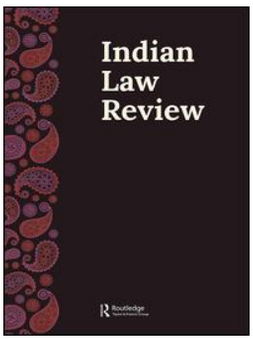

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REVIEW ARTICLE

Hourglass federalism in Nepal: the role of local government in post-conflict constitutions

Iain Payne [a,b] and Michael G. Breen [c]

[a]Institute for Global Development, University of New South Wales, Sydney, Australia; [b]Niti Foundation, Kathmandu, Nepal; [c]School of Social and Political Sciences, Faculty of Arts, University of Melbourne, Melbourne, Victoria, Australia

ABSTRACT

Federalism is the centrepiece reform of Nepal's 2015 post-conflict Constitution. However, the seven new provinces face considerable challenges as they seek to facilitate the redressal of socio-economic inequality and improve sensitivity to regional difference – historic drivers of conflict. Building on the concept of hourglass federalism to engage the discourse on decentralization in conflict-affected contexts, we highlight how Nepal's constitutionally enshrined, autonomous third tier of local government may be better situated to work towards these ends. We argue that while the hourglass schematic has already delivered on some of the key aims of the new Constitution (like inclusion), several important challenges remain, including the decentralization of the political party system and economies of scale. Unless the initial inclusion dividend and increased responsiveness of government are consolidated, there is a risk that the state will be gradually recentralized (in practice), undermining the gains of the post-conflict constitution-making process.

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I Introduction

In 2015, Nepal's Constituent Assembly enacted a new federal Constitution, which promises to shape a more equal and inclusive "*Naya*" ("New") Nepal. The Constitution of Nepal 2015 ("Constitution" or "2015 Constitution") forms the central plank of the post-conflict political settlement that brought an end to the decade-long Maoist "People's War" (1996–2006). The Maoist conflict, as is the case for most political violence in Nepal, was driven by large, historically entrenched societal inequalities, which are structured along ethnic, caste, linguistic, and gender lines, with corresponding regional dimensions. Federalism, which the 2015 Constitution commits the country to, emerged in large part from the Maoists' fight for equality and for an end to discrimination. In the post-conflict Nepali state, federalism is generally seen as a tool to undo two and a half centuries of highly centralized rule, which is widely understood to have caused and exacerbated State discrimination and exclusion. Consequently, federalism is framed as a means to, among other things, mitigate conflict, ensure balanced development across all regions of the

CONTACT Iain Payne iain.payne@gmail.com Institute for Global Development, University of New South Wales; Institute for Global Development, University of New South Wales, Sydney, Australia

country, and increase peoples' participation, especially of historically marginalized groups, in governance.[1]

The Constitution's ongoing credibility will draw from the extent that it is able to shape a more inclusive state, and due to the manner in which federalism and the promised "progressive state restructuring" have become intertwined in political discourse, if federalism is not perceived to deliver, the Constitution will be severely undermined. The maintenance of the post-conflict political settlement thus depends, in large part, on the ability of federalism to address socio-economic inequalities as well as support inclusion and be sensitive to regional differences. However, the seven new provinces, which are carved out by the Constitution, face two considerable challenges as they seek to discharge this heavy burden. First, their demarcation remains contested, and despite improving political representation for many marginalized ethnic communities, they are unable to do so in a way that fully meets these communities' aspirations. Second, as designed by the 2015 Constitution, the provinces have comparatively constrained functions – they are a relatively weak tier of government. This will likely limit their ability to enact the kinds of change expected by historically marginalized communities.

What does this mean for the ability of the Nepali federation to address historic inequalities and meet the aspirations of the Nepali people for a more equal and inclusive state? In lieu of an apparently "strong" provincial tier, is the Nepali federation destined to disappoint? While the intermediate provincial layer of government in Nepal is in need of greater theorization, in this article we turn our attention to the local level – a constitutionally entrenched third tier of Nepal's federal system, empowered with exclusive legislative, executive, and judicial power. Building on the concept of hourglass federalism,[2] we examine how Nepal's hourglass federation, and in particular its third tier of local government, may facilitate the rectification of historical inequalities and support the development of a more inclusive state – purposes that are essential for the sustenance of the post-conflict peace. We argue that while Nepal shows the hallmarks of an hourglass federal system – one which has already delivered on some of the key aims of the Constitution (like inclusion) – several important challenges remain. In particular, the decentralization of political parties and the political party system would seem essential to making local level inclusion more meaningful, and to increasing the degree of autonomy exercised in practice by local governments. Moreover, while the decision to create 753 local units enables more inclusive representation, bringing governance, and spending autonomy so close to the people comes at a sacrifice of economies of scale. The effective management of public services, such as basic and secondary education and basic health services, both of which the Constitution bestows on local government, is an ongoing challenge for most local governments, and one that will likely persist. Early progress towards the institutionalization of the hourglass federal system has been positive, but unless the initial inclusion dividend and increased responsiveness of government are

[1]Budhi Karki, 'State Restructuring and Federalism Discourse in Nepal' in Rohan Edrisinha and Budhi Karki (eds), *The Federalism Debate in Nepal: Post Peace Agreement Constitution Making in Nepal*, vol II vol II (United Nations Development Programme Support to Participatory Constitution Building Nepal 2014) <https://www.undp.org/nepal/publications/federalism-debate-nepal> accessed 3 October 2022.

[2]Michael G Breen and Iain Payne, 'The Concept and Uses of 'Hourglass Federalism'' (2021) SSRN <http://dx.doi.org/10.2139/ssrn.3826079> accessed 1 June 2021.

consolidated, there is a risk that the State will be gradually recentralized (in practice), undermining the gains of the post-conflict constitution-making process.

While there has been much discussion of the development process of Nepali federalism,[3] most of the writing after the 2015 Constitution's ratification has focused on capacity and implementation.[4] To date, there has been little analysis of the nature and structure of the Nepali federation.[5] Through a detailed inspection of the Nepali federation through the hourglass lens, this paper seeks to contribute to this gap in the literature. This analysis also contributes to our understanding of the notion of "hourglass" federalism, which is a term that has been increasingly deployed in relation to a number of federations but about which there has been very little written. Indeed, as we have noted, "the concept remains somewhat nebulous".[6] In particular, while we have identified that consolidating national unity and political stability in conflict-affected contexts is one of the principal purposes driving hourglass federalism as a strategy, Nico Steytler's writing on South Africa stands as the sole contribution to the literature on post-conflict hourglass federalism specifically.[7] The analysis of the Nepali case study here explicates the capacity and limitations of the hourglass schematic to work towards these purposes in these contexts.

More broadly, the paper contributes to debates on the role or place of local government in post-conflict decentralization. While much has been written – both in Nepal and elsewhere – about the capacity of the intermediate levels of government (ie, provinces or states) of federations to mitigate conflict and promote durable peace in multi-ethnic societies,[8] the role or place of local government has been generally overlooked. In Nepal,

[3]See Karki (n 1); André Lecours, 'The Question of Federalism in Nepal' (2014) 44 Publius: The Journal of Federalism 609; Michael G Breen, *The Road to Federalism in Nepal, Myanmar and Sri Lanka: Finding the Middle Ground* (Routledge 2018); Mara Malagodi, ''Godot Has Arrived!': Federal Restructuring in Nepal' in George Anderson and Sujit Choudhry (eds), *Territory and Power in Constitutional Transitions* (Oxford University Press 2019).

[4]See Keshav K Acharya, 'Local Governance Restructuring in Nepal: From Government to Governmentality' (2018) 12 Dhaulagiri Journal of Sociology and Anthropology 37; Democracy Resource Centre, 'Findings on Functioning of Local and Provincial Governments in Nepal: Final Report' (2018) <www.democracyresource.org/reports/final-report-findings-on-functioning-of-local-and-provincial-governments-in-nepal/> accessed 3 October 2022; The Asia Foundation, 'Diagnostic Study of Local Governance in Federal Nepal 2017' (2018) <https://asiafoundation.org/publication/diagnostic-study-of-local-governance-in-federal-nepal/> accessed 3 October 2022; Balananda Paudel and Krishna Prasad Sapkota, 'Local Levels in Federalism: Constitutional Provisions and the State of Implementation' (Swatantra Nagarik Sanjal Nepal 2018) <https://asiafoundation.org/publication/local-levels-in-federalism-constitutional-provisions-and-the-state-of-implementation/> accessed 3 October 2022; Anil Kumar Gupta, Trilochan Poudyal and Sundar Shrestha, 'Politicians' and Bureaucrats' Relations in Local Governance of Nepal' [2019] Local Government Quarterly 5.

[5]Mahendra Lawoti's analysis of the seven-province model is an exception. See Mahendra Lawoti, 'Constitution and Conflict: Mono-ethnic Federalism in a Poly-ethnic Nepal' in Vivek Sachdeva, Queeny Pradhan and Anu Venugopalan (eds), *Identities in South Asia: Conflicts and Assertions* (Routledge 2019); Mahendra Lawoti, 'Mono-Ethic Federalism in a Poly-Ethnic Society: Theory and Practice' in Bipin Adhikari (ed), *A Treatise on the Constitution of Nepal 2015* (Kathmandu University School of Law 2020).

[6]Breen and Payne (n 2) 2.

[7]Nico Steytler, 'The Constitutional Court of South Africa: Reinforcing an Hourglass System of Multi-Level Government' in Nicholas Theodore Aroney and John Kincaid (eds), *Courts in Federal Countries* (University of Toronto Press 2017).

