

# Functional Analysis and Assignment of Government Consolidated Report

(Final Draft)

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Government of Nepal  
**Ministry of General Administration**  
**Project to Prepare Public Administration for State Reforms (PREPARE)**  
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# Functional Analysis and Assignment Consolidated Report

Government of Nepal  
Ministry of General Administration  
Project to Prepare the Public Administration for State Reforms  
(PREPARE)

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- We wish to acknowledge the comments and suggestions provided by international consultants – Professors Jorge Martinez-Vazquez and Andrey Timofeev in the earlier version of this report.
- For detail analysis and understanding please refer to sectoral and thematic reports prepared for this project.

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## Acronyms and Abbreviations

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ADB	Asian Development Bank
ADDC/N	Association of District Development Committees, Nepal
ANRFRRRC	The Allocation of Natural Resources, Financial Rights and Revenue Committee
ARC	Administrative Reform Commission
ARU	Administrative Restructuring Unit
C	Community
CA	Constitutional Assembly
CBO	Community Based Organization
CG	Central Government
CO	Community Organization
F	Federal Government
DDC	District Development Committee
G	Government
GoN	Government of Nepal
ICB	Independent Central bank
L	Local Government (Third Tier in Proposed Constitution)
L(r)	Local Government (rural municipality)
L(u)	Local Government (urban municipality)
LGs	Local Governments (i.e. VDCs, DDCs, Municipalities)
LBFC	Local Bodies Fiscal Commission
LSGA	Local Self-Governance Act, 2055 (1999)
MoFALD	Ministry of Federal Affairs and Local Development
MoF	Ministry of Finance
MOGA	Ministry of General Administration
MOUD	Ministry of Urban Development
Muni	Municipality
N	National Government
NAVIN	National Association of Village Development Committees in Nepal
NAFRRC	Natural Resources, Financial Rights and Revenue Allocation Committee
NPD	National Program Director
O & M	Operation and Maintenance
OPMCM	Office of the Prime Minister and Council of Ministers
P	Province (Provincial Government under proposed Constitution)
Pr.	Private
PREPARE	Project to Prepare the Public Administration for State Reform
QC	Quality Circle
RAMP	Responsibility and Accountability Mapping Process



S	State or Provincial Government
SRDSPC	State Restructuring and Division of State Powers
U	Super National Responsibility
UNDP	United Nations Development Program
VDC	Village Development Committee
WB	The World Bank
WUC	Water Users Committee
WSC	Water and Sanitation Committee

# Summary

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## **S. 1 Introduction**

The Ministry of General Administration (MoGA), Government of Nepal has executed a project titled *Project to Prepare the Public Administration for State Reforms (PREPARE)* since March 2013 in cooperation with the United Nations Development Program (UNDP). One of the key outputs of the project is to have a government-led public service reform strategy for shift towards an inclusive federal structure and further capacity building of government institutions and parliamentarians. Functional analysis of the Government of Nepal is part of it.

Last Constitutional Assembly of Nepal (2008-2012) formed 11 sub-committees to prepare concept notes and draft of the Constitution of Federal Republic of Nepal. Among the reports submitted by the sub-committees, two reports—Natural Resources, Economic Rights and Revenue Collection (NRERRC) and Restructuring of the State and Distribution of State Power Committee (RSDSPC) of the State are of greater relevance to the present work of functional analysis. They will become the basis for the analysis carried out here.

## **S.2 Objective**

The overall objective of the present activity is to support transitional planning and management of Nepal by carrying out the tasks related to analysis and assignment of functions of government in various sectors across different levels in the context of federalization of civil service and other relevant areas of public administration by building on the previous work done towards this direction.

Specifically, this study, by analyzing the current responsibilities of the government, aims to suggest most accountable assignment of public function to different tiers of government in a federal structure based on an appropriate methodology, international practice, country's context and consultations with major stake holders.

In the current phase of study education, health, agriculture including irrigation and land reform, transport and drinking water and sanitation sectors as well as two cross cutting issues, as inputs to support sector reports are prepared.

## **S. 3 Utilization of Report**

The reports prepared by the team of consultants under this project activity can be utilized as a preparatory document for Government (OPMCM) in particular and parliamentarians and other stakeholders in general to a) articulate on functional classifications in different sectors with necessary institutional arrangements in each tier of government (central, provincial and local), b) draft an organic law of the federal Nepal, c) help draft sectoral

acts and regulation, and d) work in the area of viable modes of federalization of civil service and administration in different tiers of government.

#### **S. 4 Expected Benefits of Functional Assignment in Service Delivery**

Functional analysis and assignment in federal system is expected to improve service delivery. It could happen through better provisioning of accountability, enhanced mechanism for improving efficiency of service delivery and better financing alternatives.

In federalism, constitutionally distributed powers among different tiers of government may enhance political accountability and policy-making skills by bringing government closer to the people and politicians are more responsive to local needs and interests. It also helps to empower citizens and contribute to decision-making process.

The principle of decentralization is expected to improve efficiency of service delivery. The “subsidiarity” principle of decentralization states that functions should be assigned to the lowest level of government competent to provide efficient delivery of services. In other words, subnational governments could more efficiently supply public goods and services whose jurisdiction includes the beneficiaries. Local governments can have better information about their residents' tastes and preference and services can be better tailored to match the needs of the jurisdiction.

Like in most of the other developing countries resource available for development is inadequate in Nepal. In addition, many activities carried out by the Government suffer from inefficiencies resulting in poor performance. The corrective mechanisms advocated and practiced to minimize these problems, are extensive deregulation and greater involvement of private sector, NGO and communities in providing public goods. Involvement of community in providing local services can improve planning, accountability and ownership of programs. Charging users' fee, sharing costs with local communities and involvement of private sector in delivering services may have enormous benefits in addressing the issue of inadequate resources. Decentralization and constitutional authority provide incentive to reform the system of local governance and fiscal management, including responsibilities for revenue raising, fiscal transfers, and development expenditures at various tiers of government.

There is not a single best way for assigning public functions to different tiers of government, but there are certain commonly accepted principles which could be useful in the process of functional analysis. They are as follows.

#### **S. 5 Principles and Theoretical Approach**

*Efficiency Criteria (Subsidiarity principle):* If there is a single theoretical model relevant to the public function assignment question, it is the principle of “subsidiarity”. This model says that the higher-level communities (government) should perform only those tasks which lower level communities (government) cannot perform equally well or better. In other words, under the principle of subsidiarity, responsibility for the provision of

services should be at the lowest level of government compatible with the size of "benefit area" associated with those services. Where there are substantial spillovers of service benefits into other jurisdictions, those services should be provided by upper levels of government correspondingly.

Nevertheless, while crafting assignments, different mechanisms may be warranted in the provision of services in the following conditions externalities, economies of scale, social inclusion and equity, national priority and stability.

*Externality*, which could be any action or event that imposes costs or creates benefits for others, exists in public services. As for example, vaccinations, clean drinking water, technology, education etc. provide considerable benefits to the whole society and will not be limited to the jurisdiction, which provides the service. In such circumstances, exclusive responsibility to a higher level of government has to be assigned or, where the conditions require it, it has to be assigned concurrently (or shared responsibilities) to two or more levels of government. Defense and foreign affairs are other examples, whose benefits are considered national in scope are best provided exclusively by the central government.

*Economies of Scale*: Certain services require larger numbers of users than those associated with a local jurisdiction for cost-effective provision, for example, public transportation and sewerage in cities, specialist health services, training of personnel, etc. These functions could be assigned at higher level of government because of consideration of economies of scale. Therefore, for the reasons of economies of scale, these services are either provided by the higher level of governments or have to be assigned concurrently.

*Social Inclusion and National Priority*: Gender equity and social inclusion is a principle where no service should be denied based on gender or any other demographic or ethnic characteristic or place of residence or any other basis. This principle, which is a national priority of Nepal, has to be taken into consideration for functional analysis. Positive action programs have to be initiated for deprived and excluded population for the sake of equity, gender inequality and social inclusion.

*Equity and economic stability*: Social security of the people is by its nature and scale naturally attributed to the central government. Functions related to the improvement of equity or income distribution are also the domain of the central government. If the local or regional governments undertake these activities, it could become an incentive to the needy from other areas and the local government may need to tax the residents heavily. However, the policy and funding for these activities must be a central government responsibility, implementation can very well be left to local governments which may have informational and other comparative advantages. Similarly, any function that is important for stabilization of the economy (e.g. banking or fiscal policy) has to be assigned to the central government.

However, there is no absolute best way for perfectly assigning functions to different

levels of government. The application of these normative rules largely facilitates the assignment of functional responsibilities to different levels of government and the rules do not always yield an unequivocal answer.

It will not be possible to enumerate all powers and to foresee all possible fields of future state actions. In a similar manner, some functions e.g. basic education and primary health care may be of a local nature by the size of their benefit area, but because of their relevance in income redistribution and inclusion, throughout the world, central governments are commonly involved in financing and sub-national governments are normally involved in delivery. Therefore it may be difficult to assign all functions, perfectly. The sufficiency of any assignment has to be judged in terms of how well it achieves the objectives set up by the government in its decentralization strategy and how well it serves the idiosyncrasies and history of the country.

However, on the other hand, without a clear specific functional assignment it will not be possible to assess the adequacy of the revenue and tax assignment to different levels of government, or the need and effectiveness of a system of intergovernmental transfers. In addition, the failure to establish a clear assignment of functional responsibilities for each tier of governments can lead to duplication and an inefficient provision of services. Therefore, functional assignment needs to be the first and fundamental step in the design of a decentralized system.

*Unbundling for Achieving Clear Assignment:* In general, if any of the public functions could be exclusively assigned to one level of government, then that particular tier of the government will be entirely accountable for delivering the function in question.

However, if the concurrency is unavoidable, then to avoid duplication and inefficient provision of services and to make each tier of governments more accountable, the functions have to be unbundled so to identify what sub-functions and attributes of the service are assigned to each of the concurrent levels of government.

Considerable clarity can be regained by realizing that any public service has a multi-dimensional nature: any functional responsibility can be broken down into internationally accepted attributes for (1) actually producing a good or delivering a service, (2) providing or administering the service, (3) financing a service, and (4) setting standards, regulations or policies guiding the provision of government services.<sup>1</sup>

*Regulatory powers* can be defined as those authorizing governments to undertake policies and make decisions concerning the functioning and standards of public institutions. In particular, regulation comes in the forms of mandates and standards on inputs (e.g., student/teacher ratio) and outputs of service production (e.g., number of classes taught).

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<sup>1</sup> There is a difference between providing and producing a service. For instance, a local government may provide garbage collection services to local residents. This service may in fact be delivered by a private firm which has been contracted by the local government.

The responsibility for *financing* entails provision of financial means required to discharge a particular government function; usually this responsibility is associated with the authority to levy taxes and user fees in order to recover the costs of public services. If restricted in their ability to derive revenue from the local economic base, sub-national governments would depend on the revenue decisions—in the form of transfers, revenue sharing, etc. —of the higher-level government. Conditional transfers and otherwise explicit rules on how these funds should be determined (pool of funds) and allocated or distributed (e.g., formula-based) limit the autonomy of the grantee. On the other hand unconditional (general purpose) transfers provided to subnational governments without much restrictions provides considerable autonomy over the use of the funds and honors autonomy.

*Administration* (or provision) of public services is the attribute to which most economic arguments for decentralization apply. This aspect of government authority deals with the implementation of budget priorities through planning of government programs, specifying program targets, organization of tenders for services, hiring the private sector to deliver services, monitoring and auditing service delivery, and by reviewing implemented programs.

*Production* is separate from administration and concerns with the physical production of goods and services, such as purchasing and combining factor inputs (capital, labor, raw materials, land, technology, or management) to produce desired outputs. This attribute provides managers with discretion in choosing the production technology and the allocation of costs across different types of inputs such as staffing. And it also provides the ability to seek cost efficient production alternatives. In theory and practice, the responsibility for administration is separable from that of actual delivery; for example, local governments may be responsible for the *administration* of the service but may contract with a private provider for the actual *delivery* of the public services.

## ***S. 6 Road Map for Functional Analysis***

All these discussions lead us the following steps in the development of a proposal regarding the assignment of responsibilities of public function.

1. Out of the current functional assignments, one needs to identify the public functions, which markets will not provide. Markets will not efficiently provide goods and services that are non-exclusionary<sup>2</sup> or non-rival<sup>3</sup> or have decreasing unit costs or lumpiness of initial investments and are denied as public goods<sup>4</sup> and only these goods and services should be considered for assignment to sub-national governments.

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<sup>2</sup>If a unit of a good is provided, then nobody can be excluded from using it.

<sup>3</sup>The same unit of a good can be simultaneously used by more than one user.

<sup>4</sup>Any good that complies with the non-exclusion and non-rivalry principles

2. For each functional category, it is important to determine the benefit area of the output when provided at the optimal scale.
3. Third step will be to determine if the following special circumstances may be present in the delivery of the service: (i) spillovers beyond the primary benefit area, (ii) national objectives (“Merit Goods”), such as equal access or social inclusion, (iii) significant income distribution concerns, and (iv) cultural/ethnic differences with respect to demand for the service.<sup>5</sup>
4. If a function does not involve the aforementioned special circumstances described in 3 above, which characterizes the public good, provision of that service could be left to the private sector or if not feasible, the entire (exclusive) responsibility may be assigned to the lowest level of government that encompasses the entire benefit area (applying the “subsidiarity principle”).
5. Where any special conditions are identified as described in 3 above, exclusive responsibilities to a higher level of government can be assigned or, where the conditions require it, functions can be assigned concurrently or as a shared responsibilities to two or more levels of government.
6. Where concurrent assignments are necessary or desirable, sub-functions and/or the attributes (regulation, financing, administration, and delivery) associated with the particular competence have to be clearly assigned to particular government levels. When any of these attributes or sub-functions is still shared by two or more levels of government further unbundling of that function (attribute) in sub-functions (sub-attributes) has to be carried out until the latter can be exclusively assigned to one level of government:

## **S.7 Consultations**

There are many stakeholders and partners involved and linked with the project. Among them three—Technical Committees, MOGA and OPMCM, are of more importance to this study. Regular consultations with these groups were carried out during the assignment.

Technical Committees were formed in each ministry concerned with the sector chosen for functional analysis for carrying out the tasks of functional analysis and assignment at organizational level with national consultants. The government officials from ministries were oriented and trained on functional analysis. They were then engaged in the functional analysis and assignment work. These technical committees worked as focal

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<sup>5</sup>For details of these terminologies see the corresponding sections of the report and the main sectoral reports

points for the respective sectoral ministries and the project team and consultants worked mainly with them.

MOGA is responsible to the overall project monitoring and supervision through the on going PREPARE activities. MOGA has been executing the PREPARE project to help relevant government agencies to get prepared for administrative reforms in the context of wider state reform processes. The project PREPARE is executed and monitored by an Executive Committee chaired by the Secretary, Ministry of General Administration, Government of Nepal.

MOGA, in general, and the National Project Director (NPD) in particular monitored activities of the functional analysis project. He also worked as a liaison between the project and other stakeholders including OPMCM, Quality Circle (QC) and the Executive Committee.

Quality Circle at the Office of the Prime Minister and Council of Ministers (OPMCM) facilitated and advised MOGA and consultants of this project in different stages of their work. Quality Circle is headed by a Secretary of OPMCM and has drawn members from different government.

## **S.8 Sectoral Summary Assignments**

Based on the principles, procedure and consultation process described above, the tables below provide broad functional assignments to would be three tiers of government in health, education, agriculture, transport, and drinking water. The detail discussions and assignments are given in the respective full reports.

- Functions refer to the main activities that are more efficiently performed by the government than by the private sector, households and businesses.
- Sub-functions refer to the subsidiary functions which helps which helps in performing and achieving functions.
- Functional responsibility, however, has been multi-dimensional characteristics and into can be broken down mainly into four components, (i) regulation (setting standards, regulations or policies guiding the provision of public function), (ii) financing, (iii) providing or administering services, and actually producing goods or services (deciding and managing proper utilization of labor and capital). These characteristics are called attributes.



**Table S1: Education: Summary Table of Functional Assignment**

Attributes → Functions ↓	Sub-Functions	an Regulations Standard*	Financing	Staffing	Service Delivery		Remarks (mainly justification of assignments)
					Provision	Production Implementation	
<b>1. Access to Early Childhood Education</b>							
	Curriculum and Instructional design (for preparation and readiness for basic education)	F,L <sup>6</sup>	F,L, and Private <sup>7</sup>	School and Community	L	School and Community	Subsidiarity principle, but shared financing as it is a merit good
	Inclusion and social justice (to ensure equal participation and access to all)	F, L	F, L	School and Community	L	School and Community	To ensure equity and inclusion, Central government regulates to ensure.
<b>2. Access to Basic Education (Class I-VIII)</b>							
	Curriculum and Instructional design	F, L	F, L and private	Schools	L	Schools and community	To ensure national interest, central government regulates school curriculum.
	Examination and certification	F, L <sup>8</sup>	F, L	Schools	L	School	National interest to maintain quality and credibility
	Inclusion and Social justice	F	F, L	Schools	L	School and community	To ensure equity and inclusion
<b>3. Access to Secondary / Higher Secondary Education</b>							
	Curriculum and	F	F, P	Schools	L	Schools	National interest to regulate school

<sup>6</sup> Central government develops a broad national policy framework to ensure consistency and to ensure minimum quality standards to operate early childhood education programs in the country. The local government develops its own policy and standards to regulate it within its jurisdiction.

<sup>7</sup> As a merit good, financing is the primary functions of the central government. However, the LSGA has already devolved this function to the local government and therefore financing is also the responsibility of the local government. Therefore it is a shared responsibility. Since private sectors are already making huge investment in this sub-sector, their contributions is also needed to be acknowledged.

<sup>8</sup>As per the School Sector Reform Plan, National Examination Board (NEB) conducts the certification examination at the end of grade 8 (basic education) by delegating this function to the local authority.

Attributes →	Sub-Functions	Regulations	Financing	Staffing	Service Delivery		Remarks (mainly justification of assignments)
	Instructional design		and private				curriculum.
↓	Library/laboratory	F	F, P	Schools	L	Schools	National priority
	Examination and certification	F	F, P <sup>9</sup>	Schools	F	Schools	National interest to maintain its quality, credibility, and acceptability
	Inclusion and Social justice	F	F, P	Schools	P	Schools	Equity and inclusion.
<b>4. Access to Tertiary Education</b>							
	Curriculum and Instructional design	F	University Grant Commission (UGC)-independent Body;	Colleges / facility	F	Colleges / facility	As per the recommendation of various reports, university is a central function
	Library/laboratory	F	UGC / independent Body	Colleges / Facility	F	Colleges / Facility	
	Examination and certification	F	UGC / independent Body	Colleges / Facility	F	Colleges / Facility	
	Inclusion and social justice	F	UGC / independent Body	Colleges / Facility	F	Colleges / Facility	
<b>5. Access to Technical and Vocational Education</b>							

<sup>9</sup> As per the School Sector Reform Plan, National Examination Board (NEB) conducts the certification examination at the end of grade 10 (basic education) by delegating this function to regional/provincial authority and end of grade 12 examinations and certification by the NEB itself.

Attributes →	Sub-Functions	Regulations	Financing	Staffing	Service Delivery		Remarks (mainly justification of assignments)
↓	Curriculum and Instructional design	F,P	F,P and Private	Facility	P	Facility	Because of possible externalities in L, P is best for delivering this service. Provinces also require to adopt to their specific requirements.
	Provision of library	F	F, P	Facility	P	Facility	
	Examination and certification	F	F, P	Facility	P	Facility	National interest
	Inclusion and Social Justice	F	F, P	Facility	P	Facility	Equity and inclusion
<b>6. Access to education through open and distance learning</b>							
	Provision Curriculum and Instructional design	F, P	F, P and Private	Facility	P	Facility	Economy of scale,
	Examination and certification	F, P	F, P	Facility	P	Facility	National interest
	Inclusion	F, P	F, P	Facility	P	Facility	Equity and inclusion
<b>7. Public Libraries</b>							
	Library	F, L	F, L	Clubs, Facility	L	Clubs, Facility	Other than central Libraries. Local government should promote local clubs and civil society to operate libraries as community reading center.

**Table S2: Proposed Functional Assignment in Health (Summary Table)**

SN	Functions	Sub- functions	Attributes					Principle applied
			Regulation/ Standards/	Financing	Staffing	Provision	Service Delivery (Production) a	

1	Provide Basic Health Services							
		Out-patient service (Primary care)	L	L	L	L	L	Subsidiarity
		Child Health Care <sup>b)</sup>	P	L	L	L	L	Subsidiarity
		Vaccination <sup>c)</sup>	F	F, P	L	L	L	Subsidiarity
		Reproductive Health Services <sup>d) e)</sup>	F, P	F, P	L	L	L	Subsidiarity
		Communicable Diseases Control <sup>f)</sup>	F, P	P	P	P	P, L	Externalities
		Emergency Services	P	P	P	P	L	Economy of Scale
		Epidemic Control	F, P	F, P	P	P	P	Externalities
2	Preventive and Promotive Health Care							
		Community Mobilization	P	P	L	L	L	Subsidiarity
		IEC/BCC	P	P, L	L	P, L	L	Subsidiarity
3	Provide Specialized Services							
		Inpatient services <sup>g)</sup>	P	P	P	P	P	Economy of Scale
		Secondary Care	P	P	P	P	P	Economy of Scale
		Tertiary care	P	P	P	P	P	Economy of Scale
4	Ayurvedic and other traditional medical Services		F	P	P	P	P	National Priority
5	Access to quality Medicine <sup>h)</sup>		F	F	F	F	F	Externalities
6	Medical Education and Research <sup>i)</sup>		F	F, P	F, P	F, P	F, P	Economy of Scale
7	Chronic Diseases Management (NCD)		P	P	P	P	P	Economy of Scale

Note: Keeping in view economies of scale some of the functions are kept under provincial government

- a) Service Delivery includes medical supplies, equipment as well as management information system
- b) Child health includes all the services rendered to childcare (newborn care, Nutrition, IMCI)
- c) Vaccination has externalities beyond local or even provincial jurisdictions. This is a case for long term federal policy and financing role.
- d) Reproductive health services includes all the components of RH including family planning
- e) The rate of population growth and the size of population has implications beyond local jurisdictions. Therefore, this again may be case for higher level roles in policy and financing.
- f) Communicable Diseases have the potential to spread beyond local jurisdictions and joint effort is necessary
- g) Inpatient Service includes all the diagnostic services like laboratory, imaging and other investigations
- h) ATM does not incorporate drugs to inpatient services as these are considered part of service delivery at their respective levels
- i) Medical Education includes on the job training

**Table S3: Functional Assignment in Agriculture Sector (Crop<sup>10</sup>, Animals & Livestock, and Fisheries: Summary)**

S. No.	Major Functions as (policy Instrument)	Sub-functions	Public Good Output	Role of Government at Various Level of Services					Justification/Comment
				Regulations/Standards	Financing	Staffing	Provision	Production	
1.	Agriculture Regulatory Services		Increased market efficiency in agriculture, protected public health from unsafe food, and spread of agriculture disease effectively controlled.	F,P	F,P	F	F	F	Principle of externalities so responsibility of the federal government in close partnership with the province and local governments, the NGOS and the private sector. (P can regulate some standard as

<sup>10</sup> Cereal Crops, Cash Crops, Industrial Crops, Spice Crops, legumes, MAPs, Fruits and Vegetables (including Sericulture, Apiculture and Mushrooms)

									defined by Organic law)
		1.1. Inspection Services	Spread of agriculture disease effectively controlled; safe food products; fair domestic agriculture trade.	F,P	F,P	F,P,L	F,P,L	F,P,L	P and L also should have some responsibility in identifying and controlling diseases and inspection of food
		1.2. Quarantine Services		F	F	F	F	F	
		1.3. Licensing Services		F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	P and L also should have some responsibility in licensing service
		<ul style="list-style-type: none"> <li>Product standards development services</li> </ul>	Established or well defined national food safety standards for both processed & unprocessed food	F	F	F	F	F	
		1.4. Agriculture Regulatory Information Services	Well informed public on food safety and inspection protocols governing agriculture products.	F	F	F	F	F	
		1.5. Risk analysis and bio-security	Up-to-date, science based risk analysis and bio-security policies.	F	F	F	F	F	
2.	Research and Development (by Commodity and by Discipline)		Robust generation of new Knowledge and Technology in agriculture that serves as foundation of sustained growth with equity in the sector	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Principle of externalities so responsibility of the federal government in close

									partnerships with the province and local governments, the NGOs, and the private sector
		2.1. Up streams (Basic & strategic) Research	Robust generation of basic knowledge in agriculture	F	F	F	F	F	
		2.2. Mid-streams (technology Development) Research	Robust public generation of agriculture technologies that focuses on the needs of the poor	P	P	P	P	P	
		2.3. Down streams (Technology Testing at Farmer's Field) Research	Robust testing of appropriate agriculture in field conditions across different agro-climatic conditions of the country.	P, L	P, L	P, L	P, L	P, L	
		2.4. Collaborative or partnership research	Strong partnerships with the universities and the private sector on agriculture research.	F	F	F	F	F	
		2.5 Development of agriculture knowledge package for extension as regards new knowledge & technology	Well-developed system on the production of agriculture knowledge package for extension	F	F	F	F	F	
3.	Information, Communication and Extension		Increased access to new knowledge and technologies by the public especially the rural poor and commercialization of new technology accelerated.	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	This function is a shared responsibility of all levels of government following the principle of steering-rowing. The federal government

									“steers” while the provincial and local governments “rows” as they partner with NGOs and the private sector.
4.	Soil Health Care Services	Soil fertility protected and improved; improved soil nutrient management across all types of agriculture producers.	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Public good. Responsibility of the three tiers of government. (R&D-F, testing and services-P, and Implementation - L)
5.	Land Reform and Management	Land fragmentation and urbanization in agriculture land effectively controlled.	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Responsibility of the three tiers of government.(Policy/ Regulation-F, standardization and monitoring in provinces-P; Implementation- L )
6.	Agriculture Education	Adequate supply of Well trained human resources in agriculture from production to processing and marketing	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Public good. Responsibility of the three tiers of government
7.	Agriculture Credit	Access to agriculture credit enhanced specially aimed at the poor and growth of the farming and	P,L	P,L	P,L	P,L	P,L	P,L	Principle of subsidiarity shall apply



		agribusiness especially among the poor accelerated.						
8.	Irrigation	Reliable & cost-effective irrigation services available in all parts of the country especially among the small producers.	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Responsibility of all levels of government depending upon the size
9.	Rural Infrastructure	Increased market efficiency in all parts of the country; commercialization of agri-products accelerated; agriculture trade enhanced.	F, P,L	F, P,L	F, P,L	F, P,L	F, P,L	Appropriate level of government determined based on the Subsidiarity Principle
10.	Agriculture Statistics	Highly reliable and timely agriculture data and information. Data-based planning & policy making enhanced.	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	The federal government takes the national leadership role in the generation of timely and reliable agriculture statistics to achieve national and international quality standards in close partnerships with the provincial and local governments

1. For specific national priorities, the corresponding federal government's policies shall override contradicting policies by the sub-national governments. Such overriding role shall be limited to functions having externalities such as Food Security and Nutrition for All; Development of Food Reserve Facilities; Conservation of Agro bio-diversity, Value Chain Development; Control of HPED<sup>11</sup>, TADs<sup>12</sup> and Zoonotic Diseases; Climate Change and Poverty Alleviation.
2. Agriculture standards of the federal government shall also apply to sub-national services especially those that pertain to International Commitment.
3. During the transition, the federal government shall finance provincial and local programs for agriculture services with the concurrence of sub-national governments.
4. There shall be three tiers of government services. F- Federal, P – Provincial, and L – Local
5. Provision of services includes key result areas in public management such as planning, monitoring, and evaluation (PME) and Management information system (MIS), and human resource management (HRD)
6. Production of services includes purchasing and combining factor inputs such as labor, raw materials, land, technology or management.

#### **Table-S4 Assignment of Functions under Transport Sector**

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<sup>11</sup> Highly Pathogenic Emerging and Re-emerging Animal Disease

<sup>12</sup> Trans Boundary Animal Diseases

Functions/ Functional Area	Attributes/ Sub- attributes	Regulation	Financing	Service Delivery		Staffing*	Justifications /Comments
		Regulation/S standards	Finance	Provision	Production		
National Highways and transport management at national network level		F	F	F	F,P, Pr	F	Because of its spillover effect ( externalities), economy of scale and National priority, responsibility lies on Federal Government
Provincial Highways and transport management at provincial network level		P	P	P	P, Pr	P	Based on decentralization principles, economy of scale and spillover effect, responsibility lies on Provincial Government
Local Roads and transport management at local (rural and urban) network level		F, P	L	L	L, Pr	L	According to the principles of decentralization (subsidiarity), all functions are assigned to the local government. However, for the uniformity purpose, the standards related activities are proposed under Provincial government and overall policy, organic laws and regulations shall be under the federal government
Railways		F	F	F	F,P, Pr	F	Because of its spillover effect ( externalities), economy of scale and National dynamism, responsibility lies on Federal Government
Airways and Air Traffic Control		F	F	F	F,P, Pr	F	Because of its spillover effect ( externalities), economy of scale and National dynamism, responsibility lies on Federal Government
Waterway and Ropeway		F,P,L	F,P,L	F,P,L	F, P, L, Pr	F,P,L	Construction, maintenance and operation is being carried out by private sector. However, according to the principle of subsidiarity, regulation related attributes are assigned to respective levels of government depending upon the hierarchy of projects
Dry Port		F	F	F	F, P, Pr	F	Because of its spillover effect ( externalities), economy of scale and National dynamism, responsibility lies on Federal Government
<b>Note: F-Federal, P-Province, L-Local government and Pr-Private</b>							

\* Staffing means not the labor input necessary for physical production of goods and services but the staffing needed for administration (provision)

**Table S5: Assignment of Functions Drinking Water and Sanitation**

	Regulations		Financing	Ownership of Water	Service Delivery		Remarks
	Water quality and Standard	Watershed Conservation and Management			Provision	Production	
Federal Water Supply System (bulk supply to provinces)	F	F, P, L and community (F is important in avoiding or managing conflicts of interest arising from externalities)	F, P, L and beneficiaries	F,P and L	P (one P may share with other P if the watershed is big and or sometimes it is in the border of two Ps)	Concession, Management/ Service contract, WSC*	Federal water supply theoretically may not exist in future; it can be phased out. However, sometimes Federal and intermediate governments also have a technical/financial comparative advantage in managing and financing capital-intensive trunk system mainly for bulk supply.
Provincial Water Supply System (bulk supply to local governments and sharing of water with other)	F	F, P, L and community (F is important in avoiding or managing conflicts of interest)	P, L and beneficiaries	P and L	P	Concession, Management/ Service contract, WSC,	Depending on the capacity of watershed and its location, province can share water with other provinces on

provinces)		arising from externalities)					agreed terms and condition.
Local (rural)(bulk supply to other local governments is also possible)	F	P, L and community (P is important in avoiding or managing conflicts of interest arising from externalities)	L and beneficiaries	L	L	Concession or WSC or management/service contract, L	Direct involvement of P or L may be required in underserved areas (low population density or economically unviable areas)
Local (municipalities) (bulk supply to other local governments is also possible)	F	P, L and community (P is important in avoiding or managing conflicts of interest arising from externalities)	L and beneficiaries	L	L	Concession, Management/ Service contract, WSC	

<p>Local (sewage) (especially in municipalities, but useful in other local governments if feasible)</p>	<p>F and P (P to have uniform standard for processing and discharge among the cities of the Province)</p> <p>Wastewater and septic tank management of households as well as commercial entities, if not regulated and managed properly cause pollution to the environment and creating a risk to public health. Therefore F should regulate large capacity septic systems and disposal of sewage. P will regulate onsite systems.</p>	<p>F, P and or L and beneficiaries (F for public health reasons)</p>	<p>-----</p>	<p>P and or L</p>	<p>P and or L or private contract</p>	<p>Interconnection of water supply and sewage disposal can be regulated by F and or P, but is provided by local government. Sometimes bulk sewage disposal and sewage purification, if done by P for greater regional areas, it will be more useful from technical and financial perspective due to economies of scope. P could be useful for identifying and managing water disposal sites.</p>
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In addition to four attributes, a separate column for ownership has been added to reduce or mitigate possible conflict in the use of water among different tiers of government.

## **S. 9 Observations on Constitutional Assembly Reports on Functional Assignments**

The Secretariat of the Constitutional Assembly, combining the reports of two committees-- Natural Resources, Financial Rights and Revenue Sharing (NRFRRSC) and State Restructuring and Distribution of State Powers Committee (SRDSPC) has produced a consolidated report on the power distribution to subnational governments (Table 9.1).

The allocations nevertheless, present some challenges. Functions allocated to subnational governments without any principles could be challenging for efficient implementation.

Similarly, assignments made without considering the principles of subsidiarity or other principles may result in inefficient service delivery and crisis. Under the principle of subsidiarity, the public goods and services that are provided by subnational governments should generate benefits that can be internalized by those jurisdictions. Similarly, the lack of clear assignments could erode accountability of subnational governments, invite conflict and may result in failure in service delivery.

As for example, in the consolidated table, banks and financial institutions are assigned to provinces. Banking will have major implications to financial and macroeconomic stability. If the banks fail, it could create financial and economic crisis in the country and therefore are monitored by the central bank. It is not efficient to develop capacity of provinces to monitor banks and, if they fail, it can have spill-over effect beyond their jurisdiction. Similarly, local governments, under subsidiarity principle, could also undertake tourism, small irrigation and energy projects, which have not been assigned to them in the proposal. Natural resources are only assigned to autonomous region. Preservation of natural resources is the responsibility of all tiers of government. They are national property and all citizens should share benefits. Another example is the assignment of responsibilities for social protection and poverty alleviation to subnational governments. They affect all regions of the country and if there is no national norm or financing, poorer regions would be unable to address these challenges, whereas the well-off regions will be flooded by poorer and disadvantageous people to reap the benefits from provinces. The challenges are addressed, if social protection services are provided by the sub-national governments but financed by the central government.

However, as mentioned earlier, there is no absolute best way for deciding which level of government should be responsible for particular public services. It sometimes depends on the country's condition and the assignment has to be judged in terms of how well it achieves the goals or objectives set up by the government in its reform strategy, but the objectives and benefits must be clear. Rationalization for possible inefficiencies in allocation has been explained in the remarks column of the table.

