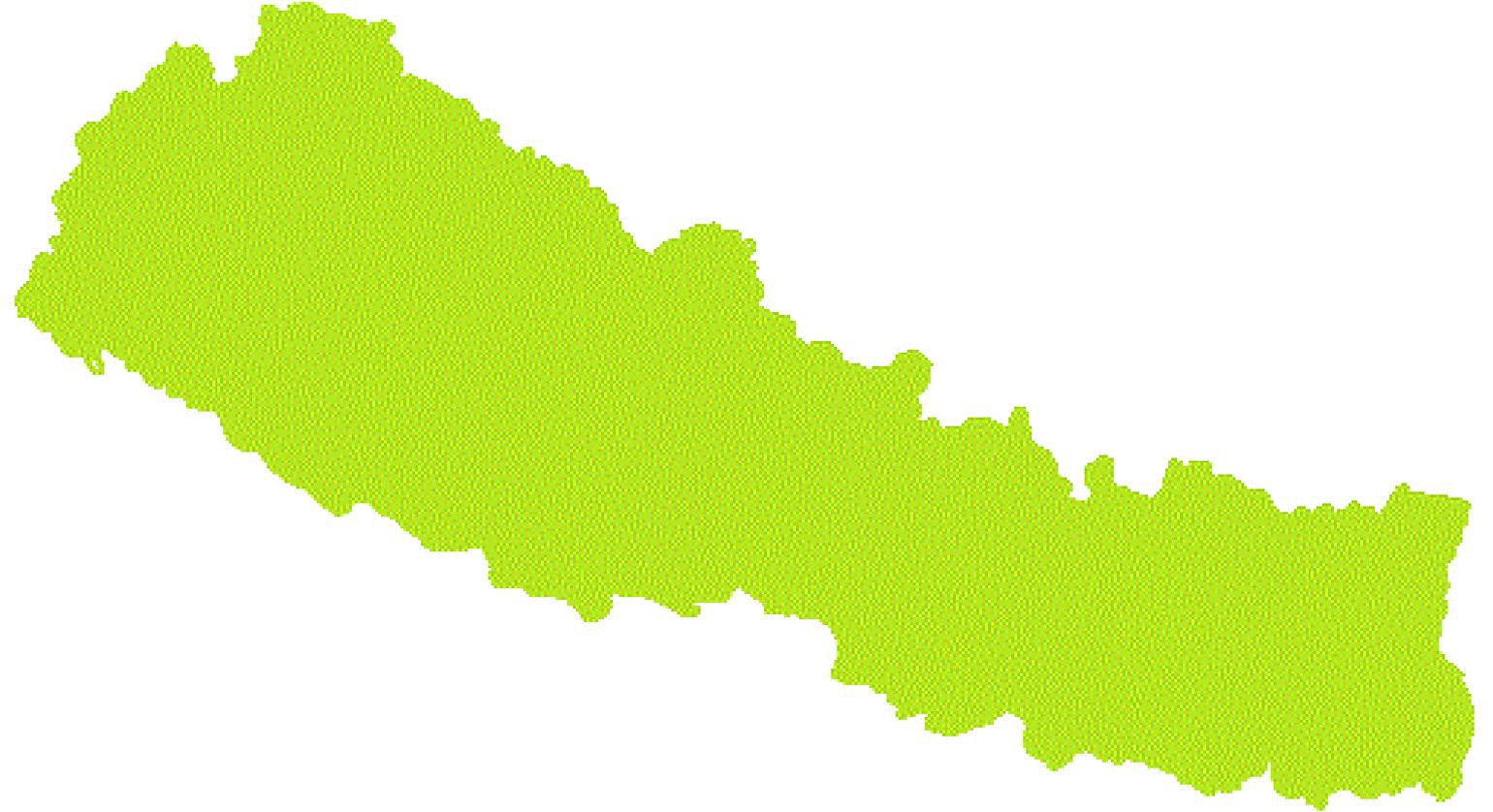


# Conservation and Prosperity in New Federal Nepal: Opportunities and Challenges



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The Australian Government - The Asia Foundation Partnership in Nepal



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July 2018

The ***Conservation and Prosperity in New Federal Nepal: Opportunities and Challenges*** was implemented with support from the Australian Government-The Asia Foundation Partnership on Subnational Governance in Nepal. The findings and any views expressed in this study do not reflect the views of the Australian Government or that of The Asia Foundation.

## Acknowledgements

The authors are grateful to the Australian Government-The Asia Foundation Partnership on Subnational Governance in Nepal for their financial and technical support of this opportunity to undertake this study to analyze the impacts of sub national government structures and federalism on Nepal's conservation programs. We are thankful to George Varughese, former Country Representative for The Asia Foundation for his understanding of the urgency of this work and for his continued critical analysis. His inputs helped clarify our thinking and strengthen the final document. The authors thank Rodney Jackson and Snow Leopard Conservancy for their support of this study, especially for the keen interest in understanding the impacts on community based conservation initiatives. The comments from our Delphi Panelists (Shyam Bajimaya, Narayan Belbase, Maheshwar Dhakal, Hiramani Ghimire, Keshav Kanel, Balanandra Paudel, Tirtha Bahadur Shrestha) were extremely valuable.

Special thanks to Purusottam Nepal, Joint Secretary – Ministry of Federal Affairs and General Administration, for chairing the national workshop, and sharing his enthusiasm and insights on federalism. We appreciate the inputs from all of the key respondents who willingly and enthusiastically shared their time and critical insights. The insights from Dil Raj Khanal, Hari Roka, and Rudra Sapkota were very useful. We are grateful for the full support from the Government of Nepal and many different elected officials who willingly shared their time and insights.

We thank the many different civil society representatives and private sector entrepreneurs within and outside of Nepal's conservation community for sharing their viewpoints, concerns and suggestions. The authors express their gratitude to all the individuals who shared their opinions and viewpoints.

Finally, we are grateful to Peter Gill for his significant technical and analytic inputs into the document. While we received inputs from many individuals and organizations, any errors of fact or interpretation are the full responsibility of the authors and do not represent the official policies or position of the Australian Government, The Asia Foundation, the Snow Leopard Conservancy or any other individuals or organizations that were consulted or supported this work.

## Abbreviations and Acronyms

ACA	Annapurna Conservation Area
BZ	Buffer Zone
BZCFUG	Buffer Zone Community Forest User Group
BZUC	Buffer Zone User Committee
BZMC	Buffer Zone Management Council
CA	Conservation Area
CAMC	Conservation Area Management Committee
CBO	Community Based Organization
CBS	Central Bureau of Statistics
CFCC	Community Forest Coordination Committee
CFUG	Community Forest User Group
DFO	District Forest Office
DFRS	Department of Forest Research and Survey
DNPWC	Department of National Parks and Wildlife Conservation
FECOFUN	Federation of Community Forest Users Nepal
FRA	Forest Resource Assessment
GDP	Gross Domestic Product
GoN	Government of Nepal
IGFMA	Intergovernmental Fiscal Management Act
ILO	International Labour Organization
IUCN	International Union for Conservation of Nature
KCMC	Kanchanjunga Conservation Management Council
LGOA	Local Government Operation Act
MoFAGA	Ministry of Federal Affairs and General Administration
MoFALD	Ministry of Federal Affairs and Local Development
MoFE	Ministry of Forests and Environment
MoFSC	Ministry of Forest and Soil Conservation
NNRFC	National Natural Resources and Fiscal Commission
NPWCA	National Parks and Wildlife Conservation Act
NPWC	National Parks and Wildlife Conservation
NTNC	National Trust for Nature Conservation
PA	Protected Area
SDG	Sustainable Development Goal
SLC	Snow Leopard Conservancy
TAF	The Asia Foundation
TAL	Tarai Arc Landscape
VDC	Village Development Committee
WTTC	World Travel and Tourism Council

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## Executive Summary

In a great irony, the rapid devolution of power and authority to provincial and local level government under Nepal's new constitution may inadvertently undermine the very contributions some of the country's most devolved, participatory and democratic institutions have made to both conservation and development. Community based organizations such as community forest user groups, buffer zone management groups, and conservation area management groups have achieved remarkable success in effective biodiversity and natural resource management and serve as examples of Nepal's commitment to participatory and inclusive grassroots democracy. While the new constitution has provisions to promote inclusive, participatory and democratic rights, many powers exercised by existing community-based organizations are at risk of being "pulled up" to the local government or provincial level, where governance structures are in their infancy and enabling resources remain weak.

