



voices of the unheard Legal Empowerment of the Poor in Pakistan



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Legal Empowerment of the Poor in Pakistan

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Foreword

Legal Empowerment of the Poor is the next step in the evolution of development thinking and practice for Rule of Law and Access to Justice, which is a cornerstone of the UN's mission and is highly prioritized by UNDP. At the global level, UNDP hosted the Commission on Legal Empowerment of the Poor (UNCLEP) through 3 years of deliberations and research and has since supported the implementation of the new framework.

According to a 2011-2012 survey of UNDP rule of law programmes, LEP as a programming approach has garnered great success in Europe & the CIS and in Asia-Pacific, including India, Indonesia, Thailand, and Vietnam. UNDP has also established the Legal Empowerment Asia Partnership (LEAP) for the region that allows change agents from government and civil society to pool ideas, information and resources at the international level.

Within Pakistan, UNDP has supported multifaceted interventions on Rule of Law and Access to Justice and continues to work for tangible improvements in this important area. In line with international best practice, our efforts are based on evidence. It was imperative that programming for the Legal Empowerment of the Poor programme in Pakistan was similarly informed by a thorough diagnostic exercise.

This Study more than fulfills this requirement. It features breadth of scope, analytical depth, methodological rigor and a high degree of policy relevance not only in the context of the LEP programme but also as a broader scoping exercise of legal exclusion and disempowerment in Pakistan. Most importantly, it carries voices rarely heard in policy and research arenas – those of the poor and vulnerable.

Stated simply, this report provides a vision of what the LEP program can be. The findings of the report have set the strategic direction, articulating a set of priorities and recommendations to make a real difference for those living under the radar of the state in Pakistan. Using it as a roadmap, the LEP program has moved to design specific interventions in the pilot phase for its successful roll-out. I believe that this Study will prove a great resource for LEP and I wish the programme team the best of luck in realizing its vision.



Jean Luc Stalon
Deputy Country Director,
UNDP Pakistan

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This project has been at the same time a great learning opportunity, an immense challenge and a memorable experience for the Research Team. We believe that it would not have been possible to complete this Study with any degree of success, without the consistent support of a number of individuals and organizations.

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The NGOs who are members of the Insaaf Network Pakistan are the true heroes of this entire effort. They have worked in severely insecure field locations, under resource and time constraints to accomplish a massive data collection task without compromising data quality or integrity. We would like to thank them for their efforts.

Finally, very special thanks to our families for their unending patience and understanding during this long and time intensive engagement.

The Research Team

Acronyms

ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
AJK	Azad Jammu and Kashmir
AJP	Access to Justice Program
BBC	British Broadcasting Channel
BBLC	Bench-Bar Liaison Committee
BISP	Benazir Income Support Program
BLSAA	Bonded Labor System (Abolition) Act
CBA	Collective Bargaining Agent
CCB	Citizen Community Board
CCTV	Closed-Circuit Television
CDA	Capital Development Authority
CDNS	Central Directorate of National Savings
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFI	Commercial Finance Institution
CPLC	Citizen-Police Liaison Committee
CRC	Convention on the Rights of the Child
CrPC	Code of Criminal Procedure
CSO	Civil Society Organization
DAMEN	Development Action for Mobilization and Emancipation
DC	Deputy Commissioner
DCC	Divisional Coordination Committee
DCO	District Coordination Officer
DCWP	Pakistan Decent Work Program
DFID	Department for International Development
DHA	Defense Housing Authority
DHS	Defense Housing Society
CJCC	Criminal Justice Coordination Committee
DMG	District Management Group
DPO	District Police Officer
DPS	District Public Safety
DPSC	District Public Safety Commission
DTCE	Devolution Trust for Community Empowerment
ECA	Employment of Children Act
EDO	Executive District Officer
EIU	Economist Intelligence Unit
EOBA	Employees' Old-Age Benefits Act
EOBI	Employee's Old-Age Benefits Institution
ESMA	Essential Services Maintenance Act
ESSI	Employee Social Security Institute
FCR	Frontier Crimes Regulation

FGD	Focus Group Discussion
FIA	Federal Investigation Agency
FIR	First Information Report
GB	Gilgit-Baltistan
GDP	Gross Domestic Product
GoP	Government of Pakistan
HEC	Higher Education Commission
HDI	Human Development Index
IDB	Inter-American Development Bank
IEC	Information, Education and Communication
IFI	International Finance Institution
IG	Inspector General
ILO	International Labor Organization
IRO	Industrial Relations Ordinance
JCO	Junior Commissioned Officer
JWC	Joint Works Councils
KESC	Karachi Electric Supply Company
KMC	Karachi Municipal Corporation
KP	Khyber Pakhtunkhwa
LEP	Legal Empowerment of the Poor
LGO	Local Government Ordinance
LIP	Labor Inspection Policy
LPG	Liquid Petroleum Gas
LPP	Labor Protection Policy
LRMIS	Land Records Management and Information Systems Program
LUMS	Lahore University of Management Sciences
MFB	Microfinance Banks
MFI	Microfinance Institutions
MFP	Microfinance Providers
MGP	Microfinance Group Pakistan
MIT	Massachusetts Institute of Technology
MNA	Member of the National Assembly
MoE	Margin of Error
MPA	Member of the Provincial Assembly
MQM	Muttahida Qaumi Movement
NAB	National Accountability Bureau
NACS	National Anti-corruption Strategy
NAO	National Accountability Ordinance
NCCWD	National Commission for Child Welfare and Development
NGO	Non-Government Organization
NIRC	National Industrial Relations Commission
NJP	National Judicial Policy
NJPMC	National Judicial Policy Making Committee
NRB	National Reconstruction Bureau

NSPP	National School of Public Policy
NTS	National Testing Service
NWFP	North West Frontier Province
OCT	Orangi Charitable Trust
OPP	Orangi Pilot Project
PAC	Public Accounts Committee
PACHTO	Prevention and Control of Human Trafficking Ordinance
PBC	Pakistan Bar Council
PBS	Pakistan Bureau of Statistics
PCC	Police Complaints Commission
PCCWD	Provincial Commission for Child Welfare and Development
PESSO	Provincial Employees' Social Security Ordinance
PFC	Provincial Finance Commission
PMLN	Pakistan Muslim League Nawaz
PMLQ	Pakistan Muslim League Quaid-e-Azam
PMN	Pakistan Microfinance Network
PMU	Project Management Units
PO	Police Order
PPAF	Pakistan Poverty Alleviation Fund
PPC	Pakistan Penal Code
PPP	Pakistan Peoples' Party
PPSC	Provincial Public Safety Commission
PSLM	Pakistan Social and Living Standards Measurement
PSO	Public Sector Organizations
PSP	Police Service of Pakistan
PTI	Pakistan Tehrik-e-Insaaf
PTLC	Pakistan Tripartite Labor Conference
RCT	Randomized Controlled Trial
ROL	Rule of Law
RSP	Rural Support Program
SAFWCO	Sindh Agriculture and Forestry Workers Coordinating Organization
SBP	State Bank of Pakistan
SDF	Sungi Development Foundation
SDPI	Sustainable Development Policy Institute
SECP	Securities and Exchange Commission of Pakistan
SHO	Station House Officer
SME Bank	Small and Medium Sized Enterprise
SPSS	Statistical Package for the Social Sciences
TAF	The Asia Foundation
TIP	Transparency International Pakistan
TMA	Tehsil Municipal Authority
TRDP	Thardeep Rural Development Program
TVET	Technical Education and Vocation Training
UK	United Kingdom

UN	United Nations
UNCLEP	UN Commission on Legal Empowerment of the Poor
UNDP	United Nations Development Program
UNICEF	United Nations International Children's Emergency Fund
USAID	United States Agency for International Development
VNC	Village and Neighborhood Councils
WATSAN	Water and Sanitation
WB	World Bank
WPB	Women's Protection Bill
ZTBL	Zarai Taraqati Bank Limited

Glossary

Ameen	Honest
Anjuman	Organization/Association
Barani	Rain Irrigated Land
Basta	Bag or satchel kept by the Patwari
Biraderi	Extended Family and/or Clan
Boliwali committee	A committee formed by a group of people to earn interest over a period of time
Challan	Case brief
Chowkidars	Village watchmen
Daroghas	Police officials under the British
Faislo	ADR mechanism operating in Sindh
Faujgars	Government officials responsible for law and order as well as miscellaneous responsibilities in colonial and pre-colonial India
Gadarak	Head of the ADR mechanism in Gilgit Baltistan
Insaaf	Justice
Jagirdar	Landlord
Jirga	ADR mechanism operating in KP and Balochistan
Kailash	Community in the Northern Areas of Pakistan
Kanal	Unit of land measurement = 506m ²
kachi abadi	Shanty Dwellings/Slums
Khasra Number	A portion of land of which the area is separately entered under an indicative number in the record-of-rights (Punjab Land Revenue Act 1967)
Kotwals	Police official in colonial and pre-colonial India
Latha	Cadastral map made on a piece of cloth
Lotoro	Tribal/Village Elder involved in ADR in Chitral
Madrassa	Religious school or seminary
Maglis	ADR mechanism active in Gilgit-Baltistan
Mairhminth	Caravans of Peace, Pardon and Appeal active in Sindh
Malik	Local influential active in ADR mechanisms in KP
Maraka	See Jirga
Mohtasib	Ombudsman
Munadi	Local system of public announcement
Musalihat Anjuman	State-sanctioned ADR mechanism provisioned in the Local Government Ordinance 2001 and subsequent revisions
Musaliheen	Arbitrators involved in the Musalihat Anjumans
Nazim	Indirectly elected head of council of elected representatives at the Union, Tehsil and District levels, as provisioned in the Local Government Ordinance 2001 and subsequent revisions. Akin to mayor at the district level.
Nazimeen	Plural of Nazim
Panchayats	ADR mechanism operating in Punjab

Patwari	Local Government Officer of the Revenue Department, responsible for land record management
Qabza	Illegal land grabbing
Qanun-e-Shahadat	A procedural law introduced in 1984 governing the rules whereby courts record evidence of litigating parties
Qaum	Nation or tribe
Qazi	Judicial officer deciding cases in the light of Islamic principles in pre-colonial and colonial India
Raj	The British Crown
Rickshaw	Three-wheeled motor-vehicle
Riwaj	Norms and customs
Rozgar	Employment
Salis	Third Party Arbitrator
Sardars	Tribal leader
Sarkari Jirga	State-sanctioned ADR mechanism
Sarkar	State
Sarmung	Local influential involved in ADR in Gilgit-Baltistan
Shakhsi Jirga	ADR body constituted to resolve dispute between 2 families
Shamilat Deh	Village commons
Shariat	Islamic law
Shiite	Islamic sect
Sulh	ADR mechanism
Tapedar (Sindhi)	See Patwari
Taraqee	Development
Tehsil	Administrative unit below District
Tehsildar	Revenue department official at the Tehsil level
Thana	Police Station
Thanedars	Station House Officer
Theekri Pehra	Volunteer Watchman
Todar Mall Bandobast	System of land administration prevailing in pre-colonial India
Ulema	Islamic Scholar
Ulusi Jirga	Gathering of elders from each household in a village for resolution of common issues
Ustaad	Teacher
Wadera	Landlords in Sindh
Zamindars	Landlord
Zilla/Zillah	District i.e. Administrative unit above Tehsil and below Division and Province

Executive Summary

Background

Legal Empowerment of the Poor (LEP) emerged as a key conceptual framework in the development and governance domain after the United Nations High Level Commission on Legal Empowerment of the Poor (UNCLEP) published its report in 2008. The concept expands the more traditional rule of law focus on the supply side defined by a narrow 'justice sector' to include the demand side of the legal empowerment equation i.e. the citizen. In Pakistan, the seminal work on Legal Empowerment was completed by the UNDP in 2008 in the form of a report prepared by Dr. Iffat Idris. This report builds on this work in 3 important ways:

1. Sharpened focus on the poor for demand-side analysis
2. Deepened technical and historical analysis of institutions and policies for supply-side analysis
3. Enhanced rigor through extensive primary data collection

LEP is not only demand-driven, but also a 'bottom up' approach. The fundamental principle of LEP is that determination of the needs and issues of the poor should precede and inform any reform program. The program itself may intervene on both, the state delivery structures (supply side) or the ability of the citizens to make the law work for them (the demand side).

Analytical Framework

The study looks at three (of the four) pillars of the LEP: Access to Justice & Rule of Law, Property Rights and Labor Rights. Access to Justice itself has been divided into three subsets: the courts, the police and Alternate Dispute Resolution (ADR) mechanisms. Additionally, devolution of power to the grass roots level has been analyzed due to its critical importance for empowerment of the poor and the intended impact and ramifications of the massive devolution effort undertaken in the last decade. Health and education have been included as additional areas due to their importance to the poor for their empowerment, as evinced in the demand-side FGDs. The focus on labor rights has been limited to secondary sources and no recommendations on the area have been included.

The analysis (and recommendations) in the report center on two sets of factors: firstly, the 'structural' versus the 'transactional', and secondly, the supply-side versus demand-side issues. These 'structural' factors can be considered as endemic to society or an institution and require high levels of political commitment, financial investment, and a long duration of sustained intervention. 'Transactional' factors pertain to issues arising at the point of interaction of the poor with state institutions within the current structural framework, and are addressable in a program context.

Methodology

The methodology adopted for the study looks at both the demand and supply side weaknesses. A combination of quantitative and qualitative tools were employed to ‘triangulate’ the findings which were enriched through extensive review of secondary sources, especially, an analysis of the macro governance reforms in the country over the last 10 years.

The qualitative tools included Focus Group Discussions (FGDs) with supply side and demand side stakeholders. The former include senior bureaucrats, lawyers, judges, professionals of the development sector and persons involved in previous reform efforts. The demand side FGDs totaling 92 in all, were held in 28 districts across all provinces, including Gilgit-Baltistan (GB) and 5 supply side workshops were held in Islamabad and all four provincial capitals. Three case studies were also prepared through a ‘quasi-anthropological’ approach of one low-income (or slum) area in each of the three urban centers of Lahore, Karachi and Islamabad.

A detailed questionnaire was then administered to 10,322 respondents in 31 target districts covered by the UNDP’s interventions on LEP, across all the four provinces and GB. A pre-methodology phase (the exploratory Phase) was undertaken to interview key informants who could advise on the key issues to prioritize and the methodology to be employed for the study.

Selection of the universe for the sample was tackled differently for the qualitative and quantitative tools. The former relied on local knowledge to spatially locate the poor, while for the latter, beneficiaries of the Benazir Income Support Program (BISP) formed the universe.

Supply Side Dynamics

The supply side institutions for the ‘Access to Justice’ rubric include the police, lower courts, land revenue and ‘formal ADRs’. The findings related to each institution are concluded below and certain recommendations have been developed for addressing respective weaknesses.

Police

Culturally, the police organization behaves as a state-centric ‘force’ rather than a citizen-centered ‘service’ which creates problems of brutalization, corruption, politicization and an anti-poor bias. These problems originate from historical policy choices, some predating independence. Past reform efforts have been carried out in political isolation, lacked an evidence-based diagnostic component, and were predicated solely on technocratic rather than political economy considerations. Transitioning to the ‘service’ culture would require expert input from organizational behavior and change management disciplines, rather than relying solely on practitioner’s judgment.

While police presence may impart a sense of security in some areas, overall they are not approached for threats to personal safety, and contact with the poor citizen, (particularly women) is negligible. Performance in crime reporting (FIR registration) and investigation is below citizen expectations. A large proportion of respondents were dissatisfied with police response to contacts (78% in Punjab and 39% in Sindh), citing corruption, inappropriate behavior and

biased behavior as key disappointments. Behavioral/attitudinal issues, particularly in dealings with the poor, undermine confidence in the police among local communities.

For improvement in citizen-police relations, the study recommends:

- Focus on the Thana level;
- Support to participatory mechanisms established by the PO 2002;
- Homegrown community policing models;
- Training on soft skills for police staff;
- Image building and confidence building measures; and
- Curtailing frequent staff transfers.

Recommendations for addressing weak service delivery include:

1. Strengthening of CJCCs (where PO 2002 is applicable);
2. Use of IT solutions such as databases and GIS systems;
3. Establishment of a community-feedback mechanism to solicit, record, and assess community perceptions and experiences related to police performance at the Thana level; and
4. Targeted infrastructure refurbishment of Thanas.

Courts

The judiciary is overwhelmed by the sheer volume of litigation leading to huge backlogs, with over 1.3 million cases currently pending with district judiciary, and 50,000 out of a total of 78,000 prisoners awaiting trial in Pakistan's jails. According to survey findings from the Study, in Punjab the majority of cases are still pending decisions; while in Sindh, 43% of cases took at least 5 to more than 10 years to resolve. Venality, coupled with high court fees, pushed up transaction costs for poor litigants to up to PKR 17,000 per interaction in Punjab. These constitute entry barriers for the poor which may explain the fact that the majority of survey respondents had never contacted the courts, while for those who had, dissatisfaction rates were relatively high (especially in Sindh) due to corruption, waste of litigants' time, and inappropriate and biased behavior of service providers.

The Study recommended that key lessons learned from past reform efforts should inform intervention by UNDP-LEP. In particular, LEP should scale and sequence interventions cautiously, focus on lower courts and emphasize capacity building for stakeholders.

For addressing structural weaknesses pertaining to backlogs and pendency, the study recommended expanding the human and infrastructure resource base for the judiciary. At the transactional level, options such as the introduction of case-flow management and delay reduction techniques, 'mobile courts', and court annexed mediation channels should be explored. Other solutions which may be considered include:

- Outsourcing process-serving function to courier services;
- Developing e-courts;
- Broadening use of probation laws;
- Detecting and penalizing false or frivolous litigation; and
- Plugging coordination gaps between justice sector institutions.

For addressing corruption, the transparency and accountability measures announced by the National Judicial Policy should be supported. In addition, improvement in case-flow management, oversight of administrative court staff, information disclosure, and citizen-court liaison need to be prioritized by UNDP-LEP.

Lawyers

Study findings indicate rising (and unchecked) misbehavior, delaying tactics through frequent adjournments, capacity constraints, and severe under-coverage of free legal aid mechanisms – for example, only 3% of poor litigants in Punjab reported receiving legal aid. Dissatisfaction rates for clients were high (29% in Balochistan), with respondents complaining of corruption, biased and inappropriate behavior, and low capacity of the lawyer. In this regard, the Study recommends the following measures:

- Strengthening coordination mechanisms between the Bench and Bar;
- Revamping legal higher education at the policy level through the Higher Education Commission and the Pakistan Bar Council, as well as at the institutional level through law colleges and universities (especially in the public sector); and
- Upgrading the quality and coverage of free legal aid to the poor and vulnerable litigants.

Land Revenue

At the structural level, the absence of a detailed nationwide cadastral survey and a strong legal framework for land entitlements bias the entire land administration in favor of the rich and powerful at the expense of the poor and vulnerable. As a result, they do not trust the Revenue Department to secure their property and there is little (if any) contact between the poor and the Department. Among those who do approach the Department, dissatisfaction is commonly related to entitlement and land record management transactions. Complaints of corruption, biased and inappropriate behavior are most widespread. Illegal occupation is becoming a trend, especially in urban areas while protracted litigation deters attempts at address by victims, especially if they are poor.

In this regard, the study recommends:

1. Explore initiatives for the computerization of land records ensuring the accuracy and transparency of data collection and reporting;
2. Explore international experiences with innovative approaches to curb the autonomy of local revenue officials; and
3. Improve legal literacy among the poor focusing on their property rights, particularly inheritance rights for women.

Alternate Dispute Resolution (ADR) Mechanisms

While mostly preferable to state institutions, traditional ADR structures such as Jirga and Panchayat are not flawless, and are themselves outranked in citizen priorities by more informal community elders. These flaws include:

1. Higher than expected levels of non-coverage and non-contact for the poor;
2. Higher than expected levels of corruption and inappropriate behavior;
3. Bias favoring the non-poor, including the powerful landed elites; and
4. Lack of enforcement mechanisms for decisions, specifically where one party is more resourceful in a dispute.

In sum, formal ADR institutions are not the 'poor man's courts' they are held to be among certain stakeholder groups.

To address these problems, it is recommended that UNDP-LEP may:

1. Conduct a broad-based mapping exercise to document and define the typology of ADR mechanisms across Pakistan which is a significant knowledge gap in policy and research;
2. Subsequent to this field-based research, advocate for an evidence based, comprehensive, legislative framework to institutionally link non-state ADR mechanisms with the state justice system and to regulate their structure and function in line with existing laws, (Musaliyat Anjumans may be studied as an imperfect first step in the right direction);
3. Advocate for the harmonization and usage of legislation for state-sanctioned ADR which is at the moment, fragmented across various substantive and procedural laws ; and
4. Conduct field-based exercises to sensitize non-state ADR institutions on human rights, particularly the rights of women.

Demand Side Situation

Broadly, the findings reveal that the bulk of the poor prefer to stay 'below the radar of the state'. This was confirmed in both the FGDs and the quantitative data. The majority of the poor opt out of the formal (and even informal) justice systems due to low confidence in these systems compounded by fear of pecuniary losses and possible rude behavior of the state functionaries. The elders or influentials of the area have emerged as enjoying the highest confidence followed by traditional ADR mechanisms. Formal state institutions lagged in all provinces. While demand for justice is high, expectations of justice from the state are abysmal. Coupled with low legal literacy among the poor and vulnerable, this leads to chronic legal disempowerment.

Cross-cutting Issues

Recommendations for change have been parceled with the proviso that these should ride the changes made possible by recent, past reforms, learn from their oversights and support current reform efforts where political will of the state has been demonstrated. The best example of the latter is the 'National Judicial Policy' which has been initiated by the Supreme Court of Pakistan under the direction of the Chief Justice of Pakistan himself.

As recommendations touch structural and transactional issues as well as both demand and supply sides, programming options such as advocacy, dialogue with political parties and awareness-raising have been included. The fundamental principle of 'implement, test, refine and scale up' cuts across all recommended actions, but applies especially to judicial reform. This is supplemented by a caution to respect diversity across the country and avoid 'a one size fits all' approach.

Structurally, the public sector needs to shift focus from inputs and outputs to outcomes in terms of benefit to the end-user. Public sector reform should be based on the perceptions and experiences of the citizen.

Women emerged as the most marginalized segment of the poor and vulnerable in terms of contact with state and non-state institutions of the justice sector. This finding holds true across all provinces as well as the urban-rural divide. UNDP-LEP should mainstream the concerns of women across all programme components, focusing especially on their right to inheritance of property.

Finally, without devolving powers to the grass-roots level, empowerment of the poor will remain elusive. It forms a necessary condition for empowerment. However, the lessons learnt from the last attempt reveal that this change cannot be brought in a political vacuum and without a well considered change management strategy that involves all stakeholders.

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CHAPTER 1

Background & Scope

Chapter 1: Background and Scope

Pakistan has had a checkered history of military rule with intermittent democracies. The country has been in the throes of another transition to democracy in the last 4 years. A few fundamentals have already changed. Power centers in the country have begun to diffuse and a more pluralistic power structure has emerged, at least at the national level. A strong Supreme Court and a vocal electronic media continue to grow as important pillars of the democratic process and as potential checks against reversion to a non-democratic dispensation.

The increased voice of people has also led to greater awareness on issues, more street agitation, more references to the higher courts and strikes by professional associations. The environment for empowerment of the people has already begun to change for the better.

With increased democratization a state (and society) has to view its gains in terms of the improvement in the status of the poorest rung. The right set of questions needs to be posed. Will the process reach the districts, towns and villages of Pakistan? How much has the state of the poorest changed in terms of perceptions, experiences and expectations from the state? How can the benefits of democratization in terms of empowerment, adjustment of state priorities and improved service delivery reach the poorest, who today account for nearly 50% of Pakistan's population¹?

The current study attempts to answer some of these questions from a policy perspective to identify gaps at the policy, implementation and process levels. It has been undertaken to help the UNDP prepare LEP interventions for districts where it is currently working. The study will inform program design and can also be of assistance to government (federal, provincial, local) for future policy reforms. Therefore the report may be seen as a policy support document.

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Conceptual Framework

What is Legal Empowerment of the Poor?

Development and law approaches have broadened from the 'Rule of Law' (ROL) to a more holistic 'Legal Empowerment of the Poor (LEP)' paradigm. LEP places the poor at the centre of the analysis and policy prescriptions. In 2008 the United Nations formed a high-powered 'Commission on Legal Empowerment of the Poor' (UNCLEP) that documented the concept into a detailed report. LEP takes a 'bottom up' approach to providing equal access to law. Its four pillars highlighted by the 'Commission on Legal Empowerment of the Poor' of the United Nations are:

¹ UNDP, Human Development Report, 2011

- i. Access to Justice and Rule of Law
- ii. Property Rights
- iii. Labor Rights
- iv. Business Rights

LEP calls for a 'bottom up' approach to tackle development and law issues, rather than focusing exclusively on supply side institutions like the judiciary and the police. It does not presume default linkages between supply side interventions and poverty alleviation. It ascertains the needs from the demand side and then develops interventions; these attempt to address both the problems on the demand and the supply side, with the needs of the poor as the primary concern.

Box 1.1 Definitions of Legal Empowerment of the Poor

Asian Development Bank: "[Legal empowerment of the poor] involves the use of law to increase disadvantaged populations' control over their lives through a combination of education and action." (Golub and McQuay, 2001, p.7)

Carnegie Endowment: "Legal Empowerment of the poor is as rights-based strategy for improving governance and alleviating poverty... [and involves]...the use of legal services and related development activities to increase disadvantaged populations' control over their lives." (Golub, 2003, pp.3)

World Bank (WB): "Legal empowerment promotes safety, security and access to justice and helps poor people solve problems and overcome administrative barriers." (Palacio, 2006, pp.15)

High Level Commission for Legal Empowerment of the poor expands the rule of law benefit of all citizens, rich or poor, men or women, rural or urban, and whether they belong to ethnic majorities, indigenous people, or other minorities." (Palacio, pp.15)

USAID: Legal empowerment of the poor refers to actions and processes, including but not limited to legal reforms, by which the poor are legally enabled to act more effectively to improve economic situation and livelihoods, allowing them to alleviate or escape poverty." (Bruce et al., pp.9)

Source: Legal Empowerment of the Poor: Concepts to Assessment: USAID 2007

On the demand side LEP calls for 'education' of the poor along with provision of organizational support, to enable them to access justice, fight for their rights and influence change. Based on the demand side issues it helps design supply side interventions that may, among others, translate into change in laws, court procedures or administrative regulation. Tools, approaches and environment vary across countries and within them. The UNCLEP recognizes the importance of local context in designing LEP policies and programs and the current report also deviates from the basic precepts of LEP as highlighted in the UNCLEP report.

What is the scope of the study?

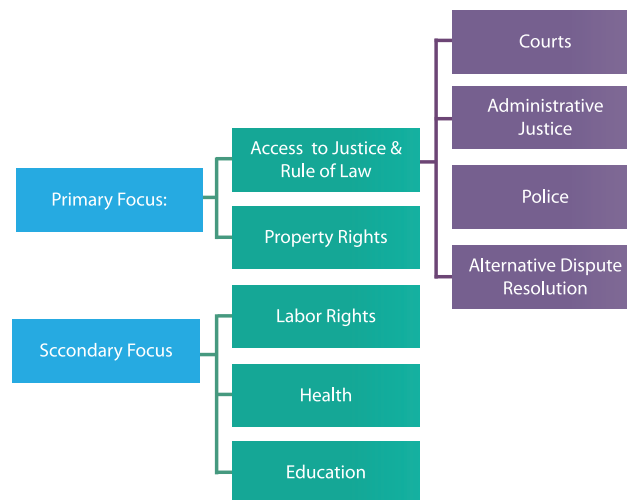
The report has been based on the concept of Legal Empowerment of the Poor (LEP) prepared by the “High powered UN Commission on Legal Empowerment of the Poor (UNCLEP)”. LEP has transformed the approach to governance and development. In 2008 the United Nations Development Program (UNDP) in Pakistan sanctioned a study² on LEP for the country and the current report builds on this seminal work on LEP.

The UNDP study builds a very useful framework of institutional factors, essentially from the supply side of the LEP i.e. the state institutions and informal mechanisms in society. The current report adds the demand side perspective in greater detail and includes data from primary sources. Resultantly, the Study has had to develop an analysis of the definition of poverty and its determinants with reference to LEP. The report presents a situation analysis of the state of LEP in the country, identifies some of the causes and finally prepares a set of recommendations.

It deviates from the ‘orthodox’ approach to LEP through inclusion of education and health as critical sectors for any reform process. It does not provide technical details of the education and health sector as these would be beyond the scope of the report and have been amply documented elsewhere. The primary purpose of inclusion is to demonstrate the need for free education and health services as pre-requisites to legal empowerment of the poor in Pakistan.

Labor issues have been covered in the situation analysis, primarily, through secondary literature in relatively limited detail. The Right to Business has not been included in the scope of the Study. Devolution of political, fiscal, and administrative authority constitutes a structural theme underpinning legal empowerment at the local levels.

Figure 1.1 Supply Side Focus Areas



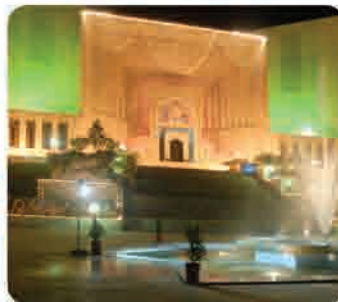
² (Iffat Idrees, 2008)

What are the limitations?

Pakistan is a diverse country with multiple cultures and sub-cultures within each province. Development levels also vary across provinces and within them. Urbanization is on the rise. The diversity limits implementation of a country wide study. The study will guide the approach to LEP but the final program and intervention will have to be tailored to local needs.

A key gap has been limited understanding of urban poverty. Dearth of secondary literature and time and resource limitations of the study restricted the findings and recommendations on the urban sector. Three case studies, conducted for the report, cannot be considered representative.

Finally, the breadth of scope is limited by the policy and programming needs the study intends to meet. In terms of quantitative research, external validity is limited to the districts covered in 2011-12 and generalizations beyond these temporal/spatial boundaries should be qualified as such. Overall, the research has attempted to find a balance between depth and breadth of focus, as prioritized above – there are therefore gaps in terms of both ‘what was studied’ and ‘how deeply it was studied’, which are expected to be filled by further research.



CHAPTER 2

Analytical Framework

Chapter 2: Analytical Framework

Pakistan's diversity makes it extremely difficult to prepare a representative picture of the legal empowerment situation across the country. The qualitative interviews and FGDs conducted for this report clearly highlighted the differences across social structures, governance, relative poverty and attitudes. Despite the differences common themes surfaced across all provinces and the Gilgit-Baltistan (GB) region. These have been culled and presented in the report with the strong proviso that the differences are equally stark and need to be considered for a more detailed governance analysis and eventual reform.

Demarcating an acceptable understanding of poverty for the report has not been easy. Absolute poverty thresholds cannot be used in the context of legal empowerment as the issues move across a broader belt of the poor than a restrictive definition can contain. The UNCLEP report also does not limit itself to the absolute poor³. This report has been based on qualitative interviews and FGDs as well as a quantifiable questionnaire and therefore has had to consider the definition issues for both. In case of the former a strict definition has not (and cannot be employed) and persons from vocations of the poor or living in poor communities were picked for the demand side analysis. For both the FGDs and the case studies three brackets need to be considered: the poor, the poorest below the absolute poverty line and groups vulnerable to poverty. The qualitative tools targeted groups with all three types included, although the analysis cannot be categorized within these subgroups and as such a demarcation was not possible. Moreover, analysis has focused not only on the poor (as defined by income or consumption metrics) but additionally, on vulnerable groups defined by their social rather than solely economic dispensation, through qualitative tools. The UNCLEP report recognizes that the legally excluded are also often the socially excluded – women, children, minorities, internally displaced persons are all vulnerable to exploitation and abuse because they are *“unable to count on the law's protection”*, and Pakistan is no exception.

The socially excluded – women, children, minorities, internally displaced persons are all vulnerable to exploitation and abuse because they are *“unable to count on the law's protection”*, and Pakistan is no exception

The quantitative questionnaire targets households and individuals accepted by the Benazir Income Support Program (BISP) as beneficiaries for cash transfers. Determinants of rural and urban poverty have also been identified, to the extent possible, from secondary sources although the research literature on rural poverty is clearly richer in case of Pakistan.

The report considers two sides to the legal empowerment issues: the supply side and the demand side. There were two approaches that could be taken for analyzing the supply dimension. First, the 'poor-only' approach would limit the perspective to the experiences and perceptions of the poor i.e. even supply-side weaknesses could only be viewed and explored in terms of the interaction between the state and poor citizens. Second, an 'institutions-only' approach would be premised on the argument that if justice sector institutions worked, they would benefit all citizens, poor and 'non-poor' alike which necessitated a more technical,

³ (UN Commission on Legal Empowerment of the Poor, 2008)

supply-driven review. The report has attempted to strike a balance between these approaches i.e. supply-side weaknesses have been analyzed in broad (rather than 'poor-only') terms, while issues which indicated systematic discrimination toward the poor and vulnerable i.e. where inequitable treatment of these groups was built into the system, those areas have been focused in greater detail. On the demand-side, a 'poor-only' approach has been adopted, within the broader context of vulnerability, as discussed above.

Secondary literature and narratives from qualitative consultations have been used to analyze historical evolution, especially, reforms initiated in the last ten years. Issues of gaps between process, design and implementation have been discussed. Current state of affairs, in terms of benefits for the poor, has been constructed from the FGDs and supportive secondary reports. The internal issues of the public sector organizations have been discussed where relevant.

Two types of issues have been identified for both the demand and the supply side: structural and transactional. While the 'transactional' cannot be isolated from the 'structural' in a causative model, it can be addressed in focused project approaches within limited resources. The 'structural' requires a difficult governance reform effort, which may require huge financial outlays, long periods of time and (most critically) an elusive political agreement. These would normally be beyond the scope of donor-funded projects. The bifurcation has been made for both demand and supply side issues and recommendations have also been framed across the divide.

Structural issues highlighted and discussed include endogenous issues of public sector organizations (including fiscal, capacity, and attitudinal constraints), and perceptions on democratization, accountability and local governance. The transactional factors consider willingness and ability of the poor to approach state functionaries within the existing structural context: the financial barriers, role of intermediaries, expectations and knowledge of rights and laws. Laws have not been discussed in detail as the report follows the premise highlighted in a number of other documents and the supply side workshops of implementation failure at the institutional level as a more significant issue than laws. Organizational and implementation issues have been discussed in greater detail.

As discussed above, focus on the poor includes vulnerable groups within the poor that have been identified for the analysis and while some of the qualitative work includes religious minorities, females have emerged as the most excluded segment across the country. Therefore the special concerns of women have been more specifically highlighted in the analysis.

Three of the four basic pillars of LEP have been used for analysis:

- i. Access to Justice and Rule of Law
- ii. Property Rights
- iii. Labor Rights

In addition to the above, the report has included two critical factors: education and health issues. Education has been discussed as an enabler of empowerment as highlighted by all respondents of the qualitative research, from amongst the poor. Health appeared as the largest vulnerability

factor for deepening poverty. Addition of health and education may be considered a deviation from the LEP concepts but they have been included as important support areas for any transaction level reform project. The recommendations have been made within the limited scope of a localized intervention. Transactional level reforms will have to consider these factors as part of a process to empower the poor in their interaction with formal and informal justice structures.

Access to Justice and the Rule of Law" is a first right for legal empowerment – one which "guarantees all others".

The UNCLEP report posits *"Access to Justice and the Rule of Law"* as a first right for legal empowerment – one which *"guarantees all others"*. This pillar focuses on public institutions that provide justice services, to mobilize *"commitment of the state and public institutions"* as well as support *"legal empowerment of women, minorities..."* and other vulnerable groups. The pillar therefore encompasses measures for strengthening both the supply-side (service providers) and the demand side (service users). In line with the UNCLEP framework, the Study has adopted this first pillar as one of its Primary Focus areas, as illustrated in Figure 1.1.

Property issues have been discussed in terms of institutional issues of the land revenue department(s) whereas urban land development authorities have not been discussed in detail. For urban areas, issues within poor and vulnerable communities included as case studies have been discussed. Labor rights have been discussed within both the formal and informal set ups although labor in formal set ups does not fall within a restrictive poverty definition. Irrespective of the definitional issue, labor welfare in the formal sector has implications for vulnerability to poverty and therefore remains very relevant to LEP.

The quantitative component of the report can be used as a baseline for gauging impact of the reform process to be undertaken. Specific indicators can be developed with the help of quantitative data.





CHAPTER 3

Methodology

Chapter 3: Methodology

This study has investigated the status of Legal Empowerment of the Poor in Pakistan by employing multiple qualitative as well as quantitative tools. This chapter will delineate in detail the methodology adopted for the conduct of this study by describing the various instruments employed as well as the sampling methodology used for the household survey. The chapter will also highlight the constraints faced by the research team, during the course of this research.

The report has been prepared in three phases:

- i. Phase I: Scoping and Exploratory Stage
- ii. Phase II: Operationalization and Prioritization of Concepts
- iii. Phase III: Measurement of Constructs

Phase I was used for scoping the problem and then finding the right perspective with which to approach it. A small set of 'key informants' was identified and interviewed. Phase I also included an initial review of relevant literature, in particular, policy documents prepared by government and other stakeholders pertaining to the justice sector in Pakistan. The exercise was a 'boundary analysis in brief' allowing the team to define the contours of legal empowerment in Pakistan through an indicative review of facts and opinions on the issue. The Phase assisted in designing the subsequent phases. Details of Key Informants are provided in Annex I.

Phase II involved Focus Group Discussions (FGDs) with supply-side stakeholders (state and civil society) and demand-side stakeholders (poor citizens in target districts). The literature review evolved into an in-depth Desk Study of key institutions and policies in the justice sector. The Phase allowed the research team to: a) prioritize focus areas for research and subsequent intervention; and b) operationalize emerging concepts into specific constructs which could be scientifically quantified and measured.

Phase III involved a household survey of 10,322 respondents in 31 districts where UNDP planned intervention in the next 3-5 years, as well as 3 Case Studies, conducted in urban slums to compensate for the rural bias of the survey. The Phase centered on measuring the constructs developed in earlier phases, focusing on the relationship between the state and citizen where 'legal disempowerment' is hypothesized to manifest due to demand-side or supply-side weaknesses.

3.1 Qualitative Data Collection Instruments and Analysis

3.1.1 Desk Study

A detailed literature review was conducted to ascertain the existing body of knowledge on Legal Empowerment of the Poor in general and especially with reference to Pakistan. The literature review included policies and plans prepared by the government, relevant news reports in print media, empirical and historical research from journals, papers, and books published by researchers and academics, program reports and evaluations prepared by international development practitioners, among others. The review identified knowledge gaps in policy

and research, and was used throughout all Phases to place findings in the context of existing knowledge.

3.1.2 Key Informant Interviews

A number of Key Informant Interviews (KIs) were conducted with stakeholders from the Judiciary, Lawyers' Community, Civil Society Organizations, Governance and Devolution Experts, and Civil Service of Pakistan. The overall purpose of these KIs was to frame the issue within the context of prevailing facts and opinions among practitioners, specifically: to ascertain the views of these Key Informants about the concept of LEP and its application in Pakistan; understand the major impediments in the legal empowerment of the poor; gain insights on the steps taken to empower the poor in Pakistan; and to evaluate the reasons for lack of legal empowerment of poor in Pakistan. These Key Informant Interviews were conducted in Islamabad.

3.1.3 Demand Side Focus Group Discussions

A series of Focus Group Discussions were conducted with the vulnerable and marginalized communities in 28 different districts of the four provinces and Gilgit-Baltistan region. As shown in the table, in all 92 demand-side FGDs were conducted, in which 1,120 individuals (including 339 women) belonging to various marginalized sections participated. While the BISP's Proxy Means Testing based scorecard was used for the quantitative survey, the FGDs with the poor for Phase II used 'local knowledge' to identify groups of poor. The same was employed for the qualitative component of Phase III as in urban centers 'spatial' location was used. A restrictive definition of 'absolute poverty' cannot be employed for the analysis, as explained earlier.

