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Discourses of Local Governance in Nepal: An Analysis of Legislation, Constitutional Processes and Civil Society Demands

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Abstract

This paper analyses the discourses of local government promoted at the political, constitutional and legal domains in contemporary Nepal. The structure of the local governance and the relative autonomy at local level is one of the major agenda in the context of popular discourses of state restructuring. In this context this paper highlights the discourses of local governance in Nepal by reviewing three types of documents: Local Self Governance Act (LSGA) 1999; election manifestos of major political parties and the concept papers prepared by thematic committees of the constitution assembly (CA). The paper analyses the expressed commitments of political parties, assess the emerging structure in the concept paper of the new constitution and examines the existing legal provisions. This review highlights the underlying ambiguities about local governance in legal framework and identifies how political parties have committed for local governance before the CA election. It also demonstrates the strengths and weaknesses of concept papers against the ideals of strong and autonomous local governance system. The analysis is supplemented with the governance experiences and learning in different sectors and parts of the country. Finally, the paper discusses the way forward for crafting the architecture of local governance in the light of the voices from local government associations/organizations, community organizations and wider civil society.

1. Introduction

The nature of Nepali society¹ and its geographical characteristics² render local governance an important agenda. The complexities inherent in the socio-cultural and physical landscape of the country indicate that the architecture of local governance may determine the ways how and to what extent the rights and participation of people in governance are ensured. The discourse of local governance in the new constitution crafting process is thus an important issue for researchers and activists alike. But until quite recently the issue of local governance and its architecture has drawn little attention amongst knowledge networks, opinion makers and the political elite of the country. In this context, this paper deals with three pertinent questions related to the local governance: 1) Is local governance agenda getting attention that it deserves in the current political transition and why? 2) Does the discourse of local governance in Nepal acknowledge the community organizations and their initiatives for advancing local democracy? 3) What will be the way forward for crafting appropriate architecture of local governance contributing to the advancement of local democracy and of community rights in Nepal?

In the period following the political change of 1990, and particularly after the comprehensive peace agreement between the Maoists and the Government of Nepal in 2006, Nepal has witnessed a complex set of demands and needs from multiple constituencies. Different forms of movements, demonstrations, and agitation have been launched in the country over the past two decades for the rights of minorities and excluded communities.³ The CA election in April 2008 further opened up the avenues for asserting the needs and demands to be addressed in the new constitution. Different political parties, civil society, and particular groups are trying their best for the realization of their demand in the new constitution. Different forms of disagreements⁴, debate, and contestations have emerged in the constitution making process. Among them, the structure and power of the government remains the major issue. Hence, this paper explores how and to what extent the agenda of local governance is getting its momentum in the current political discourse in Nepal. It presents a critical analysis of the debates and discourses on local governance, by focusing on the formulation and implementation of LSGA 1999, ongoing political processes and the CA concept papers, and on the election manifestos of major political parties.

¹ Nepali society is composed of the diverse caste/ethnic, religious, cultural groups of people (Bista 1967). It is a country of minorities, where none of the ethnic/caste groups has majority in the population structure (Sharma, 2008).

² Most of the parts of the country are hilly and mountainous, because of which it is difficult for infrastructure developments like extensions of transportations.

³ After the reinstatement of multiparty democracy in 1990, *Janajati* movements, *Dalit* movements, *terai* movements, Maoist insurgency, etc have taken place in the country. Some of these movements became violent and/or armed.

⁴ After preparation and submission of CA thematic committee concept papers, the discussions among CA members representing different political parties, have appeared with disagreements on 210 issues, out of which 135 have been resolved through the high-level mechanism and remaining other (about 75) issues are still in debate so far. These debates revolve around the nature and power of government structure (for details, see annexes of related CA concept papers).

2. Local Self Governance Act 1999 and its Ambiguities

Regarding local governance, several Acts⁵ and Regulations⁶ have been formulated and implemented in Nepal over the past six decades. The focus of these attempts was to provide a legal basis for the decentralization of power from central authority to district, village and municipality levels. They were however not designed to fully adhere to central idea of local governance that is meant to encourage and establish people's access, ownership, and participation in governing system. LSGA 1999 is the existing legal instrument crafted for designing local governance. It aims to enhance autonomy and greater roles to the local government bodies. Unfortunately, three years after the LSGA was passed, the entire elected leadership of local bodies were dissolved as their tenure expired. Since then Nepal has not been able to hold fresh local elections so far. As a transitional measure, civil servants are provided with the charge of exercising full administrative authority in the local bodies. The LSGA is regarded as a landmark for the devolution⁷ of power and authority to the local governing bodies and has marked important departure from earlier legal provisions. Having said this, the LSGA have some inadequacies and ambiguities on sharing power and authority between different governing units.

Under the LSGA (1999), there are some ambiguities on sharing power and authority between different governing units. The ambiguities can be clearly noticed when the provisions and the practicability of roles and responsibilities of VDC and DDC is minutely analyzed. For example, the roles of the VDC and DDC is very confusing and ambiguous according to the article 28 (a. 1) and 189 (a. 1).⁸ Such ambiguous roles and responsibilities for VDC and DDC create confusion about who is responsible to perform a particular task. Similarly, such ambiguities in the legal provisions are also creating the problems of overlapping powers/roles of the different tiers/layers of governing units or possibility of dual exercise of governing powers. There are other more ambiguous provisions for the roles and power of VDC and DDC in different areas and sectors as well. The major contradictions and confusions exist in the sector of resources management, such as agriculture, water, forest, environment, irrigation, and hydropower. These problems are also spread into social, cultural and development sectors, for instance, in language, cultural

⁵ The Acts relating to the local government include *Gram Panchayat Acts-2006, 2013, 2018 (BS)*; *Village Development Committee Acts-2047, 2048 (BS)*; *Nepal State Nagarpanchayat Act-2006 (BS)*; *Nepal State Municipality Act-2009 (BS)*; *Nagarpanchayat Act-2019 (BS)*; *Municipality Acts-2047, 2048 (BS)*; *District Panchayat Act 2019 (BS)*; *District Development Committee Acts-2047, 2048 (BS)*; *Zonal Panchayat Act-2019 (BS)*; *Zonal Sabha Act-2024 and 2035 (BS)*; *Decentralization Act-2039 (BS)*; and *Local Self Governance Act-2055 (BS)*.

⁶ The Regulations relating to local government include *Village Panchayat Regulation-2020 (BS)*; *Gaunsabha Regulation-2026 (BS)*; *Village Development Committee Regulation-2050 (BS)*; *Municipality Panchayat Regulation- 2020 (BS)*; *Municipality regulation-2049 (BS)*; *District Panchayat Regulation-2020 (BS)*; *District Development Committee Regulation 2049 (BS)*; *Decentralization Regulation-2041 (BS)*; *Local Self Governance Regulation-2056 (BS)*; and *Local Finance Administration Body Regulation-2056 (BS)*.

⁷ Samoff (1990:528, quoted from Agrawal et al 1999: 13) defines devolution as “the most extensive form of decentralization involving creating or strengthening independent levels and units of government through the direct assignment of decision-making responsibility.” Similarly, Maniates (1990:1, quoted in Agrawal (1999:13) defines it as “the increased empowerment of local organizations with no direct government affiliation.”

⁸ For example article 28 (a.1) states that VDC has power “To carry out or cause to be carried out agricultural development programmes within the village development area (28. a. 1.)”, whereas the article 189 (a.1) also states that the DDC has roles “To make District level policy on agriculture and livestock development, and formulate and operate programmes in consonance therewith, and inspect and monitor, and cause to be inspected and monitored, the programmes operated.”

heritage, religious places, tourist places, transportation, education, health and other areas as well (Annex 1). In fact, the LSGA has conceived the DDC and VDC both as planners and program implementing body of the government rather than one as facilitator and another as an implementer. This has created the contradictions and confusions in smooth planning and implementation of development programs as well as their effective monitoring and evaluation.

Similar ambiguities can be observed for sharing of power and authority between Municipality and the DDC. Some of the roles and responsibilities of these governing units are confusing. For example, the roles of the Municipality under the article 96 (c.2 and 3) and 189 (j.2) are very ambiguous.⁹ The provisions under these articles state that both the Municipality and DDC have the responsibility in preventing the soil erosion, river-cutting and floods in their territories. Similar ambiguities can be identified in the other sectors such as physical construction; maintenance, promotion and utilization of religiously important places and cultural heritage; construction, maintenance and repair of roads; maintenance and arrangement of necessary facilities for vehicles and transport; responsibilities to operate and manage the health facilities; planning and operation of programs for disadvantaged groups, tourism, barren lands, natural calamities, market places and so on (see Annex 2, which outlines 15 ambiguities). Such contradictions and ambiguities of responsibilities of governing local affairs under the LSGA have made the planning and implementation of the programs at the local level very difficult.

