SIAS-ASD Collaborative Fellowship Program

Discussion Paper 1

Local Democracy in the Political Transition of Nepal

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Abstract

Nepal's 'political transition' that ensued from the entry of the Maoists into mainstream politics in 2006 has been marked by a glaring continuity to the vacuum of political representation at sub-national polity. This vacuum is nurtured and sustained by the modus operandi of decision-making in Kathmandu that is characterized by a tacit politics of convenience amongst of the political party establishments but which is legitimated under the rubric of national consensus. The absence of election in local government bodies—district development committees (DDCs), municipalities, and village development committees (VDCs)—has left them without a platform for democratic representation in regard to the prioritization and mobilization of huge public resources and the discharge of developmental, administrative and para-juridical functions that underpin the country's local governance legislation. The ad-hoc structures that are set in place as proxy to elected representatives have fared badly in the local bodies. The new arrangement, called 'all party mechanism' (APM), is premised on the consensus politics, lacks popularly mandated development agenda, and avoids and silences opposition and dissent. It is unclear who will be held accountable for misappropriation of resources and power. The mechanism lacks the political zeal and electoral imperative to innovate new programs and properly mobilize the funds, and even fails to spend the earmarked budget. Accordingly, Nepal's local bodies are plagued by the lack of deliberation over people's felt needs, ineffective development planning, under-mobilization of budget, failure of service delivery, and fraudulent use and misappropriation of funds. We suggest that the past five years mark a lost post-conflict opportunity in Nepal in deepening democracy to sub-national spaces.

In this Discussion Paper, we try to establish why vibrant local governance is important in terms of advancing democracy and, more importantly, examine why the Kathmandu establishment continues with its indifference to democratic governance in sub-national levels. We suggest that there are perverse incentives on the part of political leadership for resisting local election—the status quo allows them maintain clientelism and allegiance of local cadre base, rather than facing the uncertain outcomes of the election. We situate these observations historically in terms of Nepal's democratic transition and more contemporary behavior of political actors. We see the need of building up pressure on the political elite to initiate at least an interim local election in order to allow people govern themselves and to reduce the misuse of resources.

1 Introduction

1.1 Background

This Discussion Paper is an outcome of a collaborative research initiative between Southasia Institute of Advanced Studies and Alliance for Social Dialogue under the policy research fellowship scheme. This Paper seeks to examine local democracy in Nepal within the ongoing political transition and in the face of growing demands for transparency and accountability in public institutions. Citizens, civic movements as well as the international community expect the government to provide equal space for its citizens to influence matters that affect their personal, community as well as broader affairs. These demands entail an assumption that a democratic government's actions reflect the wishes of the people and that the government guarantees their fundamental rights and allow them to become equal participants in social, economic and political spheres—irrespective of the social group or category they belong to. While "democracy" literally means that the country is "ruled by the people,"[1] it is a value-laden concept and means different things to different people.[2]Nonetheless, democracy is related with 'rights of people to participate in decision-making processes'.[3]It is a system in which the people are both rulers and the ruled, unlike the system of oligarchy, dictatorship or monarchy.[4] While notions of democracy go on unfolding and continue to be contested, the democratization of a polity largely entails extending the political rights and civil liberties to more citizens as well as increasing the responsiveness of the rulers.[5] However, despite a series of struggles, movements and governance reforms over the past seven decades, the quest for democracy even for its minimum fundamentals is an unfinished business in Nepal. Within the ongoing 'transitional' politics in particular a particularly acute problem has been that of the vacuum of democratic representation at the local governments—the districts, municipalities, and village development committees. The latter—which concerns with local democracy and decentralization—comprises the central theme of this Discussion Paper as these are amongst the most important dimensions of modern day democracy.[6]

The role of local democracy is more than simply that of local self-government. In both representative and participatory forms it comprises an essential feature of a broader democratic polity. The main idea is that the inhabitants of a given area have the rights and the responsibility to make decisions on the issues that affect them most directly and on which they can make

[1]Dhakal, Pramod. 2010. *The Law of Rule: Democracy and Federalism of the Future.* CFFN, NRN-Canada.http://www2.cffn.ca/usha/part-iii-article-by-pramod-dhakal/130-the-law-of-rule-democracy-and-federalism-of-the-future p.1 (6th June 2011).
[2]Dahl, Robert Alan. 2005. *Prajatantraka Barema*. Translated by Upadhaya, H. 2nd ed. Kathmandu: Creation Media Pvt. Ltd.
[3]Mukherjee, Subrata and Susila Ramaswamy, 2005.*Democracy in Theory and Practice.* India: Macmillan India Ltd.
[4] Ibid
[5]Lawoti, Mahendra. 2007. Contentious Politics in Democratizing Nepal. In *Contentious Politics and Democratization in Nepal* edited by Lawoti, M. India: Sage publications.
[6]Baral, Uma Nath. 2008. Local democracy and local government: A case study of DhikurPokhari village development committee, Kaski, Nepal. In *Local democracy in South Asia: Microprocesses of democratization in Nepal and its neighbors*. Gellner David N. and Hachhethu Krishna (eds.) pp: 232-257. India: SAGE publication.

decisions.[7] A vigorous and effective local democracy is the underlying basis for a healthy and strong national level democracy.[8]Local democracy provides greater opportunities for political participation and also serves an instrument of social inclusion,[9] and particularly attends to the emerging context in Nepal within which the people are seeking their extensive role in state as well as non-state institutions. Popular expectations for greater citizen role in governance are growing in recent years with the spread of information technology, as the latter allows people question the prevailing regime and, at the same time, appreciate and assert their citizen role and space within the polity.[10]Local democracy is a way to decentralize power away from central government and locate it closer to 'where people live'.[11]It also supports the inclusion of different social groups (minorities, ethnic groups, *Dalits* etc.) in political structure and the active participation of citizens in governance.[12] Local governance helps deepen democracy as it provides a mechanism for common people to have direct participation in the formation of policy. This opportunity is largely unavailable within a centralized polity, even though the local people may partake in elections and indirectly influence public decision-making. Thus, it is primarily the local government, not the central government that provides the opportunity for the people to participate actively in making decisions that affect them.

