



FEDERALISM AND EIGHTEENTH AMENDMENT

CHALLENGES AND OPPORTUNITIES FOR
TRANSITION MANAGEMENT IN PAKISTAN

Dr. Leslie Seidle and Zafarullah Khan
December 2012



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United Nations Development Programme
4th Floor, Serena Business Complex
Islamabad, Pakistan
Tel: (92-51) 8355600

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In Collaboration with
Strengthening Democracy through Parliamentary Development

Foreword

The 18th amendment to the Constitution of Pakistan was passed in 2010, with full support of all political parties. The amendment has a wide-ranging impact for the Government of Pakistan at Federal and Provincial levels. As a consequence of the amendment, there have been significant changes including 102 articles in the Constitution being reviewed, 47 subjects and 18 federal ministries being devolved to the provinces, federal and provincial constitutional purviews (through two Federal Legislative Lists) being clearly demarcated, and setting up of local government as well as holding of elections for local governments by Election Commission of Pakistan being constitutionally mandated.

UNDP Pakistan has been leading efforts to analyze the emerging challenges and opportunities as a result of the devolution process, and enhancing understanding of the amendment. In this regard, UNDP commissioned two assessments to learn more about the impacts of the amendment; an initial assessment in 2010 and a detailed follow up assessment in 2011-2012 to identify the needs of the provinces.

UNDP and Forum of Federations are collaborating to develop a joint programme for supporting federal and provincial governments in addressing the transition management challenges brought about by the implementation of 18th amendment. In this regard, UNDP jointly with Forum of Federations fielded a Project Formulation Mission in July 2012. The Mission conducted one federal and four provincial level consultations with major stakeholders, including political party representatives (government and opposition), Chief Secretary, Secretaries of Planning and Development, Finance, Law, Inter-Provincial Coordination Departments, and Director Generals-National Institution of Management as well as relevant UN agencies and international donors.

This report has been prepared based on the feedback received from the provinces on transition challenges associated with implementation of the 18th Amendment to the Constitution of Pakistan. Its purpose is to highlight the implementation gaps, key challenges, current status and opportunities that lie ahead. The report is organized in two sections and deals with both federal and provincial government transition management challenges.

In conclusion, I extend special thanks to Dr. Leslie Seidle and Mr. Zafarullah Khan for authoring this report. It is hoped that this report will contribute substantively to the limited literature that is available on Federalism and specifically on implementation of 18th Amendment in Pakistan. And it is our hope that this Mission Report, with its recommendations, will help guide the stakeholders to work towards strengthening participatory federalism and local governance in Pakistan.



Jean-Luc Stalon
Country Director a.i.
United Nations Development Programme
Pakistan

About the Authors

Dr. Leslie Seidle is Senior Program Advisor with the Forum of Federations, Research Director for the Diversity, Immigration and Integration program at the Institute for Research on Public Policy (IRPP) and a public policy consultant. He previously held senior positions in the Government of Canada, including director general of Strategic Policy and Research, Intergovernmental Affairs, in the Privy Council Office (1996-2002). He was Research Director (Governance) at IRPP (1992-96) and Senior Research Coordinator for the Royal Commission on Electoral Reform and Party Financing (1990-91). He is the author of *Rethinking the Delivery of Public Services to Citizens* (IRPP, 1995) and numerous articles on immigration issues, electoral and constitutional reform, public management and political finance; and has edited/co-edited 13 books, including *Immigrant Integration in Federal Countries* (McGill-Queen's University Press, forthcoming 2012) and *Belonging? Diversity, Recognition and Shared Citizenship in Canada* (IRPP, 2007). Leslie Seidle holds a D Phil from the University of Oxford.

Mr. Zafarullah Khan is an Islamabad based civic educator/researcher. His research interests include federalism, democratic developments, political parties, and right to information. He holds a Master's degree in Media and Communication from London School of Economics and M. Phil in Pakistan Studies from Quaid-i-Azam University, Islamabad. Presently, Mr. Khan is working as Executive Director of the Centre for Civic Education Pakistan - a research and training organization in the field of social sciences recognized by the Higher Education Commission.

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The Basis for a New Vision of Federalism

Dr. Leslie Seidle

1. Challenges to Implementation

An outside observer cannot fail to be impressed by the scale of the changes provided for in the 18th Amendment to Pakistan's Constitution. Its author, the Parliamentary Committee on Constitutional Reforms¹ held 77 meetings, for a total of almost 400 hours, between mid-2009 and early 2010 (Bhatti 2011, 19). As a result, 69 of the 280 articles of the 1973 Constitution were amended, 20 were substituted, seven were inserted and four were deleted or repealed. The 18th Amendment provided the basis for what Senator Raza Rabbani, the committee's chair, has described as "the most comprehensive restructuring of the federal and provincial administration since 1947" (Rabbani 2012, 297). The intended pace of change was also impressive. A smaller parliamentary body, the Implementation Commission, was given a one-year mandate (ending on 20 June 2011) to oversee the transition.

No one familiar with the dynamics of constitutional change in federal systems should be surprised that some significant challenges have emerged during the implementation process. Some of these reflect Pakistan's particular historical and political context. Although the country has been officially a federation since its founding in 1947, its history has been marked by periods of authoritarian rule and by centralized administration even during periods of democratic government². There have been strong and ongoing pressures, especially from provincial political leaders to institute 'true federalism' - most recently in the 2006 Charter of Democracy that inspired the 18th Amendment. Expectations were thus high when this impressive set of changes was unanimously endorsed by both houses of Parliament in April 2010. What are the main challenges that have emerged during the implementation process?

The 18th Amendment provided the basis for what Senator Raza Rabbani, the committee's chair, has described as "the most comprehensive restructuring of the federal and provincial administration since 1947" (Rabbani 2012, 297).

Insufficient political leadership

In one of the author's meetings in Islamabad, his interlocutor expressed the view that, for such a sweeping constitutional amendment, a 'more vigorous plan' is needed during implementation. Although the Implementation Commission worked hard to

¹The committee had 26 members from both houses, with 15 political parties represented.

²According to Mohammad Waseem (2010, 23), "federal governments under both civilian and military set-ups showed a tendency to control the purse and policy at the cost of the provinces." One avenue for this control was through the Concurrent List: where there was a conflict between the federal Parliament and a provincial assembly over a subject on the list, the decision of the former prevailed (Ghaus-Pasha and Bengali 2005, 247).

carry out its mandate, it seems clear that some of the momentum has been lost. In this regard, a participant at the Peshawar consultation suggested that 'political seriousness' is required and that the federal government has instead demonstrated 'prudence'. Various aspects of implementation are currently assigned to three 'high-powered' committees of federal ministers, but these bodies do not have a public or communications focus. As for the provincial governments, an October 2011 report found variation in the extent of leadership being provided, with Khyber Pakhtunkhwa deemed to be the most active (Moriani and Salman 2011, 12).

'Incomplete' devolution

According to Amjad Bhatti (2011, 35), “[t]he first and foremost phase of the transfer of subjects, functions, institutions and initiatives” from the federation to the four provinces was “successfully completed” by the target date of 30 July 2011. This entailed the devolution of 18 federal ministries and divisions covering a wide range of important policy areas, including education, health, social welfare, environment, food and agriculture, local government, rural development, women's development and minorities affairs. The provincial governments are at different stages in the transition process, although it seems they have generally taken their new roles seriously. A number of issues concerning what critics see as 'incomplete' devolution have nevertheless emerged. For example:

- The federal government has not devolved a number of federal bodies in fields that are now within exclusive provincial responsibility. Among the most high-profile examples are the Employees Old-age Benefits Institution, the Workers Welfare Fund and the Zakat Fund. Punjab and Sindh are adamant about devolution of these bodies because this would augment considerably their resources.
- The 7th National Finance Commission (NFC) Award, adopted in December 2009, increased the transfers from the federal government to the provinces by around 10 percent. However, the terms of the Award were set prior to adoption of the 18th Amendment and therefore did not explicitly take account of the additional responsibilities provincial governments have acquired (for a discussion of this, see National Management College 2012, 36-37). There has been considerable criticism of a number of cases of “transfers without resources.” At the July 2012 consultation in Karachi, a participant mentioned the case of the devolution of Jinnah Postgraduate Medical Centre to Sindh. Drug regulation is another example that has had deleterious consequences (see section 2).
- Natural resources such as oil, gas and other minerals are now under the joint ownership and management of the federal government and the respective provinces. The provinces thus have access to additional sources of revenue. However, the federal government has come under strong criticism for not respecting the new provision.

- There has also been criticism of the creation of new federal government ministries or other bodies to carry out what it sees as its continuing responsibilities in certain devolved fields - for example, to oversee Pakistan's compliance with international agreements on health and human rights. This is discussed further in section 2.

Resistance to change

In his concluding remarks at the national consultation on 25 July 2012, Qamar Zaman Kaira, the federal Minister for Information, stated that one of the key challenges at the federal and provincial levels is “internalization of the intent of the Amendment.” At the same consultation, Senator Rabbani referred to “an unfortunate mindset, in the bureaucracy but also within some political forces, that is centrist and has not accepted devolution.” Similar comments were heard at the provincial consultations held the same month. Such resistance, particularly within the halls of the civil service, may not be explicit. It can nevertheless have significant impacts on both the outcome of the implementation process in particular domains and on the development of a truly federal political culture in Pakistan (the latter point is discussed further in section 5).

