasad Yadav	Adarsha Kotwal, Bara	Local Representatives
7.	Aliwah Ansari	Adarsha Kotwal, Bara	Ward Chairperson
8.	Ramakanta Prasad Shah	Adarsha Kotwal, Bara	Local Representatives
9.	Mukesh Prasad Kushwaha	Hetauda	Civil Society Actor
10.	Madhu Sudhan Prasad Jayaswal	Adarsha Kotwal, Bara	Member of the Ward Committee

Kailari, Kailali

SN	Name	Address	Profession
1	Urmila Chaudhary	Kailari Gau Palika	Community mediator
2	Bishnu Chaudhary	Kailari Gau Palika	Youth club member
3	Ramashreya Chaudhary	Kailari Gau Palika	Youth club member
4	Ramu Ram Chaudhary	Kailari Gau Palika	Youth club member
5	Ram Sharan Chaudhary	Kailari Gau Palika	Youth club member

Dhangadhi, Kailali

SN	Name	Address	Profession
1.	Jed Awasthi	Dhangadhi	Women for Human Rights
2	Meena Bhandari	Dhangadhi	Women for human rights
3	Prem Dhungana	Dhangadhi	Youth Peace Council
4	Thekendra Raj Joshi	Dhangadhi	Laywer
5	Bharat Shah	Dhagadhi	Journalist
6	Hari Joshi	Dhangadhi	Journalist

ANNEX 3: Narrations of Focus Group Discussions

Participants of FGDs were put questions to discuss about their observations on specific roles played by present federal system to sustain peace, specifically by province and local governments; legal powers and duties trusted to province and local levels to make peace sustainable; discuss about community conflicts and notable incidents observed; conflicts on dispersal of scope/jurisdiction, resources or powers among the three levels of the government; conflicts' effects to society at national/provincial/local level; impacts of conflicts within governments and in the society or community; and typical persons/groups engaged in the conflicts at community level. Participants pointed out following as their common observations:

Biratnagar, Morang

- Political transition continues to be lethargy shown to resolve past conflicts including justice and reparations is a crucial issue and that may trigger armed conflicts further as rebel force may come into rise:
- Federal government is exercising like the previous centralized authority and undermining role of the province particularly. The role of the Province is not visible as desired by the people and this has led to a proliferation of whim that there is no need of the Province Level.
- As the people feel more safe and peaceful environment following the completion of general elections more contentious issues are surfaced.
- There are conflicts between Federal, Province and Local Level governments on innumerable issues; however, these all (intra/inter government conflicts) are hidden due to the governments are of same single party. The conflict on resource allocation is on the top of the conflicts; There are conflicts between the policy leadership and bureaucratic leadership in the governments on interests and power;
- Even there is political stability in surface, it is in crisis in reality due to political liquidities prevailing;

- Peace situation is vulnerable;
- Governments failed to formulate clear programs to reduce conflicts, they did not work broadly;
- As the issues are not prioritized aiming at addressing the need of the communities, this situation allows for potential conflicts;
- Governments are desirous to be populist through media popularity;
- A tendency willing to be violent in the community is increasing due to unemployment and injustice;
- People have a perception that federalism is for Province 2, they have a sound opinion that we do not need Province Level for us;
- There are dissatisfactions but they are to the date self-restrained;
- Administrative mechanism is uninterested to work under changed framework of governance;
- There are both legitimate and illegitimate forms of conflicts. There is are hidden conflicts in people at large on the themes such as republic, secularism, governance and federalism;
- Disorganized mobs are in rise and organizing in political tone, hence, Maoist (Biplav) and Limbuwan may further violent conflicts;
- Though the State is said to be of a Socialist orientation, there are conflicts among the interest groups particularly on public policies of health and education;
- Though State is reframed toward federal structure, political leadership is highly centralized and centralized form of political power may not be effective to deliver federal structure, therefore there is need of federalization of the political leadership and transformation of leadership from authoritative to more law-abiding democratic;
- Intra-party conflicts may make the political environment fragile leading to insecurities and peace may be endangered at any time;

- Leaderships are tempting for luxuries by consuming more public resource naming them as their facilities and this has increased despair and anguish in people and people are being alienated and losing hopes and interests; and
- Multiple and higher taxes have caused frustration and irritation in people towards the State.

