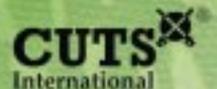
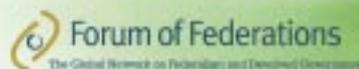


अन्तर्राष्ट्रीय सहकारी संघवाद सम्मेलन  
राष्ट्रीय परिप्रेक्ष्य और अन्तर्राष्ट्रीय अनुभव

INTERNATIONAL CONFERENCE ON COOPERATIVE FEDERALISM  
NATIONAL PERSPECTIVES AND INTERNATIONAL EXPERIENCES

20-21 जनवरी 2016, विज्ञान भवन, नई दिल्ली  
20 - 21 January 2016, Vigyan Bhawan, New Delhi

Conference Booklet





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# Conference Brief

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## Background

India is on the path to becoming one of the most influential global economies. Urbanisation, rising income and technology-driven development requires changes in institutions and mechanisms of governance. These need to be reshaped to take advantage of new aspirations and complex geo-political shifts. Inclusive growth demands a new institutional architecture that allows for inclusive planning, resource allocation and flexible, contextual development policies.

## Cooperative Federalism: The Concept

Cooperative Federalism is a concept of federalism in which national, state, and increasingly local governments interact cooperatively and collectively to solve common problems, rather than making policies separately. Cooperative federalism requires robust institutions and mechanisms for promoting intergovernmental relations. Federal partners need to share information, create institutions, specify each other's role in case of shared competence, agree to resourcing and most importantly conclude formal agreements over the performance of respective functions.

In brief, an essential element in cooperative federalism is clarity in assignment of functions among different levels of government and mechanisms for discussions and conflict resolution. This is achieved through Intergovernmental Relations (IGR) within federations which take many forms and may be exercised through a variety of mechanisms, formal and informal or both.

## Cooperative Federalism in India

As per Article 1 of the Constitution, India is the Union of States. The Constitution specifies the functional domains of the Union and States. The Constitution has clearly demarcated the jurisdictions, powers and functions of the Union and the State Governments and has spelt out in detail the legislative, administrative and financial relations between the Union, States and local bodies.

Cooperation between Union and States and between States is envisaged through various formal and informal mechanisms. For instance, Article 263 of the Constitution has provided for the setting up of an Inter-State Council for investigation, discussion and recommendation for better coordination of relation between the Centre and States. The Zonal Councils set up under the State Reorganization Act 1956 provide another institutional mechanism for Centre-State and inter-state cooperation to resolve differences and strengthen the framework of cooperation. The National Development Council and the National Integration Council are two other important forums to provide opportunities for discussion between federal partners. In addition, councils have been set up by various central ministries to strengthen cooperation. Besides, Chief Ministers, Finance and other Ministers, have annual conferences in addition to the regular meetings to share mutual concerns on various issues.

Further, to expedite the process of India's social and economic development, the Government of India has set up National Institution of Transforming India (NITI) *Aayog*. The *Aayogis* headed by the Prime Minister with its Governing Council comprising of Chief Ministers of all States and Lt. Governors of Union Territories.

## Objectives

The focus of the international conference will be to draw lessons from international best practices on the following key areas:

- **Institutions, Mechanisms and Processes to Facilitate Cooperative Federalism**  
This session will focus on how various models of inter-governmental relations mediate, clarify roles and responsibilities with regard to policy coordination, planning, resourcing, and dispute resolution in a federal set up.
- **Fiscal Federalism with a Focus on Institutional and Legal Mechanisms**  
This session will focus on institutional and legal mechanisms for fiscal federalism and how they function in different contexts and include a description of financial relations between different levels of government particularly Centre and State.
- **Fiscal Federalism in the Context of Key Social Sectors namely Health and Education**  
Using examples of the Health and Education sectors, this session will focus on describing different country institutions, mechanisms and processes to support better fiscal design and implementation of social sector programmes to ensure optimum service delivery.
- **Horizontal and Vertical Cooperation on Maintenance of Public Order**  
The main issues with regards to maintenance of public order are related to coordination, cooperation and sharing of intelligence amongst others. The session will focus on international experience on institutions, mechanisms and processes on these issues.
- **Green Federalism**  
The focus of this session will be on country experiences in establishing Central and State-level institutions, mechanisms and processes for regulating, managing and monitoring environmental protection measures.

## Expected Outcome

The expected outcome of the conference will be the following:

- 1) Identify best/good practices from other countries
- 2) Recommend replicability of those practices in the Indian context by changing or altering institutional mechanisms

## Participants

Participants at the Conference will include senior policymakers and government officials from Central and State governments, academics, practitioners and think tanks.

## Speakers

The international speakers will be drawn from **Australia, Canada, Ethiopia, Germany, South Africa and Switzerland**. In addition, sessions will have Indian experts as Chairs and Co-Chairs.

# Profile of Speakers

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## International Speakers

### Australia: Roger Wilkins

Roger Wilkins was until 2014, Secretary of the Attorney-General's Department, a position he has held since September 2008. Prior to that, he was head of the 'Public Sector Group Australia' a consultancy group focussed on public sector modernisation. He was Citi's global public sector leader on climate change from 2006-2008. From 1992-2006, Wilkins was the Director-General of 'The Cabinet Office in New South Wales' where he played a leading role in areas of reform in administration and law, corporatisation and micro-economic entities.

### Canada: Rupak Chattopadhyay

Rupak Chattopadhyay is the President and CEO, Forum of Federations. He was previously Director of Asia-Pacific Programmes and Senior Director of Global Programmes. He was also a member of the Consultative Group on the Study of Inter-governmental Relations and Dispute Resolution Mechanisms, Inter-State Council, Government of India. In 2004 he was Advisor to the Chairman of the Observer Research Foundation. Over the last decade he has contributed as an expert in support of political and constitutional reforms in Mexico, Myanmar, Philippines, Nepal, Sri Lanka, Tunisia and Yemen.

### Ethiopia: Yalew Abate

Yalew Abate, Speaker, House of Federation, Federal Democratic Republic of Ethiopia, holds a BA degree in Sociology from Addis Ababa University and MBA degree from Open University, London. The 5<sup>th</sup> House of Federation congress in its first session of the first year (September 2015) elected Abate as the new speaker of the House.

Previously, Yalew Abate has served the House of Federation as a member of its Standing Committee for Constitutional & Regional Affairs. For the last five years he was the Speaker of the Amhara Regional Government Council. Prior to this, Yalew Abate served the Amhara regional government as member of the executive cabinet. He used to be regional minister for Youth, Culture and Sport Affairs and then moved to be regional minister for Urban Development.

Yalew Abate has been member of the Central Committee of the ruling Amhara People's Democratic Movement (APDM) and member of the council of the ruling coalition, Ethiopian People's Revolutionary Democratic Front (EPRDF) for more than 10 years. He has conducted research on areas of migration, reintegration of Somalia etc. He has been actively engaged in the democratisation and development endeavours of the Ethiopian federal system since the transitional government.

### Germany: Georg Milbradt

Georg Milbradt is Chairman of the board of the Forum of Federations. Recently, he has been appointed as Vice-President of the Independent Advisory Committee of the German Stability Council. His political career includes being Minister-President of the Federal Free State of Saxony and chair of Saxony's Christian Democratic Union. He has been a member of the German *Bundesrat* as well as the Parliament of Saxony. Among other functions, he has held posts such as Minister of Finance for the

State of Saxony, treasurer of the City of Münster and was a member of the German Parliament's Conciliation Committee.

**Switzerland: Thomas Pfisterer**

Thomas Pfisterer is a former Judge of the Swiss Federal Supreme Court and has served for 25 years in the Swiss judicial system. He was also a Governor of the Canton of Aargau and a member of the Swiss Senate. He taught Constitutional and Administrative Law and Mediation at the University of Saint Gallen and is also a graduate of Basle, Berne, Yale and the Swiss Bar Association.

**South Africa: Mohammed Bhabha**

Mohammed Bhabha, Adviser, Development Bank of Southern Africa is a former Member of Parliament, qualified attorney, and experienced negotiator. He was part of the African National Congress (ANC) team at the Convention for a Democratic South Africa (CODESA), and later as part of agreements on the final South African Constitution. In 1994, he was appointed as a Senator in the first democratic parliament, and chaired the Select Committee on Constitutional Affairs. In 2001, he was appointed as a Provincial Minister of Local Government (MEC) in Mpumalanga. He has acted in an advisory capacity to several ministries since he left public office in 2004, and is presently an adviser to the Minister of Cooperative Government and Traditional Affairs.

Mohammed Bhabha has worked on transitional and constitutional support projects in Kenya, South Sudan, Madagascar, Sri Lanka, Yemen, Palestine, Bahrain, and Zimbabwe.

# Session 1

## Concept Note on Institutions, Mechanisms and Processes

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### Introduction

Federal systems are always challenged with the basic question of which order of government does what? Federalism is fundamentally characterised by the presence of two or more orders of constitutionally recognised government rule, where each order has at least one area of competence in which it is autonomous. Federal systems, as Daniel Elazar succinctly noted, a ‘combination of self-rule and shared rule’.

The early modern federations were established as dualist systems with little concurrency between the responsibilities of national (federal) and sub-national (state) governments. These countries included the US (1789), Switzerland (1848), Canada (1867) and Australia (1901). However, developments in the 1930s and then following World War II led in each of these federations to move from ‘dual federalism’ towards some form of ‘co-operative federalism.’ The latter involved interdependence and interaction between various orders through co-operative intergovernmental relations became necessary particularly due to the growth of social programmes and the financial arrangements to support them.

More recently, greater horizontal and vertical interaction has been necessitated by the pressures of globalisation and the development of new policy areas such as the environment, not contemplated when the older federations were established. Furthermore, changing allocations of taxing powers and expenditure responsibilities to different governments leading to vertical and horizontal imbalances has necessitated intergovernmental transfers and institutions for the periodic adjustment of financial relations among governments.

Not surprisingly, as federations move into the twenty-first century, the interdependence inherent within all federal systems is being further extended. The constitutional recognition of local government in a number of newer federations and the establishment of supra-national entities such as the European Union (EU) has added to the need for robust mechanisms for intergovernmental interaction and cooperation.

### Importance of Intergovernmental Relations in Cooperative Federalism

The inherent and inevitable interdependence among governments within federations often gives rise to inefficiencies in governance or conflicts. Disagreements may arise over constitutional jurisdiction, revenue-sharing and fiscal imbalances, the exercise of the federal spending power, regional development policies, control of natural resources, policies affecting cultural differences, unilateral action by one of the governments, or even simply from a clash of politics and personalities.

Most federations have found that reliance simply on the courts to resolve such disputes is insufficient, and that in many instances bodies facilitating consultation and co-operation between governments are a desirable alternative for managing interdependence and fostering co-operation. These will not eliminate

conflict which in a situation of interdependence will inevitably arise from time to time. But they provide an effective means of managing conflict.

IGR within federations take many forms and may be exercised through a variety of mechanisms, formal and informal, bilateral and multilateral. They are ubiquitous dimension of any federation whether the federal regime is the result of a process of unification or of devolution, whether the regime is 'dualist' or 'integrated' or if it has a federal chamber or not.

