



Multi-Level Government and COVID-19: Nepal as a case study

Budhi Karki¹

The form of multi-level government in Nepal

An effective state response to a pandemic of the magnitude of COVID-19 requires clear roles and responsibilities, coordination mechanisms, information channels and fiscal relations that allow for a contextualised response, and enables interventions that effectively respond to the immediate health and economic crises. Nepal, being in a very early stage of the federalisation process still lacks many of these basic requirements. The 2015 Constitution of Nepal established a federal system in Nepal with three levels of government - federal, provincial and local with exclusive as well as concurrent competencies for each level. The lists of competencies are very detailed and sometimes overlapping, thereby causing confusion in some key areas, such as education and health. The Constitution gives supremacy to federal law in concurrent jurisdiction which makes the matter more complicated for the provincial and local governments, especially while law-making.

Nepal adopted a federal system by abandoning its age-old, highly centralized and unitary state structure. This somewhat explains the lingering remnants of this centralized system, in form and practice; the mindset and working culture of politicians and bureaucrats, both carrying a legacy of older system, remain centralized. The Nepali federalization process so far has been a struggle between devolution of political powers as envisaged by the Constitution and a recentralization effort led by politicians and bureaucrats holding on to the past. This struggle was reflected in the state response to COVID-19, disguised under the claims of incapacity of sub-national governments. Sub-national governments are not yet fully clear about their roles and responsibilities – which are overlapping and confusing – and the mechanisms to facilitate inter-governmental relations are not yet fully developed. As a result, Nepal has faced a range of practical challenges in effectively responding to COVID-19.

Relevant constitutional and legal arrangements for responding to COVID-19

The 2015 Constitution does not specifically mention management of pandemics in relation to the distribution of powers amongst the three levels of government. However, communicable disease control falls under the federal jurisdiction and an epidemic is one of the grounds for the President to declare a state of emergency throughout the country or any part of it. A provincial government can also request the federal government to declare a state of emergency, however, there has been no experience with this happening so far.

Disaster management is an exclusive competency of local government, but also a concurrent area for all three levels of government. Nepal enacted its *Disaster Risk Reduction and Management Act 2017* (DRRM) as one the first sectoral federal laws after the promulgation of Constitution. The Act defines

¹ This paper represents the personal views of the author and are not associated with his employer.

a pandemic (such as COVID-19) as a non-natural disaster. The Act sets out the institutional mechanisms for disaster management from federal to local level, with very clear roles and responsibilities of given to each level of government. Several sub-national governments have enacted their own disaster management laws, with their highest leadership usually chairing disaster management committees. A permanent federal Disaster Management Fund remains under the Federal Ministry of Home Affairs (MoHA), with similar funds set up in each sub-national government.

However, when it came to responding to the biggest pandemic of the era, instead of relying on the DRRM Act and the institutional mechanisms established by it, the Federal Government chose to draw on old laws that carried with them the legacy of an old, centralized, unitary system. One of these laws is the *Infectious Disease Act 1963* which gives power to the federal and provincial governments to take action and issue necessary orders in cases such as COVID-19. There is also the *Local Administration Act 1971*, which gives the Federal Government power to mobilize Chief District Officers to implement orders related to the prevention and control of a pandemic, such as COVID-19.

Main mechanisms to respond to COVID-19

After the pandemic hit Nepal, new ad-hoc mechanisms were established by executive decisions to respond to the crisis. These not only excluded sub-national governments from consultations, but also made no provision for their representation in decision-making. An 11-member COVID-19 Prevention and Control High Level Coordination Committee (HLCC) was set up as the main mechanism to respond to COVID-19. It was led by the Deputy Prime Minister & Minister of Defense and included nine other senior members of the Federal Council of Ministers plus the Chief Secretary. The HLCC was given a sweeping mandate to ‘carry out necessary functions relating to prevention and control of COVID-19.’

Within less than a month of the formation of the HLCC, the Council of Ministers formed another COVID-19 Crisis Management Centre (CCMC) with a detailed and clear terms of reference, which eventually replaced the HLCC. At the top of the CCMC was a Directorate led by the Deputy Prime Minister & Minister of Defense and five other senior Ministers from the Federal Council of Ministers, which steered the overall response to pandemic. A Facilitation Committee to support the CCMC’s functions was formed under the leadership of the Chief Secretary, which included the Secretary of the Federal Ministry of Home Affairs and the Chiefs of four security forces (Nepal Army, Nepal Police, Armed Police Force and National Investigation Department). Four different operations were setup under the Facilitation Committee to deal with (i) health services and treatment (Medical Ops), (ii) supply medicine and equipment (Logistic Ops), (iii) maintain law and order (Security Ops), and (iv) information and technology support (Media & IT Ops).

To address fiscal issues, the Federal Government established a COVID-19 (Prevention, Control and Treatment) Fund (COVID-19 Fund) at the federal level, which was replicated at the provincial and local level, at its direction. The COVID-19 Fund was to be used to support prevention, control, and treatment of COVID-19 patients, provide relief to the poor and vulnerable, and cover the expenses of infrastructure and human resources directed at COVID-19 responses. A seven-member committee led by the Vice-Chair of the National Planning Commission was formed to operate the Federal COVID-19 Fund, with the Secretaries of relevant ministries as members. The provincial and local level Funds are each operated by a committee led by Chief Minister and Chairs/Mayors, respectively.

Influence of multi-level government in responding to COVID-19

To what extent were responses to the pandemic influenced by multi-level government in your country? Did governments work together, separately, or both?

The response to COVID-19 in Nepal was substantially led and controlled by Federal Government. The response by subnational governments was limited to implementing decisions and orders of the Federal CCMC and carrying out the functions delegated to them. The decisions related to the pandemic response were very top-down, often in a patronizing way, in the form of directives, guidelines and requests to provincial and local governments. The approach of the Ministry of Federal Affairs and General Administration in “coordinating” with the local governments was no different.