## **S. 10 Lessons Learned and the Way Forward**

Constitution Assembly (CA), Nepal has completed preliminary functional assignments to different tiers of would be federal government of Nepal. Consolidated assignments have been prepared based on the reports of Natural Resources, Financial Rights and Revenue Committee (NRFRRSC) and State Restructuring and Division of State Powers Committees (SRDSPC) by



the CA secretariat. Some of the lessons learned from this exercise and the work that can be carried out in the next phase could be as follows.

- 1) This exercise has been carried out where the public functions as well as some of the functions that can be efficiently performed by the private sector has been executed by the unitary system of government. Some decentralization work has been done in the country, but it is constrained by unclear accountabilities and responsibilities lack of clarity and duplication. It did not have desired level of service delivery. There are still some bureaucratic rigidities and tendency to favor a larger role to the central government even in the future federal structure because they think that the capacity of the local governments will be weak and will be constrained by resources.
- 2) The Constitutional Assembly has not been able to finalize the shapes and sizes of subnational government. This may also affect the appropriateness of functional assignment. These exercises may have to be fine-tuned once the CA completes the work of state restructuring work.
- 3) CA reports illustrate that different sub-committees have given different emphasis on the allocation of functions. As for example, SRDSP's report has assigned more functions and authority to provinces than the third tier of the government and also has the provision for special, protected and autonomous. On the other hand, the other sub-committee has assigned services to the local (third tier) government.
- 4) Similarly, the SRDSP subcommittee has allocated functions on the basis of the manifestos of different political parties. On the other hand, NRFRRRC's report has largely followed decentralization principles. Assignments made without considering the principles of subsidiarity or other aspects of principles may result in inefficient service delivery and crisis. Similarly, the lack of clear assignments could erode accountability of subnational governments, invite conflict and may result in failure in service delivery. These points have to be discussed in different committees of the CA.
- 5) As discussed earlier, there are still confusion and disagreements among the political parties on the recommendation of the assignment of public functions to different tiers of government. The Secretariat of the Constitutional Assembly, combining the reports of two committees has produced a consolidated report on the power distribution to subnational governments. The proposed power distribution and constitutional clauses should be subjected to the normative evaluation so that all instances could be identified where lack of compliance is found relative to the normative principles. The analysis could be presented in CA committees and sub-committees, which are involved in drafting the constitution. This could help in influencing the clauses of the constitution and power distribution in a positive

way. It may also contribute towards minimizing the risks of a negative impact of problematic constitutional provisions and avoiding future conflict.

- 6) At present, the study has been carried out only in five sectors- health, education, agriculture, transport and drinking water and sanitation. On the basis of conceptual framework developed and experience gained in the first phase, functional analysis and assignment could be carried out in the other remaining sectors like, industry, tourism, energy, social protection and security, etc.
- 7) The functional analysis only talks about the assignment of public functions to different tiers of government. However, it will be basis for carrying out other aspects of federalism like size and structure of civil service, revenue allocation, and inter-governmental resource transfer. The process could also help in addressing the transition from present situation to federal structure.
- 8) The analysis should be shared and explained with other stakeholders including politicians, sectoral administrators, and other officials from the government, academicians and civil society members.

### 1.1 Background

#### *Project to Prepare the Public Administration for State Reform (PREPARE)*

The Ministry of General Administration (MoGA), Government of Nepal has executed a project titled Project to Prepare the Public Administration for State Reform (PREPARE) since March 2013 in cooperation with the United Nations Development Program (UNDP). The Project, implemented initially for two years, will help relevant government institutions to get prepared for public administrative reforms in the context of wider state reform processes. One of the key outputs of the project is to have a government-led public service reform strategy for shift towards an inclusive federal structure and further capacity building of government institutions and parliamentarians. Functional analysis of the Government of Nepal is part of it.

### 1.2 Context for the Functional Analysis

The Interim Constitution of Nepal, 2007 has declared to end the present unitary structure of the government and transform Nepal into a federal country. During the last few years Constitutional Assembly (CA) has carried out significant work in the area of transforming the country into the federal structure. However, shapes, sizes, numbers and tiers of the sub-national governments of Federal Democratic Republic of Nepal, are yet to be decided.

Federal form of government, among others, promotes decentralized decision-making and therefore is conducive to greater freedom of choice, diversity of preferences in public services, better political participation, innovation and accountability. It is also better adapted to handle regional conflicts.

Functional assignment refers to specifying the functions and responsibilities for each level of government. In other words, what are the functions in the decentralized system of governance? Answering the question of "Who will do what"? is the essence of functional assignment. The clear assignment of functional responsibilities among different levels of government is highly essential. The assignment of functions needs to be considered as the first and fundamental step in the design of functional analysis.

In 2010, the Administrative Restructuring Commission (ARC) of 2008 proposed various administrative arrangements to be made in the context of the new federal system and highlighted a need for further analysis of the roles and responsibilities of different tiers of government by sectors on the basis of recommendations of CA committees. In 2011, all the central level organizations carried out functional analysis within their spheres of work in coordination with the Administrative Restructuring Unit (ARU) of the Office of the Prime Minister and Council of Ministers (OPMCM), which was further reviewed by a group of national consultants.

Similarly, a paper on options for federalization of civil service prepared by two national and international consultants under the PREPARE Project recently has suggested that further functional analysis of existing government organizations be carried out in much more objective and standardized forms.

The ARC report focused its work the administrative arrangements needed at the central and provincial levels. This study which builds on the ARC report provides a set of recommendations on the assignment of functions and sub-functions to different tiers of government by disaggregating the responsibility into four attributes – regulations, financing, provision and production. Clarity in responsibilities from political, administrative and fiscal dimensions of governments helps to carry out service delivery efficiently, effectively and accountably. In addition, this study will also help to formulate organic and sectoral laws and regulations.

The new Constituent Assembly (CA) has resumed its work to complete the unfinished agenda of constitution writing. Modalities of federalization of the country and the forms of governance were the major critical issues in the first CA, which need to be resolved through political consensus. Nevertheless, the government has realized the need to undertake preparatory work with regards to public administration restructuring within the federalization context. Functional analysis based on the CA committees' work is considered to be the starting point in a bid to get the public administration prepared to restructure the public administration along the federal line. In this context, the ARU of OPMCM has also recognized that there is a need to review the functional analysis carried out earlier by all the central level agencies and a group of national experts.

## **1.2 Objectives and scope of functional analysis**

The last Constitutional Assembly of Nepal (2008-2012) formed 11 sub-committees to prepare concept notes and draft of the Constitution of Federal Republic of Nepal. They all have prepared their respective reports, which are now being discussed and finalized in the second Constitutional Assembly. They are all important for the functional analysis and assignment. However, the three reports—Natural Resources, Economic Rights and Revenue Collection (NRERRC), Restructuring of the State and Distribution of State Power Committee (RSDSPC) and Determination of Forms of Governance (DRG) of the State are of greater relevance to the present work. They will become the basis for the analysis carried out here.

### **1.2.1 Objective**

The overall objective of the present activity is to support transitional planning and management of Nepal by carrying out the tasks related to analysis and assignment of functions of government in various sectors across different levels in the context of federalization of civil service and other relevant areas of public administration by building on the previous work done towards this direction.

Specifically, this study, by analyzing the current responsibilities of the government, aims to suggest most accountable assignment of public function to different tiers of government in a federal structure based on an appropriate methodology, international practice, country's context and consultations with major stakeholders.

### ***1.2.2 Scope--Sectors for Analysis***

In the current phase of study the following three major sectors and three cross-cutting issues are chosen for functional analysis in view of their relevance to the national economy as well as their likely existence across all levels of government in the federal structure:

- (i) Social sector: Education and Health
- (ii) Economic sector: Agriculture, including irrigation and land reforms
- (iii) Infrastructure sector: Road and Drinking Water Supply
- (iv) Decentralization, Social Inclusion: Cross cutting issues

### **1.3 Process of functional analysis undertaking: Major tasks and scope of functional analysis**

Major tasks and scope of the functional analysis for the consulting team under the present project activity were as follows:

- a) Overview of the reports of CA Committees as they relate to assignments of roles and responsibilities to governments at different levels, focusing on specified sector/sub-sectors/clusters
- b) Reviews of past relevant reports, including reports of ARC, central organizations and national experts
- c) Development of basic conceptual framework, suitable methodology and road map for undertaking further analysis and assignment of functions across different levels of Government in selective sectors in consultation with the concerned officials of GON (e.g., QC), PREPARE Project team and other stakeholders
- d) Consultation and interaction with a group of senior government officials to orient and guide the national consulting team and other concerned officials on methodology planning
- e) Finalization of methodology
- f) Functional analysis and identification of major functions of the state in federal context in different sectors and tiers of government and refinement of the functions as proposed by the line ministries/ experts to ensure that the major functions of government are not missed out in the draft provisions of earlier reports.
- g) Assignment of important public functions at different levels in federal structure of the state
- h) Interactions, discussions and consultations with relevant officials, experts and stakeholders as needed during reviews and preparation of draft reports
- i) Preparation and finalization of reports (integrated and sector specific) on functional analysis and assignment.

## 1.4 Expected outputs and key activities

### 1.4.1 Expected Outputs

The expected outputs of the project were as follows:

- a) Mapping of the major areas of responsibilities of the government at sectorial and organizational levels (covering different tiers of government) in the context of federalization of administration. The mapping was based on conceptual framework and suitable methodology developed with the help of international consultants, international practices, and in consultation with the concerned officials of GON (e.g., QC), PREPARE Project team and other stakeholders.
- b) Analysis of the major areas of present responsibilities of the government at different sectorial and organizational levels in view of the present organizational arrangements.
- c) Review/ identification of gaps between the existing and the desired levels of engagements of government in state affairs in federal structure of the state.
- d) Lessons learned of the study undertaken on functional assignment and the way forward, including in the areas future staffing requirements and organizational challenges of public service.

### 1.4.2 Limitations

- a) The functional analysis has been carried out based on the assumption that there will be three tiers of government when the restructuring process of the state is completed. Anything beyond that may have limited value, but this can serve as a guiding document for further analysis.
- b) The study has not attempted to look into the new organizational structures and manpower requirements. As the size and number of provinces and local municipalities is yet to be decided, it would be too early to work on the organizational structures and manpower requirements.

## 1.5 Formation of consulting team, with provision for inputs from international consultants

National team of consultants, consisting of one team leader and eight national consultants, each with specific areas of focus, carried out the tasks related to analysis of functions and assignment across different sectors and levels of government in federal structure. The national team of consultants included sector-specific consultants as well as those who focus on relevant crosscutting themes as follows:

National Team Leader and Decentralization (cross cutting theme) Consultant- Dr. Shankar P Sharma

Consultant, Education – Dr. Vishnu Karki, Education

Consultant, Health – Dr. Bal Krishna Suvedi

Consultant, Agriculture - Dr. Prabhakar Pathak

Consultant, Roads – Mr. Dhruva Raj Regmi

Consultant, Drinking Water – Mr. Sohan Sundar Shrestha

Consultant, Gender and social inclusion (cross cutting theme) – Dr. Madan Pariyar

The team was also supported with intermittent services of international consultants in important phases of the functional analysis. To this end, the Project used services of international consultants, to undertake consultations / interactions with and orientation/ training to the senior level official of civil service and other relevant areas of public administration and national consultants on the concept and methodology of analysis and assignment of functions to national and sub-national levels of government and prepare a concept paper on appropriate approach, methodology and roadmap for carrying out the functional analysis in consultation with the relevant stakeholders. They also worked with a team of national consultants in preparing and finalizing the methodology and road map for functional analysis and assignment.

### **1.6 Utilization of Reports**

The reports prepared by the team of consultants under this project activity will be utilized as a preparatory document for Government (OPMCM) in particular and parliamentarians and other stakeholders in general to a) articulate on functional classifications in different sectors with necessary institutional arrangements in each tier of government (central, provincial and local, b) draft an organic law of the federal Nepal, c) help draft sectoral acts and regulation, and d) work in the area of viable modes of federalization of civil service and administration in different tiers of government.

### **1.8 Expected Benefits of Functional Assignment in Service Delivery**

Functional analysis and assignment in federal system is expected to improve service delivery. It could happen through better provisioning of accountability, enhanced mechanism for improving efficiency of service delivery and better financing alternatives.

#### **a) Accountability**

In federalism, constitutionally distributed powers among different tiers of government may enhance political accountability and policy-making skills. Federal constitution brings government closer to the people and politicians are more responsive to local needs and interests. It also helps to empower citizens and contribute to decision-making process.

A detail unbundling of public functions carried out in the analysis helps to make different tiers of government more accountable for the service they deliver. It is difficult to mention functional assignments in detail in the Constitution because it may require too much detail and may be susceptible of changes. However, on the other hand, absence of clear assignment would risk conflicts and may result in service delivery failures due to lack of accountability. Unbundling

functions to as many sub-functions as necessary to identify unique responsibility could help to eliminate duplications and clarify assignments. It would also reduce intergovernmental friction and inefficiency of public service delivery.

b) Improvement in Implementation Efficiency

The principle of decentralization is expected to improve efficiency of service delivery. The subsidiarity principle states that functions should be assigned to the lowest level of government competent to provide efficient delivery of services. However, if the benefit areas may be larger than the lowest level of government, then efficiency within the correspondence principle calls for its assignments to a higher level of government. It implies that provision of public goods or services, which benefit the citizens of entire nation, should be made available by the federal government to ensure its optimal supply. On the other hand, subnational governments could more efficiently supply public goods and services whose jurisdiction includes the beneficiaries. Assigning the supply of public services with wider benefit areas to smaller units of government is likely to result in the inefficient under-provision of services. This framework developed in this report will increase efficiency of service delivery because local governments will have better information about their residents' tastes and preference and services can be better tailored to match the needs of the jurisdiction.

c) Efficient financing arrangement

Like in most of the other developing countries resource available for development is inadequate in Nepal. In addition, many activities carried out by the Government suffer from inefficiencies resulting in poor performance.

The corrective mechanisms advocated and practiced to minimize these problems, are extensive deregulation and greater involvement of private sector, NGO and communities in providing public goods. Involvement of community in providing local services can improve planning, accountability and ownership of programs. Charging users' fee, sharing costs with local communities and involvement of private sector in delivering services may have enormous benefits in addressing the issue of inadequate resources.

In a federal system, it is also well accepted that subnational governments should finance their expenditures to the extent possible with their own revenues rather than depending on external sources. Decentralization provides incentives to reform the system of local governance and fiscal management, including responsibilities for revenue raising, fiscal transfers, and development expenditures at various tiers of government.



## Chapter 2

### International Practice and Nepal's Exercise

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#### 2.1 International Experience

Federal countries differs a great deal in their assignments – specifically, how the division of functions is allocated among various levels of governments and associated fiscal arrangements. This chapter reviews the practice of functional assignments in seven case study countries and highlights the findings. Additional case studies have also been provided in different sectoral reports from the respective sectoral perspectives.

##### 2.1.1 Brazil

Brazil with a large land area only has 26 States and one federal district. Central government's main functions include defense, foreign relations, environmental management, labor, social security, energy and regional expenditure.

Education, health and sanitations are the concurrent functions of Federal, States, and local government. Similarly, most of the other functions like social welfare, responsibilities of disabled persons, cultural and heritage preservations, protection of natural resources and environment, biodiversity conservation, agriculture and food, housing, programs for poor and marginalized communities, traffic management, activities related with mining, tourism etc. are concurrent functions, which are further divided into sub-functions. These sub-functions are then assigned to different tiers of government for the sake of clarity in providing services.

Some of the functions like pre-school education, primary education, preventive health services, preservation of historical and cultural heritage have been assigned to the local government. Responsibility related to inter-city transportation has also been given to local government. Functional assignment in Brazil is given in Table 2.1.

**Table 2.1**

#### Functional Assignment in Brazil

##### **Federal only**

- Defense
- Foreign Affairs
- International Trade
- Currency, banking
- Use of water resources
- National Highways
- Planning; regional and natural
- Postal service
- Police: federal and frontier areas
- Regulation of labor, inter-state commerce,
- Telecommunications, inter-state transport,
- Urban development, energy, mining,

- Employment insurance, immigration,
- Citizenship and native rights
- Social security
- National Statistical System
- Guidelines and basis for national education

**Federal-State (Shared)**

- Health
- Education
- Culture
- Protection of the environment and the natural

Resources

- Agriculture
- Food distribution
- Housing
- Sanitation
- Social welfare
- Police
- Hydroelectricity

**State only**

- Residual powers i.e. any subject not assigned to federal or municipal levels by the Constitution.

**Municipal only**

- Public transport (intra-city)
- Pre-school and elementary education
- Preventive health care
- Land use
- Historical and cultural preservation

*Source: Shah, Anwar, 1990. "Fiscal Arrangements in Brazil" World Bank Working Paper 557, Country Economics Department, The World Bank, Washington DC*

**2.1.2 Ethiopia**

There are nine provinces and two chartered cities in Ethiopia. Pure public goods are the responsibility of the central government. As for example, defense, national security, foreign affairs, citizenship and immigration, international and national trade, financial and monetary policy, and banking.

Regional governments have been assigned functions such as poverty alleviation, education and health services, main regional infrastructure, investment and economic development of the

region. Constitutional provisions for expenditure assignment for Ethiopia are presented in Table 2.2.

**Table 2.2**

**Ethiopia: Constitutional Provisions for Expenditure Assignment**

*Federal provisions*

- Formulate and implement the country's policies, strategies and plans in respect of overall economic, social and development matters
- Establish and implement national standards and basic policy criteria for public health, education, science and technology as well as protection and preservation of cultural and historical legacies
- Levy taxes and collect duties on revenue sources reserved for the federal government
- Draw up, approve and administer the federal government budget
- Formulate and execute the country's financial, monetary and foreign investment policies and strategies
- Enact laws for the utilization and conservation of land and other natural resources, historical sites and objects
- Establish and administer national defense and public security forces as well as the federal police force
- Administer the National Bank, print and borrow money, mint coins, regulate foreign exchange and money in circulation
- Determine by law the conditions and terms under which states can borrow money from internal sources
- Formulate and implement foreign policy as well as negotiate and ratify international agreements
- Develop, administer, and regulate air, rail, waterways and sea transport and major roads linking two or more states, as well as postal and telecommunication services
- Determine and administer the utilisation of waters or rivers and lakes linking two or more states or crossing the boundaries of the national territorial jurisdiction
- Regulate interstate and foreign commerce
- Administer and expand all federally funded institutions that provide services to two or more states

- Deploy federal defense forces, at the request of a state administration, to arrest deteriorating security situation in regions
- Enact all necessary laws governing political parties and elections as well as possession and bearing of arms
- Determine matters relating to nationality, immigration, granting of passports and patent inventions, and protect copyrights
- Establish uniform measurement and calendar standards
- Enact a labour code, commercial code, penal code and civil laws

*Regional provisions*

- Formulate and execute economic, social and development policies, strategies and plans of the state
- Establish a state administration that best advances self-government and democratic order based on the rule of law
- Levy and collect taxes and duties on revenue sources reserved for the states
- Draw up and administer state budgets
- Administer land and other natural resources in accordance with federal laws
- Enact and enforce laws on the state civil service and civil servants' working conditions and ensure that educational, training and experience requirements for any job, title or position approximate national standards
- Establish and administer a state police force and maintain public order and peace within the state
- Protect and defend the federal constitution
- Enact and execute the state constitution and other laws

*(Sources: Articles 51, 52 and 54 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia 1995)*

### 2.1.3 Nigeria

Nigerian government is made of 36 States and one federal city. Federal government, like in other countries is exclusively responsible for police, criminal law, prison, defense, foreign affairs, higher education and other public goods of national importance. Functions like education, health, social welfare, and housing are the concurrent responsibilities of federal and state governments. Policies of most of these functions are made by the central government, but state governments mostly do implementation. States also have the road construction and maintenance assigned to them.

Local governments have the responsibilities for the activities that are mostly carried out by communities. Their functions include infrastructure including road construction and maintenance, street lighting, sewerage, management of parks and open space, vocational and adult education, agricultural development, mining, development of natural resources, health services and other activities assigned by state legislations. Expenditure assignments for Nigeria are given in Table 2.3.

**Table 2.3**

<b>Nigeria: Expenditure Assignments</b>
Federal only Defense; Shipping; Federal trunk roads; Aviation; Railways; Posts, Telegraphs and telephones; Police and other security services; Regulation of labor, interstate commerce, telecommunications; Mines and minerals; Social Security; Insurance; National statistical system; National Parks; Guidelines for minimum education standards at all levels; Water resources affecting more than one state.
Federal-State (shared) Antiquities and monuments; Electricity; Industrial, commercial and agricultural development; Scientific and technological research; Statistics and surveys; University, technological and post-primary education; Health and social welfare.
State-Local (shared) Primary, adult and vocational education; Health services; Development of Agriculture and non-mineral natural resources;
Local government Economic planning and development; Cemeteries, burial grounds; Homes for the destitute and infirm; Markets; Sewage and refuse disposal; Roads, streets, street lighting, drains, other public facilities;

*Source: Khemani, Stuti, 2001*

### 2.1.4 Canada

Canada has 10 provinces, 2 territories and about five thousand local governments. In Canada, provision of pure public good is the main responsibility of the central government. Responsibility of providing semi-public goods and goods of similar nature have been assigned

to the provinces. Province has also the authority to make laws and regulations related to the provision of education, health, public land and natural resources, social welfare, and activities related to companies in the province. Provinces and local government deliver some of the services like education and social welfare, jointly. Local governments are considered the part of provincial governments and are responsible for, among others, to local police, drinking water, sewerage, refuse collection, local roads and entertainment. Expenditure Assignment for Canada is presented in Table 2.4.

**Table 2.4**

<b>Canada: Expenditure Assignment</b>	
<b>Federal</b> Trade and commerce Unemployment Insurance Banking and Currency Postal Service Census and Statistics Defense and Foreign Affairs Shipping and Offshore Bankruptcy Patents and Copyrights Indians Citizens Marriage and Divorce Criminal law and penitentiaries	<b>Federal and Provincial (Jointly)</b> Pensions Immigration Agriculture <b>Provincial</b> Administration of Justice Civil and property rights Public lands and natural resources Health Licensing Municipal institutions Incorporation of companies Local services Education Social welfare

### **2.1.5 Switzerland**

Switzerland consists of 26 cantons. Central government is responsible not only for defense, monetary policy, foreign relations, but also for the issues, which need coordination between two or more cantons. Some of them, for example, are social security, environment, energy and infrastructure. Cantons are made responsible for local police, culture, public health, local roads, forests, water and other natural resources. Functional assignment for Switzerland is presented in Table 2.5.

**Table 2.5**

<b>Functional Assignment in Switzerland</b>	
<b>Federal</b> International relations Defense Monetary policy, customs Postal services, telecom, mass media Railway, aviation	<b>Federal and Canton</b> Agriculture Civil and criminal law Taxes <b>Canton</b> Police

Atomic energy	Churches
Water Power	Education (secondary schools, universities)
National roads	Cantonal roads
Trade, industry, labor legislation	<b>Local</b>
Social security	Local roads
Environment policy	Local public transport (in cities)
	Local gas, electricity and water supply, waste
	Primary schools
	Public care

*Source: Kirchgassner, Gebhard, "Swiss Confederation" in the Practice of Fiscal Federalism, Comparative Perspectives ed. By Anwar Shah and senior editor John Kincaid. Forum of Federations, McGill-Queen's University Press, Montreal and Kingston*

### 2.1.6 India

India has 29 States, 7 union territory, and municipalities and Panchayats. In addition to pure public goods, central government's functions include macroeconomic stability, international trade and relations and activities, which affect more than one state.

Under the concurrent rights, central government and states are responsible for economic and social development planning, industrial and commercial development, social security, employment, labor welfare, and so on. More responsibilities to the states have been given in state police, public health, agriculture, irrigation, land rights, fisheries and minor minerals, land administration, entertainment, sports and activities related to local governments.

About 29 activities have been assigned to local rural council or Panchayat. Similarly, about 18 functions have been assigned to municipalities. Expenditure assignments for different tiers of government in India are given in Table 2.6.

**Table 2.6**  
**India: Expenditure Assignment**

<p><b>Federal</b></p> <ul style="list-style-type: none"> <li>• Atomic energy and mineral resources necessary for its production</li> <li>• Railways</li> <li>• Highways declared by or under law made by Parliament to be national highways</li> <li>• Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels the rule of the road on such waterways.</li> <li>• Maritime shipping and navigation including shipping and navigation on tidal waters provision of education and training for the mercantile marine and regulation of such</li> </ul>
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education and training provided by States and other agencies.

- Lighthouses, lightships, beacons and other provision for the safety of shipping and aircraft.
- Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation and the constitution and powers of port authorities therein.
- Port quarantine, including hospitals connected therewith seamen's and marine hospitals.
- Airways aircraft and air-navigation provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
- Carriage of passengers and goods by railways, sea or air, or by national waterways in mechanically propelled vessels.
- Posts and telegraph: telephones, wireless, broadcasting and other form of communications.
- Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.
- Inter-State trade and commerce.
- Industries, the control of which by the Union is declared by parliament by law to be expedient in the public interest.
- Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
- Regulation of mines and mineral development to the extent which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
- Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
- Fishing and fisheries beyond territorial waters.
- Union agenda and institutions for - a. professional, vocational or technical training including the training of police officers; or b. the promotion of special studies or research; or c.



scientific or technical assistance in the investigation or detection of crime.

- Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
- Survey of India, the geological, botanical, zoological and anthropological surveys of India, meteorological organizations.

### **State**

- Local government, that is to say, the constitution and powers of municipal corporations, improvements trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
- Public health and sanitation; hospitals and dispensaries
- Communications, that is to say, roads, bridges, ferries, and other means of communication municipal tramways; ropeways; inland waterways and traffic thereon; vehicles other than mechanically propelled vehicles.
- Land, that is to say, rights in or over land, land tenures including the relations of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
- Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
- Gas and gas-works
- Trade and commerce within the State subjects to the provisions of entry 33 of List III.
- Production, supply and distribution of goods subject to the provisions of entry 33 of List III
- Cooperative societies
- Works, lands and buildings vested in or in the possession of the State.

### **Concurrent Federal and State**

- Forests
- Economic and social planning

- Population control and family planning
- Social security and social insurance; employment and unemployment
- Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labor.
- Relief and rehabilitation of persons displaced from their original place of residence by reasons of the setting up of the Dominions of India and Pakistan.
- Ports other than those declared by or under law made by Parliament or existing law to be major ports.
- Shipping and navigation and inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with regard to national waterways.
- Trade and commerce in, and the production supply and distribution of - a. the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest and imported goods on inland waterways subject to the provisions of List I with regard to national waterways.
- Foodstuffs, including edible oilseeds and oils;
- Cattle fodder, including oilseeds and other concentrates;
- Raw cotton, where ginned or unginned and cotton seed; and
- Raw jute.
- Factories, Boilers, Electricity

### ***2.1.7 South Africa:***

South Africa has nine provinces. National level functions have been assigned to the central government. They, among others, include defense, higher education, justice, water, foreign affairs, social security and pensions and unemployment benefits.

Some of the concurrent functions assigned to the central government and provinces include education, health, housing, agriculture, casinos and public transport. Provinces have been assigned the functions related to primary and secondary education, airports, social welfare, provincial roads and economic development.

Local levels have given the responsibilities of air pollution control, building code, fire fighting, municipal airport, municipal transport etc. In a similar manner, housing, water, electricity and sanitations have also been assigned to municipalities.

Even among the federal countries, functional assignments are not similar. It varies from one country to another and depends on socio-political situation of the country, geography, diversity and historical situation. However, in general, federal governments in most of the countries take the responsibilities of policy formulation, regulations, and standard setting. It has also been observed that the exclusive assignment of functions to different tiers of government is difficult unless the functions are unbundled. Once the sub-functions are identified it will be easier to make assignments and make respective governments accountable to service delivery. List of functions assigned to different tiers of government in South Africa is provided in Table 2.7.

**Table 2.7**  
**South Africa: Functional Assignment**

**Local government matters listed in part B of Schedule 4**

- Air pollution, Building regulations,
- Child care facilities,
- Electricity and gas reticulation.
- Firefighting services.
- Local tourism
- Municipal airports
- Municipal planning
- Municipal health services
- Municipal public transport
- Municipal public works only in respect of the needs of municipalities in the discharge of their responsibilities to administer functions specifically assigned to them under the Constitution or any other law Pontoons, ferries, jetties, piers and harbors, excluding the regulation of international and national shipping and matters related thereto
- Storm water management systems in built-up areas
- Trading regulations
- Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems.

**Local government matters listed in part Part B of Schedule 5**

- Beaches and amusement facilities

- Billboards and the display of advertisements in public places, Cemeteries, Funeral parlors and crematoria
- Cleansing Control of public nuisances
- Control of undertakings that sell liquor to the public
- Facilities for the accommodation, care and burial of animals Fencing and fences
- Licensing of dogs Licensing and control of undertakings that sell food to the public
- Local amenities
- Local sport facilities
- Markets Municipal abattoirs
- Municipal parks and recreation
- Municipal roads
- Noise pollution
- Pounds, Public places Refuse removal, refuse dumps and solid waste disposal
- Street trading
- Street lighting
- Traffic and parking.
- There are thus some local government matters which fall under the concurrent legislative competences of the national and provincial governments, and some which fall under the exclusive legislative competence of the provinces, exclusivity being qualified as indicated before.

*Source: Constitution of the Republic of South Africa, 1996*

## 2.2 National Context and Experience

### 2.2.1 Local Self-Governance Act

Following the provisions of Constitution of Nepal 1990, the Local Self-Governance Act (LSGA) 1999 was enacted to fortify local governance in Nepal. The LSGA, which initiated a number of key reform initiatives, was a major decentralization reform in the country. It provided not only more expenditure and revenue authority but also resources to local bodies (LBs), namely the Village Development Committee (VDC), Municipalities (MUNS), and the District Development Committees (DDC).

LSGA was supported with the establishment of Local Bodies Fiscal Commission (LBFC) to help facilitate the fiscal decentralization implementation process. A high-level Decentralization Implementation and Monitoring Committee (DIMC) assisted by a working group and technical support, was also initiated to implement decentralization implementation plan (DIP) carried out in 2001. DIP was adopted laying out a sequencing of decentralization activities.

Despite all these preparations and best intentions, implementation constrained by a number of events. Accountabilities and responsibilities have not been clearly specified between the central Government and the local bodies. Many responsibilities assigned by the Act to the local bodies contradict with the existing sectoral acts, which were promulgated before LSGA-1999. Twenty-three sector laws have been identified as conflicting with the LSGA and have yet to be rationalized. There were also bureaucratic rigidities, which did not fully support the intended sector devolution. Overlapping responsibilities, duplication and lack of clarity in some expenditure and revenue assignments have also been identified as some of the constraints, which didn't produce desirable results from LSGA. Lack of capacity and resources also constrained to desirable level of service delivery at local level.

Mobilization of private sectors and communities, which could help in providing more efficient production and delivery of services, are limited. There are many issues including mismatch between tasks and fund and under funded and unfunded mandates at both central and local level responsibilities (Table 2.8) for less than expected success in LSGA implementation.

Similarly, agency functions that are being conducted by local bodies have been provided in Table 2.9. By virtue of this confusion, most of the public functions and authorities in Nepal are under central government's domain.

In addition, the LSGA was enacted and planned for implementation during the time of armed conflict in Nepal. Conflict also led to the dissolution of the elected LBs since 2002. These constraints weakened and eroded the accountability of local bodies and their management and operations have become ineffective and inefficient.

