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Summary Brief

The Assignment of Functions Across Levels of Government in Nepal

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THE ASSIGNMENT OF FUNCTIONS ACROSS LEVELS OF GOVERNMENT IN NEPAL¹

The assignment of functions across the three levels of government in Nepal emanates from the constitutional annexes, unbundling of the exclusive and concurrent powers through an executive decision, the allocation of business rules between the federal and provincial levels, and the *Local Government Operation Act, 2074* (2017). Various federal laws on fundamental rights provisioned in the Constitution, health services, forests, environment protection, industrial enterprises, land utilization, etc. further specify the responsibilities of the levels of governments. These laws also allow federal agencies to delegate some of the tasks and responsibilities entrusted to them to provincial and local governments.

Provincial and local governments have adopted many laws within their jurisdictions, creating many functions which sometimes overlaps and duplicates the functions of other levels.

Despite earnest efforts in clarifying the roles and responsibilities of the three levels of government, there exist inconsistencies, overlaps, gaps, and challenges in executing the responsibilities entrusted to each level.

FINDINGS

Inconsistencies in the Assignment of Functions

There are overlaps and inconsistencies in the exclusive as well as concurrent powers of the three levels of government listed in the constitutional annexes.

- Most exclusive powers of the provincial and local governments are conditional to federal laws, many of which are yet to be adopted.
- The broad range of concurrent powers among the three levels are subject to interpretations by federal laws.

Despite earnest efforts in clarifying the roles and responsibilities of the three levels of government, there exist inconsistencies, overlaps, gaps, and challenges in executing the responsibilities entrusted to each level.

- The unbundling exercise was carried out before elected political leadership in provincial and local governments assumed their offices, hence they were not consulted, which left them without a substantial role in defining the assignment of functions.
- Inconsistencies and gaps in the assignment of functions are discernible in key sectors including education, health, agriculture and livestock, and physical infrastructure development.

Education

- Local governments have exclusive jurisdiction over basic and secondary education. However, there are overlaps in the regulation of schools, operation of technical and vocational training, and the management of schoolteachers.
 - Local governments have no role in the management of schoolteachers.

There are overlaps and inconsistencies in the exclusive as well as concurrent powers of the three levels of government listed in the constitutional annexes.

1. The summary brief is primarily based on the report prepared by a group of experts led by Krishna Prasad Sapkota (Constituent Assembly Member) between June and September 2018. A summary report in Nepali was published by The Asia Foundation in September 2019. Link: https://asiafoundation.org/wp-content/uploads/2019/12/Nepal_Functional-Assignment-Assessment_SubNatlGov.pdf

- The Compulsory and Free Education Act, 2075 (2018) provides for federal and provincial governments to run schools as model schools, mobile schools, and specialized schools. This creates overlapping responsibilities between federal, provincial, and local governments on traditional and technical education, the supply of educational materials, scholarships for disadvantaged groups, and teaching in mother tongues.
- As per the spirit of the constitution, technical and vocational education up to the secondary level is the responsibility of local governments while higher education is the responsibility of provincial governments. However, the Technical Education and Vocational Training Council Act, 2045 (1989) states that technical education and vocational training should be conducted by the Government of Nepal.
- The erstwhile District Education Offices were dissolved as most of their responsibilities were supposed to have been transferred to local governments. However, the federal government has retained its “District Education Development and Coordination Units” (DEDCU), while some provinces have started to create their own education offices at the district level. The provincial government is conducting programs related to education that are under the responsibilities of local governments.
- In the absence of a clear definition, classification, and standardization of universities, it is not clear how to distinguish between central and provincial universities. Hence, there is confusion as to what type of universities the federal and provincial level can establish and which colleges under which universities can be devolved to provincial universities. Similar overlaps exist in the operation of libraries, museums, archives, etc.

Health

- The responsibility of registration, licensing, and regulation of nursing homes and health institutions are allocated to all three levels of government. A similar overlap exists in preventive, curative, promotive and palliative care and traditional medicine. The regulation and management of health insurance schemes are also assigned to all three levels. A similar overlap exists concerning the procurement of medicine and medical supplies and the responsibility for disease control, immunization, nutrition, and family planning.