However, the establishment and nurturing of local democracy have become elusive in Nepal. Successive governments have tried to establish a system of local governance over a span of almost a century, which culminated in the bold legislative development in the form of Local Self-Governance Act of 1999. But the election of local bodies held in 1998 has not been followed up by other elections, so that there has been a vacuum of elected representatives since 2002. But the political leadership shows an unusual indifference and silence in regard to local elections, which is also resisted by autonomy activists and groups as well as fringe parties. The governments, instead, set in place a range of arrangements as proxy to elected officials, but their work remain dubious in terms of the tests of representation, transparency and accountability as well as the efficiency and equity of resource allocations and development effort. We take this context as a point of departure in this Discussion Paper to examine why the local governance faces the onslaught of political transition that followed from the signing of the comprehensive peace agreement (CPA) between the government and Maoist rebels in 2006.

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[7]Sisk,Timothy D., Julie Ballington, Scottv A. Bollens, Pran Chopra, Julia Demichelis, Carlos E. Juarez, Arno Loessner, Michael Lund, Demetrios G. Papademetriou, Minxin Pei, John Stewart, Gerry Stoker, David Storey, Proserpina Domingo Tapales, John Thompson and Dominique Wooldridge..2001. *Democracy at the Local Level: The International IDEA Handbook on Participation, Representation, Conflict Management and Governance.*International IDEA series 4.Sweden : PRESSENS BILD.

[8] Ibid. 6

[9]Pratchett, Lawrence. 2004. *Local Autonomy, Local Democracy and the 'New Localism'*. Political Studies, 52:2, pp: 358-375. De Montfort University.

[10]Khanal, Rabindra.2006. *Local governance in Nepal: Democracy at grassroot*s. Kathmandu: Smriti books.

[11]Adhikari, Damodar.2006. *Towards local democracy in Nepal: Power and Participation in the District Development Planning*. SPRING research series: 47, p. 1. Universitat Dortmund, SPRING Centre.

[12]GellnerDavid N. and Hachhethu Krishna. 2008. *Local democracy in South Asia: Microprocesses of democratization in Nepal and its neighbors*. pp.: 45-70. India: SAGE publication.

1.2 Objective of this Discussion Paper

Thus the overall objective of this Discussion Paper is to explore and explain why Nepal's transitional politics is implicated in the continuation of representational vacuum in the local governments, and to explore how the problem may be addressed. We seek to develop a nuanced view around the suggestion that the process of decentralization of power and resources is largely limited to the "laws of Nepal",[13] and faces challenges for its implementation. This problem has become particularly acute as the country moves through a protracted period of political transition following the end of Maoist 'people's war' (1996-2006). We seek to understand how the context of transitional politics—especially the politics of consensus envisaged in national level, the demands for restructuring of the Nepalese state into a federal one and those linked to autonomy—become more prominent and overshadow and trivialize the demands for the election of local bodies.

1.3 Methodology

This discussion is largely based on review of available literature and conversations with local governance constituencies. The information was collected from primary and secondary sources. Secondary sources include books, e-articles, articles, journals, reports, organizational publications, memorandum, and discussion papers etc. Primary data were gathered from personal interviews. The interviewed persons were 1) Secretary of Dhading VDC, 2) Sub-secretary of Lamatar VDC in Lalitpur, and 3) representatives of federations—ADDCN's Hem Raj Lamichhane (Executive Secretary General), MuAN's Kalanidhi Devkota (Executive Secretary), and NAVIN's Laxman Pandey (Senior Program Officer), and 6) MoLD's Govinda Bahadur Karki (Under-Secretary of Municipality Project Branch). This paper also draws from review of media content.

2 Situating local governance with transitional politics in Nepal

This discussion paper intends to implicate Nepal's ongoing political transition (post -2006) to the implementation of the country's local governance framework as was set in place over the past two decades. The current transition, however, is not entirely new. Indeed the country has undergone a much longer democratic transition that started with anti-Rana regime movement of 1940s that saw the overthrow of the Rana autocracy in 1951. Thus the attitude and disposition of Nepal's political actors to the nurturing of local governance can be better seen within this trajectory. Early from 1950s Nepal passed through episodes of democratic experiments and political instability. The end of autocratic Rana regime freed the country from the 104 years of tyranny, bestowing sovereignty on Nepalese people for the first time.[14]This change offered the

[13]For more see, Hachhethu, Krishna.2000.*Nepali Politics: Political Parties, Political Crisis and Problem of Governance.*http://www.democracy-asia.org/countryteam/krishna/Nepali%20Politics.pdf (6th June 2011)

[14]Karki, Mrigendra Bahadur. 2010. *Social movements and identity politics in Nepal*. Kathmandu- Centre for Nepal and Asian studies (CNAS).

opportunity for political parties to emerge and play their role. However, chaos and instability prevailed in the subsequent period—throughout 1950s—creating disillusionment amongst the masses over the new political order. Eventually, however, the parliamentary election of 1959 provided a two-third majority to Nepali Congress, creating hopes for both political stability and substantive reforms. But the ill-fated Congress government met a royal coup in 1961, and King Mahendra appointed a council of five ministers to help run the administration. The premature termination of elected parliament and the government and the declaration of a party-less panchayat regime was a setback to the democratization of the country. For this, the King declared the parliamentary system a failure and dismissed the fledgling government, and suspended the constitution.[15] December 2011The initiation of the Panchayat regime negated basic elements of democratic polity and the regime continued for the next 30 years.

While the political parties were officially banned during the *Panchayat* period, many of them managed to exist in underground or other creative ways and kept on agitating for a return to the constitutional democracy. Most of the movement to this end was peaceful, though sporadic armed assertions were also a part of this largely underground activity. King Birendra announced a referendum to allow people to choose between "reformed *Panchayat* democracy" and "multiparty system" in 1978, but the victory in favor of *Panchayat* regime was announced to the dismay of those who struggled for democracy. Movements and activisms of Nepali Congress party as well as communist parties continued in the subsequent period, but they largely depended upon the strength of single parties. By 1989, several parties came together to forge an alliance for a joint struggle against the *Panchayat* regime and for constitutional monarchy and multiparty democracy. This coming together for a regime change also paralleled the global development that marked the fall of the communist bloc. The *Jana Andolan* of 1990 forced King Birendra to relinquish his powers and to agree to lift the ban on political parties, to form an interim government, and to abide by the constitution to be prepared by the Commission comprising of personnel from revolutionary forces and the King. A new constitution was issued with high hopes for socio-economic transformation and democratization of the country.