**Table 2.8**  
**Division of Functions and Responsibilities Between Central and Local Bodies**  
**(Based on Local Self-Governance Act, 1999)**

SN	Functions or Responsibilities	Centre	DDC	Muni	VDC
1.	Relating to physical development				
a.	Plan formulation and implementation of land use	✓	✓	✓	✓
b.	Plan formulation and implementation of settlements and Haat (market)	✓	✓		
c.	Residential area plan formulation and implementation	✓		✓	
d.	Quality of buildings and other physical infrastructure	✓		✓	✓
e.	Approval of building designs			✓	
f.	Development of greenbelt, entertainment area	✓		✓	
g.	Public lavatories			✓	
h.	Construction of community buildings and guest house			✓	✓
i.	Water supply and sewerage plan implementation, operation/maintenance	✓	✓	✓	✓
2.	Relating to water resources, environment and sanitation				
a.	Water source protection and utilization	✓		✓	✓

	b.	Irrigation programme implementation	✓	✓	✓	✓
	c.	Control of soil erosion and river encroachment	✓	✓	✓	✓
	d.	Assistance in pollution control, environmental conservation and consolidation	✓	✓	✓	
	e.	Management of soil waste and sanitation programme	✓		✓	✓
	f.	Generation and distribution of electricity	✓		✓	✓
	g.	Management of micro hydro and other energy programme	✓	✓		
3.	Forest and Environment					
	a.	Plan formulation and implementation of forestry, geodiversity and soil conservation	✓	✓	✓	✓
	b.	Programmes of environment and afforestation	✓	✓	✓	✓
4.	Education and sports development					
	a.	Permission for running pre primary school with private resources			✓	✓
	b.	Recommendation for permission to open school or close them on priority		✓		
	c.	Assistance in management of schools in respective areas and recommendation for opening or closure			✓	
	d.	Management and supervision of schools in respective areas				✓
	e.	Assistance in making primary school available in mother tongue			✓	✓
	f.	Assistance in supervision, monitoring and management of schools	✓	✓	✓	✓
	g.	Provision of scholarship for students of depressed committees	✓		✓	✓
	h.	Implementation of audit and informal education programmes	✓	✓	✓	✓
	i.	Operation and management of libraries/reading rooms			✓	✓
	j.	Development and implementation of sports programmes	✓	✓	✓	✓
	k.	Organizing sports development committee	✓	✓	✓	✓
5.	Relating to Culture					
	a.	Repair, maintenance and improvement of places of religions importance	✓	✓	✓	✓
	b.	Protection, improvement and use of archeological objects, language, religion, art and culture	✓	✓	✓	✓
6.	Work and Transport Related					
	a.	Construction, maintenance, repair of mule track, rural roads and unmetalled roads, culverts and bridges not under HMG care			✓	✓
	b.	Parking of bus, rickshaw, tanga, trucks etc.			✓	

	c.	Determining the maximum limit of hand cart, rickshaw, tanga etc. and registration and licence			✓	
	d.	District road master plan, construction, operation, monitoring and evaluation of district roads		✓		
	e.	Construction and repair of suspension bridge	✓	✓		
	f.	Necessary provision for means of transport (vehicles)		✓		
	g.	Issuing, renewing and cancellation of class D contractors		✓		
	h.	Development and improvement of ropeway and water ways	✓	✓		
7.	Relating to Health Services					
	a.	Operation and management of Hospital, Ayurvedic Dispensary and Health Centres	✓	✓	✓	
	b.	Opening, operation and management of Health Post, Sub Health Post	✓	✓	✓	✓
	c.	Formulation and implementation of public health programmes like family planning, maternity and child care, extended inauclation, nutrition, population education and health education	✓	✓	✓	✓
	d.	Provision for prevention of epidemics	✓	✓	✓	
	e.	Control or prohibition of public use of things harmful for public health	✓	✓	✓	
	f.	Control or prohibition of use and sale of edible objects harmful for public health	✓	✓		
	g.	Inspection and monitoring of surgical equipment	✓	✓		
	h.	Primary health education	✓			✓
8.	Relating to Social Welfare					
	a.	Provision for cremation of unclaimed dead bodies			✓	
	b.	Programmes for the welfare of women and children	✓	✓	✓	✓
	c.	Control of immoral profession/trade	✓	✓	✓	
	d.	Removal of social ill practices	✓	✓		
	e.	Protection of orphans, helpless, old and disabled people	✓	✓	✓	✓
9.	Relating to Industry and Tourism					
	a.	Work as motivator in promotion of small and cottage industry	✓	✓	✓	✓
	b.	Protection of touristic heritage	✓	✓	✓	✓
	c.	Identification and development of industrial area	✓	✓		
10.	Relating to Agriculture and Land Reform					
	a.	Policy formulation, implementation supervision and monitoring of Agriculture and Livestock	✓	✓		✓
	b.	Provision for seeds, fertilizers and other agricultural inputs	✓	✓		
	c.	Promotion of agricultural fair, market place etc.	✓	✓		

	d.	Protection and consolidation of fallow and governmental land	✓	✓	✓	
	e.	Provision for grazing land	✓			✓
11.	Miscellaneous					
	a.	Eradication of misuse of child labour	✓	✓	✓	✓
	b.	Human resource development	✓	✓	✓	✓
	c.	Assistance in cooperative development	✓	✓	✓	✓
	d.	Promotion of trade and commerce	✓		✓	
	e.	Control of Natural disasters	✓	✓	✓	✓
	f.	Vital registration (birth, death, other events)			✓	✓
	g.	Provision for slaughter house			✓	✓
	h.	Kanjihouse, detention and auction of stray cattle			✓	
	i.	Street light management			✓	
	j.	Permission for construction and operation of cinema hall		✓	✓	
	k.	Provision for Haat (Market) fair	✓		✓	✓
	l.	Management of operation of fire brigade	✓		✓	
	m.	Location determination and management of crematorium			✓	
12.	Optional Functions					
	a.	Provision for good quality school education	✓		✓	
	b.	Operation of literacy programme	✓		✓	
	c.	Control of unauthorized settlement	✓		✓	
	d.	Land use programmes	✓		✓	
	e.	Electric supply and communication services	✓		✓	
	f.	Museum and zoo	✓		✓	
	g.	Job oriented program	✓		✓	✓
	h.	Ambulance service	✓		✓	
	i.	Corpse carrying vehicles	✓		✓	
	j.	Prevention of natural disaster and relief activities	✓		✓	

**Table 2.9**  
**Agency Functions Being Conducted by Local Bodies**

SN	Functions	DDC	Muni	VDC
1.	Relating to Social Security			
	a. Preparing records and identification letters of senior citizens, helpless widows and disabled		✓	✓
	b. Receiving distribution and adjustment of social security fund	✓	✓	✓
2.	Relating to Election			
	a. Collection and updating of voter list		✓	✓
	b. Involvement in all levels of election	✓	✓	✓
3.	Relating to National and International Campaigns			
	a. Feeding polio-plus, vitamin A etc.	✓	✓	✓
	b. Involvement in population education, AIDS etc.	✓	✓	✓



	c.	Involvement or coordination in different surveys, data collection etc.	✓	✓	✓
4.		Relating to Emergency Service			
	a.	Collection of information about natural disasters and distribution of relief goods		✓	✓
5.		Management of Meetings, Ceremonies			
	a.	Meetings of Ward Committees, Sectoral Committees, Board and Council	✓	✓	✓
6.		Recommendation and Certification			
	a.	On the spot inspection and recommendation		✓	✓
	b.	Publishing notices of different agencies		✓	✓

Source: Local Authorities Fiscal commission Report, 2000

### ***2.2.2 Administrative Restructuring Commission***

A separate Administrative Restructuring Commission (ARC) was formed to recommend to the Government on the administrative structures for the anticipated federal governance. The ARC has focused its work on administrative arrangements needed at the central and provincial levels in the federal structure. However, most of the identified functions have been assigned concurrently and the focus has been largely central and provincial. Unbundling was not done and exclusivity of functions and sub-functions were not worked out. As a result, the work done turned out to be only preliminary. Furthermore, the focus of ARC report was on the recommendations of the administrative structures and arrangements. The key result areas that have been identified were also grouped into economic, infrastructure, social and governance areas. More work has to be carried out in the areas of functional analysis, staffing and organizational structure.

In addition, it mainly started with the list of current functions and responsibilities of the central government and tried to divide and allocate them mainly at the center and the provinces without identifying the public function vis-à-vis private function. That may be the reason why the possible improvement in the efficiency and effectiveness of service delivery that can be achieved in the proposed functional assignment was not discussed.

## Chapter 3

# Principles and Methodology for Functional Assignment<sup>13</sup>

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### 3.1 Backgrounds and Significance of Functional Analysis

The assignment of functions between the different levels of government is the core of federalism and decentralization. The research into the assignment of public function responsibilities has not been very successful in providing a sound theoretical approach to the assignment question (Robson 2006). However, it is always advantageous to follow or construct a methodology in order to maximize legal certainty of assignment and minimize conflicts between the different subnational governments. However, before developing the methodology for functional analysis, it is important to clarify the concept of federalization and decentralization.

#### *3.1.1 Federalization and Decentralization: Some conceptual issue*

These are two concepts in two different domains, federalization in the constitutional-political organization domain, and decentralization in the fiscal and governance domain. Sometimes there is overlap between them and other times there is not much overlap. Federal systems—as opposed to unitary systems—are characterized for the shared source of legitimate political power between the federal government and the provinces or states, while in unitary systems all power emanates from the central government. Because of shared powers between the federal and state governments, federal systems appear to be more decentralized and that is typically the case at the federal-state level. But it does not have to be always the case.

Another relevant aspect in the federalization of the political system is that spheres of fiscal power to tax and the assumption of functional responsibilities for the states or provinces are either implicitly or explicitly contained in the country's constitution even though further legislation can develop them in more detail. In the case of federations these powers are not delegated but innate and cannot be taken away by the federal constituent governments unless there is a change in the constitution. In contrast, in the case of unitary systems, decentralization can be equally deep in scope of devolved fiscal powers but those can be modified and even removed at the will of the central government authorities. But there are exceptions in the sense that in the case of some unitary countries the devolution of fiscal powers to subnational governments may be contained in the constitutional text. In this regard, the conventional wisdom is that the constitutional text should not contain detailed functional assignments or taxing powers, but rather just the broad lines. Constitutions are very hard to modify. Because social, technological and economic conditions change very dynamically, it may be preferable to have all

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<sup>13</sup> Most of this chapters write-ups are excerpts from the paper “Nepal: Functional Analysis” and Concepts in the Assignment of Functional Responsibility prepared by Martinez-Vazquez and Andrey Timofeev and submitted to PREPARE Team, MOGA and UNDP

the details specified in organic laws; but of course, this type of solution requires certain level of trust between the federal and state institutions.

Finally, Nepal's federalization and decentralization is unique in the sense that powers that are with the center are to be devolved to the provincial and local governments at the same time. However, other countries have had to contend with the same tasks over the last several decades. The most important decision in this respect will be whether or not to recognize local governments as separate government entities on their own or else be silent about them or explicitly allow the states-provinces the power to determine their structure, roles and functions. In most recent times there has been a noticeable trend in decentralization processes toward the explicit recognition of local governments vis-à-vis the intermediate level of governments at the state or provincial level. Thus, the Constitutional Committees' reports envision a constitutionally established sphere of local responsibility while giving the provincial governments some authority in determining the structure of local government within federally established guidelines.

By adopting a federal constitution, Nepal will formally state that the provinces along with the national government are the fundamental legitimate instruments for exercising all legitimate powers emanating from the people of Nepal. In contrast in unitary systems, those powers are uniquely exercised by the national government. However, the true dimensions of those powers will depend on the extent of the functions and taxes that are eventually assigned to the provinces and local governments. There is no absolute pattern associating federal systems with higher or lower levels of decentralization. In practice, some unitary systems are more decentralized than some federal systems. However, it is generally the case that federal systems will tend to be also more decentralized.

## **3.2 Principles and Methodology**

### ***3.2.1 Assumptions and Theoretical Approach***

#### **a) Assumptions**

For the purpose of the present modeling exercise, four basic assumptions are made. Three of them are derived from public administration approach (Cloete,1994 and Botes et al.,1996) and the last one is about the viabilities of subnational government, which is given by the proposed Constitution of Nepal.

The three guidelines provided by public administration approach are political supremacy, democratic requirements, effectiveness and efficiency including cost efficiency.

Political supremacy assumes that the public institutions are established and function within a political environment and under the direction and control of the appropriate legislative and political executive institutions. The properly constituted and empowered political bodies at any subnational

level take fundamental decisions in allocating functions, designing functionaries and managing them.

The country having opted for a fully democratic system implies that each level of government will be elected by universally accepted elections procedures. Even if there are difficulties in demarcating public function responsibilities – it can be deduced logically that the national government will concern itself more with national, the provincial governments with provincial, and the local governments with local matters. Each level of government will have an appropriate and, in descending order, narrower geographic focus. This will not only bring the governments closer to the people, but the deployment of public function responsibilities in this manner could have positive outcome of the application of a democratic approach to government.

The third principle relates with the modeling of an assignment scheme. It would be hard to imagine that effectiveness and efficiency would be upheld if a central government department in Kathmandu were to be made responsible for the regular removal of refuse from all households across the country. Similarly, it could hardly be expected of each and every local government in the country to provide a specialized hospital service to its people. It makes good sense that responsibility for the performance of a particular public function should be assigned in a way that will ensure that, as far as possible, services are delivered effectively, and efficiently and these are the principles of correspondence and subsidiarity introduced below.

The fourth assumption is that the forthcoming Constitution of Federal Republic of Nepal will restructure the country in such a way that all subnational governments, provincial and local, are viable. In other words, that they will be fully capable in terms of material and human resources to satisfactorily discharge all the responsibilities entrusted to them.

#### b) Theoretical Approach

*i) Efficiency Criteria (Subsidiarity principle):* Under these assumptions, if there is a single theoretical model relevant to the public function assignment question, it is the principle of subsidiarity. This means, according to Laufer (1991) “... higher level communities (government) should perform only those tasks which lower level communities (government) cannot perform equally well or better”.

In other words, under the principle of subsidiarity responsibility for the provision of services should be at the lowest level of government compatible with the size of "benefit area" associated with those services. Where there are substantial spillovers of service benefits into other jurisdictions, those services should be provided by upper levels of government correspondingly. Efficiency in the provision of public services is generally enhanced when service benefits are geographically linked to the costs of their provision via fees and service charges, or alternatively by local taxes that can approximate the role-played by fees and charges (Martinez-Vazquez and Timofeev, 2014).

Decentralization of public functions allows subnational governments to tailor service they are supposed to render to the people that match their needs and demand within their jurisdiction. This framework will increase efficiency of the program because local governments will have better information about their residents' needs than the central government.

As for example, the benefit area for sanitation services or refuse collection is clearly the local community, but for air traffic control the benefit area is the entire national territory. Again, on the other hand assigning the supply of public services with wider benefit areas to smaller units of government is likely to result in the inefficient under-provision of services; e.g., an assignment of a specialized hospital in a local government. Efficiency in the provision of public services is enhanced if consumption benefits are linked to costs of provision via local fees or taxes.

Therefore the lowest level of government should be made accountable for the provision of services compatible with the size of the “benefit area” associated with those services. Sometimes this is also called “bottom up approach”.

Nevertheless, while crafting assignments different mechanisms may be warranted in the provision of services in the following conditions:

*ii) Externalities:* Externality, which could be any action or event that imposes costs or creates benefits for others, exists in public services. As for example, vaccinations, clean drinking water, technology, education etc. provide considerable benefits to the whole society and will not be limited to the jurisdiction, which provides the service. It does not consider the proportion of benefits of those services enlarging to non-residents and therefore underprovides such a service. In other words, the jurisdiction providing the services cannot internalize all costs and benefits. In such circumstances, exclusive responsibility to a higher level of government has to be assigned or, where the conditions require it, it has to be assigned concurrently (or shared responsibilities) to two or more levels of government. Defense and foreign affairs are other examples, whose benefits are considered national in scope are best provided exclusively by the central government.

*iii) Economies of Scale:* Certain services require larger numbers of users than those associated with a local jurisdiction for cost-effective provision, for example, public transportation and sewerage in cities. Similarly, water supply system may require large capital investments and also can have significant economies of scale. Services like specialist health services, training of personnel, etc. could be assigned at higher level of government because of consideration of economies of scale. However, sometimes the same agency or organization could provide several functions (e.g. training and research) cheaply than when providing them separately for the reason of economies of scope. Therefore, for the reasons of economies of scale and scope, these services are either provided by the higher level of governments or have to be assigned concurrently.

*iv) Social Inclusion and National Priority:* Gender equity and social inclusion is a principle where no service should be denied based on gender or any other demographic or ethnic

characteristic or place of residence or any other basis. As for example, various population sub-groups and those living in remote areas or poorer segment of the population normally have limited access to many public services. Poor people cannot travel, too very easily. This principle, which is a national priority of Nepal, has to be taken into consideration for functional analysis. Positive action programs have to be initiated for deprived and excluded population for the sake of equity, gender inequality and social inclusion.

v) *Equity and economic stability*: Public Functions related to the improvement of equity or income distribution are generally the public functions and thought to be the domain of the central government. If the local or regional governments undertake these activities, it could become an incentive to the needy from other areas and the local government may need to tax the residents heavily. However, the policy and funding for these activities must be a central government responsibility, implementation can very well be left to local governments which may have informational and other comparative advantages. Similarly, any expenditure done for the stabilization of the economy or social security of the people are by their nature and scale naturally attributed to the central government.

vi) *No Single Best Assignment*: However, there is no absolute best way for perfectly assigning functions to different levels of government. The application of these normative rules largely facilitates the assignment of functional responsibilities to different levels of government and the rules do not always yield an unequivocal answer. It will not be possible to enumerate all powers and to foresee all possible fields of future state actions. In a similar manner, some functions e.g. basic education and primary health care may be of a local nature by the size of their benefit area, but because of their relevance in income redistribution and inclusion, throughout the world, central governments are commonly involved in financing and sub-national governments are normally involved in delivery. Therefore it may be difficult to assign all functions, perfectly. In a sense, there is no single best assignment of functional responsibilities that would work for every country. The sufficiency of any assignment has to be judged in terms of how well it achieves the objectives set up by the government in its decentralization strategy and how well it serves the idiosyncrasies and history of the country.

vii) *Importance of a Clear and Stable Assignment*: On the other hand, without a clear specific functional assignment it will not be possible to assess the adequacy of the revenue and tax assignment to different levels of government, or the need and effectiveness of a system of intergovernmental transfers. In addition, the failure to establish a clear assignment of functional responsibilities for each tier of governments can lead to duplication and an inefficient provision of services. Therefore, functional assignment needs to be the first and fundamental step in the design of a decentralized system.

### 3.2.2 *Attributes of Functional Analysis*

In general, if any of the public functions could be exclusively assigned to one level of government, then the tier of the government will be entirely accountable for delivering the function in question.

However, if the concurrency is unavoidable, then to avoid duplication and inefficient provision of services and to make each tier of governments more accountable, the functions have to be unbundled so to identify what sub-functions and attributes of the service are assigned to each of the concurrent levels of government.

Considerable clarity can be regained by realizing that any public service has a multi-dimensional nature: any functional responsibility can be broken down into attributes for (1) actually producing a good or delivering a service, (2) providing or administering the service, (3) financing a service, and (4) setting standards, regulations or policies guiding the provision of government services.<sup>14</sup>

*Regulatory powers* can be defined as those authorizing governments to undertake policies and make decisions concerning the functioning and standards of public institutions. In particular, regulation comes in the forms of mandates and standards on inputs (e.g., student/teacher ratio) and outputs of service production (e.g., number of classes taught). There are usually pro and con arguments for assigning this attribute at a particular level of government. For example, maintaining the power of regulation by the central government over local government inputs may constrain the flexibility of sub-national governments in finding cost-efficient production alternatives, but, on the other hand, maintaining power to regulate may allow the central government to improve national welfare by internalizing inter-jurisdictional spillovers and securing non-economic merits such as equity and inclusion.

The responsibility for *financing* entails provision of financial means required to discharge a particular government function; usually this responsibility is associated with the authority to levy taxes and user fees in order to recover the costs of public services. If restricted in their ability to derive revenue from the local economic base, sub-national governments would depend on the revenue decisions—in the form of transfers, revenue sharing, etc. —of the higher-level government. This may limit the autonomy of sub-national governments and thus undermine their accountability to the constituency. It will also the fiscal responsibility with which subnational governments implement spending policies because it is assumed that officials will be more careful in taking decisions for funds they had to raise themselves as opposed to receiving them from a higher level authority. It is natural to assume that the level of government that has responsibility for financing a service can have a lot of influence on the outcome of that service even if it is not directly engaged in the administration and delivery of it. However, conditional transfers and otherwise explicit rules on how these funds should be determined (pool of funds)

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<sup>14</sup> There is a difference between providing and producing a service. For instance, a local government may provide garbage collection services to local residents. This service may in fact be delivered by a private firm which has been contracted by the local government.

and allocated or distributed (e.g., formula-based) limit the autonomy of the grantee. On the other hand unconditional (general purpose) transfers provided to subnational governments without much restrictions provides considerable autonomy over the use of the funds and honors autonomy.

*Administration* (or provision) of public services is the attribute to which most economic arguments for decentralization apply. This aspect of government authority deals with the implementation of budget priorities through planning of government programs, specifying program targets, organization of tenders for services, hiring the private sector to deliver services, monitoring and auditing service delivery, and by reviewing implemented programs.

Separate from administration per se, we may identify the responsibility for the actual delivery of public services. This attribute concerns the physical production of goods and services, such as purchasing and combining factor inputs (capital, labor, raw materials, land, technology, or management) to produce desired outputs. This attribute provides managers with discretion in choosing the production technology and the allocation of costs across different types of inputs such as staffing. And it also provides the ability to seek cost efficient production alternatives. In theory and practice, the responsibility for administration is separable from that of actual delivery; for example, local governments may be responsible for the *administration* of the service but may contract with a private provider for the actual *delivery* of the public services.

For example, while local governments provide elementary education in many countries, higher-level governments often share the responsibility of financing and regulating local education. At the same time, primary education may be produced either by local public schools or by publicly funded private schools. Thus, in order to ensure that different levels of government effectively work together, additional policy issues need to be resolved when the responsibilities to produce, provide, finance and regulate a certain government function do not all fall within the jurisdiction of a single level of government. Furthermore, each of these four attributes can be unbundled into more narrow sub-attributes.

For the purpose of the present analysis, in some cases, one more sub-attribute- staffing has been carved out for the purpose of clarifying the public administration attribute (officials of governments rather than production workers).

Staffing is largely the input for production. As for example, health workers and teaching and non-teaching staff of school are the staff to provide health and education services, respectively. However, in other occasions, if the staff is to be employed in managing the contract as for example say road construction and maintenance, it becomes the sub-attribute of provision. The Ministry of General Administration, which is the focal point for this study, is interested to have preliminary idea about the staff assignments to different tiers of government. It has been presented in a separate column.

Because many important government services ultimately will involve more than one level of government, this makes intergovernmental cooperation and dialog critical to assure successful



delivery of public services. Formal institutions for this dialog should be introduced in the law. These should involve for example intergovernmental commissions at the federal-provincial levels and at the provincial- local levels if a hierarchical vertical structure of government is adopted (where the federal government will not deal at any time with local issues), or tripartite committees with all three level of governments if a bifurcated vertical structure of government (where the central government directly interacts with both provincial and local governments and there is no hierarchical relationship between provincial and local governments is adopted). Of course, not all provinces may always be represented these committees, and much less all local governments, so there will also be a need to find venues for the fair representation of all views in the functioning of the intergovernmental committees. Quite likely, but ultimately depending on the presence of concurrent functions, the most significant expenditure responsibilities will require separate intergovernmental commission/mechanism (for education, health, etc.). Although careful work in functional analysis and institutions of cooperation and dialogue among different levels of government should avoid friction and antagonism, we cannot exclude the possibility of conflict and irreparable disagreement. For these reasons, it will also be necessary to have clear processes for conflict resolution including arbitration, administrative courts and in the last instance the constitutional court.

### *3.2.3 Road Map for Functional Analysis*

All these discussions lead us the following steps in the development of a proposal regarding the assignment of responsibilities of public function (Martizez-Vazquez and Timofeev, 2013).

1. Out of the current functional assignments, identify the public functions, which markets will not provide. Markets will not efficiently provide goods and services that are non-exclusionary<sup>15</sup> or non-rival<sup>16</sup> or have decreasing unit costs or lumpiness of initial investments and are denied as public good<sup>17</sup>s and only these goods and services should be considered for assignment to sub-national governments.
2. For each functional category, determine the benefit area of the output when provided at the optimal scale:
3. Determine if the following special circumstances may be present in the delivery of the service:
  - i. Spillovers beyond the primary benefit area
  - ii. National Objectives (“Merit Goods”), such as equal access or social inclusion
  - iii. Significant income distribution concerns

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<sup>15</sup>If a unit of a good is provided, then nobody can be excluded from using it.

<sup>16</sup>The same unit of a good can be simultaneously used by more than one user.

<sup>17</sup>Any good that complies with the non-exclusion and non-rivalry principles

- iv. Cultural/ethnic differences with respect to demand for the service.
4. If the function does not involve the aforementioned special circumstances, leave the provision of that services to the private sector or if, not feasible, assign the entire (exclusive) responsibility to the lowest level of government that encompasses the entire benefit area (applying the “subsidiarity principle”).
  5. Where any special conditions are identified at Step 3, assign exclusive responsibilities to a higher level of government or, where the conditions require it, proceed to the next step to assign concurrent or shared responsibilities to two or more levels of government.
  6. Where concurrent assignments are necessary or desirable, identify sub-functions and/or the attributes associated with the particular competence (regulation, financing, administration, and delivery) and clearly assign each to particular government levels. When any of these attributes or sub-functions is still shared by two or more levels of government further subdivide or unbundle that function (attribute) in sub-functions (sub-attributes) until the latter can be exclusively assigned to one level of government:

### 3.3 Concept of Social Inclusion

#### *Principles Guiding Functional Assignment Decisions*

Social inclusion – a cross cutting theme – in functional assignment decisions of all public functions covering all sectors of the government operations, is visualized as a “Super Function” possessing special features that influence all other functions, and it needs to be embedded in all functional assignment decisions. The key principle of inclusion that will guide the functional assignment to various levels of government (national, provincial, and local) is given below.

#### *Principle of Inclusiveness*

Following the directives, letter and spirit of the Constitution, Nepal will be transformed into an inclusive state where the individual’s identity as a citizen supersedes all other identities (e.g., gender, caste, ethnicity, language, religion or region) as a basis of claims for state services and commitments on citizen’s rights (e.g., justice, social service provision, investment in public infrastructure, police protection) given in the constitution and the legal system. The inclusiveness will be characterized by equitable development (each citizen irrespective of gender, caste, ethnicity, religion and region availing equal opportunities to enjoy a dignified living), proportionate representation (ideally proportionate to the population of each social groups in the state apparatus and public institutions), and recognition of groups identities and inter-group solidarity (respecting the diverse cultures, languages, and religion existing in the country).

#### 3.2.4 Approaches for Ensuring Inclusiveness

##### *Overall Approach to Inclusiveness*

Nepal will pursue the Holistic Transformational Approach (HTA) that ensures the fullest participation of all citizens in all spheres of life, achieving full social inclusion through (i)

removing barriers to participation and access to resources and opportunities by accelerating the drivers that favor inclusion, e.g., ensuring that legal structures and enabling environment are in place, that promote a society where diversity is considered an asset, and (ii) eliminating exclusion risk factors and changing attitudes by implementing policies that cultivate solidarity, counteract entrenched social prejudices, and encourage the participation of individuals facing barriers to inclusion. The achievements on social inclusion will be assessed through a composite measure derived from social, economic, political, cultural, social cohesion, and gender dimensions.

#### *Approaches for ensuring Inclusiveness in Public Functions*

The core functions performed by different tiers of the government in federal Nepal are grouped into six major attributes, viz., Regulation and Standards, Planning, Financing, Service Provision, Service Delivery and Staffing. The approaches adopted for inclusion in all these different attributes are given below.

#### *Regulation and Standards*

Necessary legal framework (laws, acts, policies, strategies, regulations, standards, guidelines) has to be developed to ensure an enabling environment for active participation/contribution of excluded groups at all public services and opportunities.

#### *Planning*

In the process of formulating plans and programs for various sectors of development, the participation of excluded communities has to be ensured, and inclusion concerns will be respectfully mainstreamed. Monitoring and supervision of social inclusion plans and programs could be executed on regularly through suitable governance mechanisms established within the organization structure of public institutions at all tiers of government.

#### *Financing*

Adequate allocation of public funds should be ensured for programs/projects especially targeted for the development/inclusion of excluded groups. Excluded communities should not be deprived of services on the basis of their ability to pay and their contribution requirement should be minimal in order to ensure their participation in the development initiatives.

#### *Service Provision*

Specially tailored and targeted programs has to be executed for delivering effective services to excluded communities in all sectors of development, e.g., health, education, agriculture, infrastructure, drinking water. All data of beneficiaries has to be disaggregated based on gender, caste, and ethnicity and reports have to be prepared periodically depicting inclusion achievements.

### *Service Delivery (Production)*

In all productive assets (physical infrastructure and facilities, construction) generated through government supports, inclusion of excluded communities as participants and beneficiaries should be ensured. In the operation and maintenance of all public utilities and investments, the excluded groups will be duly represented at membership, and decision-making levels, e.g., in Users' Committee, Construction Committee, School Management Committee. Awarding of public contracts for service production should ensure equal opportunities for minority bidders.

### *Staffing*

The civil service of Nepal, public enterprises and security services have to be made fully inclusive characterized by proportionate representation and active participation of people belonging to different sex, castes, ethnicity, community, ability, and locations at all levels of bureaucracy and at all tiers of government (federal, provincial and local) thereby ensuring equal opportunity to all citizens of the country to benefit from the existing/potential prospects and contribute effectively in the nation building process.

## **3.4 Consultations**

There are many stakeholders and partners involved and linked with the project. Among them are Technical Committees, MOGA and OPMCM, are of more importance to this study. Regular consultations with these groups were carried out during the assignment.

Technical Committees were formed in each ministry concerned with the sector chosen for functional analysis for carrying out the tasks of functional analysis and assignment at organizational level with national consultants. The government officials from ministries were oriented and trained on functional analysis. They were then engaged in the functional analysis and assignment work. These technical committees worked as focal points for the respective sectoral ministries and the project team and consultants worked mainly with them.

MOGA is responsible to the overall project monitoring and supervision through the ongoing PREPARE activities. MOGA has been executing the PREPARE project to help relevant government agencies to get prepared for administrative reforms in the context of wider state reform processes. The project PREPARE is executed and monitored by an Executive Committee chaired by the Secretary, Ministry of General Administration, Government of Nepal.

MOGA, in general, and the National Project Director (NPD) in particular monitored activities of the functional analysis project. NPD ensured that the activities of the project were carried out appropriately and in a timely manner as per the work plans. He also worked as a liaison between the project and other stakeholders including OPMCM, Quality Circle (QC) and the Executive Committee.

Quality Circle at the Office of the Prime Minister and Council of Ministers (OPMCM) facilitated and advised MOGA, and consultants in different stages of their work. Quality Circle is headed by a Secretary of OPMCM and has drawn members from different government agencies.

## Chapter 4

### Functional Analysis and Assignment -Health

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#### 4.1 Background and Introduction

In Nepal, Department of Health was established around 1993 BS. Later on a Ministry of Health was created which has undergone subsequent changes over the years. Ministry of Health and Population (MOHP) is the main governmental agency providing health services to the population. MOHP is mandated to carry out health related services as per the Nepal Government's Government Business Rules (Karya Bibhajan Niyamawali). Besides, other ministries like Ministry of Education (MOE), Ministry of General Administration (MOGA), Ministry of Home Affairs (MOHA), Ministry of Defense (MOD) etc also provide various medical services in different form and to different target groups. A strong and influential presence of private sector is also a major player in the health sector.

Health sector is organized as a complex system. The areas of work in health sector can be further segmented by the nature of work: academic, preventive, promotive, curative and rehabilitative. Nepal has variety of medical practices like Allopathic, Ayurvedic and Traditional, Homeopathic, Unani, Naturopathy, Chinese and possibly others.

Nepal also needs to carry out obligation for several international health protocols and regulations as Nepal is member of various international agencies. Besides, achieving the international commitments for health is also closely monitored by international community. This is particularly important in terms of international health regulations (IHR), emerging diseases, MDGs, and IAEA. These international commitments are relevant to the task of functional assignment to various tiers of health services.

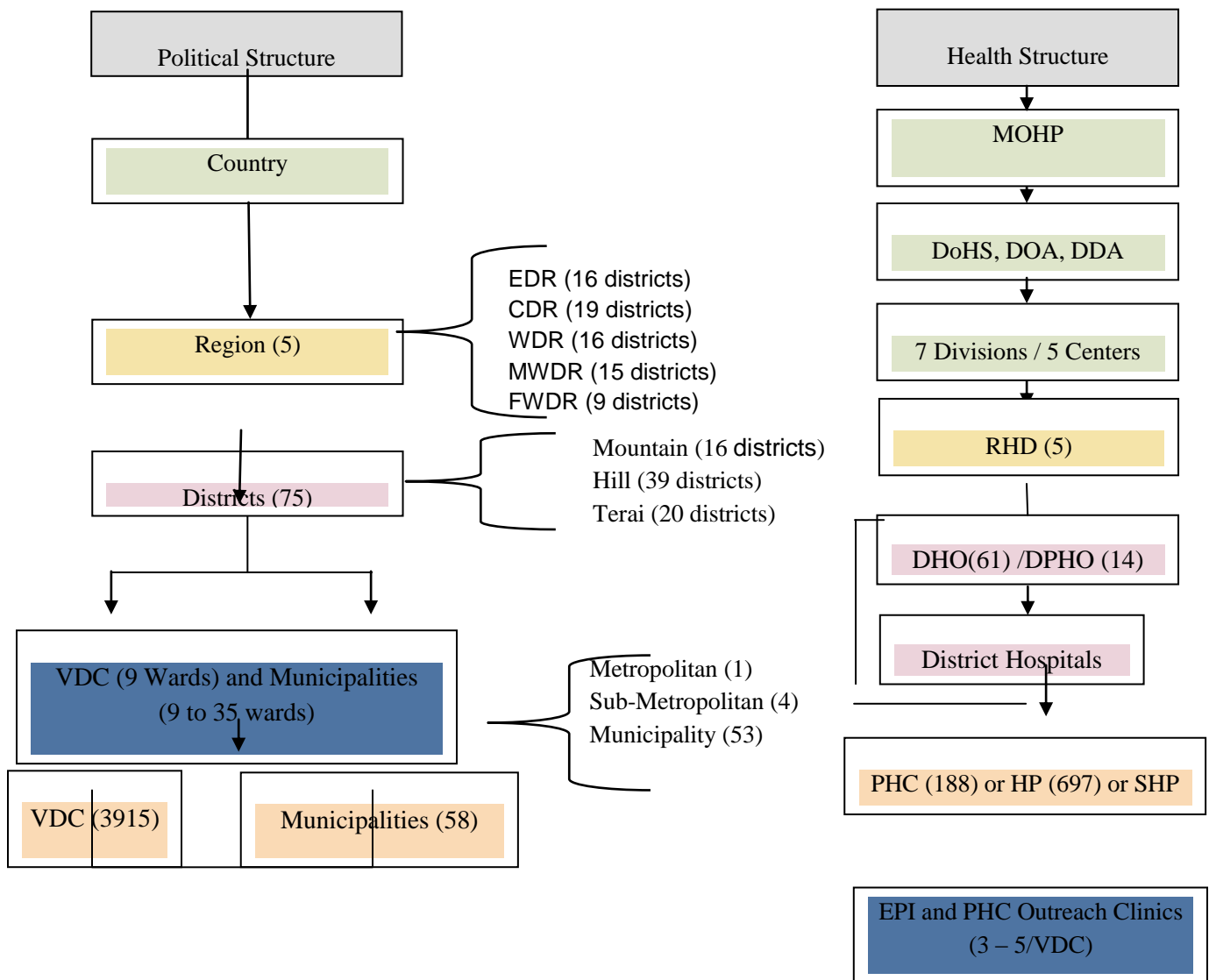
There is a large private sector in health as well. The latest census carried out by Central Bureau of Statistics (CBS) in 2013 shows that there are more than 301 private hospitals operating in the country. They also play an important role in providing curative health services as well as have influence in various health related activities. Collaboration, regulation and monitoring are important aspects in working with the private health institutions.

At present the health services under MOHP are provided through four levels:

1. Central Level,
2. Regional Level,
3. District Level and
4. Local (VDC/Municipality) level

Though ministry of health has, structurally, 4 levels, but in terms of administration and financing, it is regulated by center. For example, the human resources are recruited at the central level; the budget is allocated from center and bulk purchase of medicine and health commodities are done in the center. Training of health workers, information and education and management information system are managed centrally. The "peripheral" institutions have the role to provide the health care services. The Regional Health Directorate (RHD) plays a role of "extended arm" of the center and basically supervises and monitors the ongoing activities. The district level is basically responsible for preventive functions and running major health programs under it excluding the hospitals.

**Organizational Structure of MoHP in relation to the Administrative Structure of the Country**



As shown in the schema above, MOHP has three major departments:

- (1) Department of Health Services (DOHS)
- (2) Department of Ayurveda (DOA) and
- (3) Department of Drug Administration (DDA)

The Department of Health Services (DOHS) is the largest department among the three. About 4000 health facilities and some 22000 health workforce come under this department. It is supported by 12 divisions and centers at central level, 5 regional health directorate (RHD) at regional level and 75 district (public) health offices (D/PHO) for carrying out various tasks as allocated by MOHP. Almost all the functions pertaining to allopathy are done by DOHS along with its divisions and centers.

