

A GLOBAL DIALOGUE ON FEDERALISM

THEME TEMPLATE

Legislative and Executive Governance in Federal Countries

This theme draws on the following countries as case studies: Canada; the United States; Federal Republic of Germany; Australia; Switzerland; India; South Africa; Malaysia; Russia; Nigeria, Austria and Argentina.

GENERAL

In all federations, institutional arrangements are needed through which government decisions are made and put into effect. In some respects, the questions that arise are shared with any system of government, federal or not. The institutions must be recognised as legitimate by the people they serve; they must work effectively; they should be appropriately accountable; the formidable power of the state should be dispersed between them. In a federal system, however, additional questions arise and some old questions take on additional meaning. By definition, institutions must be established for the constituent parts of the federation, as well as for the centre. This raises questions about which institutions should be separate and distinct, and which, if any, should be shared. Many federations exist to serve the needs of diverse peoples. In such cases, particular attention must be paid to designing institutions that will be accepted as legitimate, in all spheres of government. In any federation, the complex interaction between the principles of federalism and the principles of representative (and in some cases direct) democracy inevitably raises questions about the operation of each.

The purpose of this theme is to examine the range of governing institutions used in 12 very different federal or federal-type countries; to consider their rationale and effectiveness; to explore their interrelationship with federalism. Consistently with the purpose of the global dialogue, to assist countries to learn from each other's experiences, country chapters should explain not only the formal institutional arrangements but also their operation in practice, to enable them to be adequately understood. This template provides a guide to the information that each chapter should contain. Questions that are irrelevant to any country should be ignored. If the template omits questions relevant to a particular country, however, or takes an unduly narrow perspective, please let the theme coordinators know, so that the template can be adjusted accordingly, to make the outcomes as useful as possible. In addressing the issues raised in the template, please bear in mind that whilst a clear description of the constitutional and political reality in each system (parts A-L) is essential, the analysis and conclusions (parts M-N) are perhaps the most important parts of the chapter.

Some **cross-cutting questions** that should be covered at some point in each country chapter and that should guide the development of the chapter include the following:

- Why is this country a federation? To what extent and how are these reasons for federalism reflected in the design and operation of institutions?

- Are the institutions generally accepted as legitimate by the people that they serve? Are there any significant indications to the contrary, which might or should lead to change? To what extent is the system overall characterised by the rule of law?
- Does this country tend to prefer governing arrangements that facilitate the exercise of public power or arrangements that limit and control public power? Is there a preference for effectiveness and efficiency, or checks and balances?
- Are the institutions of the centre and the constituent parts of the federation separate and distinct from each other? To what extent and how is co-operation encouraged? To what extent and how do institutions serve more than one sphere of government? To what extent and how is power shared within central institutions?
- What is the impact of the institutional arrangements on the operation of federalism?
- What is the impact of federalism on the operation of representative government?
- What is the impact of electoral system/s on the operation of legislative and executive institutions?
- To what extent is there a ladder of political office in central and constituent unit legislatures and executives? What are the roles and relevance, if any, of incentives for office, patronage, and corruption?
- To what extent does the operation of institutions in practice diverge from the formal framework for them?

A INTRODUCTION

- Briefly describe some key features of the country, to assist understanding of your chapter. What is its population size? What is the size of its territory? Are there any characteristics of the territory relevant to the structure and operation of the federation? How many constituent units are there? How do they compare to each other, in terms of size, wealth and national influence?
- Briefly describe some key features of the system of government. Does it rely exclusively on representative government, or is there an element of direct democracy? Is it a republic, or is there still some form of monarchy? Is the legal system based on the common law, on civil law, on another legal system or on a combination of influences? Is the system of government stable, recently established, or unsettled?
- Provide a very brief overview of the institutions of government that exist in this country, to enable the more detailed material that follows to be put in context.

B THE PEOPLE

- Is the population basically homogenous? Are there significant differences between segments of the population in terms of religion, language, ethnicity, or anything else? If so, do these differences help to explain why a federal form of government was established?

