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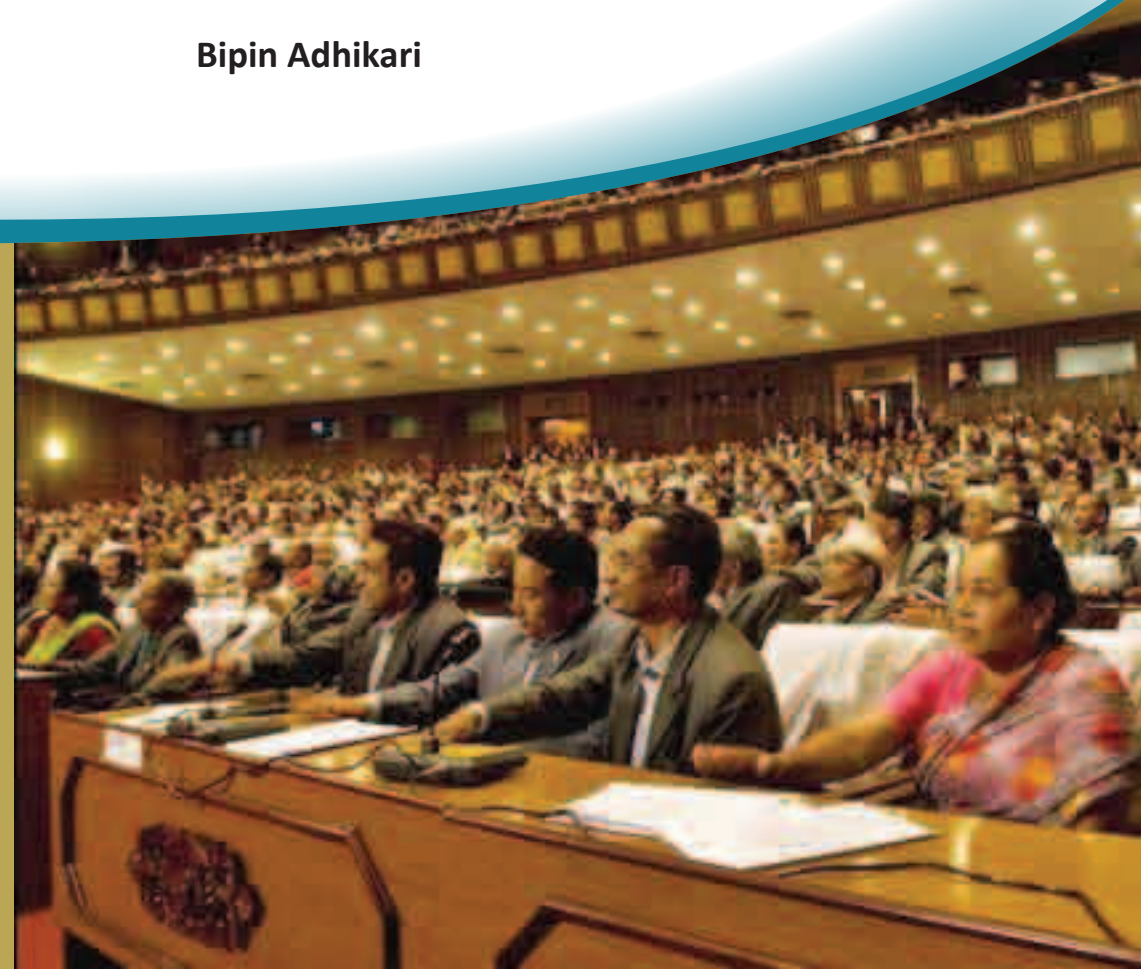
Framework for Transition to Federalism in Nepal: Lessons from Comparative Transition Experiences

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Introduction

Nepal is historically a unitary state,¹ but since May 28, 2008, it has been defined as a federal country by its amended Interim Constitution.

The Interim Constitution also provides for a sovereign Constituent Assembly to represent the nation and draft a new, full-fledged democratic constitution for Nepal. It also sets out the fundamental law of the land for the interim period, until a new constitution has been drafted and promulgated.

This shift from a unitary state to a federal polity is intended to bring an end to historical discrimination in the country based on class, caste, language, gender, culture, religion and region. A federal Nepal is supposed to eliminate the centralized and unitary form of the state, and make the country's political system inclusive of all sexes, castes, ethnic groups and regions. It is expected to ensure a significant devolution of decision-making powers from the centre to provincial and local levels of government.

The Constituent Assembly (CA) of Nepal, elected in April 2008, is working on a new constitution for the country. It is the responsibility of the CA to work out the necessary constitutional provisions for the implementation of federal arrangements as pledged by the Interim Constitution. The deadline for the work of the Constituent Assembly, originally set for two years, was extended for an additional year and has now been extended again for another three months. This time is to be spent on completing the peace process, especially the issue of management of the combatants and their rehabilitation, and preparing the first integrated draft of the new constitution. Another three-month extension is being contemplated to take the draft constitution to the people and pass the revised draft through the constitutional process laid down by Article 70 of the Interim Constitution. If the CA's work is completed on time, Nepal will have a new constitution by November 28, 2011, ending the present interim arrangements.

This discussion paper reviews proposed federal arrangements in Nepal, describes the current status of constitutional politics, and suggests a framework for the transition to federalism. Moving to a federal regime from a unitary state will require continued efforts and critical interventions over an extended period of time. Insights are drawn from the transitional experiences of three federal countries – Spain, South Africa and Ethiopia² – which provide varied perspectives, more or less successful, on the transition process. These insights are helpful not only in terms of their content, but also in terms of process-related issues.

1. For the constitutional history of Nepal up to 1998, see Surya Dhungel, Bipin Adhikari, B.P. Bhandari and Chris Murgatroyd, *Commentary on the Nepalese Constitution*, 14-47 (Kathmandu, DeLF, 1998).

2. Three main articles, each on one of these countries, are used here as points of reference for comparisons. They were contributed by Carles Viver Pi-Sunyer (Spain), Derek Powell (South Africa) and Hashim Mohammed Tewfik (Ethiopia).

Like Nepal, these countries have experienced crucial political changes during the last two decades, and federalization has been one of the main agents of those changes. Spain, a southwestern European country, is a democracy organized in the form of a parliamentary government under a constitutional monarchy. Its constitution was enacted after a referendum on December 6, 1978. South Africa is a democratic country, at the southern tip of Africa, which has overcome apartheid and has institutionalized a diversity of cultures and languages within the framework of its constitutional democracy. The current Constitution of South Africa was adopted by the country's Constitutional Assembly on October 11, 1996, after certification by the Constitutional Court. It came into effect on February 4, 1997. Land-locked Ethiopia is an ancient country in eastern Africa with people from different tribes and communities. It enacted a new constitution on December 8, 1994, which is said to be an ethnocentric constitution. Each of these countries has had a unique experience of federal transition.

The objective of this paper is to provide a basis for further discussion on how Nepal should plan its transition and accomplish the constitutionally proclaimed goal of establishing a federal country, based on informed procedures.

This suggests the need for a framework – based on a critical understanding of the requirements and the process of change.³ This need must be responded to by allowing for a smooth and peaceful process ensuring stability and integrity of the country; a rapid but sustainable start-up of the implementation process; and outlining what preparatory work could be started before the promulgation of the constitution. The issues dealt with here are mostly related to the “transition” to federalism and the devolution of power. Broader security, political, social and economic issues are generally not considered in detail.

3. Some issues of transition in this regard have been dealt with by research supported by UNDP's *Support to Participatory Constitution Building in Nepal* project. See *The Management of Transition Towards a Federal System in Nepal - A Concept Paper* (May 2010, UNDP) (Mimeograph).

1. Historical Background

An ancient country, Nepal does not have any direct historical or modern links with the comparative countries examined here – Spain, South Africa and Ethiopia. It is a multi-ethnic, multilingual, and multi-religious nation of about 30 million people. With an area of 147,181 square kilometers (56,827 square miles), consisting of mountain, hill and terai ecological regions, Nepal is the 93rd largest country by land mass with the 41st largest population.⁴

The modern history of Nepal starts in 1950-51, when King Tribhuvan ended the century-old system of Rana hereditary prime ministers, with the help of revolutionary democratic forces, and promised a new democratic constitution drafted by the people themselves. This was followed by the implementation of a cabinet system of government, and the promulgation of a new constitution for the interim period. At that time, there was neither any demand for nor a commitment to the federalization of the country. The state began to evolve into a unitary state – by and large, along democratic parameters.

Between 1951 and 1958, under democratic leadership, the country was restructured in terms of the new requirements for administration, development and control, rather than self-government or autonomy. To start, Nepal was divided into 35 districts for the purpose of administrative reorganization. In 1956, the home administration was restructured, which led to the division of the country into seven regions, 32 districts and 74 sub-districts.

The political process was not smooth in the 1950s. After a long period of instability, a new democratic parliamentary constitution was enacted in 1959, not through an elected constituent assembly as originally planned, but by proclamation of the King. General elections for the parliament were also held to form a government under the 1959 constitution. However, persistent disputes between the cabinet and King Mahendra led the King to dismiss the Nepali Congress government in December 1960 and imprison most of the party's leaders, including the Prime Minister.

Subsequently, the constitution of 1959 and the democratic framework it created were abolished in late December 1960. After the takeover of power by the King in 1961, the country was again restructured into 14 zones and 75 districts. This division was carried out after a geographical survey. A new constitution, popularly known as the *Panchayat* constitution, was then promulgated in 1962. The new constitution affected freedom of speech, expression and assembly, and excluded any role for parties in the political system. A systematic process of decentralization started in the country within these political limitations. A decade later in 1973, the nation was further restructured into four Development Regions: Eastern Development Region (EDR), Central Development Region (CDR), Western Development Region (WDR) and Far-Western Development Region (FWDR). These regions

4. For quick references on Nepal, see *Nepal: CIA - The World Factbook*, at <https://www.cia.gov/library/publications/the-world-factbook/geos/np.html>.

were comprised of the zones and districts, with the goal of attaining balanced and integrated development. The zones and districts, created primarily on administrative and economic grounds, are still more or less intact today.

