

ROUTLEDGE STUDIES IN FEDERALISM AND
DECENTRALIZATION

Emerging Practices in Intergovernmental Functional Assignment

Gabriele Ferrazzi and
Rainer Rohdewohld



An extremely valuable book for those who are supposed to deal with this, so far poorly addressed but particularly important, complex and challenging issue of decentralization.

Bernhard May, *Former Teamleader of the GTZ – Support for Decentralization Measures (SfDM) Project in Indonesia*

The authors not only provide theoretical perspectives and an overview of best practices but have managed to integrate detailed case studies into the book; academic books rarely drill down to such real world detail. I'm sure this will be a major contribution to the literature.

Blane Lewis, *Crawford School of Public Policy, The Australian National University, Australia*

The authors have produced a much needed book, useful to students, researchers and practitioners. There have been few sources available to learn about functional assignment; the book does much to fill this knowledge gap.

Agus Dwiyanto, *Gadjah Mada University, Indonesia*

Scholars and practitioners concerned with multilevel governance will find this comprehensive analysis of functional assignment to be exceptionally helpful. In particular, the book will likely be indispensable for anyone in developing countries involved with multilevel structural reform. It provides thoughtful and practical approaches to answering this crucial question 'Who is going to do what?'

Andrew Sancton, *Professor Emeritus of Political Science, The University of Western Ontario, Canada*

The much awaited book addresses a gap in the literature and will help policy-makers and practitioners with the design of processes and achieving greater conceptual clarity and consistency of functional assignments.

Claudia Buentjen, *Principal Public Management Specialist, Asian Development Bank, Manila, Philippines*

This publication by Gabriele Ferrazzi and Rainer Rohdewohld is sorely needed to encourage and guide decentralization reforms in Asia and elsewhere. It is the first book that gives functional assignment a proper and comprehensive explanation and thus fills a gap in the academic and practitioners' literature.

Christoph Beier, *Vice-Chair of the Management Board of GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH, Eschborn/Bonn), Germany*

This book not only constitutes a very useful addition to the growing literature on decentralization and multi-level governance in countries of the Global South, it is much more than that; an elaborate and practical guide for policy-makers conceiving reforms in the field of subnational government as well as a detailed tool for international development partners. It is most diversified in its concrete analysis and proposals based on most extensive cooperation experience in South Asian countries. Last but not least, this book is free from any normative bias on 'how to do it exactly'. It leaves the final choice to the national level, both governmental and societal. This approach alone makes it a distinct and sublimely rich contribution to the field.

Hans F. Illy, *University of Freiburg i.Br., Germany*



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Emerging Practices in Intergovernmental Functional Assignment

Attaining the benefits of (especially fiscal) decentralization in government remains an enduring challenge, in part because the re-arrangement of public functions across levels of government has often been carried out poorly.

This book aims to provide a firmer conceptual basis for the re-arrangement of public functions across levels of government. In doing so, it offers practical advice for policy-makers from developing and emerging countries and development cooperation practitioners engaged in such activity. Combining a theoretical approach for intergovernmental functional assignment with an in-depth analysis of real-life country cases where functional assignment (FA) has been supported in the context of international development cooperation, it underscores the common technical and political challenges of FA, and also demonstrates the need to expect and support country made and context-specific solutions to FA processes and results. Examples are drawn from a number of developing/transition countries from the Asia-Pacific region, Africa and the OECD, which outline and suggest advisory approaches, tools, principles and good practices and approaches.

This text will be of key interest to scholars, students, policy-makers and practitioners in public policy, decentralization, local governance studies, public administration and development administration/studies.

Gabriele Ferrazzi is Adjunct Professor at the School of Environmental Design and Rural Development, University of Guelph, Canada. He has worked for over 20 years as a consultant on decentralization and administrative reform projects of relevance to functional assignment supported by German development cooperation (GIZ) and other development partners.

Rainer Rohdewohld is a Senior Decentralization Policy Advisor from the German development cooperation (GIZ), with more than 25 years of work experience on administrative reform, decentralization reforms/local governance and capacity development issues in Asia (Indonesia, Cambodia, India, Pakistan, Nepal) and West Africa (Ghana). He has worked for a range of multilateral and bilateral development cooperation agencies, such as the Asian Development Bank (ADB), UNDP and the Swiss Agency for Development Cooperation (SDC).

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Emerging Practices in Intergovernmental Functional Assignment

**Gabriele Ferrazzi and
Rainer Rohdewohld**

First published 2017
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging in Publication Data

Names: Ferrazzi, Gabriele, author. | Rohdewohld, Rainer, author.

Title: Emerging practices in intergovernmental functional assignment / Gabriele Ferrazzi and Rainer Rohdewohld.

Description: Abingdon, Oxon ; New York, NY : Routledge, 2017. | Series: Routledge studies in federalism and decentralization | Includes bibliographical references and index.

Identifiers: LCCN 2016055265 | ISBN 9781138658240 (hardback) | ISBN 9781315620947 (ebook)

Subjects: LCSH: Decentralization in government. | Intergovernmental cooperation. | Central-local government relations. | Decentralization in government—Asia. | Intergovernmental cooperation—Asia. | Central-local government relations—Asia.

Classification: LCC JS113 .F47 2017 | DDC 320.8—dc23

LC record available at <https://lcn.loc.gov/2016055265>

ISBN: 978-1-138-65824-0 (hbk)

ISBN: 978-1-315-62094-7 (ebk)

DOI: 10.4324/9781315620947

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Foreword

*Dr Christoph Beier**

The need for multi-stakeholder partnerships has been acknowledged as a key precondition for attaining the international development objectives as formulated in the current global framework for sustainable development, the Agenda 2030 with its 17 Sustainable Development Goals (SDGs) and the Addis Ababa Action Agenda (AAAA) which forms an integral part of the Agenda 2030. Subnational (or local) governments are an essential and indispensable element of such partnerships – national and global strategies for implementing our sustainable development framework need to take into account their potentials and constraints as well as their institutional needs. This book on intergovernmental functional assignment addresses a critical way of how to bring subnational government on board, to play its full role.

Since the 1990s, there has been a tremendous and global shift from centralized state structures to more decentralized, multi-level systems of government, as the authors of this important book point out. These changes are not easy. Finding a clear and robust division of responsibilities between levels of governments and a corresponding sharing of resources is, however, critical for obtaining stable, effective and dynamic public sector systems. It is quite demanding to get such reforms right: The Indonesian case study demonstrates that challenges in functional assignment (deciding who should be doing what) are still front and centre in decentralization reforms, even after 15 years of implementation and several revisions to the decentralization legal framework.

This publication by Gabriele Ferrazzi and Rainer Rohdewohld is sorely needed to encourage and guide decentralization reforms in Asia and elsewhere. It is the first book that gives functional assignment a proper and comprehensive explanation and thus fills a gap in the academic and practitioners' literature. The authors rightly display a wide perception of functional assignment that goes much beyond expenditure assignment frameworks, addressing the roles and linkages between levels of government. Several features of the book represent new and useful territory; for instance, embedding decentralization modalities in their legal backdrop that elucidates which state entities give and receive functions, serves to clarify these ideal types and their implications for autonomy and accountability. The guidance provided on the typology of functions as well as on the architecture of functions will help policy-makers to make better informed

choices. Breaking down the functional assignment process into discrete and sensible steps and providing methodologies such as the vertical and horizontal unbundling offers vital assistance to those that need to design and steer a functional assignment process. Drawing on four major case studies, the authors manage not only to explain what has been attempted in functional assignment, but also put forward some emerging good practices.

The book draws amply from the experiences of the authors in supporting functional assignment reforms; GIZ can be proud of having been the main vehicle for these supporting efforts. For some years, I was a member of the advisory team working with the Indonesian government on decentralization reforms; looking back at this experience I am confident that with this book, policy-makers, stakeholders and development practitioners will have a more promising base upon which to plan and implement the empowerment of sub-national government and the transfer of functions and resources.

The importance of decentralization reforms, and therefore of functional assignment as a key element of such reforms, will not diminish despite the more than three decades of reform efforts that we have seen since the 1990s. The global framework for sustainable development calls for enhanced roles for sub-national governments and other stakeholders. As the authors point out in their concluding chapter, efforts to meet challenges like climate change and urbanization (an important driver of change in Asia) will have a better chance of success if based on solid and well-defined assignments of roles and responsibilities in the sectors most affected by climate change and urbanization. Seen from this perspective, the book is not only pertinent for governance specialists but also for sector experts that look to find answers to global development issues in the national context of sector frameworks. For the governments of the Global South, and for development partners like GIZ, the book offers a normative approach to functional assignment that has a better chance of yielding results in development cooperation than has been the case to date.

Note

- * Vice-Chair of the Management Board of GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH, Eschborn/Bonn, Germany).

Who is the book for?

This book should be useful to policy-makers situated in legislative or executive bodies who are contemplating the decentralization of governmental functions – or recentralization for that matter. It is however most likely to be used in an operational sense by the technical units that supply policy-makers with options and recommendations. It should help to guide the work of coordinating government bodies that must design and steer decentralization processes, and of ministries and agencies that must organize themselves to conduct functional assignment exercises that culminate with proposals for their political masters to consider. In particular, officials from sector ministries and agencies will find it useful as it places functional assignment – essentially a sector-based endeavour – in the context of decentralization issues that might be less familiar ground for sector officials.

As functional assignment in developing and emerging countries is likely to be encouraged and assisted by national and international development partners, we give some attention to the support role that is needed to increase the likelihood that functional assignment exercises will yield good proposals for revised assignments and scope for subnational government initiative, and prepare the ground for a proper execution. Hence the book can be a guide to advisers engaged in technical cooperation initiatives.

We hold that functional assignment exercises should be more open and participatory, and for that reason the techniques and contextual discussions in this book should also be useful to local government associations, academics, and nongovernmental and civil society organizations that seek to understand this policy field and vie for a place at the table when new institutional arrangements are under discussion. At the very least we hope that armed with this book, these actors will be better equipped to scrutinize and pass judgement on the process and results of functional assignment that are led by government.

Researchers and students residing in colleges, universities and think tanks concerned with the functioning of the public sector, and in particular with the role of subnational government and subnational institutions, will also benefit from this book. The book is relevant for a number of academic fields (as most decentralization literature is): public administration experts, public finance economists, political scientists, development sociologists and perhaps even law

experts will find references to their fields of study and research. We are consciously spare in our reference to theory, choosing instead to focus on the needs of practitioners. However, we recognize that robust concepts can be useful to the latter. Where necessary, we discuss relevant concepts of the decentralization literature – irrespective of their academic lineage – to enhance practice, and to stir some additional thoughts and contributions from the academically inclined – that may in turn provide contributions to the field where gaps persist. In that sense we hope that our book will also contribute to the further academic research on decentralization and on the factors that make or break the success of decentralization reforms.

Acknowledgements

The book distills nearly 20 years of professional engagement in supporting decentralization reforms, mainly in developing and emerging countries such as Indonesia, Nepal, Cambodia, India, Ghana, Yemen and Pakistan where we worked in an advisory capacity for international development partners like the former CIDA, GTZ/GIZ, the World Bank, the Asian Development Bank, UNDP and others. The concepts and ideas which we have summarized here have been culled from nascent literature, and developed out of a multitude of discussions, reflections and exchanges with government officials, development practitioners, academics and civil society representatives with whom we have had the opportunity of debating, constructing or applying functional assignment approaches and ideas. There are too many of them to name them individually, but we recognize that this work would have not been possible without these interactions with officials from the Indonesian Ministry of Home Affairs, the Department of Panchayati Raj/Government of Himachal Pradesh/India, the Ministry of Local Government and Rural Development in Ghana, the Departments of Local Government, Elections and Rural Development, of Health, and of Elementary and Secondary Education in Khyber Pakhtunkhwa, Pakistan, and the Secretariat of the National Committee for Subnational Democratic Development (NCDD-S) in Cambodia (to name a few). This book owes much to our engagement with these government officials, who were trying, to the best of their understanding and within the limits of their powers and resources, to move the decentralization agenda forward.

We have felt the need for this book for some time – spurred by our sometimes fruitless search for specific guidance that could be applied to the work we have supported. Perhaps the wait was all for the best, as it gave us more time to gather experiences, and properly reflect and digest what appears at first glance to be a straightforward question – ‘who should do what’ in multi-level government – but turns out to be a rather complicated and contentious area of governance. In recent years we have become convinced of the need for an updated reference on functional assignment of wider applicability in terms of context and scope. We have drawn from a broader range of literature, anchoring functional assignment more firmly to decentralization reform, particularly its political economy, and linking functional assignment principles to fiscal federalism concepts.

In our efforts to build a stronger record of what works and what principles should guide practice we have benefitted much from an early chance to structure information and ideas offered by members of the Sector Network Governance Asia of the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) (German Development Cooperation), leading to a GTZ published two-volume manual on *Functional Assignment in Multi-Level Government* (GIZ, 2009). GTZ project managers and advisors involved in functional assignment support in Indonesia, Cambodia, India and Pakistan will no doubt recognize the debt we owe to their generous sharing of their views, approaches and challenges. We have acknowledged specific contributions from GTZ/GIZ and other supporters and practitioners in the experiences that are captured in this book as illustrations and cases studies.

More recently, we have had the opportunity to expose some of our observations and much of the concept of functional assignment as presented in this publication to selected audiences, notably participants of the face-to-face training and of an online course we have offered in 2015/2016 through the Local Governance Initiative and Network (LOGIN), a Swiss Development Cooperation-funded network of government officials, NGO representatives, practitioners and academics working on decentralization and local governance issues in Asia. The responsiveness to LOGIN members shown by Preeta Lall and her team ensured that functional assignment, and our ideas in particular, gained wider distribution and useful feedback (LOGIN, 2015). We express our appreciation also to Claudia Buentjen, Principal Public Management Specialist of the Asia Development Bank (ADB), and Jochen Mattern, Coordinator of the Secretariat for the Development Partners Network on Decentralization and Local Governance (DELOG) for facilitating our presentation of some core ideas on functional assignment at the Conference on External Support for Decentralization Reforms and Local Governance, held in Manila in August 2015 (ADB/DELOG, 2015).

We are appreciative, in advance, to readers who intend to work through the ideas and experiences offered in the book and weave these into the reform discourse and practice in their setting. We would be happy to learn that this book was of some service to practitioners setting about their reforms. Moreover, we would feel satisfied if it spurs some thinkers to give the persisting loose or contentious conceptual issues more attention. In turn this will hopefully result in a richer literature, and of course improvements in practice.

We are grateful to the editors of the Routledge Federalism and Decentralization series for supporting our effort to address the paucity of literature on functional assignment; we hope this book will go some way to close the gap, and to encourage further contributions that may expand documented accounts of practice and treatment of conceptual aspects that continue to challenge – and offer prospects – to practitioners of decentralization.

Some distinguished experts on decentralization reforms have offered advice and reviewed all or some parts of this publication. We owe much to their constructive criticism. In particular, we would like to thank Christoph Beier, Claudia Buentjen, Vincy Davies, Agus Dwiyanto, Catherine Isabel Froehling, Hans Illy, Pak Kimchoeun, Blane Lewis, Bernhard May, Luc de Meester, Ejaaz Mustafa, Kolmaly Pen, Andrew Sancton and Gerhard van 't Land.

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Abbreviations

ACELG	Australian Centre for Excellence of Local Government
ADB	Asian Development Bank
ADP	Annual Development Plan
AMK	Association of Kosovo Municipalities
AMO	Association of Municipalities of Ontario
ASEAN	Association of Southeast Asian Nations
AU	African Union
AUC	Association of Ukrainian Cities
Bappenas	National Development Planning Agency (Indonesia)
BJP	Bharatiya Janata Party (India)
BRGF	Backward Regions Grant Fund (India)
C/S	Commune/Sangkat (Cambodia)
C&WD	Department of Communication and Works (KP)
CAPAM	Commonwealth Association of Public Administration and Management
CB-PRI	Capacity Building for Panchayati Raj Project (GTZ)
CD	Capacity Development
CDD	Community-Driven Development
CLGF	Commonwealth Local Government Forum
COFOG	Classifications of Functions of Government (IMF)
COGTA	Ministry of Cooperative Governance and Traditional Affairs (South Africa)
COP21	Conference of Participating Parties (= Climate Change Conference in Paris, December 2015)
CPP	Cambodian People's Party
CSO	Civil Society Organization
CSS	Centrally Sponsored Schemes (India)
D&D	Decentralization and Deconcentration
DANIDA	Danish International Development Agency
DCoG	Department of Cooperative Governance (South Africa)
DCTE	Directorate of Curriculum and Teacher Education (KP)
DELOG	Development Partners Network on Decentralization and Local Governance

DFAT	Department of Foreign Affairs and Trade (Australia)
DFID	Department for International Development (UK)
DHO	District Health Office
DLG	Decentralization and Local Governance
DMG	District Management Group (Pakistan)
DoPR	Department of Panchayati Raj (HP/India)
DP	Development Partner
DPo	Index of Devolution in Policy (India)
DPOD	Dewan Pertimbangan Otonomi Daerah (Council for the Deliberation of Regional Autonomy) (Indonesia)
DPr	Index of Devolution in Practice (India)
DPSA	Department of Public Services and Administration (South Africa)
DPWG-LGD	Development Partners Working Group on Local Governance and Decentralization
DRSP	Democratic Reform Support Program (USAID)
DWG	Donor Working Group
E&SED	Elementary and Secondary Education Department (KP)
ECE	Early Childhood Education
EROPA	Eastern Regional Organization of Public Administration
EU	European Union
EU-SPACE	EU Programme to Support Participation and Civic Engagement
FA	Functional Assignment
FATA	Federally Administered Tribal Area (Pakistan)
FDWG	Fiscal Deconcentration Working Group
FY	Financial Year
GDP	Gross Domestic Product
GIZ	Deutsche Gesellschaft Für Internationale Zusammenarbeit
GIZ-GSP	GIZ Governance Support Programme (South Africa)
GoKP	Government of KP
GTZ	Deutsche Gesellschaft Für Technische Zusammenarbeit
HIS	Health Information System
HP	Himachal Pradesh
HR	Human Resources
HRM	Human Resources Management
ICDS	Integrated Child Development Services
ICG	International Crisis Group
ICLEI	Local Government for Sustainability
ICMA	International City/County Management Association
ICT	Information, Communication and Training
IDB	Inter-American Development Bank
IIPA	Indian Institute of Public Administration
IMF	International Monetary Fund
IP3	Three-Year Implementation Plan (of Cambodia's NP-SNDD)
IPSA	International Political Science Association
KP	Khyber Pakhtunkhwa (Pakistan)

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LAMC	Law on the Administration and Management of Communes/ Sangkats (Cambodia)
LDF	Local Development Fund
LG	Local Government
LGA	Local Government Act
LGO	Local Governance Ordinance (Pakistan)
LOGIN	Local Governance Initiative and Network
M&E	Monitoring and Evaluation
MAFF	Ministry of Agriculture, Forestry and Fisheries (Cambodia)
MLA	Member of Legislative Assembly
MoEnv	Ministry of Environment (Cambodia)
MOEYS	Ministry of Education, Youth and Sport (Cambodia)
MoH	Ministry of Health
MoPR	Ministry of Panchayati Raj (India)
MoRD	Ministry of Rural Development (India)
MoSVY	Ministry of Social Affairs, Veterans and Youth (Cambodia)
MoU	Memorandum of Understanding
MSS	Minimum Service Standards
NCAER	National Council for Applied Economic Research (India)
NCDD	National Committee for Subnational Democratic Development (Cambodia)
NCDD-S	National Committee for Subnational Democratic Development – Secretariat (Cambodia)
NEDA	National Economic and Development Authority (Philippines)
NFE	Non-Formal Education
NGO	Non-Government Organization
NPM	New Public Management
NP-SNDD	National Programme for Subnational Democratic Development (Cambodia)
NT	National Treasury
NWFP	North Western Frontier Province (Pakistan)
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
OL	Organic Law
PATA	Provincially Administered Tribal Area (Pakistan)
PILDAT	Pakistan Institute of Legislative Development and Transparency
PRI	Panchayati Raj Institutions
PRIA	Participatory Research in Action (India)
PTC	Parent Teacher Committee
PTI	Pakistan Tehreek-e-Insaf
RGC	Royal Government of Cambodia
SAARC	South Asian Association for Regional Cooperation
SALGA	South African Local Government Association
SDC	Swiss Agency for Development Cooperation
SDG	Sustainable Development Goals

SfDM	Support for Decentralization Measures Project (GTZ)
SIDA	Swedish International Development Agency
SJE	Social Justice and Empowerment
SNA	Subnational Administrations
SNG	Subnational Government
SOP	Standard Operating Procedures
TISS	Tata Institute of Social Sciences (India)
TNC	Transnational Corporation
UBCM	Union of British Columbia Municipalities
UCLG	United Cities and Local Governments
UN	United Nations
UNCDF	United Nations Capital Development Fund
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
USAID	United States Agency for International Aid
UT	Union Territory (India)
WB	World Bank
WHO	World Health Organization



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Introduction: who does what?

The practice of functional assignment in multi-level government

If government is to exercise power, better in the county than in the state, and better in the state than in Washington.

(Milton Friedman, *Capitalism and Freedom*, p. 11)

Most national governments around the world, excepting perhaps those governing city or small states, have considered or actively moved towards some form of decentralization by involving political and administrative units below the national level in decision-making and service delivery (Manor, 1999; Dillinger, 1995; Birner and von Braun, 2009). They have been attracted by the promises of this state reform, chief among these being democratic participation and the improvement of public services. Decentralization reforms are highly political matters as they tend to change power relations among competing national and regional/local elites and their access to resources. How they are designed and implemented, how they proceed over time, and the extent to which national politicians and officials desire to retain power and control, depends on the political and administrative context of each country. The outcomes and results of decentralization reforms are contested; the large number and variety of studies and research shows both positive and negative results. The bottom line seems to be that context matters, and that the design of the reform itself matters. Concerns raised (and often confirmed by research), among others, relate to the capacities of subnational institutions, the need for coordination between levels of government, the risk of local elites capturing newly empowered local institutions and using them for their own ends (thus undermining the intended efficiency gains), reduced quality of public services, and loss of equality in service provision. These concerns are most evident where one or more levels of subnational government have been established – with their own political representatives and expectations of playing significant roles in providing public services.

If the design of the reform matters, then the issue of functional assignment, i.e. deciding the exact roles and functions of different levels of government, should be a core element of the reform design. Surprisingly, this is not the case. In country after country, research on decentralization reform observes the lack of clarity on this crucial issue, one that ought to be central to decentralized

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public sector performance. It seems that in the political process that precedes the enactment of decentralization reforms, decision-makers and stakeholders shy away from this issue or deal with it in a cursory and superficial manner. This can lead to what has been called ‘partial decentralization’ (Brosio, 2014) or ‘sector lag’ in decentralization as described in this book. The incomplete or lagging reforms reduce the potential impact of empowering local institutions when these are confronted with unclear mandates and vague delineation of jurisdiction between levels of government. These deficiencies, in turn, undermine the attainment of balanced fiscal arrangements where ‘funds should follow functions’.

Decisions on governmental functions entail technical considerations, to select the right functions, or their divisions, and to determine the institutional arrangements that will make their exercise successful. This book focuses on the technical dimension of functional assignment, for instance how to conceptualize governmental functions; what it means for national government to share power over these functions within their own dispersed administration and especially with subnational government; the criteria and process used for making specific decisions on where to place particular functions. However, we situate the technique we associate with functional assignment within the national and local political context, acutely aware of the political forces and arguments advanced for proceeding with, or resisting, decentralization or (re)centralization reforms. Even when the political context is favourable to reform (decentralization or centralization), decisions made on the smaller scale of the assignment of a specific function are not always straightforward, but rather call for analysis and judgement.

Functional assignment in our usage can mean the process by which functions are assigned to different levels of government, as well as the resulting pattern of functions. The impetus for revising or substantially reforming the existing functional assignment can derive from several sources, but in general hangs on policy-makers discerning some advantages. It should be noted that functional (re)assignment is not generally policy-makers’ first recourse for the suboptimal, or even dysfunctional, public sector. Poor performance in the public sector, and particularly in service provision, can persist for some time, with a variety of remedial efforts made in planning, coordination, or incentives spheres – which may or may not yield results. Evidently, some actors stand to benefit from institutional arrangements that fail to provide substantial benefits for the general public. Addressing institutional failure or inefficiency is easier to contemplate if the reforms do not threaten existing power holders. Shifting functions, and the requisite resources, away from a level of government may appear promising in terms of service results, but it can be threatening to those actors that perceive their position to be undermined – politically or materially.

In view of the above political context of functional assignment, some effort, facilitation, or pressure from stakeholders is necessary to overcome political resistance, material self-interest, or lack of confidence and know-how in bringing

about the reform. A lively stakeholder discourse is helpful in moving governments to engage and follow through in functional assignment exercises. Sparring between stakeholders on issues of federal–provincial jurisdiction is common in some OECD countries, though often it tends to be an exchange among politicians. It has been equated to a national sport in Canada; clarification of who is doing what, and revisions, are given ample coverage in the political discourse, at both federal-provincial level and provincial-municipal levels. Germany has been discussing reforms of federal–state relations for years – often these exchanges took more than one term of government before an agreement on policies could be reached. When services are threatened or their quality declines, public engagement intensifies. In developing and emerging countries this discourse is more limited, but it can bubble up on occasion, as seen in the sometimes violent protests in South Africa, where the poorly played roles of some municipalities and provinces in service delivery have come under fire.

As intimated earlier, tensions between levels of government, or poor results in services and development initiatives are often tolerated or are misdiagnosed. Remedial efforts, when they do emerge, tend to focus on improving planning, coordination, financing, or enhanced social accountability – all measures that can certainly have some impact but that will inevitably be frustrated when the underlying problem is improper assignment of roles and functions. The underdevelopment of functional assignment in the decentralization literature¹ hinders practitioners in discerning the functional assignment weaknesses in the operation of government and in the design of decentralization. We argue that this neglect of functional assignment in decentralization design accounts in part for the mixed success of decentralization reforms.

Flowing from the above caution, we stress in this book how a ‘functions’ view of government differs from one that is viewed primarily in terms of planning or financing, while acknowledging that there must be coherence between these and other building blocks of decentralized governance. Hence we distinguish clearly between functional assignment and ‘expenditure assignment’, a term that finds currency among public finance oriented academics and practitioners. Expenditure assignment implies authority to spend in certain spheres of governmental activities. Functional assignment is a broader concept, encompassing both the expenditure and revenue assignments, and addressing roles and functions that do not directly carry implication for spending; such as regulating government and private sector activities, determining broad roles that are given to certain levels of government, e.g. supervisory or coordination. These aspects of functional assignment relate to roles, authority, vertical and horizontal relations and hierarchy rather than spending per se.

Getting it right on ‘who does what’ is important. Government is not, and should not be, a monolithic entity. It is made up of various institutions, found at different scale, and with varying forms of legitimacy. To safeguard liberty and other values, many nations have opted for a national-level horizontal division of power (generally the Montesquian solution of relatively independent legislative, executive and judicial elements).² Extending the division of power vertically to

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attain an areal/territorial division is equally important in countries that are characterized by large size, large population, diverse ethnic composition, heterogeneous socio-economic conditions and markedly different geography. Appropriate assignment of roles and functions between multiple levels of government is the cornerstone of a well-functioning decentralized political-administrative system.

Despite the obvious centrality of functional assignment, getting it right has been challenging for those countries that have attempted it, such as Indonesia and Cambodia. It has also been difficult, if not impossible, to learn from the experiences of other countries. Frustrating efforts to develop a reliable approach to functional assignment has been the challenge of diverse contexts; historical, political, economic and social currents, and the forces in play differ considerably from country to country. Where the intent to centralize lies at the heart of the exercise, governments have been loath to share their internal deliberations or plans with stakeholders, or to open up their process to external scrutiny. This has also been the case to some extent where governments have intended to decentralize – generally a policy met with greater public acceptance. Academics and development agencies involved in decentralization have not excelled in facilitating the documentation and dissemination of lessons and possible good (or good enough) practices. The episodic nature of the exercise also presents challenges to building scholarship and a community of practice. As a result, there has been little convergence on concepts, terminology, and the procedural and analytical techniques that comprise functional assignment.

In part, the book addresses the above gaps and challenges in the literature by making the most of available cases and illustrations that can help to explicate practice or to ground conceptual discussions. The cases are necessarily largely drawn from countries where the authors have been active in researching or supporting functional assignment processes (largely in Asia),³ but the worldwide literature that does exist is also used to anchor some discussions. Moreover, the authors' familiarity with their countries of origin (Canada and Germany) avail them of insights in the European and North American contexts.

This book seeks to make more visible the pattern of practice, and to ultimately draw some conclusions regarding which developments have promise, and could be considered emerging good practice. It is too early to be more hopeful in terms of establishing universal standards of performance in this poorly explicated field. For this reason, we are careful to not over promise on the contribution made to theory. We note where strands of theory from various disciplines have been invoked, but make the point that functional assignment can at best be guided by some principles and normative concepts at this stage. These principles and concepts are in cases widely acknowledged but poorly applied, and in some cases it is evident that they are poorly understood. For instance, many proponents of decentralization pay homage to the principles that financing and form (organizational structures) should follow functions, and yet these principles are frequently breached. Understanding the potential and limit of existing principles is crucial to good practice. Our contribution is largely to indicate the relevance,

potential, and limit of existing theory or conceptual models. We are not so bold as to claim for our functions perspective the achievement claimed by Oates for fiscal federalism, which promised to provide ‘a general normative framework for the assignment of functions to different levels of government and the appropriate fiscal instruments for carrying out these functions’ (1999: 1121).

It is important to recognize that legal frameworks for functional assignment (meaning the distribution of functions) – often imperfect in their construction and consistency – are not usually faithfully reflected on the ground. This is particularly the case in new states or where the capacity of the state is low. This distinction, between *de jure* and *de facto* institutional arrangements, is important to consider, and must figure prominently in any practical methodology for improving functional assignment. In part related to the above distinction, it is important to give some attention to the formal and informal role of non-government actors. Pro-active and innovative arrangements involving non-government actors are sometimes ahead of the legal framework, finding space in the ambiguity, tolerance or inattentiveness of the formal system. When these arrangements on the edge of government are formalized, they can bring to light another important distinction that has been part of the discourse on public sector management since the 1980s: that between the responsibility of provision of public services (always retained within government), and responsibility for their production – which may involve a number of non-government actors: the private sector, NGOs and community groups.

In view of the complexity and multi-stakeholder nature of functional assignment processes, the conditions for a successful application cannot be entirely foreseen. In OECD countries the political threshold for undertaking functional assignment is lessened by the recognition that what is generally required is a modest revision of existing arrangements, often very sector specific – delimiting the political saliency and complexity of the initiative. In many non-OECD countries, the opening for functional assignment is tied to the appetite for, or necessity of, broad state and public sector reform, alongside a willingness to substantially decentralize the state. In some cases, the reforms even involve restructuring the state itself in terms of its unitary or federal nature (as in the case of Nepal), and/or redesigning the number of levels and number of sub-national government units.

While acknowledging the considerable inertia or resistance that may stand in the way of these larger reforms, there is some value in building up capacity for undertaking sound and substantial functional assignment exercises, and to undertake exercises even when the environment is not entirely propitious for fundamental reform. As Milton Friedman maintained, it is worth developing alternatives and ‘to keep them alive and available until the politically impossible becomes politically inevitable’ (Friedman, 1962: ix). Appreciating the importance of functional assignment and having some readiness to undertake it or finalize it at opportune times is critical to taking advantage of political openings; our book should help to guide the process with greater skill and better results at those times.

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This book is not about decentralization in its entirety but rather about functional assignment as a crucial and usually neglected building block of decentralization reforms. While we discuss theoretical and conceptual aspects of decentralization (especially in Chapter 1, 2 and 3) we do this to the extent that is necessary to illustrate our understanding of functional assignment and to inform our approach for tackling this issue – not more.

The book focuses on developing and emerging countries where decentralization is a common public sector reform, but it draws as well on OECD countries, noting important commonalities and differences. The authors aim to identify the pattern of practice in functional assignment, to make it more understandable by placing it against the backdrop of the development stage of the state, and extant concepts or theory where this is helpful. It identifies emerging good practices, and informs efforts of national and international actors that seek to support developing countries in undertaking functional assignment. Geographically, the book concentrates on Asia, or more specifically on South Asia and Southeast Asia, with additional references made to decentralization reforms in Africa and Latin America.

The book is structured into seven chapters. Chapter 1 provides an overview of the current debate on decentralization and how this reform concept has been unfolding in Asia. Positioning decentralization in the context of territorial governance, it presents the main concepts of decentralization and their respective implications. Drawing on a wide range of literature,⁴ it examines motives for decentralization reforms, and discusses potential, perceived and actual results of such reforms. It explores at length design issues of decentralization reforms, and how these influence the achievement of subnational autonomy and subnational responsiveness as two key pre-conditions to realize the promises of decentralization. Finally, the chapter gives an overview on the role of decentralization reforms in the Asian context (as compared with other regions). The concluding section discusses how functional assignment fits into the overall context of decentralization reforms and leads to the core subject of the publication.

Chapter 2 deals with basic concepts of functional assignment, covering the link between the horizontal and vertical division of powers and how the state's unitary or federal structure influences functional assignment. Looking at existing legal frameworks in Asia and available literature, the chapter establishes our understanding of what is meant by a 'governmental function'. The main section outlines the definition and scope of functional assignment, and where functional assignment connects with other essential elements of decentralization reforms. We discuss differences and commonalities of functional assignment in OECD and non-OECD countries, and investigate the extent to which functional assignment features in international development cooperation which often has strongly influenced the design and the implementation of decentralization reforms in developing and emerging countries.

Chapter 3 starts with a brief discussion of how theoretical currents shape the distribution of governmental functions between levels of the state and what that means for the specifications of functions in an organic law on subnational

government. The chapter presents at some length different types of vertical relationships between the national/central and subnational level as influenced by the particular modality of decentralization that has been chosen (i.e. deconcentration, delegation or devolution). It presents and elaborates on two broad archetypes of a functional assignment architecture, i.e. the general competence model and the ‘positive/negative list model’. Finally, the chapter discusses several typologies of functions, such as exclusive, reserved and concurrent functions, obligatory vs optional functions, and residual functions.

Chapter 4 deals with the process of creating or changing the assignment of functions between levels of government. The normative process suggested by us consists of five steps: (1) defining the goal and scope of functional assignment; (2) organizing the functional assignment process; (3) mapping of functions (status-quo analysis); (4) reviewing the assignment of functions; and (5) effecting the transfer of functions, and implementing and monitoring the implementation of the new functional assignment. Each step is described in detail. A crucial methodological approach is the vertical and horizontal unbundling of the sectors, i.e. the disaggregation of a sector into sub-units (like sub-sectors and larger service packages) and the assessment of where management functions (such as policy-making, regulation, implementation, M&E) should rest. The chapter also investigates principles and criteria that should be applied in the context of functional assignment. Experts of fiscal federalism and public finance will find some familiar concepts here, as several principles and criteria used in the context of decentralization are also found in the discourse on federalism.

Chapter 5 takes cognizance of the political nature of decentralization and discusses the political economy of such reforms, with a focus on the actors and interests in play in functional assignment. This perspective on decentralization has become increasingly important in the effort to understand why reforms have succeeded or have been stymied, and why they have been designed and implemented in certain ways. Besides examining the role of non-state actors, the chapter also probes the role of international development partners in designing and promoting decentralization reforms, and in establishing emerging/transferable benchmarks or ‘good practices’ for the partner countries, such as joint functions mapping and review exercises or consultative practices.

Chapter 6 presents comprehensively four Asian examples of functional assignment endeavours: Cambodia, India (Himachal Pradesh), Indonesia and Pakistan (Khyber Pakhtunkhwa Province). While fragments of these country cases had been used already in the previous chapters to illustrate certain issues in functional assignment, they are presented here as a cohesive narration. These countries are cases where we have been involved personally, and they draw on our personal observations to clarify the underlying functional assignment architecture and the typology of functions, the stakeholder landscape and the political economy of reforms. The role of international development partners is presented as well, showing their particular inputs to the functional assignment processes. A concluding section provides a comparative overview of the four countries, using main features and categories of functional assignment that had been developed in the earlier chapters of the book.

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The concluding Chapter 7 summarizes the main arguments of the publication and looks at future challenges in decentralization and local governance that might benefit from a proper functional assignment in government sectors, such as climate change, the global sustainable development agenda ('Agenda 2030') and urbanization. Finding appropriate answers to these challenges requires effective sector administrations, including a clear delineation of roles and responsibilities in multi-level government systems. Drawing on concepts of the literature of policy diffusion and policy transfer, the chapter finally explores how knowledge and expertise on functional assignment can be nurtured, disseminated and made available in a more sustainable manner.

We have kept the use of acronyms and abbreviations to a minimum. There are three, however, which come up consistently:

- 1 We use SNG (subnational government) to denote those levels of government below the one which has jurisdiction to determine the system of local government and to pass the basic SNG law. Often, SNG is synonymous with 'local government'. We are aware that terms like 'local' or 'sub-national' need to be understood in the specific context of each country: in a unitary state, it is the national level that has jurisdiction for regulating the structure and powers of the government levels below the national level – these could include provinces, regions, municipalities, districts, sub-districts, villages, etc. In a federal state, normally the federal (national) level will have some jurisdiction (for instance the constitution might include stipulations on the local government system) while normally the regulatory authority for local government systems sits with the constituent units of the federation, i.e. provinces or states.⁵ Here, the term SNG (or 'local government') would refer to all levels of government below this provincial/state level.⁶ Where we use the term 'national' with reference to government, we refer specifically to the highest level of government in a country. For the four countries which we discuss in more detail in Chapter 6, the term SNG captures between two to three levels of government: In the case of Cambodia, the term 'subnational administration' (or SNA) is synonymous with the term SNG and includes the provincial level, the level of districts and municipalities, and the level of communes ('villages') and *sangkats* (= urban wards). In India, SNG would include up to three levels of rural and urban local governments below the level of the states and Union Territories that make up the Indian federation. In Indonesia, SNG includes the provinces, the districts and cities (these three are often also called 'regional governments' (*pemerintah daerah*)), and the villages. In Pakistan, SNG refers to the levels below the provincial level.
- 2 We use DP (development partner) to denote bilateral and multilateral organizations which provide technical and financial support to developing and emerging countries in the context of international (development) cooperation. These organizations were previously known as 'donors' but the term DP has come to be widely accepted.

- 3 ‘Sustainable Development Goals’ (SDG) is the third acronym used more often in the book.

Other acronyms are the names of organizations (such as ADB, OECD, etc.), which are well known (and are explained in the list of abbreviations).

Notes

- 1 As an example of the decentralization literature’s relative neglect of functional assignment, even the most recent topic guide on Decentralization and Local Government created by the Governance and Social Development Research Consortium did not have this as a sub-topic in its dissection of the field, see Rao *et al.* (2014).
- 2 Not all nations accept this ‘Western’ model for the national horizontal division of power (see the views of Iranian religious scholars for instance in Tajbakhsh Kian, 2000) but it is by far the dominant model, even if variously understood and practised.
- 3 The list of countries includes Indonesia, Philippines, Cambodia, India, Nepal, Pakistan, Kosovo, Yemen, Afghanistan, South Africa, Namibia and Ghana.
- 4 In line with our limited intention for discussing the theory of decentralization, our coverage of decentralization literature focuses on selected ‘classical’ and relevant current literature providing the conceptual framework for our discussion of functional assignment. The amount of decentralization-related literature is huge – interested readers will find many more sources of empirical research and theoretical debate about the subject in the literature listed in the reference sections of each chapter.
- 5 This is for instance the case in Germany, Pakistan and India.
- 6 See also Mueller (2015: 12ff.) for a discussion of this issue.

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1 The context of functional assignment – decentralization, multi-level governance and the quest for impact

Our first chapter provides an overview of the current debate on decentralization as a model of public sector management reform that has received worldwide attention. We discuss the main concepts of decentralization and their respective implications, positioning decentralization in the context of territorial governance. Drawing on a wide range of literature, we examine motives for decentralization reforms (which can differ substantially) and discuss potential, perceived and actual results of such reforms. A main part of this first chapter explores design issues of decentralization reforms because good design has been mentioned consistently as a key success factor for such reforms; the design issues discussed influence the attainment of subnational autonomy and subnational responsiveness as two key pre-conditions to realize the promises of decentralization. Finally, the chapter gives an overview on the role of decentralization reforms in Asia. The concluding section discusses how functional assignment fits into the overall context of decentralization reforms and leads to the core subject of the book covered in the following chapters.

1.1 Decentralization, territorial governance and the role of the state

Since the 1990s, decentralization has become a common feature in the reform of the public sector in industrialized countries as well as in developing and emerging countries. At the dawn of the new millennium, the World Bank estimated that some ‘95 per cent of democracies now have elected subnational governments’ (World Bank, 1999: 107). Manor (1999: viii) noted that over 80 per cent of developing and transition countries, with widely different political systems, are ‘experimenting with decentralization’. Other authors (Sharma, 2005; Birner and von Braun, 2009; UN Habitat, 2016) mention similar figures in estimating the number of countries that have undergone some form of decentralization. Whatever the precise number is and the exact understanding of ‘decentralization’ used (and we will come to the understanding of the term later) – it is obvious that re-balancing the vertical relationship between a national government, and types and levels of subnational government¹ appears an attractive policy objective for decision-makers. And this pull is felt irrespective of regime

type, political constellation or level of socio-economic development – the ‘decentralization virus’ has infected a wide range of states, from industrialized countries such as France (the proverbial prototype of a unitary, highly centralized state); federally structured countries under military rule such as Pakistan (in 2000/2001); and newly democratized unitary countries like the Philippines. Decentralization has been seen in Europe, in Latin America, in Africa and in the Asia-Pacific region. It has come as part of democratization reforms after the fall of an authoritarian regime (for instance in Indonesia and several Latin America countries), as part of conflict-solution and state-building after a period of internal armed conflict and violence (as in Uganda or in Cambodia), and as part of a ruling elite’s strategy to build up political legitimacy to ensure regime revival (the mentioned case of Pakistan in 2000/2001). It has been described as a ‘leading governance initiative advocated by donor agencies over the past two decades’ (Dickovick, 2013: 1; similar Loughlin, 2013: 12). It is truly a global phenomenon.

Box 1.1 Understanding decentralization

Decentralization, as a concept, is part of a cluster of interrelated notions (administrative discretion, autonomy, territory, empowerment, etc.) whose evocative power and ability to rally support are equaled only by their polysemy and lack of precision, as has been pointed out by many authors. Any attempt to define this term should seek not so much to set forth a fixed interpretation as to develop an awareness of the linguistic, institutional and socio-historical contexts in which the term is used.

(Divay, 2012)

Yet, decentralization is also a concept of many meanings. Despite a rich literature and a long history of research, definitions are diverse, actual outcomes and impacts of decentralization reforms are contested, and establishing clear linear causality between decentralization reforms and outcomes is methodologically difficult (see below). The growth of decentralization reforms has led to a corresponding set of ‘jack of all trades’-advisors that seek to span its wide scope, but in the course of their work it has become evident that they hold quite different views of what it is and how it is to be implemented. As reforms have often emphasized decentralization as an antidote to centralization, the common view of decentralization as ‘good’ versus centralization as ‘bad’ has grown accordingly – a simplification that only more recently is being corrected through greater nuance in conceptual development and results. As the World Bank has put it: decentralization ‘itself is neither good nor bad. It is a means to an end, often imposed by political reality’ (World Bank, 1999: 107).

Loughlin (2013) has placed the decentralization movement into the wider context of a changing perception of the preferred organization of the nation-state and of territorial governance. For many decades, in the industrialized countries but

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also in the so-called ‘Global South’ of Latin America, Africa and the Asia-Pacific region, a highly centralized form of government (with ‘standardized and uniform institutions and policies across the national territory’ [Loughlin, 2013: 12]) was seen as preferable. Both the concept of the European ‘welfare state’ of the 1960s and 1970s and the concept of the ‘developmental state’ (Chalmers, 1999), which shaped perceptions of the state’s role and functions in the industrializing and newly developing countries of the Global South, had centralizing consequences for territorial governance² as subnational authorities (regions or local governments) became ‘agents’ of the central state (their ‘principal’), resulting in ‘territorial symmetry and standardization, and central regulation of subnational authority activities’ (ibid.: 10). The collapse of the post-1945 Bretton Woods system of fixed exchange rates, globalization of financial and commodity markets, the rise of neo-liberalism as a conceptual frame for macro-economic policies and its impact on state administration and the public sector³ supported a world-wide shift to more decentralized, more diverse and sometimes less symmetric arrangements in the territorial governance of states. For the developing and emerging countries, other factors have played a role as well: an increasing appreciation of civil society and private sector as drivers of socio-economic development, a stronger focus on basic needs and basic services (as compared with macro-economic growth rates), growing internal tensions in newly created states encompassing diverse ethnic and linguistic groups lacking a common political trajectory, and the realization that centralization of decision-making also comes with the congestion of bureaucratic systems which become increasingly unable to react purposefully and in time to the manifold challenges of their polities.

The decline of highly centralized systems of territorial governance, in favour of more decentralized, diverse and sometimes asymmetric forms of territorial governance, has affected both unitary states as well as federal states (ibid.: 16). While the concept of multi-level governance⁴ emerged out of the scholarship focused on Europe, and then the industrialized OECD countries (Piattoni, 2010; Curry, 2015), it has nevertheless great relevance and promise for developing and emerging countries as well, with their changing social structures (like the emergence of a middle class, a much stronger role of the private sector, a more vibrant and politically forceful civil society) and their increasing integration into regional or international economic and political structures. Decentralization – in whatever form and modality – is a manifestation of multi-level governance, where subnational governments (SNGs) and central government have their specific roles and do not act in isolation but ‘ought to be considered as mutually dependent’ (DELOG, 2015: 13). The intergovernmental institutional context in which they interact (like vertical and horizontal coordination among stakeholders at different levels and their respective degree of capacity) is crucial.

It should be noted that the term ‘multi-level governance’ can evoke the notion not only of interaction between level of government, but also with non-state actors. In this respect it resonates with related views of governance that have emerged in recent years. ‘Polycentric governance’ for instance is a theoretical concept that addresses the interplay of state and non-state actors (Ostrom, 2010; Berardo and Lubell, 2016). This concept is particularly useful for understanding

institutional arrangements for managing public goods or what has been called common-pool resources. We do not make use of this concept as we largely restrict our discussion of functional assignment to the vertical relations between levels of government. However, as noted in Chapter 5 on the topic of political economy, some notions of polycentric governance can be helpful in understanding the challenges of involving civil society in decisions on what different levels of government should do.

1.2 Definitions and concepts of decentralization

Like its antonym, centralization, the term ‘decentralization’ can refer to a *process* (power is taken away from a centre and distributed to other centres) and to an existing *situation* where it describes the actual power relationship between a centre and its periphery (or between several centres) at a given point in time. Both views of the terms connect the concepts of ‘territory’ and ‘power’: in a totally centralized state, power is vested in a single centre which can discharge its power unimpeded throughout the whole territory of the state. The unlikely scenario of a totally decentralized state would mean that the state as such has withered away as there is no unifying institution that keeps several centres together. States are generally found on a continuum between these extremes. ‘Place’ (as a fixed location), ‘space’ as a territorial dimension (or jurisdiction), and ‘hierarchy’ are other dimensions that are often considered in the decentralization discourse as they, too, impact on the continuum between centralization and decentralization (Mueller, 2015: 2ff.).

Decentralization as a concept is relevant for both unitary states as well as for states with a federal political structure. One of the earliest definitions comes from B.C. Smith (1985) – he defines decentralization as ‘both reversing the concentration of administration at a single centre and conferring powers of local government’ (p. 1). A second early definition is by Rondinelli *et al.* (1983), describing decentralization as:

the transfer of responsibility for planning, management and resource raising and allocation from the central government and its agencies to: (a) field units of central government ministries or agencies, (b) subordinate units or levels of government, (c) semiautonomous public authorities or corporations, (d) areawide, regional or functional authorities, or (e) non-governmental private or voluntary organizations.

(p. 13)

Another early and often quoted definition describes decentralization as ‘the assignment of fiscal, political, and administrative responsibilities to lower levels of government’ (Litvack *et al.*, 1998: 4), reflecting a narrower understanding as it refers only to different levels of government and does not include field units of central government institutions or non-governmental entities as Rondinelli’s definition does. A generic definition describes decentralization ‘as a shift of power

from a centre whose jurisdiction is relatively large to a centre or a set of centres of smaller jurisdictions' (Power, 1998: 633). There are more definitions and attempts to describe decentralization (see e.g. Agranoff, 2004; Buente, 2011; Ghuman and Singh, 2013; Öjendal and Dellnäs, 2013; Smoke, 2015a), which all include the concepts of power, space (jurisdiction), and hierarchy mentioned above. They differ (1) by the categories of actors (is the power shift only between hierarchically structured levels of government – meaning devolution or sometimes delegation) or also between government bodies and non-governmental entities (then possibly meaning delegation and/or privatization); and (2) whether the shift of power is between levels of government or within the administrative set-up of central agencies (the latter referred to as deconcentration).

Most of the mainstream literature distinguishes three modalities of decentralization: devolution, delegation and deconcentration.⁵ The other main distinction refers to three dimensions affected by decentralization, in reference to the political, fiscal and administrative aspects of the reform. 'Political decentralization' (sometimes also called 'democratic decentralization' (Manor, 2013)) indicates the shift of political decision-making authority to SNGs having both an executive component (local officials) and an elected representative body (e.g. legislature, council, assembly). 'Fiscal decentralization' refers to the distribution of fiscal resources between the different levels of government – a wide field where fiscal federalism provides the theoretical models and concepts even for decentralization in unitary states. 'Administrative decentralization' is often used – wrongly, in our view – synonymously with 'deconcentration'.⁶ But more widely administrative decentralization recognizes a shift of service delivery responsibilities between levels of government, with less attention to the power structures and dynamics within which the shift occurs. These six terms – devolution, delegation, deconcentration, political decentralization, fiscal decentralization and administrative decentralization – describe the core elements of and the scope for possible designs of decentralization reforms. They also influence how and where functional assignment can contribute to shape the design of reforms.

For our purposes, we define decentralization as a *process which reconfigures the vertical relationship between (or within) political and administrative institutions of the state, giving discretion either for (1) determining provision of individual and collective services to SNG (devolution), or for (2) producing such individual and collective services – within prescribed parameters – at sub-national level either by administrative agencies of SNG (delegation) or dispersed territorial branches of central administrative agencies (deconcentration)*. Our main focus here is on state actors, and on the issue of vertical relationships between levels of the public sector. Another key issue is the degree of discretion (or, what other authors have termed 'autonomy'; see below).

Deconcentration plays out in two different ways. In the first case, it is understood as transferring decision-making authority within a central government organization (usually a sector administration constructed as a ministry) from its headquarters to field offices of the same organization. The field offices are dispersed over the territory of the state. The jurisdiction of these field offices often

match the administrative boundaries of existing local government units but in some cases the dispersal of offices follows the logic of the ministry's mandate, this is sometimes also referred to as 'functional decentralization'.⁷ As decentralization here is confined within the sector administration (to stay with the most common organizational form involved), the need to align other legal instruments is rather limited. Often, deconcentration can be operationalized by means of ministerial orders, government regulations or decrees of lower legal strength. Funding for de-concentrated functions continues to come from the budget of the sector ministry and therefore is part of the national budget. Staff continue to come under the authority of the sector ministry, and usually have a considerable degree of mobility within the sector system (at least for the professional service levels, mobility might be more restricted for administrative and auxiliary staff). Deconcentration can potentially capture a significant portion of the advantages ascribed to decentralization, such as speed of decision-making, responsiveness to specific local needs and therefore adequacy of service delivery in view of local preferences (see e.g. Turner, 2002 on Cambodia).

In the second possibility alluded to above, deconcentration is manifested as a dual role for an official (staff or elected) who is acting in the executive arm of the SNG (for instance a provincial governor, district head or commune secretary). This official has an important role as part of the 'autonomous' SNG, but also is entrusted with the role of representing the state or national government.⁸

In either of the two cases described for deconcentration, the subnational political (representative) body is not directly involved, i.e. the main lines of reporting and accountability are upwards to the sector department, government or state.⁹ Both arrangements are useful for extending the reach of the national government, and both can be instruments for improving service delivery. But deconcentration does not satisfy requests for more political participation at the local level, and therefore cannot deliver on those reform promises that entail high levels of local participation, democratic decision-making and primary accountability to citizens.

Delegation is the transfer of decision-making authority from a level of government or a specific agency to subnational government, a special purpose body at the subnational level or even to a non-public sector entity (private enterprise, civil society organization).¹⁰ In the latter case, the meaning extends beyond the inter-governmental scope that is the focus of this book. Even so, this modality needs to be appreciated in terms of the options for implementation offered to any one level of government.

The 'agent' to which authority is delegated might enjoy a certain degree of discretion in decision-making but usually works within parameters established by the delegating body (the 'principal'). Funding for the delegated authority normally comes from the budget of the principal, as do the norms for undertaking the delegated task (unless these have been already set in the existing legal framework). If delegation occurs to subnational governments with a representative body, it might include some elements of horizontal accountability to this body (which in turn is accountable to the public); otherwise accountability is mainly

to the principal. The staff involved are the staff of the agent – in case new tasks and functions are delegated to them, they need to be trained and coached in the implementation. Like deconcentration, delegation can be a useful approach for improving service delivery and for reducing costs in the public sector (as it makes use of existing administrative structures). It can also be an indirect way of building the operational and managerial capacity of subnational institutions as a prelude to devolution. Romeo (2013: 72) points out that the ‘scope and opportunities for contractual delegation, as entry-points in the functional reassignment process to help build local governments’ capacity for service delivery, might not have been sufficiently valued and explored in many decentralizing countries’.¹¹

The above description relates to the delegation ‘ideal type’ found in the literature. But there are a number of variations to delegation that are worth noting, though we will largely stick to the ideal type in subsequent discussions. The first variation relates to the possibility that a level of SNG is the delegating entity, rather than the level of government with constitutional jurisdiction over the SNG. The power to delegate may be limited to the devolved functions in the hands of the SNG level in question. It would be unusual to see a SNG further delegate what has already been delegated to it. A second variation is generated when a lower level SNG delegates a task upward to a higher level SNG, or in some cases to a non-elected level of government that is established for the purpose of jointly implementing some tasks/functions on behalf of several or all SNG of a given level. This possibility also generally requires an explicit power to be in place to allow the SNG to pass on tasks upward in this way.

Devolution is often used synonymously with decentralization (and vice versa). It is the most comprehensive form of decentralization, requiring political, fiscal and administrative measures, and involves the setting-up or empowering of a locally elected political body which represents the citizen vis-à-vis the local administration and vis-à-vis the national state. Devolution can have far-reaching legal consequences (requiring the alignment of a large number of sector and cross-sector laws and regulations), requires an inter-governmental fiscal transfer system (that matches the functional assignment!), and creates multiple lines of accountability (horizontally and vertically). It is the most demanding modality in regard to capacity at subnational level but also in terms of national capacity to steer and guide subnational units to ensure compliance with national policy objectives while allowing for local initiative and creativity. Our section below on the design of decentralization reforms will provide more details on these issues.

Table 1.1 captures the main characteristics of the different modalities of decentralization.

1.3 Why decentralize? Motives and rationale

The motivations and expressed justifications of decentralization reforms are probably as diverse as the design and context factors shaping the potential or real benefits of the reforms. As Bardhan and Mookherjee (2006) rightly ask: ‘What

Table 1.1 Modalities of decentralization and their implications

	<i>Deconcentration</i>	<i>Delegation/agency tasks</i>	<i>Devolution</i>
Instrument	Ministerial decree and circular	Law, regulation, government decree or ministerial decree/circular	Constitution, law and related regulations
Source and receiver of authority	From ministry, 'delegated' to its own dispersed branches or field offices (but also special case of delegation to SNG officials having a dual role)	From representative body or ministry/ agency to SNG or special agency	From the 'state', or central level representative body to SNG
Funding	From ministry to its branches directly (does not show in SNG budget)	From the assigning entity to the SNG/ special agency. In some cases, funded from broader transfers that are deemed to be sufficient to cover delegated tasks	Receiving level (through assigned revenues or block or conditional grants)
Staffing	Branch staff are central-level civil servants, part of the ministry establishment. Their duties may include coordinating with SNG. In the case of a dual role by an official, the official is part of the SNG executive arm	SNG/special agency have their own staff, but operate under a national frame. May also use seconded staff of central government	SNG have own staff, but operate under a national frame; considerable discretion in hiring, firing, size of establishment, etc. May also use seconded staff of central government – treated essentially as SNG
Discretion for structuring internal organization	Branches are structured by the ministry, though often approved at cabinet or higher level	SNG/special agency can shape their units within a national frame, and handle tasks in/within units of their choosing	SNG can shape their units within a national frame, and handle functions in units of their choosing
Implementation discretion	Variable but usually limited by ministry regulations, procedures, standards and instructions. May be considerable ad hoc guidance	Considerably constrained by policy, procedures and standards set by assigning entity; some discretion on implementation in some cases	High degree of discretion, but may be limited somewhat by national standards
Reporting/accountability	From branch/official to ministry headquarters	Primarily to the assigning entity, but also to the SNG representative body and citizens	Primarily to citizens of receiving level, through the SNG representative body; vertical accountability remains and in principle is more pronounced in early stages of decentralization

Source: adapted from GTZ (2009).

persuaded a national or provincial government to voluntarily relinquish some of its own powers to lower levels? What were the original sources or causes of the decentralization process?' (p. 14). In theory and practice, the answers can probably be found in three main areas: (1) the theory of fiscal federalism and macro-economic considerations; (2) the political and historical context in which a decentralization reform was initiated, and (3) the political economy considerations of the decision-makers involved, i.e. their incentives and the expected gains to be achieved by the reform. In most cases, probably factors from all three areas are involved. There is also a distinction to be made between the political rhetoric around a decentralization reform, i.e. the formally announced rationale and objectives, and the more hidden agendas of involved decision-makers and stakeholders (see Chapter 5). The motivation and rationale are likely to shift and fluctuate as decentralization reforms unfold, leading to expected and unexpected outcomes.

Box 1.2 What theory says about decentralization

The strongest theoretical argument in favour of decentralization is that (1) it will improve the accountability and responsiveness of government by altering its structure so as to increase citizens voice and change the deep incentives that public officials face. Other arguments in favour are that it can (2) reduce abuses of power by transferring certain central government functions and resources to lower levels; (3) improve political stability by giving aggrieved minorities control over subnational governments with limited powers over issues that affect them directly; and (4) increases political competition by creating many smaller arenas that politicians vie to control.

Source: Faguet (2014: 2).

The 'decentralization theorem' by Oates (1972) is often acknowledged as a leading theoretical underpinning of decentralization (see Schakel, 2010; Ghuman and Singh, 2013). Because local decision-makers are closer to the recipients of goods and services supplied by the public sector, and therefore know better about their preferences, they can provide such goods and services in a more efficient and effective manner. In other words, the expectation is that the delivery of public goods and services is improved in terms of quantity, quality and composition of such goods and services in line with the preferences of the citizens. The efficiency of resource allocation is enhanced by decentralized arrangements as these potentially generate competition between local government units, premised on the ability of citizens to vote with their feet, selecting the local government that has the level of services and prices that suits them (Tiebout, 1956). This theoretical argument is not readily observed in practice, as citizens meet with many obstacles in uprooting to gain the said fiscal and service advantages (Weingast, 2014). Regardless of the mechanism in play, the efficiency argument is

widely perceived to have some validity, and can be expanded to a developmental argument: better resource allocation leads to better delivery of public goods and services, which in turn provides better and more sustainable opportunities for citizens to improve their social and economic well-being and even to more growth-oriented local governments (Eaton and Connerly, 2010: 10).¹² Effective mechanisms for accountability and political competition (beyond just voting with one's feet) are some of the key preconditions for such efficiency and welfare gains. Devolution is probably the most appropriate modality of decentralization in this case as it includes the necessary elements of political competition and accountability, although it can be argued that deconcentration and delegation can also help to improve service delivery – and can employ certain mechanisms to enhance the accountability of service delivery units.

Looking at the political and historical context under which decentralization reforms actually happen, a clear link between democratization and decentralization emerges. Many decentralization reforms were initiated and implemented when authoritarian (usually military) regimes were replaced by democratic political systems based on elections. There are exceptions: in the case of Pakistan decentralization initiatives were habitually used by military regimes to gain much needed legitimacy. But the link between decentralization and democratization is quite evident in many Latin American countries (e.g. see Veiga *et al.*, 2015) and also holds true in other continents like Asia (e.g. Indonesia and the Philippines) or Africa (e.g. South Africa, Uganda). Decentralization (mostly in the form of devolution) is often seen as part of the return to democratic forms of governance, where the distribution of power between different levels (each having its forms of political competition through electoral processes) creates checks and balances in the political organization of the state. Decentralization is seen as deepening and consolidating democracy by delivering power to local governments and 'by multiplying the sites for political contestation' (Eaton and Connerly, 2010: 9). Treisman sees here the most significant appeal of decentralization given that its antonym (centralization) is usually associated with dictatorship and authoritarian regimes: 'By contrast – and, in part because of this – democratic reformers often seek to dismantle centralized structures and devolve decision-making to local government' (2007: 283).

Under democracy considerations, again devolution is the most appropriate modality of decentralization as it entails the existence of elected representatives and political bodies at the subnational level which control the subnational executive and can hold local officials accountable. However, delegation and deconcentration, can make use of effective forms of participation and involvement of citizens in planning and public sector decision-making. It should be noted that democracy and decentralization are not linked unambiguously in a causal way; the existence of subnational political bodies and the occurrence of elections in itself does not necessarily mean that there is autonomy and discretion at the subnational level (see below). And decentralization is not automatically linked to democratization. As intimated earlier, the 'devolution' reforms introduced in Pakistan by General Musharraf in 2000/2001 were meant to undermine political

opposition in the provincial governments and to increase the legitimacy of his military regime (International Crisis Group, 2004).

Another aspect of decentralization is its potential impact on national stability, security, conflict resolution and state-building. In a post-conflict situation, in fragile states with limited social cohesion and political consensus, in states with aggrieved minorities or with strong competition between territorially based political elites, decentralization reforms can help to re-establish effective public institutions that strengthen the legitimacy of the state and its institutions, to build up lost capacity for providing services (for instance through deconcentration arrangements), to reduce conflicts with minority groups and to open up more political arenas (see Eaton and Connerly, 2010: 15ff.; Öjendal and Dellnäs, 2013; Faguét, 2014; Veiga *et al.*, 2015: 11f.). However, there are also risks involved if weak state capacity enables minority groups and conflicting parties to use decentralized arrangements for consolidating and perpetuating their territorial powers. The case of Yugoslavia is instructive in this regard; when stripped of its binding socialist ideology, the country could not contain Serbian nationalism, which dominated and ultimately destroyed the delicate national fabric (Pescic, 1996).

More recently, analysts have looked at the political interests of decision-makers and their networks in the state structure to understand the motives and discourse of decentralization reforms. This political economy approach acknowledges that individual or collective incentives are a major factor in making decisions on decentralization reforms and in shaping the design of such reforms. Competition with rival political parties or consolidation of the ruling party's power have been mentioned as motivations, next to pressure from SNG, international donors or from external factors such as fiscal and economic crisis (Smoke and Gomez, 2006: 351). The World Bank in its review of decentralization support acknowledged that 'decentralization was largely driven by political motivations in many client countries' (World Bank, 2008: 55). It is increasingly understood that decentralization reforms are inherently political and driven by political motives (LDI, 2013), which are 'more complex (and may be less benign) than service delivery and the like' (Smoke, 2015b: 102). Policy-makers at the central level support decentralization because they expect to benefit from them (like increasing their foothold at the local level, or extending patronage networks) (Dickovick, 2013: 10; see also Smoke and Gomez, 2006: 351).¹³ According to Manor (2013), when it comes to decentralization, 'politics is essential and inescapable' (p. 35).

Other factors mentioned as drivers or facilitating factors for decentralization reforms include urbanization and the need to have strong and effective urban governments that can provide essential services (World Bank, 2008: xiii; ADB, 2011), external shocks (like the Asian financial crisis 1997/1998), globalization or the global application of good governance concepts (including decentralization) by international development partners (DP). Support from DP has been intensive since the 1990s (see OECD/DAC, 2004; DPWG–LGD, 2006; SDC, 2007; Norad, 2008; World Bank, 2008).

One aspect is frequently absent from the observed mix of motives and drivers of reform: popular demand for decentralization by the ultimate beneficiaries, i.e. the citizens. As Manor (2013: 54) has pointed out, ‘in over 60 countries that have experimented with democratic decentralization, evidence has emerged from only one to indicate that pressure from below played any part in triggering decentralization – South Korea – and the argument even here is open to doubt’. Also Romeo (2013) has highlighted that most decentralization reforms ‘are pushed from above rather than pulled from below’ (p. 74). For India, K.B. Saxena (2011) argues that the introduction of local government systems in the early 1990s ‘was and continues to be a politico-bureaucratically engineered arrangement and does not represent the outcome of a grassroots-level political movement or a demand emerging from organized struggle of the people or advocacy of the interested social groups’ (p. 45). Nor are the economic considerations mentioned earlier a major driver for reforms: according to Dickovick (2013), there is little evidence that ‘the quest for economic competitiveness ... has been a prime driver in conferring autonomy to SNGs’ (p. 12). Decentralization reforms, it seems, are normally supply-driven, framed by national and local/regional political and bureaucratic elites (often with the support of international development partners), and loaded with political rhetoric.¹⁴

1.4 Outcomes and impacts of decentralization reforms

Possible outcomes of decentralization reforms can be sought and found in various areas: the political system and intergovernmental relations between levels of government, in the performance of public sector institutions providing public services, or in the quality of governance. To determine or measure public sector performance in general is a complex endeavour, and to determine whether performance has improved or declined after decentralization is even more complex.¹⁵

The range and scope of potential positive outcomes and impacts of decentralization reforms is substantial. We have mentioned already the hope for efficiency gains, better service delivery, more democratic participation, political stability and consensus, more accountability, and better developmental outcomes. The list of anticipated positive results can be further expanded: more transparency, good governance practices, the widening of political representation, better targeting of resources in favour of the poor and so on.¹⁶

But the literature on decentralization is not short on negative outcomes (real and perceived) as well: elite capture in the case of weak civil society and weak oversight systems, reduced overall public sector performance because of coordination gaps between levels of government, loss of efficiency because of duplicative production of public services where functional responsibilities are not clearly assigned between levels of government, increased political conflicts between elites struggling to determine agenda and design of reforms, reduced quality of public services because of lack of SNG capacity, loss of macro-economic stability, fiscal indiscipline, reduced central government capacity to

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respond to economic and fiscal shocks, slower overall growth rates, increased corruption and so on.

