

Transitional Justice: Tasks Local and Provincial Governments Can Undertake in Nepal

Sujit Mainali 回

Assistant Professor, Madan Bhandari Memorial College, Kathmandu, Nepal

Article Info.

Corresponding Author

Sujit Mainali

Email sujitmainali@gmail.com

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Abstract

The Government of Nepal (GoN) signed a Comprehensive Peace Accord (CPA) with the Communist Party of Nepal (CPN) Maoist in 2006, ending a decade-long armed communist insurgency. However, tasks concerning transitional justice (TJ) remain unfulfilled. Following the promulgation of the constitution in 2015, Nepal established a three-tier government system. To address Nepal's TJ process in a holistic manner, this study identifies tasks that local and provincial governments can efficiently perform. The constitution, along with several acts, policies, and directives, has been reviewed to determine the scope of local and provincial governments in carrying out TJ-related activities. The review indicates that while both provincial and local governments have vital roles to play, the role of local governments could be more significant if they execute activities in close consultation and collaboration with the central and provincial governments, as well as other state organs.

Keywords: conflict victims, human rights, local government, Maoist insurgency, Nepal, province, transitional justice

Introduction

After the Government of Nepal (GoN) signed a Comprehensive Peace Accord (CPA) with the Communist Party of Nepal (CPN) Maoist in 2006 ending a decade long armed-communist insurgency, Nepal's peace process entered into a new phase. The issues concerning transitional justice (TJ) became more pertinent after the armed rebel party Maoist joined mainstream politics. During the insurgency, both the Maoist and the state were involved in different cases of the violation of human rights. TJ is primarily concerned with "confronting past abuse as a component of a major political transformation" (Bickford, 2005, pp. 1045-1047). Thus after the mainstreaming of the Maoists, different initiatives were undertaken by the government in collaboration with the stakeholders of the peace process, along

with the UN, which acted as a mediator of the peace process after the signing of the CPA between GoN and Maoists. Different institutional initiatives were carried out to execute TJ related tasks throughout the country.

TJ related works were executed by the government and the other stakeholders of the peace process at the central and the local level. Activities at the local level were carried out with the help of local bodies and the activities of local bodies in this regard were guided by the Local Administration Act, 1971.

The constitution promulgated by the Constituent Assembly (CA) in 2015 introduced federalism in Nepal. The restructuring of the state by forming three tiers of the government was

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envisioned in the constitution (Government of Nepal, 2015, Article 56). Schedule 6 and Schedule 8 of the constitution listed the authorities delegated to provinces and the local levels. The parliaments and the governments elected in the provinces enacted different laws to execute the authorities bestowed to them by the constitution. To ease the functioning of the local level in accordance with the spirit of the constitutions, the Local Government Operation Act, 2074 (Ministry of Federal Affairs and General Administration [MoFAGA], 2017) was enacted.

The list of independent powers delegated to the three tiers of the government and the list of the concurrent power between them or any two of them has further decentralised the governance system. Province is an entirely new idea for Nepal. The local governments were envisioned by the Constitution of Nepal, 1990 (Government of Nepal, 1990) also. But the delegation of more authorities and responsibilities to the local level by the Constitution of Nepal enacted in 2015 has further empowered local levels in handling administrative, judicial, and governance related tasks at the local level.

Even after the full-fledged functioning of the local and provincial governments, enough attention was not given to review how the local and the provincial governments can act, either independently or jointly, to make the TJ related task more effective. This article attempts to explore the range of TJ related tasks that the local governments can perform in collaboration with the provincial governments for ensuring justice to the victims of the conflict. For this purpose, the Constitution of Nepal promulgated in 2015, different acts concerning the government Operation Act, 2074 and other concerned acts, laws, regulations, policies, etc. are reviewed.

Encyclopaedia of Genocide and Crimes Against Humanity has defined TJ as "a field of activity and inquiry focused on how societies addresses legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future (Bickford, 2005, pp. 1045-1047)." Echoing its spirit, the Secretary-General of the United Nations in a report submitted to the Security Council mentioned that TJ justice includes both judicial and non-judicial processes and mechanisms, such as truth-seeking, prosecution initiatives, reparations programs and institutional reforms to ensure the non-recurrence of the violence (OHCHR, 2009, p. 4). Maintaining compliance to this, the bodies of UN working on TJ have regarded truth, justice, reparations and guarantees of non-recurrence as its pillars or the issues in focus (OHCHR na).