Under this Constitution of Kingdom of Nepal 1990, the interim government held the parliamentary election and handed over power to the new elected government in 1991. Two more parliamentary elections were held during the 1990s. However, a consolidated democratic system proved to be elusive once again. Instead, Nepal went through the most destructive periods in Nepali history in the form of 'people's war' launched by the Communist Party of Nepal (Maoist) in February 1996. It immobilized the country and made it virtually impossible for the government to rule for around one decade.[16] The political crisis went on deepening with the people's disillusionment with mainstream parties, increased militant activity of the Maoists, and the massacre in the royal palace in June 2001. Within this chaotic and tumultuous time, King

[15]Vaughn, Bruce. 2008. *Nepal: Political developments and bilateral relations with the United States*. CRS report for congress (order code-RL34731). http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA490093(25th May 2011)

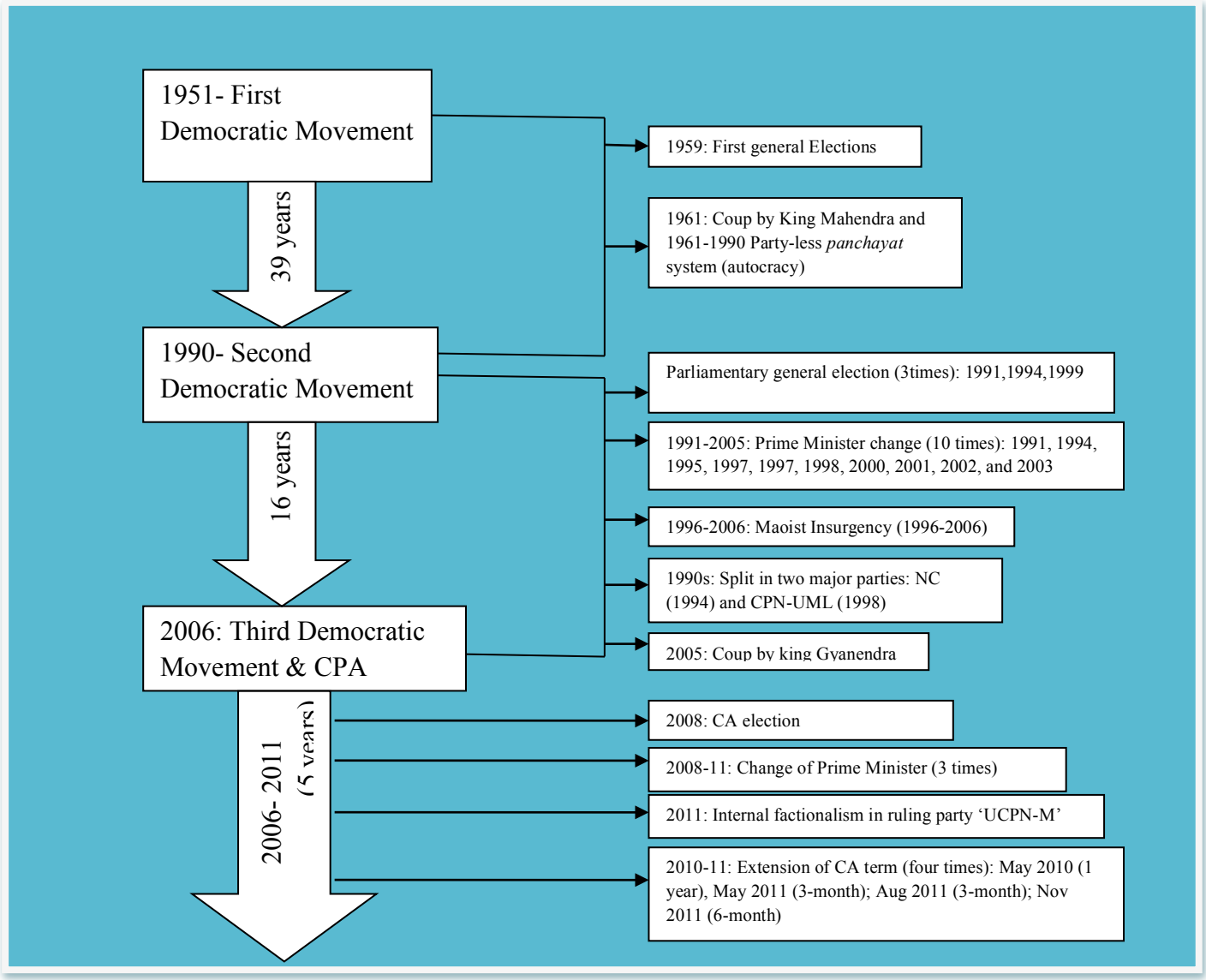
[16]Karki. 2010; *op. cit*.

Gyanendra moved in to take over state power in February 2005. The King's move antagonized the political parties, activist groups as well as other powers, and they adopted a coordinated strategy to unseat the King and to eventually move toward republican order. The people's movement of April 2006, or *Jana Andolan II* as it is also called, paved the way for the seven-party alliance (SPA) and the Maoists to conclude the comprehensive peace agreement (CPA) and to subsequently hold the election of Constituent Assembly (CA) in 2008. The CA declared Nepal republican country and promised the restructuring of the Nepal into a federal set up and to bring about a democratic constitution.

The election of the CA in 2008 has been viewed with high hopes for consolidating peace in Nepal and enhancing democratic process. The CA was expected to deliver its mandate of restructuring the country, promulgating a new constitution, and bringing about peace within two years of its election (that is, by 28th May 2010). However, the progress toward the mandate has been slow, as a substantial level of energy in the CA is devoted to extending the tenure of the CA itself and to the formation of alliances for forming a government.[17]The progress is slowed due to intra-party feuds in many parties, with different factions placing stakes over privileged positions. The end result has been a chaotic political scene, within which legitimacy of political parties and their leadership is eroding but is maintained by opportunistic alliances between the senior political leaders. The incentives for senior leadership of political parties lie in establishing and maintaining those alliances, and maintaining a patron-client relationship with the politicians and cadres within their party hierarchy.

[17]See also, Martin Chautari.2011. *Deadlines, democracy and a popular, democratic constitution*. Policy Paper No. 5, June. Kathmandu: Martin Chautari.

