

India 2016 Presentation

Recent Trends in Intergovernmental Relations: Institutions and Processes

Slide 1 – Title Page

Slide 2 – Importance of Intergovernmental Relations (IGR) in Federal Systems

IGR are an integral part of every federal system, and interaction and interdependence between different orders of government is becoming increasingly important as actors strive to improve governance. Federal partners share information, create joint institutions, determine each other's roles in the case of shared competences, negotiate over funding, and conclude formal agreements over the performance of respective functions.

Federal nations vary in relation to their history, geography, constitutional framework, legal culture, distribution of competences or resources, and federal design. Consequently, IGR can take a wide variety of forms, often in response to the design of the federal system and culture around it. IGR may involve any or all levels of government, legislatures, executives, and quasi autonomous agencies.

IGR are either vertical or horizontal:

Vertical IGR, the most prevalent form, involves interaction between different levels government – typically between the central authority and the constituent units.

Horizontal IGR concerns interaction between constituent units of the same level.

Additionally, IGR may be formal – formalized through constitutional or legislative provisions – or informal – encompassing a variety of informal modes of collaboration and cooperation.

However, despite their ubiquitous nature and their importance to the practice of governance in federations, IGR often remain opaque to the public, scholars, and even some public authorities.

Slide 3 – Key Trends in IGR

There is a multiplicity of existing IGR mechanisms, and different federal systems are subject to diverse pressures in relation to: timing; partisan politics ideology; key policy areas; economic conditions; and institutional channels of conflict and collaboration.

In spite of these differences, the majority of federations rely on a mixture of vertical and horizontal IGR mechanisms, and on both formal and informal practices. Various levels of government engage in conflictual and consensual dealings.

Several common key trends of current IGR in federal systems can be identified:

1. Efficiency Vs. Democratic Accountability
2. Increasing Horizontal Interaction (Increased Coordination Between Constituent Units)
3. Impact of New Actors (Importance of Local Government)
4. Simultaneous Development of Formal and Informal IGR Mechanisms
5. The Role of IGR in Shaping Federal Systems Outside of Constitutional Change (IGR as Instruments of Federal (Re) Engineering)

Slide 4 – Efficiency Vs. Democratic Accountability

The development of IGR and coordination processes between different orders of government in federal systems can facilitate more effective and efficient policy making and service delivery. Indeed, this is often the primary motivation behind the establishment of such processes – to enable government in federations to better serve its citizens.

Vertical and horizontal forms of coordination can facilitate the development of innovative policy action that would not otherwise be possible. In the United States, for example, horizontal cooperation between forty State governments led to the development of joint strategies to sue tobacco companies to recover health costs in the face of federal inaction.

However, there is a risk that the increased development of IGR processes has a negative impact on political accountability, citizen participation in governance, and other related democratic values. Issues of democratic accountability manifest themselves in a variety of forms.

IGR in many federal systems is characterized by executive dominance; intergovernmental negotiations are primarily conducted behind closed doors; the complexity of IGR can often blur the lines of responsibility, making it more difficult for citizens to understand which orders of government are responsible for policies and services, and therefore more difficult to hold the responsible orders to account; and IGR are often beyond the reach of traditional mechanisms for executive accountability through participatory and judicial oversight.

Some federations have attempted to mitigate the negative impact of IGR on democratic accountability through the introduction of new mechanisms. South Africa has developed a more transparent budget process act as a partial counterweight to the opaqueness of IGR, while for a period Australia introduced a benchmarking and performance evaluation of IGR under which an intergovernmental executive agency assessed whether state governments had achieved agreed outcomes in return for central government payments.

However, the extent to which the measures implemented so far have limited the deleterious impact IGR can have on democratic legitimacy is debatable, and this is an issue governance actors should be aware of in the development of IGR processes.

Slide 5 – Increasing Horizontal Interaction (Increased Coordination Between Constituent Units)

While many studies of IGR often focus on vertical interaction between central government and constituent units, horizontal relations have always been significant in some federations (such as Germany), and even dominant others (such as Switzerland).