After a 1980 referendum approved a modified version of the *Panchayat* system, elections were held in 1981 for the national legislature. The four development regions were changed into five, with the Far West being split into the Mid-Western and Far-Western Regions. Each zone consisted of four to eight districts – 16 in the Himalayan region, 39 in the hills and 20 in the terai. The political environment was further liberalized by way of constitutional amendment before the elections. This process of democratization, although in a restrained form, created further pressure on the system to open up to political parties. The enactment of the Decentralization Act of 1982 was another milestone. The Act was premised on the “delegation” model of decentralization, whereby the centre was supposed to delegate some of its powers to the local level.

Following a mass movement for restoration of parliamentary democracy, a new constitution based on the parliamentary system was promulgated in 1990. It established multi-party democracy within the framework of a constitutional monarchy and parliamentary system of government. More concrete measures were taken between 1991 and 2005 to strengthen decentralized governance. Three separate Acts – the District Development Committee (DDC) Act, the Village Development Committee (VDC) Act and the Municipality Act – were enacted in 1992, providing a local self-government regime in the country. Based on the recommendation of the High Level Decentralization Coordination Committee, chaired by the Prime Minister in 1996, the Local Self-Governance Act (LSGA) was enacted in 1999. It statutorily recognized the role of local self-governance and devolution to make local bodies more responsive and accountable to their voters.

This background shows that the process of decentralization, aimed at improving governance and increasing people’s participation, has been active for a long time in Nepal. Some progress was made, but all these exercises were accomplished within the framework of a unitary state, with or without an enabling democratic environment. Although local bodies were entrusted with more power related to development planning and resource mobilization, they were not provided with full autonomy within their respective jurisdictions. Local-level entities still had to rely on the centre for the required resources to implement programs. The ensuing system left little space for ethno-politics, recognition of the rights of indigenous people and minorities, equality of language, culture and religion, and the right to self-determination. These issues have entered political discourse only recently.

The 1990 Constitution strongly backed democratic institutions and also created an environment for ethno-politics, although it did not address many relevant issues. After about six years, an insurgency, led by the then Communist Party of Nepal (Maoist), broke out, challenging the political system with a

40-point demand. This led to a 10-year civil war between the insurgents and government forces that claimed about 13,000 lives and internally displaced from 100,000 to 150,000 people. The objectives of the LSGA were put on the back burner in the absence of locally elected bodies for a long period. The conflict resulted in the dissolution of cabinet and parliament, and the assumption of absolute power by the King. This armed conflict officially ended with the signing of the Comprehensive Peace Agreement (CPA) between the Government of Nepal and the Maoists on November 21, 2006.

The CPA outlined the terms of peace and political reform. Although it did not specifically refer to the “federalization” of Nepal, it articulated the commitment of pursuing a democratic and progressive restructuring of the state. This brought the Maoists and the major political parties together, and replaced the 1990 Constitution with the Interim Constitution of 2007, setting the stage for further democratic changes. The institution of monarchy was abolished, and federalization became one of the most significant items on the agenda of change in Nepal. The Madhesi movement, which broke out after the promulgation of the 2007 Interim Constitution, brought forward the demand for federalism more intensely by pressing for self- and shared-rule and proportional participation in state organs.

To varying degrees, all major parties in Nepal have committed to the objective of converting the country into a federal state as a political system based on equality and empowerment. Besides the activists in all cross-sections of Nepalese communities, there are two strong groups of stakeholders in the federalization process: the *janjati* indigenous people and the Madhesis. There is also some support for federalization among Dalits, women, and people of the least developed or neglected areas. The first two groups are no doubt on the frontline of federalism advocacy. However, there is also an anti-federal lobby in Nepal. The fear that the country will break up is cited as the main reason for this position. The status of this lobby does not hold much significance in the CA, but it does have some public support.

2. Interim Constitution of 2007: Departure Point for a Federal Nepal

The Interim Constitution of Nepal is a comprehensive document. Its preamble captures the essence of the change and highlights the objective of the transitional arrangements. It emphasizes the following objectives of the transition:

- Recognition of “the mandate of the Nepalese people expressed, from time to time, since before 1951 until now, through historical struggles and people’s movements for democracy, peace and progress.”
- Determination to proceed with “the progressive restructuring of the state in order to resolve the existing problems of the country relating to class, caste, region and gender.”
- “Full commitment to democratic norms and values, including a system of competitive multi-party democratic rule, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, independence of the judiciary and concepts of the rule of law.”
- Guarantee of “the basic rights of the Nepalese people to frame a constitution for themselves and to participate in the free and impartial election of the Constituent Assembly in a fear-free environment.”

This Interim Constitution will be in force until a new constitution is framed by the Constituent Assembly. It provides for everything a constitution in Nepal has traditionally dealt with (for example, fundamental rights of the people, directive principles and policies of the state, organization of executive power, legislature, judiciary, legislative and financial procedures, political parties, independent constitutional bodies, citizenship provisions, emergency powers, etc.). These provisions are mostly based on existing traditions of Nepal, but have been reformulated so as to take into consideration current requirements.

Above all, this transitional document declares Nepal to be a federal country, but does not kick-start the process of federalization. This process has been left to the new constitution. Instead, what it has done is enable the government to create a high-level commission to make recommendations for the restructuring of the state.⁵ Similarly, the Interim Constitution highlights the importance of local self-government units, but does not make it obligatory for these bodies to hold elections, or make them powerful in the interim period. Instead, it enables the government to form district, municipal and village level interim bodies with the participation and consensus of political parties active at the local level, and to operate until elections to the local bodies are held.⁶ In fact, the Interim Constitution has not been intended to provide for any preparatory work, other than holding elections to the Constituent Assembly, and minimum procedures for passage and adoption of the new constitution.

5. Article 138 (2).

6. Article 139 (2).

3. The Constitution-Making Process from 2008-2011: Achievements and Shortcomings

3.1 Thematic Work Pursued Toward the New Constitution

The Constituent Assembly of Nepal was established after a nationwide election held in April 2008 and started its official business on May 28, 2008. The Assembly has 601 members: 240 elected through a first-past-the-post election system, 335 through the proportional system and 26 nominated by the government. The house is multilingual, multi-ethnic, multi-religious and multicultural. It is an inclusive body in terms of representation of political parties, geographic regions, castes, gender and other variables. The Assembly declared the abolition of the monarchy at its first meeting, and also declared Nepal to be a federal democratic republic.

There are 11 thematic committees in the Constituent Assembly (CA).⁷ Each of these committees is assigned to work on specific constitutional areas allotted to them.⁸ All of the thematic committees established within the Constituent Assembly have already submitted their reports to the full house.

Four of the 11 Committees that will have an important contribution to the concept and form of federalism to be adopted in Nepal are: The Committee on the Determination of the Form of Government (CDFG); the Committee on State Restructuring and Division of State Powers (CSRDSP); the Committee on Natural Resources, Economic Powers and Allocation of Revenues (CNREPAR); and the Committee on Judicial System (CJS).

There are peripheral inputs on the proposed federal system from some of the other thematic committees as well. The Interim Constitution, as stated above, has provided for a high-level commission to make recommendations on the restructuring of the state to the Constituent Assembly. It is supposed to help the CA take final decisions related to the restructuring of the state and the consequent federal system. Although the commission has not yet been constituted, the work on federalism, as with all other constitutional deliberations, is ongoing.

All concept papers and preliminary drafts finalized by the thematic committees have to be cleared by the plenary meetings of the Constituent Assembly, with or without additional inputs, suggestions or direction, before they are sent to the Constitutional Committee. The CA is being assisted by an *ad hoc* committee to identify gaps and overlaps in the committee-level concept papers and preliminary drafts. All of these reports and the proposals they contain (except for that of CNREPAR) are still being debated, both within and outside the CA.

7. For an accurate political statement in this regard, one can see the Preamble and Part 4 of the Interim Constitution (dealing with obligations of the state, directive principles and policies).

8. Rule 66, *Constituent Assembly Rules*, 2008.

The CDFG report does not take any majority position, but rather proposes three different forms of government (presidential, parliamentary and mixed), one of which the Constituent Assembly will have to decide upon, with or without revision. There is extreme division of opinion about what is good for Nepal in the changed context. The CSRDSP proposal on federalization has been cleared by a majority of the Committee's members. Those who disagreed with the majority propositions on some issues proposed their alternative formulations as dissenting opinions. Similarly, the CJS proposal on the form of the judicial system to be adopted in the federal state is a majority proposition. The only proposal which was unanimously adopted at the committee level was the CNREPAR proposal. It also passed through the Constituent Assembly unanimously, and is being considered by the Constitutional Committee, which is the principal constitution drafting body of the CA.

To ensure that the inherent right of the people to be governed by their own "consent" is recognized, the approach that has been followed in the ongoing drafting work is participatory. This offers the people an opportunity to make choices on issues such as a form of government, methods of participation and decision-making, and the management of public institutions.

The Constitutional Committee is the principal drafting committee of the Constituent Assembly, which is responsible for reviewing and compiling all the reports submitted by the thematic committees and cleared by the full house into a viable constitutional draft.

The constitution drafting process is currently in its last stage of development. The original two-year term was extended by one year, and then for three more months. An additional three months is supposed to be added at the end of the current extension period to present the first integrated draft of the constitution for public debate, then final adoption. The Interim Constitution provides for the new constitution to be adopted and promulgated by November 28, 2011.

While work on the federalization of Nepal is ongoing, a national consensus on the features of federalism, or at least two-thirds support for the proposed arrangements in the Constituent Assembly, is yet to be achieved.

