Building a Self-Governing Civilization from Below:
Theory, Practice, and Implications for the New Constitution inNepal

A Workshop Sponsored by The Asia Foundation and Forest Action Nepal
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Workshop Summary and Notes
(Notes Prepared by Bryan Bushley)

A. Synopsis and Synthesis of Presentations and Discussions

Following is a summary of the workshop on "Building a Self-Governing Civilization from Below: Theory, Practice, and Implications for the New Constitution in Nepal," held on November 20, 2009 at the Hotel Shangri La in Kathmandu, Nepal. The workshop brought together a range of participants from civil society, government, and academia to discuss the challenges to effective local governance in Nepal under the current context of globalization, political instability, government restructuring,the emergence of federalism, and constitution-building. The Asia Foundation and Forest Action Nepal jointly sponsored the event.Summaries of the presentations are presented below, followed by a synopsis and synthesis of each of the subsequent discussions.

Presentation 1 – Sujay Shivakumar (US National Academies)

The first presentation, by Sujay Shivakumar—Deputy Director for Technology, Innovation and Entrepreneurship on the Board of Science, Technology and Economic Policy at the National Research Council of the US National Academies—provided an "analytical framework for understanding the failure of state governance and the basis for self-government."The main points from his presentation and the subsequent discussion are summarized below.

The governance of common pool resources is a persistent challenge that requires a re-envisioning of the state as an institution for adaptive governance and well-being, as well as the adoption of a polycentric model of governance (i.e., governance from below). Collective action problems constitute a "development failure" stemming from both a lack of motivation and informational asymmetries. These problems exist in both developed and developing countries, but the former are better equipped to deal with them due to their more effective and cohesive institutional networks. Such networks must be constantly nurtured and renewed to promote effective cooperation. This process is lacking in many developing countries, including Nepal.

Collective action problems are reinforced and perpetuated by the ideology of the state and the ideology of development. The disjuncture between such top-down ideologies and the ideology of collective action is a result of a "knowledge problem" (lack of locally specific information) and a "motivation problem" (opportunistic agents of the state). The ideology of state-led

development has often depleted local initiative, cooperation and problem-solving capacities.Development failures are thus rooted in institutional failures. It should be recognized that institutions create both constraints and opportunities (i.e., choices among constraints).

What is needed, then, is a system of polycentric governance consisting of overlapping and mutually reinforcing problem-solving arenas at multiple scales. Effective democratic governance requires (a) norms of inclusion in public discourse and decision-making, (b) governance structure based on multiple overlapping arenas of political authority, (c) citizen-based sovereignty in a polycentric institutional situation, (d) opportunities and initiative for indigenous/local problem-solving. Under such conditions, local leaders or "civic entrepreneurs" can emerge to devise creative solutions for collective action problems. Thus, achieving an adaptive self-governing civilization requires looking beyond the ideology of state-led governance and an understanding of polycentric principles of collective action (e.g., for governance and adaptation).

Discussion (on Presentation 1)

The degree of polycentricity in governance and the effectiveness of a bottom-up approach depend on cultural norms and circumstances.Nepal's context is highly influenced by both external factors (e.g. global economic and political forces) and local cultural norms.

If you look at the landscape of polycentric institutions from the top down (the state-centric perspective), it looks chaotic; but if you look at it from the bottom up (the citizens' perspective), it makes more sense. There is too much reliance on the state in the current development context; we need to focus more on building local capacities to draw on and reinvent what we have. People's participation is critical for democracy. However, we also need some efforts to build local capacities from the top down. Actors at the local level cannot build all of their own capacity. Therefore, an effective polycentric model requires a combination of bottom-up and top-down governance structures and processes that are mutually reinforcing and ensure mutual accountability. To help ensure a balance between the two, specific legal provisions for local government are needed, including a means for marginalized local entities and individuals to air grievances and appeal higher-level decisions.

