

Issues to be considered while dealing treaty related files

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Treaty making and federal constituents

Article 278. Power to Conclude Treaty: (1) The Federation shall have the power to conclude treaties or agreements.

(2) In concluding a treaty or agreement on a matter falling within the list of powers of Province, the Government of Nepal shall be required to consult the concerned Province.

(3) A Provincial Council of Ministers may, with the consent of the Government of Nepal, enter into contractual agreements on financial and industrial matters.

Status of different International Organization's (IO's)

Clarity on Status of different International Organization's (IO's) and entities with whom Government of Nepal can conclude agreement and what type of agreement can be concluded with them. (Eg-INGOs like WWF, Research Institution like ILRI, CIFOR-ICRAF)

Sister City agreement

- Is this a treaty?
- Who can conclude?
- Procedure?
- Consequences?
- Legal gap? (Local Government Operations Act has provided Local Levels can conclude such agreements) Several LLs have concluded such agreements.
- India has a procedure.

Immunities and privileges of International Organization

- Which institutions are to be provided with what level of immunities and privileges?
- Immunities and privileges of IO's specially in the context of Section 18 of the Diplomatic Privilege and Immunities of the Foreign States and Representatives Act, 2027
- Visa exemption (volunteers, consultants)
- Labor permits

Registering Treaties

- Article 102 of the United Nations Charter:
 1. Every treaty and every international agreement entered into by a member of the United Nations after the present charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
 2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this article may invoke that treaty or agreement before any organ of the United Nations.
- It is imperative that all copies of original treaty documents are deposited in Central Depository i.e. MOLIPA. (GoN (Allocation of Business) Rules)

Ratification/Accession/Approval/Accession

- There is another type of challenge of ratification of international treaties which is linked with complicated procedures of domestic legal systems
- Clarification on completion of documents required for ratification, accession, acceptance to and approval of the treaty. (Eg. Kigali Amendment Ratification)
- Internal Procedure

Settlement of Disputes

- Mutual Consultation/Negotiation, in which cases ?
- Arbitration, in which cases ?
- What mode of Dispute Settlement is the best approach?
- A need for revision of existing provisions is felt especially in Bilateral Investment Treaties.

Some issues

- Clarification on division of work in regard to Allocation of Business Rules, 2018

Eg- BIMSTEC Convention on MLA in Criminal Matters was processed for signature by MOHA and its Ratification process initiated by MOLJPA

- Clarification on what comprises the completion of domestic legal procedure in terms of Bilateral Agreements (Eg. MLA Treaty with China)
- Participation/involvement of MOLJPA in initial preparatory discussions of draft treaty/agreements.
- Involvement of law officers in preparatory discussion within Ministries

Some issues

- Weak/last hour preparation and consultation and poor coordination
- Urgency
- Which Treaties and Agreements need to follow SOP, which do not ?
- Which issues need to follow the procedure of SOP and conduct studies and which do not? A need for uniform practice is felt. (Especially in the file that are Urgent)
- What is the process to carry forward the Draft finalized by the Committee formed as per the SOP?

Practical Issues

- Legal Complexity
- Policy alignment
- Political sensitivity
- Translation and interpretation
- Implementation challenges

Thank you