Intergovernmental Relations: The Architecture of Cooperation

Experiences from Australia, South Africa and Spain

Observations for Nepal

Forum of Federations
The Global Network on Federalism and Devolved Governance

UKaid
from the British people

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The Support for Managing Fiscal Federalism in Nepal (SMFFN) programme supports Nepal's spheres of governments in implementing their federal fiscal governance system by providing knowledge of comparative practices and guidance to key stakeholders in intergovernmental relations and coordination. The programme is implemented by The Asia Foundation in partnership with the Forum of Federations with funding from UKaid.

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FOREWORD

Nepal is the world's youngest federation and has ambitiously recognized in its Constitution three levels of government a choice that reflects the historical development of our system of governance that has evolved over time. The decision to establish three levels of administration –federal, provincial, and local–creates a complex system of governance, although it also reflects the desire contained within the Constitution to deliver services directly to citizens.

As a result, we have concurrent subject areas which add complexity to the division of powers between our levels of government. While there are overlaps between jurisdictions, this distribution of powers between them reflects the reality of how governments provide services, taking into account both the shared rule and self-rule pillars of Nepal's Constitution.

Appreciating the complex array of sharing arrangements that the Constitution outlines between Nepal's three orders of government, they should work together according to the principles of cooperation, coexistence and coordination amongst all spheres of power1.

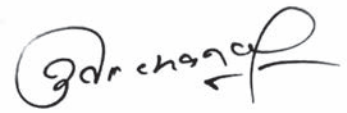
The spirit of collaboration is very much at the centre of the Constitution. To that end, there is also a provision for the provinces to coordinate, exchange information and consult with each other on matters of common concern and interest; as well as the establishment of an Inter-Provincial Council (IPC) as per article 234. However, constitutional provision alone does not guarantee these principles, practices or outcomes.

In order to do so, intergovernmental relations (IGR) play a significant role in these relationships and in the way governments allocate and define these powers and services. The importance of a strong and constructive intergovernmental apparatus is critical to this challenge. As Nepal navigate this challenge, it is vital that an effective system of intergovernmental relations is utilized to implement devolution, policy and reforms.

In this context, it is my pleasure to offer my gratitude to the Forum of Federations for producing a very important paper (Knowledge Product) that provides a comparative overview of different federal systems (Australia, South Africa and Spain) on the critical role that intergovernmental relations play in implementation and delivery of all governance and service matters. This paper highlights the importance of intergovernmental relations in federal systems, and the need to focus federalism on the delivery of public values and services.

I would like to congratulate the Forum for taking this initiative forward and developing this Knowledge Product as well as the experts from Australia, South Africa and Spain for providing invaluable insights as to comparative practices and practical guidance on IGR cooperation, conflict mitigation and capacity enhancement of provincial and local government actors in Nepal.

This paper on comparative experiences in IGR I am certain will be beneficial to all the stakeholders involved and interested in the implementation of federalism in Nepal. I believe that this Knowledge Product will be a valuable resource for those who are keen to learn about the relations between all spheres of government for cooperative federalism, coexistence and coordination amongst all spheres of government.



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1 Article 232, Constitution of Nepal (2015)

ACKNOWLEDGMENTS

The origin of this programme dates back to an important conversation that occurred several years ago in the sitting area of the then newly appointed Minister of the newly created Ministry of Federal Affairs and General Administration (MoFAGA). Honourable Minister Lal Babu Pandit had been kind enough to share his insights and observations regarding the federal implementation process that was then just beginning in Nepal.

As we sat in his home within the government compound, he spoke of the challenges confronting the ministry and the country in those early days of federation in Nepal. His primary concerns were based on what he called, 'managing federal transition', fundamental and pragmatic challenges dealing with establishing functional and competent administration across all of the spheres of government, how public servants would go about their critical work with the expectations of the population at an all-time high with the promise of a development paradigm shift to drive the country out of poverty.

The Minister was cognizant of the enormity of the challenge and the short time frame to achieve the dream of a federal republic in Nepal, one that could address the poverty and marginalisation that so many for so long have endured.

With this challenge in mind he invited experiences from around the world that he believed could offer some insights into the challenge of managing federal transition. Over the following interactions UKaid was a pivotal participant eager to support the public financial management implications of the transition, very much aligned with the challenges outlined by the Minister – from these humble conversations the programme concept was born.

Since that time the Forum of Federations has worked closely with the leadership from the national government, newly established provinces and local governments to support the transition, building political and administrative capacity to support the federalisation process.

This has been the focus of the Support to Managing Fiscal Federalism in Nepal (SMFFN) which we have implemented in partnership with The Asia Foundation and the generous support and guidance of UKaid.

The SMFFN programme's pillars forged in those early conversations around three principle challenges of the federal transition, determined by Nepal's Constitution, rooted in the reality of Nepal's political economic landscape and informed by global experiences.

Thus the SMFFN programme orientation was on federal fiscal practices, focussed specifically on knowledge sharing and capability building to:

- Enhance the knowledge and the capacity of beneficiaries in their roles and responsibilities across all three spheres of government;
- Strengthen understanding of intergovernmental pratices (IGR) and coordination in development planning and budgeting, targetted at provinces;

- Strengthen the institutional capacity of NNRFC to design an intergovernmental fiscal transfer (IGFT) system and procedures;

We have created these Knowledge Products (KP) each with a particular focus on the SMFFN programme's pillars, presenting comparative practices from various country case studies, all curated with the federal implementation challenges of Nepal in mind, presenting observations that we hope will further empower the transition.

These KP were developed with the team of international experts that was assembled from the far reaches of the world of federal practioners. The team have a breadth of experience as practioners who have undertaken reforms and lived through transitions in other countries and so these case studies depicted in the KP's bear a practical dimension that leaders in Nepal have demonstrated interest in understanding so that they might consider appropriate lessons and indeed learning from the transition case study mistakes at the same time as successes.

These are presented with observations for Nepal that are made with great humility as we do not pretend to understand the complexity of the challenges of Nepal. It is meant to enrich discussion and debate. It is important to emphasise that the histories and contexts of countries are vastly different. However, with this in mind there are observations and experience that will be useful for Nepal too.

Learning from one another, as we did during the SMFFN programme, these KP have been tested over the duration of the programme with its varied stakeholders with inputs from many Nepalese experts. It is our sincere hope that these resources are useful and impactful.

We must thank with much gratitude all those that have given their insights and time to the development of these KP over the course of the SMFFN programme. We thank the dedicated Forum team of Surya Dhungel, Purusottam Nepal, Nico Steytler, Sandra Leon, Jason Tabarias, Reuben Baatjies, Katie Hunter and Abhishek Jha. Most importantly there is no better ally and colleague than Sagar Manandhar, his tireless efforts have been the reason we have been able to achieve so much.

We express our sincere gratitude to all of our government partners whom supported us and our efforts without hesitation from government departments such as MOFAGA and institutions like the NNRFC. This programme's successes owes much to the representatives of the Governments of Nepal, the Federal government, Provincial governments, and Local governments, so to them, our profound thanks.

During the implementation phase we worked extensively with a number of Nepal organisations, incredible and dedicated professionals who have enriched these KP enormously, there are many and so we name these organisations but all involved have a heartfelt thanks.

Gandaki Province Training Academy, Nepal Administrative Staff College, Rural Development Training Center (Province 2), Rural Development Foundation (RDF), National Forum of Parliamentarians for Population and Development (NFPPD)

Many thanks to The Asia Foundation for their partnership in the endeavour, it has been a very collegial and constructive collaboration which is fitting for a programme whose core goal is to support better coordination, as partners there are none better. Lead by the formidable Meg Nalbo, without whose efforts and vision this programme as it was constructed would not have been possible, all of their staff have been wonderful collaborators, and special thanks to all of our friends at TAF Nepal. As partners we delivered a substantial amount of knowledge sharing events in difficult circumstances with each organisation delivering components in line with their strengths in governance support and advocacy.

Above all we are grateful to UKaid for their belief, guidance and generous financial support. It is only due to that support and commitment to Nepal's federal transition that this programme has become a reality. From those first conversations with Hon. Minister Pandit several years ago we now have these resources and experiences which beneficiaries in Nepal can now draw upon.

It is our hope that these materials and the insights drawn from the wealth of global experiences, research and findings are useful to those that will reference them in moving towards realizing this historic undertaking in achieving the Federal dream of Nepal.

Federal Transition is long process and as with any federation the process has no completion point, but each federation continues to evolve and mature, "federalism is more easily understood if it is seen as a process, an evolving pattern of changing relationships rather than a static design regulated by firm and unalterable rules."[1]

Phillip Gonzalez
Senior Director, Asia and Australia
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1 P. 173, Friedrich, C. J. 1968. *Trends of Federalism in Theory and Practice*. New York: Frederick A. Praeger.

ABOUT THE RESEARCH AND IMPLEMENTATION TEAM

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Reuben Baatjies was previously the General Manager of Strategy and International Relations at South African Local Government Association (SALGA) from 2014 to 2016, and between 2009 and 2014 was the Director for Intergovernmental Relations at SALGA. Prior to that he was a Deputy Director in the Premier's Office of the Western Cape Provincial Government, where he was responsible for Constitutional Roles and Responsibilities. He was also formerly a researcher at the Dullah Omar Institute at the University of the Western Cape and Managing Editor of the Local Government Bulletin (2005).

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Phillip Gonzalez is the Senior Director, Asia/Australia Program, Forum of Federations. He has over 10 years' experience and has contributed as a governance expert in support of constitutional and democratic reform in Nepal, Pakistan and the Philippines. Phillip has worked extensively across Asia with political leaders and various stakeholders on issues of multilevel governance, providing technical training in devolved and federal governance; supporting efforts towards democratic devolution. Additionally, he has also worked on governance projects in Brazil, Canada, Ethiopia, India, Sri Lanka, Russia and Ukraine where he has provided technical advice and implemented projects with partners to provide options for complex policy issues and governance questions. Phillip has a Master's degree in International Relations from Monash University, Melbourne, Australia. He received his Bachelor's degree from La Trobe University, Melbourne, Australia. He has previously worked at the Canadian Foundation for the Americas as well as the Australian High Commission in Ottawa. He is fluent in English and Spanish.

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Purusottam Nepal has a wealth of experience working for and as a consultant to governments across all spheres in Nepal. He served both federal and local governments as policy maker, programme designer, implementer and monitor of different aspects of federalism, decentralization, local governance, organization and development, human resource management, management audit, public financial management, local finance, planning & monitoring, community mobilization, inclusive development, industry and economic development. He was the former National Programme Director and National Programme manager of the Local Governance and Community Development Programme (LGCDP).

JASON TABARIAS

Jason Tabarias is an economics and public policy expert with a multi-disciplinary background. Previously, Jason has worked at Department of the Premier & Cabinet (Victoria, Australia) where he held various roles including:

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Jason has also worked as a management consultant with top tier international firms and in senior roles in Australian and New Zealand governments. Jason was previously an Honorary Fellow at the University of Melbourne, where he designed and taught graduate programmes in economics, policy and public administration.

1

Introduction

1.1. KEYWORDS

Accountability,
Balancing Power and Resources,
"Citizen-centred" Federalism,
Clientelism,
Co-financing,
Conflict in IGR,
Council of Australian Governments (COAG),
Developing Capacity and Capability,
Dispute Resolution,
Division of Powers,
Federal Fiscal Governance,
Federal Funding, Federal Loyalty,
Fiscal Federalism,
Informal Meetings,
Intergovernmental Agreement on Federal Financial Relations (IGAFFR),
Intergovernmental Reforms,
Intergovernmental Relations,
Interdependent and Cooperative Government, Multinational,
National Cabinet,
Public Management and Public Finance,
Public Value,
Sectoral Intergovernmental Relations,
Sectoral Policy Focus and Management Approach,
Service Delivery,
Shared Rule,
Transition to Democracy

1.2. BACKGROUND

"[F]ederalism is as much a matter of process as of structure... The elements of a federal process include a sense of partnership among the parties to the federal compact, manifested through negotiated cooperation on issues and programs..."[1]

The promulgation of Nepal's Federal Constitution on September 20, 2015 marked a historic moment for Nepal and signified the beginning of the transition to a federal system of government. This endeavour, a monumental task, entails an enormous degree of social and political reengineering of the political and economic practices that have defined the country for centuries.

It is difficult to imagine the scope and enormity of effort required of this transition; especially when one considers the task of establishing entirely new provinces and practices, moving the country from its previous unitary system of government to a federal democratic republic. This transition is defined by empowering and building the capacity of three spheres of government (Federal, Provincial and Local), as well as the institutions and mechanisms that finance and coordinate these entities. But perhaps more than that, the transition is defined by the creation of entirely new spheres of government in Nepal, Provinces.

Nepal's three spheres of government each have distinct and, at the same time, concurrent powers, which results in a murky separation of power. However, what is entirely unique about the federal system in Nepal is that it provides for two separate concurrency lists: both between the Federation and provinces, as well as among the Federation, provinces, and local governments. This further complicates the issue of clarity in the division of powers within an already complex model and transitional scenario.

All three spheres have their own executive and legislative branches of government and the power to draft their own laws and policies; however, in practice these powers require more than the Constitution and the rule of law to realise federal consociation in Nepal.

In practice, the devolution of powers to provincial and local governments and the coordination of these powers and services requires significant support to establish these nascent and vital governments, as well as the necessary processes and institutions.

Fundamental to the meaningful devolution of power in any federal system, and perhaps more importantly within nations transitioning from unitary systems, is the formalization of intergovernmental institutions. These include political and administrative institutions across both horizontal and vertical axes, as they provide the political and institutional frameworks for the distribution of powers.

Intergovernmental relations (IGR) are defined as those relationships between governments on matters of policy development and coordination. Within the Nepalese context, these relations are crucial. Politically, IGR provides a means for formal meetings for min-

1 P. 67, Danial Elazar, Exploring Federalism, University of Alabama Press, 1987

isters of first ministries to establish priorities and power interrelations that define federal relations vertically. Administratively, these IGR meetings play a significant role in policy development and implementation. These IGR institutions and practices are therefore essential in the promotion and coordination of powers and policies.

To that end, the Constitution of Nepal under S. 232 makes a provision for the principles of cooperative coexistence and coordination amongst all spheres of government. There is also a provision for the provinces to coordinate, exchange information, and consult on subjects of mutual concern and interest; as well as the creation of an Inter-Provincial Council (IPC). However, constitutional provisions alone do not guarantee principles, practices or outcomes.

These IGR forums and their institutionalisation, as embodied by the IPC, can drive much of the tone (cooperative or coercive) and essential debate as a necessary condition for power sharing within a federation. They also establish the basis of the relationship between the various spheres of government as either cooperative or coercive.

As mentioned, while Nepal's Constitution provides the legal premise for intergovernmental relations, these reforms require political support and will only succeed in the context of the political environment and the support those reforms receive.

IGR institutions are fundamental to the success of any decentralised system. Here, the benefits of coordination and dialogue are further amplified in supporting the peace process in Nepal – IGR institutions are essential to building trust, which is vital in post-conflict states. These IGR institutions serve to diffuse regional tensions, building unity within the country.

Key components for successfully implementing federal reform include establishing regular consultation forums between federal entities to coordinate policy responses to important decentralisation issues. Establishing regular interaction between spheres of government across all jurisdictions provides strong conditions for a more cooperative approach to governance.

Further, the role of provinces in Nepal is an equally important factor for the success of federal devolution and the creation of provincial IGR forums will support this agenda. These institutions will be pivotal in securing the voice of provinces and ensuring the devolution of those direct and concurrent powers enumerated in the Constitution. Furthermore, these provincial IGR forums (?) are best understood and implemented through a sectoral focus of policy across specific policy portfolios, such as health and education.

Importantly, as nascent provincial governments work to implement these powers, horizontal relations will deepen and provide support to one another in their dealings with the national government. Horizontal coordination is critical to forming allegiance in matters of concurrent jurisdiction; here, horizontal coordination provides collective interest and power for provinces as is the case with local spheres.

Today, it is imperative that an effective system of intergovernmental relations is utilized to implement devolution, policy, and reforms. Comparative history suggests that failure to effectively institutionalise these processes will compromise the efficacy, effectiveness and potency of federal governance and the true spirit of the Constitution of Nepal.

1.3 OBJECTIVES AND METHODOLOGY

This research paper presents the IGR practices of three countries (Australia, Spain and South Africa) with federal or federal-like characteristics as a means to illustrate specific practices, highlighting what one might consider better practices as well as sharing observations and experiences in implementing an effective devolved system of government. These are presented here as a reflection of observations that may offer stakeholders in the implementation process in Nepal comparative insights to guide their own work.

The benefits of observational learning and knowledge transfer are at the core of this research piece and, more broadly, the SMFFN programme at large. The specific objectives of this paper and the SMFFN programme as they relate to IGR practices in Nepal include:

- Enhanced knowledge on comparative federal practices, including roles and responsibilities of spheres of government.
- Strengthened understanding among SMFFN participants of IGR and coordinated development processes.
- Effective interactions between different spheres of government to support fiscal federalism in Nepal.

The SMFFN programme has focussed much of its attention and strives to make the largest impact, by empowering Provinces. To support these outcomes, the Forum of Federations worked in three stages to develop this knowledge product (KP) and create the SMFFN programme.

Firstly, it brought together expert practitioners from the countries represented in the research paper to exchange on the political and economic challenges that the governments of Nepal (National, Provincial and Local) and its officials had been confronting and working to address. Through discussion, research and survey, the team was able to understand the needs of the programme beneficiaries.

The second stage centred around the development of interactive knowledge sharing modules and was greatly impacted by the COVID-19 pandemic. This part of the methodology tested the relevance and impact of the KPs through interactive knowledge sharing events with our partners across Nepal, including a wide array of officials across a vast spectrum of public policy implementation issues. The net effect of COVID-19 on our engagement through knowledge sharing events was that we were able to conduct 3.5 times (from 9 to 32) as many events, thus testing the observations to a greater extent than originally envisioned.

This approach, along with external influences, helped to shape and refine the assertions, findings and content of the comparative practices contained within this KP; and subsequently refine and shape the observations also contained in this KP.

Thus, the orientation of this KP has been tested and our humble ambition is that this research provides important insights through relevant case studies into public policy sectors so that these experiences may further support the evolution of IGR practice towards the ultimate goal of realizing a functional federal Nepal, resulting in improved service delivery to all Nepali citizens.

1.4 COMPARATIVE OBSERVATIONS

The country cases presented in this research offer some key comparative learning in IGR that can be considered pillars of any multi-level or federal system of government. Whilst it is frequently asserted there is no one-size-fits-all approach to federal systems, there certainly are common principles of practice in IGR which, when implemented and adhered to, provide the foundation for realizing the virtues of federalism – better services, delivered closer to citizens.

Thus, in this KP we diffuse comparative experiences in IGR (to result in?) several important observations for Nepal. The purpose is to examine some of the experiences that have been understood in Australia, Spain and South Africa and consider how these are relevant to Nepal, as all multilevel systems demand substantial degrees of interaction between federal partners.

