

Intergovernmental Conflicts in Federal Nepal: Are they Constructive or a Source for Destruction?

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1. Introduction

With adoption of the new constitution in 2015, and after two successions of local, provincial and federal elections in 2017 and 2022, Nepal is streaming ahead with the implementation of the newly adopted federal governance system. However, its effectiveness in making the federal processes and practices politically, administratively and economically viable for the country has been subjected to numerous criticisms in recent times. In regard to this, Poirier and Saunders (2015)¹ highlight those interactions among the various levels of government within a federal system is inevitable and despite the diverse forms that federal systems may take, the dynamic interplay between different government tiers is a constant. Such interactions manifest through the exchange of information, the consolidation of power and resources, negotiations, and the sharing of responsibilities. These intergovernmental relations are shaped by the institutions and processes that delineate the federal structure.

In the cases of newly formed federal structure, conflictual processes often surface and as Nepal is in the midst of adapting and recreating itself under the new federal framework, the country has been grappling with its own set of conflicts and issues in the recent years. It can be said that Nepal's evolution towards a federal system has been marked by challenges and disputes, reflecting the complexities inherent in restructuring the governance system and processes at multiple levels. Mainly, simultaneous execution of 761 governments in the three tiers, each exercising exclusive as well as concurrent rights with proactive lawmaking, planning, and implementing roles, has fostered conditions for intergovernmental conflicts. However, it is not fully known what the core factors are that contribute to the emergence and extension of intergovernmental conflicts in federal Nepal. Considering this fact, this conceptual paper is constructed with three objectives in mind. First, it aims to assess the attributes of intergovernmental conflicts and its multiple dimensions. Second, it intends to outline the core drivers of intergovernmental conflicts and finally, it attempts to provide solutions to resolve intergovernmental conflicts.

While assessing the nature and characteristics of intergovernmental conflicts in federal Nepal, this paper generally observed six different types of conflicts i.e., a) between the three tiers of governments, b) between the federal and the province governments, c) between the province and local governments, d) between the federal and the local governments, e) among the local governments, and f) among the province governments. This paper thus argues that it is imperative

¹ Poirier, J., & Saunders, C. (2015). Comparing intergovernmental relations and cooperative mechanisms in federal systems: An introduction.

to understand the dynamics of each of these conflicts to better understand intergovernmental conflicts, and to find policy and pragmatic solutions to each of these conflicts.

Additionally, this paper suggests that jurisdictional problems instigated by lack of clearly defined laws, policies and institutional arrangements, power struggles and competitions between different units of government, identity struggles for coexistence between distinct levels of government, and poor approaches to dealing with conflicts are some of the core factors behind the occurrence and emergence intergovernmental conflicts. This is further escalated by the provision of exclusive as well as concurrent rights. When different layers of governments lack coordination and collaboration while formulating policies and programs it creates impacts beyond the territories of each government. Furthermore, self-centric interpretations of exclusive and concurrent rights have also increased the chances of intergovernmental conflicts, which are aggravated by resource and policy dependency among the government units, especially when they subsist against the interests of a particular government. Moreover, power holders' perspectives and understanding of the new governance system and their flexibilities and interests in collaborating with other governments, has the potential to contribute to intergovernmental conflicts in federal Nepal.

This paper further highlights that governance conflicts can be potentially addressed by taking initiatives to formulate laws and policies that clearly define and implement the roles of the three tier of government bodies, as defined by the constitution for which, proactiveness of lawmaking, judicial and relevant constitutional bodies is important. However, mere interpretation and declaration of roles and responsibilities may not be sufficient to achieve better intergovernmental relationships. For this, capacities of each actor need to be ensured and enhanced to be able to proficiently execute their designated functions.

Likewise, substantial formal and informal dialogues are necessary among policymakers and government authorities in different layers. Such dialogues have the potential to assemble the challenges and learnings gathered from the six years of federalism practices and power exercises in Nepal. When these dialogues are focused on how federalism is functioning as compared to previously practiced unitary forms of governance in Nepal, one should be able to draw the existing gaps and also possible avenues to resolution. It is significant for these dialogues to be inclusive, open and critical on every aspect of federal governance practice where the voices of people are carefully addressed, whether they support or resist federalism.

This paper concludes that intergovernmental conflict is a common phenomenon that is observed when a country adopts a new governance system with the provision of multiple layers of governments, each exercising exclusive and concurrent rights. Such conflicts are even more common when different layers of governments have to operate with the principles of coordination, cooperation, and coexistence. Also, post-conflict and post-movement governance arrangements have the potential to increase intergovernmental conflicts, as they are formed under the power

sharing arrangements between the agitating parties and interest groups, which may not necessarily be constructed with the best satisfaction of all parties. What is required to tackle this problem is robust conflict resolution structures and mechanisms along with a clear strategic mindset and political will to confront the challenges.

2. Methodology and Limitations

This paper mostly relies on the primary and secondary data gathered by Centre for Social Change (CSC) between the period of June 2022- September 2023. Secondary data are gathered through the review of academic literature, policy documents, reports, and relevant media coverage. Primary data is gathered through an action research approach in four provinces of Nepal, namely, Koshi, Madhesh, Bagmati, and Lumbini with nearly 100 individuals representing elected leaders, political party members, civil society leaders, local government officials, and media persons. This paper also incorporates information gathered by CSC as part of its flagship governance research initiative called Governance Monitoring Centre (GMC). The GMC data is gathered through real-time media monitoring of governance conflict events on four different themes (political, development, ethno-cultural and natural resources) and those have occurred across the country. Likewise, this paper also incorporates information associated with the writ filed at the Supreme Court of Nepal from different provinces, local governments, and individuals against the Federal Government.

This is a work-in-progress paper and findings and observations included in the paper are only preliminary results, meaning findings and conclusions are yet to be refined to make it a publishable paper. The authors also consider this as a conceptual paper with an ultimate aim to develop a framework for better understanding of the causes of intergovernmental conflicts and their potential solutions for a harmonious and effectively functional Intergovernmental Relations (IGR) in Nepal. However, the paper, at present is in its primitive stage, and is yet to achieve its ultimate objective. Further information and analysis are required for the further validation of the results derived from this paper.

