

---

Distr.: General  
13 February 2012

Original: English only

---

**Committee of Experts on Public Administration**  
**Eleventh session**  
New York, 16-20 April 2011

**Distribution of Powers between Central Governments and  
Sub-national Governments**

Conference room paper prepared by  
Hao Bin, Deputy Director General, Department of International Cooperation,  
Ministry of Human Resources and Social Security

The views expressed and the content presented in the paper are those of the authors and do not imply any expression of opinion on the part of the United Nations.

## **I. Introduction**

1. Distribution of responsibilities between national and sub-national governments has been a subject of enduring debate among practitioners and scholars alike in the world of public administration and beyond. This paper is an effort to see through the lens of federal and unitary systems of government, which are the two most common forms of constitutional system of government in the world. This paper attempts to highlight some of the key features of these two types of government through a few sample countries, and to provide a general view in order to lay a foundation to further analyze issues of the two systems.

## **II. Distribution of Power under the Federal System**

2. A federation, also known as a federal state, is a type of sovereign state characterized by a union of partially self-governing states or regions united by a central (federal) government. In a federation, the self-governing status of the component states is typically constitutionally entrenched and may not be altered by a unilateral decision of the central government. The form of government or constitutional structure found in a federation is known as federalism.

3. Fundamentally, federalism is about the sharing of public power. There are different types of federal governments: a Presidential government, such as the United States; Executive Federalism such as Australia and Canada; and Administrative Federalism such as Germany and Austria. Powers are assigned to the federal government and the local government either by provision of a Constitution or by judicial interpretation. In some countries, the federal government has broad power, as is in the case of the Russian Federation and Nigeria. While in others, such as in the United States, the federal government has a limited and defined role.

4. The federal government is responsible for external relations, defence and macro-economic policy. Local self-government bodies often independently manage municipal property; form, adopt and implement local budgets; introduce local taxes and dues; ensure the protection of public order; and solve other issues of local importance.

5. In today's world, of the 193 Member States of the United Nations, there are over 20 federal states across all continents, with a total of 2 billion people, about 40 per cent of the world's population.

### **United States**

6. The Constitution of the United State of America makes provisions that the federal government has certain enumerated powers, which are spelled out in the Constitution, including the right to levy taxes, declare war, and regulate interstate and foreign commerce. In addition, the Constitution gives the federal government the implied power to pass any law "necessary and proper" for the execution of its express powers. The powers delegated to the federal government were significantly expanded by the Supreme Court decision in *McCulloch v. Maryland* (1819), amendments to the Constitution following the Civil War, and by some later amendments—as well as the overall claim of the Civil War, that the states were legally subject to the final dictates of the federal government.

The state government is responsible for property law, education, estate and inheritance law, commerce laws of ownership and exchange, banking and credit laws, labour law and professional licensure, insurance laws, family laws, public health and quarantine laws, public works laws, including eminent domain, building codes, corporations law, land use laws, water and mineral resource laws, judiciary and criminal procedure laws, electoral laws, including parties, civil service laws.

7. The local government is responsible for the adaptation and implementation of state law to local conditions, public works, contracts for public works, licensing of public accommodations, assessable improvements, and basic public services.

### **Russian Federation**

8. The Russian Federation is one of the most quickly developed federations in the world. For rather a short period of time since 1990's, the world has witnessed several models of the Russian federalism. The Russian federal relations model, originally based on the practice of other countries, evolved over the past two decades. It has experienced some difficulties during this transitional period.

9. The Russian Constitution of December 12, 1993, states that the distribution of federal and regional powers is governed by "this Constitution, the Federation Treaty, and other treaties (dogovory) that delineate objects of jurisdiction and powers." The Constitution provides that the federation has jurisdiction over the following: foreign policy and international relations of the Russian Federation, international treaties and agreements of the Russian Federation, issues of war and peace. The federation government and local government share jurisdiction over 14 items ranging from use and disposal of land, subsoil, water and other natural resources to measures against catastrophes, natural calamities, epidemics, elimination. Russian regional jurisdictions are allocated powers not specifically reserved to the federal government or exercised jointly. Those powers include managing municipal property, establishing and executing regional budgets, establishing and collecting regional taxes, and maintaining law and order.

10. Today in Russia, the federal presence exerts profound impact on the political life of Russia: the organization and the work of the institutions of legislative, executive, and judicial power; the state's legal space; its social policy; and the practice of generating and managing public funds. This prompts claims that can be heard frequently about Russia losing its typical federal characteristics and turning instead into a unitary state.

### **Nigeria**

11. Nigeria is a federal constitutional republic comprising 36 states and its Federal Capital Territory, Abuja. The states are further sub-divided into 774 local government areas (LGAs).

