

2019

Orientation Workshop on Constitutional, Legal and Policy Provisions on Health and Practical Implications



About the workshop

Association of International NGOs in Nepal (AIN) in collaboration with Public Policy Pathshala (PPP) organized the “***Orientation Workshop to AIN Health Group members on Constitutional, Legal and Policy Provisions on Health and Practical Implications in the Context of Federalism***” on 27th December, 2019 at Hotel Woodland, Kathmandu. The orientation program’s focus was to inform the AIN-Health Working Group on the constitutional, legislation and policy provisions on Health, including but not limited to the health-related rights, Acts and policies; the roles and responsibilities as well as exclusive and concurrent rights of the three levels of government (Federal, Province and Local); and recognition of the social determinants of Health and Health in all policies in the new context of federalism in Nepal. The program also aimed to discuss on the practical issues and challenges, along with potential solutions, working at the local level in the changed context, and also provide an opportunity for participants to share their experiences and issues working at the local level for mutual learning and problem-solving.

The one-day workshop brought together 53 participants working in the development sector. The workshops had 3 presentation sessions followed by open floor discussion.

Opening Remarks:

Mr. Dip Narayan Sapkota, *AIN- Health Working Group Coordinator* delivered the opening remarks on behalf of the organizer. He welcomed the participants and stressed the need of developments partners to understand the health-related legal and policy provisions in the Constitution and relevant Acts in the context of federalism, and requested participants to utilize the program as an opportunity to discuss on the operational challenges they have been facing while working with the Local Government, due to change in the governance and policy landscape.



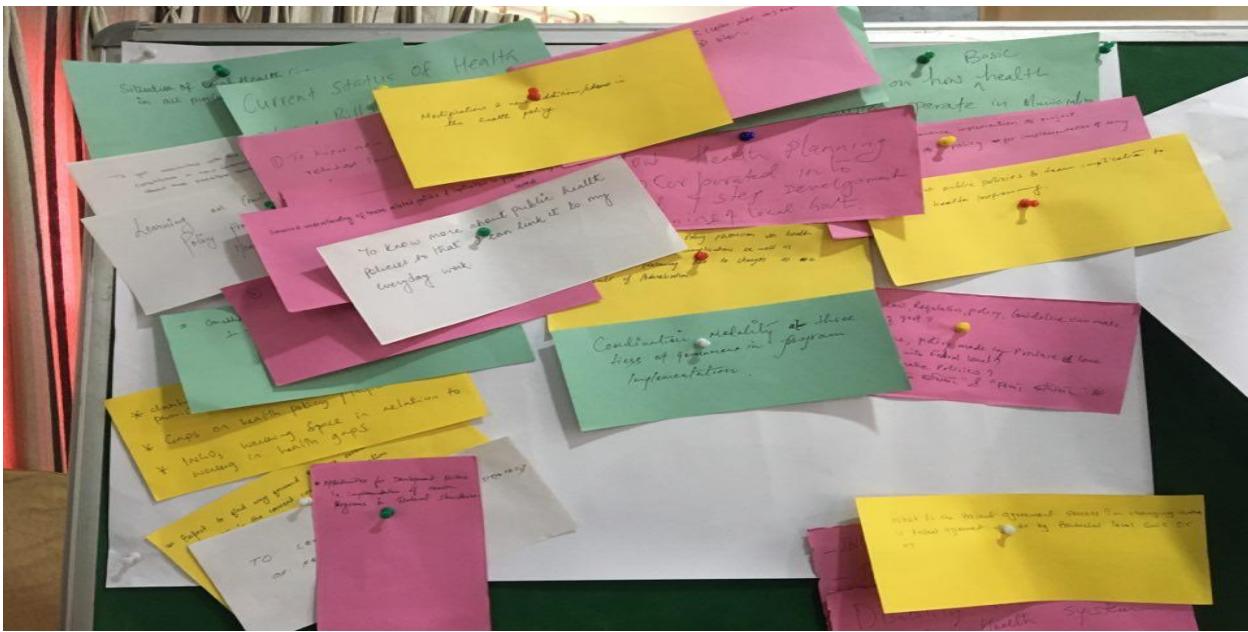
Mr. Krishna Rijal, *Executive Director of PPP*, introduced PPP as a policy think tank that aims to support policy making through research and dialogue. He shared the working experiences of PPP with the Local Governments and highlighted the role of development sector in supporting Local Governments in exercising their roles and responsibilities as per the federalism.

The opening remarks were followed by the introduction of the participants.



After the introduction session, the participants' expectations from the workshops were collected.