3. Intergovernmental Conflicts: A theoretical perspectives

Countries adopting a decentralized or a federal governance system often make some legal and institutional arrangements for ensuring a smooth relationship between different layers of governments. In general terms, those legal and institutional arrangements are known as intergovernmental relationships (IGR) mechanisms, which defines the processes of interaction, information sharing, decision-making, understanding of the roles and responsibilities, allocation

of resources, transfer of knowledge and skills and way to develop effective relationships and resolve disputes observed between and across these governments.²

In a federal governance system, a harmonious IGR is key to make all layers and levels of governments effective and efficient in their governing, planning and service delivery roles (Ojo, 2014; Kössler, et. al. 2017). Most of the federal or decentralized states have adopted both formal and informal mechanisms for IGR, whereas some countries even take the help of alternative as well indigenous dispute resolution mechanisms for the same (Kössler, et. al. 2017). However, constitutionally and legally guaranteed formal political, bureaucratic, as well as judicial mechanisms are quite common to address the concerns associated with IGR (Kössler, et. al. 2017).

Despite all those legally defined and binding IGR mechanisms in place, each country practicing a decentralized or federal governance system often experience conflicts between different tiers of governments. Most of these IGR conflicts are clustered as administrative, financial, functional, legislative, and jurisdictional one depending on their natures and characteristics. Some of these types of conflicts are deep rooted and heavily influenced by political and ideological factors, whereas others are purely functional one and driven by the lack of communication and coordination (Sebayiga, 2023). Likewise, some root cause of IGR conflicts are similar in many countries, whereas some others are also context specific. For instance, previous studies have identified the issue of resource control, ambiguous tax jurisdictions, competition over the allocation of revenue, and the construction of local government structures as triggering factors to the IGR conflicts (Ojo, 2014; Chima, et. al. 2018). Other studies have shown the political party rivalry and the lack of commitment from government agencies as ushering to local-provincial conflicts (Phakathi, 2020). The domination of centrally guided policies, along with the misunderstanding between different tiers of governments on legal, social, and economic matters have also fueled IGR conflicts in several countries (Chima, et. al. 2018). In sum, allocation of resources, democratic transfer of powers to the locals and provinces, boundary demarcations, and naming and phrasing of particular territory have stood as main causes of conflicts between different levels and layers of governments. Some states have been successful to resolve some of these core conflicts through effective functioning of IGR mechanisms, whereas some others are unable to do so for various reasons.

3.1.The IGR Mechanisms in Nepal

The Constitution of Nepal 2015 has stated that the relationship between the federal, provinces and local level shall be based on the principle of cooperation, coordination and coexistence. In order to translate this principle into practice, the Constitution and subsequent Acts and policies have created a number of institutional structures, such as the National Coordination Council (NCC),

² What are intergovernmental relations?

<https://www.centreonconstitutionalchange.ac.uk/the-basics/what-are-intergovernmental-relations>

Provincial Coordination Council (PCC), Intergovernmental Fiscal Council (IFC), National Natural Resource and Fiscal Commission (NNRFC) and so on. All these mechanisms have their own specified roles to advance the idea of intergovernmental cooperation, coordination, and coexistence and managing conflicts between different levels and layers of governments. For example, the main function of NCC is to coordinate between the Federation, Province and local level on formulation of laws and policies on matters of concurrent rights and address all forms of disputes and conflicts arising between the federal and provinces and across provinces.

Similarly, the PCC has a mandate to coordinate among the province and local level on issues around functional harmonization, strategic partnership in planning and management, definition and implementation of concurrent rights, and the utilization and allocation of natural resources. PCC also has a power to form committee on any issue necessary for establishing coordination and interrelation.

Likewise, the IFC formed under the Intergovernmental Fiscal Management Act 2074 has also the mandate to advise federal, provinces, and local levels on fiscal matter, facilitate their coordination on necessary subjects of inter-governmental fiscal management, and resolve fiscal disputes between three tiers of governments.

Moreover, the National Natural Resource and Fiscal Commission (NNRFC) formed under the National Natural Resource and Fiscal Commission Management Act 2074 has a mandate of extending both vertical and horizontal coordination and cooperation with various constitutional bodies, the Government of Nepal, government agencies in local and provincial level or public agencies as needed. The commission can consult with the federal government, different constitutional bodies, and government agencies in local and provincial level or public agencies relating to its functions and duties as needed.

The existence of all these policies as well as institutional arrangements demonstrate state's commitment to address IGR conflicts and advance IGR in the best interests of all three levels of governments. However, in practice, IGR is stood as one of the highly contested and ineffective issues, which has placed the newly established federal governance system into a big question regarding its relevance in Nepal. Considering this fact, this conceptual paper is constructed with three objectives in mind. First, it aims to assess the attributes of intergovernmental conflicts. Second, it intends to outline the core drivers of intergovernmental conflicts and finally, it attempts to provide solutions to resolve intergovernmental conflicts, so they could play a constructive role to strengthen federalism in Nepal.

4. Key Findings and Observations

In this section, we explain the intergovernmental conflicts in three ways, namely, *confrontational level conflicts*, *court entered conflicts*, and *psychological level conflicts*. At first, we present confrontational level conflicts with the support of a unique dataset on governance conflict events gathered through real-time media monitoring from the period of June 2022 till September 2023. In the second, we present an analysis of court entered cases, which are associated with intergovernmental conflicts. Lastly, we provide an observatory analysis of intergovernmental conflicts observed at the psychological level. The former two levels of conflicts are actually seen at the surface and reported them either in media or filed at the Supreme Court of Nepal for further action, whereas the last one can only be seen at the latent phase, but with higher level impacts on fueling intergovernmental conflicts in Nepal.