The responsibility of registration, licensing, and regulation of nursing homes and health institutions are allocated to all three levels of government.

- A lack of clarity concerning the responsibilities of the levels of government was visible during the COVID-19 crisis, especially in the functions to be discharged in connection with the pandemic. Despite constitutional provisions of federal exclusivity regarding communicable disease control, it became evident that the provincial and local governments had significant roles to play during the pandemic, including in the management of quarantines and isolation centers and in providing necessary health services and relief to people affected by the lockdown during the pandemic.
- Some responsibilities as per the Local Government Operations Act, 2074 (2017), such as the fixing of the maximum price and regulation of medicine and medical supplies, do not match the technical capacity of local governments. Similarly, local governments cannot regulate the licensing and standardization of health-

related services. Provisions in the Drugs Act, 2035 (1978) related to the procurement of drugs and medical supplies and the Tobacco Products (Control and Regulation) Act, 2068 (2011) contradict provisions in the Local Government Operations Act, which assigns authority to local governments on such matters.

Agriculture and Livestock

- Although the Constitution gives a minor role to the federal government in the agriculture, veterinary and livestock sector, the detailing of functions has created wide all-encompassing functions for the federal government in this sector.
 - Functions related to agricultural extension, regulation, and promotion of agricultural business and insurance, regulation of pesticides and fertilizers, veterinarian services, agricultural and animal health labs, etc. have been assigned to all three levels of government.
 - Agricultural and animal health labs other than quarantines are under the jurisdiction of provincial governments, but the federal government has been operating such labs at various places.
 - Functions related to the promotion of agriculture and livestock business and industry have been carried out by both the federal and provincial governments, when most of it should have been by provincial governments.
 - There is a lack of clarity as to which level should have the right to regulate veterinary practitioners, agricultural cooperatives, agricultural insurance business, etc.
 - The erstwhile District Agriculture Offices were dissolved and their office property, human resources, and funds were allocated to the local governments within

the district. But, provincial governments have created their own Agriculture Knowledge Centers, Livestock and Veterinary Hospitals, and Offices at the district levels. The federal government has also retained several agricultural farms (citing their roles in research and development) when most of them should have been transferred to provincial and local governments. Veterinary hospitals kept in the district levels should have been transferred to the local levels.

The authority of the federal and provincial governments on alternative energy should be limited to standardization, capacity building, and technology transfer to support local governments.

- There are considerable overlaps in the programs, projects, and activities of provincial and local governments in the agriculture and livestock sector. Provincial governments have been involved in small programs and projects in the sector that should have been managed by local governments.

Physical Infrastructure Development

The allocation of functions across the three levels of government is relatively clearer in the physical infrastructure development sector, though there are common responsibilities in this sector under the concurrent lists. Constitutionally, all three levels have jurisdiction over services related to electricity, water supply, and irrigation, while the federal and provincial governments share power over physical infrastructure related to water supply and sanitation.

- **Road:** The Constitution envisages the classification of roads in three categories: federal, provincial, and local, but this is yet to be implemented. The acquisition of land and compensation, clearance of forests, fixation of road borders, and classification of roads rests with the Government of Nepal under the *Public Roads Act, 2031 (1974)*. However, the *Local Government Operation Act* gives local governments the authority to determine the right of way, clearing construction in the road limit, and compensation related to land acquisition for roads.
- **Housing and Urban Development:** The responsibility for the development, operation, regulation, and maintenance of urban infrastructure, housing and buildings rests with local governments as per the *Local Government Operation Act*, whereas the *Allocation of Business Rules* of provinces has retained similar functions with provincial governments. The *Town Development Act, 2045 (1988)* provides for the Government of Nepal to create Town Development Committees to oversee functions, whereas the Constitution gives authority related to town development and settlement development to local governments, as long as they follow the national building codes and relevant standards.
- **Irrigation:** The constitutional annexes assign the responsibility concerning federal, provincial, and local level irrigation to their respective governmental levels, but there is no clear-cut classification as to what constitutes a federal, provincial, or local level irrigation function.
- **Hydropower and Energy:** The authority for licensing the survey, production, transmission, and distribution of hydropower and energy to the private sector rests with the Government of Nepal as per the *Electricity Act, 2049 (1992)*. This restricts the functional competency of provincial and local governments to license and operate hydro projects which fall under their mandates.