In recent years there has been a pronounced trend towards the development of horizontal IGR in other federations, reflected by the development of bodies such as the Conference of *Land* Governors in Austria, the Council of the Federation in Canada, the Council of the Australian Federation, and the Governor's Forum in Nigeria. Furthermore, in Canada and Germany some constituent units have held joint cabinet meetings. In the United States horizontal cooperation takes the form of numerous state and local official's professional associations.

Horizontal IGR between constituent units at the same level of government enables them to influence national policy debates, and develop strategies to guard against what they may regards as greater centralization of government.

Another interesting nascent development concerns the use of horizontal IGR to enhance policy delivery across borders. In some federations IGR across borders has led to the creation or strengthening of regional blocs, sometimes based on ethnic lines – as in Nigeria. Moreover, although not a pure federation, this trend is also arguably demonstrated in the EU by the influential informal relations between some member states outside the purview of formal EU institutions, and institutionally by the Committee of the Regions.

Slide 6 – Impact of New Actors (Importance of Local Government)

Aside from traditional national and subnational governments, new actors are beginning to play an increasingly important role in IGR. These new actors include: local government authorities; indigenous representatives; and the people in variety of roles (civil society groups, NGOs business or trade union organizations, and other private sector actors).

Local authorities are perhaps the most significant of the new actors having an impact in IGR processes. In some Federations, such as Brazil, South Africa, India, and Nigeria, local government is officially recognized as the third order of government and in these systems the intermingling of central authorities, constituent units, and local governments is structurally embedded. This facilitates the participation of local authorities in IGR.

However, even when local authorities not constitutionally recognized within the federal structure as an order they often participate in IGR to implement policies. For example, since 2001 mechanisms of federal-state-local government cooperation have been developed in the United States to more effectively disseminate and crime related data.

The increasing influence and participation of local government in IGR is unsurprising given the fact that local authorities are often the primary provider of a range of public services. Moreover, in some cases metropolitan areas (governed by local authorities) are larger than some constituent units and carry greater economic and political weight.

Due to the importance of local government, in some cases the federal order has bypassed the middle to deal directly with local authorities, thereby challenging the partnership between sub-national constituent units and the federal government – effectively ‘squeezing out’ the middle order. In South Africa, for example, there has been debate about whether the provinces should be abolished, while in Brazil a federal law retroactively institutionalized a federal-local government body, and there is no equivalent entity for federal-state IGR. In Canada and Australia there has been a tendency for federal authorities to bypass provincial and territorial orders by offering local authorities direct funding.

These kinds of direct relationships between central and local authorities can create tension between the different constituent units, provoking measures of resistance. For example, Nigeria’s High Court ruled that the federal legislature could not allocate revenue directly to local councils, and the German constitution explicitly prohibits the centre from delegating responsibility for the execution of federal legislation directly to local government, thereby preserving the role of the States (*Länder*).

Some federations, however, recognizing the increasing significance of the local government dimension, are beginning to develop concrete mechanisms for involving all levels of governance in IGR processes. In South Africa local government actors participate in the ‘extended national cabinet, which also includes the heads of the provincial executives. In Brazil, federal ministerial decrees in healthcare are first negotiated in tripartite arena comprising an equal number of federal, state, and municipal officials. The participation all levels of government at the policy elaboration stage improves the effectiveness of policy implementation.

Slide 7 – Simultaneous Development of Formal and Informal IGR Mechanisms

IGR processes occur across a spectrum ranging from the highly formal and legally institutionalized to the informal and highly political. Recent trends indicate that IGR is becoming increasingly formalized within constitutions, legislation, and other forms of binding intergovernmental agreement.

Six primary factors contribute to the greater formalization of IGR:

1. IGR has become increasingly important sphere of governance activity over time and has come to be recognized as such. As new federal nations have emerged, they have, with the benefit of the experiences of older federations, begun to incorporate IGR processes into their constitutions and legislation.
2. A degree of mistrust between different orders of government encourages formalization.
3. Formalizing IGR processes can enhance their reliability and effectiveness, and increases the likelihood that the various orders of government meet their obligations in this regard.