- On what bases are the boundaries of the constituent units drawn? In particular, what relationship, if any, do they have to differences between segments of the population?
- Do people principally identify with the country, with their constituent unit, with both or with neither?
- Do people consider themselves as citizens of the constituent units, as well as of the country as a whole?
- Are there significant minorities within constituent units?
- In general, are there any other aspects of the constitution and distribution of the population in this country that can assist understanding of why the institutions are established as they are, and how well they work in practice?

C HISTORY

- To what extent and how does history explain the choice of institutions in this country?
- Did the constituent units precede the centre as organised polities, or vice versa? Did the institutions first established in one influence the choice of institutions for the other?
- Has there been a history of conflict between peoples or regions in this country, which the federal system is designed to resolve? If so, to what extent does this history explain the choice of institutional arrangements?
- Are there any other aspects of the history that can assist understanding of the structure and operation of institutions of government?

CENTRAL INSTITUTIONS

D THE CENTRAL LEGISLATURE

1. General

- What are the functions of the legislature, in theory and practice?
- Is the legislature bicameral or unicameral?
- What is the extent and nature of the relationship between the legislature and the executive branch?
- Is the Head of State a constituent part of the legislature or does he or she play any other part in the law making process?
- Are there any power-sharing or consociational arrangements built in to the institutional design of the legislature? For example, rules requiring the inclusion of minor parties or representatives from all constituent units in parliamentary committees, inquiries, etc.

2. Lower House

- In accordance with what principles is the lower House composed? What electoral system is used?

- What is the rationale for the manner in which the lower House is constituted? What (if any) is the influence of federalism?
- Who makes the electoral rules for candidates and voters for the lower House? Within what parameters?
- In practice, what is the usual pattern of membership in this House? What effect does it have on the operation of the House?
- What is the term of this House? Is it fixed, or can it be terminated early?

3. Upper House

- In accordance with what principles is the upper House composed? What electoral system is used?
- What is the rationale for the manner in which the upper House is constituted? What (if any) is the influence of federalism?
- If this House was conceived as a federal House, what was that expected to mean? In practice, what role does this House play, from the perspective of federalism?
- Who makes the rules for selection of members of the upper House? Within what parameters?
- In practice, what is the usual pattern of membership in this House? What effect does it have on the operation of the House?
- What is the term of this House? Is it fixed, or can it be terminated early?
- What are the powers of this House, vis-a-vis the other House?
- How are deadlocks resolved?

E THE CENTRAL EXECUTIVE

1. General

- What are the functions of the executive, in theory and practice?
- Is the system best described as presidential, semi-presidential or parliamentary?

2. Constitution of the political executive

- How is the political executive selected?
- What, if any, is the influence of federalism, on the design of the executive?
- What, if any, is the influence of federalism on the way in which the executive is constituted and operates in practice?
- Who makes the rules for the selection of the executive? Within what parameters?
- Are there any power-sharing or consociational elements in the constitution of the political executive? For example, requiring a multi-party executive or a central executive that contains representation from all regions or ethnic groups. If so, do these requirements tend to result in consensus or conflict?

3. Head of State

- Is there a separate Head of State?
- If so, what is the role of the Head of State?
- Does the Head of State play a role in relation to all spheres of government?
- How is the Head of State selected?
- What, if any, is the influence of federalism on the design of this office?
- What, if any, is the influence of federalism on the way in which this office operates in practice?
- If there is no Head of State, who performs the role of the Head of State? Who controls the armed forces?

4. Administration

- Does the scope of central administration mirror central legislative responsibilities?
- What is the relationship between the administration and the executive branch?
- What is the relationship between the administration and the legislature?
- What is the influence of federalism on the structure, composition and function of the administration?

5. Other institutions

- Are there other central agencies that are influenced by the federal character of the polity (eg central bank)?
- Are there other central agencies that have a specific federal role? (eg fiscal equalisation commission)
- Does federalism affect the structure or operation of central regulatory agencies?

