

Delegation Plan

Policy Dialogue for Delegation of Administrative and Financial Powers and Strengthening of Local Governments

1. RATIONALE FOR DEVOLUTION

1.1 The delegation of administrative and financial decision-making powers is a systemic, managerial and legal instrument to establish clear rules of engagement between and amongst different tiers of government. By identifying roles and responsibilities of the Provincial and the local governments and between elected representatives and administration, both within the ambit of policy-making and in the domains of implementation of policy and law, delegation serves to lay the foundations for effective management of functions, improve the quality of decision making and management and thus increases the efficiency of public institutions. Under the devolution plan, reassignment of responsibilities and functions necessitated the decentralization and delegation of powers from the Provincial government to the local governments. Based on these devolved responsibilities and the delegation and decentralization of powers, the Government of Sindh has already devolved and delegated various powers (**Annexure-A**). However, in the implementation of the SLGO 2001, a number of legal and managerial issues have been identified by the local governments, which either prevent the local governments from operating effectively as independent governmental tiers, or create jurisdictional overlaps and thus lead to operational and legal friction between different tiers.

1.2 Rule of law and of service to the public are generally accepted as principles that shape the design of public administration systems. However, in countries such as Pakistan, the imbalance in political, social and economic powers, historical prevalence of command and control modalities, absence of effective enforcement mechanisms and lack of political will to sustain policy commitments hinders the translation of principles into practice. In addition, the complexities of bureaucratic and legal environments do not lend themselves easily to introduction and assimilation of models and techniques that could contribute to efficiency and effectiveness of public administration. To tackle this problem effectively it is necessary to work in at least two mutually reinforcing and complementary directions. One relates to legislation that helps create an enabling legal environment for a more rational distribution of responsibilities while preserving accountability. The other is to encourage and create opportunities for more informed debates and consistently engage in capacity building that aim at changing prevailing political economy cultures.

2. PRINCIPLES FOR FURTHER DELEGATION OF POWERS

2.1 Public policy needs to establish and promote systems that are competency based, rule-bound, transparent, results-oriented, predictable, efficient and which limit discretion in the exercise of public powers. Otherwise, the validity, value and

sustainability of such systems will always be questioned and there will be a tendency to veer towards arbitrariness and incentives for rent seeking. A review of the devolved powers and the feedback from stakeholders leads one to believe that while the Government of Sindh has made efforts to establish such a system, there is a clear need to focus on the bottlenecks in the implementation of the delegated administrative and financial powers. From a legal perspective, competence refers to the legitimate decision-making power the law confers upon an authority. From a managerial viewpoint, it refers to management capacity or skills to ensure effective performance. As a principle and a concept, competence thus has implications for the design of effective systems, but the two dimensions of competence have their own dynamics and origins. Legal competence is established through legislation which defines the breadth of powers of an organization, while managerial competence is derived from the exercise of jurisdiction, often through consequential legislation, which provide the procedures and process to follow. In addition to the notion of competence, there are some other well-established principles that must guide the decision of what to delegate to whom and to what extent. These include:

- **Equal protection and non-discrimination** which calls for developing and enforcing rules, regulations, or ordinances that do not discriminate on the basis of any individual person, race, or any other factor and which apply with equal protection to all facets of the population
- **Preemption** which prevents developing, enforcing laws, rules and regulations that are not in conflict with laws, policies or regulations of a higher authority
- **Due Process** which call for all procedural functions of local government, whether legislative, administrative or quasi-judicial, to accord due process by conforming to fundamental principles of justice and constitutional guarantees
- **Reasonableness** which implies that no action of local governments can be arbitrary or excessive in scope
- **Adequacy** which requires managerial authorities to be commensurate with legal responsibilities
- **Financial and fiscal empowerment** aligned with location of functions

3. MAJOR ISSUES IN DECENTRALISATION REFORM

3.1 Embarking upon these Second Generation Decentralization Reforms is a daunting task, given the complex political, social and legal environments within which these reforms have to germinate. Some of the challenges that the Government of Sindh will face are summarized below:

- a. **Circumscribed Decentralization** Historically, lower tiers of Government have been more of extensions of the Federal and Provincial governments with guided and limited local participation. As a consequence, local governments remained plagued with institutional and financial weaknesses, poorly managed and lacked political credibility. The SLGO-2001 signals a significant departure from earlier local government reform by moving towards substantial rather than incremental strengthening of the local government system. However, even with this

approach, the local governments often complain of not having adequate powers or not being allowed to exercise the powers vested by law.

