

Nepal

Institutional Depth and Policy Scope

Nepal, officially the Federal Democratic Republic of Nepal, is a landlocked nation with an area of 147,181 sq km and an estimated population of 31 million (CIA 2014). Nepal is divided into seven provinces, 77 *jillā* (districts), 293 municipalities (divided into 6 metropolitan cities, 11 sub-metropolitan cities, and 276 municipalities), and 3915 villages. Prior to the current province-based federal structure, the country had been partitioned into *vikās kṣetra* (regions), *anchal* (zones), *jillā* (districts), municipalities (divided into 1 metropolitan city, up to 12 sub-metropolitan cities, and regular municipalities), and villages and towns. The *jillā* were the original first-order subdivisions; the *anchal* were created in 1962 as an administrative layer between the *jillā* and the national government within the panchayat system; the *vikās ksetra* were created as a separate first layer in 1972, initially as just the Eastern, Central, Western and Mid-Western *vikās ksetra* and the Far-Western *vikās ksetra* was added in 1982; current-day provinces were created in 2015 to replace *anchal* and *vikās kṣetra*. We code the current provinces and *jillā*, as well as the *vikās kṣetra* and *anchal* from previous administrative organizational structures. Municipalities do not meet the population criterion.¹

¹ These titles do not reflect differing governing capabilities. The Government of Nepal can declare as municipality any urban area that has a minimum population of 20,000 and basic facilities like road, electricity, drinking water and communication. In the hilly and mountain regions the minimum population is fixed at 10,000 people while other requirements remain the same. A sub-metropolitan city is defined as having at least 100,000 people and a minimum annual income of 100 million rupees with electricity, drinking water, communication, paved roads, facilities of higher education and health care, facilities for conducting national and international sports, gardens, parks, and city halls. A metropolitan city is defined as having at least 300,000 people and a minimum income of 400 million rupees along with the requirements

From 1948 until 1951 Nepal was governed through the Government of Nepal Act.²

During this time the basis of subnational administration rested in the *jillā*, an administrative division inherited from colonial rule. *Jillās* were led by centrally-appointed Bara Hakim (governors) who wielded substantial power but did not have an accountability base in the region (Bienen et al. 1990). A movement for more democracy culminated in the first constitution of Nepal in 1951. The 1951 Constitution promised that the king would take steps to organize village *panchayats* (self-governing councils) and endow them with powers and authority so they could be self-governing communities (C1951, Art. 6). However, the *panchayats* were not created until over a decade later. In these years, *jillās* continued to serve as the first subnational tier of administration, and appeared to have functioned with relatively weak central oversight. According to some sources, *Jillā* governors, who were centrally appointed, essentially operated as warlords, which brings *jillā* governance in this period perhaps closer to a type of traditional authority, in a Weberian sense, rather than the legal authority—institutionalized, circumscribed, impersonal, and territorial—that undergirds our conceptualization of regional governance (Hooghe et al. 2016: 19-23; Shair-Rosenfield et al. 2014).³ With this caveat on the nature of authority, it seems plausible to assess *jillās* as non-deconcentrated subject to central veto via the gubernatorial appointment process. Hence *jillā* score 2 on Institutional Depth and 1 on policy scope from 1950 to 1961.⁴

of a sub-metropolitan city. Metropolitan cities are not coded because they fall under the same legal framework as other municipalities.

² There is some dispute about whether the Act was followed prior to 1950 or the existing Rana clan continued to govern under the status quo (Smith 1966, 86-7).