The Department of Ayurveda (DOA) has a network of about 300 health facilities spread in all the 75 districts of the country along with central and regional level hospitals. DOA carries out all the functions related with Ayurveda, Homeopathy and Unani as a separate, independent entity. Planning, monitoring, allocation of budget and management of human resources for Ayurvedic and allied services is done by this department.

Department of Drug Administration (DDA) is relatively a smaller structure with a total of five offices under it with four regional offices. However, in terms of regulatory role, it is the crucial part of ministry of health as looks into the pharmaceutical aspects, quality control of drugs, vaccines and health commodities, and regulation of private pharmacy. Basically it is a “central” entity with extended arms in few of the regions. The budget allocation is done centrally and monitoring and supervision is done from center.

**A brief Sketch of health sector**

- Total number of health facilities - about 4300
- Total number of human resources - about 30,000
- “Cost Centers” under MOHP - 278
- Health Facilities under Development Boards - about 106
- Number of Acts related to health - 21
- Number of Policies - 15
- Professional Councils, governed by acts - 6
- Academic institutions, governed by acts - 4
- Number of Private Hospitals - 301

As about 4,300 health facilities spread all over the country provide primary health services in the public sector, it makes a "broad-based" health services provider. Its strength lies in the strong presence in rural areas. However, presence in urban areas is rather undefined and sketchy. The diverse topography of the country, scattered population distribution and centrally “owned” health facility challenges the regularity of services especially in remote areas.

The "local" level health facilities like Sub- Health Posts (SHP), Health Posts (HP) and Primary Health Care Centers (PHCC) provide "essential" health care services. These services range from



promoting and preventing infectious diseases and preventable conditions to a lesser extent to curative and rehabilitative function.

Curative functions are provided by hospitals in four tiers: Central, Regional/Sub-regional, Zonal and District. Recently, some of the PHCC and HP have been "upgraded" to "community" hospitals, whose status along with their role and responsibilities in the whole health architecture needs to be established.

Besides, function as population management is allocated to MOHP. However, so far, it has very limited role in influencing the policy makers and related agencies.

## **4.2 Concept and Principles for Functional Analysis and Assignment (Health)**

### **4.2.1 Principle of Decentralization**

The assignment of functions between different levels of government is the core of federalism and decentralization. Decentralization principle is useful in assigning functions that is being carried out public institutions to different tiers of government. It will help to minimize conflicts between the different subnational governments.

#### **a) Efficiency Criteria (subsidiarity principle)**

The principle of subsidiarity is the most relevant theoretical principle relevant to decentralization. In other words, the subsidiarity principle of decentralization says that most health care services should be decentralized to the local level government whose jurisdiction includes the beneficiaries.

Decentralization can have greater benefits in health sector. It will enhance larger community participation in local health activities and can lead to improved service quality and coverage. The decentralization of health will distribute the service delivery of health and accountability systems in different tiers of government. As the local program can be tailored to the needs of the residents, this framework is expected to increase efficiency of the health services. Primary health care, childcare, many activities of reproductive and preventive health care, and many other activities related to health services can be assigned to local governments.

#### **b) Spillovers beyond the primary benefit area (externalities)**

Externality, which could be any action or event that imposes costs or creates benefits for others, exists in many health services. As for example, vaccinations, smoking and drunk driving all have externalities related to public health. Vaccination prevents contagious diseases and provides a considerable benefit to others, for which they do not pay. Similarly, smoking could create annoyance and irritation and be harmful to others, even if they do not smoke. Drunk driving will have the risk of taking lives of other people, even when they don't make any mistake. In such circumstances, exclusive responsibilities to a higher level of government have been assigned or, where the conditions require it, it has been assigned concurrently (or shared responsibilities) to two or more levels of government.

#### **c) Economies of Scale/ Scope**

While assigning the function to the different tiers of government, economies of scale needs to be factored to achieve cost-effectiveness and therefore government saving in having a larger units deliver the necessary services. In health sector procurement and distribution of vaccines for a nationwide immunization in an attempt to control, is an example, which will not only save the cost but also ensures the quality and standards of the product.

Similarly, chronic disease management, specialist services, training of personnel, control of communicable diseases etc. could be assigned at higher level of government because of consideration of economies of scope.

#### d) Equity, Social Inclusion and National Priority

Gender equity and social inclusion is a principle where no service should be denied based on gender or any other demographic characteristic or place of residence or any other basis. In health sector, usually gender inequity is not observed; however, constant vigilance is important and needs stressing equity in health sector again and again.

Similarly, social inclusion is another principle for functional assignment. Various population sub-groups and those living in remote areas or poorer segment of the population normally have limited access to the offered health services. This principle has been taken into consideration for functional analysis as it addresses various issues pertaining to federalism. Positive discrimination program has to be initiated for deprived and excluded population and commodities.

#### e) Universal coverage

This is a terminology accepted worldwide, including Nepal for the provision of health services. It assumes that the state should make every effort to provide health services, which will be available to every citizen without any discrimination, but definitely giving first priority to equity and inclusion in health. This also supports the human rights perspective of health.

These conditions-- externalities, gender and social inclusion and national priority require that a higher level of governments have to be involved in the providing those health services. These services have been assigned concurrently (or shared responsibilities) to two or more levels of government.

#### f) Importance of Clear Assignment

Concurrent assignments could create confusion in accountability of service delivery. In such situations, the function (or responsibility) has been further divided into sub-functions and/or the attributes associated with the particular competence (regulation, financing, administration, and delivery) and, as far as possible, clear assignment of each sub function to particular government levels has been arrived. When any of these attributes or sub-functions is still shared by two or more levels of government further sub-divide or unbundle that function (attribute) in sub-functions (sub-attributes) until the latter can be exclusively assigned to one level of government:

### ***4.2.2 Principle and Process of Functional Assignment***

Decentralization deals with the efficiency of service delivery and its fiscal aspects. However, in federation, the shared source of legitimate political power between the federal government and subnational governments comes from constitution.

However, constitution is very hard to modify. In this context, in case of federal Nepal, it may not be appropriate to share all health functions, constitutionally. Therefore it is suggested that except for some of the important health functions, which could be clearly exclusive to subnational governments or has to be delivered concurrently under the principle of decentralization could be shared in constitution; other functions or sub functions could be assigned through organic and sectoral laws.

a) Process and methods in Functional assignment

Under these assumptions and the principle of decentralization, the following methods have been used in the functional analysis and assignment of health sector.

b) Public goods

Out of the current health functions carried out by the government agencies, public functions, which markets will not provide were identified. These are usually the goods which are non-exclusionary<sup>18</sup> or non-rival<sup>19</sup> or have decreasing unit costs or lumpiness of initial investments are considered for assignment to sub-national governments.

Except communicable diseases, all in-patient health care services are private by nature (i.e., rival, excludable, not having huge economies of scale unless very specialized). However, services related to general health education, vector control, and diseases surveillance, which are both non-rival in consumption (consumption by one person does not reduce the amount available to others) and “nonexclusive” (benefits cannot be restricted to only those people willing to pay for them) are public services.

There are other examples in health, which are rival but do not satisfy the condition of excludability. A substantial part of the population must use immunization service if it has to be effective to the entire country. Small portion of population even if they do not choose to be immunized will benefit from widespread immunity derived from immunization program. Other examples similar to this are sanitation and safe water. A large share of the population actually must use these services if they are to be effective as medical interventions to the population. As these services are characterized by market failures, they need government interventions in maximizing the services. These are some of the reasons why the government has to intervene and spend government resources in providing these services. (Griffin, 1999)

However, as discussed in the previous section, if the services have the characteristics of externalities (spillovers beyond the primary benefit area), or the higher level of government has to be involved for the reason if gender and social inclusion, universal coverage of health or

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<sup>18</sup>If a unit of a good is provided, then nobody can be excluded from using it.

<sup>19</sup>More than one user can simultaneously use the same unit of a good.

national priority (for the reason of “Merit Goods<sup>20</sup>” or other reasons), functions or sub-functions have been assigned concurrently to two or more levels of government.

If the assignment is concurrent, then as discussed in decentralization principle, unbundling has been done to clarify the responsibilities of each tier of government.

c) Clarity of responsibilities

Clarity in expenditure assignments and overall efficiency are enhanced by the assignment of exclusive responsibilities to each level of government. This has been done by breaking down the responsibility into attributes- regulations, financing, provision and production or sub-attributes for.<sup>21</sup>

Before and after the exercise of functional assignment was carried out, consultations with the technical committee formed in the Ministry of Health, OPMCM, and PREPARE team, MOGA were organized and suggestions of the members were taken into consideration.

In Summary the following documents, references and process was used in arriving the Functional Analysis and Assignment table.

- The reform process of functional analysis is based on the declaration of Interim Constitution of Nepal 2007.
- In 2009 State Restructuring and Distribution of State Powers Committee (SRDSPC) drafted a new constitution proposing key clauses. It envisioned three tiers of government: federal, provincial (state) and local. It also proposed to list five separate schedules of functions:
  - 1) Exclusively federal functions,
  - 2) Exclusively provincial functions,
  - 3) Common functions,
  - 4) Exclusively local functions and
  - 5) Exclusive functions of autonomous regions.
- Another committee, Natural Resources, Economic Rights and Revenue Allocation Committee listed specific functions
- 2011: Administrative Restructuring Commission was formed and submitted its report in 2012 with a recommendation to restructure Nepal into a Federation of 11 units: 10 provinces and one non-territorial unit for Dalits.

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<sup>20</sup>“Merit goods” are those goods and services, which could generate positive externalities where the social benefit from consumption exceeds the private benefit. In such cases, even though the goods and services can be provided by private sector, the government feels that the access to them and consumption should not depend primarily on the ability to pay for the good or service and usually are subsidized.

<sup>21</sup> There is a difference between providing and producing a service. For instance, a local government may provide garbage collection services to local residents. This service may in fact be delivered by a private firm, which has been contracted by the local government.

The restructuring and number of provinces and local bodies is still a matter of discussion at the CA- 2. However, the functions are assumed to be almost similar in every province and hence the categorization of functions is important for assignment of the identified functions.

### 4.3 Implications of Social Inclusion

Social inclusion is a concept which is by its nature a super- policy. In health sector it might take three forms: inclusion in terms of human resources, opportunities for career and opportunities for services. As the principle of “universal coverage” does not give chance to any exclusivity, the service provision is insured. However, the management of human resources from inclusion perspectives needs appropriate actions which will be reflected into appropriate human resources management policies.

### 4.4 Existing Functional Assignments (as per LSGA and Karya-Bidhi Niyamawali)

There is mention of health services under the Local Self Governance Act (1999). However, the transfer of responsibility of the MOHP to the local authorities seems to be not very strong. The table below shows the provision of health under the LSGA, 1999.

Operation of hospitals is generally under the hospital development board designated under the provision of central government’s prerogative. Opening and operation is governed by the MOHP. Similarly, the plans and programs are made at the central level. Control or prohibition of public use of things and edible objects harmful for public health is rarely carried out. So, there seems to be minimal involvement of local government in these respects. Recently published “A Collaborative Framework” between the Ministry of Federal Affairs and Local Development and the Ministry of Health and Population (2014) tries to address some of the issues, but others remain silent.

Process of desired functional assignment under the federal system

The principles followed for functional assignment are principles of decentralization and subsidiarity, economy of scale and spillover effect of the functions. Unbundling of the concurrent functions and their assignment has been done based on decentralization principles which were extensively discussed, including consultations and interactions, with the office bearers, members of technical committee, QC and PREPARE team.

**Table: 4.1**

**Division of Functions and Responsibilities between Central and Local Bodies Relating to Health Services (Based on Local Self-Governance Act, 1999)**

SN	Functions or Responsibilities	Centre	DDC	Muni	VDC
1	Operation and management of Hospital, Ayurvedic Dispensary and Health Centres	✓	✓	✓	
2	Opening, operation and management of Health Post, Sub Health Post	✓	✓	✓	✓

3	Formulation and implementation of public health programmes like family planning, maternity and child care, extended inoculation, nutrition, population education and health education	✓	✓	✓	✓
4	Provision for prevention of epidemics	✓	✓	✓	
5	Control or prohibition of public use of things harmful for public health	✓	✓	✓	
6	Control or prohibition of use and sale of edible objects harmful for public health	✓	✓		
7	Inspection and monitoring of surgical equipment	✓	✓		
8	Primary health education	✓			✓

#### 4.5 Observations on the recommendations of the CA report

As mentioned earlier, the CA report mentions about allocation of responsibilities. However, they do not seem exactly “functional allocation”, but rather institutional or structural. So, during the consultations, orientation as well as feedback from international consultants, it was revealed that federalism should be based on “functional analysis”. Coming to the functions of a government in international perspectives is qualified if they are mentioned in the constitution as well as various perspectives and meet the “criteria” for attributes. In this sense, real allocation of function should be, as far as practicable, closer to the people (subsidiarity principle) and exclusive to the tier of government. This was observed as a major gap in the CA report, though willingness for this is felt.

Steps undertaken for functional analysis and assignment:

1. Preparation of a complete list of inventory of current functions ( from acts, regulations, policy, directives, international commitments and area of activity)
2. Categorizing the functions that market will fail to deliver and so, prerogative for the government (non-rivalry, non-excludable, decreasing unit cost and lumpiness of initial investment)
3. Determination of the benefit area of service (level, physical or geographical factors)
4. Determination of the special circumstances:
  - a. National objectives (merit goods)
  - b. Economies of Scale and Scope
  - c. Inclusion and Equity
  - d. Cultural/ethnic differences in demanding the services
5. Application of “subsidiarity” principle if the function meets none of the above steps
6. In case of determining special circumstances, the responsibility has been assigned to higher level of government (which might be concurrent or shared)
7. In case of concurrent assignment, distribution was done on the best possible attributes (regulation, financing, administration and delivery)
8. Preliminary brainstorming on procedures for necessary transfer of personnel and assets

9. Preliminary discussion was held on regulatory and institutional arrangement for monitoring, evaluation and retrofitting.

#### **4.6 Proposed Assignment of Functions at different tiers of government for Health Sector**

The following overriding principles are taken for allocation of assignment:

- A. For specific national priorities, the federal government's specific directions will override the sub-national governments. However, such overriding role should be limited to the functions having externalities and national priorities.
- B. Any international health standards adopted by the federal government will become applicable to sub-national services to the extent that these are an international commitment to a global requirement
- C. During the transition, nothing will be deemed to prevent the federal government from financing programs for health services with the concurrence of a sub-national government in its jurisdiction

**Table: 4.2 Proposed Assignment of Functions at different tiers of government for Health Sector**

S N	Function s	Sub- functions	Attributes				Service Delivery (Production) 1	Justification
			Regulation/ Standards/ Enforcement	Finan cing	Staffi ng	Provis ion		
1	<b>Provide Basic Health Services</b>							
		<b>Out-patient service (Primary care)</b>	L	L	L	L	L	Subsidiarity
		<b>Child Health Care<sup>3</sup></b>	P	L	L	L	L	Subsidiarity
		<b>Vaccination<sup>a)</sup></b>	F	F, P	L	L	L	Externalities
		Integrated management of childhood illnesses and newborn care	L	L	L	L	L	Subsidiarity
		Nutrition services (both micro and macro)	L	L	L	L	L	Subsidiarity
		<b>Reproductive Health Services<sup>b)</sup></b>	F, P, L <sup>b)</sup>	F, P, L	L	L	L	Subsidiarity
		Safer Motherhood services	P	P	L	L	L	Equity and Inclusion
		Adolescent reproductive health services	L	L	L	L	L	Equity and Inclusion
		Family Planning Services	F, P	F, P	L	L	L	National Priority
		Reproductive morbidity reduction	L	L	L	L	L	
		Population related Activities <sup>c)</sup>	P	F, P	L	L	L	Externalities
		<b>Communicable Diseases Control<sup>d)</sup></b>	P	P	P	P	P, L	Externalities
		Malaria Control	P	P	P	P	L	National Priority
		Kala-azar Control	P	P	P	P	L	National Priority
		Lymphatic Filariasis Elimination	P	P	P	P	L	National Priority
		Leprosy Elimination	P	P	P	P	L	National Priority



		Tuberculosis Control	P	P	P	P	L	National Priority
		HIV Control	P	P	P	P	L	National Priority
		Trachoma Elimination	P	P	P	P	L	National Priority
		Vector borne disease control	P	P	P	P	L	Externalities
		Newly Emerging Diseases	P	P	P	P	L	Externalities
		<b>Emergency Services</b>	P	P	P	P	L	Economy of scale
		Rabies Control/ Treatment	P	P	P	P	L	Economy of scale
		Snake bite Treatment	P	P	P	P	L	Economy of scale
		Trauma/ Injury	P	P	P	P	L	Economy of scale
		Responding to disaster	P	P	P	P	L	Economy of scale
		<b>Epidemic Control</b>	<b>F, P</b>	<b>F, P</b>	<b>P</b>	<b>P</b>	<b>P</b>	Externalities
		Enforcement of acts	F, P	F, P	P	P	P	Subsidiarity
		Support Control Activities	F	F	P	P	P	Subsidiarity
		Obtain international support	F	F	P	P	P	National Priority
		Carry out Surveillance activities	F	F	P	P	P	Externalities
2		<b>Preventive and Promotive Health Care</b>						
		Community Mobilization	P	P	L	P	L	Economy of scale
		Community Mobilization through volunteers	P	P	L	P	L	Subsidiarity
		Information, Education and Communication/BCC	P	P, L	L	P, L	L	Economies of Scale and Subsidiarity
		Design & Production of IEC Materials	P	P, L	L	L	L	Economy of scale
		Promotive services for health	P	P	L	L	L	Economy of scale
3		<b>Provide Specialized Services</b>						

		Inpatient services <sup>e)</sup>	P	P	P	P	P	Economy of scale
		Secondary Care	P	P	P	P	P	Economy of scale
		Tertiary care	P	P	P	P	P	Economy of scale
4	<b>Ayurvedic and other traditional medical Services</b>		<b>F</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	National Priority
		Enforcement of acts	F	P	P	P	P	National Priority
		Support the activities	F	P	P	P	P	National Priority
		Research and Development	F	P	P	P	P	National Priority
5	<b>Access to Quality Medicine <sup>g)</sup></b>		<b>F</b>	<b>F</b>	<b>F</b>	<b>F</b>	<b>F</b>	Related with Basic health services
		Enforcement of Acts	F	F	F	F	F	Externalities
		Regulation of pharmaceutical	F	F	F	F	F	Externalities
		Quality Assurance of medicines	F	F	F	F	F	Externalities
		Ensure Availability of essential drugs	F	F	F	F	F	Externalities
		Quality Assurance of laboratory reagents	F	F	F	F	F	Externalities
6	<b>Medical Education and Research <sup>h)</sup></b>		<b>F, P</b>	<b>F, P</b>	<b>F, P</b>	<b>F, P</b>	<b>F, P</b>	
		Training of health workers	P	P	P	P	P	Economy of scale
		Higher level education	F	F	F	P	P	Economy of scale
		Research and Development activities	F	F	F	P	P	Economy of scale
7	<b>Chronic Diseases Management (NCD)</b>		<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	
		Mental Services	P	P	P	P	P	Subsidiarity
		Oral Care	P	P	P	P	P	Subsidiarity

	Promotion of healthy life style	P	P	P	P	P	Economy of Scale
	Rehabilitative Services	P	P	P	P	P	Economy of Scale

**Note:**

1. *Service Delivery includes medical supplies, equipment as well as management information system*
2. *Keeping in view economies of scale most of the functions are kept under provincial government*
3. *Child health includes all the services rendered to child care (newborn care, Nutrition, IMCI)*
  - a) *Vaccination has externalities beyond local or even provincial jurisdictions. This is a case for long term federal policy and financing role.*
  - b) *Reproductive health services includes all the components of RH including family planning*
  - c) *The rate of population growth and the size of population has implications beyond local jurisdictions. Therefore, this again may be case for higher level roles in policy and financing.*
  - d) *Communicable Diseases have the potential to spread and joint effort is necessary*
  - e) *Inpatient Service includes all the diagnostic services like laboratory, imaging and other investigations*
  - f) *Medical Education includes on the job training*
  - g) *Access to medicine does not incorporate drugs to inpatient services as these are considered part of service delivery at their respective levels*

#### **4.7 Lessons Learned and The way forward**

- Health is considered as a public good. Delivering quality health care demands for standardization. So, standardization and regulation are important function of government. These are kept at federal level.
- Health service is consumed in various forms; however it needs to be closer to the people (Subsidiarity principle). The people closer to the community understand it better and can manage in a better way. So local provision is very important.
- It is assumed that the federal structure will retain only the ministry; the provinces will have the department/divisions for smooth carrying out activities. The local government will have the responsibilities of provisioning and producing services.
- It is recommended that a comprehensive study on reorganization of the structures and staffing should be conducted immediately after the finalization of the state restructuring and promulgation of the new constitution

## Chapter 5

# Functional Analysis and Assignment - Education

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### 5.1 Background and Introduction

Education is the largest sector in Nepal in terms of its budgetary allocation as well as in its structure and functions. Education sector broadly encompasses from early childhood education centers located in small communities to universities located in selected regions of the country. Similarly, its functional domain broadly covers formal, non-formal and lifelong learning, technical and vocational education, special needs education, and education through Madarasa, Gumba, and Gurukul.

The role of education, in principal, is only one and that is to provide access to education. However, educational needs are diverse based on age, learning objectives, and personal and career related needs. Thus, educational functions are categorized under variety of themes or services catering to diverse interest group. The major functional areas (or educational services) are broadly discussed below.

Areas of Education Functions:

Functional areas in education can be broadly grouped under 7 categories such as: 1) Early Childhood Education and Development, 2) Basic Education (grades 1-8), 3) Secondary Education (grades 9-12), 4) Tertiary Education (bachelors +), 5) Technical, Vocational Education and Training, 6) Open and Distance learning, and 7) Libraries<sup>22</sup>.

While tertiary education remains mostly as centralized function, school based education to some extent is already decentralized. Currently, there are 9 universities with independent status and their own regulatory mechanism. The University Grant Commission (UGC) works as the umbrella institution to regulate universities in the country. Technical education and vocational training; and higher secondary education is also managed largely by centralized and semi-autonomous bodies such as the Technical Education and Vocational Training Council and Higher Secondary Education Board.

The nine universities with autonomous status in operation in Nepal includes: Tribhuvan University (TU), Kathmandu University (KU), Pokhara University (PokU), Purbanchal University (PU), Nepal Sanskrit University (NSU), LumbiniBauddha University (LBU)), Far-Western University (FWU), Mid-Western University (MWU), and Agriculture and forestry University (AFU). Besides, there are three autonomous medical academies also considered as deemed universities such as: National Academy of Medical Sciences (NAMS), B.P. Koirala Institute of Health Sciences (BPKIHS), and Patan Academy of Health Sciences (PAHS) (UGC,

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<sup>22</sup> CA committee has recommend Library as a separate function of central government.

2012). Each of these universities are entitled to operate their own (constituent) colleges and can also grant affiliation to private sectors to run colleges.

## **5.2 Concept and Principles for Functional Analysis and Assignment (Education)**

### **Need for Decentralization**

Education by its nature is a local subject and as such many of its functions demand decentralization. Benefits of education are localized, in big part, materializing as private benefits to students in terms of higher learning ability, healthier lifestyle choices, fulfilling life etc. Social benefits again primarily concentrated in the community and the local/ regional labor market. National government is less able to monitor and manage the front-end delivery units than the managers in the field. However, when the benefits are localized, as in the case of education, local managers have incentives to act on their intimate knowledge of local conditions. The LSGA (1999) and Education Act and regulations have also made similar provisions for promoting greater autonomy to local bodies and to the community.

Education requires decentralization not only for making local bodies responsible and accountable but also to make individuals, family and the community to hold certain obligations for fulfilling their responsibilities. With this in view, the ministry of education has already decentralized many of its functions around school based education, non-formal education, and early childhood education programs. Local bodies are increasingly made responsible for operation of school-based education within their jurisdictions. The process of decentralization is expected to improve efficiency, transparency, accountability, and responsiveness of education services. It may also better reflect local priorities and encourage participation of the stakeholders. Beneficiaries could also share the fiscal burden of education provision and has the potential to lower costs of delivery. The decentralization strategy to lower levels of government and to individual schools has been motivated by federalization and or decentralization policy of the governments and concerns about poor school performance under centralized system.

### **5.2.1 Principle of Decentralization**

#### **a) Principle of Efficiency (subsidiarity principle)**

Matching assignment to the benefit area is less complex in education. Responsibility of school system (normally basic and secondary education) can be assigned to local governments and will be more efficient because they can correspond with their benefit area. Respective schools at local level can deal with organizations of instruction, personnel management, planning and structures, resource management etc. more efficiently. Responsibility assigned to the local government for the provision of school services is highly compatible with the size of "benefit area" associated with those services.

However, there are some aspects of education services like curriculum design including local

content, text-book production and distribution, motioning of standards, financing and harmonization of these activities, higher level of government may provide more efficient services for different reasons. These situation demands for the involvement of provincial and or central government even in providing school level education.

#### b) Externalities

Education is associated with better employment prospects, higher income and status and access to global technology and knowledge but also creates positive externalities. In other words, the public gets benefits from people going to school. Society benefits from a more productive, civil and democratic society. Education, therefore, is a service that generates positive externalities where the social benefit from consumption exceeds the private benefit. For these reasons it qualifies for merit goods<sup>23</sup> and therefore the government has to make sure that every citizen have equal access to education and they should get these services regardless of their ability to pay.

#### c) Economies of Scale and Scope

While the assignment of school education to local government may be efficient, assigning the provision of college and University education with wider benefit areas to smaller units of government is likely to result in the inefficient under-provision of services. Local governments with smaller units may not be able to get enough students in colleges or University to make it viable. It will increase cost and will thus become inefficient. In these circumstances a diseconomy of scale is triggered by fixed costs and increase in per-pupil costs. Besides suboptimal scale, local jurisdiction might not encompass the entire benefit area, which is the regional labor market in the case of general education.

While assigning the function to the different tiers of government, economies of scale needs to be factored to achieve cost-effectiveness and therefore government saving in having a larger units deliver the necessary services. In education, printing and distribution of textbooks, if the curriculum has been harmonized is an example, which will not only save the cost but also ensures the quality and standards of the product.

#### d) Equity and Inclusiveness

National commitments of the government has obligated to ensure free access to quality basic education for all, irrespective of their caste, ethnic origin, religion, culture or linguistic heritage, disabilities or residence. Due emphasis is also given to enhance the access and quality of education based on the premises that education is a fundamental right, not a privilege for all people.

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<sup>23</sup>Merit goods are those goods and services that the government feels that people will **under-consume**, and which ought to be **subsidized** or provided **free at the point of use** so that consumption does not depend primarily on the ability to pay for the good or service.

The EFA National Plan of Action (2001-2015) has provision of scholarships for girls and *Dalit* children to increase their access of primary education. The Three Year Interim Plan (2007/08-09/10) envisioned provision of free education up to tenth grade for the oppressed, backward and below poverty line students.

The Education Act, 1971 (Article 11, Seventh amendment) has a specific mention that the government can arrange scholarship for the students enrolled at Lower Secondary Education and Secondary Education as per the rules specified. Similarly, the Education Regulations, 2002 (Chapter 26) incorporates provisions of scholarship and free education for school level students.

The Local Self Governance Act 1999 requires that VDC and Municipality make arrangements for providing scholarships to the students of oppressed ethnic communities who are extremely backward on economic point of view. The operating policies of the Thirteenth Plan (2013/14-2015/16) states, “alternative programs, reservations, and scholarships will be expanded to women, indigenous and ethnic communities, *Madhesis, Dalits*, and people with special needs to ensure access to education at all levels”.

These policy statements provide the key guiding principles to conduct functional analysis of education sector to ensure inclusion. It has increased the role of central government and participation of all tiers of governments become necessary in the provision of education services.

#### e) Importance of Clear Assignment

Externalities, “merit good” principles, need for inclusion and equity, harmonization and efficiency criteria demand for concurrent assignments among different tiers of government. However, if the assignments are concurrent, it could create confusion in accountability for service delivery. In such occasions, the function (or responsibility) has been further divided into sub-functions and/or the attributes associated with the particular competence (regulation, financing, administration or provision, and delivery or production) and, as far as possible, clear assignment of each sub function to particular government levels has been arrived<sup>24</sup>.

### ***5.2.2 Principle and Process of Functional Assignment***

#### Identification of Public goods

Both the government as well as private sector can provide education. Education is similar to a private good as the slots at a given school are limited (rival) and tuition will exclude certain people from consuming it (excludability). It also provides private benefits. Education is associated with better employment prospects, higher income and status and access to global technology and knowledge but creates positive externalities.

If government do not provide or support education, private schools would still provide education for those who could afford them and would not take into account societal benefits. For this reason, education will be under-provided by the market and the government needs to intervene.

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<sup>24</sup>There is a difference between providing and producing a service. For instance, a local government may provide garbage collection services to local residents. This service may in fact be delivered by a private firm which has been contracted by the local government.



More education will be provided either if the government encourages firms to produce more (by subsidizing the education service for example) or by providing the service by itself. Furthermore, primary education may be of a local nature by the size of their benefit area, but because of their relevance in welfare and income redistribution they may also be considered, at least in part, a responsibility of the central government. As a result, significant proportion of government expenditure has to be allocated in providing education.

However, as discussed in the previous sections, if the services have the characteristics of externalities (spillovers beyond the primary benefit area), or economies of scale or the higher level of government has to be involved for the reason of gender equality and social inclusion, or meets the criteria of national priority (for the reason of “Merit Goods<sup>25</sup>” or other reasons), functions have been assigned concurrently to two or more levels of government.

If the assignment is concurrent, then as discussed in decentralization principle, unbundling has been done to clarify the responsibilities of each tier of government. Citizens need to know who to hold accountable for the failure in adequate service delivery. Most of these desirable objectives become more reachable if the assignment of functional responsibilities is “exclusive,” meaning that only a single level of government is responsible for the regulation, financing and delivery of the particular function.

Clarity in expenditure assignments and overall efficiency are enhanced by the assignment of exclusive responsibilities to each level of government. This has been done by breaking down the responsibilities (or sub-functions) into sub-attributes or sub-responsibilities as described in decentralization principle.

Before and after the exercise of functional assignment was carried out, consultations with the technical committee formed in the Ministry of Education, OPMCM, and PREPARE team, MOGA were organized and suggestions of the members.

### 5.3 Present Experience of Education Delivery in Nepal

Education, in principle and in its broad sense, is locally based service sector. However, as we unbundle the broad term 'education' into different **levels**, **types**, and **service providers** then it becomes more complex and for this reason the need for unbundling education sector is more important. For example, early childhood/pre-primary education, basic education, secondary and

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<sup>25</sup> “Merit goods” are those goods and services, which could generate positive externalities where the social benefit from consumption exceeds the private benefit. In such cases, even though the goods and services can be provided by private sector, the government feels that the access to them and consumption should not depend primarily on the ability to pay for the good or service and usually are subsidized.

tertiary education are different levels of education. All these levels have different objectives, target population, policy guidelines, and instructional arrangements.

Basic education is largely free and state is responsible for providing this level of education for all. Pre-primary education is somewhat mixed as the state has declared one year free education. In practice, however, there are multiple types of early childhood education programs being implemented in Nepal that are supported by I/NGOs and development partners.

Secondary education is partly free for deserving population belonging to disadvantaged groups. Cost for secondary education is subsidized as teacher salary and operating costs are supported by the government. Tertiary education, on the other hand, operates on a cost recovery principle and students are charged fees and operating cost.

Similarly, when it comes to the type of education, there are general streams, non-formal education, technical education and vocational training, and education for children with special needs. Open and distance learning can be also included here although this type of education at school level has not been in practice. General education is very much managed and supported through state mechanism with fixed structure and processes as there are schools, teachers and regular support system. Non-formal education, however, is implemented by non-government and locally based organizations. Technical education and vocational education, special needs education, open and distance education are managed centrally under specific act and regulations. Finally, based on service providers, education is categorized as private and public. Further into public education, there are government managed community schools and schools that are managed solely by the community. However, the government funds both types of schools. Likewise, private (institutional) schools are operated under pure private and also as private trust. Besides, there are schools also operated under public trust that includes schools operated under Madarsha, Gumba/Bihar, Gurukul, etc.

These categories and their characteristic features often determine governance and management of school functions and thus it is very much crucial to understand for functional analysis.

#### a) School governance and Management

Current education act and regulations including LSGA has devolved almost all of functions related to early education to the local government (VDC and Municipalities). There's a fixed cost on per ECD center which is allocated by the central government. Local government, depending on its resources, provides additional support to these centers along with its approval for operation. Each center is operated by the management committee formed by local government. The role of district education office is more on technical backstop and logistical arrangements as necessary.

In contrary to early childhood education, operation of basic and secondary education is regulated under the centralized and structured operational guidelines. District education offices, regional education offices and the department of education are different entities that manage and regulate operation of these services. For the higher secondary education (11 and 12) there is even a separate board, act and regulations for its operation and management. Although school level education is a local function, it is heavily regulated by central authorities.

Tertiary education is completely a central level function governed under university act and is supported by University Grant Commission. In the same manner, technical education and vocational training, special needs education and open and distance learning are also centrally managed.

Operational mandate for private education is given to the district education offices. However, the network of private schools is so strong that the management and governance of private schools are almost self-regulated. Many attempts in the past have resulted in no success in regulating private schools.

#### b) Technical and Specialized Functions

Besides regular functions, there are a number of specialized and technical functions in education sector that need to be managed with specific reference to it. For example, examination, certification and accreditation; curriculum and textbook development; and teacher recruitment and development need to be carefully understood as these functions are of national interest and as such, most of these technical functions are in operation centrally. Local capacity and their experience on these technical functions are almost none which has also resulted in its centralization.

In most countries school based education is almost always devolved to the local level for reasons to ensure quality education relevant to local needs and also to ensure its access for all. This analysis will allow revisiting allocation of educational functions and delivery services at appropriate level. While it is a general trend in countries that devolve educational functions to the local community, it is equally important to assess whether the community has the capacity to manage these functions effectively.

Although the current system supports different types of education – formal, non-formal, open and distance, it has not been able to cater to the diverse learning needs of population living under different circumstances. The reasons behind this are mainly the lack of coordination between and among different central level agencies that are responsible for its program design and implementation. Many times, duplication and misuse of resources has been openly reported. Involvement of local government in managing different educational programs for its population would significantly minimize duplication and wastage of resources. More importantly, people will have the choice of education that is most appropriate for them.

