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Three-Wheelers Don't Fly

**Design Issues for the Architecture of
Local Government Systems in Pakistan**

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Abstract

Over the last decades, local government in Pakistan has seen numerous and significant changes. As the constitution fails to provide guidance on minimum characteristics of local government systems to be established by the provinces, many of these changes were driven less by empirical evidence about the strengths and weaknesses of existing systems but rather by political considerations. The paper outlines key elements of a normative framework for effective and inclusive local government systems, such as a focus on inter-municipal and local-provincial cooperation, an agreement on the minimum functional space to be devolved to local governments, and a minimum percentage of the provincial allocable amount to be used for fiscal transfers and formula-based distribution to local governments.

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1. Introduction

A quick analysis of local government systems around the globe, including within the Asia-Pacific region, shows that there is a high degree of diversity in basic design elements of such systems, including (i) the placement of the legal framework in the hierarchy of legislative instruments (constitution/laws/Government Regulations), (ii) the number, size and types of local government units established, (iii) the fiscal arrangements (own-source revenue and fiscal grants), (iv) the scope and depth of assigning governmental functions to local governments, (v) the electoral systems used, or (vi) the institutional and procedural arrangements for central government legal oversight, enforcement of compliance, and the monitoring of local government performances in service delivery (OECD/UCLG 2019). These differences in the design of local government systems reflect the unique and particular political and administrative trajectory of each country, and the policy choices made by the decision-makers. Such differences, therefore, are not necessarily cause for concern.

Even so, the global knowledge on decentralization reforms and on how to build effective and efficient local government systems - knowledge which has been accumulated over the last four decades - indicates clearly that certain design issues are decisive prerequisites for any local government system to produce results. Building blocks of decentralization reforms, such as clear indication of the modalities being used, proper assignment of functions and responsibilities, arrangements for fiscal decentralization commensurate with the functional load of local governments, proper capacity development strategies and delivery systems (Ferrazzi/Rohdewohld 2017: 23ff) need to be tackled and dealt with in a systematic and holistic manner. Otherwise, such reforms will result in ‘partial decentralization’ (World Bank 2019) with unsatisfactory results and with the risk of discrediting the whole concept. At the same time, getting the normative manifestations of local government systems right needs to be combined with a sequenced and systematic implementation strategy which can transform a legal construct into real-life operations of local institutions delivering services to their communities (Smoke 2015a; Smoke 2015b; Smoke 2015c; LDI 2013).

For Pakistan, the need for defining essential elements of the design of local government systems is most pertinent as the Constitution in its Article 140A does not give clear guidance to the provinces, which in the federal setting of Pakistan have the jurisdiction for local government affairs. Article 140A stipulates that provinces ‘*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*’. As further details of such devolution are not

spelt out in Article 140A (or in any other article of the Constitution of Pakistan)², the local government systems established by the provinces after 2010 differed substantially in most of the dimensions mentioned earlier, including in the election mode (such as direct vs. indirect, party-based vs. non-partisan, and first-past-the-post vs. proportional representation), and the menu of functions assigned to the local level (see Islam 2015, PILDAT 2019, Shafqat 2014). Furthermore, the understanding of what constitutes ‘devolution’ is not elucidated, allowing the provinces wide space for interpretation. While formally the provinces did fulfil the constitutional requirements, the actual design and implementation of the local government systems did hardly give rise to local autonomy and discretion in decision-making which is a hallmark of ‘devolution’ as one of the three modalities of decentralization.³

Such lack of constitutional guidance is aggravated by a lack of consensus between the political parties on minimum conditions and key design issues for local governments, which would take matters regarding local government at least to some extent out of the contested areas of party politics. Policy makers are compelled to make drastic and radical changes to local government systems whenever there is a change of political majority in a province. Such compulsion for drastic changes could already been observed with the local governance system introduced by military ruler Musharraf in 2000/2001 (NBR 2002): although the system was innovative and modern at its time, it was immediately abandoned after the return to civilian rule – merely because it came from a non-elected leader and therefore could not be accepted as appropriate at all. Similar system changes linked with changing political majorities at provincial level could be seen in KP (2012/2013, 2013/2019)⁴, or in Punjab (2013/2019, 2019/2021).⁵ It does not take great wisdom to anticipate yet another wave of changes, should the upcoming 2023 general elections result in different political majorities at federal level and in the provinces. Throwing out the ‘baby with the bathwater’, these system changes prevent any lasting institutional learning and the accumulation of knowledge and expertise with relevant actors and

² The only other article of the Constitution dealing with local governments, Article 32, stipulates that 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.’

