

Nepal Underway to Inclusive Local Governance

By Indu Tuladhar, Advocate

Abstract

Inclusion is one of Nepal's pervasive issues/agenda from both the political and development forefronts. To address the inclusion agenda, the Constitution of Nepal has outlined a comprehensive framework that includes four key factors: the concept of equal citizens, social protection, the market, and the rule of law. Nepal has adopted the federal state structure to effectively and efficiently execute the framework, ensuring the devolution of State power. However, a grave misconception or limited understanding of inclusion has posed challenges to addressing the historical marginalization and exclusion in Nepali society. For instance, while talking about inclusion, most studies/reports have primarily focused on understanding inclusion from caste and ethnic perspectives, with the view to increase their participation in the State mechanisms. Indeed, this perspective is essential but not comprehensive to understand the historical issues of exclusion & marginalization in Nepali society. Notably, this concept misses the intersectional dimension, multiple forms of discrimination, exclusion, and barriers, and its implications in strengthening decentralized governance from a holistic approach of inclusion in local governance.

The country's fundamental law broadly guides and requires compatible policy decisions and social practices. The 2015 Constitution and its first amendment are critical in developing a common framework. The 2015 Constitution provides a model of inclusion that includes gender equity/equality as well. Unless properly appreciating the Constitution's model, no other models would retain legitimacy and validity. On top of that, the federal modality of governance envisioned by the Constitution and the power-sharing mechanism among different levels of governments and institutions need to be adequately assessed to offer a valid inclusion framework. From this perspective, this paper presents a holistic approach to analyzing inclusion in local governance with reference to the constitutionalist framework and parochialism. The paper has focused on concept analysis, analysis of institutional gaps, governance approach for mainstreaming the inclusion framework, system building, and institutional development in operationalizing the road map. Specifically, the following issues were explored:

- *To review the conceptual framework of inclusive governance at the local level under Nepal's Constitution,*
- *To analyze the positive practices and limitations for inclusive decision-making processes within local governance structures, fostering a truly inclusive and participatory local democracy from a gender perspective,*
- *To develop an operational guideline (a road map) for effectively mainstreaming the constitutional framework of inclusion at the local level.*

1. Introduction

The concept of "Governance" is a broad expression that refers to the practice of legitimate power that directs the functioning of society under the "just rule of law". Broadly, governance mirrors the role of the State and its action for directing the functional State and political regime under the rule of law to promote and institutionalize accountability towards its people. Broadly, it is a process that directs the country, political regime, and its respective actors toward the country's development and its people's prosperity under the just law. Nonetheless, 'inclusive governance' has recently gained attention in the global community, particularly in international development cooperation and post-conflict countries.

There is no standard, comprehensive, universally accepted definition of "inclusive governance"; hence, there is no common understanding of it. Despite that, governance practitioners use two interweaving approaches to define the concept of "inclusive governance". First, the approach sees



that it is a process of bringing marginalized and disadvantaged voices into the process of informed decision-making, which affects them. The second approach emphasizes the "just policy outcome" that benefits the well-being of the citizens and individuals in general.¹ Therefore, inclusive governance is perceived as a process by which national or subnational governments allow citizens to participate in decision-making to influence the policies and actions of government actors to achieve positive changes for people's lives based on the experiences, knowledge, and needs of the people.

As a process, inclusive governance offers or ensures the opportunity for marginalized and disadvantaged communities, including women, Dalits, indigenous people, indigenous minorities, religious minorities, youth, children...., and views/opinions to challenge or influence and shape various policies. As an outcome, it expects fairer and just policies and actions by the State regime and its actors.

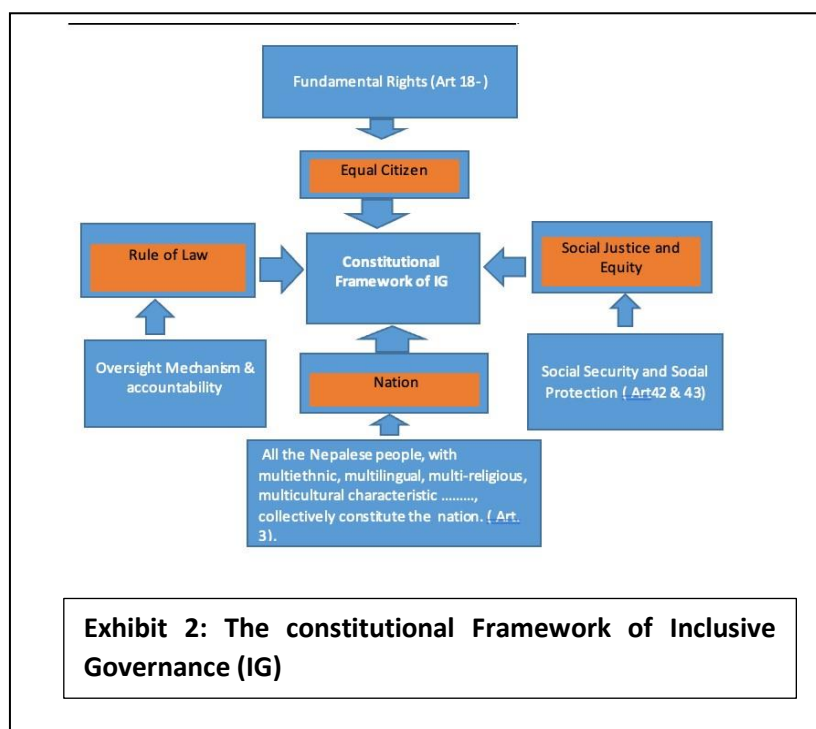
In this regard, various approaches and principles interact with each other and contribute to achieving inclusive governance. Among them, some key concepts are human rights-based

¹ Position Paper on Inclusive Governance; Final Report, Commissioned by MFA-DSH/KPSRL, August 2021, <https://www.kpsrl.org/sites/default/files/2022-02/ECDPM%20-%20Position%20Paper%20On%20Inclusive%20Governance.pdf>, access on 8 November 2023.

approaches, legitimacy, democracy (democratic governance), good governance, localization, and social cohesion,² which eventually reinforces the concept of the rule of law, equal citizens, human rights, accountable market, and social protection.