## Objective

The purpose of this session, therefore, is two-fold:

- A) understand how a range of federal systems drawn from the global north and global south; old and new federations; dualist and integrated systems have developed institutions, mechanisms, and processes to facilitate Cooperative Federalism; and
- B) facilitate reflection and discussion on what lessons or implications maybe relevant in the Indian context.

## Overview

Presentations in this session will:

Provide an overview of the constitutional and institutional context of each federation:

- Are processes for IGR provided for in the Constitution, federal legislation or have they emerged through judicial pronouncements?

Provide an overview of the policy context requiring IGR:

- What are the social and political forces which drive IGR in relevant countries?
- What are the main areas of interaction between federal partners and how have IGR influenced them?
- What are the main historical trends concerning inter-governmental interaction in other countries? Have they led to more decentralisation or centralisation or has the federal regime become more cooperative, competitive or coercive?

Provide information on the nature of IGR - formal or informal

- Are cooperative arrangements negotiated or they tend to be the result of a unilateral fiat on the part of one order of government or does this vary between policy areas?
- Does interaction tend to be primarily 'vertical' or 'horizontal' in other federal countries?

Provide an overview of modes of vertical and horizontal interaction

- Do negotiations within and between political parties act as a substitute for IGR?
- Do IGR in other countries depend largely on consensus or are there areas in which majority or special majority decision-making is used?
- What are the institutions and mechanisms through which cooperative arrangements are reached?
- Do the heads of the federal and federated executive branches have official fora? If yes, are there joint bodies or agencies, created by several members of the federation? What purposes do they serve?

- Does a formal legislative or constitutional regime govern the conclusion or status of agreements or is the conclusion of agreements the exclusive purview of the executive?
- Can agreements introduce legally binding obligations between governments or are they mostly conceived as ‘purely political’ instruments?

Provide an assessment of the effectiveness of existing modes of interaction

- Are there policy areas in which cooperative arrangements run more smoothly than others or has this changed over time?
- Are the mechanisms and processes effective in terms of policy making and implementation, in other words, what role can we attribute to IGR in the success (or not) of policy making and programme delivery?

# Country Notes

**Australia**

**Canada**

**Ethiopia**

**Germany**

**South Africa**

**Switzerland**

# Australia

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## Introduction

Australia is a representative democracy and a constitutional monarchy with Queen Elizabeth II as head of the state.

Australia has a parliamentary democracy consisting of the two Houses – the Senate and the House of Representatives. Proposed laws have to be passed by both Houses to become law and can be introduced in either House, except laws on the subject of revenue and taxation, which need to be introduced in the House of Representatives. The Senate consists of 76 Senators. The House of Representatives has 150 members representing separate electoral divisions.<sup>1</sup> The Constitution provides for the three arms of the government, namely the Legislature, Executive and the Judiciary. In the parliamentary form of governance the legislative and executive functions overlap as members of Executive Government are drawn from the Parliament.<sup>2</sup>

## Federal Structure

Australia has three levels of government – federal, state/territorial and local (though local government is not constitutionally recognised). The States have the power to make their own laws on subjects not controlled by the Commonwealth (Federal Government) and also have their own constitutions. The State governments are also divided into the same institutions as the federal government – the legislature, executive and judiciary.<sup>3</sup> In matters of common control the Commonwealth law overrules the state law. ‘Territories’ are different from states and can be administered by the Australian government or be given the right of self-government.<sup>4</sup> The responsibility of the local governments rests with the State/Territory government and thus, the roles and responsibilities differ.

All State Parliaments, excluding the state of Queensland, are bicameral with an Upper and Lower House while the Territory Parliaments have only one House.<sup>5</sup> While the federal government is responsible for national laws including trade, taxation, social security, foreign affairs etc, the State/Territory governments can make laws on subjects such as public health, education, roads, police, among others.<sup>6</sup>

## Intergovernmental Relations

**Council of Australian Governments (COAG):** It is Australia’s peak inter-governmental relations body. It is a non- statutory body which was established in 1992. This forum brings together the Prime Minister, State and Territory Premiers, Chief Ministers and the President of the Australian Local Government Association.<sup>7</sup> The COAG discusses issues related to major initiatives of one government which have impact on other governments or those that require the cooperation of other governments. The Prime Minister, as chair of COAG, also seeks suggestions from participants as to what might be on the agenda for a particular meeting. As a general rule, COAG reaches decisions through consensus of all members. Local governments though not constitutionally recognised have a seat at COAG. Through this forum Inter-governmental Agreement on Federal Financial Relations was created which established a financial framework with the aim to improve accountability and transparency in public performance reporting.<sup>8</sup>

**Council for the Australian Federation (CAF):** This forum, established in 2006, deals with relations between the States in Australia. The Premier of each State/Territory is a member of CAF. The forum was formed to discuss and resolve issues independently of the Commonwealth.<sup>9</sup> CAF intends to ensure better co-operation amongst the states and territories and to give them a united voice in their dealings with the Commonwealth (Federal) Government. Through this mechanism the States/Territories began an examination of national standards to ease the introduction of electric and low emission vehicles, signed an inter-governmental agreement towards harmonising aspects of worker compensation and occupational health and safety.

**Inter-governmental Agreements:** Most cooperative agreements are formalised through an inter-governmental agreement which is signed by the heads of government or by the responsible ministers. Such agreements set out the essential terms of the co-operative arrangement in issue, including its purpose, decision-making procedures as well as duration and may establish a ministerial council.

## Other Mechanisms

**Loan Council:** The Loan Council formally came into being in 1927 and is a State Ministerial Council.<sup>10</sup> It comprises of the Prime Minister and the Premier/Chief Minister of each State/Territory, however in practice they are represented by a nominee who is usually the Treasurer.<sup>11</sup> It describes the matters with which agreements may deal and the legal consequences of such agreements.

# Canada

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## Introduction

The federal government includes the Monarch's representative, House of Commons, and the Senate. Canada's constituent units are divided into ten provinces or states and three territories.<sup>12</sup> The provincial government includes provincial and territorial legislatures. Additionally, the federal government has legislative jurisdiction over aboriginal self-government, while municipal government is the responsibility of the provinces.

The Supreme Court of Canada is the highest constitutional court and may adjudicate on intergovernmental and constitutional disputes when a reference is brought before it.

## Inter-governmental Relations

Intergovernmental relations in Canada are mainly informal. They are not part of the Constitution nor are they statutory. Developed on an *ad hoc* basis, based on requirements of the time, they are forums for the exchange of information, and for negotiation and persuasion. The two levels of government have established their own ministries of inter-governmental affairs which provide the government perspective on policies which have inter-governmental implications.

Historically, the First Ministers' Conferences have been the main vehicle for intergovernmental relations, but the Federal government also deals with provinces on a bilateral basis. Some of the more common forums for interaction are listed below:

### ***First Ministers' Conferences***

The First Ministers' Conferences bring together Canada's most senior political leaders of federal government and provincial/territorial government. These conferences provide opportunity for governments to find common purposes and map general policy directions. They also facilitate a forum for the exchange of information and ideas, and for negotiation and persuasion. There is no regular schedule for the holding of these conferences and are called by the Prime Minister, whenever required. The 2015 conference, discussed Canada's approach to the negotiation for COP21 (climate change), resettlement of refugees, etc.<sup>13</sup>

### ***Annual Premiers' Conference (APC)***

APC is a full-fledged annual inter-governmental meeting, professionally supported by civil servants, preparing and receiving position papers, issuing communiqués, and launching projects to be undertaken by the relevant ministers. The last conference was organised in July 2015, which primarily focussed on energy and health issues.<sup>14</sup>

### ***Ministerial Meetings***

Ministers regularly meet at meetings, some of them institutionalised, which are often co-chaired by federal and provincial ministers. These are supported by strong bureaucratic support. Several such meetings have developed working relationships with interest groups involved in policy fields. Ministers regularly meet to discuss sectoral issues relating to Agriculture, Education, Environment, Finance, Health, Internal Trade, Sport, Tourism and Transport, to name a few.<sup>15</sup>

### ***Officials' Meetings***

Several meetings, formal and informal, are conducted between deputy ministers and/or other senior officials, which may be bi-lateral or multi-lateral. Some of them are listed below:

- **The Canadian Intergovernmental Conference Secretariat (CICS)**  
CICS provides the logistical work of organising conferences, distributing documents and press releases. It does not have a policy advisory role. CICS reports to Parliament through the Minister of Inter-governmental Affairs.
- **Federal/Provincial/Territorial (FPT) Agreements**  
The increasing roles of governments have required them to enter into agreements in relation to many activities, whether of federal, provincial or shared jurisdiction. FPT agreements give an idea of the scope of Federal-Provincial/Territorial collaboration in Canada.

### ***Council of Federation***

The Council of Federation was established in 2003 to facilitate formal horizontal cooperation between provinces. It encourages dialogue and consensus building between provinces. The Council functions as an umbrella organisation which seeks to improve the coordination of existing bodies. The Secretariat supports the Council and also reports to the Council of the Federation Steering Committee. The Steering Committee comprises of provincial and territorial deputy ministers of intergovernmental relations. The provinces and territories provide the funding for the Council on pro-rata population basis.

# Ethiopia

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## Introduction

The Federal Democratic Republic of Ethiopia (FDRE) was established in 1995 and comprises of nine autonomous states.<sup>16</sup> Ethiopia had been a unitary nation and federalism has developed through the Transitional Period from (1991-1995) which laid down basic mechanisms for devolution of powers. This included summoning of the National Conference, adoption of a Transitional Period Charter which outlined the basis of constituting states and devolution of powers on ethno-cultural grounds.<sup>17</sup> The Charter also led to the establishment of two orders of government - the Central Government and the regional self-governments. The transitional period lasted for three years and in 1994, the Constituent Assembly of Ethiopia ratified the Constitution bringing it to effect in 1995. It also created the legislature, executive and judiciary both at federal and the regional order of government.

The Ethiopian Parliament is bicameral in nature comprising of the House of Peoples' Representatives (HoPR) and House of Federation (HoF). The HoPR, which is the lower house, comprises of parliamentarians elected through direct elections.<sup>18</sup> The HoPR performs legislative functions falling under federal jurisdiction including labour law, commercial law etc.<sup>19</sup> The ruling party at the lower house forms the executive government headed by the Prime Minister and comprised of the Council of Ministers. The House also imposes checks on the Executive with the aim to ensure accountability of the Prime Minister.

The House comprises of representation based on at least one member and one additional representative for each one million of its population in the upper house or HoF. The members are elected by state councils and this House deals with non-legislative aspects such as self-determination of ethnic communities, inter-state disputes, division of revenue among others.<sup>20</sup>

## Federal Structure

Ethiopian federation is formed by nine 'regional states' carved on ethno-lingual basis and two chartered cities.<sup>21</sup> Of the nine regional states Southern Nations, Nationalities and Peoples (SNNP) is unique in that it is established as a federated entity to account for its very heterogeneous ethnic make-up. States further delegate functions to the district (woreda) and local governments (Kebele). States have the authority to establish their administrative institutions, enact and execute individual constitutions, formulate state policies, establish and administer state police force as well as levy and collect taxes and duties within their jurisdiction.<sup>22</sup> Legislative and Executive authority of the states lie with the Regional Council and includes council members representing their respective constituencies. The Executive Council is chaired by a President elected on simple majority.

