



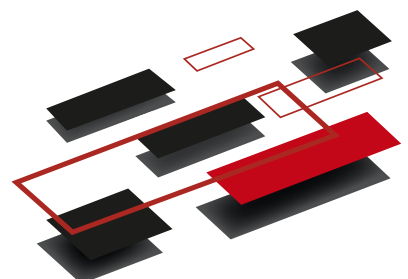
**Shifting Sands of
Local Governance in Punjab 2018**
POSITION PAPER



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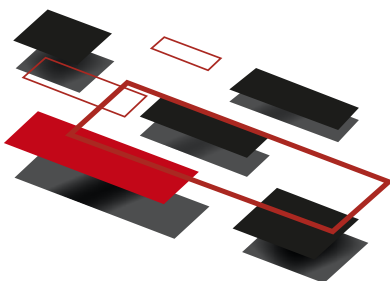


Shifting Sands of Local Governance in Punjab

POSITION PAPER

Local govt. structures in Pakistan have always been tailored to suit the necessities of the ruling party to strengthen its authority, instead of serving the communities.

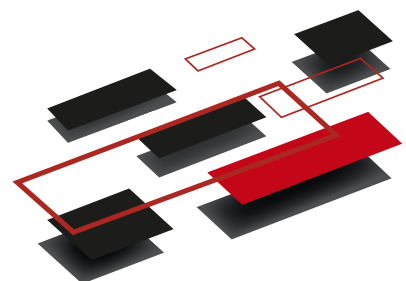
Mudassar Farooq Advocate
September 2018



Background:

Traditionally, military regimes have been relying upon non-party based local governments to bypass provinces and political parties. In 2008, all political parties hailed the passage of the 18th amendment which gave provinces more autonomy from the Centre. However, our democratic political parties in all provinces remained reluctant to share power down to the local institutions. None of the provinces held local government elections until the end of 2015, till they were compelled by the Supreme Court to do so.

When local government elections were finally held on a party basis, parties which controlled the province largely dominated most of the local government structures as well. Despite their own party candidates winning local government elections, provincial governments remained reluctant to share policymaking and financial power



Legal provisions

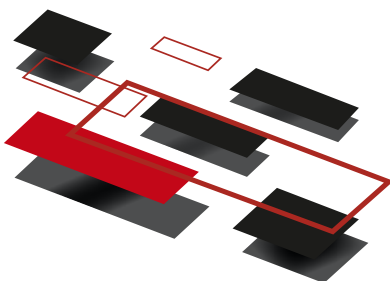
The Constitution of Pakistan asks for the LG system as the third tier of govt. in all provinces. Article 140-A of the Constitution, as amended and incorporated in 2002, makes it obligatory stating that *“each province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments”*.

Article-37 of the Constitution of Pakistan pledges to “decentralize the government administration to expeditiously dispose its' business for public convenience and requirements' and Article-32 of the Constitution dictates the state to “encourage local government institutions composed of elected representatives of the area concerned having special representation of peasants, workers and women” as the principle of policy. Contrary to the centrist practices, it is also a requirement demanded from the “provincial governments to decentralize its administration under article 10-A,” of the Constitution.

Similarly, 18th Constitutional Amendment (2010) authorizes provinces to legislate and come up with a system of Local Government suitable to their local conditions. Part of the compulsion was re-emphasized in April 2012 by the Supreme Court of Pakistan commanding provinces to hold local government elections, as enshrined and authorized by the said amendment and the Constitution of the country.

After 2013 general elections, the restoration of elected LGIs was expected, but provincial governments used all possible tactics to delay the constitutional obligation. At last the Supreme Court of Pakistan intervened and passed a judgment binding provincial governments to restore democratically elected LGIs by the end of September 2013. In pursuance to this order the provincial governments introduced new LG laws in order to hold fresh elections of LGIs. However, new LG enactments 2013, in many ways lack democratic aspirations of the masses particularly the citizen's engagements were cut to very minimal level similarly the volume of representation was also reduced significantly especially marginalized communities were deprived of their right to represent, participate in local level governance.

Although under “The Punjab Local Government Act 2013” the powers of the elected LG representatives have been reduced and district governments have been made technically dependent on the provincial government and representation of women and minorities at different levels have also been decreased, compare to the devolution system of Gen. Musharraf but the very establishment of these local government institutions after some 8 years' gap was taken as a positive step itself. It was hoped that People at least would have a say, no matter how weak it is, in local development affairs.





