

THE KHYBER PAKHTUNKHWA LOCAL GOVERNMENT (AMENDMENT) ACT, 2019

AN OVERVIEW OF AMENDMENTS AND THEIR IMPLICATIONS¹

EXECUTIVE SUMMARY

This paper reviews the recent amendments made to the local government law of Khyber Pakhtunkhwa, keeping in mind the framework and best practices of good governance. Particular importance has been given to the potential effect the amendments will have on the life of the common men and women in rural and urban parts of the province as well as how much they are in line with the principles of inclusive governance, human rights and devolution.

The first ever direct election of the heads of the local government including the Mayor and Chairman (previously referred to as Nazims) as per the latest amendments is an important step. Amendments such as shrinking the list of devolved functions and offices under the supervision of the local government, abolition of the tier of elected district government and introduction of alternate dispute resolution bodies at different levels in settled districts as well as newly merged tribal districts (previously referred to as the federally administered tribal areas (FATA)) stand to have significant impact on the functioning and powers of the local government system.

The real test of the changes made in the law (now known as KP LG Amendment Act 2019) will be its effective and timely implementation especially when the local government elections are delayed. Another important test of the law will be its ability to deliver socio-economic development for communities living in semi-urban and rural areas of the province especially those in the new merged districts formerly known as FATA. Further delay in implementing development schemes in these post turmoil districts can contribute to people's frustration, who have suffered so much

already in last two decades of militancy. The integration of these communities with the rest of the province is essential for the prosperity of the province and the country. Therefore, it is crucial to ensure local government reforms are successfully implemented in time.

There are serious challenges in the tribal districts (former FATA). Firstly, the LG law establishes in the tribal districts village councils as the lowest tier of governance. There are mandatory provisions in the law for these councils to be allocated and transferred sufficient funds for development as well as to plan and execute own policies. With very little infrastructure and systems in place within these districts, there will be difficulties. The local government department of Khyber Pakhtunkhwa will be taking on the enormous challenge of establishing local governments in the tribal districts where such bodies have never existed.

This paper presents the constitutional, legislative and institutional challenges and policy constraints that may arise during implementation of the Local Government Act 2019 in the newly merged areas and the province. The identification of challenges is followed by the provision of some key recommendations to help the government and policy makers which broadly include:

- Managing transition towards local governance in the newly merged districts
- Capacity building of elected officials and bureaucratic staff
- Accountability of Service Providers through Citizen Empowerment
- Strengthening institutions and promoting partnerships for the improvement of service delivery

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THE LOCAL GOVERNMENT ACT 2013

The 2001 local government was established under extensive federal control, however the 18th Amendment to the constitution in 2010 transferred significant power from the federal to the provincial level. This paved the way for provinces to make amendments to the local government laws but also allowed for provincial bureaucratic control over local government functions. The Khyber Pakhtunkhwa Local Government Act 2013 was passed on 31 October 2013 and subsequently amended to improve service delivery.

Of the provincial local government acts passed during 2013 the Khyber Pakhtunkhwa local government Act of 2013 stood out for being bolder than laws in the other provinces. It provides a degree of fiscal autonomy with its considerable allocation of development grant to local governments. These funds represent 30% of the total development spending of the province and are transferred to the local government tiers according to their specified shares.

The KP LGA 2013 also introduced village councils and neighborhood councils (VCs & NCs) in rural and urban areas respectively. The lowest tier, Village and Neighborhood Councils replaced the Union Council, thus bringing local government closer to the people. The Government established 3,501 village and neighborhood councils in the province as a replacement to 1,001 Union Councils² of the previous local government system.

While the success of these village level structures (the VCs & NCs) remains debatable, in some cases they proved successful in being the voice of people living in remote villages.³ They proved to be potential agents of change effective in addressing the problems of their constituent villagers, through resources at their disposal and by effectively seeking intervention of the elected office holders and public servants. An important factor in this is that mostly young, educated and energetic individuals were elected who used information and communication technology, including social media to facilitate their official work. Limitations faced by these bodies and their lack of perceived success was primarily due to challenges and failures that fell in the ambit of the provincial government. These include delayed provision or total absence of rules and procedures in vital areas such as accounting, monitoring and procurement.

After the introduction of the KP LGA 2013, elections were held in May 2015, in phases. Though the local governments only slowly became functional, as they had to contend for long periods without rules of

business and regulations for planning and executing operations. Once the local governments became functional a number of amendments were introduced some of which were detrimental to the spirit of devolution. Amendments constituted newly created sub-divisions and districts, changing the composition of the Provincial Finance Commission (PFC) to include the Minister for Local Government as co-chair, outsourcing of function/s by the provincial government to other bodies/agencies including those outside the government structure, and to provide for audit by the Local Fund Audit, an audit body under the provincial finance department. The creation of a "public Interest fund" to determine the money to be withheld from the LGs and used through officers designated by the Government was also one of the amendments aimed at restricting the scope and powers of the local governments and seen as an attempt to limit the process and effects of devolution.

