

Appraisal of Local Governance at the Federal, Provincial and District Level in Khyber-Pakhtunkhwa Province, Pakistan (April 2014)

1. Introduction

This report provides a snap shot of the issues and problems related to local government (LG) matters that is the focus of much attention by the Khyber-Pakhtunkhwa (KPK) government policy reform activity. It is hoped that this report will serve as a guide for understanding the drivers of policy in LG

There is a general agreement amongst development practitioners that a well-conceived, empowered and accountable system of (LG) can help achieve the following;

- Provision of good quality social services like health, education and clean drinking water to communities
- LG Reform in KPK will lead to empowering village communities numbering approximately 3500 villages contained in 26 districts of the province. This involves a population of 27 million persons spread over 28,773 sq miles of land area.
- According to the latest Local Government Act 2013¹, passed by the KPK legislature, more than 45,000 new community councilors will be elected; this provides a huge increase in democratization and will obviously lead to positive consequences, if the newly elected officials are empowered and will thus be able to make a difference.² However, as this paper points out there are challenges that could prevent positive outcomes from occurring.
- The reforms if successful will improve efficiency of service delivery by better community monitoring and control.
- The LG reforms will lead to greater ownership of the state by its citizens and to that extent acts as an anti-insurgency measure in a region where the state is challenged and is thus holding back (KPK's) growth.³

It may be noted that institutional structures operate within the limits set by a society's cultural mooring and norms; in this part of the world it is the Turko-Persian value system that prevails in KPK as well as in parts of Baluchistan⁴. This is distinct from the Indo-Hindu system (practiced in parts of India) or a feudal variation practiced in the Punjab and Sindh provinces of Pakistan. The (LG) institutions are therefore influenced by such influences in these regions. The main features of the Turko- Persian system contains the following elements:

- The elites consider the law not for restraining power or to protect the weak, but to serve their purpose that is to strengthen their hold over people and the resources of the state.
- Political capital is created by the elite by transferring resources of the state through a circle of patronage; those who receive favors are supposed to repay them by voting for the patronage provider during elections

¹ All references are to local government law identified as Khyber Pakhtunkhwa Local Government Act 2013, accessible at <http://bit.ly/1qKjWEi>

² Many of the insights contained in this report were obtained from key informants including officials from LG department.

³ *Criterion Quarterly*, Khalid Iqbal, "De-Radicalization: Pakistan's Dilemmas," Islamabad, October/December 2013, P. 71, argues that bad governance, collapse of order, decimation of institutions, poverty, illiteracy etc. drive persons to become radicalized.

⁴ Thomas Barfield, "*Afghanistan A Cultural and Political History*," Princeton, New Jersey, 2010, Pp 74-76

- Thus there is intense rivalry in the political hierarchy composed of members of the federal parliament, provincial assembly and (LG) in that order; all vying to obtain power over the state's resources to create a larger gathering of followers.
- During military rule, when initially the legislatures stand abolished, a partnership is created between the military and the (LG) elite to gain grass-root legitimacy by the former. After a while facing political oblivion forces the upper level elites to accept military rule. This causes a shift in the military's support of LG when the higher level political elite begins to join the bandwagon of a military ruler; be it Gen. Ayub Khan (1958-68), Gen Zia (1977-88) or Gen Musharraf (1999-2008). Later the upper level political elite creates internal contradictions and provocations that leads to, 1) subordination of local government and devolution, 2) rise in influence of assembly members and the finally this tension develops into a political crisis which ends with the exit of the military dictator. Normally fresh elections follow and the cycle is repeated again. In all this, the elites are giving priority to personal enrichment.
- Research shows that claims made for establishment of (LG) by military governments on the grounds of decentralization or devolution⁵ both commendable goals in themselves, are never the principal aims of the regime, but its main purpose is to enhance legitimacy so as to build support for extension of its rule.