Partner NGOs of the UNDP conducted the bulk of the demand side FGDs. The core research team conducted the discussions in Lahore, Bahawalpur and Karachi. A semi-structured outline for the FGDs was prepared by the research team and was shared with the partner organizations after a detailed training session about the objectives of the FGDs conducted through them. The outline for these FGDs covered the topics under four broad categories i.e. justice system, alternative dispute resolution, property rights and marginalized groups. A list of these partner NGOs is attached as Annex II.

Table 3.1 District wise Distribution of Focus Group Discussions

Sr.No	Partner NGO	District	Number of FGDs	Male Participants	Female Participants	Total Participants
1	BFD	Dadu	5	28	28	56
		Jacobabad	3	17	17	34
		Shikarpur	4	22	22	44
2	CDP	Bannu	2	12	10	22
		Karak	3	24	9	33
		Kohat	2	10	12	22
3	CHIP	Gangche	1	6	6	12
		Skardu	2	9	9	18
4	CPDI	Layyah	3	30	4	34
		Jhang	3	14	15	29
5	FDO	Rajan-pur	2	16	26	42
		Lodhran	2	23	4	27
6	KK	Lower Dir	3	23	13	36
		Chitral	4	33	22	55
7	MRDO	Tharparkar	2	17	5	22
		Umarkot	1	13	12	25
		Karachi	1	8	6	14
8	SDO	Battagram	4	26	26	52
		Toor Ghar	5	39	26	65
		Kohistan	4	46	-	46
9	SOCH	Nushki	10	70	-	70
		Pishin	8	50	30	80
10	SRDO	Peshawar	3	35	-	35
		Nowshera	4	37	-	37
11	SHER	Khushab	4	69	20	89
		Bhakkar	4	76	-	76
12	WASTA	Lahore	1	10	5	15
		Bahawalpur	2	18	12	30
	Total		92	781	339	1120

3.1.4 Supply Side Focus Group Discussions

Another major qualitative activity organized during the Phase II of this research was the Focus Group Discussions with supply side stakeholders. Five such workshops were conducted in each provincial capital and Islamabad, exploring the views of supply side on issues related to the legal empowerment of poor in Pakistan.

In addition, a total of 5 meetings were conducted in Islamabad which deliberated on preliminary research findings from Phase I and II with participants. While the earlier round of Focus Group Discussions had focused on the problem, this series of meetings was intended to evolve solutions from stakeholders directly involved with legal empowerment issues and who would serve as UNDP-LEP program partners once the intervention was launched. This ensured that research reflected ground realities and stakeholder perspectives. These workshops, which were attended by 181 participants in all, including serving and retired senior civil servants, senior judges, legal and legislative experts, members of civil society organizations and non-government service providers, focused on: prioritizing and defining gaps in laws versus implementation; identifying reason for policy and implementation failure; recognizing where this failure has approached crisis proportions; and evolving options for intervention. Details of these Focus Group Discussions and meetings are attached as Annex III.

3.1.5 Case Studies

During the literature review it was noted that research specifically focusing on urban poverty was sparse. Secondly, during the course of Focus Group Discussions, it was repeatedly observed that there is considerable difference in the dynamics of urban versus rural poverty. It was also noted that the poverty scorecard of BISP was biased towards rural poverty to a certain extent. Realizing this, case studies of urban slums in different provinces of Pakistan were undertaken to understand the problems and constraints of the urban poor as well as to fill the gap in the existing body of knowledge regarding dynamics of urban poverty in Pakistan. Three such case studies were conducted; one each in Islamabad, Lahore and Karachi.

These case studies targeted urban locations, whose inhabitants belonged to socio-economically marginalized groups. These case studies were primarily based on a quasi-anthropological approach which traced the historical development of slums into relatively improved informal housing societies with concomitant changes in the structure of property rights as recounted by 'oral narratives'. The areas targeted were the dwellings that have evolved from slums into formal sector housing. The researchers spent three to five days in these localities to study the daily lives of inhabitants and interacted with locals involving them in informal unstructured discussions. Results of these observations and oral narrative recorded through informal discussions were analyzed and collated into a separate case study report for each urban locality.

3.2 Sample Design for Quantitative Research

As mentioned earlier, research on the demand side of legal empowerment adopted a 'poor-only' approach to gain direct feedback from the poor on what they consider as major impediments in their way to legal empowerment. Phase III involved a random household survey of the poor residing in districts targeted by the prospective UNDP-LEP intervention.

3.2.1 Study Universe

There are multiple definitions and standards of poverty prevalent in the public as well as development sector all over the world. Asian Development Bank uses \$ 1.25 or less per day as the bench mark for poverty line⁴ while in Pakistan, poverty has been defined by the Planning Commission in terms of caloric intake per day⁵. The UN Commission on Legal Empowerment of the poor does not restrict itself to the absolute poor. It uses less than \$1 per day as the absolute poverty line and also suggests inclusion of groups between \$1 and \$2 per day into the group.⁶

Considering the multiple definitions of poverty, the present study uses all persons qualified to receive benefits under the Benazir Income Support Program (BISP) as the sampling universe. All persons with a score of 16.17 or under, on the poverty scorecard used by the BISP, have been declared as marginalized and vulnerable in terms of their socio-economic status. Presently, BISP has data of around 6.9 million families (42 million individuals), below the cut off score of 16.17, all across the country. Proxy-Means Testing (PMT) is a subset of means-testing, in which targeting is done through other (easy-to-collect) indicators or proxies of household welfare, which correlate well with the level of income/poverty of beneficiaries. These involve using proxies, such as household demographics, housing conditions, size and composition, available amenities, durable assets, disability etc., as an alternative measure of the need for assistance.

BISP data has also been a subject of debate and even elicited questions during the supply side meetings of Phase I. Again, the data provides the only census of poverty as other criterion, for example used by the Pakistan Social and Living Standards Measurement Surveys (PSLMs) may arguably be more robust but the data collected on their basis consists of limited samples and cannot form a population for the study. It bears mentioning that the development of the poverty scorecard for BISP was based on simulations on the most recent PSLM data (2005-06).

Further, according to the World Bank, the PMT targeting system is characterized by a relatively high exclusion error (under-coverage), but a low inclusion error (leakage). This means that the database has not (mostly) included the non-poor although it might have excluded some of the poorest. Even most of this leakage (close to 80%) covers populations that are vulnerable to poverty i.e. small income shocks will drop them below the poverty threshold. In sum, the model "does a fairly good job of excluding the non-poor" and as such represented the best available option for the sampling universe.⁷

4 (ADB, 2008)

5 (Haroan Jamal, Social Police and Development Center, 2003)

6 (UN Commission on Legal Empowerment of the Poor , 2008)

7 (World Bank, 2009)

3.2.2 Sampling Frame

BISP eligible beneficiaries within selected 31 districts have been used as the sampling frame for random selection of respondents from these districts.

3.2.3 Stratification Plan

The first level stratification was already undertaken by UNDP through identification of 31 districts across Pakistan on the following basis:

- Low scores on the Human Development Index (HDI) according to UNDP district ranking of 2007
- Possibility of data collection in the district through experienced and willing partner organizations in the field
- Simple random sample was drawn at the district level from the BISP database of its beneficiaries in digital format. Data was collected from these randomly selected beneficiaries of BISP belonging to those 31 districts.

3.2.4 Sample Calculation

Considering the nature of this research we needed a sample size of marginalized community members to collect primary data both from men and women. The following sample size calculation formula was employed for calculating the reliable sample size:

$$\text{Sample Size} = n = \frac{Z^2 * P * (100 - P)}{X^2}$$

Where

Z is the required confidence level

P is the variability or the percentage of population with the attribute we are interested in studying i.e. 50%

X is the required confidence interval also known as precision level or the acceptable level of error or the margin of error (MoE), i.e. 5% in this case

Considering the time, financial and logistical constraints for collecting data from a simple random sample, the sample size was revised by reducing confidence level at 90% and keeping the MoE at 5 % for Punjab, Sindh and KP. The sample size was collected as following:

$$\text{Sample Size} = n = \frac{Z^2 * P * (100 - P)}{X^2} = \frac{1.645^2 * 50(100 - 50)}{5^2}$$

Z is the required confidence level at 90%, i.e. 1.645

P is the variability or the percentage of population with the attribute we are interested in studying i.e. 50%

X is the required precision level or the acceptable level of error or the margin of error, i.e. 5% in this case

Table 3.2 Province wise Distribution of Sample

	Sampled Districts	Sampled Households
Punjab	9	3196
Sindh	6	1983
KP	11	3669
Balochistan	4	857
Gilgit-Baltistan	1	617
Total	31	10,322

As is evident from the above table neither number of districts nor the numbers of sampled households, are proportionate to the population of each province. This is due to the fact that districts were selected by UNDP on a different criterion recorded above and the household sample was drawn on the basis of number of BISP beneficiaries in these selected districts.

The districts for a given province are not to be considered as representative of the province as a whole as these have been selected on the basis of HDI and already form a sub-set of the provincial situation. Representativeness requires random sampling and therefore the quantitative analysis presented in this report is valid for 'districts selected for the province' and not the province as a whole. This qualifies for all the findings presented below at the provincial level.

3.2.5 Sample Size

The total sample size based on a single level stratification has been calculated in the following table for various Confidence Intervals and Margins of Error (MOE):

Table 3.3 Sampling Options

Confidence level %	MOE %	Sample Size	Districts	Total
99	5	664	31	21248
95	5	384	31	12288
90	5	272	31	8704
99	6	461	31	14752
95	6	267	31	8544
90	6	189	31	6048

Confidence level of 95 % and margin of error of 5% is generally the standard used in social science academic research. Use of these standards for sample size determination provides the researcher with considerably reliable and representative data, enabling the researcher to generalize the results for the entire population which has been surveyed. Initially it was recommended that a sample size of 384/district, calculated with confidence level of 95% and margin of error of 5%, may be adopted for this research. However, once data collection started, multiple constraints, enlisted at the end of this chapter, were reported by the partner organizations collecting the data, which forced a revision of the sample size with 90 % confidence level and 5 % MoE (with the exception of Balochistan, MoE was calculated to be around 5.5 % with a confidence level of 90%). Resultantly, 8,704 was chosen as the final sample size for the 31 selected districts at a Confidence Level of 90 % and 5 % Margin of Error.

Total sample was collected on provincial basis, according to the sample size of 272 per district, and then sample size for each district was weighed in accordance with the proportion of BISP beneficiaries in each district. Sample size of the districts having insufficient sample, due to lesser percentage of BISP beneficiaries in those districts, was apportioned accordingly to ensure representativeness of those districts.

3.3 Quantitative Data Collection, Processing and Analysis

On the basis of findings of Phase I and II of this research, which was primarily focused on qualitative research methods, quantitative instruments were designed for conducting a household survey in 31 different districts. Through this survey a database consisting of 10,322 households' responses was made and analyzed with the help of statistical software (SPSS).

3.3.1 Quantitative Instruments

Keeping in view the findings of Phase I, a comprehensive questionnaire, to be administered to the randomly selected households in the selected districts, was developed. The questionnaire included questions on health, education, property, police, judiciary and alternate dispute mechanisms, as explained earlier and will be further expounded below.

3.3.2 Training of Field Teams

Eight different partner organizations with presence in the vicinity of selected districts were contracted by the UNDP for conducting Focus Group Discussions and this household survey. A two days' training workshop, with the master trainers of these selected organizations, was conducted in Islamabad from the 28-29 of February 2012, attended by 34 representatives of NGOs. During this workshop, these trainers were thoroughly briefed about the background, rationale, and major concepts behind the content and structure of the questionnaire. The training included 'walk-throughs' of the questionnaire and 'mock interviews' which served as pre-testing for removing design errors and improving the reliability and validity of the instrument.

These master trainers then conducted separate trainings of field enumerators and field supervisors hired by their respective organizations for conducting this survey. Partner organizations were in direct contact with the research team, especially the quantitative research specialist, during the course of the entire survey and the problems faced in the field were regularly discussed and

resolved.

3.3.3 Quantitative Data Collection

Once the trainings of the field teams were complete, the field survey started in parallel across all the selected districts. Different survey teams, consisting of both male and female enumerators, were mobilized to locate the randomly selected addresses of respondents, obtained from the BISP database, in each district. UNDP-LEP undertook multiple unannounced monitoring visits to sample districts, to ensure quality of data collection and resolve on-ground problems, in consultation with the quantitative research specialist.

As mentioned earlier, due to the multiple constraints, the sample was drawn with a confidence level of 90% and MoE of 5%. However, as evident from the table below, data collected in districts belonging to Punjab, Sindh, KPK and GB meet the criteria of 95% Confidence Level with MoE slightly higher than 5%, while data collected in districts from Balochistan meets the criteria of 90% Confidence level and MoE of around 5.5%.

Table 3.4 Province wise Distribution of Sample

Province	Sampled Districts	Sampled Households	Confidence Level %	MoE %
Punjab	9	3196	95	5.15
Sindh	6	1983	95	5.35
KP	11	3669	95	5.33
Balochistan	4	857	90	5.59
Gilgit-Baltistan	1	617	95	3.89
Total	31	10,322		

3.3.4 Quantitative Data Entry and Cleaning

Data collected from the field was sent through mail to the central office in Islamabad, where all filled survey forms were sorted and entered using SPSS software. Prior to data entry, a specialized software application was developed facilitating online data entry and real time supervision. Data entry supervisors were responsible for ensuring the accuracy of the entered data. The online data entry form featured in-built error checks, double-entered and data verification was conducted separately in parallel with entry. Following the completion of data entry, around 10% of the questionnaires were randomly sampled and validated with entered responses to ensure absolute accuracy.

3.3.5 Quantitative Data Analysis

A special statistical analyst was contracted to transport all the entered and cleaned data into a single SPSS file and to perform descriptive statistical analysis. The quantitative analysis of the collected information includes: percentages, frequencies, and other analysis. SPSS was used as the main analytical software for quantitative data analysis. While inferential statistical tools were

not applied, given the wealth of data available for hypothesis generation, correlation and/or causation models, it is recommended that cross-sectional bivariate and multivariate analysis be included in further research.

3.4 Quality Control

Quality control entailed stringent measures at all stages of the Study. These included:

1. Conception: Key Informant Interviews helped to define the scope in terms of greatest relevance for policy and programming
2. Design: This included a Peer Review of Methodology once it was finalized inviting the participation of eminent scholars and development practitioners
3. Data Collection: Monitoring and verification field visits undertaken by LEP staff to ensure adherence to determined data collection protocols which data collectors were thoroughly trained to follow. On-ground contingencies were resolved without compromising the probabilistic strengths of the design.
4. Data Entry & Analysis: Data was double-entered, verified, and randomly validated. All analysis was subsequently rechecked to ensure that reported statistics are error-free.

3.5 Constraints

There were major constraints faced by the research team during the course of this study, as detailed below.

First, translating the abstract concept of legal empowerment of the poor was a linguistic and semantic challenge considering that a large proportion of responding households were expected to be uneducated and/or illiterate. The pre-testing of the questionnaire and thorough training of enumerators helped to resolve this issue.

Locating specific addresses scattered across districts that were either populous, expansive, or both, was not an easy task. Partner NGOs and their field teams were provided additional financial support to cover the sample, so that resource constraints would not compromise quality of data collection.

Worsening security conditions in certain districts, particularly in Balochistan, rendered some areas completely inaccessible to field teams. Rather than resorting to non-probabilistic methods or compromising on quality, the sample size was scaled back to requirements commensurate with a 90% confidence level with +/- 5.5% Margin of Error in Balochistan.

Finally, for certain questions exploring the experiences of respondents who had come into contact with state and non-state justice delivery institutions, too few responses could be solicited to be viewed and analyzed as representative of the population. This is a common problem for surveys attempting to measure actual contact and experience of interaction between citizens and state rather than general perceptions, as the former subset of respondents is invariably smaller. For this report, while such findings have been presented, problems associated with the

number of responses have been duly noted as a necessary qualification.⁸

3.6 Characteristics of the Population

The population, as revealed by the sample, is composed of mostly women, ranging from 53% in KP to 93% in Balochistan. This reflects the feminization of poverty in Pakistan, which is a widely documented trend⁹, which is why most beneficiaries were women, as reflected in the sample. The majority of respondents in each province have received no formal education. The mean age of respondents varied within a small range across provinces, being 40 years for Punjab and Balochistan, 41 for Sindh and KP, and 39 years for GB.

Interviewees were mostly either 'heads of households' or 'wives of heads of households'. The largest number of households headed by women were found in Balochistan (27%), followed by KP (20%), Sindh (18%), Punjab (17%) and GB (13%), respectively, with most household heads being uneducated in each province. Most household heads were also most commonly employed in unskilled labor, with the exception of Sindh where 35% reported their profession as 'agriculturalist', and Balochistan where 26% were self-employed. An alarmingly large percentage of household heads were unemployed, the highest proportion being 35% in GB. Regarding household size, most households in KP, Punjab and Sindh comprised 5-9 people. A larger share of bigger households i.e. 10-14 people was found in Balochistan and GB. Overall, around 84% of respondents were from rural areas, while 16% were from urban areas.

Holistically, the population studied is fairly unique in terms of gender, consumption, education, employment and household dynamics. Quantitative findings reported from this survey are not therefore readily comparable with other surveys which may study similar phenomenon but for a different universe.

⁸ Similar trends were reported by the Social Audit 2011-12 where a large majority of respondents, 85 percent, claimed that no member of their household had ever contacted the police. This was similar to the Social Audit 2009-2010 when 86 percent households reported never having contact with police. Also in case of state's justice delivery institutions, similar trend was reported in the latest Social Audit report, according to which 86 percent of respondents had never contacted the courts

⁹ (Institute of Strategic Studies, 2012)





CHAPTER 4

Structural Factors I: Key Cross Cutting Issues

Chapter 4: Structural Factors I: Key Cross Cutting Issues

Legal empowerment of the poor depends on the environment in which state and society interact. For the purpose of this report these have been identified as structural factors: societal and institutional paradigms that cannot be expected to change in the short term and without a strong political commitment. Structural factors have been isolated for each of the areas discussed in the report. This chapter highlights and discusses some of these cross cutting structural issues.

4.1 Implementation Weaknesses

A very low confidence in the ability of the state to implement its laws and administrative decisions could be seen across both the demand and supply side stakeholders. A perception of receding writ of the state prevails. This can partly be explained by: the inability of the average citizen (not just the poorest) to receive relief from state authorities in routine; the recent conflict in Khyber Pakhtunkhwa and Balochistan and; probably, increased awareness through the electronic media.

In a number of the supply side group meetings, most participants were of the view that legal empowerment problems are not limited to the poor. Even the relatively well off, without the right 'social capital', cannot expect justice in routine. In Karachi, an FGD participant pointed out that many apartments in posh areas lie vacant as the owners fear losing the property to the tenant. Normally in such situations, where a tenant is to be evicted, the owners have to approach 'non-state actors' to intervene.

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Supply-side FGD,
Karachi

4.2 Poverty Determinants

Poverty determinants in the country depend on local socio-economic situation and therefore details would vary across the country. A broad analysis of the determinants across rural and urban areas has been included in this section to develop a perspective on relevant legal empowerment approaches.

4.2.1 Rural Poverty Determinants

The rural poverty determinants have been derived from an ADB study¹⁰ based on selected villages in eight districts picked from Punjab, KP and Sindh. The determinants may vary if applied to other parts of the country.

4.2.1.1 Access to Land and Land Ownership

Gazdar (2007) confirms correlation of poverty incidence to skewed land ownership as maximum 'benefits of agriculture' accrue to the land-owner. The study adds homestead land ownership or

¹⁰ (Asian Development Bank, 2008)

tenure as a factor of poverty, as those with minimal or no rights to security against eviction are the poorest.

FGDs with rural poor also revealed low land ownership and in rare exceptions, the source of property was revealed as inherited and eventually divided into smaller and less productive sizes. As a structural factor, land ownership has links to the socio-economic structure in the village including attitudes towards 'kinship groups' and females. State policies on redistribution have not made a major impact, primarily due to the ability of the elite to collude with state functionaries and distribute land on paper without loss of control. Gazdar (2007) highlights the impact of the Federal Land Commission Act of the 1970s as one of the factors in reduction of poverty incidence and inequality in the case of Dir.

Female landownership among the poor is negligible. In the FGDs, most participants agreed to female inheritance rights but accepted that the right is denied to women. The latter practice was found to be endemic across geographic, linguistic and even religious divides. In at least one case in Tehsil Chobbara of District Layyah, the response of the focus group to a question on legislation for female rights, argued that these laws would misdirect the females and incite them to stand against their fathers, brothers, husbands, etc; and disturb the whole fabric of society. They also considered these laws as un-Islamic¹¹, a view contrary to the Islamic law of inheritance, (Asian Development Bank, 2008).

4.2.1.2 Patterns of Farm and Non-Farm Labor Market Arrangements

The degree of poverty of a family depends on the type of labor arrangement it engages on the farm and the ability to enter labor market outside rural areas. On farm, labor arrangements include 'shared and other forms of tenancy' and 'casual labor'. The latter falls on the lowest rung of poverty and subsistence wages make them the most vulnerable to shocks.

Access to non-farm labor markets depends on migration and access to public service. The latter depends on some degree of education. In some regions international migration and consequent remittances have been important factors for reduction of poverty. In some cases the local rural economy becomes dependent on remittance income. According to an ADB study on impact of international remittances¹²:

- i. Average income of a migrant household is 17.5% higher than a non-migrant household.
- ii. The share of remittances in rural households increased from 3% to 5% during 2002-2006, while in urban areas it remained at around 4%.
- iii. The poverty headcount and Gini coefficient reduce by 7.8% and 4.8% respectively for households receiving remittances

Access to government jobs also reduces poverty and inequality. Gazdar (2007) highlights the

¹¹ Under Islamic law female inheritance is allowed and ensured.

¹² (Vaqr Ahmed, 2010)

case of Chakwal where persons from the weakest 'biraderi' or social stratum joined public services. This not only added to their income but also their social status.

Most females work in households and assist in farming without wages. In some activities, such as cotton picking and corn harvest, females participate as paid labor in certain parts of the Punjab and Sindh. According to Ghazdar (2007), females from poor families in Chakwal managed to move to government jobs, as teachers, through education. It remains the main conduit for upward mobility for women.

4.2.1.3 Social Structures

Social structures in villages also determine entrenchment of poverty. The more skewed and hierarchical the pattern, the lower will be the ability of individuals to benefit from opportunities of economic growth, including access to non-farm labor markets. Social groups at the lower tiers of hierarchies include mostly workers in debt bondage and females form the most vulnerable sections. (Vaqr Ahmed, 2010)

While patriarchy is endemic in almost all rural areas, its degree varies and determines social and physical mobility¹³ of the women and their access to labor markets, education, social services and involvement in decision making. One of the 'all-female focus groups' in Dir responded that the discussion on legal empowerment was irrelevant for them, as they remain completely outside the domain of decision making and are isolated from life outside the household.

The more skewed and hierarchical the pattern, the lower the ability of individuals to benefit from opportunities of economic growth, including access to non-farm labor markets.

Vaqr Ahmed, 2010

4.2.2 Determinants of Urban Poverty

Pakistan heads the urbanization count in South Asia. By 2030, two-thirds of the population is expected to live in urban areas. Urban population growth is estimated at 3 times the growth of the rural population.¹⁴ Rapid urbanization also means increased urban poverty, an under-researched domain in Pakistan. Dynamics of urban poverty differ from rural poverty. According to a World Bank study¹⁵ some of the characteristics of urban poverty include:

- i. Commoditization (reliance on the cash economy);
- ii. Overcrowded living conditions (slums);
- iii. Environmental hazards (stemming from density and hazardous location of settlements and exposure to multiple pollutants);
- iv. Social fragmentation (lack of community and inter-household mechanisms for social security, relative to those in rural areas);

¹³ (Mohmand S. and Ghazdar. H, 2007) (Mohmand S. and Ghazdar. H, 2007)

¹⁴ (Planning Commission of Pakistan , 2007)

¹⁵ (Baker, Judy ,World Bank, 2004)

- v. Crime and violence;
- vi. Traffic accidents; and
- vii. Natural disasters.

The above represent characteristics of urban poverty and not structural determinants. According to an ADB study on Poverty Assessment¹⁶:

“Even though the bulk of poverty in Pakistan is concentrated in the rural areas, and mitigating rural poverty has therefore dominated the research agenda, major pockets of urban poverty exist, and growing levels of urban inequality demand that a deeper insight into the structural issues of urban poverty be developed. There is an emergent need, in view of the large numbers of people affected by urban poverty, to develop an enriched understanding of its dynamics and trends.”

This report, has attempted three urban case studies to comprehend urban poverty determinants and related LEP issues, but these cannot be considered representative. Some of the common factors included low access to education and health, female social marginalization and weak property rights. (For details see Chapter 11: LEP in Urban Settings).

There is an emergent need, in view of the large numbers of people affected by urban poverty, to develop an enriched understanding of its dynamics and trends

ADB, 2008

4.3 Access to Education

Education provides opportunities for social mobility. Access to education depends on availability and quality of state services as well as local attitudes towards education. The FGDs revealed a very high demand for education. The problem lies on the supply side. Public schools in both urban and rural areas provide low quality education. In many cases these remain dysfunctional due to teacher absenteeism, control of local influentials for personal use or non-availability of teachers. An acute shortage exists beyond primary schools, especially, for females. Taboos against female education, opportunity cost of continuing education beyond primary level and low incentive in the absence of visible successful role models reduces the demand for education.

¹⁶ (Asian Development Bank, 2008)

Table 4.1: Comparative Education Indicators in Pakistan

	Gender	Punjab	Sindh	KP	Balochistan
Pop. that ever attended school	M	72	72	71	61
	F	53	47	35	20
Pop. that completed primary or above	M	60	62	57	48
	F	44	40	26	13
GER Primary (6-10)	M	103	91	100	92
	F	92	71	76	54
NER Primary (6-10)	M	73	68	71	68
	F	68	55	56	40
NER Middle (11-13)	M	38	39	40	34
	F	32	32	25	13
NER Secondary (14-15)	M	24	26	23	21
	F	21	20	14	4
Literacy Rate 15+	M	67	71	65	56
	F	47	43	28	15

Source: Pakistan Social and Living Standards Measurements Survey 2010-11

Gazdar (2007) highlights the link of education to access to off farm labor markets for both boys and girls in areas where favorable factors for poor children allow them to be educated.

In the urban case studies education provided a major conduit for social mobility, and access to schooling had improved the socio-economic status of the second and third generations of some of the families. (See Box 4.1)

Box 4.1: Education in Maryam Nishat Colony

Maryam Nishat Colony is a low income settlement in Lahore and one of the three case studies undertaken for this report. St. Mary's school set up in the early 1980s by the Church with the assistance of foreign missionaries has been an important source of social mobility and almost 30 years later, graduates of the school work as lawyers, run a local private school and are employed in various white collar jobs. The school charges minimal fees, provides better quality than the government schools and, as an institution within the settlement, is more accessible than the former. Limitations of capacity, attitude of families and extreme poverty prevented many children of the community from accessing its benefits. It nevertheless has been an important agent of change and continues to function as one.

The quantitative data supplements the findings of the FGDs. When asked to identify key problems of their areas from a given list, health and education followed poverty as the most critical areas. This indicates an implicit realization among the poor, of education as an important need, a fact underscored by opinions shared during demand-side FGDs.

Table 4.2: Most Important Problem of the Area (%)*					
	Punjab	Sindh	Balochistan	KP	GB
None	4	2	7	8	2
Health	25	28	26	23	31
Education	21	26	26	24	32
Law & Order	5	5	14	2	1
Terrorism	1	1	1	3	0
Justice delivery	7	2	2	4	0
Housing	4	9	4	5	0
Poverty	30	26	19	29	27
Other	2	1	0	3	8
Don't Know	1	0	1	1	0
Answer Refused	0	0	0	0	0
TOTAL	100	100	100	100	100

* These and all other figures quoted from survey findings are rounded to the nearest whole number.

The above table reveals education as the third-most important problem area after poverty and health. However, when asked about the most critical problems faced by individual households, inflation and unemployment were rated at the top.

When queried about boys and girls who did not go to school, four main reasons emerged which included both the demand and supply sides.

Table 4.3: Reasons for Not Going to School (%)										
	Punjab		Sindh		Balochistan		KP		GB	
	M	F	M	F	M	F	M	F	M	F
Can't bear the expense	71	48	64	34	58	38	59	30	63	35
No school is nearby	5	5	12	8	8	3	5	5	6	6
Employed	5	0	7	0	0	0	3	0	0	0
Works in the house	1	2	2	2	1	0	1	2	1	2
Not interested	4	3	4	2	7	3	6	3	0	1
Child not well	4	1	1	0	5	3	3	1	2	2

The highest percentage of respondents cited **affordability barriers**. While all provincial governments provide free textbooks and charge no fees, there are a number of expenses still borne by the parents. These include stationery, uniform and transport as the main expenditures. Article 25A of the Constitution of Pakistan, inserted after the 18th Amendment has made education for children from ages 5 to 16 mandatory as a fundamental right. The Article provides for the provinces to legislate for its implementation. How these laws define free education will

impact the demand for education as seen in the table above. In fact even the entry on child employment reveals the opportunity cost of education perceived by the parents. As is evident boys have a larger share in employment as compared to girls because of social barriers to female employment.

The next most significant reason cited was: “*No school nearby*” which points to supply-side deficiencies that constitute major access barriers. A lesser percentage of respondents cited “*Not interested*” as the reason for not sending children to school. Taken together with the respondents citing child employment and household work, it may indicate low faith in the outcomes of education: an indictment of the quality of education provided in public schools. **Most importantly, “*Child not well*” also emerges as a significant factor behind non-attendance of schools which may indicate poor access to health services, underscored by later discussion.** The bulk of the respondents had children in public schools with the percentage varying across provinces.

Table 4.4: Types of Schools Attended (%)

	Punjab		Sindh		Balochistan		KP		GB	
	M	F	M	F	M	F	M	F	M	F
Public School	74	44	73	51	50	38	52	45	57	38
Private School	17	18	10	15	20	24	13	13	19	16
Madrassa	2	8	5	9	11	14	10	12	10	17
Madrassa dispensing religious education only	6	16	8	13	11	16	17	19	13	24
Others	1	9	1	5	1	4	2	7	1	5
Don't know	1	4	1	2	3	2	4	4	0	0
Answer declined	0	3	1	6	5	2	2	2	0	0
TOTAL	100	100	100	100	100	100	100	100	100	100

GB had the highest percentage of students (both male and female) in *madrassas* dispensing exclusively religious education (contrary to expectations). If both categories of *madrassas* are added, then the combined set contains 27% and 31% of the male and the female students respectively from the poorest households in KP, 22% and 30% in case of Balochistan and 8% and 24% in the Punjab. While the ratio of male to female appears to be counter intuitive, the high percentages are unsurprising, as the *madrassas* provide not only free tuition and books but also shelter and food.

4.4 Health Service Delivery

Break down of health structures has resulted in a higher expenditure per episode. Failure of public health policy, and break down of the referral structure¹⁷ have led to increased incidence and intensity of health episodes. As the nearest functional health facilities entail high transportation costs, families normally avoid visits to hospitals till the episode becomes serious. This is especially true of female members of the family. Resultantly the expenditure increases manifold as free medicine is not provided by the hospital. The expenditure deepens the poverty levels for the poor and pushes those on the margins, into poverty. According to the Social Audit Report 2011-12¹⁸:

"Of the respondents that indicated government healthcare was available to them, only 15% of the respondents were satisfied with government health care which is about half the proportion in Khyber Pakhtunkhwa (30 percent), Sindh (28 percent), and about third of the proportion in Punjab (46 percent)."

The above data of the social audit report does not represent the poor only but a broader cross section of incomes.

The data for the current report reveals private set ups to be the most utilized in all provinces, except GB. In Punjab and Sindh, the most populated provinces, 38% and 38% respondents respectively, revealed that they used private sector services. This was followed by BHUs.

Table 4.5: Type of Services Used (%)					
	Punjab	Sindh	Balochistan	KP	GB
Nowhere	5	3	17	1	0
Government BHU	16	21	4	15	7
Government RHC	6	6	1	9	3
Govt. Dispensary	9	21	15	4	17
Tehsil HQs Hospital	8	3	17	15	23
District HQs Hospital	8	6	21	33	41
Private Clinic	38	38	9	18	0
Traditional Hakeem	9	0	9	3	0
Others	0	0	0	1	7
Don't know	0	0	2	0	0
Answer Refused	0	2	4	1	0
TOTAL	100	100	100	100	100

17 Under the referral structure built into the design of the healthcare system in Pakistan the first stop for health is at the local level BHUs or RHCs, to Tehsil Headquarters Hospitals, District Head Quarter Hospitals and teaching hospitals. Failure of primary care and lower tiers has shifted the burden to tertiary hospital i.e. the DHQs and the teaching hospitals adding to costs and quality of service.

18 (UNDP, 2011)

What remains unclear is the type of private sector provider. During the urban case studies for this report, quacks were found in all poor areas. The standard, quality and legitimacy of the sector cannot be determined from the statistic. In case of KP, Balochistan and GB the lower private sector usage appears to be replaced by higher pressure on district headquarters hospitals. In all cases, rural health care appears to be dysfunctional (or at best weakly functioning) and a break-down of the referral system is obvious which adds to the costs of expenditure on health episodes.

The following table shows the average expenditure on the last health service utilized.

Table 4.6: Average Expenditure on last Episode (%age)					
	Punjab	Sindh	Balochistan	KP	GB
Less than 1,000	50	44	53	30	24
Between 1,000-5,000	28	35	36	39	21
Between 6,000-10,000	9	9	4	13	15
Between 11,000-50,000	10	8	2	15	32
Between 51,000-100,000	2	1	0	2	7
More than 100,000	2	3	5	1	1
TOTAL	100	100	100	100	100

The expenditure for the majority in Punjab, Sindh and Balochistan was less than PKR 1,000, though in the case of Punjab more than 20% incurred expenditure above PKR 1,000, and in Sindh more than 30% of the respondents incurred expense between PKR 1,000 and PKR 5,000. In case of KP, the percentage rises to almost 40% for the same range, despite lower use of private services. Practically, **the poor receive very little benefit from the officially free health services.**

Table 4.7: Gender of Person taken for Treatment					
	Punjab	Sindh	Balochistan	KP	GB
Male	39	40	30	40	37
Female	58	44	49	54	59
Don't know	1	0	13	1	0
Answer refused	2	15	7	5	4
TOTAL	100	100	100	100	100

Apparently more females were taken than males but whether the difference is significant cannot be determined from the current analysis.

4.5 Issues of State Institutions

Three critical trends have become endemic in Public Sector Organizations (PSOs): corruption, capture by the elites and an input (or at best process) focused approach without consideration for the 'clientele'.

Corruption as an endemic problem has been highlighted in various reports of TI, the National Anti-corruption Strategy (NACS); feedback from stakeholders for this report and a plethora of newspaper reports depict a picture of endemic corruption woven into the fabric of state institutions.¹⁹

Table 4.8: Pakistan's TI Ranking

Year	Ranking	Score	No. of countries
2011	134	2.0	182
2010	143	2.3	178
2009	139	2.4	180
2008	134	2.5	180
2007	138	2.4	179
2006	142	2.2	163
2005	144	2.1	159
2004	129	2.1	147
2003	92	2.5	133
2002	77	2.6	102
2001	79	2.3	91
2000	77	2.6	90
1999	87	2.2	99
1998	71	2.7	85
1997	48	2.53	52
1996	53	1.0	54
1995	53	2.25	54

Source: Various TI Reports

This increases transaction costs of the poor to a prohibitive level and provides an incentive to remain 'below the radar of the state'.

Second, the phenomenon of elite capture stems from the ability of the powerful to impact internal decisions on appointments, transfers and postings, disciplinary proceedings and in some cases, even recruitment and ability to pay bribes. Elite 'patrons' protect 'client' civil servants against meritocratic governance and receive a quid pro quo from state functionaries in the form of enhancement of financial, social and political capital.

¹⁹ (National Accountability Bureau (NAB), Government of Pakistan, 2002)

All poor groups across every province admitted to using local elites as intermediaries, whenever they had to visit a government office. In the absence of these intermediaries their problems remain unresolved. The symbiotic relation between local elites and state functionaries has become entrenched. It excludes the poor from being direct beneficiaries of the state and raises the political value of the elite for the poor thereby adversely impacting the democratization process. Use of intermediaries is also borne out by the Social Audit Report for 2011-12: *"Data shows that vulnerable population or vulnerable households are more likely to contact family/area/biraderi elders, while non vulnerable households are more likely to contact union council employees."*²⁰

Finally, **state institutions do not have a citizen focus.** Internal accountability mechanisms primarily focus on processes, not outputs and impact. In the police service, disposal of FIRs is the primary concern for internal accountability. It creates perverse incentives to avoid registration of FIRs and in many cases to 'dispose' off cases without due process. Similarly, in the education sector the number of schools and enrollment is prioritized far above the quality of education imparted and its impact on the economy. Additionally, it is reactive to emergencies as was shown in the response to floods and dengue fever outbreaks. The Social Audit Report 2011-12 also expresses a similar view: *"...assigning priorities based on perceived development priorities without considering the demand side preferences is a common phenomenon in the decision making milieu of Pakistani public sector..... in many instances huge allocations are made for services or infrastructures at the expense of the more basic services that people actually want."*²¹

4.6 Democratization & Accountability

In 2007 a movement for independence of judiciary was initiated in Pakistan that culminated in the restoration of democratic institutions through elections in 2008 and subsequent emergence of a strong and independent Supreme Court of Pakistan. A significant and parallel development has been the growth of a vocal electronic media in English, Urdu and some of the provincial languages. Empowerment of the poor depends (among others) on the degree to which their voice is taken up by the media. There was a general perception that issues targeted by the media do not capture issues of governance at the grass root level. Many of the poor groups seemed unaware of and unconcerned with, issues raised in the electronic media, as they either did not have access or did not have time to follow it. In case of courts also, the impact has not devolved to the poor. In some of the supply-side FGDs, paucity of legal aid options appeared as a serious problem while most demand-side participants stated that they have never had interaction with the court. In case of KP, one of the participants of the FGDs stated that he has to lose a day's wage (at minimum) to pursue a case. Almost all considered lawyers' fees to be beyond their financial reach.

A more critical factor for empowerment is devolution of political powers to the local level. A local government system initiated in the previous government led by General Pervez Musharraf has been reversed in the new democratic dispensation. **Devolution of state services to the people is a necessary (though not a sufficient) condition for increased empowerment of the people.** The process in Pakistan is discussed in detail in the next chapter.

²⁰ (UNDP, 2011)

²¹ Ibid





CHAPTER 5

Structural Factors II: Local Governance

Chapter 5: Structural Factors II: Local Governance

A necessary, though not a sufficient, condition for empowerment of the poor is the devolution of power to grass root political institutions. Succeeding democratic governments have reversed three experiments, under different military regimes. The last exercise under General Pervez Musharraf can be considered the most 'revolutionary'. Its rejection by all provincial governments after the lapse of the relevant laws in 2009, reveals serious flaws in the process adopted for devolution, even as independent surveys have shown some positive results of devolution itself. Pakistan will move towards sustainable devolution only through a politically led process, probably over time and at multiple speeds in different parts of the country. Military sponsored efforts have proved politically unsustainable.