KEY FEATURES OF THE LG AMENDMENT ACT 2019

In 2019 the LGA 2013 was amended and passed by the Provincial assembly on 29th April 2019 as the Local Government Amendment Act 2019. Prominent new features of this law include doing away with the district tier of the elected local government, direct election of the tehsil (sub-divisional) Chairman and Mayor of the city administration and linking the tehsil council with the village and neighborhood councils (VCs and NCs) in such a way that the tehsil council will comprise of the Chairmen and some members of VCs and NCs. One of the amendments provide for a reconciliatory mechanism and body for the resolution of disputes that are of civil nature at the village and neighborhood level. Perhaps the most important feature will be the implementation of this law in newly merged districts of Khyber Pakhtunkhwa.⁴ There are also claims that the changes to the law ensure a new simplified system of local governance which provides for robust fiscal decentralization and oversight. A review of major amendments follows:

DIMINISHING LIST OF DEVOLVED FUNCTIONS/OFFICES

The KP LGA 2013 devolved 24 functions/departments from the province to the local governments. Later, through amendments, six departments were withdrawn from the LGs and under the 2019 law, ten more offices/departments were withdrawn, further reducing the number.

This amendment process started with taking the Communication and Works, and Public Health Engineering departments back to the provincial

²<https://www.dawn.com/news/1435089>

³KP Diagnostic Study of Village and Neighbourhood Councils :<http://pk-sng.org/wp-content/uploads/2015/12/Diagnostic-Study-of-VCNCs.pdf>

⁴Newly merged districts were part of former federal area not in the control of provincial governments ever. In a major constitutional amendment, the federal area known as FATA is now merged in province of KP.

government in the first half of 2017. This was attributed at the time to funds not being released timely to the districts and the closure of the financial year. Yet, the situation arose due to insufficient rules, something the provincial government was responsible for and the change could have been reversed once the funds were released, settling the matter. Where rules were in place it took about two years for the nazims and staff of the local governments to understand the rules and budget making requirements and when they were finally acquainted, devolution started to shrink.

Two other such cases explain this trend where the local governments were weakened after initiating the process of devolution in 2013.

(One) The reversal of devolution of rural water supply department:

The provincial Public Health Engineering (Water and Sanitation) Department, the agency responsible for supply of drinking water and sanitation facilities in rural areas, was devolved to the district government under the LGA 2013 but was taken back from it making it again a provincial subject through an amendment. Argument in favour of reversing devolution of this department is particularly weak as it is responsible for setting up and maintaining the water supply schemes in rural areas, a function that can be performed better by local governments in partnership with communities.

(Two) The reversal of health department's devolution:

The Health department has also been taken out of the devolved list whereas primary and elementary education has been retained. Traditionally education and health are seen as twin departments of social sector and have a lot in common with each other. It was stated by the government officials and politicians that health was removed from the devolved list as regional and district health authorities have been introduced under a separate legislation which in spirit cannot be called devolution despite government claims.

Questions that arise are on what grounds the health authorities were preferred over devolution which has a proven track record of having improved service delivery at the grass roots level.

ABOLITION OF THE DISTRICT GOVERNMENT TIER

The KP LGA 2019 retains most devolution features of the LGA 2013. However, the most consequential decision is to abolish the district tier from the elected local government structure while retaining the district as an administrative unit. The sub-district units called

Tehsil local governments (and city local governments) under the new arrangement will struggle to maintain their control over the bureaucracy which will continue to report to the district administration.

Boundaries of financial autonomy are also blurred particularly in flow of funds and approvals. There is a lot of dependence on the district office of the Deputy Commissioner (and other civil servants who 'represent' the provincial government at the district level).

Tehsil and City Government under 2013 Law

Under LGA 2013, the Deputy Commissioner was the top official of the public service and part of the elected district government. Under the current law, office of the Deputy Commissioner is still there but as a representative of the provincial government with many parallel relationships which include the Chairman/Mayor of tehsil/city local council. Effectively the bureaucratic head of the district is not accountable to any elected office.

Under the LGA 2013, Tehsil/Town Nazim was placed with the status of Chief Executive of Tehsil Municipal Administration (TMA). S/he was responsible to run the affairs of the TMA, according to provisions of the law the TMA had legislative, financial, supervisory/monitoring, administrative, recreational, regulatory, and municipal powers. It had the power to keep an eye on all offices and their officials, to plan for utilization of land, ensure the implementation of developmental projects and municipal laws.

Tehsil/Town Council had the same statutory functions assigned to TMA with additional responsibilities. Being a legislative body, the Council approved the budgetary proposals, taxes, byelaws, and development projects. It had also the jurisdiction to elect a Standing Committee, a Finance Committee, a Committee on Conduct of Business, a Committee for Code of Conduct and Accounts Committee. Each committee was assigned special functions.

The city/tehsil elected governments in practical terms will operate under the Deputy Commissioner. The popular view is that doing away with the title 'nazim' and replacing it with Chairman is aimed at diluting the administrative relevance and authority of the elected head of tehsil government. The matter is already in court and will indeed be controversial and problematic in times to come.

However, other changes are welcome in terms of empowering local structures which are discussed further on.

TEHSIL/CITY LOCAL GOVERNMENT⁵

Tehsil local government consists of the Chairman of the tehsil local government and the tehsil administration. The Chairman will be directly elected through party-based elections held on the basis of adult franchise, joint electorate with the entire tehsil as a single constituency. Executive authority of the tehsil local government shall vest in the Chairman who along with the tehsil local government shall be responsible for running the business of the tehsil government in line with the provisions of the LGA 2019 and any other law in force. In performance of his duties, the Chairman will be assisted by the tehsil local administration, which consists of the tehsil municipal officer (TMO) and other officials. This arrangement will be in place for districts other than divisional headquarter districts such as Peshawar, Mardan and Kohat where the Mayor will head the city council and hence city local government.

