Critique of the functional assignment architecture of Punjab's local governance legislation of 2013 & 2019

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Moazzam Ali Janjua

Independent Development Consultant
Islamabad
Pakistan

Email: majanjua58@outlook.com

Rainer Rohdewohld

Ciptanet Consulting
Germany

Email: rohdewohld@ciptanet.de

Abstract

In 2013 and 2019, the local government legislation of the province of Punjab in Pakistan saw two rounds of major changes – each of which led to a new local government Act being passed. In 2013 the changes were driven by constitutional and judicial requirements and in 2019 by the political will of Pakistan's new coalition government. This article analyses and compares the functional assignment (FA) architecture of the two Acts against a set of parameters. The study finds that marginal improvements to the FA architecture introduced by the 2019 Act are offset by continuing inconsistencies and lack of clarity over 'who does what' in the functions assigned to local governments. The authors suggest that improving the functionality of local governments requires full implementation of the design features of the new system, including institutional strengthening of provincial-level entities which regulate and oversee the local government system.

Introduction

Functional assignment (FA) is a diagnostic approach which seeks to specify the exact roles and functions of each level in a system (i.e. 'who does what'). In recent years it has become a key concept in the academic discourse on decentralisation and local governance, following a growing realisation that judicious FA choices are an important component in the division of power and functions in a multi-level governance system, and a key element of strategies to strengthen the functionality of subnational governments (Ferrazzi 2005; GTZ 2009; Ferrazzi and Rohdewohld 2017). As a technique, FA has gained considerable traction in Asian-Pacific countries, and can be seen in Indonesia (Ferrazzi and Rohdewohld 2017), India (Aiyar 2015; Davis 2016), Cambodia (Ferrazzi and Rohdewohld 2017;

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NCDD 2012, 2013), Mongolia (DPSP 2017, 2018) and Nepal (FIARCC 2017). It has found its way to Africa ('Nyane 2016) and has been promoted by development partners (Rohdewohld 2018).

During the last decade, Pakistan has experienced two rounds of extensive local government reforms. The first (2010–2013) followed the 18th Constitutional Amendment of 2010 and resulted in a raft of new local government Acts in all four provinces. Unlike the 2001 reforms driven by the last military government, the reforms of 2010–2013 have seen little academic scrutiny; notably, examination of the FA architecture within these Acts has been missing entirely. The second, more recent wave of local government reforms, which followed the 2018 election victory of the Pakistan Tehreek-e-Insaf (PTI) party at federal and provincial level, has further changed the multi-level government structure in the provinces of Punjab and Khyber Pakhtunkhwa (KP).

This article analyses the FA architecture of the two most recent local government laws in Pakistan's largest and most populous province, Punjab: the 2013 Punjab Local Government Act (hereafter referred to as 'PLGA-13') and the 2019 Punjab Local Government Act (hereafter referred to as 'PLGA-19').[1] To carry out this analysis, the authors have applied the conceptual framework developed by Ferrazzi and Rohdewohld (2017), which distinguishes two major archetypes of FA architecture (i.e. the 'general mandate' and the 'list model'), differentiates different types of functions (such as 'obligatory' and 'discretionary'), and examines the process for making assignment decisions regarding the application of criteria and the involvement of sector institutions (see Table 2). The paper then seeks to link this FA analysis to an overall assessment of the functionality and performance of the province's local government system. However, the authors are aware that this effort is constrained by two main factors: the lack of empirical evidence as to the efficacy or otherwise of the Punjab local government system operating since 2013, and the fact that the changes introduced in 2019 have been mostly informed by the political priorities of the new PTI-led provincial governments rather than by observable, empirical shortcomings (or successes) of the legislative framework established in 2013.

Methodology and structure

The paper is based on a desk review of the two local government acts of the province and related legal instruments, and a review of existing literature. The analysis of the acts follows the analytical framework used by Ferrazzi/Rohdewohld (2017) for other Asian countries (see Table 2).