2. Constitutional Opportunity to Ensure Inclusive Local Governance

In the aftermath of the post-conflict constitution-building process, Nepal has implemented a comprehensive framework to ensure inclusive governance at the local level. This involves the devolution of power and authority across three tiers of government: the Federal, the State, and the



Local level, as outlined in the Constitution of Nepal. The adoption of federalism in Nepal was motivated by the desire to end centralized governance, which had systematically promoted the hegemony of certain ethnic groups in state mechanisms and decision-making. Additionally, it structurally denied the participation of marginalized and disadvantaged groups and populations in the decision-making process.

Along with that, Nepal's Constitution champions the critical characteristics of

inclusive governance across all three tiers of government. These include the principle of *inclusion and democratic framework, featuring a competitive multi-party democratic system, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, complete freedom of the press, and an independent, impartial and competent judiciary.*³ In this new governance structure, all three tiers of the government are endowed with State power, i.e., executive, legislative, and judicial power (with an exception that provinces lack judicial authority). The distribution of power

² Position Paper on Inclusive Governance; Final Report, Commissioned by MFA-DSH/KPSRL, August 2021, <https://www.kpsrl.org/sites/default/files/2022-02/ECDPM%20-%20Position%20Paper%20On%20Inclusive%20Governance.pdf>, access on 8 November 2023.

³ Preamble, the Constitution of Nepal.

follows three modules⁴: competitive, concurrent, and residual⁵ each outlined in Schedule 5-9. The provision for residual power is specified in Art. 58.

It is important to note that the Constitution of Nepal does not narrowly define the scope of inclusive governance as limited to the participation of diverse groups; instead, it consciously emphasizes and embraces various approaches to ensure inclusive governance at all levels, including local governance. The definition of a nation, Social protection, a broad spectrum of fundamental rights and diverse accountability mechanisms stand out as key elements. They provide ample opportunities to achieve "real" inclusive local governance through a progressive, harmonized, and dynamic interpretation of the Constitution, as opposed to a purely literal one. Following are the key features of inclusive governance, which are directed towards inclusive local governance in the country:

| Table 1: Key Concept/principle related to Inclusive Governance under the Constitution of Nepal. | |
|--|---|
| An inclusive definition of 'Nation.' | <ul style="list-style-type: none"> • Define ‘nation’ as possessing multi-ethnic, multi-lingual, multi-religious, and multi-cultural characteristics, reflecting the common aspirations of people residing in diverse geographical regions. It is a collective commitment and unity marked by allegiance to national independence, territorial integrity, and the shared pursuit of Nepal’s prosperity. In essence, all Nepali people collectively constitute the nation. |
| Equal citizens/Fundamental Human Rights and Equity | <ul style="list-style-type: none"> • A comprehensive array of rights is provided from Article 16 to 48, encompassing fundamental freedoms, equality, non-discrimination, inclusion, and proportional participation. These rights also cover the right to inclusive education, religious freedom, protection against untouchability, and prevention of discrimination based on caste, ethnicity, origin, community, occupation, or physical condition. Additionally, individuals are entitled to rights related to religion, culture, social justice, social security, and constitutional remedies. • All citizens are entitled to the same rights with the scope of affirmative measures. |

⁴See, The Constitution of Nepal, Schedue-5, List of Federal Power; Schedule-6 List of State Power; Schedule-7, List of Concurrent Power of Federation and State; Schedule-8, List of Local Level Power; Schedule-9, List of Concurrent Powers of Federations, State and Local Level.

⁵ See, Art 58. Residual powers: The Federation shall have power on any matter not enumerated in the Federal List, State List, List of Local Level or Concurrent List or on any matter which is not so specified in this Constitution as to be exercised by any level.

| | |
|---|---|
| Oversight & Accountability Mechanism | <ul style="list-style-type: none"> • Duty-bearers are accountable and have an obligation to respect, protect, and fulfill the fundamental rights of citizens and the human rights of all individuals. • Non-state actors (private sectors, media, civil society, etc.) are provided space to monitor people's trust in State authorities/agencies and hold duty-bearers. • Mechanism of parliamentary oversight is in place for accountability; there is scope to strengthen oversight in provincial and local assemblies in respective provinces and local levels. • Provision of various constitutional commissions to oversee and make government accountable, • Provision of judicial review, etc. • Empower people and non-state actors by providing tools for public interest litigations and constitutional remedies for violations of fundamental rights. |
| Participation | <ul style="list-style-type: none"> • People from marginalized and disadvantaged communities are acknowledged as rights holders, • Ensure proportional participation of women from disadvantaged and marginalized communities, thereby obligating to the State to adopt an intersectional approach that considers the intersecting impact of multiple forms of discrimination. |
| Sovereignty and State power | <ul style="list-style-type: none"> • State power and authority are vested in the Nepali people. |
| Rule of Law & Supremacy of Constitution | <ul style="list-style-type: none"> • The Constitution of Nepal is defined as the country's fundamental law, and all laws inconsistent with this Constitution shall, to the extent of such inconsistency, be void. • Every person has a duty to uphold this Constitution. |

Moreover, to ensure inclusive governance at three levels, the Constitution gives a legitimate way forward to support the place active part of disadvantaged and marginalized communities in achieving their rights, including voicing their opinions. The following are the key measures:

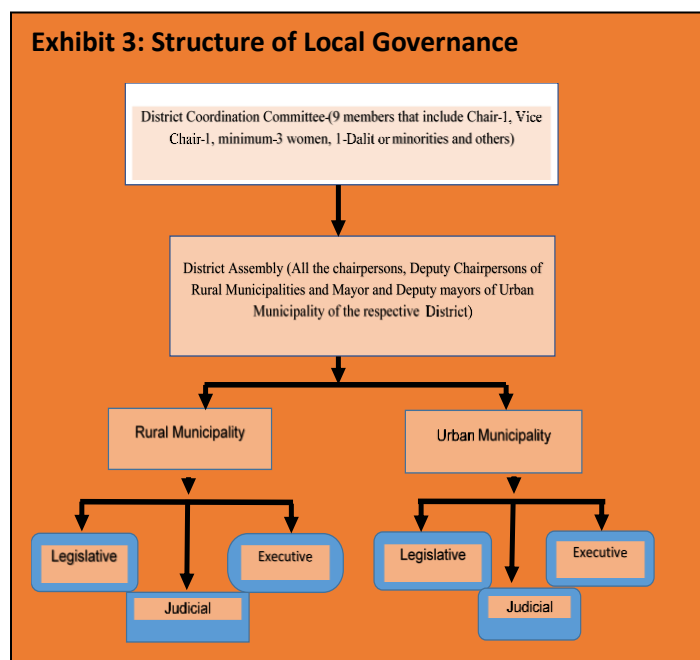
- Allow the space for affirmative measures for.....based on the principle of positive discrimination,
- Mixed electoral system (first past the post and proportional representation)

- Quota system (at all levels of elected bodies, i.e., local assembly, province assembly, and federal parliament)

In a nutshell, the Constitution gives a broad constitutional directive and framework to State authorities and citizens to ensure inclusive governance at all levels of governance structure.