The Constitution provides local governments exclusive powers on alternative energy. The authority of the federal and provincial governments on alternative energy should be limited to standardization, capacity building, and technology transfer to support local governments.

- **Drinking Water and Sanitation:** Drinking water has been kept in the exclusive list of functions of local governments and in the concurrent list of the three levels of government. The unbundling and the allocation of business rules provide similar authority over drinking water and sanitation projects to federal, provincial, and local governments. The absence of a clear classification on what constitutes a federal, provincial, or local level drinking water and sanitation projects can lead to overlaps in the execution of projects. That is among the reasons why all three levels have been involved in executing similar projects related to drinking water and sanitation. The *Water Tariff Fixation Commission Act, 2063 (2006)*, the *Drinking Water Board Act, 2063 (2006)* and the *Nepal Drinking Water Corporation Act, 2046 (1989)* authorizes the Government of Nepal on the creation of boards and corporations to regulate the execution and operation of drinking water-related projects and the fixation of service fees. A similar authority has been entrusted to the provincial and local governments by the respective allocation of business rules and the *Local Government Operation Act*.
- **Other Local Development Programs:** Under the *Private Finance in Build and Operate of Infrastructures Act, 2063 (2006)*, the Government of Nepal has authority in infrastructure development. However, the provincial and local governments have been entrusted with similar responsibilities in other policy instruments. The *Local Infrastructure Development Partnership Program (Operating Procedure) Regulations, 2075 (2018)* regarding the selection and

implementation of projects in the electoral constituencies of members of the federal parliament encroaches upon the authority of local governments to carry forward local development activities under their jurisdiction. Similar practices by provincial assembly members spending on small projects in their constituencies overlap with development work being executed by local governments with greater transparency, accountability, and effectiveness.

Inconsistencies related to Fundamental Rights

- The *Right to Employment Act, 2075 (2018)*, spreads the responsibility of setting up employment service centers and the implementation of unemployment support programs and their monitoring to all three levels of government, confusing the tasks to be undertaken by each level.
- The *Right to Safe Motherhood and Reproductive Health Act, 2075 (2018)*, authorizes the federal government to allocate grants to provincial and local governments and provincial governments to allocate similar grants to local governments. Such provisions confuse the responsibilities of each level, and can reduce the accountability of such functions.
- Under the *Consumer Rights Act, 2075 (2018)*, the concerned department of the federal government can delegate authority to monitor the market and supply mechanisms to officials in the provincial and local government, even though local governments have exclusive jurisdiction in matters related to local market management according to the *Local Government Operation Act*.
- In the *Act Relating to Children, 2075 (2018)* the responsibility of establishing and operating children's homes and operating a Children's Welfare Fund overlap between the federal, provincial and local governments. This can create confusion as to what each level should do, diffusing accountability.

There is difficulty in establishing indicators and compiling data for inter-governmental fiscal transfers, especially at the provincial and local levels.

- The *Act Related to Food and Food Sovereignty, 2075 (2018)* mandates the federal, provincial and local governments to assess food availability, control hunger and famines, develop data on food security and hunger, adopt an action plan to tackle hunger and malnutrition, identify people at risk of hunger and famines, and create stockpiles of food to avoid food-related crises, as well as provide free-of-cost food assistance to targeted vulnerable families. Such shared responsibility diffuses the accountability of the respective levels.
- Under federal laws adopted to execute fundamental rights, the provincial and local governments have been provided with functions that are supposed to be executed with the support of the federal government. But, provincial and local governments neither have clear mandated functions nor the capacity to execute fundamental rights obligations.

Inconsistencies and Duplication concerning Revenue Assignment

- House and land registration fees, vehicle tax, advertisement tax, and entertainment tax appear in the exclusive powers of the provincial as well as that of local governments.
- While the federal government has exclusive power over income tax, provincial governments have exclusive power over agricultural income tax and local governments have exclusive powers on house rental tax and business tax, which are all variants of income tax.

