Administrative Restructuring in the Context of Federalization

Tanka Mani Sharma
Dinesh Pant

1. Public Administration for Managing State Affairs:

Federalism being a system to distribute state power between centre and sub-national units with constitutionally defined political structures and powers has lots to shape how state affairs are administered in a country. Not any hard and fast rule exists to follow in designing the mode of public administration in federal context, but how such administration is designed and practiced tends to have been influenced with variance by how power is distributed between central and sub-national governments in countries which adopt different modalities differing in the level of prominence of central and sub-national governments (e.g., USA, Switzerland, India and others). As a matter of fact, public administration itself, which always matters in operationalizing the federalism depending upon the contextual needs of the country, has gone through its evolutionary development process irrespective the types of state structure like unitary and federal).

The concept of New Public Management (NPM), once popular in the 1990s as the new paradigm of Public Administration and Management (PAM) has actually been a transitory stage in the evolution from traditional PA to the New Public Governance (NPG). The NPG has the potential to provide a framework both to generate new PAM theory and to support the analysis and evaluation of public policy evolution. Highlights of some basic elements of the NPG in contrast to PA and NPM are presented in Annex 1 of this paper. Since the basic features of NPG (in terms of focus, emphasis, external relationships, mechanism and value base) are less likely to differ across unitary and federal system of governance, the new shifts in paradigm of public administration can be useful reference in many ways in restructuring administration in a country, like Nepal too.

2. Federalization and Administrative Restructuring in Nepal

2.1 Emergent context:

Nepal has gone through historic changes in recent years in many areas, mainly in political front having implications in other fronts like socio-cultural, economic and administrative. In the past, political changes are hardly followed by prerequisite restructuring and strengthening of public administration and civil service – which is viewed mainly as centralized subordinate system of political masters without public accountability. Public administration, including civil service, has to be continuously strengthened and prepared to meet the needs of state reforms. In the present Nepalese context, administrative restructuring and strengthening have to go through a transformation process since the thrusts of on-going state reforms as envisaged by the new constitution are not only on “federalism” but also “inclusiveness” and “federalism” – the two major facets of the recent political change in the country.

With the promulgation of the new constitution last year, Nepal is constitutionally a federal democratic republican state. As one of its major features, the Constitution envisages three tiers of governments at central, provincial and local with provision of seven provinces while the number of local governments is left to be ascertained by a separate commission (now
formed). Rural and urban municipalities are defined as local governments. All three tiers of governments are constitutionally assigned exclusive powers along with concurrent powers to be exercised jointly by the federal and provincial governments as well as by federal, provincial and local governments. The sub-national governments have got constitutional status with constitutionally defined political structures and powers. Likewise, parliamentary form of government has been adopted at both federal and provincial levels with bi-cameral legislature at the federal and uni-cameral one at the provincial level.

The new constitutional provisions provide a broad framework for determining how all three branches of the state affairs, i.e., legislative, executive and judiciary, are to be organized and operated. For the first time in Nepal, provincial and local governments will be exercising legislative powers at province and local levels as the sub-national governments. For this, many of the existing laws shall have to be repelled or aligned and amended while more than one hundred new laws shall have to be legislated by the federal government to meet the constitutional requirements. Comparatively, the judiciary is expected to be the least affected by the new constitutional arrangement since continuity is given to its existing three-tier institutional set-up like Supreme Court, High Court and District Court, replacing the existing appellate by high court (Article 127).

2.2 Administrative Implications of Major Constitutional Provisions

It is mainly the executive part of the state that will need to undergo transformation in terms of both reframing and strengthening of public administration in response to the political rearrangements and division of powers to different tiers of government as envisaged in the new constitution. Specifically, some important implications of new constitution on public administration can be cited as follows.

a) **Provisions of fundamental rights:** As many as 31 fundamental rights embracing all political and socio-economic lives of citizens are provisioned in the constitution (Article 16-46). All these will require various institutional arrangements in three branches of the state affairs, which should range from legal provision (Article 47) to policy, organizational and resource provisions.

b) **Directive principles and state policies:** The constitution has enshrined 13 state policies covering all important aspects of state affairs, including political and governance systems, besides setting well-elaborated directive principles (Article 50 and 51). It has guaranteed good governance ensuring people's equal and easy access to services and privileges offered by the state by making public administration clean, efficient, impartial, transparent, corruption-free, accountable to people and participative (Article 51b-6). All these principles and policies require adequate institutional arrangements, e.g., standards, organization set-ups, resource management, monitoring and correcting measures, etc. for complying and translating them into actions.

c) **Transformation from unitary to federal system:** In view of the new constitutional provisions of federal system having three tiers of the government at centre, province and local levels (municipal and village), along with the provision of special structure (Article 56), the legislative arrangements are likely to be very complex. Such arrangements will have to be made considering the five lists of powers of three tiers of government (Article 57), i.e., three exclusive lists (Schedule 5, 6, 7) one Federal-provincial concurrent list (Schedule 8), and one Federal-provincial-local concurrent list (Schedule 9) and the level
of their vertical interconnectedness. The transformation process should also adopt “Cooperation” as the organizing principle of federalism.

d) *Defining, establishing and practicing horizontal and vertical coordination mechanism:* With establishment of different tiers of the government, there is a need to allocate authorities, responsibilities and resources across different levels of government, with institutional mechanisms for interrelationship between Federal, Provincial and Local Levels (Article 231 to 237) and National Natural Resources and Finance Commission (Articles 50 and 251).

e) *Changes in size and composition of public organizations and employees:* There is need for creating many new organizations simultaneously with re-arrangements of the existing ones at different levels of government in the process of administrative federalization. This will require not only a new set of organizations and employees to be put in place at the sub-national levels to carry out the functions assigned to them but also development of new working systems, standards and procedures.

f) *Number of civil services:* Different types of services are provisioned for federal, provincial and local level governments (Article 285). Even at central level, unlike in the unitary civil service, different services to be labeled as "federal civil service" and “other federal government services” will need to be created and managed for administrative federalization (Article 285). The constitution, operation and conditions of such services shall be as provided for in the Federal Act. Likewise, positions in the Federal civil service as well as all Federal Government services shall be filled through competitive examinations on the basis of open and proportional inclusive principle. Likewise, as provisioned in the constitution, the Provincial Council of Ministers, Village Executives and Municipal Executives may by law constitute and operate various government services as required for the operation of their administration.