5.1 Decentralization for Empowerment

Decentralization has come to occupy center stage in governance thinking and practice for at least the past 5 decades.²² The wave of decentralization has swept Asia, Africa, Latin America, and transitional economies numbering over 60 countries, with the latest followers in this trend including India, The Philippines, Indonesia, Thailand, Brazil, Sri Lanka, Nepal, Mexico, and Pakistan. It has gained ground, in part, as an alternative to the lackluster performance of centralized planning and development models of the 1960s and 1950s.²³ Many of these initiatives have been funded by donors, chiefly the World Bank.²⁴

5.1.1 Theoretical Support

Theoretical support for decentralization in Pakistan includes the rationale that countries with a high level of patronage politics in government need a comprehensive institutional reform program to "*correct patrimonial distortions in the institutional environment, the incentives framework and the performance of core government institutions*".²⁵ The institutional environment of developing countries in particular calls for a greater degree of decentralization than needed for industrialized countries.²⁶ It enhances economic efficiency in the face of different local preferences for local public goods²⁷, brings local government closer to the people,²⁸ accommodates pressure for regional autonomy and, hence increases the legitimacy and sustainability of heterogeneous nation-states.²⁹ It also leads to better protection of rights, more effective service delivery, and greater accountability.³⁰

22 (Conyers, 1984)

23 (Rabinovitch, 1999)

24 (Kenneth Davey, 1989)

25 (Dia, 1994)

26 (Anwar Shah, 1998)

27 (Musgrave, 1983)

28 (Rubinfeld, 1996)

29 (Daniel, 1998)

30 (Azfar, 2001)

5.1.2 International Experiences

Empirical analyses of decentralization across (and within) countries from Africa, Latin America and Asia reveal mixed performance on political, social, and economic indicators, as shown in the figure below.

Table 5.1: International Experiences in Local Government		
Country	Representation, Participation & Responsiveness	Impact on Social and Economic Poverty
Colombia	Fairly good: evidence on participation/representation	Fairly good: little evidence on growth or equity, but good results on human development, spatial equity
Bangladesh	Poor: some improvement in participation, but very negative on representation of poor and responsiveness to the poor	Very poor on all criteria, undermined by corruption and political patronage.
West Bengal (India)	Good: Improved participation and representation, improved responsiveness	Good: positive on growth, equity, human development; evidence lacking on spatial equity
Ghana	Fairly good: participation by poor and community groups improved, limited improvement in representation, but responsiveness low.	Limited evidence shows that the resources involved were too insignificant to have made much impact. Spatial equity may have improved through government allocations

Source: World Bank, 1998

5.2 Historical Perspective

Under the British, local governments were formed of local elites, co-opted through extensive patronage systems, appointed by the central bureaucracy featuring a deliberate urban-rural divide, with the Deputy Commissioner emerging as the most powerful local governance actor.³¹ In 1959 Ayub Khan revived a 4 tier local government structure, with the lowest tier elected directly, but their powers were severely curtailed by the controlling authority vested in the DC and Commissioner, and they controversially became the Electoral College for electing the President, thereby legitimizing one-man military rule.³² After a period of dormancy during PPP government of 1972-77, under Mr. Z.A Bhutto, local governments were again revived under General Zia-ul-Haq's military rule in 1979, as the only body with electoral representation, with real power concentrated at the centre. While bureaucratic interference was diluted, the

³¹ (Tinker, 1968), & (Ahmad, 1964)

³² (Siddiqui, 1992) and (Burki, 1980)

urban-rural divide prevailed as it had since the colonial era. Elected provincial and federal governments in 1985 were dominated by local body politicians, transplanting a culture of local and personal patronage to higher tiers of government, promoted by the absence of strong party organizations. Non-party politics weakened political ownership of local governments by higher tiers, who viewed the latter as competing patronage systems³³. Additionally, many of the newly elected members of the provincial and national legislatures had risen from the local bodies and carried with them a hangover of municipal development work. It resulted in vertical development programs that gave provincial governments un-audited control over local allocations, and centralization of revenues allowed them to further dominate local service provision, especially after 1990. The competition for funds for development work, combined with corruption of local level elected officials, widened the trust deficit that culminated in the suspension of local bodies throughout the period 1993-1998.³⁴

The emerging pattern is one of zealous reform under military regimes that took over in 1959 and 1979 respectively. In both cases the move towards local bodies is seen as efforts to legitimize their rule and create constituencies for the ruling military dictators. In the 1960s the local councils (known as members of the 'basic democracies') formed the electoral college for the Presidential elections and the then President Ayub Khan was 'elected' by these councilors, dependent on state largesse, against Miss Fatima Jinnah, the sister of the founder of Pakistan. In the 1980s the local body members formed the bulk of the parliament, elected in non-party polls, resultantly the reversals in the post military regime became easy for political governments more interested in centralization of powers at the provincial level.

5.3 The Local Government Ordinance (LGO) 2001

5.3.1 Goals

On taking over the country in a military coup de tat in 1999, the then military dictator General Pervez Musharraf announced a seven point reform agenda that included devolution of power to the grass roots level. The National Reconstruction Bureau (NRB) was set up for reform of the public sector including development of a local government plan, known as the 'devolution plan'. On the 14th of August, 2001, all provincial governments promulgated Local Government Ordinances based on the final devolution plan. According to the NRB, the Ordinances attempted to:

- i. Devolve political power to 3 tiers of elected local leadership (District, Tehsils and Unions);
- ii. Decentralize administrative authority through greater operational autonomy for district level departments;
- iii. Distribute resources to districts and municipalities through new taxation powers and transfers;

³³ (Wilder, 1999)

³⁴ (Ali Cheema, 2005)

- iv. De-concentrate management functions, under human resource principles emphasizing specialization, performance, and meritocracy; and
- v. Diffusion of the power authority nexus through enhanced accountability by citizens and their elected representatives and mechanisms for involvement of civil society in development work

5.3.2 Intended Changes

In pursuit of these goals, the LGO 2001 brought about manifold political, administrative and fiscal changes to local governance in Pakistan. Politically, it created 6,458 new constitutionally protected, albeit indirectly elected (with the exception of the Union Council, the lowest tier) local governments, with reserved seats for women (1/3rd) and other socially excluded groups. Administratively, the district governments were divided into 11 groups, the roles and numbers of federal staff from the District Management Group (DMG) were scaled back and provincial staff (from the Public Health Engineering, Rural Development, Local Government, and Education groups) was transferred to the districts, with staff of the former district rural councils becoming district employees. Most importantly, the responsibility for delivering elementary and secondary education, primary and secondary health, (among other services) was given to district governments. Fiscally, the authority to levy and collect buoyant taxes such as the local rate on lands assessable to land revenue, as well as the Urban Immovable Property Tax was given to the local governments, while a Provincial Finance Commission was created (to mirror the National Finance Commission at the federal level) for systematic province to local intergovernmental transfers based on formula including population and under-development, fiscal effort, revenue generation capacity and expenditure requirement. Of particular importance to this report are changes which dealt with citizen voice, citizen participation, accountability, and access to justice.³⁵

The LGO 2001:

1. Abolished the office of the Deputy Commissioner
2. Mandated committees for oversight by elected representatives
3. Created a District Ombudsman
4. Created various citizen participation mechanisms
5. Set up departmental grievance redress mechanisms
6. Created state sanctioned ADR mechanisms

First, (together with its twin reform, the Police Order 2002, discussed later), the LGO 2001 abolished the office of the Deputy Commissioner and its powers were transferred to District and Sessions Judges, District Nazims (mayor, elected indirectly on non-party basis) and the District Coordination Officer (highest-ranking civil servant in the district). Most significantly, the Nazim was authorized to write the Annual Confidential Reports for both the District Coordination Officer and the District Police Officer, the senior most executive officials in the district, which would play a major role in decisions for appointments, postings and transfers.³⁶

Second, for legislative oversight of public spending and service delivery, various Committees

³⁵ (Asian Development Bank, World Bank, DFID, 2004)

³⁶ (National Reconstruction Bureau, Government of Pakistan, 2001)

were mandated for all local elected Councils. Accounts Committees were envisaged as subcommittees of district, Tehsil and union councils, to review internal and external audit reports and monitor activities of respective local governments to detect corruption or wastage of public funds. Similarly, Monitoring Committees were to be formed within each local council (with one-third representation of reserved seats members: women, peasants, workers and minorities) which through the involvement of citizens and regular field visits would compile quarterly reports on the functions of the respective level of government. Therefore, the District Council Monitoring Committee would oversee Health and Education (among others), the Tehsil (or Town) Monitoring Committee would oversee infrastructure and regulation, while the Union Council Monitoring Committee would oversee *all* services delivered by the local government (including higher tiers) within its jurisdiction.³⁷

Third, the office of Zilla Mohtasib (District Ombudsman) was created to provide redress for grievances arising from maladministration of all public office holders in local governments. The Mohtasib³⁸:

- i. Was to be appointed by a non-political provincial committee through due process
- ii. Could not be removed from office for any reason barring mental/physical incapacity
- iii. Immune to injunctions or stays for proceedings sub-judice before his/her office
- iv. Could start investigations of his/her own volition and in response to complaints
- v. Could make time-bound recommendations to the public office (including disciplinary action and criminal proceeding)
- vi. Enjoyed the same powers vested in a civil court for summoning persons, compelling production of documents, and awarding compensation
- vii. Bound to present an annual report on achievements to the district council and make them publicly available

Fourth, Tehsil Councils could notify Village and Neighborhood Councils (for rural and urban areas, respectively) composed of 5-11 members elected directly. These Councils were mandated to buttress tertiary level delivery of water and sanitation and other municipal services, including the organization of watch and ward through unarmed village /neighborhood guards. They could also assist the Union Administration in collection of data and taxes. Finally, they could raise funds to *“develop and maintain municipal and community welfare facilities”*.³⁹

Fifth, any collection of 25 ordinary citizens could register themselves as a Citizen Community Board (CCB) with the local government to obtain 80% cost-sharing support for development schemes that would be planned, executed and maintained by the CCB. The remaining 20% of

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

the budgeted amount for these development schemes was to be contributed in cash or in-kind by the community benefiting from the project. At least 25% of the development budget at each local government tier was allocated exclusively for expenditure through CCBs. CCBs could also take up the formation of stakeholder associations for involving the community in the improvement and upkeep of public facilities including: “*parent-teacher associations, patient-hospital management association, school management association or farm water associations or citizen-police liaison association.*”⁴⁰

Sixth, all local governments were obligated to set up Departmental Grievance Redress and Complaint Cells for grievances related to their respective responsibilities. Seventh, every public office was required to provide information solicited by any citizen concerning any office of any local government tier, and publicly display information concerning monthly staffing and performance within office premises.⁴¹

Eighth, Insaaf Committees were to be elected from among the District, Union and Tehsil Councils. Union level Insaaf Committees were to select 3 Musaliheen i.e. upstanding residents of the Union who would constitute a Musalihat Anjuman to facilitate “*out of court amicable settlement of disputes*” (civil and criminal), with assistance from the Union Nazim and the Insaaf Committee, free of cost. Courts could both refer cases to Anjumans, and make their settlements the “*Rule of the Court*”. Parties involved in disputes could request the appointment of persons other than the appointed Musaliheen, who would thereby be appointed by the Union Nazim in consultation with the Insaaf Committee.⁴²

5.3.3 Implementation Gaps

As with the Police Order 2002, the gap between de jure policy and de facto implementation remained significant for certain measures, while being less so for others. Gaps in implementation arose from the failure to envisage a detailed transitional strategy as the NRB pushed the provincial governments into supplanting the system on a fast-track basis. In many cases, the spirit of devolution could not be realized and a system unprepared to absorb the wholesale changes began to interpret the various sections of the law as per their own understanding and interest.

Provincial departments of health and education continued in parallel to the district roles in the subjects.⁴³ The latter simply paid salaries while development funds were administered by the provincial governments. No clear strategy was developed on devolution of functions and primarily administrative powers were delegated, that failed to shift responsibility to the local governments. Within the lower tiers, powers began to centralize at the district level, in the offices of the Executive District Officers and the DCOs.

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ (Javed Hasan Aly, 2007)

Fiscal decentralization could not be completed as envisaged. Inability of the district governments to undertake tax collection responsibilities, low tax potential of poorer districts and provincial resistance all combined to keep the districts dependent on transfers from the Provincial Finance Commission. The criterion for PFC in the LGOs could not be followed as traditional incremental budgeting processes continued.

Box 5.1: Fiscal Reforms

Under the LGO 2001, Provincial Finance Commissions were formed in 2002-03 by all provincial governments. PFC membership included representatives of the provincial and local government, as well as the private sector. The formula for distribution to local governments, took into account not only population and under-development, but also fiscal effort, revenue generation capacity and expenditure requirement to incentivize fiscal independence, and expenditure efficiency. Allocations down to the Union level were intended to make the transfers transparent and the financial position of each district clear. This provided fiscal space to the local governments who would in turn stand accountable to their constituents. It would also balance out geographical inequities and depoliticize expenditure to make growth inclusive and equitable (National Reconstruction Bureau).

Fiscal equalization was firmed up through formula based grants to financially weak local governments. The Punjab PFC, for instance, recommended a grant of Rs. 110 million for TMAs (Tehsil Municipal Authorities) whose annual share of octroi was less than Rs. 10 million and an additional Rs. 22 million for TMAs whose share of octroi fell below Rs. 3 million per annum, for FY 02-04, (Government of Punjab, 2002-03, 2003-04). Establishment charges, which form the bulk of local government spending, were previously withheld by provincial governments. Post-devolution they were transferred to local governments who could alter them according to budgetary requirements. District and Tehsil funds were created as separate accounting entities from the provincial consolidated fund, to disallow re-appropriation by the province and to allow transfers to become non-lapsable.

However, up till 2004, most of these transfers were still negotiated in the context of the inter-governmental politics. Provincial claw-back of fiscal autonomy began almost immediately with the provincial Departments of Finance imposing a number of "notifications, instructions and operational practices". Recurrent budgets were almost completely controlled by provinces that set staffing limits, thereby controlling wage bills that were paid from provincial accounts, while in KP and Punjab the non-salary component was also earmarked at provincial levels. Development budgets were undermined through vertical projects financed from constituency development funds allocated to MPAs. Devolved funds for uncompleted schemes implied a throw-forward which eliminated all remaining elbow-room, (Asian Development Bank, World Bank, DFID, 2004). At the same time, the situation was assessed to be improving as the de facto formula-based transfers and thus the predictability of province to local government fiscal flows was on the rise.

While districts were assigned health and education taxes that are practically difficult to levy, the Urban Tax on Immovable Property, a high-yielding earner, was assigned to Tehsils. Peshawar was able to increase collection under this head by 261% from FY 97-01, through fresh assessment of taxable property and adjustment in the assessment and classification schedules.⁴⁴ The rating area was expanded to the entire Tehsil under the devolution reform. This helped create a culture of compliance by making the public goods and services funded through local taxes visible, verifiable and accountable in their delivery, to local taxpayers. By 2004, a sample of Tehsils across Pakistan was showing encouraging signs of enhancement in own-source revenue generation.⁴⁵ The bulk of districts continued to display extremely low fiscal capacity.

According to an assessment in 2004, Accounts Committees were described as *“formed but not functional”* and Monitoring Committees were *“formed but only partly functional”* at the district and Tehsil levels⁴⁶. According to another source, by end-2008, local council monitoring committees had been notified in 36 districts and had submitted 48 Quarterly Evaluation Reports to their respective Zillah and Tehsil councils.⁴⁷ According to a 2010 review they existed *“mostly on paper”*.⁴⁸

Also, according to the assessment, Village and Neighborhood Councils (VNCs) were described as *“not formed in any district”*.⁴⁹ According to a 2010 review, at least 1,281 Councils had been established and made operational in 28 districts across the country.⁵⁰ In 2009 the Devolution Trust for Community Empowerment (DTCE) conducted an empirical evaluation of VNCs in 7 districts across all 4 provinces. This included a survey of 1200 respondents randomly sampled from 100 ‘treatment’ villages where VNCs were formed and 1200 respondents from 50 ‘control’ villages where they were absent. The Study concluded that⁵¹:

- VNCs enjoyed a higher approval rating than other local, provincial and national institutions and the majority of respondents believed that they were successfully discharging their responsibilities, as well as enjoying the highest public confidence as ‘resolver of important village issues’ followed by MNAs
- VNC Chairpersons and members were only slightly better off financially than ordinary citizens i.e. elite capture was not apparent
- While 29% of the respondents related that law and order situation had improved since the formation of VNCs (who could appoint village guards), 41% felt it had worsened, whereas 30% felt no change. Similar findings were reported for other mandated services including street lighting, garbage disposal and street cleaning

44 Ibid

45 Ibid

46 (Asian Development Bank, World Bank, DFID, 2004)

47 (Devolution Trust for Community Empowerment (DTCE), 2010)

48 (Mezzera, 2010)

49 (Asian Development Bank, World Bank, DFID, 2004)

50 Ibid

51 (Devolution Trust for Community Empowerment (DTCE), 2009)

According to an assessment in 2004 Citizen Community Boards (CCBs) were described as “A few isolated successes, but the initiative is generally stalled.”⁵² According to DTCE sources, as of March 2010, a total of 49,643 CCBs had been registered, for whom a total of 19,391 development schemes had been approved, which had utilized a total of PKR 9.3 billion in funding. According to an evaluation study conducted by DTCE in 2005, it was also found that CCBs were contributing towards key indicators of community empowerment including registered increases in the levels of altruism, networking and social capital building, political power, organization, skills, leadership, and relationship between the local councils and the community.⁵³ However, problems of capture by local elites and /or contractors hunting project funding are also apparent, and local government officials continued to view CCBs in a negative light.⁵⁴

Departmental Grievance Redress and Complaints Cells were described as: “Poorly developed in all districts”.⁵⁵ By 2010 their functionality had not improved.⁵⁶ Similarly, anecdotal evidence suggests that the access to information provisions of the LGO 2001/05 were also not implemented in letter or spirit by the local governments.⁵⁷

The Insaaf Committees were found to be “established but generally ineffective” while Musalihat Anjumans were formed at the union level and were “effective”. According to the Gender Justice through Musalihat Anjuman Project, by the end of 2007, 1003 Anjumans had been formed with 84% average representation of women. These bodies had received 5,763 cases and had settled 72% of them.⁵⁸ All planned Musalihat Anjumans were operationalized by 2010 in 1050 UCs. By December 2010 they had processed 5,784 cases within 10 months and had settled 4,197 of them.⁵⁹

5.3.4 Impacts

Social Audit Report for 2011-12 compares the performance of the current, bureaucracy led, local government system with the previous regime through feedback from the community in different provinces. The elected governments were considered as more easily available to people although the communities perceived them as more corrupt and less capable than the bureaucratic system.

“The major themes recurring in the views of different stake holders regarding efficiency and efficacy of elected and administrative local government systems was that the former suffers from excessive corruption and incapacity despite having the advantage of being accessible to common man, while the latter is less corrupt and more efficient in terms of capacity, while being inaccessible and unresponsive to the needs of people”⁶⁰

52 (Asian Development Bank, World Bank, DFID, 2004)

53 (Azhar Malik and Usama Bakhtiar Ahmed, 2005)

54 (Mezzeria, 2010)

55 (Asian Development Bank, World Bank, DFID, 2004)

56 (Mezzeria, 2010)

57 (Pakistan Press Foundation)

58 (Gender Justice Through Musalihat Anjuman Project-UNDP)

59 (USAID-Aurat Foundation, Gender Equity Program, 2011)

60 (UNDP, 2011)

In case of marginalized groups in general, indifference prevailed between the two systems as they felt their conditions had remained unchanged irrespective of the system. In the FGDs conducted for this report, a direct question of local government was not asked but when questioned about offices that can make a difference, a very small minority mentioned union councils. As the respondents belonged to the poorest groups the response can be inferred to be similar to the one in the Social Audit Report.

Table 5.2: Comparison of Local Government Systems						
	Elected LGS			Administrative LGS		
	High	Moderate	Low	High	Moderate	Low
Accessibility	✓					✓
Responsiveness	✓					✓
Service Delivery		✓				✓
Addressing Needs	✓					✓
Capacity			✓	✓		
Check & Balance			✓		✓	
Corruption	✓					✓
Consultation		✓				✓
Sense of Ownership	✓					✓

Source: Social Audit Report 2011-12

Table 5.2 reveals a higher comfort level of stakeholders with elected local governments despite perceptions of greater corruption and lower capacity. It demonstrates the potential of local government systems even with implementation gaps.

AC Nielsen Pakistan in collaboration with The Urban Institute carried out an assessment of the devolved local government system in Pakistan, involving a survey of ordinary citizens. When asked "Which level of government can you easily access?" and "Which government office did you visit most recently?", the most common response was "Union government" as compared to higher local, provincial and national tiers. When asked: "Which level of government is most responsive?" the most common response was, again, the Union (30%), followed by district (9%), provincial (8%) and federal governments (8%). According to the study: "there is no *prima facie* case for taking back control of local affairs to the provinces on the justification that they are more accountable, transparent or responsive... Whatever the senior bureaucrats in the provinces might think about it, these results suggest that there is no strong public support for the idea of increasing bureaucratic control over local affairs."⁶¹ These findings are corroborated by the Social Audit. In 2010, 25% of

61 (Shahzad Arif, William Cartier, Andrew Golda & Ritu Nayyar-Stone, USAID-Urban Institute, 2010)

the households contacted a UC member (21% in 2002), out of whom, almost 43% were satisfied by the responding treatment.⁶²

5.4 Local Government Debate

The 2008 national elections sparked a debate surrounding the local government system, which began with federal and provincial governments taking public positions on the issue, but has since grown to include prolific comment and opinion sharing from Nazimeen and local councilors, civil society leaders, academics, and media professionals.

Contrary to empirical evidence, provincial governments have moved since 2008 to reconstruct the pre-devolution authority structure, challenging the powers of the Nazimeen, and interfering in personnel management and routine administration, especially in areas of health and education. LGOs have been allowed to lapse, leaving local governments without legal backing. Punjab has re-established commissionerates and the local government elections to be held within 3 months of the general elections, as committed by the Charter of Democracy, have yet to be held.

On April 12, 2012 the Supreme Court ordered the provincial governments to hold local government elections as per the 18th Constitutional Amendment. By May, Balochistan had passed the Balochistan Local Government Act 2010 that was amended in 2011. It abolished the Tehsil tier of government, retained tax assignment for local governments as well as women membership quotas at the lowest tier, and re-established the divisional tier governed by a Divisional Coordination Committee.⁶³

Sindh reverted to the pre-devolution ante through the Sindh (Repeal of the Sindh Local Government Ordinance 2001 and Revival of The Sindh Local Government Ordinance 1979) Act 2011, absent the divisional tier. In March 2011, Punjab promulgated the Land Revenue (Amendment) Act 2011 which revived divisions along with the officiating hierarchy of revenue administration, now headed by the Commissioner and Assistant Commissioners, via amendments in various Acts through the Punjab Laws (Amendment) Act, 2011.⁶⁴

The KP Assembly passed the Khyber Pakhtunkhwa Local Government Act 2012 in May. Local governments already stood dissolved, with local administrators in charge. The UC membership lost female membership, Tehsil level was abolished, and the urban-rural distinction was revived for municipalities. However, the District Council was retained, who would head the District Coordination Committee and allocate development funds to UCs. Musalihat Anjumans have

There is no prima facie case for taking back control of local affairs to the provinces on the justification that they are more accountable, transparent or responsive... There is no strong public support for the idea of increasing bureaucratic control over local affairs.

Urban Institute, 2010

⁶² (UNDP, 2011)

⁶³ Ibid

⁶⁴ Ibid

been formalized at each local tier.⁶⁵

The provinces' recession from the local government system does not comply with aspirations of the people as captured in successive Social Audit Reports, including the report for 2010, wherein even the vulnerable groups desired an elected local government system. Other reports have gleaned similar sentiments.

Unfortunately the development funds syndrome of the provincial and national legislators continues, as huge funds have been provided to each, for work in their constituencies. The role of the local government has been assigned to the inaccessible MNA or MPA, which has strengthened the vested interest in the provincial legislatures against devolution.

Irrespective of the on-ground situation and apparent feet dragging of the political parties, their manifestos reveal some degree of support for elected local governments.

5.4.1 De Jure Political Stance

Pakistan Tehrik-e-Insaaf, which did not contest the last elections, has been vocal about local government; its manifesto proposes the following reforms for local government:

- Establishment of Citizen Community Boards (CCBs)
- Districts Nazim to be elected from Tehsil and Union Nazims
- Clarified authority and responsibility of each tier
- Funds allocation from PFCs to bypass district Nazims
- Financial transparency guaranteed in project execution

Muttahida Qaumi Movement (MQM) describes "*devolution of power to the grass roots level*" as a "*cherished goal*" and supports a neutral, impartial and independent Election Commission for local body elections. Aside from this, they posit a number of reforms for City District Governments (unsurprising given their urban powerbase). A single administrative agency headed by the Nazim would control all service delivery, revenue raising master planning, etc., while:

- Community policing would be introduced and the Police Commissioner would be elected
- A number of service delivery areas ranging from housing to water provision would be prioritized

Pakistan Muslim League (Q), the allies of the architect of Devolution 2001, only mentions "*Village Development Initiative for integrated development of rural communities*", which would be carried out "*in cooperation with the local government*". The party calls itself the "*architect of devolution of powers in Pakistan*" but is quick to clarify that while provincial-local devolution is *fait accompli* it

⁶⁵ Ibid

is federal-provincial devolution that must now be prioritized.

The Pakistan Muslim League N claims: *“Devolution, decentralization, and delegation shall be pursued to create a government that is closer to people and works.”* They also promise a District Ombudsman in every district to provide recourse to *“common men against injustice of local offices.”* Their four years in the Punjab have seen a reversal of the devolution system and its replacement by the older bureaucratic systems. The de facto policy clearly contradicts the manifesto.

Pakistan People’s Party (PPP) also has a similar dichotomy. Their manifesto promises various local government reforms, specifically:

- Party-based elections for local bodies (to be held within 3 months of general elections),
- Return of octroi tax assignment to local governments,
- Service delivery responsibilities of primary education basic health, WATSAN and population welfare to be performed by local governments
- The Deputy Commissioner to replace the DCO

In addition to the federal government, the PPP has governments in Sindh and Balochistan and has reverted to administrative local governments. Again a gap can be seen between the manifesto and the on-ground policy.

5.4.2 Causes for Implementation Failure

The devolution plan could not be implemented as designed and, as seen, has been reversed by the provincial governments. The failure of the local government system to sustain itself cannot be blamed solely on the centralizing tendencies of the political parties in power. The process of development and implementation of the devolution plan played a major role in its ultimate retreat. Reform is not only about ‘what’ it changes, but ‘how’ it changes – process is as (if not more) important as the outcome.

In one of the Supply Side FGDs conducted for this report, a senior member of the NRB team when questioned on the documentation of the Bureau’s assessment of the pre-devolution system confessed to its non-existence. The Devolution Plan attempted to supplant the system without preparing, or at least, documenting the situation diagnostics. Some of the main deficits of the process, as raised by supply-side stakeholders, were as follows:

The process of development and implementation of the devolution plan played a major role in its ultimate retreat. Reform is not only about ‘what’ it changes, but ‘how’ it changes – process is as (if not more) important than outcome.

- i. The NRB functioned as a closed shop and consultations for the devolution system were limited to an inner circle of ‘experts’.

- ii. As devolution became an important 'political agenda' of the military regime for legitimacy, the Bureau would often be pressured into developing documents, including draft statutes, on a fast-track basis with unrealistic time frames.
- iii. Two stakeholder groups critical to successful reform were excluded from the process: the political parties and the powerful district management group of the civil services. The latter viewed, and continues to view, the entire devolution process as an agenda to weaken the DMG.
- iv. The devolution plan did not contain an implementation-transition strategy. These were again prepared overnight by the provinces to ensure 'timely implementation'.

The process, or absence of it, positioned devolution for collapse upon return to democratic politics. Developed in political isolation, it was left defenseless when politics became important again.

5.5 Way Forward

In politically pluralistic systems, issues need to compete for space with other interests and ideas in the public policy domain. Local government issues in Pakistan have receded to the back burner despite a protest corner developed by ex Nazimeen and councilors led by the former chairman of the NRB. The current mainstream political parties in power have shown little inclination to put local government revival on a priority. Public demand has not yet risen to the level where failure to shift would result in loss of political support.

It will be critical for supporters of the local government system to continue the debate and advocacy process. The debate on Devolution 2001 is fraught with political incorrectness and a fixation with the illegitimacy of the parenting regime but an argument for elected local government, in a more generic context, will find relatively more space. This would allow the debate to be framed in policy rather than political terms i.e. a positive rather than normative paradigm, where, as borne out by multiple independent reviews, the reform is on far stronger footing.

An important breakthrough has already been achieved as the 18th Amendment obligates provincial governments to devolve political, administrative and financial responsibility and authority to the elected representatives of local governments. Advocacy activities undertaken by civil society, local councils, and concerned citizens played a significant role in achieving this major policy inflection.



CHAPTER 6

Courts & Administrative Justice

Chapter 6: Courts and Administrative Justice

"It has often been said that laws in Pakistan are relevant mostly as the context within which negotiations between the state and individuals, or mostly between private citizens, take place. Other factors that come to play in these negotiations are the class, ethnicity, wealth, gender, religion/sect, social hierarchy and social networks of the parties."⁶⁶

Justice in a country concerns transactions between citizens and the state and the citizens versus citizens. Public sector organizations have (or are supposed to have) internal complaint redress mechanisms. No system can improve upon a well-functioning internal complaint mechanism in terms of effectiveness, efficiency and low cost redress to the service user. At the second level, are administrative courts followed by courts and the police (including anti-corruption agencies) depending on the specific issue. For citizen to citizen disputes, forums include police, courts and alternate dispute resolution mechanisms. In Pakistan the only option available to the poor and vulnerable is the ADR: not always the most just forum but the speediest for disposal of cases.

Access to Justice is: "social justice which includes access to education for children, equal opportunity in education, employment and health as well as the right to being heard, freedom from violence and simply being treated well."

UNDP, 2011

Past assessments have cast a wider net when seeking to define access to justice. In fact, an international study by the Asian Development Bank (ADB) and TAF defines it as *"social justice which includes access to education for children, equal opportunity in education, employment and health as well as the right to being heard, freedom from violence and simply being treated well."*⁶⁷ In particular, legal empowerment is meant to encompass: *"Attention to all aspects of justice: administrative agencies, local government, informal justice systems, media, community organizing, group formation, or other processes and institutions that can be used to advance the poor's rights and well-being, rather than a focus on a narrowly defined justice sector."*⁶⁸ There is therefore, a prima facie case for UNDP-LEP to similarly broaden its outlook for program design.

A more restrictive approach to justice includes police, investigation, prosecution, courts (and lawyers) and ADRs. The functions constitute a value chain which delivers justice in a society. One weak link can cause breakdown in service delivery. Similarly delays in civil courts are also owed to weaknesses in the land record management, including corruption in the revenue department. This chapter reviews issues of access to justice with a focus on courts and administrative justice. Issues of police, investigation and prosecution and property are discussed in subsequent chapters.

⁶⁶ (Blue, 2008)

⁶⁷ (UNDP, 2011)

⁶⁸ Ibid

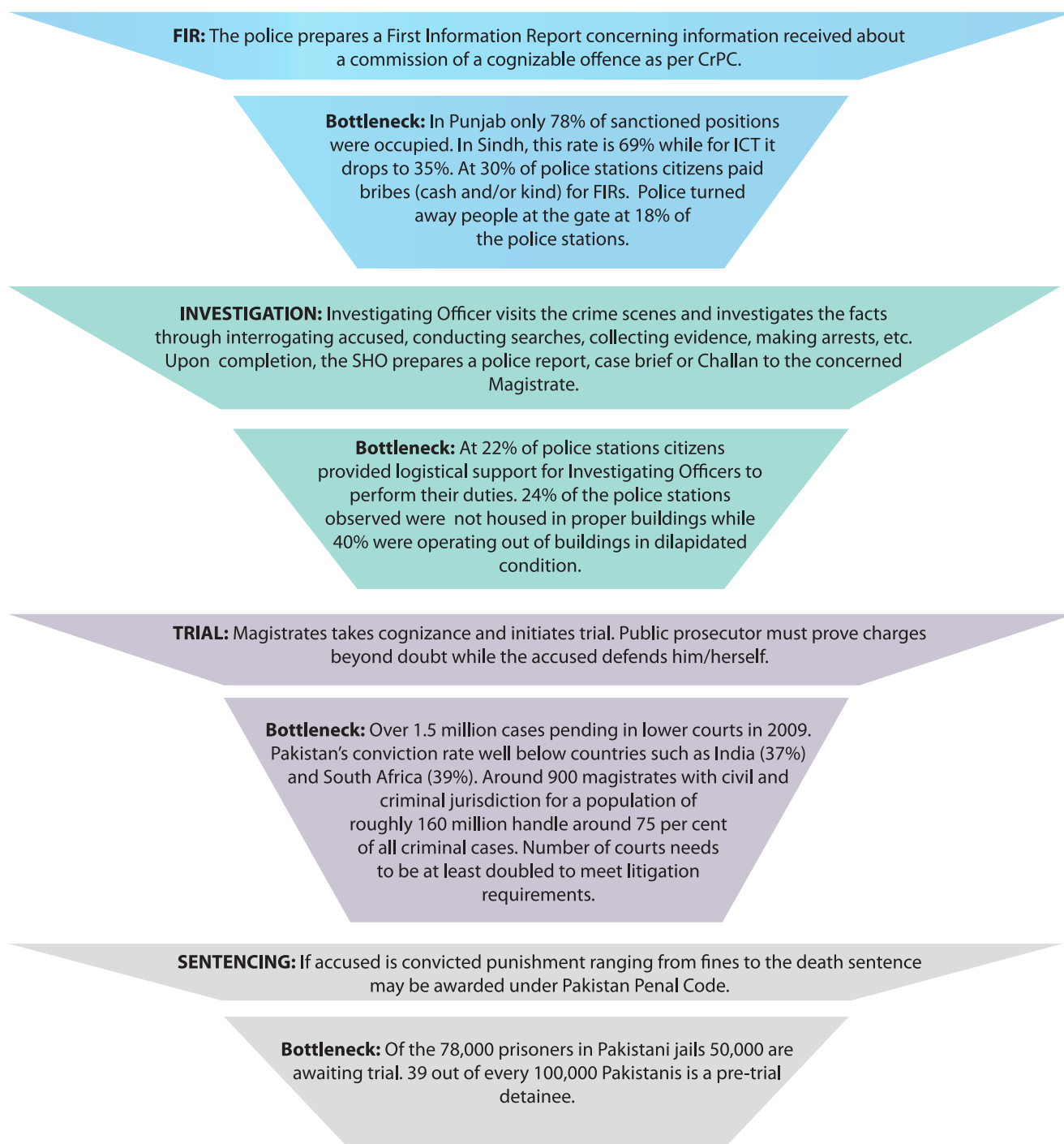
Box 6.1: The Numbers Game: Aiming for the Acceptable Tilt

In quantitative terms, public service delivery in the justice sector is extremely under-supplied. A total of 78 positions were lying vacant in Sindh for judges at the district and lower levels. 77 of them were for Civil Judges / Judicial Magistrates who handle close to 75% of criminal cases. In Sindh district courts 58 cases filed before 1995 i.e. at least 17 years old, were still pending by end-2010. More than 80% of the prison population is on trial awaiting sentencing. Only 27,000 of the roughly 81,000 prisoners have been convicted. (Law and Justice Commission of Pakistan, 2010) Investigating Officers comprise about 13% of the police strength and in populous districts such as Lahore; one investigator may deal with 30-40 cases at one time. (ICG, 2010) Of the 180,000 police in Punjab, only 40,000 man police stations while the rest police traffic and guard VIPs. (Paul Petzschmann, Norwegian Institute of International Affairs, 2010). A total police force of 55,000 in KP translates into one police official responsible for a 350 sq km area. (CHRI, HRCP, 2010)

In sum, at each stage of the criminal justice system, the litigant faces severe shortages of manpower and infrastructure i.e. each stage serves as a bottleneck where procedural traffic for service delivery is log-jammed. These choke points represent excessive demand at this level of supply, necessitating rationing of services, as illustrated in Figure 6.1

Research indicates that service rationing is not unique to Pakistan, or even to developing country contexts. At the Commonwealth Local Government Symposium, 24-25 April, 2012 held in Colombo, a delegate from UK informed the participants that local governments had resorted to service rationing due to fiscal scarcity in the aftermath of the global financial crisis. However, in the absence of a policy framework, this rationing becomes 'survival of the richest'. It may be theorized that it is in this margin of unmet demand for justice services that qualitative problems such as patron-client relationships, corruption, and political influence, find space to thrive. Service rationing therefore becomes service auctioning with services going to the highest briber, as excessive demand pushes up the equilibrium price. The Pakistani state's (official) monopoly over justice makes it essentially a seller's market with price inelastic consumption producing a rent seeking behavior and a decline in quality of the services. Policy makers must recognize that while a fiscally weak Pakistani state may not be able to bridge this supply shortage for the foreseeable future, the government can evolve a more equitable framework for service rationing, to ensure that the poor and vulnerable receive their fair share – if not at par with the non-poor who hold political and financial capital, then at least at an acceptable tilt.

Figure 6.1: Value Chain Analysis of the Criminal Justice Sector: Where are the bottlenecks?



Sources: (Free and Fair Elections Network (FAFEN) Media and Publications, 2012); (ICG, 2010); (Wasim, 2008); (Walmsley, 2009)

6.1 Historical Evolution

Pakistan's judiciary has undergone four successive epochal transitions: the Hindu period (1500BC-1500AD); the Muslim period (till the mid 19th century); the British period (till 1947); and post independence (till present day).⁶⁹ In ancient India, the King was the highest judicial authority, followed by a court of the Chief Justice, manned by judges culled from scholars and qualified Brahmins. At the local level, village assemblies acted as tribunals headed by the village Headman taking decisions typically through conciliation and arbitration.⁷⁰ These decisions were appealable in higher courts with the King representing the court of highest appeal. Courts and tribunals functioned under customary rather than formal laws. Decisions were duly enforced post-trial.

During the Muslim period, Islamic law was applied in parallel with indigenous custom and tradition. A structured judicial hierarchy was set up with defined civil, criminal and revenue jurisdiction of courts at the Tehsil, district, provincial and central levels operating under the authority of the King⁷¹, who appointed persons of "*recognized scholarship, known competence and high integrity*" to judicial posts. *Panchayats* from the Hindu period were retained at the village level. Judges were instructed to adjudicate with impartiality and were held accountable.⁷² Agents (akin to lawyers) could present cases on behalf of litigants.

The British set up courts initially to try cases of East India Company employees but were later authorized to decide cases for all residents of settlements under the Charter of 1661. The Company's transition from commercial to political power was closely followed by additional courts and increments in judicial authority ceded by the throne. In 1756, the Company was authorized with jurisdiction over civil and revenue matters by the Mughal Emperor Shah Alam. In 1790 British courts gained criminal jurisdiction and by 1862 the penal code and code of criminal procedure supplanted Muslim law. With the introduction of the Indian Evidence Act 1872 the 'Anglicization' of the Indian judicial system was absolute.⁷³ The Government of India Act 1935 provisioned High Courts and a Federal Court with judges who could only be removed on a reference from the Crown, as decided by the Judicial Committee of the Privy Council.

This Act was retained as a provisional constitution following independence and no significant changes were made to the national judicial structure until 1980 when a Federal Shariat Court was introduced to vet legal provisions in the light of Islamic injunctions.

