Managing Inter-Governmental Relationships

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Constitutional Provision for Power Sharing among Federal, Provincial and Local Governments
Local level comprises of:

$(306-1-n)$

Rural Municipalities

Municipalities

District Assemblies
The main structure of the country shall be of three levels

(56-1)

1. Federation
2. State
3. Local

These are the “federal units” of the country
State power shall be exercised by:

(56-2)

Federation
State
Local
State Power
(306-1-h)

It means the power relating to:

- Executive
- Legislative
- Judiciary and
- Residual power
Distribution of State Power

- Federation (Schedule 5, 6 & 9)
- State (Schedule 6, 7 & 9)
- Local (Schedule 8 & 9)
## Allocation of State Power

<table>
<thead>
<tr>
<th>Legislative</th>
<th>Executive</th>
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<tr>
<td><strong>Federation</strong></td>
<td><strong>Federal Parliament</strong> (House of Representative &amp; National Assembly)</td>
<td><strong>Government of Nepal</strong></td>
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<td><strong>Province</strong></td>
<td><strong>Provincial Assembly</strong></td>
<td><strong>State Government</strong></td>
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<td><strong>Local</strong></td>
<td>- Rural Municipal Assembly - Municipal Assembly</td>
<td>-Rural Municipal Executive -Municipal Executive</td>
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Intergovernmental relation means

- **Interaction** among the different levels of government
- **Understanding** the roles & responsibilities of each level
- **Developing** effective relationships to improve their ability to meet their expectation
Inter-governmental Relationship

• Constitutional provision
• Relation between same levels of government: Horizontal
• Relation between different levels of government: Vertical
Inter-governmental Relationship

• No real watertight compartments
  – overlap,
  – entanglement,
  – sharing

• Self rule & shared rule
intergovernmental relations

• According to Opeskin (1998), the term "intergovernmental relations" is commonly used to refer to relations between central, regional, and local governments (as well as between governments within any one sphere) that facilitate the attainment of common goals through cooperation. Used in this sense, mechanisms for intergovernmental relations may be seen as employing consensual tools for the mutual benefit of the constituent units of the federation.
For Van der Waldt and Du toit (1997) intergovernmental relations refer to the mutual relations and interactions between government institutions at horizontal and vertical levels. This is in line with Thornhill’s (2002) definition that ‘intergovernmental relations is all the actions and transactions of politicians and officials amongst the national and subnational units of government and organs of the state’
South African cooperative model of intergovernmental relations

• three important adjectives (distinctive, interdependent and interrelated) are crucial for intergovernmental relations and set the stage for its understanding.
Interdependent

• The 1996 Constitution of Republic of South African, Section 41(h) stipulates that spheres must cooperate with each other if the goals of the nations are to be achieved. These could be through communication, consultation, coordination, assisting and supporting each other in a variety of ways.
Interdependent

• Powell, in Levy & Tapscott (2001) notes that the ‘interdependence of the spheres is the degree to which one sphere depends on another for the proper fulfillment of its constitutional functions’. The term “interdependent” means that no sphere can operate in isolation. All spheres are inter-reliant, mutually dependent and supportive of each other, especially in terms of capacity support for provincial and local government.
Distinctive

• The 1996 Constitution of Republic of South African, Section 41(1) (e), dictates that there should be respect for the constitutional status of institutions and the powers and functions of government in other spheres of governance. This suggests that each sphere of government has its own status with a clear mandate. Hence Section 41 (f) adds that spheres must ‘not assume any power or function except those conferred on them in terms of the Constitution’.
Distinctive

• Section 41(e) notes that spheres ‘must exercise their powers and functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and Section 41(g) spells out the manner in which this is to be achieved, which is ‘co-operate with one another in mutual trust and good faith...’. ‘Each sphere has distinctive legislative and executive competencies’.
Interrelated

- The 1996 Constitution of Republic of South African, Section 49 (a) submits that spheres must ‘preserve the peace, national unity and the indivisibility of the Republic’ through the provision of ‘effective, transparent, accountable and coherent government for the republic as a whole’. This implies that spheres are crucial parts that collectively form the government of the country and if they are parts of a whole then, for the whole to function effectively as required, the parts must relate amicably. This term (interrelated) means that spheres are parts of a holistic system of government and that through these interrelated spheres, a solid and unified government can evolve.
Origin of Intergovernmental Relations

• The origin of IGR can be traced from the late 1930s in the United States. The concept of IGR became internationally accepted in the 1950s with the creation of a United States permanent body known as the Advisory Commission on Intergovernmental Relations in 1959 and the promotion of the Canadian experience of cooperative federalism.
Approaches of IGR

Democratic approach:

• It emphasize the right to autonomy of every government (regardless of level) to exist. This will lead to a volatile situation and is a recipe for complexities. IGR should, in fact, aim for effectiveness and efficiency in the public service and this requires that conflict and competition are reduced and interdependence and the pursuit of a common agenda are promoted. This brings about a comparative advantage given that resources are pooled together and hence optimally utilised.
Approaches of IGR

**Constitutional approach:**

- accepts that there is a hierarchy of governments and this is a constitutional fact, since the constitution was seen as the instrument for determining intergovernmental relations and achieving harmony
Approaches of IGR

The Financial approach:

• where IGR is viewed from a financial perspective and the crux of the matter was what responsibilities do the spheres of government have and what financial resources are attached to it?
Approaches of IGR

**Normative operational approach:**

- comprises broad elements, such as values (material, cultural, spiritual, social, institutional and political values), as well as technical limitations, geographical factors

and issues around the distribution of resources should be considered
Why IGR

• The utilization of concurrent jurisdiction
• The intergovernmental delegation of legislative powers & administrative responsibilities
• ‘Opting in’ & ‘opting out’ arrangement
• Intergovernmental agreement & accords
• Intergovernmental fiscal management
IGR

• How formal?
• How institutionalized?
• How to operationalize Intergovernmental cooperation, collaboration and coordination as a constitutional principle?
• The role of Council, committees & other intergovernmental bodies?
• Informal norms, practices & meetings?
The task of IGR

• Putting the provisions of the constitution into action
• Resolving conflicts between the federal units
• Adapting governing and policy arrangements to changing circumstances
The task of IGR

- Regulating intergovernmental competition, policy overlap, policy coordination
Some examples

• Germany & South Africa has intergovernmental relation as a constitutional principle
Germany

- Cooperative governance & loyalty to the federation
- Upper house as an IGR
South Africa

- Cooperative government (ch.3)
- Cooperate with one another in mutual trust & good faith”
India & Malaysia

- Financial commissions & councils
Canada

- Informal process of executive federalism

  (Executive federalism is the processes of intergovernmental negotiation that are dominated by the executives of the different governments within the federal system.)
Nepal

- Constitutional principle- cooperation coordination coexistence
- National assembly
- NNRFC
- Inter-state council
- Inter-state fiscal council
- Provincial co-ordination council
Relationship management mechanism

The relations between the Federation, States, and Local level shall be based on the principles of:

• Cooperation
• Co-existence
• Coordination
Inter-State Council

Constitution

a) Prime Minister: Chairperson

b) Minister of Home Affairs of GON: Member

c) Minister of Finance of GON: Member

d) Chief Ministers of concerned States: Member
Functions of Inter-State Council

To settle political disputes arising

between the federation and a state

&

between states
Inter-State Fiscal Council

*Inter-province Fiscal Management Act 2074*

- **a)** Minister of Finance (GoN) - Convener
- **b)** Minister of Finance (State) - Member
- **c)** 14 selected representatives from state - Member
  (1 Male, 1 Female selected by the state from among the chairperson and vice-chairperson, mayor and deputy mayor)
- **d)** 3 Financial Experts - Member
  (The group of experts with at least 1 female to be selected by the federal ministry)
- **e)** Secretary, Ministry (GoN) - Member Secretary
Functions of Inter-State Fiscal Council

The council will **advise** the federation, state and the local level & **facilitate** their coordination on necessary subjects of **inter-governmental fiscal management**
Provincial Coordination Council

Local Government Management Act

a) Chief Minister - Convener

b) Ministers (State Government) - Member

c) Chief Secretary (State) - Member

d) Secretary (State Government) - Member

e) Chief and Deputy Chief - Member
( of District Coordination Council within a Province)

f) Rural municipality and municipality - Member
(Chairman and Vice-chairman & Mayor and Deputy Mayors from within a state)

g) Secretary - Member Secretary
(State Ministry overseeing local level)
Functions of Provincial Coordination Council

The council will maintain coordination among the province and local level on subjects pertaining to

- Functional harmonization
- Strategic partnership in planning and management
- Definition and implementation of concurrent rights
- Utilization and allocation of natural resources
National Natural Resource and Fiscal Commission Management Act 2074

Provisions

Coordination and Cooperation

The commission can coordinate and cooperate with various constitutional bodies, the Government of Nepal, government agencies in local and provincial level or public agencies as needed.
The commission can consult various constitutional bodies, the Government of Nepal, government agencies in local and provincial level or public agencies relating to its functions and duties as needed.
The three levels shall protect

- Nepal’s freedom, sovereignty,
- territorial integrity, independence
- national interest, overall development,
- multi-party, competitive, democratic, republican, federal system of governance,
- human rights and fundamental rights
- rule of law, separation of powers and check and balance
- egalitarian society based on pluralism and
- equality, inclusive representation and identity
Principles of Cooperation

• Many functions are interdependent and interrelated.
• The federation, province and local level will have to jointly execute some functions.
• The rights are spread out in appropriation according to their competencies.
• There are various options to provide services to the people and also include their voices in decision making.
Co-Existence

• Mutual respect
• Non-interference
• Equality
• Mutual cooperation and mutual interest
Coordination

It is a way of harmonizing the various activities conducted by the different levels of government in order to increase its effectiveness.
Coordination between Federation, Province & Local level

• The Federal parliament shall make necessary laws in order to maintain coordination among the three levels of government.

