niti NOTE

Linking the National Human Rights Commission and Local Government in Nepal: Supporting Human Rights at the Coalface of the State

Strengthening Constitutionalism in Nepal

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This note has been developed by Niti Foundation with support from the National Endowment for Democracy. It is part of a series that explores how Nepal's constitutional bodies can help support and strengthen constitutionalism.

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Foreword

This note on the National Human Rights Commission (the 'NHRC') has been produced by Niti Foundation — a Nepali not-for-profit public interest organisation that accompanies locally-led policy reform, in partnership with the National Endowment for Democracy.

The assurance of human rights is a fundamental commitment of democratic constitutions. Following the transition from absolute monarchy to multi-party democracy and the descent into a decade-long civil conflict, Nepal's NHRC was established in 2000. It was elevated to constitutional status in the 2007 Interim Constitution, and this was continued in the 2015 Constitution. The transition to a federal republic in 2015 has required an adjustment in the NHRC's strategy and operational engagement. This note was commissioned to critically reflect on this challenge, in particular, exploring how the NHRC ought to engage with and support the newly formed federalised local units of government to assure the realisation of human rights in the new political context.

Highlighting the salience of human rights in the context of the newly federated Nepali state, this note emphasises that human rights and federalism ought to work in tandem to support the consolidation of a more equal and inclusive state. Importantly, as the unit of government at the coalface of state-citizen relations in Nepal's federation, local governments have a unique opportunity to strengthen the rights of citizens, serving as institutions to connect human rights discourse and standards to the local social-cultural milieu and the processes of decision-making. Ensuring the synergy of human rights and federalism requires essential links between the NHRC and the different units of the federation to be built and maintained. However, while the NHRC has begun to restructure itself to calibrate to the new federal context, as this note highlights, it has not yet adapted to engage differently and independently with the three tiers of the Nepali state. In this context, it is critical for the NHRC to prioritise reforms that enable it to accompany sub-national governments as autonomous actors, reaching down to be an effective guarantor at the provincial and local levels of the Nepali state.

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We also extend our appreciation to Dr. Bipin Adhikari and the representatives of the local governments visited during this study, as well as to the representatives from the NHRC, the Prime Minister's Office, the Municipal Association of Nepal, the National Association of Rural Municipalities in Nepal, and civil society organisations, whose valuable insights and inputs have greatly enriched the findings of this study.

We hope that this note is a useful baseline for further reflection on the critical importance of the relationship between local governments and the NHRC to fulfil Nepal's constitutional commitment to human rights.

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1. Introduction

Assuring human rights is a fundamental commitment of modern democracies. Increasingly, states entrust this commitment to national human rights institutions ('NHRIs') that are positioned at the intersection of state and society. NHRIs are considered a standard feature of the modern democratic state,[1] and according to the Paris Principles they are expected to have a clearly defined mandate, independence, and the institutional capacity required to protect and promote human rights.[2] Having proliferated worldwide, especially in the wake of the post-1990 'wave' of democratisation, these relatively new institutions are seen as vanguards for human rights norms, including both those norms established in international conventions as well as those established within domestic law.

As NHRIs seek to fulfil their role, they encounter not only the actors involved in organised violence and a multitude of human rights abuses, but they also must navigate a landscape of contestation and struggle between and across society and state, including among different branches of government, and in federal states among the federation's constituent units. Indeed, once established, new federations evolve dynamically and through a continual process of contestation.[3] In addition to broad-ranging confrontation in the political arena between political parties and other groups and actors, new federations tend to experience increased inter-institutionalised contestation within the constitutional framework itself, as federalised institutions pursue autonomy in addition to cooperation.[4] Even within an overarching constitutional commitment to human rights, the different units of the federation may not commit equally to their realisation or may do so differently, as they may have varying priorities and capacities. As such, the realisation of human rights as a constitutional commitment over extended periods, particularly during crises or disasters, in which federalism provides an 'additional layer of complexity',[5] depends on how the different units of the federation relate to the human rights agenda.

Accordingly, the promotion and protection of human rights depends not only upon the commitment and capacity of the NHRI but also upon how the NHRI engages a multitude of actors within state and societal structures, and constructive engagement by NHRIs with these actors is essential to develop a culture of human rights and ensure their institutionalisation within state and society. As Nepal transitions to a federal structure, it is particularly important for attention to be given to the accomplishment of this

1 Andrew Wolman, 'National Human Rights Institutions and their Sub-National Counterparts: The Question of Decentralization' (2017) 6 International Human Rights Law Review 1.

2 United Nations, *Principles Relating to the Status of National Institutions (The Paris Principles),* adopted by the General Assembly, 48/134 of 20 December 1993.

3 Michael Burgess, *Comparative Federalism: Theory and Practice* (Routledge 2006).

4 César Colino, 'Understanding Federal Change: Types of Federalism and Institutional Evolution in the Spanish and German Federal Systems' in Jan Erk and Wilfried Swenden (eds), *New Directions in Federalism Studies* (Routledge 2010).

5 Forum of Federations, 'Emergency Management in Federal Countries'. Proceedings of the Workshop on Emergency Management in Federal Countries (2014), <www.forumfed.org/wp-content/uploads/2016/02/EmergencyManagement_in_Federal_Countries.pdf>.

essential task. In exploring the salience of human rights in the context of the post-conflict newly federated Nepali state, this note focuses on the relationship between National Human Rights Commission of Nepal (the 'NHRC' or the 'Commission') and the various constituent units of the Nepali state — 761 governments: 753 local units, seven provinces, and the centre. In particular, it identifies the bottlenecks and possibilities affecting the realisation of the human rights commitments enshrined in the country's 2015 Constitution.

With the promulgation of new Constitution in 2015, Nepal commenced its transformation from a centralised, unitary state to a federation. Emerging from the backdrop of a decade-long Maoist 'People's War', which led to the abrogation of the 1990 Constitution, the 2015 Constitution brought wholesale change to the Nepali state, promising to bring about a more equal and inclusive '*Naya*' ('New') Nepal. Among the most significant and far-reaching of these reforms is the transformation of the historically highly centralised, unitary state into a three-tiered federation. In addition, the new Constitution enshrines a more expansive package of rights to the people, including an enlarged collection of economic, social and cultural rights. These twin reforms — federalism and the constitutionalisation of human rights — are central to (but not the only components of) the 'progressive restructuring' of the state, which guided the post-conflict constitutional moment and is conceived as the basis for the realisation of full and inclusive democracy in Nepal.[6] Both human rights and federalism are therefore important for the ongoing credibility and resilience of the 2015 Constitution and thus the maintenance of durable peace.[7] Under this new constitutional dispensation, federalism and human rights will interact with each other to shape governance outcomes. Indeed, the nascent federal system is evolving to give rise to a plurality of policy, legal, administrative or programmatic priorities or approaches across the three tiers, as each of the 761 governments has its own specific needs and priorities and has to respond to particular political dynamics in their jurisdictions. Indeed, the transition to a federal system has significant implications for the enjoyment and protection of rights and freedoms.

The NHRC was elevated by the Interim Constitution of Nepal 2007 to be an independent 'constitutional body', upgrading its legal status from its original founding as a statutory body in 2000. Despite the federalisation of the country, the NHRC has maintained a unitary structure — that is, the NHRC's jurisdiction encompasses all three tiers of the Nepali federation, and the Constitution does not mandate the establishment of additional sub-national NHRIs at the provincial or local levels; rather, this is left open for the NHRC to pursue at its discretion. The NHRC is expected to ensure that Nepal's human rights laws are complied with, international commitments are fulfilled, and bears the burden of ensuring the respect, protection, promotion, and effective enforcement of human rights throughout the entire state, across all three tiers of the federation.[8] However, while the NHRC has begun to restructure itself to calibrate to the new federal context, as a centralised, unitary entity headquartered in Kathmandu, the Commission has yet to fully adapt to engage differently within the country's federal structure. The emerging context of policy plurality on the side of the federation's political institutions and the imperative for standardisation of human rights commitments on the part of NHRC presents a unique challenge for Nepal's constitutionalism: balancing the enforcement of uniform human rights commitments and the nurturing of democracy in a plural society organised under the new federal structure. In particular, this note emphasises the salience of local governments in contributing to the resilience of human rights and argues for the need for the NHRC to engage deeply at the local level.

This note is the product of a qualitative policy research program that draws on both primary empirical data and secondary materials. It begins with a review of the literature on the role and structural design

6 See Interim Constitution of Nepal 2007, preamble. See also Budhi Karki, 'State Restructuring and Federalism Discourse in Nepal' in Budhi Karki and Rohan Edrisinha (eds), *The Federalism Debate in Nepal*, vol 2 (United Nations Development Programme, Support to Participatory Constitution Building in Nepal 2014).

7 On this latter point, see Laurie Nathan, 'The Real Deal? The Post-Conflict Constitution as a Peace Accord' (2020) 41 *Third World Quarterly* 1556.

8 Constitution of Nepal 2015, art 249(1).

of ‘fourth branch’ constitutional bodies, along with an analysis of the Nepali socio-political landscape and policy environment in the context of the post-conflict transition to federalism. Building on this literature, the note incorporates evidence from interviews and discussions held with key stakeholders, including local government representatives and NHRC officials, which were primarily conducted in 2021 and 2022. This initial data has been updated and supplemented with relevant information and examples, drawn from secondary research and interviews undertaken in 2023 and 2024.

The note is divided into eight parts. Following this introduction, Part 2 highlights the role and potential structural design of NHRIs as ‘fourth branch’ institutions within federal countries. Part 3 discusses why strengthening human rights in post-conflict Nepal is both necessary and prioritised by the 2015 Constitution. The note then turns its attention to the local level. Part 4 emphasises the importance of local government as a key human rights actor in Nepal’s federal system, while Part 5 draws attention to the accountability and capacity challenges for rights protection at the local level. Then, looking at the NHRC, Part 6 identifies the role that the Commission can play to alleviate these concerns and support local rights protection while Part 7 describes the challenges for doing so. Finally, in Part 8, the note concludes, making, in part 9, several recommendations to strengthen the link between the NHRC and local governments to create accountability and capacity for human rights protection and promotion at the local level in Nepal.