6.2 Policy and Institutional Environment

The subordinate judiciary include mainly the civil (established under the West Pakistan Civil Court Ordinance 1962) and criminal (established under the Criminal Procedure Code 1898) courts, with distinct hierarchies that extend from the district to lower levels, including the District Judge, Additional District Judge, Senior Civil Judge and Civil Judge Class I, II & III. These courts

69 (Dr. Faqir Hussain, 2011)

70 (Law Commission of India, 1958)

71 (Dr. Nasim Hassan Shah, 1986)

72 (Sharma, 1989)

73 (Ali, 2000)

have clearly defined territorial and pecuniary (value of suit in case of civil suits and quantum of penalty for criminal courts) with decisions appealable before the superior judiciary.⁷⁴

The terms and conditions of service (recruitment, promotions, etc.) for civil and criminal judicial officers are determined by provincial governments under provincial civil servants acts and rules, while High courts exercise administrative control including appointments. Recruitments are made at the Civil Judge / Judicial Magistrate level through the Provincial Public Service Commission, with the involvement of the High Court, excepting Sindh where the High Court selects and recommends candidates to the provincial government. Promotions are decided by a committee of High Court judges. Training includes attachment to the Court of Senior Civil Judge / District & Sessions Judge as well as technical training at the Judicial Academies at the federal and provincial levels. This includes training on “*substantive laws, court management, case processing, judicial procedure, and code of conduct, etc.*”⁷⁵

Procedural law mainly comprises the Code of Civil Procedure 1908 which prescribes the procedure for instituting suit, pleadings, proceedings, judgments, and execution etc., as well as the Code of Criminal Procedure 1898 for criminal cases. In addition, Qanun-e-Shahadat Order 1984 prescribes the competency of witnesses, form and presentation of evidence, etc.⁷⁶

6.3 Key Judicial Reforms

While by no means exhaustive, a brief review of this succession of reforms spanning over 178 years till the current year yields certain key insights. First, the British reforms fared, on balance, far better in the implementation of their recommended actions than reforms attempted by the Government of Pakistan. According to the Law and Justice Commission of Pakistan: “*It is obvious that the successive governments were not very enthusiastic in accepting the recommendations of various commissions/committees*”, which points toward failure of political will rather than failure of circumstance. This failure extends to reforms initiated under both military as well as democratic regimes. The Commission of 1993 similarly criticized successive governments for neglecting the resource-starved judicial administration system in the country.⁷⁸

The matrix below (Table 6.1) provides a chronology of major (attempted) judicial/legal reforms that impacted judicial structure and / or function in their recommendations:

74 (Dr. Faqir Hussain, 2011)

75 Ibid

76 Ibid

77 In an adversarial system the court remains neutral during a trial between two arguing parties. Amicus Curiae (friend of the court) is a person or organization that may intervene in a trial as a third-party to present arguments. The Supreme Court of Pakistan occasionally appoints such third-parties as Amicus Curiae to draw on their expertise when deciding complex legal issues as well as those of important public interest. For instance when adjudicating the Presidential Reference No. 1 of 2011 to revisit the case of Zulfikar Ali Bhutto, the Court appointed Ali Ahmed Kurd, Tariq Mehmood, Abdul Hafeez Pirzada, Fakhruddin G. Ebrahim, Khalid Anwar, Makhdoom Ali Khan, S. M. Zafar, Aitzaz Ahsan, Zahoorul Haq and Abdul Latif Afridi as Amicus Curiae in view of the importance of the case. Source: (The Frontier Post, 2011)

78 (Law and Justice Commission of Pakistan)

Table 6.1: History of Judicial Reforms

Reforms	Key Recommendations
First Law Commission 1834	<ul style="list-style-type: none"> English law be applied to India with due adjustment for Indian statutes and local context Rule of equity to precede rules of English law
Second Law Commission 1853	<ul style="list-style-type: none"> English civil law be applied with contextualization Procedural law to be standardized on British patterns (subsequently the Code of Civil Procedure 1859, Limitation Act 1859, Penal Code 1860 and Criminal Procedure Code 1861 were introduced)
Third Law Commission 1861	Adaptation of laws governing contracts, evidence, transfer of property, succession, as well as the Criminal Procedure Code
Fourth Law Commission 1879	Adaptation of laws governing trusts, transfer of property, companies, as well as the civil and criminal procedure codes
The Civil Justices Committee Report 1923	Amendments in the Code of Civil Procedure and High Court Rules intended to speed up disposal of civil suits
Quetta and Kalat Laws Commission 1958	Special Areas in the Divisions of Quetta and Kalat to be abolished or at least brought under the jurisdiction of the High Court and Supreme Court
Law Reform Commission 1958	Amendments in the Civil Procedure Code as well as the Registration Act
Law Reform Commission 1967	<ul style="list-style-type: none"> Increase in number of judicial officers and infrastructure improvements Better enforcement of existing laws/rules
High Powered Law Reform Committee Report 1974	<ul style="list-style-type: none"> Increase in number of judges and courtrooms Improvement in accommodation of judicial officers Improvement in performance of investigation and prosecution agencies
Law Committee for Recommending Measures for Speedy Disposal of Civil Litigation 1978	<ul style="list-style-type: none"> Increase in number of judges and courtrooms Improvement in accommodation of judges Upgrading ministerial staff and stationary Provision of training facilities for judicial officers
Salahuddin Ahmed Committee 1980	<ul style="list-style-type: none"> Adversary system be replaced by amicus curia Court discretion over adjournment and remand be limited Alternative dispute resolution be adopted Judgments to be announced without delay
Commission on Reform of Civil Law 1993	<ul style="list-style-type: none"> Reform of Civil Procedure Code 1908 Creation of a federal judicial system Increase in human and infrastructure resources for courts
Hamoodur Rehman Commission 1967	Establishment of a permanent statutory body for law reform (subsequently, the Pakistan Law Commission was constituted in 1979)

Second, recommendations regarding changes in statutes enjoyed far greater prospects for implementation than calls for investment of human, financial, and infrastructure resources to bolster the capacity of courts. This dichotomy is all the more egregious given that the latter is the most commonly held recommendation of reform commissions instituted post-independence.⁷⁹

Third, where these commissions revisited procedural laws introduced by the British largely in the 19th century, the results were not only counter-intuitive but contrary to the views and experiences of current practitioners consulted for this report. For instance, the amendments proposed by the Law Reform Commission of 1958 to the Civil Code of Procedure were not well received by litigants or the bar and bench and subsequently withdrawn in 1962. The Commission concluded that these stakeholders had become acclimatized to the technical procedures in place. This view was echoed by the Commission of 1993 which concluded that: *"existing procedural laws/rules were generally sound and needed no major surgery."*⁸⁰

"It is obvious that the successive governments were not very enthusiastic in accepting the recommendations of various commissions/committees"

Law & Justice
Commission of
Pakistan

6.3.1 The Access to Justice Program

6.3.1.1 Context

By far the most ambitious (and furthest implemented) judicial reform program was undertaken by the Asian Development Bank. The Pakistani initiative was conspicuous in size and represented the peak of ADB's steady growth in rule of law engagements in the region. It is also noteworthy that the preceding decade of the 1990s had seen a similar surge in rule of law spending of almost \$1 billion by the World Bank, the Inter-American Development Bank (IDB) and the United Nations Development Program (UNDP) in Latin America, with similar results.⁸¹

Finally, the AJP was launched when global intellectual debate on judicial reform had evolved to a point of rough-hewn synthesis. During the 1950s and 1960s judicial reform was prioritized to buttress state intervention in the economy. During the 1980s it became the instrument for strengthening free markets to unleash growth. Following the collapse of the Washington Consensus (precipitated in no small part by the Asian financial crisis of 1997-98) and the loss of an entire decade – the 1990s – to structural adjustment, a new mix of ideas (as opposed to ideologies) emerged: The judiciary must be seen as more than a failsafe for government and markets and a guarantor of growth but as an enabler of human freedoms.⁸² However, it is unclear whether these new ideas found their way into the intellectual backstopping for AJP.

⁷⁹ Ibid

⁸⁰ Ibid

⁸¹ (Armytage, 2011)

⁸² (Santos, 2006)

6.3.1.2 Achievements & Impact

The Program sought improvements in judicial policy making, independence, efficiency, governance, human resource management as well as legal empowerment of the poor and vulnerable groups. Sixty four policy actions were planned at federal and provincial levels to produce these outcomes, which encompassed an equally broad array of dimensions i.e. legal framework for reform, service delivery, fiscal and human resources, and transparency and accountability.⁸³

At the policy level, the Program expanded the composition of the Law and Justice Commission of Pakistan to include representation of the judiciary and broadened its mandate to improvement in legal education, legal aid and protection of human rights, court administration and case management and judiciary-executive coordination. The National Judicial Policy Making Committee was also constituted with the membership of the Chief Justice of the Supreme Court, Federal Shari'ah Court, and the four High Courts to enhance policy cohesion and leadership.⁸⁴

The judiciary was included in the medium-term budget framework for federal and provincial governments and trained in budget making and execution which contributed toward an increase in nominal and proportional budget allocations, though less so for district judiciary and in Balochistan, not at all. Additionally, expenditures for non-salary items actually decreased for the superior judiciary.⁸⁵

In terms of legislative reforms, AJP helped promulgate laws that created small causes courts, facilitated habeas corpus cases, amended the Civil Procedure Court for court-annexed mediation, and enhanced freedom of information, and took various other measures to improve transparency, information disclosure and awareness rising. However, the small causes courts were never established, ADR remained unpalatable to the bench and bar⁸⁶, and the Freedom of Information Ordinance 2002 was universally criticized as toothless in content and ineffectual in enforcement.

Various other measures were taken ostensibly to legally empower the poor. These include de-immunizing public servants for negligence, passing of consumer protection laws with adjudicating bodies, establishment of environmental tribunals, and finally various mechanisms to increase transparency and encourage information disclosure. For example AJP amended the General Clauses Act 1897 to necessitate all laws and regulations to be published in the official gazette. And pursuant to amendments in the Law Report Act, 2002 subordinate court decisions can be accessed from court records.

Most surprisingly, AJP broke tradition by wading into not only the recurrent side of judicial public finance (usually considered off-limits by international donors), but also with a specific focus on performance enhancement (usually de-prioritized by IFIs). Incentive schemes tied to performance reviews were introduced making subordinate judges *"the highest-paid civil*

⁸³ (ADB, 2009)

⁸⁴ Ibid

⁸⁵ Ibid

⁸⁶ Ibid

servants." Grievance redress mechanisms were put in place to receive and process complaints against subordinate courts and 15% were randomly audited, with High Court inspection teams conducting regular inspections. However, while nominal budgetary allocations to courts, particularly subordinate courts did increase as a result of AJP intervention, funding of subordinate courts as proportions of provincial budgets registered only marginal increments, as illustrated by the table 6.2 below:

Table 6.2: Changes in Provincial Budgets for Subordinate Judiciary			
	2001	2008	Increase
Punjab	0.49%	0.68%	0.19%
KP	0.56%	0.88%	0.32%
Sindh	0.43%	0.55%	0.12%
Balochistan	0.76%	0.80%	0.04%

Source: Compiled from ADB Project Completion Report, 2009

It bears mentioning that the reform was implemented in an environment of greater average fiscal abundance than enjoyed by the government before or since. This modest success in influencing budgetary priorities thus indicates high reform resistance.

Regarding judicial capacity building, some interventions were made but the impacts of these reforms remain unclear. The Federal Judicial Academy developed training curricula focusing on mainstream (e.g. case flow management, mediation, and delay reduction) as well as marginal (e.g. gender and development) areas, for Civil Judges-cum-Judicial Magistrates, Senior Civil Judges, Additional District & Sessions Judges and District & Sessions Judges. However, these trainings were and continue to be imparted on an ad-hoc basis rather than under a systematic program for *continuing education* powered by sufficient capacity at the Judicial Academies when compared for instance with trainings conducted for civil servants by the National School of Public Policy (NSPP).⁸⁷ Efforts to support provincial judicial academies were less successful, particularly for KP and Balochistan. Similarly no significant improvements could be reported for legal education excepting a law school opened by the Lahore University of Management Sciences.⁸⁸

Infrastructure investments included 501 projects including court houses, jails, litigant sheds, etc. with the judiciary assuming responsibility for its buildings. An endowment fund was created to finance schemes for legal/judicial education, research, and other activities. However, owing to weak capacity of the Law and Justice Commission which administered the fund, it utilized less than half of the \$6.4 million it had earned by the end of 2009 and only 3 of the 7 funding windows were opened.⁸⁹

⁸⁷ Ibid. Also, (Federal Judicial Academy)

⁸⁸ Ibid

⁸⁹ Ibid

At the service delivery level, impact on backlogs, pendency, judicial efficiency, and case duration is debatable. AJP helped the Supreme Court slash its backlog from 80,000 to around 19,055 during 2005-08, through delay reduction and case management reforms, with similar results at the High Court level. The Project Completion Report claims that the average length of civil cases was also reduced for Subordinate Courts and points to an independent study⁹⁰ which studied a piloting exercise involving ten courts at the district level (out of 117 nationwide) where judges disposed off 25% more cases subsequent to reform implementation. The case of Punjab reveals interesting insights in this regard (below).

Table 6.3: Pre and Post AJP Pendency and Disposition Rates in Punjab Subordinate Courts			
	2001	2008	% Increase
Pendency	1,003,098	1,221,689	22%
Disposition Rate	0.98	0.98	0%
Number of Cases Filed	857,805	1,529,859	78%
Judges Sanctioned	627	1,127	80%

Source: Compiled from ADB Project Completion Report, 2009

Judicial arithmetic necessitates that the disposition rate (i.e. a metric calculated by dividing the total number of cases disposed by the total number filed) must be greater than 1 for any year, if backlog reduction is the goal. Pendency is a function of both backlog and the number of new cases filed and/or instituted. As can be seen from the table above, the disposition rate for subordinate courts did not change in the pre-and-post AJP comparison. Pendency actually increased by 22% and without movement in the disposition rate, it may be assumed that the backlog remained static. This is despite an increase in sanctioned judges (assuming no vacancies equals working judges) of 80%, as well as the improved judicial efficiency reported by the independent study of 25%.

However, this must be seen in the context of the massive 78% increase in the number of cases filed in 2001 versus 2008. This spike in litigation, *ceteris paribus*, may owe in large part to increased confidence in the Punjab judiciary and a concomitant rise in demand for judicial services. That being the case, **AJP may ironically have become a victim of its own success.** This irony may however be lost on the average litigant in Punjab lower courts, who did not, as a service consumer, experience any substantial improvement in justice dispensation at the lower levels.

While a comprehensive retrospective analysis of AJP impact is beyond the scope of this study, certain broad insights may be gleaned.

First, a strategic choice in reform design lies between interventions that are either 'narrow and deep' or 'broad and shallow'. The AJP self-admittedly opted for the latter, buckling under the

⁹⁰ (Chemin, 2007)

weight of its own ambition in certain areas.⁹¹

Second, the volume of funding overwhelmed ADB's own resources for the associated management of fiduciary risk. Large capital investment in infrastructure were not positively assessed by ADB's own monitoring mechanisms and only 17% of the Technical Assistance Loan for institutional capacity building was utilized despite a 3 year extension. Even the establishment of provincial level Project Management Units (PMUs) could not meet programming requirements. Large funding pipelines require proportionally elaborate bureaucracies and it appears the ADB was operating beyond the point of diminishing returns.⁹²

Third, ADB found that the government was⁹³:

- i. Not monolithic and tensions between the judiciary and the executive, provinces and the Ministry of Law, Justice, Human Rights and Parliamentary Affairs (key executing agency), and various power struggles at the provincial and local government levels impeded implementation
- ii. Fickle in its support and ownership. According to ADB's own evaluation, loan approvals were made to a cash-strapped pliable government but by 2007, they were being executed by a front-line ally in the 'war on terror', at the receiving end of an unprecedented post-9/11 windfall of bilateral US funding. AJP subsequently evolved from a "government-led program into an ADB-led one" over its life cycle.

Fourth, ADB's governance portfolio in general, and AJP in particular was led by the "*decisive influence of a few individuals with a vision derived from a theoretical base, good analytical work, and effective communication and advocacy skills.*"⁹⁴ AJP could not be expected to maintain direction and effectiveness with a small base of support both at the government and donor ends.

AJP's inherent focus on the federal government level and higher judiciary came at the cost of local impact, where the bulk of justice delivery (or lack thereof) transpires. The successful pilot exercise of 10 courts was never taken to scale, except in KP, and the trickle down of infrastructure investment was also limited to the High Court levels.⁹⁵ **If scale-up to the universe of 117 local courts had been achieved, it would have spurred entrepreneurship to yield gains of an estimated 0.5% of the GDP.**⁹⁶ This represents an enormous missed opportunity.

AJP consistently outstripped stakeholder capacity whose knowledge, skills and experience fell short of the demands made on them by the reform.

The most glaring blind-spot remains the capacity of stakeholders who were implementing and/or directly benefiting from these reforms including executive bodies,

91 (ADB Operations Evaluation Department, 2007)

92 Ibid

93 Ibid

94 Ibid

95 (Blue, 2008)

96 (Chemin, 2007)

judges, and lawyers. AJP consistently outstripped stakeholder capacity whose knowledge, skills and experience fell short of the demands made on them by the reform.⁹⁷

6.3.2 National Judicial Policy 2009: Content & Achievements

Arguably the most significant achievement of the ADB AJP was the constitution of the National Judicial Policy Making Committee (NJPMC) which launched its own policy reform. On the 1st of June, 2009, the National Judicial Policy based on a draft prepared by the Law and Justice Commission, underwent numerous consultations within the legal/judicial fraternity. It includes inputs from Bar Councils and Associations (federal, provincial and local levels), judges of the superior and subordinate judiciary, Attorney General, Advocates General, Law and Justice Division and Law Departments. Drafts of the report were also launched through press briefings and online to solicit feedback. The finalized draft is part vision/value statement, part rulebook, and part list of directives, and far more prescriptive than diagnostic in focus.⁹⁸ Content is structured around several key planks:

- i. Independence of judiciary – This section forbids judges, from accepting positions or responsibilities associated with the executive branch of government, and assumes control of all special courts/tribunals, in effect disentangling the judiciary from executive government.
- ii. Misconduct – This section exhorts adherence to the Code of Conduct particularly with regard to expeditious case disposal.
- iii. Eradication of Corruption – This section states a ‘zero tolerance’ policy for corruption, establishes anticorruption cells in High Courts to detect corruption and improves disciplinary action mechanisms to penalize corruption.
- iv. Measures for Expeditious Disposal of Cases – This section presents several measures to improve trial efficiency, including:
 - a. Guaranteed production of under-trial prisoners in court for trial/remand
 - b. Free legal aid to poor defendants through Bar Councils
 - c. Legal action against false/frivolous litigation
 - d. Exercise of probation and parole to reduce prison overcrowding
 - e. Appointment of Commissions to record evidence in civil cases
 - f. Equitable appointment mechanism for judges
 - g. Bifurcation of civil & criminal court functions.

⁹⁷ (Blue, 2008)

⁹⁸ (National Judicial Policy Making Committee, 2009)

- h. Filling vacancies for judges and staff
- i. Capacity building of judges and paralegal staff.
- j. Improvement of court infrastructure
- k. Modernizing and computerizing judicial administration
- l. Compensation structures to be upgraded for provinces in line with Punjab

Notably, the Policy is a truly living document open to revisions proposed by discussions at key forums, most recently, the National Judicial Conference 2011, where tenets of the Policy may be challenged in the context of ground realities and feedback can be gained on Policy implementation.⁹⁹

According to the most recently published Annual Report of the Law and Justice Commission (2010), the Policy has achieved major results. Regarding backlogs, 98% old cases and 87% of new cases have been decided by the Balochistan district judiciary, in the first 8 months following the introduction of the Policy while other provinces have disposed off 70% cases "*both old and new*". In addition, 160 judicial officers have been repatriated from other executive departments and new posts of Civil Judges and Additional District and Sessions Judges have been sanctioned.¹⁰⁰

In addition¹⁰¹:

- i. Advocates were appointed for free legal aid to poor litigants in hundreds of cases
- ii. More than 71,000 cases were referred to the Commission for recording evidence
- iii. Nearly 16,000 actions have been taken against false and frivolous litigation
- iv. 38,292 prisoners have been released on probation and similarly 486 on parole
- v. Bifurcation of civil and criminal courts is complete in Balochistan and ongoing in other provinces
- vi. Improvements in court infrastructure are being made
- vii. Capacity building and training events are being organized for judges
- viii. Process serving agencies have been provided better salaries and facilities to boost performance
- ix. 55 Judicial officers, 339 District Court staff and 25 Supreme Court and High Courts Officers and Officials who were found guilty of corruption

⁹⁹ (National Judicial Policy Making Committee, 2011)

¹⁰⁰ (Law and Justice Commission of Pakistan, 2010)

¹⁰¹ These achievements are sourced from the Annual Report 2010 of the Law and Justice Commission as well as the Supreme Court Chief Justice's Keynote Address at the National Judicial Conference, 2011.

While these numbers do not provide any assessment of the efficiency (cost vs. benefit) or effectiveness (service delivery outcomes), they do convey **a sense of progress as far as implementation of the Policy** is concerned. The key edge enjoyed by the Policy over previous reform efforts is the fact that judges themselves are allowed, even encouraged, to be self-critical and flag problems, not only as a perfunctory exercise but to actually ensure regular course correction.

6.3.2.1 Shortcomings

The National Judicial Policy has not included the demand side in designing, implementing and monitoring the policy. Litigants' feedback or that of the public at large is a critical missing link. The supply side approach of the policy mirrors the other reform efforts of the past. The key indicator of disposition is an important but a very process focused marker. Perceptions of justice, litigant satisfaction and similar demand side indicators have not been included.

6.4 Current Situation

The current situation reveals a mixed picture. Pendency, despite some reduction, continues to be high, corruption in lower judiciary prevails, while the poor stay away from the courts due to expensive lawyers and limited legal aid options. The role of the lawyers' organizations has become more aggressive and added to problems of the lower judiciary, especially in the Punjab.

6.4.1 Pendency

Despite these achievements, the following numbers of cases were pending at district and sessions courts in each province by mid - 2012.

Table 6.4: Judicial Statistics for Subordinate Courts as of 1st of June, 2012

	Sanctioned Strength	Working Strength	Vacant Posts	Cases Pending	Judge-Case Ratio
Punjab	1385	1208	177	1,064,269	881
Sindh	440	355	85	109,803	309
Khyber Pakhtunkhwa	450	347	103	106,783	308
Balochistan	267	150	117	8,567	57
Islamabad Capital Territory	22	15	7	21,508	1434
TOTAL	2,564	2,075	489	1,310,930	

Source: Law and Justice Commission of Pakistan (Courtesy: Federal Judicial Academy)

With over **1.3 million cases pending at lower courts** and delays stretching up to 60 years¹⁰², poor performance at the service delivery level in lower courts owes to multiple factors. Lower courts judges face unattractive career prospects with frequent transfers (controlled by the Chief Justice and High Courts through non-transparent channels), rare elevations to higher courts, poor working conditions and they remain professionally bracketed as bureaucrats serving entire careers on the bench. In one instance, an attempt to recruit 100 new judges in Punjab yielded only 11 qualified candidates. Recognizing these issues the ADB set up an incentive system tied to performance improvements in case disposal. ADB's AJP incentive scheme yielded mixed results because it was de-linked from judges' careers and run by judges rather than professional evaluators.¹⁰³

6.4.2 Delayed justice

Low expectations from the court stem from the endemic delays in case decisions. While the civil cases take exceptionally long, even criminal cases are not disposed before a 'few years'. Most demand side participants in the FGDs considered delay as the single most damaging factor of the formal judicial system in the country and the cause for low confidence of the public, especially, the poor. Delays add to costs of litigation which puts it beyond the financial reach of the poor. The National Judicial Policy also considers delays as the most critical factor in undermining the performance and perception of the judicial system in the country. The initial expansion of the 'Taliban' in Pakistan legitimized itself on 'speedy justice' and even 'settled' civil cases in a matter of days.¹⁰⁴

Delays are partially the result of the procedure for civil litigation but there are other structural causes that have exacerbated the situation to untenable proportions. Firstly, the judges struggle to surmount a huge backlog, as explained earlier. Under the current budgetary allocations expansion does not appear to be a realistic possibility. Other factors in delays include the practices of lawyers of getting adjournments to delay decisions against their clients. According to the survey, "*waste of time*" is a (relatively) common factor for respondents being dissatisfied with the response of the courts in Punjab (5%), Sindh (4%) and KP, (13%).

As is apparent, case durations in all provinces are daunting for potential and current poor litigants. In Punjab, the majority of cases are still pending decisions, while in Sindh a total of 43% of cases took at least 5 to more than 10 years to resolve. In KP similarly, 23% of cases are undecided, as shown in table 6.5. Not enough observations could be secured from Balochistan and GB for this question.

102 (Armytage, 2011)

103 (USAID, 2008)

104 (Kamal, 2010)

Table 6.5: How much time did the Court take to decide the case?

Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Less than a year	20	22	9	27	8
Between one to three years	28	14	22	24	17
Between three to five years	3	9	3	6	8
Between five to ten years	1	23	6	6	4
More than ten years	2	20	6	4	4
Still not decided	43	6	31	23	58
Don't Know	1	0	0	7	0
Answer Refused	2	6	22	3	0
TOTAL	100	100	100	100	100

6.4.3 Lawyers' Attitudes

The practice of soliciting adjournments as a tactic to delay has become endemic among lawyers. An added problem faced by judges of lower courts has been powerful bars that have, on more than one occasion, misused their newfound political power, thanks to the 'lawyer's movement'. In the Punjab, specifically, there have been instances of manhandling of judges by certain members of the lawyers' fraternity. Failure of both the bench and bar to take effective action against the 'culprits' has led to increased fear among judges of deciding cases on merit as per their understanding of the law. For instance, in Lahore, 24 Judges requested for transfers, due to attitude of the lawyers.

*"The judges said in the application that due to attitude of lawyers it was not possible for the judges to perform their judicial duties as lawyers always try to maneuver and influence under trial cases. The lawyers' attitude has become the biggest hurdle to the announcement of verdicts on merit, the judges added. They said that the judges have to face a lot of pressure from the lawyers if they conclude cases on merit, saying that it has become a permanent desire on the part of lawyers to get desirable judgments above law. They also alleged that lawyers are also involved in destroying judicial record. They said that if they refused to extend an illegal favor to the lawyers it leads to a brawl in the courtroom."*¹⁰⁵

In another article an eminent lawyer laments the failure of the lawyers to reform despite leading the struggle for restoration of the judiciary. He also highlights the inability of the bench and bar to control the violence. *"It is the inexplicable apathy of the bar and the bench to blatant violence*

¹⁰⁵ (News, 2012)

that is the most obvious manifestation of the rot that has set in”¹⁰⁶

6.4.4 Corruption

Second, corruption continues to remain a problem. The National Judicial Policy prioritizes the eradication of corruption. Various think-tanks have highlighted the scale and impact of corruption in the judiciary. The Centre for American Progress warns that *“Corruption and the slow or incomplete provision of justice directly harm the Pakistani state by undermining the legitimacy of the government.”*¹⁰⁷ Another independent think-tank characterizes Pakistani judges as *“meagerly compensated and often corrupt.”*¹⁰⁸ In 2009 the judiciary was estimated to account for 15% of all bribes paid by Pakistani citizens to secure government services. The average bribe per act was Rs. 19,245 (USD 228)¹⁰⁹ in a country where 60% of the population earns less than \$2 a day. In 2011, according to the TI Pakistan’s National Corruption Perceptions Survey, Judiciary was the 4th most corrupt public service provider, moving up 2 places since last year’s ranking. The twin problems of delays and backlogs may be linked to this phenomenon. As the USAID ROL Assessment points out: *“the delays may serve more powerful interests, which benefit from ‘non-decisions’ to maintain the status quo.”* Delays are *“built-in”* to the institutional structure, to encourage payment of speed-money, hike up its price, and discourage non-payment.¹¹⁰ Processes are deliberately and strategically protracted and bottle-necked, not because of structural design deficiencies, but for the express purpose of creating opportunities for seeking rents.

“... due to attitude of lawyers it was not possible for the judges to perform their judicial duties ...judges have to face a lot of pressure from the lawyers if they conclude cases on merit, ... lawyers are also involved in destroying judicial record. ... if they refused to extend an illegal favor to the lawyers it leads to a brawl in the courtroom.”
The News, 2012

In the FGDs for this report the poor considered corruption a universal problem in access to justice. In Lodhran, judges allegedly solicit bribes through their Readers to set court dates. Nepotism and favoritism benefiting the rich and well-connected was a related issue.

This trend is evidenced by survey findings as well. **In Punjab (50%), Sindh (35%), and Khyber Pakhtunkhwa (35%), corruption was the most commonly cited cause for being dissatisfied with the response of courts** to contacts made by respondents or their household members.

6.4.5 High Costs

Even if the judges can minimize some of the internal factors, the poorest may still not approach the courts. High costs of lawyers, poor understanding of law and expenses related to travel would continue to exclude the poor. An overwhelming majority of respondents from the demand side stated that they had never hired a lawyer and that they do not have any idea of legal issues.

¹⁰⁶ (Sattar, 2012)

¹⁰⁷ (Center for American Progress, 2008)

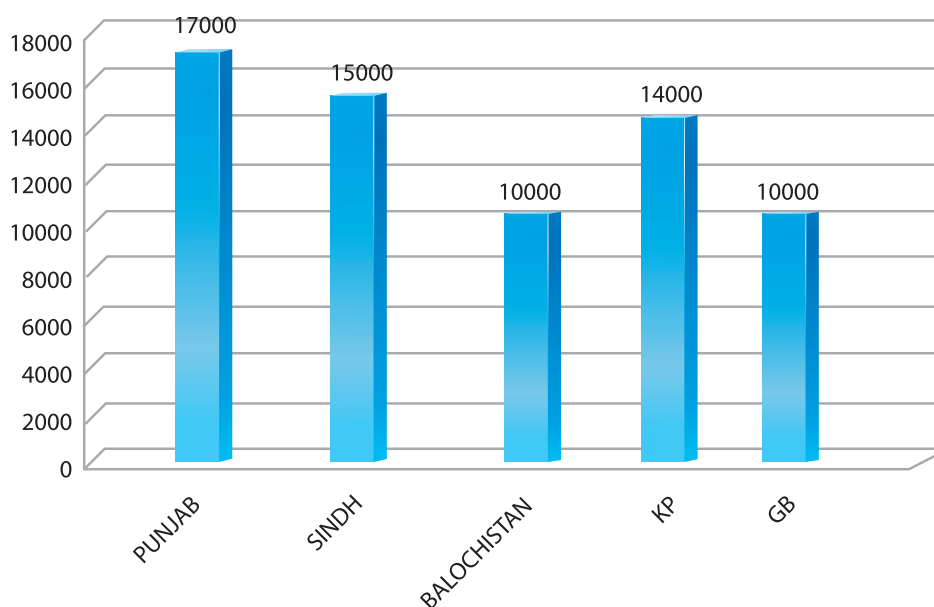
¹⁰⁸ (Pakistan Policy Working Group, 2008)

¹⁰⁹ (Transparency International, Pakistan, 2009)

¹¹⁰ (USAID, 2008)

Time, in terms of both opportunity cost (for day laborers in Karak who lose a day's wage for a court hearing) as well as in terms of a long-term investment for pursuing cases, is a prohibitive factor. As per survey findings, the highest and lowest median costs of interaction with the courts were found in Punjab versus GB and Balochistan, respectively, as shown in Figure 6.2

Figure 6.2: Median Cost of Interaction with Courts (PKR)



6.4.6 Absence of Legal Aid

In the demand side FGDs, **lack of legal literacy in terms of awareness of rights, know-how of legal language and procedures, etc. was also one of the main concerns.** The converse, i.e. long and overly complicated procedures, was also raised. No demand side respondent was aware of any legal aid program and this was described as a major gap.

In the supply side workshops, various issues related to the legal aid system were also brought up during the discussions. It was pointed out that Bar Councils are obligated by statute to provide pro-bono legal assistance through free legal aid committees. Where a heinous crime has been committed and a defendant is on trial for life imprisonment or death, he/she cannot be tried until the state provides him/her with a lawyer. In other cases, a person may petition for a state appointed lawyer for 'pauper suits' who are provided lawyers from Bar Councils. **The Legal Rights Forum worked on 600 pauper suits which the Finance Ministry was committed to fund, but this funding never materialized.**

Participants also shared that the government allocates money regularly to pay for legal services to the poor who cannot afford to foot legal bills, but this budgeted amount lapses and is spent on other activities.

While the provision of free legal aid may be performed by lawyers in rare cases, the general

mind-set is opposed to the concept. FGD participants related an incident where a relief organization working in jails for women, were asked to exit by the lawyers' community, because they protested that this forum is providing free legal advice to the poor, which has shrunk the market for their services.

It was generally agreed that law is very expensive as the lawyers who can deliver high quality services are beyond the financial reach of the poor. Moreover, legal services have gone beyond the reach of even middle class persons. This trend extends to paralegals and courts. Court fees have been raised from PKR 3,000 to PKR 15,000.

Lack of access to free legal aid has been flagged by the survey as well. While in Sindh and Balochistan, 25% and 16% of the respondents respectively, who were involved in litigation, received pro-bono assistance for representation before the court; in Punjab and KP, the situation was far worse with only 3% and 5% respondents respectively receiving such aid. The data from GB is based on too few observations to be taken as representative.

Table 6.6: To make the representation before the Court was a lawyer hired or was legal aid received?					
Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Hired a lawyer	94	67	59	90	96
Received legal aid	3	25	16	5	4
Don't know	1	1	0	2	0
Answer refused	2	8	25	4	0
Total	100	100	100	100	100

However, while service coverage of legal aid might be limited, the quality of legal services provided by lawyers providing pro-bono or hired assistance, as assessed by recipients surveyed is strong. Across all provinces, a clear majority of clients expressed satisfaction with legal services. Unfortunately, the number of recipients in the sample from Balochistan and GB were too few to merit representative analysis, though the findings are presented below.

Table 6.7: Are you or the person who received legal services satisfied with the performance of legal aid/hired lawyer?					
Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Satisfied	79	76	58	79	96
Not satisfied	10	20	29	16	0
Not sure	8	1	13	2	0
Don't know	2	0	0	2	0
Answer refused	2	3	0	1	4
TOTAL	100	100	100	100	100

Reasons for dissatisfaction with legal services (free legal aid and/or hired lawyer) were mixed both within and across provinces and no real patterns emerge, as illustrated below. Again, Balochistan and GB did not yield enough responses.

Figure 6.3: PUNJAB %

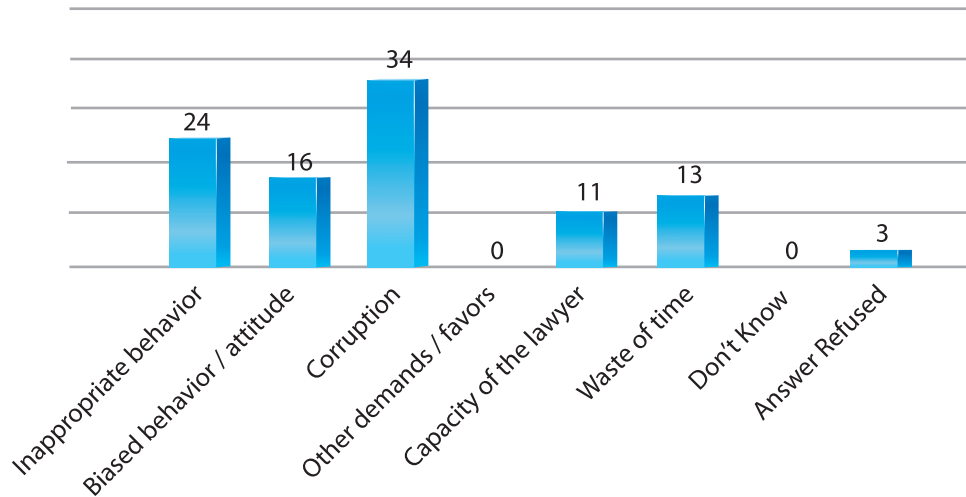


Figure 6.4: SINDH %

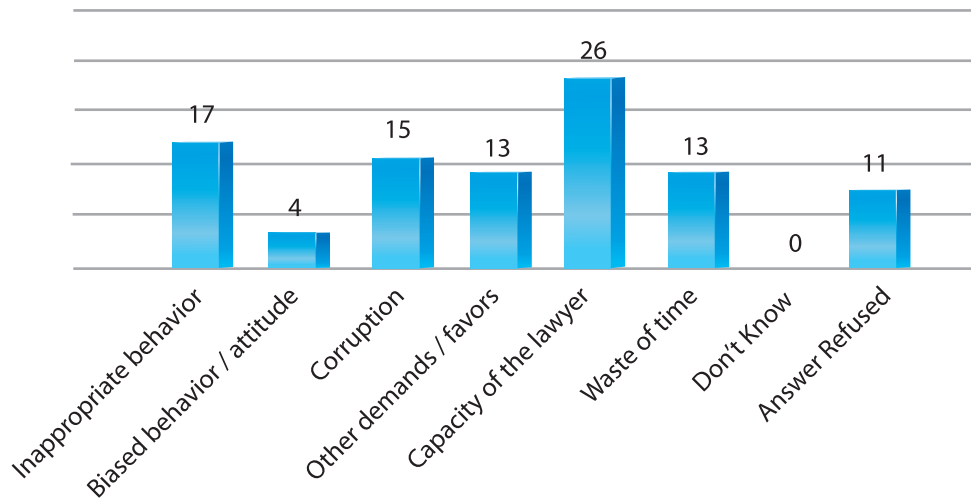
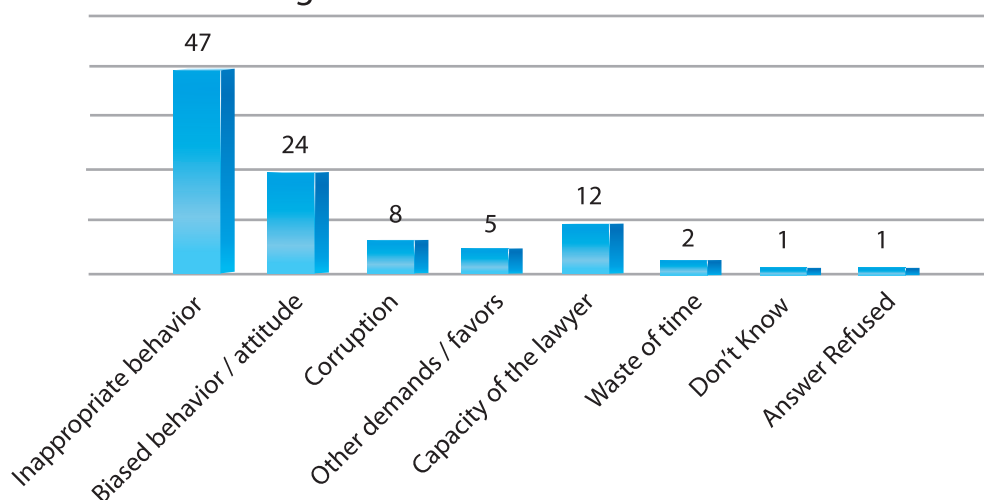


Figure 6.5: KHYBER PAKHTUNKHWA %



6.5 Perceptions of justice

The demand and supply side consultations for this report revealed very low faith in the justice system including the courts. The poor, especially, considered the justice system as irrelevant to their existence.