The paper first contextualises the 2013 and 2019 reforms and outlines the main design features of both laws. The second part analyses their functional assignment architecture. The third part discusses the potential impact of the chosen functional assignment architecture on the overall performance and

[1] The 2019 legislation was split into two Acts: in addition to PLGA-19, the Punjab Panchayats and Neighbourhood Councils Act 2019 deals with the newly-created level of *panchayats* and neighbourhood councils. This paper, however, focuses only on PLGA-19.

functionality of the local government system and summarises some policy recommendations for making the local government system more workable.

Context and main features of PLGA-13 and PLGA-19

Pakistan has had a chequered history when it comes to local government systems. Its *"countercyclical pattern of local democracy"* (Cheema et al. 2015, p. 68) saw military governments introduce systems of local representation and political participation (such as in 1959 by General Ayub, in 1979 by General Zia, and in 2001 by General Musharraf), only for these to be scrapped once a civilian government returned to power.[2] As a result one can argue that in Pakistan, decentralisation *"suffered from democratization"* (Ferrazzi and Rohdewohld 2017, p. 188). It was not until the 18th Constitutional Amendment in 2010 that local governments gained legal protection and provinces – which were given sole jurisdiction over local government affairs – were compelled, under Article 140A, to devolve political, financial and administrative responsibilities to elected representatives of local governments (PILDAT 2013; Ali 2018). In Punjab, these changes resulted in the formulation of PLGA-13. However, as the completion of local elections under this Act was severely delayed, it was not until January 2017 that elected local representatives assumed office (CLGF 2018).

PLGA-13 and subsequently PLGA-19 stipulated several types of local governments for urban and rural areas (see Table 1). Union councils were established as a lowest tier of local government everywhere except under municipal committees (see Table 1). PLGA-13 further established district health authorities and district education authorities as separate types of local governments. However, Afzal (2018) described them as *"a local government project in name only"* and as *"mere outposts of the Punjab provincial government"* because their institutional set-up reinforced the dominance of provincial-level institutions.[3]

Table 1: Types of local governments (2013 and 2019)

PLGA-13		PLGA-19	
Urban	**Rural**	**Urban**	**Rural**
Metropolitan corporation (with urban union councils) Municipal corporation (with urban union councils) Municipal committee	District councils Union councils	Metropolitan corporation Municipal corporation Municipal committee Town committees	Tehsil councils

Tellingly, also, the law did not establish a hierarchical or functional relationship between the levels or types of local government. The only direct link established was that between rural union councils and

[2] See Islam (2015) for a historical overview on local government systems in Pakistan.

[3] For example, the district authorities for health and education received the lion's share of fiscal transfers from the province (e.g. 83%, according to the 2017 Interim Provincial Finance Award), suggesting that only small fiscal grants are available for the other types of local government. Critical views on these authorities can also be found in Saleem et al. (2019).

their local district council: on the one hand the chairpersons of these union councils were made ex-officio members of the district council, and on the other the district council was given authority to *"…exercise general supervision and control on the performance of functions by the Union Council"* in those cases where rural union councils *"having urban characteristics"* were given a wider set of (municipal) functions with the approval of the district council (see PLGA-13, Section 72(2) & (3). Similarly, chairpersons of urban union councils located within municipal and metropolitan corporation areas were made ex-officio members of their respective corporations. However, PLGA-13 created no established relationship or coordination arrangement within the district between any of municipal committee, municipal corporation, metropolitan corporation and district council. The law was also silent on cross-border cooperation between local governments – despite this being an important issue for services such as waste management, the environment, water and sewage, and for the integrated development of the district. Here, the PLGA-13 deviated from its predecessor the PLGO 2001, which had envisaged a District *Mushavirat* Committee for such purposes.