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As a general point, full implementation of the 18th Amendment will take quite some time. For example, at the July 2012 consultation in Lahore, a Secretary from the Punjab government indicated that it will take four to five years to implement the new right to free education for children aged six to 16. The restoration of local government will also take years. Moreover, the implementation phase will point the way to potential changes in areas not specifically covered by the 18th Amendment. To take only one example, a participant at the July 2012 Lahore consultation suggested that devolution offers an opportunity to reform the 1908 Code of Civil Procedure, adding that this would require a great deal of research and expertise.

Some of the federal government's actions since adoption of the 18th Amendment, such as the unwillingness to share resource revenues, seem to run counter to what was agreed to in 2010. In light of the amounts of money involved, this is – understandably - damaging the post-devolution climate. In other cases, such as the lag in devolution of the federal institutions mentioned at the outset of this section, the main stumbling block is apparently the need first to agree on how assets will be divided. As for the overall pace of change, as the transition proceeds it may not be productive to focus unduly on deadlines and end points.

However, it will take time, leadership and public education for that conception to become more widely shared in Pakistan.

2. The Federal Government's Role with regard to Devolved Matters

A number of controversies have emerged concerning the federal government's intent to continue to play a role with regard to certain matters that were devolved to provincial governments under the 18th Amendment. A full account is not possible here, but a few examples will illustrate some of the dynamics at play.

The experience of other federal countries amply demonstrates that federalism is not a static form of government but a work in progress.

Education

Opinion leaders, including leading academics, have pressed for the Higher Education Commission (HEC) to remain a federal body despite provincial responsibility for education. For example, Professor Chaudhry Rehman has argued that ending standardized national curricula will lead to provincialization and suggested that some international organizations such as USAID could end their funding for scholarships (*Dawn* 2011). Other academics called for the creation of a new federal ministry of higher education. A participant at the July 2012 Karachi consultation said that devolution would enable provincial governments to reflect their own needs in curricula but added that national benchmarks need to be developed. In June 2012 the federal government revoked the HEC's autonomous status and placed it under the control of the Ministry of Professional and Technical Training. However, this action was suspended by the Sindh High Court in July 2012. The HEC's future thus remains to be settled.

Drug regulation

In light of the 18th Amendment, responsibility for drug regulation, which had been carried out by the federal Drug Regulatory Authority, was transferred to the provincial governments. However, the latter lacked the funds and personnel to carry out the new functions. The weakness of the new system became evident in January 2012 following the death of nearly 150 people from an adulterated heart drug distributed by the Punjab Institute of Cardiology. Following an instruction from the Supreme Court, a new Drug Regulatory Agency, with a mandate to regulate the country's pharmaceutical industry, was created by presidential decree. The Punjab government was initially reluctant to issue a no-objection certificate, but the Council of Common Interests subsequently reached agreement on establishing the new agency. Legislation is

expected to be adopted by the Senate in the near future.

Compliance with/reporting on international commitments

The 18th Amendment stipulated that international treaties, conventions and similar instruments are the exclusive responsibility of the federal government. However, obligations under international agreements often require reporting on subject areas, such as health and education, that are now exclusively under the provinces. These requirements have been assigned to various federal ministries (Khan 2012b). For example, environment-related reporting falls to the Ministry of Climate Change. Reporting on compliance with conventions, etc. on human rights will be the responsibility of the new National Commission for Human Rights in collaboration with the Ministry for Human Rights. There has been some criticism that the creation of new federal bodies such as the Commission for Human Rights (which was envisaged as a federal institution created through political consensus) runs counter to the spirit of devolution (seven new ministries have been created since adoption of the 18th Amendment). Pressure from international donors is also cited as a factor (Khan 2012b). Some have suggested that certain international organizations resist changing their ways of working to become more engaged with provincial governments.

The above examples illustrate a number of points about constitutional change and governance in contemporary federal systems that are relevant to the transition taking place in Pakistan:

- Given the scale of the 18th Amendment, which was developed by political representatives without a consultation phase, it is not surprising that some of the changes are being contested. Making certain adjustments (as was done on judicial appointments) does not detract significantly from the overall thrust and value of the reform package and should not be criticized as 'backsliding'.
- In areas such as health (i.e. drug regulation) and even education, there may be a case for a continuing but limited federal role. Even in a decentralized federation such as Canada, there is a federal health department which is responsible for, among other matters, the approval of new drugs and programs to prevent and combat epidemics.

More generally, what is sometimes referred to as the 'watertight compartments' vision of federalism does not accord with contemporary realities. Policy fields such as economic development and

Even in a decentralized federation such as Canada, there is a federal health department which is responsible for, among other matters, the approval of new drugs and programs to prevent and combat epidemics.

environmental protection, to name only two, cannot be nearly assigned to one order of government. Federal countries, even those (such as Switzerland) that have attempted to define in considerable detail the different governments' responsibilities, are faced with policy and even program interdependence. Managing this interdependence is central to day-to-day governance in federal systems, and intergovernmental institutions and processes often make an important contribution to policy coordination.

3. Intergovernmental Institutions and Processes

Compared to Germany, Canada and Australia, Pakistan has a relatively modest set of intergovernmental institutions. It nevertheless has some experience in this area, and the 18th Amendment points the way to a more significant role for intergovernmental processes.

Council of Common Interests

The Council of Common Interests (CCI), which dates from the 1973 Constitution, was intended to harmonize federal-provincial relations. Its creation was also a response to the two smaller provinces' concerns about the economic domination of Punjab and Sindh (National Management College 2012, 13). It consisted of the chief ministers of the four provinces and an equal number of members appointed by the federal government.

According to one academic assessment, "it was ineffective as an institutional mechanism for conflict resolution" (Waseem 2010, 12).

The 18th Amendment resulted in a number of important changes to CCI's mandate and rules:

- CCI is mandated to formulate and regulate policies respecting the 22 matters enumerated in Part II of the Federal Legislative List (FLL) and exercise supervision and control over related institutions. This list includes some of the subjects that were previously on the Concurrent List (see note 2 above), which was abolished by the 18th Amendment, as well as several others. CCI's mandate thus covers a range of highly important domains,

However, in part because of the periods of authoritarian rule, CCI was not very active in the decade prior to the 18th Amendment: of the 20 meetings since CCI's inception, only 11 took place in the period 1973-2009 (Khan 2012a).

including: national planning and national economic coordination, including planning and coordination of scientific and technological research; supervision and management of public debt; legal, medical and other professions; standards in institutions for higher education and research; electricity; and interprovincial matters and coordination.

- The federal government can only legislate on subjects in Part II of the FFL after consultation with the provinces through the CCI.
- CCI's members are the prime minister (who cannot delegate his role to a minister), the chief ministers of the four provinces and three representatives of the federal government nominated by the prime minister.
- CCI meetings are to occur at least once every 90 days and are to be chaired by the prime minister. Decisions are by simple majority.
- The Council is to have a permanent secretariat with representation from all the provinces and regions based on quotas.
- CCI is responsible to Parliament and is to submit an annual report to both houses.

As for the impact of these changes, CCI has clearly become a more active body. It has held nine meetings since July 2010, six of these between July 2010 and June 2011. During the latter period, it decided an average of six issues per meeting. Of these, the highest number were in the energy/power sector, followed by post-18th Amendment devolution issues. According to one observer, “the usefulness of this intergovernmental forum is being established” (Khan 2012a). There are nevertheless opportunities that can be more fully realized.

CCI has held nine meetings since July 2010, six of these between July 2010 and June 2011.

- Provincial governments could make more effective use of CCI to resolve questions that fall within its jurisdiction. The Council's responsibility to decide on interprovincial matters and coordination provides a relatively open door (Khan 2012a).
- Since mid-2001, the rule that CCI should meet at least once every 90 days has not been observed: only two meetings were held in the July 2011-June 2012 period. It is not clear why the '90-day rule' is not being respected. In light of the continuing need to address transition issues, a continuing active role for CCI would be beneficial.
- The secretariat provided for in the 18th Amendment has not been established. The Ministry of Inter-Provincial Coordination has performed this function, with no additional resources allocated for the purpose. It is not clear why no action has been taken to set up a secretariat. The additional cost, which ideally should

be shared by the five governments, may well be an issue. As for reservations about the possible tendency for a secretariat to act overly independently of governments, there are various administrative options that would discourage this.

- The CCI may need to be more flexible in its procedures. For example, it was mentioned more than once during the July 2012 consultations that some provincial government summaries have been rejected because they were not in the correct format.

National Economic Council

The National Economic Council (NEC) dates from the 1962 Constitution, although it seems to have been active only since 1975³. Prior to the 18th Amendment, it was composed of the prime minister and other members selected by the prime minister; only one member could be appointed from each province. The NEC's present composition is as follows:

- the prime minister, who chairs the council
- the chief minister and one other member from each province nominated by the chief minister
- four other members nominated by the prime minister “from time to time.”