It is imperative for the three tiers of government to undertake integrated steps for ensuring these four elements. The constitution has provided ample space for the provinces and local government to perform TJ related tasks. There is a list of 21 powers for the provinces and a list of 22 powers for the local levels under Schedule 6 of the Constitution. These powers have been further clarified by the Local Government Operation Act, 2017 framed by the federal government as well as by the statutes and policies enacted by the provinces.

This restructuring of State has empowered the local levels for effectively delivering the tasks of TJ. In order to make this even more meaningful and organised, a National Reparations Act needs to be framed. The Truth and Reconciliation Commission has already issued the Truth and Reconciliation Commission Reparation Directives, 2020. The province and local levels may urge the federal government to draft a national law on reparation in partnership with the entire stakeholders of TJ, by inculcating the spirit of the said Directive as well. In this process, special attention needs to be paid to the conflict hit women, children and senior citizens. Being based on the provisions set forth by the Constitution, Acts, Policies, etc., the province and local levels may assume the following initiations for performing tasks of TJ, including that of reparation.

Truth-seeking Collecting Data

No full and updated data is available on indicators such as how many conflict victims are there at the concerned local or province level, what is their status, which age group they belong to, in which trades and professions are they engaged or are unemployed, or whether they are totally fit mentally, or not. If we are to prepare and update such statistics, then it will be handy to understand their plights and needs. This will further ease in drafting TJ-related plans and programs from a victim-centric angle and to execute them.

The local governments can take initiative in data collection. The Constitution and laws have basically entrusted this responsibility to the local levels. Under the powers of local levels enshrined in the Constitution (Schedule 8.6), the task of the collection of statistics and records are also featured in. In the Local Government Operation Act, 2017 (11.f) also, duties of collecting and managing basic statistics and performing other tasks on the local data and records collection have been assigned under the responsibility of local levels.

The provincial governments may render financial, managerial aid, etc. in the data collection works to the local levels inside the respective provinces. It will be convenient for the provincial government to prepare a province level database from the data collected at the local levels. This need has been sensed in the Directives for the granting of machinery equipment and other items to the conflict affected individuals and dependent families for self-employment, 2019 issued by the Lumbini Provincial Government. It mentions requesting the details of conflict victims who have received skills from all the local levels of the province for granting machinery equipment and other items. This shows the need for partnership between local levels and provinces in the act of data collection.

Reforming the Libraries

Reforms in the libraries at the province and local levels may be undertaken with a conflict- and conflict-victims focus in mind. The National Education Policy, 2019 (10.26.3 & 4;

11.3.25) (Government of Nepal, 2019a) speaks of establishing a public library in all local levels and equipping them with modern information and communication technology. Moreover, the operation of satellite libraries and mobile libraries in all wards also features in the Policy. It has put the task of operation and management of local libraries and reading rooms within the purview of local levels. The Local Government Operation Act, 2017 (11.H) also has placed the duty of operation and management of local libraries and reading rooms within the scope of local levels. As regards the responsibility and power of provincial governments with respect to libraries, the National Education Policy, 2019 (11.2.3) speaks of the provincial government to be liable for framing laws on province level libraries and museums, and for their operation and regulation.

In course of fulfilling these responsibilities assigned by the National Education Policy, 2019 and the Local Government Operation Act, 2017, the local levels and provincial governments may bring victim-centric action plans. They may create and develop libraries from the ward level to the municipality and provincial levels and ensure the collection of news, comments, audio and video footage, photos, books, reports, Acts, Rules, Directives, etc. pertaining to the incidents of armed conflict, peace process and TJ that have transpired in that region. This will help the conflict victims, their offspring and researchers in better understanding conflict and TJ. It is also necessary to allow the conflict victims to record their experiences of conflict in these libraries, whether orally or in writing. This act will foster a victimcentric history and the experiences of victims will also get a new breath of life.

Prosecution Initiatives Free Legal Counselling

In the course of seeking legal recourse for the criminal incidents of the conflict period, many of the conflict victims are still enduring hassles and costs. The families of persons who have disappeared during the conflict have faced difficulties to transfer property titles in their names. The conflict victims were not dropped into such legal quagmires because of their personal reasons. Hence, an initiation is required for offering them free legal services. The provinces and local levels may play a leading role to this end.