Figure 1: Sixty years of political change in Nepal—A snapshot



We situate our discussion of local governance within the context of national-level politics in Nepal. The latter provides pointers to dispositions of political actors towards local governance and democratic development at the grassroots level. For this we take reference to the principle of 'democratic decentralization'.[18] Democratic decentralization refers to the development of reciprocal relationships between central and local governments and between local governments and citizens. It incorporates two key dimensions: decentralization and democratic local governance.[19] The first, decentralization, refers to the transfer of authority, responsibility, and accountability from central to democratically independent local level of

[18] Crook, Richard and James Manor.2000. Democratic Decentralization. OED working paper series no.-1.Washington, D.C.- World Bank
[19]Barnett, Camille Cates, Henry P. Minis and Jerry VanSant.1997. *Democratic Decentralization.* US-Research Triangle Institute-USAID

governments.[20]Decentralization can be considered in three interrelated conceptions. Firstly, it can be considered "deconcentration" or administrative decentralization that involves the hand-over of functional responsibility from the central government to local entities. Secondly, it relates to financial decentralization, which allows greater rights to local entities for access to resources. A third conception comprises political decentralization, which aims to give citizens or their elected representatives more power in public decision-making. This conception is often associated with pluralistic politics and representative government, and it supports democratization by giving citizens and their representatives more power in the formulation and implementation of policies. This conception assumes that the decisions made with greater participation of local people—rather than those imposed by central authorities—will be better informed of local needs and capacities, and accordingly are likely to be better implemented. It is expected that the election of representatives allows the local people to know better their representatives and, conversely, elected officials to know better the needs and desires of their constituents. But for this conception to have a hold, the local bodies should have elected representation and have substantial powers and resources, and with due accountability mechanisms to hold bureaucrats accountable to elected representatives and elected representatives accountable to citizens.[21] For these to happen, it is important not only to set up elected local bodies, but also to nurture a variety of local institutional forms, which play complementary roles in local governance.

These multiple local institutional forms constitute democratic local governance—that corresponds to the second dimension of democratic decentralization. The notion of democratic local governance goes beyond the formal sphere of local government entities and includes the gamut of rules, procedures and institutions that are engaged in decision-making at the local level. Several customary and indigenous institutions as well as other community organizations, user groups, mother groups form an integral part of decision-making at local spaces. Democratic and inclusive local governance allows the participation of these groups in appropriate spheres of decision-making. They further raise citizen voices, and in many ways hold the public officials accountable and transparent, and involve citizens in decision-making processes. Thus, democratic local governance looks beyond local government administration and service delivery to the institutions and structures that enable people to decide things and to do things for themselves.

However to achieve an effective local democracy, at the least, requires constitutional and regulatory framework and a political commitment of those in charge of making decentralization decisions. As we try to show below, Nepal has had one or other forms of customary as well as state-sanctioned local government formations over its documented history. More recent laws on

[20]Whiteford, Peter. 2001. *Reconciling devolution and equity in income security*. UNISCO, Vol. 53 (167).
[21]Crook and Manor, *op. cit*.

local governance provided unprecedented roles for the elected local bodies, but their effective implementation was severely constrained initially due the Maoist insurgency and subsequently due to lack of elections. The worries on reviving local governance framework lately have also been overshadowed by the demands for state restructuring, within which the two are projected as mutually competitive.

3 Genealogy of Local Governance Policies and Laws in Nepal

Here we present a brief outline of local governance practices from early periods in Nepal to the contemporary ones. Local governance evolves not only because it is not always feasible for a central government to handle local-level activities and administration. It also evolves from customary and indigenous forms of governance practiced by different communities. Some of the customary practices were streamlined into modern legal system while others continue to operate in an informal basis. Nevertheless, the governments have adopted decentralization policies over the past several decades, though their motivations and ideologies are different from one country to another. In Nepal, while decentralization policy as such is a relatively recent—primarily from 1980s—the practices of delegating authorities to local units and agents go back to ancient history. We briefly present below these practices at various periods in Nepalese history, starting with the Lichhvi period to the present.

3.1 Local Governance from Early Era to Rana Period

In Nepal the presence of local governance can be traced back to the *Lichhvi* period where '*Panchali*', the primitive form of local self-government at the village level was present.[22,23] In the *Malla* period, these *Panchalis* changed into the name of *Panchayat.* Local administration during the Malla period was known as *bhuguti* (highest local administrative unit), *visaya* (intermediate), and *grama* (village- lowest unit of local administration). In the urban areas the highest unit was called *tolanayaka* and the lowest was named *tola*. King Prithvi Narayan Shah (1723-1775) unified Nepal and divided it into 12 administrative divisions. These divisions were placed under *Amali*s (officers). The *Amali* was supported by *Subba* or *Sardar*. The Amali/ *Subbas* the in-charge of maintaining law and order and was responsible for the district administration and revenue collection. Some other titles, for instance *Birtawal, Naike, Kotwal, Pradhan, Panch, Patwari, Mukhiya* etc., were also given to those functionaries by the king, and they were entitled to collect tax at the district level and to discharge justice and administration. The Kings also recognized the indigenous governance practices. For example, in eastern Nepal the indigenous system of *Kipat* was allowed to continue as such for long, the collection of tariff and revenues under this system was entrusted to the *Rais* and *Subbas* of the *Kirati* community.[24]

[22]Hachhethu, *op. cit.*
[23]MLD. 2008. *Ministry of Local Development: Key achievements in 2007*. Kathmandu: Government of Nepal.
[24]Khanal, *op. cit.*

However, the state-sanctioned decentralization process in Nepal started in with the formation of Kathmandu municipality 1919 during the Rana rule. Subsequently, the *Manyajan Kachaharis* were established in 1926 at village level throughout the country. These are entitled to look after the security, development and small disputes of the village level.[25] In 1947, a law was promulgated to establish village, municipality and district panchayats, and some legal authority was also provided by Padma Shamsher Rana, the Rana Prime Minister who appointed a Constitutional Reform Committee to draft the country's first constitution known as the Government of Nepal Constitution Act, 1948. While the constitution enumerated certain fundamental rights and duties, the legal changes made in the constitution were slight. In reality, the district and village level administration was not for devolution of power. The officials at the district level were required to follow the commands of the Rana prime minister. Besides, whatever powers given to these officials were solely due to lack of physical reach of the rulers to remote locations. Later, the rulers gave some power to the *Panchayats* to reduce the government's burden of resolving the local affairs.