Punjab Local Government Act, 2013

On August 23, 2013, the Provincial Assembly passed the Punjab Local Government Act, 2013 (XVIII of 2013), by replacing the Punjab Local Government Ordinance, 2001, (XIII of 2001). Later, on 13th September, 2013, vide Notification No. SOR (LG) 39-20/2013, issued under subsection (3) of section 1 of the aforesaid Act, all provisions of the Act except section 154 thereof dealing with repeal of 2001 Ordinance were enforced with immediate effect.

The new legislation by PML-N govt. was more tilted towards 1979 model of LG governance. It introduces various levels of local governments and Authorities, i.e., one for Education and other for Health for each district. The law as well retained several provisions of 2001 Ordinance, but no administrative office was devolved to the local governments. It took almost one year for the Punjab Province to complete the LG electoral process.

In November 2016, with the completion of the last leg of polls on reserve seats for women, minorities, peasants/workers, youth and technocrats at the different levels of UCs, District Councils, Municipal committees, Municipal Corporations and Metropolitan Corporation, in Punjab the LG electoral process was finally completed and LGs in the Punjab province started their functions from 2 January 2017.

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Why local governance?

The local government institutions constitute one of the most important avenues for marginalized people, particularly; women and minorities to participate in the development of their communities and influence the decision-making processes that are directly relevant to their lives. Important opportunities for poor people, women and minorities to participate in the development of their communities are to be found in local institutions of governance. This system is not only key to strengthen democracy and improve service delivery at grass roots level but also imperative for improved service delivery for citizens. It takes the governance many steps closer to the governed.

The future of Local Govt. System in Pakistan has always been dependent upon the nature of govt./regime and outcome of the power struggle at the center. In fact, the Local govt. structures in Pakistan always tailored to suit the necessities of the ruling party to strengthen its authority and the elected governments have always manipulated the local govt. institutions to muster temporary political objectives. For bureaucracy Local govt. system is a political and administrative force to whom they are supposed to surrender or share most of their power. The local govt. system in Pakistan could never become a self-sustaining, stable and self-governing set of institutions and has always been a rolling stone among players of power, political governments, military regimes.



Current Situation:

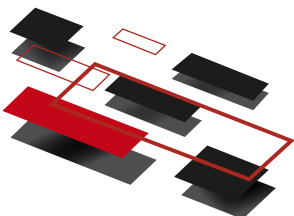
The local govt. system in Punjab was formally installed in January 2017 with thumping PML-N majority in 34 districts out of total 36 districts of Punjab. This LG system was trailed with conflicts from the day first with power tussle between the chairmen and vice chairmen and protests by the councilors for more powers. PML-N Govt. ignored the LGIs. The entire development works at grass roots level were carried out through MNAs and MPAs. The provincial government left no room for local government representatives to solve people's problems.

However, before general elections July 2018, all of a sudden, the government opened the public kitty to local governments and tried to cajole the local councilors. Despite all these efforts, PML-N failed to secure majority and form government in Punjab and Centre and Pakistan Tehreek-e-Insaaf (PTI) was finally successful to grab Punjab after making governments at the center and KPK. Soon after taking over Punjab, PTI started working out modalities to evolve a LG system in Punjab, which suits their political needs, sending waves of worries among the 60,000 elected representatives on local govt. institutions.

The PML-N councilors are obviously worried and they are protesting against possible changes in the LG system but it is not clear yet whether they are going to challenge it in the court. The recent announcement by the PTI in Punjab to introduce “a new model” of local bodies where “people make decisions according to their needs” indicates the [partys keenness to replicate](#) Khyber Pakhtunkhwa's model of governance.

Every time there is change in the government at the top, interruption with LG institutions is must. Same was true this time with PTI taking over the charge at the center, Punjab and KPK.

Since coming into power, the Pakistan Tehreek-e-Insaaf (PTI) has been outspoken about the need to make governance more effective and responsive to the needs of the people. Effective devolution of power does offer prospects of deepening democracy. However, there are many problems with the current local government system which undermine such lofty goals.





Primarily PTI wants to reform the local government system on the K-P model. In the case of Punjab, where most local government positions are held by the PML-N, the PTI seems keen to change the Punjab Local Government Act 2013 but it does not enjoy the needed majority in the provincial assembly to do so. Rumors were rife that it may suspend the LGIs. Given the chances of litigation and agitation from rival political parties, the PTI government has reportedly decided that it will let the incumbent local governments complete their respective tenures.