It is not difficult, however, to trace out a blueprint of the proposed federal framework and supporting arrangements, based on the committee-level concept papers and preliminary constitutional drafts. They are in any case the basis for moving on from the current situation. They all show there is no exclusive foreign model that has been followed in regard to the development of a federalization plan. The arrangements are more or less typically Nepalese. The thinking behind these arrangements has been mostly political.

3.1.1 Form of Government

As noted briefly above, it must be emphasized that as of today there is no majority position on what system of government the new constitution will be based on. In a committee of 43 members, 18 have opted for a "consociational" presidential system and multi-member direct proportional electoral system

based on block vote. This system provides for a directly elected president to exercise executive power with his ministers, who are members of the unicameral legislature and are elected from their constituencies based on direct vote. They are appointed to the cabinet by the president on the advice of the party they belong to, and are mainly removed through the same process. The number of ministers that a party can send to the presidential cabinet is based on the party strength in the legislature. This form of government, as proposed by the Unified Communist Party of Nepal (Maoist) – UCPN (Maoist),⁹ is in fact semi-presidential, and has been criticized by many as undemocratic and based on totalitarian patterns. It does not in practice provide space for political opposition in the parliament.

Another 16 members of the CDFG Committee prefer a continuation of the parliamentary form of government, with a constitutional president and an executive prime minister. They proposed a bicameral parliament with a mixed-member electoral system as a major point of departure. Proposed by the Nepali Congress, among others, this revised model limits the prime ministerial power of dissolution of the House of Representatives and sets out preconditions for organizing a vote of non-confidence against the government. This revised framework does not allow a vote of non-confidence against the prime minister in the lower house of the legislature, unless the motion also specifies the name of the person who is to be prime minister if the motion succeeds. The report of the Committee on Determination of the Form of the Legislative Body (CDFLB) has also proposed a legislature of parliamentary form by majority. This form of government, which in some ways has tried to improve on Nepal's earlier parliamentary model, is not acceptable to the UCPN (Maoist), which sees it as an unstable and dysfunctional system that cannot be improved at all.

The third position is politically very weak. Only three votes support the recommendation for a presidential executive elected by a two-third majority of all members of the lower house of the legislature. The proposal specifies that the would-be president must be a member of the house.

As far as the provincial form of government is concerned, the majority proposal is for a unicameral parliamentary executive. Similarly, the CDFG report provides for a provincial legislature based mainly on parliamentary features.

The third level, local self-government, has a mixed feature which needs to be further developed by appropriate legislation. A framework for this has been provided by the CDFG report. As for the form of government for special structures, which exist side by side with the local self-government units, the CRSDSP committee's report has no specific proposal. This will have to be worked out by the concerned province according to the constitution.

9. The Unified Communist Party of Nepal (Maoist) was previously the Communist Party of Nepal (Maoist), until it formally merged with the Communist Party of Nepal (Masal) in January 2009.

3.1.2 Federalism with Three Levels of Government

As it stands now, as a matter of majority proposition, Nepal is going to be a federal country with three levels of government constitutionally created: Federal (national), provincial and local self-government units. The country has been restructured into 14 provinces: Twelve of them are in the hilly and mountainous regions, and two are in the plains. All of the provinces are of different size, and seven of them have been identified as ethnic territories, representing seven of Nepal's major ethnic groups. All provinces, except for the two in the Far West, have been designed with strong ethnic considerations. Provinces could be realigned, or their boundaries changed, through a two-thirds vote in the provincial legislature, again approved by the same strength in the national legislature. Each province has a designated capital, which could also be changed later.

In the third level, the units of local government stand side by side with special structures designed to address ethnic self-governance. Local governments (i.e. traditionally Village Development Committees and municipalities) are to be created by the provinces, and their numbers and demarcation of territory are to be determined according to standards set by the national government. The special structures include autonomous regions, special regions and protected regions. There are 23 autonomous regions designated to specific groups of indigenous people. This arrangement enables all minority, endangered and marginalized ethnic groups, communities and cultural regions to have their own protected areas. Some areas outside of the autonomous or protected regions could also be declared special regions in view of their low level of development, or if they are economically or socially excluded, or could be developed for the purpose of a particular plan. These autonomous regions could be granted their own specific set of powers, but otherwise fall under the jurisdiction of the concerned provinces.¹⁰

With this restructuring, the existing framework of districts, zones and development regions, within the structure of the unitary state, will disappear.

3.1.3 Basis of Federal Organization

According to the CSRDSP report, restructuring has been done on the basis of ethnicity, language, culture, and historical, regional and territorial continuity as preliminary grounds while keeping in mind economic interrelationships, the ability to stand as a province, the status of natural resources, development infrastructure and administrative convenience. Ethnic factors have clearly been given prominence in the federalization plan. Most importantly, the seven ethnic provinces and 23 autonomous ethnic regions within different provinces are intended to respond to the demands of Nepal's many indigenous groups. The country's dominant caste groups in terms of population and other social indicators – Khas Bahun-Chhetris – are considered to be outside of these indigenous groups.

10. Article 8 (7), the CSRDSP report.

3.1.4 Division of Powers

The CSRDSP report and its attached preliminary constitutional draft provide detailed arrangements for the division of powers between the federal government and provincial governments. Six different schedules or lists of powers are set forth in the preliminary draft report of the CSRDSP. The federal government, provincial governments, local level governments and autonomous regions – or the first type of special structure in the provinces as stated above – have specific sets of powers allocated to them. There is a concurrent list which specifies subjects under common powers of the federal government and the 14 provinces. The federal list is the longest of all with 30 items; whereas the provincial list has 28 items. Both local governments and autonomous regions, under the special structures, have 20 enumerated items each.

3.1.5 Fiscal Federalism

On the fiscal side, the CNREPAR preliminary constitutional draft provides for two separate schedules concerning the allocation of economic powers among the three levels of government: Federal, provincial and local. They confer fiscal jurisdictions to each of these constituent units. There is no separate mention of “special structures” and their economic powers in the CNREPAR report. The first schedule specifies what economic powers belong to which level. The subjects covered are national defense, civil aviation, intellectual copyright, roads, irrigation, drinking water, education, health, electricity, agriculture, tourism/culture, social development, industries and professions, registration of events, environment, forestry, mining and minerals, and land. Provinces are entitled to have their own planning service, police, civil service, airports, intrastate roadways, irrigation systems, universities, hospitals, etc. Similarly, local governments are entitled to local-level planning, services, roads, small irrigation projects, micro-hydroelectric projects, district-level hospitals, ten-plus-two (senior high school) level education, drinking water, etc.

Additionally, the CNREPAR preliminary constitutional draft has a third schedule that allocates the sources of revenue among the three levels of government. Local governments are entitled to entertainment taxes, land revenue, property taxes, profession taxes, etc. They share revenues with provincial governments in areas like home and real-estate registration fees, and service fees. The federal government will control major sources of revenue like customs, value-added tax, corporate income tax, and personal income tax. Only the vehicle tax will be fully controlled by the provincial governments; the rest are to be shared with either the federal government or the local level administrations.

The CNREPAR report deals with six major issues: First, it defines “natural resources” – the economic backbone for most of the provinces in the new setup. Second, it allocates sources of income among the federal government, provinces and local levels, including special structures. Third, the standards to be applied in the allocation of sources of income have also been specified.

Fourth, there are rules for joint economic relationships between different levels of government. Fifth, the report lays down the norms for financial equalization between the federal government and the provinces as a matter of constitutional policy. These formulations are intended to make fiscal federalism workable.

There is a separate clause in the CNREPAR draft dealing with the judicious allocation of revenues. It is the responsibility of the federal government to make provisions for the allocation of revenues it collects from federal sources to provincial and local governments. A national finance commission has been proposed to make recommendations to the federal government on the quantity of fiscal transfers to the provincial and local governments. Such variables as the need for expenditure, revenue-generating capacity, and ongoing efforts to improve productivity are the basis on which the federal government is to determine fiscal equalization grants for the provinces. Likewise, this applies to the provinces when they make decisions with regard to local government units.

3.1.6 Thematic Commissions

There are two important expert commissions proposed by the CNREPA draft. The first is the National Natural Resources Commission, which has the power and responsibility to settle disputes involving natural resources between different levels of government. It also has the responsibility of doing research on potential conflicts in this area, and making recommendations to the government in order to avoid disputes. The second is the National Finance Commission which is set up to determine the grounds and mechanisms for the allocation of revenues between different levels of government. It is also authorized to recommend equalization grants, conditional grants, and fiscal options to the provinces and local government units.

3.1.7 Role of the Federal (National) Government

There are some specific provisions in the CNREPA report which help explain the overall nature of federalism in Nepal. To start, it should be noted that economic powers not specifically allocated to any level of government are deemed to belong to the federal government. As for the allocation of revenues, if the relevant schedule does not ascribe taxing power to any level of government, this is to be decided by the federal government. Where there is a lack of clarity in the allocations made among two or more levels of government, federal laws are intended to clarify matters. The federal government is also vested with the right to provide framework legislation for items falling under concurrent jurisdiction, thereby providing a basis for further provincial and local level legislation. Similarly, the federal government has been authorized to determine economic policy, and set out standards and measures of supervision, by enacting the necessary laws. The federal government also has the responsibility for building the capacity of provinces to monitor the development and construction work in their territories, and services to be

provided to their people. This responsibility has been given to the provincial governments for the local units falling under them. However, it is clear that federal law-making shall not adversely affect provincial and local economic powers, and their economic arrangements. Autonomy has been assured to the provinces and local governments within their spheres of authority.

Finally, the CSRDSP report is very clear that the relationship between the federal government, the provinces, the local level and special structures shall be based on the principle of cooperation, co-existence and coordination. The federal government has been given the power to manage inter-provincial relations. It can also enact laws on the provincial set of powers, if two or more provinces request this. On matters of national importance, and issues which are important for national level coordination, the federation can issue the necessary directives. On the advice of the federal government, the president can also reprimand a province, suspend a provincial government or its legislature, or even dissolve them if they commit acts that compromise national sovereignty, integrity, or law and order.