Under the current law, Tehsil/City Local Government is the highest tier of local governments⁶ and the directly elected head is expected to be more powerful. A look at the powers and functions of the Chairman/Mayor does not match this expectation. Their role mostly constitutes 'coordinating', supporting and recommending even regarding matters that fall in the ambit of their authority. For example, they can recommend disciplinary action against the tehsil level employees but cannot take a direct action.

TEHSIL COUNCIL⁷

Tehsil Council will comprise of all the Chairmen of village councils and neighborhood councils in the tehsil. There are also reserved seats for women, peasants, workers and religious minorities and will be elected indirectly from among the members of the village councils who secure the largest number of votes in their respective councils. This new arrangement is better in terms of providing a village level representation at the Tehsil level unlike before where tehsil councilors were elected from constituencies of the tehsil or towns.

DIRECT ELECTION OF CHAIRMAN AND MAYOR

The LG Amendment Act 2019 introduces direct election of the Chairman of the tehsil council and mayor of the city council by the voting population of the tehsil/city as single constituency through adult franchise which will really empower the new elected offices. This is a key step in promoting democratic norms and

empowering people to vote for a person to head the local government.

CITY COUNCIL

The City Council will comprise of all the chairmen of neighborhood councils in the tehsil. Also, there will be reserved seats for women, peasants, workers and religious minorities, number of which are to be determined by the government; they will be elected indirectly from among the members of the VCs and NCs who secured largest number of votes in their respective councils.

City Council has the same functions as those of the tehsil council with some additional ones relating to the urban profile of the city local government concerned.

VILLAGE AND NEIGHBORHOOD COUNCILS

Under the LGA 2013, the nomenclature of the union council, the previous lowest tier of local bodies, was replaced with the Village Council (VC) and Neighborhood Council (NC) splitting one union council into about three. Distinction was made between urban and rural councils. The representation in these councils was based on population. The composition of councils was not fixed as it ranged from ten to fifteen members due to variation in population of local constituencies.

Under the LG Amendment Act 2019 VCs and NCs are retained with slight change in composition. There are now a total of seven members. Three general councilors including Chairman, one seat (reserved) each for women, youth and peasants/labourers. All members are to be elected directly on non-party basis from a single constituency on the basis of highest votes polled. Those with the highest number of votes will be Chairman as was the case under previous law. Members of the council are assigned the administrative, coordinating and monitoring functions even for departments that are not devolved such as health.

DISTRICT ADMINISTRATION

Local Government Amendment Act 2019 introduces a new entity by the name of District Administration. This represents the provincial government in the district and has a coordinating and conflict resolution role vis a vis the local governments.

District Administration is headed by the Deputy Commissioner who on the orders of the Chief Minister, exercises special powers and carries out functions that otherwise fall within the ambit of the Chairman.⁸

⁵Term City Local Government applies to cities which are divisional headquarters such as Abbottabad, Kohat, Mardan and Mingora etc. Chapters V of LGA 2013 was substituted

⁶As per LGA 2013.

⁷Chapter VI of LGA 2013 was substituted

⁸The law mentions a list of functions and powers of the Chairman, Tehsil Local Government vis-à-vis district administration. These bind the Chairman to 1) coordinate, where required with District Administration for district wide development and delivery of services; 2) monitor and

The Deputy Commissioner is mentioned as principal representative of the provincial government in LG Amendment Act 2019 that lists his functions pertaining to local governments which he is not part of. This leads to a scenario in the district where the Deputy Commissioner is placed above two/three or more elected heads of local governments. This creates a relationship which is contentious and limiting to the independence and role of the elected members and involves the role of the Deputy Commissioner beyond the task of coordination. Under the functions of district administration, it is mentioned that “the Chief Minister may issue directions to a Chairman for implementation in public interest and if he fails to comply with the directions, the Chief Minister may require a department or a Commissioner to take such action as the situation may necessitate”. It is simple to infer that such directions will pertain to the domain of the Chairman and that is why the orders are issued to him but in case of his failure to comply, the department or (deputy) Commissioner will carry them out.

Human resource working under the Chairman tehsil local government is predominantly under the formal supervision of and with reporting lines to officials under the provincial government/Deputy Commissioner. This is likely to create confusion and will lead to reporting fault lines.⁹

LOCAL GOVERNMENT FINANCE

Sections 35 and 36 of LGA 2013 were substantially amended bringing the following changes:

PREPARATION AND APPROVAL OF THE BUDGET

Chairmen of the local councils will present the budget within 30 days of commencement of the financial year whereas earlier the presentation of the budget was mandatory prior to the commencement of the financial year. This gives more time to the local governments/councils to work on financial estimates. The budget will be passed through simple majority of the members present and through voting. The Chairman has a casting vote in case of a tie, something not there earlier. In case the budget is not approved by the council within ten days of its presentation, the

supervise the performance of functionaries of provincial government offices in the tehsil and hold them accountable by making inquiries and reports to the District Administration; 3) call for quarterly reports from Government departments in the tehsil, other than those devolved to Tehsil Local Government, present them to tehsil council and forward them to District Administration and the relevant provincial department(s). These functions of the chairman/mayor of tehsil/city local government place additional responsibility on the chairman/mayor regarding functions that are administratively outside his ambit.