While PLGA-13 was based on the concept of **devolution**, in practice the devolution of administrative authority was severely restricted, and the overall administrative set-up of the province was never aligned with the political set-up of the local government system, therefore perpetuating a disconnect between the political, fiscal and administrative dimensions of decentralisation (Ferrazzi and Rohdewohld 2017). With the exception of a small, local cadre of public employees, local governments were given no autonomy to appoint or dismiss staff – this remained a prerogative of the provincial government. PLGA-13 also applied the concept of **delegation** between provincial-level and local governments (Section 65(1)), and also within the local government system to the extent that, in principle, district councils, municipal corporations and metropolitan corporations could delegate functions to the union councils (Section 66(1)). These options, however, have (as far as the authors are aware) never been attempted or utilised.

PLGA-13 was short-lived. Conceived in the context of the 18th Constitutional Amendment, and implemented after substantial prodding by the Lahore High Court and the Supreme Court of Pakistan, its life ended in April 2019 with the passing of new legislation, PLGA-19. PLGA-13's short tenure on the statute books generated little empirical evidence that would allow for an assessment of its impact, and there were no efforts by the government (or any political parties) to seek such evidence before promulgating the new Act. Limited empirical evidence from Kasur District did indicate a number of weaknesses, namely: (i) the lack of a structured and participatory approach to determining development spending, (ii) intermittent fiscal transfers from the province to the district, which hindered an efficient implementation of any development agenda, (iii) incomplete implementation of the administrative dimension of devolution, and (iv) a systemic weakness at the district council level, causing district councils to function more like extensions of union councils (because all union council chairpersons were ex-officio members of their district council) than independent local governments with their own issues and priorities (Janjua and Werter 2019).

Having attained power at national level, Pakistan's PTI party was able to influence the development of local government frameworks from the vantage point of the federal government and by using the party networks, despite constitutional provisions which assign sole jurisdiction for local government affairs to the provinces. The federal government coordinated the legislative process in Punjab and KP provinces; anecdotal evidence suggests that provincial political leaders and senior administrators, rather than driving changes themselves, required endorsement from the federal government for anything they hoped to implement.[4]

PLGA-19 abolishes the district as a tier and type of local government even though a district administration continues to exist as regulated by the Punjab Civil Administration Act 2017. Instead, PLGA-19 defines several types of urban local government (such as metropolitan corporations, municipal corporations, municipal committees, and town committees) and one type of rural local government (*tehsil* councils). In regard to elections, instead of the 'first-past-the-post' system traditionally used in Pakistan, PLGA-19 introduces a closed-list proportional representation system, meaning parties receive seats on the local council according to their share of votes. Instead of voting for one candidate, citizens vote for a party list with a defined ranking of candidates. PLGA-19 also provides space for non-partisan 'electoral groups' to contest local elections. The head of local government is elected directly and separately from the council, and the law provides for a cabinet of councillors and professionals to advise and assist him or her. There are two other innovative features in PLGA-19: it provides for a minimum tenure of two years for officers posted in local governments, in order to reduce the disruption of services due to frequent transfers; and it makes provision for inter-municipal cooperation in the form of 'joint authorities' which can discharge functions on behalf of their member local governments. In addition, the Punjab Government passed the Punjab Village Panchayats and Neighbourhood Councils Act 2019 (hereafter referred to as 'VP&NCA-19'), which introduced a new and lower level of political representation and participation, along the same lines as the village and neighbourhood councils introduced by the PTI in KP in 2013. Technically, however, village *panchayats* and neighbourhood councils are not defined as 'local governments' in the Punjab – despite the fact that they have similar municipal responsibilities, are part of the fiscal transfer system to the sub-provincial level, and can be delegated tasks and functions by local governments established under PLGA-19.[5]

[4] See for instance online reports by the Associated Press of Pakistan on 8 April 2019 (www.app.com.pk/pm-briefed-on-new-local-govt-system-in-punjab, accessed 15/9/2019); *The Dawn* on 11 April 2019 *"PM Khan okays draft Punjab local govt law"* (https://www.dawn.com/news/1475281; accessed 15 September 2019); and *Daily Times* on 11 April 2019 *"PM gives nod to new LG system in Punjab"* (https://dailytimes.com.pk/375517/pm-gives-nod-to-new-lg-system-in-punjab; accessed 15 September 2019).