This report examines and explains the various aspects of the above problematic and indicates the best likely course for maximizing effectiveness of LG and greater community participation. These matters are discussed under the following headings;

- Brief History of Local Governance in Pakistan
- Roles of Federal, Provincial and Local Bodies in (LG)
- Services Provided by Local Government
- Design Features of LG Act 2013
- Prevention of Abuses in LG system
- Key Conclusions

2. Brief History of Local Governance in Pakistan

It is important to understand the historical background underpinning LG development in Pakistan in order to analyze the importance of the KPK LG Act, 2013. The following are the brief highlights of history;

- The British introduced local government in India not for democratizing their colonial administration but to co-opt the native elite for extending their imperial control. Thus local governments were never substantively empowered and were formed in a "top-down" manner with extremely limited functions; secondly their members were not elected but nominated by British district administrators. This method of coopting supporters was meant to dry up resistance against Britain's control and was an attempt to seek legitimacy for penetrating the indigenous social structures. Instead of having elections for the appointment of local body, its members were nominated by the Deputy Commissioner (district administrator), who were also head of local bodies at the district level.
- After Independence in 1947, the emphasis remained on strengthening central and provincial governments as was the case during the pre-independence phase. Thus there was understandably little emphasis on local governments. The limited local governments that existed were controlled by the central bureaucracy. In the post-independence period there were weak local government

⁵ Development in Practice, (Vol 19, No. 8, Nov 2009), "The Modern Face of Traditional Agrarian Rule: Local Government in Pakistan," by Nadeem Malik, published by Taylor & Francis for OXFAM, GB.

institutions looking after municipal services within a framework of powerful central governments that were instruments of very strong civil and military bureaucracies.

- This design prevailed until 1958 Martial Law when President Ayub Khan the military ruler installed a form of local government, called Basic Democracy in 1960; it was more of an electoral college for purposes of electing members to the national and provincial assemblies, rather than a genuine grass-root based local government. Like the British colonialists before the purpose was not to install representative LG but to create a controlled electoral machine for purposes of creating legitimacy for military rule.
- Gen Zia ul Haq assumed power after deposing the elected Prime Minister Mr. Zulfikar Ali Bhutto in 1978. He also needed legitimacy and thus revived Local Governments through the promulgation of Local Government Ordinance (LGO 1979) and local bodies were elected in all four provinces during 1979 and 1980. In essence, Gen. Zia sought to use the old strategy of 'divide and rule' by creating a new and competing class of 'collaborative' local-level politicians, who would be given power and in turn will legitimize military rule. Furthermore Gen Zia ordered the holding of local body elections on non-party basis. A method followed later by others and was even borrowed by democratically elected governments later.
- Gen Musharraf removed Mr. Nawaz Sharif the prime minister, in a coup in 1999. He faced the same problem of legitimizing his rule and like other Martial rulers before him, had to depend on local governments to provide him with legitimacy. However, unlike both Ayub Khan and Gen Zia ul Haq, did not dismantle the grid-lock of the civil administration structure. Gen Musharraf on the contrary led its demolition and completely destabilized the pivot of state control exercised through the time tested role of the deputy commissioner in districts. It is argued that this erosion of control paved the path to the rapid loss of state control over large swathes of territories in the KPK and in S. Punjab. There was a consequent growth of radicalization in these regions and an ever-expanding threat of insurgency. A research report on the causes of insurgency in Swat found clear indications of support for the insurgents by the religious right MMA coalition government in KPK.⁶ It also received favorable treatment from the military government and is even alleged to have been brought to power in KPK in 2003 and thus remained in office until 2008. The MMA also found favor in the National Assembly through the patronage of Gen Musharraf. It was during this period that the insurgency spread rapidly in FATA and KPK. Gen Musharraf, perhaps unwittingly in his desire to oust the mainstream Pakistani political parties, ended up by main-streaming radicalization that is now threatening the whole of Pakistan as well as international security.
- Such opportunism was also evident in Gen Musharraf's decentralization reforms launched in January 2000 and called, "Devolution of Power".⁷ It was implemented through a series of local government elections that were completed by August 2001. This system operated till 2004, when Musharraf held provincial and national assembly elections. The elections brought to power the provincial and national level elites, who were (feudally) arrayed against the local body notables previously elected under the Devolution Plan. Instead of remaining committed to the local bodies formed by him, Gen. Musharraf in a sense abandoned them. The local bodies were sacrificed to the provincial and national elites elected in the 2002 general elections; obviously Gen Musharraf

⁶ The success of the MMA (Muttahida Majlis-e-Amal) in the 2002 elections and the formation of government by them in KPK (NWFP then), was due to assistance provided by Gen Musharraf's government. Prominent political leaders belonging to mainstream political parties like the PPP and PML (N) were excluded when they were declared to be corrupt and barred from elections under a tailor made Legal Framework Ordinances (LFO) to achieve this end. Secondly, Gen Musharraf changed the qualification criteria for contesting elections. According to Article 8 (a) of the Constitution, a candidate must be a graduate from an accredited university to contest elections. But the MMA was facilitated when their religious degrees from Madrasas were made equivalent to degrees from accredited Pakistani Universities.