2. The Fourth Branch and Federal States

Nepal's 2015 Constitution establishes the NHRC as a constitutional body tasked with ensuring the respect, protection, promotion, and effective enforcement of human rights throughout the country.[9] The subjection of executive government action to the scrutiny of an independent institution, such as the NHRC, in addition to the oversight and accountability provided by the legislature and the judiciary, follows a global trend that elevates 'fourth branch' institutions into constitutional governance.[10] Following Tarun Khaitan's theorisation,[11] the purpose of these kinds of institutions is to guarantee that key constitutional promises will be respected over time — in the NHRC's case, the 2015 Constitution's commitment to fundamental rights and duties.[12] The rationale for independence is to insulate the implementation of human rights from the political executive who may have the ability and willingness to frustrate the effective implementation of these rights and thus undermine the Constitution's promises to the people of Nepal. The ongoing constitutional resilience of human rights in Nepal thus depends — at least in part — upon the ability of the NHRC to effectively perform its mandate.

Scholarship on the fourth branch is embryonic and has only just begun to examine how fourth branch institutions operate in federal systems. The emergent literature highlights the importance of design, in particular how the dispersal of fourth branch authority impacts both the potential for partisan capture as well as on the service delivery and responsiveness to central versus sub-national concerns.

In exploring the question of how to disperse the authority of fourth branch institutions across multiple orders of government, Michael Pal identifies two design approaches for election management bodies (EMBs) in federations. In the 'unitary model', a central EMB administers both national and sub-unit elections, while in the 'division of powers model', separate central and sub-unit EMBs administer elections within their respective jurisdictions.[13] A unitary design that incorporates sub-national representation,

9 Constitution of Nepal 2015, art 249(1).

10 On the fourth branch, see generally, Christina Murray, 'The Human Rights Commission et al: What Is the Role of South Africa's Chapter 9 Institutions?' (2009) 9 *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 122; Tarunabh Khaitan, 'Guarantor Institutions' (2021) 16(S1) *Asian Journal of Comparative Law* S40; Mark Tushnet, 'Institutions Protecting Democracy: A Preliminary Inquiry' (2018) 12 *The Law & Ethics of Human Rights* 181; Mark Tushnet, 'Institutions Supporting Constitutional Democracy: Some Thoughts about Anti-Corruption (and Other) Agencies' [2019] *Singapore Journal of Legal Studies* 440; Mark Tushnet, 'Institutions Protecting Constitutional Democracy: Some Conceptual and Methodological Preliminaries' (2020) 70 *University of Toronto Law Journal* 95. The NHRC is not alone in Nepal but is one of 13 constitutional bodies, including the Election Commission of Nepal, the Commission for the Investigation of Abuse of Authority, the Auditor General, the Public Service Commission, the National Natural Resource and Fiscal Commission as well as seven 'Other' commissions, the National Women's Commission, the National Inclusion Commission, the National Dalit Commission, the Madhesi Commission, the Muslim Commission, the Tharu Commission, and the Indigenous Nationalities Commission.

11 See Khaitan, (n 10).

12 See Constitution of Nepal 2015, pt 3.

13 Michael Pal, 'Constitutional Design of Electoral Governance in Federal States' (2021) 16(S1) *Asian Journal of Comparative Law* S23.

as is the case for the Independent National Electoral Commission in Nigeria, where two members of a 12-member body are drawn from each of the country's six geo-political zones, presents a third possible model.[14] This general schematic can be applied to other fourth-branch institutions (anti-corruption agencies, human rights institutions, audit institutions, etc).[15]

Focusing on the issue of partisan capture — a primary concern of the fourth branch literature more generally — Pal highlights how both the unitary and division of powers models offer advantages but also pose particular dilemmas for democratic resilience. The 'unitary model of election administration empowers a national, independent institution as a check on abuses by local political majorities', which scholarship has generally understood to be a greater risk to democracy in federations, '[b]y pooling authority over federal and state/provincial elections into the hands of a single central institution'. However, this pooling of authority may make the possibility of institutional capture easier. As Pal notes, 'Centralization creates fewer pressure points in the system, but increases the possible harm caused by capture of the institution of election administration'.[16]

Design also shapes fourth branch service delivery and responsiveness to central versus sub-national concerns. In his exploration of the arguments for and against the establishment of sub-national human rights institutions in federal systems — that is, the value of adopting what Pal has described as the 'division of powers model' — Andrew Wolman highlights that the establishment of sub-national human rights institutions can make these institutions more proximate and accessible, which in turn will help them to provide better services and be more culturally nuanced.[17] The creation of sub-national human rights institutions can also more robustly influence sub-national government policy and promote sub-national innovation in human rights. On the other hand, he highlights that sub-national human rights institutions can be more financially costly for the state and may be less efficient and less effective if economies of scale lead to deficiencies in human, financial or technical resources. Furthermore, the creation of multiple institutions can lead to undesirable fragmentation across the units of the federation — either normatively as regards to the content of rights or practically as to their implementation — resulting in undesirable inequality or disparities among citizens across the country in their enjoyment of rights.[18]

Indeed, the universalising notions underpinning human rights and the devolutionary logic of federalism sit in tension, as José Woehrling discusses. While the vertical division of governmental power in federalism may work to further the protection of rights and freedoms by providing an additional check on state power and by increasing citizen participation in political affairs,[19] 'the localisation of a substantial amount of political power can also bring negative consequences, such as a greater likelihood of sectoral tyranny through the creation of localised minorities, and the increased burden created by complex multi-level legal systems'.[20] In light of this tension, the challenge for NHRIs is to find a path that ensures respect for human rights but not at the expense of respect for the federal principle.[21]

14 See Olufunto Akinduro, 'Nigeria: Independent National Electoral Commission' in Helena Catt and others (eds), *Electoral Management Design* (Revised Edition, International Institute for Democracy and Electoral Assistance 2014) 131, http://aceproject.org/ace-en/topics/em/annex/electoral-management-case-studies/nigeria-a-need-for-modernization. A similar kind of design is also adopted in Bosnia and Herzegovina and Pakistan, see Iain Payne, 'Federalism and the Fourth Branch: An Introductory Survey' Unpublished Manuscript.

15 As Tarunabh Khaitan notes, exactly what constitutes the fourth branch is dependent on constitutional context. See Khaitan (n 10).

16 Pal (n 14) S39.

17 Wolman (n 1).

18 For his part, Wolman (n 1) concludes that the establishment of sub-national human rights institutions is more desirable where a national institution lacks authority or legitimacy, where sub-national jurisdictions are territorially large (requiring large distances to be covered) and transport is inefficient, and where there are culturally diverse populations that are territorially concentrated.

19 José Woehrling, 'Federalism and the Protection of Rights and Freedoms: Affinities and Antagonism' in Alain-G Gagnon and José Maria Sauca (eds), *Negotiating Diversity: Identity, Pluralism and Democracy* (Brussels, PIE Peter Lang 2014) 106–114.

20 ibid 107.

21 ibid 117.

Building these insights, this note's discussion of the NHRC highlights that under the unitary model, which the NHRC adopts, the structural links established with the federation-level political branches and actors encourage the NHRC to be more responsive to central concerns at the expense of deep engagement with sub-national needs and interests. A state's basic federal dynamics, orientations, and goals are essential when evaluating the role of the fourth branch at the sub-national level, and in the case of Nepal, federalism was introduced with the overt aim of devolving power away from a highly concentrated and centralised state.[22] Thus, rather than acting as a force for greater decentralisation, the unitary model institutional design of the NHRC is tending towards supporting centripetal forces within the Nepali federation and thus may run counter to the aim of federal state restructuring in Nepal.

22 Karki (n 6).

3. Human Rights in Post-conflict Nepal

In Nepal's public discourse, 'human rights' entered with a big bang in the early 1990s, and with the beginning of the Maoist 'People's War' in 1996, the human rights agenda rapidly grew in significance and salience. With the resolution of the Maoist insurgency as a part of the peace settlement of 2006, ensuring that the state better protects and promotes fundamental human rights is a central burden borne by the 2015 Constitution. The Constitution commits itself to civil liberties and human rights,[23] and guarantees 31 fundamental rights and duties of citizens,[24] far more than the 20 rights enumerated in the 2007 Interim Constitution,[25] and the 12 rights contained in the 1990 Constitution.[26] In the 2015 Constitution, there is an emphasis on economic, social and cultural rights, which are essential components of the Constitution's commitment to:

> Protecting and promoting social and cultural solidarity, tolerance and harmony, and unity in diversity… resolving to build an egalitarian society… [ensuring] economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability…[27]

Two legacy issues are important in shaping the Constitution's enlarged concern for these rights. The first is the Nepali state's long history of social, political, cultural and economic exclusion, which is recognised as a root cause of conflict, particularly the decade-long Maoist insurgency.[28] Inequalities in Nepal are structured along ethnic, caste, linguistic and gender lines, with corresponding regional dimensions, and have been reinforced by the state and other institutions. Different ethnic and linguistic groups have also experienced highly divergent developmental outcomes with large disparities in access to land, food, healthcare, education, and other basic needs. Thus, the Human Development Index (HDI) is far better for upper-caste Hindus (Brahmins and Chettris), at 0.538, compared to Janajatis (Indigenous) (0.482), Madhesis (0.454), and Dalits (0.434).[29] Consequently, many groups continue to deplore the denial of equality and dignity to their person and community. Responding to these entrenched inequalities, the Maoist insurgency was a violent expression of dissatisfaction with the state's failure to ensure the equal enjoyment of core economic, social, and cultural rights for its citizens. The incorporation of several of the insurgents' demands in the Comprehensive Peace Accord, the peace

23 Constitution of Nepal 2015, preamble.

24 See ibid pt 3.

25 See Interim Constitution of Nepal 2007, pt 3.

26 See Constitution of the Kingdom of Nepal 1990, arts 11 – 22. On the historical development of constitutionalised human rights in Nepal, see Basant Adhikari, 'Constitutional Recognition of Human Rights: A Reflection on The Constituent Assembly Discourse in Nepal' in Budhi Karki and Rohan Edrisinha (eds), *Participatory Constitution Making in Nepal: Issues of Process and Substance*, vol 2 (United Nations Development Programme, Support to Participatory Constitution Building in Nepal 2014).