These observations serve as a guide to the role that IGR plays in any multilevel system. As was first noted by Elazar, IGR are the essential "oil in the machinery" of every federal system.

Listed below are a number of important factors that are presented in the subsequent chapters of this IGR KP for consideration:

- IGR is a means to engage and communicate with one another in good faith, to try to reach consensus where possible, and importantly to manage (political, legislative, technical and resource) tensions so that development and policy is not impeded.
- Planning for the development of devolution must itself be devolved or shared. No one sphere of government should dominate.
- Political authority and support must be given by all jurisdictions.
- Under devolution, the concept of "the public" is necessarily more nuanced and complex than under the system it replaced, because devolution has broader representation and involves a tension between national, regional, and local views. This additional nuance is a feature of devolution. It is important to develop a culture of devolution in which there are constant conversations between multiple legitimate voices and views.

- Disagreements between governments are a feature of decentralised governance, rather than a failure, and can be harnessed for positive outcomes.
- The purpose of IGR is to manage this tension - to create a coherent government that delivers services to the people through the three spheres of government, who use IGR internally to iron out differences and reach consensus for joint planning and action.
- Thus, the Constitution of Nepal will create tension between:
    - National direction, provincial needs, and locally defined preferences.
- Consensus may not always be possible, but at the very least informing one another of plans, programmes and budgets, alongside frequent and regular communication with the aim of coordinating development efforts, should be the norm.
- IGR is ultimately the vehicle and mechanism which attempts to coordinate, as far as is practically possible, government activity to promote integrated development (by, among others, avoiding duplication or waste of scarce resources and fragmentation of projects and services).
- IGR is not a panacea for all political and systemic challenges, but rather a functional mechanism and vehicle to ensure effective communication, consensus building and coordination of efforts and resources towards the same development objectives.

Phillip Gonzalez
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2

Intergovernmental Relations and Service Delivery through a Sectoral Policy Focus:

An Australian Federation Case Study in Delivering Health Services and Observations for Federal Nepal

- Jason Tabarias

2.1. EXECUTIVE SUMMARY

TENSIONS BETWEEN SPHERES OF GOVERNMENT

In 2010, the state of intergovernmental relations in Australia was at an all-time low. Following on from a significant reform to intergovernmental financial relations in 2009, the federal government and states immediately fell back into public bickering, with claims of misuse of federal grants and cost-shifting amongst the Prime Minister and state Premiers.

HEALTH REFORM – SECTORAL INTERGOVERNMENTAL RELATIONS

The deadlock was broken by the development of a new intergovernmental policy and funding agreement in the health sector – the largest single intergovernmental agreement in Australia's federal history. The proposal for reform of the health system was driven by Health Ministers, supported by key external stakeholders and underpinned by strong policy analysis by health sector officials in both the federal and state governments. In agreeing to the proposals, central Ministers and officials also took the opportunity to mature the system of federalism and improve standards of public management in hospital administration.

This case study demonstrates the importance of sectoral intergovernmental relations in federal systems, and the need to focus federalism on the delivery of public value – improvements that matter to citizens and improve their lives.

KEY LESSONS OF FEDERALISM

- Disagreements between governments is a feature of federalism, rather than a failure, and can be harnessed for positive outcomes.
- Successful federal reforms require support from stakeholders outside of government to avoid federalism being seen as "governments talking amongst each other" rather than engaging with the issues that matter to citizens.
- The point of federalism is to deliver improved public value; federalism is not an end, but the means for better delivery of public value than other systems of government.

RECOMMENDATIONS FOR NEPAL

- Prioritise the development of sectoral intergovernmental relations including developing capacity and capability amongst officials to enable provincial and local governments to both actively participate in and take national leadership roles in the development of service reforms.
- Reorient the development of federalism in Nepal towards the delivery of public value through sectoral coordination and reform, which will improve citizen support for federalism.

2.2. CASE STUDY – HEALTH REFORM IN AUSTRALIA

2.2.1. A NEW ERA OF COLLABORATION

In 2009, the federal government and all eight State and Territory governments of Australia agreed one of the largest reforms to intergovernmental arrangements in Australia's history. By signing the Intergovernmental Agreement on Federal Financial Relations (IGAFFR), they replaced a series of ad-hoc intergovernmental agreements covering policy coordination and/or financial arrangements with a simpler system based on four elements:

- six ongoing intergovernmental policy agreements (National Agreements), clarifying shared objectives in priority sectors (health, education, skills and workforce development, housing and homelessness, disability and Indigenous reform);
- five ongoing intergovernmental funding agreements (Specific Purposes Payments, SPPs) which could be used as determined by each State in pursuit of the National Agreement policy objectives within each sector;
- a series of smaller time-limited policy reform and funding agreements (National Partnership Agreements, NPAs), and;
- reconfirmation of the existing approach of directing all the revenue of the federally-collected Goods and Services Tax (GST) to States to use as they see fit, with distribution based on an independent assessment of horizontal fiscal equalisation.

Prior to the IGAFFR, the States' reliance on ad-hoc intergovernmental policy agreements and federal funding made for an unstable operating environment. Priorities and policies changed at the whim of the federal governments and ministers, undermining State responsibilities and making public accountability unclear. Funding was short-term and made it difficult for States to invest in the people, processes and infrastructure required to deliver improved services.

The IGAFFR gave States significantly more operational certainty, policy clarity and fiscal autonomy. Short-term, prescriptive funding arrangements were replaced with ongoing funding that States could direct to their own needs within the specified aims of the National Agreements.

The signing of the IGAFFR represented unprecedented levels of collaboration in what was often a challenging relationship between the federal and State governments. The IGAFFR reforms were themselves collaboratively designed, based on advocacy by the government and officials from the State of Victoria.

2.2.2. IMMEDIATE COLLAPSE OF THE SYSTEM AND PUBLIC BICKERING

The next year, the federal government released a report on its long-term spending projections – the 2010 Intergenerational Report. The Report found that federal government spending would need to rise significantly across many sectors in coming years, with taxation growth unlikely to keep up with spending.

Health spending would contribute two-thirds of the projected growth in government costs over the next 40 years. Given Australia's split responsibilities for health, with the States responsible for hospitals and the federal government responsible for primary care and pharmaceuticals, this cost growth was projected to impact States similarly. Speaking to the media, the Prime Minister of the day noted that health and hospitals were the largest area of State spending and, if spending trends were to continue, it would "consume the entire budget of States" in next 20-30 years.

The Prime Minister alleged that the States were using federal funding under the Healthcare SPP to cover hospital cost growth and re-directing their "fair share" of State funding away from health to cover other areas of State spending in a covert contradiction of the IGAFFR. In retaliation, the Prime Minister threatened to redirect funds from the States' untied GST revenues to pay for some of the federal government's future contributions to State health costs, in overt contradiction of the IGAFFR. If the States did not agree, the Prime Minister threatened that the federal government would take over the running of the hospitals from States.

Meanwhile, a parallel debate was also being had amongst federal and State health ministers. The federal health minister accused the States of underfunding public hospitals, leading to (i) significant increases in the waiting times for elective surgery, such as hip replacements and cataract surgery and (ii) excessive waiting times at emergency departments. The evidence showed that waiting times were indeed increasing, although there was debate as to why. Calls to improve hospital services from stakeholders such as the Australian Medical Association and patient lobby groups were becoming louder and more frequent. Further, the federal health minister accused States of mismanaging hospitals, claiming that many were inefficient. He claimed that the federal government should only contribute towards the "efficient price" of hospital activities, which would leave States to pick up all the costs of using outdated management approaches.

State health ministers made counterclaims of the federal government's underfunding and mismanagement of the primary healthcare system, which forced too many patients into State hospital emergency departments. They also pointed to other reasons for increasing costs, such as the rising cost of medical technology, the ageing population and rising service expectations from the public. The health ministers' public disagreements were often ugly and undermined the goodwill surrounding the signing of the IGAFFR.

2.2.3. THE BEGINNING OF A NEW CONVERSATION

To address these issues, the Ministerial Council for Health (which comprised the Health Ministers from the federal government and each State) commenced the development of a new intergovernmental agreement to replace the National Health Agreement which was signed only a year before. They debated a new National Health and Hospitals Network Agreement, with two distinctive components: the first to improve public hospital services to citizens and the second to improve the efficiency and management of hospitals and increase public hospital funding.

The first component - a time-limited National Partnership Agreement - focused on delivering hospital system improvements. It included:

- establishment of targets for reducing the elective surgery backlog and improving emergency department waiting times;
- public reporting on performance to "name and shame" States and hospitals with sub-standard service levels; and
- new intergovernmental funding to reduce the backlog in elective surgery in each State.

The second component - an ongoing National Agreement - focused on building public sector capability and managing government finances. It included:

- the requirement for States to learn and adopt a new "activity-based" approach to accounting for hospital activity and managing hospitals, based on the best practice system employed in the State of Victoria;
- termination of the Healthcare SPP intergovernmental funding;
- redirection of some of the States' GST revenue to contribute towards overall higher levels of federal contribution to the costs of running hospitals;
- calculating future federal funding contribution to State hospitals on the level of hospital activity, (replacing the previous funding formula referencing population and rurality); and
- requiring States to report to new independent bodies to monitor the efficiency and activity levels in State hospitals and determine the federal funding.

The proposal contained major issues for States because it introduced significant federal oversight of their constitutional responsibilities for health. It also reduced their ability to deliver on some of their other responsibilities – such as school education and transport infrastructure – because some of their GST revenues would be forcibly "tied" to hospitals. The States also calculated that the federal government could contribute less money under some scenarios than under the existing Healthcare SPP by only agreeing to contribute towards the "efficient price" of hospital activity, leaving the States even worse off.

Despite the issues with the proposal that State officials poured over, the political environment was a key factor in the negotiations. At the time, all States were led by a

government from the same political party as the federal government (Labor Party), except in the State of Western Australia (Liberal Party). As such, all States signed on to the National Health and Hospitals Network Agreement – except for Western Australia. In the State of Victoria, the Labor Premier signed the agreement as one of the last things he did prior to going to an election in late 2010.

However, in a surprise Victorian state election result, the opposition Liberal party narrowly won power. The new Victorian Premier refused to be bound by the actions of his predecessor and refused to ratify the National Health and Hospitals Network Agreement. Soon after, the two Liberal-led States, Victoria and Western Australia, led a revolt against the financial aspects of the Agreement and all jurisdictions were forced back to the negotiating table to try to reach an agreement on a new national deal.

2.2.4 A NEW DEAL DELIVERING NEW RESULTS FOR CITIZENS AND GOVERNMENT

Further political changes at the federal level also played a role soon after. Negotiations on a new national health agreement coincided with the decision of the federal governing party to replace their Prime Minister with a new leader who was eager to cement a deal with States. There was a new political dynamic.

State officials and ministers engaged directly with each other – without the federal government present – to discuss the terms of a new health agreement under which States might all be better off, irrespective of their political affiliation. States that were previously hesitant to speak publicly about the poor offer from the federal government were now able to support a united position, led by the two opposition States.

The States collectively pushed the federal government to offer a revised proposal. The negotiations did not overturn the "public value" elements of the deal – the needs to increase hospital service levels and deal with the backlog in elective surgery – nor the need for States to learn and adopt new financial and management approaches to improve the efficiency of hospitals.

However, the new deal preserved the States' untied GST revenues, ensured States a larger federal contribution to the costs of public hospitals and guaranteed that the funding would not drop below agreed levels. All States signed on to the revised National Health Reform Agreement and an associated National Partnership Agreement in 2011. Implementation of the agreement involved new laws at State and federal levels, the training of staff on new financial and management methods and the establishment of new oversight bodies. The resulting changes to service delivery in emergency departments and in elective surgery were mostly completed by 2012.

The results after the implementation of the National Health Reform Agreement were positive:

- More Australians received emergency department services. The number of emergency department presentations per 1000 people increased by 2.5% per year in 2018-19.
- More Australians accessed elective surgery, although they waited longer. Elective surgeries rose 2.5% per annum, outstripping population growth over the period of 2018-19. However, the waiting time to access elective surgery improved in only half of the eight States over the same period.
- Cost growth was controlled. Overall spending on healthcare (of which hospitals comprise the largest component) increased at 1.2% per annum per person, compared to 3.2% per annum per person in the five years prior to the Agreement.

2.3. IMPLICATIONS FOR THE DEVELOPMENT OF FEDERALISM IN NEPAL

2.3.1. DISPUTES ARE COMMON - AND CAN BE POSITIVE

The case focused on the health sector, but disputes of this kind are a typical feature of Australian federalism. Debates between spheres of governments are neither a failure of federalism, nor something that is confined to young federations. One of the virtues of federal systems is that governments have the right and responsibility to identify failures (including potential corruption and mismanagement) in the areas of other governments' responsibilities and hold public discussions on the opportunities for improvements.

Further, these kinds of debates are not limited to areas of concurrent powers; there will always be flow-on implications to other government sectors. For example, in Nepal the availability and effectiveness of telecommunications and electricity (federal government responsibilities) can materially impact the rate of business growth and economic development, which in turn impacts local government business taxation revenues. It is therefore appropriate that local governments be able to hold the federal government to account for its efforts in improving telecommunications and electricity infrastructure.

Disagreements between the spheres of government in Australia are often the catalysts for reform and the delivery of outcomes that citizens value. In this case, the financial analysis the federal government undertook eventually led to both improvements in both State hospital services AND lower cost growth for federal and State governments. Similarly, the coalition of States working against the federal government preserved State financial autonomy, which meant that improvements in health did not come at the cost of other areas of State responsibility, such as school education or infrastructure.

The Australian case shows the opportunity for Nepal to recast disagreements between governments in the federation in a positive light. Nepalese political and bureaucratic culture needs to accept disputes as a part of federal governance. In turn, the protagonists in intergovernmental debates need to ensure they direct disputes into positive outcomes by empowering, rather than undermining, other spheres of government.

2.3.2. ALL FEDERATIONS NEED TO MATURE AND DEVELOP

Despite the differences in the base capacity of public administration across nations, there is always a need for investment in new capability. The case highlights three kinds of developments that were required in Australia:

- the reform of intergovernmental mechanisms (the IGAFFR);
- improvements to public management and public finance (the adoption of modern "activity based" accounting for hospital activity and new oversight institutions), and;
- the adoption of new sector-specific management approaches to improve outputs (elective surgery and emergency departments).

In Australia, reforms that are focused primarily on improving intergovernmental mechanisms are relatively rare – only two such major reform initiatives have occurred in the last decade; the 2009 IGAFFR reforms were successful, but the second (Reform of Australia's Federation, 2014-15) ended without producing direct results[1]. That is not to suggest that reforms to intergovernmental mechanisms are not required – Australia's federation has many shortcomings. Instead, the experience of Australia is that it is difficult to sustain public support for reform of intergovernmental institutions alone. Intergovernmental reforms can seem technical, bureaucratic and distant from the issues that citizens care about.

As such, while Nepal has a unique opportunity to invest in the design and development of its federal system at the outset, it should not be assumed that public support for the efforts will continue indefinitely. The case of Australia shows that public support for federalism is finite, but that institutional design and reform can be an ongoing component of federalism under the right circumstances.

The need to improve capability in general public management is also constant in Australia. The case shows that hospital costs were growing, in part due to the widespread use of outdated administrative approaches. Modern alternatives were known, but the States had not always invested in the costs of reform, such as building new skills, attracting staff with scarce specialist skills, modifying information technology systems and managing the risks of change. An important point to highlight is that the capability-building in the Australian health case was primarily horizontal - other States adopted the approach to hospital financial management which had been used in the State of Victoria for decades and was proven to be more efficient. The role of the federal government was to identify good practice and facilitate its uptake amongst States (including through funding to build capability), not to design a new approach in an area it had no direct experience in.

Lastly, the Australian case showed the need to adopt improved management approaches in the health sector. In many ways, these were the most crucial capability-building elements of all. Without them, the key elements that citizens valued – better hospital services – would not have resulted. The federal government was critical of the States' management of hospital services and accused them of misusing federal grants. But rather than withholding, its positive response was to: (i) establish independent, apolitical oversight bodies to end the doubt about how much State and federal money was flowing to hospitals and how hospitals were performing and (ii) provide new, additional funding and incentives for States to invest in improving services. The new capabilities that resulted have had a lasting impact beyond the time-limited investment period and have largely ended the stoushes on hospital funding.

The Australian case shows the opportunity for Nepal to not view lower capability in provincial or local governments as a rationale for the federal government to step in and directly manage or deliver services which are the constitutional responsibility of provincial or local governments. Instead, low capability is an opportunity for the federal government

1 During the development of this case study in mid-2020, the Prime Minister announced a new reform to intergovernmental institutions (but not financial arrangements). Further detail is provided later in this document.

to invest in enhancements that will both deliver better services today and underpin the ongoing viability of provincial and local governments in the future. To a large degree, this involves investing and developing the public management capacity – the civil services – of provincial and local governments.

2.3.3. ENGAGEMENT AND CONSULTATION UNDERPIN SUCCESSFUL REFORMS

The case study shows how two kinds of engagement were critical to success: (i) engagement with citizens and stakeholder groups and (ii) engagement horizontally across States.

In the first instance, the issue of poor service delivery in hospitals was supported by external groups: the Australian Medical Association and patient lobby groups. External consultation and engagement ensured that there was public support for reforms. The role of external stakeholder groups can be especially important in intergovernmental reforms because such groups can play an independent role in debates between spheres of government. Engagement also enrols the stakeholder groups as a kind of informal "auditor" to check that the investment has delivered real improvements to health services (rather than, say, being diverted to other uses). The Australian Medical Association continues to play this role, regularly reporting on health service metrics such as elective surgery waiting times.

A key insight for Nepal is that intergovernmental relations should not be considered a discussion between governments, but a method of policymaking and service reform that engages with citizens and communities as a matter of course. Intergovernmental policymaking needs to be centred on consultation – joint or separate – with local constituents, representative groups, ethnic and social groups and so on. All spheres of government have the mandate to undertake this engagement. Citizens and groups need to be invited into the process and their voices must be heard in intergovernmental debates and reforms.

The case also shows how the horizontal engagement between officials and ministers in States of different political persuasions was key to the success of the reforms. If the first National Agreement was agreed upon without pushback from States, it would have eroded the States' main source of income (the Goods and Services Tax) and made them more reliant on future federal funding, including in other sectors. Over time, the effect would have been to significantly undermine the role of States and the federal system in Australia. The importance of States seizing the change in political dynamics to form a united block against the federal government was critical. Being apolitical, officials were an important part of this process because they were more able to reach out and connect across States of different political persuasions. Officials' relationships pre-existed the change in government in Victoria and were built on years of engagement in the issues of health policy and across a range of intergovernmental issues.

An opportunity for Nepalese federalism is to ensure that strong horizontal engagement by officials is an ongoing component of provincial and local administrations, such that this "relationship capital" at the officials level can be brought to bear on key issues when required.

2.3.4. INTERGOVERNMENTAL REFORMS MUST DELIVER PUBLIC VALUE

The case of health reform in Australia tackles three key changes:

i intergovernmental financial and funding reform;

ii capability building in public administration and;

iii the delivery of improved health services to the public.