3.1.8 Right to Self-determination

In the proposed federal system, the right to self-determination has been assured to *adivasi*, *adivasi-janjati* (indigenous nationalities) and *madhesis* (Terai communities), with regard to internal and local issues in the areas of politics, culture, religion, language, education, information and communication, health, habitation, employment, social security, economic activities, commerce, land, mobilization of resources and environment rights. In addition, the right to political *agradhikar*¹¹ has also been maintained for ethnic communities in the seven ethnic territories. This allows these communities the preferential right to have their candidate in the position of leadership for two consecutive terms in both the concerned province and autonomous regions within the special structures. The right to self-determination can be exercised by the concerned communities only in a way that does not affect the sovereignty of the nation, its independence, unity and territorial integrity. This apparently does not include the right to secession.

3.1.9 Dispute Resolution Mechanisms

An inter-provincial council has been proposed for the purpose of dispute resolution at the political level. The council consists of the head of the federal government, the federal home minister, the federal finance minister and the chief ministers of all provinces. It can recommend issues for resolution to the federal legislature. The federal legislature can also recommend that an issue be decided by way of referendum. Similarly, federal issues at the provincial level, for example between special structures or the local level and the province, can also be submitted to the provincial legislature. Judicial resolution of such disputes can be taken to the concerned provincial high court.

11. This refers to the priority entitlement to political leadership positions.

A Constitutional Court has also been proposed in the CSRDSP draft report to settle federal disputes. Federal cases decided by provincial high courts can be submitted to the constitutional court by way of appeal. These provisions exist along with alternative dispute resolution techniques.

The fourth important report of the Constituent Assembly, which has a strong bearing on the federal system, is the report of the Committee on Judicial System. Its preliminary constitutional draft provides for a three-tier judiciary comprised of a Federal Supreme Court at the top, Provincial High Court in the middle, and District Courts at the sub-provincial level. Municipal and village level courts, judicial entities, or alternative dispute resolution forums can be created through provincial laws. These could handle local issues such as family disputes, domestic violence, children's rights violations, "untouchability" related to Dalit issues, and issues related to culture, religion and the customary laws of minority communities like *adivasi janjati*, Madhesi and Muslim people. District courts could also institute separate benches to deal with these issues according to provincial laws.

Special judicial committees have been proposed at the level of federal, provincial and local legislatures, which would consist of 10 legislators, reflecting the membership composition in the house. These committees would exercise powers of judicial appointment, transfer and disciplinary action, including the impeachment of judges on specified grounds. The Federal Legislature Special Judicial Committee has the power to interpret the constitution and federal laws in all issues related to positions and powers of national importance, issues directly involving political subjects, and issues of laws contradicting the constitution. The Federal Supreme Court has the power to interpret the constitution and laws only as pertains to the remaining issues. The Federal Supreme Court has been given jurisdiction to hear original cases as follows: Disputes between the centre and the provinces; disputes between provinces; disputes between the constitutional bodies; and disputes related to national security, currency and foreign affairs. The overall arrangement of the Special Judicial Committee tends to maintain the supremacy of the legislature over the judiciary – with the effect that the relationship among the constituent units of federalism may not be subject to the checks and balances provided by an independent judiciary.

The draft constitutional text also provides for federal and provincial judicial service commissions to oversee the appointment, transfer, promotion and disciplinary action of judicial cadres, other than judges.

3.2 Problems, Gaps and Issues Requiring Further Work

The debate on federalism – especially the proposed system and its features – is still ongoing, and it has helped stakeholders to better understand the many pros and cons of constitutional proposals.

Within this context, the following issues are being considered in the process of constitution-writing and transition:

- The establishment of effective national structures of government that would promote a national agenda without derogating from provincial or local level autonomy.
- Devolution of power among the national, provincial and local government levels.
- Establishment of structures of government and building the required capacity for governance.
- Establishing a credible system of conflict management and mediation to ensure effective governance.

At the moment, the basic question remains of what type of federalism would be most suitable for the country. Should Nepal be a confederation like Switzerland, or a more centralized federal polity which includes some level of role for the national government? There are strong opinions on both sides of this question. The trend of the CA reports indicates a movement toward the latter, with the fear of the country's disintegration playing a major role. A three-tier federal system has been generally accepted, and the process of power sharing between the centre and the provinces has also been discussed at length in the draft constitutional documents. There is concern about the allocation of powers among different levels of government, and the exhaustive concurrent list is another important issue being debated. In an environment that does not have a federal culture and temperament, this might mean a powerful national government and relatively weak provinces. The division of resources among different levels of government does not seem to have been settled either. Due to the lack of clarity concerning jurisdiction over resources, some even question whether natural resources should be shared between constituent units of the federation from the outset, or rather be left for future consideration.

With respect to fiscal resources, the issue of tax and revenue collection is also unsettled. It needs to be specified whether this is a central or provincial responsibility, or one that is shared. There is the provision for a national finance commission, which is expected to play an important role in the financial decision-making of the federal government. However, the authority of such a commission has not been clearly established. For example, the draft does not indicate whether its recommendations would be binding, or whether the government could take appropriate decisions on each recommendation that it should receive from the commission.

The draft constitutional documents are not clear about the number and size of special structures and the village and municipal units, as well as the interrelationship among these units and with the provincial governments. This gap has led to the idea that there should be a fourth level of government at the district level assuming that there would be a level between the provinces and the numerous local self-government units to help make development possible. Considering the diversity of political parties and apprehension about them, some even think that decentralization under the unitary state could be a viable

option. If that option is chosen, another question raised concerns the difference between local autonomy and decentralization. This shows how important it is to clarify institutional arrangements among provincial governments and local structures and self-government units.

There is also fear in some quarters that the right to self-determination being assured to the indigenous people and Madhesi could lead to secession, or to a minimization of democratic principles and the rule of law. If ethnic communities have the right to self-determination, what will happen to the other marginalized communities that live in those regions? The protection of affirmative rights of marginalized populations (women, Dalits and indigenous groups) also comes up in this scenario. How to manage the diversity of languages in relation to an official language is certainly another key issue. The draft constitution definitely needs to provide a reorientation of the existing provisions in this regard.

The form and nature of central level institutions have also been an issue. There has been much discussion about the role of national level commissions on issues that are “internal” to the provinces. Similarly, some parties seem to be in favour of a bicameral legislature at both the federal and provincial levels. Others think that unicameral legislatures are fine at all levels of government because the system has already committed itself to an inclusive state and a proportional system of representation, requiring no additional structure to allow indigenous and marginalized people to be heard. The form that the party system will assume (two parties, three parties or multi-party) and the nature of the party system (national, regional or provincial), along with their internal election system and mode of operation will also have an impact on these issues.

Certain important grey areas have also been identified. They must be sorted out in the days ahead by building consensus, or at least forming a two-thirds majority of the CA’s members in order to be passed by the Constituent Assembly.¹²

First, the CDFG report on the form of government is indecisive. The major parties remain divided over whether Nepal should continue with a parliamentary system of government, or switch over to the Maoist-backed presidential system or to a mixed system. The report proposes three levels of government, as does the CSRDSP report, but there is no majority position within the 43-member committee on the issue of the form of government and the electoral system to be adopted. It is not clear which form of government will garner consensus before the full house of the Assembly, or at least the two-thirds majority needed for it to be written into the new constitution. This decision will affect the issue of representation of ethnic people, Dalits and minorities, both at the national (federal) and provincial levels. It may also affect stability, because there is always a chance that communities and regions could feel they are not adequately represented in the governmental system.

12. For most of the contentious issues in this regard, see Bipin Adhikari, “Design Options for the New Constitution: Some Important Considerations” in B. Adhikari (ed.), *Nepal: Design Options for the New Constitution*, 416 -509 (Kathmandu: Nepal Constitution Foundation et al, 2010).

This also creates a major roadblock for the people working on transition management. Unless the form of government is clear, it is difficult to think about who should take the leadership role in the process.

Similarly, a couple of additional difficult issues, including whether Nepal is finally agreeing to a 14-province federalization plan or will reduce the number of provinces further, must be settled. Critics point out that Nepal cannot afford so many provinces, many of which are viewed as not being economically viable. Identity and capacity do not match well in some cases. The size of the proposed provinces is not uniform either. Some are very big and some are very small. In terms of population, the Mithila-Bhojpur-Koch Province, for example, is a very heavily populated region, while Jadan province is thinly populated.

The 14-province federalization plan is the negotiated settlement between the parties forming a majority at the committee level. The CSRDP report has 24 different maps in its annex, suggested either by parties, or as individual submissions by CA members. The strong possibility of dominance by one region over another cannot be ruled out.

The demarcation of boundaries is yet another challenge. The Madhesi parties, mostly active in the Terai region, have advocated for a unified Madhes (that combines the lowlands of Nepal from the Mechi river in the east to the Mahakali river in the west) as a single province. They have been critical of the proposal for two provinces in the lowland areas which, in their opinion, weakens the political weight of Madhes. A compromise solution may be expected in due course.

Another difficult issue, still to be negotiated to the satisfaction of all, is whether some of these provinces are to be given an ethnic identity as proposed, or whether all provinces should have a non-ethnic identity. Generally, the indigenous peoples of Nepal consider it necessary to project identity in mainstream politics. There are others who think that such arrangements could be discriminatory for the smaller ethnic communities as well as for the majority of people (who are not part of indigenous groups). If identity is selected as the criterion for the demarcation of provinces, how can the rights of minority groups within provinces be protected? Minority populations might expect something in return.

Similarly, the special structures being proposed give emphasis to the smaller indigenous communities which are a minority in the concerned areas, leaving the majority constrained. Some populations will have provinces named for them, while others will only have protected and special areas. It is again left to provincial laws to define inter-ethnic relationships and other self-government matters. The challenge is to make federalism successful in a system that recognizes ethnic territories where ethnic groups are not a functional majority, and which has political *agradhikar*¹³ as an additional basis to establish the role of historically

13. Regarding the provision of *agradhikar* (special political rights): Article 13 of the CSRDP preliminary draft states “(1) In the case of states constructed on the basis of ethnic or community divisions within their main constituency, political parties, at the time of elections, and during the formation of provincial governments, should give

marginalized indigenous people in government. The establishment of provinces based on minority ethnic populations has the potential to create conflict.