In December 1960, the King used his emergency powers to dissolve the parliament and implement direct monarchical rule. The King and his advisors drafted a new constitution in 1962 that introduced a new layer of subnational government – the *anchal* (zone) – and created subnational assemblies at the village, town, *jillā*, and *anchal* levels (C1962, Part 8, Ch. 1). The monarchy controlled political competition and appointed individuals to serve in supervisory roles at the *anchal* level. However, the *jillā* by and large retained their previous authority, and even gained some. For example, the newly established *jillā* assemblies met biannually to discuss and approve the panchayat's budget and to assess development plans (Rose 1963, 19). These powers were formalized with the 1962 District Panchayat Act, which allocated authority over taxation, administration, and development to the *jillā* panchayat. No comparable enabling legislation or authority was conferred on the *anchal*, which were advisory in nature and whose committee only sporadically met to discuss policy (Maheshwari 1963, 175). So the *jillā* continue to score 2 on Institutional Depth and 1 on Policy Scope, and the *anchal* score 1 on Institutional Depth and 0 in Policy Scope from 1962 to 1989.

In 1971 the Local Administration Act was amended to create an additional layer above the *anchal*: the *vikās kṣetra* (development region) Each *vikās kṣetra* was governed by a Regional Administrator appointed by the central government (1971 Act, Ch. 3, Sect. 4B). These Regional Administrators weree empowered to maintain peace and order, oversee lower level administrators and administration (*anchal* and *jillā* levels), protect property, report back to the central government, inspect borders, disaster response, and the local police, prisons, and military (1971 Act, Ch. 3, Section 4B-C). Additionally, these regional administrators are tasked with local administration of central policies and directives (Section 4B). *Vikās kṣetra* appear to

have been created largely to supervise district development (Asia Foundation 2012, 4). Given the strong hand of the central state in their creation, appointment, and oversight functions, *vikās kṣetra* score 1 in Institutional Depth and 0 in Policy Scope from 1971 to 2014.

In response to a large democracy movement, Nepal passed a new constitution in 1990. The 1990 Constitution legalized political parties, limited the power of the King, and expanded the national legislature to include more subnational influence in national affairs. The new constitution maintained the tiered structure of governance: villages and towns, municipalities, and *jillā*; next, *anchal*, and finally, *vikās kṣetra*. Panchayats were replaced with development committees in the municipalities and *jillā*, whose members started to be directly elected in 1992.

In 1996 Maoist rebels began a campaign to overthrow the Nepalese monarchy and establish a Communist government, which led to a ten-year civil war. In 1999, amid the civil war, two major pieces of legislation on decentralization were passed. The Local Self Governance Act (LSGA) and Local Self Governance Regulation (LSGR) laid out the terms for greater devolution of local authority, specifically to the *jillā* and, to a lesser extent, the villages and towns at the most local level. The local assembly was renamed the District Development Committee and the local executive the Local Development Officer. The primary competence devolved to the *jillā* in the Act is economic development, though a longer list includes some aspects of education and culture (Asia Foundation 2012, 58-59). *Jillā* assemblies were now directly elected, though the only elections took place in 1992 and 1998. By 2003 the intensity of the civil war led the central government to abandon local elections and instead appoint representatives (ibid. 58). We judge the change in legislative framework to modestly increase

the policy authority of the *jillā*, from 1 to 2 between 1999 and 2002,^a and after that, policy authority becomes zero due to the suspension of self-governance under civil war conditions.

In 2005 the King of Nepal disbanded the government and declared direct rule in an attempt to combat the Maoist rebels and, in the end, to negotiate a ceasefire. The King tried to hold on to authoritarian rule, but a pro-democracy uprising declared Nepal a secular republic, and removed the powers of the King. An interim parliament drafted a temporary constitution in 2007. This constitution did not substantially restructure subnational authority (Dhungel et al. 2011, 50-51).