3. Practice of Inclusive Local Governance from Gender Equality and Social Inclusion Perspective

It is significant to note that the Constitution of Nepal has taken, federalism as means and tools to address both exclusion as well as issues of multiple forms of repercussion of centralized state mechanism in the country. Hence, it has taken federalism as an opportunity to review, restructure,



consolidate, localize, and materialize transformative reforms to ensure inclusive governance at local level.

Currently, Nepal has 753 local governances that sub-divided into 293 urban municipalities (6 Metropolitan Cities, 11 Sub metropolitan Cities, 276 Municipalities) and 460 rural municipalities. There are 77 districts Coordination Committee and the same number of District Assembly. Each District Assembly comprises of the Mayors, Deputy Mayors, Chairpersons and Vice Chairpersons of respective district. The respective District Assembly elect a District Coordination

Committee (DCC) as an Executive branch at the district level. The DCC is involved of a maximum of nine members chosen from District Assemblies, that include one Chief, one Deputy Chief, at least three women, and at least one Dalit or minority community and others. District Assembly and DCC are the part of the Local government.⁶

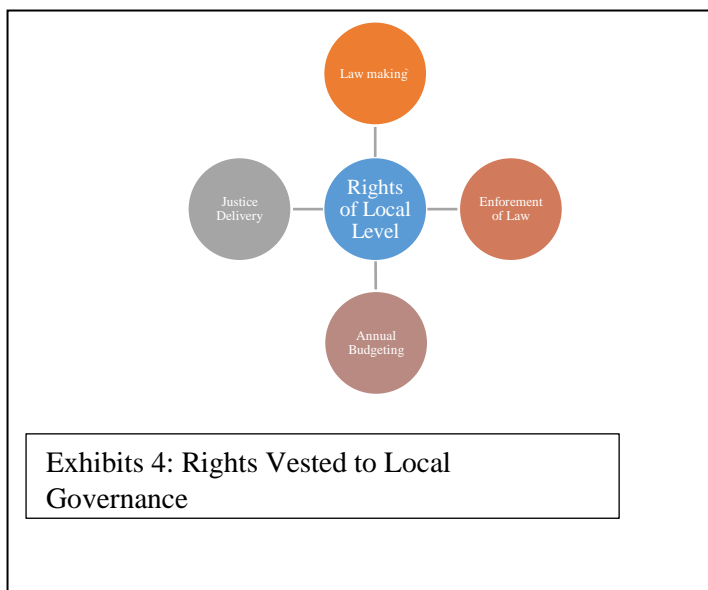
The Constitution has granted the functional responsibilities of local government. Total 22 exclusive functions assign to local government including management of local police, local services, local development projects and programs, basic and secondary education, basic health and sanitation, and local economic development.⁷ Local government is also responsible to fulfill the responsibility of concurrent power outlined in scheduled -9 the concurrent powers of Federation, State and Local level. The federal law, Federation, Province and Local Level (Coordination and Inter-relation) Act, 2022, further ensure clarify and elaborate the authority to

⁶ Art. 220, The Constitution of Nepal

⁷ Schedule-8, The Constitution of Nepal

enact necessary law on the matters of respective exclusive powers and implement such powers.⁸ Regarding concurrent power that listed in schedule-9, local government shall enact law related to service delivery and public health at local level, consumer's interest, regulation of quality standard in public service to be delivered at local level and public awareness⁹. The local level also shall enact necessary law on or execute such matters included in schedule -9 in case federal law or province law is not enacted on such matter.¹⁰

Gender equality and inclusion is central to inclusive governance that include local governance too. The constitution undoubtedly points that elimination of discrimination based on class, caste, region, religion, gender and all forms of caste based untouchability is the precondition to ensure economic inequality, prosperity and social justice.¹¹ With this spirit, Nepal has conducted two local level elections after promulgation of the Constitution of Nepal in 2017 (three phases 4 May, 28 June and 18 September) and 13 May 2022 respectively. Over the period of 6 years of practices of local



governance; Nepal has experienced and observed both optimistic pathways and enormous challenges; to guarantee the inclusive local governance which may obvious in newly transitioned federal context; particularly in social protection, health, education, employment and so forth.

Some of the key success, and challenges that observed in this paper based on both primary and secondary sources of information. Primary information was gathered from observation/interaction/ during the field visit at local level as a resource person in various capacity building training/workshop to local governance actors along with policy review. Secondary information was retrieved from desk review of previous reports and papers etc. Some of the highlights are provided below:

A) Legislative Pathways towards Inclusive Participation at Local level

Over the period, Government of Nepal (GoN) is able to introduces both legislative and policy framework to ensure inclusive local governance apart from the constitutional and international commitment. Particularly, Local Governance Operation Act, 2074 (2017), and Local Level

⁸ Sec 5 (1),

⁹ Sec 6 (1C),

¹⁰ Sec 6 (4),

¹¹ Preamble, the Constitution of Nepal

Election Act, 2074 (2017), are the key which open the avenues to fulfill the aim of the Constitution of Nepal to achieve inclusive and prosperous local governance. These legislations invite active participation of its citizens in State mechanism; particularly, women, Dalit, and indigenous minorities in local governance structures adopting affirmative approach “Reservation”.