- b. **Multiplicity of Agencies** Developmental functions in the devolved services and functions continue to have multiple players, which not only dilutes the role of local governments who often have lesser managerial and financial resources at their disposal than the Provincial government, but also results in fuzzy accountability processes. The case of Karachi is a classic example, where as per the SLGO-2001, responsibility of governance for the whole of the Karachi has been vested in City District Government Irrespective of the fact there are more than a dozen federal government controlled agencies working separately under their own rules which do not fall in conformity with the rules and regulations of Sindh Government or that of CDG Karachi.
- c. **Poorly defined Intergovernmental Roles and responsibilities.** In the context of local government reform, clear, rule-based intergovernmental relations both on the administrative and financial aspects, are critical in determining the outcome of reforms. In the absence of such clarity, the role of local governments as effective, independent tiers of government gets obliterated. Such inter-governmental relationship is not restricted to province-local government sphere only but extends to the federal-provincial relationship too.
- d. **Capacity Deficits.** Because of the fairly limited role that they have hitherto had to play as independent governmental units, local governments tend to be characterized by weak institutional, technical, human and financial capacities. The result is weak enforcement of authorities, poor service delivery, low political and administrative credibility of the local governments.
- e. **Poor Accountability Mechanisms.** Effective, adequate and credible institutional mechanisms for accountability and transparency of operations are important for any tier of government but perhaps more so for the local governments where institutional arrangements for Monitoring & Evaluation are weak. The SLGO-2001 provides for several new arrangements and stresses on the role of local government Council monitoring through Committees as well as through institutions such as the Local Government Commission. However, these arrangements are still to take root and monitoring of local government performance remains a source of concern.

4. FRAMEWORK FOR SECOND GENERATION REFORMS

4.1 As mentioned above, under the Devolution Plan, the Government of Sindh has already instituted a reforms process, which saw a structural and functional change in the governance systems in the Provinces, effected primarily through the promulgation of Sindh Local Government Ordinance 2001 and implementation of its provisions, enforcement of the Budget Rules 2003 and devolution of a number of administrative and financial powers and delegation of a host of responsibilities and functions. To deepen the reforms process, facilitate more effective local service delivery and strengthen the devolved institutions, there is now a need to review options for delegation of further powers, both administrative and financial. This requires a two-step analytical process:

a. **Functional and Management Review**

4.2 Such a review would entail:

- i. stock taking of what has already been devolved
- ii. assessment of its implementation status
- iii. identification of managerial, legal gaps
- iv. identification of impediments to implementation
- v. options for remedial actions
- vi. assignment of responsibilities for implementing the approved remedial actions
- vii. determination of costs associated with the exercise

4.3 In this respect, the DSSP has already proposed a Management Review framework (**Annexure B**) that seeks to establish a two-stage strategy for monitoring the devolved powers and the exercise of these powers to enable more effective provision of services to the publics. Under this proposed framework, a multi-stakeholder Review Team, led by the Local Government Commission, will evaluate the efficacy of the existing devolution of powers and based on this evaluation, evolve a mechanism for consistent monitoring and evaluation of devolved powers with a view to proactively introduce changes that empower local governments.

b. **Subjective vs. Organic Competence Delegation**

4.4 There are primarily two broad categories of competence-based delegation of powers: subjective and organic. Subjective competence refers to the attributions given by legislation to a public entity which in turn becomes the subject or owner of the competence (for e.g. devolution of powers from province to local governments); organic competence refers to the distribution of the subjective competence among the different administrative organs within it and thus entails internal distribution of functions. The notion of decentralization operates at the level of subjective competence, while de-concentration and hierarchical delegation are forms of organic competence. Put another way, subjective competence is a reference to vertical delegation and decentralization, while organic competence refers to horizontal delegation and decentralization. These notions provide us with an analytical framework, which can be used in detail during the Management Review process mentioned above, with further nuanced analysis in terms of:

- **Exclusive competence** with powers in the sole domain of a tier of government
- **Alternative competence** whereby decisions can be made by two or more organs within the same tier of government
- **Shared competence** which attributes legal authorities to different tiers of government, for exercise in different phases of the decision making process
- **Concurrent competence** where different tiers of government and organs or different entities have competence on the same matter
- **Substitution competence** which refers to competence of a given tier of government which cannot be actualized unless the tier that has the primary competence fails to exercise the powers that are vested in it

4.5 A strategy to achieve clear delimitation of powers, it is important that most devolved powers be in the category of Exclusive Competence as that allows for establishment of distinct roles and responsibilities; where Alternative or Shared Competence has to be provided for, the triggers must be well defined so as to minimize chances of friction between two tiers of Government. As a general rule, Concurrent Competence should be avoided as it blurs lines of responsibility and thus for accountability; as for Substitution Competence, while it can be a useful tool for risk mitigation and as a safeguard mechanism for ensuring basic performance and service delivery, the thresholds for allowing crossover of functions from one tier to another must not be set too low as to allow higher forms of authority to encroach repeatedly upon jurisdictions of lower tiers and thus threaten their legitimacy, nor set too high so as to prevent one tier from stepping in and ensuring minimum service delivery. Following a strategy that carefully balances the need for functional efficiency with pursuit of requisite structural reform is never an easy task but can result in more efficient intergovernmental relations that strengthen public decision making processes and public accountability mechanisms.

4.6 In Sindh, we need to also evaluate the current delegation of powers from these perspectives to ascertain whether an appropriate power-mix is present. As mentioned earlier, the Management Review initiative will gauge in detail where we stand at the moment. However, it is evident even through a cursory review of the current devolution mix that while Subjective Competence delegation has taken place (vertical decentralization from one tier of government to another), there is a need to focus on Organic Competence delegation, which focuses on the notion of delegation to different organs within an entity, because this is the kind of delegation that interests us in terms of improving performance of public institutions. At one level, this would require managerial delegation insofar as it is intended to solve management problems without negatively affecting the legal certainty in the administrative decision-making process and without blurring the necessary clarity of the lines of accountability; at another, Organic Competence delegation also needs to look into issues surrounding the delegation of certain rule-making powers to a tier of government to produce what is referred to as subordinate legislation in the form of rules, regulations etc. Although the Sindh Local Government Ordinance 2001 does transfer some powers from province to local governments to produce such subordinate legislation, these powers may require further deepening and broadening and there is a strong case for clarifying intergovernmental relations on this front. Moreover, there is a need to closely examine possibilities for managerial delegation within the ambit of Organic Competence delegation. This essentially means that we as a Government take a broader outlook and see where effective governance can be achieved through distribution of powers within a local government. There has been little discussion or deliberation in this regard and most of the focus has been on transfer from one tier to another rather than within a tier. The feedback received from local governments, which would be more scientifically reflected by the Management Review initiative, is that there may be a need for distribution of powers within say the Education Department in a District Government, with delegation of authorities from the EDO to the DO and from the DO to the ADO, both in terms of administrative as well as financial powers.

4.7 The areas in which such delegation may take place and the extent of powers to be delegated should be determined by need and by a strategic approach that takes into account capacities to exercise powers at different tiers. Traditionally the notion of administrative delegation was embedded into the notion of hierarchy, as delegation was

a relationship that could only operate if those delegating and those delegated were linked by a relation of subordination of the latter to the former. But we are now moving into a phase of our institutional history where we need to move away from hierarchical relationships as the sole basis for delegation and take into account legislated competences in deciding which powers should be delegated and to what levels.

