

Working Paper: Constitutional Mandates and Provisional Devolutions for Nepal's Intermediate Governments

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This paper investigates the scope of powers for public policy currently with Nepal's province governments by examining the devolutions made through the Constitution and during the implementation of it. Nepal's provincial governments are autonomous intermediate tiers whose autonomy is guaranteed under the constitution. Of the three tiers in Nepal's federal system, the provincial lack a clear historical antecedent and are thinly endowed compared to other two: local and federal tier. Despite constitutionally guaranteed exclusive and concurrent jurisdictions, the provinces have relied on federal devolutions to run its operation in initial years. Several devolutions have happened in areas of agriculture, forestry, health, and administration but most of these devolutions have been carried out through executive orders rather than framework legislations. Even where legislations have been brought forth the implementation has either not followed or legal ambiguities have provided an impression that the devolved authorities are only provisional, thereby prolonging the transitional period for federal restructuring.

The seven province governments have enacted public policies within their constitutional and devolved authorities and discovered the fragmented nature of policy making in the federal set-up and the limitation of their provisional powers. Provinces continue to face the challenge of leveraging the benefits of both relative accessibility and economies of scale, one of which are not available for the federal (accessibility) and local tier (scale). However, the provincial policymaking continues to be marred by pork-barrel spending both because of dispersed supply and demand of public projects. Special attention needs to be paid to advocacy-based coalitions that can go beyond individual constituencies and local governments which could come in the shape of non-governmental organizations, trade unions and associations, cooperative, educational institutions and private sectors that are regionally prominent. Provinces also have a comparative advantage in extending social protection to marginalized groups whose concerns are not always addressed through federal and local public policies. In sum, extending public policy space for Nepal's provinces is a two-fold exercise: claim constitutional powers not provisional ones and deliver to citizens where federal or local government cannot.

Introduction

This paper has set out to understand the public policy space that province governments have, given their constitutional and political mandates and set of authorities that have been devolved to them. This paper is part of the of larger research to understand various aspects of public policy processes at provincial governments. The understanding of policymaking at the province government is crucial to both the implementation of federal system in Nepal as it will contribute to our understanding of what these governments have the powers and processes for delivering policy outcomes. Moreover, there is a dearth of understanding in province governments as these are new structures and any understanding of policies in Nepal will have to contend with the role of province government.

In this research, we primarily use secondary research methods interpreting constitution, various laws, government documents and published reports to understand the set of powers that are currently with the province governments. We triangulated these findings with field research from two provinces,

Gandaki and Madhesh. We also evaluate other aspects of provincial policy making including their progress against a set of macro-level processes and through advocacy framework utilizing both interviews and provincial publications.

In this paper, the next section includes an overview of intermediate governance in Nepal, where we show how provincial governments mark a departure from previous practices in regional governance but also argue that the design of previous institutions (at the regional level and district level) continues to persist in the organization of province government. This will be followed by the evaluation of the devolution process to the provinces, where we show that the set of powers that provinces have can be construed. We also show that these policies provinces can pursue, through the set of powers that they currently have that are primarily distributive. They have little authorities to influence regulatory and redistributive policies.

The third section will take stock of the public policy initiatives of provinces and their progress. We show that provinces have largely mimicked the policy processes at the federal level. The annual plans, programs and budget which is the primary method through which provinces deliver their policies begins with the input of planning commission and in principle is expected to align to the periodic plans. In practice, however, policy making is a political exercise between ministries, political parties, and provincial assembly members. The budget allocations are characterized by pork-barrel spending and allocation over a plethora of small projects. There are persistent challenges throughout the policy processes further worsened by the fact that provinces in their initial years have operated with a vacancy of 40 percent. The process is still weaker in monitoring and evaluation; the provinces have been unable to show tangible progress in comparison to a baseline as administrative data collection remains scattered and inept. We provide an in-depth discussion of two novel policies made by the province government to show how policy spaces are being utilized to address specific problems of the provinces. We also touch upon the role of advocacy-coalitions in provincial policy making, emergent as though it is, will be crucial in the way policymaking at the provincial level can achieve tangible outcomes and broader legitimacy. We conclude with six reflections for provincial public policy space:

Intermediate Governance in Nepal

Provinces are the intermediate tier in Nepal's federal governance system. Conceptually, Nepal's federal system has been defined as hour-glass federalism which is identified as a "schematic that combines a strong center and strong local government with comparatively weaker provinces designed to play a coordinating role" (Breen and Payne, 2022). This places provinces not just as an intermediate tier but also as an intermediary between the stronger federal and the local tier. A major point of debate in recent years has been about the role of the provincial tiers in Nepal's governance system. However, the creation and demarcation of provinces as a federal tier was a crucial point of contention during constitution-making, suggesting that it is not an inconsequential tier but has a substantive political role. Besides intermediate governing units were also a part of Nepal's unitary governance system which we will show is influential in the way provinces are carved out both in terms of authority and geography.

Intermediate organizational structure within Nepal's governing system is not new. Within the unitary structure, several attempts at creating various deconcentrated units to either enforce the decisions of the centralized government or coordinate functions with the decentralized units (panchayat or local

bodies) were created¹. Prior to federal restructuring through 2015 constitution, Nepal's unitary governance system was organized into five development regions, 14 administrative zones and 75 districts. The development regions were first created in 1972 to kindle spatial regional development along four development axes linking terai, hills and mountains. However, instead of promoting regional development, the development regions became a basis for government programming which emphasized balance between development regions rather than reducing imbalance across elevation (along development axis) within the same development region (Gurung, 2005).² As a result, the attempt to promote regional development through development regions failed and instead these development regions became an intermediate layer between the center and the districts (Thapa, 2018). The headquarters or urban centers of the development regions had been housing regional directorates of several line ministries including agriculture, health, education, forestry, among others; and some other specialists training and research centers. These organizational structures were crucial in providing the preliminary architecture of provinces and continue to persist in the federal system (The Asia Foundation, forthcoming).

The development regions, despite its strategic importance over government policy, were not designed to have political representation and was managed through centralized deputation. This is the defining distinction between provinces and the intermediate development regions or any intermediate government unit that preceded.³ Provinces have political representation through a legislative assembly, with two seats at the provincial assemblies for each seat at the federal House of Representative. With smaller constituencies the provincial assemblies hold the potential to be more representative of diverse ethnicities than House of Representative.⁴

However, an analysis shows that besides Madhesh, none of the provinces can derive political majority through select nationalities. This indicates that provinces do have political representation unlike earlier intermediate units but besides in Madhesh the political representation in provinces is not ethnically centered. The political representation in such a case can arrive from electoral representation and not group representation. Rather, the spatial demarcation of provinces closely follows that of erstwhile development regions. Of the seven provinces, Madhesh, Lumbini and Gandaki's boundaries included areas that were under multiple development regions, while Koshi, Bagmati, Karnali and Sudurpaschim's boundaries closely followed that of Eastern, Central, Midwestern and Far western development regions (Thapa, 2017). This shows that while the rationale for provincial demarcation of Madhesh might have been ethnic autonomy, in the demarcation of other provinces the structure of development regions seems to have prevailed.⁵

The district level (deconcentrated) units in the unitary governance system also served as an intermediate unit to coordinate functions with local bodies and had direct role in local administration (The Asia Foundation, forthcoming). For both reasons, the districts (besides in two location) remained a primary administrative boundary through which provinces were created. Within districts, District

¹ Bhim Dev Bhatta; (1988). Decentralization in Nepal . Indian Journal of Public Administration, (), – . doi:10.1177/0019556119880105 and need another one.