Bardibas, Mahottari

- The roles by the ruling and opposition parties are not played as desired by the public at large ensuring public safety, security and social incentives;
- The burden of the taxes has caused detestation in the people towards the governments.
- At least a group is in rebel covering whole nation and some regional groups are also in existence and are potential to acquire support from the frustrated population;
- There is anti-ruling sentiment in the people which is deeply rooted since long course of political movements. This easily raise antagonism with the State even in in small issues and that may fuel anti-state protests creating confusion in terms of public safety issues;
- Feudalists are converted to capitalists and the residues of the past conflicts are in existence and not being addressed properly leading to solutions. The relief and redress facilities are not being provided just and there is potentiality of revival of conflicts in different scales;
- There are latent conflicts between Federation and Province. Similarly, there are conflicts between province and local governments. Province are weakened in roles of governance particularly in regulatory and resource control as there is no role of province on land, water and forest;
- If the perception of “province not necessary” is spread and deepen, counter concept of empowering more will come forward in its oppose and conflict may intensify on this issue;

- There is general tendency of expecting from the Centre rather than taking that province and local governments could also be instrumental to address our need but we do not consult or handle people delegations to local and province government but cry with the federal government in most of the issues;
- Police itself was playing role as judiciary in various community level conflicts, the formation and activation of Local Judicial Committees have played roles in making dispute settlement process more accessible and that has increased accessibility justice and dispute resolutions, however, the Judicial Committees are not performing competently as desired;
- Corruption is rampant and trust toward state agencies fair service delivery is in decline, this has demanded more effective anti-corruption campaign at state and none state levels;
- Performance of the state apparatus is clumsy and complex. Several procedural hurdles are prevalent and over procedural formalities to be fulfilled by the service recipients are felt burdensome;
- Religious, ethnic and fundamentalist ideological conflicts may arise in the context of fragility if the governance would not be sound enough;
- Rebel, interest of neighborhood country, royalists and geo-ethnic groups are potential triggering force for country; and
- Interpretation of the Constitution by the governments on their own is also a potential room for conflicts.

Hetauda, Makawanpur

- Natural resources such as water supply (drinking and irrigation) are insufficient to fulfil the need of community people and conflicts are in rise in community due such causes;
- Prevalence of dory, child marriage witchcraft, discriminations, alcohol consumption induces conflicts that increases feelings of insecurity among the community people; and
- Performance of province government has not been visible for community people and due to lack of the effective delivery of

public services in the community, frustration among general people is in rise in gradual manner.

Dhangadi, Kailali

Some of the most prevailing conflict issues in the community are domestic violence, polygamy, child marriage, land related issues. Not many cases are registered with community mediation centre rather referred to the Judicial Committee. The level of a socio-political awareness among the community people is very high. There is positive as well as negative change in the people's political. People used to keep silence before but now they are highly vocal. Conflicts surface and come forward for discussion.

The local government leadership with cooperation from the Tharu community, is furthering political stabilization in Kailali. Efforts have been made for enhancing social cohesion, constructing different committees more inclusive like judicial committee and other different committees at local level. Investments are made by Local and Provincial Governments to economic enhancement, skill development and infrastructure.

Conflicts escalates when the basic needs of people are not fulfilled. There is no horizontal conflict among local governance. There is conflict between local government and provincial government. The laws are not enough to manage the conflict. There is no hidden conflict. Local government's working system/approach is transparent and is working to building trust among community people.

Women's participation in development is high, they are organized in the form of cooperatives and women's groups. There are agro-cooperative and multi-purpose cooperatives and almost all of the households have access to cooperatives. They have generated more than 20 million rupees as capital within a ward through cooperative. They get donation from local government for local entrepreneurship development. There are enterprises like cottage industries like spices industries, (Turmeric powder, Garlic, Coriander seed, Cumin seed), and hosiery industries. Local governments are promoting 'one cooperative, one industry'. There

is increment of local economic activities that contribute to build peace. There are vegetable farming, mushroom farming, and local shops. There is peoples' trust on local governance led by leaders from Tharu community is perceived as affirmative aspect for sustaining peace at local level.

Media and civil society members believe that society is stable but external actors are trying to disturb and instigate conflicts. Dissatisfaction and tension with every governance structure exist. Community is not able to access the state resources properly. There is lack of good coordination and collaboration between governments and people. The disenchantment of people towards political leadership is increasing. Local government services are tedious. Local police are not responsive in cases of violence in the community, especially when women are victimized. There is less coordination between local and provincial government. There is conflict at policy and laws for example there is no clarity on which government authorities are authorized to collect tax. There is numerous demand of people, and the government is unable to fulfil all such demands. There is no clear role on use of police forces (Federal or province or local). There is scarcity of civil servant. Doctors choose to be under federal government and hospital is under provincial government as a result there is scarcity of doctors in hospitals. The leadership lacks clear 'vision' and need good planning and implementation to sustain peace. No clear division of power among layers of government. Corruption is institutionalized. Coordination with local, provincial and federal government is low. Feeling of lordship within elected representative is threat to institutionalization of democracy. There is conflict between civil servants and elected representatives.



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