⁹Earlier LG laws, chiefly LGO 2001 and LGO 1979 also

Chairman will send the budget to the Local Government Commission (LGC), through the Local Government Department (LGD) and the LGC shall convey approval within thirty days, after the budget is reviewed and approved by the LGC or a committee appointed by it for the purpose. In case the LGC fails to approve the budget, it will be considered to have been approved as prepared by the Chairman concerned. This is a very practical and realistic arrangement as prior to the amendment, in case of failure of the budget getting through before the commencement of the financial year, the LGD would make and approve budget for the local council concerned. The amendment also provides for making, presentation and approval of a revised budget at any time before the expiry of the financial year for which the budget is prepared. This was not the case earlier. In case of absence of one or more local councils, the principal accounting officer (PAO) concerned will prepare the budget and send it to the LGC through LGD which will approve it. Clarification in this regard preferably limiting the validity of such a budget to the period of absence of the council, would make the legislation more democratic.

ALLOCATION OF FUNDS

LG Amendment Act 2019 retains the provision of mandatory allocation and transfer of development funds not less than 30% of the provincial development portfolio. This augurs well for the local governments, however, on the other hand the provision regarding powers of provincial government to withhold any amount of funds in the name of the public fund to be spent by designated government officials, is also there. Going by the record, the amount of withheld funds has not been significant but the way of its spending and the possibility of retaining huge amounts of funds will not favor the principle of equity and might deprive people of remote areas from their well-deserved development projects. Also, according to a new provision funds to the tune of 2% of the local governments' development share, will be retained by the provincial government to be spent by the local government department on third party audit of the local governments and their human resource development.

mentioned prominent officials that is the district coordination officer (DCO) and Chief Officer respectively. They played huge roles but both of them were part and parcel of the local governments concerned and reported to the elected nazim/chairman/mayor. Functions and responsibilities assigned to them by the law and mentioned by it were entirely their obligation pertaining to the local government concerned.

FINANCIAL AND ACCOUNTING SYSTEM

The financial and accounting system in place prior to LGA 2019 will continue till it is replaced by a new one. Operational friction will likely result from running the new arrangement, with old procedures. The update of the accounting system therefore needs to be assigned priority and bound by a time frame. This also implies that almost absence of monitoring of flow of funds to and expenditure by the VCs and NCs during their first term, will continue to make the affairs of this important tier of local governance, less transparent and difficult to measure in terms of financial management performance.

PROVINCIAL FINANCE COMMISSION

Functions of the provincial finance commission (PFC) have been retained. There is a slight change in composition to the effect that now five Chairmen tehsil councils are members of the commission in lieu of four nazims (two each of district and tehsil councils elected by the category concerned of nazims). The change is of significance as this time the five Chairmen are to be elected from among five geographic zones of the province, making the PFC more representative. Previously delayed communication of the local governments' share by the PFC obstructed timely preparation of the budget by local governments. The legislation empowers the PFC to regulate its procedures and business.

OVERSIGHT AND REGULATORY FRAMEWORK:

Local Government Commission (LGC)

The Local Government Commission (LGC) comprises of:

- Minister Local Government (Chairman),
- Two Members of Provincial Assembly nominated one each by the Chief Minister and Leader of Opposition.
- Two eminently qualified individuals, including a woman selected by the government;
- Secretaries of Law and Local Government departments; representative of the Finance Department.
- Director General Local Government will provide secretariat support to the Commission.

Powers given in the LGA 2013 (and retained in LGA 2019) to the LGC include the power to submit reports to the provincial government, conflict resolution in case of a dispute between various tiers of local government, submit progress reports regarding TMA and district administration to provincial government

and to take notice of non implementation of local government laws.

The LGC will have the power to commission a third-party performance or financial audit of any number of local governments in public interest. All members of the LGC have full time offices without dedicated secretarial support, making it extremely difficult for the LGC to optimally perform its functions.

ENFORCEMENT

Enforcement remains a challenge in the functioning and effective working of local governments in Pakistan. The issue was addressed to an extent by the LGA 2013 provision, regarding enforcement officers designated by the local councils. Under LGA 2019, designation of enforcement officers for offences in fourth and fifth schedules has been taken away from the elected councils and assigned to the provincial government. The controlling authority of enforcement officers has been added, however the shift of control from the local government to the provincial government is likely to slow the pace and impact the quality of enforcement.

ALTERNATE DISPUTE RESOLUTION (ADR)

In order to provide for speedy and affordable justice, the LGA 2019 provides mediation councils at the village and neighborhood councils which facilitate out of court arbitration and amicable settlement of disputes of civil nature. These councils shall be established at the sub-divisional level in tribal districts. Provision regarding the alternate dispute resolution (ADR) are more robust in 2019 compared to those in the LGO 2001. These, in a way, are part of the village and neighborhood councils. If implemented carefully and rules and procedures are established for these ADR councils, it will be a laudable effort for social and civil disputes. It will also reduce burden on the judicial system, particularly that of the lower judiciary which is already facing problems of being overburdened.