4.8 The argument made above for a shift in focus from vertical to horizontal distribution of powers should not cloud the complexity and the interwoven legal and managerial issues of vertical or Subjective Competence delegation. Despite the fact that the SLGO2001 has been promulgated and a number of powers have been devolved, there is still a felt need for more Subjective Competence delegation. In the case of APT, E&D powers for example, the fact that almost the entire lot of officers in BS-16 and above are Provincial employees means that the managerial accountability for these large number of officers is ultimately with the Province, not the District or TMA where they're currently working. This weakens the authority of the local governments and can act as a hurdle in effective service delivery. The way out would be establishment of District Cadres for devolved functions, but a system that establishes District Cadres without also devolving allied managerial powers to the Districts can breed a breakdown of services. Likewise, such Subjective Competence or vertical delegation of powers may be required in the local governments themselves, with Districts devolving some of their legislated powers to the TMAs and the TMAs to the Union Administrations. Absence of such institutional and legal osmosis can result in mere relocation of concentration of powers, from Province to Districts in our case. Within reasonable limits and following a phased, strategic approach that is shaped by realities of elite capture, lack of managerial capacity, poor political will and enforcement capabilities, there are opportunities for improving intergovernmental relations in a way that does not become an end in itself, but as a basis for improved service delivery and public institution management.

5. Recommendations

5.1 As part of a strategic plan that serves as the basis for conceptualization and implementation of second generation devolution reforms in Sindh, it is suggested that the following actions be taken:

Short Term Measures

- a. Undertake a Management Review of the Devolved Administrative Powers with the objective of monitoring and evaluating the current status of devolved powers, assessing their adequacy, reviewing status of implementation and identifying specific areas requiring changes
- b. Carry out a mapping of all legislation and subordinate legislation in the form of rules, regulations, orders and directives to ascertain which are in need of realignment with the umbrella legal framework of the SLGO-2001; which have to be amended or rescinded in part or in toto; which of the orders, instructions and directives have to be withdrawn or replaced and suggest institutional mechanisms through which these changes can be effected and identify the costs and timelines for such an exercise

- c. Through a review and consultative process, identify what further devolution of powers, both in terms of Subjective Competence as well as Organic Competence needs to take place (**Annexure C**).

Long Term Measures

- a. Through following due process and appropriate institutional arrangements, carry out requisite legislative amendments identified during the review process
- b. Institute a monitoring and evaluation process for periodic feedback and review of the exercise of powers and assess their adequacy and effectiveness in creating an enabling environment for improved performance by different tiers of government. In this respect, the role of the Local Government Commission must be highlighted as the principal institution for monitoring the overall performance of the local governments
- c. Invest consistently and adequately in capacity building initiatives both for civil servants as well as the elected representatives at all tiers of Governments

6. Responsibility for Actions

- 6.1 All the short term measures are being supported by the DSSP through a Management Review Initiative, led by the Local Government Commission and including various stakeholders. All costs and logistics are also being supported by the DSSP. However, for issues relating to the implementation of the recommendations made by the Review team and for long term measures, different roles and responsibilities would have to be assigned, with political support and willingness to see the recommendations through being central drivers of the process. For e.g., amendments in laws will required the involvement of the Local Government and Law Departments, while deepened vertical financial decentralization from one tier to another will require the Provincial government and its Line departments to be on board. Likewise, when we deal with the important issue—and the focus of this Delegation Plan—of organic competence delegation, with transfer and redistribution of powers within a tier, then the concerned local government departments need to not only be aware of the changes proposed but also willing to accept them. This would require sustained investment in training and institutional support which would have to be partly subscribed by the Provincial and local governments themselves and by donor agencies and programs such as DSSP and DSP.
- 6.2 As a first move in the direction, the Program Support Unit of the SDSSP has held a Stakeholder Workshop on May 10, 2005 to review the existing status of the devolution, impediments in the implementation and recommendations from the district governments to remove the irritants and streamline the process. Review of the policy dialogue and recommendations of the participants (**Annexure-D**) would be a continuous process.

Devolved Administrative and Financial Powers

- 1 Sindh Local Government Local Fund Budget Rules, 2001
2. Sindh Local Government (TMA/UA, APT) Rules, 2001
3. Sindh Local Government (TMA/UA Civil Servants Efficiency & Discipline) Rules 2001
4. Sindh Local Government (IMPOSITION OF TAXES) Rules, 2001
5. Sindh Local Government (PROPERTY) Rules, 2001
6. Sindh Local Government (CONDUCT OF BUSINESS) Rules, 2001
7. Sindh Local Government Nazims, Naib Nazims & Members (HONORARIA & PRIVILEGES) Rules,2001
8. Sindh Local Government (CONTRACT) Rules, 2001
- 9 Devolution of Ex-Officio Powers to District Nazims - 2001
10. Sindh Town Municipal Administration Rules of Business, 2002
11. SINDH Union Administration Rules of Business, 2002
- 12 Sindh District Government and Taluka / Town Municipal Administration (BUDGET) Rules, 2002
14. Sindh Union Administration (BUDGET) Rules, 2002
15. Powers for Approval of Planning & Development Schemes –2004
16. Devolution of Property Tax - 2004
17. Creation of Town / Taluka Local Fund Account - 2004
18. Powers for Procurement of Medicines & Medical Equipment -2005
19. New Chart of Accounts (District and TMAs) 2003
- 20 Local Government Internal Audit Rules 2004
- 21 Local Government Fiscal Transfer Rules 2004