12. The current 1999 Constitution of the Federal Republic of Nigeria, in Section 4 (Second Schedule), indicates the Exclusive Legislative List, consisting of 68 responsibilities, on which only the federal government can act. The matter exclusively enjoyed by the federal government are defence, foreign affairs, extradition, police and other government security services; arms, ammunition and explosives; prison; currency; taxation of income, profits, and capital gains; mines and minerals; copy right; aviation; banks; trade and commerce, creation of states.

13. Both the federal government and the states have concurrent power to exercise. The concurrent list has 12 items. Both the federal government and the state governments can pass laws on any matters found on the concurrent list, which includes the allocation of revenue; antiquities; industrial, commercial and agricultural development; scientific and technological research, among other.

14. States have exclusive legislative power in residual matters.

15. The executive power is distributed in the similar manner between the two tiers of government.

16. According to the constitution, if a law passed by a state government that conflicts with a federal government law, the federal law will prevail.

17. One interesting feature of the Nigerian federation is that it practices fiscal federalism a concept that was introduced 60 years ago. The current constitution establishes a federal account into which with only a few specified exceptions “shall be paid all revenues collected by the Government of the Federation.” The constitution establishes a fiscal-equity commission, the Revenue Mobilization Allocation and Fiscal Commission responsible for reviewing, from time to time, the revenue allocation formulae and principles in operation to ensure conformity with changing reality. The commission provides advice to the president on proposals for revenue allocation. When the president is in receipt of the advice, the president submits to the National Assembly for consideration. The National Assembly will work out a formula taking into consideration facts such as population, equality of states, internal revenue generation, land mass, population.

18. So the division of powers is weighted toward the federal government instead of the states governments. The justification for such a strong federal government is that when the regions are more powerful than the federal government, divisive forces could take advantage of the situation. Another reason is there are broad economic particularities, and disparities among the states, therefore a stronger federal government has the means to support weak jurisdictions. Lastly, a stronger federal government is believed to be necessary meet external threats.

## **Brazil**

19. Brazil has been a federal country for more than a century. Federalism was incorporated into the 1891 Constitution. Brazil is a three-tiered federation, as the municipalities are not the creation of a state. The Constitution has detailed provisions governing the sub-national jurisdiction, and revenue, and the constitution maintained its tradition to straighten the municipal government vis-à-vis the state government.

20. In terms of the division of power, the federal government holds the largest number of exclusive powers. Many believe that the constitution favours the federal government. The federal supreme court systematically requires the state constitutions and laws to reflect the federal constitution imposing a hierarchical interpretation of constitutional norms.

21. Power conflicts between the three orders of the government and their legislatures are resolved by the federal supreme court through judicial reviews provided for in the constitution.

22. The state enjoys little constitutional power, but they collect the highest tax, are responsible for determining the tax rate, and have greater administrative freedom. According to the constitution, the autonomy of municipalities is preserved.

### **III. Distribution of Power under the Unitary System**

23. A unitary state is a state governed as one single unit, in which the central government is supreme and any administrative divisions (sub-national units) exercise the powers that their central government delegates. In a unitary state, sub-national units could be created and abolished and their powers may be broadened and narrowed, by the central government. Although political power in unitary states may be delegated through devolution to local government by statute, the central government remains supreme; it may abrogate the acts of devolved governments or curtail their powers. Many states in the world have a unitary system of government. In a unitary system, political power is concentrated in the central government, with sub-national units either created by it or enjoying delegated powers from it. There are about 160 countries that are considered unitary states.

#### **France**

24. France invented the model of the centralized unitary state, in which territorial governance is conceived in a strictly top-down, hierarchical manner and exercised through a prefectural system. The French model of the state was adopted by many other states.

25. In this system, decision-making in France used to be highly centralized, with each of France's departments headed by a prefect appointed by the central government, in addition to the conseil général, a locally elected council. However, in 1982, the national government passed legislation to decentralize authority by giving a wide range of administrative and fiscal powers to local elected officials. In March 1986, regional councils were directly elected for the first time, and the process of decentralization has continued, albeit at a slow pace. In March 2003, a constitutional revision has changed very significantly the legal framework towards a more decentralized system and has increased the powers of local governments.

26. The conseil général is an institution created in 1790 by the French Revolution in each of the newly created departments. Though the central government can theoretically dissolve a conseil général (in case of a dysfunctional conseil), this has happened only once in the Fifth Republic.