In 2015, a permanent constitution was passed, which introduced a federal structure with seven, newly drawn, provinces as constituent units. The constitution also recognized subnational self-governance down to the village level, abolished Anchal and Vikas ksetra, and stripped jilla from self-governing powers. The provinces were endowed with substantial authority and control. Each province is governed by a directly-elected assembly, while executive authority is shared between indirectly-elected provincial ministers and a centrally-appointed provincial head. In terms of exclusive policy control, provinces set policy for higher education (including universities), and culture (including protection and use of language, script, fine arts, and religion); the health service, (Schedule 6); some economic policies (including mining, trade and commerce within the province, provincial highways and infrastructure, land management). They share family law, family planning, social law (including labor rights and disputes), property law, land use, research, economic development (including infrastructure, tourism, industrial development), and anti-poverty policy with the federal government (Schedule 7), and broadly share social security, utilities (such as drinking water, electricity), agriculture, disaster

management with both the federal and local governments (Schedule 9). Most aspects of economic policy are reserved for the federal government or shared among levels. Provinces do not have authority over local government or residual powers, but they have authority over provincial police as well as law and order (Schedule 6: 1). Immigration and citizenship are central prerogatives (Schedule 5, 20).

Provinces remain subject to a central government veto, at least through two venues. First, the provincial executive is dual, part elected from and by the provincial assembly and part appointed by the central government through its centrally-appointed head. Second, the constitution gives the President the authority to reprimand, suspend, or dissolve the provincial Council of Ministers and the Provincial Assembly “if any province indulges in an act that would have a serious effect on Nepal’s sovereignty, territorial integrity or independence, autonomy” (Art. 232 ((3).) Suspension or dissolution must be approved by a majority of the combined chambers of the federal parliament, triggering new elections within six months ((Art. 232 ((4). and ((5).). Provinces score 2 on Institutional Depth rather than 3 and 2 on Policy Scope.

Jillā appear to have lost policy authority but they remain decentralized governments. The now indirectly elected assemblies function primarily as coordination agents between provincial and local (village and municipality) governments. The list of constitutionally-mandated exclusive and shared authority for local governments, as well as language in the discussion of which bodies constitute “local” government (Parts 17 & 18), indicates that the *jillā* are coordinating rather than authoritatively deciding relative to the much more powerful provinces (above) and the self-governing villages and municipalities (below). We conceive this as decentralized government with a very limited policy role.^β

Elections for the provincial bodies were held at the end of 2017. It is not clear whether provinces started functioning before the elections, and so we conservatively start coding from 2018.

Fiscal Autonomy

No legal basis for subnational tax authority existed in Nepal prior to the 2015 Constitution's adoption. *Jillā*, *anchal*, and *vikās kṣetra* score 0 on Fiscal Autonomy until 2014. The 2015 Constitution is centralizing on taxation. Art. 203 states that "no tax shall be levied and collected except in accordance with law. No loan shall be raised and guaranteed and guarantee be given by the provincial government except in accordance with the federal law." At the same time, Schedule 6 authorizes in principle the provinces to set the rate (not the base) for minor taxes on tourism, vehicles, entertainment, and land-use fees (Schedules 6 & 8) and agricultural income (Schedule 6). Provincial governments cannot alter the tax base and all major taxes are reserved under federal government control (Schedule 5). Taken together, we interpret the central constraints to dominate and score zero.^β The *jillā* do not have taxation authority.

Borrowing Autonomy

The prospect of internal borrowing has been established by a proposal from the National Natural Resources and Fiscal Commission (see Fiscal Control and Borrowing Control below) to enable local governments to borrow up to 10% of VAT and local revenues, but that has not yet been passed into legislation (IMF 2019). As of 2018, no legal basis for subnational borrowing has existed in Nepal since 1950.

Representation

No regional assemblies existed in the *jillā* alongside the centrally-appointed governors from 1950 through 1961. During this time the *jillā* score 0 on both Assembly and Executive.

