

ASSIGNMENT OF FUNCTIONS ACROSS LEVELS OF GOVERNMENT IN NEPAL

Summary Report

स्थानीय सरकार सबलीकरण



The Asia Foundation

The Australian Government - The Asia Foundation Partnership in Nepal

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This publication is supported by the Australian Government's Department of Foreign Affairs and Trade (DFAT) – The Asia Foundation partnership on Subnational Governance. The opinions expressed here are those of the authors. They do not reflect the views of the partnership or the organizations.

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First Edition

August 2020

Published Copies

500

Design & Print:

Creative Press Pvt. Ltd.

Hadigaun, Kathmandu

PREFACE

The Constitution of Nepal (2015) has allocated exclusive and concurrent lists of functions and powers to the federal, provincial and local governments. Attempts are being made to further define and elaborate the constitutional jurisdictions through federal, provincial and local laws and executive decisions. Despite these efforts, there still exists huge ambiguities in the exercise of jurisdictions between and among the three levels of government. Each level of government is working in an environment with overlapping mandates, resources and efforts, causing confusion and inefficiency in service delivery to the constituencies. The urgent attention of all three levels of government is required to harmonize contradictory laws, policies, institutions, and working procedures to clearly establish their respective jurisdictions and use of resources. In this context, this study identifies some ambiguities and overlapping mandates between the levels of government in a few key sectors.

I express my gratitude to Krishna Prasad Sapkota, Rudra Sapkota and Nawaraj Koirala, who prepared a detailed study report by reviewing necessary reference materials, conducting field visits and consulting stakeholders. Likewise, I thank Madhu Raman Acharya, Parshuram Upadhyay and Amol Acharya for preparing this summary report on the basis of the detailed study report.

I acknowledge Mr. Balananda Poudel, Chairperson of the National Natural Resource and Fiscal Commission for his continuous guidance and feedback on the study. Similarly, I express my gratitude to Dr. Somlal Subedi, former Chief Secretary to the Government of Nepal, Dr. Shyamkrishna Bhurtel, a Member of Local Level Restructuring Commission, and Dr. Damodar Adhikari for their technical advice and input throughout the study. I also express my sincere appreciation to representatives of the Government of Nepal, province governments, local governments, donor agencies, and other subject experts for their valuable suggestions and validation of the findings of the study.

This is a preliminary exercise and I hope that it will inspire further study and analysis to build a shared understanding on the complexities of the exclusive and concurrent constitutional powers, leading to evidence-based inter-governmental negotiations and coordination.

Bishnu Adhikari
Governance Director

ABBREVIATIONS

DCC	District Coordination Committee
DEDCU	District Education Development and Coordination Unit
FCNA	Federalism Capacity Needs Assessment
FY	Fiscal Year
GoN	Government of Nepal
HPI	Human Poverty Index
IPC	Inter-Provincial Council
LGOA	Local Government Operation Act
MDPI	Multi-Dimensional Poverty Index
NNRFC	National Natural Resources and Fiscal Commission
O&M	Organization and Management
PPSC	Provincial Public Service Commission
VAT	Value Added Tax

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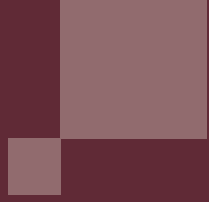
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Chapter 1

BACKGROUND AND CONTEXT

1

Background and context

The Constitution of Nepal has adopted a three tier-system of federalism in which the functions and powers of the federal, provincial, and local levels are allocated in exclusive and concurrent lists in Annexes 5-9. These functions were further unbundled by the Government of Nepal (GoN) through an executive decision. The *Allocation of Business Rules* of the federal and provincial governments details ministry-wise functions at their respective levels. The functions and powers of local governments are enacted through the *Local Government Operation Act, 2074* (LGOA, 2017). The arrangements for inter-governmental fiscal transfers are laid out in the *Inter-Governmental Fiscal Arrangement Act, 2074* (2017) as well as the *National Natural Resources and Fiscal Commission Act, 2074* (2017). Federal legislations and amendments of various sectoral laws further specify the functions and responsibilities of the federal, provincial, and local governments in the changed constitutional context. Functions of several laws related to the implementation of fundamental rights specified in the Constitution have been allocated to the three levels of government.

Despite efforts to implement these provisions, there are inconsistencies, overlaps, gaps, lacunae, and challenges in executing the functions and responsibilities entrusted to the different levels of

government. This summary report¹ attempts to identify these issues in the allocation of functions and expenditures across the three-levels of government,² and focuses on key sectors including education, health, agriculture and livestock, and physical infrastructure development.



Chapter 2

CONSTITUTIONAL AND LEGAL BASIS FOR THE ASSIGNMENT OF FUNCTIONS

2

Constitutional and legal basis for the assignment of functions

2.1. The constitutional basis for the assignment of functions

The Constitution of Nepal envisions a federal system consisting of three levels of government – federal, provincial, and local. It makes provisions for exclusive and concurrent powers and functions for the three levels in its annexes. The exclusive powers of the federal, provincial, and local levels are specified in Annex- 5, Annex-6, and Annex-8 respectively. The Constitution also specifies the concurrent powers shared by the federal and provincial levels in Annex 7 and those shared among the federal, provincial, and local levels in Annex-9. The federal, provincial, and local levels have 35, 21, and 22 exclusive powers respectively. The federal and provincial levels share 25 concurrent powers, while the federal, provincial, and local levels share 15 concurrent powers as per the respective constitutional annexes.

Apart from the list of functions specified in the annexes, various articles in the Constitution provide for the functions and powers of the three levels. The federal level is entrusted with residual matters not listed in the powers of any level. In Article 59 (1), the Constitution clearly mentions that the federal, provincial, and local levels shall make laws, adopt an annual budget and

formulate and implement policies and plans on matters related to their respective competencies and fiscal powers. Provincial and local laws and policies, to exercise the concurrent powers, must be coherent with federal laws, policies, and standards as per Article 59 (2) of the Constitution.

2.2. Unbundling of functions across levels of government

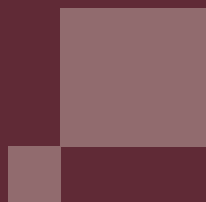
On 31 January 2017, the GoN approved the unbundling of functions scheduled in the Constitution.³ Based on the unbundling framework approved by the GoN, the Business Allocation Rules assigns the roles and responsibilities of the federal and provincial ministries at the respective levels. The LGOA legally endorses the unbundled functions of local governments. Based on these legal instruments, the federal level has been assigned 606 functions, while the province and local government have been assigned 267 and 302 functions, respectively. Except for defense and foreign affairs, most other functions are spread over the federal, provincial, and local levels. Most of the unbundled functions assigned to the federal level are in areas of internal affairs, economic affairs, industry, commerce, and supplies, etc. The provincial level has a higher number of functions in internal affairs, forest and environment, health and population, industry, commerce and supplies, etc. The local level has a greater number of functions in agriculture, health, education, urban development, forests, and the environment.

2.3. Allocation of functions through sectoral federal laws

Since the adoption of the Constitution in 2015, several sectoral laws have either been enacted or amended to align them with the constitutional mandates of the federal, provincial and local governments and to implement provisions on fundamental rights enshrined in the Constitution. Federal laws have been adopted in the sectors of health services, forests, environment protection, industrial enterprises, land utilization, etc. Laws regarding the implementation of fundamental rights have also been introduced, including those related to the right to employment, right to food, right to housing, right to safe motherhood and reproductive health, compulsory and free education, social security, and rights of children, etc. These laws allow for federal agencies to delegate some of their entrusted tasks and responsibilities to the provincial and local levels. Thus, the tasks of the provincial and local levels have significantly increased. Different sectoral bills concerning law and order, drinking water and sanitation, animal health, information technology, federal civil service, and relations among the federal, provincial, and local governments have been tabled in the federal parliament to re-allocate functions and responsibilities across the three levels of government. Proposals in these bills also contain provisions that might affect the functions and responsibilities of the three levels. With these additions, as well as the laws adopted by the provincial and local levels, the responsibilities of the three levels of government are likely to evolve in a significantly different manner as compared to how they currently exist.

2.4. Allocation of functions in accordance to provincial and local laws

As per their constitutionally entrusted powers, provincial and local governments have adopted many laws related to their exclusive jurisdictions. While most of these laws are based on the template or model framework provided by the federal government or were adopted as per the guidelines or norms established under federal laws, provincial and local level laws have also created many responsibilities and functions at their respective levels, sometimes overlapping and duplicating the functions and responsibilities of other levels. Provincial and local governments have also created several additional functions and responsibilities that arise out of their policies and programs and other decisions based on their respective laws.



Chapter 3

PRINCIPLES APPLIED IN THE ASSIGNMENT OF FUNCTIONS

3

Principles applied in the assignment of functions

Although there are no universal principles and templates that can be applied to the assignment of functions across the three levels of government, many federal countries around the world apply the principle of subsidiarity, economies of scale, finance and functionaries should follow the functions, principle of equity and inclusion, principle of accountability, and principle of cooperation, coexistence, and coordination. These principles do not offer one-size-fits-all solutions and have to be improvised to suit Nepal's constitutional requirements.

Article 232 (1) of the Constitution of Nepal states that the relations between the federal, provincial, and local levels shall be based on the principles of cooperation, co-existence, and coordination. Nepal has sought to apply most of the above-mentioned principles when allocating functions to their respective levels in the constitutional annexes, and when unbundling the constitutional mandates between the three levels of government. Though not stated explicitly, a few criteria seem to have been applied in the allocation of functions across the federal, provincial, and local governments in Nepal (Table 1).

Table 1: Criteria for the allocation of functions

No.	Level	Criteria for allocation of functions
1	Federal level	Tasks that need national integrity, currency and monetary affairs, national security and defense, regulation, setting of standards, external relations, inter-provincial nature of work, including projects and infrastructure, research and development, etc.
2	Provincial level	Tasks related to the development of infrastructure, execution of development projects, regulations of provincial level functions, coordination among the local levels within the province, and program or projects encompassing more than one municipality and district.
3	Local level	Tasks related to the delivery of services; execution of local development works and regulation of local services and activities

Source: Developed based on the *Unbundling of the Functions of the Federal, Province and Local Levels as per the constitutional annexes* (in Nepali), GoN (2017)

Principles on the Assignment of Functions across Levels of Governments

Principle of subsidiarity: According to the principle of subsidiarity, the functions of the state should be allocated to the level closest to the people which can perform it in the most efficient way. In this sense, tasks related to the delivery and regulation of services and the execution of development activities that can be performed by the local and provincial levels

should be kept at those levels, leaving more complicated tasks like national defense, finance, foreign affairs and the execution of inter-provincial and big projects to the federal level.