4.1. Governance Conflict events reported in the media

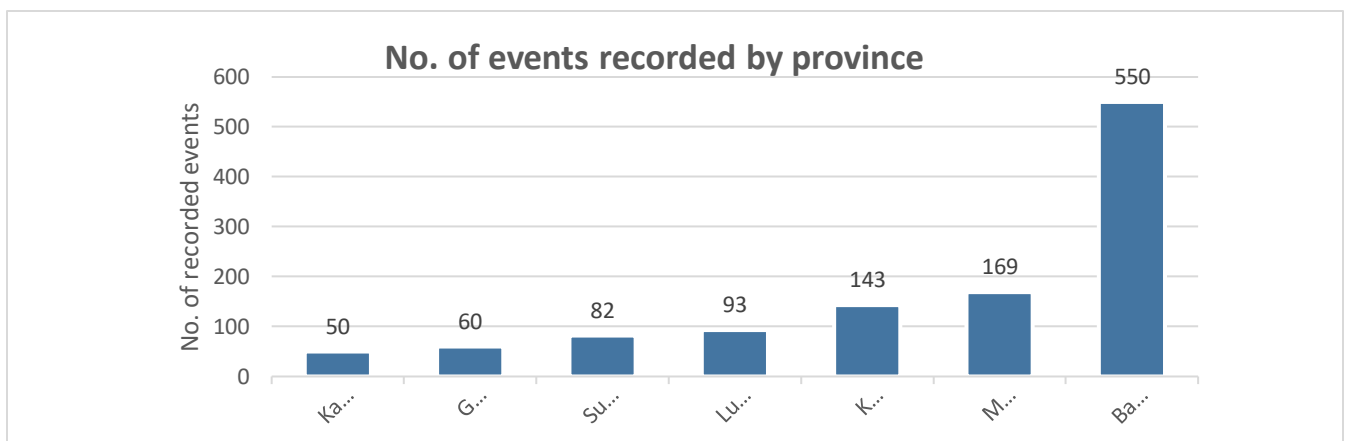
While documenting the overarching governance conflicts within the federal structure of Nepal, we systematically classified the conflicts into three primary categories: violent, non-violent, and cases reported to the Commission for the Investigation of Abuse of Authority (CIAA). This comprehensive categorization provided insights into the diverse nature of conflicts prevailing within the current federal framework. Furthermore, it enabled us to gauge governance transparency and accountability, particularly through the examination of cases reported to the CIAA. (CSC, 2023). Over the course of a year (June 2022-September 2023), we meticulously recorded a total of 1147 events as shown in Table 1. Within this dataset, 226 events were identified as having a violent nature, 804 were classified as non-violent, and 117 were cases officially registered by the CIAA (CSC, 2023). These cases filed with the CIAA specifically targeted public servants involved in activities such as corruption, illegal accumulation of wealth, and misuse of power. This quantitative breakdown serves as a valuable foundation for a more nuanced understanding of the dynamics of governance conflicts in Nepal's federal structure, shedding light on the prevalence of different conflict types.

This quantitative breakdown of events can be refined by examining the data on a provincial basis, revealing distinctive patterns in government conflicts across different regions. Notably, Bagmati Province exhibited the highest incidence of conflicts, totaling 550 recorded events, while Karnali Province recorded the lowest with 50 cases. The elevated number of cases in Bagmati Province can be attributed to several factors. Firstly, a significant proportion of conflicts were associated with cases registered by the Commission for the Investigation of Abuse of Authority (CIAA) at both the Supreme Court and the Special Court. Additionally, the concentration of protests against the federal government structure and its processes was observed predominantly in the Kathmandu Valley, contributing to the overall surge in conflict events within Bagmati Province.

Table 1: Total recorded governance conflict events

Event Types	No. of events recorded
Violent	226
Nonviolent	804
CIAA	117
Grand Total	1147

Table 2: Number of governance conflict events recorded by province



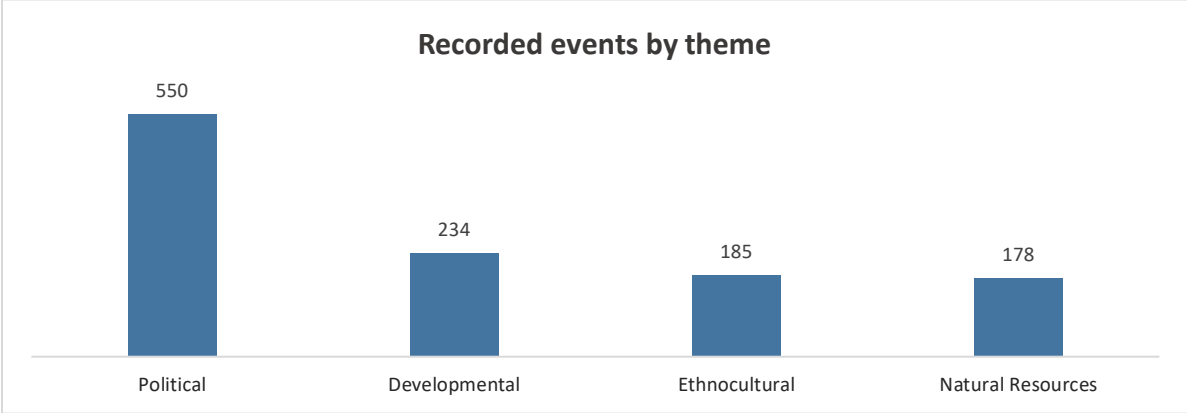
In the process of documenting conflict events, our analysis also involved a thematic division to discern the predominant sectors where conflicts were most prevalent. The thematic categories—Development, Political, Ethno-cultural, and Natural Resources—were chosen deliberately, considering the persistent inequalities within these domains. These divisions were rooted in historical patterns of resource sharing, power dynamics, and societal disparities, with the aim of assessing the enduring nature of differences within these critical sectors. This thematic lens provided a comprehensive framework for understanding the nuanced layers of conflict. This analytical approach allows for a more targeted and holistic examination of governance conflicts, fostering a deeper comprehension of the ongoing challenges within the specified thematic dimensions.

As seen in table 3 below, our analysis revealed that the Political sector experienced the highest number of conflicts, with 550 recorded events. This significant figure can be attributed, in part, to the psychological factors influencing politicians wanting to accumulate power and resources. This accumulation often leads to public outrage, resulting in protests against the political structure and governance in the country.

Furthermore, we identified 234 cases in the Development sector, underscoring the pressing need for infrastructure development. This suggests a demand from the civilian for developmental activities that have been stalled or delayed for an extended period. The recorded 185 Ethno-cultural conflicts highlight issues related to identity and the potential infringement of minority rights by government institutions, processes, or structures.