Councils called panchayat were created in 1962 for all subnational tiers and took effect that same year, alongside larger bodies known as sabha at the *jillā* and *anchal* levels. Contrary to village panchayats, which were composed through direct elections, *jillā* and *anchal* panchayat were indirectly elected. The process was as following: each village assembly (sabha) chose from among its ranks a representative to be sent to the *jillā* sabha (assembly). Once the *jillā* sabha was formed, its members chose a nine-member executive composed a chair, vice-chair, and seven other members, all from among their ranks. The *anchal* sabha, then, was composed of all members of each *jillā* panchayat within the zone, and its members chose a nine-member *anchal* panchayat from among their ranks (C1962, Art. 33).³

In the *jillā*, the executive was dual: alongside the nine-member executive committee selected by the sabha, there was the bada hakim (governor), appointed by the central government. From 1965, the governor was replaced by a chief district officer, also centrally appointed. In the 1970s the role of district administration was shifted to Local Development Officers, which is how they remained titled until 1989. Regardless of title, all of these administrators at the district level were central government appointees (Asia Foundation 2012, 4). In the *anchal*, the commissioners, named Zonal Commissioners and appointed by the king,

³ *Jillā* executive committee members were *jillā* assembly members who had been indirectly elected by the assemblies.

served as the sole regional executive (C1962-Amended, Art. 33). They functioned as central government representatives to the *anchal*, usually with no roots to the villages, *jillā*, or *anchal* populations. From 1962 through 1991 the *jillā* score 1 on Assembly and 1 on Executive. The *anchal* score 1 on assembly and 0 on executive.

Jillā assemblies and executives became directly elected in 1992 (Asia Foundation 2012, 58). Escalating instability from the civil war led to the suspension of local elections in 2002 and these were not resumed until after the war's end. As a result, central government appointees took over jilla and anchal governance (*ibid*). From 2003 to 2014, *jillā* and *anchal* score 0 on Assembly and 0 on Executive.

The *vikās kṣetras* were run by a centrally appointed Regional Administrator who acted as the executive for the region (Local Administration Act, 1971, Chapter 3). They score 0 on Assembly and 0 on Executive from 1971 to 2014, when they are abolished.

The 2015 Constitution clearly defined subnational representation for the provinces, *jillā*, villages, and municipalities. Each province has a directly-elected provincial assembly, the *pradesh sabha* (Part 14, Art. 176), from whom a provincial Council of Ministers and Chief Minister are selected to exercise executive power in the provinces (Part 13, Art. 162 & 168). The federal president also appoints a Provincial Head who co-exercises authority alongside the Council of Ministers (Art. 163-166).

Jillā revert back to their pre-1992 status, but without central oversight. The *jillā sabha* (Art. 220) is again indirectly elected: it is composed of the executives from the village and municipality assemblies, who then elect a nine-member District Coordination Committee from among its members (Sect. 3). Hence the *jillā* District Coordination Committee scores 2, while

the *jillā sabha* scores 1. Subnational elections were held for the first time in November and December 2017, and so we code this change only from 2018. Provinces score 2 on Assembly and 1 on Executive from 2018 they score 2,1, while from 2015 to 2017 the *jillā* score 0 on Assembly and 0 on Executive and in 2018 they score 1,2.

Shared-Rule

Law Making

The 1951 Constitution established a unicameral Advisory Assembly (C1951, Ch. 4). The members were selected by the King and consisted, as much as possible, of representatives of various areas, classes, and interests of Nepal (Art. 34). The King could determine the size of the assembly at a minimum of at least 25 members (Art. 51, Sect. 3).

The 1959 Constitution established a bicameral parliament of the Maha Sabha (Senate) and the Pratinidhi Sabha (House of Representatives). The Senate consisted of 36 members, 18 elected by the House of Representatives and 18 selected by the King (Art. 19). The House of Representatives consisted of 109 members elected in population-based electoral districts (Art. 22). This parliament was abolished in 1960, and there was no national legislature from 1960-1961.

The 1962 Constitution established the unicameral National Panchayat, which was composed in 1980 of three types of representatives (Art. 34). First, the *anchal* assemblies selected members to represent each of the 75 *jillā* that fell within their respective *anchal*. Second, Class and Professional Organizations could elect representatives. Lastly, the King nominated 15 percent of the total members for the remainder of the Panchayat. From 1962

through 1980 the *jillā*-based representatives made up at least 60 percent of the seats in the National Panchayat (Inter-Parliamentary Union 1995), and so the region was the primary unit of representation, regional governments selected representatives, and regions had majority representation. However, the assembly was relatively toothless: any bill passed by the Panchayat was subject to royal approval. Furthermore, any bill with budgetary implications for the Royal Family, budget, military, and debt had to first gain the approval of the King before it could be put to the vote (Art. 55). The King also had the authority to pass any law without first consulting the Panchayat (Art. 57). From 1962 through 1980 the *anchal* score 1.5 (.5, .5, .5, 0) on Multilateral Law Making.