Economies of scale: The principle of economies of scale demands that functions should be assigned to a level of government at which it is most cost effective and efficient.

Finance and functionaries should follow the functions: This is a widely known principle with regard to the allocation of functions to different levels under a federal system. Also called the “3F” principle (Functions, Finance, and Functionaries), it requires that expenditures should be commensurate to allocated functions, and necessary human resources should be allocated according to their respective functions.

Principle of equity and inclusion: This principle requires that the assignment of functions should be carried out to ensure the equity and inclusion of marginalized geographical areas and groups of people into the state mechanism, one of the ostensible reasons for adopting a federal system of government. This is also necessary to create balance among the various provinces and local units, which have different capacities and potentials.

Principle of accountability: When allocating functions, ensuring accountability in executing any function should also be considered. In other words, functions should be assigned to the level

in which the accountability and capacity in executing the respective function can be best ensured.

Principles of cooperation, coexistence, and coordination:

The different levels within a federal system are required to coexist in a cooperative and coordinated fashion. The principles of cooperation, coexistence, and coordination among the different levels of government are built into the constitutional and legal arrangements in how federalism is defined in most countries.



Chapter 4

OVERLAPS AND INCONSISTENCIES IN THE ALLOCATION OF FUNCTIONS

4

Overlaps and inconsistencies in the allocation of functions

There are many challenges and inconsistencies in the allocation of functions through the mechanism of constitutional annexes, the unbundling of the functions approved by the government, and the pre-existing and new sectoral laws adopted by the federal parliament.

4.1. The overlap and duplication in the exclusive powers of the three levels of government

There are considerable overlaps and duplications in the exclusive powers of the three levels of government in the Constitution. For example, house and land registration tax, vehicle tax, entertainment tax, and advertisement tax appear both in the exclusive list of the provincial level (Annex 6) as well as that of the local level (Annex 8). “Law and order”, “health services”, “radio”, “television”, and “environment management” appear in the exclusive functions of the federal level (Annex- 5) as well as that of the provincial level (Annex 6). Similarly, functions related to “drinking water”, “cooperatives”, “FM”, “language, culture and fine arts” etc., appear in the exclusive lists of both the provinces (Annex 6) and that of the local level (Annex 8). Some functions such as “tourism fees, service fees, and fines” appear in the exclusive power of all three

levels. Such duplications in exclusive functions across the levels of government are listed in Table 2.

Table 2: Constitutional mandates and duplication in the exclusive powers among the three levels

S.N.	Subjects appearing in the exclusive power of both the federal and provincial levels	Subjects appearing in the exclusive power of both the provincial and local levels	Subjects appearing in the exclusive power of all the three levels
1	Law and order	House and land registration tax, vehicle tax, entertainment tax, advertisement tax,	Tourism fee and royalty, service fees, fines and punishment
2	Health services	Cooperatives	
3	Radio Television	FM radio	
4	Environment management	Languages, culture and fine arts	

Source: Functional Assignment across the three levels in federal Nepal: An abridged edition (in Nepali), The Asia Foundation, September 2019

4.2. Most of the exclusive powers of provincial and local governments are conditional to federal laws

There are only a few areas that are exclusively within the jurisdiction of one government. For example, the provincial government has exclusive powers related to agricultural income tax, provincial universities, provincial highways, provincial employee services, etc. But, these functions can only be executed following the

respective federal laws required to categorize the universities, highways, etc., as federal or provincial. Likewise, local governments have exclusive powers related to property tax, house rent tax, land revenue, business tax, basic and high school education, basic health services and sanitation, local and agricultural roads, alternative energy, local statistics, local employee services, local development works, etc. However, these powers are related to the powers of the federal and provincial governments through the many norms and standards on these matters that are defined by federal and provincial laws.

4.3. Inconsistencies between the exclusive and concurrent powers between the three levels of government

Some of the exclusive powers of the provincial and local government have also found space in the concurrent list of functions listed in Annex 7 and Annex 9 of the Constitution. For example, “health services”, “agriculture”, “cooperatives”, “utilization of water resources”, “environment”, “mines”, etc., appear in the exclusive list of provinces (Annex 6) as well as in the concurrent list of functions among the three levels of government (Annex 9). Similarly, functions related to “agriculture”, “environment”, “bio-diversity”, “wildlife”, “disaster management”, “electricity, irrigation, and drinking water”, “cooperatives”, and “mines” appear simultaneously in the exclusive list of local governments (Annex 8) and the concurrent power of all three levels of government (Annex 9). Such duplications and inconsistencies are visible across multiple sectors (Table 3).

Table 3: Duplication among the exclusive and concurrent powers of the three levels of government

No.	Subjects appearing in the exclusive power of the federal level as well as in the concurrent lists	Subjects appearing in the exclusive power of the provincial as well as in the concurrent lists	Subjects appearing in the exclusive power of the local level as well as in the concurrent lists
1	Health services	Health services	Health services
2		Agriculture	Agriculture
3	Social security and poverty alleviation		
4	Environment	Environment	Environment
5			Biodiversity
6		Disaster Management	Disaster Management
7	Wildlife		Wildlife
8		Utilization of water resources	
9	Tourism fees, service fees, fines and punishment	Tourism fees, fines, and punishment	Tourism fees, service fees, fines and punishment
10	Mines and minerals	Mines and minerals	Mines and minerals
11		Cooperatives	Cooperatives

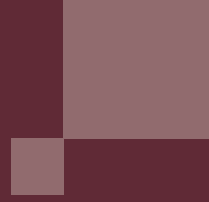
Source: Functional Assignment across the three levels in federal Nepal: An abridged edition (in Nepali), The Asia Foundation, September 2019

Because the concurrent powers between the federal and provincial governments (Annex 7) and between the federal, provincial, and local levels (Annex 9) consist of 40 subjects listed in the annexes, most of the powers of the provincial and local government are relevant to the federal government as well. The concurrent powers between the federal and provincial levels (Annex 7) consist of such broad subjects as law and order, prison and detention management, acquisition of property, supply and price control of essential goods and services, cooperatives, drugs and pesticides, family planning and population management, poverty alleviation, social security, employment and unemployment aid, industrialization, and settlement of industrial disputes, mines, physical infrastructures, waterways, environment protection, biological diversity, communication, disaster management, tourism, water supply and sanitation, research and development, etc. They have broad implications on the exclusive powers of the province.

The concurrent powers of the federal, provincial, and local levels (Annex 9) include an even broader range of subjects such as education, health, agriculture, cooperatives, electricity, water supply, irrigation, forests, wildlife, birds, environment, ecology, biodiversity, mines and minerals, disaster management, social security, poverty alleviation, royalty from natural resources, etc. This leaves little exclusive power to the provincial and local governments and creates a wide-range of overlaps in the powers and responsibilities between the three levels of government.

In the absence of clearly defined principles on the allocation of functions and power-sharing across the levels of government, a certain degree of confusion and overlap has existed since the constitution drafting process. Some efforts were made to clarify

such duplication through the unbundling of the functions. But, the unbundling of the scheduled powers was carried out by the federal government before elected representatives in the provincial and local government assumed their offices. Hence, they were not consulted, leaving them out without a substantial role in negotiating and defining this process of assigning functions.



Chapter 5

SECTOR-WISE OVERLAP AND DUPLICATION OF FUNCTIONS

5

Sector-wise overlap and duplication of functions

Though major trends, challenges, and issues in the assignment of functions are somewhat similar across the board, there are discernible gaps, challenges, and institutional bottlenecks in key sectors including education, health, agriculture and livestock, social development, and physical infrastructure development.

5.1. Education

Education appears in the exclusive as well as the concurrent list of functions of the federal, provincial, and local governments (Table 4).

Table 4: Constitutional mandates and functional allocation in the education sector

Exclusive to the federal level	Exclusive to the provincial level	Exclusive to the local level	Concurrent powers between the federal and provincial level	Concurrent powers between all three levels
Central universities, central level academies, regulation and standards of universities, central libraries	Provincial level universities, higher education, libraries, museums	Basic and secondary education	Scientific research, science, and technology	Education and sports

Source: The Constitution of Nepal, Annexes 5-9

The *Government of Nepal Business Allocation Rules, 2074 (2017)*, the *Provincial Government Business Allocation Rules, 2074 (2017)*, and the *Local Government Operation Act, 2074 (2017)* outline detailed provisions on the functions of the three levels of government in the education sector (Table 5).

Table 5: Other legal mandates and the distribution of functions and responsibilities in the education sector

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operation Act, 2017</i>
1	Policy, law, standards, and regulation related to education and central universities	Policy, law, standards, implementation, and regulation of the province level universities and higher education	Policy, law, standards, planning, implementation, monitoring, evaluation and regulation of child, basic, adult, informal, alternative, continuous, and community learning and special education
2	Policy, law, and management of central libraries	Policy, law, standards, implementation, and regulation of the province level libraries, museums, and archives	Operation and management of local level libraries and reading centers

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operation Act, 2017</i>
3	National policy, curriculum framework, standards for qualification and skills tests of the technical and vocational training Technical Education and Vocational Training Council	Policy, law, standardization, implementation and regulation of the provincial education, technical and vocational training and development, production and distribution of curriculum and textbooks	Planning, operations, approval, monitoring, evaluation, and regulation of technical education and vocational training Preservation, promotion, and standardization of the local level educational knowledge, skills, and technology
4	Policy and standards related to the conditions of service, qualification, and equivalence of the school level teachers	Standardization and regulation of the conditions of service, qualification, and management of the school level teachers in the province level	
5	Demand projection of human resources and national education and human resources development planning,	Demand projection and development and implementation of educational planning of human resources at the province level	

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operation Act, 2017</i>
6	Approval, delegation, and regulation of the educational institutions operating with the approval of the diplomatic missions and foreign educational institutions		Mapping, approval, adjustment, and regulation of schools
7	National academic research and educational statistics management	Academic research and educational statistics management in the province level	
8	Coordination of education-related issues of the provincial and local level		Coordination and regulation of educational programs of up to secondary level

Source: Functional assignment across the three levels in federal Nepal: An abridged edition (in Nepali). The Asia Foundation, September 2019

Similarly, federal acts like the *Education Act, 2028* (1971 with 2018 amendment), *Education and Vocational Training Council Act, 2045* (1989) and the *Compulsory and Free Education Act, 2075* (2018) have created responsibilities related to education across the three levels of government.