A recent examination of research on decentralization (LDI, 2013) found that there is ‘evidence to support both positive and negative decentralization outcomes, but no grand generalization beyond a very basic level’ – which is that results of reforms depend on its context (p. i). The analysis of a large body of empirical studies found mostly mixed or inconclusive results for major outcome categories like service delivery, human conditions and livelihood, and governance (ibid.: 13).

Similarly, a literature review of public sector governance reforms during the period 2001–2011 found very mixed results for decentralization reforms, e.g. on poverty reduction (more countries with no or negative impact as compared with countries with a positive impact), on the improvement of service delivery, and on the degree of responsiveness of local governments (Scott [2011: 11f.] provides details of the studies reviewed).

Faguet (2014) reviewed several country studies from Latin America, focusing on governance outcomes, and found that:

for some of the most important transformations involving governance and the exercise of power, such as increasing political competition, enhancing political stability, limiting governmental power and promoting economic stability, decentralization is critically implicated ... it can be a key factor driving improvements in all of these areas’

(p. 11)

But, he said, it can also be ‘a key element fomenting instability, opacity, capture and decline’ (ibid.). Regarding fiscal outcomes and fiscal governance, he finds more pessimistic and negative findings (e.g. on the empirical link between decentralization and macroeconomic stability) in a considerable range of studies (ibid.: 8).

Sharma (2005: 38f.) discusses a number of studies on the fiscal and macro-economic results of decentralization reforms, which show negative effects such as market distortions, destabilization of fiscal systems, reduced quality of services and others. Faletti (2005) mentions distributional conflicts, fostering of subnational authoritarianism, exacerbated patronage, higher levels of corruption, larger deficits and poorer overall macro-economic performances as negative outcomes identified in research studies analysed (p. 328). Outcomes of decentralization can also vary between sectors. For instance, in education, ‘most research finds positive effects of decentralization on enrolment ratios, responsiveness to local needs and education outcomes’ whereas in ‘health services the evidence is mixed’, showing both positive and negative results (Veiga *et al.*, 2015: 20).

Ghuman and Singh (2013) conducted a meta-analysis of 32 studies on the effects of decentralization in several Asian countries, focusing on eight particular service sectors (e.g. education, health, roads). In 13 studies, the impact of decentralization on service delivery was positive; in 11 studies the results of reform are reported negative; and eight studies show mixed results (p. 9).

It seems that there is an abundance of research available that can find both positive and negative results of decentralization reforms for particular sectors, for whole countries, or for individual local government units. Treisman takes a critical view of such research and concludes that ‘it is hard to reach any general conclusions about whether political – or administrative, or fiscal – decentralization will improve or impair the quality of government and economic performance. They will have many effects, driving in different directions on different dimensions’ (2007: 274). Our book is not the place to discuss the methodological problems of measuring the results of decentralization, such as the issue of causality, the effects of context factors, etc.¹⁷ – the bottom line here is the conclusion that the ‘evidence on most fronts is inconclusive. Many expected relationships can be valid, but outcomes vary. Results seem to depend on political, institutional and socio-economic context and how reform is approached, but in rather idiosyncratic way’ (Smoke, 2015a: 2). In a similar way Eaton and Connerly (2010) conclude that evidence ‘linking decentralization and development is highly indeterminate’ (p. 4).

The mentioned research results should introduce caution in any decentralization endeavour. They can also point to some key determinants for success or failure of decentralization reforms. The most important one: ‘Context matters’. Context here means the political context, the socio-economic conditions of the state in which a decentralization reform is taking place, the capacity of the state institutions to implement the reform, and the incentives that orient actors.¹⁸ The second main conclusion: ‘Reform design matters’. In other words how the reform is planned and formulated (and by whom!), the modality of decentralization, the linkages between the three dimensions of reform (political, fiscal, administrative), the pace and sequencing of reform steps, the comprehensiveness of reform, the learning loops that are (or are not) built into the reform, and the capacity of the relevant political and administrative institutions to implement the reform as planned – all these factors (and more) determine whether the reform will achieve its objectives.

1.5 The design of decentralization reforms

The previous section has emphasized that two main factors influence the impact of decentralization reforms: the *country context*, in which a reform is conceptualized and implemented, and the actual *design* of the reform.

The *context* of reforms is shaped mainly by factors like the country’s history, the existing political system and organization of the state (e.g. levels of government; relationship between branches of the state), the political culture and capacity of civil society, the existing capacity of state institutions (including fiscal capacity), the social realities (e.g. degree of homogeneity of ethnic, linguistic and cultural groups; hierarchy between distinct groups of the population); the economic conditions (e.g. distribution of wealth, urban–rural divide); internal social and political stability and others (see for instance Dickovick, 2013; Manor, 2013: 30f.; Veiga *et al.*, 2015). Because the context is different in each

country, ‘similar decentralization policies in different countries may produce different outcomes’ (Sharma, 2005: 39). These context factors resulting from the political, social and economic trajectory of the country are a given in the short term – but they need to be analysed comprehensively and understood properly in order to determine how they influence the design and the potential impact of a decentralization reform (Smoke, 2015c).

The *design* of decentralization reforms includes first of all the choice of the modalities of decentralization, and subsequent decisions regarding the fiscal, political and administrative dimensions of decentralization. The latter decisions flow in large part from the choice of modality of decentralization (see Table 1.1). The architecture of functional assignment also should be a conscious choice (see Chapter 3). Part of the design is furthermore the formulation of a flexible, medium-term implementation strategy that determines pace and sequencing of the reform¹⁹ (see below), and incorporates monitoring and evaluation mechanisms as opportunities for learning in order to correct negative and/or unintended results of the reform. In this sense, decentralization reforms should not be seen to follow a linear process but rather they should be seen as cycles or loops as indicated in Figure 1.1.

The World Bank has suggested ‘explicit, stable and self-enforcing rules’ for three broad areas: ‘a) division of national political power between national and subnational governments, b) the structure, functions, and resources assigned to subnational government, c) electoral rules and other political institutions that bind local politicians to their constituents’ (World Bank, 1999: 112).²⁰ The first set of rules mentioned above refers to the sharing of power in the nation-state between a central government and one or several levels of SNG. We discuss below (see Chapter 2) issues of the horizontal and vertical division of power in the state. The second set of rules goes straight to the heart of functional assignment: what functions (or part of functions) of the state become the responsibility of SNG, and which ones remain with the central government? And what are the resources that accompany any transfer of functions to SNG? The third set of rules relates to necessary preconditions that are required to achieve responsiveness of the local political system (see below).

Other authors (see e.g. Sharma, 2005; Bardhan and Mookherjee, 2006; Ghuman and Singh, 2013) suggest similar design areas of decentralization reforms in a more detailed manner.²¹ Manor (2013: 32) identifies three key design factors for democratic decentralization (devolution):

substantive powers must be devolved... substantive resources must be devolved ... and accountability mechanisms must be developed to ensure ... horizontal accountability of bureaucrats to elected representatives ... and downward accountability of elected representatives to ordinary people. If any of these three essentials is absent, the system will fail.

Romeo (2013) distinguishes three generic categories of outputs that must be included in a national programme to implement decentralization: policy outputs, institutional outputs and sector outputs. *Policy outputs* include four elements:

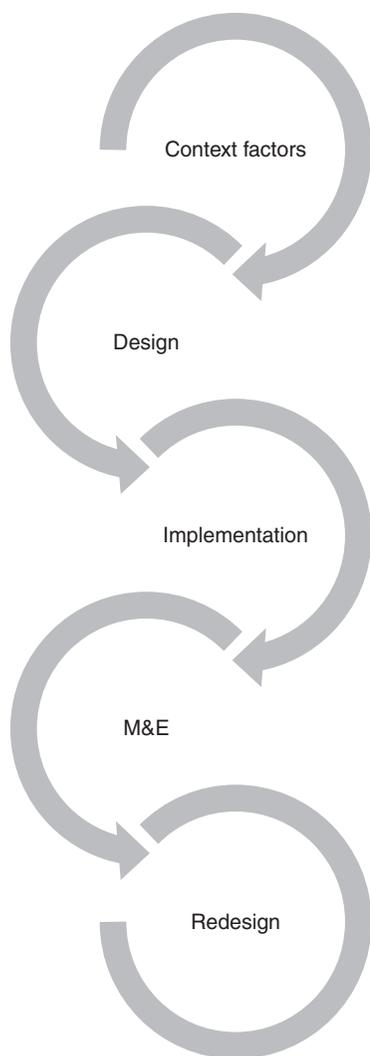


Figure 1.1 A simple implementation model for decentralization reforms.

Source: authors' illustration.

(1) the legal framework for decentralization (constitution, local government act); (2) sector decentralization policies and instruments to reassign functions; (3) the fiscal decentralization framework (policies and laws); and (4) the subnational human resources management HRM framework. *Institutional outputs* refer to the organizational and procedural changes required at national and subnational levels, while *sector outputs* include the actual investments in infrastructure and services (p. 81).

For our purpose, we distinguish three key elements of the design of decentralization reforms: (1) the legal and institutional framework for the assignment of functions (powers, authority, responsibilities) between the core government and the SNG (responsibilities between central and field offices of central agencies in the case of deconcentration); it is here that functional assignment is crucial as it helps to establish which functions (or parts of) should be devolved; (2) the commensurate assignment of resources²² following the dictum ‘funds follow functions’; and (3) the political, administrative and procedural mechanisms that ensure that SNG respond to the priorities and preferences of their local constituents.

It is especially this last aspect that is now receiving a lot of attention in the literature on decentralization, an emphasis that is warranted because the efficiency gains of decentralization implied in the theory of fiscal federalism are contingent on functioning accountability mechanisms that translate priorities and preferences of the local population into local public sector policies and programmes. If such a link is not obtained or if it is not strong enough, inefficiencies and elite capture might occur as the new discretion of SNG might be utilized in the interest of local elites but not in the interests of the wider local population.

For decentralization reforms to achieve the intended efficiency gains, two factors are critically important: *autonomy* and *responsiveness*. Autonomy originates from a combination of ‘power of initiative and immunity from high-level controls’ (Clark 1984 as quoted in Agranoff, 2004: 58). ‘Power of initiative’ is the discretion of SNG to decide on policies and programmes for their constituencies within their defined mandate, and to also determine the implementation modalities of such policies. As formulated in our definition of decentralization above, SNG determine the ‘production and provision of individual and collective services’. In the words of Romeo (2013), autonomy is about the ‘what to do’ and ‘how to do it’ (p. 68). Functional assignment would help to answer the question of ‘what to do’ as it leads to a clearer picture of ‘who should be doing what’. But this decision is inextricably bound to the intended degree of autonomy that is to be conferred.

Often, the degree of local government autonomy has been assessed by the proportion of local expenditure as a percentage of overall public expenditure (see for instance Faletti, 2005: 327). However, research has shown that detailed central guidance on how to spend public funds can undermine and restrict local autonomy even where expenditure has been assigned to the local level (see Loughlin, 2013: 14). Shair-Rosenfield *et al.* (2014) have pointed out the potential gap between formal authority and informal practices (p. 90f.), i.e. even where the legal framework seems to bestow a sufficient or high degree of autonomy on local government institutions, prevailing social norms and political pressures can mean that higher levels of the state hierarchy continue to substantially influence local decisions.²³ Similarly, Romeo (2013: 69) comments on the distinction between *de jure* and *de facto* empowerment of local levels. Do Vale (2015) proposes a set of five parameters to measure the degree of subnational autonomy, attempting to capture its fiscal, administrative and political dimensions.²⁴ These efforts to grapple with the concept of autonomy should sensitize policy-makers to the various dimensions of autonomy, and to achieve coherence in moving from concepts to practice.

Responsiveness of SNG comes from a number of institutional and procedural arrangements that ensure that SNG officials implement policies and programmes in line with the preferences and priorities of their constituency. It is mainly the quality of governance and democracy at the subnational level that determines the responsiveness of SNG. However, there are prerequisites for local democracy, such as educated and politically active citizenry, absence of high inequality in economic or social status, prevalence of law and order, the conduct of free and fair elections, effective competition between political candidates or parties, presence of reliable information channels to citizens, presence of formal and informal oversight mechanisms (Bardhan and Mookherjee, 2006: 9) – prerequisites which are often said to be lacking in many developing and some emerging countries. Political competition, accountability, civic engagement and the availability of participatory processes are factors that determine governance quality.

Box 1.3 Democracy and decentralization

So decentralization requires democracy in order to achieve its potential.

Source: Faguet (2014: 11).

Political competition requires elections, but also party competition, intra-party democracy and limit conditions (Weingast, 2014).²⁵ Accountability can have several directions: the *primary* and most important *accountability* is between citizens and their elected representatives. *Horizontal accountability* between elected representatives and the subnational administration ensures that the administration implements programmes and provides public services based on the priorities established by the elected representatives. There is upward, *vertical accountability* between SNG and higher levels of government, either as legality control or to ensure that national priorities are reflected in subnational policies. For the issue of responsiveness, the primary accountability and the horizontal accountability are crucial.²⁶ Access to information and government transparency are important pre-conditions to enforce accountability, as are strong media and participatory mechanisms like social audit or service charters. Accountability requires civic engagement by the local population, such as attendance at meetings, consultation, co-management and so on. The availability and capacity of civil society organizations are critically important here. Such mechanisms can be established as part of a decentralization reform,²⁷ but they can also exist (or be established) independently from such efforts to reconfigure vertical relationships in the state organization. As we can see, a substantial number of context factors must be in place in order to achieve responsiveness, again underlining the need to understand comprehensively the political and social context in which decentralization reforms are initiated.

The design of decentralization reforms (and its implementation strategy) must include mechanisms to monitor and supervise SNG behaviour by higher levels of government. This can be simple legality control (is a SNG acting within existing

laws and regulation?) but can also take forms of more detailed and forceful guidance and direction. As outlined in our previous discussion on multi-level governance (see section 1.1), decentralization does not mean that SNG act in isolation from each other or from the centre as they are ‘embedded in a broader, functioning system of intergovernmental relations’ (Dickovick, 2013: 7). They remain part of the state organization, with particular roles and functions, and the intergovernmental relations between centre and SNG are key to ensuring that overall policy objectives can be achieved and public sector functions fulfilled. Vertical and horizontal collaboration and coordination are crucial ingredients of decentralization. In the eyes of the World Bank, a ‘commonality of interests must develop between national and subnational political elites’ (World Bank, 1999: 114) in order to stabilize the balance of power.

Design and implementation of decentralization reforms need to pay attention to the linkages between the political, fiscal and administrative dimensions of the reform and follow a holistic approach (Ghuman and Singh, 2013). Because of the political and bureaucratic realities, however, they are often treated separately and independently (see Smoke, 2015c: 252).²⁸ Since these dimensions are often ‘owned’ by different ministries pursuing their own interests, intra-governmental coordination and a coherent implementation of the reform programme can by no means be taken for granted. Decentralization has been called a ‘whole of government’-reform as it impacts on sector issues (distribution of functions), on fiscal and budgetary issues, on issues of human resource management in the public sector, on issues of planning and others. Having suitable coordination mechanisms among central agencies and between the centre and the subnational level is important, but often neglected in reform implementation. And it is not only a decentralization reform itself that needs coordination. Often, parallel public sector reform processes are ongoing which interfere with and are impacted by the decentralization reform (Smoke, 2015b). Sensible prioritizing, sequencing and connections between decentralization and these other reforms is necessary.

The presence of a strong central government has been mentioned as a necessary condition for decentralization to succeed (World Bank, 1999; Sharma, 2005; Öjendal and Dellnäs, 2013: 8). In fact, decentralization might require a higher level of capacity from a central government than retaining a centralized system as the central government might need to intervene on multiple issues and in numerous local government units. The success (or otherwise) of decentralization partly depends on this effective interaction and exchange between units of government at different levels. In this context, having well-established systems of information exchange (e.g. reporting system, M&E systems) are vital design elements also contributing to a more effective coordination of reform implementation.

Other essential aspects of the reform design and its implementation are the issues of pace and sequencing; should decentralization be done rapidly or incrementally, in a Big Bang-Indonesian style or in small and carefully designed steps as in Cambodia? As Smoke (2015b) points out ‘some evidence suggests a more gradual, staged, context-tailored process could allow local governments – and central actors with altered functions in decentralizing environments – to acquire

experience and capacity needed to meet new and evolving roles’ (p. 109). On the other hand, the window of opportunity for significant and comprehensive decentralization reforms might be short – in this case a rushed approach with corrective measures taken later might be the only option. What is the ideal sequence of reform initiatives looking at the different dimensions of decentralization? There has been considerable debate for instance whether political decentralization should precede fiscal decentralization or vice versa (see for instance World Bank, 1999: 123ff.; Sharma, 2005: 40). Examples for both choices exist and show different results which cannot easily be taken from one country and adopted in another.

There has been relevant concern about the capacity of SNG institutions to cope with a fast and comprehensive transfer of functions (Eaton and Connerly, 2010) which might argue in favour of a more incremental, set-by-step approach to decentralization. In any case, a strategic approach for capacity development, built upon a solid assessment of capacity development needs at national and sub-national level, is required.

Decentralization is a long-term process, and the ‘design, legislation and implementation of policies of decentralization are really only the beginning of a long process of institutional and organizational change’ (Eaton and Connerly, 2010: 3). The implementation strategy therefore needs to be of medium-term to long-term orientation.²⁹ Part of this strategy is the creation of learning loops where an assessment of the unfolding reform and its intended and unintended results leads to corrective measures or adjustment of the reform design.

In summary, the design of a decentralization reform includes the following main steps and elements:

- choice of the modality and functions architecture;
- decisions regarding pace and sequencing of reforms;
- legal and operational arrangements for the political, fiscal and administrative dimensions of decentralization as per chosen decentralization modality (here, the issue of functional assignment is critically important);
- establishment of intra- and inter-governmental coordination mechanisms;
- establishment of an appropriate vertical information flow (such as a monitoring and evaluation system);
- establishment of an effective mechanism for SNG oversight;
- formulation of a holistic, medium- to long-term implementation strategy;
- establishment of a capacity development strategy targeting all governmental levels.

Depending on the intended objectives of the decentralization reform, design options will vary. Is it about service delivery? Is it about creating political space at the subnational level? Is it about creating a more democratic and therefore decentralized government system?. For improved service delivery at the subnational level, genuine autonomy for but also responsiveness of SNG are necessary preconditions. The latter requires improved governance quality at the subnational level as indicated in Figure 1.2. However, the relationships between

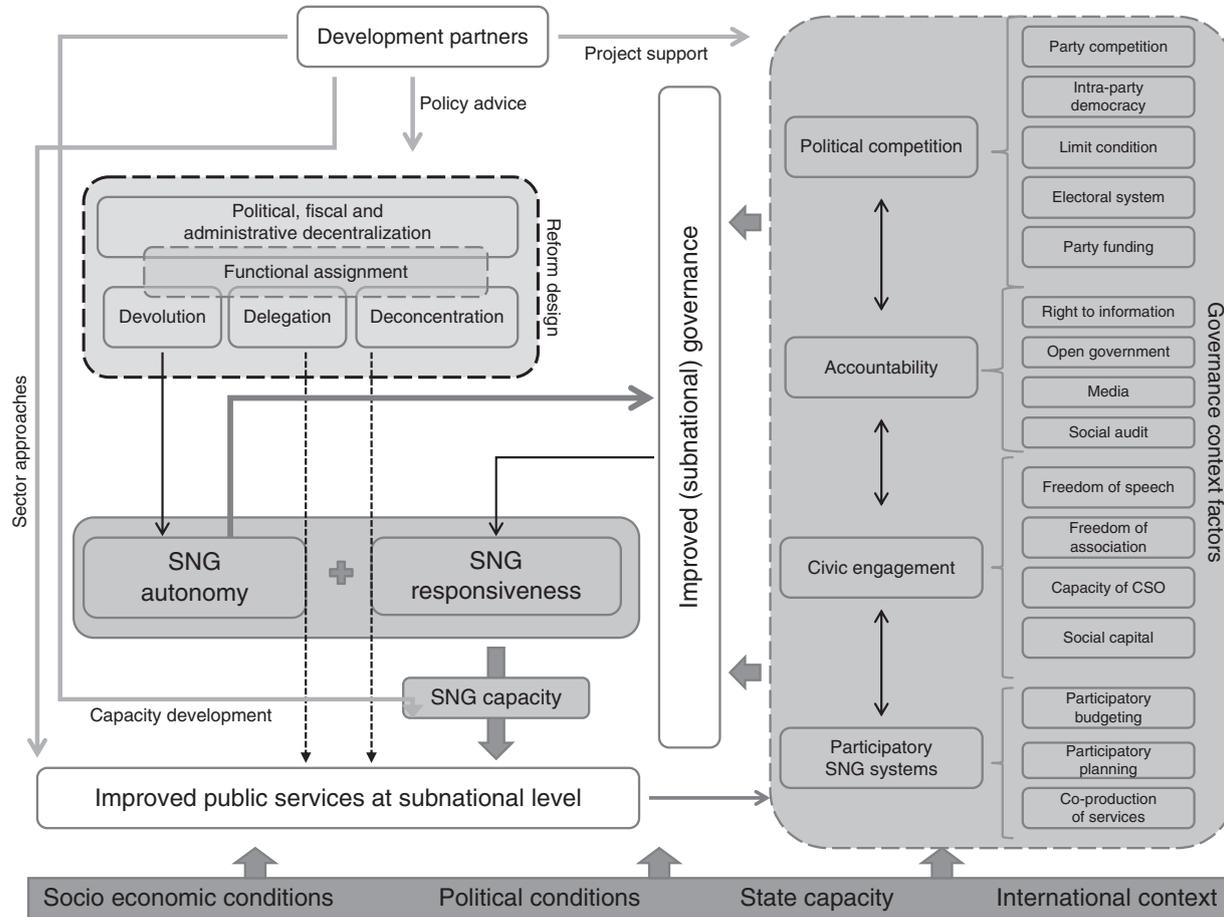


Figure 1.2 Decentralization, governance and service delivery.

Source: authors' illustration; adapted from Eaton and Connerly (2010); Dickovick (2013); LDI (2013); Myerson (2014); Weingast (2014); Velga *et al.* (2015).

the elements shown here are by no means uni-directional but rather multi-directional, influencing each other at various points in time. We take here a systemic view of decentralization in a multi-level governance setting where political and administrative actors at national and subnational level interact with each other in several streams of governance.

1.6 Decentralization in Asia

Before we connect our discussion of design issues of decentralization reform (previous section) with a more detailed examination of functional assignment as part of the reform process (next section), it is worth zooming in on how decentralization manifests itself in Asia. ‘Asia’ here means mainly the developing and emerging countries of Southeast Asia and South Asia – we exclude the Asian–Pacific OECD member states (for instance Japan and South Korea). We are also dealing only in a cursory way with China.³⁰

Asia has been no stranger to decentralization reforms although it might have started later than other regions such as Latin America and Africa. More than a decade ago, the World Bank summarized that ‘a fundamental transformation in the structure of government has been taking place across East Asia’ as subnational governments then accounted for substantial amounts of public expenditure and delivered many critical services (World Bank, 2005: 1).³¹

A quick overview shows the width and breadth of reforms undertaken in the region – but also the diversity of results, achievements and outcomes. India has introduced rural and urban local governments as a third level of government by means of two constitutional amendments in 1993/1994 (deSouza, 2000). Pakistan has seen several waves of decentralization (late 1970s, 2000/2001 and most recently following the 18th Constitutional Amendment of 2010) (Seidle and Khan, 2012). Indonesia and the Philippines have been called the ‘fast starters’ because of the comprehensiveness of their decentralization reforms (World Bank, 2005) but results for service delivery have been uneven, and political aims of the reforms might have been undermined by the influence of local elites (Ostwald *et al.*, 2016; Shair-Rosenfield, 2016). The implementation of Thailand’s decentralization reform initiated in the late 1990s – albeit quite comprehensive on paper – stalled because of the political conditions and never really kick-started again (Sudhipongpracha and Wongpredee, 2015), and Thailand remains a highly centralized state with a powerful Ministry of Interior controlling the subnational levels (Unger and Mahakanjana, 2016). Sri Lanka’s government has rekindled its interest in decentralized government arrangements following the end of the armed conflict with the Tamil minority in the Northeast of the island (Vasanthakumar and Abeyratne, 2015). Nepal’s decentralization started well, but got caught up in the accelerating internal armed conflicts and political unrest which ultimately lead to the regime change and the declaration of Nepal as a federal republic – a process that is still ongoing and where the exact role of local governments within the newly created constituent units of the federation is not yet clear. Cambodia has received a lot of attention – and development

partner resources – when its government started a slow decentralization reform – moving from deconcentration to devolution – in 2001 (Niazi, 2011). China never had an official decentralization policy but nevertheless has developed a highly sophisticated decentralized intergovernmental structure with subnational governments accounting for about 80 per cent of public expenditures. Even so, subnational government is not democratic and does not have any taxing powers. Vietnam, another one-party regime in Asia, has been slowly moving to more decentralized forms of government following its economic liberalization (Wescott, 2006) but the effectiveness of its decentralization reform has been inhibited by conceptual inconsistencies and fragmentation of reform efforts (Thanh Tu Anh, 2016).

As elsewhere, the reasons and motives for these reforms are mixed: economic growth, search for efficiency gains, urbanization, political developments like democratization and accommodation of regional demands for autonomy have been mentioned as factors driving decentralization reforms in Asia (World Bank, 2005; Bhattacharyya, 2010; Buente, 2011; Brosio, 2014 for Southeast Asia). While several of these factors are not different from other regions, the speed of economic growth,³² urbanization ‘with the surge of huge megacities absorbing a large share of the national population’ (Brosio, 2014: 7), the overall small tax burden and the Asian traditions of strong and/or authoritarian central government have been mentioned as peculiarities of Asia (ibid.) Furthermore, decentralization in Asia focused less on political decentralization as compared with Latin America (the exceptions being Indonesia and the Philippines), and has generally been less rapid and more controlled (Smoke and Gomez, 2006: 342ff.). Another difference is the higher level of shared taxes and intergovernmental transfers to finance SNG as compared with own-source revenue (Smoke and Gomez, 2006; Brosio, 2014).

Box 1.4 Economic development in Asia and decentralization

With economic development, however, civil society and the business sector demanded that the government offer better public services and utilities as well as better opportunities for employment and business development. Particularly as the regional disparities in living conditions kept widening, the people and business in outer regions desired governments to be closer and more responsive to them and demanded decentralization of political and fiscal administration ... the ensuing demand for decentralization has been prevalent in almost all of the countries in Asia.

Source: Ichimura and Bahl (2009: vii).

Like in other regions, the results of decentralization reforms have been varied. They ‘appear to have been benign so far ... there seems not to have been a systematic deterioration in the delivery of key services’ (World Bank, 2005: 9). Other conclusions are more negative (Buente, 2011), arguing that although

‘decentralization could enhance civil society’s participation in some localities, the overall result [of democratic decentralization] seem to be negative’ (p. 146). The aforementioned meta-analysis by Ghuman and Singh (2013) showed positive, negative and mixed results. The intergovernmental organizational arrangements, the mechanisms for SNG financing and the issue of subnational accountability and management systems have been identified as the three pivotal decentralization challenges in Asia (ibid.). Functional assignment appears to be a major concern regarding the vertical relationship as responsibilities assigned to each level are unclear and/or overlap. As Ghuman and Singh (2013: 17f.) have pointed out: the ‘mismatch between functions, finances and functionaries ... is emerging as a major stumbling block for decentralization to be a success story in Asia’. Summarizing several recent research articles on decentralization reforms in Southeast Asia, Malesky and Hutchinson (2016) conclude that decentralization ‘has not fulfilled its economic and governance promises, even in the countries where it was implemented most earnestly’ (p. 136). They provide four reasons for what they call ‘varieties of disappointment’: misperception of the objectives of decentralization reforms (whether economic or political), mismatch between theoretical models on decentralization and the reality of the country cases examined, internal contradictions in the implementation of decentralization reforms because of the complexities of such reforms, and finally the failure of end users (like citizens) to take advantage of the transferred powers (p. 127).

What distinguishes Asia from other regions such as Latin America and Africa is the observable lack of a regional perspective on decentralization, and of official government networks dealing with decentralization and local governance. In June 2014, the African Union adopted the *African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development*; part of the set-up of AU’s secretariat is the ‘Specialised Technical Committee on Public Service, Local Government, Urban Development and Decentralization’ with its ‘Sub-Committee on Decentralization and Governance’. Nothing comparable exists for Asia. For Southeast Asia, in September 2015 a meeting of mayors passed a so-called ‘Makassar Declaration on ASEAN Cities and Local Governments’.³³ In May 2016 a South Asia Cities Summit was organized under the auspices of the Asian–Pacific chapter of the UCLG.³⁴ However, these are rather weak efforts to formulate regional agendas on decentralization and local governance. Perhaps Asia is too large and diverse to be able to develop such common perspectives – the distinction between South Asia and Southeast Asia is obvious, China is in many respects a very singular case and does not offer much guidance for other Asian states. Pan-Asian institutions that could host and drive the formulation of joint positions on decentralization and local governance are lacking. Existing regional associations (rather ‘subregional’ in reach) like ASEAN and SAARC are either not focusing on governance issues at all (ASEAN), and/or are too weak anyhow to make a meaningful difference (SARRC).

1.7 Functional assignment in the overall context of decentralization reforms

Before we turn to the specific position of functional assignment in the overall context and design of decentralization reforms, let us summarize the understanding of decentralization used in this publication:

- Decentralization refers to hierarchical relationships between government levels (devolution), within government agencies (deconcentration) and to principal–agent relationships among government entities and between public and non-public sector entities (delegation). Privatization is not a form of decentralization³⁵ in our scheme as the responsibility for the provision of public goods and services remains with the state (represented by a defined level in the state hierarchy), even when the production of such goods and services is transferred to non-governmental entities like private corporate bodies.³⁶ Delegation to non-governmental entities (like NGOs, private sector entities), however, is a form of decentralization as the state remains the principal of the delegation arrangement and retains political responsibility for service provision.³⁷
- All three modalities of decentralization are relevant, useful and legitimate; they serve particular purposes and can achieve particular outcomes.³⁸ Which form or mix of decentralization is best in the particular context of a country should be analysed and decided prior to designing the reform strategy. As we will see below, the three modalities have different implications for functional assignment.
- We use the term ‘subnational government’ (SNG) synonymously with ‘local government’, meaning all levels of government below the level which has jurisdiction for regulating local government affairs. In unitary states, this is normally the national level; in federal states it is the state or provincial level. This level is what we call ‘central government’ or ‘centre’.
- Decentralization is a ‘multi-dimensional process’ (Faletti, 2005) the impact of which is clearly conditioned by the way its various political, fiscal and administrative elements are configured. One can do public sector reforms³⁹ without decentralization, but one cannot do decentralization without public sector reforms. Decentralization reforms require additional and supporting reforms initiatives, like modifying civil service rules and systems, changing or introducing performance management systems, and adjusting budget management and financial management systems at national and subnational level.
- Apart from functional assignment, other building blocks of decentralization reforms are therefore indispensable, e.g. the political empowerment of SNG, the fiscal and financial management arrangements, civil service reforms, legal harmonization of sector laws with the decentralization framework, capacity development and supervisory systems (see Chapter 2).
- Decentralization is a multi-year reform process where the passing of the legal framework (like a local government act) is but one step. Decentralization

reforms must be based on a longer-term strategy and a ‘corridor of objectives’, which – while keeping in mind the purpose and objectives of reform – allows for adjustment and correction as the reform unfolds.

- We strongly support the notion that decentralization reforms are ‘whole of government’ reforms which need the cooperation and coordination of numerous government agencies.

The need for a clear delineation of functions has been mentioned repeatedly in the literature on decentralization in Asia. The regional overview by the World Bank (2005) had observed that ‘in most countries, specific responsibilities are unclear, and overlaps among the different levels of government are common’ (p. 10). The 1999/2000 World Development Report had already noted that explicit rules ‘setting out the division of functional responsibilities among levels of government reduce ambiguity and increase political accountability’ (World Bank, 1999: 124), and this was further reinforced in the World Bank’s 2007 evaluation of its support for decentralization reforms in client countries, which stressed the importance of clarifying the roles and responsibilities of different levels of government, while acknowledging that the Bank support had not been effective in this regard (World Bank, 2008: xiii). In regard to China, Smoke and Gomez (2006: 345) confirm that the ‘lack of clarity on functional assignments ... have created problems’. Agranoff (2004: 29) lists ‘establishing clear jurisdiction and functional boundaries’ and ‘transfer of *defined powers* [our emphasis] to plan, make decisions and manage specific tasks to units [of government]’ as some of the ‘normative requisites for devolution’. On a similar note, Manor (2013) argues that it is ‘especially necessary to ensure that the division of responsibilities between central government and elected bodies at lower levels is spelled out clearly and in detail’ (p. 47). Brosio (2014) observes a ‘frequent fuzziness of the assignments’ deriving ‘from the intersection of provisions between the general laws on decentralization ... and the sector laws (e.g. education, health, and public works)’ (p. 8). He also notes, and criticizes, the ‘prevalence of concurrence of assignments rather than a separation’ (ibid.). Sharma (2005: 42) refers to studies that highlight the risks of ‘allocative inefficiency as well as poor accountability and governance’ if ‘expenditure and revenue assignments are not properly assigned’ across levels of government.

It seems that the reality in Asia is still a long way from this consensus that clarity in functional assignment is a key requirement for decentralization reforms to succeed. Why is that so? From our observations, we think we can offer four main answers.

First, functional assignment – which largely takes place within specific sectors, involving sector organizations and sector legal frameworks – is a missing or weak link between the overall decentralization policy (enshrined in constitutional stipulations and generic local government acts) and the implementation of such governance frameworks in the service sectors. This missing or weak link gives rise to what Brosio (2014) has called ‘partial decentralization’. In our book we give this idea further shape by reference to the ‘sector lag’,

where sector administrations fail to keep up with the broader legislative changes of decentralization reforms. It took Indonesia nearly seven years to fix a hasty assignment of functions in 2000 that was deemed unworkable, even by district/city governments that were the beneficiary of a large residual block of functions. Cambodia, having started with a vague form of general competence (see Chapter 6, section 6.1) at the commune level in 2001, is still experimenting with the transfer of granular service functions in selected sectors like rural water supply, tentatively employing ‘pilots’ for testing the capacity of receiving district administrations. In India, more than 20 years after the constitutional amendments, few states have devolved real sector functions to their local governments (despite regular elections taking place in nearly all states). Somehow the vision of the basic decentralization framework never made it into the realpolitik of the sectors, remaining stuck in the maelstrom of bureaucratic resistance, lack of capacity for ensuring policy coherence and lack of expertise on how to go about functional assignment.

Second, international development partners which normally provide substantial monetary and non-monetary support to decentralization and local governance (DLG) reforms⁴⁰ invested few efforts for including functional assignment in their menu of support to developing and transition countries. A significant part of the DP support – especially from the large multilateral financing institutions – is geared towards the fiscal framework (revenue and expenditure assignment and transfer mechanisms). Sector support provided by DP is often detached from decentralization/governance support and more focused on direct means of achieving improved service level than on building up sustained and better governance structures.⁴¹ Sometimes sector support can even undermine decentralization reforms (OECD, 2004).

Third, in many cases decentralization reforms are not planned events but happen quickly and under pressure because of political imperatives, leaving little time for good sequencing and conceptual preparation. The time to work through the various steps required (including decentralization in the sectors) is simply not there in these circumstances. Once the overall decentralization framework has been passed, often the political will or capacity to push it through the sectors has dissipated.

Fourth, there is little documented knowledge about functional assignment processes, their sequencing, their organizational requirements and the underlying conceptual and legal framework. Assignment decisions are rarely documented with accompanying reasons for why a particular function has been subsumed in a particular sector or assigned to a particular level of government, making it difficult for external observers to understand what has happened and to draw conclusions for similar processes elsewhere.

Our next chapters will hopefully offer some answers and guidance on the complex but critically important process of functional assignment, both for reforming governments and local government stakeholders but also for DP lending support to these changes.

Notes

- 1 The number of subnational government tiers varies considerably between countries, conditioned mainly by the size of the population and of the land area. Gomez-Reino and Martinez-Vazquez (2013) found that out of 197 countries, more than half (101) had 2 levels of SNG, 50 had 3 levels, 35 had 1 level, and 10 had 4 tiers of SNF (cited in Veiga *et al.*, 2015: 6). See also Table 5.1 in World Bank (1999). For Asian countries, see World Bank (2005: 11).
- 2 ‘Territorial governance’ is defined as the formulation and implementation of public policies, programmes and projects for the development of a place or territory by (1) coordinating actions of actors and institutions; (2) integrating policy sectors; (3) mobilizing stakeholder participation; (4) being adaptive to changing contexts; and (5) realizing place-based/territorial specificities and impacts (see ESPON and Politecnico di Torino, 2014).
- 3 A prominent example was Osborne and Gaebler (1994) with their slogan of ‘Steering instead of Rowing’ and the distinction between ‘provision’ and ‘production’ of public service. Privatization of state-owned enterprises became a prominent policy issue also in developing and emerging countries, as did the involvement of the private sector in the production of public service (for instance by means of public–private partnership arrangements). The New Public Management (NPM) movement took up some of these ideas in their concepts of modernizing and reforming public administration (see e.g. Hood 1991 and Lane 2000 as examples of some of the early work on NPM).
- 4 Multi-level governance is understood as:

decision-making system to define and implement public policies produced by a collaborative relation either vertical (between different levels of government, including national, federal, regional or local) or horizontal (within the same level, e.g. between ministries or between local governments) or both.

(UN Habitat, 2016: 5 [footnote 4])

According to Loughlin (2013) the concept of multi-level governance applies both to international relations as well as to the political organization within the nation-state, where central governments:

are no longer the exclusive powers ... but now operate alongside a number of other political actors – the EU institutions, regions, local authorities – and even private-sector actors such as business groups ... they are more constrained and have to act in a more collaborative fashion.

(p. 13)

- 5 In most of the literature on decentralization, privatization has disappeared as a modality of decentralization. The sometimes confusing variety of definitions and meanings can be seen in a recent paper (Goel and Saunoris, 2016) which distinguishes ‘physical’, ‘fiscal’ and ‘virtual’ forms of decentralization (the latter basically meaning ‘e-government’, i.e. the use of digital tools to offer access to government services and information). Analyzing decentralization in three Western European countries, Ebinger *et al.* (2011) use ‘political decentralization’ as a synonym for ‘devolution’ and ‘administrative decentralization’ as a synonym for ‘delegation’.
- 6 Öjendal and Dellnäs (2013) include ‘delegation’ in their understanding of ‘administrative decentralization’ (p. 10).
- 7 For instance, in the province of Khyber Pakhtunkhwa (Pakistan) the functional boundaries of health districts are different from the administrative boundaries of the districts as territorial sub-units of the province. Similarly, in Cambodia non-governmental health service providers operate in so-called ‘operational health districts’, which have different jurisdictions (territory) compared with the administrative districts. This mismatch of boundaries is a serious administrative hurdle to move towards territorially unified SNG administrations.

- 8 Romeo (2013: 77) discusses this arrangement rather critically.
- 9 The deconcentrated units, or the service delivery units they manage, may of course be accountable to local service users and stakeholders, but that accountability is not built into their mandate in the way it is for an elected SNG.
- 10 In some countries, e.g. Cambodia, the term ‘agency task’ is also employed. In Indonesia the term used is ‘assistance task’ – perhaps as a legacy of the nineteenth-century bureaucratization by the Dutch colonial powers where the Indonesian regent was subordinated to Dutch superiors and ‘their duties and powers were scrupulously described’ (Kartodirdjo, 1974: 156). Some academics believe that there is no issue of a transfer of authority in this arrangement (see for instance Wasistiono, 2006) but in our view it conforms to our description of delegation. We do not believe that it is tenable to think of ‘assistance tasks’ as not involving some transfer of authority, since there is some discretion involved in such tasks. We find support in our view in evident practice and the Indonesian constitution, which holds that regional government autonomy is in part achieved through the implementation of these assistance tasks.
- 11 For OECD countries, Brosio (2014: 14) argues that contracting between levels of government is a ‘crucial innovation in intergovernmental relations’, which substitutes ‘rules and hierarchical commands’. He sees it as a way to solve ‘missing assignments which are frequent in the case of new and innovative policies’ (e.g. in multi-sectoral issues like environmental protection). In our view, however, the application of contracts in developing countries as a means to structure intergovernmental relations is rather doubtful because the required capacity of the contracting parties to manage their relationship is often missing.
- 12 This developmental rationality for decentralization is further expanded by Romeo (2013).
- 13 We will deal with the political economy of decentralization in more detail in Chapter 5.
- 14 Romeo (2013) rightly argues that a combination of ‘supply’ from above and ‘demand’ from below will increase the sustainability of reforms, and proposes that decentralization should be used to generate demand for participation – again, this brings us to the issue of causality to be discussed below.
- 15 Kuhlmann and Wollman (2011) suggest a three-step model for evaluating institutional reform policies like decentralization: (1) whether changes in the institutional settings are in line with defined/expressed goals and objectives; (2) whether these changes have effected operational changes (‘performance’); and (3) further outcomes ‘in the wider political, socio-economic and so on environment’ (p. 480f.).
- 16 Manor (2013) mentions a whole range of positive outcomes from democratic decentralization: enhanced government responsiveness (speed, quantity and quality of response); enhanced information flow between government and ordinary people, enhanced transparency with potentially positive impact on the reduction of corruption, reduced absenteeism of public officials, a more active civil society, more consensual policy decisions (p. 32f.).
- 17 LDI (2013) and Smoke (2015c) give a good overview of methodological challenges for measuring results of decentralization reforms.
- 18 Bardhan and Mookherjee (2006: 11f.) for instance list the following context factors: distribution of literacy and education, economic and social status, existence of media, active civil society organizations and the tradition of civil engagement.
- 19 For example, in Asia, Cambodia has opted for a slow and incremental process of decentralization (see e.g. Niazi, 2011), whereas Indonesia has become known for its radical ‘big-bang’ approach for decentralization (Hofman and Kaiser, 2002).
- 20 This of course refers to devolution as a modality of decentralization.
- 21 Sharma (2005: 39) has listed several essential design elements as follows: the alignment of fiscal arrangements with functional arrangements (‘finance follows functions’), local access to information as a precondition for achieving an informed public

- opinion, functioning mechanisms for making local priorities known, credible incentives for people to participate, adherence to local priorities, appropriate incentives for SNG to main fiscal responsibility and properly designed instruments (for instance regarding the legal framework, the responsibilities for service delivery, allocation of taxes among levels of government, intergovernmental transfers, control of SNG borrowing and the election rules for SNG). Bardhan and Mookherjee (2006: 12–14) focus on constitutional authority, the electoral process, the range of expenditure and management responsibilities, financial devolution, authority and competence of local officials, information and oversight mechanism. Ghuman and Singh (2013) add ‘adequate infrastructure facilities’ and ‘regular capacity building for local officials’ to their menu of design factors.
- 22 Fiscal resources are mentioned most often in the literature, but human and physical/technical resources are an important component of any decentralization reform as well. Increasingly, data (information) must be seen as a resource required for public sector performance.
 - 23 Especially in countries with strong social hierarchies and paternalistic traditions decentralization reforms need to take into account the mindset of local officials who often struggle with the fact that they can differ from what higher levels of government (and more senior officials) have told them.
 - 24 These parameters are subnational public expenditures and public revenue as a percentage of the total expenditures/revenue (fiscal autonomy), the number of subnational public employees as a percentage of total government employment (administrative autonomy), the frequency of meetings of inter-governmental forums per year and the number of subnational institutional veto players in national policy formulation (political autonomy) (Do Vale, 2015: 748ff.).
 - 25 Limit condition has been defined as ‘institutions and incentives [which] limit the stakes of power by restricting the scope of policy authority of elected representatives’ (Weingast, 2014: 17). He also puts in doubt the existence of such limit condition in developing countries.
 - 26 Bunte (2011: 145) points to the fact that approx. 40 per cent of the subnational office holders in Indonesia were replaced in direct local elections by candidates with more attractive performance records.
 - 27 Many of the decentralization reforms that were part of a democratization agenda included direct elections to subnational representative bodies.
 - 28 Brosio (2014) highlights the risks of a mismatch between devolution of functions and devolution of finance, leading to what he calls ‘partial decentralization’.
 - 29 The World Bank (2008) emphasizes that industrialized countries often needed a century or so to reach current levels of decentralization.
 - 30 This has mainly pragmatic reasons as our professional experience does not cover China. But there is also a conceptual justification to leave China out: its singularity in terms of size and influence in the region, and its very unusual trajectory of decentralization reforms as she does not have an official decentralization policy in the first place but nevertheless appears as one of the most decentralized countries in the world because of the high percentage of subnational expenditure in the overall public expenditure.
 - 31 The World Bank report deals with Indonesia, the Philippines, Thailand, Cambodia, China and Vietnam.
 - 32 According to the World Bank, economic growth, urbanization and decentralization are linked since in both developed and developing countries growth in per capita income is associated with declining central government share in public investment (2005: 4).
 - 33 www.uclg-aspac.org/index.php/news/397/makassar-declaration-on-asean-cities-and-local-governments.
 - 34 www.uclg-aspac.org/uploads/SAC_Summit_2016.pdf.

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35 Similarly Faletti 2005: 329.

36 See the distinction between ‘provision’ and ‘production’ of goods and services discussed earlier.

37 This can also be seen as a form of ‘contracting out’.

38 We note that elsewhere ‘decentralization’ is often restricted to mean only ‘devolution’. For instance, Faguet (2014) defines decentralization:

as the devolution by central (i.e. national) government of specific functions with all of the administrative, political and economic attributes that these entail, to regional and local (i.e. state/provincial and municipal) governments that are independent of the center within given geographic and functional domain.

(p. 3)

Likewise, the World Bank – a major player in disseminating and supporting decentralization reforms in their client countries – defines decentralization only as ‘the transfer of political, fiscal and administrative powers to subnational units of government’ (World Bank, 1999: 108; similarly World Bank, 2008) – which means devolution. We think this is an unreasonable diminution of the concept.

39 Public sector reforms or public sector management reforms look for structural, procedural or relational changes of public institutions, i.e. institutions that are predominately funded by public budgets and controlled by public (representative) bodies (World Bank, 2012).

40 According to the OECD, in 2012 6.1 per cent of the total Official Development Aid (ODA) (US\$1.055 billion) went to ‘decentralisation and support to subnational governments’. In 2008, the percentage had been only 2 per cent, while in 2011 it had been 7 per cent (OECD, 2014: 7f.).

41 As Smoke (2015c) has observed, development partner agencies themselves display a silo mentality where different sector specialists working for the same agency do not coordinate and align their respective activities in the same partner country.

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2 Basic concepts in functional assignment

There are benefits to approaching the issue of functional assignment in a systematic way. It is a large and intricate issue – even overwhelming to new practitioners thrown into the breach. Building a sound conceptual foundation is a worthwhile investment before advancing to the more challenging concepts and seeking to make sense and use of the varied practices noted around the world. Terminology alone can frustrate discourse. Looking at existing legal frameworks in Asia and available literature, the chapter establishes our understanding of what is meant by a ‘governmental function’. Accepting that a number of terms are used interchangeably, we nonetheless suggest some order or nuanced use.

Moving beyond terminology, this chapter outlines the definition and scope of functional assignment, and where functional assignment connects with other essential elements of decentralization reforms. There are several ways in which the powers and functions of government are constructed, and we position our core concern of intergovernmental division of powers (who does what?) against the backdrop of the horizontal separation of powers common to democratic states. Understanding the horizontal division can be helpful in appreciating the scope for vertical functional assignment directed to subnational levels of government. Furthermore, we distinguish the way functional assignment should be viewed with respect to the unitary and federal state structures as these are, in their ‘ideal types’, considerably different in some respects. We discuss differences and commonalities of functional assignment in OECD and non-OECD countries, and investigate the extent to which functional assignment features in international development cooperation which often has strongly influenced the design and the implementation of decentralization reforms in developing and emerging countries.

2.1 Horizontal and vertical division of power and functions in the nation-state

Functional assignment in this book relates to the vertical division of power and functions in the state. This is sometimes also referred to as an areal or territorial division and stands in contrast to the division in terms of ‘government process’ or the ‘horizontal’ dimensions of power (Maass, 1959; Thomson, 1961; Murphy

and Tanenhaus, 1977). The horizontal separation of the state into three power centres or branches – legislative, executive and judicial – is well known, and common to many if not most countries. This separation, first noted in embryonic form and encouraged by Baron de Montesquieu, a French philosopher/lawyer in the 1700s, influenced the development of the US Constitution and subsequently the state structure of other nations. The key attraction of this separation of powers is that each branch of the state plays a complementary role in advancing and legitimizing government action, and in concert they establish a system of checks and balances that protects citizens from the danger of government's detachment from citizens or outright governmental tyranny.¹

The three branches of government mentioned above conform best to a presidential system, like that of the United States or Mexico. In parliamentary systems there is more blurring between the legislative and executive functions (in Canada for instance the Cabinet ministers are drawn from elected parliamentary members of the governing party). Even so, the division is useful to understand how SNG is located within the state, and how intergovernmental relationships are formed.

It is striking how much uncertainty or misunderstanding the vertical division of power (and functions) raises in relation to its intersection with the already described horizontal separation of powers. Figure 2.1 seeks to convey that all three broad branches of government are often reflected in the institutional matrix of SNG. This representation is resisted by those who hold that only the national *executive* function is shared with SNG. The notion that decentralization comes only from the government (meaning the executive branch in this case) can be found in the decentralization discourse of several countries, as strongly held views of key government officials and even academics (see for instance Hoessein,

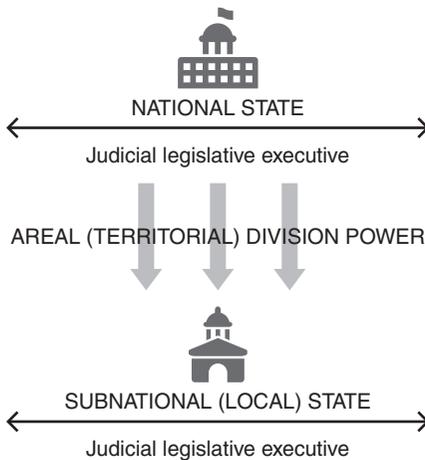


Figure 2.1 Division of state power at national and subnational level.

Source: authors' illustration.

2002 for the Indonesia case where supposedly a strong form of devolution has occurred). Such views are at times held even in the face of contradicting national legal frameworks, and are indicative of the past dominance of the executive over other branches in these countries. These views maintain that SNG does not share or draw from the legislative and judicial powers of the national state; SNG has a lesser standing and is more of a means of implementing executive functions than a self-governing entity that can set policy and mobilize resources. Arguments that are attached to this view include the ‘fact’ that unlike the national state/government, the local state/SNG has no sovereignty. While these views are questionable, and contested in some countries,² Chapter 3 will indicate how such views or constructions on the autonomy and legal standing of SNG and the modalities of decentralization can significantly influence functional assignment and other building blocks of decentralized governance.

It does not take much casting about to uncover the fact that most SNG – and certainly those that are the focus of this book – are composed of both a representative (legislative) body and an executive body – equivalent in many respects to those found at national level. Only in some countries can we find SNG with no elected officials; in Asia for instance this is currently the case in Afghanistan (IRoA, 2010) and in Nepal (Local Nepal Today, 2015). But even in these two countries the intention – though frustrated by persistent violent conflict or instability – was and is to establish or re-establish representative bodies. In most countries that have pursued devolution as the preferred modality of decentralization, the establishment of representative bodies symbolizes the intention of giving democratic, political power to the subnational level. However, a balanced mix of political and administrative decentralization, while desirable, is by no means guaranteed. For instance, many Indian states have not followed up the establishment of elected bodies with the creation of administrative units reporting to these bodies, thus creating asymmetry between the political and administrative dimension of decentralization. The same applies to the current devolution reforms in Pakistan’s Khyber Pakhtunkhwa province where the inconsistency in this case is that devolved offices remain under the control of a provincial-level official.

The role of elected bodies at local level is much more circumscribed as compared with counterpart national-level state institutions (in relation to concepts of sovereignty for instance) but within the bounds of their functional assignments they have potentially similar roles. In practice, there is a tendency to use institutional terminology that is particular to SNG; representative bodies may be called ‘councils’ instead of ‘legislatures’ or ‘parliament’, and legal instruments may be called ‘bylaws’ or ‘ordinances’ instead of ‘laws’. However, these labels should be seen more as an aid to distinguishing the actors rather than to denote their importance or legitimacy. This is not to deny that national or state legislation acts as a framework for SNG legal instruments, or to ignore the reality that often SNG representative bodies are in fact restricted or diminished in formal or informal ways and are not truly able to function according to the prevailing international ideal type of SNG under devolution: to make local-level policy, approve local budgets and hold the local executive to account for implementation.

In fairness to the proponents of the executive view of the vertical division of power, it is certainly the case that the judicial function is not often seen at SNG level, or that it is there but in a much diminished or subsidiary form to that seen in national counterpart institutions. However, in federal nations the constituent units do have substantial judicial functions, and often their own court system. A substantial role can be seen in unitary states as well, particularly where asymmetric decentralization is adopted. For instance, the province of Aceh in Indonesia has been putting in place an institutional framework for Shari'a enforcement starting in 1999 (ICG, 2006). In other countries, the judicial function is seen often at the lowest level of SNG. For instance, in Pakistan conflict resolution through the *Musalahat Anjuman* institution was conducted under the auspices of the Union Councils, the lowest level of government under the 2000/2001 decentralization framework of Pakistan (UNDP, 2010). Similarly, in the Indian state of Himachal Pradesh, the state's Panchayati Raj Act of 1994 (as amended over time) regulates in its Chapter IV the judicial functions of the Gram Panchayat (the lowest level of SNG) and lists in Schedule III the offences that under the Indian Penal Code can be dealt with at this level.

In a fashion similar to the rather messy national parliamentary systems, in many countries the three horizontal branches (that can be seen as broad processes or functions of government) are also not neatly separated at subnational level. For instance, in some SNG the mayor as chief executive may be elected and also chair the representative body. In other countries, a commission of elected representatives of the SNG forms the apex executive body. As we will see in later chapters, in all levels and forms of government the legal instruments issued by the legislature may be operationalized by regulations made by the executive. Hence the executive sometimes makes policy through regulations, particularly when the law is general or contradictory. This messiness should not obscure the main point, i.e. SNG, in its mature state, has both representative and executive functions.

Having the potential to act in terms of all three broad functions of government does not mean that functional assignment exercises always address all three, or even both of the more salient representative and executive functions. Some decentralization modalities will implicate none, one, or both of the representative and executive functions – the institutional scope of the modality carries substantial implications for the instruments used to effect the transfer and the way implementation is supported and made accountable.

When the recipient of functions is this combined (representative and executive) SNG entity, important implications flow. The representative body has an opportunity – if not an obligation – to set policy, within prescribed bounds conditioned by the chosen decentralization modality. Through policy and legal instruments and through other mechanisms (e.g. scrutinizing budgets, plans and their implementation), representative bodies will influence the executive's discharge of the received governmental functions. Representative bodies generally seek to make the executive actions, as well as their own actions, accountable to citizens. The conduct of regular and contested elections where political parties compete is the primary accountability mechanism in this respect. As discussed in

Chapter 1, section 1.5, it is this political competition within a framework of sub-national autonomy that ultimately leads to SNG responsiveness and thereby to the realization of the efficiency and welfare gains that fiscal federalism and decentralization theory promise.

2.2 What is a governmental function?

The key unit of analysis of this book – the governmental function – eludes easy definition. In the context of defining the role of subnational government, legal instruments in many countries tend to equate functions with entire sectors (e.g. education, agriculture) or specific services provided to the public (e.g. literacy programme; extension services to farmers). The 2008 Organic Law of Cambodia on the subnational administrations avoids a formal definition of ‘function’ but does list sectors that are prioritized for the transfer of functions. The Sub-Decree No. 68/2012 that follows the law adds some clarity when it states that ‘Functions refer to acts or activities including the provision of public services, infrastructures and other mechanisms’ (Article 4).

Linking functions to public services is sensible. However, equating functions with any acts or activities of government, even in the provision of services, has some disadvantages. This can be seen in particular in India, where functional assignment is cast as ‘activity mapping’³; this has sometimes resulted in functional assignment exercises where the unit of analysis has indeed been activities, but of such reduced scope as to make them of little direct consequence to the lives of citizens – regardless of where in the system they are being carried out.⁴

Complicating the definition of a function is the use of comparable terms that vary considerably across countries. Typical alternate terms to ‘functions’ include ‘competences’, ‘responsibilities’, ‘matters’, ‘areas of jurisdiction’, ‘expenditure assignments’, ‘powers’, ‘duties’ and ‘tasks’. Even within the same government system it is common to find several terms in use (see Table 2.1), while a legal definition which could guide their application is normally lacking. Often the terms are used interchangeably, or one term is used to explain a similar term – raising the question of the meaning of the ostensibly explanatory term.

Table 2.1 Terminology pertaining to functions used in selected countries

<i>Country</i>	<i>Terminology</i>
Canada	Powers; responsibilities; matters; affairs
Indonesia	Matters; authorities; tasks
Cambodia	Functions; duties; powers
India	Subject matter; functions; activities
South Africa	Spheres of jurisdiction; powers; functions
Pakistan (Khyber Pakhtukhwa)	Functions; authority; matters; operational components

Source: authors’ compilation.

The understanding of governmental functions is also shaped by the conceptual underpinnings of different academic fields. For instance, in the *public finance literature*, the IMF ‘Classification of Functions of Government’ (COFOG) is sometimes used, a ‘detailed classification of the functions, or socioeconomic objectives, that general government units aim to achieve through various kinds of expenditure’ (IMF, 2014: para. 6.1.26). ‘Functions’ are here understood as broad categories of objectives and policy purposes, for which often several government agencies at different levels share responsibility.⁵ While these categories are useful to pull together information on expenditures across the state,⁶ they are not very helpful in the context of decentralization as even the sub-categories used by the IMF are too broad to delineate responsibilities between government levels in an operationally meaningful manner. In the *political science literature*, state functions like legislative, judicative and executive functions are used which – as we have seen earlier – refer mainly to the horizontal division of power between branches of the state structure but also intersect with a vertical division of power between territorially based units of the nation-state.

Riker (1964) was an early writer who sought to structure what government does on behalf of citizens in a condensed list of ‘areas of government action’; this term is just another way of labelling governmental functions. He used only two broad categories: ‘getting money’ and ‘spending money’, with the latter being broken down further into four categories: external affairs, activities related to internal security, activities related to trade and activities related to citizens’ welfare (see Box 2.1).

While there is no standardization in the use of terms associated with governmental functions, at times the pattern of usage suggests some useful connotations. These connotations generally must be inferred and as a rule do not hold strongly across countries. It may be useful for functional assignment practitioners or supporting actors to reinforce some of the connotations, where they promise more clarity.

Drawing on earlier work, we suggest that a (governmental) function is best viewed as a ‘*set of related activities that work within a larger system to produce a result that is beneficial to that system’s operation*’ (GTZ, 2009: 5). Governmental functions can relate to (1) (public) services; (2) internal government services and processes; and (3) the regulation of individual rights and obligations. In our understanding, executing a function often results in the provision of an individual or collective service as might be defined by the IMF⁷ or other such broadly conceived lists. This may be schooling for children of a certain age, or it may be ensuring the safety of water sources (another public good; citizens may not even be aware that this is being provided, but they do derive a benefit). Functions are often directed to citizens; they are the ultimate beneficiaries of the provision of a service or a public good. Functions can also be directed to internal ‘clients’ within the government’s administrative system. For instance, a unit in a public works-focused ministry may be entrusted to manage procurement for a number of other operational units of the administration. In many countries, Civil

Box 2.1 What government does

A Getting Money

By current financing, e.g. tax collection, sale of public property

By deferred financing, e.g. borrowing

B Spending Money

- 1 On external affairs, e.g. military and diplomatic affairs
- 2 On activities related to internal order
 - Maintenance of public safety, e.g. enforcement of criminal law
 - Supervision of property rights, e.g. defining and protecting ownership of realty and personality
 - Supervision of civic rights and liberty, e.g. defining and protecting the right to vote
 - Supervision of public and private morality, e.g. censorship, supervision of marriage
 - Inculcation of patriotism, e.g. provision of national holidays
- 3 On activities related to trade
 - Provision and supervision of money and credit, e.g. central banking
 - Provision and supervision of facilities for transportation and communication, e.g. management of the post office
 - Provision and supervision of utilities, e.g. management of wells and atomic energy plants
 - Provision and regulation of production and distribution of goods and services, e.g. supervision of labour-management relations
 - Encouragement of economic development, e.g. granting subsidies
 - Supervision of irreplaceable resources, e.g. conservation and management of forests
- 4 On activities related to citizens' welfare
 - Provision and supervision of education
 - Provision of aid to the indigent or handicapped
 - Provision for recreation and culture, e.g. maintenance of parks, musical societies, etc.
 - Provision of public health services, e.g. supervision of drug manufacturing
 - Encouragement of the acquisition of new knowledge, e.g. granting patents and copyrights, supporting exploration, encouraging scientific societies.

Source: Riker (1964).

Service Commissions play a key role in the appointment and transfer of the senior levels of public officials, and provide important functions to the other public sector agencies.

The framing of a governmental function in ways that highlights benefits to citizens (or consumers within the public sector) directly or indirectly ensures that a function entails a certain level of importance, complexity and relationship with other functions. A governmental function that is worth transferring between levels of government should consist of several (or many) activities, working together to produce desired results; an output or even an outcome that is ultimately valued by citizens.

The importance of a function is not necessarily indicated by the magnitude of public funds spent on it. Executing a regulatory function often does not require a big budget envelope, yet the resulting legal instrument can have a significant impact on individuals and the private sector.

Because it has a results orientation, the term ‘function’ carries the notion of ‘responsibility’, i.e. being responsible for making sure that the required results are attained, even where the state decides to use others in the discharge of the function. It also has a connotation of ‘authority’, i.e. having the legal and financial muscle to implement the function. It also is associated with ‘accountability’, requiring the service provider to answer for the implementation (speed, quantity and quality) of the service. If these notions do not seem relevant to an identified function, then the function in question is probably not a function in the sense that we suggest but rather an activity or minor task (which might also be important to be carried out but would probably not come up in a meaningful functional assignment process).

Because functions are ideally weighty sets of activities of government, it is not unusual to find that government organizations are structured in a way that highlights certain functions. For instance, the Ministry of Health in Indonesia has four Directorate-Generals under the Minister, and these already flesh out some key functions, which might then be expected to be elaborated in the several directorates under each (Figure 2.2).

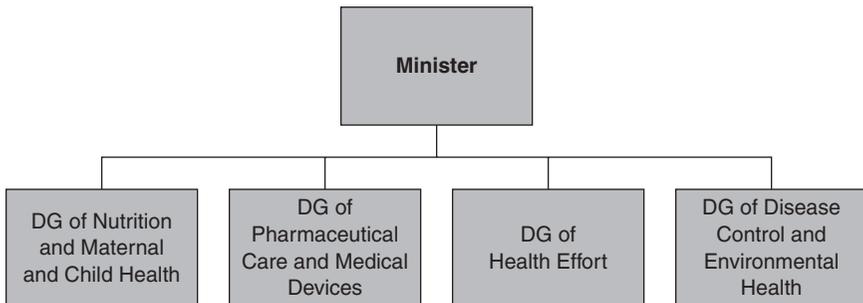


Figure 2.2 Structure of the Indonesian Ministry of Health.

Source: Indonesian Ministry of Health (2016).

This functions-organizational congruence sometimes leads observers to equate functions with organizations. This was very much the approach being taken in the mid-2000s in Ghana, where the entire decentralization discourse within government seemed to be premised on the question of which ‘departments of District Assemblies’ should be established, to the exclusion of any mentioning of the formal transfer of functions (Ferrazzi, 2007). The logic of organizational units has its appeal; broad functions are set at the apex and more narrow/specific functions down the hierarchy of organizational units. But organizational divisions of government agencies or ministries depend on many factors, including the specific institutional arrangement chosen by governments (e.g. cabinet and departmental structure). These tend to change as new cabinets are formed or public sector reforms are instituted. The specification of functions must be seen to stem from the specific mandates of the agencies/ministries created. Functions do not disappear as such (from a given level of government) when agencies and ministries or their subunits are dropped or merged; the functions are usually shifted and/or reformulated.

2.3 Definition and scope of functional assignment

As mentioned earlier (Chapter 1), decentralization can refer both to a *process* or the result of a process, a *state of affairs*. The same applies to functional assignment as a core element of the decentralization design: functional assignment as a ‘process’ refers to the sequence of activities through which levels of government receive roles and specific functions. Functional assignment can also refer to the resulting division and intergovernmental relations that arises from this process – the actual roles and specific functions held by the various levels of government and the institutional arrangements for interaction.