6.5.1 Perceptions of the Poor

First, the way justice is understood and prioritized by the poor is very different from the way it is done in mainstream development/governance discourse. The opening questions of the demand-side FGD outline were intended to allow the poor to arrive at justice and legal empowerment as key requirements in terms of improving their current and future lives. The discussion could then further explore this focus. However this does not happen. The immediate concerns of the poor are inflation, housing, livelihood, health, and transport i.e. factors underpinning their day-to-day survival. Their distant concerns are tied to the education of their children, and the fact that even when educated, they do not find jobs because poor quality public schooling is all they can afford (as expressed by women in Chitral). Even where fairly progressive ideas are expressed, for instance, girls education is emphasized in Jacobabad (Sindh) to improve employability and bolster household income, and feudalism is condemned in Southern Punjab, the 4 Pillars of the UN CLEP Report are absent from the narrative. A female respondent from Jacobabad, Sindh stated: *"I never heard the word justice until you asked me to join the discussion today."*

Second, the way justice is experienced by the poor is very different from the way it is conceptualized in mainstream rule-of-law discourse. When the UN CLEP Report mentions *"4 Billion Lives Excluded"*, it calls to mind a picture of courts and police stations teeming with multitudes of the poor, clamoring to be heard. However, the FGDs have found respondents

to be generally disconnected from, unconcerned with, and uninformed about what we define as the 'justice system'. This is symptomatic of the broader erosion of the state-citizen relationship in Pakistan. Respondents were unaware of new legislation on women's rights, (with the exception of women in Chitral trained by a local NGO). There was also limited awareness of the restoration of the judiciary, across the board. The poor, therefore, experience justice (or injustice) socially and economically, rather than legally.

"I never heard the word justice until you asked me to join the discussion today."
Woman Respondent in FGD, Jacobabad

This phenomenon is backed by survey results. Across the board, economic difficulties of unemployment, inflation and poverty are the most important issues for poor households by a large margin. These are followed by 'Education' and 'Health'. Socio-economic justice significantly outweighs narrowly defined justice sector issues of 'Law & Order' and 'Injustice', as prioritized by the poor.

Table 6.8: I am going to read out a list of issues. Please indicate which ones bother your household the most?

Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Unemployment	20	22	19	25	29
Inflation	28	26	25	31	28
Poverty	27	27	26	28	27
Law & Order	2	3	6	1	0
Corruption	4	1	0	1	0
Terrorism	0	0	1	1	0
Injustice	4	1	1	1	0
Education	7	8	9	6	8
Health	8	11	11	5	7
Others	1	0	0	0	1
Don't Know	0	0	1	0	0
Answer Refused	0	0	0	0	0
TOTAL	100	100	100	100	100

One of the most criticized institutions (not raised by the moderators) was BISP, which, participants allege, is benefiting the rich and undeserving – not the police or the courts. In fact, schools, hospitals and even banks were mentioned more often (without prompting) by respondents than judiciary and law enforcement. For the Kailash, the conversion of their dwindling numbers to Islam is the greatest injustice and they demand laws against proselytizing in their area. In some districts of KP, Shariah was considered the panacea but all respondents did not consider Taliban's code as Islamic.

In the few cases where respondents were aware of the restoration of the Supreme Court judges, they complained that the higher courts are involved in political cases that have little to do with the issues of the poor i.e. they are trying to solve the wrong problem.

When placed in the quantitative context provided by the survey, the facts and opinions expressed in demand side FGDs more often than not stand confirmed. The key pattern is the diversity across provinces. When asked simply: “*Do you trust the Courts?*” the majority of respondents from Punjab, Sindh, and GB said “Yes”. But this majority was more sizable in Sindh (81%) than Punjab (60%) and KP (65%). In Balochistan 39% expressed trust, while 36% of the sample did not. Additionally, there were no significant differences between male and female respondents in the level of reported trust across provinces except in Balochistan where a much greater proportion within women responded: “Yes” than men for this question.

Table 6.9: Do you trust the Courts?

Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Yes	60	81	39	65	95
No	22	12	36	14	1
Don't know	15	2	18	17	4
Answer refused	2	5	7	4	0
TOTAL	100	100	100	100	100

6.5.2 Experiences of the Poor

Paradoxically, on being asked, when someone from the household had last contacted the courts, an overwhelming majority responded: “*Never*”. The no-contact majority includes 85% in Punjab, 87% in Balochistan, 94% in GB, 84% in Sindh, and 73% in KP. The next most common responses in KP, Sindh and Punjab were “*more than a year*”.

This disconnect from the courts is typical of the poor’s experience with the whole justice system in Pakistan, as discussed in following sections. In this case, this disconnect may reflect the fact that the trust placed in courts (above) may express confidence in the political role played by the judiciary vis-a-vis the government, rather than faith in the legal/constitutional role played by the judiciary vis-a-vis the citizenry i.e. they trust the courts to bring the government to justice rather than bringing justice to the people.

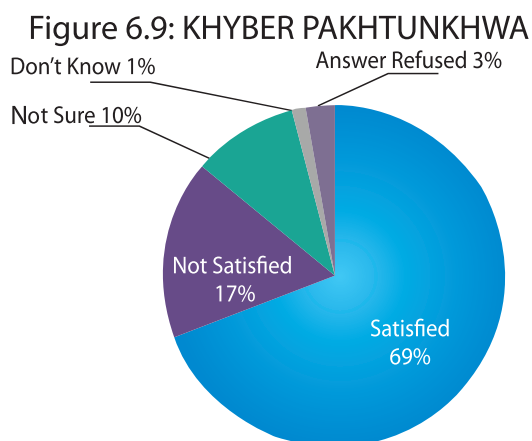
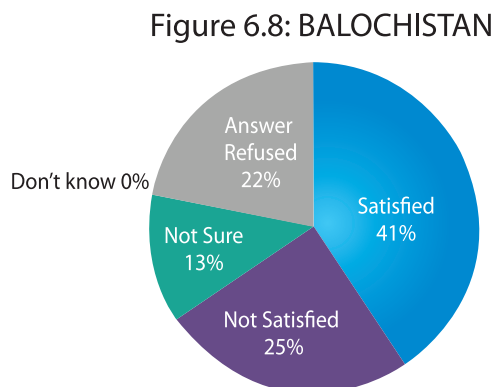
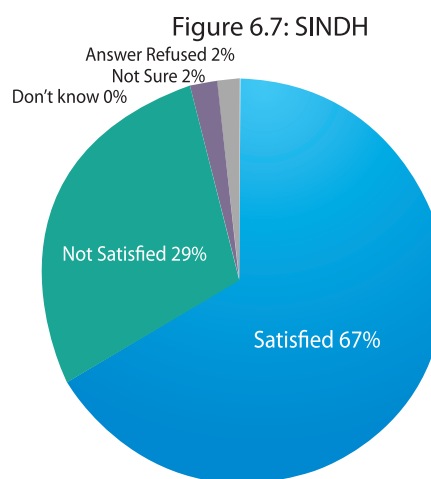
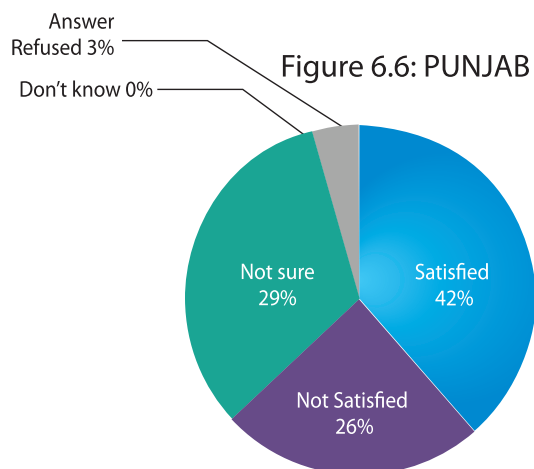
However, this spillover ‘halo’ effect does not extend to pulling the poor citizen to the courts and does not substitute for the solution to their problems of justice, as borne out by the near complete disconnect between the poor and the courts. This also cannot be taken as any straightforward endorsement of the political role of the judiciary by the poor, in context of the feedback received from the FGDs.

At a more fundamental level, this contradiction may also be interpreted to mean that while the poor trust courts to deliver justice, they are not willing to pay the cost in terms of time, money and effort i.e. even assured of the reward, they cannot afford the investment. This is all the more plausible given their poverty, in the face of high costs, as described earlier.

In either case, this gap between perceptions and experience is mirrored by other similar surveys, most notably the Social Audit 2011. According to this report, while 66% of households reported

faith in courts, 86% of them had never contacted them.

Regarding satisfaction with court responses to contacts made, the responses were fairly mixed both within and across provinces. In KP (69%) and Sindh (67%), a clear majority expressed satisfaction. In Punjab and Balochistan a more nuanced response mix was obtained with 42% satisfied in the former and 41% satisfied in the latter, as shown below. Unfortunately, the results from GB are based on too few responses to be taken as representative.



When probed, the reasons for lack of satisfaction among dissatisfied respondents were more or less similar across all provinces. In Punjab, Sindh and KP, 'Corruption' (most common), 'Inappropriate Behavior', and 'Biased Behavior' were cited by most respondents. Balochistan and GB did not yield a sufficient number of respondents for this question.

Figure 6.10: PUNJAB %

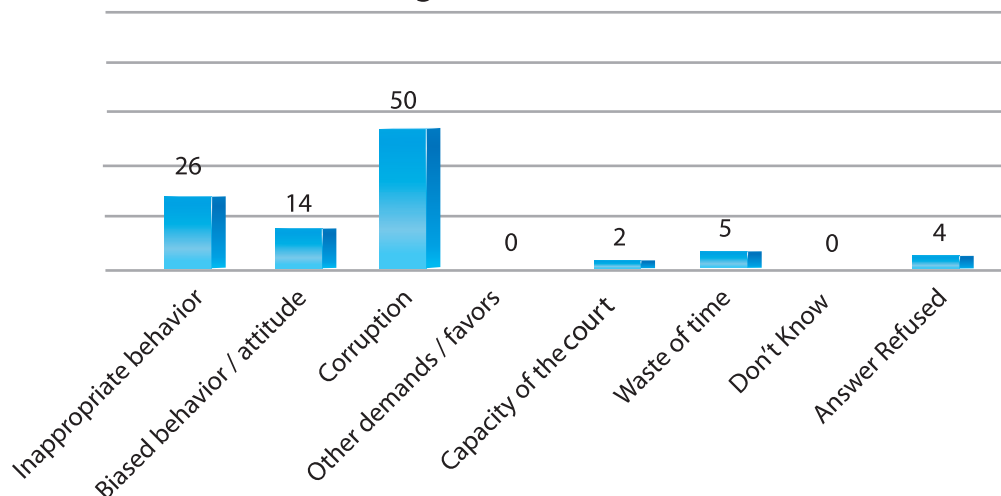


Figure 6.11: SINDH %

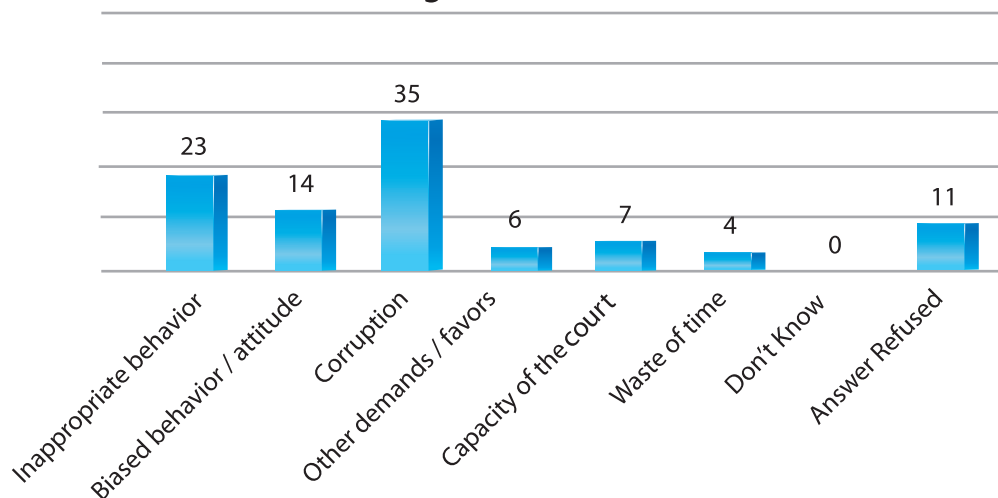
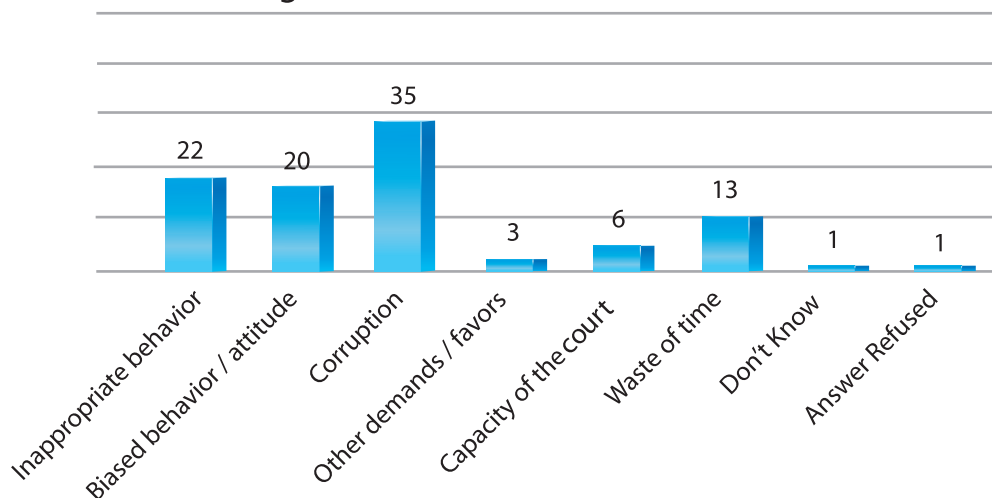


Figure 6.12: KHYBER PAKHTUNKHWA%



In the demand-side FGDs, one of the most common complaints regarding government officials was not about lack of service but propriety of attitude – and they were thoroughly conscious of the fact that they were made to wait outside an office, or not allowed into an office, or not spoken to cordially because they were poor and even that their apparel reflected them as such. This is supported by the foregoing survey findings.

6.5.3 Perceptions of the Supply Side

Most of the participants of supply side FGDs were of the view that inability to access justice in Pakistan was not limited to the poorest. Even people with relatively higher incomes could not depend on state institutions for easy justice. This was especially true in civil litigation.

There was a general consensus among all the participants, belonging to various geographical regions, different professional backgrounds and varied academic qualifications, that the poor in Pakistan are extremely disempowered. It was a general perception that **without proper implementation of existing laws, introduction of new laws is hardly an effective and efficient option for empowering the poor**. Lack of political will, inefficient institutional structures, largely illiterate populace and endemic corruption of state institutions were unanimously agreed as the major contributors of the disempowerment of the poor majority in Pakistan.

6.6 Administrative Justice

Administrative justice i.e. internal accountability mechanisms and complaint redress mechanisms from the first line of reprieve for the citizens, particularly for alleged wrongs dealt with by the state. Administrative courts form the next portal for redress and from there onwards, issues move to normal courts and even police. An important complement to the administrative complaint redress and internal accountability mechanisms are parliamentary oversight bodies and anti-corruption agencies. As in other countries, the fundamental problem remains the

Platonic dilemma: *'Who will monitor the monitors?'*

6.6.1 Internal Accountability

On paper, Pakistan has all of the above. All public sector organizations have complaint redress mechanisms although they rarely provide relief to the people. The poorest evinced very little faith in public sector organizations to provide services and relief on merit and therefore none mentioned internal complaint mechanisms as a source of potential relief.

Every complaint has two potential components: rectification of the action taken (or omitted) and retribution in case of inefficiency. The latter can be a case of poor professionalism or outright corruption. In case of the latter, in addition to internal accountability, anti-corruption agencies also become operative. Internal accountability mechanisms have become extremely weak and public servants face consequences only in exceptional circumstances.

6.6.2 Ombudsman

The 1973 Constitution calls for setting up of the office of the Ombudsman to provide relief to the public. The federal Ombudsman office was set up in 1981. The provincial equivalents were set up much later. The Ombudsman's office also reacts to public complaints. Its internal evaluation approach is limited to 'disposal' of complaints rather than impact in terms of relief to the people, confidence in the office of the ombudsman and improvements in administration attributable to their office.

In case of Federal Ombudsman, the appeal lies with the President's secretariat, with no time bar to deal with them. Resultantly these lie unattended for years. As discussed in Chapter 5, the Local Government Ordinance(s) 2001 also included stipulations on setting up the office of district ombudsman. No district ombudsman was ever appointed.

6.6.3 Legislative Committees

Legislative oversight continues to be weak in all provinces. According to law, all line Ministries have a corresponding Standing Committee in the provincial assembly, National Assembly and the Senate. The standing committees in the national assembly and senate are more active and therefore relatively more powerful. In a country where democracy gets interrupted every ten years, the system has still not taken enough root to have an impact. Firstly, the committees have very limited resources for research and they are mostly supported by the secretariat for the relevant legislature. Secondly, these committees normally focus on process and input issues only and not output and impact, similar to the public sector organizations they are mandated to scrutinize. Thirdly, the capacity of the legislators to comprehend technical issues is limited and therefore their ability to hold civil servants accountable is constrained. Finally, they have very little ability to impact internal accountability mechanisms of the organizations. Even recommendations of the Public Accounts Committee (PAC), the most powerful standing committee, often fail to translate into tangible action. Notably, the Balochistan assembly, and government, continues to function without any standing committee.

6.6.4 Anti-Corruption Agencies

Anti-corruption agencies form the last resort and they may take cognizance only in case of illegal benefits taken by the public office holder for acts of omission or commission. Each provincial government has an anti-corruption agency that applies the Prevention of Corruption Act 1947. At the federal level, the Federal Investigation Agency (FIA) and the National Accountability Bureau (NAB) have concurrent jurisdiction under separate operative laws. The FIA uses the Prevention of Corruption Act 1947 and NAB functions under the National Accountability Ordinance 1999, which not only creates the organization but also includes provisions for its anti-corruption operations. NAO allows NAB jurisdiction over provincial public office holders also.

Most anti-corruption agencies in the country are perceived to be corrupt, though NAB has a slightly higher level of public confidence. Its reputation was particularly tarnished in 2002 when it was perceived as an instrument in cobbling a coalition for General Pervez Musharraf. Contrary to expectations, the Bureau has survived the shift to the new democratic dispensation and continues to enjoy the reputation of the premier anti-corruption agency in the country even if its stature has diminished greatly from its early days.¹¹¹

Anti-corruption agencies as specialized police organizations have some of the typical problems of the latter. In addition to corruption, these organizations have an input based focus where they deal with complaints from the citizenry in routine. No prioritization process for public relief exists and often cases are closed when the complainant withdraws his complaint. The influence of the accused public office holder often pushes the complainant into a compromise.

NAB started its work on the premise that if the 'big fish' are netted, there will be downward relief through 'high impact, high visibility' precedents. Apparently the strategy did not work as desired. The poor person, if at all, deals with junior functionaries of service delivery organizations. Without a prioritized focus on the public sector's potential interface with the poor, a top down approach alone will not have an impact.

A National Anti-Corruption Strategy (NACS) was developed by NAB that advocated a three pronged approach of awareness, prevention and enforcement. It resulted in a revision of the Bureau's mandate to add prevention and awareness functions. Practically, NACS has remained unimplemented, which has now lost value as a policy document. **While NACS was prepared through widespread consultations similar to the devolution plan process, it did not include all political parties. Therefore the document has very little, if any, political support.**

Irrespective of the structural issues of all the institutions discussed in this section, they remain irrelevant to the poorest. They are unapproachable in terms of hierarchical protocol and physical distance from the poor. Unless these organizations review their approach to include a pro-poor, demand side understanding and application, the poor will continue to be excluded from potential relief offered by them.

¹¹¹ NAB declares itself as the apex anti-corruption organization in the country (National Accountability Bureau), and the Supreme Court has referred a number of cases to the NAB, with the most recent one being the investigation of alleged violation of rules by the ex-Prime Minister Yousuf Raza Gilani in awarding government contracts. (Khan I. , 2012)

6.8 Conclusion

A discussion on structural problems of the lower judiciary would include a number of other issues including the approach of the judicial structures to the litigants' issues. The National Judicial Policy has been a laudable attempt by the higher judiciary to put their own house in order, but the policy development and monitoring process does not include feedback from litigants or the general public, despite attempts in that direction. The progress primarily views pendency issues and not qualitative impact.

While the judicial process needs to be speeded up, the current prioritization process should be reviewed. High profile cases and those considered to be the most 'difficult' should be decided first. The ability to decide cases, involving powerful people, without being influenced will add to the confidence in the courts. The Supreme Court in particular has followed this path to an extent and currently enjoys more confidence than any of its predecessors since the 1950s. Unless lower courts can display bold impartiality in difficult cases, mere disposal of cases will not matter.

Most importantly, the poor need to be prioritized. The singular contradiction uncovered under this study remains the fact that while judicial statistics portray a judicial structure overwhelmed by the massive and growing volume of litigation, the poor remain disconnected from the courts. This litigation must therefore flow from the non-poor. If explored further, we know that an estimated 60-80% of caseloads currently constitute disputes revolving around land. A further (as yet unknown) percentage is taken up by frivolous litigation. As related earlier, the poor (as defined and studied under this report) are largely landless. It also stands to reason that they do not engage in frivolous litigation, because their primary concern is survival rather than 'face-saving'. The logical conclusion to be drawn here, (in the absence of detailed analysis of judicial statistics), is that **judicial service delivery has been hijacked by the non-poor. Meanwhile the poor, being shut out of the formal system, turn to inferior substitutes** i.e. ADR. In sum, **they prefer injustice to no justice at all.** This analysis also dovetails with the earlier submission on the supply and demand for justice sector services (Box 6.1).

The bulk of relief (or justice) for the citizenry should ideally be provided before the matter enters courts; this can be done through internal accountability mechanisms, the ombudsman, parliamentary oversight bodies and anti-corruption agencies. Ineffective functionality of these systems will continue to undermine the efficiency of the courts (and the justice system) even if they manage to tackle their endogenous issues.

Irrespective of the structural issues of all institutions dispensing administrative justice, they remain irrelevant to the poorest. They are unapproachable in terms of hierarchical protocol and physical distance from the poor.





CHAPTER 7

Police, Investigations & Prosecution

Chapter 7: Police, Investigation and Prosecution

Police reform is a public good most often advertized but never sold in Pakistan. Law enforcement has been more reformed with less success than perhaps any other public service area. This history of failure boils down to a dialectic between two opposing *cultures*, with their own distinct and entirely functional dynamics of power, interests, and values i.e. the 'force' culture where the police is an instrument of coercion wielded by the state to protect primarily the interests of said state – versus – the 'service' culture where the police enforces laws intended to protect the safety and well-being of citizens. The discussion on the democratic credentials of the state which would legitimize its laws and its Weberian monopoly over violence, (as emphasized by much of the literature) is actually a secondary consideration. The struggle for successful police reform in Pakistan is essentially, a struggle between these two competing cultures.

The struggle for successful police reform in Pakistan is essentially, a struggle between two competing cultures: 'force' versus 'service'.

7.1 Historical Perspective

Under the Sultans of Delhi and later the Mughals, town *sarkars* (districts) were governed by *Kotwals* and villages by *Faujدارs* who were entrusted with broad responsibilities, ranging from the maintenance of law and order to administering property and supervising inns. They performed these responsibilities in cooperation with local citizens and were sub-ordinate to the *Qazi*. Every village appointed their own *chowkidars* (watchmen) who were in turn assisted by *Thanedars* (Station House Officers). Under the British, in 1720 *zamindars* (landlords) were authorized to act as *kotwals* and *faujدارs*, then replaced by *daroghas* who were found to be equally oppressive and ineffective in preventing or detecting crime. In 1843, Charles Napier first introduced an organized police system described as a "*semi-military force and not a purely civil Force*" which was emulated subsequently by Bombay, Oudh and Lahore. On March 22nd 1861, the Police Commission of 1860 submitted a Bill, which is today known as the Police Act 1861 in Pakistan, India, Bangladesh, and Sri Lanka. This seminal law chose to institutionalize the Irish Constabulary police model throughout the South Asian colonies, irrevocably redirecting the indigenous evolution of the policing systems of these countries.¹¹²

The British Metropolitan Police was founded in 1829 by Robert Peel (a politician), Richard Mayne (a lawyer) and Charles Rowan (a soldier), each employing their unique perspective to develop a police intended to prevent rather than punish crime, without threatening civil liberty i.e. embodying a service rather than a force.¹¹³ The Irish Constabulary model originated in Ireland in 1836 and contrasted the Metropolitan model by being semi-militarized, its *raison d'être* being the subjugation of a population opposed to British laws i.e. a 'next-best' option to military intervention.¹¹⁴

¹¹² (Razvi, 1961)

¹¹³ (Critchley & Peel, 1977)

¹¹⁴ (J, 1977)

The two models are distinct in legitimacy, structure and function. While the British model was based on law, under the Irish model, the police: “*usurped the role of judge, jailer and executor.*” The British police was decentralized, civilian and unarmed, while the Irish Constabulary recruited from the military, organized hierarchically, and armed its personnel. The British police focused on crime while the Irish Constabulary defined crime in political rather than legal terms i.e. serious crime “*was an implicit defiance of state authority and a possible prelude to rebellion; political resistance was either a ‘crime’ or the likely occasion for it.*”¹¹⁵

The Police Act 1861 created a police force in India that was accountable to the bureaucracy rather than the people, responsible for controlling the population rather than protecting citizens, and loyal to the leadership rather than the law.¹¹⁶ But by far the most damaging property inculcated by the British colonial policing model was an anti-poor bias, as history would bear out. In the aftermath of the 1857 uprising, the division between a European gazetted officer corps and a local native constabulary, (which continues to this day, not just in Pakistan but throughout the Commonwealth of South Asia) was further reinforced. This entrenched existing social hierarchies to serve colonial interests. “*The recruitment of constables from locally dominant communities (albeit from poorer strata) gave them a bias towards the richer peasants, landlords and village heads and against the peasants and laborers of subordinate castes. Deference to men of wealth and power was too prevalent a social trait for the subordinate police to be immune to, despite their official responsibility.*”¹¹⁷ Social exclusion was thus systematically built into policing practice. Where the local constabulary was despised, it was the natives who were to blame for corruption and brutality, not the Raj; while “*authority over the local police propped up pliable landed gentry, at greatly reduced cost to the Empire.*”¹¹⁸

The Raj itself became unsatisfied by this system and in 1902 the Fraser Commission attempted reform of a police force described by it as inefficient, disorganized, untrained, corrupt, oppressive, and failing to “*secure the confidence and cordial cooperation of the people.*”¹¹⁹ In short, the **Irish Constabulary system in India was deemed excessively ‘colonial’ even by the colonials.** The Commission did retain a crucial aspect of the Police Act 1861: the union of judicial, policing and revenue powers in the office of the Executive Magistracy. Sir Frederick Halliday had observed as early as 1838 that: “*The union of the magistrate with the Collector of Revenue has been stigmatized as incompatible: but the junction of the thief catcher with Judge is surely more anomalous in theory and more mischievous in practice.*”¹²⁰ Unfortunately, this theoretical anomaly and practical mischief survived not only the remainder of the Raj but also the independence of Pakistan.

“The union of the magistrate with the Collector of Revenue has been stigmatized as incompatible: but the junction of the thief catcher with Judge is surely more anomalous in theory and more mischievous in practice”
Sir Frederick Halliday

115 (Muhammad Shoaib Suddle, United Nations Asia and Far East Institute for the Prevention of Crime, 2001)

116 (Commonwealth Human Rights Initiative, 2008)

117 (Arnold, 1986)

118 (Paul Petzschmann, Norwegian Institute of International Affairs, 2010), (Khalid, 2009)

119 (Gupta, 1979)

120 (NIPA, Karachi, 1965)

Table 7.1: History of Police Reform in Pakistan

1948 Passage of Bill to introduce a Metropolitan System of Policing in Karachi
1951 Recommendations of Sir Oliver Gilbert Grace, IG Police, NWFP
1961 Police Commission headed by Mr. Justice J.B. Constantine
1962 Pay & Services Reorganization Committee (Justice Cornelius)
1970 Police Commission headed by Major General A.O. Mitha
1976 Police Station Enquiry Committee headed by M.A.K. Chaudhry
1976 Law and Order sub-committee headed by Ch. Fazal Haque
1976 Police Reforms Committee headed by Gen. Rafi Raza
1981 Orakzai Committee on Police Welfare, Promotion and Seniority Rules
1982 Cabinet Committee on the Emoluments of SHO
1983 Cabinet Committee on determining the status of SHO
1983 Sahibzada Rauf Ali Committee
1985 The Police Committee headed by Mr. Aslam Hayat
1987 Report of the two member delegation's visit to Bangladesh and India
1989 Report of the seven member delegation's visit to Bangladesh and India
1990 Police Reforms Implementation Committee – M.A.K. Chaudhary
1995 Report of the UN Mission on Organized Crime in Pakistan
1996 Report of the Japanese Police Delegation on the Police System in Pakistan
1997 Committee on Police Reforms under the Chairmanship of Interior Minister
1998 Report of the Good Governance Group on Police Reforms: Committee Vision
2000 Report of the Focal Group on Police Reforms: NRB Draft 2000

Source: CHRI, 2008

The recommendations of these commissions, committees and missions dealt with problems relating to the relationship between the Superintendent of Police with the Deputy Commissioner, investigation and prosecution, recruitment, training, compensation and incentives, decentralization of authority, monitoring and accountability, political interference, and the capacity of the police to tackle challenges of militancy and organized crime. Of relevance to this report are the recommendations dealing with the relationship between the police and the citizenry. The issue was tabled by the Commissions headed by Justice J.B. Constantine (1960-61) and Gen A.O. Mitha (1969-70). The Police Committee (1985) recommended a code of conduct for the Police and the improvement of public image through advocacy. The UN Commission on Organized Crime recommended that accountability to the public be enhanced, and a paradigm shift be achieved in the perceived role of the police from hostile repressors of the state to “democratic policing” where the police is “not only of service to the larger community but also an

integral part of it and accountable to it for their actions.”¹²¹

If a plumb-line is dropped through the totality of these reforms, two key insights become apparent:

- Implementation paralysis is chronic as recommendations of one reform are repeated years later by the next, because they were not put in place.
- The issue of police culture vis-a-vis their relationship with the citizenry remained on the peripheries of most reforms. The mainstream approach toward police reform has been technocratic and state-centric i.e. predicated mainly on:
 - changing laws and regulations e.g. the introduction of new offices and institutions, and
 - investment of higher levels of resources for a narrowly defined law enforcement ‘sector’
 - exclusive focus on ‘supply-side’ dynamics i.e. focused almost exclusively on government rather than governance

In 2000 the National Reconstruction Bureau (NRB) held consultations with a Focal Group on Police Reforms. They were driven by the express need to create a *“model most suited in transforming the existing police-public estrangement”*.¹²² These consultations resulted in the enactment of the Police Order 2002, by far the most ambitious police reform ever launched in Pakistan.

7.2. Police Order 2002

7.2.1 Content

The preamble to the Police Act 1861 claims an intention to create a police system that is *“a more efficient instrument for the prevention and detection of crime.”* The mandate does not extend to service to the citizen or the rule of law. The Police Order 2002 on the other hand seeks to establish a police service that adheres to *“Constitution, law and democratic aspirations of the people”* which is *“professional, service-oriented, and accountable to the people”* and strives to *“promote amity”, “guide and assist members of the public”, “ensure the rights and privileges, under the law a person taken in custody, are protected”* and that *“the information about the arrest of a person is promptly communicated to a person of his choice.”*¹²³

The law brought about various changes in supplanting the repealed Act of 1861 in the function and structure of the police organization in Pakistan. It separated the function of investigation from watch and ward (alongside the creation of various other specialist branches and divisions including intelligence, education and training, personnel management, crimes against women,

¹²¹ (Mushtaq Ahmed Sukhera et al., NIPA Lahore, 2003)

¹²² (Gourp D, Mushtaq Ahmed Sukhera, NIPA Lahore, 2003)

¹²³ (Commonwealth Human Rights Initiative, 2008)

IT, etc.), created an independent prosecution service, eliminated the duality in command of district-level policing, strengthened the administrative and functional powers of the provincial police head, secured tenure of posting for various officer ranks, made the District Police Officer accountable to a publicly elected District Nazim, and created a National Police Bureau and a National Police Management Board.¹²⁴ Of particular relevance to this report are the unprecedented measures to improve accountability to, and relationship, with the ordinary citizen.

First, Public Safety Commissions established at the district, provincial and national levels emulated the Japanese model. They were composed of elected representatives from respective legislatures (with equal membership from treasury and opposition benches, including quotas for women) as well as ordinary citizens (not civil servants or politicians). These Commissions had wide-ranging responsibilities, including oversight of the implementation of policing plans, preventing unlawful actions by the police, recommendations of grants for police establishments, conduct of enquiries, recommendation of reforms in laws and procedures, and submitting an annual report regarding police performance and national law and order situation. They had the powers to intervene in unlawful orders given to the police by any authority and recommend pre-mature transfers of police officials. At the district level these Commissions were mandated to approve the local policing plan, provide recourse to District Police Officer for any unlawful request made of him by any authority, and detect collusion between the Nazim and DPO against the public interest. Most importantly, the DPSC had the authority to direct the DPO to take time-bound action against an SHO who has refused to file an FIR as well as to enquire into complaints of neglect or misconduct by any district police functionary, take required action, and report within a specified period of time. If required, DPSCs could conduct independent fact-finding enquiries and direct the DPO to suspend or otherwise penalize offending officials in accordance with the departmental rules.¹²⁵

Second, Police Complaints Authorities were established at the Federal and Provincial levels with the authority to order an enquiry into complaints concerning “*neglect, excess or misconduct*” against any police officer, (by an officer chosen by the Authority), and recommend actions on the basis of enquiry findings. The Authorities could also request a judicial enquiry into serious infractions resulting in death, rape or torture.

Third, Citizen Police Liaison Committees could be established as voluntary self-financing and autonomous bodies, to act as a bridge between aggrieved citizens and the police, and to assist the Public Safety Commissions and the Police Complaints Authorities with their functions.

Fourth, Criminal Justice Coordination Committees were established at the district level under District and Sessions Judges, composed of the Head of District Police, District Public Prosecutor, District Superintendent Jail, District Probation Officer, District Parole Officer, and Head of Investigation i.e. the entire criminal justice value-chain at the district level. The Committees are legally mandated to “*keep under review the operation of the criminal justice system and work*

¹²⁴ (Gourp D, Mushtaq Ahmed Sukhera, NIPA Lahore, 2003)

¹²⁵ Ibid

towards the improvement of the system as a whole", to plug crucial coordination gaps between functions of investigation, prosecution, justice dispensation, conviction and incarceration performed by the local government.¹²⁶

7.2.2 Amendment

In 2004, the Police Order underwent significant amendments to provisions that shielded the police from political interference and which strengthened internal accountability as well as external oversight. Of relevance to this report are the amendments pertaining to the latter¹²⁷:

- The powers of Public Safety Commissions in the appointment, transfer and/or recall of the provincial police head, and the transfer of the district police head were watered down
- The composition of the District Public Safety Commissions (now District Public Safety and Police Complaints Commissions) was to include 1/3rd membership of MNAs and MPAs, instead of ½ Zillah Councilors and ½ independent members, which infused partisan parliamentary politics into a local oversight body
- The Police Complaints Authority ceased to exist at the provincial level and was merged with the Public Safety Commissions at the district and provincial levels.
- The membership of opposition members in Public Safety Commissions at the provincial levels was halved

The roll-back of these key provisions was the result of a confluence of factors – legitimacy (or lack thereof) playing a central role. First, being promulgated under the Musharraf regime, politically it was *reformatio in soluto* from the very beginning. Conspiracy theorists ensured that suspicions concerning its intent would eclipse its content. According to a member of the PML Q, *"The whole devolution plan, including the police reforms, was designed only to create an alternative political power base for Musharraf."*¹²⁸ Unfortunately the democratic governments in the 1990s had been responsible for escalating politicization of the police and had never contemplated reform.

Second, double standards on the part of the reformist regime further de-legitimized the PO 2002. As stated by a police official: *"so long as the ruler of the day treats the police as his personal militia, the police can never be reformed"*. From 2007-2008 the police were used to put down political dissent following the unceremonious departure of the Chief Justice as well as during the run-up to the February 2008 elections.¹²⁹

"So long as the ruler of the day treats the police as his personal militia, the police can never be reformed".
Police Official, ICG, 2008

Backlash from the provinces added to the pressure for amending the PO 2002. Police was a subject of the Concurrent List where both the Federal

¹²⁶ (National Reconstruction Bureau, Government of Pakistan, 2002)

¹²⁷ (Consumer Rights Commission of Pakistan & ADB, 2005)

¹²⁸ (International Crisis Group, 2008)

¹²⁹ (International Crisis Group, 2008)

and Provincial Governments may legislate but Federal legislation would take precedence in case of conflict. As decided by the Lahore High Court: *“Criminal Law is included in concurrent list in Part –II of the 4th Schedule to the Constitution of Islamic Republic of Pakistan. The Police Order 2002 is relatable to the enforcement of the criminal law and policing, therefore, it would squarely fall within the said list...The petition having no merit is accordingly dismissed.”*¹³⁰ Despite this, critics continued to bemoan the encroachment of provincial autonomy by the federal government eventually evolving from a legal to political argument, which precipitated the backpedaling by the Musharraf regime on the PO 2002.

The long-standing inter-service rivalry between the DMG and the PSP also lent momentum to these amendments. As explained by a police officer: *“Members of the DMG opposed the draft Police Order tooth and nail because they simply could not bear the prospect of not being able to lord it over the police, as they had been doing for six decades”.*¹³¹ Within the police itself, anti-reform elements included officials who were not willing to accept the stringent accountability of the reform which accompanied the additional powers. Draft rules circulated by the NRB were never promulgated by senior police officials, neither did a single Provincial Police Officer submitted his annual policing plan to the PPSC, as legally obligated.¹³²

Finally, opposition from Musharraf’s political base, the PML-Q leadership tilted the scales. According to a former IG, behind their ostensible attachment to the ideals of provincial autonomy, was the need to retain control of “postings and transfers” so that their political fiefdoms within the police would remain untouched.¹³³ It may be speculated that pro-reform forces possibly compromised in a bid to secure the implementation of the PO 2002, piecemeal if not wholesale. Even there, it is unclear if they succeeded.

7.2.3 Key Lesson(s)

Most police reforms have been based on supply side issues, mostly internal to the Police and its relations with the rest of the governance structure. Police Order 2002 attempted to create a system that would make the police force responsive to the public but power dynamics blunted the shift.

Police Order 2002 (revised in 2004) created a legal instrument to revamp the police as an organization and embed policing into community support and oversight, which was an attempt at ‘new wine in an old bottle’. The training, institutional comfort with status quo and internal issues of the police services were not considered over the long term for a transitional process. According to the supply-side stakeholders, the original changes by the Police Order 2002 as well as subsequent amendments did not feature any involvement of stakeholders.

There have always been various interest groups supporting the status quo in the Police; which have mobilized against the Police Order. The participants observed that each new reform only

¹³⁰ (Lahore High Court, 2003)

¹³¹ (International Crisis Group, 2008)

¹³² Ibid.

¹³³ Ibid.

substitutes one set of vested interest groups with another. However, the overriding consensus, particularly among police officials, was that the Police Order 2002 and the participatory oversight mechanisms it provisioned were a) a great improvement over the past alternative and b) should not be discontinued.

Police needs critical organizational reform before it can transition to the 'Japanese model' of community-based policing. The first change has to be in attitude and approach of the police. Unless the community becomes the client, no legal reform will succeed. In Khyber Pakhtunkhwa, the change, at least in some areas, could be witnessed only after tragic militant atrocities.

Training has to be the prime focus wherein police officers, of all levels, will have to be re-oriented to shift the organization from an input and process focus to an output and outcome based policy. Without an effective, systemic, internal accountability mechanisms, and complaint response culture, a law requiring community involvement will be resisted and like the Police Order 2002 face implementation failure.