The constitution has also provisions the remuneration, facilities and conditions of service of the employees of the Federal Judicial Service shall be as provided for in the Federal Act (Article 155). There are also provisions relating to the remuneration, facilities and conditions of service of the government attorneys and other employees under the Attorney General shall be as provided for in the Federal Act (Article 161).

All these will require creation of new basic laws and changes in the existing ones and other suitable institutional arrangements at both central and sub-national government levels. In view of the need for administering various types of government services, a comprehensive civil service policy as well as an umbrella Act will also be required for uniformity in organizing and administering national civil service.

g) *Provision for constitutional bodies:* More than a dozen constitutional bodies are provisioned to look after different issues like accountability and oversight, election, inclusion and human rights (Article 239-265). All these will be federal bodies, with exception of the Public Service Commission (PSC).

The mandate of PSC has expanded to conduct selection tests for recommending the suitability of candidates for various public services, besides civil service (Article 243). There are several provisions regarding the consultation with the Public Service Commission in relation to recruitment and selection of civil employee in the country,
including the matters concerning the law relating to the conditions of service of the Federal Civil Service; the principles to be followed in making appointments to, promotions to, the Federal Civil Service or positions thereof and taking departmental action; suitability of any candidate for appointment to the Federal Civil Service position for a period of more than six months; suitability of any candidate for transfer or promotion; departmental action against any employee of the Federal Civil Service and so on. This will require government to develop accountable and transparent administrative process in dealing with main functions relating to administration of public servants. There is also a provision of Provincial PSCs (Article 244), whose functions, duties and powers shall be as provided for in the State law. All these will require PSC to undergo rigorous process of setting basic principles and laws and restructuring work that can address demands of both federalism and state policies and commitments related to human rights and good governance.

h) **Intergovernmental transfer:** Provisions are made for both exclusive and concurrent revenue assignments at all three tiers of government. The central government will have to transfer many of powers and resources to the sub-national governments and likewise many ministries are likely to be reorganized with the potential reduction in their existing number. Likewise, creation of Natural Resource and Fiscal Commission too is envisaged in the constitution (Article 250), which might have influence in how structures and systems of public fiscal administration are designed and practiced in the country.

i) **Drafting of laws:** Since both provincial and local governments, besides federal one, also will be exercising legislative powers as the sub-national governments, many of the existing laws shall have to be repelled or amended while more than one hundred new laws shall have to be legislated by the federal government to meet the constitutional requirements. The government has to expedite the process of enactment of 138 new laws and amendments of large number of present laws as identified by the technical team.

j) **Services and staffing during transition:** The government is to make necessary provisions, as part of transition management, to deliver services at provincial and local levels without disrupting what it has been doing now. For this, it will have to adjust public servants, who are in government service at the time of promulgation of the new constitution, to the federal, province and local levels in accordance with the law (Article 302).

Federalization of the state and its administration is to take place with decentralization principles. In view of its history of decentralization reform, Nepal has a long way to go to materialize the administrative federalization at central, provincial and local levels. Therefore, the transition into federal form of the state tends to be very challenging and complex one as it requires lots of preparations at both political and administrative levels in view of the features of both prevailing administrative setup and new constitutional provisions.

**2.3 Challenges of Administrative Restructuring in the Federal Context and Transition Management:**

Nepal's public administration will need to undergo through significant transitions, particularly at the level of sub-national governments, in terms of basic structures and functions of parliamentary, executive and judiciary. Specifically, the challenges to management of transition from the unitary form of government to the federalized and decentralized form of
governance from the perspective of administrative restructuring can be summarized as follows:

a) Though central government has existed as backbone of the unitary system, the central government in federal structure will not or cannot continue to exist and function in the way it did in the unitary set-up. The government is to make necessary provisions, as part of transition management, to deliver services at provincial and local levels without disrupting what it has been doing now. It will have to adjust public servants, who are in government service at the time of promulgation of the new constitution, to the federal, province and local levels in accordance with the law. Likewise, it will have to take lead in making required institutional arrangements, including organizations, operating mechanism, resources and legal provisions, etc. with a comprehensive transitional management plan (road map).

b) The province level set-up, being completely new one, is likely to pose various issues of sharing of authorities and resources with both central and local level governments. It will demand a well-thought out action plan for replacing or making new adjustments in the earlier institutional arrangements at regional, zonal and district levels, which existed for long period as integral parts of Nepal’s political and administrative set-ups, without causing disruption in delivery of services to people. There is a long way in making the newly created provinces functional politically, fiscally and administratively as one major feature of federal state;

c) Like the central government, local bodies designed to operate as local government have existed since long in Nepal’s administrative structure in various forms and names, but these too will not continue to exist and operate in new federal structure in the way they did in the past. Lots of precautions and preparations are needed for restructuring the existing local institutional set-up as viable units of local governments, both municipalities and village bodies, with focus on village bodies in new modalities.

d) Though the constitution does not recognize “District” as a different tier of sub-national government, its existence is allowed to continue. It remains to be decided and seen whether the existing organizational arrangements at district level would be completely eliminated or remain in new forms as extension of provincial government or a kind of federation or integrator or supervisory agency of local government units at district level.

e) It seems to be wide-spread apprehension there might be some competing interests in sharing many of the powers and resources from the federal government to sub-national governments simultaneously. This will also require re-orientation in spirit of the constitutional provisions, with coordinating mechanism, so that the efforts towards creating institutional arrangements through administrative restructuring would not be affected.

However, transformation of unitary form of public administration into a federal one with three independent as well as collaborating tiers of governments also offers a lot of opportunities for the country to improve governance through promotion of inclusiveness, responsiveness and accountability in the public institutions and public delivery mechanisms at all levels. For this, it is necessary that the existing centralized and unitary public administration is reframed in line with the demands and spirits of the new Constitution. This also requires well-thought out and well-organized action plans or roadmap as early as possible to ensure successful
transition to the federalized and decentralized public administration, with undisrupted public services for meeting what people should have expected from the federalization of the state.