Some of the major challenges that surround education system of Nepal are, teacher management, poor school infrastructure, poor learning achievement, and widening gap between private and public education systems. Public schools in general are characterized as having poor learning environment and infrastructure support. Moreover, due to expanding private schools and internal migration, many public schools in communities are at the brink of closure as they are losing student population. The emerging trend in public schools is such that many are gradually opting for English medium instruction has become widespread. The reason provided by many public schools for using English medium is simply to attract student enrollment. However, there is no evidence to confirm that choosing for English medium has actually helped increase and/or retain student in public schools. Nevertheless, this is something contradictory to national policy that

promotes instruction in local language (mother tongue) and for which the role of local bodies becomes more prominent. For this reason, analysis of functions and its assignment would be extremely useful to determine the level most appropriate for specific functions and activities.

#### **5.4 Existing Assignment of Functions**

##### **a) Access to Early Childhood Education**

The national educational program and policy document of the government – the School Sector reform Plan – has outlined two major objectives of the early childhood education program: 1) To expand access to quality ECED services for children of four year (48 months) of age to prepare them for basic education, and 2) To launch an integrated approach to ECED program in the country whereby all concerned ministries and their line agencies work in tandem to achieve children’s all-round development<sup>26</sup>.

In order to achieve these goals some of the major strategic interventions that the government has stipulated include government's commitment to fund one year ECED program for children of four year (48 months) of age, institutionalization of National ECD Steering Committee to formulate national policy directives and guidelines and expansion of ECDs in both schools and in communities.

The strategies also emphasizes on the directives provided under the Local Self Governance Act (LSGA), which requires close collaboration with and the lead roles be taken by the local bodies in the operation and management of ECEDs.

These broad policy and programmatic provisions in the government document clearly indicated a few things that can be takes as indicative directions for functional assignments such as, 1) the prominent role of central government in making ECD policy and standards, 2) shared financial responsibility, and 3) the autonomy of local bodies in making ECD provisions and its production.

##### **b) Access to Basic Education Services**

Basic education in Nepal is guided by both national and international regulatory provisions. It is seen as the basic life skills that everyone must have. As such, it is governed as rights of every citizen under the interim constitution of the country. International commitments under the Education for All (EFA) and Millennium Development Goal (MDG) has also required developing countries to follow certain principles and guidelines to ensure access and quality standards.

In line with these broad national and international commitments, Nepal has introduced compulsory basic education policy. In support of the national interest, many VDCs and municipalities (the local governments) have taken up further by declaring free and compulsory education within their jurisdiction.

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<sup>26</sup>MOE. 2014. School Sector Reform Plan - Extension Program (2014-15). Kathmandu.

The emerging practices in the community, provisions in education act and regulations, and current education program and plans such as the SSRP, including the recommendations of the OPMCM and CA commission reports suggests that the provision of basic education should be an exclusive function of the local bodies. However, when it comes to making policies and standards and financing basic education, it is largely accepted to be a shared function between the central and local government. Similarly, examination functions also require central management with delegation of some of its power to the local bodies.

The role of central government in basic education is also seen to be required to ensure equity in access to quality education. Provision of scholarships and affirmative policies are enforced by the central government.

#### c) Access to Secondary Education

Secondary education in the new education plan – SSRP – covers grades 9 to 12. The major goal of this level of education is to meet the national development needs by producing competent and skilled human resources and to provide a sound foundation for tertiary education<sup>27</sup>. Unlike basic education which is mostly free and the drive for compulsory education is currently underway, secondary education in principle follows cost subsidy modality. As such, government provides grants in aid to schools as subsidy but also allows schools to collected nominal fees as operational cost. Besides, for marginal and needy population, provision of scholarships is also made available.

Thus the role of higher level of government is more prominent in secondary education due to specific quality requirements to be met in producing skilled human resources. Similarly, as a merit good, more regulatory and distributive power is needed to be exercised by higher level government. In the CA commission report has suggest secondary education to be the responsibility of the provincial government. Role of private sector is also important in ensuring secondary education.

#### d) Access to Tertiary Education

Tertiary education system in Nepal largely follows the principle of cost recovery. As such cost of the services is generally recovered in the form of tuition and fees from students. However, these costs are highly subsidized and thus students are required to pay only the nominal costs. Tertiary education is also considered as the merit good and hence it is not accessible to all but only to those deserving on grounds of merit.

Since the beneficiary of this level of education may even cross international borders, maintaining its quality and consistency for national and international recognition is therefore becomes the responsibility of the central government. Moreover, Universities operate as an autonomous entity under their own regulations, therefore minimal government is exercised. However, the central government through UGC provides an overarching policy guidelines and regulatory mechanisms.

#### e) Technical, Vocational Education and Training (TVET)

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<sup>27</sup> Ibid.

All technical, vocational education and training programs in Nepal currently operate under the Council for Technical Education and Vocational Training (CTEVT), which is a semi-autonomous body. As a result, this function is currently being managed from the central level. However, the need for technical and vocational education and training are almost everywhere. Thus, there's need to decentralize this function at different level. However, because of the problems of economies of scale and externalities, it may not be feasible to have different training schemes in smaller areas. Therefore for the sake of efficiency, regional skill set required in the local or regional economy should be tailored and training program should be clustered.

Since this function requires heavy investment and it also helps generate local employment, the role of provincial government becomes more prominent. Although some non-government sector is emerging slowly in this area, private sector is almost not attracted. As a result, the role of government is higher.

f) Access to Education through Open and Distance Learning

This is a relatively new concept in Nepal which is emerging slowly. Since this a new area, there's no significant policy and guidelines available as yet, this function is seen to be retained at the central level until such times when rules and regulations are enforced.

g) Libraries

While every school and colleges will make provision of libraries within their own facilities, this is about public libraries that are meant to serve the learning needs of diverse population. The concept of national, provincial and local library is also to preserve and promote national, regional and local culture, language, and different artifacts of historical values.

Usually, each level of library are financed and managed by respective government authority and sometimes local clubs and civil society also operate libraries and community learning centers on their own.

## 5.5 Observations on the Recommendations of the CA Report

Various committees and commissions formed by the government to provide guidelines and strategies for allocation functions across different level of government has submit its reports and recommendations.

The report of the CA Committee on Restructuring of the State and Distribution of State Power proposed five separate schedules of functions to be listed in the Constitution: 1) exclusively federal functions; 2) exclusively provincial functions; 3) common functions, which would be discharged by provincial governments “on the basis of the fundamental principle, standards and framework of legislation determined by the Federal Legislature;” 4) exclusively local functions; and 5) exclusive functions of autonomous regions.

With regard to education sector, the report has included following functions under the federal, provincial and local government's responsibility - *Federal government*: central university, central library; *Provincial government*: University, higher education, library, and museum; books and printing press; *Local Government*: Primary and secondary education; *Autonomous area*: Primary, secondary education, library and museum

The State restructuring commission suggested three tiers of the government and also made recommendation to keep all residual functions under the federation. In this analysis, the same three tiers of the government has been followed and on top of that service-delivery facility has been added to reflect units already in function at the lowest level of services delivery such as the school and its management committees.

The Administrative Restructuring Commission, among other sectors, also did the analysis and allocation of functions for education sector. Along with the allocation of functions, the commission also suggested to have organizational setup at Federal, Provincial and Local level. The commission report also suggested for the provision of Ministries and Directorate at the provincial level

The report submitted to OPMCM by the consultants includes a comprehensive list of education functions and its assignments to different level of government. However, the functional analysis and its assignment appear to have been guided by existing organizational structure and it does not provide any conceptual and/or theoretical basis. Nevertheless, listing of education functions in the OPMCP is quite comprehensive and it has been used as the starting point for this analysis and assignment.

## 5.6 Proposed Assignment of Functions at Different tiers of government for Education Sector

A comprehensive list of functions is prepared under broad functional areas. Each area will be unbundled to the possible extent. Each activity will be then assigned to appropriate level of government using the basic principles and agreed norms of the government.

**Table 5.1 Summary Table of Functional Assignment**

Attributes  Functions	Sub-Functions	Regulations and Standard*	Financing	Staffing	Service Delivery		Remarks (mainly justification of assignments)
					Provision	Production Implementatr	
<b>1. Access to Early Childhood Education</b>							
	Curriculum and Instructional design (for preparation and readiness for	F,L <sup>28</sup>	F,L, and Private <sup>29</sup>	School and Community	L	School and Community	Subsidiarity principle, but shared financing as it is a merit

<sup>28</sup> Central government develops a broad national policy framework to ensure consistency and to ensure minimum quality standards to operate early childhood education programs in the country. The local government develops its own policy and standards to regulate it within its jurisdiction.

<sup>29</sup> As a merit good, financing is the primary functions of the central government. However, the LSGA has already devolved this function to the local government and therefore financing is also the responsibility of the local government. Therefore it is a shared responsibility. Since private sectors are already making huge investment in this sub-sector, their contributions is also needed to be acknowledged.

Attributes	Sub-Functions	Regulations	Financing	Staffing	Service Delivery		Remarks (mainly justification of)
	basic education)						good
	Inclusion and social justice (to ensure equal participation and access to all)	F, L	F, L	School and Community	L	School and Community	To ensure equity and inclusion, central government regulates to ensure.
<b>2. Access to Basic Education (Class I-VIII)</b>							
	Curriculum and Instructional design	F, L	F, L and private	Schools	L	Schools and community	To ensure national interest, central government regulates school curriculum. L will contribute to local content.
	Examination and certification	F, L <sup>30</sup>	F, L	Schools	L	School	National interest to maintain quality and credibility; F for monitoring certification, L for exam and certification.
	Inclusion and Social justice	F	F, L	Schools	L	School and community	To ensure equity and inclusion
<b>3. Access to Secondary / Higher Secondary Education</b>							
	Curriculum and Instructional design	F	F, P and private	Schools	L	Schools	National interest to regulate school curriculum..
	Library/laboratory	F	F, P	Schools	L	Schools	National priority
	Examination and certification	F	F, P <sup>31</sup>	Schools	F	Schools	National interest to maintain its quality, credibility, and acceptability; P for examination; F for certification

<sup>30</sup> As per the School Sector Reform Plan, National Examination Board (NEB) conducts the certification examination at the end of grade 8 (basic education) by delegating this function to the local authority.

<sup>31</sup> As per the School Sector Reform Plan, National Examination Board (NEB) conducts the certification examination at the end of grade 10 (basic education) by delegating this function to regional/provincial authority and end of grade 12 examinations and certification by the NEB itself.



Attributes	Sub-Functions	Regulations	Financing	Staffing	Service Delivery		Remarks (mainly justification of)
	Inclusion and Social justice	F	F, P	Schools	P	Schools	Equity and inclusion.
<b>4. Access to Tertiary Education</b>							
	Curriculum and Instructional design	F	University Grant Commission (UGC)-independent Body;	Colleges / facility	F	Colleges / facility	As per the recommendation of various reports, university is a central function
	Library/laboratory	F	UGC / independent Body	Colleges / Facility	F	Colleges / Facility	
	Examination and certification	F	UGC / independent Body	Colleges / Facility	F	Colleges / Facility	
	Inclusion and social justice	F	UGC / independent Body	Colleges / Facility	F	Colleges / Facility	
<b>5. Access to Technical and Vocational Education</b>							
	Curriculum and Instructional design	F,P	F,P and Private	Facility	P	Facility	Because of possible externalities in L, P is best for delivering this service. Provinces also require to adopt to their specific requirements.
	Provision of library	F	F, P	Facility	P	Facility	
	Examination and certification	F	F, P	Facility	P	Facility	National interest
	Inclusion and Social Justice	F	F, P	Facility	P	Facility	Equity and inclusion
<b>6. Access to education through open and distance learning</b>							
	Provision Curriculum and Instructional design	F, P	F, P and Private	Facility	P	Facility	Economy of scale,
	Examination and certification	F, P	F, P	Facility	P	Facility	National interest
	Inclusion	F, P	F, P	Facility	P	Facility	Equity and inclusion
<b>7. Public Libraries</b>							
	Library	F, L	F, L	Clubs, Facility	L	Clubs, Facility	Other than central Libraries. Local government

Attributes	Sub-Functions	Regulations	Financing	Staffing	Service Delivery		Remarks (mainly justification of)
							should promote local clubs and civil society to operate libraries as community reading center.

### 5.7 The Way Forward

Global practices in education sector vary from one model of operation to another. There are countries where education is highly regulated and controlled centrally and at the same time there are countries that have completely devolved all education functions to school board. Therefore, rather than learning from external practices, it is in the best interest of the country to adopt and build own and homegrown systems. Educational needs are very much contextual and also individual and therefore it has to be grounded to what exist as local reality.

Secondly, education sector in Nepal has long been decentralized many different activities to the local bodies and even to the facility level. Therefore, it is easy to build on whatever has been already devolved. However, there needs to be clarity in roles and responsibility along with the required capacity to perform these functions effectively.

Along with the functional assignment, there is a need to critically review these functions and required capacity to perform these functions. Thus capacity building plan is also required along with this exercise.

## Chapter 6

# Functional Analysis and Assignment of the Agriculture Sector

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### 6.1 Background and Introduction

#### 6.1.1 Agriculture

The overriding principle of Nepal's economic development effort is to reduce poverty, good governance and inclusive development with the emphasis on decentralization and people's participation. The country is now planning to graduate from a low income country (least developed country) to a middle income country (developing country) by 2022. The agriculture sector is one of the priority sectors viewed to contribute Nepal's development albeit ambitious goal. Nepalese agriculture has always been central to the national economy; it is the largest single sector contributing around 35% of the total GDP, employing 66% of the labor force and feeding around 27 million people. Although the national economy is based on agriculture, it is highly characterized by small holder, subsistence orientation and low level of commercialization with about 80% of farming households operating less than 1 ha of arable land.

The agro based industries and allied business are growing but limited. The poultry and dairy processing are fast moving, and the private sector is improving productivity. Other emerging sectors include tea, flowers and vegetable seeds. Growth in the dairy and poultry sector is an example of mobilizing private investment with the right policy and regulatory environment, demand growth and agribusiness functioning in value chain (for feed, meat and dairy processing, cold storage and distribution). In 2008 there were 1,288 companies processing and marketing agricultural products while in 2011 there were about 5,500 agriculture cooperatives in such commodities as dairy, tea, coffee, honey and citrus (ADS 2013).

The then Government of Nepal formulated the Agriculture Prospective Plan (APP) as a 20 year vision and strategy for agriculture led growth in 1995 and has implemented it since the first year of the Ninth Five Year Plan (1997-2002). The potential merit of the APP was agriculture led development and poverty reduction. Despite its merit it did not perform well as expected because of low level of investment, weak coordination and weak commitment or ownership from the various stakeholders (ADS Assessment, 2011). The government of Nepal formulated the National Agriculture Policy in 2004 (NAP) and it became the umbrella policy for agriculture development. The long term vision of NAP is to improve living standards of the people by transforming subsistence agriculture into a sustainable commercial and competitive agriculture.

The APP did not capture the current challenges in agriculture sector, and it is being phasing out in 2015. Therefore, the Government of Nepal has prepared another long term Agriculture Development Strategy for a 20 year vision with a Ten year action plan and road map based on the assessment of the current and past performance of the agriculture sector. The long term Agriculture Development Strategy (ADS) vision of the agriculture sector is "A Self-reliant, sustainable, competitive, and inclusive agriculture sector that drives economic growth and

contributes to improved livelihoods and food and nutrition security”. In order to achieve this vision, the appropriate delivery of public functions and their corresponding sub-functions on the agriculture sector is of paramount importance. Through the development of agriculture industry in Nepal, the country is expected to achieve the following goals:

1. Food and nutrition security
2. Poverty reduction
3. Agriculture trade Competitiveness
4. Higher and more equitable incomes
5. Strengthening farmer’s right
6. Sustainable development

To date there are more than 22 agriculture related Policies, 16 Acts, 9 Regulations and 5 Orders. However, the country suffers from implementation problems such as low public investment in agriculture, weak coordination between ministries, and ineffective monitoring and evaluation.

### *6.1.2. Irrigation*

Irrigation is essential towards the development of profitable agriculture. Nepal has comparative advantage in terms of water resources for agriculture, which makes the development of country’s irrigation system a highly viable option towards improving the country’s agriculture performance. A good irrigation infrastructure leads to sustainable and improved income among farmers by increasing cropping intensity and use of new technologies. Irrigation in Nepal remains, therefore, a major policy and an investment priority of the government. The Agriculture Development Strategy has suggested to have fruitful and meaning full link between irrigation and production unit, focus on system and on-farm water management to increase irrigation efficiency, focus on policy implementation as well as policy development, focus on operation and maintenance as well as new system development and reduce institutional gaps between irrigation and agricultural ministries and their line agencies.

### *6.1.3. Land Reform*

There are increased incidences of agriculture land being transformed into residential use or non-agriculture use. The average farm size has decreased over the years due to the combined effects of several factors such as inheritance, loss of land due to urbanization, and degradation. Smaller size and fragmented farms pose difficulties to achieve economies of scales and to provide sufficient income to farmers. The average farm size is 0.7 ha per household. Though the Ministry of Land Reform and Management has issued Land Use Policy, 2013 with a vision to use the available land resources optimally for the sustainable social, economic and environmental development of the country, it has not been implemented due to absence of proper legislation.

### *6.1.4. Introduction of Functional Analysis*

One of the fundamental principles of the federal government is to make all tiers of government and their institutions more accountable and responsible to the people; government services must be delivered efficiently to all citizens. An equally important principle is people’s participation in government decision-making. Many countries see decentralization as an important component of

a strategy designed to increase the political power of the people as expressed through the local governments. It is not only important for political reason but it also improves the welfare of the populace (McLure&Vazquez). Towards this end a stable and meaningful decentralization requires an unambiguous and well defined institutional framework in the assignment of functional responsibilities among the different levels of government together with the sufficient budgetary autonomy to carry out the assigned responsibilities at each level of government.

In the agriculture sector, in order to have concrete and clear functional analysis, the sector is divided into different subsectors as follows:

1. Crops (food crop, cash crop, industrial crop, pulses and MAPs), Horticulture (fruits, vegetables, spice including area specific olive, kiwi and tea/coffee)
2. Fisheries and aquaculture
3. Livestock and animals of all species

Major functions for each subsector are identified. In the identification and determination of functions, various principles, tools, previous works undertaken by the OPMCM and international practices are examined or considered for their relevance. The CA Committee reports and the integrated lists of powers for different tiers of government are points of departure for unbundling the functions. While unbundling the functions of the sector, first sub-sectors are identified and for each of the subsectors major public functions are developed based on accepted public management principles. From each major function, sub-functions are identified and subsequently different activities are determined to support the functions and sub-functions. The sub-functions and the activities identified may differ for each of the sub-sectors depending upon the nature and the type of services within and across the commodities.

## **6.2 Concept and Principles for Functional Analysis and Assignment**

### ***6.2.1 Principles of Decentralization***

Decentralization of functions allows sub-national governments to tailor the services they are supposed to render to the people in line with the demands of their jurisdiction. It increases the efficiency of the program because local governments will have better information about their residents' needs than the central government. The lowest level of government should therefore be made accountable for the provision of services compatible with the size of the 'benefit area' associated with those services. Commonly accepted principles of decentralization include an efficient allocation of resources via a responsive and accountable government an equitable provision of services to citizens in different jurisdictions of sub-national governments.

Although, there is no absolute way for assigning particular function to a level of government, there are fundamental rules for the ideal assignment of responsibilities in a multi-level system of government. These most commonly accepted principles for functional assignments include the following:

#### **A. Efficiency criteria (Subsidiarity principle)**

The efficient provision of the government services requires that government satisfy the needs and preferences of their people as well as possible allocation efficiency at the lowest possible

cost (production efficiency). Allocation efficiency is best achieved by applying the “subsidiary” principle. Decentralization of public functions allows sub national governments to tailor service they are supposed to render to the people that match the demand of their jurisdiction. Responsibility for the provision of services should be at the lowest level of government compatible with the size of “benefit area” associated with those services. Farm infrastructure like farm to market road (agriculture road), rural telecommunication, local electrification, small scale irrigation scheme, farmers’ training, setting up of demonstration farms, and implementation of farmer field schools are some of the services that can be exclusively, local.

#### B. Externalities

Where there are service spillovers into other jurisdictions those services should be provided by upper level of government, correspondingly. As for example agriculture technology creates positive externalities. Food security is also the externality generated by agriculture production. Similarly, excessive use of inorganic fertilizer and pesticides may result in water pollution and adverse health impact. Some of these functions are assigned concurrently.

#### C. Economies of scale and scope

While assigning the function to the different tiers of government, economies of scale needs to be factored to achieve cost-effectiveness and therefore government saving in having a larger units deliver the necessary services. In agriculture sector procurement and distribution of vaccines for a mass vaccination campaign in an attempt to control or eradicate certain epidemic animal diseases is an example which will not only save the cost but also ensures the quality and standards of the product. Similarly, market information program and support of technical specialist to extension agents, could be assigned at higher level of government because of consideration of economies of scale.

#### D. National priority and social inclusion

The interim Constitution of Nepal, 2007 and the draft constitution of Federal Nepal, both have emphasized to pursue a policy of establishing the rights of all citizens to food sovereignty. Agriculture Development Strategy (ADS) also has identified food and nutrition security as one of the flagships program of the government. Agriculture is one of the vital components for inclusive development in Nepal. Most of the poorer rural people either are self-employed (mostly in agriculture) or wage earners in agriculture. Many of these people live in remote isolated areas and suffer from hunger and nutrition. These conditions also justify for government intervention either at the higher level of government or concurrently to different tiers of government.

#### Importance of clear assignment

Concurrent assignments could create confusion in accountability of service delivery. In such occasions, the function (or responsibility) has been further divided into sub-functions and/or the attributes associated with the particular competence (regulation, financing, administration, and delivery) and, as far as possible, clear assignment of each sub function to particular government levels has been arrived. When any of these attributes or sub-functions is still shared by two or more levels of government, functions and attributes have been further unbundled into sub-

functions and sub-attributes until the sub-functions can be exclusively assigned to a single level of government.

### *6.2.2 Principle and Process of Functional assignment*

Decentralization deals with the efficiency of service delivery and its fiscal aspects. However, in federation, the shared source of legitimate political power between the federal government and sub-national governments comes from constitution. However, constitution is very hard to modify. In this context, in case of federal Nepal, it may not be appropriate to share all agriculture functions, constitutionally. Therefore it is suggested that except for some of the important agriculture functions, which could be clearly exclusive to subnational governments or has to be assigned concurrently under the principle of decentralization may be mentioned in the constitution; other functions or sub functions could be assigned through organic and sectoral laws.

The function is said to be a discrete set of activities carried out in the delivery of services. Functional assignments (also known as expenditure assignments or delineation of powers or competences) answer the fundamental question of which level of government (local, provincial or central) should be responsible for the specific functions and activities that belong and will remain in the public sector. Under these assumptions and the principle of decentralization, the following methods have been used in the functional analysis and assignment of agriculture sector.

#### Inventory of current functional assignment

(Stocktaking of policy, act and regulations etc)

In many cases this can be a quite a significant undertaking. The point of this first step is to know as well as possible what, in practice, expenditure assignments are and to identify all ambiguities. Without knowing what we have it will be difficult to know where it is that we should go. By taking inventory of the status quo in the formal and de-facto delineation of expenditure responsibilities we get a necessary point of departure for functional assignment reform. In our context the current functional assignment are the devolved programs in the agriculture sector provided by the LSGA, 1999 and Government of Nepal/ Work Division Regulation, 2012. Similarly the point of departure for unbundling the functions in the future mapping are the CA Committees report, ARC reports and the integrated list of powers delineated by the CA Committees.

#### Public goods

Out of the current agricultural functions carried out by the government agencies, public functions, which markets will not provide were identified. These are usually the goods, which are non-exclusionary<sup>32</sup> or non-rival<sup>33</sup> or have decreasing unit costs or lumpiness of initial

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<sup>32</sup>If a unit of a good is provided, then nobody can be excluded from using it.

investments are considered for assignment to sub-national governments. Services related to agriculture education and diseases surveillance, which are both non-rival in consumption (consumption by one person does not reduce the amount available to others) and “nonexclusive” (benefits cannot be restricted to only those people willing to pay for them) are public goods. In the case of control and eradication of the animal infectious diseases, the benefits are international and inter-generational in scope. Animal health systems are neither a commercial nor a strictly agricultural good. They are fully eligible to national and global public resources. Failure of one country in controlling disease may endanger the entire planet. An example is the bird flu epidemic in the recent past and Ebola virus epidemic in the recent days.

There are other public goods as well in agriculture like technologies, agriculture research, food, plant and animal quarantine services that effectively control the spread of pest and diseases, and food safety and quality control regulations are public goods and usually falls on the jurisdiction of federal government. Similarly, agriculture biodiversity, water quality and availability, climate stability and soil functionality are also characterized as public goods by their nature.

If any of the public function satisfies the condition of public goods and cannot be provided by the private sector, the entire (exclusive) responsibility has been assigned to the lowest level of government that encompasses the entire benefit area, as far as it satisfies the subsidiarity criteria. However, as discussed in the previous section, if the services have the characteristics of externalities (spillovers beyond the primary benefit area), or qualifies for public interventions for the reasons of social inclusion, equity or national priority, functions or sub-functions have been assigned to higher level of government or concurrently to two or more levels of government.

If the assignment is concurrent, then as discussed in decentralization principle, unbundling has been done to clarify the responsibilities of each tier of government. Clarity in expenditure assignments and overall efficiency are enhanced by the assignment of exclusive responsibilities to each level of government. This has been done by breaking down the responsibility into attributes or sub-responsibilities for (1) actually producing a good or delivering a service, (2) providing or administering the service, (3) financing a service, and (4) setting standards, regulations or policies guiding the provision of government services.<sup>34</sup>

Before and after the exercise of functional assignment was carried out, consultations with the technical committee formed in the Ministry of Agriculture, OPMCM, and PREPARE team, MOGA were organized and suggestions of the members were taken into consideration.

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<sup>33</sup>The same unit of a good can be simultaneously used by more than one user.

<sup>34</sup>There is a difference between providing and producing a service. For instance, a local government may provide garbage collection services to local residents. This service may in fact be delivered by a private firm which has been contracted by the local government.



### 6.3. Principle of Inclusiveness

The Civil Service of Nepal mandated to be fully inclusive characterized by proportionate representation and active participation of people belonging to different sex, castes, ethnicity, community, ability, and locations at all levels of bureaucracy (e.g., officer levels – special class, first class, second class, and third class; and non-officer level positions) and at all tiers of the federation (e.g., national, provincial, and local) thereby ensuring equal opportunity to all citizens of the country to benefit from the existing/potential prospects and thus contribute more effectively in the nation building. Here under are specified some of the functions for the agriculture sector.

- (i) Assess/verify the agriculture related status (such as, land holdings, income from agriculture, food security, nutrition status) of the excluded communities
- (ii) Develop policies, plans and programs specifically targeting the well-being of excluded groups.
- (iii) Execute plans and programs for improving the living conditions and economic development of the excluded communities.
- (iv) Develop special agriculture support packages for enhancing income of marginal and landless excluded communities.

### 6.4. Existing Functional Assignment

The current sub-national governance structure is largely based on the Local Self Governance Act, 1999. The Act provided expenditure and revenue authority and resources to local bodies (LBs), namely Village Development Committee (VDC), Municipalities and the District Development Committee (DDC). The LBs compose the second tier of the government after the central and is the DDC. Despite the introduction of the Act, the governance structure remains highly centralized, thus it fails to address many of the existing pressing problems on governance and service delivery efficiency.

#### A. Local Self- Governance Act, 1999 (LSGA)

The Local Self Governance Act in 1999 is an outcome of the compromise between the central government and local bodies elected in 1992; the central government made unconditional fiscal transfers to different tiers of local bodies without defining the functions of the local bodies. This practice lasted only for two and half years after which various models and procedures were applied. These created confusion among the LBs in coordinating and liaising different line offices at the local level. In 2001, a Decentralization Implementation Plan was adopted laying out a sequencing of activities where four sectors consisting of primary health, primary education, agriculture and livestock extension activities were identified as the first phase of sector devolution through the 2001-2002 budgets. This arrangement is still continuing; however, there is no hard evidence to measure the benefits. The underperformance of LSGA is an impetus for

the current functional analysis and assignment for a federal system to make all tiers of government more accountable and responsible. Almost all functions are concurrent in nature, which means there is no accountability for any tier responsible if the particular function is not performed adequately.

B. Government of Nepal, Government Business Rules, 2012

The Government of Nepal; Government Business Rules, 2012 has identified 32 different functions for the agriculture sector, while land reform and irrigation have 18 functions each. These functions are broad; they do not specify which tiers of the government they belong. Furthermore the functions are organization oriented rather than sector oriented. The analysis of functions was made without any regard to tools/methodologies or principles. The functions are more concentrated at the center. It was difficult to know which functions are for local bodies. There is no responsibility to which of the tiers of the government it is accountable to. It lacked ownership on the part of the people; therefore they were not effective.

## 6.5 Observation in the CA Reports

There are two reports available from CA Committees to review. They are the basis for un-bundling of the functions. But the reports are not consistent with each other especially in the functions of the agriculture sector. Four different functions for agriculture sector are included in the federal government in the allocation of the proposed economic rights (list 1) provided by the NRERRAC. They are Agriculture, Quality Standard, Regulation and Investigation and Technology Development. While in the provincial government Agriculture, Investigation, Technology Management and Production Management are identified and in the local government Agriculture, Production Management, Agriculture/Veterinary and Technical services are identified. Similarly in the irrigation sector Mega and Inter Provincial Irrigation are included in the federal government while Inter Local Governmental and Provincial level, Middle underground Irrigation Project and Irrigation Project in the Province in a provincial level and Small and Underground Irrigation Project within territory are included in the local level of government. In the land sector Land Use/Consumption Policy in the federal level and Land Management/Consumption Policy in the provincial level are included. No authority is given to local level in the land sector (literature review in Annex 1).

In the integrated list of power provided by the CA Committees (NRERRAC and SRDSPC) there is no federal function on agriculture except quarantine and insurance. In the provincial level there are two functions, Agriculture/Livestock Development and Insurance Management and Operation and in local level there are three functions, Agriculture /Livestock Development, Management, Operation and Control of Agriculture /Livestock Extension and Insurance are identified. These proposed recommendations did not fulfill the normative principle of decentralization or functional analysis. Furthermore some of the essential functions like

agriculture research; agriculture educations are completely missing. These discrepancies will create confusion. Before they are adopted in the constitution or in an organic law they should be harmonized to give clear direction and meaning.

## **6.6 Proposed Functional Assignment under Federal System**

The desired functional assignment are drawn on the basis of the review of the ARC report, CA Committees, especially Natural Resources, Economic Rights and Revenue Allocation Committee (NRERRAC) and State Restructuring and Distribution of State Powers Committee (SRDSPC), International practices and the previous work done by ARU of the OPMCM. Even if there is some kind of controversies in between the two CA Reports, it provides enough bases for unbundling the functions to the desired level.

The functional assignment is provided in the functional matrix having major functions as policy instrument in Y-Axis and the role of the government at various levels of services in the X-Axis. In the agriculture sector the functions enumerated below are as policy instruments that are at disposal of the government to stimulate and accelerate agriculture development. Primarily, these functions are meant to generate public goods at every level of government operations to create the right policy environment to make agriculture industry, from production to processing & marketing, more efficient and therefore more competitive and profitable on the part of the producers. At the same time, the right policy environment has positive effects towards increasing private sector confidence and thus investment to help develop the agriculture industry. Given government's limited resources, investment by the private sector is a key strategy to increase resources for agriculture development. On the part of the small, poor agriculture producers, the right policy environment creates stability in the industry that encourages them to take risks such as the adoption of new technologies or knowledge, an essential step in increasing productivity and profitability among small marginal farms.

For the purposes of this report, there are ten (10) major or broad functions or policy instruments, and these are further divided into sub-functions and activities that are assigned into different tiers of government by applying accepted public management principles. This is provided in the functional matrix table, in X axis as attributes and Y axis as functions. The major functions or policy instruments of agriculture development are listed below:

1. Agriculture Regulations (AR)
2. Agriculture Research and Development (ARD) (by commodity and by discipline)
3. Information, Communication and Extension (ICE)
4. Soil Health Care (SHC)
5. Land Reform and Management (LRM)
6. Agriculture Education (AE)
7. Agriculture Credit (AC)

8. Irrigation Development (ID)
9. Rural Infrastructure (RI)
10. Agriculture Statistics (AS)

### ***6.6.1 Agriculture Regulations***

An efficient, stable, and reliable regulatory service is the cornerstone of modern agriculture, which only the government has the sole authority or responsibility to lead even in a more developed economy. Of course, as any public function, agriculture regulations involve all levels of government operations from the federal to the local levels. This function, to be truly effective, must be discharged in close partnerships with the agriculture producers, both small and large, NGOs, and the private sector such as the agriculture processors and exporters. Protocols, technicians training, monitoring, risk analysis, and the production of communication materials to achieve economies of scale are responsibilities of the federal government while the actual tasks or providing local services resides with the local governments except in international ports. The government must set quality standards of its products, both fresh and processed. In setting quality product standards, the government must be conscious of its international obligations or commitments to international bodies such as Codex & WTO and OIE.

The Agriculture Regulatory Service of the country must be anchored on good science, an essential foundation for service reliability, stability, and public confidence. It means, therefore, that the country must set up its regulatory service with adequate laboratory facilities for inspection and testing, and its technical personnel are well trained.

### ***6.6.2 Agriculture Research and Development (by commodity and by discipline)***

A robust research and development is of fundamental importance towards the generation of innovations and new knowledge and technologies, for the sustained agriculture growth especially among the poor, small scale agriculture producers.

In designing the country's agriculture knowledge generation system, Nepal must address the logical connections of the three types of research in agriculture: upstream & strategic research, which is the responsibility of the federal government; midstream or technology generation, which is the responsibility of the provinces; and downstream research or on-site farm research, which is the responsibility of local government units. The federal government assumes the leadership responsibility in upstream research by providing a sustainable funding mechanism and setting up of the required laboratories equipped with the right equipment and highly trained personnel. Such a set-up can be accomplished in partnerships with key universities of the country. At the same time, the federal government must define the research priorities of the country in pursuit of its strategic goals of development in agriculture while maintaining a

dynamic relationship with all provinces whose agriculture research systems is tasked to generate technologies appropriate to their own agro-climatic and socio-economic conditions.

### ***6.6.3. Information, Communication and Extension***

Information, Communications, and Extension (ICE) Services provide logical connection to research and development. Without ICE, research knowledge simply gets to be stored in reports and not used by farmers and the rest of the farming population who need to keep abreast with latest technologies or market information. While ICE is a joint activity among the three levels of government services in partnerships with the users of agriculture knowledge and information, the federal government assumes the leadership role in designing a responsive system. The central government must set up the federal infrastructure through investment in highly qualified federal specialists who shall provide technical extension support to provinces in the setting up of a provincial agriculture knowledge system that effectively links all local government units to research and other market information.