⁷ A good analysis of this subject by Cheema et al. is available at <http://www.hks.harvard.edu/fs/akhwaja/papers/Chapter8.pdf> and may be seen

like other Pakistani military rulers before him, used LG Reforms for political benefit so as to remain in power rather than assist the development of the country.

- The 2001 Devolution Plan removed the Deputy Commissioner as the pivot of the executive authority of the state; it ushered in a chaotic situation where power shifted to the feudal rural elite that did not have any institutional bounds of law to restrain them. In the absence of controls this led to corruption and caused a reduction in the effectiveness of the state; furthermore the MMA government created insecure security climate by encouraging the insurgents and compromising coercive police response.⁸
- The whole problematic highlighted above paints a dismal picture, especially where the state structure is abused in such a manner that it threatened the lives of citizens for petty political gains. Some recent disclosures have linked the presence of Osama in Abbottabad as puzzling and begs the question as to what was the real intent of Gen Musharraf?⁹
- By 2002 when Gen Musharraf had obtained a higher level of elite support in the national elections he sacrificed local government at the altar of opportunism. After the elections Musharraf supported the provincial level elites in weakening local governments and strengthening his supporters in the assemblies.¹⁰
- The democratically elected governments that came into power as a result of general elections in 2008, set aside Gen Musharraf's reforms on 20th Feb, 2010, and reversed the Devolution Plan reverting to the previous LG system prior to the reforms of Gen. Musharraf.¹¹
- In this landscape where opportunism has ruled supreme so far, the LG Act 2013 is a happy change and is an ingenious attempt to transfer power to the grass roots and at the same time strength the state's executive authority by reviving the office of the Deputy Commissioner and entrusting him the responsibility controlling the administrative structure created for supporting the activities of the district council as its principal accounting officer and having the elected Nazim become the District Council's head. The following enhanced powers for district councils included in the KPK LG Act 2013 transfers more powers to the Nazims, than in the Devolution Plan of Gen Musharraf (2000). For instance:
 - S. 18 (c) read with the first schedule of the act, transfers full powers to the district councils in relation to the devolved subject that include all the relevant sectors involved in the delivery of services.
 - They can create new jobs and reduce existing ones and the authority to shift priorities within the budgeted allocation.¹²
 - They also have the power to review the quality of services provided by ordering inspections under S. 61 of the LG Act.
 - They are empowered to audit expenditures and act as district public accounts committee
- Thus there are more devolved power available to the local bodies in the new Act of 2013 than was the case in Gen Musharraf's Devolution. At the same time there are legal boundaries defined to restrain abuse and corruption as is described in this paper.
- However the district councils although fully empowered may find it difficult to manage the transition given the shortage of experience and capacity that prevails presently. Some assistance to create capacity here will pay dividends.

⁸ Khalid Aziz, "Swat: The Main Causes Of The Breakdown Of Governance And Rise Of Militancy," Published by Riport in 2010, accessed on 23rd March 2014, at <http://bit.ly/1f5oX1W>

⁹ *The New York Times*, Carlotta Gall, "What Pakistan Knew About Bin Laden," March 19, 2014, accessed on 22nd March at http://www.nytimes.com/2014/03/23/magazine/what-pakistan-knew-about-bin-laden.html?_r=1

¹⁰ Some commentators allege that the 2002 elections were rigged; see "Story of Pakistan," at <http://bit.ly/Ox2zs0>

¹¹ *Dawn.Com*, "Khyber Pakhtunkhwa to revise 'old' local govt. system on Jan 1," 27th Dec 2012, <http://bit.ly/OoRqJy>

¹² These changes are to be included in the new Rules of Business for LG that are under process presently.