² <https://www.adb.org/sites/default/files/publication/28685/nep-regional-strategy-development.pdf>

³ Panchayat system had an intermediate tier at the district and zone, both selected through indirect elections.

⁴ Albeit, it has been argued that provincial majorities of different ethnicities is difficult besides in Madesh.

⁵ Two of the major political parties wanted this continuation, suggesting that despite a lack of political representation, the development regions were important to these major political parties then.

Administrative Office (DAO) responsible for peace and security and District Development Committees (DDC), responsible for development functions, were the most influential of district offices.⁶ While the function and organization of DDC and other sectoral offices of line ministries were restructured to local and province governments, DAO remains with the federal government. This is yet another key marker in the evolution of intermediate governance in Nepal.⁷

The historical stream of intermediate structures erected to serve the functions of centralized unitary governance system, provincial tiers make departures in two key regards: their position is constitutionally guaranteed, and they have a political representation which promises to be electorally significant across the seven provinces but more so ethnically in Madhesh. However, the intermediate institutions of development regions and districts have persisted in the logic of provinces both in the spatial demarcation and the organizational devolutions that have been carried out in the first years of federal transition. While the organizational persistence will be easy to re-shape through the constituent policies of province government, the spatial demarcation will continue to persist.

Political and Constitutional Mandates

The Madhesh movement in 2007 is understood to be the defining event that established the federal restructuring agenda to be adopted in the succeeding constitution. An important demand of the movement was a separate province in the terai region for Madhesi people (Madhesh Movement, 2007). The federal idea also had a substantial traction owing to the Maoists insurgency which had made autonomous governments for ethnic communities one of its major demands (Bhattarai, 1996). Similarly, several preceding movements led by indigenous ethnicities had fought for their rights to self-determination. As such, the political demands for federal restructuring and struggle for self-determination from Nepal's diverse ethnicities remains an integral driver for the federal bargain to be established in 2015 constitution.

Multiple scholars have used a historical institutionalist framework to explain the origins of federalism in Nepal. Lecours (2014) argues that the Madhesi movement utilized the 'critical juncture' after the 2006 people's movement to push for the federal agenda when the overthrow of monarchy had been in process, but the national political parties had not consolidated their control of the central government.⁸ Similarly, Breen (2018) argues that Nepal's federal origins lies in the moderate secession risk, i.e., the secession risk was never substantial enough to materialize into dangers of secession but not too weak either to subside through coercion.⁹ Both of these factors suggests that the federalism

⁶ Other district offices of sectoral ministries including education, health, agriculture, livestock, among others, crucial as they were in delivering service, were at the administrative control of DAOs and DDCs and reported on the technical front to the regional directorates.

⁷ A criticism of the intermediate region and district structures across sectoral areas, for example, in agriculture was that they were underfunded, understaffed, and lacked the autonomy to respond to citizens need and were instead pre-occupied with implementing the central governments projects.⁷⁷ Similarly, in health sectors decentralization reforms are an important element of the sector strategy. ⁷ It is only of relative importance as to what needs to be decentralized to the provinces. These examples suggest that provinces as intermediate tiers with political representation have a crucial role in contributing to the reforms in such sectors.

⁸ In the analysis of path-dependent institutions, the concept of critical juncture refers to situations of uncertainty in which decisions of important actors are causally decisive for the selection of one path of institutional development over other possible paths (Cappocia, 2016) <https://doi.org/10.1093/oxfordhb/9780199662814.013.5>

⁹ . Sijapati (2012) argues that 'beyond the manifestation of historical marginalization and alienation experienced by Madhesis at the hands of a succession of ruling elites of Nepal',⁹ the most important cause for the relative success of Madesh movement lied in the 'most important resource available to Madhesis, ...which... is lacking in the case of other marginalized groups in Nepal, is the strategic location and economic significance of the Terai.' Especially after the Madhesi movement in 2007, the Indian government had substantially increased its interest and regularly advocated for sub-national autonomy in Nepal (Jnawali, 2022).

and creation of province owes to the fluid circumstances that centralized state found itself in after the overthrow of monarchy. Even though the agency of the actors who leveraged these events and junctures to establish their political agenda ought to be considered a key causal mechanism.

While these factors had successfully bargained for a federal agenda, the larger details of the vertical and horizontal restructuring of the state had to be etched out. During the first and the second constituent assembly, these became important points of negotiation and counter-mobilization. We have already shown that the two major parties had supported a horizontal restructuring of provinces along the line of erstwhile development regions thereby attempting to sidestep the contentious demands for ethnic autonomy that had erupted across the country.¹⁰ This attempt was aided by additional factors: first, different ethnic communities came into contravention of one another's geographical claim, and second, simultaneously a countermobilization by dominant ethnicities had emerged to thwart the federal restructuring (The Asia Foundation, forthcoming). Owing to the difficulty in reaching a consensus, the main political parties had agreed to 'fast-track' the constitution drafting and attempted to sideline the question of horizontal restructuring by keeping the constitution silent on the names and demarcation of the federal units. This was rejected by the federalist groups in Constituent Assembly and outside; they took the issue to the Supreme Court, which issued an interim order against the postponement of federal restructuring (i.e., primarily horizontal restructuring) (Malagodi, 2018). The 2015 Constitution demarcated the boundaries of seven provinces and gave them a name using numbers.

The issue of horizontal restructuring owing to both political constraints and judicial decision could not be side sidestepped. The other aspect of restructuring was the delineation of authorities between the tiers of the federal system. On this, some consensus had been built from the first Constituent Assembly that translated to the 2015 Constitution, while others were hastily settled during the fast-tracking of the constitution drafting process with contentions registered especially from the protesting Madhesh-based parties.

First of these consensuses that translated from first Constituent Assemblies' State Restructuring Committee was to choose 'cooperative' model of federalism over 'dual' or competitive federalism (The Asia Foundation, forthcoming).¹¹ The adoption of cooperative model of federalism with shared powers between state and the federal government but with the legislative supremacy of federal level was carried to the Constitution from the first Constituent Assembly's state restructuring committee recommendations. Similarly, the inclusion of local government as the third tier of the federal system seems to have been the overarching agreement within the State Restructuring committee which also translated into the Constitution. However, the specific nature of interrelationship between provinces and local governments diverged from this committee's recommendation to the 2015 constitution. The committee recommended for the restructuring of local governments be carried out by the provincial

¹⁰ The two parties even at their weakest electorally during the first Constituent Assembly had enough votes to impede the promulgate the constitution.