[5] For a more detailed assessment of PLGA-19 and VP&NCA-19 see Janjua and Rohdewohld 2019.

The province's local governance legislation also provides for a 21-month transition period; as a result, local elections at any tier will not take place before the end of 2020. Until then, local government units are run by administrators appointed from the civil service.

The functional assignment architecture in PLGA-13 and PLGA-19

The FA analytical model proposed by Ferrazzi and Rohdewohld (2017) posits two archetypes of FA architecture: a general competence model (also called 'general mandate'), and a model based on specific, listed functions, known as a 'positive list' model. 'Positive lists' are further sub-divided into either 'closed' lists (if no other function can be added, other than by amending the relevant legal instrument), or 'open' lists (if the governing legal instrument allows the competent authority to add functions).

Applying this analysis to PLGA-13, it can be seen that its FA was of the 'positive list' type: that is, the law stipulated lists of functions for the different categories of rural and urban local governments. However, there was some ambiguity as to whether these lists were 'open' or 'closed' as defined in the Ferrazzi/Rohdewohld model. This paper argues that they were essentially closed lists, albeit with two broad exceptions. Firstly, union councils were allowed under Section 72(1)(g) to *"take other measures likely to promote the welfare, health, safety, comfort or convenience of the inhabitants of the Union Council"*; and secondly, district councils were allowed under Section 77(r) to *"undertake other developmental activities"*. Both these types of local government were therefore empowered to tackle issues not mentioned explicitly in their list of functions. However, the authors consider that these powers were too weakly worded in the overall context of PLGA-13 to be regarded as some kind of 'general mandate' for local government. This view is supported by the fact that – as pointed out by a number of observers – PLGA-13 did not cover all public authorities operating in the local governance sphere. Some agencies remained outside the control of local governments: notably, the Lahore Development Authority (and similar development authorities in other cities), the Parks and Horticulture Authority, and the Punjab Agricultural and Meat Company (PILDAT 2013).

Another weakness of PLGA-13 was that it did not distinguish between 'obligatory functions' and 'optional functions'; all listed functions appeared to be of equal significance. A long list was stipulated (see below), but without specifying the criteria and considerations used to assign functions to the different types of local governments. Only one consideration was mentioned in the Act, namely *"improved and efficient service delivery to the citizens"* (see Preamble and Section 65). Other criteria used in FA processes elsewhere (e.g. economies of scale, capacity, the ubiquitous 'subsidiarity') are not alluded to. There is also no evidence that any wider consultation on this issue took place in the preparation of the Act, or that any structured process was used to decide how functions should be assigned to levels of government.

As of late 2019, the province still had no fully functioning association of local councils; six years earlier, when PLGA-13 was being formulated, the existing association certainly lacked any real capacity to engage with the provincial government on this issue. Nor do civil society organisations appear to have been involved, or development partners. The involvement of provincial sector departments in assigning local government functions was unclear, and seemingly limited to discussions in the provincial cabinet.

To emphasise the importance of this issue, it may be useful to detail the wide range of functions expected of local governments under PGLA-13. Within the Act, the functions of each level of local government (with the exception of the district authorities for education and health) were grouped into clusters: (i) budget and finance, (ii) regulation and enforcement, (iii) planning (including spatial planning), (iv) economic development (v) municipal services and infrastructure, (vi) population registration (vii) emergency and disaster relief, (viii) social welfare/social protection, (ix) cultural affairs, (x) oversight and facilitation, and (xi) other functions. Not all functions were assigned to all levels, but the overall functional load for local governments was considerable. Under PLGA-13, all levels of local government were able to approve budgets and had the authority to establish levies, charges, fees and local taxes. These, however, needed to be vetted by the provincial government before entering into force. All local governments also had the authority to frame and enforce local bye-laws and regulations, and could issue licences and permits. Schedule VIII of the law contained a detailed description of these 'general powers' of local government. Framing and enforcement of rules, however, fell within the ambit of the provincial government.