3. Government's Preparedness in the Federalization of the Public Administration:

3.1 Updates on initiatives

Nepal’s present public administration needs reframing, reorganizing and strengthening both at the national and sub-national levels in order to execute the new constitution, but not many initiatives could be taken in this direction until the promulgation of constitution. Some important attempts that have been made by the government towards getting it prepared for transition to the new state structure are also briefly highlighted and presented in this paper.

Before making various constitutional provisions in the constitution regarding administrative restructuring and federalization, various study and reports were prepared. A high level Administrative Restructuring Commission (ARC) was formed as back as 2008, which submitted a comprehensive report in 2011 on the structures of the public administration under a federal set up of new constitution, the government also created technical committees in ministries to support the federalization process. Its report has been useful reference for the administrative restructuring as it focused on ending the unitary and centralized governance system and for the adoption of federalization in the country for better service delivery. Likewise, Administrative Reform Suggestion Committee has submitted a detail report in 2014 with useful recommendations pertaining to administrative restructuring, service delivery, corruption control and ethics in administration, etc.

Likewise, immediately after the promulgation of new constitution, Government has also launched Immediate Reform Action Plan (IRAP), envisaging series of actions programmed under for four pillars like transition management, development management, service delivery and post-earthquake reconstruction though some of these actions (e.g., those related to performance management, service delivery and GESI mainstreaming, etc.).

The Ministry of general Administration (MoGA) has also prepared and executed a thirty-nine point "Vision Paper" with detailed action plan to support administrative reform and restructuring. For the provision of managing human resources in three different levels, it essential to prepare acts and laws based on Article 285 and article 302. In this regard, basic principles have been approved by the government of Nepal for preparing of those two acts. Similarly, an initial draft has also been prepared based on article 302 of the constitution for the management and adjustment of civil employees. MoGA has focused administrative restructuring and implementation of federalization through making action plans in line with the IRAP of the Government and its Vision Paper-2072. It has also started to prepare inventory/collect information regarding number of civil employees, physical infrastructures, organizations and resources from all government organization.

The executive has already initiated the process of revising existing laws and drafting new sets of laws as required by the constitutional provisions since a large number of laws have been identified as those requiring amendments while 138 laws covering areas are to be newly created through legitimate processes.

As encouraging development, the Government of Nepal has recently formed a few important committees including High Level Directive Committee for Implementation of Federalization
and Administrative Restructuring (Chaired by Hon’ble Prime Minister), Coordinating Committee on Implementation of Federalization and Administrative Restructuring (chaired By Chief Secretary). A High Level Directive Committee for Implementation of Federalization and Administrative Restructuring has recently decided that job descriptions of all civil employees need to be managed with tying up with their adjustment in three different tiers of the government. Likewise, a commission for determination of number and demarcation of village bodies, municipalities and special, protective or autonomous regions (chaired by Mr. Balananda Paudel) has also established for the purpose of managing number and demarcation of required local level bodies.

3.2 Initiatives of MoGA through PREPARE

Among various preparatory efforts, launching of Project to Prepare the Public Administration for State Reform (PREPARE) by the Ministry of General Administration (MoGA), Government of Nepal, in cooperation with the United Nations Development Program (UNDP) since March 2013 has been a significant initiative. The Project has been extending various kind of technical supports to the relevant government institutions to get prepared for administrative restructuring and reforms in the context of wider state reform processes, with focus on inclusiveness and administrative federalization, to be undertaken after promulgation of the new constitution. Currently, the project activities are focused mainly on two such interrelated areas: a) administrative restructuring and transition management; and b) other administrative reforms, which cover building capacity of selected government institutions, promoting inclusion approach in civil service and ensuring accountability / transparency in civil service.

Though project is a time-bound initiative to be executed in compliance with the approved project document to the feasible extent, it has pursued objective and flexible approaches for its periodic activity planning. Accordingly, while planning the project activities on quarterly and annual basis, attention is paid to include activities that generate inputs to support the process of administrative restructuring and reforms in light of the on-going political process of constitution-making and new constitution and ensure that the thrust areas of long-term good governance policies and strategies of the government (like those envisaged in 13th Plan) are addressed. Likewise, due attention is paid to: maximize activities not only to support the transitional phase of state reforms but also to help build capacity of key government organizations (MoGA, PSC, OPMCM, CIAA, etc.); respond to the emergent needs of stakeholders / partner agencies and those identified by experts and past studies; and also ensure backward and forward linkages between project activities.

The project has generated important technical inputs on the basis of its studies for state restructuring and civil service reform strategy, with some important contributions towards constitution drafting. The major project inputs are related to transition management planning, analysis and assignment of functions across three tiers of government in federal structure in selected major sectors, identification of needs for organizational arrangements in federal administrative structure in selective sectors, capacity building of selected government institutions, promotion of inclusive approach within civil service and promotion of transparency and accountability in administration. Further details are as follows:

3.2.1 Generation of Technical inputs on Administrative Restructuring and Transition Management:
Major technical inputs created in this theme so far under the Project and their potential uses are briefly summarized below:

a) *Preparation of option paper on civil service restructuring and management in a federal state:* It is based on review of both the existing features of civil service and challenges facing it in the context of federalization of administration and the international practices and experiences in civil service restructuring in the context of federal structure of the state. Three different options (i.e., hard and fast, a ‘cautious’, and a ‘step-by-step’ approach), applicable to any form of federalization, are suggested for restructuring of civil service in the federalization context, with suggestions for undertaking functional analyses and preparing transition management plan.