Functional assignment is relevant to any nation with one or more subnational levels of government. Principally, functional assignment is about a transfer of responsibilities and powers and the attendant resources to exercise these. While the emphasis on transferring powers and functions places the focus on SNG, the functional assignment process also pertains to the role and functions of the national (central) government (or state where the modality implicates the representative body at this level); it is the level of government that retains, decentralizes or recentralizes functions.

Functional assignment is broad not only in terms of being multi-level in its reach, but also because the functional assignment process can entail the examination and clarification of a variety of roles, pertain to different scales and refer to a number of models regarding the architecture/construction of functions. The key expressions of functional assignment are briefly described below:

Expenditure assignment pertains to the authority to spend funds. This term, commonly used in the public finance literature, is often used interchangeably with functional assignment since much attention is placed on what subnational government does, and to do its work SNG generally has to spend money. As the subsequent items will convey, functional assignment is much more than assigned areas of SNG spending.

Revenue assignment is the authority to set and/or collect revenue – it is the flip side of expenditure assignment, and logically also falls under functional assignment.

Right to regulate: Functional assignment entails the regulation of public or government actions – an important role since central government or SNG – as understood in this book – has a representative body that generally is empowered to develop policies and regulations that pertain to its overall mandate and specific functions. As mentioned earlier, government can opt to involve other actors in the delivery (production) of public services – controlling their production through regulation.

The ‘*Right of initiative*’ concept acknowledges that SNG functions or activities are not necessarily *transferred* from higher levels of the state or government (see also Romeo, 2013: 68). To reiterate an earlier point, this is why it is helpful to use the term ‘powers’ in the functional assignment discourse to indicate that a SNG may be empowered to act of its own initiative – beyond discharging specific functions that have been transferred to it. The actual, genuine autonomy of SNG can be seen in part by the degree to which it holds and capably exercises its ‘right of initiative’. Of course, this ‘right of initiative’ is bounded. On the one hand the SNG is bounded by resources that are sufficiently discretionary to allow it to decide what it wishes to do beyond what it is expected to do by higher level government (i.e. compelled to do by the existing legal framework). Moreover, it is generally prohibited from infringing on functions of other levels of government (unless permitted to do so, usually on a case by case basis). This circumscribed ‘right of initiative’, if made explicit and encouraged, can nonetheless allow SNG to be more proactive and creative. This right is particularly evident in government systems choosing a ‘general competence’ – architecture for SNG functions or that allow for optional functions (see section 3.5).

General intergovernmental roles are important in countries with several levels of government (some can have four or five levels, see note 1 in Chapter 1). Here, it may be important to identify which levels will have general roles towards other levels. These roles may have to do with support, overall supervision or more narrow legality control on certain functions (e.g. approval of spatial plans). In cases, a level of government may be given the role to set some or all of the functions of the lower level(s). A higher level SNG may also be given the responsibility to take up lower level SNG functions if the latter prove unable to perform what may be deemed to be basic or essential mandatory functions.

In some countries governments will explicitly identify one or more level of government which is expected to develop or maintain a role as ‘*general purpose local government*’. The advantage of this designation is that a coherent decentralization effort can be geared to placing most public services provision at this designated level of government, affording it certain advantages of scale, capacities and economies that come from clustering related functions under the same government level. Making this choice sometimes entails a generic division of labour between multiple levels of government. For instance, the national or SNG

(e.g. province) level may provide technical support/supervision to a general purpose local government, with a lower level of government below the general purpose local government providing aspirational inputs to the latter to influence its development directions and service delivery. Indonesia's Big Bang decentralization was characterized by its focus on the district and city level⁸ as 'general purpose local government' having a hierarchical relationship with the lower levels of local government.⁹ A similar hierarchy of roles appears to be taking shape in Cambodia as well, with the district (rural) and municipality (urban) being the level in question. In contrast, the local government act of Khyber Pakhtunkhwa (Pakistan) is less clear on this issue as the different tiers of local government (district, tehsil and village/neighbourhood) are somehow sharing functions and their hierarchical and vertical relationships are blurred.

The assignment of *dual roles of subnational government officials* (see Chapter 1, section 1.2) is a mechanism that helps national government to control some aspects of SNG by creating positions in SNG that have dual responsibilities; to the SNG as well as to the central government (or more broadly the national level state¹⁰). Dual roles of subnational government officials are common where some supervision of SNG is entrusted to the official in question, on behalf of the central government. It can also be found where national imperatives require it, such as in responding to emergencies, maintaining order, appointing officials on behalf of the state or leading celebrations arising from national symbols or events.

Some of these dimensions of functional assignment will be examined in more detail in the chapters to come.

2.4 Functional assignment in unitary versus federal state structure

Policy-makers inhabiting a unitary or federal state structure are sometimes leery of entertaining governance reform that does not explicitly distinguish such state structures or does not clearly tailor approaches to their unitary or federal characteristics. This is understandable, but this attitude sometimes slides into a belief that the two state structures are radically different and that functional assignment should therefore be vastly different in process and result. This position is less tenable; there is much that is common to both state structures where functional assignment is concerned.

It is useful to begin by acknowledging the substantial differences in functional assignment for both state structures before underscoring some important similarities:

Federal states are characterized by a division of listed powers between the federal (national) level and the constituent units (sometimes called federal or formative units) that is embedded in the national (and sometimes constituent unit) constitution. In theory, this construction does not derive from the process of functional assignment that we describe in Chapter 4. Rather, in negotiations between equals, the constituent units yield a measure of their sovereignty

(functions) to the federal (union) level. In practice, however, the ways federal nations are formed are numerous, and beside the bottom-up approach there can also be a top-down approach to establishing the division of functions of the federal and constituent level; Nepal is a case in point, where a pre-existing unitary state seeks to transform itself into a federal state, employing a national constituent assembly, and national party based bargaining, as vehicles to arrive at the division of functions. In such settings, functional assignment is part of a process of attaining a renewed social compact with disaffected regions (see for instance Watts, 1996) much more so than a search for efficiency and effectiveness in service delivery.

The federal model begins to approximate the unitary state model, however, if jurisdiction over local government (the levels below the constituent unit) is given to the constituent unit – which is normally the case. India and Pakistan (with its 2010 constitutional amendment) are good examples in Asia: in both cases, the constitution provides an overall framework for local government systems (more detailed in the case of India, more loosely defined in the case of Pakistan), while details are specified in state and provincial laws respectively. In some OECD countries (Canada for instance) the national constitution may give the assignment of the management of local government in its entirety, in a succinct statement, to the constituent units. In the case of the United States, the state's jurisdiction over local government flows from the fact that the federal level was not delegated this function; the purposeful omission kept local government as a state jurisdiction.¹¹ However the assignment is framed, it is common to see practically the entire local government framework in the constitution/laws of the federation's constituent units. This frees up the constituent unit to act in a manner typical of unitary states, when looking downward to its local governments.

Unitary states are characterized by a framework for functional assignment that is determined by the national state/government. It can entail variable relationships between SNG levels of government – the highest level of SNG does not necessarily have jurisdiction over lower levels of government.¹² However, often some hierarchy between levels is established to lighten the inter-governmental relationships for the national government. For instance, in the Philippines, the province reviews **ordinances of the municipality/city government**, and in Indonesia the traditional village structures were set by the province until this arrangement was changed by Law No. 6/2014, which anchored regulatory authority over village affairs with the city/district level. But at any time the national government can revise these assignments relating to inter-governmental relations as it deems fit.

At least in theory, in the nation-forming stage constituent units of federal nations yield a measure of sovereignty over some functions to the federal level, and this is enshrined in the country's constitution. This compact generally allows for amendments and sometimes even exit from the federation. In contrast, assigning functions in a unitary state, leaving aside the issue of the state's genesis, is generally a top down affair. Functional assignment is generally not specified in the constitution of unitary states; hence it must flow from subsidiary

legislation. In principle one should expect functional assignment in unitary states to be more dynamic, since change does not require constitutional change, but it is not uncommon to see heavily centralized regimes persist for considerable periods of time.¹³

While recognizing some notable differences resulting from state structure, the above description should explain why a constituent unit in a federal state might nonetheless have a relationship to lower level governments that is essentially the same as that between the national level and SNG in a unitary state. A constituent unit in a federal state often has a relatively free hand in establishing and shaping local government. This relationship is underscored in Canada by the popular referencing to the constitution that local government is but a ‘creature’ of the province. It is the latter that often pushes for devolution or centralization, generally in a search for efficiency, equity or a reduced fiscal burden; the centralization of educational financing in recent decades in the province of Ontario is a case in point (Garcea and Munroe, 2014). In a similar way, Section 3.1 of KP’s 2013 Local Government Act stipulates that local governments function ‘within the provincial framework and shall faithfully observe the federal and provincial laws’ (see Chapter 6, section 6.4).

Both federal and unitary states employ similar concepts in functional assignment, but with some marked differences in the extent of their use. For instance, both make use of exclusive and concurrent functions, though perhaps federal states make more use of both. Federal states also make use of residual functions – which is only seen in rare cases in unitary states. The use of lists of functions and of the general competence model is evident in both systems. Asymmetry in the functions assigned to SNG is also not uncommon in both cases. Watts (2005) has pointed to the diversity found among federations in these constructions. It may well be that variation within a given state structure is as marked or more so than the variation found between the ideal types of federal and unitary states. As for the process of making decisions on who does what, that should have much in common regardless of state structure.

It is also important to note that the federal–unitary distinction does not determine the actual degree of decentralization – in terms of functions or other measures. There are a good number of federal countries that are, or have been, quite centralized – more so than a few unitary countries. For instance, Mexico, Malaysia, Pakistan (before 2001) are more centralized than post-1999 reforms Indonesia – a unitary state. There is some pattern discernible, however; more federations are proportionally found among OECD countries than among developing countries,¹⁴ and federations by and large exhibit greater decentralization than is found in unitary states.¹⁵

As noted above, in principle it is easier to make changes in functional assignment in a unitary state, where the framework for functions is likely to be set in an ordinary law and/or lower level instruments. Changing constitutions which set out the functions of the national and constituent levels can be a more difficult task. Of course, changes to the functions of local government by a state/province are as easy (or difficult) in a federal state as in the case of national level in a

unitary state. It should also be noted that some federations are able to (re)interpret and adjust the distribution of functions without resorting to constitutional changes. Administrative delegation, opting in/out clauses, bilateral agreements and cooperation, and court adjudicated disputes over jurisdictional grey areas generates what is sometimes referred to as ‘cooperative federalism’ (Lazar, 1998; Wanna *et al.*, 2009), a style of engagement marked by creative mutual accommodation.¹⁶ An example seen in Canada is the federal devolution of immigration policy to provinces. This was done in an ad hoc fashion, and asymmetrically, favouring Quebec, British Columbia and Manitoba. The approach mirrors what is often seen in unitary states, though the consequences of unequal treatment among constituent units in federations are potentially more grave. In the above Canadian case resentment developed in other provinces over the unequal treatment of immigration policy (Reeve, 2010).

In newly formed federal states there appears to be a trend towards increasing the specificity of functions over time, at least as evidenced in constitutions.¹⁷ There is no similar observation on unitary states, but the growing state intervention and complexity of life in all countries would argue for increased differentiation of the tasks of government over time in any state. Changes in the SNG frameworks in some unitary states do seem to bear this out, although there has also been a counter trend, mostly in OECD states, to simplify and empower local government in a permissive fashion that does not rely on detailed lists (see Chapter 3, section 3.3 on general competence versus positive lists). As an example of this trend in unitary (positive list architecture) states, the list for Indonesia following decentralization reforms is many times more detailed than earlier lists. Pending decentralization instruments in Cambodia are also having the effect of enlarging or formalizing the list of functions in the sectors that are piloting a transfer of functions.¹⁸

We have seen from the arguments made above that the federal–unitary distinction is not a dichotomy. In fact, some states are purposefully crafted in the middle ground between the two, as in the case of South Africa, where a constitutional list for functions is provided for all levels of government (national, provincial and municipal), although there is a substantial degree of concurrence among levels (Republic of South Africa, 1996). Nepal’s new constitution also lists functions (called subjects) for all three levels: national, provincial and local (Durbar, 2015). These federal/unitary hybrids have the advantage of giving more certainty and stability to the lower levels of government, more so than is normally found in unitary or federal systems – as the latter often have their constituent units act as ‘unitary states’ vis-à-vis their local governments. Having functions of all levels of government in the constitution goes some way towards treating SNG as a third/equal order of government, as put forward in municipal lobbying for constitutional protection in Canada (UBCM, 1992) and Australia (Bennett, 2008). This achievement does not guarantee an empowered local government, as seen in Nigeria, where constitutional guarantee of local government and constitutional list of their functions (see Federal Republic of Nigeria, 1979, 1989) did not stop states from keeping local government ‘impotent and insolvent’ (Awotokun, 2005: 130).

On the negative side, a hybrid state structure may work against flexibility in changing functional assignment in view of the high political threshold of constitutional amendments. Additionally, a cooperative form of federalism among three levels would be challenging, as has been noted in the case of South Africa (see Box 2.2) where efforts have been made to give life to the constitutional commitment to ‘distinctive, interdependent and interrelated “spheres” of government’ but considerable debate has ensued over whether provinces are ‘an unnecessary “layer” between the national and local governments’ or ‘an essential element to direct and coordinate regional decision-making and service delivery’ (De Villiers, 2008: 1).

Box 2.2 South Africa’s governmental structure

A division of functions embedded in the constitution gives South Africa the appearance of a federal structure. Provinces have both exclusive and concurrent competences. Furthermore, they account for about 50 per cent of national expenditures, and have some say over municipal government. Nonetheless, the constitution allows national legislation to prevail in many circumstances that are interpretable by the national level. Hence the national level state sets the legislative framework for concurrent functions it shares with the provinces, and for municipal functions. For instance, it sets the size, conditions and standards regarding provincial and municipal expenditures. The central government tends to deal with provinces and municipalities unilaterally, instead of giving the provinces a dominant role in guiding municipalities.

Source: authors’ assessment based on technical support provided through GIZ-GSP.

2.5 Functional assignment in the decentralization reform cycle

Decentralization and local governance (DLG) reforms are normally ‘whole-of-government’ initiatives, i.e. reforms with an impact cutting across the mandate of many institutions or sectors. This is particularly true for devolution, the strongest form of decentralization, but also applies in a more limited way to the weaker forms of decentralization; delegation and deconcentration. Depending on the context of the DLG reform, the change agenda includes numerous arenas (see Figure 2.3). The institutional changes that arise will reflect the political forces and dynamics at play in the country. These include political, social and economic actors, pursuing their interests and responding to domestic and external trends and events. These forces and dynamics shape and set the bounds for reforms. Functional assignment is foundational for the design of decentralization reforms, but all of the building blocks outlined in Figure 2.3 need to be given attention, at appropriate times, if decentralization is to yield the substantial promises associated with it.

While functional assignment is often associated with broader DLG reforms (and sometimes upheavals in state structure), the process and outcomes of



Figure 2.3 Functional assignment in relation to other decentralization reforms.

Source: authors' illustration.

functional assignment should also be assessed on its own terms. In this more limited frame, the desired results of a functional assignment process include an understandable and coherent assignment of functions, a durable consensus on the assignment among the stakeholders involved, an assignment that is feasible in terms of its implementation, and a resulting distribution of functions that has some stability over time.

The above results of a good assignment have not yet been consistently or clearly voiced. They can however be inferred from the criticism levelled at existing systems deemed to be in need of reform. For instance, the distribution of functions in the Solomon Islands is perceived to be cumbersome, messy, non-transparent and difficult to implement (Government of the Solomon Islands, 2009). However, the results listed are generally not well articulated in a positive sense. The guidance offered by some countries that have employed a systematic approach has tended to be focused on the process itself. For instance, in Cambodia, the government requires that the process of functional assignment be 'systematic, orderly, rational, transparent and equitable' (RGC, 2013).

Achieving the four substantive results listed above makes it more likely that the larger decentralization goals will be accomplished. As discussed earlier, the success of DLG reforms depends on its political and administrative context and on its design, i.e. political, administrative and fiscal arrangements chosen and the competency and consistency with which they are applied. The building blocks of the reform design may be well constructed and fit together, or they may be incoherent and in tension with each other. Drawing in part on the previous chapter on the context of functional assignment processes, some aspects of DLG reforms that determine success are briefly explained below:

- Coherence in the political empowerment of subnational level of government, particularly on decentralization modalities. Understanding the degree of autonomy, and forms of political life and mechanisms for accountability is a crucial foundation for functional assignment, and shapes the types and architecture employed.
- Fiscal arrangements within the state (such as revenue and expenditure assignments to different levels of government, horizontal and vertical fiscal transfer systems, performance-based grant systems) need to be adjusted in line with the desired DLG reform and the functional assignment decisions taken; as the principle of ‘funds follows functions’ indicates, the assignment of functions has (or should have!) a profound influence on the fiscal arrangements.
- SNG autonomy in setting own organizational structures and SNG authority to hire and fire officials, or to establish (or modify existing) salary and career systems must also accord with the broad intentions of reform, decentralization modalities and functions. HRM responsibility for SNG is required in both devolution and delegation arrangements as it is a key requirement to achieve efficiency and welfare gains, and to have effective horizontal accountability between elected representatives and public officials of subnational level (see for instance Mogedal and Steen, 1995; Saide and Stewart, 2001).
- DLG reforms must include revisiting sector and cross-sector laws and regulations in order to ensure consistency within the legal framework (see also Romeo, 2013: 80). Passing a local government act containing a new list of functions for subnational governments is not sufficient, if such functions are not reflected in sector laws and legislations, in the planning system or in budgeting and procurement systems. Lack of legal harmonization can undermine the intended reform programme.
- A stable multi-level governance system with well-performing units of subnational government needs a decisive and forceful national government that is able to track how SNG are able to discharge their functions and powers, and to bring to bear a set of effective sanctions and incentives, and technical and managerial capacity at the national level to spur and support performance improvements of SNG.

Functional assignment can give considerable direction to some of the above building blocks of decentralized governance. For instance, it can help to shape oversight systems by delineating the types of functions (obligatory vs voluntary), to make clear where the oversight functions reside in the hierarchy of government levels, and to build common understanding and consensus among the stakeholders that are part of the sector system.

The direction of development that functional assignment can give to related building blocks of decentralized governance is not always appreciated or utilized. Empirical evidence shows that DLG reforms are often not planned and implemented in a structured and well-sequenced manner, but proceed

haphazardly and unpredictably, driven by political entrepreneurship that capitalize on opportunities presented by larger social and political events. Keeping a clear sight on all the pieces of the DLG puzzle that must at some point come together is therefore important. Likewise establishing some mechanism for monitoring real-life impacts of the reforms, for learning and for initiating re-adjustment measures will go a long way in ensuring that DLG reforms are sustainable and produce the desired results.

2.6 Functional assignment in OECD and non-OECD countries

There are several factors that distinguish functional assignment in OECD countries from functional assignment in non-OECD countries. These relate to the diversity of functional assignment solutions, the scope of reform, favoured architecture, discourse and political positioning, and the consultative process.

By virtue of having a greater proportion of federations, OECD countries can generate a range of functional assignment solutions within any one country – generating more diversity in the functions given to SNG and intergovernmental relations than is the case generally for unitary states. The diversity in federal states comes from the common place practice of giving the constituent units the jurisdiction over lower-level government. These constituent units of the federation maintain much in common but can also place their own stamp on their SNG.¹⁹ Changes in the vertical relationship between levels of government are linked with another reform trend that is more pronounced in OECD countries but also visible in non-OECD countries: the increased use of single-function agencies (instead of multi-purpose, territorially based local governments) and the separation of provision and production of public services by the involvement of non-public service providers (see Kuhlmann, 2010; Kuhlmann and Wollmann, 2011; Wollmann, 2012).

Because of the longer experience with SNG in OECD countries, a number of reforms have generally already taken place in their SNG frameworks. Hence the distribution of functions is generally somewhat or quite decentralized, and further reforms will then tend to be incremental, in either direction. The assignment of functions to different levels tends also to be familiar to stakeholders within the sector systems, resulting in less ambiguity than seen in other countries. SNG and their associations are normally more influential actors in such functional assignment exercises than in most developing and emerging countries. In OECD countries, functional assignment exercises tend to be more sector-focused and limited in scope. Reflecting the stage of state evolution in OECD countries, it is also not uncommon to see functional assignment exercises in these countries that are largely or entirely about recentralization, as seen in Norway and Denmark (Ahmad *et al.*, 2008), Hungary (Soos and Dobos, 2014) or in Canadian provinces (see Garcea and Munroe, 2014 for the case of education). Recentralization also occurs in unitary states (as seen in the 2014 revision of the regional government law in Indonesia), but these may be less frequent or less visible in being subsumed under predominantly decentralization focused

reforms. It should be noted however that unitary states do have greater scope for undermining their SNG than might be found in federal-constituent unit contexts. The proliferation of SNG units as seen in some developing countries for instance may not diminish the number or weight of functions, but they do place SNG in a weaker position vis-à-vis the central government on important aspects of the implementation of functions – such as their financing for instance. The case of Uganda comes to mind in this regard (Lewis, 2014).

Following from the above observation that OECD countries have a large proportion of federal state structure, and that in these federal states the tendency is to give constituent units the jurisdiction over local government, it is not surprising that local government frameworks exhibit variety, as seen in countries like Canada, United States and Germany for instance. This variety is evident in the political and administrative structures (e.g. role of mayors and councils) but it is also often reflected in variety in the architecture of functional assignment. In the United States for instance the existence of Home Rule-governed local government (i.e. SNG systems based on the general competence model discussed in Chapter 3, section 3.3) is seen in some states, while a positive list of functions guiding local government action (*ultra vires model*) is seen in other states; most states lie somewhere in the middle of the continuum bookended by these dichotomous ‘ideal types’ (Smith and Kennedy, 2003).

In contrast, non-OECD countries will generally have a rather tightly bound positive list architecture, reflecting a more centralistic approach. In part this arises from their choice of state structure, where the unitary form is dominant. But it also arises from the historical context that kept SNG rather weak relative to the centre. This does mean that under favourable conditions reforms can be quite fundamental as there is much room to move towards a more decentralized form of governance. In doing so however non-OECD countries appear to be maintaining a positive-list architecture rather than to opt for a more permissive general competence architecture. This can be seen for instance, chronologically, in the Philippines (1991), Indonesian (2000s), recent Cambodian (2015/2016) and the anticipated Nepalese reforms.

In view of the more prominent concern for fiscal burdens in OECD countries – a side effect of a larger state and a corresponding higher tax burden on the public than in non-OECD countries – it is more likely that decentralization, or recentralization, is promoted or justified in part on the basis of fiscal efficiencies or in some cases revenue neutrality; as seen in the service redistribution in Ontario (Canada) in the 1990s (Dollery *et al.*, 2008; Côté and Fenn, 2014). In contrast, non-OECD countries will tend to emphasize a combination of aims, with democratization and other political factors being quite prominent.

2.7 International cooperation and functional assignment

Official development assistance (ODA), particularly technical cooperation/assistance, is often employed in support of governance reforms in non-OECD countries, including in the area of functional assignment. A case can certainly be made that

developing countries and emerging countries often have governments, and polities that are rather fragile and at times overwhelmed with the challenges of governing. The state is generally weaker, and the nation may be burdened with severe political and social rifts that cause instability and hinder the reach and effectiveness of the state. Support for governance reform by DP is therefore justified, although the capacity to absorb, and willingness to act on reforms are always issues to be taken into account when proffering support.

Before making specific observations about what ODA is offering or could offer, it should be noted – as alluded earlier – that the demand for a specifically ‘functional assignment’ solution to various service and development challenges of the state can be neglected or not appreciated by the way ODA presents its support and engages with the client state. It is not unusual for ODA political and technical support to perceive and enjoin its clients to see the challenges as ones arising from, or amenable to interventions in, planning, financing, social accountability (a more recent favourite) or simply capacity development – the latter often delimited to training on existing systems and mandates. In short, the governance problem may be misdiagnosed or only partially diagnosed, leaving the more structural solution of functional (re)assignment off the table. This speaks to the already alluded dearth of experience and skills in functional assignment (both with client governments and ODA agencies) and the nature of the reform, all hampering the possibilities of generating a community of practice that is able to identify the need for the reform, and apply suitable approaches.

Several support efforts of international development partners have been seen in a good number of countries, spanning Asia, Africa and Latin America, both from bilateral organizations (e.g. GIZ, SDC) and multilateral (UNDP) or international finance institutions (World Bank, ADB, IDB). These have exhibited a great deal of variation: some DP have made their entry point the national level (e.g. the World Bank in Kenya), while others have chosen one or more levels of SNG (e.g. GIZ supporting the provincial level in Aceh/Indonesia). The intensity of support and level of detail has differed considerably, with rapid and superficial forays standing in contrast to multi-year and deep cross-sector analysis. Sector focus has varied, from one sector, to a set of lead sectors, to a broad sector approach; reflecting the scope of government decentralization policies supported by the DP. DP modalities have often employed technical assistance, but in other cases also financial assistance (loans and grants) to incentivize policy implementation and steer policies in certain directions.

The most comprehensive and systematic DP support to functional assignment in Asia has probably been seen in Cambodia, where a range of DP (e.g. ADB, UNICEF, GIZ, World Bank) have supported the government’s cautious functional review and functional mapping process, resulting in the initial transfer of several service functions to the districts (mainly) and the provinces (see Chapter 6, section 6.1 for details).

The value added from the DP support in Cambodia and elsewhere has been to systematize the functional assignment process, defining key steps and sequence. They have also infused some regional/international experiences and previously

used conceptual schemes into the national efforts. These support efforts have not been deeply assessed, although some internal monitoring and evaluations do exist. Unfortunately, these have not been widely shared. We have in a very broad brush way depicted the performance of these support efforts in several countries (Figure 2.4), generally where we have been ourselves involved in providing technical assistance.

As a first observation it can be seen that functional assignment processes take some time; several years is not atypical. Perhaps the engagement with DP also works to extend the time, as the systematization of the process and addition of robust analysis tends to require more time, in developing the approach, in finding a consensus among DP and between DP and government, and then in implementing it. The support provided to the Cambodian government by the GTZ (and later GIZ), first bilaterally and later with European Commission funding, began in 2000. The methodology of functional assignment was elaborated and applied over the period 2011–2015. Only in 2015 have pilots been initiated to actually transfer some functions to the district level. It is difficult to say definitively whether DP support is a main factor in extending the preparation period, as there is even less information available about countries that undertake functional assignment processes without the support of DP.²⁰

Political factors also determine pace and depth of reform. The relatively quick ‘Big Bang’ decentralization in Indonesia was made necessary by the looming

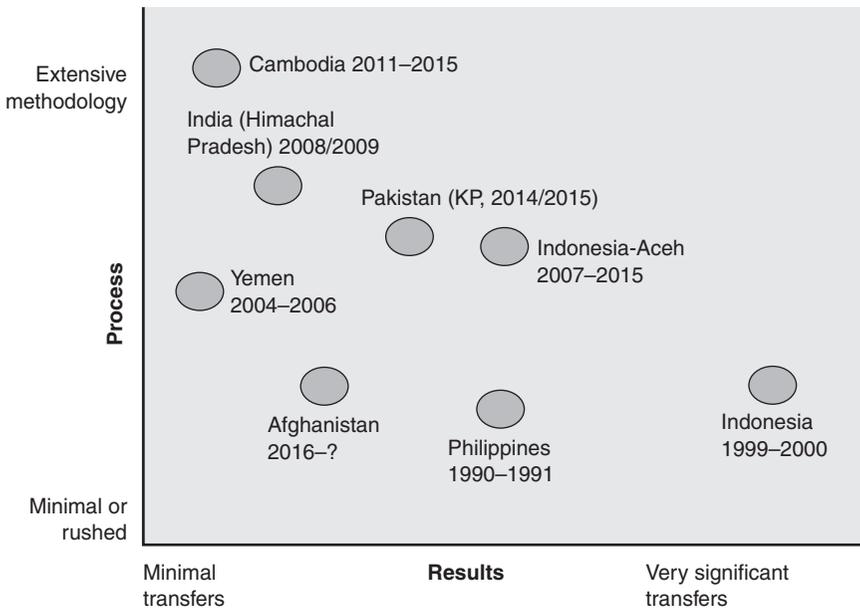


Figure 2.4 Process versus results in functional assignment.

Source: Ferrazzi and Rohdewohld (2015).

danger of national disintegration. Some reworking has been necessary since the Big Bang, suggesting that rapidity has its drawbacks. Piloting and phasing can make effort more systematic, but extends timing considerably, as noted in Cambodia, where some observers see the protracted process as a means of avoiding action. This concern would call for DP to be cognizant of the possibility of being manipulated to avoid rather than support substantial reforms.

While incisive assessments of the support given by DP are missing, it is not unreasonable to conclude that they can be most useful in raising the capacity of national actors to undertake functional assignment exercises. This means of course providing support to the key government actors involved, but also extending the support to non-government entities that can themselves provide support or hold the government accountable. In this respect, it appears that DP have largely focused on government, directing much less support to non-government entities. The multi-year functional assignment support provided by the European Commission to Cambodia (executed largely by GTZ/GIZ) has certainly added capacity in government, particularly in the lead ministries and the coordinating body for decentralization (the National Committee for Subnational Democratic Development). Still, the nascent SNG associations, private sector, academia and NGOs have seen relatively little engagement or improved capacities in this process (Ferrazzi, 2015).

An additional concern calling for attention is how DP can encourage innovations such as the more systematic support to functional assignment that has been seen in some countries. Although literature, including that of ODA, is now replete with knowledge management approaches, there seems to be a general lack of expertise in governance projects in applying knowledge management and developing the kind of networks and capacity development mechanisms that could solidify and further innovations or improvements.

Notes

- 1 See the writings of James Madison in the Federalist Papers No 47/48, in Hillsdale College, 2012.
- 2 Democracy theorists will generally opine that sovereignty lies with the people. If the people opt to create representative institutions at several scales it is not a straightforward logical conclusion that sovereignty is exclusively vested in the national state. It can be argued, for example, that the establishment of international immigration and trade offices by some provinces and regions (e.g. Quebec in Canada) is one example of some sharing of sovereignty with the national state. Even if sovereignty is denied to SNG, the democratic legitimacy it gains through its representative institutions suggests that SNG cannot be viewed merely as extensions of the national executive.
- 3 Activity Mapping Framework was issued as a national-level Government Order in August 2003 (Notification No: RDP.367.ZPS.2002 dated 18 August 2003).
- 4 For instance, the Taluk level of government in Karnataka State is charged with the task to 'Supervise mid day meals schemes for school children' (IDPMS, 2015: 8).
- 5 Major headings of functions in the IMF statistics are (1) general public services; (2) defence; (3) public order and safety; (4) economic affairs; (5) environmental protection; (6) housing and community amenities; (7) health; (8) recreation, culture and religion; (9) education; and (10) social protection (IMF 2014, Table 6A.1). Each of these categories is broken down further into up to nine sub-categories.

6 Therefore, in most countries these categories inform how Ministries of Finance summarize public expenditures.

7 The IMF functions described earlier:

distinguish between individual and collective goods and services provided by general government units ... A collective service is a service provided simultaneously to all members of the community or to all members of a particular section of the community ... The use of such services is usually passive and does not require the explicit agreement or active participation of all the individuals involved. The provision of a collective service to one individual does not reduce the amount available to others.

(IMF 2014: 6.1.33 and 6.2.34)

An individual service 'is one that is acquired by a household and used to satisfy the needs or wants of members of that household' (ibid.: 6.1.35) The consumption of individual goods and services by one household excludes its consumption by another.

8 Equivalent jurisdictions which differ in their degrees of urbanization.

9 As the former Minister for Regional Government Ryaas Rasyid explained in 2011 to a Cambodian delegation interested to learn of the Indonesian experience (see the study tour account in EU-SPACE, 2011), the original intent was to give the village a separate and more equal standing to the other subnational levels of government, but the rush to conclude the reforms, and the difficulty faced in reconciling diverse views on the future role of the village, forced him to roll the village government under the tutelage of the district, a structure that persisted until 2014, when a separate law for village administration was enacted.

10 We use the term state to refer to the complex of institutions that hold the power of legislation, execution and the judiciary. Often the term government is loosely used to mean the executive branch, or the executive and legislative branches. We will try to be precise when necessary.

11 The Tenth Amendment to the US Constitution states that the '*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*'

12 See the example of the district level in Pakistan's Khyber Pakhtunkhwa province as mentioned above.

13 It would be an interesting research topic to determine whether unitary states' functional assignment is characterized by greater change than those of federal states, or whether the changes in federal systems are more gradual and frequent as compared with the less frequent but larger reforms seen perhaps in unitary states.

14 The Forum of Federations (2015) lists 25 federal countries, of which about half are members of the Organization for Economic Cooperation and Development (OECD).

15 There are no systematic comparisons of this difference in the literature, but there is some evidence for maintaining that federations are somewhat more decentralized. For instance, the proportion of central government expenditures to total expenditures of federated (including Spain) versus unitary nations in the OECD reveals this pattern (OECD, 2016). Admittedly, this expenditure focused measure is not a very good indicator of decentralization if the core feature of autonomy is what is in question.

16 Brosio (2014) points to the use of contracts between levels of government or between government agencies as a new form of cooperation in OECD countries, replacing more hierarchical types of cooperation.

17 Compare for example Germany (1949), with 39 powers/functions and India (1949) with 144 powers/functions, with United States (1787) with 18 powers/functions listed (see Herperger, 1991; and Wolf-Phillips, 1968).

18 For a description of these functions see the annual work plan of the NCDD (NCDD, 2016).

- 19 Of course the same applies in non-OECD federal countries. For instance, following the 18th Constitutional Amendment of 2010, which returned legislative jurisdiction on local government matters to the provinces, the four provinces of Pakistan have constituted their own – and differing – systems of subnational government.
- 20 One noteworthy impact of DP involvement is generally that at least the functional assignment process is made somewhat more open and that some trace of it is left in the formal or grey literature.

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3 The conceptual and legal architecture of SNG functions

Chapter 3 starts with a brief discussion how theoretical currents have shaped the distribution of governmental functions between levels of the state, looking at clusters of functions which in OECD countries (but also elsewhere) sit with the national and subnational level, respectively. We conclude that mimicking a particular distribution of functions in the context of a decentralization reform will not help much, and that engaging in a functional assignment process as described here is a more promising approach. We present and describe at some length different types of vertical relationships between the national/central and subnational level as influenced by the particular modality of decentralization that has been chosen (i.e. deconcentration, delegation or devolution). We elaborate particularly two broad models of a functional assignment architecture, i.e. the general competence model (sometimes also called ‘general mandate model’) and the ‘positive/negative list model’, two archetypes of a functional assignment architecture that we found helpful in our country experiences. Finally, we introduce here several typologies of functions, like exclusive, reserved and concurrent functions, obligatory vs optional functions, and residual functions. Having a clear understanding of these typologies and how to use them in functional assignment processes will provide much clarity to the stakeholders involved in these processes and help steer the process in the direction of a stable and workable arrangement.

3.1 Broad theoretical currents shaping the distribution of functions in government

In Chapter 1 we made references to concepts and theorems of fiscal federalism that deal with the assignment of functions across levels of government, often in the context of federal states but with applicability also in unitary states. In general, fiscal federalism distinguishes three broad roles of the public sector: macro-economic stabilization, income redistribution and resource allocation. The first two (macro-economic stabilization and income redistribution) are seen as classical roles for central government while the third one (resource allocation) is seen as significant for subnational levels. Veiga *et al.* (2015) argue, drawing from Tiebout’s rational choice model mentioned in Chapter 2, that redistributive

functions tend to be assigned to higher levels of government because of the concern (perhaps overblown) that households may vote with their feet, and move to SNG with higher social transfer and/or lower taxes (p. 8). While there is debate on the appropriateness of the first two roles for SNG, there is essentially unanimity in the view that the third role, resource allocation, does fit well with SNG. According to Agranoff (2004), services ‘that decentralized levels of government finance are primarily allocational. Their primary rationale is the provision of goods and services as opposed to higher-level government stabilization and distribution’ (p. 43).

The above considerations are in fact reflected in the traditions of several OECD countries, where broad groupings of functions are found at different levels of government by their association with allocative versus distributive roles of the state. In Australia this is evident in the long held caricature that local government is concerned with the three ‘Rs’; rates, roads and rubbish. In the province of Ontario, the 1996 ‘Who Does What’ panel reinforced the view that municipalities are to focus on the ‘hard services’ – property and infrastructure related services that tend to be local in scale and impact, while the province would take up the soft services (health, education and welfare) that have greater spillovers and implications for redistribution (Dollery *et al.*, 2008: 167). Public services such as ‘sanitation, garbage removal, street repair and cleaning, fire protection and recreation facilities’ are usually the responsibility of SNG in almost all countries (Veiga *et al.*, 2015: 31),¹ while social protection seems to be the least decentralized function (*ibid.*).

These function groupings however are rather broad and with fuzzy boundaries. Moreover, they may have more to do with historical patterns of when services were introduced, and the level of government that was in the ascendancy at the time, than any contemporary systematic application of criteria on which level is best equipped to undertake particular functions. It is not surprising then to see, beginning in the 1990s in Australia and other OECD countries, a shift from property-related services to ‘community’ services (Allender *et al.*, 2009; Tasmanian Government, 2013). Even so, there is continuous recalibration in this respect, and it is possible to see social/community services being taken away from local government and back to provincial levels, with justification that is more specific in the criteria or considerations offered than was the case in the past. The previously cited retraction of educational financing in Ontario (Canada) is such an example.

The broadening of local government functions in developing and emerging countries is aided by the rising appreciation that public services such as health and education are important contributors to fighting inequality (e.g. Oxfam, 2014). The fiscal federalism literature is increasingly reflecting the recognition that SNG are well placed to administer services that have important redistributive implications, such as primary health care, education, child care, housing and public transportation (World Bank, 1999: 114f.).

The above shifting currents on the broad groupings of functions are only partly helpful in providing direction for functional assignment exercises. A much

more detailed and defensible approach is needed to decide who does what in multi-level governance systems. We think that the functional assignment approach described here can bridge between rather abstract theoretical concepts, and the operational and administrative requirements of public administrations working under the conditions of limited resources, uncertainties, lack of permanency and sometimes fragile and contested state structures.

3.2 The legal framework for governmental functions – the SNG law and other instruments

Governmental functions can be set out in a vast range of legal instruments with varying legal weight. In a broad and rather general manner, constitutions often define general objectives of the state and by implication list key areas that governments are expected to look after (see the example of South Africa in Box 3.1). These constitutional stipulations are often wide-ranging and perhaps not very helpful for functional assignment as they are more outcome-oriented, stipulating political objectives of the state. Such constitutional clauses need to be elaborated through laws – some general, some sector-specific – to set out in detail what governments are doing, and how they should do it. Not uncommonly, international or regional conventions and treaties to which the state has become a party compel the government to work in a certain direction, or to take up certain services. For instance, for health or education universal declarations are in place obligating states to provide services. Article 4(a) of the UNESCO Convention against Discrimination in Education expects signatories ‘to make primary education compulsory and free’ (UNESCO, 1960). Individual countries embed these obligations, or nationally generated social accords, in their constitution and laws, specifying services that must be provided and in cases specifying also the service standards to be attained. More recently, the Agenda 2030 with its 17 Sustainable Development Goals (UN, 2015) and the Paris Agreement on Climate Change² exemplify global agreements containing priority areas, targets and timelines for the contracting parties. Each government has to translate these

Box 3.1 Constitutional and legislative basis for services in South Africa

The constitution (Article 27) gives everyone the right to have access to health care services, sufficient food and water; and social security, including appropriate social assistance. Article 29 entitles everyone to a basic education (Republic of South Africa, 2013). These obligations are in turn translated as legislation that requires municipalities to deliver basic service and attain certain service standards. For instance, basic water and basic electricity must be provided free of charge to the poor.

Source: RSA (2006).

international agreements into national policies and to create the necessary legal and operational frameworks. International commitments therefore make their way into national frameworks and influence what governments do, and which level of government does it. For functional assignment, the most critical law is of course what we call the ‘organic SNG law’ – the law regulating structure, position, role and broad functions of subnational units of government as part of a multi-level governance system. As we will show, other laws – pertaining to sectors, planning and public finance, public sector procurement or civil service arrangements, to mention a few – are crucial as well.

The organic law for SNG is the foundational law specifying the structures, relationships and procedures related to SNG. It typically spans the processes of elections, policy-making, functions, planning, organization, supervision, financing, financial management, reporting and linkages to civil society. It also can make reference to the establishment (civil service), cooperation between SNG and more. In regulating these key governance structures and procedures, the organic law should judiciously confer the degree of discretion/autonomy that accords with the overall decentralization policy, and should subsequently guard that these broad assertions of SNG discretion are upheld in any subsidiary regulations that provide more detail.

Some organic laws are very comprehensive, but others are slim, particularly if some of the above mentioned processes or aspects of SNG are treated in their own dedicated laws.³ The civil service and financing are often treated separately, although some general financing and staffing provisions may also be found in the organic law. Treating the same processes or aspects of SNG in separate laws can of course lead to some inconsistencies across laws, as seen in Indonesia in the case of the 1999 regional government law (the SNG organic law) and the regional finance law, which even differed somewhat in their definition of decentralization modalities.

An examination of the organic law can already provide a partial picture of the functional assignment in place. First, cross-sector functions are usually embedded, at least in part, in the organic law. Second, there may also be guidance on the principles, architecture and criteria that steer the decisions on functional assignment. For instance, if there is to be a general competence architecture, the explanation (and bounds) of the relevant powers would be found in the organic law. Decentralization modalities and perhaps their emphasis would also be appropriate in this law, as well as the criteria that are to guide the assignment of functions. If these overarching elements of decentralization are only briefly, or not at all, mentioned in the constitution, then it is more likely that they will be addressed in the organic law. Third, sector functions may be found in the organic law as well, and if they are not all listed there, provisions specifying how they are to be identified and set in the legal framework are likely to be in the organic law. Fourth, the organic law may give some guidance on the degree of dynamism that should be embraced in moving forward, acknowledging that some functions may not have been adequately addressed, or foreseen, and indicating the legal mechanism that should be adopted to keep the assignment relevant and acceptable.

The cross-sector functions typically found in an organic law on SNG include (1) setting own organizational structures and staffing categories, staffing levels and salaries/incentives; (2) human resource development (e.g. training); (3) spatial and development planning; (4) supervising and supporting lower-level SNG; (5) setting the functions for lower-level SNG; (6) revenue raising through taxes, fees and charges; and (7) establishing cooperation and needed structures with other SNG and non-state actors.

The above cross-sector functions can also be thought of as governance functions. Often it is assumed that SNG has these functions, as they are essential to getting things done in any sector. But whether they are in fact given, or the degree of discretion given, can vary considerably from one country to another, between levels of SNG, or in pre versus post decentralization contexts. Sometimes the devil is in the details, and these are not always evident in the organic law itself. It has occurred that a generous but broadly given governance function in the organic law is subsequently elaborated in a stingy regulation. It is from these contradictions that proponents of decentralization sometimes cast a jaundiced eye at reforming governments, claiming for instance that the ‘decentralization creature is released, but yet firmly held by its tail’, a common retort against overblown claims of decentralization in the Suharto era in Indonesia.⁴

Whether broad (governance) roles or specific (e.g. sector) functions are specified in an organic or related law, it is common for the entire set of laws impinging on SNG to have subsidiary legal instruments to make them more operational. Harmonization and consistency among these subsidiary instruments is also a challenge. If for instance, the general SNG law gives certain service responsibilities to the SNG, but the national procurement law does not stipulate corresponding procurement powers for the SNG, the SNG may be hampered in effectively executing its service function. The responsibility for this harmonization sometimes rests with the ministry concerned with SNG, but sometimes it is more diffused, bringing into play the ministry concerned with the judiciary and perhaps other units (such as the secretariat for the cabinet, or state reform agencies). The rigour of the reviews can vary widely, depending on the country and the saliency of the functions being regulated. In some cases, informal relations, such as access to the president, may outweigh formal structures and processes, allowing for contradictory regulations to mar the legal framework.

With respect to sector functions, as mentioned above, the organic law may specify the mechanism for identifying and formalizing these in the legal framework. But some organic laws go further, indicating the sectors within which functions may be identified for SNG, and even indicating which sectors have priority. In some cases, the organic law itself may hold all of the functions that are expected to be needed for the SNG – and in some cases even for the national government.

As mentioned above, laws – once passed by the legislature and put into force – often need to be made more specific and operational by means of lesser legal instruments, like government regulations, ministerial decrees, administrative guidelines, budget documents, etc. All these legal instruments can be sources for

assigning functions to levels of government (see Figure 3.1). The higher the instrument is placed in the hierarchy of the state's legal system, the more powerful it is and the more difficult it is to modify it. A state's constitution can be changed only with considerable political effort – with voting or population thresholds set high to ensure a measure of sober consideration and permanency of policies. A law requires the approval of the state's legislature and is subject to political competition and to finding a legislative majority. Lower-level legal instruments often no longer require the involvement of the legislature but can be formulated and put into force by the executive branch of the state, i.e. more easily and without bringing the issue into the open political arena. Ideally, all of these legal instruments will be fashioned in a coordinated or harmonized way, but often this is not the case.

It is difficult to identify good practices, let alone 'best practices', in the legal frameworks for functional assignment. Much depends on the past developments in the legal system and the legal traditions of the country. Even so, it is appropriate to put forward some considerations to aid deliberations on the legal instruments to be employed. For instance, the legal instruments to effect transfers of functions should be of the same weight across sectors. Having one sector transferring functions by means of a law while another uses lesser administrative instruments will create a certain imbalance in the system – giving unequal opportunities to effect change to similar actors. The higher the legal instrument, the more stability and credibility it will have. The lower the instrument the easier it

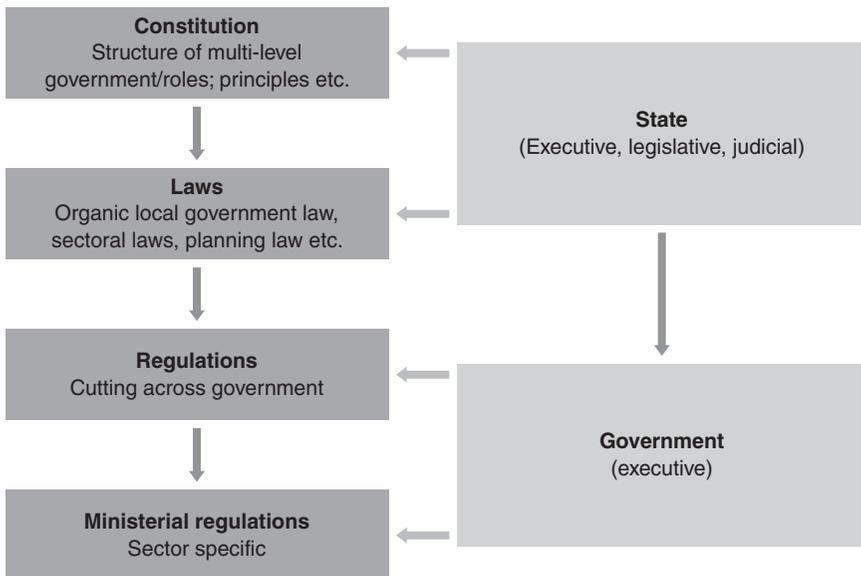


Figure 3.1 Different legal instruments of state actors.

Source: adapted from GTZ (2009).

can be changed as required; a balance may be needed, suited to national dynamics.

There is furthermore the consideration that legal instruments tailored to each sector can allow for a more detailed treatment that is better suited to tapping the expertise and involvement of sector stakeholders and is more likely to exhibit appropriate sector phasing and consistency with other 'sector' instruments. In contrast, the use of an omnibus legal instrument (like Indonesia's Government Regulation No. 38/32007) allows for a more coherent and comprehensive approach, and with a result that is probably easier for the public to apprehend, but with a list of functions that is more awkward to change.

Indonesia is a good example to illustrate different approaches of the legal architecture in functional assignment and their advantages and disadvantages. The initial 1999 Indonesian law on decentralization⁵ (on 'regional government' as it is referred to in Indonesia) in Article 7 just stipulated that all governmental areas except foreign policy, defence and security, justice, monetary and fiscal matter, religion and 'other areas' are local government affairs. Article 11 then listed several priority sectors as explicit 'mandatory' functions of the district/city level, like public works, health, education, agriculture, transport, environment and others. There was no clarification in the law whether the whole sector would go to the district/city level, and if not, which sector components would stay with the national level. The law did not specify in detail the sector functions transferred to the subnational levels (districts and provinces), and the follow-up omnibus Government Regulation 25/2000 – prepared the following year – only outlined the national and provincial lists of functions, leaving an apparently large residual for the district/city level. Hence for several years the detailed sector functions of the district/city level remained unclear, with districts/cities wary of taking up functions solely on the justification that the functions were not found on the higher-level lists – and not sure otherwise what they truly had to take up. This architecture was akin to a strong form of general competence, for the district/city level (see section 3.3). In 2004, the original decentralization law was modified with some strengthening of the provincial role.⁶ As a consequence of this legislative revision, in 2007, a replacement Government Regulation (PP 38/2007) was issued by the Ministry of Home Affairs after lengthy deliberations with each sector ministry which detailed the sector functions of the national, provincial and district/city levels. As mentioned earlier, Government Regulation 38/2007 was also omnibus legislation, covering all sectors that made use of SNG.

The advantage of this omnibus approach was that all transferred functions could be found in one – albeit bulky – document and that there was a certain degree of coherence and consistency between the sector regulations. The disadvantage was of course that if the dynamics in a sector (e.g. learning from applying the regulation in practice) warranted modifying arrangements, then the government regulation would be difficult to change as it reflected a careful balancing of interests across the government agencies (Ferrazzi, 2008). The most recent amendment of Indonesia's decentralization framework⁷ saw the regulation

on functional assignment become an annex to the law passed by the legislature – this continues the omnibus format, and lifts the threshold for change even higher, making it more difficult to attain adjustments over time than the previous government regulations. On the positive side, the list of functions has considerable legal strength, being at par with sector-oriented laws passed by the legislature.

In contrast to the Indonesian case, Cambodia's organic law of 2008 did not specify any sector functions of the district level; these are currently being identified and slowly transferred – often on a pilot-basis – by ministerial decrees (*Prakas*) of the sector ministries and sub-decrees approved by the national coordinating body (NCDD) before being passed by the government. As compared with Indonesia, the Cambodian approach is incremental and piece-meal, sector-specific, and exhibits different levels of commitment among the participating sectors.⁸

In countries with a British tradition of public administration, it is not uncommon to frame decentralization as a transfer of authority to manage prescribed and already existing organizational units. By implication, all functions that are managed by this particular unit then become functions of the local government. For instance, the 2013 Local Government Act of Khyber Pakhtunkhwa (Pakistan) in Article 12.2 simply says that 'on the commencement of this Act, the administrative and the financial authority for the management of the offices of Government, specified in the first Schedule in a District, shall stand devolved to the District Government of that District' (Government of KP, 2013). The First Schedule of the Act then lists 24 devolved offices (plus some additional ones for urban areas). Nowhere in the Act are the mandates and functions of the devolved offices explained in detail; presumably the explanations found in the initial establishment of such units, or in regulations that have accrued since, are still held to be in force. A somewhat similar approach is also seen for some of the functions in the Local Government Code of 1991 in the Philippines, where certain officials (professional posts) are required for several types of local government units; for instance, veterinarian, health officer, engineer for infrastructure, agriculturalist. While there is some logic and simplicity to this approach, it risks freezing the structures that serve as vehicles for discharging the devolved functions, and the way the functions are made operational. A more explicit and encompassing functions based transfer would avoid this pitfall.

The above organization-versus-function-muddle points to an even larger ambiguity found in decentralization design regarding the entities that *give* functions and those entities that *receive* them. This can have important implications for selecting modalities and types of functions, and designing their institutional arrangements with consistency. To do justice to this issue it is worth viewing the framing of decentralization modalities through the lenses of principal-agent theory.⁹ In the context of intergovernmental relations, this theory suggests that a level of government with the power to create SNG will want to do so, for getting more done and to encourage local creativity, resource mobilization and adaptation to local needs. But it must then grapple with the problem, and cost, of controlling the SNG. Where the emphasis is on ensuring compliance with

higher-level government priorities, government may choose to forego the use of SNG and simply internalize the implementation task (through its internal command and control structure; binding the principal and agent very tightly). Where the aim is to unleash the creativity and vigour of SNG, then devolution is the favoured arrangement. Delegation can be seen to be a compromise between these two options.

In the devolution option the SNG creating government will want to ensure that local political institutions (parties, councils) and processes (i.e. elections) will serve to compensate (or more than compensate) for some of the accountability lost to the higher-level government. It will then, in most cases, try to align these local political institutions with those it controls or influences at its own scale. The key point to be drawn from this description is that the modalities of devolution and delegation are not mere command and control devices applied between technical units of different levels of government. Furthermore, the legal anchoring of functions should tell an important story about what the decentralization policy is expected to do. The ideal types that we know as decentralization modalities should have very carefully crafted and appropriate legal instruments that reflect the principal-agent accommodations intended. It is useful in this regard to remember the distinction between the ‘state’ (combining at least the legislative and executive branches) and the ‘executive’ alone (often loosely called ‘government’). Different branches of the state are typically involved in different modalities of decentralization and therefore in creating the functional assignment.

An organic law for SNG that contains the functions of the SNG is created by the state (meaning it has been passed by the legislature). This state backing is typical of the strong form of decentralization that we know as devolution. Having the functional assignment contained in a law gives it the legitimacy and permanency that is not found in lesser legal instruments. It is possible, however, and fairly common, to have the state delegate some measure of legislative authority to the government (the executive) – allowing it to construct more detailed lists of functions for instance – adhering to the framework imposed in the organic law. The functions housed in these executive instruments can also be deemed to be devolved. This was the approach seen in Indonesia, at least up to 2014. In the most recent law the detailed lists were placed in the appendix of the law itself, presumably to overcome conflicting legal streams; those pertaining to the sectors mainly.

An additional insight that might be gained from Figure 3.1 is that the government as executive, once clear about which functions it has responsibility for, can of its own initiative decide to *delegate* some of its own functions (those not reserved) in whole¹⁰ or in part to SNG through regulations or lower-level instruments.

To lend more clarity to the above concepts, in the following figures and explanations the modalities of decentralization are individually mapped on the state actors we have mentioned earlier:

Figure 3.2 shows the typical case of devolution, where a law (an organic law for SNG for instance) is used to impart functions from the state (here including

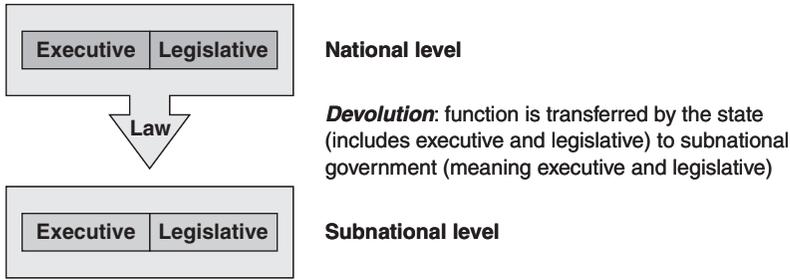


Figure 3.2 Who gives and receives in devolution.

Source: adapted from GTZ (2009).

both legislative and executive) to the SNG (likewise composed in this case of both the legislative and executive branches). The terminology for the SNG representative body may vary (e.g. council, assembly), but it is important to note that there is a strong political dimension to this functional assignment. Accordingly, considerable discretion needs to be given to the SNG to shape policies and their own regulations that allow it to discharge the devolved functions in ways that respect both upward and downward accountability. Referring to the concept of autonomy (see Chapter 1, section 1.5), the functional assignment needs to reflect – in the scope of the function, financing, guidance and supervision – the ample discretion that is called for under the modality of devolution.

Figure 3.3 shows the case of delegation. It is assumed here that some higher legal instrument (constitution or law) has already given the national level (one can think again of the combination of legislative and executive) its own set of functions. Some may be exclusive, in the sense that they are reserved and cannot be passed on to SNG. For others, the national executive could decide to delegate them in whole or in part to the SNG. The receiving entity in Figure 3.3 is still the SNG as a whole (legislative and executive), however, the national executive

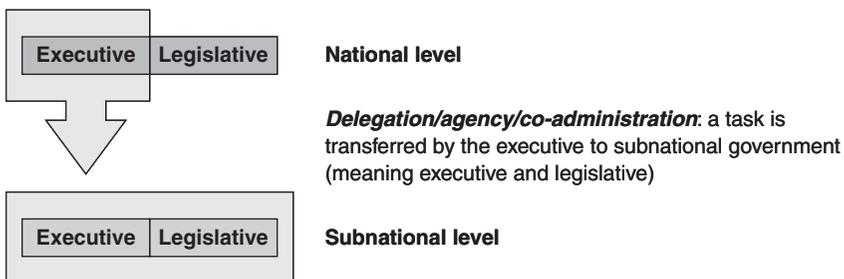


Figure 3.3 Who gives and receives in delegation.

Source: adapted from GTZ (2009).

will retain considerable influence on what essentially are well specified tasks: ‘When SNG act as agents of the central government, regulation and monitoring are needed to enforce national mandates and standards’ (World Bank, 1999: 120). Hence the national government has strict oversight, and can intrude with detailed guidance, although it is usually the case that some discretion is still given to the SNG concerning the way it carries out the delegated task. SNG autonomy is much more limited than is the case for devolved functions. For instance, the standards may be more output or outcome oriented in the latter, whereas in some delegated tasks, minute aspects of inputs and processes may be prescribed (e.g. forms used, costs of services).

In Figure 3.4, the common case of deconcentration is shown (the less common variant follows in Figure 3.5). Here, the national executive (meaning the head office of a national agency) is the giving entity while the receiving entity is field offices or regional branches of the same agency – which are found throughout the country in some locational pattern that suits the particular functions of the agency in question. In this case, SNG is not receiving the function, although it may engage in coordination with the de-concentrated unit of the national government that is the recipient. The issue of SNG autonomy therefore does not arise. Normally the functions delegated in this case are also well specified tasks to be discharged in the locality where the field office is based – the ‘larger’ function in which the task is embedded is not transferred. In fact, the term ‘transfer’, although commonly used, may be erroneous in the case where the giving and receiving entities are part of the same ministry or agency. Sticking to the term ‘delegation’ would be conceptually more correct.

Deconcentration does not exclude per se some discretion in local-level decision-making – but any such discretion rests with the management of the sector field office, with corresponding upward accountability mechanisms within the agency. There is no primary accountability to the local constituency, although the field office could be empowered to employ some accountability mechanisms in relation to SNG (e.g. consultation and joint monitoring exercises) or in relation to users (e.g. service charters prepared with user groups). The degree to which the de-concentrated offices engage with SNG can vary

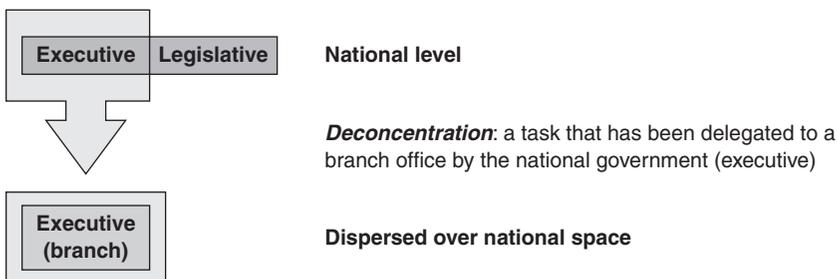


Figure 3.4 Who gives and receives in deconcentration (common form).

Source: adapted from GTZ (2009).

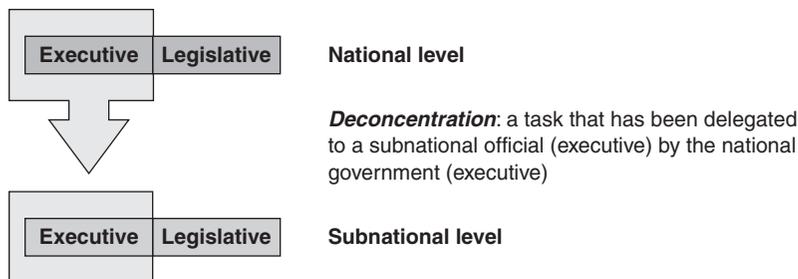


Figure 3.5 Who gives and receives in deconcentration (special form).

Source: adapted from GTZ (2009).

considerably, and is one of the sources of friction between central and SNG organizations. Efforts to ensure horizontal coordination that bridge the de-concentrated and devolved channels have a long and difficult history.¹¹

As explained earlier, another possible meaning of deconcentration is the delegation of certain (national-level) tasks from the national executive to the SNG executive. The latter is usually a sole official (e.g. clerk to a council, or governor) who relates to the legislative side of the SNG as part of the SNG executive, but also takes on tasks given by the national executive (and sometimes the state). In this respect it acts as a representative of the national/central government.¹² This architecture can lead to confusion and some tension if not managed carefully.¹³

There are some cases of deconcentration where several sector ministries' branches are established in common administrative areas, and additionally a coordinating figure, like a governor, is placed in a hierarchical or coordinating role over these de-concentrated units. The governor in this case is not housed in any SNG, as the latter does not exist. The governor may have an advisory body of citizens to assist his/her work but this body would not be a decision-making body, nor would it have the influence that a properly constituted representative body would have, in relation to the governor or to the de-concentrated units. The governor is also a de-concentrated figure in this scenario, likely responsible to the nation's president, perhaps through a ministry that is concerned with internal affairs or SNG (if these exist). This double deconcentration structure can be thought of as an intermediary towards a fulsome SNG. If a representative body is added, with the ability to make policies, approve a budget, and hold the governor, and implementing units, accountable, then the structure can transform itself into a typical SNG. This incipient structure (governor, advisory body, de-concentrated units) can be found in Afghanistan at provincial level. It was also in place in Cambodia before elected councils were introduced in 2008.

The modalities shown in Figures 3.2–3.5 are idealized conceptions that seek to consistently translate the intent of the functional assignment. Often a combination of these modalities is selected, with the mix depending on the country

context. At times the construction is quite complicated, with all three modalities and their variants in play (as in the above case of a governor/de-concentrated unit combination without an elected representative body). In some cases, the stated modalities are not consistently crafted, or the modalities are not explicitly identified. Deviations from the ideal types may be appropriate for the country context, or stage of SNG development, but they also invite risks in clarity and accountability as mentioned earlier.

The examined forms of functional assignment clearly indicate the potentially wide utilization of different modalities of decentralization within a multi-level governance system. To illustrate this point let's assume the state transfers certain functions (such as the provision of primary health services) to the SNG under a devolution arrangement. The receiving SNG will bundle responsibility for the discharge of primary health services in its own District Health Office (DHO) and will provide the required financial, human and technical resources through allocations in the district budget. The SNG can also decide to delegate the production of all or selected devolved primary health services to non-governmental service providers (such as private sector operators or non-profit health organizations). The district government (or even the DHO itself) could decide to transfer elements of the functions managed by the DHO to sub-district health units under a deconcentration modality, thus giving higher flexibility for decision-making to its own staff in the sub-districts. For the ultimate beneficiary of primary health services, the distinctions between these and other possible modalities of providing services might not always be clear. Therefore, within the sector system itself the applied modalities with their different funding and accountability implications need to be spelt out very distinctly in legal instruments, service contracts and other contractual arrangements – and these institutional arrangements need to be made clear to citizens/users.

To underscore the need to carefully consider the modality, and its consequences in crafting the intergovernmental relationships that they entail, we can turn our attention to the form of supervision that must be crafted to reflect the chosen modality. In the case of deconcentration, supervision becomes an internal function, which is woven into daily management, and may be bolstered through the use of internal audit bodies (e.g. units of the same ministry in question). In the case of delegation, the supervision is not as direct; the ministry delegating cannot treat the SNG that is taking on the delegated function/task as if it was part of its own organizational structure. It may need to control the SNG in the discharge of the delegated function through the use of formal ministry or government level legal instruments. The right to revoke SNG bylaws that run afoul of ministerial guidance could be one such formally acquired supervisory power. Perhaps the delegated functions can come under the audit scrutiny of a government wide audit body, responding to the national executive or even parliament. In the case of devolution, an argument can be made that the control must even be more indirect. In this case, tools like legislated minimum service standards come into play – with a focus on outputs and outcomes rather than inputs and procedures. Moreover, an argument can be made that ministers (even in the ministry

concerned with SNG) should not have the power to revoke SNG bylaws; differences of opinion on the legality of SNG instruments are better resolved through the judicial system. Different countries will have somewhat different stands on the particulars of what is most appropriate for each modality, but the point is that crafting these systems related to functional assignment must be done with an appreciation of the essence of the modality, i.e. the inherent autonomy that it embodies through its political and legal form.

As a final point on the modalities of decentralization, there is obviously migration of functions or their parts from one modality to another; that is in fact the core result of a functional assignment process where functions that formerly resided in headquarters and were carried out in large part through field offices (deconcentration) are shifted to SNG through devolution or delegation. But a migration is sometimes seen between delegated functions and devolved functions. Some policy-makers, as is the case in Namibia for instance, see delegation as a stepping stone to devolution; it is in a sense a risk minimizing strategy to only let a function go to the SNG provided that the central government retains considerable influence over it. Hence in Namibia, decentralization policy promotes delegation across the board as a stage in the development of SNG capacity.¹⁴ The Cambodia framework allows for migrating specific functions from delegation to devolution (assignment) and vice versa, but does not explain why this dynamic feature is needed. There are practitioners and advisors that discourage some of the above thinking, particularly that delegation should be seen as a stage towards devolution. In their view, the character of the functions themselves should lead policy-makers to decide, at the time of decentralization, whether the function is best carried out in a devolved or delegated fashion. For instance, according to this view, if the central government is asking SNG to undertake civil registry activities, these should remain as delegated tasks (because of the need to maintain national uniformity) and never graduate to devolved functions.¹⁵ While this principled stand seems warranted for some functions, other functions may in fact be ideally devolved but may benefit from a period of delegation while SNG capacity is developed.