A comparative analysis of functions across the three levels of government reveals some overlap and duplication in the regulation of schools, operation of technical and vocational training, and regulation and management of school teachers. For example, secondary level education is the exclusive jurisdiction of the local government, but the *Compulsory and Free Education Act, 2075* (2018) allows federal and provincial governments to also run schools at the secondary level as model schools, mobile schools, and specialized schools. It also creates overlapping responsibilities between the federal and local government on traditional and technical education, the supply of educational materials, scholarships for disadvantaged groups, primary health checks in the schools, and teaching in the mother tongues. There is a certain degree of contradiction in the education sector among the various instruments of law related to this sector. For example, local governments which have exclusive jurisdiction over basic and secondary education have been given no role whatsoever concerning the management of school teachers.

The Constitution stipulates technical and vocational education up to the secondary level be carried out by local governments and that related to higher education be carried out at the province level. However, the *Technical Education and Vocational Training Council Act, 2045* (1989), which has not been amended yet, states that technical education and vocational training should be conducted by the GoN.

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 a certain confusion as to what type of universities the federal and provincial level can establish and which colleges under which universities can be devolved into provincial universities. Similar overlaps exist in the operation of libraries, museums, archives, etc.

There is also an institutional dilemma in the education sector at the federal, provincial, and local levels. For example, the erstwhile District Education Offices were dissolved as most of their responsibilities were supposed to have been transferred to local governments. As a result, some employees and sections of the District Education Offices were transferred to the local government. However, the federal government retained its “District Education Development and Coordination Units” (DEDCU), while some provinces have started to create their own education offices at the district levels. The DEDCU has several overlapping functions and responsibilities with local governments, especially in relation to secondary education. There has been a delay in the transfer of land and other assets of schools from the federal government to the local government. Provincial governments have been conducting programs related to education like the ‘one school, one nurse’ program which should be part of the responsibilities of local governments.

5.2. Health

The Constitution places “Health” among the concurrent functions of the three levels of government. While issues related to health policy, health services, health standards, national and specialized hospitals, disease control and control of communicable disease, etc., are placed under the functions of the federal government, provincial governments are assigned functions related to “health services”, while local governments are entrusted with the responsibility of “basic health and sanitation” (Table 6).

Table 6: Constitutional mandates and functional allocation in the health sector

Exclusive to the federal level	Exclusive to the provincial level	Exclusive to the local level	Concurrent powers between the federal and provincial level	Concurrent powers between all three levels
Health policy, health services, health standards and monitoring, national and specialized hospitals, traditional health practices, and communicable disease control	Health services	Basic health and sanitation	Medicine, Ayurveda medicine, Aamchi, and other medical professions, drugs, family planning	Health

Source: The Constitution of Nepal, Annexes 5-9

Regardless of constitutional assignments, there is overlap and duplication in the unbundling of functions and the allocation of businesses between the federal, provincial and local governments (Table 7). For example, the responsibility of registration, licensing, and regulation of nursing homes and other health institutions is allocated to all three levels of government. A similar overlap exists in responsibilities related to preventive, curative, promotive, and palliative care, and with traditional medicinal practices like Ayurveda, homeopathy, natural medicine, etc. Likewise, responsibilities for the regulation and management of health insurance schemes is also spread across all three levels. Duplication and overlap also exists in the procurement of medicine and medical supplies, and on responsibilities in disease control, immunization, nutrition, and family planning.

Table 7: Other legal mandates and allocation of the functions and responsibilities in the health sector

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
1	Policy, law, and standards related to health and nutrition	Provincial policy, law, standards and planning, implementation, and regulation related to health services and nutrition	Policy, law, standards, planning, implementation and regulation of basic health and sanitation Operation and promotion of basic health, reproductive health, and nutrition-related services
2	Establishment, operation, and regulation of national and central hospitals and health academies Policy, law, standards, and regulation related to specialized service hospitals Policy, law standards and regulation related to the establishment and operation of health institutions including nursing homes	Registration, operation, licensing and regulation of nursing homes, diagnostic centers, treatment centers, and other health institutions and laboratories according to national standards	Establishment and operation of hospitals and other health institutions Registration, operation, licensing and regulation of general hospitals, nursing home, diagnostic centers, and other health institutions and clinics Public health surveillance at the local level

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
3	Policy, law, and standards related to the promotional, curative, rehabilitative, preventive, professional and business-related health institutions at the national level	Management of necessary promotional, curative, rehabilitative and preventive health services at the provincial level	Operation of preventive, promotional, curative, rehabilitative and palliative health services at the local level Promotion of public health services like healthy lifestyles, physical exercise, yoga, panchikarma like health services
4	Policy, law, and standards related to health services in traditional medicine like Ayurvedic, Yunani, Aamchi, Homeopathic, natural medicine Medicinal research on herbals, animals and minerals	Standardization, implementation, monitoring and regulation related to customary health services in traditional medicine like Ayurvedic, Yunani, Aamchi, Homeopathic, natural medicine at the provincial level	Management of traditional health services like Ayurvedic, Yunani, Aamchi, Homeopathic, natural medicine, etc.

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
5	Policy and standards related to communicable and non-communicable diseases and their prevention and controls	Prevention and control of communicable and non-communicable diseases	Disease prevention and control
6	Health insurance and social health security	Management and regulation of social health security schemes like health insurance according to national standards	Management of social security schemes like health insurance
7	Supply and management of most-essential health supplies including that of immunization, and family planning	Immunization and family planning	Licensing, regulation, and monitoring of the services related to family planning, maternal and child welfare services Mitigation, control and prevention and management of malnutrition of women and children
8	Policy, law, standards, and regulation related to procurement and supply of medicine	Procurement and supply management of essential and sensitive medicine and other health supplies	Procurement, storing and distribution of medicine and health equipment at the local level

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
9	Standards of basic health services and sector National policy, law and standards related to population, migration family planning, maternal and child welfare, reproduction, etc.	Physical infrastructure development and management related to health services according to national standards	Physical infrastructure development and management related to health services Development of local level health-related objectives and standards according to federal and provincial standards
10	Policy, law, standards, and regulation related to the fees on health services and goods	Production, storing, maximum retail price fixation, disposal, standardization of medicine-related health technology and supplies according to the national standards and registration, licensing and regulation of industry producing such materials	Fixing of minimum price and regulation of medicine and other medical products at the local level

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
11	Policy, law, and standards related to academic, business-oriented and professional health institutions and associations	Registration, licensing and regulation of health services related to academic, business-oriented and professional institutions and associations at the provincial level	

Source: Functional Assignment across the three levels in federal Nepal: An abridged edition (in Nepali), The Asia Foundation, September 2019

Some of the responsibilities allocated to local governments by the LGOA such as the fixing of maximum prices, and regulation of medicine and medical supplies, do not match their technical capability and do not adhere to the principle of economies of scale. Similarly, local governments do not have the capacity to regulate the licensing and standardization of health-related services.

The provisions in the *Drugs Act 2035* (1978, including the 2000 amendment) related to the procurement of drugs and medical supplies and the *Tobacco Products (Control and Regulation) Act, 2068* (2011) contradict provisions in the LGOA that gives local governments authority on such matters.

Need for functional clarity: the COVID-19 lesson

Although this study was conducted before the COVID-19 crisis, a lack of clarity on the responsibilities of the federal, provincial, and local governments is evident in the discharging of functions in response to the pandemic. The three levels of government have overlapping jurisdictions over health services, disaster management, the supply of medicines and medical equipments, and overseeing market mechanisms for essential supplies. Despite the constitutional provisions giving the federal government exclusive powers regarding communicable disease control, it became evident that the provincial and local governments had significant roles to play during the COVID-19 pandemic. This included the management of quarantines and isolation centers, and providing necessary health services and relief to people affected by the lockdown during the pandemic.

The province and local governments are required to play a substantial role in prevention, control and relief work in response to such epidemics including in financing, regulation and service provisioning, data and information management, implementation of preventive measures ranging from awareness building to health and hygiene education, institutional arrangements such as the establishment and operation of response funds, operation of the crisis management team, relief distribution, primary health care, and hospital management, etc. These roles are not possible through only one level of government, and requires broader collaboration and cooperation between the three levels.

Therefore, it will be worthwhile to review the roles of the three levels of government during the pandemic and reallocate functions and responsibilities to each level clearly with predetermined standard operating procedures applicable to all the levels of government.

5.3. Agriculture and livestock

In the Constitution, the functions of agriculture and livestock are spread over the three levels of government, but a bigger role is given to provincial and local governments in these sectors (Table 8). Agriculture is listed as one of the concurrent powers under all three levels of government, whereas agriculture, livestock development, and veterinary medicine are included in the exclusive as well as the concurrent powers of provincial and local governments.

Table 8: Constitutional mandates and functional allocation of the agriculture and livestock sector

Exclusive to the federal level	Exclusive to the provincial level	Exclusive to the local level	Concurrent powers between the federal and provincial level	Concurrent powers between all three levels
Land-use policies Quarantine	Agriculture and livestock development	Agriculture and animal husbandry, agro-products management, animal health, cooperatives Agricultural extension management and control Agricultural roads	Veterinary medicine, pesticides	Agriculture

Source: The Constitution of Nepal, Schedule 5-9

There is considerable duplication and overlap between the levels of government in the agriculture and livestock sector in the detailed allocation of business (Table 9). Although the Constitution gives little exclusive or direct role to the federal government in agriculture, veterinary and livestock, the detailing of functions in the allocation of business creates several broad functions for the federal government. Functions related to agricultural extension, the regulation and promotion of agricultural businesses and insurance, the regulation of pesticides and fertilizers, veterinarian services, agricultural and animal health labs, etc., have been spread out across all three levels of government. There are similar overlaps between the responsibilities of the provincial and local governments.