In the Natural Resources sector, we documented 178 cases (CSC, 2023), pointing to governance challenges in the equitable distribution of resources and the need for action against illegal extraction of natural resources. Additionally, the cases underscored the government's perceived inability to protect citizens from animal attacks.

Table 3: Recorded governance conflict events by theme



Intergovernmental Conflict

Zooming in on intergovernmental conflicts, we identified 25 cases that resulted in the generation of 43 events as seen in Table 4, illustrating the cascading impact of intergovernmental disputes. Notably, development conflicts emerged as the primary driver, accounting for the highest number with 9 intergovernmental conflicts. This suggests a significant influence of resource allocation and power dynamics on infrastructural development within the context of intergovernmental relations.

Furthermore, political and natural resources intergovernmental conflicts were observed in 7 cases each. Interestingly, ethno-cultural intergovernmental conflicts were relatively limited, with only 2 recorded cases. This pattern suggests that intergovernmental conflicts tend to be less persistent in terms of issues related to identity and marginalized rights. This could be attributed, in part, to constitutional provisions safeguarding the rights of minorities, women, and Indigenous people. Such provisions, which are often recognized by government units, contribute to a more stable landscape in these particular dimensions of intergovernmental relations.

Table 4: Total Intergovernmental conflict events

Total number of recorded events (June 2022 – September 2023)	1147
Total Number of events for intergovernmental conflicts	43
Number of cases extracted	25 (details are given in the table below)

Table 5: Recorded intergovernmental conflicts by theme

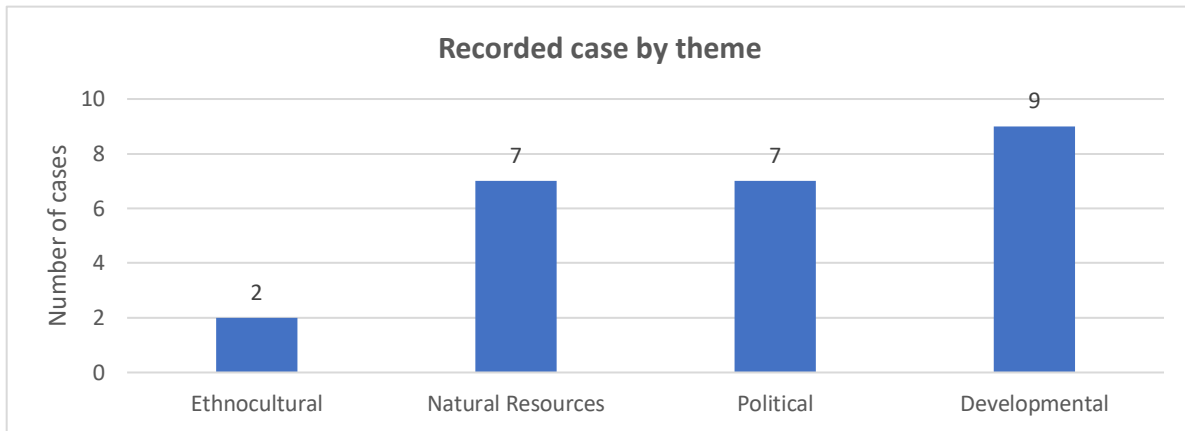
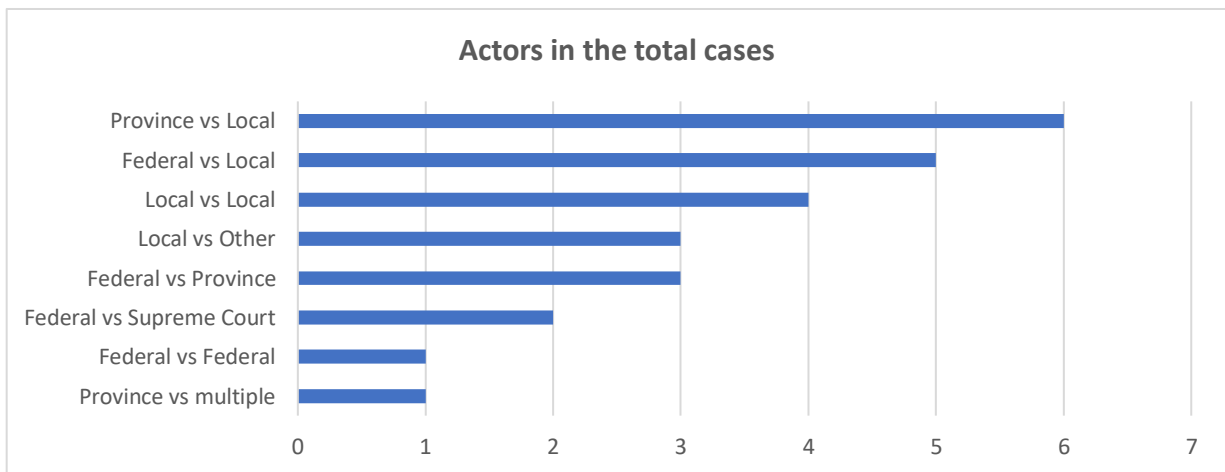


Table 6: Conflicting Actors in total intergovernmental conflict cases



While examining the occurrences of intergovernmental conflicts in the observed 25 cases, the challenges in intergovernmental relations can be further categorized into two dimensions: Vertical and Horizontal, which are further elaborated as below:

Vertical Dimension

The federal system in Nepal comprises a three-tiered government structure: local, provincial, and federal. Within the constitutional framework, Schedule-7 delineates the distribution of 25 powers between the federation and the provinces. Additionally, Schedule-9 outlines 15 concurrent powers that are shared among the federal, provincial, and local levels. These powers are to be exercised in conformity with the Constitution, as well as in accordance with federal, provincial, and local laws (Dhakal, 2023). Despite this, in recent years, there has been a noticeable occurrence of overlapping and duplication of functions and responsibilities among these government units, leading to confusion and conflicts. These conflicts within the three levels of government characterize the vertical dimension of conflict, encompassing tensions between local and provincial levels, local and federal levels, as well as provincial and federal levels.