2.1 Questions on 'autonomy'

The nature of local governance can be assessed and reflected in terms of how the local development plans are formulated and implemented. The local governing body cannot be autonomous until and unless it exercises its own authority to decide on local governance and development affairs. The primary principle of LSGA was to make local government autonomous and independent in making development plans and in their effective implementation. But the specific provisions of this Act do not provide the lower tiers of governing units with autonomous powers in regard to formulating and implementing development activities. For example, the Article 43 (7.a and b), 11 (7.a, b and c), and 195 (5.a, b and c) have provisioned about how lower tiers of governing unit have to abide by the upper layers (see Annexes 3). The LSGA provisioned that the VDC and Municipality governments need to consider the DDC's directives for making local development plans, while DDC planning has to abide by the directives of the central government. This means the DDC also makes its annual development plans based on the directives given by the central government. This mechanism of local planning shows that the local government under LSGA is largely controlled by central government.

The above ambiguities and contradictions raise a question about whether the LSGA has made commitments for autonomy of local governing bodies. Its Article 50 mentions that VDCs have a responsibility to follow the directives of DDC and the National Planning

⁹ The Article 96 (c.2 and 3) mentions, "2. In the event of necessity to carry out irrigation plans in the Municipality area, to make plans thereof and implement and cause to be implemented the same and 3. To control and prevent, or cause to be controlled and prevented the possible river-cuttings, floods and soil erosion in the Municipality area." Similarly, Article 189 (j.2) mentions 'To formulate plans on prevention of soil- erosion, river cutting etc in the areas affected from such acts, and implement and cause to be implemented the same.'

Commission (NPC) when it formulates plans and implements them. In the same way, the DDC is required to follow and respect any of the directives and orders from the central government/NPC (Article 122). Similarly, Article 207 (1 and 2) of LSGA authorises NPC and central ministries to issue directives and orders to DDC in formulation and implementation of district development plans (see Annex 4). Accordingly, the upper governing tiers have powers to control the development activities of lower governing units. Thus the lower governing units cannot formulate and implement development plans independently and have to follow the directives and orders from higher authorities.

2.1 Questions on ‘accountability’

Another basic principle of LSGA is to make local governing units accountable to the people in their respective jurisdictions. But the ambiguous roles in hierarchical structures have resulted in upward accountability. According to Article 234 the central government has the role of monitoring and supervision of local bodies.¹⁰ This provision makes the lower governing body accountable to the upper ones rather than to their own constituencies. These legal provisions maintained and strengthened the upward chain of control. In addition, Article 238 provides power to the central government to suspend and dissolve the local bodies on several grounds¹¹. Similarly, Articles 235¹² and 236¹³ have provisions of rights and power of central government for special grants to any of the local bodies. This also encourages the central government or the upper tiers of the governing body to become more powerful and influential vis-à-vis the lower tiers by virtue of the former’s capacity of allocating resources and imposing conditionality.

3. Political Promises for Local Governance

Election manifesto of the political parties is the key document to analyse political promises for the local governance. Ideally, the members of the constitution assembly hold the promises made during the election which is actually discussed and negotiated during the drafting of the constitution. This section analyses the party manifestos.

¹⁰ Article 234 states, “(1) [the central] Government may regularly monitor as to whether the Local Body has carried out the functions entrusted to it pursuant to the prevailing law, whether it has accorded necessary priority to the backward communities, women and children, whether such matter as the ecological balance has been encouraged, and may give necessary directions. (2) It shall be the duty of the concerned Local Body to abide by the directions given by [the central] Government pursuant to sub-section (1).”

¹¹ The Article 238 states, “(1) If [central] Government has adequate ground of the fact that any Local Body has committed any of the following acts, it may, by stating such reasons in the notice published in the Nepal Gazette, suspend such Local Body :- (a) If it commits any act jeopardizing the sovereignty, integrity, nationality or communal harmony of [...] Nepal in a manner to be contrary to the Constitution [...]. (b) If it misappropriates any property or income of the Local Body. (c) If it obstructs the discharge of functions of the Local Body by not holding the meeting of the Local Body for upto one year, except in cases caused by circumstances beyond control.”

¹² The Article states, “[the central] Government may, in order to consolidate and enhance the capacity of the Local Bodies, formulate and introduce a special programme.”

¹³ This Article states, “(1) [the central] Government shall have to provide the Local Body each year with minimum grant prescribed and also with additional grants on such basis as population, level of development, possibility and capability of mobilizing revenues, necessity of financial resources, regular record keeping of incomes and expenditures, situation of auditing and financial discipline of the concerned Local Body. (2) [the central] Government may prescribe the process of, and procedures for, the expenditure of the grant amounts to be obtained under sub-section (1).”

Table 1: Major political parties and their promises stated in their manifestos

Political parties	Three tiers	Highlights of the major statement
United Nepal Communist Party (Maoist)		...state will be in three (central, autonomous provinces and local) tiers.
Nepali Congress		...state will be divided into three tiers of government- central, province and local.
CPN-UML	 the division of the power and roles will be based on the three tiers of government- central, province and local.....
Madhesi Janaadhikar Forum Nepal	Not stated clearly	
Terai-Madhesh Loktantrik Party	Not stated clearly	
Sadbhawana Party (Mahato)	Not stated clearly	
Nepal Majdoor Kisan Party	Not stated clearly	
Nepal Sadbhawana Party (Anandidevi)	Not stated clearly	
Rastriya Janasakti Party		... Below the central government, there will be federal government and local government (municipality, VDC or village council) will be structured below the federal government. ...
National Democratic Party	Not stated clearly	
Rastriya Janamukti Party	Not stated clearly	

Source: Manifestos of the particular political parties

As table 1 shows the major three political parties (Maoist, Nepali Congress and CPN-UML) have clearly made their promises for the provision of three tiers of governing units in the new constitution. However, Terai-based political parties and parties with small number of CA members have no clear positions on the tiers/layers of governing units. Instead, they give much importance to the provision and power of the provinces. To be specific, the Terai-based political parties have emphasized on making the whole Terai region ‘an autonomous province’ (see annex 5). While many political parties converge on ending the centralized power of the government, they are primarily focused on the power of the

provinces rather than the lowest governing units. Their manifestos speak very little about the power and authorities of the lowest governing tiers. It can be suggested that there is inadequate elaboration and political promises for autonomous power of the lowest tiers of governing unit. It means almost all of the political parties have clear political promises for establishing the autonomous provinces but limited attention on autonomous power of the lowest governing units.

3.1 Meaning for the use of term ‘autonomous’

Almost all of the political party’s manifestos made public for CA election in 2008 offer promises about the establishment of autonomous federal government in Nepal. The use of the term ‘autonomous’ (or *Swayatta*) is very common in the manifestos of political parties (Table 2). However, the meaning and the purpose of the use of this term is quite different. Most of the political parties (except Terai-based political parties) have used this term for the power and roles of the provinces. The Terai based political parties have used this term for the autonomous power of the whole Terai region as ‘an autonomous provincial region’.

Table 2: Frequency of the use of term “Autonomous” in the political party’s manifestos

SN	Political parties	Size (% of CA members)	Frequency of the term ‘autonomous’ for the autonomous power (including governing) of:					
			Total	Institution/ Organization ¹⁴	Region	Province	Local	Others ¹⁵
1	United Nepal Communist Party (Maoist)	38.1	14	-	-	9	-	5
2	Nepali Congress	19.1	5	1	-	4	-	-
3	Communist Party of Nepal (Unified Marxist-Leninist-- CPN-UML)	18.0	2	-	-	1	1	-
4	Madhesi Janaadhikar Forum Nepal	9.0	18	-	10	5	-	3
5	Terai-Madhesh Loktantrik Party	3.5	7	-	5	2	-	-
6	Nepal Sadbhawana Party (Mahato)	1.5	8	-	7	-	-	1
7	Nepal Communist party (ML)	1.5	10	-	-	4	1	5
8	Janamorcha, Nepal	1.3	14	1	-	11	1	1
9	Rastriya Prajatantra Party	1.3	3	1	-	1	1	-
10	Nepal Communist	0.8	4	3	-	1	-	-

¹⁴ This includes the parties’ political commitment for establishing autonomous institutions like universities, media, health etc.