Table 9: Other legal mandates and allocation of the functions and responsibilities of the agriculture and livestock sector

No.	Nepal Government Business <i>Allocation Rules, 2017</i>	Provincial Government Business <i>Allocation Rules, 2017</i>	Local Government Operations <i>Act, 2017</i>
1	Policy, law, standards, and regulation related to agriculture, agricultural biodiversity and biotechnology	Provincial policy, law, standards, planning, implementation and regulation related to agriculture, food, and nutrition	Local level policy, law, standards, planning, implementation, monitoring and regulation of agriculture, agricultural production and management
2	Policy, law, standards, and regulation related to the use and management of veterinary medicine, micro-nutrition-related medicine, micro-nutrients, bio-pesticides, and chemical pesticides	Provincial policy, law, standards, regulation, implementation and licensing related to the production, use and management of agricultural and veterinary medicine, pesticides, micro-nutrition related material, and their management	Supply, utilization, and regulation of agricultural seeds, breeds, fertilizers and chemicals, and medicines
3	National policy, law, standards, and management of veterinary health	Provincial policy, law, standards, planning, implementation and regulation related to livestock development and food and nutrition	Local policy, law, standards, planning, implementation, monitoring and regulation of animal husbandry and animal health

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
4	Policy and standards related to livestock insurance	Policy, planning, and implementation related to livestock insurance	Insurance and credit facilitation related to livestock
5	Accreditation of laboratories related to livestock and veterinary services	Management and regulation of animal diseases, diagnostic laboratories, and agricultural labs	Other tasks related to animal husbandry and animal health
6	Regulation, registration, issuance, renewal, and cancellation of licenses of veterinary doctors		Management of animal health services
7	Inter-provincial development, promotion, and coordination of fisheries and livestock-related businesses	Development and promotion of the livestock industry and business	Operation, monitoring, and regulation of animal bazaars, and haat bazaars, their infrastructure development, training, technical extension and services, and farmers capacity development programs

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
8	Policy, law, standards, quality fixation, coordination and regulation of the production, import and use of chemical and biological fertilizers	Supply management and regulation of agricultural fertilizers, seeds, and pesticides	Operation, monitoring, and regulation of agricultural bazaars, their infrastructure, information management, training, technical extension, services and support, agricultural supplies and farmers' capacity development
9	Inter-provincial development, promotion, and coordination of agricultural industrialization, fishery industries and businesses	Agricultural industrialization and development and promotion of agricultural industries and businesses	Development, promotion and marketization of high-value agricultural products
10	Policy and standards related to agricultural insurance	Policy, planning, and implementation related to agricultural insurance	

No.	Nepal Government Business Allocation Rules, 2017	Provincial Government Business Allocation Rules, 2017	Local Government Operations Act, 2017
11		Implementation and promotion of collective and cooperative farming and lease farming	Coordination, management, and regulation of farmers' groups, agricultural cooperatives, and local agriculture-related institutions
12		Agricultural extension, farmer training, and capacity development as well as empowerment	Projection, management, and mobilization of agriculture extension-related human resources Capacity development of farmers, technical services, skills development, and empowerment

Source: Functional Assignment across the three levels in federal Nepal: An abridged edition (in Nepali). The Asia Foundation, September 2019

Overlaps and duplication were created to ensure fundamental rights on food and food sovereignty. The *Act Related to Food and Food Sovereignty, 2075* (2018) allocates similar responsibilities to federal, provincial, and local governments on the assessment of food availability, control of hunger and famines, development of data on food security and hunger, adoption of an action plan to tackle hunger and malnutrition, identification of people at risk of hunger and famines, and creation of stockpiles of food to avoid food-related crises. All three levels have been mandated to provide free-of-cost food assistance to vulnerable families. Such shared responsibility diffuses accountability.

Whereas agricultural and animal health labs other than animal and plant quarantines are under the jurisdiction of provincial government constitutionally, the federal government has been operating such labs at various places. Similarly, functions related to the promotion of agriculture and livestock businesses and industries are being carried out simultaneously at both the federal and provincial levels, when most of this should have been left to the provincial level. There is a lack of clarity as to which level should have the right to regulate veterinary practitioners, agricultural cooperatives, agricultural insurance business, etc.

Like in other sectors, there is a certain degree of institutional overlap and duplication in the agriculture and livestock sector. For example, the erstwhile District Agriculture Offices were supposed to have been dissolved and devolved allocating their office property, human resources, and commensurate funds among the local governments within the district. While such offices were closed, the provincial governments have created their own Agriculture Knowledge Centers and 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 the provincial and local governments. Veterinary hospitals at the district levels should have been transferred to local governments.

There is considerable overlap in the program, projects, and activities of the provincial and local governments in the agriculture and livestock sector. Provincial governments are involved in small programs and projects in the sector that should be managed by local governments.

5.4. Physical infrastructure development

The allocation of functions across the three levels of government is relatively clearer on physical infrastructure development, even though there are common responsibilities under the concurrent lists of the Constitution. The lists envisage the classification of roads into federal, provincial, local (including agricultural and rural) categories along with the allocation of responsibilities to their respective level. Constitutionally, all three levels have jurisdiction over services related to electricity, water supply, and irrigation, while the federal and provincial levels share power over physical infrastructure related to water supply and sanitation (Table 10).

Table 10: Constitutional mandates and functional allocation in the physical infrastructure development sector

Exclusive to the federal level	Exclusive to the provincial level	Exclusive to the local level	Concurrent powers between the federal and provincial level	Concurrent powers between all three levels
Central level large electricity, irrigation, and other projects National transportation policies, management of railways and national highways Civil aviation, international airports	Province level electricity, irrigation, and water supply services, navigation Province highways Physical management and other necessary matters of provincial governmental offices	Local level development plans and projects Local roads, rural roads, agricultural-roads, irrigation Water supply, small hydropower projects, alternative energy	Industries and mines and physical infrastructures Water supply and sanitation	Services such as electricity, water supply, irrigation

Source: The Constitution of Nepal, Annexes 5-9

Functions related to physical infrastructure development have been further detailed by the *Business Allocation Rules* as well by the LGOA (Table 11) and by a few other sector-based laws. The responsibility for railway infrastructure rests with the federal government, while those related to water and alternative transport is with the provincial government. The sole responsibility with regard to local roads (including rural and agricultural roads) and suspension bridges rests with local governments.

Table 11: Other legal mandates and detailed allocation of functions and responsibilities in physical infrastructure development

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
A.	Roads and other transport infrastructure		
	National railways, railways including urban metro rail, and rail security related policy, law, standards,	Policy, law, standards, planning, construction, up-gradation, repair and maintenance and statistics management related to provincial highways	Policy, law, standards, planning, implementation, monitoring and regulation related to local roads, agricultural road, and irrigation
	Policy, law, standards, implementation, and regulation related to national highways	Study and research related to road technology	
	Policy, law, standards related to water transport and alternative transport		

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
	<p>Project identification, study, construction, repair and maintenance, fees, and management of national and international railways</p> <p>Management and regulation of frontal access of national highways and access points and road limits of branch roads.</p> <p>Operation of international passenger services and foreign investment in roads and other alternative transport</p>	<p>Promotion of technology, feasibility study, project implementation, operation and management of ropeways, waterways and alternate transport</p>	<p>Preparation of master plan, implementation, repair and maintenance, and regulation related to local and rural roads, agricultural road, suspension bridges, culverts</p> <p>Other works related to local road, rural roads and agricultural roads</p>
	<p>Promotion of environment, disability and gender-friendly and disaster and risk-sensitive transport technology</p>		

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
B.	Urban development, housing, and settlement development	Urban development, housing, and settlement development	Urban development, housing, and settlement development
	Policy, law, standards, and regulation related to settlement development, urban development, and housing	Planning, construction, operation, repair and maintenance of urban development infrastructure, project implementation and guidelines related to buildings and housing	Policy, law, standards, planning, project identification, implementation, and regulation related to urban development, settlement development, and housing as per federal and provincial laws
	Policy, law, and standards related to the national building code	Implementation of the national building code and its regulation at the provincial level	Permission, monitoring, and regulation according to the national building codes and standards
	Construction, repair, and maintenance of national urban development and federal government buildings	Policy, law, standards, planning, implementation, and regulation of province-level government offices and their physical management	Construction, repair and maintenance, operation and management of government buildings, schools, community buildings, conference halls, and other public buildings and structures.

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
	Policy, law, standards, and regulation related to national-level common housing and apartments	Promotion of housing construction technology within the provinces	Policy, planning, program formulation, implementation, monitoring, regulation and evaluation of safe settlements
	Specialized urban structures	Development, planning, implementation, coordination and infrastructure development of provincial capitals and cities	
C. Irrigation			
	Policy, standards, and implementation related to the operation, repair and maintenance, management of federal and inter-provincial irrigation systems, dams, main canals, and other related infrastructure	Study and identification of projects; survey, implementation, monitoring and coordination in the operation of water bodies inside the province	Formulation of master plans; implementation, repair and maintenance, and regulation of local irrigation and dams

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
	Identification, study, construction, and regulation of federal and inter-provincial irrigation and water-induced disaster related projects	Fixation of the quality of services, their service fees and regulation related to the provincial level irrigation	Operation, repair and maintenance, service fee fixation and collection, and related management of local small surface and ground-water irrigation systems
	Master plans and regulations of river basin plans and water utilization Study, research and technology development related to water resources, irrigation, and ground-water	Policy formulation, implementation, development of technology, and management related to watersheds and water utilization at the provincial level	Local policy, standards, planning, implementation, and regulation for watershed conservation Community adaptation related to land resources and watershed management

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
D.	Electricity and power	Big power projects, policy, law, standards, and regulation regarding water resources and power infrastructure	Project identification, construction, operation, repair and maintenance of water utilization of province boundary rivers according to national water resources policy and federal policy
		Local policy, law, standards, planning, implementation, monitoring and regulation of hydro-electric projects of up to one megawatt	Works related to small hydro-electric projects and alternative energy
			Policy, law, standards, planning, implementation, and regulation regarding alternative energy at the local level

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
	Policy, law, standards, and regulation of sustainable development, conservation and utilization of water resources and power, and allocation/distribution of water	Study, research, policy, law, standards, master plan, planning and project construction, implementation, operation, repair and maintenance, and regulations of provincial electricity and power management Planning, master planning, implementation, monitoring and evaluation of water resources-related project within the province	
	Utilization, quality, and standards of renewable and alternative energy	Policy, standards, and regulation related to the promotion of participation of the private sector in the extension of power, electricity-related services	Development and transfer, capacity development and promotion of alternative energy-related technology

No.	<i>Nepal Government Business Allocation Rules, 2017</i>	<i>Provincial Government Business Allocation Rules, 2017</i>	<i>Local Government Operations Act, 2017</i>
E. Drinking water and sanitation	Policy, law, and standards related to drinking water and sanitation Big national and inter-provincial drinking water projects	Policy, law, standards, implementation, fixation of service fees, planning, project implementation and operation, repair and maintenance, and regulation of drinking water, sanitation and hygiene at the province level	Policy, law, standards, planning, implementation and regulation related to drinking water at the local level
	Identification, construction, and regulation of national and inter-provincial sewerage processing projects		Sanitation and waste management at the local level

Source: Functional Assignment across the three levels in federal Nepal: An abridged edition (in Nepali), The Asia Foundation, September 2019

5.4.1. Road

In absence of a clear-cut distinction between national, provincial, and local roads, all three levels of government are engaged in the construction, repair, and maintenance of roads of various categories. Environment, disability and gender friendly elements need to be incorporated in the physical infrastructure developed by all three levels along with disaster and risk-sensitive transport technology. The responsibility for the acquisition of land and related compensation, the clearance of forests, the fixation of road borders, and the classification of roads rests with the GoN as per the *Public Roads Act, 2031 (1974)*. However, the LGOA gives local governments the authority to determine the right of way, clearing construction in road limit areas, and paying compensation for land acquired for roads.