Provision in the law regarding ADR is different for the newly merged tribal districts and sub-districts (as the councils/bodies for ADR will be constituted at the sub district (sub-divisional) level rather than the Village and Neighbourhood Council level as elsewhere in the province. This was done with the aim to provide protection to the tribal jirgahs that remained part of the criminal justice administration system under frontier crimes regulation (FCR).¹⁰ This is viewed positively as well as criticized as a measure to limit change, for which the FATA merger was carried out. This point of view argues ADR councils in FATA should be established at the village council level as done elsewhere in the province in line with actual intent of

¹⁰The protection is given with the intention to respect the tribal norms and traditions and to protect the centuries old local institution. It has more merits than de-merits (including ways to make these Jirgas respect human rights as oppose to local customs specially in cases when both contradict each other.

LGA 2019. That would have further strengthened the local custom as well as would have made the Jirga system more inclusive. Focused attention and careful handling of this aspect in formulating rules and by laws will go a long way to make local governance more inclusive.

The LG Amendment Act 2019 and Human Rights

To comply with human rights responsibilities, local governments should have necessary powers and financial resources. Adequate implementation of human rights, particularly economic, social and cultural rights, by local authorities require funds besides political, policy and technical support. Local governments even if empowered would not be effective if no resources were available to carry out their obligations. Sharing of responsibility by different tiers of government for the protection and promotion of human rights is a key principle in this regard. In addition, local redressal mechanisms or sensitization of officers to address human rights violations do not only need money but also intent which the government can improve through its political focus as well as guidelines which it may issue from Chief Secretary office.

Coordination among provincial departments and local governments is imperative to reconcile related policies with the obligations of human rights emanating from the national constitution and international treaties.

GLOBAL PRACTICE

Legislation in a number of countries explicitly require local governments to respect human rights through various administrative arrangements. For instance, the Local Self-Government Act of Serbia stipulates that municipalities must ensure promotion and protection of the rights of national minorities and ethnic groups. In Slovenia, municipal administrations are required by law to take care of gender mainstreaming. In Ireland, the local government legislation does not specifically provide for the promotion and protection of human rights, but in discharging their functions local authorities are required to have regard for the need to promote social inclusion. Similarly, the legislation on local governments in India does not specifically mention protection of human rights among their responsibilities; however, the constitutionally mandated municipal functions directly relate to core human rights, such as implementation of initiatives for democratic inclusion, welfare measures and the local justice system.

In Pakistan, particularly in Khyber Pakhtunkhwa, it is a mix of the above with no pronounced declaration of human rights protection in the local government laws but since the local governments have vast scope of

operations at local levels and can actually enhance their jurisdiction and scope of work.

Following paragraphs look at the KP LG Amendment Act 2019 from this angle.

EDUCATION AND HEALTH

Free of cost and compulsory education to all children of age five to sixteen, after the 18th Amendment is a fundamental right (Article 25A). Education for this age group is a devolved function and under the purview of the local government. Traditionally, local governments focused on brick and mortar development alone and the same trend continued after devolution was introduced under LGO 2001. Planning and Development Guidelines framed under LGA 2013 bound local governments to spend certain amount of their respective development funds in the social sector which included education. Rural and semi-urban health facilities of primary and secondary healthcare are not part of devolved list under the new law but there is a clear provision that empowers the local governments to inspect and monitor these facilities and report on them.¹¹

Through a carefully carved out mechanism that avoids administrative confusion with education department, the local governments can enhance their role in improving service delivery in health by promoting partnership among different tiers of governments.

FOCUS ON WOMEN

Population welfare remains in the devolved list. This department has the unique advantage of a female only outreach in the urban and rural areas with access to households. This can play a huge role in promoting healthy lifestyle among women besides helping them exercise their reproductive choices. For this purpose, decentralized management already provided by the law can be augmented by allocation of funds from the local governments' pool and assigning the female office bearers/members to the job. Local governments will have to be made to realize there is much more to do beyond the customary raids in the name of monitoring. LGs can also enhance health and wellbeing by tapping the potential of lady health workers (LHWs) through a reward mechanism by coordinating with their supervisors under the provision of LG law as mentioned above.

CIVIC AMENITIES

Access to civic amenities that include drinking water and sanitation services is among the universal human rights. Provision of these facilities in urban areas is a key function of tehsil and city local governments under the law. In rural areas, water and sanitation services fall in the domain of public health engineering (PHE) department which, under the amended LG law, once again is included in the devolved list. Demonstration of

¹¹Functions of chairmen and local governments/VCS & NCs

performance can pave way for transferring of PHE and other such functions completely to local governments where it truly belongs from the point of view of international best practices. For this purpose, alliances and partnerships will have to be built with communities, non-profit organizations and with private parties on a case to case basis. A lot can be learnt from the working of rural support programs (RSPs) that are working in various parts of Pakistan.