There are some overlapping arrangements as well. For instance, the preliminary report drafted by the Committee on Judicial System (CJS) provides for a Federal Supreme Court with jurisdiction over disputes of a federal nature coming from different sectors. Ignoring it altogether, the preliminary draft of the CSRDSP report, which came long after the CJS draft became public, provides for a Constitutional Court as the major dispute resolution mechanism. These kinds of overlap will become clear only after an integrated first draft of the constitution is finalized by the Constitutional Committee.

Some matters of principle are also involved. The CJS preliminary draft, as pointed out above, gives important judicial powers to the Special Judicial Committee in the federal legislature (which includes the power of judicial appointment, transfer, disciplinary action, etc). This also includes the power of interpretation of the Constitution and federal laws, as well as the authority to look into cases related to positions and powers of national importance, issues directly involving political subjects and issues of laws that contradict the constitution. Many critics fear that this provision, by vesting important juridical powers in the legislature, could compromise the principle of the separation of powers and the independence of the Federal Supreme Court and, therefore, its capacity to interpret the Constitution and protect its supremacy, which is so important for the success of a federal system. Similarly, for many indigenous and Madhesi groups, it is important to provide for an inclusive judiciary.

Except for the issues highlighted above, there do not seem to be many differences on the economic, fiscal, institutional, or other regulatory aspects of the existing proposals. However, this is not to deny the existence of gaps in the preliminary drafts that have been produced to date and the paucity of provisions for many important issues. One example is rules about the transfer of resources. Some of the technical issues may need statutory elaboration once the new constitution is adopted and put into force. Furthermore, none of the draft constitutional provisions provide for an implementation strategy, keeping in mind the capacity constraints of the concerned institutions. A successful transition to federalism is not possible without sorting out these issues properly.

preference to a member of the majority ethnic group or community for the lead position in government.. However, such rights of political preference will only be in effect for two terms of office. (2) The majority ethnic group or community in an autonomous area, constructed under the special provision, will have political preference at the top level of leadership in that autonomous area. These rights regarding political preference will only be in effect for two terms of office.”

4. Comparative Experiences in Managing Transitional Processes: Spain, South Africa and Ethiopia

Examining the management of transitions to federalism in Spain, South Africa and Ethiopia is helpful for understanding the process, as well as preparing for such a transition. Although the transitional experiences of these countries are very context-specific, they can provide Nepal with invaluable insight on how to manage the process of change after the new constitution is promulgated.

4.1 Spain

Spain is known as a *de facto* federation. Its Constitution of 1978 does not speak of a “federation” in its classical sense. Nevertheless, Spain grants more self-government to its Autonomous Communities (ACs) than most federations allow their constituent parts. So the experience of Spain is exemplary of the fact that actions speak louder than words.

Spain showed a lot of patience and planning in its federalization initiative, which went through three major stages. The first started with the death of the dictator Francisco Franco in November 1975 until the approval of the Spanish Constitution in 1978. It was at this time that the groundwork was laid for the establishment of a system of democracy and the rule of law; and a quick start was given to the demands of Catalonia and the Basque Country for provisional autonomous community institutions. What needs to be learned from this experience is that a federal system does not work well when the basics of democracy and the rule of law are not operative.

The second stage was from 1978 until the Statutes of Autonomy of the Autonomous Communities were passed (1979-1983). This was a steady process that was implemented gradually. Even though the constitution had no bold declarations, the statutes went beyond and provided for autonomous arrangements.

Finally, during the third phase from 1979 to 1983 or 1987, depending on the region, the Autonomous Communities started to set up their governmental and administrative bodies (presidency, parliament and executive), services were transferred from Spain's central administration, and financial systems were established. Along with these transfers of services from the centre to the ACs, commensurate fiscal resources were progressively transferred. Elections were held, parliaments were created, and governments were instituted. In fact, between 1981 and 1983, all of the ACs passed laws concerning the presidency, executive and parliament. The transition process occurred gradually in a sustainable manner that was slow, steady and affordable.

As of 1987, the transition could be considered fully completed and the decentralization policy was established and consolidated.

The next phase began in 1992, when a decisive step was made toward leveling out and establishing symmetry between all ACs. The current and

final stage began at the beginning of 2000 with the process of reforming some of the Statutes of Autonomy.

What is remarkable about this process is that the administrations of the ACs were built gradually, through the transfer of services (i.e. officials, assets, buildings and financing) from the central government. They were created almost exclusively from the peripheral central government administration (i.e. officials and civil servants who were already in the territory of each AC), and from local supra-municipal bodies (provincial or “county councils”). The carrying out of transfers depended on the willingness of both the centre and the respective ACs. Generally, no deadlines were set for implementing these reforms, either explicitly or implicitly.

Financing of the ACs is based essentially on the following principles and rules: The principle of “financial autonomy of the AC,” that of “coordination with the State Treasury,” and that of “solidarity among all Spaniards.”

To resolve conflicts of power, the Spanish Constitution established a Constitutional Court, which began to operate in 1981. The resolution of conflicts is not the only function of the Constitutional Court, nor does it have a monopoly for exercising this power, because such conflicts, when they do not affect laws but rather regulations of a lower order or acts of execution, can also be brought before the ordinary courts of justice. However, in practice the Constitutional Court plays a major role in resolving conflicts of power. Its legal rulings have generally tended to favour the aims of the Spanish central government, although there have been key rulings that have nullified significant Spanish laws aimed at affecting basic structural issues in the system of distribution of powers.

It is probably important for Nepalese policy makers to note that, in only ten years, Spain was able to create 17 governmental bodies, the ACs, from scratch, each of them with new administrations. Competences, services and economic resources were transferred and 17 regional political systems were created. It should be noted, however, that there were problems along the way, some changes of direction were more or less improvised, and some rather arguable decisions were made.

Moreover, the decentralization process and the democratization process took place simultaneously. Several factors were at play, including the need to join the European Union, which demanded democratization and the existence of a certain culture of democracy. In addition, the memory of the Spanish civil war of 1936-39 remained very much alive, leading to a firm determination by all political forces, the social and economic players, and the general population to avoid any confrontation and to seek, at all costs, the consensus necessary to establish a common program of action. The process of debate and reform has not subsided in Spain even now.

In conclusion, however, emphasis must be placed on the incompleteness of the Spanish Constitution and the gradual construction of a decentralized system in Spain.

4.2 South Africa

South Africa is a new democracy that began its process of democratization in 1992. As in the case of Nepal, an interim constitution was thought necessary to provide a basis for the work of the Constitutional Assembly that would eventually draft the constitution.

Unlike the Spanish process, bilateral negotiations between the African National Congress (ANC) and the then-ruling National Party, led to an understanding on an interim constitution, and an elected constitutional assembly which would draft the constitution. These negotiations were crucial in setting the agenda for change, but their role in soliciting the participation and support of other fringe parties in this process was no less important. This is an area where Nepal faces a problem. In Nepal's case, since the removal of the king, none of the major parties have agreed on political issues, nor have they been able to solicit the other parties' opinions and participation in the constitution building process.

The South African approach to constitution making is significantly different from those of Spain and Nepal in at least one way: South Africa agreed on 34 constitutional principles that would inform the new constitution before the process was started. This ensured that the debate in the assembly was not open-ended – as it is in Nepal – and was intended to achieve a new constitution based on constitutional principles sought by the forces of change. Cooperative federalism required self-rule and shared rule together as the main theme in the constitution. While South Africa survived this vacuum, it remains to be seen whether Nepal can still get a democratic constitution, based on the universal standards of democratic values and the rule of law.

It took Spain a great deal of time to get to the point where local units began to increasingly exercise decentralization. In South Africa, it took seven years from 1993 to establish local governments. A detailed phased transition plan was enshrined in a specific local government transition act by the apartheid parliament in 1993, which remained in force until 2000. The policy and legislative framework for local governments was developed from 1996 to 2000. Again, as the paper on South Africa shows, it took about ten years (1995-2005) to develop and enact laws governing intergovernmental fiscal relations. The National (federal) Ministry of Finance led this process. This shows that bringing federalization down to the local level becomes practical only after its implementation at the provincial level and this usually takes time.

There was no single "grand plan" or process for the entire transition in South Africa. As in Spain, a series of plans were implemented in phases. When the 1996 Constitution came into effect, a special structure, called the Technical Constitutional Working Group (TCW), was established to coordinate the implementation of the constitution's many provisions. The goal of this intergovernmental task force was to assist with the preparation of a work plan for the implementation, advise government on the date when the constitution should come into effect, coordinate and monitor the

implementation process, and provide technical assistance to the provinces. The TCW work plan classified tasks according to specific timeframes when they had to be completed. This type of planning could be of benefit to Nepal in its federalization process.

In the same year (1996), the South African government assigned responsibility for the “overall coordination and facilitation of the implementation of the constitution” to the national Ministry for Provincial Affairs and Constitutional Development (MPACD).

An advisory board, the Commission on Provincial Government, was established under the 1993 Constitution to continue the work of establishing provincial governments, which had begun during negotiations. This process of establishing local governments provided another challenge. Early local pacts involved: a) a separate negotiated settlement on the transition to fully democratic local government which fed into the multiparty negotiations and the interim constitution that ensued; b) the formation of transitional local councils; c) negotiating a new constitutional dispensation for local government in the final constitution; d) demarcating new municipalities and reorganization; and e) devolving a new policy and legislative framework to implement the constitution.

The interim phase (1995-2000) started with the election of transitional local councils and concluded with the first fully democratic local elections under the 1996 Constitution, held on December 5, 2000.