• The Provincial assembly may maintain coordination between the Provincial and Rural Municipalities and Municipalities and settle political disputes, if any, that have arisen, in coordination with the concerned Rural Municipality, Municipality and District Coordination Committee.

• The process and procedures for the settlement of disputes shall be as provided for in the Provincial law.
Maintaining Coordination

• Through direct contact
• Through defined procedures
• Coordination should exist from the beginning of planning

This is a continuous process. There is no such thing as ‘done and dealt with’ while relating to coordination.
Resource mobilization

- Optimization of resource mobilization
- Expansion of tax-base
- Borrowing
- Efficiency
Regulatory function

National Basic Minimum Standard

Does the provision compromise the authority and independence of provincial and local government?
Policy harmonization

- National Policy Standard
- Communication
Communication

• National Database
  – Definition
  – Periodicity

• Information Sharing
International convention

• As per the Treaty Act, the obligations created from international conventions, are equivalent to the national law
• The level of government having the work-area befitting the obligations will then be held accountable for its fulfillment
Fundamental Right

• The duty of ensuring the fundamental right is given to the government having an work area related to the right.

• The necessary legal provisions for this should be arranged for within three years of the commencement of the Constitution (Article 47)
Directive Principles

• No questions can be raised in any court as to the implementation of any matter contained in the directive principles itself.

• The principles are not unattended and have some moral and administrative obligations.

• The GoN has to submit an annual report of progress to the President and the President then sends it to the federal parliament for review.

• To look after the implementation, the parliament can constitute a committee for this purpose.

• There are provisions of monitoring of the implementation.
• Role of public officials in managing IGR
Public Administration principles and functions that govern IGR

- Public Administration enables government to meet its mandate by providing capacity that is required to ensure that the expectations and mandates of government and society are met.
Public Administration

• Public Administration is organized in two ways: *laterally and vertically.*

• Laterally, the government creates departments or ministries using functional activities. This suggests that the need to create a new forum, where ministries can share information, monitor and get feedback from officials who are dealing with the implementation issues, is inevitable.

• On the other hand, certain state functions are concurrent in nature suggesting that there is also a need for coordination across spheres or levels of government, making coordination a critical task from an intergovernmental relations perspective.
Public Administration

• Nnoli (2000) declares that ‘effective coordination of various arms of public administration is the wheel around which its efficiency and effectiveness revolve’.
Successful management of IGR
Successful management of IGR

Successful management IGR = C+ 3C+ 3P+ L

Where:

• C = commitment (and a critical element hence it stands alone);
• 3C = communication, coordination, capacity;
• 3P = project management, planning, policy management; and
• L = leadership.
Functionalist model of the systems theory
Public administration functionalist approach to IGR
Common destination

- Constitution
- Fundamental Right
- International convention
- Directive principle
- Manifesto
मुलुकको समिद्ददीको डुंगा

स्थानीय

प्रदेश
गाउँपालिका र नगरपालिकाको समिद्द्दीको डुङ्गा

उपमेयर

मेयर
गाउँपालिका र नगरपालिकाको समिद्दीको डुङ्गा

वार्ड सदस्य

वार्ड अध्यक्ष
मुलुकको सम्रिद्दीको डुंगा

योजना: स्थानीय प्रदेश संघ

आवधिक लक्ष्य
स्थानीय तहको समिद्दीको डुङ्गा
सरकार संचालन गर्न सक्ने क्षमता खै?
संघ

साधन, श्रोत, हस्तान्तरण खै?
प्रदेश
हामीले काम सुरू गर्न पाएको खै?
सेवा सुविधाको कानून बनाइदिएको खै?
प्रदेश
स्थानानीय
संघ संचालन गर्न सकने क्षमता खै?
स्थानीय साधन, श्रोत, हस्तान्तरण खै?
संघीयता एउटा तहले अर्को तहलाई दोष देखाएर पंछीने व्यवस्था हैन।

संविधानले दिएको भूमिका पुरा गर्नको लागि तिनी तहको बिचमा सहकायर्घे र सम्मन्त्वय गर्ने व्यवस्था हो।
Perspective
BoAt!

LAND!
NO IT'S NOT...

IT'S DEEP...