

PAKISTAN ADMINISTRATION

A JOURNAL OF THE
NATIONAL SCHOOL OF PUBLIC POLICY



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ISSN 1027-1023

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Preface

The *Pakistan Administration*, a Journal of National School of Public Policy has been once again successful in leaving its footprints in the public policy domain. Testament to this is the accolade and appreciation received by the Editors from various well-established scholars and civil servants on the previous Issues of this Journal. It's also quite encouraging that not only the selected authors but also the readers are impatiently waiting for the publication of next issue of this Journal. Keeping in view such enthusiasm and encouragement, the Editors are mindful of further improving the quality of this Journal.

We are happy to present our Winter Issue, after getting all the selected papers/articles through peer-review and language editing process. The articles selected in this Issue include two case studies of 113th National Management Course, and three case studies from 114th NMC participants. In addition, four articles written by participants by 29th Senior Management Course are selected in this Issue.

We very much appreciate the support of our faculty and training participants as we strive to make *Pakistan Administration* a leading journal on public policy and public administration issues in the country.

Dr. Safdar Ali Sohail
Executive Editor

Editor's Note

The Winter 2021 Issue of *Pakistan Administration*, a Journal of National School of Public Policy is in your hand. This Issue of Pakistan Administration, like previous ones, continues to contribute to the knowledge on the topics of governance, public administration and public policy in the country. In the current issue, we have included wide range of research papers from different policy domains such as governance, local government, IT applications, and financial management of the economy.

The first article on “Land Disputes and Efficacy of Revenue and Civil Courts in Pakistan” by Syed Hammad Abid, presents an interesting topic to critically examine the efficacy and efficiency of the existing revenue and civil courts in deciding the cases. In addition, some workable recommendations are forwarded to ensure fair and speedy dispensation of justice in land disputes in the country.

A similar paper by Waqar Ahmed on “Alternate Dispute Settlement System in KP: Challenges, Opportunities and Options for Improvement” aims at identifying and analysing the challenges and opportunities posed Disputes Resolutions Committees in police department in KPK. The author also compare the working of these alternate dispute mechanisms with other successful replicable best practices in the world.

The article, “Local Government in Punjab: Comparative Analysis of PLGA, 2013 and PLGA, 2019” by Marryam Khan, analyses both the Acts against a three-factor comparative framework to identify an optimal decentralization legal framework for Punjab, which is implementable, sustainable, and political ownership. The paper further explains that whether political decentralization, decision-making power and political representation have been enhanced in the latter Act or not.

The case study presented by Waseem Ajmal on “The Challenges of Converting Municipal Solid Waste (MSW) to Energy in Lahore” explains the underlying bottlenecks in establishing the waste to energy incineration plant in Lahore. The study describes the different dimensions of political, professional and personal responsibilities an officer must keep in mind before disposing off his/her administrative duties.

The next case study on “Leveraging ICT for Integrating Regulatory Functions for Cross-Border Trade: Development of Pakistan Single-Window Platform” by Syed Shakeel Shah, holistically examines the ICT-based integration of cross border trade regulations for efficiency, transparency and ease of doing business. The study explains that indigenously developed reform projects are better alternative to conceive technology-driven reforms in terms of outcomes as well as costs.

Syeda Naureen Zahra's study on "A Case of Money Laundering in the Education Sector - Analysis of Operational Methodology" depicts an interesting case that how an apparently education sector case, put up for exemption from withholding tax, and turns out to be linked with massive money laundering. The author describes how the loopholes in tax system needs to be plugged and how one individual efforts can make a difference if decisions are made on merit and in good-faith.

The research study by Salman Sharif on "Financing of CPEC Projects: Implications for Pakistan" examines the financial obligations arising out of CPEC projects vis-à-vis potential socio-economic benefits to Pakistan's economy. The study further put to test the notion that Pakistan falling into Chinese 'debt trap' and examines whether sufficient fiscal space can be created for Pakistan to be able to pay off the liabilities.

The case study, "Procurement of Number Plates in Punjab Excise, Taxation & Narcotics Control Department" by Wajihullah Kundi, critically examines the impact of bureaucratic indecision resulting from the fear of National Accountability Bureau and involvement of multiple stakeholders in the decision-making process as a result of the judgement passed in the Mustafa Impex case.

The study on "The Buddha's Journey from Peshawar to Zurich: Handling the Complex Challenges of Coordination" by Syed Junaid Akhlaq, explains the moving of 2000 years old mighty Buddha's statue from Peshawar to Rietburg Museum Zurich that entails number of policies, administrative and operational challenges. The author describes how his innovative thinking, relentless perseverance and taking risky initiatives and decisions helped him in accomplishing the task.

Finally, I am very grateful to the submitting authors who have contributed their valuable work. It is a pleasure to publish this 43rd Volume (Winter Issue) of Pakistan Administration which aspires to be engaging and accessible to all policy related readership in the country. Submissions for the next issue of the journal within the domain of government, governance and civil/public service are solicited. We are hopeful that you will enjoy this Issue of 2021. Comments, feedback and suggestions would be most welcome.

Dr. Saif Ullah Khalid
Editor

Disclaimer

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Pakistan Administration

Volume 43

December 2021

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Land Disputes and Efficacy of Revenue and Civil Courts in Pakistan

Capt (Retd) Syed Hammad Abid¹

Introduction

Disputes over documentation and possession of property directly impact peaceful existence of societies. Loss of property and possession is deemed as loss of honor and dignity. Social, cultural, and customary peer pressure are major factors that trigger violence. Land has always been considered to a valuable asset and a finite resource. Compromises over land, even when made voluntarily, are considered psychological infringements of fundamental and economic rights. Land disputes exist everywhere. From the global to the local. At the domestic level, factors that play catalytic roles in infusing and promoting land disputes are the same that hamper effectiveness of land administration. These include climate change, food insecurity, unemployment, unplanned urbanization, deforestation, and encroachment of state and private land due to poor enforcement of rights.

Areas now comprising Pakistan have been grappling with these issues since times immemorial. On the other end of the spectrum, there are many countries where technology has been employed in resolving land disputes. Ineffective systems are at significant risk of failure and data loss due to numerous disasters and lack of interoperability.² As elsewhere in the world, land-related disputes in Pakistan affect peaceful co-existence of society.³ Boundary disputes and identification of ownership of land lead to conflicts for which claimants seek intervention of revenue and civil courts. Civil courts have plenary jurisdiction where trial suits are initiated. Notwithstanding delays that exist elsewhere, the situation in Pakistan has deteriorated to the extent that it has now started to undermine the whole legal system.

While effective legal safeguards that ensure protection of property rights for all are in place in developed countries, these are generally absent in Pakistan. In addition to the civil courts, revenue courts starting from the court of Naib Tehsildar to the court of Chief Settlement Commissioner/ Senior Member Board of Revenue (SMBR) operate under the West Pakistan Land Revenue Act, 1967 (WPLRA) for settling land disputes of tenancy, lease, partition, mortgage, correction of record and entries. The provincial governments exercise administrative control over these revenue courts. When it comes

¹ Police Service of Pakistan, 29th SMC (shammada@yahoo.co.uk).

² Tim Hanstad, "Designing Land Registration Systems for Developing Countries," *American University International Law Review* 13, no. 3 (1998): 647-703.

³ Sheikh Usman Karim ud din, "Jurisdiction of Civil Courts," *Courting the law, Pakistan's 1st Legal News & Analysis Portal* (January 2017), <https://courtingthelaw.com/2017/01/02/commentary/jurisdiction-of-civil-courts/> (accessed July 20, 2021).

to efficacy, the situation in revenue courts is not very different from their counterparts in parallel civil and criminal systems. Instead of expeditious dispensation of justice or adjudication, these ineffective systems tend to prolong the agony of complainants and respondents alike.

Given the fractured and untenable civil judicial system of Pakistan, many revenue cases are also filed in the civil courts on the pretext of collecting evidence and further inquiry.⁴ However, aggrieved parties are unable to get the matters decided conclusively. Often decisions are delayed to an extent that the first generation knocks on the door of the court and it is only the subsequent generation that receives remediation, if at all.

Therefore, there is a dire need to conduct research and explore the causes of land disputes in Pakistan. The efficacy of existing revenue and civil courts in resolving cases also needs to be analyzed critically and measures for improving their performance through fair and speedy dispensation of justice need to be proposed.

The scope of this study is vast, yet research constraints have limited it to Punjab province. It is believed that matters relating to revenue administration and courts issues related thereto are more or less similar in nature in the rest of Pakistan. To ascertain efficacy of civil courts, comparison has been drawn between the working of district judiciaries of Punjab and KP, specifically in the context of matters pertaining to land disputes. This paper explores causes of land disputes, role of civil and revenue courts and provides suggestions which, if implemented, would be productive in meeting the ends of justice.

Review of Literature

The term ‘land dispute’ is defined as “a dispute over the right of land use between land users and other organizations or persons in connection with the appropriation or withdrawal of land from the users, with the system of land management, and with the exercising of other functions of disposal and control of the land.”⁵ Land disputes between claimants arise due to non-fulfilment of terms and conditions of tenancy or allotment of the state land. Along with this there are multiple other reasons due to which disputes arise, including cancellation of conveyance deeds, fraudulent concealment, etc.

Article 23 of Pakistan’s Constitution grants every citizen the right to procure property anywhere in the country. According to this Article, a person can not only obtain property, but also hold and even give it up at will. Naturally, individuals must exercise this right by adhering to the law and its restrictions.⁶ According to Article 24, property

⁴ The Punjab Land Revenue Act, 1967 (Lahore: Official Printers, XVII of 1967).

⁵ *The Great Soviet Encyclopedia 1979*, 3rd ed., s.v. “Land Disputes”, <https://encyclopedia2.thefreedictionary.com/Land+Disputes> (accessed July 26, 2021).

⁶ The Constitution of Pakistan, 1973, Articles 23, 24 (Islamabad: Official Printers, 1971).

shall never be forcefully taken from the owners without the authorities compensating them by specifying an amount and defining the method for compensation.⁷

The Honorable Supreme Court of Pakistan in the case of Liaquat Hussain vs. Federation of Pakistan remarked on the accumulation of backlog in courts at all the levels of judicial hierarchy.⁸ Later, in its Report No. 60 *Expediting Trial Proceedings*, the Law and Justice Commission of Pakistan identified a dire need to reduce delays, reform procedures, reduce cost of litigation and ensure implementation of directives issued by the district judiciary. The report also encourages alternative dispute resolution methods to minimize the costs of litigation.⁹

Based on the value of the case, if someone is not satisfied with the decision of a civil judge, an appeal can be filed against it in the district judge's court and even an appeal or revision can be filed in the High Court against the verdict of the district judge's court. Usually, appeals can be filed in the Supreme Court after announcement of verdicts by High Courts.¹⁰

Public discourse in Pakistan has long identified certain people or groups involved in concerted – and even organized – land grabbing which are collectively referred to as “Land Mafia”. These individuals and groups are involved in unlawfully dispossessing land from real owners by making false claims of ownership of particular parcels of land and following such fraudulent cases through all manner of legal forums, thus using the law for their nefarious purpose. Therefore, a law appropriately titled *Illegal Dispossession Act* was approved in 2004 to deal with this issue; however, this too has proven to be of very little success till now.¹¹

Land administration is “the process of recording, accumulating, managing, allocating information of land ownership, its value, use, rules of property transaction ratio of taxes and related legal issue.”¹² With Pakistan's economy being predominantly agriculture based, agricultural revenue assessment system is centuries old. The old system has lost its relevance and lacks effectiveness in meeting contemporary demands. Thus it is imperative to use of technology to digitize land record for minimizing disputes by cutting processing time for land record management, decision-making, strategic planning and predictive modelling. The adoption of these technologies would make land records management efficient and easier.¹³

⁷ Ibid.

⁸ Ministry of Law, Justice and Parliamentary Affairs, PLD 1999 SC 504.

⁹ Law and Justice Commission of Pakistan, *Expediting Trial Proceedings*, no. 60, <http://www.commonlii.org/pk/other/PKLJC/reports/60.html#fn5> (accessed 14 August 2021).

¹⁰ Asmat Ali and Munir Ahmad, *Analysis of the Barriers to Land Administration in Pakistan, 15th Global Spatial Data Infrastructure Association (GSDI) World Conference, 2016: 1-29*.

¹¹ David Bolt, Independent Chief Inspector of Borders and Immigration, *Annual Report*, (London: Williams Lea Group, April 2016 to March 2017).

¹² United Nations, Economic Commission for Europe, *Land Administration Guidelines*, 1996, <https://digitallibrary.un.org/record/216105?ln=en> (accessed July 20, 2021).

¹³ Fawad Raza, Mohammad Almas and Kamran Ahmed, *Land Records Information Management System*, <https://proceedings.esri.com/library/userconf/proc05/papers/pap1279.pdf> (accessed July 23, 2021).

This study explores the significance of land records for urban development. It notes the detriments of traditional land records management and its overall impact on economic growth of the country and cost of wasted opportunities. The author is of the view that a paradigm shift in technology is need of the hour so as to bring substantial change in the land records management system.¹⁴

Research Methodology

This research is exploratory in nature; a mixed methodology of qualitative and quantitative techniques has been used. Both primary and secondary sources have been consulted. In the qualitative part, deeper understanding of the issues has been elicited through several interviews with serving judges of the district judiciary, a retired judge of the higher judiciary, revenue officers up to the rank of Members of the Board of Revenue (BOR) Punjab and eminent practicing lawyers dealing cases of civil nature in different courts were conducted. The quantitative study is based upon the data of Directorate of District Judiciary, Monitoring Unit of LHC, Secretariat of District Judiciary of PHC and BOR, Punjab.

1. Land Administration in Pakistan

Administrating land matters of provincial governments in Pakistan is the primary function of revenue departments. These also handle land of the federal government. Administratively, the land of Pakistan is divided into four provinces and a federal territory. The provinces are further divided into divisions.¹⁵ For instance, the Punjab province has nine revenue divisions. Divisions are divided into districts which are further divided into tehsils that, in turn, comprise Qanoongo and Patwar circles. The fundamental unit of land administration is a village (*mauza*). A group of villages forms a Patwar Circle that is headed by a Patwari. For the smooth running of administrative work, groups of several Patwar circles headed by Qanoongos are constituted. In turn, two to three Qanoongo circles make up the circle or jurisdiction of a revenue officer, the Naib Tehsildar. The tehsil comprises revenue circles where all the records are maintained and is considered the principal unit of revenue administration.¹⁶

1.1 Structure of Revenue Courts Elucidating the Jurisdictional Extent

The hierarchy of revenue courts in Punjab along with their mandate is explained in the following chart:¹⁷

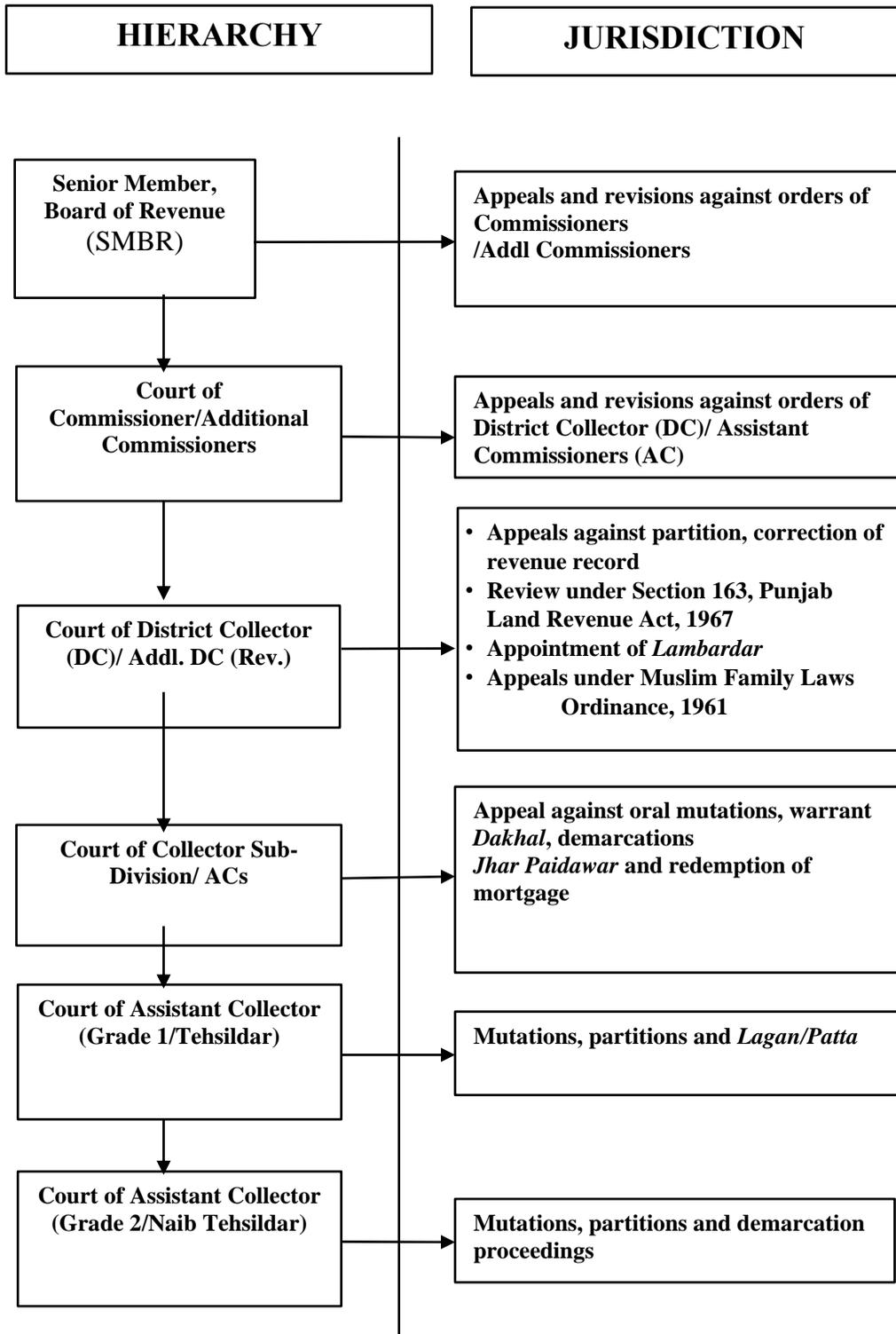
¹⁴ Rashi Gupta, Mona N. Shah and Satya N. Manda, "Emerging paradigm for land records in India," *Emerald Insight*, under "Smart and Sustainable Built Environment 2020,"

<https://www.emerald.com/insight/content/doi/10.1108/SASBE-11-2019-0152/full/html> (accessed July 19, 2021).

¹⁵ The West Pakistan Land Revenue Act, 1967 (Islamabad: Official Printers, XVI of 1967), Chapter II.

¹⁶ *Ibid*, Chapter-III.

¹⁷ Former Deputy Commissioner Saif Anwar Jappa of Gujrat, Government of the Punjab, interview by author, Lahore, 19 July, 2021.



1.2 Causes of Land Disputes

The main causes of land disputes are elaborated in the following paragraphs:

1.2.1 Lack of Titling and Land Registry System

Land disputes mainly emerge due to the absence of strong titling and land registry system with reliable cadastre. The record of rights (*misl-e-haqqyat*) of owners (*haqadaran-e-zameen*) is updated after every four years; this and subsequent periodical record (*girdawri*), confer rights with mere presumption of truth and not necessarily the whole truth. Due to these discrepancies and inherent weaknesses in the title documents, land grabbers (“*qabza mafia*”) exploit the socially and economically weak litigants by involving them in civil and subsequent criminal litigations.¹⁸

1.2.2 Land Disputes between the State and the Tenant

It has been observed that there are frequent instances of land disputes between the state and tenants.¹⁹ Major reasons have been summarized as under:

- 1) Non-fulfilment of terms and conditions of tenancy or allotment of state land to individuals.
- 2) Identification of improvements made by tenants.
- 3) Conferment of propriety rights.
- 4) Issuance of final conveyance deeds.
- 5) Cancellation of conveyance deeds due to fraud or concealment of facts.
- 6) Lease/instalments and recovery of outstanding dues related to state land.
- 7) Disputes related to illegal occupation or cultivation of state land, eviction and recovery of fines (*tawan*), etc.

1.2.3 Disputes between Private Parties

Similarly, there are numerous factors pertaining to disputes between individuals in revenue matters.²⁰ Most significant are:

¹⁸ Former Deputy Commissioner Maqbool Ahmad of Jhang, Director Land Records and Secretary Colonies Board of Revenue, Government of Punjab, interview by author, Lahore, July 21, 2021.

¹⁹ Ibid.

²⁰ Ibid.

- 1) Title/ownership, right to cultivate, occupy and partition.
- 2) Inheritance.
- 3) Share of produce.
- 4) Ejectment of tenants.
- 5) Right of way/easement rights.
- 6) Improper demarcation of land.

1.3 Revenue Courts

The performance of the revenue and appellate courts of Punjab was analyzed by navigating through factors impacting the process of service delivery. No centralized record was available prior to April 2020 with regards to the institution and disposal of revenue cases at various revenue courts in Punjab. This posed difficulty in carrying out a comparative analysis of preceding years. In April 2020, Revenue Court Case Management System was put in place at the Secretariat of the BOR), Government of the Punjab. As Figure-1 indicates, total cases instituted in the revenue courts in Punjab from April 2020 till June 2021 were 155,332, whereas the disposal reached 58,106.²¹ Overall disposal percentage was just 39%. This indicates that 61% of aggrieved persons had to suffer delays in obtaining relief, faced mental anguish and bore economic losses due to protracted litigation. Further analysis revealed that the disposal of revenue cases at the courts of District Collector (DC), Additional DC (Revenue)[ADC(R)] and Assistant Commissioner (AC) was slightly better than courts of Tehsildar and Naib Tehsildar, averaging 47% and 28% respectively.²²

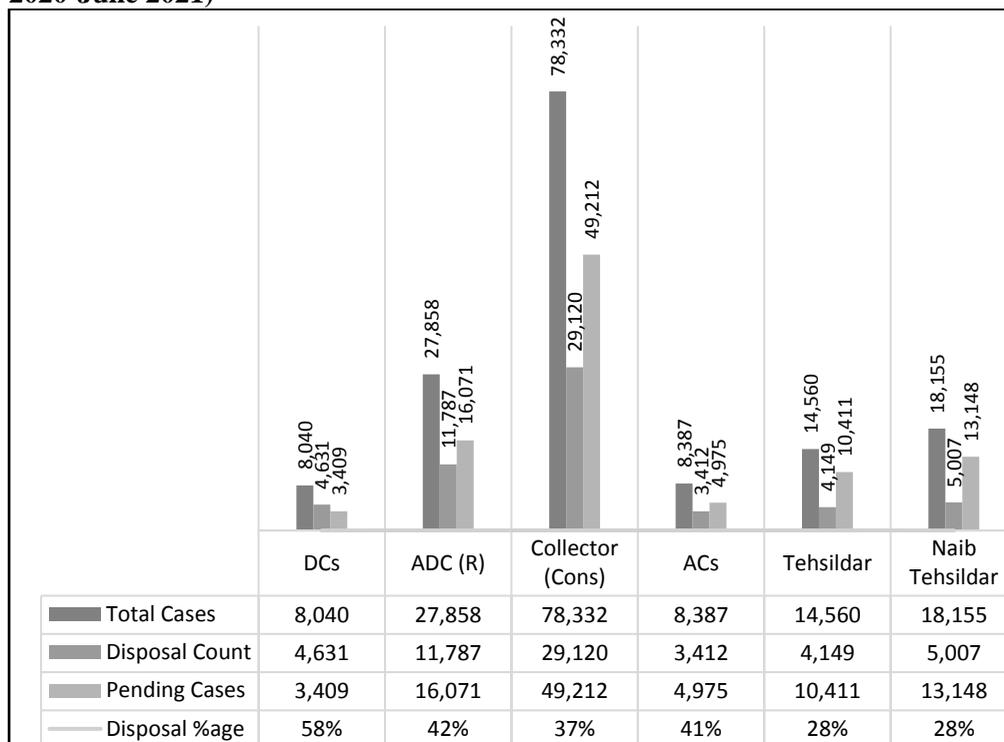
This suggests that the lower tiers of the revenue courts in Punjab are not efficient in allaying the concerns of the affected individuals. Major factors identified for overall unsatisfactory performance of the revenue courts are greater inclination of office holders towards administrative functions, frequent law and order duties, missing sense of urgency towards court work, absence of proper case management system, norm of illegal gratification, and missing element of empathy towards the needs of citizens.²³

²¹ Secretary Ishfaq Ahmad Chaudhry of Revenue and Establishment at Board of Revenue, Government of the Punjab, interview by author, Lahore, July 22, 2021.

²² Ibid.

²³ Former Deputy Commissioner Lt. (retired) Sohail Ashraf of Gujranwala and Director General PDMA, Government of the Punjab, interview by author, Lahore, July 22, 2021.

Figure 1: Institution and Disposal of Cases by Revenue Courts in Punjab (April 2020-June 2021)²⁴



1.3.1 Appellate Revenue Courts

The situation is not much different when it comes to efficacy of appellate revenue courts in Punjab. Statistics in Figure-2 below show that only 31% cases were decided at the courts of Commissioners and 24% at the appellate forum of the BOR over the period of 15 months from April 2020 till June 2021.

²⁴ Office of the Registrar, Board of Revenue, Government of the Punjab (Lahore: Official Printers).

Figure 2: Disposal of Revenue Cases by Revenue Appellate Forums (April 2020-June 2021)²⁵



1.3.2 Limitation of Revenue Courts in Determining Rights of Parties

An underlying issue that is encountered and goes to the very root of any case is that of factual controversies which require determination of rights in recording of evidence and grounds of fraud. This is a mandate of a civil court and not the revenue authorities under Section 172 of the WPLRA, 1967. It is pertinent to mention that neither the Civil Procedure Code (CPC, 1908) nor the Qanoon-e-Shahadat Order, 1984 is applicable in recording of evidence before revenue courts. Section 172 places exclusivity to the revenue officers in matters of revenue and excludes the jurisdiction of a civil court in its exercise of civil jurisdiction.²⁶ Matters that have been expressly drafted into the body of Section 172 are more relating to procedure than substance. Due to this inability, the efficacy of the revenue courts is compromised and has following implications:²⁷

1.3.2.1 Matters pending before relevant revenue forum does not proceed further till the factual controversy is decided by the respective civil court. This undoubtedly delays the dispensation of justice besides increasing the cost of litigation.

²⁵ Ibid.

²⁶ Practicing lawyer Syed Kamal Ali Haider at the Lahore High Court, Lahore, interview by author, Lahore, August 2, 2021.

²⁷ Ibid.

1.3.2.2 Revenue courts remain excluded from any claim based on fraud. Thus, the litigants have to get their rights determined before a civil court. At times when fraud is established, litigants pursue criminal charges against the other party which in turn results in inordinate delays in the originally instituted revenue proceedings.²⁸

1.3.2.3 A decree passed by a civil court is received for implementation before revenue officers. *Prima facie* errors, mistakes, elements of fraud and concealment cannot directly interfere in the implementation process of the decree. This also results in miscarriage of justice.²⁹

1.3.3 Constitutional Jurisdiction Under Article 199 (Judicial Review) has an Overriding Effect on Revenue Authorities and Orders

On the revenue side, the hierarchy of courts starts at Naib Tehsildar and goes up to the court of SMBR. Cumbersome as this dispute resolution process is, judicial review under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 enables challenges to the orders/directions of the highest revenue court on substantial grounds of illegality, irrationality, procedural impropriety, proportionality.³⁰ Besides procedural grounds encapsulated in the body of Article 199 and its sub clauses that encompass classic nature of writ petitions (including mandamus and contextually relevant prohibitions), it has been observed that the honorable High Courts while exercising jurisdiction under Article 199 do not enquire into factual controversies of a dispute; this results in directions being issued to the same member of BOR to retry the dispute and re-adjudicate upon it again. The High Court's inability under Article 199 to conduct proceedings which are inquisitorial in nature throws back the petitioner before the same fora.

Similarly, if the judgment that has been rendered against the act/order/action of the SMBR by the honorable High Court is found to be illegal or without jurisdiction, the honorable Supreme Court acting under Article 185 of the Constitution and exercising power of appeal does not intervene directly into factual controversy(ies) and transmits the matter back to the same forum from which the grievance originated. Thus, such an exercise frustrates the litigant as he is back to square one and there is no *finis litium* (end to litigation). The West Pakistan Board of Revenue Conduct of Appeals and Revision Rules, 1959 govern the conduct and disposal of revenue matters before the BOR but are not exhaustive in nature and do not cover all eventualities. Yet Section 3 addresses presentation of appeals and applications for revisions to the BOR. Section 4 addresses stay of execution of orders in the decrees and Section 4A deals with the disposal of urgent petitions for stay order.

²⁸ Ibid, Section 172.

²⁹ Ibid.

³⁰ The Constitution of Pakistan, 1973, Article 199 (Islamabad: Official Printers, 1971).

1.3.4 Ineffective Law of Possession and Dispossession

Prevailing law of possession of property is primarily represented by Section 8 of the Specific Relief Act, 1877 and Section 9 of the same act. In case of immovable property, the prime distinction between the two sections is that Section 8 covers instances in which a person is entitled to possession of specific immovable property on the basis of a title in the manner provided by the CPC, 1908. Relaxation in terms of limitations on the plaintiff on the basis of possession in the suit is 12 years. Section 9 of the Specific Relief Act has a different approach: the scope of this section provides that any person who is dispossessed of immovable property without his or her consent may file a suit claiming dispossession within a period of six months.³¹

As the aforementioned two sections did not cover all instances of dispossession, in order to accommodate situations involving an element of land grabbing, the Illegal Dispossession Act (IDA), 2005 was enacted to specifically empower a person affected by land grabbing to file a complaint before a District Court. However, IDA could not yield the expected results.³² This was further highlighted by the honorable Supreme Court of Pakistan in its judgment dated July 19, 2016, with the remarks that, “In terms of the ratio of the second set of cases, not every influential, rich or powerful person, who illegally grabs someone’s property, is amenable to the provisions of the IDA, 2005 unless, as a condition precedent, he possesses the credential and antecedents of ‘land grabber’ or ‘Qabza Group’ or ‘Qabza Mafia’.”³³

1.3.5 Impact of Punjab Land Records Authority (PLRA) on Revenue Courts

Enactment of PLRA on February 13, 2017, was an endeavor by the Government of Punjab to reform and digitalize the old colonial, manual system of land records. This initiative is a step in the right direction. It put into place the long-awaited centralized authority for managing revenue record of the province. The existing legal framework was the major impediment in achieving this target. Accordingly, amendments in WPLRA sections 41-A and 42-B were introduced in tandem with Punjab Land Revenue Rules sections 37-B and 37-C to provide the legal cover for preparing and maintaining computerized land record. Services being offered at PLRA Arazi Record Centers (ARCs) include issuance of copy of Record of Rights (*fard*), mutation attestation, and placement of embargos.³⁴

It is expected that computerization will lead to reduction in multiplicity of civil/revenue litigations and manipulation of land record. The system provides secure land rights that

³¹ District and Sessions Judge Jehanzeb Shinwari of Haripur, Government of KP, interview by author, Islamabad, July 31, 2021.

³² Ibid.

³³ “Illegal Dispossession Act: Illegal Occupants Will Serve a Decade in Jail, says SC,” *Express Tribune*, July 20, 2016.

³⁴ Director General Moazzam Iqbal Sipra of Punjab Land Revenue Authority, Government of Punjab, interview by author, Lahore, July 30, 2021.

cannot be manipulated, maneuvered or tampered with. Mutation of land is only possible through secure and reliable means of transaction. The seller's biometric verification from NADRA and recording of free consent tendered before the attestation officer in presence of witnesses has started to serve as a major impediment in the process of civil litigation. Moreover, with systemic interventions, the nature of civil suits has also changed, especially in cases where perjury-related transactions were executed with the help of revenue functionaries in the manual system. However, its success would only be fully measured once record of urban areas is digitized throughout Punjab.³⁵

1.3.6 PULSE Project of the World Bank

On the request of PLRA, the World Bank has launched a project named 'Punjab Urban Land Systems Enhancement Project (PULSE)' for the creation of a province-wide digital cadastral map, data improvement in urban areas and the scale-up of Land Record Management Information System (LRMIS).³⁶ The essential part of the project is mapping at the land parcel level with identical boundaries. Mapping through satellite imagery has been slightly successful in the rural areas in identifying land boundaries as compared to the urban centers of Punjab. Urban centers pose difficulties due to dense infrastructure, very small size of units (2 marlas/50 sq. yds. and below, etc.) and regularly changing nature of immovable property.³⁷

1.3.7 Lack of Standardized Procedures in Private/Cooperative Housing Societies and Authorities

No uniform procedures for issue of title documents to land owners exist in the private sector/ cooperative housing societies and housing authorities. Due to ineffective regulatory and enforcement regimes of the government, mushroom growth of unregistered private housing societies/institutions has increased. Most of these societies/institutions issue their own allotment letters without any integration with local government bodies. This complexity has provided room for scams, frauds and disputes. The gravity of the situation can be realized from the fact that the Government of Punjab has enlisted 1,753 illegal housing societies in Punjab on its e-Khidmat Markaz portal.³⁸

³⁵ Ibid.

³⁶ World Bank, "Project Information Document (PID) – Punjab Urban Land Systems Enhancement Project," Report No. PIDISDSC28292, March 26, 2020, <https://documents1.worldbank.org/curated/en/131221586419652020/text/Concept-Project-Information-Document-PID-Punjab-Urban-Land-Systems-Enhancement-Project-P172945.txt> (accessed August 19, 2021).

³⁷ Chief Executive Officer Omar Masood of Urban Unit, Government of Punjab, interview by author, Lahore, August 4, 2021.

³⁸ e-Khidmat Markaz, "List of Approved/Un-approved/Illegal Housing Societies," <https://fc.punjab.gov.pk/HousingSocieties/> (accessed August 13, 2021).

2. Civil Courts in Pakistan

Civil courts are courts of plenary jurisdiction which are known as the court of first instance where trial in a suit is initiated. Civil courts entertain cases on the basis of nature of subject matter, value of the subject matter and territorial jurisdiction of the court. Subject matter can be defined as the authority vested in the court to entertain cases of a particular nature and pertaining to particular subject matter. Territorial jurisdiction means that the court can decide upon a dispute within the geographical limits of the court's authority and not beyond those territorial or geographical limits. Pecuniary jurisdiction is related to value in terms of money of the subject matter. Monetary value is further classified into three categories of civil judges of the first, second and third classes where a civil judge first class has unlimited jurisdiction in terms of value of the subject matter. Civil Courts are subordinate to the High Courts and remain under the superintendence and control of the High Court under Article 203 of the Constitution of Islamic Republic of Pakistan 1973. At the district level, the District Judge has control over all civil courts within the local limits of its jurisdiction.³⁹ The following are the classes of judges formulating the district judiciary:

- 1) The Court of District Judge – Administrative head of the district judiciary.
- 2) The Court of Additional District Judge – Court of appeal and revision.
- 3) The Court of Civil Judge – Hears civil trials.

2.1 Efficacy of Civil Courts

Although the problem of delays exists at the global level, the situation in Pakistan has deteriorated to the point that it is undermining the whole legal system. Consequently, public trust in the judiciary has been all but eroded, especially in the realm of civil justice (as opposed to criminal justice).⁴⁰ The honorable Supreme Court of Pakistan in the case of Liaqat Hussain vs. Federation of Pakistan remarked on the accumulation of backlog in courts at all the levels of judicial hierarchy.⁴¹

2.2 Comparative Analysis of Pendency of Cases in Civil Courts

A comparative analysis of the pendency of cases pertaining to land disputes in the district judiciary of Punjab and KP is presented in Figure-3 below. This indicates that pending cases in Punjab increased from 33,650 in the year 2018 to 58,154 in the year 2019 with an increase of 42%. Likewise, the load increased from 58,154 cases in the year 2019 to 90,260 cases in the year 2020, an increase of 35% pendency. From the

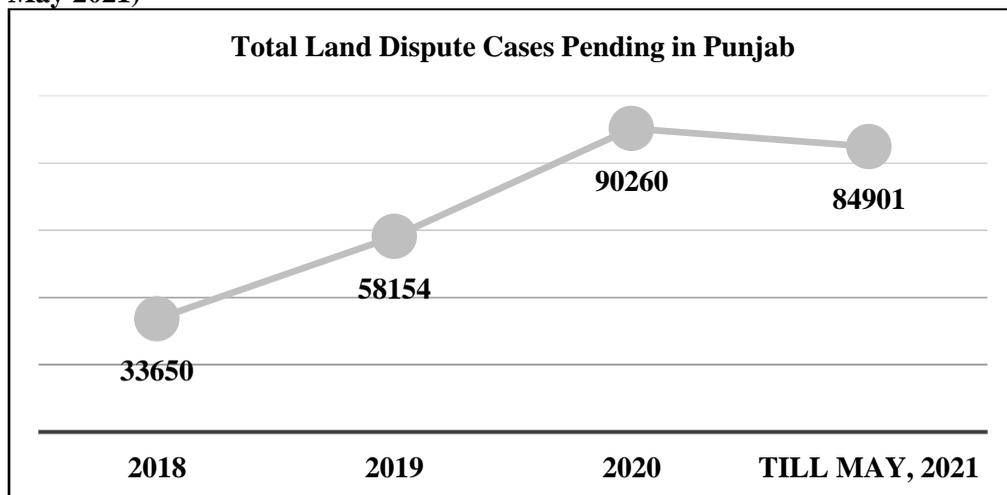
³⁹ Justice (retd.) Ali Akbar Qureshi of Lahore High Court and practicing lawyer of the Supreme Court of Pakistan, interview by author, Lahore, August 8, 2021.

⁴⁰ Justice (retd.) Javeid Iqbal, "Role of Judiciary as a catalyst of change," *Proceedings of the International Judicial Conference held in Islamabad 2006*, Law and Justice Commission of Pakistan: 18.

⁴¹ *Ibid.*

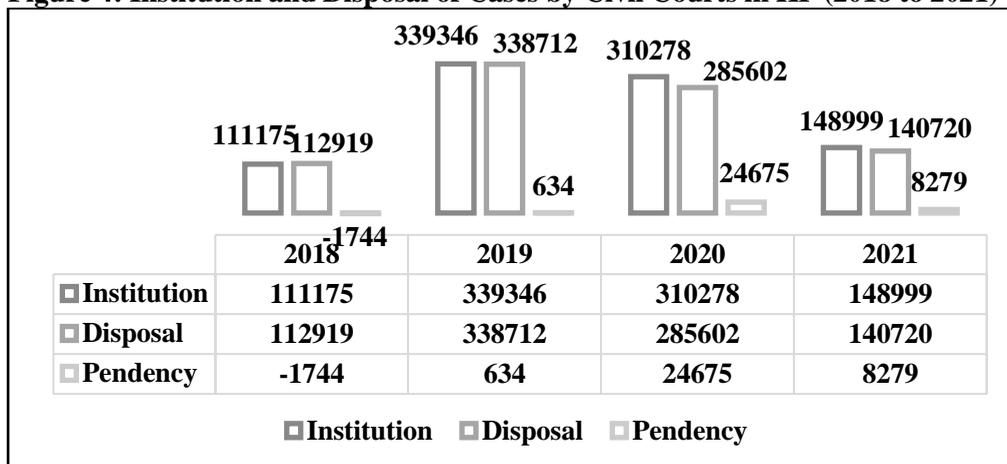
pendency of land dispute cases (84,901) during the first five months of 2021, it can be estimated that pendency would increase to around 55% by the end of 2021.⁴²

Figure 3: Pendency of Land Dispute Cases in the Civil Courts of Punjab (2018 to May 2021)⁴³



According to the data of the last four years of land disputes from 2018 to June 2021, the subordinate judiciary of KP disposed of 112,919 (including pendency of previous years) out of 111,175 cases, 338,712 out of 339,346 cases, 285,606 out of 310,278 cases and 140,720 out of 148,999 cases in the years 2018, 2019, 2020 and 2021 respectively.⁴⁴

Figure 4: Institution and Disposal of Cases by Civil Courts in KP (2018 to 2021)⁴⁵



⁴² Office of the Directorate of District Judiciary, Lahore High Court, Lahore (Lahore: Official Printers).

⁴³ Ibid.

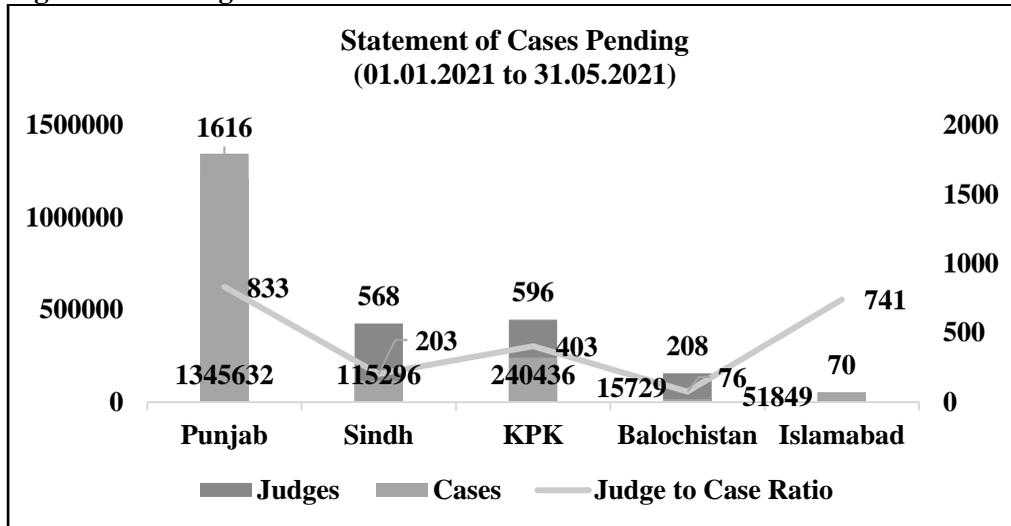
⁴⁴ Office of the Secretariat of District Judiciary, Peshawar High Court, Peshawar (Peshawar: Official Printers).

⁴⁵ Ibid.

In June 2018, Peshawar High Court introduced the Court Case Management System with the basic intent to keep a check on the pace of litigation by establishing meaningful events, setting scheduled dates and time frames for both pre-trial events and trials. This system has improved disposal rates and reduced backlog of pending cases as evident from Figure-4.⁴⁶

2.3 Cases to Judges Ratio in Pakistan

Figure 5: Pending Cases in Pakistani Courts⁴⁷



Disproportionate case load distribution on district judiciaries all across Pakistan has hampered and continues to seriously hamper performance of judges. This has a direct correlation with the misery of litigants who desperately await dispensation of justice. According to the latest statistics of June 2021 released by the Law and Justice Commission of Pakistan (as presented in Figure-5), the cases per judge ratio in Punjab is 833, 568 in Sindh, 596 in KP, 208 in Balochistan and 70 in Islamabad.⁴⁸

2.4 No Substantial Amendments in the Existing Laws

The system of civil courts in Pakistan has become obsolete because of lack of amendments in the Civil Procedure Code, 1908 which were mandatorily required to be affected with the changing circumstances particularly in context of notices, summons, procedure of proclamation and misuse of adjournments. Similarly, WPLRA, 1967 requires changes to be made with the efflux of time resulting in multiplicity of

⁴⁶ AD and SJ Muhammad Umer Al Farooq Khan of Dir Upper, Government of KP, interview by author, Islamabad, July 31, 2021.

⁴⁷ Office of the Law and Justice Commission of Pakistan, Government of Pakistan (Islamabad: Official Printers).

⁴⁸ Ibid.

litigations, lack of timely decision in disputes and inability of revenue courts to determine rights in question before them.⁴⁹

2.5 Delays in Trial Proceedings

There are many factors that result in procedural delays in trial which lead to extending litigation time frames. Following are some of the glaring issues:

2.5.1 Irregular Attendance and Corrupt Practices

Irregular attendance, lack of punctuality and corrupt practices in subordinate judiciary have deep and profound impacts on the efficacy of the judicial system of Pakistan. Bar members usually complain that judges are not present in their court on time, nor for the full notified duration. Litigants always express reservations regarding performance of judicial staff.⁵⁰

2.5.2 Unnecessary Adjournments by the Judges

It is believed that the major cause of delay in adjudication of cases in civil courts are unnecessary adjournments. The CPC's Order XVII Rule 1 gives the courts power of discretion to grant an adjournment to the parties if sufficient cause is presented. However, this power of discretion must be exercised in accordance with law.⁵¹

2.5.3 Frequent Shuffling of Judges and Cases

A major cause that erodes credibility of civil courts and results in unwarranted delays in dispensation of justice is frequent shuffling of judges, both on the basis of complaints as well as on administrative grounds. In many instances, cases are transferred from one judge to another without any valid reason due to extraneous pressure of the district and tehsil bars.⁵²

2.5.4 Judges Give Relaxation to Process Servers and Non-Attending Parties

As per CPC, if a judge finds that the summons was properly and timely served on the defendant, the court may proceed *ex parte* in the case. However, judges are wary of being accused of denial of justice and hence prefer to give adjournments rather than resolve cases quickly. Judges' inability or unwillingness to take *ex parte* action against disinterested litigants results in further delay of cases. In civil suits, when a case is filed

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Practicing lawyer Syed Tayyab Mehmood of Lahore High Court, Lahore, interview by author, Lahore, August 16, 2021.

⁵² Former President G.A. Khan Tariq of Lahore Bar Association, interview by author, Lahore, August 2, 2021.

by the plaintiff, a summons is issued to the respondent. However, most cases are adjourned on the dates of hearing, leading to delays.

The process service mechanism is flawed and often cases are adjourned due to connivance of process servers with either of the parties and as a result false reports are presented in court. Many a time, summons are issued but the influential party “prevails” upon lower staff to ensure that the defendant is not informed; such corruption is in total disregard to the principles of natural justice.⁵³

2.5.5 Mismanagement During Evidence Recording

By and large, the process of recording evidence takes significant time, which could be much longer as compared to the total time taken by all other steps. This is due to one or more witnesses defying the summons and not coming to court, and the court in spite of having powers to implement its orders, still adjourning cases. Furthermore, the rule of continuous hearing at the evidence stage of the suit is consistently not followed, therefore it becomes difficult to recollect what witnesses have said. Adjournments at this stage affect adjudication and fair trial, besides causing inordinate delays.

2.5.6 Local Legal Culture

One of the reasons for delays is the mindset of lawyers and judges in respectively requesting and granting *status quo* (stays) without considering maintainability of cases as a temporary dispensation to litigants. Judges exercise their powers as a customary practice rather than adjudicating on case admissibility. Lawyers usually assure their clients of getting them temporary dispensation that can be prolonged as long as desired by the litigants.⁵⁴ Deferral is regularly propagated in the light of the fact that both judicial authorities and legal advisors acknowledge it as the standard, to change which requires altering assumptions and behaviors of individuals who are benefitted by it.

2.5.7 Management of the Cases by the Courts

Due to lack of any case management system in lower courts, litigants have lost confidence in all manner of courts. Lower courts are unable to control the speed of prosecution by building up significant actions, or setting date-wise court agenda by forecasting future events and trials.⁵⁵

2.5.8 False and Fabricated Litigation

People resort to false and frivolous litigations to delay the cases. There is comparatively a very small percentage of genuine litigants in Pakistan whose cases are based on facts.

⁵³ Ibid.

⁵⁴ Practicing Lawyer Hafiz Naimat Ullah of Lahore High Court, Lahore, interview by author, Lahore, August 16, 2021.

⁵⁵ Ibid.

Culturally, in most situations false cases are initiated to settle scores with rivals. Proceedings of a case can be impeded by raising any undeserved claim, concealing any fact, producing forged documents and by denying access to genuine documents. The real plight is that there is no law to effectively discourage this tendency.⁵⁶

2.5.9 Non-Cooperation of the Legal Fraternity

Although influence of the lawyers impeding working of district judiciary and quick disposal of cases has existed for a long time, but with the launching of Lawyers Movement in 2007 during the tenure of President General Musharraf and the restoration of deposed judges of the Supreme Court and High Courts through an executive order a *carte blanche* was given to the elected bodies of the lawyers enabling them to interfere in the smooth working of district judiciaries at will. They now resort to strikes and boycotts, mostly for personal/vested interests to promote demands of their fraternity. These add to the miseries of the hopeless litigants.⁵⁷ Former President of Lahore Bar Association, Mr. G.A. Khan Tariq, in an interview with the author, expressed his concerns over the growing violence, non-professional attitude and unbecoming conduct of the majority of young lawyers. He also condemned the attack on the hospital staff of Punjab Institute of Cardiology, Lahore, by lawyers on December 11, 2019, and termed it as a ‘collective shame’ of the legal profession. According to him, 85 strikes were recorded in Lahore Division alone during the same year. If this trend goes unchecked, it will have serious repercussions on the overall credibility of the criminal justice system.

2.5.10 Covid-19 Crises

The world has adapted to online virtual systems in the course of the Covid-19 pandemic, but many developed societies had already developed mature legal systems in which laws are continuously updated. Consequently, the shift to online courts was perceivable and achievable. However, both the bench and the bar in Pakistan have not managed to shift to online trial mode due to a conventional thought process, poor administrative resources, and lack of training. Therefore, litigants continue to suffer inordinate delays in trial proceedings in civil courts.⁵⁸

3. Best Practices: World Justice Project (WJP) Rule of Law Index

There are several globally recognized forums which provide insights into the working of various legal systems which universally accept the principle of rule of law. These organizations have set forth basic standards and monitoring mechanisms to measure

⁵⁶ Former Secretary General Rehan Ahmed Khan of Lahore Bar Association, interview by author, Lahore, August 2, 2021.

⁵⁷ Ibid.

⁵⁸ Ibid.

efficacy of judicial systems in various countries. Amongst these organizations, World Justice Project Rule of Law Index is a reliable and independent source of data collection that covers 128 states. Eight parameters are relied upon while formulating the index. These include efficacy of criminal and civil justice systems, limitation on governments to exercise their powers, rate of corruption, openness of governments, fundamental rights, order and security, and regulatory framework.⁵⁹ According to the WJP Index of 2020, Denmark is at number one amongst the top ten ranking countries followed by Norway, Finland, Sweden, the Netherlands, Germany, New Zealand, Austria, Canada, and Estonia.

Table 1: WJP Rule of Law Index – Top Performers

Sr.#	Country/ Jurisdiction	Overall Score	Score Change	% Score Change	Global Rank	Global Rank Change
1	Denmark	0.90	0.00	0.0%	1	0
2	Norway	0.89	0.00	0.1%	2	0
3	Finland	0.87	0.00	-0.1%	3	0
4	Sweden	0.86	0.00	0.2%	4	0
5	Netherland	0.84	0.00	-0.5%	5	0
6	Germany	0.84	0.00	0.1%	6	0
7	New Zealand	0.83	0.00	0.3%	7	1▲
8	Austria	0.82	-0.01	-0.6%	8	1▼
9	Canada	0.81	0.00	-0.2%	9	0
10	Estonia	0.81	0.00	0.0%	10	0

Pakistan is amongst the bottom performers, standing at 120 out of 128 countries. Afghanistan is the only country in South Asia which stands below Pakistan at 122. It is pertinent to mention here that Pakistan's standing in the world index had lowered by another point in 2020 as in 2019 it was ranked 119. This indicates that internationally accepted standards of rule of law are lacking in the country, thus jeopardizing the efficacy of dispensation of justice.⁶⁰

Table 2: WJP Rule of Law Index – Bottom Performers

Sr.#	Country/ Jurisdiction	Overall Score	Score Change	% Score Change	Global Rank	Global Rank Change
1	Zimbabwe	0.39	-0.01	1.5%	119	1▼
2	Pakistan	0.39	0.00	-0.7%	120	1▼
3	Bolivia	0.38	0.00	0.3%	121	0
4	Afghanistan	0.36	0.02	4.3%	122	3▲

⁵⁹ Nomad Research Team, "The 5 Best Countries for Judicial Independence and Rule of Law," *Nomad Capitalists*, (August 2021), under Rule of Law Index, <https://nomadcapitalist.com/global-citizen/best-countries-rule-of-law/> (accessed on August 16, 2021).

⁶⁰ Ibid.

5	Mauritania	0.36	0.01	4.0%	123	1▲
6	Cameroon	0.36	-0.02	-4.4%	124	2▼
7	Egypt	0.36	0.00	0.1%	125	2▼
8	Congo, Dem. Rep.	0.34	0.01	2.6%	126	0
9	Cambodia	0.33	0.00	0.7%	127	0
10	Venezuela, RB	0.27	-0.01	-2.6%	128	0

3.1 Cadastre System of Survey and Mapping

The cadastral systems were designed earlier to collect revenue through collection of taxes on property. The cadastral surveys are significant as they are linked with ownership of the property. These supplement legal ownership of the land, depict geographical factors including areas and parcel boundaries.

3.1.1 Cadastre System in the Modern World

Many countries in Europe and North America have realized the importance of converting outdated manual land record systems of registration into modern cadastral systems initially and have further upgraded their systems by incorporating Geographical Information System (GIS) technology. One such successful model worth citing is Denmark which is ranked at number one in the global rankings of Rule of Law Index of WJP. It introduced a cadastral information infrastructure accessible to all users, and tailored it for efficient interaction with other land data systems. The cadastral register was computerized during a period of four years from 1985 to 1989. It involved digitization of nearly 15,000 analogue cadastral maps, comprising about 2.5 million land parcels, and was completed in 1997.⁶¹ The transition towards the cadastral system in the modern world has curtailed unnecessary land disputes and litigations due to precision of identified boundaries of land owners.

3.1.2 Cadastral System and Certification of Titles Act, 2016, India

India has enacted the Rajasthan Urban Land (Certification of Titles) Act, 2016 to reduce the trend of rising land disputes by putting in place an effective cadastral system under a centralized Urban Title Certification Authority.⁶² This act is unique in so far as being the first such attempt in India to curb fraudulent practices in sale and purchase of non-agricultural land in urban areas by issuing a certificate of ownership for a nominal fee. Moreover, relying upon its success, the Government of India has mandated to upgrade their colonial maps and land registers by merging these through GIS-based cadastral system.

⁶¹ Stig Enemark and Pia Dahl Højgaard, "Transforming Society – The Story of the Danish Cadastre from late 1700s," in Fig Working Week, Helsinki, Finland, 2017.

⁶² Rajasthan Urban Land (Certification of Titles) Act, 2016, (Jaipur: Official Printers).

3.2 Alternate Dispute Resolution Systems (ADRS)

ADRS have officially been introduced in India, Bangladesh and various Latin American and African states in recent years. These are primarily seen as a method of relieving the crisis of overburdened state courts facing impossible backlogs of unresolved cases. The aim of ADRS has been described amongst other as relieving court congestion, reducing undue costs and delays, enhancing community involvement in dispute resolution process, facilitating access to justice and providing a more effective resolution of disputes. More positively these are also advocated as offering a cheaper, faster and more accessible justice for ordinary citizens, particularly the poor who do not have access to the state justice either because of dearth of resources, social exclusion or lack of physical access.⁶³

3.3 Malaysian Law Reforms and Introduction of Court Case Management System

Malaysia introduced judicial reforms by amending civil procedural law and enacted the new Rules of Court, 2012. Major changes included a more systematic and proactive system of court case management. The new model proved to be highly efficient and practical in facilitating parties in getting the matters swiftly adjudicated by the courts. It further aided in reducing delays and accumulated cases in civil courts. Due to this innovation, confidence of the general public was restored in the judicial system of Malaysia.⁶⁴ The Singapore judicial system has also successfully rolled out a case management system that has gained recognition worldwide.

3.4 Existing Best Practices in Pakistan

3.4.1 Land Information and Cadastre System

In 2006, Defence Housing Authority (DHA) Islamabad was among the pioneers to effectively implement the internationally tested cadastral system. The prime objective was to eliminate frivolous land disputes and curtail illegal encroachments by *qabza* groups (land grabbers). Learning from the positive outcome of the newly placed system, DHA Lahore adopted it in a more effective manner by using remote sensing/GIS in 2011.⁶⁵ Implementation of a cadastral system by DHA has reduced the number of disputes pertaining to entitlement, partition and demarcation of property. Resultantly, the number of land related litigations have been reduced considerably as

⁶³ Gertrude Sackey, "Investigating Justice Systems in Land Conflict Resolution: A Case Study of Kinondoni Municipality," Tanzania, 2010, https://webapps.itc.utwente.nl/librarywww/papers_2010/msc/la/sackey.pdf, (accessed August 10, 2021).

⁶⁴ Shahrul Mizan Ismail, "Case Management for Civil Trials in Malaysia: Rationale & Process," Research Gate (September 2016) under Civil Procedure in Malaysia, <file:///C:/Users/IT-Section/Downloads/ArticleforCLJOnlineJournal-ShahrulMizanIsmail.pdf> (accessed August 17, 2021).

⁶⁵ Former Additional Director Aamer Maqsood of GIS at Land Acquisition Branch, DHA Lahore, interview by author, Lahore, August 8, 2021.

compared to government-owned agencies like Lahore Development Authority (LDA) and Metropolitan Corporation Lahore (MCL) as well as private societies which still rely on the old traditional system.⁶⁶

3.4.2 Expeditious Justice Initiative

National Judicial Policy Making Committee (NJPMC) approved and launched the Expeditious Justice Initiative (EJI) which has worked wonders in the field.⁶⁷ This initiative was launched in March 2019 and included setting up of model criminal trial courts in all the districts of Pakistan. The main purpose of these courts was to introduce a time-bound criminal trial regime and improve service delivery of the criminal justice system while remaining within the existing resources and adoption of synergetic approach with various stakeholders. This mechanism involves day-to-day hearings and an improved process service mechanism and production of witnesses. This successful model was later replicated at the Model Civil Appellate Courts (family and rent cases) and Model Trial Magistrates Courts throughout the country. However, there is a dire need to carry out a similar exercise in the civil trial courts in order to conclude outstanding litigations involving land disputes.⁶⁸ The performance of these model courts until August 17, 2021, is indicated in Table-3.

Table 3: Performance of Model Trial Courts in Pakistan⁶⁹

Sr.#	Name of Court	Date of Establishment	No. of Working Days	No. of Courts	Witnesses Recorded	Total Cases Decided
1	Criminal Trial Courts	01.04.2019	705	171	229,237	52,177
2	Trial Magistrate Courts	13.12.2019	612	149	148,208	91,719
3	Civil Appellate Courts	13.12.2019	612	117	66,736	66,736
Total				437	444,181	210,632

Conclusion

Land disputes are a frequent occurrence in Pakistan. While weak administration and poor land record management are factors that lead to land disputes, the situation is made worse due to the inability of the redressal system at revenue and civil courts to provide satisfactory resolution of such matters. Repeated adjournments, delays,

⁶⁶ Advocate/Practicing Lawyer Hafiz Naimat Ullah of Lahore High Court, Lahore, interview by author, Lahore, August 16, 2021.

⁶⁷ Supreme Court of Pakistan, Annual Report, June 2018-May 2019 (Islamabad: Official Printers, 2019).

⁶⁸ ASJ/Director Raja Jahanzaib Akhtar of Model Courts of Pakistan, Islamabad, Government of Pakistan, interview by author, Islamabad, August 22, 2021.

⁶⁹ Ibid.

increasing pendency, and prolonged durations in conclusion of cases poorly reflects on the performance and effectiveness of the revenue and civil courts. As a result, the public is losing – or has already lost – trust and confidence in Pakistan’s criminal justice system in general, and in its courts in particular.

Therefore, there is an urgent need to direct efforts to address the gaps identified in our land management system(s) and in the working of revenue and civil courts in Pakistan. A direct correlation exists between the number of land disputes and the work load of the courts. Hence, any intervention in the revenue and civil courts alone would be futile without removing the weaknesses in the existing land records administration and titling system. Reduction in the number of land disputes will lessen the case load and enable revenue and civil courts to effectively decide the same. Moreover, proven best practices, both from Pakistan and abroad, can be appropriately customized according to ground realities of various provinces and implemented to ensure effective, transparent, and speedy dispensation of justice by revenue and civil courts in Pakistan.