The final phase (2000) included matters like the allocation of powers and functions between districts and local municipalities, intergovernmental grants and the regulatory frameworks for municipal property rates, financial management and administrative and planning systems.

When reviewed in the context of Nepal, and in the perspective of the proposed constitutional norms, some lessons can be drawn from the South African experience.

The transition to cooperative federalism was steered by a strong but inclusive leadership. Key processes of implementation were embedded in the core plans, budgets and functions of government departments at all levels. This allowed for organized long-term planning – often across terms of government – and administrative continuity. Building capacity and legitimacy for change was as important an outcome as getting the policy or legislation enacted. The most effective transition was probably the fiscal reforms managed by the Ministry of Finance. Flexible and adaptable politicians and officials were also very helpful. The key point is that processes of implementation were in themselves acts of building state effectiveness and legitimacy, not merely a means to an end. A single, all-inclusive process for the entire transition would have been both impractical and inefficient.

The experiences of both Spain and South Africa prove that building a basic, let alone an effective, state is complex and takes time. There is a vast difference between implementing structural and policy reforms and state effectiveness.

Even today, many provinces and municipalities in South Africa lack the capacity to discharge their constitutional functions effectively. Improving the workings of government remains an ongoing process.

Governments of “local unity” offered opportunities to build a new political community across social and political divides. They showed that bargaining between local elites and co-governance on local issues was not only a necessary condition for security and stability after conflict, but entirely possible even within the context of a national government. The local agreements gave rise to local forms of unity government centered on establishing consensus and new forms of political community in deeply divided communities.

At this stage, one can compare the Spanish experience of staggering the establishment of their Autonomous Communities to the South African experience of establishing the different tiers of government. The promotion of cooperative governance in South Africa can be highlighted as being of great value.

4.3 Ethiopia

Several lessons can be learned from Ethiopia’s transition experience. Like Nepal, Ethiopia is a country with a great deal of diversity. It has more than 80 ethnic communities, each speaking its own language. Barring a few exceptions, these communities live predominantly in their own ethnic areas. In 1991, a Transitional Period Charter (like the Interim Constitution of Nepal) established the right to self-determination and laid down the legal framework for reconstituting the state and devolving state powers along ethno-regional lines. The state was reorganized along ethno-territorial lines into 14 provinces, accommodating all ethnic groups, big or small. The process was similar to what was done in South Africa, but Ethiopia decided to choose “ethnic federalism.”

The Charter established two parallel systems of government – central government and the component regional/national self-governments – for the transitional period. At the same time, it provided a mandate to enact laws to establish local and regional councils on the basis of nationality. All adjacent nations, nationalities and peoples were authorized to enter into agreements to jointly establish larger regional self-governments and set up other necessary intermediate units of self-government between *woredas* (districts) and the regional levels. The right to self-determination was not only recognized but it was put into operation. The experience of Ethiopia could be a model for regional governments under the special structures to be created in Nepal as an example of building coalitions and exercising the right to self-determination that has been already accepted by the CSRDSP preliminary constitutional draft.

Nepal could perhaps draw lessons from the fact that with the new constitution, the transitional government of Ethiopia had to deal with many problems other than just political ones. With the military regime gone, many soldiers, police and security officers were left jobless and scattered throughout the country. The collapse of governmental structures, the existence and

spreading out of a large number of ex-soldiers, police and security officers throughout the country, the proliferation of small arms and ammunitions in the hands of the civilian population, and the refusal of the Oromo Liberation Front (OLF) to garrison its forces, all stood in the way of maintaining peace and order. Not only was Eritrea able to achieve its de facto independence, the entire machinery of the Ethiopian state had become dysfunctional. This type of challenge has not been envisaged when a new constitution comes into operation in Nepal.

The debate about whether the legislatures in Nepal should be unicameral or bicameral is still unresolved. In Ethiopia, the federal government has two different assemblies: The House of Peoples' Representatives (lower house) and the House of Federation (upper house). The latter House gives representation to all of Ethiopia's ethnic groups. It has the power to interpret the constitution, and decide on "all constitutional disputes." The Council of Constitutional Inquiry, established by the Constitution with the power to investigate constitutional disputes, supports it in this role. The House of Federation is also the ultimate defender of the constitutional compact of the peoples of Ethiopia, and it is mandated to determine the distribution of joint federal and state tax sources and the size of federal subsidies to be provided to member states.

The country's Capacity Building Strategy, which goes hand in hand with its Development Strategy (ADLI), aims at creating a systematic combination of human resources, working systems and institutions that will enable the country to achieve its development objectives. It is designed to provide the necessary capacity at all levels of government in Ethiopia. The Woreda (District) Level Decentralization Program, a sub-program of Ethiopia's capacity building strategy, was set up to deepen the process of devolution by empowering the lower tiers of regional governments, the *woreda* administrative units.

The Civil Service Reform Program, a sub-program of Ethiopia's capacity-building strategy, aims at creating and promoting an efficient, effective, transparent and accountable civil service. Its role includes strengthening public financial management, management systems, human resources and performance management.

The process of transition has been completed in Ethiopia and the state reconstituted along ethno-territorial lines. During a transitional period, a central government and 14 regional/national self-governments were established. During the second phase, the country has constitutionally become a federal democratic republic. The devolution of power has been implemented and facilitated by national development policies, strategies and key sector programs at both the federal and regional levels. The pace at which the powers and functions of the state have been devolved to lower levels of government, namely to *woredas*, has been quite significant, entrenching genuine self-rule and grassroots participation in governance processes.

However, the major problems faced by Ethiopia in the post-1994 constitution still persist. As in other developing countries, like Nepal, one of the most

difficult challenges confronting the federal and regional governments has been the challenge of capacity-building. As Nepal considers a framework for transition, a clear policy for the development of capacity must be devised.

Governments in Ethiopia at the regional level have limited taxation power through which to finance their constitutionally allocated functions and services, and hence, they are still heavily dependent on federal transfers. Nepal's situation seems to be slightly better, but federal transfers will be important for most of the provinces. Similarly, even though taxation powers have been shared between the different levels of the proposed governments (including those of special structures), the capacity of the provincial and local governments to maximize the benefits derived from federal transfers, needs to be nurtured over a certain period of time.

5. Framework for a Federal Nepal: Key Transitional Arrangements and Sequencing

These examples help us better understand some of the most important issues to be addressed during Nepal's federal transition. Considering the Nepali context and the experiences of Spain, South Africa and Ethiopia in their transitions to federalism, it is not difficult to identify what could be the most relevant lessons for Nepal. There are issues of substance, as well as issues of procedure, and organizational arrangements. The issues of substance include those subjects that the constitution must address through its provisions. The following pointers are intended to provide a basis for further discussion on how Nepal should plan its transition, and implement its constitutionally proclaimed goal of establishing a federal country.

5.1 Key Issues and Arrangements to be Addressed

While Nepal's achievements over the last 33 months of constitution building are significant, on the substantial side, there are some crucial decisions which the CA must make to finalize the constitutional basis for the federalization of the country. Without a doubt, the first and foremost issue is the determination of the form of government. Without taking a decision on this important issue, it will be difficult to settle on political norms and values, as well as institutions and procedures that deal with, for example, the electoral system, legislative procedures and the system of governmental oversight, accountability and control.

Secondly, three levels of federal government have been accepted but the third level, the level of local self-government, has been provided for without giving it a concrete shape. The relationship between the third level and the provinces has not been specified, nor has the relationship between the third level and the federal government been thought through. Even within the third level, municipalities and village development committees are to co-exist alongside the special structures, including the autonomous regions. The CSRDSP report does not explain the relationship between these two forms of self-governing units, leaving it to be settled by provincial laws. However, the autonomous regions, under the special structures, and the local government units each have their own scheduled (enumerated) powers. There do not appear to be linkages between them, which is bound to create problems in governing and result in a lack of coordination.

Another substantial issue that needs to be tackled by the constitution is the number of provinces, including those defined as ethnic territories. The 14-province proposal has been criticized on grounds of economic viability, insufficient infrastructure and a lack of common standards regarding the creation of provinces. In each of the ethnic territories, devised to recognize identity, the defining ethnic group is not in a majority. The right to self-

determination has been given to indigenous peoples and to the Madhes, but the constitution is not at all clear on how this right is to be exercised in the territories where groups other than indigenous peoples and Madhes are in the majority. These issues have to be properly addressed in the constitution itself, so that its implementation does not suffer from contradictory rules and other inconsistencies. Finally, the Madhes-oriented parties have not given up their demand for “all Madhes as one province,” while the CSRDSP report has proposed two Madhes provinces. This needs to be resolved.

On the fiscal side, the constitution needs to clarify the schedule of powers for each level of government in order to avoid unnecessary overlap and duplication. If Schedule 2 of the CNREPAR report is taken as an example, the provinces are without independent sources of revenue. Either they share revenue sources with the federal government or with the local governments. Similarly, the concurrent list of federal and provincial powers is unnecessarily long with 27 items on it. Several of the items on the concurrent list, such as registration of births and deaths, waterways and cinemas, could be allocated to the provincial list without affecting federal interests. It is also unclear why dispute settlement institutions, like the Inter-Provincial Council proposed by the CSRDSP report, do not include representation of the third level of the federal system, if representation of the second level has been accepted. Similarly, it needs to be decided immediately whether the constitution is to accept the Constitutional Court as the apex court for federal dispute resolution (as suggested by the CSRDSP report) or whether this responsibility should go to the Supreme Court, which will have to create a separate bench for this purpose (as proposed by the CJS report). Above all, the proposal to create Special Judicial Committees in the federal, provincial and local level legislatures (to interpret the constitution in some cases and to play a key role in the appointment, dismissal and code of conduct of judges) is highly problematic. This will have an impact on judicial independence, and also frustrates the objective of institutionalizing a federal system as a solution to discrimination based on ethnicity, language, culture and region. The proposed system will inherently result in discriminatory practices in the hands of a majority in the legislature.