As for the institutional mechanisms, the provincial level CCMCs – a replication of the Federal CCMC – were established in each province, led by the Chief Minister. Similar structures were established in each local government, led by its Chair/Mayor. As part of their job, the provinces established isolation centers, established their own testing labs, and managed medicines and other essential services. The response by local governments were concentrated around establishing and managing quarantine facilities and distributing relief to the needy. Even though all three levels of government worked together, a systematic, centralized approach was adopted which did not provide space for the sub-national governments to influence the response to the pandemic in any independent way, except for carrying out routine responsibilities. Furthermore, District Level CCMCs were also eventually set up in all districts with Chief District Officers given greater authority and leadership over the COVID-19 response, which further compromised the roles of provincial and local government.

How effective was action by the centre and by sub-state levels of government?

The nationally-led pandemic response was relatively successful to prevent the spread of the pandemic in its early phase. The Federal Government imposed a nationwide lockdown also sealing the open border with India and suspending international flights. As the pandemic started hitting the big cities in India hard, it caused the mass exodus of thousands of Nepali migrant workers back home, contrary to the Government's expectations. Quarantine facilities, most of them not meeting WHO standards, were packed with around 175,000 people at one point.

Over the last six months, 44 testing labs have now been established and equipped, almost from scratch. COVID-19 designated hospitals have been established. Quarantine and isolation facilities were also established throughout the country in coordination with provincial and local governments. The Federal Government slowly increased the daily RT-PCR testing from a few hundred tests in the beginning to over 10,000 per day by August. The Federal Government's effort was effective to control the number of active cases to around 5,000 and the number of deaths stayed below 50 until the end of July. Once the four-month long lockdown was lifted in the third week of July however, the number of infections and deaths increased significantly. As of 25 August, the number of COVID-19 active cases in the country is over 10,000 with 175 deaths.²

Did emergency conditions change the normal arrangements for multi-level government?

There are some provinces that have been more affected by the pandemic than others. The pandemic in its earlier phase remained highly 'immigrated' from India (over 90% of the total infected number) with the inflow of immigrants due to an open border. This meant that some local governments were

² As of August 26, total number of COVID-19 cases have reached over 34,400 out of which over 19,500 have recovered and 175 have died. Total number of RT-PCR tests stands at 635,255 with over 21,700 tests per million. The pandemic has spread all over the country through all seven provinces but worst hit are Province 2 bordering with India and Bagmati Province which includes the federal capital and the most populated city Kathmandu.

overwhelmed in their efforts to manage quarantine and provide relief to a large number of returnees. Some provinces and local governments were overstretched, but they were not completely dysfunctional. Although the Constitution gives the Federal Government power to suspend or dissolve any provincial government on certain grounds, a pandemic event is not one of them. Though many parts of the country, including the federal capital, remain under prohibitory order at the moment, the Federal Government has not considered declaring a state of emergency so far. As such, there have been no changes in the normal arrangements for multi-level government due to the pandemic.

Do you expect the experience of dealing with this emergency to have a longer-term effect on multi-level government? What positive or negative insights can be gained from experience with multi-level government during this emergency?

The federal system – although still in a nascent phase – was a real blessing in dealing with COVID-19 in Nepal. The current response to the pandemic was much more effective compared to the devastating 2015 earthquake that rattled Nepal. Due to the absence of any regional or local government in place, offices were run by civil servants who were mostly in-charge of the response to the earthquake. However, the new federal structure placed elected governments in these decision-making roles, an improvement, after almost 15 years. This hugely influenced the mode of response to the current pandemic, especially in terms of democratic accountability.

Responding to COVID-19 by activating the institutional mechanisms set out in the DRRM Act would have been more effective and more in keeping with the federal spirit. However, this did not happen, due to the distrust of the Federal Government towards the newly established sub-national governments. The Federal Government also did not want to take risks with the newly instituted, ‘untested and inexperienced mechanisms’ in the DRRM Act. The Federal Government’s move to constitute ad-hoc mechanisms such as the HLCC and CCMC was also guided by the need to have a strong nationally-led and coordinated approach to respond to the pandemic. The centralized mindset of the decision-makers appears to have played a role in the decision to adopt this approach.

The experience of dealing with the pandemic also had some significant positives for Nepal’s new federal setup. The COVID-19 pandemic has proved as an opportunity for the subnational governments, especially local governments, to reach out to people and demonstrate the real essence of federalism. It has also helped them, as well as the Federal Government, to find greater clarity regarding their roles and responsibilities and the need for a coordinated approach in times like these. Their performance in response to the pandemic at the community level has helped federalism gain wider prominence in a country with still abundant anti-federal sentiment in the air. The Prime Minister, considered not very appreciative to the federal system by many, has heaped praise to the roles played by the provincial and local governments in several of his addresses to the nation, and the President also acknowledged and appreciated their contribution in the parliament.

Overall, the pandemic has created an opportunity for the state to accelerate the federalization process; the same way the 2015 earthquake presented an opportunity for the political forces to conclude the painfully prolonged constitution making process.

Biography: Budhi Karki is Senior Policy & Programme Advisor at International IDEA in Nepal and a constitutional lawyer. He worked as a senior lawyer and team leader of the legal team in UNDP’s constitution-building support initiative in Nepal from 2008-15. He also worked as a constitutional law expert for the functional analysis of Nepal’s Federal Constitution carried out by the Coordination Committee on Federalism Implementation and Administrative Restructuring under the Office of Prime Minister and Council of Ministers of Nepal in 2016. He has written and edited several publications on issues related to constitution making and federalism.