¹¹ National and subnational institutions regard themselves as partners in government, sharing powers for the common good; the states or provinces have extensive involvement in the formulation of federal policies, on the one hand, while the federal government relies on the states for the implementation of its policies, on the other. A typical instrument of cooperative federalism, for example, is the framework law, whereby the federal legislature lays down basic goals and principles for a policy area and then allows the states to implement these in their own ways.
<https://www.idea.int/sites/default/files/publications/federalism-primer.pdf>

government with certain preconditions, rather than by a commission as was carried out after the promulgation of the Constitution. Since this recommendation did not feature in the Constitution, local government restructuring took place without any stake of the provincial tier. During the local government restructuring, the provincial governments existed only in name and the Constitution and have no stake in it. By design of constitution, provinces have the legislative supremacy over the local tiers and can make fiscal transfers to local government. However, their parallel creation and the fact that local government's antecedent structures are more historically institutionalized, means that the two lower tiers of the federal system are not as inter-linked.

Based on the schedules of the constitution, the most substantive set of powers that the province government has is on law and order and developmental functions. The province government has minimal powers in taxation and revenue generation.¹² As such the law and order and development functions are where the provincial policymaking will largely be based.

Law and Order Authorities: 'Provincial police administration and law and order' is the first exclusive authority of the province governments. The constitution envisions this to be imparted through a provincial police administration. Nepal Police was and remains the primary authority to keep law and order throughout the country. Based on these two facts, we can infer that the Nepal Police is to be restructured/adjusted to the provincial tier for the creation of provincial police administration. Like other authorities, however, the Constitution does not explicate the process or the principles for this restructuring. There are multiple ambiguities within the Constitution that makes it difficult to explicitly determine the sharing of policing functions between the two tiers. Still, some inference can be made in this regard. The Article 268 of the Constitution states that both Nepal Police and provincial police are to be guided by the federal level indicating that primary legislation for even the provincial police will be based on federal legislation. Perhaps, a limitation to what the federal law can influence in provincial police administrations can be drawn from the 'law and order' jurisdictions that is allotted to the shared jurisdiction of federal and province governments thereby limiting the scope for interpretation.¹³ As will be discussed, in the first years of federalism implementation, the creation of provincial police and the restructuring of Nepal Police has been a contentious issue with limited progress.

Another aspect of the law-and-order function that needs to be considered when considering provincial authority is the role of the District Administrative Office. Headed by Chief District Officer, DAO was and continues to be responsible for mobilizing Nepal Police to maintain law and order within the districts. Additionally, the CDO has been provided to authorities through the Local Administration

¹² The provinces can levy motor vehicle tax, entertainment tax, advertisement tax and agricultural tax; of which first three are shared with the local government within non-tax revenue sources, provinces can collect tourism fee, house and land registration fee, service charges and fines/penalties, of which tourism and house and land registration fee are shared with the local government. these internal sources of revenue in the initial stages of provinces operation have only contributed on average 14.5 percent of their total budget during the fiscal year 2020/21. This too is substantially different in the seven provinces with Bagmati receiving about 19.4 percent in own source income while Karnali and Sudurpaschim receiving 0.3 and 0.7 in internal revenue during the fiscal year 2020/21 (Devkota et al, 2021). Provinces have been allocated equalization grants and share in revenue and royalties generated by federal government, but these are contingent on federal legislations and recommendation of National Natural Resources and Fiscal Commission.

¹³ These include civil and criminal procedures, preventive detentions, prison and detention management and maintenance of peace and order, transfer of accused, detainees, and prisoners from one province to another, among others.

Act, 1975 and several other acts including several quasi-judicial authorities. DAO is also responsible for distributing citizenship and passports and remains the principal entity for the federal government to coordinate its development affairs. DAO is of crucial importance to the federal government, however, in the initial years its role appears to be in direct contravention to the exclusive authority of provinces. The Constitution does not demarcate a role for the office, but its antecedent role in law and order within the unitary structure and its recurrence during the transition; and its other multifarious roles in administration and development coordination means that this organization will continue to have a big say in the restructuring of law-and-order authorities.

In the initial years, the Chief Ministers especially in Madhesh have regularly questioned the role of CDOs in imparting law and order. Policing, and law and order is one of 21 exclusive authorities of the province but remains one of the most integral ones.¹⁴ In our interviews in Madhesh, we found that policing remains integral in imparting of even the developmental function of the provinces may it be for the security of public development projects or for providing security to private investments. Without these powers, the provinces will be limited to implementing only their development authorities which will further constrict their scope for policymaking (The Asia Foundation, forthcoming).

Developmental Authorities: Most of the jurisdictions outlined for the provincial government concern issues in economic and regional development. Broadly this includes sectors like communication, physical infrastructures (province-level electricity, irrigation, and water services and navigation), higher education, health services, use of natural resources (including mines, forest, and environmental management) and agriculture.¹⁵ An implication of this is that the broader mandate the Constitution sets for the provinces is to pursue regional development within each of the provinces.

However, each of these sectors is also included in the concurrent list of provinces with federal and local government.¹⁶ For example, ‘tourism, water supply and sanitation’ is a concurrent right of all tiers but ‘irrigation and water services’ are also its exclusive rights of the provinces. Even in the report submitted by the state restructuring committee there is little documentation on the specific demarcation of powers in each of these sectors and their (de)merits in locating at a certain tier (The Asia Foundation, forthcoming).¹⁷ The committee report simply enlists each of the parties’ preference and synthesizes this preference to make a recommendation. Given the cooperative principle of Nepal’s federalism, we can argue that policymaking in these areas will be shared across the three tiers and will be contingent on federal framework legislation. Any roles and authorities for the provinces in development could in principle be dictated by the federal legislation especially when the schedules are ambiguous.

Constitutionally, the most complete set of authorities marked for provinces is in agriculture, where agriculture and livestock development remain province’s exclusive authority while it can also generate agro-income tax through this sector which is linked to its only revenue generating potential besides that were already being drawn by the central government or local bodies (The Asia Foundation,

¹⁴ Of the coercive power that the provinces have, law and authorities are the most substantial one. The other taxing authorities with provinces is very thin.

¹⁵ Constitution of Nepal, Schedule 6, 7 & 9.

¹⁶ See: Constitution of Nepal Schedule 7 & 9.

¹⁷

forthcoming). However, even within these authorities a broader reading of agriculture related authorities in the schedules of the constitution suggests several authorities related to fertilizers and pesticides and land management among others will continue to be with the federal government or shared across tiers.

The law-and-order authorities and developmental authorities are two sets of powers for the provinces as envisaged in the Constitution. The Constitution also remarks about the broader goal for how these functions are to be imparted. As with any government, the larger public policy will have to be in the welfare of its citizen, but some texts from the constitution can be interpreted as specific set of goals set for the federal system and by extension the provinces. These include to ‘represent diverse regional characteristics,’ ‘to protect and promote national unity in diversity,’ ‘to gear up a balanced regional development’ and ‘to address issues of inclusive representation.’¹⁸ The preamble clearly emphasizes the need for accommodating ‘regional’ diversity as a consequential role of the federal set-up and consequently the provinces. Still more broadly, the constitution sets out to ‘end all forms of discrimination that evolved through a centralized unitary system of governance. A corollary of this would mean that provinces have a role to play in ending this discrimination, because they are the primary federated units. This substantially broadens the roles provinces are to play in the federal system while pointing towards a somewhat clearer direction.