### ***6.6.4 Soil Health Care (SHC)***

Soil fertility is of fundamental importance to improve agriculture productivity. Every farmer must understand their soil in terms of their properties and the science required to make them healthy and productive. This is the main purpose of Soil Health Care Services. While the advisory services should be lodged mainly through the local units, the federal government has the responsibility to insure a national system that show effective partnerships at all levels of government and the setting of the standards of services that specifies equipment, personnel training and skills, and types of services provided.

### ***6.6.5 Land Reform***

There is increased instance of agriculture land being transformed into land plotting and land grabbing practices for more and more residential use. Government has issued Land Use Policy, 2013 with a vision to use the available land resources optimally for the sustainable social, economical and environmental development of the country. Unfortunately the required legislation has not been in place, hence, the policy has not been implemented yet. The federal government therefore, should take the responsibility to develop the Act and sub-national government should enforce it. Land Bank Scheme should be brought in by federal government; similarly contract or cooperative farming should also be in place to be implemented by the respective governments.

### ***6.6.6 Agriculture Education***

The development of appropriate human resources needed in agriculture is the major task of agriculture education. The four types of agriculture education are; technician level, graduate level (B.S), higher level (M.S and Ph.D) and in service education. Technical level can be done at provincial level where as graduate and higher level can be done at federal level and in- service education can be done at provincial and local levels.

### ***6.6.7 Agriculture Credit***

To provide capital for farmers to purchase inputs or make capital improvements on their farms, credit is required. The country can explore various conduits for agriculture credit: banks,

cooperatives, NGOs, etc. The role of the federal government is to promulgate credit policy and actual implementation resides with the credit conduits. Local governments are inefficient providers of agriculture credit; therefore, government must explore more viable providers.

#### ***6.6.8. Irrigation***

There should be fruitful and meaning full link between irrigation and production unit, focus on system and on-farm water management to increase irrigation efficiency, focus on policy implementation as well as policy development, focus on operation and maintenance as well as new system development and reduce institutional gap between irrigation and agricultural ministries and their line agencies. CA Committee has recommended mega and inter provincial irrigation to be the responsibility of federal government, Inter government local and provincial, middle underground project, and irrigation in the province to be responsibility of provincial government and Small and underground project within territory to be the responsibility of local government. Details are provided in the functional table.

#### ***6.6.9. Rural Infrastructure***

Farm infrastructure like farm to market road (agriculture road), rural telecommunication, and rural electrification are the public goods and are responsibilities of local governments. Farm infra structures have positive influence to increased growth in agri-business enterprises and commercialization of agriculture products. Other support services in infrastructure development can be done through PPP model as shown in the functional table.

#### ***6.6.10. Agriculture Statistics***

Statistics are public goods and are used in any policy formulation and planning. Good planning requires data's the real ground situation. Therefore the federal government should play a critical role in the statistics so as to maintain national and international quality and standards. Other governments should follow the standards/mechanism as set out by the federation in order to maintain quality data.

**Table 6.1: Functional Assignment in Agriculture Sector (Crop<sup>35</sup>, Animals & Livestock, and Fisheries)**

1. For specific national priorities, the corresponding federal government’s policies shall override contradicting policies by the sub-national governments. Such overriding role shall be limited to functions having externalities such as Food Security and Nutrition for All; Development of Food Reserve Facilities; Conservation of Agro bio-diversity, Value Chain Development; Control of HPED<sup>36</sup>, TADs<sup>37</sup> and Zoonotic Diseases; Climate Change and Poverty Alleviation.
2. Agriculture standards of the federal government shall also apply to sub-national services especially those that pertain to International Commitment.
3. During the transition, the federal government shall finance provincial and local programs for agriculture services with the concurrence of sub-national governments.
4. There shall be three tiers of government services. F- Federal, P – Provincial, and L – Local
5. Provision of services includes key result areas in public management such as planning, monitoring, and evaluation (PME) and Management information system (MIS), and human resource management (HRD)
6. Production of services includes purchasing and combining factor inputs such as labor, raw materials, land, technology or Management.

S. No.	Major Functions as (policy Instrument)	Sub-functions	Public Good Output	Role of Government at Various Level of Services					Justification/Comment
				Regulations /Standards	Financing	Staffing	Provision	Production	
1.	Agriculture Regulatory Services		Increased market efficiency in	F,P	F,P	F	F	F	Principle of Externalities,

<sup>35</sup> Cereal Crops, Cash Crops, Industrial Crops, Spice Crops, legumes, MAPs, Fruits and Vegetables (including Sericulture, Apiculture and Mushrooms)

<sup>36</sup> Highly Pathogenic Emerging and Re-emerging Animal Disease

<sup>37</sup> Trans Boundary Animal Diseases

S. No.	Major Functions as (policy Instrument)	Sub-functions	Public Good Output	Role of Government at Various Level of Services					Justification/Comment
				Regulations /Standards	Financing	Staffing	Provision	Production	
			agriculture, protected public health from unsafe food, and spread of agriculture disease effectively controlled.						so responsibility of the federal government in close partnership with the province and local governments (P can regulate some standards as defined by organic law).
		1.1. Inspection Services	Spread of agriculture disease effectively controlled; safe food products; fair domestic agriculture trade.	F,P	F,P	F,P,L	F,P,L	F,P,L	P and L also should have some responsibility in identifying and controlling diseases and inspection of food.
		1.2. Quarantine Services		F	F	F	F	F	
		1.3. Licensing Services		F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	
		<ul style="list-style-type: none"> <li>Product standards development services</li> </ul>	Established or well defined national food safety standards for both processed & unprocessed food	F	F	F	F	F	
		1.4. Agriculture Regulatory Information Services	Well informed public on food safety and inspection protocols governing agriculture products.	F	F	F	F	F	
		1.5. Risk analysis and bio-security	Up-to-date, science based risk analysis and bio-security policies.	F	F	F	F	F	



S. No.	Major Functions as (policy Instrument)	Sub-functions	Public Good Output	Role of Government at Various Level of Services					Justification/Comment
				Regulations /Standards	Financing	Staffing	Provision	Production	
2.	Research and Development (by Commodity and by Discipline)		Robust generation of new Knowledge and Technology in agriculture that serves as foundation of sustained growth with equity in the sector	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Principle of Externalities, so responsibility of the federal government in close partnership with the province and local governments.
		2.1. Up streams (Basic & strategic) Research	Robust generation of basic knowledge in agriculture	F	F	F	F	F	
		2.2. Mid-streams (technology Development) Research	Robust public generation of agriculture technologies that focuses on the needs of the poor	P	P	P	P	P	
		2.3. Down streams (Technology Testing at Farmer's Field) Research	Robust testing of appropriate agriculture in field conditions across different agro-climatic conditions of the country.	P, L	P, L	P, L	P, L	P, L	
		2.4. Collaborative or partnership research	Strong partnerships with the universities and the private sector on agriculture research.	F	F	F	F	F	
		2.5 Development of agriculture knowledge package for extension as regards new knowledge & technology	Well-developed system on the production of agriculture knowledge package for extension	F	F	F	F	F	
3.	Information, Communication and Extension		Increased access to new knowledge and technologies by	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	The principle of steering-rowing. The federal

S. No.	Major Functions as (policy Instrument)	Sub-functions	Public Good Output	Role of Government at Various Level of Services					Justification/Comment
				Regulations /Standards	Financing	Staffing	Provision	Production	
			the public especially the rural poor and commercialization of new technology accelerated.						government “steers” while the provincial and local governments “rows” as they partner with NGOs and the private sector.
4.	Soil Health Care Services		Soil fertility protected and improved; improved soil nutrient management across all types of agriculture producers.	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Responsibility of the three tiers of government (May be R&D-F, testing and services-P, and Implementation -L)
5.	Land Reform and Management		Land fragmentation and urbanization in agriculture land effectively controlled.	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Responsibility of the three tiers of government (Policy/ Regulation-F, standardization and monitoring in provinces-P; Implementatin-L
6.	Agriculture Education		Adequate supply of Well trained human resources in agriculture from production to processing and marketing	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Responsibility of the three tiers of government
7.	Agriculture Credit		Access to agriculture credit enhanced specially aimed at the poor and growth of the farming and agribusiness especially among the poor accelerated.	P,L	P,L	P,L	P,L	P,L	Principle of subsidiarity shall apply
8.	Irrigation		Reliable & cost-effective	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Responsibility of all

S. No.	Major Functions as (policy Instrument)	Sub-functions	Public Good Output	Role of Government at Various Level of Services					Justification/Comment
				Regulations /Standards	Financing	Staffing	Provision	Production	
			irrigation services available especially among the small producers.						levels of government depending upon the size
9.	Rural Infrastructure		Increased market efficiency, commercialization of agri-products accelerated; agriculture trade enhanced.	F,P,L	F,P,L	F,P,L	F P,L	F, P,L	Appropriate level of government determined based on the Subsidiarity Principle
10.	Agriculture Statistics		Reliable and timely agriculture data and information. Data-based planning & policy making enhanced.	F,P,L	F,P,L	F,P,L	F,P,L	F,P,L	Depending on the needs of different tiers of government.

## 6.8. The Way Forward

A rule of thumb in designing organizational structures, whether private or public is: function takes precedence over form. Thus, the functions of government to enable the country to achieve its agricultural development goals must dictate the form or organizational structure of government agricultural services at all levels of operation. This is the major objective of this Report i.e., to define the functions of government in agriculture development.

The core functions of government in agriculture development have been amplified in this Report in terms of their role as policy instruments of development. However, more follow-up work is needed before the country can come up with the appropriate organizational design that exhibits two important elements: efficiency and relevance. Given government's limited resources the organizational structure must be cost-effective, which is a challenge given various competing sector interests. Equally important, it must be able to effectively respond to the aspirations of the Nepali people. It must be a transformational organization; it is able to create a significant positive difference in the lives of the Nepali people specially those who have been left out by past developments in agriculture. A key objective therefore in building the agriculture bureaucracy is to design and build a "lean and mean" government agriculture organization. In the pursuit, of this objective, there are important principles and considerations that should guide subsequent processes, which are enumerated below:

### A. Focus on the national vision and priorities as a fundamental consideration in defining government services

The reorganization of the Nepali government agriculture bureaucracy must be guided first and foremost by its national vision of agriculture and the corresponding national priorities. The long term agriculture development strategy (ADS) has defined the vision and the corresponding national priorities, and also there are enough data and information from recent developments, as captured in this Report, plus good international practices and lessons from New Public Management (NPM) that can provide a solid framework to serve as guide in the organizing the government agricultural bureaucracy .

### B. Look at agriculture development in terms of the whole value chain in defining the functions of government and its corresponding structure

Making the whole agriculture industry more efficient means that agriculture development must give attention to efficiency issues of the value chains in the industry. In other words, government services should focus their attention to cost reduction from production to processing and marketing of the various products of the industry by adopting the "seed to the table" approach in the provision of agricultural services. Such an approach requires that government must work with all types of clients in the industry: agricultural producers, processors, distributors, suppliers of agriculture products, agriculture distributors, consumers, homemakers, and other players of the industry. The "seed to the table approach" requires that government services are interdisciplinary in character and provided by highly trained, professional employees who have the appropriate skills and the strong motivation to help.

C. Agriculture development must focus on people to achieve inclusive growth; they are the reason for the provision of agriculture services

The growth of the whole agriculture industry must be anchored on people development from farmers to agriculture processors, whether small or large. Sustained growth of the agriculture industry can only happen if the people in the sector, both poor and rich, feel involved in the process of development and experience the benefits of development, which is the essence of inclusive development. Therefore, progress or growth of the industry must be ultimately measured in terms of progress or growth of the people in the industry specially the poor: i.e., in terms of measureable indicators such as better income, better nutrition, and better health.

Since the better-offs can generally help themselves, government services must focus on the poor to help build their capacities so that individually and collectively they can help themselves. This means that the provision of agriculture services such as research and development must give due attention to the generation of public goods at all levels of government implementation. The aim is to empower the poor to help themselves and enjoy the benefits of their labor in agriculture. At the farmers' field, it means the availability of new knowledge, affordable credit, reliable irrigation system, and secure land tenure that will allow the farmers to produce more, market their produce, lower their cost of production and transport, and ultimately increase their income.

D. A critical function of the agriculture bureaucracy is to address climate change to minimize vulnerabilities and increase resiliency of agriculture livelihoods and communities

In designing government agriculture services, enough attention must be placed to the function of mainstreaming climate change so that the issues of mitigation and adaptation in the agriculture industry are effectively addressed. This means that government services in agriculture, at all levels of implementation, must have the mandate and the capacity to address climate change at both the strategic and operational levels. Such a mandate requires that planning agriculture programs should move away from commodity orientation to landscape orientation. Given small farm sizes of Nepali agriculture and given the multi-commodity nature of small farms, it is critical that in defining the functions of government in agriculture development, such realities are adequately addressed.

E. The critical importance in the delivery of integrated agriculture services to accelerate the speed of development requires that land reform and irrigation are effectively addressed in defining the functions of the total government bureaucracy

The separation of irrigation and land reform responsibility from the Ministry of Agriculture & Development requires a review so that the government can mount a more integrated and thus a more cost-effective approach to accelerating agriculture development of the country. There are models or lessons from other countries that can guide the Nepali government in terms of the efficiency considerations as regards the structural arrangements. It is critical to bring the major

issues into the open and for the government to agree on the key principles that should eventually guide its decisions.

- F. Agriculture development is not a sole function of the government; non-governmental organizations (NGOs), the civil society, and the private sector are important partners

Agricultural development is a shared national building endeavor; therefore, in defining the functions of government and the corresponding organizational structure, the role of non-governmental organizations, the private sector, and the civil society must be duly considered or factored. Government has the responsibility to provide leadership and should generally confine itself to areas that non-governmental institutions are absent or under serving. The general function of government is to create the policy environment for the effective participation of these institutions to accelerate agriculture development.

- G. The government agriculture bureaucracy is best served by few well trained, well paid, highly motivated personnel rather than thousands of poorly trained, underpaid, and unmotivated employees

Government, to be effective, must be served by highly motivated, well paid, and well trained personnel although they are few in numbers. The effective discharge of government functions in agriculture development, like other branches of government, is dependent on the quality of its employees at all levels of operation. Therefore, it is important that government must adhere to a meaningful minimum qualifications standard for its staff. The current number of employees should not be used as a basis for determining the number of required employees. Rather, once the functions of government have been agreed at all levels of operation, it becomes necessary to determine the minimum staffing requirement to perform the function at all levels of operation.

### National Priorities

In pursuit of national priorities, as a rule of thumb, federal government's policies shall override contradicting policies by the sub-national governments. Such overriding role shall be limited to functions having externalities such as Food Security and Nutrition for All; Development of Food Reserve Facilities; Conservation of Agro bio-diversity, Value Chain Development; Control of HPED<sup>38</sup>, TADs<sup>39</sup> and Zoonotic Diseases; Climate Change and Poverty Alleviation. Agriculture standards of the federal government shall also apply to sub-national services. During the transition, the federal government shall finance provincial and local programs for agriculture services with the concurrence of sub-national governments.

### Functional Analysis of Irrigation and Land Reform

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<sup>38</sup> Highly Pathogenic Emerging and Re-emerging Animal Disease

<sup>39</sup> Trans Boundary Animal Diseases

Irrigation and Land Reforms are taken as it interfaces with the agriculture sector. These are separate sectors by themselves. Hence their detail functional analysis and assignment should be carried out separately

## Chapter 7

# Functional Analysis and Assignment in Transport Sector

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### 7.1 Background and Introduction

Transport infrastructure in Nepal generally covers the following areas of sub-sectors, which have been undertaken for the functional analysis purpose:

1. Roads and Transport Management
2. Railways
3. Air Transport and Air Traffic Control
4. Waterways and Ropeways
5. Dry Ports

In order to assign different transport related functions into various levels of government, it is necessary to understand the current transport related policies with regard to development, operation and management of the above-mentioned transport subsectors and the responsible institutions.

The National Transport Policy (NTP)-2002 is the main official policy document of Nepal with regard to all transport related functions. According to the policy document, the central level transport infrastructures will be developed and managed according to the short term, medium term and long term master plan prepared at the central level. The local level transport infrastructures will be developed and managed according to the master plan prepared at the local level. The Policy document emphasizes the involvement of the private sector in construction and operation of airports, roads, waterways and ropeways through the process of Build Operate and Transfer (BOT), Operate and Transfer (OT) and Build Own Operate and Transfer (BOOT). The NTP-2002 has indicated that a comprehensive Transport Act, Rules covering road transport, tunnel, railways, waterways, rope ways, cable car, airport and multi-modal transport shall be enacted and implemented. However, it has yet to be realized.

Air transport related infrastructures mainly airports (which covers all constituents such as, runways, taxiways, terminals, hangers, parking lots, radio communication and weather forecast system, aviation control towers including its radar system, drainage and lighting system) is being developed and managed by the Civil Aviation Authority of Nepal (CAAN) under the Ministry of Culture, Tourism and Civil Aviation (MCTCA). Operation of entire airports and airline services including communication and safety is another important component of the air transport sub-sector. Altogether, there are 40 airports in the country at present. They include one international and 39 domestic airport.



Responsibility for development and management of railway, ropeways and waterways lies with the Ministry of Physical Infrastructure and Transport (MOPIT). The Railway Department has been recently established under MOPIT and is responsible for the development and operation/maintenance of railways in the country. The development, management and operation of waterways and ropeways are under the domain of private sector. The MOPIT is limited to issuance of license only.

Dry ports have been developed and managed by Nepal Intermodal Transport (Development) Board (NITDB) under the MOCS. In addition to a rail-based dry port (ICD) in Birgunj, road based dry ports are operating in Kakarbhitta, Biratnagar and Bhairahawa. One more dry port is under construction in Larcha near Tatopani at the Chinese border and several others are currently undergoing a feasibility study.

The responsibility of transport management related functions including the development of infrastructures such as bus terminals, bus stops/shelters and the entire transport operation and management related functions lies on the Department of Transport Management (DOTM) under MOPIT. However, the DOTM, so far, has not been involved in developing transport management related infrastructures, focusing only on issuing route permits, providing driving licenses and monitoring of traffic operation.

The Department of Roads (DoR) under the Ministry of Physical Infrastructure and Transport is the main agency responsible for planning, design, construction, operation and maintenance of the Strategic Road Network (SRN) throughout Nepal. According to the latest published SRN Statistics for 2011/2012, SRN has a network of 11,600 km of roads. Categorized according to composition by surface type, almost 50% is sealed and an equal length is gravel or earthen. An additional 415 km of roads are said to be under construction and a further 2,760 km are planned totaling a SRN of 14,810km.

Local Road Network (LRN) is considered to be approximately **60,000** km in size. However, only about **20,000** km of local roads are said to be operational. For the LRN, the overall responsibility lies with the Ministry of Federal Affairs and Local Development (MOFALD) and its Department of Local Infrastructure Development and Agricultural Roads (DOLIDAR), while construction and maintenance is being carried out by local bodies (DDCs, VDCs and Municipalities).

At present, there are only two levels of organization responsible for development and management of transport related functions under the existing unitary system. These are central level organizations (ministries, departments and central level offices at the field) and local level organizations (DDCs, VDCs and municipalities). There is no clear assignment of functions at the central level government or local bodies. For example, some of the local roads are being constructed by the central level institutions whereas some strategic roads are being constructed by local level institutions (DDCs). Functions related to other sub-sectors – waterways, ropeways,

railway, air transport and transport management – are being managed by central level organizations. The service delivery of many of these sub-sectors could be more efficiently delivered by local level organizations. In order to increase accountability and to ensure better efficiency in service delivery, the functions are to be assigned at various levels of the government (to be developed in the near future) according to their capacity and benefit area.

## 7.2 Concept and Principles for Functional Analysis and Assignment

Certain assumptions are made while developing the concept, methodology and road map for the analysis of various functions at different levels of government with regard to transport infrastructures.

- i. As indicated in various CA committees’ reports, there will be 3 tiers of governments including special autonomous region(s) in the Federal Democratic Republic of Nepal.
  - ii. The transport infrastructure, particularly infrastructure related to roads, will be further classified as federal, provincial and local (urban or rural).
- (a) Central level roads are the arterial roads having strategic importance connecting East-West, North-South or the main roads connecting the federal capital with provincial capitals or the main roads crossing two or more provinces. These roads are called national highways.
  - (b) Provincial level roads are the roads within the province connecting different local level unit headquarters (including current district headquarters).
  - (c) Local roads are the roads developed within the lowest tier of state (and may include existing or extended VDCs or municipalities) in order to fulfill local transport demand. These roads are not the part of the central or provincial road systems. Local governments manage project formulation, construction, and maintenance of these roads.

The hierarchy of different subsectors under the transport sector can be summarized as indicated in **Table 7-1**

**Table 7.1: Hierarchy of Transport Subsectors at Various Levels**

<b>Roads and Transport Management</b>	<b>Railway</b>	<b>Air Transport and Air Traffic control</b>	<b>Waterway and Ropeway</b>	<b>Dry Port</b>
National Network	National Network	National Network	National level projects	National level
Provincial Network		Provincial (STOL airport)	Provincial level projects	

Rural Network		Local Helipads	Rural local level projects	
Urban Network			Urban local level projects	

In the federal context, it is necessary to ascertain the responsibility and authority at each level to make each level of government accountable. It is also necessary to clarify the role of the federal government for functions other than exclusive federal functions. Functional analysis is helpful in identifying and clustering sub-functions of a similar nature together. The underlying principle of functional analysis and assignment of functions at different levels of government is to make each level of government accountable and transparent in service delivery by avoiding ambiguities, duplication, undesirable intervention and coordination problems. Depending upon the capacity of different levels of government and the nature and complexity of the public service, responsibility can be assigned exclusively to a single government level or functions can be shared among governments. Exclusive responsibility leads to better accountability and reduces coordination costs. However, some of the functions need to be executed concurrently. The functional assignments need to be clear and stable over time and citizens need to know who to hold accountable. Therefore, concurrency needs unbundling of functions into sub functions and attributes until it is clear which level of government is accountable for their fulfillment. In order to undertake the current functional analysis and assignment the following principles will be adopted followed by practical steps as outlined in subsequent paragraphs.

### *7.2.1 Principles of Decentralization*

Once the roads and other transport infrastructures are classified into three groups, which correspond to the three tiers of government, it creates the foundation for assigning road functions to subnational governments. Decentralization principle is extremely useful in assigning functions to different tiers of government. It will help to minimize conflicts between the different subnational governments.

#### i) Efficiency Criteria (subsidiarity principle)

The principle of subsidiarity is the most relevant theoretical principle to decentralization. In other words, the subsidiarity principle of decentralization says that the responsibility for roads should be assigned to the level of government that represents the community of users who benefit most from the road. In other words, national highways, provincial highways and local roads may be assigned to respective governments. Although, hierarchy of roads and hierarchy of different levels of governments have a one-to-one relationship, sometimes it is difficult to distinguish them. Many roads fulfill the purpose of both. In addition, the users are not only local people within the political jurisdiction, but also a large number of transit passengers and tourists.

A road link can be part of the national, provincial or local network. Depending on which level of network a road link belongs to, this can be a national highway, provincial road or local road. This road hierarchy is primarily based on the ownership of infrastructure and hence the responsibility

to plan, design, construct, maintain and operate these roads lies on corresponding level of governments. It is to be noted that a functional hierarchy, which is based on the volume of traffic carried by roads, differs from this classification.

ii) Spillovers beyond the primary benefit area (externalities)

However, for countries like Nepal infrastructure investments in general and roads, in particular have alluring benefits but also daunting costs. Increased infrastructure facilities can do much to boost productivity and growth. Therefore, if infrastructure will have externalities that raise productivity and profitability and help improve service delivery elsewhere in the economy but cannot be captured by those who finance the investment project, then the classic efficiency argument for public support is warranted. In such instances, responsibilities of road construction could be shared between subnational governments or be subsidized with central government funds.

In addition, road transport imposes negative externalities on society, too. These externalities include environmental and road damage, accidents, congestion, and oil dependence. This also calls for shared responsibility in transport management.

In this situation, exclusive responsibilities to a higher level of government have been assigned or, where the conditions require it, it has been assigned concurrently (or shared responsibilities) to two or more levels of government.

iii) Economies of Scale/ Scope

While the assignment of roads that includes identification of potential roads, feasibility study, design and standard of roads and other administrative activities related to it. However, sometimes local governments may not want to develop the entire capability because of diseconomies of scale associated with it. If the constructions activities are limited, it will result in the inefficient provision of services. In these situations, local governments (especially rural municipality) may delegate their authority to their neighboring urban municipality or provinces. Railway establishment will also have enough economies of scale and scope to operate at the national level but for minor local systems.

iv) Social inclusion and national priority

Nepal ranks lowest in South Asia in road density. Many poorer areas have either no road connection (e.g. Humla) or inadequate (most of the hilly and mountainous areas) road network. Low-income population and many of the topographically difficult areas are deprived from markets and basic services. In order to increase access to and quality of services as well as to promote growth and productivity with greater equity, road expansion is important. In addition, reduction of average time to reach road overhead to entire population is also a national priority of the government. This situation demands for sharing of responsibilities different levels of

governments.

v) Importance of Clear Assignment

Concurrent assignments could create confusion in accountability of service delivery. In such occasions, the function (or responsibility) has been further divided into sub-functions and/or the attributes associated with the particular competence (regulation, financing, administration, and delivery) and, as far as possible, clear assignment of each sub function to particular government levels has been arrived. When any of these attributes or sub-functions is still shared by two or more levels of government further unbundling in sub-attributes has been done.

*7.2.2 Principles and Process of Functional*

Decentralization deals with the efficiency of service delivery and its fiscal aspects. However, in federation, the shared source of legitimate political power between the federal government and subnational governments comes from constitution and road sector is one of them.

However, constitution is very hard to modify. In this context, in case of federal Nepal, it may not be appropriate to share all transport and transport management functions, which can create confusion, constitutionally. Therefore it is suggested that except for some important public functions, which could be clearly exclusive to subnational governments or have to be assigned concurrently under the principle of decentralization could be allocated concurrently; other functions or sub functions could be assigned through organic and sectoral laws.

Under these assumptions and the principle of decentralization, the following methods have been used in the functional analysis and assignment of transport sector.

a) Public good

Out of the current transport related functions carried out by the government agencies' public functions, which markets will not provide were identified. These are usually the goods which are non-exclusionary<sup>40</sup> or non-rival<sup>41</sup> or have decreasing unit costs or lumpiness of initial investments are considered for assignment to sub-national government.

Road, most of the time is a public good, but it could also have the characteristics of private good and therefore is complex. In rural areas, roads are usually public goods. Even if it is rival and can qualify for excludability, there is usually no congestion, and the cost of collecting fees would be expensive, because tollbooths are required in many driveways. So, roads in that kind of setting are pretty close to public goods. Highway if it is congested could be a rival good and can have the characteristics of excludability, if the toll collection fee is cheap. But urban area highways as well as roads are usually congested. They have the feature of rival good and excludability characteristics. Consequently, the marginal cost of being on the road or highway is positive. In addition, it is cheaper these days, to detect and collect road use fees, including with the uses of

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<sup>40</sup>If a unit of a good is provided, then nobody can be excluded from using it.

<sup>41</sup>More than one user can simultaneously use the same unit of a good.

electronic devices. These fees can have different levels for different times of day generally, and even be "live," with different charges for different traffic conditions. So they can be considered as private goods.

However, for countries like Nepal infrastructure investments in general and roads, in particular, have daunting costs. Where income and productivity are depressed by inadequate infrastructure, the financial resources needed to develop infrastructure will also be limited. Therefore, if infrastructure will have externalities that raise productivity and profitability and help improve service delivery elsewhere in the economy but cannot be captured by those who finance the investment project, then the classic efficiency argument for public support is warranted.

b) **Subsidiarity principle**

If any of the public functions satisfy the condition of market failure and cannot be provided by the private sector, the entire (exclusive) responsibility has been assigned to the lowest level of government that encompasses the entire benefit area (“subsidiarity principle”).

c) **Spillover**

As discussed in the previous section, if the services present externalities (spillovers beyond the primary benefit area), or are associated with social inclusion and equity, the assignment has been done exclusively or concurrently at the higher tiers of the government.

d) **Unbundling**

If the assignment is concurrent, then as discussed in decentralization principle, unbundling has been done to clarify the responsibilities of each tier of government.

e) **Expenditure assignment**

Clarity in expenditure assignments and overall efficiency are enhanced by the assignment of exclusive responsibilities to each level of government. This has been done by breaking down the responsibility into attributes—regulation, financing, service provision and production.<sup>42</sup>

### **7.3 Principle of Inclusion in Transport Sector**

The following points need to be considered from the social inclusion perspective in the implementation of assigned functions.

- i. Assess the involvement of excluded communities in road construction and management committees.

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<sup>42</sup>There is a difference between providing and producing a service. For instance, a local government may provide garbage collection services to local residents. This service may in fact be delivered by a private firm which has been contracted by the local government.

- ii. Develop policies, plans and programs to ensure proportionate representation of excluded communities in road construction and management committees.
- iii. Develop special packages to provide employment opportunities for excluded communities during road constructions and maintenance.
- iv. Ensure that the transport infrastructure and transport management supplement the livelihood of the marginalized population.
- v. Ensure mandatory provisions by making reservations for women, elderly people, children and disabled in public transport.
- vi. Existing Functional Assignments (as per LSGA and Karya-Bibhajan Niyamabali) including Literature Review
- vii. In developing a basic conceptual framework, methodology and road map for undertaking functional analysis and assignment of functions across different levels of the government, various documents were reviewed. In particular, the following national and international literatures were reviewed extensively.

### *7.3.1 National Literature*

There were some studies carried out earlier regarding the functional analysis, among others, of the transportation sector. This study builds on them. Brief highlights of the previous studies are and discussion on other related documents are presented below.

- a) Administrative Restructuring Commission (ARC) Report: ARC was constituted in November 2008 with the aim of transforming Nepal's public administration to suit the governance system of a federal democratic republic. The committee submitted its report in April 2011 which comprehensively analyzed the existing condition of public administration in Nepal. According to the report, all the transport related functions are proposed to be assigned to both federal and provincial level government authorities except local transport which is assigned exclusively to local level governments.
- b) OPMCM Report: The OPMCM has also carried out some exercises on functional analysis through the ministerial technical committees. The functions broadly classified are in 4 major clusters, namely i) Policy, Acts, Regulations and Standards ii) Creation of Assets iii) Operation and Maintenance and iv) Monitoring and Evaluation, which were further developed as activities with assignment of functions at various levels of government.
- c) Constitutional Assembly (CA) Report: Significant exercises have been made with regard to functional assignments at different levels by various CA thematic committees. They have nevertheless indicated the need on further development and detailing of these functions so as to avoid ambiguities during actual implementation. The CA Secretariat compiled the recommendations made by different CA thematic committees which

highlight the responsibilities to be assigned at different levels of government as provided in the **Table 7.2** below:

**Table 7.2: Exclusive and Concurrent Functions of Different Tiers of Government**

<b>Proposed Allocation of Powers/Responsibilities to Different Levels of Governments based on the consolidated CA Draft</b>					
<b>Functional Areas (A)</b>	<b>Exclusive Competencies</b>		<b>Concurrent Competencies (Federal and Provincial) (D)</b>	<b>Exclusive Competencies</b>	
	<b>Federal Government (B)</b>	<b>Provincial Governments (C)</b>		<b>Local Governments (E)</b>	<b>Autonomous Regions (F)</b>
<b>Transport</b>	National Rail, Management of National Highways	Provincial Railways and Provincial Highways, Transport		Local/Agriculture/Rural Roads	Roads
<b>Civil Aviation</b>	International and Inter-Provincial Aviation, International Airport	Provincial Aviation			
<b>Transport</b>		Transport	Waterways, Vehicle License		
<b>Physical Infrastructure</b>			Physical Infrastructure		

Source: CA Committee Report (Sambidhan Darpan)

- d) **Transport Infrastructure Sector Specific Documents:** Among the Major documents reviewed are i) National Transport Policy–2002; ii) Departmental policy documents of DOR and CAAN, iii) Public Roads Act-1974; iv) Local Self Governance Act-1999; v) Motor Vehicles and Transport Management Act-1993; vi) Civil Aviation Act-1959 vii) Nepal Civil Aviation Authority Act-1996; viii) Land Acquisition Act, 2034-1977 and other relevant Acts and Regulations. Other national documents reviewed include the Approach Paper to the thirteenth plan (FY 2013/14–2015/16) of the Government of Nepal, Multimodal Transportation of Goods Act-2006 and Public Works Directives-2002. These documents have been reviewed to understand and identify the current functions carried out by various government and non-governmental agencies in the transport infrastructure sector.



- e) Various Transport Infrastructures related Acts and regulations provide details of functions to be carried out by various authorities for effective delivery of services.
- f) Local Self Governance Act: According to LSGA-1999, the functions and responsibilities related to local level transport infrastructure development and transport management lies mainly with DDC, municipality or VDC. However, the construction and maintenance of suspension bridges and development and improvement of ropeway and waterways are concurrently carried out by the center and the DDC. The details of local level transport related functions and responsibilities at different levels are provided in the following **Table 7-3** which needs reviewing.

**Table 7.3: Existing Division of Works and Transport Related Functions and Responsibilities between Central and Local Bodies**

SN	Functions or Responsibilities	Centre	DDC	Municipality	VDC
a.	Construction, maintenance, repair of mule track, rural roads and unmetalled roads, culverts and bridges not under central level government care			✓	✓
b.	Parking of bus, rickshaw, tanga, trucks etc.			✓	
c.	Determining the maximum limit of hand cart, rickshaw, tanga etc. and registration and license			✓	
d.	District road master plan, construction, operation, monitoring and evaluation of district roads		✓		
e.	Construction and repair of suspension bridge	✓	✓		
f.	Necessary provision for means of transport (vehicles)		✓		
g.	Development and improvement of ropeway and waterways	✓	✓		

Source: Local Self-Governance Act, 1999

- g) GON functional assignment regulations (*Karya Bibhajan Niyamabali*) in Transport Infrastructure: These functional assignments form the basis for performing various functions at present by different ministries and underlying departments, authorities and offices. The current transport infrastructure related functions are carried out by four different ministries, namely the Ministry of Physical Infrastructure and Transport (MOPIT), Ministry of Federal Affairs and Local Development (MOFALD), Ministry of Culture, Tourism and Civil Aviation (MOCTC) and the Ministry of Commerce and Supplies (MOCS).

