



Nepal Policy Forum

Summary Report of the Webinar
on

**Federal Governance: People First and the Rule of
Law**

(Organized by Nepal Policy Institute with Association
of Nepalese in Americas)

4 July 2021

A webinar entitled “Federal Governance: People First and the Rule of Law” was organized on 4 July 2021 by Nepal Policy Institute (NPI) in partnership with the Association of Nepalese in Americas (ANA). The webinar’s objective was to highlight the strengths of, and challenges inherent in, the newly established form of federal governance in Nepal.

Following a welcome note from Mr. Chooda Mani Khanal (General Secretary of ANA), Mr. Khagendra Dhakal (Chairperson of NPI) set the context of the webinar. Mr. Dhakal highlighted the recent changes in governance and cited examples of both good and bad practices that have ensued in the new federal governance of Nepal.

There were seven speakers, including the principal presenter (Dr. Gambhir Bhatta, Member, NPI) and the chief guest (Dr. Usha Jha, Member, National Planning Commission of Nepal) at the webinar.

The topics discussed covered a wide array of issues and challenges of the governance system in Nepal particularly in the newly federalized context.

Principal Presenter: Gambhir Bhatta, PhD (Former Chief of Governance Thematic Group, Asian Development Bank, Manila, Philippines; and Member, NPI)

Dr. Bhatta delved into the subject matter of the webinar by talking primarily of the ‘4 Fs’ of federalism as a way to bring forth some main points for discussion. He highlighted the following:

- ‘4-Fs’ include: Forms, Functions, Functionaries, and Funds aspects of federal governance.
- Importance of robust public institutions in building a stronger democracy, and inequitable access to assets and the pervasive barriers to inclusion as some of the challenges to democratic governance.
- Key bases of federalism in Nepal include: principle of subsidiarity, cooperative federalism, residual rights, and hierarchy of rights.
- The key challenges embedded in the current political culture include: clientelism, political party leadership, and political collusion at the local level impacting policy contestation.
- The notion of centralised federalism and dispute over share of resources as central challenges to the implementation of federalism in Nepal.
- Further lack of functional clarities as well as lack of adequate framework legislation are some of the major hurdles in the institutionalization of federalism in Nepal.
- The provincial administrations have not, in practice, gone through the required complete transformation to a federal form of governance; staff management policies that still pre-date the 2015 Constitution are symptomatic of this.
- In identifying major fiscal challenges, he explained that a high level of vertical fiscal imbalance is a dire situation for local governments. This means they are fully reliant on resources from the center, which either perpetuates their subordination or presents the central government with a moral hazard problem when it comes to enhancing the resourcing of the local governments in a scenario where fiscal indiscipline is likely to be high.
- He ended by pointing out the inherent fallacy of ‘good governance’ which imposes constraints on governments that need to grow institutions first and make incremental improvements. His conclusion was that, indeed, “institution building is generally an

incremental process, which hopefully will cumulatively, and over the long run, lead to the impetus for further reforms.”