27 Constitution of Nepal 2015, preamble.

28 See, eg, Karen Macours, 'Increasing Inequality and Civil Conflict in Nepal' (2011) 63 *Oxford Economic Papers* 1.

29 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).

settlement signed between the government and the Maoist combatants in 2006, and subsequently in the new Constitution of 2015, helped to bring an end to the conflict.

Addressing the economic and social disparities at the core of the conflict has been central to the political agenda of Nepal's post-conflict democratic transition. In addition to agreeing to the 'progressive restructuring of the state by ending... [its] current centralized and unitary form' (the precursor language to the adoption of federalism),[30] the Comprehensive Peace Accord committed both parties 'to create an atmosphere for the Nepali people to enjoy their civil, political, economic, social and cultural rights and ... to creating an atmosphere where such rights are not violated in the future under any condition'.[31] The parties further committed themselves 'to adopt a policy of establishing the rights of all citizens to education, health, housing, employment and food security'.[32] While the entrenchment of these rights in the 2015 Constitution is an important step; the realisation of these rights requires resources and capacity on the part of the state agencies and a credible commitment to deliver them.

The human rights violations perpetrated by the Maoist combatants and the state's security forces during the Maoist insurgency are a second legacy issue that makes the goal of enhanced human rights protection under the 2015 Constitution additionally important. The atrocities committed by both sides of the conflict have been well documented. A report from the UN Office of the High Commissioner for Human Rights, for instance, catalogues the various forms of rights violations that took place.[33] As a result of the conflict, more than 17,000 people were killed, an estimated 100,000 to 150,000 people were internally displaced, and today, 1,300 persons remain 'disappeared'. People's property was seized or destroyed. Targeted gender and sexual violence were common, often perpetrated by state actors; and while more than 2,500 alleged cases of torture have been recorded, most incidents have gone undocumented.[34] Moreover, the guerrilla nature of the insurgency resulted in highly localised conflict dynamics, shaped by local power relations and disputes. Violence, from both sides, was generally calculated and targeted, exacerbating divisions within communities. In several districts across the country, survivors, as well as the relatives of the victims of these atrocities, continue to await justice. In Madi Municipality, Chitwan district, for example, the victims of the Badarmude bus bombing incident have awaited justice for the past 17 years.[35]

By the end of the conflict in 2006, addressing human rights issues assumed a central place in the national discourse on peace and constitution-building, primarily focused on highlighting the limitations of political rights and the need for the inclusion of broader economic, social, and cultural rights into the constitutional framework. Indeed, social movements and activism, especially among the marginalised communities of Janajatis (Indigenous), Madhesis, Dalits, and women focused on lobbying constitution-makers to enshrine the rights of marginalised communities in the 2015 Constitution.[36] Now that the formalisation of those rights in the Constitution has been achieved, the challenge lies in how state institutions — particularly, in the federal context, the three tiers of government — work together with the NHRC to deliver them in practice.

30 Comprehensive Peace Accord, Government of Nepal – Communist Party of Nepal (Maoist), signed on 22 November 2006, art 3.5. It is unclear why federalism was not explicitly mentioned in the Accord. However, as Karki notes, 'there is no prize for guessing that federalism was at the back of their minds'. See Karki (n 6) 8.

31 Comprehensive Peace Accord, Government of Nepal – Communist Party of Nepal (Maoist), signed on 22 November 2006, art 7.1.2.

32 ibid, art 39.

33 United Nations Office of the High Commissioner for Human Rights, 'Nepal Conflict Report' (2012) 14–23.

34 Maria Villellas Ariño, 'Nepal: A Gender View of the Armed Conflict and the Peace Process.' (Barcelona, School for a Culture of Peace, Autonomous University of Barcelona, 2008) Peacebuilding Papers 4.

35 See Ramesh Kumar Paudel, 'Thirteen Years On, Victims of the Badarmude Incident Await Compensation', *The Kathmandu Post* (6 June 2019) <https://kathmandupost.com/national/2019/06/06/thirteen-years-on-victims-of-the-badarmude-incident-await-compensation>.

36 See Niti Foundation, *Why Nepal's 'Other' Commissions Matter for Justice and Inclusion* (2022), <https://nitifoundation.org/why-nepals-other-commissions-matter-for-justice-and-inclusion/>.

4. At the Coalface: A Critical Role for Local Government

In addition to the heightened emphasis on human rights, federal restructuring in Nepal is also understood as a means to end discrimination, mitigate conflict, ensure balanced development across all regions of the country, and increase participation — especially of members of historically marginalised groups — in governance.[37] There is a synergistic relationship in Nepal between the projects of human rights and federalism. If well-calibrated, the two can work in tandem towards a more equal and inclusive state.

Indeed, the importance of the connection between local government and human rights has been increasingly emphasised in the wider literature. For example, the UN Human Rights Advisory Committee has written that while central governments have the primary responsibility for the promotion and protection of human rights, 'local government has a complementary role to play' because in many instances it is local government that can actually 'translate national human rights strategies and policies into practical application'.[38] Indeed, 'Local authorities are close to citizens' everyday needs and they deal with human rights issues on an everyday basis' and thus 'the real effect of human rights is experienced locally'.[39]

What is new for Nepal in the federal context, however, is the extent to which devolution amplifies the opportunity for local governments to pursue policy priorities and agendas according to local needs and the varying dispositions of their elected governments. This indeed is the core logic of establishing federalism in the first place and is the natural outcome of 'self-rule'. Different policy agendas will have different and even conflicting consequences for rights and freedoms, positive or negative.

Thus, in federated Nepal, it is an obligation for all 761 governments — 753 local units, seven provinces, and the centre — to ensure that the rights contained within the Constitution are realised and do not become mere empty promises.[40] Given its dominant revenue and spending capacity and the primacy given to it in the vertical division of powers, the federal government has a principal role in this respect. Under this responsibility, the federal Parliament has enacted 16 distinct pieces of legislation specifically designed to give effect to the Constitution's fundamental rights.[41] The federal Right to Food and Food Sovereignty Act 2018, for example, provides a concrete legal framework to implement constitutional rights

37 Karki (n 6).

38 Human Rights Council Advisory Committee, 'Role of Local Government in the Promotion and Protection of Human Rights' Final report (United Nations General Assembly 2015) 6.

39 ibid 7–8.

40 Constitution of Nepal 2015, art 52.

41 These are the Social Security Act 2018, the Consumer Protection Act 2018, the Public Health Services Act 2018, the Right to Housing Act 2018, the Right to Food and Food Sovereignty Act 2018, the Individual Privacy Act 2018, the Land (Seventh Amendment) Act 2018, the Compulsory and Free Education Act 2018, the Right to Employment Act 2018, the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act 2018, the Rights of Persons with Disabilities (Amendment) Act 2018, the Environment Protection (Amendment) Act 2018, the Crime Victims Protection Act 2018, the Children Act 2018, the Public Security (Third Amendment) Act 2018, and the Right to Safe Maternal and Reproductive Health Act 2018.

relating to food sovereignty, freedom from hunger, and access to clean drinking water.[42] The provinces too, through the exercise of their legislative and executive powers given to them by the Constitution, are required to act.[43] For instance, Gandaki Province has enacted the Right to Information Act 2022 to promote people's right to access information,[44] while Lumbini Province has adopted a Strategy on Ending Child Marriage to protect children's rights and empower them.[45]

Authority, Accessibility, and Advocacy

Local governments must also assume a central role in ensuring that citizens can exercise constitutionally guaranteed rights. Indeed, the Constitution's 'hourglass' federal system elevates local governments to the role of key actors in the management of public services and the protection of rights.[46] Under the federal division of power, local units can autonomously raise revenue and have greatly enhanced expenditure power. They have executive and legislative authority, which is exercised by a directly elected executive that is integrated into the local legislature.[47] Schedule 8 of the 2015 Constitution catalogues 22 functions that form the exclusive jurisdiction of local units, including basic and secondary education, basic health and sanitation, the management of local services such as vitals registration (births, deaths, marriage and migration), local development projects and programs, local economic development, and the protection and development of languages and cultures. In addition, through Schedule 9, they share legislative and executive responsibility for 15 matters with the centre and provinces. Overall, local governments are responsible for around one-quarter of state expenditure, compared to around only 10 per cent for the provinces.[48] Moreover, through their judicial committees, local units are endowed with limited judicial power. Led by the deputy mayor/vice-chairperson, these committees are principally tasked to mediate local-level civil cases, such as land disputes, matrimonial issues, and other similar cases.[49] In summary, in the new federal setup local governments are substantially empowered to support economic, social and cultural rights.

Moreover, as the unit of government that is closest to the people, local government is most salient in the lives of citizens. During the 2017 election campaign, candidates from all parties regularly employed the popular slogan '*singha durbarko adhikar gaun-gaunma*' (the power of Singha Durbar — the seat of government in Kathmandu — in every village), a slogan which emphasised that, under the new federal structure, government services would reach closer to the people, by bringing government from Kathmandu to the villages. High hopes have been placed on local representatives to deliver significant change.[50] For most citizens, local government is the 'front door' when engaging with the state, providing an immediate and accessible space for citizens to seek the fulfilment of their needs, regardless of which

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42 Constitution of Nepal 2015, arts 35(4) and 36. On the Right to Food and Food Sovereignty Act 2018, see Amnesty International, *Right to Food in Nepal: Analysis of the Right to Food and Food Sovereignty Act 2018* (2019) <www.amnesty.org/download/Documents/ASA3101302019ENGLISH.pdf>.