The LGOA places the responsibility with regard to the development, operation, regulation, and maintenance of urban infrastructure, housing and buildings with the local government whereas the *Allocation of Business Rules* retains similar functions for the provincial governments. These functions can be executed by local governments through conditional grants and other allocations from the provincial government.

5.4.2. Irrigation

The Constitution spreads the responsibility of irrigation to all levels of government, but does not provide a clear classification as to what constitutes as federal, provincial, and local level irrigation functions. The LGOA mandates local governments to regulate small irrigation projects, whereas the *Irrigation Regulation 2056 (1999)* retains rights related to the management of consumer

committees for small irrigation projects, including the fixation of related service fees and formation and dissolution of the users' committees, through the offices of the GoN.

5.4.3. Hydropower and energy

The authority for licensing the survey, production, transmission, and distribution of hydropower and energy to the private sector rests with the GoN as per the *Electricity Act, 2049 (1992)*. This restricts the functional competency of the provincial and local governments to license and operate hydro projects which fall under their mandate. Without a clear classification of electricity and power-related projects, provincial and local governments can initiate similar projects leading to duplication and overlaps. The Constitution grants exclusive power to local governments on alternative energy. The distribution of authority related to alternative energy at the federal and provincial level should have been limited to standardization, capacity building, and support technology transfer to the local level.

5.4.4. Drinking water and sanitation

Drinking water has been kept in the exclusive list of functions of local governments as well as the concurrent list of the three levels of government. The unbundling of functions and the allocation of business rules provides similar authority over drinking water and sanitation to all three levels, except that they cater to federal, provincial, and local level projects. The lack of a clear classification on what constitutes a federal, provincial, or local level drinking water and sanitation project can lead to duplication and overlaps in the execution of projects by the three levels of government. This is one of the reasons why all three levels of government are

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)* provide for various authorities related to drinking water to the GoN including the creation of boards and corporations to regulate the execution and operation of drinking water-related projects and the fixation of service fees. Similar authority has been entrusted to the provincial and local governments by the allocation of business rules and the LGOA. Some of these overlaps and duplications are repeated in the *Drinking Water and Sanitation Bill, 2076 (2019)* tabled in the federal parliament. The bill proposes providing authority over the preservation of water sources and the operation of quality services related to drinking water and sanitation to the federal government, whereas these authorities should also rest with provincial and local governments. There is no clear-cut distinction in the bill as to what kind of services, programs, or projects related to drinking water and sanitation can be constructed and operated by the three levels of government. The provision for creating a federal commission or board for fixing service fees for drinking water encroaches upon the functional authority of local governments. The authority related to fixing service fees on water and sanitation can be left to local governments, while the federal government can be allocated the responsibility of fixing standards related to the service. The bill should be revised in consultation with provincial and local governments to avoid duplication and for allocating responsibilities commensurate with the capacities of the three levels.

5.4.5. Other local development programs

The existing *Town Development Act, 2045* (1988, with the 2018 amendment) provides for the GoN to create Town Development Committees. This parallels the authority related to local development including town development and settlement development that rests with local governments as long as they conform to national building codes and relevant standards.

As per the *Private Finance in Build and Operate of Infrastructures Act, 2063* (2006), the GoN has authority in areas of infrastructure development in which provincial and local governments have been entrusted with similar responsibilities. This should be amended to avoid duplication.

The *Local Infrastructure Development Partnership Program (Operating Procedure) Regulations, 2075* (2018) regarding the selection and implementation of projects in the electoral constituencies of the 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 respective constituencies overlap with the efforts and resources of the local governments which can execute development work with greater transparency, accountability, and effectiveness.



Chapter 6

INCONSISTENCIES AND OVERLAPS RELATED TO FUNDAMENTAL RIGHTS

6

Inconsistencies and overlaps related to fundamental rights

The Constitution guarantees various fundamental rights to citizens, including the right to life and property, right to equality, right of inclusion in state affairs, right of social justice and social security, right against discrimination, exploitation, and untouchability, etc. The Constitution also specifies the rights of women, children, Dalits, senior citizens, and consumers, etc. Besides this, the Constitution includes the right to labor and employment, health and education, housing, clean environment, food security, etc., which requires the involvement of all three levels of government in making provisions and ensuring that these fundamental rights are adhered to at all levels.

The federal parliament has adopted a series of legislation in accordance to fundamental rights including the rights of employment, social justice, safe motherhood, reproductive rights, consumer rights, rights of children, etc. These laws define the various roles and functions of the federal, provincial, and local governments in making provisions for and ensuring the implementation of these fundamental rights. However, there are certain inconsistencies in the key actions performed by the federal, provincial, and local governments when executing and provisioning for fundamental rights (Table 12).

Table 12: Overlapping responsibilities of the levels of government in the provision and execution of the fundamental rights

No.	Responsibilities of the federal government	Responsibilities of the provincial government	Responsibilities of the local government
A. Right to Employment Act, 2075 (2018)			
1	Establish an employment service center in each local government – Clause 10		Such centers to be under the jurisdiction of the local governments – Clause 10
2		Implement an unemployment help and information program – Clause 20	Provisions of a Directive Committee to implement and monitor the provisions of the Act in the local level – Clause 17 (2)
3	Implement an unemployment support and information program – Clause 20	Implement unemployment help and information program- Clause 20	Implement an unemployment help and information program – Clause 20
4	Monitoring and inspection – Clause 29	Monitoring and inspection – Clause 29	Monitoring and inspection – Clause 29

No.	Responsibilities of the federal government	Responsibilities of the provincial government	Responsibilities of the local government
B. <i>The Right to Safe Motherhood and Reproductive Health Act, 2075 (2018)</i>			
5	Allocation of grants and allocation through the budget to provincial and local governments	Allocation of grants and allocation through the budget to local governments	Local governments to allocate budgets for safe motherhood and reproductive health
6	Make necessary arrangement in coordination with provincial and local governments regarding the management of shelter houses for providing safe reproductive health services to women who are mentally disabled, abandoned by families or have been raped	Make necessary arrangement in coordination with provincial and local governments regarding the management of shelter houses for providing safe reproductive health services to women who are mentally disabled, abandoned by families or have been raped	Make necessary arrangement in coordination with provincial and local governments regarding the management of shelter houses for providing safe reproductive health services to women who are mentally disabled, abandoned by families or have been raped
C. <i>Consumer Rights Protection Act, 2075 (2018)</i>			

No.	Responsibilities of the federal government	Responsibilities of the provincial government	Responsibilities of the local government
7	The concerned department of GoN can designate functions related to the officials of the federal, provincial, and local governments to monitor activities related to the market and supply mechanism to provide consumers quality supplies at appropriate prices in an easy manner	The concerned department of GoN can designate functions related to the officials of the federal, provincial, and local governments to monitor activities related to the market and supply mechanism to provide consumers quality supplies at appropriate prices in an easy manner	The local levels can constitute committees and sub-committees for monitoring activities related to the market and supply mechanism to provide consumers quality supplies at appropriate prices in an easy manner
D. <i>The Act Relating to Children, 2075 (2018)</i>			
8	Federal, provincial, and local governments to establish and operate children's homes as necessary	Federal, provincial, and local governments to establish and operate children's homes as necessary	Federal, provincial, and local governments to establish and operate children's homes as necessary
9	The federal government to establish a Child Rights Committee and to set up a childrens' welfare fund	The provincial governments to establish their Child Rights Committee and to set up a childrens' welfare fund	The local levels to constitute their Child Rights Committees and to set up their childrens' welfare fund

Source: Functional Assignment across the three levels in federal Nepal: An abridged edition (in Nepali), The Asia Foundation, September 2019

6.1 Right to employment

The *Right to Employment Act, 2018*, gives the responsibility of setting up employment service centers across all levels of government and spreads the responsibility of implementing unemployment support programs (including information, training, credit, and concessions) and their monitoring and inspection to all three levels of government. This creates duplication and a lack of clear-cut responsibilities for each level, hence causing confusion on the tasks to be undertaken.

6.2 Right to safe motherhood and reproductive health

The *Right to Safe Motherhood and Reproductive Health Act, 2075 (2018)*, provides for the federal government to allocate grants through the budget to the provincial and local levels, and authorizes provinces to allocate similar grants to the local levels. The act also requires the federal government to make necessary arrangements in coordination with provincial and local governments regarding the management of shelter houses for providing safe reproductive health services to women who are mentally disabled, abandoned by their families, or have been raped. It is not clear which level of government is responsible for these provisions. This reduces the accountability of government on such functions.

6.3 Consumer rights

As per the *Consumer Rights Act, 2075 (2018)*, the concerned department of the GoN can delegate its authority related to the officials of the federal, provincial, and local government

to monitor activities in the market and supply mechanisms to provide consumers with quality supplies at appropriate prices. Local governments are also authorized to constitute committees and subcommittees for such monitoring. This creates confusion as to what roles and responsibilities they have to bear. The fact that local governments have exclusive jurisdiction in matters related to local market management and that the LGOA provides such authority to them should have been taken into account.