³ For a comparison of the different modalities of decentralization (deconcentration, delegation, and devolution) see Ferrazzi/Rohdewohld 2017: 13-17.

⁴ A short-lived and never implemented Local Government Act 2012 - formulated by a coalition government consisting of the Awami National Party (ANP) and Pakistan People’s Party (PPP) - was replaced with the Local Government Act 2013 endorsed by a new coalition government led by the PTI. This Act was significantly modified by a major amendment in 2019, strangely enough by the same political majority which had promulgated the 2013 LGA.

⁵ Punjab saw a major modification of the local government system when the 2013 Punjab LGA was replaced with two pieces of legislation, the 2019 Punjab Local Government Act and the 2019 Punjab Village Panchayats and Neighbourhood Councils Act. See Janjua/Rohdewohld 2019 for a detailed assessment. This legislation, which was never fully implemented, saw various modifications until it was finally thrown after parts of it were declared *ultra vires* by a major ruling of the Supreme Court of Pakistan in March 2021. The new legislation endorsed by the end of 2021 is again a significant departure both from the 2013 system, and from what had been conceptualized in the 2019 pieces of legislation; it has yet to be finally passed by the provincial assembly.

stakeholders, often destroying any progress or achievements which had been made in enhancing the functionality and performance of local governments.

In a vast, diverse, and federally-organized state such as Pakistan, having differences between local government systems should be regarded as normal. The systems of Balochistan (large territory, relatively small population widely dispersed throughout the territory of the province) and of Punjab (population of more than 110 million people, rapid urbanization, strong manufacturing and service sectors) are bound to differ. The argument here is that such differences should take place within shared and common minimum conditions and design elements, to ensure that despite diversity the mandate of Article 140A is properly translated in the provincial legislation.

2. Suggested Minimum Conditions and Design Elements

Content and character of such minimum conditions and design elements are obviously part of the political debate and subject to normative frameworks and conceptual or ideological preferences. Taking guidance from the various building blocks of decentralization reforms referred to earlier, such common and shared design elements should include the following:

- A statement on the purpose and objective of local governments
- A preference for devolution as the applied modality of decentralization (as against deconcentration and delegation)
- An agreement on certain key principles to be reflected and accommodated in the provincial legislation; such as (i) creating a unified administration at local level, (ii) enhancing inter municipal cooperation, (iii) fostering local-provincial cooperation, (iv) shared criteria for assigning sector functions to local governments, (v) a commitment to match expenditure assignments with revenue assignments including fiscal transfers, (vi) the non-interference of MPAs/MNAs in local government processes
- An agreement on the minimum functional space to be devolved to local governments (e.g., municipal services, spatial planning/land use planning, functions in primary health and primary education, local economic development, agriculture extension etc.), with introducing a distinction between obligatory and discretionary functions
- An agreement on the minimum percentage of provincial allocable amount to be used for fiscal transfers and formula-based distribution to local governments
- A commitment to the inviolability of the electoral cycle

- An agreement on a minimum representation of women, minorities, and marginalised groups (with definitions) based on direct election.

These elements of a system design will be explained and justified in more detail below.

Statement on the purpose and objective of local governments

The 2013 local government acts of the four provinces are rather silent when defining the *raison d'être* of local governments:

- The KP legislation refers only to the relevant constitutional articles, i.e., Articles 32 and 140A
- The 2013 Punjab LGA links the establishment of local governments to the '*promotion of good governance*' and the '*effective delivery of services and transparent decision making through institutionalized participation of the people at local level*'. While still rather general and placed only in the Preamble of the Act, the formulation gives at least a sense of what policy makers intend to achieve with the establishment of local governments.
- The Sindh LGA 2013 uses the same formulation as Punjab in its preamble
- The Preamble of the 2010 LGA of Balochistan refers to Art. 32 and Art. 140A of the Constitution, framing the latter with the addition 'so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public'. In other words, the existence of local governments is linked to "convenience" and "public requirements".

A statement on the purpose and objective of local government provides a yardstick for assessing the details of local government legislations: do the stipulations support or hinder the achievement of the intended purpose?