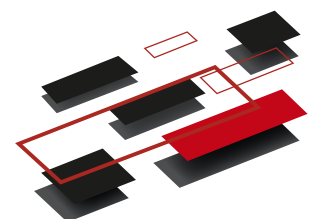
It is however unlikely that the provincial government in Punjab, including the PTI's new chief minister, will give any power or funds to the existing local governments. According to some other media reports, Pakistan Tehreek-i-Insaf's Punjab government has plans to scrap the existing "powerless" local government system and hold fresh party-based elections in the province, if its legal team gives a go-ahead to it in this regard.

Apparently, the PTI is now trying to reconfigure the local government system in Punjab based on which new LGIs will be elected in 2020. Some decisions in this regard include plans to elect mayors directly in the next round of local government elections. That is a good idea and it would also be useful to take local government units down further to the village level. However, it is important that local governments in the future have more financial and political autonomy from the provincial government, than they currently enjoy, even in K-P.

Other important issues that PTI is pondering upon include the need to increase the proportion of seats allocated to women, and to allow women and other marginalized groups to contest their seats directly. If it is true this should be a welcome step. Unless this happens, marginalized groups remain obliged to follow the line of their party leaders and patrons rather than safeguarding the interests of the communities they represent. Moreover, it is vital to ensure that revised local government legislation also provides means to ensure that seats for workers and peasants can only be contested by these individuals.

Implementation of the above-mentioned reforms will be a litmus test for whether the PTI can bring governance down to the local level. Contrariwise, halfhearted efforts at local level in this regard will merely allow PTI's lot of electables at the federal and provincial level to continue ruling the country from above.

The PTI claims its party-run KP was the only province to devolve power to the village level. And 30 per cent of the provincial annual development plan fund was allocated for the local governments. Currently, under the provincial finance commissions' awards, according to an authentic estimate, the local governments' share is close to 40% of the allocable pool that accounts for 13% of the public spending.



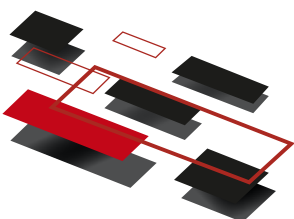
However, the PTI's move to “strengthen” the local government appears to fall short of the provisions of the 1973 Constitution. Article 140-A of the Constitution stipulates that decision-making power should be with the elected local governments and without devolution of political, administrative and financial powers to the local governments, the mandate of the 1973 Constitutional will not be fulfilled. Decentralization is the key to democratization of institutions.

The Musharraf regime had replaced commissioners, deputy commissioners and assistant commissioners by district coordination officers who were responsible to the elected district nazims. Both at the federal as well as the provincial level there has been a tendency to centralize power and authority. The Musharraf reforms brought the local bodies under the control of the central government. “the district/local councils were not financially empowered which weakened their ability to manage their restricted spending mandate. Over 90% of the local bodies' expenditure is financed by the provincial government through fiscal transfers. The PTI however claims that its previous provincial government in KP during its five-year tenure had increased the revenue of municipal bodies by 85%.

Except in Khyber Pakhtunkhwa where 12 departments such as education, health, drinking water, sanitation, etc were devolved, the local bodies system has been replaced by a highly centralized system in which the provincial governments (other than that of KP) enjoy enormous power, resources and discretion.

To remove this “structural deformity,” Advisor to Prime Minister, Dr. Ishrat has said PTI has pledged to devolve small infrastructure initiatives to village councils by transferring resources for decision-making power to the people by scaling out the successful KP model to other provinces also. Other provinces ought to devolve power, authority and finance to the district governments.

Surveys and studies reveal that more interaction between ordinary citizens and government functionaries takes place at the local level, he opined. Theoretically, many policymakers tend to agree on the role of local bodies and local communities in the socio-economic uplift of the masses, but somehow their governance practices tend to differ from the stated principles and commitments.



One school of thought views that authority and responsibility among the three tiers of government — the federation, provinces and district setups — should be redefined. The responsibilities which can be managed at the district level — projects, tax collection, etc. — should be kept out of the jurisdiction of the provincial governments. And the federation should not duplicate responsibilities that can be more efficiently handled by sub-federations.