In 1980, the Third Amendment changed the selection process for the National Panchayat to direct elections. 112 seats were divided across the *jillā* based on population. Another 28 seats were selected directly by the King. This electoral process, which removed control over Panchayat representatives from the *anchal* governments, lasted from 1981 to 1989. *Jillā* and *anchal* both score 0 on Law-Making.

In 1990 the King bowed to demands for increased democracy and formed a nine member constitutional reform committee. The resulting Constitution created a bicameral parliament consisting of a House of Representatives and a National Assembly. The 205 seats of the House of Representatives were divided among the *jillā* based on population (Art. 45). Of the 60 members of the National Assembly, ten members were selected by the king, 35 were selected by the House of Representatives and could not be members of the House, and 15 were indirectly elected by an electoral college consisting of village and *jillā* authorities (Art. 46). There

is no basis for *anchal* representation in either of these assembly bodies under the 1990 Constitution. Both *jillā* and *anchal* continue to score 0 on Law-Making.

The 2007 interim Constitution created a unicameral parliament consisting of 330 seats (Art. 45), with 209 of the seats reserved for the seven political parties who had sitting members in the parliament previously dissolved by the King. Additionally, 73 of the seats were reserved for the Communist Party of Nepal. Lastly, 48 members were divided among the Samyukta Bam Morcha, people-based and professional organizations, oppressed communities, backward regions, indigenous ethnic groups, and women (Art. 45 Section B and C). Shared rule on Law Making is zero.

The 2015 Constitution created a bicameral legislature consisting of a 275-member House of Representatives and a 59-member National Assembly. The House of Representatives is based on the principle of popular representation (Art. 84). The National Assembly is based on the principle of regional representation with 56 of the 59 seats divided equally among the provinces (Art. 86). Each province selects 8 representatives to the National Assembly; the election is performed by an electoral college that consists of all members of the provincial assembly, all chairpersons and vice-chairpersons of village councils, all mayors and deputy mayors of municipal councils (with different weights of votes for each) (Sect. 2a). We conceive this system as falling short of meeting the criterion for designation by the provincial government (L2) because the number of provincial votes appears to be outnumbered by those from local governments. The remaining three members are appointed by the president. The House of Representatives and the National Assembly have equal legislative powers (Art. 109), except that financial bills can only be introduced in the former (Art. 110).

Thus the provinces are the unit of representation in the National Assembly (L1=0.5), they do not designate their representatives in the National Assembly (L2=0), they comprise majority representation in the National Assembly (L3=0.5), and they have relatively strong legislative powers (L4=0.5). The first elections for the National Assembly took place in February 2018, and so score changes for the provinces are only reflected beginning in 2018.

Executive Control

No routinized meetings or consultations exist between the central state and *vikās kṣetra*, *anchal*, or *jillā*, regarding national policy. The *vikās kṣetra*, *anchal*, and *jillā* score 0 on multilateral and bilateral Executive Control throughout the period.

The 2015 Constitution established the Inter-Provincial Council to adjudicate disputes on policy making between the federal and provincial governments and among the provinces. The council's members include the prime minister, home minister, finance minister, and chief ministers of each province (Art. 234). The constitution does not foresee any regular meeting schedule ("held as may be necessary") and its authority appears to be restricted to settling disputes – rather than coordinating or co-deciding policy. We interpret this as too limited in scope and intent to qualify as a form of executive control.