Recommendations

In light of the forgoing discussion, following recommendations are given to increase the efficacy of our revenue and civil courts and ensure fair and speedy dispensation of justice in land disputes:

1) Revenue Courts

- a.** Revenue Court Management System on the pattern of BOR Punjab should be enforced across the country to ensure time scheduling of cases and reduce pendency.
- b.** Court staff should be provided online access to authentic revenue record for disposal of minor record corrections. An online revenue case interface can be extended to applicants for keeping themselves aware of the dates of hearing and status of their cases.
- c.** Revenue cases can be categorized according to their complexities (simple and complex) and nature (state land, urban and rural property), etc. with assigned time lines for effective disposal and to reduce backlog.
- d.** Dedicated revenue officers be deputed for revenue courts; they should not be entrusted with routine administrative work. This would improve disposal rate and increase efficiency.
- e.** Amendment in respective Land Revenue Acts is needed to empower the revenue courts to record evidence using provisions of CPC, 1908 and QSO, 1984.

2) Civil Courts

The huge backlog of cases and burden on the judges can be reduced by increasing the number of judges in civil courts. It will resultantly increase the disposal of cases and provide much needed relief to the litigants.

- 3) High Courts need to put in place necessary implementation and monitoring mechanisms to ensure that civil courts adhere to the following measures aimed at speedy dispensation of justice:
 - a. Blanket approval of adjournments by the judges should be discouraged by supplementing the same with the imposition of heavy costs on litigants in the absence of sufficient cause so as to expedite the process of trial.
 - b. Judges must not hesitate to pass *ex parte* decrees in cases with non-attending parties.
 - c. Antiquated and intricate procedures should be updated and simplified to expedite the court proceedings.
 - d. The rule of continuous hearing at the evidence stage of the suit must be followed.
 - e. Reversion to electronic means of recording evidence (e.g. Skype and WhatsApp applications) must be encouraged for the continuity of trials.
- 4) Keeping in view the success of the Model Criminal Trial/Appellate Civil Courts under the Expeditious Justice Initiative of the honorable Supreme Court of Pakistan, Model Civil Trial Courts may also be introduced to complete the trials within stipulated timeframes and to proceed on day-to-day basis. A restriction may be imposed on filing miscellaneous applications at the inception of the suit, i.e. before recording of the evidence and not otherwise.
- 5) There is a need to roll-out an effective court case management system in civil courts/ subordinate judiciary all across Pakistan. Pre-trial stage mechanisms should be introduced to curtail frivolous and fictitious claims at the very outset of trial. Conversion of manual record of disposed cases should be centralized electronically to prevent decided cases being re-adjudicated to curtail the tendency of filing frivolous cases.
- 6) Legislation is direly needed to set up a centralized land records authority at provincial and federal levels to standardize issuance of title documents to the land owners. At a later stage, all government/private housing authorities and cooperative societies must be brought within the ambit of this central land authority with defined uniformed procedures to limit land disputes. Operational capacity of

the Punjab Land Records Authority should be increased to complete its mandate in the remaining rural and urban areas of Punjab. A similar exercise of computerization of land records along with required features should be replicated in all other provinces to reduce multiplicity of civil/revenue litigations and land record manipulation.

- 7) A holistic land management approach is required to reduce land disputes/litigations and lessen the burden on revenue and civil courts by implementing a three-phased plan with computerization of land record (rural and urban) in the short-term, introduction of cadastral system for survey and mapping in the medium-term and upgradation of cadastral system to RS (remote sensing)/GIS as a long-term measure.

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Alternate Dispute Settlement System in KP: Challenges, Opportunities and Options for Improvement

Waqar Ahmed¹

Introduction

The Khyber Pakhtunkhwa (KP) province is bordered by Afghanistan in the north-west, Azad Jammu & Kashmir (AJK) and Gilgit-Baltistan (GB) in the east and north-east, Punjab in the south-east, and Balochistan in the south-west. The region on the western boundary of KP, along the Afghan border, comprises areas formerly known as the Federally Administered Tribal Areas (FATA) which were semi-autonomous until 2018. Covering an area of 39,282 square miles (101,741 km²), KP has a population of 35,519,927 (according to the 2017 census). The province carries a unique culture with strong traditional social structures bound by centuries' old customary rules.² Pakhtuns, being the ethnic majority, are governed by their traditional legal code, the *Pukhtunwali*. The prime virtues of this code are 'ghairat' (self-respect / bravery) and 'izzat' (honor). Family and community elders play a key role in communal dealings and in ensuring communal peace and social integrity through an informal justice system called *Jirga*.³ Considered an alternate dispute resolution (ADR) mechanism, *jirgas* sit in a circle that symbolizes equality among all the parties and carry out arbitration and mediation between the parties to resolve disputes. It is often the first resort used by Pakhtuns for resolving conflicts because of its impartiality and provision of swift justice.⁴

The Government of KP has been keen to promote the ADR practices in KP. It has added many features in ADR mechanism including case management, appointment and selection of mediators and managing issues of ethical conduct. The *Musalihati Jirga* has been functionalized under Rule 89-A of Code of Civil Procedure (CPC), 1908 to provide arbitration services in ADR (discussed in the following section). However, a more practical model was adopted by the KP Police through the Dispute Resolution Councils (DRCs) under the leadership of the then IGP, Nasir Khan Durrani (late), which is discussed in section 2 of this paper.

¹ Police Service of Pakistan, 29th SMC (wa216@me.com).

² Abida Hassan, Dil Muhammad Malik, "Evolution of Dispute Resolution Processes: From Informal to Formal and Back to Informal," *Global Social Science Review* (2020): 327.

³ Formally defined as "a tribal council responsible for settling disputes in Afghanistan and Pakistan" (<https://www.collinsdictionary.com/dictionary/english/jirga>), the word has been expanded to mean any consultative assembly. Naturally, as a traditional institution it is now subject to both controversy and change, criticism and appreciation. While some see it as an illegal dispensation, its proponents consider it as an alternate model that works in an otherwise logjammed judicial system.

⁴ Mushtaq Ahmad, Muhammad Jawad, Abdul Majid, Saima Sarir, and Usman Qaddus, "Revival of Jirga through DRC with Special Emphasis on Sustainable Resolution of Conflict: With Reference to District Swabi – KP Pakistan," *Psychology and Education* 58, no. 2 (2021): 10290.

Notwithstanding the fact that ADR is an informal forum for settling disputes between two or more groups, this informal justice system plays a vital role in social control and is strongly embedded in local traditional practices of KP. Dispute resolution, whether instituted by the state or non-state actors, is central in maintaining security and justice in a society. Hence, effective dispute resolution mechanisms are essential in ensuring cohesion and preventing conflicts.⁵ The increase in frequency and complexity of cases in formal courts has underscored and enhanced the need for ADR mechanisms to expand the rule of law and justice in KP. The two processes for dispute settlement processes in the context of ADR are arbitration and mediation. These are defined below for quick reference.

- ‘Arbitration’ is a formalized process that requires clearly defined and codified structures such as a legal system with authority, a long-held tradition, and a system of beliefs (e.g. religious beliefs). An arbitral role is usually assigned to the government representing the state which conducts arbitration between contesting groupings through legal frameworks, policy frameworks, and legal institutions (e.g. courts). The system has formal legitimacy, which is assigned to the state, and can use force for executing its decisions.
- ‘Mediation’ towards reducing conflicts in the society derives its legitimacy from traditions and customs. The institutions of mediation are traditional and stem from what Friedrich Hayek refers to as ‘spontaneous human organization’. Its enforcement and legitimacy is derived from social collateral. Mediation is practiced through social forums (locally, *jirgas*, *panchayats*), professional organizations like traders’ unions and other civil society organizations (CSOs).

ADR, in its various forms, is practiced in different cultures around the world.⁶ It has its roots in indigenous, customary systems and, as such, is often referred to as ‘traditional dispute resolution’, ‘informal justice’, or ‘customary justice’. However, none of these terms fully capture the specific nature of community-based mechanisms. For instance, ‘customary law’ is a limited descriptor of a range of principles used to resolve disputes within ADR processes because these often use Shariah and/or simple pragmatism to resolve disputes. This is why the term ‘traditional’ is problematic here as it implies that these processes do not or have not changed and evolved over time, although there is ample evidence to the contrary. ‘Informal justice’ is similarly misleading, as it pitches these processes in an artificially dichotomous relationship to so-called ‘formal justice’ – the state justice sector, specifically – when in reality there is a crossover and interaction between actors and institutions that are part of both ADR and state justice.

⁵ Rabia Manzoor, Syed S. Ahmad and Vaqar Ahmad, “Effectiveness of Dispute Resolution Councils in Alternative Dispute Resolution: A Study of Selected Districts of Khyber Pakhtunkhwa,” *Quest Journal of Management and Social Sciences* 2, no. 1 (2020): 53.

⁶ Syed A. Shah, Faraz Ali, and Hidayat U. Rahman, “An Analysis of Dispute Resolution Council,” *Nobel Research Journal* (2020): 60.

ADR systems usually feature the following key aspects: confidentiality and privacy, continuity and preservation of peaceful relationship, resolution of emotional aspects of antagonism, engaging people in deciding matters, and speedy process of conflict resolution.⁷

ADR's institutional utility can also be analyzed from the perspective of the peacekeeping process, which is exercised in different ways by various actors in Pakistan, based on their diverse socio-cultural contexts. The various channels for these peacekeeping processes or detriments to these are listed below:

- Formal state institutions such as the police, prosecution, courts, legal fraternity (bars) and other institutions with legal legitimacy for exercising the use of force.
- Traditional community institutions such as *jirgas*, *panchayats*, etc.
- Political organizations at local level.
- Civil society organizations such as professional bodies, trade unions, etc.
- External groups that use force as the currency of arbitration such as sectarian and violent religious groups, ethnic groups, caste-based groups, and criminal syndicates.

These process actors can be categorized as positive peacemakers or dispute settlers and negative peacemakers. The positive peacemakers may constitute formal state entities, traditional forums (e.g. family, *jirgas* and *panchayats*) and civil and professional bodies. On the other hand, the negative peacemakers' role can be played by socio-ethnic groups, sectarian or religious groups and criminal syndicates.

The Issue

The institution of DRC, a form of ADR mechanism facilitated by KP Police, is available to the citizens of KP for resolving disputes in a less formal setting. Its inherent benefits like impartiality, short time frame and cost effectiveness are notable as compared to a full-fledged police investigation or contesting a civil or criminal case through the legal system. The KP Police deemed it necessary to set up these DRCs due to its inherent lack of resources, both monetary and human. These constraints had resulted in difficulties for KP Police to professionally handle law and order situations or prevent and detect crimes, the primary responsibilities of any police force. While the DRCs provide the public an effective way to settle disputes, they also reduce the case-load for both the police and judicial systems in the first place.

⁷ Manzoor et al., "Effectiveness of Dipute Resolution Councils in Alternative Dipute Resolution: A Study of Selected Districts of Khyber Pakhtunkhwa," (2020): 54.

The DRC forum has been much talked about in the context of its effectiveness, which warrants a deeper study of ADR in its true perspective. This will help in identifying its strengths and gaps and, as part of a larger body constituting varying ADR mechanisms, where it needs positive augmentation. Although there have been certain perception based studies conducted on the performance of ADR-based platforms such as DRC, there is still a practical scarcity of adequate research grounded in the analysis of actual records and case reports of DRCs in the particular setting of the intended study. There is also a need to evaluate the DRC system in comparison with other ADR models in order to understand its local effectiveness.

With the evolution of public administration and its sub-constituents like public policing, the best approach for learning the most effective practices is by conducting comparative studies of such models elsewhere. This would help in identifying best practices that could be emulated in local settings without allocation of scarce resources in terms of time and finances for such research. Accordingly, there is a need to conduct a study in order to understand the working efficacy of these DRCs in KP in terms of objectives, composition, referral mechanism, working, and possible gaps. Evaluation is also required when comparing these with successful replicable models elsewhere. These aspects are the main focus of this study.

Significance and Scope of the Study

As noted above, little research has been produced on dispute resolution mechanisms in various areas and among different groups in KP. This study, therefore, analyzes the use of, and access to, DRC mechanisms in Peshawar's police stations from the perspective of its beneficiaries, i.e. the citizens. Due to time and resource constraints, the study focuses on data collected from DRCs currently operational at two police stations in Peshawar. Furthermore, the research draws on a comprehensive desk-based review of the existing policy, procedural and legislative documents (for example, the Musalihati Jirga Rules under the KP Local Government Act 2013, Police Rules, ADR Rules 2005, etc.). The extent to which DRCs have been internalized, practiced, and adopted by the department(s) and gaps in existing DRC mechanisms are also studied.

The second part of the analysis explores the institution of ADR that has been formally adopted by the police and other organizations around the world. Functions that these ADRs are assigned, their referral system and the composition of such ADRs are also covered. In this regard, this study restricts itself to North America and one model each from the US and Canada. The two models selected shall be of different synthesis to ensure a range of characteristics of these ADRs available for the cross-sectional comparison of these models.

Review of Literature

According to Hassan and Malik (2020), ADR is not a new technique (as sometimes portrayed). ADR mechanisms have been employed in different eras and cultures one way or the other. Western ADR is, basically, a new transformation with some alterations, but serves the same purpose as in the older times.⁸ This study underlines its usage both in times past and current which shows that the system has been performing well in all periods.⁹ This paper concludes that no one ADR process can be replicated elsewhere in the world because of its local applicability as well as amicability and longevity of relationships between parties as this dispute resolution platform is long lasting and sustainable. This paper also provides both historic and scientific reasoning about the effectiveness and utility of the ADR systems and how modern organizations such as police should take advantage of this concept of conflict resolution.

There are a range of acts, procedures and rules available in Pakistan relating to ADR directly or indirectly and provide a legal base for its implementation. In this context, this paper has examined the Arbitration Act, 1940, Criminal Procedure Act, 1898, Family Court Act, 1964, Small Claims and Minor Offences Court Ordinance, Alternate Dispute Resolution Act, 2020, Alternate Dispute Resolution Rules, 2021 and Police Act, 2017.

For comparison with foreign models and best practices in ADR systems around the globe, the paper has looked into the ADR system of Edmonton Police Service of Canada and Alternate Dispute Resolution Centre of Durham, USA. Glensor and Stern (1995) have reviewed the ADR system of Durham to provide a basic understanding of the underlying advantages of effective links between mediation and community policing.¹⁰

DRCs established in KP Police draw all their strength from the core idea of ADR. There are studies available on the DRCs of KP such as the one conducted by Ullah and Ibrar (2019) using quantitative methods to evaluate the perception of a random sample in terms of their responses.¹¹ In another research by Shah et al. (2020), the authors comment on the working of ADR and identify its shortcomings and challenges in their findings through a qualitative study based on the responses from the selected sample.¹² There are other useful works also such as by Manzoor et al. (2020) which is a qualitative research and is a perception based study.¹³

⁸ Hassan and Malik, "Evolution of Dispute Resolution Processes: From Informal to Formal and Back to Informal." (2020): 327.

⁹ Ibid.

¹⁰ R.W. Glensor, A.J. Stern, "Dispute Resolution and Policing: A Collaborative Approach Toward Effective Problem Solving," Police Executive Research Forum (PERF), 1995.

¹¹ Farhat Ullah and Muhammad Ibrar, "Effectiveness of Police Public Services Mechanism in Crime Reduction in Khyber Pakhtunkhwa," *Pakistan Journal of Criminology* 11, no. 1 (2019): 131.

¹² Shah et al., "An Analysis of Dispute Resolution Council," *Nobel Research Journal* (2020): 60.

¹³ Manzoor et al., "Effectiveness of Dispute Resolution Councils in Alternative Dispute Resolution: A Study of Selected Districts of Khyber Pakhtunkhwa," (2020): 50-67.

This study is based on the actual working procedures of the panels deliberating the day-to-day work of DRCs in KP. It also delves into individual case proceedings. In addition to examining related documented research of case files, it looks at the procedures that this system is following and undertakes a comparative study in the context of ADR mechanisms elsewhere, to come up with recommendations regarding effectiveness, outreach and intake of these DRCs in KP.

Methodology

Given operational and time constraints, this research, primarily, relied upon qualitative and, to some extent, quantitative methods. A comprehensive desk review was conducted to examine relevant documents including existing police laws, rules and regulations, procedures, and the DRC system adopted by the police under the customary ADR system.

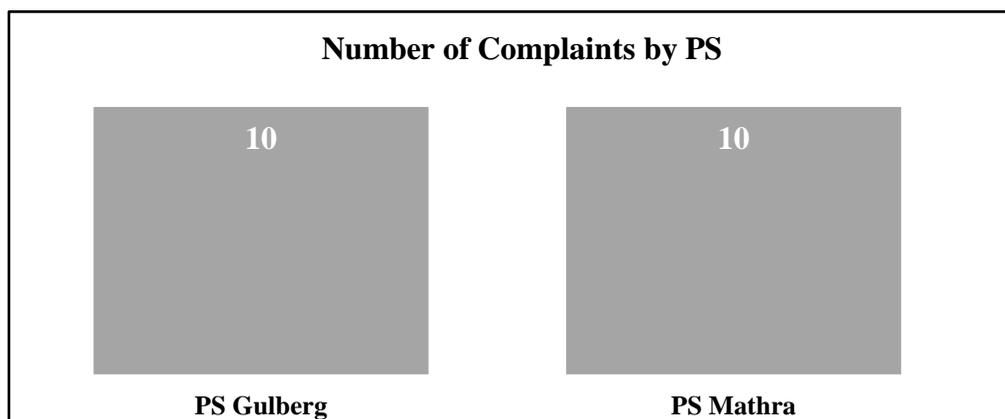
To compare the working of DRCs with the successful national and international ADR models, an extensive literature review was conducted by referring to online resources, books, journals and reports pertaining to the subject. For its quantitative analysis, the study has used primary statistical data from the sample police stations. A random sample of 20 cases from the following police stations of District Peshawar was used for this study:

Rural areas: Police Station Mathra (10 cases)

Urban areas: Police Station Gulberg (10 cases)

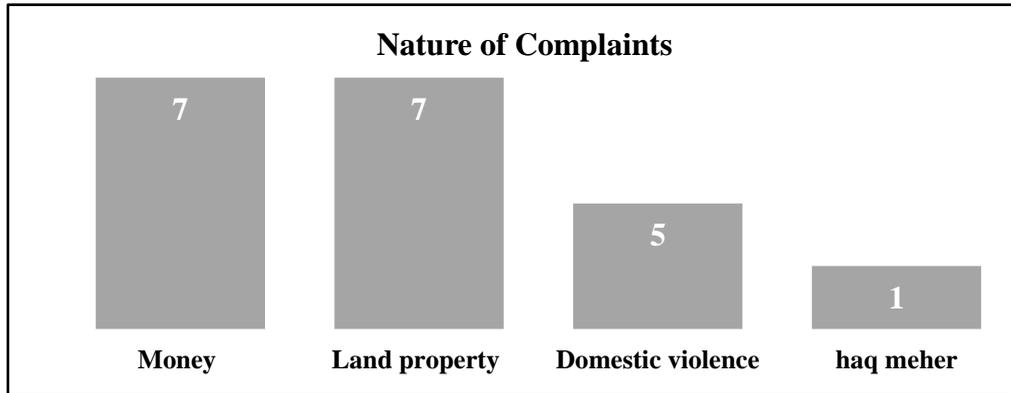
Recognizing that the nature and frequency of disputes is different in urban and rural areas, the sample for each type of case was further divided into urban and rural police stations as well as the nature of its outcome, i.e. (i) disposal, (ii) pendency or (iii) re-surfacing.

Figure 1: Number of Complaints Taken from the Selected Police Stations



The study ensured that the sample size not only is significant, but also provides a realistic and robust understanding of the subject. Among the 20 cases selected for the sample, seven cases each (35%) were related to monetary and property disputes, five cases (25%) were related to domestic violence/disputes, and one case (5%) was related to *Haq-e-Mehr* (for the sake of analysis, this too is classified as a domestic dispute).

Figure 2: Nature of Complaints



Analysis (Part I)

This section analyzes the institution of DRC, its legal background, introduction in KP, need, functions, working and composition in its current format. It studies the working of DRCs in light of statistics obtained from the two police stations of Peshawar, i.e. Gulberg and Mathra.

1.1 Legal Provision Backing DRCs and its Need

DRC is defined as “a system in which disputes are resolved through dynamic engagement with victims and offenders as well as the larger community for attempting re-conciliation by adapting a fair approach that meets the needs of the three groups by a process ensuring security and dignity of all.”¹⁴ Several obstacles were faced by the KP Police in preparing the legal grounds for DRCs, such as vacating a stay in High Court that was granted in 2015 against their establishment in KP.

The DRC system is an initiative of the KP Police that draws its inspiration from the Pakhtun code for dispute resolution. The first DRC was made operational in Police Station Gulbahaar, District Peshawar, on January 14, 2014. The next followed at Police

¹⁴ Shah, et al., “An Analysis of Dispute Resolution Council,” (2020): 63.

Station Gulberg, District Peshawar.¹⁵ The establishment of DRCs was later incorporated in the Khyber Pakhtunkhwa Police Act, 2017, Chapter-VI, Section 73.¹⁶

The KP Government passed the Alternate Dispute Resolution Act, 2020 through the Provincial Assembly to provide a solid base for alternate bodies for dispute settlement. In the following year, the Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa, made Alternate Dispute Resolution Rules, 2021 under the enacted law. The Alternate Dispute Resolution Act, 2020 empowered the district administration to act as or nominate a *salis* (an arbitrator), in cases where both the parties agree to public hearing and resolving the dispute. It is also important to note that the CPC, 1908 originally contained a provision for arbitration between parties; however, this was later omitted because of the enactment of separate Arbitration Act (1940). In 2002, Section 89-A was inserted through the Local Government Ordinance to facilitate the option of an alternate settlement of disputes through mediation and conciliation.¹⁷ In addition, other sections of laws and procedures provide legitimacy to the ADR system; these are illustrated in the table below:

Table 1: Laws and Procedures Legitimizing ADR

Laws	Derivation/Section of Law
U/S 345, CrPC, 1898	“The parties (accused and aggrieved/victim) can use this section for ADR to settle the dispute provided under Section 345 of CrPC, 1898.” ¹⁸
U/S 14, Small Claims and Minor Offences Courts Ordinance, 2002	“Where at any stage of the proceedings, it appears to the Court either on application of any party or otherwise, that there exists a possibility of amicable settlement between the parties, the Court may, subject to consent of parties, through <i>salis</i> or any other person, conciliate, arbitrate, mediate or resolve through any other means, the claim or offence, as the case may be provided that the Court shall not proceed for amicable settlement of offences which are non-compoundable or, for reasons to be recorded in writing, where it considers such settlement to be either against the public policy or interest of the State.” ¹⁹
U/S 10, Family Courts Act, 1964	“Pre-trial proceedings (i) when the written statement is filed, the Court shall fix an early

¹⁵ Ullah and Ibrar, “Effectiveness of Police Public Services Mechanism in Crime Reduction in Khyber Pakhtunkhwa,” (2019): 137.

¹⁶ Government of Khyber Pakhtunkhwa, “Police Act 2017,” Kyber Pakhtunkhwa Police Department, 2017.

¹⁷ Government of KP, “The Khyber Pakhtunkhwa Code of Civil Procedure (Amended),” Government of Khyber Pakhtunkhwa, 2020.

¹⁸ Government of Pakistan, “The Criminal Procedure Code, 1898,” Government of Pakistan, 1898.

¹⁹ Government of Pakistan, “Small Claims Minor Offences Court Ordinance,” Printing Press of Pakistan, 2002.

	date for a pre-trial hearing of the case; (ii) and on the date so fixed, the Court shall examine the plaint, the written statement (if any) and the précis of evidence and documents filed by the parties and shall also, if it so deems fit, hear the parties and their counsel.” ²⁰
Arbitration Act, 1940	A wide range of list of disputes can be settled through Arbitration Act, 1940, particularly disputes of civil nature. ²¹

1.2 Need for DRCs

1.2.1 High Number of Pending Cases and Adjudicative Delays

The common saying, “Justice delayed is justice denied”, aptly describes Pakistan’s current judicial system. The recent decision of Asma Nawab, who was served a 20-year sentence of imprisonment by lower courts and was recently judged innocent and exonerated from the charges by the Supreme Court, demonstrates the critical shortcomings in Pakistan’s judicial system.²² Similarly, Mazhar Hussain was acquitted by the Supreme Court two years after his death, after having already spent 19 years behind bars for a crime he never committed.²³ The total number of cases currently pending in courts are around 1.8 million. This unfortunate figure amply demonstrates the extent of delayed decision-making and the overall poor performance of the judicial system.²⁴ According to the National Judicial Policy, the court must present its verdict on a case within a year; however, courts take an average of three years to rule on cases. This is primarily because most judges are overburdened and often hear around 30 to 40 cases on a daily basis.²⁵ Delay(s) in investigations, comprise another key reason for this lagging behind of the judicial process.

According to the National Judicial Policy, the court must present its verdict on a case within a year; however, the court takes an average of three years to rule on cases. This is primarily because most judges are overburdened and often hear around 30 to 40 cases on daily basis.²⁶ Another key reason for this delay in the judicial process is that investigation officers (IOs) and prosecutors rarely use their legal power to discharge unfit cases. Resultantly, highly contradictory cases end up consuming precious time of the courts.

²⁰ Government of Pakistan, “Family Court Act,” Government of Pakistan, 1964.

²¹ Government of Pakistan, “The Criminal Procedure Code, 1898,” 1898.

²² News Desk. “Asma Nawab released after remaining 20 years in prison,” *Pakistan Today*, April 5, 2018, <https://archive.pakistantoday.com.pk/2018/04/05/asma-nawab-released-after-serving-20-years-in-prison/> (accessed June 25, 2021).

²³ Hasnaat Malik, “SC acquits man two years after his death,” *Express Tribune*. October 9, 2016, <https://tribune.com.pk/story/1195917/sc-acquits-man-two-years-death> (accessed October 7, 2021).

²⁴ Law and Justice Commission. “8th Judicial Conference,” April 2018.

²⁵ Peshawar Session Court. “Annual Report 2019-2020,” 2020.

²⁶ Peshawar Session Court. “Annual Report 2019-2020,” 2020.

1.2.2 Human Resource for Investigations

The number of police officers working in the investigation branch is fairly inadequate. The workload for the IOs is significant; for example, the 131 IOs posted in 32 functional police stations in Peshawar investigate five to six heinous crimes per month on an average (excluding the investigation of minor crimes).²⁷ This overburdens the IOs in effectively conducting investigations related to serious crimes.

1.2.3 Lack of Financial Resources for Investigation

Delays in the release of budgets at the *thana*²⁸ level and the poor financial provision allocated for investigation(s) are a major issue in investigations. As explained in the table below, the cost of investigation provided to the IOs is almost negligible compared to the average financial budget required for investigations. This impacts the performance of the justice system.

Table 2: Funds Availability vs. Case Load of Investigation Branch KP Police²⁹

Year	Total Cases	Funds Allotted (PKR Million)	Avg. Funds/Case (PKR)	Funds Req. (PKR Million)	Avg. Funds Req./Case (PKR)	Shortfall (PKR Million)
2018	35,400	24.06	679	109.49	3,093	85.42
2019	34,402	22.49	653	106.40	3,093	83.91
2020	26,924	21.17	787	83.27	3,093	62.10

Overall, the financial and human resource constraints severely impact justice outcomes and increase the citizen-state trust deficit. This is problematic because research indicates that citizens’ trust in the police is established only when the police are able to perform their duties with fairness, determination, and equity.³⁰ The table below demonstrates the high level of acquittal in serious crimes, particularly crime against persons and crime against property (in 2020).

²⁷ KP Police Research Branch. “Crime Data,” 2021.

²⁸ Thana literally means a ‘police station’.

²⁹ Ibid.

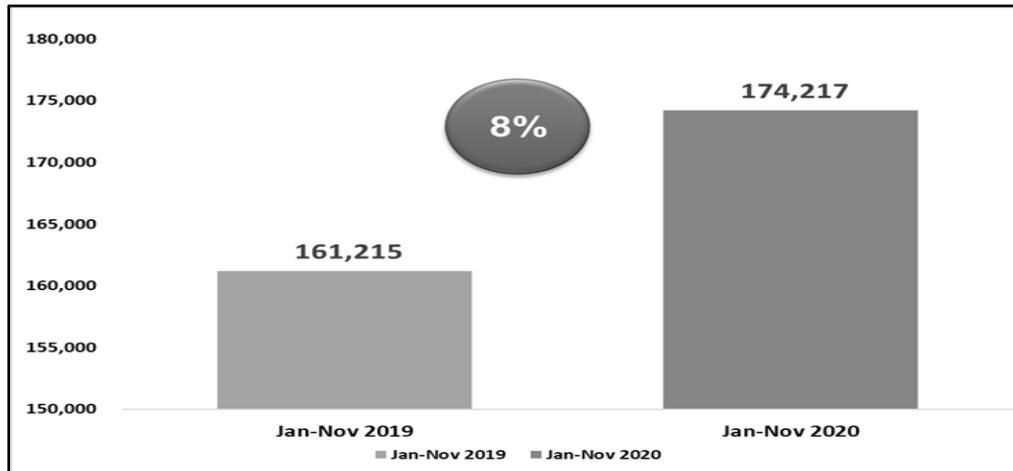
³⁰ Ullah and Ibrar, “Effectiveness of Police Public Services Mechanism in Crime Reduction in Khyber Pakhtunkhwa,” (2019): 137.

Table 3: Acquittal Rate in Different Categories of Crimes Investigated by KP Police (2020)³¹

Category	Decided	Convicted	Acquitted	% Conviction	% Acquittal
Crime Against Person	1,944	335	1,609	17%	83%
Crime Against Property	551	48	503	9%	91%
Traffic Accidents 279/336 PPC	18,561	17,962	599	97%	3%
ATA	46	8	38	17%	83%
LSL	73,548	64,811	8737	88%	12%
Miscellaneous	29,226	26,302	2,924	90%	10%

1.2.4 Increase in Crime Ratio

Despite the systemic deficiencies in the investigation processes, there has been an increase in the ratio of crime cases, which further demonstrates the need for DRC systems. The figure below shows an increase of 8% in registration of crime across KP between 2019 and 2020.³²

Figure 3: Increase in Crime Ratio (2019-2020)

³¹ KP Police Research Branch, "Crime Data," 2021.

³² Ibid.

1.3 The Institution of DRC in KP

According to KP Police, these DRCs were established with the objective of involving all the parties for settlement of their disputes by providing them a free and fair forum that would ensure the functions of ADR and guarantee them security and respect.³³ KP Police further states that the purpose of these DRCs is to facilitate citizens of KP in resolving their minor issues through a community-based platform that has members from the society with appropriate experience and repute.

According to the need analysis for DRCs of the KP Police, the formal system of dispute settlement through courts is too costly and time consuming as these courts are already over-engaged due to the immense case-load and suffer from all manner of resource constraints. The cases lingering in courts not only frustrate the plaintiffs, but result in escalation of minor issues into subsequent serious criminal offences. For example, a minor family issue sometimes results in serious loss of life as in cases of divorce or child custody. Therefore, a need was felt by KP Police to offer an alternate dispute resolution system in the shape of DRCs.

The DRCs have the specific function to amicably resolve complaints forwarded by the Police Department within the ambit of law and constitution. Even if an agreeable solution is not reached among the parties and no consensus on the decision of the DRC, the DRC is authorized to dispatch a report incorporating the findings to the SHO of the local police station to take cognizance of the matter by adopting the due course of law. The findings are also reported to the district police chief.

One remarkable aspect of the DRCs is that their members participate as independent observers during contentious cases that are being investigated by the KP Police. In such cases, the investigative officers update DRCs regarding their findings.

Regarding the DRCs' composition, only those aspirants who are apolitical, experienced and are of well repute are eligible to serve on their panels. The eligibility criteria apparently seem fine, but there is no formal mechanism to ensure the desired objective. For example, the word "experience" is vague; the required experience, such as skill or experience in negotiation, communication, conciliation or mediation is not specified.

In order to select the members of the councils, the District Police Chief in consultation with the community requests people of good repute from the community to become members of the DRC. Anyone who wishes to become a part of DRC must do so voluntarily. This process is subject to verification by district police authorities. There is no training for the members of DRCs. The current structure of the DRCs is in want for expansion of its ownership to stakeholders such as prosecution, probation, juvenile

³³ KP Police, "Dispute Resolution Councils, Khyber Pakhtunkhwa Police," Khyber Pakhtunkhwa Police, January 16, 2014.

reclamation and rehabilitation, prisons, etc. The system of DRC must ensure the trust of the judiciary and the legal fraternity in order to enlist a robust referral system.

There are 21 members in each DRC at a police station. They are not permanent and join and leave at will. The membership of the DRCs normally represents people from a wide range of professions such as former judges, retired officers (both civil and military), academicians, religious professionals (*'ulema*), media persons and business professionals. Each DRC has a secretary who is selected by the members of the DRC. After the selection, the secretary works on a quarterly rotation basis. The secretary, who has the main role on the forum, is assigned duties such as coordination between various offices, formation and changes to the panel after consultation, and maintaining the record of all deliberations and decisions that take place under the DRC's supervision. The secretary is also duty-bound to hold a monthly meeting with the District Police Chief and present a summary report regarding all the monthly activities of the DRC. The composition of the DRCs is such that these are mainly overseen by the District Superintendent of Police (SP); apparently there is no formal involvement of a higher level of senior police officers.

The DRCs have been made operational under specified parameters. The council is restricted to consider only those complaints that are referred by the concerned police officers themselves. No member can receive a complaint or application in his or her personal capacity; in such cases, the applications must be referred to the District SP where the member concerned is barred from becoming a member on the panel taking up such a case. If in case any side has a conflicting view about the outcome reached by the DRC, they may resort to seeking intervention of the SP concerned. In such a situation, the review council, having its own five different members other than the original decision-makers, reviews the findings. This system of referral is very restricted and there is no check in place to evaluate the whole DRC system at either the police station or district level.

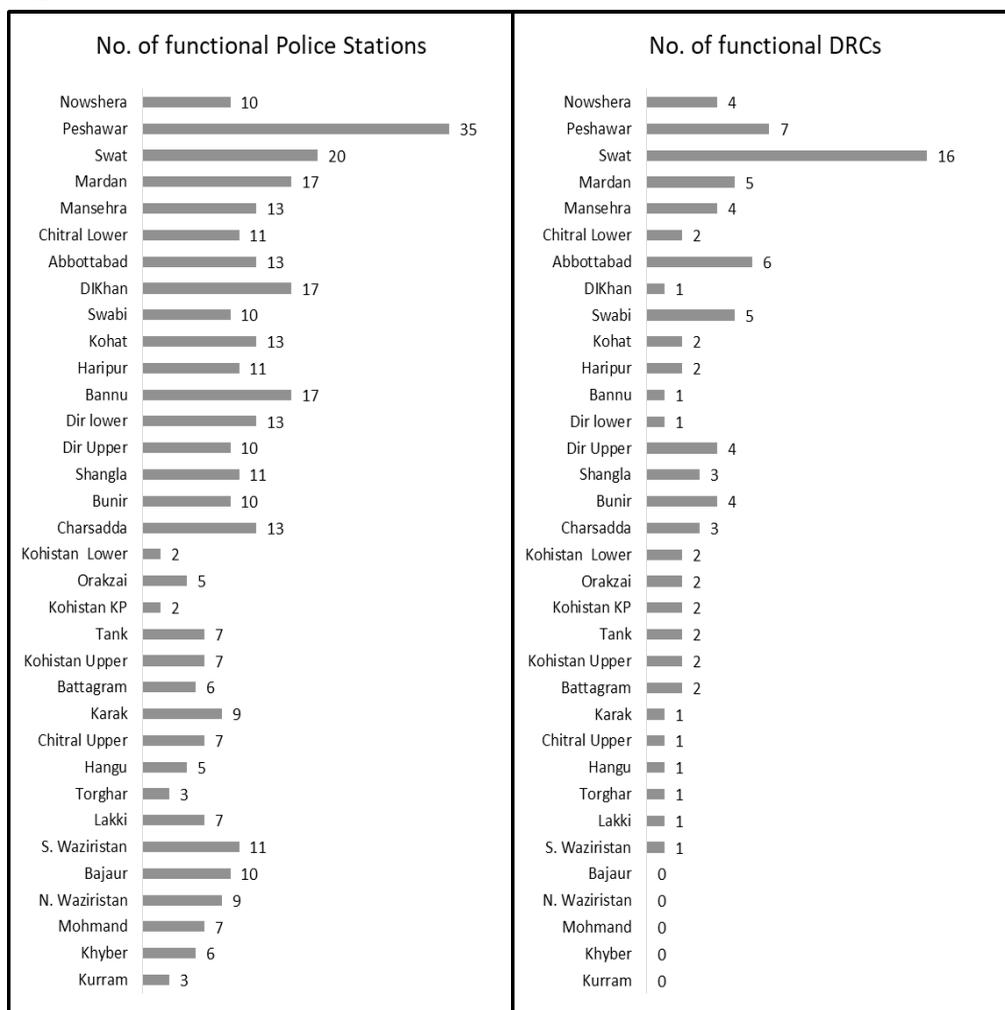
The working of DRCs is regulated by a code of ethics entailing that none of the members are allowed to misuse DRC status for any kind of personal benefits or political motives. If a complaint is lodged against a panel member in this context, the subject member shall voluntarily step down from the council. The code of ethics restrains a member from holding a public office or joining a political party. If a member violates these restrictions, he or she is bound to voluntarily resign from the council.

At the DRCs, a police coordinator is assigned the responsibility of summoning both the disputing parties and ensuring that both the sides attend the council meeting. He is also tasked to maintain a record of the proceedings of the council that includes the statements from the concerned parties and documents presented by them. If there is a need, the coordinator must provide support and advice to the panel members to deal with issues of a legal nature.

1.4 Functional DRCs in Police Stations

The figure below compares the total number of police stations and the number of DRCs that are operational in each district of KP. Overall, there are 350 functional police stations in KP, but the DRCs are functional in only 88 stations i.e., only about 25% of the police stations have functional DRCs. The highest number of DRCs are in Swat. Bajaur, North Waziristan, Mohmand, Khyber and Kurram do not have any functional DRCs. The Newly Merged Districts (NMDs) are witnessing expansion of the mainstream legal system to these areas but are suffering due to numerous limitations; hence, there is a serious need for DRCs in NMDs.

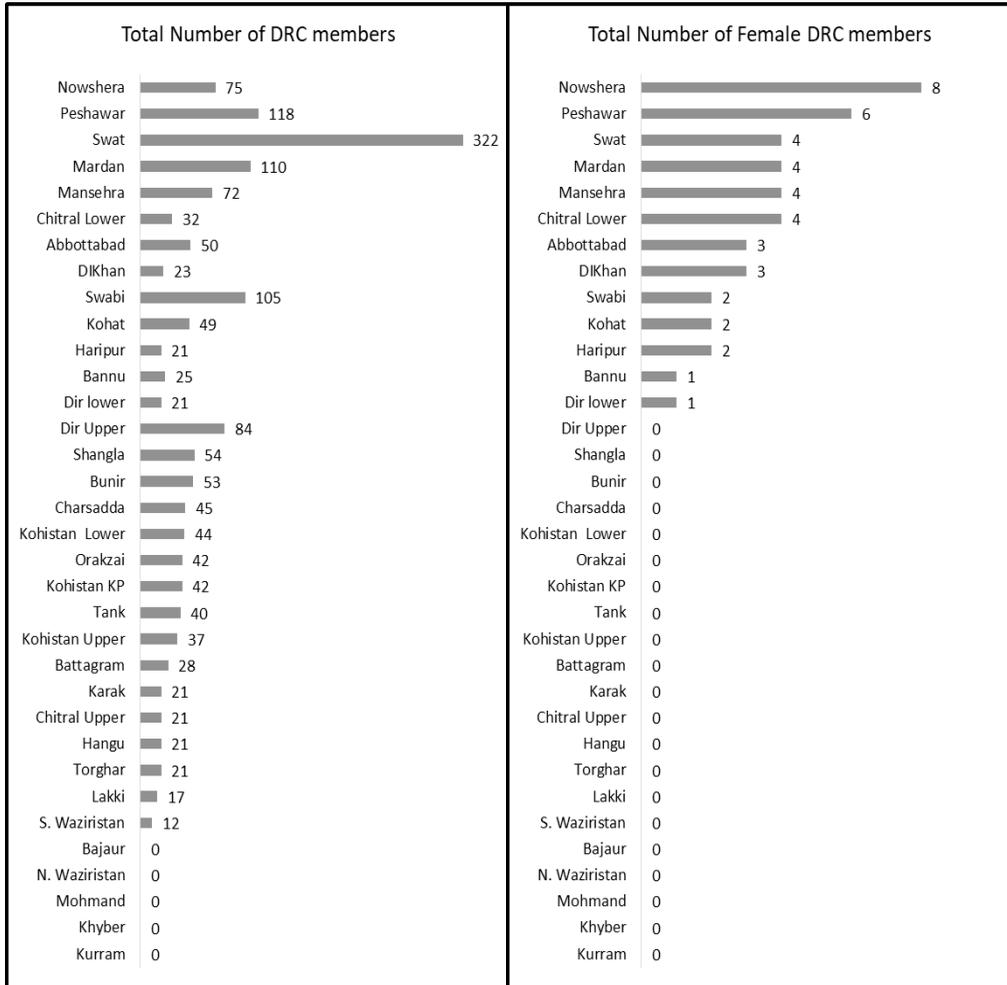
Figure 4: Functional Police Station vs. Functional DRCs³⁴



³⁴ KP Police Research Branch, 2021.

The representation of females in DRCs is significantly low when compared to males. The charts below demonstrate that there are 1,605 members in the DRCs functional across KP out of which only 44 are female members i.e., females represent less than 3% of the membership in DRCs.

Figure 5: Female Representation in DRCs in KP³⁵



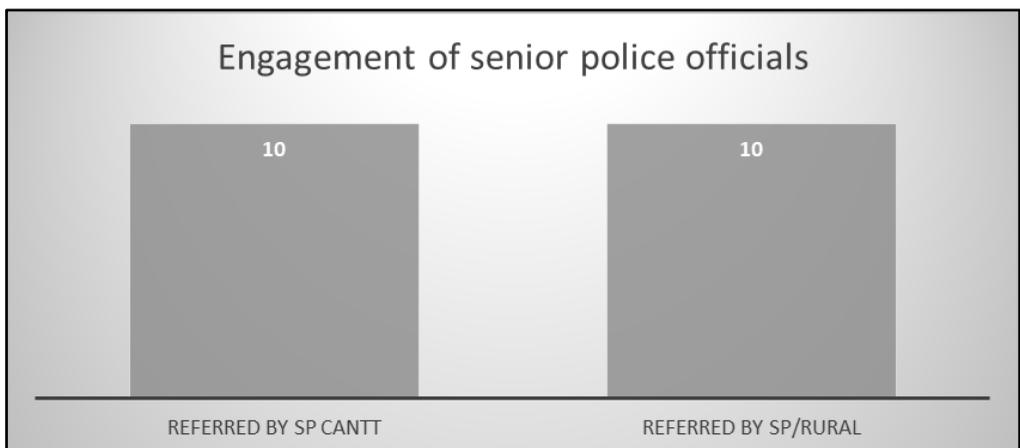
1.5 Engagement of Senior Police Officers at the Initial Stage of the Dispute

The statistical data collected from police stations of Gulberg and Mathra regarding the DRCs reveal mid-level police officers' involvement and supervision in the initial hearings and in referring cases to the concerned DRCs. The Superintendents of Police were engaged in all sampled cases for referring the cases to the committee. This

³⁵ Ibid.

demonstrates the high level of acceptability of the DRC system in the KP Police. This is an area where raising the involvement level from mid to high in the referral, training and evaluation aspects can serve the objectives of DRCs very well.

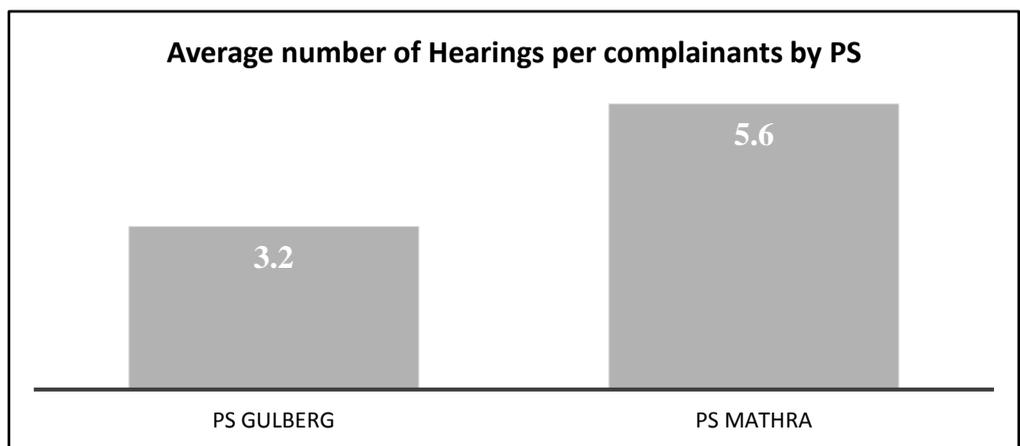
Figure 6: Engagement of Senior Police Officers at the Initial Stage of the Dispute



1.6 Frequency of Hearings Per Case by the DRC

Based on the study samples, the average frequency of hearing a case before reaching a decision is 3.2 times in urban areas and 5.6 times in rural areas. This is very good considering the delayed disposal of cases in the formal legal settings, where many cases of civil nature remain unresolved for years and some of these disputes result in criminal acts. For instance, an independent study conducted by the KP Police identified that in a majority of murder cases, the motive behind the crime was prolonged land disputes.³⁶

Figure 7: Frequency of Hearing per Case by the DRC

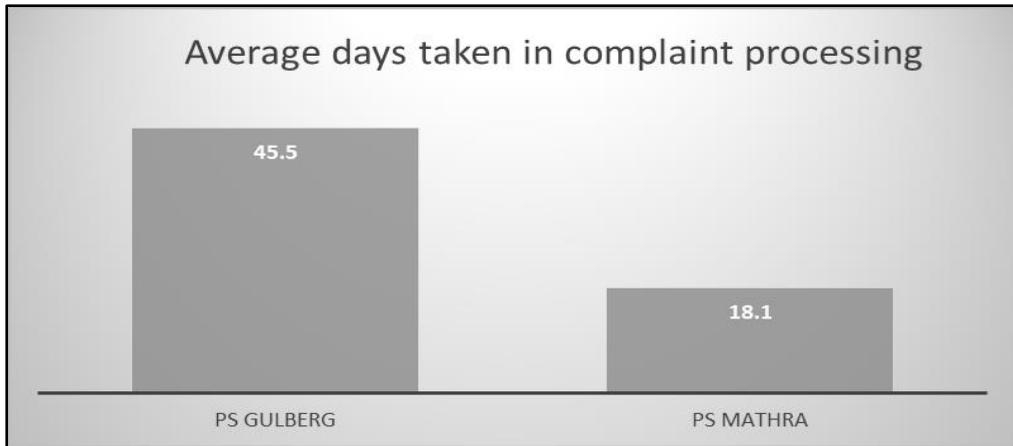


³⁶ KP Police Research Branch, "Investigation Deficit Analysis Report," 2018.

1.7 Number of Days Taken in Processing a Dispute by DRC

The examination of data from the sample reveals that, on average, the complaints are processed in 45.5 days in urban areas and in 18.1 days in rural areas. This suggests that processing disputes at DRCs is nearly 2.5 times quicker in rural settings compared to urban settings.

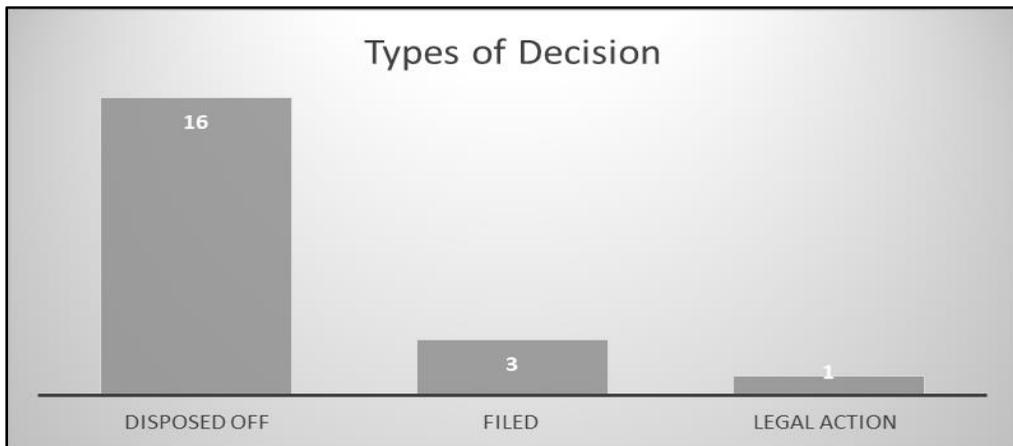
Figure 8: Number of Days Taken in Processing a Dispute by DRC



1.8 Types of Decisions Taken by DRCs

The data further reveals that in 16 out of the 20 samples cases (80%), the decision was to dispose of the case. In three out of 20 instances (15%) cases were filed by the DRCs. Legal action was taken only in one out of 20 sample cases (5%).

Figure 9: Types of Decisions Taken by the DRCs



Analysis (Part II)

DRCs facilitated by the KP Police are unique in nature. It is in KP that these DRCs are mandated by law to serve as an ADR mechanism in the public domain. A similar system of ADR, the equivalent of KP DRCs, has been replicated in Sindh Police whereas it does not exist in Punjab, Balochistan and Islamabad Capital Territory. This research focuses on ADRs around the globe to search for best practices in this respect and to analyze such systems for replicable features in the context of DRCs in KP. In this context, the paper shall consider two models, i.e. ADR provided by Edmonton Police in Canada and dispute settlement provided by the Dispute Settlement Center, Durham, North Carolina, USA.

2.1 Model I

Edmonton Police in Canada currently offers ADR to its citizens. Its “ADR processes such as mediation, facilitated discussions, peacemaking circles, and Supervisory Reviews are constructed in such a manner so as to be open to people’s voices.”³⁷ Edmonton Police Service is using its ADR process to achieve participant satisfaction with the complaint process as well as using it to restore the trust of the people through renewed partnership with police and the community.

The ADR system of the Edmonton Police Service is available to the public for addressing their complaints against police officers. The process starts first with the consent of both the parties, i.e. the complainant and the concerned police officer. This step is completed before the formal investigation of the complaint is initiated. ADR is a process that ensures privacy, openness to dialogue and mutual understanding between the conflicting sides.³⁸

Edmonton Police Service ADR entails the following services:³⁹

- This process is facilitated by the skilled mediators or supervisors and is guided through the ADR sequence.
- This process is completed within days of the submission of the complaint and consumes considerably less time as against time taken up by a full investigation.
- The whole process of ADR is confidential and the data protection requirement is adhered to here.

³⁷ Edmonton Police Service, Alberta, Canada. *Alternative Dispute Resolution*, 2019.

<https://www.edmontonpolice.ca/AboutEPS/EPSSOrganizationGovernance/ADRProcess> (accessed June 15, 2021).

³⁸ Ibid. Muhammad Hassan Ahmad, Ihtesham ullah Khan, Mohammad Naqib Ihsan Jan, Naurrual Hilal Md. Dhalan. “The Legal Position of Community Mediation,” in *Islamic Law Review* 15, no. 2 (December 2019): 241-258.

³⁹ Ibid.

- The environment provided by Edmonton Police for such mediation is very relaxed and unbiased. The location for such mediation is agreed with the consent of both the parties.
- This ADR process is a supplemental tool for enhanced community policing.
- This system gives both the parties a sense of control over the ADR proceedings, where they arrive at a workable solution together to resolve the complaint.

The Edmonton Police offers ADR under four different options: “mediation, facilitated discussion, peacemaking circles, and supervisory review.”⁴⁰

In principal, “mediation” is a form of dispute settlement that is assisted by a well-trained mediator. Both the complainant and the police officer are granted opportunities to be heard at length. Every effort is made to resolve the issue in a mutually satisfying and cordial manner. Edmonton Police Service ensures provision of a neutral space for such deliberations so that confidentiality and privacy of the matter at hands is not undermined.

In the technique of “facilitated discussion”, the mediator meets the conflicting sides in isolation; neither of the parties is made to confront each other. The concerns and points of view on a particular aspect of the matter are conveyed to other side in a most professional manner through the mediator. This form of mediation does not necessarily involve an agreement which is reduced to writing. This technique is mostly used where a direct meeting with the disputing sides may prove to be counterproductive.

The method of “peacemaking circle” is adopted for the groups that are large in number. In this method, two “circle keepers” moderate the proceedings of interactions between the two groups in order to ensure balance, mutual respect and the concept of equality to get the desired result of the conflict settlement. Such a proceeding normally ends with an agreement in written format.

There is one more form of dispute settlement which is known as “supervisory review”. In this format, the concerned officer’s supervisor is offered an opportunity to review the complaint made and the point of view of the officer. This allows the supervisor to verify whether a corrective course has been adopted or not. The result is made known to both the complainant and the officer along with the ‘Professional Standards Branch’.

At the end of the ADR process, both the parties agree to a written resolution. This written agreement may contain specific terms and conditions of the proposed resolution. In case of disagreement between the parties, the complaint is sent back to the Profession Standard Board and a formal investigation is started.

⁴⁰ Ibid.

2.2 Model II

Our second model under consideration is that of Dispute Settlement Center (DSC) of Durham, North Carolina, US, which began its operation in 1983. It was initially funded by the Z. Smith Reynolds Foundation for startups. The center was headed by an executive director working full time. The executive director is tasked with formulating a system for referring cases in coordination with the courts and the office of the district attorney of Durham.⁴¹ The executive director is assisted by a board of directors having representatives from the concerned agencies of referral. The term of these directors is three years and they are brought into office by a majority vote of the “mediators” and “facilitators”.⁴² There are a total of 17 board positions. The board meets monthly to conduct program reviews and identify issues and challenges for future operation. The board also undertakes the financial review of the program, where the executive director presents the overall summary of the resources of program’s financial position, its future plans for new assignments, finalization of agreements and contracts and related financial problems.

According to DSC Durham, the following areas came under the purview of the center:

- Minor civil mediation
- Minor criminal mediation
- Divorce and family mediation
- Workplace dispute mediation
- School mediation
- Public policy problem solving

Third party evaluators at the University of North Carolina’s Institute of Government in 1992 reported that, “88 percent of interpersonal misdemeanor cases referred to the Center by the courts resulted in agreements between disputants”.⁴³ This shows the high rate of success of resolution of minor cases.

According to a report,⁴⁴ the major caseload handled by the center was in the area of minor criminal cases mediation. These cases included those of harassment, assault, problems among relatives, neighbors and acquaintances. Under the head of minor civil case mediation, the center heard landlord-tenant cases and other minor civil cases

⁴¹ Daniel McGillis, *Resolving Community Conflict: The Dispute Settlement Center of Durham*, (North Carolina, Department of Justice, Office of Justice Programs, National Institute of Justice, 1998): 10.

⁴² *Ibid.*, 12.

⁴³ *Ibid.*, 2.

⁴⁴ *Ibid.*, 3.

including small claim disputes. The center has also been offering services in divorce and family mediation and its related issues such as child custody, visitation and property division.

Glensor and Stern conducted a valuable understanding of the underlying advantages of effective correlation between mediatory tactics and community policing in their article *Dispute Resolution and Policing: A Collaborative Approach toward Effective Problem Solving*. According to them, the police do not have appropriate training and have relied on practices of enforcement strategies to counter situations that call for specialized training thus leading to cosmetic solutions to the problems.⁴⁵ Thus, in such situations, the community based dispute resolution programs are effective in addressing the causes of disputes and offer help to law enforcement agencies and parties involved. The success of the center has been attributed to the conflict resolution skills of its mediators. The general organization of the center involves an executive director, an assistant director, a training coordinator, a school coordinator, a school trainer, a public-police coordinator, and an administrative assistant. The center selects volunteers for the role of community mediators after qualifying a training program that is available to all citizens. The DSC has catered for the training of its staff, i.e. the mediators and the facilitators, and provided the following types of trainings:⁴⁶

- Basic mediation training: This is designed to train people in mediatory skills.
- Conflict resolution training: This training has been articulated for schools and workplace issues, and has courses for people of all ages on subjects such as anger control and inter-personnel skills.
- Facilitation training: This program is tailored for groups.
- Train-the-trainer programs: This program offers training to become a trainer in the skills such as mediation and conflict settlement.

The institution of above-mentioned trainings by the DSC of Durham establishes the fact that before someone can work as a mediator or a facilitator they must go through a well-organized training program. This gives greater credibility to the services of the DSC of Durham. Additionally, the center has catered for maintaining a sustainable chain of trained personnel for its services through the training of trainers program. The training aspect of DSC of Durham is the star feature of this program.

The following section comprises a comparison matrix of all the three models considered so far in the ‘Analysis’ part of this paper, i.e. DRCs of KP, ADR of Edmonton Police Service and the Dispute Settlement Centre of Durham. In this matrix,

⁴⁵ R.W. Glensor, A.J. Stern, “Dispute Resolution and Policing: A Collaborative Approach Toward Effective Problem Solving,” *Police Executive Research Forum (PERF)*, 1995.

⁴⁶ McGillis, *Resolving Community Conflict: The Dispute Settlement Center of Durham, North Carolina*. US, 7.

a total of 19 parameters regarding these three models have been selected for comparison as shown in the first column of the matrix in Section 2.3.

2.3 Comparison Matrix

Table 4: Comparison Matrix of Three Models

Models' Comparison Matrix					
S. No	Attributes	DRC KP Police	Edmonton Police	Durham DSC	Comments
1	Administrative Control	Police	Police	Non-Police	Durham DSC is autonomous
2	Robust Referral System	No	Yes	Yes	KP DRC has police referral
3	Referral from Courts	No	No	Yes	Durham receives referral from courts
4	Criminal Cases	No	No	Yes	Minor cases
5	Civil Cases	Yes	No	Yes	Edmonton restricted to police cases
6	Public Policy Mediation	No	No	Yes	
7	Workplace Dispute Resolution	No	No	Yes	
8	Handling Complaints against Police	No	Yes	Yes	DRC KP does not have mandate in cases against police
9	Divorce and Marriages Mediation	Yes	No	Yes	
10	Robust Training Program	No	No	Yes	No training criteria for members in KP DRC
11	Evaluation System in Place	No	Yes	Yes	KP DRC does not have an evaluation system
12	Ease of Access for Public	Yes	Yes	Yes	
13	All the Stakeholders Involved	No	No	Yes	No formal inclusion of all stakeholders in KP DRC
14	Decision Implementation Procedures in Place	No	Yes	Yes	KP DRC does not have a mechanism to ensure implementation
15	Confidentiality of the Proceedings	No	Yes	Yes	No confidentiality clause in KP DRC
16	Any Role in Police Investigation	Yes	No	Yes	Underutilized role of DRC in KP
17	State Funding	No	No	No	KP DRC is a voluntary forum
18	Private Funding	No	No	Yes	
19	Revenue Generation	No	No	Yes	

The above comparison matrix provides a general understanding of the model of KP's DRCs in comparison to the ADR forum facilitated by Edmonton Police Service and an independent Settlement Council run by Durham County, USA. The focus is area for

KP Police DRC is improvement of its referral system to get higher coverage of cases and issues faced by the public.

The second area of concerted efforts is the composition of these DRCs in order to make these more inclusive in the context of stakeholders. Although the forum is currently facilitated by the KP Police, there is potential benefit in increasing the representation of other agencies and offices having relevance to the overall system of restorative justice through reforming the organizational structure of these DRCs.

Thirdly, the DRCs in KP can be utilized as a primary complaint redress forum to look into minor complaints of public against police officers. If both the parties agree to take the complaint to the DRC, then the DRC may decide the matter after giving fair opportunity to both the sides to present their case. This will not only provide a faster route for resolving the complaints by the public but will also reduce the case load of formal disciplinary enquiries conducted by the KP Police's central and regional units. Moreover, the mandate and jurisdictional coverage of these DRCs needs to be revisited and enhanced, as the functions and coverage of the current DRCs is very limited thus restricting its efficacy. Although this will require a concerted effort on behalf of stakeholders such as the KP government and judiciary, but the gains of such an initiative outweigh the costs.

The analysis and comparison thus far has paved the way for identifying the gaps in the working of DRCs in KP. In light of the statistics and data provided by the KP Police, the DRC system appears to be working successfully, but there is room for improvement in certain areas.