Every local level, in partnership with the provincial government and the stakeholders of TJ, may make provisions for free legal services to the conflict victims. Doing so is a statutory duty of the provinces and local levels also. Under the right to justice in the Constitution (20.10), it is mentioned that the indigent party shall have the right to obtain free legal aid as per the laws. In order to implement this constitutional arrangement, the federal government has issued an Integrated Legal Aid Policy, 2019 (Ministry of Law, Justice, and Parliamentary Affairs, Government of Nepal. (2019). The "Background" section of the Policy reflects the spirit inherent in the Universal Declaration of Human Rights adopted by the United Nations, principles on access to legal aid in the criminal justice system and the various international treaties and conventions in which Nepal has expressed its commitment.

The Policy has made some important provisions in this direction. It (8.8) aims to provide an integrated legal aid by combining the legal aids being offered by different mediums such as Central Legal Aid Committee, District Legal Aid Committee, free legal counsel arranged by the judiciary, and by the Nepal Bar Association, national level human rights institutions, other government agencies and nongovernmental organisations, in a coordinated manner. The Policy (9.1) tries to identify an indigent party on the basis of recommendation of local level or an identity card issued as per the prevailing laws while offering legal services. It has placed the victims of armed conflict also as the group to be benefitted from the free legal aid. It (8.13) also speaks of creating a separate fund for managing free legal aid. The Constitution (217) as well as Local Government Operation Act, 2017 (46) provides for a Judicial Committee in each Rural Municipality and Municipality to be headed by the Deputy Chairperson and Deputy Mayor respectively.

It is essential for the local levels and provincial governments to emphasise on the implementation of these provisions stipulated by the Constitution, Act and Policy. The local levels and provincial governments may encourage the local legal aid committee, District Legal Aid Committee and Judicial Committee to be mobilised in an effective manner for ensuring free legal aid to the conflict victims. For this to happen, it is necessary that those agencies are acquainted with the judicial concerns of conflict victims by means of arranging a direct conversation between their office bearers and the victims.

Reparations Programs

Ensuring the Right to Read and Learn

Another important task of TJ is to ensure the rights to read and learn of the conflict victims and their offspring. This goal may be achieved by providing for scholarship and free training. The Local Government Operation Act, 2017 has entrusted this responsibility to the local levels. The Act has placed the duties of planning, operation, permission, monitoring, evaluation and regulation of the technical education and vocational training; and of the management of free education, student incentivization and scholarship, within the jurisdiction of local level itself. While fulfilling these responsibilities, the local levels should be attentive to the issues of conflict victims and their offspring. The provincial government may aid the local levels in this effort by extending financial and managerial support. The province and local levels also may jointly take initiation for releasing funds from the centre in these objectives.

The Truth and Reconciliation Commission Reparation Directives, 2020 (Truth and Reconciliation Commission, Government of Nepal, 2020) also provides for the education and training facilities to the conflict victims and their offspring. The Directives contain provisions including offering free education and education allowance to the conflict victims or any member of their families, allocating certain quotas to the conflict victim families in Technical Institutes, offering them skill-oriented and employment-centric technical trainings, and to arrange for reservations also for the victim families in the scholarship programs to fund the postgraduate studies. Thus, the conflict victims and their families may further take advantage from the provisions stipulated in the Truth and Reconciliation Commission Reparation Directives, 2020 towards ensuring the right to read and learn of the conflict victims as well as their families.

Facilitating the Cooperatives

The local levels may facilitate in making the conflict victims entrepreneurial for their financial empowerment. The armed conflict of the past had impacted the rural part of Nepal more. Hence, a majority of conflict victims reside in the villages. The local levels in collaboration with the provincial governments may thus facilitate in establishing a cooperative related to agriculture and in involving them in collective income generation.

This duty and power have also been conferred by the Constitution to the local levels. The Constitution has placed the tasks of agriculture and animal husbandry, agro-products management, animal health and cooperatives under the jurisdiction of local levels (Schedule 8.15). The Local Government Operation Act, 2017 (11.b) has also tasked the responsibility of framing local policies and laws on cooperatives as well as their implementation, regulation and advancement to the local levels. The Truth and Reconciliation Commission Reparation Directives, 2020 has felt the need of creating cooperatives. Under the title of Collective Reparation (5.2.b.ii), this document speaks of implementing the programs of, inter alia, agriculture, income generation, vegetables farming, cooperatives, etc.