The NEC is mandated to review the overall economic condition of the country and to advise the federal and provincial governments in formulating plans on financial, commercial, social and economic policies. Meetings are to take place at least twice a year and are called by the chair or following a request from at least half the members. The federal government's Cabinet Division serves as the secretariat. As with the CCI, the NEC is required to submit an annual report to Parliament.

A participant at the July 2012 Peshawar consultation mentioned that although the NEC was supposed to develop a framework for the provincial governments' new power to negotiate direct loans, nothing has happened on the matter. The participant added that this is “a lapse on the part of the federal government and the NEC.” It is nevertheless clear that the NEC has assumed a more active role – one that will continue to be important as the transition continues.

In the July 2012 consultations and the author's meetings, a number of additional observations were made about intergovernmental institutions and processes:

Between the adoption of the 18th Amendment and the end of 2011, the NEC met nine times to address a range of demands from the provinces (it had 11 meetings between 1975 and June 2011).

³The following account draws extensively on National Management College (2012), 14-16.

- The Ministry of Inter-Provincial Coordination is not considered a 'key player' within the federal government, and this affects the degree to which it can influence the positions of other ministries on the implementation of the 18th Amendment.
- The corresponding ministries (or equivalent) at the provincial level do not have sufficient staff and expertise to carry out the new leadership functions required of them. As a participant at the Peshawar consultation put it: “Now the provinces have the rights and space and they won't be able to blame Islamabad for their problems in future.”
- Greater use could be made of the Inter-Provincial Conference, which can be convened by the prime minister from time to time to address a particular issue but seems to be dormant⁴. The Conference, which falls within the mandate of the Ministry of Inter-Provincial Coordination, could provide a less formal forum than CCI or NEC to address ongoing and emerging implementation issues.

A further question concerns the potential benefits to governance in Pakistan of creating (or reinforcing) intergovernmental institutions and processes beyond those composed largely of the prime minister and chief ministers. In Canada and Australia, a range of bodies allow ministers and senior officials to coordinate programs in fields where both orders of government are active, address irritants, and build and maintain channels of communication. In some policy sectors in Canada - for example, education and the environment - a secretariat provides ongoing support to a council of ministers, as well as carrying out research and advocacy⁵. In other fields, meetings are relatively informal and there is no joint administrative support.

Although copying the practices of other federations is not advisable, further strengthening of intergovernmental processes provides important opportunities for Pakistan, both to address practical matters and to help build a culture of collaboration. Initiatives to share expertise and experience from federal countries with well-developed intergovernmental institutions and processes, such as Australia and Canada, would be a useful initial step. Other options include learning sessions in Pakistan led by experts from such federations and short-term secondments of senior Pakistani civil servants to intergovernmental agencies in other relevant federations. With its strong record of publications and learning activities in this area, the Forum of Federations is well placed to offer assistance in this area.

As Pakistan faces the future, managing interdependence and improving communication between governments will require concerted attention.

⁴Zafarullah Khan could not recall an example of the Conference being convened since adoption of the 18th Amendment (email to the author, 9 September 2012).

⁵The Council of Ministers of Education Canada is composed of the ministers of education of all the provinces and territories. The federal government has no representative.

4. Local Government, Citizen Participation and Public Education

The last local elections in Pakistan were held in 2005. Elections were scheduled to be held in 2009. However, following the political changes of 2008, the provincial governments decided to postpone the votes in order to allow time to amend the local government systems. Reform of local government is mandated by the 18th Amendment, and expectations seem to be quite high. At the 25 July 2012 national consultation, Haider Rizvi said that Pakistan was still living with local government structure from the British colonial period and asked how it was possible to talk about governance without the 'third tier.' At the Karachi consultation, a member of the Sindh Assembly said that citizens want governance at their doorstep through local government.

As of October 2012, three provinces, Balochistan, Khyber-Pakhtunkhwa, and Sindh, had passed new local government laws (in Sindh, inter-party disagreements delayed the adoption of new local government legislation). It is not clear when the next round of local elections will be held; it is possible they will not all be held at the same time.

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The future of local government in Pakistan is a huge field that is beyond the scope of the present report. The issues extend beyond election rules to include the structure of local administrations, their financing and channels for involving the public in their work. In light of its past work on local government, including its financing, the Forum of Federations could lend expertise as part of a future UNDP project. In this regard, it would be important not to duplicate some of the projects that are already underway - such as projects being supported by UK Department for International Development and the work of the Free and Fair Election Network (see Democracy Reporting International 2010, 7).

The potential for greater citizen involvement through local government reform will depend in part on public understanding of the broader constitutional and governance changes that are being implemented. In this regard, the author's clear impression following his visit to Islamabad is that, despite the scale and significance of the 18th amendment - or perhaps because of this- not enough has been done to explain to opinion leaders, the media and the broader public the intent of the reform and the implications for Pakistan's future. At the 25 July 2012 national consultation, Professor Syed Jaffer said that a 'communications gap' is one of the key elements of what he described as 'slippage' in the implementation of the 18th Amendment. At the July 2012

consultation in Karachi, a member of the Sindh Assembly indicated that Assembly members have to rely on media reports to learn about developments.⁶

In light of the huge challenges all governments face in implementing the 18th Amendment and the sensitivity of some of the issues, it is perhaps understandable that political leaders have not been as proactive as some would wish. It is not too late to correct this. Improved communication about the changes underway would help alleviate potential distrust from provincial governments and situate what to some are quite technical matters within the broader governance context. This would also be one way of demonstrating that governments are acting to bring about the greater openness in government that is meant to flow from the 18th Amendment.

5. A Vision for the Future of Federalism in Pakistan

According to Bhatti (2011, 19), the 18th Amendment has four broad characteristics or purposes, which he labels the “intent of the legislature”: reconciliatory, redistributive, reconstructive and reformative. He adds: “Accountability and representation are two key features of devolution which need to be incorporated at every tier and sub-tier of development planning, management and execution. This would usher in a new era of *development through devolution* in Pakistan.” (Bhatti 2011, 6-7; italics in the original) According to Saeed Shafqat (2011), the “general tenor of the 18th amendment was to ameliorate the power-retentive effects of the previous amendments and to diminish, to every extent possible, the feeling of distrust that the provinces had been feeling for each other in the absence of any form of power-sharing and autonomy from the centre.” Although there are no doubt other ways of characterizing the current reform, the author was struck by the relative absence of official documents or public statements by political leaders explaining the rationale for the sweeping changes introduced by the 18th Amendment and what they mean for the future of Pakistan and its people.

In light of this apparent gap, this report closes with a suggestion that consideration be given to launching an exercise with the objective of developing a new vision for federalism in Pakistan. This vision would go beyond simply explaining what was achieved in 2012 and the steps to date to implement the reform – although this would nevertheless need to be addressed. Rather, it should take focus on themes that are implicit in the 18th Amendment, such as responsiveness, participation and openness. This would allow for links to be drawn with issues that matter to people in their daily lives, including improved public services.

⁶A participant at the July 2012 Lahore consultation stated that the way the Constitution was amended and a new federal-provincial paradigm introduced was never communicated to the people through the media or other means.

As for the process for developing the vision might be developed, there are a range of options. A few basic criteria would nevertheless need to be met:

- The exercise should be explicitly sanctioned by the Prime Minister or a senior federal minister.
- The collaboration of provincial governments would need to be obtained, starting with exploratory discussions before any announcement.
- There should be opportunities for public involvement in at least the federal and provincial capitals.
- There should be a target date for submission of an 'advanced draft' for governments' consideration and finalization.
-

It would remain to be seen whether the exercise would lead to a 'vision statement' explicitly endorsed by all governments or to a document that identified areas of consensus as well as reporting points of disagreement. The former is an ambitious aim that would require considerable political championing throughout the process.

The overall purpose of such an exercise – admittedly a challenging pursuit - would be to articulate what has been described as the new paradigm for federalism in Pakistan. This would have a number of potential benefits, including helping to diminish the resistance to change that is evident in a number of circles. It could help diminish the undue focus on technical issues and jurisdictional disagreements. Finally, it would serve to underline the many strengths of federalism, including its potential contribution to Pakistan's democratic and economic development.

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Provincial Progress and Perspectives

Post-18th Amendment Transition Management Challenges and Opportunities
Zafarullah Khan

The Process

Almost a year after the transfer of subjects, functions and ministries of now abolished Concurrent List the United Nations Development Programme (UNDP) and the Forum of Federations joined hands to facilitate consultative roundtables at all the four provincial capitals. The process was aimed at gauging the provincial progress so far, critically examine the challenges being faced and figure out potential possibilities to meet these challenges.

The roundtables held in Peshawar (9th July 2012), Lahore (11th July 2012), Karachi (13th July 2012) and Quetta (17th July 2012) brought the mandate bearers and the duty bearers from five selected ministries/departments namely: the Finance, Planning and Development, Law, Inter-Provincial Coordination and Local Government under one roof to share their experiences, perspectives and discuss the way forward. They were also given a choice to identify their priority subjects/areas according to the specific provincial needs. In order to expand the scope of consultative process a separate session for academia and civil society engaged with democratic devolution was also arranged in all the four provinces.