The local level government comprises of Village Committees, Municipalities and District Assemblies. With the election for 744 local bodies, over 36,000 local leaders from Ward units to Municipal level. Out of them in ward committees, total 13,360 seats, in Municipal Committees-1315 seats, Village Executive-1924 seats and District Coordination Committee-225 seats have been allocated to the women. Although, how many women candidates will win the election for the position of Mayor, Deputy Mayor, and Ward Chair cannot be predicted until the election results are not declared. Nonetheless, these act ceased the opportunity to ensure proportional participation in local governance as it has provisioned for reserved seats for women, Dalit and minorities’ groups.

| Name of the Local Body | Position | No. of Unit | Total Elected Positions | Type of Candidates/position Reserved | Expected Women’s Participation |
|--|---|--------------------|--------------------------------|---|--|
| Municipality | Mayor-1 and Deputy Mayor-1 | 263 | 526 | 50% women candidates | Not predictable until result is declared |
| Village Assembly | Chair-1 and Vice-Chair-1 | 481 | 962 | 50% women candidates | Not predictable until result is declared |
| Ward Committees (municipalities and village assemblies) | Chair-1 for each ward | 6680 | 6680 | No reserved seat for women | Not predictable until result is declared |
| Ward Committee (municipalities and villages) | Members-4 (at least 2 women members, among them 1 | 6680x4 | 26720 | 2 elected seats reserved for women) | 13,360 |

| | | | | | |
|---|-----------------------------|-------|------|---------------------------------------|-------|
| | should be Dalit) | | | | |
| Municipal Executive (including metros and sub-metros) | Members (women-5) | 263x5 | 1315 | 5 elected seats reserved in each unit | 1,315 |
| Village Executive | Members (women-4) | 481x4 | 1924 | 4 elected seats reserved in each unit | 1,924 |
| District Coordination Committee (Total) | 9 members in each Committee | 75x9 | 675 | 3 women's seats in each Committee | 225 |

The Local Level Election Act, 2017 seem more evolutionary rather than revolutionary in terms of ensuring people's participation at local governance. The legislative framework is not inclusive as aimed by the Constitution of Nepal. The legislation is inconsistent with the several provisions that outlined in the constitution; particularly with the preamble, Art 38 (4), Art 40 (1), and 42 (1). Local election system, along with party and its governance are governed by federal legislations; which give very limited opportunities to address local diversity in proportional basis to ensure proportional participation of Dalit, marginalized/disadvantages groups at local governance due to provision of 'certain reserve seats to certain groups'. This legislation and practice of the local election under this legislation not only undermined the women and marginalized communities' fundamental right; but threats to sense of accountability, respect for the value and spirit of constitution which eventually challenges to strengthening inclusive local governance.

B) Local Democracy, Election and Status of Participation

In democratic system, election is the legitimate process of ensuring people's participation in decision making process. Hence, periodic free and fair local election is the precondition for sustaining or deepening democracy at local level. After restructure of the unitary state structure into federal structure; Nepal successfully conducted two local elections in 753 local level; vote cast was more than 10 percentages lower in 2022 local election in comparison to 2017 local election in the country, which were conducted in three phases. For instance, in 2022 local election 64% of the total 17,733,723 registered voters voted;¹² whereas in 2017 local election, 14,054,482 people were eligible to vote, and the average vote caste at 74.56% in first phase; 73.69 in second phase; and 77% in third phase¹³.

¹² LOCAL ELECTION 2022 An Overview of Electoral Contestation, COCAP

¹³ Nepal's Local Election, 2017, Observation on Nepal's Local Election, Democracy Resource Center, November 2017

The data in percentage shows the decrease of people's participation in voting from 2017 election to 2022 election. Nonetheless still 64% people of all strata of life actively participated in voting in local elections in 2022, despite various level of dissatisfaction. Expectations are high after the restructuring of the State mechanism, but during the first tenure, there was allegation that local government could not serve people with attainable standard and commitment. Despite that local elections eventually support to create and co-create a space for restoring democracy to the local level where it is most needed and meaningful. Two smooth local level periodic elections give hope for momentum towards inclusive local governance with democratic norms and values; and ensure opportunity to local citizens to participate in the process of decision making of electing their representatives. Nonetheless, local democracy at grassroots is not inclusive, which eventually hinder the inclusive participation of grassroots citizens, particularly, women and disadvantages communities. The prominent political analyst, Lok Raj Baral statement in his newly published book regarding grassroots democracy is profoundly depicts the current picture of political participation of common people; ".....grassroots politics, which is characterized by three main contradictory trends: too much party centric activities, lack of initiative of local leaders due to imposition of candidates from above; and local enthusiasm for participations, political parties' roles in controlling local bodies.....The 2022 local election were virtually control by the central leadership of parties allowing partisan spirit to seep through."

C) Women, Dalit and ethnic minorities in Local Governance

Currently women hold 41.22% of the total elected positions in the local level governance. This represents only a minimal increase in the share of elected women in local governments compared to the election in 2017. Though at first glance women's representation in local level seems encouraging. The provisions of reservation which mandates political parties to nominate a woman candidate in either of Head or Deputy Head's position and reservation for a Female and Dalit Female ward members have essentially contributed to women's representation in the local levels.

The number of women's candidacy in executive positions of local levels mainly Head and Deputy Head and more so the outcomes of the election describes that women were underrepresented in the Head post. The majority of those elected to the posts of head (Mayor and Chair) were male. Of the 293 candidates elected in the position of Mayor only 13 are women. That means only 4.4% of Mayors of municipalities are women. Similarly, of the 460 Chairpersons of rural municipalities elected only 12 (2.6%) are women. This gender gap is even more noticeable in the case of Ward Chairperson in which only 1.02% of those elected to the post are women.¹⁴

¹⁴ LOCAL ELECTION 2022 An Overview of Electoral Contestation, COCAP

D) Open Avenues to ensure Inclusive Service to the People

| Women's Participation in Local Government in 2017 and 2022 Election | | | | | | |
|--|---------|-----------|-------|--|---------|-------|
| Women Elected Members in Local Level Election in 2017 | | | | Women Elected Members in Local Level Election in 2022 | | |
| Position | Men (%) | Women (%) | Total | Men (%) | Women % | Total |
| Mayor | 97.24 | 2.76 | 254 | 95.54 | 4.45 | 292 |
| Deputy Mayor | 6.18 | 93.82 | 275 | 20.89 | 79.10 | 292 |
| Chair | 97.34 | 2.63 | 418 | 97.37 | 2.62 | 457 |
| ViceChair | 9.18 | 90.84 | 415 | 32.23 | 67.76 | 456 |
| Ward Chair | 99.28 | 0.78 | 6733 | 98.98 | 1.01 | 6685 |
| Ward member (open election) | 98.12 | 1.86 | 12775 | 96.76 | 3.23 | 13366 |
| Women member | - | 100 | 6742 | ===== | 100 | 6661 |
| Dalit women member | - | 100 | 6568 | ===== | 100 | 6446 |

<https://www.nepjol.info/index.php/JPS/article/download/39283/30088>
Source: Election Commission
<https://result.election.gov.np/LocalElectionResultDetails.aspx>

Regarding Dalit representation in 2022 local election, only seven rural municipality chairpersons have owned the election from the Dalit community. This is just 1.52 percent of the total 460 rural municipalities. Likewise, only eight members have been elected in the position of deputy mayor in urban municipalities which is only a 2.73 percent of the total number of deputy mayor positions.