Government can use this report as a reference document in preparing a policy or long-term vision for restructuring and management of civil service in federal structure of the state.

b) *Functional analysis and assignment:* Since almost all project activities related administrative restructuring are not possible without knowing functional assignments across different levels of government under the federal structure, substantial time has been devoted on analysis and assignment of government functions across different tiers of government in federal structure. So far these exercises are undertaken with coverage of nine major sectors. In first phase, this was undertaken for five major sectors covering education, agriculture, health, transport infrastructure and drinking water, including two cross-cutting themes such as decentralization and social inclusion, with reference to the constitutional provisions drafted by the first CA committees. In the second phase, similar studies were undertaken in four sectors (with reference to the new constitution) covering law and order, land, energy, industry and tourism. The findings of functional analysis (undertaken in the first phase) in terms of recommended functional assignments have been shared with the CA members as inputs for finalizing the preliminary draft of the Constitution. Some changes in the draft constitution provisions in line with the suggested assignment were also observed.

These reports can be used as basis for making clear assignment of functions and authorities to different tiers (federal, provincial and local) of government in selected sectors. These will also be useful in expanding functional analysis activities, with required refinement of methodologies, in other new sectors. Most importantly, these can be important bases for identifying the needs for institutional arrangements (organizational set-up, interlinkages, staffing structure and size, logistics support, resource allocation and law drafting) in different sectors at different tiers of government.

c) *Preparation of transitional management plan for federalization of public administration:* This was initiated in view of the need for government to ensure smooth delivery of services by analyzing risks of disruption in services during administrative federalization. With reviews of both current political and administrative situations of Nepal and international practices of transition management planning in selected countries, a comprehensive framework of transition management plan has been prepared for federalization of public administration in Nepal. This proposes 61 actions clustered into 12 components, covering institutional arrangements at central, provincial and local levels, relationship between civil services at different levels, legal requirements for constitutional compliance, infrastructural requirements, inter-governmental fiscal relations, etc.
Some study-based suggestions were also shared with the CA members as inputs in finalizing the draft Constitution, besides sharing with senior government officials. Government can make this plan as a generic framework (with necessary revisions) as a basis to be followed by all sectoral ministries in preparing their respective TMP.

d) Institutional arrangement of government under federal constitution: This study identifies the needs of organizational arrangements (including their interlinkages and basic staffing patterns) in different tiers of government in federal structure of the state covering four major sectors (like education, health, agriculture and transport infrastructure where the tasks of functional analysis and assignments were completed) with reference to the proposed functional assignments, constitutional provisions relevant to institutional arrangements and review of international experiences in making institutional arrangements in federalization context.

The government can use this report by considering the suggestive institutional arrangements for the creation of required organization set-ups at different tiers of government in selected four main sectors.

e) Intergovernmental fiscal design in the context of the Federal Constitution of Nepal: A report has been prepared and submitted by international expert with analyses of both the expected expenditure needs of different government levels regarding functional assignment (five sectors such as agriculture, transport, education, health, including local development) and the assignment of revenue sources in the context of new constitution. Besides proposing 10 rules for the implementation of the federal constitution in Nepal, some ways are suggested to fill in the vertical fiscal gaps for the intergovernmental fiscal transfer system.

Recommendations can be useful for the Ministry of Finance in planning fiscal decentralization in the context of new constitution. The report can also be a useful reference document for the commission working on determination of number and size of local government for considering the right number of local bodies and their sizes.

3.2.2 Technical support to Administrative Reforms of incremental nature

Major technical supports provided by MoGA through its PREPARE so far are also related to administrative reforms of incremental nature. Among the major activities undertaken in this thematic area are briefly highlighted below:

a) Capacity building: The major activities undertaken are: a) support to institutional strengthening of MoGA through functional assessment and institutional development planning; improving management auditing systems and practices; offering of inputs for changes in civil service rules/policies; analysis of personnel information management system, human resource development planning for civil service employees; and b) support to institutional strengthening of PSC through strategic planning, adoption of assessment centre methodology for candidate selection at senior positions), etc.

b) Social inclusion: The major activities are: a) review of policies, laws and regulations related to inclusive human resource administration in civil service; b) review and design of training module and manual on affirmative action at workplace; c) conduction of training of trainers for promoting affirmative action in workplace; d) review of existing inclusive
recruitment policy and practices; e) support to women and socially-excluded groups for preparing to attend PSC’s entrance examination for section officers; f) support to prepare policy directives for MoGA for making work place GESI friendly.

c) **Accountability, transparency and responsiveness**: The main activities on this theme are: a) preparation of a manual for performance contracting (at executive level) for OPMCM; b) technical support to CIAA for preparing its strategic plan; review of policy and legal environment for anti-corruption drives in Nepal; development of training manuals on financial, procurement and land-related issues and conduction of training to improve capacity of investigation officers

Furthermore, on the basis of various inputs generated through its studies as highlighted above, MOGA-PREPARE have been organizing various consultations / interactions with administrative actors along with national and international experts at central and local levels on key issues of public administration transition, administrative restructuring and public service delivery in state restructuring process. These activities have also taken place in generating the inputs for ensuring wider ownership of the change process. All these should have facilitated in creating vibrations of government engagements in the change process and generating awareness on the part of key public officials, particularly at administrative levels, of the needs and the challenges for administrative restructuring and strengthening with articulation technical inputs for dealing with them. Further highlights of reports prepared on these project initiatives in Annex 2.

There were also opportunities to update project’s efforts and inputs with some members of the then Constitution Assembly and to share study-based inputs relating to functional assignments, transition management and articulation of state policies on administration / governance as contributions towards the constitution drafting.