3.2 Local governance during 1950 to 1990

Following the overthrow of Rana rule in 1951, the efforts at decentralization got some momentum. King Tribhuvan announced an interim government and an interim constitution for a period up to the election of Constituent Assembly. The interim constitution curtailed the authority of the prime minister, but it also reasserted the King's supreme executive, legislative, and judicial powers. In 1952, in a significant move to local development, the government started Tribhuvan Village Development Program (*Tribhuvan gram bikas*) with assistance from US and India. The idea was derived from US experience of community development, based on the principle of responsibility and action at the lower level and the participation and use of democratic methods, emphasizing development work from the bottom up technique.[26,27]

Subsequently the parliamentary election for a new government was held in 1959, in which Nepali Congress won a clear majority. However, King Mahendra dissolved the parliament and took the charge of the country in his hand and introduced the party-less *Panchayat* system in 1962. He implemented a concept of decentralization with the organization of four hierarchical layers i.e. national, zonal, district and village. An Administrative Power Decentralization Commission (APDC) was formed to materialize the scheme. The commission took a radical approach suggesting that all power should be entrusted to the Village *Panchayat*, the lowest unit of government, except the power of foreign policy and defense. Local bodies were formed at the village, city, district and zonal levels. 3,347 village Panchayats were formed through the Village Panchayat Act (1963).

[25]Dhungel, Dwarkanath;Tejeshwor Babu Gwanga, Praduman P. Regmi and Aasswathama Pokharel. 2003. *Nepalma Bikendrikaran Sambhadhi Sarwajanik Prayasharu.* 1st ed. Kathmandu: IIDS
[26]Bhattarai, Tika and Shyam Bhattarai. 2004. *Perspective on Social and Cultural Change and Development*. 2nded. Kathmandu: TU.
[27]Baral. 2008. *op. cit.*

After the formation of APDC and based on its principle of local self-government, the central government came out with three more phases of decentralization policy. The first policy review came out in 1967; it stressed on the motto of 'decentralization for development'. The second version of revision came in 1975 stressed on the policy of 'unified district administrative system' introducing the concept of Integrated Rural Development (IRD) with the participation of Village and District Panchayats. The last Decentralization Act of Panchayat rule came out in 1982, which was based on the idea of 'people's participation through bottom-up planning'. However, effective local self-governance or the actual devolution of power and rights were not possible since the Panchayat Constitution was self-contradictory. On one hand it emphasized decentralization principle, and on the other it centralized the executive, legislative and judicial power in the King. Furthermore, the King appointed *Anchaladhis* and Chief District Officer, who exercised significant power in regard to local governance.

In 1975, King Birendra introduced the concept of 'Back to the Village National Campaign (BVNC)'. In this campaign, each zonal committee had a BVNC structure, with a secretary nominated by the King. The BVNC network was extended to the district and village levels so as to reinforce a communication system. However, the committees carried out the same activities as the *panchayat* and therefore operated parallel to the latter. The BVNC was created to ensure a loyal organization and circumvent active party members from gaining seats in the *panchayat* elections. The BVNC became an organization of centrally controlled *panchayat* loyalist elites but it did not survive beyond 1979. In 1980s, Nepal aligned more with broader move to decentralization that was facilitated by international aid agencies globally. These efforts made during the panchayat regime went through an overhaul with the advent of democracy in 1990.

3.3 Local governance during 1990 to early 2002

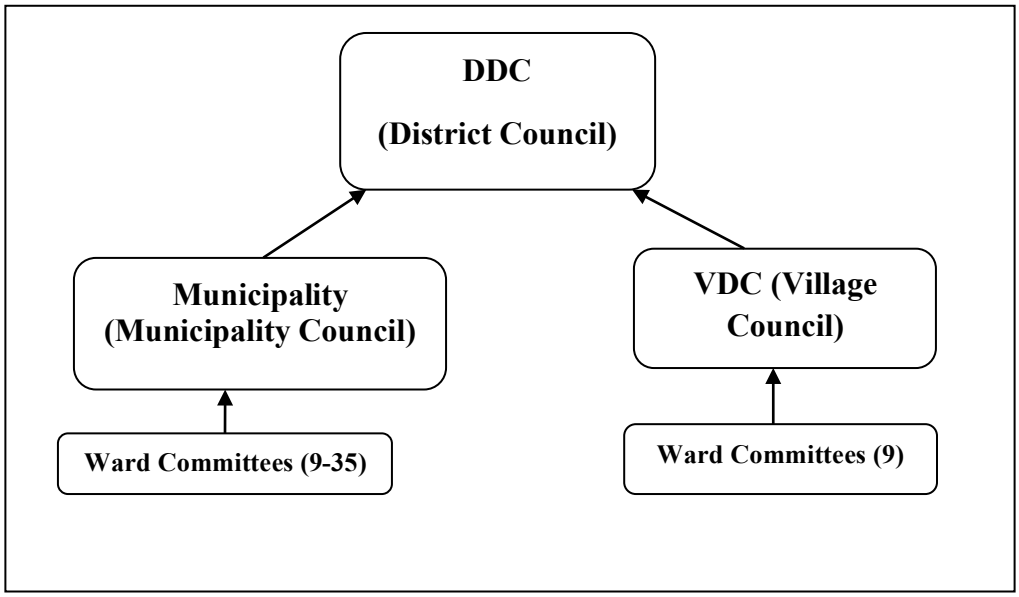
The people's movement of April 1990 (or *Jana Andolan* I) led to the overthrow of the *Panchayat* regime and a new Constitution of the Kingdom of Nepal was promulgated.[28]The interim government, which represented the spectrum of public opinion, was directed to conduct fair and free elections within a year. Although the King proclaimed the constitution, its development, unlike past constitutional proclamations, was through a democratic process in which the interim Council of Ministers served as a legislature. The first elected government came to power in 1991 and in 1992 it passed three new laws for the promotion of local government – Village Development Act, the Municipality Act and the District Development Committee Act. These initial legislative changes, however, made little changes beyond removing 'panchayat' from previous laws – the Village Panchayat into Village Development committee (VDC) and *Nagar Panchayat* into Municipality. In the subsequent period, a number of VDCs were assembled to form a municipality, and the number changed over the past two decades. By 2011, there are 3,913 VDCs[29] and 58 municipalities.[30]. Each VDC contains nine wards, while a Municipality

[28]Ibid
[29] Now 3754 VDCs, declared in the budget speech in the legislative parliament on 15th July 2011
http://www.nepalnews.com/archive/2011/jul/jul16/news03.php

consists of 9 to 35 wards. Each district could have between twelve to more than hundred VDCs. The election of these local bodies was held in 1992, and again in 1997.[31] These elections allowed competition and contestation amongst political parties to stake their claims in local bodies. However, the role of these bodies was still modest.