2.4 Key Findings: Challenges and Opportunities

Table 5: Key Findings, Challenges, and Opportunities

Challenges	Opportunities
Limited referral system of the DRCs and absence of referral from other stakeholders such as courts and prosecution.	KP Police is a very dynamic organization and it enjoys an active relationship with other stakeholders such as courts and prosecution. There are certain forums available such as Provincial Justice Committee where such proposals can be floated and the objective of expansion of referral catchment area, referral
The DRCs in KP are facilitated by KP Police and there seems to be no formal input from other stakeholders in its structure.	

<p>The mandate of the DRCs is restricted to petty civil matters only. The limited scope of the DRCs is a hurdle in its impact on the society of KP.</p>	<p>procedures, expansion in the ownership of the DRCs and rolling out of new service areas for DRCs can be brought on its agenda for discussion and proposals.</p>
<p>The DRC in KP is a subject mainly handled by mid-level officers of the KP Police such as District Superintendent of Police.</p>	<p>The office of the Regional Police Officer (RPO) has the main responsibility to serve as the overseeing arm of the administrative control of the Inspector General of KP Police. The involvement of the RPO at a higher level of the DRC can be easily achieved without extra burden on the resources of the KP Police. At the regional level, the interaction of the RPO with the representatives of other stakeholders could be very beneficial for expansion of referral system and the mandate of the DRC.</p>
<p>There are no criteria for imparting training either prior to or after the selection of members of the DRC. Keeping in view the future role of DRCs in KP, the training aspect cannot be ignored for long.</p>	<p>KP Police have strong training institutions such as police training colleges and other training schools. In addition, there is a long history of collaboration on projects between the KP Police and other development partners such as Department for International Development (DFID) UK, United Nations Development Program (UNDP) and United States Agency for International Development (USAID). The development of training module and training of members of the DRCs can be achieved without many complications.</p>
<p>The proceedings of the DRC are not protected by any formal confidentiality procedures and data protection.</p>	<p>The Police Legal Branch, in consultation with other stakeholders, is capable of drafting confidentiality and implementation clauses for the agreement between disputant parties before they can join the proceeding of the DRCs.</p>
<p>The decision implementation is one of the weakest areas of the DRCs where its impact is undermined.</p>	

Conclusion

ADR is a very useful supplementary system of conflict resolution and peacemaking. From an analysis of data from two police stations in this paper, the DRCs in KP are doing a commendable job in achieving this objective. The DRCs, on the one hand, are instrumental in saving time and resources of the disputants and, on the other hand, provide a valuable outlet for enhancing community trust in the institution of alternative justice in general and in the model of community-based policing in particular.

Based on the qualitative study of 20 cases reported by the DRCs in Gulberg and Mathra police stations of Peshawar, this paper has identified that the DRCs' success ratio is overwhelming on the decision and disposal basis. The time taken by these DRCs to work out a case is satisfactory. Also, the settlements in most cases are sustainable and disputant parties are happy with the decision reached at the DRC.

The DRCs system in KP is being replicated in Sindh, but the concept is still awaiting the approval of police leadership elsewhere in Pakistan. The effectiveness of this system is yet to be seen in the other national and provincial police settings. After converging focus on studying the international ADR models, two such models were identified. An in-depth study of these models and review of the qualitative study of the DRC provided an opportunity to compare the mandate, working and effectiveness of the DRCs in KP in comparison with the two identified international models.

In light of the key findings of this paper, it can be said with confidence that although the DRCs in KP are performing well but they are still at a rudimentary stage. The system needs more involvement of stakeholders and senior police officers. The DRCs in KP need reforms in structure, referral system and mandate. Their role needs to be re-discovered in line with requirements of the community and in consonance with the modern outlook of the ADR platforms. The footprint of these DRCs needs to be extended to areas where they are still not established.

Recommendations

Although the DRCs provide an easily accessible and reliable platform to the public to quickly dispose off their disputes and issues, they still have room for improvement and reformation to provide better service delivery to its beneficiaries, i.e. the members of the public. Some of the key recommendations are as follows:

Structural Reforms

The DRC system in KP needs structural reforms. While it is quite encouraging that the police, despite its overwhelming engagements in the fight against crime and terrorism elsewhere, is sponsoring and facilitating this important initiative to address the needs of the community in the context of dispute resolution, the ownership must now be

extended to other key stakeholders such as courts and prosecution services. Some of the recommendations for structural reforms are:

- (i) The DIG of each region must be made the executive director of the regional board of directors that must also have representation from the prosecution, legal fraternity and the community.
- (ii) There should be nine directors and the Regional Board must have one representative from the Prosecution Department, one practicing lawyer, one representative from the Reclamation and Probation Department, one retired judge, and five representatives of the community of good repute.
- (iii) The Divisional Board must ensure better gender representation. The selection of the members of the Divisional Board should be the responsibility of the executive director with the agreement of the IG KP.
- (iv) At the district level, the District Board should be headed by the District Police head and should continue working under the existing set of rules.
- (v) The District Board members' selection should be the responsibility of the head of the District Police and should be endorsed by the Regional Board.
- (vi) The District Board should have five members, including the District Police Chief, and should ensure the same composition to the best of its effort, but its representation should be flexible. The District Board should be responsible for selecting its members at police station level.
- (vii) The District Board should be made responsible for selecting members of each council on a voluntary basis as per the existing eligibility criteria. However, before members can be selected, all the members must undergo a need based, custom- designed training program to enhance and judge their interpersonal and social communication skills. To develop such training modules, the KP Police can seek cooperation from development partners such as DFID UK, UNDP and USAID. The KP Police can additionally rely on the experience of its training wing for organizing such training programs. Only successful volunteers should be selected as members of the concerned DRC.
- (viii) All the community representatives and non-serving members of the regional and district level boards must be selected for a period of two years.
- (ix) The referral mechanism must be extended to the courts and prosecution as well so that the catchment area of the DRCs is increased and its valuable services are extended to a larger number of disputants, who would otherwise remain deprived of this dispute resolution forum.

- (x) The government and higher judiciary must seriously consider referral of minor criminal cases, especially those involving juveniles, women, old citizens and first-time offenders.

A Complaint Redressal Body Against Police Malpractices

The DRCs in KP can be effectively used as a mediation forum in cases of complaints against police regarding investigations, high-handedness, misdemeanor and petty corruption involving police officers of the rank of constable. The recommendations include:

- If both the parties (i.e. the police officers and complainant) agree, the enquiry procedure can be preceded by a fact-finding sequence by the DRC which can serve as preliminary finding dossier before a formal enquiry is deemed fit.
- A confidentiality clause needs to be included in the charter of the DRCs so that confidence of the community in the DRCs can be enhanced.
- The role of the DRCs, as independent observers, in contested investigations needs to be enhanced and more frequently utilized. This is a very good feature of the DRCs in KP but upon examining the cases in the police stations it was discovered that this tool is practically unused in the DRCs.

Extension of DRCs to Newly Merged Districts

The government is yet to establish a fully operational court system in several regions across the Newly Merged Districts (NMDs) [previously, known as FATA or the Federally Administered Tribal Areas] due to resource constraints. Recognizing the limitations of the court system, it is necessary to support ADR by extending the DRCs to all the police stations in the NMDs. Doing so will ensure a gradual and smooth transition from a customary legal system to a more formal legal system.

Balancing Gender Ratio and Greater Representation of Women in DRCs

The limited representation of females in DRCs has a major implication on the access of females to DRCs. The disproportionate representation is a challenge for females and further exacerbates the patriarchal setup, particularly in rural settings. To address this issue, it is important to encourage the membership of females in DRCs and to sensitize females to approach the DRCs for resolving their disputes, especially involving families.

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Local Government in Punjab: Comparative Analysis of PLGA, 2013 and PLGA, 2019

Marryam Khan¹

Introduction

Devolution of political, administrative and financial powers to local level is essential for inclusive, need-based and equitable governance. The Constitution of Pakistan provides for a federal form of government, wherein authority is distributed between the federation and provinces. Article 140-A of the 1973 Constitution of the Islamic Republic of Pakistan states that the provinces shall “devolve political, administrative and financial” powers to local governments.² In Pakistan, the legal history of decentralization includes the promulgation of Basic Democracies Ordinance, 1959 by President General Ayub Khan, Local Government Ordinance (LGO), 1979 by President General Zia-ul-Haq and LGO, 2001 by President General Pervez Musharraf. These laws are viewed as tools for earning political legitimacy and weakening of political forces.³ Notwithstanding this criticism, LGO, 2001 is seen as the most democratic local government framework introduced till date.⁴ Interestingly, LGO, 2001 was promulgated by a military ruler but abrogated by a democratic government in 2008.⁵ Thereupon, Punjab Local Government Act (PLGA), 2013 was introduced in the backdrop of the 18th Amendment and Article 140-A.⁶ However, elections under PLGA, 2013 were only held on directions of the Supreme Court of Pakistan (SCP). In 2019, the local governments were dissolved by the government upon passage of the PLGA, 2019.

This paper examines PLGA, 2013 and PLGA, 2019 in a three-factor based comparative, institution-building and contextualized framework. It identifies strengths and weaknesses of both legal instruments towards establishing sustainable local governments in Punjab. Local government institutions are designed with standard characteristics including a definite area of jurisdiction, authority within such

¹ Pakistan Administrative Service, 29th SMC (marryamkhan1@gmail.com).

² Article 140-A, The Constitution of Islamic Republic of Pakistan, 1973

http://www.na.gov.pk/uploads/documents/1333523681_951.pdf (accessed on July 6, 2021).

³ Ali Cheema, Asim Ijaz Khwaja and Adnan Qadir, *Local Government Reforms in Pakistan: Context, Content and Causes* (Cambridge: Harvard Kennedy School, 2018), https://epod.cid.harvard.edu/sites/default/files/2018-02/local_government_reforms_in_pakistan_-_context_content_and_causes.pdf (accessed on July 15, 2021).

⁴ Ishrat Hussain, *Governing the Ungovernable: Institutional Reforms for Democratic Governance* (Oxford University Press, 2018), 182-185.

⁵ Shahzad Arif, William Cartier, Andrew Golda and Ritu Nayyar Stone, “The Local Government System in Pakistan: Citizen Perceptions and Preferences,” *IDG Working Paper* (2010), 05,

<https://www.urban.org/sites/default/files/publication/29166/412216-The-Local-Government-System-in-Pakistan-Citizens-Perceptions-and-Preferences.PDF> (accessed on July 10, 2021).

⁶ Article 140-A, Constitution of the Islamic Republic of Pakistan, 1973,

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designated local areas, clear delineation of responsibilities, civic services provision, need-based development, revenue generation, autonomy (as distinguished from sovereignty), and accountability, both vertically and towards people.⁷ The three-factor framework will enable us to analyze the degree of inclusion of these characteristics in PLGA, 2013 and PLGA, 2019. The study explores enabling and limiting factors for establishment of local governments in Punjab. The aforementioned comparative analysis scheme will aid in identifying the essential legal features required for an optimal, context-based and sustainable decentralization model for Punjab. An extreme decentralization plan can result in poor service delivery as seen in Latin America and may even lead to separatist tendencies as evidenced in Italy.⁸ Therefore, the challenge is to identify optimal decentralization, division of responsibilities with matching resources and accountability, integration of institutions, etc. with an overarching mission to improve service delivery, need-based development and governance.

Statement of the Problem

Punjab has not been able to establish and build local government institutions despite the passage five local government laws. The legal framework for decentralization must be developed in the specific historical, social, economic and political context of the province to generate ownership and sustainability. It requires symmetrical decentralization in political, administrative and financial spheres. Therefore, a holistic comparative examination of PLGA, 2013 and PLGA, 2019 within contextualized and institution-building frameworks is integral for identifying features of an implementable law for devolution. Notwithstanding the enhanced decentralization under PLGA, 2019, there are common inhibiting factors that do not allow establishment and sustainability of local governments essential for need-based development and improved service delivery. This paper shall undertake a much-needed contextualized and institution-building integrative approach essential for establishment of a local government system in Punjab. These laws will be tested against the three-factor comparative framework to identify an optimal decentralization legal framework for Punjab, which is implementable, sustainable and has political ownership.

Significance and Scope of the Study

Punjab is the largest province of Pakistan with a population of around 115 million. The five attempts at decentralization of power to local governments could not bear the desired results. Notwithstanding the 18th Amendment and Article 140-A of the Constitution, the devolution of power could not be made to LGs.⁹ Given the rapid speed of urbanization in Punjab, it is essential that local governments are introduced for need-

⁷ Pardeep Sachdeva, *Local Government in India* (London: Dorling Kindersley, 2011): 1.

⁸ Chanchal Kumar Sharma, "Emerging Dimensions of Decentralization Debate in the Age of Globalization," *Indian Journal of Federal Studies* (2009): 47-65, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1369943 (accessed on July 1, 2021).

⁹ Article 140-A, The Constitution of Islamic Republic of Pakistan, Government of Pakistan, http://www.na.gov.pk/uploads/documents/1333523681_951.pdf (accessed on July 6, 2021).

based development, planned urbanization, uplift of rural areas, and improved service delivery *inter alia*. Major works on political, administrative and financial strands of decentralization examine these three areas separately. Moreover, decentralization is studied as an end in itself and not as a tool to improve governance. The debate on decentralization is dominated by international best practices and not set in the peculiar context of Punjab and is not substantiated with data.

This research paper undertakes a legalistic comparative analysis of PLGA, 2013 and PLGA, 2019, places these in the unique context of Punjab, and studies essential characteristics of LG institutions in relation to these two legal instruments. Most importantly, the report undertakes a sample Perception Analysis Survey of 210 LG officers to overcome any shortcoming of data on performance of LGs. The scope is limited to these three factors and is strictly set in the context of Punjab.¹⁰ It will identify the strengths and weaknesses of these laws. This paper will identify the legal features essential for establishment of LG institutions in an integrated manner, which can be useful to build LG institutions aimed at improved service delivery.

Review of Literature

The literature review undertakes an in-depth examination of PLGA, 2013 and PLGA, 2019. It further studied the work by Pardeep Sachdeva on essential features of sustainable local governments. It analyzed the work on local government by Dr. Ishrat Hussain in his book titled *Governing the Ungovernable*. It undertook an exhaustive analysis of scholarly articles, journals, international donor-funded reports, etc. on devolution of powers in Pakistan. There are various studies under the aegis of the World Bank and GiZ, however, it is observed that these studies evaluate devolution as an end in itself. The work done by Dr. Aisha Ghaus Pasha, Dr. Ali Cheema, Dr. Hafiz A. Pasha, Asim Ijaz Khwaja, Hasaan Khawar, Dr. Saeed Shafqat, Dr. Ahsan Rana, etc. was examined. Multiple reports indicating the economic distribution in Punjab have also been examined. Furthermore, scholarly articles on devolution of power have been studied. These works dilate at length on the importance of establishment of local governments and see devolution as an end in itself. These also identify the major political, administrative and financial features required for establishment of effective local governments. For instance, the work by Dr. Aisha Ghaus Pasha emphasizes the need for symmetry between decentralization of functions and resource generation capacity of local governments and was useful in establishing a link between administrative and fiscal decentralization, autonomy and accountability.

There are just a few studies on comparison between PLGA, 2013 and PLGA, 2019 such as by Janjua and Rohdewohld, which is discussed hereunder. However, PLGA, 2019 has undergone multiple amendments which were studied by obtaining the relevant amendments and consulting primary sources from Local Government & Community Development Department (LG&CDD). There are no adequate studies on

¹⁰ Saif Anjum, former Secretary LG&CD, interview by author, June 28, 2021.

PLGA, 2019 as it is a recent piece of legislation and has not been enforced through establishment of LGs. There is also a shortage of first-hand empirical data on performance of local governments (in Punjab). Thus, the study tries to undertake a comparative analysis of PLGA, 2013 and PLGA, 2019 (as amended till date) by analyzing the amendments made in the latter. It has further undertaken a Perception Analysis Survey of 210 local government officers to gather first-hand data to predict trends based on feedback of field formations of LG&CDD. The paper further employs an institution-building approach, which is not adequately available in the present body of literature on local governments in Punjab. These points can be found in varying degrees in different studies but are not discussed in a holistic manner.

This study examines local governments as institutions and identifies essential legal characteristics for designing sustainable local government institutions, which is then placed in our unique context. It tries to discover the essential legal features covering both formulation and implementation aspects of a legal instrument that will help in establishing sustainable local governments in Punjab. It is an addition to the existing body of literature and can help us tailor our laws to our specific context and adopt an integrative approach for improved governance and service delivery.

Method

The research method adopted for this study includes qualitative and quantitative research methodologies. An in-depth examination of a large number of both national and international secondary sources on the subject has been undertaken. In view of a lack of data on performance of local governments, a sample Perception Analysis Survey of 210 officers of LG&CD Department including Directors (BS-19, 5), Additional Directors Local Governments (BS-18, 120), Deputy Directors Local Government (BS-18, 20), Municipal Officers (BS-17, 30) and Chief Officers (BS-17/18, 35), has been conducted. Interviews (unstructured) have been conducted with two former secretaries and the incumbent Secretary, LG&CD. The other officers of LG&CD Department interviewed included Additional Secretary (retd) Janjua, who has extensively worked on PLGA, 2013, Arshad Baig, Additional Secretary, LG&CD, Najeeb Aslam, Director Local Government Academy, Lala Musa. Moreover, Hasaan Khawar and Dr. Ali Cheema were also interviewed.

Organization of the Paper

The paper is organized into three sections. Section-I is a comparison of political, administrative and fiscal decentralization under PLGA, 2013 and PLGA, 2019. Section-II evaluates the adequacy of the two legal instruments within an institution-building framework. Section-III undertakes a contextualized approach towards establishing local governments. These three sections will help identify the enabling and limiting factors towards establishments of local governments in Punjab.

Section I

Comparative Analysis of PLGA, 2013 and PLGA, 2019

1.1 Background

The legal history of local governments includes five legal instruments. It begins with the promulgation of the Basic Democracies Ordinance, 1959 that introduced a four-tiered local government machinery, wherein only the persons at the lowest rung were directly elected. It acted as an electoral college of around 80,000 “Basic Democrats” for President Ayub Khan.¹¹ Later, President Zia introduced the LGO, 1979 that entrusted limited powers and roles to the local governments. The most inclusive LGO was introduced by President Musharraf in 2001.¹² However, it is also criticized for devolving powers to local governments with an intent to weaken provincial governments.¹³ The LGO, 2001 was repealed by a democratic government and administrators were appointed, accordingly.¹⁴ Local governments in Pakistan have been associated with military rulers requiring instruments to legitimize their rule and weaken political forces.¹⁵ It is also pertinent to mention that four successive democratic governments of Pakistan Muslim League Nawaz (PML-N) and Pakistan Peoples Party (PPP) never ventured to establish local governments during the period 1988-99.¹⁶

In 2013, the PLGA was enacted in the backdrop of Article 140-A of the Constitution of the Islamic Republic of Pakistan, 1973 that enjoined upon provinces to undertake political, administrative and fiscal devolution.¹⁷ However, despite the enactment of PLGA, 2013, the provincial government in Punjab did not hold elections for local government till directions from the SCP.¹⁸ The election manifesto of the present government included establishment of local governments. It enacted PLGA, 2019 and dissolved the existing local governments elected under PLGA, 2013. Notwithstanding political ownership, the PLGA, 2019 has undergone multiple amendments that curtail financial and administrative decentralization; elections have not been held till date. On March 25, 2021, the SCP restored the local governments as they existed before April

¹¹ Ishrat Hussain, *Governing the Ungovernable: Institutional Reforms for Democratic Governance* (Oxford University Press, 2018): 183.

¹² Zulqarnain Hussain Anjum, “New Local Government System: A Step Towards Community Empowerment?” *The Pakistan Development Review* 40, 4 Part II, (2001), 845-867. <https://www.pide.org.pk/pdf/PDR/2001/Volume4/845-867.pdf> (accessed on July 4, 2021).

¹³ Syed Mohammad Ali, “Devolution of Power in Pakistan,” *United States Institute of Peace: Special Report*, (March 2018) https://www.usip.org/sites/default/files/2018-03/sr_422_mohammad_ali_final.pdf (accessed on July 14, 2021).

¹⁴ “Punjab Proposes Sunset Clause in Local Govt Ordinance,” *Dawn*, July 10, 2009, <https://www.dawn.com/news/963979/punjab-proposes-sunset-clause-in-local-govt-ordinance> (accessed on July 5, 2021).

¹⁵ Ali Cheema, Asim Ijaz Khwaja, and Adnan Qadir, “Decentralization in Pakistan: Context, Content and Causes” *HKS Working Paper No. RWP05-034*, (2005) <https://research.hks.harvard.edu/publications/getFile.aspx?Id=177> (accessed on July 17, 2021).

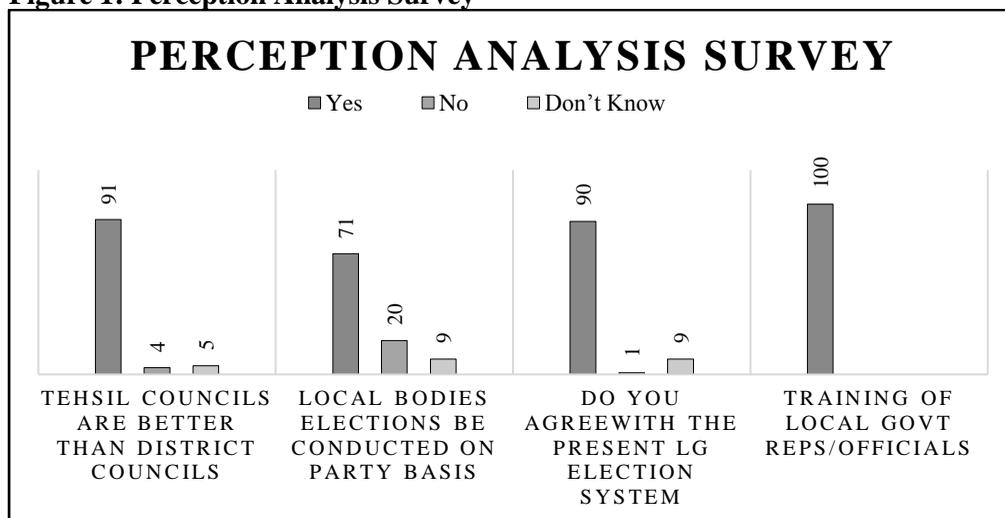
¹⁶ *Ibid* 13.

¹⁷ Article 140-A, The Constitution of Islamic Republic of Pakistan, 1973, Government of Pakistan, http://www.na.gov.pk/uploads/documents/1549886415_632.pdf.

¹⁸ *Ibid* 13.

5, 2019. The Government of Punjab has formulated transition teams for establishment of local governments. This section will make a comparative analysis of the political, administrative and fiscal devolution under PLGA, 2013 and PLGA, 2019. The Perception Analysis Survey of 210 officers of LG&CDD depicts certain useful trends regarding decentralization under PLGA, 2013 and PLGA, 2019, which are employed to analyze these two legal instruments vis-à-vis the views of the implementation agents. The sample survey was undertaken to gather data on performance of LGs as it was seen that there is shortage of data. The trends depicted in the Perception Analysis Survey in Figure-1 will be discussed hereinafter.

Figure 1: Perception Analysis Survey¹⁹



1.2 Political Decentralization

PLGA, 2019: Under PLGA, 2019, a local government comprises a directly elected head who shall have a cabinet consisting of councilors and professionals. It shall also have a council comprising councilors, a convener *inter alia*. It introduced party-based elections, which minimize patronage related differences between provincial and local tiers.²⁰ The holding of party-based elections was also supported by 71% of officers of LG&CDD as given in Figure-1. An overall satisfaction with LG election scheme was supported by 90% officers as given in Figure-1. Executive authority of a local government vests in the head and his/her cabinet, whereas the supervisory and legislative powers are with the council. At present, the local government structure comprises 11 Metropolitan Corporations (nine at divisional headquarters and the remaining two at Sialkot and Gujrat). It will have 15 Municipal Corporations for each

¹⁹ Survey conducted with 210 officers of local government in collaboration with Local Government Academy, Lala Musa and LG&CD, Punjab.

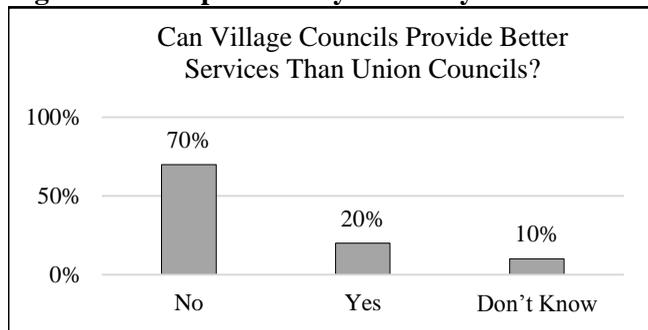
²⁰ Ali Cheema, Asim Ijaz Khwaja, and Adnan Qadir, “Decentralization in Pakistan: Context, Content and Causes,” *HKS Working Paper No. RWP05-034* (2005), <https://research.hks.harvard.edu/publications/getFile.aspx?Id=177> (accessed on July 17, 2021).

area with a population of 250,000 (including Municipal Corporation Murree), 133 Municipal Committees for towns with populations between 75,000 and 250,000, 64 Town Committees with populations between 30,000 and 75,000, and 136 Tehsil Councils for each tehsil, respectively.

The District Council under the PLGA, 2013 has been abolished and governance has been taken down to Tehsil level, which is supported by 91% of LG&CDD officers as indicated in Figure-1. It is perceived that this will improve service delivery at the rural level. However, the replacement of district level tier with Tehsil Councils has by default reduced the percentage of representation of women and minorities.²¹ The Tehsil Councils represent rural areas that are neglected in terms of municipal service delivery and development and will allow representation to these areas in decision-making. The Union Councils have been replaced by Village Councils (VCs) and Neighborhood Councils (NCs), wherein election of chairman, vice chairman and all councilors on reserved seats shall be direct and non-party based. The mode of election is proportional representation with close list system, which gives broader political representation.²² The elections are party-based except in case of VC and NC. The direct elections, executive authority, proportional representation, relatively smaller size of local bodies with proximity to local populace are major features that indicate a sharp departure from PLGA, 2013 that provided for indirect elections, which diluted the representative character and the authority of the head of local governments.

PLGA, 2013: The PLGA, 2013 provided for one Metropolitan Corporation for Lahore. The provincial government could notify an area with a population from 30,000 to 500,000 and an area with a population of more than 500,000 as Municipal Committees and Municipal Corporations, respectively.

Figure 2: Perception Analysis Survey



The rural areas in a district were notified as District Councils, save the areas within Lahore. The chairmen and vice chairmen of the UCs were to be directly elected. The directly elected chairmen of the rural UCs elected members including women, minorities and peasants on reserved seats. The District Council in turn elected its chairman and vice chairman. In the same vein, the mayor and deputy mayors of a

²¹ Dr. Raja M. Ali Saleem and Zainab Altaf, “Effect Implementation of the PLGA, 2019: Lessons Learnt from the Implementation of PLGA, 2013,” *Centre for Public Policy and Governance, Forman Christian College University*, (2020), <http://cppg.fccollege.edu.pk/wp-content/uploads/2021/02/Effective-implementation-of-Punjab-Local-Government-Act-2019-Consultations.pdf> (accessed July 1, 2021).

²² Moazzam Ali Janjua and Rainer Rohdewohld, “Critique of the Functional Assignment Architecture of Punjab’s Local Governance Legislation of 2013 & 2019,” *Commonwealth Journal of Local Governance*, (2019), <http://epress.lib.uts.edu.au/ojs/index.php/cjlg> (last accessed 1st July 2021).

Metropolitan Corporation or a Municipal Corporation were indirectly elected by the chairmen of the Union Councils. It provided for adult franchise through secret ballot. A local government had a five-year term in office.²³ It could be removed through a vote of no-confidence by two-third majority of the members of the local government.²⁴ The chairmen and mayors were indirectly elected and thus lacked the adequate political authority of decision-making. It is pertinent to note that 70% of the participants of the Perception Analysis Survey were against replacement of UCs with VCs as shown in Figure-2. It is apprehended to have serious bearing on quality of service delivery.

1.3 Administrative Decentralization

PLGA, 2019: Under PLGA, 2019 the Chief Officer is head of the administration and shall also be the principal officer, who is to be appointed by the government.²⁵ As per Section 21(2) of the PLGA, 2019, an entity providing services for building control, solid waste management, water supply, sewerage and drainage, traffic management, land-use planning, zoning and sectoral development spatial plan shall be transferred to the Metropolitan Corporation or local government concerned, as the case may be. Transfer of development authorities including LDA, Water & Sanitation Authority (WASA), and Traffic Engineering & Transport Planning Agency (TEPA) was commended as the most significant step towards meaningful empowerment of local governments. However, the transfer has been revoked and now these authorities rest within the provincial government through an amendment in Section 21. Health and primary education were also originally devolved to local governments, which were again transferred back to the provincial government through amendment. Under Section 30, local governments may form joint authorities for discharge of particular functions, which is in the interest of economies of scales and effectiveness.

Section 5(2) of PLGA, 2019 stipulates that a local government shall have no interference in its official business. However, the provincial government is empowered to direct a local government to perform any additional functions. Most importantly, under Section 27 the provincial government may appoint a caretaker to perform any of the functions assigned to local governments. It may further fix the standards for service delivery by a local government and ring fence the expenditure of local government to maintain service delivery standards.²⁶ The provincial government can also remove the head of a local government after affording an opportunity to show cause and suspend or dissolve a local government after enquiry by the Commission.²⁷ The mechanism for inter-agency coordination is stipulated at divisional and district levels under the Commissioner and Deputy Commissioner (DC), respectively, to coordinate the work, which are related to the provincial and federal governments. A local government is bound to 'abide by' the directions of the DC or the Commissioner.

²³ Section 30, Punjab Local Government Act, 2013, <http://extwprlegs1.fao.org/docs/pdf/ind143880.pdf> (last accessed on July 20, 2021).

²⁴ Ibid 22, Section-35.

²⁵ Ibid 22, Section 45.

²⁶ Sections 29 and 136, The Punjab Local Government Act, 2019, Government of Punjab.

²⁷ Ibid 27, Sections 232 and 233.

Accountability mechanisms are relatively elaborate under PLGA, 2019. The Council is empowered to form monitoring committees to oversee the functioning of the local government. The members are completely prohibited from participating in any business of local government, wherein their personal interests are involved. In this respect, members must declare their interest and the Chief Officer is to maintain a record of conflicts of interest, which will be available for public information. Under sections 225 to 236, the administrative secretary or an authorized officer or a minister can take part in proceedings of local government and order an inquiry into the affairs of the local government through the Inspectorate General.²⁸ The IG is also empowered to conduct yearly inspections of all local governments.²⁹ It may also direct the LGC to review and conduct enquiry in any matter pertaining to local government.

PLGA, 2013: Under PLGA, 2013, the executive authority of a local government is vested in the mayor or chairman. The government could appoint a Chief Officer, who would be responsible for coordination between the government and the LG and also ensured implementation of all laws and policies by the concerned LG. The Chief Officer functioned under the supervision of the mayor.³⁰ The PLGA, 2013 established District Health Authority (DHA) and District Education Authority (DEA). The boards of DEA and DHA included chairman, vice chairman and CEOs of the authorities. In practice, the control of DHA and DEA remained with the provincial government through the office of CEOs since the financial and administrative powers remained with the CEO and the DC.

The government was empowered to devolve any of its functions to the local government. Similarly, a local government may devolve its functions to UCs.³¹ However, the Act did not provide for establishment of joint authorities. Under Section 119, the provincial government could direct a local government to collect taxes and issue guidelines for better service delivery. Under Section 120, the local government was obligated to implement the directions of the provincial government. The provincial government could also require performance of a function outside the mandate of a local government, while providing matching budgetary resources with it. A local government could also transfer any of its functions to the government or another local government with the prior approval of the provincial government. The Punjab Local Government Commission (PLGC) was entrusted with the responsibility to settle disputes between local governments and departments. The PLGC was also a conduit for consultation between members of the national and provincial legislatures and local governments for holistic development planning. The Commission could conduct inspections and enquiries in to matters of local governments and recommend penal actions including removal from office. However, it did not provide a formal role to the DC Office for dispute resolution between local governments and the province. It also barred a member, having interest in the proceedings or business of local government,

²⁸ Sections 235 – 236, The Punjab Local Government Act, 2019, Government of Punjab.

²⁹ Ibid 27, Section 244.

³⁰ Ibid 27, Section 64 & 88.

³¹ Ibid 27, Section 65 & 66.

from voting under Section 68(7). Under Section 70, the local government is to periodically publish reports and maintain record of its proceedings.

1.4 Financial Decentralization

PLGA, 2019: Under PLGA, 2019, the local government maintains a Local Fund, wherein all general revenue proceeds from the provincial government, rents, taxes, fines, loans, etc. will be deposited. In addition, it shall also maintain a Public Fund, Sinking Fund and a Special Fund. The head of local government shall prepare an estimate of its receipts and expenditures, which shall be approved by the Council by a simple majority. The Provincial Allocable Amount (PAA) shall be disbursed on a need and performance based formula taking into account the needs, backwardness, ability to raise taxes, financial management capacity for expenditures and service delivery standards of a particular local government. Under Section 139, the LG can also raise loan for undertaking public work. Under Section 189, the minimum threshold for total allocable share has been fixed at 26% for first two years and thereupon 28% of the general revenue receipts of the province. It is pertinent to mention that the Local Fund will be considered as the composite balance of Punjab. The tax base remains the same under PLGA, 2013 and PLGA, 2019. The LG receives Urban Immovable Property Tax (UIPT), Entertainment Tax, Tax on Transfer of Immovable Property, Tax on advertisements and billboards, toll tax, *inter alia*. The tax on billboards and advertisements stands reverted to provincial jurisdiction in Metropolitan Corporations. In addition, it receives fees, charges, rates on parking, drainage, conservancy, water, markets, etc.

PLGA, 2013: Sections 100 to 118 stipulate the LG finances, budgetary and resource mobilization procedures. Under these a Local Fund shall be maintained for all general revenues including taxes, rents, share in the Finance Commission award, *inter alia*. In addition, it keeps a Public Account and a separate Special Purpose Account. The mayor or chairman of local government shall table budget before local government that may approve it with simple majority. The local government is also to display a statement of annual statement of accounts for public scrutiny. As per Section 112(4), the Finance Commission shall recommend formula for distribution of PAA to LGs. The primary factors to be considered in determination of the formula include performance, requirements, population size and underdevelopment of a particular area. Sections 115-118 and Schedule III deal with taxation by the LG. It may levy a new tax subject to vetting by the provincial government. However, a district-wise study of local governments revealed constrained autonomy of local governments in preparing their budgets, particularly the Annual Development Programme (ADP) due to existence of vertical programs and high salary component in budgets. The PLGA, 2019 allowed collection of fees on billboards and advertisements in metropolises which stood returned to the provincial government. The tax base largely remains identical and static under both laws.

Section II

2.1 Building Local Government Institutions in Punjab

Institution-building in developing countries requires definitive missions and goals, functional assignment and alignment between various agencies, resource allocation, accountability, and inter-agency coordination.³² Local government is defined by K. Venkatarangaiya as “the administration of a locality – a village, a city or any other area smaller than the state – by a body representing the local inhabitants, possessing a fairly large amount of autonomy, raising at least a part of its revenue through local taxation and spending its income on services which are regarded as local and, therefore, distinct from State and Central Services.”³³ The institutional characteristics of LGs include a local entity, locally elected, certain degree of autonomy, non-sovereign, well-defined functions, authority to raise local taxes, vertical and horizontal linkages and accountability.³⁴ LG is not sovereign but is autonomous in a limited sphere clearly spelt out under the law. This section examines the enabling and limiting characteristics of PLGA, 2013 and PLGA, 2019 from a sustainable institution-building perspective steeped in our political, economic and social framework.

2.2 Institutional Mission and Goals

The Constitution of Islamic Republic of Pakistan, 1973 enjoins provinces to establish local governments and ‘devolve’ political, administrative and fiscal authority along with responsibility to such locally elected governments.³⁵ The term ‘devolution’ as employed under the Constitution is different from ‘delegation’. Devolution allows quasi-autonomous local governments to perform certain transferred functions, wherein these units are accountable only within a certain budgetary framework to provincial governments. In contrast, delegation transfers responsibility and partial autonomy but accountability vests completely in the central or provincial government.³⁶ Decentralization is designed to transfer powers from centrally appointed unaccountable bureaucracies to locally elected representatives accountable to local public.³⁷ The mission and goal formulation and implementation process has to include both central and local stakeholders and must be people-centric.³⁸

³² Peter Blunt and Paul Collins, “Institution Building in Developing Countries: Special Issue of Public Administration and Development,” *Public Administration and Development*, (1994).

³³ Pardeep Sachdeva, *Local Government in India* (London: Dorling Kindersley, 2011): 1.

³⁴ *Ibid*, 2-3.

³⁵ Article 140-A, The Constitution of Islamic Republic of Pakistan, 1973.

http://www.na.gov.pk/uploads/documents/1333523681_951.pdf (accessed on July 6, 2021).

³⁶ Aaron Schneider, “Decentralization: Conceptualization and Measurement,” *Studies in Comparative International Development* (2003), <https://www.researchgate.net/publication/265300663> (accessed on July 7, 2021).

³⁷ Pranab Bardhan, “Decentralization of Governance and Development,” *Journal of Economic Perspectives* 16, no. 4, (2002), 185-205, <https://www.aeaweb.org/articles/pdf/doi/10.1257/089533002320951037> (accessed on July 25, 2021).

³⁸ Fumihiko, “Decentralization Theories Revisited: Lessons from Uganda,” *Japan: Ryukoku RISS Bulletin*, no. 31 (March 2001),

https://www.researchgate.net/publication/242247248_Decentralization_Theories_Revisited_Lessons_from_Uganda (accessed on July 25, 2021).

It is important that devolution does not become hostage to elite capture at local level as in that case it will overly provide for services for elite at the expense of non-elite and militate against the goals of devolution.³⁹ Elite capture can be inferred from a 24-year rural household panel survey in Punjab and Sindh, which reflected that intergenerational ownership of land remains stable, reinforcing concentration of wealth.⁴⁰ Perpetuated inequalities create separate streams of service delivery for the rich and poor, wherein the former opt out of the public service delivery spectrum and shift to private sector service provision, which is the case in Pakistan. Elite capture depends on social-economic fabric and inequities. For instance, from 2009 to 2004, Lahore had 18 times higher per capita allocation than the average of all 35 districts together, which is indicative of inequitable development.⁴¹

An examination of PLGA, 2013 and PLGA, 2019 discloses that both were formulated in a top-down manner. The elections to local governments under PLGA, 2013 were made possible only after the intervention of SCP and powers were never fully devolved to the local governments, which reflects inadequate political will. In contrast, the PLGA, 2019 had strong political ownership and political will behind its formulation since establishment of functional local governments was part of the election manifesto of Pakistan Tehreek-e-Insaf. It empowered local governments by transferring development authorities and all such SPVs for service delivery to LGs, which could enhance local government revenues up to 6%.⁴²

The delay in holding elections and repeated amendments diminishing powers of local governments are indicative of lack of consensual division of powers. PLGA, 2019 has a robust mayor-council model for both urban and rural local entities and will lead to highly contested elections.⁴³ For instance, Lahore city with a population of around five (05) million will be the electoral college for the Mayor of Lahore, which is a direct challenge to authority of members of Provincial Assembly in Lahore. Notwithstanding the noble objectives of any local government law, it will not be successful unless the process of formulation is broad-based and inclusive. Participatory LGs can be achieved if the process of formulation of local governments is multi-stakeholder and inclusive. Both Acts also did not have a clear binding mission. Moreover, frequent amendments to PLGA, 2019 have diluted the spirit of decentralization that was present in the original Act of 2019.

³⁹ Ibid 38.

⁴⁰ Silvia Redaelli, "Pakistan @ 100 from Poverty to Equity," The World Bank Group. (2019), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/868741552632296526/pakistan-at-hundred-from-poverty-to-equity> (accessed on July 20, 2021).

⁴¹ Ibid.

⁴² Gharad Bryan and Ali Cheema, "State Capacity in Punjab's Local Governments: Benchmarking Existing Deficits," *Oxford: International Growth Centre* (2020), <https://www.theigc.org/publication/state-capacity-in-punjab-local-governments-benchmarking-existing-deficits/> (accessed on July 20, 2021).

⁴³ Gharad Bryan and Ali Cheema, "State Capacity in Punjab's Local Governments: Benchmarking Existing Deficits," *Oxford: International Growth Centre* (2020), <https://www.theigc.org/publication/state-capacity-in-punjab-local-governments-benchmarking-existing-deficits/> (accessed on July 20, 2021).

An equitable governance paradigm requires that LGs are empowered according to the spirit envisioned in their mission and goals, otherwise these will remain ceremonial in nature. For instance, in Punjab, the Human Opportunity Index (HOI) for minorities and various ethnic groups is predetermined by birth. The survey of Learning and Educational Achievement in Punjab Schools (LEAPS) showed difference in learning outcomes in public and private schools and implications for opportunities in life.⁴⁴ Another instance of top-down approach is evident in the absence of LG representation in Punjab Finance Commission.⁴⁵ However, the present Act of 2019 opens the meetings of Finance Commission for public participation.⁴⁶

2.3 Resource Generation and Provision

Fiscal decentralization is measured through extent of devolution of revenues and expenditures from the central government to the last layer of government.⁴⁷ In 2019, the Federal Government collected 91.3% of overall revenue and spent 63.1% of total expenditures.⁴⁸ The primary determinant of fiscal autonomy is the ability of local government to generate its own source revenue (OSR). Where own source revenue collection is meagre, transfers from provincial government through revenue sharing, grants or borrowing plays a crucial role, which is the case in Punjab.⁴⁹ The tax base remains identical under PLGA, 2013 and PLGA, 2019. The Interim PFC Award, 2017 distributed 62.5% and 37.5% of the net proceeds of the PFC between the provincial and local governments, respectively. The PLGA, 2013 did not allocate a specific share from the PCF to be contributed to the local governments. The PAA was distributed amongst three entities viz. Local Councils, DEAs and DHAs. The Interim Award, 2017 allocated 66.9% to DEAs, 16.0% to DHAs, 12.8% to Metropolitan Corporations, Municipal Committees, District Councils and 4.3% to Union Councils. The Interim PFC Award 2017 (in operation till date) distributed funds under the grants system is presented below:

⁴⁴ Silvia Redaelli, "Pakistan @ 100 from Poverty to Equity", *World Bank Group*, (2019), <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/868741552632296526/pakistan-at-hundred-from-poverty-to-equity> (accessed on July 20, 2021).

⁴⁵ Dr. Iftikhar Ahmad and Dr. Miraj ul Haq, Local Governments and Sustainable Urban Development: A Case Study of Punjab, *PIDE School of Public Policy* (2021): 8, <https://www.pide.org.pk/Research/Local-Governments-and-Sustainable-Urban-Development.pdf> (accessed on July 29, 2021).

⁴⁶ Section 182, The Punjab Local Government Act, 2019, Government of Punjab.

⁴⁷ Fayyaz Hussain Tunio and Agha Amad Nabi, "Political Decentralization, Fiscal Centralization and its Consequences in case of Pakistan," *Cogent Social Sciences* (2021): 3, <https://doi.org/10.1080/23311886.2021.1924949> (accessed on July 30, 2021).

⁴⁸ Economic Survey Pakistan, 2019, https://www.finance.gov.pk/survey_1920.html (accessed on July 27, 2021).

⁴⁹ Dr. Aisha Ghaus Pasha & Dr. Hafiz A. Pasha, "Devolution and Fiscal Decentralization", *The Pakistan Development Review*, (2000), 981–1011 https://www.researchgate.net/publication/24046247_Devolution_and_Fiscal_Decentralisation (accessed on 30th July, 2021).

Table 1: Interim PFC Award 2017

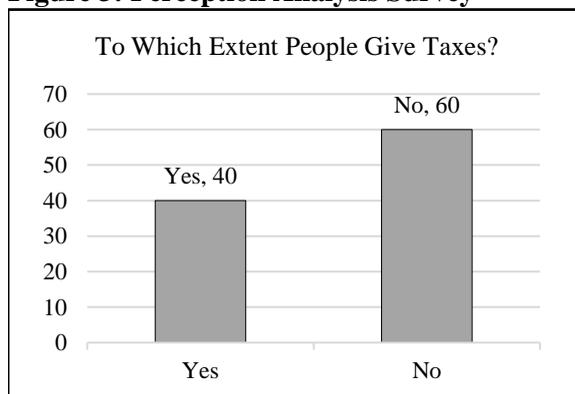
Grant Type	DEAs	DHAs	Councils	Unions	Total (% Share)
General Purpose Grant	57.0%	13.0%	9.0%	3.0%	82.0%
Development Grant	5.2%	2.0%	2.5%	1.3%	11.0%
Transition Grant (Temporary)	4.7%	1.0%	1.3%	0.0	7.0%
Total	66.9%	16.0%	12.8%	4.3%	100.0%

Source: Finance Department, Government of the Punjab

It is evident that majority share of the development funds went to the DHAs and DEAs, which indirectly came under the administrative management of the provincial government through CEOs.⁵⁰ Districts, the main units capable of steering need-based harmonious development at local level, were completely absent from transfer of funds.⁵¹ The formula/criteria for revenue transfer must devolve to the district level, while eliminating discretion and preferring poorer districts to qualify for matching grants in non-discretionary and equitable manner to bring equalization in development.⁵² Moreover, public participation in budget-making process is to be ensured for building linkages between communities and government.⁵³

The PLGA, 2019 dedicates 26% general revenue receipts of the province in the first two years thereupon the share will be 28%. It is evident that both the laws have overlooked fiscal decentralization and need to revisit it.⁵⁴ The pattern of low OSR is historically persistent with local governments. In 2003-04, the OSR of six districts in Punjab totaled between 0% to

Figure 3: Perception Analysis Survey



⁵⁰ Dr. Iftikhar Ahmad and Dr. Miraj ul Haq, “Local Governments and Sustainable Urban Development: A Case-Study of Punjab”, *PIDE School of Public Policy*, (2021), 08 <https://www.pide.org.pk/Research/Local-Governments-and-Sustainable-Urban-Development.pdf> (accessed on 29th July, 2021).

⁵¹ “Policy Paper on Punjab Provincial Finance Commission Award”, *Centre for Peace and Development Initiatives* (2018) <http://www.cpd-pakistan.org/wp-content/uploads/2019/02/Policy-Paper-Punjab-PFC-Award.pdf> (accessed on 02nd August, 2021).

⁵² Ibid 981-1011.

⁵³ Junaid Kamal Ahmad and Richard M. Bird, “Rethinking Decentralization in Developing Countries,” *The World Bank*, (1998) (accessed on July 18, 2021).

⁵⁴ Fayyaz Hussain Tunio and Agha Amad Nabi, “Political Decentralization, Fiscal Centralization and its Consequences in case of Pakistan,” *Cogent Social Sciences* (2021): 3, <https://doi.org/10.1080/23311886.2021.1924949> (accessed on May 30, 2021).

8% of total receipts. There is a need for expanding OSR base of local governments under PLGA, 2019.

Efficiency in local governments is directly linked with predictability and certainty of budgetary transfers, certain degree of autonomy in budget making including salary and development sides and expansion of revenue base. A major disadvantage of direct transfers is the disconnect between service delivery and associated cost, free-riding and inclination to overspend by the local governments. While expanding tax bases, it may be seen that tax assignment is linked with needed expenditures to ensure balanced distribution of revenue streams at provincial and local levels. At present, tax compliance remains low as is confirmed through the survey result given in Figure-3. Linkage between service delivery and tax can enhance tax base. Secondly, the capacity to collect taxes is to be examined. The immobile tax factors are usually assigned to local governments as the incidence falls on locals. Tax assessment autonomy for local governments is to be carefully designed as to avoid unrealistically low tax valuations by the local tiers. The PFC Award of 2017 which distributed net proceeds of provincial Consolidated Fund to the local government as Provincial Allocable Amount is still in operation.⁵⁵ It is noteworthy that the net proceeds of PCF included UIPT under both Acts.

2.4 Functional Assignment and Accountability

At present, administrative decentralization has stopped at the intermediate provincial tier. Furthermore, PLGA, 2019 and PLGA, 2013 create superfluous functional responsibilities and jurisdictions between provincial and local governments. For instance, in PLGA, 2019 the functions including establishment of open markets, parks and horticulture, value chain development, building control and land use, provision of drinking water, *inter alia* are certain instances of conflicting jurisdictions with Industries, Housing, Urban Development & Public Health Engineering departments, etc.⁵⁶ In the same vein, the conferment of powers in relation to development authorities such as LDA and Metropolitan Corporation also create issue of overlapping planning and municipal jurisdiction. The LDA Act of 1975 states that the government shall notify areas comprising as metropolitan areas within Lahore.⁵⁷ The SCP, in Imrana Tiwana case judgment, held that the superfluous jurisdiction of LDA stands cancelled in subservience to jurisdiction of Metropolitan Corporation, Lahore. Article 140-A of the Constitution of Islamic Republic of Pakistan, 1973 formed basis for exclusion of parallel jurisdictions that limit the jurisdiction of local governments that has been given primacy under the Constitution.⁵⁸ However, the problem persists.

⁵⁵ Dr. Aisha Ghaus Pasha and Dr. Hafiz A. Pasha, "Devolution and Fiscal Decentralization," *The Pakistan Development Review* (2000), 981-1011, https://www.researchgate.net/publication/24046247_Devolution_and_Fiscal_Decentralisation (accessed on July 30, 2021).

⁵⁶ Arshad Baig, Addl. Secretary LG&CD, interview by author, August 2, 2021.

⁵⁷ Section 3 (b) Lahore Development Authority Act, 1975, Government of the Punjab.

⁵⁸ Faryal Siddiqui, *Signal Free Corridor: A Reflection on Inter-Governmental Power Struggle, Judicial Restraint and Regulatory Capture*, Lahore: Lahore Development Authority v Ms. Imrana Tiwana, 2015),

Under both Acts, the roles and responsibilities need to be clearly delineated, which is also imperative for accountability and service delivery. Multiple layers of decentralization confuse jurisdictions across national, provincial and local governments, wherein everyone transfers the responsibility to the other tier.⁵⁹ There are superfluous jurisdictions in both local government laws that diffuse responsibility and adversely impact service delivery. The Government of Punjab has established multiple SPVs for provision of service delivery particularly for Lahore viz. the LWMC, LTC, LPC, PSPC, PCMMC⁶⁰, etc.⁶¹ These dual jurisdictions need to be eliminated for clear accountability stemming from responsibility. Moreover, both laws have centralized decision-making and devolved administrative implementation features, wherein the provincial government holds administrative control over responsibilities of local governments.

Accountability structures require presence of ‘invited spaces’ for government mechanisms for public input or feedback and ‘autonomous spaces’ created by civil society or public for activism. Accountability is also affected by the level of funds and authority transferred by provincial to local governments.⁶² Accountability mechanisms are to be designed in a manner responsive to citizen-needs and feedback, otherwise, these will lose interest and trust in these structures. Multiple instances are available to report citizen feedback with matching response mechanisms viz. Fix my Street Platform, wherein, citizens can geo-reference a complaint regarding street condition in their locality. These digital platforms are working in Georgia, Hungary, Slovakia, etc. In 2008, a Citizen Feedback Model was introduced in Lahore that recorded phone numbers of citizens and they were later contacted for feedback through SMS. The model generated 110,000 complaints of corruption and 36,000 penal actions were taken to punish corrupt officials in the initial six years. In India, ‘I Paid a Bribe’ framework website enabled complete reformation of the Driver Registry offices in Bangalore making those completely online. The accountability mechanisms are again inter-connected with enabling opportunity to avail legal remedies. Sierra Leone had set up local paralegal services in villages for citizens to demand enforcement of their rights.⁶³

The PLGA, 2019 provides for performance delivery standards and massive information sharing with public, however, there is no feedback mechanism for public to name and sanction under-performance. Public participation in meetings and sharing of

https://sahsol.lums.edu.pk/sites/default/files/signal_free_corridor.pdf (accessed on 3rd July, 2021).

⁵⁹ Iñaki Albisu Ardigó, “Local Government Accountability Mechanisms,” *Transparency International* (2019) (accessed July 23, 2021), <https://www.u4.no/publications/local-government-accountability-mechanisms> (accessed on August 4, 2021).

⁶⁰ Lahore Waste Management Company (LWMC), Lahore Transport Company (Lahore Transport Company), Lahore Parking Company (Lahore Parking Company), Punjab Saaf Pani Company (PSPC), and Punjab Cattle Market Management Company (PCMMC)

⁶¹ Dr. Iftikhar Ahmad and Dr. Miraj ul Haq, “Local Governments and Sustainable Urban Development: A Case-Study of Punjab”, *PIDE School of Public Policy*, (2021), 04. <https://www.pide.org.pk/Research/Local-Governments-and-Sustainable-Urban-Development.pdf> (accessed on 29th July, 2021).

⁶² Iñaki Albisu Ardigó, “Local Government Accountability Mechanisms”, *Transparency International*, (2019) (accessed 23rd July, 2021) <https://www.u4.no/publications/local-government-accountability-mechanisms> (accessed on 04 August, 2021).

⁶³ Ibid.

information by local governments is inadequate for evaluating their performance. It is a top-down information sharing framework, which can create information monopoly and distortion. Technologically advanced solutions are needed to end information manipulation and asymmetry. A legally mandated monitoring and evaluation framework with digitized tools collecting data and producing outcome information for the government and citizens is required.⁶⁴ Elections are not an adequate means for continuous accountability. Media also needs to be bolstered with presence of civil society organizations to hold local governments accountable.⁶⁵ Both laws do not provide a system of rewards and punishments at local level that is imperative for efficiency and accountability. While the SCP has directed the government to immediately restore local governments, Pakistan is at a critical juncture. Local participation minimizes the prospects of abuse of power by enabling participation in local decision-making and holding elected structures accountable.⁶⁶

2.5 Inter-Agency Linkages

A conspicuous feature of PLGA, 2013 is Section 5(2), which holds that there shall not be interference in the business of LGs. Yet, as examined earlier, the provincial government can issue directions to a LG to perform functions in addition to those enlisted in the Act.⁶⁷ The provincial government can also remove the head of a local government and suspend or dissolve a local body under certain circumstances. The most conspicuous provision for resolution of inter-agency disputes, particularly between provincial and local governments, is that regarding roles of DC and Commissioner as liaison officers between local governments and federal and provincial governments. The office of the DC has been identified as a center for coordinating work between a local government and a provincial or federal government agency.⁶⁸ The DC can also issue directions to LGs in relation to any official business that relates to the jurisdiction of federal or provincial governments.

Another distinctive feature is the power of local governments to form joint authorities for delivery of functions, which is not available under PLGA, 2013. Under PLGA, 2013, the provincial government is authorized to devolve functions to local governments and may also direct them to collect certain class of taxes, which the LG is obligated to implement. The LGs can also devolve responsibilities to UCs.⁶⁹ The

⁶⁴ Silvia Redaelli, "Pakistan@ 100 from Poverty to Equity", *World Bank Group*, (2019)

<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/868741552632296526/pakistan-at-hundred-from-poverty-to-equity> (accessed on 20 July, 2021).

⁶⁵ Fumihiko, "Decentralization Theories Revisited: Lessons from Uganda" *Japan: Ryukoku RISS Bulletin*, No. 31 March (2001)

https://www.researchgate.net/publication/242247248_Decentralization_Theories_Revisited_Lessons_from_Uganda (accessed on 25th July, 2021).

⁶⁶ Inaki Albisu Ardigó, "Local Government Accountability Mechanisms", *Transparency International*, (2019) (accessed 23rd July, 2021) <https://www.u4.no/publications/local-government-accountability-mechanisms> (accessed on 04 August, 2021).

⁶⁷ Section 22, Punjab Local Government Act, 2019, Government of the the Punjab.

⁶⁸ Ibid 66, Section 249.

⁶⁹ Sections 65, 66, 119 & 120 Punjab Local Government Act, 2013, Government of the Punjab.

PLGC is empowered under both the laws to coordinate and monitor the functioning of LGs. The PLGC shall also be a conduit for consultation between members of the national and provincial legislatures and LGs for holistic development planning. The mechanism of horizontal linkages has been remarkably improved under PLGA, 2019 by providing for establishment of joint authorities between two or more local governments that will eventually bring economies of scales in service delivery. It will also enable much needed competitiveness between local jurisdictions essential for growth.⁷⁰ Conflict resolution mechanisms are rudimentary under the current law, whether between two or more local governments, between the civil administration and local government, between provincial and local governments and can lead to imposition of decisions by provincial government. There is no direct mechanism for consultation and dispute resolution between local and provincial agencies except through the DC Office or the administrative department. It is observed that a body of politically elected representatives at provincial and local level can be a conduit for transmission of local problems to the provincial and even national level.

Section III

3. Contextualized and Optimal Decentralization

Devolution of powers is to be in harmony with a country's peculiar socio-cultural, political and economic DNA to build ownership at provincial and local levels.⁷¹ This section examines PLGA, 2013 and PLGA, 2019 in their unique historical, political, social and economic context of Punjab, which affects implementation prospects of both legislative instruments.

3.1 Contextualization: Inhibiting and Necessitating Factors

The introduction of LGs by military rulers is envisioned with distrust and as an attempt to either legitimize their ascent to power or to weaken political forces.⁷² However, similar trends of centralization of power were also visible in democratically elected governments. Zulfiqar Ali Bhutto also centralized authority as exemplified by not holding party elections and making nominations for party offices.⁷³ The four successive democratic governments of PML-N and PPP never ventured to establish LGs in Punjab

⁷⁰ Junaid Kamal Ahmad and Richard M. Bird, "Rethinking Decentralization in Developing Countries" *The World Bank*, (1998)

<https://documents.worldbank.org/en/publication/documentsreports/documentdetail/938101468764361146/rethinking-decentralization-in-developing-countries> (accessed on 18 July, 2021).

⁷¹ "Decentralized governance for development: A Combined Practice Note on Decentralization, Local Governance and Urban/Rural Development", *UNDP*, 2015 <https://www.undp.org/publications/decentralised-governance-development-combined-practice-note> (accessed on 02 August, 2021).

⁷² Ali Cheema, Asim Ijaz Khwaja & Adnan Qadir, "Local Government Reforms in Pakistan: Context, Content and Causes", *Cambridge: Harvard Kennedy School*, (2018) https://epod.cid.harvard.edu/sites/default/files/2018-02/local_government_reforms_in_pakistan_-_context_content_and_causes.pdf (last accessed on 15th July, 2021).

⁷³ Saeed Shafiqat, "Democracy in Pakistan: Value Change and Challenges of Institution Building", *The Pakistan Development Review* 37, (1998), 37:4, 281-298 <https://www.jstor.org/stable/41261058> (accessed on 18th July, 2021).

during their rule from 1988 to 1999.⁷⁴ The political spectrum in Punjab also remained under predominant influence of PML-N. Moreover, the rural areas voting patterns remain defined by *biradari* and caste systems.⁷⁵ Political leaderships and parties have also failed to evolve an inter-party conflict resolution mechanism and harmonious democratic environment.⁷⁶ The religious landscape is influenced by *madrassah*⁷⁷, powerful clerics and sects. It is important to remember that decentralization is directly influenced by the level of economic equality, social-stratification, political participation and literacy, particularly vis-à-vis rural voter. These determine the likelihood of resource and power capture by local elite and capacity of the poor voter to hold them accountable.⁷⁸ Decentralization has a direct relationship between structural frameworks and attitudes that eventually construct a new society.⁷⁹ South Asian local governments have remained vulnerable to local elite and special interest capture. Citizen participatory frameworks are more pronounced under PLGA, 2019, which are to be reinforced with formal feedback mechanisms to cultivate culture of continuous accountability and responsiveness. Moreover, any LG system needs continuity to generate citizen awareness and gradually change patterns of power in society.