43 Provincial powers are outlined in schedules 6, 7 and 9 of Constitution of Nepal 2015.

44 See 'Gandaki Province passes RTI Bill', Nepal News (August 12 2022) <https://nepalnews.com/s/nation/gandaki-province-passes-rti-bill>.

45 See Lumbini Province Government, *Lumbini Province Ten Year Strategy to End Child Marriage* (2078/79-2088-89) (2021) <https://nepal.unfpa.org/sites/default/files/pub-pdf/lumbini_ending_child_marriage_strategy.pdf>.

46 Iain Payne and Michael G Breen, 'Hourglass Federalism in Nepal: The Role of Local Government in Post-Conflict Constitutions' (2021) 7(2) *Indian Law Review* 177.

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

48 See, eg, the figures for the 2021-22 financial year in Financial Comptroller General Office, *Government of Nepal Consolidated Financial Statement: Fiscal Year 2021/22* (2023) <www.fcgo.gov.np/storage/uploads/publications/20230619133028_CFS%20Report%20For%20Website.pdf>.

49 On judicial committees, see Til Prasad Shrestha and Namit Wagley, Judicial Committees in Nepal: A Closer Look (Nepal Law Society, 2019); International Commission of Jurists 'A Critical Evaluation of the Operation of Nepal's Judicial Committees in Relation to Women's Access to Justice: An Evaluation of a Best Practice System That Acts as a Bridge Between Formal and Traditional Justice Systems (April 2023).

50 The Asia Foundation, 'Diagnostic Study of Local Governance in Federal Nepal 2017' (2018) 3.

state agency or level of government within the federation is formally or actually responsible. Indeed, beyond its formal roles, local government represents the vast social capital of local elected members, which constituents draw on to access a whole array of government services.[51] It is thus unsurprising that an overwhelming majority of respondents in the *Survey of the Nepali People in 2022* identified local government as the arm of the state that is principally responsible for education, healthcare and the maintenance of infrastructure.[52]

Through its constitutionally entrenched powers and proximity to citizens, local governments have the capacity to significantly influence the enjoyment of rights. For example, across the country, local governments have been focused on making laws and implementing programs on issues including child marriage, women's rights, education, and gender-based violence.[53]

Human Rights Violations beyond Local Government

Beyond their formal jurisdiction, through their elected representatives, local governments play an important role in representing, articulating and advocating for community concerns. This is particularly apparent in the context of the violation of rights by higher-order governments within the federation. One key example regards the infraction of customary rights over natural resources, such as access to national parks or usufruct rights.[54] For instance, during consultations with local leaders in 2021, it was reported that in Bagmati Province's Madi Municipality, local Indigenous people were denied their customary rights of access to areas inside the Chitwan National Park and were subject to constant harassment and beatings by National Park personnel. This continues today; Indigenous people in the area have been reportedly stopped from fishing, as well as restricted from collecting wild fruits, vegetables, and grass. Some of the Indigenous community's houses have been demolished by the Nepali Army without due process, while other people have been chased away through the deployment of elephants. In such situations, local government representatives must navigate the tension between supporting local and Indigenous peoples' demands or conforming to federal laws, which impinge on the rights of the people in their constituencies. In Madi, the then mayor and other elected representatives worked with the Indigenous communities to oppose these actions and helped to elevate the issue to the national media, and civil society organisations.[55]

Another category of systemic human rights violations that falls outside of local government's direct jurisdiction is the ill-treatment of women, particularly those accused of witchcraft, and the ill-treatment of Dalits in many different forms.[56] These forms of discrimination and oppression are widespread in society, often normalised to the extent that they are rendered invisible. Reports abound of women alleged to

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51 See, eg, the discussion of earthquake relief grants discussed in Bhisma Bhusal and others, 'Does Revolution Work? Evidence from Nepal's People's War' (Center for Effective Global Action, University of California 2020) Working Paper Series No 116.

52 School of Arts, Kathmandu University, Interdisciplinary Analysts and The Asia Foundation, *A Survey of the Nepali People in 2022: National Brief* (2022) 46, 51-52, 56.

53 Ministry of Federal Affairs and General Administration, Report on the Comparative Study of Laws Issued by the Local Level (2020), available at: https://mofaga.gov.np/news-notice/2093>.

54 These rights are which are acknowledged in international human rights instruments, such as the International Labour Organization Convention 169 on the Rights of Indigenous and Tribal Peoples.

55 See, eg, Dev Kumar Sunuwar, 'Violence Against Chepang Peoples in Nepal Sparks Outrage at National Park Authorities and Conservation Movement', *Cultural Survival* <https://www.culturalsurvival.org/news/violence-against-chepang-peoples-nepal-sparks-outrage-national-park-authorities-and>; 'People of Madi Will Retaliate if CNP Obstructs Housing for Chepang People', *Indigenous Voice* (22 July 2020) <https://english.indigenousvoice.com/news/people-of-madi-will-retaliate-if-cnp-obstructs-housing-for-chepang-people>. While these efforts by local officials are positive in terms of the increased representation of local concerns in the public sphere, human rights abuses by federal park authorities remain widespread across the country. More formal and legal measures are required to address the disjuncture between the top-down agenda of ecological and park conservation, and Indigenous concerns about livelihoods and access to resources.

56 Dalits constitute the lowest social strata in Hindu communities in South Asia, who over the centuries have been denied equal access to resources, dignity, and representation in public roles as well as in the social-cultural milieu.

be witches — most often by their family members or close relatives — and as a result, beaten to death, harassed, and subjected to other forms of mistreatment. The former Mayor of Beni Municipality in Gandaki Province insisted that while local law-making does not consciously promote caste discrimination, they were unable to effectively address this problem due to their limited powers. These cases are complex problems, pertaining to entrenched societal practices which are reproduced despite a general commitment by state actors to address them. It is most clear, however, in these cases that local governments can take the lead in generating public discourse on the importance of securing constitutional rights.

Violations of Rights at the Local Level

While local governments are substantially empowered to support economic, social and cultural rights, there are also numerous instances where local governments themselves are perpetrators of rights violations. For example, most local governments have focused on bringing '*bikas*' ('development', but often narrowly construed as road building) to their communities, with little focus on other pressing issues.[57] While from 2002 onwards, there was provision for local governments to earmark funds for specific marginalised groups — women, Dalits, Janajati, or Madhesi — in their budgets, this practice is no longer being followed in many local municipalities after federalisation.[58] Rather, it is observed that in many places local elected leaders negotiate fund allocations in a mostly wholesale manner, resulting in relatively equal budgets — mostly for infrastructure work — given to each of the wards within the municipality. This conception of development as infrastructure-only sidelines significant social, economic, and cultural issues, which require immediate action in local government jurisdictions.

The prioritisation of infrastructure by local governments also often leads to significant rights violations. Widespread reports suggest that local development work, especially road construction, frequently results in the encroachment of private property without adequate compensation as required by article 25(3) of the Constitution. The narrow and powerful interest in infrastructure has limited understanding of human rights and silences voices speaking out against such injustices. Sometimes, people's homes or land are appropriated. In other cases, while private property is not trampled upon in the strict sense, construction has led to significant negative collateral effects on the welfare and security of vulnerable households and communities. In the case of Dalit households in the Badimalika Municipality in Sudurpashchim Province, for instance, around the year 2021, a new road jeopardised an entire Dalit settlement, when its construction severely increased the community's vulnerability to landslides.

In recent years, the plight of street vendors against the order of Kathmandu Metropolitan City (KMC) has been widely covered by the media. Stating that street vendors and hawkers have been encroaching on footpaths and sidewalks and creating issues for the cleanliness and management of the city, KMC barred them from running their businesses.[59] Police crackdowns and brutality were regularly observed after the rules were introduced.[60] The issuing of eviction notices by KMC to landless squatters residing on the city's river banks highlights another situation in which the human rights of the marginalised are neglected in the name of 'development'.[61]

57 Janak Rai, 'Status and Process of Law-Making in Local Governments: Reflections from Two Provinces' (International Alert and Saferworld, 2020) 14–15.

58 The provision for allocating public funds to marginalised groups was originally outlined in the country's Tenth Plan on Poverty Reduction Strategy Paper in 2002 and subsequently included in the government guidelines on local budget formulation.

59 See, 'Street Vendors Protest in Front of Kathmandu Metropolitan City Office', *The Kathmandu Post* (September 15 2022) <https://kathmandupost.com/national/2022/09/15/street-vendors-protest-in-front-of-kathmandu-metropolitan-city>.

60 See, 'Demonstration Staged Outside KMC Office Against City Police Brutality', *The Kathmandu Post* (July 12 2023 <https://kathmandupost.com/visual-stories/2023/07/12/demonstration-staged-outside-kmc-office-against-city-police-brutality>.

61 See, 'Hundreds of Landless Squatters Protest Against Mayor Shah', *The Himalayan Times* (March 28 2023) <https://thehimalayantimes.com/nepal/hundreds-of-landless-squatters-protest-against-mayor-shah>.