All local governments were also tasked with land use and spatial planning (including those union councils 'having urban characteristics'). Significant functions for economic development were mentioned mainly for the municipal and metropolitan corporations, which were empowered to *"promote technological parks, cottage, and small and medium size enterprises"* (Section 87(1)(cc)). Economic functions of rural local governments were mainly in the fields of animal husbandry, cattle fairs and the provision of cattle pounds. The large majority of functions listed in the 2013 legislation were in the field of municipal services, such as paths and roads, public buildings and public spaces, street lighting, water and sanitation, waste management etc. In addition to providing and maintain rural water supply schemes, an amendment of the Act in 2017 specifically expanded the union councils' responsibility to include sanitation and solid waste collection, as well as sanitary disposal of solid, liquid, industrial and hospital waste. There was substantial overlap in these functions, since the possible linkages between the local governments which establish and manage public infrastructure (such as water supply systems) were not mentioned and considerations relating to economies of scale were not reflected. For the urban local bodies, the financially lucrative function of regulating *"affixing of sign-boards and advertisements"* was exempted in those localities where this function was being performed by the (provincial) Parks and Horticulture Authority.

Population registration functions (such as the registration of births and deaths) remained with the union councils and municipal committees. All local governments shared responsibility for emergency and disaster relief activities. The only social welfare function mentioned in PLGA-13 was the provision of relief for widows, orphans, the poor, persons in distress, and children and persons with disabilities; this function was only mentioned for the district councils and the urban corporations. Cultural affairs, such as organising fairs and local sports events, establishing libraries and reading rooms, or even museums and art galleries (in case of the urban corporations) were another significant element of the functional load given to local governments. Oversight and facilitation roles were specified only at union council and district council level. The former level was tasked to identify deficiencies in service delivery and make recommendations to the other local governments. District councils were to 'assist' those union councils which have urban characteristics in the discharge of the municipal services allocated to this type of union council. Otherwise, the law was silent about the mutual relationships between the different types of local government.

Other functions specified in the lists included, for instance, maintenance of data and information systems, maintenance of municipal archives and records, and – in the case of union councils – community mobilisation. For both union councils and municipal committees, the establishment of a dispute settlement system was an important function: they should nominate members of dispute resolution committees, known as *panchayat* or *musalihat anjuman*, and monitor their performance (see Chapter XII of the PLGA-13). The urban local governments (i.e. municipal committees, municipal corporations and metropolitan corporations) did have powers to delegate or outsource the discharge of their functions to other entities. According to Section 81(3), a municipal committee could *"…assign or outsource any of its functions in such manner and on such terms and conditions as may be prescribed"*. Likewise, under Section 87(2) both metropolitan and municipal corporations could "…*entrust any of [their] functions to a person, an authority, agency or company through a contractual arrangement, on such terms and conditions as may be prescribed"*. This was in addition to the option to delegate functions to other local governments as described above. This stipulation in PLGA-13 was in marked contrast to the KP Local Government Act 2013, whose Section 115A clearly stipulated the contracting-out of services as an exclusive responsibility of the provincial government.

Table 2 below compares Punjab's FA architecture under both PLGA-13 and PLGA-19 with that of other Asian-Pacific countries, as well as Pakistan's KP province.