F THE CENTRAL JUDICATURE

- Can courts declare actions of the central executive invalid, on constitutional and/or other legal grounds? Which courts?
- Can courts declare actions of the central legislature to be invalid, on constitutional and/or other legal grounds? Which courts?
- How is the federal nature of the system reflected in the structure of the judiciary?
 - Is there a single judiciary or are there separate court hierarchies for each sphere of government?
 - If there is a single judiciary what role, if any, do constituent units play in making appointments to it and other decisions about it?
 - If there are separate court hierarchies, how is their jurisdiction defined? Do they merge, or share jurisdiction at any point?

G INTERGOVERNMENTAL RELATIONS

- Is there formal/informal co-operation between the executives of the various jurisdictions that comprise the federation? What form does it take? What purpose does it serve?
- Is there formal/informal co-operation between legislatures? What form does it take? What purpose does it serve?
- Is there formal/informal co-operation involving the administration? What form does it take? What purpose does it serve?

INSTITUTIONAL ARRANGEMENTS OF THE CONSTITUENT UNITS

H LEGISLATURES

- Is the role of the legislatures in the constituent units and their relations with the executive branch broadly the same as in the central sphere?
- Are the legislatures bicameral or unicameral, or a mixture of both?
- If the legislatures are bicameral, what is the rationale for this?
- In particular, are the legislatures designed to provide specific representation for minority groups? Whether this is their design or not, do they in fact do so?
- What is the composition of the House(s)?
- What is the source of rules for the composition of the House(s)? What are the parameters for them?
- Do these legislatures play any specifically federal role?
- What is the impact of federalism on the legislatures of the constituent units?
- Does the central Head of State play any role in relation to these legislatures?

I EXECUTIVES

1. Political executive

- Is the executive branch in the constituent units structured in broadly the same way as at the centre?
- What is the source of the rules for the composition and structure of the executive branch? What are the parameters for them?
- Is there a separate Head of State? If so, how is this position constituted? If not, what role, if any, does the national Head of State play within this sphere of government?
- What is the impact of federalism on the executive branch of the constituent units?

- **Other Institutions**

- Are there any relevant sub-national regulatory agencies? What function/s do they perform?

J ADMINISTRATION

- Does the administration of the constituent units carry out any functions for the centre (a) directly or (b) indirectly?
- If so, which functions? How are these decisions made?
- How do these arrangements work in practice?
- What is the impact of federalism on the operation of these administrations?

K JUDICATURE

- Can courts declare actions of the executives of the constituent units invalid, on constitutional and/or other legal grounds? Which courts?
- Can courts declare actions of the legislatures of constituent units to be invalid, on constitutional and/or other legal grounds? Which courts?
- Do constituent units have their own court hierarchies? If so, is there any central influence on the structure of these or appointments to them?

L LOCAL GOVERNMENT

- In general terms, what is the institutional structure of local government?
- Which institutions of local government are elected?
- Does the institutional structure of local government reflect population diversity, by design and/or in practice?
- What is the source of the rules for the establishment and structure of local government?
- What is the relationship between the decision-making organs of local government and the institutions of the centre and of the constituent units?

ANALYSIS AND CONCLUSIONS

M CONSTITUTIONAL FRAMEWORK

- To what extent are arrangements for the institutions of government embodied in the national Constitution or in the Constitutions of the constituent units?
- To what extent are they embodied in legislation?
- To what extent do they derive from convention or practice?
- To what extent and in what way have they evolved over time?
- What are the strengths of this approach?
- What are its weaknesses?

N THE INTERACTION BETWEEN FEDERALISM AND REPRESENTATIVE INSTITUTIONS

- What are the effects of the institutional design on the operation of the federation? What are its strengths? Its weaknesses?
- What are the effects of federalism on the operation of institutions of representative government? What are the strengths? The weaknesses?
- What future trends are evident at this time?