On the socio-economic front, power and resource distribution remains biased in favor of traditionally influential professional, business, landed and bureaucratic interests. In Pakistan, the top 5% of the landed elite holds 64% of the aggregate land, whereas, the small farmers who constitute 65% of our entire population own around 15% of the land.⁸⁰ The distributive patterns of landholdings are similar in Punjab. The country is also undergoing massive urbanization with highest ratio of urban population across South Asia. It is estimated that nearly 50% of the Pakistanis will live in cities by 2030. The increase is attributed to large influx of rural populations towards the cities. In 2011, the percentage of migration stood at 58%.⁸¹ Punjab hosts 50% of population and is facing unplanned and massively rapid urbanization. Urban centers have agglomeration

⁷⁴ Syed Mohammad Ali, Devolution of Power in Pakistan, *United States Institute of Peace: Special Report*, (March 2018) https://www.usip.org/sites/default/files/2018-03/sr_422_mohammad_ali_final.pdf (accessed on 14th July, 2021).

⁷⁵ Fayyaz Hussain Tunio & Agha Amad Nabi, "Political Decentralization, Fiscal Centralization and its Consequences in case of Pakistan", *Cogent Social Sciences*, (2021), 03. <https://doi.org/10.1080/23311886.2021.1924949> (accessed on 30th May, 2021).

⁷⁶ Ibid 73.

⁷⁷ *Madrassah* is traditionally defined as "a college of higher learning, specifically a college of law/jurisprudence. Graduates of the madrassahs then were effectively useful for the administration of many Islamic states at that time." Aljunied, Syed Muhd Khairudin, and Dayang Istiaisyah Hussin. "Estranged from the ideal past: Historical evolution of madrassahs in Singapore." *Journal of Muslim Minority Affairs* 25, no. 2 (2005): 249-260.

⁷⁸ Pranab Bardhan, "Decentralization of Governance and Development", *Journal of Economic Perspectives Vol. 16, No. 4*, (2002), 185-205. <https://www.aeaweb.org/articles/pdf/doi/10.1257/089533002320951037> (last accessed on 21.08.2021).

⁷⁹ David K. Hart, "Theories of Government Related to Decentralization and Citizen Participation", *Public Administration Review*, (1972) <https://www.jstor.org/stable/975228> (accessed on 2nd August, 2021).

⁸⁰ Fayyaz Hussain Tunio & Agha Amad Nabi, "Political decentralization, fiscal centralization, and its consequences in case of Pakistan", *Cogent Social Sciences*, (2021) 7:1. P. 15 https://www.researchgate.net/publication/352290798_Political_decentralization_fiscal_centralization_and_its_consequences_in_case_of_Pakistan (last accessed on 21.08.2021).

⁸¹ Shehryar Nabi and Dr. Ijaz Nabi, "Urban Development in Punjab: A Political Economy Analysis", *Consortium for Development Policy Research*, (2018) <https://cdpr.org.pk/wp-content/uploads/2018/04/urban-development-challenges-punjab-pakistan.pdf> (last accessed on 21.08.2021).

effect due to close location of factors of production including finances, labor force, corporations, etc.⁸² The agglomeration effect is most visible in areas with maximum industrial output that include Lahore, Sialkot, Faisalabad and Gujranwala regions. It is pertinent to note that 25% to 33% of the national GDP comes from urban Punjab.⁸³ The youth bulge with 65% population under 30 years of age has increased traffic load in cities, encroachments, squatter settlements, over-burdened municipal services, shortage of housing facilities *inter alia* and requires planned urbanization. The five biggest cities of the country including Lahore will cumulatively face 78% of housing shortage by 2035, if current migration trends remain unchecked.⁸⁴ The PLGA, 2019 did unify developmental jurisdictions of all development authorities with relevant local governments. However, these were returned to the provincial government through amendments. In addition, the need for training to build capacity as evidenced from Figure-1 is significant. Lack of capacity also contributes to unplanned urban sprawl and development. A study of 35 countries which analyzed political decentralization notes that this process delivers better in developed countries with established institutions whereas it fails to bear positive results in poor countries.⁸⁵ Therefore, any attempt at decentralization needs to undertake the context for implementation that will lead to institution-building.

3.2 Multi-Level Dependence, Integration and Governance

Integration begins with the process adopted to design decentralization. A law or policy formulated through top-down approach without considering the local context cannot be successfully implemented due to lack of broad ownership.⁸⁶ The formulation process for PLGA, 2013 and PLGA, 2019 was top-down and did not involve multi-stakeholder consultative process. It is the primary reason behind multiple amendments to PLGA, 2019 since the stakeholders, particularly the provincial administrative departments resisted implementation due to lack of involvement in the formulation process. Decentralized relationships also extend to include engagement of citizens, businesses and civil society as partners and networks in inclusive development.⁸⁷ The PLGA, 2019 provides for citizen inclusion and joint authorities for societal and institutional integration in local governance. However, these need to be bolstered through information & communication technology (ICT) platforms for citizen complaints, feedback, performance measurement and preferences, which are to be integrated in the provincial planning and development processes. It also builds

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Shehryar Nabi and Dr. Ijaz Nabi, "Urban Development in Punjab: A Political Economy Analysis", *Consortium for Development Policy/bisu Research*, (2018) <https://cdpr.org.pk/wp-content/uploads/2018/04/urban-development-challenges-punjab-pakistan.pdf> (last accessed on 21.08.2021).

⁸⁵ Claire Charbit, Maria Varinia Michalun, "Mind the Gaps: Managing Mutual Dependence in Relations among Levels of Government" *OECD Working Papers on Public Governance*, (2009) <https://doi.org/10.1787/221253707200>. (accessed on 29th July, 2021).

⁸⁶ Ibid.

⁸⁷ "Decentralized governance for development: A Combined Practice Note on Decentralization, Local Governance and Urban/Rural Development", *UNDP*, 2015 <https://www.undp.org/publications/decentralised-governance-development-combined-practice-note> (accessed on 02 August, 2021).

democratic character of citizens through structural designing to allow citizens' input and voice.⁸⁸ For instance, Turkey has established multiple local-level platforms including sister city arrangements, women platforms, neighborhood authorities, youth councils *inter alia* to ensure formal systematic participation of local people.⁸⁹ These bodies enable joint efforts, continuous monitoring, accountability and horizontal integration at local level.

Local governments are envisioned as a source of information transmission to the provincial tier.⁹⁰ For instance, a local government can better inform about the need to establish a trauma center, expansion of children's ward, maternity ward, or even the number of hospital beds needed within a particular locality, which the provincial government can embed in overall policymaking framework. Data on social statistics is essential to design socially and economically inclusive policies for mitigating vulnerabilities based on identity and local governments can efficiently provide it.⁹¹ The PLGA, 2019 does not provide for formal institutionalized feedback mechanism to convey local preference to the provincial government. These are to be linked with FD and P&DD Board through LG&CDD.

The multi-level integration is not limited to citizen, local and provincial spectrum but extends to include field formations.⁹² Horizontal harmonization further requires redefining civil services as a partner of LGs to get desired human development and improved participatory governance.⁹³ The PLGA, 2019 grants a predominant role to the office of Commissioner and DC for resolution of disputes between two local jurisdictions *inter alia*. Both PLGA, 2013 and PLGA, 2019 do not provide an adequate framework for building stakes of local representatives and the bureaucratic machinery in the local system, which needs to be devised by giving a voice and power to citizens over elected representatives and creating incentives for the frontline workers.⁹⁴ Goal alignment between local governments, bureaucracies and local staff through a well-designed incentive framework is imperative for improved service delivery.⁹⁵

⁸⁸ David K. Hart, "Theories of Government Related to Decentralization and Citizen Participation", *Public Administration Review*, (1972) <https://www.jstor.org/stable/975228> (accessed on 2nd August, 2021).

⁸⁹ "Decentralized governance for development: A Combined Practice Note on Decentralization, Local Governance and Urban/Rural Development", *UNDP*, 2015 <https://www.undp.org/publications/decentralised-governance-development-combined-practice-note> (accessed on 02 August, 2021).

⁹⁰ *Ibid* 95.

⁹¹ Silvia Redaelli, "Pakistan@ 100 from Poverty to Equity", *World Bank Group*, (2019) <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/868741552632296526/pakistan-at-hundred-from-poverty-to-equity> (accessed on 20 July, 2021).

⁹² Muhammad Usman Asghar, "Governance Issues in Pakistan: Suggested Action Strategy", *ISSRA Papers* (2013) https://ndu.edu.pk/issra/issra_pub/articles/issra-paper/ISSRA_Papers_Vol5_IssueI_2013/06-Governance-Issues-Mr-Usman-Asghar.pdf (accessed on 8th August, 2021).

⁹³ *Ibid* 86.

⁹⁴ "Devolution in Pakistan: An Assessment & Recommendations for Action", *Asian Development Bank*, (July 2004) <https://openknowledge.worldbank.org/handle/10986/14373?show=full> (accessed on 13th August, 2021).

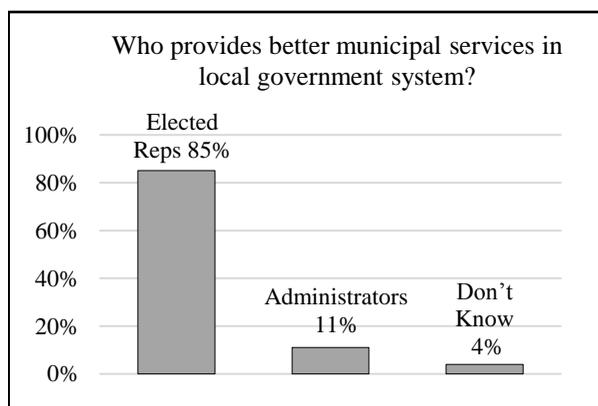
⁹⁵ Claire Charbit, Maria Varinia Michalun, "Mind the Gaps: Managing Mutual Dependence in Relations among Levels of Government" *OECD Working Papers on Public Governance*, (2009) <https://doi.org/10.1787/221253707200>. (accessed on 29th July, 2021).

Local based representatives understand local problems and solutions in a much better manner than the provincially elected representatives.⁹⁶ Therefore, a collaborative arrangement between local representatives and field formations is imperative for governance. For instance, joint work plans and supervisory mechanisms for local governments and civil service were introduced in Ethiopia for effective decentralization.⁹⁷ Local governments have been decried for serious capacity issues and corruption, however, these cannot be employed to discredit the institution as similar problems are reported in well-established provincial institutions.⁹⁸ A major capacity deficit in local governments is the inability to utilize funds. In 2018-2019, the median fund utilization remained 33% and 71% for rural and urban local governments, respectively.⁹⁹ Capacities of sub-national governments are needed to be built. The integration between civil service and local governments will fill such gaps, however, such incentive framework is not included in both legislative instruments. Moreover, continuous capacity building of LGs as agreed by all participation at 100% (Figure-1) is required. A study of decentralization in 60 countries disclosed that it can reduce poverty only if elements including resource adequacy at the last tier, clear functional assignment and accountability mechanisms involving for both local representatives and bureaucracy are present. The interference of local government representatives in operational and daily work of officials is cited as the cause for underperformance.¹⁰⁰

3.3 Optimal Decentralization

Designing decentralization is as significant as the implementation strategy, which is strictly derived from the political, economic and social context. Figure-4 depicts that 85% of local government officers believe that elected representatives provide better service delivery. Theoretically and practically, the question therefore is no longer about decentralization but about optimal decentralization.

Figure 4: Perception Analysis Survey



Optimal decentralization requires clear delineation of responsibilities, territorial

⁹⁶ Claire Charbit, Maria Varinia Michalun, “Mind the Gaps: Managing Mutual Dependence in Relations among Levels of Government” *OECD Working Papers on Public Governance*, (2009) <https://doi.org/10.1787/221253707200>. (accessed on 29th July, 2021).

⁹⁷ “Decentralized governance for development: A Combined Practice Note on Decentralization, Local Governance and Urban/Rural Development”, *UNDP*, 2015 <https://www.undp.org/publications/decentralised-governance-development-combined-practice-note> (accessed on 02 August, 2021).

⁹⁸ *Ibid* 91.

⁹⁹ Gharad Bryan, Ali Cheema, Ameera Jamal, Adnan Khan, Asad Liaqat, Gerard Padro I Miquel, “State Capacity in Punjab’s Local Governments: Benchmarking Existing Deficit” *International Growth Centre*, (2020).

¹⁰⁰ *Ibid*.

jurisdictions, taxation for service provision and consideration for regional disparities in disbursement of fiscal resources.

Legal instruments must exist in order to elucidate the supremacy of authority in case of overlapping jurisdiction and conflict. The local government system should be made subject to a 10-year review as reform is a continuing process. Optimal decentralization requires that local expenditure is funded locally, which is also imperative for improving service delivery and accountability. Local fiscal taxation, expenditures, and debt-raising must have a definite degree of autonomy to render these governments accountable. An optimal decentralization model will also require capacity building of local entities for discharge of fiscal and administrative responsibilities. It will need entrustment of power to hire and fire local human resource. In our context, capacity building/ training is most required in the fields of procurement, budget utilization, land-use planning, and debt management. As already stated, the fifth ingredient is multi-level cooperation and dispute resolution mechanisms horizontally, vertically and also as a whole at society's and governmental dimension.¹⁰¹ Economies of scale and optimal utilization of resources require horizontal integration that starts from delimitation process to formal legal mechanisms for joint action between local jurisdictions. Inter-jurisdictional partnerships enable local governments to internalize positive and negative externalities, especially in the areas of waste management, water provision, energy generation *inter alia*.¹⁰²

The PLGA, 2013 and PLGA, 2019 provide for agency arrangements and the latter provides for joint authorities. Another dimension of optimal decentralization requires engagement of public in decision-making, planning, community mobilization and also an introduction of ICT interventions for information dissemination, service delivery and accountability. India has introduced local social audits and also scorecards by citizens whereas New Zealand has adopted result-oriented management model.

Lastly, the central government needs to install a performance monitoring and course correction mechanism. A formal mechanism for equalization of development and opportunities across regions is required at federal and provincial levels, which may be both horizontal and inter-local.¹⁰³ Such formal institutional framework are absent at the provincial level under both the Acts.

Conclusion

The governance challenges faced by Punjab require establishment of sustainable local government institutions. A comparative analysis of PLGA, 2013 and PLGA, 2019

¹⁰¹ "Ten Guidelines for Effective Decentralization Conducive to Regional Development", *OECD-Library*, (2019) <https://www.oecd-ilibrary.org/sites/76846b63-en/index.html?itemId=/content/component/76846b63-en> (accessed on 26 July, 2021).

¹⁰² Ten Guidelines for Effective Decentralization Conducive to Regional Development, *OECD-Library*, 2019 <https://www.oecd-ilibrary.org/sites/76846b63-en/index.html?itemId=/content/component/76846b63-en> (accessed on 26 July, 2021).

¹⁰³ *Ibid*.

shows that political decentralization, decision-making power and political representation have been enhanced in the latter through the introduction of party-based direct elections and a closed-list proportional representation electoral system. However, administrative and financial decentralization largely remains similar under both the Acts and the enhanced functional devolution under PLGA, 2019 has been reversed through amendments. The frequent amendments in PLGA, 2019 indicate the need for a multi-stakeholder consultative process for formulation of an implementable local government law.

Building sustainable local government institutions requires an over-arching mission to improve governance that is shared commonly by various stakeholders. Also required are contextualized framing, financial certitude and ability to generate own source revenue and clear functional assignment to fix responsibility. These enabling factors are essential to create a degree of autonomy for local governments, which is imperative for holding these accountable. Moreover, a whole of government integrative approach requires horizontal and vertical coordination between local governments and other stakeholders for improved governance, need-based planning and development, ending information asymmetries, and institutional harmonization for service delivery *inter alia*. Thus, optimal decentralization and sustainable local governments depend on careful incorporation of these elements in the process and design adopted for building these institutions. The original form of PLGA, 2019 had better administrative devolution through complete transfer of the development function and authority to local governments; however, it required enhanced fiscal autonomy and better conflict resolution mechanisms.

Most importantly, it is only with political will and building trust and ownership at provincial and central levels that local governments can be established. The context, standards for building institutions and integration for better service delivery can be the best drivers to envision a law that is owned at national, provincial and local levels. A comparative, institution-building and contextualized framework has established that a local government law has to be designed as per our context and in synchronization with other institutions to generate ownership and sustainability.

Recommendations

- (i) A Provincial Coordination Committee should be established under the Chief Minister, Government of Punjab, with representation from stakeholders including the Chief Secretary Punjab and secretaries of departments concerned. It should be assisted by a Cabinet Committee on decentralization to supervise and coordinate implementation of decentralization on behalf of the Chief Minister and the Provincial Cabinet. The Cabinet Sub-Committee may include the ministers of law, finance and other relevant ministers, Chief Secretary and administrative secretaries. The Cabinet Committee will submit recommendations to the Chief Minister and these will be placed before the provincial cabinet for smooth transition of local governments. It will be a

permanent body like the Standing Committee of Cabinet on Finance and Development and Standing Committee of Cabinet on Legislative Business. It will be responsible for ensuring establishment and transition of powers, etc. to the local governments. It will further create provincial political ownership of local governments as on July 17, 2021, provincial, divisional, district and tehsil transition teams were constituted to prepare transition plans for establishment of local governments as per decision of SCP dated March 25, 2021.

- (ii) The Punjab Finance Commission should be notified as given under the PLGA, 2019. The provincial government may devise a mechanism to take input of local governments in disbursement of the award. This may be done through formulation of a committee under Minister of Finance to hold meetings with local government representatives to understand their financial preferences, needs, revenue generation capacity and limitations and ensure financial predictability for local governments.
- (iii) The tax base of local governments has to be incrementally linked with provision of services. The incremental approach will allow capacity building for collection, link service provision with charges and develop a tax culture, and build local autonomy and accountability. The tax base can be increased through revision of UIPT, which can be extended from built-up properties to cover vacant plots not contributing to GDP. The duplicity in tax jurisdiction, wherein stamp duty and transfer of property fee are separately collected by provincial and local government respectively, should be abolished. The shared tax base may be fully allocated to local jurisdictions to expand their tax base and increase tax compliance.
- (iv) Functional assignment should be clearly stipulated and integration of multiple agencies performing the same tasks must be undertaken as was originally provided under PLGA, 2019. The development authorities, water and sanitation authorities, *inter alia* must be transferred to concerned local governments for uniformity of jurisdiction, responsibility and accountability.
- (v) Capacity-building trainings particularly in fields of land use management and fiscal planning must be regularly held. The focus should be on rural local governments. The recommendation has been backed by local government officers during the survey.
- (vi) ICT platforms for complaint registration, recommendation for improvement, and feedback on service delivery should be introduced by PITB for each district. The data should be vertically fed in a portal at the Chief Minister's Office. The poor performing and good performing local governments should be incentivized during finance award.

- (vii) Vertical institutional integration mechanism be formulated through the LGCDD, wherein the development preferences of local governments are reflected in annual development plans.

- (viii) District-level horizontal integration between field apparatus and local governments should be undertaken by empowering the latter in hiring and firing of staff. An incentive framework needs to be introduced that enables the local government representatives to hold local officials accountable.

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The Challenges of Converting Municipal Solid Waste (MSW) to Energy in Lahore

Waseem Ajmal Chaudhry¹

Introduction: New Challenges, New Fears

It was a sweltering afternoon in June 2013. Mr. Chaudhry, Managing Director (MD) Lahore Waste Management Company (LWMC), was sitting in his office and anxiously contemplating upon his options on how to pick up the gauntlet thrown at him by the Chief Minister (CM), Punjab. He used to seek great inspiration from Prometheus, his dialogical self, in such challenging situations.

“Why do you seem worried?” Prometheus asked the MD.

“The CM desires that I should plan and execute a power plant by converting municipal solid waste into electrical energy,” the MD replied.

Prometheus further asked, “So, what’s wrong with that?”

The MD said, “He wants to get it done tomorrow. He has made ambitious promises with the electorate to end energy crises in the country in the shortest possible time, therefore, he is exploring every avenue to achieve his political goals and there is zero tolerance for any non-performance.”

Prometheus said, “He is politically correct. The country is in the grip of large power and electrical shortages; load-shedding is affecting the production in industries. Punjab is the worst affected province and its economic growth has slowed down tremendously. You must do your best to actualize his vision because it is a national cause. You have done mega projects before which you started from scratch and made them successful. You can accomplish the same here as well. I extend you a hearty Godspeed.”

The MD felt encouraged but still he could not overcome his feelings of reluctance, confusion, and nervousness. Although energy was primarily a federal subject, however, provinces were also having concurrent jurisdiction. The elder brother of the CM was the Prime Minister of the country. Therefore, the aspirations of the CM were too high. He believed he could muster up all the required support at the federal level, even if it amounted to asking for the moon.

The MD called the Chairman Lahore Waste Management Company (LWMC), who was a political appointee and a close confidante of the CM. He told him about the task

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assigned to LWMC by the CM that morning in the Energy Council meeting. The Chairman said, “It was a recognition of trust and confidence of the CM in you and LWMC because we have successfully delivered on one of the CM’s earlier cherished dream of outsourcing solid waste management operations to international companies through a transparent bidding process. We would *Insha Allah* deliver the same results here as well.”

International outsourcing of solid waste management (SWM) operations to Turkish companies had produced good results in keeping the city cleaner than before. Lahore city was now being appreciated in the media and by the citizens for its better clean standards as compared to the other big cities of Pakistan. The CM was much pleased to reap political mileage out of it. The success of the outsourcing project was led by the MD and that put him in the good books of the CM. But the MD clearly understood that the CM was a hard task master in setting deadlines, monitoring progress, minutely micro managing the process as well as achieving results. The MD also understood that the new task assigned to him was not only technically complex and arduous, but the organization was also not compatible in terms of competencies and skills to accomplish it. Even the mandate of the task was inter-sectoral, and power production was not the core business of the LWMC. However, it was due to the earlier repute of the MD as a go-getter that had prompted the CM to designate him the lead actor in the process.

The CM’s political ambition was hinging on the premises to demonstrate to the electorate that he was going all out for energy production and not even sparing garbage for this purpose. This would have become a symbol for the fact that he was not leaving any stone unturned to address the energy crisis. For the MD, failure to achieve the goal would not only have caused a downgraded image in the eyes of the CM as an officer not capable of delivering, but as entailing future career and personal losses. Being the MD of a public sector company, he was getting a market-based salary package and privileges which his other fellow colleagues in the mainstream departments and ministries were lacking. The Federal Government (FG) had already issued his transfer orders to the province of Balochistan as part of rotation policy but the CM had not allowed him to leave and had requested the FG to cancel the orders, which were yet pending.

“How should I proceed?” the MD asked Prometheus.

“You should go by the book in a professional manner. Build the technical capacity of LWMC, hire a good consultant for preparing the feasibility, take the Board of Directors (BOD) along and keep the CM informed,” Prometheus replied.

The MD reminded him of the fact that the BOD was not in favor of waste-to-energy (WtE) plant and, while formulating the strategic plan and disposal strategy of LWMC, the board was inclined towards other methods of waste disposal including composting, landfilling, refuse derived fuel (RDF), etc. He further inquired of Prometheus, “How can I make a commitment with the CM in the absence of any clearly articulated

renewable energy policy at the federal or provincial level and without having any feasibility report about the viability of the project at provincial level? I feel like venturing into a deep ocean without a compass. I apprehended that any ambivalent answer to the CM will have serious repercussions for my career.”

Prometheus laughed at him and said, “Aren’t you used to it? How many times in the past you have actually sailed through the eye of the storm? And do you believe that the service career is the loftiest good of life. Don’t you remember the famous quotation by Paulo Coelho, ‘When you want something, the whole universe conspires in helping you to achieve it’.”

The MD started envisioning a feasible, technological, and environmentally sustainable plan to embark upon a waste to energy project for processing 2,000 tons of Municipal Solid Waste (MSW) on a daily basis keeping in view the characterization of MSW in Lahore. Nonetheless, it was a challenge for him to initiate a public policy dialogue with the CM and his team on the subject and try to build a consensus to choose a long-term safe route instead of a short-term risky path, which could cause significant implications on public finances and the environment of city.

Statement of the Problem

The Gordian Knot

WtE is a process of generating energy in the form of electricity and/or heat from the treatment and processing of waste. The selection of technology is based on waste characteristics and many other factors. It becomes feasible only when an optimal output is achieved in terms of cost, energy, and externalities. WtE has a popular but wrong perception of an easy, cheap, and profitable transaction and a possible solution for waste treatment everywhere. Waste disposal/treatment strategy formulated by the LWMC was heavily oriented towards a mix of different waste disposal options (RDF, composting, sanitary landfilling, etc.) other than the direct WtE option. However, the disposal of a small quantity of waste through WtE option was only to be exercised based on a detailed feasibility report. The CM wanted to pursue the goal of establishment of WtE incineration plant irrespective of considering feasibility of appropriate technology, energy cost, sustainability, and environmental effects of the project. For him, it was a high-impact political agenda worth pursuing at all costs. The MD LWMC was trapped in an ethical dilemma about his professional and personal responsibility towards meeting the objectives. The divergence of views between the CM and the MD became more pronounced due to the conflict of the style of micromanagement of the political boss and the steadfastness of the MD trained in classical bureaucratic traditions of Weberian legal rational authority. The conflict had potentially adverse repercussions for the civil service career of the MD who wanted answers to two key questions:

- (i) Was establishing the WtE incineration plant an optimal solution for municipal solid waste disposal of Lahore city?
- (ii) Was obeying the political authority of the CM without addressing the complex technical and ethical issues legitimate and obligatory for the MD LWMC?

Methodology and Literature Review

The case study has been prepared by collecting all the relevant information from different primary and secondary sources. The main source was the official documents of LWMC including minutes of BOD meetings, strategic plan, waste disposal strategy, ISTAC (international consultant) reports regarding Integrated Waste Management Plan of Lahore, waste characterization studies, WtE consultant pre-feasibility and detailed feasibility reports, etc. Technical proposals of international companies entering into MOUs with LWMC were also consulted. Interviews with the members of BODs and key stakeholders were also conducted. Different books, journals and websites were perused to explore technical parameters of WtE plants in various countries. The data and information were then critically reviewed, analyzed and incorporated in this case study to illustrate the research questions and conclusion. The protagonist recalled his own memories to reflect upon critical moments.

1. Agency – Thy Name Is LWMC

Means to An End

Mr. Chaudhry was the first MD of LWMC, a public sector company which was established in March 2010 to transform SWM operations being carried out in a non-scientific, non-professional manner by the City District Government Lahore (CDGL) into modern integrated solid waste management practices compatible with world standards. The corporate company mode was carved out to bring in professionals in the public sector and insulate political interference in the executive decision-making. Private sector participation was also envisioned as a strategic aim of carrying out the operations. The company entered into a contract, known as Services and Asset Management Agreement (SAAMA) with the CDGL on June 25, 2011, to manage all affairs related to SWM except legal and enforcement issues. The MD had successfully gathered a team of professionals who gradually gained expertise in SWM with the help of capacity building efforts undertaken by the Turkish consultant firm ISTAC. The increased capacity of LWMC team helped in successfully outsourcing the collection, transportation, mechanical sweeping and washing, and manual sweeping in Zone I and II of Lahore to Turkish companies through an international, transparent bidding process in November 2011. The financial costs of these contracts amounted to approximately \$320 million over a period of seven years. The LWMC team understood that any scientific disposal intervention like composting, RDF, material recovery facility

(MRF), or WtE would largely depend upon the success of collection and transportation of MSW to the designated disposal facility.

The MD and his team had by now realized that the foremost challenge for LWMC was to prepare a waste disposal strategy after strengthening and outsourcing of collection and transportation systems of more than 5,000 tons of MSW on a daily basis. The formulation of a disposal strategy was a tedious issue because mixed MSW was being collected, creating technological issues and causing financial constraints for effective disposal.

Challenge of Waste Disposal

Solution No Pollution

In Lahore, like all urban centers of Pakistan, SWM systems were under tremendous pressure due to rapid increase in population, urbanization and industrialization. The scale of the problem was snowballing with every passing day due to absence of a regulated scientific waste disposal system for MSW, hospital waste and hazardous industrial waste, which was resulting in serious risks to human health and environment.

Waste Disposal Strategy of LWMC

Think Green – Make It Clean

LWMC had engaged the services of M/s ISTAC², an official company of Istanbul Metropolitan Municipality, in 2010 to build the professional capacity of LWMC team and prepare an integrated waste management plan for the city of Lahore. Detailed deliberations were carried out between M/s ISTAC and LWMC officials about the waste management hierarchy and its adoption for Lahore. Waste disposal hierarchy is defined in the literature as shown in Figure-1. M/s ISTAC suggested that in the context of Lahore, the waste management strategy of LWMC may include compost, RDF and sanitary landfilling which were the most economical, environmentally safe and sustainable options. The waste disposal strategy was approved by the BOD.

² Environmental Protection and Waste Materials Recycling Industry and Trade Company (ISTAC) of Istanbul Metropolitan Municipality.

Figure 1: Waste Disposal Hierarchy – Adopted³

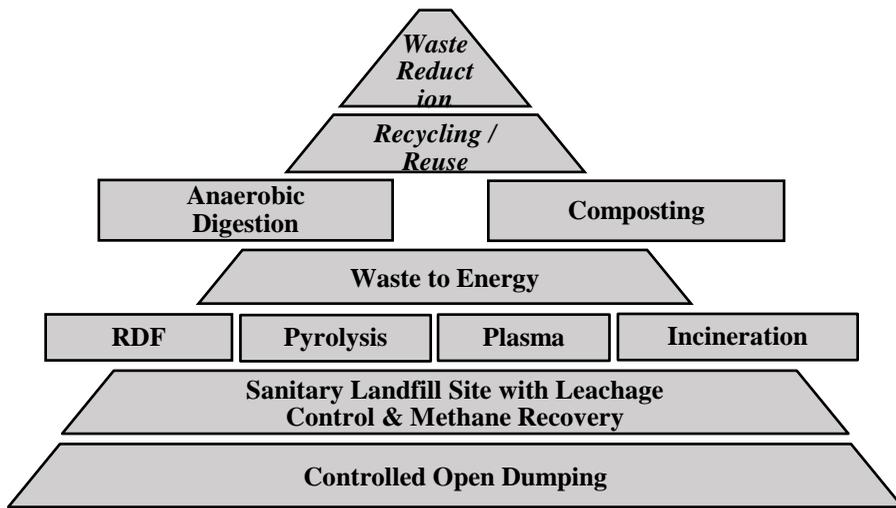
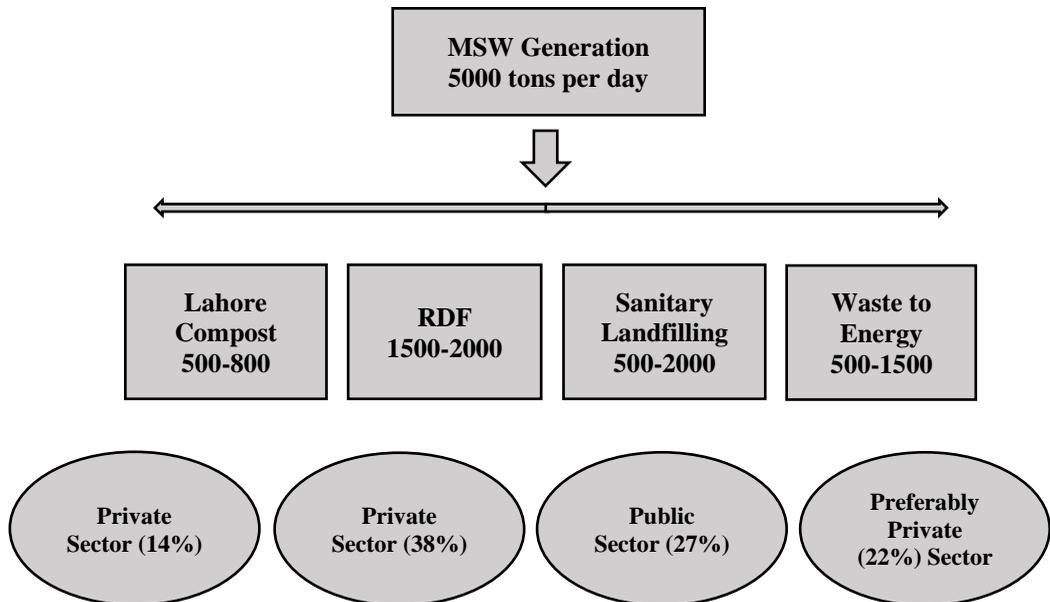


Figure 2: Waste Disposal Strategy of LWMC



² Ranjith Kharvel Annepu, Nickolas J. Themelis Stanley-Thompson Professor Emeritus, "Adopted from Sustainable Solid Waste Management in India," (Waste-to-Energy Research and Technology Council (WTERT), Columbia University, Earth Engineering Center, NY, USA).

1.1 Establishment of Landfill Site

Reduce Carbon Footprint

Pursuant to waste management strategy, 140 acres of land were acquired on the outskirts of Lahore at Lakhodair to establish a modern sanitary landfill site, the first of its kind in Pakistan. It was designed by M/s ISTAC and constructed by a Turkish company called CEVKA through an international bidding at a cost of PKR 1.2 billion. It had all the features like leachate collection and treatment system, gas capturing system, clay liner, geo-membrane, geo-textile, stone water drainage pipes, landscaping, admin block, and wheel washing area. It was completed in 2014, and three lots started functioning catering to 3,000 tons of waste.

1.2 Establishment of RDF Facility

Burn Green Fuel

Another agreement was made between LWMC and DG Khan Cement factory in July 2011. According to this, LWMC will provide MSW @ PKR 50 per ton, DG Khan Cement will establish an RDF facility with an initial capital investment of PKR 200 million along with PKR 50 million for procurement of land. LWMC would earn PKR 55 million annually from sale of waste, and save PKR 1.5 billion per year as cost of waste handling at the landfill site. The plant started functioning in 2014. RDF was an alternative fuel source replacing imported coal in the cement factory.

1.3 Waste-to-Energy Technologies

Making Value of Trash

The waste strategy of LWMC provided an option of WtE facility to be executed through the private sector. Waste to energy literature suggests a number of technologies to convert MSW into useful forms of energy. However, adoption of these technologies by a specific country/city depends upon multiple factors including socio economic conditions, waste characteristics, institutional capacity, environmental implications, financial requirements, energy policies and tariffs, and sustainability of operations. Based on these factors LWMC analyzed the various available technologies like Refuse derived Fuel, pyrolysis, gasification, incineration, Anaerobic Digestion- Mechanical biological treatment, landfill gas to energy) along with their pros and cons. The detailed comparative analysis is shown in Annexure-I.

2. Conceptualizing Waste to Energy

Well Begun is Half Done

“What should we do as a first step to embark upon this new technological adventure and also build the capacity of organization to respond to the challenge at hand?” inquired the MD at a BOD meeting. The Chairman asked, “What is the advice of our Turkish consultants?”

The MD replied, “They are not supporting the proposition of an incineration based WtE plant. In their view it is not feasible at this stage of waste management system of Lahore. They recommend sanitary landfill as the most essential and economic need at this stage which can generate electricity after maturation, i.e. four years. They have also highlighted that even an advanced waste management system of Istanbul does not have a waste-to-energy incineration plant currently.” Another BOD member suggested, “We should take a world tour. Let’s visit the WtE plants in India, Eastern Europe, China and Central Asia. The CM will have no objection. He might even consider us doing serious evaluations about the prevalent technological options.”

Prometheus had a different view. He advised the MD, “Learn from the experience of those who have actually done it. Focus on a good start as ‘well begun is half done’.” Therefore, the MD decided to learn from the private sector experience and navigate future course of action. He sought permission from the BOD to invite Expressions of Interest (EOIs) from international companies stating that the Government of the Punjab was currently exploring all possible options to meet the growing shortage of energy in Punjab and looking for one feasible option to produce energy from the municipal solid waste. The LWMC declared its intention to seek private sector partners showing interest in “waste-to-energy project having capacity of 1,500-2,000 tons/day” by the use of different technological options at Lahore. The LWMC reached out to 72 world renowned companies, in response to which 32 companies submitted their EOIs. These EOIs were related to different technologies ranging from mass burn incineration to gasification, pyrolysis and plasma. In order to find the feasible and optimal solution, the MD sought approval of BOD to hire a firm of international repute for carrying out pre-feasibility report of waste to energy project in Lahore, and evaluate the proposal at hand in the light of the pre-feasibility report.

The LWMC had already conducted a number of waste characterization studies⁴ in different seasons and weather conditions to assess the composition of waste along with its moisture contents and calorific value. This information was of great advantage in terms of saving time and was a crucial pre-requisite for selection of a feasible technology option in the context of Lahore. The average high calorific value of the Lahore waste was 1,692 kcal/kg which was far lower than the required 3,000 kcal/kg for an optimal thermal technology solution.

⁴ M/s ISTAC, “*Waste Characterization report*”, 2013-14.

After the advertisement inviting EOIs by LWMC, a number of international companies were interested in collaborating with LWMC and many of them even visited its office. Some of them also signed MOUs for establishment of the WtE project in Lahore which are as under:

- 1) Swede Tech International (Pvt.) Ltd, Sweden, MOU signed on 06-11-2013
- 2) M/s Alba Group, Germany, MOU signed on 11-11-2013
- 3) Reality Renewable Energy (Pvt.) Ltd, UK MOU signed on 19-11-2013
- 4) M/s China Western Power Industrial Co. Ltd., PR China, MOU signed on 24-11-2013
- 5) M/s Renoir Global (Pvt.) Ltd. (Renoir Group, UK), MOU signed on 28-11-2013

Bringing companies to the doorstep of LWMC obviated the need of visits around the world to see various plants. Discussions with these companies about the choice of technologies and methodology increased the knowledge base of LWMC team professionals. The pre-feasibility consultant also brought into focus all relevant aspects and evaluated their proposals.

In the view of the MD LWMC, the decision to move forward and select the most feasible option should have been first discussed at the level of BOD LWMC, Chairman Planning and Development Department, and the Chief Secretary before placing it before the CM. He tried to reach out to the Chairman P&D office for seeking guidance, but could not get a good response. He felt that the senior officers of the province were not willing to share any kind of responsibility of the process before the CM. Once again, he sought recourse to Prometheus, “I feel alone in the arena and vulnerable to political pressure.” Prometheus looked into his eyes and said in an emotional tone, “I can’t find a single example of courage that didn’t require vulnerability. And we are all scared to say things that are worth saying. Responsible action has multiple dimensions. It must not exclude personal conscience and there are certain life lessons that you can only learn in the struggle. Loneliness is proof that your innate search for connection with truth is intact.”

3. Planning WtE Prerequisites

Taming the Fury of Storm

The MD was confident that he had a number of MOUs with world renowned companies to show progress in the next meeting with the CM. The selection of international consultant for pre-feasibility study was also a good progress indicator. But that was not good enough for the CM who wanted to move ahead in a superfast tectonic manner.

Also, on finding a cue from an unknown source, the CM started mentioning the WtE plant installed in Delhi.

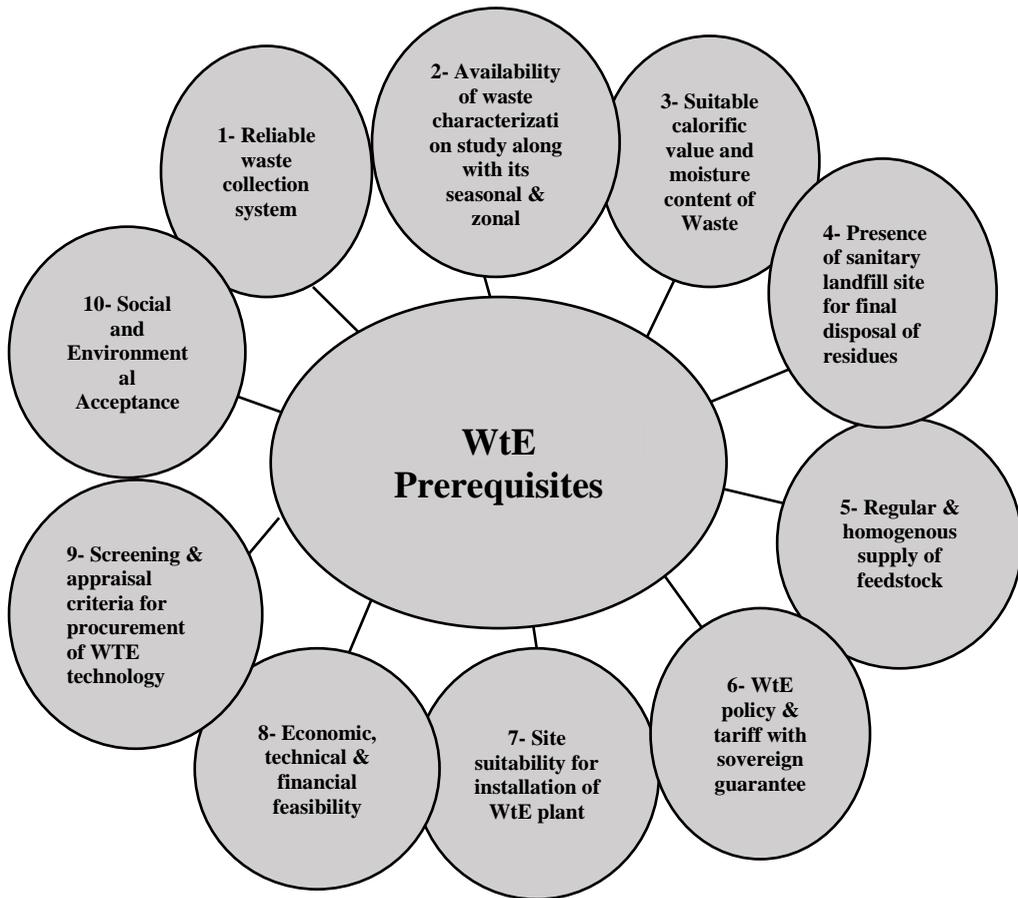
He urged the MD LWMC twice to visit Delhi and briefed him about the incineration plant built by the Jindal Group. Assessing the reluctance of MD LWMC, the CM directed MD of Punjab Power Development Board (PPDB) to visit and brief him about the incineration plant installed in Delhi. The CM was very keen to replicate the Indian model and directed the MD LWMC to study and review the Indian experience and make a presentation for the next meeting to be held on September 9, 2013.

Mr. Shah, the MD PPDB, met the MD LWMC in his office after his Delhi visit. He had a short video in his phone showing the working of the WtE plant. He claimed to be a man of the CM's trust to the extent of having access even to his personal bedroom. "Sahib is unable to sleep properly because he is haunted by his promises to people regarding the end to the energy crisis. Sahib sent me to Delhi personally to see this plant, which is owned by his family friend, i.e. the Jindal family. What we have to do is just replicate that model here. Don't go for complicated feasibility options, and do not oppose this option."

The MD LWMC was supposed to take this message seriously, but he wanted to have a detailed analysis of Indian plant based upon data which had not collected by Mr. Shah. A short video could not become the basis of any decision.

For the next meeting, the MD LWMC prepared a detailed presentation for the CM. The MD explained to the participants of the meeting that WtE was not a standalone project, rather it was a part of the long journey towards integrated and sustainable waste management systems. A number of prerequisites had to be met before even thinking of establishment of a WtE project. He apprised the meeting's participants that it was important to know the waste characterization/composition of MSW along with its calorific value and moisture contents, waste generation, detailed analysis of waste collection systems, waste transportation systems and disposal strategy of the municipality. The complete list of prerequisites was shown as under (Figure-3).

Figure 3: Prerequisites of Waste to Energy Project



The CM was, however, more interested in knowing the Indian experience and referred to his earlier direction to the MD LWMC to present his assessment of the incineration plant installed in Delhi. “Don’t become a professor Mr. MD, just tell me how the Indians have done it,” the CM said. The MD LWMC shared his assessment of the Indian experience. He said that Timarpur Waste Management Company Ltd. (TWMCL) was established in April 2005 and entered into a 25 years’ concession agreement with Municipal Corporation of Delhi under a public-private partnership (PPP) framework for processing about 2,000 (TPD) of waste with potential of 20 MW generation after several revisions. The developers selected a bid for minimum amount of financial assistance within an overall ceiling of Rs 10.50 million per MW with revised capital investment \$45 million as well as subsidies of \$2 million and land at a nominal rent. The MD also said that huge protests were frequently registered by the communities which were also supported by the courts due to emission of toxic

pollutants (Dioxin and Furon) from the plant. The MD synthesized the key lesson of Indian experience of WtE as under:

- Hefty subsidies were taken from municipal and state governments.
- MOU signed during 2005 and plant was started in 2010 indicating a long-term gestation period.
- Several revisions were made in the technical feasibility.
- Adverse environmental impacts led to socio-economic problems.

The MD further proposed that some key policy decisions were required to be undertaken which would create an enabling framework for the private sector to establish a WtE plant in Lahore.

- The federal government (NEPRA) should immediately announce a good upfront tariff for waste-to-energy projects to attract investors.
- The CM must decide about the procurement model which could be either public sector only, on PPP basis or IPP mode.
- Federal or provincial government should decide about providing an investment subsidy to the private sector on the basis of their capital investment as was being practiced in India as well as in many other countries.
- The capacity of LWMC to implement a WtE project must be augmented and its legal mandate to conduct such business be prescribed.

The CM was not pleased with the candid discussion of the issue by the MD. However, he mentioned that the government will have to spend initially because private sector would be reluctant to invest in WtE project on account of the novelty of technology and associated risks. He further opined that composition of MSW in Delhi and Lahore must be similar and, if Indians could establish WtE plant, why could we not do it. He strongly stressed the need to work on a fast-track basis and directed the MD LWMC to quickly finalize the pre-feasibility report and present a doable action plan in the coming week. The MD was disappointed that despite his hard work the CM was not able to appreciate the importance of carrying out detailed feasibilities, demonstrating the economic viability of the project first and then deciding about having or not having a WtE plant in Lahore. It was quite obvious that the CM had already taken a decision in this regard and was not willing to listen to anything else. The senior bureaucratic leaders like Chief Secretary and Chairman P&D remained silent on the issue and did not support the MD LWMC in his dialogue with the CM. The MD clearly understood that ‘isomorphic mimicry’ of Indian model would lead towards grave financial and environmental risks.

The MD felt disenchanted and depressed after the meeting. The Chairman of BOD came to him and said, “You are supposed to only implement what the CM is telling you, do not confront him with complex technical issues because he has limited time to deliver during his tenure. Therefore, we have to devise a shortcut for him.”

While going back to his office after the meeting, the MD looked at his luxurious vehicle, thinking of his hefty salary, a posh house in the GOR (Government Officers’ Residential) Estate, and questioned himself with a vacillating mindset, “Am I choosing the best for myself and my family?” He felt compelled to have a recourse with Prometheus again. “Why do you keep coming back to me, I have chosen a path of eternal punishment by providing knowledge and power to the human beings which I believed was a public good, so am I going to urge you to do the same? A steadfast heart does not stray from the path. You need to be like a cliff against which the waves continually break, but it stands firm and tames the fury of water around it. It is your choice to ‘be’ or not to ‘be’.”

4. Waste-to-Energy Conference

Knowledge is Power

A US-based firm, Ecoair, was selected as consultant for LWMC through a transparent international bidding for carrying out pre-feasibility of a WtE facility in Lahore. Ecoair organized a wide consultative meeting on December 6, 2013, on converting waste into energy project in Lahore. A number of public and private sector stakeholders including university research centers from Punjab University and University of Engineering and Technology Lahore participated in the workshop. Franz Paul, the chief technology expert from Ecoair, briefed the participants on various technologies used globally in waste-to-energy projects. He advocated using a technology that matches the lower calorific value (LCV) and high moisture content of waste in Lahore. He said that “fluidized incineration” technology might be the most suitable one for energy generation from waste, keeping in view the characteristics of solid waste of Lahore. He further proposed to having waste-to-energy plants installed in the industrial zones in order to utilize the heat and electricity in an efficient manner. He said that such a plant of western standards could be installed at a cost of one to five million euros for obtaining electricity from solid waste. He added that from his experience, four years were required for a waste-to-energy plant to be fully functional, depending on various factors.

5. Pre-Feasibility Results

Nostrum

After examining all available data, it transpired that the average net calorific value (NCV) of the MSW to be processed at the Lahore WtE over extended periods of time

will be on average only 5.3 MJ/kg and that a reasonable range for operation will be between 4 and 7 MJ/kg. During times of very high moisture content (values of 70 % and above), it was necessary to either use a design allowing for co-combustion of coal or use of high-tech presses for some mechanical dewatering of MSW (with the subsequent need for treatment of the highly polluted liquid derived from pressing). Because of a rather low NCV, the Lahore MSW was considered suitable for fluidized bed combustion. This technology was tested and proven over many years in Europe for mechanically pre-treated MSW at the thermal power generation levels of about 90 MW for Bubbling Fluidized Bed (BFB) systems and about 160 MW for Circulating Fluid Bed (CFB). Because of the economies of scale, it was more cost-effective to have only one rather than two or three units. For the Lahore LHV of 5.3 MJ/kg, a 160 MW capacity CFB unit corresponded to a capacity of 109 tons per hour or 2,608 tons per 24-hour day. On the basis of the proven CFB technology, the nominal capacity of a first economically-favorable large Lahore CFB unit will be about 800,000 tons of MSW per year.

6. Devious Paths of Decision-Making

Resistance by Inaction

The signals emanating from the CM Secretariat were erratic, dubious, non-transparent and not consultative. Some foreign company or investor would directly contact the CM Office with their preferred mode of technology and methodology and the CM Office would schedule a meeting of the CM with the potential investor overnight. The MD and Chairman LWMC would be called to such meetings and were expected to make pleasing and welcoming comments on the proposal there and then in the presence of the CM. This would not give the MD LWMC proper time to thoroughly appraise the proposal before hand. Any probing questions asked during the meeting would be considered as “obstructive to the proposed investment”. Most of these companies would reach the CM Office with a strong lobbying contact person close to his family or political sources. The CM would like to ink some sort of MOU or assurance with these companies on the spot and then expected the MD LWMC to take the cue and go ahead and make it happen.

A case of similar nature happened when Germany’s international group ALBA met the CM on November 17, 2017. Even before signing an MOU, the CM announced through a press conference that a 100-megawatt power plant will be installed in Lahore and the German group will make most of the investment in this power plant. The CM said that through German technology, coal will be made from solid waste for generating energy. He said that after Lahore, the launching of this project in other cities will also be considered. This announcement clearly indicated that an understanding already existed between the CM and ALBA. However, later when the ALBA group made a visit to the LWMC headquarter, interacted with LWMC WtE team, and visited the already functional RDF facility made through a PPP arrangement between LWMC and DG Khan Cement with them they were bamboozled. They were expecting a huge subsidy

from the government to construct such a plant in Lahore while the LWMC not only had such a functional facility through PPP framework, but was also earning income through sale of waste to its private sector counterpart. ALBA never returned and the CM took the impression that the MD LWMC was causing obstructions to his preferred way of working. There was clearly a widening communication gap between the CM and the MD.

Speaking to his Chairman, who was also the advisor to the CM and one of his close political aides, the MD expressed his concerns. “Sir, I hope you would be able to explain to the CM the real reason why ALBA did not come back. I have inferred from the recent discussion with the CM that he considers it our fault for not showing them the right path.”

The chairman replied, “Don’t worry, I will explain the entire situation to the CM.” Later on, in hindsight, the MD felt that it would have been much better if he himself would have requested a one-on-one meeting with the CM. However, such meetings would always be seen with a lot of suspicion by service colleagues, seniors and other stakeholders who would interpret it as by-passing the official channels and becoming a personal loyalist of the CM. Frustration of the CM was increasing day by day because he had started believing that the MD was resisting his instructions by inaction. The MD started feeling the heat and erosion of the trust relationship.

7. In the Line of Duty

The Inevitable Hour Elegy

On June 10, 2014, the CM called a sudden meeting. The MD LWMC was directed to present the progress of WtE project at the home-office of the CM in Lahore. He was perplexed about the purpose of the meeting. He had been constantly contemplating about the recent happenings with different interested parties and investors, which came to see him showing interest towards investing in the WtE project.

The CM would randomly enquire about the progress of any such interaction with investors and the way forward on previously signed MoUs. One such international company was M/s Princeton Engineering USA which came to the MD LWMC’s office along with a provincial minister known for his close proximity with the CM. A prominent Pakistani expat from Chicago was accompanying them. The minister told the MD that this person was very important for the CM and the LWMC was supposed to provide all required support and help to this company for their proposal of WtE project. The company’s CEO, who was a Chinese-American, held detailed meetings with the LWMC team.

There were a number of technical deficiencies in his proposal. First, he had not carried out any pre-feasibility about waste characterization of Lahore MSW. Therefore, his choice of technology, i.e. “gasification”, seemed inappropriate. The documents he

presented to LWMC about the experience and credibility of his past projects were reviewed and cross-checked through various sources including the internet. It transpired that the company was having legal disputes with an American municipality and there were charges of forgery and fraud against it. Hence, the LWMC team was careful in granting them a letter of intent that included a clause in LOI which suggested “further processing of the WtE project implementation with the company will take place after meeting all the legal and codal formalities of procurement”. The clause was not acceptable to M/s Princeton which wanted a blanket approval clause incorporated in the LOI mentioning award of contract to the company. The intermediary minister also telephoned the MD and apprised him of the sensitivity of the matter because the eminent expat personality was complaining against the MD to the CM for non-cooperation.

When the MD reached the CM’s residence for the meeting, his apprehensions were found to be true when he saw M/s Princeton team present during the meeting. He whispered to the Chairman showing his concern that their presence in the meeting might lead to an unpleasant scenario. When the CM entered in the meeting room, the MD could feel vibes of indignation in his demeanor. The CM enquired from the M/S Princeton team about progress of the planned investment. The expat Pakistani, who was leading the delegation of M/s Princeton, told the CM in a complaining tone, “We have travelled twice from Chicago to Lahore to bring in investments here but the attitude of bureaucracy is creating obstructions and they are not willing to issue an unequivocal LOI to us.”

The CM looked furious. In an enraged tone, he said the MD, “You are neither doing this project yourself, nor are you letting anyone else do it. What is the problem with you?”

The MD looked towards the Chairman for support and expected him to reply because he was fully aware of the whole issue. But he preferred to remain silent. The MD explained the technical issues in the proposal of M/s Princeton to the CM and apprised him that the LOI the company was insisting could not be issued without following an open competitive bidding process. The CM got blue in the face with anger, got up from his chair, looked at the MD and said, “I was wrong to retain your services in the province of Punjab. You better go to Balochistan where the Federal Government wants you to be.” Before the MD could say anything further, the CM left the room, leaving the meeting inconclusive. The next day, the MD started packing his bags for Balochistan.

8. Reflection

The Show Must Go On

Was the MD following a correct and responsible course of action?

Perhaps one can never answer it in absolute terms because various meanings of the word 'responsibility' stand in inevitable tension with one another. However, some kind of theorization is needed to foster a reflective conversation about 'what to do next', and also, seen retrospectively, what was being done to be. The theory of countervailing responsibility propounded by Michael Harman is a great tool to elucidate multiple and even conflicting meaning of 'administrative responsibility'. He puts across a three-dimensional lens to describe this phenomenon.

- a) Political responsibility: embodies the virtue of duty. The administrator has both a moral duty and a legal obligation to implement policies enacted by democratically elected representatives who give authoritative voice to the public will. Policy/administration dichotomy is the hallmark of this category of responsible action.
- b) Professional responsibility: embodies the virtue of integrity. The notion of professional as a neutrally competent technocrat has been challenged by a growing recognition of breakdown of policy/administration dichotomy. Administrative agencies are specialized repositories of knowledge, experience and commitments that are invaluable sources for the generation and advocacy of policy alternatives. This form of responsible action provides space for administrators to say 'no' to proposals of their political masters.
- c) Personal responsibility: reflects the qualities of self-awareness and authentic relationship. In the standard debate, responsibility is assumed to be an attribute of the decision and not of the actor who makes it. But the notion of personal responsibility defines it as a quality that inheres in the actor, rather than in decisions. Decisions are seen as manifestations of actions taken by responsible actors. Personal responsibility derives insight from an awareness of both the existence and the social and psychological limitations of one's role as agent or cause of one's action.

The theory of countervailing responsibility holds that any one of these three meanings is not only inadequate for a full understanding of responsible action, it also becomes pathological unless it is 'countervailed' by each of the other two meanings. The following table⁵ illustrates the countervailing meanings of administrative responsibility.

⁵ Michel M. Harman, "The Responsible Actor as 'Tortured Soul' The case of Horatio Hornblower," (Sage Journal, Scholr.google.com), 1989, p.7.

responsibility provides some explanation to what happened and why it happened the way it did. However, there can be other interpretations to the unfolding of events. For the protagonist, it was an effort to carry out a difficult balancing act, one that he was intuitively bound to follow in his view of life. Rationality is bounded and limited by the tractability of the decision problem, cognitive limitations of mind, and the available time. So, as decision makers, we can act as “satisfiers” only rather than seeking an optimal solution.

10. Recommendations

- (i)** Robust planning processes including feasibility, appraisal, costing analyses, environmental impacts must be followed in all mega projects having long gestation periods.
- (ii)** All approval processes should be transparent and well publicized so that any violations based upon political expediency may be known to general public and civil society.
- (iii)** Bureaucratic mindsets need to be sensitized and trained to maintain a balance between official duties towards political bosses and society at large. The blurring of the distinction between a “government servant” and a “public servant” needs to be sharpened and well-articulated.
- (iv)** Rules and procedures should clearly enunciate the protection mechanisms available to public servants for showing any dissent to wrongful influence and directions.
- (v)** Civil servants must be trained to deal with ethical dilemmas leading to personal sacrifices of creature comforts in the line of duty. Inculcating critical historical awareness adhering to the principles of integrity may provide a moral compass to navigate through such dilemmas.

Annexure I

Sr#	Criteria	Windrow Composting	Direct Incineration	RDF Incineration	Bio-Methanation	Mechanical Biological Treatment	Landfilling
1	Scale of application in tpd (tons per day)	Minimum waste tonnage should be 25 tpd and above. For Lahore the waste tonnage is 5000+ tpd and thus suitable option.	500 tpd and above (smaller plants are not technically viable, given the cost of required environmental control equipment and boiler technology. For Lahore the waste tonnage is 5000+ tpd and thus direct incineration is feasible.	500 tpd and above (smaller plants are not technically viable, given the cost of required environmental control equipment and boiler technology. For Lahore, due to high waste availability (5000+ tpd) direct incineration is feasible.	Centralised up to 500 tpd plant as well as decentralized plants are operational in the region. Therefore scale of application may vary from 1-500 tpd. Not Suitable for Lahore as the waste goes beyond the limits. This can be possible if multiple biomethanation plants are installed in series to make them more viable.	Centralised up to 500 tpd plant as well as decentralized plants are operational in the region and globally. Therefore scale of application may vary from 1-500 tpd. Suitable for Lahore.	Applicable for small to large scales; there is no minimum waste tonnage required.
	Applicable with population size	Suitable for cities with population more than 0.1 million while Lahore is city with population more than 12.6 million.	Suitable for cities with population more than 1 million while Lahore is city with population of 12.6 million.	Suitable for cities with population more than 1 million while Lahore is city with population of 12.6 million.	Suitable for cities with population more than 0.5 million while Lahore is city with population greater than 12.6 million.	Suitable for cities with population more than 0.5 million while Lahore is city with population less than 12.6 million.	Suitable for city of any size.