[8]See John Agnew, 'Post Script: Federalism in Post-Cold War Era' in Graham Smith (ed), *Federalism: The Multiethnic Challenge* (Longman 1995); Nancy Bermeo, 'Conclusion: The Merits of Federalism' in Nancy Bermeo and Ugo M Amoretti (eds), *Federalism and Territorial Cleavages* (Johns Hopkins University Press 2004); David A Lake and Donald Rothchild, 'Territorial Decentralization and Civil War Settlements' in Philip G Roeder and Donald Rothchild (eds), *Sustainable Peace: Power and Democracy after Civil Wars* (Cornell University Press 2005); Dawn Brancati, 'Decentralization: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?' (2006) 60 International Organization 651; Dawn Brancati, *Peace by Design: Managing Intrastate Conflict through Decentralization* (Oxford University Press 2009); Jan Erk and Lawrence Anderson, 'The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?' (2009) 19 Regional & Federal Studies 191; Stefan Wolff, 'Complex Power-Sharing and the Centrality of Territorial Self-Governance in Contemporary Conflict Settlements' (2009) 8 Ethnopolitics 27; Liam D Anderson, *Federal Solutions to Ethnic Problems: Accommodating Diversity* (Routledge 2013); Lars-Erik Cederman and others, 'Territorial Autonomy in

while the government and donors did focus on promoting local peacebuilding initiatives (eg, through the formation of the Local Peace Committees), the limited attention given to local government during Nepal's constitution-making process is striking.[9] This was despite the emergence of a clear local governance vacuum by the end of the conflict. Due to the conflict, elections were not held, and in 2002, elected local governments had been disbanded and replaced by bureaucrats. Throughout the Constituent Assembly deliberations, issues related to local government were subordinated to the broader issues of state restructuring and the federalism debates over provincial delineation. While the delineation of local boundaries became an animating force in politics, this only materialized after the ratification of the 2015 Constitution, when the expert commission established to complete this task was ready to hand down its recommendations.[10] Throughout the constitution-making era, local elections were continually postponed and it was not until 2017, twenty years on from the previous local polls, that Nepalis had the chance to elect their representatives to local government.

More broadly, there is little literature that looks specifically at the role or place of local government in mitigating conflict and promoting durable peace, a fact lamented by Paul Jackson in his Introduction to a recent Special Issue on the topic.[11] The literature that does exist raises the potential of local government to re-establish the State and non-violent politics, to provide local autonomy, and to address historical grievances. But, at the same time, it notes that decentralization can ignite new conflicts.[12] The United Nations Development Programme ("UNDP") has commissioned research into post-conflict decentralization, finding no empirical examples where local government had contributed to peace.[13] Dawn Brancati argues that decentralization is most effective when the political party system is integrated.[14] However, as Jackson notes, "one of the ironies of decentralisation ... is that it requires a functioning and capable centre to make it work. The strength of local government is usually contingent upon the strength of the centre in so far as local government is usually reliant on both central government finances, but also on central government oversight".[15]

the Shadow of Conflict: Too Little, Too Late?' (2015) 109 American Political Science Review 354; Yonatan Tesfaye Fessha, *Ethnic Diversity and Federalism: Constitution Making in South Africa and Ethiopia* (Routledge 2016).

[9]On local governance in post-conflict Nepal, see Bandita Sijapati, 'Local Governance: Local Governance and Inclusive Peace in Nepal' in Deepak Thapa and Alexander Ramsbotham (eds), *Two Steps Forward, One Step Back: The Nepal Peace Process*, (Accord, Issue 26, Conciliation Resources 2017) <www.c-r.org/accord/nepal/local-governance-and-inclusive-peace-nepal> accessed 3 October 2022.

[10]See Democracy Resource Centre, 'Preliminary Findings on Local Body Restructuring at the Local Level' (2016) <www.democracyresource.org/reports/preliminary-findings-on-local-body-restructuring-in-nepal_september-2016/> accessed 3 October 2022.

[11]Paul Jackson, 'Local Government and Decentralisation in Post-Conflict Contexts' (2016) 1 Third World Thematics: A TWQ Journal 747.

[12]See ibid; James Manor (ed), *Aid That Works Successful Development in Fragile States* (The World Bank 2007); Rachael Diprose and Ukoha Ukiwo, 'Decentralisation and Conflict Management in Indonesia and Nigeria' (2008) CRISE: Centre for Research on Inequality, Human Security a Ethnicity Working Paper No 49 < https://assets.publishing.service.gov.uk/media/57a08bc140f0b652dd000e80/wp49.pdf> accessed 12 October 2022.

[13]Paul Jackson and Zoe Scott, 'Local Government in Post-Conflict Environments' (Workshop on Local Government in Post-Conflict Situations: Challenges for Improving Local Decision Making and Service Delivery Capacities, Democratic Governance Group and Oslo Governance Centre, United Nations Development Programme, Oslo, 28–29 November 2007) <https://gsdrc.org/document-library/local-government-in-post-conflict-environments/> accessed 3 October 2022.

[14]Brancati, 'Decentralization: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?' (n 8) 60; Brancati, *Peace by Design: Managing Intrastate Conflict through Decentralization* (n 8) 157–194.

[15]Jackson (n 11) 753.

The remainder of this article is divided into five sections. In Part II, we overview the emergence of federalism in Nepal as a tool to address the historic marginalization and exclusion that has driven conflict but note the limitations of the provinces in this regard. Following this, in Part III, we introduce the concept of hourglass federalism, outlining the purposes for which it is deployed and the five dimensions (which concern the division of powers, revenue and funding relationships, the relationship to the people, intergovernmental arrangements, and administrative structure) that we have identified as characterizing its design. In Part IV, we discuss these five dimensions in relation to Nepal's new federal structure. This provides a foundation, in Part V, for a discussion of the capacity and limitations of Nepal's hourglass federal model to facilitate the rectification of historical inequalities and support the development of a more inclusive state. Finally, the article concludes.

II Federalism in Nepal

The federal settlement established by the 2015 Constitution emerged from the country's post-conflict peace process. Federalism was presented by the Maoists and various ethnocultural and regional groups as a tool to undo two and a half centuries of highly centralized rule, which is widely understood to have caused and exacerbated State discrimination and exclusion on the basis of ethnic, caste, linguistic and gender lines, with corresponding regional dimensions. These inequalities have driven political violence – most notably the Maoist insurgency (1996–2006).

In his analysis of the extent of exclusion within Nepali society prior to the country's federal restructuring, Mahendra Lawoti paints a picture of total societal supremacy by members of what he terms the "caste Hindu hill elite" (CHHE) – ie, hill Brahmins (Bahuns) and Chettris, which only comprise around one third of the national population.[16] For example, from the country's first elections in 1959, Nepal's Parliament was overwhelmingly comprised of CHHE, whose ratio of elected representatives has consistently been twice that of their share of the national population.[17] Lawoti shows similar CHHE dominance in other State institutions, such as the judiciary, the public administration and the army, as well as the technology and education sectors and civil society. Moreover, the Human Development Index (HDI) is far higher for upper caste Hindus (Brahmins and Chettris) (0.538), compared to Dalits (0.434), Janajati (Indigenous) (0.482) and Madhesi (0.454) groups.[18] The centrality of Kathmandu, the capital, as the country's hub of modernization, both economically and politically, has added a strong spatial dimension to marginalization – proximity to Kathmandu alleviates or reinforces existing patterns of exclusion.[19] Thus, despite their otherwise privileged CHHE identity, Bahuns and Chettris in the westernmost regions of the country have

[16]Mahendra Lawoti, *Towards a Democratic Nepal: Inclusive Political Institutions for a Multicultural Society* (SAGE 2005) 103–111.

[17]See Mara Malagodi, *Constitutional Nationalism and Legal Exclusion: Equality, Identity Politics, and Democracy in Nepal (1990–2007)* (Oxford University Press 2013) 195–201.

[18]Pitamber Sharma, Basudeb Guha-Khasnobis and Dilli Raj Khanal, 'Nepal Human Development Report 2014: Beyond Geography, Unlocking Human Potential' (Government of Nepal, National Planning Commission and United Nations Development Programme 2014) <https://npc.gov.np/images/category/NHDR_Report_20141.pdf> accessed 3 October 2022.

[19]Karl Kössler, 'Inclusion Through Ethnic Federalism? Some Considerations of the Constitutional Transition in Nepal' (2009) 8 European Yerabook of Minority Issues 499, 501.

been among some of the communities most disregarded by the State.[20] While the 1990 People's Movement, which through the enactment of the 1990 Constitution, led to the (re)introduction of multiparty democracy and promised widespread societal transformation, political culture continued to be dominated by the CHHE.[21] As Mara Malagodi has shown, through its privileging of the Shah monarchy, Hinduism, and the Nepali language, the 1990 Constitution continued to enshrine CHHE dominance on a symbolic level.[22] Moreover, despite renewed attempts throughout the 1990s at political decentralization, a lack of political and bureaucratic will to see power devolved from Kathmandu meant that the "creeping trends of centralisation" were not restrained.[23] Sub-national governments never received sufficient resources to implement change and were substantially discredited.[24]

The launch of the Maoist "People's War" in February 1996 was thus a violent expression of dissatisfaction with the ongoing failures and exclusionary practices of the State.[25] Throughout the ensuing decade of conflict, ethnic identity became increasingly salient in political discourse. The Maoists blended ethnic activism with class war to recruit party cadres, promising ethnic minorities autonomy and the right to self-determination.[26] When the Maoist's proposed the establishment of nine autonomous regional governments in 2000, federalism, an idea which had previously been on the fringes of mainstream political debate,[27] gained nation-wide political recognition.[28]

After ten years of insurgency, the Maoist combatants joined the parties of the democratic political mainstream to overthrow the Shah monarchy, bringing an end to the conflict, and initiating a period of constitution-making. The Comprehensive Peace

[20]The human development index scores in the regions that now comprise Karnali and Sururpaschim provinces, for example, have historically been the lowest in the country. See Sanjib Dhungel, 'Provincial Comparison of Development Status in Nepal: An Analysis of Human Development Trend for 1996 to 2026' (2018) 28 Journal of Management and Development Studies 53.