CHILD PROTECTION, MINORITIES RIGHTS AND NEGLECTED SEGMENTS OF SOCIETY

Social Welfare is one of the devolved function/offices. A look at the functions and responsibilities of Social Welfare under the KP Government's Rules of Business tells us that policy and measures for protection of vulnerable sections of society such as elderly, children, orphans and destitute fall under the ambit of this department. This provides huge opportunity to the local governments to spend their funds and resources for the welfare of neglected sections and communities of society under the same mechanism/s mentioned above for health and population welfare. This includes measures for child protection only as women protection and welfare of minorities are subjects of Women Development and Minorities Department which do not fall in the devolved list. However, this does not stop local governments from playing a role for women protection and minorities welfare under the 'loose' mandate given to them by the LG law regarding non-devolved departments. Satisfactory performance on this count may pave way for advocacy in favor of devolving women development and enhancing LG's sphere of action in the realm of minorities affairs at any point in time when revision of LG laws is on the agenda. LGs can also focus on initiating innovative projects for child protection,¹² welfare of the elderly and the downtrodden. For this purpose, framing rules under the new law will require detailed and diligent work and consensus between LG department and the Social Welfare Department.

WOMEN REPRESENTATION

Securing appropriate elected representation in the local government system is sufficiently provided for in the LGA2019 as was the case in LGA 2013 and LGO 2001, that is 33% seats reserved for women in both the tiers namely tehsil council and village and neighborhood councils. The new law goes a step further by ensuring that these women are directly elected after contesting elections at the village and neighborhood level and some of them from there will be elected for Tehsil council. The direct election will improve the quality of women representation .

The LCB may take the initiative of increasing the number of female civil servants and officials by amending the relevant rules through invoking the principle of affirmative action for which sufficient grounds exist.

¹²Social welfare department is a devolved function and LGs have legal mandate to work on these issues.

MATTERS RELATED TO POLICING

The Local government's role in keeping a check on police custody and maintaining an eye on possible torture in police stations and/or anywhere else is a sensitive area from an administrative stand point but is of extreme importance from the human rights point of view. Policing, to the extent of law and order, for the first time, was brought under the local (district) government in LGO 2001. The relevant law provided for police safety commissions at different levels including district safety commission. There were committees at the police station level as well. The entire apparatus remained dysfunctional as the provisions were partially implemented, mostly on paper. Under the current law, the subject is provincial. Local governments while remaining within the limited mandate given to them for non-devolved functions/ departments can play an important role by keeping a watch on the police operations including illegal detention and torture and reporting the same to the provincial government, higher police officials and watchdog organizations. This may also lead to carving out a formal niche for local governments in the important area of policing that is one of the key yardsticks of measuring the state of human rights in a society.

CHALLENGES AND OPPORTUNITIES FOR LOCAL GOVERNMENT IN THE NEWLY MERGED DISTRICTS

The former Federally Administered Tribal Areas (FATA) represent one of the poorest areas of Pakistan. Prior to its merger with the province of Khyber Pakhtunkhwa the Newly Merged Districts were beyond the realm of governance and marginalized with 60 percent of the population of the area living below the poverty line. The population had limited or no access to state institutions or facilities such as the police, healthcare and education. The social development indicators for the newly merged districts are low not only in national comparison but also in the world. Added to this has been many years of militancy faced by the region. In the post-turmoil scenario, the merger of FATA and efforts towards its mainstreaming and integration is a critical step in improving people's lives and stabilizing Pakistan's democracy and peace.

A number of measures towards this end were taken in 2018 with the extension of jurisdiction of the Supreme Court and the Peshawar High Court to the merged districts, the introduction of the police system and plans to set up 13 police lines, 95 police stations and 190 police posts in the districts.¹³ Provincial Assembly elections have also been held with 16 seats for merged areas, the elections mostly dominated by independent candidates, which also highlights the absence of political party structures and influence. Steps in the right direction have been taken and setting a system for local government administration and

¹³<https://www.thenews.com.pk/print/380233-authorities-take-steps-to-introduce-policing-in-fata>

representation will be another major step towards mainstreaming and integration. More importantly local governments will be able to for the first time deliver grass root change and allow for representation and participation of local communities.

This however will be a long and difficult process and likely to be met with a number of challenges which can be overcome with political will and reform implementation.

STARTING FROM SCRATCH

One of the difficult tasks in merged areas remains the replacement of a system for the maintenance of law and order and criminal justice administration, and a shift from the century old Frontier Crime Regulation (FCR) regime to the one practiced in the rest of the country. Attempts in this regard, have shown signs of success as police officers and judges were appointed and, police stations and courts set up in areas as remote as South Waziristan.

Local Governments did not exist in erstwhile FATA and all has to be built from scratch. In 2002, the Government introduced FATA Local Government Regulation and in 2004, some of the Agency Councilors were nominated by the political agents in each agency (administrative unit renamed as district after merger); the system was not successful because the general public had no confidence in selected office bearers who had no powers. In 2011, Political Parties Order 2002 was proclaimed allowing political parties to campaign freely in FATA. In 2012, the FATA Local Government Regulation 2012 was drafted, however it was not promulgated. The fragile security situation was cited as a reason for the non-extension of Local Government Regulation 2012. The Federal Government set up a high-level committee on FATA reforms in 2015. Its recommendations included setting up elected local governments in the area in 2017, an intervention that had to happen earliest of all on the reforms menu. The committee suggested certain measures as well for holding these elections, which remained a key item on the agenda for merger.

Establishment of Local Government infrastructure and its working in the tribal districts will be quite an uphill task. Recruitment of officers and support staff mainly secretaries of the Village and Neighbourhood Councils is underway. For official accommodation, spaces will be rented where government buildings are not available.

