

Overview of Standard Operating Procedure on Treaty Making

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Some Reference

- Treaty Handbook of the United Nations
(prepared by Treaty Section of the Office of Legal Affairs), revised edition of 2013
- International Treaty Making, New Zealand, 2021
(Guidance for government agencies on practice and procedures for concluding international treaties and arrangements)
- Standard Operating Procedures (SoPs) with respect to entering into MoU's/Agreements with foreign countries (revised in 2018)

Basis of Treaty Making in Nepal

- Constitution of Nepal
- Nepal Treaty Act, 1990 (2047)
- Treaty Making Directives, 2018 (2077)
- Regulation of House of Representatives, 2023 (2079)
- Regulation of National Assembly, 2019 (2075)
- Judicial Decisions (Precedent)
- Directives of Parliamentary Committees

Role of Government Agencies (Bilateral)

Lead Agency: Concerned Ministry (Sector/ theme/ jurisdiction)

- Issue identification
- Preliminary Study
- Draft preparation
- Negotiation : Authorization from Council of Ministers
- Negotiation
- Initial Signature
- Opinion of Concerned Ministries (Law Ministry is must)
- Final Approval from the Council of Ministers
- Definitive Signature/ ratification
- Information to the Parliament
- Deposit at the MoLJPA
- Registration in UN via diplomatic channel

Role of Government Agencies (Multilateral)

Lead Agency: Concerned Ministry (Sector/ theme/ jurisdiction)

- Issue identification
- Preliminary Study: Rights and Obligation
- **Negotiation : Authorization from Council of Ministers**
- **Negotiation**
- Opinion of Concerned Ministries
- Final Approval from the Council of Ministers
- Ratification/ Accession
- Deposit at MoLJPA
- Registration in UN via diplomatic channel

Issues and Challenges

- Lack of policy clarity
- Lack of extensive Research
- Lack of national interest analysis
- Overlapping of jurisdiction/ confusion
- Variation in practice
- No effective coordination
- Role of civil society/ pressure group
- Protocol of Signatories
- Guidelines / Standard Conditions of Donor Agencies
- Diplomatic Immunities and privileges
- Language

Treaty Making Directives, 2018 (2077)

- To clarify the roles and responsibilities to the agencies and officials involved in treaty making process
- To make treaty making process transparent and convenient

Stages

- Initiation
 - Preliminary Study
 - Extensive Study
- (Exceptions)*
- Formation of Negotiation Team
 - Roles and Responsibilities of Negotiating Team
 - Full Power
 - Participation, Drafting in Negotiation
 - Signature
 - Reporting

- Opinion of Concerned Ministries/ Agencies
- Opinion of MoFA, MOLJPA (must)
- Proposal to the Council of Ministers
- Submission to the Parliament (as required)
- Instrument of Ratification/ Accession/Acceptance/ Approval (as required)
- Exchange of Completion of procedure through diplomatic channel
- Entry into force
- To inform Federal Parliament

Role of Province

- Consultation with Province
- Approval from GoN

Other Procedural Aspects

- Reservation
- Declaration
- Amendment
- Termination
- Revocation
- Depository
- Registration in UN and other concerned International Organization
- Treaty Publication
- Treaty Series
- Model Treaty
- Annual Report
- Formats

Structural Arrangement (Coordination committee)

Chief Secretary	Coordinator
Secretary, OPMCM	Member
Secretary, MOF	Member
Secretary, MOLJPA	Member
Secretary, MoFA	Member
Secretary, NPC	Member
Secretary, Concerned Ministry	Member
Joint Secretary, International Law and Treaty Division, MOLJPA	Member- Secretary

Way Forward

- Compliance to Treaty Making Directive
- Meeting of Coordination Committee
- Review of Treaty Act
- Assessment of existing treaties and their implementation
- Assessment of Supreme Court's Judgments
- Coordination, cooperation in treaty making
- Understanding on same plane esp. of MoFA and MoLJPA
- Regular discussion, interaction, discourse on various aspects
- Capacity building Trainings

Welcome to Discussion...