

[Working Paper Series: Horizontal Accountability in Asia]

Horizontal Accountability in Nepal

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1. Introduction

Nepal underwent a major political transition in the early 2000s, marked by a shift from an absolute monarchy to a federal democratic republic. This transition culminated in the adoption of a new constitution in 2015, which established a multi-level governance system consisting of federal, provincial, and local governments. However, the transition has not been without challenges, including political instability, weak governance systems, and social and economic inequalities.

The transition, characterized by a decade-long civil war between Maoist rebels and government forces, ended in 2006 with the signing of the Comprehensive Peace Agreement. This agreement led to the integration of Maoist rebels into the political mainstream and paved the way for drafting a new constitution. This new constitution established a federal system of governance with a bicameral federal parliament and an independent judiciary. It also created several new institutions, including the National Human Rights Commission and the Commission for the Investigation of Abuse of Authority.

Despite these significant changes, the transition has been marked by political instability, with frequent changes in government and a lack of continuity in policymaking. This instability has also led to a lack of accountability and transparency, with little progress in addressing corruption and ensuring effective service delivery. Social and economic inequalities have also been persistent challenges in Nepal. The country's human development indicators remain among the lowest in South Asia, with high poverty levels, malnutrition, and illiteracy. Discrimination and marginalization of certain castes also continue to be a significant problem.

The implementation of the federal system has also been challenging, with disputes over the division of powers and resources between the federal, provincial, and local governments. There are concerns about the ability of local governments to deliver effective services, and resource allocation has been a contentious issue, with accusations that the federal government has not provided adequate resources to the provincial and local governments. One of the key challenges of governance in Nepal is the lack of capacity and resources of government institutions. Government institutions at all levels, including the federal, provincial, and local, suffer from a shortage of skilled personnel, inadequate budget, and inadequate infrastructure. This has resulted in ineffective service delivery, weak regulatory systems, and low administrative efficiency.

Corruption is another significant challenge facing governance in Nepal. Despite having laws and regulations to prevent corruption, there remains a lack of political will to enforce them.

Corruption in Nepal is pervasive, with government officials and politicians often involved in corrupt activities, leading to a loss of public trust in the government and public institutions. Nepal has also faced significant challenges in terms of political stability. Since the Constitution's adoption in 2015, the country has faced multiple changes in government, including the resignation of two prime ministers, leading to a lack of continuity in governance. This has also impacted the implementation of policies and programs, leading to slow economic and social development.

As previously stated, in recent years, there have been efforts to address the governance challenges in Nepal. The government has initiated various reform programs to improve administrative efficiency, service delivery, and accountability. These programs include the Civil Service Reform Program, the Local Governance and Community Development Program, and the Economic Governance and Development Program. Additionally, CSOs are essential in strengthening governance in Nepal. However, there have been challenges in the operations of CSOs, including government interference and restrictions on their activities.

Another significant challenge facing governance in Nepal is the country's geography, with the rugged terrain making service delivery difficult, particularly in remote areas. The government has launched various initiatives to address this issue, including providing mobile services, extending road networks, and establishing satellite offices.

2. Constitutional and Political Framework in Nepal

2.1. Constitutional Provisions

The Constitution of Nepal guarantees 31 fundamental rights, including communication rights (Article 19) and the right to information (Article 27), which provides an essential purpose for access to information from public officials unless rated as classified. The constitution also clearly states the principles of the separation of powers and checks and balances between the organs of the state, namely the legislative, executive, and judiciary. Similarly, the federal parliament has established ten parliamentary committees for the oversight of ten various thematic areas. Of these committees, the Public Accounts Committee (PAC), in particular, attracts interest regarding the surveillance of public finances.

2.2. Judicial System

The preamble of the Constitution clearly states the three organs of the state, which have an “impartial, independent and competent” judiciary system in place. The judiciary is organized as a unitary arrangement, with the provision of the Supreme Court, High Court, and District Courts. The Supreme Court has a Constitutional Bench under constitutional remedy, which investigates inter-governmental jurisdictional disputes. At the local level, a Judicial Committee exists comprising the Deputy Mayor or Vice Chairperson of local governments as the head and two members from the elected representatives. The jurisdiction of the committee has been confined to non-criminal cases.