As discussed earlier, Australia finds it challenging to undertake and sustain reforms to intergovernmental processes and funding. Similarly, it can be challenging to build the case for investment in more modern processes, updated IT systems and highly skilled staff as a stand-alone reform. Both reforms are important, but do not in themselves deliver notable public value. The key to the success of intergovernmental health reform was the bundling of intergovernmental financial reforms and investment in skills and capability with the third kind of improvement: better emergency department and elective surgery services.

Intergovernmental health reform in Australia can be seen to have followed the "strategic triangle" approach advocated by Professor Mark Moore, of Harvard University. Put simply, the strategic triangle argues that the best reforms are desirable (politicians and stakeholders want them), deliverable (government can get it done) and beneficial (citizens get value from the reforms). Many reforms meet two of the three tests; only the best meet all three.

The Australian health reforms worked because they successfully dealt with these three questions:

- What do citizens want from their public hospitals? [improved emergency departments and elective surgery]
- What additional public sector capacity and capability is needed to deliver these reforms? [new forms of public management and additional funding]
- How can we secure political support (including external stakeholders) for the reform? [engage externally with the Australian Medical Association, enable reduced cost-growth for all governments]

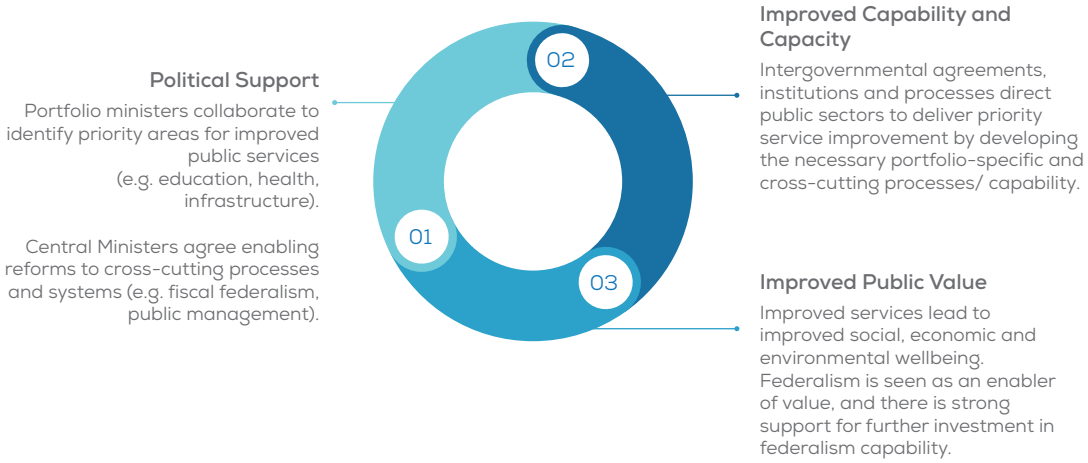


Figure 1 - Strategic Triangle in Federal Policy and Service Delivery

While other elements changed throughout the negotiations, the focus on delivering better emergency department services and elective surgery remained constant. Importantly, this allowed the public to focus on things that mattered to them, without having to know, be educated or care about efficient operation of the federal system. Federal capability building and financial matters receded from the debate because politically and morally, officials and ministers from all governments understood that the delivery of public value needed to remain at the core.

By linking the two challenging reforms – investment in new capability and federal funding reform – to things that citizens clearly valued, Australian governments were able to tackle multiple issues simultaneously that would not have been successful if tackled separately. The reason for their success, according to Moore's theory, is that investment in public sector capability is best tackled where there is a clear public purpose to which the new capability is directed. Moreover, this is a virtuous cycle. When capability building leads to palpable public value, citizens are more likely to support further investment by the political level in capability in the future.

2.4. OPPORTUNITIES FOR FEDERALISM IN NEPAL

2.4.1. A – DEMONSTRATE PUBLIC VALUE THROUGH SECTORAL IGR

The Australian case highlights the key role of health ministers and officials (State and federal) in driving intergovernmental reform. Sectoral ministers and officials were deeply engaged with the service systems they were responsible for and the citizens that benefited. Sectoral ministers and officials were closer to the key stakeholders and were better placed to clarify the public value of intergovernmental reform in terms of things that citizens cared about.

In contrast, the current trajectory of the development of federalism in Nepal is heavily centralised. There is limited engagement between sectoral officials and ministers in different spheres of government despite clear areas of shared constitutional responsibility. In some cases, sectoral communication between spheres of government is prohibited, which limits the ability to exchange ideas, develop relationships or plan in a joint fashion. Joint planning is still in its infancy - there is no clear, agreed articulation of policy priorities or service reforms that citizens can expect to see delivered through the coordinated activities of central, provincial and local governments.

The Australian case shows there is an opportunity for Nepalese federalism to re-orient the intergovernmental agenda towards sectoral issues. Sectoral officials and ministers from federal, provincial and local governments are best placed to identify reforms that their constituents prioritise, including leading engagement and consultation with citizens and groups. Sectoral officials and ministers are best placed to give a "purpose" to the development of federalism; planning comes "up" from sectorial officials and ministers, rather than "down" from the central government.

This implies both a move away from the rigidity of central coordination between spheres of government and a move towards building the support for federalism based on what it delivers for citizens. Sectoral officials and ministers from federal, provincial and local governments need to see themselves as part of a joint group delivering services and value to the nation, rather than just as members of their sphere of government or political party – and they need infrastructure and institutions to support them. Viewed in this light, delays in the establishment of provincial and local government public service acts, and the resulting delays in the establishment of a full cohort of civil services within each sphere of government, are major barriers to the effective operation of the federal system.

The Forum of Federations has worked with federal nations all around the world – developing, established and advanced. Our dialogues have discovered that (i) the need to mature and develop the federal system of government exists in established and advanced federations as much as in newer federations and (ii) there is much to be learned from how successful federations at all stages of maturity continue to secure public support for the federal system of government. In particular, we have observed that successful federations place the concept of public value at the heart of their approach to the development of federalism. The concept of public value (contrasted with shareholder value in the private sector) was developed by Professor Mark Moore of Harvard University, and its roots and applications are much wider than federalism but are nonetheless applicable here.

Professor Moore espouses an approach to public management in which the alignment of three elements of a "strategic triangle" – political support, capability/capacity and public value – drives priorities and action. That is to say, the best outcomes are where political support, the capacity and capability of government and the demand from citizens for action are all present.

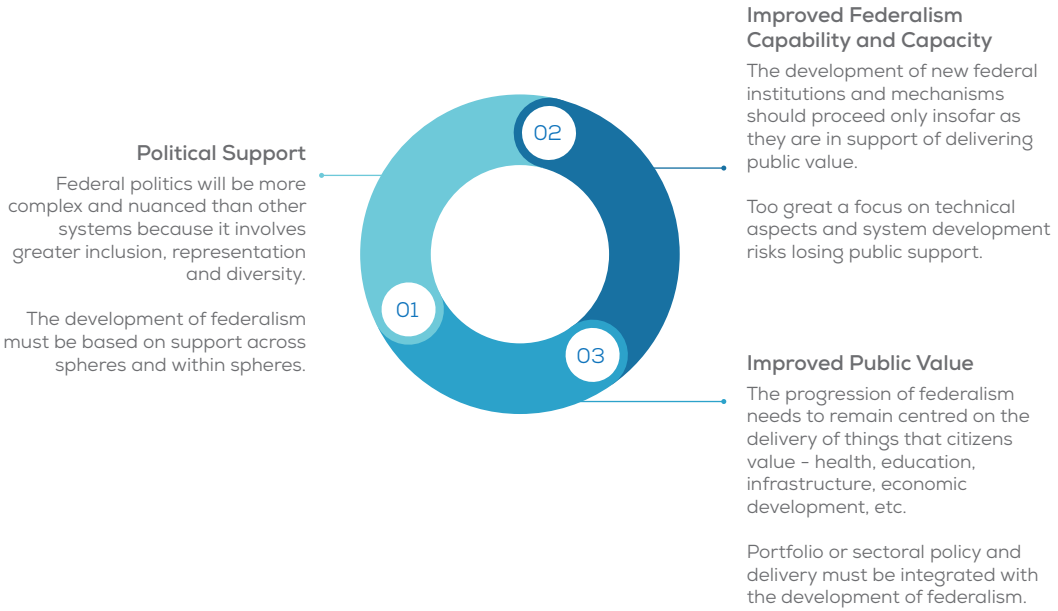


Figure 2 - The Strategic Triangle in the Development of Federalism

Our experience with the public value "strategic triangle" provide three key lessons for the development of federalism in Nepal and other new federations:

1. Planning for the development of federalism must itself be federal. No one sphere of government should dominate, and political authority and support must be given by all jurisdictions. Under federalism, the concept of "the public" is necessarily more nuanced and complex than under the system it replaced, in many ways because federalism has broader representation and involves a tension between federal, state and local views. This additional nuance is a feature of federalism. It is important to develop a culture of federalism, in which there are constant conversations between multiple legitimate voices and views.

2. Delivering public value – the things that improve the lives of citizens, social groups, businesses and others – must remain the focus of governments in a federation. Successful federal nations deliver public value (e.g. better healthcare, improved education, new infrastructure) through federalism, not because of federalism. For new federations, this means that the role of portfolio or sectoral Ministers and officials who are responsible for service delivery systems should be as important in the development of federalism as the role of central Ministers and officials in fiscal and management roles. Successful delivery of intergovernmental sectoral reforms reinforces the case for the further development of federalism more than the successful development of federal institutions.

3. Deviating from a focus on public value is risky. Improving capability and capacity in federalism is critical and necessary, and there is often a bias towards a technical approach in new federations because of the influence of knowledgeable international development organisations and well-intentioned civil servants. But if the development of federalism becomes the end - rather than the means - it will eventually find limited public support. An overly technocratic development approach risks **eroding popular support** for federalism if citizens come to believe federalism is "for governments/politicians" rather than "for the people". As such, beyond taking advantage of an initial period of public support, the maturation and development of federalism must be built into the "business as usual" of the federation rather than as a separate project with its own plan.

Of course, these lessons need to be tempered with the conditions on the ground in any developing federation. Day-to-day concerns of government will not wait to make space for the development of federalism. By definition, there will be greater capacity in the existing spheres of government than the newly created sphere(s). Some political parties will be established, while others may be new. Variations in the degree of organisation of social groups, civil society actors, regional representative groups, ethno-linguistic groups and business groups will impact on the ability to consult and engage with the public. Access to resources and infrastructure, rates of human and economic development will vary and will impact on the federalism capacity and capability building agenda.

Nonetheless, the three lessons point towards a single concept underlying the ideal development pathway: **"citizen-centred" federalism**. Having taken into consideration the conditions on the ground, a good test for prioritising the development of federal institutions or mechanisms is to ask whether or to what extent the proposed next steps deliver public value for citizens.

For example, it will be easy to argue that the development of basic fiscal and resource sharing mechanisms should be a high priority in the early stages of a transition to federalism; they enable the creation and operation of the new (federal or sub-national) government(s). This first step is citizen-centred insofar as it enables what citizens voted for. However, there are many levels of sophistication of fiscal and resource sharing mechanisms. The citizen-centred principle will tell us that only the minimum level of sophistication is required initially. The next priority should be to focus on the effective operation of the new government(s) and their delivery of public value to citizens before (or at least alongside) the development of more sophisticated fiscal arrangements and resource sharing. Effective fiscal and resource sharing mechanisms are only citizen-centred to the extent that they enable and actually deliver the services and reforms – better education, improved healthcare, greater economic development – that the new government(s) are charged with delivering.

The next part of this framework takes this concept of a citizen-centred federalism as its core. It asks, how might we go about staging the development of federalism in a citizen-centred way to deliver public value? The focus is on bringing to life the three lessons from theory and our experience:

- the establishment of a culture of federalism, principally through intergovernmental relations amongst officials and ministers;

- the development of mechanisms that enable a focus on public value and a delivery of public value through the federation; and
- the technical and systemic development of federalism to support the delivery of public value and sustain public support for further investment in the federal system.

THE AUSTRALIAN MINISTERIAL COUNCIL SYSTEM, SENIOR OFFICIALS AND PUBLIC VALUE

Until very recently, executive policy coordination and intergovernmental engagement in the Australian federation was undertaken through the Council of Australian Governments (COAG). COAG was chaired by the Prime Minster of the federal government and is comprised of the Premiers of each of the six States and the Chief Ministers of the two Territories. COAG considered only the most important issues in the federation. It made decisions by consensus and generally met between two and four times per year.

During the writing of this case study, the Prime Minister announced that COAG was to be replaced by National Cabinet with the same membership[2]. National Cabinet was initially convened as a weekly mechanism for Australian governments to convene to address the COVID-19 crisis but has been retained to replace COAG - with the key difference that it will continue to meet approximately once a month via telepresence (video conferencing) and once a year in person. Given the recency of the announcement, much of the detail of the operations of National Cabinet remain to be worked out.

Both COAG and its successor are supported by a series of Ministerial Councils which drive intergovernmental policy and coordination in sectors of national significance. Ministerial Councils are comprised of the relevant federal and State ministers in each sector, with a range of chairing and administrative arrangements. The role of Ministerial Councils is to develop the detail of policy and financial proposals for COAG's consideration in each sector (although COAG would refer issues to Ministerial Councils from time to time). Ministerial Councils therefore provide the "content" of federalism in Australia. Ministerial Councils also oversee the implementation of intergovernmental reforms and agreements.

Ministerial Councils under COAG (up to early 2020)	Reform Committees under National Cabinet (mid-2020 onwards)
• Federal Financial Relations	• *Federal Financial Relations*
• Disability Reform	• Rural and Regional
•Transport and Infrastructure	• Skills
• Energy	• Energy
• Skills	• Housing
• Attorneys-General	• Transport and Infrastructure

2 The (unelected) head of the Australian Local Government Association was an observer member of COAG but has an as-yet unclear relationship with National Cabinet.

• Education • Health • Closing the Gap [Indigenous] • Indigenous Affairs • Australian Data and Digital • Women's Safety	• Population and Migration • Health

The existence of specific Ministerial Councils, their terms of reference and their administrative arrangements are decided by consensus on an ad-hoc basis. Prior to the announcement of the new National Cabinet system, there were twelve Ministerial Councils. Under the new National Cabinet arrangements, there are seven National Cabinet Reform Committees reflecting priority reform areas, supported by a larger number of Ministerial Forums and Ministerial Regulatory Councils dealing with all other matters that concern both state and federal governments.

Under the COAG arrangements, the Ministerial Council on Federal Financial Relations had an informal special status, because all reform proposals with significant financial impacts must also be debated there prior to COAG's consideration. The Council on Federal Financial Relations also led on cross-cutting federal reforms, including taxation and intergovernmental funding frameworks. Under the recently announced arrangements, the Council on Federal Financial Relations now sits beneath National Cabinet and above all other Ministerial forums, formalising this special arrangement.

Ministerial Councils provide the core "public value" elements of Australian federalism. By collaboratively developing, researching and proposing intergovernmental policy reforms in areas that touch the lives of citizens and groups, they enable the central and financial elements of federalism to translate into change that benefits people and the nation. The Council on Federal Financial Relations supports the process by augmenting public value reforms with changes to improve the functioning of governments, such as changes to administrative and governance arrangements or financial management.

Both COAG/National Cabinet and its Councils are supported by Senior Officials Groups, comprised of the most senior public servants employed in the relevant sector in State and the federal governments – generally, heads of government departments. Senior Officials are in turn supported by a range of other officials within their departments. The role of Officials Groups is to collaboratively research and propose intergovernmental reform proposals for their Ministerial Councils to consider and approve. Officials Groups undertake engagement with stakeholders and citizens, prepare detailed policy analysis and draft intergovernmental reform agreements. Officials Groups also identify and diffuse practical and political issues so their respective Ministerial Councils can operate as smoothly as possible. Officials Groups are the "engine rooms" of intergovernmental relations in Australia.

Officials Groups from each jurisdiction form a kind of national policy workforce supporting the operations of federalism. Members of Officials Groups engage

on all areas of intergovernmental relations on a more-or-less constant basis. Officials groups meet formally, either via telepresence or in person on a regular basis – sometimes weekly or fortnightly in times of peak intergovernmental activity. Outside of formal meetings, officials are also in contact with their counterparts in other jurisdictions via telephone, email or telepresence even more frequently. For example, it is common for State Officials in education to have deeper working relationships with their education counterparts in another State or in the federal government than with officials in health or justice departments in their home State.

Officials often engage multilaterally but can frequently engage bilaterally where there are coalitions of mutual challenge or agreement, or along political party lines. It is also common for State officials to engage with each other without the federal government present in order to (i) discuss matters that do not involve the federal government or (ii) form common positions on issues to negotiate with the federal government.

Both the frequency and nature of interactions between jurisdictions at the Officials level contrast with those at the Ministerial level. Intergovernmental relations at the Officials levels allows tackling of both the urgent and important issues in a way that is difficult within the context of infrequent, politicised Ministerial meetings. Indeed, increasing the frequency of meetings under the National Cabinet arrangements seeks to address this same issue at the First Minister level. The lack of media spotlight on Officials interactions also removes opportunities for politicking, and reliance on personal relationships ensures that individual issues are balanced against the fuller agenda of issues in a way that is crucial to the smooth functioning of the federal system.

EXAMPLE: MINISTERIAL COUNCIL ON EDUCATION

Under COAG, the Ministerial Education Council was the forum for strategic intergovernmental policy coordination in early childhood education, school education and higher education in Australia. As with Councils in other sectors, the role of the Education Council was to provide advice to Education Ministers, coordinate policy development, resolve issues prior to the meetings of Education Ministers and oversee the implementation funding agreements in the education sector.

The Education Council was comprised of the Ministers for Education (or equivalent) from each State and the federal government. The Education Council was chaired on a rotating basis, with each State and the federal government taking turns on an annual basis. The Education Minister from New Zealand was also an observer member. At the time of writing, the Education Minister from the State of Victoria was the chair of the Education Council. The federal government was next due to chair the Council in 2028. It remains to be seen how these arrangements will change under the new National Cabinet arrangements.

The chairing arrangements for the Education Council reflected responsibilities in the Australian federation. Early childhood education is regulated by the States

and provided privately or by State governments. School education is funded, regulated and provided by States (although private schools are also funded by the federal government). Higher education is both funded and regulated by the federal government.

The Ministerial Council on Education Council was supported by the Australian Education Senior Officials Committee (AESOC), comprised of the heads of the Education Department in each State and the federal government. At the time of writing, the Secretary of the Department for Education and Training from the State of Victoria was the chair of AESOC, in keeping with the chairing arrangements for the Education Council.

The Education Council and AESOC were supported by a small independent secretariat, funded by all governments. Although the Secretariat was based in the State of Victoria, it reported to the Chair of the Education Council and AESOC on a rotating basis. The Secretariat helped to prepare meeting agendas, supported AESOC's research on key issues and coordinated physical and telepresence meetings of both the Education Council and AESOC in various locations around the country. In conjunction with the rotating chairing arrangements, the independent Secretariat helped to ensure an impartial, apolitical and efficient coordination of the intergovernmental education agenda in Australia.