Moreover, many local governments have been alleged to support the persistence of caste-based discrimination. For example, despite a constitutional guarantee in article 24(1) that 'No person shall be subjected to any form of untouchability or discrimination in any private and public place on grounds of his or her origin, caste, tribe, community, profession, occupation or physical condition', several local governments have deployed public funds to build segregated public water taps.[62] Local Dalit communities very much see this as state-sponsored caste discrimination.[63]

At the level of individual locally elected representatives, one of the leaders of the lynching of Nabraj BK and his five friends, a high-profile murder stemming from local opposition to an inter-caste marriage, which rose to national prominence, was a sitting ward chairperson in Chaurjahari Municipality.[64] A similar case of the misuse of power in support of discrimination is that of the former deputy mayor of Mai Municipality who used her political clout to dismiss a case filed by her niece against those who prevented her from attending her own father's funeral rites on the grounds that she was married to a Dalit man.[65]

Other examples could also be presented. In interviews with elected representatives and civil society organisations, interlocutors expressed that local government extraction of riverine materials had made nearby settlements more vulnerable to landslides, floods, and other risks. Such extraction generally most severely affects Dalits and other marginalised groups who live in more disaster-prone areas. Some local human rights defenders accused local government officials of hiding information about the extraction, and their support of unfair settlements with those affected. Furthermore, some local leaders were allegedly reported to be involved in the extra-judicial settlement of rape cases, without proper recourse to justice. Local leaders were also said to lobby against the registration of cases against those accused of inhuman treatment of alleged 'witch' women.

In summary, as the unit of government at the coalface of state-citizen relations in Nepal's federation, local governments are critical for the realisation and resilience of human rights. This role will manifest both through their own policies and priorities and through their collaboration with other institutions of the state, provincial and federal as well as independent institutions like the NHRC. However, as this note will discuss, current NHRC engagement has been unable to capitalise on the full potential of the design of local government under federalism. This note contends that, in order to achieve the realisation and resilience of human rights, the NHRC must engage local governments in a meaningful and structured manner. For this engagement, the NHRC needs a strategy and institutional arrangement for communication, monitoring, awareness-raising, and capacity building with local governments, civil society, political leaders and social activists at the local level. This is essential for promoting a culture of human rights and enhancing capacity and demands for human rights 'from below' in Nepal.

62 Traditional caste-based purity practices have prohibited Dalits from physically accessing water from sources used by higher castes.

63 See, eg, Prakash Singh, 'One Source, Different Taps: Caste-Based Discrimination Still Prevalent', *The Himalayan Times* (24 April 2019) <https://thehimalayantimes.com/nepal/one-source-different-taps-caste-based-discrimination-still-prevalent>; 'Untouchability Thriving in Rural Bajura', *The Himalayan Times* (25 April 2019) <https://thehimalayantimes.com/nepal/untouchability-thriving-in-rural-bajura>; Anushiya Shrestha, Deepa Joshi and Dik Roth, 'The Hydro-Social Dynamics of Exclusion and Water Insecurity of Dalits in Peri-Urban Kathmandu Valley, Nepal: Fluid Yet Unchanging' (2020) 28 *Contemporary South Asia* 320.

64 See, 'Despite Laws in Place, Justice Still Out Of Reach for Dalits in Nepal', *The Kathmandu Post* (October 19 2021) <https://kathmandupost.com/national/2021/10/19/despite-laws-in-place-justice-still-out-of-reach-for-dalits-in-nepal>.

65 ibid.

5. Challenges to Human Rights Implementation at the Local Level

Accountability

While Nepal's local governments possess significant human rights responsibilities and much expectation has been placed on them to deliver, two issues have the potential to undermine their ability to emerge as rights-promoting institutions. The first of these issues concerns governmental accountability for the protection of rights. This stems from the design of local government itself.

Local accountability takes place politically, foremost, through the electoral process. The local legislatures and executives were elected for the first time in 2017 and then in 2022 to serve five-year terms.[66] Under the 2015 Constitution, local governments cannot be disbanded or have their responsibilities assumed by the federation's higher-order governments.[67] Furthermore, the new local governance system introduces a directly-elected executive that sits within the local legislative chamber: there is no mechanism to remove local executives via a vote of no-confidence or motion of impeachment. Opposition parties, however, do sit within the legislature (and, due to their direct election, in many cases also have leadership positions within the executive) and can provide at least a modicum of discursive accountability. However, it is not uncommon for local governments to be dominated by a single political party, and in some localities, there is only one party represented in the entire elected assembly.[68]

The basic design of local government thus muddles the separation of powers and the role of the political opposition — both of which have the potential to undermine accountability for rights implementation. To begin with, the Constitution, as well as the Local Government Operations Act of 2017 (the 'LGOA'), the federal umbrella legislation that expands upon the Constitution to fill out the legal framework for local governments, do not conceive of an opposition party in the local government, primarily because most members of the executive are elected directly by the people. Representatives from different political parties can become part of the same executive, even without having been in any electoral alliance or forming any coalition for local government. The Constitution envisions local government as being driven by a more consensual decision-making process, with little partisanship.

To add to this muddling, certain institutional structures have been established to provide some degree of accountability over executive action. The LGOA requires local legislatures to establish at least three assembly committees: an audit committee, a legislative committee, and a good governance committee.[69]

66 Constitution of Nepal 2015, art 225. On the 2017 local elections, see Democracy Resource Centre, 'Nepal's Local Elections 2017: Final Observation Report' (2017), www.democracyresource.org/reports/nepals-local-elections-2017-final-observation-report/>.

67 Compare the situation for provincial governments and assemblies, which may be suspended or dissolved and brought under temporary federal rule through a presidential order, made on the ratification of two-thirds of the federal Parliament. See Constitution of Nepal 2015, art 232.

68 This is the case, for example, in Bhaktapur Metropolitan City. See also The Asia Foundation (n 57) 22.

69 Local Government Operations Act 2017, s 22.

The audit committees monitor the local government's financial accounts, while the legislative committees draft or review proposed legislation. The good governance committees are designed to promote good governance, transparency, and accountability within local governments by, for example, measuring and publishing social and economic progress for constituents.[70] Establishing other special rights-specific accountability mechanisms, such as the creation of specialised human rights committees, is also possible under the Act;[71] however, to our knowledge, no local units have taken this path to date. These committees, internal to local government, can be complemented by local coordination committees, as provisioned under the Government of Nepal's Fifth National Action Plan on Human Rights (2020-2025), especially as a way of increasing the voice of civil society.[72] However, to date, only a few local governments have formed these committees.

Moreover, while judicial committees are established in every local unit, they are not designed to be a local judicial restraint on the local executive power. Rather, they are envisioned as the first line of justice forming a link between citizens and other institutions within the justice sector and bringing justice administration closer to individual communities through locally driven processes. Significant ambiguities as regards to their operation remain, however, which has led to confusion in the application of the law and significant inconsistencies among the roles and work performed.[73]

Depending upon local political setups and partisan representation structures, the effectiveness of these institutions is highly variable on a case-by-case basis. Many of the local government representatives consulted during this study highlighted that the only effective institution to hold the executive to account was the audit committee; the others were less effective in practice. Moreover, in many places, even the LGOA-mandated committees are inactive or are not functioning adequately, especially in the smaller rural municipalities,[74] resulting in 'a severe lack of legislative oversight bodies in local governments.'[75]

Finally, even while some oppositional structures may develop, it is likely that due to quotidian relationships between different local leaders, the notions of 'separation of powers' and 'checks and balance' will not be as effective in the local context. Accordingly, the virtues of the separation of power, checks and balances, as well as the politics of opposition or dissent need to be tested against the way the members of the local executive and legislative play their roles in representing citizen concerns and raising voice around policies and the use of executive power. Thus, local governments need to be tested partly on the side of politics, involving the processes of deliberation and debate on citizen's concerns and policies to respond to them and partly on the structural or institutional set-up that set out the roles and authorities of different actors and the relations between them.

70 Ministry of Federal Affairs and Local Development, *Good Governance Promotion Strategy and Action Plan: Sample (Draft)* (2017) <https://mofald.gov.np/sites/default/files/News_Notices/Sushasan.PDF>.

71 Local Government Operations Act 2017, s 22.

72 The coordination committees are designed to comprise at least three members from civil society who work alongside locally elected representatives.

73 See, eg, Til Prasad Shrestha and Namit Wagley, Judicial Committees in Nepal: A Closer Look (Nepal Law Society, 2019); International Commission of Jurists 'A Critical Evaluation of the Operation of Nepal's Judicial Committees in Relation to Women's Access to Justice: An Evaluation of a Best Practice System That Acts as a Bridge Between Formal and Traditional Justice Systems (April 2023).

74 Speaking of the legislative committees, for example, Janak Rai observes that 'many of the committee members are unaware of and are not involved in the law-making process. In practice, only a few male elected members participate in the drafting of legislation'. See Rai (n 58).

75 Bhim Bhurtel, 'Fiscal Federalism: An Analysis of Its Initial Implementation in Nepal' (International Alert and Saferworld 2020) No 6 18.

Capacity

A second issue that threatens to undermine local government's emergence as rights-protecting institutions is capacity. The shift to federalism — especially of the three-tiered nature adopted by Nepal — is an enormous and challenging task. While significant strides have been made since 2015, there remains much to be done. In particular, administrative capacity continues to be an issue that undermines the ability of local governments to fulfil their constitutional mandates. Many local governments still do not have a full corps of administrative staff appointed, including in key positions such as legal drafting. This has proved to be one of the principal reasons preventing local governments from enacting legislation. On top of this, very few of the elected officials have had previous experience engaging in human rights-related work or advocacy. Thus, the awareness of the need for rights compliance within local government remains very low.

A common refrain among local civil society leaders is that local governments are insufficiently aware of their human rights responsibilities and, where there is a general understanding of the need to protect rights, knowledge of how to do so is limited. This sentiment is also generally echoed by local elected representatives who concede that they require more training and accompaniment through capacity development as they seek to govern and make decisions. Furthermore, an even more glaring gap is the limited understanding of the decisions on 'development work' and local human rights concerns, as local government leaders consulted for this study interpreted their mandate and preference for (infrastructure) development, without consideration to rights concerns. Similarly, there exists a high degree of confusion and lack of understanding around how federal laws and institutions can impact the rights of local and Indigenous populations, especially as local leaders find themselves required to navigate between more conservative federal laws on one hand and the rights and interests of their constituencies on the other.