- The power and responsibility related to tourism fees, service fees, and fines and punishment have been listed in the exclusive powers of all three levels and in the concurrent list as well.
- The revenue power of provinces related to agriculture income tax and “other” tax and non-tax revenue remain undefined and not applied.
- Federal laws have imposed limits on the exclusive revenue power of provincial and local governments.
- There is difficulty in establishing indicators and compiling data for inter-governmental fiscal transfers, especially at the provincial and local levels.
- There is marked duplication in the allocation of resources, budget, programs, and projects among all the three levels, with the federal and provincial governments allocating budget to programs and projects that fall under the jurisdiction of local governments.
- Review prevailing policies and laws to clarify inconsistencies in the assignment of functions and to remove hurdles in their implementation.
- Re-adjust the assignment of functions across the levels of government in compliance with their constitutional competencies through federal laws.
- Expedite the adoption of federal laws that have to do with the assignment of functions.
- Introduce an institutional mechanism to oversee inconsistencies in federal, provincial and local laws on assigned functions.
- Transfer remaining responsibilities and institutions to their respective provincial and local governments.
- Develop and update objective indicators for inter-governmental transfers and revenue allocation based on data and information.
- Introduce some incentives in inter-governmental transfers for rewarding the good performance of provincial and local governments.

Institutional Challenges

- Delays in the transfer of functions and government institutions, property, projects, and budget in assigned functions.
- A mismatch between assigned functions and respective capacities.
- Existence of parallel institutions in the federal and provincial governments, especially in districts.
- Re-centralization of devolved offices.
- Delays in the institutional arrangement for executing some functions (such as the provincial police) at the provincial level.
- Strengthen regular consultation with provincial and local governments regarding the principles, process, and indicators for inter-governmental fiscal transfers.
- Develop guidelines and monitoring mechanism for levying and collecting local level taxes.
- Adopt a bottom-up planning and budgeting approach to avoid duplication and redundancy.
- Update the guidelines for classification of development programs and projects into the federal, provincial and local levels.
- Remove hurdles for recruiting human resources at the provincial and local levels, including through an early enactment of necessary federal legislation.
- Introduce and implement a capacity development action plan at the provincial and local levels.

WAY FORWARD

- Develop a common understanding on the exclusive and concurrent powers and functions of the three levels of government through the institutionalized practice of regular consultations.

- Clarify the provisions related to the responsibility of the three levels of government concerning fundamental rights.
- Drawing lessons from the COVID-19 crisis, review the respective roles of the three levels of government during pandemics and reallocate functions and responsibilities to each level with predetermined standard operating procedures applicable in such situations.

CONCLUSION

Nepal has taken significant strides in implementing a federal system of government after the promulgation of the Constitution in 2015. There remain significant challenges and gaps towards a smoother implementation of the federal system of governance, emanating from inconsistency and duplication in the assignment of functions, the slow process of federal legislation, delays in the adjustment and recruitment of the civil servants in provincial and local governments, hurdles in transferring the functions, institutions and relevant programs and projects to the respective levels, and a weak system of inter-governmental coordination

and dispute resolution when they arise. There are significant capacity gaps, especially at provincial and local levels for them to carry out the functions entrusted to them by the spirit and provisions of the Constitution.

There is a need to review the current practice of assigning functions, and amending or enacting legislation to enable the respective levels of government execute entrusted functions with more clarity and consistency. The existing gaps and inconsistencies in the assignment of functions across the three levels of government should be rectified primarily through federal legislation and a review of the existing laws and bills that are tabled at the federal parliament. The adoption of the remaining sectoral laws should get priority, ensuring an enhanced level of coordination and consultation across the levels of government on these policies and law-making processes. The system of taxation, budgeting, inter-governmental fiscal transfers, inter-governmental relations, and the transfer of institutional and human resources should also be reviewed to create more clarity, consistency, and accountability between the three levels so that they can execute their entrusted functions responsibly and effectively.