6.4 Rights of children

The *Act Relating to Children, 2075 (2018)* provides concurrent overlapping functions and responsibilities to the federal, provincial, and local governments to establish and operate children's homes as necessary and can also operate their own Children Welfare Fund. This can create confusion as to who should do what and diffuses accountability if the intended outcomes are not attained.

To execute constitutional provisions on fundamental rights, the provincial and local governments are provided with functions through federal legislation which are supposed to be executed with the support of the federal government. But, the respective provincial and local levels neither have clear mandated functions nor the capacity to execute the fundamental rights obligations.



Chapter 7

CHALLENGES AND INCONSISTENCIES IN EXPENDITURE AND REVENUE ASSIGNMENT AND INTER- GOVERNMENTAL TRANSFERS

7

Challenges and inconsistencies in expenditure and revenue assignment and inter-governmental transfers

The Constitution outlines the fiscal powers of the three levels of government, including their expenditure assignment and right to raise taxes and collect revenue in the sectors under their jurisdiction. Article 60 of the Constitution allows the federal, provincial, and local governments to levy taxes and raise revenue on matters falling within their exclusive jurisdiction. The imposition of the taxes and collection of revenue in matters related to concurrent powers is to be determined by the federal government. The Constitution stipulates that provincial and local governments will receive fiscal transfers including equalization grants, conditional grants, complimentary grants, special grants and revenue transfers as per the recommendations of the NNRFC. The *Inter-Governmental Fiscal Arrangement Act, 2074 (2017)* and *NNRFC Act, 2074 (2017)* identify the basis and mechanism for mobilizing natural resources, allocating revenue, and allocating equalization and conditional grants.

The Constitution provides for different sources of revenue to the three levels of government, including the distribution of taxes collected at the respective levels. The federal level has the right to

collect customs, excise duty, value added tax, income tax, and visa, passport, tourism fees, and other service fees. The province level is provided exclusive revenue rights related to agricultural income tax, house and land registration tax, vehicle tax, advertisement tax, entertainment tax, tourism and service fees, while the local level is entrusted with house and land registration tax, vehicle tax, service fees, advertisement tax, and tourism fees, etc.

7.1. Inconsistencies and duplication in the constitutional annexes concerning revenue and taxation rights of the federal, provincial, and local levels

There are some inconsistencies and duplication in the constitutionally scheduled fiscal powers across the levels of government. For example, Annex 5 puts tourism fee under the exclusive list of the federal level, whereas in Annex 6 tourism tax is the exclusive power of the provinces as well. Similarly, the house and land registration fee, vehicle tax, advertisement tax, and entertainment tax appear in the exclusive powers of the provinces (Annex 6) as well as that of the local levels (Annex-8).

There exists a significant degree of overlap in the functions related to revenue especially at the provincial and local levels (Table 13). While the federal government has exclusive power over income tax, the provincial governments have exclusive power over agricultural income tax and local governments have exclusive powers on house rental tax and business tax, which are variants of income tax. The power and responsibility over tourism fees, service fees, and fines

and punishment have been enlisted in the exclusive power of all three levels and in the concurrent list as well. House and land registration tax, vehicle tax, entertainment tax, and advertisement tax appear in the exclusive powers of both the provincial and local governments.

Table 13: Distribution of fiscal powers and revenue across the three levels of government

No.	Exclusive revenue powers of the federal government	Exclusive revenue powers of provincial governments	Exclusive revenue powers of local governments	Concurrent revenue powers of all three governments
1	Customs			
2	Excise			
3	Value Added Tax			
4	Income Tax (individual as well as corporate)	Agro-Income Tax	House rent tax, Business Tax,	
5	Remuneration Tax		Wealth Tax	
6	Passport and visa fees			
7	Royalty from casinos/lottery			
8	Tourism fees	Tourism fees	Tourism fees	Tourism fees
9	Service charge/fees	Service fees	Service charge/fees	Service fees
10	Penalty and fines	Penalty and fines	Penalty and fines	Penalty and fines
11	Motor vehicle tax	Motor vehicle tax	Motor vehicle tax	Motor vehicle tax

No.	Exclusive revenue powers of the federal government	Exclusive revenue powers of provincial governments	Exclusive revenue powers of local governments	Concurrent revenue powers of all three governments
12		House and Land Registration Tax	House and Land Registration Fee	
13		Land revenue	Land Tax (Land Revenue)	
14		Entertainment Tax	Entertainment Tax	
15		Advertisement tax	Advertisement tax	
16			Sales and fee from local natural resources and minerals	Royalty from natural resources
17	Other tax and non-tax revenue in accordance with the federal laws	Other tax and non-tax revenue to be levied in accordance with the provincial laws or other prevailing laws	Other tax and non-tax revenue to be levied in accordance with the local laws and other prevailing laws	

Source: The annexes of the Inter-Government Fiscal Arrangement Act, 2074 (2017)

Though the *Inter-Government Fiscal Arrangement Act, 2074* (2017) clarifies the share of the respective levels in the various taxes, there is some overlap and confusion regarding the right to raise taxes as well as the place for collecting and sharing revenues between the different levels of government. According to the Act, royalty obtained from natural resources is to be collected in a federal divisible fund and distributed to the divisible funds of the local and provincial governments. The right to raise revenue in the tourism sector falls within the exclusive as well the concurrent revenue jurisdiction of all three levels.

7.2. Undefined revenue power

Provincial governments are allocated exclusive revenue powers on agriculture income tax, but there are dilemmas and confusions on the tax. For example, Clause 11 of the federal *Income Tax Act 2058* (2002) waives income tax on agriculture except on income earned through organized agricultural businesses. The federal *Value Added Tax Act, 2052* (1996) waives VAT on basic agricultural production including paddy, legumes, rice, vegetables, fruits, etc. It is unclear what type of agricultural income tax provinces can introduce. In the absence of clarity, most provinces have not started levying agricultural income taxes yet. A few provinces have introduced provisions for such taxes but have not started collecting them. As per *Inter-Government Fiscal Arrangement Act, 2074* (2017), all the three levels of government have revenue rights over “other” tax and non-tax revenue as per the respective level laws, this is something that remains undefined and can create confusion.

7.3. Limits imposed by federal laws on the exclusive power of provincial and local governments

Many federal laws, including those regarding revenue and taxation, have imposed limits on the exclusive functions of provincial and local governments. For example, Annex 8 of the Constitution includes property tax, house rent tax, house and land registration tax, vehicle tax, service tax, tourism fees, advertisement tax, business tax, land revenue, entertainment tax, etc., under the exclusive jurisdiction of local governments, whereas the *Local Government Operations Act, 2017* (LGOA) states that policies, laws, standards, execution, and monitoring of property tax, house rent tax, and land revenue are subject to federal and provincial laws. Clause 62 (a) of the LGOA allows local governments to raise revenue from the sale of natural resources including soil, sand, rocks, recycled materials, forest products such as firewood and herbs, etc. But, a few provinces have introduced legislation allowing the District Coordination Committees (DCCs) to raise such taxes. This raises the question whether DCCs can be counted as revenue-raising institutions.

7.4. Difficulty in establishing indicators and criteria for inter-governmental fiscal transfers

The NNRFC has adopted a few criteria regarding inter-governmental transfers, including revenue transfers, equalization grants, conditional grants, complimentary and special grants. These criteria apply several socioeconomic indicators. There is a dearth of necessary information and data for developing such indicators to establish the criteria for inter-governmental fiscal transfers. For example, in the absence of updated data, the

NNRFC has been using the Nepal Human Development Report 2014 to establish HDI of the respective provinces and local units. The provincial and local governments do not have the capacity to generate the information and data required by the NNRF to develop indicators for establishing the criteria for transfers.

7.5. Duplication in the allocation of resources, budget, programs, and projects

In the absence of a coordinated approach, there is a certain degree of duplication in the budgeting and programming of the federal, provincial, and local governments. There is a tendency to replicate similar projects and programs at each level, sometimes all three or at least two levels allocate a budget for the same program or projects. This also has to do with the top-down budgeting process, in which provincial and local governments only start their budget after ensuring transfers from the federal level. Because of the duplication of functions in the exclusive lists and lack of clarity as to what the respective levels are supposed to do with concurrent functions, there is a practice of allocating budget, programs, and projects through all three levels in similar activities. There have been instances of allocation of the budget from provinces and the federal government even for small projects or programs of a similar nature simultaneously. This has diluted accountability and resulted in the duplication of scarce resources as well as aggravated the problems of effectively implementing the core constitutional principles of cooperation and coordination for the smooth functioning of the federal governance system in the country.



Chapter 8

INSTITUTIONAL CHALLENGES FOR EXECUTING ASSIGNED FUNCTIONS

8

Institutional challenges for executing assigned functions

The Constitution provides all three levels of government the necessary functional autonomy to set up institutions to execute the functions they are entrusted with. Most of the institutional arrangements in the federal system relied on the re-allocation of the previous unitary government's institutions between the three levels of government.

Initially, the LGOA required that all erstwhile central government institutions that performed the functions of local governments be transferred within six months to that level. Many such institutions such as schools, hospitals, and health posts were transferred to local governments after the adoption of the LGOA in 2017. Likewise, the erstwhile district level offices of the government related to agriculture and public health were also transferred to local governments. The core functions and staff of district level offices on education and local development were divided between the local governments within the district. As district level institutional resources were divided between several local governments within the district, much of their expertise and institutional capability was lost during the transfer.

After elections to the provincial level in November-December 2017, many government institutions located in the erstwhile regional and zonal levels were transferred to the provincial levels. The erstwhile regional directorates related to education, health, forests, agriculture, livestock, physical infrastructure, and regional training centers of health, education, cooperatives, agriculture, forests, etc., were transferred to provincial governments. Subsequently, the divisional offices of forests, irrigation, roads, housing and urban development, and drinking water were also transferred to provincial governments. Similarly, the zonal and district offices related to small and cottage industry, transport management, and district and zonal level hospitals were transferred to provincial governments too. However, the district level line agencies, namely the district education office, health offices, and divisional offices of cooperatives and irrigation, which were meant to be transferred to the municipal level were retained under the federal and provincial structures to do similar work mandated to local governments. The continued existence of parallel institutions in many sectors demonstrates the need to re-structure and re-adjust such functions across the three levels of government in compliance with their constitutional competencies.