The challenges of building a new constitution both contribute to, and are the result of, ineffective governance structures and processes. In particular, the challenges of obtaining an effective constitutional agreement are based on (a) differences in interests and theories about constitutional process among various actors; (b) interest-based decision-making; (c) a perceived need for absolute consensus; (d) a focus on the 'politics of the moment'; and (e) a lack of focus on basic overarching 'rules of the game'.As one participant observed, the Constitution-writing process in Nepal is complicated by the fact that the "dust on many immediate issues has not yet settled" (e.g. Dalits, Muslims, Janajatis, Madhesis). They further added,"the Constitutional Assembly should be the place where the dust will settle, but instead it continues on its tragic course"

There is a perceived tension between local governance and the introduction of a new Federalist system of government, which is closely tied tothe constitution-making process. Different interest groups (e.g., based on ethnicity and regional identity) are vying for their own positions in an attempt to define the shape of federalism and their own specific rights within the new Constitution. However, rights issues have to be resolved on an ongoing basis, through the context of a collective action problem, by creating a system where people continuously engage

with each other. Rather than provide a list of specific rights for all interest groups that attempts to solve all problems from the outset, the Constitution should provide a framework for working through ongoing issues. It is unclear, though, whether such a document is politically feasible within the current political context.Nonetheless, we need an evolutionary—not revolutionary—approach to constitution building. The result should be a 'living' document that facilitates ongoing democratic engagement and deliberation by clearly defining the 'rules of the game'.

We must strike a balance between general and specific issues in the constitution bysetting the rules in a way that constrains the ways these rules can adapt and change. We also need standardized rules (and responsibilities) that apply equally to everyone.Inserting the specific interests of individual groups could lead to dangerous consequences. Moreover, there is a difference between rules on paper (e.g., in the constitution) and rules in practice. In practice, rules are mediated by power relations, often in a very subtle way. Thus, the everyday adherence to and enforcement of rules is also important.It was also noted that policy-making challenges are distinct from Constitution-building challenges; they require the creation of broad, simple rules for informing discussions at the policy level.

Presentation 2 – Hemant Ojha (Forest Action)

The second presentation, by Hemant Ojha—Executive Director and Governance Specialist, Forest Action Nepal—focused on the concept, evolution and functions of local governance within the context of modern Nepal. It was noted that local governance has several purposes: (a) provisioning, (b) civic engagement, (c) enabling, and (d) conflict mediation. However, local governance/government is often seen as more of a service provider than as a facilitator of civic engagement.

In Nepal, local governance functions within a very diverse and challenging context characterized by ethnic diversity, heterogeneity, poverty and marginality, environmental fragility, remoteness and inaccessibility, feudal political culture, a history of struggle against the monarchy, and ongoing conflict and transition. In the current political environment, there is also a very real danger that federalism will usurp local governance structures and processes.

Local governance evolved from the Panchayats (1960s-1990s), through the onset of Democracy (i.e., Constitutional Monarchy – 1990-2002), through the civil conflict (1997-2005) and finally into the current post-conflict scenario. Although this transition has been marked by an increasing degree of autonomy in the laws, since 1990 we have witnessed the emergence of local federations and a process of intra-party centralization that has continually undermined and questioned the legitimacy of local governance bodies. More specifically, the tension between political centralization (national political parties) and the decentralization of the state (consolidation of these national political parties' power and influence at the local level) is a threat to local governance.

Part of the problem lies in the fact that there is no clear indigenous concept of democratic (local) government/governance: "Sarkar" ("government") is not viewed as citizen-friendly; "Sasan" (akin to "governance") is perceived as control of the people by powerful actors; "Sthaniya Nikaya" (local bodies) or "Sthaniya Sarkar" (local government) present too narrow a view of local democracy. Thus, a more positive, holistic and less state-centric interpretation of (local) governance is sorely needed. Furthermore, effective local governance requires not just political decentralization, but fiscal and administrative decentralization of the state as well.

While we need further clarity on what the appropriate size and boundaries of local governance are (e.g., should it be at the level of the VDCor the DDC level?), the role of parallel (non-state) local institutions for the governance of irrigation, forests, education, etc., and their interplay with various government entities at different levels must also be considered.Finally, there is a fundamental need for the development of an inclusive, independent discursive sphere that is free from the feudalistic, techno-bureaucratic and 'bikashe' (development) mindsets, and engages the various state and non-state actors in a deliberative democratic process.