3. Roles of Federal, Provincial and Local Bodies in (LG)

Pakistan inherited its legal framework and practices governing (LG) from the British. The latter being a colonial power was more interested in maintaining control rather than being overly concerned with community satisfaction or democratization of communities. They encouraged LG in urban areas so that the residents could share the cost of services. However, the development, budgetary and provision of services were kept under state control. After Independence in 1947, this state of affairs underwent some change however, unlike India that went full speed ahead with developing local government, Pakistan on the other hand witnessed the government's wish to focus more on control rather than encourage the growth of LG for reasons mentioned earlier.

The current Constitution (1973) provides the following directives concerning local government:¹³

- Article 32 gives a categorical direction to the state to encourage LG institutions based on elected representatives and with special representation to peasants, workers, youth and women
- Article 37 recommends decentralization of administration for expediting the disposal of peoples' business. A corollary of this is to provide services to the people in the social sectors of health, education, drinking water and sanitation and related areas. It has now been achieved through the passage of the "Right to Public Services Act," by the KPK government.¹⁴
- Article 140-A provides for the establishment of a fully empowered LG system along with devolution of political, administrative and financial responsibilities to the LG structures managed by representatives at the community level.

Ever since Pakistan's creation there has been a constant struggle between those who supported the rights of the provinces against those who wanted to strengthen the central government. Failure to resolve this struggle, led to the separation of E. Pakistan in 1971, and a war with India. This struggle for provincial rights has turned into rebellion in Baluchistan and is a cause of concern in KPK; at the heart of it is the demand for greater provincial autonomy. This demand is actually a continuation of the struggle for freedom from the British. After the exit of Britain the Federal Government has been unnecessarily scape-goated into being defined unfairly as Britain's shadow by those who stand for provincial rights; it is one of the reactions associated with de-colonization in other countries too. But in the case of Pakistan, due to the ethnic nature of the federation, it erupts into an Irredentist mode.

In order to diffuse this threat one of the most far reaching achievement of the previous PPP coalition government that ruled Pakistan from 2008-2013, was the passage of the 18th amendment to the Constitution¹⁵. It has reduced the centralizing feature of the 1973 Constitution that permitted interference by the federal government into provincial matters via the concurrent list of subjects; it has now been revised in favor of the provinces.¹⁶

However, ironically while the provincial elites demanded freedom from the fetters of the federal government, yet they are slow in accepting the same principle in the transfer of powers from the province to local government – there is a reluctance by the provincial elite to transfer full powers to LG as has been noted above. The provinces are yet some distance away from the Constitutional aspiration to devolve power to the local level; if that is achieved it will greatly strengthen civil society. It remains an ideal that still needs to be pursued. To a large extent the barrier in achieving this goal is the unwillingness of the provincial political elites to allow it to happen¹⁷. They are now in a position to allow these changes to occur

¹³ The Constitution of The Islamic Republic of Pakistan (as modified up to 30th April, 2010), Govt. of Pakistan, 2010

¹⁴ It became law on 21 January 2014.

¹⁵ Text of the 18th Amendment to the Pakistan Constitution is available at <http://bit.ly/1mbCvkb>

¹⁶ Under Art 70 (4) read with the 4th Schedule of the Constitution, the subjects over which the Federal Government can exercise jurisdiction are listed. Those subjects that are not included therein are in the domain of the provinces. Local Government is no more a federal subject according to the 18th amendment.

¹⁷ The upper level elites see this as a threat to their current control over resources they obtain through the budget.

and a great opportunity will be lost, if the LG Act 2013, is not used to enhance democratization and transfer power to the grass root representatives as directed in the Constitution.¹⁸

4. Design Features of LG Act 2013

Interviews with officials and my own assessment indicate the following policy issues facing the new PTI government in the KPK after the 2013 election;