Provisional Devolution for Provinces

After the promulgation of the constitution, a preliminary structure for province governments was established before the first set of elected representatives came into provincial assembly in 2017. In context of the transition from unitary state’s power to provinces, this was a crucial period, as it was foundational in bringing provinces government to a workable shape. The decisions taken by the federal government that determined the shape of provincial institution during this period included: passing of the Provincial Assembly Election Act, determination of temporary capitals, setting up of the organization of seven ministries in each province based on High-Level Administrative Restructuring Committees decision, and unbundling powers of the three tiers of government. All these decisions continue to be instrumental in shaping provincial government till date. The Elections Act was used to elect second set of provincial assembly members as well, the five of the seven temporary capitals were elected as permanent ones; most provinces continue to operate with seven ministries initially determined by the restructuring committee and the unbundling report continues to be the basis through which the federal government devolves authorities to the provinces.

After the provincial assembly came into office in 2017 and formed the first provincial executive through majority vote, they demanded devolution in the spirit of the Constitution. For the implementation of Constitution and in no small part because of demands by provincial elected representatives, subsequent devolutions to the province have occurred. The devolutions to provinces have mainly occurred in the areas of developmental authorities primarily in forestry, agriculture, health, and infrastructure (transportation). This can be confirmed from the size of the central civil service that were adjusted to the provinces and the existent regional and district offices of sectoral areas that have been devolved to the provinces (See Annex I and II). However, the law-and-order authority

¹⁸ See, the Preamble of the Constitution of Nepal (2015).

continues to be with the federal government. While some provinces have enacted their provincial police, they have waited for the federal government to adjust the police service.

Taking a stock of the devolutions made to the province government, we argue that the devolutions made to the provinces are 'provisional' in nature and lacks the permanence necessary for the provincial organization to evolve on its own and in relation to federal and local institutions. Here we use 'provisional' to argue that devolved provincial jurisdictions even if constitutional could be delimited by federal executive decisions at any time or place; and without much coercive agency (in maintaining law and order or in taxation) their public policies can simply be ignored or negated by state and non-state institutions.¹⁹ This has materialized in the method and the sequence that is used for devolution to the provinces. Firstly, most devolutions were made to the provinces through federal executive decisions without framework legislation in place may it be in forestry, agriculture, infrastructure, health, or education. As such any jurisdictions of the provinces devolved through executive decisions in principle can be retracted or revoked through an executive decision. The example of this was documented where hospitals which were first devolved to the provinces were later brought under federal control (Democracy Resource Center Nepal, 2019).

In other instances where devolutions have been made or attempted through legislations, some key provisions are either left ambiguous or the sequence of devolution creates uncertainty for the actors responsible for enacting those legislations. Take for example, Employee Adjustment Act, 2017, which was to adjust employees to local and provincial tiers. Even as the employees were made to shift from federal civil service to provinces, key elements like the terms and conditions of their service and how the arrangement for inter-governmental civil service management were to be made which would implicate their career development were not determined. Employee adjustment in this sense was carried out without a framework legislation that guides civil service at all three tiers and without any arrangement for inter-governmental civil service management. Here these sequences of events have meant that the federal government has failed to pass the framework legislation for the past seven years and the provinces consequently have waited for the federal government before legislating their own. The adjusted employees have to contend with the uncertainty of their career growth during this prolonged transition which has affected the process of institution building for the provinces.

Similar process has unfolded in the process of adjusting Nepal Police to the provincial police. Nepal Police and Provincial Police Act, 2076 was brought forth for the creation of the provincial police force and for delineating the roles of both Nepal Police and Provincial Police. Similarly, Police Personnel Adjustment Act, 2076 detailed the process for the adjustment of Nepal Police personnel to provincial police force. However, the implementation of both acts remains some way off. For its part Nepal Police has reorganized its police force and maintains a deconcentrated unit at each of the provinces. The unit officially reports and coordinates with the Internal Affairs and Law Ministry of the provinces,

¹⁹ Jauregui (2016) has used the polysemy of the modifier "provisional" to denote that police power in India is essentially provisional authority. She defines provisional authority as first, possibilities and occurrences of authoritative interaction bound by time and space; second, conditions of supply and demand, and exchanges of resources, material or otherwise, as in provisions that may be expected, offered, distributed, traded, or taken among multiple interested parties, and third, partial or integral component of a socio-cultural code characterized by binding interdependence of actors and acts.

but the province government has little say in the law-and-order functions carried out by provincial police units or district and area police offices. It is unlikely that provinces will have any authority over the law-and-order functions unless these Acts are implemented. However, the provisions on the career development of the adjusted provincial police are ambiguous which creates reluctance on the police force to be adjusted in the first place. This uncertainty has been used by successive federal governments and senior police to delay the adjustment process and the creation of the provincial police (The Asia Foundation, forthcoming).

The devolutions to the provinces have also been attempted to curtail by keeping a hold over the key officials. One of the broadest devolutions to the provinces was carried out in the sectors of environment and forestry with 68 percent of all forest service employees adjusted to the provinces. However, the enactment of Forest Bill has ensured that the division forest officer, the most key official in forestry which also has a quasi-judicial role will remain under and be deputed by the federal government, even as the division forest office is devolved to the provinces. This has been challenged in the courts by the Madhesh government, however the court has not decided on the matter. The control of key personnel would ensure that the devolution to provinces would only be for the allocation of resources to the division forest office, while the regulatory functions would be carried out by the provinces.²⁰ The federal government has also floated the provision to keep control of ministerial secretaries in the provinces through Civil Service Bill, which is under deliberations. However, these procedures suggest that keeping the hold over the key personnel in provincial agencies is yet another method through which provinces' authorities have been kept provisional (The Asia Foundation, forthcoming).

The fact that devolutions to provinces have occurred suggests that there are factors that have contributed to putting levers on federal government to devolve authorities. First, the Constitution itself has been a major anchor of these devolutions. Second, in many of these sectors there were persistent challenges faced in administering public policies in areas of agriculture, and health among others where some form of decentralization had been on the reform agenda, the provincial devolutions was also used as a method to push implement these agendas. Importantly, the chief of these can be traced to the fact that political federalism preceded any devolutions which were crucial for the administrative devolutions to take place.

The first provincial assembly was elected, which led to the establishment of the first provincial executives. These political events provided a strong impetus to lobby for devolutions to federal governments. In fact, authorities in the federal system have been construed as permanently 'provisional', as governments engaged in conflict may be tempted to view the constitution as provisional and subject to renegotiation (Gardner, 2016). In this sense, provisional authority of the provinces can be seen in a different light, whereby despite constitutional guarantees, the province's authority is under constant renegotiation with the federal tier. This becomes even more important in cooperative federal systems where the delineation of authorities is not written on sand but guided by framework legislation.

The executive decisions have preceded the adoption framework legislations in the devolution process. On the one hand, these executive decisions have been instrumental in providing 'provisional' powers

²⁰ Several provinces have also brought their own Forest Act afterwards.

to the provinces before the legislation is passed. However, these provisional powers are always at the risk of being retracted if the framework legislations are not brought which has been testified by several examples. As such the priority of executive decisions over framework legislation has contributed to the prolonging of transition from unitary governance structure to a federal one.