From February to April 2018, a multidisciplinary team conducted extensive document reviews and interviewed more than 109 key respondents to explore the impacts of Nepal's new sub national government structures on conservation programs, focusing particularly on protected area management systems. The resulting paper focuses on conservation and especially on protected areas, but many lessons are applicable to other sectors in Nepal. A separate analysis may be required to explore the impacts on forestry and watersheds outside of protected areas, as well as the role of private business and industry.

This report documents the historical contribution of conservation to Nepal's national and local prosperity, identifies several important capacity gaps at national and local levels of government, analyzes the impacts of new sub national government structures on different forms of protected areas throughout the country, and identifies emerging new responsibilities of each level of government.

The team concludes that Nepal's transition to a more highly devolved government structure can be successful given adequate investments in training and capacity building, and assuming facilitating sub-national governments collaborate with existing community-based organizations to mainstream conservation into local, provincial, and national development planning and implementation. Finally, the report recommends that the Government of Nepal recognize the special contributions of conservation to Nepal's ecological, environmental, and economic health by creating special conservation-focused funding opportunities for sub national government bodies.

## Introduction

The implementation of the 2015 Constitution of Nepal presents **a number of challenges and opportunities** for the nation. Over the long term, there is great hope that the new federal framework can provide greater accountability, transparency, and efficacy by devolving powers to new local and provincial-level governments. In the short-term, however, implementation presents numerous **challenges as existing structures and institutions rush to re-organize**: the need for amending existing laws to ensure all new laws are brought into conformity with the new constitution, and for the emerging local and provincial-level governments to gain much-needed experience and grow their capacities for transparent and equitable governance.

This is the first study to examine potential impacts of new governance structures on conservation and protected area management systems of the country. The study was conducted from February through April 2018. It accomplishes several tasks although it was conducted amid a **rapidly evolving legal and regulatory environment**. It highlights areas of clarity and confusion, especially related to management structures of different types of protected areas and suggests areas that need immediate resolution. The study also identifies challenges and potential unintended consequences of the new framework for the conservation sector. Finally, the study identifies specific opportunities in the conservation sector, and suggests ways forward that are applicable to the conservation sector and other sectors.

Specifically, the study finds that important **achievements such as community-based conservation, innovated in Nepal over the past 3-4 decades, are potentially at risk** under the new constitutional and legal framework. For example, roles and responsibility of community-based organizations (CBOs) like community forest user groups, buffer zone user committees, and conservation area management committees may be changed by new laws that place powers over buffer zones, community forests, and conservation areas under the jurisdiction of local and provincial level governments, respectively. There is a risk that this change may disempower and disincentivize CBOs. The study recommends that roles for community-based organizations in conservation be preserved. The study also recommends that steps be taken to resolve disputes between provincial and local governments and CBOs to establish collaborative and cooperative relationships over the long term as provisioned in section 105 of Local Government Operation Act 2074.

Furthermore, the study highlights the **potential risk** that new local and provincial governments, eager to raise revenues for development activities, will turn to **unsustainable exploitation of natural resources**. It **recommends new fiscal transfer mechanisms to encourage conservation** among local and provincial governments. The study also recommends developing incentives for business and industry to undertake environmentally friendly or “green” resource extraction practices. Specifically, the study recommends that Government of Nepal create special criteria within the “special grants” category of funding under Inter-Governmental Fiscal Management Act 2074 based on the guidance and recommendations of National Natural Resources and Fiscal Commission (NNRFC) to continue its history of productive investments in conservation. Past investments in conservation have yielded proven biodiversity and economic benefits.

## Methodology and team

With funding from the Australian Department of Foreign Affairs and Trade (DFAT) and The Asia Foundation, an interdisciplinary team conducted a six-week study. The team conducted comprehensive document reviews and interviewed 109 key respondents, government officials, civil society members, elected representatives at local and provincial levels, local community members, and individuals from the private sector. The team also identified eight experts as Delphi panelists to review the policy paper and provide comments for finalizing the document.

Field consultations were conducted in the Terai and mountain protected areas. In a concluding national level workshop, findings were presented to an audience of 55+ key policy makers including conservation professionals, private sector actors, government officials, civil society leaders, and elected local and provincial level representatives.

Study results are a snapshot of current conditions in a rapidly changing and evolving legal and regulatory environment. The findings and recommendations will hopefully, **restart a national dialogue on conservation, emphasizing conservation as a key component of local and national prosperity**, an element that has been under-emphasized in recent discussions and media accounts of the transition process.

## History of Conservation in Nepal

Until the early 1950s, Terai had sparse settlements and some of the prime habitats were managed for the hunting interests of the country's Rana rulers. The launch of a large malaria eradication program in 1954, the subsequent influx of hill migrants, and the construction of the east-west highway, changed the ecology of the Terai dramatically. Prime wildlife habitats shrank significantly, and the population of many large mammals, including tigers, rhino, and elephants plummeted severely as a result.

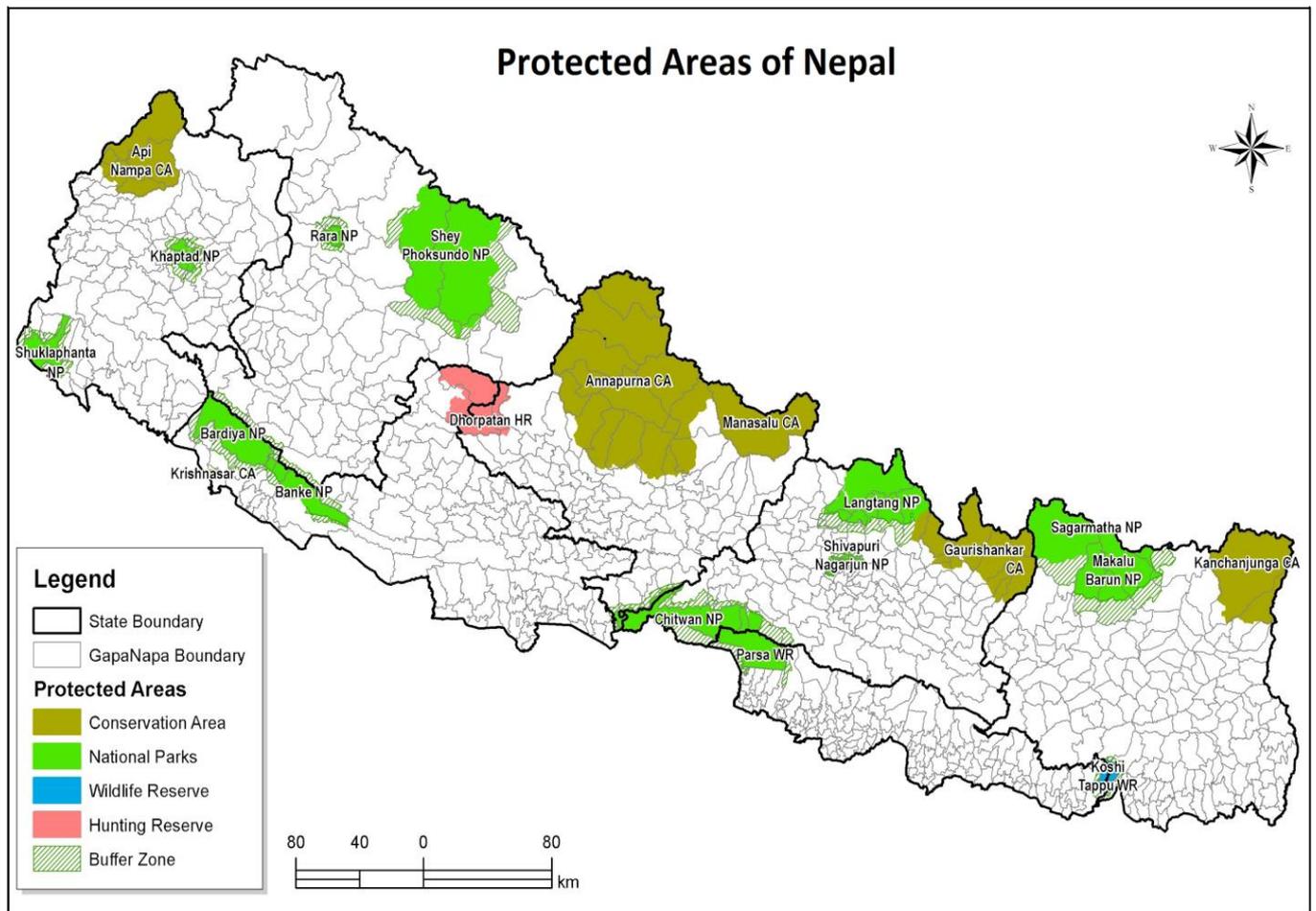
Alarmed by the loss of wildlife and their habitats, the government promulgated the National Parks and Wildlife Conservation Act (NPWCA)<sup>1</sup> 1973 and established Chitwan National Park. In the following years, several parks, reserves, conservation areas and buffer zones were established to protect some of the remaining species of animals and unique natural areas (Figure 1).