¹⁵ Almost all of the political parties have made their promises for the special autonomous regions based on the caste/ethnic, religions, and language groups.

	party Aekikrit							
11	Nepal Majdoor Kisan Party	0.8	1	-	-	-	1	-
12	Rastriya Prajatantra Party, Nepal	0.7	3	-	-	2	1	-
13	Rastriya Janamorcha	0.7	18	-	-	-	12	6
14	Nepal Sadbhawana Party (Anandidevi)	0.5	2	-	2	-	-	-
15	Rastriya Janasakti Party	0.5	9	-	-	9	-	-
16	Nepal Communist Party Samyukta	0.3	5	-	-	4	-	1
17	Sanghiya Loktantrik Rastriya Manch	0.3	92	2	-	68	3	19
18	Nepali Janata Dal	0.3	9	3	-	6	-	-
19	Rastriya Janamukti Party	0.3	63	-	-	62	-	1
20	Chure Bhawar Rastriya Eakta Party	0.2	-	-	-	-	-	-
21	Dalit Janajati Party	0.2	5	-	-	3	2	-
22	Nepa Rastriya Party	0.2	-	-	-	-	-	-
23	Nepal Loktantrik Samajbadi Dal	0.2	5	-	-	5	-	-
24	Nepal Pariwar Dal	0.2	-	-	-	-	-	-
25	Samajbadi Prajatantrik Janata Party, Nepal	0.2	-	-	-	-	-	-
	Total	100	297	11	24	197	23	42
	%	100	100	3.7	8.1	66.3	7.7	14.1

Source: Manifestos of the particular political parties

Only a few parties have used the term ‘autonomous’ for local governments or local communities. The term ‘autonomous’ has been used 197 times (66.3 % of total) with respect to the provincial government. In contrast, it is used only 23 times (7.7 %) with respect to local government. It indicates that autonomous power and role of the lowest tiers of governing unit is not a primary concern of local government for most of the political parties. In addition, the Terai-based political parties have used this term for the autonomous power and role of the region ‘whole Terai as an autonomous provincial region’. Moreover, the two largest political parties (namely UCPN Maoist and Nepali Congress) have not used this term in relation to local governments. Only one political party (Rastriya Janamorcha) has mostly used this term for the autonomous power linking with local government¹⁶. After the provinces, the term is used linking with identity (caste/ethnicity, religion, language etc) based autonomous region. In general, the central argument of most of the political parties to use

¹⁶ This political party is not in the line of federal government. It argues for the need of better decentralization of the government.

this term for ‘others’ is for the autonomous governing power of the special groups like language, caste/ethnic, religious population inside the autonomous province.

3.2 Provisions of local governance

It appears that the political parties, in principle, agree on decentralizing the central state lower governance levels. Though the stated objectives indicate powerful local governance there are questions of whether they have a common understanding and are aiming for the same. Similarly, there are doubts that whether these commitments will addresses the people’s aspiration in terms of redistribution of wealth and power. In particularly, there are doubts whether the local government units can exercise autonomous rights and be accountable towards their own constituencies. Analysis of the manifestos indicates that the lowest governing units, under the power and control of provincial government, may not be able to exercise these autonomous governing rights (Table 3).

Table 3: Local governance Issues in the manifestos of major political parties

Political parties	Provisions about the local governance
United Nepal Communist Party (Maoist)	... It is scientific and appropriate to develop autonomous federal governance on the basis of the policy of self-determination rights. The area with dense population of any of the other caste/ethnic groups within an autonomous federal province could be established the sub-autonomous local governing regions.
Nepali Congress	... Under the autonomous federal provinces, the VDC and municipality levels governing units with rights to self-ruled local autonomous units will be developed. By ending the existing centralized governing system, the autonomous federal provinces will be established.
CPN-UML to form an autonomous and self-ruled local governing units under the federal structure, a constitutional high commission will be formed. And autonomous federal units inside the defined boundary will be empowered with self-determination powers.
Madhesi Janaadhikar Forum Nepal	... Along with the rights to self-determination, the ‘Madhesh as an autonomous state’ with the power of regional autonomy is established..... For the context of state restructuring, we are in the line of establishing whole Terai region an autonomous political federal region..... .. Under the federal structure, provinces will be autonomous and empowered with rights.
Terai-Madhesh Loktantrik Partywe are the supporters to establish whole Terai as an autonomous federal region with rights to self-determination in the region for political and administrative conducts.
Sadbhawana Party (Mahato)the main objective of our party is to establish the whole Terai an autonomous federal regions.

 And the autonomous federal region will have full power and authorities to deal with all issues within its territory... ...there will be some other autonomous governing units based on language, culture, community etc. under the province...
Nepal Sadbhawana Party (Anandidevi)our party has proposed to establish the whole Terai as an autonomous provincial region during the leadership of our late party leader Gajendra Narayan Singh.So we do demand for this....
Rastriya Prajatantra Party Our party has strong commitment to establish autonomous federal units in state's governance. Under the concept of local governance, VDC, municipality or district level autonomous units must be clearly mentioned in the constitution.

Source: Translated from manifestos of the political parties

It is seen that the political commitments for the establishment of autonomous province with rights to self-determination is very strong. But, the agenda of making local government an autonomous unit has been overshadowed or not strongly spelt out within the discourses of state restructuring. As a result, the provision of autonomous local governance seems very weak. Local governments are conceived as sub-autonomous region (under the autonomous provinces) particularly in the manifestos of Maoist and the Terai based parties. But there is no clear and visible statement to prove that whether such regions will be autonomous with rights to self-determination. It may raise the question of whether the political parties are willing to make federal provinces and provincial government more powerful and make local level governing bodies (village, municipality, communities) as subordinate units.

4. New Constitution and the Local Governance: A Content Analysis

The Concept Papers that have been submitted by the CA thematic committees¹⁷, to a large extent have adopted a decentralized governance mode with three governance tiers (federal, provincial and local). Of eleven committees, The Restructuring of the State and Distribution of State Power Committee (RSDSPC) is directly responsible for crafting the governance structure and the distribution of power among different bodies. In the preamble of the concept paper, RSDSPC has proposed autonomous, self-ruled and fully authoritative governing units¹⁸ in the constitution. Regarding the governing tiers, the concept papers of other thematic committees also resemble with those submitted by RSDSPC. Similarly, the

¹⁷ There are 10 thematic committees and one constitutional committee in constituent assembly. These committees have already prepared their thematic concept papers and submitted to the CA.

¹⁸ The preamble of the RSDSPC's concept paper mentions, "... it is considered necessary to create autonomous, self-ruled and fully authoritative states, local units and special structures for political, economic, social, cultural, linguistic and physical development of the country by keeping Nepal's national sovereignty and independence intact;....".

Committee on Determination of Forms of Governance of the State (CDFGS) recommends the establishment of three tiers of governing units.¹⁹

4.1 Provisions about the power of governing units: the dilemmas of power

The distribution of power at different levels of governance is an important political and administrative issue. It affects the ownership, efficiency and effectiveness of governance outcomes. The analysis of concept papers indicates a common agreement towards autonomous governing units. In most of the concept notes comes the term “autonomous” either in relation to provinces or the local governments (see Table 4).

Table 4: Provision of local governance in CA thematic committees

Committees	Provision of Local Governance
Restructuring of the State and Distribution of State Power Committee	Preamble:it is considered necessary to create autonomous, self-ruled and fully authoritative states, local units and special structures for political, economic, social, cultural, linguistic and material development of the country Structural Tier of Federal Nepal: There shall be autonomous areas and protected areas within the state as per Article,
Committee for Fundamental Rights and Directive Principles	Directive Principles:federalism based on mutual cooperation, ensure the condition of reaping the benefits of democracy by adopting the people’s inclusive, proportionate system in the governance on the basis of local autonomy and decentralization, and establish a federal democratic republic system.....
Committee on Determination of the Form of the Legislative Body	Provision relating to autonomous unit: Local autonomous units shall be established based on the principle of decentralization and with a view to institutionalize democracy at the local level by ensuring that local people participate in the legislature and fully exercise their sovereignty.
Committee for Preserving the National Interests	Right to self determination: The federal governance system of Nepal shall function by being based on the principles of autonomous system of governance.
Constitutional Committee	Preamble:.....Maintaining national integrity and internalizing the people’s right to self-determination, autonomy and self rule;

Source: CA thematic committee concept papers (www.can.org).