Province's Powers and Public Policy

In federal systems, public policy processes are intrinsically complex (Radin & Boase, 2007; Welzien & Soroka, 2011; Chapman, nd; Hollander, 2010). As such the relationship between federalism and public policy, even though an emerging field in federal studies, is not conclusive theoretically. However, several literatures have attempted to interpret the public policy implications of multi-layered governance system in general and federal systems in particular within specific policy domains. Chief of the concerns expressed with regards to policymaking in the federal system is the issues of overlap and duplication (Hollander, 2010). The independence of the tiers causes policies to be duplicated causing concerns for efficiency in policy response. However, these same set of challenges has also been put forth as the strengths of federalism; multi-level engagement in the same domain encourages multiple initiatives, leads to inter-agency collaborations, and spurs policy innovation and experimentation and diffusion (Landau 1969, Engel 2006, Rabe 2007, Hollander, 2010, Welzien & Soroka, 2011). In fact, redundancy caused by policy overlap and duplication can be considered as a fail-safe, a kind of check and balance that federalism provides (Hollander, 2010). Groups can appeal to multiple levels when one level of government proves unresponsive or ineffective, thereby improving representation (Hollander, 2010). Similarly, specialization across tiers has also been argued as a potential benefit of federal systems (Bretton, 2000).

The strengths and challenges in policymaking in federal systems might not conceptually translate to the specific cases of intermediate governance or more specifically to Nepal's provinces, however, they provide directions for analysis of provincial public policies in a theoretical context. Within this sense more context-specific analysis of provincial policy space is necessary. To begin with the provincial policy spaces are limited by the constitutional and devolved mandates whereby most authorities with this tier enable it to make distributive/developmental policies. However, without much of taxing authorities and the fact that law enforcement agencies have not come under its domain and in its initial years it has had to manage its agencies with very limited staff, its ability to make redistributive and regulatory policies are substantially limited.²¹ We have shown that even within distributive/development policies, the devolved authorities of the provinces are only 'provisional' whereby these provisional authorities are constantly under renegotiation for further devolutions or recentralization.

Another subset of policies that provinces have made in their first years are the constituent policies (i.e. the creation and regulation of government agencies and can also refer to policies that establish the way a government functions. It is important to note here that the constituent policies of province governments have been greatly influenced by the preliminary architecture of seven ministries and consequent devolutions made to the provinces which were both administered by federal government (The Asia Foundation, forthcoming). However, the provinces have begun developing their own

²¹ Lowi (1972) identifies three types of policies redistributive, regulatory, and distributive policies.

constituent policies by establishing their own public service commission and restructuring ministries primarily to manage party alliances.

In the same stream, the provincial policy-making processes have been greatly influenced by the way policymaking is done at the federal level. Each of the provinces has a planning commission which has created periodic plans for the provinces and are also the expert bodies to draft sectoral policies. These periodic plans are, however, even according to planning commission officials barely referred to or reflected in the annual plans, programs, and budget allocations. Even though these planning commissions as advisory units within Office of Chief Ministers have a say in provincial policymaking, budget allocations are more dominantly a political exercise between ministries (and ministers), political parties (ruling and opposition) and provincial assembly members. Many groups and communities lobby with these set of actors to get their projects into the final budget allocation resulting in pork-barrel spending and small projects allocated across the provinces. An analysis suggests that more than 675 projects below NPR 10 million were run by a province during the year 19/20, while yet another province had 858 projects below NPR one million most of which were doled out in infrastructure development (Devkota et al., 2020).

While the provinces have attempted to correct these through a ceiling for the prioritization of projects, these do not get implemented owing to political pressures. Ministers and provincial assembly members, in our interviews, alluded to the discrete demands from the constituencies as a reason for allocating funds for such small projects. This small nature of these projects has begged the question that if provinces are duplicating functions that could be performed by the local governments. However, it is important to note here that the allocation for small projects is not purely a provincial issue but has also been endemic in federal policymaking.²² This raises a fundamental question of economies of scale in policymaking which has not been leveraged in the case of both federal and province policymaking, let alone local level. An important research question in this sense could be an enquiry into the reasons behind the constraint to achieving scale in public policies at the provincial level.

The implementation of budgets has also been low in the initial years of provincial governments, even though the spending percentages differ substantially between provinces. The implementation has also suffered due to a lack of employees as even within the devolved structures of the provinces, there are close to 40 percent vacancies based on preliminary Organization and Management survey conducted by federal government. The provinces have also not been able to induce implementation through cooperation (fiscal transfers) with local governments. In the fiscal year 20/21, the share of transfers to local governments by provincial governments across seven provinces ranged from 6 to 14 percent, indicating that most of the spending is being carried out directly by the provinces (Devkota et al, 2021). Given provinces have nascent organizational structure and a lack of employees, direct implementation by province governments would put substantial burden on provincial agencies.

Similarly, the policy monitoring and evaluation is also weak in the provinces. Monitoring and evaluation are carried out by respective line-ministries or planning commissions. However, the progress in key indicators and in the implementation of specific projects are rarely compiled. It is hard

²² An analysis of budget allocations in the fiscal year 2023/24 shows that federal ministries were found to have allocated close to 100 percent of their projects below NPR 5 million (Devkota, 2023).

to find administrative data being collected through the provincial ministries. This is also reflected in the annual Economic Surveys that some provinces have begun publishing which primarily uses administrative data produced by the federal government.²³ It is fair to say that the provinces do not have and are far from building a statistical system or administrative data collection processes across ministries to measure their progress across substantive developmental outcomes. Each successive government of provinces have published their annual progress reports, but these are difficult to contextualize without any baseline. This will in turn affect the quality of policy analysis that can be conducted externally using the available administrative data.

The above discussions provide a macro-overview of annual public policy cycle in provinces. However, this does not take stock of the progress in sectoral public policies or for that matter any specific public policy that are pursued by specific province governments, these might vary considerably between domains and provinces. A careful analysis of such policies allows us to take stock of public policy scope and constraints of provinces in a clearer context. For this we use novel policies in two of the provinces (Madhesh and Gandaki) that have been pursued to address context specific problems.

Policy 1: Beti Padhao Beti Bachao in Madhesh Province

Madhesh Province governments initiated the CM Beti Padhao Beti Bachau, a year after the first government took office in 2017. The program was specifically targeted to empower women in provinces who lag across several human and social development indicators compared to both men and women in other provinces.²⁴ In our interviews, provincial assembly members across parties, ministers and civil society representatives commended the program for addressing this aspect of Madheshi society, indicating the policy enjoyed a fair amount of political legitimacy. Reports have suggested that then Chief Minister, a former teacher, and a representative from the Muslim community where the conditions of women still worse-off, had a personal motivation which provided further impetus in bringing forth this policy, showing the role of political leadership in problem identification. However, it is important to note that some variants of these programs were being implemented in different locations even by the federal government. The province partnered with several development agencies to implement the program suggesting that the policy direction and design was done through more eclectic consultations, but it originated through clear political commitment.

The primary components of the program include bicycle distribution program and education insurance scheme for girl children, while other components include awareness raising activities to promote girls education, programs against gender-based violence and dowry, provision of separate toilet for girls, scholarships for outstanding students and public service commission preparation for girls.²⁵ The areas of these project activities span across education, public health, social protection; and

²³ See Economic Survey of 23/24 of Lumbini and Madhesh Government for reference.