4. **Needs for New initiatives for Restructuring and Strengthening of Public Administration**

As stated earlier, though the new constitution have various consequences or influences in how all three main branches of the state affairs (i.e., legislative, executive and judiciary) are organized and operated, it is the executive that will have to undergo substantive reframing of public administration in response to the political rearrangements and division of powers to the different tiers of government. Specifically, the rationales for articulating and designing a new program for administrative restructuring and strengthening in the changed context of Nepal can be summarized as follows:

a) Reframing or restructuring and strengthening of public administration, particularly the administrative federalization, is needed not only to help execute the constitutional provisions related to the executive roles of the government but also to ensure smooth continuity and expansion of delivery of public services

b) New efforts towards building governance capacity is to be compatible with not only the needs of all-round socio-economic development of the country but also to comply with emerging thrusts of the good governance, like rule of law, inclusiveness and wider participation, accountability and integrity, service orientation, responsiveness, conformance to principles of human rights, etc.
c) New initiatives of strengthening of administrative machinery should also be supportive towards the reconstruction drive after the recent earthquake disaster.

d) The new project initiatives will need to take a broader strategic approach by focusing on the needs of administrative restructuring and strengthening, with focus on central and provincial levels in the beginning in view of the expected involvement of the Ministry of Federal Affairs and Local Development in making local level institutional arrangements, including needed prototype legal provisions.

e) The activities of PREPARE, which have supplemented various governance reform programs being undertaken in the country, have still lots to contribute towards ensuring a successful transition of administration to a federal structure and creating an enabling environment for a capable, professional, effective and inclusive civil service in Nepal.

f) The new project / program initiatives for public administration restructuring and strengthening will have to take care of both finished and non-finished agenda of administrative restructuring as well as emergent needs of the transition management.

Now, in view of the emergent needs of restructuring and strengthening of public administration, particularly the administrative federalization, the government is also considering to develop and launch a comprehensive program, which will also provide technical inputs and support for the recently formed high-level committees at OPMCM, as follow-up initiatives by building on the activities undertaken by MoGA through PREPARE project supported by UNDP.

5. Way Forward: New Program Initiatives

In light of the needs as highlighted above, a new initiative in a form of comprehensive program is being articulated. Some major features of this initiative are highlighted in succeeding parts.

a) Objectives and Thrust Areas (Components):

The program will have to have objective of extending support to the Government of Nepal in restructuring public administration and managing transition from unitary to federal system, with focus on reframing, in the context of the new constitution for state reforms and effective delivery of public services. The following key areas or components can be considered to be covered by the new program.

i) Legal and policy reform: This will involve extending technical support to enactment of the basic laws and revision of existing laws, including civil service law and the sectoral laws that relate to intergovernmental relations, relevant policies and standards, development of model laws for provinces. Likewise, this will mean to include: among others, support to design of policies for management of public services / civil service at different levels of government, promotion of gender and social inclusion policy and delivery of services to people, including marketization of public services, facilitation of managerial innovations and practices of e-governance by adapting to technological innovations.

ii) Institutional reframing and mechanisms for effective public service delivery: This component will have to include re-structuring of the existing ministries in reduced
number and decentralized form with restructuring as well as creation of other organization-set-ups at federal, provincial and local levels. A few new organizations will be needed as integrators at different levels of government like Inter-Provincial Council, Federal-Provincial Coordination Council, along with strong administrative mechanisms for fiscal federalism. Necessary institutional mechanisms will need to be installed or strengthened for effective delivery of public services to people, focussing on poor, marginalised and socially disadvantaged groups. Besides strengthening of anti-corruption agencies, mainstreaming performance management approach in administration and management of public institutions in wider scale will also have to be prioritized under this component.

iii) Management of civil servants: This will have to include a few selective activities such as: a) identifying the human resource needs at different levels of government under the federal structure during and after transition; b) making staff arrangements from among existing civil servants and local body staff at different tiers of government through staff re-allocation from surplus to deficit sector of government in order to give continuity to delivery of public services before creating federal civil service and other government services; c) developing civil service policy and strategy; and d) creating federal civil service and other government services at central and sub-national government levels, including process and standards for their administration relating to recruitment, development and utilization, through needed legislation and policy decisions

iv) Capacity building: Apart from capacity-building of several public agencies for federalization, decentralization and transition management, etc, this component will have to include: a) building human resource capacity of administrative and developmental institutions operating in public sector through different means; b) supporting aspiring women and members of socially excluded groups for civil service entry examinations and development of in-service capacity building; and c) capacity-building of lead agencies like MoGA, PSC, OPMCM, for administrative federalization. Some innovative measures like execution of HRD plan in civil service, with development of staff data base and inventory of service seekers and administrative outreach for them, will also be considered. Likewise, design and execution of sectoral transition management plan for major sectoral ministries for re-organizing existing administrative set-ups in line with the needs of state restructuring will have to take place with stocktaking of the existing human and physical resources. Capacity development of newly created organizations at federal, provincial and local levels will also need to be included in this component.

v) Strategic communication: A wider participation and ownership in administrative restructuring process is necessary for sustainable change process guided by collective wisdom. This component will consist of: a) interactions / consultations among key government officials and representatives of public servants by profession/ and levels, public service users, professional associations, civil societies from different sectors, etc. on the subjects of administrative transition, restructuring and strengthening; b) use of mass communication media for reaching and interacting with different stakeholders of public services at political and administrative levels on the subjects of mutual interests.

The new program will also have to choose a few selective cross-cutting themes in view of the multi-dimensional feature of public administration as well as the issues related to its restructuring and strengthening. Transition management will be a cross-cutting theme for carrying out program activities from time perspective, besides a few other emergent cross-
cutting themes like integrity and accountability, gender equity and social inclusion; and conflict sensitivity.

b) **Implementing partners, implementation modality and challenges:**

MoGA will be the lead implementing partner of the Program, with a high level committee headed by the Chief Secretary for the overall guidance of the program execution. OPMCM can look after policy reforms while MoGA can be made responsible for institutional reframing and management of civil servants. Both OPMCM and MOGA along with sectoral ministries can well look after transition-related issues. Likewise, MoGA and other related agencies may jointly take care of components of capacity development and strategic communication.