Major functions of MOPIT, MOFALD, MOCTC and MOCS as broadly prescribed in the GON functional assignment regulations (*Karya Bibhajan Niyamabali*) are as follows:

- Policy formulation with regard to physical infrastructure, planning and programming, implementation, monitoring and evaluation.

- Policy formulation with regard to transport operation and management, planning and programming, implementation, monitoring, regulation and evaluation.
- Policy formulation on roads, waterway, railway, sub-way, flyover, including air transport development and ropeway development, regulation of plans, approval and implementation.
- Construction, maintenance and preservation of strategic roads and bridges, local roads including agricultural roads, mule tracks suspension (pedestrian) bridges and local bridges. Construction, operation and maintenance of airports.
- Works related to the maintenance of international relations with regard to construction of road way and ropeway including maintaining relationship, coordination and cooperation with air transport related international and regional institutions including UN ICAO.
- Equipping and maintaining airports with necessary communication and navigational facilities.
- Transport related study, research, data collection and analysis.
- Works related to roads, railway and transport management including governance of the roads board.
- Works related to the engineering council and engineering consulting services and their organizations.
- Construction and maintenance of railway and metro.
- Administering of Nepal engineering service, civil engineering group, general, highway and railway subgroups, airport subgroup, aeronautical engineering group and civil aviation operation and engineering groups.
- Functions relevant to dry port such as management of international transit, multimodal carriage of goods and construction and management of trade related infrastructures such as dry ports, container freight stations and goods sheds.

### 7.3.2 Existing Functional Assignments (LSGA and Karya-Bibhajan Niyamabali)

Existing functions under the transport infrastructure sector are mainly allocated at the central and local levels. Functions assigned to the central level are as prescribed in the GON functional assignment regulations (*Karya Bibhajan Niyamabali*) approved by the cabinet of ministries whereas functions assigned to the local level (DDCs, VDCs and municipalities) are in accordance to the Local Self Governance Act (LSGA)-1999. The existing functional assignments have been briefly presented below:

#### a) Local Self Governance Act

The LSGA-1999 has defined major transport related functions to be carried out at local level by different agencies. Transport related functions and responsibilities to be performed by central and local bodies is provided in the **Table 7-3**. Some of the functions such as construction and maintenance of suspension bridges and development and improvement of ropeway and waterways are proposed concurrently by the center and the DDC. It is obvious that the capacity of the lower units (municipalities and VDCs) is

limited to delivering these services efficiently. However, in the federal structure these responsibilities should be retained at the lower level and can be delegated to the higher level of government or horizontally to the neighboring municipality temporarily until the lower level government becomes capable. One of the important functions of the federal government is to enhance the capability of the lower level governments to take up responsibilities assigned to them through technical and managerial support. The functions to be assigned at local level governments in the federated structure will be based on the principles explained above.

b) Observations/Remarks on the LSGA

In the LSGA, the construction and repair of suspension bridges and functions such as the development and improvement of ropeway and waterways have been assigned to the central government. It can be understood that the assignment of these functions to higher levels of government is mainly due to capacity constraints and they will remain in the federated structures as well. The federal government's role will be more significant in capacity building of the lower level governments for implementation of various functions. According to the principle of decentralization the responsibility for development of the local level transport infrastructures should remain with the local level government. However, in the initial years, such functions can be delegated to higher level governments or horizontally to neighboring municipalities depending upon their capacity.

c) GON functional assignment regulations (*Karya Bivajan Niyamabali*)

The regulations mainly prescribe functions such as policy formulation, planning, implementation, and monitoring under various ministries for transport sub-sectors – roads, airways, railways, ropeways, waterways, dry ports and transport management – at the central level. Under the current unitary system, the functional assignments are made as exclusive functions for each ministry at the central level. These assignments are based on the government's convenience and the historical practices as exercised by the institutions under the respective ministries rather than any principles. In the federal structure, when the functions currently exercised by the central government and their underlying units are assigned to various levels of government, the rearrangement of the civil servants might be a serious challenge and needs to be dealt with diligently.

#### **7.4 Observations/Remarks on the Recommendations of the CA Report**

The following observations are made on the proposed allocation of powers/responsibilities to different levels of government as recommended in the consolidated CA draft:

- (i) Some functions are considered as exclusive and some as concurrent. However, unbundling of the concurrent functions/responsibilities into sub-functions/activities

needs to be done with assignment of the particular sub-functions/activities to relevant levels of government.

- (ii) Roads related functions are of concurrent nature and different hierarchy of roads has been proposed at different levels. Hence most of the functions will be exclusively assigned to different tiers of the government according to this hierarchy.
- (iii) Roads have also been proposed under autonomous regions without taking into consideration the type of roads to be administered under these regions.
- (iv) Provincial railways are assigned under provincial governments. They are unlikely to perform functions like railway construction, operation and overall management because of their nature, national dimension, requirement of large network for viability and requirement of higher level technical as well as managerial capabilities. Therefore, railway related functions should be assigned under the federal government.
- (v) Provincial aviation has been proposed under provincial governments which may not be feasible due to its nature, security and mandatory requirement to follow international standards and norms. Therefore, it should be the responsibility of the federal government. However, construction of small STOL airports including management and running of airport facilities could be assigned at the provincial levels. Operation of all or few airport facilities can be outsourced to private sector, however, regulatory functions namely air traffic control and aviation security shall remain with the federal government.
- (vi) Transport management related functions are provisioned only under provinces. These are concurrent functions and all levels of government will be responsible according to the hierarchy – the federal government for the national level network, provincial governments for provincial network and local governments for local level (rural and urban) networks.
- (vii) Likewise, waterways and vehicle license appear to be proposed as concurrent functions between the federal government and the provinces. Waterways, like roads or transport management functions, are to be assigned to all levels of government and facility as they are considered primarily as private goods. However, regulation functions such as standards, norms and monitoring of services and safety targets will be the functions of respective governments.
- (viii) Physical infrastructures are provisioned as concurrent functions between the federal government and the provinces but it hasn't been specified what they include and therefore it will not be further considered for functional assignment.
- (ix) The construction, operation and management of dry ports have not been included in the CA committees report under the transport sector and need to be incorporated as dry ports constitute an important component in the transportation of imported and exported goods.

## 7.5 Proposed Assignment of Functions at Different Levels of Government in Transport Sector

Five major attributes have been identified and adopted for functions relevant to different transport sub-sector as prescribed by decentralization principle. These are:

1. Regulation (regulation and standards, planning and policy and enforcement)
2. Financing (finance)
3. Provision (planning of budget priorities, programs, organizing tenders, hiring of private sector to deliver the services and monitoring)
4. Production/service delivery (construction or creation of physical infrastructure and facilities), operation and maintenance)
5. Staffing

Regulation and Standards are the major attributes with regard to delivering functions in the public sector. In case of transport infrastructure they can be created by the private sector on concessionary basis or construction, rehabilitation or service contracts. But the regulatory authority will remain with the government. It deals with the functions related to enactment of Acts, Regulations and other relevant legal processes necessary for the smooth implementation and delivery of the service under the transport sector. Likewise, setting standards such as design and construction parameters for different categories of roads or railways, setting standards and norms for public transport routes, vehicle fleet size, seat numbers and environmental parameters, determination of vehicle tax and charges, safety standards etc. fall under the function of “Regulations and Standards”. Similarly, Production /service delivery (also involving the creation of physical infrastructure and facilities, construction, maintenance of facilities and assets and day to day operation of the services) are the most visible and permanent functions in the transport sector. They involve all the activities necessary for construction and maintenance of roads, airports, or other transport infrastructures including procurement of goods and services necessary for service delivery as targeted. Other attributes such as Financing, Provision and Staffing are common as applicable to rest of the other sectors under the study.

Based on the methodology/principle and tools developed as mentioned in earlier sections, the functions are assigned to different tiers of government.

Functional assignment summary **Table 7-4** is a result of detailed unbundling of functions and their attributes (processes) within the current administrative structure which clarifies roles and responsibilities of different levels of government in delivery of particular services. The roles and responsibilities are assigned at the most suitable level of government in light of these principles. A comprehensive review of the functions being performed currently was carried out to provide an inventory of functions which would be the subject of assignment in a federal constitution. The relevant existing government assignment regulations, government policies, relevant normative Acts and regulations also were well taken into account while determining various functions and

the attributes. While assigning functions to various tiers of government and the facility, recommendations made by CA committees, ARC report, OPMCM report and internationally practiced decentralization principles also have been taken into consideration.

While assigning the functions for different transport sub-sector at different levels of government, it is mandated for providing the services under it to the citizens of Nepal. The accountability for service delivery (provision and production) and regulation under the function is thus clarified. At the same time, it should be noted that in most cases, different levels of government would need to work in a cooperative intergovernmental framework for optimal delivery of services. The higher levels of government, especially, will create the environment for performance of functions assigned to lower levels of government. In other cases, where there is some co-occupation of mandates, the roles and responsibilities of different levels of government should be clearly developed for synergistic governance. In both types of assignments, exclusive and co-occupied, intergovernmental relations as developed will play a critical role in service delivery and accountability to the citizen.

One of the key principles underlying the proposed assignment is the assumption that the constitutional scheme will provide adequate unconditional funds to each level of government to address any vertical imbalance. It is likely that most of the tax/revenue collection will be the responsibility of the federal government while substantive expenditure responsibilities are to rest with sub-national levels, therefore it is necessary to develop some financing mechanism of intergovernmental transfers to avoid possible vertical imbalance by ensuring the revenues sharing at each level of government. This assumption implies that a function assigned to a certain level allows it to carry out budgeting for it even if the funds flow from a higher tier of government.

The analysis and justifications for assignment of various functions under different transport sub-sectors at different levels of government are provided in the subsequent paragraphs.

**Table 7.4 Assignment of Functions under Transport Sector**

Functions/ Functional Area	Attributes/ Sub- attributes	Regulation	Financing	Service Delivery		Staffing *	Justifications /Comments
		Regulation/ Standards	Finance	Provision	Production		
National Highways and transport management at national network level		F	F	F	F,P, Pr	F	National priority, externalities, economy of scale and spillover effect
Provincial Highways and transport management at provincial network level		P	P	P	P, Pr	P	Decentralization principles, economy of scale and spillover effect
Local Roads and transport management at local (rural and urban) network level		F, P	L	L	L, Pr	L	Principles of decentralization-subsidiarity, all functions are assigned to the local government. However, for the uniformity purpose, the standards related activities are proposed under Provincial government and overall policy, organic laws and regulations shall be under the federal government
Railways		F	F	F	F,P, Pr	F	National priority, externalities, economy of scale and spillover effect
Airways and Air Traffic Control		F	F	F	F,P, Pr	F	National priority, externalities, economy of scale and spillover effect, air control and security sensitiveness
Waterway and Ropeway		F,P,L	F,P,L	F,P,L	F, P, L, Pr	F,P,L	Construction, maintenance and operation is being carried out by private sector. However, according to the principle of subsidiarity, regulation related attributes are assigned to respective levels of government depending upon the hierarchy of projects
Dry Port		F	F	F	F, P, Pr	F	National priority, externalities, economy of scale and spillover effect

**Note: F-Federal, P-Province, L-Local government and Pr-Private**

\* Staffing means not the labor input necessary for physical production of goods and services but the staffing needed for administration (provision)

a) Roads and Transport Management

In Nepalese current context, roads primarily fall under the category of public goods and are the responsibility of the government. All the road related functions are of a concurrent nature and to be carried out by all levels of government. Attributes such as planning, regulation, service delivery (construction and maintenance), organization and staffing will be equally applicable for national highways, provincial highways and local roads. Therefore, all the functions for national level roads have been assigned as exclusive functions under the federal government while provincial and local roads are under the provincial and local level governments respectively. Likewise, some of the construction related functions under the federal government can be delegated to provincial governments depending upon their capacity. The functions related to environment, land acquisition, compensation and forest clearance for projects of all levels shall be performed by local level governments as delegated by the federal and provincial governments with the appropriate financing mechanism. Due to revenue authority lying with the federal government, funding for different categories of highways/roads under different levels of government may be the responsibility of the federal government through appropriate mechanisms such as intergovernmental transfer or may be the responsibility of sub-national governments from their own revenue funds.

Functions related to transport management and associated infrastructures need to be developed and managed at all network levels and assigned at all levels of government. Transport management functions at the urban network will include all modes of public transport such as bus services, subway, trolleybus or other appropriate mode of transport. However, the federal government shall be responsible for overall policy, organic laws and regulations.

b) Railways

Railways provide transportation services with significant economies of scale and scope and with externalities to the entire economy. Even though the services are excludable and can be priced as in the case of private markets, the likelihood of market failure, scale economies and externalities to the entire economy call for the assignment of this responsibility to the federal government..

Generally, railway is feasible for the haulage of goods and passengers for a long distance. Secondly, the revenue generated from railway services will be mainly from freight not passengers. (In India, large subsidy has been provided in the passenger fares which have been compensated by freight fares and the revenue generation ratio is 20: 80.) It is necessary to have ample volume of goods to transport at a time from one location to another to make the railway investment financially viable. However, depending on the capacity of the provinces, there may be room for local-provincial lines in the future.



There is also the possibility of some local/regional lines in the future including subways in the urban area. The local government is to provide assistance in acquisition of land required for the construction of terminals, junctions/stations and other facilities funded with central government grants. Railway functions such as construction, maintenance and some of the operational services can be outsourced to the private sector or on concession basis but the overall responsibility for regulation and performance monitoring lies on the federal government. Therefore, all the main functions related to railways have been recommended to be assigned to the federal level of government.

c) Air Transport

The air transport has a great significance in the movement of goods and people in Nepal. Air transport services in all over the world including Nepal are provided by the private sector. Operation of all or few airport facilities also can be outsourced to private sector, however, due to its nature, security and mandatory requirement to follow international standards and norms, regulatory functions namely air traffic control and aviation security shall remain with the federal government. As proposed by CA, the construction and management of small STOL airports at the provincial level and helipads can be developed at local level. All other functions including regulation functions such as setting standards, security standards and monitoring lies to the federal government. Basically, economy of scale and externalities in particular air traffic control play determining role while assigning the functions to different level of governments

d) Waterway and Ropeway

Waterway and ropeway functions have been considered as private goods in the current scenario. The role of the private sector in construction, maintenance and operation is significant. However, setting various standards and monitoring responsibilities lie on the respective levels of government. As the waterway and ropeway infrastructures can be developed at all levels as national, provincial, rural and urban level projects, all functions will be assigned at all levels of government.

e) Dry port

Dry ports are commonly considered as trade and transit infrastructures which facilitate international trade and greatly contribute to national economy. These are very important transport infrastructures with regard to transportation of goods in import and export. The dry ports not only facilitate trade and provide services in transportation of merchandise to and from the country, but facilitate customs clearance and checking of goods imported or ready for export. Therefore, a federal government's presence is necessary in these locations when import and export activities are involved. Because of its international importance and dealing with central level revenue collection activities, all the functions related to international dry port construction, management and operation are to be

assigned to the federal government. The federal government may delegate or even privatize certain aspects of the operation and even construction of these dry ports, but management and control should remain under federal authority given the importance of sanitation and quality controls and customs processes. However, in the case of intra-country or domestic transactions, provinces that are capable of construction and operation of the dry ports the construction, management and operation may be carried at the provincial level or private sector can be involved for construction, management and operation of dry ports on concession basis.

#### *Recommendations on New Functional Classifications and Organizational Arrangements*

New organizational institutions for transport sector and sub-sectors need to be created based on the new functional classification and their assignment to different levels of government. The organizational structures at different governance levels will primarily be based on functions to be performed by the respective governments. Principally, the organization at the federal level will be relatively small. The federal government will focus mainly on policies, regulations, standards and monitoring. Federal government will also be involved in implementation of national level projects (e.g., construction and maintenance of national highways, airports, railways and other important transport infrastructures). Therefore, a ministry covering all transport sub-sectors including air transport may be created at the federal level. As a majority of the constructions, maintenance and operation works will be outsourced, a few departments or the authority with minimum staff could be created for a few sub-sectors if it will not be possible to perform the functions from the ministerial structure. Similarly, the ministry and departments could be created at the provincial level while appropriate offices at the local level. However, it will be premature to presume the organizational structures for different levels of government at present, as the size and number of provinces and local level units are yet undetermined. Reorganization of the government structures in different levels of government and staffing is a herculean task and needs to be studied comprehensively immediately after finalization of the state restructuring and promulgation of the new constitution.

## **7.6 The Way Forward: Conclusion and Policy Recommendations**

The transport related functions under the subsectors roads and transport management, railways, airways and traffic control and dry port, are considered as public goods. Waterway and ropeway, airlines operation and surface transport operation can be considered as private goods.

The assumption is made that there will be 3 tiers of government under the federal structure of Nepal. The methodology adopted for functional analysis and assignment

include a review of existing documents comprising CA committees recommendations; a study of international practices; and determining of functions based on whether they are private or public goods. The principles followed are principles of decentralization and subsidiarity, economy of scale and spillover effect of the functions. Unbundling of the concurrent functions and their assignment has been done based on decentralization principles which were extensively discussed, including consultations and interactions, with technical committees, QC and PREPARE team.

All the functions related to roads subsector and transport management will be performed by each level of the government (federal, provincial and local) as exclusive functions. Railway construction, maintenance and operation should be under the federal government because of its scope, national dynamism and requirement of large network for its viability and requirement of high level technical as well as managerial capability. Air transport also falls under the responsibility of the federal government due to its nature, security sensitiveness and mandatory requirement to follow international standards and norms. However, STOL airport construction and its management can be done by provincial governments and helipads by local governments. Some of the functions under air transport and railways can be delegated to the provincial government depending upon the capacity of the province. Dry port related functions are mostly considered as federal level functions because they entail handling of international trade and transport. However, some of the provinces may develop dry ports in close supervision of the federal government. Waterway and ropeway related functions are primarily managed by the private sector while regulation functions (standards, norms, license issue) are carried out by respective governments. In order to deliver functions more efficiently, it is strongly recommended to keep all the transport sub-sectors including air transport under a single organizational umbrella. A comprehensive study on reorganization of organizational structures and staffing should be conducted immediately after the finalization of the state restructuring and promulgation of the new constitution.

## Chapter 8

### Drinking Water and Sanitation Sector

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#### 8.1. Background and Introduction

Government of Nepal is committed to provide basic level of safe and sufficient water service to all Nepalese people by 2017, considering that the proper development of water supply services supports the social and economic development of the nation and improves the health status of people.

At present, 83 percent of total population had access to basic level safe drinking water and 70 percent of total population had access to basic sanitation facility. There are altogether 38000 water supply schemes. 50 percent of the schemes are functioning and remaining schemes required rehabilitation and reconstruction. Currently, there are two level of water supply and sanitation projects-central level and district Level.

There are three main technical options for Water Supply in rural areas.

1. Gravity Piped Water System
2. Shallow tube well with hand pump
3. Rainwater harvesting

The percentage of population served by the Gravity Piped System, shallow tube well and rainwater harvesting are 85, 10 and 5 respectively. Thus, piped Water Supply System serves 70 percent of rural population.

Only 10 percent of the population is served by medium/ higher level Water Supply Services. Water Safety Plan is being implemented in Rural Water Supply System, to maintain Water Quality Standard.

In the 1990s, political liberalization and a focus on Decentralization saw important new sector emerge, namely community groups, local government and the private sector including non-governmental organizations. However, the ever growing urban population and increasing water demand has placed a strain on existing urban water supply and sanitation service. There have been a number of efforts to streamline planning and investment in the sector. Some of the major efforts are examined below:

1. National Drinking Water Quality Standard (2006) provides detail of water quality standard.
2. Urban Water Supply and Sanitation Sector Policy (2009) was formulated.
3. GONs Local Self-Governance Act (1999) provides the legal basis.
4. Government's 3 years Interim plan (2007-2010) provides guidance on urban sector priorities.

5. Local authorities (Municipalities, VDCs and DDCs) are responsible for developing and overseeing project implementation at local level.
6. The Nepal Water Supply Corporation Act (2007) provided the legal base for transfer of ownership of water supply and wastewater service system.
7. Water Supply Management Board Act (2006) places emphasis on the involvement of local bodies and institutions.
8. Water Supply Tariff Fixation Commission Act (2006) provided the authority for economic regulation of water supply and wastewater services and in resolution of consumer complaints.
9. In the early 1990s, the institutional framework for urban development was created with the establishment of the Ministry of Housing and Physical Planning, now the Ministry of Urban Development, Nepal Water Supply Corporation and Town Development Committees in each municipality. The Town Development Fund was established in the mid 1990s as a source of urban finance. ADB ongoing urban and environmental improvement project, which is the first, decentralized urban development project executed by DUDBC reflects an attempt to put integrated municipal development into practice.
10. Several Government Ministries, departments and other agencies are involved in the management of the water supply and sanitation sector and related activities. The MoUD is responsible for formulating national level policies and programs and guiding sector activities to meet objectives and targets outlined in National Development Plans. The Department of Water Supply and Sewerage (DWSS) is the lead agency in the sector and is responsible for water supply services in rural areas and small urban centres.
11. MoUD oversees the activities of the NWSC, a semi-autonomous corporation responsible for water supply and sewerage in major urban centre outside of Kathmandu valley and the KVWSMB, an autonomous body established under WSMB Act (2006) and responsible for water supply and sewerage services in Kathmandu Valley. MOUD also oversees RWSSFDB, an autonomous unit established to support small rural WSS projects.
12. Among these agencies, the Department of Water Supply and Sewerage is mandated to translate the policies into action through program planning, budgeting and resource allocation. Divisional office is in principle, the main implementing body of water supply programs in the district.
13. Current Water Sector Services are grossly inadequate and unreliable with people having to resort to a number of coping strategies (e.g. private tankers, shallow wells, deep wells, vendors, traditional suppliers and bottled water).
14. Water quality delivered to customers is unsatisfactory partly due to inadequate water treatment at sources and deterioration of water quality in the distribution system. Water quality of the alternative water sources from vendors, tankers and

bottled water is also questionable. Poor water quality and inadequate water quantity impacts sharply on health.

National Urban Water Supply and Sanitation Sector Policy (2009):

The goal of the UWSSP is to ensure socio-economic development, improved health status and quality of life to urban populations including the poor and marginalized through the provision of sustainable water supply and sanitation services and protection of the environment.

Major functions of MOUD as broadly prescribed in the GON works assignment regulations are as follows:

- Policy formulation with regard to urban development and urban infrastructure development, planning and programming.
- Implementation, Monitoring and Evaluation.
- Works related to water supply, sanitation and sewerage.

Major functions of MoFALD related to Water Supply services as prescribed by the GoN works assignment regulations are as follows:

- Along with other local development activities, policy formulations on local level water supply infrastructure, planning and programming, implementation, monitoring and evaluation.
- Construction and management of local water supply services.

The Ministry of Urban Development is the apex body governing the drinking water sector in the formal sector. However, few other ministries and agencies are also operating water services through various mechanisms e.g. Local Development, Industry, etc. There is a private sector in Drinking Water Service as well. They also play an important role in providing Drinking Water service. At present, the MoUD function at three levels for executing water delivery services i.e. Federal Level, Regional Level and District Level.

In terms of administration and financing, it is regulated by Federal level. The human resources are recruited at the Federal level. The budget is allocated from center. The Regional Directorate basically supervises and monitors the ongoing activities. The water supply system of Nepal is complex. It is estimated that more than 38000-piped water supply systems provide water supply services in public sector.

### *8.1.2 Fundamental Sectoral Assumptions and Principles*

- Water is a national endowment commonly owned by all the people of Nepal.

- As far as conditions permit, every Nepalese citizen shall have access to sufficient water of acceptable quality to satisfy basic human needs.
- Water utilizations shall be sustainable to ensure conservation of the resource and protection of the environment.
- Delivery of water services shall be decentralized in a manner that involves autonomous and accountable agencies.
- National target: Provide universal access to basic water and sanitation service by 2017.

Under these assumption, the drinking water infrastructure could be classified as Federal, Provincial and Local, in the new Federal Structure of Nepal

- Federal Level Water Supply network is the large-scale project supplying water in federal capital and the project connecting two or more provinces and water quality improvement project including water treatment plant, large-scale drainage and sewerage projects including wastewater treatment plant.
- Provincial Level Water Supply network is the water supply system within the province and water supply system connecting two or more municipalities and distribution of water received in bulk from the Federal water supply system should be the responsibility of provincial government.
- Local Level Water Supply scheme developed within the local tier of the state.

The provincial government should be responsible for water conservation and management of water resources within the provincial border. Construction, operation and management of sewerage system including wastewater treatment plant for benefitted population more than 100,000 can be assigned to the provincial government because of highly sophisticated technology and technically complex and is beyond the capacity of local government.

If the watershed transcends provincial borders, then, water conservation function would be assigned to federal level. Local government should be responsible for watershed management and preservation within the municipality border. Depending on the capacity of watershed and location, province can share water with other provinces.

## **8.2 Concept of Principles for Functional Analysis and Assignment**

Water Supply and Sanitation<sup>43</sup>:

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<sup>43</sup>Although drinking water and sanitation, which are mostly the part of health sector functions, this separate section is added to the benefit of sectoral consultant of drinking water, who is different from health sector consultant of this project.

Census of Nepal, 2011 revealed that the main sources of drinking water are piped water, tube well (hand pumped water), village well, spout water and river. Most of the households in urban area have pipeline connection in their premises, but this is only 35% in rural areas. Majority of the households in rural areas (54%) use public/ neighbor's tap water for drinking.

However, inadequate resources constrained governments' ability to fulfill this goal. Governments absorbed most of the capital and recurrent costs of water supply even to provide a minimum level of services with low-cost technologies, but the coverage and quality of services suffered greatly. The system became unsustainable.

As a result, private sector participation and decentralization were introduced in water supply and sanitation. There are other instruments used to improve efficiency of delivery. Independent commissions, public utilities corporations, and community groups can, to a large extent, substitute the role of mainstream bureaucracy, but the role of community, water users group and private sector is increasing in water supply service to increase the efficiency and effectiveness of the delivery.

### *8.2.1 Principles of Decentralization*

Under the assumptions discussed earlier, decentralization principle is useful in assigning functions that is being carried out by public institutions to different tiers of government. It will help to minimize conflicts between the different sub-national governments.

#### a) Efficiency criterion (subsidiarity principle)

Subsidiarity principle says that the responsibility for water supply should be assigned to the level of government that represents the community of users who benefit most from the system.

There are two important levels of devolution that have evolved in water supply services. They are devolution to local governments, and devolution to community-based user groups. The latter is more common and, depending on the country, is often incorporated into the first type.

In view of it, rural and urban water supply and sanitation are often devolved to local governments. Some of the strongest local governments can undertake activities ranging from interaction with communities to technical planning to supervise construction. Other local governments might focus more on interacting with the communities, but rely on higher-level (central or provincial) governments for technical support. Sometimes stronger urban municipalities provide services to neighboring rural areas.

These days participatory management processes has enabled decentralization to user



groups-the intended beneficiaries. The users group usually called water and sanitation committees (WSCs), weigh all technically feasible options, consider capital and recurrent cost implications, make choices, and then manage systems. The approach is beneficial for both governments and communities. Communities' get what they need, and governments are relieved of the long-term operation and maintenance (O&M) burden. This approach will help share the costs and improve efficiency of water supply system. User groups are common in rural water supply and sanitation.

b) Externalities

Water supply also involves both positive and negative externalities. Positive externalities include improved health with the supply of improved water quality and quantity, education and income benefits as the time savings from collection of water can lead to increased school attendance and opportunity for other income generating activities. Negative externality is generated through disposal of water, which can create environmental problem. This is especially relevant if improved water supply is not dealt with improved drainage and sanitation. Similarly, overuse of water resources could generate depletion and destruction of watershed and the ecosystem. Government's involvement, for these reasons is important in water supply and sanitation services.

c) Economies of scale/ scope

Some water supply system could be natural monopolies for the reason that investment in the system may require large capital investments and also can have significant economies of scale, making rival supply very difficult. Although community wells may be less susceptible to this monopolistic tendency, but even for them the large upfront capital requirements lead to sufficient entry barriers to limit rivalry in poor areas. In those situations, the government may have to enter into picture in order to regulate the service and protect people from monopoly pricing. Similarly, sometimes central and intermediate governments also have a technical/financial comparative advantage in managing and financing capital-intensive trunk system mainly for bulk supply. In addition, depending on the capacity of watershed and its location, provinces may benefit by sharing water with other provinces on agreed terms and condition.

d) Equity and inclusion

Many areas in Nepal have inadequate water supply and the quality of water needs to be improved. Low-income population and many of the topographically difficult areas are deprived from basic services including water. Public sector has to be involved in order to increase access to and quality of services in water supply expansion especially in those areas.

In addition to the above, debate of "water as a human right" have prompted water supply

as a 'merit good'. Under these assumptions, everybody despite their location of residence, income, gender and ethnicity, should have access to water regardless of their ability to pay the market price. Direct involvement of government may be required in underserved areas (low population density or economically unviable areas) and in addressing the issue of inclusion.

Traditionally, water was treated primarily as a social good. Its positive health and environmental externalities seemed to justify the view that water was a fundamental right of the people. In addition, this sector generally requires large, lumpy investments, but once the investments are made, the marginal costs of providing service to an additional portion are quite small. As a result, the delivery of water services, in many cases, may have the characteristic of natural monopoly. For these reasons, governments were involved very heavily in supplying water.

e) Importance of clear assignment

Concurrent assignments could create confusion in accountability of service delivery. In such occasions, the function (or responsibility) has been further divided into sub-functions and/or the attributes associated with the particular competence (regulation, financing, administration, and delivery) and, as far as possible, clear assignment of each sub function to particular government levels has arrived. When any of these attributes or sub-functions is still shared by two or more levels of government further unbundling in sub-attributes has been done to arrive at the exclusivity of the function.

### *8.2.2 Principles and Process of Functional Analysis*

#### Functional Analysis and Assignment

Decentralization deals with the efficiency of service delivery and its fiscal aspects. However, in federation, the shared source of legitimate political power between the federal government and sub-national governments comes from constitution and water supply and sanitation sector is one of them.

However, constitution is very hard to modify. In this context, in case of federal Nepal, it may not be appropriate to share all water supply and sanitation functions, which can create confusion, constitutionally. Therefore it is suggested that except for some important public functions, which could be clearly exclusive to sub-national governments or have to be assigned concurrently under the principle of decentralization could be allocated concurrently; other functions or sub functions could be assigned through organic and sectoral laws.

Under these assumptions and the principle of decentralization, the following methods have been used in the functional analysis and assignment of transport sector.

a) Public good

Private firms do not sufficiently provide water supply in most of the rural areas because of thinly spread households and lack of effective demand. Similarly, once the water or sewer pipes are not used to full capacity then the use of the service by one individual does not subtract from its value, if the pumping and chemical treatment costs are negligible (in most of the rural areas gravity system of water supply is prevalent and water is not treated) and may be non-rival. When there is little or no cost to society from added utilization, then expanded use leads to an increase in total economic welfare and is not done, in general by the private sector. Similarly, groundwater is rival, but has a character of non-excludability, because of grossly weak enforcement capacity of the government.

Goods and services that are both excludable and rival are easily rationed by price and are classified as private goods. Public goods, in contrast, are characterized by non-excludability and non-rival in consumption and are difficult to allocate with market mechanism.

b) Assignment in the context of market failure

In addition, as described in earlier sections, positive externalities are derived by the society with the delivery of clean water. Usually, these public health externalities are not incorporated into an individual's decision to pay for water delivery (societal benefit is much higher than the financial benefit of it or in other words the sum of individual willingness-to-pay is less than society's value for potable water). Because of all these nature of water supply, the market system will tend to under provide this service.

Similarly, as discussed in the previous section, water supply also has the characteristics of externalities (spillovers beyond the primary benefit area) and also for the purpose of social inclusion and equity, the assignment has been done exclusively or concurrently at the higher tiers of the government.

However, because of the complexity of geographical location of water resources and related distributional issues, externalities, economies of scale and equity issues, the supply mechanism and distribution of water supply and sanitation becomes complex.

Furthermore, because of the nature of lumpiness investments required in water supply, the marginal costs of providing service to an additional portion are quite small and the service has the characteristic of natural monopoly.

Water supply and sanitation in most of the occasions, satisfy the condition of market failure and cannot be provided by the private sector, the entire (exclusive) responsibility has been assigned to the lowest level of government that encompasses the entire benefit area (“subsidiarity principle”).

c) Mechanism for production and distribution

Even if the assignment of water supply and sanitation is largely the responsibility of government, separate institutions can be responsible for different parts of a water system. For example, government can provide capital and land and then contract out the construction of the water supply system to private firms. Once the system is completed it can be handed over to water users associations, or local communities for operation and distribution of water. This kind of unbundling of water supply system could introduce appropriate incentives, improve accountability, increase efficiency, improve accountability and lower the financial burden of the government.

Alternatively, under the delegation model, governments transfer water management to public or semi-private water companies, which will be responsible for providing services within a specified region. However, as in the pure private sector, there are strong incentives to underserved rural areas, unless the government subsidizes it. Furthermore public companies also suffer from the same inefficiencies and incentive problems of other government agencies.

Private firms can also manage water supply system, under government regulations, and provide benefits to the society. It is increasingly common in the urban sector to hand over the provision of water supply to private sector. This arrangement has led to better quality services and higher operational efficiency. (Humplick, F., and A. Estache, 1995)

Private companies are usually not interested for rural water supply because they tend to neglect harder-to-reach segments of the population and it is hard to mobilize users’ fee. An alternative to this is water and sanitation users committee (WSC). In many countries, including Nepal WSCs have very active in rural water supply and distribution with government’s support and incentives.

If the assignment is concurrent, then as discussed in decentralization principle, unbundling has been done to clarify the responsibilities of each tier of government.

Clarity in expenditure assignments and overall efficiency are enhanced by the assignment of exclusive responsibilities to each level of government. This has been done by breaking

down the responsibility into attributes—regulation, financing, service provision and production.<sup>44</sup>

Before and after the exercise of functional assignment was carried out, consultations with the technical committee formed in the Ministry of Physical Planning, OPMCM, and PREPARE team, MOGA were organized and suggestions of the members were taken into consideration.

### 8.3 Implication for Social Inclusion

#### Principles of inclusiveness

National and International covenants and commitments of the government has obligated to ensure access to basic water supply and sanitation service for all irrespective of their caste, ethnic origin, religion, culture or linguistic heritage or disabilities. Due emphasis is also given to enhance the access and quality of drinking water on the premises that safe water is fundamental right for all people.