- The PTI leadership had prepared itself for governing the Punjab. They had not envisaged that the electorate would give them a majority in KPK instead and were initially slow in the introduction of policy reforms.
- However they generated momentum rapidly. In this connection the PTI decided on a four pronged approach focusing on (1) an effective grass-root driven LG system, (2) enactment of a Right to Information Act to empower the citizen, (3) Introduction of Right to Public Services legislation, (4) Creating an effective monitoring and complaint redressal system. During the last one year these policies are now in place and shows the KPK government to be ahead of other provinces in empowering its citizens, that is a remarkable achievement for a province that is facing the brunt of militancy and counter militant operations by the state.
- One of the criticism against the previous 2001 LG Ordinance was the paucity of development funds available for the LG bodies. The total funds provided for development were about Rs. 800 million. These had to cater for the budgets of 26 districts, 55 Tehsil Municipal Administrations, and 987 union Councils. When the available funds were sub-divided none except Peshawar received Rs. 100 million or more. This meant an absurdly low level of development and sparse provision for new infrastructure in the health and education sectors. Most of the demands thus remained unfulfilled and caused criticism of the incumbent governments further loosening the bonds between the citizens and the state.¹⁹
- This issue has been addressed to an extent under the LGA 2013, it stipulates in S. 53 (a) that the share of the LG bodies from the provincial development budget shall be 30% of the total. It would mean a transfer of at least Rs 50 billion in 2014-15 from the province's development budget, which is a huge improvement over the past.²⁰

Some of the other important features of the LG Act 2013 that need to be highlighted are the following:

- The powers of various entities under LG like the District Councils, City Municipal administration, Tehsil Municipal administration, Neighborhood Councils and Village Councils have been clearly laid down to prevent ambiguity and will assist in the efficient performance of LG and delivery of public services.
- Chapter II to VII of the LG Act 2013 lays down the powers of all the Local Bodies at different levels including their powers to;
 - Devise policies regarding services to be provided and how costs will be recovered
 - Formulate budgets and rates to be collected as taxes
 - To distribute resources internally within the council as per allocation
 - Enforce area planning rules through regulations
 - Hiring & firing of staff including reporting on performance

¹⁸ There are also some problems associated with an absence of alignment between the various stipulations in the 18th amendment; for instance LG is a provincial subject thus all matters related to it must be undertaken by the provincial governments. However, for anomalously elections in local government have been entrusted to the Federal Govt. under Art 219 (d). This will lead to delays in the future unless this issue is resolved in time.

¹⁹ Many experts like Kilkunnen have described this inability to provide good public services by the state as one of the causes of insurgency in developing societies worldwide.

²⁰ There are ample amount of funds that could be brought into service of the communities, if they are delinked from the current patronage networks particularly the exorbitant allocations derived by certain members of the KPK Assembly.

- Undertaking actions concerning regulatory oversight over subjects transferred to specific entities of LB
- To take emergency action against violators of its by-laws by lodging complaints with the police
- To deliver kind of services indicated in the LG Act 2013 for the specific LB
- The above authority to impose obligations or to make expenditures relates to the following institutions in the LG²¹;
 - City District government for Peshawar and city district government other than Peshawar (S. 17-20 of LGA 2013)
 - Tehsil Municipal Administration for a Tehsil, Town in the city District (S. 21-25)
 - A Village Council in the rural areas and a Neighborhood Council in areas with urban characteristics (S. 26-29).
- Clearly the LG Act introduces a visionary transformation of a fundamental nature, and if capacitated will bring a change in the balance of power at the departmental level, when under S. 12, it shifts many of the departmental services to the district. They are listed in the First Schedule of the Act. It takes away 23 departmental responsibilities away from the provincial executive, and places them with the respective district councils. They include amongst other;
 - Primary and secondary education
 - Vocational education
 - Basic and rural health and child and mother care
 - Hospitals other than district hospitals since the later are associated with medical colleges that is a provincial matter.
 - Agriculture
 - Rural development
 - Communication and works
- The Local Councils are placed under various control mechanisms to prevent the waywardness experienced in the Devolution Plan of 2000. They are of two kinds. The first is the provincial government's desire to keep the LB's on a leash and under its control. The other type of behavior modification provisions of law relate to prevention of abuse and to engender accountability in conduct by the elected authorities of LB.
- Some of these provisions are statutory and provide as institutional arrangement under the LG Act 2013 while the others are provided as behavior controlling rules of conduct stipulated within the Act.
- The following are the statutory *controlling mechanisms*;
 - S. 54 – 65 include an all-encompassing rule bound sub system to ensure that the LG remain under the control of the provincial government. This is achieved by the creation of a powerful Local Government Commission
 - It is composed of 7 members; 5 of them i.e the majority are members of the provincial legislature; only one member represents the LBs while 2 are civil society experts/technocrats.