At the district level, Woreda Councils consisting of directly elected representatives from each local region or kebele are responsible for functions including preparation of annual budget at district level and its implementation, collecting local taxes and levy such as tax on agricultural income and supervise public construction works at the local level etc. These Woreda Councils are accountable to the Regional Executive Committee and to its electorate.

## Inter-governmental Relations

Inter-governmental relations transpire through both formal and informal mechanisms in Ethiopia.

- **Constitutional**

**House of Federation:** HoF conducts intergovernmental relations at the horizontal level through two standing committees – Council of Constitutional Inquiry and Revenue Allocation Committee. Their objective is to facilitate cooperation between the Centre, State and provinces through dialogue and mediation. Their role also includes determination of division of revenues derived from joint Federal and States, decisions on subsidies among others.<sup>23</sup>

- **Statutory**

**Ministry of Federal Affairs:** It ensures equitable development through coordination and integrated effort of federal and regional bodies. It works towards ensuring sustainable and harmonious inter-governmental relations through exchange of best practices. The Ministry cooperates with federal and regional organs for maintenance of public order and coordinates with the states in cases of federal intervention.

- **Special Purpose Bodies**

**Council of Nationalities:** This was established in 2001 in the state of Southern Nations, Nationalities and Peoples (SNNP), for interpreting state constitution and helping in the functioning of the Council of Constitutional inquiry within its jurisdiction. The Council of Nationalities also seeks to promote peace and cooperation at the district level (Woreda) and local level (Kebele). Similar measures were adopted by states of Amhara, Oromiya and Tigray in the subsequent years to empower local governments including the municipalities and ensure effective service delivery of basic amenities and strengthening interstate and intra-state fiscal provisions such as transferring of revenues.

Intergovernmental relations in Ethiopia are also facilitated through national and regional economic and development programmes more and less through informal mechanisms. For instance, the Agricultural Development Led Industrialisation (ADLI) includes support for development of large-scale commercial agriculture. The Sustainable Development and Poverty Reduction Programme (SDPRP) serves as a policy framework for sustainable growth and poverty reduction by maintain macroeconomic stability in a decentralised framework.<sup>24</sup>

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# Germany

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## Introduction

Governed under the Basic Law for the Federal Republic of Germany 1949, Germany is a parliamentary democracy. The president as the head of state largely has a ceremonial position and is elected for a maximum of two five-year terms by a federal convention. The chancellor – head of the government – is elected for a four-year term.<sup>25</sup>

Federal legislative power is vested in a bicameral parliament. The Bundesrat, or Federal Council (the upper house), has 69 seats, with each state having three to six representatives depending on the state's

population. The Bundestag, or Federal Assembly (the lower house), has 598 deputies who are elected for four years using a mixed system of proportional representation and direct voting.<sup>26</sup> Additional seats are added when a party wins more seats through direct voting than it would have by proportional representation alone. Its executive bodies include the Council of Elders and the Presidium. The legislative authority of the Bundesrat is subordinate to that of the Bundestag, but the upper house nonetheless plays a vital legislative role.<sup>27</sup>

## Federal Structure

The federal legislature has powers of exclusive jurisdiction and concurrent jurisdiction with the states in areas specified in the constitution.

Germany is territorially organised into 16 federal states.<sup>28</sup> Of these, two states Berlin and Bremen are city-states where the state government discharges both state and municipal responsibilities. Each of the 16 states have its own constitution, legislature, and government, which can pass laws on all matters except those, such as defence, foreign affairs, and finance that are the exclusive right of the federal government. The *Bundestag* appears more influential than the *Bundesrat* in that it only needs the latter's consent for proposed legislation related to revenue shared by the federal and state governments, and the imposition of responsibilities on the states. In practice, however, the agreement of the *Bundesrat* in the legislative process is often required, since federal legislation frequently has to be executed by state or local agencies. In the event of disagreement between the *Bundestag* and the *Bundesrat*, a conciliation committee is formed to find a compromise.

The working relationships between the Bund and the Lander operate on three levels: the 'Whole State,' i.e. the level which comprises institutions in which both the Bund and the Lander are represented on terms of equal status; the 'Federal State,' the constitutionally organised structure of interrelationships between the Bund and Lander institutions, whose decisions are subject to majority voting rules; and the 'Third Level,' which is the level of horizontal coordination between the Lander themselves. Since Germany has a system of proportional representation for the election of its lower house, no one party wins an absolute majority of the seats and all German governments are therefore coalitions.<sup>29</sup>

The federal courts are courts of appeal, and are at the head of five legal hierarchies: Bundesgerichtshof (Federal Court of Justice), Bundesverwaltungsgericht (Federal Administrative Court), Bundesarbeitsgericht (Federal Labour Court), Bundessozialgericht (Federal Social Court, and the Bundesfinanzhof (Federal Tax Court).<sup>30</sup> Länder, or State courts, are the trial courts and also preside over appeals in the initial states. The BVerfG is divided into two panels, each consisting of eight judges. The first panel considers cases concerning basic human rights, while the other senate resolves constitutional disputes.

## Inter-governmental Relations

Germany is an integrated federation and the apex body for intergovernmental relations is the Bundesrat. The federal government passes framework legislation which the states are in-charge of administering and can expand on. Since states governments have direct representation in the Bundesrat, almost all legislation that has an impact on state administrations is reviewed very early on in the process by state governments.

## Conference of Prime Ministers

Beyond the Bundesrat, a structure of joint standing conferences, committees, and working groups brings together the specialised branches and desk-officers of the executives of the various Länder, sometimes also including their counterparts from federal ministries.

At the apex of this informal structure of intergovernmental cooperation between the Länder is the conference of Prime Ministers, where the heads of government come together regularly in order to coordinate their government activities. Below this, there is a structure of standing conferences of branch ministers from Land governments (with the relevant federal minister often invited as a guest). There is similar conference for each branch of government, in which ministers discuss and coordinate policies between the Länder (and often also with the federation).

## Coordinating Committees and Workgroups

In addition to the above, various departments and branches of ministries, specialising in the same matters, have their own coordinating committees and working groups. Federal officials participate regularly in these networks.<sup>31</sup>

## Other Mechanisms

### Vermittlungsausschuss (Mediation Committee)

The Mediation Committee is a joint body composed of representatives of the Bundestag and the Bundesrat. The need for this body emanates from the fact that interplay between the two chambers significantly modifies a legislative process that otherwise is typically parliamentary in character.

The chairpersonship of the Mediation Committee alternates every three months between a Member of the Bundestag and a member of the Bundesrat. Meetings of the Mediation Committee are strictly confidential; minutes of the meetings are not made available until the beginning of the second electoral term following the one during which the meeting was held, i.e. generally not until at least four years have passed.<sup>32</sup>

### Stabilitätsrat

The Stability Council (*Stabilitätsrat*) is a joint body of the German Federation (*Bund*) and the federal states (*Länder*). It was established in 2010 as part of the second stage of Germany's federal reforms and is enshrined in Article 109a of the Basic Law (*Grundgesetz*), Germany's constitution. Together with Germany's debt brake rules, the Stability Council strengthens the institutional framework for safeguarding the long-term sustainability of public budgets on the federal and *Länder* levels. Membership of the body is composed of federal and state finance ministers. The council also has an independent body of experts (Advisory Board) that assists the Stability Council in monitoring compliance with the upper limit on the general government structural deficit set out in the Budgetary Principles Act.

# South Africa

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## Introduction

The Constitution, which was adopted in 1996, demarcated South Africa into nine Provinces. It describes South Africa as a Unitary State with federal features. The Constitution has strong elements of federalism which is located within the context of a system of relations between the National, Provincial and Local government. Therefore South African Government is referred to as ‘cooperative government’.

The Constitution provides that all inter-governmental mechanisms should be exhausted before a dispute is brought to the Constitutional Court.

## Federal Structure

South Africa has a parliamentary system with the President as the head of the State and National government. It has a bicameral legislature, the National Assembly comprising of 400 members and the National Council of Province (NCOP) comprising of 90 members, ten members from each province.

Executive powers are exercised by the President elected from and by the National Assembly who in turn appoints a national cabinet. The National Cabinet comprises of the President, Deputy President and Ministers.

The powers and functions of Provincial and Local Government are derived from the Constitution and enjoy its protection. Provinces share legislative competencies with the states over issues mentioned in the concurrent list, amongst others, health, education and social welfare. The Provinces have the function of implementing national policies and have a large degree of autonomy in this regard. ‘Exclusive’ legislative powers residing with the provinces are limited and include culture, roads, veterinary health and sport, amongst other powers and functions.

The country is divided into 27 district and 283 local municipalities. Their powers and functions are derived from the Constitution.

## Inter-governmental Relations

There are a number of inter-governmental structures to co-ordinate national policy. An ‘extended national cabinet’ sets national priorities in cooperation with the provincial executive heads and representatives of local governments. The President’s Coordinating Council (PCC) comprises of premiers or heads of all provinces, National Ministers, including the President and South African Local Government Association (SALGA). Summitries of PCC tend to deliberate upon the formulation and implementation of national policy and legislation in the administrative divisions in alignment with national interests.

PCC also acts as a dispute resolving institution at an inter-provincial level and between the National and provincial governments.<sup>33</sup> PCC has been instrumental in encouraging local governments’ participation and assesses service delivery performances at each level.<sup>34</sup> However, as an informal body of facilitating intergovernmental relations, decisions of PCC are not binding or enforceable.

Separately, the Minister of Finance has a Budget Forum consisting of Provincial Ministers of Finance.

Further, institutionalisation of some ministries including **Ministry of Cooperative Governance** and Traditional Affairs to specifically deal with IGR reflect upon the strengthened process of cooperative federalism. National ministries presiding over specific subjects of concurrent list have established intergovernmental forums to coordinate policy and laws.

Constitutional provisions have also led to establishment of institutions to ensure service delivery to both orders of the government. The Public Service Commission was established to administer functioning of National and Provincial departments and public services.

The Council of Education Ministers (CEM) comprising of National and Provincial ministers of Education, function to promote the national education policy and coordinate in matters of interest mutual to both the Centre and the provinces. The Heads of Education Department Committee, as a separate intergovernmental body facilitates development and administration of the education system.

Administration of provincial boundaries and changes is facilitated through inter-governmental agreements (IGAs). IGAs, considered as political instruments are subject to 'implementation protocol' under the South African law but not susceptible to legal enforcement.<sup>35</sup>

Informal IGR at the sub-national level is practiced through the Forum of Provincial Directors-General consisting of Director-Generals of the provinces and local governments. The Forum of South African Directors-General (FOSAD) also comprise of Director-Generals of each sphere of governments and of all departments. FOSAD provides technical and administrative support to PCC and serves as forum for coordinating interdepartmental and intergovernmental relations over issues such as rural development and urban renewal.<sup>36</sup>

Subjects under the purview of concurrent jurisdictions are coordinated through institution of MINMECs - they are informal forums where national ministers and provincial Ministers Executive Council (MEC) with common sectoral responsibilities co-ordinate their activities. MINMECs are also advised by the national departments on concerned matter such as tourism, science and technology, environmental affairs etc.

The National executive of SALGA serves as the highest mediating authority between the national conferences and meetings of General Council. As a statutory body, SALGA plays a consultative role in matters pertaining to local governance. SALGA also has the authority to delegate 10 members to NCOP.