[21]Lawoti, *Towards a Democratic Nepal* (n 16) 38–58.

[22]See summary in Malagodi (n 17) 268–274.

[23]Lok Raj Baral, *Nepal: Trauma of Political Development and Stability: Essays on Nepal and South Asia* (Adroit 2017) 122.

[24]Yash Ghai, 'Restructuring and Federalism in Nepal' (Conference on Federalism and State Restructuring in Nepal, UNDP Nepal,HT
Kathmandu, 23–24 March 2007) 3 <https://constitutionnet.org/vl/item/restructuring-and-federalism-nepal> accessed 3 October 2022. Local government spending, which actually decreased between 1999 and 2001 and never amounted to more than 4.62% of Nepal's total expenditure, illustrates the continued failure of decentralization initiatives. See Manoj Shrestha, 'An Overview of Intergovernmental Fiscal Relations in Nepal' (2002) Georgia State University, Andrew Young School of Policy Studies Working Paper 02–05, 12 <https://gsdrc.org/document-library/an-overview-of-intergovernmental-fiscal-relations-in-nepal/> accessed 3 October 2022.

[25]Deepak Thapa and Alexander Ramsbotham, 'Introduction: Two Steps Forward, One Step Back: The Nepal Peace Process' in Deepak Thapa and Alexander Ramsbotham (eds), *Two Steps Forward, One Step Back: The Nepal Peace Process* (Accord, Issue 26, Conciliation Resources 2017) 9 <www.c-r.org/accord/nepal/introduction-two-steps-forward-one-step-back> accessed 3 October 2022.

[26]Mahendra Lawoti, 'Transforming Ethnic Politics, Transforming the Nepali Polity' in Mahendra Lawoti and Susan I Hangen (eds), *Nationalism and Ethnic Conflict in Nepal: Identities and Mobilization after 1990* (Routledge 2013). See also Anne de Sales, 'The Kham Magar Country: Between Ethnic Claims and Maoism' in David N Gellner (ed), *Resistance and the Nepalese State* (Social Science Press 2003); Krishna Hachhethu, 'The Communist Party of Nepal (Maoist): Transformation from an Insurgency Group to a Competitive Political Party' (2008) 33–34 European Bulletin of Himalayan Research 39, 63–65.

[27]Federalism was first proposed in 1951 by the Nepal Tarai Congress, and the demand for federal autonomy has been echoed over the decades by various Madhesi and Janajati movements. It remained, nonetheless peripheral to mainstream political discourse. See Breen, *The Road to Federalism* (n 3) 69.

[28]For an overview see Kiyoko Ogura, 'Maoist People's Governments, 2001–2005: The Power in Wartime' in David N Gellner and Krishna Hachhethu (eds), *Local Democracy in South Asia: Microprocesses of Democratization in Nepal and its Neighbours* (SAGE 2008).

Accord, the peace settlement signed between the government and the Maoist combatants in 2006, mandated the parties:

> To carry out an inclusive, democratic and progressive restructuring of the state by ending the current centralized and unitary form of the state in order to address the problems related to women, Dalit, indigenous people, Janajatis, Madhesi, oppressed, neglected and minority communities and backward regions by ending discrimination based on class, caste, language, gender, culture, religion, and region.[29]

The 2007 Interim Constitution, however, did not formally incorporate a commitment to federalism. Therefore, on the endorsement of the Interim Constitution, protests erupted within the Madhesi community (the *Madhes Andolan*), from which the original claim for federalism had originated, demanding a guarantee of federalism in the new republic.[30] The major political parties were forced to amend the Interim Constitution to ensure that "the State shall be made inclusive and restructured into a progressive, *democratic federal system*".[31] This was confirmed in the fifth amendment in 2008, which formally recognized "the aspirations of indigenous ethnic groups and the people of the backward and other regions, and the people of Madhes, for autonomous provinces".[32] Thus, as Budhi Karki notes,

> Nepal is quite unique in that all major political parties agreed, with relative ease, to abandon the age-old centralised and unitary structure in such a short period (from May 2005 to July 2008), moving from a vague commitment to explicitly agreeing to 'restructuring the state progressively including a federal system with autonomous regions'.[33]

In the ensuing decade of constitutional deliberation, it was federalism above all else that emerged as the fault line of political contestation. While Nepal's post-conflict constitutional moment was undergirded by a joint commitment to "state restructuring", the discourse increasingly equated the two ideas. Indeed, Karki highlights that, even though state restructuring is a much broader concept, "there is a general understanding in Nepali discourse that state restructuring is federalism and federalism is state restructuring, and nothing more".[34]

In particular, the role of ethnicity in defining the boundaries and names of the new federal subunits was, and remains, hotly contested. Numerous federal divisions were proposed; however, no single model was able to gain political consensus.[35] On the one hand, the Maoists, Janajati and Madhes-based parties argued for various federal models in which subunits were defined by a single ethnic identity group. On the other hand, the

[29]Comprehensive Peace Accord, signed between Nepal Government And the Communist Party of Nepal (Maoist) on 22 November 2006, art 3.5.

[30]International Crisis Group, 'Nepal's Troubled Tarai Region' (Asia Report No 136, 2007) <www.crisisgroup.org/asia/south-asia/nepal/nepal-s-troubled-tarai-region> accessed 3 October 2022.

[31]Interim Constitution of Nepal 2007, art 138(1) (text of the first amendment, made on 13 April 2007, in italics).

[32]Interim Constitution of Nepal 2007, art 138(1A) (text of the first amendment, made on 12 July 2008).

[33]Karki (n 1) 8.

[34]ibid.

[35]Most notably, the Constituent Assembly's Committee for Restructuring of the State and Distribution of State Powers produced a draft report recommending a 14-province federation. Later the High-Level State Restructuring Commission produced two reports. The majority recommended a 10-province model, while the minority recommended six provinces. For a detailed assessment of the two State Restructuring Commission's models, see Magnus Hatlebakk and Charlotte Ringdal, *The Economic and Social Basis for State-Restructuring in Nepal* (Himal Books 2013). For an overview of other proposed models, see Pitamber Sharma, Narendra Khanal and Subhash Chaudhary Tharu, *Towards a Federal Nepal: An Assessment of Proposed Models* (Social Science Baha 2009).

"reluctant federalists" – the Nepali Congress, the National Democratic Party (RPP) in its various guises, and to some extent the Communist Party of Nepal (United Marxist-Leninist), historically the principal actors of democratic politics and of which the dominant CHHE communities comprised a significant constituency – rejected ethnic federalism and proposed models that incorporated multi-ethnic subunits based on economic viability.[36]

After the first Constituent Assembly (2008–2012) was unable to resolve the federal question, in spite of the protests of the Madhesi and Janajati communities, the second Constituent Assembly (2013–2015) approved the seven-province federal model, which is incorporated into the Constitution that was promulgated in September 2015. Many Madhesi and Janajati political actors continue to contest the seven-province model for its failure to adopt an ethnic logic as the primary factor in the delineation of provincial boundaries.[37] Indeed, only one of the seven provinces, Madhesh Province, can be said to establish an ethnic "homeland" (and even these boundaries remain contested by the Province's majority Madhesi population).[38]

The formation of seven provincial subunits has thus not fulfilled the demands of many marginalized ethnic communities for greater political representation. Mahendra Lawoti's analysis of the outcomes from the 2017 provincial elections, for example, shows how provincial delineation combined with the electoral system (which uses a mixed method of 60% of seats drawn from single member first-past-the-post constituencies and a parallel 40% proportional representation),[39] has contributed to the CHHE obtaining dominance in the provincial assemblies in all provinces except Madhesh Province (see Table 1). In fact, in these provinces (all but Madhesh Province), the CHHE have twice the number of seats than the ethnic group that won the second highest number.[40]

Lawoti thus argues that:

> The seven–province federal model is thus a mono–ethnic federal model. This has been attained by gerrymandering to make the marginalized groups non–competitive and less significant minorities. These features will increase the likelihood of the Khas Arya [ie, CHHE] winning majority seats in six out of seven provincial assemblies and in the federal parliament . . . The seven-province federal model would thus facilitate the continuation of symbolic and substantive hegemonic domination of Khas Arya in the new federal republic Nepal.[41]

[36] Jha credits Krishna Hachhethu with coining the notion of 'reluctant federalism', see Prashant Jha, *Battles of the New Republic: A Contemporary History of Nepal* (Hurst and Company 2014) 306.

[37] International Crisis Group, 'Nepal's Divisive New Constitution: An Existential Crisis' (Asia Report No 276, 2016) <https://www.crisisgroup.org/asia/south-asia/nepal/nepal%E2%80%99s-divisive-new-constitution-existential-crisis> accessed 3 October 2022.

[38] 67.8% of Madhesh Province's population is Madhesi (including both 'pure' castes and Madhesi Dalits). A further three provinces (Province 1, Bagmati Province, and Gandaki Province) establish a plurality or majority (as is the case in Bagmati) of Janajatis, which comprise 39.77, 52.68, and 39.26% of the populations respectively. While the Madhesi identity is not homogenous, it is much more internally accepted as a congruent marker of ethnicity than Janajati, which is an umbrella term to refer to all Indigenous groups. Thus, Bagmati Province's Jananati majority is split between Tamang (20.43%), Newar (16.92%) and other Indigenous groups (15.33%). Statistics taken from Subhash Nepali, Subha Ghale and Krishna Hachhethu, 'Federal Nepal: Socio-Cultural Profiles of the Seven Provinces' (Governance Facility 2018) 22, 33, 79 <https://issuu.com/nashnewa/docs/federal_nepal_the_provinces_-_socio> accessed 11 April 2021.

[39] Constitution of Nepal 2015, art 176(1)(b).