However, the types of restructuring and transition management that are needed for administrative federalization and state restructuring process may also have to face some challenges as foreseen below:

a) Administrative restructuring and transition management of this magnitude will obviously require wider participation and operation of large number of government institution across different tiers of government and accountable for them. This issue can be made complicated by the likely frequent changes in senior government officials concerned with project execution.

b) Various kinds of resistance from the critical stakeholders shall be experienced in the process of transfer of authorities and resources and transition management. Driving the key actors, particularly sector ministries, in the process of transfer of powers and resources will be a challenge, particularly for OPMCM and MoGA. For this, constant interaction and meetings with the politicians will also be required for ensuring political buy-in of the change process, which is often likely to be highly influenced by the change in the guard of government.

c) A number of international donor agencies are also in engaged or showing interest to support in the process of transformation of governance in the context of state restructuring. A lot of effort and maneuvering from both top political and administrative levels will be required for ensuring coordination among the development partners potentially working in the area of public administration and governance.

d) Legislative reform, which is backbone of the whole transformation process of public administration will require coordination with the line and staff ministries and with the Parliament. This will naturally demand supportive and active political leadership, which cannot be often expected to be forthcoming.

e) The sequencing and timing of provincial and local elections is likely to have profound impact on the process and magnitude of transfer of power and resources from central to the sub-national governments.

f) In view of Nepal’s lack of experiences in federalization, complex and multi-dimensional nature of the change to be gone through and low institutional capacity to manage change, Government will obviously require sustained and systematic support based on the relevant international experiences.
g) There is need for both disseminating technical inputs generated through new program initiatives with policy-makers, decision-makers and reform actors and discussing the major political and administrative processes of federalization and decentralization in the broader context of constitution implementation.

Development of certain mechanisms for sustained engagement and dialogue among the lead actors, especially with OPMCM and MOGA, can be a strategy to ensure that all government partners on the board for moving up the reform process. Appropriate mechanisms for constant interaction and meetings with the politicians will have to be developed for ensuring political buy-in of the outputs of the new program initiatives. Likewise, bringing in political and administrative experts having experiences of the countries undergoing similar kind of transformation process can facilitate informed change-related decision makings.

It is important to reinforce here that the new program initiatives of the Government for restructuring public administration and managing transition should be built on what has already been done and what other activities are underway. It would also be desirable to develop the program document on consultation with relevant stakeholders including government agencies and relevant development partners so that all are pulled on the same page.

Some References:

Constitution of Nepal 2015


Reports of various Administrative Reform Commissions and Related Committees


Various unpublished reports produced from MoGA/ PREPARE
Annex 1
Elements of the New Public Governance (NPG)
in contrast to Public Administration (PA) and New Public Management (NPM)

<table>
<thead>
<tr>
<th>Paradigm/ key element</th>
<th>Theoretical roots</th>
<th>Nature of the state</th>
<th>Focus</th>
<th>Emphasis</th>
<th>Relationship to external (non-public) organizational partners</th>
<th>Governance mechanism</th>
<th>Value base</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Administration</td>
<td>Political science and public policy</td>
<td>Unitary</td>
<td>The policy system</td>
<td>Policy implementation</td>
<td>Potential elements of the system</td>
<td>Hierarchy</td>
<td>Public sector ethos</td>
</tr>
<tr>
<td>New public Management</td>
<td>Rational/public choice theory and management studies</td>
<td>Disaggregate</td>
<td>Intra-organizational management</td>
<td>Service inputs and outputs</td>
<td>Independent contractors within a competitive market-place</td>
<td>The market and classical or neo-classical contrasts</td>
<td>Efficacy of competition and the market-place</td>
</tr>
<tr>
<td>New public Governance</td>
<td>Organizational sociology and network theory</td>
<td>Plural and pluralist</td>
<td>Inter-organizational governance</td>
<td>Service processes and outcomes</td>
<td>Preferred suppliers, and often inter-dependent agents within ongoing relationships</td>
<td>Trust or relational contracts</td>
<td>Neo-corporatist</td>
</tr>
</tbody>
</table>

Source: Stephen P. Osborne (2006)
## Annex 2
List and Highlights of Reports from PREPARE Project of the Ministry of General Administration (MoGA)

<table>
<thead>
<tr>
<th>Broad Theme (Areas)</th>
<th>S.N</th>
<th>Subjects of Report</th>
<th>Major contents of the report</th>
<th>Possible use or modality of implementation</th>
</tr>
</thead>
</table>
| Restructuring of civil service in federal context      | 1   | The Nepal Civil Service and Restructuring of the State (Options paper) | a) Review of existing features of civil service and challenges facing it in the context of federalization of administration  
   
b) Review of international practices and experiences in civil service restructuring in the context of federal structure of the state.  
   
c) Lessons learned from other countries  
   
d) Suggestions on options for restructuring of civil service in federal structure of the state in Nepal | Government can use this report as a reference document in preparing a policy or long-term vision for restructuring and management of civil service in federal structure of the state |
|                                                        | 2   | Background Paper: Legal and Policy Outline for Civil Service in Federal Context (Nepali) | a) Review the existing legal and policy provisions for civil service administration in Nepal  
   
b) Review of civil service practices in other countries  
   
c) Suggestion on what government can do for changing policy and legal provisions for federalization of civil service in Nepal | MoGA can consider this report as background material for drafting policy and laws related with civil service administration in federal context.                                                                 |
| Functional analysis, assignment and institutional arrangements in federal context | 3   | Functional Analysis and Assignment (13 Reports):  
   
   **First phase (8 Reports)  
   Sector: Agriculture, Education, Health, Transport Infrastructure and Drinking Water** | (Covering all Reports)  
   
a) Review of existing functional allocation and their practices in selected sectors, including international practices and experiences of functional analyses and assignment in other countries  
   
b) Review of principles and concepts, present practices and legal provisions related to | All these reports provide basis for:  
   