2.3. Oversight Through Constitutional Bodies

Nepal's Constitution of 2015 envisioned 13 constitutional commissions. These commissions have been formed in order to empower and protect the rights of marginalized communities, backward communities, and other disadvantages. With the executive, judiciary, and legislative being on equal par in terms of their functional independence and autonomy to perform checks and balances, the 13 commissions, which can work in close collaboration with civil society to democratize society, are yet to reach the people and check the government but are limited to their jurisdiction with recommendation power and no executive role.

The 13 commissions include the Commission for the Investigation of Abuse of Authority (CIAA), Auditor General, Public Service Commission Election Commission, National Human Rights Commission, and National Natural Resources and Fiscal Commission. However, National Women Commission, National Dalit Commission, National Inclusion Commission, Indigenous Nationalities Commission, Madhesi Commission, Tharu Commission, and Muslim Commission are subject to review every ten years.

The work, role, and results of these commissions are brought into question frequently. The appointments of the chiefs of these commissions are strongly influenced by the political system and political interest, which are often used as a political weapon at the point of bargaining for political power distribution. This leads the people of Nepal to frequently question the independency and ethical conduct of these bodies, which has also lost its credibility in recent times in the public sphere.

3. Gaps and Challenges with Accountability

Accountability plays a vital role in checks and balances, surveillance, and institutional constraints on the exercise of power. In democracies, a legislative body plays the role of monitoring and providing control over the functioning of the executive body. However, there seem to be gaps in accountability mechanisms in Nepal. The ill development of relevant norms regarding sanctions and the distance between formal institutions and actual practices of accountability at the minute level are some of the main issues of democracies in many developing countries, including Nepal.

3.1. Local Government Operation Act

The federal mechanism of Nepal has a clear division of rights in all three levels of government, and the Local Government Operation Act is a milestone document in strengthening the local governance system. The Local Government Operation Act has mandated 35 powers to the federal level, 21 powers for Province level, 25 concurrent powers of federation and province levels, 22 powers of local level, 15 concurrent powers of federal, province and local levels. However, there are major drawbacks to the Local Government Operation Act, as reflected in the absence of planned and targeted investment in the development of marginalized communities. Unlike the former block grant mechanism, there is an absence of mandatory allocation of plans and programs to the targeted communities, while this differs on a case basis across the nation. Social accountability is on the verge of disappearance in this context. Marginalized communities are being continually marginalized due to this provision. Additionally, the situation of the same remains to be stagnant and aloof from the mainstream development.

Fortunately, the introduction of Local Government Institutional Self-Assessment (LISA) has dragged the local governments to invest in targeted thematic areas and communities. Though inadequate, a small step forward has been set in this early stage of Nepal's federal mechanism.

3.2. Intra-Government Accountability: Local Level

Local-level governance is an essential aspect of Nepal's political system; however, intra-governmental accountability issues often hinder the effective functioning of local-level governments. Intra-governmental accountability refers to the extent to which different levels of government hold each other accountable for their actions.

One of the main intra-governmental accountability issues in Nepal's local-level governments is the lack of coordination and communication between different levels of government. The country's federal system of governance has created three levels of government: federal, provincial, and local. However, there is often a lack of coordination and communication between these different levels, which leads to inefficiencies and overlaps in service delivery.

Another issue is the lack of clear delineation of responsibilities between different levels of government. This ambiguity often leads to confusion about who is responsible for specific tasks and can lead to a lack of accountability. In addition, there is often a lack of clarity about the allocation of resources, which can lead to disputes and inefficiencies.

A third issue is the lack of capacity at the local level. Many local-level governments lack the necessary resources and expertise to carry out their responsibilities effectively. This lack of capacity can lead to inefficiencies and a lack of accountability.

Finally, there is a lack of transparency and public participation in local-level governance. Citizens often do not have access to information about local government activities, and there are limited opportunities for citizens to participate in decision-making processes. This lack of transparency and public participation can lead to a lack of accountability and can undermine citizens' trust in the government.

3.3. World Justice Project "Rule of Law index"- a Reflection of Case Scenario

The World Justice Project (WJP) is an independent organization with the mission to promote the rule of law around the world. Each year, the WJP releases a report evaluating the rule of law in different countries based on a comprehensive set of indicators. In the most recent report, Nepal was ranked 105 out of 126 countries.