Nepal currently has 12 national parks, one wildlife reserve, one hunting reserve, six conservation areas and 13 buffer zones, covering over 3.4 million ha or 23.39% of the country (DNPWC, 2074). This figure excludes watershed areas, community forests, Ramsar sites outside protected areas, environmental conservation areas, and other categories of protected lands (CBS, 2016). Approximately 1,062,823 people from many diverse ethnic groups are directly dependent upon resources contained in the buffer zone community forests and many more villagers live in nearby communities (DNPWC, 2074).

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<sup>1</sup>It was enacted with a general view to:

make arrangements for national parks, protect wildlife and their habitat, regulate hunting, protect, conserve, develop and make proper arrangements for the use of places of special importance from the view point of natural beauty, in order to maintain the etiquette and welfare of the general public (Preamble to NPWCA).



**Figure 1. Protected Areas showing overlaps with the new local-level government units**

Protected areas in Nepal were initially established following the East African “fortress” model of protection and conservation of wild animals with fences and guns and by alienating local communities. Many villagers from protected areas in the Terai, in particular, were relocated and the traditional access to forest resources by local communities was restricted.

Nepal introduced the Himalayan National Parks Regulations in 1979 that allowed settlements inside the park as enclaves and enabled local people to practice their traditional rights of livestock grazing inside the park along with use of forest resources. Despite these token provisions, the conservation model provided few benefits to local people (Dearden and Rollins, 2002), prompting conservationists around the globe to search for an alternative model.

Subsequently, ‘Conservation Areas’ (CAs) were introduced in the third amendment of the National Parks and Wildlife Conservation Act in 1989. The model, based on multi-land use principles and people’s participation, is one among a continuum of protected area categories for the sustainable use of natural ecosystems (IUCN, 1994). Similarly, the fourth amendment of the NPWCA in 1992 included a provision to declare areas surrounding national parks and wildlife reserves as buffer zones. The conservation area and buffer zone (BZ) categories were further institutionalized with the Conservation Area Regulations for the Annapurna Conservation Area, and the Buffer Zone Regulations in 1996, along with Guidelines for both in 1999.

Conservation area and buffer zone programs are significant for many reasons. First, they developed collaboration and partnerships between the government, non-governmental

organizations, local people, and the conservation authorities for engaging in conservation efforts. Second, they provided a share of the revenue generated by the protected areas to support conservation and community development activities, including education, roads, drinking water, health and sanitation, income generation and capacity building, and wildlife damage relief at the local level. While conservation areas like Annapurna retain 100% of the revenue, the buffer zone receives 30-50%. Third, tourism became a major contributor to protected area incomes. Fourth and most importantly, the programs developed a network of conservation-related community-based organizations (CBOs) such as buffer zone management committees, conservation area management council (in Kanchenjunga Conservation Area), buffer zone committees, and functional groups, including BZ community forest user groups (BZCFUGs), and the conservation area management committees. These institutions are responsible for managing forests for sustainable local use, monitoring wildlife, controlling wildlife crimes, implementing small-scale community development projects, and raising conservation awareness.

Prevailing conservation-focused institutions are locally represented, inclusive, and are key to Nepal's remarkable conservation successes. In recent years, some buffer zone forests have recovered so well that many species like rhino, tiger, deer, and others have started using them for habitat just like in the adjoining park, thereby turning some buffer zone community forests in Chitwan into wildlife-based ecotourism models.

Nepal's conservation-related Community-Based Organizations (CBOs) have achieved global recognition by demonstrating practical and effective ways to achieve positive outcomes for conservation and local communities. The political economist Elinor Ostrom won the Nobel Prize partly for her work on Nepal's forest and irrigation user groups. Her 'design principles' for common pool resource management showed that CBOs are well-equipped to enforce management rules because their members are generally well informed about the state of resources and infringements, and they are strongly motivated for the management regime to work (Ostrom, 1990). A prerequisite for this is that CBOs' decision-making processes must be transparent and democratic.

Conservation-related CBOs have also served as bulwarks for democratic culture in Nepal. Without locally elected governments since 2002, these user groups and associations were often the only grassroots democratic institution functioning at the local level in the absence of locally elected representatives of government until Local Level elections were conducted in 2017. Also, they have provided Nepal's weakest and most vulnerable citizens with a voice and representation. However, as with all civil society organizations, CBOs, are sometimes politicized, which can erode their effectiveness.

We argue that policy makers should build on Nepal's globally recognized long and proven experiences of grass root institutions such as community based organizations (CBOs) and any attempt to dismantle these institutional achievements should be vehemently discouraged. These institutions have played significant roles in advocacy and institutionalization of democratic processes and inclusive practices in natural resource governance for decades and this institutional capacity built over years should be retained for sustained conservation and prosperity. This concern is based on empirical evidence of evolving trends.

For example, some of the local governments of Tanahu and Kaski districts have already taken steps to dissolve existing Community Forest User Groups and Conservation Area Management Committees in ACA, respectively, with intentions either to consolidate their authority or to capture revenues from natural resources. Community Forest User Groups of Dovan in the critical corridor of Tarai Arc Landscape raised their concern over sharing of

forest revenues with the local government and impact this may have on effectiveness of community forests as institutions.

These institutions are not without their own limitations, however. The most commonly cited risk of failure or under-performance are “elite capture” and “politicization,” where the most powerful members of a given community use either their wealth or social capital and/or political alliances to consolidate power and authority over resource use decision making, often for individual gains. This risk is not limited to CBOs and their management only, but is shared by all sectors of Nepal’s civil society and politics. Past experiences in Nepal has shown that these risks have been minimized through a combination of approaches, including enacting proportional representation of socially and economically deprived groups in executive bodies of CBOs, enhanced transparency and accountability in decision making through participatory review processes, and open and transparent dispute resolution mechanisms. Nepal’s new Constitution has recognized the effectiveness of these principles and they have been used as guiding principles to minimize risks.

Numerous studies have analyzed the best practices of effective CBOs, which are distilled by Eleanor Ostrom in her Noble Prize lecture based on her work and that of many resource management experts over the last 50 years. These best practices have essential features as ensuring clear and locally understood boundaries between legitimate users and nonusers, while creating clear boundaries that separate a specific common- pool resource from a larger social-ecological system. They ensure that appropriation and provision rules are congruent with local social and environmental conditions, and that the distribution of costs is proportional to the distribution of benefits. They emphasize collective-choice arrangements, ensuring that individuals affected by a resource regime are authorized to participate in making and modifying its rules, while ensuring that monitoring individuals who are accountable to or are the users monitor the appropriation and provision levels of the users.

Individuals who are accountable to or are the users also monitor the condition of the resource, and provide for graduated sanctions, where sanctions for rule violations start very low but become stronger if a user repeatedly violates a rule. They include rapid, low-cost, local mechanisms for resolving conflicts among users or with officials and that there is a minimal recognition of user rights to make their own rules by the government.

Finally, these resource management principles work best when a common-pool resource is closely connected to a larger social-ecological system, and governance activities are organized in multiple nested layers. Following these design principles provides the core foundation that enhances the probability of long term success. (**See Elinor Ostrom, Noble Prize lecture 2009**). The authors remain convinced that while management practices of current natural resource and conservation CBOs can be improved and strengthened, these CBOs already are practicing many of the “best practices” and provide a strong foundation for future growth through effective monitoring and service delivery. The key lesson learned is “not to let the perfect be the enemy of the good”, retaining the skills and capacities of these functioning yet imperfect CBOs while encouraging future evolution and improvement.

Nepal is also one of the pioneer countries in adopting the landscape-level conservation approach involving multiple land use and stakeholders and multisectoral agencies to protect corridors that are crucial for regional landscape connectivity, congruity and wildlife movement. For example, the Terai Arc Landscape in the Terai connects 15 protected areas in Nepal and India within a landscape matrix totaling 51,000 km<sup>2</sup>. Similarly, conservation initiatives are ongoing in the Chitwan-Annapurna Landscape, Sacred Himalayan Landscape, Kanchenjunga Landscape, and Kailash Sacred Landscape. This approach benefits wide ranging species like tiger, rhino, elephant, and snow leopard as well as local communities through tourism, possible payment for ecological services, and access to forest resources.