Fiscal Control

No routinized meetings or consultations existed between the central state and *vikās kṣetra*,

anchal, or *jillā* authorities regarding national tax policy. The *vikās kṣetra*, *anchal*, and *jillā*, score 0 on multilateral and bilateral Fiscal Control throughout the period.

The 2015 Constitution established the National Natural Resources and Fiscal Commission, which is tasked with making recommendations on revenue sharing and redistribution between the federal and provincial governments and among the provinces (Art. 251). The composition of the Commission is determined by the president, and its members are expected to be experts and academics rather than political representatives (Art. 250).

Borrowing Control

No routinized meetings exist between the central state and *vikās kṣetra* or *anchal* authorities regarding national borrowing policy. The *vikās kṣetra* and *anchal* score 0 on multilateral and bilateral Borrowing Control until 2014. There is no borrowing control for the *jillā*.

The 2015 Constitution established the National Natural Resources and Fiscal Commission, which is tasked with making recommendations about internal loans that federal, provincial or local governments may take on (Art. 251, ((1).f)). The composition of the Commission is determined by the president and does not include representatives of the provincial governments (Art. 250).

Constitutional Reform

The 1951 Constitution made no reference to changes or amendments to the constitution. The 1959 Constitution defined this power as belonging to the King (Art. 77). This was reaffirmed by the 1962 Constitution (Art. 82). The 1990 Constitution required a two-thirds vote from both

houses of parliament and approval of the King in order for a constitutional amendment to occur (Art. 116). The 2007 interim Constitution requires a two-thirds majority of the unicameral parliament to amend the constitution (Art. 148). Due to the fact the regions could not raise the decision hurdle or co-determine constitutional change, all subnational units score 0 on multilateral and bilateral Constitutional Reform until 2014.

The 2015 Constitution provides a path for constitutional amendment, with explicit reference to amendments regarding the boundaries and rights of provinces (Art. 274). With respect to regular constitutional amendments, a vote by 2/3 majority of each legislative chamber is required to pass any amendment, meaning that the chamber based on regional representation can block constitutional reform (Sect. 8). With respect to amendments regarding provincial boundaries or issues included in Schedule 6 of the constitution, the relevant Provincial Assembly is required to assent or the amendment will fail (Sect. 4-7). As the first elections for the National Assembly did not take place until February 2018, on both multilateral and bilateral constitutional reform, provinces score 4 beginning in 2018.

There are no provisions for constitutional reform powers for the *jillā* in the 2015 Constitution of Nepal.

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Self-rule in Nepal

		Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
						Assembly	Executive	
Jillā (districts)	I	1950-1961	2	1	0	0	0	3
	I -> II	1962-1970	2	1	0	0	1	5
	II -> III	1971-1991	2	1	0	0	1	5
	III	1992-1998	2	1	0	0	2	7
	III	1999-2002	2	2	0	0	2	8
	III	2003-2014	1	0	0	0	0	1
	I	2015-2017	2	0	0	0	0	2
	II	2018	2	0	0	0	1	5
Anchal (zones)	I	1962-1970	1	0	0	0	1	2
	I -> II	1971-2002	1	0	0	0	1	2
	II	2003-2014	1	0	0	0	0	1
Vikās ksetra (development regions)	I	1971-2014	1	0	0	0	0	1
Provinces	I	2018	2	2	0	0	2	7

Shared rule in Nepal

			Law Making						Executive Control		Fiscal Control		Borrowing Control		Constitutional Reform		Shared Rule
			L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B	
Jillā (districts)	I	1950-1961	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	I -> II	1962-1970	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	II -> III	1971-2014	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	I	2015-2017	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	II	2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Anchal (zones)	I	1962-1970	0.5	0.5	0.5	0	0	0	0	0	0	0	0	0	0	0	1.5
	I -> II	1971-1980	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	II	1981-2014	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vikās kṣetra (development regions)	I	1971-2014	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Provinces	I	2018	0.5	0	0.5	0.5	0	0	0	0	0	0	0	0	4	4	5.5