Inclusive local governance is not only about ensuring representation and participation in decision making processes; but at outcome level there should be more just policy outcomes, which can serve the people fairly and equitable manner considering the local diversity. There are several such set examples which witness the substantial local ownership in the implementation of inclusive governance services. Particularly, during the COVID period, local governments play a significant role to ensure the services to the people; it had played the intermediary coordinating role, to take advantages of economies of scale and to be responsive to local peculiarities and aspirations. Nonetheless, there are huge issues of good governance, particularly, the issue of corruption, non-transparency, non-participatory law making process, capacity of local governance and so forth. Hence there is challenges to strengthen law/policy making process at local level, which is so crucial to enable policies that reflects local people's need and aspiration particularly women, Dalits, people from marginalized and disadvantages communities through their active participation as a sovereign citizen.

E) Fundamental Rights and Social Security

Nepal aims to create an inclusive and equitable society by addressing poverty, inequality, and discrimination through comprehensive fundamental rights. The responsibilities for social security are shared among the federal, provincial, *and local levels*, encouraging collaboration to implement and coordinate social welfare policies and programs. By prioritizing economic justice, human development, and sustainable development, Nepal aims to enhance overall well-being and reduce economic disparities for all its citizens through localization of SDGs.

Addressing unemployment has been a persistent challenge for the local government over time. The youth unemployment rate, specifically among individuals aged 15-29, stands at 19.2 percent. It is estimated that over 400,000 young individuals join the labor force annually. These statistics highlight the quantitative aspect of the employment challenge faced by Nepal.¹⁵ Unemployment and the loss of jobs have wide-ranging impacts on various aspects of society. The families of unemployed individuals face significant hardships, and the negative effects of prolonged unemployment spans generations in the aspect of health, nutrition, education, and livelihood. Elevated levels of unemployment can create a vicious cycle that adversely impacts both business and overall economy of the country leading to rise in poverty.¹⁶ Nonetheless, there is a persistence challenge to enhance capacity and capabilities of local governance to realize these responsibilities.

Nepal's multidimensional poverty rate is approximately 39 percent, which reveals that there is a significant difference between the number of individuals in need of assistance and those who actually receive it.¹⁷ This discrepancy is especially notable among marginalized groups, as data shows that Dalits, for instance, have lower coverage rates compared to other castes.¹⁸ One factor contributing to such subpar implementation is the inadequate design and cash delivery mechanisms of many cash transfer programs, resulting in minimal impact. According to Nepal's cash transfer programs, 10% of formally enrolled recipients of the old-age pension and 35% of widow pension recipients do not receive their full entitlements. In terms of budget allocation, this translates to households receiving only NPR 5.8 billion from four different types of social protection benefits (namely, widow pension, old-age pension, endangered ethnicities allowance, and disability allowance) out of the allocated NPR 6.8 billion, pointing to a leakage of 16 percent.¹⁹ Consequently, inadequate policy implementation has contributed to the perpetuation of vulnerable and marginalized circumstances in Nepal.

¹⁵ "Employment Protection in Nepal." *ILO*, <https://www.ilo.org/kathmandu/areasofwork/employment-promotion/lang--en/index.htm>. Accessed 4 July 2023.

¹⁶ Shrestha, Hari Prasad. "Unemployment: The Biggest Challenge For Nepal." *Spotlight*, 11 November 2022, <https://www.spotlightnepal.com/2022/11/11/unemployment-biggest-challenge-nepal/>. Accessed 4 July 2023.

¹⁷ Multidimensional Poverty Index, 2018.

¹⁸ *Supra* N. 67.

¹⁹ *Ibid*.

Social protection policies fail to acknowledge the psychological, socio-cultural, and other identity-related issues faced by marginalized ethnic groups. This poses a significant problem as the cultural values, norms, and worldviews imposed by the dominant ethnic group, under the guise of "universal" policies, benefit members of the dominant group while disadvantaged individuals from marginalized ethnic groups.²⁰

The LGBTI++ community faces a similar situation where they are excluded from accessing the benefits of social security schemes due to discriminatory citizenship provisions. Transgender and Intersex individuals, in particular, suffer the consequences of not having citizenship with a gender marker. Although the Constitution and laws do not restrict the rights of the LGBTI++ community to social protection, their access to such benefits is hindered by the requirement of citizenship. This creates a barrier that prevents them from accessing social protection; and local government could not prioritize to address the need of these left behind population.

F) Inclusive Socio –economic Rights and local level

According to the Nepal Demographic and Health Survey from 2016, 4.6 million individuals experienced food insecurity, with 20% of families experiencing mild to moderate food insecurity, 22% experiencing moderate to severe food insecurity, and 10% experiencing severe food insecurity..²¹ Households in rural areas with higher food prices are likely to be food-insecure than houses in urban areas that includes women, Dalit, people from marginalized communities.

Likewise, the State has promised its citizens the right to free education up until the secondary level, but the laws do not appear to have been realized. After the introduction of neoliberal economic policies, rapid privatization and commercialization of the education sector started in Nepal. At present, there are a total of 36,032 schools in Nepal — 27,343 public, 7,373 private, and 1,316 religious.²² With endogenous privatization, private schools promised better education with better facilities at a higher price, which led to the enrollment of best-performing students in private schools. It left public schools with lower-ability students.

This kind of polarization has manifested in exam results for the past decades; in 2019, the percentage of government-school students who scored a grade point average (GPA) above 3.60% was only 0.8 %, while that of private-school students was 11 percent. The government of Nepal has allotted a budget of NPR 2,388,188,000 to provide scholarships to 2,575,204 school-level students for the academic session of 2079, according to the Economic Survey of 2079-80. The coverage of this policy is unknown, however, as stories about families having to sacrifice generational wealth or students having to compromise on their quality of education are heard regularly on the news.

²⁰ Rasaili, Prem Kumar, Social Protection and Poverty among the Women in Nepal, An Analysis from a Gender Perspective, Resilient Social Protection For An Inclusive Development.