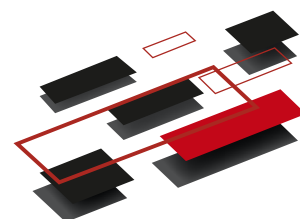
To improve efficiency and accountability, the three tiers of government may also be subjected to a system of mutual institutional accountability. This has been the principal stand of the PTI for many years that members of parliament have no role in the construction of streets, nullahs and other civic issues. Their job is to do legislation and all development works should be launched through local institutions. The role of legislators need to be limited to the assemblies for legislation and policy making and will not have anything to do with development funds. PTI thinks that people were fed up of the present LG system in Punjab as union council chairman are powerless and could not do anything.

On the other hand, Pakistan Muslim League-Nawaz (PML-N) is visibly perturbed and threatened mass protests against any possible attempts by the Pakistan Tehreek-e-Insaf (PTI) led Punjab government to suspend the current local government (LG) system. PML-N is afraid that the PTI would roll back the existing LGs as the PML-N dominates the LGs in Punjab and the PTI wishes to get its own candidates elected.

PML-N believes that PTI conspiring to get control of local governments in Punjab and it is in hurry to bring changes in the LG system to suit their political objectives till the next local government elections in 2020. PML-N leaders have warned the PTI should respect the people's mandate in the local government and not get involved in decisions which can create unrest among local institutions.

As second option PML-N may move the court against the government if the mandate given to LGs is disrespect. However, as both these platforms might not yield any success, the party decided a mass protest last month, but interestingly, the planning meeting was not attended by majority of the PML-N mayors and UC chairmen.

The party had invited all the mayors and chairmen in the meeting and intimated about it also through the media but only around five LG representatives attended it. This lukewarm response to the call gives credence to speculations about possible exodus of the LG members from the PML-N to the PTI.



Conclusion

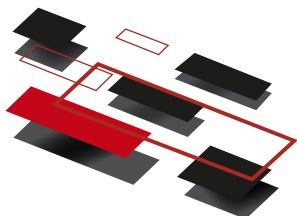


Local government is third tier of Governance but first tier of Democracy. No political system can work successfully without ensuring the grassroots level democracy. The rise of the local governance is often seen as a part of a broader process of downward devolution of power, yet attention to local government lags in our political sociology. Any step by the PTI govt. in Punjab to empower the LG system in line with article 140-A of the constitution would be appreciated.

Local Governance is key to democracy and PTI govt. should grant more powers to local government institutions in Punjab, otherwise it may face the fate of PML-N, which brought about 6 amendments to its own Punjab Local Government Act 2013 to concentrate powers and now new PTI govt. in Punjab is planning to introduce further changes in the PLGA 2013.

There were flaws in the PLGA 2013, ranging from lack of citizens participation and limited financial and fiscal autonomy to increased concentration of power with the provincial govt. Local Govt. Institutions, no doubt, are very weak and pro-people amendments to empower LGIs is need of the hour. But that does not mean to go away with the entire LG system. The system must continue and we hope that the PTI government before finalization of the new draft would take into account our following concerns;

The Civil and Administration Ordinance issued on 30th December 2017 by the Punjab Government has virtually overturned the devolution of power set-up introduced by former President Pervez Musharraf. Under this new ordinance the District bureaucracy is all powerful, and political, administrative and fiscal powers of the elected representatives; mayors and Chairmen have been completely undermined and directed towards the Deputy commissioners.



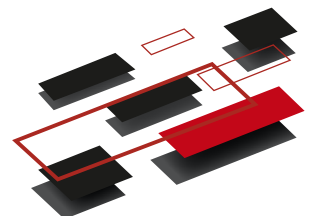
Reduced autonomy: The PLGA 2013 have reduced autonomy of local governments. There is limited space for practical engagement available to local communities; The representation volume of marginalized sections, particularly women have been drastically reduced; The mode of indirect elections on reserve seats are in contradiction to Electoral laws of national and provincial assemblies; It provides that only the chairmen of union councils will elect members of a district council on reserved seats. Previously, all members of union councils were required to be elected members of a district council on such seats.

The Punjab Local Government Act 2013 does not provide for adequate political, fiscal and administrative autonomy to districts, without which local governance will remain weak. The lack of political, administrative and fiscal independence to districts is a failure to provide an opportunity to peasants, laborers and workers to be masters of their destiny.