Comment: The LB Commission is a powerful oversight body and could initiate inspections/enquiries on the direction of the Chief Minister, by itself or on a reference made by a Nazim. This body has been provided the powers of a court to conduct its proceedings and to ensure compliance. It is too early to make any observations yet one question that arises is that will this not subordinate the LBs to the executive and also make them less powerful to conduct their own affairs thus weakening the empowerment principle?

²¹ The LG Department is authorized under section 5 (2) to notify the category in which a particular area or parts of an existing LB will be categorized.

- S. 57 (2) of the LG Act 2013 allows the government to provide guidelines and advice to Nazim District Council for achieving goals of policy and for promoting economic, social and environmental security of the province.
- S. 58 permits the Chief Minister or an officer specially authorized by him to issue directives to a Nazim and if he fails to implement them then authorizes the Chief Secretary to take such action as the situation may require.
- Under S. 59 the Chief Minister is empowered to remove a Nazim from office for non-compliance of the executive instructions of the government.
- Under S. 60, the Chief Minister can suspend the order of the head of a local body, if it is not in conformity with the law or is against public interest or he may refer the matter to the Local Government Commission for inquiry and after getting its recommendation quash the order of the local council.
- In the same manner, the Nazim tehsil council will monitor and improve the level of services provided to the people by examining the level of services²². If the Chief Minister is dissatisfied, he can refer the matter to the Local Government Commission for enquiry and action against the defaulting Nazim, (S. 61).

5. Challenges in LG Act 2013

The following are some elements that act as anomalies in the current LG Act 2013, and will in my view slow down the full fruition of initiative at the grass root level unless corrective action is taken. In a sense, the Act mirrors in many ways a psychologically protectionist attitude adopted by the provincial level legislators, who see the development of grass-root initiatives through the LG Act as a threat to their dominance in being the main bridge between their constituents and the state. Currently they exercise influence through the provincial executive. Secondly, there is patronage involved for the MPA which they exercise through the institution of the District Development Advisory Committee (DDAC). This is a legally instituted committee (under the DDAC Act 1989), and all members of a district elected to the provincial assembly are its members. They receive enormous amount of budgetary allocations.²³ Despite the creation of local government structures, DDACs have continued to function while there are LG. It is chiefly due to weakness of provincial government against this very powerful legislator's lobby that the DDACs exist.

Under the new set of practices introduced by the government wide LGA 2013, the Deputy Commissioner who may belong either to the federal or provincial elite civil service is being designated as the principal planning officer for all planning and development initiatives. Development funds in a district will be kept in a Special Designated Account (SDA) and this account will be managed by the DC. Under the draft Rules of Business, that are being examined presently, the Deputy Commissioner will also be the principal

²² This clause indicates the provision of mandatory service level indicators and the need for their independent evaluation in terms of delivery.

²³ It is found that powerful political figures of govt. receive a minimum of Rs. 200 million of development funds while less powerful ones get only Rs. 40 million respectively. The sources for funding DDAC members are District Development Initiatives, Special Dev Package, Priority Projects Schemes, development allocations from tobacco cess share from Oil, Gas and Hydel Generation Royalty. They also get allocations for schemes like sanitation, water, schools and roads, agricultural tube wells etc. Members from the oil/gas rich districts get 10% of the 18 billion Oil and Gas Royalty in addition to the other funds identified above. Many have criticized the wastage of this enormous amount of funds in the DDAC. These funds could change the shape of the local communities if they were utilized by the LG.

accounting officer rather than the secretary of the district council that will likely remain the responsibility of the additional director local government.²⁴

One can foresee, that there will be contestation between the members of the provincial assembly in a district and its Nazim. While the principle of joint membership in DDAC and District Council provides avenues for coordination and exchange of information, yet the issue of dominance and subservience of the district Nazim will arise. However, if the LG process continues, then he is going to emerge as the king-maker of the district in the future, as each district includes from 4-6 provincial assembly seats and the Nazim's influence will be considerable as a vote gainer.