The process culminated at the National Roundtable on 25th July 2012 in Islamabad where all major federal and provincial stakeholders were together to present a federal picture and benefit from the global experiences of Forum of Federations. The outcomes of entire process reveal that besides certain province-specific concerns, by and large, there are many common issues. This enhances possibilities of working together within the new paradigm of devolved governance.

It was a timely initiative by lead United Nations agency in the field of governance and democratization, United Nations Development Programme (UNDP) and inter-governmental organization in the field of federalism the Forum of Federations to explore and examine transition challenges and identify potential areas for targeted technical assistance.

Background

New constitutional contours for federal-provincial relations

Politics of Pakistan during the last 65 years have revolved around the unsettled question of provincial autonomy. Traditionally the provinces have complained about the centralized federal grip. This grip, traditionally had been fortified through; 'governor, revenues and resources, ideology and institutions, and policies and projects' decided, planned and managed by the federal government. The provincial role had

been confined merely to be an obedient implementer with varying degree of success or failure.

In 2010 Pakistan experienced a 'negotiated legislative revolution' characterized by historic political consensus for the 18th Constitutional Amendment.

Structural reforms articulated by the Amendment have impacted almost all branches of the government and pillars of the State including the Legislature, the Executive and the Judiciary. It has also expanded the scope of constitutionally guaranteed fundamental rights. In light of the 18th Amendment, its sequels the 19th and the 20th Amendments, the governance at the federal and provincial tiers has to go through futuristic reforms to improve service delivery and satisfy the contents of Pakistani democracy-the citizens. In order to deepen the concept of democratic devolution the mandate to establish a viable Local Government has been made an exclusive provincial competence.

The Amendment has attempted to redefine federal-provincial relations especially by abolishing the Concurrent Legislative List, protecting provincial share in the National Finance Commission (NFC) and vesting jointly equal share in natural resources between the federal and concerned provincial government.

Through the Amendment, role of the Parliament and respective provincial assemblies have been enhanced in case of imposition of emergency in the country or in any one or more provinces. The Amendment also incorporated a new entry in FL-II i.e. 'inter-provincial matters and coordination' for nurturing cooperative federal culture.

Part V and VI of the Constitution especially Articles 141-174 specifically deal with relations between federation and provinces. Out of these thirty four (34) articles, seventeen (17) have been amended. The major amendments included; redefining legislative competence of the Parliament and provincial assemblies after the abolition of the concurrent list, inclusion of a provincial legislative ratification clause if the provincial government entrusted any function to the federation, reforms in the Council of Common Interests (CCI) and National Economic Council (NEC) with a constitutional obligation to submit annual performance reports to the both Houses, consultation has been made mandatory with concerned provincial government prior to a decision to construct hydro-electric power stations, and the provincial power to raise domestic or international loan within the prescribed limits by the NEC has been acknowledged..

While provinces are at the heart of these political and fiscal changes, this calls for proactive provincial role to convert Pakistan into a participatory federation and offer effective service delivery to the citizens-the consumers of governance and democracy.

These changes will require development and strengthening of responsive and accountable institutions with an active involvement of the citizens.

The Constitution and the Amendment:

The Constitution of Islamic Republic of Pakistan-1973 consists of 12 Parts arranged in 27 Chapters, 280 Articles, five Schedules, Preamble and one annexure. The 18th Constitutional Amendment was passed by the National Assembly on April 8th, 2010 and by the Senate of Pakistan on April 15th, 2010 and accented by the President of Pakistan on April 19th, 2010. The 18th Amendment changed about 100 Articles. The Concurrent List from the Fourth Schedule was deleted along with some inclusions and exclusions in Federal List-I (exclusive domain of the Federal Parliament/Government) and Federal List-II (shared domain as far as policy formulation, regulation, supervision and control of institutions related to the list are concerned). Additionally, 11 recommendations were also enunciated, which falls within the executive authority of the Government.

There are about fifteen notes of reiteration by various political parties that could be described as “pending politics” as these points of view could not yield multiparty consensus for time being in the Parliamentary Committee for Constitutional Reforms that authored the 18th Amendment. In order to fully comprehend the post 18th Amendment politics of democratic development in Pakistan these three pieces of the puzzle have to be put together. This also implies that democratic federalism is always a work in progress and tomorrow we may resolve these issues as well.

Part-I: Current Situation

The 18th Constitutional Amendment has introduced the largest structural reforms in Pakistan since 1947. The amendment envisaged an Implementation Commission to transfer powers to the provinces after abolition of the concurrent list within a specified deadline of June 30, 2011. This is for the very first time that a constitutional deadline was met and seventeen ministries that fell under the abolished concurrent list had been transferred to the provinces. Some functions of six other ministries were also devolved and the Pakistanis celebrated a Day of Provincial Autonomy on July 1, 2011.

The 18th Amendment did not create new institutional architecture. Rather it reallocated powers with the Parliament, federal government and the provinces. The amendment

proposed to create only three new institutions with specific objectives and mandate; first the Implementation Commission to transfer ministries and subjects of abolished Concurrent List with a sunset clause, the second permanent secretariat of the Council of Common Interests with due provincial representation and the third High Court in Islamabad Capital territory. During the process of implementation one new ministry i.e. Capital Administration and Development Division (CADD) was created to take care of the devolved subjects and functions for the Federal capital.

In this way the impact of the 18th Amendment could be analyzed in three distinct categories. First the transfer of power, authority and reallocation of various subjects and functions. Second the transition that is on-going with its attendant teething problems. The third is the long-term and continuing efforts to fully transform Pakistani federation by fully functionalizing the framework articulated by the 18th Amendment for good and responsive governance that meet citizens' expectations. This report is based on provincial perspectives on the transition phase. The report draws its contents from deliberations among stakeholders, the mandate and duty bearers, civil society and academia at all the four provincial capitals during July-2012 i.e. exactly a year after the transfer of new roles and responsibilities.

1. Messages from the Provinces

The series of provincial consultative roundtables arranged by the UNDP and FoF were first effort of its kind after the transfer of various subjects, functions and ministries to the provinces by the Implementation Commission in June 2011. The elected parliamentarians, political leaders and the senior officials acknowledged the usefulness of the process and quite candidly shared their perspectives and flagged various problems.

Though the provinces with varying degree of political and administrative commitment are interested to implement the 18th Amendment, there still appears to be a huge communication gap between the federal and provincial governments. There is no formal mechanism to liaise with each other, sort out pending issues, share each other's experiences and devise strategies to make democratic devolution work in the best interest of the citizens of Pakistan. There is a high level ministerial committee to address post-transfer challenges and facilitate the transition but it is not proactive. The Senate of Pakistan also

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picked up this issue in May 2012 and constituted a special committee to address the challenges during transition and its report has yet to see the light of the day.

Amid that kind of lackluster situation this intervention was timely and collected many thought provoking insights that can help inform future interventions to make a meaningful impact. Following are the major messages collected from these deliberations. These messages can guide strategies to support and strengthen democratic devolution by addressing the challenges being faced during the management of this transition.

A. Status of Implementation

Fourteen major political parties including the four (*National Party, Jama'at-i-Islami Pakistan, Pakhtunkhwa Milli Awami Party and Jamhorree Wattan Party*) that had boycotted Election-2008 and an independent legislator from Federally Administered Tribal Areas (FATA) were part of multi-party Parliamentary Committee on Constitutional Reforms that deliberated and authored the 18th Amendment.

Out of these parties three are ruling the provinces as a lead partner, namely; Pakistan People's Party in Sindh and Balochistan, Pakistan Muslim League-N in Punjab and Awami National Party in Khyber Pakhtunkhwa. About eight parties are coalition partners in one or the other province. While they were part of the process there is also a broader ownership of the product i.e. the 18th Constitutional Amendment.

There were Cabinet Committees and Inter-Departmental Committees to facilitate the transition. After initial enthusiasm these committees have become almost dysfunctional in Sindh, Punjab and Balochistan.

However, the provinces adopted different methodologies to implement the 18th Amendment. There were Cabinet Committees and Inter-Departmental Committees to facilitate the transition. After initial enthusiasm these committees have become almost dysfunctional in Sindh, Punjab and Balochistan. In Khyber-Pakhtunkhwa while there is a strong political will for the cause of provincial autonomy the oversight mechanisms are slightly more effective. In all the four provinces no new ministry or department has been created and all devolved functions have been assigned to existing departments. In Sindh a Revenue Board (2011) and in Punjab a Revenue Authority (2012) has been created to increase provincial fiscal efforts.

All provinces complained that there was unnecessary culture of secrecy and lack of effective communication between the federal and provincial governments particularly about distribution of assets of the devolved ministries after 30th June 2011 i.e. the Constitutional deadline for devolution of subjects of abolished Concurrent List. This

communication gap has killed the initial zeal that was visible among the provinces. The prevailing attitude is giving birth to new kind of grievances especially about putting responsibilities on provinces without corresponding financial resources. “The 7th National Finance Commission preceded the 18th Amendment and the provinces had very little fiscal space as the federal government transferred liabilities without corresponding resources and assets transfer” maintained an official of Planning and Development in Khyber Pakhtunkhwa.

