

Reviewing the Bill pertaining to the Speedy Development and Implementation of the National Priority Projects, 2075¹

Background for Reforms in Project Delivery

One of the much-hyped controversies surrounding the Bill in question is the authority proposed to be given to the PM for bringing the projects costing over NRs 25 billion under his direct supervision.

There are some other clauses also that have generated a debate among the development analysts as to whether the PMO in deed deserves such overriding authority to implement the large-scale sectoral projects that might likely lead to politicization, non-transparency and policy corruption at a bigger proportion. Though seen as a radical departure for expediting and accelerating the mega projects by drastically reducing their time and cost, the idea that the bill has propagated is not easy to buy in among development critics and implementers.

So, the review of this Bill warrants a number of questions to be examined as follows:

- a) Do any such parallels exist from other democratic countries both from the north and south?
- b) Is there found any such theoretical basis or rationale behind vesting too much power and authority in the PM and his/her office, and examining if it harms democracy but helps faster economic development leading to a trade-off ?, and
- c) Can we mitigate that trade-off through a balanced allocation of authority among the PMO and other sectoral ministries adopting some measures (such as creating legal and institutional check and balance mechanism, enhancing civic vigilance, etc.)?

Let me walk through the first question if there are any good examples of this legal arrangement elsewhere.

United Kingdom (UK) under the leadership of the then Prime Minister Tony Blair during 1997-2007 tried to introduce radical reforms in bureaucracy so as to deliver key development projects. He had created a Prime Minister's Delivery Unit (PMDU) to oversee major projects under which the public service agreements or PSAs were signed. It was also called Delivery and Reform Team (DRT) at the Cabinet, run under PM's direct supervision. A permanent secretary on behalf of the DRT would be deputed at each ministry to fast-track development works. This

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arrangement proved extremely productive and yielded positive results for the delivery in the government.

The first PMDU or DTU was responsible for 17 PSAs. The initiative became popular and has been imitated so far in 25 countries, with Malaysia's PEMANDU (Performance Management and Delivery Unit) being seen as the greatest success.

Canada and Australia were other countries in the developed world. In our region, Pakistan has implemented it under the same name - Delivery Unit - and India also has done it with some adaptations and a different name ("Delivery Monitoring Unit").

One of the success factors in the UK was the PM's personal commitment. For example, PM Blair would allocate 4 hours' dedicated time to the PMDU per week. In 2010, the new coalition under David Cameron reviewed it as he couldn't continue with this 'Labour-initiated reform'. But he did need something like this for his 'political consumption'. So, he created a similar agency called 'Major Projects Authority' and dubbed it as a partnership between the PMO and MoF (which was led by the Liberal Democrats then).

Malaysian government created the Malaysian Investment Development Authority (MIDA) in 1967 to attract FDI and fast-track development works.

But some 10 countries including Australia, Chile, Wales (within the UK itself) out of those 25 have dropped this institutional arrangement, citing various reasons including lack of coordination among the sectoral agencies leading to conflict and rivalry between them, criticism of the PMO's highhandedness surpassing the sectoral ministries' jurisdiction, resistance from bureaucrats, authority running up at the center with the selected technocrats, etc. This shows how the same reform efforts work differently in different settings.

Regarding the second question as to if it harms ministerial autonomy, accountability and decentralized allocation of authority by superimposing the power and responsibility in one agency (PMP) at the cost of others (sectoral ministries) and also if there is found a theoretical rationale, the answer remains in the grey area. The only justification for this arrangement is the possibility of stronger coordination among government agencies. Development has overall suffered from poor coordination and departmental ego.

Here I would like to share an anecdote. When I was the environment secretary, I had attended a meeting at the Presidential Office which was being chaired by President Ram BaranYadav. The agenda was to review the progress on the Chure Area Conservation and Development Programme which was the president's own flagship project. There were other secretaries also in the meeting, and two secretaries representing local development and forest began to argue on the issue of excavation of sands and stones from the river within the forest area. They were taking positions in such a way that no one would listen to other's views. Then, I stepped in and said, "Mr President, we are now behaving like we are secretaries in our ministries alone. We are, but we are more than that. We are rather the secretaries of the Government of Nepal. We

better take a holistic and inter-sectoral view rather than stick to one's own parochial ministerial position when an inter-sectoral agenda is being discussed. We need to become solution-oriented and contribute to that end." No wonder, I was applauded by President Yadav for this view of mine then. This calls for the need for an inter-sectoral, larger perspective of the government bureaucrats because, even practically speaking, they no longer belong to any particular ministry rather they are frequently shifted from one ministry to another any fine morning without being pre-informed at all.

Coordination and harmonization among agencies is an issue in all bureaucracies. A recent initiative of the UK has been the famous 'Whole-of-Government Approach'. In other words, the government needs to be seen as one entity: which sounds obvious but not so easily followed in practice. For a super-powerful PMO and its risks to democracy, I think we can look at India itself. But this risk is 'compensated' by stronger development. We also see better coordination and more streamlined development in the Chinese system, but only at the cost of democracy, again. So, there seems a trade-off, which, however, should be mitigated by all means possible.

This would lead to the the third premise of maintaining a balance, and for this, I think, a balance is necessary and could be created such as by the revised UK Major Project Office where power has been divided between the PMO and MoF, at least in theory. In our system, however, it's hard to see any minister standing up for their legal mandate. Whichever organizational set up we have, the PM remains unchallenged in practice.