Table 2: Comparison of Functional assignment arrangements in Asia

	Cambodia	India	Indonesia	Pakistan		
		Himachal Pradesh		KP 2013	Punjab 2013	Punjab 2019
Context factors	Part of rebuilding state structures; weak state capacity; long-term vision and strategy	1993 constitutional amendment; local government as state subject; dominating role of national level in fiscal issues and sector programmes; strong role of 'parallel bodies' for sector services	1998/1999: democratisation and regime change 2004 onwards: political and economic consolidation	Fragile law and order situation; fragmented governance system in the province until 2018; 2010 constitutional reform	2010 constitutional reform; legacy of previous systems	2018 election victory of PTI at federal and provincial level (KP, Punjab, Baluchistan); interference of federal level in provincial jurisdiction
Decentralisation modality	2001: devolution, deconcentration and delegation (agency tasks); in practice delegation 2008: devolution ('assignment'), delegation and deconcentration	Devolution (although in practice mostly delegation/ agency)	1999: devolution and delegation 2004 and 2014: devolution, deconcentration, delegation	Devolution	Devolution, with some optional elements of delegation	Devolution and delegation; optional elements of delegation from local governments to other entities
Typology of functions used	2001: not defined 2008: obligatory and permissive	Not defined	2004 and 2014: obligatory and discretionary 2014: 'general government functions' added	Not defined	Not defined	Not defined
Use of criteria	Not well documented in results of the review process	Criteria applied for the 2009 State Notification on Activity Mapping differ substantially from those advocated by the union government	2004: criteria devised and applied 2014 revision: use of criteria less clear	Criteria were used in the two sector pilots supported by development partners; but existing legal framework does not indicate use of criteria	Not explicitly mentioned	Not explicitly mentioned

	Cambodia	India	Indonesia	Pakistan		
		Himachal Pradesh		KP 2013	Punjab 2013	Punjab 2019
Process architecture	Structured; institutionalised support (NCDDS; contractual arrangements with sector ministries providing funds and technical know-how); sequence of steps defined	1996: None 2008: sequence suggested, but discontinued mid-way	None (no institutional structure in place)	None (ad hoc)	None (ad hoc)	None (ad hoc)
Sector involvement	Integral part of the NCDDS-supported institutional arrangements; internal D&D working groups of sector ministries	1996: very limited 2008: limited; mainly for the initial steps	1999: weak, ad hoc sector working groups 2006–2015 in Aceh: national sector ministries invited to make their case to Ministry of Home Affairs and Government of Aceh working teams. 2004 and 2014 national revisions: sectors provided inputs through Ministry of Home Affairs and Government, in ad hoc approach.	Ad hoc	None	None
Coordinating body	NCDD (as intergovernmental body)	None	Weak central government – SNG coordinating body; FA process under the leadership of coordinating Ministry for State Reform (1999/2000), State Ministry of Regional Autonomy (2000) and Ministry of Home Affairs (2004 and 2014)	None	Provincial Transition Committee	Provincial Transition Team and Cabinet Committee on Transition (2019–2020)

	Cambodia	India	Indonesia	Pakistan		
		Himachal Pradesh		KP 2013	Punjab 2013	Punjab 2019
Role of development partner	Substantial inputs on concept and process; support to selected sector ministries; institutional funding of NCDDS	1996: none 2008: conceptual inputs and process architecture	1999–2003: significant conceptual inputs 2004: some support but marginal influence 2006-2009: significant support and influence in case of Aceh 2004: little support and influence	Limited	None	Limited
Role of non-state actors from civil society and private sector	Very limited	None	Limited	None	None	None
Involvement of SNG	Very limited	None	Limited (however veto role of SNG association in 2004 law revision)	None	None	None

Key: NCDD: National Committee for Subnational Democratic Development (Cambodia); NCDD-S: National Committee for Subnational Democratic Development – Secretariat (Cambodia); D&D: Deconcentration & Decentralisation; SNG: Subnational Government

Source: Authors' compilation based on Ferrazzi and Rohdewohld 2017 (Table 6.4)

Functional assignment under PLGA-19

The PLGA-19 does not deviate substantially from its predecessor as far as the basic features of its FA architecture are concerned: it follows the list model and also avoids explicitly defining functions as either 'obligatory' or 'discretionary'. As in 2013, there has been no structured process to discuss the assignment of functions with the provincial sector departments. Still, some modifications are noteworthy. For example, Section 5 (1) outlines in a very general manner the purpose and functions of local government by stating that, subject to and to the extent given under PLGA-19, *"every local government shall have the authority to run the affairs of [its] respective local area without improper interference"*. This mandate will include to:

> *exercise its authority and to incur expenditure in the best interests of the residents without any favour or prejudice in a democratic and accountable manner, to involve all residents in running its affairs and from time to time consult them on the level, quality, range and impact of services, to provide services in a financially and environmentally sustainable manner, to give equitable access to services; and to promote and undertake development in the respective local area* (Section 5(2).