The concept papers, despite a general conception of a decentralised state, largely focus the provinces and often tend to ignore the local governance. For example, the recommendation of RSDSPC at some point states that there will be mechanisms to control the functions and roles of lowest tiers of governing units. The mechanism is structured through the decisions

¹⁹ This committee under the heading of formation and operation of the government service has recommends that “Government Services shall be in three tiers: central, provincial and local”.

made by federal and provincial legislative body.²⁰ The “autonomous” in the sense of decentralizing authority seems to be used and defined for making province more powerful (see Annex 6). Moreover, the lists of rights of different governing tiers under the heading of Sharing Power among the Federations seem that the focus of power distribution is centered on federal or provincial government.²¹ It indicates that there will be possibility of central or provincial influence and domination in exercising authority over the lower governing tiers (see Table 5).

Table 5: Ambiguous list of the rights of governing tiers in the concept papers of RSDSPC

Federal	Province	Local	Autonomous
Customs, excise duty, VAT, Institutional income tax, passport, visa, postal service, tourism fee, service tax	Personal income tax, business tax, land revenue, remuneration tax, land and housing registration tax, automobiles tax, entertainment tax, advertisement tax, tourism and agriculture tax, service tax	Local tax, property tax, house tax, automobile tax, service tax, tourism tax, advertisement tax, land revenue tax	Property tax, business tax, house and land registration tax, automobile tax, entertainment tax, tourism tax, land revenue tax, remuneration and agriculture income tax
Royalty from natural resources	Royalty from natural resources	Royalty from natural resources	Royalty from natural resources
Mine excavation	Mine excavation and management		Mine excavation and management
Affairs relating to Federal Legislature and Executive	Provincial legislature, and related to local governance and special structure		Other rights determined by the provincial government
	Utilization of forest and water within the province.		Natural resources and their utilization

Source: CA thematic committee’s (RSDSCP) concept paper (www.can.org).

²⁰ This committee recommends, “No matter whatsoever is written in this Constitution, on areas of common list as mentioned in Schedule 5, the Provincial Legislature can formulate necessary laws on the basis of the fundamental principle, standards and framework of legislation determined by the Federal Legislature”.

²¹ The RSDSPC has listed 30 items/areas as rights of federal state government contrasting 28 items/areas for provincial government and 20 for local government. The list of these tiers of government show the distribution of power focused and concentrated on central and provincial government.

There are some ambiguities created by the lists of areas for the exercise of authority by different governing tiers (see Table 5). Long congruent list in areas such as taxation, royalty from natural resources, on environmental issues may create overlapping and confusion in which case the upper tier of government often dominates the decision.

4.2 Provisions related to special structures: still confusing

The marginalization, backwardness, and exclusion have been taken as some of the major driving forces for the political movement in Nepal. A proper mechanism is required in order to incorporate the historically excluded and backward groups into the mainstream politics, economy and society. Allowing maximum state power to the sovereign citizen is the preferred strategy to address the historical injustice, exclusion and marginalisation. The concept papers have largely sought to recognise and address these issues through the provision of ‘autonomous governing power’ to those specific minority groups²².

According to this provision, there will be special units within the provinces based on the settlement of minority caste/ethnic groups with self governing authority.²³ However, there are some ambiguities in the recommendation of this committee. The special regions will remain under the authority of provincial governments.²⁴ This invokes a questions whether the special regions can enjoy autonomy without the compromising the authority given to the provinces²⁵. Similarly, at certain point power vested with federal government may clash with those of lower tiers²⁶. This will be particularly the case during situations of conflicts, contradictions, disagreements among the lower tiers²⁷.

5. Way Forward for Local Governance

Given the post conflict political volatility and increasing frustration among the citizen with the Kathmandu based politics in Nepal, strong local governance system is the only hope they can live up with. This is important for the sustenance of historically practiced local support system on economic, social and environmental fronts. However, to achieve this there needs a strong political commitment from different actors for decentralization of governing powers towards lower units. In this section, the ideas and opinions of diverse actors related

²² The RSDSPC has listed 23 special regions as self-autonomous area. These are in the name of different indigenous nationalities.

²³ The RSDSPC under the heading of state restructuring and structure of the state power has mentioned, “*The identity, Self-rule and autonomy of the indigenous people and indigenous nationalities living in the state, local unit and special structure shall be guaranteed*”. It further states “*an area with majority of an ethnicity/ community or linguistic community or with dense population within a Province shall be maintained as an autonomous region*”.

²⁴ This committee under the heading of the sharing of power among the federation, local level and special structures writes “*The powers of special zone and protected areas to be formed under the special structures in pursuant to this Constitution shall be as determined by the provincial law*”.

²⁵ In the list of the areas, it is written that special autonomous region will exercise its rights “determined by the provincial government”, which indicates that the power and rights of the special region may be under the control of the province.

²⁶ This committee, under the heading of Sharing of power among the Federation, local level and special structures write that “*The Federal Legislative shall have the power to formulate laws in areas not mentioned in the list or the common list of the Federation, province, local level and autonomous regions under the special structures, and on areas not determined in this Constitution and legislations under the Constitution*”.

²⁷ This committee (RSDSCP) in its concept paper further recommended the power of federal state government, “*In order to manage the mutual relations between the provinces, the Federation shall carry out necessary management role*”.

to the local governance are analysed to project a comparative understanding of which system is suitable in Nepal.

5.1 Fundamental principles of local governance

The concept of local governance encompasses institutional networks, interactions, collaborations and collective action in enhancing democratic practices at the local level. This broader notion of local governance can foster democratic norms, values and practices of diverse types of locally functioning institutions. This is a new phenomenon evolving around the human collectivism. It is expected to provide spaces for diverse community groups and networks to promote and engage in collective action for locally defined agenda (Adhikari 2009, 2010, 2011; Ojha 2010). The fundamental principle of local governance is to make the government responsive and accountable towards the people in its jurisdiction.

The three-pillar²⁸ concept for the success of decentralization program in Nepal (Agrawal et al 1999: 79-79) may be relevant for understanding local governance discourse in Nepal. Based on this theoretical stance, the prevailing local governance discourse is not sufficient to address even one of the three. The creation and strengthening of local institutions can be ascertained with the links of five key governance issues: 1) the natural way of governing citizens; 2) way of deepening democracy - power devolution reaching from central to the very local; 3) accountability and responsiveness of the government, 4) correction of the failure of top-down approach; and 5) the cost effectiveness of the government (Ojha and Rai 2010). The understanding of these key issues is crucial in strengthening local governance in Nepali context.

The community institutions in the field of forest, irrigation, drinking water, cooperatives, health and education can be regarded as the constituent elements for crafting an embedded structure of local governance in Nepal (Ojha 2010, Ojha and Rai 2010)²⁹. These groups have gained considerable governance experience and are demanding the recognition of their role in local governance. Despite some criticism, these institutions provide ample space for widening and deepening local democracy. Although these institutions prioritise delivery of needed services at local level, they also function as a foundation of democratic institutions.

²⁸ For them, first is management of political relationships at the level of the central state so that some powerful actors at that level become committed to pursuing decentralization. Second is creation of institutional mechanisms at the level of the locality. Third is the management of flows of information and creation of capabilities so that the new information is used appropriately to produce goods and services for people.

²⁹ The crucial issues related to local governance in Nepal are: 1) *individual versus community rights*: The local governance discourse in Nepal somehow seems to be moving around the roles and powers of individual and community. The contrasting arguments are equally appearing in the discourse that whether individual sovereignty or community practices are important to be recognized under the local governance. The ambiguity is visible whether the enabling collective efforts and its strength is important and possible for local governance. 2) *Representation versus participation*: The concept representation is hugely appreciated in the traditional discourse of democracy. However, the practicality of democracy since its establishment has been criticised as its inadequacy of fascinating the essence of participation. The narrow definition of democracy understood as election of representatives, processes of service deliberation, have been currently challenged and questioned along with the emerging dynamics of social learning, everyday politics, and interactions feeding critically the current discourses of local governance in Nepal. 3) *Government versus governance*: The administrative structure of the government one or other way do not advance for people's participation and civic engagements in all government activities like planning, implementation, evaluation, monitoring, decision making and so on. The developing discourses indicate that the essence of local governance in Nepal has been overlapping with the concept of decentralizing power from centre to the provinces. This inadequacy of local governance discourse is one of the crucial issues.