3.3 Two main archetypes in the architecture of SNG functions

We have discussed issues of the design of overall decentralization reforms earlier, in Chapter 1, section 1.5. In regard to functional assignment under the devolution modality of decentralization, a key parameter of the design is the choice between a ‘general competence’ model of subnational government (sometimes also called a ‘general mandate’ of SNG) (LDI, 2013; Romeo, 2013) and a model based on specific, listed functions (also referred to as a positive list; a negative list alongside it can sometimes be found as well). These two models or archetypes follow their own internal logic; they have particular implications for the architecture of functional assignment and the nature and ease of vertical relationships in the multi-level government system.

In the *general competence model*, only a few objects of SNG (general objectives) are indicated. These are typically formulated in a broad manner, like ‘provide services to improve the welfare of citizens’, ‘promote local well-being’, ‘maintain peace and order’, ‘protect the environment’, ‘promote local economic development’, etc. Powers that enable wide action may also be explicitly included; such as the stipulation to give legal personality to subnational governments (i.e. that they can own property, make contracts, can sue and can be sued). Additionally, the SNG is given certain powers that allow it to act flexibly to achieve these objectives. These may entail the powers to establish a variety of organizational structures to pursue its objectives. Romeo (2013) defines the ‘general mandate’ as ‘the responsibility [of local authorities] to do whatever is in their power to improve the welfare of their communities, as long [as] they operate within national law, and the only limitation being the resources available to them’ (p. 68). The advantage of this architecture is that SNG are encouraged to be pro-active, using the general competence cover as first resort. It reduces local anxiety about being *ultra vires* (beyond the powers), since much room is given to SNG action. As compared with the more rigid and constraining list of functions, greater creativity, initiative and innovation are made possible in service provision arrangements. However, general competence models come in several varieties, and all of them set some bounds for local government actions.

The general competence model has several names around the world, and even within some federations: it is called just that in Canada (Lidstone, 2004) and New Zealand (McKinlay, 2010); ‘home rule’ in the USA; ‘general mandate’ in Cambodia; it was known as ‘well-being power’ in the UK (2000/2003) where it has recently been updated to ‘general power of competence’ (Sanford, 2016). The differences in name suggests some content differences as well; these can be substantial.

Box 3.2 A general competence construction, with a short negative list: communes in Cambodia (2001)

In Article 43 of the commune law of 2001, the objects of Commune Councils are broadly laid out (and are not subsequently followed by a positive list). This general competence construction is accompanied (through Article 46) with proscribed specific powers (functions): forestry, post and telecommunication; national defence; national security; monetary; foreign policies; fiscal policies; and ‘Other fields prescribed in laws and relevant legal instruments’ (RGC, 2001).

The other approach mentioned earlier, standing in contrast to general competence, is the enumeration of *functions*, creating lists that set the bounds for what SNG are allowed to do (positive list model). Sometimes this enumeration is also done for the national level. In some cases, a short negative list¹⁶ is also prepared, normally accompanying the positive list, but sometimes alongside a general competence construction (see Box 3.2 on Cambodia’s communes). A negative

list refers to what is explicitly excluded from the authority of SNG; sometimes it delimits powers, while in other cases it underscores what is evidently illegal, unethical or beyond the powers of SNG.

A positive list is normally enumerated for each level of government and elucidates what it can (or must do) – preferably there is no overlap or duplication between such lists of different levels of government. A given level of government must stick to its list and must not act beyond the powers conferred, otherwise it will be *ultra vires*: *acting beyond its specific assigned powers*. A short hand for the positive list model is also therefore referred to as *ultra vires*. The detailed list approach has been the most common historically (over the last 150 years at least), reflecting the fact that SNG has been viewed too often as lacking capacity, being corrupt or straying from its intended purpose. It was Judge Dillon in the US that set out the initial ‘*ultra vires*’ ruling, asserting that anything that is not on the list, or strictly ancillary to the items on the list, cannot be taken up by local government.¹⁷ In this context, the negative list is just an emphasis that in some cases is superfluous, e.g. the actions are illegal (e.g. allowing gambling), or are already proscribed in other legislation (e.g. the inability to borrow, if invoked, may already be clearly proscribed in other laws or regulations on public financial management).

While *general competence* seems very permissive in principle, experience in its application has revealed certain realities, limitations and drawbacks. These generally indicate that the ‘strong’ form of it is not workable, and is therefore not seen in practice (see Box 3.3 for the challenges such a construction would meet). Governments designing the architecture for SNG have felt the need to point out that existing or newly added policies impose obligations on the state to perform some functions, and to set performance standards (in OECD countries these are usually found in sector legislation) – meaning that it cannot be left to the discretion of local governments to decide whether or not such a function should be executed. Such guidance is particularly needed where SNG levels are newly formed and do not have a history of practice to rely upon. Hence, in practice general competence is accompanied by a positive list of obligations, and can also be constrained by an explicit set of limitations on powers given. For instance, in Canada municipalities have broad powers to act under a general competence construction, but they may only do so within the jurisdictions that are listed. (Some are broad functions and others are narrowly defined functions, and they are functions that are expected to be discharged – not a menu to choose from.) In Germany, Article 28 of the Federal Basic Law (*Grundgesetz*) stipulates that the lowest level of local government units (*Gemeinden* or communes) has general and complete responsibility for local issues (*eigener Wirkungskreis*); this stipulation is taken up by the local government laws of the states (*Länder*) that make up the federation and have jurisdiction over local government matters. Because of an ever-increasing interdependence of discharging functions in a multi-level governance setting some observers doubt whether such a distinction between own local functions and listed/transferred local government functions has any meaning in practice (e.g. Bull, 2008; Hesse and Ellwein, 2012: 204).

Some German state laws have open-ended lists of local government functions. The German case therefore underscores that general competence is unlikely to be the only feature and a clean form; the system becomes messy as higher level state institutions seek to ensure performance or expect SNG cooperation in discharging their functions.

Box 3.3 Challenges working against a strong form of general competence

- Reconciling with the theoretical foundation for the assignment of functions, where criteria have been developed based on political and economic principles (e.g. subsidiarity).
- Determining the limit of the permissive framework, including how to avoid the SNG from infringing on activities normally associated with non-state actors (family, communities, civil society organizations, private sector).
- Ensuring that LG does take on some functions deemed obligatory (where citizens have universal right of access); providing broadly the same level of universal services to all citizens.
- Aligning financing with functions when these are not ‘fixed’, the relevance of the much debated ‘vertical fiscal imbalance’ is put in question, and is obscured by the horizontal variation as LG take on different functions from their neighbours.
- How concurrence is to be conceived between the LG and central government, or between different levels of LG.
- Unifying the legal framework to gain consistency between the organic legal framework for LG that may be permissive and other relevant legal instruments (e.g. sector instruments, procurement, planning, financing) that may continue to be *ultra vires* in character.

Source: authors’ assessment.

Notwithstanding the limitations of a general competence model as mentioned above, SNG that have started their life with positive lists have chafed under the restrictive framework, and in some countries (Canada, Australia, New Zealand, the UK) they have pushed for a relaxation of this architecture (e.g. through more general and permissive formulations and added powers). The case of the United States is instructive in showing that the shortcomings of the strong forms of the two contending models (Home Rule and positive list models in this case) have resulted in frameworks gravitating towards a rather ‘mushy middle’, where their differences in practice are not very great.

The general architecture of functional assignment contained in the organic SNG law has implications for the oversight and performance monitoring systems that need to accompany decentralization. In the case of the *general competence model*, the options for higher levels of government to intervene (either to prevent SNG action, or to impose certain actions upon SNG) is more limited; therefore, more indirect means (like financial incentives) are required for political steering.

Detailed positive and negative lists give much more opportunities for higher level governments to check on the compliance by SNG, to exercise legality control or to direct the appropriateness of SNG action.

Within both models of the functional assignment architecture, different types of governmental functions come into play, although certain types may be more readily observed in one or the other model. One major distinction in functions is found between exclusive and concurrent functions. Another demarcation is seen between obligatory and optional functions. Finally, there are residual functions. These typologies of functions are examined in the next section.

3.4 Typology of governmental functions

Exclusive, reserved and concurrent functions

In multi-level government, of federal or unitary structure, functions can be assigned to levels of government with varying degrees of exclusivity. The terms exclusive, reserved and concurrent are used to denote these differences. All of these kinds of functions are generally explicitly enumerated, thus residing in positive lists. Where general competence is allowed for more than one level of government it is in principle possible to potentially have extensive concurrence, derived from the overlapping initiatives of the different levels of governments, but the latter architecture is not common. Hence, for the sake of simplicity, it is best to think about exclusive, reserved and concurrent functions as a possible feature of positive list architecture. These kinds of functions can coexist in the same system, and any one of these kinds, or even all three combined, usually forms only a subset of the total number of functions listed. However, in federal structures, exclusive functions can form the vast majority of functions. Unitary states tend to not use this designation to the same degree.

Exclusive functions are in principle only given to one level of government and cannot be infringed upon by other levels of government unless the assigned level agrees to some form of sharing of the function. *Concurrent functions* are shared by one or more levels of government; but what this can mean is more complicated in that two understandings can be found in practice.

Continuing with exclusive functions,¹⁸ these are explicitly identified in most federal structures, for two levels of government. The constitution will typically have a list of functions that are the exclusive jurisdiction of the federal level and a list that is the exclusive jurisdiction of the formative unit (state, province, etc.) (see for instance the case of Canada shown in Figure 3.6). The Canadian case is typical of federal structures in having the exclusive functions make up the vast majority of the functions in the constitution.

Exclusive functions are generally more rigidly adhered to for the national level than for the formative level in a federal nation (or SNG in a unitary nation). This is perhaps why an additional term is sometimes used to denote exclusive functions of the national level, namely '*reserved functions*'. This adds to the notion that exclusive national-level functions are entirely out of bounds to SNG.

Exclusive federal functions	Exclusive provincial functions		
Public debt and property Regulation of trade/commerce Unemployment insurance Direct/indirect taxation Postal service Census/statistics Defence Navigation/shipping Quarantine Sea coast and inland fisheries Ferries (interprovincial/international) Currency/coinage Banking/incorporation of banks/ paper money Weights and measures Bankruptcy Patents Copyrights Indians/Indian reserves Citizenship Marriage/divorce Criminal law, including criminal procedure Penitentiaries Works connecting provinces	Direct taxation within province Management/sale of public lands belonging to province Prisons Hospitals Municipalities Formalization of marriage Property and civil rights Administration of civil/criminal justice Education Incorporation of companies Natural resources Matters of a merely local or private nature		
<table border="1" style="margin: auto;"> <thead> <tr> <th style="background-color: #d3d3d3;">Concurrent functions</th> </tr> </thead> <tbody> <tr> <td> Old age pensions Immigration Agriculture </td> </tr> </tbody> </table>		Concurrent functions	Old age pensions Immigration Agriculture
Concurrent functions			
Old age pensions Immigration Agriculture			

Figure 3.6 Exclusive assignment of functions in the Canadian constitution (1867).

Source: Government of Canada, 2014. Permission granted by the Privy Council Office (2016) © Her Majesty the Queen in Right of Canada (2016).

The opposite is not true; it is usual for subnational functions to be influenced by the national level. This may happen through the imposition of national standards of service for instance as mentioned earlier. This reaching downwards by the national government may even be the case where the term ‘exclusive’ is explicitly adopted in the assignment of functions pertaining to SNG.¹⁹

In contrast to the promise of non-interference of exclusive functions (notwithstanding the intrusion mentioned earlier), concurrent functions purposefully allow for sharing of functions between two or more levels of government. But this concurrence can have two meanings or situations: (1) specified levels of government can undertake the very same specific function; and (2) a broad function (generally a sector or subsector) is shared between levels of government. In the second case, it can be argued that the functional assignment process has simply

not run its full course. It can happen then, as in decentralized Indonesia but prior to 2014, that the stated ‘shared’ functions set in a law are subsequently assigned in detail through a more operational regulation – so that in the end there is no overlap between functions of different levels. This ultimately gives rise to an essentially exclusive assignment (with the limitations explained earlier).²⁰

Where the functional assignment process has run its course, and still results in the sharing of broad or more granular functions, then this permanent concurrence can give rise to positive or negative outcomes. In some cases, citizens can benefit from more than one level of government being engaged in a given function. This can allow for some degree of competition or collaboration. For example, provincial and local levels both may fruitfully engage in coordinated or even stand-alone investment promotion, training of entrepreneurs, or the subsidizing of non-governmental organizations that undertake poverty alleviation. In the case of investment promotion for instance, a province may be able to more easily undertake promotion nationwide or in an investment fair abroad, but it could do so employing promotional and informational materials developed by or with the assistance of lower level government (e.g. a district government).

But in other cases concurrence can instead lead to tension and disputes between levels, and inefficiencies when two or more levels proceed. For example, if two levels of government can both establish terminals for public transport – and they fail to coordinate – this could lead to inefficient and competing facilities. Concurrence can also make it difficult for citizens to hold government accountable, if multiple levels are providing the same service in the same locality. According to the World Bank, sharing responsibilities between levels of government works well only ‘when they are clear, when each tier’s responsibilities are well defined, and when the regulatory framework anticipates that local governments are sometimes agents of the central government and sometimes principals acting on their own’ (World Bank, 1999: 115).

In the interest of effective accountability mechanisms (especially primary accountability towards citizens) and good vertical relations between levels of government, it is best to avoid concurrent functions that arise from a concluded assignment process, where specific function remain concurrent. Where instead a broad sector/subsector is said to be shared, it is best to have a way of concluding the assignment in detail so every level has its own functions within that sector.

Obligatory versus optional functions

Associating a level of government with a set of functions does not necessarily speak to the requirement of that government to discharge those functions, or to the expectations concerning the intensity or quality of implementation. To distinguish functions along this dimension it is necessary to frame the functions in terms of the obligations they carry for the level of government in question.

Obligatory functions (also known by other labels, such as mandatory or statutory functions) are normally characterized by the state’s commitment to citizens (e.g. as part of social compact in international conventions, national constitution

or national laws). Because such commitments revolve around the most urgent and necessary actions of the state, the focus of these functions is understandably on basic services. The obligation to deliver these services is bound to the national state, and in the process of decentralization this obligation is in part transferred to the SNG, through the devolution or delegation modalities. In either of these two modalities, to further convey the expectations of the national state, explicit performance expectations (such as minimum service standards) are attached to the functions.²¹ These oblige the nation-state to track performance and help SNG to successfully discharge the functions by means of funding, technical support and capacity development. The above explanation suggests that the nation-state cannot entirely shed its responsibility when it decentralizes to SNG services associated with the rights enshrined in the highest laws of the nation and its international commitments. There is always a residual interest of the nation-state to ensure that these rights and commitments are translated into reality – even when the provider becomes the SNG with a high degree of autonomy, as in the case of SNG managing devolved functions.

Box 3.4 Key features of obligatory functions

- Specifically stipulated in the legal framework as assigned (devolved)/delegated.
- Focus on the core services to be provided by SNG.
- National level (or level with jurisdiction over SNG) determines standards and policies.
- Tend to be full functions that underscore responsibility and accountability; cover all citizens/users; include regulatory power and implementation.
- Tend to be exclusively transferred to one level of SNG (not concurrent).
- Tend to be the same across an SNG level (except perhaps in piloting phase) – and are assigned/delegated among SNG levels using functional assignment criteria.
- Show stable assignment in the short to medium term.
- Have resources to implement as part of the transfer arrangement.

Source: adapted from Cambodian context, in Ferrazzi (2013).

The key features of obligatory functions, in relation to the functional assignment framework, are shown in Box 3.4. Typical examples of obligatory functions that pertain to basic services are primary education, primary health care or water provision. In South Africa it even extends to housing (Republic of South Africa, 2006). Generally, the state or national government balances the ‘obligations’ with support such as funding and technical backstopping. Where performance requirements are rights based in character (e.g. all children will have access to primary education), there may nonetheless be some flexibility given to SNG in their implementation, particularly in terms of the time frame allowed to achieve these expectations, thus respecting local priorities and circumstances, and

acknowledging local capacities. In Indonesia, minimum service standards have been promoted with mixed results for over a decade on the heels of the Big Bang decentralization (Ferrazzi, 2007; 2011), but the idea is slowly taking hold within government and among stakeholders that even with devolved functions SNG have an obligation to do their best to meet certain standards, regardless of where citizens may live.

Optional functions (also known by different labels, such as discretionary, permissive or voluntary functions) are very distinct from obligatory functions, being characterized by local character and local identification. They often refer to economic sectors since local action in these fields depends very much on particular histories, endowments and aspirations (see Box 3.5 for key features). For instance, some communities may wish to promote tourism heavily, while others may wish to do little in this area, being more concerned about retaining the original character of their community. Generally, the higher level governments will not force all communities to expand their tourism promotion effort. Cultural, non-formal educational and religious matters are further prominent fields for optional functions.

Box 3.5 Key features of optional functions

- Are generally not enumerated in the legal framework as assigned functions.
- Choice by SNG depends on local interest and capacities.
- Can be drawn freely from a broad range of fields.
- Take up depends on SNG ability to mobilize resources.
- Same functions can be taken up by more than one level of SNG, within set rules of cooperation/coordination/concurrence.
- Selection could vary considerably between jurisdictions of same SNG level.
- Focus can vary from year to year; can be terminated by the SNG at will.
- Do not generally require approval or supervision from other levels of government (except for adherence to legality), but expenditures are included in budget and reported as required for financial management.

Source: adapted from discussion of 'permissive functions' in the Cambodian context, in Ferrazzi (2013).

The above understanding does not preclude that some obligatory functions will be identified in sectors where generally SNG is allowed to choose its focus and intensity of activity. For instance, SNG may be obligated to provide a business licence for tourism ventures (e.g. resorts, tour operators) that fulfil certain criteria even if the SNG has not chosen tourism as a priority sector for local economic development.

It is also worth noting that obligatory and optional functions are context specific. OECD countries will tend to have more obligatory functions that elsewhere may be deemed to be optional, or not even be considered. The requirement that local projects of a given size and nature be the subject of an environmental

assessment may be one example, with the assessment being well established as a must in OECD countries, whereas some developing countries are still not firm on this point. This example also can be used to make the point that optional functions could over time become obligatory. Another example in this regard is early childhood education, conducted (by government) on a shoestring or not at all in some countries – and yet over time with public pressure this tends to become a more entrenched government obligation, including becoming an obligatory function of SNG.

The intensity and duration of efforts by SNG undertaking optional functions depend on local interest and local resources. For optional functions, the responsiveness of SNG mentioned earlier is decisive: if local constituencies want SNG to take on such functions, political competition within the SNG political arena translates such demand into budget and operational decisions as long as the required administrative, technical and financial resources are available. As there is usually no legal requirement for SNG to discharge optional functions, there can be no expectation by citizens across the country that optional functions, chosen by any particular SNG, will be offered to all citizens in all SNG. Hence optional functions will be fairly diverse among SNG.

While the legal embedding of obligatory functions has already been implicitly covered – these functions normally are enumerated and reside in the various legal instruments discussed earlier – the legal treatment of optional functions is less obvious to policy-makers. Where optional functions have been adopted as part of the functions architecture, considerable differences in views on how the concept should be made operational have been in play. The main issue dividing policy-makers into opposing schools of thought relates to the question of enumeration/regulation of optional functions. Providing a list can serve to guide SNG and give confidence that SNG action – while freely initiated – is consistent with the legal framework. The downside is that such a list (or lists if they are sector based) can be misread as ‘must do’. Moreover, the list can unduly restrict SNG if the latter assume these are not illustrations but rather the boundaries for action. In either of the last two drawbacks, the regulation of these functions would seem to undermine the very philosophy of the right of local initiative. Indonesia struggled with these issues and came away initially with the decision to list functions in broad strokes (sectors really), and then allow the districts/cities to forward their intended lists to the central government for approval. That would have locked in the lists in their original form, and would have burdened the central government needlessly (no one knew what to do with the lists); the approach was soon abandoned. Later construction of optional functions reverted to the vague sector lists. (Detailed lists were only made for obligatory functions.)²² Cambodia seems to be heading for a more relaxed approach, where lists are provided by the central government but merely to prod SNG with examples (see Ferrazzi, 2013). However, some officials are uneasy with this approach and continue to push for a common list of optional functions for each level of SNG.

The above discussion echoes in some respects the previous treatment of general competence. In fact, and this is what was previously meant by the

tendency for models to converge to a mushy middle, a feasible general competence construction (which necessarily features some enumerated obligatory functions) is not very different in practice from a construction that is founded on a positive list but that also is accompanied by the power to take up optional functions. It is possible to come at the mushy middle from either model, and still give meaningful life to a 'right of SNG initiative'.

As in the case of general competence, any use of optional functions will have a limit. In the first instance this limitation will normally be that explicit functions assigned to other levels is out of bounds. This is seen in Norway for instance, where the municipal act states that 'local governments are free to undertake any activity not specifically assigned to other public institutions' (UN-Habitat, 2007: 41). However, this restriction can be lifted in some countries, if agreement is reached between the initiating SNG and the higher level that owns the function, as is the case in Finland (*ibid.*: 20). Perhaps in the latter case the root meaning of the term 'permissive' comes into play; infringement on upper level functions is 'permitted' upon request – on a case by case basis – and at the pleasure of the level given the formal assignment.

Residual functions

Even where functions are enumerated, there is sometimes the clear admission that it is not possible or appropriate to list all governmental functions. The category of *residual functions* is therefore invoked. This term relates to functions that have not yet been identified in the legal instruments that capture functional assignment. Precise definitions of this category of functions in the literature are scarce – one that we crafted to be sufficiently broad is '*functions not explicitly mentioned in the functional assignment legal framework that are a priori and en bloc assigned to a specific level of government*'. It is a useful concept as it acknowledges that governmental functions are always evolving. Decades ago environmental protection or functions dealing with digital telecommunication would not have been on any positive list of any level of government.

Because the device of residual functions is generally found in constitutional lists, it is tempting to associate it with the national level of federal states. But national constitutions can assign residual functions to either the national level (e.g. Canada) or to constituent units (e.g. United States). Moreover, while this category of functions is generally associated with federal structures, the concept can also make its way into arrangements seen in unitary states. As mentioned above, this did occur in Indonesia in the 1999 laws on regional government, where lists were set out (in an accompanying regulation) for the national and provincial level – with the district/city level receiving the residual, i.e. all functions not mentioned for the higher levels. This created much surprise and uncertainty, and the architecture was revised in a new regulation in 2007 to a typical detailed positive list for each of the three levels.

Departing from the peculiar case of Indonesia above to address the more general case, it can also be argued that SNG with some kind of general competence

construction (or right of initiative) do have considerable residual character if assignment to higher-level government is done by positive lists. This arrangement, it might be interpreted, should allow SNG to go beyond any stipulated functions they have formally received to take up whatever functions/activities have not been listed for higher levels. This would be a very generous interpretation, but in principle it has justification. It presupposes that higher levels have not been given jurisdiction over residual functions. But even if the latter limitation was in place, it could be argued that there should yet be room for lower level SNG initiative. As indicated in the preceding section, some countries seek to provide such flexibility with more firm direction by opening up a category of ‘optional’ or ‘permissive’ functions that indicate the terrain upon which SNG could roam, if they wished to do so and had the wherewithal to be active in these functions.

Notes

- 1 It is interesting to note that in the KP Local Government Act 2013 such services (often clustered as ‘municipal services’) are the only functions explicitly listed in the Act (Government of KP, 2013: Art. 2.r). These functions have clearly local character, have a spatial dimension and are bound to a particular territory, or – in the case of fire protection – require a quick response time.
- 2 UN Framework Convention on Climate Change, FCCC/CP/2015.L.9, <http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf>.
- 3 In the case of Indonesia, the organic SNG law started as a comprehensive law (1999), but its 2004 revision revealed a pared back law in some respects, and the emergence or continuation of related laws affecting SNG; particularly for elections, spatial and development planning, financial management, procurement and civil service.
- 4 Various versions of this phrase were heard in the context of the very tentative decentralization steps taken during the Suharto regime, but it can still be heard today. See for example a recent version that equates ‘autonomy’ to an animal whose head is released by a central government that is intent on holding on to its tail: ‘pemerintah pusat melepaskan kepalanya tetapi memegang ekornya’ in Lambiombir (2014).
- 5 Undang-Undang Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah.
- 6 Undang-Undang No. 32 Tahun 2004 Tentang Pemerintahan Daerah.
- 7 Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah.
- 8 For instance, in the rural water supply sector, small functions were transferred to selected districts in two provinces for a pilot period of two years. The education sector transferred certain functions to all districts in one province without any sunset clause. In the environmental sector, a whole function was transferred country-wide to all districts, again without a sunset clause.
- 9 Framing decentralization modalities in this way has been attempted by some writers, see for instance Tommasi and Weinschelbaum (2007), but to date none has pushed the analysis to the level of ascertaining the specific legal forms and the actors they implicate, and thus the variations in the accountability that result from these differences.
- 10 The ‘whole’ in this instance does not free the delegating entity from exercising responsibility to provide overall policy direction in how the delegated function is to be implemented.
- 11 The effort made in the Integrated Development Planning scheme of South Africa, supported by the GTZ, indicates that achieving an ‘alignment’ (in the jargon of the government of South Africa) is quite difficult, and it may be more productive to seek

- to reduce the need for such an alignment, through appropriately designed decentralization that gives substantial functions to SNG (or respects those given) rather than placing them in proposal/requesting mode vis-à-vis more dominant de-concentrated offices of the central government (see for instance Engel *et al.*, 2002).
- 12 An example of this model is the *Landrat* or district administrator of the *Kreise* (districts) in the German local government systems: being a locally elected official who needs the approval of the district council for discharging local functions, s/he is simultaneously the representative of the state administration and ‘acts as agent for the *land* [state] ministry of the interior to ensure that the communes work within the law and provide adequate services’ (Allum, 1995: 433).
 - 13 Romeo (2013: 77) calls this special form of deconcentration a ‘rather ubiquitous variant of politics-driven reforms’ which is being used to maintain central government control over the SNG; while such arrangement can strengthen the role of the SNG official it undermines his/her accountability to the elected councils.
 - 14 The government of Namibia began with the intention to phase decentralization, starting with a period of two or three years of ‘delegation’, followed by devolution when capacity levels are sufficient. However, the delegation mode has lived past the intended phase; it is not clear what kind of capacity is missing that is causing concern and how these are to be overcome so that the devolution step can kick in (Ferrazzi, 2002).
 - 15 Arguments along this line were frequently imparted by the GTZ-Support for Decentralization Measures team that was supporting the government of Indonesia in its decentralization policy development in the 1998–2005 period.
 - 16 Some authors use this term to refer to functional assignment through a residual – where no list is evident (see for instance Alm *et al.*, 2005: 141), but we believe that this is a confusing usage and unnecessary one in view of the existence of the term ‘residual’ that aptly captures that situation in most cases.
 - 17 Hampton Roads Chamber of Commerce. 1999. The Dillon Rule in Virginia. Task Force on the Dillon Rule. 12 May . <http://hfrinc.org/Sections/Readings/DillonRuleReport.html>.
 - 18 ‘Exclusive functions’ must not be misunderstood as functions where levels of government can act without taking any reference to other levels of government. We do agree with Agranoff (2004: 40) that ‘in today’s interdependent world virtually all competences are in some way overlapping’. For Germany, Bull (2008) argues in the same direction saying that nowadays there are only functions shared between higher levels of governments and SNG. ‘Exclusive’ for us means that only one level of government has legal control over this function.
 - 19 In the Philippines, the now defunct original draft of the Basic Bangsamoro Law (BBL), introduced in September 2014 as House Bill 4994 resp. Senate Bill 2408, listed as exclusive functions of the future autonomous Bangsamoro entity among others ‘trade, industry, investment, enterprises and regulation of businesses’; at the same time it qualified the exclusivity by stipulating that the autonomous region needs to take ‘into consideration relevant laws’. In other words, discharging the ‘Exclusive Function’ was made conditional on the larger national legal framework.
 - 20 As will be seen in the discussion on horizontal unbundling, probably most sector service functions are somehow ‘shared’ between SNG and central/provincial government as in most cases some management roles (like sector policy-making, strategic planning) will remain with the higher level of government.
 - 21 Ideally, the nature of the performance indicators will differ somewhat between the two modalities, with delegated functions likely to be more rigidly prescribed, including on the input side, whereas devolved functions may be accompanied with performance indicators that speak more to expected results.
 - 22 It should be noted however that in Indonesia the explicit enumeration of optional functions has resurfaced in the recent legislative revision (Law 23/2014). However, it

has yet to be operationalized, and one can only hope that the government will learn from its experience in the first round of reforms, and abandon the intended ‘mapping’ of optional functions across its more than 500 SNG units.

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4 The process of functional assignment

In this chapter we will explore the process of functional assignment, i.e. the sequence of steps and decisions that create or modify a functional assignment in the state's multi-level governance system. We will also describe some of the technical approaches that we think can help policy-makers, particularly those situated in sector ministries, to work through the suggested steps in functional assignment.

As is the case of decentralization reforms in general, there is no 'one size fits all' for the functional assignment process. Scope, timing, meticulousness of the analysis, the resource envelope to carry out the steps, and the support infrastructure required and/or provided will differ from country to country. As noted in Chapter 2, section 2.4, the process will also differ significantly if the challenge is that of arriving at a (new) division of functions between a federal (or incipient federal) level and its constituents as compared with the case of a level of government (e.g. a constituent unit in a federal state or a unitary central state) that has a rather free hand in shaping the local government below it.

In any of the above contexts, we have observed a large variation in the length of the process; in some cases functional assignment processes that have needed more than three years before functions were actually transferred to subnational governments (e.g. Cambodia), while in other cases a 'quick and dirty' approach was used that brought about political commitments for sector decentralization in a matter of months. Notwithstanding such variability, we argue that a well-structured and comprehensive approach needs to include the following basic features: (1) a lead role of the relevant sector department, combined with (2) an effective coordination by an inter-governmental body or by the lead organization of the government which is in charge of the decentralization reform;¹ (3) openness and transparency of the process and its results; (4) a minimum of stakeholder participation from within and outside the public sector; (5) an agreed time line for implementing the process and taking concrete decisions; and (6) a certain flexibility in implementation to allow the process to react to changing framework conditions.

Core elements of the functional assignment process are the horizontal and vertical unbundling of the sector, and the re-allocation of functions from one level of government to another, using a number of principles and criteria. Going

through a sequence of steps as outlined below, the functional assignment process moves from a more technical dimension (like identifying the concrete *de facto* and *de jure* list of functions in the sector, and which level of government handles them) to a more politically charged dimension as the proposed new allocation of functions takes centre-stage in the political decision-making process.

Drawing on the concepts covered in previous chapters, several important decisions must be woven through the basic steps of functional assignment. The underlying modality of decentralization (whether deconcentration, delegation or devolution) along with a basic decision on the architecture of the functions (general competence or positive list) carve out the scope and nature of the reform. These in turn will influence the kinds and mix of functions that come into play, the degree of concurrence and the reliance on obligatory versus voluntary functions.

Ideally, the process of functional assignment that we put forward will be sequential, with each step building upon the results of the previous one. Such a linear approach to policy formulation and implementation is however seldom the reality in many developing and emerging economies, so some backward and forward steps, loops and inconsistencies might occur. It is important, however, not to lose sight of how the steps are inter-connected, and to cross-check at intervals where the process stands.

The normative process of functional assignment that we proffer has come out of experiences that have seen partial or embryonic versions of the suggested five steps indicated in Figure 4.1: (1) defining the goal and scope of functional assignment; (2) organizing for functional assignment; (3) functions mapping; (4) functions review; and (5) effecting the transfer and implementation/monitoring of the new functional arrangement. The only functional assignment process that has come close to this fully fledged version is the process seen in Cambodia which, despite its comprehensiveness, intensive development assistance received, and considerable time spent on going through the steps, has not yet brought about significant sector decentralization. All the other examples of functional assignment which we have seen have been more fragmented, less linear, partial (like neglecting public consultation or not addressing the issue of resources), discontinued at some point or in the end failing to obtain political endorsement.

In the following sections, we describe each of these five steps of the normative functional assignment process in some detail.²

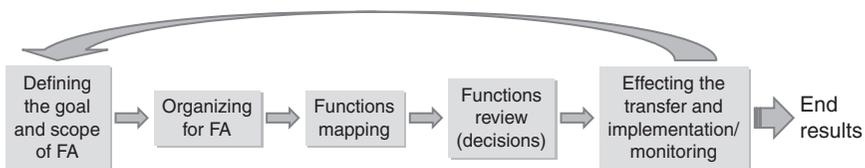


Figure 4.1 The normative process of functional assignment.

Source: Ferrazzi and Rohdewohld (2015).

4.1 Step 1: defining the goal and scope of functional assignment

At the outset of the functional assignment process, the parameters need to be determined that will guide the participating individuals and institutions throughout the process. These parameters need to be spelled out explicitly and unambiguously, to avoid downstream confusion and delays. Key aspects that need to be determined here include the following:

- 1 *Preferred modality of decentralization*: is it about deconcentration of functions within a sector organization? Is it about delegating functions to a variety of actors (vertically and horizontally)? Is it about devolution, and if so, does the intended reform recognize a ‘right of initiative’ or general competence of SNG or does it follow a strict negative/positive list approach? Stakeholders of the functional assignment process should have a common understanding of these issues.
- 2 *The scope of functional assignment*, like number of sectors, or number and scale of functions to be transferred. Some countries opt for a narrow approach to decentralization, starting with only one or two sectors (or a few functions within these sectors), before moving towards a more comprehensive transfer. The incremental and in principle asymmetric decentralization seen in Indonesia in the 1980s is an example of this cautious approach (Ferrazzi, 2010). The approach to district/municipal empowerment in Cambodia post the 2009 elections also follow this pattern (Niazi, 2011). Often concerns about the capacity level of the receiving entity (to which functions will be transferred) are mentioned as reasons for such a limited approach.
- 3 *The understanding of what a ‘function’ is*: Having a good definition how the term is used in the legal and administrative context of the country and ensuring that this understanding is widely shared by all stakeholders helps in avoiding confusion. Such agreed understanding of ‘function’ should also inform the legal drafting process where the use of words with similar but slightly different meaning should be ruled out. Preferably, functions should be formulated as authority or power on a defined subject matter. For example, in the function ‘provision of maintenance of inter-district roads’, the core function is ‘provision of maintenance’ while the subject matter on which this function is exerted are the inter-district roads. The legal framework for the sector should also make clear that ‘provision’ or even partial scope of management does not mean that the level of government receiving this function must itself produce the goods and services; it can engage with external ‘producers’ (see Figure 4.2). The function should be framed as broad as possible to show the full scope in a concise way, using exceptions if necessary to acknowledge limits (e.g. ‘Provision of irrigation services for agriculture except for schemes covering over 10,000 ha’). Vague or circular formulations (e.g. ‘management of personnel in the province’; ‘building of roads in accordance with laws and regulations’) should be avoided. Finally,

detailed description and technical aspects of the function should be left for accompanying implementation guidelines.

- 4 *Criteria and principles to be used to re-allocate functions:* A set of criteria and principles should be used that act as a ‘filter’ between the pre- and post-decentralization scenario. Such criteria and principles can be drawn from the general theory of fiscal federalism and public finance, but also from public sector management theory (see below). Clarity and agreement among the stakeholders regarding which relevant criteria will be used and how they will be weighted in the decision-making process are important at this stage of the functional assignment process. Sometimes, there is a trade-off between criteria – in such cases the decision-makers need to know what the overriding concerns (and objectives) of the process are. In order to increase transparency and the openness of the process, it will be helpful to document for each function the criteria and principle on the basis of which it should be allocated to a certain level of government under the post-decentralization (or recentralization) scenario.
- 5 *The implementation strategy: sequencing versus phasing versus piloting.* While Indonesia’s Big Bang approach to decentralization in 1998–2000 resulted in a massive and sudden transfer of functions to the subnational level, other countries experiment with limited forms of decentralization, transferring a few functions at a time, and possibly thereafter moving faster depending on the early results. This was the intended approach in Yemen in 2004–2006 when the decentralization strategy was being shaped. (It was stillborn due to larger political dynamics) (UNDP/UNCDF, 2006). Such sequencing and phasing can be by functions, or by numbers of receiving subnational government units (e.g. starting with more advanced jurisdictions first). Some countries use a piloting approach where functions are assigned to SNG in an experimental manner and with sun-set clauses attached, before the assignment is rolled out system-wide and permanently; this is now happening in Cambodia in three sectors (health, education and rural water supply/sanitation). In all these cases the intention is to observe possible shortcomings and pitfalls of decentralization, learn, design appropriate support mechanisms and fine-tune the decentralization reforms prior to a full roll-out. This approach creates experimental spaces for policy innovation with built-in safeguards and risk mitigation measures to minimize potential damage if the policy experiment fails. But it can also slow down effective decentralization enormously and it gives ample opportunities for veto-players in the political and administrative arena to block or delay decentralization.³
- 6 *Clarification of roles and involvement of stakeholders:* Stakeholders of a functional assignment process can come from the public and the non-public sector. Stakeholder analysis or force-field analysis can be tools to inform the decision-makers regarding who the stakeholders may be, and their likely perception of, and attitude towards, the intended reforms. Some stakeholders might wish to take a proactive role; others might just want to ensure that

they are not affected negatively by the intended reforms. Of course the sector institution of the government is the lead institution in the process, guided by either an inter-governmental coordination body or by the lead agency for the decentralization reform. Core ministries like finance and planning, and the agency/body dealing with civil service issues are likewise key stakeholders. In many countries local government associations exist that represent the interest of subnational jurisdiction in the national policy process. There may be professional or business associations that play an important role in the sector (such as teacher unions and health care professional bodies). Universities, research institutes or individual academics might have a solid understanding of the sector and can advise government on the effect policies like decentralization might have on the sector. Sometimes civil society organizations play a watch dog role for sector service delivery, and try to capture satisfaction and perception of the users of sector services. Not all stakeholders need necessarily be part of all stages of the functional assignment process. Nor do they need to engage with the same level of intensity. One should watch out for veto players that have the political clout to delay and ultimately to derail the reforms – these players need to be integrated to get their buy-in on the process and its ultimate results. It will be wise to get a solid common understanding of the functional assignment process among all the major stakeholders at the outset. Otherwise an iterative process of analysis by the sector institution(s) and within an inner circle of stakeholders, followed by the vetting and endorsement of results and proposals by an outer circle of stakeholders might be a feasible and realistic option.

4.2 Step 2: organizing for functional assignment

Once key parameters have been determined, the functional assignment process needs to be shaped by creating the institutional framework and by putting in place the procedural architecture. Decentralization being a ‘whole of government’ reform,⁴ it is advisable to have an inter-governmental/inter-ministerial coordination body that oversees and steers the process.⁵ This can be the cabinet or a sub-committee of the cabinet, or it can be a special purpose body that includes representatives of the relevant government institutions. Involvement of the finance ministry, the planning ministry, and the government agency responsible for civil service issues⁶ is of paramount importance. Since governments are hierarchical structures, the leadership of this coordination body is crucial to make it effective; the seniority of its chairperson is a factor to be considered carefully. Many public sectors have a culture of delegating decisions upwards, so having the president/vice-president, prime minister, or a senior minister as head of such a coordination body often makes sense. But it needs to be balanced with the workload of the position; otherwise the leadership role cannot be discharged in an effective and efficient manner. In case where the coordination of the decentralization reform (and therefore of the functional assignment process)

is with a single government institution (like a Ministry of Home Affairs), it will be useful to establish ‘rules of the game’ and procedural safeguards, so that all government institutions feel assured that the lead agency will not be too dominant or self-serving in the process.⁷ As sector ministries may be less familiar with concepts of decentralization and functional assignment, they will require technical and facilitation support from the lead body. For instance, in Cambodia the NCDD-S provided guidelines and manuals for the functional assignment process (RGC, 2012; RGC, 2013); it also entered into contractual relationships with the prioritized line ministries that gave these ministries access to financial resources for the functional assignment process based on established targets and time lines (Niazi, 2011). The NCDD-S thus became a support unit for all the sector ministries involved.

At this stage it should also be decided how and when to involve external, i.e. non-governmental stakeholders. These need to be advised about the functional assignment process and the underlying parameters. They might also be in need of further support before they can become meaningful dialogue partners in the process, having a proper understanding of functional assignment as such but also of the conditions and frameworks of the particular sector.

The functional assignment process should allow for sufficient time and resources to undertake a sound technical analysis of the issues before the political dimension of the decentralization process dominates again. The sequencing and timing of the various steps in functional assignment should guarantee that at least the *de facto* and *de jure* analysis of the functions in the pre-decentralization scenario can be done comprehensively and in a consensual manner. If this is achieved, it becomes much easier to also identify the required shifts in functional assignment at the later stage.

Finally, a well-structured functional assignment process needs a realistic time line that is communicated clearly to the stakeholders involved and to the wider public. An open-ended process runs the risk of losing momentum and thereby credibility. Setting targets and a monitoring process help to communicate the government’s seriousness with the policy reforms and to focus attention.

4.3 Step 3: functions mapping

Functions mapping is about documenting the existing, pre-decentralization *de jure* and *de facto* allocation of functions within the sector system. The assumption that this picture can be readily compiled and should be familiar (at least within the respective sector) often does not hold true as the legal stipulations governing the sector functions can be scattered throughout a wide number of laws, regulations, administrative guidelines or budgetary documents. Over time, the legal framework for sectors often has become a complex set of legal instruments that are not well connected. Even worse, new legal instruments do not always or do not comprehensively annul preceding legal instruments, leaving a trail of partly outdated, partly contradictory and therefore confusing stipulations.

In cases where public sector management policies of countries include the outsourcing of services to non-public entities (like private business or not-for-profit organizations), or the privatization of services or the use of public–private-partnership models, establishing the existing allocation of functions requires making the distinction between ‘service provision’ and ‘production of services’.⁸ This is necessary to underscore that even when other producers are involved the legal responsibility to ensure that a function is performed and that the related services are available as expected rests with government – it is simply the production of such services that is performed by non-public entities (see Figure 4.2). Sources of information that can be used when establishing the existing functional allocation include the legal and administrative framework (such as sector laws, government notifications, ministerial orders), organigrams and rules of business of sector institutions, budget documents,⁹ field observations and feedback from sector experts and citizens/users of services.

A key methodology for functional mapping is what we call the *vertical and horizontal unbundling* of a sector. *Vertical unbundling* is the disaggregation of a sector into smaller clusters or sets of functions within the sector. For instance, according to the World Health Organization (WHO) the health sector can be divided into six sub-sectors or components: (1) leadership and governance; (2) infrastructure, equipment and medical products; (3) health work force; (4) health financing; (5) health information; and (6) service delivery (WHO, 2007: 14). Each component has its own set of functions. In Cambodia, the education sector has been divided in so-called ‘functional areas’ like ‘Education Infrastructure, Logistics and Personnel’, ‘Curriculum, Educational Standards and Examination’,

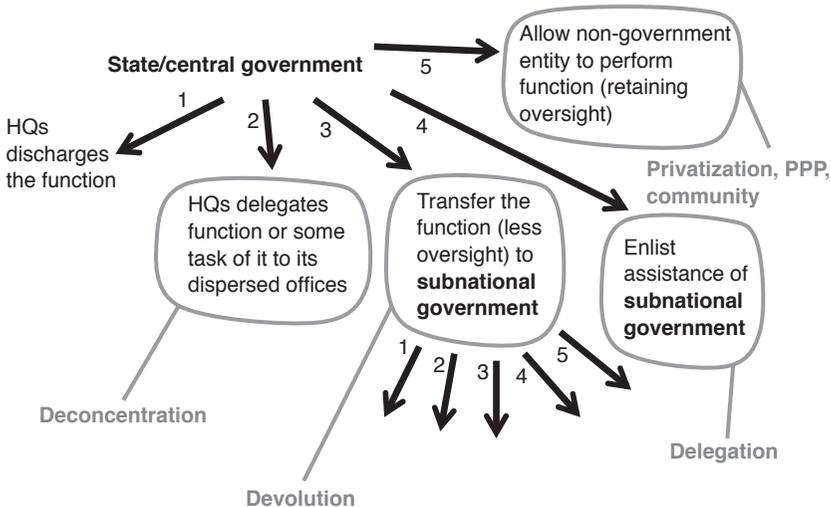


Figure 4.2 How does government go about ‘providing’.

Source: authors’ illustration.

‘Education Policy, Planning and General Management’, ‘Early Childhood Education’, ‘Provision of Education in Public School System’ and so on (MOEYS, 2013). The Elementary and Secondary Education Department of Khyber Pakhtunkhwa Province (Pakistan) decided to disaggregate the sector into 16 main functions without using any sub-sector categories (GIZ, 2015a). Whatever term used (‘sub-sector’, ‘functional area’, ‘business components’, etc.), the underlying rationale is to identify suitable sub-categories of the sector which cluster inter-related activities and tasks. Often, the macro structure of a ministry or department (like its division into several major units like directorates-general) gives an idea about such categories as a similar logic is often used in forming organizational units (of bringing together related tasks) (see Figure 2.2 as an example). Disaggregating the sector vertically helps to sharpen the analysis of which level of government is actually doing what.

Box 4.1 Management functions in the health sector

Legislating
Revenue raising
Policy-making
Regulation
Planning and resource allocation
Management [operational]
Inter-sectoral collaboration
Interagency coordination
Training

Source: Mills (1990: 26).

Horizontal unbundling links each sector function with a set of management functions, like policy formulation, sector planning, regulation, implementation, monitoring and evaluation, etc. One of the earliest efforts to unbundle these functions within a sector was undertaken in the health sector (see Box 4.1). The most common management functions found across sectors are provided in Table 4.1, along with a brief explanation of what these entail. For each of the management function, the analysis done during this functions mapping stage would indicate the level of government which is in charge, providing a much more detailed and nuanced picture of functional assignment in the sector. For instance the statement ‘primary education is the function of the subnational government’ does not yet capture the fact that even if service delivery of primary education (such as providing physical infrastructure, managing the schools, etc.) is the prime responsibility of a subnational level (say the District Government), most likely the central government retains important responsibilities for primary education, like setting norms and standards, curriculum development, teachers training, etc. The concept of unbundling helps to visualize and illustrate the inter-relationships of service delivery functions within a multi-level governance

Table 4.1 Management functions in horizontal unbundling

<i>Management functions</i>	<i>Explanation</i>
Policy	Policies describe what governments want to achieve: they define goals and objectives, set targets and determine schedules/time lines. They are usually decided at the top level (president, chief minister, cabinet), sometimes in conjunction with the legislative body and sometimes without. Often, the legislative body determines policy objectives and outcomes to be achieved, and lets the executive branch work out how to operationalize the achievement of such objectives. Subnational governments can also have policies covering their geographical and administrative jurisdiction – these are often (but not always) a sub-set of the higher-level policies. In the context of the functional assignment process, the management function ‘policy’ refers (mainly) to the higher-level national policies.
Planning	Once policy goals are set, it is the task of the administration to ensure that these goals are achieved. ‘Planning’ can be short term, medium term or long term; it can include operational planning, budget planning and others. What is meant here: which level is charged with the responsibility to operationalize policies?
Budget and funding	Which budget is providing the financial resources for the function being analysed – national, subnational, other? Related to this is the question to whom the administration is accountable when spending funds.
Regulation	Regulation can include setting technical norms and standards, e.g. for infrastructure like school buildings or road construction, determining entry requirements (e.g. for levels of the education system, or for staff recruitment at certain levels of the salary system) and preconditions for obtaining a business licence or a permit. Regulation can target both public and private sector actors.
Operations and maintenance	Applies only for physical infrastructure and equipment. It is an important aspect because often higher-level governments finance initial investments in infrastructure or the purchase of equipment, but do not provide funds for O&M.
Monitoring and evaluation	Important for assessing to what extent policy targets are being met. M&E has also the notion of supervising compliance with rules and standards. In the context of functional assignment M&E is important for assessing whether the allocation of functions to a certain level of government is working and is delivering the expected results.
Implementation	Which level of government and which organizational unit is actually doing the job?

Source: adapted from GTZ (2009).

system. It also helps to indicate that usually even *after* decentralization the higher level(s) of government will retain important roles and responsibilities for decentralized functions.

In view of the choices mentioned above, how best to arrive at an unbundled description of a sector and sector functions? The legal framework of the sector may be the best starting point to identify functions. Observing the institutional set-up at macro and micro level can be helpful to get an idea of which functions are being handled by the various administrative units; they will house resource data associated with the functions. In other cases, the analysis by sector officials and other sector specialists (e.g. from research institutes, non-governmental organizations) can provide important information of what is actually taking place. In Khyber Pakhtunkhwa (Pakistan) a two-day workshop was an essential part of the functional assignment process in the education and health sectors. Here, sector officials from the key branches of the line departments (including field officials) were involved in the unbundling exercise and in the discussion about a possible future allocation of functions between the provincial and the district level of government (GIZ, 2015a; GIZ, 2015b).

The unbundling exercise must examine the *de jure* assignment of functions but should also seek to discern the *de facto* situation as in many cases there will be a difference between the two. We see the unbundling exercise as a more technical part of the overall functional assignment process, where substantial internal and external sector expertise can be mobilized to attain a pre-decentralization scenario that is as comprehensive as possible. Being comprehensive however, does not mean getting lost in the trees of the forest. One pitfall observed is the tendency to disaggregate too much, thereby achieving a level of granularity where mere activities and disconnected singular tasks are listed instead of functions. If that is the case, it is difficult to assign responsibility for achieving the outputs or outcomes associated with a function to one level of government (which is a major intention of the functional assignment process) as there are too many fragmented roles associated with each function.

Figure 4.3 illustrates the emerging disaggregated structure of the education sector following vertical and horizontal unbundling. In each subsector, a number of key functions can be identified, which have a number of management roles attached to them. In the analysis of *de jure* and *de facto* execution of these management roles, a rather exhaustive and granular picture of ‘who does what’ in the education sector emerges that allows a more precise and realistic discussion about which function (or parts thereof) should become the responsibility of which level of government.

Table 4.3 shows how the technique of horizontal unbundling results in a detailed and nuanced description of responsibilities for one particular function (‘provision of physical infrastructure and basic facilities in elementary and secondary education in KP’). In the pre-devolution scenario, nearly all management functions are with the provincial department (E&SED) or provincial special purpose bodies (like the DCTE). Partly, deconcentrated units of the department (like the District Education Officer) implement the departmental functions. Only

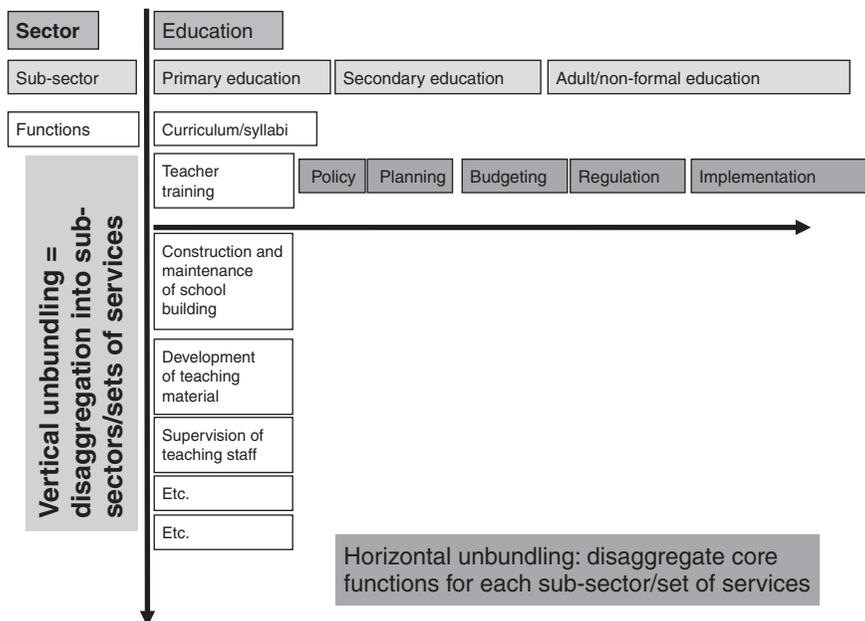


Figure 4.3 Illustration of unbundling of the education sector.

Source: adapted from GTZ (2009).

in maintenance and repairs of school facilities, another stakeholder (the Parent Teacher Committee) is involved.

For the post-devolution scenario, the application of the horizontal unbundling approach results in a detailed delineation of service delivery roles in the sector. First, there is a clear demarcation between provincial-level infrastructure (for which all responsibilities remain with the provincial department and other provincial bodies) and district-level infrastructure for which responsibilities are mostly with the district government, sometimes with the Communication and Works Department (C&WD) (a provincial body), and – as before – with the Parent Teacher Committee (PTC). The policy responsibility for the management function ‘provision of physical infrastructure and basic facilities in elementary and secondary education’ always remains with the provincial department. Based on horizontal unbundling, such a detailed functional map allows better monitoring of what the stakeholders are doing, and sharpens mechanisms of accountability.

Functions mapping produces lists of functions, indicating their legal basis and the level of governments responsible for each function. It is important at this stage to have a sector/sub-sector wide approach rather than just an institutionally anchored approach. It has been noted in many countries that ministry mandates exhibit a great deal of overlap, leading to turf battles in cases.¹⁰ A sector-wide

Table 4.2 Matching funding sources to functions

<i>Function type</i>	<i>Degree of SNG discretion</i>	<i>Proportion of SNG budget</i>	<i>Priority financing sources</i>
Devolved (obligatory)	High	Highest	Block grant/revenue assignment , conditional grants
Delegated (obligatory)	Low	Low to significant	Conditional grant , block grant, revenue assignment
Deconcentrated (dual role in SNG)	Low	Low or none	Part of ministry budget
Optional	Highest	Low to significant	Revenue assignment , block grant (e.g. LDF)

Source: Ferrazzi and Rohdewohld (2015).

approach will ensure that the functions in question will be cleanly decentralized – regardless of their fragmentation at the original level of government.

The mapping analysis should furthermore include the financial, human and physical resources associated with each function: what is the budget required (or being used) and where do the funds come from? What staffing levels are required (or actually being used) to carry out a function?¹¹ What are the institutional arrangements? Are there physical resources (like buildings, equipment, machinery) linked to a function? Having this information available is important further downstream in the transfer process as once a function has been earmarked to be transferred to another level of government the related resources (which also need to be transferred) can be identified quickly. The functions mapping process should also review gaps and inconsistencies between the *de jure* and the *de facto* situation in the sector: are there functions listed in the legal framework that have become obsolete and are not implemented anymore? Or have new functions come up that are not yet reflected in the legal instruments even while sector institutions are already engaged in implementing them? Government functions continue to evolve and change, and sometimes legal codification of functions does not keep pace with actual implementation.

In some cases, sector institutions are in mid-stream in experiments or pilots that are designed to test the possibility of decentralization. They may also have opted for a centralized service provision in rural areas and a decentralized approach in urban centres. These variations should also be captured, along with resource implications and perceptions on the success of these variants. This last point is valid for any institutional arrangement. While it is not likely possible, or advisable at this stage, to rigorously evaluate service delivery in the functions mapping stage, any indications that can be absorbed at this stage can be fed into the subsequent functions review, which has a strong evaluative dimension.

Sector officials and sector specialists are probably best suited to undertake the functions mapping exercise (including vertical and horizontal unbundling), as they have an operational familiarity of the sector, its institutional set-up and how functions are being implemented. This stage of the process of functional assignment therefore looks more technical than political. Still, external stakeholders like civil society organizations engaged in the sector, or sector experts from research and professional organizations can play an important role in the exercise as they may have different views and perceptions of what is happening in the sector.

4.4 Step 4: functions review

During the functions review stage, two things happen: first, the sector institution concerned proposes an altered assignment of functions, taking into account the overall decentralization policy framework of the country and using principles and criteria as a filter for its proposal. Second, this proposal from the sector ministry is reviewed by the relevant authority (such as the cabinet, inter-ministerial coordination body or the lead agency for decentralization reform), and a decision is taken regarding which functions will experience assignment changes. At the end of this stage, the *political decision* to proceed with decentralization in this sector is taken, and needs to be operationalized in the next stage (i.e. Step 5).

In the functional assignment process, decisions are made to reassign functions to other levels of government.¹² In the context of decentralization reforms, the transfer is mostly from a higher-level of government (such as national, state/province) to a tier of subnational government below. However, the functional assignment process does not rule out reassigning functions from lower to higher levels of government (for instance, if significant spillover effects have been observed). In the decision to (re-)assign a function, several principles and criteria can be used as tools in the decision-making process.¹³ They bring a certain degree of rationality to an otherwise essentially political process. Most of these criteria are not clear-cut, and they do not lend themselves to a strictly scientific process of decision-making. There are also trade-offs between them – one principle might suggest assigning a function to a higher level of government while another would argue for assigning the function to a lower level. But using such principles and criteria helps to make the (re-)assignment process more transparent and gives the decision-makers arguments for the public discourse on the upcoming changes.

The most common principle used in this screening process is the principle of *subsidiarity*, which says that the function in question should be undertaken by the lowest jurisdiction that can do so effectively and efficiently. Subsidiarity is mentioned in quite a few decentralization laws as a guiding consideration. The 2009 UN Guidelines on Decentralization also uses subsidiarity, saying that public responsibilities should be exercised by those elected authorities that are closest to the citizen (UN Habitat, 2009). In the run-up to the October 2016 Habitat III conference, again the principle of subsidiarity has been highlighted in

a number of policy papers.¹⁴ *Efficiency* and *effectiveness* have been mentioned already as major justifications for a decentralized allocation of public sector functions. The consideration here is that transaction costs (of obtaining information on preferences and tailoring services) are lower when administrative units close to the end users are in charge of providing the services, and that the speed of service provision increases.

The effectiveness and efficiency criteria assume that there is available information on the performance of current arrangements. This is sometimes the case. But even when some experiments/pilots are under way, these initiatives may not have been meaningfully evaluated at the time of the functions mapping or functions review exercises. It becomes necessary then to obtain the perceptions of various stakeholders as a proxy for relevant indicators falling under these criteria (of which there could be several: cost efficiency, social acceptability, satisfaction with services and resolution of service complaints; quality of services; speed/responsiveness of service; indicators for increased welfare, etc.). Additionally, it may be possible to infer from regional/international experience whether the current (or alternative) arrangements are promising in terms of these criteria/indicators.

Localized service provision can also ensure that local variations in the kind of services or their composition can be built in more easily, therefore making services more adequate and relevant to the local context. Related to this is the criterion of *heterogeneity of demand*,¹⁵ which argues that if a service has to be delivered in a very heterogeneous manner, it is better to give this function to lower levels of government.¹⁶ In the economic view of the public sector, attainment of *economies of scale* is a significant criterion which works to reduce unit costs of delivering a certain function/service by increasing the quantity of service provision (e.g. bulk order of school books, medicine). The existence of externalities (also called *spillover effects*) is another common principle; this looks at the potential consequences of a function for other jurisdictions. If such (positive or negative) consequences exist, and if they are significant, it then argues for allocating the function to a higher level of government.¹⁷ Often the level of capacity is used as an argument against assigning functions to lower level of governments, citing their lack of technical and managerial capacity and inadequate human resources.¹⁸ The issue of *accountability* can be a criterion in allocating functions to a particular level of government, if this allows citizen and elected representative to exert a maximum amount of accountability pressure. Finally, *equity* is another criterion influencing the decision which level of government should be made responsible for delivering a certain service/a certain public good. Especially in social services (like health and education), countries have made national or international commitments to ensure or even guarantee a certain minimum level of services to each citizen. Centralized service delivery might seem a tempting option for realizing such commitments in every corner of the country.

Each of these criteria pushes for decentralization or for centralization, and to varying degrees: the subsidiarity principle tends to allocate functions to lower

levels of government. Effectiveness and efficiency can work in both directions: better qualified and skilled central level staff might be able to work more effectively and efficiently, but local level staff are closer to the recipients of the services and can adjust the services faster and more suitably. Economies of scale normally favour higher levels of government because the unit cost of the service decreases as scale increases (but a U shape cost curve structure can also be found for some services). Externalities, where they exist, provide arguments for shifting a function to a higher level of jurisdiction, whereas heterogeneity of demand is a key argument for shifting services closer to local levels. Capacity considerations often works in favour of higher levels of government, however frequently potential capacities are not considered (unless organizations start doing things they will not be able to develop the capacities needed for handling functions properly). Equity is often seen better addressed by higher levels of government.

Sometimes, these criteria also work against each other; there are trade-offs that need to be considered and taken into account. For instance, Bardhan and Mookherjee (2006) point to the trade-off between higher efficiency and responsiveness in local service provision on the one hand, and higher demands for coordination and the potential loss of economies of scale on the other. Achieving economies of scale by bulk ordering equipment or consumables can go against the principle of effectiveness, if the ordered goods do not reach the intended target areas easily or without delays, or if the specifications are not appropriate to all the local contexts. In our view, achieving consensus and a minimum level of common understanding in the sector system is more important than the 'scientific' application of the suggested criteria.

Specifying the rationale behind the decision taken, by indicating for each function which criteria and additional source of information/judgements have ultimately been used when assigning the function to a particular level of government, will greatly facilitate the discussion with other stakeholders, and will make it easier for everybody to understand (and evaluate) the motivation behind the decisions made.

The proposal of the future functions map should include information about the resource implications: how many staff would be affected, and how would their future institutional affiliation look like? Does the transfer of the suggested function also require a transfer of physical resources and assets? What are the implications for the institutional set-up of the public sector (both at the receiving and as the departing side of the transfer)?¹⁹ In which legal form are functions transferred: obligatory or discretionary, as devolved/delegated/de-concentrated? Will the transfer be on a pilot-basis or permanent, and will it cover all subnational government units or will it be rolled-out in sequences? Where will the funds for executing these transferred functions come from? Does the transfer require changes in planning procedures, procurement systems and the HR management system of the public sector? What are implications of the proposed new functional map for capacity development at subnational and higher levels of government, and is there a strategy in place how to address capacity gaps at the various levels? Having such comprehensive information

available would help the decision-makers understand the implications of the suggested policy changes.

Once the appropriate authority starts reviewing the changes suggested by the sector agency, the focus will be on two issues: consistency of the proposed changes with the overall decentralization policy, and an assessment of its implications for the wider public management system. Checking on consistency for instance involves an examination of the functions that are proposed for transfer: are they formulated and conceptualized in line with the common and agreed understanding of what a governmental function is? Are they sufficiently broad to capture a substantial load of services, or are they too small and of high granularity so that the sector becomes highly fragmented? Are they leaning towards stipulating simply common administrative activities or do they indicate that valued outputs and outcomes are at stake? What accountability lines do they require? Is the suggested change in the sector in line with the changes suggested in other sectors? Are there spillovers of the suggested changes to other sectors, and are cross-sector linkages properly addressed?

The implications for the overall public sector are mainly in the budget system, the public sector HR system and in the planning system of the country where the re-allocation of functions to other levels of government might require corresponding adjustments. For instance, giving more expenditure responsibility to subnational governments might require an increase of the thresholds for public procurement that can be undertaken by the SNGs.

As the new functional assignment in the sector becomes visible and its implications better known, the review stage of the functional assignment process is an appropriate opportunity to build in stakeholder participation for having the suggested changes vetted by others, and for capturing their views. This can contribute to the further improvement of the suggested changes, and will also increase common understanding of the new arrangements and build consensus. Thus implementing the new arrangement within the sector system can possibly proceed more smoothly, and will lessen friction and tension.

Bringing the functions review to a conclusion, a political decision is taken on the functions to be transferred.

4.5 Step 5: effecting the transfer; implementation and monitoring

Once the political decision has been taken, effecting the transfer (i.e. making it a reality in the legal and operational framework of the sector) will require decisions by the national sector institution(s) concerned, by other national government agencies that need to put in place required changes (e.g. of HR management rules, procurement rules), and by the subnational governments that will receive new functions.²⁰

Necessary measures to be undertaken by *the concerned national sector institution(s) and government agencies* include the following.

Adjustment of the legal framework of the sector: Depending on the hierarchical status of legal instruments that need to be changed (laws, government regulations, ministerial decrees, etc.), this adjustment can take time (e.g. if a law must be passed by parliament) and might require further involvement of other parties (such as a Law Department, Prime Minister's Office, etc.). As ideally the functions mapping has identified the various legal instruments governing the sector, at least the sector institution would know at this stage which legal instruments to address.

Dissemination and information-sharing on the new arrangements: It is not only public sector staff that need to be informed what changes are planned, and how they as individuals will be affected. Also users of government services, the private sector and other stakeholders need to know about such modifications so that they can adjust accordingly, establish new relationships and modify their own business processes if required.²¹

Adjustment of fiscal and budgetary systems and procedures: As funds should follow functions, the transfer of functions to SNG requires an assessment of existing fiscal and budgetary systems. Have the receiving SNG sufficient revenues to fund the new functions? Does the envelope of fiscal transfers to SNG need to be increased? Are different sources for own-source revenue of SNG required for financing the higher expenditure loads of SNG? Is there a need to modify the existing mix of own-source revenue, conditional and unconditional grants that provide the revenue sources for SNG? How is the annual budget cycle affected by giving more functions (and that often means: more expenditure responsibilities) to SNG? Is the system of budget execution and budget reporting sufficiently robust to deal with the new functional arrangements? What are the implications on the budget requirements of the sector institution(s) that shed functions to lower levels of government?