The Challenges of Converting Municipal Solid Waste (MSW) to Energy in Lahore

2	Waste suitability/acceptability	Food waste (including wastes from households, restaurants and markets), fats/oils/grease, paper and cardboard, landscaping and garden waste (e.g. hedge-clippings, leaves)	High moisture and organic content make it unsuitable. Requires waste with calorific value > 3,000 BTU/lb. Calorific value of the waste is higher than 6,000 BTU but due to high moisture content, it would be unsuitable without pre-drying of the waste.	High moisture content makes it unsuitable calorific value requirement is 3,000-6,000 BTU/lb for RDF with moisture less than 20% which is difficult to achieve without pre-processing/pre-drying of the waste and that would add additional costs.	Food waste (including household, restaurants and market wastes), fats/oils/grease, slaughter-house waste. Lahore's waste contains high organic content (approx. 54%), moisture content (72.49%) – suitable.	Most suitable technology to handle heterogeneous waste with no initial requirement of segregation at source.	Municipal solid waste, construction and demolition waste, wastewater sludge, non-hazardous industrial wastes.
	Organic waste composition threshold or moisture content	Higher fraction of organic content is required. Lahore's waste contains high organic content (approx. 54%) and Moisture content (72.49%) – suitable.	<50% moisture content. Moisture content in Lahore's Waste is (72.49%) which makes it unsuitable for incineration	<12% moisture content. Moisture content RDF from DG Khan cement plant is above (20%) which makes it unsuitable for incineration or direct combustion	>50% of the MSW. Lahore's waste contains high organic content (approx. 54%) and moisture content (72.49%) – suitable.	Low as possible to make the sorting process easier.	Low as possible to keep the leachate production lower. However, with leachate collection system in place moisture content does not impact the process of land-filling and its operation
	Waste to avoid	Non-biodegradable wastes (plastic, glass, metal, inerts) Mixed waste in Lahore.	Yard leaves or source separated food waste.	C&D waste and sludge from the desilting of the drains.	Non-biodegradable wastes (plastic, glass, metal, inerts), tree clippings	Medical infectious waste.	Medical infectious waste.
3	Suitability of technology for mixed waste	High – Feedstock should be free from	High – Feedstock should be free from	High – Feedstock should be free from	Unsuitable for mixed waste	Most suitable technology to	Ultimate treatment for the

	and segregated waste	non-biodegradable and debris and low on moisture.	inert and debris and low on moisture Content. In Lahore, due to mixed waste/sludge collection and higher moisture content, it's unsuitable.	inert and debris and low on moisture Content. In Lahore, due to mixed waste/sludge collection and higher.	Pre-sorting/segregation is required for Lahore.	handle heterogeneous waste with no initial requirement of segregation at source.	mixed waste.
	Pre-processing	High Required for mixed waste	Low Required for mixed waste	High Required for mixed waste	High Required for mixed waste	Not required	Not required
4	Volume reduction %	50-70%	80-85%	80-85%	50%	80-85%	Nil
5	Land requirements	High (For 500 tpd of MSW 6 ha of land is required)	Low land requirements 16-40 sq.m per ton of the waste ⁶	Low land requirements 16-40 sq.m per ton of the waste ⁷	Low to Moderate For small units: 500 sq. m for 5 MT unit For large scale: 300 tpd of MSW: 2 ha of land is required)	High (For 500 tpd of MSW: 6-8 ha of land is required)	Generally large
6	Labor requirements	Labor intensive and requires considerable technical capacity	Not labor intensive but requires considerable technical capacity	Not labor intensive but requires considerable technical capacity	Labor intensive (based on current practice)	Labor intensive (based on current practice)	Not labor intensive but requires considerable technical capacity
7	Energy requirements	Moderate	High	High	Moderate	High	Low
	Reject	30-50%	Up to 15%	Up to 15%	Up to 50%	Up to 15%	100%
8	Reliability – proven internationally for large scale	Proven technology	Internationally proven. Developed countries moving away from mass burn technology to cleaner	Proven technology	Internationally proven and many plants under operation	Highly sensitive process and plant performance is impacted by slight contamination	Proven technology

⁶ Incineration of Municipal Solid Waste February 2013, DEFRA UK.

⁷ Incineration of Municipal Solid Waste February 2013, DEFRA UK.

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			technologies				
9	Operational complexity	Least technically complex	Technically complex, requires highly skilled training and careful maintenance	Technically complex, requires highly skilled training and careful maintenance	Technically complex, requires highly skilled training and careful maintenance	Technically complex, requires highly skilled training and careful maintenance	Requires specialized training, careful maintenance, and post-closure care
10	State-of-the-art and clean technology	High percentage of rejects i.e. 30-50% requires more space for disposal of the reject and have higher emissions	High emission from waste incineration (SOx, NOx, heavy metals, Dioxins, Furans). Emission control system has high capital and operating cost	High emission from waste incineration (SOx, NOx, heavy metals, Dioxins, Furans). Emission control system has high capital and operating cost	No harmful emissions	No harmful emissions	Methane emissions
	Leachate pollution	High	Low	Low	High to slurry production. However, with the composting process can be managed easily at site.	High	High
	Carbon footprint	Low	Least	Moderate	Low	Low	High
11	Predominant skills for operation and management	Skilled and semi-skilled labour	Highly skilled labor required	Highly skilled labor required	Skilled and semi-skilled labor	Skilled and semi-skilled labor	Skilled and semi-skilled labor
12	Compliance with the regulatory requirement	Low environmental pollution	High environmental pollution if not the air purification system is substandard and temperature is maintained below 850c	High environmental pollution if not the air purification system is substandard and temperature is maintained below 850c	Low environmental pollution	Low environmental pollution	High environmental pollution

	Social acceptability	Odour issues in case of improper aeration. Public acceptance higher than waste to energy technologies	Negative public perception and low acceptability	Negative public perception and low acceptability	High public acceptance	High public acceptance	Negative public perception and low acceptability
	Market sounding	Market for products and by-products. In Pakistan compost market is very low	Readily available market for energy form waste	Readily available market for energy form waste	High demand for energy and Bio-CNG	High demand for recyclables while low to moderate demand for RDF and compost	None
	Flexible/modular and capable to adjust for lock-in effect	Highly flexible and capable to adjust according to the quantum and composition of the waste as well the possible future intervention for source separation.	Not flexible and prone to lock in effect	Not flexible and prone to lock in effect	flexible and capable to adjust according to the quantum and composition of the waste as well the possible future intervention for source separation.	flexible and capable to adjust according to the quantum and composition of the waste as well the possible future intervention for source separation.	None

Leveraging ICT for Integrating Regulatory Functions for Cross-Border Trade: Development of Pakistan Single-Window Platform

Syed Shakeel Shah¹

1. Introduction

Cross-border trade plays a key role in the economic activity of every country. Import and export of goods through Pakistan's borders involve a complex regulatory regime involving a large number of departments/entities which are entrusted with compliance functions through a system of licenses, permits, certificates, NoCs, etc. The legacy manual system comprising fragmented regulatory compliance of different government agencies used to cause delays at border nodes, added transactional costs and adversely impacted competitiveness of businesses. Consequently, Pakistan's rankings in international indexes measuring efficiency of trade regulation functions were also affected. These showed a continuous decline over a long period, as other countries improved their trade governance systems leveraging the tremendous potential of information and communication technologies (ICT) for development of National Single Window (NSW).² Pakistan also embarked on this key reform through a direct intervention from the Prime Minister's Office. Pakistan Customs was entrusted with the responsibility of development and deployment of NSW through a wide-ranging consultative process involving multiple public sector stakeholders. The project faced numerous challenges and delays before it was finally rolled out. This process provides practical lessons for other initiatives attempting to leverage technology for functional convergence. This paper looks at implementation strategies, challenges and responses in the NSW project implementation. It also attempts to draw conclusions and recommendations relevant to other similar reform initiatives in the wider public policy domain.

2. The Issue

In Pakistan, manual and fragmented processes for regulation of cross-border trade by multiple public entities had continued to cause delays in clearance of shipments, added administrative costs, and created room for malpractices. Development of an ICT-based integrated system for regulatory convergence was the obvious public policy response

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² National Single Window is a single channel for electronic submission of required information for import/export/transit consignments as well as processing and uploading of compliance documents by trade regulators. In an advanced NSW, all trade regulators, port operators, logistic agents, banks, etc. are inter-linked for instituting an efficient regulatory and operational environment.

to ensure transparency, bring down compliance costs and improve ease of doing business.

This paper analyses the following key questions:

- (a) Whether ICT-based integration of cross-border trade regulations can lead to improved efficiency, enhance transparency, and increased ease of doing business?
- (b) Should public policy practitioners' endeavor to conceive and implement technology-driven reforms through home-grown projects or continue with current practice of developing reform concepts around foreign loans, driven by external consultants?

3. Scene Setter

It was a usual cold afternoon in January 2017. Tahir, Joint Secretary Economic Affairs (JSEA) serving at the PM Office, had just concluded a meeting as he was immediately summoned to the office of the Secretary to the PM (SPM). Flashing a typed paper, Fawad Hassan Fawad, the SPM, blurted, *“Here is yet another complaint regarding delays in clearance of goods at the airport.”*

Continuing in his usual heavy, no-nonsense style, he said, “I need a quick, yet comprehensive analysis of what is wrong in regulation of our cross-border trade, causing these complaints. The World Bank has recently shared yet another report highlighting the deteriorating ratings for Pakistan in ease of doing business. The PM desires a concrete plan to address this issue in a systematic way. Please do a quick research and develop practical proposals for bringing about improvements. You will brief the PM whenever we find time in his schedule and solicit his directives.”

The complaint had been sent in by M/s Mughal Seeds, an importer of vegetable seeds. They were agitating the inordinate delay in release of imported seeds from the Air Freight Unit at Jinnah International Airport Terminal in Karachi due to delay in processing of seed quality analysis report by Federal Seed Certification and Registration Department (FSCRD). On March 17, 2017, the PM was briefed in his chamber by the JSEA, highlighting the cumbersome and fragmented regulatory processes undertaken by multiple departments.

The JSEA briefed the Prime Minister: “The solution is development of a National Single Window system, an ICT platform to connect importers/exporters with regulators to complete all data entry and regulatory requirements through an online system and a single interface. Progressive countries have already developed such systems, improving trade competitiveness and related rankings.”

After a short discussion, the PM instructed his Secretary to issue a directive to the Federal Board of Revenue (FBR) for development of NSW, designating Pakistan

Customs as the lead agency. “FBR may move a summary, with specific proposals on timelines, stakeholder/contact points and a National Steering Committee [NSC] for smooth roll out of NSW,” the directive concluded (**Annex-A**). The JSEA was also designated as focal person to work closely with FBR, since the project was to involve long-term engagement with numerous federal and provincial entities. With this started a long and intricate process of development of Pakistan Single Window (PSW).³

4. Organizational Background

Regulation of cross-border trade is a complex process. With numerous types of goods being imported into, exported from, or transiting through a country, these consignments have to comply with various regulations prescribed under different statutes, administered by various public sector entities. Import and export policy orders issued by the Ministry of Commerce specify regulatory requirements and the agencies authorized to issue regulatory documents for specific goods. For instance, import of seeds is allowed subject to drawing of samples and testing of quality by FSCRD of Ministry of National Food Security & Research. Similarly, bulletproof jackets are importable under authorization of Ministry of Interior. E-Form and I-Form have to be issued by banks for imports/exports in order to account for foreign exchange involved. The Customs Department can only allow release of these goods once the required compliance documents have been received and uploaded in the Customs Automated System. Public sector entities have traditionally relied on antiquated legacy manual systems, and importers/exporters had to visit these offices located at multiple locations, submitting multiple applications with repetitive data. Scale of regulatory compliance requirements can be gauged from the fact that in 2019, **2.1 million** compliance documents were issued by public sector entities for **2.5 million** containers cleared in the year.⁴

The advent of ICT offered a newfound opportunity to improve regulatory governance as process integration became a distinct possibility. However, historically public sector entities in Pakistan have been slow in adopting digitization, thus levying huge costs on the businesses. Lack of competitiveness of economy leads to low level of investments, which in turn leads to lower production and exports. The PM Office took cognizance of this state of affair. JSEA Tahir, the main character of this study, was assigned to work with Customs on development of PSW, an integrated platform where importers/exporters would file all the required information for all types of regulatory compliance. Tahir later served as Chief Reforms and Automation in FBR, working directly with the project team in various phases of the project.

³ National Single Window is a generic name for ICT-based trade regulation system. Countries name their NSW with a brand name for reference and smooth interaction with NSWs in other countries (Korean NSW is called TradeNet). The Steering Committee of the NSW project decided to name it as Pakistan Single Window (PSW).

⁴ Source: WeBOC data.

5. The Story: PSW from Conception to Roll-out

5.1 Trade Regulation in Pakistan in 2016

As Tahir pondered over the complexity of the task ahead, it was important to ascertain the current state of regulatory efficiency for cross-border trade in Pakistan. As public sector entities are reluctant to admit inherent inefficiencies, and have a delusional belief that their work processes are flawless, a good starting point would be to study related credible independent reports.

On receipt of the Prime Minister's directives, Tahir carried out a quick analysis of the state of trade regulation in Pakistan using a team of professionals in the Prime Minister's Delivery Unit (PMDU). He assigned Adil Gilani and Shazia Ghani (both team leads at PMDU), to carry out a desk review of the World Bank's annual Ease of Doing Business reports over the years which included a specific indicator 'Trading Across Borders'.⁵ This activity revealed very disturbing patterns.

In 2017, Pakistan ranked **172** out of **190** economies, *down* from **74** in 2007. On the other hand, India improved its position from **134 to 68**. Further research led to another intriguing fact. This continuous decline in Pakistan's score and ranking was not due to any deterioration in regulatory practices. In fact, Pakistan's cross-border trade regulation was almost at the same level in 2017 as in 2007. However, other countries had improved their efficiency scores and moved ahead of Pakistan. *Studies showed that the main paradigm shift achieved by progressive national administrations was achieving regulatory convergence leveraging ICT-based NSWs.*

5.2 Understanding a National Single Window

As a spadework, Tahir further studied the concept of NSW, which is an ICT-based platform connecting traders, port operators, regulators, and potential service providers like logistic companies. As part of the 'single window' approach, businesses involved in trade receive government services through a single interface in a practical model of whole-of-government approach. The complex organizational arrangements and processes that go into service delivery are made transparent to users, resulting in increased efficiencies and a reduction in transaction costs. Standardized information and documents are lodged through a single-entry point to fulfill all import, export, and transit-related regulatory requirements. Every regulator gets the information required by it through NSW, and performs regulatory processes in an automated environment, in complete contrast with (the former) manual environment.

⁵ World Bank Report. *Doing Business 2017 – Economy Profile Pakistan*. October 2016. <https://openknowledge.worldbank.org/bitstream/handle/10986/25601/WP-DB17-PUBLIC-Pakistan.pdf?sequence=1&isAllowed=y>.

In the manual environment, traders must submit documents at multiple points, repeating the same information fields for different compliance documents. Moreover, offices of regulators are situated at multiple locations within a port city, or even in other cities as well. Traders have to run around to all those offices to get compliance documents incurring huge costs. This extremely inefficient system adds to time and cost of clearance of goods. Tahir had realized that development of NSW was a comprehensive solution to bring ICT-based integration of cross-border trade regulations.

5.3 NSW and World Trade Organization's Trade Facilitation Agreement

During the course of desk study, Tahir learned that establishment of NSW was one of the suggested trade facilitation measures under the WTO's Trade Facilitation Agreement.⁶ He discussed this with Joint Secretary WTO in Ministry of Commerce, who informed that Pakistan had not yet decided on including NSW in the schedule of commitments. Intrigued, he called Syed Tauqir Shah, Pakistan's Ambassador to WTO, who confirmed the position. "It is the most complex of all the commitments, and Ministry of Commerce has not yet started any spadework nor communicated any timeline for its implementation." Tauqir Shah suggested that Pakistan should put NSW commitment in the schedules which allow longer time for implementation. Tahir quickly called a meeting of FBR and Ministry of Commerce at the PM Office. With consensus, NSW timeline of June 2022 was communicated to the WTO in May 2017. However, it was decided that there will be an internal shorter timeline of December 2020 to reap early benefits of reforms. From the onset, it was clear that the project will involve a lot of spadework and challenges.

5.4 Spadework and Initial Challenges: Inter-Ministerial Turf Wars

On receipt of the PM's directives, Tahir engaged with Customs Wing of FBR to move on with the next steps. There were several challenges upfront like developing a roadmap, institutional mechanism for inter-ministerial consultation and finding a project director who was capable of and willing to work on the project for a long time, keeping in view the high turnover of officers due to persistent jockeying for field postings.⁷ One additional hiccup was a tug-of-war between Ministry of Commerce and FBR. Since WTO matters in Pakistan are entrusted to Ministry of Commerce under the Rules of Business, 1973, and NSW was now a WTO commitment, the ministry was lobbying to get the project implementation of NSW. Customs Wing of the FBR, on the other hand, was of the view that since NSW was a cross-border trade issue, Customs Department had the domain expertise to develop the system. Moreover, Customs already had the experience of successful development and deployment of its own

⁶ Trade Facilitation Agreement is an agreement negotiated by World Trade Organization member countries. Agreement aims to promote trade efficiencies by cutting red tap at border, promoting transparency and leverage information and communication technologies. Pakistan ratified TFA in 2015, and it came into effect February 22nd, 2017.

⁷ The reason for the general interest in "field" (as opposed to HQ) postings is not just the "experience" and independence but, unfortunately, also participation in the general culture of 'unlawful gains'.

automated system WeBOC.⁸ It had the technological base to lead the NSW project. Since no consensus could be reached, Tahir requested the FBR and Commerce to move a note for the Prime Minister, recording their respective stances. Once the note reached the PMO, Tahir decided to use it to seek clear orders of the PM on the way forward, including designation of lead agency and subsequent steps.

5.5 First Building Blocks: Institutional Framework for NSW Project

Tahir briefed the PM and SPM on the note received from the FBR and Ministry of Commerce. He got the approval for a go ahead on the project with clear guidelines on institutional arrangements and implementation policy. A directive issued on October 13, 2017, re-affirmed the earlier decision to designate Pakistan Customs as lead agency for the development of NSW (**Annex-B**). All other regulators were to retain their respective legal jurisdictions, while integrating their trade regulation functions with ICT-based PSW platform. Moreover, key ministries were directed to work closely with the FBR for preparing inception document for the project, as it was to involve business process mapping and re-engineering to prepare all the entities for a single-window environment. The FBR was also directed to move a summary for constitution of the steering committee for the project, which was to be headed by the Finance Minister and having representation of key regulatory ministries to guide the project team.

This institutional set up was to guide the project for next four years till the establishment of NSW. The next step on the critical path was building a project team capable of taking this complex project forward with a long-term commitment to regulatory integration project.

5.6 Challenges in Establishment of Project Management Office

Tahir held separate meetings with Chairman and Member Customs at the FBR, emphasizing the importance of the NSW initiative and the Prime Minister's personal interest in the matter. Selection of the project team was of paramount importance, as the project required a long-term commitment, robust IT component and challenges of working across different ministries. The FBR bosses highlighted that since no funds were allocated for the project in the budget for the ongoing year, it was not possible to hire a separate project team from the market. Additionally, since the NSW was a very unique project, there was little possibility to find the right people from the private sector with relevant experience. After deliberations, it was decided that Project Management Office will be established within the FBR House as a component of the Customs Wing, comprising officers of Pakistan Customs without any additional financial incentive. Moreover, on the suggestion of Tahir, it was agreed that Imran Khan Mohmand will be the Project Director (PD). Imran was working in FBR as Chief Reforms. Besides being a reforms-minded officer with strong views on leveraging ICT for regulatory

⁸ Web Based One Customs was developed by FBR using available expertise of PRAL and domain knowledge of a team of customs officers. Development started in 2010 and deployment started in 2011.

convergence, he was tech savvy and strong headed enough to take up this challenging assignment.

5.7 With Significant Challenges, Project Gets Going

Tahir was initially unsure about prospects of the project. The project team started off in very challenging circumstances. The contours of the project were not clear, the level of cooperation from other ministries uncertain, and there was no budget available to carry out spade work. The PD Imran Mohmand briefed Tahir on this situation, and concluded, “I will manage some financing from development partners as grants. But for keeping ministries and department involved in the project, I need your support.”

Tahir assured him of full support, and designated Awais Siraj, a team leader in PMDU, to work with PD NSW and push ministries and departments wherever needed. The next steps for the project team were also discussed. These included preparation of a situation analysis report by an international consultant, and a high-level blueprint and implementation program. These two were supposed to be high-level documents, a big canvas to draw the outline of ICT-based integration of regulatory functions of various public sector entities.

5.8 Not so Rosy: Picture Out of Situation Analysis and Implementation Program

Working with various stakeholders, both these documents were finalized in next four months by an international consultant, Crimson Logic.⁹ This was a particularly difficult phase as ministries and departments were not very eager to share their workflows. Any mention of change is bound to elicit adverse response from a typical public sector mindset. Tahir and his PMDU team lent full support to the consultant and project team so that the consultant could finalize the work in the shortest possible time. The document highlighting challenges and prospects for ICT-based regulatory integration of functions related to cross-border trade was finalized by April 2018.

According to documents, there was potential of no less than 28 applications and issuance of permits, licenses, release orders, certificates, registrations, etc. required by trade regulators to be integrated in the NSW platform. With a few exceptions, most of the regulators worked in a manual environment relying on paper-based documentation, and multiple layers of approvals and verifications. There was no risk management system. Storage, maintenance and archiving of records was hugely chaotic and virtually dysfunctional.¹⁰

⁹ Crimson Logic is a Singapore-based technology firm specializing in digital government solutions. <https://www.crimsonlogic.com/>.

¹⁰ Crimson Logic, a Singapore-based consultancy, commissioned this study titled “Consultancy on Pakistan National Single Window: NSW Blueprint and Implementation Program”.

On the financial side, the consultant estimated a cost of **\$163 million**, and an operating yearly cost of **\$22.5 million**. The annual benefit to cross-border trade was projected at **\$80 million**, declaring the investment viable. However, with the project being run on zero PSDP¹¹ allocation, and even the cost of consultancy being borne by USAID, it introduced another layer of challenges. On implementation, the document recommended quick establishment of working groups in key areas comprising government agencies and private sector to deep dive into data harmonization, business process mapping and re-engineering, e-commerce, and port community system. Other implementation challenges highlighted were developing a financing model, training of ‘laggards’, i.e. departments with low levels of automation, business model development, services to be provided, operations flow, change management, service fees, legislation, etc. But the most challenging decision to be taken, according to the report, was whether to buy an “off the shelf” solution from an IT solutions provider, or develop an in-house system for integration of trade regulators.

5.9 Dilemma: Off-the-Shelf ICT System or Develop an In-house One

This was a critical decision in the project lifecycle. The PD was called to the PM Office to make a presentation on the pros and cons of both the options. Imran, PD NSW, informed that “off-the-shelf system” was an easy option, but carried multiple pitfalls. It would save the team a lot of effort in hiring IT professionals and developing modules for each function of the program. While some international development partner would be ready to provide funding, it will be expensive. The provider will retain rights over the software. That would mean periodic payment of license fees. Secondly, any future changes required in the program (e.g. if government decides to impose halal certification from an authority on all meat imports/exports) would entail sending requests and negotiating anew with the developer(s). This too would entail cost and time. In the past, a payment dispute of the FBR with system providers had led to the International Centre for Settlement of Investment Disputes tribunal in London. Moreover, there were peculiarities of functions of Pakistan’s border stations (like Wahga, Torkham and Chaman) which might require dynamic system design.

For a homegrown system, the positives were the fact of holding proprietary rights over the system, development of local talent, flexibility of tailoring and altering modules whenever needed, no license fees and a future possibility of providing system development services to other countries in case of successful development and deployment of NSW. On the downside, there was a risk of not finding the required human resources, danger of failure in software development and deployment, resource constraints and very high level of scrutiny (by NAB, etc.).

After substantial discussion, it was agreed that the project will be developed in-house. Despite anticipated difficulties, this carried more value for the country. Tahir assured the project team of all-out support in overcoming the challenges. It was time to get

¹¹ Public Sector Development Programme, the main government window for new development work.

going with constitution of the steering committee and working groups for critical decision-making.

5.10 National Steering Committee (NSC) and Working Groups

In April 2018, Tahir got the National Steering Committee (NSC) notified. Headed by the Advisor to the Prime Minister on Finance, it had representation from key stakeholders.¹² Although Tahir had proposed that the PM should chair it, this was not agreed by the PM on the ground that it will not be possible for him to hold regular meetings due to his busy schedule. Four working groups were also constituted to develop stakeholder consensus on key components of NSW.

Over the next three years, the NSC took several key decisions with consensus. It was decided that a separate entity will be created to run NSW and the initiative was renamed Pakistan Single Window. The draft PSW law was approved and sent to Parliament for deliberation. Hiring of technical and domain experts through Pakistan Revenue Automation was also started.

5.11 Development of Legal Framework

Tahir worked with a legal consultant and the project team to prepare the draft PSW law. By May 2019 the draft was circulated to all the stakeholders for their comments and suggestions. For the next six months, an intensive consultative process ensued, as key ministries shared their perspectives and suggestions. The final draft was sent to the Law Division for vetting after which the bill was forwarded to the Federal Cabinet for its approval prior to introduction in Parliament. Approval was granted in May 2020, and it was introduced in Parliament in the subsequent month where it was referred to the Standing Committee on Finance. After its approval from the respective standing committees in the National Assembly and Senate, the bill was finally signed into law by the President of Pakistan on April 9, 2021.¹³

However, the legislative process was not as simple and straightforward as it may have appeared. There were serious issues and disruptions, which are discussed in the analysis below.

5.12 Staging of the Project: Testing the Waters

Tahir realized that NSW projects were unique and undertaken only once. Hence, there was always going to be a level of trial and error learning process leading to improvements. Not surprisingly, NSW projects had failed in many countries and were

¹² Although the original directive from the PM had nominated Minister for Finance, Revenue and Economic Affairs as Chairman of the Steering Committee, later developments saw the portfolio of Finance Minister going to the PM and appointment of an Advisor to PM on Finance.

¹³ <https://download1.fbr.gov.pk/Docs/20214261345351407SingleWindowAct.pdf>.

progressing very slowly in others. Accordingly, it was decided to test the waters, and see how integration actually worked and impacted regulation of cross-border trade. Tahir had a detailed meeting with the Customs Department team, and it was decided to stage the project in three phases.

- 1) Stage I – Integration of early adopters through INTRA¹⁴ (completed in July 2018);
- 2) Stage II – Development and launch of PSW-Light, integrating major trade regulators (completed in December 2020);
- 3) Stage III – Comprehensive PSW, to be completed by June 2022.

5.13 Administrative Changes and New Role

In June 2018, Tahir was transferred to FBR. He requested the top FBR management for getting posted as Chief Reforms and Automation (Chief R&A). The Project Office of PSW was reporting to Chief R&A, so there was an opportunity to work directly with the team and use his background experience. The first challenge was arranging finances. So far, even consultancy services were being financed by development partners. Now it was time to hire experts, arrange office spaces and purchase IT equipment, all of which needed financing.

The concept note of the project had already been cleared by the Planning Division, with the direction to look for funding from development partners as the national budget situation was very tight. Although these partners had picked up the cost of certain consultancies for supporting studies, there were certain expenditures like salaries of programmers, cost of equipment, building hiring, etc. that could not be provided by donors. This was a big challenge. Working with the project team, Tahir found an innovative solution for the same, which is discussed below.

6. Analysis of Specific Issues and Challenges

The development cycle of any project presents many sets of unforeseen issues and challenges, and it requires quick thinking and innovative approaches. This section will study some of the important issues and challenges faced in development of PSW.

¹⁴ Integration of Trade Regulatory Agencies (INTRA) initiative integrated 11 regulatory authorities including Engineering Development Board, Ministry of Climate Change, Trade Development Authority, State Bank of Pakistan, commercial banks, Department of Plant Protection, Federal Seed Certification Agency, Animal and Plant Quarantine Department, Ministry of Commerce and National Tariff Commission.

6.1 Financing Challenges: Finding Solution to a Complex Problem

6.1.1 What was Going On in Minds

From the start, financing appeared as a big challenge. In private discussions, PD PSW confided that he actually did not want public funds for projects due to excessive level of public scrutiny by media, the National Accountability Bureau (NAB), etc. On the other hand, funding through donors entailed risk of project takeover with re-prioritization and expensive consultancies with little utility. Hence, some quick thinking was needed.

6.1.2 Thinking Out of the Box: Goods Declaration Fund (GDF)

While brainstorming options, Tahir floated the idea of using GDF, a special fund available to the FBR, for project expenditures. A levy of PKR. 250 per “Goods Declaration”¹⁵ had been imposed through Finance Act, 2011 (the annual national budget approval bill) for staff welfare and improvement of IT infrastructure of the FBR. Strangely, the money had been accumulating in a National Bank of Pakistan branch in Karachi. Although some rules were framed, and a committee was empowered to take decisions on expenditures from the Fund, not a single meeting of the committee had been held in last eight years and no expenditure had been incurred.

Tahir got approval of two things immediately. One was transferring the money from Karachi to Islamabad. The second was convincing the Member Customs (Operations) to hold first meeting of the GDF committee and take a decision regarding allocation of funds. A decision from NSC was also obtained for utilization of GDF for PSW project. This opened the way for utilizing the hitherto stagnant GDF and eased a lot of burden related to financing constraints.

6.1.3 Ensuring Long-Term Commitment of Domain Experts of Other Departments

Tahir foresaw another important challenge: long-term commitment of domain experts of other departments. Since the project involved integration of functions of different departments through an IT-based intervention, the departments were asked to nominate domain experts who must remain involved in the project till its roll out. The challenge was to keep these officers engaged, given the practice of frequent transfers and postings. As was well known, the lack of continuity seriously impeded progress throughout Pakistani governance. Indeed, it was a general practice that a representative from a ministry in one meeting never showed up in the subsequent meeting.

¹⁵ Goods Declaration or GD is a document filed by all importers/exporters with Customs, containing all the information required by department for processing of the import/export/transit procedure.

Tahir worked around this challenge in consultation with the project team. It was decided that a project allowance will be paid to the domain experts after getting approval from the NSC. In the final analysis, this greatly helped sustain interest of the domain experts to stay engaged with PSW over a long period and contribute actively. Financial incentives are perhaps one of the best nudge to guiding human behavior.

6.2 Multiple Choices and Decision-Makers' Predicaments: Selection of Operational Models

The next challenge for Tahir and the project team was to solicit a NSC decision on the appropriate operational model. A few models of NSW operations were considered.

- 1) A government operated system, with full accountability and cost of the PSW being borne by the government, and PRAL¹⁶ developing the IT modules.
- 2) A public-private partnership, where operations of NSC are outsourced to a private entity which could recover costs through service fees.
- 3) A hybrid model, where PSW would be governed by a statutory body established under a new act that appointed a government agency to operate the PSW. The operation and delivery of the PSW would be undertaken by a SPV (special purpose vehicle) wholly owned by the government agency but acting outside of government constraints in terms of compensation, HR practices and technology procurement.

There was a heated debate in the NSC. Even the PM's Advisor on Finance (Chair of NSC) pointedly asked why a new entity was needed as PRAL was already there. The Chair was informed that although PSW was being developed by the Customs Department as directed by the Prime Minister, it was not a FBR specific project. It involved many government entities which were to be represented in the governing body of the new entity. Moreover, PRAL had become another bureaucracy, with multiple layers and a very complex decision making process that could potentially stifle the development of PSW. *"Is there any guarantee that a special company that will be created to run PSW, will not become another PRAL?"* the PM's Advisor on Finance asked.

Tahir and the project team had no cogent answer to this hypothetical query. He informed the Advisor that there could be no guarantee to that effect, except good management practices. After a lot of discussion, the NSC finally agreed to go ahead with the hybrid model wherein PSW would be governed by a statutory body established

¹⁶ PRAL was established in 1994 as IT company for computerization of FBR data. Beside data warehousing, it also developed several solutions for automation of key functions of FBR. The current Customs solution WeBOC and Income Tax solution Iris were developed by PRAL. However, PRAL gradually lost its creative edge and got subsumed in public sector entity culture of FBR.

under a new Act (to be passed through Parliament) and incorporated with the Security & Exchange Commission of Pakistan (SECP).

6.3 Powerful Pulls: Unwanted Interest of Development Partners

In early 2019, Tahir and the project team were invited to a meeting at the World Bank (WB) country office in Islamabad. After a briefing on PSW, a Senior Sector Specialist of WB intervened: “The WB is finalizing a three-year program with Government of Pakistan for tax reforms, amounting to \$400 million. We are considering inclusion of PSW as one of the program components. However, we will implement it our own way, through our own consultants and procurement of hardware/software.” Tahir did not endorse the proposal, and asked the WB to support the NSW on a need basis, as against a takeover of the project.

Such a takeover by a development partner was one lingering fear of the project team. This was because foreign consultants did not have a comprehensive understanding of or a long-term commitment to any project. They were primarily concerned with loan disbursement targets, often exaggerating the costs of components. They were politely informed that since all the decisions on these matters were being taken through a consensus in a very well-represented NSC and validated from the PM Office, hence there was no need or option for mid-course changes. The argument went a little too far, and the meeting ended on a sour note, with the WB side emphasizing the leverage they had due to deteriorating balance of payment situation of the country and eagerness of the Finance Division to sign off this big loan. Imran (the Project Director) informed Tahir that in case the project is taken over by WB, he would resign from his position and the FBR may look for another person. That too would have been a potential crisis.

Tahir held meetings with the FBR management, as well as in the Finance Division, and convinced them to exclude PSW from proposed loan deliverables as steps had already been initiated for utilizing Goods Declaration fee for certain expenses and other financing options were also being explored.

6.4 Legal Framework Puzzles: Use of Existing Enabling Provisions or a New Law?

Tahir held long discussions with legal experts on this particular aspect. There were two options for the governing legal framework of PSW. The easier option was to use existing laws and cobble together a legal framework. The current law on electronic transactions, the Electronic Transactions Ordinance, 2002, partly addressed the primary legal requirements of an NSW by creating functional equivalence of paper and electronic documents and recognizing electronic signatures. Similarly, the Customs Act, 1969 allowed goods declarations and other processes to be handled electronically. However, these provisions were inadequate to support a comprehensive ICT-based regulatory integration. There were gaps in existing legislations, particularly with regard

to the other regulators governed by their respective legislations that made no reference to processes like electronic communications, digital signatures, integrated risk management, joint inspections, and other essential functions of the NSW.

The second option was to establish PSW through a standalone legislation providing for an appropriate governance structure for supervision and oversight of the PSW operating entity to protect public interest. This necessitated a well-developed legal statute that fully empowered the PSW's governance and operating entity and defined the relationships between various stakeholders including the lead agency (Customs), other government agencies, and the private sector. The NSC approved this second option. However, moving such a proposal through a cumbersome legislative process proved to be a bigger challenge than was anticipated.

6.5 Moving PSW Law Through a Partisan Legislative Process

This was a very challenging process and required an extremely personal outreach effort from Tahir. The Standing Committee of National Assembly on Finance was gridlocked as members of the opposition in the committee refused to discuss the legislation unless the Advisor on Finance appeared in person and presented it. The Advisor, for his part, was wary of the attitude of the opposition members, who had earlier embarrassed him for not being a member of the Parliament. He had decided not to appear before the committee. Hence, the whole business was gridlocked. And so, as it happened, for over three months, nothing moved.

In the meantime, PSW got the attention and support of the PM's Advisor on Trade, Investment and Industry, Abdul Razaq Dawood, who viewed it as an important reform initiative for ICT-based regulatory convergence. He was approached to seek the PM's attention and instruction to Advisor Finance for getting the legislation cleared through the committee. The same was done. As a result, the PSW Bill was approved by the National Assembly's Standing Committee on Finance in September 2020.

In addition, Tahir reached out to the opposition members to enlist their support. The key opposition members in the committee, Ahsan Iqbal and Aisha Ghaus Pasha, were approached with the argument that the PSW legislation was the outcome of a reform initiative by the PML(N)'s previous government and the then PM had issued orders for its development. So, passage of the legislation will be a joint credit for both the government and opposition, and a positive development for the country. This intervention proved very useful, as the bill was finally cleared by the committee.

The second challenge was passage of the bill through the Senate, where the opposition had a numerical advantage over the treasury benches at that particular time. Hence, the Standing Committee of the Senate was dominated by opposition members. However, proceedings there were surprisingly smooth as Chairman of the Committee Niaz A. Naik just read through the draft and he became a supporter of the legislation.

6.6 Analysis of Early Results of Regulatory Integration under INTRA Initiative

As already noted, Tahir had conceived the PSW in stages. An early exploratory project for integrating early adopters had been carried out in 2017-18. It had yielded a very promising result. In the 2019 WB report on Ease of Doing Business, Pakistan moved to 142 out of 180 economies surveyed for ‘Trading Across Borders’ indicator. This was an improvement of 29 positions from a year earlier and was at a time when only the first batch of eleven regulators had been integrated. In the 2020 report, Pakistan made another massive improvement and appeared at rank 111, an improvement of 31 positions.¹⁷ *Due to this very impressive performance, Pakistan was included in the list of 10 best reforming economies.*¹⁸ This was a huge relief and encouragement for Tahir and the PSW project team, as it clearly established that ICT offered a huge potential to leapfrog regulatory reforms through integration of trade regulatory practices. These early results also increased broad-based support for the PSW project which became very useful in many subsequent stages.

Analysis of Projected and Actual Cost

As noted earlier, an international consultant had estimated the project cost to be at **\$163 million**. This was based on a financing model involving consultancies and procurements through foreign loans and off-the-shelf components. An analysis of this cost estimate indicates that the total expenditure on the PSW so far is **\$5.251 million**. Out of this, **\$3.378 million** has been procured as technical assistance grant from partners like USAID, ITC, DFID and ADB. An amount equal to **\$1.753 million** has been spent from GDF, and **only \$0.120 million** has been utilized from PSDP. This clearly showed that leaving reform projects to loan agreements led to exorbitant costs, while limiting outcomes due to lack of ownership.

Launch of PSW

The Pakistan Single Window Act was passed by Parliament in April 2021. Subsequently, the Economic Committee of the Cabinet approved the issue of 12 notifications under the Act on May 26, 2021, operationalizing various provisions of the law. The Governing Council of the PSW has been notified, with Minister for Finance, Revenue and Economic Affairs as its Chairman and secretaries of the Ministries of Commerce, National Food Security and Research, Maritime Affairs, National Health Services, Science and Technology, Narcotics Control, Additional Secretary (Economic Affairs) of the PM Office, Member Customs (FBR) and Chief Executive Officer of the PSW Company as members. In addition, four additional members who are specialists

¹⁷ <https://www.doingbusiness.org/en/data/exploreconomies/pakistan>.

¹⁸ <https://www.worldbank.org/en/news/press-release/2019/10/24/doing-business-2020-accelerated-business-climate-reform-agenda-puts-pakistan-among-top-10-improvers>.

in areas related to international trade, logistics information and communication technology and corporate governance were also be included in the NSC.

The PSW Company has been incorporated under Section 42¹⁹ of Companies Act, 2017 to carry out functions of the PSW. As a first step, registration of users has been started and a biometric verification system has been launched using integration with NADRA and SECP. So far, over **5,915** users have got themselves registered with PSW. The PSW Act provides for a self-sustaining financing model based on fee for services.

7. Conclusions

- (i) ICT-led integration of regulatory functions through PSW initiatives has already resulted in improved efficiency and transparency. Independent analysis by WB's Doing Business project has recorded an improvement in trading across the indicator, as Pakistan has moved 60 places in the ranking of 180 economies, from 171 to 111. With the rollout of comprehensive PSW in 2021, it is certain that further improvements will be recorded.
- (ii) Development of PSW clearly indicates that homegrown reform projects are the better alternative to conceiving technology-driven reforms that seek foreign loans and implementation consultants, both in terms of project outcomes as well as costs. Public policy practitioners must learn to prefer challenges of the former as against administrative convenience of the latter option which comes at huge cost.

8. Lessons Learnt

Certain lessons have been learnt both in terms of what was done right and contributed to success of the project, and also things which did not go as intended or caused delays.

(i) Personal

One personal lesson learnt was that selection of an appropriate person to lead the project on long-term basis is crucial. Tahir's success in this regard ultimately proved to be most critical factor in completion of project. One big omission was Tahir's inability to develop an institutional linkage between the PSW and PM Office. This could have been done by nominating JSEA on NSC of PSW. The link was personal, and with change of government and his transfer, that vital support was lost and led to many delays. Thirdly, the course chosen by Tahir to resolve turf rivalry between FBR and Ministry of Commerce (para 5.4) led to the loss of precious time. Instead of calling for a summary with views of both divisions, it would have been better to call a meeting

¹⁹ The provision for setting up a not-for-profit association i.e. one that applies its profits or income in promoting its objects only and prohibits the payment of any profits, income, dividend or proceeds to its members.

of both and request the SPM to decide the matter. This would have saved a few months at the critical inception stage.

(ii) Organizational/External

For organizations, one major lesson is internalization of reform processes for harnessing benefits of ICT. Digital approaches in governance hold promise, and actualization of the same depends on creating ownership and leadership of reform initiatives within the department. The Customs Department was able to develop a core team of officers who worked on the project for four years till its completion. One important organizational omission that led to a lot of problems in PSW was absence of outreach and advocacy. The FBR and project team could not do that effectively, leading to increased resistance from other departments accustomed to long traditions of manual work. Moreover, Customs could have expedited the implementation of the project by allowing use of GDF early. A huge amount was available with department while it was grappling with financing challenges. It was done at a much later stage. A decision by the FBR that led to delay in software development for NSW was deputation of software developers from PRAL. The company was apprehensive of NSW, as in their view this would have ended the monopoly of PRAL on FBR automation. Instead of deputing its existing staff, it started a hiring process that took months.

9. Recommendations

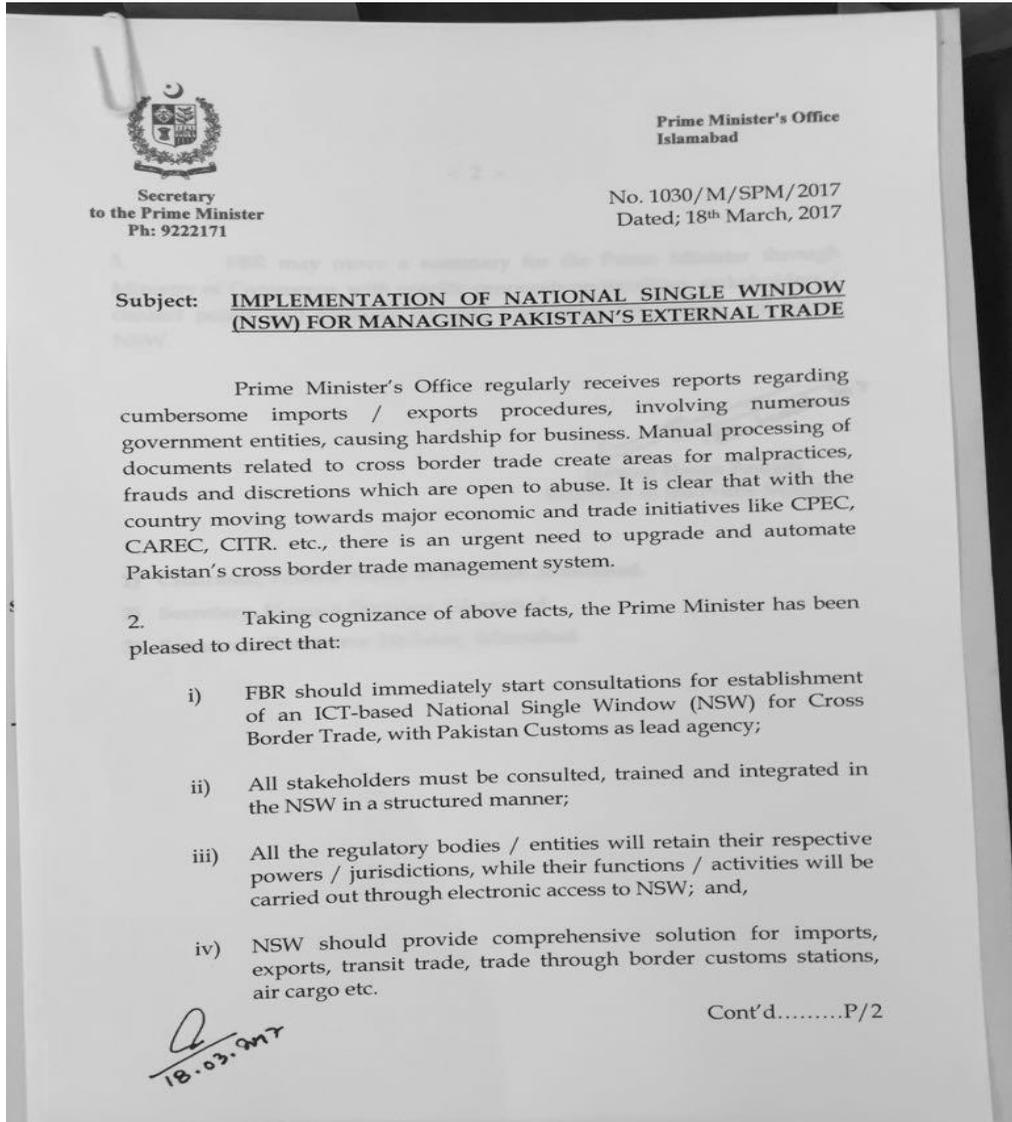
- (i)** While ICT-based governance reforms have an immense potential for improving service delivery through integration of fragmented functions, success of such initiatives will depend on creating ownership of all, as well as strong leadership roles within the public sector. The current approach of outsourcing reform initiatives to donors, with consultants in lead roles and departmental project directors being changed frequently, leads to waste of expensive loans and low efficiency yields for the stakeholders. This can be achieved through following steps:
 - (a)** Developing reform champions within relevant departments/service groups;
 - (b)** Including project management training in mandatory training programs;
 - (c)** Development of reform vision by relevant public policy practitioners as against consultants; and
 - (d)** Assigning public sector project managers to work during the whole project lifecycle
- (ii)** The practice of signing loans for projects of limited utility, without extensive stakeholder consultation, must be curtailed. Increasingly, loans in foreign

Leveraging ICT for Integrating Regulatory Functions for Cross-Border Trade

currencies are signed for balance of payment consideration, with no tangible project utility. In case of PSW, there is a massive difference in project cost indicated by consultant and actual cost incurred through innovative financing strategy. Hence there is a need to undertake:

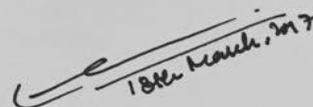
- (a)** Capacity-building of officers to work out financing options, including grant windows of development partners and locally available resources within and outside PSDP
 - (b)** Development of a foreign loan policy, prohibiting project loans for balance of payment purposes
- (iii)** Based on experience with PSW, a reform initiative for investment facilitation is recommended. One major obstacle to investments are manual processes for regulatory approvals, utility connections, land acquisition, etc. As an international best practice, ICT can be leveraged to provide virtual one window to prospective investors for all types of business inquiries and approvals through the federal Board of Investment. This can be done by:
- (a)** Initiating a project (modelled on PSW) to integrate investment related functions of all federal and provincial ministries
 - (b)** Have prospective investors submit all relevant information through a single interface of BoI, which will automatically be disseminated to all relevant entities (SECP, FBR, relevant industrial zones, gas suppliers and electricity utilities, etc.), with time stamp of requests. Stipulate that all entities be bound to respond within the required period
 - (c)** BoI may charge service fees to maintain and upgrade system

Annex A



-: 2 :-

3. FBR may move a summary for the Prime Minister through Ministry of Commerce, with specific proposals on timelines, stakeholders / contact points and National Steering Committee for smooth roll-out of NSW.



(Fawad Hasan Fawad)
Secretary to the Prime Minister

- 1) Chairman, Federal Board of Revenue, Islamabad.
- 2) Secretary, Finance Division, Islamabad.
- 3) Secretary, Commerce Division, Islamabad

Annex B

PRIME MINISTER'S OFFICE
ISLAMABAD

Subject: IMPLEMENTATION OF NATIONAL SINGLE WINDOW (NSW) FOR MANAGING PAKISTAN'S EXTERNAL TRADE

10. Prime Minister has seen and been pleased to observe as follows:
- i. The need for a National Single Window(NSW) for managing Pakistan's external trade in efficient and transparent way was deliberated upon in detail, and a conscious decision was taken to give FBR a lead role keeping in view pivotal role of Customs in implementation of trade regulations;
 - ii. FBR owns and operates the automated clearance system, which will now form the backbone of National Single Window;
 - iii. FBR has the requisite manpower, IT infrastructure and legal powers to develop and operate integrated trade solutions at the border areas, ports and airports;
 - iv. Most of the reforms for establishing NSW relate to customs procedures and processes; and,
 - v. Commerce Division and all other trade related facilitation and regulatory Ministries/Organisations will retain their respective regulatory jurisdictions, as was clearly mentioned in Prime Minister's directive dated March 18th, 2017.
11. Keeping above in view, Prime Minister has been pleased to approve proposal in Para 5 of the summary, with the following stipulations:


13.10.2017

- i. All the Federal Divisions/Ministries/Entities (detailed in Annex-III) to provide complete assistance to FBR in formulation of National Single Window Document which will outline the required procedural reform along with specific timelines for definitive outcomes for improved governance of cross border trade;
- ii. A NSW focal person shall be nominated by each Ministry/Division, not below the rank of Additional Secretary, for coordination with NSW Project Management Office;
- iii. Once the document is prepared, Revenue Division shall initiate a summary for the Prime Minister for approval of a National Steering Committee with an appropriate representation; and,
- iv. Keeping in view the fact that significant time has passed since earlier orders were issued on the subject, FBR must complete the exercise for finalizing NSW document within thirty days positively.

[Handwritten signature]

(Fawad Hasan Fawad)
Secretary to the Prime Minister
13-10-2017

Chairman, FBR

No. 2657/28/17

Cc: Secretary Commerce
Secretary National Food Security & Research

A Case of Money Laundering in the Education Sector – Analysis of Operational Methodology

Syeda Naureen Zahra¹

Introduction

For us in the taxation system, the first week of every quarter is always the busiest. Hordes of taxpayers storm the offices of Commissioners, Inland Revenue, for exemption certificates. These certificates are issued by the Commissioner after deposit of taxes in advance by the taxpayers for the whole year so that they wouldn't have to pay withholding tax on any further transactions. It was on one such Monday morning of the first week of January when Maheen Hussain, Commissioner Inland Revenue (CIR), Corporate Regional Office Lahore, was exposed to the notorious world of money laundering.

An education sector company, K-Education (Pvt.) Ltd., applied for exemption from deduction of withholding tax u/s 152(5A) of the Income Tax Ordinance, 2001 (ITO, 2001). The exemption was claimed on remittance of \$49.3 million on account of payment for purchase of 16,700 ordinary shares from NS Mauritius (Pvt.) Ltd., a Mauritius-based non-resident company. The capital gain on sale of shares in the hands of the non-resident company had justifiably been claimed as exempt from withholding tax in terms of Article 13(4) of Double Taxation Treaty executed between Pakistan and Mauritius. On the face of it, there were no red flags. However, a deeper investigation into the case revealed very complicated networks and channels used for money laundering. The weaknesses in the tax system and loopholes in the execution system of double taxation treaties which facilitate these money laundering methodologies also came to surface.

Aim of this Case Study

This study aims to expose how an apparently routine education sector case put up for exemption from withholding tax turned out to be linked to a massive money laundering network of shell companies when probed deep enough. The case study discusses loopholes in the tax system and in double taxation treaties and how money launderers take advantage of these loopholes. It also suggests the way forward for the Federal Government to plug the same. Another important aspect which is discussed was the dilemma faced by the Commissioner in charge who kept moving on with the investigation while handling extreme external pressure to stop further enquiry into the matter.

¹ Inland Revenue Service, 113th NMC (nooreen_zahra@hotmail.com).

Statement of the Problem

Tax evasion is rampant in Pakistan. It is one of the major sources of black money which is then laundered by big businesses, sometimes belonging to seemingly kosher and unsuspected sectors like education. It is then re-injected back into the company's capital as white money after routing it through a network of shell companies and bank accounts. These money laundering practices are also facilitated by weaknesses and loopholes in the tax system in Pakistan which hurt the economy in a big way.

Key Question

What is the operational methodology used by an apparently unsuspected business enterprise in the education sector used for money laundering and the loopholes/weaknesses present in our tax system which facilitate such money laundering methods?

Section I

Facts of the Case

Kashif, an Inspector of the Commissioner Inland Revenue,² placed a file on top of the pile of files with the words, “Madam, please have a look at this file first. The CA firm has requested for the early processing of the exemption certificate as they have to make payment to a non-resident company for purchase of shares,” he said with his signature smile.

“Kashif, will these ever end? I have decided dozens of these exemptions already!” the CIR responded with a rhetorical question.

He smiled and left the room. The CIR put the coffee mug aside thinking that enough caffeine had already been pumped into her system to get her through at least the first half of the day. Then she picked up the file. Shoving files and papers aside, she made room for this file and started with page 1 of the correspondence side of the file. After 15 minutes of going through the file, she realized it was not her routine exemption file. Usually, the exemption was to be issued on imports or local sales. Under the system, the taxpayer having paid the due withholding tax(es) in advance, applies for exemption from further withholding during the rest of the year. But in this case, transaction of money was not on account of sale or purchase of raw materials or finished goods; instead, it was in connection with payment being made for purchase of shares from a non-resident company.

² Inspectors are the “non-gazetted” rank and file employees who rarely rise to become “officers” – individuals who are selected through the civil service examination.

As this was an unusual case, she had to brush up her tax law skills. She picked up the 'bare acts' book³ and opened the concerned section. Section 152 of the Income Tax Ordinance, 2001 required deduction of advance tax when a payment is made to a non-resident. In the instant case, an education sector company, K-Education (Pvt.) Ltd., had made an agreement to purchase shares from a Mauritius-based non-resident⁴ company, NS Mauritius (Pvt.) Ltd. However, Article 13(4) of the Double Taxation Treaty between Pakistan and Mauritius clearly provided that the capital gain arising to the seller company will be taxed in its country of residence.⁵ Apparently, everything looked fine according to the law. There was no reason to reject this exemption request. But, deep down, she had a gut feeling that there was something more about this case. Though she did not have the answers yet, her proverbial gut had never cheated her before. She had only 30 days to decide after which the exemption would automatically be allowed by the system under Section 152(5A) of ITO, 2001.

As the first thing a tax officer checks for in such transactions is the source of funds. She scoured tax records of K-Education for a clue regarding the source of funding. It didn't take her long to see that an interest free loan of Rs. 6.97 billion (equivalent to \$49.3 million) was extended to K-Education by another education sector company, Learning Services (Pvt.) Ltd. for purchase of these shares. "*That's huge!*" she said to herself. This fact itself raised the first red flag. Two education companies, one giving big money, free of cost, to the other to buy shares from a non-resident company! One thing her training over the years as a tax officer had taught her was to slow things down to a micro level whenever a red flag popped up and then replay these. And so it was, she replayed everything.

Something did not add up. Businessmen make wise choices. They don't spend until they hope to make a lot more from their spending. So, what was in it for the loaning business entity? A little more digging and she realized that the directors of both K-Education and Learning Services were the same. So, they were associate companies,⁶ 'sister concerns' as we call them. But why didn't Learning Services purchase these shares directly? Why use K-Education Pvt. Ltd.?

Her hunch had been right. This was not her routine tax exemption case. She rang the bell and asked her peon to get Kashif.

"Yes, ma'am," Kashif raced in with another bundle of files.

"Kashif, please ask the chartered accountancy firm people to come in tomorrow. I'd like to take this file home and do some research." The case was represented by one of the three top chartered accountant firms in Pakistan.

³ In legal parlance, a collection of the texts of the laws and not a book that has interpretations of such laws.

⁴ Section 83 of ITO, 2001.

⁵ Article 13(4), Convention Between Islamic Republic of Pakistan and The Republic of Mauritius for the Avoidance of Double Taxation and The Prevention of Fiscal Evasion with respect to Taxes on Income.

⁶ Section 85(3)(f) of ITO, 2001.

“Right, ma’am,” he replied and raced back out.

The CIR had already studied K-Education (Pvt.) Ltd. Now, it was the turn of Learning Services. It was all thanks to technology that Federal Board of Revenue (FBR) officers could now study tax returns and audited accounts of any taxpayer registered with the FBR online. Though tired, she downloaded returns of last ten years along with audited accounts. The day ended. She got back home and had her dinner early in her room. She then unfolded her decade-old laptop and placed the file before her, feeling a little excited to work over this case.

She started with the latest year’s return of Learning Services (Pvt.) Ltd. Hours passed and she still couldn’t find anything unusual. She was about to wrap things up when she saw sale of shares in audited accounts of year 2008. With droopy eyelids, she delved a bit further into the audited accounts and *voila!* Years ago, Learning Services had sold its 17,600 ordinary shares to a Mauritius-based company, NS Jhelum for \$27.5 million. This non-resident company later on changed its name to NS Mauritius from which the same shares were now being purchased for \$49.3 million by K-Education. The intended amount of remittance, \$49.297 million, was inclusive of capital gain as per following break-up:

Table 4: Capital Gain to NS Mauritius (Pvt) Ltd.

Sale price of shares sold by Learning Services – A	\$49.297 (M)
Purchase price of shares to be purchased by K-Education – B	\$27.500 (M)
Capital gain on sale of shares (A – B)	\$21.797 (M)

Simply put, Learning Services sold its shares to a non-resident company years ago and was now buying its own shares back through a sister company at almost double the cost. New questions popped up in her mind. Does the company want to evade tax on some transactions or does it want to park illicit money at an offshore location? This kept on getting more and more interesting. She decided to call it a night because now she needed to have a meeting with the taxpayer’s consultants from the accountancy firm. Only they could fill in the blanks here or maybe they’ll create more blanks. She dozed off with these thoughts in her head.

The next morning, the CIR had excitedly started discussing her findings with her Inspector, Kashif, when the peon brought the card of the consultant representing the interesting new case. This was the visiting card of the partner of the accountancy firm. *No doubt, big money meant big guns.* She thought to herself while putting the file aside and motioning the peon to let the consultant in. After exchange of pleasantries, the consultant started discussing the details of the case. She patiently let him explain what she already knew about the case. When he was done, she bluntly asked him one question that had piqued her interest the most in this situation.

“Why is Learning Services giving K-Education the money to buy back its own shares at almost twice the price it had sold few years back?”

His eyes widened for a brief moment and he went all quiet. Either he was not expecting the department to dig this deep this soon or he was not expecting her to get so straightforward at the first hearing. He took a moment and then resumed talking.

“Madam, as per the operative laws of our country, this transaction is not illegal. And you will notice that the capital gain made by the non-resident company ensuing from the sale of shares in this case cannot be taxed in Pakistan under the double taxation treaty signed between Pakistan and Mauritius,” he said this while placing a bundle of pages before her with parts of it highlighted for the reader’s convenience.

She had already gone through the treaty contents. He was right. The gain arising out of this transaction was to be taxed in the country where the alienating (or selling) party was a resident in the year. In simple words, since the selling company had no footprint in Pakistan, we could not tax its capital gain. The law was clear. She knew this from all her file reading last night so she had no intention of dragging the case on this point. A voice at the back of her head was telling her to explore more, may be in some other areas.

The hours passed by and evening caught up with the afternoon. In no time, she found herself staring out of the window of her more than twelve years old *sarkari*⁷ Cultus as her driver honked and meandered his way through the busy Lytton road. Everything was cold and grey. It had started drizzling before she reached home.

After a quick early dinner, she found herself in her study chair with the same file opened before her, a cup of coffee with rising twists and twirls of white steam to her left and her laptop to her right, picking the file from where she had left off yesterday. For the next few days, she held various meetings with the representatives of the applicant company while trying to bring further clarity to the matter at hand and requiring various documents from the taxpayer. The summary of the proceedings was now placed in front of her in a tabular form.

⁷ “*sarkar*” is an Urdu word with many connotations; however, in simple meaning it means the government and *sarkari* means official.

Table 5: Summary of the Proceedings

Documents Requisitioned	Rationale	Reply of the Taxpayer
Audited Accounts of NS Mauritius (Pvt.) Ltd.	To verify declaration of income/ investment with Mauritius Tax Authorities	Not provided with the contention that non-resident person is not required to submit the same u/s 83 of the Income Tax Ordinance, 2001
Name of the Directors of NS Mauritius and their nationalities	To examine if there is any connection with the Directors of K- Education and Learning Services (Pvt.) Ltd.	-do-
Copy of share subscription agreement executed between NS Jhelum (Pvt.) Ltd., [now renamed as NS Mauritius (Pvt.) Ltd.] and Learning Services (Pvt.) Ltd.	To examine the terms and condition of the agreement between NS Jhelum (Pvt.) Ltd., (now renamed NS Mauritius) and Learning Services (Pvt.) Ltd.	Provided after persistent inquiries through numerous meetings and correspondence
Mode of valuation and authority determining the value of shares	The shares being purchased constituted 70% of book value of Education Services (Pvt.) Ltd. On the contrary, it constituted 25% of net assets of the company when they were sold to NS Jhelum (Pvt.) Ltd., now renamed as NS Mauritius	Not provided and reiterated that the valuation was duly verified and endorsed by the State Bank of Pakistan while issuing approval for remittance of the amount

During the proceedings, it was disclosed that \$27.5 million had already been remitted with the approval of State Bank of Pakistan without any intimation/approval from the Commissioner Inland Revenue.