5.2 Voices of local government representatives: there are still dilemmas

A number of networks have emerged during post LAGA period who have now stood up in defending local governance. Association of District Development Committee of Nepal (ADDCN)³⁰, Municipality Association of Nepal (MuAN)³¹ and National Association of Village Development Committees in Nepal (NAVIN)³² have organised the voices around local governance in recent years. While they represent the constituency of local governance defenders, they are struggling internally to come up with clear vision of local governance structure and its composition³³. While the association leaders have publicly acknowledged the institutional strengths and roles of community institutions (Rai and Paudel 2010) they are unclear on how to integrate them in the broader notion of local governance. In fact there is limited, discussion on the natural of relation with diverse community institutions which were conventionally not within the formal structure of the local government bodies. There needs further research and dialogue to enhance the synergy between local communities and local governments and address governance confusion between them.

Looking at the emerging discourses of inclusive democracy, the discussion on local governance should go beyond central vs. local to embrace the ideas of inclusive, participative, deliberative structures and processes. Till now, the conventional idea of having a strong local government bodies as central actors in managing local affairs and developing collaboration with community institution has dominated the debate. There is little appreciation of embedded structure of local governance inclusive of community institutions.

5.3 Local governance: voices from community organizations

Community institutions, either modern or indigenous ones are the key institutions in diverse field of local life support system in Nepal (Ghimire 2010, NR Confederation 2009). They also form very strong element of local democracy (Ojha 2010, Ojha and Rai 2010, Adhikari 2010, 2011; Paudel 2009; Pokharel 2009). In the context of constitution building, national federation of diverse community institutions have begun consolidating their voices through

³⁰ Established in 1995, this association is the umbrella organization of District Development Committees (<http://www.addcn.org>).

³¹ Established in 1995, MuAN initially played an advocacy role to influence the central government on some legal issues. Since 1997, its role and function expanded to areas of promoting international relations and providing technical advice and counselling to member municipalities (http://www.muannepal.org.np/muan_introduction.php).

³² NAVIN was established in 1996 as an umbrella organization to represent and support Nepal's 3915 VDCs. It has established itself, both nationally and internationally, as a reputable representative organization of VDCs and has projected itself as a pioneer organization for promoting decentralization and democratization process in Nepal (<http://www.navin.org.np/>).

³³ The CA thematic committee's concept papers have recognized the roles and existence of the MuAn and NAVIN but the roles and existence of ADDCN is not clearly mentioned. ADDCN in this context is arguing for the significances for the existence of district level governing units in new constitution of the country. A booklet entitled "Why District Government is Necessary in the Context of New Constitution and State Restructuring?" published by ADDCN, based on the district level interactions organized in 26 districts (in between 2009-2010), has summarized in 7 points the arguments against the need of district level government and 13 points for the needs of district level government in new Nepal (see this booklet for details). This association gives seven basic significances of why district level governing unit is necessary for new Nepal: 1) to solve the problem of geographical remoteness; 2) to make service delivery closure to the people; 3) to solve the problems of the lack of efficient human resource in the village level; 4) to solve the problems of the lack of sufficient physical infrastructure; 5) for catalytic role in dual types of service delivery in governing tiers; 6) for effective means of economic source generation and its strengths; and 7) social and cultural cooperation (ADDCN 2010a, 2010b and 2010c).

their collective identity - NR Confederation³⁴. The view of confederation is based on the successful experiences of community institutions in managing community infrastructure, social services and environmental resources. They also claim that the community institutions follow inclusive and democratic practice and have greater efficiency and effectiveness in delivering their promises. Their recommendation to the CA is therefore to get these systems constitutionally recognized and established as one of the local governing tiers (Ghimire 2010).

5.4 Local governance: voices from civil society

Conceptualisation of local governance as an inclusive and embedded structure of local institutions also embraces a greater collaboration with civil society organisations. Obviously, the idea has induced increased interests of civil society organisations in local governance. They have been advocating local governance with increased accountability, inclusion, participation, transparency³⁵. However, given the fragile politics and ideological differences among the CA members³⁶ achieving consensus around certain issues in the new constitution is really a challenge. The demand for autonomous local governance system has also suffered from these larger political conflicts (Ghimire 2010; Adhikari 2010; Paudel 2009). Consequently, the voice of civil society for strong local governance has proved weak. Consequently, the demand for embedded nature of local government inclusive of community institutions has not been recognised. Further discussions between these actors may help develop stronger counter arguments for politically cantered local governance discourses. However, the great challenge in this direction will be the contestations for their governing power, which must be resolved at the first stage.

6. Reframing Local Governance beyond Dominant Discourses

From the above discussion it appears that the current discourses of local governance are not adequate to address the key concerns raised by community groups or the civil society organisations. Firstly, it is noted that despite some of the positive achievements, the provisions of LSGA (1999) was inadequate to advance the autonomous local governance. The power devolved to local governance under this act is vulnerable in front of the interference by the upper tier government units. Similarly, several ambiguities in the roles and responsibilities between different tiers of governance often resulted in weak position of

³⁴ This is a loose forum of more than 13 federations and other organizations working in natural resources in Nepal. In this forum, the federations and other organizations related to forest, drinking water, irrigation, electricity etc are members and coworkers. Its major aim is to enhance the discourses of community rights from natural resources management practices, experiences and perspectives in Nepal. This forum is actively engaging in new constitution building processes since the beginning of new constitution making processes in Nepal (i.e. after the CA election). This forum has organized a series of interactions, campaigns, round-table discussion, media campaigns, lobby and networking with political parties and other organizations, and issued publications for community rights in new constitution.

³⁵ The four issues of local governance relies on the question of: 1) how local government can be made accountable to the people of its area; 2) how the structure of local governance can be ensured with inclusive participation of all section of people in the area; 3) how to ensure the transparency in the conduction of local governance; and 4) how to reduce dual institutional frameworks to discourage unhealthy competition.

³⁶ Conflicts and contestation upon some constitutional issues and formation of government are hindering to the constitution making processes in Nepal.

local government bodies. Such ambiguous provisions produced the questions of accountability, participation, inclusion and effective service delivery.

Secondly, the expressed commitments of the political parties for local governance are also inadequate in terms of embracing the concept of 'autonomous' local governance. Parties have in most cases used the term 'autonomy' in relation with provinces. It indicates that the political commitments are just centred to the province level. They are largely silent on the level of authority to be enjoyed by the lowest layer of governing units. Despite this, the political commitments for the advancement of 'autonomous' rights of communities with distinct socio-cultural identities raised by some of the political parties is important. However, their commitments for this right are also in one way or another hooked to the power and authority of the provincial level. It raises doubts about how local governments can be made 'autonomous' and 'accountable' to the people of their respective jurisdictions. Moreover, the demands of Terai-based political parties (whole Terai as a 'self-autonomous' province with rights to self-determination) pose further questions of how local governance may become 'autonomous' under this condition. Therefore, the expressed commitments of political parties are not adequate to address and capture the real essence of local governance. Furthermore, these commitments may look more questionable in the eyes of community organizations.

The analysis of CA concept papers provide an illusionary picture of 'autonomous' local governance. It is found that the term 'autonomous' has been defined and used primarily in reference to the power and roles of the provinces. It is very vaguely defined and adopted in case of local level governing units. However, there are provisions for autonomous special region (based on caste/ethnicity, religion, language etc.). Many fear that these regions will be placed subordinated to particular province.

The existing experience on collective actions of community organizations can provide a foundation for designing an autonomous local governance system in Nepal. However, as demanded by the community groups, providing constitutional recognition and legal security to these community groups is a prerequisite. The current focus at the province has undermined the role of lower governing tiers and raises questions of 'autonomy' or 'local self-governance'. Therefore, the idea of community based local governance is contentious not only with the political discourse but also with the legacies of the local government organizations.