6. The NHRC: Guaranteeing Rights Across All Levels of the Federation

Ensuring there is accountability for the implementation of human rights by local government is not solely in the hands of local actors. Despite local government's entrenched political autonomy through the federal system, local government's accountability for the protection and promotion of rights extends beyond mechanisms housed at the local level and includes provincial and federal institutions, as well as the judiciary and the independent national constitutional bodies. Of particular interest here is the NHRC.

The NHRC was established in 2000, under the National Human Rights Commission Act 1997 (later replaced by the National Human Rights Commission Act 2012). It was elevated to constitutional status in the 2007 Interim Constitution,[76] and this was continued in the 2015 Constitution.[77] The Commission's mandate is the protection, promotion and respect of human rights.[78] It does this through investigating rights abuses and making recommendations to the government for redressal. In addition, it can, of its own accord, initiate judicial proceedings against rights violators. It also has a monitoring function, reviewing laws for their human rights compatibility and consulting with the executive.[79] Due to its national mandate — the Commission's jurisdiction is not confined merely to federal matters — the NHRC has an important role to play in protecting rights at the local level.

Accompanying Local Government

There are several ways that the NHRC can support the protection of rights by local government. For one, there is an obvious need for local governments to receive external support to build their capacity to protect rights. As mentioned above, this is something that is welcomed by local elected representatives. However, local governments are suspicious of assistance given by the higher-order governments, particularly the centre, whose assistance is viewed as undermining their political independence and promoting a recentralising political agenda. Local government leaders complain that the federal government's bureaucrats issue directives in a manner they used to do during the pre-2015 pre-federal period. They consider these top-down communications as violations of their autonomy and think that, rather than helping the capacity of local government, the federal government is intent on encroaching on their political-administrative autonomy. Local representatives thus resisted the development of model laws for local government by the Ministry of Federal Affairs and General Administration. In this context, as a body with national reach but with independence from the central executive, the NHRC can provide supportive accompaniment to local governments through the process of institution-building and the

76 Interim Constitution of Nepal 2007, pt 15.
77 Constitution of Nepal 2015, pt 25.
78 ibid, art 249.
79 ibid.

enactment and implementation of local legislative instruments. Given the above difficulties, the NHRC requires a nuanced approach to aiding local governments.

Closing the Accountability Gap

A second way that the NHRC can support human rights at the local level is by helping to close the accountability gap, which, as discussed above, persists in local government. Civil society organisations (CSOs) shoulder a significant burden for providing human rights accountability at the local level in Nepal — and, indeed, there is an acknowledgement from both the NHRC and governments of the important contribution that civil society and human rights defenders make. However, CSOs have neither the scale nor the institutional legitimacy that the NHRC enjoys as a constitutional body. Moreover, human rights CSOs also face capacity constraints, unless they are supported by donors, the government, or the NHRC. Sustaining a vibrant civil society to champion human rights remains a challenge, especially in a highly donor-dependent context like Nepal. The NHRC's presence at the local level is thus critical.

To support independent accountability for human rights realisation, the NHRC might focus on converging its efforts with the work of the local coordination committees formed under the National Action Plan on Human Rights. As mentioned above, many local governments are still yet to form these committees and supporting their activation could be a priority focus for the NHRC's accompaniment. Beyond these committees, the Commission can provide broader support to local government accountability institutions. Indeed, interviews with local stakeholders revealed a desire for this kind of engagement. As one of the former mayors suggested:

> We have a committee [in the local government] to formulate laws. But the committee does not have subject matter expertise, as local representatives are not legal experts, and hence we cannot prepare laws according to the needs of our times. The National Human Rights Commission can support us in making such committees competent and help the development of people- and human rights-friendly laws.

The ways in which human rights institutions can provide accountability are well discussed in scholarly literature. Christina Murray, for example, discusses in the South African context how the country's independent institutions can provide a check on government power 'by providing a legitimate and authoritative account of government's record, which can be used by citizens and Parliament in scrutinising government's performance'.[80] Drawing on Linda Reif's framework, Murray argues that these institutions provide accountability through 'answerability' (demanding information and reasons) rather than 'enforceability' (punishing negative behaviours) and promote governmental compliance through 'cooperative control' — that is, being 'facilitative and proactive, using advice and persuasion, wherein the actors confer and dialogue to try to obtain the desired result and change behaviour'.[81] Through the collection, publication and deployment of robust evidence at the local level, the NHRC can provide discursive accountability to local governments.

80 Murray (n 10) 131.
81 ibid 131–132.

7. Challenges to NHRC Engagement at the Local Level

While external, independent accountability and support for local government are necessary, to date, the NHRC has been unable to provide these. Indeed, aside from a few very limited interactions and discussion programs, the NHRC has had limited substantive engagement at the local level.[82] The Commission normally visits localities in response to the complaints they receive or as part of a *suo moto* case.[83] They are known to occasionally visit local governments, as for some years the NHRC has been engaged in efforts to support human rights-friendly local governance, but these efforts are episodic and event-oriented. This lack of sustained systemic engagement has many, compounding reasons.

Physical Presence

The NHRC's lack of physical presence in local areas is the biggest hindrance. While for the monitoring of violations, NHRC staff from the regional offices do liaise with and consult local government officials and other local actors, they primarily assume the role of 'informants' rather than key stakeholders. In the consultations held for this study, local representatives also indicated that NHRC engagement was very limited in their local government units. NHRC visits to these sites are not regular, and commissioners tend to only visit for larger high-profile issues that receive national media or public attention and work their way into the national political-legal discourse. In many local units, especially in remote areas, years pass between NHRC visits. And this is not only the case for those areas that are distant from NHRC offices. During the 2021 consultations with local government leaders in Bajura and Myagdi districts, it was noted that the NHRC's last visit occurred two years prior. Similarly, during consultations in Khotang district conducted in the same year, staff at the NHRC's 'outreach office' in Diktel (then, one of only two such offices in the country) mentioned that it had been over five years since an NHRC commissioner last visited the office.

This limited local engagement, especially in its early years, quite clearly, is in part a result of the physical structure of the Commission, which for a long time even after the federal structure was introduced in the country remained Kathmandu-centric. After the founding of its central office in Lalitpur in the Kathmandu Valley in 2000, beginning in late 2004 the NHRC began establishing regional offices, now eight in total across the country. The decision to build an office was initially based on the severity of the Maoist insurgency in the early 2000s, with areas that experienced a greater intensity of armed conflict receiving priority in NHRC office establishment. This was due to the desired goal of making the registration of complaints by victims easier, and monitoring and investigation more effective and efficient. Later, additional offices were established so that there was one in each of the erstwhile five Development Regions.

82 See, eg, National Human Rights Commission of Nepal, *Annual Report: 2020* (2021) <www.nhrcnepal.org/nhrc_new/doc/newsletter/Annual%20Report%20FY%202019-20_compressed.pdf>.

83 Initiated under National Human Rights Commission Act 2012, s 12.

In 2018, the NHRC began the process of restructuring to align its administrative structure with the new federal configuration — essentially aligning its regional offices with the new seven provinces. However, approval from the Ministry of Finance, which was required before the restructuring could proceed, was not provided until July 2022.[84] This delay from the Ministry led to the NHRC operating primarily through its centralised structure.

Currently, when a human rights abuse is reported, the central office of the NHRC directly contacts the relevant municipality or rural municipality. Moreover, incident-specific communications from the NHRC to local governments, urging action or accountability for human rights abuses, are centralised, and provincial offices do not have formal authority to engage on these critical matters. This results in accessibility issues for citizens, and despite the creation of a 'regional' office in each of the seven provinces, the NHRC's engagement at the sub-national level remains limited.

Reactive Engagement

As a result of this centralisation, the NHRC's local engagement is usually reactive, and highly dependent on victims lodging complaints. While complaints can be lodged electronically, by phone, or through mobile applications, local civil societies highlight that this often does not generate a response. Thus, victims often feel compelled to travel to the nearest NHRC office to lodge an in-person petition, which is seen as a much more reliable way to ensure that the NHRC commences an investigation. This issue was raised during research in 2021 in Navrajpur Rural Municipality in Madhesh Province, where the husband of a woman accused of witchcraft (and subsequently abused by groups within the community) was compelled to travel to the NHRC office in Janakpur (at least a whole day round trip) to ensure that the case elicited a response. Compared to many other local units in the province, Navrajpur is relatively proximate to an NHRC office. More broadly, due to the 'normalisation' of rights violations in several localities, many victims or survivors do not know that it is the NHRC that is charged with helping to address their concerns. Given this, public education about the existence and role of NHRC is essential.

Constrained Resources

Constrained financial and human resources is another factor shaping the Commission's limited engagement at the sub-national level. While the NHRC enjoys considerably more resources than the newly established identity-based 'Other' commissions, which also have a rights-promoting function,[85] its budget remains meagre. This is particularly the case when compared to the budgets of the other, legacy constitutional bodies. The NHRC's budget is around one-third (33.15 per cent) that of the Public Service Commission, almost half (44.55 per cent) of that of the Auditor General, and around one-sixth (18.57 per cent) of that enjoyed by the Commission for the Investigation of Abuse of Authority.[86] A more important point about the NHRC's resources is, however, that the Commission requires authorisation from the federal Ministry of Finance if it is to expand offices or incur any significant expenditure.[87] Accordingly, while it is autonomous constitutionally, the Commission's operations, including its engagement with civil society and local governments, are circumscribed by directives of the Ministry of Finance, and by other legislation, including those related to public procurement.[88]

84 See National Human Rights Commission Act 2012, s 26.

85 On these, see Niti Foundation (n 36).

86 See, eg, the figures for the 2023-24 financial year in Ministry of Finance, *Government of Nepal Budget Speech: Fiscal Year 2023/24* (2023) <www.mof.gov.np/site/publication-detail/3249>.

87 See National Human Rights Commission Act, ss 26 and 32.

88 Public procurement law is attracted if NHRC engages an NGO or other actors to provide services. The law is considered cumbersome and inflexible and has been the subject of review.