- As political parties will participate in the forthcoming elections to the District Council, thus the party heads will be forced to recognize the strength of the Nazim as a potential vote gatherer in a future general election instead of dependency on other members of the provincial assembly.
- Furthermore, the designation of the Deputy Commissioner as the common bureaucratic head of district council and DDAC will create a conflict of interest and is thus best avoided.
- It may also be considered that if the current phase of the LG initiative is successful, it will lead to political stability and give an advantage to the government of KPK in dealing with the insurgency raging in many of her districts.²⁵

The following are some of the provisions contained in the LG Act 2013, that currently compromise the development of a fully responsible and empowered local bodies in KPK and that need to be addressed in the next round of legislation to bring it in line with the spirit of the Constitution and the 18th amendment;

- S. 3 places LG under the control of the provincial authority and its executive who are the elites at the provincial level; this strengthens the executive and helps him retain the executive's pivotal position that is essential for good governance and counter-insurgency. However it will be prudent for the executive to avoid conflict with the LG as then it may become dysfunctional –that will be a disaster and a tragedy and will enflame the insurgency even further.
- S. 5 (4) authorizes the provincial government to make rules for LG in following matters;
 - Structure and functioning of LG
 - Consolidating groups of offices for efficient management in the districts
 - Allocation of business of LG at various tiers
 - Making rules for the posting, promotion and transfer of offices and officials
 - Make rules for evaluating performance of officials
 - Indicate the channel of communication and interaction between hierarchies
 - Make rules for management of local councils business including coordination

These provisions are essential for system maintenance, yet it will be prudent to minimize interference in the working of LG institutions.

6. Prevention of Abuse in the LG System

As the foregoing discussion has shown, there are quite a few provisions present in the LG law to prevent abuse within the system. These are of two types and they can either operate alone or in tandem, depending upon circumstances.

(Internalized system for prevention of abuse)

- 1) There are control mechanisms within the LG Act 2013 for the prevention of abuse and the misuse of power. Briefly these are;
 - a. S. 18 (f), creates district accounts committee to scrutinize accounts for the monies spent

²⁴ DDAC want the deputy commissioner to be the secretary of the District Council so that they are able to influence its decisions. The DDACs also want him to be the secretary of DDACs.

²⁵ An opportunity exists where the development of a simultaneous Peace Plan to eradicate radicalization and insurgency could be fruitfully executed.

- b. S. 18 (i) specifies the election by the district council of a committee to ensure that members observe the code of ethics laid down in the Act under S. 88, 89, 91, and 92
- c. S. 37 of the Act provides for an audit of expenditures of every local body
- d. S. 41 provides that the recovery of losses/corruption caused wilfully to a local council shall be recovered from the personal assets of the member causing it.
- e. Under S. 80 (2) every member elected to a local council is mandated to declare his/her assets at the time of entry. This disclosure makes public the assets of members at the time of assumption of responsibility, a matter of public knowledge. Under the Right to Information Act citizens can get such information and could cause the initiation of criminal proceedings against someone who has made inordinate assets during his/her membership.
- f. S. 109 of the Act creates a complaint cell at every LB structure level that could be brought into play against anyone abusing his position and making profit or not performing the legally required service for the public

(External systems for prevention of abuse)

- 2) There are other external laws and measures for checking corruption. As a counselor in LG has been defined as a public servant under S. 114 of the LG Act he/she will come under the purview of:
 - a. The provincial Anti-Corruption Act
 - b. The National Accountability Law
 - c. Initiation of proceedings in the Provincial Legislature against corruption in the form of a motion (though very rarely used).