The provinces maintained that the federal government has kept many lucrative departments like the Employees Old age Benefits Institution (EOBI), Workers Welfare Fund (WWF) and Evacuee Property Trust.

B. Pending issues: Incomplete Devolution

Almost all the four provinces complained about what could be described as 'incomplete devolution.' The provinces maintained that the federal government has kept many lucrative departments like the Employees Old age Benefits Institution (EOBI), Workers Welfare Fund (WWF) and Evacuee Property Trust. The subject and Ministry of Social Welfare has been devolved to the provinces but in *Pakistan Baitul Maal* that distributes around Rs 3 billion per annum there is no role for the provinces.

Khyber-Pakhtunkhwa had additional complaints regarding reluctance to transfer Pakistan Forest Institute and assets of tourism related institutions. The first issue has been resolved, while the second one is still pending.

Sindh had specific concerns about the collection and distribution of *Zakat*. The province is also waiting for resources of Jinnah Post Graduate Hospital. Punjab has written to the federal government to resolve these pending issues otherwise it intends to approach the Supreme Court under Article 184 (1).

The provinces also faced resource constraints for federal initiatives like the Lady Health Workers and many other projects started on either directives from the president or the prime minister.

“We amicably resolved the issue of Drugs Regulatory Authority in the spirit of Article 144. We can authorize the federal government to do certain more things but first there has to be negotiations on pending issues related to the EOBI, WWF and Evacuee Property Trust” said Dr. Abul Hassan Najmee, Law Secretary of Punjab.

There should be a forum comprised of federal and provincial government to communicate better on issues related to devolution and share each other's experiences for mutual learning, suggested a member of Sindh Assembly.

Part-II: Reforms

The impact and implications of the 18th Amendment, especially for the provinces, could be examined in legislative, policy and planning, administrative and fiscal domains. The provinces fairly grasp what has changed in the wake of the 18th Amendment but they feel that there is no structured forum to share each other's experiences and learn from emerging best practices, if any. Similarly a mechanism to share institutional memory of the past 65 years is also missing. This section has collected what the provinces are doing to internalize the spirit of the 18th Amendment and catalyze the process of transition. The transition managers at the provincial level must realize that all these issues are interlinked and impact each other.

A. Legislative Reforms

"Notwithstanding omission of the Concurrent Legislative List by the Constitution (Eighteenth Amendment) Act, 2010, all laws with respect to any of the matters enumerated in the said List (including Ordinances, Orders, rules, bye-laws, regulations and notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof, or having extra-territorial operation, immediately before the commencement of the Constitution (Eighteenth Amendment) Act, 2010, shall continue to remain in force until altered, repealed or amended by the competent authority." (Article 270AA (6), Constitution of Pakistan)

In the light of Article 270AA (6) of the Constitution there is no legal vacuum as the existing legislative arrangement is well protected. This opens up possibilities for the provinces to creatively think about their own futuristic legal framework that will best suit their specific needs. This window of opportunity can also be utilized to dissect, what didn't work in the past and how it could be improved to yield the desired democratic dividends.

According to the provinces more than 70 laws need to be changed in the light of new roles and responsibilities constitutionally allocated to them after the abolition of the Concurrent List. Some provinces have taken steps to make their own laws on devolved subjects. Khyber-Pakhtunkhwa has passed 35 laws including laws for curriculum/education and local government. Punjab has also passed about 35 laws related to devolved subjects. The laws pertaining to the Local Government and Curriculum are in the Assembly. However, in Punjab some laws are pending due to incomplete devolution of Workers Welfare Fund (WWF), Employees Old-age Benefits Institution (EOBI) and Evacuee Property Trust.

Punjab also has concerns that through Article 142 (b) a new Concurrent list has been created as the Parliament and a provincial assembly has the power to make laws with respect to criminal law, criminal procedure and evidence.

Sindh is working on indigenizing many laws to synchronize them with the spirit of the 18th Amendment. Sindh has a Right to Information law but its rules have not been formulated and it is not yet operational. Political leadership is also engaged in negotiations to find a common ground for new Local Government Law.

Khyber-Pakhtunkhwa has passed 35 laws including laws for curriculum/education and local government. Punjab has also passed about 35 laws related to devolved subjects.

The Balochistan Local Government Law was enacted in May 2010. Whereas the laws related to Zakat, Labour and education are under the consideration of Balochistan Assembly. Here we must realize that the Law ministry cannot initiate any piece of legislation on its own. "We can only wet the proposed law by the concerned department" said an official of department of law Sindh. It was observed that there is no effective mechanism for inter-departmental communication in this regard. Secondly the citizens' participation in the process of reforming or amending the laws according to the provincial needs is totally missing. Even a member of sindh Assembly complained that what so ever was happening even the members of the Provincial Assembly came to know either through the media or the finalized draft piece of legislation. He suggested creating effective communication channels among ministries and political leadership.

New legislative arrangement and spaces

1	Federal Legislative List-I and II	The Parliament
2	Fundamental Rights: Right to Education, Right to Information and all other justice- able fundamental rights	Federation and the provinces
3	(a) Local Government (b) Only for Cantonments (entry 2- FL-II)	(a) Provinces (b) Federal Government
4	Criminal Law, Procedures and Evidence (Article 142 (b))	Both the federal Parliament and the provinces (New concurrency?)
5	Residual subjects (including the subjects of abolished Concurrent List)	Provinces
6	For Islamabad Capital Territory and other territories outside provinces	The Parliament
7	Assigned under Article 144 (for one or more provinces by consent)	The Parliament
8	(a) Federally Administered Tribal Areas (FATA) (b) Provincially Administered Tribal Areas (PATA)	(a) The president can extend/ direct. (b) The governor can extend/ direct

B. Policy Reforms

Before the passage of 18th Amendment, policy formulation and socio-economic planning were the exclusive domains of the federal government through the Planning Commission. The uniformly standard policy templates rarely accommodated inter provincial variations, inequalities and development disparities beyond occasional lip service. Therefore provinces were merely the parking place for federally designed policies and prescribed planning, especially in subjects related to the social sector.

The 18th Amendment has changed the role for the provinces. They are no more only the implementation arms of centralized policies. Rather the democratic devolution offers a new space to think and tailor policies according to specific provincial needs and priorities. This space, if prudently utilized, can help address long prevailing development deficits and focus on ignored areas.

'The federally planned education policy never emphasized on coastal management studies or marine biology in Balochistan or tourism studies in Khyber Pakhtunkhwa' said a participant in Balochistan.

Again instead of copy paste of failed policies in haste the provinces first need to strengthen their capacities in this regard and embark on consultative process with the relevant stakeholders, many participants suggested in provincial consultations. Nevertheless, Punjab has taken the lead to approve its own Youth Policy. The realization amongst provinces to develop both the short and the long term sectoral policies was evident at these consultative roundtables.

There appears a realization, especially among the political leaders that the provinces need to develop and enhance their policy making and planning capacities. 'Now the provinces have the rights and space and they won't be able to blame Islamabad for their problems in future' maintained a leader of Awami National Party who was part of the Parliamentary Committee on Constitutional Reforms and the Implementation Commission.

The Provinces though appreciative of the inclusion of Article 25-A i.e. Right to Education are skeptical about required financial resources. Only the Punjab government has taken some policy steps to realize this right but they too maintain that it will take 4 to 5 years to implement this right. The 18th Amendment has also provided space to the provinces to indigenize curriculum according to their historical heritage and human resource requirements.

Despite change in the overall vision for policy and planning the provinces were critical of retaining the pre-18th Amendment mechanism of approving various projects via the Executive Committee of National Economic Council (ECNEC) and Planning Commission. Participants in all the four provinces stressed the need to develop capacity of provincial planning and development departments and create institutional linkages with sectors of vital importance.

C. Administrative Reforms

“In view of a major devolution of powers and responsibilities to the Provinces in the constitutional reforms package, it is imperative that the extent of and modalities for distribution of work between the Federal Public Service Commission, Provincial Public Service Commissions and the respective services be reworked and the services reorganized so as to ensure provincial autonomy and good governance. It is also recommended that adequate indigenization of the services should take place as part of this reform.”

— Recommendation by the Parliamentary Committee on Constitutional Reforms

Most of the clauses of the 18th Amendment have reformed the hardware of Pakistani statecraft. This particular recommendation emphasizes the need to improve the required software to make these changes work.

Two years after the adoption of the 18th Amendment and one year after the transfer of subjects and ministries to provinces there is no serious effort to move towards this idea. None of the provincial or the federal government has even highlighted this aspect. The mandate bearers emphasized the need of creating effective communication channels among various ministries and the political leadership.

The provincial executive requires new kind of mindset, communication culture and expertise to comprehend, internalize and operationalize the changes ensured by the 18th Amendment. It is equally important to vanguard provincial interests at new institutional spaces like the Council of Common Interests, National Economic Council and in new regulatory framework for joint and equal ownership of natural resources.