Historical Nationalisation of the Rights Agenda

These are not the only issues of concern. Another important issue is that the NHRC is much more sensitive to federal concerns than to those at the sub-national level. As already noted, the Commission's engagement in local and sub-national issues is heavily shaped by the extent to which these become salient in national political-legal discourse. This is a natural product of the NHRC's centralised place within Nepal's governance imagination. For one, the struggles for human rights from which the Commission emerged — the fight against the increasingly authoritarian Shah monarchy, and the Maoist insurgency — were of national concern. While the Maoist conflict triggered the initial decentralisation of the NHRC, compelling it to establish regional offices to investigate conflict rights violations, the work of these offices was designed to collect information that would feed into what was a national political issue. As such, decentralisation was not instituted primarily to deal with the diversity of issues present at the local and regional levels.

However, once the Maoist conflict ended following the Comprehensive Peace Accord in 2006, the NHRC's momentum slowed. It faced hurdles in convincing the Ministry of Finance for more resources, especially as government officials view the Commission as a body opposed to and critical of the government. This attitude reflects an insufficient appreciation on the part of government officials for the rationale of having the NHRC as a constitutionally enshrined guarantor of human rights. For them, 'human rights' are principally an externally imposed agenda to which some degree of grudging compliance is required to satisfy donor countries. The human rights governance agenda is thus more oriented toward international human rights agencies than the agendas and experiences of 'ordinary' people, and the rights discourse tends to make more reference to international commitments than to how these translate to improve people's lives and livelihoods.[89]

Relational and Institutional Links to Centralised Political Culture

As already noted, the Commission's physical location — in the Kathmandu Valley — has meant that its chief decision-makers (the five appointed commissioners and the senior bureaucrats) are influenced by the experiences and concerns of a Kathmandu-centric political discourse. Relational and institutional links exist between its commissioners, civil servants, federal politicians, and bureaucrats, as they all inhabit a shared Kathmandu-centric political culture. More than this, through the appointment, financing and accountability process, structural links exist between federation institutions and the Commission. The commissioners are appointed by the President upon the recommendation of the Constitutional Council, a multi-partisan and inter-institutional body, all the members of which are drawn from federation-level institutions.[90] The influence of federation-level institutions on appointments was particularly heightened during the appointment, in 2021, of 52 commissioners to constitutional bodies, including all five members of the NHRC. Due to the dissolution of the House of Representatives at the time, none of these appointments received parliamentary hearings, as the Constitution requires.[91] The bypassing of the parliamentary hearing process not only undermined the integrity of the process, it also excluded any opportunity for representatives from within the House to voice sub-national interests through the appointment process. This further centralised the appointment process around a few federation-level leaders. Indeed, this entire affair almost led to the NHRC having its 'A' status downgraded by the Global Alliance of National Human Rights Institutions (GANHRI).[92]

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89 See, eg, Simon Robins, 'Transitional Justice as an Elite Discourse: Human Rights Practice Where the Global Meets the Local in Post-Conflict Nepal 44(1) *Critical Asian Studies* (2012) 3.

90 Constitution of Nepal 2015, art 248. On the Constitutional Council and the appointments process generally, see Niti Foundations forthcoming policy brief, published as part of the series on Strengthening Constitutionalism in Nepal.

91 See, 'Supreme Court overturns Oli's House dissolution', *The Kathmandu Post* (February 23 2021) <https://kathmandupost.com/national/2021/02/23/supreme-court-overturns-oli-s-house-dissolution>.

92 See, 'The Impending NHRC Downgrade', *The Kathmandu Post* (August 20 2023) <https://kathmandupost.com/national/2023/08/20/the-impending-nhrc-downgrade>.

Furthermore, like the other constitutional bodies, the NHRC is reliant on the federal executive branch (via the Ministry of Finance) to approve its annual budget, as well as for any major organisational changes (e.g. the opening of new offices),[93] and the enactment of its delegated legislation.[94] The four years of delay in approval of the NHRC's revised organisational structure is illustrative of the dependence on the central executive for its basic functioning. The restructuring of the NHRC entails costs such as for staff and infrastructure and hence it requires the federal government's approval via the Ministry of Finance.

Limited Structural Links to Sub-national Governments

In contrast, as stated before, there are limited structural links between the NHRC and provincial or local governments. Indeed, there is only a vague constitutional connection between the NHRC and provincial and local government. While article 294(1) of the Constitution requires all constitutional bodies, including the NHRC, to submit their annual reports to the President, which must subsequently be discussed in the federal parliament, the Constitution does not compel the submission of reports to the provinces and is silent as regards to local government. Article 294(3) states that '...a constitutional body *may* prepare a separate report in relation to the functioning of each province and submit it to the Chief of Province.'[95] This lack of a firm requirement to discuss findings at the sub-national level has led to the inaction of the constitutional bodies, including the NHRC, towards preparing and disseminating province- and local-level-specific reports.[96]

In light of these challenges, it should not be surprising that the NHRC is more responsive to federal concerns, and while the NHRC is intended to be a national body that services all three levels of the federation, in actuality it acts and serves much more like a federal/central body.

93 National Human Rights Commission Act 2012, s 26.

94 ibid, s 32.

95 Constitution of Nepal 2015, art 294 (emphasis added).

96 For further discussion on the constitutional body reporting, especially in relation to the provinces, see Niti Foundation's forthcoming legal assessment report, published as part of the series on Strengthening Constitutionalism in Nepal.

8. Conclusion

This note has explored the salience of human rights in the context of the newly federated Nepali state. The 2015 Constitution makes clear commitments to protect and promote human rights and to devolve state authority via a new federal system. As this note has highlighted, if well-calibrated, the projects of human rights and federalism can work in tandem towards a more equal and inclusive state. It is critical, however, that attention be given to ensure that human rights and federalism in practice are complementary and reinforcing and not placed in opposition. This is essential for the ongoing credibility and resilience of the 2015 Constitution.

With a focus on Nepal's National Human Rights Commission, this note has highlighted the essential links that must be built and maintained between the NHRC and the different units of the federation, in particular the constitutionally entrenched local governments, not least because it is through these that citizens principally engage with the state. Nepal's local governments possess significant human rights responsibilities and much expectation has been placed on them to deliver issues related to accountability.

As the constitutional body mandated to guarantee the respect, protection, promotion, and effective enforcement of human rights, this note has emphasised the accompanying role that the NHRC can play in supporting human rights at the local level. Indeed, the NHRC's mandate is national, extending across all tiers of the new federation, all 761 governments. However, to date, the NHRC has struggled to assert itself to provide the independent accountability and supportive accompaniment required at the local level. While the NHRC has begun to restructure itself to calibrate to the new federal context, it has not yet adapted to engage differently and independently with the three tiers of the state. Institutionally, from the NHRC's perspective, this is principally an issue of constrained resources. However, this note has argued that this is also linked to the historical nationalisation of the human rights agenda as well as the NHRC's unitary design, in particular its lack of physical presence in local areas and its primary structural and relational linkages with the federal political branches, which instil a centripetal inertia into the Commission's operations.

As the unit of government at the coalface of state-citizen relations in Nepal's federation, local governments have a unique opportunity to strengthen human rights for citizens, serving as institutions to connect human rights discourse and standards to the local social-cultural milieu and the processes of decision-making. Harnessing this potential will necessarily be a lengthy process that will require sustained engagement among local leaders, human rights defenders, and the NHRC. This necessitates the NHRC to prioritise reform that enables it to accompany sub-national governments as autonomous actors. It is insufficient for the Commission's vision to be limited to federal/central affairs. It must reach down to also be an effective guarantor at the provincial and local levels of the Nepali state.

9. Recommendations

Building on the findings from the report, this note makes several recommendations to strengthen the links between the National Human Rights Commission and local governments to enable accompaniment and support accountability and capacity for human rights protection and promotion at the coalface of the Nepali state:

For the National Human Rights Commission

Adopt a partnership approach to accompany local government. The NHRC should seek to reframe local governments as partners in the human rights agenda rather than just sources of information. A partnership approach should seek to accompany and empower local stakeholders, including local governments and local civil society, to take ownership of human rights implementation, leveraging the unique insights and presence of local governments at the coalface of the Nepali state to more effectively address human rights issues and ensure that local contexts and needs are adequately considered.

Embrace structural reform that supports decentralisation of decision-making and engagement with sub-national governments. The NHRC remains more responsive to federal concerns, and working against the centripetal inertia that continues to influence the Commission requires the prioritisation of institutional mechanisms that enable the Commission to respond to the different priorities and needs that manifest at the provincial and local levels. Empowerment of the NHRC's provincial offices to handle communications and establish consistent dialogue with local governments is essential. This will facilitate more responsive and tailored responses to human rights challenges, foster stronger partnerships with local authorities, and enhance the overall effectiveness of human rights efforts at the grassroots level.

Establish a department or division within the Commission to lead engagement with local-level stakeholders, particularly local government. The NHRC currently does not have a department or division dedicated to engagement with local government within its organisational structure and there is no established system for regular coordination and communication with local government bodies. The establishment of a dedicated local government division, which should be nested within the Commission's devolved provincial office architecture, will ensure that local-level human rights issues receive the necessary and sustained organisational attention they deserve. Empowering provincial offices to engage directly with local government authorities would provide a structured approach to focusing on the development and implementation of NHRC strategies, action plans, and reporting specific to and on local governments, while also supporting the decentralisation of the Commission. Local government divisions, housed at the provincial level, could act as hubs for coordinating communication, training, support, and resources tailored to the unique challenges faced by local governments, as well as support building stronger partnerships with local stakeholders, including local coordination committees formed under the Fifth National Action Plan on Human Rights as well as other mechanisms development by local governments.