Section II

Case Analysis

2.1 Tax Evasion and Tax Avoidance

“*Tax evasion*” and “*tax avoidance*” are two interesting concepts in taxation. These terms are entwined and yet have their individual existence. **Tax evasion** is defined as the act of reducing or minimizing the amount of tax liability by using illegal methods⁸ whereas **tax avoidance** is management of one’s financial affairs to minimize the liability within the law.⁹ While there is absolutely no tolerance for tax evasion before the eyes of law, unfortunately, tax avoidance schemes are run in the widely available grey areas. Tax consultants and lawyers identify weak areas of taxation laws and abuse these grey areas. Over the years, states identify these grey areas and make stronger and more definite, all-encompassing legislations. But this takes time as laws mature over decades when new scenarios come to light and are adjudicated upon by the courts. In the absence of legislation, enforcement agencies cannot do much and courts almost always give relief to the petitioners. One reason she wanted to dig deep into this case was to at least clearly identify such loopholes and try to get these plugged once and for all for future tax avoiders.

2.2 Red Flags

The Income Tax Ordinance when read with the relevant treaty did provide cover to the transaction. But there were red flags and it was time to pen these down one by one.

2.2.1 Valuation of Shares

At the time of original sale of shares by Learning Services, the value of the shares was 25% of the net book value of the company’s assets. For ease of understanding, “book value” is the net value of a company's assets found on its balance sheet as recorded in the books of accounts.¹⁰ However, at the time of purchase of shares by K-Education, the same shares constituted 70% of the net book value of the Learning Services’ assets. Therefore, the sale price seemed exuberantly high and that also without being evaluated by any independent authority.

2.2.2 No Regulations for Evaluation of Intrinsic Value of Shares

There are various concepts of valuation of shares in accounting. Two are particularly important. One is book value as explained above and the other is intrinsic value. The latter “**intrinsic value**” is a rather complex concept. As discussed earlier, the taxpayer

⁸ <https://www.collinsdictionary.com/dictionary/english/tax-evasion>, accessed on December 10, 2020.

⁹ www.Dictionary.com, accessed on December 10, 2020.

¹⁰ www.investopedia.com, accessed on December 10, 2020.

was required to clarify as to what was the mode of evaluation of shares to be sold by NS Mauritius. In response, the taxpayer contended that the sale value was in fact the intrinsic value of the shares. **Intrinsic value** may also be differentiated from the **market value** which is a company's worth based on the total value of its outstanding shares in the market¹¹ whereas the intrinsic value is the actual and true worth of these assets estimated through the use of fundamental and technical financial techniques.¹²

After spending an hour with the audited accounts of K-Education (Pvt.) Ltd. and its share purchase agreement with NS Mauritius and State Bank of Pakistan's regulations, the following revelation came to light: *There were no regulations in the country for evaluation of intrinsic value.*

If the relevant authorities had framed regulations for ascertaining intrinsic value, this would become increasingly difficult for the tax avoiders to take advantage of this gap.

2.2.3 Treaty Shopping

The capital gain arising to the non-resident company was to be remitted without being taxed in Pakistan as per Double Taxation Treaty (DTT) provisions between Pakistan and Mauritius. But interestingly, when the Mauritius Income Tax Act 1995 was consulted, there was no provision to tax the capital gain in Mauritius.¹³ Therefore, in the instant case, due to a good **treaty shopping** facility available, the money would remain untaxed in Pakistan as well as in Mauritius.

2.2.4 Transactions Between Associate Companies

The next red flag obviously was K-Education and Learning Services being associate companies having the same directors. Learning Services which had sold its shares to the non-resident company had also given a huge amount as **interest-free loan** to K-Education, a sister company to buy back the same shares.

2.2.5 Part of the Amount Already Remitted

Another red flag surfaced during the proceeding was that out of total amount of \$49.3 million, an amount of \$27.5 million had already been remitted, having been approved by State Bank of Pakistan without the prior approval/intimation to the CIR. There was, thus, a total lack of communication between two prime state agencies involved in such transactions, i.e. the FBR and SBP.

¹¹ www.investopedia.com, accessed on December 10, 2020.

¹² www.investopedia.com, accessed on December 10, 2020.

¹³ Mauritius Fiscal Guide, KPMG, 2017-18, page 4.

Section III

Money, Politics and Education Business

So, this was what the CIR knew so far. Learning Services, an education sector private limited company wants to buy back its own shares from a foreign company NS Mauritius through K-Education (Pvt.) Ltd. A huge sum of about seven billion rupees was given to K-Education for this purpose as an interest-free loan. *“These education businesses must be minting money,”* she wondered to herself. Her initial investigation had revealed that they were sister concerns because of common directorship. But, the real question was who were these directors? She opened the relevant form of both companies’ incorporation documents. They belonged to the same family. Makes sense. Private limited companies are usually incorporated by family members to keep the shareholding within the family. But this last name of the directors rang some sort of a bell. Was this not a renowned political family running a big business of school education system? She googled to confirm. No sooner had the search engine presented her with its finding that she heard her phone ringing. With one eye on the screen, she answered the phone.

“Maheen, are you still in office?” asked a familiar voice.

It took her a moment to realize that it was the Chief Commissioner, her boss. “No, Sir, it is well past office hours. I left at 5 p.m. Is everything ok?” She glanced at the screen to see if he was calling from his landline, which he was. It must be important if he is still in office and offered no pleasantries as is usually his style.

“Maheen, you have a case. K-Education (Pvt.) Ltd. Why is its exemption request still pending?” His voice was a little tense.

“Sir, I am working on it. We only received the application a few days back and a lot of revenue is involved. It will take some time,” she responded plainly, as her eyes were now staring at the laptop screen. The directors indeed belonged to a very powerful political family. So many thoughts passed through her mind hidden under three words: politics, money and education business.

She heard her boss saying something again. “Well, it is a high-profile case. Chairman FBR has personally asked to expedite this case. Please discuss this case with me first thing in the morning.”

“Right, Sir. I will,” she said with new thoughts rushing in her head. *These are quasi-judicial proceedings. No one should be interfering to influence the final decision.* The stakes had just gotten higher. She had always hated it when someone interfered in her case proceedings.

This was a big case. About fifty million dollars were to be remitted outside Pakistan, equivalent to almost seven billion rupees. The tax on such a huge sum would also be in billions. “I have to prepare the case well. For both scenarios: issuance or rejection of exemption certificate,” she thought.

Putting the phone aside, she got back to work picking up the trail of thought from where the phone call had interjected it. The one thing that she was certain about was that this transaction could not be brought directly into the ambit of taxation laws. Having neatly jotted down all the points, she glanced at the wall clock. It was almost three in the morning. Sleepy but excited, she called it a night.

It was 9:00 in the morning. Her phone rang. It was her boss.

“Maheen, where are you?” he asked with a mixture of tension and displeasure.

“Sir, I am sorry. I overslept. Was studying the K-Education file till late night. I’ll be at work within half an hour and will brief you about what I found,” she replied.

“Please hurry and come straight to my office,” he said and hung up.

Exactly thirty minutes later, she reached office and headed straight to the Chief’s office as directed.

“Morning sir, sorry for the delay,” she said as soon as she entered his office. Putting the file next to her, she sat right across the Chief. “Is everything okay sir, you sounded rather tense on the phone?” she asked.

“Maheen, this is not your usual case, big people are behind it. Are you planning on rejecting this exemption?” he asked without replying to her query directly.

“Sir, I have made a brief of the case. Let’s go through the facts first,” she said while placing the brief before him.

He put on his specs and started reading without saying another word. After fifteen minutes of reading and explaining and going through the relevant documents, he was more concerned than before.

“Sir, I have just explained the details of the case to you. There are many red flags and billions of rupees’ worth of revenue is involved. Even otherwise, it appears like a case of money laundering. I need some more time to collect enough information to connect the dots,” she replied completely ignoring the anxious undercurrent in his voice.

“Try to understand Maheen. There are very powerful people behind this case and if the share purchase agreement is genuine, the money is actually being remitted outside and

the treaty covers this transaction as exempted, what is stopping you from issuing this exemption certificate?” he asked in a tone that was both firm and confident now.

Truth be told, she had asked herself the same question a million times for the past two days. She had tried to answer herself honestly, and so it was that she produced the same answer before her boss.

“Sir, it is definitely very convenient for me to take the easier route. But I believe that we, the Inland Revenue officers, are not only the enforcers and collectors of revenue but we are also custodians of the revenue frontiers of our country. Our duty is deeply linked to the overall economic well-being of state and society. If we see a transaction, which dangerously teeters close to the domain of anti-money laundering laws, should we just close our eyes and investigate it to the extent of our jurisdiction only? Would it be doing justice to our duty as a civil servant? Sir, I intend to request for more time to further investigate, prepare a report accordingly and forward it to the concerned authorities. With your permission, of course,” she finished her retort on a signature *sarkari mulazim* phrase.

He stared at her for a while without saying anything and then reclined into his chair, “Fine, Maheen, dig as deep as you want and prepare your case. If I am convinced, I’ll forward it to the authorities concerned. Meanwhile, I’ll talk to FBR Member Policy and seek his guidance on the matter,” he said.

She knew the meeting had come to an end. She picked up the file and left the room. Once back in her office, she asked her peon to bring Kashif in. Moments later, Kashif was seated before her with his serious mode on. She shared all the findings of last night and what had happened in the Chief’s office in the morning.

“So, what have you thought, madam?” he asked.

“I don’t know, Kashif. I know that legally, there is little we can do. But sometimes our duty calls for more. It is not our routine tax case, Kashif. We work day in and day out for every single penny of tax that we can collect. How can I let this money go, money that could build hospitals, schools and roads? Money that our country so badly needs. Money that we borrow and are never able to pay off, so we borrow more. Knowing all this, how can I let go of this money,” she concluded the sentence and felt a wave of warmth sweeping through her heart. She felt confident and convinced.

Kashif had listened to all of this intently and quietly.

The CIR had known Kashif for two years now. He was in his early forties but his time in the department had led him years ahead of his age. He was professionally sound and also the most trustworthy staff member of the Commissioner’s office.

“Well, if we are going down that road, we better be prepared. Armed to the teeth,” said Kashif, after a long pause with a thoughtful look on his face. Now, they had to investigate further and make a strong case before the Chief Commissioner.

A moment later, Kashif had left the room with what once was just an interesting file. Now, it was the most important file in the office. The large banyan tree outside the window moved slightly. The Commissioner’s office was on the fourth floor of a huge building built sometime in the 1960s. Having withstood more than half a century, the building still stood tall in the heart of Lahore near the famous Old Anarkali bazaar. The banyan tree was old and wide too. Its branches gnarly and twisted. They reminded her of the impossibly intricate network of transactions that go through money laundering nexuses. She knew such channels were very hard to trace even when there were international treaties between countries to counter and check such transactions. But once such transactions had become doubtful, how could one let the revenue go without probing hard enough. Especially in these times when money laundering and tax evasion had eaten the very foundations of the country’s economy.

Section IV

More Investigation, More Clues

The CIR got to the office earlier than usual to work on the pending files from the previous few days so that she could focus entirely on ‘the file’. Kashif had been working on the file for the past few days.

“Madam, you were right all the time. This definitely seems to be a classic case of money laundering,” said Kashif after ensuring the door was closed behind him.

“OK. What do you mean?” she asked, her heartbeat and excitement levels both rising. “Let’s rewind things, in slow-motion mode. Since the beginning, we have been wondering why one education sector company would give an interest-free loan to another education sector company to buy back its own shares from an offshore company which begs the question: why not buy its own shares directly? It makes no sense. Or does it?”

4.1 Stages of Money Laundering

“There are various methods to launder money, each having a certain level of complexity associated with it.¹⁴ Nonetheless, in a classic case of money laundering, three interlinked stages can always be identified, i.e. placement, layering and integration. In the **placement** stage, the process starts with the physical placement of

¹⁴ Waseem Ahmad Qureshi, “An Overview of Money Laundering in Pakistan and Worldwide: Causes Methods, and Socioeconomic Effects”, *University of Bologna Law Review* 2, no. 2(February 11, 2018): 300-345

black money in the financial infrastructure which may be done through investment in financial and non-financial assets. In **layering** stage, the finance managers conceal the source of money through a seemingly infinite number of transactions, bank accounts and book keeping tricks to the extent that it becomes virtually impossible to trace back to the origin of the money. The **integration** of money is the phase where laundered money is brought into the economy, usually through the banking system.¹⁵ The money trail has just started,” Kashif explained.

“So, if I apply these three stages to this case, original investment of \$27 million would have been the out of books profits of Learning Services accumulated through tax evasion. You know how these education businesses earn huge profits and under declare these profits to evade tax. This money would have then been *placed* outside the country through undocumented means to be later on brought back as investment through a shell company. The next step would have been to change the name of the shell company, create a new sister concern in Pakistan and give a huge interest free loan to this sister concern to undertake further transactions. This would be the start of *layering* stage. Next comes the *integration* of this money in the books of the company in the shape of foreign investment and apparently now the applicant company wants to reinitiate this cycle of money laundering by remitting an exorbitant amount for purchase of the same shares,” the CIR said connecting the dots.

4.2 Link with Panama Leaks/Network of Shell Companies

“Madam, remember Mr. Satish Lalani, the main shareholder of NS Mauritius who signed the share purchase agreement with K-Education?” Kashif asked.

“What are you getting at, Kashif?” The CIR knew he had found something that she had missed.

“As per ICIJ¹⁶ investigations, Satish Lalani is linked with five offshore entities that have appeared in Panama Leaks,” he said. His voice hushed and guarded.

“What?” she said after an awkward pause.

“There is more, madam,” Kashif said with a stern expression on his face. “The money is not going to Mauritius as it should be as per the share purchase agreement.”

“Then where is it going?” asked the CIR.

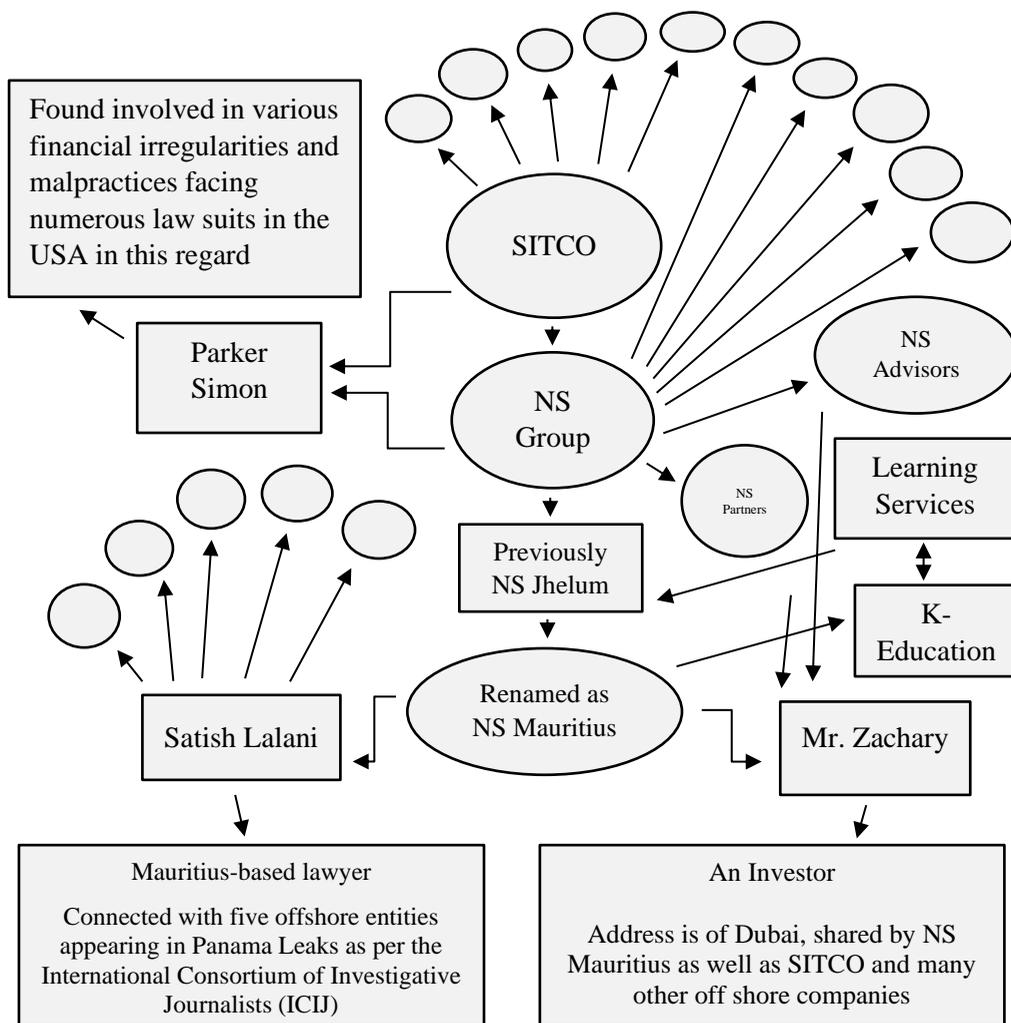
“To an account in New York. The money already remitted has gone to the same account,” he replied.

¹⁵ Ashley Williams, “3 Stages of money laundering – How AML screening guards your business”, Shufti Pro, online blog, July 10, 2019.

¹⁶ The now well-known International Consortium of Investigative Journalists that revealed the Panama Papers and is now behind the Pandora Leaks.

“Hmm. Let me guess. There is more?” she asked with a bland expression on her face. “Yes, madam. The address of NS Mauritius given on the share purchase agreement is that of one of Mr. Zachary, an investor, c/o SITCO (Mauritius) Ltd. His official address as per the agreement is Shangri-La Hotel Office Tower, Dubai, UAE. Same address is being used by a number of offshore companies managed under NS Group of Companies having offices all over the world. However, the top man is Mr. Parker Simon who manages the network of all these offshore companies through SITCO (Mauritius) Ltd. Mr. Parker Simon is also involved in various financial irregularities and is facing multiple law suits in the USA.”

“Let me try to explain this network using a flow chart,” he responded.



“Hmm. So, even though we know a little more about a lot more now, we at least are sure that this particular transaction is not as simple as the taxpayer would have us believe,” the CIR mused as she relaxed back in her chair.

“Yes, madam. And that’s what I meant when I said this is just the beginning of the transaction. The money, most probably, will be routed to other countries as well. We may never get to the bottom of the whole mystery as to where would the transaction culminate and for what purpose is the money being remitted but it surely is not payment for purchase of shares,” said Kashif in an agreeing tone.

“Very well, Kashif, let us now prepare a presentation. We’ll discuss this with the Chief Commissioner in the afternoon,” she said in a concluding tone.

4.3 Interactions with the High-ups

4.3.1 Presentation to the Chief Commissioner

Hours later, the CIR was sitting in the huge office of the Chief Commissioner with Kashif beside her, all ready to share this confounding information with the Chief. The Chief did not utter a single word throughout the presentation, his eyes focused on every single slide.

“There are indeed multiple red flags and serious risk areas, Maheen,” the Chief said, once the lights were switched back on.

“You’re right, sir. That’s why I intend to write to the Board (FBR) for condoning the time limitation in this case as it is a special case and requires detailed investigation,” said the CIR.

She took her leave from the Chief and walked up to her office. Once again, she called Kashif and asked him to prepare a letter, through proper channel, requesting Member Operations for condonation of time limitation in the instant case as well as obtaining following information through International Taxes Wing from the tax authorities of Mauritius so that the case may be proceeded in accordance with the law.

- (i) Status of NS Mauritius (Pvt.) Ltd. previously named as NS Jhelum (Pvt.) Ltd. whether incorporated in Mauritius or a permanent establishment of another company.
- (ii) Names and nationalities of directors of the NS Mauritius (Pvt.) Ltd.
- (iii) Detail of shareholders of the NS Mauritius (Pvt.) Ltd.
- (iv) Tax returns for the last 10 years along with audited accounts in respect of NS Mauritius (Pvt.) Ltd.

- (v) Details of directors of the SITCO (Mauritius) Ltd., the company, NS Mauritius is sharing the address with.

Kashif hastily scribbled the dictation and left the room.

4.3.2 Consultation with the Member Policy

The next morning, the CIR presented the Chief with a copy of the letter. The Chief gave it a cursory reading and approved it with a slight nod of his head. The Chief then picked up his phone and called Member Policy's office. Member Policy was not only an honest officer and a thorough professional but was also very close to the Chairman. "The Member has agreed with the condonation request but he recommends to tread very carefully in this case as very influential people are involved and there may be some serious repercussion for both of us. Nevertheless, Member Policy has promised to arrange a meeting with the Chairman. Maheen, prepare a detailed presentation. We might be travelling to the capital very soon," said the Chief.

4.3.3 Meeting with the Chairman

The CIR could barely sleep that night. She got up early and double-checked the files and essential auxiliary documents. A couple of days later, she was sitting on the opposite side of a huge mahogany table with the Chief Commissioner seated beside her in the FBR headquarters. The Chairman was in the committee room attending an important meeting with a delegation from the Chamber of Commerce. Moments later, the committee room door flung open and the Chairman entered the room.

"Should I begin the presentation, sir?" asked the CIR after the exchange of pleasantries. "No, Madam. There is no need for further elaboration. Member Policy has explained the case to me already. Just bear in your mind before you make any decision that these things have a way of firing back at you. Right now, I have an important meeting to attend at the Prime Minister's office," he said.

With these words, he rang the bell, motioned his peons to pick up his files and bag and left the room.

"Well, that was unexpected," the CIR thought to herself.

Her journey back home was filled with even more anxiety than had been her journey to the FBR headquarters.

A few more days passed and condonation for time limitation was still being awaited despite several calls and reminders, so was the information requested to be obtained for tax authorities in Mauritius.

It was the last day to decide the case. In desperation, she called the Chief Commissioner. “Sir, we have not been granted condonation and there are merely a few hours left in the day to pass an order. If I do not decide today, the taxpayer will be given automatic exemption by the system,” said CIR.

“I know, Maheen. But it’s your call. I would not interfere with your decision although there might be consequences for both of us.”

Once back in her office, the CIR went through the contents of the file again. Though the information requested from tax authorities of Mauritius through FBR was not yet received, there were still enough red flags to reject this exemption. She felt confident. It was time to prepare a detailed report enumerating all the red flags along with relevant documents as annexures to be sent to the Chairman FBR through proper channel and upload the rejection order on to the system. Signing the rejection order felt like lifting a huge baggage from her shoulders despite a lingering fear of the unknown. The drive back home was a mixture of both satisfaction and anxiety.

Days passed. And soon, weeks and months. It was business as usual. K-Education paid the due tax and never applied for a review or appeal in the court against the rejection order. Both CIR as well as the Chief Commissioner remained posted in the same positions. Nothing was yet heard about any action regarding the suspected money laundering case. Many a times she felt an urge to pursue the case again with the board but a voice in her head told her not to. She knew that she may never come to know why higher authorities in the FBR, despite having a reputation of being very professional, showed such complacency in this case: whether it was political pressure or some fiscal policy exigencies like preventing any negative signals to the prospective genuine foreign investors. Nevertheless, she had done whatever she was supposed to do at her level. She had also sent to the board proposals pinpointing weaknesses in the tax system and the need to revisit double taxation treaties signed with certain countries known as tax havens. She had saved billions of rupees’ worth of revenue too. However, not all the stories turn out as expected. It was half a win for her or half a loss. But she chose to look at it as half a win.

Section V

Conclusion, Lesson Learned, Recommendations

In conclusion, although no action had yet been taken in the light of the Commissioner’s report regarding the suspected money laundering but a huge amount of revenue had been recovered due to her independent decision based entirely on merit and good faith. It was also an enormous learning and growing experience for her as to how a seemingly simple case can take a very unexpected turn. Likewise, her expectation, that the higher authorities would be as enthusiastic about the outcome of her investigations as she herself was, also proved wrong. Nonetheless, her persistence and hard work made a

huge difference in terms of safeguarding revenue despite being warned about the serious repercussions. The matter lingered for a whole month but she showed forbearance and perseverance. She kept working on the case and also sent the report to the FBR bearing all the facts and red flags in the instant case as well as proposals to plug the loopholes in the tax system and double taxation treaties, thus, doing what was the right thing to do on her part.

The crux of the story is that we, as civil servants, need to be vigilant as well as persistent in the exercise of our official duties even in the face of adversity and threat of grave consequences. Even if individually, we act responsibly and do the right thing, we can make a difference in one way or the other. Though there would be some failures along the way, but these should not stop us from taking tough decisions in the right direction rather than opting for the easier route.

Recommendations

- (i) There is a need to re-visit the double taxation treaties including DTT with Mauritius in order to remove the grey areas facilitating tax evasion. In the case of Mauritius, India had already revised its double taxation treaty between the two countries.
- (ii) Other identical cases, using same methodology for money laundering, may also be identified and examined in other field formations.
- (iii) Presently, Commissioner Inland Revenue has only 30 days to decide the exemption cases. This authority to condone time limitation should be delegated to the Chief Commissioner instead of Member Operations in cases warranting more time for investigation. An amendment in the Income Tax Rules, 2002 should be made accordingly.
- (iv) The lengthy and cumbersome process for obtaining information from a foreign country through Directorate General of International Taxes also needs improvement. Empowering Commissioners or Chief Commissioners to get this information directly from foreign countries under intimation to the superior offices would make the process much simpler.
- (v) A memorandum of understanding should be signed between the agencies like the State Bank of Pakistan, the Federal Board of Revenue, and Securities and Exchange Commission of Pakistan for swift and instant sharing of information. This may be done through developing a single shared portal allowing access to the authorized persons only.
- (vi) A task force of above authorities and other concerned departments should be constituted for examining double taxation treaties in light of existing

international best practices in order to identify loopholes facilitating money launderers.

- (vii)** Rules should be framed to make chartered accountancy firms responsible and even liable to criminal negligence if they are found facilitating their clients in using money laundering methodologies.
- (viii)** Proper regulations should be framed and officially notified by the State Bank of Pakistan for calculation of intrinsic value of assets so that money laundering networks may be restrained from parking illicitly obtained funds abroad.

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Financing of CPEC Projects: Implications for Pakistan

Salman Sharif^d

Introduction

Pakistan and China have enjoyed excellent diplomatic relations for the last seven decades. While bilateral trade between the two countries has grown steadily over the years – especially as both are in a Free Trade Agreement (FTA) since 2006² – it was only in May 2013 that the two countries launched a historic economic cooperation initiative, the China-Pakistan Economic Corridor (CPEC), during Chinese Premier Li Keqiang’s visit to Pakistan. The visit of Chinese President Xi Jinping to Pakistan in April 2015 provided the occasion for the signing of 51 agreements, Memoranda of Understanding (MOUs) and financing contracts that collectively constitute the CPEC.³

The CPEC is also one of the most strategically significant components of China’s Belt and Road Initiative (BRI). The BRI envisages US \$3 trillion investment in the next 30 years, spanning more than 60 countries, covering 62% of the world’s population and nearly 30% of global GDP. China has termed the CPEC as a “flagship” project among the six corridors that are part of BRI. The CPEC links the Xinjiang region of China with Pakistan’s coastal area of Gwadar, reducing China’s dependence on the long sea routes along the Strait of Malacca and around the Indian Ocean, a shipping route from the Middle East to China which is about 12,000 km long.⁴

For Pakistan, the CPEC provides much-needed foreign investment in infrastructure and energy sectors, with technical expertise, funding and construction support from Chinese companies, thereby unleashing potential socio-economic dividends throughout CPEC sites and routes. It also provides a strategic underpinning with China for shared economic prosperity. An undertaking of this grand scale is unprecedented in Pakistan’s history and it is critical for the country’s growing population which requires sustained economic growth in the coming decades to provide employment to its people and to ensure national development.

¹ Foreign Service of Pakistan, 29th SMC (ssharif2021pk@gmail.com).

² FTA between Pakistan and China, November 24, 2006, <http://wits.worldbank.org/gptad/pdf/archivelchina-pakistan.pdf> (accessed July 22, 2021).

³ Shirin Lakhani, The China-Pakistan Economic Corridor: Regional Effects and Recommendations for Sustainable Development and Trade, 45 Denv. J. Int’l L. & Pol’y 417 (2017).

⁴ South China Morning Post, “China’s Super Link to the Gwadar Port – a visual explainer,” n.d. <https://multimedia.scmp.com/news/china/article/One-Belt-One-Road/pakistan.html> (accessed July 29, 2021).

The timing of the CPEC could not have been better as far as Pakistan is concerned, because at that point in time (2013-14), US aid to Pakistan was receding with the fading away of Kerry-Lugar Bill assistance, and divergences had emerged between Pakistani and US interests in Afghanistan, South Asia and the region. During this period, Pakistan's economic woes also necessitated a major overhaul of the country's energy sector, which was marred by high circular debt and serious power shortages. At the same time, the country's transport and communication infrastructure network also needed to be upgraded.

CPEC is only the latest manifestation of the strategic economic partnership between Pakistan and China, with investments of over \$62 billion in road, rail, energy and other infrastructure projects that are being made between 2015 and 2030. While the CPEC has been termed as a "game changer" for Pakistan's economic future, it has also faced criticism over financial sustainability and lack of transparency, with fears that it may lead Pakistan into a Chinese "debt trap". The dilemma for Pakistan's policymakers is to determine the affordability of the Chinese financing option, given Pakistan's current economic situation.

Significance and Scope of this Study

This paper is significant as it sheds light on financing of CPEC projects, a subject that finds itself in constant media spotlight. Doubt is often cast by CPEC critics, who believe that there are serious issues of transparency, disclosure and, more significantly, debt sustainability. On the other hand, the governments of Pakistan and China have consistently claimed that the financial liabilities are limited and that these can be easily paid off by Pakistan since they do not constitute more than 5% of Pakistan's total external debt. Through this research, both these positions will be examined and the notion of Pakistan falling into a "Chinese debt trap" will be put to test to see if sufficient fiscal space can be created for Pakistan to be able to pay off these liabilities.

The scope of this study will be limited to CPEC-related economic activity, which is expected to constitute the bulk of Pakistan's economic growth component in the coming years. The assumption here is that, barring exogenous shocks such as war, pandemics or natural calamities, the fate of Pakistan's economy will be determined largely by the outcome of CPEC projects, i.e. with industrial development, agriculture, transit trade, and regional trade all forming pillars of the country's economic future.

Review of Literature

To review this topic, a wide range of literature has been consulted. A key relationship to be examined is the economic impact of megaprojects (defined as those costing \$1 billion or more) such as those which are part of the CPEC. A 2015 McKinsey study concludes that large infrastructure projects which contribute to the GDP of their countries significantly can be “economically transformative”, e.g. the Panama Canal, Dubai’s International Airport, etc.⁵ Similarly, another study by Gary Alpert concludes that there is empirical evidence of infrastructure spending having a “stimulatory effect” on GDP that is greater than other forms of spending.⁶ China’s own experience in this regard has been to use debt to finance its large infrastructure projects. China’s non-financial debt that is expected to rise to nearly 300% of its GDP by 2022 is a concern for IMF.⁷

While this could mean that Pakistan should not be bothered about the cost of CPEC, there are voices that claim financing of the CPEC projects could have dire consequences for a vulnerable economy such as Pakistan. Such doubts have been cast since the time CPEC began in 2015. Pakistan was among the eight focus countries that Hurley et al., 2018,⁸ termed “most vulnerable” to Chinese loans due to debt distress. The report criticized the relatively high interest rates charged by China, which in some cases, exceed the “2-2.5% concessional rate of China Exim Bank”, and could be as high as 5%. While quoting Pakistan’s high public debt to GDP ratio, which stood at 70% in 2018, the report feared that Pakistan may end up going to IMF again.

Similarly, Andrew Small⁹ argued that “Pakistan’s deteriorating economic picture had forced China to re-evaluate the feasibility of moving ahead with it in its most expansive form”. He contends that negative growth rates for 2020 “severely affected” Pakistan’s project loans repayment capacity and that its government was trying to renegotiate CPEC energy deals. These views match the statements given by senior US government officials against CPEC, calling it a “Chinese debt trap” for Pakistan. On the other hand,

⁵ Nicklas Garemo, Stefan Matzinger and Robert Patter, *Megaprojects: The good, the bad, and the better*, McKinsey & Company, 2015.

⁶ Gary Alpert, “Can Infrastructure Spending Really Stimulate the Economy?”, Investopedia, September 12, 2020. <https://www.investopedia.com/articles/markets/080816/can-infrastructure-spending-really-stimulate-economy.asp> (accessed August 21, 2021).

⁷ Atif Ansar, Bent Flyvbjerg, Alexander Budzier and Daniel Lunn, *Does infrastructure investment lead to economic growth or economic fragility? Evidence from China*. Oxford Review of Economic Policy, 32:3, November 3, 2016, pp. 360-390.

⁸ John Hurley, Scott Morris, and Gailyn Portelance, *Examining the Debt Implications of the Belt and Road Initiative from a Policy Perspective*, Washington: Center for Global Development, 2018.

⁹ Andrew Small, *Returning to the Shadows: China, Pakistan and the Fate of CPEC*, Washington: German Marshall Fund, 2020.

Ishrat Husain¹⁰ writes that “detractors of CPEC are also blatantly wrong when they assert that Pakistan would not be able to service the loans and repatriate the profits to Chinese investors”. He is of the view that the additional burden of CPEC debt or investment profits would not create any unmanageable stress on Pakistan’s economy and that peak payments would range between \$2.5 and \$3 billion per annum. This topic, however, requires to be examined in detail to discover the truth behind these speculations. Hence, the focus of this research paper is on financing of CPEC and its possible socio-economic implications.

Methodology

Due to the complexity of the subject, this research uses a mixed method approach, applying both primary and secondary research methods. Primary sources include interviews with serving and retired government officials from the relevant departments dealing with the CPEC projects. Secondary sources include official statements by the governments of China and Pakistan as well as those by officials of the US Government, World Bank, IMF.

1. CPEC Projects: An Overview

The CPEC is the culmination of decades of excellent, rather exemplary, diplomatic ties between Pakistan and China which have finally entered the economic domain. The aim of CPEC is to connect the Chinese city of Kashgar in Xinjiang province and Pakistan’s Gwadar port while stimulating economic growth within Pakistan and China’s landlocked western region. This connectivity will reduce China’s dependence on the 12,000 km long sea routes along the Strait of Malacca, substituting it with a land route of just 2,700 km between Xinjiang and Gwadar.

CPEC lays out a network of regional connectivity that will benefit Pakistan and China, and also has the potential for regional integration with Iran, Afghanistan, India, and Central Asian Republics. CPEC linkages will build road and rail transportation systems, allowing greater accessibility and free movement of people and goods as well as exchanges of academic, cultural and regional knowledge. This fits in with the Chinese mantra of a “win-win” model for collective growth, development and a “shared destiny and prosperity”.

¹⁰ Dr. Ishrat Husain, *CPEC and Pakistan’s Economy: A Way Forward*, Islamabad: Center for Excellence for CPEC, 2018.

1.1 Areas of Cooperation

The list of CPEC cooperation areas is vast and constantly evolving. According to the CPEC website of the Planning Commission, Government of Pakistan, the potential areas of cooperation/development include:¹¹

- Regional connectivity¹²
- Diverse investment opportunities
- Industrial cooperation
- Financial cooperation
- Agricultural cooperation
- Socio-economic development¹³
- Tourism, including coastal tourism
- Educational linkages
- Human resource development
- People-to-people contacts
- Increased livelihood opportunities
- Enhanced security and stability of the region

CPEC projects were originally envisioned to be worth \$46 billion when the initiative was launched during President Xi Jinping's visit to Islamabad in April 2015. Later, the outlay of the projects was increased by the Chinese side, initially to \$55 billion and eventually to \$62 billion.¹⁴

1.2 Major CPEC Projects

The CPEC includes an impressive list of megaprojects, mostly in the energy sector, but also in roads, rail and other infrastructure. Details of the CPEC projects are as follows:

1.2.1 Energy

Till date, \$33.8 billion have been pumped into energy projects under the CPEC, with the addition of 12,230 MW of electricity. Transmission lines are also being revamped.

¹¹ Ministry of Planning, Development & Special Initiatives, "CPEC Significance/Potential", n.d. <http://cpec.gov.pk/significance-potential/4> (accessed July 30, 2021).

¹² Transport infrastructure, energy hub/flows, logistic hub/flows, trade and commerce, peace and development of region, connectivity/harmonization/ integration of civilizations.

¹³ Poverty alleviation, education, medical treatment, water supply, vocational training.

¹⁴ Salman Siddiqui, "CPEC investment pushed from \$55b to \$62b", *Express Tribune*, April 12, 2017.

The Government of Pakistan's official website for CPEC projects lists 17 priority projects including coal-fired power plants at Sahiwal, Port Qasim, Hub, and Thar. Major hydroelectric projects include Karot Hydel project and Suki Kinari Hydel project. Among renewable energy sources, there is the Quaid-e-Azam Solar Park Bahawalpur as well as UEP and Sachal Wind Farms at Jhimpir and HydroChina Dawood Wind Farm at Gharo. Other actively promoted hydel projects include Kohala and Azad Pattan in AJK, and other smaller wind and hydel projects.¹⁵

1.2.2 Infrastructure

The CPEC lays special emphasis on roads and railways infrastructure as well. Major projects include the Karakoram Highway (KKH) Phase II, Multan-Sukkur section of the Peshawar-Karachi Motorway, Khuzdar-Basima Road, upgrade of D.I. Khan-Zhob N-50 road, and KKH Thakot-Raikot section. The railways megaproject is the expansion and reconstruction of the main line (ML-1) which is estimated at around \$6.8 billion for which negotiations are still ongoing with the Chinese authorities.¹⁶

1.2.3 Gwadar

Gwadar carries exceptional importance for CPEC. Gwadar port operations are with China Overseas Ports Holding Company (COPHC) since 2013 on a 40-year lease. The various projects at Gwadar include the East Bay Expressway, New Gwadar International Airport, Gwadar Free Zone, construction of breakwaters, dredging and berthing areas and channels, Pak-China Friendship Hospital, Pak-China Technical and Vocational Training Institute, and Gwadar Smart Port City Master Plan.¹⁷

1.2.4 Rail-based Mass Transit Projects

Mass transit projects in all four provincial capitals are envisaged under the CPEC. These are the Karachi Circular Railway, Greater Peshawar Region Mass Transit, Lahore Orange Line and Quetta Mass Transit.

1.2.5 New Provincial Projects

Efforts are underway to add new projects from the provinces to the existing CPEC list. These projects are still in PC-1 preparation and approval phase and will then be

¹⁵ Ministry of Planning, Development & Special Initiatives, "CPEC Projects" n.d. <http://cpec.gov.pk/energy> (accessed July 22, 2021).

¹⁶ Ibid.

¹⁷ Ibid.

considered by the respective Joint Working Group (JWG) for inclusion under CPEC. These include the Ketu Bunder sea port development project, Naukundi-Mashkel-Panjgur road project, Chitral CPEC link road from Gilgit-Shandur-Chitral to Chakdara, and Mirpur-Muzaffarabad-Mansehra road for CPEC connectivity.

1.2.6 Special Economic Zones

Nine Special Economic Zones (SEZs) are planned under the CPEC in Phase 2 (2021-2025). These SEZs will provide impetus for industrial development across Pakistan. The Government of Pakistan is developing SEZs to promote industrial and socio-economic growth, create jobs, transfer technology, and boost foreign direct investment (FDI) as well as conversion to an export-led economy. The four SEZs at Rashakai, Allama Iqbal Industrial City Faisalabad, Dhabeji Thatta and Bostan Balochistan, are expected to add at least 475,000 direct and one million indirect jobs all over Pakistan.¹⁸ The remaining SEZs that are planned are ICT Model Industrial Zone Islamabad, Pakistan Steel Mills Industrial Park at Port Qasim, Mirpur Industrial Zone AJK, Mohmand Marble City, and Moqpanass SEZ in Gilgit-Baltistan.

1.2.7 Social Sector Development Projects

These include a number of initiatives including people-to-people exchanges (media, culture, films, etc.), transfer of knowledge in different sectors (capacity building trainings and workshops), establishment of Pakistan Academy of Social Sciences (with Higher Education Commission [HEC] as its partner) and transfer of knowledge in education sector through Consortium of Business Schools (from both China and Pakistan with HEC in the lead).

1.2.8 Others

These include the cross border optic fiber cable project, pilot project of Digital Terrestrial Media Broadcast (DTMB), etc.

1.3 Governance Mechanism

The CPEC projects are regularly monitored through the convening of the Joint Cooperation Committee (JCC) which is the highest decision making body for CPEC-

¹⁸ Rafi Group, "SEZs under CPEC: Prospects for Businesses and Entrepreneurs", n.d. <https://rafigroup.com/blog/sezs-under-cpec/> (accessed July 31, 2021).

related matters. The JCC is headed by the Minister for Planning, Development & Special Initiatives from Pakistan's side, whereas from the Chinese side, it is co-chaired by the Vice Chairman of National Development and Reforms Committee (NDRC). Till date, nine JCC meetings have been held. The 10th meeting was scheduled in July 2021 but had to be postponed at the last minute.¹⁹

Under the JCC, there are nine Joint Working Groups (JWGs) which examine subject-wise issues at the technical level, including feasibilities and progress of on ongoing projects. These include planning, transport infrastructure, industrial parks/special economic zones, international cooperation & coordination, agricultural cooperation, social & economic development, and energy, gwadar, security issues. A tenth JWG on science & technology is already approved to be added for which the necessary MOU has already been signed in 2020. On July 1, 2021, the Federal Minister for Planning, Development & Special Initiatives, Asad Umar, announced that both sides have agreed to add another JWG on information technology.²⁰

In October 2019, Pakistan established a CPEC Authority through an ordinance.²¹ The Authority is headed by a Chairperson who will ensure accelerated pace of implementation of the CPEC projects. Lt. Gen. (Retd) Asim Saleem Bajwa was the first Chairperson. The current Chair is Khalid Mansoor, Special Assistant to the Prime Minister (SAPM) on CPEC.²² The Authority is responsible for “planning, facilitating, coordinating, monitoring and evaluating” all CPEC activities as well as attending to inter-provincial and inter-ministerial coordination, organizing and coordinating JCC and JWG meetings, conducting sectoral research and narrative building for the CPEC to ensure implementation of mega decisions.

1.4 Progress on CPEC Projects

In the first five years of CPEC, 32 “early harvest projects” were completed by 2020. The first phase of the CPEC (2015-2020) focused on infrastructure, particularly energy and transportation. The second phase (2021-2025) is directed towards industrial cooperation with investment, especially from the Chinese firms, in SEZs.²³ On June 3, 2021, Pakistan's Foreign Office spokesperson said that 19 projects had been completed, 28 were under construction, while 41 remained in the pipeline. He said

¹⁹ Amb. Masood Khalid, ex-Ambassador of Pakistan to China, interview by author. Lahore, July 29, 2021.

²⁰ Daily Times, “CPEC IT joint working group on cards: Asad Umar”, <https://dailytimes.com.pk/782926/cpec-it-joint-working-group-on-cards-asad-umar/> July 1, 2021 (accessed July 31, 2021).

²¹ Mariana Babar, “CPEC Authority established through Ordinance”, *The News*, October 8, 2019.

²² Dawn News, “Khalid Mansoor appointed SAPM on CPEC affairs as Asim Bajwa bows out”, August 3, 2021.

²³ Muhammad Tayyab Safdar, “The Local Roots of Chinese Engagement in Pakistan”, Washington: Carnegie Endowment for International Peace, June 2021, p.8.

“CPEC projects have created more than 26,000 jobs and have boosted local power industry. In addition, CPEC motorway projects have created over 50,000 jobs”.²⁴

1.5 Financing Arrangements under CPEC

There are four types of financing arrangements that are being used in the CPEC projects. These include:

1.5.1 Investment

Most of the energy projects in CPEC are in the Independent Power Producers (IPPs) mode with Chinese companies borrowing funds from Chinese banks (mainly from China Development Bank and China Exim Bank) on commercial basis at an interest rate of 4% to 5%, etc. with no direct debt liability for Pakistan. Special Purpose Companies (SPCs) have been created for transacting these loans. Majority of the SPCs are owned by Chinese companies, e.g. the International and Commercial Bank of China (ICBC) is providing \$1.44 billion to Huaneng Shandong Ruyi (Pakistan) Ltd., an SPC of Huaneng Shandong Power and Shandong Ruyi Group, for development and operation of Sahiwal coal power plant. Another example is China’s Export-Import (Exim) Bank funding of \$1.55 billion for Port Qasim Electric Power Company Limited, an SPC of Power China and Qatar’s Al Mirqab Group that is working on Port Qasim’s coal power plant.

²⁴ Ministry of Foreign Affairs, “Transcript of the Press Briefing by Spokesperson on Thursday, 03 June, 2021”, Islamabad, June 4, 2021).

Table 1: Debt Financing Arrangements for Select CPEC Energy Projects

Project	Debt: equity	Lender	Borrower	Borrower's owner	Amount (\$ million)
Port Qasim coal power plant	75:25	China Eximbank	Port Qasim Electric Power Co.	PowerChina, Al Mirqab Group	1,550
Suki Kinari Hydropower Station	75:25	China Eximbank, ICBC	SK Hydro	China Gezhouba Group, Haseeb Khan	1,416
Sahiwal coal power plant	80:20	ICBC-led syndicate	Huaneng Shandong Ruyi (Pakistan)	Huaneng Shandong Power, Shandong Ruyi Group	1,440
Engro Thar Block II coal power plant	75:25	Bank of China, Bank of Communications, CCB, CDB, China Eximbank, ICBC, Pakistani Banks	Engro Powergen Thar Limited	Engro Powergen, China Machinery & Engineering Corp., Habib Bank, Liberty Mills	831
TEL Thar Block II coal power plant	75:25	CDB, Habib Bank	Thar Energy Limited (TEL)	Hub Power Company, Fauji Fertilizer Limited, China Machinery & Engineering Corp.	262 (from CDB)
Hydro China Dawood wind farm	70:30	ICBC	Hydro China Dawood Power	Hydro China, Dawood Power	78.8
Quaid-e-Azam solar park	80:20	CDB, China Eximbank	Zonergy	ZTE Corp.	62.2 (and RMB 400 million)
UEP wind farm	75:25	CDB	United Energy Pakistan	United Energy Group, Orient Group Investment Holdings	252
Sachal wind farm	85:15	ICBC	Sachal Energy Development	Arif Habib	100 (export buyer's credit)
Karot Hydropower Station	80:20	CDB, China Eximbank, SRF, IFC	Karot Power Co.	CSAIL (owned by China Three Gorges Corporation, SRF, IFC)	1,392
Three Gorges second and third wind power projects	70:30	CDB	Three Gorges Second Wind Farm Pakistan, Three Gorges Third Wind Farm Pakistan	CSAIL (owned by China Three Gorges Corporation, SRF, IFC)	NA
Hub coal power plant	75:25	Bank of China, Bank of Communications, CCB, CDB, China Eximbank, ICBC	China Power Hub Generation Co.	China Power International Holding, Hub Power Co.	1,500

Source: Columbia University²⁵

1.5.2 Concessional Loans

Concessional loans are given to the Government of Pakistan at rebated interest rate with generous lending terms, i.e. at rates of around 1-2% with tenures of 20 years or more. The first payment due on these loans is usually within five years of the start of the lending period. This is rather similar to the World Bank’s IDA loans which usually have a 1-2% interest rate and are extended over 15-20 years’ period. In contrast, commercial loans are usually at 4-5% interest and have to be returned within 5-10 years

²⁵ Erica Downs, “The China-Pakistan Economic Corridor Power Projects: Insights into Environmental and Debt Sustainability”, New York: Columbia University, October 2019. p.36.

of borrowing; their servicing options are also limited. With concessional loans, there is always the option of more liberal servicing and the tenor may be extended even beyond the 20 years' limit, if needed. Examples of projects being financed through concessional loans include KKH Phase II, Multan-Sukkur section of Karachi-Peshawar Motorway, Khuzdar-Basima road, etc.

1.5.3 Interest-Free Loans

These constitute only a small percentage of an overall CPEC financing. They are without any interest and with long-term payback period. An example of this interest-free or zero-interest model includes East Bay Expressway, Gwadar.

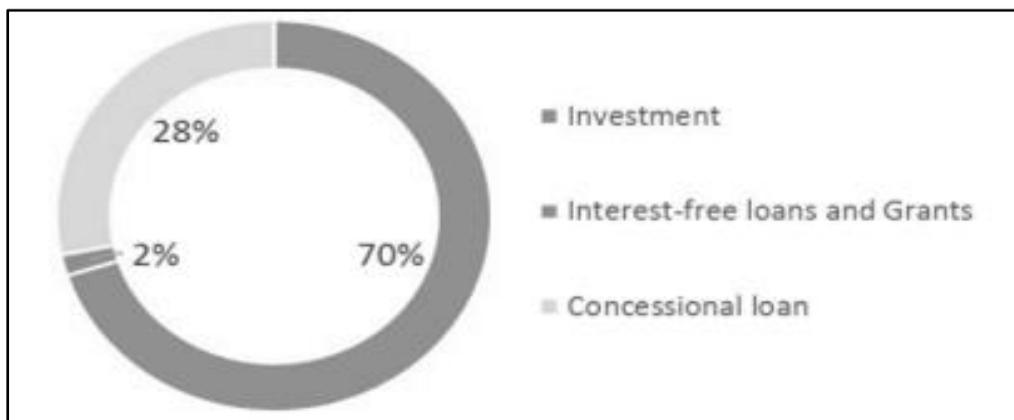
1.5.4 Grants

Some CPEC projects are also purely on Chinese grants, i.e. donations with no expectation of repayment. The grant-financed type of projects includes Gwadar International Airport, Pak-China Friendship Hospital, etc.

1.5.5 Contribution of Each Sector in CPEC Mix

Out of the estimated \$62 billion budget outlay of the entire CPEC by 2019, projects amounting to \$19 billion are either complete or under construction. A recent study gives the following break-up of sector-wise financing:

Figure 1: Source of CPEC Money for Completed and Ongoing Projects



Source: *Journal of Infrastructure, Policy and Development*²⁶

²⁶ Ibid.

1.6 Investment, Financing Mechanism and Supporting Measures

There is a full section in the long-term plan for CPEC (2017-2030), dedicated to the investment and financing mechanism and supporting measures, agreed by both the governments. The following arrangements are listed and elaborated in the document:

1.6.1 Government Funds

Both the governments will bear the primary responsibility for financing and investing in public welfare projects. They will coordinate the use of Chinese grants, interest-free loans, concessional loans and preferential export buyers' credit to support strategic priority projects of CPEC, enhance preferential margins where possible, and ensure that the funds are used exclusively in the CPEC projects. Pakistan's federal and provincial governments will also allocate funds for CPEC. Provincial governments may be allowed to issue financial bonds in domestic and foreign capital markets. Both governments will also strive to support credit enhancement for major projects, reduce financing costs and protect the creditors' rights and interests.

1.6.2 Indirect Financing of Financial Institutions

The two countries will also approach development of finance institutions and commercial banks, and "study and solve financial issues with the CPEC building; explore various ways to support the Silk Road Fund, China-Eurasia Economic Cooperation Fund in participating in the investment and financing for the CPEC".²⁷

1.6.3 Direct Investment of Enterprises

The two sides are also expected to "encourage Chinese enterprises, private sectors and funds of other entities to invest in CPEC, including Pakistan's private sector,"²⁸ and to establish private financial institutions infrastructure funds, if needed.

1.6.4 Loans From International Financial Institutions

Both China and Pakistan would also welcome international financial institutions such as the World Bank, Asian Development Bank (ADB), Asia Infrastructure Investment Bank (AIIB), and others to provide long-term concessional loans to the CPEC projects.

²⁷ Long Term Plan for China-Pakistan Economic Corridor (2017-2030), pp.24-26 <http://cpec.gov.pk/long-term-plan-cpec> (accessed July 25, 2021).

²⁸ Ibid.

1.6.5 Other Innovative Investment and Financing Methods

Pakistan's government (at both federal and provincial levels) as well as private sector will also explore how to conduct RMB financing in China, Hong Kong and other offshore centers dealing in RMB. Chinese and Pakistani market players will also be asked to mobilize resources from international market.

1.7 Pakistan's Financial Obligations in CPEC Projects

There are several ways in which the Government of Pakistan is contributing its share towards the CPEC projects. This includes providing incentives, sharing equity in various projects in partnership with Chinese government, providing sovereign guarantees on commercial projects particularly in the energy sector, funding certain CPEC-related projects through its development budget or Public Sector Development Program (PSDP).

1.7.1 Incentives

In order to attract Chinese investments, the Government of Pakistan is offering attractive and lucrative benefits, particularly at the SEZs and also to attract Chinese investors to the coal and power plants. NEPRA offered concessional terms to Chinese investors in coal projects through attractive upfront tariffs. Similarly, one-time exemption on custom duties and tariffs on all capital goods imported to Pakistan for SEZ development, installation and income tax relief for 10 years are being offered.

1.7.2 Equity

There is a wide range of equity sharing between the Government of China and Government of Pakistan, as well as private firms from both countries. In some cases, such as ML-1 railway project, Pakistan and China are still negotiating the equity ratio. Pakistan has sought 90:10 ratio however, China is keen on having it at 85:15. Final decision is yet to be taken. On power projects, debt-equity ratios vary ranging from 70:30 to 85:15, with loans coming in from the Chinese banks.

1.7.3 Sovereign Guarantees

The Government of Pakistan has to provide sovereign guarantees for many of the CPEC projects, including for example Rs. 1.2 trillion for ML-1 railway project. Since the government is already granting sovereign guarantees for circular debt, it has to

work with IMF to maintain its guarantee limits, which are currently set at Rs. 1.9 trillion. Pakistan even committed, at one stage, to set up a revolving fund to cater for unpaid claims of the Chinese energy companies, however, the fund is yet to be established.

1.7.4 PSDP-Funded Projects

According to the official CPEC website of the Ministry of Planning, Development & Special Initiatives, Pakistan allocated a total of Rs. 167.166 billion (around \$1.02 billion) in FY2018-19 for CPEC-related projects.²⁹ This represents Pakistan's component of the budget for completion of various CPEC projects. All PSDP funds have to be approved through the planning and finance channels, i.e. Central Development Working Party (CDWP), Executive Committee of the National Economic Council (ECNEC), etc.

2. Pakistan's Economic Outlook and CPEC

2.1 Current Economic Situation

Pakistan's economy has been facing a number of challenges during the last decade. It had witnessed "volative growth pattern" with regular "boom and bust cycles" impeding "long-term and inclusive growth." Structural problems include unsustainable debt including circular debt in the energy sector, loss-making public sector entities, chronically low FDI levels, low and restricted exports due to regular energy shortfalls, and consistently poor tax revenue generation.

2.1.1 GDP Growth Rate

The economic growth rate at the time of signing of CPEC, i.e. in 2014, was 4.67%. By 2018, it increased to 5.83%, primarily due to CPEC-related investments as well as other macroeconomic stability measures. However, it dropped drastically to 0.98% in 2019 and further to 0.5% in 2020³⁰ due to the Covid-19 pandemic. In 2020-21, Pakistan's GDP growth rate has increased to 3.94%.

²⁹ Ibid.

³⁰ World Bank, "GDP growth (annual %) – Pakistan", <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=PK> (accessed July 31, 2021).

2.1.2 Pakistan and IMF

Balance of payments crisis led Pakistan to enter into an Extended Fund Facility (EFF) program with IMF in 2018 for a \$6 billion bailout. While Pakistan has received the first two tranches, Covid-19 and other factors led to a delay in the clearance and receipt of the third tranche. In April 2020, Pakistan borrowed an additional \$1.3 billion from IMF under the Rapid Financing Instrument (RFI) for urgent support to Covid-19 affected economies. Pakistan-IMF negotiations are stalled due to conditionalities on revenue generation, stricter tax reforms, energy sector reforms, and independence of the State Bank of Pakistan. Recently, IMF has authorized additional \$2.8 billion for Pakistan as revised global SDR allocation.³¹

2.1.3 Macroeconomic Reforms

The current government embarked upon an ambitious economic reform agenda that included tax reforms and efforts towards addressing economic imbalances with improved performance in fiscal and external account balance, led by market-based exchange rate. However, the economic shock of the Covid-19 pandemic created serious issues in FY2019-20. The government's timely corrective measures, i.e. a \$8 billion stimulus package, construction sector stimulus, expanding social safety net to vulnerable population and adjusting monetary policy helped restore economic stability while maintaining foreign exchange reserves balance. High remittance levels also contributed to early economic recovery. Pakistan's GDP growth rate recovered to 3.94% in FY2020-21 and the economy is now on a V-shaped recovery path.³²

2.2 Pakistan's Public Debt

In June 2020, Pakistan's total public debt (domestic and external) amounted to Rs. 36.399 trillion which is about 87.6% of the GDP, representing a very high debt-to-GDP ratio.³³ This represented an increase of 1.7% from pre-Covid levels – one of the smallest recorded increases as compared to global average of 13%.

³¹ Pakistan Observer, "IMF authorizes \$2.8 billion funds for Pakistan," August 4, 2021, <https://pakobserver.net/imf-authorizes-2-8-billion-funds-for-pakistan/> (accessed August 22, 2021).

³² Ministry of Finance, "Overview of the Economy", Economic Survey 2020-21.

³³ Ministry of Finance, Economic Survey 2020-21, p.184.

2.2.1 Debt Sources

Out of Rs. 36.399 trillion total debt, Pakistan's domestic debt constitutes Rs. 23,283 trillion whereas external debt amounts to Rs. 13.116 trillion. Domestic debt is mainly borrowings by the government from within the country including through prize bonds, treasury bills, savings schemes, bank borrowings, etc. In the past, the government used to borrow heavily from the State Bank of Pakistan, however, now it can no longer do so. External debt is primarily accumulated through amounts borrowed from bilateral and multilateral international lenders as well as commercial credit through Eurobonds, sukuk, etc., floated by the government in international markets from time to time.

2.2.2 Debt Sustainability

Although the FY2020 debt-to-GDP level of 87.6% is alarmingly high, the IMF remains confident that Pakistan's economic reforms are going in the right direction and that the debt levels remain "sustainable" provided Pakistan continues to undertake the agreed reforms agenda of the EFF program.³⁴ In fact, the IMF projections indicate that the debt-to-GDP ratio for Pakistan is likely to come down to 73% by 2025.

2.3 China: Pakistan's Largest Bilateral Creditor and Investor

A recent study by the US Institute of Peace (USIP) states that China is now Pakistan's largest bilateral creditor.³⁵ The Ministry of Finance reported that in June 2013, Pakistan's total external debt was \$44.35 billion. Chinese loans accounted for only 9.3%. In April 2021, Pakistan's external debt had increased exponentially to \$90.12 billion with China's share rising to 27.4%, i.e. \$24.7 billion.

2.3.1 Currency Swap Agreement

Contrary to the narrative of "debt trap", China has in fact been helping Pakistan in repaying its foreign debt for many years now. As recently as December 2020, China had expanded the bilateral Currency Swap Agreement (CSA) from its original amount of \$1.5 billion (10 billion yuan) at the time of signing in 2011, to a revised amount of \$4.5 billion (20 billion yuan) in 2020. This was done to repay the \$2 billion debt to Saudi Arabia, in two tranches of \$1 billion each in December 2020 and January 2021. CSA is a Chinese trade finance facility used by Pakistan since 2011 to repay foreign

³⁴ International Monetary Fund, "Request for Purchase under the Rapid Financing Instrument," Country Report No. 20/114, April 2020 p.7.