## **Council of Traditional Leaders**

South African Constitution's recognition of traditional leaders gives it a distinct identity. The Council of Traditional Leaders has bridged the gap between African traditionalism and indigenous law on one hand and democratic egalitarian constitutional ethos on the other.<sup>37</sup> Members of the Council are elected by Houses of Traditional Leaders of each province. This house has an advisory role in municipalities and is able to influence policy through its participation in the intergovernmental forums.

# Switzerland

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## Introduction

Switzerland has a long republican tradition. Its modern democratic Constitution dates back to 1848 and it is an early modern federation. The Constitution was updated twice, most recently in 1999. Switzerland is a bottom up federation where cantons came together to create a federation. The Federal Constitution defines Switzerland as a federal state composed of 26 cantons with far reaching autonomy. Switzerland is also a linguistically and religiously diverse country and this has had far reaching impact on its internal organisation.

Switzerland has a parliamentary form of government together with direct democracy. The bicameral parliament consists of the National Council and the Council of States (Senate). The executive consists of the seven members of the Federal Council, elected by a joint sitting of Federal parliament for a four-year term of office. Each member of the Federal Council heads one of the seven departments of the Federal Administration. The members of Switzerland's federal government are usually (re-)elected every four years in December after the parliamentary elections by both chambers of the federal parliament meeting together as the Federal Assembly. There is no legal limit to the total term of office, some federal councilors have been in office for over 20 years.<sup>38</sup>

The President of the Swiss Confederation is elected by rotation from among the Federal Councillors for a one year term and serves only as the *Primus inter pares*, the first among equals. He or she chairs Federal Council meetings and assumes special representational duties. Constitutional amendments are also subject to referendum through popular initiative requiring minimum 100,000 signatures. In certain cases, double majority, i.e. approval of majority of the people and of cantons is mandatory. In this sense, direct democracy acts as a check to federal functioning and allows citizens to enjoy a degree of political determination.

## Federal Structure

In Swiss federal state, the government, parliament and courts are organised on following three levels:

- Federal
- Cantonal (26 cantonal constitutions)
- Communal (in a few small cantons and in some 2500 small villages reunions of all citizens are held instead of cantonal and communal parliaments; local courts are usually common to several communities)<sup>39</sup>

As the country follows a bottom up nation building approach, the Central Government directly governs few selected sectors and the cantons have considerable political autonomy.<sup>40</sup> The Council of States ensures equal representation of Cantons and enables inter-cantonal partnerships to take place under its jurisdiction. Amendments can be proposed in either chamber and are discussed separately but in order to transform into a law, a relative majority of both the Council of States and National Council is required. The federal constitution reserves the areas of foreign relations, the army, customs examinations and tariffs, value added taxes and the legislation on currency, measure and weight, railways and communications to the confederation.<sup>41</sup>

The cantons along with some major cities have armed police forces, run hospitals and universities. Legislation on public schools is made by the cantons, resulting in 26 different education systems, but the public schools are actually run by the communes, much like many other public services (like water supply and garbage collection). The communes have tasks expressly assigned by the confederation or by the canton but they can also legislate when cantonal law does not specifically refer to issues that affect them directly.<sup>42</sup> The confederation, cantons and communes do collect income taxes to finance their affairs.

## **Inter-governmental Relations**

Cantons have influence on the national stage through the Council of States, one of two legislative chambers in Switzerland. Executive forums also play an active role in bringing together the central and cantonal governments. Of these, the Tripartite Conference of Agglomeration (TAC), founded by the federal government, the Cantonal Government Conference (Kdk/CdC), the Swiss Municipalities Association and the Swiss Cities Association, aim to facilitate cooperation among Switzerland's three levels of government on urban and regional policy. Founded in 2001, the TAC meets at least twice a year and brings together experts and policy makers. The board and the office of the TAC are run by the Cantonal Government Conference and it is a platform of the Federal government, cantons and communes collectively. Presided by the President, the Conference is primarily to look after cooperation in agglomeration related areas and incentivise rural areas for enhanced participation in the federal functioning.

### **IGR and Non Sectoral Cooperation**

Conference of the Cantonal Governments (KdK/CdC) was founded in 1993. The CCG's work concentrates on problems concerning 'governments as a whole' (i.e. non-sectoral issues). For instance the primary issues have been European policy, revision of the Constitution, reform of the allocation of tasks and financial equalisation. Cooperation between the CCG and the other conferences is regulated by a framework directive.

One of the CCG's main tasks is to help build consensus among the cantons and between the cantons and the federal government. The Conference also provides specialist knowledge (primarily recruited from the cantons) for cantonal participation in the federal arena. However, the CCG has no legal power to make decisions that bind the cantons. Accordingly, any canton can take individual action at any time in parallel or even in variance with the CCG's activities.

### **IGR and Sectoral Cooperation**

Cantons as well as local councils may formally establish joint (horizontal) organisations and institutions on their own initiative. The most long-standing conferences are those of the sectoral ministers. Today, there are 14 conferences of sectoral ministers in fields such as education, environment, spatial planning, public transport, and police. Each conference is composed of a plenary assembly, an executive board and an administrative office. All of the conferences have one or more plenary assemblies in a year. Sometimes, a member of the Federal Council is present as a guest. Each canton has one voice. Procedurally, unanimity is required. The conferences follow the model of 'consociationalism' and the principles of partnership. The administrative offices have in recent years developed into a permanent body with full-time staff.

### **Inter-Cantonal Relations**

Situated in Bern, the 'House of Cantons' provides a common platform to over 13 conferences in order to facilitate inter-cantonal relations through regular meetings and interaction<sup>43</sup> between the cantonal and central ministers. It provides for a common platform to express concerns regarding federal governance.

### **Other Mechanisms of IGR**

Besides conferences at inter-state level, regional inter-governmental conferences also play an important role in facilitating cooperation in areas more domestic in nature. The Directors' Conference is a political body formed through legally binding concordats.<sup>44</sup> Cantonal Ministers of various sectors through these conferences coordinate working of their respective sector at national level and assist local authorities in executing tasks that cannot be performed independently.

The most prominent example is the Conference of Cantonal Ministers of Finance, a forum for cantons to negotiate fiscal policy matters without central interference. Recommendations are collectively presented to the federal government and in this sense, the Conference has been highly instrumental in intervening in federal-cantonal relations to preserve individual interests. All fiscal matters need to be consulted with the Conference before reaching at a solution at the federal level.

### **Inter-Communal Cooperation**

Communes have been pivotal in producing as well as delivering services at the local level through inter-communal institutions. The inter-communal jurisdiction decides the extent of central control a commune can have in cases when communes cannot carry out service delivery provisions.

### **Swiss Association of Cities**

The Swiss Association of Cities serves to represent the interest of core cities, larger agglomeration of communes and regional centres.

## Session 2

# Concept Note on Fiscal Federalism

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### Introduction

The overriding issue in fiscal federalism is referred to as ‘the assignment problem’ that is the assignment of taxation, expenditure and regulatory responsibilities to various orders of government. The way in which assignment function is resolved then determines the sort of fiscal relations that should exist between orders of government.

Inter-governmental fiscal relations include the structure of transfers between orders of government, the division of the tax, and any requirement for one order of government to assert influence over the decisions taken by another by financial means. The decentralisation of functions also gives rise to both the desire and the opportunity for different governments to coordinate or harmonise their policies. Such coordination can occur horizontally among governments at the same order, or vertically between governments at different orders.

Instruments for inter-governmental fiscal transfers may either be rule based (finance commission grants) or discretionary (e.g. special purpose grants) and may be for different objectives. Such transfers may be used either to augment revenue capacity of constituent units or be aimed at expenditure equalisation. Often such transfers (both discretionary and rule-based) may be aimed to promoting regional economic development.

### Importance of Inter-governmental Relations in Fiscal Federalism

The inherent and inevitable interdependence among governments within federations on imposing, collection and sharing of revenues often gives rise to inefficiencies in governance or conflicts as some levels might collect more revenue but retain less and vice versa. Moreover, some levels may collect more revenue than their expenditure requirements at the expense of others. Disagreements may arise on revenue-sharing, the exercise of the federal spending power, the rationale for conditional and unconditional transfers to all or select states, and horizontal and vertical fiscal imbalances.

Most federations have found that reliance on rule based or discretionary grants to resolve disputes is insufficient, and that in many instances bodies facilitating consultation and co-operation between governments are a desirable alternative for managing interdependence and fostering co-operation, and dispute resolution. Expert institutions are also required to collect and process data on state of development of states and formulation of mechanisms of revenue sharing.

Intergovernmental Relations (IGR) within federations on fiscal matters take many forms and may be exercised through a variety of mechanisms, formal and informal, bilateral and multilateral.

### Objective

The purpose of this session is to:

- A) Understand the institutional and legal mechanisms for fiscal federalism and how they function in different federal contexts; and

- B) Identify lessons relevant to the Indian context
- C) Identify best practices on fiscal federalism in the context of key public services like health and education

## Overview

Presentations in this session will focus on the following areas:

- What are the constitutional or legislative divisions of fiscal powers among federal, state and local governments, how are these powers exercised and what are the deviations in *de-jurevs. de-facto* responsibilities?
- What is the assignment of spending and regulatory responsibilities?
- Does the division of powers follow subsidiarity principal, if not what are the underlying bases?
- What are the common values such as vertical equity, horizontal equity, relative emphasis on social services and regional development, access to the poor and disadvantaged groups, protection of women and minorities or support, for affirmative action.
- What are the existing mechanisms for fiscal transfers?
- How are the trade-offs between equity and efficiency and growth evaluated? What are the views about the role of the public sector and private market solutions to public services? What are the political preferences for solidarity and equalisation across jurisdictions?
- What kinds of controls are imposed on transfer payments and how is the effectiveness of transfers assured for instance are there administrative controls or effectiveness is assured through performance measurements (benchmarking)?
- What are the channels of federal influence on sub-national policies and vice-versa?
- Do higher level governments have the opportunity to intervene in spending decisions at lower levels?
- What are the areas of fiscal conflicts among different orders of government in the federation? What are the institutional arrangements to deal with these conflicts?
- What is the extent and nature of asymmetry among sub-national jurisdictions and any resulting asymmetry in fiscal arrangements (e.g. between states/provinces and ‘territories’).
- To what extent do fragmented internal markets impact economic growth and fiscal capacity of the various orders of government? How can incentives be designed to speed up market integration and improve economic efficiency nationally?
- What are the impediments to reform? What are the processes for building consensus and coalitions for reform?

## Country Notes (2A)

**Australia**

**Canada**

**Ethiopia**

**Germany**

# Australia

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## Mechanisms and Processes

Australia does not have a formal constitutional requirement for equalisation. Section 96 of the Australian Constitution provided for the federal government to ‘grant financial assistance to any State on such terms and conditions as [federal] Parliament thinks fit’. Equalisation payments to the Australian states are based on assessed fiscal capacity on both the revenue and expenditure side of state budgets. In other words, both the spending and taxing of the Australian states are considered in determining equalisation.

A wide range of factors are taken into account to determine the extent of payments. These include population size, age, and structure, per-capita income, the impact of geography on costs, the presence of indigenous peoples and the capacity of various tax bases.