Overall Comments on the Bill

Let me now refer to the text of the Bill.

The overarching concept of the Bill indicates that the priority projects (EPC-Engineering, Procurement, Construction; EPCF-EPC with Financing, G2G), which the relevant ministries failed to deliver on time, would be implemented by a powerful body separately created and directly supervised by a high-level authority under the Rt. Honorable Prime Minister. Such provision has been mentioned in Clause 19 of the Bill. But clause 4 clearly states that an office will be created under the relevant ministry to implement the priority projects. I think it is heading towards an epic failure. The idea behind creating such Bill is that the Ministries couldn't implement the projects, and the Clause 4 again brings back the Ministry's authority to implement the projects.

So, based strictly on the 'letter' of the Bill, the PM is not as strong as we tend to see. The actual implementation entity is outside of OPMCM, and it can handle all issues. The PM heads the Steering Committee with a mandate to issue instructions, etc. But the 'spirit' could well be that the PM would prevail over everything. In none of the 25 or so examples cited above, do we find a Steering Committee. The government appoints a go-getter as the head of the body and reports to the PM. And, that's it. But we are the great believers in a committee system with the names of 'steering committee' which we know is almost always dysfunctional.

So the contradiction is going to create additional burden on the part of the government. On the other hand, such office, which will be created as per Clause 4 and headed by an Executive Director with staff from private sector entirely, will prove to be another lame duck, and may turn to be a scapegoat for the bureaucracy in the future.

One another point I want to mention here is that the bill enables single-source procurement (Clause 13). Even here, the PM/PMO has no formal authority. Still, they could easily eat the commission of 25 billion and say that the project chief would take the responsibility.

The UNCITRAL model law on public procurement (which our system has been influenced from) does allow single-source procurement but defines restricting conditions for it. In our case, no conditions are defined, thereby opening the possibility for misuse.

Clause-wise Comments

1. Clause 9 on Project Implementation: Too much discretion to the implementing agency, timeline needs to be fixed right here in the Bill or at least in the regulation to be followed; any variation in the timeline should be backed with strong rationale. Provision of a fine of Rs. 5 lakh for the delay in meeting the agreed timelines is nothing. It needs to be increased if considered a solution at all.
2. Clause 11: Project developer's selection: Only low-cost bidding: I think it should not be the only basis. Sub clause 8 needs to be revised with sub clause 10.
3. Sub clause 11 of Clause 11 is dangerous. I think it needs to be revised: at least three time biddingshould be enforced and only then single bidder is qualified. Or else this will lead to policy corruption and political 'commissionocracy'.
4. Clause 13: Direct Negotiation: it should be stated that the direct negotiation would be possible only after three times bidding fails or if the project brings innovative technology or the size of the project is too big for others to compete (like that in the PPPIA-Public Private Partnership and Investment Act, 2019).
5. Clause 23: Land acquisition: Land Acquisition Act 2034 has all the provisions mentioned in this Act. Therefore, it's better to reiterate that the land acquisition will be followed as per the 2034 Act.
6. Clause 24: While providing compensation amount, it's good to provide financial literacy training to the recipients to make sure that the claim is not submitted unjustly and exorbitantly and the money is well spent.

7. Clause 27: Government land. Does it include forest land and government forest as well? Can the Government of Nepal (Nepal Sarkar) means that the cabinet can provide such land on lease? Who is going to sign the lease agreement? What is the matrix? I think a separate guideline is required for this.
8. Clause 28: ROW-Right of Way: not much clear. It doesn't solve the problem. The issue is with transmission line route. Even on the issue of towers, the Act doesn't say how the land valuation is fixed.
9. Clause 37: Recruiting other staff for the project implementation. Executive Director can recruit 50% staff on his/her own discretion. I think it needs to be more specifically defined, and the Executive Director shouldn't be provided with such huge discretion. It risks being politicized. Therefore, all staff should be recruited competitively from the open market.
10. Clause 45, 46 and 47 for other facilitation: Customs, Repatriation, and others, not much clear. It should be mentioned that only 1% custom tax will be charged for construction equipment. Similarly, the project developer needs a foreign currency account.
11. Labor issues: whether foreign labors are required, not made clear. How they can be recruited, etc. should be clarified.

Overall, the idea is good, but there are discrepancies on a number of issues, including its mandates and reporting mechanism. I think it's good to create such institutional mechanism, but it needs to be equipped with adequate power, and needs to be separate from regular bureaucracy. After all, it is all about intention of the rulers, which if found malicious in the course of implementation can lead to dangerous fallout for democracy and good governance. Therefore, all possible legal ring-fencing should be made without complacency.

In a nutshell, in keeping with the light of the above discussion, some specific suggestions of mine to reform the bill are the following:

1. A high-power authority directly under the Steering Committee (which is headed by the Rt. Honorable Prime Minister with ministers from key ministries) with adequate mandate and resources provided and accountability fixed.
2. Such high-power authority needs to be headed by someone with ministerial portfolio, and s/he should be directly reporting to the Steering Committee.
3. Contract Agreement, including cost-variation (not more than 10 percent from the feasibility reports) should be clearly stated in the agreement.
4. A separate guideline for EPCF is required, outlining how cost is fixed, and payback mechanism. It is good to apply Swiss Challenge modality on EPCF proposals.

5. All staff should be competitively hired, and there needs to be clear and transparent mechanism for recruitment. Otherwise, political parties or government can influence the recruitment process.