²⁴ The program was meant to address the poor condition of girls in Madhesh province, in comparison to other provinces, as presented by major indicators, like highest marriage by age 18 (52.5), second highest childbearing before 18 (19.4), highest adolescent birth rate (96), highest ratio of abortions carried out at home/authorized centers (45.5/34.8), highest experiences of physical violence since age 15 (among girls and women aged 15-49, i.e. 34.2), and poor school completion rate at each level.

²⁵ The primary two components of the program had been allocated more than NPR 30 crores and NPR 30 crores respectively.

can be deemed as distributive policies and do not have any element of regulatory or redistributive policies.

The Constitution has divided the jurisdiction in all these sectors across the three tiers of government however, lack of jurisdictional clarity which has been an important part of Nepal's federalism debate does not seem to have impeded the implementation of the program. However, the types of authorities that the provinces had limited the scope of the policies to distributive, when in fact a fair amount of programming in addressing gender-based violence and gender discrimination also requires regulatory and redistributive interventions. Neither overlap and duplications, a persistent challenge in policymaking in federal systems, seems to be an overarching concern in the implementation of this policy. Several federal government programs have also tried to address the same issues; however they differ from the program as it exclusively targets Madhesh.

The program is similar in name to a program being implemented across the border in India. It is also similar in its scope to a program implemented by Karnali Province which itself out-scaled existing programs that were being implemented in a few local governments (Samuel and Ghimire, 2021). However, the program also diverges substantively from any of these preceding programs, where local contexts have been adapted to include further components. This shows that provinces have taken initiatives to innovate on policies taking inspiration from other provinces and even other countries, also working to out-scale and diffuse. These have been identified as an important element of how policymaking in the federal systems can lead to innovation and diffusion.

It is one thing to identify the problem, but as we saw provinces have not been devolved several authorities mandated by the constitution and are constrained by the lack of employees. These were encountered by the province government during the implementation. The constraint of staff shortages which are a major concern in provinces, seems to have been addressed in this program through a partnership with a development agency which deployed staff across provinces to support the implementation of the program.²⁶ This shows yet another way in which the provinces can partner with external agency, no less an INGO, in addressing its constraints to implement a public policy. This, however, should be taken in context, such partnerships with international agencies till date need to be sanctioned by the federal government.

Since the launch of the program a total of 26,956 infants had been registered under the program till 29 February 2020 in the province and around 15000 bicycles were distributed to girls studying in grades 8 to 10 (OCMCM 2020 as cited in Mahato et al, 2021). More substantively, analysis has shown that the program resulted in an increase in birth registrations of girl child, increased awareness of the value of girls, and reflected in experiences of less gender-based violence and could have reduced the drop out of girls (Samuel and Ghimire, 2021). However, these achievements need to be contended with the fact that some parts of the programs lack commitment from successive governments who have dropped several elements of the programs. The data collection (reporting and monitoring) is not

²⁶ The program was supported by UNICEF, on the request of the CMO, by providing the manpower required for the implementation of the program. UNICEF funded eight Social Protection District Coordinators and one Social Protection Advisor for education insurance program. The coordinators were later replaced by 30 Palika level social protection coordinator which was funded by UNICEF. The program involved municipality, schools, and private entities for the implementation of program.

systematized making it difficult to ascertain the impact. The program could even have a counter-productive impact as in the varying interpretation of the program among the stakeholders (Samuel and Ghimire, 2021). Similarly, the program has also faced challenges in coordination between provincial line-ministries and municipalities. The program had been implemented in coordination of schools who faced their own set of challenges to distribute the bicycles, while the program was also criticized for alleged corruption in the in the procurement of bicycles.

This case study shows how province governments have navigated their constitutional and political mandates and worked through their policy-making constraints to bring forth a program, which has its own sets of achievements and failures, but has garnered significant political legitimacy. The important aspect of this policy is the role of problem jurisdiction in policymaking whereby the province government has been able to traverse jurisdictions and significant constraints to produce a policy that aims to address the issues plaguing one of the most marginalized segments of society. While provinces can pursue policy navigating their own set of constraints, the nature of their authorities will affect the design of the policies. *Beti Bachao Beti Padhao* is a distributive policy, while at least in principle it could have added elements of regulatory and redistributive policies if it had such authorities.

Policy 2: Ek Ghar Ek Dhara program of Gandaki Province

The first provincial government of Gandaki established in 2018 took the decision to make drinking water service available to all the households in the province. The Policy and Program of Gandaki Province since then has included the “*ek ghar ek dhara*” (one house, one tap) program, which has received continuity in the latest FY 80/81 Policy and Program document as well.²⁷ The first provincial Five-Year Periodic Plan 2075/2076 also has listed “providing access to basic drinking water service to all citizens of the province” as one of its priorities under physical infrastructure and energy sector. Besides the fact that access to drinking water is one of the fundamental constitutional rights, it is also a pertinent problem especially in hills of Gandaki which appears to be the rationale behind the problem. However, similar variants of the program have been in existence across local bodies and federal level with varying degrees of achievements. The province government following similar construction program has implemented the program across the districts and continued it across the fiscal years. It has also targeted localities which had not been previously accessing drinking water.

Several scattered data and reports are available that highlight the achievement of the program. Almost 8% of the population of Gandaki did not have access to basic level services to drinking water²⁸ and 70% don't have access to medium and high-level drinking water service. “One house, one tap” project falls somewhere in-between basic and high-level drinking water service. As per the first periodic plan of Gandaki Province made in 2017, 91.7% of the population had access to basic level drinking water service and 30 % have access to medium and high-level service to drinking water. The periodic plan had set the target to 100% from 91.7 %, to be achieved by FY 2080/81. The 2080's provincial

²⁷ However, FY 78/79's policy and program does not mention the program.

²⁸ Basic Service refers to drinking water from an improved source provided collection time is not more than 30 minutes for a roundtrip including queuing. Improved drinking water sources are those that have the potential to deliver safe water by nature of their design and construction, and include: piped water, boreholes or tube wells, protected dug wells, protected springs, rainwater, and packaged or delivered water. At least basic service includes both safely managed and basic services. Limited refers to an improved source more than 30 minutes roundtrip. Unimproved sources include unprotected dug wells and unprotected springs. No service (i.e., surface water) refers to the direct collection of water from surface waters such as rivers, lakes or irrigation channels.

economic survey and the five-year progress' report, however, shows that now 93.75% of the population has access to basic level water service, which is little higher compared to national average, which stands at 93.4% (CBS, 2021). Media reports also claim the provincial data to be little higher at 94.18%. The province still has one more year to meet its target. As per the target set in the provincial policy and programs, Gandaki government's target is to improve access to medium and level service to drinking water of 50% of its population by 2080/81. However, the official provincial government documents have not clearly captured the progress on this end. While the provincial Economic Survey of 2078 claims that 20% of the population do not have access to medium and high-level service to drinking water, the 2080's survey points out 18%. We can infer that there is a 2% increment in this area. The data from the latest economic survey shows that the government has annually increased the numbers of beneficiaries under "one house, one tap" program. We could not find government records which show the disaggregated data on the type of households that have benefitted from this project. The focus, however, has been to improve equitable access to drinking water for deprived groups. Till 2079 Falgun, 6 lakh 34 thousand population of 11 districts²⁹ have collectively benefitted from this scheme in Gandaki.³⁰ The targeted population has been localities that have been facing acute water shortage including the slum area and where basic water supply is not available. Altogether, the data provided by the province government through various sources do not give a clear idea of the achievement in improving access to drinking water both quantitatively or qualitatively. While we know that significant resources have been invested towards this end, and some achievement has been made.³¹ The province government across successive regimes have continued the program and there is commitment to achieve the 100 percent target even if it was not achieved in during the first periodic plan.