Panelist: Man Bahadur Biswokarma, PhD, Former Secretary, Government of Nepal

- Helped contextualise the concept of federal governance vis-a-vis constitutionalism.
- Contradictions inherent in the background of the process of adoption of federalism and people’s aspirations.
- The aspects/components that shaped people’s aspirations:
 1. Devolution of power which would make governance effective;
 2. Service delivery enhancements;
 3. Self-rule and shared rule;
 4. Social inclusion and diversity management; managing plurality was also crucial, and it was felt that only federalization could manage such diversity;
 5. Fiscal autonomy for equitable development;
 6. Conflict management;
 7. Increased responsiveness to the public; and
 8. Balanced development.
- Local governments have been the primary interface for service delivery to the people, which has brought governance closer to them.
- Examples of policy innovations include, eg, Rampur municipality in Palpa District, and Resunga municipality in Gulmi District have come up with a single education system (private schools do not feature).
- In Barbardiya municipality of Bardiya District, they have legitimized the practice of Badghar – a customary socio-economic and political system practiced in the Tharu community, assigning it a legal status.
- Development functions at the local level have been taken forward which were stalled for a long time.
- People’s perception of Federalism:
 1. Over-politicization and de-politicization of issues simultaneously, thus causing conflict over prioritization of issues.
 2. Degrading political culture.
 3. Heavily layered structures that make federalism financially burdensome and hinder its productivity. This was a flaw overlooked during the design of the federal structure in Nepal.
 4. Creation of multiple centres in the name of reaching out to people which have rather served as centres for corruption, disparity, and discrimination.
 5. Therefore, more scope for elite capture of resources at the local level.
 6. Procurement capacity as well as spending capacities of the local as well as central governments have not increased.
 7. Dual administration systems creating confusion and conflict in the governance system.
 8. Overlap in constitutional provisions.
 9. Centralised mindset.

Panelist: Anga Raj Timilsina, Ph.D., Global Programme Advisor on Anti-corruption, UNDP Global Service Centre, Singapore

Dr. Timilsina started by asking a crucial question: Has the governance and anti-corruption environment improved or worsened after the introduction of Federalism in Nepal? He answered this question by highlighting the following:

- Various governance efficiency and effectiveness indicators have shown very little improvement since 1996 and, in fact, they show a downward progression in the last three years.
- Transparency International's corruption perception index shows that Nepal has improved 6 points since 2012. However, it does not mean much as this improvement is considered very low.
- Other indicators still show a very high level of prevalence of corruption in the country.
- The Center for Investigation of Abuse of Authority reported that municipalities and rural municipalities have been found to be second most corrupt entities after the land revenue offices in Nepal.
- What are the major challenges in strengthening governance and anti-corruption and what can be done to address them?
 1. Technical fixes will not help without a deeper economic and political analysis.
 2. Bringing more legislations, finding ways to make inter-governmental coordination more effective, building capacity and providing monitoring support at provincial and local level, increasing stewardship of the centre, addressing the issue of horizontal and vertical fiscal deficits, evidence-based planning and changing role of National Planning Commission.
 3. Governance building is an incremental process, however politics cannot be separated from governance.
 4. Federalism came into effect in Nepal overnight without any mechanism for transition management which makes Nepal's federation process very vulnerable.
- The success of federalism will depend on the major political parties remaining committed towards devolution of power in the next decade. In case they are not, a question arises if the majority of people will be able to defend federalism.
- '*Dalal punjibaadi*' – an interlocked corruption system including politicians, businesses, elite capture of resources and decision-making, and culture of clientelism that poses a major threat to federalism.
- There is a need for radical reform of the political, administrative, and economic institutions of Nepal as well as strengthening overall integrity including in the political, judicial, and bureaucratic domains.
- Lack of internal democracy in political parties and a centralized mindset are overarching challenges to the process of federating.
- Lack of social integrity as well as collective loss of morality and normalization of corruption are also key challenges.

Panelist: Dr. Pragati Ghimire, Member, Association of Nepalese in Americas, Medical and Public Health Expert/SME

- Focused on the COVID-19 pandemic and the government's response to it;
- Such response shows the level and extent of good governance;
- Lack of accountability in leadership;
- Weak institutions and the lack of collaboration among them which was apparent in the vaccine procurement process, which in itself was not done appropriately;
- An aid securing driven leadership is leading to lack of accountability;
- Institutional corruption leading to scarcity of vaccines;
- Medical professionals not getting the required support at provincial level;

- The infrastructure needed is not available; and
- There has tended to be false information from the leaders themselves.