The government further attempted to streamline and consolidate local governance through promulgation of Local Self-Government Act (LSGA) in 1999. The Act provided an unprecedented range of authority to The Act introduced two-tier system of local government, with VDCs and municipalities respectively as village and town-level government and District Development Committees (DDCs) as the upper tier. The structure is shown in Figure 2.

Figure 2: Structure of local bodies in LSGA, 1999



Source: LSGA 1999

The officials in these local bodies—DDCs, VDCs, and municipalities—were elected by the people residing within the respective jurisdictions on the basis of adult franchise. The rights and responsibilities vested to these elected officials were unprecedented in Nepalese history—they encompassed development planning and execution, basic administrative services such as vital registration, service delivery, and leadership and oversight of government offices to para-judicial

[30] Now 99 Municipality, declared in the budget speech in the legislative parliament on 15th July 2011 http://www.nepalnews.com/archive/2011/jul/jul16/news03.php

[31] Paudel, Narendra Raj. 2006. *Critical Assessment of Local Governance System in light of Public Service Delivery at Local Level in Nepal*. Network of Asia-Pacific Schools and Institutes of Public Administration and Governance (NAPSIPAG) Annual conference paper. University of Sydney.

functions. Thus, the enactment of LSGA 1999 and Regulations 2000 were vital steps towards the strengthening of local bodies, but the election of local bodies did not happen after the introduction of these laws. A major legal weakness in the post-1990 local governance law is that it lacked the constitutional guarantee of self-governance.

3.4 Ad-hocism and lack of representation in local governance: 2002onwards

The five-year tenure of local body officials came to an end in July 2002, which was a period of high political chaos, following the royal massacre of June 2001, increased Maoist militancy and threat and extortions. Onwards Nepal went through two episodes of the capture of state power by the King, a major peaceful movement of 2006 (called *Jana Andolan* II) launched by an alliance of parliamentary parties and the Maoists, the election of constituent assembly in 2008, and subsequently the declaration of the republic. Through these years, there has not been attempt to hold the election of local bodies, and voices to demand such election have been sidelined in reference to the imperative of peace, state restructuring and constitution-making. Initially the threat of the Maoists maiming or killing of the candidates was an intuitively understood pretext of postponing elections. But, even after the entry of the Maoists into the peaceful mainstream after the Comprehensive Peace Agreement in November 2006 the local bodies continue to operate under a range of ad hoc arrangement and are plagued by lack of popular representation.

3.4.1 Authorization to civil servants to run local bodies

After the end of tenure of elected representatives in July 2002, the government faced the problem of how to run the local bodies. One of the measures adopted by successive governments was to entrust the civil servants to operate as proxies of elected representatives. Accordingly, the Local Development Officers (LDOs) were given charge of DDCs, VDC Secretaries for VDCs, and the Executive Officers for municipalities. For example, the VDC secretaries were expected to discharge the administration of the VDC budget for basic services and development projects; vital registration; management of voter list; and tax collection. They were also required to recommend individuals for citizenship certificate and property transfers. Similarly the LDOs and executive officers of municipalities were charged with responsibilities of elected representatives.

This ad hoc arrangement, however, faced a number of difficulties. The VDC secretaries in most districts shifted their office to district headquarters—and continue to do so even today. Initially, these secretaries abstained from the villages due to Maoist threat. Their absence caused difficulty on the local people to receive even basic services, such as recommendation letters, vital registration. More than that, decisions in regard to the prioritization and use of development funds was made away from the village, and no effective mechanism for accountability was in place. In the post-2006 period, the security situation in Tarai villages worsened, and so was the

reason put forward to justify the stay of the secretaries at the district headquarters. Even when the security situation has improved to a great extent in recent years, the situation has not much changed until now.[32] In some 850 VDCs, the post of secretary is absent or vacant;[33] the secretaries of the nearby VDCs look after such VDCs. There are cases where up to five VDCs are look after by a single VDC secretary.[34] Thus, the VDCs are deprived of services of secretaries due to the government's failure to fill in the vacant positions, and the resignation, retirement and promotions of the secretaries.[35] Thus, the local inhabitants were required to go to these Headquarters for even a small work—and the people had hard time finding the place where the secretaries were staying in. The people are frequently required to stay overnight at district headquarters and to pay for accommodation and other costs in getting things done from the secretaries.

However, on top of the above problems, the civil servants—the VDC secretaries, LDOs as well as municipality mayors—are not accountable to local people and they do not represent the people. Accordingly the needs, priorities and aspirations of local people go unheard. Instead, the bureaucrats are loyal to their superiors, who in turn look up to the Ministry of Local Development (MLD), so that the essence of local governance gets significantly compromised. Thus Nepal does not have a functioning system of local government, but rather a weakly accountable form of local administration that seeks guidance from Kathmandu. This has made the planning process relatively non-participatory as well as non-transparent.

3.4.2 All-party mechanism (*sarbadaliya samyantra*)

The lack of representation in local bodies is glaringly apparent to all governments and stakeholders in the post-2002 period. King Gyanendra, during his direct rule in early 2006, tried to hold the election at municipality, but major political parties boycotted it as they saw the election as a means for the King to legitimize his direct rule. The parties were instead planning a movement to overthrow the royal regime. After this failed attempt, no further initiative has come forward to hold the local body elections. The stated modus operandi of post-2006 politics in Nepal is based on the rhetoric of political consensus, which having failed to focus on and agree upon local election, has failed to acknowledge the need of holding the election.