Nepal's conservation successes have also had important economic benefits. A prime example is nature-based tourism. The Government records shows that 70.36% and 51.49% of total international visitors to Nepal spent time in a protected area or other nature-based tourism activities in 2015 and 2016. Over the period from 2006 to 2015 international visitor numbers to protected areas increased on average by 10% annually and revenue increased by 13% (Samarth-NMDP, 2016). These visitors spent ±US \$1.9 billion in 2017, about 6.8% of Nepal's national GDP and directly and indirectly, employ more than 1 million Nepalese (WTTC, 2018). This is roughly one of every 12 jobs in the country (ILO, 2017). Local level economic development of Sagarmatha National Park and Annapurna Conservation Area over the last 30 years demonstrates the power of nature-based tourism, transforming these mountain regions into economic engines of growth for local development.

Sustainable uses of forest products make important contributions to Nepal's economy. Some 40% of all Nepali families are dependent upon forest products. Forestry and forest coverage have improved from 29% of Nepal's surface area in 1994 to over 40.36% in 2017 (DFRS, 2015), providing subsistence needs such as timber, firewood, medicine, construction materials, mulch and composting materials for croplands and numerous other household and commercial benefits. Additionally, conservation is a key component of seven of Nepal's 15 SDGs, most explicitly in SDG 15.1(a) that sets a target of dense forest coverage at 45%.

Quantifying forests' contributions to national economy is complex. One study estimates that forestry directly contributes 9.45% to Nepal's GDP and provides full-time equivalent jobs for 9.23% of the economically active population (Pant, 2016). Another study states that forestry contributed US\$ 3.5 billion, or 19.52% of total national income (2013-2014). Healthy forests and protected areas provide agro-biodiversity, hydropower and ecosystem services like flood prevention, reservoir and landslide protection, and climate resilience.

### **THE ECONOMIC VALUE OF WILDLIFE**

Studies have shown that a live tiger is worth 2,000 times more than a dead tiger, based on the value of tourist visitors, food and lodging, guides, and other associated services. Studying 6 tiger reserves in India, a team identified and valued 25 different landscape and ecosystem services, using Millennium Ecosystem Assessment (MA) criteria. Their findings indicate that, while benefits ranging from US\$ 128 million to US\$ 271 million can be attributed to these tiger reserves annually, the actual stock value protected is estimated in the range of US\$ 344 million to US\$ 10.08 billion. They also observed that many benefits are delivered less at the local level and accrue at the national and global level. A large proportion of these benefits are intangible and have little "market" value, which is why their contribution to the economy often goes ignored (Verma et al. 2017).

Another study has shown that visitors are willing to pay significant wildlife premiums just for the opportunity to possibly see a snow leopard, another rarely sighted and vulnerable species. In that study, 49 % of visitors stated they would be willing to pay a "snow leopard conservation fee" in addition to the existing park entry fee, with the mean amount of US\$ 59 per trip (Schutgens, et al. 2018). The main reasons visitors stated for their willingness to pay was their desire to protect this species and its environment through an affordable fee. Another study found that the total projected willingness to pay by tourists to the Baghmara Buffer Zone Community Forest for the recreational and aesthetic services was US\$ 3,806,468 per year (KC, et al. 2013). Cost sharing needs to account for transactional costs related to technical support, fiscal oversight, etc.

Other cultural services and customary land uses argue for increased investments in conservation, which also often involve compliance with Nepal's international treaty obligations like the Convention on Biological Diversity (CBD), ILO 169 and other rights of indigenous peoples and local communities. These customary land uses, traditional practices, and cultural services are widely prevalent, particularly in mountain parks and protected areas. They are also both ecologically sound and contribute to local livelihoods and incomes. Although difficult to quantify, these resources and ecosystem functions are important features supporting a prosperous nation and its conservation strategy.

## **New legal framework**

The **new constitution and legislation to follow will have far-reaching consequences on all aspects of governance** in the country, including governance related to protected areas and natural resources. This segment highlights sections of the Constitution of Nepal relevant to the relationships between different levels of government and articles specifically related to conservation and the environment. It examines powers of different government levels with respect to policy-making, management, revenue generation, and benefit sharing around protected areas and natural resources. It highlights what is clear in terms of these powers and what remains unclear and yet to be resolved

### **The Constitution on the relationship between different levels of government**

Nepal's new **constitution of 2015 fundamentally transforms the country from a unitary political structure to a federal system**. It establishes three spheres of government, i.e. at the federal, provincial, and local levels. Each level enjoys certain exclusive powers, which are enumerated in Schedules 5, 6, and 8 of the constitution. Exclusive powers can be exercised by the respective level by enacting laws that are consistent with constitutional provisions. Concurrent powers shared by the Federation and Provinces are listed in Schedule 7 and that shared by the Federation, Province and Local Levels are listed in Schedule 9. While using the powers provisioned by Schedule 7 and 9, new provincial and local laws should be consistent with the Constitution and Federal laws.

Article 232 of the Constitution, which addresses the relations between the three spheres of government, makes clear that the levels are not hierarchically related; rather, relations should be based "on the principles of cooperation, co-existence and coordination." **Each level has multiple exclusive powers which they are entitled to exercise independently**. Meanwhile, cooperation and coordination between the levels is clearly needed to implement the Constitution by resolving any outstanding issues that may arise relating to concurrent powers. Resolving outstanding issues will not be easy. Article 234 of the constitution has a provision for formation of inter-provinces councils for taking up this challenge.

The principles of Cooperation, Co-existence, and Coordination are particularly important given that approximately 320 laws that must be amended and 120 new laws that must be enacted by 4<sup>th</sup> March 2019 in order to fully implement constitutional provisions and address overlaps and contradictions brought forth by the new constitutional provisions (Bajimaya, personal communication, 2018). Some existing laws may also be repealed. The Unbundling Report and subsequent Government of Nepal Regulations 2018, Provincial Government Regulations 2018, and Local Government Operation Act 2017 (LGOA) have attempted to clarify the roles and responsibilities of each government level, but the process of delimiting each level's powers is still underway. Table 1 below shows federal, provincial, local and concurrent powers related to various categories of protected areas, as defined by the constitution and the above-mentioned laws.

PA categories	Federation powers	Provincial powers	Local Level powers
<b>National Parks, Wildlife Reserves, Wetlands</b>	Policy, Law and Standards; Plans; Management		Human-wildlife conflict management; maintenance of wetland records
<b>Conservation Areas</b>	Policy, Law, Standards and Plans	Management	
<b>Buffer Zone</b>	Policy, Law and Standards		BZ forest management (community, leasehold and religious forests)
<b>Local-level conservation areas</b>			Formulation and implementation of policy, law and standards and plans related to local biodiversity conservation  Management and utilization; Maintaining records of biodiversity and wetlands
<b>Wildlife and birds (zoos and biological gardens)</b>	Policy, law and standards	Management	Policy and monitoring of wildlife farming and birds; Trophy management; wildlife-based tourism and incomes  Local level zoo management
<b>International treaties</b>	Formulation and implementation of policy, law and standards as required by each multilateral environmental agreement		Implementation

**Table 1:** Exclusive and concurrent powers of the Federation, Province, and Local Level related to various categories of protected areas (Unbundling Report 2018)

## The Constitution on conservation and the environment (general principles)

The principles of equity and access are fundamental rights guaranteed and are embedded in all aspects of Nepal's new Constitution. Recent decisions and amendments to different bodies charged with implementing the Constitution clarify that decision-making authority at the policy level remains consolidated at the Federal level and will apply to all current and future international treaties and conventions. Implementation and enforcement of policies is divided among the three different levels according to different functions as described in other sections of this report. The management function table (Table 1) illustrates this in more detail. Implementation challenges remain, particularly for several key international obligations such as compliance with ILO 169 provisions, as there remain a number of different interpretations of the meaning of these provisions depending on the viewpoint of the readers. These challenges existed prior to devolution and remain issues for Nepal's civil

society to resolve over time through practice, trial and error, and Adaptive Management. Detailed analysis of these implications is outside the scope of this study, and is worthy of a series of separate special policy papers.

The constitution recognizes the importance of environmental conservation and protection. The constitution guarantees the right of every person to live in a healthy and clean environment as a fundamental right (article 30 (1)). The Constitution also guarantees the fundamental right to get compensation for the damage caused by environmental pollution or degradation as prescribed by law (article 30 (2)). However, this right to get compensation does not prevent making legal arrangements to create a balance between the environment and the development work of the nation (article 30 (3)). Fundamental rights are enforceable. Clause (g) of Article 51 of the Constitution requires all three spheres of the government to protect, promote and use available natural resources of the country in an environmentally sustainable manner in consonance with national interest, by adopting the principle of intergenerational equity and distributing the results (fruits) judiciously and according to priority and preferential right to local communities (article 51 (g) (1)). The benefits of natural resources use will be distributed “according to priority and preferential right to the local communities.” Unlike fundamental rights, Article 51 provisions are directive principles, and thus, not enforceable.