The amount available for equalisation is now determined by the amount of Goods and Services Tax (GST) revenue. The GST rate and the base upon which it is levied can only be changed with the agreement of state governments and the federal parliament. Each state receives a per-capita share of the GST revenue plus an offset amount that reflects different expenditure and revenue needs and capacities relative to the average of all the states.<sup>45</sup>

## Institutions

The Commonwealth Grants Commission of Australia recommends how the revenues raised from the GST should be distributed to the States and Territories to achieve horizontal fiscal equalisation (HFE). It is an independent statutory body which responds to requests sent to it by the Commonwealth Treasurer. It makes its recommendations in consultation with the states and territories and based on data provided by them and independent statistical sources.<sup>46</sup>

The current framework for Commonwealth-State financial relations in Australia is set out in the Intergovernmental Agreement (IGA) on Federal Financial Relations. Legislative authority for payments made under the IGA is provided by the Federal Financial Relations Act 2009.

The IGA provides for general revenue assistance, including the on-going provision of GST payments in accordance with the principle of HFE, to be used by the States for any purpose; national payments for specific purposes to be spent in the key service delivery sectors; and national partnership payments to support the delivery of specified outputs or projects, to facilitate reforms or to reward nationally significant reforms.<sup>47</sup>

# Canada

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## Mechanisms and Processes

The Government of Canada provides financial support to provincial and territorial governments on an ongoing basis to assist them in the provision of programmes and services. There are four main transfer programmes: the Canada Health Transfer (CHT), the Canada Social Transfer (CST), Equalisation and Territorial Formula Financing (TFF).

CHT provides for a long-term predictable funding for healthcare, and supports the principles of the Canada Health Act which are: universality; comprehensiveness; portability; accessibility; and, public administration. CHT transfer payments are made on an equal per capita basis, and include both cash and tax point transfers. Starting in 2014-15, provincial and territorial CHT transfers will be allocated on an equal per capita cash basis only.<sup>48</sup>

The CST is a federal block transfer to provinces and territories in support of post-secondary education, social assistance and social services, and early childhood development and early learning and childcare. The CST is calculated on an equal per capita cash basis to reflect the Government's commitment to ensure that conditional transfers provide equal support for all Canadians.<sup>49</sup>

The Equalisation and TFF programmes provide unconditional transfers to the provinces and territories. Equalisation enables less prosperous provincial governments to provide their residents with public services that are reasonably comparable to those in other provinces, at reasonably comparable levels of taxation. TFF provides territorial governments with funding to support public services, in recognition of the higher cost of providing programmes and services.<sup>50</sup>

The Federal-Provincial Fiscal Arrangement Act, 1985 of Canada provides for Equalisation and TFF programmes. The purpose of equalisation programme was entrenched in the Canadian Constitution in 1982, which provides that Parliament and the government of Canada are committed to the principle of making equalisation payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.<sup>51</sup>

## Institutions

The Department of Finance, Canada administers major federal transfers to the provinces and territories. It coordinates with relevant departments and institutions at the Central and provincial level to enable timely delivery of transfers.

# Ethiopia

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## Mechanisms and Processes

Article 62 (7) of the Constitution of Ethiopia stipulates that House of Federation (HOF) would determine the formula on which the federal government gives subsidies (grants) to the states. HOF also determines the proceeds of the federal and state governments on the revenues collected from the concurrent taxes.

The Constitution also provides the possibility for the federal government to give direct assistance (and loans) to the states for emergency, rehabilitation and development purposes.<sup>52</sup> Such assistance/loan cannot be a hindrance to the proportionate development of the states. Once the federal government ascertains that the assistance and loan would not be a hindrance to the proportionate development of the states and provides the assistance, it is entitled to audit and inspect the subsidies it has conferred to the states.

Article 35 of proclamation No. 251/2001 (Consolidation of the House of Federation Proclamation) has also reaffirmed the fact that revenue sharing and subsidies are decided by the HOF and the latter would follow up whether they are implemented in accordance with its recommendations. The provision has also required the HOF to facilitate the undertakings of studies to promote proportionate development of the states and to enable states be independent from federal grants.<sup>53</sup>

The federal government has used a grant formula to distribute federal grants that take into account a composite of several indicative variables. These variables include population, composite index of level of development, sector performance and recently an index of poverty situation in the respective regions. The grant distribution formula has been frequently adjusted to improve fair distribution of resources and encouraging efficiency and effort of regional governments to mobilise resources from local sources.<sup>54</sup> Transfers from federal to provincial level comprise conditional, unconditional transfers and well as equalisation transfers.<sup>55</sup>

## Institutions

In sharing of revenues, taxes are grouped into three: central (that of the Federal Government), regional and joint. As far as collection of the revenues goes, the regional governments collect their own revenues whereas the Federal Government collects not only its own revenues but also the joint revenues. The HOF consults with experts and relevant departments to develop grant formula of transfers to states.

# Germany

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## Mechanisms and Processes

Germany's federal system is cooperative. All the fiscally important taxes are set by the Central Government, and the objective of redistributive horizontal and vertical transfers is to mitigate regional fiscal imbalances so that regional levels of public goods and services are similar. Essentially, transfers are channeled from relatively wealthy states to poorer ones. The level of the transfer depends on state-specific 'fiscal capacity' and 'fiscal needs'.<sup>56</sup>

In Germany, the federal, state, and local governments have shared rights in the joint taxes (income, corporation and value added tax). This means that the tax revenues have to be distributed among the different governments of the country. The designated government collects the tax and then transfers part of the revenue to the government that is entitled to receive a designated quota.<sup>57</sup>

A four-stage equalisation system assigns the joint taxes to the three government layers: i) Initial assignment of joint taxes by means of politically determined division rules; ii) Horizontal redistribution of state-specific revenues from value added tax (VAT); iii) Horizontal redistribution of fiscal revenues from financially strong states to financially weak states; and iv) vertical transfers from the federal to the state level. In addition, special needs grants compensate for special fiscal burdens some states have to bear. These grants are given lump-sum, regardless of fiscal or economic performance.

Germany's constitution holds that as long as a legislative competency is not assigned to the federal government the legislative power lies with the Länder (states). In the case of concurrent legislation the Länder can only exercise legislative power if the federal level does not use its legislative power. However, the federal government only obtains jurisdiction in this area if the protection of 'comparable living standards', as stipulated in the Constitution, require it.<sup>58</sup>

## Institutions

The legislation of joint taxes and the responsibility concerning the enforcement of the income tax law are assigned to different governmental layers. The tax-setting autonomy is allocated at the Central-level. Particularly, the Central-level defines both tax-tariffs and tax bases, while the states have no tax setting autonomy. The responsibility of tax enforcement, however, is delegated to the states.<sup>59</sup>

## Country Notes (2B)

Australia  
Canada  
Germany  
Switzerland

# Australia

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## Health

The healthcare system in Australia provides universal access to a range of services which are to a large extent funded publicly through taxation. 'Medicare' is the publicly funded scheme that provides universal access to free treatment in public hospitals as well as subsidies for medical services.

- **Service Delivery:** The responsibility of service delivery through public hospitals rests with the State/Territory governments which also take care of other related issues such as health promotion etc. The local governments also have a role to play through delivery of health care services including preventive health and immunisation.
- **Organisation of Health Workforce:** Both the Commonwealth as well as the State/ Territory governments have a role to play in the planning, education, training, health practitioner regulation and reform. Responsibility for national workforce planning is split between different jurisdictions.
- **Funding arrangements:** The Commonwealth provides a majority of the funding as well as private health insurance rebates to encourage people to take insurance policies. The States/Territories provide a majority of the funding for emergency care including ambulance services and follow-up community care services etc. The funding is shared between the Commonwealth and the States/Territories for public hospitals.
- **Shared Policy roles:** The Commonwealth mainly has the responsibility for primary care the States and Territories also play a role for instance, through community health centres. While the States/Territories are the system managers of the public hospitals, the Commonwealth has a policy role to play for instance through compensating the States and Territories for providing free care in public hospitals. This shared responsibility between the Commonwealth as well as the State/Territory can sometimes lead to overlapping mandates.

## Education

The Commonwealth and State/Territorial governments are jointly responsible for education in Australia. While the Commonwealth is responsible for funding and coordination the State/Territorial governments take care of the budgeting for individual schools.

- **Evaluation and Assessment:** The Council of Australian Governments and the Standing Council on School Education and Early Childhood work to ensure different levels of governments work together to create a national level evaluation and assessment framework.
- **Division of roles and responsibilities:** All the states/territories have a department of education responsible for government-funded primary and secondary schools. These departments make their own policies regarding school organisation, curricula, assessments, distance education, allotment of resources etc. However, the Commonwealth has a role to play in shaping school policy through agreements, funding arrangements as well as certain national bodies such as COAG Education Council.
- **In terms of higher education,** the decision making is shared between the Commonwealth and higher education providers with the former focusing on policy while the latter deals with accreditation of courses, quality standards etc. Educational goals are defined through intergovernmental arrangements between Commonwealth and State/ Territorial governments.

- **Funding:** Public schools are largely funded by State/Territory government and students attending these schools are entitled to free education. Non-government (private) schools receive a major part of their funding from the federal government and a smaller part from State/Territorial government. Higher education institutions are funded by the federal government through the Commonwealth Grant Scheme. A majority of funding for tertiary education comes from private sources while household expenditures also play a role.
- **Service Delivery:** The responsibility for managing government schools rests with the State/Territorial governments. This includes workforce management/planning/property management etc. The State/Territorial governments also have a role to play in overseeing the governance of higher educational institutions.
- **Vocational Education and Training:** Policy making is a shared responsibility between the Commonwealth and the States/Territories. The funding is also shared with States/Territories making a majority of the contribution. In terms of delivery, the responsibility rest with the States/Territories which administer and manage the programmes. There is a national regulator, the Australian Skills Quality Authority (ASQA) established in 2009, however Victoria and Western Australia did not agree to refer their regulatory authority to the said regulator.

## Canada

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### Health

Hospital and medical services are free for all provincial residents through single payer coverage plans administered by provincial governments.

- **Division of powers:** The federal government has jurisdiction over several areas such as patents, regulating patented drug prices, safety and efficacy of therapeutic products, health research among others. The administration of publicly funded health services rests with the provinces. In order to better manage their systems many provincial governments created regional health authorities (RHA's) which would operate at arm's length from the provincial government.
- **Decision making criteria:** The primary jurisdiction rests with the provincial governments. The Canada Health Act requires provincial governments to have in place a publicly administered insurance scheme for hospital and physician services without laying down the specific criteria for the same.
- **Subsidies:** The provincial governments provide a host of subsidies such as drug plans, long-term care and facility based nursing etc.
- **Centre-State cooperation:** In order to deal with issues of overlaps and interdependencies the provincial and federal governments work through a series of intergovernmental councils, advisory committees and working groups which report to the Conference of Federal/Provincial/Territorial (F/P/T) Deputy Minister of Health which in turn report of the Conference of F/P/T Ministers of Health. Interprovincial coordination and collaboration also occurs on common issues.
- **Tax distribution:** The provincial governments have taxation authority, however the extent of collections vary from state to state depending on the economic diversification and tax bases. Thus, the federal government brought forth the concept of a tax redistribution programme

called equalisation which would enable less prosperous governments to also provide public services to their population.

## Education

Education in Canada is the responsibility of provincial governments which take care of the organisation, delivery and assessment of education at various levels. There exist various differences between provinces in terms of the curriculum, assessment, accountability policies etc.