National Institutes of Management-constituent bodies of National School of Public Policy at provincial level have incorporated various courses based on analysis of the 18th amendment for civil servants and culture of research on it is being promoted, informed the chief instructors in Sindh and Balochistan. Much more serious efforts are required to improve the quality of human resources to manage this transition that in fact is a paradigm shift to govern the country and its federating units, emphasized a participant in Karachi.

D. Fiscal Reforms

Federalism is a bird with two wings; political and fiscal. Provinces eulogize the political space given to them through the 18th Amendment but complain about the federal government's reluctance to transfer resources. Almost all provinces maintained that the 7th National Finance Commission preceded the 18th Amendment and the provinces

had very little fiscal space as the federal government transferred liabilities without corresponding resources and assets transfer. The second complaint pertained to Article 167 (4) under which the provinces can negotiate a domestic or an international loan and the Provincial Consolidated Fund can serve as security. National Economic Council (NEC) was supposed to prepare new framework but after the passage of two years nothing has happened in tangible terms. It is a lapse on the part of the federal government and the NEC, said a participant in Khyber Pakhtunkhwa.

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Similarly the provinces have been given joint and equal ownership in natural resources (Article 172). Therefore the existing legislation in this context needs to be revisited to ensure the role of provinces in control and management of natural resources. “No practical step has been taken in this regard” complained a political leader from Balochistan at Quetta roundtable. The provinces also need to come up with their suggestions and proactive engagement in this regard.

The provinces shall also start preparing their cases for the next NFC due in 2014 and develop their forceful and convincing arguments regarding their fiscal needs, said a leader in Khyber Pakhtunkhwa. At roundtables the members of civil society urged the provinces to announce Provincial Finance Commissions and distribute resources among the districts in a democratic manner.

Khyber-Pakhtunkhwa got 145 projects with an overall liability of Rs. 79.14 billion. Out of these the province continued only with 31 Projects involving funding of Rs 14.90 billion that were of crucial importance. Twenty other projects are there with support via Council of Common Interests (CCI). In June 2010 it was decided at a meeting of the CCI that funding for vertical projects and Higher Education Commission will continue from the federal government till the next NFC in 2014. Then there are projects initiated under the directives of the President or the Prime Minister. To fund these initiatives sans financial support has become a huge challenge for provinces. The federal government must share liabilities till the completion of these projects, shared an official of finance department.

In order to increase provincial fiscal efforts, especially to collect General Sales Tax (GST) on services, Sindh Board of Revenue was created in 2011 and Punjab Revenue Authority in July 2012.

Khyber-Pakhtunkhwa and Balochistan have not started any such initiative. The 18th Amendment has provided at least five new windows of opportunities to the provinces to expand their fiscal efforts. These windows are; capital gains, state lotteries, duties in

respect of succession of property, estate duty in respect of property and sales tax on services.

Traditionally the provinces in Pakistan have relied on federal transfers and had always shied away from their own fiscal efforts. But after the 18th Amendment this culture has to change. A realization is emerging in this regard. A leader of the ruling party in Sindh said the real problem of Sindh is the right and control over its resources. Sindh produces 71 percent of gas in the country and there are at least six fields that could be made operational with little investment. He said Article 158 of the original constitution of 1973 empowers the province to fulfill its needs first. But unfortunately our industry especially the fertilizer industry continues to suffer.

All these points indicate that the provinces need a new kind of economic vision and enhance their capacities to increase their fiscal efforts.

Part-III: Institutional Framework and Performance

New institutional spaces

One distinct feature of twenty eight federally organized countries in the world is that they have at least two or more tiers of constitutionally defined governments on same set of population and territory. For smooth functioning of each tier a substantial level of interaction and cooperation is of vital importance. The methods for managing such coordination, communication, cooperation and conflict resolution are varied. In federalism discourse these methods are often described as 'Inter-governmental Relations (IGR)'. In Pakistan an equivalent expression that figures in the Constitution is 'Inter Provincial Coordination.' The Constitution of 1973 created the Council of Common Interests (CCI) to 'conform to the spirit of federalism.' Composition of the CCI had been and till today have an equal representation of the federal and four provinces. The creation of the Council was a progressive leap forward along with establishment of territorial chamber, The Senate of Pakistan in 1973. The Constitution of 1973 also retained two other forums namely; National Economic Council (NEC) and National Finance Commission (NFC) to further the spirit of federalism in Pakistan besides fair distribution of resources and efforts for equitable development in the country. The 18th Amendment has laid a special focus on reforming and strengthening these forums.

The 18th Amendment has reformed and restructured various constitutional forums of federal-provincial interaction and has introduced mechanisms of shared decision making to promote participatory federalism. Reorganization of Council of Common Interests (CCI) and National Economic Council (NEC) with expanded mandate will have impact on the nature of inter-governmental relations in Pakistani federation.

Pakistan has an Inter- Provincial Coordination Ministry since 1970s. The 18th Amendment has inserted a new entry in federal Legislative List-II, “Inter provincial matters and coordination.” This hints that in future this subject will attain significant importance and shape the dynamics of Pakistani federalism.

After the 18th Amendment the CCI has been made an effective constitutional forum and has been given a role in resolution of conflicts between and among the federation and provinces. Earlier it was only the prerogative of the prime minister to convene meeting of the CCI. Now the provinces can also requisition it. The Council has been mandated to formulate and regulate policies on subjects enlisted in Federal List II and supervise and control related institutions. The CCI and the NEC have been made responsible to the Parliament and are supposed to submit their annual reports.

If the provinces will have more realization about the possibilities that this constitutional forum offers it will yield more positive results, maintained the participants in the provincial roundtables. However some provinces complained about rejection of their summaries for the CCI on technical grounds and their items are not brought on the agenda.

In the executive sphere, Inter-Provincial Coordination (IPC) is an important platform for agenda setting. The concept of Inter-provincial Coordination (IPC) that initially started as a part of various ministries in 1971 has now graduated into full-fledged IPC ministries at federal and provincial levels. Presently, the Federal Ministry of Inter-Provincial Coordination also serves as the secretariat of the CCI along with its other assigned roles. However, its existing capacity mismatches with the important role it can play to translate the soul and spirit of the 18th Amendment.

Performance of the CCI 2010-11

After the passage of the 18th Amendment, the Council has held nine meetings since July 18 2010, and has deliberated on vital issues and taken decisions on matters relating to the federation, with the full participation of the provinces. Out of these meetings six were held during the first year i.e. from July 2010 to June 2011.

On March 8 2012, for the first time in country's history, Federal Minister for Inter-provincial Coordination and member of the Council, Mir Hazar Khan Bijirani presented the Annual Report of the Council (July 2010-June 2011) to the Parliament. It has yet to be properly debated and discussed in the Parliament. The report also couldn't get the attention of the media and the birth of this new tradition by and large went unnoticed.

In quantitative terms, the report reveals that during this period instead of constitutionally required four meetings, the Council had six meetings during the first year. In total, the CCI decided on 36 summaries/issues – i.e. six decisions per meeting, on average. Of these 36 issues, only one was presented by Punjab. Interestingly, the provincial point of view prevailed on interpretation of Article 157 and subsequently appropriate amendments were recommended in the policy for power generation projects. The 'federalism filter' was applied on 10 summaries and the matters were referred for consultations with the provinces or to seek their perspectives and opinions.

The qualitative analysis of decisions made at these meetings inspires confidence in the efficacy of the strengthened institution to promote participatory federalism in Pakistan. Eleven summaries discussed by the council were related to the energy/power sector, seven were about post-18th Amendment devolution, corresponding constitutional obligations and financial costs, four summaries were related to water/dam related issues, three pertained to regulatory bodies, two were about a coordinated response to disasters (floods) and relief, two related to harmonized agri-tax and tube-well subsidy, and one each was about census, food security, economic zones and railways. At least two summaries were rejected on the pretext of quality and being exclusive domain of the provinces.

Performance of NEC 2010-2011

Though the NEC figures in 1962 Constitution but it remained a dormant body. It has been retained in 1973 Constitution (Article 156). Its post 18th Amendment composition is: the Prime Minister (PM) as Chairman, the Chief Minister's (CM) and

one other member from each province nominated by the CM and four other members nominated by the PM “from time to time.”

The NEC is mandated:

- to review the overall economic condition of the country
- to advise the federal and provincial governments formulate plans in respect of financial, commercial, social and economic policies [to ensure balanced development, address regional equity and be guided by the Principles of Policy]
- NEC must meet at least twice a year with one-half of total membership as quorum. Could be summoned by the PM or could be requisitioned by one-half of the membership.
- Only one meeting of NEC during 2010-2011 instead of mandatory two. Similar situation during 2011-2012
- The NEC was supposed to develop a framework for the provincial governments' new power to negotiate direct loans, nothing has happened on the matter. Neither the federation nor the provinces are proactive in this regard.
- The NEC presented its first report in February 2012 in the Parliament.