Crafting autonomous governance system that meets the aspiration of diverse actors, therefore, is a challenging task in Nepal. However there are lots of avenues through which these challenges can be converted into opportunities. Based on the three pillars of decentralization as we have discussed earlier (political relation at the central, creation of local institution and flow of information), crafting the architecture of local governance in Nepal can benefit from the experiences and learning of existing community institutions. It means mainstreaming the experiences and institutional dynamics of community institutions into local governance can be the start. But for this, the collaboration between local governments and community organizations with clear understanding about the space for power and roles of the local government and community organizations is a must. This can transform the

existing discourses of local governance with considerable insights gained from community governance. Finally, the task ahead is also to engage in dialogue among concerned actors—political parties, civil society organisation and federations of user groups among others.

7. Conclusion

The system of local governance could potentially play important role in establishing, advancing and institutionalizing local democracy in Nepal. It appears that the discourse of local governance, which gained momentum following the promulgation of LSGA (1999) in Nepal, is still inadequate to embrace the ‘autonomous’ local governance. The insufficient understanding, firstly, may be due to the existence of centralized and feudal conceptions along with underlying social structure. Secondly, it can be attributed to the limited conceptions and practices of democratic norms and values. Thirdly, it may be due to the weak lobbying from and networking within the civil society actors. Fourthly, it may be due to the lack of understanding of local governance; and finally it may be due to the lack of honesty to fulfil the commitments amongst political actors and policy makers.

In this paper we argued that the current debate on local governance is limited to creating a governance structure at the local level is very weak against the authorities of federal and provincial governments. Here, the lessons and insights from the grassroots may be an important tool for advancing a viable, autonomous framework of local governance. We suggest that recognizing and mainstreaming the institutional strengths and capacities of community organizations provide a convincing case for crafting inclusive and broad-based local governance framework in Nepal.

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10. Annexes

Annex 1: Ambiguities in the roles and responsibilities of VDC and DDC in LSGA (1999)

SN	Subject	Functions and roles of VDC	Function and Roles of DDC
1	Agriculture	To carry out or cause to be carried out agricultural development programs within the village development area (28. a. 1.)	To make District level policy on agriculture and livestock development, and formulate and operate programmes in consonance therewith, and inspect and monitor, and cause to be inspected and monitored, the programmes operated (189. a. 1.).
2	Agriculture	To arrange for agricultural <u>Haats</u> (weekly temporary bazaar), markets and fairs or to assist in organizing such fairs within the village development area (28. a. 2)	To promote, and cause to be promoted, the agricultural <u>Haat</u> markets and fairs (189. a. 4).
3	Drinking water	To prepare drinking water projects for the supply of drinking water required within the village development area and to implement and operate the same, and to arrange or cause to be arranged for their maintenance (28. b. 1).	To formulate and implement, and cause to be implemented, such drinking water plans as are to benefit the people in more than one village development area in rural areas of the district development area (189. b. 1)
4	Transport	To prepare projects on tracks and trails, and rural roads required within the village development area and to implement the same and make arrangement for their maintenance and repair (28. c. 1).	To build, operate, monitor, evaluate and maintain and repair the approved District level roads, and cause to be done the same (189. d. 2). To formulate, build and maintain and repair the plans of suspension bridges required in the district development area, and cause to be done the same (189. d. 3).
5	Education	To establish pre-primary schools with own source, to give permission to establish them and to operate and manage the same (28. d. 1).	To make recommendation, setting out rationale and reasons, for the approval and dissolution of the schools in the district development area (189. h. 2).

6	Soil-erosion	To prepare programmes on soil-erosion and river control that affects the village development area and to implement or cause to be implemented the same (28. e. 2.).	To formulate plans on prevention of soil- erosion, river cutting etc. in the areas affected from such acts, and implement and cause to be implemented the same (189. J. 2.).
7	Irrigation	To prepare projects of irrigation, dams, canals, water channel, water bank (Pani ghat) etc. required within the village development area and to implement or cause to be implemented the same (28. E. 2.).	To formulate, implement, operate and maintain and repair programmes on irrigation, ditch, embankment, and small ditch providing facility to more than one village development area in the district development area, and cause to be done the same (189. J. 1.).
8	Hydropower	To generate and distribute electricity and to cause to be generated and distributed the same (28. e. 3).	To formulate, implement, operate, distribute and maintain and repair projects on mini and micro hydropower and other energy, and cause to be done the same (189. c).
9	Health	To operate and manage village level health centre, health post and sub-health posts (28. g. 1).	To operate and manage, and cause to be operated and managed, the district level health posts, hospitals, Ayurvedic dispensaries, health centres, health offices etc (189. n. 1).
10	Health	To launch programmes on family planning and maternity and child care (28. g. 4).	To formulate and implement the programmes such as family planning, mother child welfare, extensive vaccination, nutrition and population education and public health (189. N. 2).
11	Forest	To afforest or have afforestation in barren land, hills, steppe and steep land and in public land (28. H. 1). To prepare programmes in respect of forests, vegetation, biological diversity and soil conservation and to carry out or cause to be carried out the same (28. H. 2).	To prepare plans on forests, vegetation, biological diversity and soil conservation, and implement and cause to be implemented the same (189. G. 1).
12	Environment	To make various programmes on environment protection and to	To protect and promote, and cause to be protected and

		carry out or cause to be carried out the same (28. H. 3).	promoted, the environment (189. G. 2).
13	Religion	To keep records of religious places and rest houses, inns, shelters etc. within the village development area and to look after and preserve them or cause to be done the same (28.i.1).	To keep records of culturally and religiously important places located within the district development area and to preserve and promote them by having them repaired and maintained (189.l.1). To promote, and cause to be promoted various languages, religions and cultures (189.l.2).
14	Language and culture	To preserve or cause to be preserved various languages, religions and cultures and assist in their development (28.i.2).	To preserve, promote and use, and cause to be preserved, promoted and used, the archaeological objects, languages, religion, art and culture within the district development area (189.l.3).
15	Tourism	To preserve, develop and expand tourist areas and to make or cause to be made arrangements for preventing pollution in such places (28.j.1).	To protect, promote, expand and utilize the natural, cultural, historical and touristic heritages in the district development area, and cause to be done so (189.o).
16	Natural calamities	To carry out or cause to be carried out necessary works in respect of controlling natural calamities (28.k.4).	To carry out necessary acts in respect of controlling natural calamities (189.p.2).
17	Women	To prepare necessary plans for the upliftment of women within the village development area and to implement the same (28.k.7).	To prepare and implement a plan required for the upliftment of the women in the district development area (189.f.1).
18	Disadvantage groups	To carry out activities regarding the protection of orphan children, helpless women, aged and old, disabled and incapacitated persons in line with the national policy and to carry out or cause to be carried out acts regarding the wiping out of social ill-practices and the protection of girls and women (28.k.8).	To carry out acts on the protection of the orphans, helpless women, the aged, disabled and incapacitated persons as per the national policy, and to carry out or cause to be carried out acts on the wiping out of social ill-practices and the protection of the girls and women (189.f.2).

Annex 2: Ambiguities in the roles and responsibilities of MDC and DDC in LSGA (1999)

SN	Subject	Functions and roles of municipality	Function and Roles of DDC
1	Floods and soil erosion	To control and prevent, or cause to be controlled and prevented the possible river-cuttings, floods and soil erosion in the Municipality area (96.c.2).	To formulate plans on prevention of soil-erosion, river cutting etc. in the areas affected from such acts, and implement and cause to be implemented the same (189.j.2).
2	Education	To extend supports in the operation and management of schools being operated within the Municipality area and to make recommendations for the establishment and dissolution of such schools (96.d.2).	To make recommendation, setting out rationale and reasons, for the approval and dissolution of the schools in the district development area (189.h.2).
3	Education	To prepare and implement or cause to be implemented, sports development programmes (96.d7).	To set programs relating to sports and physical development, and implement and cause to be implemented them (189.h.5).
4	Religion	To prepare an inventory of the culturally and religiously important places within the Municipality area and maintain, repair, protect and promote, or cause to be maintained, repaired, protected and promoted, them (96.e.1.).	To keep records of culturally and religiously important places located within the district development area and to preserve and promote them by having them repaired and maintained (189.l.1). To promote, and cause to be promoted various languages, religions and cultures (189.l.2).
5	Cultural heritages	To protect, promote and use or cause to be protected, promoted and used archaeological objects, languages, religion and culture within the Municipality area (96.e.2).	To preserve, promote and use, and cause to be preserved, promoted and used, the archaeological objects, languages, religion, art and culture