The main problem has been the 'technocratic approach' to reform that failed to recognize the need to manage the politics of reform and had no solutions for problems emerging from the organizational re-orientation of the Police Force. It assumed flexibility in the organization to adjust to new realities prescribed by a 'piece of paper'. Politics of police control have moved from the British imperial objectives, which had a level of predictability, to the whims of post-independence military rulers and political leaders. Reform of the police system cannot be undertaken without political legitimacy and with a national consensus. The diversity in the country calls for provincially focused reforms that do not focus on laws alone, have political champions and include a demand-side perspective.

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7.3 Current Situation

It is unfortunate to note that the criticisms of the police highlighted by the Fraser Commission in 1903 remain equally valid for the police organization in Pakistan today, 109 years after they were first reported. It is also obvious that the 'force' culture has won out over 'service' in no uncertain terms. Given the increased levels of perception of corruption the already biased system has metamorphosed into an instrument that has developed a strong political economy which resists all change efforts.

In terms of policy, while the PO 2002 continues to remain the law in KP and Punjab, in the absence of elected councils or Nazimeen, DCOs head local governments as district administrators, while provincial Police Rules govern day-to-day business for respective provincial police forces. Sindh has reverted to the Police Act 1861, and a "Superintendent of Police looks after the Law and Order and according to law; Deputy Commissioner is entrusted with police superintendence". However, District Sessions Judge remains head of the criminal justice system i.e. district magistracy has not been revived. Balochistan remains divided into A and B areas, with the former

falling under police jurisdiction governed by the Balochistan Police Act 2011, while Levies have been reinstituted under the Balochistan Levies Force Act 2010 in the latter. Area A is mostly urban and covers minimal terrain in Balochistan. In 'B' areas police superintendence authority lies with the Deputy Commissioner, while in 'A' areas it lies with the Senior Superintendant of Police.¹³⁴

Multiple supply-side stakeholders at different workshops stressed that Access to Justice should not start with ADR or courts but with the Thana. Unfortunately, no reform, even the Police Order 2002/05, has ever contemplated any change in 'thana' culture. The most basic right of all citizens is to be able to launch a FIR; according to the law, an FIR can be recorded even on the telephone, but the 'thana' culture has rendered this provision 'unbelievable'.

Some of the key issues of the police force, highlighted below were culled from the stakeholder FGDs as well as other sources.

7.3.1 Police brutalization

Brutalization and use of excessive force is common. In 2010, the Human Rights Commission of Pakistan reports 338 people killed in police encounters and 174 people rescued from illegal police detention. Following the example of the police, vigilante justice is also on the rise, with two nationally televised incidents of lynch mobs in Sialkot (August, 2010) and Toba Tek Singh (May, 2010).

7.3.2 Corruption

The police also remain highly corrupt. According to the 2011 TI Pakistan National Corruption Perception Survey, Police ranks second in the list of most corrupt government departments and 54% of the respondents who had contact with the department during the last 12 months "*felt compelled to pay a bribe*". Low-ranking officials earn less than USD 100 a month, and venality is a tempting option to make ends meet.¹³⁵ Similarly, as already stated, demand-side **FGD participants complained of bribery payments as a common occurrence in interaction with the police.** The findings from the survey confirm this trend, as discussed below.

7.3.3 Politicization of the police

Politicization continues a secular trend under both democratic and military regimes over the last 6 decades.¹³⁶ In September, 2011 the Advocate General Sindh informed the Supreme Court that 40% of police officers had political affiliations.¹³⁷ Of the 180,000 police in Punjab, only 40,000 man police stations while the rest police traffic and guard VIPs – about 6,000 policemen are deployed for the security of 4 private and official residences of the Chief Minister.¹³⁸ When Shahbaz Sharif was removed as Chief Minister on February 20, 2009 according to a court ruling,

¹³⁴ (Citizen's Voice Project, Asia Foundation, 2012)

¹³⁵ (Abbas, 2009)

¹³⁶ (Imam, 2011)

¹³⁷ (Pakistan Today, 2011)

¹³⁸ (Paul Petzschmann, Norwegian Institute of International Affairs, 2010)

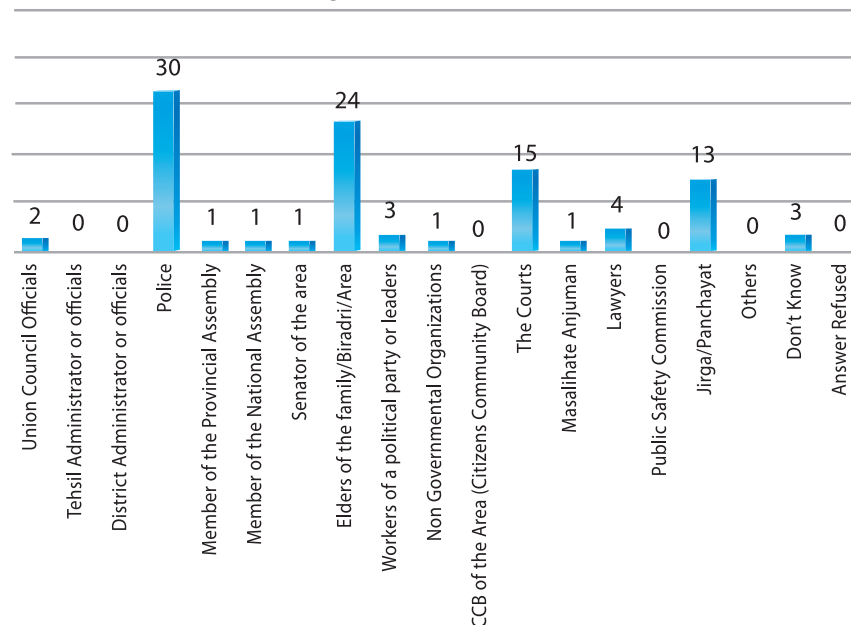
Mr. Salman Taseer moved immediately to supplant the top police leadership in Punjab with his own cronies. During this shuffle the visiting Sri Lankan cricketing team was attacked by terrorists who escaped, exposing the utter incompetence and helplessness of the police.¹³⁹

7.3.4 Trust Deficit between Citizens and Police

As already mentioned, the police function as a support for those at the higher ends of the socio-political hierarchy and not an arbiter of justice for members of the community as a whole. While with increased corruption, the relationship patterns have begun to vary between rural and urban areas. The average policeman views himself as a beneficiary (client) of the socially, politically and economically affluent class (patrons) and reinforces the status quo. While the police have been, perhaps, the most socially embedded profession, the community (except for the patrons) remains irrelevant to their objectives. An exception has arisen in KP as a result of the Taliban massacre of police and people. A better understanding and cooperation now exists in areas like Malakand and Bannu where communities have higher trust in Police and vice versa.

This is borne out by survey findings. When asked “*Who would you approach for help if your personal safety was threatened?*”, respondents mostly cited ‘Elders of the family, biraderi/ area’ and local ADR institutions, with police being a distant third choice. A notable exception was KP where the police was the preferred ‘go-to’ institution for 30% of the respondents in case of personal safety threats, followed by community elders, the courts, and formal/traditional ADR, as shown in Figure 7.1. It may be surmised that these ‘elders’ are in fact the same individuals who serve as intermediaries for the ordinary citizens to approach the police, as related in demand-side FGDs.

Figure 7.1: KP (%)



139 (Abbas, 2009)

In the demand side FGDs, almost no poor person had expectations of relief from the police. The 'thana' was seen as a place of fear and the few instances of interaction reported, including roadside routine checks, had ended in pecuniary losses for the poor in terms of extortion by the Police. This was equally true of urban and rural poor. In Maryam Nishat colony the residents stated that police patrolling in the area increases just before Easter and Christmas to extort money from people involved in illegal activities like manufacture of alcohol or even frivolous misdemeanors. During the rest of the year, the illegal alcohol manufacturers and bootleggers pay the police on a regular basis. **The poorest found Police to be attitudinally callous and rude, corrupt and indifferent to their problems.**

The supply side participants' view did not deviate from the demand side respondents. Apathy of police was a major subject of discussion in almost all the workshops. It was noted that unless the system evolves away from the 19th century concepts and moves towards a service mindset for the police, legal empowerment is not possible, an observation already highlighted in previous reforms (as mentioned in the previous section).

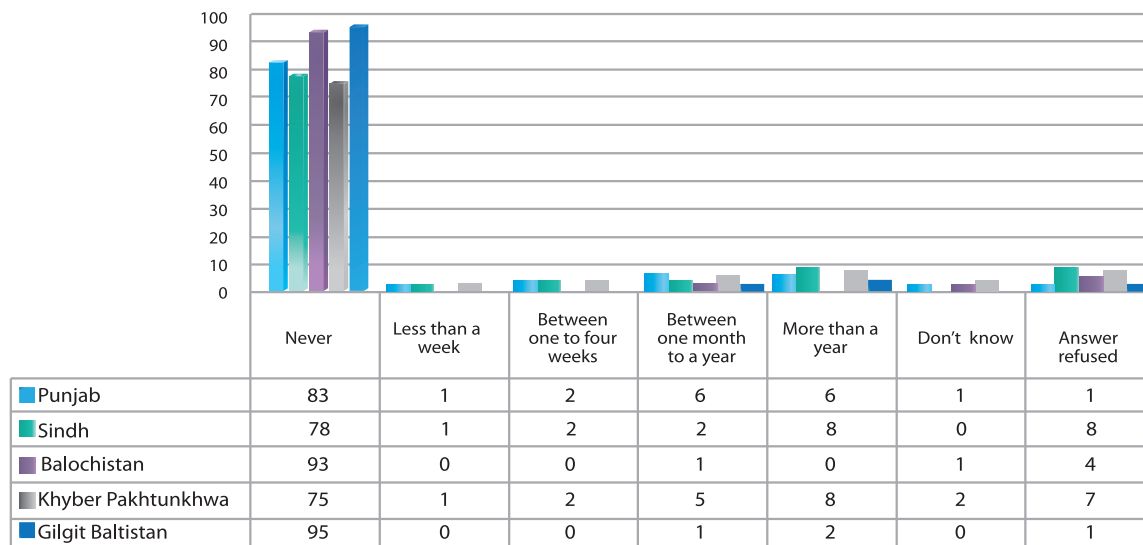
However, as stressed throughout this report, the situation is far from homogenous across provinces. Survey findings reveal large differences in poor citizens' perceptions of police across provinces. When asked *"Does the police or its presence in your area make you feel secure?"*, most respondents in Sindh (58%), GB (89%) and KP (62%) replied in the affirmative, while in Punjab (54%) and Balochistan (55%) the majority replied: *"No"*. There were no significant differences in the responses from men versus women for this question across provinces, except KP where a much greater proportion of women responded: *"Yes"* to this question than men.

Table 7.2: Does the police or its presence in your area make you feel secure?

Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Yes	35	58	7	62	89
No	54	33	55	22	8
Don't know	10	2	33	14	3
Answer refused	1	7	5	2	0
TOTAL	100	100	100	100	100

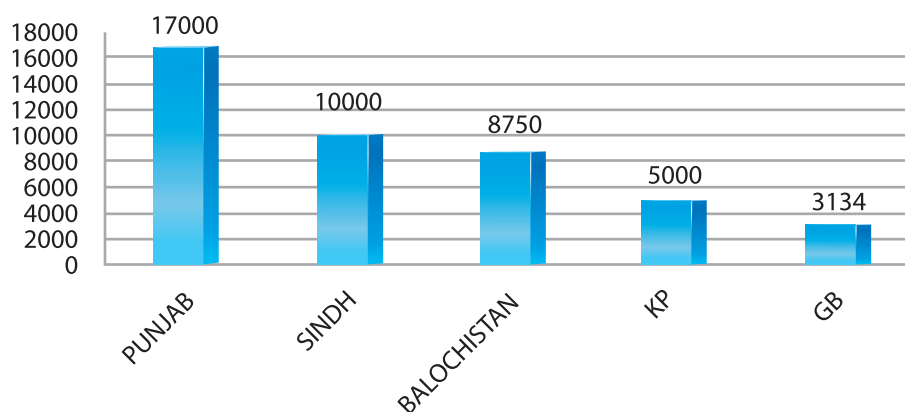
However, despite this apparently positive response on the general sense of security provided by the police to the poor citizen, it is clear that there is minimal interaction between the two. For the question *"When was the last time someone from your household contacted the police?"*, an overwhelming majority of respondents replied: *"Never"*. There is very little variation in this response across all provinces.

Figure 7.2: When was the Last time Someone from your Household Contacted the Police?



It may be surmised that both for hypothetical and actual problems, approaching the police is not an option. Police presence may hold a symbolic or psycho-social value for local residents. But this does not transcend to practical citizen-police interaction i.e. it is the presence and not the action or conduct of the police from which this value is derived. The trust deficit between the police and the citizenry therefore remains intact. In addition to this trust deficit, affordability barriers may also preclude citizen-police interaction. As shown below, the median costs of interaction with the police are relatively high, which may bear significantly on their ability to approach the police.

Figure 7.3: Median Cost of Interaction with Police (PKR)



A similar dichotomy is found in the findings of the Social Audit Report 2011, where both vulnerable and non-vulnerable respondents expressed this sense of protection provided by police presence but preferred local elders to the police for hypothetical threats to safety and 84% had never contacted the police.

7.3.5 Service Delivery Performance

Regarding the registration of the First Information Report (FIR), the contacts with the police, service delivery performance may be assessed in positive terms. For Sindh, KP and Punjab, a significant proportion of contacts resulted in the successful registration of FIRs.

Table 7.3: Was an FIR Registered?					
Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Yes	46	74	9	61	39
No	26	19	64	21	52
Don't know	27	0	0	2	4
Answer refused	2	7	27	16	4
TOTAL	100	100	100	100	100

As can be seen from the matrix above, the situation in Punjab, Sindh and KP is better than other areas, although Punjab has a higher No-to-Yes ratio for this question than other provinces. The findings from Balochistan and GB are qualified by the fact that too few responses were solicited for this question to be considered representative. Probing deeper, those respondents who were ultimately successful in getting an FIR registered, were asked if they encountered difficulties in completing this transaction. While the majority in Sindh (60%) and KP (61%) reported no difficulties, in Punjab a marginal majority of 64% answered "Yes". The findings from Balochistan and GB again yielded too few observations. When considered together with the findings of the demand-side FGDs (as described in earlier sections), these survey results may indicate the strong role of intermediaries who act as middle-men between citizens and police i.e. as complainants approach the police mostly via these middle-men, FIR registration stands facilitated.

Following the FIR, the next key service provided by the police is investigation. The PO 2002 separated the investigation function from 'watch and ward' creating a parallel hierarchy, where at the police station level, an inspector other than the SHO is responsible for investigating FIRs. This has in cases, created parallel points of contact that need to be engaged by the complainant to first record and then track the investigation of his/her FIR. It has also created coordination gaps between the investigation wing and the mainstream police service along with blurring of reporting lines. The gathering, recording and storing of evidence is marred by capacity constraints and political interference. Forensics capacity is grossly sub-par, lacking technical and infrastructure resources. Investigation branches face severe manpower shortages, with Investigating Officers handling up to 30 to 40 cases at a time, while recruitment and retention

remain a challenge.¹⁴⁰

Table 7.4: How long did the police take to investigate / resolve the issue?			
Response	Punjab (%)	Sindh (%)	Khyber Pakhtunkhwa (%)
Less than a week	11	8	21
Less than a month	42	9	16
Between one month to a year	22	16	35
More than a year	8	54	13
Still Investigating	14	11	12
Don't Know	1	0	4
Answer Refused	1	0	1
TOTAL	100	100	100

As can be seen from the matrix above, the survey findings provide ample evidence of such problems, though to varying degrees across provinces. In Punjab, 53% of the cases were resolved within a month, while 22% took from a month to a year, while some others remain unresolved. This situation is better than Sindh where 54% of cases took more than a year to resolve. Similarly in KP, investigation duration for 35% of the cases was from a month to a year's time, including those still pending resolution. In Balochistan and GB, the number of observations was below par for analysis.

With regard to overall satisfaction with the police, in Sindh and KP, the majority of respondents i.e. 52% and 50% expressed satisfaction with the police, though the ratio of Dissatisfied-to-Satisfied is much higher for Sindh than KP, as can be seen below. In Punjab on the other hand, an overwhelming 78% expressed dissatisfaction against 15% who were satisfied. Another interesting trend consistent across all provinces is the polarization of responses i.e. very few respondents chose the "Not Sure" option. This may reflect similar polarization in service delivery at the extreme ends of the quality spectrum. Balochistan and GB again did not gain enough responses for comment.

¹⁴⁰ Ibid

Table 7.5: Are you or the person who made the contact satisfied with the functioning of the police?					
Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Satisfied	15	52	27	50	74
Not satisfied	78	39	27	28	13
Not sure	2	2	0	5	4
Don't know	0	0	0	1	0
Answer refused	4	7	45	16	9
TOTAL	100	100	100	100	100

Respondents reporting dissatisfaction were asked a follow-up question for the reasons behind this perception. While there were certain variations across provinces, the most common response was invariably “Corruption”. The next most common responses were “Inappropriate Behavior” and “Biased Behavior”. Inappropriate behavior provides evidence of the “Thana culture” discussed above, which is not idiosyncratic to experiences with the police, but also colors experiences with the rest of the formal justice system, among the poor. A somewhat counterintuitive finding is the rarity of complaints with police capacity, again across all provinces. Arguably, from the end-user’s perspective, the weakness in service provision is primarily a function of attitude rather than ability i.e. **it is the ‘won’t do’ rather than the ‘cant-do’ element which is creating problems for poor citizens seeking police assistance.**

7.3.6 Participatory Oversight Mechanisms

With regard to the mechanisms created by the PO 2002, there was very little awareness and even rarer service experience among poor citizens surveyed. Across Punjab, Balochistan and GB, a maximum of 1% respondents were aware of the functions of DPS & PCC and/or CPLC. In Sindh and KP, the situation was only slightly better, as can be seen in the matrix below.

Table 7.6: Are you aware of the functions of the following?					
Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
District Public Safety and Police Complaints Commission (DPS&PCC)	0	3	1	1	0
Citizen Police Liaison Committee (CPLC)	0	2	1	1	0
Aware of both	0	6	1	3	0
Don't know	86	78	92	85	100
Answer refused	13	11	5	9	0
TOTAL	100	100	100	100	100

As expected, not enough observations were obtained from Punjab, Balochistan and GB against the question: *"When was the last time someone from your household contacted the DPS&PCC?"* In Sindh (62%) and KP (87%), the majority response was "Never". For CPLC, the situation was marginally more positive. While not enough responses were gained from Balochistan, GB and Punjab, in Sindh and KP 35% and 6% of respondents (respectively) had contacted the CPLC more than a year ago. This indicates that CPLCs may have been formed and active in the past but have become dysfunctional more recently.

7.4 Prosecution

The PO 2002 created an independent prosecution service to place an additional check on police performance. Provincial Prosecution Service Acts subsequently created a separate district hierarchy headed by a public prosecutor assisted by deputy public prosecutors. However, this structure remains under-funded, under-staffed, and under-trained, with politicization continuing as under the police, despite the efforts of the ADB Access to Justice Reform. Driven by meager salaries, prosecutors either resort to venality or private practice which undermines credibility. These factors greatly impede the performance of 2 key functions: a) strengthening the *challan* (charge sheet) during the pre-trial phase, and b) formally approving the case for trial (as mandated by the Criminal Prosecution Act). Citizens who opt out are faced with more expensive fees charged by private lawyers who cannot exert pressure on the police to fulfill evidence collection responsibilities. **The resulting low conviction rate of 5-10% is even more alarming considering that most convictions are the result of guilty pleas by defendants trading interminable trial processes for light sentences. The quality of trial advocacy is therefore even lower than these statistics reflect.**¹⁴¹ Lackluster performance in prosecution is caused in part by weak investigation, as discussed earlier.

¹⁴¹ (ICG, 2010)



CHAPTER 8

Alternative Dispute Resolution Mechanisms

Chapter 8: Alternative Dispute Resolution Mechanisms

Alternative Dispute Resolution (ADRs) mechanisms exist in every justice structure in the world. In the more developed systems ADRs constitute a recognized legal option with sanction of the state. In Pakistan a mix of traditional and informal ADRs exists. The latter have normally been spotlighted for the 'wrong reasons', mainly decisions that violated the fundamental rights enshrined in the Constitution and even outright anachronistic practices that target females as commodities. However, these stories do not provide the complete picture. ADRs cannot be eliminated but they definitely need to be understood in greater details, reformed and linked to formal structures.

8.1 Historical Context

In pre-colonial times *Jirga* was mostly composed of tribal chiefs or a council of elders using customary law to settle criminal/civil disputes between tribes. Under the British *Jirgas* were co-opted to politically strengthen the Raj. According to the first Advocate-General of Sindh, Captain Keith Young: "*The only significant difference between the tribal and colonial legal system was that the law went from being oral to written and later it was used as a semi-judicial body through which the local administration controlled the law and order situations by calming down the warring tribes in the frontiers of the British Empire.*"¹⁴² Though the Political Agent or the Deputy Commissioner continued to have the final say on all decisions, considerable administrative and punitive powers were delegated to the tribal chiefs. This nexus of tribal and bureaucratic authority in the borderlands continues to the present day.¹⁴³

Another form of ADR, *Panchayats*, was formalized by the British as early as 1888 in Madras with the passage of the Village Counts Act. The *Panchayat Act 1912* conferred civil powers to the *Panchayats* beyond their earlier mandate of arbitration, but required both parties to agree to approach the *Panchayat* which vastly reduced their utility. The *Punjab Panchayat Act 1922* and later amendments subsequently empowered *Panchayats* to adjudicate civil and criminal matters, deliver sanitation services, legislate in certain areas, and even impose taxes.¹⁴⁴

8.2 Policy Environment

Various laws contemplate provisions for ADR in Pakistan. They include¹⁴⁵:

- The Arbitration Act, of 1940 which covers the settlement of civil and commercial disputes through arbitration. The Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Ordinance was promulgated in 2006 to further elaborate on this role.
- The resolution of family (matrimonial) disputes is covered by the Muslim Family Laws Ordinance 1961 through Arbitration Councils. The Family Courts Act 1964 promotes a similar institution of Family Courts.

¹⁴² (Baras, 2004)

¹⁴³ (Sindh Judicial Academy-UNICEF, 2009)

¹⁴⁴ Ibid

¹⁴⁵ (Hussain, 2006)

- The Small Claims and Minor Offences Courts Ordinance 2002 encourages arbitration, conciliation or mediation through “*Salis*”. The inclusion of section 89-A and Rule 1-A in Order X in the Code of Civil Procedure empowers courts to use ADR with statutory backing.
- Industrial disputes between labor and management are covered by the Industrial Relations Ordinance 2002 which contemplates “*Shops Stewards*” and a “*Joint Work Council*” to negotiate disputes.
- Amendments in relevant laws covering Income Tax, Sales Tax, Custom, and Excise Duties also include provisions for resolving fiscal disputes through ADR.

Experts agree that these and other provisions need to be amended to facilitate ADR in the formal justice realm¹⁴⁶.

The policy position taken by the Supreme Court is fairly in line with the “ADR technocrats” school of thought. At the National Judicial Conference 2011, the Chief Justice remarked: “*Keeping in view the potential in delivering inexpensive and expeditious justice we have to devise new ways and means to create public awareness, acceptability and confidence for promotion of ADR.*”¹⁴⁷

It must be clarified of course that this blanket endorsement does not cover inherently informal justice mechanisms operating completely out of the domain of the state. On the contrary, a recent judgment by the Sindh High Court in 2003 banned trials under the *Jirga* system throughout the province. In his 48-page judgment Justice Jaffery stated: “*Private persons have no authority to execute the decision of jirgas nor the jirgas have the authority to execute their own decisions through their own sources. If such decisions are carried out and executed by killing persons, then the offence of murder will be committed and they will be liable for action as per the law... The Constitution is based on a trichotomy of powers, i.e. legislature, judiciary and executive ... in jirgas the powers of legislature, judiciary and executive authorities are being exercised.*”¹⁴⁸

According to eminent jurist Justice Nasira Iqbal, ADR within state-sanctioned legal frameworks such as the Musalihat Anjumans have achieved laudable results. However, feudally inspired informal *Jirgas* should be abolished and their decisions not enforced.¹⁴⁹

8.3 Broad Typology

Any typology developed for ADR in Pakistan is bound to be tautological (because of overlaps between competing systems) and incomplete (given the dearth of mapping exercises in research). With these qualifications, the following typology is presented only as an indication of the diversity found with ADRs prevalent in different regions.

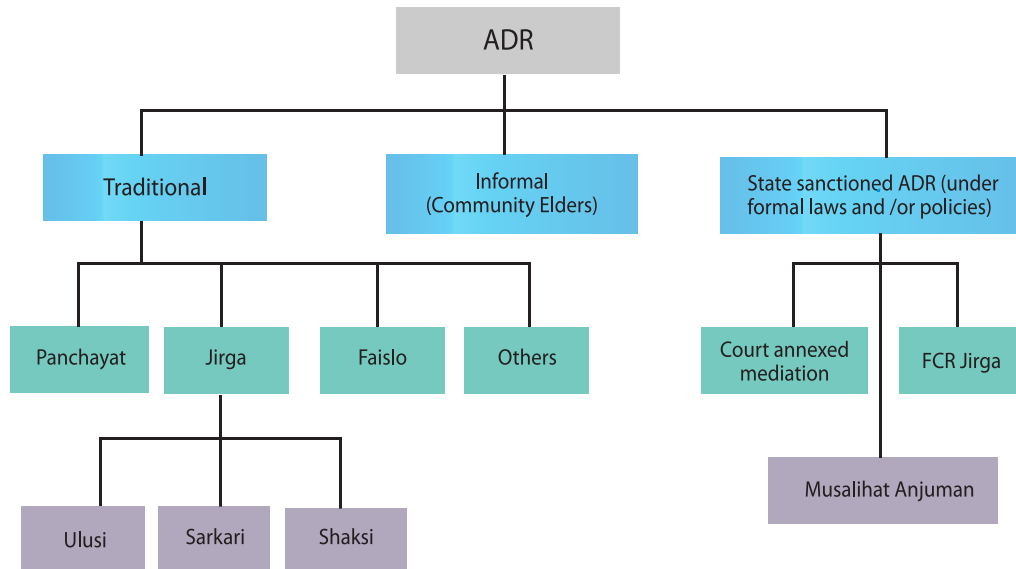
146 (UNDP, 2011)

147 (Law and Justice Commission of Pakistan, 2011)

148 (Asian Human Rights Commission, 2004)

149 (Law and Justice Commission of Pakistan, 2011)

Figure 8.1: Alternative Dispute Resolution Taxonomy



Traditional or custom-based ADR refers to structured mechanisms which are unsanctioned by the state including *Jirga* in KP and Balochistan, *Faislo* in *Sindh* and *Panchayat* in the Punjab. An informal ADR mechanism is a more unstructured mechanism which involves elders of the area, family or extended family (explained in greater detail below). State-sanctioned ADR includes court-annexed mediation (e.g. through the Small Claims and Minor Offences Courts Ordinance, 2002), *Musalihat Anjumans* provisioned in the PO 2002 (explained earlier in Chapter 6), and the *Jirga* mechanism provisioned in the Frontier Crimes Regulation (FCR) 1901, as described in the historical context.

While most of the scholarly work has focused on the *Jirga/Faislo/Panchayats* customary practice which legitimizes the ‘Honor’ related crimes or codes, their structure and function for mediation, arbitration and reconciliation, have been ignored by researchers and practitioners.

8.3.1 *Jirga*

The *Jirga* includes 3 sub-categories. First, the ‘*Sarkari Jirga*’ established under the Frontier Crimes Regulation (FCR) 1901, which empowers the magistrate, the political agent or his assistant to designate a group of elders to try a criminal or a civil case. This *Jirga* can inflict a maximum penalty of up to fourteen-year imprisonment. Second, the *Qaumi* or *Ulusi Jirga* is an assembly of the elders comprising each household of a certain village or community which is convened to discuss matters such as collective property, rights and distribution of irrigation water, or common concerns, like selection of a site for a school, etc. Third, *Shakhsi Jirga* is formulated in case a dispute arises between two individuals or families. The *Jirga* members are chosen from both the parties to arrive at a just settlement acceptable to both sides. Finally, the *Maraka*

which has no legal/administrative authority is a general assembly of people in which important collective issues are discussed, opinions sought, and decisions taken. Unlike the *Jirga*, it does not carry a government sanction but represents the collective will of people, all the same.¹⁵⁰

8.3.2 Panchayat

While no substantive literature was obtainable on the specific structure and function of the *Panchayat*, particularly in relation to its differences from ADRs practiced in other regions, they are treated by most scholars as akin to, even synonymously with the *Jirga*.

8.3.3 Faislo

The *Faislo* system can be used in: an extended family system; village community; and in the larger *biraderi* or *qaum* (tribe). *Faislo* is used not only to resolve civil matters, but increasingly used to settle matters of life and death and serial killings in tribal feuds. *Faislo* is to mediate and the objective is to end the feuds by consensus of both the tribes. In order to bring warring parties or tribes to a negotiating table or for agreeing to have *Faislo* (mediation), various strategies are adopted. The concept of *Mairhminth* (caravans of peace, pardon and appeal) is a foremost strategy. In rural areas of Sindh, under *Faislo* or *Sulh*, disputes related to crimes committed by a member of a community or a group of the community intentionally or unintentionally or due to misunderstanding or accident, are taken up.¹⁵¹

8.4 Supply Side Perspectives

There are four broad schools of thought regarding Alternate Dispute Resolution (ADR) among supply side stakeholders in Pakistan. It must be noted that no particular stakeholder group e.g. the judges, police officials, lawyers, civil society activists or donors (researchers and practitioners) are monolithic in their subscription to one school. Differences exist both within and between these stakeholder groups in terms of perspectives on ADR. Throughout the supply-side workshops, participants in different areas expressed varied opinions regarding the impartiality, transparency, and cost-effectiveness of the ADRs.

8.4.1 ADR Apologists

First, 'ADR Apologists' consider ADR a necessary evil i.e. they recognize the inherent shortcomings of ADR, but when weighed with its potential to deliver speedy and cheap justice particularly for the poor, they find it an endorsable compromise. According to a report of the Danish Ministry of Foreign Affairs: "*the majority of the population is often not in a position to access the formal legal system, for various cultural, linguistic, financial and logistical reasons. Their access to justice largely depends on the functioning of informal systems, which have been neglected in terms of external support*"¹⁵². According to research, **in developing country contexts, up to 80% of caseloads are borne by informal justice systems, which, despite their endogenous weaknesses remain far more accessible to the poor and vulnerable social strata than their formal**

¹⁵⁰ (Bano, 2011)

¹⁵¹ (Sindh Judicial Academy-UNICEF, 2009)

¹⁵² (Danish Ministry of Foreign Affairs, 2000)

counterparts.¹⁵³

Alternate Dispute Mechanisms like *Panchayat*, *Jirga* and *Musalihat Anjuman* were repeatedly mentioned in all the supply side workshops as a vital instrument for enhancing the legal empowerment of the poor. Some participants were of the view that the informal system should not be condemned outright and efforts should be focused on its improvement and sensitization of the members and society on human rights issues. Most citizens are willing to go to *Panchayats* and solve disputes through arbitration rather than courts, because they are disappointed by the latter. The *Panchayat* system should be revived to provide speedy justice delivery. People are hesitant to approach courts or police, but will opt for arbitration through local elders who are not necessarily powerful or rich, but whose decisions are respected. Around 80% of the litigation is in lower courts and most problems are petty where ADR can play an effective role in their settlement; the need is to make it more effective with support from the formal legal system. However, it was also pointed out that in urban areas, ADR is functioning to get relief from land-grabbers, provide water and other facilities, through underworld mafias.

“The majority of the population is often not in a position to access the formal legal system, for various cultural, linguistic, financial and logistical reasons. Their access to justice largely depends on the functioning of informal systems, which have been neglected in terms of external support”
Danish Ministry of Foreign Affairs, 2000

8.4.2 ADR Moralists

Second, ‘ADR moralists’ are not willing to overlook the weaknesses of ADR, in particular, the tendency to overstep internationally recognized standards and norms of human rights and are not accepting of its prevalence even as a ‘second-best’ option. They highlight the fact that *Jirga*, *Panchayat*, and their local variants are not the consensus-based semi-formal ADR mechanisms practiced world-wide and labeling them as such is highly misleading. These views were voiced by participants of supply-side workshops, most notably by women representing civil society organizations and the lawyers’ community.

A recent study on women’s empowerment in Pakistan condemned “*discriminatory parallel judicial systems such as the Jirga and Panchayat, which are now labeled Alternate Dispute Resolution Systems*”, which denied land rights to women in Pakistan.¹⁵⁴ Recent scandals involving gross violations of human rights carried out on orders from ADRs, have caused a backlash of negative public opinion regarding ADR. A recent example is discussed in Box 8.1.

‘ADR moralists’ also highlighted the fact that *Jirga* decisions are biased considering the socio-economic status of the parties involved as *Jirga* also favors the rich and the powerful. The view found some support in the demand-side FGDs, conducted for this study. *Shariat*, *Riwaj* and *PPC* are different themes on which decisions are made considering the facility of the stronger party. Secondly, *Jirga* is also not that inexpensive for the poor. Malik and their sons monopolized the

¹⁵³ (Sindh Judicial Academy-UNICEF, 2009)

¹⁵⁴ (USAID-Aurat Foundation, 2011)

Jirga and it was a corrupt system backed by elites and not the community. Most often the *Jirga* would get money from both sides and once the decision is made, will return the money of the winner. Informal *Jirga* was invariably for the powerful.

Box 8.1 Violations of Women's Rights by ADR bodies: A Recent Example

According to media reports, in district Shikarpur, Sindh, a local Faislo convened under the direction of a landlord decided for 12 girls to be handed over in marriage to settle a blood feud between two groups within the Maher clan. The girls were part of compensation for a 4 year old murder case, where the guilty party was also asked to pay a fine of PKR 250,000 to the aggrieved group on May 5, 2011. The verdict was accepted by both parties and girls aged between 8 to 12 were to be married to male members of the aggrieved group. Sukkur police responded by booking 25 people involved with the affair on behalf of the state.

The total marginalization of women from the structure and function of informal ADR mechanisms, and the general disregard for their rights when meting out justice or resolving disputes cannot be denied or ignored.

Source: Express Tribune, 7th May, 2011

8.4.3 ADR Technocrats

Third, 'ADR technocrats' view ADR as a real-world solution to the problem of the vast volume of litigation, which is not manageable through formal courts. It offers relief to the courts and to litigants who cannot or will not approach the courts, and also broadens options for dispute resolution. The only complications they recognize with regard to ADR originate either from jurisprudence and the philosophical basis for ADR (which may cause de-professionalization of adjudication¹⁵⁵ and encourage "plurality of law"¹⁵⁶), its legal underpinnings, or the practical structure and function of ADR from a reformist standpoint.

With reference to historical linkages of ADR it was pointed out that the British accepted *Jirga* but never introduced 'Jury' in the sub-continent, because the British did not trust the locals. Considering various benefits associated with the concept of 'Jury', some FGD participants proposed that it should be introduced in Pakistan as well, because it involves the community on a relatively larger scale. *Jirga's* writ is more acceptable than the formal law as people consider formal law as an 'alien' law, owing to the transplant effect. It was also noted that according to the 1968 *Jirga* law in Balochistan, formal state functionaries worked in close coordination with community ADR mechanisms. Communities participated in ADR because of time/cost savings and this built ownership of the system while reducing burden on courts.

¹⁵⁵ (Chaudhree, 2006)

¹⁵⁶ (Benda-Beckmann, 2006), (Merry, 1988), (Roberts, 1998), among others.

Repeated references were made to India's *Panchayat* system. It was also pointed out that in India the *Panchayat* System is a formal part of their CrPC and should be looked at as a possible model. The Panchayati Raj system has been included in the constitution of India and is administered by a separate ministry. It was also noted that the *Panchayat* Raj system worked in India because they did not interfere with the Indian civil service, which still have excessive control, as opposed to the LGO, which is perceived to have been sabotaged by the DMG as it excluded them from design and curtailed their power in implementation.

It was pointed out by many that **Reconciliation or Musalihat is not possible without authority**. Musalihat Anjumans were not that successful because they were not given any enforcement mechanism for their decisions. Musalihat Anjumans and other such ADRs should be institutionalized within the local government legal framework, and in the CrPC. It was pointed out that government-sanctioned ADR needed to be simplified into something comprehensible to the average villager. Reformers should strive for practicality rather than perfection, and it should be incorporated into the CrPC and for enforcement they should be given certain mechanisms.

8.4.4 ADR Nostalgists

Fourth, 'ADR nostalgists' point to the indigenous nature of ADR which is deeply embedded in the historical evolution of local social mores, norms and customs which may enjoy greater legitimacy and credibility at the community level than formal laws and courts. In 2008 following rising militant activity in Lakki Marwat, KP, a local politician blamed the government for ignoring the *Jirga* and the local traditions and customs it represented.¹⁵⁷ A large subset of lawyers, judges, police officials and civil society representatives echoed this perspective during the supply side workshops.

8.5 Demand Side View

8.5.1 ADR versus State Institutions

In demand-side FGDs, participants unanimously preferred ADRs over formal justice system even if the experiences regarding ADR were mixed. These views align well, for the most part, with survey findings. Both, for threats to their person and their property, respondents preferred approaching ADR or community elders over the police, revenue departments or courts.

As pointed out earlier, KP was a notable exception, with more respondents (30%) preferring to approach the police before informal mechanisms. However, it must be noted that these informal mechanisms do not include only the more institutionalized ADR mechanisms such as *Jirgas*, *Panchayats*, *Faislos*, or others with designated members, a hierarchy of decision-makers and protocols for decision-making, however informal they may be. Elders of the community i.e. family, biraderi and/or area are an extremely important pillar, in fact more important than ADR or police and courts, for mitigating threats to personal safety. In GB, 47% of respondents preferred to approach them versus 2% who opted for ADR. Similarly, in Punjab, Sindh and KP respondents

¹⁵⁷ (Daud, 2008)

cited community elders more commonly than ADR. Though from a conceptual standpoint these 'elders' may also be categorized as ADR, but they are obviously distinct in practical terms from the demand-side perspective. Ensuing discussion and assessment will therefore differentiate between these forms of ADR i.e. 'traditional' ADR versus 'informal ADR' or community elders.

Table 8.1: If you fear for the safety of your person where do you go for help?					
Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Union Council Officials	2	3	1	2	0
Tehsil Administrator or officials	1	2	4	0	5
District Administrator or officials	0	0	2	0	0
Police	21	25	4	30	37
Member of the Provincial Assembly	5	1	16	1	0
Member of the National Assembly	2	1	7	1	0
Senator of the area	1	1	4	1	0
Elders of the family / Biraderi / Area	29	35	22	24	47
Workers of a political party or leaders	10	2	8	3	1
Non Governmental Organizations	0	1	1	1	0
CCB of the Area (Citizen Community Board)	0	0	0	0	0
The Courts	8	12	2	15	5
Musalihati Anjuman	0	0	0	1	1
Lawyers	1	1	1	4	0
Public Safety Commission	0	0	0	0	0
Jirga / Panchayat	16	14	26	13	2
Others	0	0	0	0	0
Don't Know	3	1	0	3	0
Answer Refused	1	1	0	0	0
TOTAL	100	100	100	100	100

Similar results are obtained for threats to property as shown in table 8.2.