Panelist: Ms. Basundhara Bhattarai, Ph.D., Senior Gender and Environment Specialist
Institute for Study and Development Worldwide (IFSD), Sydney, Australia

- Nepal is a highly vulnerable to natural disasters and calamities;
- Therefore, governance vis-à-vis managing disasters becomes very important.
- The communities within Nepal also possess varying capacities to cope with disasters;
- Decentralization and power sharing must be designed with central attention on environmental risks; and within this, the needs of the most vulnerable population from such environmental risks need to be kept in mind, especially at the local level;
- Power and resources as well as their distribution are inherently interlinked with disaster management;
- Disaggregating the vulnerable and the question of intersectionality emerges as an important consideration; boxing all vulnerable groups into one category, or treating them as a homogenous category, further complicates the situation especially during disasters;
- Local government representatives are facing difficult times figuring out their roles;
- Agricultural innovations are not suitable to the farmers' needs at the grassroots level; and holistic thinking is lacking in terms of addressing their agricultural needs; and
- Therefore, state planning needs to take these gaps into consideration.

Panelist: Ms. Sharu Joshi, Board Member, Nepal Policy Institute; and Founder Member, Inter-Generational Feminist Forum

Ms Joshi shared her views on two thematic areas: Gender Equality, and Migration Governance. She started by posing a pertinent question: Is it a federalism of convenience? She highlighted the challenges underlying federal governance in Nepal, and raised the following points:

- The constitution was adopted in haste;
- Federalism is rife with nepotism;
- Women's mobility has been restricted since two decades in different ways; partial restrictions and total bans driven by protectionist attitudes towards women further rooted in a patriarchal mindset;
- The country aims to achieve middle income status by 2030; however, challenges include:
 - Women, ethnic communities, most vulnerable, and marginalized sections of the population have not received adequate attention and efforts have not been made for their socio-economic upliftment; this will be a challenge in moving towards achieving middle-income status;
 - To provide suggestions to the current government is very difficult unless one is affiliated with a particular political party;
- A positive development is the increased political representation of women (particularly Dalit women);
- A key lesson learnt is that in order to institutionalise the federal architecture, strength and weakness mapping of local governments, and their knowledge and capacity building gaps need to be addressed adequately;

- While the number of women representatives have increased remarkably, they have not been able to break the culture of silence, and there are high chances they may have also been co-opted into the culture of corruption;
- The understanding of development is not centered on human development but rather channelled towards only infrastructure development, followed by conflict of interest;
- There appears to be convenience-driven development;
- Within inclusion, intersectional marginalization has not been adequately addressed. However, there will be an opportunity in the 2021 Census which will ask 80 questions to all seven hundred thousand households. This will be a baseline data for future work.
 - As migration is key issue for Nepal, there is need to focus on Gender Responsive Migration Governance as the Local Governance Act 2017 has given a mandate to the local governments for data management, employment generation, and socio-economic re-integration;
 - Remittance has brought about inclusion and has given voice to migrant workers who cover about 56% of households;
 - There is a trend of denial in accepting migration, but remittances have sustained the economy;
 - A patriarchal mindset is the reason for imposing bans on women's mobility/migration, which is now being adopted at the local level as well;
 - Returnees' skills need to be mobilized to address the myriad issues evident in society.

Panelist: Usha Jha, PhD, Member of National Planning Commission, Guest Speaker of the event.

Highlighting the role of the National Planning Commission, Dr Jha shared the following: NPC is an apex planning body under the Chairmanship of Rt. Hon. Prime Minister and its major roles are:

- Evidence based policy formulation in coordination with Ministries;
- Vertical and horizontal coordination among different ministries and local governments and non-government stakeholders;
- Research / Development;
- Monitoring and Evaluation.

The current NPC team started working with these mandates and first defined *Samridha Nepal and Sukhi Nepali* (Prosperous Nepal and Happy Nepali) – the overall goal of Nepal's New Constitution.

NPC has always kept 'people first' in all of its work and during the journey of defining the key phrase ('Prosperous Nepal and Happy Nepali') wide consultations were held at local, provincial, and federal level. More than 5,000 people participated during the formulation of the 15th five-year plan (2019-2023).