[40] See Lawoti, 'Mono-Ethic Federalism' (n 5).

[41] Lawoti, 'Constitution and Conflict' (n 5) 50. It is important to note, that contra to Lawoti's strongly stated argument, these results are not solely (or even primarily) the result of gerrymandering provincial boundaries; the legacy of historical discrimination, the political party candidate nomination process and the decline in support for ethnic parties (compared to the first Constituent Assembly elections in particular) are also significant contributing factors.

Table 1. Dominance of the CHHE in provincial legislatures.

Province	CHHE Population (%)	CHHE representation in provincial assembly (%)
Province 1	27.84	41.07
Madhesh Province	4.88	4.69
Bagmati Province	37.10	59.10
Gandaki Province	36.10	55.56
Lumbini Province	30.03	63.46
Karnali Province	60.96	87.50
Far West Province	60.02	81.25

Source: Mahendra Lawoti, "Constitution and Conflict: Mono-ethnic Federalism in a Poly-ethnic Nepal" in Vivek Sachdeva, Queeny Pradhan and Anu Venugopalan (eds), *Identities in South Asia: Conflicts and Assertions* (Routledge 2019) 501.

While the identity-based debates continue, in the years since the promulgation of the 2015 Constitution and elections to instate the new federated institutions in 2017, Nepal's federal discourse has naturally turned to issues of establishment and implementation. The tussle between the old centralized (now federation) institutions, resistant to devolve power, and the newly created provinces and local units, seeking to establish their own space, is a preponderant theme.[42]

Perhaps surprisingly given Nepal's recent adoption of federalism, the justification for the existence of the seven new provinces has emerged as another important issue in the debate – one that that remains substantially unresolved. No doubt, this partly emanates from the fact that provinces are an entirely new institution in Nepal's governance imagination – Nepali experience with governance is either Kathmandu-centric or from district and village levels. Indeed, provincial authority is being exercised at the same time as the provincial architecture of government is being constructed, and thus cannot be expected to be fully developed in such a short time. However, tensions with regard to the provincial function also derive from constitutional design – on its face, the 2015 Constitution establishes the seven provinces as relatively weak intermediate subunits.

Indeed, the Constitution bestows relatively little power to the provinces, which are sandwiched in between the federation and powerful, constitutionally enshrined local governments. For example, as regards education, basic and secondary education are placed under the exclusive jurisdiction of local government,[43] while the federal government has sole authority over central/national universities and university regulation[44]; the provinces' only exclusive education responsibility concerns the regulation of provincial universities.[45] The "unbundling" exercise, which was initiated to give definition to the amorphous list of concurrent responsibilities shared by all tiers of the federation, including for "education", delineated provincial governments the right to determine the criteria for managing and regulating teachers and management of the grade 10 examinations.[46] Provinces are similarly squeezed in relation to healthcare. Exclusive responsibility for basic health and sanitation is devolved directly to the local level,[47]

[42]For literature on federal implementation, see n 4.
[43]Constitution of Nepal 2015, sch 8.8.
[44]ibid, sch 5.15.
[45]ibid, sch 6.8.
[46]Federalism Implementation and Administration Restructuring Coordination Committee, Office of the Prime Minister and Council of Ministers, Government of Nepal, *Unbundling/Detailing of List of Exclusive and Concurrent Powers of the Federation, the State and the Local Level Provisioned in the Schedule 5,6,7,8,9 of the Constitution of Nepal*, 100 <www.opmcm.gov.np/wp-content/uploads/2017/07/Unbundling-Final-English.docx> accessed 3 October 2022.
[47]Constitution of Nepal 2015, sch 8.8.

while control over health policy, services, standards, quality and monitoring, national and specialized hospitals, and communicable disease control is retained at the federal level.[48] Little is left to be covered under the provincial exclusive jurisdiction over "health services" or the shared provincial jurisdiction over "health".[49] Greater space is afforded in relation to domestic security, with the Constitution envisaging the creation of provincial police forces.[50] However, even here, the federation retains the central police, the Armed Police Force, and national intelligence and investigation services.[51] The province's weakened position vis-a-vis the central and local levels is further seen in their limited ability to collect revenue. In the fiscal year 2018–19, for example, the total revenue taken in by the seven provincial governments was Rs 229 billion, only two-thirds that of local units at Rs 343 billion.[52] The political commentator CK Lal has therefore described Nepal's federal model as a wineglass where, "all potent power is poured into the bowl at the top" and there is "little authority for provincial governments", which act as stem of the glass.[53] For him, "the wine-glass model has so disempowered the State [ie, the provinces] that it seems to exist only to take all the blame whenever the federal government fails to deliver".[54]

In summary, Nepal's provinces appear to face two considerable challenges as they seek to fulfil the hopes and expectations of a more equal and inclusive state – what could be termed as Nepal's provincial problem. First, their demarcation means that for many marginalized ethnic communities they are unable to ensure greater political representation, and second, even where they do provide greater political representation (eg, in Madhesh Province), their expected constrained function will be likely to limit their ability to enact the kinds of change expected by historically marginalized communities.

III Looking to the local level: hourglass federalism

The seven provincial governments are, however, only one element of Nepal's new federal system. Departing from traditional two-tiered federal schematics, the 2015 Constitution organizes shared- and self-rule across three layers of government. The new federation thus comprises of the centre, the seven provinces, and 753 local units. Through this constitutionally entrenched autonomy, the 2015 Constitution has envisaged local government as a key actor in the management of public services and in the protection of rights; it forms a critical piece of Nepal's new federal system.

Indeed, local government is experienced by many as the most salient sphere of government influence and upon which high expectations are placed. The Survey of the Nepali People in 2020, for example, shows that an overwhelming majority of Nepalis

[48]ibid sch 5.16.
[49]ibid schs 6.9, 9.3.
[50]ibid sch 6.1.
[51]ibid sch 5.4.
[52]Revenues from their own sources amounted to Rs 24.88 billion (provinces) and Rs 26.73 billion (local), while fiscal transfers totalled Rs 115 billion (provinces) and Rs 226 billion (local). Figures of the Auditor General, cited in Khim Lal Devkota, 'Subnational Level Finances' *The Kathmandu Post* (28 March 2021) <https://kathmandupost.com/columns/2021/03/28/subnational-level-finances> accessed 3 October 2022.
[53]CK Lal, 'Five Years of Relentless 'Oli-Fication'' *The Kathmandu Post* (22 December 2020) <https://kathmandupost.com/columns/2020/12/22/five-years-of-relentless-oli-fication> accessed 1 June 2020.
[54]CK Lal, 'The Long Decade' *Republica* (29 April 2019) <https://myrepublica.nagariknetwork.com/news/the-long-decade/> accessed 1 June 2020.

think that local government is the arm of the state that is principally responsible for education, healthcare and the maintenance of infrastructure (roads).[55] During the 2017 election campaign, candidates from all parties regularly employed the popular slogan "*singha darbarko adhikar gaun-thaunma*" (the power of Singha Durbar, the central administrative block in Kathmandu, in every village), with high hopes placed on the new local governments that they would be able to deliver significant change.[56]

The enlarged role of local government in Nepal's 2015 Constitution parallels recent international federal debates and reforms, which have increasingly emphasized the local level in federal systems. Michael Breen, for example, has identified a broader shift towards the strengthening of local government in ethnically diverse countries in Asia.[57] Moreover, the Forum of Federations has identified "hourglass" federalism, a schematic that combines a strong centre and strong local government with comparatively weaker provinces designed to play a coordinating role, as one of the three key trends emanating from the resurgence of the federal idea over the past twenty years.[58]

Elsewhere, we have developed the otherwise vague notion of an hourglass federal model further.[59] We conceptualize hourglass federalism as a strategy, drawing from its purposes, and hourglass federal systems as institutional configuration of government. As a strategy, hourglass federalism is pursued for two overarching reasons – improving local services and autonomy and/or consolidating national unity and political stability. These are often complimentary objectives. By creating more locally targeted services and opportunities for participation, the hourglass model is supposed to enhance the matching of policies with preferences in highly diverse societies. At the same time, the model both ensures the primacy of the centre and creates alternative subnational power sources, which undercut provincial independence ambitions, reducing secession risk.

As an institutional manifestation, hourglass federal systems are characterized by five key features. First, fiscal federalism – namely, whether local governments have their own revenue sources and/or a direct financial relationship with the centre. Greater fiscal capacity and autonomy at the local level equates to a stronger hourglass configuration. Here, the fiscal arrangement in Indonesia is emblematic. The second characteristic concerns the constitutional allocation of powers – or at least protection – to a local government so that it can engage in autonomous legislative and executive decision-making. The strength of the hourglass arrangement along this characteristic depends on the expanse of these powers and the degree of supervision from the central or provincial level. South Africa and Brazil form typical examples of a strong hourglass model on this dimension. Third, local government's accountability to its constituents. This most commonly and most strongly will occur through direct elections (eg, as in Canada), but other forms of direct citizen accountability, such as by participatory forums, are also possible (eg, as occurs in parts of China). The fourth characteristic regards

[55]Dhiraj Giri, Uddhab Pyakurel and Chandra Lal Pandey, 'A Survey of the Nepali People in 2020' (Kathmandu University, Interdisciplinary Analysts and The Asia Foundation 2020) 121, 131, 137 <https://asiafoundation.org/publication/a-survey-of-the-nepali-people-in-2020/> accessed 3 October 2022.
[56]The Asia Foundation (n 4) 3.
[57]Michael G Breen, 'Federal and Political Party Reforms in Asia: Is There a New Model of Federal Democracy Emerging in Ethnically Diverse Countries in Asia?' [2020] Government and Opposition: An International Journal of Comparative Politics 1.
[58]Rupak Chattopadhyay, 'Relevance of the Federal Idea: A Forum of Federations Perspective' (2019) 15 Federal Governance 33.
[59]Breen and Payne (n 2).

intergovernmental and dispute resolution institutions. Local government representation and involvement in these, as is the case in Morocco, where provincial councils are elected by municipal councils, is indicative of a stronger hourglass design. The final characteristic concerns whether local governments have their own dedicated civil service. The establishment of an autonomous local bureaucracy that is not that free from oversight by the higher order governments is the strongest configuration. This occurs in Brazil.