27. The conseil général discusses and passes laws on matters that concern the department; it is administratively responsible for departmental employees and land, manages subsidized housing, public transportation, and school subsidies, and contributes to public facilities. It is not allowed to express "political wishes." The conseil général meets at least three times a year and elects its president for a term of 3 years, who presides over its "permanent commission," usually consisting of 5-10 other departmental councillors elected from among their number. The conseil général has accrued new powers in the course of the political decentralization that has occurred past in France during the past thirty years. There are in all, more than 4,000 conseillers généraux in France.

28. Different levels of administration have different duties, and shared responsibility is common; for instance, in the field of education, communes run

public elementary schools, while departments run public junior high schools and regions run public high schools, but only for the building and upkeep of buildings; curricula and teaching personnel are supplied by the national Ministry of Education.

### **United Kingdom**

29. The United Kingdom had been traditionally a very centralized country. Many people believed that over the period since 1945, power and authority have moved upwards within the English political system, as expectations of government responsibilities for improving individual lives have risen with the advent of the welfare state, and as parliamentary and governmental attention has turned from governing overseas territories to directing domestic policy. Across a whole swathe of issues with a strong local dimension, including health, education, housing, planning, and regeneration, post-war governments have wholly or partly taken responsibility away from local government. In sum, local government's powers and responsibilities have been pushed both upwards to central government, and sideways and downwards to the regional arms of central government, as well as to other local bodies. There has been less emphasis on local government having a unique local role.

30. The situation has changed significantly due to decentralization, initiated under the leadership of Tony Blair, Prime Minister from 1997-2007. Although parliament retains the "common issues," including security, immigration and asylum, macroeconomic policy, and the benefits regime, limited self-governing powers have been transferred to the regions, i.e. to Scotland and Wales. The devolution settlement transferred decision-making powers to the regional governments for the "bread and butter issues," such as health care, social services, housing and homelessness, and so on. Within these fields, the regional administrations can vary the ways that services are designed for and delivered to their populations. In England, however, the centre seems to retain the important issues, especially regarding taxation.

31. The current government has announced a plan to decentralize health care. The goal is to shift control of England's \$160 billion annual health budget from a centralized bureaucracy to doctors at the local level.

### **Japan**

32. Japan has a unitary system of government. In a unified system of national government, there are central and local components. During the last decade of the twentieth century, the government of Japan achieved a significant degree of decentralization, the high point of which was the 1999 Omnibus Law of Decentralization. As a result, a new relationship was established among the branches of government, with the central government ceding some control over local affairs.

33. The Omnibus Decentralisation Act established in July 1999 has revised the comprehensive powers of control and supervision that central and prefectural governments had over municipalities. The central and prefectural involvement is restricted to cases where it is provided for in laws or the ordinances based on such laws. Amendments to the law have resulted in the abolition of the agency delegated function. In conjunction with this creation of a new relationship between the central and local government, a Central-Local Government Dispute Resolution Council has been established within the Ministry of Public Management, Home Affairs, Posts

and Telecommunications as a fair and impartial organisation to examine and make recommendations when disputes occur between central and local governments.

34. Laws relating to local government have also been amended, which has resulted in the abolition of the approval system for local government bond offerings, the creation of a system by which local government can relay its opinions concerning the calculation of Local Allocation Tax, and the abolition of the Local Tax Law of the approval system for non-statutory general taxes. Together these changes are transforming the superior/inferior and servant/master relationships between central and local government that existed in the past into relationships based on equality and cooperation. A revision was also undertaken of the regulations requiring the creation of a uniform number of staff positions and administrative organisations in accordance with the existing legislation of the central government.

35. The local government range of functions is broad, and local government's responsibilities cover all aspects of the country's domestic life other than diplomacy, national security, trial and prosecution.

## **China**

36. China is a unified nation of multi-ethnicities. China adopts a unitary system, within which the system of regional autonomy of ethnic minority and the system of Special Administrative Regions are practiced. There are 23 provinces, 5 autonomous regions, and 4 municipalities directly under the central government. In addition, there are 2 special administrative regions, Hong Kong and Macau, enjoy a high degree of autonomy.

37. There are 3 types of power distribution, namely, the distribution of the role between the central government, the provinces and the municipalities; the distribution of the role between the central government and the autonomous regions; and the distribution of the role between the central government and the special administrative regions.