Sub-clause 5 states that the government will conserve and make sustainable use of forests and biodiversity by “mitigating possible risks to environment from industrial and physical development.” The new Constitution of Nepal (sub-clause 6) simply calls for maintaining “the forest area in necessary lands for ecological balance (Article 51(G-6). Nepal’s Sustainable Development Goals 2016-2030, however, has a target to maintain 45% of forest cover. Sub-clauses 7 and 8 of Article 51, Clause (G) further reinforce the government’s commitment to the protection of the environment and biodiversity, and guides the government to adopt principles of ecologically sustainable development practices, such as the “polluter pays” principle, the precautionary principle, and prior informed consent in environmental protection. Had some of these state policies been included under the fundamental rights, these would have been binding to the federation, provinces and local levels.

## **The Constitution on equity**

The Constitution promotes equity according to the principles of inclusion and proportional representation. It also seeks to consolidate national unity by eliminating “all forms of discrimination, exploitation and injustice,” and to maintain “social cohesion, solidarity and harmony by recognizing cultural diversity” and to abolish economic inequality through equitable distribution of gains. In the conservation field, many of these principles have been practiced for some time already. For example, the Buffer Zone and Conservation Area Regulations have provisions for at least 33% of female representation in all CA and BZ institutions and make it mandatory to have representation of marginalized groups like Janajatis and Dalits.

## **Powers related to conservation policy**

The table above makes it clear that the federation will continue to be responsible for policies, laws, and standards related to most protected areas. The signing and adoption of international conservation-related treaties also remains with the federation. Nepal is already party to around 30 international treaties and conventions related to biodiversity conservation, indigenous rights, and species conservation. Thus, with regard to policy-making, there has

been little devolution of powers in the conservation field. The local levels are required to implement the national obligations related to international conventions and treaties.

However, there are a couple of exceptions. Local governments now have policy-making powers for local-level conservation areas. These are areas that are designated by local governments, such as locally important wetlands, remnant forests, or sites of historical interest. Local governments also share powers with the federation for policy related to wildlife and bird farming.

## **Powers related to management of protected areas and the environment**

In contrast to powers over policy making, the new constitution and accompanying laws spell out some important changes regarding the management of protected areas.

One important change is in the management of conservation areas. Previously, under the third amendment to the NPWCA in 1989, this responsibility lay with the central government, although the center reserved the power to delegate management to a third party. Thus, in the Annapurna, Gauri Shankar, and Manaslu Conservation Areas, management responsibilities were delegated to the National Trust for Nature Conservation (NTNC), a national non-governmental organization. The Kanchanjunga Conservation Management Council (KCMC), a locally elected institution, has managed the Kanchanjunga Conservation Area. Now, the constitution accords management responsibility for conservation areas to provincial governments, which may or may not choose to continue delegating management responsibilities to NTNC and the KCMC (their path forward is uncertain, as will be discussed below).

Buffer zone management appears to be changing. To date, Buffer Zone Management Council (BZMCs), whose members are elected by local communities, have served as an umbrella organization for various institutions, such as BZ User Committees and User Groups, found inside BZs. BZMCs are responsible for collaborating with the parks/ reserves and local institutions to develop and implement five year and annual programs and projects which are focused on achieving conservation objectives as well as improving the local livelihoods. Under the new framework, jurisdiction of buffer zone and local governments overlap. The management of buffer zone has been shifted from the national park (central government under previous arrangement) to the local level. The local governments have the management powers over buffer zone community, leasehold and religious forests as shown in Table 1.

Management of buffer zone forests is also changing. BZs include three forest types: buffer zone community forests (BZCFs), leasehold forests, and religious forests. Under the previous system, national parks and wildlife reserves oversaw buffer zone forest management but this responsibility now has been transferred to the local Level. Buffer zone forests are similar to forests managed by community user groups. Leasehold forests inside the buffer zone are managed by the buffer zone communities and the park in practice. There is, however, no provision of managing leasehold forests in the BZ Management Regulations 2052.

The provinces also now have the power to manage zoos and botanical gardens, which were previously managed by the central government.

The constitution and especially the Local Government Operation Act 2017 has also devolved powers for managing wildlife trophies and wildlife parts, and for maintaining records of wetlands, biodiversity and wildlife to the local level.

Management of national parks, wildlife reserves, and Ramsar sites will see few changes. Responsibility for national parks and wildlife reserves will remain with the federal government, which to date has managed these areas through the Department of National Parks and Wildlife Conservation (DNPWC), under the Ministry of Forests and Environment (MoFE). Management of Ramsar sites will also remain under the purview of the federal government. Ramsar sites have historically been managed by the DNPWC or the District Forest Office (DFO), depending on their location inside or outside national parks and wildlife reserves.

The Local Government Operation Act 2017 does make one important change related to national parks and wildlife reserves: human-wildlife conflict management is now the responsibility of the local government. However, it is unclear whether this includes the management of relief and compensation for when wildlife destroys crops or property, or harm or kill local people, or simply the mediation role between wildlife victims and the protected area authority to access relief and compensation support. If local government is responsible for relief and compensation, it is unclear whether the local government will have powers to generate funds for this purpose or whether this will continue to be funded through the federation budget and structure.

## **Powers related to revenue raising and benefit sharing**

The new legal framework makes some drastic changes to powers relating to revenue collection and benefit sharing in relation to natural resources. There remains much lack of clarity.

Article 59 (4) of the Constitution states that “The Federation, State and Local level shall provide for the equitable distribution of benefits derived from the use or development of natural resources. Certain portions of such benefits shall be distributed, pursuant to law, in forms of royalty, services or goods to the project affected regions and local communities.”

The Constitution establishes a National Natural Resources and Fiscal Commission (NNRFC), which has been entrusted to develop a revenue sharing mechanism covering five different sources – mountaineering, electricity, forests, mining and water and natural resources.

The revenue comprises three categories – tax, non-tax and royalties. For example, VAT and excise duty are tax, and the tourism fee is non-tax. Royalties include five sources, i.e., mountaineering, electricity, mines and minerals, water and other natural resources. What is clear is that the Intergovernmental Fiscal Management Act (IGFMA) has allocated 50% of revenue to the Federation, 25% to the Provinces and 25% to the Local Level. Similarly, clause 6.2 of IGFMA states that the federation will keep 70% of tax, and the remaining 30% will be split equally between provinces and the local levels. The revenue sharing arrangements of non-tax such as tourism fees which fall under the jurisdiction of all three spheres of the government is not clear, and needs to be resolved.

The Intergovernmental Fiscal Management Act 2017 has identified four types of grant. First, the "fiscal equalization grant." This grant is determined based on the revenue generation capacity and expenditure needs of provincial and local governments. It is also provided to address social equity and justice. For example, poor provincial and local governments with a high number of disadvantaged groups will receive a higher share of equalization grants. Second, the "conditional grant." This grant is provided to provincial and local governments to implement projects financed by the federation. Third, the "complementary (matching) grant." This grant is provided to the provinces and the local levels to implement infrastructure

development projects like local roads. Fourth, the "special grant." This grant is provided to provincial and local governments to fund projects such as the improvement of health or education services or livelihood support for disadvantaged groups. There is a constitutional provision that requires provinces to provide these four types of grants to their local levels as well.

It is not clear whether NNRFC will have the power to manage the revenues from national parks, wildlife reserves, or BZFs. If it does, then the Intergovernmental Fiscal Management Act 2074 states that the federation will receive 50%, while the provinces and concerned local levels will each receive only 25%. This would be a drastic change from current policy. Currently, in accordance with the Buffer Zone Regulation 1996, between 30%-50% of national park and wildlife reserve revenues are returned to buffer zones for local conservation and development purposes.

On the other hand, the Local Government Operation Act has given local governments the power to collect wildlife-based tourism revenues. Revenue collection and benefit sharing in conservation areas may also see changes under the new setup. To date, the federal government has delegated NTNC to collect entry fees from tourists for trekking or otherwise using conservation areas under its management. In Annapurna, Manaslu, and Gaurishankar conservation areas NTNC has the right to retain 100% of these revenues for management of the conservation area. In other conservation areas such as Kanchanjunga and Api Nampa, between 30-50% of revenues are reserved for local management use. As provinces are responsible for management of conservation areas, they are likely to collect conservation area revenue. There are two issues. First, whether provinces will manage conservation areas by themselves or will continue with existing management arrangements, i.e., delegate management responsibility to a conservation-focused institution such as NTNC is not clear. Second, if provinces are responsible for collecting entry fees for conservation areas, then how much would be applied to the direct management of conservation area is also not yet clear.