a) assigning functions and authorities clearly to different tiers (federal, provincial and local) of government in selected |
<table>
<thead>
<tr>
<th>Broad Theme (Areas)</th>
<th>S.N</th>
<th>Subjects of Report</th>
<th>Major contents of the report</th>
<th>Possible use or modality of implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cross-cutting theme: Decentralization, Social Inclusion</td>
<td>4</td>
<td>Institutional Arrangements of Government of Nepal Under Federal Constitution (focusing on central and provincial levels in selected four main sectors)</td>
<td>Reviews of constitutional provisions relevant to institutional arrangements to be made in government in federalization context, including reports on functional analyses in four major sectors of government like education, health, agriculture and transport infrastructure. Review of international experiences in making institutional arrangements in selected four sectors;</td>
<td>a) Consider the suggestive institutional arrangements for the creation of required organizational set-ups in different tiers of government in selected four main sectors. b) Use conceptual framework and methodology used.</td>
</tr>
<tr>
<td>(5 sectoral reports + 2 thematic reports + 1 integrated report)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second phase (5 reports) – in Nepali Sector: Peace and Security, Industry and Tourism, Energy and Land Management (4 sectoral reports + 1 integrated report)</td>
<td></td>
<td></td>
<td>Decentralization and Social Inclusion as the two relevant cross-cutting themes for preparing methodological basis for undertaking functional analysis and assignment in selected sectors of government functions under the federal structure of the state. Analyses of functions of government in selective nine sectors (i.e., Agriculture; Education; Health; Transport Infrastructure; Drinking Water; Peace and Security; Industry and Tourism; Energy and Land Management) and assignments of the unbundled functions, with references to existing functions as well as provisions made in the constitution, across different tiers (federal, provincial and local) of government on sectoral basis in federal structure of the state. Suggestions on how these reports can be used by the government, including use of reports for further functional analysis in new sectors, in making organizational arrangements, drafting new laws, etc, in federal context.</td>
<td>b) expanding functional analysis activities in other sectors where such analysis for clear assignment has not taken place; c) making institutional arrangements (organizational set-up, interlinkages, staffing structure and size, logistics support, resource allocation and law drafting) in different sectors at different tiers of government; d) development of conceptual basis with methodology, with required refinement, for undertaking functional analysis and assignment in new sectors of government. a) b)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

17
<table>
<thead>
<tr>
<th>Broad Theme (Areas)</th>
<th>S.N</th>
<th>Subjects of Report</th>
<th>Major contents of the report</th>
<th>Possible use or modality of implementation</th>
</tr>
</thead>
</table>
| Transitional management | 5   | Transitional Management Plan for Federalization of Public Administration in Nepal | a) Review of current political and administrative situations of Nepal  
b) Review of international practices of transition management planning in selected countries  
c) Suggestion of a comprehensive framework of transition management plan (TMP) for federalization of public administration in Nepal, proposing 61 actions clustered into 12 components, covering institutional arrangements at central, provincial and local levels, relationship between civil services at different levels, legal requirements for constitutional compliance, infrastructural requirements, inter-governmental fiscal relations, etc. | Government can make this plan as a generic TMP framework (with necessary revisions, if necessary) as a basis to be followed by all sectoral ministries in preparing their respective TMPs |
| Fiscal Decentralization | 6   | Intergovernmental Fiscal Design in the Context of the Federal Constitution of Nepal | a) Proposing 10 implementation rules for the implementation of the federal constitution in Nepal  
b) Analysis of expected expenditure needs of different government levels regarding functional assignment (five sectors such as agriculture, transport infrastructure, education, health, including local development) | a) Recommendations can be useful for the Ministry of Finance in planning fiscal decentralization in the context of new constitution.  
b) Report can be a reference document for commission on determining number and size of local government for considering the right number |
<table>
<thead>
<tr>
<th>Broad Theme (Areas)</th>
<th>S.N</th>
<th>Subjects of Report</th>
<th>Major contents of the report</th>
<th>Possible use or modality of implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>c) Analysis of the assignment of revenue sources in the context of new constitution</td>
<td>of local bodies and their sizes</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>d) Ways to fill the vertical fiscal gaps for the intergovernmental fiscal transfer system (an outline of intergovernmental fiscal transfer systems in line with the constitutional provisions)</td>
<td>c) Report also provides some inputs for MoGA in its studies on functional assignments and required organizational arrangements at different tiers of government</td>
</tr>
<tr>
<td></td>
<td>7</td>
<td>Functional Analysis and Institutional Capacity Assessment of Ministry of General Administration</td>
<td>a) Analysis of functions being performed by MoGA</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>b) Assessment of institutional capacities to perform the assigned functions</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>c) Suggested measures to enhance institutional roles and capacity of MoGA</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>MoGA can choose suggested measure(s) for implementation on a priority basis and execute with necessary preparation</td>
</tr>
<tr>
<td></td>
<td>8</td>
<td>Institutional development Plan focusing on Capacity development of MoGA</td>
<td>a) Assessment of capacity from both individual and organizational perspectives</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>b) Assessment of institutional development needs, including needs for strategic plan and shifting from personnel administration to human resource management approach</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>c) Suggesting transformation process of MoGA in three hybrid models (in the new structure of the state): transferring present relevant HR functions to ministries; improving current structure and process; and moving towards fully decentralized HR functions</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>MoGA can selectively use the findings and recommendations of the report as reference inputs in its restructuring and re-strengthening drives</td>
</tr>
<tr>
<td>Broad Theme (Areas)</td>
<td>S.N</td>
<td>Subjects of Report</td>
<td>Major contents of the report</td>
<td>Possible use or modality of implementation</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----</td>
<td>--------------------</td>
<td>-------------------------------</td>
<td>-------------------------------------------</td>
</tr>
</tbody>
</table>
|                     | 9   | Human Resource Development Plan for Civil Service (Nepali) | a) Review of existing situation of human resource development practices in civil service  
    b) Suggestion of a framework of human resource development plan, including an action plan for its execution to develop human resources in the civil service | MoGA can choose the suggested measures in terms of its priority in the light of relevance and feasibility by improving legal provisions and designing action plan for developing needed work force in civil service |
|                     | 10  | Improving Effectiveness of Management Auditing in Nepal (Nepali) | a) Review of existing management audit systems / processes and practices in Nepal’s government organizations  
    b) Suggestions on the ways for improving management audit practices in government organizations, including improvement in current directives for management auditing and development of capacity to conduct management audits | MoGA can start: revising its current management audit directives; developing capacity to undertake management audit; and considering delegation of such audit function to respective lead ministries |
|                     | 11  | Assessment of Institutional Development Needs and Preparation of Strategic Plan of PSC | a) Identification of institutional development needs of PSC  
    b) Suggested framework of strategic plan, with suggested time-bound actions, for PSC to develop capacity and perform its institutional roles | PSC can choose suggested measure(s) for implementation on a priority basis and execute them with necessary preparation |
|                     | 12  | Competency-based Assessment Centre Methodology for Public Service Commission for candidate selection (Nepali) | a) Review of competencies required for performing the jobs of the positions of Class I and II officers of two professional services of civil service (Administration and Forestry), with a view to designing a selection methodology for PSC to select candidates applying for senior positions | PSC can use the inputs generated by the report in many ways like:  
    a) refine the suggested competency frameworks, with review of roles of |
<table>
<thead>
<tr>
<th>Broad Theme (Areas)</th>
<th>S.N</th>
<th>Subjects of Report</th>
<th>Major contents of the report</th>
<th>Possible use or modality of implementation</th>
</tr>
</thead>
</table>
|                      |     |                                                        | **b)** Suggestion on competency frameworks required for Class I and II officers of two professional services of civil service (Administration and Forestry).  
**c)** Suggestion of various methods to measure the suggested competencies as required by Class I and II officers of Administration and Forestry services.                                                                                                                                                                                                 | selected senior level positions in more detail;  
**b)** use the refined competency framework to design appropriate methods for measurement of required competencies with development of appropriate instruments;  
**c)** plan for launching of Assessment Centre Methodology for selective position levels of civil service in an effort to modernize and improve its candidate selections methods.                                                                 |
| Affirmative action   | 13  | Inclusion in Civil Service: Issues and Initiatives     | **a)** Review of existing policies and legal provisions related to social inclusion in civil service of Nepal  
**b)** Suggestion on policy options on how social inclusion should be promoted in Nepal Service                                                                                                                                                                                                                                                         | MoGA can use this report as background for drafting policy and law for mainstreaming GESI policies in administration of civil service.                                                                                                                                                             |
|                      | 14  | Affirmative Action Promotion at Workplace: Training Module and Manual | **a)** Review of existing training courses of major public training institutions of Nepal on promotion of affirmative actions in work places of civil services  
**b)** Suggestion of three sets of training courses covering five themes (gender sensitivity, diversity management, harassment,                                                                                                                                                                                                                             | **a)** Local public training institutions can move on conducting training courses on how affirmative action can be promoted in work place in separate package or as part of their regular training programs.                                                                 |
|                      |     |                                                        |                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                 |