Presentation 3 – Sagar Prasai (The Asia Foundation)

The third presentation, by Sagar Prasai—Deputy Country Representative of The Asia Foundation, Nepal—addressed the economic basis for the failure of local governance, particularly within the current context of transition to a Federal system of government. He noted that it is past the time to discuss whether to federalize or not—the process has already started. However, there are three key issues that confound the possibility of a greater federal autonomy: (a) the lack of economic viability at the local level; (b) the introduction of meso-level structures, such as federalism, which tend to disrupt the devolution process; and (c) the urbanization of wealth and the lack of a functioning alternative to rule by the socioeconomic (urban) elite.

Prasai noted a few failures and inequities in the distribution of wealth and revenue-generating potential, from the individual to the state level: the lack of economic opportunity for women; the concentration of taxable transactions in and around the capital city of Kathmandu; and the lack of revenue-generating capacity through taxation for expenditures at the sub-national (district) level.He concluded that the prospects of providing an answer to these administrative and financial issues through Federalism is "murky" at best, noting that Federalism doesn't facilitate aspirations for greater political autonomy. To realize such aspirations, we need to promote the devolution of state structures and resources to a much lower level.

Discussion (on Presentations 2 and 3)

The discussions following the last two presentations centered around three main points that were recognized as major challenges:

- How to ensure local governance within the context of the constitution-building process;
- How to ensure simultaneous political, fiscal and administrative decentralization; and
- How to create a sphere of discourse.

Three extreme solutions being discussed within context of constitution-building were identified: (a) the protection of citizens from markets (especially Chinese and Indian); (b) addressing structural problems; and (c) providing a minimalist constitution, with a clear statement that it is not perfect and will be built upon through subsequent amendments. With respect to point (a), it was stated that the economy should not be burdened with specific thresholds, but that the capacity for solving common problems should be strengthened instead. Furthermore, this capacity building needs to be detached from current development strategies.

Concerning point (b) above and ensuring the joint devolution of political, fiscal and administrative authority, it was acknowledged that the central level is not interested in decentralization to the district level; and the district level has no real incentive to decentralize to communities. Thus, trickle down theories of governance do not work. Rather, decentralization

must be thought of more holistically. Moreover, it was noted that taxation is closely connected to the state-building and revenue-generation activities of government. If financed by the rich and privileged, the state will tend to protect their interests, not those of the poor and marginalized. In order to counter this tendency, a balance must be struck between local and higher-level institutions and powers, to promote the effective, holistic devolution of authority and local governance. Furthermore, it was recognized that those actors who are most concerned about local autonomy and local government—independent of national political parties—must be empowered.

In terms of the role of the constitution in promoting local governance, it was noted that constitutional provisions are necessary, but not sufficient for realizing local democratic governance. There is a challenge in empirically defining the sphere of local governance. While the State is generally viewed as unfriendly to citizens, it was also acknowledged that there is currently a vacuum of state authority, with many 'autonomous' groups running around creating chaos, resulting in a lack of 'rule of law'.Nonetheless, the devolution of power to local level holds the possibility for post-devolution (deliberative) conflicts that can help shape local (governance) institutions.

Thus, the perspective of the role of local government and governance must be expanded beyond simply that of provisioning to include the fostering of a sphere for civic deliberations. In this regard, it was asked whether the state and political parties couldbe redefined to become political institutions with a "platform" where everyone can converge and converse. Instead, what we have now is ideologically stuck political parties who claim to represent poor people, without defining what we mean by the poor.

Finally, it was noted that meaningful collaboration among state, civil society and the private sector is rare at the local level. There is a clear need for a joint commitment. Such a joint commitment should come before making specific provisions—constitutional or otherwise. Only an inclusive, collaborative configuration of the state, marketsand civic movements can promote effective local autonomy and governance.

B. Detailed Workshop Notes

Opening Statements:

Naya Sharma

- Critical moment in Nepal; period of political transition
- Objective: inform ongoing political debate on strengthening local democracy.