## **Potential challenges, opportunities, and ways forward**

Much remains to be done to implement the devolution of powers related to protected areas, and conservation more generally, as outlined in the constitution. Because powers, roles, and policies related to conservation are not yet set in stone, there remain opportunities to negotiate, innovate, and experiment. However, there are also potential pitfalls. This section discusses the challenges, potential ways forward, and opportunities for the conservation sector under the new legal framework.

### **Clarifying roles and responsibilities**

Clarifying the roles and responsibilities of various levels of government, as well as CBOs, is essential and will require formal amendment or revision of many laws, rules and regulations. Lack of clarity is likely to be especially problematic where funds and fund transfers are involved. Even where the laws are clear, this study has found that many government officials and representatives from the local, provincial, and federal governments do not fully understand them, and often perceive their own powers as being more extensive than they actually are.

In general, addressing this problem will require proactive efforts to inform the involved, key decision makers and policy makers. This effort could start by highlighting those areas of

relative clarity within the new laws, such as the power to create policies related to conservation. Regarding areas where the law itself is presently unclear, efforts could be made to ensure policy-makers and the public understand the importance of key constitutional principles like subsidiarity and particularly the importance of Coexistence, Coordination, and Collaboration between the different levels of government. Ensuring a common understanding of underlying terminology and concepts through media familiarization and discussion programs would be both invaluable and inexpensive.

There remain countless legal and governance ambiguities and challenges abound. Some 120 new laws to create and approximately 320 laws are requiring amendment. The Ministry of Law, Justice, and Parliamentary Affairs and the different line Ministries are working frantically at this on-going process. Our report highlights a number of areas of confusion. Resolution of these matters remains jurisdictional and management responsibilities of the appropriate agencies. Provision of explicit recommendations on individual laws is outside the scope of this study, and our intention is only to highlight areas of overlapping, confusion, concern, and priorities for action.

Most experts interviewed during the course of this study expect this process to be time consuming and some of the issues can also be contentious. Experts predict that the first five years of constitution implementation will be messy and challenging, and these are likely to spark lively civic debates. This is an inevitable consequence of the decision to use a “Big Bang” approach to implementation of Federalism, where all stages of devolution are expected to happen simultaneously without much thought on the transitional management.

## **Avoiding “pulling up” conservation-related management powers**

Although the constitution has set the stage for the devolution of powers in many realms, paradoxically, the **new legal framework may be used to “pull up” powers for protected area management away from CBOs**, which have hitherto shouldered this responsibility, placing local or provincial governments in charge instead. Keeping in mind the principle of subsidiarity, roles for CBOs should be maintained, while potential conflicts between the CBOs and government bodies should be resolved through cooperation, negotiation and dialogue.

In the buffer zones, the constitution has given management responsibility to local governments, but the new management structure needs to be finalized. **The role of existing management institutions, such as local buffer zone community forest user groups, buffer zone user committees and the buffer zone management committees, is presently unclear.** Some municipalities have already taken steps to dissolve community forests user groups operating under their jurisdiction, and this has raised concern about the future of community forest and buffer zone forest user institutions, a globally acknowledged Nepali conservation innovation.

In conservation areas, the constitution has given management responsibilities to the provinces. Although previously held by the central government, the responsibility had been delegated to NTNC and KCMC, whose future roles are now uncertain. The study team learnt during the field visit to the Annapurna Conservation Area that the Annapurna Rural Municipality had issued letters to ward representatives to form new forest management committees to replace conservation area management committees, creating confusion and uncertainty about roles of existing conservation area institutions as well as of new institutions.

The **transfer of management powers raises questions related to capacities**. CBOs have been managing forests and buffer zone resources for many years. What is more, CBOs are well-equipped to enforce management rules because their members are well informed about the state of resources and infringements, and they are strongly motivated for the management regime to work, as academics like Elinor Ostrom have demonstrated (Ostrom 1990). Likewise, NTNC and KCMC have developed close working relationships with conservation area communities and have decades' experience in managing for conservation and development objectives. By contrast, local government bodies and provincial governments are new, and they are not tested. Along with other responsibilities, natural resource or biodiversity management experience is a new area of engagement for them. Because they represent the broader community beyond immediate resource users, these governments are not as well-positioned as CBOs to enforce natural resource management rules.

**To the extent possible, roles for CBOs in management should be preserved, and/ or partnerships between CBOs and local governments should continue and be strengthened** so that trained and experienced institutions and communities can continue to fulfill an important niche and play a key role in sustainable resource utilization. Targeted training, capacity building, and aligned institutional arrangements will help overcome this critical gap but will require investments of time and money.

## **Maintaining existing financial incentives for conservation and establishing new ones**

As with management powers, the **new legal framework has left open the possibility that conservation-related revenue collection responsibilities and benefit distribution could be “pulled up” from local communities to the local and provincial levels** of government. This risk is evident across the different types of conservation area. National park and wildlife reserve revenues - 30%-50% of which have historically been ploughed back into buffer zones - could now be divided among the federation, provinces, and local governments on a 50%-25%-25% basis, depending on interpretation of the NNRFC's powers. In buffer zones, BZF and other forest royalty-based revenue on natural resource extraction - hitherto retained 100% by CFUGs – could be collected by the federal government and divided on the same basis. BZF revenue from wildlife-based tourism revenue - 100% of which BZCFUGs also retained – could now be collected by local governments. When local governments collect their share of BZ funds, it is unclear whether they will treat them as additional revenue for the whole constituency, or whether they are for special use in those parts of their jurisdictions in the buffer zone alone. Most importantly, in conservation areas, tourist entry fees and other fees - previously collected by NTNC retained at the local level - may be collected by provinces.

Provinces may also take over the collection of tourism fees such as to Upper Mustang and Upper Dolpo from the Department of Immigration. Tourism fees have been the main source of funds for the operation of conservation areas and conservation agencies such as NTNC. While providing strong incentives for local conservation, these fees have not always trickled down to the local level, as in the case of Upper Mustang Tourism fees, and have created conflict in the past.

Changes that return **fewer funds to the local level in conservation areas could engender conflict and reduced "grassroots" oversight or responsibility**. Some user groups, particularly around Chitwan and Bardia National Parks, have been very successful in operating eco-tourism programs with substantial incomes. These user groups are likely to resist changes that give them a smaller portion of benefits.

Moreover, such changes could lead to negative outcomes for conservation by “**de-incentivizing**” behaviors that have led to improved forest management, expanded forest coverage, and achieved zero poaching rates through community anti-poaching patrols, etc. Communities living around protected areas have higher costs as compared to other communities: their lives, crops and property are at risk of damage or loss due to wildlife, and they also have reduced access / rights to natural resources. The buffer zone and conservation area programs were developed to address these issues through ensuring revenues from conservation are returned to local communities for their welfare and development.

Meanwhile, **local and provincial governments may feel pressure to over-exploit natural resources to raise revenues.** Local political leaders are enthusiastic and often assertive, and they are under extraordinary pressure to produce results and satisfy constituents’ expectations. While local government bodies appear to have sufficient resources this year, they are very likely to face funding shortfalls in future years, according to World Bank reports that predict inadequate funds transfer from the center to the provincial and local levels (World Bank, Sept 2017).

While the Constitution grants some revenue generating powers to these new levels of Government, the **actual potential to raise funds will be limited by the natural assets and population base available within each jurisdiction.** This will put additional pressures on the poorest and most fund-deprived jurisdictions, likely forcing newly elected officials to seek to raise funds from all assets and sources in their boundaries. Elected representatives interviewed for this study mentioned potential royalties from natural resources such as sand, pebbles, and aggregate mining, as well as leasing of public lands for hotel use (in Annapurna Rural Municipality) and a drinking water factory (Gosaikunda Rural Municipality). They seemed less worried about potential environmental impacts of such activities in the long run. This apparent “extract now, pay later” mentality is likely to increase in the future with potentially disastrous environmental outcomes.

In order to address these problems, local governments should be encouraged to allocate adequate financial resources for conservation. The 50%-25%-25% distribution of royalty revenues between the federal, provincial and local levels should be re-examined reflecting community needs and challenges. In cases where local governments have gained revenues previously retained by BZ-based CBOs, local government should be encouraged to ensure that these funds return to BZs where they are most needed.