Minimized functions:In PLGA2013 the functions of LGIs have been minimized, rural-urban disparities are legalized; A set of new institutions and government controlled private limited companies are currently functional, whereas PLGA2013 protect their functioning; The people's participation in decision-making process and accountability of local government representatives by the citizens very much missing in the Act. Concept of local self- government has been compromised and devolution of administrative, political and financial aspect have been ignored that is exactly in contravene of the country constitution clause 140-A; and the true spirit of 18th amendment;

The financial dependency of current LGIs depend on Federal and provincial grants. The PLGA 2013 fails to provide fiscal decentralization in line with the 18th constitutional amendment. The Act vests huge powers in the Punjab Government and provides excessive role and arbitrary powers to Provincial Government. It seems government was not transferring powers to the districts and more interested in keeping all powers within a few hands. The Local governments were not given right to levy and collect taxes. Without financial authority the local government system is bound to fail. Every metropolitan city in the world collects tax and spends itself.

Denial of Political Empowerment: With regard to change in the modality of elections on reserve seats for four generally under-represented categories — women, peasants/workers, youth and non-Muslims at the union council level is particularly problematic. As the very first tier of representative government, the union council is a breeding ground of political consciousness and activism. True political empowerment of women at the union council, through direct access and accountability to the electorate, can help build a pool of abler and independent female



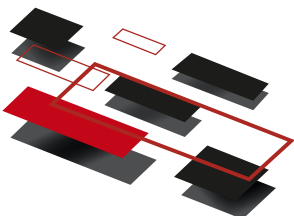
candidates for positions of authority at higher levels of government. Empowerment at the grass-roots then is key to mainstreaming women in politics. The transformative potential of gender quotas will otherwise be difficult to realize.

Reduction in Women Representation: The PLGA 2013 had significantly reduced the representation of women from 33 per cent to 10-20 per cent at various tiers of the local governments in the Punjab. It provides two seats out of 13 seats for women at union councils level, which is around 15%. The indirect election of women for upper tiers of the local government could deprive them and other marginalized groups of due representation.

The Punjab Local Government Act 2013 provides one minority seat in every union council. In the original law, the government was to fix a minority seat if there were at least 200 minority votes in a union council. By reducing the number of union council representatives, the marginalized sections are deprived of democratic rights, particularly women and minorities.

Colonial model of governance: Keeping in view the detailed analysis drawn here above, one can clearly identify the legacy of colonial governance in the structures, systems and processes of district management. The traces of multiple acts, attitudes and ordinances through which various military governments have been running the affairs of local governance are also visible. The real powers have been vested with the non-elected cadre of district Bureaucracy.

Multiplicity of over-lapping tiers: The architecture of local government in Punjab appears to be multiplicity of over-lapping tiers, hierarchical as well as parallel. Below the province, there are the District Administration tiers - division, district, tehsil, and - and the tiers - district councils, union councils, metropolitan and municipal corporations, and municipal committees". There was need to simplify and develop the Upper and Lower tiers and abolish all other tiers to remove confusion and make local government simple and efficient.

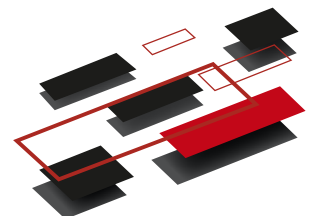


If we are really serious to devolve governance, the local governments must not be created as an extension of the provincial governments rather an autonomous third tier of governance. The new provincial govt of PTI should exercise its powers only in terms of legislation, regulation, standardization, monitoring and periodical audits. A whole chapter promulgating fundamental principles for local governance needs to be incorporated with a list of subjects falling in the sphere of local governance. Apart from the legislative structure, specific recommendations are as under:

Recommendations:

Policy-Level

- The PTI Govt. should broaden the bases of the consultations on possible changes in LG system in Punjab, involving all the stakeholders, including civil society.
- The LG system in Punjab should not be suspended and must be allowed to complete its constitutional tenure. This would help reduce panic and uncertainty among the LGs and local councils.
- PTI has the right to bring about positive and pro-people changes in PLGA2013, but this should not be done at the cost of the disruption of the rights of the councilors and suspension of services to communities.
- Any changes in the PLGA2013, must be in line with the articles 32 and 140-A of the constitutions, ensuring devolution of political, fiscal and administrative powers at the local level in letter and spirit.
- Punjab Local Government Board and Coordination Committees and their overriding financial and administrative authorities should be abolished to devolve these powers to the proposed 'Local Cabinets.' The said Board's powers as Planning Commission and the power of Local Board Funds need to be devolved to the Intra Local Cabinet's financial and planning structures.
- Planning and Development Department's mandate to approve Local Councils' development plans need to be removed or the department be made accountable to the Local Government instead of the Provincial Government. Otherwise, it is 'provincial centralization' in the name of decentralization;