- **Division of powers:** The constitution provides for each province to exclusively make laws for education. Thus, in each of the 13 provinces the specific department or ministry is responsible for organisation, delivery and assessment of education at all levels of educational institutions.
- **Regional differences:** There exist various differences across the provinces in terms of curriculum, assessment criteria, accountability policies which take into account the specific needs of the particular geography.
- **Funding:** The funding for education is taken from the provincial government through a mix of provincial transfers and local taxes. The provincial regulations, which are revised yearly, state the structure of the grant and details the funding for each school depending on parameters such as number of students, location etc. Some funds are also received from the federal government for university research, student assistance, international education as well as indirect funding through certain programmes such as Established Programmes Financing (EPF) etc.
- **Cooperation between centre and provinces:** Since the nation does not have a central education policy but each province has a system of its own, organisations such as Council of Ministers of Education Canada (CMEC) play a role in cooperative development of policies. This helps meet the changing needs of the land as well as move towards standardisation.
- **Monitoring and Assessment:** This responsibility also lies with the provincial government, which results in multiple structures and systems in place and thus, a lack of standardisation.

# Germany

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## Health

Semi-autonomous public entities, which include healthcare providers having the responsibility and authority for healthcare. While these entities perform functions at a national level there also exist other entities with a similar composition that perform tasks at the state (Länder) and local (municipal) level.

- **Sharing of responsibilities:** The responsibility of execution of federal law is shared by the Centre and the Länder. The Joint Federal Board (Gemeinsamer Bundesausschuss) which operates at a national level has the responsibility to determine the benefits package of social health insurers and defining general guidelines for capacity planning of out-patient physicians. The Joint Federal Assessment Committee (Bewertungsausschuss) also operating at a national level determines the level of payment for outpatient physicians. On the other hand, the distribution of payments between family physicians and specialists is determined by the Association of Statutory Health Insurance Physicians (Kassenärztliche Vereinigung) at the state level. Responsibility for certain aspects such as hospital planning and financing of investment

costs for hospital infrastructure such buildings and medical equipment rests with the Länder which results in varied state laws.

- **Supervision mechanism:** The standards for supervision and control differ of social health insurers differ among states and also among states and central-level.
- **Fund raising:** Though subsidies through tax financing have increased, a majority of healthcare expenditure of social health insurance is still raised independently of taxes. Healthcare is financed mainly by contributions borne by employees and employers rather than taxes. Further, as federal taxes contribute towards financing of social health insurance, they enhance the decision making space for the central government. The 2007 health care reform introduced a central fund financed by income-dependent contributions and is administered by an autonomous federal agency. The contribution rate is determined by the federal government while prior to 2007 these were decided by individual social health insurers.

## Education

Under the Basic Law unless the legislative powers rest with the Federal government, the Länder have the right to legislate and this applies to the school, higher education, adult and continuing education sectors. Administration of the education system also largely rests with the Länder.

- **Division of power:** At the federal level, the Federal Ministry of Education and Research is responsible for policy, coordination and legislation regarding aspects such as out-of-school vocational training, financial assistance for students and admission to higher education institutions among others. Moreover, each Länder has the responsibility for its educational and cultural policy in accordance with the federalist principle. The constituent states have the joint responsibility for the entire state which requires them to work with each other as well as the federal government.
- **Cooperative framework:** Cooperation is ensured through various bodies including the Standing Conference of the Ministers of Education and Cultural Affairs (Ständige Konferenz der Kultusminister der Länder) was established in 1948 with the objective to serve as a forum of cooperation.
- **Funding:** Public primary and secondary schools are free of charge and the funding responsibilities are divided between the Länder, for recruitment and remuneration of teachers, and local authorities mainly for costs towards non-teaching staff and material. Länder are responsible for funding towards higher educational institutions which comes mainly from public sources. The autonomy given to these institutions is increasing and there is a shift towards target and performance based financing.
- **Vocational Training:** In terms of decision making on structure and substance, these are taken jointly by the Federation, Länder, employers and employees. There exists a well-established system of vocational training in Germany with cooperation between educational institutions, employers and other partners to create and adjust curricula.
- **Evaluation and Assessment:** While individual frameworks are present in each of the Länder the Standing Conference of Ministers of Education and Cultural Affairs (KMK) provides and overarching strategy. School supervisory authorities and institutes for school pedagogy assist education authorities for system evaluations and providing recommendations. There also exists a structured legal framework for external school evaluation and school supervisory authorities and in some cases institutes for school pedagogy are responsible for academic supervision.

# Switzerland

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## Health

Health insurance is mandatory for all persons living in Switzerland and premiums are to be paid per person. Thus, general taxation does not cover health insurance.

- **Interdependent competences:** Health policy is interlinked with social, financial and education policy which are under the legislative authority of the cantons or the confederations, thus creating a complex matrix.
- **Variation in systems:** Due to the existence of cantonal autonomy, the different cantons have organised their health systems in different ways resulting in differences in execution and implementation of federal law.
- **Coordination and Cooperation:** The Conference of the Cantonal Ministers of Public Health (CCMPH) plays a key role in coordinating between the federal government and the 26 cantons with the objective to promote cooperation between the cantons as well as the cantons and the confederation.
- **Shared competencies:** Prevention and promotion are the main areas where the cantons and confederation share legislative powers because of which this is not only decentralised vertically but also within the administration of the federal level.
- **Horizontal Federalism:** There exist four regional conferences of cantonal public health ministers for different parts of Switzerland. Each of these possess their own objectives, financial means, administrative structures and programmes through which cantons sign regional accords to regulate on various aspects such as hospital planning etc.
- **Financing:** Almost two-thirds of the health care system financing comes from private households and cantons are the most important players in terms of their control over allocation of resources.

## Education

The responsibilities for regulation, financing and execution vary based on the educational level and educational institution:

- **Varied Responsibilities:** Cantons are responsible for providing adequate, compulsory and free education to children through public schools. They are responsible for regulation as well as supervision of compulsory education. The responsibility of supervision and financing of the Baccalaureate schools and upper-secondary specialised schools rests with the cantons while both the confederation and the cantons are responsible for Swiss-wide recognition of the Baccalaureate. Vocational education and training falls within the regulatory capacity of the confederation while cantons are responsible for the implementation. A similar scenario exists for the tertiary level education with the confederation being responsible for regulation and the cantons for the implementation aspects. As per Federal Constitution, both the confederation and the cantons are jointly responsible for ensuring quality higher education.
- **Cooperation between cantons:** In case of issues where uniform solutions are required, these are regulated at a national level by Swiss Conference of Cantonal Ministers of Education (EDK) which comprises of 26 cantonal ministers responsible for education, culture and sport. Any task which entails regional cooperation are taken care of by EDK and in general the cantons' cooperation is regulated through a legally binding agreements.

- **Cooperation between cantons and confederation:** In case of areas of joint responsibility the cantons and confederations work together. The State Secretariat for Education, Research and Innovation (SERI) has the responsibility for issues on behalf of the Confederation.
- **Supervision and Monitoring:** As the responsibility for the education system largely rests with the cantons, there exist 26 different education systems in Switzerland. The supervision and inspection of schools rests with the cantons and is executed via the education authority. These vary in terms of their organisation, functions, roles and responsibilities and over time have largely focused on administrative and bureaucratic functions.
- **Financing of Education:** The division of authority is at three levels of confederation, cantons as well as communes. Both communes and cantons are responsible for recurring costs of schools within their jurisdiction. The responsibility for financing for the upper secondary level and university instruction lies with the cantons while the confederation participates in the funding for vocational education, university instruction and research.

## Session 3

# Concept Note on Horizontal and Vertical Cooperation on Maintenance of Public Order

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### Introduction

Public order is the paramount concerns for any nation. The purpose of public order is essentially to protect and enhance liberty, equality and justice. But different federations face different degree of challenges with regard to public order. Public order is also dependent upon strategic location of the country, the geography of its sub national entities, disparity across the country and degree of ethno - cultural heterogeneity. In the current times when the world is increasingly getting integrated through both physical as well as technological infrastructure - the need to ensure public order too has increased. Challenges like terrorism, internal strife, cyber-crime and money laundering amongst others have far reaching consequences on the safety and security of citizens and non-citizens alike. In some cases the very factors which necessitated a particular public order arrangement at the time of formation of the federation may not be as relevant while in other cases occurrence of specific events may have caused more centralisation or decentralisation of such measures.

### Importance of Inter-governmental relations in the domain of public order

Inter-governmental relations are crucial to ensure public order mainly because of their cross jurisdictional implications of ensuring public order. Different orders of the government need to coordinate, cooperate and share intelligence to combat security threats. There is often an increased need for integrated action in order to counter threats emanating from terrorism or such crimes as money laundering. The degree of public order could also be contingent upon the fiscal autonomy of sub national governments. Inter-governmental relations are also necessary in both cases, i.e. where decision making is more centralised as well as where it is more decentralised. At times disputes arise because of multiple agencies looking after the same concern. These agencies may be either constitutional or statutory and may have overlapping functions.

### Objective

Given the above the, the purpose of this session will be as follows:

- A) How different federal systems drawn from various parts of the world developed institutions, mechanisms and processes to ensure coordination, cooperation, sharing of intelligence and modernised their security forces in the context of changing threat perceptions.
- B) How do different developed and developing federations deal with some of the common global threats such as terrorism, money laundering, and cybercrime and design their legal tools to counter them.

## Overview

Presentations in this session will include:

### ***Constitutional and legal landscape with respect to security issues:***

- Do constitutions clearly demarcate responsibilities for levels of government?
- Is distribution of powers adequate?
- Administrative framework with respect to ensuring public order?
- Which agency is federal, which belongs to the sub national levels and what are their respective tasks?
- To what extent is public order measures based on convention, legal framework or court decisions and to what extent they are constitutional?
- Which level of the government have control over the police, paramilitary forces/central armed police forces and intelligence agencies and how is their coordination and cooperation ensured?

### ***Evolution of federal arrangement:***

- Does the system reflect original design/what are the specific events which brought about a change
- What are the specific events which brought about major changes in strategic approach to security and how change management is/was operationalised in security apparatus?
- Are the changes functional in nature?

### ***Others***

- To what extent is the public security system premised on the principal of subsidiarity?
- What is the degree of financial interdependence between different orders of the government?
- What are the mechanisms for oversight?
- How do different orders of the government manage coordination and cooperation and share intelligence
- Provide an overview of the consultative mechanisms whether formal or informal and their impact?
- How are integrated actions taken and how is overlapping is avoided?

# Country Notes

**Australia**  
**Germany**  
**South Africa**

# Australia

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## Coordination to Combat Organised and Serious Crime<sup>60</sup>

### *Legislative Framework*

Horizontal and vertical cooperation in Australia is for maintaining internal security and combating serious crime. Its criminal laws and law enforcement activities particularly deal with crimes such as corporate and financial crime, cybercrime and the trafficking of drugs and people across the border. States and territories are generally responsible for criminal law in relation to murder, assault, sexual assault, robbery, theft, handling of illicit firearms, etc.