In recent years, the Education Council and AESOC have been responsible for both driving significant intergovernmental reforms in education and managing the general business of intergovernmental operational coordination.

The Education Council recently oversaw a significant national priority - the transformation of the early childhood sector. The reforms proposed by the Education Council and agreed by COAG introduced both (i) new harmonised State regulatory standards to improve the quality of early childhood education, including the requirement for early childhood educators to be degree-qualified and (ii) new funding arrangements and performance targets to ensure both greater and more equitable access to early childhood education.

Attendance at early childhood education is not mandatory in Australia. While some States had attendance rates as low as 40% prior to the reforms, all States have since achieved above the target of 95% of children enrolled in early childhood education. Further, only two States are yet to meet the 95% target for Indigenous attendance, but they are on track to achieve this milestone by the agreed 2025 target date. These twin reforms to quality and access have had significant public value impacts. They have improved the foundation for primary school learning, increased social equity and sharpened the prospects for future national economic growth.

At the same time, the Education Council has also progressed crucial yet more operational outcomes outside the national priority agenda. For example, it has agreed an Interstate Student Data Transfer Note – a standardised electronic mechanism for transferring student data between jurisdictions

when a student relocates within Australia. This technical initiative did not garner significant media attention, but nonetheless improves the experience for students and families and enables smooth learning transitions in a time of disruption for children. This example demonstrates how the Ministerial Council system, supported by its networks of officials, helps to deliver public value and administer the day-to-day functioning of federalism in Australia.

2.4.2. B – BUILD CAPABILITY AND CAPACITY THROUGH SECTORAL IGR

The case of intergovernmental health reform in Australia highlights both the critical importance of financial reforms and capability building, and how central agencies can deliver those outcomes through a sectoral approach. Central agencies' design of the National Health and Hospitals Network Agreement and the time-limited National Partnership Agreement combined the capability-building and financial reforms with public value elements, delivering on all three outcomes. Specifically, central agencies agreed:

- time-limited grants for governments to adopt new financial management practices to reduce hospital cost growth and account for hospital activity, including improvements to processes, training and acquisition of specialist staff and the modification of information systems; and
- ongoing funding for higher levels of hospital activity (and for improved transparency of funding flows to hospitals) to deliver improved services that citizens valued.

In contrast, the current trajectory of the development of federalism in Nepal borders on technocratic. The emphasis is on building federal institutions, enabling grants and building cross-cutting capability such as public financial management. There are less clear links between the development of federalism and citizen needs. Five years on from Nepal's constitutional referendum and three years on from the election of provincial governments, there is a risk of federalism being disconnected from the things that citizens value and voted for – health, education, infrastructure and inclusion. There's also a risk that investment in capability building will have no clear purpose. In such gaps, investment may be redirected to meet the needs of narrow interest groups instead of the wider society.

The key implication for Nepal is for central agencies to seek opportunities to drive the development of federalism through sectoral reforms. While there will always be a need for central coordination, its only through bundling the investment in capability and processes development with outcomes that citizens value that federalism can be (re)positioned as the means by which citizen value is delivered. This approach would create a virtuous circle in which the delivery of better public services creates more public support for further development of federalism.

BREAKOUT CASE STUDY – STRUCTURING INTERGOVERNMENTAL AGREEMENTS TO SUPPORT STATE LEADERSHIP AND ACCOUNTABILITY

In 2008, Australian States and the federal government reformed intergovernmental arrangements by signing the Intergovernmental Agreement on Federal Financial Relations (IGAFFR). One element of the reforms was to rationalise the many ad-hoc funding and policy agreements down to three time-limited National Partnership Agreements (NPAs). One of these NPAs was the National Partnership Agreement on Literacy and Numeracy.

The NPA on Literacy and Numeracy sought to address a worrying trend – the persistent backwards slide of Australian students' outcomes in literacy and numeracy compared to international peers, particularly at the lowest end of the socio-economic spectrum. The States, as majority funders and system owners of the public-school system, were invested in the challenge. The federal government, as majority funders of the private school system and responsible for welfare and economic development, were also invested.

The States and federal government agreed that success would be indicated by improved overall attainment in literacy and numeracy in Australian national standardised testing and improved performance by students in lower socio-economic backgrounds in international standardised testing. Specific targets were set for each State, given the varying composition of each State's population.

Despite agreement on the problem, the causes of poor rates of literacy and numeracy were complex and there was no simple set of fixes to be implemented. The solution required (a) investment in better understanding the drivers of poor results and (b) experimentation on different approaches to see what works.

Officials from central agencies worked with their State and federal counterparts in the education sector to agree the NPA on Literacy and Numeracy. The Agreement featured two funding components:

- Matched Facilitation Payments.
    - The federal government provided 60% of the total funding under the Agreement to States to investigate the causes of poor educational outcomes and address them. Importantly, States then needed to match federal funding dollar-for-dollar. Activities that States undertook included implementing new data collections to better understand the drivers of poor literacy and numeracy outcomes and establishing teaching and learning coaches to spread best practice amongst the teacher workforce. Some actions were State-specific experiments, while others (such as building a consistent approach to data collection) were national.
- Reward Payments.
    - The federal government provided 40% of the total funding under the

agreement as reward payments to States for meeting the agreed targets. The achievement of targets would be independently assessed by the COAG Reform Council – a group designed to independently monitor the performance of States and the federal government's actions under intergovernmental agreements. Reward payments were untied, and could be spent as each State deemed fit, although it was implied that the funds would be spent within the education sector.

The structure of the NPA was ideally suited to the situation because:

- States lacked the financial capacity to invest in and explore alternative approaches to literacy and numeracy. The Facilitation Payment component significantly subsidised the costs to States of investing in change. Facilitation Payments simultaneously blunted any potential States' complaints about financial resource constraints and coerced the States into investing some of their own-source revenues in the change, ensuring they had a significant stake in its success.
- The activities and targets under the Agreement were effectively set by States individually through bilateral agreement with the federal government. This approach reinforced States' responsibility for school education, allowed tailoring to each State's population and ensured compatibility with existing State literacy and numeracy improvement initiatives. It meant that States had more "skin in the game" than if targets or activities were arbitrarily imposed by the federal government and improved the chances of success.
- Reward payments were not paid unless literacy and numeracy improved. While States were largely free to experiment and trial approaches that suited them, there were strong financial incentives to choose activities that were likely to lead to improved outcomes. Meanwhile the federal government bore no fiscal risk in the case of underperformance. Federal spending on reward payments was only triggered in the case of evidenced improvements.

The outcomes of the Agreement were positive. Only two States achieved less than 50% of their allocated Reward Payments for improving literacy and numeracy under the agreement. In the remaining two States, failure to meet the Reward Payment targets was more due to having set (self-imposed) targets at too high a level than having under-performed per se.

The structure of the National Partnership Agreement on Literacy and Numeracy shows how central agencies use sectoral intergovernmental agreements to:

1. Reinforce, rather than undermine, the authority and responsibilities of the States
2. Invest in the development of States capacity without federal micromanagement or meddling
3. Link grant payments to outcomes that citizens care about and ensure that public value remains the core of intergovernmental agreements.

2.5. APPENDIX A – OVERVIEW OF FEDERALISM IN AUSTRALIA

2.5.1. PRE-FEDERALISM

The continent of Australia was originally inhabited by a number of distinct indigenous groups with varying languages, customs and traditions collectively known as Indigenous Australians. Current estimates are that Indigenous Australians have lived on the continent for 50,000-65,000 years.

European settlement began in 1788, when the British invaded and occupied the vast majority of the continent to establish the self-governing colony of New South Wales, which also incorporated modern New Zealand and other Pacific Islands. Over time, New South Wales separated into a number of self-governing colonies, and the colony of Western Australia was independently established in the remainder of the continent.

2.5.2. OVERVIEW OF LIFE IN AUSTRALIA

Australia is a stable liberal democratic sovereign nation of 26 million people. Australia is a federal parliamentary constitutional monarchy, with Queen Elizabeth II as the current Monarch. Australia encompasses the continent of Australia and surrounding islands; the oldest, driest, flattest continent with a variety of landscapes from deserts to tropical rainforests. Australia has a mix of key industries which includes mining, banking, manufacturing and international education. Australia has the world's tenth highest per capita income, and the world's sixth highest Human Development Index score. Australia is one of the most urban countries in the world, with over 86% of people living in cities or towns. Immigrants account for around 30% of the population, with Indigenous Australians comprising less than 4% of the population.

2.5.3. FEDERALISM

Federalism in Australia began in 1901, at which point the six colonies of continental Australia established the Commonwealth of Australia. The model of federalism in Australia is based on the system employed by the United States of America, with a two-tiered system of a federal government and State governments. The constitution provides for exclusive powers of the federal government (such as foreign affairs, defence and certain taxes) and concurrent powers of the State and federal governments (such as immigration, social security, telecommunications and the regulation of corporations). In practice, all concurrent powers are exercised exclusively by the federal government. All other powers not formally listed in the constitution are exercised by the states and include law and order, primary education, transport and social welfare.

The Commonwealth of Australia comprises six states (the original six colonies of continental Australia), two self-governing Territories and the federal government. Local governments are created within the constitution of each state only (they do not appear in the federal constitution), and inherit powers delegated to them by state governments. The number of local governments varies between states, with the two most populous states having 128 and 79 local governments respectively, despite having broadly similar population sizes.

2.5.4. FISCAL FEDERALISM

Over the years, the Australian federal government has come to dominate revenues and taxation, including using special wartime provisions to take over state taxation powers. The federal government raises the majority of taxes while being responsible for less than half of service delivery, while the states are dependent on grants from the federal government to cover basic functions. The federal government uses its fiscal advantage to also dominate intergovernmental relations, policy and service delivery.

State revenues are a mix of federal government grants (tied to specific outputs or policies), untied general revenue assistance from the federally collected Goods and Services Tax and own-source taxes (such as taxes on property transactions and fees-for-services). Australia has a system of horizontal fiscal equalisation which distributes untied revenues amongst states based on population, geographic and economic factors on the basis of independent assessment of each state's characteristics.

States each run their own system of fiscal grants to local governments, and there is a very limited degree of funding passed directly from federal governments to local governments via state governments.

2.5.5. INTERGOVERNMENTAL RELATIONS

The Australian Constitution provides for no formal engagement of parliaments in federal activities, and therefore Australia relies on executive federalism. For most of the period since 1992, Australian executive federalism operated through the Council of Australian Governments (COAG), which was comprised of the Prime Minister from the federal government, the Premier of each state and the Chief Minister of the two self-governing Territories. The non-elected head of the Australian Local Government Association was a non-voting member of COAG. Australia is currently replacing the COAG system with a new National Cabinet system, of similar structure, with the status of local government to be determined.

Beneath COAG / National Cabinet sits a series of sectoral Ministerial Councils, in which the relevant federal and state Ministers meet to develop sectoral policy, coordinate service delivery issues and manage the implementation of intergovernmental agreements linked to tied grants. Ministerial Councils cover areas like health, education, transport, disability, law, indigenous affairs and so on. The Ministerial Council on Federal Financial Relations has a special status; it provides for both intergovernmental relations on economic issues and management of the system of federal financial relations.

Both COAG / National Cabinet and its Ministerial Councils are supported by a mature system of officials' groups comprised of the heads or deputy heads of relevant government departments in each jurisdiction. Sectoral officials' groups are responsible for research, policy analysis, policy development and the planning, implementation and monitoring of intergovernmental policy and service delivery reforms. Central officials' groups are responsible for the administration of Ministerial approvals of policy and service delivery reforms and the administration of associated funding agreements.

2.5.6. KEY ISSUES

As is common in federations, the fiscal and policy dominance of the federal government is the key challenge in the Australian federation.

- The reliance of states on federal revenues (often tied to federal government policy prescriptions) has notably blurred the accountability for outcomes. Citizens frequently call on the federal government to "step in" to areas of state underperformance, which results in further federal tied grants and further blurring of accountability.
- The system of fiscal equalisation effectively penalises states for generating higher own-source revenues, with any significant increase in state revenues resulting in a drop – often dramatic – in untied federal general revenue assistance.

Over the years, attempts to reform the federation have had limited public support and have been largely unsuccessful, in part because there are limited incentives for the federal government to relinquish financial or policy control.

Despite these issues, federalism is clearly a positive factor in Australia's overall success and economic strength. In 2007, academics reported that "federalism may have increased Australia's prosperity by $4,507 per head in 2006 and that this amount could be increased by another $4,188 or even more if Australia's federal system were more financially decentralised."[3]

3 Twomey and Withers, Federalist Paper 1 – Australia's Federal Future, Council for the Australian Federation, 2007

3

Intergovernmental Relations in South Africa:

Experiences and Observations for Nepal

-Reuben Baatjies

3.1. INTRODUCTION TO INTERGOVERNMENTAL RELATIONS (IGR) IN SOUTH AFRICA

The South African Constitution states that "government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated" (section 40(1)). The country is divided into nine provinces and 257 municipalities. The Constitution divides powers between national, provincial and local governments.

This arrangement is the product of the negotiations that were held in the early 1990's, between liberation movements (most notably the African National Congress (ANC)) and the outgoing apartheid government, led by the National Party (NP). While the ANC favoured a unitary state, the NP and a regional movement in KwaZulu-Natal (the Inkatha Freedom Party), favoured federalism. The compromise, ultimately laid down in the 1996 Constitution, was a quasi-federal state with strong unitary elements, which allocates significant powers to local government.

At the centre of the constitutional division of powers is a list of powers (Schedule 4A) allocated to both national and provincial governments with authority to make and implement law on these matters. In case of conflict between a national and a provincial law, the Constitutional Court decides whose law prevails. The list of concurrent powers is extensive and includes matters such as environment, health, housing, welfare services, agriculture and, importantly, disaster management.

In practice, then, it is an hourglass model of federalism: a strong and politically dominant centre, weak provinces (with very few revenue raising and law making powers) and strong local government (though many are hampered significantly by socio-economic realities and consequent financial constraints and challenges). This manifests in:

- Provinces, for the most part, do not raise substantial revenue (apart from some licences and fees). They rely on a constitutionally guaranteed, 'equitable' portion of the national revenue pie (distributed according to a clear and transparent formula). In fact, provinces are generally reliant for 95% or more of their expenditure on fiscal transfers, so their scope for innovation or autonomy is constrained.
- As a result, provinces also do not innovate and make law in concurrent areas (Schedule 4 functions). The practice is: national legislates and regulates and provinces implement.
- Local government does raise its own revenue and has more substantial exclusive powers under Schedule 4B and 5B. It also arguably enjoys greater protection in terms of the Constitution, with a number of favourable Constitutional Court rulings over the last two decades. However, its ability to exercise its powers and perform its functions are often incapacitated by its socio-economic and historic context as well as financial capacities: out of 257 municipalities, less than 20% really generate significant shares (more than 50%) of its own revenue, with most dependent on the equitable share (the unconditional fiscal allocation) and conditional grants. This renders its right to govern 'on its own initiative' (autonomy) relatively docile. Add to

this poor governance and outright dysfunctionality in quite a few cases. The strength of local government is generally to be found in the mostly powerful metros and larger cities, with only a few beacons of excellence and good governance among the smaller-sized municipalities.

Apart from the above institutional arrangements, the multi-level government dynamic is influenced by the political reality that the African National Congress controls most levers of power throughout the system. Eight out of the nine provinces are governed by the same party as the one that governs nationally. The Western Cape Province is governed by the leading opposition party (the Democratic Alliance), which also controls the majority of the municipalities in that province, either directly or by coalition.

It can thus be said that South Africa has a quasi-federal, but clearly decentralised governance system, in which IGR is critical in managing relations between spheres or tiers of government. Cooperative government is the marshalling of the distinctive effort, capacity, leadership and resources of each municipality and province; and directing these as effectively as possible towards the development and service delivery objectives of the region and country as a whole. IGR incorporates political leadership and directing actors towards common political priorities, and consists of the processes through which those priorities are harmonized to flow in the same developmental direction.

3.2. WHY IGR – THE HOW

IGR is the key vehicle which attempts to coordinate government activity, as far as is practically possible, so as to avoid.

- duplication (waste of scarce resources)
- fragmentation of projects and services

Most importantly, it must (positively) ensure coherent governance (various levels of government supporting one another to achieve common objectives) and that people experience one government (not municipal, provincial, and national governments each functioning separately to the detriment of integrated development that will enhance quality of life, economic development and investment).

IGR ensures that communication between the various and multiple development actors of government have synergy and coherence in their planning (seen as one government working for the people) and their execution (accountability). The primary object of co-operative governance is not for the sake of government talking, but to provide effective and efficient government and maximise resources and impact.

Intergovernmental relations primarily serves two key purposes which are beneficial, irrespective of the governance system, but it is especially useful and necessary in a federal system in which roles and responsibilities are divided (or concurrent) between spheres of government and their institutions.

KEY QUESTIONS

Why - what is our why? Why are the state and spheres of government necessary? What is our foundational premise that we must advance in SA - freedom, democracy, non-discrimination, etc.?

What - is it that we want to achieve? What development objectives, functions, and priorities? For IGR purposes, which functions must be performed concurrently or jointly, and what services must be provided to foster economic growth and the development of spaces, places, and people?

How –will those joint functions be performed and services provided (directly, through service providers, communalisation)?

Who – provides those services and performs which functions; which levels of government are most appropriate to perform which functions?

When – do various activities take place within the planning and budgeting cycle? By when must budgets be passed, by-laws adopted, divisions of revenue agreed upon, etc.? Flow and sequencing of decision making and intersection points that require coordination?

Purpose of IGR – 1. Manage inherent tension and conflict

The Constitution builds in a tension between:

- National direction (national government defining how to secure the well-being of all the people); and
- Locally defined preferences (provincial and local governments determining their preferred choices within their areas of jurisdiction).

The purpose of IGR is to manage this tension - to get coherent government that delivers services to the people through the three spheres of government, who internally (using IGR) iron out differences and reach consensus for joint planning and action.

There are of course inherent tensions in any system of governance as every level of government, and even institutions within it, will always act in their own self-interest and sometimes stretch their legal powers. IGR is a means to engage and communicate with one another in good faith, try to reach consensus where possible and, importantly, to manage (political, legislative, technical and resource) tensions such that development is not impeded by these inherent and ongoing ever-present tensions. Consensus may not always be possible, but at the very least informing one another of plans, programmes and budgets and insuring regular communication with the aim of coordinating development efforts should be the norm.

IGR is not an end in itself, but a means for marshalling the effort, capacity, leadership and resources of each sphere and directing these towards the developmental and service delivery objectives of government as a whole. IGR must have this developmental character if it is to be successful.

Purpose of IGR – 2. System for joint planning and action

The other object of IGR is to establish a system in which spheres of government plan together to provide a coherent approach to service delivery and development. IGR is ultimately the vehicle / mechanism which attempts to coordinate, as far as is practically possible, government activity so as to promote integrated development (by, among others, avoiding duplication or waste of scarce resources and fragmentation of projects and services).