Matching the financing of SNG to the functions given (and powers conferred to act on its own initiative) is not a straightforward matter. As a starting point, the misstep of providing funds without any guidance on what the funds should be used for ought to be avoided. On the other hand, it is important to respect the autonomy endowed in the functions of the SNG. A possible matching of typical funding sources available to SNG against the modalities/types of functions held by SNG is provided in Table 4.2. Finer differentiations are of course possible by drawing from other fiscal principles but this broad cut should provide the overall fiscal framework for functions.

Guidance and guidelines on how to implement functions: Depending on the type of functions to be transferred (e.g. obligatory vs discretionary) and the decentralization modality, SNG will require more or less detailed guidance and guidelines on how to implement these functions. Some countries have introduced minimum service standards as a means to ensure that services are being provided with the same level of quality across jurisdictions. If that is the case, SNG need to be aware of such service standards and include them in their operational and budgetary procedures. If obligatory functions have been transferred, SNG need to be aware that such obligatory functions come first when spending budget

Table 4.3 Horizontal unbundling of a function in the education sector in KP (Pakistan)

Management functions	Policy	Planning	Budget and funding	Regulation	Maintenance and repair	Monitoring and evaluation	Implementation
Current situation	E&SED	E&SED DCTE (for RITEs) DEO	E&SED	E&SED C&WD	E&SED PTCs (petty repairs)	E&SED DEO	C&WD PTCs (maintenance and repair)
Proposed after devolution	E&SED	E&SED (province infrastructure) District government (district level infrastructure)	E&SED (province level infrastructure) District government (district level infrastructure)	E&SED C&WD	E&SED (province level infrastructure) District government (district level infrastructure) PTCs (petty repairs, basic facilities)	E&SED 1 Regular M&E of provincial level infrastructure 2 Ad-hoc M&E of district level infrastructure C&W Department (send reports on all implemented infrastructure to either district government or E&SED) District government (district level infrastructure) (regular M&E)	C&WD PTCs (basic facilities, petty repairs)

Source: GIZ (2015a).

Remarks

Here, a major shift is anticipated as for district-level infrastructure the responsibility goes to the district government. This would include all primary schools and lower levels of secondary schools (middle schools and middle portions of secondary schools). Ideally, the transfer of existing schools to the districts needs to be notified as they are public assets, and their ownership needs to be stated clearly. Once transferred, the responsibility for maintenance goes to the district. There is a strong role for the sub-district level education offices at tehsil/circle level, as they are much closer to the schools.

Provincial-level infrastructure includes the teacher training institutions (PITEs [Provincial Institutes of Teachers Education], RITEs [Regional Institutes of Teachers Education], Agrotech Institutes), head offices in Peshawar, deconcentrated units of these head offices (if they still exist).

The role of the C&W Department after devolution is similar to a (public-sector) contractor: the level responsible for infrastructure development contracts and the technical execution.

PTCs retain the current role for M&R (basic facilities) within the financial limits determined by the government.

Major consideration: subsidiarity and the policy objective of the constitution and the LGA, i.e. the 'expeditious disposal of (the government administration's) business to meet the convenience and requirements of the public'.

funds (and the guidelines for budget planning and execution need to reflect this priority).

Modification of HR management system of the sector (or across sectors): For instance, regulations for recruitment, promotion and termination of public servants may need to be changed to give SNG a greater responsibility in personnel issues. There may be a need for a modified career system that gives public servants the option for vertical and horizontal mobility. In case SNG did not have responsibilities for HR management before, new institutions need to be established at SNG level to handle these functions. At the same time, higher-level HR management agencies may also experience changes because of a reduced or modified workload (e.g. more coaching, advising and supervisory tasks instead of implementation).

Transfer of assets: Assets linked to transferred functions need to be handed over to SNG. This could be immovable assets (like buildings), or mobile assets like motorcycles and vehicles, office equipment and technical machinery. Usually, the public sector maintains records or inventories of such assets which need to be altered to reflect the handing-over and receiving of assets.²²

M&E, oversight and supervision: Often decentralization reforms result in giving SNG more responsibilities for implementation of services while policy-making, strategic planning and the setting of norms and standards is retained by the higher levels of government. If that is the case, the system of monitoring and evaluation, of oversight and supervision needs to be modified so that the higher levels of government can keep track of what is happening at subnational level. Partly this is about ensuring and enforcing compliance with existing rules and regulation, partly it is about monitoring whether intended sector outputs and outcomes are achieved, or whether changes in sector policies and sector strategies are required. Such M&E systems are also crucial for assessing the impact of the functional transfer and for triggering amendments and adjustments in the functional assignment. Unfortunately, despite repeated demands for functioning M&E systems – not least in the context of the 2005 Paris Declaration on Aid Effectiveness (OECD, 2008a) and its successor agreements from Accra (OECD, 2008b) and Busan (OECD, 2012) – implementing such systems in the context of supported decentralization reforms is far from satisfactory. A recent analysis by the Development Partners Network on Decentralization and Local Governance (DELOG) found ‘only slow progress and modest accomplishment in establishing, implementing and using country M&E systems’ (DELOG, 2015: vii), with ‘much more on paper than in operation’ (ibid.: viii).

Organizational and legal adjustments at national level: Transferring functions to SNG might result in organizational reforms at the national level because changing the workload or mix of functions to be handled here has implications on the size or the organizational set-up of the relevant national agencies. Additionally, agencies and ministries that have seen functions decentralized will need to ensure that they led a process of modifying or striking down older legal instruments that are contradictory to the new legal instruments specifying functional assignment.

Formulation and implementation of capacity development strategies: In most cases SNG will require initial support to build up the technical and managerial capacity for handling the new functions transferred to them. Part of the transfer period is therefore the formulation and funding of such capacity development strategies. Capacity development interventions can be in the form of staff training, but can also be in the form of continuous coaching and mentoring, conducting peer reviews and providing peer support, seconding experts from one SNG to another (or from national to SNG level), and organizing learning and knowledge sharing events.

The role of the sector ministries is essential during the transfer process. Taking the lead, however, does not mean that sector ministries will always be able to conclude the tasks entirely on their own. For example, if the revision of a law or government regulation is required, the sector ministry cannot accomplish this autonomously – the instrument in question stands above the ministry's powers. But it can take a leadership role in doing the legal analysis and proposing draft instruments for the relevant entities issuing the legal instruments.

Some of these steps will require a harmonized or coordinated approach. For instance, it may be best to have a similar approach to legal instruments to accomplish the transfer, and to harmonize the legal framework. Similarly, cross-sector coherence will be needed on the nature of the guiding instruments used to assist SNG to implement the functions; these should reflect the modality/type of function being transferred. Also, the inter-ministerial body may need to bridge the discussion between sector ministries and the ministry concerned with finances on which local charges/revenues in the sector should accompany the functions transferred.

The *Subnational Governments* receiving new functions likewise need to take a number of steps to make the transfer effective:

Adjustment of institutional structures, staffing levels and composition of staff: The extent to which SNG can engage with these issues on their own or depend on policies and regulations from above might vary from case to case. As outlined earlier, the issue of HR management and discretion for deciding institutional arrangements for the provision of services is a key ingredient of SNG autonomy.

Modifying budgeting and planning procedures to accommodate new functions: Usually, this will follow the guidelines and procedures established by the higher-level government so that there is commonality in such procedures across all SNG. Some elaboration or localization of these higher-level requirements may be possible or required.

Augment and update asset management system: This becomes an issue in cases where the transfer of functions is followed by a significant transfer of assets that need to be recorded and maintained. At the time of significant decentralization, it is often necessary to switch from manual to digital asset management systems, and in cases these need to be linked to those of higher level government. For instance, a district roads inventory, with assessment of road quality, may need to be developed, with a linkage to provincial roads asset management system.

Capacity development strategies: SNG need to identify proactively their capacity development needs and participate in or make use of capacity development measures offered by higher levels of governments (and/or procure their own capacity development inputs if they have sufficient resources for this purpose). Civil society organizations often provide relevant capacity development initiatives or act as service providers for national capacity development strategies. Capacity development interventions need to differentiate sufficiently between the various target groups at their level: elected representatives will probably require and accept a different set of skill development measures as compared to technical or managerial civil servants at the subnational level.

Some of these efforts require the engagement of all affected SNG, whereas others could be undertaken also with the facilitation of the SNG associations. This is particularly the case for capacity development initiatives. SNG associations can help central government institutions to organize capacity development events that are top-down. SNG associations can also undertake capacity development needs assessments of their own members, and mount initiatives that respond to these if there are gaps in the top-down offerings.

For non-public sector stakeholders (like private business, civil society organizations and development partners), this stage of the functional assignment process entails disseminating information and generating an understanding of the new functional arrangements, to be clear about new roles and responsibilities at the different government levels. Often, civil society organizations act as service providers in capacity development interventions which need to be adjusted. They can also provide important research and feedback on the functionality and performance of the new functional assignments, thus providing the policy-makers with evidence-based inputs on where to amend the policy reforms. Development partners often provide funding and expertise for capacity development measures, and help sector institutions and other government agencies in monitoring and fine-tuning of reforms.

Effecting the transfer will be an iterative process, where legal and administrative frameworks have to be established (or modified) by higher levels of government, before the SNG and external stakeholders can do their parts, and provide feedback in turn.

Much of what has been outlined in this normative process view of functional assignment relates to a substantial decentralization reform such as devolution where functional (re-)assignment is undertaken for a number of functions and sectors. This is perhaps where the greatest need for clarity and guidance is to be found. Consultative processes are vital for achieving good results. Even assuming success in such a substantial decentralization effort, it is unlikely that all stakeholders will be pleased, or that the new arrangements will suffice for a very long time. Although changes in functional assignment are episodic, tensions and discussions or debates and even public protests relating to who holds the functions and how they are being implemented do occur on a fairly frequent basis.

Inter-governmental tussles can be minimized if stakeholders are properly involved in setting the scope of decentralization and in the specific choice of

functions to be transferred. There is an additional step that can be taken to make additional adjustments as needed: a *formal and permanent consultative mechanism* can be established to deal with issues of functional assignment as they arise. Such a mechanism can avoid creating obligatory functions that are not matched with resources (unfunded mandates), and can lead to a common view of the issue – avoiding protracted tensions, and perhaps litigation in the courts. Where functional assignment is still murky, clarification can be achieved; in the case of intended or unintended concurrent functions for instance. Interim working arrangements can more easily be established without necessarily having to fix the legal framework immediately. With the benefit of such a consultative mechanism, it can be expected that a more effective preparation for a consensual set of further legal framework changes can be achieved if these are needed.

The participants in a consultative mechanism may differ by context. Where the functional assignment has been limited to one SNG unit (as in the case of special autonomy in the province of Aceh/Indonesia), it makes sense to have the agreement between the national state or government and the respective SNG unit. In that case, the specific legal instrument addressing functional assignment between these two levels could contain the mechanism for consultation. There is in fact such a mechanism in the Law on Governing Aceh (Law No. 11/2006), where the national government commits to consult Aceh on any administrative decision that impinges on Aceh.²³

Where the functional assignment relates to an entire class of SNG, then the consultative mechanism could be between the SNG association and the government level that has jurisdiction for SNG. Ideally the mechanism would be embedded in the organic law for SNG (that sets out the existence and operation of SNG). But, if the existing legislation has omitted such a mechanism, a special agreement could be established. The mechanism could be designed in a general way, to allow for discussion on any matter that relates to SNG; functional assignment issues would of course figure prominently in practice. This agreement may be between the ministry concerned with SNG and the relevant SNG association(s). For instance, in South Australia, the state government and the local government association have agreed that ‘planning for any new functions or services or where significant change is proposed by Commonwealth, State or Local Government should include identification of necessary funding sources and any proposed funding changes’.²⁴

4.6 Concluding observations on the normative process of functional assignment

We mentioned earlier that the process of functional assignment described here is a normative model not yet found in practice in its entirety. It is therefore helpful to keep in mind some general observations and caveats when embarking on a functional assignment process. Previous processes of transferring functions to subnational levels of government have shown some of the pitfalls, like transferring functions without the corresponding resources; transferring functions that

at the higher level were not implemented at all but were nonetheless ‘given’ to lower levels of government; the transfer of tiny and fragmented functions that were more activities than functions as we understand them. A consistent decentralization framework that clearly indicates the direction of the decentralization policy (which modality of decentralization is dominating? which approach is taken for the identification of functions?) is clearly helpful to guide the functional assignment process. Precise and detailed results in the more technical functions mapping stage of the business process help to rationalize the political decisions that need to be taken later. We understand that this preceding analytical work of associating budgets, staffing and assets with a particular function (or a set of functions) can be time-consuming and difficult as public sector budgets are often not based on functions, but on organizational units, staffing and other considerations.²⁵ In addition, relevant budget and staffing data are often not easily available, being regarded as heavily guarded crown jewels of the finance department and similar agencies. Still we argue that investing time and resources at this stage of the transfer process will help in circumventing or avoiding difficulties further downstream.

As the overall decentralization process is difficult to plan and to design in a linear way – despite all the best efforts, the shifting influence of stakeholders and the fluctuating level of political support will inevitably make the journey bumpier than expected – the more technical aspect of functional assignment can help to bring some elements of the process to a less polarized and more fact-based domain. We also argue that achieving consensus and buy-in by the main stakeholders is more important than a scientific approach looking at the smallest detail of matters. The dictum of not good governance but ‘good enough governance’ (Grindle, 2004) can also be applied to functional assignment!

Stakeholder involvement is important but we must admit that we have not seen many and good examples of this. Participation of sector agencies, promoted and guided by an inter-ministerial body, has been employed with some success, as seen in the case of Cambodia. Broader participatory vehicles such as government commissions, open discussion fora, associations of subnational governments, networks of academia/university faculties or civil society organizations are seldom involved in functional assignment processes. In order to play a meaningful role, their capacity needs to be strengthened as well. And governments are often unwilling or simply unable to do that.

Even with a conducive domestic environment (as seen in Indonesia in the late 1990s for instance), functional assignment tends to remain an in-house exercise, with DP more on the periphery, only sometimes invited in core processes/products.²⁶ This is perhaps as it should be, and DP will need to be modest about their role and influence, and patient enough in view of the time needed for reforms. The considerable capacity development work needed to make the coordinating body for functional assignment effective is part of that recognition. DP will, however, need to be increasingly sensitive to discerning the political winds and opportunities, and to not work at cross-purposes among themselves. This will mean leveraging their coordinating support (to coordinating platforms and other

cross-sector institutions dealing with decentralization reforms) in a tighter linkage with their sector based support. DP can certainly improve how their various same-organization projects strewn across sectors can provide more coherent support to cross-sector reforms. Cooperation between DP working in the same or different sectors can also improve. While ideally this coordination/cooperation would be led by the country government, some informal efforts may also be needed when the country government is not able, or willing to mount these.

Some flexibility on the part of DP is also in order. At all costs DP should avoid adopting a 'standard model' of functional assignment. Even when a policy/legal frame appears to call for an elaborate approach, DP should ensure that the effort matches capacities, and that the methodology takes into account the existing structures, data availability and idiosyncrasies of the political-administrative context. For instance, as the case study in this book on Cambodia indicates (see Chapter 6), it may make sense to clarify the optional (permissive) avenue to empower SNG, while encouraging the government in the longer term to make some headway on the more substantial transfer avenue.

Notes

- 1 This is often a Ministry of Home Affairs or a Department of Local Government.
- 2 In earlier presentations of this normative process we have referred to the suggested steps as a 'business process', but this terminology may not resonate with all government officials.
- 3 Weingast (2014) discusses the merit of decentralization 'as a series of steps', arguing that 'across-the-board decentralization' in many developing countries may be problematic because political and economic factors prevent greater responsiveness of local officials to local citizens. A step-by-step approach, focusing on selected SNG first, can create a demonstration effect showing that decentralization can work (p. 21f.).
- 4 At least for devolution; deconcentration measures in a sector might not need to be harmonized with other sectors.
- 5 On the issue of inter-governmental coordination in decentralization reforms, see Smoke (2005) and Rohdewohld (2006).
- 6 This can be a technical ministry (e.g. in Pakistan, the provincial governments have an Establishment Department or a General Administration and Establishment Department) or a commission (for instance the 'Civil Service Commission' in Indonesia).
- 7 When Indonesia embarked on a pilot exercise in decentralization (1995–1997), the sector ministries began to mistrust the lead agency (Ministry of Home Affairs) because it started to add sector units (for agriculture, education, health, etc.) to its organizational structure. The sector ministries regarded this as a confirmation of their perception that their loss of functions due to decentralization would result in the gain of functions (and power) by the Ministry of Home Affairs (Ferrazzi, 1998). Tambulasi reports a similar perception of the Malawi Ministry of Health, which regarded health decentralization as 'passing on administrative control [over the decentralized health services] to the Ministry of Local Government' (2013: 91).
- 8 Veiga *et al.* (2015) discuss options for service provision that a central government can use, including contracting out, selling concessions, community participation or direct transfer of resources and responsibilities to households (p. 59 ff).
- 9 Budget documents will indicate what programs/services are being funded. As an aside, in some cases, these may be the only indication that decentralization has taken

place; there may not be a formal assignment other than that indicated in the changed line items of budget documents (which normally have a legal status). This approach to decentralization ought to be avoided of course, as it does not afford the SNG any predictability beyond the budget year – most countries do not yet have credible multi-year budget frameworks that might mitigate this drawback.

- 10 One observer has noted that in Indonesia, responsibility for small and medium enterprises (SMEs) is scattered across 20 national institutions (Dwiyanto, 2016) (Personal communication, September).
- 11 It makes sense to note what is actually spent, and what other resources are actually being used. However, some policy-makers may wish to determine what should be spent to properly deliver the service. That leads to the issue of performance expectations for the functions and the various tools that can be used to ensure proper implementation. Budget sufficiency could be gauged in reference to minimum service standards for instance. Ultimately, policy-makers must decide if the focus is on decentralizing within the context of how services are being delivered, or whether at the same time they seek to improve the quality and reach of the services. If the latter, the analytical challenge will need to be met in the ‘functions review’ step (see section that follows in this chapter).
- 12 This is not always the case of course. As raised in Chapter 3, the functional assignment process could also (or only) confer powers that allow for a right of initiative or gives a measure of general competence; these would not involve the specific assignment of sector functions.
- 13 See e.g. Veiga *et al.* (2015) discussing some of the principles which we examine.
- 14 See for instance UN Habitat (2016).
- 15 Not surprisingly for such a diverse nation, this is one of the key criteria used in the activity mapping approach that in India stands for functional assignment (Debroy and Kaushik, 2005; Gol, 2009a and 2009b).
- 16 Bardhan and Mookherjee (2006) formulate as follows:

If heterogeneous communities have distinct preferences for local public goods and services, economic efficiency requires a pattern of provision of such goods and services that caters to these diverse needs. The traditional theory of federalism is based on the assumption that centralized governments are incapable of achieving such differentiation.

(p. 6)

- 17 Basically the argument is that a jurisdiction should handle only those functions where it can fully control their positive or negative consequences. A common example is a public service (e.g. in health and education) whose benefits can be enjoyed by citizens from adjacent jurisdictions, when the jurisdiction providing the services cannot exclude these external users.
- 18 While the capacity level of the receiving entity is a legitimate concern, we argue that it is often used as a killer argument to stop decentralization early on. A lot of capacity is normally gained in the process of transferring funds, staff and assets. The different modalities of decentralization provide ample space for adjusting decentralization reforms with existing and potential levels of capacity, and for moving from more limited forms of deconcentration and delegation to full-blown devolution.
- 19 It is often overlooked that transferring functions to the subnational level has implications for the institutions at a higher level: for instance, units that deal with direct implementation of services might disappear or become much smaller; while new units for M&E, for oversight functions and for regulation might become established or their staff strength enlarged. Staff transfer might lead to a reduction of overall staff numbers at the higher level, requiring smaller HR management units.
- 20 The Habitat III Policy Paper 4 (Urban Governance, Capacity and Institutional Development) includes a comprehensive list of areas requiring interventions by national

- authorities in order to build functioning multi-level governance systems (UN Habitat, 2016: 24ff.).
- 21 For instance, changes in the public procurement systems can have significant impacts on the private sector that supplies goods and services to the public sector.
 - 22 The earlier the issue of assets is tackled the better. It is not uncommon that in the process of transferring functions the assets linked to such functions ‘disappear’ or are simply not handed over to the receiving SNG, leaving them ill-equipped to handle the new responsibilities.
 - 23 Article 8 of Law No. 13/2006 on Governing Aceh stipulates that ‘administrative policies of the central government that are directly related to the Government of Aceh will be made in consultation and with the consideration of the Governor [of Aceh]’ (Undang-Undang Republik Indonesia Nomor 11 Tahun 2006 Tentang Pemerintahan Aceh) (authors’ translation).
 - 24 South Australia and Local Government Association of South Australia 2004. *State-Local Government Relations – An agreement between the State Government and Local Government in South Australia*.
 - 25 For instance, in Khyber Pakhtunkhwa (Pakistan), the provincial sector budget is based on organizational units (like the District Education Office or the Secretariat) and includes all personnel expenditures of these units. The non-staffing operational budget is kept separate, as is the development budget. Linking these budget lines with functions requires in-depth understanding of the sector, its budgetary and operational mechanisms, and often has to rely on assumptions and ‘informed guesses’.
 - 26 Even where a DP was strongly involved in the conceptual development of a framework for functional assignment and has facilitated the ensuing negotiation process between the SNG and the national government, as had been the case with the European Commission/GIZ in Aceh/Indonesia, the results often do not meet the sometimes high expectations of the DP (based on own country experiences and normative concepts) but tend to reflect vested interests, standard national solutions and political opportunities.

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5 Political economy of functional assignment

As noted in the discussion of Chapter 1 on the broader decentralization context, reforms in the public sector are difficult to bring about. In part, this is a result of their complexity; there are many reform components possible, and several may be required to bring about any improved welfare. Moreover, these component reforms often must be properly sequenced and fit together well. At a more fundamental level, the benefits to be derived from decentralization are value-laden (e.g. greater participation) and may impinge favourably, or badly, on the dominant political and social forces. Hence, those in power may perceive the reforms to be congruent with their interests, or a threat to their position.

Understanding how functional assignment, and more broadly decentralization, reforms tend to unfold is crucial to practitioners and advocates who are concerned with a rational assignment or partial to the realization of normative concepts such as subsidiarity. An awareness of the political economy of public sector reforms, decentralization and specifically functional assignment will give the latter reform initiatives a better chance of success.

The promises of decentralization have already been covered in Chapter 1. It is possible to have some success in functional assignment and still have few results on decentralization outcomes. On the other hand, a poor functional assignment process is quite likely to seriously dampen the chance of success of the decentralization reform. It is worthwhile then to narrow the discussion of results to the specific functional assignment process and the more immediate outcomes that might be expected, like an understandable and coherent distribution of functions, an assignment that is supported by key stakeholders, an assignment that is feasible (i.e. it can be implemented in view of technical, managerial and financial capacities), and a distribution of functions that has some stability over time and therefore allows for an empirical assessment of its value.

Because functional assignment is often wrapped within the larger decentralization reforms (and in some cases recentralization reforms), the desirability of the above short to medium term results are not always well articulated by governments or stakeholders. In some cases, these rational results are in fact not desired. It can happen that hard decisions on which level should be entrusted with functions are put off or avoided, by allowing concurrent functions for instance; this tactic undermines coherence and easy comprehension. In other

cases, officials with a tradition of top down decision-making cannot imagine that they should seek to gain stakeholder support for decisions pertaining to what government should do – or more specifically ‘which level of government should do what’. Politicians may at times be committed to delivering on a reform effort, but in taking up functional assignment decisions they may give short shrift to the quality of the results, their time horizon being too short to take into account the risk of poor implementation or flaws that may require framework revision.

Even when non-government actors mount pressure for meaningful decentralization, the reform is nonetheless managed by one or more central state institutions, making it hard for other stakeholders to influence what should be expected from the functional assignment process. Within the state, central state institutions will dominate, effectively side-lining SNG in many cases. But even these central state institutions will often differ on the desired extent, process and pace of reform. Some will of course want to hinder any real reform. Understanding the political context of functional assignment is key to making sense of various reform trajectories, and to shaping an exercise for best results.

5.1 Functional assignment as a political agenda

Whether wrapped in the larger discourse on decentralization, or pared down to the technical terminology of functional assignment, redistributing functions and attendant resources is a highly political undertaking. It is recognized as such in most cases, and is often given a visible or even prominent place in political party’s platforms and strategies, government reform programmes, and further downstream in legislative frameworks (see the case of the Indonesian Big Bang in Box 5.1).

Box 5.1 Political discourse as a prelude to the Indonesian Big Bang

The Indonesian national elections held in 1999, following the demise of the Suharto regime, saw a lively public and political party discussion on decentralization reforms (among other political reforms). A survey undertaken by the consortium of NGOs captured the position of the 40 or more old and new parties planning to contest the elections. It found an overwhelming desire to maintain the unitary state, but also an awareness of the need to enhance autonomy – with an assumption or explicit orientation towards giving the provinces a larger role/share of resources (Ferrazzi, 1999). The continued dominance of the government, however embattled, can be seen in the resulting legislation, where enhanced autonomy was given to the district/city level instead of the province. Moreover, when functional assignment was clarified (in a year 2000 regulation) the district/city level was given residual powers beyond very limited national/provincial lists; even district/city governments were surprised. This result on the one hand reflects the public sentiment for reform, but also indicates the possible disconnect between public discourse, government policy and legislation.

However, beyond this surface view of politics, very little examination has been given to the power holders' motivations, contextual prerequisites and specific choices made in defining and pursuing decentralization. The discussions in Chapter 4 on the criteria for deciding where functions should reside can give the impression that functional assignment is a rational, welfare-maximizing undertaking. It is far from that of course (as underscored by the disconnect noted in Box 5.1 for the Indonesian case), but there is unfortunately little 'theory' to help practitioners to understand the underlying political currents that shape these exercises (O'Neill, 2005). It is curious, or a paradox in the words of Eaton *et al.* (2010), that the central government would want to yield power and resources to SNG. The pervasiveness of decentralization reforms belies the fact that the political will is often translated faithfully only to the point of a legislative framework, with reforms grinding to a halt or a glacial pace thereafter. Yet observers of decentralization tend to take the legal enshrinement of a **decentralisation framework** as indicative of central government intentions to reform.¹ An attempt must instead be made to understand the interests and behaviours of key actors, as these could provide insights that are of practical importance to practitioners of functional assignment.

In OECD countries reform has in some cases been an outgrowth of broad political ideologies and fashions, pertaining for instance to the role/size of government, and the need to address the fiscal crisis of the state. Hence underpinning the 'Common Sense Revolution' of the Conservative government of Ontario in the mid 1990s was the ethos of reducing the size of government, privatization and volunteerism. These found their expression in part through the policy of provincial-local government functional disentanglement, thus reducing duplication and waste according to the announced logic. True to its ideology, the Conservative government also promised that the ensuing uploading and downloading of functions would be revenue neutral, safeguarding the highly valued Conservative constituency of 'tax payers' (Graham and Phillips, 2005).

A similar agenda underpinned decentralization in developing and emerging countries in the earlier days of this reform. Erk (2015) notes that during the 1990s, decentralization was promoted as a one-size-fits-all blueprint by DP, wrapped within the broad promotion of privatization, liberalization and a reduction of state involvement in markets. However, in developing and emerging countries, decentralization has also had an endogenous logic that reflects the incomplete articulation of the state, the fragility of the state, and the tendency for a winner take all political tradition. Hence the reforms have often served the governing political parties to extend the reach of the state, enlarge their patronage system and mobilize constituents for their particular political purposes (see for instance Ito, 2011).

The above reality goes some way to explain the enthusiasm of some developing and emerging countries to establish elected SNG and the reluctance to follow this up with a clear set of functions with predictable and sufficient resources. The case of Cambodia (see Box 5.2) exemplifies this shortfall.

Box 5.2 Elected SNG awaiting their functions: the case of Cambodia

Communes in Cambodia, established in 2001, and districts/municipalities and provinces, established in 2009, have had their elected (directly or indirectly) bodies since their formation, and yet have to receive functions as promised in legislative frameworks. It has to be surmised that the dominant political party (the Cambodian People's Party) benefitted largely from mobilizing political support at local level, largely through extending its patronage network beyond the party to the elected SNG. Channelling too many resources through the SNG, however, in a way that is not personalized by the Prime Minister or amenable to party influence, has apparently not been in the political interests of the CPP. Decentralization must therefore be seen largely as a means for the CPP to consolidate its power through state structures (Smoke and Morrison, 2009).

5.2 Fractious central state institutions

As indicated in the previous discussion, bureaucrats and elected officials can find reasons to support or resist decentralization reforms. It is rather rare to find all political forces aligned in favour. Elected officials do tend to follow the party line when the political party fortunes are at stake, but often individual politicians will act based on a calculation of their political ambitions and the benefits they must direct to their key (and often geographically and class specific) supporters. Individual politicians can also exhibit contradictory impulses. In some countries, national and provincial/state legislators may vocally favour decentralization while insisting on directing development funds in their constituency, even though the funds may pertain to functions already transferred to SNG.²

As the saying goes, where officials in the bureaucracy stand depends very much on where they happen to sit. It is not uncommon to see officials adapt their views as they migrate through different ministries or agencies. Centrally appointed officials in SNG may advocate for SNG, but once ensconced in the mother bureaucracy they will generally tow the central line. Officials in a ministry for local government may strongly promote decentralization, but be less sanguine when moved to a ministry of public works. Officials in the bureaucracy that happen to shift to political posts will also reflect their new positions in their views on reforms.

The drivers of policy-makers' positions are a complex overlay of interests, incentives, identities and allegiances. These are also quite fluid in some nations, particularly where state structures are weak and political alliances are formed on the prospects of financial gain and accumulation of political power rather than any deep deliberation on political philosophies or what constitutes national public goods. Even where the state is not fragile, considerations are wide ranging, including material benefits; career paths; institutional standing and rivalries; kin, tribal and ethnic relations; political party affiliations, political ambitions and policy platforms.

Coordinating agencies concerned with subnational government are usually the strongest advocates for decentralization, and take an active role in coordinating its policy design and implementation. In South Africa the Ministry of Cooperative Governance and Traditional Affairs (COGTA) has the mandate to address intergovernmental relations as a whole, and is concerned to empower municipalities, and to some degree provinces. In Indonesia the Ministry of Home Affairs is responsible for general guidance to SNG, and has on the whole sought to strengthen SNG. These SNG supervisory or guiding ministries (or agencies) are expected to set the framework for and promote subnational government, or at least ensure harmonious relations between levels of government. Often they seek to be perceived as honest brokers, bridging the concerns and interests of the central state with those of the local state. It is these ministries/agencies that often lead the inter-governmental bodies that may be struck to design and guide decentralization policies that cut across sectors.

There are other national coordinating bodies however that can take a different position on decentralization from those institutions specifically charged with guiding SNG. In particular, national planning agencies and ministries dealing with finances are generally lukewarm if not hostile to such reforms. Understandably, national planning is made less binding and more complex to the extent that important socio-economic functions are decentralized to SNG. Additionally, national planning agencies are a common anchoring institution for DP, and the latter often design their interventions to be centrally managed, for their own management needs, regardless of emerging or implemented decentralization policies. Recognizing the political imperatives and their own institutional disadvantages, national planning agencies can end up torn into two camps, with sector oriented planners favouring centralization – or at best functional decentralization,³ and regional planners favouring territorial decentralization. This split can be seen in Indonesia's National Agency for Development Planning (Bappenas) and the Philippines' National Economic and Development Authority (NEDA), where organizational units reflect these two streams of planning – long recognized as being in tension (see Friedmann and Weaver, 1979).

Equally tepid about decentralization, ministries of finance are often more concerned with financial macro-stability – possibly endangered if SNG borrow irresponsibly or fail to honour hard budget constraints.⁴ Finance ministries also are concerned about an increase in leakages as budgets are increased in the more numerous SNG. Establishing intergovernmental financing schemes, treasury channels and ensuring prompt reporting from SNG are also seen as challenging and potentially ongoing headaches to these ministries.

National planning agencies or ministries of finance can be roped into inter-governmental bodies for decentralization, but they will bring to the table the above mentioned professional traditions, concerns and interests. There is no assurance that they will become full throated supporters for decentralization. As a consequence, designs that do not have their support may be very flawed, particularly in lower level regulations, and in the execution stage. The Indonesian district autonomy pilot launched in 1994 was stillborn in part because it never

gained the support of the powerful Ministry of Finance, and this was reflected in the poor match between decentralized functions and the meagre financing that followed them (Beier and Ferrazzi, 1997). This mismatch occurred despite the best efforts of the Ministry of Home Affairs and the Ministry for State Administrative Reform (MenPan) to gain the cooperation of all necessary state institutions.

Where the cross-ministerial coordination is more formalized, as seen for instance in the National Committee for Subnational Democratic Development (NCDD) in Cambodia, the Ministry of Finance and other cross-sector agencies (like the Ministry for the Civil Service) may be pressed to show some goodwill and be seen to cooperate in crafting the decentralization components that fall under their mandate (e.g. financing, planning, civil service, audit). These inter-ministerial bodies are expected to serve, *inter alia*, as forums for discussing policies, negotiating agreements on action plans, monitoring policy implementation and evaluating policy outcomes (Rohdewohld, 2006). But even when these bodies exist, genuine cooperation between these national organizations is hard to obtain – yet it is essential to bringing all of the needed policy pieces to maturity and having them fit together well. As a case in point, the Cambodian decentralization effort guided by the NCDD began operationalizing its ten-year national programme in 2010 but is only now (more than five years later) entering a rather limited pilot phase in that country (Ferrazzi, 2015).

Some countries have opted to give more force to decentralization guiding bodies by including members of representative bodies, usually central level institutions. For example, the Philippines placed three members of the Senate and three members of the House of Representatives (as well as representatives of local government associations) in the Oversight Committee to guide the implementation of the Local Government Code (Republic of the Philippines, 1991).

Perhaps the most resistance to decentralization, and conversely the most appetite for recentralization, can be expected to come from sector ministries. These have a fairly common list of concerns that make them cautious or resistant to decentralization reforms, particularly when these are pushed and guided by other ministries, as indicated in the discussion above. The most common sentiment expressed in such cases is that the SNG supervising ministry is merely seeking to shift budgets and control from the sector ministries (and their deconcentrated arms) to the ‘SNG sector’, ostensibly under the firm grip of the SNG responsible ministry. This view is all the more prevalent when the SNG responsible ministry takes on the allocation of expenditures normally flowing through sector ministries – the decentralization policy is then likely to be seen as an effort of the SNG responsible ministry to expand its turf, and gain the advantages of control over larger budgets and other benefits.

The coordination hurdles in the path of decentralization are well understood by the actors involved. As a Cambodian ministry reviewing the functions it should transfer to SNG reports: ‘progress of the reform depends on the strength of the political will, mobilization of managers and technical Ministry staff to support (the preparation of) the transfer and the co-operation between the Ministry

and its stakeholders' (MOEYS, 2015). Gaining that cross-sector support has been difficult in most decentralization efforts. Hence, a country/state may have a relatively progressive foundation (constitution and a decentralization/local government law), coexisting in some tension with sector ministries that exhibit several if not all of the behaviours found in Box 5.3, which give rise to what the authors refer to as a 'sector lag', meaning that a progressive framework has been put in place somehow, but the key actors that have to implement it are far behind in their awareness, preparation or willingness to realize the framework. Brosio (2014) uses the term 'partial decentralization' but emphasizes the functions-finance mismatch; this is important, but does not take in other stances or behaviours that characterize the disconnect between the legal framework and reality. Moreover, the finance lag raised by Brosio is in large part related to the concerns of the Ministry of Finance, as discussed above, whereas the sector lag we refer to is largely derived from the reluctance of sector ministries to get behind the supposed framework policies of decentralization.

Box 5.3 Sector lag in decentralization reforms

A sector lag may come about if sector ministries:

- are concerned that losing control will lead to service collapse/deterioration;
- differ in their understanding of decentralization terminology and concepts;
- have opted for deconcentration or minor agency tasks – with a tendency to sell this initiative as having done 'decentralization';
- bypass SNG, opting instead to go 'directly to local institutions', 'user groups', 'the people' and 'the community';
- are tentative in undertaking innovation, or even engaging in testing/piloting;
- maintain legal contradictions/fragmentation between the LG law and sector instruments of functional assignment, planning and procurement rules;
- have not begun ministry re-organization to reflect planned or ongoing decentralization efforts;
- do not have specific sector plans for decentralization;
- have not made a connection to an overall cross-sector plan for decentralization;
- have not indicated how they will reconfigure vertical relationships;
- have a fragmented internal discourse/low engagement with stakeholders.

Source: adapted from Ferrazzi (2007).

Sector ministries which are not convinced of the merits of decentralization or fearful of its impact on their personal and institutional interests are adept at fighting rear-guard battles. They may push hard on deconcentration, and even deconcentration that is 'functional' in its spatial logic rather than coinciding with administrative boundaries, thereby making it harder to coordinate with, or be influenced by, territorial governments. Such deployment of deconcentrated offices also makes it difficult to attain the one-to-one match with SNG jurisdictions that

could facilitate eventual devolution or delegation. They may also seek to establish quasi-autonomous agencies to indicate that there is a need for special bodies to govern the sector at subnational level, rather than SNG per se. They may even concede to the pressure to transfer functions inter-governmentally, but then control the financing and procurement decisions, thus tapping the benefits that come from this control – within the bound of legality or beyond them.

This obstructive sector ministry behaviour can be noted in many countries where decentralization has apparently won the day legislatively, but where support was not deep. The initial proposal put forward by the Cambodian Ministry of Education, Sports and Youth in Cambodia – after three years of analysis – consisted of largely inconsequential functions that had no substantial funding behind them, and promised to do little to improve services.⁵ Hungary's sector ministries have ignored the 1991 Local Government Act injunction against unfunded mandates; the accumulation of service standards imposed by the ministries since the act passed has not seen commensurate financial transfers (Pigey, 1999). The Ministry of Finance must be seen as complicit in this regard.

The rear-guard action described above is quite common in developing and emerging countries, where funds that are associated with transferred functions are distributed by the ministries to SNG or central officials placed in SNG under the mechanisms of deconcentration, or distorted forms of delegation that amounts to the same thing. Indonesia, even after the Big Bang decentralization, has shown this inclination; the central ministry budgets for health and education actually increased substantially in the years after the 1999 reforms. The data for 2001–2004 shows that as national budgets increased the proportion of central government health spending in health and education generally remained above 30 per cent, despite having shed the financially weighty functions in these sectors to the districts and provinces (see expenditure tables provided in Simatupang, 2009).

The above dynamics should not entirely cloud the motives of sector ministries. It is particularly important for proponents of a meaningful functional assignment process to understand the viewpoints and interests of the sector ministries. The latter's concerns may be imagined and/or self-serving, but they may also be to some extent justifiable. The range of concerns typically voiced, or reflected, in ministry positions include the fear of the unknown, in terms of the roles of the institution once it has shed key functions, the fate of the public services in terms of their quality and access, the status and remuneration (legal and otherwise) for officials that will remain in the institution or may be transferred.

It is advisable for functional assignment proponents to anticipate and appreciate the disruption that can occur to careers, power, prestige and formal/informal income streams as a result of the transfer of functions and their associated resources. The uncertainty alone that surrounds the reform, particularly how disruptive it might be, is sufficient to cause hesitation in officials that must think about the welfare of their staff. In this context, the possibility that a 'rival' ministry (that concerned with SNG) may benefit could be quite galling. Addressing this distrust is important. For instance, if the SNG ministry has been involved in directly providing financing to

SNG for small infrastructure, shedding this intrusive reach in favour of transparent, predictable and possible formula based transfers that come from the central treasury would go some way to allay the sector ministries' suspicions of empire building.

Box 5.4 Cabinet cohesion in Afghanistan's provincial policy

The current president must gain the approval of the National Assembly for his choice of cabinet members, and must also seek consensus with the chief executive officer, an outcome of the contested election. Ministerial appointments must reward power brokers that have been instrumental in the electoral outcomes. A much awaited policy has been issued to push service delivery largely to the provincial level (IRoA, 2015), but this modest decentralization policy is proceeding at a glacial pace, though no minister has publicly disavowed the policy. Ministers stand to lose some power and resources to provincial governors and other local actors. Those that have their own power bases and political ambitions may not see the benefits of the government policy. This may explain in part why most ministers have so far not taken the policy seriously.

Sector ministry reluctance or resistance can be overcome with some of the above strategies, employed by SNG/decentralization coordinating bodies. In some cases, they can only be overcome by a show of political commitment from the highest levels of the executive and legislative bodies that hold the executive to account. The effectiveness of a presidential or prime ministerial intervention, or even sustained attention, can vary widely. In some countries the leader and party will have firm grip on the cabinet. In other countries the cabinet membership itself is a political compromise, and the president may only have the firm support of some of its members (e.g. same party members or same ethnic group). S/he may enjoin the cabinet to comply with a policy, but the response may be weak or mixed (see the case of Afghanistan in Box 5.4).

Cabinet cohesion and discipline is easier to attain when a given political party is dominant, government leadership is in evidence and when political circumstances favour it. The threat of national disintegration, for instance, can impinge on all of these factors; it can encourage leadership, bold decentralization measures and a reasonable level of cabinet wide commitment to follow-through. In this case, the pace of decentralization may even be so hasty as to preclude a systematic functional assignment process, as seen in Indonesia, where subsequent fixes were required after the hasty 1999 reforms – and even those fixes have left the functions framework deficient in some respects (Ferrazzi, 2008).

5.3 Unequal and tense relations between central state and SNG

Inter-governmental relations centred on functional assignment reveal a wide range of situations, from a complete lack of SNG voice to a discussion or

contestation that reveals roughly equal power between the central state and SNG. In the latter case, the central government may be dealing with larger SNG units, presenting a compact front in the form of capable SNG associations.

Where the state is creating SNG levels, it is understandable that non-existing SNG will have no formal voice, although a lively debate may be evident in the larger political arena, including actors that will subsequently be playing roles in the nascent SNG. New or revamped tiers of SNG have been created in Eastern European states that were under the Soviet sphere of influence. For instance, Slovakia created regional government to group its district governments, whereas Poland did just the opposite, creating districts (O'Dwyer, 2006). These reconfiguration of territorial structures is necessarily accompanied by a new or adjusted set of functions. The deliberations on the territorial size/number of units have in cases been closely intertwined with the decision on what these units are expected to do.

The existence of SNG, and even of SNG associations, does not necessarily lead to a meaningful central state–SNG dialogue. The central government in Hungary undertook some extensive reforms in 1990, but policy was formulated at the central level with almost no input from local officials. The highly fragmented municipalities created were out of kilter with the service functions expected of them. In practice, the small municipalities do not carry out many of their 'mandatory' functions (Pigey, 1999). The Canadian case instead points to more assertive local government, armed with a long history and a strong sense of its legitimacy, insisting on being treated as an equal partner. As the Federation of Canadian Municipalities put it, the federal and provincial government:

cannot speak in terms of senior government ... and subordinate municipal governments as mere receptacles of downloaded responsibilities. And if we must talk about a sequence of authority, we should address municipal government as the first order of government — the oldest form of government in Canada, predating Confederation.

(Hughes, 2001: 4)

A discussion among equals is more likely to take place where SNG is mature in its longevity, resources, support from the public and technical competency to carry out analysis and a policy dialogue.

As might be expected, SNG capacity varies greatly, even within the same country where multiple levels are found. In some cases, SNG is weakened by the mere fact that legislated elections in fact do not happen, as seen as seen in Nepal where the last election took place in 1997, and Afghanistan where formal representative bodies below the province have not been made operational as required under the 2003 Constitution. National emergencies have a tendency to become chronic in these situations. The voices of SNG in these cases are effectively neutered, endangering any functional assignment exercises that may be planned.

SNG weaknesses are also derived from the design of the SNG forums; a lack of cohesion among SNG, and SNG tiers, may arise from the multiple associations formed for different classes of SNG (e.g. urban versus rural, provincial

versus district). Moreover, the separation of elected officials and the executive side could emphasize cleavages. Any and all SNG associations may ultimately act to further narrow interest. A recent assessment report on the Association of Kosovo Municipalities (AKM) raises the perception that the association ‘is occasionally used as an instrument by municipality mayors to advance their narrow interest’ and that there is a tendency to ‘make the AKM an organization of mayors and less of municipalities’ (UBO Consulting, 2011: 37).

Further complications in putting forth a united SNG front are found when some SNG officials are burdened with central government roles. The case of the provincial governors in Indonesia shows that divided loyalties are unlikely to be resolved in favour of SNG. Singly, or through their own provincial association, the governors have failed to champion the province as a regional government, siding with the central government attempt to reassert control over the districts and city governments, by adding central functions to the role of the governor, particularly functions that help to rein in the excessively autonomous districts and cities (see Ferrazzi *et al.*, 2012). The legislative changes to the regional government law achieved in 2014 gave the governors and central government much of what they sought.

For all of the above reasons, it is rather rare to see a functional assignment process that has been jointly designed between the central government (or a federal unit) and SNG, and where SNG participates effectively. This can occur in some situations, as seen in the case of the Aceh province negotiations with the central government following the achievement of an internationally brokered peace deal (Helsinki Peace Accord of 2006). In this case however, Aceh was bolstered by advisory support funded by the European Commission. Even in this case, however, the negotiations that took place sector by sector were skewed in some respects. Aceh could be said to have equal capacity, but the central government’s power to delay and the threat of pushing through its own views made the playing field still somewhat uneven (see Box 5.5).

5.4 Non-state actors: their added value and access to the functional assignment process

A wide range of civil society actors, such as community based groups and non-governmental organizations, think tanks, academics and consultants dealing with governance issues, professional associations (e.g. teachers, health professionals), the media, faith-based organizations, and political/traditional/elite or other significant figures have a stake in functional assignment processes. Their readiness to add value to the process, and the access given to them, vary widely.

There are very few non-state actors that can claim specific expertise in functional assignment. Some academics have made this one of their fields of interests (never their sole focus it seems), and on occasion an NGO may have dealt with decentralization long enough to feel some comfort level in addressing the specific challenges of functional assignment. Other NGOs in some countries are largely an implementing actor for the national government (and/or international

**Box 5.5 Can functional assignment be a negotiation among equals?
The case of Aceh**

The functional assignment process adopted by the Indonesian government reflected the long conflict, the 2005 Helsinki Peace Accord that ended it, and the 2006 Law on the government of Aceh that gave more direction to national government–Aceh intergovernmental relations. The national government was under international scrutiny to adhere to the peace accord and the new law. Aceh’s citizens were kept informed by the Aceh government and civil society organizations. Moreover, Aceh struck cooperation with EU–GTZ to assist it in giving a proper shape to the functional assignment negotiations, and to prepare it to work through the sector by sector negotiations – led on national government side by the Ministry of Home Affairs, with considerable vice-presidential oversight. Some sector ministries were reluctant to give to Aceh a better deal than that given to other provinces, and the Ministry of Home Affairs struggled in its mediating role. Sector ministries delayed and avoided hard decisions, or referred them to the Vice-President or President. The process took seven years, much longer than the two years expected (concluding in a government regulation in 2015), slowed in particular by several contentious land and resource sector assignments. Aceh did not get all that it sought, but on the whole it was able to press home its arguments, and to use the existing framework to its advantage. SNG can rarely negotiate from such a favourable position.

development partners) and thus may have gained significant sector know-how but they focus usually on service delivery and do little to support SNG.⁶ The national and local press has generally struggled to deal with the complexity of functional assignment processes, and they rarely have an assertive stance towards the central government. In the worst of cases, the press is simply in the pocket of the central (or local) state and does not dig deeply or give voice to stakeholders sitting outside government.

The central state is cautious when dealing with non-government stakeholders, and where possible it will tend to work internally in an opaque way. It may, under pressure from a local elite, open up the process, but it would generally prefer to co-opt these local elites than to be truly transparent and accountable in the way it conducts functional assignment processes. Hence the Ministry of Home Affairs in Indonesia paid heed to some strong district/city representatives in the 2004–2007 revision of functional assignment. As these representatives were playing important roles in SNG associations, the latter, and some selected district/city leaders, were invited to regional workshops. However, these were hasty, poorly prepared events, where the voice of the ministry dominated.⁷

Even where some capacity exists in civil society, there is little guarantee that it will be utilized. OECD governments tend to be more welcoming of civil society participation, but even in some of these countries the process of functional assignment has been rather closed. In the case of the Canadian province of Ontario alluded to above, one of the lessons of the fast and deep institutional

changes concerning service delivery by the government was that ‘the premier’s office could seize control of an issue, ram legislation through the legislature, and overcome the public furore, which would be forgotten eventually’ (Graham and Phillips, 2005: 182).

While Cheema (2013) claims that civil society organizations (CSOs) are ‘playing a vital role in promoting decentralization and democratization at national and local levels in Asia’ (p. 239), we are more cautious regarding the role of CSOs in functional assignment. Where traditional and civil society is thick and vibrant there may be more pressure exerted on government to open up the functional assignment analytical and decision-making processes. But the emergence of civil society does not always translate into greater push for SNG empowerment. Relations between civil society and SNG may have been poisoned in the past, leading to deep-rooted mistrust that plays out in the decentralization policy arena, as seen in the case of Albania (Zürcher and Troshani, 2007). New or older non-government entities may be angling for a direct relationship with the central government and DP funding,⁸ or may push for regulations that force SNG to allocate funds to them as local contracting agencies. Central governments are often glad to oblige, as they see their patronage network expand; the nearly 14,000 Citizen Community Boards established in Pakistan, and their assured 20 per cent of the local government allocations, were a key achievement trumpeted by the National Reconstruction Bureau (Aziz, 2005).

The existence of capable and numerous CSOs of various kinds that can hold SNG to account should be one of the factors that influences the decision to shift service functions to (lower levels of) SNG. Services that lend themselves to local accountability will benefit from decentralization. As one of the central government concerns is a shortfall in public financial management capability and vertical accountability mechanisms at local level, the potential of CSOs to boost accountability to service users and communities should go some way to allay this concern. For instance, the ability of some CSOs to conduct budget scrutiny and expenditure tracking should be seen as a useful safeguard. This consideration appears to have entered into the deliberations on decentralization in some countries, such as in Tanzania (Egli and Zürcher, 2007).

The reality of civil society in many nations, particularly in developing and emerging countries, is that capacity to engage with the state is low. The kinds of polycentric arrangements that have been promoted by Elinor Ostrom and others are difficult to find or construct, and tend to operate best at smaller scales/local government levels. The necessary institutions required to bring state and non-state actors to the table (see McGinnis, 2016) are largely missing. Multi-stakeholder forums and co-management of services, for instance, are notoriously difficult to establish and maintain. Yet it is this kind of thick social capital – to invoke another useful concept – that would be needed to bring civil society into the functional assignment discussions and decision-making. Only when external assistance is obtained does it seem possible to make civil society more organized and capable of playing a meaningful role in the functional assignment process. But DP have not yet taken up the capacity development effort in any systematic

and intensive way that would result in sustainable capacities in functional assignment (or decentralization in general) outside government.

5.5 The role of international development partners

As noted in Chapter 1, the literature on decentralization reforms shows a rather mixed set of results, with little discernment of the variables that lead to success (or failure). The key promises of decentralization can be realized but specific results depend on a complex set of ‘political, institutional and socioeconomic factors, and reform starting points and trajectories’ (Smoke, 2015: 251). This reality would suggest that DP should approach support for decentralization with some humility and preparation. This has not generally been the case for the greater part of the last few decades. Erk (2015) notes that during the 1990s, decentralization was promoted as a one-size-fits-all blueprint by DP, wrapped within the broad promotion of privatization, liberalization and a reduction of state involvement in markets.

DP can of course add value to decentralization/functional assignment processes. The aforementioned success in Aceh (Box 5.5) is one such example where DP has shown that it can facilitate a good process that brings together stakeholders, expertise and the scrutiny of the public. DP has at times reflected the best values enshrined in the global accords on aid harmonization, alignment and aid effectiveness, like the 2005 Paris Declaration and its successor agreements from Accra and Busan, working in concert and with a fairly unified approach to providing support.⁹ Their role, however, must be acknowledged and accepted by the national government, placing some constraints for instance on DP being able to effectively straddle technical assistance and social mobilization initiatives.

But DP have quickly eroding corporate memories, and perhaps in part because of that appear to be eternal optimists. It is not uncommon to see them engage in ways that are superficial, of short duration, and with insufficient initial or mid-stream analysis. There is value in learning in the course of implementing an iterative approach, thus avoiding a one-size fits all imposition or rigid notions of best practices (see for instance Andrews, 2012). But it is important to appreciate the complexity if not outright chaos of governance contexts and interventions (Ramalingan, 2013), and for DP to acknowledge the importance of politics (Carothers and De Gramont, 2013). Attention needs to be given to the particular set of factors mentioned by Smoke (2015): country setting, national and local political and bureaucratic dynamics, available resources and capacities. These set the parameters for what is possible and how the engagement is best conducted. Some self-reflection is also in order for DP, to recognize the pressure and incentives of DP to implement quickly and claim success, when what is often required in functional assignment support is persistence, adaptation and modesty of aims (Ferrazzi and Rohdewohld, 2011).

DP will need to use more finely tuned political antennae, for instance by refraining from aligning themselves too quickly with just any policy entrepreneurs, or the

default anchor institutions that manage DP. They must recognize that they may be unduly lending reputational and technical advantage that will legitimate the position or legislative changes being pursued. This urge to ‘get behind the champions of reform’ must be balanced by an appreciation of the biases and limitations of various ministries, in particular those that are given the SNG mandate.

Even if the SNG responsible ministry is successful, by dint of perseverance, closeness to the top executive/parliament, horse-trading or other means, DP should recognize that only the easier part has been accomplished; the hard work of implementation remains to be done. In this regard, legislative prowess is a poor indicator of the true political backing that is needed to realize difficult reforms. Proponents of decentralization will need to engage in the arduous work of explaining, convincing and supporting the sector ministries in elaborating policies and implementing these – all the while maintaining some coherence with the original overall broad policy that has been embedded in law. Equally arduous will be the task of ensuring that resources match the functions, requiring the participation of the usually cautious finance and civil service ministries.

To some degree, the coordinating ministry or inter-ministerial bodies guiding decentralization can choose to have it rather easy at the start (ramming through a law that looks impressive on paper) and fight a long and difficult battle later in the implementation stage – or it can try to gain some understanding and commitment up front from sector ministries in the policy design/legislative effort – a more laborious process that may (there is no guarantee) allow for a smoother implementation of whatever compromise is reached at that earlier stage.

DP rarely appreciate the above choices, and how fragile the legislative victories of individual/institutional policy entrepreneurs can be. These may have been welcomed by the executive and legislative leadership for immediate reasons (such as electoral campaigning) but a few months is a long time in politics. The policies may still be desired by some constituencies, but the political will of government to push them through against a politically fractured cabinet may be more trouble than it is worth; political capital is generally limited and must be allocated carefully – usually to immediate or urgent political opportunities and challenges. The DP tendency to assume that the next step to legislative victories of the kind described here is implementation that merely requires some technical assistance to unfold, places the DP at an immediate disadvantage, having failed to grasp the dynamics that made the legislation possible and its implementation nearly impossible. For those DP with little appetite for a long term and difficult engagement the prospects for any results are dim.

Strategies that may yield more results will include those that give the political dimension its due weight. This may mean encouraging the use, and supporting, a coordinating body that will have some political muscle, bringing the key players (and parliament and civil society if possible) around the table, where shirking will be more visible and costly to all actors. In the same way that the Philippines established its broad Oversight Committee for the decentralization effort, a body with a similarly broad scope, or more narrow focus on functional assignment, could be struck. While some central governments have shown an interest in

explicitly mounting a systematic functional assignment process, the tendency has been to limit the coordinating membership to the central government. For instance, the Fiscal Deconcentration Working Group (FDWG) struck in late 2015 in Afghanistan intends to explicitly develop and guide on functional assignment process to further a ‘provincial budget’; it has stacked the FDWG with Ministry of Finance officials and selected coordinating agencies but excluded the four sector ministries involved in the 3-year pilot that is to subsequently roll out across all service sectors (IRoA, 2015). Although DP are expected to contribute to this initiative, none has proffered advice suggesting a more inclusive membership in the lead up to the FDWG formation. This reflects too much deference for the centralized management approach of the Afghan government, an approach that is bound to meet with difficulties as the reform initiative unfolds.

The importance of being sensitive to the political dimension is key to making a sound decision to enter the field, to choose the most promising institutional entry point(s) and to influence a process that may be protracted and experience many ups and downs. A willingness to learn, make use of errors and try again is useful, entailing therefore flexible programming. Sharing experiences and building a national capacity of different actors to support, also with a political analysis approach, the reforms will enhance sustainability as the process of decentralization/recentralization is unlikely to be a one-shot effort.

5.6 Implications for practitioners

Functional assignment processes are, and ought to be, largely endogenous efforts. While much of the prescriptions and cautions pertain to DP that hope to make a contribution, it is critical that national capacity be developed within government and the broader set of stakeholders to design and execute a reasonable functional assignment process. This means that the political economy of functional assignment (and more broadly decentralization) needs to be appreciated by these actors. A greater self-awareness regarding motivations, concerns and tactics could result in better practice. As a case in point, the concerns that give rise to the ‘sector lag’ mentioned in this chapter could be countered, once they are properly understood. Key concerns, and the possible response of the institution(s) charged with guiding the functional assignment process (and their supporters) are offered for consideration in Table 5.1.

The suggested responses seek to address valid concerns of sector ministries that resist functional assignment. It assumes that government is not monolithic in its composition and views, making room for officials that do have the desire to improve services to the public (among other objectives) and are willing to take some risk. Concerns over service failure is not necessarily a ploy to buy time and dilute reforms, although this subterfuge has been widely used in some countries. A hopeful indication of the nature of sector resistance is that when sufficient communication efforts are made to explain the nature of the possible changes, and the future roles of the decentralizing institutions, the resistance of officials in these institutions tends to drop.¹⁰

Table 5.1 Typical sector ministry concerns and possible responses

<i>Sector ministry concern</i>	<i>Possible response of functional assignment guiding institution(s)</i>
Roles following decentralization	Stress and explain the importance of continuing ministry role in the transferred functions, on policy, coordination, monitoring, technical support and incentivizing
Extent and quality of implementation of functions once transferred	Ensure an adequate initial capacity development strategy; ensure guiding instruments (e.g. standards) are part of the package; ensure that distinction between mandatory and discretionary functions is in place/understood; involve non-ministry actors in forums for monitoring, sharing, learning and adjusting implementation
Ministries may have (unspoken) ulterior motives	Acknowledge fear of unknown and explain what should happen and safeguards (e.g. piloting first, phased approaches); acknowledge loss of legal/extra legal access to benefits (address where possible); acknowledge suspicion of 'empire building' of SNG related coordinating institutions and explain actual role/limits of SNG general guidance of these institutions

Source: authors' compilation.

Proponents of an open and participatory approach to functional assignment, including DP, will need to deepen their analysis of the decentralization arena. This should not be understood to necessarily require long and complicated studies. Reflection needs to be balanced with action, and when interests and motives are not always easy to discern, reversion to a 'satisficing' stance is needed to get on with the work and adjust as necessary in the midst of the doing.

Facilitating tools for the approach alluded to above have existed for some time. Notably, some form of force field analysis should be employed, to clarify who has been for, or against decentralization (and a suitable functional assignment process) and why. This is a useful base from which to identify possible alliances and strategies that might be fruitful. Approaching the preparation of a functional assignment exercise in this fashion is to adopt a 'change management' approach that acknowledges that functional assignment is not merely a technocratic process, but one that is inherently political in many senses of the term and thus requires careful preparation of the preponderance of influential actors to shift them towards wanting change and locking in change.¹¹

The likelihood of designing a proper functional assignment exercise lies in understanding the awareness and readiness to technically engage and the balance of the forces arrayed for or against such a systematic and participatory approach. Specific strategies to reduce resistance and maximize support are likely to emerge from this purposeful approach. This approach is equally relevant to coordinating ministries genuinely interested in mounting a good functional assignment process and to DP that wish to support the process.

Notes

- 1 See for example a recent review of a book on decentralization by Dickovick (2014), who faults the writers precisely on this point.
- 2 Constituency development funds have been in full view in Pakistan, Philippines and India, and are expanding to other countries (van Zyl, 2010).
- 3 As Chapter 1 indicates, functional decentralization is a specific form of deconcentration, or at best a form of delegation to special operating agencies or quasi-state agencies.
- 4 This situation has been observed repeatedly in Latin America, especially Brazil. See the chapters on Latin American examples in Smoke *et al.* (2006).
- 5 See the proposed functions found in the report produced by the ministry (MOEYS, 2015).
- 6 For example, the health sector in Afghanistan is nearly all reliant on NGO execution through DP/Ministry of Health contracts (see Sabri *et al.*, 2007).
- 7 One of the authors was charged by USAID-ICMA at that time to support the associations in preparing for the workshops and lived through the frustration of seeking to prepare members for a process that was not really designed to give them a meaningful role.
- 8 Cheema (2013) notes the dependence of many CSOs in Asia on funding from DP.
- 9 One such example was the Capacity Building Needs Assessment (CBNA) conducted by USAID, GTZ, ADB and CIDA in Indonesia following the 1999 decentralization laws. This cooperation was based on a shared agreement with the government, used a common conceptual approach, and made use of the complementary resources and instruments of the development partners involved. See Rohdewohld (2001) and Lopes and Theison (2003) (Country Case Indonesia).
- 10 See for instance the example offered by Pak Kimchoeun for Cambodia. He interviewed about 100 line-department officials in one province in the context of NCDD-S' preparatory activities. Initially, most of them did not clearly understand what the functional assignment was to entail, and were wary. But in the course of discussions they came to understand what this would mean, and how it might affect their work; the vast majority concluded that the reform was a good idea. (Personal communication, 10 September 2016).
- 11 In this respect, Lewin's three stage approach to managing change continues to be relevant. See for instance Burnes (2004).

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6 Country cases studies in functional assignment in Asia

In the previous chapters we have illustrated our conceptual understanding of functional assignment as a core element of designing decentralization reforms by using concrete examples and indications of good practices from a variety of countries. However, these country examples came only in bits and pieces, in accordance with the particular issue at hand. For policy-makers and practitioners who are relatively new to the field, such fragmented illustration may be insufficient to ground the concept and process of functional assignment. Dealing with a concrete country example in a more holistic manner can serve to demonstrate the concept and its application, highlighting pitfalls and shortcomings, or indicating the diversity of the stakeholder landscape. On the other hand, not all concepts pertaining to functional assignment are in play in every country's reform efforts. Each country experience is different regarding the institutional interests in play and the dynamics between actors; these are not usually transparent and have to be gleaned from observation, analysis and judgement. In view of our proximity to and actual involvement in several processes of decentralization and functional assignment, it makes sense for us to illustrate through case studies how some of the concepts and practices can play out. Our advantage is of course with those countries where we have intensively assisted functional assignment processes. In the following sections we therefore describe functional assignment using four concrete country cases: Cambodia, the Indian state of Himachal Pradesh, Indonesia and the province of Khyber Pakhtunkhwa in Pakistan. Each case follows a slightly different path of narration, but in all cases we try to cover (1) main elements of functional assignment (such as the underlying legal architecture, the typology of functions, processes of functional assignment and their results); (2) the stakeholder landscape and the role of international development partners; and (3) the political economy of reforms. While using available documents and literature to the extent possible and necessary, some comments convey more our personal views and intuitions of why things have happened or have not happened, why actors have behaved this way and not the other, and why some results seem to refute rationality and common sense. Decentralization reforms, in the end, are political reforms, and the actors involved have their own calculations of gains and losses, of incentives and benefits. Opaque policy processes are common,

political entrepreneurship is prevalent, and external observers are sometimes left scratching their heads and trying to make sense of what is unfolding.

6.1 Advisory approach to support functional assignment in Cambodia (2001–2016)

The case of Cambodia is particularly interesting since the government has sought to learn from previous experiences in functional assignment elsewhere, and has put in place perhaps the most rigorous methodology and process of any country (developing, transition or OECD). In fact, our template of a functional assignment process outlined in Chapter 4 is very much based on the Cambodian model. Cambodia has nonetheless struggled to make headway, indicating the significance of the political economy of the decentralization reform. The historical and political context of Cambodia's reforms should not be forgotten: after decades of armed conflict, civil war and the Pol Pot regime which displaced millions of people and extinguished or exiled a generation of skilled and educated Cambodians, Cambodia ten years after the Peace Agreement of 1993 was still rebuilding the state and its institutions. It exhibited weak capacity of the public sector, low levels of social capital and could not draw from any substantial history of working through participatory and democratic institutions. Not surprisingly, the initial phase of decentralization was more about deconcentration to the provincial level; the notion of devolution to levels below the provinces did not appear until 2001.¹ Regarding functional assignment in the post-2008 period, following the establishment of three more levels of elected councils, the role of DP has been persistent and substantial, particularly through the multi-donor SPACE programme,² but also through the sector support provided by ADB, UNICEF and others. In this respect the Cambodian case reveals the extent to which DP can be a positive and constructive factor, combining their different modalities for assistance to maximize their leverage, while also showing their limitations – originating from their institutional mandates, internal political economies, limitations in their instruments and their often short-term orientation.

The functional assignment architecture of Cambodia's SNG laws

In the reform period following the turbulent 1990s, the Cambodian government initially faced the challenge of functional (re)assignment in the Commune/Sangkat (C/S) reforms of 2001. The law establishing the C/S councils³ gave broadly framed functions to the new councils, within a very loosely formulated mandate 'to promote and support good governance by managing and using available resources in sustainable manner to meet the basic needs of its Commune/Sangkat for serving the common interests of the residents' (Article 41). A sub-decree followed in 2002 to elaborate the issue of functional assignment, with the intention to empower C/S with service functions.⁴ However, the sub-decree was vague, and no significant bundle of functions was transferred in that sub-decree or in the ensuing years. Some officials and DP maintained that functions did not

need to be transferred as the C/S were operating based on a ‘general mandate’. In fact, what the C/S were generally doing was encroaching (by ministry invitation or tolerance) on functions that were still clearly held by central-level state institutions. With their meagre financing, these community-development activities of C/S were mostly project-based (e.g. asphaltting of a small road, digging a well), conditioned by the availability of funds (often off-budget funds from DP channelled directly to selected C/S) and did not constitute what would be understood as governance or management of substantial functions. In summary, no structured process of assigning sector functions to the C/S level was ever undertaken.