Hari Sharma (Social Science Baha)–Introductions

PRESENTATION 1 – Dr. Sujay Shivakumar

"Building a Self-Governing Civilization from Below: An Analytical Framework for Understanding the Failure of State Governance and the Basis of Self-Government"

- Challenge of 21st century is to achieve democratic governance.
- Alexander Hamilton – "Reigning deity" – Set constitutional challenge - Whether civil societies are able to self-govern, or whether they have to rely on their constitutions and central governments?
- Looking at state as institution for adaptive governance and well-being
- Model of polycentric governance (from below).
- Collective action problems, when unresolved seen as a failure of development:
  - o Problems of motivation – public goods, safety health, knowledge; Provision and maintenance of CP resources.
  - o Problems of information
    - Locally specific knowledge not easily communicated to state, knowledge of relationships with each other and rules specific to their domain;
    - Moral hazard problems, one actor insulated from consequences of his/her actions;
    - Problems of principal agent – Citizen doesn't necessarily know what policy-maker is doing;
    - Signaling problems regarding quality, either misleading or incommunicable;
- People everywhere face problems of collective action
  - o Developed countries, well-adapted networks of institutions generally lead to productive outcomes (people pay more attention to these types of institutions, so they are kept in good repair).
  - o In poorer (developing) countries, individuals face negative incentives that evade effective collective action.
  - o Most societies have an institutional repertoire – The challenge is to re-interpret them in contemporary contexts.
  - o E.g., Ubudehe in Rwanda: Ad-hoc arrangements to share grazing land and water sources; Tradition of crafting covenants to share scarceresources.
  - o Need to be more aware of institutional resources, and renew them for effective cooperation. E.g., like maintaining a road, but can't just expect the state to take care of collective action challenges.
  - o Collective action challenges are highly localized, and thus must be addressed locally.

- The state as an institution
  - Ideology of the state
    - Rulership – Unity of power to maintain unity of law critical for social harmony (Hobbes).
    - Governance
  - The Knowledge Problem – "Agents of state cannot gain knowledge of time and place " (Friedrich Hayek)
  - The Motivation Problem – Possibility of self-seeking and opportunistic agents of the state (James Buchanan)
  - Intellectual Crisis
  - Failures of Ideology of the state
    - Emphasis on State-led development has often ruined capabilities for locally based problem-solving
    - Results have often been catastrophic – e.g. Rwanda, Somalia
  - What is the alternative?
    - Recognize failures of development are rooted in institutional failures (address underlying problems of CA)
    - Polycentric Governance – existence of overlapping problem-solving arenas (at various scales)
    - Not a panacea – Scope as an adaptive system depends on processes of innovation, trial, evaluation and replication among alternative policies and actions.
- Need bounds within which problem-solving activities can be developed.
- Institutions create both constraints and choices among these constraints.
- We not only work within the bounds we have, but if solutions to collective action don't come within these bounds, we're empowered to change the rules.
- "Civic Entrepreneurs" – Introduce creative and unique solutions to problems of collective action.
- Role of democracy in development
  - Concerns norms of inclusion in public discourse and decision-making
    - Participation and debate
    - Consensus-building
  - E.g., Tocqueville in *Democracy in America:*
    - Multiple, overlapping arenas of political authority
    - Various scales, from community organizations, to district/state government to national government.
    - Governance structures are adaptive framework for problem solving.
  - Sovereignty in poly-centric situations is vested in citizens
  - Have to deal with indigenous institutions, even if they aren't ideal; Challenge lies in developing and modifying existing rules and constitutional amenities
    - Harness more effectively the problem-solving potential of local organizations
    - Draw on existing mechanisms/shared concepts to encourage rule change
    - Normative bases for rules – "conjectural evolutionary claims"
  - Reviving indigenous capabilities for problem-solving – Major challenge of development is to draw indigenous practices to craft capabilities for self-governance.
  - E.g. Somaliland, bottom-up governance system based on traditional understandings of how they constitute themselves.
- Obtaining a Constitutional agreement is a major challenge

- o Differing interests and theories about constitutional processes and outcomes (multiple actors, each with short, medium, long-term interests in framing of the constitution)
  - o Interests based on working properties of constitutional rules.
  - o Unanimity can lead to problem of "Hold-out"
  - o Need to separate constitutional objectives from 'politics of the moment'
  - o Constitution should set out basic rules of the game over the long run – Need thicker "veil of uncertainty"; Rulers may expect to be governed by own rules in ways they can't anticipate.
  - o Constitution should be a 'general-consensus' document – e.g., a simple open framework.
- Achieving Self-Governing Civilization
  - o Challenge lies in looking beyond the ideology of state-governance
  - o Need to understand the nature of collective undertakings (multiple governance levels, multiple adaptation sources)