Who does what, when, how, with what funding, etc. is the essence / substance of what IGR is about and meant to facilitate (i.e. development). It is not a panacea for all political and systemic ills, but a functional mechanism and vehicle to ensure effective communication, consensus building and coordination of efforts and resources towards the same development objectives.

The point of departure and underlying premise of an effective IGR approach is that it (IGR) must be measured terms of development results rather than in terms of processes, forums, and meetings. The approach must be one that integrates both national priorities within provincial and local autonomy.

3.3. CONSTITUTIONAL AND LEGISLATIVE FOUNDATIONS

The South African Constitution states that "government is constituted as national, provincial and local spheres of government which are **distinctive, interdependent and interrelated"** (Section 40(1)). The "distinctive" element in Section 40(1) reflects that each sphere exists in its own right (relative autonomy); it is the final decision-maker on defined functions and is accountable to its constituency for its decisions.

Municipalities are responsible for the provision of basic services, such as water, electricity, refuse-removal, and municipal infrastructure. These functions are performed within nationally and provincially set regulatory frameworks. Although provinces are **"distinctive"**, they exercise their powers and perform their functions within the regulatory framework set by the national government which is also responsible for monitoring compliance within that framework and, if need be, intervening when constitutional or statutory obligations are not fulfilled. Municipalities are likewise subject to both the national and provincial regulatory and supervisory powers. It is this relationship of regulation and supervision that defines how the three spheres are **"interrelated"** – provinces and municipalities exercise their distinctive powers within imposed frameworks and under supervision.

Within the regulatory frameworks and subject to supervision, provinces and municipalities enjoy relative autonomy, remaining accountable to their constituencies to reflect their policy preferences. However, they must still exercise their powers for the common good of the country as a whole by cooperating with the other spheres. In this sense the spheres are **"interdependent"**; only collectively and in cooperation with one another can they provide government that meets the needs of the country as whole.

For example, when a municipality proposes a new township development in its Integrated Development Plan, health and education (schooling) services have to be provided by the provincial government, not to mention roads, public transport, etc. while financing for housing development must be transferred from the national to the provincial government, where it goes to the housing developers approved by the municipality. Of course, it doesn't always work that way in practice, but this is precisely what interdependent and interrelated mean in the Constitution and why it is superior to 'autonomy' in the Constitutional and legislative framework.

There are only 3 principles that underpin and guide IGR in the Republic, as required by the Constitution:

- **First, there is a common loyalty to the Republic as a whole**
  - All spheres are committed to securing the well-being of all the people in the country and, to that end, must provide effective, transparent, accountable and coherent government for the Republic as a whole. This is the object of cooperative government and governance.
- **Second, the distinctiveness of each sphere must be safeguarded**
  - constitutional status, institutions, powers and functions of each sphere must be respected
  - a sphere must remain within its constitutional powers
  - when exercising those powers, a sphere must not do so in a manner that encroaches on the geographical, functional or institutional integrity of another sphere
- **Third, spheres of government must take concrete steps to realise cooperative government by**
  - Fostering friendly relations
  - Assisting and supporting one another
  - Informing one another of, and consulting one another on, matters of common interest
  - Co-ordinating their actions and legislation with one another
  - Adhering to agreed procedures
  - Avoiding legal proceedings against one another

3.3.1. A. AUTONOMY, REGULATION AND CONNECTEDNESS

The Constitution allocates government functions on either an exclusive or shared (concurrent) basis.

- The national government is exclusively responsible for national defense, foreign affairs, the criminal justice system (safety and security, courts), higher education, water and energy resources and administrative functions such as home affairs and tax collection.
- The bulk of social services are shared competencies between the national and provincial governments. This includes school education, health services, social security and welfare services, housing and agriculture. In these areas the national government is responsible for policy formulation, determining regulatory frameworks including setting norms and standards, and overseeing the implementation of these functions. The provinces' function is largely that of implementation within the national framework.

- There are a limited number of exclusive provincial functions including the granting of liquor licenses, provincial roads, ambulance services and provincial planning.
- Municipalities are responsible for the provision of basic services, such as water, electricity, refuse-removal, and municipal infrastructure. These functions are performed within nationally and provincially set regulatory frameworks.
- Although provinces are "distinctive", they exercise their powers and perform their functions within the regulatory framework set by the national government which is also responsible for monitoring compliance with that framework and, if need be, intervening when constitutional or statutory obligations are not fulfilled. Municipalities are likewise subject to both the national and provincial regulatory and supervisory powers.
- It is this relationship of regulation and supervision that defines how the three spheres are "interrelated" – provinces and municipalities exercise their distinctive powers within imposed frameworks and under supervision.
- Within the regulatory frameworks and subject to supervision, provinces and municipalities enjoy relative autonomy, remaining accountable to their constituencies to reflect their policy preferences. However, they must still exercise their powers for the common good of the country as a whole by cooperating with the other spheres.
- In this sense the spheres are "interdependent" – only collectively and in cooperation with one another can they provide government that meets the needs of the country as whole.

3.3.2. B. SUPPORT, MONITORING AND INTERVENTION

While provincial and local governments, especially the latter, have relative autonomy and are accountable to their constituencies, there is an inter-sphere hierarchical accountability mechanism built into the cooperative governance constitutional order. Each sphere of government must respect the constitutional status, powers and functions of the other spheres and each should exercise its powers and perform its functions without encroaching on the geographical, functional or institutional integrity of another sphere.

However, should any sphere of government be unwilling or unable to meet its obligations, the Constitution provides for a system of interventions in terms of which the national government may intervene in provinces and provinces may intervene in municipalities.

- Section 100 of the Constitution regulates national interventions in provinces, while Section 139 structures provincial interventions in municipalities.

Naturally, intervention powers are seldom used as they are seen as political tools and not successful cooperative governance – "government would've failed if it reaches that point". National government has only intervened in provinces a handful of times, although it is more frequent at the local level in contested provinces, where regional and political party opposition or even internal party factionalism is rife.

National government is responsible for monitoring the performance, and supporting provincial and local government, to fulfil its legislative and executive obligations. Should

a Province fail to fulfil its legislative or executive obligations, national government may intervene in that province.

The Constitution places a number of obligations on provinces – for eg. each provincial government must by legislative or other measures, provide for the monitoring and support of local government in the province (Section 155(6)). The provincial executive is thus under a constitutional obligation to effect support through legislative and executive measures. However, should local government grossly fail (for eg. to pass a budget or an IDP) then the provincial government has constitutional powers to intervene in the municipality in the following ways:

- by issuing directives to the Council to comply with the law; or
- to send in an (appointed) Administrator to fulfil said executive obligations; or
- to dissolve Council and call for new elections of that Council.

There are 4 grounds for intervention (three of which are financial related failures):

- Regular interventions in terms of Section 139(1) of the Constitution
- Serious financial problems in terms of Section 137 of the Municipal Finance
- Budgetary problems in terms of Section 139(4) of the Constitution
- Financial crisis in terms of Section 139(5) of the Constitution

3.3.3. C. ACCOUNTABILITIES AND PUBLIC PARTICIPATION AND INVOLVEMENT

- **National Government**
  - Cabinet is accountable to Parliament
  - Parliament is accountable to the electorate (elections and reporting), open meetings and hearings, where civil society and the media report on issues, provide input to parliamentary committees and so on
  - Law-making requires public engagement and input, even the Constitutional Court has insisted on this and set out requirements for public consultation
- **Provincial Government**
  - Accountable to their electorate (elections and reporting) and provincial legislatures which conducts oversight that is open to the public - the media and civil society report on issues and provide inputs, or can request to input to committees, etc.
  - Any provincial law-making requires public consultation which is heavily regulated, including constitutional court jurisprudence which set strict requirements for consulting the public
  - Provinces are also accountable for expenditure to national government through various reports required by National Treasury and other conditional grant reporting requirements of national departments

- **Local Government**
    - Accountable to its constituency through elections and all of its business must be conducted in open meetings in which the public (mainly media and civil society) can attend and report on issues
    - Also accountable for expenditure to provincial and national government through various reports required by legislation (mainly the MFMA) and regulations
    - Municipalities must consult communities and allow public input on all key planning documents and budgets – public consultation is heavily legislated for all key processes (integrated development plans, municipal budgets, by-laws, etc.)

3.4. INSTITUTIONALISED IGR

Section 41(2) of the Constitution requires that an Act of Parliament must:

- establish or provide for structures and institutions to promote and facilitate intergovernmental relations; and
- provide for appropriate mechanisms and procedures to facilitate the settlement of IGR disputes.

The IGR Framework Act (the Act) took effect in 2005 and, in giving effect to this constitutional requirement, provides for:

- an institutional framework for interaction between national, provincial and municipalities and all organs of state within those spheres;
- more certainty, coherence, transparency and stability to the practice of IGR throughout the country;
- the primary institutional mechanism for pursuing intergovernmental coordination; and
- (ultimate objective, however, is to provide) the necessary vehicle to facilitate effective delivery.

The Act provides a general framework applicable to all spheres and sectors of govt while it recognises the fact that other Acts of the Parliament have created specific forums contemplated in Section 41(2), and thus limits its role to establishing a general legislative framework. The forums created by the Act are meant to facilitate the monitoring of how policy and legislation are implemented to ensure that legislative intention translates into tangible, measurable results.

THE ACT ATTEMPTS TO:

- Reflect on and legislate best practices in IGR since 1994;
- Establish common approaches and understandings of IGR;
- Provide greater predictability and uniformity in core IGR areas such as intergovernmental development planning; coordinated implementation and service delivery; uniform and predictable approaches to addressing IGR disputes; and

- Formalise relations between and within spheres ie. between district and local municipalities.

Key Point: In the end, the Act is just a framework and cannot create effective IGR.

3.4.1. IN PRACTICE (EVOLUTION AND PRACTICAL FUNCTIONING)

The IGR system was founded on complex formal and informal, but interrelated institutions, processes and practices. The IGR system evolved rapidly from 1996-2003 with minimal legal regulation. Outside of legislation, IGR was largely unregulated, and practices evolved pragmatically as government in all three spheres sought to give effect to the founding principles of co-operative government.

There has been an organic mushrooming of IGR structures throughout the state between different spheres (between national and provincial and local departments for eg.) and coordination within spheres (horizontal coordination – structures and mechanisms for local and district municipalities to coordinate their activities).

To meet the challenge of co-operative government, the three spheres of government over the first decade :

- Developed IGR forums at the national and provincial levels dealing with issues of alignment, integration and coherence;
- Developed systems and processes in terms of which national, provincial and local governments pursue their common objectives; and
- Engaged in joint work and common projects to give effect to common objectives.

It is therefore no surprise that regular dialogue, consultation and engagement (intergovernmental relations) was fundamental in the building blocks of the South African governance system, long before IGR was formalised in the IGR Act in 2005. The Act merely formalised the mechanisms for spheres of government to coordinate their efforts in development planning.

Given that the vast majority of functional areas listed in the Constitution are concurrent in nature (meaning that each sphere has a part to play in the delivery of that function to citizens), the different spheres of government depend on each other for support in development planning and implementation, and regular communication is essential.

3.4.2. IGR STRUCTURES (NATIONAL, PROVINCIAL AND REGIONAL / LOCAL) AND THEIR ROLES

IGR structures should play a crucial role in forging coherent government in the region – they establish platforms for engagement and coordination to take place between national government's policy direction as well as the distinctive service preferences of provinces and municipalities.

Key Point: However, formal IGR mechanisms will not by itself achieve the desired outcomes of cooperative government - non-statutory measures and approaches must ensure that

the system works in a predictable yet flexible manner (*and those often emerge organically with time).

The following are the key IGR structures that drive policy coherence, implementation and oversight:

- National
    - President's Coordinating Council
        - Composition: President + Premiers + Organised Local Government Chairperson
        - Frequency: Annual (legislation), but in practice twice per year
    - President's Infrastructure Coordinating Commission
        - Composition: President = relevant Cabinet Ministers + Premiers + Mayors of Metropolitan Municipalities
    - MinMECs
        - Composition: National (portfolio) Minister (for eg. Health) + provincial ministers for health + organised local government representative for health
        - Frequency: once per quarter or twice per year
    - Technical Structures
        - Each of the above political forums have a technical structure that serves as its secretariat and content clearing house, developing draft plans, policies, implementation, etc. and make recommendations to the political structure, which would consider the implications and choices, and attempt to reach consensus on the way forward
- There are more than 13 IGR MinMEC's, established to manage concurrent functional areas - implementation of policies and programmes / national development priorities
    - These political structures are supported by technical committees made up of national and provincial DG's and heads of departments of each functional area
- Some of the key MinMECs include (*names of these structures may change):
    - Cooperative Governance (Local and Prov Government) MINMEC
    - Housing MINMEC
    - Health MINMEC
    - Agriculture MINME
    - Sports & Recreation MINMEC

- Public Works MINMEC
- Dept Water Affairs and Forestry MINMEC
- Arts and Culture MINMEC
- Social Development MINMEC
- Land Affairs MINMEC
- Transport MINMEC
- Police Services
- Inter-Ministerial Committee on Disaster Management

CLUSTERS

- Clusters were established to foster an integrated approach to governance that is aimed at improving government planning, decision making and service delivery
  - The main functions of a cluster are to ensure alignment of government-wide priorities; facilitate and monitor the implementation of priority programmes; and provide a consultative platform on cross-cutting priorities and matters being taken to Cabinet
- The clusters function at different levels, namely Ministerial (political), Director-General (administration) and communication clusters. The main clusters are (these may vary from administration to administration, but generally have remained consistent):
  - Infrastructure Development Cluster
  - Economic Sectors and Employment Cluster
  - Governance and Administration Cluster
  - Human Development Cluster
  - Social Protection and Community Development Cluster
  - International Cooperation, Trade and Security Cluster
  - Justice, Crime Prevention and Security Cluster
- **Provincial**
  - Premier's Coordinating Forum
    - Composition: Premier + Mayors of all municipalities in the province + organised local government
    - Frequency: Annual (legislation), but in practice could be more
      * These Premier-Mayoral Forums are supported by technical committee's made of Provincial DG, Head of the Local Government Department, including municipal managers of the Metro's and District Municipalities and officials from organized local government.

- MuniMECs (Municipal – MEC structures)
  - This is not a legislated structure but has emerged as common practice mirroring the MinMECs at the national level, but this time is between the province and local government sectors
  - Members: Provincial Minister for sector (for eg. Health), plus a Municipal Council member (responsible for health in this example)

- **Regional / District**
  - District Intergovernmental Forums
    - Composition: Mayor of District + mayors of the local municipalities in that district
    - Frequency: once per annum (legislation), but in practice could be once per quarter or twice a year
  - Sectoral district forums
    - Composition: for eg. District disaster management forum (all responsible officials within the district and key stakeholders)
    - Apart from the statutory District Intergovernmental Forum, additional District IGR structures range from:
      - Mayoral Forum, Advisory Forum
      - Municipal Managers Forum
      - IDP Forum
      - Speakers Forum
      - Local Economic Development Forum
      - Communicators Forum
      - Water and Sanitation Forum

3.4.3. IGR TOOLS AND DISPUTE RESOLUTION

Implementation Protocols are useful tools for the practical application of co-operation, co-ordination and the delivery of joint programmes and projects.

- Implementation Protocols:
  - Set out clear outcomes of the joint work;
  - Detail who is responsible for what task;
  - Determine what resources are required for the task at hand and who will provide them;
  - Set performance indicators; and

- Put in place oversight mechanisms to ensure that outcomes are indeed achieved.

- An Implementation Protocol should be used where multiple entities must co-ordinate their actions in order to implement a policy, exercise a power, perform a statutory function, or provide a service
  - A portion of the budget could be set aside for joint (intergovernmental) projects and applications by multiple state actors.

With regard to dispute resolution, the Constitution clearly provides that "all spheres of government and all organs of state within each sphere must co-operate with one another in mutual trust and good faith by avoiding legal proceedings against one another".

- This principle is reinforced by Section 41 (3), which provides that "an organ of state involved in an intergovernmental dispute must make every reasonable effort to settle disputes by means of mechanisms and procedures provided, and must exhaust all other remedies before it approaches a court to resolve the dispute"
- Section 41 (4) provides that if a court is not satisfied that the requirements of subsection (3) have not been met, it may refer a dispute back to the organ of state involved
- Sections 41 through 45 of the IGR Framework Act detail the specific steps that organs of state are required to follow in settling disputes –
  - The first stage is the process that precedes the declaration of the dispute
  - The second stage is that which follows the formal declaration of the dispute

Generally, and because of these provisions, governments rarely take each other to court, unless it involves clarification of powers and functions or the institutional integrity of a sphere being encroached by another (like interdicting against an intervention). There have only been a few of these exceptional cases, because government fears that courts may dismiss the case on the basis of the constitutional provision that they should exhaust all other remedies of negotiation, consensus and dispute resolution before considering approaching a court.

IGR practice continues to evolve and is THE fundamental way in which the spheres of government and their entities communicate, engage in a structured manner, negotiate and agree on priorities, budgets and implementation phases and role players.

3.5. INTERGOVERNMENTAL FISCAL RELATIONS – BALANCING POWER AND RESOURCES

Fiscal powers, capacity and efficiency is the real ammunition that empowers governments to fulfil their political, social and economic objectives. Without sufficient fiscal instruments (revenue), no government can deliver on its mandate.

A proper fiscal decentralisation system requires consideration of macro-economic and political efficiency and stability, and an effective (re)distribution of resources. A vertical fiscal imbalance exists when the expenditure responsibilities of sub-national governments are extensive relative to their revenue raising capabilities. A wide gap obliges sub-national governments to rely extensively on transfers from the national government. If the balance of power and revenue raising capability is tilted or lopsided in favour of one sphere over another or others, then of course the federal balance is not maintained and it remains a centrist state, whatever stated federal pretentions it may have.

In South Africa of course the political history has shaped the decentralised model into a cooperative governance system, and the fiscal configuration into a system of intergovernmental fiscal relations, in which the sub-national spheres play a key role and are always consulted prior to any significant changes in the system or allocations. The South African fiscal system has decentralised a great deal since the advent of democracy in 1994, with key budgetary decisions being made at all three levels of government simultaneously. Intergovernmental fiscal relations, the involvement of provincial and local governments in budgetary and allocative decisions and instruments, has been the cornerstone of improving allocative efficiency.

The South African intergovernmental fiscal relations system is grounded in the Constitution. It guarantees provinces and municipalities a share of revenue raised nationally, and provides for a complex and elaborate set of revenue transfers from national to sub-national governments. The intergovernmental fiscal system determines the way in which taxes are allocated and shared among the spheres of government, and how funds are transferred from one level to another.

3.5.1. OBJECTIVES

The primary objective of these transfers is to enable provincial and local governments to provide public services and perform their constitutional functions, as complementary to their own revenue raising powers. It also aims to reduce inter-regional inequalities and improve, through the provision of public services particularly to poor households, social indicators inherited from past discriminatory policies.