This formulation, weak as it is, gives at least some direction for the purpose and the activities of a local government. Like its predecessor, PLGA-19 stipulates that local governments must work 'within the provincial framework'; it also includes a considerable number of stipulations allowing the provincial government to direct local governments to undertake initiatives, to prevent local governments from other initiatives, to suspend and dissolve a local government, and to interfere in the scope of local government functions.

The detailed lists of functions in PLGA-19 can be found in the Third Schedule (for metropolitan corporations, municipal corporations and municipal committees), in the Fourth Schedule (for town committees) and in the Fifth Schedule (for *tehsil* councils). In each Schedule, functions are listed within two parts: Part 1 lists functions which local governments perform *"in such manner and to such extent as may be directed by the Government"* [Section 21(2)], while Part 2 lists functions which local governments perform in a manner and to the extent determined by the council. The wording of the Act can be interpreted in such a way that the Part 1 functions represent 'delegated' functions (since the Government determines the 'what' and the 'how'),[6] whereas Part 2 functions can be seen as 'devolved' functions, since PLGA-19 outlines the 'what' while the local council determines the 'how'. Although, as noted above, the law does not make a clear distinction between obligatory and discretionary functions, the formulation 'shall perform' indicates that both Part 1 and Part 2 functions should be regarded as obligatory functions. This distinction was not at all evident in the prior PLGA-13.

Depending on their size and type, local governments have functions related to **economic affairs** (e.g. economic value chain development); **social services** (e.g. primary and secondary education facilities;

[6] See Ferrazzi and Rohdewohld 2017, p. 13ff. on how to distinguish delegated functions from devolved and deconcentrated functions.

pre-schools; primary healthcare facilities; children's services; community safety); **infrastructure and municipal services** (e.g. city roads and traffic management; water supply, sewerage and sanitation; solid waste management; building regulations; land use planning; burials and cremations; public conveniences; slaughtering of animals; licensing markets and fairs; parking; transport, parks and landscape development; signboards and advertisements; regulatory enforcement in assigned areas); **citizen registration** (e.g. registration of births, deaths, marriages and divorces); **cultural affairs** (e.g. arts and recreation, museums, galleries, libraries, sports); **emergency planning and relief**; and **environmental health and awareness services**.

However, the formulation of the functions is often vague (the term 'value chain development' is a good example), and for numerous functions a more detailed unbundling and discussion with the sector institutions concerned will be required to give clarity to local governments on what is expected and/or permitted. A positive innovation of the law relates to municipal services within the territorial jurisdiction of metropolitan corporations: Section 21(2) of the PLGA-19 eliminates the duality of politically elected local governments and technical-administrative service providers (such as local development authorities, water and sanitation agencies, solid waste companies, parking companies, park and horticulture authorities etc.) which have been accountable only to the provincial government. The metropolitan corporations' full control over these service providers signifies a significant increase of their operational and political space and will hopefully remove the existing overlap of mandates between the provincial and local level

Discussion and recommendations

The FA architecture of PLGA-19 shows marginal positive changes compared to its predecessor legislation. It provides the option to strengthen the functional responsibility of metropolitan corporations, by bringing previously semi-autonomous public authorities (which deal with local government functions but are run by the provincial government) under the control of elected metropolitan mayors.[7] It also widens the scope of local government functions, as education and some health functions are assigned once again to the local governments (rather than residing in structures which are devolved in name only). Overall, PLGA-19 focuses strongly on the obligation of local governments to deliver services (Janjua and Rohdewohld 2019).