Table 8.2: If you are worried about the security of your property where do you go for help?					
Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Union Council Officials	2	2	1	2	0
Tehsil Administrator or officials	1	3	4	1	15
District Administrator or officials	0	0	2	0	0
Police	14	19	4	23	25
Member of the Provincial Assembly	4	1	14	2	0
Member of the National Assembly	1	1	5	1	0
Senator of the area	1	1	5	0	0
Elders of the family / Biraderi / Area	26	29	20	21	41
Workers of a political party or leaders	8	2	8	3	1
Non Governmental Organizations	0	1	1	1	0
CCB of the Area (Citizen Community Board)	0	0	0	0	0
The Courts	8	12	3	14	7
Musalihati Anjuman	0	0	0	1	1
Revenue Department	14	13	1	11	9
Public Safety Commission	0	0	0	0	0
Jirga / Panchayat	11	10	25	12	2
Others	4	2	6	2	0
Don't Know	4	2	0	4	0
Answer Refused	1	2	1	1	0
TOTAL	100	100	100	100	100

In all provinces, except KP, community elders were preferable to police and courts for mitigating threats to property. In KP, marginal 2% more respondents opted for the police than community elders. In Balochistan, *Jirga/Panchayat* or traditional ADR remains the most common preference.

Overall, traditional and informal ADR are more commonly preferable to formal authorities including police, courts and revenue for personal and/or property security. However, traditional ADR on its own loses 'most preferred' status for both personal and property security, more so for the latter.

8.5.2 Coverage and Use

According to survey findings, the coverage and accessibility of traditional ADR mechanisms was less than universal. The prevailing notion of the ubiquitous, all inclusive and all-accessible *Jirga* or *Panchayat* is divorced from ground realities. When asked if there was a traditional ADR mechanism operating in their areas, a sizable proportion of respondents, (44% and 94% in Punjab and GB), said: “No”.

Figure 8.2: PUNJAB

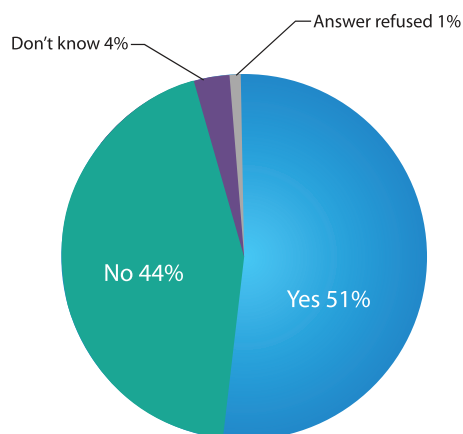


Figure 8.3: BALOCHISTAN

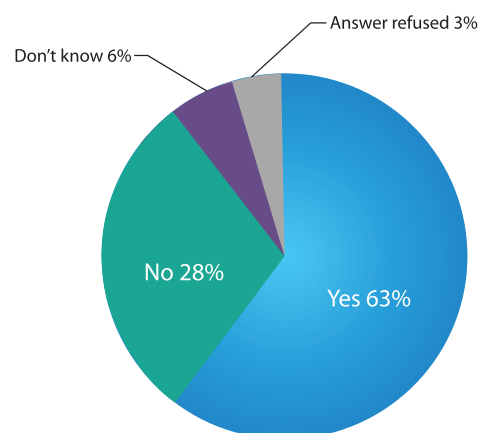


Figure 8.4: GILGIT BALTISTAN

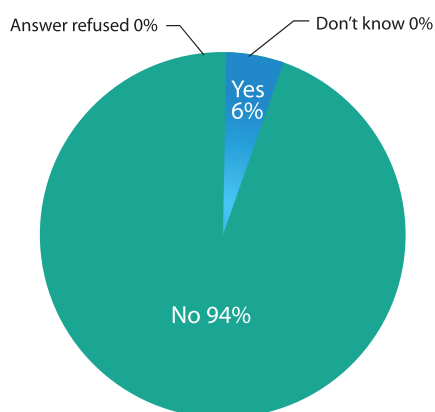
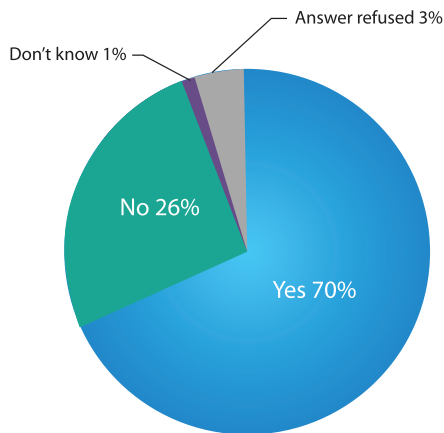
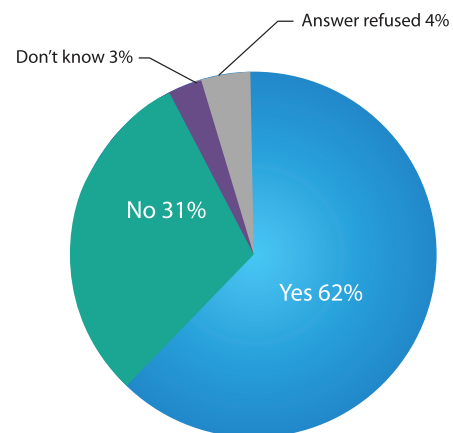


Figure 8.5: SINDH**Figure 8.6: KP**

These findings, though counter-intuitive, align completely with foregoing analysis. For example, in GB, we have seen that only 2% of the respondents would approach traditional ADR mechanisms for threat to personal safety and only 2% for threat to property. This makes complete sense, as 94% of the respondents of GB do not have a traditional ADR body operating in their area.

However, these findings must be qualified by certain considerations. First, as highlighted before, traditional ADR is absent in urban settings, and these findings may allude to this rural bias. Second, while this question explores the coverage of traditional ADR, it does not include informal mechanisms led by community elders, as discussed above. This is borne out by the cross-tabulation of responses against this question with the urban/rural categorization of respondents in the figure below.

Table 8.3: Cross-tabulation of Urban/Rural Responses for Coverage of Traditional ADR		
PUNJAB		
	Yes (%)	No (%)
Rural	53	43
Urban	39	52
SINDH		
Rural	69	27
Urban	75	19
BALUCHISTAN		
Rural	69	20
Urban	56	36
KP		
Rural	66	29
Urban	47	41
GB		
Rural	6	94
Urban	8	92

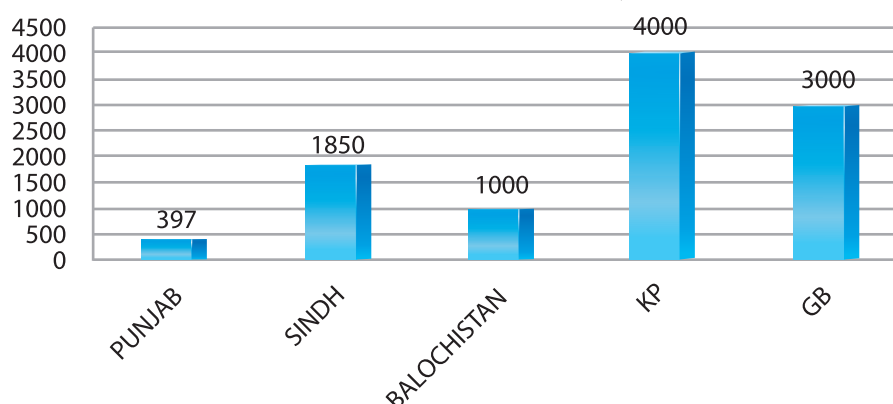
Except for Sindh, there is a marked difference in the presence of ADR reported from urban versus rural areas. This is borne out by the urban case studies. The poor communities in urban areas have been formed over the last few decades and no clear pattern of ADR appeared in the three case studies. In Siraj Colony Karachi the Church's role as an arbiter received much greater acceptance in the Christian community than in Maryam Nishat Colony Lahore. Similarly in the relatively new (10 year old) Islamabad's Mehrabad Area, ADRs were completely dormant.

These same qualifications apply to the next question concerning usage of traditional ADR. When asked *"When was the last time someone from your household contacted the Jirga or Panchayat?"*, the majority of respondents across all provinces and GB replied: *"Never"*. However, the exclusion of informal ADR and the rural bias of traditional ADR mean that these findings do not depict the complete picture.

Table 8.4: When was the last time someone from your household contacted a Jirga or Panchayat?					
Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Never	67	66	70	54	97
Less than a week	1	4	5	3	0
Between one to four weeks	3	3	1	5	0
Between one month to a year	9	5	6	11	0
More than a year	6	14	9	12	1
Don't Know	1	1	4	2	0
Answer Refused	14	8	5	13	2
TOTAL	100	100	100	100	100

This lower than expected usage may be seen in the context of affordability. **Contrary to mainstream opinion, ADR is not delivered as a charge-free service.** Though far lower in every province / area than the courts, the median cost of interaction with non-state, traditional ADR mechanisms such as Jirgas and Panchayats constitute cash transactions, as shown in the figure below.

Figure 8.7: Median Cost of Interaction with Jirga/Panchayat (PKR)



It may be further commented, that while low, usage of traditional ADR is generally greater than usage of police and courts. For example, in Punjab while 83% of respondents had never contacted the police and 85% had never contacted the courts, this drops to 67% for traditional ADR.

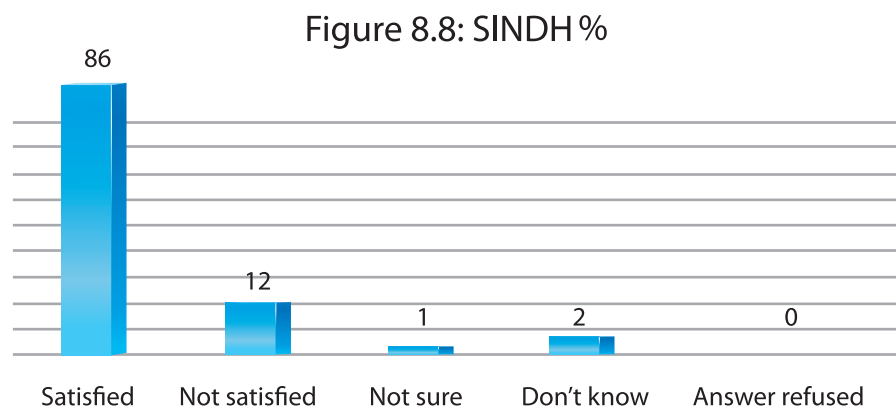
8.5.3 Service Delivery Performance

Overall, ADR is highly diverse in its structure, function, and the typology of problems it processed from one district to another.

While perceptions regarding performance varied, ADR was universally preferable to the formal system. However, the choice between an unavailable formal system and an available informal one is not really a choice at all. In any case, it is interesting to note that the people, who act as intermediaries between citizens and formal state institutions, also act as arbiters of the informal dispute resolution mechanisms. Further, it is ironic that where on the one hand, respondents criticize feudal/political leaders for distorting the formal justice system, they will defer to their leadership with respect to ADR.¹⁵⁸ A saying related in Lodhran encapsulates this attitude: *"no-one should tell a lie in Panchayat and no one should tell a truth in the court"*.

"No one should tell a lie in Panchayat and no one should tell a truth in the court".
FGD, Lodhran

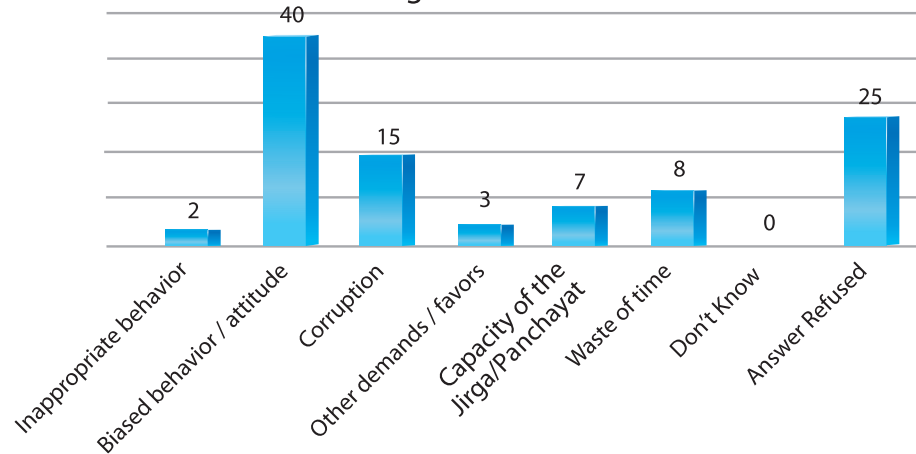
In Sindh, the *Faislo* headed by the local *Ameen/Feudal/Salis* was trusted and successful, as related by participants of demand-side FGDs. Women respondents said that family disputes were solved through community elders. According to the survey 86% of respondents in Sindh were satisfied by the response of the traditional ADR body when they were contacted, while 12% were dissatisfied.



The most common causes of this dissatisfaction included *"Biased behavior / attitude"* (partiality), *"Corruption"*, and *"Waste of Time"*, as shown in the next figure.

¹⁵⁸ This suggests an implicit acceptance of social inequalities and their consequences. Although most demand-side respondents pointed out the bias in ADRs when one of the parties was more powerful, they continue to approach them for justice services more frequently than the state.

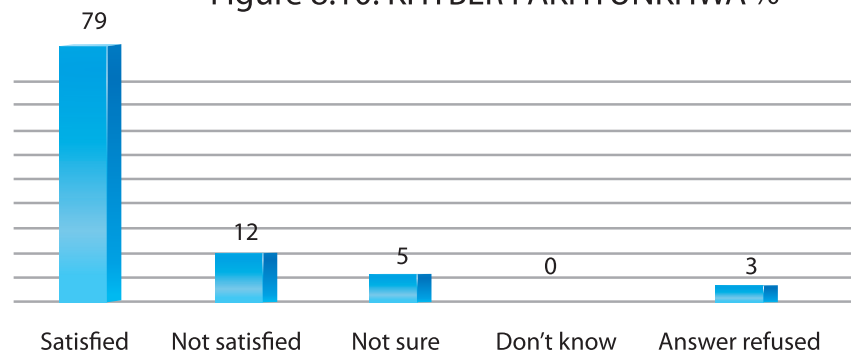
Figure 8.9: SINDH %



In demand side FGDs in KP, the *Jirga* was preferred, (even though it did not always function), to avoid the police more than the courts. In places, perceptions were highly negative – for instance, in Karak respondents called ADR ‘police in white clothes’, who demanded high fees and decided in favor of the more affluent party. Survey results indicate that the median cost of interaction with the Jirga in KP (PKR 4,000) is highest in comparison with all other provinces and GB. On the other hand, in Chitral, the *Lotoro* (tribal/village leader) was trusted for solving disputes related to land, water supply, even problems with in-laws faced by women. In Kailash, a *Maglis* led by a *Gadarak* settled cases, mostly related to wives eloping with other men.

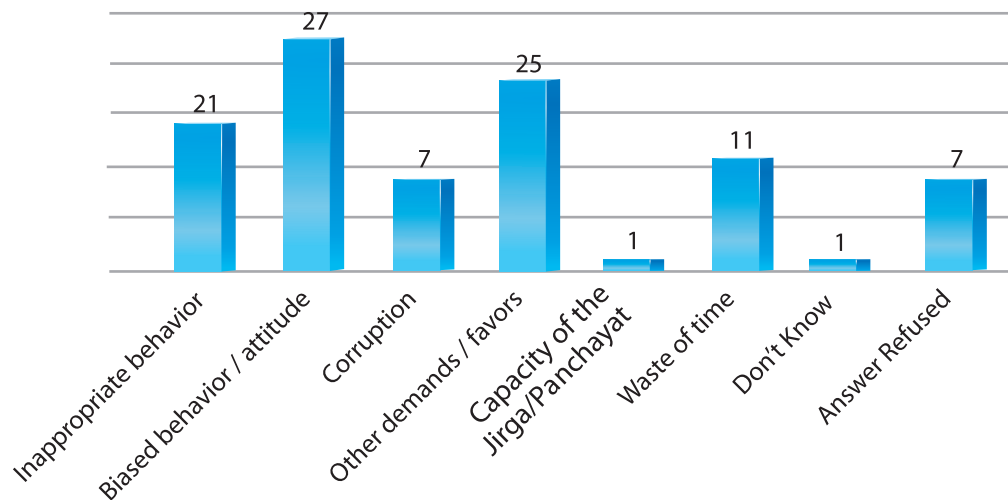
According to the survey, 79% of the respondents who had contacted traditional ADR were satisfied with the experience, while 12% were dissatisfied. Unlike Sindh, 5% were “Not Sure”, which suggests a greater proportion of mediocre experiences, thereby reflecting the diversity suggested by FGDs.

Figure 8.10: KHYBER PAKHTUNKHWA %



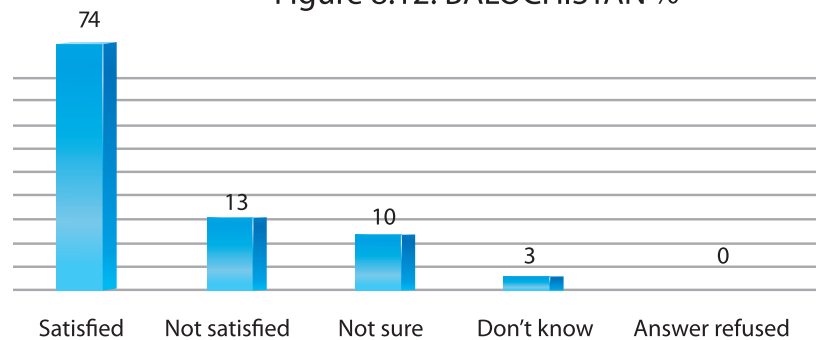
When asked, most respondents cited the reasons for dissatisfaction as biased behavior, “Other demands/favors” (which indicates ‘in-kind’ rather than ‘in-cash’ corruption) and inappropriate behavior, as shown below.

Figure 8.11: KHYBER PAKHTUNKHWA %



In Balochistan, the majority of respondents appeared to be satisfied, while 13% were dissatisfied. Not enough responses were obtained for the follow-up question probing reasons for dissatisfaction.

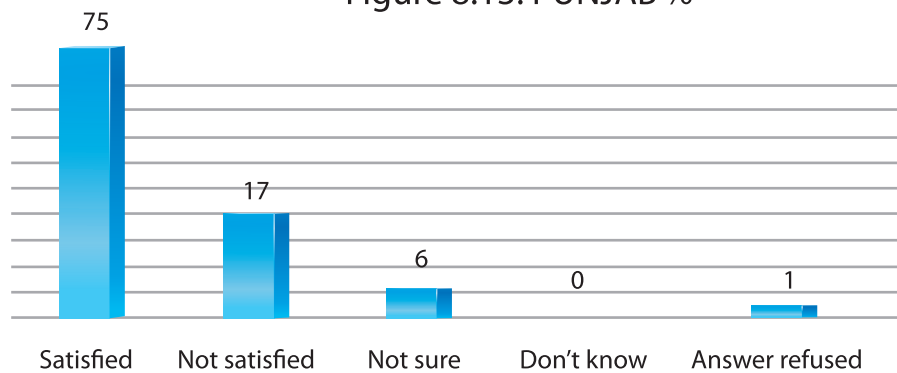
Figure 8.12: BALOCHISTAN %



In GB, the '*Sarmung*' enjoyed a high level of trust among the community. In Tehsil Gamba, which was predominantly Shiite, *Ulema* (clerics) were preferred as arbiters. Unfortunately, too few respondents were found for questions on satisfaction levels for survey results to be reported as representative.

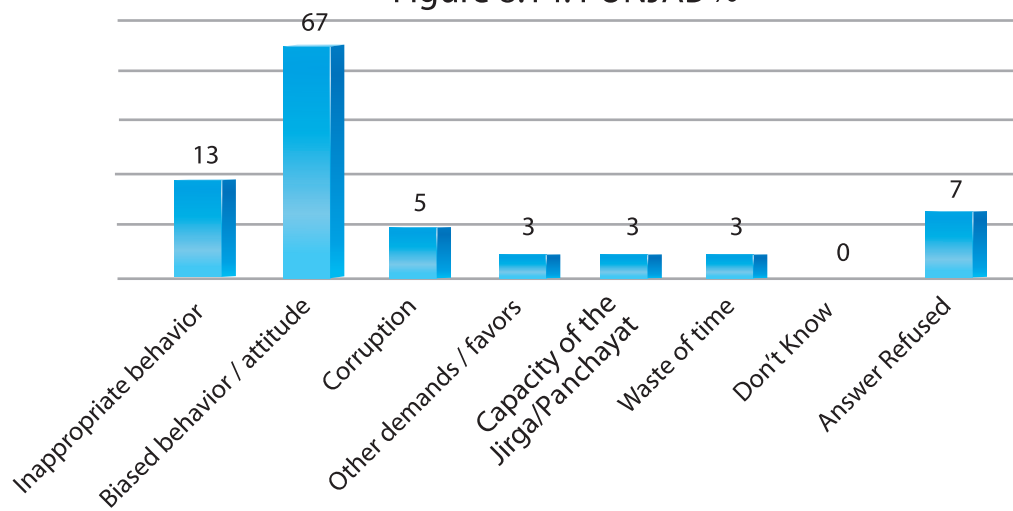
In Punjab, perceptions regarding *Panchayats* were mixed, citing the influence of *Sardars*, lack of implementation, delays, and legal support as problems. According to the survey, 75% of the respondents were satisfied with the performance of traditional ADR mechanisms that they were in touch with, while 17% (the highest dissatisfaction rates of all provinces) were dissatisfied.

Figure 8.13: PUNJAB %



Most dissatisfied respondents cited biased behavior, inappropriate behavior and corruption as causes for their lack of satisfaction. Partial behavior is the most widely quoted factor for dissatisfaction (67% of respondents), and though not a Punjab-specific problem, it does appear to be more prevalent than in other provinces, which may account for similarly high dissatisfaction levels.

Figure 8.14: PUNJAB %



8.5.4 Musalihat Anjumans

In demand-side FGDs, most participants revealed lack of knowledge and awareness of their existence or operation. This was confirmed by the results of the survey. When asked: *"Is there a Musalihat Anjuman operating in your area?"*, an overwhelming majority of respondents replied: *"No"*. Only in KP did the Anjumans appear to have some scale of presence, as illustrated below.

Table 8.5: Is there a Musalihat Anjuman operating in your area?					
Response	Punjab (%)	Sindh (%)	Balochistan (%)	Khyber Pakhtunkhwa (%)	Gilgit-Baltistan (%)
Yes	4	3	1	18	4
No	79	85	88	63	93
Don't know	16	8	5	12	2
Answer refused	2	4	6	7	1
TOTAL	100	100	100	100	100

Of the subset of respondents who reported presence of Anjumans, a very small proportion had contacted them, with the exception of KP and to some extent in Sindh. Not enough responses were found in GB.

Figure 8.15: PUNJAB

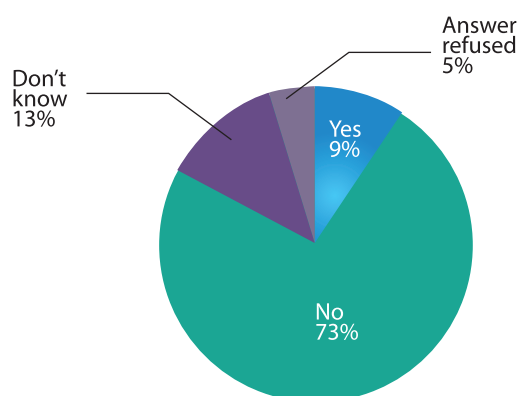


Figure 8.16: BALOCHISTAN

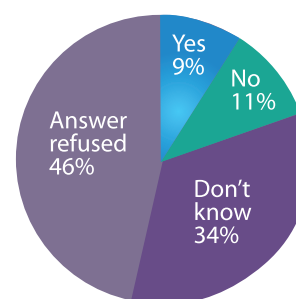


Figure 8.17: KHYBER
PAKHTUNKHWA

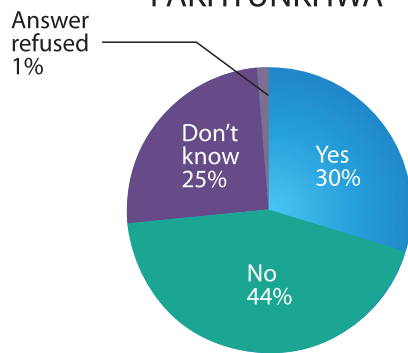
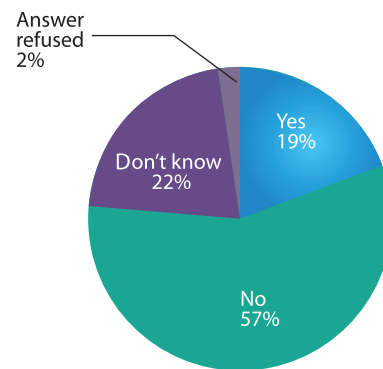
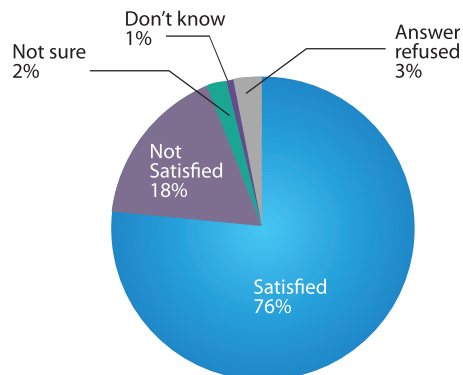


Figure 8.18: SINDH



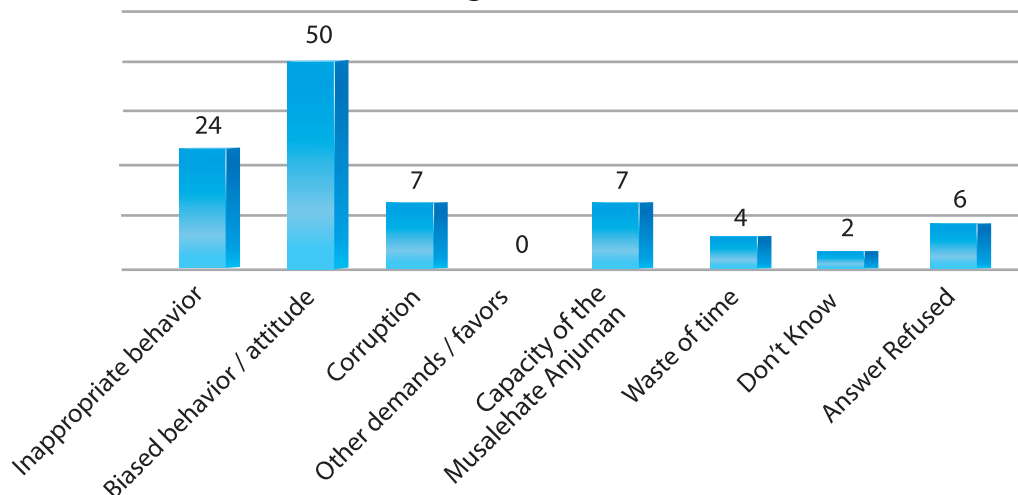
As expected, only KP yielded sufficiently representative number of responses for follow-up questions regarding satisfaction levels of respondents who contacted the Musalihat Anjuman. Of these, the majority expressed satisfaction, as shown below.

Figure 8.19: KHYBER PAKHTUNKHWA



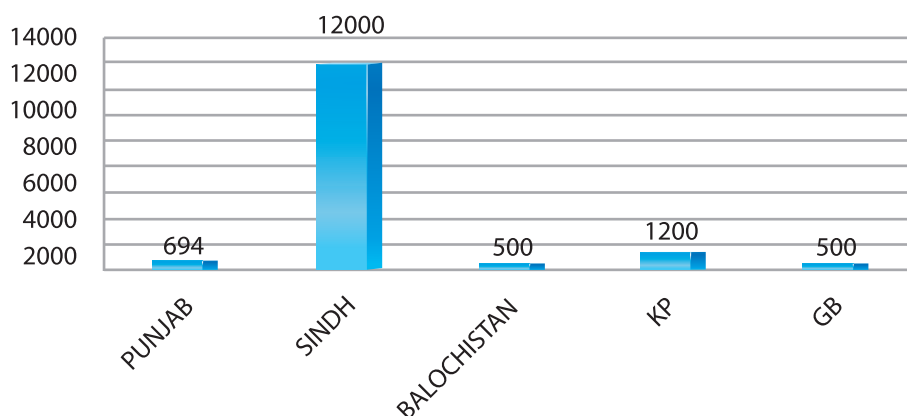
When probed further, the minority of dissatisfied respondents cited biased behavior, inappropriate behavior and corruption as reasons for dissatisfaction, which are surprisingly similar to grievances expressed for traditional ADR i.e. the Jirga in KP.

Figure 8.20: KP %



In addition, Anjuman services are not apparently free of cost for complainants – in fact in Sindh, the median cost of interaction with the Anjuman was greater than non-state traditional ADR (*Faislo*) though it is lower in other provinces as shown in Figure 8.21.

Figure 8.21: Median Cost of Interaction with Musalihat Anjuman (PKR)



8.6 Conclusion

ADR, as previously pointed out represents a knowledge gap in policy and research. In fact, one of the key recommendations emanating from the National Judicial Conference 2011 was for

a research study to explore the exact structure and function of ADRs operating in Pakistan.¹⁵⁹ In this context, the only robust primary research exercise that could be found was the quasi-anthropological study conducted by SDPI in 2003, which contributed seminal insights presented below:

1. Women face systematic discrimination by ADRs functioning in sampled regions across all 4 provinces, *karo-kari* being the most offensive manifestation.
2. While the poor placed *"over twice the confidence on justice dispensed by the community or informal institutions than they did on the courts"*, the rich accessed ADR when they could monopolize the process and approached courts to signal their affluence and to demonstrate their ability to buy justice.
3. Broadening the acceptance of ADR would depend on greater perceived impartiality and ability to enforce decisions.

Overall, the study found ADR to be speedier and cheaper than formal courts but also, depending on the locality *"coercive, authoritarian, subjective, and without any system of checks and balances or appeal"*.¹⁶⁰ These findings are in complete consonance with what has been revealed in the foregoing analysis. Most importantly, the role of informal ADR or ADR led by community elders has not been given the attention it deserves, by researchers and practitioners alike.

On balance, the perceptions of both the demand side and the supply side presented ADRs as accessible, but imperfect justice forums, which must not be rejected outright or accepted wholesale. The degree of confidence in the fairness of the ADR partially depended on the level of egalitarianism (sans women) in a given society. In more hierarchical societies, complaints of partiality to the powerful increase. The findings on corruption in ADR mechanisms run contrary to the general beliefs about the system.

ADRs need to be explored in greater detail at the local levels and linked to formal legal systems. Reform of the ADRs must benchmark the fundamental rights provided by the Constitution. A process of engagement and awareness within the community has to be initiated at the local level. In rural areas and semi-tribal to tribal structures, traditional ADRs exist as interfaces for reform. In urban areas social structures may not always have established ADRs. The more traditional ADRs like the *'Musalihat Anjuman'* may be the answer, especially for the urban settlements.

¹⁵⁹ (Bano, 2011)

¹⁶⁰ (SDPI, 2003)





CHAPTER 9

Property Rights

Chapter 9: Property Rights

Difficulties in obtaining secure title, easy transfers and a quick settlement of disputes make property purchase in Pakistan a difficult proposition for the average local buyer and unattractive for the foreign investor. The problems of the land titling system and the inability of the state to settle land disputes within reasonable time durations have, among other factors, provided incentives for rent seeking. The term 'land mafia' has become common, especially, in urban areas although the practice of land grabbing also exists in many rural areas. In urban areas housing societies that ensure a secure and swift transfer of title sell property at high premiums. In a fast urbanizing country, the distorted land market raises the price of 'acceptable land' to exorbitant levels. Hence the incentive for the mafias is to convert 'unacceptable' land into 'acceptable' by all means available to them.¹⁶¹

The poor remain marginal to the entire situation in both the rural and urban areas even with variations in details. **According to BISP's Poverty Scorecard Survey, almost 85 % households of the four provinces of Pakistan do not own any land.**¹⁶² This fact is substantiated by the FGDs conducted during the course of this study where most of the poor did not own property. In the few instances of property ownership the source was inheritance. Subsequent divisions normally shrink the size of individual shares below the economic and subsistence level and the families 'minimize' the impact of this fragmentation on male shareholders by excluding females.

Problems and issues of property rights in Pakistan have been deliberated in detail in the UNDP's 2008 study on Legal Empowerment in Pakistan. According to this report there are multiple consequences of insecure property rights, which include: exploitation of vulnerable groups like women and minorities, blood feuds, lack of investments, inefficient use of land (especially agriculture land), and hindrance in raising funds for any productive business ventures. Lack of secure property rights is a common feature in many under-developed and developing countries and a major cause of persistent and chronic poverty.

The report of the Commission on Legal Empowerment of the Poor (CLEP) stipulates that the concept of legal empowerment is fully established in the basic principles of human rights articulated in the 1948 Universal Declaration of Human Rights, where article 1 of the Declaration states that "*All human beings are born free and equal in dignity and rights.*"¹⁶³ Article 17 of the same Declaration recognizes property rights as a fundamental human right. For UN-Habitat, legal empowerment begins with the recognition that many laws work against the poor and one of most important of these laws is the law dealing with property rights.

Despite such unequivocal articulation and declaration, the absence or insecurity of property rights remains a central cause of poverty, especially in the poorest countries. The focus on property rights, as envisaged for the very first time in the Commission on Legal Empowerment

¹⁶¹ This phenomenon has been observed to varying degrees and documented in the Case Studies presented in Chapter 11.

¹⁶² Quoted by DG Operations of BISP in a Seminar titled 'BISP making difference in the lives of the people' in BISP Secretariat Auditorium on January 17, 2012, (Benazir Income Support Program, 2012)

¹⁶³ (UN Commission on Legal Empowerment of the Poor, 2008)

of the Poor report, seeks to expand the legal protection of assets of the poor as well as promotes access to legally secure property ownership by the poor.

The sources of legal exclusion, according to the Commission on Legal Empowerment of the Poor report, are multiple and more often than not country-specific; however, four common themes of legal exclusion are cross cutting across various geographical regions. The common factors include: lack of access to a well-functioning justice system; lack of effective property rights among the poor, because of which the intrinsic economic value of their property remains untapped; unsafe working conditions for women and children because their employers often operate outside the formal legal system; and lack of economic opportunities for the poor as their property and businesses are not legally recognized. Resultantly, the poor cannot access credit, nor invest in global and local markets.¹⁶⁴

All these factors highlighted above, indicate that legal empowerment is closely linked to economic independence and financial strength; strong and secure property rights are fundamental for ensuring economic independence of the masses. The poor in Pakistan, as around the world, lack economic means and their share in property is meager. Where even that meager share is not protected or secure, opportunities for legal empowerment of the poor diminish considerably.

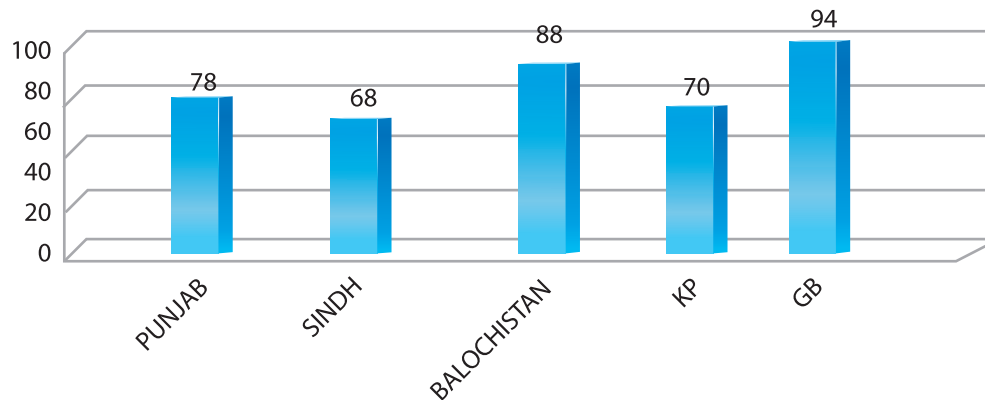
As is evident from the following table, most of the respondents surveyed do not trust state institutions, like Police and the Revenue department, enough to approach them if they are facing any threat to their property. In all provinces (except KP where level of trust in Police and community elders was almost the same), the highest percentage of respondents were of the opinion that they would go to "*Elders of the family / biraderi / area*" if they are worried about the security of their property. The level of trust in state institutions, in Balochistan, was the lowest where only 5% of respondents were willing to approach the state apparatus for the security of their property; while the level of trust in state machinery was highest in KP, where 34 % of respondents were willing to approach the state in case of any threat to their property.

Table 9.1: If you are worried about the security of your property where do you go for help?				
	Police	Revenue department	Elders of the area	ADR
	%			
Punjab	14	14	26	11
Balochistan	4	1	20	25
Sindh	19	13	29	10
KP	23	11	21	12
Gilgit Baltistan	25	9	41	2

¹⁶⁴ Ibid

Landlessness among the poor is also corroborated by the quantitative survey findings. As the following graph shows, an average 80% of the respondents across the 31 surveyed districts have never contacted the Revenue Department. Percentage of respondents who have 'Never' contacted the Revenue Department was highest in GB (94%) and Balochistan (88%), while this ratio was lowest in KP with 70% of the respondents falling in this category.

Figure 9.1: When was the last time someone from your household contacted the Revenue Department?%



Similarly, when specifically asked whether the Revenue Department secures their property, around 50 % of the respondents across all surveyed districts did not respond positively. The percentage of affirmative response was highest in GB i.e. 87%. The following figures unequivocally establish the lack of trust the poor of Pakistan have in state departments for securing whatever meager property they own.

Figure 9.2: PUNJAB

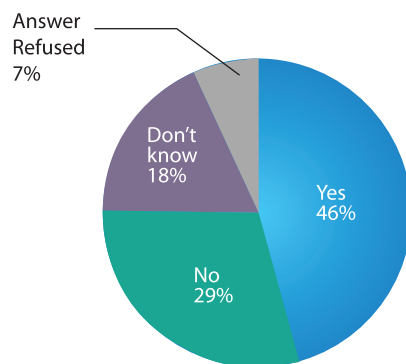


Figure 9.3: SINDH

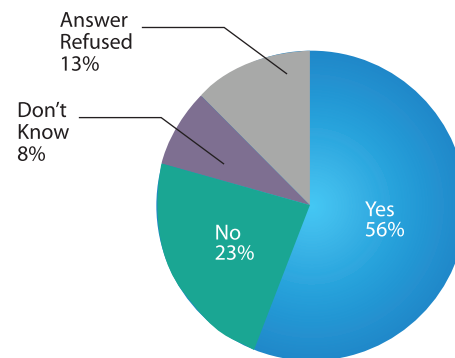


Figure 9.4: KP

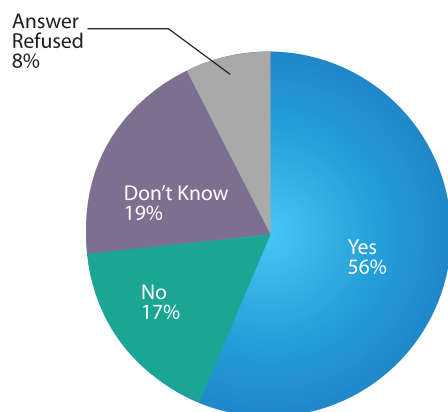


Figure 9.5: BALOCHISTAN

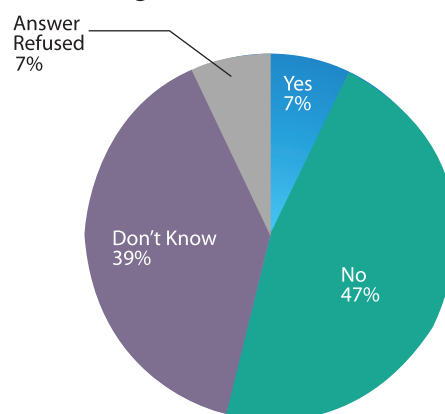
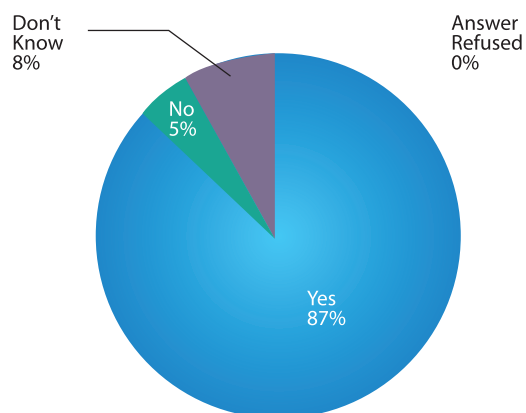


Figure 9.6: GB



9.1 Historical Evolution

In the pre-British period, all land belonged to the state and the local *jagirdar* had the task of collection of revenue in kind from the cultivators. Sultan Ala-uddin Khilji (1255-1316 AD) was of the first rulers to introduce a land administration system in the sub-continent. Sher Shah Suri (1540-45 AD) restructured the system through introduction of standardized land measurement and documentation of the revenue payments at the local level. Later, the system, known as '*Todar Mall Bandobast*' was consolidated by the Mughal King Akbar (1556-1605) and continued till intervention by the British in the form of Permanent Settlement in 1793. The latter provided permanent 'tenure' to the *jagirdars*, effectively making them owners of the lands. Secondly, land tax was fixed at a given rate, irrespective of the produce and the payment mode was converted from 'in-kind' to cash. The Permanent Settlement provided the basis for 'landlordism' and skewed land ownership. The conversion to cash enhanced the role of the money lender in the rural economy.¹⁶⁵ The British also introduced legislation pertaining to the rights and responsibilities of landowners vis-à-vis the State. They also appointed revenue officials such as *Patwari*, *Tehsildar*, etc. with detailed powers and responsibilities.¹⁶⁶

As the political processes began to take root in India, the landlords, generally considered loyalists of the British, began to position themselves to secure their political interests. In the Punjab, the Unionist party, composed entirely of the landed interest, became a formidable political force after World War I and even succeeded in forming a provincial government in 1937 which continued in power almost till 1947 under different leaders. As the party began to lose popular ground to All India Muslim League in the 1940s many of its leaders joined the League. The entry of the feudal leaders from the Punjab into the Muslim League had a profound impact on future land policy in Pakistan. Sindh and Balochistan already had a landlord dominated political scenario.¹⁶⁷

The skewed landownership, insecure tenure of the tenant farmer and absentee landlordism leading to non development of land were some of the ills produced by the Permanent Settlement. The All India Congress, with a strong left-leaning pressure within its ranks, had also promised land for the tiller and subsequently introduced land policy reforms in India.