Social infrastructure compared to the settled districts of the province lags behind to a sizable extent. Many studies and surveys have proved this despite the fact that even these figures regarding numbers of professionals and education, health and other service delivery outlets are misleading at times for a number of reasons such as limited or no accessibility, their being suspended or unavailable due to militancy or its aftermath.¹⁴ Local governments do not work in isolation and the extent of their success depends on the overall milieu of the area. There will be challenges even after setting up local governments. These include how line departments of provincial government take on the task of routine functions and build new facilities under a fresh mandate.

State citizen relationship and confidence will be easier gained in some tribal districts such as Mohamand, Bajaur and parts of Khyber and Kurram, for two reasons, firstly the social and civil infrastructure in these areas is better, in some cases at par or higher than many settled districts and secondly, operations against militant activities in these areas were partial and carried out almost ten years back. Challenges will be steeper in North Waziristan, South Waziristan, Orakzai districts and parts of Khyber where displaced families are yet to settle fully and start living anew. Local governments will need additional and custom designed support in these areas.

THE CHALLENGE OF ACCEPTABILITY IN MERGED AREAS

An added challenge in the newly merged areas is that of acceptability. This is due to the lack of familiarity with the system and minimal social capital required for the working of local governments. In order to counter this situation, the Local Government Department came out with an innovative approach. District Coordinators are hired and trained on the local government system and law, one for every district. They will engage the district/tehsil officials and serve as a bridge between the government officials of various tiers and the community on issues related to local government. Youth ambassadors are locals of the tribal districts and were hired in such number to cope for the VCNCs or their clusters.

CONSTITUTIONAL

Under the Constitution of Pakistan, the Local Government is a provincial subject. Provinces can lay down the basic legal framework for their creation and operation. The Constitution distributes legislative,

¹⁴) DEVELOPMENT STATISTICS OF FATA 2016; Bureau of Statistics; FATA Secretariat, Warsak Road Peshawar II) FATA DEVELOPMENT INDICATORS HOUSEHOLD SURVEY (FDIHS) 2013-14; Bureau of Statistics, FATA Secretariat, Warsak Road, Peshawar October 2015 III) FATA MULTIPLE INDICATOR CLUSTER SURVEY (MICS FATA) GOVERNMENT OF PAKISTAN 2009; Published by Planning and Development Department FATA Secretariat, Warsak Road, Peshawar Pakistan.

administrative and revenue powers between the Federal Government and provinces and in turn provinces decentralize some of their powers to the local governments. Functions and powers are assigned to the Local Governments through provincial laws. The Constitutional provisions regarding local governments are:

The State shall encourage Local Government institutions composed of elected representatives of the areas concerned and, in such institutions, special representation will be given to peasants, workers and women
(Article 32)

Promotion of social justice and eradication of social evils. The State shall: Decentralize the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public
(Article 37i)

Each Province shall, by law, establish a Local Government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the Local Governments
(Article 140 A)

It remains an omnipresent challenge to ensure that the province is discharging its constitutional obligation in a befitting manner.

LEGISLATIVE CHALLENGES

The Local Government Ordinance 2001 was framed at federal level and adopted by the provinces. LGA 2013 was a provincial legislation that came as a result of an oft repeated promise made during the electoral campaign and was on top of the agenda of the ruling party. Most of the amendments introduced through legislation in the subsequent year and the LGA 2019 appeared to signal less political will on part of the provincial government to devolve its powers to the districts. An element of haste also shows. Both the above cast aspersion on the quality and intent of legislation. Sub-ordinate legislation that frames rules is delayed, at times to such an extent that the working of local governments is hampered or stopped. In many cases, rules framed are not in tune with the principal legislation and give too much or hold back powers enshrined by the law.

INSTITUTIONAL

The biggest challenge thrown by the LGA 2019 is abolition of the district tier from the elected local governments yet retaining the district as an administrative unit and making the district administration part of the local government law. District administration and city/tehsil local governments heavily depend on each other, yet the boundaries are blurred in the law. This raises challenges for the framers of the rules of business and other sets of rules and procedures. Some provisions in

the law, also increase the potential of operational challenges, for instance, in the chapter of district administration, a section provides that if the Chief Minister asks the Mayor/Chairman of a City/Tehsil Local Government for carrying out a function and the Chairman concerned fails to do so, the Chief Minister will make the district administration perform that function. Such provisions raise questions on the separation of roles and operational independence. Provisions listed in chapters on regulatory functions and accountability pose serious challenge to the working relationship among different bodies.

ENFORCEMENT

Enforcement of local government laws remained a difficult task under various local governance regimes. The LGA 2019 addresses this issue by providing enforcement officers and municipal wardens. The provision itself has a challenge as these wardens will be recruited by the provincial government whereas they will work for the local governments across the province. Defining their duties and reporting lines seems to be a serious task. In the past, enforcement suffered due to heavy dependence on police and judiciary.