IV Hourglass federalism in Nepal

Nepal's federal structure, we argue, is a typical example of the emergent "hourglass" model. In what follows, we will discuss the five dimensions in turn. This will provide a foundation for us to return, in Section V, to the question raised in the Introduction – namely, whether the federal model may assist to address socio-economic inequality and thus prevent future conflict.

Dimension 1: Direct funding relationship between the centre and local government

Taxation and expenditure powers are divided among all three tiers of the Nepali federation. While the assignment of revenue sources is relatively contiguous with the pre-federal fiscal regime, the 2015 Constitution entrenches the decentralization of revenue collection.[60] This fiscal system, however, is relatively centralized: the centre retains all major revenue bases, while provinces and local units are only assigned comparatively low-yielding sources (Table 2). Thus, the total revenue raised by local and provincial governments in the 2019–20 financial year was only 29.1% and 16.7% respectively (Table 3).[61] The revenue imbalance towards the centre within the Nepali federation is substantial.

Local governments have greatly enhanced expenditure powers at the local level under the new federal set up. The quantum of State expenditure through local governments rose from less than 5% in 2015–16 under the erstwhile local unit configuration[62] to 26.9% in 2019–20[63] under the restructured system of local government ushered in by the 2015 Constitution (see Table 4).

The large vertical fiscal imbalance means that, at least for the foreseeable future, the sizable portion of the majority of local government budgets are heavily reliant on

[60]The Asia Foundation (n 4) 36.

[61]There was a significant increase in subnational revenue collection from FY18-19 to 19–20 due to the suboptimal extraction capacity of provincial and local governments (an estimated that NPR 51 billion was lost in FY 18/19). See Bhim Bhurtel, 'Fiscal Federalism: An Analysis of Its Initial Implementation in Nepal' (Vol. 6, International Alert and Saferworld 2020) 22 <https://www.international-alert.org/publications/federalism-in-nepal-fiscal-federalism-initial-implementation/> accessed 3 October 2022 . We anticipate the FY 19–20 figure is expected to stabilize and remain constant in future years.

[62]Under the earlier structure there were the earlier structure of 3,157 village development committees (VDCs) and 217 municipalities. The calculation of local government expenditure is only a rough estimate, see figures in Jamie Boex, 'Intergovernmental Fiscal Design in the Context of the Federal Constitution of Nepal' (Report submitted to Ministry of Finance, Ministry of Federal Affairs and Local Development, Ministry of General Administration, Government of Nepal, 2016) 42–43.

[63]Financial Comptroller General Office, *Government of Nepal Consolidated Financial Statement: Fiscal Year 2019/20* 7 <https://www.fcgo.gov.np/storage/uploads/reportpublication/2021-05-17/20210517185110_CFS_2019_20%20final.pdf> accessed 16 June 2021.

Table 2. Dimensions and measures of hourglass federalism.

Dimension/characteristic	Weak	Moderate	Strong
Division of powers between local and other levels of government	Local government (LG) has powers delegated or supervised by provincial government	LG has powers delegated or supervised by central government	LG has its own constitutional powers
	Provinces have stronger (more) powers than LG	Provincial and LG powers are broadly equivalent in strength	LG has stronger (more) powers than provinces
Own revenue and direct funding relationship between centre and local government	LG responsible for less than 10% of overall govt expenditure	LG responsible for between 10% and 33% of overall govt expenditure	LG responsible for more than 33% of overall govt expenditure
	Less than 20% of LG revenue comes from its own sources	Between 20% and 50% of LG revenue comes from its own sources	More than 50% of LG revenue comes from its own sources
A direct relationship between local government and the people (eg via elections)	There are no elections but there are participatory forms of accountability	Legislature or executive (or equivalents) are directly elected	Legislature and executive (or equivalents) are directly elected
Intergovernmental arrangements with Local/Centre institutions and dispute resolution	Local govt has no formal, or statutory only, involvement in IGA & dispute resolution mechanisms	Local govt is represented in formal (constitutional) IGA & dispute resolution mechanisms	Local govt is directly represented in Provincial or Central parliaments/executives & dispute resolution mechanisms
A dedicated administrative structure	LG does not have its own civil service	LG has its own civil service, but policies or oversight are provided by the centre/province	LG has its own autonomous civil service

Table 3. Revenue collection by financial year (NPR in millions).

Financial Year	Federation	Province	Local
2019–20	753,064 (54.2%)	231,992 (16.7%)	404.307 (29.1%)
2018–19	733,370 (83.6%)	68,722 (7.8%)	75,341 (8.6%)

Source: Financial Comptroller General Office, *Government of Nepal Consolidated Financial Statement: Fiscal Year 2018/19*, 7 <https://www.fcgo.gov.np/storage/uploads/reportpublication/2020-08-06/Book-final.pdf> accessed 16 June 2021; *Financial Comptroller General Office, Government of Nepal Consolidated Financial Statement: Fiscal Year 2019/20*, 7 <https://www.fcgo.gov.np/storage/uploads/reportpublication/2021-05-17/20210517185110_CFS_2019_20%20final.pdf> accessed 16 June 2021.

Table 4. Expenditure by financial year (NPR in millions).

Financial Year	Federation	Province	Local
2019–20	738,136 (62.0%)	132,907 (11.2%)	320,015 (26.9%)
2018–19	789,274 (66.2%)	95,934 (8.1%)	306,413 (25.7%)

Source: Financial Comptroller General Office, *Government of Nepal Consolidated Financial Statement: Fiscal Year 2018/19*, 7 <https://www.fcgo.gov.np/storage/uploads/reportpublication/2020-08-06/Book-final.pdf> accessed 16 June 2021; Financial Comptroller General Office, *Government of Nepal Consolidated Financial Statement: Fiscal Year 2019/20*, 7 <https://www.fcgo.gov.np/storage/uploads/reportpublication/2021-05-17/20210517185110_CFS_2019_20%20final.pdf> accessed 16 June 2021.

financing via intergovernmental fiscal transfers. For example, a capacity needs assessment undertaken by the World Bank and UNDP shows that 53% of local governments are completely dependent on fiscal transfers and revenue sharing and 97% of local

Table 5. Local government reliance on own-source revenues.

Own-source revenues as a percentage of total venues (2018)	Number of local governments
0–10%	701
11–20%	35
21–30%	11
31–40%	3
41–50%	2
51–60%	1

Source: International Center for Public Policy in the Andrew Young School of Policy Studies, Georgia State University, "Capacity Needs Assessment for the Transition to Federalism" (World Bank Group and UNDP 2019) 95 <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/503181593615554741/nepal-capacity-needs-assessment-for-the-transition-to-federalism> accessed 3 October 2022.

governments are dependent on conditional grants to finance their education budgets.[64] Similarly, 99% of local governments are dependent on conditional grants to finance basic health services.[65]

Fiscal redistribution is also necessitated by the significant horizontal revenue imbalance among the federation's subunits. While some local units – principally the larger, historically well-established sub/metropolitan cities – are able to raise significant portions of their revenue (30–50%), this is not the norm; for the overwhelming number of local units – in particular, rural municipalities – own sources account only a small portion of their total revenues (see Table 5).[66] Thus, while intergovernmental fiscal transfers made up only 5–6% of local government budgets in the pre-federal system, they now comprise 40% of subnational revenue.[67]

In addition to the Local Government Operations Act 2017, which expands upon schedules 7 and 9 of the 2015 Constitution to outline local units' financial jurisdiction,[68] federal fiscal equalization is governed by the National Natural Resources and Fiscal Commission Act 2017 ("NNRFC Act") and Intergovernmental Financial Management Act 2017 ("IGFM Act"). The NNRFC Act elaborates the functions of the NNRFC in its role to regulate centrally dispersed fiscal equalization and conditional grants, while the IGFM Act, among other things, establishes the basis for intergovernmental sharing of value added tax (VAT), domestic excise duty, and royalties (see Table 6). This statutory regime places local units and the provinces on an equal footing as regards the sharing of these revenues. As far as the vertical share of intergovernmental transfers are concerned, around three quarters of federal fiscal transfers are to local units compared to only one quarter to the provinces (see Table 7).

Dimension 2: Division of powers between local and other levels of government

As the ability of local units to autonomously raise and expend revenue suggests, the Constitution's federal division of power assigns the local level with exclusive powers:

[64]International Center for Public Policy in the Andrew Young School of Policy Studies, Georgia State University, 'Capacity Needs Assessment for the Transition to Federalism' (World Bank Group and UNDP 2019) 123 <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/503181593615554741/nepal-capacity-needs-assessment-for-the-transition-to-federalism> accessed 3 October 2022.
[65]ibid 125.
[66]ibid 95.
[67]Bhurtel (n 61) 10.
[68]Local Government Operations Act 2017, ch 9.

Table 6. Revenue sharing among the three tiers of the federation.

Level of government	VAT and excise duties (s 6(2))	Natural resource royalties (sch 4)	Foreign grants/borrowing (s 12)	Internal borrowing (s 14)
Centre	70%	50%	Yes	Yes, within the limits set by the NNRFC
Provincial	15%	25%	Yes, with pre-approval of federal government	Yes, with pre-approval of federal government
Local	15%	25%		

Source: Intergovernmental Financial Management Act 2017.

Table 7. Intergovernmental transfers: vertical shares.