A larger effort in functional assignment was initiated in the context of the 2008 subnational democratic development reforms, which saw elected councils established at district/municipal, provincial and capital city levels. These reforms were embedded in the Law on the Administration and Management of the Capital, Provinces, Municipalities, Districts and Khans (called ‘Organic Law’), which was passed in 2008 and aimed to increase participation in the political decision-making process and to improve citizens’ access to public services. These aims flowed from the larger policy framework – the National Programme on Subnational Democratic Development (NP-SNDD, 2010–2019), which is the overall policy blueprint for shifting from centralized, bureaucratic control to ‘autonomous’ subnational administrations (SNAs), which are subject to democratic accountability.

The Organic Law provides the legal framework for a government-wide functional review to identify sector functions that will be transferred to each SNA level, along with the financial and human resources necessary to implement the functions. It sets out criteria that in general accord with the principle of subsidiarity – a function should be transferred to the lowest governance unit if it has a high impact on the lives of citizens and if it can be efficiently and effectively implemented. Table 6.1 is a simplified view of the Organic Law’s description of modes and functions typology, including the dynamism allowed (shift between modalities over time for a given function). The term ‘assignment’ in the Cambodian legal framework

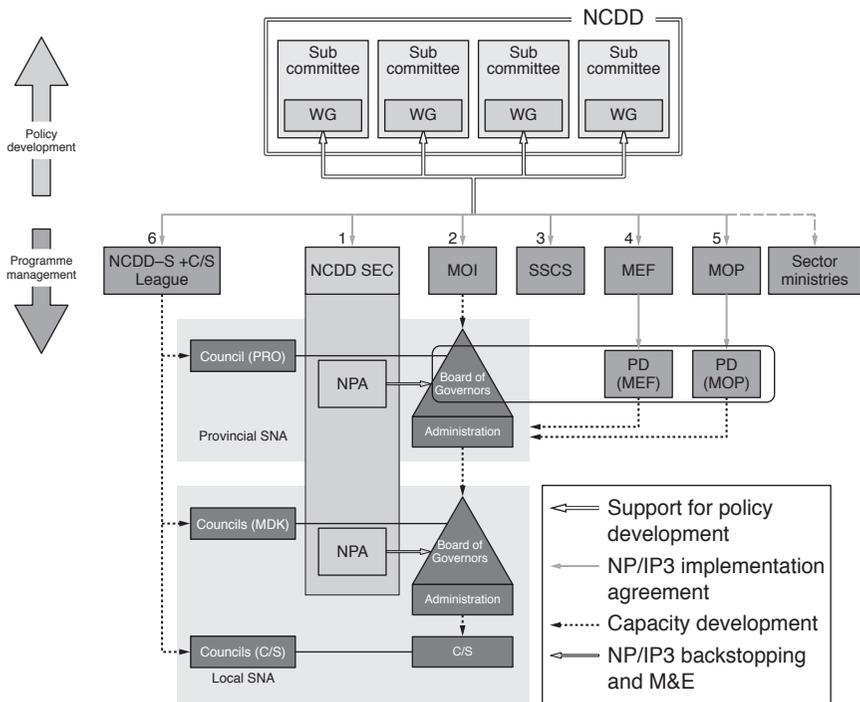
Table 6.1 Relationship between modalities of decentralization and functions (Cambodia)

	<i>Assignment to Council</i>	<i>Delegation to Council</i>	<i>Delegation to Governor/Board of Governors</i>
Obligatory functions	Yes – if can be managed by Council ⇕	⇔ Yes – if it needs considerable central government guidance	Yes – largely for security, legality and human rights issues, and oversight of line offices
Permissive functions	Yes, but Councils can shed these over time with approval	Not applicable	Not applicable

Source: adapted from Ferrazzi (2010).

corresponds to devolution. The special case of deconcentration to an SNG official (the Governor/Board of Governors) is also employed.⁵ A ‘right of initiative’ (sometimes called the ‘general mandate’) can be seen to exist, through the ‘permissive’ functions. But there is ambiguity in how these functions come about, with the law seemingly allowing for both a council initiative and the ‘transfer’ of such functions to councils from central state institutions. As for the assigned or delegated functions, there is little explanation to differentiate the two, and no guidance on which one should be dominant.

The Cambodian decentralization reform process is coordinated government-wide by a sophisticated set-up of institutions, time-bound implementation plans and contractual agreements between government entities (see Figure 6.1). The



C/S: Commune/Sangkat; IP3: Three-year Implementation Plan; MEF: Ministry of Economy and Finance; MOI: Ministry of Interior; MOP: Ministry of Planning; MDK: Municipality, District and Khan; NCDD: National Committee for Subnational Democratic Development; NP: National Programme; NPA: National Programme Advisor; PRO: Province; PD: Provincial Department; SSSCS: State Secretariat for Civil Service; SNA: Subnational Administrations; WG: Working Group.

Figure 6.1 Policy development and implementation relationships of NCDD.

Source: NCCD-S (2010: 47).

National Committee for Subnational Democratic Development (NCDD), an inter-ministerial committee, is tasked with guiding decentralization, including ‘the development of national arrangements *for sector development and functional reassignment* [our emphasis]’ (NCDD, 2011: 30). Supported by its secretariat (NCDD-S), the NCDD coordinates the reform and is responsible for designing a government-wide approach to complete the functional review process, outlining the steps and timeframe and the associated institutions and techniques which have been designed through a consultative and transparent process between national and subnational government bodies. The NCDD is chaired by the Minister of the Interior who is also one of two Deputy Prime Ministers – a fact that underlines the political importance of the SNDD reforms.

Regarding the sector functions to be transferred, ministries started functional mapping (the initial stage in the functional assignment process) as early as 2010. The NCDD did much to encourage adequate internal organization of ministries to guide their analytical and decision-making processes; working groups on decentralization and deconcentration (D&D) were set up in each participating ministry, with high level ministry participation and support. The early work of the NCDD focused on reaching a common understanding internally and with the first wave of ministries on the scope and scale of a functional review exercise; assessing the readiness of the ministries to engage in functional review; and determining the capacity strengthening support required to undertake functional review and subsequently to implement the transfer of functions. The NCDD-S also entered into financial contracts with the leading ministries to provide them with resources to undertake the required analysis. In this support effort, GIZ had its key connection to NCDD-S, while ADB and UNICEF were well anchored to sector ministries. This launching step was initiated with considerable capacity development for ministry working group members to create ownership and to ensure that they have the confidence to lead the functions mapping, as well as the overall process of functional assignment. Much of the capacity development support at this time again came from the SPACE programme.

The NCDD phased the functional assignment process, beginning with five key ministries: Education, Youth and Sport (MoEYS), Health (MoH), Rural Development (MRD), Agriculture Forestry and Fisheries (MAFF), and Social Affairs, Veterans and Youth (MoSVY). These were joined later by the Ministry of Environment (MoEnv). Additional ministries were to join the effort at later stages. In addition, the possibility of supporting Councils to undertake permissive functions was open to any ministry that had an interest for SNAs taking a role in its sector. However, the concept of ‘permissive functions’ was not clear for many years following the Organic Law. Some interpreted the concept to be the same as ‘general competence’ (or general mandate in the Cambodian usage) but there are no grounds in the Organic Law for such a broad conception. The Organic Law’s ambiguity on the nature of permissive functions made it difficult for ministries to get behind the concept and operationalize it.⁶ In general, it was seen as ministries ‘allowing’ SNAs to undertake projects in areas that are formally the responsibility of the ministries. For their part, the resource strapped

ministries were happy to see SNA spend in their sector as this meant an infusion of additional resources. (The SNAs expenditures were typically funded through DP financing.)

While mapping processes for all of the leading ministries have been of reasonable quality and were completed in one or two years' time, the subsequent step of functions review, where functional reassignment is explored and proposed to the NCDD, has seen many delays and few completed reports or formal submissions to NCDD. This situation points to a reluctance by ministries to transfer their functions, personnel and resources. Equally, it points to a lack of, or inconstant, overall political commitment to decentralization policy at the highest political level. Despite having sufficient technical support and sufficient time to work through functions mapping and functions reviews, proposals by sector ministries were not submitted formally to the NCDD; instead, some informal copies were floated in NCDD-S and DP circles. This approach (ignoring the formal system and seeking some kind of informal stamp of approval) is not unusual in the context of a government that is dominated by one party, and seeks consensus rather than open conflict. Hence, these informal proposals must be seen as trial balloons, meant to test the waters while retaining the possibility of distancing the leadership of the ministries from the specifics of the proposals. The proposals put forward in this way were in fact quite weak, reflecting poorly the government policies in the NP-SNDD (and its first three-year implementation plan) and the Organic Law.

Somewhat surprisingly, the political scene in Cambodia in 2014–2015 became more propitious for decentralization, as a national political awakening took place on the heels of the 2013 elections that nearly ended the domination of the Cambodian People's Party (CPP), which had ruled the country since 1985. While the political actors were rather fractious, and reform ideas not entirely clear or ordered, grassroots call for political change in Cambodia became louder. Within this context, the CPP appeared more eager than in previous years to make itself relevant and legitimate. The value of moving forward on reforms that had been promised as attaining improved services, enhanced participation and democratic life became more (or once again) apparent and attractive.

In April 2015, ministries were asked by the Prime Minister himself to put forward proposals for functions – with the implication that these should be substantial functions. This high-level signal had an effect. For instance, the previously long list of rather trivial (and essentially unfunded) functions put forward by MoEYS in its initial informal proposal was transformed into a more substantial list of functions to be transferred to the district/municipal subnational administrations (SNAs), with some involvement of Commune/Sangkat as well. Functions to be transferred included the management of Primary School Education, the management of Early Childhood Education (ECE), and the management of Non-Formal Education (NFE). In some respects, the education proposals were still tentative. The transfer would be phased, unfolding over the period 2016–2019, beginning in just one province in the first year. The NCDD approved a draft sub-decree to transfer the three functions mentioned above in August

2016, and the draft awaits the signature of the Prime Minister as of the time of writing (November 2016).

The Ministry of Health (MoH) also became more adventurous, accepting that primary health care should shift to the district/municipal level, and even beginning a discussion of whether the entire ‘operational health district’ functions (some now held in special operating agencies straddling administrative boundaries) should somehow be transferred. The previously lightly floated possibility of realigning health catchment areas to be congruent with districts/municipalities was revived. Alternatively, the MoH appeared willing to see the hospital component placed at provincial level (or transferring both primary health care and the hospital level care to the provincial level). Another possibility floated by the MoH was that of proceeding with the devolution of those operational districts with catchment areas that are congruent with a district subnational administration boundaries (a one-to-one match).⁷ These possibilities were a much bolder proposition than the tepid steps contained in the limited pilots that had begun in 2014 (e.g. the pilot funded with DFAT, see NCDD, 2014), which were centred on community and SNA monitoring of health services that stayed firmly in the ministry’s hands.

As these two main ministries (health and education) recrafted their proposals, the Ministry of Environment actually moved faster,⁸ shifting solid waste management in urban centres to municipalities, through a sub-decree.⁹ Additionally, four other functions were delegated to SNAs; natural protection area management, natural protection area community management, environmental education and mainstreaming of climate resilience. This delegation was achieved by the ministry through the use of ministerial decrees (*Prakas*).¹⁰ These functions came with only a very modest amount of funding attached (for solid waste management largely). While the scope of the delegated functions remains unclear, the solid waste management is of some importance to municipalities.

In late 2014, the Ministry of Rural Development put forward its proposals as well, encompassing the following functions to be transferred to the district level: family food security enhancement, community latrine and public toilet construction and education on basic health care, water supply system maintenance, traffic survey on accessing rural road and traffic signboard installation, and rural road routine maintenance. Compared with the education sector, it remained cautious and reluctant to transfer substantial functions. For instance, in rural water supply, it agreed on the transfer of the operations and maintenance function for rural water pumps to a handful of districts in two provinces on a two-year pilot basis – a function that hardly attracts any allocation in the ministry’s annual budget.

Over the late 2015 and early 2016 period, the NCDD appeared more assertive, urging the ministries to formally submit their proposals, and pushing back on some of the suggested functions or issues. For instance, in the above case of the MRD, NCDD is pressing the ministry to also transfer the construction and periodic maintenance of roads connecting communes to districts. The invigorated NCDD has nonetheless not been able to push the ministries to be clear on the designation of the functions, whether they are to be assigned (devolved) or

delegated. Moreover, it is not clear if the SNAs must implement (obligatory aspect) and if so to what standard. These choices in modalities and character of the functions will have large implications for financing, supervision and support. It is not clear if the ministries are still uncertain about the conceptual aspects of functional assignment or whether they are simply unwilling to lend clarity at this stage.

Conceptual and technical challenges in Cambodia's functional assignment

Cambodian officials have been reluctant to recognize the weaknesses in the policy and legal framework for decentralization (such as the NP-SNDD 2010–2019 and the 2008 Organic Law). Issues that have been problematic include the difference between the two modes of ‘assignment’ and ‘delegation’. The nature of permissive functions (e.g. what makes them different from obligatory functions?) has never been adequately determined. Neither has the meaning of the ‘general mandate’ (mentioned by officials and DP but not actually found in the Organic Law) been revealed. Other unresolved issues refer to C/S functions (should Communes/Sangkat obtain transferred functions or continue to be ‘permitted’ to dabble in functions still held by the ministries?), the role of the district/municipality level (should it be a ‘general purpose local government’?) and the legal instruments for transferring functions, i.e. should the instrument to effect transfers of functions be as open as permitted by the absence of any precise regulation in the Organic Law, i.e. involve any instrument, including ministerial decrees? For a number of reasons (see below on political economy) the NCDD could not act as a proper policy development forum to resolve these issues. As a result, conceptual gaps and multiple interpretations have hampered implementation of functional assignment. Officials have tended to just focus on implementation processes rather than provide the needed conceptual clarification that could give coherence and direction to the implementation.

Other technical and political issues impacted negatively on the effectiveness of the functional assignment process since it began in 2009. Many of these have to do with the general limited capacity of state institutions in Cambodia and are not specific to functional assignment. While NCDD-S could make use of the DP assisted legal database setting out current functions, other data for functions mapping was difficult to collect, particularly on resources attached to specific functions and to specific levels. Linking functions with budget data was a major challenge. The protracted process meant that staff turnover occurred frequently in the ministries and NCDD/NCDD-S, which further slowed progress as new people had to be made familiar and brought on side. Despite formal roles in ministerial D&D working groups, senior officials of the sector ministries were often not well aware of discussions and did not show strong political support. Overall, decentralization concepts and tools were very new for most officials and took time to be absorbed. The capacity to manage the functional assignment consultative and analytical process in the ministries, and overall in the NCDD and its secretariat (NCDD-S), was low and took time to build. Coherence in the support

provided by DP also took some time to build, and did not hold up in some crucial aspects (see below).

Little support from outside the government administration was forthcoming to speed up the functional assignment process. Weak opposition parties failed to take up the decentralization theme in a meaningful way, while weak civil society did not have the preparation to engage in the discourse and to hold government accountable for policies. Leaders of the existing SNA association remained passive and are beholden to government, and thus unable to prod government to stick to the policy/legal framework. And as always, there is the ‘human factor’: poor chemistry between individual leaders and political factions represented in the NCDD hampered the development of policies and consensus-building on key issues of the SNDD reforms.

DP support for functional assignment

UNDP provided some early support in functional assignment, largely by providing the advisory support that was crucial in the preparation for the 2001 law establishing Communes/Sangkat councils. GTZ/GIZ was also present at that time and made some modest contributions to the law; subsequently it has been the main DP providing conceptual support to the government of Cambodia on issues of functional assignment. While it was not able to assist the government in following through on the promise of transferring functions for the Communes/Sangkat Councils, its analytical work and engagement with stakeholders indicated the scope for such transfers (limited in view of the small size of the Councils), and how to empower the Councils within the scope of the roles they might be able to play.

More ambitious and intensive DP support to functional assignment was provided in the context of the 2008 Organic Law, where the main modality to empower the new Councils was to be transferred functions. As early as 2009, GTZ, the implementing agency for SPACE, responded to a NCDD request for initial inputs on a possible methodology for functional assignment by drawing on its experiences in other Asian countries (see GTZ, 2009). The SPACE component on Strengthening Responsiveness: Functional Assignment supported the NCDD in developing an overall methodology for functional assignment in concert with other DP, in particular UNICEF and ADB. This work fits within the overall Cambodian government planning for furthering the NP-SNDD, particularly through its three-year implementation plans (called ‘IP3’) – the first being the IP3 2011–2013. It is through this more operational planning that DP were to align their support with government policy, both in terms of their broad budget support and technical or financial support for specific initiatives. At this operational level, DP were expected to coordinate and devise a suitable division of labour in response to NCDD guidance and requests.

Within the DP constellation, SPACE was limited to working with the NCDD/NCDD-S. The idea was to empower this body in its coordinating function for the policy on subnational democratic development (including in the functional

assignment process) in relation to ministries and other state institutions. This gave clarity and a feasible scope to its efforts, but it also introduced some limitations. Principally, SPACE could not directly support sector ministries which were unfamiliar with functional assignment and had established D&D Working Groups to manage the process although these were very much in need of technical and process support. GTZ/GIZ (as implementing agency for SPACE) had to mobilize direct support of other, sector-based projects and other DP to assist the sector ministries. Cooperation with UNICEF was generally good, while the discrete technical assistance modality of ADB (generally lasting a few months and with gaps between initiatives) made that cooperation on functional assignment more difficult, even if ADB specialists from headquarters made efforts to bridge these efforts with ongoing and frequent dialogue. The influence of ADB's policy-based lending is difficult to gauge; stipulations on functional assignment, which were included in the policy matrices used for assessing progress and thereby triggering the disbursement of further tranches of the loans, are without doubt a factor that policy-makers take into consideration.¹¹

Over time, NCDD-S in particular became more technically proficient and more confident in its engagement with the ministries – in part due to the SPACE training and ongoing support. However, SPACE was not able to nurture a working relationship with the NCDD itself, namely the senior ministry officials that formed the NCDD Sub-Committee on Functions and Resources. Admittedly, this sub-committee, and others, rarely met and did not function as intended. A lack of senior level engagement (within the sub-committee structure or outside it) indicated that the high reliance of NCDD on DP funding did not necessarily translate as intense dialogue or influence on policy-making. This meant that SPACE was at times in the dark regarding the fate of its inputs, or what the thinking of the NCDD might be in terms of commitment to the functional assignment process, to the dialogue with other parts of government, and to the pace of the larger decentralization reform. Having said that, the technical advisors of SPACE (national and international) were able to work their way up the NCDD-S chain of command over time, gaining more access to and trust of senior levels, particularly in the 2012–2014 period.

Staying with the positives, SPACE was seen to be a patient partner, willing to persist with its engagement while allowing the NCDD/NCDD-S to maintain ownership and set the pace of technical cooperation. Largely because of this posture, SPACE was at times called to be intensely involved in the preparation of policy/legal instruments pertaining to functional assignment. This has been seen in the preparation of the three manuals making up the overall functional assignment process: Functions Mapping (RGC, 2012), Functions Review (RGC, 2013) and Effecting the Transfer of Functions (RGC, 2014),¹² and was also reflected in the sub-decrees on the general process of functional assignment and on permissive functions. The latter (completed in 2014) finally provided some clarity on permissive functions and their relationships to international concepts like general competence/general mandate and the right of initiative of sub-national government.

The support work of DP was nearly always marked by a certain level of dissonance (if not outright contradictory advice), reflected for instance in inputs of advisors supporting the preparation of the draft three-year implementation plan for NP-SNDD (the IP3) and in the inputs for the design of ‘functions’ pilots. The IP3 2011–2013 deviated from the NP-SNDD focus on transferred functions, while the pilots were entirely confusing on which kinds of functions to pilot, and what the impact of piloting for the further functional assignment process should be. Moreover, the IP3 2011–2013 did little to discourage direct ad hoc DP funding of SNAs or ministries. When the functional assignment process appeared to stall in 2014/early 2015, DP recognized that their facilitating role (and even development financing) gave them only modest leverage in encouraging the avowed political reforms of the Cambodian government. Domestic forces and political strategies of key actors were more determining. Some DP made their expectations clearer in some respects, while others sought the compromise of small steps – encouraging pilots for instance. Over the period 2014–2015, very modest health and rural sanitation pilots were started, funded by Australia and the World Bank, respectively.

DP have as a block failed to build non-government stakeholders in the functional assignment process. Weak voice and accountability in the functional assignment process was in part due to a very low engagement of civil society organizations and academia. These actors could potentially add scrutiny, analysis, advocacy and capacity development initiatives for central government or SNAs. But they have not built up their capacity to do so appreciably, and DP have not made a concerted effort to support them to do that. This leaves the conversation on functional assignment largely to central government and the always changing and often inconsistent or divided DP community.

The support that can be provided by DP (even when harmonized) is ultimately limited. There is a need for more intensive, frequent and quickly mobilized support that needs to come increasingly from Cambodian sources. In our view, a bigger and more sustainable payoff to DP efforts could come from investments in more stable and country-rooted academics, association of councils and NGOs. This will generate a better discourse, increase the intensity of support and scrutiny, and generate more country-owned and sustainable solutions. Getting to this stage will require purposeful capacity development investment and a long term perspective.

Political economy of functional assignment in Cambodia

The Cambodian experience underscores that the existence of formal policy and legal support is a necessary but not sufficient condition for real progress in functional assignment. The strong and explicit policy and legal framework did allow DP to legitimize their support, but in the course of the cooperation DP found that there was considerable capacity development required, widespread concerns in high places about relinquishing power and formidable resistance to taking risks in concrete action. Much of the concerns and resistance expressed itself as

ministry-level foot dragging, demands for ‘further guidance’, protracted processes and other stalling tactics. Some of the technical analysis, aided by SPACE tools, was in the end quite acceptable in many key respects (mapping, matching to resources, selecting criteria for choosing functions to be transferred), but even in these cases (e.g. in the health and education sectors) ultimately the (informally) proposed transfers were for a long time not meaningful or well argued.

The Cambodian experience underscores that functional assignment is politically sensitive as it determines roles and resources. It is not unusual to see inconsistency in policy and implementation, particularly when policies are generally a nod to external pressure. Even when substantial support is found domestically, decentralization is an arena where various interests coalesce or clash; political parties, central and local politicians, the bureaucracy, professional associations (health and teacher unions especially) and communities/civil society. It should be no surprise that in Cambodia, the dominant party (CPP) has split tendencies – on the one hand accommodating democratic reforms while on the other hand keeping control of political bodies (including SNAs) and maintaining access to off-budget revenue that it can channel through the party structure (rather than through SNAs).

Because the government feels it needs to show some progress, it has favoured models – like the much-acclaimed and publicized ‘One Window Service Offices’ – or cautious steps (like piloting). Even these innovations could be significant, but they have been designed in Cambodia to stay aligned with the main informal policy of ministries, which is to retain central control. Having said that, the government is also not monolithic, and probably less so over time, and thus it is important to distinguish the groupings within government, and even within the NCDD itself. The NCDD’s lack of focus on decentralization policies (i.e. the distractions with managing rural/decentralization projects or too soft an approach on functional assignment) is tied to the same kinds of divisions between factions (progressives vs conservatives, link to political parties, clean versus corrupt and other characteristics or affiliations) as found in ministries.

The challenge for DP supporting decentralization is whether to accept very modest and non-linear steps as part of a slow journey to something more significant, or to withdraw. The pace has been exceedingly slow if the perspective encompasses the period beginning with the 2001 C/S reforms; in the 14 years since then there has not been any meaningful transfer of sector functions at any council level. But if DP are in it for the long term, the question becomes one of how to respectfully combine dialogue and pressure, and to offer assistance to encourage those next steps in the evolution of decentralized governance that meets the voice, accountability and participation objectives promoted by DP.

Ultimately, the pace and depth of functional assignment (and of decentralization in general) depends on domestic forces. Students, garment workers, farmers disposed of land and the emerging middle class will in time push government reforms in Cambodia. This reform movement may result in government accepting a more level-playing field for all parties, and accounting for all revenues and expenditures, with consideration for what SNAs should be doing. This will

unfold all the quicker as the central government is forced to introduce or raise local property taxes, which works everywhere in the world to galvanize citizens into caring about where their money goes and how well it is used (as opposed to SNAs relying on central grants and foreign funds).

Conclusion

If the Cambodian government is to be judged on the basis of a set of approved and transferred functions, then its decentralization reforms will be deemed a failure up to now. But there is no doubt that the discourse on decentralization has been salutary, particularly on the purpose and rights of SNG (see for instance Particip GmbH and EuroPlus Consulting & Management, 2016) and that the NCDD-S has gained capacity to steer the decentralization process. Moreover, through the clarification of permissive functions there is at least some opportunity for Councils willing to scramble for resources to stay active and responsive to their citizens.

DP can take heart in having facilitated the development of a robust functional assignment process in Cambodia, drawing from international practices. But DP also (re)learned how functional assignment is bound within the larger political reforms and currents. A robust functional assignment methodology and process is no guarantee of meaningful results. DP did adjust to some degree to this reality. Their focus on the development of a Cambodian suitable model of permissive functions could be seen as the building of a stepping stone to a more conventional reassignment of functions down the road. This solution had its risks in terms of halting progress altogether or in adding complexity, and confusion. But even so, the engagement was maintained, and as a result NCDD, SNAs and ministries delved deeper into functional assignment issues. When political signals for a more robust (transfer) option were given in 2015, the actors were more ready to take advantage, in part because of this persistent DP engagement. Even so, the jury is still out on whether substantial transfers of functions, nationwide, will occur within the life of the NP-SNDD, i.e. until 2019.

6.2 Functional assignment in Himachal Pradesh/India (2008–2009)

Background to decentralization in India

India has been termed a ‘quasi-federal’ state (Watts, 1966) and a ‘centralized rather than decentralized federal system’ (R. Saxena, 2013) because the features of its federal arrangements have tended to give the Centre (or Union) far reaching powers and competences vis-à-vis the States and Union Territories (UT) that make up the federation. Among those centralizing features is a long list of exclusive functions reserved for the Centre, powerful national bodies like the Planning Commission¹³ and the National Development Council, central dominance in taxation and public expenditure, and constitutional provisions that allow the

Centre to interfere in state politics (see Swenden, 2012).¹⁴ Initially, the constitution paid little attention to local governments, i.e. the level below the state level.¹⁵ Article 40 merely mentions that the ‘state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government’. It was only in 1993 that the 73rd Amendment of the constitution created the legal basis for a rural local government system, establishing three tiers of local government bodies (the so-called *Panchayati Raj Institutions*/PRI).¹⁶ Local government being a state subject, the detailed legislation implementing the constitutional amendment was subsequently passed by most states and Union Territories within a reasonable period of time, at least as far as the mandatory provisions of the amendment (like establishing the PRI, regular conduct of elections, reservations for women, Scheduled Castes and Scheduled Tribes, the establishment of State Election Commissions and State Finance Commissions, the establishment of District Planning Committees) were concerned (Chaudhuri, 2006; Aiyar, 2015). The aspect most relevant for functional assignment, i.e. the transfer of functions and responsibilities from the state level to the local government level, was stipulated as a discretionary provision. Not surprisingly, in 2001 a national *Task Force on Devolution of Powers and Functions to Panchayati Raj Institutions* concluded that defining the devolved powers and functions of local government was as one of the weakest aspect of implementing the constitutional amendment (MoRD, 2001). Other observers shared similar sentiments, saying that ‘in most states there has been very limited progress in terms of administrative and financial devolution’ (Chaudhuri, 2006: 187). Analysing the situation in the Indian state of Madhya Pradesh, McCarten and Vyasulu (2006: 138) concluded that ‘panchayats have limited fiscal resources and administrative discretion and have often acted as mere agents of the state government with delegated authority’. The same could be said about other states as well, perhaps with the exception of Kerala and West Bengal, which have been mentioned consistently as front runners for effective devolution.

The long-time prevalence of centrally sponsored schemes (CSS) in the sectors has been viewed as a main impediment to achieving real decentralization in India. As the Union funds for these sector schemes were passed on to the states with detailed guidelines how to spend them, the states had little discretion – and no appetite – to transfer sector funds to the local governments. Instead, in most cases state departments were made responsible for managing the funds while local governments were included mainly to the extent that they could identify beneficiaries (for instance in cases of social welfare programmes), could help in planning (for instance of infrastructure) and could mobilize public endorsement for state-formulated programmes.

In many cases, these centrally sponsored schemes worked through so-called ‘parallel bodies’ like user groups, civil society organizations, registered societies and similar outfits, thus bypassing (or better: ‘out-crowding’) the elected bodies in whose functional domains they operate.¹⁷ Despite repeated efforts to modify the way CSS were planned and implemented (especially after establishing the

Ministry of Panchayati Raj at Union level)¹⁸ no substantial modification to safeguard the functional role of PRIs could be achieved: ‘almost nothing was done by the central Ministries/departments concerned to review CSS and bring them in conformity with “the import of constitutional provisions in letter and spirit”’ (Expert Committee, 2013 Vol. I: 42).¹⁹ It remains to be seen whether recent changes to the system of CSS will bring wider discretion to the states in the use of these funds, and enlarge the option for state governments to pass on such funds to the local governments.²⁰

For the first decade or so following the 73rd Amendment little was done by the Union government to speed up the devolution process in the States. The setting-up of a Union Ministry of Panchayati Raj (MoPR) in 2004 gave new impetus to the national decentralization agenda. One of the first activities of the new ministry was to organize a series of national round tables to review various aspects of the decentralization process and to develop related action plans (MoPR, 2004). In 2006–2007, a series of Memoranda of Understanding (MoU) were signed between the national government and the states, in which the state governments committed themselves for specific actions to take the decentralization agenda forward. Activity mapping was a key issue in these agreements; in 2008/2009 the MoPR issued a number of papers and concept notes providing guidance to the States and UTs on how to conduct activity mapping (see below). However, implementation was again weak and follow-up by the MoPR inconsistent. Other main initiatives of the MoPR intended to push state government into action were a Model Act on PRI, which was meant to guide state legislation²¹ and a national capacity development framework (MoPR, 2010). The Union Ministry furthermore commissioned the formulation of a devolution index, ranking the states along several parameters indicating progress in operationalizing the amendment. The devolution index was fine-tuned and modified several times; the last version was published in 2015.²² ‘State of Panchayat’-Reports (published in 2006, 2008 and 2010) also attempted to take stock of pertinent issues in decentralization and to suggest action points to the state governments. One powerful tool of the MoPR was its own Backward Regions Grant Fund (BRGF), in a way its own ‘centrally sponsored scheme’, which included involvement of the PRIs at all levels and an integrated, bottom-up district planning process as a precondition to access funds.²³ Commemorating 20 years of the 73rd Amendment, in 2013 the Ministry constituted an Expert Committee which conducted a comprehensive assessment of devolution in India and came up with a number of recommendations.²⁴ However, the apparent lack of interest of Prime Minister Modi’s BJP government in issues of local government gives little hope that the Expert Commission will have a significant impact on the further deepening of devolution.²⁵

Assessing decentralization in India is complex because the situation between the states varies substantially.²⁶ This could already be seen in the first (and in his own words ‘crude’) devolution index suggested by Chaudhuri (2006). The Devolution Indices commissioned by the MoPR since 2006 indicate again the differences and shifts in the ranking of the states. Also the 2013 Expert Committee

highlights repeatedly the diversity of devolution in the states. Kerala normally comes out as the state that has progressed most in empowering local governments, providing them with substantial public funds for own decision-making and decentralizing management responsibility for a significant share of public employees.²⁷

Devolution in Himachal Pradesh

Himachal Pradesh was one of the first states to introduce state legislation following the 73rd Amendment. In 1994, the *Himachal Pradesh Panchayati Raj Act* was passed by the State Assembly establishing a three-tier system of rural local government bodies.²⁸ Most of the mandatory stipulations (like regular elections, reservations for women, Scheduled Castes and Scheduled Tribes, the setting up of State Finance Commissions and District Planning Committees) were implemented, earning Himachal Pradesh a middle rank in the various devolution indices since 2006.²⁹

While the formal setting of the local government system in the state looks satisfactory, the assessment of its performance and functionality projects a less encouraging picture. Sharda (2011) refers to State Finance Commissions' reports indicating the failure of many Panchayats to carry out their statutory functions (even minor ones like maintenance of paths and the construction of toilets and drains). Referring to data from 2000 to 2005 he concludes that 'an insignificant number of Gram Panchayats' has been performing the devolved functions. Irregular meetings and lack of coordination between rural and urban bodies undermined the effectiveness of the District Planning Committees. Overall, Sharda summarizes that the PRIs in Himachal Pradesh are still the 'agencies of the Central and State Governments to implement their programmes and schemes' (p. 245), and that 'in practice, the entire system is still centralized' (p. 246).

In 1996, the state's Department of Panchayati Raj (DoPR) had notified 15 subject matters where functions were to be given to the PRIs, especially at the Gram Panchayat level.³⁰ Assigned functions included, among others, micro-level planning, the monitoring of infrastructure works and the selection of beneficiaries of social welfare programmes. This notification was to be followed by specific notifications and administrative orders from the sector departments. While some departments did issue notifications to their line staff identifying limited functions to be transferred to PRIs, there was little support forthcoming on how these were to be interpreted and what the PRIs themselves could expect on the basis of the notification. The transfer of staff or funds from specific sector departments did not take place at all. According to State Government officials, one of the reasons for this implementation gap was the lack of involvement of the sector departments in preparing the Activity Map; as it was the DoPR which had drafted the document, the sector departments did not feel obliged to implement its provisions. Overall, the assessment of government officials was that the 1996 Activity Map did not help in clarifying the distribution of tasks and functions between the levels of government in the state (CP-PR, 2008b). It was felt that a

notification alone did not provide the necessary methodological direction to undertake activity mapping for any department. In addition, the fact that the DoPR had taken it upon itself to issue a notification to other departments to work out the functions, functionaries and funds to be devolved to PRIs, did not impress the departments that they were ultimately responsible to take the agenda forward. Similar comments could also be heard from elected representatives of the PRIs (Dwivedi *et al.*, 2009).

The functional assignment architecture in India and Himachal Pradesh

The constitutional basis for functional assignment (which in India has been termed ‘Activity Mapping’) can be found in Article 243G of the Constitution, which reads as follows:

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified herein, with respect to: a) the preparation of plans for economic development and social justice, b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

In relation to its functional assignment architecture, key terms or concepts that point to its scope in this provision are ‘*to function as institutions of self-government*’, ‘*devolution of powers and responsibilities upon Panchayats*’ and ‘*with respect to: (a) the preparation of plans for economic development and social justice, (b) the implementation of schemes for economic development and social justice*’. The first item (*to function as institutions of self-government*) contains a whiff of a general mandate as discussed earlier (Chapter 3, section 3.3) but this notion is not strong enough and too bounded by other stipulations. The second item clarifies that the power and responsibilities of the PRI are devolved from higher levels but do not exist in their own right as is the case in other constitutions.³¹ The third item indicates the scope of jurisdiction that the PRI are expected to cover: ‘*economic and social justice*’ is a wide field (especially in a country as economically and socially diverse as India) and can potentially include areas like health and education, social welfare and income distribution, but also areas like infrastructure development, employment generation, local economic development, and the promotion of investment, vocational training and skills development, strengthening the economic sectors such as agriculture, natural resources, manufacturing and industry, etc. Here, the expected role of PRIs is both the planning of activities leading to economic development and social justice, and the implementation of such schemes; in other words, the

stipulation includes a pro-active role of PRIs that covers the whole cycle of public policy.

The Eleventh Schedule of the Constitution lists the functional areas (called ‘subject matters’) in which responsibilities can be devolved to the local government bodies (see Box 6.1). In terms of its functional assignment architecture, the Eleventh Schedule follows the positive list model. The formulation of the Eleventh Schedule is unsatisfactory insofar as the subject matters listed are of very different nature, scope and complexity: sometimes they refer to a whole sector

Box 6.1 Subject matters that can be devolved (India)

- 1 Agriculture, including agricultural extension.
- 2 Land improvement, implementation of land reforms, land consolidation and soil conservation.
- 3 Minor irrigation, water management and watershed development.
- 4 Animal husbandry, dairying and poultry.
- 5 Fisheries.
- 6 Social forestry and farm forestry.
- 7 Minor forest produce.
- 8 Small scale industries, including food processing industries.
- 9 Khadi, village and cottage industries.
- 10 Rural housing.
- 11 Drinking water.
- 12 Fuel and fodder.
- 13 Roads, culverts, bridges, ferries, waterways and other means of communication.
- 14 Rural electrification, including distribution of electricity.
- 15 Non-conventional energy sources.
- 16 Poverty alleviation programme.
- 17 Education, including primary and secondary schools.
- 18 Technical training and vocational education.
- 19 Adult and non-formal education.
- 20 Libraries.
- 21 Cultural activities.
- 22 Markets and fairs.
- 23 Health and sanitation, including hospitals, primary health centres and dispensaries.
- 24 Family welfare.
- 25 Women and child development.
- 26 Social welfare, including welfare of the handicapped and mentally retarded.
- 27 Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
- 28 Public distribution system.
- 29 Maintenance of community assets.

Source: https://india.gov.in/sites/upload_files/npi/files/coi-eng-schedules_1-12.pdf (accessed 17 June 2016).

(e.g. ‘agriculture’ or ‘education’), sometimes they are programme-based (e.g. ‘poverty alleviation programmes’), and sometimes they refer to institutions (‘libraries’) or administrative systems (‘public distribution system’). There is also no distinction between obligatory and discretionary functions and no indication of principles or criteria that states (whose task it is to translate the Eleventh Schedule into concrete transfer of functions) are expected to use. The weakest aspect – as has been pointed out by many observers – is of course the use of the word ‘may’ which leaves the ultimate decision whether to transfer functions, and which ones, to the individual states. The 2013 Expert Committee found that most states in India:

have not devolved clearly the functions, its concomitant funds and functionaries ... whatever functions have been devolved, the same has not been done in most cases through supporting legislation. Local governments are still considered subordinate entities to States, largely entrusted with agency functions.

(Expert Committee, 2013, Vol. I: 78f.)³²

Because a meaningful transfer of functions and responsibilities did not happen in most states, the issue of devolving functions to the PRIs became a key concern of the Union Ministry of Panchayati Raj after it had been carved out of the Ministry of Rural Development as a separate ministry in 2004. One of the national round tables mentioned above focused on activity mapping, and between 2006 and 2009 the ministry issued a number of concept papers and guidelines for the states on how to do activity mapping as a prelude to an effective transfer of substantial functions. The catch phrase of the debate was the ‘3F’, i.e. ‘functions’, ‘funds’ and ‘functionaries’ that need to be devolved to the PRIs as an integrated package in order to make devolution happen.

The most comprehensive guideline was a circular issued by the MoPR Secretary dated 27 April 2009 on ‘Guidelines for Devolution of Functions, Funds and Functionaries (3Fs) to the Panchayati Raj Institutions (PRIs) through Activity Mapping’ (MoPR, 2009b). The conceptual understanding of activity mapping as described in this document is in several dimensions similar with our own normative model of the functional assignment process (see Chapter 4): *First*, it shares the understanding that the subject matters listed in the Eleventh Schedule of the constitution will not be devolved ‘wholesale’ to the PRIs, but that they need to be unbundled, i.e. disaggregated into ‘services, activities and sub-activities’ which are then assigned to the appropriate levels of government (ibid.: para. 6). This is in line with our understanding that in decentralization normally it is not whole sectors that are transferred from a higher level of government to a subnational government entity but certain elements of these sectors; the approach is similar to what we call ‘vertical unbundling’, a process that reveals which level of government has which broad functions/services in a given sector. While we prefer to focus this vertical unbundling on functions (understood as larger packages of services and regulatory roles), in India the term ‘activities’ has

become common. *Second*, the MoPR concept propagates the use of principles as guidance in assigning disaggregated elements of the subject matters to PRIs; the circular mentions the principles of ‘public finance and public accountability’ and ‘the governance principles of Subsidiarity, Democratic Decentralisation and Citizen-Centricity’ (ibid.: para. 6). Some of these principles we use as well (like subsidiarity and accountability, the public finance principle is just another formulation of what we call ‘economies of scale’ and ‘externalities’), others (like ‘democratic decentralization’ and ‘citizen centricity’) require more detailed explanation to be of use in an actual unbundling exercise.³³ The circular does not indicate a particular order of priority of these principles, nor does it mention that there can be trade-offs in the use of such principles. *Third*, the circular conveys the understanding that activity mapping is not a one-time exercise but has to be done continually (ibid.: para. 5). *Fourth*, the circular indicates that the Activity Map requires legal strength by issuing a detailed Government Order, and that further orders from the line departments are required to make transfers fully operational. This resonates well with our approach that sector departments need to take a lead in functional assignment with appropriate guidance by those government entities that have overall responsibility for the decentralization process. It also emphasizes the importance of creating a proper legal framework for devolution which is much more than having a local government act. *Fifth*, the circular states clearly that devolving functions need to be matched by devolving funds and functionaries. For instance, Annex III of the circular lists administrative and service institutions which might come under the control of one of the three tiers of PRIs as a consequence of devolving functions, and Annex IV lists the corresponding officials who could be transferred.

Clear explanations about the ‘how to do’ of activity mapping are missing from the circular, it does not provide the process architecture, guidance on the actors to be involved or illustrative examples of the application of the principles. The circular (in line with previous documents) does not differentiate between obligatory and discretionary functions of the PRI. In practice, when looking at Activity Maps prepared by the states (including the 1996 Activity Map from Himachal Pradesh), one can see that one result of the MoPR template has been a tremendous disaggregation and fragmentation of activities distributed between the various levels of administration, which makes it difficult to determine where the ultimate responsibility for a certain service/function (to which ‘activities’ contribute) rests. Overall, the activity mapping process is being presented as an administrative and technical process rather than a political one.³⁴ Evidence of this perception can be found in the report of the 2013 Expert Committee, which several times refers to ‘structured, *scientific*, internally consistent and practical methodologies for proceeding with effective and meaningful devolution’ (e.g. Expert Committee, 2013, Vol. I: 51; our emphasis). Aiyar (2015:103) also refers to ‘scientific activity mapping’. In our view, this misperception results in activity mapping processes that neglect or even suppress the political dimensions of the devolution process; however, the diverse and often contradicting incentives and interests of the stakeholders involved must be acknowledged and factored into

the process. The results then might not always be ‘structured’ and ‘consistent’ as they reflect difficult compromises but they might have a better chance of implementation as long as they are based on a wider, inter-agency consensus.

It seems that the 2009 circular of MoPR did not result in a noticeable improvement of the situation. Davis (2016) summarizes the current practice of activity mapping by saying ‘that many of the activities have been devolved into a kind of concurrent list’, with little documentation available on the setting in which the activity mapping process was carried out. It would be essential to open up the activity mapping formulation process to include stakeholders from the sectors and those outside the bureaucracy (p. 248).

The latest conceptual input on the Indian approach to activity mapping can be found in Vol. IV of the 2013 Expert Committee report. Here, an element of horizontal unbundling has been added as activities are classified into five broad categories: ‘setting standards, planning, asset creation, operations and maintenance, and monitoring and evaluation’ (Expert Committee, 2013, Vol. IV: ii). Some of these resemble categories which our normative approach uses as so-called ‘management functions’ in the horizontal unbundling exercise (see Chapter 3, section 3.3). Using these five categories, the committee then presents model activity maps for eight major centrally sponsored schemes distributing activities between the sector ministry at national level, the state government, the PRIs (including the District Planning Committees) and user groups/parallel bodies. The committee does acknowledge that states might feel the need to deviate from the suggested arrangements in view of their particularities; it does not present the model activity maps as binding or static documents. Again, looking at the apparent lack of interest the current Union government under Prime Minister Modi takes in issues of PRI, it is unlikely that the Committee’s proposal will change much of the current practice of centrally sponsored schemes.

The narratives of the other country cases in this chapter (especially the Cambodian case) indicate a substantial role of international development partners in the functional assignment discourse. This is not the case with India. With the exception of German development cooperation (GTZ) in Himachal Pradesh (see below), support to activity mapping in India has been limited to Chhattisgarh (where activity mapping has been supported as part of the EU-funded State Partnership Programme) (PRIA, 2012)³⁵ and rather limited interventions by Swiss Development Cooperation (SDC) in Sikkim where a state-level workshop on activity mapping was conducted in April 2010. Otherwise, DP – which in general play a much more limited role in India as compared with other states in the Asia-Pacific – have not paid attention to the issue of functional assignment.

Revisiting functional assignment in Himachal Pradesh (2007–2009) and the role of international development partners

A critical analysis of the functional assignment architecture of the 1994 PRI Act of Himachal Pradesh and its 1996 Activity Map indicated a lack of clarity in the preferred mode of decentralization (devolution vs agency task/delegation). The

1994 PRI Act did not specify a level of ‘general purpose local government’ and was silent about a ‘right of initiative’ of any level of the PRIs. The relationship of the 1994 PRI Act and existing sector legislation remained unclear, and little execution of decentralization in departmental instruments could be established. The distribution of functions to PRI levels did not indicate whether and how criteria and principles were applied leading to the assignment to a particular level. There was concurrency of functions (including of planning for the same subject matter), a sometimes very narrow formulation of functions and a separation of substantive function and related management functions. Functions for the Gram Panchayat level were sometimes formulated as obligatory functions (‘must perform’), while the obligatory (or discretionary) character of functions for the *Zilla Parishad* and *Panchayat Samiti* levels was less clear; sometimes these functions were linked to availability of funds (CB-PRI, 2008a).

The May 2006 MoU signed with the Union Minister of Panchayati Raj committed the State Government to improve upon its Activity Map within the same year. The Union government was making access to national funds increasingly dependent on a stronger role of PRIs in planning and implementation of programmes, and as the agreed deadline passed the State Government was coming under growing pressure to implement this commitment as soon as possible. Improving the Activity Map therefore became a major area of work for a new bilateral Indo-German technical cooperation project funded by the German Government that started in mid-2007.³⁶ The role of the technical cooperation project included (1) defining the process architecture of the activity mapping exercise (who should be involved at which stage, the sequencing of activities, the institutional relationships in the process, communication and information processes, time schedules and milestones, design of templates and workshop formats); (2) clarifying the role of the DoPR vis-à-vis the sector departments in order to ensure the buy-in of the latter; (3) increasing the understanding of the different forms of decentralization (i.e. devolution, delegation and deconcentration), as often the terms ‘decentralization’ and ‘devolution’ are being used interchangeably; the activity maps resulting from the envisaged process should reflect the different types of decentralization more precisely; (4) building up a core group of government officials familiar with activity mapping, its process and the instruments being applied; (5) building a consensus on where, how and when to involve stakeholders from outside the sector departments (e.g. elected representatives of the PRIs, civil society organizations, politicians and others); and (6) ensuring an integrated approach to activity mapping which looks simultaneously at functions, funds and functionaries (see Dwivedi *et al.*, 2009).

The technical advisory team in conjunction with senior officials of the DoPR conducted diagnostic work on the current functional assignment arrangement (CB-PRI, 2008a) and organized among others a two-day training workshop on activity mapping, which brought together representatives from several sector departments to discuss conceptual issues, to look at experiences from other Indian states and to assess international approaches to functional assignment. From the workshop and subsequent efforts, tentative activity maps were

developed for further deliberations within the sector departments and between sector departments and DoPR (see CB-PRI, 2008b). The role of the GTZ advisors included providing expertise and know-how, facilitating the process within and between DoPR and sector departments (including arranging arenas where different actors and stakeholders could meet and discuss), accessing expertise from and networking with relevant individuals and institutions outside of Himachal Pradesh in order to gain additional inputs and to provide new perspectives for state stakeholders.

The advisory team developed formats and templates which were used by the sector representatives to assess and document the status quo situation in their sectors, and – based on a set of criteria and principles – formulated suggestions for an improved sector activity map.³⁷ The conceptual approach suggested by the GTZ team somewhat deviated from the activity mapping approach suggested by the Union ministry but did make use of some of the elements suggested by it. The working process consisted of five steps: (1) the vertical unbundling of the subject matter into individual services and activities, with an indication of related funding sources; (2) a status quo analysis describing the current status of discharging those functions and activities identified during the first step; (3) re-grouping of these functions and activities between state government, PRIs and other potential service providers (like civil society organizations) and providing a rationality/justification for the suggested assignment of responsibilities; (4) identification of public officials who will be affected by the planned devolution of functions and indication of future modes of placement and salary payments; and (5) finally a description where HRM functions would reside under the suggested devolved service arrangement. The advisory team was clear that activity mapping could not be done without the sector departments, and that putting an improved sector activity map into practice would require not only the formal notification but also an implementation strategy for each sector to make the new assignment of functions operational.

The end results of this joint exercise were different from what the GTZ advisory team had expected. As time passed, the institutional support of the DoPR waned as it felt under pressure to report the accomplishment of the exercise to the Union ministry. In the sector departments, the exercise did not reach the more senior level of officials and could not get enough buy-in to become a serious policy proposal. Conflicts between the DoPR and sector departments reduced further the latter's willingness to participate in the exercise.³⁸ As soon as the discussion reached issues of staffing and funding, the willingness of Government officials to even consider more drastic changes evaporated. The activity mapping approach of the Union level, which included particular formats for documenting the arrangement of functions, funds and functionaries had a strong pull effect as its political and bureaucratic rationality was closer to the mindset of the state government's officials. In the end, the Department of Panchayati Raj issued a notification in October 2009³⁹ that listed the Activity Maps for all the 29 subject matters mentioned in the Eleventh Schedule. While the sector departments had formally been given a chance to comment on the draft notification, no

serious effort was undertaken to reach a common understanding.⁴⁰ The notification allocates activities to the three levels of the PRI system based on ‘scale of scheme’ and ‘as per guideline of the state government’, i.e. it does not take a principled approach for functions and services, but a case-by-case approach where ultimately functional assignment is subject to individual decisions of the state government and linked to schemes. While ‘scale of scheme’ could still be accepted as a criterion for assigning responsibilities (taking it as a proxy for externalities and spillovers which will vary depending on the size of schemes) other criteria suggested by the Union ministry (like subsidiarity, accountability, etc.) do not appear in the Activity Map of the state. It does not provide information about funding or entertain the idea of tied/untied grants to PRIs based on their assignment of functions: in all 29 subject matters, the notification states that ‘the Department will earmark the fund against each activity at respective PRI level in consultation with the Finance Department’. This of course is a logical arrangement as long as the assignment of functions/activities is based on individual cases; however, it does little to realize the Union government’s aim to allocate funds and functionaries in conjunction with functions on a long-term basis. Only in regard to functionaries does the 2009 Activity Map of Himachal Pradesh move further than the 1996 arrangements as it indicates at least a few cases where officials should be placed at the PRIs level under deputation mode. In several instances, certain HR management functions (like disciplinary actions, leave sanction and the writing of the annual performance report) are also devolved to PRI officials.

This functional map has been in operation since 2009. The rather bleak comments by Sharda (2011) cited above probably do not yet mirror any changes that might have been brought about by the 2009 arrangement, therefore, it is interesting to look at the ranking of Himachal Pradesh in the 2015 Devolution Report commissioned by the Union Ministry (TISS, 2015). The aggregate ranking of states in devolving powers and responsibilities to Panchayats is measured by two indices: an ‘Index of Devolution in Policy’ (DPo) and an ‘Index of Devolution in Practice’ (DPr). The former reflects:

the state governments’ policy commitment to devolve responsibilities and resources to the Panchayats. Thus the indicators include the functions, functionaries and finances officially allocated to the Panchayats and the infrastructure and governance structures created for the smooth functioning of the Panchayat operations.

(Ibid.: 55)

The latter is meant to reflect ‘the actual devolution happening in the field’; the indicators chosen should reflect ‘actual control of panchayats over transferred institutions, functions, functionaries, financial autonomy and administrative systems in place’ (ibid.: 56). In other words, the DPo Index reflects the *de jure* situation while the DPr Index reflects the *de facto* situation. On the DPo Index, Himachal Pradesh comes tenth (out of 25 states included in the analysis), but

regarding the devolution of functions (a sub-element of this index) it comes only 22nd.⁴¹ In the DPr Index, Himachal Pradesh performs much better and is ranked in fifth place. But again, its ranking on the devolution of functions is much lower (rank 14). Other findings of the Devolution Report 2015 point to the state's lack of adjusting sector laws with the assignment of activities as only one relevant sector law has been modified. It also indicates that only one out of 27 Executive Orders issued has been operationalized.⁴² While some of the observations of the 2015 Devolution Report need to be taken with caution,⁴³ the report still shows the considerable gap between the formal arrangements (as reflected in legal and administrative instruments) and the ground reality of public administration and political processes in the state.

Political economy of functional assignment in Himachal Pradesh

The 2008/2009 activity mapping exercise in Himachal Pradesh involved a diverse set of state-based and external actors and stakeholders; there was little matching of their respective trajectories which explains a good deal of the final results of the 2008/2009 exercise.

The Union Ministry of Panchayat Raj was under pressure to show that it had the muscle and the means to push the states for a more serious devolution of functions to the PRIs. Having little legal and financial power to force states into action, it used persuasion and peer pressure to move states in the right direction.⁴⁴ By means of roundtables and a MoU with the states it tried to create a road map for more serious joint efforts. Its attempts to build devolution into the plethora of centrally sponsored schemes run by the Union sector ministries more or less failed completely (see comments in Aiyar, 2015, also K.B. Saxena, 2011) It provided some conceptual advice and guidance to the states on how to go about activity mapping but again it was up to the states to take up the offer. In regard to Himachal Pradesh, it was sitting on the sidelines once the MoU had been signed in 2006.

A key stakeholder was the Department of Panchayat Raj of the Government of Himachal Pradesh, which felt obliged to produce some results that showed that the 2006 commitment had been honoured. While the Union ministry could offer little in terms of funds, it is still the sector 'mother ministry' for the state department and provides platforms and arenas where state performances on PRI issues are shared, compared, discussed and (ultimately) judged. Also from the individual perspective of state government officials dealing with PRI issues, the professional arenas and networks provided by the Union ministry offer opportunities to showcase the states' real or perceived progress. From this perspective, the state department in Himachal Pradesh was keen to show a modified and advanced activity map (based on the guidelines and formats provided by the Union ministry) as soon as possible. With the limited staff available, the state department was enthusiastic to get support from an external agency by means of the Indo-German technical cooperation project, but went its own way when this bilateral cooperation did not produce results quickly enough and in ways that emerged slightly different from established procedures and formats.

The state's sector departments were overall not interested in improved activity mapping and tended to regard the exercise as a bureaucratic nuisance that had to be endured because of the political agenda. With the exception of a small number of individuals, few sector officials saw devolution as a positive policy objective; there was also very limited conceptual understanding of decentralization reforms. Regulatory departments like Finance and Planning were not involved at all and like the sector departments saw little benefit from empowering the local government level.

The advisory team of GTZ was initially thrilled to have an opportunity to work on a core issue of decentralization reforms in the state; it invested considerable resources in the diagnostic work, the setting up of the process architecture and in efforts to get buy-in from the departments involved. It misjudged the ultimate motivation of the DoPR and failed to grasp the incentives that made the DoPR get engaged in the activity mapping exercise. With the limited resources available (both in terms of time, funds and in-house sector expertise), it could not push the effort far enough.

The local governments (PRIs) themselves were hardly involved in the activity mapping exercise; only in August 2008 were selected PRI representatives invited to comment on the tentative results achieved. The PRIs as a group do not have a political lobby in the state. The conceptual understanding of decentralization in general (and of activity mapping/functional assignment in particular) is very limited, especially at the Gram Panchayat level, which is the politically more important and active level in the state. Neither were civil society organizations nor academia from the state itself involved in the exercise or were given the chance to provide inputs. The small size of the state (the population is approx. 6.8 million) means that the elected Members of the Legislative Assembly (MLA) are in close proximity to their constituencies; like elsewhere in India (or Pakistan, for that matter) their access to development funds means that they have considerable financial influence and political clout to dominate decision-making in the local governments that fall in their constituency. Especially the higher levels of the PRI system (like the district-level *Zilla Parishad*) work more or less in direct competition with the MLA, which at the political level manoeuvre against efforts to strengthen the PRI system.

Conclusions

From the experience of the 2008/2009 activity mapping exercise in Himachal Pradesh, several lessons emerge:⁴⁵

The interaction between sector departments and the 'decentralization' department is essential: While the DoPR needed to facilitate the process of activity mapping (and could assist with methodological inputs, resources and the vetting of emerging results), the onus for implementing the process lies with the concerned sectors. Unilateral action by the DoPR resulted in significant lack of buy-in by the sector departments, as had been shown with the 1996 Activity Map. The 2009 Activity Map suffered a similar fate. Keeping the right balance

between a pro-active ‘decentralization department’ and reluctant sector department is a major challenge in the functional assignment process.

Need for conceptual understanding: The experience in Himachal Pradesh has shown that a proper understanding of conceptual issues (like understanding the different forms of decentralization, the distinction between obligatory and discretionary functions) can be a key success factor. Activity mapping processes therefore require an *ex-ante* building of conceptual capacity for the stakeholders involved.

Political clout is important. Despite several rounds of elections in the state, the PRIs are not yet considered a significant player in the political and development processes of the state. A major weakness in the PRI system in Himachal Pradesh is the lack of organization of elected PRI representatives. No associations exist of *Zilla Parishad* Chairpersons, of *Panchayati Samiti* members or even *Gram Pradhans*, which could lobby with the political establishment to be given their statutory and constitutional rights. The political competition with the MLAs reduces further their perception by the people as relevant and important institutions of governance.

Understanding the motivations and incentives of stakeholders is crucial. The DoPR saw the issuance of the new Activity Map in October 2009 as a success because the commitment of the 2006 MoU with the Union government had been fulfilled, not caring much about the fact that the ground reality did not change with the new Activity Map. The sector departments continued to ignore the Activity Map as it had not been issued with their active involvement and did not include any road map for devolution in the sectors.

Combination of sector know-how and decentralization know-how is required. In those cases, where in the view of the GTZ advisory team progress has been made – at least on paper – it was because decentralization expertise could be combined with sector know-how. For instance, progress on activity mapping for rural drinking water in HP has been made primarily due to the institutional mandate of GTZ with the sector department (IPH) provided by GTZ’s cooperation agreement, and by the availability of sector expertise in the GTZ advisory team. In the case of social welfare, the absence of such sector know-how reduced the impact of the advice provided as the GTZ team struggled with identifying entry points for further-reaching devolution initiatives, and lacked institutional access to the department.

6.3 Big Bang and efforts to restore order: functional assignment efforts in Indonesia (1999–2014)

The case of Indonesia is of particular interest as it has a strong tradition of centralization of power and of preferring hierarchies in social and political relations (Rohdewohld, 1995). Yet it is held up as a country that underwent rapid and extensive decentralization – with some success. Dubbed the Big Bang by World Bank staff (Hofman and Kaiser, 2002), it is easy to overlook the two-year transition phase (1999–2001) that was crucial in providing time, a process and the

focus for the national government to elaborate the grand design set out in the initial legislation. The functional assignment component came into being in the middle of that period. While the decentralization was indeed substantial in scope, the Big Bang label is not as appropriate as it might have seemed at the time, as a great number of challenges in the decentralization reforms became evident in the ensuing years, and in particular substantial changes in architecture and content of functional assignment had to be made in the years that followed. These revisions in functional assignment are not just normal maintenance, but efforts to resolve issues that were not adequately addressed in the initial design.

The government and stakeholders have shown a commitment to coming to grips with the challenges of functional assignment, and the process used has seen some uneven improvement over time; for instance, in the negotiations undertaken with the Aceh Freedom Movement in defining the special peace deal for the province. Moreover, over the last 15 years Indonesia has sought to operationalize a principled approach to implementing obligatory functions of its regional governments, through the application of minimum service standards. At the same time, persistent tendencies towards centralization and unilateral central action have marred in some way practically all of the attempts to make improvements in functional assignment. Moreover, flaws in the overall decentralization design, a clash between streams of legislation and impediments in public sector reform in general, have limited the possible benefits of functional assignment; this accounts in large part for subsequent reversals, where recentralization has taken place without adequate processes to give them sufficient legitimacy. The approach taken to functional assignment in these various waves of reform made use of DP support, but selectively.

The Big Bang and the surprising residual category of functions for districts/cities (1999–2000)

The Big Bang dates back to 7 May 1999, when Law 22/1999 came into being on the heels of political unrest stoked by the regional financial crisis. Long simmering periphery-centre tensions over Jakarta/Javanese economic and political dominance came to the fore, and the 1999 loss of East Timor province in a UN sponsored referendum set a potential precedent that was keenly observed in other provinces with aspirations for greater self-determination, including Aceh, Papua and Riau. Centripetal forces threatened to tear the country in a potential chain reaction of separatism (Tiwon, 1999).

Decentralization was one prop for the government to hold the country, and the ruling national and local elite, together in a new compact. This organic law set out fundamental reforms in regional government⁴⁶ political structures and processes, and included a revamped framework for functional assignment. In its most visible effect, it dissolved all vertical agencies in the districts/cities – generally by integrating the units, staff and assets into the district/city governments. To match this organization focused reform on the functions side, Law 22/1999 (Article 11 explanation section) indicated that central and provincial lists of

functions were to be issued, explaining that ‘With the enactment of this law, all functions are in principle already with the District/City. As a result, the transfer of functions does not have to be activated, but rather it is done by acknowledgment of the Government’. This made for a one-off (rather than incremental) approach, with districts/cities handed a large residual as a kind of black box that had to be divined.

A vague effort to nail down what district/city government must do is found in Article 11 (2) but poor drafting leaves these obligatory ‘functions’ as really broad sectors (public works, health, education and culture, agriculture, communications, industry and trade, investment, living environment, land affairs, cooperatives, labour). Two of these sectors already enter the list of provincial functions (likewise listed as sectors), namely ‘communications’ and ‘public works’. The two levels cannot both have jurisdiction over these two sectors lock, stock and barrel. It is also unimaginable for the districts/cities to have nearly total jurisdiction (even if ‘policy’ is retained by the centre) over these 11 sectors.

A kind of release valve was placed in Law 22/1999 to get around the above problem of districts/cities being overwhelmed by some functions; by allowing the weaker ones to voluntarily pass functions up to the province if ‘they stated that they could not, or could not yet, implement the functions’ (Article 9). How this was to happen was not explained in the law; whether the functions become provincial; whether provinces have to accept them; how the funding would follow the functions; whether the districts/cities would retain any influence. No mechanism was mentioned for the districts/cities to reclaim the functions. Useful details could have been provided in the government regulation that was to elucidate the functions related articles of the law, but on this mechanism the details in the regulation did not clarify the main points above and in fact added additional elements that made the mechanism even more improbable, such as the provincial right to in turn pass the functions up to the central government, and the right of districts/cities to reclaim the functions by just stating they are capable of discharging them.

Details on functional assignment took some time to be developed. Following the enactment of Law 22/1999, the Coordinating Ministry for State Reform and Supervision (known by its Indonesian acronym *Menkowsabangpan*) took the lead role in coordinating the preparation of the numerous follow up instruments of various legal standing (about 30); one of these was the Government Regulation on the distribution of functions. The drafting process for this Government Regulation was a challenge. The ‘innovative’ and inconsistent formulation of Law 22/1999 made it difficult to elaborate and to foresee its operationalization in the two-year time frame stipulated in the law. Moreover, *Menkowsabangpan* chose to prepare the regulation as largely an internal exercise, denying the drafters the stakeholder input that is needed for technical robustness, political legitimacy and buy-in from the sector departments.

The *Menkowsabangpan*-produced draft of the specific functions appeared rather arbitrary, incomplete, difficult to penetrate and inconsistently formulated. The lack of technical sounding board showed clearly. The lists also tended to

underplay the role of the provincial level – even beyond the constraints set in law. The obligatory functions for districts/cities saw no more helpful clarification, leaving these governments to deal with the mentioned black box residual.

It speaks to the urgency of the decentralization measures in the national political agenda that sector ministries' response to this approach, and content, was quite muted. The ministries were at this time busy reworking their organizational structures, but this alone explains little of their passivity. But the *Menkowsabangpan*-drafted division of functions evidently did not sit well with some ministers (e.g. forestry). It took a visit from the forceful Minister for Regional Autonomy (with strong presidential backing) to tip these ministers into acceptance and outward support for the lists.⁴⁷

Suggestions on the process and technical content came from a German government-funded bilateral project that had been working with the Ministry of Home Affairs for more than ten years, the GTZ-Support for Decentralization Measures Project (SfDM). These suggestions were ignored initially, but the inputs on the criteria to be used in assigning functions received a better reception. The set offered by GTZ (drawing on international experience) was reviewed by *Menkowsabangpan* internally, drawing the attention and participation of many senior staff. The adapted and adopted criteria were used to delineate the functions of the central and provincial governments. Unfortunately, the manual on the criteria was never formally sent to the sector ministries; it was distributed informally, but only a handful of sectors were given 'assistance' in its application. The actual application of the criteria was not transparent and likely not very well done. The Coordinating Minister himself clearly ruled out the possibility of enriching the emerging draft through intensive sector discussion, fearing the protracted process this might entail. Not having the option of using sector expertise, the drafting team returned to its task, with little guidance on what was needed to gain ministerial approval. This resulted in a variety of different alternative drafts being produced (five at one point) according to different guesses about what might fly politically.