CAPACITY

Capacity has been a serious challenge in the local governance of the province. This applies to both numbers and quality. Posting in the local government department remained lowest on the priority ladder of services department as well as officers. The bulk of officers posted in the field were not in tune with the knowledge and skills required for their workplace. Some recent measures are all set for a turn around on this count. These include:

Upgrading and reshaping the local government secretariat and its attached departments
Establishment of a reform cell in it that coordinates the working of development partners and encourages them to be housed inside the department or closely in liaison with it.
Recruitment of officers such as tehsil municipal officers (TMOs) through competitive examination
Imparting preservice and pre-promotion courses in the Local Governance School set up by the LG department for training of its officials.
Office accommodation and human resource in terms of support staff remained a key challenge after the introduction of VCNCs. This was resolved by renting accommodation and making speedy recruitment.

The above measures notwithstanding, capacity both in terms of infrastructure and human resources will remain a key challenge.

RECOMMENDATIONS

SUBORDINATE LEGISLATION

Rules of Business, Finance, Planning and Budget rules should result from thorough deliberations. The Local Government Department in consultation with the Law department and other experts ensure rules are framed in the spirit of the parent legislation and facilitate working of the local governments at all levels. This should not be left to government officers alone and stakeholders should also be involved as the law calls for partnerships and associations of sorts.

CLARITY ON THE EXTENT OF DEVOLUTION

There needs to be clarity on how much the provincial government intends to devolve. Departments devolved earlier, were brought back in provincial control; similarly, groups of health facilities were included in devolved list but now are out of it. The Government needs to clarify its position on devolution and amend the law accordingly.

MANAGING TRANSITION

Abolition of district tier brings with it a huge gap in terms of setting up new reporting lines among various tiers and offices of the provincial and LG departments. The urgent challenge is framing different sets of regulations at the provincial and departmental level for defining clear roles of officials.

Careful handling of relationships between the bureaucracy and elected representatives may prove to be tricky. For example Public officials on the one hand will be working under the supervision of the Chairman at the tehsil/city level, while also being managed by their departmental seniors who supervised them earlier and will continue to control their dossiers and promotion.

Tribal districts will experience local governments for the first time. Handling transition in these areas will have a strong bearing on the benefits of local governments for the common men and women in terms of changing their lives and empowering them socially and economically.

EXPANDING YOUTH AMBASSADORS AND DISTRICT COORDINATORS

Appointment of district coordinators and youth ambassadors in tribal districts for promoting awareness about local governments and meeting the challenge of acceptability is laudable. The same may be considered for settled districts, especially those on the periphery such as Lakki Marwat, Dir, Batgram, Tor Ghar and Kohistans.

PRIORITIZATION FOR IMPROVING SERVICE DELIVERY

LG Amendment Act 2019 does provide for innovative Public Private Partnership models for improved service delivery as well as area specific special projects. Rules must be framed timely to clarify procedures to facilitate implementation.

TOWARDS ACHIEVING GENDER BALANCE

Despite reserved seats in the local governments and direct election of the councilors, extra ordinary measures are required to make progress towards achieving gender balance in tribal districts and many settled districts. Efforts can include the 'affirmative action' of appointing more women officers and officials in these districts in the local government bureaucracy and other departments dealing with them.

PARTNERSHIP THROUGH POLITICAL CONSENSUS

Local governments cannot be expected to contribute much to infrastructure development and social mainstreaming if they work in isolation. Cooperation of the provincial government and its partnership is required.

DECENTRALIZE ENFORCEMENT

In order to strengthen enforcement at the local government level and ensure imposition of fines and their collection, changes need to be brought in the appointment and regulation of enforcement officers and municipal wardens by decentralizing their power and duties.

INCREASE REVENUE GENERATION SPACE FOR THE LOCAL GOVERNMENTS

LGs need opportunity and space to increase and generate their own revenue. This is possible when the provincial government foregoes some of its powers in the ambit of revenue and taxation. This is particularly important in areas where the management function is with the local government such as tax on property particularly in the housing sector.

ACCOUNTABILITY OF SERVICE PROVIDERS THROUGH CITIZEN EMPOWERMENT

Citizens need to be empowered to keep a check on the working of elected councilors and providers of services (civil servants). This may be done through a variety of ways including making provision in the rules to this effect.

Involving communities through inviting consensus proposals from them for development projects can

also pave the way for participatory democracy and local community empowerment. This will also check the undesired practice of distribution of development funds among councilors randomly.

MAKING A ROBUST DISPUTE RESOLUTION SYSTEM UNDER LOCAL GOVERNMENTS

The local government department needs to liaise effectively with the Home Department to explore its ambit of responsibility and associated operational details of alternate dispute resolution measures. The linkage of the Home Department with elected structures at the local level will benefit the dispute resolution system.

STRENGTHENING THE LOCAL GOVERNANCE SCHOOL

The Local Governance School is a training institute operational under the Local Government Department,

the school needs to have a useful updated curriculum in terms of training designs to ensure effective trainings and build capacity of officials and elected representatives.

The option of inviting faculty from other departments of the government and training institutions on deputation can help add value to the school and help towards its functionality.

TRAINING

Training on the new law and the associated rule of business are essential and will help in educating and informing officials of the local government department and representatives across the two tiers of the local government. Elected councilors and office bearers need to be included in training sessions with added modules in management and leadership.

About Democracy Reporting International

Democracy Reporting International (DRI) is a non-partisan, independent, not-for-profit organisation registered in Berlin, Germany. DRI promotes the political participation of citizens, accountability of state bodies and the development of democratic institutions worldwide. DRI helps find local ways of promoting the universal right of citizens to participate in the political life of their country, as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

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