Part-IV: Local Governance

According to the Article 7 of the Constitution of Pakistan the State means the Federal Government, Parliament, a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess. The Article 32 of Principles of Policy asks the State to encourage local Government institutions composed of elected representatives of the areas concerned and give special representation to peasants, workers and women in such institutions.

After one year provinces are struggling to enact legal framework for these institutions of vital importance. This section highlights concerns raised by the participants over this delay.

The 18th Amendment incorporated Article 140-A to define minimum democratic benchmarks for future Local Government. It empowered each province to establish, by law, a local government system to devolve political, administrative and financial responsibility and authority to

The 18th Amendment inserted Article 140-A that says, “Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local government. Elections to the local governments shall be held by the Election Commission of Pakistan.”

the elected representatives of the local governments.

Though the Election Commission of Pakistan has been entrusted to conduct these elections, but unlike time bound constitutional deadlines for the presidential, federal and provincial elections, the constitution is silent about any kind of deadline for the local elections. Therefore as of today none of the provinces has moved forward to offer vibrant local government to the consumers of democracy and governance at grass roots. The constitutional article is also silent about any kind of local governance in federal capital, Islamabad, Federally Administered tribal Areas (FATA) and Gilgit-Baltistan, highlighted the participants from civil society.

Muttahida Qaumi Movement's minister from Sindh said local government is necessary to take the fruits of devolution to people. He said every district shall have its own development plan and the district government shall have a leading role to achieve it. He appreciated the Social Audit Report prepared by UNDP by involving various universities. The report establishes widening gaps in service delivery in absence of the local government. He emphasized the need of conducting similar research studies on other important issues like National Finance Commission, especially how many resources came to the province and where they were spent.

The participants termed such research inputs as highly valuable to inform pro-citizen decision making and policy formulation. They also stressed the need to create an effective culture of monitoring and evaluation to audit the efficacy of various policies. Pakistan is a difficult country and we have to be serious to realize democratic changes, said many participants. In absence of local government not only the State of Pakistan is incomplete rather the devolution appears to be the only change of masters from Islamabad to provincial capitals. Provinces must come forward to take the spirit of devolution and fiscal equalization down to districts.

In May 2012 the Khyber-Pakhtunkhwa Assembly passed the Local Government Act (LGA) to implement Article 140-A in its letter and spirit. Balochistan adopted new Local Government Law in May 2010. Sindh adopted local Government law in October 2012. 'We need to go beyond political platitudes and hold elections for local government' demanded many participants. The laws have been adopted without any meaningful consultation with the citizens and some of them even fail the minimum benchmarks defined by the constitution.

Part-V: Role of Civil Society

Civil Society perspectives on democratic devolution

Civil society is a vibrant part of Pakistan and can help catalyze long term democratic changes to improve governance and hold the government accountable. Traditionally Pakistani civil society has exhibited courage and creativity to promote new ideas and approaches that shape climate of opinion.

But regarding the 18th Constitutional Amendment there is a paucity of comprehensible information and very little efforts have been made to create awareness about the structural changes introduced through it. Subsequently many people are not able to relate with these complex constitutional changes.

The 18th amendment has expanded the scope of constitutionally guaranteed fundamental human rights. The amendment affirms three new rights namely: the Right to Fair Trial and due process, Right to Information and Right to Education. The amendment slightly modifies three other fundamental rights. In Article 17 i.e. Freedom of Association clause pertaining to intra party election has been deleted. In Article 25 i.e. Equality of Citizens word 'alone' from 'No discrimination on the basis of sex alone' has been dropped. In Article 27 i.e. Safeguard against Discrimination in Service, the following has been added, 'provided also that under representation of any class or area in the service of Pakistan may be redressed in such manner as may be determined by an act of (Majlis-e-Shoora) Parliament.'

Similarly, the amendment along with promising effective local government system has created new space for engagement with devolved ministries especially related to social sector at provincial level. There is a realization among the civil society organizations that devolution is a long process but they want to see a dedicated journey towards achieving the objectives of the 18th Amendment. The civil society organizations are eager to learn and be part of the process especially to realize Local Government and promotion of education according to Article 25-A. They want categorical commitment from the provincial government to provide enabling environment and corresponding resources for Right to Education. Protection of the rights of women and other vulnerable groups is also high on their list of priorities. Many civil society organizations maintained that without taking the spirit of devolution down to districts, tehsils and union councils/villages the message of 18th Amendment will remain just a slogan without substance.

Civil society organizations also questioned the efficacy and relevance of the amendment as many issues related to human rights and areas like Gilgit-Baltistan, Federally Administered Tribal Areas (FATA) and Azad Jammu and Kashmir have been ignored. Similarly the labor is suffering after the 18th Amendment. Industrial Relations act of Islamabad pretends to be a National Law. The retention of National Industrial Relations Commission at federal level also creates confusions as the department of labour has been devolved. This will create problems for registration of unions.

Therefore we need to implement Right to information. Civil society expects that after democratic devolution there will be a healthy competition among the provinces to translate these changes in to a reality for their people.

Although the politicians, especially the mandate bearers, have the primary responsibility to deliver good governance but civil society also requires accurate and timely information to judge the performance of government.

Suggestions by the civil society

- a) Constitutional literacy through public education campaigns and focused trainings about the constitution, its relationship with the citizens and changes brought through the 18th Amendment are important.
- b) Technical support will be required to draft new legislation and evolve policy framework on devolved subjects especially the issues related to Right to Information, Right to Education, children, youth, women and minorities.
- c) Role of federal agencies in law and order requires serious reforms as the security challenge is enormous.
- d) Media has given more negative messages about the 18th amendment. There should be more information that is easy to understand. The Right to Information is important to create 'courage to question.'
- e) The province must adopt Provincial Finance Commission (PFC) to distribute resources with justices among districts. This will be the best way to make people feel the impact of devolution.

Part-VI: Rethinking Democratic Governance

First miracle was across the board political consensus at the highest level on the 18th Amendment in the Parliament where no one enjoys even a simple majority, let alone the required two-third majority to amend the Constitution, reflects the maturity of mandate bearers. The second miracle happened on June 30, 2011 when the Implementation Commission completed its task to devolve subjects, functions and 17 ministries to the provinces. Can the third miracle of smooth transition and finally democratic transformation happen?

The first miracle was possible due to commitment and consensus, the second required clarity in crafting the new roles and responsibilities and the third will require continuation of the process to internalize, institutionalize and finally operationalize the democratic devolution. This entails that provinces would have to embark on a well thought out legislative, policy and planning, fiscal and administrative reforms process. Equally

Presently what eclipses the potential and possibilities is absence of post-implementation structured liaison and communication gaps between the federal and provincial governments.

important will be to proactively engaged at new and reformed federal spaces like the CCI, NEC and NFC to vanguard the provincial interests.

Understanding gaps about the new role and mandate of the CCI and NEC are also problematic. Many are also concerned about the fulfillment of international obligations and commitments, especially regarding reporting on Millennium Development Goals (MDGs) and other international covenants and conventions. The Implementation Commission addressed these concerns and well defined these aspects. Unfortunately, neither these changed responsibilities were communicated well nor any kind of orientation was offered to those who are now responsible for them. (see annexure 1)

All stakeholders need to realize that the sunset clause about the Implementation Commission was only about transfer of the subjects, functions and ministries and the transition and transformation are long-term processes and require continuous liaison and cooperation. Political elite has hammered out historic consensus, now it is the turn of the executive to exhibit enthusiasm and energy to enforce the constitution. Equally important is the role of provincial legislators to make this transition happen. During the consultative process it was observed that a very little effort has been made to communicate the impact and implications of the 18th Amendment to the provincial parliamentarians. This gap does not auger well for the futuristic strategies for transition management.

Similarly in the process of transition many institutions and departments would need to adjust to new realities. The Provincial Assemblies need to revise their Rules of Procedure and Conduct of Business. The provincial governments would have to revise their Rules of Business and more importantly take the spirit of the devolution down to districts by establishing elected local government. In this process creative imagination with well researched baselines can serve as a valuable currency to reform the laws and tailor futuristic policies according to specific provincial needs.

During the roundtables provinces talked about their specific needs. At least three provinces highlighted the need to revisit and reform Code of Civil Procedure-1908. This will bring change in to citizen's lives. Issues related to the federalized governance of various regulatory bodies by giving due representation to the provinces were also highlighted by many provinces.

At least three provinces highlighted the need to revisit and reform Code of Civil Procedure-1908.

To improve federal-provincial, inter-provincial and intra-provincial communication many called for formal and informal forums to communicate better on issues related to devolution and share each other's experiences for mutual learning.

We need to functionalize this reformed framework. Time has arrived to evolve

mechanisms to transform 'the statutory' in to 'societal' so that the people are able to feel the difference.

While citizens are the most important link in all these efforts, they need to be involved in these processes in a meaningful way. Civil society also needs to be vigilant to ensure accountability and transparency in these processes. All this will help evolve culture of learning from each other's experiences to carve out federal democratic future for Pakistan.