Although operating without a sound basis for decision-making in the form of explicit criteria and meaningful external stakeholder participation, the central government did make a more intensive effort to sound the sector ministries, in early to mid-2000. By this time, the Coordinating Ministry (*Menkowsabangpan*) had ceded its coordinating role on this effort to the State Ministry for Regional Autonomy. Under Ryaas Rasyid's leadership, this body was able to engage with ministries, even if the communication was largely one way.⁴⁸ Where GTZ was asked to provide support, some criteria and systematic discussion was in evidence, such as that seen in the case of the Ministry of Forestry, where the GTZ advisors in the SfDM project linked with GTZ colleagues in the forestry sector⁴⁹ to support policy-makers in this sector ministry.

While individual decisions on which functions should be transferred were being made in some fashion, and in general reflected a substantial commitment to decentralization, it was the overall architecture yielding a residual at the districts/city government level that posed some challenges in crafting a coherent decentralization

framework. For instance, it became difficult for the central government to set a proper framework for organizational structures when the functions of the districts/cities were not clear. It was perhaps this impasse that led the Ministry of Home Affairs to encourage each district and city (around 250 of them) to make a list of the functions they would carry out. The lists were submitted to the Ministry of Home Affairs for review. It appears that this unorthodox and unwieldy approach fizzled out – but not without ratcheting up the central government concern that there was no evident mechanism to make the district/cities do many of the things that they ought to be doing according to the perception of the central government. Some measure of corporate memory and inertia was built into the district/city system, as a remembered set of functions/activities that were either done before the reforms or shifted over from de-concentrated units. But the uneasy feeling grew that some lever was needed to ensure that obligatory functions (at this point still a list of sectors in which regional governments were asked to be active) would be taken up, in the proper detail, intensity, and according to technical and other expectations. This sentiment, however, was still poorly developed as policy by the time the Government Regulation was issued (as Government Regulation No. 25/2000 on 16 May, with a title that clearly hinted at its strange construction) (Government of Indonesia, 2000). The vehicle of the minimum service standard (MSS) was simply placed in the regulation as a task (among many others) of the central government to develop for the obligatory functions of the districts/cities (Article 2.4.b).⁵⁰

As mentioned earlier, the mechanism for passing functions up to the province was somewhat clarified but still fell short of being clear or politically feasible (it was never used in practice). While this attempt to allow for some asymmetry was unworkable, the design of decentralization in Indonesia certainly did need to take into account the widely varying sizes and capacities of its SNG, district governments in particular. The Suharto government had made much of its scientific measurement of district capacities, indicating it was assigning functions in keeping with each district's capacity. In practice there was no evident relationship between the few functions that were transferred to districts and the measured capacity of districts (Ferrazzi, 1998). In the decentralization reforms, this issue of varying capacities was entirely ignored.

On the promising introduction of obligatory functions, the design was deficient in not clarifying the difference between obligatory functions – and other functions not carrying this label. This concept, broadly introduced in the law, could have been made more operational in the above mentioned Government Regulation No. 25/2000, but this opportunity was missed as the lists in this regulation did not specify the nature of the functions in terms of their obligatory or optional character. The residual construction for district/city government functions in particular worked against making any such distinction for this level.

Improvements and shortfalls in the revisions (2001–2007)

Grumblings over the 1999 framework were heard after its introduction, as soon as 2001. The Director General for Regional Autonomy in the renamed Ministry

of Home Affairs and Regional Autonomy had publicly acknowledged at various times that ‘Issues concerned with government functions need to be reviewed and regulated to ensure no conflicts’,⁵¹ referring to the tussles seen between levels of government, particularly around functions with revenue raising potential. He was largely prodded for a review of Government Regulation No. 25/2000 by sector ministers – certainly not by the districts/cities that were becoming more comfortable with their discretion – and by the apparent lack of vertical accountability. At the regional government-level though governors were an exception to this general contentment. The Minister of Home Affairs and Regional Autonomy noted to DP that he was sensing much discontent among governors with the law, particularly on the lack of clear hierarchy between levels of government and their perceptions that the excesses of districts/cities were tending towards national disintegration (see for instance GTZ-SfDM, 2001).

While the public discourse on the law’s implementation was substantial leading up to the revision, the revision itself – when it was actually worked on – was a rather rushed and (again) closed affair. On occasion one or several DP would be given some access, particularly GTZ-SfDM in view of its early support. By this time, political sensitivity had grown considerably in Jakarta against giving DP too much access to important policy processes, across policy areas – not just in decentralization.⁵² DP largely responded as a group with a list of weaknesses of the framework, highlighting for instance that regional governments, especially districts/cities, were unclear about their functions, and that some functions were contested between centre, province and district/city levels. They also pointed out that sector ministries were holding on to their laws and regulations in disputes over functions, that the role of the province towards district/city was unclear and not effective in terms of supervision, coordination and facilitation. Central government continued to directly spend on activities that are regional government functions. DP were concerned because the little evidence collected showed that service delivery was not satisfactory, and that there was no mechanism to ensure that public services would in fact be delivered (DWG, 2003). But in the drafting stage of the revised law, DP were only allowed to provide inputs to address these issues in an ad hoc way or at a distance; although several DP had some concrete proposals for solving the above widely acknowledged weaknesses.

Only belatedly was a draft of the new law sent to the regional government associations – after the government draft was submitted to the national legislature, making any changes more difficult. The Executive Director of the District/City Governments Association complained about this treatment publicly, and expressed his fear that shunting aside the associations was a tactic to ‘pull back functions of the district/city with underhanded clauses’ (Kompas, 2004). The Minister of Home Affairs sought to reassure stakeholders by explaining that ‘Our revision will not recentralize power, but simply redistribute functions that have so far not been clear’ (Suara Pembaruan, 2004).

On a related but organizationally very separate track DP were heavily involved in supporting the government in developing the minimum service

standards, with GTZ, ADB, USAID and the World Bank working together (D-SPM-WG, 2002). The model building exercises conducted in the regions on a number of sectors (principally health, education and civil registry) were helpful to the government, and some of the ideas were taken up in Law 32/2004. A separate Government Regulation on Minimum Service Standards was issued in 2005 (Government Regulation No. 65/2005); this regulation slowly influenced policy, planning, budgets and ultimately service reach and quality in the years that followed (Ferrazzi, 2007).

In general, however, the new Law 32/2004 did not itself contain the solutions for all of the weaknesses voiced in the functional assignment framework. It did provide more clarity on obligatory functions (*urusan wajib*), and called for an explicit list for the district/city rather than a residual. One could think of this shift as going from a somewhat general competence construction to more of a positive list. It also formally introduced the category of discretionary functions (*urusan pilihan*). Key criteria for allocating functions were placed in the law (like externalities, accountability, efficiency, keeping in mind a harmonious relationship between the government levels) and were to be used in the detailed work on functional assignment. The law also was clearer on the minimum service standards, linking them to basic services (obligatory functions); telegraphing the Government Regulation No. 65/2005 that was being drafted alongside the law. The new law also dropped the unworkable notion of provinces taking up responsibilities of the district/city government if these are unable to do so themselves.

But the law again did not contain the actual lists of functions; this was to come once more in a subsidiary government regulation. In contrast to the one year it took to prepare Government Regulation No. 25/2000 following the first reforms, it would take three years for this new regulation to be issued as Government Regulation No. 38/2007 'Regarding the Division of Functions Between the Central Government, Provincial Government and District/City Government'.⁵³ Admittedly, this regulation was more complex as the functions of the district/city level were also enumerated, and the functions at all levels were made quite detailed. The printed regulation was dubbed 'the pillow' (*buku bantal*) for vastly exceeding the previous version (32 pages), coming in at 568 pages; perhaps the pillow label also attested to its soporific effect.

Consultations to prepare what became Government Regulation No. 38/2007 were more extensive and participatory than seen in the case of its predecessor. The application of the criteria was more explicit. As with the larger framework revision effort leading to law 32/2004, DP were kept on the periphery of the exercise, and their advice was generally ignored. This self-sufficiency is to be lauded if reflecting rising conceptual capacities and legal drafting skills in the relevant government units. But, as a multi-donor research effort conducted in early 2008 revealed, the completed Government Regulation No. 38/2007 showed many of the same weaknesses as identified in the prior framework (Ferrazzi, 2008). The main drawback, as pointed out by numerous observers, was a legal architecture that again relied on an omnibus regulation. In the Indonesian

politico-administrative context this left no feasible strategy for ensuring that sector laws and regulations would align themselves with any centrally formulated lists. In terms of Government Regulation No. 38/2007 itself, a 2009 Bappenas-multi-donor stock taking effort on decentralization reforms concluded that concurrence of functions was evident (sometimes a function was assigned to all three levels), but it was not clear if this concurrence was intended and how it should play out. Also the distinction between obligatory (*wajib*) and discretionary (*pilihan*) functions was not clear or workable, and the list was criticized as overly detailed for the purpose of assignment lists. Structure and level of detail appeared to follow central-level organizational structures (down to directorates/sub-directorate levels) rather than to adhere to a purely functional perspective. The formulation of the functions was seen as faulty. Another comment pointed out that supervisory functions devolved to the provincial government were duplicated as de-concentrated tasks to the provincial governor as the representative of the central government. There was no clear mechanism for further adjustment of functional assignment. Overall, the assessment was that the previous clarity between modalities of decentralization had been eroded as deconcentration and agency (delegation) tasks had practically become one and the same (USAID-DRSP, 2009).

Related to issues of financing, the central government was seen to continue its tendency to meddle in the functions of the regional governments, using deconcentration/agency modalities to channel funds to schools and health clinics for instance (though the functions were supposedly devolved), or establishing parallel (and DP-funded) community driven development (CDD) schemes to build infrastructure that was ostensibly part of the functions of regional and local governments. In short, the central government ran roughshod over the principle of 'Funds follows Functions'. The regional governments grudgingly accepted this reality (and of course accepted the funds from whatever channel was used), but on occasion expressed frustration with these deviations from the functional assignment framework – even rejecting CCD initiatives or deconcentration funds (see for instance Tempointeractive, 2008).

In the first decade after the reforms, a striking feature of centre-local relations was the proliferation of regions, particularly districts and city governments. As the 2009 stock taking study observed, 187 districts/cities and six provinces were added between 1999 and 2008, fuelled by financial incentives favouring the creation of new regions (e.g. the transfer formula and special funding for the transition), and the reinforced patronage offered by political and bureaucratic posts and resources (USAID-DRSP, 2009). The permissive policy of the government (including parliament) in this regard speaks to individual and party interests and how these can undermine the stated desired outcomes of decentralization. The created districts varied greatly in their size and population – some were considerably below the 50,000 mark. In principle these new districts were to discharge the same set of functions as more established districts, some of which had populations of more than one million. The lack of well-developed mechanisms to facilitate asymmetry in assignment or in the production of services accounted for some of the lacklustre performance of decentralization.⁵⁴

The special case of functional assignment in Aceh (2006–2015)

The central government showed more commitment to decentralization and more consistency in its approach to functional assignment in the negotiations that took place following the 2005 Helsinki Peace Accord on Aceh. The law that originated from that accord (Law 11/2006 on Governing Aceh) set out in broad strokes the functions of Aceh (as a provincial government, and as district/city governments, often injecting much concurrence between these two levels) and called on the central government to define its functions that were deemed to have an impact on Aceh, so as to indicate (by excluding these) where the Government of Aceh responsibilities lay – and could be further regulated internally by Aceh's government(s). At this juncture, Government Regulation No. 38/2007 had just been issued and served as a complete if imperfect baseline for the functions of all levels of government. Hence the task was essentially one of arguing which functions, and why, would differ in the case of Aceh. The ultimate decision rested with the central government, but several circumstances worked to give Aceh a strong, and almost equal, voice.

The Province of Aceh was aided by the EU-funded and GTZ-implemented *Aceh Local Governance Project* (Phase II) to fashion a government regulation on the 'Governmental Functions that are of a National Character in Aceh'. The provincial negotiating team, comprising of officials and academics, came up with its own criteria to complement those set in Law 32/2004 (that guided the preparation of Government Regulation No. 38/2007), emphasizing adherence to the peace accord and the law on Governing Aceh, as well as the desire to have the provincial level as the locus of special autonomy.

The negotiations were meaningful in view of the international scrutiny placed on both sides, and of the existing commitments already enshrined in the peace accord and the subsequent law. The support provided by the *Aceh Local Governance Project* helped to shape a process rich in expertise and with opportunities for the two parties to learn and communicate effectively. This process was intensive for the first year, covering 32 sectors, and then dragged on at a slower pace thereafter in an attempt to resolve some strongly contested functions. The Ministry of Home Affairs, with considerable vice-presidential oversight, showed a commitment to finding solutions in the face of some intransigent or uninterested sector ministries and an empowered Aceh team that would not readily yield. Proposals came largely from the sector ministries, but the Aceh response was generally well laid out and cogently argued. This kind of regional government response to central government proposals – sitting across the table nearly as equals – had not been seen in the two previous function assignment efforts in Indonesia (for Government Regulation No. 25/2000, and Government Regulation No. 38/2007) (GTZ, 2009). The process did get bogged down on several contentious issues, perhaps as a result of this equality, and it took more years than expected to complete the regulation. The result is, however, generally acceptable by both sides, and their publics.

A further national framework refinement in 2014 – functions are elevated into law

As far as functional assignment is concerned, substantive changes made with the issuance of another revised law on regional government (Law 23/2014), must be seen as more tinkering rather than any fundamental departure from the 2004 framework. It is hard to even point to any constituency that was pushing for further reforms. Law 23/2014 tries to give more structure to the architecture of functions, but fails to give it much more clarity. On a positive note, obligatory functions now are found in basic services and in other areas as well. This allows for a tighter, and reduced scope, of minimum service standards (MSS) – these are now tied solely to basic services rather than proliferating across sectors as they have to date, generated by ministries as a tactic to attract state budget allocations. Standards for other functions will have more of a technical dimension rather than a rights-based approach to minimum levels of service as embedded in MSS.⁵⁵ As an example of a continuing weakness in the law, discretionary functions remain unclear in their conception.

Perhaps the revision simply reveals the persistent tendency of the bureaucracy and elected officials at national level to reclaim powers previously given (or ‘lost’) to the regional governments. This would seem to be the case if attention is given to the main change in functional assignment introduced by the new law: a new category of functions has been created in the new law, i.e. the ‘general government’ (*pemerintahan umum*) functions – vested in the President, and de-concentrated in part to the Provincial Governor and Bupati/Mayor. Whereas previously only the provincial governors were subject to this special form of deconcentration (see section 3.2), this double role now extends down to the heads of the districts/cities. These ‘general government functions’ have to do with national identity, stability, security, conflict management and intergovernmental relations. The clarification and emphasis points to a desire of the central government to reassert its hierarchy over both levels of regional governments. Surprisingly, the law now allows the central government to turf out the regional heads if they do not implement strategic national programmes. How this power accords with functional assignment (and regional autonomy) remains unclear.

There is uncertainty over how the ‘general government functions’ will be resourced and organized – with some concern over how they will dovetail with the existing supervision roles also given to provincial ‘autonomous’ government. To facilitate the implementation of the new general government functions, a regional leaders’ forum (*Forkopimda*) is to be established, with details of its functioning to be determined. The structure harks back to the military territorial style of managing internal security seen in Suharto’s New Order.

Recognizing that previous frameworks contained no mechanism for incremental adjustments of functions, Law 23/2014 now stipulates that unforeseen functions (i.e. functions not mentioned in the law) are to come into being through a Presidential Regulation. This means centralization (horizontally speaking, at national level) and perhaps reflects the desire to curb the sector ministries’ independence

and recalcitrance. A strong indication of this sentiment is that the list of sector functions is now integrated into the law as an appendix, rather than being placed in a subsidiary government regulation as was the case with the previous law. This may be seen as a way to reduce the clash with sector ministries that persist in pointing to their own laws and regulations as a valid base for sector governance, regardless of the contradiction with the regulation on functional assignment originating from the law on regional government. It remains to be seen whether placing functions higher in the hierarchy of legal instruments has the intended result of forcing harmonization. Evidence from the period following the initial decentralization reform launched in 1999 suggests this may not be the case; at times even Director-Generals have countered the regional government law and subsequent regulations with the use of their own decrees, having a much lower legal standing.

Further evidence of the recentralizing influence is the changes made in some of the functions now placed in the law's appendix. The most striking is the responsibility for mining permits, which was taken away from districts/cities and placed at the provincial level. Districts/cities also have reduced roles in fisheries, forestry and water resources, again to the benefit of the provincial level.

The above recentralizing tone of the 2014 law revision had been on the horizon for some time. It was being fuelled in part by a cadre of older academics loyal to the bureaucracy and its tendency to rule with a strong hand in what is after all a 'unitary state'. That means deciding in Jakarta preferably. In the reform period it meant avoiding strong provinces – in favour of a divide and rule approach that shifted power to the smaller districts/cities. With national disintegration receding as a concern but powerful district/city heads overstepping their bounds,⁵⁶ power is now preferable at provincial level – using tools of control that have been developed for the purpose; such as making the regional heads the President's extensions and inflating their roles. This centralistic view is on the one hand a kind of reflexive stance of the remaining and persisting New Order elite. But it is also a legal and philosophical stance given credence in intellectual circles. This group sees SNG as an offshoot solely of the central government executive. Hence decentralization should, in this view, be seen as originating from the central government. (Rather than, say the nation-state – this alternative is generally not mentioned in the government and allied academic discourse.) This position conflicts with the Indonesian Constitution, which makes room for the national legislature to make laws on regional government – and explicitly calls for the assignment of functions to be done through laws.

Addressing the status and functions of the village (2014 onward)

The traditional nature of village in Indonesia gave it some advantages as a socially cohesive unit of 'self-government'. But the scale and low administrative capacities precluded its recognition as a typical level of SNG. The traditional autonomy of villages (*otonomi asli*) was recognized in laws dealing with the village (like Law 5/1979) or regional government-oriented laws subsuming the village under the tutelage of the district (as was the case with Law 22/1999 and

the subsequent Law 32/2004). However, the nature of this autonomy has never been adequately elaborated. In the course of time, and due to bad policies, this original autonomy of villages has been overly reduced or constrained, becoming essentially a collection of mere self-help projects that were self-funded. In some regions, strong ethnic identity also favoured collective cultural practices, such as rites of passage or cooperative water use – under the label of traditional villages (*Desa Adat*) (see for instance the case of Bali in Warren, 1993). Even so, the villages were purposefully controlled and shaped to assume standard forms and play a minor role in development. The post Suharto government had wished to rectify this situation back in 1999, but the urgency and scope of reforms meant that it had to be postponed. It was not until village heads and secretaries began to be more vocal (and impressed politicians with their numbers and protests in Jakarta) that the Ministry of Home Affairs and the national legislature became more serious about restructuring this level of quasi-government. President Joko Widodo, elected in 2014, made it one of his campaign promises in the presidential elections.

Some DP had long promoted a more formalized type of village autonomy, where the village government would be entrusted with certain functions for regulatory, service and development purposes, as well as the duty to perform agency tasks as needed (see for instance GTZ-SfDM, 1997). NGOs were rather split on this issue, with some favouring the same formalization as given to regional government, and others preferring to maintain greater freedom at the village level by avoiding the introduction of formal governmental functions (USAID-DRSP, 2009).

The new law on the village (Law 6/2014) does not set the nearly 75,000 villages decisively on either path. Its overriding accomplishment is to provide additional funds, growing by 2017 to an overall 10 per cent of the regional government allocation, representing a five to ten-fold increase of what they have had prior to the law. On the face of it, the role of the village is substantially expanded. The law specifies that these bolstered funds ‘shall be prioritized to fulfil the development needs ... including, but not limited to, primary needs, basic services, environment, and village community empowerment activities’ (Article 74).

Local village-scale authority are authorities to regulate and manage interests of the Village community that are conducted by the Village ... including boat moorings, village markets, public baths, irrigation channels, environmental sanitation, integrated service posts, art and learning workshops, as well as village library, village ponds, and village roads.

(Elucidation, Article 19)

Local village-scale development shall be implemented by the village itself (Article 81.4), and be incorporated into the village budget.

So far the emphasis has been on making development planning for these funds more inclusive (Anggriani, 2016). But it is not clear that the village mandate in this law is anything more than permission to do an occasional project in any selected service area. There is nothing in the law (or to come in further

regulations) that indicates what ‘local village scale’ means and where the village is truly expected to deliver services on an ongoing basis and in an equitable way to all users. This is not much of a concern if resources applied are small, but with the level of resources now allocated to the villages this loose approach is unlikely to yield good local governance in the service/development areas identified in the law. The law evidently was a political response, with no functional assignment exercise attached to it. Thus little thought about capacities and how the supposed service area where villages are to tread will be partitioned between the district (who now has the functions – these have not been retracted from the districts) and the villages. Districts and provinces can also task the village government to carry out some activities on their behalf. This might give some direction to village government, but these would be additional spending, beyond what the villages are assured, further overwhelming capacities.

Political economy of functional assignment in Indonesia

The Indonesian experience brings out several important aspects of functional assignment. When reform is pressing, functional assignment can happen relatively quickly. But it also shows that rushed functional assignment exercises are unlikely to tap into available expertise and views, and will therefore be faulty in important respects. The experience also indicates that external support from DP can be helpful at times, but has limits, particularly when the state is gaining in self-confidence and has sufficient own funding; deploying the symbolism of self-sufficiency and nationalism became hallmarks of the national bureaucracy again soon after the economic and political rebound following the 1997–1998 crisis.

It is commonplace to suggest that decentralization initiatives are generally top down. This is true to a point – but pressure for meaningful decentralization in Indonesia came from below initially, even if local elites did dominate. That pressure from below ensured that there would be some continued pressure on central government to follow through on its framework, even as sector ministries sought to recapture the functions and resources that had been lost in the initial reforms. Nonetheless, as the central state reconsolidated, it was able to swing the revisions to its favour, pulling back some important functions and highlighting the role of their de-concentrated officials (governors and later also mayors and regents) in the regions.

The ‘Big Bang’ label attached to Indonesia’s decentralization reforms tends to obscure the ongoing tussles mentioned above. It also underplays the learning and slow evolution that takes place around public sector reforms that are tied to decentralization. The introduction of minimum service standards to ensure regional government service delivery was a giant leap, conceptually, and the struggle to make them workable is all about the forces that push towards good governance pitted against those actors at central and regional level benefitting from the status quo; a lack of transparency and accountability in regional government spending is crucial to their continued dominance. The anaemic effort to publicize and operationalize the MSS indicates both technical capacity constraints and the disruptive implications that these could have on the body politic.

Related to the inability to follow through fully on expenditure norms, the national government showed similar lack of commitment to matching funds with functions. This was most evident in the inappropriate use of deconcentration channels for functions that had ostensibly been devolved, with deleterious effects on service performance (Lewis, 2016). Despite numerous statements abiding by the principle of ‘money follow functions’ the sector ministries stood to lose too much by its strict enforcement. In this respect, the poor relationship between the Ministry of Home Affairs and the Ministry of Finance precluded the former from playing the kind of advocacy role on behalf of SNG towards the strong Ministry of Finance that could have led to a closer match between functions and funds. How the core decentralization policy is buffeted by short term interests can also be seen in the mismatch between funds, functions, capacities and scale at the village level (see for instance Lewis, 2015), in this case a politically expedient granting of funds has preceded any rational discussion on what the funds should be used for, and how these responsibilities dovetail with the functions held by the districts.

The revisions of the regional government laws and lesser regulations seen in Indonesia also speak to the nature of the SNG associations, academic and NGO capacity to be good policy development sparring partners to the central government in functional assignment. Admittedly, DP dominated the field initially and did little to develop national capacities outside government. But the government (especially the Ministry of Home Affairs) also relied on favoured academics, selecting those who would be sure to uphold some of the cherished (and central-istic) notions of the central government. The centralizing trend in the revisions speaks to the lack of independent and capable actors outside government on the issues of functional assignment. That takes time, and some purposeful supporting interventions, to develop.

Conclusion

Functional assignment in Indonesia has gained in technical sophistication (technical dimension and process) in subsequent rounds of reform (or revisions) following the initial 1999 reforms. The central government – Government of Aceh negotiations are a high mark in this regard, while the village level functions in Law 6/2014 are a more disappointing example. These successes and shortcomings underscore the political dimension of decentralization and the functional assignment exercises.

6.4 Functional assignment in the new local government system in Khyber Pakhtunkhwa/Pakistan (2013–2016)

The context of devolution reforms in the province

As in India, local governments had initially been given little weight in the political and administrative architecture of the nation-state when Pakistan came into

being in 1947. The British colonial model of territorial administration was based on District Officers with significant administrative, judicial and fiscal powers in their districts who worked as representatives of the provincial government.⁵⁷ Forms of local representation were introduced less for ensuring local participation and provision of services by local governments⁵⁸ than for co-opting local elites; local governments were formed top-down and with members nominated by the colonial bureaucracy (Cheema *et al.*, 2006). The focus of the independence movement on political representation at provincial and central level reinforced this ‘lack of political ownership to build local governments’ (*ibid.*: 279f.). The political path of Pakistan following independence resulted in what has been called the ‘countercyclical pattern of local democracy in Pakistan’ (Cheema *et al.*, 2015): the various military governments that ruled Pakistan⁵⁹ established or strengthened local governments aiming at gaining political legitimacy and at weakening political and administrative elites at national and provincial level, which could potentially jeopardize the power of military leadership; the subsequent civilian governments – which came into power based on a popular mandate – restricted again the role of local governments as changes introduced by their military predecessors were rolled back. Contrary to other countries where decentralization was often part of a democratization agenda, the tragedy of decentralization in Pakistan is that it suffered from democratization. This roller coaster of local government development continued until 2010, when the 18th Constitutional Amendment finally instituted a constitutional protection for local governments⁶⁰ and tasked the provinces with devolving political, administrative and financial responsibilities to elected representatives of local governments. The amendment furthermore returned to the provinces exclusive jurisdiction for local government matters. With the exception of the constitutional stipulations of Article 32 and Article 140A, there is no further national (federal) guidance on the structure of local government systems and the specific roles of local governments.⁶¹ With considerable prodding from the Supreme Court, the provinces finally passed local government acts in 2013; subsequently elections to local governments have taken place in Baluchistan (late 2013), Khyber Pakhtunkhwa (May 2015), Sindh (late 2015), and Punjab (late 2015).⁶²

It is worthwhile to take note of some legacies of previous local government architectures that continue to influence the current arrangements put in place following the 2010 constitutional amendment – features that preceded General Musharraf’s 2001 Local Governance Ordinance, and were in part maintained under his reforms.⁶³ One such legacy is a divide between urban and rural areas⁶⁴ which continued under the 2001 Local Governance Ordinance of General Musharraf’s decentralization reform. In the case of KP, it re-emerged in the distinction between village and neighbourhood councils, the former being rural areas and the latter being urban areas, and in the extended list of functions for councils in a city district. Another legacy is the non-partisan character of local elections: political parties were not formally contesting entities in local elections in Pakistan until 2010; in KP political parties can now contest elections at tehsil and district level but not at the village/neighbourhood level. While having partisan elections

at tehsil and district level is a significant improvement in the context of Pakistan,⁶⁵ it also requires democratic and bottom-up decision-making processes within the political parties that would allow local politicians to influence party agenda and party programme – something that is not (yet) the case in Pakistan. In the political discourse of Pakistan, local governments have never been seen as having their own natural rights and responsibilities. They have always functioned under close supervision and guidance of the provincial governments or even the federal government (during the periods of military governments); the current arrangements in KP for supervision and control indicate that the provincial government continues to regard local governments more as their agents at local level rather than as political actors having their own sphere of rights and responsibilities (see below). This has implications for the realization of accountability: both the prevalence of indirect elections under the 2001 LGO for tehsil and district levels, and lack of local autonomy in service delivery meant that accountability lines have been unclear. The degree of ‘SNG autonomy’ discussed earlier (section 1.5) appears rather restricted, especially in regard to the management of public sector human resources⁶⁶ and in regard to accessing unconditional local government grants. Throughout the history of local government in Pakistan, there has been a disconnect between the political, administrative and financial dimensions of decentralization; local governments have never been allowed to exercise full control over the administrative set-up that was to discharge local-level functions, as can be seen in the continuing strong role of the avatar of the colonial District Officer.⁶⁷ Under the 2001 LGO, this ‘partial devolution’ (Keefer *et al.*, 2006) meant that public services which were formally devolved continued to be provided by organizational units of the provincial sector departments – which drew from the entire provincial government for strategic, technical and operational guidance. Financial dependence on fiscal transfers from the provincial level and rather limited access to own-source revenue meant that local governments were kept at the mercy of the provincial government, and that the principle of ‘funds follow functions’ was breached. However, the introduction of a rule-based fiscal transfer system under the 2001 Local Governance Ordinance (based on awards by the Provincial Finance Commissions) was a significant improvement compared with earlier arrangements. The local government systems introduced after 2010 do not break entirely with these legacies; one distinction however is that the diversity of local government systems between the provinces is much greater than it used to be (PILDAT, 2013). This is an expected result of a genuine assignment of the local government jurisdiction to the provinces.

Before we turn in detail to the local government system established by Khyber Pakhtunkhwa’s 2013 Local Government Act, it is helpful to recall some of the contextual factors that influence political and socio-economic policies in the province. With a population of more than 22 million,⁶⁸ the province lags behind the national average in key social development indicators such as population below the poverty line, literacy rate, rate of attended births, households with access to tap water and safe sanitation (GoKP, 2010a: 6). Located along

Pakistan's border with Afghanistan, the province has hosted around three million refugees from Afghanistan since the armed conflicts in Afghanistan started with the Soviet invasion in late 1978, which had a profound impact on economic, social and religious life in the province. The so-called 'tribal areas' along the border with Afghanistan lack representative structures of governance;⁶⁹ because of their geographical location and characteristics they have become retreats for Islamist extremists from both countries. The internal security situation is a major factor influencing government policy. The military's action against Islamist militants in the Swat valley starting in 2009 created a huge number of internally displaced people; reconstruction of physical and social infrastructure and re-establishing state institutions in these areas has been a key policy field for the province.⁷⁰ Natural disasters (like a major earthquake in 2005 and large flooding in 2010) have exacerbated the shortcomings in providing public infrastructure and economic opportunities. In the context of national politics, KP is an interesting case because here the Pakistan Tehreek-e-Insaf (PTI), the political party newly established by Imran Khan, managed to form a coalition government. Governing KP provides PTI the opportunity to showcase its capacity and policy successes as a spring board for advancement at the national level where it was placed third in the national elections of 2013. PTI's national election manifesto expressed strong support for local governments, and called for an 'effective, efficient and representative local government system' where 'authorities, responsibilities and resources will be devolved' and 'public participation in the local government will be ensured' (PTI, 2013: 20f.). The emphasis of PTI is on empowering 'local communities at the grassroots level', therefore PTI proposed to 'create a bottom-up system by focusing on the Community and thus rural governance will begin with the Village' (ibid.). In line with the spirit of the PTI manifesto, KP is the only province in Pakistan that located the lowest tier of local government not at the union but at the village and neighbourhood level, thus substantially increasing the number of local government units and elected representatives.⁷¹

Roughly 7 per cent of the province's revenue comes from official development assistance (ODA). In some sectors like health and education, the percentage of foreign funding for development purposes is considerably larger.⁷² Devolution follows major public financial management reforms, such as output based budgeting and multi-year financial planning that have been introduced at provincial level since 2008. The pillars of the coalition government's substantial reform initiatives have been summarized as follows:

reforms in all sectors and improved service delivery, increased investment in development, move towards a 'Medium Term Development Framework' for better management and application of resources; increase investment in education & health; targeted private sector led investment in the productive sectors to promote efficiency and competitiveness; encourage investment by reducing cost of business through reforms in compliance regimes, re-engineering of Govt. business processes and removal of market distortions.

(GoKP, 2014: 8)

This would be a daunting policy agenda even in countries with better socio-economic conditions and more effective public sector institutions than Khyber Pakhtunkhwa.

The functional assignment architecture of the 2013 Local Government Act

The Local Government Act (LGA) of the province was passed in late 2013, and elections at the three levels of local government (district, tehsil and village/ neighbourhood) took place in May 2015. The terminology being used by the Act is ‘devolution’, defined as ‘conferment by Government of its administrative and financial authority for the operation, management and control of specified offices of Government to the local governments’ (Section 2.e, LGA: 2013). The autonomy of local governments is restricted; they function ‘within the provincial framework and shall faithfully observe the federal and provincial laws’ (Section 3.1, LGA: 2013) and ‘shall not impede or prejudice the exercise of the executive authority of Government’ (Section 3.2, LGA: 2013). Especially the second sentence underlines the interpretation that whatever local governments do derives from authority given to them by the provincial government as ultimate decision-maker of what can or cannot be done. Section 13.3 stipulates that the District Government ‘shall be responsible to the people *and the Government* for improvement of governance and delivery of services within the ambit of authority devolved to it’ [our emphasis]. Islam (2015) argues that therefore local government should not be regarded as a third tier of governance.⁷³

The functional assignment architecture of the act is not based on the general competence model. Instead the LGA uses a list model for two of the three tiers of local government. Where the act explicitly mentions responsibilities of local governments, it does not clarify whether these are obligatory or optional functions. The act does not explicitly specify criteria for the assignment of functions to the different levels of government. The preamble only refers to Article 37 of the national constitution which ‘requires decentralization of government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public’ (GoKP, 2013: 2). Article 112.3 of the act furthermore includes a reference to the principle of ‘subsidiarity’ as a major consideration in the drafting of all implementing regulations under the act (which would apply also to the Rules of Business of the different local government levels). From these stipulations one could argue that ‘convenience’, ‘requirements of the public’ and ‘subsidiarity’ should be regarded as criteria to guide the assignment of functions to levels of government. There also seems to be some overlap or concurrence between the local government levels, especially regarding monitoring and oversight roles of higher vis-à-vis lower levels of the local government system.

For the *district level*, the act uses an organizational approach. It does not devolve functions but rather government offices. Section 12.2 of the act stipulates that ‘the administrative and the financial authority for the management of the offices of Government, specified in the First Schedule in a District shall stand

devolved to the District Government of that District'. The First Schedule then lists a total of 19 devolved offices that will come under the district government,⁷⁴ many of them dealing with social services. The act itself does not regulate further which functions the listed offices implement (or should be implementing). Such clarification comes in a lesser legal instrument, i.e. the Rules of Business of the District Government as approved by the Provincial Government in November 2015. The First Schedule of these Rules of Business lists 15 proposed district offices and their 'Operational Components', while the Second Schedule specifies the concrete responsibilities of each office. In other words, the Rules of Business of the District Government is the legal instrument that regulates functional assignment for the district level.

For the second level of local government, the *tehsil level*, the approach differs. Section 22 of the act lists the main functions of the tehsil municipal administration,⁷⁵ including responsibility for 'municipal services' which are defined in detail in Section 2.r of the act. The 2015 Rules of Business of the Tehsil and Town Municipal Administration then indicate the organizational units of the administration at this level, and allocate the detailed functions and responsibilities of the tehsil level to each unit. A similar approach is seen for the *village and neighbourhood level*. Section 29 of the act lists the tasks of this level; a corresponding list is in the 2015 Rules of Business for Village and Neighbourhood Councils. A major role of this level – beside typical community development – is simply to monitor performance of public officials (e.g. in health and education), and to prepare reports to higher levels in the system.

The LGA does not specify or mention explicitly a vertical hierarchy between the three tiers of local government. However, there are a number of stipulations that lead to the assumption that certain forms of hierarchy are intended. These hierarchies manifest themselves in reporting obligations of lower levels towards higher levels, or in monitoring, inspecting and intervening rights of higher levels vis-à-vis lower levels. These vertical relationships are not necessarily conducted in cascading fashion; a level of government can engage with all levels below it. Hence the provincial government can deal with all three levels of the local government system, the district government can deal with the two levels below the district, and the tehsil level can deal with the village/neighbourhood level. For instance, the inspection of the tehsil administration and of the village/neighbourhood councils can be initiated by both the province and by the district level.

The LGA does not provide discretion to local governments to decide on different modalities for the production of services – Section 105A clearly stipulates that the contracting-out of services is an exclusive responsibility of the provincial government. For none of the three levels of local government does the act indicate the intention to introduce a 'right of initiative'.

There was no public debate about which functions should be devolved; stakeholders like academia or civil society organizations did not have a role in the decision-making process. Even within the sector administrations, it was at times not clear where the process of assigning functions was, and ultimately who was making decisions.⁷⁶

Functional assignment support by international development partners – two sector cases

In two cases, sector departments made an attempt to systemize the assignment of functions as an input for further regulations, making use of ongoing technical cooperation projects between Pakistan and Germany. KP has for years been a focal area for bilateral cooperation of these countries, and areas of engagement included health and education services, including the strengthening of relevant local government units. This combination of sector-specific and cross-sector governance support was crucial for mounting sector functional assignment processes as knowledge and expertise from different fields could be brought together.

Support for the *Elementary and Secondary Education Department (E&SED)* started in early 2014, shortly after the LGA had been passed by the Provincial Assembly. At this point there was no further guidance from the Provincial Government to the sectors on how the devolution agenda was to be implemented. The E&SED approached GIZ for support. GIZ then facilitated an unbundling exercise (similar to that described in section 3.5) which identified 16 core functions in the sector (vertical unbundling) (see Box 6.2).⁷⁷ For each core function the current and proposed future allocation of responsibilities between the provincial and district level was indicated (horizontal unbundling). Participants of the unbundling exercise were senior officials from the department covering the main areas of its work, including officials dealing with finance and planning issues,

Box 6.2 Sector functions in elementary and secondary education (KP/Pakistan)

Sector planning
 Provision of physical infrastructure and basic facilities
 Provision of equipment, furniture, school libraries, laboratories and IT equipment
 Curriculum development
 Textbooks and learning material development
 Printing and distribution of textbooks
 Examination
 Assessment (of student competencies)
 Teacher training and education – pre-service
 Teacher training and education – in-service
 Human resource management (HRM)
 Academic inspection
 Academic supervision of schools
 Regulation of private schools and establishing
 Public private partnership models
 Scholarship, stipends
 Sports and co-curricular activities

Source: GIZ (2015a).

with teacher training and with textbook development. Several district education officers contributed with their expertise of field realities in the districts. This was in March 2014.

For several months, there was no further progress, until in December 2014 the management of the department called for a review of the results of the March workshop in small groups (again bringing together the various organizational units of the department), before the results (the list of sector functions and their proposed allocation under the post-devolution scenario) were endorsed. Based on this review, an assessment of the budgetary and human resource implications was done, using the budget and personnel figures of the FY 2014/15. This analysis indicated significant shifts of budgetary and personnel resources from the provincial to the district level: the province's share of salary expenditure would decrease from 5.1 per cent to 0.8 per cent; the share of non-salary current expenditure would decrease from 93.9 per cent to 13.9 per cent; and the share of development funds would decrease from 100 per cent to 36.4 per cent (GIZ, 2015a: 8f.).⁷⁸ At this time (early 2015), there was still no clarification regarding key issues for implementing the LGA. The fiscal decentralization framework was not yet defined, and changes in HR management, development planning and procurement had not yet been decided by the Provincial Government. The department then choose to use the results of the unbundling exercise for its required input to the Rules of Business of the District Government, which were at that time being drafted by the Local Government Department. However, for reasons that were not explained the Rules of Business of the District Government as endorsed by the Provincial Government in late 2015 do not reflect this assignment of functions as emerging from the E&SED-GIZ cooperation.

The functional assignment support to the *Department of Health*⁷⁹ differed in several aspects from the previous exercise in the education sector. First, it started later (August 2015) and at a time when sector departments had had time to consider how they wanted to approach devolution under the 2013 LGA. For instance, the Department of Health had already formulated its input to the new District Government's Rules of Business indicating the functions that should be taken up by the devolved district health office. Therefore, some officials of the department did not see the need for a more structured approach to functional assignment, feeling that this had been done already. Second, it proved impossible to get all units of the department together in the unbundling exercise as some key units appeared to deliberately distance themselves from the exercise. Third, the delivery of health services in KP is based on large-scale contracting-out of primary health services to the private sector; while primary health is a natural candidate for devolution, the management of such contracts remains reserved for the provincial level.⁸⁰ And fourth, the health sector is characterized by the existence of a considerable number of so-called 'autonomous bodies' (like teaching and tertiary hospitals) having their own legal personality. These autonomous bodies receive an annual grant-in-aid from the health budget but are otherwise largely independent from the provincial administration. What they do (and how they do it) is placed beyond the reach of devolution to local governments.

The unbundling exercise facilitated by GIZ used the WHO model of six main functional clusters of the health sector (WHO, 2007). For each of these clusters, core sector functions were listed (vertical unbundling, see Table 6.2) and the current and proposed responsibilities of provincial and district level were enumerated (see the example of the function ‘Provision of essential packages of primary health services’ in Table 6.3).

Because key units of the department did not participate in the exercise, completing the vertical and horizontal unbundling could not be done jointly, and missing items were later added by technical advisors from GIZ. In a second step, an analysis of budgetary and personnel implications of the suggested assignment of functions was done in October 2015 using data for the FY 2015/2016. If the proposed assignment of functions is applied, the province’s share of the sector’s salary expenditure would remain unchanged, while its share of non-salary current expenditure would decrease from 90 per cent to 83 per cent, and its share of development expenditure would decrease from 100 per cent to 78 per cent (GIZ, 2015b, Chapter 4). These shifts are less significant compared with elementary and secondary education because of the institutional set-up of the sector (large-scale contracting-out, existence of autonomous bodies). Furthermore, the department has kept responsibility for the district headquarter hospitals at the provincial level – if these units would be devolved to the district level the corresponding budgetary and personnel changes would be much bigger.

As in the case of education, the functional assignment exercise did not include any external stakeholders (academia, civil society, private sector, etc.) but was restricted to officials from the field and from the head office. Continuing lack of institutional support for the functional assignment exercise and the transfer of senior officials towards the end of 2015 meant that the results of the exercise were not absorbed by the department and have not been reflected in the current Rules of Business of the District Governments.

Compared with Cambodia, the functional assignment processes were much shorter and did not include external stakeholders. They were not done in the context of a ‘whole-of-government’ approach to devolution but were instead isolated within the sector environment. These two contrasting examples show that a structured functional assignment process in Khyber Pakhtunkhwa is still unfinished business. Whether it will spring back to life depends on a number of issues. As the local councils were only elected in May 2015, implementation of the devolved system in KP has just started; it can rightly be argued that we are still in the ‘effecting the transfer’ stage of our functional assignment process. The budget for the FY 2016/2017 will be the first that should fully reflect the devolved scenario.

It can be argued that there should be some institutional memory of the last reform under the 2001 LGO on how to engineer the change to a devolved system. However, structures and processes of administration in Pakistan change slowly. Understanding shortcomings and successes of the new devolved system, and formulating adequate policy responses depends to a large extent on the skills and expertise of the Local Government, Elections and Rural Development

Table 6.2 List of suggested health sector functions (KP/Pakistan)

<i>Cluster</i>	<i>Suggested functions</i>
Leadership and governance	<ul style="list-style-type: none"> Formulation of sector policies Formulation of sector strategic plan Regulation of public and private service providers Monitoring and evaluation of sector performance Preparation of legal instruments (acts, regulations rules) for the sector Setting of technical norms and standards Setting of clinical standards, guidelines, SOPs Evidence-based planning (ADP) and recurrent planning Vertical and horizontal coordination (e.g. of health programmes) Management of service contracts Establishment of disaster and emergencies preparedness Establishment of an accountability and public disclosure system
Service delivery	<ul style="list-style-type: none"> Provision of essential packages of primary health services Provision of curative services Provision of rehabilitative services Management of the individual health facility Collection and disposal of medical waste Quality assurance and quality management Establishment and maintenance of a referral system Management of community relations Provision of community-based services Provision of outreach services Provision of medico-legal services Provision of disaster and emergency response services Litigation Management and maintenance of HIS
Health workforce	<ul style="list-style-type: none"> Creation of posts Recruiting Posting and transfers Performance evaluation Promotion Staff welfare issues Pre-service training In-service training
Health financing	<ul style="list-style-type: none"> Budgeting Regulation of health fees Internal audit and accounting Financial management (revenue and expenditures) Development and implementation of alternative financing Mechanisms
Infrastructure, equipment and medical products	<ul style="list-style-type: none"> Procurement Provision of infrastructure (health and administrative facilities) Maintenance and repairs (of health facilities, equipment, etc.) Logistics and supply chain management

Source: GIZ (2015b).

Table 6.3 Provision of essential packages of primary health services

<i>Situation</i>	<i>Policy</i>	<i>Planning</i>	<i>Budget and funding</i>	<i>Regulation</i>	<i>Maintenance and repair</i>	<i>Monitoring and evaluation</i>	<i>Implementation</i>
Status quo	Province	Province, districts	Province	Province	Districts	Province, districts	Districts
Proposed after devolution	P&D, FD, DoH, DG	DoH (HSRU, DGHS), DHO, DG	DoH, DG (ADP)	DoH, DG		IMU, DHO, DHIS	DHO, MS

Source: GIZ (2015b).

Abbreviations: DG Director General; DGHS Director General Health Services; DHIS District Health Information System; DoH Department of Health; FD Finance Department; HSRU Health Sector Reform Unit; IMU Independent Monitoring Unit; MS Medical Superintendent; P&D Planning and Development Department.

Department, the Finance Department and the Planning and Development Department. Likewise, the elected councillors at the three levels of the local government system need to settle in their new roles and responsibilities; learn to deal with expectations and demands of their constituencies; become adept at navigating the systems and processes of the bureaucracy; and devise ways to interact with political representatives of other levels (not least the members of the Provincial Assembly). Capacity and momentum to change the functional assignment framework will emerge from success and lessons learned in meeting these more immediate challenges.

The Local Council Association of the province could help to eventually mount an effort to conclude and improve functional assignment. But it needs to be reactivated and to make itself visible again as an important stakeholder on local government issues. As all stakeholders go through their learning curves and the electorate starts to react to emerging (or missing) impacts of the devolution reform, opportunities (and needs) for revisiting the functional assignment as framed by the LGA and the Rules of Business of each local government level will come up. International development partners (like DFID and the EU Commission) that provide substantial budgetary support to the province have an interest in effective service delivery under the new devolved system. Currently, most of their support (especially in health and education) bypasses the public sector system and goes straight to community-based organizations. However, in the long run they should have in interest in having their support on-budget/on-treasury. As the examples of the two sectors in KP (and we can probably add the example of Cambodia as well) have shown, the combination of sector expertise and cross-sector governance expertise should be seen a key requirement for a meaningful functional assignment exercise. Development partners can be one important source of both kinds of expertise.

Political economy of functional assignment in Khyber Pakhtunkhwa

Compared with Cambodia and Indonesia, it is noteworthy how little public debate has taken place in Khyber Pakhtunkhwa on functional assignment. Whether this is because decision-makers did not want to open the Pandora's Box, or because the significance of the issue was not appreciated we cannot say. Although sufficient time would have been available between the passing of the act (December 2013), the local government elections (May 2015) and the final endorsement of the Rules of Business for the three tiers of local government (November 2015), the time was not used for a structured and inclusive debate on the assignment of functions. In any case, it would have been mainly a debate within the administration (as the elected representatives came into offices only in the second half of 2015), but even a structured debate between field officials and HQ-based officials would have been an opportunity to debate and test out which functions could possibly go to the district level and below, and which one should remain at the provincial level. At no point did the provincial government come up with a concrete time line for operationalizing the LGA, and no guidance was given to the sector departments on how to prepare for devolution. Not all sector departments would automatically oppose devolution. The existing district offices of the main service departments had already in the past been heavily involved in the provision of services and in the planning and execution of development budgets. Using them as nuclei of the new district administration would give an immediate and strong infusion of technical and managerial capacity to the district level (similar to what happened in Indonesia following the Big Bang).

Civil society did not play any role in the debate on the precise roles and responsibilities of the local government units, nor were academia involved in a substantial manner. The DP stood mainly on the sidelines. GIZ was the sole provider of technical support in two cases, but did not have the leverage and the sector based projects to push for a more comprehensive approach in functional assignment. The two sector cases were never part of a mainstream decentralization reform; they were always seen as a test case and as a pilot – out there to catch the interest of the decision-makers. Significant DP support for sectors like education and health was in place, but thus far has happily ignored that a devolution framework was being put in place in KP – the available sector programmes do not reflect the governance challenges which devolution is adding to the general technical, capacity and infrastructure issues in each sector. Because of the fragmented nature of local government in Pakistan, and because of the intense political competition between parties ruling different provinces, little inter-provincial exchanges on functional assignment is likely to occur. Nor has there been a lot of effort to tap into wider regional or international experiences with functional assignment.

Conclusions

Cheema *et al.* (2015) have formulated two requirements for achieving effective local democracy in Pakistan: (1) 'giving local governments control over the

planning and provision of all local public goods and services, control over their administrative staff and rights to predictable and effective finances' and (2) 'protection for local governments against selective politically motivated interference in their domain by higher tiers of government' (p. 77). In the case of KP, the 2013 Local Government Act does not deliver these requirements. The local governments do not have sufficient autonomy in the planning and provision of public services,⁸¹ nor does the law shields them against political interference from above. Control over staff remains mostly and (firmly) in the hand of the provincial government.⁸² It remains to be seen to what extent the Provincial Government makes use of the weighty instruments that the law provides for imposing itself on the decisions and priorities of the local governments. If the past is any guide, any tool available to this end is likely to be used.

Regarding functional assignment, our assumption is that the current architecture of the law (and lesser legal instruments) will see changes over time – too little debate has been taken place on this issue, and once the elected representatives have settled in their positions the chances are high that they will question the extent of discretion that local governments have been given on service provision and establishing local priorities. Once the devolved system has gone through a few budget cycles and one or two more rounds of elections, the opportunities for more genuine local autonomy will become more apparent and corresponding demands will be made and more forcefully by actors engaged in local democracy.⁸³

6.5 Summary and conclusions

The four country studies presented in the preceding sections have shown the variety and diversity of functional assignment processes that we have encountered (and have been associated with) over the years. Each one of them has taken place within a particular context, at a particular point in time, and with the corresponding opportunities (or lack thereof) of this point in time. In Cambodia, rebuilding the state and re-establishing the territorial outreach of state institutions for service delivery was a critical concern when the deconcentration and decentralization policy started with the 2001 law on C/S administration. Being aware of the weak capacity of state institutions, the reform design was long term, cautious and moving in sequenced steps. It shifted gear with the 2008 Organic Law but remained marred by bureaucratic resistance with – at times – weak policy guidance. Not surprisingly, nearly 15 years later, a substantial transfer of sector functions to the district level has not yet taken place. The Indian example of Himachal Pradesh illustrates how sector arrangements (like the dominance of centrally sponsored schemes with their funding and implementation requirements) undermine a potentially strong push for political empowerment, and how state/regional-specific context factors can modify the outcomes of policy reforms. Indonesia's decentralization reform started with a regime change and a strong push for a more democratic and accountable, competitive polity; the significant change of the power equation between the national, provincial and

district/city levels is still being contested as the frequent revisions of the SNG laws have shown. The context of decentralization and functional assignment in Khyber Pakhtunkhwa is similar to Cambodia insofar as the provincial state needs to re-establish its footprint in parts of the provincial territory, and that the establishment of elected bodies and of an accountable administration below the provincial level is seen as a way to gain legitimacy for the state.

With the exception of Cambodia before the 2008 Organic Law, the preferred modality of decentralization seen in our case studies is devolution. However, the examples also show the potentially large gap between the term ‘devolution’ in the legal framework, and the reality of financial, technical and managerial supremacy of national/state/provincial agencies which impede the potential of subnational governments to get their grips on newly acquired responsibilities. The examples also demonstrate that good craftsmanship in legal drafting, and having a clear conceptual understanding of the modalities of decentralization, are critical requirements that shape the initial steps of a decentralization trajectory. The particular blend of the political, administrative and fiscal dimensions of decentralization is decided in the early stages. One of the key shortcomings of the Indian Panchayati Raj system, in our view, is the missing distinction between typologies of functions, and the missing link between political decentralization on the one hand, and administrative and fiscal decentralization on the other.

None of the cases shown here has made use of the general competence model, one of the two archetypes of functional assignment which we explained in Chapter 3, section 3.3.⁸⁴ The list models applied in Cambodia, Himachal Pradesh, Indonesia and KP differ in the level of detail and discretion given to the SNGs; furthermore, in Cambodia and KP the lists are still emerging and being tested. The Indonesian case is interesting because of the conceptual switch between the 1999 law, and the 2004 and 2014 laws: the 1999 law had a list of functions for the national and provincial level, giving the residual – without further explanation and qualification – to the district/city level. This unusual construction was dropped in the 2004 law (and maintained as such in 2014) which defined the functions for all levels (district/city, province and national). Indonesia also illustrates shifting choices for the legal framework of functional assignment: from stipulating these functions in Government Regulations as was the case with the 1999 and 2004 laws, to making them part of the law itself in 2014.

The concept of obligatory and discretionary functions has been used in Cambodia and Indonesia, while KP and Himachal Pradesh do not apply this distinction. The apparent absence of this dichotomy indicates to us the lack of clarity of policy-makers regarding two important requirements: first, to have a sound conceptual understanding of local governments as state institutions in their own rights (and not as something that derives its licence to live and operate from the whims of a national or state executive) (see the discussion in Chapter 2). And second, that SNG need a certain degree of autonomy (understood as a combination of ‘right of initiative’ and ‘immunity from high-level controls’) and thus of discretion regarding the ‘what to do’ and ‘how to do it’. The ‘general government

function' introduced in Indonesia's 2014 revision of the SNG law is a strange conception, and appears to be a further central intrusion into SNG rather than a means of empowering SNG; it will be interesting to observe how it will be implemented and how it will shape the relationship between the levels of government.

In Chapter 4, section 4.4 we discussed the criteria that can be used when deciding on the (re-)assignment of a governmental function. In all country cases discussed above, criteria have been part of the legal framework – some explicit, some less obvious. The use of such criteria in the four cases is, however, rather uneven and mostly not discernible or made transparent.

In the case of KP, the existing legal framework (the Rules of Business for the local government levels) does not indicate clearly how the criteria in the LGA (subsidiarity, convenience of the public) have been used. The same applies to Indonesia from 1999 up to 2016 (Aceh being an exception). In Cambodia, the available results of the functions reviews do not show a clear link to the principles that have been formulated for the functional assignment process. In India, the justifications given by the Himachal Pradesh state government for assigning a function (activity) to a certain level of local government differ completely from the criteria and considerations put forward by the Ministry of Panchayati Raj. The lack of giving justification and rationale for a particular functional assignment decision makes it difficult to conduct a proper assessment of the decision and thereby reduces the potential for transparency and accountability.

As mentioned earlier, Cambodia comes closest to our normative process of functional assignment outlined in Chapter 4. For a number of reasons⁸⁵ it has become a testing ground for a structured, conceptually sound approach to functional assignment (irrespective of the twists and shifts this process has seen in practice). In the other cases, the process was either not part of a government-wide approach to functional assignment (as in Khyber Pakhtunkhwa), was done in haste and with subsequent frequent alterations (as in Indonesia), or suffered from conceptual and procedural clarity (as in Himachal Pradesh/India). As our Figure 2.4 illustrated, a sound balance between 'processes' and 'results' is the preferable way.

Only Cambodia has a strong inter-governmental coordination body for its decentralization policy,⁸⁶ and while overall the process has been slow, it still shows a remarkable perseverance in pursuing its agenda. Otherwise, effective mechanisms for vertical and horizontal coordination and collaboration are missing in our cases. While the absence of such a mechanism cannot be named as the sole or main reason for the observable 'sector lag' in decentralization it is nevertheless a factor not to be ignored: the case of Himachal Pradesh demonstrates nicely how sector departments simply ignore government policies (and get away with this) because they have not been part of the decision-making process and do not feel bound by its results. In the case of Indonesia, the drastic dissolution of most de-concentrated agencies at district/city level during the 1999 reforms has created a kind of protected space for local governments where even with inconsistencies between the SNG law and sector laws the capacity of national

Table 6.4 Comparison of case studies

	<i>Cambodia</i>	<i>Himachal Pradesh/India</i>	<i>Indonesia</i>	<i>KP (Pakistan)</i>
Context factors	Part of rebuilding state structures; weak state capacity; long-term vision and strategy	1993 Constitutional amendment; local government as state subject; dominating role of national level in fiscal issues and sector programmes; strong role of 'parallel bodies' for sector services	Democratization and regime change 1998/1999; political and economic consolidation since 2004	Fragile law and order situation; fragmented governance system in the province; 2010 constitutional reform
Decentralization modality	2001: Devolution, deconcentration, and delegation (agency tasks); in practice delegation. 2008: devolution ('assignment'), delegation, and deconcentration	Devolution (although in practice mostly delegation/agency)	1999: devolution and delegation 2004 and 2014: devolution, deconcentration, delegation	Devolution
FA architecture	2001: commune level: a combination of 'general mandate' (permitted infringement on central level functions) and list models (but transfers did not come about) 2008: list model with transfer of sector functions (in pilot stage currently)	List model (29 subject matters than can be transferred)	1999: list model for national and provincial level; residual functions for district/city level 2004 and 2014: list model for district/city, provincial and national levels	List model for all three levels; concurrence of monitoring/oversight functions
Typology of functions used	2001: not defined 2008: obligatory and permissive	Not defined	2004 and 2014: obligatory and discretionary; 2014: 'general government functions' added	Not defined

Use of criteria	Not well documented in results of the review process	Criteria applied for the 2009 State Notification on Activity Mapping differ substantially from those advocated by the Union government	Criteria of 2004 framework were used; the use of criteria in the 2014 revision is less clear	Use of criteria in the two DP supported sector pilots; existing legal framework does not indicate use of criteria
Process architecture	Structured; institutionalized support (NCDD-S; contractual arrangements with sector ministries providing funds and technical know-how); sequence of steps defined	1996: none 2008: suggested sequence discontinued mid-way	None, no institutional structure for the process	None (ad hoc)
Sector involvement	Integral part of the NCDD-S-supported institutional arrangements; internal D&D working groups of sector ministries	1996: very limited 2008: limited; mainly for the initial steps	1999: weak, ad-hoc sector working groups 2006–2015 in Aceh: national sector ministries invited to make their case to Ministry of Home Affairs and Government of Aceh working teams. 2004 and 2014 national revisions: sectors provided inputs through Ministry of Home Affairs, in ad hoc approach	Ad hoc

continued

	<i>Cambodia</i>	<i>Himachal Pradesh/India</i>	<i>Indonesia</i>	<i>KP (Pakistan)</i>
Coordinating body	NCDD (as intergovernmental body)	None	Weak central government – SNG coordinating body; FA process under the leadership of Coordinating Ministry for State Reform (1999/2000), State Ministry of Regional Autonomy (2000) and Ministry of Home Affairs (2004 and 2014)	None
Role of DP	Substantial inputs on concept and process; support to selected sector ministries; institutional funding of NCDD-S	1996: none 2008: conceptual inputs and process architecture	Significant conceptual inputs 1999–2003 Some support but marginal influence in 2004 Significant support and influence in case of Aceh 2006–2009 Little support and influence in 2014	Limited
Role of non-state actors	Very limited	None	Limited	None
Involvement of SNG	Very limited	None	Limited (however veto role of SNG association in 2004 law revision)	None

Source: authors' compilation.

sector agencies to implement sector agendas is more limited. From our experience we strongly advocate the powerful involvement of sector agencies in the functional assignment process as the only way to utilize sector expertise and to gain sector buy-in for the reform.

DP have at times been playing an intriguing and colourful role in the functional assignment processes examined here. Experimenting with conceptual approaches in the context of the early years of Indonesia's Big Bang, and slowly grooming more solid advisory and theoretical approaches afterwards,⁸⁷ the processes in Cambodia, Himachal Pradesh and even Khyber Pakhtunkhwa showed that DP can provide valuable contributions to complex and contested change processes. Personal and institutional affiliations have certainly been important, but the case of Cambodia – which at times had a quite fractious and cantankerous DP community working on decentralization and local governance issues – also showed how harmonization and alignment of DP support can occur and be fruitful. The functional assignment support by DP in Cambodia was not without internal controversies but it showed how different agencies can make use of their comparative advantages and apply their tools and instruments to a common cause. Again, having strong and consistent government leadership is an important requirement. In India, the role and influence of DP in general is much more limited compared with other developing and emerging countries of the region; in Indonesia, the influence has become distinctively less ever since Indonesia recovered from the economic and political upheavals of the 1998 Asian financial crisis (Ferrazzi and Rohdewohld, 2011). The Indonesian case provides similar evidence to Cambodia on the benefits of DP harmonization, but it also underscores that operating in sensitive policy areas can result in shifting stances of government towards external support. The imprimatur of external expertise and DP approval can be appreciated in some circumstances, but such support may at certain points be perceived as intrusive and unnecessary. Notwithstanding some officials' strong feelings that the countries receiving DP support have acquired all of the capacity needed to proceed on their own, it appears that in all countries discussed here, DP have missed the opportunity to build up capacity of non-state actors (such as civil society, academia) to become a valuable partner in functional assignment processes, and have shown little interest in sustainable, internal and cross-country knowledge management initiatives.

Earlier, we advocated the involvement of non-state actors in the functional assignment effort – provided a certain level of capacity and conceptual understanding is available. Non-state actors did not play a meaningful role in any of the four examples discussed here – while decentralization and local governance is an important issue for civil society organizations in all four countries, their involvement is often about particular sector issues (like access to water and sanitation, education and health services), or about advocacy for political participation and inclusion of disadvantaged groups of local communities. The minutiae of functional assignment – something other DLG experts would call the 'nuts and bolts' of decentralization – is not something many civil society organizations would engage in. Furthermore, a clash of interest might occur when such

organizations act as service providers in sectors and therefore have their own institutional interests to take care of. Academia and think tanks are often not involved deeply enough in sector issues to play a leading role in functional assignment processes and to advise their governments on this issue. In the four cases discussed here, it is only in Indonesia that academia had a significant influence on overall decentralization and functional assignment concepts.

Like civil society and academia, SNG have not played a major role in the examples recounted here. Even in Indonesia, where SNG by virtue of their associations were able to influence the 2004 revision of the 1999 decentralization laws, their engagement in subsequent functional assignment processes was rather insignificant (Aceh excluded). There is of course a vicious circle here: unless SNG and their associations are invited by the government to participate in functional assignment they will not start to build up meaningful and influential capacity and expertise. And without showing such capacity and expertise, they will not be regarded as a valuable actor which can contribute substantially to functional assignment deliberations.

In all the four cases presented and discussed in this chapter, multilateral and/or bilateral development partners have played a role in functional assignment processes, sometimes more pronounced, sometimes less so. Our chapter on the political economy has likewise examined the interests, incentives and potential contributions of international DP in these processes. Of course it is not a coincidence that we discuss DP involvement extensively as we have done most of our professional work through them and regard them as a potentially powerful conduit to facilitate more robust and comprehensive functional assignment processes in the Global South. Our concluding chapter will again look at the contribution that DP can make to policy learning and policy transfer as we discuss how learning and knowledge about functional assignment can be improved, and how access to such knowledge can be made available for policy-makers and stakeholders that struggle to find solutions for this complex issue.

Notes

- 1 The reform process was therefore for many years known as ‘decentralization and deconcentration reform’, in short ‘D&D’. After 2008, the official terminology became ‘Subnational Democratic Development’ (SNDD).
- 2 SPACE (the EU Programme for Strengthening Performance, Accountability and Civic Engagement of Democratic Councils in Cambodia) started as a joint initiative of several European DP (including the European Commission, SIDA, DFID and Germany) and is implemented by GTZ/GIZ. Following DFID’s exit from Cambodia, the other three European DP continued their cooperation. Launched in 2008, SPACE supports the implementation of the Ten Year National Programme on Subnational Democratic Development 2010–2019 (NP-SNDD) and supports national and subnational Cambodian government institutions in fulfilling their responsibilities to citizens more efficiently, transparently and responsibly. SPACE reflects a commitment to improving aid effectiveness and is the first tangible output of the EU division of labour exercise that began in Cambodia in 2008 following the *Accra Agenda for Action*.

- 3 The Law on the Administration and Management of Communes/Sangkats (LAMC), 2001.
- 4 Article 69 of the sub-decree on Decentralization of Powers, Roles and Duties to Commune/Sangkat Councils of 2002 states that:

The National Committee for Support to Commune/Sangkat shall define services to be provided by the central level of administration, agencies of the state, national and international organizations and private sector and the ones to be provided by Commune/Sangkat.
- 5 It will be important to confirm if original intentions are indeed in line with the relationships indicated in Table 6.1.
- 6 It was only in 2014 that the government issued the Sub-Decree on the Selection, Management, Arrangement and Implementation of Permissive Functions by SNAs. This was accompanied by a 'Technical Document' to guide the SNAs in the implementation of permissive functions.
- 7 The MoH appears in fact to be heading in this direction. In December 2015 it sent an official letter to NCDD to inform it of its intention to transfer the health centre and overall health management of the OD to four district SNAs with congruent boundaries to their respective OD. The process of vetting the proposal has been slow. In July 2016, MoH established an inter-ministerial committee to prepare the transfer process (consisting of MoH, the Ministry for Civil Service, Ministry of Economy and Finance, Ministry of Interior and NCDD-S). The work of this committee was expected to lead to a draft sub-decree and related regulations that could then receive a broader airing through a consultative process.
- 8 The information on the Ministry of Environment initiatives derives from personal communication (24 August 2016) with Kolmaly Pen, advisor dealing with functional assignment in the GIZ supported Decentralization and Administrative Reform (DAR) Programme.
- 9 Royal Government of Cambodia Sub-Decree No. 113/2015 on Solid Waste Management.
- 10 The decision made in the Organic Law to allow unspecified legal instruments to effect the transfer of functions facilitated the initiative taken by the Ministry of Environment, where it was essentially able to sidestep the lengthy functions mapping and functions review steps; with both good reasons (it was too long and unwieldy) and bad reasons (it was not so keen on the external review of its intentions). The NCDD put a nice face on it by indicating the Ministry of Environment had accelerated the process. But the fact remains that when ministries are allowed to proceed purely on the basis of their own instruments, occasions for scrutiny and harmonization across sectors are constrained.
- 11 One such policy-based lending operation by ADB is the Decentralized Public Service and Financial Management Sector Development Programme (DPSFM), which includes a policy-based loan and a sector loan (Project Number: 41392-023). However, the project loan component of this operation merely establishes a project fund (the Subnational Investment Fund/SNIF) for 184 districts that is not linked to transferred functions. Where functions are being transferred these are generally on a pilot basis and not across all 184 districts. Hence the loan is unlikely to have prodded the government into making any transfers of functions. It may well be that if timely disbursement is expected that the districts will follow the course taken by the Commune/Sangkat since 2001, and take on projects that are still the functions of national state institutions – presumably with the tacit or explicit permission of these institutions.
- 12 The Functions Mapping guidelines were issued in 2012; Functions Review in 2013, and the final guidelines 'Effecting the transfer' have not yet been formally approved, but the draft version has been applied in part by NCDD-S and sector ministries.