7. Major Issues of Development Facing Local Government

The quality of services provided to the people lies at heart of any efficient local government system and is a measure to judge the effectiveness of the institutions involved. The following are some of the major issues involved in the delivery of public services:

- The distinction between urban and rural areas was removed under LG Act 2001, with the result that the taxes collected by former towns and urban councils from their fairly large tax base, saw their resources transferred to rural areas, with a consequent decline of investment in urban areas, resulting in a reduction of operations and maintenance (O&M) of urban services leading to urban decay. This was a huge loss caused to tax-paying urban areas whose incomes were used under the Devolution Plan to subsidize and win the sympathies of the rural elites by Gen Musharraf. The deterioration of the urban areas has since accumulated for the past more than 12 years and will now require a major effort to correct.²⁶
- Since urban areas were regulated away it also led to their legal demise; a death sentence was passed on them when the department of Physical Planning & Housing (PP&H) was abolished. This also dealt another blow; it ended the creation of new towns and satellite townships in the province for more than 14 years. Although no studies have been undertaken yet this senseless reduction of urban assets under Gen Musharraf's Devolution Plan hurt the long term economic growth potential of the provinces.
- There is a conflict of interest introduced into the working of local government institutions, when the space that belonged to district and village councils is occupied by the more influential members of the provincial legislative assembly through the DDAC. The result is that the development space of district council and the proposed village councils/neighborhood councils (former urban wards of Union Councils), whose elections are due soon is compromised and suborned by the politically more influential DDAC.

²⁶ This is besides its negative impact on GDP growth

- Secondly, vide section 64 of the new LG&RD law the Chief Minister can pass any directions to a district Nazim. In case of non-compliance the Chief Secretary would be authorized to take any action approved by the Chief Minister. This explicit new section of law places the district Nazims in a subservient position. In this way the DDACs dominate development allocations as well as prioritization of projects in a district. Although, the chairman of the District Council is a member of DDAC, yet being in minority, he is disempowered. In addition, the administrative control of the political executive and the MPAs is enhanced as the administrative head of a district the deputy commissioner (who heads most of the planning and budgetary functions) is also under the directions of the provincial executive who can be influenced by members of DDAC to take decisions that may not be in the best interest of a Local Body.

8. Key Conclusions

The following are the key conclusions that can be drawn from the above analysis:

- 1) The LG Act 2013 provides many instruments for internal accountability through audit and inspection committees as well as outside supervision through the Local Government Commission and through the executive directions of the Chief Minister.
- 2) Local Bodies are free to levy taxes within their jurisdiction as provided under Chapter 10; the dos and don'ts have been clearly specified. They have full authority to use the funds as they feel fit and they have full rights to levy taxes as laid in the law.
- 3) LG has full rights to hire/fire/change duties of employees working for LB
- 4) Standards of delivery of social sector services are secured through inspection by district council and checking by the Local Government Commission
- 5) Job classification etc. are determined by the Local Government department and are available.
- 6) The LG Act has devolved departments to District Councils under S. 12 and the services that they are to provide are indicated
- 7) The provincial government has clearly indicated the following for LG;
 - a. The process where the actions of the LG can be reviewed or reversed by the Chief Minister
 - b. The Local Government Commission is a powerful instrument for enforcing coherence between the different organs of government and also correct and hold accountable persons responsible for egregious acts
- 8) The citizens are empowered through
 - a. Through empowered local government and the right to choose the right candidate by voting
 - b. By obtaining information through the recently legislated Right to Information
 - c. There is a robust public complaint and redressal system at the LG level as well as at the provincial govt. level.
 - d. The government has legislated the Right to Public Services Act whereby any citizen who has been marginalized can demand social services as a basic right
 - e. Citizens can also seek specific type of performance by govt. departments by referring a complaint to LG or government as the case may be
- 9) The major weakness in the LG system is the contest between the LG and DDAC – it is a contest between elites of two categories – however the future lies with the LG unless the executive authority of the province strangulates LG; that could happen with any imprudent act
- 10) This round of devolution is meaningful and is adequately funded and empowered with greater autonomy. It has greater chances of succeeding since it is not based on opportunism nor is the aim to seek legitimacy as this round of local government reform has been initiated by an elected government.
- 11) This report has clearly shown in section 6 the various methods available for controlling nepotism and corruption

- 12) The system will be able to create greater legitimacy by its immediate installation through elections that should be completed quickly.
- 13) From the review of various issues presented in this report the structural shape of LG and related devolution appears to be based on solid foundations and will provide responsible services to the people. As such there is reason to believe that LG structures are more worthy of trust than as compared with the past attempts in formulating an empowered and effective LG.
- 14) If the LG are imaginatively dove-tailed into a Peace-Plan it could also reduce the current way of radicalization and insurgency raging in the KPK and the region.