The 15th Plan has set ten goals (four for prosperity and six for happiness) and are as follows:

Prosperity:

- High and equitable income,
- Development and utilization of full human capital potential,
- Accessible modern infrastructure and interconnectivity, and

- High and sustainable production and productivity.

Happiness

- Well-being and decent living,
- Safe civilized and just society,
- Health and balanced environment,
- Good governance,
- Comprehensive democracy, and
- National unity, and security.

NPC works with government ministries to support them in planning and budgeting and also continuously guiding them to establish the federal system of allocations in all of their implementation plans.

All ministries have developed their plans based on the indicators defined in 15th five-year plan and Sustainable Development Goals plan for one year, five year, and 25 years.

Federalism in itself is a very healthy system for ensuring "people first" and the Constitution, 15th five-year plan, and other policies have all tried to incorporate it. The challenging part is its proper understanding and putting in place a meaningful implementation structure. It is yet very much in its infant stage, and it would not be justified to judge its success or failure at this stage.

Our expensive election systems, bureaucratic centralised mindsets, and lack of adequate capacity at the local and the provincial level are the limiting factors to achieving development.

Local governments have part ownership in successful federalism, and we do see development at local level, as per the voice of local people. But corruption is getting institutionalized at all levels, and social infrastructure is yet not a priority. Hence, this is a good time for all of us to identify the challenges and find ways address them properly.

In nutshell, there is evidence of "federal governance and people first" being prioritized in all the policy and implementation plans. If only the country were able to take care of the rule of law and the expensive structures, it would be able to demonstrate the proper results of federalism.

Comments and Remarks by Principal Presenter and the Panelists during the Questions & Answers Session.

Question: Relevance of Federalism in Nepal based on the questions asked by the participants.

Dr Usha Jha: My vote would always be to strengthen Federalism as it has increased people's access to resources. The federal structure has also given people the space to voice their concerns and needs through their own mechanisms. We need to work harder to institutionalize it, as there are lots of challenges, especially the centralised mind-set and corruption getting institutionalized at all levels (the latter is not because of the adoption federalism per se but because we are yet to manage it effectively).

Ms. Sharu Joshi: In a departure from an extremely centralized system, federalism has proven to be an asset to start localized initiatives of tourism and agriculture. We should not go back but rather work on strengthening the federal structure further.

Dr. Basundhara Bhattarai: A new governance structure has been adopted but there is a persistent gap in bringing people's voice to the fore. If we can ensure that people's voices are adequately heard there is no need to go back from the federal system.

Dr. Anga Raj Timilsina: We do not control whether we stay in the federal system or revert back. The root cause is in the leadership. The main concern is political party functioning including, political party financing, and costly electoral processes that yield corruption. Social accountability and social contract have become buzzwords but civil society is weak in Nepal. At the local level there is a lot of experience, but the problem is at the provincial level; therefore, we need to re-think this as provincial level is replicating what has been done wrong at the centre for long. We need to start thinking about what role we can play to change the political culture in the country. Small fixes will not work in Nepal.

Dr. Pragati Ghimire: Lack of accountability towards the constituents. Political literacy is lacking among the people which leads them to electing wrong leaders.

Dr. Gambhir Bhatta: There is no going back. In terms of policy-making it is the prerogative of the government in power to set the direction for the country. So, the question is not about changing the political system but about changing the political parties and the way they operate. We need to make political parties think differently and that is what is going to get us where the country wants to be in the future. It will take time but if the way political parties think and behave changes, this will take the country forward in the right direction.

The webinar ended with a vote of thanks by Dr. Ambika Adhikari (ANA Board of Trustees). Ms. Nalini Subba Chhetri (NPI Board Member) concluded the event.

(The webinar was moderated, and webinar proceedings compiled, by Ms. Kalpana Jha, NPI Board Member)