- 13 In January 2015, the Planning Commission (which never was a constitutionally protected body) was abolished by the government of Prime Minister Modi who had come to power in the previous year. It was replaced by a new national body, the *National Institution for Transforming India* (NITI Aayog).
- 14 R. Saxena (2013: 364ff.) points out that since the 1990s India moves towards a 'federalization' with the states gaining in power and influence at the cost of the Union level. The much stronger role of regional political parties and the need for coalition governments at the Union level involving these regional parties is probably a major factor here: in many cases the regional parties do not have a national agenda but use their national role to foster regional, state-bound interests. The BJP government that came to power in 2014 is currently an exception from this trend.
- 15 The terminology for local governments in India can vary between the states. The term 'panchayat' is normally reserved for rural local governments, while urban local governments are often called 'urban local bodies'. Initially, 'panchayat' referred to village councils (often called 'Gram Panchayat'); only with the 73rd constitutional amendment were higher levels of Panchayats introduced.
- 16 Small states with less than two million people can limit the PRI system to two tiers. For the Northeastern states, special arrangements apply. For tribal areas identified under Schedule V of the constitution, the Panchayat (Extension to Scheduled Areas) Act (PESA) of 1996 created special provision for local government (see MoPR, 2011, Chapter 9). The 74th Amendment in 1993 created the constitutional basis for local government bodies in urban areas. The legal and institutional framework of rural and urban local governments in India differs substantially. Here, we will focus on the mainstream rural local government system only, which is captured by the term Panchayati Raj Institutions (PRI). Currently, the PRI system consists of 618 District Panchayats, 6618 Intermediate Panchayats, and 248,255 Village Panchayats India-wide (see MoPR data at www.panchayat.gov.in/documents/10198/1791196/State%20wise%20number%20of%20PRIs-2.pdf [accessed 16 June 2016]).
- 17 See K.B. Saxena (2011) with a critique of the impact these CSS and their parallel bodies have on the PRI. The report of the 2013 Expert Committee also deals extensively with the CSS and their negative impact on the PRI system (e.g. Expert Committee 2013, Vol. I, Chapter 3).
- 18 A 2009 advisory of the MoPR Secretary on 'Delineation of role and responsibilities of Panchayati Raj Institutions (PRIs) in CSSs/ACAs' (MoPR, 2009a), which was sent to all ministries and departments of the Union government had underlined the critical role of the Union Government in the devolution process 'because of the increasingly large fiscal transfers it makes to the States in the functional domain of the PRS' (para 1). It emphasized the lack of 'horizontal convergence or vertical integration, resulting in multiple district plans unrelated to each other and often mutually conflicting' (para. 4).
- 19 The report of the 2013 Expert Committee (Vol. I) describes extensively the efforts of the MoPR (but also other central institutions like the Planning Commission) to have the central sector ministries accommodate the provision of Article 243G of the constitution in the guidelines of their CSS. Despite support from the highest level (like the Prime Minister and Cabinet Secretary), efforts to strengthen PRI involvement in the CSS have achieved little. This failure also underlines the importance (and complexity) of achieving inter-governmental coordination for devolution as a 'whole-of-government' reform. One of the 'fascinating' features of the CSS is their longevity: Davis (2016) analyses the potential of activity mapping for a CSS (the Integrated Child Development Services/ICDS) which has been in existence since 1975!
- 20 In the budget year 2015/2016, the number of CSS was decreased to 50. In October 2015, a report on the rationalization of centrally sponsored schemes was published which suggested a further reduction of CSS to 30, the introduction of 'core' and 'optional' schemes, and greater flexibility in the design of the CSS so that states could choose those components or elements of the schemes which are aligned with their

needs and levels of socio-economic development (NITI Aayog, 2015). Parallel to reducing fiscal transfers by means of CSS, the states' share of the Union taxes was increased from 32 per cent to 42 per cent. According to Kapur and Srinivas (2016), most states received either the same or more funds from the Union level, but overall with less strings attached than before.

- 21 Not surprisingly, the states had little appetite in following such advice and not a single state has taken up the model act as a blueprint for modifying its own local government framework (Expert Committee, 2013, Vol. I: 84).
- 22 The Devolution Index has been prepared since 2006 by various Indian research institutes, such as the National Council for Applied Economic Research (NCAER), the Indian Institute of Public Administration (IIPA) and the Tata Institute of Social Sciences. The 2015 report can be downloaded at www.panchayat.gov.in/documents/10198/378720/devolution.pdf.
- 23 Even in regard to the BRGF, the Expert Committee's finding was that 'the district planning process initiated in BRGF districts is neither extended to cover the gamut of development requirements in these districts nor replicated in non-BRGF-districts' (Expert Commission, 2013, Vol. I: 51).
- 24 Towards Holistic Panchayati Raj – Twentieth Anniversary Report of the Expert Committee on Leveraging Panchayats For Efficient Delivery of Public Goods and Services (April 2013). (The several volumes of the report can be downloaded at www.panchayat.gov.in/report-of-expert-committee.)
- 25 In early 2016, the MoPR was again merged with the Ministry of Rural Development. It remains to be seen whether its previous initiatives will continue, or whether the Union government's efforts to push states for a full implementation of the 1993 constitutional amendment will fizzle out.
- 26 The MoPR website has an (undated) status report which summarizes the devolution of functions, funds and functionaries in each state. Download at www.panchayat.gov.in/documents/401/84079/Status_of_Devolution.pdf.
- 27 Regarding functional assignment, Kerala is an interesting case as in 2000 the state had passed an omnibus legislation (the Kerala Decentralisation of Powers Act No. 16 of 2000) that in one stroke devolved numerous sector functions to the PRIs by modifying the respective sector legal framework.
- 28 Historically and in line with its small size, HP had a two-tier system of PRIs: the Gram Panchayat at the village level and the Panchayat Samiti at the intermediate (or block) level. The Zilla Panchayat at district level was added because of the 73rd Amendment. Traditionally, the Gram Panchayat level was the most important one, dealing with community development, conflict resolution at the village level and even having some judicial functions. This level is also the one seen as most important in terms of peoples' empowerment and political participation. The intermediate (block) level had an important role in collecting needs and aspirations of its population and in discussing those with the de-concentrated offices of the sector ministries, whose 'block officers' are usually clustered at this level.
- 29 For instance, Himachal Pradesh was ranked 10th in the 2009 devolution index, 14th in 2010, 12th in 2011 but only 17th in 2012 (see MoPR data at www.panchayat.gov.in/ranking-of-states-on-devolution-index [accessed 16 June 2016]).
- 30 Notification No. PCH-HA (1) 12/87-10206-406 dated 31 July 1996.
- 31 See e.g. Article 28 of the German Basic Law.
- 32 See also Expert Commission 2013 Vol. I: 80ff. for a summary of the situation of devolving functions to the PRIs. A much more positive assessment of the PRI system can be found in Bhattacharyya (2010) who calls it 'near-revolutionary and remarkably successful' (p. 159). However, his focus is on the widening of democratic participation and the opening of political space at the local level, a valid point considering the fact that the PRI system involves the regular election of nearly 2.8 million representatives (MoPR, 2011: 14).

- 33 One could speculate whether ‘citizen centricity’ is close to what we call ‘heterogeneity of demand’.
- 34 Davis (2016) points out that the discussion on activity mapping ‘have remained confined to bureaucratic circles’ (p. 244).
- 35 According to MoPR data (see EN 26) activity mapping in Chhattisgarh had been done but no Government Orders have been issued.
- 36 Capacity Building of Panchayati Raj Institutions in Himachal Pradesh (2007–2010). Project partners were the Department of Panchayati Raj (DoPR), the Irrigation and Public Health Department (IPH) and the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ).
- 37 See Annex 2 in Dwivedi *et al.* (2009).
- 38 For instance, a proposal for further delegation of tasks had been brought to the notice of the Minister for Social Justice and Empowerment as well as the Chief Minister. It was reported that the Minister for SJE was reluctant to grant political approval for the idea of shifting primary management of CSS funds to PRIs as this would deprive local MLAs of control over local development and welfare matters. In other words, they would be denied the ability to ‘patronise’ their constituencies on the strength of CSS funds. As a consequence, the departmental leadership became reluctant to continue a thorough activity mapping process as it was anticipating more potential conflicts between the administrative and political rationality (Dwivedi *et al.* 2009: 10f.).
- 39 Notification No. PCH-HA(3)9/2006–18580–22180 dated 19 October 2009 (see <http://hppanchayat.nic.in/PDF/Activity%20Mapping%20.pdf>).
- 40 The arrangements for rural drinking water included in the notification did not reflect the results that had been developed between the GTZ advisory teams and IPH officials.
- 41 See Table 2.3 of the report (TISS, 2015: 61).
- 42 See Tables 3.1–3.3 in TISS, 2015.
- 43 The authors do indicate that the DPR-Index is based on a very small sample of PRIs selected for field verification.
- 44 The devolution index is a good example of extorting pressure in a ‘name and shame’-manner as the ranking of the states did become an issue for state officials dealing with PRI issues.
- 45 This part builds on Dwivedi *et al.* (2009).
- 46 ‘Regional government’ (or *pemerintah daerah* in the Indonesian language) is the general term used to denote those levels of government below the national level, i.e. the provinces and the districts (*kabupaten*) or cities (*kota*). This term does not encompass the village level.
- 47 The former Minister, Ryaas Rasyid, clearly enjoyed recounting this period of his political brief on the occasion of a meeting with a Cambodian study tour delegation in 2011 (facilitated by this author, Gabriele Ferrazzi). He insisted that he sat close to the Minister of Forestry in one of these dialogues, and ended up kicking him at a critical point in their intense conversation.
- 48 The coordination mechanism used by *Menkowasbangpan*, and later the State Ministry for Regional Autonomy, to engage with sector ministries were special teams established through Presidential Decrees, respectively Keppres 67/1999 issued in July 1999 Tentang Pembentukan Tim Koordinasi Tindak Lanjut Pelaksanaan Undang-Undang Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah Dan Undang-Undang Nomor 25 Tahun 1999 Tentang Perimbangan Keuangan Antara Pemerintah Pusat Dan Daerah (with *Menkowasbangpan* as chair and the Minister of Home Affairs and Minister of Finance as co-chairs), and the April 2000 replacement in Keppres 52/2000 Tentang Pembentukan Tim Koordinasi Tindak Lanjut Pelaksanaan Undang-Undang Nomor 22 Tahun 1999 Tentang Pemerintahan Daerah Dan Undang-Undang Nomor 25 Tahun 1999 Tentang Perimbangan Keuangan Antara Pemerintah Pusat Dan Daerah (chaired by the State Minister of Regional Autonomy). It needs to be pointed out that these

- coordinating teams were charged with the finalization and implementation of the regional government and regional finances laws, and not just the functional assignment aspects. Their struggles to mount proper functional assignment processes stem in part from the time pressures and complexity of this large undertaking.
- 49 These forestry sector GTZ supported projects were the Strengthening the Management Capacities in the Forest Sector Project (SMCP) and the Sustainable Forest Management Project (SFMP).
 - 50 The MSS concept also was given a sentence in the elucidation of the regulation (in Article 3.2), but this did not make the concept any more robust or operational.
 - 51 As reported in the Donor Working Group (DWG). 2003. *Clarification of Law 22 – Minutes of Meeting*. 9 June.
 - 52 Despite the growing sense of nationalism within some of the central government institutions at this time, the government of Indonesia-DP coordinating mechanism – the Consultative Group on Indonesia (CGI) – provided a platform for DP coordination and policy inputs on decentralization. This was achieved on the DP side through the Donor Working Group, as part of the Joint GOI-DP WG on Decentralization. The CGI was dissolved by the President in 2007, citing the reduced financing obtained from the DP and the preference for bilateral discussions with each of the diminishing number of funders.
 - 53 Peraturan Pemerintah Nomor 38 Tahun 2007 tentang Pembagian Urusan Pemerintahan antara Pemerintah, Pemerintahan Daerah Provinsi dan Pemerintahan Daerah Kabupaten/Kota.
 - 54 The districts were encouraged to cooperate to overcome size limitations, but the organizational forms (and experience) for this cooperation were lacking for many years after the reforms. Effective models for same level government cooperation were not developed until a decade later.
 - 55 Whether this differentiation will indeed turn out to be positive depends of course on whether the government is able to wisely differentiate between basic services that require MSS and those that can benefit from other standards. This differentiation is not a trivial matter and may not lead to the crisp demarcation that the new law seems to suggest.
 - 56 The excesses of some regional heads and representative bodies (particularly at district and city levels) went so far as to be in breach of the constitution (e.g. in relation to discriminatory regulations for instance) but the central government often appeared at a loss as to how to counter these, even if existing supervisory tools might have served the purpose.
 - 57 This extremely powerful position continued after independence under other names (like Deputy Commissioner, District Coordination Officer, District Magistrate); it can be found in India and in other states with a British administrative tradition.
 - 58 Some exceptions might be seen in urban areas where urban local bodies assumed responsibilities for municipal services.
 - 59 Military governments were as follows: General Ayub Khan 1958–1968; General Yahya Khan 1968–1971; General Zia-ul-Haq 1977–1988, and finally General Pervez Musharraf 1999–2008.
 - 60 Article 32 states that the state ‘shall encourage local government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women’. Article 140A of the constitution specifies that ‘each province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments’.
 - 61 For the pre-2010 period it has been argued that devolution ‘undercuts federalism in Pakistan because it simply bypasses the provinces and funds are devolved directly from the Centre to the local bodies’ (Bhattacharyya, 2010: 157) – the 18th Amendment has cured this situation by removing any federal jurisdiction on local government matters. While this should also put an end to direct fiscal transfers between the federal

- and the local levels, some federal vertical initiatives (like Polio Eradication, Prime Minister's National Health Insurance Initiative) continue.
- 62 For a comparison of the various local government acts, see PILDAT, 2013. Beside the mentioned provinces, there are separate local government laws for the Islamabad Capital Territory (ICT) and the Cantonments (military sections of urban areas). Elections in the ICT took place in November 2015, and elections in the Cantonments in April 2015. The Federally Administered Tribal Areas (FATA) along the border to Afghanistan do not have a local government system. For a concise overview of local government in Pakistan since 1947, see Islam, 2015.
 - 63 We agree with most of the critical comments regarding the rationality and motives behind Musharraf's LGO. Taking it as an example of designing decentralization reforms, however, we regard it as a significant improvement over previous local government systems in Pakistan. Despite the resistance from within the provincial bureaucracies and the powerful so-called District Management Group (DMG) of senior administrators (see Rais, 2008), there is evidence that the reform did improved service delivery (see e.g. Aslam and Yilmaz, 2011). For a general overview of the 2001 reforms see ICG, 2004, ADB/DFID/World Bank, 2004, and Urban Institute, 2006.
 - 64 Thus rural–urban divide can also be seen in India as discussed in section 5.3. See Cheema *et al.* (2006) for the situation in Pakistan.
 - 65 There is a considerable debate how non-partisan election systems weaken political competition and vertical coordination: elected local representatives might not have the political linkages and networks with party-based provincial and national governments, while political parties at higher levels cannot 'enhance their reputation by sponsoring better local governance' (Cheema *et al.*, 2015: 71). According to Myerson (2014), having a path from local to national level on which politicians with good reputation can advance to higher levels of power creates incentives for improving public services; political parties that participate at all levels of the political system can provide such career opportunities. Cheema *et al.* (2015) argue that 'the democratic parties' disconnection from local government has created local political vacuums that have been repeatedly exploited by nondemocratic forces to undermine the national system of civilian governance' (p. 68). The 'higher incidence of dynastic dominance in Pakistani politics compared to other polities' is also seen as a consequence of 'the barriers to entry in provincial and federal politics resulting from the disconnect between local governments and political parties' (*ibid.*: 72).
 - 66 Even under the comparatively progressive 2001 Local Governance Ordinance, local governments' role in civil service management was severely restricted (Aslam and Yilmaz, 2011: 162).
 - 67 This was partly altered under Musharraf's Local Governance Ordinance 2001 because the District Coordination Officer was formally reporting to the elected district *Nazim*. However, the authority of *Nazim* did not include matters of transfers and promotion which remained under provincial jurisdiction.
 - 68 The last proper population census was conducted in 1998. The population figure of 22.2 is an estimate for 2009 (GoKP, 2010a).
 - 69 The province's Local Government Act for instance does not apply to the FATA but to what is called Provincially Administered Tribal Areas (PATA).
 - 70 See for instance Asian Development Bank and World Bank (2009); Government of NWFP (2009); GoKP (2010b).
 - 71 Under the 2001 LGO and previous local government systems, the union (a cluster of villages) was the smallest unit of local government. In KP, there were 1001 union councils with approx. 13,000 elected councilors. With the creation of village and neighbourhood councils under the 2013 KP LGA, the number of units increased to 3501 V/N councils (out of which 505 are urban neighborhood councils), and approx. 40,000 elected representatives (see <http://lgkp.gov.pk/neighbourhood-council/> (accessed 29 April 2016)). See also Islam (2015).

- 72 In the FY 2014/2015, foreign assistance funding for development in the education sector amounted to Rs11.795 billion as compared with Rs8.132 billion from provincial revenue (GIZ, 2015a: 8). In the FY 2015/2016, the health sector's development spending (Rs8.28 billion) consisted of Rs4.23 billion provincial revenue and Rs4.13 billion foreign assistance (GIZ, 2015b: 16).
- 73 Contrary to this view, the Lahore High Court in its interpretation of the meaning of Article 140A of the Constitution had clearly stated that local government institutions 'had to be empowered and given definite functions; they were not envisioned by Art. 140A of the Constitution to be an agent or an underling of provincial Government but a distinct and empowered third tier of elected governance' (Lahore High Court, 2015, CLD 983). In a similar ruling, the Lahore High Court had said that while the assignment of functions to local government remained a prerogative of the provincial legislature, the:
- local tier could not be stripped off a core bundle of functions over which it was empowered to exercise self-government ... Diluting the core bundle beyond a minimum threshold through centralization was tantamount to stripping local governments of their basic functionality as a tier of government.
(Lahore High Court, 2015; PLD, 522)
- 74 The initial LGA of December 2013 listed a total of 24 devolved offices. The fourth amendment of the LGA in August 2015 removed some of them (such as Vocational Education, Special Education) or reformulated the denomination.
- 75 These include for instance (1) spatial and land use planning, zoning, enforcement of such plans vis-à-vis public and private sector; (2) execution and management of development plans for improvement of municipal services and infrastructure; (3) enforcement of municipal laws, rules and bye-laws; (4) provision, management, operation and improvement of municipal services; (5) the collection of taxes, fines and penalties provided under the LGA and others. There are also coordinating and monitoring functions vis-à-vis the village and neighbourhood level.
- 76 The amendment of the LGA in 2015, however, indicates that sector departments could influence decisions on functional assignment.
- 77 See GIZ, 2015a for details of the unbundling exercise in the education sector and other diagnostic work that was done as part of the bilateral cooperation.
- 78 As salary expenditures are fixed, the interesting part of the budget from the perspective of the bureaucracy is the non-salary current expenditure – this is where operational funds for the actual work are coming from. Development expenditures are mainly for physical infrastructure work.
- 79 See GIZ, 2015b for a summary of the process and results of the exercise.
- 80 Interestingly enough, the already mentioned fourth amendment of the LGA in August 2015 added a new section (105A) saying that:
- Government may, by notification, exclude any of the functions assigned to the city District Government, District Government, Tehsil Municipal Administration or Town Municipal Administration as the case may be, outsource these function to any authority, firm or company on such terms and conditions as it may determine in accordance with existing laws or rules in force in the province.
- 81 The 2015 provincial Planning and Development Guidelines for instance establish uniform sector allocations for the development budget: 20 per cent each for health and education, 10 per cent for drinking water and sanitation; and 5 per cent each for agriculture, women's development, and youth and sports. Only 30 per cent can be spent at the full discretion of the district government.
- 82 The key administrative official that appears in the District Government's Rules of Business (the Deputy Commissioner, who is the main link between the administration and the elected representatives, including the District *Nazim*) is not mentioned once in the LGA.

- 83 Assuming of course that possible changes in the political landscape – the next provincial election will come up in 2018 – will not lead to a complete revamping of the local government system.
- 84 Note the discussion whether the 2001 commune law included a ‘general mandate’ in section 6.1.
- 85 Some explanations could be the timing of the reforms (e.g. coming after Indonesia’s Big Bang), which allowed the utilization of lessons learnt elsewhere, the heavy engagement of DP in the deconcentration and decentralization reforms and their ability to align their support efforts, and the lead role of a national coordinating body with strong political backing from the national leadership.
- 86 In this respect it should be noted that Indonesia has long had an inter-ministerial body, the Council for the Deliberation of Regional Autonomy (*Dewan Pertimbangan Otonomi Daerah/DPOD*). Co-chaired by the Ministry of Home Affairs and the Ministry of Finance, it was to be supported by a secretariat drawing from the Ministry of Home Affairs. However, this body interpreted its mandate narrowly and never generated meaningful policy. It met rarely, and then largely to rubber-stamp the creation of new regions (Ferrazzi, 2006). Decentralization initiatives since the mid-1990s were instead led by ministries concerned with state reform or the Ministry of Home Affairs. The latter has never had a good reputation as an honest broker, complicating its efforts to give leadership.
- 87 The initiative by GTZ’s Sector Network Governance Asia that resulted in the 2009 paper on functional assignment (GTZ, 2009) is a good example here.

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7 Functional assignment challenges and how to address them

The preceding chapters have captured the conceptual and practical advances made in functional assignment, pointing out its importance as a building block of decentralized multi-level governance and indicating its place in the overall design of decentralization reforms. The relatively low level of attention given to this fundamental aspect of multi-level governance and the paucity of documented practices of functional assignment solutions and methods (good ones and bad ones) that can foster comparison and an internationally informed community of practice have at times led to inadequate diagnosis of what ails multi-level governance. This in turn is likely to account for some of the mixed results seen in decentralization (or recentralization) reforms.

In the early chapters we stressed the importance of getting it right on ‘who does what’, adding that this conceptual imperative has not been matched by scholarly work or systematic patterns of practice. We subsequently put forward elements and steps of a normative process for conducting robust functional assignment, partly tested and distilled from our own professional involvement in such processes (mainly in Asian countries) as described in the case studies presented in Chapter 6. This normative process is built around five major steps, from ‘defining the goal and scope of functional assignment’ (Step 1) up to ‘effecting the transfer, implementation/monitoring’ (Step 5) (see Figure 4.1). Clarity about the decentralization modality (deconcentration, delegation, devolution) and about the overall functional assignment architecture in the SNG legal framework (‘general competence’ versus ‘list model’, see Chapter 3, section 3.3) and informed use of the different types of governmental functions (like ‘obligatory’ and ‘discretionary’) (see Chapter 3, section 3.4) are critical preconditions for conducting a meaningful and coherent functional assignment process. The ideal types of decentralization are rarely found in their pure forms in practice, but comparing reality to these forms can indicate where the system is positioned and where it may be heading, together with the opportunities and challenges likely to be met. Moreover, an appreciation for these modalities makes it easier to discern the different roles played by state institutions (legislative, executive and judicial branches). This view clarifies who is giving functions and who is receiving, and that clarity will be reflected in the scope of decision-making, supervision, reporting requirements and mechanisms for accountability in general (see Chapters 2 and 4).

Methodologies such as vertical and horizontal unbundling, and the conscious application of criteria like ‘externalities’ and ‘heterogeneity of demand’ (see Chapter 4) can help in distilling meaningful sector functions and in determining the most appropriate level to which a function should be assigned. The normative process for functional assignment as proposed in this book recognizes the critical role of sector institutions in formulating this key element of the wider decentralization reforms and aims at adding technical depth and sector expertise to an otherwise political decision.¹ We acknowledge the political nature of decentralization and local governance reforms, where the final decisions reflect difficult compromises driven as much by the interests and power relations of the stakeholders involved as by technical and practical considerations. The political nature of DLG reforms requires an understanding of its political economy, i.e. of the interests and incentives of the actors involved (see Chapter 5). In the case of developing and emerging countries, international development partners are often influential actors in the design and implementation of such reforms, and we illustrate some of their strengths and weaknesses in the case studies in Chapter 6. In discussing the approach and fate of functional assignment, we underscored the importance of understanding how political factors can facilitate or hinder the application of functional assignment. Experience shows that there is not a straightforward relationship between the sophistication of the methodology, the intensity of effort and the resulting robustness of the functional assignment – let alone of the ultimate results of decentralization. It is the political factors that intervene to limit efforts, or give unexpected room for them – even rushing their pace on occasion.

Recognizing the value of functional assignment, and the need for a more systematic approach to its processes, entails an appreciation for the scope of this concept. Whereas it has been common to use the term interchangeably with expenditure assignment, the full value of functional assignment is only evident when its broader scope comes into view. This includes the role differentiation between levels of government; the regulatory functions that SNG may take up; the establishment of dual roles within SNG officials; choices on functions architecture, including the empowerment of SNG in a form that is not a specific sector assignment at all, but more the creation of political space or discretion for action.

Our view of functional assignment also posits that important choices relating to the architecture of functions need to be made, very consciously, in the design stage of decentralization. We indicate that the trend towards a more permissive architecture has its appeal, but as OECD experience shows a strong form of general competence is not attained anywhere. Rather, a hybrid form – drawing from enumerated lists (particularly to denote obligatory functions) is more the norm. In particular, developing and emerging countries may do better moving towards such a hybrid form with well-defined positive lists as starting points, offering more certainty, if less initial discretion, to their newer and still evolving SNG.

Because the social and political history and contemporary political dynamics are country specific, it is risky to offer a one size fits all architecture or process

for functional assignment, even within a regional block of countries. The challenges in Myanmar cannot be equated with those in Indonesia, though they may have some similar events and developments, and both belong to the ASEAN regional block.² The normative approach to the process of functional assignment which we offer here has been tested in some of its parts, indicating that it is promising, if adapted to the local context. Some techniques are quite transferable, particularly the unbundling of sectors/services that makes it easier to see how implementation occurs or could be reshaped in terms of the level of government made responsible. This tailoring of a relevant approach veers considerably from past tendencies to advocate for country or cross-country assignments that are too broad or generic. Constitutions sometimes appear simplistic in their assignments, often assigning large sectors or sub-sectors to specific levels of government, or to be shared between levels of governments. This practice hides the reality that subsequent legislation is tasked with, or must out of necessity, provide more details (of unbundled functions), particularly where concurrence is indicated (see for instance the case of Mexico, in Giugale and Webb, 2000). Examined from the side of policy-making in designing assignment, it is preferable to avoid the ambiguity inherent in such simple lists. In the past, this caution has not been expressed, or followed; there are numerous general decentralization or fiscal decentralization guides that offer assignment advice, indicating which sectors or broad expenditure categories should be placed at federal (national), state and local levels of government – usually with considerable concurrence shown (see for instance Shah, 1998; McLure and Martinez-Vazquez, n.d.). We think that these are too abstracted and simplified. Such tables and matrices are offered for a particular country or for any country, in the latter case further undermining their usefulness. The rationale for such simplified assignment comes from the empirical, but nonetheless gross observation, that expenditure levels (amounts of public funds) are typically distributed across these levels (see for instance the multi-country data provided in Ahmad *et al.*, 1997). The generic tables for functional assignment may at best provide a rough indication of where the sectors and expenditures may be considered, but do not bring out the specificity, interconnections and architecture or typology of the assignments as we have elaborated in this book. The generic guidance seen in the past is usually devoid of reference to decentralization modalities, and choices of function types and their architecture. It is attention to the latter that gives definition to roles, and scope of action that condition the degree of autonomy exercised and the pattern of relationships between levels. More recent conceptualization seen in the literature also supports this more fine-grained appreciation for SNG scope of action (see for instance OECD and KIPF, 2016), but we hold that our offered framework is particularly useful to come to grips with the choices and implications of functional assignment.

In this final chapter we want to address two main issues: first, we want to elucidate why we think that a more rational approach to functional assignment as part of decentralization reforms will increasingly become more important for the overall performance of multi-level government systems in developing and

emerging countries. And second, we want to formulate some ideas and suggestions on how the concept of and knowledge about functional assignment can be expanded, institutionally anchored and made available to policy-makers and stakeholders alike on a more sustainable basis. We ground some of these considerations in the literature about policy diffusion and policy transfer which we think provides a suitable conceptual framework for such strategies.

7.1 Why is ‘who does what’ becoming more important?

Earlier in Chapter 1 we referred to the worldwide shift to more decentralized, more diverse and sometimes less symmetric arrangements in the territorial governance of states – a tendency seen in OECD and non-OECD, in federal and unitary countries alike. Veiga *et al.* (2015: 17) list the ‘global financial and economic crisis, rapid urbanization and demographic changes, global environmental challenges/climate changes, and economic globalization and regional integration’ as important future challenges for subnational government.

Contrary to some views or ideological commitments popular in recent decades, the state has not retreated, even under the leadership of conservative governments. There is mounting pressure on it: in non-OECD states for it to do more, and in most countries to be more effective and efficient. This trend works to place greater emphasis on intergovernmental roles and relationships, and state engagement with private sector and stakeholders.

The current global agendas – the United Nations’ ‘Agenda 2030 for Sustainable Development’ with its 17 Sustainable Development Goals (SDG), the ‘New Urban Agenda’ of the Habitat III conference of late 2016, but even more the climate change agreements based on the COP21 which took place in Paris in late 2015 all require that national and subnational levels of government work together to achieve the common goals. The combined challenges of climate change, urbanization and sustainable development underline the need to have well-defined and well-resourced mandates of the different government levels in a state’s system.

Functional assignment and climate change

The various responses to climate change can be grouped into two areas of action: *mitigation* and *adaptation*. Mitigation is concerned with the causes of climate change, which are widely seen as the emission of greenhouse gases into the atmosphere leading to global warming. Adaptation is about dealing with the effects of climate change which can be seen in rising levels of temperature globally, leading to rising sea levels, the changing of seasonal weather patterns combined with droughts and/or floods, changes in maritime ecosystems, etc. These changes have effects for instance on agriculture (like changing of cropping patterns), housing (like increased frequency of flooding of low-lying residential areas), on whole eco-systems (for instance in coastal areas the disappearance of coral reef systems due to higher water temperatures), on the

costs of providing public services (for instance frequent repairs or the replenishment of road infrastructure destroyed by flooding, or reconstruction of public buildings destroyed by tropical storms). Adaptation takes place locally as the effects of climate change manifest themselves in locally/regionally tangible changes; the externalities and spillover effects of adaptation measures can normally be controlled within a given jurisdiction.

The global nature of climate change explains the visibility of national level policies and national priorities in defining mitigation/adaptation objectives. However, implementation of such policies and attainment of the objectives is only possible with the involvement and commitment of subnational governments and/or de-concentrated branches of national agencies. As the effects of climate change are felt locally, many of the adaptation measures also need to be conceptualized and implemented locally, and in accordance with the local context. Climate change adaptation provides much scope for SNG initiative in view of the locally manifested effects of climate change. The distinction between mitigation and adaptation is important because in general subnational governments will be inclined to emphasize adaptation rather than mitigation interventions. This has to do with the externalities of both (reducing greenhouse gas emission will not normally change immediately the climate change effects on a specific location), the spatial pervasiveness of climate change effects and the political economy of adaptation measures; these have a tangible, short- or medium-term positive impact on the local constituency and can therefore translate into political rewards bolstering the standing of local politicians and decision-makers.

There is consensus that the poorer segments of the developing and emerging economies suffer more from the effects of climate change: often low-cost residential areas and slums are located in low-lying and flood-prone areas, their ability to diversify to other economic activities is more limited; they have fewer economic resources to cope with the negative impacts of weather changes like flooding or storms. Adaptation measures therefore are clearly linked to issues of economic and social development in the locality.

SNG around the world have been taking the initiative to respond to climate change threats. They have done this individually, and they have also joined to share their experiences and be more effective. This is particularly evident in the urban SNG, as seen in the Mayor's Compact, which now boasts around 200 cities around the world, aiming to provide evidence that 'cities are true climate leaders, and that local action can have a significant global impact'.³ Rural SNG are also active, if not as well organized as their urban counterparts.⁴ Such joint initiatives are driven by genuine concerns about the effects of climate change, but are also part of the ongoing tussle between public and private stakeholders about budgetary resources to finance the required measures.

There is enormous value in understanding how climate change initiatives fit into the mandates of levels of governments, and specifically the institutions at each level of government. It is this clarity of 'who does what' that legitimizes policy, planning and budgeting exercises – even where the correspondence between planning and budget execution is rather poor. But discerning who is

responsible for climate change responses is fraught with difficulties. Understanding these can be helpful in surmounting them and thus liberating (or obligating) and empowering SNG to be active in this field.

‘Climate Change’ is not a sector but a cross-sectoral issue like gender, participation or social justice. Climate change interventions have not only to do with the ‘what’ of public sector activities, but with the ‘how’. In other words, the normal economic, social, legal and political functions of the public sector (like providing education and health services, building and maintaining public infrastructure for economic activities, maintaining law and order, ensuring justice and social inclusion, regulating the behaviour of the private sector, establishing and enforcing legal frameworks in the sectors, etc.) do not change because of climate change. What does change is probably the significance of each function (as compared to other functions), and how the functions are planned and executed, in turn requiring reworked spending priorities in national and subnational budgets. Hence governments are concerned with how to make public infrastructure less vulnerable to the effects of weather patterns, how to provide the right incentives and support to the segments of the population effected by climate change, how to ensure that public agencies and utilities reduce their share of greenhouse gas emission, how to use instruments of land-use planning to safeguard carbon storage eco-systems, how to use the education system for increasing citizens’ awareness about the causes and effects of climate change, etc.

The above perspective suggests the value of a policy centre (e.g. a dedicated coordinating unit) for climate change response within government (with a cross sector view) but it also suggests the importance of sector specific policies that mainstream broad principles and targets. Within each sector, a fairly robust description of sector functions and who is responsible for them is required. As discussed above, it is how these functions are implemented that will determine the impact on climate mitigation or adaptation. For instance, if a Ministry for ‘Rural Development’ has typically been responsible for river ‘training’, (as is the case in Nepal) it may need to do more of it, or to plan for more extreme water flows in the way it designs its installations. These require awareness of the challenge, and the requisite skills to implement the existing function with new parameters. The changing emphasis on certain functions, and modified skill set needed, may strengthen the case for reassessing whether the right level of government has the main responsibility for a given function that plays an important role in climate change response. To continue with the above example of river training, if the ministry has been undertaking all planning and financing and procurement for river training efforts, it may decide to pass these in whole or in part to the provincial level – if that promises better outcomes. This decision might be taken by applying a functional assignment process that will uncover how the function is carried out, and insert some sensible criteria to determine whether the function should be transferred to a different level of government.

Functional assignment as such is not a tool or approach that helps in identifying climate change relevant areas of intervention. These need to already be known. The potential benefits of applying the functional assignment concept to

climate change interventions starts from the downstream end of climate change policies: once policy objectives and priority intervention areas have been determined, applying functional assignment can help in the review of existing assignments of sector functions to levels of government in those sectors that matter most, and make them more rational and effective. Thus functional assignment can contribute to attaining climate-change related policy objectives more effectively and efficiently. It complements the putting in place of new or revised fiscal arrangements that motivate SNG to engage in mitigation and/or adaptation measures, and delineates the areas of responsibility between the existing levels of government. It can differentiate between what must be undertaken by SNG, to reflect national imperatives, and gives room to what could be entirely up to the SNG. It can thus assist in making national intervention plans more realistic and practical, for instance by identifying gaps in the legal and fiscal arrangements that influence SNG behaviour and would stand in the way of achieving the climate change policy objectives.

Functional assignment and urbanization

Urbanization is another trend that places the functional assignment challenge squarely in front of policy-makers. This applies especially to Asia; its sheer population size has made Asia the continent with the most urban population in the world. Almost half of the world's urban residents live in Asia. The speed of urbanization is much higher in Asia as compared with the past development in Europe. This rapid pace of urbanization comes with a price; deterioration of air quality, traffic congestion, noise pollution and the unsustainable use of limited land resources are some of the challenges (ADB, 2014a). Asia has an estimated 500 million slum dwellers; more than half of the most polluted cities are in Asia, while air pollution contributes to half a million deaths a year in the region (ibid.: 2–6).⁵ On the other hand, urbanization usually goes hand in hand with industrialization and is clearly positively correlated with the increase of the national gross domestic product (GDP); empirical data show that in many Asian markets productivity is at least 1.5 times higher in the urban economy than in the non-urban. In Malaysia and Thailand, cities contribute more than 90 per cent to GDP. But even in less urbanized countries like Sri Lanka and Bangladesh, more than 65 per cent of GDP is produced in urban areas (ADB, 2014b: 1). In Asia like everywhere else, the urban economy is the 'engine of growth', creating economies of scale, pushing technology development, fostering product design and service innovation through shared market innovation and increased competition. The mentioned ADB report summarizes the role of the cities in Asian economic development by pointedly saying that 'cities and city regions have replaced the nation state as the principal drivers of economic development in many Asian countries' (ibid.: 4). These cities and city regions are not competing any more with smaller, perhaps urban or even rural SNG within the same state – their attention is towards the world market, and they are calling for regulatory instruments that will allow them to be competitive with other such city regions on a

global scale. For assigning functions, this calls for different, asymmetric arrangements; such cities and regions need a much stronger role in promoting themselves directly in the areas of trade and investment, in providing the required infrastructure, or in providing the required skilled manpower. They are certainly seeking greater revenue raising instruments to finance their competition strategies. Their economic and political clout changes the power relations between this category of SNG and national players considerably. Again, the ADB has summarized this nicely by saying that:

the push for decentralization under increasingly federated structures is inevitable. Mayors of principal cities will have increasing sway over national politics, but this will also contribute to tensions between national and local governments. Well designed and effectively implemented decentralization will make a huge difference.

(ADB, 2011: 115)

A clear delineation of roles between national and subnational levels (which could include all three modalities of decentralization), and a well-balanced match of functions and funds are in our view critical ingredients of such ‘well designed decentralization’. Metropolitan regions need to coordinate closely with their multiple autonomous local government units for the delivery of public services like water and sanitation, public transport and road infrastructure; they will benefit from a proper functional assignment process where a criteria-based assignment of functions to different levels can help to streamline responsibilities, as other solutions to ‘metropolitan fragmentation’ (such as creating new metropolitan government structures, annexing adjacent territories and dissolving the lowest tier of government) often face political resistance (World Bank, 2015: 59).

Functional assignment and sustainable development

Both climate change and urban development are intrinsically tied to issues of sustainable and inclusive development which are at the core of the global Agenda 2030. The 17 SDGs with their many more specific targets, each coming with indicators, cover most policy areas where SNG play (or could play) an important role. This includes for instance health (SDG 3), education (SDG 4), water and sanitation (SDG 6), inclusive growth and employment (SDG 8), infrastructure development (SDG 9), urban development (SDG 11) and climate change (SDG 13). The debate about ‘localizing’ the Agenda 2030 is currently in full drive as states are in the process of formulating their national strategies and targets – which in many cases need the involvement, commitment and collaboration of SNG. Again, functional assignment and the resulting clear delineation of roles and responsibilities can contribute to the overall effectiveness and efficiency of the public sector in pursuing the SDGs. The use of different types of functions can help to steer the course of SNG as key services can be formulated

as obligatory functions (perhaps with service standards attached to them), with resource allocation matching the functional load of SNG. This dimension of ‘who does what for achieving the SDGs’ is currently largely missing from the Agenda 2030 debate which focuses on targets and financing, and less on the issue of improving the functional arrangements between inter-related levels of government.

However, in the context of improving public services, other diagnostic initiatives exist which can be fine-tuned to accommodate a functional assignment perspective and help to clarify the focus for SDG attainment. One of these, called ‘Functional Analysis’, tends to be conducted at national level and is usually focused on one or more ministries or agencies that is struggling to meet its intended core results. However, because the focus is on the entire sector, the analysis sometimes extends to subnational entities that are involved in the sector (see for instance the case of education in Romania in World Bank, 2011, or the case of the health sector in Cambodia in ADB, 2010). Whether the sector is entirely centralized or not, the methodology could be formally expanded to always bring into play whether the sector would benefit from any of the three modalities of decentralization, with some guidance on the functional assignment opportunities and challenges, and a sector focused methodology to work through the exercise. The Functional Analysis/Review methodology is common to the World Bank and Asian Development Bank approaches to institutional diagnostics and reform design; these agencies could enhance it with a robust functional assignment component and make it available to governments and other DPs.

Beyond the area of international development cooperation, another exercise called ‘Service Delivery Review’ is developed by local government supporting research and education institutions in OECD countries (see for example ACELG, 2015). It is oriented to practitioners in a particular sector who wish to avail themselves of practical guidance in undertaking a review of specific services, employing good practices in the modalities of delivery. Triggering SNG level service reviews are complaints or concerns regarding complexity of service access, service overlaps and service gaps, lack of integration of services, or overly complicated administrative, funding and reporting arrangements (AMO, 2008: 3). The general intent of the review is to better align services with community needs, improve quality, increase efficiency and maximize partnerships in terms of service providers. An additional ‘module’ could be tacked on to indicate what elements of service appear to be missing or would naturally complement those already under review. The methodology could then guide the local government in an exercise to determine where those related functions are located (if they are implemented at all), whether the local government has an existing framework that would allow it to take up the functions, and if not how to make a case to the appropriate level of government for inclusion of those services in the scope of services for the local government in question.

Piggybacking on the above initiatives would have the benefit of some name recognition in the tools employed. The challenge of retrofitting these instruments lies in enticing the designers of such tools to seize these opportunities to enhance

the tools without making them too complex and burdensome; ‘functional analysis’ as it stands often covers the whole range of public financial management processes and human resource management analysis. Service delivery reviews are also quite comprehensive for a given function. To ask practitioners to think about what they are lacking is another stretch.

7.2 Functional assignment, policy diffusion and policy transfer

We have frequently alluded to the lack of publicly accessible knowledge about functional assignment processes – how these processes have been conceptualized in a particular country; which actors had been involved and the roles they have assumed; how the activities have been sequenced; whether certain methodologies and criteria have been applied; how horizontal and vertical interaction in the public sector and between the public sector and the political domain have played out; and what rationale has influenced the chosen functional assignment. Research papers, case studies and analytical diagnostics about decentralization reforms per se are abundant (even if such research is disjointed, too divers in terms of methodology and coverage, and reflecting the numerous academic disciplines interested in decentralization) (Channa and Faguet, 2012; Smoke, 2015a; Smoke, 2015b) – but the knowledge on functional assignment processes is hardly documented and made available to others. Cross-country policy learning is thus barely possible (and even within a country knowledge and lessons learnt are seldom institutionalized in a manner that they can be used in a next round of functional assignment). The sporadic and intermittent occurrence of functional assignment processes scattered across different jurisdictions with their specific political, legal and economic legacies has prevented a community of practice from emerging. For newcomers to the topic, there is little guidance on what has worked and how to approach functional assignment; there are no conceptual ‘help desks’ and ‘hotlines’ from which to get advice.

Our question in this last section is therefore how such knowledge about functional assignment processes can be made available to others, and how processes of diffusion can be facilitated to enable policy learning across borders. Which institutions, networks, stakeholders could possibly drive, nourish and sustain such a process? Who would be the ultimate users and beneficiaries of such an enhanced knowledge management system on functional assignment?

In order to identify promising avenues on how knowledge about functional assignment can be expanded and made available to a broader set of potential users, we turn to the concepts of policy transfer (see e.g. Dolowitz and Marsh, 1996, 2000; Evans 2009; Carrol and Common, 2013a) and policy diffusion (see e.g. Mintrom, 1997; Berry and Berry, 2007; Shipan and Volden, 2012) as a theoretical and practical context in which to position our suggestions. Both concepts are closely related⁶ and deal with the question how policy innovations and policy reforms migrate (or ‘diffuse’) between political and legal jurisdictions – be it across national borders, between the constituent units of a federal state or

even between units of subnational government.⁷ Diffusion is defined as the process ‘by which an innovation is communicated through certain channels over time among the members of a social system’ (Rogers, 1983: 5 as quoted in Berry and Berry, 2007: 225). ‘Policy transfer’ is understood as ‘a process in which knowledge about policies, administrative arrangements, institutions, etc. in one time and/or place is used in the development of policies, administrative arrangements and institutions in another time and/or place’ (Dolowitz and Marsh, 1996: 324). Processes of ‘policy diffusion’ (i.e. the spread of policy ideas) do not always lead to ‘policy transfer’ in the sense of adopting and implementing new policy ideas by other polities as decision-makers might decide against introducing such policies.⁸

A policy innovation is understood, very simply, as ‘a policy that is new to the state adopting it’ (Mintrom, 1997: 741). The distinction between ‘policy invention’ (‘the process by which *original* policy ideas are conceived’) and ‘policy innovation’ as adaptation of a policy conceived and applied elsewhere some time ago but taken up as a new policy by another jurisdiction (see Berry and Berry, 2007: 223; their emphasis) might seem abstract and too theoretical for our purpose, but it serves to remind us that the worldwide trend to decentralization reforms as described in Chapter 1 has probably seen more cases of *adaption* of DLG concepts to specific political, legal and socio-economic contexts than pure cases of original *inventions* (although we would not rule this out entirely).

Innovations are driven by political imperatives and often promoted by ‘policy entrepreneurs’⁹ who identify problems, shape the terms of the policy debates, suggest policy solutions, and build networks and coalitions (Mintrom, 1997). The transfer of policy innovations can be voluntary, direct and indirectly coercive, or negotiated (Dolowitz and Marsh, 1996; Evans, 2009). States borrow policy innovations perceived as successful because they compete with each other, or because there is pressure to comply with certain regional and/or international standards (Berry and Berry, 2007: 225). For developing and emerging countries it has been argued that policy reforms in the public sector have often been introduced as a conditionality for accessing external assistance (see e.g. Kamarck, 2005, Evans, 2009); this refers often to the Structural Adjustment Programmes of the 1980s and 1990s, but also to wider public sector reforms which can include decentralization as ‘one of the most common themes in government reform’ (Kamarck, 2005: 143). In other words, policy transfer came about as a negotiated transfer which had more or less pronounced coercive elements ‘because the recipient country is denied freedom of choice’ (Evans, 2009: 245). Factors influencing whether a policy is adopted or not include for instance political, social and economic characteristics of the jurisdiction, the capacity within the governmental sector, the existence of advocacy coalitions and others (Berry and Berry, 2007: 225). Not least the interests of policy transfer agents (see below) influence how potential policies are filtered and selected, and how selected policies are then implemented: the case of health sector decentralization in Malawi is a good example how the implementation of transferred policies depends on ‘the general bureaucratic interest, institutional capacity and cultural

environment within which such reforms are implemented' (Tambulasi, 2013: 80). Common (2013) and Tambulasi (2013) also emphasize the role of political and societal culture and norms in the policy transfer process, such as the hierarchical high power distance culture and high uncertainty avoidance culture in Malawi undermining the appeal of decentralization (Tambulasi, 2013: 92f.), and the specific mix of Islamic and Arabic values, tribal traditions, collectivist culture and focus on personal and family relationships undermining (or blocking) the adaptation of policy ideas on public sector management in Saudi Arabia (Common, 2013: 25ff.).

Similarities between states (in terms of ideological orientation, socio-economic characteristics, cultural and historical commonalities, etc.) can influence the learning of states from one another (see Berry and Berry, 2007: 230f.), whereas geographical propinquity 'does not equate with policy transfer because ideological and resource similarities are necessary preconditions to adapt lessons from one country to another' (Dolowitz and Marsh, 1996: 353).

There is a consensus in the literature that policy diffusion (and possibly policy transfers) occur more often nowadays because of technological advances in electronic communication, ease of international travel, globalization and increasing interdependence of states (Dolowitz and Marsh, 2000; Common, 2001; Common, 2013). The occurrence of policy transfer is largely shaped and conditioned by the contextual factors of the adopting jurisdiction which makes it problematic to design a standardized transfer strategy. However, the significance of formal and informal policy networks and policy communities has been mentioned consistently which 'have lines of communication within them where ideas are exchanged', thus driving 'policy diffusion in addition to controlling and spreading knowledge within international policy cultures' (Common, 2001: 12f.). The networks established and maintained by international organizations like the OECD, World Bank and regional development banks,¹⁰ regional networks (like the Eastern Regional Organization for Public Administration/EROPA) or global networks (like the Commonwealth Association of Public Administration and Management/CAPAM) or the Commonwealth Local Government Forum/CLGF) could be potential conduits where knowledge about functional assignment could be shared and disseminated to relevant stakeholders.

Objects of policy transfers can include 'policy goals; structure and content; policy instruments or administrative techniques; institutions; ideology; ideas, attitudes and concepts; and negative lessons' (Dolowitz and Marsh, 1996: 349f.). Depending on the degree or form of the transfer, a distinction is made between copying, emulation, hybridization and synthesis, and inspiration (ibid.: 351).¹¹ Copying, i.e. the direct 1:1 transfer of policies is seen as a 'rare occurrence' (Common, 2013: 2) as in most cases a policy seen as promising for addressing perceived or real policy problems is adjusted and modified to fit the specific legal, political and socio-economic context of the receiving jurisdiction. In that sense the transfer of decentralization and local governance policies in most cases follows the forms of emulation and/or hybridization and synthesis. This would

also apply to our normative model of a functional assignment process which needs to be adjusted and fine-tuned in line with the contextual factors.

Decentralization reforms can be regarded as a policy innovation for the polity where they are implemented; likewise, functional assignment must be regarded as a new ‘policy instrument or administrative technique’. It does not matter whether the reform constitutes a dramatic and significant departure from previous political and administrative arrangements (as was the case with Indonesia’s Big Bang in 1999), or whether it is an incremental reform process like the one seen with Cambodia, which moves from deconcentration to carefully orchestrated forms of devolution sprinkled with elements of delegation. Both reforms represent innovations as they change institutional roles and mandates, modify political space in the state system, and alter vertical and horizontal relationships in the public sector.

Agents of policy transfer ‘play a key role in facilitating policy-oriented learning through imparting technical advice’ (Evans, 2009: 260). Such agents include elected officials, political parties, bureaucrats/civil servants, pressure groups, policy entrepreneurs and experts, transnational corporations, think tanks, supranational governmental and non-governmental institutions and development consultants (Dolowitz and Marsh, 2000; similarly Evans, 2009). For discussing how to establish a firmer fundament of functional assignment in the region, we focus on (1) elected officials; (2) bureaucrats/civil servants; (3) think tanks (in their wider conceptualization as ‘knowledge institutions’) (Evans, 2009); (4) NGOs; and (5) development consultants. This last category we discuss in conjunction with international development partners which normally commission consultants and/or provide the resources for governments to do so.¹²

Elected officials (‘politicians’) as agents for policy transfer in functional assignment can come both from the national legislature and from the elected (representative) bodies at subnational level. They could become aware about policy innovations through media or through direct interaction with elected officials elsewhere (e.g. by means of inter-parliamentary associations). In the case of SNG elected representatives, regional and international associations of SNG (like the United Cities and Local Government/UCLG and their regional chapters) disseminate new initiatives, models, lessons learnt and experiences from one environment to another. In the context of the debate about Agenda 2030 and its implementation, these regional and global networks have become more vocal and also have been given a much larger role in regional and global negotiations and exchanges than was the case previously. It should be the business of any SNG associations¹³ to influence national policy regarding the functions SNG are to hold and the powers associated with their mandate.¹⁴ Associations around the world do a fairly good job of engaging the national/state governments on planning and financing issues, but they do not seem ready in many cases to carry on a dialogue and analytical process concerning functions. There are exceptions of course, mostly found in countries with more established SNG. The current South African Local Government Association (SALGA) is very much engaged in challenging – and offering alternatives – to provincial policies regarding the delegation

(or recentralization) of key services. They make use of former government staff and academics in putting together strong arguments for where functions should be, under which modalities, while dealing with wide variations in SNG capacity (see for instance SALGA, 2011). In Ontario (Canada) the municipal association has worked with the province for several years to develop benchmarks for performance of what are essentially obligatory functions (although this or related terms are not often used). This can be seen as useful preparation for any discussion on changes in functional assignment.

Civil servants are another significant agent when it comes to the transfer of policy ideas ‘as the actual implementation and the resultant policy outcomes depend on their performance and interests’ (Tambulasi, 2013: 82). As in the case of elected representatives, they can become aware about policy innovations through media or through direct interaction with civil servants elsewhere – by means of professional associations, through study visits to other countries, secondment and professional exchanges, etc. Civil service professional training – especially for the higher echelons – often includes elements of comparative public administration and encourages officials to assess the relevance and applicability of policy reforms elsewhere for their own legal and political context. The existing regional associations in Asia like ASEAN and SAARC offer opportunities for bilateral and multilateral exchanges even if these are mostly limited to issues of trade and economic integration.¹⁵ It has often been argued that the public sector¹⁶ because of its context and dominating incentive structure is less innovative than the private sector because the main factor driving innovation in the private sector (competition) is missing.¹⁷ In contrast, innovation in the public sector is ‘largely internal competition for signaling, advancement or power by individuals or coalitions’; the main incentive being ‘those of career politics and upward mobility in management’ (Potts and Kastle, 2010: 123). This diagnosis, while primarily based on the context of OECD countries, holds certainly true as well in the context of non-OECD countries. However, the public sector of the latter is marked by additional constraining factors like high degrees of clientelism and rent-seeking, a less-developed capacity of the civil society to hold the public sector accountable, lack of incentives and a more limited demand for reforms from the users of public services (Cummings, 2015: 322). Still, in the context of developing and emerging countries the public sector does play a critical role in designing and driving policy reforms – perhaps even to a greater extent than elected representatives.

Knowledge institutions (like think tanks, universities, professional training institutions) are an important agent of policy transfer for several reasons: they collect and store knowledge; they disseminate knowledge by means of study programmes, professional training and publications; and they generate new knowledge by means of research and diagnostic analysis. Therefore, an important means of propagating and enhancing knowledge on functional assignment lies in building up training and education institutions that offer programmes that, in principle, ought to include functional assignment. Universities, think tanks and professional training institutions should be taking the lead in this

regard. They have done a reasonable job of promoting broad-based decentralization offerings,¹⁸ but because of their broad coverage these generally do not contain the depth of content on functional assignment that is required for policy-makers and practitioners; relevant content tends to be in fiscal issues/expenditure assignment which do not cover important features of functional assignment as we have laid out in this book. These offerings should in many cases be deepened with a robust functional assignment module; otherwise it may be necessary to develop functional assignment specific training. It may also be possible to augment units of specialized university courses that deal with public sector reform, but these are generally too diluted to make any appreciable impact on eventual practice. Functional assignment would need to be covered more comprehensively, and research on DLG issues should include diagnostics on existing and proposed functional assignments to build up more institutionalized knowledge on this subject.

As pointed out earlier, civil society and non-governmental organizations ought to play a more prominent role in functional assignment processes; however, for reasons explained in Chapter 5 they are often absent from such processes. Our country cases in Chapter 6 also illustrate the limited role of NGOs in shaping DLG reforms. This limits their potential to act as agents of policy transfer in functional assignment. Moreover, they lack the knowledge and expertise to share with others, and do not have the incentive and impetus to learn from others in order to make their own contribution to functional assignment processes (and DLG reforms) more relevant. Dolowitz's and Marsh's observation that international NGOs 'are increasingly playing a role in the spread of ideas, programs and institutions around the globe' (Dolowitz and Marsh, 2000: 11) might be true for other policy areas (like environment, climate change, social protection, gender), but in the area of decentralization (including functional assignment) this role has not yet emerged. However, we argue that their role needs to be strengthened and their capacity be expanded in the field of decentralization and functional assignment to bring other voices and interests into an otherwise technical and bureaucratic discourse.

Development partners and consultants have played a major role as policy transfer agents. As pointed out earlier, many government and public sector reforms in developing and emerging countries have been driven by the conditionalities of external aid programmes (Kamarck, 2005; Tambulasi, 2013). Multilateral institutions like the World Bank and the Asian Development Bank have funded extensively the professional training of public officials and have used study tours, site visits and support to professional networks to expose officials to new ideas and concepts. They have their own semi-academic institutes engaged in research and professional training¹⁹ supporting their own operations but also providing wider support to developing and emerging economies globally and in Asia, respectively. Development partners (and international organizations like the UN and their specialized organizations) shape and disseminate policy ideas (including concepts of decentralization) and promote policy transfers on a global scale, as the spread of the paradigm of decentralized health

systems illustrates (Tambulasi, 2013: 85).²⁰ Ivanova and Evans (2004), and Tambulasi (2013) describe how development partners influence policy transfer processes in recipient countries and – in the case of health sector decentralization in Malawi – finally use conditionality as an instrument to enforce policy change. Development consultants play a major role in such policy transfer processes – they ‘act as policy experts in the development of new programmes, policies and institutional structures’ (Dolowitz and Marsh, 2000: 19) and are ‘knowledge producers and knowledge brokers’ (Borda-Rodriguez and Johnon, 2013: 344). Their work is normally ‘commercial, contract-based and usually short-term’ (ibid.: 354) and takes place in a trilateral power constellation involving the client (the commissioning DP), themselves and the beneficiaries. In international development cooperation, their role is significant but also controversial and contested.²¹

The policy transfer agents discussed above (elected officials, bureaucrats/civil servants, knowledge institutions, NGOs and development partners plus consultants) constitute the potential targets of any effort to widen the conceptual, institutional and knowledge base for functional assignment in Asia (and elsewhere). Such effort has to be multi-level and multi-actor-based: documentation and analysis of functional assignment processes need to be authorized by governments (officials and civil servants); the documented knowledge needs to be shared by knowledge institutions (e.g. by means of specialized courses or the inclusion of functional assignment in existing professional training programmes). Development partners should provide resources to facilitate and enable such documentation and sharing of lessons learnt, and ensure that they are applied in their own support programmes. Carefully planned and contextualized exchange visits and study tours²² could enable peer learning (see Andrews and Manning, 2015) and make such exchanges models of real policy learning.²³ Professional training programmes and exchanges could apply innovative approaches to learning by governments (Blindenbacher and Nashat, 2010). Ideally one or two regional institutions would become knowledge hubs on functional assignment that would allow and facilitate direct support to planned and ongoing functional assignment processes, and help in feeding back lessons learnt and results into the wider exchange network(s). The creation of a focused policy transfer network (Evans, 2009: 260) in the region (and ultimately, beyond) anchored with such a knowledge hub would go a long way in expanding and improving the knowledge on functional assignment, and in finding ways to make such knowledge more effective for supporting decentralization and local government reforms. Still, it will be a long way before ‘epistemic communities’²⁴ in functional assignment can support improved functional assignment processes in the countries engaging in this endeavour.

This book has pointed to considerable diversity in the understanding, architecture and processes of functional assignment. While we have made the case for instructive similarities and opportunities for learning on the substantive choices made by different countries, we have also cautioned on the need to understand the local context in discerning what can be drawn from emerging international good practices. It is on the process side of functional assignment that we can be

more sanguine about the opportunities for international transferability, with the possibility of some degree of standardization of analytical steps and sharing of the stepwise methodology.

Notes

- 1 We agree with the view that a much more differential treatment of sectors is required in designing and implementing decentralization reforms as some sectors might lend themselves more to decentralized arrangements than others (see Smoke and Gomez, 2006: 364). In our view, functional assignment can help in establishing such a more nuanced approach to decentralization.
- 2 It is possible for these countries to learn from each other, but the following treatment of policy transfer concepts underlines that it will take some careful vetting of what may be relevant; with exchanges occurring based on appropriate analytical and discursive approaches. Such approaches have unfortunately been rare, arresting the development of an effective community of practice.
- 3 The quote derives from the address by Michael R. Bloomberg, the 108th mayor of New York city (www.compactofmayors.org/history/). This effort entails leadership of the world's global city networks – like the C40 Cities Climate Leadership Group (C40), ICLEI (Local Governments for Sustainability) or the global SNG network 'United Cities and Local Governments' (UCLG) with its regional chapters.
- 4 For instance, King County in the US has committed in its Strategic Climate Action Plan to reducing GHG emissions from its operations, compared with a 2007 baseline, by at least 15 per cent by 2015, 25 per cent by 2020, and 50 per cent by 2030 (King County, 2015: 3).
- 5 On urbanization in East Asia see also World Bank, 2015.
- 6 The policy diffusion concept emerged from US policy studies and drew extensively from the spread of policy reforms among the states of the US. The policy transfer concept seems to have a broader empirical and practical outreach. While it is still focusing extensively on transfer processes between OECD countries or from OECD to non-OECD countries, it is slowly adding examinations of policy exchanges between non-OECD countries and from non-OECD to OECD countries (Nedley, 2004; Carroll and Common, 2013b).
- 7 Berry and Berry (2007: 231) furthermore mention 'vertical influence models' involving the exchange of policy ideas in a vertical direction.
- 8 Common (2001:14) underlines this distinction by defining policy transfer as the '*conscious* adoption of a public policy from another jurisdiction' (our emphasis).
- 9 Mintrom (1997) defines 'policy entrepreneurs' as 'political actors who promote policy ideas' (p. 738) or as 'people who seek to initiate policy change' (p. 739). In most countries (whether OECD or non-OECD) policy entrepreneurship is probably not confined to the political domain in the sense of political parties and elected representative bodies, but can also be found on the upper echelons of public administration; policy entrepreneurship plays out in the interaction between politicians, senior administrators and representatives of interest groups lobbying for their specific causes. Still, the interests (and incentives) of politicians (= elected representatives) and career public officials are different, as the case of Khyber Pakhtunkhwa also indicates.
- 10 Common (2001) calls the role of international organizations in policy transfer 'ambiguous' and points out that states 'retain considerable autonomy in deciding whether or not they will allow themselves to be influenced by them' (p. 75).
- 11 Other forms of policy transfer have been called 'bandwagoning', 'policy learning' or 'lessons drawing' (Evans, 2009: 244).
- 12 Regarding the other categories of policy transfer agents, we can probably rule out a potential role of TNC in functional assignment policy transfers. 'Policy entrepreneurs'

and ‘pressure groups’ are too vague categories in our context, especially when seen from a regional perspective. ‘Supra-national organizations’ are not relevant for our regional context (Asia). While many elected SNG representatives are members of political parties, we have not seen a regional exchange on DLG issues driven by regional party structures – this is not surprising in view of the very limited process of political integration in Asia and the lack of such regional party networks.

- 13 The character of SNG associations varies considerably: some represent SNG as corporate bodies, some represent elected members of SNG political bodies, some represent chief executives of SNG, some represent a combination of all. Depending on their membership, interests and incentives might differ.
- 14 Ivanova and Evans (2004) illustrate how such a SNG association, the Association of Ukrainian Cities (AUC) has acted as an influential policy transfer network in reshaping the role and mandates of urban governments after the Ukraine became independent.
- 15 We have earlier pointed to the lack of an Asian-wide platform on DLG issues comparable to what has emerged in Africa (see Chapter 1, section 1.6). EROPA as a regional platform on general public sector/public administration issues is loosely structured and does not have the binding power to establish a common regional agenda.
- 16 The public sector is defined as ‘the civil service and public administration as funded by public revenue (i.e. taxes) as tasked with the coordination and delivery of policy mandates’ (Potts and Kastle, 2010: 124).
- 17 See Potts and Kastle (2010: 127ff.) for a critique of policies to introduce surrogate mechanisms of competition in the public sector.
- 18 See for instance the training offered at various times by The Hague Academy for Local Governance (2012); Harvard School of Public Health (2016); World Bank Institute (2005). These offerings generally survive for only a few cycles unfortunately. In the region, institutions like the Local Government Academy in the Philippines, or the Development Academy of the Philippines can be mentioned which provide not only capacity development opportunities for SNG officials from the Philippines but sometime regional training programmes.
- 19 Like the World Bank Institute (WBI) based in Washington DC, and the Asian Development Bank Institute (ADBI) based in Tokyo.
- 20 Treisman (2007: 3–4) gives a concise overview of the involvement of DP in promoting decentralization reforms.
- 21 See Borda-Rodriguez and Johnson (2013: 343f.) with data and further references.
- 22 For example, the Cambodian NCDD and its ministerial partners in decentralization have organized two study tours to Indonesia, and also brought Indonesian officials to Cambodia from 2011 to 2016.
- 23 See also Rogers (2005) with guidance on how countries can learn from each other about the success and failure of policy initiatives.
- 24 Epistemic communities are:

comprised of natural and social scientists or individuals from any discipline or profession with authoritative claims to policy relevant knowledge that reside in national, transnational and international organizations. The function of these communities is to facilitate the emergence of policy learning that may lead to policy convergence.

(Evans, 2009: 252f.)

According to Common (2001: 35), epistemic communities can be a mechanism or an obstacle for policy transfer; the latter because they tend to withdraw from policy debates if contentious issues (i.e. issues not in line with their belief system) arise.

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