Additionally, Section 7.2 of the Inter-Governmental Fiscal Management Act indicates that distribution of natural resource revenue will prioritize those areas where the resources were extracted. This arrangement could lead to inter-provincial and inter-local level imbalances for resource transfer, because sub-national bodies that have few resources will receive fewer funds. The equalization grant, however, can be used to address this problem by factoring in this issue while designing formulas for equalization transfer.

Some experts suggested that the government should include criteria under the Fiscal Commission’s “special funds” grants to encourage conservation. One interviewee stated: “*While dealing with protected areas you need to have a tailored policy. One single policy or a flat approach will not work*”. Another option would be to create another “conservation grant” category to fund conservation initiatives. However, this could be difficult because the constitution has clearly mentioned only four types of grants.

Finally, it will be important to amicably resolve any disputes between local governments and CBOs arising from changing financial powers. Dialogue and negotiation between the user groups and the newly elected officials will be essential to avoid lasting conflicts. With

approximately 30% of newly elected leaders with experience as community forest user group members and leaders, hopefully compromise solutions can be developed without disrupting functioning user groups.

Devolving power without dissolving these functioning local institutions is in the local leaders' best interest, for political self-preservation as well as to ensure a sustainable resource base, prosperity and ecological and environmental stability. The strong functioning of these local user groups, buffer zone bodies (BZCF, BZMC, etc) and conservation area groups (CAMCs, etc) is critical for economic and environmental health at local and national levels, as well as for continued political support to these newly elected leaders from their base.

If strong relationships can be built between CBOs and local governments, then the new framework could potentially even lead to better conservation outcomes. In an interview, the Federation of Community Forest Users Nepal's chairman said that locally elected representatives could be more efficient in providing forest related services than District Forest Offices have been in the past. He pointed out that *"many local government representatives are our friends (over 2000 former members of FECOFUN now have been elected in the local government) and we can work together. We can embrace each other and wrestle to get the forest sector on track for community benefits."*

## Emphasizing conservation and prosperity

In 2017, a Left Alliance won the national and provincial-level elections in a landslide, campaigning on a platform of **"prosperity through stability."** The focus on prosperity was popular as Nepal remains Asia's second-poorest country, with large portions of the country still reeling from the 2015 earthquakes, which destroyed infrastructure and lives. Electricity and road access remain woefully inadequate, and lack of opportunity at home drives millions of young Nepalis to seek work abroad each year.

But discussions around **prosperity have focused largely on infrastructure and physical development, neglecting a more holistic approach** that includes human capacity building, resource conservation and management, and creating sustainable livelihoods, all integral to sustainable development. This attitude is prevalent, and during field consultations some recently elected officials suggested increasing economic activities in environmentally sensitive tourist regions, taking over management of private sector factories and taking over community forest management to increase revenues. There is also a **sense of competition amongst new provinces to attract investments from private sector for mega-scale projects**. This focus on increasing local revenues without considering environmental costs, or potential impacts on tourism is widespread. Recent media articles describe local officials whose first actions are to purchase bulldozers to build roads with GON funds, with little or no consideration of the associated environmental impact.

Developing project selection criteria that balances development priorities with intangible factors like environmental, cultural and social well-being elements is needed. Utilizing a **"pay forward"** concept could help integrate conservation into the regular development planning process, given conservation's past economic contributions. Such a recommendation is consistent with international trends, as IUCN is working to strengthen ecosystem benefits and "green" listing of biodiversity benefits.

Meanwhile, many long-time conservationists have not adapted their justifications for conservation, continuing to argue that conservation is inherently important without recognizing the pressure local officials may feel for rapid infrastructure development from their voters and constituents. Targeted capacity building efforts and developing simple, clear project selection criteria that link conservation and development activities are needed,

highlighting the potential contribution conservation can make to Nepal's local and national economic development.

## Other issues

In order to conform to the new constitution, **several existing laws on conservation management will need to be amended.** For example, the existing NPWCA will need to be amended to reflect the fact that conservation area management now falls to the provinces. One option would be to create a separate act or regulations for conservation areas, to make them clearly distinct from national parks and wildlife reserves. Previously, the inclusion of conservation areas under the NPWCA has created confusion and concern in local communities, who feared that conservation areas may eventually be turned into national parks and impose restrictions upon them. During the field visit, conservation area management committee and tourism management committee members in Ghandruk raised such concerns, despite over 30 years of experience with the conservation area.

**Devolving management of human-wildlife conflict to local governments offers great potential.** However, the effectiveness of the new policy depends on how quickly and resourcefully (whether the amount provided reflects the market value of loss of livestock to wildlife) the local government can **deliver relief and compensation support to wildlife victims.** Currently local governments have not received additional budget from the federation for this purpose and it is also unclear whether they can access the park revenue or BZ fund. Not only do the shared benefits change, the power to open and operate local bank accounts changes, impacting how quickly funds can be disbursed in cases of human wildlife conflicts. Locally operated bank accounts have potential to be more responsive to urgent and time bound local needs.

Unlike other services such as health, education, agriculture and livestock, **the budget to take up additional responsibilities associated to protected areas has not been transferred to the local government.** During field visits, elected representatives confirmed that they have not received any additional resources to address protected area related issues. They also expressed their limitation to take up new responsibilities under the current set-up. They opined that they should be given the funds given to buffer zone to take up added roles and responsibilities effectively. *'We are expected to clean-up elephant's dung but we have no access to the park's tourism revenue'* said one interviewee. Loss of buffer zone funds without adequate resources to fill the financial gap, therefore, can be counterproductive to conservation efforts to date.

The purpose of devolving responsibility for maintaining records of wetlands to the local level is unclear. With no other involvement in management of these areas, local governments do not seem well-positioned for this role.

The province is now responsible for managing zoos and botanical gardens. The local level can also manage zoos at the local level. These added responsibilities have already created some conflicts. For example, there is speculation that management of the botanical garden at Godavari will be given to a private firm. While developing a public-private partnership presents a promising avenue to explore further, handing over the management responsibility to a private firm without proper checks and balances can backfire in long run. A renowned botanist who had a long association with the Godavari Botanical Garden expressed his concern and said that *"...if the government gives away its responsibility to manage the botanical garden of international significant to a private firm which seek profits...it is matter of time that commercial interests will start to override those of conservation."*

Local governments are also responsible for developing wildlife and bird farming policies. This responsibility was previously held by the central government, but the field has not developed. Devolving policy powers to the local level may allow greater opportunity for the private sector to invest in these fields. However, this is a sensitive area and thus requires well developed procedures and monitoring mechanisms to reduce potential risks.

**Revenue sharing arrangements for non-tax is not clear.** For example, the tourism fee is under the concurrent jurisdiction of the local, provincial, and federal governments. This may have been the reason why Khumbu Pasang-Lamu Rural Municipality in Solukhumbu district to levy the tourism fee to trekkers in addition to the park entry fee a few months ago. The federal government has banned the municipality from collecting additional fees from trekkers, but the likelihood of conflict between different levels of government over taxation remains high. If tourists are charged extra for no tangible benefit, it is likely to impact their motivation and may result in a revenue shortfall. The entry fee represents almost over 85% of the protected area revenues in the Sagarmatha National Park, Chitwan National Park, and the Annapurna Conservation Area. Whether the tourism fee is considered as non-tax and shared with the federation is not clear.

## Broader lessons relevant across sectors

While impacts of these new federal government structures on conservation were examined in depth, more **general findings also emerged, applicable to many sectors of Nepal's development economy.** These lessons learned include the need for greater **emphasis on dialogue and negotiation**, to implement the three core constitutional principles of **Coexistence, Coordination, and Collaboration**. Given the capacity gaps within existing GON Ministries (**horizontal gaps**) and the gaps in capacity between the three spheres of Government (**vertical gaps**), this will require significant investments in training at all three spheres of government as well across existing ministries, starting with basic constitutional literacy. Ironically, many locally elected leaders appear more familiar with different constitutional clauses and recently enacted laws than the central ministry officials are. It was not unusual to see them with copies of laws and citing different clauses during interviews and discussions. In contrast, central line agency ministry bureaucrats were more inclined to see few operational changes and advocate a “business as usual” approach. Such bureaucratic resistance to inevitable changes is normal, but will require investments and energy to overcome.

A core finding is the need to “**Devolve, but don't Dissolve**”, particularly to retain the experience and expertise gained by different community-based organizations and individuals over time. Devolving authority without undercutting or undermining these locally active and effective institutions such as CFUGs, BZMCs, CAMCs, mothers' groups, saving and credit groups, community-based anti-poaching units (in Tarai national parks), female community health workers and community managed schools is urgent.