In the cooperatives to be established thus, if we become able to include the conflict victims, it may accelerate a spirit of reconciliation and partnership among the community. It may aid in healing the scars of conflict also. A collective entrepreneurial model of cooperatives may be suitable in the local levels with a high number of conflict victims. The provincial government may support this effort by offering financial aid, training and by ensuring a market for the agro-products to be produced by these cooperatives.

A sample of this task has been presented in the Directives for the Granting of Machinery Equipment and Other Items to the Conflict Affected Individuals and Dependent Families for Self-employment, 2019 (Lumbini Provincial Government, Nepal, 2019a), issued by the Lumbini Provincial Government. It speaks of the possibility of granting machinery equipment and other items lump sum, if one or more conflict victims desire to set up a business of the same type. In the case of cooperatives also, the provincial governments may advance this model in making the local levels partners for the mission.

Introducing Self Employment Programs

The local levels may also assist the conflict victims in becoming entrepreneurial at the individual level. The government has fixed a goal of increasing productivity and employment in the agricultural sector. In consonance with this goal, the local levels and provinces may run selfemployment programs for the conflict victims.

This power and responsibility have been entrusted to the local levels by the Local Government Operation Act, 2017. The Act (11) has further assigned the duty of collecting data of unemployed persons to the local levels. The provincial governments may render financial, managerial aid, etc. for the local levels to this end. The Truth and Reconciliation Commission Reparation Directives, 2020 also speaks of making the conflict victims and their family members employed. The Directive also provides for prioritising the conflict victims in programs run under the Prime Minister Employment Program, offering free seeds for a certain period to the victim families engaged in agriculture, offering them tax exemptions for a certain period, and to make needful arrangements for the conflict victims willing to migrate for foreign employment. The Self-Employment Program directed toward the conflict victims and run under the initiation of province and local levels may draw advantage from the said provision as well.

A model for partnership in this direction

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between the province and local levels has already been put forth by the Lumbini Provincial Government itself. It has issued the Self-Employment (Operation and Management) Directives for the Conflict Affected, 2019 (Lumbini Provincial Government, 2019b). These Directives aim at imparting training to the conflict affected people on skills and capacity development and to make them self-employed by granting them corresponding equipment.

The Lumbini Province also has issued Directives for the granting of machinery equipment and other items to the conflict affected individuals and dependent families for self-employment. These Directives may stand out as a model for enhancing partnership between province and local levels in a bid to enable the self-employment of conflict victims. These Directives provide for the province disbursing funds to the local levels on the basis of individuals seeking self-employment and the local levels distributing machinery equipment and other items to the beneficiaries from the same fund.

Providing Concessional Loans

The provincial and local governments may take initiative in providing concessional loans for the conflict victims willing to be entrepreneurial or running their own businesses. Those loans may be ensured well within the current policy provisions. The Integrated Procedure on Interest Subsidy for Concessional Loans, 2018 (including the third amendment) (Nepal Rastra Bank, 2018), issued by the Nepal Rastra Bank, speaks of granting concessional loans from the banks and financial institutions nationwide for setting up or expanding businesses to the individuals of various age groups and engaged or willing to be engaged in various trades and professions. The beneficiaries shall be educated and unemployed persons, returnees of foreign migration, women and the Dalit community. Loans at a tune of Rs. 5 lakhs to Rs. 5 crores shall be dispersed depending on the plan or project of the business. Similarly, there is a provision of collateral free loan as well.

The province and local levels may take initiation to include the conflict victims in the list

of above beneficiaries. As for present, they may also initiate to ensure concessional loans for the conflict victims under the existing Procedures. The Youth and Small Entrepreneur Self-Employment Fund has also been advancing collateral free loans of up to Rs. 5 lakhs in order to inculcate entrepreneurship among the youth. Assistance may be drawn from such provisions of the Fund in order to muster capital for making the conflict victims entrepreneurial. The province and local levels have to interact with the officials of Nepal Rastra Bank and the Youth and Small Entrepreneur Self-Employment Fund by engaging the entire stakeholder to this end. In addition, benefit may also be derived from a provision on the Truth and Reconciliation Commission Reparation Directives, 2020, which speaks of disbursing an interest-free or concessional loan of up to Rs. 5 lakhs to the conflict victims or their families.