Expectations:



The major expectations were related to:

Understanding of the existing health-related Acts, policies and guidelines

- Clarity on Public Health Service Acts
- National Health Policy

Understanding of the three levels of Government in the context of Federalism

- Rights and Responsibilities of Local Government
- Exclusive and Shared Rights of Local Government
- Coordination mechanism of the three Level of governments
- Clarity on municipal health system
- Government heath sector reforms

Opportunities for development partners in the implementation of health programs in the federal structure

- INGOs' working space in relation to working on heath gaps

Presentation sessions:

1. Constitution and Federalism:



Mr. Pratap Paudel, *Chairperson and Policy and Legal Expert of Public Policy Pathshala*, started the session with the question: “Is Federalism a transition or a foundation?” to the participants to be answered at the end of the session. He then proceeded on highlighting relevant provisions in the constitution on federalism.

He described Nepal’s Federalism as Co-operative Federalism. He added that Constitution mentions the powers of all three levels in various Schedules of the Constitution itself. The exclusive jurisdictions of the federal, province and local governments are given in Schedules 5, 6 and 8 respectively while the concurrent jurisdictions of the federal, province and local governments are given in Schedules 7 and 9. Under this, the right to basic healthcare falls under the jurisdiction of the local level while the right to health has been documented under the jurisdiction of all three levels of government. Section 11 of the Local Governance Act 2017 lists these powers and gives the local government the power to create local policies, laws, regulations, standards and procedures, and implementing and regulating them. He emphasized that, in the present context, Local Governments are very strong in terms of their political mandate, autonomy, resources and power. So, considering that, the development partner should give greater emphasis to local governments and support them in their role to deliver basic services to people.

He further explained that the program formulation is guided by policies while the executive decisions are made according to the laws. He added that, in most of the cases, the law formulation is missed, and we have the added responsibility to sensitize the governments in Acts, policies, rules, standards, guidelines and procedures formulation for effective implementation of the programs. Policy-making has been undervalued at the government level.

He also outlined that the Constitution of Nepal 2015 documents the Right to Health extensively and in great detail. Article 35 of the Constitution enshrines Right to Health as a fundamental right, along with many other issues related to public health, like food, water, environment,

reproductive rights, considering the social determinants of health too. In accordance with the mandatory provision for creating laws related to fundamental rights within three years of the promulgation of the Constitution, the Government of Nepal has already endorsed before the deadline (October 2018): Public Health Service Act, Safe Motherhood and Reproductive Health Right Act, Act relating to Children, Social Protection Act, Consumers Act, Food security Act, Environment Act, etc. while there are other Acts yet to be formed.

Common queries during the session:

Q1. In absence of the federal Acts, Regulations, Standards and lack of technical expertise among the local level

- How can a Local Government formulate the laws and how can they be empowered?
- How AIN can facilitate the timely formulation of Acts at the federal level?
- How can AIN / INGOs give technical assistance to the Local Governments?

Response: Local Governments have the rights to formulate laws and regulations as provisioned in the schedule 8 of the Constitution and Local Government Operation Act. However, as per the shared rights-schedule 9, local governments can exercise within the provisions defined by federal and provincial laws, and provisions which if in conflict with the latter laws would be null and void to the extent, they are conflicted.

Q2. Provisions for Local Government to establish hospitals

- If a municipality wish to establish 50-bedded hospital, can municipality do that? Or what if, the municipality wishes to establish 2 hospitals in one municipality.
- Can a hospital initially operated by development sector be handed over to the municipality? How legal is that?

Response: Constitution has opened the way for Local Governments to operate the primary level hospital. Consistent with the constitution, health services are newly classified by levels according to the responsibility of the local, provincial and federal governments. The classification forms the basis for establishing, upgrading and managing health institutions, designed to ensure quality health services accessible to all citizens. The basis for classification is the type of health services

tailored to the need of the population rather than the bed-capacity. If the local government wishes to provide additional services beyond their mandate of basic healthcare which would be funded by the federal government, the local governments should identify and manage sources required for the health infrastructure development themselves.

Also, the government can identify opportunities for partnership with other governments (local or province) as well as governmental, non-governmental and private sector institution for expansion of health services.

2. Health Related Acts and Policies:

Mr. Pratap Paudel, shared the list of existing policies and laws, and emphasized the need for formulation of Public Health Service Regulation, Basic Healthcare Service Package and other necessary standards and guidelines needed for ensuring the right to free basic healthcare as provisioned in the Constitution.

He provided an overview on different National Health Policies and governments' program priorities at different period of time. He stressed that at this moment, our programs and health systems should be guided by the current National Health Policy-2076 that aims to ensure access to quality health services for every citizen in federal structure by developing and expanding the health system based on the social justice and good governance.