To address the problem, the governments in post-2006 period put in place an All-Party Mechanism (APM or *sarbadaliya samyantra*)—a body that comprises of members one each from major political parties represented in the district, or VDC and municipalities. These party representatives are chosen not by the people, but by the party people in higher positions within the party hierarchy. The APMs have been deciding on development priorities of the local level,

[32] Sharma, Bhadra. 23rd November, 2010. *4,000 VDCs to get managers soon*. Pp:4. The Kathmandu Post

[33] "Now only around 200 to 300 VDC secretary post is vacant, since MoLD have sent some civil servants in the vacant areas" (Interview with Govinda Bahadur Karki, Under-Secretary of Municipality Project Branch, MoLD, 26th June 2011)

[34] OCHA.2010.http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/B8B7E489B28D274DC12576EE0031A2D3/$file/2010-03-22-VDC-Secretary-Notes.pdf (6th June 2011)

[35] 28 VDC secretary and two employee were killed in the last 14 years (Gyawali, 25th June, 2011)

settle disputes, and other related work of local governance including the budget allocation for their respective jurisdiction, in the manner in which elected officials are authorized by the LSGA 1999.[36] The formal authority remains in the hands of the bureaucrats (LDOs, executive officer of the municipality, and VDC secretary), but APMs have assumed de facto responsibility.[37] As the APM personnel are not elected by and accountable to the people, serious concerns have emerged over the mismanagement of the funds made available to local bodies, lack of transparency, accountability, and widespread corruption.[38]

The Government of Nepal has also announced a plan to establish a citizen's forum comprising of local people and leaders in each VDC. The forum is expected to represent the voices of local people, as it will discuss, prioritize and oversee the development effort at the local level. To execute and mobilize such forums, the Local Government and Community Development Program (LGCPD)—a multi-donor funded program under the MLD—appoints and deploys social mobilizers that are recruited by local NGOs.[39]However, such social mobilizers were unable to execute those responsibilities, as they have little control over the functioning of the APMs. Moreover, the social mobilizers have not been able to reach into many VDCs. Hence, such kind of imposed work at the local level does not give any fruitful outcome.[40]

4 Prospects and challenges for establishing effective local governance

It has become evident from the above discussion that the ad hoc measures adopted over the past several years in regard to local governance have not produced tangible gains—indeed, these measures have produced non-transparent and unaccountable governance. The local bodies are increasingly found to be engaged in corruption, mismanagement of resources, over-politicization, and not working in the interest of local people. Given this, voices for holding local body elections have been raised, but the successive governments have ignored those demands and no preparations are still on the scene for local body election. Rather, arguments against such elections have become privileged within the ongoing political transition.

Different organizations and political activists have raised the voices in favor of election of local bodies for the past several years. Among the national-level politicians, for example, Narayan Man Bijukchhe (Chairman of the Nepal Workers and Peasants Party) was in favor of local elections saying that local bodies should not be kept sans people's representatives for a long time.[41] More sustained demands are emerging from the federations of local bodies, namely,

[36] State government allocates Rs.15 to 30 Lakh budget annually to every VDC. However, the total annual budget for the overall VDC of the country is around 15 million.
[37]Jha, Prashant. 11th May, 2011. 'All Politics is Local: When Will We Have the Next Local Elections?' *The Kathmandu Post*, p.7.
[38]Gyawali, Krishna. 25th June 2011. 'Ga.Vi.Sa. Bajet: Pandhra Arabko Khel.' *Kantipur.*
[39] Sharma. 23rdNovember, 2010; *op.cit.*
[40]Interview with Laxman Pandey, Senior Program Officer, NAVIN on 15th June 2011.
[41]Suprabha. May 29, 2011. *Either hold election or reinstate local bodies: Bijukchhe*. http://breakingnewsnepal.com/either-hold-election-or-reinstate-local-bodies-bijukchhe/721/

Association of District Development Committees of Nepal (ADDCN), Municipality Association of Nepal (MuAN) and National Association of VDCs in Nepal (NAVIN). They have been campaigning a lot over the past several years. In 2010, they jointly submitted a memorandum to Prime Minister Madhav Kumar Nepal, requesting to hold local level elections as soon as possible. The memorandum stated:

> "Peace process in Nepal is improving and accordingly, the elections of CA, business groups, student organizations, school level administrations and political parties have been held at all levels—district, town and village—without any interruptions. But no elections are held for local government, towards which the government is not focusing their attention. If we wait for the declaration of new constitution, and subsequently the formation of new states and after that new structures of local government and so on, then it will take another couple of years for the local level elections and thus, for the formation of local government. In such condition, the local people of Nepal are and will always remain out from the basic necessities that they should be getting by virtue of being a citizen of a democratic country."

These federations also conducted a peace really on 25th May 2011 and a hunger strike during 25thto 28th May 2011 demanding for the election of local government.[42] They also filed a case in Supreme Court for the early local election, but the Supreme Court ruled that the organizations wait for the declaration of new constitution. These federations subsequently have proposed to the government that, the government should conduct an interim local election for the time being.[43] But for the Ministry of local Development (MoLD), local election is not yet possible.[44]

The proposal for having representative local bodies is overshadowed by the agenda of state restructuring, which has been a bone of contention in Nepal over the past few years. Nepal's ethnic and Madhesi movements have brought federalism at the forefront of the political agenda. As a result of this, through declaration of CA in its first meeting held on May 20, 2008, there has been a broad political consensus to have federal structure of the country. Accordingly, the Interim Constitution 2007 has been amended. Article 138 of the Interim Constitution requires Nepal's restructuring according to democratic federal system by ending the centralized and unitary state structure. A section of political parties and movement groups believe that the election of local bodies comprises a distraction to the ongoing structuring, and that the election should only be held once the federal structure is agreed upon. The government fails to offer categorical reasons for not moving forward with the process of election, but the ongoing political transition is a vaguely asserted pretext for not holding it.

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[42] Interview with Hem Raj Lamichhane, Executive Secretary General, ADDCN on 11th June 2011.
[43] Ibid.
[44] Interview with MoLD's Govinda Bahadur Karki (Under-Secretary, MoLD).