²¹ “Food Assistance Fact Sheet - Nepal.” *USAID*, 30 September 2019, [https://www.usaid.gov/food-assistance/nepal#:~:text=Situation.and%20Health%20Survey%20\(DHS\)](https://www.usaid.gov/food-assistance/nepal#:~:text=Situation.and%20Health%20Survey%20(DHS)). Accessed 6 July 2023.

²² Economic Survey 2079-80, Ministry of Finance, Nepal.

Providing basic health service to its people is the responsibility of the government; and receiving health service from the government is people’s fundamental rights. The government of Nepal has run the hospitals and health centers in different urban and rural areas of Nepal. With the liberalized economic policy adopted by the government many hospitals, poli-clinics and labs have been established from the private sector. As of 2021, there are a total of 10 health centers, 110 hospitals, 3,789 health posts, 3,176 sub health posts and 203 primary health centers in Nepal. Prior to the massive sweep of privatization, the number of private hospitals in Nepal was a mere 2.

Private hospitals guarantee better facilities with better services, which can only be accessed by people with adequate resources. Big name hospitals such as HAMS hospital are charging as much as NPR 7,000 per night for a bed in the general ward, in a time when the monthly minimum wage in Nepal is NPR 15000. 366 hospitals are private, and 99 are located inside Kathmandu.

Most of the big hospitals are either located in Kathmandu or in major cities in Nepal. People living in rural areas are still deprived from even the basic health care facilities in Nepal. In some areas, hospitals have been established, but they lack proper equipment, lab and expert human resources including doctors.

| Provinces | Hospitals | Primary Healthcare Centers | Health Posts | Urban Health Centers | Community Health Unit | Other Health Unit | Total |
|---------------|------------|----------------------------|--------------|----------------------|-----------------------|-------------------|-------------|
| Koshi | 18 | 40 | 648 | 52 | 49 | 9 | 816 |
| Madhesh | 13 | 32 | 745 | 17 | 7 | 8 | 822 |
| Bagmati | 33 | 43 | 640 | 110 | 90 | 18 | 934 |
| Gandaki | 15 | 24 | 491 | 52 | 41 | 12 | 635 |
| Lumbini | 20 | 30 | 570 | 68 | 47 | 6 | 741 |
| Karnali | 12 | 13 | 336 | 18 | 22 | 3 | 404 |
| Sudur Paschim | 14 | 16 | 378 | 57 | 43 | 3 | 511 |
| Total | 125 | 198 | 3808 | 374 | 299 | 59 | 4863 |

A report published by the National Library of Medicine, USA, showed that the percentage of population with access to a secondary or tertiary health service center in under 30 minutes by walking was less than 15%. In addition to that, 5.6% out of all deaths registered in the year 2017, as per the Nepal Burden of Disease report of the same year, were due to diarrheal diseases.

G) Implication of Climate Change and Environmental Degradation

This chapter addresses the persistent crisis characterized by environmental degradation, depletion of shared resources, adverse effects of shifting climatic conditions and its impact on weakening social protection. Nepal is prone to vulnerability to various hazards, encompassing a slew of environmental catastrophes. According to the Global Climate Risk Index (CRI) scale from Climate

Transparency in 2020, Nepal is ranked as the 9th country most affected by climate-related extreme weather events, despite being a carbon negative country.²³

Various laws and legislations have been introduced by the government in the interest of climate consciousness and environmental protection, including the Right to clean environment, provided by Article 30 of The Constitution of Nepal 2015(2072); the Environmental Protection Act 2019(2076); the National Adaptation Program of Action (NAPA) to Climate Change 2010; the National Climate Change Policy 2019(2076); the National Environment Policy 2019(2076); and the National Framework on Local Adaptation Plans for Action 2011. Additionally, the Sustainable Development Goals for 2030 place significant importance on the promotion and advancement of climate risk management strategies that effectively address the root causes of climate vulnerability. These strategies also aim to tackle the factors that perpetuate long-term poverty and food insecurity.

The fundamental right to a clean and healthy environment is least enjoyed by marginalized communities and socioeconomically disadvantaged groups mostly situated in rural areas, although their contribution to the climate crisis is next to none.²⁴ Moreover, these communities endure the repercussions of worsening climatic conditions induced natural calamities. A 2009 survey conducted by Gallup reported that on top of almost half the Nepali population having no idea what climate change was, 12% had never even heard of it.²⁵ The lack of awareness regarding the matter, sparse resource and ability to combat climate change further makes them susceptible to ripples of climate-related shocks.

The difficulty in the traditional way of living of rural communities is exacerbated even further by the implications of a degraded environment. Nepal's temperature is estimated to increase by 0.9 percent from 2016 through 2045.²⁶ It is particularly deleterious to Nepal's environmental health,

²³ "Accessing Climate Finance in Nepal: Issues and Options." *Adpc.net*, http://www.adpc.net/igo/category/ID1861/doc/2023-uAQc62-ADPC-Accessing_Climate_Finance_in_Nepal_ForWeb.pdf. Accessed 11 July 2023.

²⁴ "Social Dimensions of Climate Change." *The World Bank*, <https://www.worldbank.org/en/topic/social-dimensions-of-climate-change#:~:text=As%20the%20climate%20continues%20to,identity%2C%20and%20other%20related%20risks>. Accessed 12 July 2023.

²⁵ Becken, Susanne et al. "The cultural context of climate change impacts: Perceptions among community members in the Annapurna Conservation Area, Nepal." *Elsevier*, vol. 8, 2023, pp. 22-37. Available at https://www.climatenepal.org.np/sites/default/files/doc_resources/becken2013.pdf. Accessed 12 July 2023.

²⁶ "Nepal - Country Climate and Development Report." *International Finance Corporation*, 14 September 2022, [https://www.ifc.org/en/types/insights-reports/2022/nepal-country-climate-and-development-report#:~:text=Winters%20are%20projected%20to%20be,\(from%20157%2C000%20in%202010\)](https://www.ifc.org/en/types/insights-reports/2022/nepal-country-climate-and-development-report#:~:text=Winters%20are%20projected%20to%20be,(from%20157%2C000%20in%202010)). Accessed 11 July 2023.

considering 15 percent of its total land area is mountainous.²⁷ Growing temperatures are resulting in glacial melting, its rate growing by an alarming 65 percent from 2010 to 2019 than in the decade prior.²⁸ The ramifications are severe—disruption of landscapes; resultant Glacial Lake Outburst Floods (GLOFs), landslides, and an increased risk of avalanches, to name a few—and worse, these changes are rapid and irrevocable. Glacial melting also affects river systems, and in turn affects communities in lower regions whose livelihoods depend on melted water supplied to these systems by seasonal melt of snowpacks.²⁹ Beside local communities, untimely melting of snowpacks also brings about disturbances in the aquatic ecosystems, which disproportionately affects the small-scale fishing industry. In Nepal, communities involved in small-scale fishing and fish farming frequently face marginalization and occupy the lowest rungs of the socio-economic hierarchy. It is within these small-scale endeavors that poverty is most pervasive.