For instance, the 2008 legislation of Cambodia on the administration of provinces, municipalities and districts clearly links these local bodies to the achievement of 'democratic development', characterized by public representation, local autonomy, consultation and participation, responsiveness and accountability, promotion of quality of life of the local residents, promotion of equity, transparency and integrity, and measures to fight corruption and abuse of power.⁶ The Constitution of South Africa defines the objectives of municipalities as '*a) to provide democratic and accountable government for local communities; (b) to ensure the*

⁶ See Articles 2,11, and 12 of the 2008 Law on the Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans of the Kingdom of Cambodia.

provision of services to communities in a sustainable manner; (c) to promote social and economic development; (d) to promote a safe and healthy environment; and (e) to encourage the involvement of communities and community organisations in the matters of local government.’⁷

Stating similar policy objectives in the Constitution and/or in the provincial legislations would provide guidance to policy makers at provincial and local level in detailing e.g., the assignment of functions to local governments or the processes for formulating development plans and local budgets. This is also important because provincial legislation post the 18th Constitutional Amendment often delegated the task of formulating detailed and specific legislation relating to

Box 1: Understanding of “Devolution” in the 2013 KP LGA

Section 2.e of the 2013 KP LGA defines devolution as ‘*conferment by Government of its administrative and financial authority for the operation, management and control of specified offices of Government to the local governments*’. This definition is misleading in several aspects:

- Being an Act passed by the Provincial Assembly, it is the elected legislature, not the executive, which is conferring power and functions to the local level. Devolution is not an act of generosity by the Government, but a decision of the province as polity.
- Devolution by definition includes the transfer of political authority to take decisions on those functions or subject matters assigned to the local governments; it cannot be limited to “*administrative and financial authority*”.
- The definition links devolution to “specified offices”, not functions or areas of jurisdiction. Detailing the functions was left to the provincial administration and was stipulated in the Rules of Business for local governments. Normally, decentralization reforms modify the assignment of functions and jurisdictions between political and administrative tiers within the state structure – how these functions are handled by dedicated institutions (or “offices”) is part of the autonomy and discretion which characterizes devolution.

local governments (such as their Rules of Business) to the provincial administration without giving sufficient guidance of what law makers want to see in such lesser legislation. A ‘statement of intent’ would limit the discretion of the provincial bureaucracy in drafting such regulations and ensure that they stay within the purpose and objectives of the main legislation.

Devolution as preferred modality of decentralization

The academic literature on decentralization and local governments makes a clear distinction between three modalities of decentralization: deconcentration, delegation, and devolution. Each of these modalities comes with specific requirements

and implications (see Ferrazzi/Rohdewohld 2017: 17). Art 140A uses the term ‘devolution’ but does not provide a binding definition. As a consequence, the conceptual understanding in the provincial legislations differs substantially, is often misleading and not always consistent (see Box 1 on KP).

⁷ Article 152.1 of the 1997 Constitution of South Africa (as amended from time to time).

All the different modalities have advantages and disadvantages. Being strongly associated with the political dimensions of decentralization, i.e., the existence of a body of elected representatives ('council') and the competition of political parties or electoral groups, devolution should clearly be stated and defined as the preferred modality of decentralization to avoid misunderstanding, but also to close escape routes for provincial policy makers reluctant to transfer powers and responsibilities to the local tiers.

Key principles

Globally, it is standard practice in law-making to leave detailed and granular stipulations to lower-level legal instruments and to focus the main body of legislation (such as an Act passed by parliament) on principles, objectives and other major issues which need to be taken into account when drafting implementing regulations (such as Government Regulations, Rules, or even Administrative Orders). In the hierarchy of legal instruments (Constitution => Act => Rules and Government Regulations => Administrative Orders), the lower-level legal instruments must stay within the limits set by the higher legislation. For the arrangement of local government systems by provincial legislation, constitutional guidance on some key principles would be useful. Six issues are of paramount importance:

- (i) local governments must have the **jurisdiction to determine their administrative set-up** (including jurisdiction for HR management) needed to discharge the assigned functions. In other countries, the term 'unified administration' has been used to describe the fact that such local administrative units function under the oversight and supervision of an elected official (such as a Mayor, or District/Tehsil Chairperson), who in turn is supervised and controlled by an elected council. The current arrangement in the provinces of Pakistan provides inadequate autonomy to local governments in managing their administrative arrangements. Most of the government staff working at local level comes under the control of provincial institutions (such as the Local Council Board in KP or the Local Government Board in Punjab) which determine recruitment, placement, and career development. Local Governments have no say in the decisions of these provincial bodies, and no involvement in selecting officials posted to them.
- (ii) Many functions and government services at local level have characteristics (such as spill-over effects, economies of scale) which indicate that service delivery by more than one local government unit will make sense economically and in terms of service quality. Typical examples for this kind of **inter-municipal cooperation** include

solid waste management, water supply, sewage water, public transport, but also aspects of education and health services. Spatial planning is likewise a function where each local government unit needs to consider linkages with the neighbouring local governments, especially in cases of rapid urbanisation which characterizes most of Pakistan. Many countries have created special purpose vehicles for such joint service delivery (VNG 2010); the 2019 Punjab LGA also had stipulations allowing the creation of ‘joint authorities’. Putting forward the idea of inter-municipal cooperation in the Constitution or provincial legislation could encourage policy makers at provincial level, but also local leaders, to consider such options in the interest of better service delivery.