Fiscal federalism in South Africa is characterised by:

- Firstly, a strong national government that has a specific constitutional responsibility for spearheading action and creating an enabling framework for sub-national governments, in which sub-national governments have a vital role to play in implementation – meeting the needs of communities through the provision of basic services.
- Secondly, the allocation of revenue raising capacity among sub-national governments is uneven, which necessitates compensation between levels of government (vertical) or among sub-national governments themselves (horizontal).

3.5.2. CONSTITUTIONAL GUARANTEES AND SUB-NATIONAL AUTONOMY, FISCAL EMPOWERMENT

Section 229 and 230 of the Constitution grant municipalities significant taxation and borrowing powers, subject to national legislation and regulations such as the Municipal Finance Management Act.

The Constitution requires the national government to strengthen intergovernmental fiscal relations by adopting legislation to establish and facilitate it. That was duly done in the 1997 Intergovernmental Fiscal Relations Act, which established –

- the process for revenue sharing among the spheres of government, which requires the all-important Financial and Fiscal Commission (FFC) to submit its recommendations annually for the division of revenue,
- as well as the details of the Division of Revenue Bill that must be passed annually, which again specifies that the FFC must be consulted prior to its introduction as a Bill.
- The Act also established the consultative forums with provincial and local government in the form of the Budget Council and the Budget Forum. National government must consult with these two spheres about their allocations prior to the introduction of the Division of Revenue Bill in the National Assembly (Parliament).

Fiscal decentralisation in South Africa provides sub-national spheres of government, particularly provinces, with considerably lower fiscal autonomy and revenue generating capabilities that those reserved for national government, which levies broad based taxes such as income and corporate tax, VAT, customs and excise duties, and fuel levies.

National government shares revenues with provinces and municipalities through unconditional grants (which is a constitutionally guaranteed component of revenue raised nationally) and conditional grants (which is distributed by the national government or departments with specific instructions for its spending).

3.5.3. BUDGET PROCESS

The initial revenue division formula and figures are based on constitutional allocation of powers and functions between the spheres of government, as well as legislative mandates (informed by the work of the Fiscal and Financial Commission). It is also informed by the revenue raising powers of the spheres, for eg. local government has property taxes, utility charges (water, electricity, etc.), so they do not get a substantial portion of national revenue because they are expected to raise substantial 'own' revenue (practically this is only true for a minority of municipalities).

The so-called vertical division is done by considering the factors listed in Section 214 of the Constitution and in consultation with the FFC and provincial governments. Importantly, the vertical division is a policy judgement that reflects the relative priority of functions assigned to each sphere of government – it is a judgement that cannot be captured in a formula. 'Redistribution' is an important principle and is preserved as a role for national

government in the division of revenue (hence formulas for division of revenue between provinces and local governments).

In considering this division, government takes into account the economic and social impact of services; the effectiveness with which extra funds can be spent; the scope for savings within budgets; and the impact of fluctuations in allocations.

Provincial and local governments, being distinct spheres of government, determine the priorities for these funds and are directly accountable (to their constituencies) for how they are spent.

HORIZONTAL DIVISION – THE FORMULAS

The equitable share is based on a set of formulas that consider the specific social, economic and institutional needs of each sphere, while conditional grants are allocated to address backlogs and specific sectoral and regional needs. Despite these formulas, there is still a significant mismatch between the expenditure assignment of sub-national spheres of government, particularly local government, and their financial resource capacities.

There are formulas for horizontal allocations between provinces and between local governments to ensure that allocations are based on objective data and cannot be influenced by bias. The provincial formula allocates funds to each province according to its demographic and economic profile, taking into account the services (functional competencies) for which they are responsible, primarily education, health and housing. It also includes a component to address backlogs in infrastructure and the provision of services.

The demographic and economic profiles provide an indication of the demand for basic services within the province. The formula is updated each year as new data becomes available – refinements of the formula have become infrequent as there is a growing understanding of how to measure the service needs of each province.

The result is significant redistribution of resources to reflect an equitable provision for services provided by provinces. The formula consists of six components that capture the relative demand for services amongst provinces. Health, Education, Basic, Poverty, Institutional and Economic – 4 of the 6 components rely on population figures.

The local government equitable share (LGES) formula is designed to enable municipalities to deliver a package of basic services to low-income households affordably. The principles and objectives of the LGES formula was agreed through the formula review process in 2012/13 between National Treasury, Cooperative Governance Department, SALGA, the FFC and Statistics South Africa.

The **objectives** of the LGES formula are to:

- Enable municipalities to provide basic services to poor households
- Enable municipalities with limited own resources to afford basic administrative and governance capacity and perform core municipal functions

The **principles** of the LGES formula require that the LGES Formula must:

- Be objective and fair
- Be dynamic and able to respond to changes
- Recognise diversity among municipalities
- Only use high quality, verifiable and credible data
- Be transparent and simple
- Provide for predictability and stability

The formula is updated annually with:

- Cost data to account for price increases
- Electricity cost is updated using regulator approved tariff increases for bulk portion of the costs and CPI inflation
- Water cost is updated using the average of approved water board tariff increases for bulk costs and CPI inflation
- Sanitation and Refuse Removal costs are updated using CPI inflation
- To promote transparency, details of all the data and calculations used to determine the allocation of each municipality are published in Excel format on the National Treasury's website

3.5.4. FISCAL IGR STRUCTURES

As indicated above, the fiscal configuration is driven through intergovernmental fiscal relations, which ensure that both sub-national spheres of government play a substantial role and are always consulted in the division of revenue. The consultations take place in structured and legislated IGR Forums set out in the Intergovernmental Fiscal Relations Act (IGFR Act) of 1997.

FISCAL AND FINANCIAL COMMISSION (FFC)

Key to the entire fiscal configuration is the Fiscal and Financial Commission, established by the Financial and Fiscal Commission Act of 1997.

- Its key role is to make recommendations to Parliament and government (Ministry of Finance in particular) on the division of revenue between the spheres (vertical) as well as within spheres (horizontal), and on other financial and fiscal matters as envisaged in the Constitution and national legislation, which has significantly empowered the FFC and lent weight to its work. Hardly any changes to the fiscal system can be made without the evidence-based work of the FFC.
- Its purpose is to make recommendations to Parliament, provincial legislatures, organise local government and other organs of state on financial and fiscal matters as envisaged in the Constitution and other national legislation

- It provides influential, proactive, expert and independent advice for an equitable, efficient and sustainable IG Fiscal Relations (IGFR) system, through evidence-based policy analysis to ensure the realization of Constitutional values
- S4 of the Money Bills Amendment Procedure and Related Matters Act, 2009, requires parliamentary committees to consider any recommendations of the FFC when considering Money Bills
- In February/March every year, the FFC publishes its "Financial and Fiscal Commission: Submission on the [2020] Fiscal Framework and Revenue Proposals, for an Equitable Sharing of National Revenue" document which outlines the key features of the current socio-economic and fiscal situation and prospects, looks at government's economic / fiscal strategy (reflected in estimates for the fiscal framework and revenue) and comments on these, as well as makes recommendations
  - This is done in two ways, one dealing with broader economic developments and policy; and a second dealing more narrowly with the fiscal framework and fiscal policy stance
  - This work informs the division of revenue between spheres, as approved by Parliament, in the annual Division of Revenue Bill/Act

Even in the composition of the FFC, to ensure that national government does not dominate decision making and influence, intergovernmental relations plays a key part in that each province nominates one member and organised local government nominates two members that serve on the Commission. So, in fact, sub-national government's interests are represented through having more than half of the Commission's membership. With that kind of legitimacy, the Commission has been able to focus its work on empirical data and evidence that is highly respected throughout the State.

Apart from being legislated, the FFC enjoys great legitimacy and respect (it is very transparent in publishing its work), and its research and evidence-based recommendations are taken very seriously by all government stakeholders.

BUDGET COUNCIL

The Budget Council is a consultative forum for national government to consult provinces on fiscal and financial matters, most importantly their share of national revenue and other fiscal matters. The Minister of Finance would typically 'introduce' the medium-term budget to provinces (with provincial Ministers of Finance) to hear their views in this forum prior to its reading and tabling (budget speech) in Parliament. The Council meets twice a year and the FFC is usually invited to this meeting.

The Budget Council is a body in which the national government and the provincial governments consult on:

- any fiscal, budgetary or financial matter affecting the provincial sphere of government;
- any proposed legislation or policy which has a financial implication for the provinces, or for any specific province or provinces; and

- any matter concerning the financial management, or the monitoring of the finances, of the provinces, or of any specific province or provinces.

BUDGET FORUM

On the other hand, the Budget Forum is a consultative platform between the national and local government on fiscal and financial matters concerning local government. It is an annual meeting between the Minister of Finance, provincial Ministers of Finance and organised local government (represented by the South African Local Government Association), and usually includes the FFC.

The Budget Forum is a body in which the national government, the provincial governments and organised local government consult on–

- any fiscal, budgetary or financial matter affecting the local sphere of government;
- any proposed legislation or policy which has serious financial implications for local government; and
- any matter concerning the financial management, or the monitoring of the finances, of local government.

The practice of budget consultations is of course more fluid than these structures suggest and in reality, the power relations and dominant political party position in all of these structures mean that it is much more of a one-way communication and information session (from national government) than really considering the views or concerns of provincial or local government. By the time these structures meet, most of the big fiscal or financial decisions would already have been taken elsewhere. As a result, power relations are of course heavily skewed in national government's favour, which is becoming increasingly apparent as local government struggles to stay afloat while billions are diverted to failing (nationally-owned) state enterprises.

3.5.5. KEY CONSIDERATIONS FOR NEPAL FISCAL IGR

To maintain a healthy federal and fiscal balance, **it is essential that provinces and local governments build their own revenue streams and strengthen their hand at the federal negotiating table**, thereby creating the leeway they need to conduct their own affairs or 'govern on their own initiative'. It is incumbent on provincial and local government to work together and develop their own revenue sources that utilises technology (linking account and electronic payment systems) to fairly charge for services and functions it delivers to citizens and communities, and to mobilise additional resources through partnerships with the private sector and other agencies.

If sub-national governments are strong and collaborate, they can apply significant pressure on the federal government in a range of areas, not least fiscal autonomy and allocative efficiency. This also means not accepting the status quo and using its collective clout in the IGR arena to tilt the fiscal balance more in the sub-national favour through continuous pressure to ensure that the intergovernmental public finance system is transparent and based on clear developmental mandates and socio-economic indicators,

and that revenue allocations between and within the spheres reflect that (perhaps through clear formulas and principles) – this minimises perceived biases and social injustices.

This is necessary to keep federal government transparent and ensure that it is not merely a centrist state with federal pretentions.

3.6. CRITICAL SUCCESS FACTORS TO MAKE IGR WORK FOR SOCIAL AND ECONOMIC DEVELOPMENT

3.6.1. MATURE AND VISIONARY LEADERSHIP

Political vision and leadership is critical in setting tone and direction for administrative and technical cooperation on joint and coherent planning, budgeting and implementation. It requires strong and mature leadership to put politics to one side and focus on development objectives and progress, particularly in insisting on the discipline of structured IGR engagement with strategic agendas and respectful dialogue and progress.

Certainly, personalities have a major impact on relationships, and IGR is no different; but if progress is to be made, it requires mature leaders who are willing to put their egos aside, engage in good faith and seek to build consensus towards common goals, irrespective of the political or ethnic divide.

3.6.2. THE CONDUCT OF IGR - MUTUAL RESPECT AND GOOD FAITH COMMUNICATION AND NEGOTIATION

It takes a mutual respect and understanding of the differences in the political divide of motives of the different actors and where each are coming from, with the aim of finding middle ground and building consensus that makes steady progress in developing villages, towns and cities.

This must apply to all functionaries of government since they all work for the people – conduct negotiations and conflict resolution with that in mind. This requires working towards putting in place clear rules of engagement, operating procedures and the like, which focuses on building consensus and progress.

At the national level, focus IGR on incentivising **cooperation between spheres of government** and achieving greater integrated development. The practice of IGR must reflect the principle of negotiated and consensus-seeking interaction, whether between federal and provincial government or between provincial and local government, or between all three spheres.

- IGR forums are a platform for interaction and consensus building between federal / provincial and local government, and must not be seen or used as an instrument of the provincial or federal government
    - The underlying principle of integrated development planning across spheres is that it must be a dialogue between spheres

- Remember the purpose: to ensure government acts as one, complementing one another and minimising duplication (waste of scarce resources)
- IGR is merely the vehicle to ensure that political priorities are harmonized to flow in the same developmental direction

- Discussion and debate of these forums must be supported by rigorous analysis, ensuring that role players engage on strategic content and on the basis of evidence that they all agree with / accept as legitimate and impartial. This is especially important in the context of political pluralism that characterises the provinces.
- Manage expectations, be realistic with what can be done in year 1, year 2 and so on and understand the pace (phases) of development – all mature democracies took decades and centuries to get to where they did, they were not built in five years.
  - Comments such as 'but is yet to function effectively' after just one or two years in operation is highly unrealistic and puts unnecessary pressure on a new system – understand the phases the system will go through and how to manage and strengthen those.

3.6.3. KEY PRIORITIES THAT UNIFY THE ACTORS

Coordination and integration of planning, budgeting and implementation is very difficult to achieve, even within one institution, never mind across spheres of government and their entities. Thus, it is futile to attempt it across the board. Rather, the aim should be to coordinate efforts only in those concurrent functional (sectoral) areas which have the most developmental impact on the lives of citizens - things that build public value by improving the quality of life (health, education, housing, etc.) and livelihoods (mobility, electricity/ energy and other economic services). The sectoral approach to IGR as the means to achieve coordinated service delivery works.

Focus IGR on those most critical areas – outline the priority issues and how IGR will be used to further these outcomes in the province. Yes, there will be constant conflicts and challenges, but the objective is progress (managing tensions and building consensus towards common goals) – to identify challenges, opportunities and prospects for collaboration.

Technology in particular now makes communication and coordinating planning and implementation systems, portals and dashboards (to name a few) so much simpler and more accessible. Several countries, including South Africa and Brazil, have been using information and communication technologies to improve coordination of various social programs.

3.6.4. INITIATIVE AND INNOVATION

It requires provinces especially, as well as local governments, to take the initiative and use IGR as a means to build strong provincial governance (not government, meaning with local government and together making up strong provincial governance).

A clear and common Provincial IGR Framework (there may be different elements in each province) that is accessible to and utilised by all government actors in the province may be useful.

- A Provincial IGR Policy Framework could identify the key priorities shared by provincial and local government, and then provide clarity on the roles and responsibilities of the various actors in any given sector (of those priorities) to ensure more focused and coherent IGR engagements in the province. The Framework provides direction in such a way that alignment between the political and administrative structures is based on strategic content (the sectoral service delivery areas).

Provincial and local government should work toward establishing clear roles and responsibilities, resources, partnerships and flow of decision making required. ***Why, what, when, where, how – set the direction***.

It is not cooperation for its own sake, but rather it is both spheres interests to forge strong collaborative governance that strengthens the province, which in turn strengthens their hand at the federal negotiating table and in the Federal State.

- A clear and common Provincial IGR Framework (may be different elements in each province) that is accessible to and utilised by all government role players in the province may be useful
- The aim is to ensure a coherent province-wide approach to local government – the key is how can the province design, structure and manage relations with local government to achieve optimal efficiency?
- While the ultimate objective must be to improve coordination and strengthen integrated governance, the question is:
    - what IGR approach and mechanisms can be a) utilised or b) put in place, to bring a measure of stability and predictability to IGR in the province?
- A Provincial IGR Policy Framework could provide clarity on the roles and responsibilities of the various actors in the provincial-local arena to ensure more content driven IGR engagements in the province
    - In so doing, it sets out the structures, rules of engagement and type of content to be dealt with by the various IGR structures as well as how those structures are to be aligned and the key issues which will link them
    - A calendar of engagements (based on the timeline of planning and budget cycles) should form the basis for the meetings of the various IGR fora
        - The Framework must further ensure that the agenda of the various IGR fora is driven by the major planning and budgeting cycles which occur at specific times/dates in the calendar, both at the provincial and local level.

These issues then provide the strategic direction and catalyst for IGR engagement in the province. The Framework provides direction in such a way that vertical alignment between the political and administrative structures is based on strategic content.

3.6.5. IGR RESILIENCE DURING THE COVID-19 PANDEMIC

The pandemic tested the resilience of intergovernmental cooperation structures, particularly at the level of officials. There were furious weekly and even daily meetings of 'command councils' and 'command centres' in which provincial and local officials coordinated their responses. On the face of it, this worked very well.

This manifested, for example, in the rapid establishment (in a matter of days or weeks) of temporary facilities and conversion of certain centres and sports stadia into field hospitals, which were collaborative efforts between provinces and municipalities. All the actors already knew each other, could call one another and schedule meetings rapidly to make the necessary decisions and so on. This kind of rapid response and resilience was of course due to the investment that has been made over the last two decades in nurturing both formal and informal intergovernmental relations between different spheres of the multi-level government.

3.6.6. PATIENCE AND INVESTMENT IN THE SYSTEM YOU HAVE CHOSEN

Change (new structures and systems), development and maturation of a system takes years and decades, invest in it and focus on incremental building block progress. It takes time and investment, as spheres and institutions become more familiar with roles and responsibilities.

SOME KEY POINTS:

- Do not let early frustrations and concerns detract from the overall vision and desire to bring development closer to the people
- Do not revert back to old order practices on the basis of lack of performance and 'delivery', this is undermining long term growth and maturation of the federal system in Nepal
    - There will be many 'teething' issues within and among the new spheres, but they must be supported and strengthened to fulfil their role in the federal system
    - Focus is naturally on institutions and human resources early on, but then moves to performance systems and processes that work efficiently
        - Many of South Africa's challenges arise from too much chopping and changing, continuously creating new institutions and abolishing others, shifting roles and responsibilities so that the system remains unstable and not maturing away from the structural and institutional setup phase into the performance and efficiency phase (perfecting the functioning of the system, work flow, decision making, etc.)
- Invest in the system and focus on incremental building block progress
    - Setting up good structures and institutions that ensure the necessary checks and balances (to manage ongoing conflict that is inherent in a system) responsive to citizens and accountable institutions

- Focus on and support development, enactment and implementation of framework and sectoral legislation outlining clear powers, roles and responsibilities between state actors
- Focus on human resources – the management, technical and operational skills required to make the system function effectively and efficiently
- Establishing clear lines of accountability, authority and decision making within institutions, spheres and inter-governmentally to establish clear work flow, communication channels and accountability (particularly for concurrent functions)

UNDERSTAND THE PHASES OF TRANSITION SO AS TO MANAGE IT

- South Africa had three phases of development post-apartheid
  - Establishment – setting up the structures and dealing with the human resource implications (in some cases this is still occurring)
  - Consolidation – focus on service delivery, performance systems and efficiency
  - Sustainability – runs as a well-oiled machine (like City of Johannesburg, Cape Town, Durban Metros and other cities)

Key to note is that of the 283 municipalities South Africa started with in 2000, it is now down to 257 and many of them are still at various stages within those last two phases (like those merged with other municipalities after every election, which is very disruptive to progress) and frankly some of them never migrated out of the structural establishment challenges (failed municipalities even now, whether due to corruption, mismanagement or incompetence). The same applies to the way provinces developed, or not.