The role of the federal (national) government in the proposed federal system is very important. However, as a federal system is a combination of shared rule and self-rule, a suitable balance between these two elements needs to be found. Current proposals appear to give a great deal of power to the national government, which may compromise the intent and spirit of federalism.

Many of these problems, and the gaps and concerns that were noted in Section 4, arose because the major parties were not enthusiastic about constituting a state restructuring commission, which could have provided a firm professional basis for the thematic committees. Some sort of professional support might be useful, even now, to look into the efforts of the thematic committees, and provide them with theoretically sound and workable options.

In any case, matters of principle (for example, the 34 constitutional principles in South Africa) must be laid down first – so that finding answers to difficult questions becomes easier.

Procedural issues are no less important. Major parties are crucial in setting the agenda for change, but their role in soliciting the participation and support of other fringe parties is also vital. For example, with regard to the restructuring of the state, what has emerged from the committee level is basically the position of major parties (excluding the Nepali Congress). The opinions of the fringe parties were not given much consideration. As an example, the CSRDSP report does not explain why the six-province federalization plan of the Communist Party of Nepal (Marxist-Leninist), in which every province (except Bagmati province) shared borders with both India and China, was not seen as a viable option for federalization. Yet none of the 24 other proposals for the restructuring of the state were set aside on the basis of any argument or rationale. During these negotiations, critical institutional pathways for future implementation processes were not defined, nor were any benchmarks. These are key areas that Nepal has not dealt with so far.

If the decision of the country to go ahead with federalism is firm, it is not necessary to wait for the new constitution to be enacted; work on implementation of the federalization plan can start immediately. A state restructuring policy support unit could be established by the government without delay. An advisory commission on provincial government may be necessary, as in the South African case, “to facilitate the establishment of provincial government,” during the transition and under the final constitution. Some very important work, like the preparation for elections, plans to hand over power to the provincial units, and a high-level body to work out a transition plan, could be initiated immediately. The experiences of Spain, South Africa and Ethiopia show that they all adopted progressive and incremental approaches to their transitions. The lead role of the federal/national government in the policy formulation and planning phase cannot be overemphasized.

The experiences of these countries show there is no need for a single “grand plan” or process for the entire transition. A series of plans can be implemented in phases. A technical constitutional working group (TCW), for example, as provided by the South African constitution, could be established by the new constitution to coordinate implementation of the constitution’s many provisions. It is important to note that the TCW was an intergovernmental task force, established to assist with the preparation of an implementation work plan, advise the government on the date when the constitution should come into effect, coordinate and monitor the implementation process, and provide technical assistance to the provinces.

The work on framework legislation, for which the draft constitution has given responsibility to the federal government, may also be started on all issues related to the concurrent schedule for the division of powers.

Although the transitional arrangements, for example the transfer of resources, are asymmetrical, depending on the local situation, this is acceptable if it is mutually agreed upon. A decisive step could be made at a later stage toward establishing symmetry among all provinces.

In the case of Spain, provincial administrations, with few exceptions, were not built *ex novo*, or from scratch, but rather were set up progressively through the transfer of services from the peripheral state administration, and from local supra-municipal bodies. These transfers saved on costs, sped up the process and provided the Autonomous Communities with officials who were already prepared. It is obviously a sustainable approach to transitional arrangements.

The draft constitutional provisions must adequately cover the general framework for intergovernmental relations and fiscal arrangements, including procedures to resolve intergovernmental disputes. The role of the ministries must also be identified and intergovernmental coordination processes defined. Appropriate and subsequent legislation can be enacted by the newly elected parliament under the new constitution.

One of the major requirements of the transition, as seen in South Africa, is meeting the capacity-building requirements of provincial administrations, local governments and special structures. They will also need assistance and technical support to restructure and implement legal provisions. In Ethiopia, the country's Capacity Building Strategy goes hand in hand with its Development Strategy (ADLI) and aims at creating a systematic combination of human resources, working systems and institutions that will enable the country to achieve its development objectives. Key processes of implementation, embedded at all levels of the transition process, allowed for organized long-term planning and administrative continuity.

Public security issues, including the management of arms, are no less important in the transitional period. In Ethiopia, Eritrea was able to achieve its *de facto* independence because the central government had become dysfunctional. Some transitional strategies may be worked out to help prevent such scenarios in Nepal.

The civil service reform/restructuring program must respond to the goal of creating and promoting an efficient, effective, transparent and accountable public organization. This includes strengthening public financial management, management systems, human resources and performance management.

5.2 Technical and Organizational Aspects

A strong and effective transitional government at the centre, which can guide the course of constitutional politics, is a major political precondition for an emerging federation. The ANC of South Africa, with a two-thirds majority in the house, is a good example. Even when there is no single party that dominates government, a strong and effective coalition should still be sufficient. The lead role of the federal/national government in the policy formulation and planning phase cannot be overemphasized.

The new constitution defines explicit and implicit powers of the federal government to federalize the country. What is not recognized is the need for a specialized coordinating body at the federal government level. The constitution should create such a body through appropriate provisions. This would facilitate the resolution of issues related to the transfer of powers or resources within a defined timeframe. The Ministry of Federalism, Constituent Assembly, Parliamentary Affairs and Culture may be given a suitable role in this process.

The willingness of a transitional government to work with technical experts and institutions with experience in transition management is another aspect of effective political leadership. Such experts or institutions can help the process by developing necessary models or options, when required.

A federal system also requires appropriate provisions for the settlement of disputes. When issues cannot be sorted out by political means, their resolution must be grounded in the constitution, and addressed through legally acceptable dispute settlement mechanisms. Duplication of jurisdictions must be avoided. Other significant preconditions are effective law and order, a strong political determination with federal orientation, availability of resources and institutional capacity.

5.3 Priorities and Next Steps Toward a Federal Nepal

As stated at the beginning of this paper, it contains two subjects for analysis: issues of substance, particularly those that need to be addressed in the constitution, and issues of procedure for the transition.

It might be useful to make a clearer distinction between the issues that must be dealt with in the constitution and the procedural matters while, if possible, providing a critical analysis of substantive questions. This is an urgent question as Nepal moves forward in the transition process.

First, it must be noted that the final aim is to include provisions dealing with as many structural issues of the federal system as possible in the constitution. But if it is not possible to address all of the structural issues in the constitution, then it should at least include the competencies that are to remain in the hands of the central government, with necessary binding clauses in favour of the sub-national units. However, as the Spanish experience demonstrates, there are very few issues that strictly require inclusion in the constitution, such as the procedures to become sub-national units, the mechanisms to resolve disputes, etc.

Therefore, the Constituent Assembly may attempt to establish a gradation (“prioritization”) of those elements that are absolutely necessary to be incorporated into the constitution, and those that are not. The gaps are adequately noted above. However, as far as the procedural issues are concerned, the constitution should establish transitional mechanisms for solving these issues through infra-constitutional laws (for example, the procedure to become an autonomous region or to establish boundaries). Whether an agreement on

the number of provinces can be reached or not, the constitution should set out conditions and procedures for the creation of provinces, and the same must be done for other levels of government as well.

The second most important issue to address within the constitution is the creation of a mechanism for resolving any conflicts that may arise during the transition period. It could be a political process or mechanism, but the best way to resolve these disputes is through a jurisdictional review by the Supreme Court, Constitutional Court or a judicial body.

It is also important that the constitution should include certain rules regarding the financial system of the federation and the sub-national units. However, the implementation of the system could be enacted through a law that could possibly require approval by a large majority.

Finally, it would be useful to include in the constitution a number of guidelines concerning the process for the transfer of services from the central government to the sub-national units. Of course, there are provisions dealing with cooperative federalism, as in the South African constitution, but there could be more guidelines to explicitly recognize this aspect of transition.

No doubt, the ethnicity issue is a major question in Nepal. It has conflated three separate constitutional matters: the fundamental rights of the Nepalese people (specifically questions of equality and the protection of religious, cultural and minority views and values); traditional customs, laws, practices and structures; and geopolitical dispensation. As well as the spheres of government, the hierarchical tiers of government must be established on sound principles with the division of powers and authority clearly defined. In addition to this, the establishment of provincial/federal entities must be dealt with and defined in clearly set out terms to avoid disputes.

A major area that has not been given sufficient attention is the special regional structures and local levels of government, an issue that deserves to be dealt with on a priority basis because of its importance for service delivery.

These are key issues, and the successful resolution of these matters will invariably depend on the transitional clauses. The major challenge, which will require careful consideration, is the process of physically and legally transitioning the current state of affairs to that spelled out by the constitution.

As such, the blueprint of a federal Nepal, and the issues that require further consideration, show where the country stands at this point in its commitment to federalism. As far as transitional issues are concerned, it is clear that the thematic committees need to give more attention to this aspect of the federalization process. There is no chapter on the transition to federalism in any of the preliminary drafts of the CA's thematic committees. There is an expectation among the general public that Nepal will have a new constitution on November 28, 2011, and that as soon as the constitution is promulgated, all provinces will automatically start operating as autonomous territories. To obtain compromises on all contentious issues, including the suitable form of government and independent judiciary, the political leadership will have to

work hard. In addition to addressing the constitutional issues noted above, any transitional plan must give consideration to the priorities and next steps in the federalization process.

The following framework is suggested along with a *proposed* timeframe for the most important processes.

A first set of tasks would be:

- Finding solutions to all contentious constitutional issues such as the nature of provinces, system of government, etc.
- Filling gaps and resolving inconsistencies in constitutional provisions.
- Integrating the scattered provisions from the different committee reports into a comprehensive single document.