8.1. Delays in the transfer of functions, government institutions and property, projects and budget in assigned functions

After the adoption of the federal system of governance, most of the decentralized government institutions/offices at the sub-national level and the associated property and budget under these offices were slowly transferred either to the provincial or local

governments. But many other institutions, properties, projects, and budgets that are supposed to be transferred to provincial and local governments are still being held by the federal government because of the legal hurdles. Most prevailing laws have not been amended and do not recognize the role of the provincial and local governments in the execution of their relevant functions. The delay in legislation, including amendments in sectoral laws, has interrupted the transfer of functions, institutions, property, employees, and projects to provincial and local governments. Such delays are visible in the field of education, where new legislation is yet to be adopted. For example, the Constitution includes basic and secondary education in the exclusive functions of local governments, whereas many functions related to curriculum, examinations, approval of standards for secondary schools, and even operations of some secondary schools are still within the jurisdiction of the federal government as per the existing laws. The property of many secondary schools and schools related to basic education are yet to be transferred to local governments as well.

8.2. Mismatch between assigned functions and respective capacities

The existing institutional and technical capacities of local governments does not always match the capacity needed to execute some of their mandates. For example, the Local Government Operations Act 2074 (2017) authorizes local governments to regulate the pricing, production, and quality of medicines and medical equipment at the local level, but most local governments do not have the capacity to do so. The function also does not fit them when considering the principle of economy of scale as well.

8.3. Existence of parallel institutions

While many erstwhile central government institutions have been transferred to provincial and local governments, the federal and provincial governments continue to keep their line agencies in the district level parallel to local government structures, often creating confusion in jurisdiction and overlaps in the execution of programs and functions. For example, the federal government has kept its District Education Development Coordination Unit (DEDCU) and provincial governments have started to create their own education offices in the district levels, whereas the erstwhile District Education Offices were supposed to be transferred to local governments as their education sections. Due to the existence of parallel federal and provincial institutions, especially at the district level, there is a certain degree of overlap in their respective functions. This has undermined the delivery of services and the execution of programs and has diffused accountability across all three levels in their respective sectors.

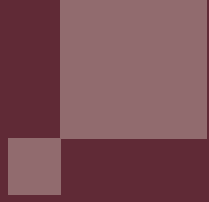
8.4. Re-centralization of the devolved offices

There is also a trend in re-centralizing some of the offices which were supposed to be devolved to provincial and local governments, as new federal or provincial laws have created an obligation for the respective level to execute some of these functions. For example, provincial governments have started to create their own divisional offices in place of erstwhile district level offices, including in agriculture, health, cooperatives, cottage and small industry, social development, etc. Though that has helped increase their capability to deliver these services at the district level, it has led

to duplications. Many of these functions should have been left to local governments.

8.5. Delays in institutional arrangement to execute some functions at the provincial level

The Constitution provides for the creation of a provincial police force as per federal law. Despite some delays, the adoption of the *Nepal Police and Provincial Police (Operation, Supervision, and Coordination) Act, 2076 (2019)* and the *Police Staff Adjustment Act, 2076 (2019)* has paved way for the creation of a provincial police force and the adjustment of the existing unitary police force under provincial governments. Federal laws regarding the provincial police and the adjustment of the police force assume that some of the existing unitary police structure will be re-allocated to the provinces, but actual work to this effect is yet to begin.



Chapter 9

ISSUES IN INTER- GOVERNMENTAL RELATIONS

9

Issues in inter-governmental relations

The Constitution has enshrined the principle of cooperation, coexistence, and coordination (Article 232) among the three levels of government. It envisages a few mechanisms and processes for ensuring inter-governmental coordination and smooth settlement of issues in inter-governmental relations. Major institutional arrangements for inter-governmental relations and dispute settlements include the Inter-Provincial Council, the Constitutional Bench at the Supreme Court, and the NNRFC to carry out studies and research on potential disputes regarding the division of natural resources and recommending coordinated functioning among and between the governments.

The Constitution (Article 231) envisages a few principles with regard to the legislative relations between the three levels of government. It states that federal laws will apply to the entire country, while the provincial and local laws will be applicable to the respective level only. The federal parliament can legislate laws under the exclusive jurisdiction of the provinces, provided two or more provinces request for the same. No such law has been adopted so far. Likewise, provinces are empowered to enact laws for resolving political disputes between the provincial and local governments to establish coordination among them. But, most

provinces have yet to adopt such laws of their own. As per the Constitution, the federal government can issue directives to the provinces on issues of national importance as per federal laws and it will be the duty of the provinces to abide by such directives. The federal government is also entitled to issue warnings to the Province Council of Ministers on actions taken by them affecting national sovereignty, territorial integrity, national independence, and it may suspend the Province Council of Ministers and the Provincial Assembly for up to six months or dissolve them altogether. The latter action must be approved by the federal parliament. During such a suspension or dissolution, the concerned province will be governed under federal laws. The federal government can also issue directives to local governments directly or through provincial government in accordance with the Constitution and federal laws, and local governments are supposed to abide by such directives.

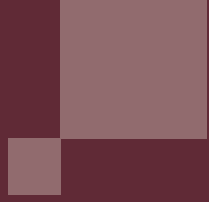
In accordance with Article 235 (1) of the Constitution, the federal parliament is supposed to adopt a federal law governing the relations and coordination among the three levels of government. A bill to this effect has been tabled in the federal parliament. Its early adoption would go a long way in settling the intergovernmental relations in a more institutionalized and legal manner.

The constitution has envisioned the establishment of an Inter-Provincial Council (IPC) chaired by the Prime Minister with the Chief Ministers of the provinces as its members for resolving political disputes arising among or between the provinces and the federal government. The IPC has continued formal and informal meetings and even adopted a 29-point action plan for the implementation of related provisions in the Constitution. The implementation of this action plan has remained challenging,

because of, among others things, the absence of a regular follow-up and monitoring mechanism.

Article 137 of the Constitution provides for a Constitutional Bench under the Supreme Court including the Chief Justice and four other justices to look after issues related to constitutional disputes related to the powers and functions of the federal, provincial, and local governments. The Constitutional Bench can also adjudicate any case *sub judice* in the Supreme Court involving a question of serious constitutional interpretation. The Constitutional Bench has already adjudicated a few cases related to the powers and functions of the three levels of government.

The Constitution envisions the mechanism of inter-governmental transfers and the mechanism of such transfers based on the recommendation of the NNRFC. The NNRFC has been established and a chair has been appointed, but it does not have other members yet. It is yet to develop an exhaustive criteria, principles, and guidelines for resource transfers through concrete formulas. Similarly, the LGOA has provided for a Provincial Coordination Council (PCC) under the chairpersonship of the Chief Minister in each province including participation of the chair, vice-chair, mayor and deputy-mayor of village and municipal government. The PCC of different provinces have met a few times, but are far from being institutionalized.



Chapter 10

WAY FORWARD INCLUDING RECOMMENDATIONS

10

Way forward including recommendations

Based on the above-mentioned challenges, gaps and overlaps in the assignment of functions across the levels of government, a few recommendations can be made on ways to improve the execution of responsibilities through policy reform, re-allocation of responsibilities, expenditure and revenue assignment, a better system of budgeting and programming, fiscal transfers, employee management and capacity development.

10.1. Develop a common understanding regarding the exclusive and concurrent powers and functions of the three levels

Regardless of constitutional and various legal provisions, the federal, provincial, and local governments have accumulated differing understandings as to what is and is not under their jurisdiction. Among others, the concurrent list, the unbundling of functions and federal legislation in many sectors leaves room for interpretations by each level to suit their interests. A broader understanding needs to be developed among the three levels of government, including the criteria and principles to be applied on how the allocation of responsibilities to the different levels is to be interpreted. This requires a broader policy framework through

consultation among the three levels, including mechanisms created for inter-governmental coordination, cooperation, and shared responsibilities.

10.2. Review prevailing policies and laws and remove implementation hurdles

Though many new laws have been introduced and many other amended to harmonize with the federal spirit, several laws that were adopted during the unitary system of government are still in place. The policy and legal system that existed during the unitary system, especially those affecting the functions of the three levels of government, should be brought in line with the new constitutional design. Sectoral laws related to the assignment of functions and expenditures should be reviewed, amended, or repealed to harmonize with the constitutional spirit in consultation with provincial and local governments. Laws adopted after the promulgation of the constitution also contain some inconsistencies and lacunae in the assignment of functions across the three levels of government. They should be updated and amended ensuring clarity and consistency. Similarly, sectoral federal laws related to the functions of provincial governments should be brought in line with the constitutional mandates of provinces and this should be reflected in the *Business Allocation Rules* of the provinces.

10.3. Expedite the federal bills on the assignment of functions

Many federal bills that seek to introduce new sectoral laws or amend existing sectoral laws are in the pipeline in the federal

parliament. Their adoption should get priority. For example, the draft legislation regarding inter-governmental relations and coordination that has been tabled in the federal parliament and the federal laws regarding the operationalization of the provincial and local level employee services should get priority.

10.4. Introduce an institutional mechanism to deal with inconsistencies in laws concerning the assignment of functions

In the absence of an institutional mechanism to check inconsistencies in new laws or amendments made in existing laws with constitutional provisions, any such inconsistency should be brought to the Constitutional Bench of the Supreme Court for adjudicating disputes regarding such provisions. In this context, an institutional mechanism with broader ownership of the levels of government should be created for developing guidelines, principles and constitutional limits, and for checking inconsistencies and ensuring coherence in legislative action, including the regular monitoring of laws to be adopted by the three levels. The mechanisms for coordination such as the Inter-Governmental Coordination Council, which is proposed in the Inter-governmental Coordination Bill, and the Inter-Provincial Council can be activated in such legitimate processes, especially in developing guidelines and work plans for a coherent legislative process in the three levels.

10.5. Transfer remaining responsibilities and institutions to the respective provincial and local levels

As identified in the respective sectors in the sections above, many institutions, projects, programs and budget related to the functions of the provincial and local levels but currently held by the federal level should be transferred to the respective levels as soon as possible. A joint plan of action between the respective levels should also be developed. The federal laws that restrict such transfers must be amended at the earliest.