			within the district development area (189.l.3).
6	Transport	To prepare plans of unpitched and pitched roads, bridges and culverts as needed within the Municipality area, except those roads which are under the responsibility and control of His Majesty's Government, and construct, maintain and repair or cause to be constructed, maintained and repaired, the same (96.f1.).	To build, operate, monitor, evaluate and maintain and repair the approved District level roads, and cause to be done the same (189.d.2).
7	Transport	To arrange or cause to be arranged for bus parks and parking places of rickshaws (three-wheelers), horse-carts, trucks etc. within the Municipality area (96.f.2). To prescribe the upper limit of push-carts, rickshaws, horse-carts etc. in consideration of transport requirement of the Municipality and register and provide number to them (96.f.3).	To make necessary arrangements on the means of transport to be operated within the district development area (189.d.4).
8	Health	Operate and manage, or cause to be operated and managed, municipal level hospitals, Ayurvedic dispensaries and health centres (96.g.1).	To operate and manage, and cause to be operated and managed, the district level health posts, hospitals, Ayurvedic dispensaries, health centres, health offices etc. (189.n.1).
9	Health	To formulate programmes relating to family planning, mother and child welfare, extensive vaccination, nutrition, population education and public health, and to implement or cause to be implemented the same (96.g.3).	To formulate and implement the programmes such as family planning, mother child welfare, extensive vaccination, nutrition and population education and public health (189.n.2).
10	Health	To ban the public use of such things and objects in the Municipality area as are harmful to the public health or remove the same (96.g.5).	To prohibit or remove the public use of the things injurious to the public health in the district development area (189.n.5).

11	Disadvantaged groups	To carry out, or cause to be carried out, programmes relating to the interests and welfare of the women and children and acts relating to the control of immoral profession and trade (96.h.2).	To carry out acts on the protection of the orphans, helpless women, the aged, disabled and incapacitated persons as per the national policy, and to carry out or cause to be carried out acts on the wiping out of social ill-practices and the protection of the girls and women (189.f.2).
12	Tourism	To protect, promote, expand and utilize or cause to be protected, promoted, expanded and utilized natural, cultural and tourists' heritage within the Municipality area (96.i.2).	To protect, promote, expand and utilize the natural, cultural, historical and touristic heritages in the district development area, and cause to be done so (189.o).
13	Barren land	To protect barren and governmental unregistered (<u>Ailani</u>) land in the Municipality area (96.j.3).	To protect and promote the <u>Ailani</u> (unregistered) land and governmental barren land situated within the district development area (189.e.).
14	Natural calamities	To carry out necessary functions on the controlling of natural calamities (96.j.7).	To carry out necessary acts in respect of controlling natural calamities (189.p.2).
15	Market	To arrange or cause to be arranged for <u>Haat</u> bazaar, markets, fairs and exhibitions etc. (96.j.18).	To promote, and cause to be promoted, the agricultural <u>Haat</u> markets and fairs (189.a.4).

Annex 3: Basis of making Annual Plan under the provision of LSGA (1999)

VDC shall have to be taken as the basis	Municipality shall have to be taken as the basis	DDC shall have to be taken as the basis
<ul style="list-style-type: none"> • Directives received from the District Development Committee on national development policy (43.7.a.). • Overall necessities 	<ul style="list-style-type: none"> • Directives received from the National Planning Commission and the District Development Committee on national development policy (111.7.a.). 	<ul style="list-style-type: none"> • Directives received from the National Planning Commission and the concerned Ministry on national development policy (195.5.a.). • District level policies and

indicated by periodical plans (43.7.b.).	<ul style="list-style-type: none"> • Overall necessities indicated by periodical plans (111.7.b.). • Suggestions received from the Ward Committee (111.7.c.). 	<p>goals set on the basis of national goal and policy (195.5.b).</p> <ul style="list-style-type: none"> • Overall necessities indicated by periodical plans (195.5.c). • Plans received from the Village Council and the Municipal Council (195.5.d.).
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Annex 4: Provisions to follow the directives of upper governing tiers in LSGA (1999)

Directives to be Abided by VDC	Directives to be Abided by Municipality	Directives to be Abided by DDC
<ul style="list-style-type: none"> • The Village Development Committee shall have to abide by the directives given, from time to time, by the National Planning Commission and the District Development Committee in respect of the formulation and operation of its plan (50). 	<ul style="list-style-type: none"> • The Municipality shall have to abide by the directives given by the National Planning Commission, His Majesty's Government and the District Development Committee in respect of the formulation and operation of the town development plan (122). 	<ul style="list-style-type: none"> • The National Planning Commission and the concerned Ministry of His Majesty's Government may, from time to time, give necessary directions to the District Development Committees in respect of the formulation and operation of the district development plan (207.1). • The District Development Committee shall have to abide by the directions given pursuant to sub-section (1) (207.2).

Annex 5: Issues of the tiers of local government in major political party's manifestos

Political parties	Provisions about the structure of Government
United Nepal Communist Party (Maoist)	Structure of Federal State: ... based on ... the structure of the state will be in three (central, autonomous provinces and local) tiers.

Nepali Congress	Structure of the Federal State: The provision of the division about the function, roles and power of the state will be divided into three tiers of government- central, province and local.By ending the present centralized state structure, the federal state will be made by making federal provinces an autonomous.
CPN-UML	Federal Structure and Governance System: the division of the power and roles will be based on the three tiers of government- central, province and local. Highlights:(10) Three layers of governing units with clear division of power and roles will be developed. And there will be cooperative and coordinative relations between these tiers.
Rastriya Janasakti party	... Below the central government, there will be federal government and local government (municipality, VDC or village council) will be structured below the federal government. ...
Nepal Majdur Kisan Party	.. Our party is advocating for making local government an autonomous. and to make already existing fourteen zones of the country is more practicable.
Madhesi Janaadhikar Forum Nepal	Concept about the State Restructuring: it is necessary to develop “Federal Loktantrik Ganatantra” with autonomous and powerful provinces now. Autonomous State and Provincial Government:..... For representation and respects of all diversity and identities, we are demanding for self-determination and autonomous provincial government.
Nepal Sadbhawana Party (Anandidevi)	10) Future Structure of the State: Based on the diversities of the country, Nepal should be structured into three-mountain, hill and madhes provinces.
Sadbhawana Party (Mahato)	•Autonomous or Self-decisive:It is our commitment to provide self-decisive power to the people of the country. Under the self-determination region, the people will have autonomous rights to be clearly mentioned in the constitution.
Rastriya Janamukti Party	Structure of Autonomous States: 1).... the country will be divided into a number of self-autonomous provinces. Based on the particular conditions, these provinces will be smaller or larger or in any numbers.
National Democratic Party	4.1) Provision of Federal Governance and State Restructuring: There will be federal states by ending the centralized state..... And the provincial government will have self-autonomous powers to conduct the administration.

Terai-Madhesh Loktantrik Party	The main aim is to end the internal colonialism and establishment of self autonomous Terai-Madhesh province: We are the supporter to establish a self-autonomous Terai-Madhesh region. ... We think that it is only a better way to end the internal colonialism.
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Source: Translated from Manifestos of the Political parties

Annex 6: Provisions about the local governance in different CA thematic committee's concept papers

	Committees	Provision of Local Governance
1	Committee for Fundamental Rights and Directive Principles	<p>2. Directive Principles:</p> <p>1. establish a federal democratic republic system while at the same time hoisting high the sovereignty, independence and integrity of the nation and protecting the lives, property, equality and liberty of the people.</p> <p>4. To guarantee good governance by ensuring equal, easy and unhindered access of the people in the services and facilities received from the State while making the public administration fair, able, impartial, ready (swift), transparent, accountable to people, and participatory,</p> <p>j. Policies Regarding Social, Justice and Inclusiveness:</p> <p>2. To keep women, <i>dalits</i>, Madhesis, <i>adivasis janjatis</i>, backward class, Muslims, minority and marginalized communities, oppressed class, sexual and gender minority, disabled (differently able) people, backward pushed region, the poor, farmers, workers, youths participating in the state structure of the nation on the basis of the principle of inclusiveness and in public services on the basis of the principle of proportionate participation,</p>
2	Committee on the Protection of the Rights of Minorities and Marginalized Communities	<p>Right of the Minorities, Marginalized and Excluded Communities</p> <p>(9) Persons of the minorities, and marginalized and excluded communities shall have the right to get fully represented in a proportional way in the State's plans, projects and programs or their implementation or monitoring and evaluation.</p> <p>(10) The minorities, and the marginalized and excluded communities shall have the right to participate in State affairs by making arrangements in the laws.</p>
3	Restructuring of the State and Distribution of State Power Committee	<p>3. State restructuring and Structure of the State Power</p> <p>1. The exercise of Nepal's state power shall be used by federation, states, local unit and special structure as mentioned in the constitution.</p> <p>2. The federation, states, local units and special structures shall protect and preserve Nepal's national unity, integrity, sovereignty and country's long-term interest, overall development, human rights, rule of law, separation of power, control and balance, equitable and pluralistic society based on</p>