Financial Year		Amount (in NPR mn)	Percent Distribution	Percent of GDP
2017–18	Local	245,556	98.2	8.1
	Provincial	4,412	1.8	0.2
	Total	**249,968**	**100**	**8.2**
2018–19	Local	308,487	73.1	8.9
	Provincial	113,434	26.9	3.3
	Total	**421,921**	**100**	**12.2**
2019–20	Local	313,666	75.9	8.0
	Provincial	99,844	24.1	2.5
	Total	**413,510**	**100**	**10.5**
2020–21 (budget)	Local	262,758	72.5	
	Provincial	99,874	27.5	
	Total	**362,632**	**100**	

Source: Speech by Finance Minister Dr. Yuba Raj Khatiwada, *Budget Speech of Fiscal Year 2018/19*, Joint Assembly of Federal Parliament (29 May 2018) <https://mof.gov.np/site/publication-detail/2262> accessed 3 October 2022; Ministry of Finance, Government of Nepal, *Inter Government Fiscal Transfer (Local & Province) Fiscal Year 2018/19* <https://mof.gov.np/site/publication-detail/1924> accessed 3 October 2022; Government of Nepal, Ministry of Finance, *Inter Government Fiscal Transfer (Local & Province) Fiscal Year 2019/20* <https://mof.gov.np/site/publication-detail/2070> accessed 3 October 2022; Government of Nepal, Ministry of Finance, *Inter Government Fiscal Transfer (Local & Province) Fiscal Year 2020/21* <https://mof.gov.np/site/publication-detail/2215> accessed 3 October 2022.

executive, legislative and judicial. Local powers are exercised by a directly elected executive that is integrated into a local legislature.[69] Schedule 8 of the 2015 Constitution catalogues 22 functions that form the exclusive jurisdiction of local units, including the management of local services, local development projects and programmes, basic and secondary education, basic health and sanitation, and local economic development. In addition, through schedule 9, they share with the centre and provinces legislative and executive responsibility over 15 matters. Through the establishment of local judicial committees, local units are also bestowed judicial power.[70]

Despite the further elucidation of local government functions in Chapter 3 of the Local Government Operations Act 2017, ambiguity continues as to the precise jurisdiction of each tier of government. This emanates from the considerable overlap of functions in the Constitution's schedules,[71] and has also been perpetuated by delays in the promulgation of federal legislation, which is anticipated to operate as a framework to nest provincial

[69]See Constitution of Nepal 2015, pts 17 and 18. The constitutional framework is further elaborated in the Local Government Operations Act 2017.

[70]ibid art 217.

[71]For eg, 'Disaster management' is listed as both an exclusive responsibility of local government (sch 8(20) and as a concurrent power of the federation, provinces, and local governments (sch 9(9)) while 'preparedness for, rescue and relief during, and recovery from, natural and non-natural disasters' is listed as a concurrent power of the federation and the provinces (sch 7(17)).

and local legislation. Where federal legislation has been enacted, confusion and apparent contradiction with the Constitution remains.[72] Phil Marker and his co-authors, for example, highlight this issue as regards the federal Disaster Risk Reduction and Management Act 2017.[73] Similar ambiguities exist, for example, in education.[74] Jurisdictional uncertainty will likely dissipate over time, especially as the Constitutional Bench of the Supreme Court is called on to resolve intergovernmental disputes.[75]

At this early stage, however, fearing that their laws may be later invalidated due to inconsistency with federal or provincial laws – local laws are invalid to the extent that they are inconsistent with provincial or federal laws[76] – much local lawmaking has been stymied.[77] This is compounded by the lack of awareness of the importance of the legislative process among local lawmakers, and a "quick and easy" approach to local legislating that has relied heavily on copying "model laws" prepared by central ministries.[78] Despite this, local level laws are slowly beginning to be promulgated.[79]

Dimension 3: A direct relationship between local government and the people

The local level is directly elected and accountable to the people. A first-past-the-post (FPTP) electoral formula is used, which is different to the mixed parallel electoral system at the centre and provinces. There are also quotas for women and for Dalits, but not for other minorities (as is the case for elections at the central and provincial levels). The first elections under the Constitution were in 2017. The local government elections were held first, which allowed for a specific focus on local issues and local candidates. Turnout was high – 74.5% across the three phases – indicating an interest in local governance.[80] Where federal elections are concurrent, voters tend to vote on the basis of national issues,[81] which undermines the accountability of local government.

Local government is secure and cannot be dissolved by the central or the provincial level. Local governments also engage directly to undertake participatory planning processes, which have been used to improve governance and the accountability of local officials to the people, as well as increase the legitimacy of local government.[82]

[72]For a critical appraisal of a number of new laws vis-à-vis the Constitution, including the Local Government Operation Act 2017, see Paudel and Sapkota n (4).

[73]Phil Marker and others, 'Political Economy Issues Related to Climate Change and Disaster Resilience in Nepal' (Oxford Policy Management 2018).

[74]Democracy Resource Centre, 'School Education and Local Government' (2020) 4–5 <www.democracyresource.org/reports/school-education-and-local-government/> accessed 3 October 2022.

[75]To date, the Bench has not decided any significant cases as regards the federal distribution of power.

[76]Constitution of Nepal 2015, arts 57(6) and 57(7).

[77]Democracy Resource Centre, 'Formation and Functioning of Provincial Institutions' (2019) 16–17 <www.democracyresource.org/reports/formation-and-functioning-of-provincial-institutions-aug-2019/> accessed 3 October 2022.

[78]Janak Rai, 'Status and Process of Law-Making in Local Governments: Reflections from Two Provinces' (Vol 4, International Alert and Saferworld 2020) <www.international-alert.org/publications/federalism-in-nepal-status-and-process-law-making-local-governments/> accessed 3 October 2022.

[79]ibid 11–12. On local lawmaking on education, see Democracy Resource Centre, 'School Education and Local Government' (n 74).

[80]Democracy Resource Centre, 'Nepal's Local Elections 2017: Final Observation Report' (2017) 21 <www.democracyresource.org/reports/nepals-local-elections-2017-final-observation-report/> accessed 3 October 2022.

[81]Arjan H Schakel, 'Congruence Between Regional and National Elections' (2013) 46 Comparative Political Studies 631; Silvia Bolgherini, Selena Grimaldi and Aldo Paparo, 'Assessing Multi-Level Congruence in Voting in Comparative Perspective: Introducing the Municipal Level' (2021) 47 Local Government Studies 54.

[82]Ganesh Prasad Pandeya, 'Does Citizen Participation In Local Government Decision-Making Contribute to Strengthening Local Planning And Accountability Systems? An Empirical Assessment of Stakeholders' Perceptions in Nepal' (2015) 16 International Public Management Review 67.

Thaneshwar Bhusal has recommended its expansion into participatory budgeting processes.[83] A survey undertaken by the Nepal Administrative Staff College found that almost half (44%) of Nepalis say that they participate – "frequently" or "occasionally" – in ward/village meetings, while 19% say that they participate in local level planning/budgeting meetings.[84] Local governments are therefore strongly and directly accountable to the people, not to another level of government (as is often the case in more traditional two-tiered systems, where they are subordinate to provincial governments).

However, the issue of inclusion, as discussed above, is critical. If local government is disproportionately comprised of or representative of upper caste Hindus, it may do little to address inequality. The most prominent measure of political inclusion is a measure of disproportionality – the Gallagher Index.[85] This can, at an aggregate level, allow for the proportionality outcomes to be compared across local, provincial, and national levels. The results show that local government is more proportional than provincial or national governments. At the local government level following the 2017 election, disproportionality stands at 7.71, whereas the 2017 elections resulted in a disproportionality measure of 11.62 at the provincial level, and 12.47 at the national level – a difference of more than 50% (based on categories of Dalit, Janajati, Khas Arya and Madhesi, see Table 7).[86] Khas Arya are the most unrepresented, with quotas for Dalits resulting in that group being the most overrepresented (see Table 8). This data comports with the findings of Bhishma Bhusal and his co-authors. In their survey of local governments in 11 earthquake affected districts, they find that the newly elected cadre of local government representatives more closely represent the caste and gender characteristics of Nepal's society. Moreover, they find that this greater political inclusion has yielded substantive policy inclusion for non-elite castes, showing that, for non-elite castes having a clan member in local elected office has remedied disadvantage for those seeking earthquake reconstruction grants.[87]

Dimension 4: Intergovernmental relations

There are several institutions for intergovernmental relations, according to the letter and implementation of the 2015 Constitution. But the role for local government is limited. There is an Inter-Provincial Council, established under the Constitution to resolve disputes between the centre and the provinces.[88] According to the Constitution, this council includes representatives from the provincial and central levels, but not from local government. Further, the Intergovernmental Relations Act 2020 establishes a National Coordination Council, which is designed as an intergovernmental coordinating body, and which incorporates representatives of local government associations, provinces, and federal ministers.[89] The inclusion of local government representatives should enhance

[83]Thaneshwar Bhusal, 'Participatory Budgeting at the Local Level in Nepal' (*DevPolicy*, 3 July 2017) <https://devpolicy.org/participatory-budgeting-local-level-nepal-20170703/> accessed 1 June 2020.
[84]Nepal Administrative Staff College, 'Nepal National Governance Survey 2017/18' (NASC 2018) 33.
[85]Michael Gallagher, 'Proportionality, Disproportionality and Electoral Systems' (1991) 10 Electoral Studies 33.
[86]The Index measures the proportion of seats per ethnic category versus their proportion of the population. The higher the number the more disproportional the outcome is. A score of 1 represents perfect proportionality.
[87]Bhishma Bhusal and others, 'Does Revolution Work? Evidence from Nepal's People's War' (2020) Center for Effective Global Action, Working Paper Series No 116, 67 <https://doi.org/10.26085/C3S886> accessed 3 October 2022.
[88]Constitution of Nepal 2015, art 234.
[89]Intergovernmental Relations Act 2020, s 16(1). For commentary on the Act, see Bishnu Adhikari and Parshuram Upadhyaya, 'Can a Sweeping New Law Counter Nepal's Federal Overreach?' (*InAsia*, 2 September 2020) <https://

Table 8. Proportion of population versus proportion of seats in local government.