Open Discussion and Questions:

- Bottom-up approach is one approach, but East Asia has highly centralized model of state development, so we must look at what fits within specific national circumstances.
- Are political institutions able to carry the social mobilization that you would wish for?
- Nepal won't fail (as a state), but how it will evolve is another question.
- Can you delay issues of ethnicity and address them at a later time (i.e., not in the Constitution)?
- RESPONSE: By recognizing everyone, you tend to freeze development of local groups; better way is to empower them and have "ethnicity" as a type of local institution [but how do you accomplish this in a legal/constitutional context?]
- Ethnic groups should not be "put in museums", but allowed to modernize and change to adapt themselves; thus must empower them to solve their own problems, rather than just formal recognition in the Constitution.

- Hari Sharma: Can institutions be crafted? How can the issues be sequenced?

- Constitution making – "We're trying to write a constitution when the dust on immediate issues has not yet settled" E.g., issues of *Dalits, Muslims* within ethnicity has not even made a mark anywhere, or begun to be articulated.
- No ethnic majority in any VDC in Nepal
- Likely to make mistakes within the current context.
- Constitutional assembly should be the place where the "dust will settle"; instead it continues on its tragic course.
- "Indigenous" knowledge/practices must be distinguished from "local"
- Have had a successful experiment with local governance in Nepal; but today, in the Constitution-making process, talk of local governance is seen as anti-Federalism.
- Local self-government has been lost in the policy dialogues
- RESPONSE: Waiting for the dust to settle will take a very long time.
- What you want in a constitution is a mechanism to help frame the debate, setting the rules for discussion; not a comprehensive document that presents solved problems.
- Need a constitution that helps society come to terms with ongoing issues, not one that attempts to solve them all from the outset (this approach reduces the flexibility and longevity of the Constitution).

- Bill Cole: Not the standard approach to Constitution writing, which is to include everything in the Constitution (US constitution is an exception).
- Is it politically possible not to go down to the level of solving all these problems? Is the political expectation that you will solve all the problems? If so, it becomes very politically difficult (unfeasible) not to do so.
- Idea of taking extremely difficult problems and putting them off in the constitution (i.e. flag them for addressing later, but still work out a basic framework document).

- This is the evolutionary approach to Constitution-building; but Nepal has adopted the "Revolutionary" approach, assuming that a "perfect" or complete constitution must be made. We are already on that track [So how do you get off of it?]
- RESPONSE: "Car is heading off the cliff and there's a battle for the steering wheel"

- Have changed interim constitution six-times, due to the claims of "marginalized communities".
- In every party, you don't have a constitutional style of decision-making. Each party is trying to maximize its own outcomes at the cost of others.
- Indigenous institutions and knowledge are relevant. Our society is too diverse: "Can capture this diversity if the economy is within the bounds of the constitution."
- RESPONSE: What puts the local in local is the collective action institutions; these vary in scale from small to large. If you look at this from the top down, it's extremely chaotic; but it makes sense from a citizen's point of view, since you are members of different institutions at different scales.

- As a citizen, it is difficult to get yourself heard at national level, but less so at local levels.
- Constitutional Assembly members are interested in bringing more and more rights.
- RESPONSE: Way of animating these rights is actually placing/solving them within the context of a collective action problem. Rights issues have to be resolved on a day-to-day (ongoing) basis; just because it's in the constitution doesn't mean that it's going to happen.
- Difference between a perfect Constitution and a governance system where people have to "muddle through". To make a live constitution, you need to create a system where people engage with each other.

- Nepal's context is highly influenced by external factors; How do you fit the global influences into your framework?
- Also influenced by local cultural norms; e.g., Mukhiya system in Mustang where women are never allowed to interact in the system, e.g., when women are in their period, often excluded from participation. How can we make the state more accountable and democratic in the face of such [negative] local norms?
- RESPONSE: Many institutions don't measure up to our normative expectations.
- Have to work with what you have – i.e., take what you have to start with, but you don't have to accept it, you can change it. The process of modification can include adaptive constraints, such as gender equality, etc.
- There is too much focus on the state in current development context, rather than local capacities to draw on and reinvent what we have.