However, a note of caution is in order. The wording of the functions (in the various Schedules) is open to widely differing interpretations, as well as confusion between the local and the provincial levels. Insufficient involvement of sector departments in the drafting of the Act accounts in part for this lack of clarity – but redressing this shortcoming will require substantial inter-departmental engagement between key provincial regulatory departments such as Planning, Finance, and Local Government &

[7] In 2001, a similar effort to devolve these functions to local governments was made, but could not be implemented successfully.

Community Development, and the sector departments, to clarify the distribution of functions between the provincial level and the various categories of local governments. It is not clear when or if this is likely to happen. While the KP provincial government has organised FA workshops with the devolved sector departments in KP, to develop lists of sector functions for the future *tehsil* local governments and devise related staffing structures and asset requirements, the Punjab provincial government has so far taken no such steps.

Yet such discussions will be essential. The fiscal decentralisation concept embedded in PLGA-19 includes an element of performance measurement, as well as fiscal rewards for strong performance in service delivery; however, applying such a concept in a meaningful manner requires the clear delineation of local government functions and a subsequent determination of performance standards. Such clarification would also facilitate better targeted and holistic capacity development interventions both for local government officials and elected representatives – something that was widely missing under PLGA-13.

Another problem with PLGA-19 is the Act's undeclared use of different modalities of decentralisation (**delegation**, as seen in the functions listed in Part 1 of Schedules III to V; and **devolution**, as seen in the functions listed in Part 2 of the same Schedules). These different modalities risk leading to opaque relationships between the provincial and local levels since, by definition, technical and legal oversight should be much stronger for delegated functions than for devolved functions; for the latter, oversight should be limited to legal aspects. The authors recommend a more precise conceptual distinction between the two modalities in PLGA-19 to facilitate the establishment of adequate reporting and oversight mechanisms.

As of late 2019, litigation against the PLGA-19 was ongoing at the Lahore High Court (and with the potential to be referred to the Supreme Court of Pakistan). Nevertheless, the provincial government was publicly maintaining its intention to conduct first local elections of village panchayats and neighbourhood councils by the end of 2020, and in the second phase will go for elections under PLGA-19. The provincial government needs to act swiftly to clarify the functional responsibilities of the local governments vis-à-vis the provincial sector departments well before the inductions of elected representatives. Without such clarification, it will be impossible to create clear accountability mechanisms between local communities, their elected representatives and the local administration.

In light of the above concerns, the authors conclude that the marginal improvement of FA architecture in PLGA-19 compared to PLGA-13, as reported above, will not automatically result in better local government performance (or better service delivery). In the past, reforms of the local government

system have too often suffered due to lack of proper implementation,[8] inconsistent policies,[9] and fragmentation of the institutional structures and processes which enable local governments to function. Punjab's 2019 legislation is more challenging and complex than that of 2013, and therefore demands more capacity from key provincial institutions to steer, monitor and guide its implementation. At a practical level, this means the availability of relevant data and information, the ability to analyse existing information against declared policy intentions, and the institutional capability to formulate and enforce policy changes. Therefore the proper establishment, resourcing and performance of institutions like the Punjab Local Government Finance Commission, the Punjab Local Government Commission, the Punjab Local Government Board and the Inspectorate of Local Government, as well as the interaction between district administrations and local governments, will be crucial; as will the ability of the Punjab Local Government & Community Development Department to oversee the local government system, identify and analyse policy implementation issues, and create consensus between sector departments.

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[8] A typical example is the human resource policy which often creates (or 'sanctions') positions in the local administration without having the financial means to fill these positions. For instance, in 2017, nearly half of the sanctioned positions of municipal officers in the province were vacant. In the same policy field, the non-implementation of a district service as foreseen under the 2001 Punjab Local Governance Ordinance's Section 140A undermined the autonomy of local governments in the management of their own human resources.

[9] Such as the half-hearted implementation of the 2017 Provincial Finance Award which was conceptually sound but never fully executed by the provincial government. (CPDI 2018).

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