4. Constituent units associated with particular minority groups may prefer and encourage the formalization of IGR to better protect their interests
5. The legal culture of a federation. Federations with a civil law tradition are more likely to prefer explicit, written provisions governing IGR, while those with a common law tradition tend to prefer informal, political arrangements.
6. Formal, institutionalized IGR are seen as conferring greater accountability and transparency to governance processes.

One of the key debates around the selection and design of IGR systems, and the decision to adopt more formal or informal mechanisms, relates to the desire to develop IGR that can be flexible and innovative on the one hand, but effective on the other. Some practitioners posit that there is a correlation between informality and flexibility, and effectiveness and innovation. In Austria, for example formal IGR vertical institutions, with detailed internal regulations (created in the context of EU integration) have been replaced with more informal and effective IGR mechanisms, particularly in the context of EU affairs, which often require rapid reaction.

It is not, however necessarily the case that informal systems of IGR are always more flexible and effective. In some contexts formalized mechanisms may be important to the success of cooperative policy delivery. For example, the better performance of IGR in Brazil's healthcare sector in contrast to those in education is partly attributed to the fact that healthcare IGR are framed by legislative provisions.

The majority of federations utilize both formal and informal IGR mechanisms. Striking a balance between the two types – and between efficiency and accountability in IG systems – requires each individual federation to design IGR processes that take into account the specificities of their federal systems.

Slide 8 – IGR as Instruments of Constitutional (Re) Engineering

The increasing prevalence and necessity of IGR in federal systems generate debate about the potential need for constitutional reform to formalize procedures. IGR, however, can also be used to alter the formal architecture of a federal state incrementally and informally. Perhaps the most obvious example of this is when IGR increases the importance of local government, changing a de jure two level federation into a de facto three level system.

Three other noteworthy manifestations of the ways in which IGR contributes to constitutional (re) engineering of federal states are:

1. Distortion of the Distribution of Competences

IGR may have the effect of modifying the distribution of competences between federal partners. For example, the use of federal spending power, conditional grants, or unfunded mandates can turn an exclusive constituent unit matter into a de facto shared one. Federal funding may also generate direct

federal-local arrangements in areas of regional/state competence. In some cases these shifts are consensual, with constituent units placing a higher value on funding for policies than constitutional orthodoxy.

2. IGR Used as Alternatives to Constitutional Reforms

Federal partners may revert to informal IGR arrangements as an alternative to constitutional reforms that are politically complex or unobtainable. In Canada, for example, the failure of two major constitutional reforms in 1989 and 1993 to sufficiently address the interests of all federal partners led a number of politicians to utilize informal administrative arrangements to devolve certain policy areas (often characterized by asymmetry). Some in Quebec regarded these informal procedures to be inappropriate, as they desired official recognition of distinctiveness.

3. Transformation of De Jure Dualist Systems into De Facto Integrated Federations

Dualist federal regimes can be transformed into integrates or hybrid systems through IGR. Through processes of administrative devolution, constituent units are implicitly turned into agents of the federal authorities, which set the major strategic direction, design policies, and provide funding. Some sub-national government actors, such as Quebec in Canada, strongly resist any erosion of the dualist system and moves toward to integration, as they wish to protect their status.

Slide 9 – Conclusion

The centralization of IGR, and the extent to which the development of new IGR processes is leading to increased centralization within federal systems, is one of the most significant current dynamics facing practitioners. The extent to which a federation's IGR processes lead to greater centralization – or alternatively to the active implementation of measures to prevent centralization – depends upon the specific conditions of a federation in relation to its constitutional, institutional, and federal structure, demographics, policy making effectiveness, political context etc. It is important to recognize that the development of IGR does not necessarily always have a centralizing effect. It can also encourage and enable constituent units to assert their rights and influence.

Slide 10 – Thank You For Your Attention