

Intergovernmental Cooperation and Coordination in Nepal: Flagging Some Experiences

Prof. Purna Man Shakya / Senior Advocate / Supreme Court, Nepal

Nepal transitioned to a federal democratic form of government in 2015, establishing three tiers of government - local, provincial, and federal.

The Constitution lists the exclusive and concurrent powers of each level of government and calls for coordination and cooperation among them in exercising these powers.

Broad Principles

Article 50 of the constitution specifies that the political objective of the country is to “...maintain relations among federal units on the basis of principles of cooperative federalism...by ensuring local autonomy and decentralization.”

Article 56 further clarifies that the federation, states, and local governments are political entities that exercise sovereign power.

Article 57 explains that such power will be exercised pursuant to the constitution, federal laws, and the laws made by state legislative assemblies and municipal assemblies at the local level.

Constitutional Outline

Article 232 (1) of the Constitution states:

- (1) The relations between the Federation, Provinces, and Local level shall be based on the *principles of cooperation, coexistence and coordination*.

Similarly, its clause (2) has the following prescription:

- (2) The Government of Nepal may, pursuant to this Constitution and the Federal Law, *give necessary directions* to any Provincial Council of Ministers on matters of national importance and on matters to be coordinated between the Provinces, and it shall be the duty of the concerned Provincial Council of Ministers to abide by such directions.

Clause (8) has similar provision regarding local governments:

- (8) The Government of Nepal may, directly or through the Provincial Government, *render necessary assistance to, and give necessary directives to*, any Village Executive or Municipal Executive, pursuant to this Constitution and the Federal law. It shall be the duty of the Village Executive or Municipal Executive to abide by such directives.

While there have been some tensions and contestations among institutional relationships in Nepal's cooperative federalism, they have not been serious until now. Current tensions may be noted as follows:

Provincial governments like Madhes and Gandaki have faced problems regarding Provincial Police Acts. This has created a lack of clarity around jurisdictional authority, chains of command, resource allocation, and coordination between federal and state police forces.

Security coordination between federal and state police/law enforcement.

Civil servants of provincial level

Forest Act

Overlapping jurisdictions and unclear division of powers between the federal, provincial, and local governments. There may be disputes over which level of government has authority over certain policy areas.

Revenue sharing and fiscal federalism. Determining fair systems for allocating tax revenue and intergovernmental transfers could be contentious.

Management of shared natural resources like water, forests, etc. Coordinating usage and conservation of resources that cross jurisdictional boundaries.

Compliance with federal laws and policies. States may resist directives from the federal government.

Capacity and readiness of state and local governments to handle new responsibilities.

Grounds of Frictions

As a federal system some tensions in the division of power is always possible. The reasons are as follows:

- Top down process of federalization
- All three tiers of the government have their own legislative, executive, and judicial powers. Autonomy works efficiently, however cooperation requires certain level of sophistication.
- This sophistication is required especially when legislating provincial laws without federal parliamentary consent, creating public sector organizations, and rejecting federal public servants.
- The financial spectrum of intergovernmental relations (three different fiscal transfer categories) (to be done by other paper presenters in this conference)
- Efficiency and exposure of Intergovernmental Fiscal and Natural Resources Commission
- Expressions and behaviors of influential political leaders both in power and opposition
- Federal bureaucracy trained in unitary state is prone to federal solutions on the problem related with autonomy.

To strengthen the implementation of federalism in Nepal, there is a need for regular and intensive discussions and interaction between the federal, provincial, and local governments.

Activating intergovernmental structures can help create effectiveness, transparency, accountability, and harmonize intergovernmental relationships

The list of the following intergovernmental coordination mechanism (IGCMs) of different capacities may be useful at this stage:

Mechanism/Councils/Organizations	Constitutional Provisions & Relevant Statutes
Office of the Prime Minister and Council of Ministers (OPMCM)	Government of Nepal (Allocation of Business) Rules, 2017 Government of Nepal (Work Performance) Rules, 2016
Inter-Provincial Council	Article 234, the Constitution of Nepal, 2015 Federation, Province and Local Level (Coordination and Interrelation) Act, 2020 (2077)
National Coordination Council	Federation, Province and Local Level (Coordination and Interrelation) Act, 2020 (2077)
Thematic Committee	Federation, Province and Local Level (Coordination and Interrelation) Act, 2020 (2077)
Provincial Coordination Council	Federation, Province and Local Level (Coordination and Interrelation) Act, 2020 (2077)
National Natural Resources and Fiscal Commission	Articles 250 and 251, the Constitution of Nepal, 2015 National Natural Resources and Fiscal Commission Act, 2074 (2017)
District Coordination Committee	Article 220, the Constitution of Nepal Federation, Province and Local Level (Coordination and Interrelation) Act, 2020 (2077)
Intergovernmental Fiscal Council	Intergovernmental Fiscal Arrangement Act 2017 (2074)
National Development Action Committee (NDAC)	National Planning Commission
Ministry of Federal Affairs and General Administration	Government of Nepal (Allocation of Business) Rules, 2017
National Assembly	Part 8, the Constitution of Nepal
Supreme Court Constitutional Bench	Article 137, the Constitution of Nepal
Local Government Associations	Municipal Association of Nepal (MuAN), National Association of Rural Municipalities in Nepal (NARMIN), and Association of District Coordination Committees of Nepal (ADCCN)

(Chart: Bipin Adhikari)

- Effective policy, organizational, and procedural measures can help harmonize intergovernmental relations in federal settings

This will require a review of the following legislation:

Federation, Province and Local Level (Coordination and Interrelation) Act, 2020 (2077)

Intergovernmental Fiscal Arrangement Act, 2074 (2017)

National Natural Resources and Fiscal Commission Act, 2074 (2017)

Financial Procedures and Fiscal Accountability Act, 2076 (2019)

Financial Procedures and Fiscal Accountability Rules, 2076 (2020)