He further explained about the Public Health Service Act, that guarantees every citizen easy and universal access to quality health services. He highlighted that the Public Health Service Act has defined free basic health services according to the provision for each citizen's right of such services, and the fiscal responsibility of providing such services lies with the federal government. Province and local governments may add to such services as necessary, and they must assume the cost of the additional services respectively. Here, he highlighted the importance of AIN in influencing the Local Government in identifying the additional basic health services as per the

local context, needs and disease burden. He added that the Act also allows for the local governments to partner with other local governments, organizations operated by the province and federal government or the private sector to provide health services.

He also discussed about the Safe Motherhood and Reproductive Health Right Act and International Development Policy 2019. He mentioned that the latter provisions for the development cooperation budgets from partners to be reflected in the national treasury.

3. Local Health Governance: An Overview of the situation:



Dr. Amit Bhandari, *Public Health Expert of PPP*, highlighted the local health service delivery and systems: pre- and post-adoption of federalism and provided a brief overview of the Local Health Governance based on PPP's experience working with and for several local governments in the last two years.

He compared the governance and institutional arrangements, service delivery structure and functions, information management, health financing and financial management, human resource management, and procurement and supply chain management before and after the federalism. He also shared with examples a synopsis of the local health governance, including legal and policy landscape, priority accorded to health, attributes of governance, as well as roles and interactions between the three levels of government and within local governments.

He concluded that the federalism provided an unprecedented opportunity to reorganize health systems and boost health service delivery, and it's too early to evaluate its impact on local health governance and delivery. He added that the local government have the authority and financial resources to strengthen local health governance and improve services delivery, however the transitions related issues needs to be managed early and effectively to prevent loss of health gains made so far by the country.

To this the participants added that, at the federal structure, there is no clear communication channel at three levels of government. The problem also lies in the data management. The health

coordinators are yet not clear about their roles and responsibilities. I/NGOs can play an important role in these regards.

Mr. Dip Narayan Sapkota emphasized the pros and cons of the federalism. He stated that the federalism has weakened the decision making of the health system, while at the same time have made the local governments powerful and accountable towards its people for service delivery.

Mr. Deepak Poudel, from Save the Children, emphasized the need to understand the difference in health network and health system. The health networking, starting from FCHV at the grassroot level is relatively strong, while if we consider the different building blocks of health system, it is not so. Regarding the Act formulation, he stressed the need for further discussion to identify the priority Acts and policies that are urgently needed as of now for the effective implementation of health services, and with course of time, focus on other priorities in formulating additional policies.

4. Open Floor Discussion

Mr. Dip Narayan Sapkota facilitated the open floor discussion, where participants shared their views, concerns and problems. AIN health members shared that they have been constantly supporting the Governments and have contributed to the achievements in health sectors. They highlighted the role of AIN in facilitating the project approval process.

Closing remarks

One of the participants expressed regard to PPP in clarifying the confusions that they faced while working at the local levels, and expected similar orientation program on education sectors too.

Mr. Pratap Paudel, from *Public Policy Pathshala*, thanked AIN for organizing the event and emphasized the role of AIN in supporting the Local Governments in every possible way.

Dr. Anjana KC, from *Save the Children*, shared her experience of working with Public Policy Pathshala in Province 2 and claimed it to be very effective in sensitizing the Local Governments regarding their rights and responsibilities in changing context. She thanked PPP for their time and effort in sharing their knowledge and expertise in polices and health to AIH health member, and also thanked AIN for providing the platform to talk about policies, challenges and identify the solutions.

Way forward:

The presentations and discussions posited that the development sector can have an important role in strengthening the local health governance. It has highly been recommended that AIN-Health Working Group, identify possible areas for support to local governments. Some of the areas for support might include:

- Sensitize the local governments regarding their rights and responsibilities as envisioned in the Constitution and the Local Government Operation Act
- Facilitate the Acts and policy formulation process as per the local needs
- Advocate for timely formation by the federal government of Public Health Service Regulation, Basic Health Service Package and other necessary standards and guidelines needed for ensuring the right to fundamental health as provisioned in the Constitution.
- Provide technical assistance to the Health Coordinators at the local level to enable them to effectively deliver on their role
- Capacitate the local governments and support their local initiatives (like the provision of School Health Nurse)
- Support in strengthening information management at the local level
- Support local governments in identifying the priority areas for health and budget accordingly
- Identify areas of partnership with the government
- Facilitate to improve the inter-governmental coordination

Apart from the, the participants also recommended that, based on the experience and evidence, AIN should define the health gaps and circulate information among the AIN members that would help organizations focus on the priority areas, and that would benefit the work of government too. They also highlighted that AIN should facilitate for quick project approval process that have been delayed till date.

Further, the participants called for such legal and policy orientation and practical discussions in education and other sector too.

Acknowledgements

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Save the Children

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