Once these tasks have been carried out, it will be much easier to plan the transition process.¹⁴ It is possible to be less prescriptive than providing a “blueprint,” a structure, or a set of timeframes, and proposing necessary guiding principles which decision-makers may want to take into consideration in arriving at conclusions. But given the stage of constitution-writing that Nepal has reached, a broad framework and schedule of milestones must be elaborated in detail. In the case of Nepal, the transitional framework might look like this:

July 2010 – October 2011: Establishment of a Nepal Government Institute of Federalism and Devolution of Powers as early as possible, which would be a permanent policy-making and research forum of the government in this area and would work on federalization initiatives. The national government could use this institute’s expertise to cater to its professional demands and requirements on federal and transitional issues. This Institute would also respond to the capacity-building requirements of provincial administrations, local governments and special structures.

November 2011 – June 2019: The new constitution of Nepal and the country’s restructuring will come with a number of security challenges. It is unlikely that the demands of all stakeholders will be met by the constitution in the ways they want. The new government will have to face instability arising from the creation of provinces, the demarcation of territories, the delimitation of constituencies, unsatisfied demands, claims on natural resources and the demands of disgruntled political forces, along with an almost inevitable degree of lawlessness. Management of this security challenge should be the top priority for the government. Without an effective security system, generally, and particular concern for the most potentially volatile areas, it will be difficult to establish the legitimacy of the new constitution.

14. Progress made at the sub-committee level of the CA’s Constitutional Committee is explored in a recent article by Bipin Adhikari, “Another Eleventh Hour May 2011,” in *Himal South Asian*, May 2011. Also available at: <http://www.himalmag.com/component/content/article/4426-another-eleventh-hour.html>.

December 2011 – November 2012: Preparation for nationwide elections for the legislature and the new federal government is certainly the first requirement to provide the national government with a fresh political mandate. The existing election commission must be ready with an amendment bill for the present electoral laws, in light of any changes made by the new constitution. The legislative process in this regard may be completed after November 28, 2011. Even though the CA's constitution-making mandate will then be completed, its status as the legislative body may be retained by the new constitution until it is taken over by the newly elected legislature.¹⁵ Installation of the new legislature and the government by November 2012 will help to move ahead with the transition framework. If the federal legislature is to be a bicameral body, requiring a separate electoral process for members of the upper house where provincial legislatures are also involved, the constitution should allow it to function as a unicameral unit until provincial elections are held later next year.

June 2013 – July 2014: As soon as the new government is established, it will need to set up required constitutional bodies including the Election Commission, the Public Service Commission, the National Audit Commission, the National Human Rights Commission, the Office of the Attorney General, and other commissions that are newly created by the constitution, such as the National Financial Commission and the Natural Resources Commission. This will also be the time to establish a federal Supreme Court and/or Constitutional Court, according to the new constitution, which will be the judicial unit responsible for maintaining the supremacy of the constitution.

July 2013 – January 2014: The issue of administrative restructuring of the federal system will become very important at this stage. The existing uneasy and uneven power relations between political actors (under the people's mandate) and the administration as it exists today (the permanent government) must be reviewed in this new context.

The national government should restructure the National Planning Commission (NPC), the principal planning agency of the existing unitary state, in the context of a federal system. The newly established provinces, local governments and regions under special structures may continue to need the NPC's technical assistance and guidance until they have their own institutions and procedures in place for development planning, setting of priorities, budgeting, oversight, monitoring and evaluation. This means that the NPC might be called upon to assist the new levels of government in making informed decisions about how to undertake development planning in the initial years of the transition.

15. The proviso to Article 82 of the Interim Constitution raises this possibility.

August 2013 – May 2014: The thematic committees have not proposed any guidelines or procedures for the demarcation of the territorial boundaries of provincial and local government units including special structures within provinces. A technical committee, similar to a state restructuring commission, might need to be created by the government as soon as the first integrated draft of the new constitution is approved, to physically demarcate the boundaries according to the restructured map of the country as specified by the constitution. This is a huge challenge to be met during the transition process because of the scale of the task, and ethnic and other sensitivities that will be aroused by the demarcation process.

December 2011 – May 2014: The work on framework legislation with regard to all issues on the concurrent schedule under the scheme of division of powers may also be started anytime after the promulgation of the constitution in November 2011. The draft constitution has mandated the federal government to provide a framework in this regard. This responsibility may be assigned to the Ministry of Law and Justice, which not only has drafting experience but by and large has the necessary experience in coordinating legislation with concerned ministries and agencies. By the time the elections to the provincial government and/or legislature are concluded, and the governments are formed, these framework legislations should be passed by the national legislature. This step could enable provincial legislatures to work on their laws as needed without wasting time.

June 2013 – August 2014: Preparation for elections to provincial legislatures and/or governments could be started immediately after the conclusion of the national elections. Conducting elections in all provinces at once is going to be an enormous task. The process will include drafting legislation, having it passed by the national legislature, and developing electoral support systems in the provinces. Provincial governments may not be able to start operating before February 2014.

June 2014 – August 2014: The national government will have to find office space for the provincial governments and relevant provincial (and national) ministries, provide personnel for the interim period, and establish an office supply system and other related facilities. While many of the existing buildings along with civil administration and local government facilities will be very useful, many provincial capitals may not have the capacity to handle the requirements of a full-fledged governmental system. Thus, the government might need to employ private contractors for many of these purposes, or rent facilities – whichever is the best option. Provincial elections and the formation of provincial governments are crucial to the subsequent transfer of powers and resources to local bodies, or regions under the special structures.

August 2014: Once the provincial governments are instituted, there should be no delay in establishing the Inter-Provincial Council, as provided by the constitution, to serve as a political forum to adjudicate any disputes

that could emerge between the national government and provinces, or between provinces. This must be done according to the legislation enacted to work out the Council's modus operandi or working procedures. The draft constitutional provisions must be studied to respond to the requirements of national legislation concerning the establishment of the general framework for intergovernmental relations and intergovernmental fiscal relations, including procedures to resolve intergovernmental disputes at the level of the Inter-Provincial Council.

August 2014 – August 2016: The work toward making the third level of the federal system operational can begin immediately after the promulgation of the constitution. It is the responsibility of the federal government to develop guidelines for the establishment of local governments – their numbers, required population, area etc. – on the advice of a high-level commission. There is no specific arrangement dealing with the enactment of legislation setting out the transition timeline for democratic local governments and special structures. In most cases, legislation will have to be decided upon by provincial legislatures, which can only be done after the relevant elections and the formation of the provincial governments.

August 2014 – August 2017: The transfer of services may be gradually carried out by the national government, subject to policy decisions made jointly with the provinces.

August 2014 – August 2015: This period could be used for the enactment of legislation required by the constitution for the establishment of the political and administrative institutions of the new provincial and local units (the legislature, executive and judiciary). The reports of the CSRDSP and CNREPAR lay down the relevant norms.

August 2014 – August 2016: Preparations for local government elections, and elections for the regions under special structures, could be carried out during this period. These elections are tentatively scheduled to be held in August 2016.

May 2015 – August 2016: Before the local level elections, provincial governments will have to help establish local organizational structures and departments, especially for the newly created special structures. This will include the assignment of staff, service delivery functions and budgets to the local governments.

August 2016 – June 2019: This is a testing period to mobilize the grassroots operation of the democratic process. Even if the transitional arrangements, for example the transfer of resources, will allow for asymmetrical progress, depending on the local situation, it is fine as long it is mutually agreed upon. However, a decisive step could be made later toward leveling out and establishing symmetry among all provinces. The transfer of services may be made gradually, subject to joint policy decisions.

Conclusion

The framework suggested above is clear. In fact, some initiatives on the part of the government have also been noted, but they are not efficient and coordinated. Certain agencies have taken an interest in transitional issues of relevance to their own mandates and functions, although none has taken an overall leading role.

Some important ongoing initiatives at the government level are:

- The National Planning Commission of Nepal, chaired by the prime minister, has been undertaking initiatives for the institutionalization of a federal system of development planning suitable to Nepal's context. These include a strategy and a roadmap for the transition to a new development planning process.
- Established in 2008, the Administrative Reform Commission (ARC) has been working on administrative structures appropriate to a federal system. It has begun implementation of a detailed working plan for transitional arrangements.
- The Ministry of Federalism, Constituent Assembly, Parliamentary Affairs and Culture has undertaken two studies to date: One that identifies simple and efficient mechanisms to transform and devolve administrative and security arrangements from the centre to the provincial and local levels; and the other proposing a mechanism and preparatory process for the distribution of natural resource management functions among the centre, provinces and local units.

There are other suitable forums like the Office of the Prime Minister and the Council of Ministers, the Ministry of Finance, the Ministry of Peace and Reconstruction, the Ministry of Home Affairs, the Ministry of Health and Population, the Ministry of General Administration, and the Ministry of Local Development. However, there does not seem to be any close contact or information sharing among these offices on issues related to the transition. They are not even working with the CA on matters relevant to them. A recent UNDP study shows that "the prevalent thought at the political as well as bureaucratic levels has been found to be a 'wait and see' approach."

The Office of the Prime Minister and the Council of Ministers has been considering the establishment of a unit to facilitate the transition to federalism.

However, there is little sense of urgency in preparing for the transition. The experiences of the countries discussed here make it clear that the initiatives taken so far by Nepal's government to manage the transition to the federal system need to be strengthened.

A framework is absolutely necessary to set out a process to follow, and to thereby formalize the main steps that are required. The aim should be to formalize the process as much as possible, perhaps even within the constitution.

However, if this is not possible, a certain degree of formalization, including agreements between parties (inside and outside of parliament; written and unwritten) would be useful.

Future activities, as this paper shows, should be very specific. An example would be to organize an activity aimed at responding to very concrete issues facing members of the Constituent Assembly during the process of drafting and implementing the constitution.

The challenges of becoming a federal country are numerous and varied. If the activists who led the country onto the path of federalization are sincere, they must not downplay the importance of a planned and thoughtful federalization process. They must also not give the impression to the Nepalese people that federalism is a panacea for all the ills of the country. It is absolutely necessary to take federalism as one among many other important elements of modern constitutionalism including representative democracy, basic human rights, independence of the judiciary and limited government. The interventions suggested in this discussion paper are intended to help ease the process in a significant way.