In our research, we've identified conflict between **local and provincial governments** occurs primarily around disputes over resource allocation and revenue collection. One noteworthy case involves the disagreement between Koshi Province and Itahari Sub-metropolitan City concerning the utilization of natural resources, revenue sharing, and delays in implementing forest regulations by the state government. Despite repeated directives from the Division Forest Office to halt the extraction of stones and pebbles from the river, Itahari Sub-Metropolitan City has persisted with these excavation activities. According to Article 60 of the Constitution, Federal, Provincial, and local levels are authorized to impose taxes within their financial jurisdiction and collect revenue accordingly. The Constitution grants both the provincial government and the local level a share of revenue. Nevertheless, the Province government accuses Itahari sub-metropolis of violating the law by not conducting the required initial environmental impact assessment, even though both levels of government have the right to revenue. A similar scenario has unfolded in Gandaki Province, where local levels have raised objections to a proposed forest-related Act in the Gandaki Province Assembly. They argue that the Act could limit their constitutionally guaranteed rights in the excavation and sale of river products. This conflict highlights a recurring issue across different regions, emphasizing the ongoing tensions between local autonomy and state-level regulations in the management of natural resources.³ A distinctive local-level vs. provincial conflict that emerged recently involved Kopilasgadhi Rural Municipality and the Koshi Province government. In this case, the local unit opposed against the provincial government's decision to name the province as "Koshi," boycotting the decision and thereby withholding acknowledgment of the new provincial name.

Another vertical dimension conflict has arisen between the Local and Federal government. The root cause of this conflict is primarily related to the allocation of human resources and budget. Local-level authorities have alleged that the Federal government has failed to disburse the funds owed to rural municipalities under the revenue sharing provision. Consequently, this has led to a

³ Published in Online Khabar on 8/22/2023 [□□□□□□ □□ □□□□□□ □□□□□□ □□□□□□, □□□□□□ □□□□□ □□□□□ □□□□□](#)

situation where most of the local governments are grappling with a financial crisis, making it challenging to meet salary obligations and cover administrative expenses.⁴

Finally, the vertical dimension of intergovernmental relations centers on the conflict between *Provincial and Federal* governments. This conflict has predominantly arisen due to the overlapping of powers. A notable example is the challenge posed by the Bagmati Province government to the recently enacted Urban Area Public Transport Management Authority Act by the Federal government. In the Act passed by the Federal Parliament, there is a provision to place the Urban Area Public Transport Authority, the body managing the transport of Kathmandu Valley, under the Federal Government. The Bagmati province government argues that the Constitution has granted rights to manage transportation to the provincial government thus Kathmandu's transport management should also fall under the provincial.⁵

The vertical conflict dimension mentioned above underscores the challenges and complexities that emerge from the interplay of responsibilities and jurisdiction within Nepal's dynamic federal framework.

Horizontal Dimension

The inherent conflict within the Federal structure extends beyond the vertical dimension, involving three tiers; it also manifests horizontally. Nepal, similar to many other Federal governance systems, grapples with a significant level of conflict within its governing units. In our study, we have closely examined the landscape of intergovernmental relations, shedding light on the complexities that arise horizontally within the country's federal structure. Within this horizontal dimension, we identified two distinct types of intergovernmental conflict.

The first type pertains to conflicts between the Local governments, where disputes often emerge when one local unit seeks to assert its authority or pursue actions that affect another unit's jurisdictions. This conflict revolves around resource allocation, territorial boundaries, or differences in policy implementation. A notable instance of conflict between local governments is that of Kathmandu Metropolitan City (KMC), where KMC initiated the excavation of Kapan Khola (Yagyamati and Chakhucha rivulets) beyond its jurisdiction, sparking a conflict with Budanilkantha Municipality. Another similar conflict emerged when Panauti Municipality imposed an additional tax on trucks transporting mining materials from Bethanchowk Rural Municipality.⁶ This dispute escalated to a court case, as the imposed taxation violated the Local Government Operation Act.

Within the realm of intergovernmental conflicts in Nepal, the second type of horizontal dimension is manifested in conflicts between Provincial governments themselves. These disputes often arise

⁴ Published in ekantipur on 9/27/2023 [\[Link\]](#) : [\[Link\]](#)

⁵ Published in Online Khabar on 10/30/2023 [\[Link\]](#)

⁶ Published in Setopati on 12/1//2022 [\[Link\]](#)

when two Provincial governments contend for authority or resources, leading to a complex interplay of interests and jurisdictional challenges. In our study, we delved into instances where Provincial governments found themselves in direct conflict, highlighting the intricate dynamics at play in the horizontal dimension of intergovernmental relations.

In examining these horizontal and vertical intergovernmental conflicts, it was evident that the evolving Federal governance framework in Nepal has presented challenges in establishing harmonious relationships and ensuring smooth coordination among and across three tiers of government. As the nation continues to adapt to its federal structure, addressing these vertical as well as horizontal conflicts becomes crucial for fostering effective governance and intergovernmental cooperation, coordination and coexistence.

4.2. Conflicts filed in the Supreme Court of Nepal

Following the promulgation of the new Constitution in 2015, Nepal adopted the model of decentralization and committed to institutionalization of a federal structure of governance, where the state was restructured into three tiers of government: namely, the Federal, Province and the Local level structures. This restructuring was facilitated by the delineation of the jurisdiction of each level in the Schedule 5 to 9 of the Constitution. The powers thus distributed have been categorized as exclusive powers/jurisdictions, concurrent power/jurisdiction and residual power or jurisdiction. Also, the practice of federalism in Nepal is based on the principle of Cooperative Federalism where all tiers of the government are required to function collaboratively on the principle of “cooperation, co-existence and coordination”. However, this paper highlights that this concept has been difficult to achieve as there are multiple overlapping subject matters and power dynamics even in the issues that fall within the “exclusive jurisdiction” of a certain tier of the government.

Hence, to avoid potential power conflicts between the different tiers of government, multiple institutional mechanisms were created to absorb the conflict and give a viable solution. The judicial method of settlement being one of those ways has been co-opted in many forms. After much deliberation, the Constitution, considering several alternatives, urged for the creation of a Constitutional Bench under the Article 137. The Article provides that a Constitution Bench shall be constituted comprising of five sitting judges from the Supreme Court including the Chief Justice and four judges designated by the Chief Justice from amongst the recommendation of the Judicial Council, which shall be responsible for hearing the cases on important constitutional matters.