21
<table>
<thead>
<tr>
<th>Broad Theme (Areas)</th>
<th>S.N</th>
<th>Subjects of Report</th>
<th>Major contents of the report</th>
<th>Possible use or modality of implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>Review of Implementation Status of Inclusive Recruitment Policy (Nepali)</strong></td>
<td>discrimination, work ethics, etc.) to be provided by lead public institutions for civil servants working at senior, middle and junior position levels (a training manual also suggested)</td>
<td>b) MoGA should keep monitoring training institutions on how they are incorporating this theme in their training programs</td>
</tr>
<tr>
<td></td>
<td>15</td>
<td>a) Review of recruitment practices of Public Service Commission as per legal provisions for allocating 45% of vacant positions for women and disadvantaged groups of society</td>
<td>This report provides some glimpses of the success and failure of this inclusive recruitment policy and learnings. Hence, MoGA can identify the areas of change in policies and laws for practising inclusive approach in recruitment in civil service.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15</td>
<td>b) Review of changes in composition of civil service after execution of inclusive recruitment policy</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>15</td>
<td>c) Suggestions on changes to be made in such recruitment policy.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Gender and Social Inclusion Friendly Workplace (for Civil Service) Policy (Nepali)</strong></td>
<td>a) Review of past and existing efforts towards creating gender and social inclusion-friendly work environment in civil service</td>
<td>MoGA can use this report as technical input for preparing policy document and getting it approved through legitimate authority for ensuing GESI friendly workplace in civil service</td>
</tr>
<tr>
<td></td>
<td>16</td>
<td>b) Suggest a draft policy (objectives, policies and actions) for ensuring gender and social inclusion-friendly work environment in civil service</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Performance Contract Guidelines (Nepali)</strong></td>
<td>a) Review of existing practices of performance contract in government organizations</td>
<td>Government can use this report to prepare Performance Contract Directives and formalize them through decision-making level and issue them to sectoral ministries for execution in appointing senior government officials at leadership positions</td>
</tr>
<tr>
<td></td>
<td>17</td>
<td>b) Preparation of a suggested manual for undertaking performance contracting with those government officials holding senior positions, like Secretary, Director Generals, managers of development projects (in phase-wise basis), etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Broad Theme (Areas)</td>
<td>S.N</td>
<td>Subjects of Report</td>
<td>Major contents of the report</td>
<td>Possible use or modality of implementation</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
|                     | 18  | Review of Policy Environment for Anti-corruption Drive in Nepal: Roles of Commission for the Investigation of Abuse of Authority (remains to be finalised for wider sharing)                                                | a) Analysis of policy, legal and institutional contexts for anti-corruption drive in Nepal  
   b) Review of international initiatives in fighting corruption  
   c) Findings on proliferation of anti-corruption laws, agencies, limitations of CIIAA, role of government and CIAA in implementation of anti-corruption strategies, etc.  
   d) Recommendations on anti-corruption strategy implementation, coordination modality for anti-corruption strategy, national anti-corruption coordination committee, etc. | a) Both Government of Nepal and CIAA can use this report for understanding the broader context as well policy-legal environment for anti-corruption drive in Nepal  
   b) Report can be useful source document for devising anti-corruption strategy in Nepal                                                                                                                                                                                                                                      |
|                     | 19  | Assessment of Staff Training Needs of the Commission for Investigation of Abuse of Authority (CIAA)                                                                                                                | a) Review of growing need of staff and their capacity building in CIAA  
   b) Emphasis on organizing in-house training programs on a regular basis for CIAA staff  
   c) Identification of training needs of CIAA personnel into two categories: basic and specialized.  
   d) Suggestions on various training programs like basic orientation training, investigation skills on preliminary and detailed, specialized issue / sector-based training, general organization management training, personal skill development training, exposure visits, etc. | CIAA can conduct various need-based programs for its personnel as part of its institutional capacity building.                                                                                                                                                                                                                                         |