An important element of this program is that that the drinking water and water supply appears to be not clearly demarcated in the constitution, some elements of which were kept within exclusive jurisdiction of local and province governments while others under shared jurisdiction along with federal government. The federal government had issued a statement that the federal, provincial and local levels would implement different scales of programs considering mountain, hill and terai regions basing on population, even when most authorities had been devolved to the provinces.³² Both local and federal government have been implementing similar programs across Gandaki provinces. the federal government has also been implementing this project through conditional grant. For instance: In Tanahu, 23 drinking water service projects out of 151 were carried out with through federal government's conditional funding in FY 21/22. There has been widespread criticism that the federal government should cut down the conditional grant to provincial and local government and focus on

²⁹ Citizens in different municipalities of Baglung, Syanga, Nawalpur, Tanahu, Gorkha, Mustang, Manang, Myagdi, Parbat, Kaski, and Lamjung districts have benefitted from this provincial project

³⁰ For instance: Mirchhulung, Bhimad Municipality-5 in Tanahu district had been facing acute drinking water shortage. Under the "one house, one tap" program, taps have been installed in 72 households. The solar power technology has been used to draw water from the nearest source. A total of 3,354 houses were provided drinking water facility with the initiative of the Gandaki Province government in Tanahu district.

³¹ While announcing her 100 days achievement, Minister of Energy, Water Resources and Drinking Water Sarswati Aryal Tiwari, shared progress under "one house, one tap" program as well.

³² Based on the unbundling report, the federal government has handed over Drinking Water and Sanitation Division Office in all seven provinces. This particular division, which is under the Provincial Government, has been implementing the "one house, one tap" project in the provinces. The reports show that the provincial governments have been collaborating with the local governments to implement the project.

national level projects. However, the federal government has been separating budget to implement small scale projects³³ to sub-national governments through conditional grant. While such steps contravene the division of power, they also contribute to the policy objective of providing one tap for one house. The fact that provinces have targeted a problem specific to province has meant that the program has collaborated with local governments. To systematize the regulation of drinking water supply in the province, it has also brought forth Gandaki province has also endorsed **Management of Drinking Water and Sanitation Act** in 2022. The Act aims to govern the process through which drinking water suppliers can provide water.

The program has also faced other challenges that have impacted the implementation of “one house, one tap” project including lack of technical human resource in province, natural disasters, lack of budget for maintenance, number of high projects impacting the quality of work, and COVID-19 are some of them. Owing to a lack of available reports detailing the ways in which this program is being implemented or how it is being monitored and evaluated, it is difficult to analyze the fuller scope of the program. However, it shows how province governments have been implementing policies that are of particular importance to their geography, while managing to collaborate with local governments when the lower two tiers have been competing for jurisdictions.

Advocacy coalitions in provincial policymaking: A common characteristic in policymaking is the role of advocacy-coalitions. This framework posits that policymaking and policy change overtime is influenced by elected and agency officials, interest groups and their leaders, researchers who share a specific belief system and show “nontrivial degree of coordinated activity” (Sabatier and Jenkins-Smith, 1993 as cited in Martin et al, nd). Provincial policymaking can also be analyzed from the set of actors that are engaged in advocating for their positions during the policy-making process. We enquired about the set of actors who were involved in such processes in our interviews in Gandaki and Madhesh. While still preliminary, there are some important insights into these as well.

Most interviewees shared that elected representative and agency officials under the influence of their constituency remain the primary actors shaping policies. In fact, the distributive nature of provincial policies has also meant that more elaborate or bigger groups of actors have not emerged in this process besides a few exceptions. Policies continue to be shaped in a patron-client relationship between the elected representatives and their constituency. While local governments have been provided some space to advocate for their shared positions, combined advocacy by local governments with provinces are rare. Besides provinces can only influence a handful of constituent policies of the local governments and have some control over setting the rates of local taxes and rates.

A set of actors who have grown in prominence in shaping policies at the provincial level were found to be construction contractors, with a major chunk of provincial policies focused on infrastructure projects.³⁴ This has meant that coalitions have emerged primarily for taking advantage in public procurement, and where more research would help understand the beliefs of these actors and the

³³ In the current fiscal year 2020-21, the provinces received conditional grant funds amounting to Rs36.35 billion. The total number of conditional programmes is 13,256. The local levels received Rs161 billion in conditional grants for 84,000 programmes and projects. This analysis shows that the federal government still enjoys sending petty programmes and projects to the sub-federal levels (Devkota, 2020).

³⁴ Of all the ministries Ministry of Physical Infrastructure Development on average across provinces has the largest proportion of the budget amounting to 36 percent.

influence of their networks. Similarly, still nascent but some coalitions were found to have emerged in the cooperatives sector especially in agriculture and livestock and transportation sectors. The provinces have substantial authority in both these sectors. Coalitions were also found within the communications sector especially across journalists and their associations, especially since the provinces at least through financial inducements have attempted at influencing their own coverage in the media.

The formation of advocacy coalitions for shaping provincial policies is likely to emerge in coming days as it is the first time in history of Nepal's governance system that intermediate structures have begun to shape policies.³⁵ Persistent coalitions are more likely to be developed in regulatory and redistributive policy-making rather than distributive ones, thus limiting the extent to which these can emerge given current set of powers with provinces. This was illustrated in the response of a private sector lobbyist in Janakpur, "The provinces do not have much to contribute to the private sector, they cannot provide tax-breaks, neither can provide security. As such it is hard to see why private sector would engage with the provinces." Despite these limitations, the political access of SMEs to local and province government officials was found to be significantly associated with higher growth (Khan et al, 2023). This does suggest that even through distributive policies and political prowess of the provincial leaders, actors and networks can take substantial benefits.

Conceptualizing Provincial Government's Public Policy Space

We identify five crucial aspects that will determine the provincial public policy space. First, most of the devolutions to the provinces are within the development authorities especially in forestry, agriculture, infrastructure, and health. Within these authorities only distributive policies are implementable. Without a police administration and at the current level of vacancy, provinces will not be able to pursue regulatory policies. Perhaps the only avenue for pursuing redistributive policies is agro-income tax which the provinces are some ways from administering, even if it is not practically impossible. Secondly, even the devolutions that are made to the provinces are mostly provisional in nature which limits their potential in having authoritative interactions with their own adjusted employees let alone the external stakeholders. Some qualification is necessary in this regard, provinces have achieved these provisional powers through the pressures put on the federal government through the political lobbying of provincial representatives. It helped that political federalism through provincial assembly was guaranteed through the Constitution. In this sense, the provision devolutions can be further renegotiated to make them more permanent or could even be recentralized/retracted through executive decision. Especially within cooperative federal system like that of Nepal, framework legislations remain the key in demarcating jurisdiction. However, the first years of provinces have shown that executive orders have been primarily utilized for devolutions over framework legislations.