The report evaluates countries based on eight factors: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. Nepal's performance on these factors varied widely. One of the areas where Nepal performed poorly was corruption. The report found that corruption was a significant problem in Nepal, particularly in the public sector. The lack of effective measures to combat corruption was a major factor contributing to this issue. Nepal also scored poorly in the area of civil justice. The report found that the country's court system was slow, inefficient, and lacked independence. There were also concerns about access to justice, particularly for marginalized and disadvantaged groups.

On the other hand, Nepal scored relatively well in the area of fundamental rights. The country has a constitutional commitment to protecting fundamental rights and a vibrant civil society advocates for these rights. However, there were concerns about how these rights were implemented and enforced, particularly for marginalized groups. Nepal's performance on the other indicators was mixed. The country scored relatively well in the area of order and security, but there were concerns about the excessive use of force by law enforcement agencies. Nepal also scored relatively well in the area of regulatory enforcement, but there were concerns about the lack of effective regulation in some areas.

Overall, the WJP report highlighted several areas where Nepal needs to improve the rule of law. In particular, the country needs to take more effective measures to combat corruption and improve the efficiency and independence of its court system. There is also a need to improve access to justice and ensure that the fundamental rights of all citizens are effectively protected, including marginalized and disadvantaged groups. To address these issues, the Nepali government and civil society need to work together to implement reforms that promote the rule of law, which could include measures to strengthen the judiciary's independence, improve the effectiveness of law enforcement agencies, and promote greater transparency and accountability in government. There is also a need to increase public awareness of the importance of the rule of law and to build greater public support for these reforms.

4. Conclusion and Recommendations

Nepal's transition to a federal democratic republic has been marked by significant challenges, including political instability, weak governance systems, and persistent social and economic inequalities. However, there have been efforts to address these challenges, including reform programs, civil society initiatives, and government initiatives aimed at improving service delivery and accountability. It is essential to continue these efforts to achieve sustainable and inclusive economic and social development in Nepal.

There is a need for improved coordination and communication between different levels of government in order to address these intra-governmental issues. Clear delineation of responsibilities and resource allocation is also necessary. Necessary resources and expertise need to be provided to local-level governments to allow them to carry out their duties effectively. There is also a need for increased transparency and public participation in local-level governance to ensure accountability.

The Constitution of Nepal has provided adequate legal frameworks, mechanisms, procedures, and opportunities for the state and civil actors to strengthen the true essence of the constitution. Longed prosperity is achievable only through confirming ethical accountability and transparency, which may sound utopian in nature, while there are factors contributing to attaining the same within a certain period. The federal mechanism of Nepal is relatively young, despite the fact that the actors involved are the ones who were already used to the prior system. Both the bureaucratic organization and the representatives need to work together with civil society to empower the disadvantaged, unreached, and underrepresented communities and construct a strong culture of rationality, accountability, and transparency which must be the ultimate process in attaining synergy. This could be fulfilled through initiatives such as the inter and intra government coordination center. The lack of coordination between the constitutional bodies and the governments is clearly visible due the gap in collaboration among the same. The systemic crisis in the collaboration leads to degrading quality of

service delivery, raises question to the governance mechanism, transparency and accountability of the state against the long run vision of and journey towards the prosperity of the nation.

The WJP report highlights several areas where Nepal needs to improve the rule of law. While there are some areas where the country is performing relatively well, there are also significant challenges that need to be addressed. By working together, the government and civil society can take steps to promote the rule of law and build a more just and equitable society for all Nepalese.

In conclusion, horizontal accountability is crucial for an effective functioning democracy in Nepal. While the Constitution provides a strong framework for horizontal accountability, it is still challenging to implement due to weak institutions, lack of transparency, and political interference. Greater transparency, free and independent media, a strong and independent judiciary, a robust civil society, and responsible private sector behavior are needed to strengthen horizontal accountability. Only by working together can Nepal achieve an authentic and functioning democracy. ■