- When we talk about local democracy, people's participation is very important.
- Many practices worldwide regarding legal provisions for local government.
- Nepal is building a new Constitution, and all sectors want to put their issues in the constitution; including us (those) who want 'local governance' in the constitution

- Most of the interest groups want explicit, detailed provisions in the Constitution; but who is taking the catalytic role of integrating and simplifying these into "thin" [general, overarching] provisions? How can we strike the proper balance between general and specific issues?
- RESPONSE: One way of overcoming this is standardizing the rules, so that they apply equally to everyone. Inserting the interests of individual groups could lead to very dangerous consequences.
- Way to deal with normative issues is by setting the rules in a way that constrains the ways the rules can adapt and change.

- Keshav Kanel: Have some fundamental problems with the concept in the Asian context. Everyone has an equal opportunity. Amartya Sen said it is not [just] opportunity we need to address, but need to build capacity of people.
- Fundamental problem – Theory that people all have an equal opportunity, without thinking about the capacity of people is problematic.
- Although provisions say that everyone has an equal opportunity, someone has to build capacity [who?]. Need to be some provisions for this.
- RESPONSE: Need for both a bottom-up and top-down governance structure.Need efforts to build capacity from the top down. Local level cannot build all of their capacity.

- A major issueis that there's no way for marginalized groups to appeal decisions. Does articulating all these rights through interest groups solve the problem, or does it make the problem worse?
- RE: Very difficult to dictate outcomes, but you can set the rules of the game [i.e. within the Constitution] to regulate [prescribe] the types of normative outcomes you would like to see.
- The policy-making challenge is very different from the Constitution-making challenge; it requires creating broad, simple rules for informing discussions at the policy level. Need a simple framework for solving these problems through time and updating institutions to adapt.

- Hemant Ojha: Difference between rules on paper and rules in practice. Rules are mediated within the context of power relations, [often] influenced in a very subtle way.
- Need to influence ways in which rights are being articulated.
- The rule is one thing, but the everyday part of the process is equally important.

- Rights in constitution-making vs. rights in constitutional enforcement
- The more rights, the more difficult it is to do a deal (i.e. rights-based vs. interest-based negotiations).
- RESPONSE: If someone preaches simple rules, can constrain policy makers and go against acceptance of a Constitutional document.

PRESENTATION 2 – Hemant Ojha (Forest Action)

Title?

- Why local governance?
    - Provisioning function
    - Civic engagement function
    - Enabling function
    - Conflict mediation
- In some cases, local governance is seen more as a provider of local services, than as a facilitator of civic engagement.
- Nepal's context of local democracy: diversity, heterogeneity, poverty and marginality, environmental fragility, remoteness and accessibility, feudal political culture, long history of struggle against monarchy, conflict and transition.
- Local democracy sidelined by establishment of provincial level governance, or federalism; local governance not well articulated in the process.
- Waves of local governance innovations
    - Panchayats (1960s-90s)
    - Democracy (1990-2002) Local self-governance act, local body elections
    - Civil conflict (1997-2005) Legitimacy of local bodies questioned
    - Post-conflict (2006-date) how do we envision local governance in new Constitution?
    - Since 1990
        - Local federations emerged and continue to be active
        - Intra-party centralization, detrimental effects on local governance
- Government versus governance
    - "Sarkar" (government) is not a citizen-friendly notion in Nepal
    - "Sasan" (governance) is also perceived as control of people by a power holder.
    - Sthaniya Nikaya" (local bodies) or "Sthaniya Sarkar" (local government) are too narrow view of local democracy.
    - The English discourse – elitist privilege and development jargon.
- Representation vs. Participation
- Critical Issues:
    - Founding of local government, individual sovereignty vs. community practices
    - Handling the differences: gender, class, caste, ethnicity, regionalism. Expanding local democracy – balancing demand and supply.
    - Tension between political centralization (national political party) and decentralization of the state.
    - Political decentralization without fiscal and administrative decentralization.
    - Scale of local governance
        - Perspective: State control or self-governance
        - Geographic factors
    - Interface with national government bureaucracy
    - Local government [and governance] in an era of globalization.
    - Re-crafting [building] local governance in the new Constitution
        - Subsidiarity – Political feasibility vs. normative appeal
        - Beyond self-governance on paper – minimizing central control beyond formal constitutional/legislative provisions
        - Authority and jurisdictions – revenue generation/spending, horizontal equity