The Constitutional Bench thus is empowered to listen to the following subject matter, or has the jurisdiction to settle the following disputes, viz.

- a. Art. 133(1)- to declare any laws or its part thereof, void (invalid) on the grounds of

- Inconsistency with the Constitution of Nepal
 - Inconsistency of the laws made by Province with the laws made by the Federal body
 - Inconsistency of the laws made by the Local government with the laws made by the Federal or the Province
 - Any laws that impose unreasonable restrictions on the fundamental rights guaranteed by the Constitution.
- b. Art. 137 (2) (a)
- Disputes of jurisdiction amongst the Federation, Province and Local Level.
- c. Art. 137(2) (b)
- Dispute on matters relating to the election or qualification of the member of the Federal or provincial parliament.
- d. Any case sub-judice in the Supreme Court referred by the Chief Justice to the Constitutional Bench because of its subject matter involving a constitutional matter requiring serious constitutional interpretation.

Thus, one of the approaches this paper used to further understand intergovernmental conflicts is through the study of registered court cases, registered by one tier of government against another. In this regard, the Annual Report of the Supreme Court (FY 2078/2079) showed 301 pending cases in the Constitutional Bench (FY 2078/2079), of which only 18 cases were settled, and 283 cases were remaining. While these cases include general disputes, the disputes under conflict of jurisdiction were specifically concerned with the issues of Powers/Jurisdiction of each level under the Constitution.

Although the cases at the Phant (□□□□), Registry of Constitutional Bench has not been segregated according to the subject matter of the case or the Article under which the case has been filed, the Constitutional Bench Phant reveals that there are around 10 cases running in the court that are concerned with the subject matter of conflict of jurisdiction. The cases are listed in the table below:

Case filed by one tier of the Government against another on the matter of jurisdiction:

S.N.	Case Number	Date of Registration	Name of the Case	Subject Matter	Status of the Case
1	076-WC-0001	2076-04-23	Bechan Kumar Mahato on behalf of Ministry of Industry, Forest, Tourism and Environment, Province 2 v. Office of the Prime Minister and Council of Ministers et. al	Constitutionality of the decision by the Federal Government to take over Sagarnath Forest Development Project and merge it with Timber Corporation of Nepal and form National Forest Authority Private limited. This is said to be inconsistent with the Entry 19 of the Schedule 6 of the Constitution that puts provincial forests and their administration within the exclusive jurisdiction of the province.	Sub-judice with an interim order in the favor of the Province Government causing the Federal Government to stay their decision until the finality of case.
	076-FN-0120	2076-05-16	Bechan Chaudhary on behalf of Industry, Tourism and Environment Ministry, Province 2 v. Office of the Prime Minister and Council of Ministers et. al.	Rejoinder application in the matter of 076-WC-0001	Final, order issued.
2.	076-WC-0010	2076-08-02	Bechan Chaudhary on behalf of Industry, Tourism, Forest and Environment Ministry, Province 2 v. Secretariat of the Federal Parliament et. al.	The Forest Act, 2076 which brings the Division Forest Office and District Forest Officer within the jurisdiction of the Center and other provisions of the Forest Act is inconsistent with the Schedule-6 of the Constitution.	Sub-judice with show cause order
3.	077-CC-0001	2077-05-30	Chief Minister Lal Babu Raut v. Ministry of Law, Justice and Parliamentary Affairs et. al.	The policy decision made by the Central Government on 2075/05/01 to allow inter-province transfer of officers under the Officers Adjustment/Integration Act, 2075 is unconstitutional.	Sub-judice With show cause order
4.	077-CC-0004	2077-07-20	Minister of Law and Internal Affairs Gyanendra Kumar Yadav v. Nepal Police Headquarters et. al.	The vacancy announcement by the Nepal Police to fulfil its seats is inconsistent with the Constitution in the context when the province has already enacted the Province Police Act.	Sub-judice with show cause order
5.	077-WC-0021	2077-07-20	Minister of Law and Internal Affairs of Province no. 2 Gyanendra Kumar Yadav v. Ministry of Law, Justice and Parliamentary Affairs et. al.	The Sec 6(1)(a), Sec 7(2) and Sec 9(1) of the Federation, Province and Local Level (Coordination and Interrelationship) Act, 2077 interferes with provincial competence of being able to impose criminal punishment and administrative fines.	Sub-judice with show cause order
6.	077-CC-0005	2077-08-18	Minister of Physical Infrastructure Development Jitendra Prasad Sonar v. Energy, Water Resource and Irrigation Ministry et. al.	The circular issued by the Groundwater Resources Development Committee under the Federal Ministry of Energy, Water Resources and Irrigation and the bid inviting proposals for “Special Program on Prosperous Terai-Madhesh Irrigation” on 2077/07/24 interferes with the provincial jurisdiction prescribed under the entry 7 and 19 of the Schedule VI of the Constitution as	Sub-Judice with Show Cause Order

				well as the Standards of Classification of Projects and Development Program, Responsibility of Federation, Province and Local Level.	
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Cases filed by individuals pursuant to Art 137(2)(a) on matters of jurisdiction

S.N.	Case Number	Date of Registration	Name of the Case	Subject Matter	Status of the Case
8.	075-WC-0030	2075-08-19	Advocate Manish Kumar Shrestha et. al. v. Office of PM and Council of Ministers et. al	Unconstitutionality of the decision of the Provincial Assembly of Sudurpaschim Province to locate their capital in the Godavari Nagarpalika; inconsistent with the Art. 288 of the Constitution	Sub-judice and show cause order.
9.	075-WC-0044	2075-11-05	Ganesh Hamal et. al. v. Office of PM and Council of Ministers et. al	Unconstitutionality of the decision of the Government of Nepal to ascertain the headquarters of the Eastern Rukum District with the Article 57 and Schedule 8 of the Constitution.	Sub-judice
10.	075-WC-0047	2075-11-27	Bhimraj Neupane et. al. v. Office of PM and Council of Ministers et. al.	Unconstitutionality of the decision of the Council of Ministers to shift the center of the Thulibheri Municipality of Dolpa District from Dunai to Jufal.	Sub-judice with show cause order

As shown by the table, among the 10 cases, seven cases have been filed by several ministries of the Provincial Government of the Madhesh Province and the remaining three are filed by individual litigants as Public Interest Litigations. An analysis of the observed court cases showed that among the seven provinces of Nepal, Madhesh Province was the province that most actively filed cases against encroachment of its jurisdiction by the Federal Government. However, it was simultaneously observed that the party dynamics in the province reciprocated with the party dynamics at the Central level. Meaning, if the Central and Provincial Governments have the same political party in power, the issues of jurisdiction are rarely raised or are resolved politically but when there are opposing parties in power, such cases are amplified into conflicts and these issues are raised demanding larger attention.