Part VII: Recommendations

Besides specifically flagged issues and concerns raised by the stakeholders and duly highlighted in this report, many more recommendations can be distilled from the deliberations of consultative roundtables. These recommendations can be considered to devise future strategies and interventions to facilitate management of transition both at the federal and provincial level and further devolve to districts where citizens consume most of the services and formulate their opinions about the governance and quality of democracy/federalism. Following are the major recommendations:

Civil society also needs to be vigilant to ensure accountability and transparency in these processes. All this will help evolve culture of learning from each other's experiences to carve out federal democratic future for Pakistan.

- While there is a broad political ownership of the 18th amendment, we need to address teething problems by facilitating the provinces in legislative, policy and planning, administrative and fiscal domains.
- Building capacity of reformed institutions like the Council of Common Interests and National Economic Council is important. Equally important is to facilitate the provinces to make best use of these federal forums.
- Inter-provincial coordination has attained a new significance to nurture federal culture in Pakistan. Dedicated focus to enhance the capacity of the IPC ministry that also hosts the CCI secretariat becomes important.
- Every tier of the government has to revise their rules of business. Similarly the Provincial assemblies have to revisit their rules of procedure. This process will require technical assistance.
- Capacity building of civil services along with introducing long term reforms in the light of changed roles and responsibilities.
- Orientation of federal and provincial parliamentarians on context, contents, impact and implications of the 18th Amendment is required. Similar efforts are

needed for civil services and civil society. Such interventions will empower them to contribute in an informed manner and ensure meaningful oversight and accountability.

- Research and baseline studies on devolved and shared subjects are important to inform policy formulation and legislative initiatives.
- Establishment of local government according to the spirit of Article 140-A is an urgent need for effective service delivery.

Annexure-1

Who is responsible for International reporting in Pakistan?

Pakistan is obliged to comply and report on core international covenants, conventions and commitment and representation at international forums. The 18th Amendment and the subsequent transfer of 18 federal ministries to provinces have raised many concerns in this regard.

The amendment added a new entry 32 in the Federal Legislative List that makes international treaties, conventions, agreements and international arbitration exclusively a federal subject. Secondly the three notifications issued by the Implementation Commission to transfer 18 ministries to provinces specifically mention where this obligations have been housed.

S. No	Subject/issue	Reporting responsibility
1	Population, Youth, Tourism, Livestock, Social Welfare, Health, and Labour	Economic Affairs division
2	Education and adherence to international commitments	Shared responsibility of Economic Affairs division, Ministry of Inter-Provincial Coordination and Ministry of Foreign Affairs
3	Women	Ministry of Human Rights
4	Minority Affairs	Ministry of National Harmony
5	Sports	Pakistan Sports Board
6	Cultural Pacts and Protocols	Ministry of National Heritage.
7	Environment	Ministry of Climate Change
8	Agriculture	Ministry of National Food Security and Research.
9	Report about core human rights conventions like; International Covenant on Civil and Political Rights (ICCPR), International Convention on Social and Economic Rights (ICESER) and Convention Against Torture (CAT)	Ministry of Human Rights with inputs from proposed National Commission for Human Rights

If there will be a need for inter-provincial cooperation and coordination for some minimum benchmarks or standards then entry 13 of Federal Legislative list-II could be creatively invoked via Council of Common Interests. The constitution also offers mechanisms in Article 144, 146 and 147 where provinces can voluntarily entrust some functions to the federation and vice versa. Provincial consensus on creating Drugs Regulatory Authority in the federal government is recent example of such cooperation.

What is more important to make these changes work is to provide adequate human resources to fulfill these new tasks and train the responsible officials in their new reporting responsibilities. There is also a need to increase inter-ministerial communication to evolve synergies in these efforts. After 18th Amendment the Parliament passed the General Statistics (Reorganization) Act, in May 2011. As per law Pakistan Bureau of Statistics has been established by merging Pakistan Bureau of Statistics, the Population Census Organization, The Agriculture Census Organization and the Technical wing of Statistics Division. It is a step forward regarding collection, compilation and analysis of statistical data relating to various sectors of economy including social sector.

The 18th Amendment has also improved reporting to the Parliament. Now following reports are to be laid before the Parliament:

S. no	Report	Periodicity	The Senate	The National Assembly	Provincial Assemblies
1	Principles of Policy Article 29 (3)	Annual	Yes (After 18 th Amendment)	Yes	Yes, every province its' own report
2	Council of Common Interests Article 153 (4)	Annual	Yes (After 18 th Amendment)	Yes (After 18 th Amendment)	No
3	National Economic Council Article 156 (5)	Annual	Yes (After 18 th Amendment)	Yes (After 18 th Amendment)	
4	National Finance Commission Article 160 (3B)	Bi-annual	Yes (After 18 th Amendment)	Yes (After 18 th Amendment)	Yes, every province its' own report
5	Auditor General Article 173	Annual	Yes (After 18 th Amendment)	Yes	Yes, every province its' own report

Annexure 2

Transition Management Challenges Subsequent to Implementation of 18th Amendment”

Methodology:

The 18th amendment to the Constitution of Pakistan was passed in 2010, with the full support of all major political parties. The amendment has wide-ranging impacts for the Government of Pakistan at federal level, legislating for much demanded provincial autonomy in legal, executive, fiscal and administrative spheres. As a consequence of the amendment, there have been significant results including 100 articles in the constitution being amended, 47 subjects being devolved to provinces, 17 federal ministries being devolved to the provinces, federal and provincial constitutional purviews (through two Federal Legislative Lists) being clearly demarcated, and elected local governments becoming constitutionally mandated.

UNDP Pakistan has been leading efforts to analyze the emerging challenges and opportunities as a result of the devolution process, enhancing understanding of the amendment. In this regard, UNDP commissioned two assessments to learn more about the impacts of the amendment; an initial assessment in 2010 and a detailed follow up assessment in 2011-2012.

UNDP has shared the initial findings of the assessments and made recommendations on potential areas of support to key donors and through the Good Governance Working Group (GGWG). In addition, UNDP has initiated discussion with the Forum of Federations (FOF), which works on strengthening federal systems. The FOF is an Intergovernmental body comprising of 10 member states and it's mainly funded by the Canadian government.

For the last 3 years, the FOF has been extensively involved in technical and financial assistance in Pakistan with the objective of bringing together government bodies, political parties, academics, civil society, and media to have a dialogue on devolution related to federalism. Their work has been widely appreciated and contributed to Pakistan becoming an official member of FOF.

UNDP and FOF are collaborating to develop a joint programme for supporting federal and provincial governments in addressing the transition management challenges brought about by the implementation of 18th amendment. In order to collect update information and assess the challenges the UNDP and FoF mission conducted one

federal and four provincial level consultations with major stakeholders, including political party representatives (government and opposition), Chief Secretary, Secretaries of Planning and Development Department, Finance Department, Inter-Provincial Coordination Department, Law Department, Local Government Department and National Institution of Management as well as relevant UN agencies.

It is expected that the consultative workshop will help develop a shared understanding of issues discussed among all stakeholders, and help to formulate a joint/common set of recommendations/suggestions as well as identify areas of support where UNDP-FOF can offer their support to strengthen the provincial and federal capacities in transition management in follow up to the implementation of 18th amendment. The consultative workshops will aim to seek the feedback of provincial and federal stakeholders on some of the critical issues listed below.

1. Develop a provincial roadmap of operationalizing necessary changes in requisite legislation, rules of business/administrative reviews/revisions, and fiscal rules under the new constitutional framework.
2. Identify mechanisms to improve linkages between political mandate bearers and duty bearer such as strengthening capacity of provincial standing committees to provide direction and oversight.
3. Identify means to strengthen the new institutional arrangements, such as role of CCI in policy making, implementation of constitutional provisions, and articulation of federal and provincial roles within legal framework, as well as ways to promote inter-provincial cooperation, information sharing, communication and coordination on areas of common interest, particularly with regards to federally relocated/retained institutions.
4. Identify institutional development requirements such as reviewing/devising rules of business that govern the provincial executive machinery.
5. Identify capacity building requirements of provinces for training the officers of the executive in realizing the changes introduced by new framework under 18th amendment.
6. Identify mechanisms for institutional response to citizens' concerns as per the new constitutional granted Right to Information.

Through the Lens



Senator Raza Rabbani delivering the key note speech at the stakeholders Consultative Workshop in Islamabad



Haider Abbas Rizvi, Member National Assembly is speaking at the stakeholders Consultative Workshop in Islamabad



Participants at the Balochistan Consultative Workshop



Qamar Zaman Kaira, Minister of Information, is speaking at the stakeholders Consultative Workshop in Islamabad



Sajida Mir, Member Provincial Assembly, speaking at the Punjab Consultative Workshop



Mian Iftikhar, Information Minister KPK, speaking at the Khyber Pakhtunkhwa Consultative Workshop



Syed Sardar Ahmed, Member Provincial Assembly, speaking at the Sindh Consultative Workshop



Participants at the Sindh Consultative Workshop



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Forum of Federations
THE GLOBAL NETWORK ON FEDERALISM

United Nations Development Programme
4th Floor, Serena Business Complex
Islamabad, Pakistan
Tel: (92-51) 8355600

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