Increased temperatures are also giving way to longer droughts and wetter monsoons with unpredictable rainfall. It does not bode well for Nepal's agriculture industry, both because agriculture is the leading sector of Nepal's national economy³⁰ and because the industry is primarily driven by natural rainfall; monsoon is dubbed the plantation season in Nepal leading to food insecurity. According to the National Population and Housing Census conducted by the Central Bureau of Statistics of Nepal in 2021, 7,502,385 out of the total working population of 14,983,310—more than 50% of the entire workforce—are engaged in skilled agriculture, forestry and fisheries.³¹ These demographics, along with the rest of the rural population heavily dependent on natural resources for livelihood, are already being faced with the consequences of climate change, as they are usually situated in areas most prone to the effects of climate change.³² Additionally, the Climate Country Development Report from 2022 estimated that the economic impact of climate vulnerability in Nepal's agricultural sector in 2020 amounted to approximately 1.5-2 percent of the country's GDP.

²⁷ “Geography of Nepal.” *Embassy of Japan*, <https://jp.nepalembassy.gov.np/geography-of-nepal/#:~:text=Upper%20Himalaya&text=It%20occupies%2015%25%20of%20the,%2C%20Dhaulagiri%2C%20Manaslu%20and%20Annapurna>. Accessed 11 July 2023.

²⁸ Erdenesanaa, Delger. “Himalayan Glacier Loss Speeding Up, New Report Finds.” *The New York Times*, 19 June 2023, <https://www.nytimes.com/2023/06/19/climate/himalayas-melting-water-source.html#:~:text=The%20report%20from%20the%20International,than%20in%20the%20previous%20decade>. Accessed 11 July 2023.

²⁹ Ibid.

³⁰ “Agriculture Sector.” *The Official Portal of Government of Nepal*, <https://nepal.gov.np:8443/NationalPortal/view-page?id=44>. Accessed 11 July 2023.

³¹ “National Housing and Population Census 2021: Urban/ Rural Report.” *National Statistics Office*, <https://censusnepal.cbs.gov.np/results/downloads/urban-rural>. Accessed 11 July 2023.

³² “Major Group: Indigenous People.” *Sustainable Development Goals Knowledge Platform*, December 2022, <https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=750&menu=3170#:~:text=Indigenous%20peoples'%20traditional%20livelihood%20practices,to%20providing%20them%20food%20security>. Accessed 11 July 2023.

Further, regions across Nepal experienced ceaseless rains August 11 through 14 in 2017, as a consequence of which 35 out of the 77 districts of Nepal suffered from floods and 80% of agriculturally significant lands in Terai were inundated, not to mention a large chunk of the population residing in the regions affected, were displaced.³³ The consequences of flooding in Nepal are diverse, ranging from the uprooting of individuals in affected communities to the devastation of both public and private structures. This results in restricted movement, disrupted services, reduced food supply, and soaring food and transportation costs. Certain demographics face heightened vulnerability during floods, primarily those with limited mobility, including older individuals, pregnant women, women with children, those without land or legal documentation and people with disabilities.

News of landslides and soil erosion blocking highways in hilly regions is heard regularly; the latest being the Mugling-Narayanghat highway roadblock caused due to massive landslides in various spots along the highway, trapping hundreds of vehicles in and disabling commute in the route.³⁴ Nepal lost about 25% of its forests between 1990 and 2005—equivalent to the land area of Qatar³⁵—and though measures to mitigate deforestation have been taken since, the effects have been long-lasting.

H) Gender Based Violence and Human Rights

Article 38 (3) of the Constitution of Nepal reads, "No women shall be subjected to physical, mental, sexual, psychological or other forms of violence or exploitation on grounds of religion, social, cultural tradition, practices or any other grounds. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with the law." Article 21 of the Constitution of Nepal, for the first time in the constitutional history of Nepal, ensures the 'right to crime victim'. The provision reads, " (1) A victim of crime shall have the right to get information about the investigation and proceeding of a case in which he or she is the victim; (2) A victim of crime shall have the right to justice including social rehabilitation and compensation in accordance with law. However, Constitution itself is discriminatory against women. It has not considered women as an equal citizen. For instance, the constitution of Nepal deprives and restrict women to

³³ "Nepal Flood 2017: Post Flood Recovery Needs Assessment." *United Nations Nepal*, <https://un.org.np/resource/nepal-flood-2017-post-flood-recovery-needs-assessment#:~:text=Nepal%20experienced%20incessant%20rainfall%20from,parts%20of%20the%20Terai%20region>. Accessed 11 July 2023.

³⁴ "Mugling-Narayanghat road section blocked again." *Nepal Live Today*, 2 July 2023, <https://www.nepallivetoday.com/2023/07/02/mugling-narayanghat-road-section-blocked-again/>. Accessed 11 July 2023.

³⁵ Kutter, Andrea, and Andrew Mitchell. "A new and more sustainable era for Nepal's forests." *World Bank Blogs*, 24 June 2021, <https://blogs.worldbank.org/endpovertyinsouthasia/new-and-more-sustainable-era-nepals-forests-0>. Accessed 11 July 2023.

grant citizenship to her own child and husband on the ground of marital ground; which eventually hinder women and her children to exercise their fundamental human rights.³⁶

Prevalence of Gender based Violence

In Nepal, 9.0% and 7.0% of women experienced physical and/or sexual violence, respectively, in the fiscal year 2015/16 AD, of which the target for that year was 28.4%.¹ However, there has been an increase in the percentage of women who experienced physical and/or sexual violence in 2022 AD, i.e. 23.0% and 8.0% respectively. Nepal's government established a reduction goal of 17.5% for violence against women by 2022 AD¹. As an SDG commitment, Nepal has to reduce violence against women to 5.0% by 2030.

Likewise, there are several such legal measures which reinforces gendered social norms and values; i.e laws related to sexual offenses, marriage law, domestic violence related laws and so forth.