Of the seven cases that have been filed by the Madhesh Province, two were concerned with the ownership and management of Forest Resources and The Forest Act. Three cases were relevant to the allocation and management of human resources (officers and police personnel) and the remaining two were related with encroachment of the jurisdiction of the Provincial Government to make penal laws and impose administrative fines and concerned with the Management of an Irrigation Project. While five of the subject matter of the cases concerned are pertinent and applicable to all the provinces, only Madhesh Province is seen to have raised a constitutional dispute.

Similarly, there were also a number of pending cases regarding the location of Province capital, District Headquarter and Municipal Center. These cases further concentrated on issues like where the development budget allocated for development of the capital should actually be invested. Further, the change in party-power dynamic after the elections created a deadlock which displayed Federal government's reluctance to provide lands for development of the Capital despite completion of requisite formalities.

Intriguingly, this study shows that no cases were filed by the Local Government on matter of jurisdiction against the Federal or the Provincial Government. However, a higher number of cases were related to the inconsistencies between Local Education laws and Federal Education laws.

Also, among the cases whose decisions have been published and the full text of decision has been available, it was observed that when the Province or Local Government used their discretion within their subject-matter to make legislations, the Supreme Court did not interfere with their law-making power. The Supreme Court took a stance only when their laws clearly violated the Constitution, Federal or the supervening laws and the burden of establishing such violations lied on the claimant/applicant.

This paper also demonstrates that most cases in the Constitutional Bench were filed by individuals claiming the inconsistency of the local or provincial laws has had impact on their privileges or limited their privileges citing an unreasonable infringement on their fundamental rights.

Nonetheless, a glaring problem that was identified by this study was the caseload of the Constitutional Bench and its inability to provide prompt, immediate decisions. This delay further deepened the impacts of intergovernmental conflicts and lengthened its timeline. This emphasizes the need to create conflict resolution mechanisms and also stresses an urgency to strengthen the already existing bodies and mechanisms dedicated to intergovernmental conflict resolution.

4.3.Conflicts at the psychological level

As explained earlier, events related to intergovernmental conflicts reported in the media as well as the cases filed in the Supreme Court of Nepal are minor in numbers when compared to overall governance conflicts recorded by CSC between the period of June 2022- September 2023. However, several anecdotal evidences and field-based interviews and observations by CSC indicates that significant numbers of intergovernmental conflicts are at the psychological level and the impacts of such conflicts can be directly observed on the core functionality of the three tiers of the government. To this, a number of factors have contributed. First, a strong sense of autonomy, in particular felt by the local governments is one of the prominent factors in this regard. All 753 local governments perceive that they are fully independent and autonomous to exercise the exclusive constitutional rights. Thus, they often attempt to exercise all the given rights without any interference from other governments but tend to forget the constitutional principle of Nepal's federal model that all 761 governments should be operate under the framework of cooperation, coordination and co-existence. There are no such initiatives and authorities in place that could facilitate policy as well as programmatic collaborations among Local governments, between the Local and Provincial governments, and between the Local and Federal governments. The role of District Coordination Committee (DCC) is found important to facilitate local government level

coordination in each district, but they seem to be least effective to perform their roles, partly due to their unclear mandates, and partly their own resource capacity, and leverage over the Local governments. Likewise, the role of NNRFC and ICC could be critical to facilitate policy and programmatic collaborations between the local, province and federal entities. However, their roles also seem ineffective and incomplete in this regard.

The second important psychological factor regarding the existence of intergovernmental conflicts is associated with federal authorities' fear of losing its traditional control over resources and leverage due to the devolution of power as per the current constitutional provisions, whereas the local and provincial authorities are trying to gain as much autonomy as possible. As a result, there is a constant psychological battle between these governments authorities. In principle, both political and bureaucratic are operating under the federal governance framework. However, in practice, there is a tendency of running the local and provincial governments based on the instructions of the federal government. Gradual increase of conditional grants and the decrease of equalization grant provided to the local government, delay in formulating Civil Service Act, Education Act and several other important Acts to facilitate the power devolution process, and inefficient channel of communication between the Federal agencies and the Local and Provincial government authorities is preparing a ground for intergovernmental conflicts. Likewise, Federal governments allocating grants to several small-scale development projects without consulting local governments is breaching their jurisdictions, and at the same creating a space for a conflict between Local and the Federal governments. There is also a constant complain about the local government authorities that political and bureaucratic leadership at the Federal level are operating with centralized mindset, thus becoming less cooperative to facilitate the process of federalism. Accumulation of grievances against the Federal authorities is psychologically preparing the local governments to resist against them in one way or another.

The third psychological battle revolves around the existence of Province structure in a new governance framework of the country. Several our interactions with authorities from all three tiers indicate that, both the Local and Federal authorities consider the province structures as a burden to independently exercise power and mobilize resources either at the very top or at the very local level. There has been a dominant discourse that Province structures are not economically and politically viable for a small economy like Nepal. There is nothing to offer from the province structures, as the Local and Federal structures can easily perform the roles of what Provinces are doing at present. Provinces are also criticized for being highly dependent with the Federal actors from forming governments to its overall execution with very little independent decision-making roles in all their affairs. Thus, there is a tendency from the Federal and Local government authorities to contravene the existence of the provinces and be less cooperative with this newly established structure. Such situation is also creating a potent ground for dyadic as well as triadic intergovernmental conflicts.