Category	Proportion of population (%)	Proportion of seats in local government (%)
Dalit	13.8	22.0
Janajati	35.8	29.3
Khas Arya	31.2	22.0
Madhesi*	15.4	17.0

Source: Bhishma Bhusal and others, "Does Revolution Work? Evidence from Nepal's People's War" (2020) Center for Effective Global Action, Working Paper Series No 116, 67 <https://doi.org/10.26085/C3S886> accessed 3 October 2022.

* *Excludes Terai Dalit, Terai Janajatis (Tharu) and Muslims*

shared rule and coordination. Additional intergovernmental sectoral committees also incorporate a single local government mayor/chairperson in addition to the federal and provincial ministers. However, as the local member is to be appointed to the sectoral committee by the federal minister,[90] their ability to provide a contrasting voice may be diminished.

Otherwise, it is the role of the provincial assemblies to resolve disputes with or between local governments, and to coordinate through provincial coordination councils.[91] The central government also has a coordinating role, through legislation[92] and district structures discussed below. An Intergovernmental Fiscal Council includes local government representatives, who form a majority.[93] But this must be understood in the context of the broader fiscal arrangements discussed above, which display a large vertical imbalance.

The National Assembly – the second chamber of the central legislature – is formed by an electoral college that comprises the members of the provincial assemblies and the mayors/chairpersons and deputy mayors/vice chairs of the local governments.[94] While federal legislation gives an increased weight to the votes of provincial assembly members,[95] local government leaders still control half of the total votes within the college.[96] Further, the political parties have intervened in this process. The Nepali Congress Standing Committee nominated its representatives to the National Assembly, without the agreement of provincial chiefs or local governments.[97] So in theory, local governments have a direct link to the central government and participate indirectly in shared rule at the centre through the National Assembly. But in practice, the process and outcomes have continued to be strongly controlled by the centre.

asiafoundation.org/2020/09/02/can-a-sweeping-new-law-counter-nepals-federal-overreach/> accessed 10 October 2020.

[90] Intergovernmental Relations Act 2020, s 20(1).

[91] Ibid ss 22–23.

[92] Constitution of Nepal 2015, art 235.

[93] Intergovernmental Fiscal Arrangement Act 2017, s 33.

[94] Constitution of Nepal 2015, art 86(2)(a).

[95] National Assembly Election Act 2018, arts 56–57 and sch 1.

[96] Across the country, there are 1506 mayors/chairpersons and deputy mayors/vice chairs and 550 provincial assembly members. Each mayor's/chairperson's and deputy mayor's/vice-chairperson's vote is weighted at 18 votes, while each provincial assembly member's vote is weighted at 48. After weighting, provincial assembly members cast 26,400 votes compared to 27,108 votes cast by local government heads and deputy heads.

[97] Tika R Pradhan, 'NCP Leadership Takes Unilateral Decision as It Picks National Assembly Candidates' *Kathmandu Post* (4 January 2020) <https://kathmandupost.com/politics/2020/01/04/ncp-leadership-takes-unilateral-decision-as-it-picks-national-assembly-candidates> accessed 1 March 2021.

In addition, the districts, which pre-dated the 2015 Constitution, were retained,[98] and have a mandate for both vertical and horizontal coordination. With 77 in number, the districts are much smaller than provinces but far larger than local governments. A district comprises four to upwards of twenty local government areas. At the district level, there is an assembly comprising the mayors/chairs and deputy mayors/vice chairs of each composite local government. The assembly elects a coordination committee (DCC), with the role of coordinating local governments in the district, and with provincial and federal offices in the district (ie, with civil servants not governments). However, the central government has been actively directing and delegating tasks to the DCC, which undermines local authority, and bypasses the role of provincial governments.[99] An almost paradigmatic hourglass federalism strategy, but not one that goes to the strengthening of local government!

Otherwise, the political party system can underpin or undermine intergovernmental coordination, as well as centralization (discussed later). In Nepal, the party system is not very nationalized. Ethnic and regional issues influence the development of parties, and the behaviour of voters, such that there are substantial differences in policy priorities and voting patterns across regions. We calculated the party nationalization index[100] for the five largest parties in Nepal, as at the 2017 elections, (using 2017 provincial election data – see Table 9). Overall Nepal has a very low level of nationalization (0.579), which is comparable to other ethnically divided federal countries, like Brazil. This is part to do with the regional and ethnic parties, and part to do with the electoral alliance formed by the CPN (Maoist-Centre) and the CPN (UML). Nepali Congress is by far the most nationalized of the parties and it continued to poll well in Madhesi areas. In 2018, the UML and the Maoists merged, and they now control a majority of local governments (400 of 753).

Table 9. Party nationalization indices.

Party	Party Nationalization Index	Number of local body mayors/ chairs
Nepali Congress	0.805	266
Communist Party of Nepal (Unified Marxist–Leninist)	0.594	294
Communist Party of Nepal (Maoist-Centre)	0.545	106
Federal Socialist Forum*	0.619	34
Rastriya Janata Party Nepal*	0.412	25
Other	-	28
Party system nationalization/Total	0.579	753

Source: Authors' calculations, using official 2017 Provincial election results, sourced from Election Commission of Nepal, *Pradesh sabha sadasya nirwachan, 2074: nirwachan parinam pustak* [Provincial Assembly Member Election 2074: Election Result Book] (2018) <https://election.gov.np/ecn/uploads/userfiles/ElectionResultBook/PA2074.pdf> accessed 20 June 2020.

* *After the 2017 electoral cycle, the FSN and RJPNN merged to become the Janata Samajwadi Party*

[98] See Constitution of Nepal 2015, art 220.

[99] Thaneshwar Bhusal, 'Long Read: The Transformation of Nepal's Local Development Policymaking Structures' (*LSE*, 1 May 2020) <https://blogs.lse.ac.uk/southasia/2020/05/01/long-read-the-transformation-of-nepals-local-development-policymaking-structures/> accessed 1 June 2020.

[100] Mark P Jones and Scott Mainwaring, 'The Nationalization of Parties and Party Systems: An Empirical Measure and an Application to the Americas' (2003) 9 Party Politics 139.

Dimension 5: A dedicated administrative structure

The repurposing of the country's historically highly centralized administrative apparatus to meet the needs of the three-tier federation has been one of the most contentious issues of the federal transition; many issues remain unresolved. After several false starts, which were thwarted by resistance from the civil service unions, the federal legislature enacted the Employee Integration Act 2018, which oversees the redeployment of civil servants to local and provincial bureaucracies. The Organization and Management Survey established under the Act – a process that was dominated by senior bureaucrats, with provincial and local governments having no formal avenue to input – resulted in the assignment of 137,617 employees across the federation: 48,409 employees (35%) in the central administration, 22,297 employees (16%) in the seven provinces, and 66,908 employees (4%) across the 753 local governments.[101]

Currently, however, under the Employee Integration Act, the federal government retains authority over transfer and management of high-level employees including secretaries at provincial ministries and the chief administration officers of local governments ("CAOs").[102] While this is only intended to be a transitional provision, which will be adjusted once provincial governments establish their own provincial public service commissions ("PPSCs"), as it stands, the most senior bureaucrat in local government, the CAO, does not report to the locally elected executive. CAOs have been frequently transferred by the federal government without consultation with the local executive.[103]

Moreover, two additional issues have hampered the effective establishment of local administrative structures. The first is human resources. Even though the largest cadre of civil servants is now supposed to be deployed at the local level, many local governments – in particular, rural municipalities – continue to be chronically understaffed. Only two-thirds of the local level positions were filled by existing civil servants,[104] with the majority of these deployed to the larger urban municipalities. The federal government has thus far prevented municipalities from hiring staff outside of the formal recruitment process to be undertaken through the PPSCs. Thus, in September 2019, for example, across the nine local units in Taplejung district, nearly 60% of all employee positions were vacant.[105]

A second issue that has come to the fore regards the relationship that local governments have to public school teachers. As "basic and secondary education" are listed under the exclusive jurisdiction of local units,[106] local elected officials have sought to engage in teacher management, appointment and monitoring. The Local Government Operations Act 2017, however, does not explicitly give local governments the right to appoint teachers. Moreover, the federal government has issued various circulars

[101] DRCN cites informants who assert that the decision to retain a 'lumbering and burdensome organization structure' at the centre has not adequately followed the jurisdictional competencies bestowed on the federal government by the Constitution but has rather been a result of senior bureaucrats' desire to continue serving at the federal level. See Democracy Resource Centre, 'Formation and Functioning of Provincial Institutions' (n 77) 8–10.
[102] ibid 29.
[103] ibid 17.
[104] ibid 10.
[105] Ananda Gautam, 'Health Workers Deployed to Carry out Administrative Works in Local Units' *The Kathmandu Post* (27 September 2019) <https://kathmandupost.com/province-no-1/2019/09/27/health-workers-deployed-to-carry-out-administrative-works-in-local-units> accessed 1 June 2020.
[106] Constitution of Nepal 2015, sch 8.

instructing local governments not to do so,[107] and the federal government's 2019 Education Policy retains the functions of secondary education management under the federal Ministry of Education.[108]

In summary, the new administrative structure provides local units a large bureaucracy over which they can wield authority. However, the extent to which local bureaucracies are autonomous will be shaped by future choices on the role that local governments will have in appointing employees through the PPSC process, whether DAOs will continue to be integrated into the central administrative service, and whether they will have the autonomy to appoint non-service employees like public school teachers.