- (iii) Often, decentralization is regarded as a zero-sum exercise where one level (national, provincial) loses powers and resources while another (local) gains accordingly. If such a mindset prevails, it is difficult to realise constructive and cooperative patterns of engagement between the local level and the provincial level, even if such cooperation would result in better service outcomes. While the concept of devolution advocates local autonomy and discretion in decision-making (e.g., in allocating budget resources), it also acknowledges that local governments are an integral part of a wider political body, and that national/provincial policy objectives and legislations have to be considered and taken into account when exercising local autonomy. The **principle of local-provincial cooperation** is meant to remind local leaders and provincial policy makers about the need for working together when appropriate, and not to regard each other as rivals.
- (iv) Provincial legislation since the passing of the 18th Constitutional Amendment exhibited a wide variety when **assigning functions and responsibilities** to the local levels. Again, this reflects variations of context conditions and of preferences for policy choices, and therefore would be a natural (and intended) effect of having a federal set-up. Still, it makes sense to guide provincial law makers by clarifying a minimum set of local functions (see below), and to determine a set of criteria to be used when deciding on the assignment of additional functions (e.g., in the social sectors). Regarding the assignment of such functions, principles such as subsidiarity, economies of scale, heterogeneity of demand have been put forward as guidance for assignment decisions.⁸

⁸ In the context of operationalizing its new 2015 constitution which created a federal state structure, Nepal has undergone an interesting exercise in unbundling government functions to the national, provincial, and local level. While still in need of further

- (v) The 2019 World Observatory on Subnational Finance and Investment (OECD/UCLG 2019) provides relevant and comparative data on **subnational finances**, and to what extent subnational or local governments are involved in public expenditures on public services. Hardly any country has made a proper costing of functions which are being assigned to local governments; as a consequence, often local governments find themselves burdened with a multitude of responsibilities but without the adequate fiscal resources. Such unfunded mandates discredit the concept of decentralization, but are often the easy way out for central policy makers. Having a clear commitment in the Constitution that expenditure assignments to local governments must match with their revenue assignments (including fiscal transfers) would put pressure on provincial policy makers to avoid unfunded mandates.
- (vi) In Pakistan and other countries in Asia and the Pacific (such as the Philippines, or India), members of state/provincial assemblies or of the national parliament have dedicated budget resources which they can spend on development activities in their respective constituencies, leading to the situation that development activities in a given local government are being funded by the own local government budget, funds from the provincial government, funds from the respective Member of the Provincial Assembly (MPA), and the respective Member of the National Assembly (MNA). Since social norms tend to accentuate the hierarchy between these levels, MPAs and MNAs influence local decisions in a way which can be detrimental to an integrated and sustainable social and economic development of a local government, despite numerous efforts to harmonize and coordinate such development expenditures with the overall local development priorities of the local entity. It also blurs the lines of jurisdiction and accountability between the different tiers. Ideally, such options for MPAs and MNAs are to be discontinued.

Minimum functional space of local governments

In 2013, the global association of regional and local governments, *United Cities and Local Governments* (UCLG), had established a list of functions and service responsibilities which typically are assigned to the local level. These included *services* (e.g., public transport, street lighting, cleaning of streets, management of local markets), the *provision of infrastructure*, *building-related functions*, *urban planning* (including the application of land-use regulations),

detailing, the exercise is one of the few in the regions where an attempt was made to make informed and principled decisions on the assignment of functions. See Government of Nepal 2017.

and *local economic development* issues (UCLG 2013). In Pakistan, there seems to be an implicit consensus that ‘municipal services’ are a natural choice of local functions as these are mentioned in all the provincial legislations. Primary health care and primary education are also functions frequently assigned to local governments. Zoning, land-use planning and spatial planning are crucial and indispensable local functions as they inform and shape social and economic development within the territory of each local government. Having a minimum list of local government functions mentioned in the Constitution, with the option of the provinces to expand, will help to achieve a minimum level of comparability between the provinces.