Lastly, intergovernmental conflicts are also influenced by public sentiment towards a particular governance structure, in particular against the provinces. Our observations and interactions with the province authorities suggests that Provinces being highly criticized by the public regarding its least effective roles to serve on the best interests of the people, feel pressure to be demanding and to take against the Local as well as Federal governments. As reported by media lately, the current Chief Minister of Madhesh province has threatened to call for a street-based protest against the Federal government for being less responsive to their demands, in particular for not formulating laws that are supportive of the effective execution of the Provinces.⁷ Lal Babu Raut, Former Chief Minister of Madhesh, along with other cabinet minister had even participated in a sit-in protest last year in August against the Federal government demanding immediate adjustment of the police force.⁸ Likewise, a meeting with Chief Ministers held in Kathmandu in February 2019 were vocal about the centralized mindset of the Federal government and delay in drafting relevant laws as well as delay in delegating full-fledged fiscal authority to the Provinces as key impending factor behind less effective presence of the Province governments.⁹

As indicated in the governance conflict data, significant civilian resistance against each layer of government have exerted pressure to meet their demands and expectations and to do so, they require resources, revenue, technical capacities, as well as more independent space to operate within the existing Federal governance framework. In such case, they may have to go against the Federal and Province governments, which may produce a positive result when conflicts are handled constructively. If not, there are possibilities to produce counterproductive results, which might take the country towards a vicious cycle of protests, demonstrations, and legal battles against the Federal and Province authorities.

Conclusions and Recommendations

Abiding by the fundamental aim of this paper, evidences gathered from the media monitoring, court case analysis, and interviews and observations from the ground, this paper has been able to highlight some of the critical intergovernmental conflicts that are existent in federal Nepal. These factors reportedly act as catalysts that fuel the underlying as well as evident layers of intergovernmental conflicts and hinder efficient and peaceful governance. In efforts to draw attention of relevant bodies to address such existing and potential triggers of intergovernmental conflicts are needed to address timely, with adequate strategies and with deeper level of understanding of the dynamics and direction of the conflict. One pertinent lesson that we can learn from the analysis of the intergovernmental conflicts filed in the Supreme Court of Nepal as well as reported in the media that they are not many in numbers until now, as compared to other forms of governance conflict events. However, overall sentiment and psychology around

⁷ <https://myrepublica.nagariknetwork.com/news/madhesh-province-govt-to-announce-protest-against-federal-govt/>

⁸ <https://kathmandupost.com/province-no-2/2022/08/14/madhes-government-members-stage-sit-in-protest-demanding-police-adjustment>

⁹ <https://kathmandupost.com/national/2019/02/19/chief-ministers-press-for-devolution-of-power>

intergovernmental relations is so critical and demand immediate resolutions through policy and institutional arrangements as well as vertical and horizontal dialogues with the local, provincial and federal entities. In particular, position of Provinces in the current governance framework is found so critical towards transforming or minimizing the level of intergovernmental conflicts. Thus, the political parties' and bureaucratic leadership's perspective towards strengthening the province structure through policy as well as programmatic solutions seems vital. Likewise, there is a need to clarify the constitutional scope of the autonomy of the local governments and accustom them with the principle of cooperation, coordination, and co-existence seems equally vital to clarify through the comprehensive interpretation of the Constitutional rights mentioned in Schedule 8 to 9. Consequently, equitable distribution of natural resources and equal distribution of benefits derived from the use of natural resources remains a challenge for Federal management. Hence, plans, policies and clarity in guidelines supporting rightful allocation of resources and revenue distribution at all three tiers of government must be prioritized.

The intergovernmental conflicts, their triggering factors, actors, circumstances and consequences highlighted through this paper suggests a peculiar need to develop or activate the existing conflict resolution mechanisms at all levels. This especially spotlights the roles, capacities and also objectives of the local governments, reinforced by equal if not more efforts from the Provincial and Federal governments. Therefore, constructive dialogues that create channels of communication for coordination and cooperation are extremely important to not only restore effective governance at all there three tiers but also enhance the public delivery system, strengthen justice and judiciary systems and importantly, rebuild the trust between civilians and the government as an entity. In addition, to rise from the existing as well as underlying governance conflicts, it is significant to grasp the anticipation of peaceful governance in its entirety. More importantly, the role of citizens in governance processes should be clarified to make them further responsible/accountable to strengthen federalism in Nepal. Hence, local and indigenous knowledge and practices must be incorporated in the decision-making processes to foster inclusiveness and build a sense of ownership among local communities. Solution driven local political dialogues with participation of relevant stakeholders can be one way to fulfil this aspiration.

This paper suggests that governance conflicts can be potentially addressed by taking initiatives to formulate laws and policies that clearly define and implement the roles of the three tier of government bodies, as defined by the constitution for which, proactiveness of lawmaking, judicial and relevant constitutional bodies is important. However, mere interpretation and declaration of roles and responsibilities may not be sufficient to achieve better intergovernmental relationships. For this, capacities of each actor need to be ensured and enhanced to be able to proficiently execute their designated functions.

Likewise, substantial formal and informal dialogues are necessary among policymakers and government authorities in different layers of the governments. Such dialogues have the potential

to assemble the challenges and learnings gathered from the six years of federalism practices and power exercises by different tiers of governments. When these dialogues are focused on how federalism is functioning as compared to previously practiced unitary forms of governance in Nepal, one should be able to draw the existing gaps and also possible avenues to resolution. It is significant for these dialogues to be inclusive, open and critical on every aspect of federal governance practice where the voices of people is carefully addressed, whether they support or resist federalism.

This paper concludes that intergovernmental conflict is a common phenomenon that is observed when a country adopts a new governance system with the provision of multiple layers of governments, each exercising exclusive and concurrent rights. Such conflicts are even more common when different layers of governments are required to operate with the principles of coordination, cooperation and coexistence. Also, post-conflict and post-movement governance arrangements have the potential to increase intergovernmental conflicts, as they are formed under the power sharing arrangements between the agitating parties and interest groups, which may not necessarily be constructed with the best satisfaction of all parties. What is required to tackle this problem is robust conflict resolution structures and mechanisms along with a clear strategic mindset and political will to confront the challenges.

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