V Hourglass federalism and post-conflict inclusive State building

To return to the fundamental part of our purpose – to explore whether Nepal's hourglass model can help address socio-economic inequality in Nepal and meet the aspirations for an inclusive post-conflict Constitution. First, we can conclude that Nepal has a moderately hourglass federal system. Local government is strongly accountable to the people, it can receive funds from the federal government and raise its own revenue, it is represented in national level institutions and has its own independent civil service. This means that it can deliver some of the dividends that are associated with strong local government of hourglass federalism, as articulated by Anwar Shah,[109] by targeting funds to locally driven and contextually situated policy and programmes. But implementation is key and exactly how structure will translate into practice is still emerging (eg, the shape of the local administrative structure). It is too early to say for sure whether the hourglass federal model will reduce inequality.

Some have raised concerns that Nepal's local governments have too much power and will not be able to develop the capacity for the delivery of key services. For example, Jamie Boex writes that "International experience suggests that a local government jurisdiction requires a minimum population of around 100,000–200,000 residents before it has sufficient scale to effectively manage public services such as public education and basic health services".[110] Comparing Nepal to other federal or constitutionally decentralized countries in Asia shows that the average number of citizens per local government area is only 37,000 (approximately), which is the lowest in the region.[111] In order to manage the

[107]The constitutionality of this order has been challenged through a writ petition filed at the Constitutional Bench of the Supreme Court. At the time of writing, the case remains sub justice.

[108]Democracy Resource Centre, 'School Education and Local Government' (n 74).

[109]Anwar Shah, 'Whither Provinces and States? The Case for an Hourglass Model of Federalism' (Forum of Federations 2012) Occasional Paper Series No 9 < https://forumfed.org/document/whither-provinces-and-states-the-case-for-an-hourglass-model-of-fedralism-number-9/> accessed 3 October 2022.

[110]Boex (n 62) 17.

[111]Authors' calculations. Comparison countries from which calculations are made are India (based on the upper tier, or districts), Indonesia, Malaysia, Myanmar, Nepal, Pakistan, Philippines, and Sri Lanka. Indonesia, India, Myanmar, Pakistan and Philippines have more than one level of local government. These calculations are based on the upper tier, or districts in the case of India. Population data from The World Factbook (*CIA*, 2020) <www.cia.gov/the-world-factbook/countries/> accessed 10 June 2020; local government data drawn from countries' constitutions. See also data produced by The Asia Foundation, 'State and Region Governments in Myanmar (2013) <https://asiafoundation.org/wp-content/uploads/2013/03/StateandRegionGovernmentsinMyanmarCESDTAF2013.pdf> 10, accessed 10 June 2020; The Hunger Project, 'Participatory Local Democracy' (2014) <https://localdemocracy.net/> accessed 10 June 2020; OECD/United Cities and Local Government Project, '2019 Report of the World Observatory on Subnational Government Finance and Investment: Country Profiles' (2019) <https://www.sng-wofi.org/publications/SNGWOFI_2019_report_country_profiles.pdf> accessed 10 June 2020; ASEAN Learning Center, 'Local Administration of ASEAN Member

breadth of their powers, we would expect that local government in Nepal will need to work in close cooperation with central and provincial governments, and indeed, this is one reason that the centre has retained rights in relation to the employment of teachers.

We have shown that local government has produced an inclusion dividend. While Democracy Resource Center Nepal's analysis has argued that the higher numeric representation has not translated into meaningful participation at decision-making,[112] Bhishma Bhusal and his co-authors' conclusions are more promising, pointing to real increases in substantive policy inclusion for non-elite castes through more representative local governments.[113] Further, it is also meant to provide a more nuanced and meaningful representation. The Asia Foundation provides the example, among others, of the Newari dominated Bhaktapur, where there is only one Khas Arya local government representative despite that group comprising around 10% of the total population.[114] On the other hand, this does indicate that local government can achieve more targeted and local autonomy, through creating new majorities that are not possible at the provincial level. There is a quota for women members, meaning that women are also well represented. However, even though parties were required to nominate one woman and one man for the position of mayor/chair and deputy mayor/vice chair positions, women were elected to head only 18 of 753 local governments. Moreover, only 2% of non-quota positions were won by women.[115]

Indeed, in his assessment of the representation of minorities (ethnic, gender, and religious) in local governments in Nepal's Tarai region, Janak Rai has pointed out that the politics of the "non-dominant inclusion of minority groups" continues. Traditional ruling groups – men and hill "pure" Hindu castes – maintain hegemonic control through the continued domination of key decision-making positions, while historically marginalized communities still do not hold positions of meaningful power.[116] Despite this, Rai does acknowledge that the new local governments have opened up an important new political space that some groups have been able to utilize. He cites the Tharu, whose elected representatives have been better placed to utilize the local governments to benefit the community. In his assessment, this is due to the fact that local Tharu communities are well organized, and their leaders have the necessary cultural and social capital.[117] Thus, while the local government structures are more inclusive and sensitive to local majorities, more remains to be done. The role of the political parties in this is critical.

While Dawn Brancati argues that decentralization is more effective when party systems are integrated,[118] the objectives in her cases are different. In Nepal, an integrated party system undermines the inclusion dividend that we have seen so far in the local governments. If the political party system remains highly centralized, so will be the federal system. The only systematic study of the political party system in Nepal so far,

States' <http://asean.dla.go.th/public/article.do?lv2Index=146&lang=en&random=1486885224156> accessed 10 June 2020.

[112]Democracy Resource Centre, 'Findings on Functioning of Local and Provincial Governments in Nepal' (n 4) 27.

[113]Bhusal and others (n 87).

[114]The Asia Foundation (n 4) 30.

[115]ibid 8–9.

[116]Janak Rai, 'Deepening Federalism: Post-Federal Analysis on Marginalised Communities in Nepal's Tarai Region' (Vol 3, International Alert and Saferworld 2019)8–12 < https://www.international-alert.org/publications/deepening-federalism-post-federal-analysis-marginalized-tarai-nepal/> accessed 3 October 2022.

[117]ibid 12.

[118]Brancati, 'Decentralization: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?' (n 8) 60.

undertaken by Krishna Hachettu prior to federalization, concluded that because political parties evolved as underground revolutionary organizations, they developed centralized and personality-based structures, and a culture of secrecy.[119] Despite federalization, they remain as such. They do have the usual decentralized structures, with regional, district and/or local committees, for example, and are highly factionalized, but candidates and policy issues are mostly decided nationally, and they remain highly centralized. Indeed, for example, the head of the Nepal Communist Party (NCP) in Province 1 is a member of the federal legislature, and the NCP Chief Minister of the Province is subordinate within the party.

However, the hourglass federal structure does create incentives to decentralize parties. One is the electoral system, by which most seats have single-member constituencies, which are more suitable for local level control of candidature; second is the federal structure, which gives an extent of autonomy to regional and local level leaders from which within party authority should logically follow; third is the allowance for ethnic and regional parties, which pressurizes national-level parties to address local issues more specifically.[120] So in time, we could anticipate further decentralization in parties, which would go a long way in strengthening local government and achieving the aims of reducing social inequality.

VI Conclusion

While most of Nepal's post-conflict constitution-making exercise focused on the to-be-created provinces and limited attention was given to local governance during the constitution-making debates, the 2015 Constitution has elevated the new local governments to assume a place of paramount importance in the new three-tiered federation. Indeed, in comparison to the provincial sub-units, local government is a comparatively strong layer of government – as we have accounted, a typically hourglass federal structure. Despite not assuming a place of central focus in the constitution-making debates, the hopes and expectations placed on local government are strong – as was apparent in the excitement and hope that swelled during the 2017 local elections where almost all candidates campaigned on platforms of bringing government closer to citizens. In their introductory overview to the Nepali federation, Surya Dhungel and Phillip Gonzalez recognize and highlight the potential for local government to address historic inequalities and meet the aspirations of the Nepali people for a more equal and inclusive State, writing that "The hidden pain of *Madhesi, Janajati* and *Dalit* movements can be addressed through local governance mechanisms if implemented open heartedly".[121] Similarly, Bandita Sijapati, writing before creation of the new local governments, argued that

> local bodies offer opportunities to respond to the socio-economic needs of affected populations in post-conflict Nepal: establishing inclusive forms of governance; giving voice to local populations, including previously marginalised groups, and enhancing their participation in

[119] Krishna Hachhethu, *Political Parties of Nepal* (Baha Occasional Paper 1, Social Science Baha 2006) 13–14 <https://soscbaha.org/wp-content/uploads/2019/11/political-parties-of-nepal.pdf> accessed 3 October 2022.
[120] Jones and Mainwaring (n 100).
[121] Surya Dhungel and Phillip Gonzalez, 'Nepal (Federal Democratic Republic of Nepal): From a Centralized Monarchy to a Federal Democratic Republic' in Ann Griffiths and others (eds), *The Forum of Federations Handbook of Federal Countries 2020* (Palgrave Macmillan 2020) 250.

the peacebuilding process; and alleviating tensions that evolved over the 10 years of armed conflict.[122]

Through our explication and discussion of the hourglass model in Nepal we have begun to show how this may be possible. The hourglass design has already delivered on some of the key aims of the Constitution such as greater inclusion in (local) government. However, ongoing implementation and institutionalization is crucial and exactly how structure will translate into practice is still emerging. Moreover, several important challenges remain, including the continued centralization of political parties and the party system, and the need for local government to develop economies of scale and work in cooperation with other levels of government for public service delivery. The Constitution's ongoing credibility will draw from the extent that it is able to shape a more inclusive state, especially through the new federal structure. The hourglass features of Nepal's system provide an opportunity to provide meaningful progress in this regard. However, unless the initial inclusion dividend and increased responsiveness of government are consolidated, there is a risk that the State will be gradually recentralized (in practice) and the gains of the post-conflict constitution-making process undermined.

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ORCID

Iain Payne http://orcid.org/0000-0001-5680-8170
Michael G. Breen http://orcid.org/0000-0003-1876-6453

[122]Sijapati (n 9) 92.