A worrying finding was that several locally elected officials saw only the material assets of such institutions as community forests, or tourism management committees and proposed taking over management to gain access to the revenues generated from these sources. **The human and institutional capacities of these organizations were overlooked.** Such omissions will likely lead to wasted resources, duplication of efforts, loss of many organizational, institutional and non-materials gains and ensuring conflicts. Many of these community organizations currently retain more direct economic benefits than they would under rearranged management structures where revenues would now flow to the local level instead of to the user groups. Trying to capture these resources at the local level could lead to contest and confrontation, and possibly a loss of political power, undesirable outcomes for

both society and for individual elected politicians. The partnership between the local government and CBOs, therefore, is crucial to minimize likely conflicts. Building and strengthening partnerships with CBOs should be one of the key policy pillars of the local government.

Partnerships also need to be developed with the private sector. Nepal has a long history of private sector engagement in protected areas. The private sector played a significant role in providing various tourism related services and these have made protected areas as major tourism destinations in the country. The provincial and local governments should continue to explore mutually beneficial public-private partnerships as tourism concessionaires or conservation partners. The capacity of provincial and local governments should be built so that they can effectively negotiate commercial and conservation interests for long-term sustainability.

In conclusion, the transition from a unified government structure to a devolved sub national government structure presents Nepal with many exciting challenges and opportunities. Devolution is proceeding rapidly, outpacing the rate that new laws can be developed and exceeding the capacities of newly elected government officials and understanding by officials of the pre-Federalism government structures as well. Nepal faces numerous challenges and gaps in clarity of both function and structure of these new sub national government levels. Despite these gaps, Nepal has the opportunity to strengthen its commitment to implementing participatory, inclusive and sustainable democracy if a few steps are followed.

The following recommendations summarize the analysis and findings presented throughout the report and are provided here to rapidly recap key lessons learned.

**First**, Nepal should devolve without dissolving, retaining the function and skills of existing community-based organizations. We argue that policy makers should build on Nepal's globally recognized long and proven experiences of grass root institutions such as community based organizations (CBOs) and any attempt to dismantle these institutional achievements should be vehemently discouraged. Some innovative and coordinated measures have to be devised to mainstream the CBOs with the new governance system to avoid confusion and misunderstandings but building on their institutional capacity in effective monitoring and service delivery to the community. These institutions have played significant roles in advocacy and institutionalization of democratic processes and inclusive practices in natural resource governance for decades and this institutional capacity built over years should be retained for sustained conservation and prosperity.

This concern is based on empirical evidence of evolving trends. For examples, some of the local governments of Tanahu and Kaski districts have already taken steps to dissolve existing Community Forest User Groups and Conservation Area Management Committees in ACA, respectively, with intentions either to consolidate their authority or to capture revenues from natural resources. Community Forest User Groups of Dovan in critical corridor of Tarai Arc Landscape raised their concern over sharing of forest revenues with the local government and impact this may have on effectiveness of community forests as institutions.

These institutions are not without their own limitations, however. The most commonly cited risk of failure or under-performance are 'elite capture' and 'politicization', where the most powerful members of a given community use either their wealth or social capital or political alliances to consolidate power and authority over resource use decision making, often for individual gains. This risk is not limited to CBOs and their management only, but is shared by all sectors of Nepal's civil society and politics. Past experiences in Nepal has shown that

these risks have been minimized through a combination of approaches, including enacting proportional representation of socially and economically deprived groups in executive bodies of CBOs, enhanced transparency and accountability in decision making through participatory review processes, and open and transparent dispute resolution mechanisms. Nepal's new Constitution has recognized the effectiveness of these principles and they have been used as guiding principles to minimize risks.

Numerous studies have analyzed the best practices of effective CBOs, which are distilled by Eleanor Ostrom in her Noble Prize lecture based on her work and that of many resource management experts over the last 50 years. These best practices have essential features as ensuring clear and locally understood boundaries between legitimate users and nonusers, while creating clear boundaries that separate a specific common-pool resource from a larger social-ecological system. They ensure that appropriation and provision rules are congruent with local social and environmental conditions, and that the distribution of costs is proportional to the distribution of benefits. They emphasize collective-choice arrangements, ensuring that individuals affected by a resource regime are authorized to participate in making and modifying its rules, while ensuring that monitoring individuals who are accountable to or are the users monitor the appropriation and provision levels of the users. Individuals who are accountable to or are the users also monitor the condition of the resource, and provide for graduated sanctions, where sanctions for rule violations start very low but become stronger if a user repeatedly violates a rule. They include rapid, low-cost, local mechanisms for resolving conflicts among users or with officials and that there is a minimal recognition of user rights to make their own rules by the government.

Finally, these resource management principles work best when a common-pool resource is closely connected to a larger social-ecological system, and governance activities are organized in multiple nested layers. Following these design principles provides the core foundation that enhances the probability of long term success. (**See Elinor Ostrom, Noble Prize lecture 2009**). The authors remain convinced that while management practices of current natural resource and conservation CBOs can be improved and strengthened, these CBOs already are practicing many of the “best practices” and provide a strong foundation for future growth through effective monitoring and service delivery. The key lesson learned is “not to let the perfect be the enemy of the good”, retaining the skills and capacities of these functioning yet imperfect CBOs while encouraging future evolution and improvement

**Second**, pre-federal Nepal has developed a number of innovative benefit sharing mechanisms with community-based organizations and these should be retained to the fullest extent possible as they have been field tested and adapted over the last 2-3 decades and are also globally recognized for their contribution to conservation and development.

**Third**, Nepal has prospered locally and nationally through a number of innovative conservation and natural resource management mechanisms. Training local and provincial elected leaders in techniques to mainstream conservation, ecological and environmental health into their evolving development planning structures, policies and laws, will help them capitalize and build on these considerable assets and expand their contributions to local and provincial economies.

There is an urgent need for greater integration of conservation principles and approaches into definitions of prosperity, and training of newly elected officials in their understanding and use, as well as to initiate dialogue amongst stakeholders on likely implications of constitutional provisions in relation to protected area management. Training is needed in all sectors and at all levels of the new government structure including the pre-federalism Ministry officials. Civic and management training topics ranging from basic Constitutional literacy, understanding the management functions of newly formed government bodies (such

as the National Nature Resources and Fiscal Commission), and strengthening the administrative and financial capacities of each level to perform their new functions. Governance function training will also be required with special emphasis on priority setting for development planning, transparent decision-making and public communication, establishing and managing dispute resolution mechanisms at all levels, and other governance issues such as equitable benefit sharing.

All levels of government will also require specialized training in new skills dealing with the private sector, including transparent proposal evaluation and bid tendering processes, negotiation and mediation skills, evaluating cost effectiveness, cost benefit analysis, implications of short and long-term financing terms and conditions and financial risk assessment among other topics. A partial listing of technical training topics includes basic conservation and biodiversity awareness and definitions, importance of conservation in long term prosperity, the role of CBOs, economic valuation of conservation projects, use of the concept of total economic valuation (TEV), linkages between conservation and economic benefits, managing and evaluating human-wildlife conflicts and their compensation mechanisms, sharing of conservation benefits and tourism management.

**Fourth**, greater emphasis on integrating conservation, well-being and ecological/environmental health into definitions of prosperity is needed through targeted training, as Nepal has already demonstrated that it is possible to conserve and prosper simultaneously. We recommend using the “pay forward” concept when developing different training components. This concept has been successfully applied by different Government of Nepal Ministries, most notably by the former Ministry of Health and Population, who uses it to calculate how to proactively respond to the changing demographic pyramid that Nepal is likely to experience.

Anticipating a bulge in the number of Nepalese who will be under the age of 15 in coming years, the Ministry has decided to invest greater resources in this emerging proportion of the populations, recognizing that these investments now will pay off in terms of reduced needs in the future. It is a form of using analytics to predict future trends and make investments in behavior change while the costs remain smaller. Applying a variation of this principle for making investments in conservation now, with the expectation of greater returns on investment in the future in the conservation sector is suggested. This also provides an opportunity for institutional learning across different technical sectors, a sector of Nepal Government function that remains underutilized and untapped.

**Fifth**, one of the aims of the equalization transfer should be to off-set inter-provincial and inter-local level imbalances that may result from transfer of natural resource revenues as provisioned in the Section 7.2 of Intergovernmental Fiscal Management Act 2074.

**Sixth**, the existing NPWCA will need to be amended to reflect the fact that conservation area management now falls to the provinces. One option would be to create a separate act or regulations for conservation areas, to make them clearly distinct from national parks and wildlife reserves.

**Finally**, in recognition of conservation's contribution to Nepal's social, political and ecological health, there is an urgent need to develop special funding streams and mechanisms to continue investment in these innovative and successful programs.

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