Thirdly, provinces have discovered their limitations in administering public policy as they have tried to copy the processes of the federal government. Special attention needs to be paid to their constituent policies which were heavily influenced by the federal government thus causing similar challenges in policy processes and outcome that are a feature of federal policy making. Unlike federal however,

³⁵ Advocacy Coalitions Framework suggests that policy analysis requires an evaluation of at least a decade (Jenkins-Smith and Sabatier, 1994)

province governments have a nascent institution in administrative data collection, where the data produced by provincial agencies are scattered and the provincial agencies have relied heavily on administrative data produced by the federal government.

Fourthly, some novel policy examples indicate that provinces are better suited to pick up specific problems plaguing the provinces and pursue policies partnering with federal and local tiers and other state and non-state actors. This will address the legitimacy challenges of provincial policies and are far more likely to be supported across the board. The benefit of policy plurality, innovation and diffusion can be achieved through this, which we have shown through the examination of the two novel policies from Gandaki and Madhesh. A crucial element in gaining legitimacy for provincial governments will be in achieving economies of scale in their policies, as local governments have a comparative advantage in small scale service delivery, which all tiers of government have been preoccupied with. On the other hand, legitimacy can also be gained through targeting marginalized groups who have been underserved by local and federal tiers.

Finally, an important element of provincial policymaking will be to assess the extent to which advocacy coalitions emerge in provincial agencies. The fact that the provinces have the authorities to pursue distributive/developmental policies suggests a growth of elaborate networks are unlikely to grow. Unless provinces are devolved with authorities especially policing that can be utilized in regulatory oversights. Even then distributive policies can create their own sets of network, which are emerging, who will continue to influence provincial policy-making. Beyond local governments and provincial assembly members' immediate constituencies, provinces can utilize the actor networks of non-governmental organizations, trade unions and professional associations, cooperative, educational institutions and private sectors that are regionally prominent to achieve both scale and induce broader legitimacy in their policies.

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Annex I: Devolved federal offices to provinces in economic and regional development, along with provinces exclusive and concurrent jurisdiction

(Produced by the author based on the Constitution and 'Provincial Institutions' report by Democracy Resource Center)

S.N.	Area	Exclusive Jurisdiction of Province (Schedule - 6)	Concurrent with Federal (Schedule - 7)	Concurrent with Federal and Local level (Schedule - 9)	Provincial Institutions Common in Seven Provinces	Province specific institution
1	Communication	Radio, F.M. and Television operation	Communication related	Newspaper		
2	Electricity	Province level electricity service		Electricity		

3	Irrigation	Province level irrigation service		Irrigation	Water Resource and Irrigation Development Division Office, Water Resources and Irrigation Development Sub-Division Office, Ground water Resources and Irrigation Development Division Office.	Bagmati [Narayani Lift Khageri Irrigation Development] Gandaki [No - Ground water Resources and Irrigation Development Division Office] Lumbini [Bandganag Irrigation Management Office, Praganna and Badkapath Irrigation Management Office] Karnali [No - Ground water Resources and Irrigation Development Division Office] Sudurpaschim – [Pathraiya-Mohana Irrigation Development Office]
4	Drinking Water	Province level drinking water service	Drinking water	drinking water	Drinking Water and Sanitation Division Office	Gandaki [Drinking Water and Sanitation Unit Office]
5	Education	Province University, Higher education, Library		Education and sports	Education Development Directorate Education Training Center Vocational and Skill Development	

					Training	
6	Health	Health Service	Sanitation, Medicine and pesticides, Medical profession, Ayurvedic profession, Amchi.	Health	Health Directorate Health Office Province Health Supplies Management Center Province Public Health Laboratory Zonal Hospital District Hospital/Others Zonal Ayurvedic Dispensary District Ayurvedic Dispensary	Bagmati – [Zonal Ayurvedic Health Center, District Ayurvedic Health Center] Lumbini – [Provincial Ayurvedic Hospital, Ayurvedic Hospital instead of Zonal Ayurvedic Hospital] Gandaki – [District Ayurvedic Dispensary] Karnali – [Province Hospital, District Ayurvedic Health Center] Sudurpaschim [Health Training Center, District Ayurvedic Health Center]
7	Mines and Minerals	Mines exploration and management	Mines	Mines and minerals		
8	Environment	Management of national forest, water stretching and environment in inter-province form.	Environment protection, bio-diversity, Use of forest, mountain, conversation area, waters	Forest, water stretching, birds, environment as well as bio-diversity.	Forest Directorate, Forest Research and Training Center, Division Forest Office, Solid	

			spread inter-province		Waste and Watershed Management Office	
9	Agriculture			Agriculture	<p>Agriculture Development Directorate Agro Business Promotion Assistance Training Center Crop Protection Laboratory Seeds Laboratory Soil and Fertilizer Test Laboratory Agriculture Knowledge Center</p> <p>Livestock and Fishery Development Directorate Veterinary Hospital and Livestock Service Specialist Center Livestock Service Training Center</p> <p>Cooperative Training Center</p>	<p>Koshi [Silk Processing Center Silk Development Program Horticulture Center Farm Center] Madhesh [Fisheries Development Center, Tropical Gardens and Nursery Center] Bagmati [Vegetable Development Center, Prajanan Pindhi Bij Koya Srot Kendra, Spice Crop Development Center, Flower Development Center, Temperate Horticulture Nursery Center, Mulberry Nursery Development Center, Sub-tropical Provincial Horticulture Development Center,</p>
		Agriculture, livestock development				

						<p>Temperate Fruits Rootstock Development Center. Goat Development Firm, Fisheries Development Center, Vocational Grainage Center]</p> <p>Gandaki [Silk Development Program, Prajanan Pindhi Bij Koya Srot Kendra, Fishery Development Center, Cooperative Registrar Office]</p> <p>Lumbini – [Fishery Development Center, Poultry Development Farm]</p> <p>Karnali [No- Cooperative Training Center]</p> <p>Sudurpaschim [Fisheries Development Center, Dry Fruits Development Center, Vegetable Germplasm Culture and Seed Production</p>
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						Center,
10	Transport			Vehicle transport license	Transport Infrastructure Directorate, Office of Transport Management, Office of Transport Management Service	
		Transport	Water ways			
12	Industry and Trade	Factory, Industrialization, Trade	Industries, industrialization			
13	Infrastructure Development	Provincial Highways	physical infrastructure	Slum management	Infrastructure Development Office, Office of Urban Development and Building,	Bagmati [New Urban Housing Project, Public Housing Project Implementation Unit, Public Housing Project, Public Construction Unit] Karnali [Road Division Office]

ANNEX II: EMPLOYEE ADJUSTEMENT TO THE PROVINCES

S. N	Services	Total number of adjusted employees in provinces	Percentage of total employee size in the provinces	Total Employees across the country in these services	Percentage of federal service employees adjusted to provinces
1	Economic, Planning and Statistics	49	0%	400	12%
2	Engineering	1571	11%	8281	19%
3	Agriculture	1415	10%	5005	28%
4	Administration	4355	32%	32179	14%
5	Forest	3465	25%	5569	62%
6	Miscellaneous	348	3%	3271	11%
7	Education	191	1%	1569	12%
8	Legislative	33	0%	260	13%
9	Health Service	2394	17%	27302	9%
	Total	13821	100%		

Source: Ministry of Federal Affairs and General Affairs

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WORKING DRAFT