### *Collaborative Mechanisms*

Relevant Agencies: Strong collaborative partnerships with the states and territories exist to tackle organised crime. These include active forums such as the Standing Committee of Attorney-General and the Ministerial Council for Police and Emergency Management. Further, the Australian Crime Commission, with oversight by a Board comprised of State, Territory and Commonwealth representatives has been constituted to facilitate specific, cooperative responses against organised crime. Similarly, joint agency investigations and intelligence arrangements between the Australian Federal Police and state and territory agencies have been also put in place.

To combat organised crime, the Attorney-General's Department is the central policy, legislative and coordinating agency for the framework. A range of other Australian Government agencies have also policy, operational, and regulatory responsibilities in combating organised crime, including Australian Crime Commission, the Law Crime and Community Safety Council, Australian Criminal Intelligence Forum and several other agencies at federal and provincial level.

Approach to coordination: To combat serious and organised crime, the Australian government has formulated an Organised Crime Strategic Framework, which identifies key organised crime threats and coordinates a whole-of-government response to them. Under the framework, an Organised Crime Threat Assessment (OCTA) is prepared to provide a shared picture among relevant stakeholders of the most significant threats and harms arising from organised criminal activity. The OCTA informs the priority areas of action and thus helps in the alignment of government resources to the priority areas of action. It also promotes information and intelligence exchange across Commonwealth agencies. An Organised Crime Response Plan (OCRP) is developed on the basis of OCTA, which details the multi-agency actions plans and deliverables against each priority. Such multi-agency action plans and approaches also engage state/territory and international partners to deliver a comprehensive response to specific organised crime threats. The OCTA and OCRP are produced on a biennial basis.

Coordination for gathering and responding to criminal intelligence: To gather and act upon criminal intelligence there exists the Australia Criminal Intelligence Forum (ACIF). It is made up of heads of intelligence from commonwealth, state and territory police. The ACIF has developed the Australian Criminal Intelligence Management Strategy 2012-2015 which recognises that the state, territory and federal governments have overlapping responsibilities with respect to criminal intelligence at local and national levels. There is also consistent methodology for the management of criminal intelligence.

## Coordination to Combat Terrorism<sup>61</sup>

In 2002, the commonwealth, states and territories entered into an agreement for taking whatever action is necessary to ensure that terrorists can be prosecuted under the criminal law, including a power to commonwealth to enact specific, jointly-agreed legislation. In order to balance powers between commonwealth, states and territory, it was agreed that such commonwealth legislation cannot override state or territory law where that is not intended. Any amendment based on the referred power will require consultation with, and agreement of, states and territories.

The commonwealth subsequently enacted legislation designed to enhance Australia's capacity to deal with terrorists. An inter-governmental agreement on counter terrorism laws was entered in 2004 to set out a process for obtaining the states' and territories' agreement to amendments and regulations which may be proposed in the legislation.

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## Germany

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### Police/Security Agencies

Police functions are divided between state and federal agencies namely the LKA (State Police) and the BKA (Federal Police).

- The LKA is the local police agency responsible for traffic accidents, investigating crimes, enforcing local laws and ordinances, and responding to local emergencies.
- The BKA is the federal police agency responsible for higher-level law enforcement actions such as protection as protection of head of the state, terrorism related criminal investigation, collecting and analysing national crime data, and other issues of national importance.

As per Article 73 (10), the federation has the exclusive legislative authority in the following areas, amongst others:

- a. criminal investigation,
- b. protection of the free democratic constitutional structure, its continuance and the security of the Federation or a State (protection of the constitution) and
- c. maintenance of a Federal Criminal Police Office and the combat of international crime”.

The federal agency is also responsible for counter terrorism. The federal agency is also responsible for border control, which is carried out by the Federal Police. All other police tasks are fulfilled by the state police.

Prison administration is run exclusively by the states and similar rules apply for the administration of the judicial system. Each state is responsible for the staffing, payment and maintenance of the courts in its region. The federal state is responsible for the highest courts which act as final appeal courts for the state courts and therefore ensure the uniform interpretation and development of law. The major codes in criminal law are all federal laws. Further, in criminal matters the German system relies on inquisitorial procedures.

In addition, collaboration in police functioning exists due to the following three elements:

1. At the General Conference of the National and State Interior Ministers substantial aspects of the policy of internal security are agreed upon and coordinated;
2. The standards for the central criminal law, law of criminal procedure and traffic law are the same for all police forces and thereby lead to a large extent to a standard police assignment, and
3. The upper service level of all German police force is trained together at the German Police University in Münster, where the basic understanding of police activity and management is harmonised.<sup>62</sup>

## South Africa

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### Cooperation and Coordination Mechanisms at National Level

Government in South Africa, while distinctively structured nationally, provincially and locally is interdependent and interrelated in an effort to facilitate the delivery of essential services including that of policing and safety for all.

The South African Police Service (SAPS) is South Africa's principal law enforcement service. The National Commissioner heads the SAPS. Deputy National Commissioners and Provincial Commissioners report to the National Commissioner.

The Minister of Police is responsible for policing in the Republic. In meeting this responsibility, the Minister determines plans and sets national policing policy, priorities and budget. In doing so, the Minister takes into account the policing needs and priorities of the provinces as determined by the provincial executives and directs the National Commissioner of Police accordingly. The Minister is supported by the Secretariat for Police, in giving effect to his/her responsibilities and obligations.

The functions of National Commissioner of Police include prudent budgeting, financial management, and the proper control of police resources, including human resources to meet pre-determined goals and objectives as determined by the Minister of Police in consultation with the provinces.

The Constitution established a Civilian Secretariat to assist the Minister with the management of the South African Police Service. Its objectives include implementing, promoting and aligning the operations of the Secretariat at national and provincial spheres of government, and coordinating the functions and powers of the Secretariat at national and provincial spheres of government. The Civilian Secretariat for Police has the responsibility for the alignment of provincial strategic and annual performance plans with that of the National Secretariat and the integration of strategies and systems of the various spheres of government. Furthermore, there is to be a strong emphasis on collaboration between the provincial and national secretariats in the areas of research, monitoring and evaluation as well as partnerships to direct and guide anticipated and specific outcomes.

### Cooperation and Coordination Mechanisms at Provincial Level

Provincial governments play a critical role in the monitoring of police conduct and the quality and focus of police service delivery, as well as promoting good relations between the police and communities. The monitoring and oversight role played by the Provincial Secretariats is important as it generates inputs that inform the strategic approach.

## Cooperation and Coordination Mechanisms at Municipal Level

Each municipality is responsible for promoting a safe and healthy environment within its financial and administrative capacity and in line with national and provincial priorities. The democratisation of policing in South Africa has created the opportunity for safety and security reform and integrated policy aimed at transforming local policing and introducing improved safety and crime prevention strategies.

## Session 4

# Concept Note on Green Federalism

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### Introduction

Green federalism or environment federalism has gained significant currency in recent times due to concerns about climate change and the need for sustainable development. This is because the pressures of globalisation have led to a greater human impact on our natural surroundings. The concept of environmental federalism requires an examination of the appropriate jurisdiction for the management and provision of environmental goods and services. This is because of the following reasons. First, most constitutions were written before environmental issues or sustainable development became central to public policy formulation and are therefore environmentally 'blind'. Second, because the 'environment' touches on a multitude of sectors which fall in within the jurisdiction of different governments (for example fisheries management may fall within federal jurisdiction, but agriculture and mining may fall within state jurisdiction), it has become important to coordinate policy development for overlapping areas of responsibility.

Given the cross border impact of environmental issues, it would seem natural for national (federal) governments to take on the role of establishing framework regulations.

At the subnational level, state and local governments have important roles to play in ensuring proper design and implementation of programmes that meet their objectives.

### Importance of Inter-governmental Relations in Green Federalism

Whereas the environment is a holistic concept, federalism is based on the very concept of segmentation. Within a federal framework, there can be uncertainty on how best to legislate for and regulate issues surrounding the environment, and more specifically climate change, due to the perception of the environment, as unitary and global, versus the nature of federal structures, which advocate decentralisation and the division of power. Federal systems could have the advantage in dealing with such challenges as they can facilitate more broadly distributed responsibilities, power and authority. The challenge however arises in practical terms when decisions have to be made on how to share responsibility or due to the lack of capacity at one level of the government or the other.

Further, since most Federal constitutions do not demarcate environmental jurisdiction, Federal and Provincial legislation largely govern approaches towards the environment. However, the constitutional structure in each country determines how legislation is developed and how it is applied. Federal regulation often acts as a signal to states. States may perceive this signal to mean more stringent regulation is necessary. Alternately, states may understand federal regulation to be a maximum standard or states may believe federal legislation crowds out state action. In some cases, states have reacted to federal environmental policy by enacting legislation to limit state agencies from enforcing standards more stringent than federal standards. States may also adopt radically different policies as a result of perceived weakness in federal legislation. Lastly, limits on state and federal power have often shaped environmental regulation. Federal law may pre-empt state legislation in issues of interstate commerce or navigable waters. Federalism doctrine limits federal power as well.

Different federal structures have dealt with environment differently depending on the structure of government, the stage of development and the maturity of environmental governance. In environmental decision-making, the two dominant models of federalism are that of collaboration and competition. They both have their own limitations: for example cooperation may not lead to competition and without competition efficiency may not be achieved.

## Objective

The purpose of this session would be to:

- Illustrate through comparative experience how federal countries have achieved coordination, or not, on issues related to the management, protection and regulation of environmental policy.

## Overview

Presentations in this session will include:

- Is environmental federalism a part of constitutional scheme?
- What are the responsibilities of federal, sub national and local governments/bodies in environment protection?
- What are the main areas of environmental disputes in other countries?
- Is multilevel or federal governance system really an advantage in green federalism?
- What is the extent to which devolution of environmental policy and governance power happens in other countries
- What kind of regulatory and monitoring framework exists in other countries towards protection of environment?
- Should green federalism be strictly based on the principal of subsidiarity?
- Between competitive and cooperative, which model suits what kind of federation?
- What is the role of judiciary in environmental protection in other countries?

# Country Notes

Australia  
Canada  
Germany  
Switzerland

# Australia

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## Environment Federalism

In 1999, Australia passed 'Environment Protection and Biodiversity Conservation Act' (EPBC), which set the foundation for environmental protection in the country. However, The EPBC Act is not the sole means of providing biodiversity and heritage protection.

## Environment Protection and Biodiversity Conservation Act

EPBC Act clearly demarcated the responsibilities of the Commonwealth by enlisting the 'Matters of National Environmental Significance' (MNES). The MNES specified the scope of the Commonwealth on environmental matters. The EPBC Act also sought to eliminate redundancies of roles and functions between the governmental levels by providing bilateral agreements. These agreements allowed the Commonwealth to delegate authority to undertake assessment and approval in relation to MNES to the States.

## Intergovernmental Links

The COAG in 1992 set out the agreement on the roles and responsibilities of each level of government in Australia. The Intergovernmental Agreement on Environment (IGAR) and other legislations, specifies the roles of the Commonwealth, states and local bodies, which are given below:

### *Commonwealth*

The Commonwealth hold the responsibility for the management, including operational policy, of living and non-living resources on land which the Commonwealth owns or which it occupies for its own use. Under the EPBC Act, an Environment Assessment (EA) is required if an "action" is likely to have a significant impact on matters of national significance such as heritage sites, wetlands of international importance, threatened species etc.