References

- Almeida Lopes Fernandes, Gustavo Andrey, Marco Antonio Carvalho Teixeira, Ivan Filipe de Almeida Lopes Fernandes, and Fabiano Angélico. 2020. “The Failures of Horizontal Accountability at the Subnational Level: A Perspective from the Global South.” *Development in Practice* 30, 5: 687-693. Accessed March 20, 2023. <https://www.tandfonline.com/doi/abs/10.1080/09614524.2020.1773764?journalCode=cdip20>
- Amnesty International Nepal. 2019. “NEPAL: LAND for LANDLESS PEASANTS COMMENTS and RECOMMENDATIONS on AMENDMENT to the LANDS ACT 1964.” Accessed January 9, 2023. <https://www.amnesty.org/en/wp-content/uploads/2021/05/ASA3112212019ENGLISH.pdf>
- Bhattarai, Prakash. 2019. “The New Federal Structure in Nepal: Challenges and Opportunities for Quality Governance.” External Democracy Promotion: EDP. April 23. <https://www.external-democracy-promotion.eu/the-new-federal-structure-in-nepal-challenges-and-opportunities-for-quality-governance/>
- Bhusal, Thaneshwar. 2017. “Paving the Way for Women: Implication of Nepal’s Local Elections.” *BroadAgenda*. June 6. <https://www.broadagenda.com.au/2017/paving-the-way-for-women-implication-of-nepals-local-electionsnew-blog-post/>
- Election Commission. 2017 (2074 BS). *Election Results*. Kathmandu: Election Commission Nepal.
- Election Commission. 2022 (2079 BS). *Election Results*. Kathmandu: Election Commission Nepal.
- Gurung, Mahendra Man. 2021. “The Right to Know.” *The Kathmandu Post*. September 27. Accessed March 20, 2023. <https://kathmandupost.com/columns/2021/09/27/the-right-to-know#:~:text=Nepal%20is%20the%20first%20country,fundamental%20right%20of%20the%20citizen>
- Human Rights Watch. 2021. “Nepal: Lack of Accountability Undermining the Rule of Law.” January 13. <https://www.hrw.org/news/2021/01/13/nepal-lack-accountability-undermining-rule-law>
- Informal Sector Service Centre: INSEC. 2023. “Nepal Human Rights Year Book 2023.” Accessed March 21, 2023. <https://inseconline.org/en/human-rights-year-book-2023/>
- Kisan, Yam Bahadur, Ram Bahadur Charmakar, and Prakash Nepali. 2014. “Nepal: Access to Justice for Dalits.” Samata Foundation Equity Watch 2014. Accessed March 20, 2023. https://samatafoundation.org/wp-content/uploads/2020/09/Equity-Watch-2014_Nepal_Access-to-Justice-for-Dalits_English-1.pdf
- Nepal Administrative Staff College. 2018. “Nepal National Governance Survey- 2018.” Accessed March 21, 2023. <https://www.nasc.org.np/nngs-2018>
- Nepal Law Commission. 2015. “The Constitution of Nepal.” Accessed March 20, 2023. <https://lawcommission.gov.np/en/wp-content/uploads/2021/01/Constitution-of-Nepal.pdf>
- Paswan, Bhola. 2017. “Technically Included, Practically Left Out.” *The Record*. May 13. Accessed March 21, 2023. <https://www.recordnepal.com/technically-included-practically-left-out>
- Paudel, Ramesh C., and Anil Kumar Gupta. 2019. “Determinants of Accountability in the Bureaucracy: The Case of Nepal.” *Modern Economy* 10, 9: 2085-2109. <https://www.scirp.org/journal/paperinformation.aspx?paperid=95234>

- Poudel, Keshab. 2022. “Constitutional Bodies Everywhere, Nowhere.” *SpotlightNepal*. May 1. <https://www.spotlightnepal.com/2022/05/01/constituioal-bodies-everywhere-nowhere/>
- Sijapati, Bandita. 2017. “The Quest for Achieving Universal Social Protection in Nepal: Challenges and Opportunities.” *Indian Journal of Human Development* 11, 1: 17–36. <https://doi.org/10.1177/0973703017696378>
- Thapa, Deepak, Nyima Dorjee Bhotia, Binay Jung Thapa, Vibhav Pradhan, Shalini Gupta, and Manesh Shrestha. 2021. *Resilient Social Protection for an Inclusive Development*. Kathmandu: Himal Books.
- Timilsina, Krishna Prasad. 2020. “Problems and Prospects of Local Judicial Committee in Nepal.” *Journal of Political Science* 20: 124–141. <https://doi.org/10.3126/jps.v20i0.31798>
- World Justice Project. n. d. “WJP Rule of Law Index.” Accessed April 30, 2023. <https://worldjusticeproject.org/rule-of-law-index/global>

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