4. Conclusion

The Constitution of Nepal is landmark to enhance the inclusive local government with the devolution of power. Along with that Federation, Province and Local Level (Coordination and Inter-relation) Act, 2022, Local Level Operation Act, 2017 and several other federal legislations empower with legislative, executive and judicial power. The Constitution of Nepal ensure the four key pillar of inclusion and inclusive local governance i.e. equal citizens, human rights/fundamental rights, social protection and markets. Nonetheless, laws and policy could not fully embrace the spirit of constitution, which weaken the commitment to democratic values, constitutionalism and respect the supremacy of the constitution.

Moreover, to ensure the inclusive local governance, civil and political rights only are not enough; but socio-cultural and economic rights are also must to be realized. So that common citizens, particularly women and disadvantaged community can feel belongingness and embrace State as a guardian, but reality is far. Violence against women, access to justice is also one the major threats that hinder to ensure inclusive local governance.

³⁶ Art 11 (5) and (7),

5. Way Forward

A) Empowerment Need for Unleashing the Leadership

Local government with immense legislative, executive, and judicial powers, which are still new not only for local level stakeholders, i.e. local elected members, local government officials, civil society, common citizens, but for local governance experts and academia as well. If they don't have adequate understanding on their roles and powers that ensure by the Constitution of Nepal along with federal and province laws, they cannot translate their roles to ensure inclusive decentralized local governance from paper to reality. Therefore, in relatively new legal and political context, to empower the local representatives with their roles (legislative, executive, and judicial) are not only important but also urgent.

In this context, it is essential to organize regular academic discourse, policy dialogues, dedicated trainings on law making, strengthening local assembly's oversight mechanism, judicial role that uphold by the Constitution of Nepal along with various federal, province and local laws.

B) Strengthening Capacity with the special Focus on elected representative of Women and Disadvantages groups

Affirmative constitutional and legal measures i.e. reserve seats for women, Dalits and minorities in local government enable to increase women and marginalized people's representation in the formal structure of local governance; which is landmark achievement towards inclusive local governance. However, due to the social set up, gendered social norms, educational background, level of empowerment, and exposure to leadership level; women, Dalits, and minorities groups' and people's voices are still not being heard and realized in real world, which hinder to expose their leadership roles, and harvest their capacity and potential for overall development.

In this context, very thoughtful, focused and process oriented capacity building intervention is required, which can give confidence to the respective individuals and populations; to challenges multiple forms of deprivation, discrimination and barriers. Particularly, following key capacity building program should be prioritized:

- Federal and provincial laws and policies which define role, authority of local government,
- Law making process of local assembly, its scope and limitation,
- Oversight role of local assembly and its members.

C) Enable Citizens Participation in Law Making Process

Attention

Cross learning attitude, time management, trust and respect to each other is precondition fulfilling this gaps.

Understanding dynamics of diversity, nature of exclusion, discrimination using the intersectional approach (The Intersectional approach focuses to address multiple and intersecting forms of deprivation, discrimination and disadvantages faced by women, persons with disabilities, gender and sexual minorities, and others) is urgent. Cannot be viewed women and marginalized group as a one category, there is a diversity, inequality and discrimination within such groups; which create multiple barriers to become passive to active participation.

Representation or presence of various section of the society in the elected bodies of local governance is advantages to ensure inclusive law making process which apparently contribute to enhance the inclusive local governance. However, it is not enough that only few handfuls elected members of dominant political parties or majoritarian group hold or capture the process.

Hence, to deepen the meaningful participation of common citizen that includes people from minorities and disadvantages populations in law making process is required. The party who hold the majority should be more responsible and accountable to listen to rational and alternative view from various strata of the society particularly, minorities and disadvantaged groups. Through this process aspiration of minorities and disadvantages communities/populations can be well recognized. This will create ownership both over the process and outcome; that support to enhance rule of law.

Attention

Democratic structure/mechanism i.e. periodic election, elective bodies institution, oversight bodies etc. only are not enough; organizational culture and norms have a powerful influence on how representatives, public officers and common citizens do their job. So democratic culture, norms, ideology that based on concept of equality, non-discrimination, transparency, accountability, compassion etc. are the pre-condition that should be upholds by every individual actor.

D) Adopt Coherence Legal & Policy Framework at Local Level should be in Place

Structural Transformation has been directed to making efforts to address the legal and policy gaps and ensure effective implementation to reduce gender and inclusion gaps throughout social, economic, and political spheres of local level governance structure in Nepal by the Constitution of Nepal alongside federal and province legislations.

Hence, to effective operationalization of inclusive local governance, inclusive legislative and policy framework should be adhering by local government. The Intersectional approach should follow to address multiple and intersecting forms of deprivation, discrimination and disadvantages faced by women, persons with disabilities, gender and sexual minorities, and others. The local legislation, strategy, procedure should assure to address the different strategic and practical needs of women (considering the diversity within women) along with other minorities groups.

E) Establish and Strengthening Institutional Mechanism

In order to institutionalize inclusive services at local level, the Constitution of Nepal along with several federal and province laws authorize and provide responsibilities to local governance to establish various institutional structures at local level. Hence, to fortify those obligation, local governance has to map out those minimum required structures and establish those institutional mechanisms accordingly to ensure inclusive service; which is minimum to enhance inclusive local governance.

F) Strengthening Judicial Committee along with Mediation Centers

In order to enhance the inclusive local governance; ensuring access to justice is one of the fundamental ingredients. Hence, exercise the judicial authorities of local government particularly local judicial committee in inclusive manner is the key pillar to increase access to justice of women, Dalit, and other vulnerable and marginalized groups. For that, all three tiers of government should jointly invest its technical and financial support to enhance capacity of judicial committee, its actors and justice seekers. Local government should invest on following:

- Enhance the capacity on GESI responsive justice delivery and mediation to the members of local judicial committees and mediators;
- Establish the secretariat of judicial committee with appropriate resource allocation,
- Establish equipped ward level mediation centers with rosters of qualified mediators,
- Strengthen the monitoring of local mediation centers.

G) Plan of action and Increase Financing

Local government should map their constitutional power, along with the power that has vested by federal and provincial legislations along with resource mapping. Based on that, all local level should develop plan of action to execute all legislative, executive and judicial power to challenges gendered social norms and gender stereotypes, to combat discriminatory social norms and gender stereotypes with adequate resources. The plan of action must be backed by appropriate resource allocation.

Attention

In order to fully implement the recommendation, inclusive economic growth is required, but ensuring GESI responsive budget is precondition for equitable distribution of available resources.