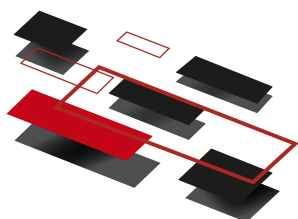


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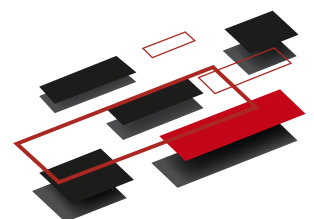
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- Progressively eliminating the rural urban divide is recommended to minimize feudalist influence and eliminate discriminatory development planning, budgeting and public facilities. Reconstitution of the rural or urban constituencies, if and when required, must have sound justification besides population factor.
- Too much control of Provincial government will damage true spirit of LG system; The Provincial Governments' role in LG system should be limited to the level of providing policy guidelines only. The extra ordinary powers in the Act given to provincial government should be reduced to ensure political, administrative and fiscal independence. Therefore, the Act needs to be redrafted.



- The presence of parallel state institutions and authorities in local areas is no good to the local democracy; The local governments should not be reduced to the position of mere agents of provincial government. More functions to grass-root level councils amongst various tiers of LGIs is recommended.
- Scrap the provisions establishing separate Education and Health Authorities and instead devolve these functions to the local councils as per the requirement of the 18th Amendment to the Constitution. ?
- All key municipal functions such as public works, development, education, health, revenue & estate should be wholly devolved to the lowest tier of Local Government.
- The composition of Local Government Commission should be balanced between local government members and members of the Provincial Government. Bureaucracy retains a great deal of power as the Acts currently stand.
- The role of political representatives and bureaucratic officials should be clearly defined and limited to avoid any abuse of power. LGs should also have the discretion to work on local issues without undue interference from the Provinces. ?

Reserve Seats & women

- Mere the right to contest elections at the 'reserved' as well 'general' seats and assuring certain percentage of their representation at each level is not enough. Given the depth and frequency of entrenched discrimination, affirmative measures to impart them equal representation, the right to adult franchise and equal citizenship is important. Mainstreaming minorities is far more a complicated and challenging task.
- There should be increase in volume of representation, particularly representation of women, needs up to 33 % at least. Women should be elected directly on the basis of adult franchise at the lowest tier of government.
- On reserved seats women should need to be elected directly, based on the constituencies and the seats be filled through joint electorate. Women's 33% representations should be ensured in all monitoring committees also. Women's presence in Council's meeting need to be ensured through legislative measures. Gender mainstreaming, missing in the said act, needs to be adopted as an official strategy.
- Gender mainstreaming asks for special provision of budget to women for women's development, women-specific projects, creating room for their active participation during the Sessions, providing them suitable seating in office, keeping them informed about the Council's meetings, ensuring their participation in development planning and budgeting, all substantiated by legislative support from the Bill.



- Gender budgeting and gender audit should be incorporated as a legislative requirement at the local level. A certain percentage of women-specific projects be made mandatory. Gender discriminatory practices; like not to provide them budget, narrowing down women's space to speak during the sessions, not to provide them seating in office, holding Council's meetings without informing women, keeping them away from development planning and budgeting process and not to have separate toilets for them need to be legislatively discouraged.

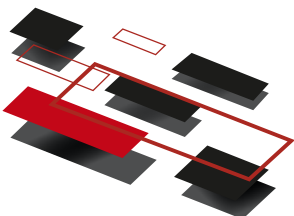
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Financial Independence

- Local councils should be fiscally empowered. A substantial percentage of funds allocated to the Provinces via the Provincial Finance Commission Award should be clearly stipulated in law. Criteria for development funds should be spelled out to avoid arbitrary allocations.
- In order to be truly representative, Local Governments must make available Financial Information Reports to the public and be accountable to citizens. Increased powers of taxation should also be given to District Councils.

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- Provisions for capacity building of the Local Government Institutions and their members should be provided for. Intergovernmental dialogues between all tiers of Government should be introduced keeping in mind principles of cooperation, prioritizing and aligning developmental needs at all levels.



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