Remembering the Persons Who Died During the Conflict

One of the major facets of TJ is to make the remembrance of persons who died during the conflict everlasting under the rights of victims to reparation. This task may be accomplished by building schools or any of its blocks, park or a part thereof, roads, bridges, water taps, platforms, cremation sites, water bodies, etc. in the name of the conflict dead. The province and local levels do possess this power. The Constitution has conferred a power up to the naming of the province to the relevant Provincial Assembly. The power to name a local school has been conferred to the relevant local level under the Local Government Operation Act, 2017 (11.H). There is also a practice of naming other locations within the local level by the concerned level itself.

The memory of persons who died during the conflict may also be secured in the minds of new generations by forming a scholarship fund or a sports fund. This act will not only heal the wounds of conflict victims but also inform the new generation about the horrors of conflict in the past, thereby preventing their course from a possible conflict in the days to come.

The Truth and Reconciliation Commission Reparation Directives 2020, provides for observing the date of signing of the Comprehensive Peace Accord (CPA) as a National Day for the Remembrance of Conflict Victims in memory of the conflict in Nepal and respect of the conflict victims. In line with this spirit, the local levels may run programs within their levels in memory of any human rights violating event that transpired within their region during the conflict days. For e.g., the concerned local levels may commemorate the killing of 11 unarmed peasants by the government security forces in Bargadi of Dang on November 28, 2001 or the death of 39 individuals in Bandarmude of Chitwan, triggered by the bombing of a passenger bus on June 6, 2005, an act perpetuated by the then armed Maoist insurgents. The concerned local levels may observe those mournful days each year by organising programs.

Establishment and Operation of Care Centre

A big number of people were injured in the course of the armed conflict. Bullets could not be recovered still from the bodies of many. Many have become disabled. There are also conflict victims who are rendered incapacitated mentally and physically in other ways. There is also a dearth of attendants for the medical and other care of several senior citizens who have lost their youth offspring in the conflict.

In order to address this problem faced by conflict victims, the provincial and local governments may take a joint initiative. Care and Rehabilitation Centres may be established for such conflict victims. This responsibility falls to the local governments as well. The Local Government Operation Act, 2017 (11) entrusts the local levels with the duties of operation and management of disability rehabilitation centres, senior citizen centres and incapacitated care centres; the operation, management, monitoring and regulation of rehabilitation centres for the orphans, helpless, incapacitated and mentally retarded persons; and to discharge other works relating to the management of senior citizens, persons with disabilities and the incapacitated. The province may lend the needful support to local levels in this connection.

Free Health Care

Another major theme of TJ to pay attention to is the health of conflict victims who have been left injured or incapacitated due to the armed conflict. The Local Government Operation Act, 2017 (11) entrusts the responsibility of basic health works within a local level to the concerned level itself. As the Constitution has earmarked the basic health and sanitation under the responsibility of local levels, the Act has followed suit.

It is expedient for the local levels to provide basic healthcare and the provinces to offer other health services free of cost in government hospitals within the provincial jurisdiction for the sake of conflict victims. Free healthcare is a right of the conflict victims. The Truth and Reconciliation Commission Reparation Directives, 2020 has already assured the free medical treatment of conflict victims in government hospitals (5.2.a.ii).

Provision of Housing

It is necessary to provide free or subsidised housing to the conflict victims who have lost their place of residence or guardians or those who do not want to return to their origins once they had been displaced therefrom, after producing their record count. The Constitution itself has guaranteed the right of housing to all. Under the constitutional right to housing (37), it is laid down that every citizen shall be entitled to the right of decent housing. In order for implementing this constitutional provision, the Federal Parliament has passed the Right to Housing Act, 2018 (Federal Parliament of Nepal, 2018). The Act reads that the federal government, Provincial Government or Local Level shall have to provide the homeless person and family as follows with the housing facility gradually, as prescribed, on the basis of resources by prioritising, with mutual coordination:

- Having no house and land under ownership of him or her or his or her family within the State of Nepal or and is unable to make arrangement for housing from his or her or his or her family's income generation, resource or effort, and
- Having been displaced permanently due to a natural disaster as well.