Develop specific reports focused on local governments in addition to its annual national report. Currently, the NHRC's annual report, which provides information on the state of human rights across the entire country and is submitted to the federal government, primarily addresses national-level human rights issues. The development of dedicated local government reports, for example undertaken at a provincial level, would provide a detailed assessment of human rights conditions and challenges at the grassroots level, highlighting specific issues faced by local communities. This kind of targeted reporting would offer more robust evidence and provide actionable insights and recommendations tailored to the unique contexts of local government, enabling human rights concerns to be identified, analysed and addressed more effectively. Additionally, such reports would foster greater accountability and transparency, giving communities a clearer understanding of their rights and the specific actions their local governments are taking to protect and promote these rights, thus encouraging local governments to take proactive measures in upholding human rights. Strategic collaboration with civil society can support the NHRC to collect and publish data, lessening the resource and capacity burden on the Commission.

Enhance the capacity of local government representatives to engage with the NHRC. Capacity building will require the NHRC to take a collaborative approach built on civil society partnerships. It will also require a focus on training, including the development of modules and curricula specifically tailored for local government representatives and officials, focusing on raising awareness about human rights issues and equipping local stakeholders with the knowledge and skills necessary to uphold human rights principles in their decision-making processes and practices. In addition, capacity building should focus on establishing mentoring and other relational support systems to provide ongoing support and accompaniment to local representatives and officials.

Support independent accountability for human rights realisation at the local level. The NHRC might focus on converging its efforts with the work of the local coordination committees formed under the Fifth National Action Plan on Human Rights. As mentioned above, many local governments are still yet to form these committees and supporting their activation could be a priority focus for the NHRC's accompaniment. Beyond these committees, the Commission can focus on providing broader support to local government accountability institutions, according to the monitoring mechanisms that local governments choose to adopt.

Strengthen local government law-making capacity. Foundationally, the NHRC should support understanding of the local government mandates defined by schedules 8 and 9 of the Constitution. Importantly, the constitutional devolution of power to the local level does not only provide rights to local government; the Constitution's schedules demark the duties that local governments owe their constituents. Local law-making capacity can be further enhanced through the provision of human rights-based expertise, provided both through specialized training programs as well as the development of resources such as draft model legislation, rules, manuals, and guides tailored for local government contexts.

Establish a mechanism to support the dissemination of the NHRC's annual reports to local legislatures. In accordance with article 294 of the 2015 Constitution, the NHRC submits its annual report to the President, after which it is tabled in the federal parliament. More recently, the NHRC has begun submitting reports to the chiefs of provinces. The NHRC, however, currently does not report to local governments. The establishment of a mechanism to share the NHRC's annual report (or relevant sections of their annual report, or a report specifically for local governments) with local legislatures will help ensure a local government focus within the Commission's reporting. Moreover, the dissemination of the Commission's reports can facilitate the integration of its findings into local policy-making processes, promote transparency, and strengthen local accountability mechanisms as well as supporting the implementation of a more cohesive national human rights framework.

For Local Governments

Establish robust human rights monitoring mechanisms to ensure effective coordination with the NHRC and address human rights issues at the grassroots level. As mentioned above, few local governments have formed mechanisms to support accountability for human rights, and supporting the activation of these mechanisms should be a priority. There are several different monitoring mechanisms that local governments could choose to adopt. Firstly, the formation of local coordination committees, as mandated by the Fifth National Action Plan on Human Rights, as mechanisms to facilitate structured communication and collaboration between the local government, civil society, and the NHRC. Further, utilising section 22 of the Local Government Operations Act 2017, local governments can establish human rights committees to create their own dedicated accountability mechanisms. Moreover, collaboration with the NHRC can also be supported through the appointment of designated local government human rights officers. Where local governments are constrained by resources, several neighbouring local governments could pool resources to appoint a common human rights officer, as authorised by section 26(o) of the Local Government Operations Act, which enables local units to engage in partnership or the joint management of services, as a way of ensuring that human rights monitoring and coordination remain effective and efficient.[97]

Develop local human rights action plans. By crafting tailored action plans, local governments can establish more responsive and effective frameworks for protecting and promoting human rights, addressing issues specific to their communities. These plans should be developed in collaboration with local civil society and human rights defenders and aim to be comprehensive and inclusive. They should cover identifying and prioritizing local human rights issues, setting clear objectives and targets, and outlining specific actions and strategies to achieve these goals. Importantly, they should not only guide local government actions but also emphasize the integration of human rights principles in the operations of judicial committees. The plans should incorporate mechanisms for monitoring and evaluating progress, ensuring accountability, and gathering feedback from the community and the NHRC. Local coordination or human rights committees can support these processes effectively.

Enact legislation and rules to facilitate the discussion of NHRC reports within local legislatures. In addition to promoting transparency and fostering accountability, by institutionalising the review and discussion of NHRC reports, local governments can create a structured platform to address human rights concerns, enabling the integration of human rights priorities into local policies and actions and ensuring a cohesive and coordinated effort to uphold human rights across all levels of government.

Utilise the platforms of the Municipal Association of Nepal and the National Association of Rural Municipalities in Nepal. The Municipal Association of Nepal (MuAN) and the National Association of Rural Municipalities in Nepal (NARMIN) serve as vital intermediaries, aggregators and advocates, facilitating communication and collaboration among local governments and between local governments and other stakeholders. Their platform can be utilised for sharing best practices, disseminating information, and coordinating efforts to address human rights issues at the local level, supporting an integrated and cohesive national approach to human rights while also ensuring local government autonomy and fidelity to local contexts. In particular, MuAN and NARMIN should initiate regular interaction with the provincial offices of the NHRC via their provincial committees.

For the Federal Executive and Legislature

Support the financial and functional autonomy of the NHRC. Financial and functional autonomy enable

97 See Niti Foundation's forthcoming exploratory study on joint service arrangements among local governments, published as part of the series on Strengthening Constitutionalism in Nepal. As the study shows, to date, joint service arrangements have focused on the fire services, the management of riverbed materials, the construction of roads, and market access for agricultural products, among other issues. While there has not been a focus on human rights, there is no constitutional impediment to local government collaboration in this domain.

the Commission to set its priorities, plan and execute activities efficiently, respond to emerging human rights issues, and sustain long-term projects. This is essential to ensure that the Commission can operate independently without undue external interference and safeguard its impartiality and credibility as well as public trust. Importantly, the allocation of sufficient resources is imperative to support the NHRC's engagement with local governments. As has already been raised by the NHRC, the National Human Rights Commission Act 2012 and enabling regulations should be amended to enable the Commission to receive funds and infrastructure from sources other than the federal government, including sub-national governments, diversifying its financial base and enhancing its operational capacity, and enabling unutilised operational budget to be utilised for programmatic costs, which will enable the NHRC to promptly address emerging and strategic human rights issues and priorities.[98]

Amend the National Human Rights Commission Act 2012 to align it with federal principles outlined in the 2015 Constitution. Amendment must be carried out in consultation with the NHRC and other concerned stakeholders, including local and provincial governments. Specifically, section 4, which outlines the Commission's function, duties and powers, is silent as regards subnational governments, leaving them to be caught under the catchall, 'public institutions'. This ought to be remedied with a clear reference to local and provincial governments. Section 4(c), in particular, empowers the Commission to 'monitor the implementation status of the prevailing laws regarding human rights and recommend to the Government of Nepal for effective implementation thereof'. To explicitly confirm the NHRC's authority to monitor and make recommendations to sub-national governments, this section should be amended to include specific reference to local and provincial governments. The amended function, duties and powers could include specific duties for provincial offices to establish them as a principal liaison with local government. Moreover, while the NHRC has its offices in all the provinces, the Act refers to these as 'regional offices'. Section 26 should be amended to expressly reference the need for sub-national offices to be established as *provincial offices* in each province with a mandate for coordination and collaboration with local governments within the province, bridging the gap between the NHRC at the centre and local governments. Finally, the Act should be amended, either in section 27 or through the insertion of a new section, to safeguard the Commission's financial autonomy to allocate resources to its provincial offices to ensure that they are provided budgetary and in-kind support required to perform their roles.

Amend the Local Government Operations Act 2017 to support human rights protection and promotion in local government and facilitate links between local governments and the NHRC. Amendment must be carried out in consultation with local governments, the NHRC, and other concerned stakeholders. For one, the Act should be amended to explicitly note local governments' role in supporting human rights, as expressly stated in article 56(6) of the 2015 Constitution. Moreover, the Act can be amended to support the establishment of human rights monitoring and reporting mechanisms, as described above. Finally, the Act can be amended to mandate regular and ongoing human rights training for local government officials, conducted in partnership with the NHRC.

For Civil Society

Institutionalise relationships and networks with a focus on enhancing civil society organisation presence at the local level. Civil society enjoys myriad relationships across all levels of the state and plays an important role in connecting communities and the NHRC. It, too, can play an important linking role between local government and the NHRC, facilitating communication, coordination, and joint initiatives aimed at promoting and protecting human rights. Special focus should be given to forging connections with local governments at the grassroots level while also fostering collaboration with the NHRC at the provincial and national levels. To do this, civil society organisations should focus on decentralising decision-making

98 See, eg, National Human Rights Commission of Nepal, *Annual Report (Summary) FY 2021-22* (2022) <https://www.nhrcnepal.org/uploads/publication/Annual_Report_Summary_For_Website_Final.pdf>, 70.

processes and enhancing their presence at the local level. By establishing local branches or chapters and recruiting grassroots activists, these organisations will be better equipped to understand local dynamics and engage effectively with local governments and communities to address human rights issues locally.

Collaborate on policy localisation. Civil society can play a crucial role in supporting the implementation of initiatives at the local level, such as the Fifth National Action Plan on Human Rights, thereby contributing to the effective promotion and protection of human rights in communities across the country. Collaboration with organisations such as NARMIN and MuAN has the potential to scale efforts to localise national human rights policies and action plans.

Conduct training and education programs. Civil society can collaborate with the NHRC to develop curricula and deliver training specifically tailored for local government representatives and officials. These programs should focus on raising awareness about human rights issues and equipping local stakeholders with the knowledge and skills necessary to uphold human rights principles in their decision-making processes and practices.

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