Indeed, the ongoing political transition offers perverse incentives for several political parties and their specific constituencies. For example, all parties who can demonstrate their presence even by nomination of a few people in a local jurisdiction—district or village levels—have the opportunity to be represented in a the APMs of the respective jurisdiction and by that virtue participate in decisions about resource allocation. Having no requirement to face the people in election, the APMs have a free hand in decision-making on the mobilization of funds available at the local level. The cases of misappropriation of funds are hard to detect, because there exists no political opposition, given the requirement that decisions are made in a consensual basis. For political leaders, the status quo allows them to nominate their trusted people into the APMs and maintain their clientelistic relationship across the party hierarchy. The result is the possibility of widespread misappropriation of public resources and the capture of public authority by agents not endorsed by the people. Individually, political party leaders are keen to seat themselves to the central government, and thereby do not see incentives to push forward the agenda of local election. They are reluctant to share the power they have with the common citizens.[45] Instead, the maxim of consensus in national-level politics—in the absence of a competitive political environment embedded in the vagaries of ongoing political transition—has institutionalized a politics of convenience within which the political leaders negotiate their own interests with each other. Thus, the satisfaction of vested interests of the parties within the status quo has led to a curious collective silence in reviving elected and accountable local government in Nepal.

This has happened despite the fact that the Election Commission was ready to conduct the election and even the Danish government showed interest in providing funds for it.[46] Yet the lack of commitment of the government and of the major political parties has sidelined the demands for setting up elected local governance. Local people are therefore denied of their right to elect representatives who will look after developmental, para-juridical and administrative services in the respective jurisdictions. Elected officials would more readily available to the service of local people, whereas many of the VDC secretaries at present are stationed in district headquarters. The motivation of elected officials to earn repute for next election means that they would strive to serve the best and become more transparent and accountable.

Even within the unelected set-up of local governments that exist today, the effective implementation of local governance legislation has been impaired due to ambiguities and contradictions within the law. The LSGA itself have overlapping rights and responsibilities between VDC and DDC in respect to agriculture, water, forest, irrigation, hydropower and environmental management. The LSGA authorizes the DDCs, municipalities and VDCs as planners and program implementing bodies, rather than separating their roles—for one as

[45]Adhikari, Damodar. 4th Nov. 2010. *Challenges and Opportunities of Institutionalizing Local Governance in Nepal*. Roundtable interaction. Lalitpur
[46]Sharma. Badhra. 4th July 2011. *Politicos Not Head Local Bodies, After All*. The Kathmandu Post, p.1.

facilitator and others as implementers.[47] Due to this, delivery of some mandate becomes nobody's responsibility, whereas in others clash of authority ensues. Furthermore, 23 Acts contradict with the LSGA.[48] Mr. Laxman Pandey of NAVIN gives an example:

> "There was a small pond in Rama Shikhar Jhala VDC of Kailali district. The VDC council gave the permission of fish catching of the pond to a group of local people. However, the community forest user group claimed that the pond comes within their community forest, and they—and not the VDC council—have the right to manage the resources."

This problem and other ambiguities and contradictions in LSGA and related legislation, however, have had nominal effects on the modus operandi of APMs. The APMs make less reference to the laws than to the arbitration of mutual interests of those who participate in them. This behavior negates the maxim of rule of law, and adds to the larger attitude of Nepal's transitional politics within which powerful people benefit from the subversion of institutions that are meant to safeguard public interest through such mechanisms as the separation of power. It remains unclear about the extent to which power is abused and resources misappropriated over the long period Nepal has passed through the transitional politics.

5 Conclusion

In this Discussion Paper, we examined the continuing vacuum of representation in local governance in Nepal and the prospect of change within the ongoing transitional politics. Nepal went through turbulent times of Maoist insurgency during 1996-2006, and subsequently through an opaque process of political transition after signing of the Comprehensive Peace Agreement in November 2006. In this course, Nepal's local government structures—the DDCs, municipalities and VDCs—have been devoid of elected representatives, as the tenure of elected ones ended in July 2002. We suggested that the long absence of elected representatives in local governments and the ad hoc arrangements put in place are problematic in many respects.

Firstly, the lack of elected representatives in local government structures in Nepal represents a serious compromise on democratic gains made in Nepal. Existing local governance legislation—despite its several limitations—is an important milestone in the previous five decades of the quest for democratization. Prevailing APMs in local government are set up without any basis for people's representation and consent. They are neither elected by nor are accountable to the people. Secondly, the absence of periodic local elections means that there is no basis for seriously committed people to stake a claim over public offices, resulting in a situation in which groups of patronized individuals have had access and control over public decision-making. Thirdly, the present set up runs the high risk that the mobilization of funds earmarked to local governments are misappropriated, especially because there is presently no opposition and it is

[47] Rai, Jailab and Naya Sharma Poudel. 2011. *Discourses of Local Governance in Nepal: An Analysis of Legislation, Constitutional Processes and Civil Society Demands*. Discussion paper series 11:1. Kathmandu.

[48] ADDCN.2004. *Bikendrikaran ra Susasanko Pakshaposanma Jilla Bikas Samiti Mahasangh Nepal:Itihas dekhi Bartaman samma.* Kathmandu: ADDCN

difficult to identify who will be accountable for the misuse of power and misappropriation of resources. Finally, because the APMs tend to make decisions on the basis of convenience of the members, and largely in non-transparent ways, the present local governance set up does not allow people's participation and negate the opportunity for deliberating upon what are priorities, how much resources are to be allocated and how to deliver developmental and other services. Uncertainty and silence over the coming election and the lapse in accountability offer perverse incentives for those in APMs in delivering their mandate.

But how and why the status quo in local governance is sustained and nurtured, given especially that political leadership continues with its commitment to democratic ideals? Indeed, a tacit political consensus appears to center on holding local elections only after holding the next parliamentary elections, after the declaration of the new constitution, following the federal restructuring of Nepal. In that long way and over the past several years, we see the misappropriation of huge public resources and suppression of popular voices in local spaces, causing miseries to local people. Our argument is that the greed for resources and clientelistic control over local cadres encourage higher-level political leaders to continue with the status quo. The status quo is equally rewarding to smaller parties and outfits, as they presently can exercise control over local resource allocation decisions, which however will be gone once someone gets elected after an election. For groups that identify themselves as vanguards for federal restructuring, the election of local bodies comprises a distraction, as specifics of local level politics and local voices can be threatening to the powers meant for provinces. But government bureaucrats positioned to local government units have convening power and can more easily maneuver with the APMs than the elected officials. In this way, the status quo serves the vested and often malicious interests of many groups. Thus present local governance framework requires a serious thought in regard to making it accountable, representative and transparent arrangement. Even an 'interim' election of local bodies is likely to greatly improve the situation.