### *States*

The States have responsibility for:

- developing and implementing policy in relation to environmental matters which have no significant effects on matters which are the responsibility of the Commonwealth or any other State;
- the policy, legislative and administrative framework within which living and non-living resources are managed within the State;
- developing Australia's position in relation to any proposed international agreements of environmental significance which may impact on the discharge of the State's responsibilities; and
- participating in the development of national environmental policies and standards.

At the State level, EA is generally comprehensive covering all proposals deemed likely to have a significant effect on the environment. Each State has developed its own thresholds of significance both for screening (whether an EA is required or not) and for significance of impacts.

### ***Local Bodies***

The IGAE also provides that Local Government has a responsibility for ‘the development and implementation of locally relevant and applicable environmental policies within its jurisdiction in cooperation with other levels of Government and the local community’, and an interest in:

- (i) the environment of their localities and in the environments to which they are linked; and
- (ii) the development and implementation of regional, state-wide and national policies, programmes and mechanisms which affect more than one Local Government unit.

## **Canada**

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### **Environment Federalism**

Although the Canadian Parliament has the power to legislate with regard to Federal properties and works, its legislative authority in environmental matters remains largely indirect and limited. In Canada each level of government can legislate in environmental matters. The constitutional foundation for the role of the provinces on environmental issues is based, in particular, on provincial ownership of natural resources.

### **Environmental Policies**

In response to the emerging concerns of citizens about the initial visible impact of economic growth on the quality of the environment, the two levels of government mobilised at the end of the 1960s to implement the first real public policies on the subject. The Fisheries Act constituted the principal justification for Federal regulations pertaining to the environment. The Federal Department of the Environment left the responsibility for applying and enforcing Federal standards to the provinces and maintained its role of developing those ‘national’ standards.

The adoption of the Canadian Environmental Protection Act in 1988 and the Canadian Environmental Assessment Act in 1992 marked a significant change in the balance of Federal-Provincial relations regarding the environment. The late 1980s also saw the establishment of the first formal intergovernmental cooperation forum in environmental matters, the Canadian Council of Ministers of the Environment.

### **Intergovernmental Linkages**

The Canadian courts have confirmed that the environment is not a single matter falling entirely within either federal or provincial jurisdiction. The provinces derive their authority over environmental matters mainly from their powers over property, natural resources, local government, and public lands. The federal government can act using its jurisdiction over criminal law, navigation, fisheries, interprovincial and international trade, and, more broadly, its general power to legislate for ‘Peace, Order and good Government.’

Provincial environmental laws are based on provincial constitutional powers, such as over municipalities, local works and undertakings, property and civil rights, provincially owned (public) lands and natural resources. Each province has its own environmental statutes such as Environmental Protection Act (EPA), Resource Act, Water Act, Environmental Assessment Act, et al. Where there is a

direct conflict between federal and provincial environmental statutes in relation to the same matter, federal law prevails, but such conflicts are rare, and overlapping requirements are common.

Both federal and provincial governments established environmental departments in the late 1960s and early 1970s, creating a competitive dynamic in which both orders of government legislated and in which programmes often overlapped, contradicted, or complemented each other. The Canada-Wide Accord on Environmental Harmonisation was signed in 1998 by the federal government and all the provinces and territories, except Quebec. It emphasises consensus-based decision making and single-window delivery of services.

Every jurisdiction has an environmental ministry of some form, but environmental responsibilities can be widely shared within each government. For example, under federal environmental laws, the following Ministers are responsible for administration of the principal statutes: Minister of the Environment; Minister of Fisheries and Oceans; Minister responsible for Parks Canada; Minister of Health; and Minister of Transport.

The provinces often have similar duplication, and municipal governments also regulate many environmental activities. In Canada, regulators, abatement officers and government ministers generally have broad discretionary powers. Decisions regarding permits must generally consider the ‘public interest’ and economic issues as well as environmental ones.

## Environmental Assessment

The Canadian Environmental Assessment Act 2012 (CEAA) introduced new criteria to identify the projects that will require assessment. A federal EA will only take place if a project is of a type specifically listed in the Regulations. In most cases, a federal EA will not be conducted if an equivalent provincial EA process is also available. This measure purports to reduce duplication, although provincial and federal EAs may not always cover the same subject matter.

Most provinces also have environmental assessment requirements. Under CEAA, the responsible federal authority identifies the governmental bodies to be involved and plans the environmental assessment. The provincial ministers have discretion to order a more detailed individual EA of a controversial project. Provincial environmental assessments also include some environmental investigation and public consultation. Public consultation is mandatory at different stages of an environmental assessment, including a growing duty to consult with aboriginal groups. The decision-maker must consider public comments and either order additional study or approve or deny the project.

# Germany

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## Environment Federalism

The Environmental policy-making function involves all levels of government in different roles. Legislation is primarily a federal function with strong rights of co-decision on Länder governments and the executive function is Länder’s stronghold. According to the constitution, the Länder hold the residual legislative competence while the competences of the federal level are secondary and derived from Länder.

## Environment Policies

The German Federal Constitution divides legislative competences concerning environmental protection between the Federal Republic and the Länder level. All important subjects of environmental law are covered under federal laws for instance Federal Emission Control Act (2002), the Federal Act on Nature Conservation and Landscape Management (2010), the Water Resources Act (2010), the Closed Substance Cycle and Waste Management Act, the Town and Country Planning Act (2008), the Federal Soil Conservation Act (1998), the Federal Hunting Act (1976), the Animal Protection Act (2006) and the Gene Technology Act (1993).

## Intergovernmental Links

The tripartite system of governance provides opportunities for formulation, implementation, and financing of environmental actions and programmes. EU Directives and national legislation guide the legislation in Germany. While the Local bodies follow the broad mandates of the states, they have considerable autonomy.

Some Länder integrate specific ecological aspects, such as mining externalities while determining fiscal needs of Local bodies. Others incorporate ecological functions in their fiscal equalisation structure through conditional grants for measures related to sewage disposal, water supply and waste disposal, remediation of contaminated sites, etc. There are also some limited examples of fiscal equalisation laws that incorporate water and landscape conservation.

## Environment Assessment

Federal government is responsible for guiding legislation for EIA. Lander may have additional EIA legislation in place to evaluate proposals. The method mostly used for environmental assessment in Germany is the 'ecological risk analysis'. Environmental impacts are assessed for the factors like soil, fauna, flora, biodiversity, population, human health, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelations between the above factors. All these factors have to be identified, described and evaluated. In addition, some of the other procedural regulations are the Environmental Audit Act (2002), the Environmental Information Act (2004) and the Environment Legal Remedies Act (2006).

# Switzerland

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## Environment Policies

The Swiss Constitution contains provisions relating to protection of nature, flora, and fauna as a cantonal concern and the protection of environment against harmful acts, such as air pollution and noise as a concern for Confederation.

## Inter-governmental Links

Subsidiarity principle applies to environment administration. Environment matters are dealt at three competence levels of federal, cantonal and communal administrations. All levels have the powers to

introduce laws and regulations on environmental issues. Implementing regulations at the cantonal level concerning EIA requires approval of the Federal Council. Permits for new building and plants are issues in active involvements of communal and cantonal levels. The Confederation supervises and coordinates the execution of environmental legislation by cantons.

Cantons are responsible for enforcement of environmental laws. Each canton has the autonomy to decide on the enforcement mechanism for the environmental legislations and carrying out inspections. Their increased autonomy also creates opportunity to increase cooperation with each other. The system of fiscal equalisation supports cantons with weaker economies. This system is aimed at making cantons use their autonomy to deliver efficiency, quality, innovation, and to achieve the best outcomes for their inhabitants and their economy.

## Environment Assessment

Environment Impact Assessment (EIA) is requested for projects which can affect the environment. There are specific types of installations that have been enlisted considering their impact on environment. These have been classified in eight categories of transport, energy hydraulic infrastructure, waste disposal sites, military buildings and infrastructure, sports tourism-leisure, industry and other installations. The Environmental Impact Report (EIR) is jointly evaluated by the federal and cantonal authorities.

## Some Key Pointers on Distribution of Responsibilities

Environmental effects often spill over from one jurisdiction to another. Some of the key pointers in this regards are mentioned below:

**Federal Framework and Mainly Cantonal Implementation:** Federation has a duty to protect the environment and the cantons are only responsible for the implementation of the relevant federal regulations, except where statute reserves this duty for the federation.

**Division of Powers:** The cantons have power to decide on land use in specific locations. The federation has powers over matters related to environmental aspects, such as alpine transit traffic, energy policy, nuclear energy, and agriculture policy.

## Endnotes

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- <sup>1</sup> [http://www.aph.gov.au/About\\_Parliament/Work\\_of\\_the\\_Parliament/Forming\\_and\\_Governing\\_a\\_Nation/par](http://www.aph.gov.au/About_Parliament/Work_of_the_Parliament/Forming_and_Governing_a_Nation/par)
- <sup>2</sup> [http://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Powers\\_practice\\_and\\_procedure/00\\_-\\_Infosheets/Infosheet\\_20\\_-\\_The\\_Australian\\_system\\_of\\_government](http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets/Infosheet_20_-_The_Australian_system_of_government)
- <sup>3</sup> <http://www.australia.gov.au/about-government/how-government-works/state-and-territory-government>
- <sup>4</sup> <http://www.australia.gov.au/about-government/how-government-works>
- <sup>5</sup> [http://www.abc.net.au/ra/federasi/tema1/aus\\_pol\\_chart\\_e.pdf](http://www.abc.net.au/ra/federasi/tema1/aus_pol_chart_e.pdf)
- <sup>6</sup> *Ibid*
- <sup>7</sup> <http://www.coag.gov.au/>
- <sup>8</sup> Strengthening Australia's Cooperative Federalism, Council for the Australian Federation, May 2009
- <sup>9</sup> <http://www.caf.gov.au/aboutus.aspx>
- <sup>10</sup> <http://www.aph.gov.au/binaries/library/pubs/rn/2001-02/02rn43.pdf>
- <sup>11</sup> [http://www.directory.gov.au/directory?ea0\\_1fz99\\_120.&&cf654a6c-a5f2-4b6c-a528-84fc2610d442](http://www.directory.gov.au/directory?ea0_1fz99_120.&&cf654a6c-a5f2-4b6c-a528-84fc2610d442)
- <sup>12</sup> The ten provinces are: Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta and Newfoundland & Labrador. Three territories include: Northwest Territory, Yukon and Nunavut.
- <sup>13</sup> Prime Minister of Canada Website, <http://pm.gc.ca/eng/news/2015/11/23/prime-minister-hosts-first-ministers-meeting>
- <sup>14</sup> Canada's Premier Website, <http://www.canadapremiers.ca/en/meetings-events/76-2015/438-summer-meeting-july-15-17-2015-st-john-s-newfoundland-and-labrador>
- <sup>15</sup> Intergovernmental Affairs, Canada Website, <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=relations>
- <sup>16</sup> <http://www.ethiopia.gov.et/web/Pages/GovernmentOverview>
- <sup>17</sup> Tewfik H, Forum of Federation "Transition to Federalism: The Ethiopian Experience" p 5
- <sup>18</sup> Tewfik H, Forum of Federation "Transition to Federalism: The Ethiopian Experience" p 19: [http://www.forumfed.org/pubs/occasional\\_papers/OCP5.pdf](http://www.forumfed.org/pubs/occasional_papers/OCP5.pdf)
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