3.7. KEY CONSIDERATIONS AND RECOMMENDATIONS FOR NEPAL

A key attribute of South Africa's post-apartheid success is the cooperative governance model and IGR system which tries to ensure that the three spheres of government, including its entities and agencies, consults with and communicates its plans and budgets with one another. Of course this does not always happen, and the results usually show it. While a number of challenges and constraints remain, there are key lessons that can be learnt from the South African experience.

Firstly, IGR must be the communication vehicle to coordinate and drive service delivery and development – most essential is to understand and respect the different roles and responsibilities each sphere has in contributing to building the country. Regular and structured communication and consensus building between provincial and local government, in particular, as well as on a sectoral basis, is essential for effective and rapid development. Focus on development outcomes. Regular communication across all spheres and state institutions, whether through formal or informal IGR, was really a major part of what enabled the South African government to make such tremendous strides

in service delivery in a relatively short period of time, from providing water, electricity, sanitation, etc. for a small minority during the apartheid era, to reaching over 90% of the population by 2011 (in 16 years).

Secondly, do not seek to undermine other spheres of government – **see yourself as one government** and conduct IGR in good faith, seeking genuine consensus. People do not care which sphere of government is to blame for whichever failures, it only serves to build public resentment towards government as a whole. The public only sees government delivering or failing (the form is irrelevant). If local or provincial government fails, the unity of the country is undermined, government fails and ultimately the people suffer.

Only unity in action (coherent government) can achieve the development ambitions that Nepalese citizens demand and expect of their government. IGR can be the vehicle to coordinate plans, budgets and implementation of the different spheres on key priorities so that people experience one government working for their collective interests. This builds public trust and confidence which in turn leads to a greater willingness to contribute to and participate in the development taking place (citizens pay their taxes, licenses, fees, etc.).

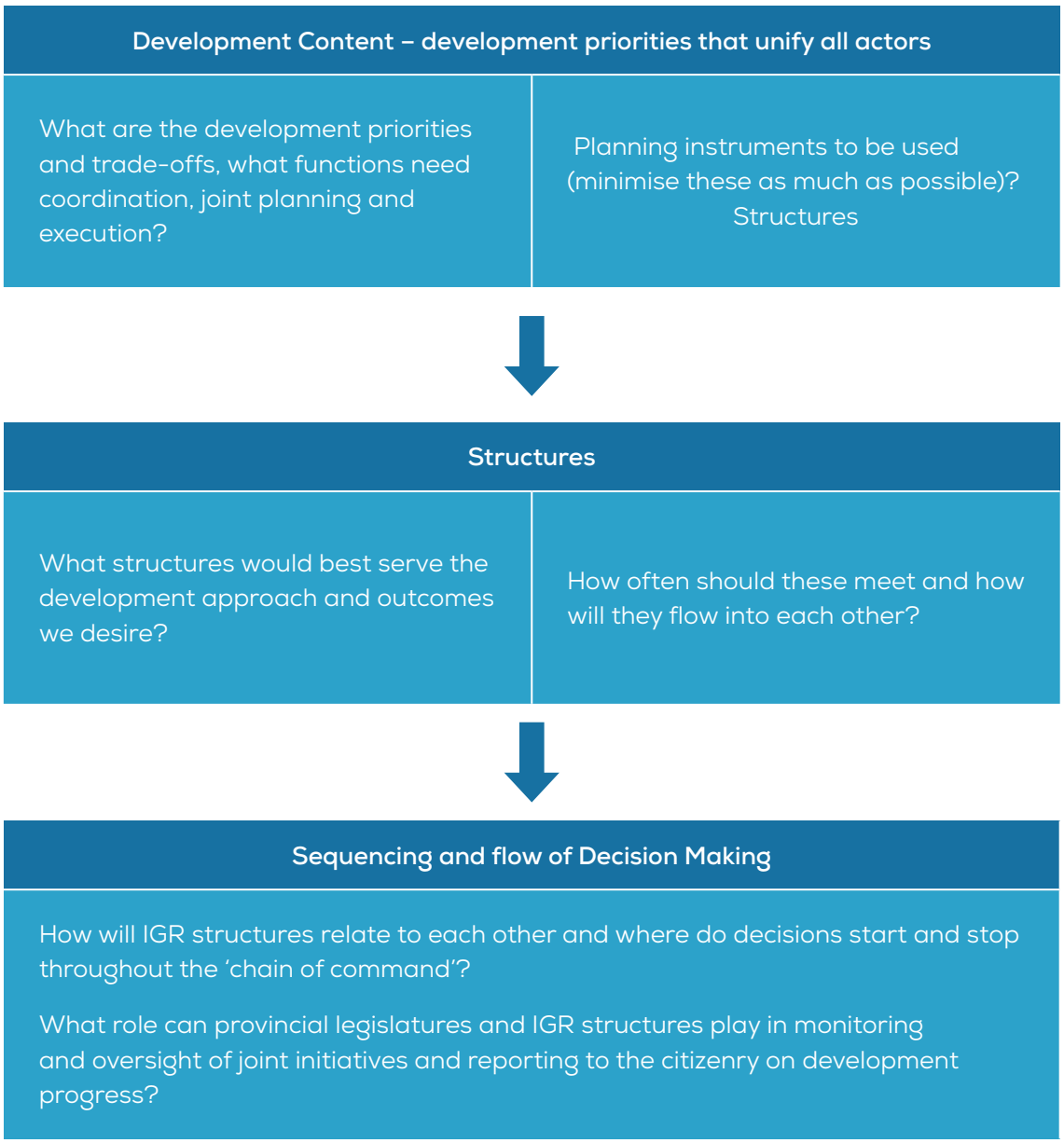
Finally, while federalism is meant to decentralise governance closest to the people they are meant to serve, now more than ever **communication, coordination and collaboration** (i.e. effective IGR) between the different role players, particularly provincial and local government, are essential to maximising limited resources and delivering integrated development outcomes that improve the quality of life and livelihoods of citizens.

Sub-national government failure only opens the door for more and more federal intervention, often in the form of detailed regulation which encroaches on the autonomy and flexibility of provinces and local governments to structure and manage their affairs according to local needs and priorities. It is thus in their own self-interest to collaborate and use IGR as a tool to maximise the impact of joint development priorities to ensure that people experience tangible progress and benefits and the feeling that the government indeed 'works for us'.

Of course there will be political and other tensions between provinces and local governments, those will not go away, but working together to ensure public value and strengthening confidence in their governance will have significant positive effects and spin-offs in the federal balancing act and strengthening federalism itself.

3.8. ANNEXURE:

IGR FLOW CHART



4

Intergovernmental Relations in Spain:

Lessons to be drawn for Nepal

- Sandra Leon

4.1. INTRODUCTION

4.1.1. A BRIEF INTRODUCTION TO THE SPANISH CASE

Spain is a parliamentary democracy with 46 million inhabitants that joined the European Union in 1986, becoming one of its biggest economies. In Spain, transition from a unitary to a federal state and **transition to democracy** happened simultaneously. The 1978 Constitution culminated in a transition to democracy after more than 40 years of dictatorship and regulated the creation of a decentralized state, the so-called "State of Autonomies". This model resulted in the creation of 17 regions (Autonomous Communities, AC hereafter) and 2 autonomous cities.

Spain is defined as a **multinational** type of federation because it contains more than one single national group that sees itself as separate, with strong culture, language and traditions. Nationalist and secessionist political parties in the Basque Country and Catalonia have traditionally played a very important role in the formation of parliamentary majorities in the Spanish parliament.

Regional asymmetries is one of the defining characteristics of the Spanish decentralization model: some regions accessed autonomy through a fast-track process that granted them higher levels of expenditure powers, whereas the so-called slow-track or ordinary regions accessed autonomy with more limited jurisdiction and they could not expand it for a period of at least five years[1]. Since the mid-1990s, however, the decentralization process has evened out the powers and institutional features of ordinary and enhanced regions[2]. As for **taxing asymmetries**, two different systems coexist: the Common regime (for 15 regions) and the Foral regime, which grants the Basque Country and Navarre full tax autonomy.

Division of powers "`a la carte". The number of regions and competences for each region was not pre-defined in the Constitution. Local assemblies in each territory decided whether they wanted to form a new region and the list of competences they were willing to adopt (among the ones listed in the Constitution). This is why the Spanish territorial model was initially defined as "`a la carte".

Open-ended model. The levelling of power between ordinary and enhanced regions and the periodic changes in the regional model of financing (see Box 4, in section 2) has endowed the Spanish decentralization model with a very dynamic and ongoing nature. The system has been able to adapt to the increasing demands of autonomy (from ordinary-regions but also from regions with strong national identity), but it has also delayed the settlement of the system.

1 Seven regions accessed autonomy with higher levels of expenditure powers (the so-called fast-track regions) and ten regions accessed autonomy with lower expenditure powers (slow- track regions)

2 In addition, the Constitution recognizes historical powers and privileges to certain regions, which adds further asymmetry to the model

4.1.2. HOW CAN THE SPANISH CASE INFORM FEDERAL DESIGN IN NEPAL?

- As in Spain, Nepal is implementing a top-down or coming-together type of federalism where appeasement of territorial conflict and achievement of democratic stability has loomed large.
- The federal model in both cases is linked to aspirations of democratic and peace and, as a result, citizens hold high expectations over the model, which puts additional pressure on the project.
- In both countries the federal project was divisive, as it was not supported (or it was directly opposed) by some sectors of the society. Resilience during the early years is crucial, as conflict or shortcomings in the functioning of the model may easily fuel demands to backtrack it.
- Creating a top-down decentralization process, the central government has a predominant role in intergovernmental relations both in Spain and Nepal. Accordingly, the challenge in the early stages of the process is to reassure provincial autonomy and build trust among political actors.
- In both countries, new regional assemblies are created in territories that lack experience with autonomy. The development of regional administrative capacity and institutional representation of regional interests (particularly through intergovernmental bodies) is crucial to reassure autonomy, particularly in cases (as in Spain or Nepal) where shared-rule is limited.
- Although different in their level of economic development, in Spain and Nepal local governments are very heterogeneous and there is a deep divide between rural and urban areas. This represents a challenge for the representation of very heterogeneous local interests.

4.2. IGR IN SPAIN

4.2.1. WHAT IS THE ROLE OF REGIONS IN IGR BODIES AND WHO MONITORS THEM?

- The form that the allocation of authority has adopted in most federations is highly intertwined (competences are vertically allocated to different levels of government). So IGR contribute to **grease a decentralized and interdependent institutional structure.**
- IGR make possible that the legislative competences and joint programs are developed in a **coordinated** manner and maximize consensus.
- But IGR are more than this. They contribute to enhanced trust and the development of federal loyalty among the actors involved through repeated interaction.
- IGR also guarantee effective shared-rule of regional governments, particularly in those cases where the role of the chamber of territorial representation, as it is the Spanish case, is weak.

- Parliamentary scrutiny over bargaining in the Sectoral Conferences is generally very limited. In Spain there is no requirement of regional parliamentary approval of IGR agreements and, with the exception of Catalonia, there are no formal parliamentary supervision bodies at the regional level that are responsible for tracking agreements with the central government[3].

Box 1: DIVISION OF POWERS

The division of powers in Spain is established in very general terms in the Constitution and with more detail in the regional charters, so-called Statutes of Autonomy. Regional autonomy or the division of powers cannot be abolished unilaterally by the central parliament. Regional Statutes of Autonomy are considered to have quasi-constitutional natures and all of them have the same constitutional status.

In Spain the predominant distribution of authority model is 'concurrent' competences, such as general economic policy, in which the central government approves framework or basic legislation (that establishes general rules within a policy area) and regional governments can pass further or supplementary legislation and have the authority to implement all the legislation and its administrative application.

CONSTITUTIONAL AND LEGAL REGULATIONS OF SPANISH IGR

- Too late regulation: The Constitution was silent on intergovernmental cooperation. The development of the mechanisms of cooperation between the ACs and the central government in Spain lagged behind the decentralization of taxes and expenditures.
- Late development of IGR bodies: Sectoral Conferences (SCs) were institutionalized in 1983, but it was not until 1992 that SCs were given a systematic regulatory framework.
- The Constitution establishes that any cooperation agreement between Autonomous Communities requires parliamentary approval, which has discouraged horizontal collaboration.
- Stronger focus on decentralization than on IGR: Spanish regional politicians have generally been more concerned with the specific division of authority between the national and regional governments than with the establishment of bilateral or multilateral cooperation mechanisms.

3 McEwen et al., 2015, Aja and Colino, 2014: 457

4.2.2. MULTILATERAL COOPERATION: SECTORAL CONFERENCES

The most widely used mechanism for multilateral cooperation are Sectoral Conferences, which are formed by the national minister of a particular policy area and the 17 representatives from the ACs (usually the regional ministers of the corresponding area).

- They are **consultative** and based on **voluntary** cooperation. Agreements are only binding for the regional governments that sign them. Decisions are generally adopted unanimously[4].
- The central government has a clear **dominant position**. The Minister convenes the Conference, sets the agenda and chairs the meeting.
- Functions:
  - **Legislative cooperation:** they discuss some of the "basic" central laws before their enactment that will be subsequently developed by regional laws. This prevents subsequent legal conflicts with regional governments when the latter have to complement central government's basic legislation.
  - Approve, monitor, evaluate and extend **Joint Programs**. Joint Programs are collaborative initiatives between the central government and regional governments in policy areas where competences are concurrent.
  - **Allocation of transfers:** the most extended instrument of collaboration between the central government and regional governments are funding agreements (convenios). The criteria to allocate central conditional funds for co-founded projects are decided in the Sectoral Conference[5].
  - Channel **participation on European Union institutions:** ACs participate in the transposition of European directives and decide joint positions that will be formally defended by the Spanish government at European institutions.

BOX 2: THE MISSING LINK: HORIZONTAL RELATIONS

The Spanish Constitution regulated that **horizontal relations** had to be approved by the Spanish parliament. This discouraged cooperation among regional governments. There are no formal horizontal conferences that meet regularly, although there have been some recent attempts to enhance cooperation among ACs.

4 Gonz´alez G´omez, 2006:102, de la Pen˜a Varona et al., 2015)

5 P´erez Medina, 2009:30 and ff., Aja and Colino, 2014: 450)

4.2.3. THE PRACTICE OF MULTILATERAL COOPERATION

The majority of Joint Programs that are approved in the Sectoral Conferences involve co-financing by central and regional authorities through funding agreements. These financing agreements (convenios) are legally-binding, simple and flexible cooperation instruments. Although they are signed bilaterally, the contents are generally identical across regions.[6]

Figure 1: *Co-financing agreements between regional and central governments by year (Source: Ministry of Territorial Politics)*

IGRS IN INFRASTRUCTURE AND ENVIRONMENT AREAS

Concurrent competences are predominant.

- **Infrastructures:** the central government has the competence over roads/railways that run across regions and regional governments have competences over roads and railways that run within their region.
- **National parks:** the basic legislation is the competence of the central government and executive and legislative powers are regional.
- **Water resources:** the central government is responsible for waters that run across regions whereas regional governments are responsible for waters that run within regions.

These competences are developed through **national and regional plans** (with specific yearly funding agreements).

4.2.4. BILATERAL COOPERATION

Bilateral relations have played a very prominent role in three areas:

- Early in the process, during the decentralization of competences. The transfer of authority from the central government to the regions was negotiated in **bilateral commissions**. In these commissions the central government and each regional government individually decided on the duties, material and human resources to be transferred to the specific region in order to carry out their new duties.
- In the approval of **regional financing**. Any multilateral agreement on regional financing that is approved at the corresponding Sectoral Conference (**Fiscal and Financing Policy Council**) has to be ratified bilaterally.
- Bilateral commissions have had a very important role in **conflict resolution**. In 2000, bilateral commissions were assigned the role of resolving conflicts on competences between the central government and regions in order to reduce the number of cases brought to the Constitutional Court. The number of meetings of these commissions have significantly increased over time.[7]

4.2.5. CONFERENCE OF PRESIDENTS

The Conference of Presidents (prime ministers of the central and regional governments) was for long demanded in order to instil a more integrated and coherent approach to the operation of intergovernmental relations. The first time it was convened was in 2005. Prior to the Covid-19 crisis, it had only been convened six times. During periods of high political confrontation Prime Ministers have been reluctant to convene it to avoid the possibility of a regional President not attending the meeting.

BOX 3: IGR AND THE COVID-19 CRISIS

Over the last several years, the opportunity to institutionalize the Conference of Presidents so that it could survive the vicissitudes of the political cycle was lost. It was only convened twice in the last decade, so when the pandemic broke out, intergovernmental relations at the highest political level were not properly oiled nor institutionalized. The Conference of Presidents played a crucial role in managing the coronavirus crisis, as it was convened every week during the first months of the pandemic.

7 Sanjaume-Calvet and Grau-Creus 2016

4.2.6. LOCAL-REGIONAL COORDINATION

- Local administration in Spain is formed by municipalities (8131) and provinces (50)[8]. Provinces represent the electoral district.
- Supra-municipal local entities (*Provincias*, but also *Mancomunidades* or *Comarcas*) have a prominent role in achieving economies of scale in the provision of public services.
- The large number of municipalities and their heterogeneity[9] **reduces the leverage** of local governments against the central government because local collective action is hampered by too divergent local interests.
- The National Commission on Local Administration (NCLA) is the commission where the central and local administrations cooperate. The largest association of municipalities is the Spanish Federation of Provinces and Municipalities (SFPM), which selects local representatives to the NCLA[10].
- The most important task of the NCLA is to approve **financing agreements** (*convenios*) which are signed vertically between the central government (usually a sectoral Ministry) and one or several municipalities, provinces or the most important local association: the SFPM. They are flexible cooperation instruments that are formally bilateral, but in many cases they are signed exactly with the same content with different local administrations, so in practice they are multilateral forms of central-local cooperation.
- A great number of agreements include **funding commitments** by the central government that are used by the central administration **to drive specific policies that have to be developed by local governments**. Central government funding may complement existing funding provided by regional governments or local governments.
- At the provincial level, local coordination is conducted by **Provincial Councils** (*Diputaciones Provinciales*). This is an intermediate administrative level (between the region and municipalities). Provincial councils are in charge of the direct provision of certain public services (rubbish collection, fire protection and prevention), coordinating the provision of public services at the local level and provide economic, legal and technical support, particularly to the smallest municipalities.
- Provincial councils are **very dependent on central transfers** and they are not democratically accountable (they are non-elected bodies). In some cases, their capacity to allocate funds has given rise to **clientelism and corruption**. Around one third of local revenues comes from unconditional transfers from the central government (revenue-sharing).