³⁵ Uzair Younus, "Pakistan's Growing Problem with its China Economic Corridor," *US Institute of Peace*, (2021).

debt and keep its gross forex levels steady, while avoiding the issue of reflecting it as a loan or added external debt.³⁶

2.3.2 Chinese Loans under CPEC

The Chinese Embassy in Pakistan made a public statement in January 2020 where it conveyed that the total loan liability for Pakistan out of CPEC is around \$5.8 billion, which makes 5.3% of Pakistan's total foreign debt of around \$110 billion, with repayment tenor of 20 to 25 years and around 2% interest rate. Repayments will commence in 2021, with annual repayments of about \$300 million. According to Pakistan's Ministry of Planning, CPEC does not impose an immediate burden of loans repayment as well as energy sector outflows. The CPEC outflows would commence from 2021 and will be spread over 20 to 25 years with maximum in 2024 and 2025.³⁷

2.3.3 Chinese Investments in Pakistan other than CPEC

Chinese investments are not limited only to Chinese government. In fact, it was in 2016 when Pakistan Stock Exchange's 40% shares were bought by a Chinese consortium. Then, in 2018, Ant Financial, which is affiliated with China's Alibaba Group, purchased 45% shares in Telenor Microfinance Bank through an investment of \$184.5 million. Recently, in November 2020, two Chinese companies concluded a contract to establish a mobile phone manufacturing facility in Faisalabad. Another Chinese textile manufacturer, Challenge, is going to invest \$150 million in sportswear export manufacturing facility at Lahore with a target market in the Western countries. There is even news of Hui Coastal Brewery and Distillery Limited considering to set up operations for beer production in Balochistan.³⁸

2.4 Potential Economic Growth and Employment Opportunities

There are various estimates about the potential economic growth from the CPEC projects. These range from exaggerated estimates given by political leadership of Pakistan to swing public opinion or to claim credit for CPEC's success, to the independent assessment of multilateral institutions such as the World Bank.

³⁶ Shahbaz Rana, "China again bails out Pakistan to pay Saudi debt", *Express Tribune*, December 13, 2020.

³⁷ Ministry of Planning, Development & Special Initiatives, "Ministry of Planning Clarifies Western Media Fresh Report on CPEC" n.d. <http://cpec.gov.pk/news/123> (accessed July 29, 2021).

³⁸ Ibid.

2.4.1 Pakistan's Estimates

According to the government of Pakistan's official website, a decade-high growth rate of 5.3% was achieved in 2017 and, subsequently, the growth rate was expected to rise to 7% by 2020. While the Covid-19 pandemic as well as some delays in CPEC activities prevented Pakistan from achieving the target growth rate, Pakistan's economy has rebounded in FY2020-21. Nevertheless, Pakistan remains confident that CPEC will yield big economic dividends in the long run that will more than compensate for any loan repayments. A \$13 billion GDP growth is expected by 2025, and 800,000 direct jobs are expected to be generated as a result of the CPEC activities in the next 15 years.

2.4.2 Chinese Estimates

A statement by the Chinese Embassy in Islamabad in January 2020 stated that the CPEC projects were on track and that there were no delays. It said that 32 projects had "achieved early harvests" in the last five years, which had led to significant improvements in local transportation infrastructure and power supply, "creating 75,000 jobs directly and contributing between 1% and 2 % of GDP growth in Pakistan."³⁹

2.4.3 World Bank Estimates

A World Bank report examining the socio-economic impact of BRI concluded that Pakistan would have the highest welfare gain among all BRI countries, i.e. 10.5% by 2030 (relative to the baseline). These gains would be due to reduced cost of trade as a result of the improvement of Gwadar port's connectivity, through road and rail network under CPEC.⁴⁰ In terms of infrastructure investment, Pakistan's GDP could potentially increase by 6.43% till 2030. The CPEC could help 1.1 million people come out of extreme poverty, while boosting employment opportunities. Pakistan may also see the creation of four million new jobs and trade may also increase by 9.8%, provided Pakistan is able to fully implement and operationalize CPEC projects and carry out the necessary reforms alongside.

³⁹ Associated Press of Pakistan (APP), "Chinese embassy rejects US negative rhetoric against CPEC", January 23, 2020. <https://www.app.com.pk/national/chinese-embassy-rejects-us-negative-rhetoric-against-cpec/> (accessed July 31, 2021).

⁴⁰ Maryla Maliszewska and Dominique van der Mensbrugge, "The Belt and Road Initiative: Economic, Poverty and Environmental Impacts", Washington: World Bank, April 2019.

2.4.4 GDP Growth Projections

An extrapolation of the GDP growth rates, under various scenarios, reveals the likely fiscal space that may be generated by CPEC if it is able to spur consistent economic growth for Pakistan's economy over a long period. There are five different GDP growth scenarios tabulated below, i.e. annual GDP growth at 2%, 3%, 4%, 5% and 6%. In each scenario, an incremental GDP growth indicates that for every 1% increase in GDP growth, at least \$59 billion to as much as \$89 billion can be created by harnessing the economic dividend of the CPEC projects, i.e. from \$374 billion (at 2% growth) to \$666 billion (at 6% growth).

Table 2: Projected GDP Growth for Pakistan (2021-2035)

Year	Projected GDP Growth for Pakistan				
	@ 2% p.a.	@ 3% p.a.	@ 4% p.a.	@ 5% p.a.	@ 6% p.a.
2020	278.00	278.00	278.00	278.00	278.00
2021	283.56	286.34	289.12	291.90	294.68
2022	289.23	294.93	300.68	306.50	312.36
2023	295.02	303.78	312.71	321.82	331.10
2024	300.92	312.89	325.22	337.91	350.97
2025	306.93	322.28	338.23	354.81	372.03
2026	313.07	331.95	351.76	372.55	394.35
2027	319.33	341.90	365.83	391.17	418.01
2028	325.72	352.16	380.46	410.73	443.09
2029	332.24	362.73	395.68	431.27	469.68
2030	338.88	373.61	411.51	452.83	497.86
2031	345.66	384.82	427.97	475.47	527.73
2032	352.57	396.36	445.09	499.25	559.39
2033	359.62	408.25	462.89	524.21	592.95
2034	366.82	420.50	481.41	550.42	628.53
2035	374.15	433.11	500.66	577.94	666.24

Source: Author's estimates based on current year (FY 2020-21) GDP level

2.5 Effect on Pakistan-China Trade

In 2020, Pakistan's exports to China were \$2.33 billion. The China-Pakistan Free Trade Agreement (CPFTA-II), effective since January 1, 2020, provides Pakistani exporters and manufacturers zero duties on over 1,000 products. Leather, agriculture, confectionary items, biscuits, as well as textile, surgical and seafood items constitute major exports which could increase to \$9.73 billion by 2035.⁴¹

⁴¹ Associated Press of Pakistan, "Pakistan's exports to China likely to reach \$ 3 billion at end of this year: Ambassador Haque," August 12, 2021.

Table 3: Projected Growth of Exports to China (2021-2035) [US\$ billion]

Year	Projected Growth of Exports to China		
	@ 2.5% p.a.	@ 5% p.a.	@ 10% p.a.
2020	2.33	2.33	2.33
2021	2.39	2.45	2.56
2022	2.45	2.57	2.82
2023	2.51	2.70	3.10
2024	2.57	2.83	3.41
2025	2.64	2.97	3.75
2026	2.70	3.12	4.13
2027	2.77	3.28	4.54
2028	2.84	3.44	4.99
2029	2.91	3.61	5.49
2030	2.98	3.80	6.04
2031	3.06	3.99	6.65
2032	3.13	4.18	7.31
2033	3.21	4.39	8.04
2034	3.29	4.61	8.85
2035	3.37	4.84	9.73

Source: Author's estimates based on current year (FY 2020-21) export level

3. Implications for Pakistan

The state of Pakistan's economy, particularly its debt situation and possible financial benefits from the CPEC have already been examined. There is no doubt that Pakistan's economy has received a huge boost from the CPEC investments. There is positive economic activity within the country since the last 5-7 years with major energy projects coming online and the power generation capacity has increased significantly with addition of new projects completed in the early harvest phase of the CPEC from 2014-2017. The road infrastructure network is also progressing at a fast pace and work is continuing very quickly to improve the connectivity of various routes across the country. This will lead to better accessibility, faster travel and commute time, and more reliable journeys for movement of goods and people from the north to south of the country and vice versa. The ML-1 railway project has the potential to inject new life in the weakening railways system of the country through high-speed, modern trains that will be able to ply passengers and freight. At the same time, while there have been many positive aspects emerging out of the CPEC, there are some challenges as well, which must remain in the minds of Pakistan's policymakers as the execution of the CPEC projects continues. Some of these challenges have serious implications for Pakistan in the long run, both on the financial as well as strategic level. Others could manifest themselves in the form of financial challenges but are actually driven by global considerations. This section examines the implications of CPEC financing for

Pakistan from various angles with a view to identifying the issues and deducing relevant conclusions to enable sound policy recommendations to emerge.

3.1 CPEC and US-China Rivalry

The US has been one of the harshest critics of the CPEC's financial viability. Its main objection to China's BRI is that it is based on commercial investments as opposed to the traditional US model of economic assistance and aid to developing countries including Pakistan. A study by Center for Strategic & International Studies (CSIS) commented that *"Unlike the Marshall Plan, which mainly dispersed aid in the form of grants that did not have to be repaid, China uses loans that often come at commercial interest rates. While the BRI provides vital infrastructure funding to developing countries, it also leaves many with unsustainable debt."*⁴²

The US's concerns in the context of Pakistan and the CPEC were conveyed at a public event by Ambassador Alice Wells, acting US Assistant Secretary of State for South Asia, in her remarks at the Woodrow Wilson Center, a Washington think-tank, in November 2019. She criticized the CPEC and conveyed US concerns regarding high costs, lack of transparency and openness in the bidding processes, low employment creation for Pakistani workers, and long-term impacts of the CPEC debt on Pakistan.⁴³

3.1.1 Cost of US Assistance vs Cost of CPEC

The US government used its economic assistance to put political pressure on Pakistan, relentlessly asking the country to "do more" in the context of the war in Afghanistan. The economic losses as a result of Pakistan's involvement in the global war on terror are estimated at over \$120 billion during the last two decades; there has been attendant loss of an estimated 80,000 lives. In contrast, CPEC projects will add productivity to the economy, by bringing energy, infrastructure, jobs and investment. So, any cost accrued in terms of loans or guarantees can be paid off through the economic dividends generated by the projects.

⁴² Dylan Gerstel, "It's A (Debt) Trap! Managing China-IMF Cooperation Across the Belt And Road", Washington: Centre for Strategic & International Studies (CSIS), 2018.

⁴³ Daniel Markey, "How the US Should Deal with China in Pakistan?" Carnegie-Tsinghua Center for Global Policy, April 2020.

3.1.2 US Leverage on International Financial Institutions (IMF, WB, etc.)

While the US has been unsuccessful in creating any rift between China and Pakistan vis-à-vis the CPEC, it still enjoys considerable leverage at the Bretton Woods institutions where it has already used the IMF and World Bank to question the transparency of the CPEC projects. Pakistan is currently in an IMF program where it has certain financial obligations and conditionals to meet. The US can use this leverage to push Pakistan, and thereby, exert pressure on China through CPEC. Thus, while the CPEC costs may not increase directly, there could be indirect costs to Pakistan's economy, such as more stringent negotiations on debt servicing or difficulty in securing future loans, etc.

3.2 Is CPEC a Debt Trap?

There are arguments on both sides of this issue. On the one hand, the US, India and other detractors of the CPEC claim that China is using BRI as a debt trap for other countries, e.g. the case of Hambantota port in Sri Lanka.⁴⁴ On the other hand, there are recent studies such as those from Columbia University, US Institute of Peace (USIP) and others that negate this impression and have convincing arguments about it.

3.2.1 Pakistan's Overall CPEC Liabilities

One estimate is that the total worth of the CPEC energy and infrastructure projects is around \$26.5 billion and that Pakistan will have to pay back \$28.4 billion on this account as well as an additional \$11.4 billion as dividends to investors, thus incurring an overall liability of \$39.8 billion.⁴⁵ The claims of the US authorities and even concerns raised by the IMF point out that debt trap may become a serious issue, if Pakistan is unable to capitalize on the installed projects. In actual, the liabilities will peak at about \$3-4 billion by 2024-25 and then taper off with total repayments due in the next 25 years, i.e. till 2037-38.

3.2.2 China's Position on the Loan Issue

In February 2021, in reply to a question that if Pakistan had approached China to restructure a loan of \$22 billion for the CPEC energy projects, China's Foreign Ministry spokesman, Zhao Lijian, who had previously served in Pakistan as well, was

⁴⁴ Umesh Moramudali, "The Hambantota Port Deal: Myths and Realities", *The Diplomat*, January 1, 2020.

⁴⁵ Shahbaz Rana, "Pakistan to pay China \$40b on \$26.5b CPEC investments in 20 years," *Express Tribune*, December 26, 2018.

quoted as saying categorically that these energy projects were “commercial investments where Chinese companies invested in Pakistan” and that they did not incur any debt burden on Pakistan because “they are investment projects”.⁴⁶

3.2.3 Pakistan’s Position

Pakistan’s position has been very clear that there is no debt trap. In response to the statement by the US side, Pakistan’s Planning Ministry issued a statement in January 2020, which downplayed the US concerns and stated that “*necessary due diligence with all financial implications is being undertaken before finalization of any projects. Pakistan’s debt sustainability strategy has an endorsement of International financial institutions.*”⁴⁷

3.2.4 View from the Experts

Notable experts including Dr. Ishrat Husain have also dismissed claims that Pakistan would face any debt distress from the CPEC, given that the loan component is quite low as compared to the overall project outlay. A study by Columbia University reveals that there are many reasons why China cannot trap Pakistan under heavy debt long-term impact of the CPEC debt on Pakistan, including the fact that this would undermine the excellent bilateral ties. Indeed, China desires to see Pakistan as a stable and stronger partner. China’s support to the IMF program for Pakistan, and above all, any controversy with the CPEC would tarnish the overall image of BRI’s success.⁴⁸

3.2.5 Weaknesses in the Debt Trap Theory

The biggest weakness in the debt trap theory is the fact that in more than 70 years of “all-weather” diplomatic relations, Pakistan and China have always stood by each other. To expect China to betray Pakistan on this occasion would be presumptuous and incorrect. Moreover, there are other considerations, such as revenue from toll use of the road and rail, the economic activity to be generated in the manufacturing and industrial sectors as a result of abundant energy supply, employment generation and export enhancement through development of SEZs, etc. Expansion of CPEC to include regional countries such as Afghanistan and Central Asia can also release economic

⁴⁶ Global Village Space, News Desk, “CPEC energy projects inflict no debt burden on Pakistan: China”, February 26, 2021. <https://www.globalvillagespace.com/cpec-energy-projects-inflict-no-debt-burden-on-pakistan-china/> (accessed July 31, 2021).

⁴⁷ Ibid.

⁴⁸ Erica Downs, “The China-Pakistan Economic Corridor Power Projects: Insights into Environmental and Debt Sustainability”, New York: Columbia University. October 2019, p.38.

dividends for Pakistan which can easily be used to repay these Chinese loans and any profit dividends that accrue.

3.3 Financial Risks for Pakistan

Having examined the reasons why Pakistan and China remain confident that the CPEC will not prove to be a debt trap, we must also examine some of the genuine financial risks for Pakistan associated with CPEC financing in the coming years. These include the following:

3.3.1 Exchange Rate Fluctuation

One of the biggest risks associated with CPEC financing and debt repayments is the exchange rate. Pakistan is now following an open market exchange rate which makes it more vulnerable to regular and frequent fluctuations. While currency swap arrangement exists between Pakistan and China, a large number of loans are underwritten in dollars. Hence, a further depreciation of the Pakistani rupee vis-à-vis the dollar could make Pakistan's exports less competitive, and loan repayment much more expensive.

3.3.2 Maintaining Debt Sustainability

While Pakistan is confident that it will be able to continue meeting its debt obligations, the high debt-to-GDP ratio continues to remain a worry for policymakers. Pakistan has to ensure that debts remain within manageable limits and the risk of default is avoided at all costs, as that could seriously damage the country's credit rating and put the economy under extraordinary stress.

3.3.3 FATF 'Grey List'

Pakistan has remained on the Financial Action Task Force (FATF) 'grey list' since 2018, despite meeting 26 out of 27 points in the FATF action plan when its progress report was presented to the FATF board on June 25, 2021. Pakistan received China's support in FATF to remain in the grey list but it will need to get more countries on board to graduate from the list and ensure that it does not fall in the 'black list' – something that could jeopardize the entire CPEC project.

3.3.4 Current Account Deficit

During the first phase of the CPEC, Pakistan's imports registered a sharp rise, mainly due to import of Chinese machinery and equipment for infrastructure and energy projects' construction and operation. In FY2020-21, Pakistan's current account deficit remained positive for 11 months, however, it ended the year in the negative with a deficit of \$1.85 billion, mainly due to rise in global oil prices and vaccine arrivals. Pakistan needs to boost its exports while cutting down imports so that current account deficit remains in check.

3.3.5 Indirect Liabilities Through Sovereign Guarantees

While the energy projects under the CPEC are direct loans to Chinese firms from China Exim Bank, however, Pakistan has provided sovereign guarantees to the Chinese firms operating these power plants that their project's energy output will be purchased so they can repay their commercial loans. Pakistan's poor transmission and distribution culture, as well as non-payment of bills by consumers will mean that a lot of these sovereign guarantees may be invoked.

3.4 Financing of CPEC: SWOT Analysis

A SWOT (strengths, weaknesses, opportunities, and threats) analysis of the financing aspect of the CPEC projects has been carried out and reveals the following:

Table 4: SWOT Analysis

STRENGTHS	WEAKNESSES
Strong diplomatic ties Geostrategic advantage Strong government commitment Availability of cheap labor	Political instability Weak economy No accountability for delays Control of key assets Unskilled human capital Population growth
OPPORTUNITIES	THREATS
Regional trade and energy hub Industrialization and investment Youth dividend Capacity-building	US-China rivalry Regional security External shocks – war, pandemic, natural disasters, etc.

Source: Author's own research

3.4.1 Strengths

Pakistan's biggest strengths in utilizing and affording the CPEC projects are its strong and deep-rooted brotherly ties with China, its geographical geostrategic advantage which places it at the cusp of blue waters, supportive government policies and commitment to CPEC, and above all, availability of cheap labor.

3.4.2 Weaknesses

A weak economy with low revenue generation, low saving rates, high debt-to-GDP ratio and balance of payments problems, followed by political instability, i.e. frequent change of policies after every election, no accountability in cases of cost overruns or delays in the projects, control of key assets handed over to Chinese firms on lease, and lack of skilled human capital in Pakistan. Above all, the current population growth rate of the country is very high, i.e. 2.4% which must be brought down.

3.4.3 Opportunities

The CPEC offers tremendous opportunities including industrial development through the SEZs. Pakistan's youth dividend, less than 30 years of age and vaccinated, can be a source of cheap and readily available workforce for the CPEC projects and beyond. While the youth dividend is extremely important, equally so is capacity building. But most importantly, the CPEC offers the opportunity to expand it simultaneously through linkages in Afghanistan, Central Asia and the rest of South Asia.

3.4.4 Threats

These would include US-China rivalry and the ensuing political game at the global level, regional security threats from India and instability caused by a turbulent Afghanistan, and above all, external shocks from war, pandemic and natural calamities.

3.5 Other Possible Implications

Other possible implications for Pakistan related to the CPEC financing include:

3.5.1 Cost Overruns/Delays

If there are delays due to any reason, e.g. political indecision or instability, change of policy, or simply cost overruns due to exchange rate fluctuation or rising fuel prices worldwide, then Pakistan would have to pay additional costs.

3.5.2 Security Costs

Providing security to Chinese engineers and personnel working on the CPEC projects also requires additional funding. Already, the Pakistan Army has raised one division (34th Light Infantry for Special Security) for CPEC security. Another division is being considered.⁴⁹ This will also add to the cost of the CPEC projects.

3.5.3 Opportunity Costs

Since Chinese investments will run the energy projects on commercial basis and Chinese companies are also investing in other sectors, Pakistan's indigenous manufacturing capacity and expertise may not be able to get priority investments. Pakistani manufacturers would need to work out ways to enter into joint ventures with Chinese companies so that the Pakistani private sector does not go out of business due to increased Chinese presence in the market.

Conclusion

Pakistan's direct loan repayments from the CPEC projects amount to \$5.8 billion, which forms 5.3% of Pakistan's total external debt. However, the cumulative financial impact of the CPEC could, in fact, be as high as \$39.8 billion if we take into account sovereign guarantees, subsidies and other concessions, etc. offered to Chinese firms investing in various CPEC projects. Given the economic growth projections based on successful implementation of the CPEC, as well as trade benefits accruing from enhanced regional trade, Pakistan's economy can be expected to generate an additional \$59 to 89 billion between 2021-2035, depending on how high it maintains the GDP growth rate. *This research concludes that the cost of CPEC financing does not outweigh its socio-economic benefits, which will manifest in the form of higher growth rate, job creation and higher trade volume.* While there is no CPEC "debt trap" for Pakistan, CPEC is essentially a commercial undertaking. Failure or delays in CPEC infrastructure, energy and industrial projects could lead to additional financial burden.

⁴⁹ Daily Pakistan, "Pakistan Army to deploy another division for CPEC security", May 19, 2019.

The Government of Pakistan, therefore, needs to adopt and implement concrete policy measures to ensure the best use of this opportunity to build its infrastructure as well as human capital. Only through successful and timely implementation of various CPEC phases can we truly ensure that the socio-economic dividends of this historic initiative reach the ordinary Pakistanis and bring an era of economic development and prosperity in the country.

Recommendations

Keeping in view the discourse of this research, including the various aspects of CPEC financing, Pakistan's economic outlook, as well as the wide range of possible implications, the following policy recommendations are submitted for consideration of the CPEC Authority to work with identified focal points to ensure CPEC project financing and the resultant socio-economic benefits remains on track.

(i) Regular Followup of CPEC Progress at Leadership Level

The JCC is an important forum, but the CPEC will require constant and regular monitoring of progress at the top level of political leadership, i.e. presidential and prime minister level. This will ensure timely discussion at highest level in case any financing issue is to be discussed. **Focal point:** Ministry of Foreign Affairs.

(ii) Active Tracking of Regional Integration by Expansion of CPEC to Afghanistan and Central Asia

Regional integration is critical for the CPEC's future, particularly from a commercial point of view. Inclusion of Afghanistan, Central Asia and even the Middle East can bring regional connectivity and prosperity, and connect China and Pakistan with other regions through Gwadar. It will also earn Pakistan valuable royalties and tolls. **Focal points:** Ministry of Foreign Affairs, Ministry of Commerce, Board of Investment.

(iii) Continued Macroeconomic Reforms to Stabilize Economy

Pakistan must continue to undertake structural reforms of the economy to resolve chronic issues such as circular debt, loss-making public sector enterprises, tax reforms, documentation of economy, exchange rate stability, debt management, minimizing current account deficit, etc. A healthier economy will be in better position to repay the CPEC-related loans and liabilities. **Focal points:** Ministry of Finance, Ministry of Planning, etc.

(iv) Using Innovative Methods to Manage CPEC Debt and Liabilities

Pakistan may opt for creating a revolving fund to handle the circular debt repayment that accrues periodically. It may also consider floating CPEC bonds in international money markets or targeted at the Pakistani diaspora, to mobilize resources and ensure timely repayment of the CPEC liabilities. **Focal point:** Debt Policy Coordination Office, Ministry of Finance.

(v) Countering the Negative Narrative Against CPEC in the International Arena

Countering the negative perceptions about the CPEC in the international media is vital to strengthen Pakistan's credit worthiness and to spur FDI in Pakistan by other countries, e.g. the US and European countries. **Focal points:** Ministry of Foreign Affairs, Ministry of Information, Board of Investment.

(vi) Ensuring Capacity-building of Local Workforce and Technology Transfer

The biggest advantage of the CPEC in the long run, after the initial infrastructure and energy phase, can be knowledge and capacity-building. Pakistan's youth, with 60% population under the age of 30 years, must be fully involved through employment creation, vocational and technical skills training, scholarships etc. **Focal points:** Ministry of Planning, provincial governments.

(vii) Capitalizing on Industrial Development Through SEZs

Through the SEZs, Chinese companies must be asked to ensure technology transfer so that Pakistan can also industrialize its indigenous manufacturing sector. Involving Pakistan's private sector companies in this regard for joint ventures can be a useful mechanism. **Focal points:** Ministry of Planning, Board of Investment, provincial governments.

(viii) Early Implementation of ML-1 and Inclusion of Diamer Bhasha Dam in CPEC

Pakistan must ensure early approval and implementation of ML-1, i.e. within the repayment period of the CPEC, so that the necessary advantage can be taken from its operationalization through services to Chinese companies as well. Other megaprojects

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such as Diamer Bhasha Dam can also be attempted to be added within the CPEC as a “strategic project”. In case Chinese investors are not fully forthcoming, then other multilateral financial institutions such as AIIB or World Bank may be involved for financing CPEC’s megaprojects. **Focal points:** Ministry of Foreign Affairs, Ministry of Planning, Ministry of Economic Affairs, provincial governments.

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Procurement of Number Plates in Punjab Excise, Taxation & Narcotics Control Department

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Introduction

The Excise, Taxation & Narcotics Control (ET&NC) Department issues number plates to motor vehicle owners at the time of registration of motor vehicle under the relevant provisions of the Provincial Motor Vehicles Ordinance, 1965 and the Punjab Motor Vehicles Rules, 1969. The registration number is allotted immediately upon payment of the fee and submission of documents, but number plates are issued after a gap of one week and delivered through a courier service along with registration documents. The department registers approximately 1.9 million vehicles during an average year, the bulk of which are motorcycles (85%).² The annual requirement of number plates comes to around 2 million.³

The public procurement regime in Punjab is governed by the Punjab Procurement Regulatory Authority (PPRA) Act, 2009 and Punjab Procurement Rules (PPR), 2014 framed thereunder. The Act envisages a Public Procurement Authority which will “monitor application of the laws, rules, regulations, policies and procedures in respect of, or relating to public procurement, recommend to the government revisions in or formulation of new laws, rules and policies in respect of or related to public procurement, establish performance indicators for procurement performance of the procuring agencies and monitor compliance with these indicators through independent third party evaluation.”⁴ The rules set out the principles of procurement stating that “a procuring agency, while making any procurement, shall ensure that the procurement is made in a fair and transparent manner, the object of procurement brings value for money to the procuring agency and the procurement process is efficient and economical”.⁵

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² Excise, Taxation & Narcotics Control Department, Government of Punjab.

³ Ibid.

⁴ Punjab Procurement Regulatory Authority, *Punjab Procurement Regulatory Authority Act, 2009* (Lahore: Official Printers, 2009).

⁵ Punjab Procurement Regulatory Authority, *Punjab Procurement Rules, 2014* (Lahore: Official Printers, 2014).

The Issue

The supply of number plates to the public had been at a standstill for five months. The backlog had reached as high as 1.1 million. The procurement process initiated about a year-and-a-half ago had stalled due to the expiry of bid validity period of the only bidder left in the competition. The public was forced to procure substandard number plates from the market. The issue had tarnished the image of the government. These challenges had been compounded due to indecisiveness resulting from a fear of misplaced accountability by the National Accountability Bureau (NAB) and involvement of multiple stakeholders in the decision-making process as a result of the judgment passed in the Mustafa Impex case.⁶

Key Research Questions

- 1) What options did the Secretary have for resolving the crisis?
- 2) How did the Mustafa Impex case slow down the procurement of number plates?
- 3) How did the current accountability regime targeting civil servants impact the procurement of number plates in Punjab?

1. Scene Setter

It was Thursday, August 22, 2019, around 2 p.m. Wajihullah, Secretary, Excise, Taxation & Narcotics Control (ET&NC) Dept., Government of Punjab, was sitting in his office located on Egerton Road, opposite the iconic Faletti's Hotel. He had taken over the charge of Secretary only three days hence on August 19. Having just concluded a meeting with his Additional Secretary and Deputy Secretary (Technical), his telephone set buzzed. He picked up the phone. The operator told him that Secretary to the Chief Minister (CM) wanted to talk to him. He straightened himself up as if he was actually appearing before the senior officer. "It must be some important message," he thought to himself.

Soon, the Secretary to CM was on the line. "Congratulations Wajih on your posting. We know it is your first posting as Secretary. Unfortunately, your honeymoon is going

⁶ Mustafa Impex case. Karachi vs the Government of Pakistan, PLD 2016 SC 808. Under this case the Supreme Court of Pakistan had defined the term "government" – wherever it occurred in legal documents – as the cabinet, and not as the prime minister or chief ministers; this had complicated decision making as decisions that were earlier taken at various levels of government now routinely went to the cabinet.

to be short as you have to immediately attend to the crisis of number plates which has been brewing for some time. The department has not been supplying any number plates to the public since April 2019 despite charging their prices. The backlog has reached as high as 1.1 million. The issue is bringing a bad name to the government. The local media has turned its guns on the government for its failure to resolve the crisis and facilitate the public. The procurement process has been initiated but it is not getting anywhere. You must look into the matter and find an immediate solution. Get in touch with Chief Secretary [CS] and keep me posted on all developments. Goodbye and best of luck!”

After the call, the Secretary immediately called for the record. The latest correspondence on the subject was a summary for the CM moved by his predecessor on 07.08.2019 providing an updated status of the procurement process initiated in October 2018. A lot of ground had been covered but the process had stalled because of the expiry of bid validity period of the sole bidder left in the competition. Other bidders had refused to extend their bid validity period due to escalation of dollar to rupee exchange rate as the raw material for the plates was imported. The previous secretary, after weighing various options, had recommended a licensing system whereby the government would withdraw from the business of procuring and supplying licence plates; instead private parties would be authorized to do so. These would compete amongst themselves on quality and price parameters set by the government. This option entailed amending the Punjab Motor Vehicles Rules, 1969 and getting approval from the Cabinet through its Standing Committee on Legislative Business. The summary was routed through the Law Department. The Law Department had returned the summary with the observation that the department should first clarify the fate of current procurement before exploring other options.

“What should I do?” he questioned himself. “Should I scrap the on-going process and navigate the uncharted territory of the licensing regime which was not in place in any province and hence fraught with unknown risks or should I go ahead and conclude the current process?” The questions raced through his mind as his forehead furrowed and his eyes pored into the summary in front of him.

2. Background

After going through the summary, the Secretary decided to familiarize himself with the procurement history of number plates and get the latest update on all developments leading up to the present situation. He asked Naveed, Deputy Secretary (Technical), to prepare a brief along with a chronological history of the current procurement and

submit it by the next day. When he reached office the next morning, he found the brief on his table. He immediately delved into it.

According to the document, the procurement of number plates in Punjab had commenced in 2004 when the first contract for the procurement of retro-reflective number plates conforming to ISO 7591 standard for vehicles registered in Lahore was awarded as a pilot project to M/s 3M Pakistan (Pvt) Ltd by the IT Department. The initiative was taken very well by the public and it was decided to roll it out to other districts in 2007. The contract with M/s 3M was accordingly extended for a period of three years. Under the contract, M/s 3M was supposed to import finished number plates from Germany. Initially the contract proceeded smoothly but then problems began to crop up. It transpired that M/s 3M had set up a manufacturing facility in Karachi for embossing and hot-stamping the number plates without informing the department, though it continued invoicing the department for the price of imported number plates in euros. When the matter came to the notice of the department, it withheld payment of Rs. 375 million for breach of contractual obligations and black-listed the company for one year. The matter went to the court and was still *sub judice*.

The second contract for the procurement of number plates was concluded with M/s Inbox Technologies (Private) Ltd (IBTL) in February 2014. Under the contract, M/s IBTL was bound to deliver four (04) million pairs of number plates to the department over a period of three years. That contract had expired in February 2017. However, the department placed a “repeat order” for 15% of the original quantity under PPR, 2014 to avoid any disruption in supply. The supply of plates continued until April 2019 and then ceased once the stock was exhausted.

In the interval between the expiry of contract with M/s 3M and the new contract with M/s IBTL, the department continued registering vehicles and collecting payment for the number plates. However, when it realized that the new contract would take time to materialize, it stopped charging any fee for the plates. The motor vehicle owners were left in the lurch and were forced to procure number plates from private vendors. When the contract with M/s IBTL was concluded in February 2014, the supply situation improved but plates could not be delivered to the owners as they had not paid the price. This resulted in the accumulation of undistributed number plates in various motor branches across Punjab.

As the history of the case unfolded before him, the Secretary had a sense of *déjà vu* that the current procurement process was no different from the previous one when the public had to run from pillar to post to get the number plates and once the procurement

had got underway, the department would be flooded with backlogged plates which it would not be able to distribute efficiently. However, he brushed off these thoughts and tried to concentrate on the brief.

2.1 Universal Registration Mark Scheme (URMS) and Punjab Safe Cities Authority (PSCA)

The brief flagged another important decision of introducing the Universal Registration Mark Scheme (URMS) in Punjab which had been taken in a meeting held under the chairmanship of the CM on 23.06.2016. The old scheme of registration was linked to the district and year of registration and the number plates displayed both these marks. The scheme was alphanumeric with the first two alphabets signifying the district, the third one indicating category of the vehicle followed by two digits for the year of registration and maximum four digits unique to the vehicle (**Annex A**). The scheme posed a few problems. The number was long and difficult to remember and trace in a hit and run situation. Since the series was repeated every year with only the year of registration changed, the numbers were similar across years causing confusion. It was also observed that motor vehicle owners preferred registration marks of certain districts especially Lahore which led to increased workload in motor branches and inaccurate reporting of data as temporary addresses were given for registration. The URMS, on the other hand, addressed these issues. The series would start with AAA followed by digits from 000 to 999 (and 9999 in case of motorcycles) (**Annex B**). Once the AAA series was exhausted, it would be replaced by AAB and this would continue until the last series starting with ZZZ was exhausted.

The brief referred to a series of meetings held with PSCA in the first quarter of 2017 in which the size of number plates and fonts of letters/digits printed thereon were discussed in detail. The PSCA wanted a bigger plate size for its cameras to read the numbers correctly. The plates were to have security features embedded in them to prevent any forgery or tampering. It was decided that the new contract for the number plates would incorporate all these changes and a summary would be sent to the CM for amending the Punjab Motor Vehicles Rules, 1969. The Secretary stopped at this point and soliloquized. “The new procurement process could not start in earnest unless the rules were amended first. The previous contract had expired and rules were yet to be approved by the competent authority!”

2.2 “Government” Redefined: The Mustafa Impex Case

The Secretary called for the original summary moved by the department to amend the Punjab Motor Vehicles Rules, 1969 for the introduction of URMS and redesigning of the number plates. The summary was initiated on 09.09.2016. He recalled an important development which had redefined the way the business of the “Government” would be transacted. The Supreme Court, in the Mustafa Impex case in August 2016, had redefined (and expanded) the definition of the Federal Government declaring it as a collective entity (cabinet) constituting the prime minister and federal ministers. The judgment, when applied to the provincial government, meant that statutory powers exercisable by the provincial government could only be authorized by the cabinet consisting of the CM and provincial ministers and not the CM on his own. After this judgment, any amendments in the rules, which were earlier approved by the CM, were to be approved by the provincial cabinet. The Cabinet had constituted the Standing Committee of Cabinet on Legislative Business (SCCLB) headed by the Law Minister under Rule 25(3) of the Punjab Government Rules of Business, 2011 to examine amendments in the rules and recommend these to the Cabinet for approval.

The CM approved placing the proposed amendments before SCCLB on 31.10.2017. The matter was considered by SCCLB in its meeting held on 27.12.2017. The Committee examined the amendments in detail and recommended these to the Cabinet. The Cabinet approved the amendments through circulation on 10.04.2018. However, the department had a sudden change of heart and moved another summary to the CM on 12.06.2018 recommending deferring the introduction of URMS as it had sufficient stocks of number plates at its disposal which, if not put to immediate use, would cause considerable loss to the government. The summary was returned unapproved by the CM as a caretaker regime had taken office by then and the matter was deferred to be considered by the new government after the elections.

2.3 Status of the Current Procurement

The Secretary then turned his attention to the chronology of the current procurement. The procurement process for newly-designed number plates under URMS was initiated in December 2017 and pre-qualification of firms was completed in April 2018. The last date for submission of bids was 02.10.2018. Out of seven firms, four firms were pre-qualified. One of the companies, M/s Daoming Optics, which had failed to pre-qualify, filed a writ petition in the Lahore High Court (LHC) challenging its disqualification. The LHC granted a stay order which remained in operation from 21.01.2019 to 15.05.2019. The technical evaluation of the bids was carried out on 20.05.2019. Three

out of four firms refused to extend their bid validity period citing sharp escalation in the exchange rate. The financial evaluation of the sole bidder, i.e. M/s IBTL was carried out on 21.05.2019. After the financial evaluation, the procuring agency sought approval of the department to award the contract to M/s IBTL. The department dithered and asked the procuring agency to finalize the matter at its level as being the “Competent Authority under PPR, 2014” it had the power to do so. A lot of back and forth ensued. Meanwhile, the bid validity period of M/s IBTL expired and the procurement process came to a halt.

After going through the brief, the full complexity of the situation dawned on Wajihullah. He decided to move quickly to chalk out a strategy to resolve the crisis and get all stakeholders on board. He knew that the previous Secretary had been transferred as he was unable to handle the procurement in a professional manner and failed to come up with a viable plan to fast-track it. The same fate could befall him if he faltered.

3. Salvaging the Procurement Process

After consulting his team, Wajihullah decided to set up a meeting with the CS to brief him on the available options and the way forward. The meeting was held on 26.08.2019 which was attended, among others, by the Secretary Law, Secretary Finance and Acting Managing Director, PPRA. The Secretary apprised the participants that there were four options before the department, i.e. continue with the existing contract, float another tender, establish an in-house manufacturing facility or introduce the licensing regime as proposed by his predecessor. He explained that retendering would entail scrapping the existing procurement and inviting fresh proposals. However, new bids were expected to be higher as the dollar had appreciated considerably vis-à-vis rupee since October 2018 when the firms had submitted their bids. The department was charging Rs. 1,200 for a pair of number plates for motor cars and Rs. 750 for motorcycles/ rickshaws. In case of higher bids, the official prices would have to be revised upwards. If, however, the prices were kept unchanged, the differential would need to be subsidized to reduce the burden on the motor vehicle owner. In case no subsidy was provided, there would be no option but to pass on the extra cost to him. Both options were deemed financially and administratively unfeasible.

The option of in-house manufacturing was a non-starter as it amounted to replacing a private sector monopoly with a public sector monopoly. The licensing regime was a new idea that had not been piloted in any other province. Besides, it required amending the Punjab Motor Vehicles Rules, 1969, which was a time-consuming process. Under these circumstances, the only option left was to carry on with current procurement and

take it to its logical conclusion. The CS concurred with the views of Wajihullah and asked him to move a summary for approval of the CM to place the matter before the Standing Committee of Cabinet on Finance & Development (SCCFD) for its consideration.

Wajihullah immediately moved the summary on 29.08.2019 through the PPRA, Law and Finance Departments recommending continuation of the current procurement subject to two clarifications. First, since only one bidder was left in the field, whether the current procurement would qualify as a single bid and if it were so, whether the department could proceed with it under PPR, 2014. Secondly, whether the stay period of four months, when the procurement was stayed, could be excluded from the calculation of bid validity period. The bid validity of the sole bidder had expired on 29.07.2019.

PPRA advised that under PPR, 2014 even if one complying bid was received, the department could award the contract to the bidder. Furthermore, the contract had to be awarded within the original or extended bid validity period. The Law Department advised that since the procurement process was on hold for four months due to the operation of stay order, it could be excluded for the purpose of calculating the bid validity period. The remedy was available under Section 15 of the Limitation Act, 1908. If stay period were excluded, the bid validity period could be extended up to 10.10.2019. The CM allowed the department to place the matter before SCCFD. The meeting of SCCFD held on 07.10.2019 allowed the department to proceed in light of the advice of the Law Department and PPRA. The Secretary immediately directed the Director General E&T to proceed with the contract. Only three days were left to conclude the contract with M/s IBTL as the extended bid validity period was expiring on 10.10.2019. Time was of the essence.

4. The Spectre of NAB Haunts

A few months of working as Secretary had alerted Wajihullah to the fact that ET&NC Department remained under constant media spotlight as it dealt with sensitive issues of registration of motor vehicles, collection of property tax and issuance of liquor licenses. Due to its urban footprint and public exposure, the department was at the receiving end of several complaints relating to financial embezzlement, revenue slippages, tampering with record and staff collusion with transport/‘agent’ mafias.⁷ The

⁷ Due to cumbersome procedures and absence of transparent access to officials, ‘the agent’ or a private intermediary, akin to a facilitator or legal counsel, is an ubiquitous figure in all government offices in the developing world; often this character has an unsavoury presence and acts as a conduit of bribes between the citizens and officials.

urban profile of its clientele further compounded the situation as this constituency was not only highly vocal and impatient but also had ready access to media which amplified its voice and provided it a bigger platform to vent its grievances. Under these circumstances, it was naive to assume that the department would be able to escape the notice of NAB for long. The Secretary wondered if and when the department would get on the wrong side of NAB. He was soon to learn this, not once but twice.

The department first appeared on the radar of NAB when the scandal of illegal registration of army-auctioned vehicles hit the headlines in 2017. It was reported that as many as 8,000 vehicles were registered between 2005-2014 against fake army vouchers due to collusion between motor branch staff of Excise Department, army officials and the agent mafia.⁸ Since commercial vehicles were largely imported and carried a higher price tag, mafias involved in the commercial transport business would get hold of the frame of a smuggled/stolen/scrap vehicle, fabricate a body around it, register it as an army-auctioned vehicle with the Excise Department and operate it as a commercial transport endangering the safety of passengers. Unfortunately, there was no practice of physically inspecting the vehicle at the time of registration due to shortage of staff. Although commercial vehicles were required by law to get a “fitness certificate” from motor vehicle examiners, manual systems were in place at that time rendering the verification laborious and time-consuming. NAB took cognizance of the matter, procured the data of all army-auctioned vehicles registered during the period and implicated two directors in-charge of motor registration branches in Lahore. The investigation dragged on for about two years and was dropped without reaching any conclusion.

The second time the department got in the crosshairs of NAB was when an L2 license was granted to an under-construction hotel in Lahore for the sale of liquor in January 2019. Such licenses are issued under the Prohibition (Enforcement of Hadd) Rules, 1979, which spells out a very stringent regime for the manufacturing, storage, transportation, possession and sale of liquor. As soon as the license was issued, the local media picked up the story and raised a storm accusing the government of being complicit in the promotion and sale of liquor in the Islamic Republic under the guise of licensing. The department was brought under so much pressure that it was left with no option but to withdraw the license. The hotel filed a writ petition in the Lahore High Court arguing that the license had been issued after completing all formalities and it was illegally revoked. The court accepted the petition and restored the license.

⁸ ET&NC Department, Government of Punjab.

No less a person than the CM and all those involved in the process ranging from Excise Officer Lahore, who had carried out the site inspection, to the Director General, who had recommended the case, to the Secretary, who had moved the summary for approval of the CM, to the Principal Secretary to the CM, who had dealt with this matter, were summoned by NAB and asked to explain their position. This was despite the fact that LHC had already decided the case in favour of the hotel. NAB insisted that the department did not pursue the matter vigorously enough in the court which led to an adverse decision. The department filed an intra-court appeal which was still pending.

Against this backdrop when, after approval of SCCFD, the Secretary directed the DG Excise & Taxation to conclude the contract with M/s IBTL, the DG dragged his feet and came up with lame excuses. He tried to shift the responsibility onto the department arguing that the contract was to be signed by the Secretary himself. Nothing could be further from the truth as the procuring agency was the Directorate General, E&T and the department was only involved to the extent of getting approvals from the relevant fora. When the DG was pressed to explain his reluctance, he referred to an anonymous call from an unknown source advising him against proceeding with procurement or else the matter would end up in NAB and other consequences would follow. This was a rude awakening for the Secretary who had returned to Punjab after a gap of nine years and was not aware of the extent to which the fear of NAB had pervaded the top echelons of bureaucracy.

The flat refusal of the Director General jolted Wajihullah who had invested so much effort and energy in reviving a moribund procurement process. Now when all obstacles had been cleared and all legal formalities fulfilled, the officer had backed out due to fear of NAB and was ready to shelve the procurement to save his skin. Under these circumstances, the Secretary was left with no option but to scrap the procurement process on the grounds that there was no competition due to a single bid. NAB's fear had frustrated all attempts of the Secretary to bring the crisis to an early end. The DG got himself transferred after two months.

5. A New Player Enters

NAB's earlier interventions and its likely involvement in the number plates impressed upon the Secretary the need to tread with caution and explore other safe options. An opportunity presented itself in the form of a proposal by National Radio & Telecommunication Corporation (NRTC). NRTC is an entity under the Ministry of Defence Production fully owned by the Government of Pakistan. NRTC had been approaching the department in the past to reach an understanding on the procurement

of number plates. The Secretary did not engage it initially as he was trying to salvage the current procurement process. However, when the process was shelved, he decided to sound out the management of NRTC. The decision was prompted by a number of important considerations.

To begin with, NRTC was a government entity and a government-to-government (G2G) contract could be explored if it agreed to reduce the rates to less than what were offered by M/s IBTL. Second, since it was a defence organization and nature of the contract was G2G, NAB would also steer clear of it. Third, there was little chance of the procurement being challenged in the court due to its G2G nature. Fourthly, a long-term engagement with NRTC would rid the department of this problem once and for all. Fifth and finally, the backlog could be cleared in a shorter time as the contract could be awarded after receiving the bid and carrying out technical and financial evaluation. The more Secretary mulled it over, the more he became convinced of the feasibility of the G2G option. He discussed the matter with his team. They all concurred that it was the best option under the given circumstances. The Secretary knew that NRTC was desperate to conclude the contract with Government of Punjab as the volumes were big. A contract with Punjab would enable NRTC to conclude similar contracts with Government of Sindh and Islamabad Capital Territory (ICT) administration with which its negotiations were under way.

As expected, the NRTC management offered to supply plates to the department at a price which would be lower than that offered by the sole bidder. A comparison of the two rates is given in Table-1.1. NRTC, however, insisted on a mobilization advance as a *quid pro quo*. The Secretary immediately went into a huddle with his team on how the agreement with NRTC could be operationalized within the ambit of PPR, 2014. It transpired that PPR, 2014 did not provide for any G2G arrangement and relaxation of rules would be required from the Cabinet. His attention was drawn towards Section 23 of PPRA Act, 2009 which reads as follows⁹:

- 1) *The (PPRA) Board may, for reasons to be recorded in writing, recommend to the Government to exempt any public procurement from the application of any rule or regulation made under this Act.*

- 2) *The Government may, on the recommendation of the Board and by notification, exempt application of any rule or regulation made under the Act in any public procurement by specifying alternate mode of the public procurement.*

⁹ Punjab Procurement Regulatory Authority, *Punjab Procurement Regulatory Authority Act, 2009* (Lahore: Official Printers, 2009).

3) The notification under subsection (2) shall immediately be published in the official Gazette and on the websites of the Government and the Authority.

The section was pointing a way forward. If the present procurement were to be exempted from PPR, 2014, the case would be taken to the PPRA Board of Management (BOM) headed by the CS for detailed examination. If the Board concurred, it would recommend the matter to the provincial Cabinet for approval to undertake the procurement under the G2G mode. The Secretary immediately moved a summary for the CM for approval to place the matter before PPRA BOM, which was granted.

Table 1.1

S.No.	Category	Unit price for a single number plate incl. of GST quoted in the previous bid	Rate quoted by NRTC	% Increase/ Decrease
1.	Private Vehicle Cars (front)	600	596	-0.67%
2.	Private Vehicle Cars (rear)	600	596	-0.67%
3.	Commercial Vehicle Cars (front)	600	596	-0.67%
4.	Commercial Vehicle Cars (rear)	600	596	-0.67%
5.	Govt Vehicle Cars (front)	800	797	-0.38%
6.	Govt Vehicle Cars (rear)	800	797	-0.38%
7.	Semi-Govt Cars (front)	800	797	-0.38%
8.	Semi-Govt Cars (rear)	800	797	-0.38%
9.	Private Bike (front)	296	294	-0.68%
10.	Private Bike (rear)	500	498	-0.40%
11.	Govt. Bike (front)	300	298	-0.67%
12.	Govt. Bike (rear)	500	498	-0.40%
13.	Semi-Govt Bike (front)	300	298	-0.67%
14.	Semi-Govt Bike (rear)	500	498	-0.40%
15.	Rickshaw (front)	500	498	-0.40%
16.	Rickshaw (rear)	500	498	-0.40%

In the meeting of PPRA Board held on 17.02.2020, Wajihullah presented his analysis. According to him, the department would be able to save Rs. 124 million if G2G contract was signed with NRTC for three years and Rs. 208 million if the contract was for five years as shown in Table-1.2 below:

Table 1.2

Procurement of ISO 7591 and ANPR Compliant Number Plates											
COMPARISON											
Sr. #	Category	Pair Plate Rate received in 2019 (inclusive of all taxes) (in PKR)	NRTC Rates	Difference of NRTC Rates with last bid (May 2019) per pair	Difference in percentage	Total Estimated annual consumption of NP (based on actual consumption of 2018-19)	Total estimated cost as per Bid Rates	Total estimated cost as per NRTC Rates	Estimated annual Saving against bid rates as on 22.05.2019	Estimated three years Saving against bid rates as on 22.05.2019	Estimated five years Saving against bid rates as on 22.05.2019
1	Private Vehicle Cars	1,200.00	1,150.00	-50	-4.17%	196,945	236,334,000	226,486,750	9,847,250	29,541,750	49,236,250
2	Commercial Vehicle Cars	1,200.00	1,150.00	-50	-4.17%	78,332	93,878,400	89,966,800	3,911,600	11,734,800	19,558,000
3	Govt. Vehicle Cars	1,600.00	1,540.00	-60	-3.75%	2,221	3,553,600	3,420,340	133,260	399,780	666,300
4	Semi-Govt. Cars	1,600.00	1,550.00	-50	-3.13%	950	1,520,000	1,472,500	47,500	142,500	237,500
5	Private Bike	796.00	780.00	-16	-2.01%	1,616,796	1,286,969,616	1,261,100,880	25,868,736	77,606,208	129,343,680
6	Govt. Bike	800.00	780.00	-20	-2.50%	5,279	4,223,200	4,117,620	105,580	316,740	527,900
7	Semi-Govt. Bike	800.00	780.00	-20	-2.50%	600	480,000	468,000	12,000	36,000	60,000
8	Rickshaw	1,000.00	970.00	-30	-3.00%	56,844	56,844,000	55,138,680	1,705,320	5,115,960	8,526,600
	Total					1,957,867	1,683,802,816	1,642,171,570	41,631,246	124,893,738	208,156,230
		* USD in 02nd October 2018 was Rs. 122.71									
		* USD on 22nd May 2019 Rs. 150.75									
		* USD on 11th February 2020 Rs. 154.7									
		* Data collected from Exchange-rates.org									

However, if the department resorted to retendering, the bids received would be higher by about 30% for each category of number plates as shown in Table-1.3 below:

Table 1.3

Procurement of ISO 7591 and ANPR Compliant Number Plates										
COMPARISON										
Sr. #	Category	Pair Plate Rate received in 2019 (inclusive of all taxes) (in PKR)	Price of Pair of Plates in USD on 02nd October 2018 (122.71)	Conversion of price of plate from Dollar on 02nd October 2018 to PKR 11th February 2020	NRTC Rates	Difference of NRTC Rates with last bid (May 2019) per pair	Difference in percentage	Price differential in case of retendering	Difference in percentage	
1	Private Vehicle Cars	1,200.00	9.779	1,512.835	1,150.00	-50	-4.17%	362.835	31.55%	
2	Commercial Vehicle Cars	1,200.00	9.779	1,512.835	1,150.00	-50	-4.17%	362.835	31.55%	
3	Govt. Vehicle Cars	1,600.00	13.039	2,017.114	1,540.00	-60	-3.75%	477.114	30.98%	
4	Semi-Govt. Cars	1,600.00	13.039	2,017.114	1,550.00	-50	-3.13%	467.114	30.14%	
5	Private Bike	796.00	6.487	1,003.514	780.00	-16	-2.01%	223.514	28.66%	
6	Govt. Bike	800.00	6.519	1,008.557	780.00	-20	-2.50%	228.557	29.30%	
7	Semi-Govt. Bike	800.00	6.519	1,008.557	780.00	-20	-2.50%	228.557	29.30%	
8	Rickshaw	1,000.00	8.149	1,260.696	970.00	-30	-3.00%	290.696	29.97%	
		* USD in 02nd October 2018 was Rs. 122.71								
		* USD on 22nd May 2019 Rs. 150.75								
		* USD on 11th February 2020 Rs. 154.7								
		* Data collected from Exchange-rates.org								

The analysis convinced the Board to recommend the matter to the government. The matter came up before the Cabinet on 12.03.2020 in which approval was accorded to

conclude G2G contract with NRTC. The gazette notification was issued on 16.06.2020 (**Annex C**). The contract with NRTC was eventually signed on 29.10.2020 after getting approval of the draft G2G contract from SCCLB. Under the contract, NRTC would supply 2.9 million number plates for one year. The contract would be extendable for two years subject to satisfactory performance.

6. Analysis

6.1 Impact of Mustafa Impex Case

The role of the Mustafa Impex case in delaying the procurement process cannot be overemphasized. As mentioned earlier, the summary for amendments in the Punjab Motor Vehicles Rules, 1969 was moved on 09.09.2016 and was finally approved by the Cabinet on 10.04.2018. This meant a delay of almost one and a half years. The amendments had to be routed through SCCLB first which, after detailed examination, recommended these to the Cabinet on 27.12.2017, after a delay of more than a year.

The Mustafa Impex case expanded the scope of the definition of the “Provincial Government” to include both the CM and provincial ministers. Earlier, the CM had exercised executive authority on behalf of the Cabinet. Whenever rules were to be amended, the department would prepare a summary for the CM and route it through the Finance and Law departments giving full justification for the proposed amendments and spelling out any financial and legal implications. If departments went along with the amendments, the summary would be approved by the CM. The decision-making was expedited that way. Now, by putting a liberal interpretation on the word “Government”, the Superior Court judgment added another tier in the form of Cabinet to the approval mechanism.

Different ministers in the Cabinet have different views on any matter under consideration rendering it difficult to forge a consensus and arrive at a common decision. While it cannot be disputed that collective decisions are always preferable over individual decisions and diversity of opinion elevates the level of debate, the fact is that only those agenda items are generally taken up by the Cabinet which advance the constituency interests of the CM and cabinet members, while the rest are deferred to be considered at a later stage. Cabinet deliberations best epitomize the political economy of the decision-making process not just in Punjab, but globally.

While the final approval authority rested with the Cabinet, the Cabinet had instituted clearing mechanisms in the form of standing committees to filter agenda items and

refer only those to the Cabinet which ranked higher in the political pecking order. The two important ones were the Standing Committee of the Cabinet on Legislative Business (SCCLB) and Standing Committee of the Cabinet on Finance & Development (SCCFD).

The SCCLB is headed by the Law Minister with representation of ministers for Higher Education, Excise, and Sports as well as secretaries/ heads of Law Department, Regulations Wing and Implementation & Coordination Wing (I&C) as permanent members (**Annex D**). At this forum, legal amendments are examined threadbare and recommended to the Cabinet for approval. The SCCFD is headed by the CM assisted by the Finance Minister, Minister for Industries and Advisor to the CM on Economic Affairs and Planning & Development (**Annex E**). The SCCFD is authorized to dispose of cases having financial implications for both the current and development budgets.

The introduction of these additional tiers has further slowed down the decision-making process. Almost all proposals originating from the departments are either legislative in nature and require amendments of existing rules or enactment of new law/ rules, or financial which require provision of funds for development and non-development activities. All these proposals are vetted by the committees before they make it to the Cabinet. In many cases, the proposals are referred back to the departments for review. It takes considerable time for the departments to put these proposals back on the agenda of the committees and get these approved. The paperwork of the departments has increased manifold as they first initiate the summary for the CM for approval to place a matter before either of the Standing Committees and then move another summary for consideration of the respective committee. In case the Cabinet approval is required, a third summary for the Cabinet is also moved.

These Standing Committees have weakened the office of the CM reducing it to a clearing house for cases to be considered by these committees. The CM's Secretariat has ceased to perform the leadership role that it used to when the CM was exercising all authority without sharing it with Cabinet or the standing committees.

There is another perception that in the current accountability regime where even the CM and ministers are not immune to the high-handedness of NAB, these committees serve an important purpose of diffusing the responsibility and taking the burden of decision-making off the shoulders of the CM. If a decision goes wrong, the responsibility will fall on the whole Cabinet rather than the CM alone. The fear of accountability by NAB and media witch-hunting that have permeated government echelons to such an extent that the CM Secretariat simply refuses to entertain

summaries whereby departments seek directions from the CM on sensitive issues requiring highest level clearance or which warrant a departure from previous policy.

6.2 Implications of NAB Intervention

NAB's intrusion in the executive functions of the departments under the garb of accountability has assumed ominous proportions. NAB law confers wide powers on NAB officials to call for any information from any department under Section 19 of NAB Ordinance, 1999 reproduced below:¹⁰

“The Chairman NAB or any authorized officer may, during the course of an inquiry in connection with contravention of any provision of this Ordinance:

- (a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Ordinance or any rule or order made thereunder;*
- (b) require any person to produce or deliver any document or thing useful or relevant to the inquiry;*
- (c) examine any person acquainted with the facts and circumstances of the case; and*
- (d) require any bank or financial institution, notwithstanding anything contained in any other law for the time being in force, to provide any information relating to any person whosoever”*

Further, Section 27 of NAB Ordinance, 1999 states:¹¹

“The Chairman NAB shall have the power to seek full and complete assistance and can call for any documents and information relevant to or in connection with any matter or proceeding pending before the NAB, from any department of the Federal Government, Provincial Government, local authority, bank, financial institution, person or any authority and institution or department in the public sector or the private sector, as he may deem it fit and proper to demand or require, provided that in any case in which a question of secrecy is involved or is raised at any time, the Chairman's decision shall be final.”

¹⁰ National Accountability Bureau, *National Accountability Bureau Ordinance, 1999* (Rawalpindi: Official Printers, 1999).

¹¹ Ibid.

With around 1.9 million number plates being issued every year (corresponding to the number of vehicles registered) the procurement of motor vehicle number plates is a huge undertaking; the cost of procurement runs into millions of rupees. While negotiating contracts of such high value, the thought uppermost in the mind of a procuring officer is that he might be called upon to clear his position, should NAB investigate the matter a few years down the line. These apprehensions are reinforced by many incidents in which officers were summoned by NAB to well into their retirement years to defend their decisions about matters disposed of by them many years ago.

The bid validity period of M/s IBTL expired for the reason that neither the department nor the procuring agency (Directorate General E&T) were willing to proceed on their own due to the fear of NAB and allowed the bid validity to lapse. The issue of number plates could have been resolved in October 2019 had Director General E&T stood his ground and not capitulated to the external pressure attributed to NAB. The NAB's likely involvement was the reason why the department was advised by the CS to take the matter to SCCFD for its token approval. However even this did not suffice to allay the concerns of the DG and other members of his team.

The decision to conclude G2G contract with NRTC was also driven by the consideration of 'NAB proofing' the procurement process and putting departmental officers at ease. Since no private party is involved in G2G contracts and the contract is between two government entities, there is no fear of any loss being caused to the government. It is a fact that NAB treats public sector contracts differently from those concluded with private sector and takes a more favourable view of these.

There is a tendency among government departments to conclude contracts with defence-related organizations as these are perceived to be more secure and immune from NAB scrutiny. NRTC had capitalized upon this factor to venture into the procurement of number plates in almost all provinces. At the time when it had approached the department, it had already concluded a contract with Government of Balochistan. After signing the contract with Excise Department Punjab, it was eyeing similar contracts with Government of Sindh and ICT. The NRTC specialized in the design and development of telecommunications equipment and vehicle number plates manufacturing was not its domain. However, it had jumped into this field due to the current accountability bandwagon to diversify into this business as well.

The fear of NAB had nudged the department towards the G2G contract, but it also spawned some unintended consequences as well. Such G2G contracts restrict

competition by squeezing private parties out. One of the objectives of public procurement is to create a market for goods and services, nurture the private sector and support small and medium enterprises. The private sector competes on the basis of cost and quality, with the ultimate beneficiaries being the citizens. These objectives are compromised when a public sector organization enjoys a monopoly over the provision of goods and services.

G2G contracts pose another type of problem. Since there is no competition in such contracts, there is always a chance that the contract price would be higher than that obtained through open competition. PPR, 2014 specifies competitive bidding as the principal mode of procurement in order to achieve the best value for money. G2G contracts are exceptions to this rule.