Annexure - C

DELEGATION OF ADMINISTRATIVE & FINANCIAL POWERS

I. Delegation of Administrative Powers

| | Area of Delegation | Are these powers sufficient? | Implementation Status and Impediments | What further devolution is required from Province to LG? | What further devolution is required? (eg from DCO to EDO to DO) |
|---|---|-------------------------------------|--|---|--|
| 1 | Sindh District Governments (Conduct of Business) Rules-2001 | | | | |
| 2 | Promulgation for Sindh Town/Taluka Municipal Administration Rules of Business-2002 | | | | |
| 3 | Promulgation of Sindh Union Administration's Rules of Business-2002 | | | | |
| 4 | Amendments in existing Minor Laws / Acts / ordinances/rules/regulations to align with provisions of the SLGO-2001 | | | | |
| 5 | APT Rules | | | | |

| | | | | | |
|---|--|--|--|--|--|
| 6 | Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 | | | | |
|---|--|--|--|--|--|

II. Delegation of Financial and fiscal Powers

| | Area of Delegation | Are these powers sufficient? | Implementation Status and Impediments | What further devolution is required from Province to LG? | What further devolution is required within LG? |
|---|---|------------------------------|---------------------------------------|--|--|
| 1 | Planning & Budgeting powers | | | | |
| 2 | Delegation of Drawing & Disbursing Powers | | | | |
| 3 | Delegation of taxes, fees, other receipts | | | | |

III. Existing Delegation of Contract / Technical Powers

| | Area of Delegation | Are these powers sufficient? | Implementation Status and Impediments | What further devolution is required from Province to LG? | What further devolution is required within LG? |
|---|---|------------------------------|---------------------------------------|--|--|
| 1 | Delegation of powers to DGs / TMAS to enter into a contract(s) with private firms or NGOs and for hiring of consulting services | | | | |
| 2 | Delegation of | | | | |

| | | | | | |
|--|--|--|--|--|--|
| | Powers for Technical Sanction of WSS schemes | | | | |
|--|--|--|--|--|--|

IV. Delegation of powers to other agencies

| | Area of Delegation | Are these powers sufficient? | Implementation Status and Impediments | What further devolution is required from Province to LG? | What further devolution is required within LG? |
|---|--|-------------------------------------|--|---|---|
| 1 | Delegation of financial and administrative powers to SMCs, VDAs, Health Boards, Patient Welfare Societies, CCBs? | | | | |
| 2 | Delegation of legal and judicial powers for LGC, Council Monitoring Committees | | | | |
| 3 | Delegation of financial powers to the Mushavirat Committee | | | | |

List of Participants

Workshop for Reviewing Draft Delegation Plan in Consultation with District Governments