From the social inclusion perspective for the drinking water sector the following are suggested:

1. Developing policies, plans and programs specially tailored for excluded communities thereby enhancing their access to drinking water
2. Implementing plans and programs targeted for excluded communities
3. Devising policies plans and programs to ensure proportionate representation in User's committees (UCs).

### 8.4 Existing Functional Assignments

Existing functions under Drinking Water infrastructure sector are mainly allocated at the Federal and Local level DDC, VDC and Municipalities are in accordance to the Local Self Governance Act (LSGA)-1999. The existing functional assignments have been briefly presented below:

#### 8.4.1 Local Self-Governance Act - LSGA 1999

Following the provisions of Constitution of Nepal 1990 the Local Self-Governance Act (LSGA) 1999 was enacted to fortify local governance in Nepal.

According to LSGA-1999, the functions and the responsibilities related to local level drinking water infrastructure development and management lies mainly with DDC, municipality or VDC. The details of local level drinking water related functions and responsibilities at different levels is provided in the following Table – 8.1.

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<sup>44</sup>There is a difference between providing and producing a service. For instance, a local government may provide garbage collection services to local residents. This service may in fact be delivered by a private firm, which has been contracted by the local government.

Accountabilities and responsibilities have not been clearly specified between the Federal Government and the local bodies. The responsibilities given by the Act to the local bodies contradict with the existing sectoral acts, which were promulgated before LSGA 1999 was enacted. Mobilization of private sectors and communities, which could help in providing more efficient production and delivery of services are limited. There are many issues including duplication of responsibilities, mismatch between tasks and fund, under-funded and unfunded mandates at both Federal and local level responsibilities.

**Table 8.1: Division of Works and Drinking Water Related Functions and Responsibilities between Federal and Local Bodies (Based on Local Self-Governance Act, 1999)**

SN	Functions or Responsibilities	Centre	DDC	Municipality	VDC
a.	Water supply and sewerage plan implementation, operation/maintenance	✓	✓	✓	✓
b.	Water source protection and utilization	✓		✓	✓

According to the LSGA-1999, some of the functions such as construction and maintenance of drinking water are proposed concurrently by the center and the DDC. However, in the federal structure, these responsibilities should be retained at the lower level. One of the important functions of the federal level governments is to enhance the capability of the lower level government to take up responsibilities assigned to them through technical and managerial support. Although there is the provision in the Local Self Governance Act and Regulations to delegate the power and responsibilities to the local bodies according to the basic principles of Decentralization, the local bodies have not been able to exercise the powers delegated to them in effective manner due to the lack of elected leadership and resources.

#### **8.4.2. Government Business Rules (Karya Bibhajan Niyamawali), 2012**

The government of Nepal through its Government Business Rules has given responsibilities to undertake functions to the respective ministries. Accordingly, Ministry of Urban Development is mandated to carry out with 30 different functions while the Ministry of Federal Affairs and Local development with 22 different functions. Although the regulation specifies the works, duties and powers of every public body, there exists ambiguity and duplicity in many works, duties and powers.

#### **8.4.3 Administrative Restructuring Committee Report**

Government of Nepal also commissioned a study on the administrative restructuring in a Federal System. The Administrative Restructuring Commission formed for this purpose also submitted a report in 2011. The report reviewed the required changes on the public administration side in the new federal structure of the country. In addition the

Constitutional Assembly also formed a state Restructuring Commission to purpose restructuring of Nepal into federation in 2011. The commission submitted its report in 2012.

The major functions identified under drinking water supply infrastructure sector as recommended by ARC comprises water and sanitation, construction and management. According to the report, all the water supply functions have been assigned to both federal and provincial level government except local water supply. The functional assignment to various levels of government is provided in Table-8.2.

Likewise OPMCM has also carried out some exercise on functional analysis through the ministerial technical committees. The functions are broadly classified in four major clusters namely, (i) Policy, Acts, Regulations and Standards (ii) Creation of Assets (iii) Operation and Maintenance (iv) Monitoring and Evaluation which were further developed as activities with assignment of functions at various levels of government.

**Table 8.2: Proposed Level-Wise List of Responsibilities and Powers**

Key Result Area	Major Works (Functional Analysis)	Level-Wise Functional Assignment	Proposed New Organization
Water Supply and Sanitation	Formulation of plans and projects related to drinking water and sanitation	Federal and Province	Federal: Ministry Department, Board
	Formulation and implementation of drinking water and sewerage plants at province and local level	Province and Local	
	Monitoring and evaluation	Federal, Province and Local	Local: Offices

*Source: ARC Report 2011*

### **8.5. Observations on the Recommendation of the CA Report**

Nepal at present has two tiers of local bodies. At the top, the country has District Development Committees, one each in 75 districts and at the bottom there are 3751 Village Development Committees and 99 municipalities.

The Constituent Assembly Secretariat has combined the public functions assigned by two committees i.e. SRDSPC and NRERARAC in a single list as shown in Table 8.3.

In developing basic conceptual framework, methodology and roadmap for undertaking functional analysis and assignment of functions, various documents were reviewed and in particular, the following documents were extensively reviewed:

- Administrative Restructuring Committee Report- sector specific intent and recommendations
- Constitutional Assembly Report- sector specific intent and recommendations
- Sector specific document - planning and policy documents, act and regulations, national plans
- Work division/allocation regulations

After reviewing of ARC report and CA Report regarding the assignment of the responsibilities in Drinking Water and Sanitation sector the following suggestions and recommendations are proposed.

- (i) Drinking Water and Sanitation sector is largely public goods and falls under the responsibility of federal government because of its national objectives to supply basic safe water to all by the year 2017, which is also a millennium development goal and need to have regulation of national standards.
- (ii) All the functions are of concurrent nature to be carried out by all level of government instead of Federal and Provincial only. All the functions of Federal Water Supply System have been assigned as exclusive functions under Federal government whereas Provincial and Local Water Supply System under Provincial and Local government respectively.
- (iii) The 2009 SRDSPC report gives autonomous regions an exclusive responsibility for national resource and their use. At the same time exclusive responsibility for use of water resources is given to Provincial government only. Hence, the exclusive responsibility for preservation and use must be given to Federal, Provincial and Local government.
- (iv) The proposed delineation of responsibility is centered on facilities rather than function. So, it is suggested to provide functions associated with these facilities.

**TABLE 8.3: PROPOSED DELINEATION OF FUNCTIONAL ASSIGNMENT**

Functions and Responsibilities	Federal (F)	Province (P)	Local (Rural/ Urban)	Production Pr= Private G= Public C=community (management committee, users group etc.)	Remarks
<b>Drinking water (DW) and sanitation</b>					
<b>Drinking water</b>	<b>F</b>	<b>P</b>	<b>L</b>	<b>Pr. G.C</b>	<b>F water for all and standard; P and L implementation, oversight</b>
<b>Sanitation</b>	<b>F</b>		<b>L</b>		<b>F sanitation for all; health benefit</b>



## 8.6 Recommendations on New Functional Classification

A new assignment of functional competences is likely to involve the transfer of personnel and assets. The transfer of personnel without the transfer of assets and structure can affect the quality and intensity of Decentralization process.

In regards to Drinking Water Sector, the Department of Water Supply and Sanitation will be Federal line agency under the Ministry of Urban Development and there will be the Department of Water Supply under each provincial government. Arrangements can be made before hand that all deconcentrated public personnel throughout the national territory can be transferred to the sub-national governments, which is required by the new functional assignment. This will require further analysis.

The division of responsibilities between Federal, Provincial and Local governments in this report is based on considerations such as economies of scale, economies of scope, cost benefit, spill over and explicit assignment of functional responsibilities. While sharing the responsibilities between two or more government level it is recommended to assign for regulation, standards and overall policy at the Federal level and assign responsibilities for financing and overseeing implementation at the provincial level and local governments should be directly involved in providing and delivering services.

The functional assignments presented in this report may not be the best in deciding which level of government should be responsible for water supply service. In order to deliver functions more efficiently, it is strongly recommended to keep all under single umbrella of Department of Water Supply and Sanitation.

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While assigning the functions for different drinking water sub-sector at different levels, first the exclusive functions at different levels of government have been assigned as provided in the **Table 8.4** below. The analysis and justifications for assignment of various functions under different drinking water sectors at different levels are provided in the subsequent paragraphs.

In many countries, drinking water system is developed by the private sector under government regulation, contract and supervision. In Nepalese context, because of the reasons discussed earlier, it largely falls under the category of public goods except for tanking on trucks. All the drinking water related functions are of a concurrent nature and to be carried out by all levels of government. Attributes like planning, regulation, service delivery (construction and maintenance), organization and staffing will be equally applicable for Federal, Provincial and Local Water Supply System. However, formulation of organic laws, sectoral laws and setting norms and standards for all levels of water

supply system are the responsibilities of the federal government. The provincial government can make the relevant laws while the local governments can make the directives as provisioned in the constitution and the laws of the country. Some of the functions such as construction, operation and maintenance of some national or provincial water supply system can be assigned to the public private partnership, private sector on concession basis or on rehabilitation and maintenance contract. Due to revenue authority lying with the federal government, funding for different categories of water supply system under different levels of government, to a large extent, may be the responsibility of the federal government through appropriate mechanisms supplemented by the revenues from sub-national governments

**TABLE 8.4: ASSIGNMENT OF FUNCTIONS IN DRINKING WATER SECTOR (SUMMARY TABLE)**

Attributes → Functions ↓	Regulations		Financing	Ownership of Water	Service Delivery		Remarks
	Water quality and Standard	Watershed Conservation and Management			Provision	Production	
Federal Water Supply System (bulk supply to provinces)	F	F, P, L and community (F is important in avoiding or managing conflicts of interest arising from externalities)	F, P, L and beneficiaries	F,P and L	P (one P may share with other P if the watershed is big and or sometimes it is in the border of two Ps)	Concession, Management / Service contract, WSC*	Federal water supply theoretically may not exist in future; it can be phased out. However, sometimes Federal and intermediate governments also have a technical/financial comparative advantage in managing and financing capital-intensive trunk system mainly for bulk supply.
Provincial Water Supply	F	F, P, L and community (F is important in	P, L and beneficiaries	P and L	P	Concession, Management / Service	Depending on the capacity of

System (bulk supply to local governments and sharing of water with other provinces)		avoiding or managing conflicts of interest arising from externalities)				contract, WSC,	watershed and its location, province can share water with other provinces on agreed terms and condition.
Local (rural)(bulk supply to other local governments is also possible)	F	P, L and community (P is important in avoiding or managing conflicts of interest arising from externalities)	L and beneficiaries	L	L	Concession or WSC or management /service contract, L	Direct involvement of P or L may be required in underserved areas (low population density or economically unviable areas)
Local (municipalities) (bulk supply to other local governments is also possible)	F	P, L and community (P is important in avoiding or managing conflicts of interest arising from externalities)	L and beneficiaries	L	L	Concession, Management / Service contract, WSC	

<p>Local (sewage) (especially in municipalities, but useful in other local governments if feasible)</p>	<p>F and P (P to have uniform standard for processing and discharge among the cities of the Province)</p> <p>Wastewater and septic tank management of households as well as commercial entities, if not regulated and managed properly cause pollution to the environment and creating a risk to public health. Therefore F should regulate large capacity septic systems and disposal of sewage. P will regulate onsite systems.</p>	<p>F, P and or L and beneficiaries (F for public health reasons)</p>	<p>-----</p>	<p>P and or L</p>	<p>P and or L or private contract</p>	<p>Interconnection of water supply and sewage disposal can be regulated by F and or P, but is provided by local government. Sometimes bulk sewage disposal and sewage purification, if done by P for greater regional areas, it will be more useful from technical and financial perspective due to economies of scope. P could be useful for identifying and managing water disposal sites.</p>
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**Note:**

- A. *For specific national priorities, the federal government's specific directions will override the sub-national governments. However, such overriding role should be limited to the functions having externalities and national priorities.*
- B. *Any international drinking water standard adopted by the federal government will become applicable to sub-national services.*

## 8.7 Conclusion and Policy Recommendations

All the functions related to drinking water management are concurrent functions and will be performed by each level of the government (federal, provincial and local). Drinking water also falls under the responsibility of the federal government, at least in the medium-term due to its nature, security sensitiveness and mandatory requirement to follow international standards and norms. However, some of the functions under federal drinking water system can be delegated to the provincial government depending upon the capacity of the province.

Along with the functional assignment, there is a need to critically review these functions and required capacity to perform these functions. Thus, capacity building plan is also required along with this exercise.

In order to deliver functions more efficiently, it is strongly recommended to keep all the drinking water sub-sectors including drainage and sewerage under a single organizational umbrella.

A comprehensive study on reorganization of organizational structures and staffing should be conducted immediately after the finalization of the state restructuring and promulgation of the new constitution.

It is difficult and time taking to have a detailed comprehensive functional assignment in short time. A detailed unbundling of the functions has been carried out to make different tiers of government more accountable for the service delivery. This report is expected to help in preparing the organic as well as sectoral laws.

Since it is necessary to clearly and scientifically delimit the works to be carried out by the various levels of governments in the federal system, the functional assignments presented should be given final shape as soon as possible.

Continuity should be given to the technical committees so as to carry out works as fixing and analyzing the scope of work between the federation and the federal units, organizational management, estimation of human resources and review of acts and regulations.

## Chapter 9

### Observations and Reflections on CA Reports

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#### 9.0 Constituent Assembly Reports

First elected Constituent Assembly in 2008 started drafting a new constitution for Nepal. It constituted eleven thematic committees to help draft the constitution. In 2010, the State Restructuring and Distribution of State Powers Committee (SRDSPC) of the Constituent Assembly produced a report on the restructuring of the country and distribution of powers among different tiers of government.

However, there were disputes among the political parties on the recommendations of the report. When there was no agreement on SRCSPC's report, a high level State Restructuring Commission (SRC) was formed at the end of 2011. SRC also failed to come up with a consensus report; the members of the Commission submitted two different proposals to the government.

Nevertheless, the SRDSPC report envisioned three tiers of government: federal, province, and local and proposed special jurisdictions including autonomous regions, special regions and protected areas.

It proposed for separation of powers between the federal government, provinces, local governments, and special jurisdictions. Furthermore, the Committee proposed a hierarchical system of intergovernmental relations, where the provincial tier will deal directly with the local and the federal government would not.

The SRDSPC report also proposed five separate schedules of functions to be listed in the Constitution a) exclusively federal functions; b) exclusively provincial functions; c) common functions, which would be discharged by provincial governments “on the basis of the fundamental principle, standards and framework of legislation determined by the Federal Legislature;” d) exclusively local functions; and e) exclusive functions of autonomous regions. Distribution of power to subnational governments was basically carried out on the basis of manifestos of different parties. The report has neither mentioned basis for allocation nor the reasons for proposed allocation to different tiers of government. Justifications for the proposed autonomous, special and protected reasons were weak and functional assignments to these regions were not explained.

Another Committee on Allocation of Natural Resources, Financial Rights and Revenue Sharing (ANRFRRSC) managed to reach consensus on most of the issues and submitted the report in CA in 2010. It also assumed three tiers of government and distributed public

functions among subnational governments. The committee proposed a clear recommendation on natural resources, financial rights and revenue sharing. The report was also able to identify the jurisdiction, rights, limitations and boundaries of the federal government, provinces and local bodies. The distribution of power among different tiers of government was largely based on the principles of public finance and subsidiarity. The report has also provided reasons for proposed allocations.

The Secretariat of the Constitutional Assembly, combining the reports of two committees has produced a consolidated report on the power distribution to subnational governments (Table 9.1).

The allocations nevertheless, present some challenges. Functions allocated to subnational governments without any principles could be challenging for efficient implementation. Similarly, assignments made without considering the principles of subsidiarity or other principles may result in inefficient service delivery and crisis. Under the principle of subsidiarity, the public goods and services that are provided by subnational governments should generate benefits that can be internalized by those jurisdictions. Similarly, the lack of clear assignments could erode accountability of subnational governments, invite conflict and may result in failure in service delivery.

As for example, in the consolidated table, banks and financial institutions are assigned to provinces. Banking will have major implications to financial and macroeconomic stability. If the banks fail, it could create financial and economic crisis in the country and therefore are monitored by the central bank. It is not efficient to develop capacity of provinces to monitor banks and, if they fail, it can have spillover effect beyond their jurisdiction. Similarly, local governments, under subsidiarity principle, could also undertake tourism, small irrigation and energy projects, which have not been assigned to them in the proposal. Natural resources are only assigned to autonomous region. Preservation of natural resources is the responsibility of all tiers of government. They are national property and all citizens should share benefits. Another example is the assignment of responsibilities for social protection and poverty alleviation to subnational governments. They affect all regions of the country and if there is no national norm or financing, poorer regions would be unable to address these challenges, whereas the well-off regions will be flooded by poorer and disadvantageous people to reap the benefits from provinces. The challenges are addressed, if social protection services are provided by the sub-national governments but financed by the central government.

However, as mentioned earlier, there is no absolute best way for deciding which level of government should be responsible for particular public services. It sometimes depends on the country's condition and the assignment has to be judged in terms of how well it achieves the goals or objectives set up by the government in its reform strategy, but the

objectives and benefits must be clear. Rationalization for possible inefficiencies in allocation has been explained in the remarks column of the table.

Other challenges and issues as well as inefficiencies related to the proposed allocations are described in the remarks sections of the Table 9.1.



**Table 9.1: Proposed Allocation of Powers/Responsibilities to Different Levels of Governments based on the consolidated draft (comments are from the author)**

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
1	Defense and army	National unity and protection of territorial integrity, war and defense, arms, ammunition factories, and production related to them					It is enough to say “defense” (details can be spelled out in the law) (definition of defense: “The action of defending from or resisting attack” covers many things)
2	Police and law order	Central police force, armed police force	provincial police, administration and, law and order	detention on the issue of security of the state, management of prison and detention, management of law and order, inter-provincial transfer of	Municipal police, community police	Police	It is better to focus on outputs like Law and Order, local street patrolling, investigative activities. Police (and other agencies established) will

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
				accused, detained, and prisoner			do these jobs, but functions could differ (e.g. investigative –F and P-- street patrolling, local. Law and Order, therefore could be concurrent Similarly, “detentions on the ...prisoner “could be clauses in law.
3	Money and banking	Central bank, monetary policy, financial policy, money and banking,	Bank, financial institutions, cooperatives,		Cooperatives	Cooperatives	Banking will have major implications to financial and macroeconomic stability and therefore should be the function of F. In addition, banks cannot be regulated by provinces (as they

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							have to follow national and international norms not the provincial). Banks go where the market is. Provinces can play a role in consumer protection.
4	Taxes and revenues	customs, excise, value added tax, corporate income tax, personal income tax, passport, visa, tourism service fee, service charge and fees, royalty from natural resources	remuneration tax, land and house registration fee, vehicle tax, excise, entertainment tax, advertisement tax, tourism tax??, agriculture tax, service charge, fee, fines and penalty, royalty from natural resources		Local tax (property tax, house rent tax, house and land registration fee, vehicle tax), entertainment tax, fees and fines, tourism fee, advertisement tax, business tax, land tax (malpot), penalties royalty from natural resources,	Local tax (property tax, house rent tax, house and land registration fee, vehicle tax), entertainment tax, fees and fines, tourism fee, advertisement tax, business tax, land tax	Entertainment and advertisement tax, house and land registration fee could go to local and not concurrent with state because of cost-benefit criteria. (in addition, land registration and house entitlements have

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
						(malpot), penalties royalty from natural resources,	<p>been identified local function and therefore it is better if the tax is paid in the same jurisdiction)</p> <p>Tourism fee is shared if geographical area is large otherwise local.</p> <p>Vehicle tax, is province (vehicles move generally within province) as it has been allocated to register in P (if registered in L, could be L)</p> <p>Natural resource (overlap) tax is concurrent if it is a rare/ national resource.</p> <p>Otherwise</p>

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							royalties could be L or P depending on the affected areas (should be shared if affected area covers more than one L). In case of national taxing authority could be F, but revenues could go to P and L, too. Royalty from rare minerals could be shared and mining could be local for the reason of environmental degradation.

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
	Planning	central planning		planning			Planning of what? Economic development/ urban planning? What about local planning (physical/ infrastructure). No need to write. Each tier will have their own plans.
5	External aid	foreign grants, assistance, and loan	foreign grants and loan upon the consent of the federal government				First of all it is not a function. It is an input (financing). Second, Nepal is a small country and F can manage it; it involves politics if given to P, directly; distribution of foreign aid may not be equitable

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							or allocated to priority areas due to politics.
6	Communication	regulation of telecommunication and control, central telecommunication, allotment of radio frequency, television and post	Radio, FM, television.	media	FM operation	FM radio management, operation and TV	
7	Statistics	Central statistics (national and international norms and standards)	Provincial statistics		Local statistics and record collection, records collection of unemployed	statistics and records management	Largely F. Province and L may collect statistics for their use or with the overriding clause of F for national use.

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
8	Irrigation	Central level irrigation and other projects	Provincial level irrigation and other projects, irrigation projects			irrigation projects	What are other projects in F and P? Irrigation is also local. Therefore, concurrent.
9	Development projects				local level development projects and programs	other development projects	Can be deleted; almost everything is development
10	Energy	Central level energy and other projects, nuclear energy	provincial level energy and other projects, electricity projects			electricity projects	How can it be (all) electricity projects in autonomous? Alternative energy, if it is in other projects it could be L and P. Micro-hydro solar etc can be handled by L. It is, therefore concurrent.



S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
11	Education	Central university and central library, university standards and regulation	Universities, higher education, library, museums, books and press		Primary and Secondary Education	Primary and secondary education, library, museum	Can't be exclusive at both columns because of equity, merit good and externality reasons. Primary (now it is called basic and covers 1-8), and Secondary ( 9-12) may go to L because of subsidiarity principle; but certification, curriculum etc may be F. Financing basically is F for primary but could be shared with P and L; F, P and L and private share financing for secondary;

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							college education could go to P and F (concurrent) to be recognized and accredited nationally. P can facilitate the establishment and finance (but should be accredited by University) Standardized test for Basic education F/P (delegated to P); Standardized test for secondary could be -F Education, therefore is concurrent.
12	Health	Central health policy (health standards/quality)	Health services	drugs, family planning, population	Basic health and sanitation	Health Services	Some of the healthcare services like

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
		and monitoring, national and specialized hospitals, traditional treatments services, control of communicable diseases)		control			communicable diseases, public health etc. are public goods and could be local if the benefit area is confined to the local jurisdiction, other wise it could be P or F depending on the benefit areas and externalities. Many services in health are private in nature, but are publicly provided due to considerations of equity and merit good. Therefore, by nature and financing need, it is concurrent (F, P, L). But production could

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							be community or private. Even if some of the services, which are private in nature government, is involved for equity reason.
13	Legislature and executive	federal parliament and executive affairs	provincial parliament			autonomous elected council	First, legislation is not a function but an input. It can be deleted. Second, Local government will also have council. Council could have legal status and role. It will come in a separate clause or section.
14	Commerce and supplies		Intra-provincial commerce	supplies of essential goods and services,	management of local market,		Inter-provincial matters related to commerce could

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
				distribution, price regulation, quality and monitoring			be F. F may have the role in supplies of essential goods like salt, petroleum products, edible oil (most of them are imported) for quality reason. This in fact, can be deleted and “common market type of clause has to be written in the constitution (in fact it is already there)
15	Tourism	Casino		casino and lottery, tourism			What about other tourism activities? No need to write casino. (Local touristic infrastructure has localized benefits

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							but promotion to foreign markets is a national public good). Tourism is concurrent.
16	International trade	International trade, foreign exchange, port, quarantine					
17	Civil aviation	International and inter-provincial aviation, international airport	Provincial aviation				Air Traffic control is F; transport could be private, runways F and terminals could be P but can be under private management. (Aviation is largely international/ national. So as the airport/ airline security). In addition, air transport is inter-

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							linked across regions; there will be more flights outside the province than within the province; so it must be better to put under concurrent between F and P (P can finance airport construction and manage it)
18	Science and technology			scientific research, science and technology and human resource development			Can be deleted; it is basically F; but if it is education it could be F, P, and L (concurrent)
19	Disaster			fire and natural disaster, relief and reconstruction			Fire fighting is usually local; disaster preparedness

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							should be sub-national but disaster response provincial or national as local capacity is often wiped out by a major disaster. It is therefore concurrent.
20	Foreign and diplomatic affairs	Foreign and diplomatic affairs, international relations, UNO, international treaties and agreements, extradition, management of international borders					Foreign affairs is good enough to write
21	Transport	National rail, management of national highways	Provincial railways and provincial highways, transport		local/agriculture/rural roads	Roads	If we only write railways as concurrent, details could be written in the law (reason: railways



S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							usually will have national liege, national computerized control, and because of economies of scope easier for F to handle; concurrent with P, if the land and security are to be provided by P. Province can also make railway liege.
22	Physical infrastructure			physical infrastructure			Not clear?? What kind of physical infrastructure. L also develops physical infrastructure. So better to delete.
23	Intelligence	National intelligence and investigation	Provincial intelligence				No need to write. It is a component

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
			bureau				of maintaining law and order (Police) or separate intelligence bureau.
24	Court	supreme court, constitutional court, and laws relating to judicial administration	management of physical, human resource, and other subjects of the courts other than that of supreme and constitutional courts		local courts, mediation and intermediation management	court	Court, law and justice are independent and is a different chapter in the constitution. If that is so, no need to write here.
25	Citizenship, passport and visa	Citizenship and passport, visa, immigration	Management of passport and citizenship		distribution of citizenship and passport, and their records management	distribution of citizenship and passport, and their records management	When we say foreign affairs and immigration is F, then no need to specify visa, passport: Visa, passport is usually managed by F (or F agencies);

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							distribution of passport and record should also be done by F (only distribution could be, if national government wants could be delegated to local)
26	Space and astronomy	space and astronomy					Can go in residual; no need to write
27	Weights and measures	Weights and measures					If standards etc are F and written in the clause, no need to write in table
28	Mining	Extraction	Mining extraction and management			Mining Exploration and management	Mining and exploration are similar. It has to be classified in the law; can be allocated

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							concurrent but mining of rare minerals is mostly is F (e.g. oil, gold, uranium and so on); mining of stone and boulders for environment reasons should be controlled by F or P through policy.
29	Natural resources					natural resources and their use	It may be similar to mining. Preservation is F, P, L; sharing of royalty may be required for bigger projects , which could be a national property. No need to give exclusiveness in autonomous. What if they have

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							large hydro potential, uranium and oil etc.? They are national property.
	Insurance	Policy	Management and operation	Insurance			Insurance provided by Private, if it is government (e.g. insurance companies however, are regulated by regulatory agency) should follow national policy. Therefore, policy and regulation could be assigned to F. No need to allocate in F and P as concurrent.
30	Justice system	Legislation on criminal offence,	criminal and civil procedures,				Justice is F, (it has international

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
		fines and penalties	evidence and swearing in (legal norms?, public actions and documentation, judicial procedures) Family affairs (marriage, transfer of property, divorce, endangered, orphans, adopt son, inheritance) related laws,				norms, has to be given equally and indifferently; so no need to write in other competence.
31	Intellectual property	Patent, design, copyrights,					
32	Property			acquisition of property, and creation of ownership, contract, partnership and agency related, bankruptcy and			No need to write; private sector and government can own property; it must be in the fundamental right (including the clause of

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
				insolvency			acquisition of property) and overall economy (in fact it is already there); all others could go to laws
33	Poverty			poverty alleviation,			No need to write it; it is mainly the job of F, but is concurrent to all.
34	Land		Land management, documentation, and collection of land tax	Land policy and laws related to land	Issuance of land entitlement certificates	Issuance of land entitlement certificates	To issue a land certificate, one needs to maintain a cadaster. It is better to have a unified national cadaster and single land certificate. F, therefore has a role. Entitlement certificates may not be exclusive to L?

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
35	Language and culture		Protection and use of language, culture, scripts, and religion	conservation of archeology, ancient monuments, and museums		Protection of language, culture, scripts, and religion	Heritage—is it only provincial?? It has international implications—world heritage sites etc; so also F. It could be concurrent.
36	Sports and entertainment			film, cinema hall and sports			For recreational activities, the benefit area is localized and should be mostly local unless advancing a national objectives, if any. No need to write.
37	Forest and mountains	F (climate, biodiversity etc)	forest within province	Inter-provincial forest, wild animals, birds, national parks, mountains			National parks are also F. Forest is also linked with carbon absorption,



S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							biodiversity and climate change- so also F. Local has to protect and community forestry probably is also L
38	Water and sanitation		use of water resource	drinking water and sanitation, utilization of water			Drinking water is F, P, and L. It depends if the water source is mostly located within the locality; has to be shared with other districts or even provinces. Same with sanitation as it is aimed to prevent pollution of the

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							water sources  ( generally Sanitation is largely L, but is also the responsibility of F for public health reason). It is concurrent.
39	Environment	National and international ecological management, carbon services	ecological management	environment protection, bio-diversity	environment protection, biodiversity		Bio-diversity mainly F, P and L (Can't be both exclusively local and shared between F and P)- -Concurrent
40	Agriculture		Agriculture and livestock development	pesticides	Agriculture and livestock; management, operation and control of agriculture extension	Agriculture and animal farming livestock	Agriculture is also F (R and D, communicable animal diseases, subsidy policy); Also F will have a say in land use (protected areas etc.) and WTO.

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							It is concurrent.
41	Trade and industry		factories, business	trade union, rights of industrial (workers) and labor, management of conflict; ... industry, mining; ..Industrialization		Trade and business	Business (small industry and commerce) could be L—smaller units can register locally; Trade policy and international trade, FDI linked to F
42	Liquor		Production, manufacturing and transactions				Can be covered by industrial law; no need to put here; Production is done by Private; Government may only provide permission. However, since alcohol

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							consumption is a nuisance, local licensing of retail is quite common
43	Transport		transport	waterways, vehicle license			Vehicle license responsibility could be given to P; transport could be all F, P and L. F also needs to engage in long route transportation network and national transport management planning
44	Trust (Guthi)		Trust management				Is mainly managed by cooperatives/ private trust/autonomous

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
45	Social security			Social security and employment	Management of elderly, disabled, single women, women etc.		Social security is theoretically F; (only delegated management only could be P and L). however, P and L could provide support to it.
46	Vital registration			vital registration, birth and death registration	Vital registration, including birth and death		It must be F for the region of regulating emigration, providing citizenship certificate, controlling terrorism and so on. L may be responsible for registration, if delegated by the central government.
47	Civil service	Central civil service management	provincial civil service		management of local service		This is an attribute/input

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							not a function per se  (no need to write)
48	Service management					management of services	All- F, P and L do manage services. No need to put here
49	Management of professions			medical, legal and other professions			No need to put here. Must have central certification process in some cases like medical and legal professions ((For other professions requiring licensing (hairdressers, plumbers, etc.), provincial governments might be better positioned to

S.No.	Functional Areas	Exclusive Competencies		Concurrent competencies (Federal and Provincial) (C)	Exclusive Competencies		Remarks
		Federal government (F)	Provincial governments (P)		Local governments (L)	Autonomous regions (A)	
							enforce compliance))
50	Constitutional bodies	CIAA, CA, PSC, EC, NHRC, NERC, NFC,	commissions of provincial level				No need to put here. It is a separate chapter in constitution.
51	Sub-provincial bodies		local government, special structures				No need to put here. It there is anything it will appear in the Constitution as a separate section/clause. However, most of the other committees have identified them as separate constitutional bodies.
<p>Source: सविधानसभादर्पण (Constituent Assembly Mirror), Parliament Secretariat, 2013.</p> <p>Categorization are by functional areas are not in the same format as in the report.</p>							





## Chapter 10

### Lessons Learned and the Way Forward

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Constitution Assembly (CA), Nepal has completed preliminary functional assignments to different tiers of would be federal government of Nepal. Consolidated assignments have been prepared based on the reports of The Allocation of Natural Resources, Financial Rights and Revenue Committee (ANRFRRC) and State Restructuring and Division of State Powers Committees (SRDSPC) by the CA secretariat. Some of the lessons learned from this exercise and the work that can be carried out in the next phase could be as follows:

- i. This exercise has been carried out where the public functions as well as some of the functions that can be efficiently performed by the private sector has been executed by the unitary system of government. Some decentralization work has been done in the country, but it is constrained by unclear accountabilities and responsibilities lack of clarity and duplication. It did not have desired level o service delivery. There are still some bureaucratic rigidities and tendency to favor a larger role to the central government even in the future federal structure because they think that the capacity of the local governments will be weak and will be constrained by resources.
- ii. The Constitutional Assembly has not been able to finalize the shapes and sizes of subnational government. This may also affect the appropriateness of functional assignment. These exercises may have to be fine-tuned once the CA completes the work of state restructuring work.
- iii. CA reports illustrate that different sub-committees have given different emphasis on the allocation of functions. As for example, SRDSP's report has assigned more functions and authority to provinces than the third tier of the government and also has the provision for special, protected and autonomous. On the other hand, the other sub-committee has assigned services to the local (third tier) government.
- iv. Similarly, the SRDSP subcommittee has allocated functions on the basis of the manifestos of different political parties. On the other hand, ANRFRRC's report has largely followed decentralization principles. Assignments made without considering the principles of subsidiarity or other aspects of principles may result in inefficient service delivery and crisis. Similarly, the lack of clear assignments could erode accountability of subnational governments, invite conflict and may result in failure in service delivery. These points have to be discussed in different committees of the CA.

- v. As discussed earlier, there are still confusion and disagreements among the political parties on the recommendation of the assignment of public functions to different tiers of government. The Secretariat of the Constitutional Assembly, combining the reports of two committees has produced a consolidated report on the power distribution to subnational governments. The proposed power distribution and constitutional clauses should be subjected to the normative evaluation so that all instances could be identified where lack of compliance is found relative to the normative principles. The analysis could be presented in CA committees and sub-committees, which are involved in drafting the constitution. This could help in influencing the clauses of the constitution and power distribution in a positive way. It may also contribute towards minimizing the risks of a negative impact of problematic constitutional provisions and avoiding future conflict.
- vi. At present, the study has been carried out only in five sectors- health, education, agriculture, transport and drinking water and sanitation. On the basis of conceptual framework developed and experience gained in the first phase, functional analysis and assignment could be carried out in the other remaining sectors like, industry, tourism, energy, social protection and security, etc.
- vii. The functional analysis only talks about the assignment of public functions to different tiers of government. However, it will be basis for carrying out other aspects of federalism like size and structure of civil service, revenue allocation, and inter-governmental resource transfer. The process could also help in addressing the transition from present situation to federal structure.
- viii. The analysis should be shared and explained with other stakeholders including politicians, sectoral administrators, other officials from the government, academicians and civil society members.

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