Minimum percentage of provincial allocable amount

Keeping in mind the need to match expenditure assignments with revenues as mentioned earlier, countries like Indonesia, India, and the Philippines have determined (by law, by constitution, or through bodies like a Finance Commission), what percentage of national revenue must be allocated to the local governments by means of fiscal transfers. In *Indonesia*, the general fiscal transfers amount to 26% of the national revenues. In the *Philippines*, the Internal Revenue Allotment (IRA) grants to all subnational governments amount to 40% of the national revenues in the fiscal year 3 years prior to the year of the transferring. In *India*, the Central Finance Commission has fixed the unconditional block grants to District, Block (*tehsil*) and Gram Panchayats funded through the states to 42% of the national revenue pool. The 2019 Punjab Local Government Act included a proviso fixing the provincial allocable amount to not less than 26 percent of the general revenue receipts of the province in the relevant financial year with an intended increase to 28 percent.⁹ Such clear stipulations give more certainty and predictability to fiscal transfers, especially when formula-based transfer systems are used to divide the financial pool amongst the local governments units.

Inviolability of the electoral cycle

One of the saddest features of Pakistan’s local government systems is the arbitrariness shown by provincial politicians in delaying and postponing local government elections. This lack of continuity is a major explanation for the continuing lack of capacity of local governments to provide public services, as elected councillors cannot accumulate expertise and comprehension and transfer such knowledge from one batch to the next. Processes and procedures within local government are disrupted again and again.

⁹ See Sec. 188 of the 2019 PLGA. The recently approved PLGO 2021 maintains this proviso in its Section 121.

This arbitrariness shows a deep disrespect for a core element of a democratic polity, i.e. conducting elections in a regular and predictable manner. Elections are the main instruments for people to determine their representatives, to judge on the performance of sitting representatives, and to express their priorities for policy choices in the upcoming legislative period as reflected in the manifestos of the competing political parties. The 2017 Elections Act partly put a stop to this arbitrariness, as Sec. 219a clearly stipulates that the Election Commission ‘... shall hold elections to the local governments within one hundred and twenty days of the expiry of the term of the local governments ...’ Unfortunately, the Election Commission does not have the administrative and political means to enforce compliance with this stipulation when Provincial Governments block the process. Recent decisions by High Courts and by the Supreme Court of Pakistan have strengthened the hands of the Election Commission – this gives hope that such opportunistic behaviour of provincial elites will not be tolerated any longer. Constitutional protection of this 120-days period would be another significant step. At the same time, it would be prudent to use common sense and to accept the political nature of elections at every tier of the political system; this means, elections should be based on party lists and lists of electoral groups with the option for independent candidates in individual constituencies.

3. Way forward

As mentioned earlier, conceptual and ideological preferences will shape the views of political actors regarding minimum conditions and core design elements of local government systems in Pakistan. Unless the judiciary determines these in more detail, it will be up to the political parties to forge a consensus and to translate such consensus into the legal framework, i.e., the Constitution and the provincial legislation. Such an inter-party dialogue should include experts and resource persons from the academia (universities and policy think tanks), representatives of local governments and their associations, and civil society organisations. Starting point of such a dialogue should be the quest for obtaining better and more representative empirical evidence about successes and failures of the different systems and their design elements - something which has been thoroughly missing in the policy-making processes on local government affairs of the last few years. Within the federal set-up of Pakistan, there are institutions such as the Council of Common Interest or the Ministry of Inter-Provincial Cooperation which could be used as platforms for dialogue across provinces and between provinces and the federal level. Having a more elaborate Article 140A defining minimum conditions and essential design elements, will be a major step in enhancing convergence of

local government systems of the provinces. However, unless the political parties share such a consensus and commit to implement it in the provinces, such minimum conditions and design elements will remain in the lofty heights of political rhetoric and will not be reflected the daily experiences of the Pakistani citizens with their own local governments.

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Abbreviations

BMZ	German Federal Ministry for Economic Cooperation and Development
HR	Human Resources
IRA	Internal Revenue Allotment
KP	Khyber Pakhtunkhwa
LGA	Local Government Act
MNA	Member of National Assembly
MPA	Member of Provincial Assembly
OECD	Organisation of Economic Cooperation and Development
PLGA	Punjab Local Government Act
PLGO	Punjab Local Government Ordinance
UCLG	United Cities and Local Governments

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