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8 Supra-municipal local entities that operate as an intermediate layer between provinces and the municipalities are Mancomunidades, Comarcas and Metropolitan areas

9 Of the total 8131 municipalities, more than 60 per cent have less than 1000 inhabitants

10 A Sectoral Conference on Local Matters was created in 2005 that reunites central government representatives, regional authorities and local representatives selected by the SFPM. This Conference was created to enhance coordination of regional and national local policies together but it has only met twice since its creation.

- There have been attempts by **regional governments to enhance their control over local taxation**, but these attempts have been turned down by the Constitutional Court.

- **A "second decentralization" is still pending** Decentralization in Spain has been built around regional powers. Regional governments have usually regarded local governments as potential sources of political opposition, so many observers argue that the "second decentralization process" (towards local governments) is still pending.

4.3. COOPERATION AND CONFLICT IN IGR

4.3.1. WHAT ARE THE MAIN DRIVERS OF COOPERATION?

- **Interdependence:** in areas where central and regional governments' competences are more interdependent, the level of institutionalization of multilateral cooperation is higher. In less intertwined policy areas incentives to cooperate are lower.

- **Financing:** multilateral cooperation is more likely when **central governments' funds** are distributed. It is a "win-win" scenario: on the one hand regional governments welcome new resources to provide employment, social or educational policies; on the other hand, cooperation strengthens central government's spending power to shape ACs' activities in a certain policy areas through funding[11].

- **Technical bodies**: when **technical bodies** have a prominent role, such as secretariats or working committees. Secretariats facilitate the preparation of IGR meetings and the implementation of decisions. And in second-level bodies discussion is less permeable to political pressure and confrontation because participants have a more technical (less political) profile.

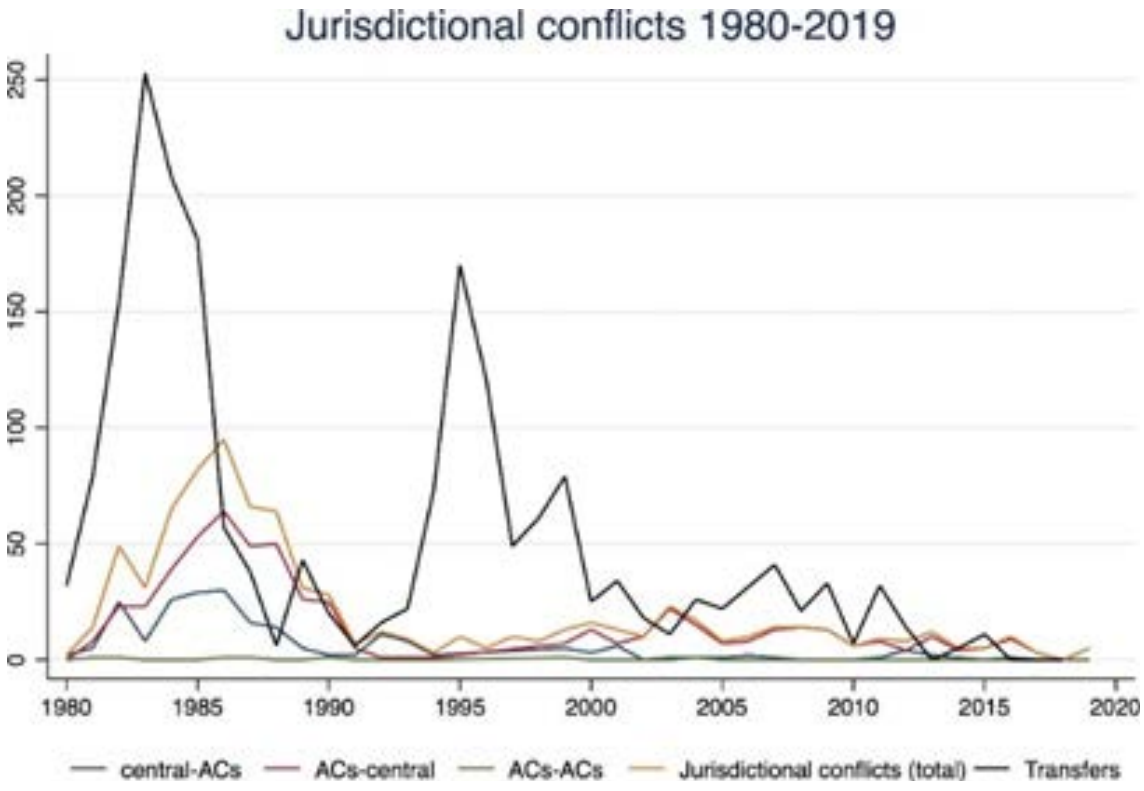
- **Political parties:** the role of political parties in vertical cooperation has been a **double-edged sword**. On the one hand, state-wide parties - the Socialist Party (PSOE) and the Popular Party (PP) - usually meet before the Sectoral Conference takes place to coordinate proposals among the aligned regional governments (regional governments ruled by their party). However, periods of high parliamentary confrontation between government and opposition parties have resulted in a worsening of intergovernmental cooperation. In that context, regional governments ruled by the main opposition party "boycott" any initiative from or possibility of an agreement with the central government. As a result, SCs dynamics end up reproducing the relationship between government and opposition parties in the Spanish parliament.

11 However, in 1992 the Constitutional Court put a limit to the use of spending power by the central government, so that it could not continue using subsidies to fund policies in areas that belonged to the jurisdiction of regional governments

4.3.2. SOURCES OF CONFLICT

The most important drivers of Intergovernmental conflict in Spain have been:

- The periodic **renegotiation of the regional financing system.** Intergovernmental conflict does not only follow partisan congruence (partisan alignment with the national incumbent party) but also (and very prominently) economic divisions: poorer regions demand more transfers from the central government and richer regions demand further taxing autonomy.
- The reform of the **regional Statutes of Autonomy** (regional constitutions); the last wave of reforms started in 2003 and lasted until the beginning of 2010s. Eight regions reformed their statutes of autonomy, in some cases invading central competences. Resultantly, conflicts on competences ensued and some of them reached the Constitutional Court. The constitution states that the final approval of the reformed regional statutes takes place in the Spanish parliament, so the final decision has always depended on the relative force of parliamentary majorities.
- The **secessionist challenge** in two regions: Catalonia and the Basque Country, which have reinforced a centrifugal dynamic in the evolution of the territorial system. As a result of regional asymmetries in financing regimes (the Basque Country and Navarre have full autonomy over taxes), regional grievances have emerged (particularly in Catalonia, which has always demanded further tax autonomy).
- **Polarization on the territorial cleavage.** The secessionist threat in Catalonia has prompted a radicalization of the right-wing electorate, part of which has switched their vote to an extreme right-wing party, Vox, that defends the abolition of the State of Autonomies.
- **Politicization.** When IGR are highly politicized, relations are not primarily driven by the interests of the territories but rather by the interest of the political parties that rule the federal and regional governments. The party-political congruence or incongruence of governments and, more specifically, the specific relationship between government and opposition parties in the Spanish parliament have traditionally shaped intergovernmental cooperation. During the last years, the increase in polarization has weakened intergovernmental relations in Sectoral Conferences and bilateral commissions. Also, the Conference of Prime Ministers - a meeting of the federal Prime Minister and the regional Prime Minister - has only been convened twice in the last decade.



Graph 1

4.3.3. MANAGING INTERGOVERNMENTAL CONFLICT IN SPAIN

- Judicial Review. The Constitutional Court has played a very important role in settling disputes over competences and in protecting regional autonomy. The Figure above exhibits the number of constitutional challenges on competences by year, type of claimant and number of transfers to regional governments.
- Bilateral commissions. In 2000 a reform of the law that regulates the Constitutional Court established a new function for Bilateral Commissions of Cooperation: the capacity to reach agreements to resolve a jurisdictional conflict in order to decrease the number of cases brought to the Constitutional Court.
- Maturation of the system. Graph 1 shows that the number of conflicts on competences brought to the Constitutional Court was particularly high at the beginning of the process, when the regional governments were being transferred new powers and both the central and regional governments were trying to clarify their sphere of competences. If federal design is subject to ongoing renegotiation, then conflict will last for a longer period.
- Activation of intergovernmental cooperation bodies. In periods where intergovernmental cooperation bodies have been convened more regularly (bilateral commissions, the Conference of Presidents, Sectoral Conferences) conflicts on competences have decreased, as intergovernmental cooperation bodies have served to iron out differences and reach agreements over conflicts that otherwise would have ended up being decided through judicial review.

- Increase regional resources. One of the ways to build consensus when it comes to periodically renegotiate a new model of regional financing has been to increase the overall amount of resources that are allocated to regional governments.
- Party system fragmentation. Since 2015 the Spanish national and regional party systems have become more fragmented (the effective number of parties with representation in national and regional assemblies has increased). Fragmentation forces political parties to reach agreements to form majorities in parliament. In a context of high polarization at the national level, regional fragmentation may force political parties to overcome confrontation at the national level, as political alliances at the regional level may cut across ideological blocks. Party system fragmentation may weaken the role of party-political congruence in IGR.

4.4. MAKING ACCOUNTABILITY WORK

Clarity of responsibilities will vary according to different factors:

The **division of powers**, which depends on how competences are allocated between levels of government. A clear, transparent and relatively stable division of powers has to be in place, yet: a) regulation cannot specify who does what in every possible contingency; and b) some services are better provided in a concurrent way. As a result, conflicts are simply difficult to avoid (see previous section on how to manage conflict).

Citizens' capacity to learn *who does what*. The ongoing and asymmetric decentralization process in Spain (see Box 5) has shown us that it takes time for citizens to learn that the regional administration is responsible for the provision of some public services. At the beginning of the process citizens continued ascribing responsibilities to the federal level, even though the competences already belonged to regional governments. This creates a sort of "accountability gap" during the period in which the central government was still held accountable for policy outcomes that were in the hands of regional executives. Citizens also gain knowledge on the division of powers when they interact with the public administration (i.e. if they make use of public schools or public health care).

Politicians' strategies. Politicians' strategies may undermine clarity of responsibilities. If intergovernmental relations are driven by "passing the buck" and blame-avoidance strategies, citizens may remain confused about who does what. Politicians may engage in blame-avoidance when regional performance is poor, but if as a result citizens are less capable of assigning responsibilities, they may struggle to claim the benefits when policy or economic outcomes are at stake.

BOX 5: THE SPANISH SYSTEM "`a la carte"

The division of powers in Spain was regulated through a particular system. The Constitution listed the powers that could be transferred to the regional governments and the ones that belonged to the central government. The competences that regional governments did not incorporate in their regional constitutions were automatically allocated to the centre. Essentially, each region could choose its own competences "*`a la carte*" within the limits established in the Spanish Constitution. This system deepened the asymmetric characteristics of the decentralization model.

[a]Sala 2014: 115

4.5. LESSONS TO BE DRAWN FOR NEPAL

4.5.1. ENHANCING INTERGOVERNMENTAL COOPERATION

- **Institutionalization of IGR.** Early in the process, set up bodies for intergovernmental cooperation that meet regularly and that are supported by technical bodies and secretariats that organize the meetings, record minutes and provide a follow-up of intergovernmental agreements. Regularity operates as a self-reinforcing process that weakens partisan divisions and contributes to oil personal relationships among representatives. Institutionalized processes (regular meetings that take place beyond the political cycle and limits to discretionary rules) contribute to enhanced trust and loyalty.

- Use intergovernmental cooperation bodies (such as Sectoral Conferences) to enhance collaboration in areas of concurrent competences through joint programs that define common standards and indicators of performance and that are monitored and evaluated in the Sectoral Conference.

- Promote frequent informal meetings among provincial and federal representatives. Personal relationships play a fundamental role in greasing intergovernmental relations and informal multilateral meetings can help to develop personal connections that later on may favour cooperation in formal intergovernmental settings.

- Protect intergovernmental cooperation bodies from the political cycle. Well-oiled bilateral and multilateral cooperation bodies represent the best way to prevent and manage intergovernmental conflict. Early institutionalization of these intergovernmental cooperation mechanisms will reinforce their role in the structure of multilevel governance and place them above day-to-day politics. Convene intergovernmental cooperation bodies even in the most difficult scenarios, as this will contribute to strengthening their role beyond the political cycle.

- Find a good balance between bilateral and multilateral cooperation. Bilateral cooperation is necessary to address problems that are specific to certain territories and to resolve conflicts, but multilateral cooperation prevents the co-optation of federal-provincial dynamics by the provinces with higher political leverage and provide an integrated and coherent approach to IGR.

4.5.2. MANAGING CONFLICT

- Set up a system of judicial review to resolve conflicts when the federal parliament/government or the regional parliament/government pass ordinary laws that go against the principle of autonomy or the division of powers established legally. Yet do not let judicial review become the only possible way to channel conflict. Use bilateral relations to reach political agreements that prevent judicial conflict.

- Instil a long-term perspective when managing conflict. It takes time for multilevel governance to settle, so conflicts on competences will be part of the day-to-day politics, particularly as the system is subject to adaptation and adjustments. When intergovernmental conflict peaks, do not give in to pessimistic discourses as these will undermine the foundations of the system and contribute to extending the idea that backtracking is possible. Intergovernmental conflict or failure in public provision may inform changes in the functioning of a system that will be subject to a trial-and-error period. Yet do not let those problems question the viability of the whole federal project.

- Integrated party systems in contexts where polarization is not very high play a fundamental role in resolving intergovernmental conflicts. Political parties operate as channels of communication between different levels of government and bottom-up demands. This is particularly so when state-wide parties have adapted organizationally to a decentralized structure, as this allows them to have a better grasp of local conditions and demands.

- Set up clear rules so that disagreement can be better managed. Intergovernmental collaboration through joint programs should define common standards and indicators of performance that facilitate monitoring and evaluation. The main risk of intergovernmental coordination is the development of a "pass the buck" (to other levels of government) strategy, but there is less room for blame-avoidance strategies when failure can be more easily identified.

- Use IGR to enhance legislative cooperation and to prevent conflict on competences by clarifying who is responsible for what in areas where competences are blurred, as there will always be room for competence confusion. Legislative cooperation is particularly important in systems where shared-rule (the extent to which sub-national units can participate in decisions that concern the whole political community and not just their region) is limited (as in Nepal or Spain).

- Allowing some asymmetries in the system can appease ethnic conflict, but it may also represent a never-ending source of territorial grievances between provinces and instil a logic of competitive federalism in the system. Asymmetries create a sort of inter-temporal trade-off on conflict (to sort conflict today you increase the

chances of fuelling conflict tomorrow) that can only be resolved by choosing the type of conflict that is more important to avoid.

- Invest time in designing a clear division of powers, but devote the same amount of time and effort to developing intergovernmental bodies that help to resolve disagreement (see previous section), as intertwined competences will always leave room for jurisdictional conflict.

4.5.3. DESIGN AND STABILITY OF THE SYSTEM

- Lay out a clear, transparent and relatively stable distribution of fiscal and expenditure powers. The system needs some flexibility to adapt to certain circumstances (external shocks or technological change, for instance) but avoid that decentralization (the allocation of competences) is perceived as open-ended game for a long time.

- **Let the system mature.** One of the challenges in the Spanish devolution process is its ongoing nature, as it has been periodically changing since the creation of the Autonomous Communities. This has prevented the maturation of the system and the transition from a phase of institutional building focused on decentralization to a phase focused on honing the functioning of the system. Maturation is very important for accountability (see section 4).

- **Use IGR to check and support each other.** Elections are imperfect mechanisms to control subnational fiscal behaviour, so IGR must serve to exchange information on best practices in the implementation of public policies, monitor subnational policy initiatives and promote mutual support. This will prevent the centrifugation of subnational political action and will instil a more centripetal or integral approach to IGR.

4.5.4. EMPOWERING REGIONS AND LOCAL GOVERNMENTS

- **Encourage horizontal cooperation** without federal oversight. This will reinforce provincial autonomy and capacity and will contribute to enhancing provincial accountability and a "provincial mindset" among civil servants. IGR that are too dominated by vertical relations might undermine the benefits of decentralized governance, regional experimentation and the diffusion of best practices, and are more likely to result in free- riding and blame-avoidance dynamics between the federal and sub central governments.

- **Involve provinces in IGR oversight.** IGR take place among executives and intergovernmental agreements are not usually scrutinized by provincial assemblies. Involving provincial assemblies in the monitorization of IGR may contribute to enhancing transparency and operate as an additional check upon provincial executives' actions.

- **Empower provinces to enhance accountability and fiscal responsibility.** The best way to prevent provincial opportunism and free-riding is enhancing provincial fiscal autonomy and the visibility of provincial responsibilities. An extensive use of conditional transfers will undermine provincial autonomy and responsibility and excessive transfer- dependence may create incentives for regional governments to overspend and to engage in blame-avoidance strategies when poor provincial fiscal outcomes are at stake. Encourage a bottom-up logic.

- **Strengthen institutional representation of local governments** by promoting their association into large representative bodies. Early in the process, establish GR cooperation bodies between the federal, provincial and local governments.

4.5.5. THE ROLE OF POLITICAL PARTIES

- **Integrated but decentralized statewide parties will curb centrifugal pressures:** the stability of a federation is grounded in a difficult balance between, on the one hand, a federal government powerful enough to ensure redistribution and macroeconomic stability but not too powerful to encroach upon subcentral authority; and, on the other hand, a set of subcentral units with sufficient authority to accrue the benefits of decentralized governance but not too independent to free-ride on the collective goods. Integrated political parties may contribute to curb centrifugal pressures. Yet to reinforce subnational autonomy, statewide parties must also adapt organizationally to the decentralized form of the state.

- Intergovernmental bargaining should be primarily carried out in IGR multilateral and bilateral bodies. **Political parties cannot become the main channels for intergovernmental bargaining** because that puts provinces into a very unequal position (giving more leverage to those that are ruled by incumbent statewide parties) and because the politicization of IGR may hinder (successful or failed) policy responses and initiatives at the provincial level. It may also weaken the voice of provincial representatives and interests over party interests.

- Political discourse: **avoid blame-avoidance strategies**. From an electoral point of view, these strategies may pay off in the short-term (exonerating governments for poor performance). Yet in the long run they undermine accountability. "Pass the buck" intergovernmental dynamics contribute to confusing citizens on responsibility assignments. These strategies hamper accountability because provincial governments might not be held fully accountable in elections for poor provincial public services, but they will also be unable to claim electoral credit for good policy outcomes.

4.5.6. ENHANCING ACCOUNTABILITY

- Citizens learn responsibility attribution as they interact with the public administration, so **use public spaces** (schools, hospitals, etc.) to inform citizens about who is responsible for the provision of the service (for instance, using the provincial government logo in buildings or posters or launching radio or TV ads on public services, as regional governments in Spain have done). These actions are particularly important in the very early stages of the federal project to enhance individuals' knowledge of the division of powers.

- **Empower provinces to enhance accountability**. Protect provincial autonomy to enhance the role and visibility of provincial actions in the federal structure. Assisting them in consolidating their new powers will improve the operation of democratic accountability at the provincial level by strengthening the link between provincial responsibilities and constituents' capacity to monitor them.

5

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