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Moreover, the Chapter adds: In order to provide the homeless person and family with the housing facility, concessional financial facility shall be provided as prescribed. The homeless person and family under extreme destitution, not able to manage housing even under the facility, and being unable to make other alternative provision, shall be gradually provided with the housing facility on the basis of the priority as prescribed.

All the provinces and local levels may intensify their dialogue with the federal government for ensuring the right to housing. In this process, the provinces and local levels may take initiative to include the conflict victims in the list of beneficiaries as laid down by the Right to Housing Act, 2018.

The Truth and Reconciliation Commission Reparation Directives, 2020 (5.2.a.iii) provides for a financial succour of up to Rs. 5 lakhs in case a family have lost its house in course of armed conflict or have been displaced from its origins, intends to build a new house or renovate the existing one. Similarly, the Directives specify that decent housing shall be provided to the conflict victims having no permanent abode under the Janata Housing Program, being run by the provincial governments. Both the provinces and local levels may facilitate from their respective points for the enforcement of this measure.

Institutional reforms to ensure the nonrecurrence of the violence

Forming Conflict Victim Groups

Conflict victim groups may be formed at the Rural Municipalities and Municipalities levels by enclosing conflict victims of both categories. This will facilitate fulfilling the pending tasks of TJ. It will further assist in fostering unity among the conflict victims and to heal the traumas of conflict. Further, this move will encourage all parties of the TJ to be accountable towards the issue of this justice. It is expedient for the province or local levels to seek opinions from the conflict victim groups prior to planning any move on conflict victims, and imparting them leading roles in implementing the programs devised under such plans. This will aid in developing the concept of victim-centric TJ. This will also take the tasks of TJ down to the ground level for institutionalisation.

Conclusion

TJ encompasses both judicial and non-judicial aspects, including truth-seeking, prosecution initiatives, reparations programs, and institutional reforms to ensure the non-recurrence of violence. Provincial governments and local governments can play a significant role to achieve the objectives of TJ. The review of constitutions, different acts, policies and directives have suggested that the role of local governments could be more instrumental in this regard, if they manage to carry out the tasks in close collaboration with the provincial government.

Local governments can be instrumental in fulfilling the truth-seeking objectives of TJ. They can assist by collecting conflict-related data and reforming local libraries. These libraries can be developed into repositories of documents concerning incidents of armed conflict, the peace process, and TJ initiatives specific to the region. The Local Government Operation Act, 2017 and the National Education Policy, 2019 provide substantial scope for local governments to act in this capacity. Free legal counselling and services for victims and their families could be pivotal in realising the prosecution-related goals of TJ. The Integrated Legal Aid Policy, 2019, issued by the federal government, identifies victims of armed conflict as a group eligible for free legal aid. Local governments and provincial governments can jointly work to harness these provisions effectively by exercising the judicial rights granted to them under the constitution and relevant laws.

Regarding reparations programs, local governments can use the authority conferred by the Local Government Operation Act, 2017 to ensure the right to education for conflict victims and their children. Additionally, they can leverage the provisions of the Act to frame local policies on cooperatives and to implement, regulate, and advance support systems that meet the social and economic needs of victims and their families. Local governments can introduce self-employment

programs to benefit victims and actively collaborate with other state bodies to provide concessional loans. These measures can help victims engage in various trades and professions. Furthermore, local governments can honour those who lost their lives during the conflict by naming schools or public institutions after them. They can also establish and operate care centres, providing free healthcare and accommodation for victims and their families. To achieve institutional reforms and ensure the nonrecurrence of violence, local governments can form conflict victim groups at the Rural Municipality and Municipality levels. These groups, encompassing victims from all backgrounds, can serve as pressure groups, reminding society of the dark consequences of conflict and advocating for peace.

To achieve these TJ goals, local governments must recognize their significant empowerment under the constitution, acts, and policies. To act effectively, they must collaborate with the provincial governments. The joint initiatives of the local and provincial governments to remain engaged with the federal governments as well as state institutions such as central banks, financial institutions, the Nepal Bar Council, the Youth and Small Entrepreneur Self-Employment Fund, and others, could be more effective in realising the goals.

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