- What are the appropriate size and boundaries of local governance? VDC or DDC? Demands for ethnic autonomy?
- Capacity – Local governance knowledge to be produced under local government networks
- Beyond electoral frameworks
- Main purpose: enabling CAs
- Strong influence from political parties over local government elections
- Other parallel institutions for local governance of irrigation, forests, education, etc.
- Need for growth of independent discursive sphere, free from the feudalistic, techno-bureaucratic and 'bikashe' (development) mindset.

PRESENTATION 3 – Sagar Prasai (Deputy Country Representative, Asia Foundation)

- Not a time to discuss whether to federalize or not. Nepal did not choose to federalize based on government efficiency considerations; but rather based on political aspirations for greater political autonomy (i.e., more significant self-governance).
- 3 Issues that confound the possibility of a greater federal autonomy:
  o Need for economic viability at the local level
    - e.g., rights-based approach for gender empowerment has failed in that it has not provided women with economic opportunity to get out of their 'oppressions'.
    - Distribution of economic development in Nepal is such that 65% of taxable transactions are in Katmandu and surrounding areas.
    - 60% of the districts raise less than 10% of their expenditures.
    - Whole idea of providing an answer through federalism is very murky, from the economic point of view at least.
  o Every time you introduce a meso-level structure, you tend to disrupt the flow of devolution. Are federalism and local self-governance compatible within the context of the transition period?
  o Can we have a functioning alternative to elite rule (economically)?
    - Have yet to see a deflationary pressure in growth in major Asian capital-city-dominated states (including Nepal)
    - 'Urbanization of wealth' is a major challenge.
    - Difficult to craft a propulsive center to define growth (difficult to predict the market factors influencing urban growth processes and geography).
  o Federalism does not facilitate aspirations for greater political autonomy.
  o Very important to look at both devolution of state structures, resources, etc. at a much lower level than we are now.

Open Discussionand Questions (On Hemant Ojha's and Sagar Prasai's presentations)

- Local governance is something that tends to create power from the bottom to the top
- "How to ensure local governance within context of the Constitution-building process?" Federalism might not be compatible with local governance.
- "Center is very scary, and local level is very dynamic"

- Keshav Kanel: How can a forestry program be better implemented through a district-level institution, instead of at the watershed level?

- Central-level will not be interested in decentralization to district level; and district level will not be interested in decentralizing to communities.
- Decentralization must be thought of in a very holistic way.
- Trickle down theories do not work
- Theories need to be grounded in the context of developing countries (e.g., Nepal)
- Taxation is very connected to state-building and revenue of the government
- If financed by the rich, the state will strive to protect their rights, not those of the poor. [i.e., it is accountable to those who fund it].

- Hari Sharma: Smaller local issues are connected to broader issues of rights vis-à-vis the state.
- What about the state? Can the state, and also political parties, be redefined to become political institutions with a "platform" where everyone can converge and converse (here we have ideologically stuck political parties who claim to represent poor people, without defining what we mean by the poor).(e.g., Hemant's discussion about expanding the sphere).
- How do we reconceptualize governance? What constitutes "local"? Can be local or global.

- Provision is very important with regard to local governments roles and responsibilities
- Implementation is crucial in the case of Nepal.
- State, civil society and private sector must come together to make a joint commitment; We never see joint collaboration of these actors at the local level.
- Such a commitment is important, before making provisions.
- Full devolution, form and function, should be transferred to the local government.

- Day after the party in Nepal, Message of clean up is still there ('some are too drunk to be effective, some are still with a hangover.')
- Debate on economic viability has not even started.
- The state is seen as unfriendly. State is a 'monopoly of violence'; but where is the "sarkar", with so many 'autonomous' groups running around creating chaos?
- This problem is not being addressed through the local self-governance issue.
- Only inclusive, state, market or civic movements can promote local autonomy.
- It's the market that actually is the most inclusive. Doesn't distinguish between caste, ethnicity, etc.
- Civic movements-when they define themselves in sectarian terms—tend to exclude/marginalize some actors.
- Devolution of power to the grassroots level creates the possibility for post-devolution [deliberative] conflicts that shape local institutions.
- Constitutional provisions are not enough for realizing local, democratic governance.