38. The distribution of functions between the central and local governments is in legislative and administrative fields. According to the Constitution, the National People's Congress has the power to amend the Constitution, and to enact and revise basic laws. The Standing Committee of NPC has the power to interpret the Constitution and supervise its enforcement. When the National People's Congress is not in session, the Standing Committee has the power to enact partial supplements and amendments to statutes enacted by the National People's Congress (NPC) provided that they do not contravene the basic principles of these statutes. The 2000 Legislation Law enumerates the areas where only the NPC and its Standing Committee could enact laws. The NPC could authorize the State Council to formulate administrative regulations. The people's congresses of provinces and municipalities directly under the Central Government, and their standing committees, may adopt local regulations. The local government shall report such local regulations to the Standing Committee of the National People's Congress for the record. However, the local regulations must not contravene the Constitution, the statutes and the administrative rules and regulations of the central government.

39. People's congresses of autonomous regions have the power to enact autonomy regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The autonomy regulations and specific regulations of autonomous regions are submitted

to the Standing Committee of the National People's Congress for approval before they go into effect.

40. According to the Basic Law of Special Administrative Regions, a bill passed by the legislative council of the Special Administrative Regions and signed, and promulgated by the Executive Chief will be taken into effect. Bills passed by the legislative council need to be submitted to the Standing Committee of the NPC for the record.

41. The State Council is the executive body of the highest organ of state power; it is the highest organ of state administration. The following are taken into consideration when deciding if certain tasks are under the central government:

- Scale. National or trans-provincial issues such as census; the setting up of national economic regions; the building and managing of large railways, major road systems, and electric grids; the managing of the main water ways such as the Yantze River and the Huanghe River.
- The levels of resources involved. Major projects such as the Three Gorges Dam Project that has significant implications on manpower, financial resources, and materials.
- Functionality. According to the principle of compatibility of responsibility and accountability, different levels of government have different functions.
- The significance of the subject matter. When the issues concerned are of national importance, such as the administrative division, and the approval of setting up autonomous prefectures.

42. The central government discharges legislative and administrative control and supervision. The Constitution, organic laws, and regional autonomous laws make clear provision concerning major issues. The NPC can take corrective action when it finds that local actions contravene the constitution and relevant national laws. The local governments are executive organs of the local national people's congress, they also report to the administrative organs at a higher level. In the meantime, the component departments of the local governments report and receive guidance from the corresponding component departments of the government at a higher level. Legislative powers on central taxes, shared taxes and local taxes rests with the NPC and the State Council. The central government is responsible for the management of the taxation system, while local governments are responsible for collecting shared taxes and local taxes according to the taxation law, and they are not able to make changes to taxation policies. The State Council has the power to change or cancel the implementation of the local budget. In addition, the State Council establish auditing organs to conduct auditing on the revenue and expenditure of different ministries and the local governments.

#### **Efforts of the Chinese Government to delineate the role of the Central and Local Government**

43. The defining of the role of the central and local government has been largely dependent on the economic and political interests of the central and local government. There is general agreement that a central government, which could effectively and efficiently provide leadership in the process of social and economic development, has proved to be an important guarantee to sustain a speedy and



smooth development during a transitional period at a relatively low cost. This is important lesson learnt through the opening-up.

44. There is also consensus that the role of central and local governments could be better defined in China. Public affairs of national importance and inter provincial issues could be handled by the central government, while matters related to local regions could be handed by local governments. The core issue is how to effectively delineate the role of the local and central governments. The challenges are two fold, one is how to strengthen the central government's authority over certain issues, and the other is how to give local governments autonomy.

45. There is a need to specify concurrent powers, and the primary and secondary roles of the central and local governments.

46. Some local governments are overly concerned with their local interests to fully implement the policies of the central government. As a result, the authority and capacity of the central government are unduly affected. There are heated investment, redundant projects, industrial structures is irrational. Some locality government in some instances becomes insubordinate.

47. There has been political support from the government for improving central and local relations. Devolution, must be properly handled and central and local relations are considered major parts of the political system reform of the government. There have been major efforts to delineate the role of the central and local government.

#### **IV. Conclusion**

48. Under the federal system, it is more common that through the evolution of a federation there is a gradual movement of power from the component states to the centre than the other way around. The federal government acquires additional powers, sometimes to deal with unforeseen circumstances. The acquisition of new powers by a federal government may occur through formal constitutional amendment or simply through a broadening of the interpretation of a government's existing constitutional powers given by the courts.

49. In some federal system countries, it has been difficult to describe them as either centralized or decentralized. The Brazilian federation has been marked by federally centralized policies and constraints on the sub-national freedom to introduce legislation. Limited powers are allocated to the states. At the same time, state and municipal governments now enjoy considerable administrative autonomy, responsibility for policy implementation, and a share of public resources they had never enjoyed previously.

50. Local government systems in all countries have different histories but their similarity in the end is marked. Efforts to improve central and sub-national governments have been constant. They all must relate to higher levels of government, either at national or provincial levels. The higher levels, by and large, dominate relations.