10.6. Through the NNRFC, develop and update objective indicators for inter-governmental transfers and revenue allocation based on data and information

The NNRFC should develop and regularly update objective indicators for inter-governmental transfers and revenue distribution among the various provincial and local governments based on their population density, access to public utilities, need for capital expenditure, and objective sectoral indicators of performance in key sectors like services, education, health, agriculture, and infrastructure development, etc. While allocating conditional grants, the federal government should start allocating grants and transfers to provincial and local governments in bulk through result-based indicators, instead of outlining them in small projects and programs. The system of gathering data and evidence required by the NNRFC in developing such indicators should also be strengthened, specifying the roles and responsibilities of the

provincial and local governments in keeping and supplying such data to the NNRFC.

10.7. Through the NNRFC, strengthen regular consultation with provincial and local governments regarding the principles, process, and indicators for inter-governmental fiscal transfers

The NNRFC should institutionalize regular consultations with provincial and local governments in developing and reviewing the criteria, principles, and guidelines for the allocation and re-allocation of resources as well as in expenditure and revenue assignment. It can also start monitoring and developing recommendations regarding the revenue and expenditure assignment of the respective levels during the sectoral legislation drafting processes to ensure that revenue and expenditure assignments are consistent with the principle of ‘fund follows the function’ in line with the spirit of the constitution.

10.8. Develop guidelines and monitoring mechanisms for levying and collecting local level taxes

In the long absence of elected local representatives, the rates of local taxes and service fees remained frozen for a long time. After elections to local governments, the local level representatives rushed to increase rates or levy new taxes on an ad hoc basis without properly studying the revenue potentials, their impact analysis, and without having to ensure coordination with other local

governments. This practice should be discouraged by introducing a proper review system of the tax base and rates through better studies. The NNRF can introduce guidelines and principles for taxation in consultation with the three levels of government. The practice of local governments providing tax rebates without proper scrutiny needs to be discouraged as well.

10.9. Adopt bottom-up planning, budgeting, and programming to avoid duplication and redundancy

The current practice of top-down planning and budgeting has led to a certain degree of duplication in the programs and projects selected by the three levels of government, leading all three levels to plan, budget and execute similar projects without coordinating with other levels. Instead, a bottom-up approach, in which local and provincial levels prepare their budget in advance of the federal budget would reduce such duplications and redundancies. Though the constitutional requirement put their budget ahead of that of the federal level, their budgeting and programming are contingent upon transfers from the federal government and hence they rely on a top-down budgeting practice rather than a bottom-up one. The bottom-up budgeting and programming approach would be highly relevant especially in the case of common jurisdictions among the different levels. Instead of creating parallel projects, the federal government should initiate the practice of executing such projects through provincial and local governments. There is also a need for bringing in some semblance of uniformity in the budgeting, programming, finance, and revenue proposals of the provincial and local governments. A system that allows bottom-up and joint planning practice among the levels of government

would help contribute to developing coherence in the planning and programming of the three levels of government. Similarly, the federal and provincial governments should encourage the practice of financing or providing grants to projects identified by local governments instead of selecting local projects. And, local governments should be encouraged to generate sufficient revenue to meet their own expenditure needs and resource-based development priorities.

10.10. Update the guidelines for the classification of development programs and projects into the federal, provincial, and local levels

To avoid overlaps and duplication of similar development programs and projects by the three levels, the *Standards for Classification and the Allocation of Programs and Projects to Federal, Provincial and Local Levels, 2074 (2017)* needs to be reviewed and updated. More clarity is needed on what kinds of projects and programs are to be allocated to which level. This should be done based on practical work experiences, their successes, and in deep consultations with provincial and local governments.

10.11. Introduce some incentives in inter-governmental transfers for rewarding good performances by provincial and local governments

Though the criteria for inter-governmental transfers takes into account the population, geography and socioeconomic diversity of provincial and local governments, the existing mechanism does not take into account their performance in the transfers

they get to execute under their mandated functions. Some kind of performance-based transfers in addition to the transfers provincial and local governments are entitled to, would greatly enhance their performance. The current practice of disbursing the budget equally among the various wards of the local governments should be replaced with a criteria-based approach weighing the geographical disparity, population, and the level of development in the respective wards within local governments. In consultation with local governments, the NNRFC can contribute to developing such guidelines for local governments with a built-in criteria and formulae for allocation to each ward, including some allocation grounded on performance-based outputs and indicators. That should also include rewarding wards and local governments which mobilize a higher internal revenue from their own sources.

10.12. Remove hurdles for recruiting human resources for provincial and local governments, including through an early enactment of necessary federal legislation

The assignment of functions across the federal, provincial, and local levels requires that the respective levels receive adequately trained and capable human resources and have the necessary capacity for their execution. Although the process of adjusting the erstwhile central government employees to federal, provincial, and local levels has concluded, the federal government is still amending a few cases post-adjustment. The federal government should conclude the remaining aspects of employee adjustment and create an enabling environment to make necessary human resources available to provincial and local governments. The

respective levels should be empowered through the necessary federal acts to hire employees they need to execute their responsibilities. In this regard, an early passage of the *Federal Civil Service Act*, an umbrella act which is supposed to set the guidelines for the provincial and local level employee services, will be of crucial importance. Similarly, the necessary legislative framework for provincial and local level employee service standards should be adopted by the federal parliament at the earliest. In the meantime, the appointment of the commissioners in the Provincial Public Service Commission (PPSC) in the remaining provinces should get priority, as should the provincial laws on hiring provincial and local level employees to fill vacancies created after employee adjustments. In that connection, the provincial and local governments should undertake Organization and Management (O&M) surveys of their own to ensure they meet the organizational structure and number and type of employees they require to execute their responsibilities and functions. This exercise will also end up in developing comprehensive terms of reference and job descriptions for each post created in the respective governments, outlining the responsibilities and accountability of each post.

10.13. Introduce and implement a capacity development action plan

Along with a federal capacity development plan, each provincial and local government must also develop its own capacity development plan to equip their institutions with the necessary technical, physical and financial capabilities to sequence priorities, build a shared understanding among key stakeholders, and enable them to perform entrusted functions, timely and

effectively. Sub-national level capacity development plans should be tied to national capacity development plans regarding the implementation of federalism. The gaps and lacunae in the existing system, especially at the provincial and local levels identified in the Federalism Capacity Needs Assessment (FCNA) exercise outlined in a report (2019), should serve as an important guide in this regard.⁴ This should include the development of the capacity of the respective provincial and local governments at institutional (committees, sectoral units, ward committees) and individual (political and bureaucratic or staffs) level. Such a plan should give utmost priority to ensuring better delivery of services and better capacity for the respective levels in executing their entrusted functions in relation to sectoral development activities, regulation, and execution of budgets and programs. This is an area in which partner resources can also be pooled for implementation with approval of the federal government.

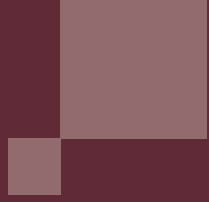
10.14. Implement provisions related to the responsibility of the three levels of government concerning fundamental rights

The federal government should create a mechanism for monitoring the respective roles and responsibilities of the three levels of government to ensure the implementation of the provisions related to fundamental rights. It should develop a national working guideline and a national implementation plan outlining the unambiguous roles and responsibilities of governments in this regard. The provincial and local governments should be provided with fiscal transfers in the form of conditional grants to execute

such responsibilities. A system of reporting and monitoring of progress on these activities should also be initiated.

10.15. Activate the roles and responsibilities of the three levels of government in implementing the state's obligations emanating from international treaties and conventions that Nepal has become a party of

There are a host of obligations, such as domestic legislation, initiation of action plans, reporting and the like concerning international treaties and conventions that Nepal has been a party of from time to time. Many such obligations require implementation from the federal, provincial as well as local levels. The federal government should develop a matrix of such responsibilities including those to be executed by provincial and local governments and adopt a national action plan and a monitoring and integrated reporting system in this regard.



Chapter 11

CONCLUSION

10

Conclusion

Nepal has taken significant strides in implementing a federal system of government after the promulgation of the Constitution in 2015. Politically, the successful election to the three levels of government unleashed the process of implementing constitutional provisions related to federalism and other aspects. It has increased the accountability of provincial and local level institutions and improved the condition of delivery of services and execution of development projects to some extent. Apart from an unbundling of the functions mentioned in the constitutional annexes, various federal laws have specified further responsibilities and functions of the federal, provincial, and local levels. A system of fiscal transfers and revenue disbursement and the system of annual programming and budgeting at all levels is already in place. The process of employee adjustment to the three levels have been completed, albeit without much success in transferring the bulk of the staff to provincial and local levels. Overall, the achievements made so far remain far from satisfactory.

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 civil servants in the 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 the provincial and local levels for them to carry out the functions entrusted to them.

Despite such hurdles, there are good prospects in benefitting from the federal system of governance from better execution to good governance and delivery of services and better development results. There is enough room for reviewing the current practice, assigning functions, and amending or enacting legislations that stands in the way of enabling the respective levels to execute entrusted functions with more clarity and consistency.

The existing gaps and inconsistencies in the assignment of functions in 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 in these policies and law-making processes. The system of taxation, budgeting, programming, inter-governmental fiscal transfers, inter-governmental relations, and the transfer of institutional and human resources should also be reviewed for creating necessary clarity, consistency, and accountability between the three levels of government so that they can execute their entrusted functions responsibly and effectively.

Endnotes

1. The summary report 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. Based on field studies of selected provincial and local governments reflecting Nepal's geographical diversity in Province No. 2, Bagmati, and Karnali Provinces, it also draws inferences from other sources and empirical observations during the implementation of the federal system in Nepal since the adoption of the new constitution in 2015.

2. The Asia Foundation (2019), *Functional Assignment across the three tiers in federal Nepal: An abridged edition* (in Nepali), The Asia Foundation, September 2019

3. GoN (2017), *Unbundling of the Functions of the Federal, Provincial, and Local Levels as per the constitutional annexes* (in Nepali), Government of Nepal, January 2017

4. World Bank et. al. (2019), *Capacity Needs Assessment for the Transition to Federalism*, Georgia State University, World Bank Group and UNDP, 10 July 2019, accessed at <https://www.mofaga.gov.np/uploads/notices/Notices-20200506153437737.pdf>