7. Conclusion

An analysis of this case reveals that the Mustafa Impex case has had a negative impact on the procurement of number plates as a lot of time was consumed in steering the proposed amendments through various fora including the board (BOM) of PPRA, SCCLB, SCCFD and the Cabinet for getting exemptions from the procurement rules. Procurement could have been expedited if the executive authority had rested with the CM. The involvement of a number of stakeholders rendered it difficult to evolve consensus on the matter. Initially, the number plates had to be redesigned keeping in view the requirements of PSCA and attendant amendments in the rules caused inordinate delay. The bid validity period had to be extended after seeking special relaxation from the Law Department. Further complications arose because of NAB's involvement in departmental affairs. The factor of NAB discouraged the department from resorting to open competitive bidding and nudged it towards G2G arrangement. This completely shut the private sector out of the procurement process and allowed an organization working in the telecom sector to dominate the number plates manufacturing business in the country.

8. Lessons Learnt

In retrospect, the department should have stayed out of the direct procurement of number plates. Provision of number plates is not a public good that has to be delivered by the government. There is enough capacity in the private sector to manufacture and supply the plates. The department should instead have regulated the quality and price and allowed multiple private players to compete. Withdrawing from the supply would have not only averted the need for the department to seek any approval from PPRA,

SCCLB, SCCFD and Cabinet but also helped save time. This would have deterred the NAB intervention as well.

Awarding the contract to a single bidder on the basis of open competitive bids, as was done in previous contracts, should have been revisited as it established the monopoly of a single player to the exclusion of other firms which had submitted technically feasible bids but could not match the lowest price of the successful bidder. Involving multiple players would have helped diversify the risk in case there were problems with a single supplier.

The Director General should have taken Secretary into confidence and shared his concerns regarding NAB upfront so that the time spent in reviving the current procurement could have been saved and negotiations with NRTC started as soon as possible.

Imported raw material in the production of number plates should have been avoided and the supply chain localized to cut delays. An imported regime posed many problems. One was the exchange rate risk. Three out of four bidders refused to extend the bid validity period as the dollar had appreciated against the rupee. In previous contracts, it had taken a lot of time for the contractor to open the letter of credit with a local bank and get approval of the State Bank of Pakistan. Import restrictions due to exogenous shocks and unforeseen circumstances also delayed the imports. The department was facing the same problems with supply of smart cards where raw material was being imported. Accordingly, it would have been and would be more prudent in the future to indigenize supply sources and reduce reliance on imports.

9. Recommendations

The following recommendations are proposed to streamline the procurement process of number plates:

- (i) The word “Government” used in Section 23 of PPRA Act, 2009 may be replaced with the word “CM” so that approval for exemption from any rules or regulations under the Act could be granted by the CM directly without involving the Cabinet. This will fast-track the procurement process.
- (ii) All departments may carry out the exercise of suggesting suitable replacement of the word “Government” with “Cabinet”, “CM”, “Secretary” or any other appropriate authority in the rules so that only certain categories of amendments are referred to the Cabinet while others are approved at the level of the CM/ other authorities.

- (iii) NAB may only investigate procurement contracts worth more than Rs. five (05) billion and that too upon receiving a reference from PPRA. Investigation may be undertaken at earlier stages and not when the officers concerned have either been transferred or have superannuated and have no access to the record.
- (iv) For contracts valued at less than Rs. five (05) billion, investigation/inquiry may be carried out by PPRA.
- (v) The government may withdraw from the business of procurement of vehicle plates and introduce a licensing regime outsourcing the job to private players. Quality parameters and price ceilings may be fixed and strictly enforced.
- (vi) Procurement may be localized and import of raw material discouraged in all future procurements as this is the main cause of delay. Instead of using aluminum, which is an import item, local materials may be deployed for the manufacturing vehicle number plates. This can be done without compromising the security features demanded by PSCA.
- (vii) G2G mode of contracting may be resorted to in case of projects which are sensitive in nature and where information cannot be shared with private sector. PPRA may be authorized to designate such projects.

Subsequent events vindicated the decision of the department to conclude G2G contract with NRTC. The procurement of number plates has started since April 2021. No NAB notice has been received so far. All the same, one private party approached the LHC for an injunction against G2G contract, but no stay was granted. The matter is still *sub judice* in court. The department is hopeful of getting a verdict in its favour. The government has amended PPR Rules, 2014 by incorporating provisions for direct contracting with organizations owned and controlled by the government. The amendment provides that “for procurement of works, services, consultancy services, a procuring agency shall engage an organization, semi-autonomous or autonomous institution under the administrative control of the federal and provincial government registered with the Authority if project is time-bound and of sensitive nature and its information cannot be shared with the private sector. In case there are more than one eligible organizations intending to participate, then the competition shall be held among such organizations.”¹² (**Annex F**).

¹² Notification No. SO(CAB-I)2-9/2015 dated March 10, 2021.

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Annexures

Annex A



Annex B



Annex C



The Punjab Gazette
PUBLISHED BY AUTHORITY

LAHORE WEDNESDAY, JUNE 17, 2020

**GOVERNMENT OF THE PUNJAB
LAW AND PARLIAMENTARY AFFAIRS DEPARTMENT**

**NOTIFICATION
(63 of 2020)
16 June, 2020**

Notification No.S.O(Cab-I)2-9/2015, dated 20.05.2020, issued by of Services and General Administration Department (Implementation & Coordination Wing) is hereby published in official Gazette for general information:

**GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT
(Implementation & Coordination Wing)**

Dated Lahore the 20th May, 2020.

NOTIFICATION

No.S.O(Cab-I)2-9/2015.- In exercise of the powers conferred under section 23 of the Punjab Procurement Regulatory Authority Act, 2009 (VIII of 2009), Governor of the Punjab, on the recommendation of the Board of Management of the Punjab Procurement Regulatory Authority, is pleased to grant exemption from the application of the Punjab Procurement Rules 2014 for procurement of retro-reflective number plates by the Excise, Taxation and Narcotics Control Department through direct contract modality on G2G basis by engaging National Radio and Telecommunication Corporation (NRTC).

**CHIEF SECRETARY
GOVERNMENT OF THE PUNJAB**

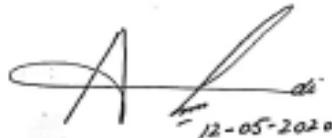
- vi. To consider / approve legislative proposals in principle in terms of Rule 33(1) of the Punjab Government Rules of Business, 2011.
- vii. To consider / approve signing of Memorandum of Understanding (MoU) / Letter of Interest (LoI).
- viii. To consider / approve Constitution / Re-constitution of Board of Directors / Board of Governors / Governing Bodies of Autonomous / Semi-Autonomous Bodies and Public Sector Companies under Government of the Punjab.
- ix. To consider / approve amendments in Schedules of Substantive / Delegated Legislation.
- x. The Cabinet may assign any other business to the Committee for disposal on its behalf under terms and conditions set by the Cabinet under Rule 25 (3) read with Rule 25 (1) (c) of the Punjab Government's Rules of Business, 2011.
- xi. The Committee may co-opt any other person, including a government functionary, a technical or professional expert, an academician etc. to assist the Committee in disposal of its business with approval of the Convener of the Committee. The member thus co-opted shall, however, have no right to vote.

JAWWAD RAFIQUE MALIK
CHIEF SECRETARY

D. & DATE EVEN:

A copy is forwarded for information and necessary action to:

1. All the Provincial Ministers, Punjab
2. All the members of the Standing Committee on Legislative Business
3. The Advisor to the Chief Minister, Punjab
4. The Senior Member, Board of Revenue, Punjab
5. The Chairman, Planning & Development Board, Punjab
6. All the Administrative Secretaries, Govt. of the Punjab
7. The Additional Chief Secretary, Punjab
8. The Principal Secretary to Chief Minister, Punjab
9. All the Divisional Commissioners, in the Punjab
10. The Provincial Police Officer, Punjab
11. The Chairman, Chief Minister's Inspection Team, Punjab
12. The Additional Secretary (General) / Staff Officer to Chief Secretary, Punjab
13. The Section Officer (I&C-I), S&GAD
14. P.S.O to Chief Secretary, Punjab
15. P.S to Secretary (I&C), S&GAD



12-05-2020

(ADIL UMAR-PMS)
SECTION OFFICER (CABINET-III)

Annex E

TO BE RE-SUBSTITUTED BEARING SAME NUMBER & DATED 14.09.2018



GOVERNMENT OF THE PUNJAB
SERVICES & GENERAL ADMINISTRATION
DEPARTMENT
(CABINET WING)

Dated Lahore, the 27th May, 2019

NOTIFICATION

No.SO(CAB-II)8-6/2018: In pursuance of the decision of Provincial Cabinet made in its meeting held on 08.09.2018, the Standing Committee of the Cabinet on Finance & Development is hereby notified with the following composition and TORs:-

COMPOSITION

i)	Chief Minister, Punjab	Convener
ii)	Minister for Finance, Punjab	Member
iii)	Minister for Industries, Punjab	Member
iv)	Dr. Salman Shah, Advisor to Chief Minister Punjab on Economic Affairs and Planning & Development	Co-opted Member

TORs OF THE COMMITTEE:

2. The Standing Committee of the Cabinet on Finance and Development is constituted by the Provincial Cabinet under Rule 25 (3) read with Rule 25 (1) (c) of the Provincial Government's Rules of Business (ROB), 2011 and is authorized by the Cabinet to dispose of the business of the Cabinet in terms of Rule 25 (1) (c) under the following Terms of Reference:-

- i. The Committee shall examine and decide upon all cases for supplementary grants on current side. Among other things as mentioned in the Budget Manual, supplementary grants also include creation of new posts on the non-development side.
- ii. The Committee shall examine and decide upon all fiscal matters (such as levy, abolition, remission, alteration or regulation of any tax, fee etc., incurring of floating of loans, raising of debts, and issuance of provincial guarantees), on behalf of Provincial Cabinet.
- iii. The Committee shall examine and decide upon cases of provision of supplementary grant for new / un-funded development schemes outside ADP.
- iv. The Committee shall examine and decide proposals for substitution of ADP schemes with new schemes.
- v. The Committee shall be fully authorized in terms of provisions of Rule 25 of the Punjab Government's Rules of Business, 2011.

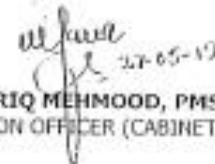
- vi. The Cabinet may assign any other business to the Committee for disposal on its behalf under terms and conditions set by the Cabinet in terms of Rule 25 (3) read with Rule 25 (1) (c) of the Punjab Government's Rules of Business, 2011.
- vii. The Committee may co-opt any other person, including a Government functionary, a technical or professional expert, an academician etc. to assist the Committee in disposal of its business with approval of the Convenor of the Committee. The member thus co-opted shall, however, have no right to vote.

YOUSAF NASEEM KHOKHAR
CHIEF SECRETARY

No. & DATE EVEN:-

A copy is forwarded for information and necessary action to:

1. All the Provincial Ministers, Punjab.
2. All the members of Standing Committee of Cabinet on Finance & Dev.
3. The Advisor to the Chief Minister, Punjab.
4. The Senior Member, Board of Revenue, Punjab.
5. The Chairman, Planning & Development Board, Punjab.
6. All the Administrative Secretaries, Govt.-of the Punjab.
7. The Additional Chief Secretary, Punjab.
8. The Principal Secretary to Chief Minister, Punjab.
9. All the Divisional Commissioners, in the Punjab.
10. The Provincial Police Officer, Punjab.
11. The Chairman, Chief Minister's Inspection Team, Punjab
12. The Additional Secretary:(Gen)/Staff Officer to Chief Secretary, Punjab.
13. P.S.O to Chief Secretary, Punjab.
14. P.S to Secretary (I&C), S&GAD.


(TARIQ MEHMOOD, PMS)
SECTION OFFICER (CABINET-II)

Annex F



**GOVERNMENT OF THE PUNJAB
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT
(Implementation & Coordination Wing)**

Dated Lahore, the 10th of March, 2021

NOTIFICATION

No.SO(CAB-I)2-9/2015.- In exercise of the powers conferred under section 26 of the Punjab Procurement Regulatory Authority Act 2009 (VIII of 2019), Governor of the Punjab is pleased to make the following amendment in the Punjab Procurement Rules 2014 with immediate effect:

AMENDMENT

In the Punjab Procurement Rules 2014, in rule 59, after clause (d), the following new clause (e) shall be inserted:

"(e) direct contracting with an organization, owned and controlled by the Government: (i) for procurement of works, services and consultancy services, a procuring agency shall engage an organization, semi-autonomous or autonomous institution under the administrative control of the Government, Federal Government or other Provincial Government, registered with the Authority, in direct contracting, if project is:

- (a) time bound; or
- (b) of sensitive nature and its information cannot be shared with private sector.

(ii) Government organization engaged for the procurement shall accomplish the task exclusively through its own resources without involving private sector as a partner or in the form of a joint venture or as a sub-contractor.

(iii) In case, there are more than one eligible organizations intending to participate, then the competition shall held among such organizations.

(iv) rules 12 and 14 of the rules shall not apply on procurement process under the clause."

MD PPRA

No:	1106
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(A&F)	

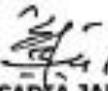
**CHIEF SECRETARY
GOVERNMENT OF THE PUNJAB**

P.T.O

NO. & DATE EVEN:

A copy is forwarded for information and necessary action to:-

1. The Secretary to Governor, Punjab.
2. The Secretary to Chief Minister, Punjab.
3. The Accountant General, Punjab, Lahore.
4. The Provincial Police Officer, Punjab.
5. The Registrar, Lahore High Court, Lahore.
6. All Administrative Secretaries to Government of the Punjab.
7. All Commissioners in the Punjab.
8. The Managing Director, PPRA.
9. All Heads of Special Institutions of S&GAD.
10. All Deputy Commissioners in the Punjab.
11. The PSOs to CS and ACS, Punjab.
12. PS to Secretary (I&C), S&GAD.


10/3/2021
(SADIA JAMAL)

SECTION OFFICER (CABINET-I)

The Buddha's Journey from Peshawar to Zurich: Handling the Complex Challenges of Coordination

Syed Junaid Akhlaq¹

Introduction

International collaboration in the fields of contemporary cultures and cultural heritage helps propagate and preserve national history, memory and identity. While taking many forms and shapes, such collaborations provide both challenge as well as opportunities to appraise capacities of cultural organizations. Thus, such international collaboration demands unconventional leadership that is able to unravel complexities of processes for establishing coordination among various stakeholders. The protagonist of this case study, Mahmood, served as the focal person in this international project between Pakistan and Switzerland in his capacity as the Director General of the Department of Archeology and Museums (DOAM). He was responsible for dealing with policy, rules and regulations relating to the loaning of cultural artifacts. The whole episode entailed and exhibited leadership that was able to maintain a steady flow of coordination and communication between important stakeholders i.e. DOAM, Directorate of Archaeology and Museums (DAM), Khyber Pakhtunkhwa, Swiss Development & Cooperation Agency (SDC), Islamabad, and Rietberg Museum Zurich (RMZ), Switzerland.

This study narrates the exclusive event of the journey of a huge Buddha statue from Peshawar Museum to RMZ Switzerland for an international exhibition during 2018-19. The exhibition was initiated and coordinated by DOAM under its national charter. The challenges of the project were multifaceted and for the ease of analysis, these have been divided into two sections i.e. the particular issues related to DOAM and its counterpart organization in KP and the project specific issues.

After the 18th Constitutional Amendment, the archeological sites and museums were devolved to provinces. However, international cooperation remained with the federation. In this case, a multicultural team added to the complex working environment in this project. Members from three different countries – Pakistan, Switzerland and Germany – were undertaking this monumental task. The role of leadership was of paramount importance at every stage. Hence, a focused approach was required for impactful outcomes. This study documents major challenges faced during the execution of this project and necessary leadership skills applied for the successful resolution of the issues that arose and were dealt with during the project. Although it was a one-off exclusive event, it provided an excellent opportunity to understand structural and functional gaps existing vis-à-vis inter-organizational

¹ Secretariat Group, 114th NMC (junaidakhlaque@hotmail.com).

coordination (IOC) in DOAM and its counterpart organizations in the provinces. The insights and lessons learnt during the course of the on-ground activities can easily serve as guidelines for similar projects in the future. This study provides a cumulative blueprint of the skills, strategies, procedures and decisions followed at each step to address issues arising from time to time. This would help to build a strong case to rectify existing discrepancies in order to improve the business environment in DOAM and its counterpart provincial organizations. Some practical policy recommendations are also presented at the end with a view to improve the performance of DOAM and these other organizations.

Statement of the Problem

Moving a colossal, 2,000-year-old Buddha statue from Peshawar Museum to RMZ entailed dealing with a number of policies and administrative and operational challenges. Lack of capacity in DOAM, non-existent coordination mechanism with provinces, and non-enunciation of SOPs for the movement of such artifacts required innovative thinking, relentless perseverance with stakeholders and the ability to take risky initiatives and decisions. Resolution of these complex governance issues was a possible only on account of personal efforts rather than institutional accomplishments.

Key Research Questions

The study examines:

- (i) How effective coordination was forged among all the partners for completing this challenging task?
- (ii) What leadership skills were necessary for handling conflicts arising in the multicultural setting of this project?

Research Methodology

This is an explanatory study with a qualitative scheme of research. The relevant data has been gathered from the primary sources like direct observation of the author, interviews with the participants, etc. Two separate questionnaires were also developed, one to record the opinions of the staff members and the other for the management group involved in the project (**Annex I**). The secondary sources include literature review and data gathered from the printed materials and documents available in the records of DOAM and DAM-KP. Besides the process of data collection, a detailed discussion was also carried out with experts in archaeology, management and public administration.

Section 1

The impact of cultural heritage and archeological history is not limited to the historical sites and museums only. Indeed, culture is a reflection of national identity. Nations preserve and exhibit their cultural heritage for identity, pride and posterity. Pakistan is acclaimed worldwide for its rich cultural heritage and centuries old archeological artifacts. It was in the northern region of Pakistan that Buddhism flourished during the 2nd century BCE and prevailed for the next 1,000 years.² Hundreds of stupas and sculptures of Buddha were found in the areas of Taxila, Swat and Takht-i-Bahi near Mardan (World Heritage Site). Today, the Gandhara sculptures occupy a prominent place in museums across Europe, USA, Japan, China, Korea and India. Museums in Pakistan preserve precious collection of Buddha sculptures; Peshawar Museum has one of the richest treasures of Gandhara art in stone, stucco, terracotta and bronze.

1.1 DOAM – A Department Dealing with its Own Devils

DOAM is the continuation of the Archaeological Survey of India, which was created in 1861 for archaeological survey, research, excavations, protection, preservation and conservation of the moveable and immovable antiquities of British India. Till 2011, it served as the only agency for, *inter alia*, promotion of the cultural heritage of Pakistan both within the country and abroad. DOAM still remains the state party under UNESCO Conventions for protection of cultural heritage and undertaking international collaboration. With customs being a federal subject, DOAM is the leading federal agency allowing export of antiquities for the purpose of exhibition, research and restoration under Antiquities Act, 1975.

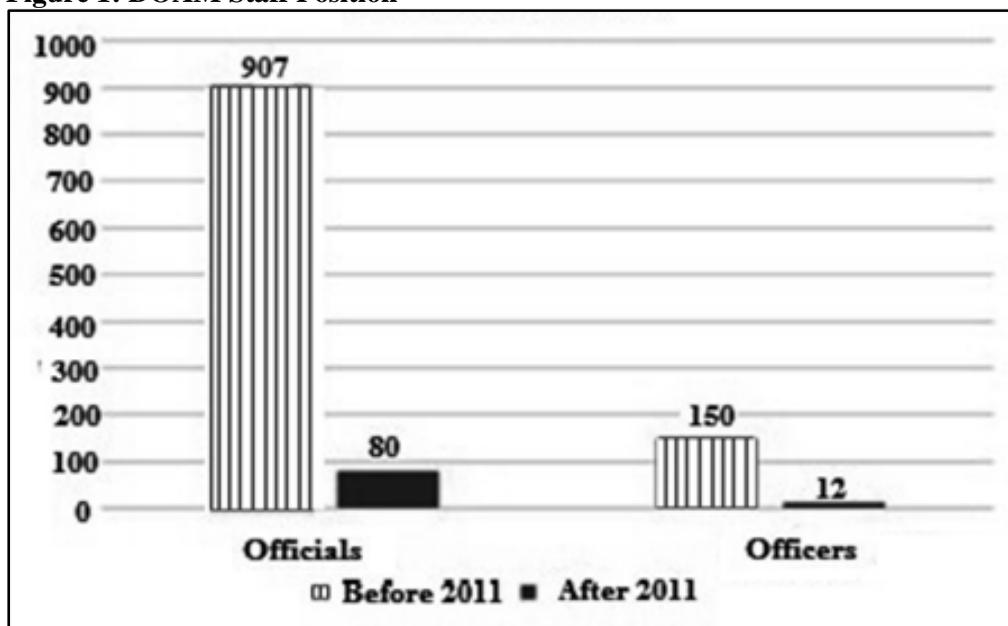
The department has always been fortunate enough to have a visionary leadership that was keen in taking initiatives on both national and international level. Till 2011, DOAM had organized about fifty international exhibitions in collaboration with foreign museums. It was also successful in registering six archaeological sites on UNESCO World Heritage List and participated in research with a number of foreign archaeological missions. The ill-planned devolution of the department, however, led to a decline in old achievements and successes. International cooperation was reduced significantly. From 2011 to 2017, DOAM could only coordinate three international events and, that too, on a small scale. Similarly, no significant activities were undertaken by the department in the fields of archeology, research, exploration, etc. As a result, a submissive department, operating under an inadequate leadership and shattered inter-organizational coordination network, lost its fervour for innovation and high achievement.

² Luca M. Olivieri and L. Colliva, "IsMEO/IsIAO – DOAM Excavations at Bīr-Koṭ-Ghwaṇḍai 1984-1992. 'a Reassessment of the Chronological Sequence on the Basis of the Latest Fieldwork at the Site' in Pakistan," *Pakistan Archaeology*, 1995, no. 32 (2017).

1.2 The Ill-Effects of Devolution

Prior to devolution, DOAM had regional offices in the provincial capitals: Archaeological Exploration & Excavation Branch, Karachi; Pakistan Institute of Archaeological Training and Research (PIATR), Lahore; Central Archaeological Library, Karachi; Central Archaeological Laboratory, Lahore; and museums, archaeological sites and historical monuments located across the country. The sanctioned strength of the department was about 1057 employees; this figure was reduced to a paltry 100 after 2011.

Figure 1: DOAM Staff Position



The mandate of DOAM was also confined to Islamabad Capital Territory (ICT) and administration of the Islamabad Museum. Devolution of offices and officials to provinces had subverted the organizational structure and functions to an extent that had shaken the whole edifice. The ill-thought and unjust division of assets and human resource developed immense mistrust and communication gap between DOAM and its provincial counterpart. This further hindered the career prospects for DOAM employees which in turn rendered them alienated, demoralized and non-committed towards their duties. In fact, the whole organization had fallen victim to stagnation.

As a result of DOAM's breakup in the post-devolution period, an ongoing confusion ensued among UN agencies and donors. This state of affairs had alarmingly hampered international collaboration in the field of archaeology and museums. On the other hand, the provincial governments could not fully adopt archeology and museums as provincial subjects and failed miserably to put in place an appropriate legal and

institutional framework. This, in turn, led to a fracturing of the governance mechanism related to archaeology and museums.

In 2015, Muhammad Arif, the regular Director General (DG) of DOAM, retired. After him, the department continued working under a stopgap arrangement. Mahmood, the Joint Secretary in the National Heritage & Culture Division, was given the additional charge of DG DOAM in February 2017 and he carried out this duty for over two years till August 2019. He also had the experience of working in international environments and had worked closely with UN agencies, donors and INGOs during his previous assignments.

Section 2

The Scene Setter

It was early one morning in October 2017 when Mahmood, the DG DOAM, and Johnnes, Deputy Director of RMZ, were sitting across the stretch of a wide wooden table in the department's conference room, accompanied by Sophie, Development Officer, SDC, and Azmat Khan, Director DOAM. It was their second meeting when John expressed his foremost concern, *“Do you think it is possible that we can bring the Buddha for an exhibition in Zurich?”*

The question was simple but the answer was very difficult. There was a deep, meaningful silence in the room as Mahmood took a pause to weigh his options and looked towards Azmat, and then replied in a resolute voice, *“The task is indeed challenging, but we will certainly make it happen – for the pride of this department, this country and surely to secure a far-reaching collaboration and friendship between these two countries.”*

Even at that time, Mahmood was fully aware of the impediments involved in an international joint venture such as this since DOAM had not undertaken any such project after its devolution in 2011. The task was multifaceted as there were issues regarding both policy and capacity about which he was equally apprised of. After John and Sophie left, Mahmood looked at Azmat, a grey-haired seasoned officer in his mid-50s, who responded firmly, *“Sir, we will make this event possible for the pride of our country and for the revival of prestige and credibility of our department.”* For Mahmood, the support and backup of his team was heart-warming and he could now set eyes on the successful completion of this project.

Section 3

The Story

The ancient land of Gandhara, located across modern-day Afghanistan and north-western Pakistan, is known for its Indo-Greek art works. It is considered as one of the main centers of proliferation of Buddhism in Asia. The Buddha statue, taken to Zurich for exhibition, was excavated by a British archaeological team in 1909 in Sahr-i-Bahlol, Mardan region. It was then handed over to the Peshawar Museum where it remained for over a hundred years until it was transported to RMZ in December 2018.

3.1 The Initiative

The DG, ever since assuming the charge of this department, had always looked for re-establishing international collaboration which was one of the important functions of DOAM. In April 2017, he met Sophie at a cultural event in Islamabad and discussed the possibility of establishing cooperation in the field of archaeology and museum activities. Sophie, already inspired by the rich cultural heritage of Pakistan, promised to connect DOAM with some cultural organizations in Switzerland.

The SDC, an organization under Federal Department of Foreign Affairs of Switzerland, had been operating in Pakistan since 1966. The agency had worked with the federal and provincial governments over an impressive range of areas pertaining to education, health, governance, humanitarian assistance, etc. Though, remarkable in their own right, these accomplishments lacked a summation – a final flourish of the Pak-Swiss partnership, which was to be accomplished by this joint effort in the cultural realm.

Having worked in Pakistan since 2015, Sophie was acquainted with the functioning and capacity of public sector organizations. In a subsequent meeting, she shared her concern regarding the immensity of a Pak-Swiss joint venture with Mahmood, *“Do you believe in your ability to satisfy the pre-requisites for an inter-country collaboration on art and culture?”*

The DG was well acquainted with the lengthy processes and coordination issues involved in handling international projects with constrained time lines. He also had knowledge of fast-track working of organizations like SDC, where the public services are liable to uphold their credibility and the trust of their citizens by all means. The finances in such international projects are usually borne by the other party. The DG's confidence reassured Sophie, thereby encouraging her to arrange for a meeting between the DG and Mr. John, head of the RMZ – a major Swiss art museum administered by the city of Zurich. Like most European organizations, RMZ dwelled little on the processes and followed a rather outcome-oriented approach. Specializing in the traditional and contemporary arts of Asia, Africa, America and Oceania, the RMZ enjoyed a distinct status as the only Swiss art museum treasuring non-European art and artifacts. The museum hosts a remarkable collection of about 23,000 objects for public

display in its galleries. The RMZ undertakes a commendable effort to showcase the Buddhist lifestyle through joint exhibitions and remains committed to enhancing its credibility regarding this subject matter. The RMZ had, however, not undertaken any project with Pakistan in the past.

3.2 Visit of John to Peshawar

October 2017 was at the precipice. John along with Dr. Caroline Widmer, Curator of Paintings at the RMZ, arrived in Pakistan on the invitation of DOAM. During their visit to Peshawar Museum, the curator introduced a statue of Buddha in *abhaya mudra* (reassurance pose) to the guests, *“This 9-foot high and 1.5-ton heavy, Gandhara-period colossal Buddha statue was created between the first and third century BCE.”* The robe-wearing Buddha is one of the largest pieces of that period in the Gandharan art and almost perfectly intact since its installation at the site of display. At that time, the Peshawar Museum was under renovation and many objects were covered with cloth and dust. Laying their eyes upon it, John and Dr. Widmer basked in the mystique. John expressed his first gaze at the statue as *“love at first sight”*. The enticement was so compelling that in the meeting the next morning he asked the DG, *“Do you think it is possible that we can bring the Buddha for an exhibition in Zurich?”*

Section 4

4.1 The Initial Arrangements

The next day, the DG with his two senior-most colleagues in DOAM, started to chalk out the roadmap for this challenging task. Mahmood said, *“Our first task is to make a coordinated effort to take all the concerned departments on board and obtain approval from the Federal Cabinet; the complexity of the project would certainly raise some eyebrows. We are dealing with a myriad of attitudes here.”*

During the same week, the DG discussed the proposal with the Federal Secretary, National Heritage & Culture Division (erstwhile National History and Literary Heritage Division) and found him very sincere and forthcoming. The Secretary agreed to the proposal, in principle, but asked the DG to take the Federal Minister on board before initiating the summary for the Cabinet. Subsequently, a briefing was arranged for the Federal Minister which was also attended by Sophie and other officials of the division. John joined the meeting via Skype. During the briefing, the DG sought support of the Minister for getting approval from the Federal Cabinet and then the Provincial Cabinet of KP. After gleaning necessary input from the Ministry of Foreign Affairs, Economic Affairs Division and Law Division, a comprehensive case was submitted to Federal Cabinet for signing of a Memorandum of Understanding between DOAM and RMZ. The Federal Cabinet endorsed the proposal to the sheer joy of the DG and his team.

Subsequently, permission of the Provincial Cabinet of KP for loaning the Buddha statue to RMZ was required as a much-needed development. This part of the project required a negotiator with powers to convince persons at the political level and settle matters at the highest provincial management level. The DG then travelled to Peshawar along with Azmat. During his journey, the DG remained slightly anxious about the response of the officials in KP, but he was confident as he had strong and convincing arguments for participating in this international venture. Extensive discussions and briefings with the Secretary of Department of Tourism, Sports, Archaeology and Museums, KP and Director of DAM KP were held as no procedure or precedent existed for approval of loaning and transporting the priceless Buddha statue. An added layer of difficulty was the fact that the government at the center and in KP province belonged to two different political parties. Hence convincing officials of the KP government was not easy. However, despite all these hurdles, the DG, with the support of the Federal Minister and the Secretary, was able to convince the provincial officials about the benefits of this project. The Provincial Cabinet finally accorded its approval to sign the letter of agreement (LoA) for lending the large Buddha statue to RMZ.

4.2 Signing of MOU and LOA

In March 2018, during a ceremony held in Zurich, DOAM and RMZ signed a Memorandum of Understanding (MoU). At the same ceremony, an LoA was also signed between the DAM KP and RMZ (**Annex II**). This was a significant development towards execution of the project.

4.3 The Exhibition in Zurich; the Social and Cultural Outreach

It was the cold evening of December 12, 2018, when Mahmood was standing on a marble platform in RMZ, proudly viewing the Buddha statue right in the middle of the museum hall that was packed with visitors. These art lovers had thronged the museum just to have a glimpse of the sacred Buddha from Pakistan. He was exhilarated as the Secretary, Department of Archaeology and Museums, KP whispered, “*The exhibition is indeed a success and will be remembered for a long period of time.*”

The main event, “Next Stop, Nirvana” exhibition, was held from December 12, 2018, to March 31, 2019, and attracted about 35,000 visitors and monks from across Europe who came to gaze at the rare effigy.³ RMZ had advertised the exhibition widely and had also launched an international coverage of the event. The news of Buddha’s journey to Zurich was also reported in leading print and electronic media in Pakistan, hailing the efforts of DOAM and Peshawar Museum in bringing home the honor of international representation of cultural heritage of Pakistan (**Annex III**).

³ Johannes Beltz, “Next Stop, Nirvana? Measuring the Success, Impact, and Sustainability of a Buddhist Art Exhibition,” *Orientations* 52, no. 4 (July/August 2021).

The exhibition took the cultural heritage of Pakistan to an entirely different level. Buddhism is the new way of life in Europe, not as a religion, but as a code of practical life. Their reverence to Buddha and Buddhism stands second to none. The exhibition featured a whole theme on Buddhism with innumerable articles gathered from around the world along with RMZ's own precious collections that spoke volumes on the origin and stature of Buddha himself, his biography, teachings, and history of the religion. The statue, with its archeological and historical uniqueness, was the main attraction of the event and a matter of pride for Pakistan.

4.4 Fruits of Exhibition; Museum Cooperation

The exhibition proved a milestone in establishing long-term collaboration between Pakistan and Switzerland in the field of culture and also opened avenues for similar cooperation with other countries. RMZ organized an exhibition of contemporary miniature paintings by students of National College of Arts Lahore (NCA) in Zurich from March to June 2019. Tobias Hotz, the stone conservator from Germany, led a two-day workshop for museum officials on "Stone Object Preservation, Conservation and Restoration" in April 2019 in Islamabad. John also proposed holding a joint exhibition on the "Indus Valley Civilization" in coordination with Karachi and Lahore museums but this proposal could not progress beyond the initial stages. He also offered lending some artifacts from RMZ for exhibition in Pakistan.

In 2019, for the first time, DOAM sent twenty artifacts from its own collection to China for exhibition at National Museum of China, Beijing. Similarly, cooperation was established with Republic of Korea in the field of research whereas France also requested the Fasting Buddha from Lahore Museum to be loaned for an exhibition in Guimet Museum, Paris. It also offered technical assistance in the field of museology. The Australian High Commission in Islamabad offered DOAM cooperation in the field of cultural heritage and in 2019. Professor Mark Allon from University of Sydney, travelled to Pakistan to discuss cooperation on establishing a conservation and research center at Islamabad Museum for study of Gandharan Buddhist manuscripts. In 2018 and 2019, UNESCO and SDC approved a joint venture with DOAM on two projects on the digitization of antiquities and capacity building of museum officials in developing computerized inventory of the objects.

The safe return of Buddha from Zurich to Peshawar was termed as a 'symbol of trust' between the two countries. At the organizational level, the event restored the communication channel and coordination between DOAM and its counterpart provincial/regional organizations. The success of this project brought DOAM in the limelight and restored, to some extent, its past glory and credibility. The fruits were even more far-reaching as DOAM was able to establish a reputation among art lovers.

Section 5

Complexities of the Project

The DG, while heading the project, confronted a number of complex issues and on one occasion expressed to Azmat, *“I felt myself in an administrative quagmire.”* There was a long list of approvals and requirements to be met before transporting the statue to Zurich. The process demanded extensive efforts and coordination with various ministries and departments under a strict time line. A few issues are highlighted briefly hereunder:

5.1 The Demoralized Staff

At the time of joining DOAM, things looked bleak to Mahmood. The employees were demoralized as a result of the devolution. They were in a state when all were bemoaning the past and wailing about the present state of affairs. Not much was happening around, but as leaders know challenges are windows to new opportunities. The DG, with extensive experience and knowledge of public sector management, had an idea to deal with such a complicated situation. He had the vision to put life back into the dwindling department.

5.2 Extensive Documentation

The first hurdle was the extensive documentation. Despite signing an MoU in 2018, it took eight months to move the statue. For instance, the Customs Department asked for many documents regarding the loaned item, the second party, i.e. RMZ, the lending terms, security of artifact, conservation report of the object, etc. The conservation report of the centuries old statue could not be dusted out from the shelves of the Peshawar Museum and the DAM KP had to prepare it on emergency basis to get clearance of the consignment. Similarly, the airline disclosed at the last moment the condition of keeping consignment in their warehouse for cooling purpose for 48 hours before its transportation. This resulted in delay of the transportation of the statue which was being anxiously awaited in Zurich. Since the process had not been documented ever before, the project team had to face new challenges every day.

5.3 Deinstallation of the Statue

The next difficulty was the absence of a stone conservator in DAM KP who could uninstall the priceless object from a pedestal where its feet were fixed in two-feet deep concrete. Thus, after long deliberations, SDC arranged the services of Tobias Hotz, a stone conservator from Germany. His visit to Peshawar was arranged by DOAM and it proved to be a good experience, as Hotz recalled, *“We tried to move it with a crane but it wouldn't budge and I had to stop the operation before the statue was damaged.”* However, he was not surprised that the statue was attached with steel rods in the pillar

to keep it safe and secure from frequent jolts by tremors and earthquakes. The team was forced to break a part of the museum wall to find out where the statue was attached. Although it was eventually detached, the newly laid floor of the museum was damaged during the process.

5.4 Transportation of the Huge Statue

The Buddha was transported by Emirates airline to Zurich via Dubai and it arrived in the nick of time for the “Next Stop, Nirvana” exhibition at the RMZ. The cost of transportation and insurance was borne by SDC and RMZ jointly as per the LoA. This required hectic negotiations and consultation for safe travel of the statue within the agreed terms and conditions.

5.5 Information Gap and Personal Interests

A few issues were raised due to lack of information sharing, either deliberately or accidentally by the people involved, promoting individual benefits over collective gains. For instance, the artifact needed to reach the site of exhibition ten days prior to the event in order to be cleaned and readied before the public display, but it arrived just two days before the exhibition. This caused inconvenience for the RMZ, although they were able to manage it. Moreover, the curator of Peshawar Museum, at one time, felt that he might not be able to fly to Switzerland for exhibition due to some administrative issue, so he tried to pull-out his support and assistance from the entire process.

5.6 Claim by Pakistan Insurance Company Ltd (PICL)

Just two days before the departure of the statue, Azmat came in perplexed while holding an official letter containing a new claim by the Pakistan Insurance Company Limited (PICL). The company claimed that every cultural artifact leaving the country needs to be insured through them, otherwise, it could not travel out of Pakistan. The claim was not true and the issue was finally settled.

5.7 The Challenges of a Multi-Cultural Team

The team on ground comprised members from Pakistan, Switzerland and Germany. The team members had different backgrounds and perceptions of working norms and environment. The core team included Mahmood, Sophie, John, Secretary Department of Sports, Archaeology, Museums Culture & Sports KP, and the Director and Curator of Peshawar Museum. Due to his long association and experience, Professor Muhammad Ashraf, head of Taxila Institute of Asian Civilizations, Quaid-i-Azam University, Islamabad was consulted regularly during execution of the project. In addition, the team on ground for uninstallation of the statue included Azmat; Director and Curator of Peshawar Museum; program officer SDC; representative of M/s Movers (shipping company); Tobias Hotz, and the representative of RMZ. John joined the team at the time of departure of the Buddha. Here, it is important to mention that apart from

cultural diversity, both the teams operated virtually also. While operating in a virtual mode, a number of issues arose, including time difference, working norms and environments, etc. cropped up. The DG was able to get everyone on-board and deal with each member according to varying maturity levels. Some members were driven by enticement of rewards or fears of punishment, others operated by delegating powers and responsibilities and still a few were prodded only through close monitoring and the use of authority.

Section 6

Analysis

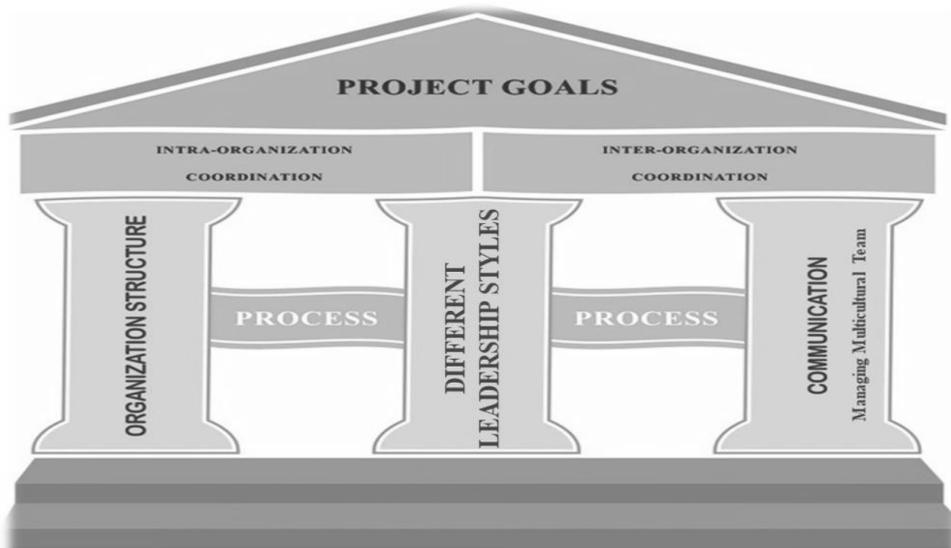
An international project such as this was a risky commitment for the DG who had assumed the charge not long ago. There was no prior mapping available relating to IOC between DOAM and its provincial counterparts in recent years. Furthermore, managing a multi-cultural team amidst a challenging environment was an added complexity. Accordingly, each step taken towards executing the project required careful planning from the start. Fortunately, once the process had begun, the pieces of the puzzle started to fall into place.

Coordination is the most important prerequisite to achieve any organizational goal and it is impacted by many organizational factors. Malone and Crowston's model is based on a concept of coordination as management of dependency between actions.⁴ In case of specific events, it requires an in-depth identification of the nature of the environment in which an organization has to operate and the subsequent development of appropriate procedures in relation to each case. In this connection, IOC refers to the act of managing interdependencies between activities performed to achieve a common goal.⁵ This much-needed IOC is generally achieved through common coordination mechanisms such as IO communication, knowledge sharing, rules and procedures, routines, liaison, integration roles, interim authorities, etc.

The following figure describes the role of organizational structure, leadership and the importance of communication in establishing effective coordination required to achieve the project goals.

⁴ Thomas W. Malone and Kevin Crowston, "What Is Coordination Theory and How Can It Help Design Cooperative Work Systems?" *Proceedings of the 1990 ACM Conference on Computer-Supported Cooperative Work - CSCW '90*, 1990.

⁵ Ibid.

Figure 2: Theoretical Framework

6.1 Organizational Structure

Organizational structure can be understood when organizing people and tasks into specific units to enhance communication, allocate required resources and facilitate actions in order to reach decisions regarding organizational goals.⁶ DOAM was a well-structured organization prior to 2011, having four main features of bureaucratic structure⁷ but an ill-planned division resulted in conflicts, confusion, lack of coordination among functions, failure in ability to share ideas and a compliant mechanism of decision-making. Henry Mintzberg divided the structure of an organization into five different arrangements and one of these is *adhocracy* with different independent functioning project teams possessing horizontal job specialization.⁸ It is divided into operating adhocracy that functions on behalf of the clients of the organization, and administrative adhocracy that serves the organization itself. In flatter organizations, many people are under the control of one supervisor with a few hierarchical levels where employees have more individual responsibility.⁹ The employees are experts and cannot be told how to work; the job of managers is just to synchronize and manage their work.¹⁰

⁶ Wendy Bloisi, Curtis W Cook, and Phillip L Hunsaker, *Management and Organisational Behaviour*, Open World Cat, 2nd ed. (Maidenhead (UK): McGraw-Hill Education, (2007).

⁷ Barbara Senior and Stephen Swailes, *Organizational Change*, 4th ed. (Harlow: Prentice Hall, 2010).

⁸ Henry Mintzberg, "Structure in 5'S: A Synthesis of the Research on Organization Design," *Management Science* 26, no. 3 (1980): 322–41.

⁹ E.Edwine Ghiseli and J. P. Siegel, "Leadership and Managerial Success in Tall and Flat Organization Structure," (25), no. 4 (1972): 617–24.

¹⁰ Peter F. Drucker, "The Coming of the New Organization," *Harvard Business Review*, 1988, 45–53.

The lack of coordination between DOAM and its counterpart organizations in provinces called for an unconventional approach and tactics by the DG in the discourse to this project. From the start, Mahmood had constituted a project team comprising the most experienced officials of DOAM. An office order was issued to clearly define the roles and responsibilities of all team members and Azmat was nominated as the focal person for this project. The core members of the team were provided laptops and a WhatsApp group was created for prompt communication and decision making.

In IOC, an organizational structure occupies a significant mantle; but the use of network-type arrangements is gaining popularity. Network arrangements are helpful in information sharing, expediting processes and making recommendations etc.¹¹ Furthermore, IOC gains grounds especially through the network of serving civil servants who work together and know each other well enough to be able to coordinate outside of official channels.¹² The DG made an active headway through his existing network of peers and counterparts at federal and provincial levels.

He was also able to establish IOC through the hierarchical authority, originating directly from the center of government, where the Federal Minister and the Federal Secretary, occupying the central positions, were goal-driven and had no vested interests in any particular department and could therefore enforce coordination as a rule. John also explicitly remarked that “*without the large network resulting from this coordination, the project would not have been possible.*”

6.2 Leadership and Management of a Multi-Cultural Team

During his interaction with DOAM officials, Mahmood had mentioned his desire to turn DOAM into an efficient and high performing organization. He encouraged the officers to revive the success stories DOAM projects from the past. While handling this project, in addition to the challenges of coordination, the DG had another onerous task of leading a culturally diverse team. According to Northouse,¹³ leadership is “a process whereby an individual influences a group of individuals to achieve a common goal.” Communicating vision to different integrated units of organization is also a leadership task that can set the growth path of the organization.¹⁴

¹¹ Per Lægveid et al., *Coordination Challenges and Administrative Reform*, In book: *Public administration Reforms in Europe*, vol. The View from the Chapter: 22 (Edward Elgar, 2016).

¹² B. Guy Peters, “The Challenge of Policy Coordination,” *Policy Design and Practice* 1, no. 1 (January 2, 2018): 1–11.

¹³ Peter G. Northouse, *Leadership: Theory and Practice, 6th Edition*, Amazon (Thousand Oaks: SAGE Publications, Inc, 2013).

¹⁴ Ihsan Ali and Muhammad Naeem Qazi, *Gandharan Sculptures in the Peshawar Museum in the Peshawar Museum in the Peshawar Museum (Life Story of Buddha)* (KP: Directorate of Archaeology), accessed September 9, 2021.

Figure 3: The Situational Model of Leadership

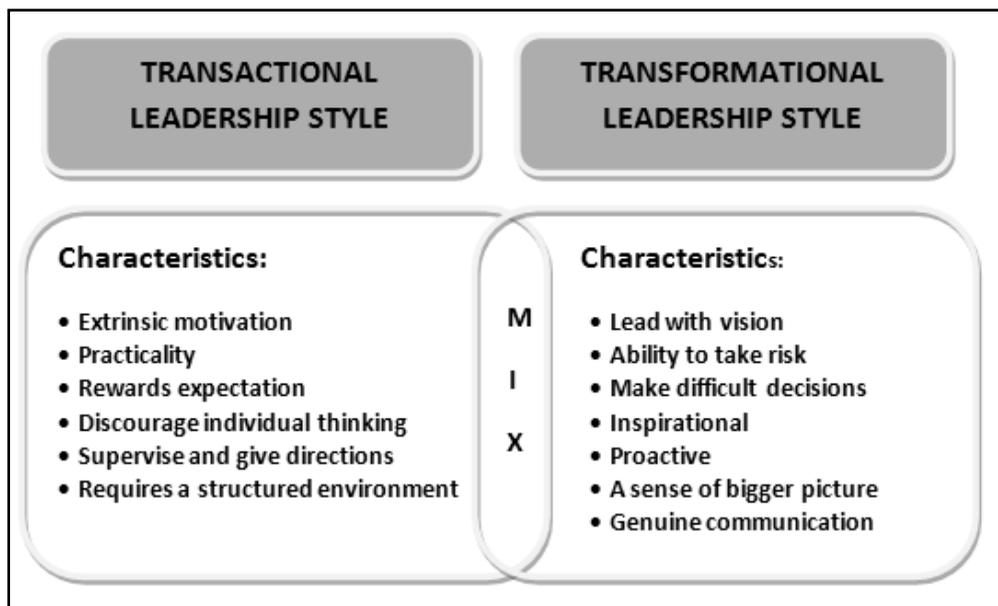
The leadership skills exhibited by Mahmood may be analyzed in the context of Hersey and Blanchard's situational model of leadership (1982). The situational model of leadership favors multiple leadership styles and tactics, as and when required by the situation. The main tactics include telling, selling, participating and delegating. The first two tactics are for less mature (Level M1/M2) team members with low commitment and experience and who need constant direction and motivation to deliver. The latter two styles are for more seasoned members (Level M3/M4) who are well-versed in their job and can take basic work-specialized decisions on their own.

The DG was able to steer the multicultural and diverse team with multiple tactics. For example, through his regular contact and follow-up with the project team at DOAM, he was able to motivate and convince them through the telling and selling style. He assured them that the successful completion of this project would help in reviving the glory and trust of DOAM and bring more of such projects. The DG also agreed, in principle, to grant honorarium to the project team and make all possible efforts to send them for foreign trainings in future. Tobias Hotz, being a world-renowned stone conservationist and competent at his work, needed no directions and was rather dealt with an approach of 'participation' and 'delegation'. He took most of his decisions himself while dismantling the statue in consultation with Azmat and the Curator Peshawar Museum.

The transactional and transformational leadership styles inspire others through vision, charisma, emotional attachment and personal relationships¹⁵ and work well in such situations. The salient characteristics of the two styles are given in the following figure:

¹⁵ Kwasi. Dartey-Baah, "Resilient Leadership: a Transformational-Transactional Leadership Mix," *Journal of Global Responsibility* 6, no. 1 (April 2015): 99-112.

Figure 4: Leadership Style. Source: Kwasi Dartey-Baah, 2015



Looking at the practice and literature, it may be argued that the DG used a mix of both these leadership styles while handling this project. For instance, bearing the confidence of the Federal Secretary of the division, the DG negotiated terms and conditions of the MoU and LoA with SDC and RMZ in the best interest of the country, which were later on approved by the federal and provincial cabinets. It was agreed upon that all the expenses of insurance and transportation of the statue from Peshawar to Zurich and back will be borne by RMZ and the museum's compensation fee was not included in the agreement so as to build trust for future collaboration and avoid any conflicts. No additional incentives or concessions were demanded relating to the travel of officials from Pakistan to Zurich at the time of the exhibition. These were difficult and risky decisions which were taken in the best interest of DOAM and the country.

In another instance, when the PICL had sent a letter to stop the process of transportation of the statue (on the account that it was the sole authority to be hired for insurance on export of every state property), this issue was promptly addressed and the matter was sorted out immediately. Any delay at that time could have jeopardized the whole project. The DG had no time to consult the division while replying to PICL and himself took a prompt decision as per rules.

Transformational leaders march ahead by keeping each individual in the loop. Multi-cultural teams frequently face the challenges of direct and indirect communication, individual attitudes towards hierarchy, accents, fluency and norms of decision-making. The cultural differences in these perspectives, if left unresolved, can seriously impede

working and coordination in these diverse teams.¹⁶ The uninstallation team was culturally diverse and had been facing various issues on daily basis in Peshawar. It was necessary to keep the team motivated and avoid any further conflicts. The constrained time schedule was one of the major sources of conflict. Since John was leading the project virtually from Switzerland, his manner of interaction with the Pakistani staff on WhatsApp and Skype was at times arrogant and non-accommodating. His tone and words were sometimes harsh. At this difficult time, the DG played a pivotal role to dilute any tense situation that would arise to avoid conflict and friction between the team members. He counted on emotional intelligence to uplift the spirit of DOAM and kept the communication channel open with John and Sophie and the rest of the foreign team members of the project. John, in his feedback, has mentioned that the project could only have been completed due to the close cooperation of DOAM and SDC.

The team members were asked to assess the performance of the leader through a questionnaire based on seven dimensions of team coordination, namely purpose and goal, roles, team processes (communication, cohesion), intergroup relationships, problem solving, passion, commitment and leadership attributes (**Annex IV**). Nearly ninety percent of the members were satisfied with their leader and the outcome of the project and mentioned that they had received clear instructions about the purpose and goal of the project, that roles were defined at the start, and intra and inter organizational cohesion and communication was intact all the time. They also expressed a positive stance on the rest of the dimensions. This shows that the leadership of the project was able to stand up fairly to their expectations and it delivered in the end.

6.3 Communication in a Challenging Environment

The significance of communication is evident in its power to alter the outcomes of complex projects; in most cases this either amplifies the fruits of coordinating endeavors or sabotages the process. Communication is integral for employees' motivation, dissipating information, shaping desired attitudes, socialization, controlling process, conflict management and problem solving. Being the third pillar in this framework of analysis, communication had radical impact on the outcomes of coordination activities in this venture. An effective and efficient communication system requires leadership acumen such that the members trust the leader and keep an active communication open.¹⁷ The uninstallation phase of the project required active communication as each day brought a fresh challenge for the DG. John, in his feedback, has highlighted communication as a major challenge in this project.

Right from the beginning of this project, the DG remained engaged in active communication through email, WhatsApp, Skype, etc. with SDC and RMZ. At a later stage, he asked Azmat to keep regular contact with DAM KP and other team members

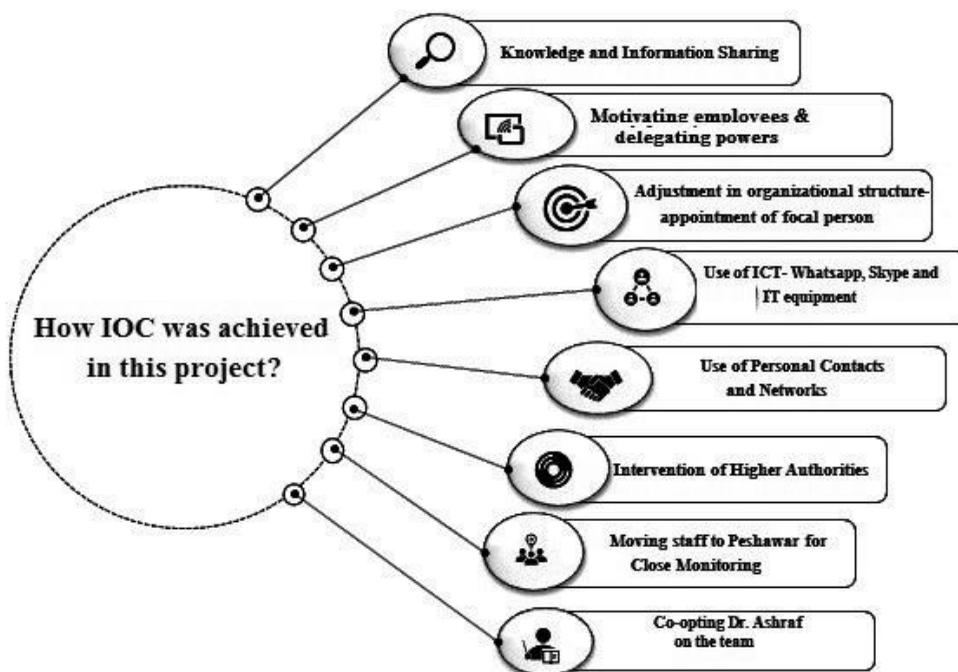
¹⁶ Kristin Behfar, Jeanne Brett, and Mary C. Kern, *Managing Multicultural Teams, Organizational Collaboration*, 1st ed., vol. (In book: *Organizational Collaboration*, 2020), 155–64.

¹⁷ George Bucăța and Alexandru Marius Rizescu, "The Role of Communication in Enhancing Work Effectiveness of an Organization," *Land Forces Academy Review*, no. 22 (1) (March 2017).

in Peshawar for the sake of maintaining transparent and frequent communication channel which was important in an environment where the local staff was divided and demoralized and the international partners were frustrated on procedural delays, non-cooperation from local authorities and lack of commitment. Azmat, a Pushto-speaking officer who previously worked in DAM KP, was sent to Peshawar to create some leverage through common language during the uninstallation phase of the project.

DOAM, being a research organization, lacked openness and a sharing culture. In such an environment, employees are incentivized on personal achievements and gains because promotions and other perks are decided on the basis of individual contribution made in the field of research. This had fanned a culture of non-cooperation and individualism throughout the entire organization. The horizontal communication channels among employees of the same level without a senior manager are equally important.¹⁸ The DG encouraged and motivated members of the team to engage with each other through WhatsApp, Skype or telephone for better communication and coordination and that worked to good impact. The following figure shows the steps taken to develop IOC in this project:

Figure 5



¹⁸ Wendy Bloisi, Curtis W Cook, and Phillip L Hunsaker, *Management and Organisational Behaviour*, Open WorldCat, 2nd ed. (Maidenhead (UK): McGraw-Hill Education, 2007).

Conclusion

This case study is a good example of improvisation in the public sector. There was a lack of policy, institutional knowledge and coordination between organizations on loaning an artefact of this size to a foreign entity for exhibition. However, through dedicated efforts, the leader managed to make provisions in the existing policies and procedures and the team delivered under his directions. This attitude needs to be widely practiced in public services, where many opportunities are lost just because of cumbersome processes and absence of systematic regulations, etc. The processes need to be simplified for efficient functioning of the public sector.

Lessons Learnt

The Buddha statue reached the exhibition on time, but the relentless efforts magnified the image of Mahmood on many aspects and added invaluable experience to his career. He recalled that if practiced earlier, the following steps could have saved a lot of hard work and delays:

(i) Missing SOPs

DOAM lost its valuable data, records and documents during the process of devolution. As a result, there were no SOPs for carrying out an international assignment of this magnitude. Mahmood realized that he should have appointed a team to prepare a manual covering all aspects for handling of international exhibitions, soon after joining the department. If the “blue print” had been available, the efforts would have been more organized and targeted. For instance, the Ministry of Commerce and Industries had no role in issuing of the NOC for the export of the object, yet a few days were lost in sending them a letter to issue the NOC and receiving their subsequent reply.

(ii) Digitization of Record

There is sufficient evidence available that use of digital technology accelerates processes of governance. As Mahmood was not from the regular cadre of DOAM, it took him some time to reach out to the grassroots level of the departmental ailments. Along with other high-profile documents, the conservation reports of the invaluable antiquities were also missing from the records of DOAM and DAM KP. Had he been able to discover the issue earlier, he might have settled it on time. But the conservation report of the statue could not be prepared until it was required by the shipping company. The report was an essential formality for customs’ clearance. John also kept on asking for the conservation report to know the exact height and weight of the statue for insurance purpose. An emergency conservation report was prepared in the nick of time.

(iii) Coordination Forum at Functional Level

DOAM and its provincial counterparts had not been in the habit of coordinating with each other; consequently, no efforts were made to establish any engaging platforms such as a coordination committee at the management level after devolution of the department in 2011. Mahmood realized that during the execution of this project that he had overlooked this important aspect. If an effective coordination mechanism had been in place, officers of these two organizations could have met at least every three months. Resultantly, he might have been in a position to better control the process.

Recommendations

The episode of the Buddha statue travelling from Peshawar to Zurich has left not only memories, but it has also taught invaluable lessons at the same time. Based on the analysis and learning, the following measures are recommended for consideration:

(i) Promoting Cultural Diplomacy

Pakistan has great potential for religious tourism which was very well realized by all stakeholders of this event. These types of activities can be proposed to other countries, like Japan, Korea, Thailand, etc. with assistance from the Ministry of Foreign Affairs. Efforts should also be made to exhibit artefacts of other countries in Pakistan.

(ii) Promoting the Institution of Museums

Museums have special importance in modern societies. In order to promote museum activities, the governments should allocate proper funds in their budgets. Museums should have a specialized service cadre so that they can meet the new challenges in the arena of exhibitions of art and artefacts. Museums should also establish partnerships and linkages with universities, research and educational institutes, both in Pakistan and abroad.

(iii) Setting up a Coordination Committee of Organizations Dealing with Museums and Archaeology

It is high time to set up a coordination forum/committee comprising DOAM and organizations dealing with archaeology and museums in the provinces. Such a coordination mechanism will be useful in creating synergy in their work and in holding similar events more efficiently in future. Members from private museums may be included in this forum for better preservation and promotion of rich culture of the country.

(iv) Increasing Organizational Performance Through Capacity-Building

In order to create an enabling environment, the re-structuring of organizations dealing with archaeology and museums at all levels may be carried out vis-à-vis their revised mandate. The important records of these organizations may be digitized and important information published, circulated and placed on websites. Moreover, vacant positions, especially of heads of organizations, may be filled on priority basis through a competitive process.

(v) Simplifying Business Process for Holding International Exhibitions

After devolution, there is a duplication of procedures for holding such international events. These processes should be simplified and reduced. For example, there is a condition of engaging an insurance agency from Pakistan to send antiquities for exhibition abroad. This condition should be waived off in order to reduce cost of insurance and transportation. Similarly, after the approval of the Federal Cabinet, the concerned provincial minister or department may be authorized to grant approval to avoid delay in such projects. Information regarding antiquities should be shared with Web-Based One Customs (WeBOC) system of Pakistan Customs in order to expedite processes at ports, etc. Such proposals may be discussed in the coordination forum proposed above.

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