		<p>ethnic equality, multi-party competitive democratic system and the rights of proportionate and inclusive representation and identity.</p> <p>3. The identity, self-rule and autonomy of the indigenous people and indigenous nationalities living in the state, local unit and special structure shall be guaranteed.</p> <p>8. Provisions related to special structures</p> <p>1. As per Article (4) of the Constitution, apart from the main structure, an area with majority of an ethnicity/community or linguistic community or with dense population within a Province shall be maintained as an autonomous region.</p> <p>9. Sharing of power among the Federation, local level and special structures</p> <p>1. The Federation shall have the right over the subjects mentioned in Article (3) of this Constitution. The Federal Legislature shall formulate laws in subjects provided for in Schedule (3) of this Constitution.</p> <p>11. The Federal Legislative shall have the power to formulate laws in areas not mentioned in the list or the common list of the Federation, province, local level and autonomous regions under the special structures, and on areas not determined in this Constitution and legislations under the Constitution.</p> <p>10. Inter-relations among Federal Units</p> <p>1. The relations among the Federation, local level and special structures shall be based on the Principle of cooperativeness, coexistence and coordination.</p> <p>5. If any province carries out an act that would hurt national sovereignty, integrity and the law and order of the country, the Head of State, on recommendation of the Federal Government, can alert the province, dismiss or dissolve the Provincial Government and Legislature, as required.</p> <p>12. Rights of self-determination</p> <p>(1) Tribal people, indigenous nationalities, Madhesi shall have the rights of self-determination internally and locally in the form of politics, culture, religion, language, education, information, communication, health, settlement, employment, social security, financial activities, commerce, land, mobilization of means and resources and environment. These will be fixed by making laws.</p> <p>(2) No impacts shall be made on sovereignty, freedom, unity and regional integrity while enjoying the rights of self-determination pursuant to clause (1).</p>
4	Committee on Determination of the Form of the Legislative	<p>43. Power of the Provincial Assembly: The legislative authority of the Province s shall be vested in the Province Assembly. The legislative power of the Provincial Assembly under this Constitution shall be limited as set out in the Province list and Common list of Schedule (1).</p> <p>Provision relating to autonomous unit:</p>

	Body	<p>80. Provision for Local Autonomous Units: Local Autonomous Units shall be established based on the principle of decentralization and with a view to institutionalize democracy at the local level by ensuring that local people participate in the legislature and fully exercise their sovereignty. Law shall ensure that the composition and working procedure of the Units of different Provincial Governments are uniform.</p>
5	Committee on Determination of Forms of Governance of the State	<p>Local Executive</p> <p>1. Exercise of Local Executive Power:</p> <p>(1) The executive power of each local government shall be vested on concerned executives of Local Governments under this constitution and other relevant Laws.</p> <p>(2) The executive of Local Government shall have the obligation to direct, control and conduct of local level governance according to this constitution and other laws. ...</p> <p>6. Conduct of work of local government Division of work and conduct of work shall be made according to the regulation approved by the executive body of local government</p> <p>INTERRELATION BETWEEN THE GOVERNMENTS OF DIFFERENT LEVEL</p> <ul style="list-style-type: none"> • Mechanism for settlement of disputes between Federal and Provincial government: <p>(1) If Any dispute on exercise of executive power between Federal government and one or more provincial governments raised the President / Prime minister shall for the settlement of such dispute form a committee as follows:</p> <p>(4) The committee formed under this Article shall determine the procedure itself.</p> • Mechanism for settlement of disputes between Federal, Provincial and Local government <p>(1) If any dispute on the exercise of executive power under this constitution and law is raised between two or more local governments, one or more than one local government, one or more than one provincial government and federal government, the President/ Prime Minister shall form the committee as follows in order to resolve such disputes.</p> <p>(4) The committee formed under this Article shall determine the procedure itself.</p> <p>RELATING TO GOOD GOVERNANCE AND THE GOVERNMENT SERVICE</p> <ul style="list-style-type: none"> • Good Governance Maintaining good governance by following the universally recognized principles of human rights, Multiparty democratic system, popular sovereignty and civilian supremacy, check and balance, rule of law, social justice, equality, proportional inclusive representation, fair and competent judiciary, periodic

		<p>election, right to information, free press, transparency, accountability, responsibility, political interference free administration, planning evaluation mechanism, public hearing, citizen's charter, fairness, formation of various commissions, free and competent administrative mechanism having freedom to determine good governance and eliminating the corruption and impunity.</p> <ul style="list-style-type: none"> Public Administration <p>(1) Basic Guiding principles of Public Administration: Basic Guiding Principles of Public Administration are as follows;</p> <p>(4) Government Services shall be in three tiers, central, provincial and local.</p> <p>(6) Any provincial level service commission may work for more than one province as prescribed by the law.</p>
6	Committee on Judicial System	<p>2. Courts</p> <p>1) There shall be the following courts in Nepal :-</p> <p>(a) Federal Supreme Court,</p> <p>(b) Provincial High Court, and</p> <p>(c) District /Local Court</p> <p>3. Specialized Courts:</p> <p>In addition to the courts referred to in clause (2) above, the law may also establish special types of courts or tribunals for the purpose of hearing special types of cases:</p> <p>Provided that no special court or tribunal shall be constituted for the purpose of hearing a particular case and no law shall be enacted conferring jurisdiction on any other institution other than the courts for the criminal cases that may award punishment more than 6 months.</p>
7	Committee to Decide on the Structure of Constitutional Bodies	Provision of 11 constitutional committees-including Dalit, indigenous peoples and women
8	Committee on Natural Resources, Economic Rights and Revenue Allocation	<p>14. Distribution of Economic Rights:-</p> <p>(1) The distribution of economic rights among the different level of governments shall be as set forth in List 1. Economic rights that do not fall under the jurisdiction of any government shall be deemed under the jurisdiction of central government.</p> <p>(5) The local government may, under its jurisdiction and without making contradiction with central and provincial laws, enact and implement necessary laws.</p> <p>(8) Provincial governments shall develop policies and plans under their jurisdiction</p> <p>(12) The provincial and local governments shall be autonomous on the subjects under their jurisdiction.</p>
9	Committee to	6. Right to social justice:

	Decide the Basis of Cultural and Social Solidarity	<p>(2) The backward class, communities and people (of backward regions), who are lagging behind from political, economic, social, and cultural as well as from gender and educational point of view, shall have the right to participate in various State structures on the basis of the principles of proportional inclusion.</p> <p>10. State Policies: (4) The State shall implement special programmes for the economic and social development of the Madhesi, Dalit, indigenous/ethnic groups, women, Muslim, labourers, peasants, people with disabilities and backward class and people from backward regions, on the basis of proportional inclusion and by ensuring their dignified access to and participation in the state structure.</p>
10	Committee for Preserving the National Interests	<p>18. Right to self determination The Federal governance system of Nepal shall function by being based on the principles of autonomous system of governance. Every province and local government shall, as provided for in this constitution and in a way not to be contrary to the sovereignty, integrity and national unity, enjoy full right to self-determination for political, economic, social and cultural development of their people residing in their own territory and to promote, preserve and utilise the natural resources.</p> <p>28. To be accountable to the government Nepal National Army, paramilitary force, intelligence agencies and police organizations shall remain accountable to the government.</p>
11	Constitutional Committee	<ul style="list-style-type: none"> • Preamble: Maintaining national integrity and internalizing the people’s right to self-determination, autonomy and self rule; <i>(There has been an agreement to make further discussions on this subject in the context of the report to be prepared by Committee on State Restructuring the State and Distribution of the State Power and Committee on the Determination of Forms of Governance of State)</i> Having determined upon creating an equitable society on the basis of proportionate inclusive and participatory norms in order to ensure economic equality, prosperity and social justice while ending all kinds of discrimination including caste system and untouchability relating to class, caste, region, language, religion, gender and class;