- Bill Cole: Are there a few things that can be done in the Constitution, that can help set the stage for going forward?

- Keshav Kanel: Theory and testing in the real world, e.g. Ostrom's micro-politics or collective action. Do theories "trickle down"?
- Markets are extremely polycentric, and many suffer from information asymmetries [i.e, they are a reflection of the social relationships within which they function]. Always potential for take-over of the market
- Need a constitution that constrains the nature of competition.

- Hemant Ojha: How can we see the prospect of local governance in Nepal, after almost 20 years of democracy.
- Looking at experience of several countries around the world, it's clear that there are examples of systems that bring governments/governance closer to local communities, ie., "global wisdom of local governance."
- Challenge of empirically defining sphere of local governance. Social scientists should engage in cross-disciplinary ways, so that two types of knowledge systems [?] can arrive at local governance
- Intersection between civil and political is very crucial. When we have some opportunities for local governance, there is not necessarily a balance among local institutions and with higher-level institutions.
- How does a local politician realize their candidacy and legitimacy without approval from the national level political apparatus (i.e. national parties)?
- Conflict between community networks and local government. How do we resolve tensions between civic engagement and local institutions?
- How do we conceptualize a process/modality of local governance where we encourage groups to build up their political power from below, while supporting greater local political autonomy?
- Concept of local democracy is confused, no locally elected bodies; center is not in favor of de-centralizing the state into many autonomous areas.
- Discourse of democratization is weak in terms of bringing power down to the village and household level.
- Need to empower those actors who are most concerned about local power/autonomy and local government, independently of national political parties.
- How do we create a "sphere" of discourse?

- How can you make a deal – Is it possible to prioritize the agenda?
- Diagram with two axes (with negative relationship?):
   o Importance of issue to have a deal
   o Prospects for reaching an agreement.

- Given sheer physical (geographical) discrepancy in the country, how do you go about making something like the market inclusive?
- RESPONSE: Markets are inclusive, but highly uneven (inequitable).

- Need to focus on what is working [i.e., Appreciative Inquiry], and preserve it.
- Three extreme solutions are being discussed (even by political leaders):
   o How do you protect citizens from the markets (e.g., Indian and Chinese)?
   o Addressing structural problems
   o Minimalist constitution, with a very clear statement agreeing that this is not perfect, and argue that a newly elected house will deal with subsequent amendments.
- Copenhagen will fail. What will happen afterwards? We need to adopt the Copenhagen conference approach.

- Distribution of growth is difficult. Not important to have equitable opportunity for the entire population.
- Who are the local in the local? About 1.5 million Nepalese working outside, so localities are very connected with global financial streams. Greater worry about what happens to the Malaysian economy than what happens to the Nepali economy.

- Shouldn't burden the economy with specific thresholds, but should strengthen capacity for solving common problems. Need to detach it from a strategy for development.

- George Varughese [closing]: Thanks to everyone for agreeing to participate in this opportunity to interact. Thought we would hang this workshop at the end of our own internal workshop on local governance. Thankful for speakers for getting people going. Something that the Asia Foundation likes to support.

ADDITIONAL REFLECTIONS (Bryan Bushley)

There is much talk in the CA about the need to guarantee the autonomy and specific rights of various groups, e.g. ethnic and indigenous groups, dalits, etc., without paying enough attention to the "institutional infrastructure" necessary for ensuring and nurturing this local autonomy and these rights. We need to focus on establishing 'universal rights' for all groups [e.g., not specific rights for individual groups, but a 'bill of rights' that applies to everyone], but also go beyond this…

The Constitution must clearly state what specific powers (political, administrative and fiscal) are delegated to the regional, district and local levels of government, and what *rights* and *accountability* local bodies can expect vis-à-vis these meso-level governance institutions. In this sense, effective local governance must also be ensured by the state (i.e., through the Constitution and its enforcing bodies).

Conflicts within local institutions, or between local and higher-level institutions are not necessarily bad—since they can contribute to the development and reform of local institutions—as long as they operate within the overall parameters of the constitution and the rule-of-law.