Mr. Waseem Akhtar, Advisor, Local Government Department – Chief Guest

Local Government Department

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Attachment 3.0

I. Delegation of Administrative Powers

| Planned Delegation | District Recommendations |
|---|---|
| Promulgation for Sindh District Governments (Conduct of Business) Rules-2001 | SLGO stipulates a monitoring mechanism which needs to be strengthened |
| Amendments in existing Minor Laws / Acts / ordinances to give way to the provisions of the SLGO-2001 | The Minor Acts should be reviewed for amendments in consultation with relevant social sector PLDs and all stakeholders through LGD |
| Amendment in the Sindh APT Rules; for delegation of such powers to Districts which lay down the processes for appointments, postings and transfers | <ol style="list-style-type: none"> 1. The Provincial Government should lift ban on recruitment. Local Governments may recruit/appoint the employees as per APT Rule 2. The Provincial Government should route all correspondence pertaining to policy issues and transfer and posting through the Zila Nazim / DCO. 3. Create link between Taluka Engineering cadre with district engineering cadres 4. Create an independent cadre of field civil servants to be posted as TMO 5. Proper Cadre and proper rules for the appointment of EDO 6. A separate Cadre of Executive Magistrates should be established 7. Implementation of powers to transfer staff in grades 1 – 17 within the district Nazim letter & spirit <p>Accelerate the process of formation of District Cadre</p> |
| Notification by Local Government Department to amend Schedule 2 of the Sindh Civil Servants (Efficiency and Discipline) Rules, 1973 assigning administrative powers of Authorized Officers under Sindh E&D Rules, to various officers of the District Governments | After promulgation of RSO-2001 only authorities can take cognizance of disciplinary matters therefore the question of appointing authorized officers is redundant |
| Notification regarding devolution of ex-officio functions performed by the erstwhile office of Divisional Commissioners and Deputy Commissioners | Notification regarding devolution of ex-officio functions performed by the erstwhile office of Divisional commissioners & Deputy Commissioners should be given statutory status by incorporating it into the SLGO |

II. Delegation of Financial Powers

| Planned Delegation | District Recommendations |
|---|--|
| Budgeting powers transferred to DGs/TMAs | <ol style="list-style-type: none"> 1. City District Government Karachi having larger fiscal base and assigned to greater responsibilities and with higher number of Departments as compared to other Districts may be treated differently while deciding the financial powers relating to current as well as development expenditure 2. Financial powers for approval of development schemes should be increased from existing of other District Governments to be increased upto Rs 40 million 3. There are approval forums for the provincial and district government, however in absence of such forums at TMA level has created problems in approval of TMA development schemes it was therefore recommended that there should be Town/Taluka Development Committee for approval of Development Project upto Rs. 5.0 million. 4. Decision of one line transfer of budget should be implemented from BY:05-06 5. Since the new chart of accounts has been notified by the Auditor General Pakistan therefore proper heads/sub-heads of accounts should be maintained (Account IV of DGs) 6. House Committees may be notified and made functioned in all DGs, with a view for checks and balances |
| Delegation of Drawing & Disbursing Powers for TMAs | <ol style="list-style-type: none"> 1. Confusion in TORs of BDC & DDC should be removed 2. Clear definition, demarcation and linkages for DGs, Taluka administration & Union councils (Development Schemes) 3. Bureau of Statistics role and linkages may streamline and strengthened 4. Budget Development Council function among present DGs |
| Share from divisible pool transferred to DGs | PFC Formula based distribution should be complete and in timely manner |
| Transfer of 2.5% GST share received from Federal Government in lieu of the erstwhile OZT is distributed among LGs on historic collection basis. | OZT / GST share may be increased in proportion to incremental receipts from Federal Government Entertainment Duty Property Tax stand resolved |
| Property tax and Entertainment Duty transferred to TMAs | EDO Revenue should be the first appellate authority in respect of property Tax in place of Director Excise |

III. Delegation of Contract / Technical Powers Planned

| Planned Delegation | District Recommendations |
|---|---|
| Delegation of powers to DGs / TMAS to enter into a contract(s) for various purposes including hiring of consulting services | DG (Tech) will be consulted for co-opting technical support in the sector. There is a need for developing multi-sectoral frameworks for quality assurance, quality monitoring e.g. TPV to be undertaken consisting of CSO and other elected representatives |
| Delegation of Powers for Technical Sanction of Water Supply & Sanitation schemes | <ol style="list-style-type: none"> 1. LGD should clearly outline the job description of TMAs with particular reference to accord of Technical Sanction. Linkages should be established with DSU for a more structured planning, budgeting and monitoring of development activities. 2. LGD should be moved to clarify the service structure of the recently devolved functionaries of now defunct PHED in order to rectify the service related issues. Ideally the previous service structure should be revived 3. Based on the established need of environmental monitoring at the onset of every development activity as well as ton support the diurnal municipal activities. Consider devolution of EPA at districts 4. LGD should clearly spell-out linkage between TMA and DSU is providing technical assistance, similarly DSU & DG 5. In District Headquarter TMAs TO(infrastructure) should be a BPS-18 Officer |