All India Muslim League developed an Agrarian Reform Committee in 1949 which prepared a compromised land reform process which proposed to provide increased security of tenure to the farmer without enforcing a land ceiling. In East Pakistan, the reforms were more successful under the East Bengal Land Acquisition and Tenancy Act, 1950 that provided a ceiling of 33 acres for self cultivated land. Earlier, the Government Hari Enquiry Committee (1947-48) formed by the Government of Sindh had rejected land reforms.¹⁶⁸

The very first land reform committee was constituted under the direction of Quaid-i-Azam Muhammad Ali Jinnah. Since then, various efforts have been initiated from time to time to

¹⁶⁵ (Zaid, 1997)

¹⁶⁶ (UNHABITAT, 2012)

¹⁶⁷ (Gazdar, 2011)

¹⁶⁸ (The Secular, 2010)

introduce land reforms in the country. Finally, the military rule of General Ayub Khan introduced the first set of 'serious' land reforms in West Pakistan which provided a ceiling of 500 acres for irrigated and 1000 acres for un-irrigated land with proprietary rights for the tenant farmer and a floor of 50 acres as an economic landholding. The measures featured loopholes such as ownership of orchards which was exempted and the allowance of gifts, etc. minimizing the impact of the reform. The more revolutionary reforms were introduced by the Pakistan Peoples' Party (PPP) in 1972 and 1977 reducing ceilings to 5 and 12 hectares in the first instance and then to 4 and 8 hectares for irrigated and non-irrigated land, respectively.¹⁶⁹

In a case decided by the Federal Shariat Court in 1989 land reforms were declared un-Islamic in a verdict of 3-2. Federal Shariah Court, 1989

Despite the reforms, the bulk of landholdings continue to depict a skewed picture as collusion with revenue officials shielded the more powerful landlords from the brunt of the new reforms. Entry of the landlords into the 'socialist' PPP also helped them avoid serious government scrutiny. The impact remained far below potential.¹⁷⁰

In a case decided by the Federal Shariat Court in 1989 land reforms were declared un-Islamic in a verdict of 3-2.¹⁷¹

9.2 Policy Environment for Property Rights in Pakistan

Under the constitution of Pakistan, property rights of both the citizens and the state are guaranteed under various articles; especially Article 23, 24, 172 and 173 of the constitution of 1973 directly deal with the issue of property rights in Pakistan.¹⁷² Article 23 declares that *"every citizen shall have the right to acquire, hold, and dispose off property in any part of Pakistan, subject to the Constitution and any reasonable restriction imposed by law in the public interest"*. Similarly, Article 24 of the constitution guarantees the security of property and forbids the illegal acquisition of property by anyone including the state, by clearly stipulating that *"no property shall be compulsorily acquired or taken possession of, save for a public purpose, and save by the authority of law which provides for compensation therefore..."*. On the other hand, Article 172 defines the property rights of the state by stipulating that any property, which has no rightful owner, shall vest in the Government of that Province where this property is located, and in any other case in the Federal Government. Similarly, Article 173 of the Constitution allows the Federal and Provincial Governments to dispose off, sell, grant or mortgage any property vested with them.

Besides these constitutional provisions, there are various laws that regulate the entitlement, ownership, transfer, and tenancy of immovable property and land in Pakistan. Three major legislations covering property ownership and sale/purchase of property are: The Transfer of

¹⁶⁹ (Iffat Idrees, 2008)

¹⁷⁰ Ibid

¹⁷¹ (Federal Shariat Court, 1989) The Qazalbash Waqf case (*Qazalbash Waqf v. Chief Land Commissioner, Punjab and others* – reported as PLD 1990 SC 99) on August 10, 1989 (made effective from March 23, 1990). The judgment was split 3-2 in favor of declaring the various questions raised on land reforms as un-Islamic. Source: (Khan A., 2010)

¹⁷² (UNHABITAT, 2012)

Property Act 1882, the Registration Act 1908, and the Land Revenue Act 1967. According to experts, all three are mutually conflicting in certain provisions.¹⁷³ In addition to these laws, all provinces have their own separate Tenancy Acts, which are: the Punjab Tenancy Act 1887; the Sindh Tenancy Act 1950; the Khyber Pakhtunkhwa Tenancy Act 1950; and the Balochistan Tenancy Ordinance 1978.

As is evident from constitutional and legal provisions, all land in the country can be divided into three basic categories: privately owned land, state owned land, and village common land. While the former two are self-explanatory, the third category, i.e. village common land or '*Shamilat Deh*' is a source of confusion. This creates space for numerous frauds especially in villages, which have become part of cities with the passage of time, including villages in the vicinity of Islamabad. The '*Shamilat Deh*' is basically the common or community land of the entire village, which may be used for communal purposes such as graveyard, mosques, schools, village ponds, grazing grounds, etc. It is the property of the entire village and not owned by any single or group of individuals. Community lands of those villages which have been merged into cities have become a huge source of land grabbing, frauds and litigation in those cities. Grey areas in ownership have been exploited by land mafias who have marketed plots to land city dwellers unfamiliar with the intricacies of land system in Pakistan. Chapter 11 discusses this phenomenon in greater detail.

Further, in many villages no proper settlement has been carried out, which means that there are multiple owners linked to one *Khasra Number* (land identifier coded and recorded by state revenue officials). In this scenario, when these villages become part of cities and land prices escalate, prospective sales of land spark disputes among the multiple owners. Without any mechanism to legally link individuals with plots of land in any given *Khasra Number*, third party claimants can extort exorbitant amounts of cash from ongoing deals for the buyer to secure undisputed possession of the land. This accounts for a large volume of unresolved litigation, denial of justice, and rent-seeking by land mafias connected to state institutions.

9.3 The Rural Scenario

The dynamics associated with urban and rural property rights are fairly different. In rural areas, a minority of owners holds most of the land and the majority constitutes landless tenants, earning their livelihood by tilling that land. According to the ADB's report on Rural Economy and Livelihoods in Pakistan, only 43% of the households in seven studied districts owned some agriculture land.¹⁷⁴ As already discussed earlier in the report, land ownership, degree of security of tenure and limitations to eviction from the homestead (along with lack of access to off-farm economic opportunities) are critical determinants of rural poverty.¹⁷⁵

Contractual arrangements between the tenant and owner or landlord fall under 2 major categories. Under the first arrangement, i.e., 'fixed-lease rentals', the owner rents the land to the tenant against a certain 'per annum, per hectare amount', which is paid to the owner in advance.

¹⁷³ (Iffat Idrees, 2008)

¹⁷⁴ (Haris Gazdar, ADB, 2007)

¹⁷⁵ Ibid

Following this payment it is up to the tenant to cultivate whatever he/she wishes. Under the second (and more prevalent) arrangement commonly known as 'share-tenancy', the tenant does not pay any rent in advance but works to cultivate the land of the owner and the fruit of that cultivation is shared equally between the owner and the tenant. Under share-tenancy, seed, fertilizers and investment associated with the improvement of land is paid for by the landlord. When distributing dividends, the owner deducts his investments first and then pays the tenant's share, which often amounts to the grains, barely sufficient for the sustenance of the tenant and his family for the rest of the year.

Duration of these contracts is determined arbitrarily by the landlord. Long duration contracts are avoided for the fear of land seizure by the tenant or litigation demanding ownership on the basis of their long possession and cultivation of the land. The contracts are mostly oral which makes eviction easier.

It may thus be argued that: a) in rural areas the poor are mostly landless and more rarely small land-holders; and b) property rights of the weak and/or the poor are as insecure in rural areas as they are in urban areas. Skewed land distribution has changed little despite the distribution of 770,000 hectares of land amongst 121,000 farmers across Pakistan, under the reforms discussed earlier.¹⁷⁶

However, the situation has not been absolutely static. National political developments and subsequent policy shifts have played an important role in shaping the evolution of property rights and access to land in Pakistan. Haris Gazdar finds that property rights and entitlements to land have undergone significant nonmarket and involuntary changes over time; especially around the 1970s when large migrant landowners began to sell their land to emerging local landlords. He suggests that changes in national and provincial politics had strengthened the relative position of local farmers over nonresident landlords, particularly those belonging to nonlocal ethnic groups. As some landlords encountered difficulties in maintaining their bargaining power over share-tenants, they began selling out their holdings, which shifted the overall balance of ownership.¹⁷⁷

9.4 Urban Scenario

Similarly, in urban areas, weak property rights lead to sub-optimal land use and give rise to under-developed land markets in major Pakistani cities. Growing land informality is the leading cause of these problems. Enterprises operating on informal land cannot access mortgage-backed finance. Land mafias grab prime locations at sub-market prices, distorting competition in key industries such as retail and housing construction.¹⁷⁸ It also limits the land available for housing for the "poor and middle class" driving the growth of "*kachi abadis*".¹⁷⁹ Criminal activity and natural disasters caused by environmentally insensitive development further increase this cost. **International experience reveals that land informality is both a cause and an effect**

¹⁷⁶ (Iffat Idrees, 2008)

¹⁷⁷ Ibid

¹⁷⁸ (Vincent Palmade, 2005)

¹⁷⁹ (Planning Commission of Pakistan, 2011)

of urban poverty.¹⁸⁰

Pakistan is a rapidly urbanizing country with Punjab leading the process. Rapid urbanization continues in three ways: urban population growth, rural-to-urban migration and reclassification of rural land as urban. A demand and supply gap has emerged in the urban land market that has pushed up prices to anomalous levels. The result has been high costs of construction leading to high levels of household expenditure on housing, suppression of business expansion and development of informal housing. According to one ADB study conducted in 2003, an estimated 35% of Punjab's population was located in *Kachi Abadis*. Three major factors contribute to this phenomenon: high levels of public landholding, low investment in infrastructure and weak property rights and titling.¹⁸¹

Out of the three case studies for this report, at least two low income settlements were constructed on public land. These included the unclaimed area around a *nullah* in Karachi, and the Mehrabad settlement in Islamabad constructed in sectors G12 and F12, for which land payments were made by the Capital Development Authority (CDA) in 1985. This has resulted in the inability of the residents to register the property in their own names and transfers are made on bilateral contracts on stamp papers. In the case of Maryam Nishat Colony in Lahore, the land had been purchased by the original settlers from a local landowner. The high registration costs prevent the new owners from transferring their properties. The situation had led to litigation in the 1990s when the descendants of the original owners demanded excessive prices to settle the court cases.

In the 1980s and 1990s the government of Pakistan and the Punjab had passed legislation on awarding ownership rights to dwellers of *kachi abadis*. According to anecdotal evidence, the poorest were not always the beneficiaries of these laws due to corruption of the state functionaries and the inability of the poor to produce documentary evidence.

9.5 Key Issues

There are no two opinions about the fact that definition and enforcement of property rights substantially enhances the ability of citizens to acquire property which may then be used as collateral for credit or liquidated for investment in various economic activities which could generate employment and alleviate poverty. Security of immovable property emerges as a major issue across the rural and urban areas, for a number of reasons.

9.5.1 Land Title

The system of property administration prevalent in Pakistan is deeply flawed, archaic and inherited from the British, whose major concern with land administration was to collect revenue and not to secure unambiguous property titles. To this day, property records in Pakistan, both in rural and urban areas, do not stipulate title of ownership but merely record transfers and transactions. Land administration or revenue records in Pakistan do not establish the

¹⁸⁰ (Fernandes Fdes, Lincoln Institute of Land Policy, 2011)

¹⁸¹ (World Bank, 2006)

actual ownership of the property – instead they identify the individual who is paying tax levied on a particular property or simply record a transaction between two individuals. This fact was also substantiated by Pakistan's Rule of Law Assessment Report by USAID, which identifies “*difficulty of securing clear title to real property*” as the foremost problem for conducting business in Pakistan.¹⁸² Courts have also accepted that revenue record alone does not establish ownership. ‘Oral gift’ has been accepted as valid under Islamic law and the practice of Benami is also recognized by courts in Pakistan and India. Benami allows purchase of property in someone else's name. The practice facilitates tax evasion and concealment of illegally gained assets in addition to protraction of civil cases.¹⁸³

Property records in Pakistan, both in rural and urban areas, do not stipulate title of ownership but merely record transfers and transactions.

In urban areas the title record lies with multiple agencies that add to the confusion. These include land Registrar, Revenue and Excise Departments as well as the local Development Authority, Municipal Corporations, Cantonment Boards and others. Even procedures may vary across jurisdictions.¹⁸⁴

9.5.2 Land Record Management

As related during supply-side FGDs, the *Patwari* (*tapedar* in Sindh), the junior-most functionary of the revenue department, is the custodian of the land record which is available in his ‘*basta*’ often in the shape of a piece of cloth (*latha*). Changes in the record are initiated by the *Patwari* and confirmed by a senior revenue officer. This provides the junior official with exceptional powers and influence in rural life. Collusion with the powerful rural elite has been a natural outcome of the position.

Transparency of land record management is extremely limited. Even access to a citizen's own land records requires payment of bribes. This study could not find any evidence of a cadastral survey conducted in Pakistan. According to one source, the last such survey in India was conducted before independence.¹⁸⁵

The office of the *Patwari* and other officials of land revenue department hamper rather than deliver land and revenue services in Pakistan. This fact was substantiated by the survey of this study, where respondents were asked whether they were satisfied with the working of the land revenue during their contact with the department. With the exception of KP, the proportion of dissatisfied respondents outweighs the satisfied respondents. Not enough responses were obtained from Balochistan for this question.

182 (USAID, 2008)

183 (National Accountability Bureau, 2002)

184 (World Bank, 2006)

185 (R. S. Deshpande, ADB, 2007)

Figure 9.7: PUNJAB

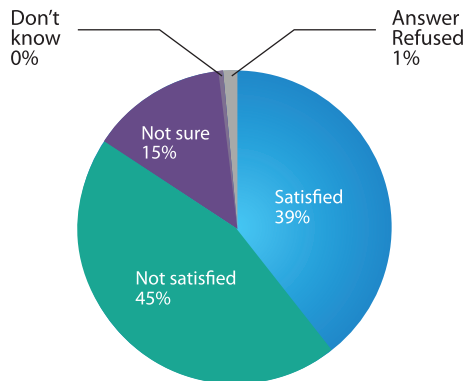


Figure 9.8: SINDH

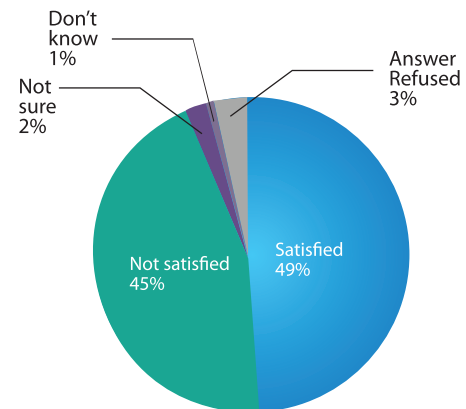


Figure 9.9: KHYBER PAKHTUNKHWA

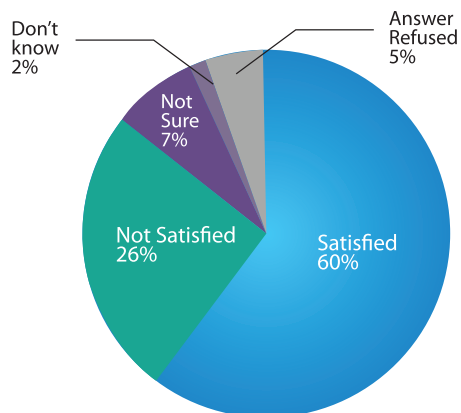
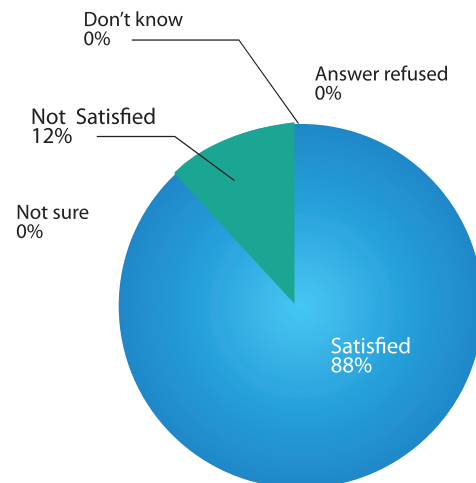


Figure 9.10: GILGIT BALTISTAN



The World Bank has initiated a Land Records Management and Information Systems Program (LRMIS) in Punjab. The project targets computerization of land record purportedly reducing ambiguities, allowing for better land management and easing access to information for citizens. Computerization of land record is extremely important but the current state of the record carries

risks for the outcome of the project. Without rectification of land records, computerization may codify and legitimize existing inaccuracy and inconsistency. A cadastral survey conducted under the current institutional capacity, corruption and skewed social structures might be even more difficult than computerization.

Many within and outside the government bureaucracy advocate computerizing all land records, which would dramatically reduce (if not eliminate) two of the *Patwaris*'s most frequently abused powers: the maintenance of land records and the assessment of revenue. The aforementioned World Bank-assisted pilot projects in Punjab and Balochistan for computerization of land records are faltering primarily due to resistance from *Patwaris*. According to a 2010 report of the International Crisis Group titled "Reforming Pakistan's Civil Service", there are major vested interests at work in preserving the existing system of land management. The landed elite, many of whom are also politically influential co-opt local revenue officials who grant them preferential access to land and other privileges in exchange for bribes, as well as protection from prosecution penalty.¹⁸⁶

Realizing the importance of the issue, Supreme Court of Pakistan has also directed all provincial governments on 30th June 2012 to computerize land record within three months. Though highly improbable, computerizing all land records would significantly reduce opportunities for corruption and malpractice, although without a scientific cadastral land survey, such risks cannot be ruled out. One model to follow for reducing corruption in land revenue department is the "*Bhoomi*" project of the Indian state of Karnataka, in which 20 million land records of 27,000 villages of the state, covering seven million farmers and 35 million beneficiaries were computerized. Resultantly, where farmers before had to wait for months and pay bribes for rights of tenancy, they can now simply visit information kiosks to obtain a computerized copy of their records for a nominal service fee.¹⁸⁷

Another model suitable for replication in Pakistan is the Indian Punjab Model. According to this model, lands are allotted on a passbook. The buyers and sellers of land would have to register the transfer of land by using their passbooks, thereby reducing the role of the revenue officials.¹⁸⁸

9.5.3 Corruption

Opacity of land revenue records, complicated land management laws and protracted litigation has enabled the growth of corruption. Stories of *Patwaris* in luxury cars and privately hired assistants to manage their office work abound. Corruption marginalizes the poor even farther. The elite capture of the revenue department has failed previous land reform attempts. According to the International Crisis Group report, the *Patwari* is considered the main culprit for the failure of the 1973 land reforms. In most cases, at the behest of landowners, *Patwaris* never informed tenants that their status has changed post reform and the peasants continued to work on their fields, without knowing they had become the owners of their farms. The same report holds provincial revenue departments responsible for lack of effective checks on the

¹⁸⁶ (International Crisis Group, 2008)

¹⁸⁷ Ibid

¹⁸⁸ (The Dawn, 2012)

Patwari, and observes that the departments generally “lack both the will and the resources to hold the *Patwari* accountable.” Attributing this lack of accountability to the prevailing conflict of interest, the report observes that “the revenue departments themselves are corrupt to the core”.¹⁸⁹

Urbanization and high land prices in cities has added another dimension to this corruption in terms of nature of the volume and value of transactions involved. Tampering of land records has become more common, undermining confidence in the land revenue record for determining ownership. The corruption in the revenue department has become endemic, strengthening the nexus between revenue officials and land mafias. This has further complicated the already intricate land management system from the perspective of the poor and non-poor citizen, as related during FGDs with both supply and demand side stakeholders.

Provincial revenue departments “lack both the will and the resources to hold the *Patwari* accountable... [because]... the revenue departments themselves are corrupt to the core”.
ICG, 2008

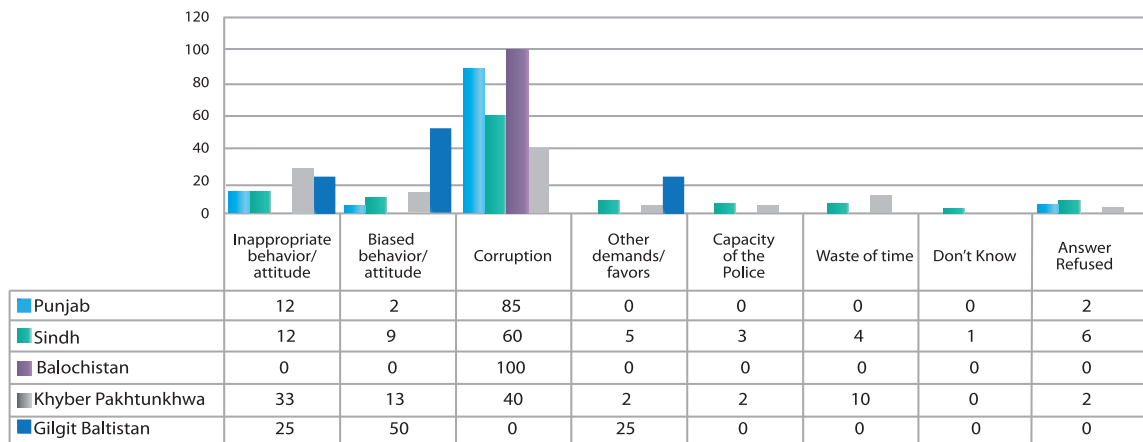
According to the Transparency International Pakistan’s (TIP) National Corruption Survey Report 2011, land revenue department was reported as the most corrupt department among the eight major public service providers of Pakistan, outranking even the police. It is also pertinent to note that public perceptions regarding corruption in the land revenue and administration have gradually deteriorated over the last decade. According to yearly Corruption Perception Surveys published by TIP, land revenue and administration was the 7th, 4th, 4th, 3rd, and 1st most corrupt public sector department in 2002, 2006, 2009, 2010 and 2011 respectively. According to the latest survey of 2011, only 10 % of the population had any encounter with the land revenue and administration department during the last 12 month; this fact corroborates the earlier quoted fact that only 15 % of the households in Pakistan own any land. Around 62 % of those who had any encounter with the revenue department in 2011 ‘felt compelled to pay the bribe’.¹⁹⁰ Transparency International Pakistan has requested all the political parties to promote transparency and good governance measures and prioritize computerization of land records within a year.

Apart from these survey and reports from multiple sources, the issue of corruption in land revenue department was also highlighted in the quantitative survey of 31 districts done for this study. As the following graph shows, corruption was reported as most often the reason for dissatisfaction among respondents with the Revenue department’s functioning. In Punjab, Sindh, and KP, corruption stands out as the most commonly cited reason for discontent of the poor with the department; however, most of the respondents from Balochistan preferred not to answer this question. Unfortunately, not enough responses were obtained from GB and Balochistan.

¹⁸⁹ (International Crisis Group, 2008)

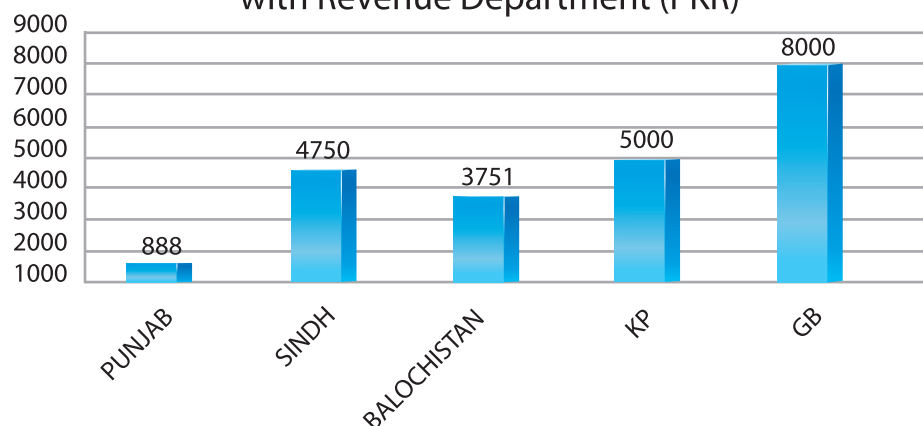
¹⁹⁰ (Transparency International, 2011)

Figure 9.11: Reasons for not Being Satisfied with Land Revenue Department(%)



In addition, according to survey results, the median costs of interaction with the Revenue Department are relatively high considering the income group of respondent. This indicates that it is not only the incidence of corruption but also the 'bribe per act' which constitute problems for poor citizens. This is particularly true for GB, KP and Sindh.

Figure 9.12: Median Cost of Interaction with Revenue Department (PKR)



9.5.4 Protracted Litigation

Civil litigation often takes decades to settle. The problem appears to be endemic to the subcontinent.¹⁹¹ In Pakistan, civil litigation comprises the bulk of case load in the courts. **According**

¹⁹¹ (Blue, 2008)

to USAID, 60 to 80 percent of caseloads pertain to land related cases.¹⁹² Generally, two paths are available to litigants in civil matters: one is the hierarchy of the revenue department topped by the Board of Revenue and the other is civil courts. The relatively poor opt for the former. But more often than not, revenue officials are being accused of deciding the case in favor of the more powerful party, as the poorer litigants lack resources to influence decisions through informal channels.¹⁹³

9.5.5 'Qabza' Factor

Illegal possession of land or property of someone else, or '*Qabza*' as generally termed in Urdu, is by default, a crime against the weak and the marginalized i.e. illegal occupation can only happen where a powerful occupier takes possession of land owned by a weaker owner. *Qabza* is an instrument of the land mafia to grab land and property of citizens without social and political capital i.e. without connections to the state machinery. Stronger members of land mafia groups do not even hesitate to illegally occupy the state owned land with the collusion of state officials of the land revenue, and often the police department. *Qabza* groups employ different methods to earn profit; one is to occupy a weak citizen's land and essentially hold it hostage until a handsome ransom is paid by the original owner. Another method is to occupy land illegally and then, with the complicity of land revenue officials, transfer it to their own names to sell later at high prices. In some of the demand side FGDs, the issue of insecurity of weaker families also appeared and the respondents claimed that poor families with children are under threat of losing their land to more powerful people.

In large urban areas the term 'land mafia' has evolved. As the urban land market remains distorted there are high returns on land ownership. The law favors de facto control of property. Ability to influence land records, control the police and benefit from an extremely slow judicial process has made *Qabza* or land grabbing a low risk and high return crime. In a supply side workshop in Karachi the participants highlighted that landlords fear loss of property to tenants and resultantly many expensive apartments remain unoccupied.

9.5.6 Female Marginalization

Inheritance laws in Pakistan are highly complex and difficult to both understand and implement. These laws, coupled with prevalent social norms and practices, place women at a clearly disadvantaged position. A woman is entitled to half of the man's share and even there she is expected and pressured to forgo her right in favor of men of her family, if this right is not denied outright. In the demand side FGDs, the most commonly emerging theme was of denial of inheritance rights held by women. Both in urban and rural locations across the country, and even within communities of religious minorities – Christians, Kailash, Hindus – inheritance was withheld from women family members.

According to the ADB's report on Rural Economy and Livelihoods in Pakistan, only 2.2 % of households reported female ownership of land in the seven studied districts. Pakistan typifies a

¹⁹² (USAID, 2010)

¹⁹³ Ibid

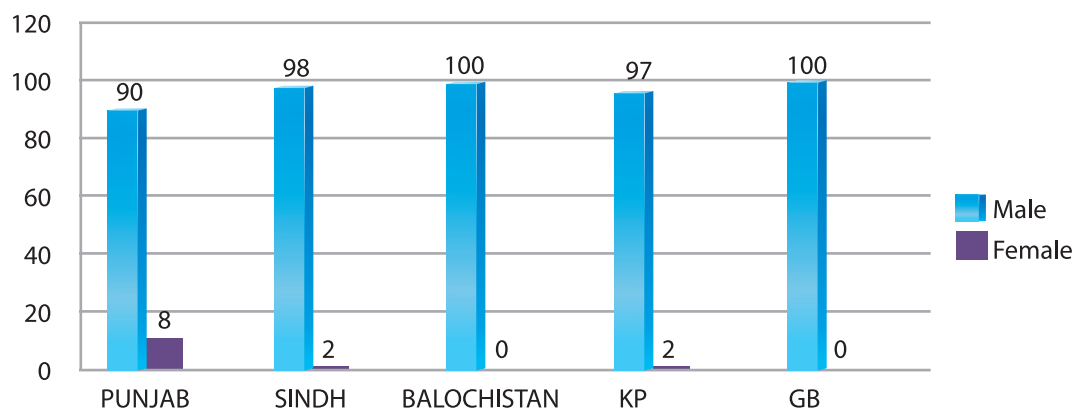
global trend, where women, who constitute half the world's population, own only 10 percent of the world's property.¹⁹⁴ Recognizing these deleterious trends, Article 14 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), of which Pakistan is also a signatory, requires that the *"States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas"*.¹⁹⁵ However, the reality is that despite these international commitments, the right to property remains a challenge for Pakistani women.

Both in urban and rural locations across the country, and even within communities of religious minorities – Christians, Kailash, Hindus – inheritance was withheld from women family members.

Further, Article 15 of the same Convention stipulates that *"States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals"*.¹⁹⁶ Once again these commitments are flaunted with impunity through inheritance laws which, by default, have a certain predilection favoring men and systematically discriminating against women.

According to the quantitative survey conducted during the course of this study, the percentage of females who had ever contacted the revenue department was negligible. Cultural norms notwithstanding, this also to an extent, is indicative of the female marginalization in terms of owning property. This inference regarding marginalization of women becomes more significant when viewed with the perspective of lowest socio-economic strata, which was the population of this survey, where women are equally engaged in all the economic activities alongside men, but when it comes to owning or dealing with property they are systematically marginalized.

Figure 9.13: Please state the gender of the person who made the contact with the Revenue Department %



194 (UN Commission on Legal Empowerment of the Poor, 2008)

195 (CEDAW)

196 Ibid

9.6 Conclusion

Considering the importance of property rights, an agenda for legal empowerment of the poor would have to focus on promoting an inclusive and pro-poor property rights system, ensuring equitable and sustainable access to land. **It is critical that the poor enjoy the security and stability of tenure, both in urban and rural settings**, so that they do not live in constant fear of movement, displacement and eviction. Access to and ownership of land and effective land governance, both in rural and urban areas, can mitigate the risks of tenure insecurity and facilitate poverty eradication by promoting economic growth.¹⁹⁷

There is a dire need for concerted efforts to revise and repeal discriminatory laws and related administrative and social practices to ensure women's full and equal access to economic resources, including their inheritance and equal right to own property.¹⁹⁸

Considering the fact that the vast majority of the adult poor are women, legal empowerment efforts should also support awareness-raising and legal literacy campaigns targeting women, particularly rural women, on gender equitable land rights, to encourage and empower them to demand justice. One important step in this regard could be provision of legal aid services to women and removal of all impediments that women may encounter in accessing justice. All these steps must be mainstreamed in all interventions for legal empowerment.¹⁹⁹

Effective recognition and security of property rights can also be instrumental in pulling the poor out of the vicious cycle of generational poverty by facilitating their access to credit, to start any sustainably productive activity e.g. business-startups and entrepreneurship. To materialize this objective it is imperative that the poor must, however, be given due protection of law to own, use and dispose off their property.

The political economy of land governance in Pakistan makes it structurally the most difficult area for reform. It is not only the landlords, but also the urban land mafia and an increasingly corrupt revenue department who have (and protect) vested interests in the status quo. The LRMIS project of the World Bank is as an ambitious but crucial intervention. Its success, along with that of a possible cadastral survey, may be the first step toward a more comprehensive reform process. In urban areas, poverty pockets in informal settlements may be relatively easier target due to the prevailing apathy among state and citizens alike regarding these communities. Awareness on property rights, advocacy for property ownership and assistance in utilization of property for access to business finance may be used as options. The situation in rural areas appears to be more restrictive for transactional level interventions due to the stronger role of structural factors.

¹⁹⁷ (UN Secretary General, 2009)

¹⁹⁸ Ibid

¹⁹⁹ Ibid





CHAPTER 10

Labor Rights

Chapter 10: Labor Rights

Labor rights constitute one of the four pillars identified by CLEP as key areas of LEP. As the Commission notes, labor, though not a commodity, is typically “*the most valuable asset a poor person owns*”. It is important to a poor person’s livelihood that her labor be recognized and fairly rewarded. To help reduce insecurity there ought to be as little uncertainty as possible about the workers and employer’s mutual rights and obligations. There also needs to be adequate protection enabling the poor person to hold the employer to fulfilling her side of the contract of employment whether it is written, verbal or implied. Unfair terms must be unenforceable in both law and practice.

With these assurances and protections in place, the reduction of workers’ vulnerability translates into greater resilience in times of economic stress and slowdown. However, legal protections alone may not be sufficient for such change to take place in the face of social, political, economic and cultural structures being a source of unfairness due to systemic flaws within one or more of them. Such flaws might work to ensure that the poor and poorest are excluded from fundamental rights, including labor rights, and present barriers to realizing the goals of LEP.

The Commission believes that legal frameworks can provide an important aspect of the enabling environment within which the aforementioned structural flaws may be addressed. Indeed, LEP may be viewed as being “essentially about increasing civil, political, economic, social and cultural freedoms through the law” (Singh, Moving towards Implementation).²⁰⁰

In order to be effective, the legal framework for labor rights needs to be based on a well informed design. This would require a dialogue with both workers and their employers on the state’s part, as well as facilitating a dialogue between workers and employers. The process is likely to enable information and knowledge to be gleaned about the relevant flaws and peculiarities of the local social and economic structures as well. The state as an enforcer and facilitator needs to give particular attention to its ability to create the right kinds and levels of capacity within its own relevant institutions that will ensure an effective implementation and smooth operation of the legal framework, to the reasonable satisfaction of all stakeholders. The process needs to be updated periodically, preferably with aspects that are ongoing and embedded within the tripartite (workers-employers-government) institutional framework, with a view to taking targeted action on any critical changes that might have taken place.

The right of workers to form associations and unions as they choose and through them to exercise their right to collectively bargain with employers is espoused by CLEP. The goal of legal empowerment is for the workers to achieve equitable control over their livelihoods. This would have to be balanced with the employers’ reasonable rights and needs, in order to run a viable enterprise mutually beneficial to both the worker and employer and to the entity’s other stakeholders.

²⁰⁰ (Singh, 2009)

In low income countries like Pakistan, with no unemployment insurance or safety net, survival depends on being able to earn a living. Levels and quality of education and skills tend to be low. This not only means low incomes but also a poor economy as a result of poor levels of human development and people's ability to reach and exploit their full potential. These factors combine to ensure a situation where a lot of people have available to them only poorly paying, low productivity and low quality jobs. They do not have the requisite skills to compete for the relatively smaller number of higher quality jobs. Better jobs are simply not available in rural areas or, in many societies; those belonging to lower socioeconomic classes may face considerable hurdles in accessing them. The low quality jobs they have available to them, nevertheless, might under-utilize whatever skill the poor have, unfairly exploit their labor and offer them little or no opportunity of improving their skills. Yet, the poor often have no option but to accept such poor jobs and livelihoods in order to be able to feed themselves and their dependents.

CLEP sees the enabling environment that labor rights promise as creating "the synergy between the protection and productivity of the poor" which in turn should prove beneficial to both employers and the economy.
UNCLEP, 2008

The poor, especially in developing countries, work long hours for little or sometimes even no reward, often in hazardous environments likely to be harmful to their health, putting their lives at risk. They might be subjected to physical, verbal or psychological abuse. They are usually unaware of their rights – contractual or statutory, if they have any - and they rarely possess the means or ability to enforce them. Labor rights, fundamentally, are about recognizing that labor is not a commodity left to mere market mechanisms to determine its place in the market. The worker is a person with human rights who deserves dignity. She is entitled to be treated with fairness, decency and respect. The CLEP sees the enabling environment that labor rights promise as creating "*the synergy between the protection and productivity of the poor*" which in turn should prove beneficial to both employers and the economy.

A body of labor law typically is aimed to cover five or six major areas. These are, broadly, industrial relations, occupational health and safety (including essential training), fair terms and conditions of employment, (minimum) level of wages, safety nets in the shape of employees' welfare and social security and human resource development in terms of appropriate training and support for skills being updated and enhanced.

A total of six labor policies have come to exist in Pakistan since the first one announced in 1955, followed by those of 1959, 1969, 1972, 2002 and 2010. Three of the six policies had been produced by military regimes. On paper, every labor policy, including the latest, seems to make the right kind of noise about most issues such as protecting legitimate rights and interests of workers, labor laws, wages, women empowerment, and so on. However, not all were able to translate all aspects of policy into enacted law. While some commendable laws did come as a result of these various policies, every government has failed in successfully implementing these laws and rules. The institutions resulting from some of these laws have never been reasonably effective. Whether the cause has been lack of resources, incompetence or corruption, the failure depicts a lack of commitment on the state's part.

This lack of commitment and resources has been a regular concern overall with regard to the advocated policies of the government and actual labor rights available in Pakistan, especially when it comes to the people living below the poverty line, most of whom lack awareness of their rights or the ability to access or enforce them. The reality of poverty and unemployment in the country does not depict an acceptable position overall. The Government acknowledged as much when the Minister for Human Rights told Parliament, in June 2010, that 200 people had committed suicide during the previous six months due to poverty and unemployment (Daily Times, June 30, 2010).

There seems to be an idealistic approach towards what the government wants to achieve to fulfill the requirements of international laws and conventions without necessarily factoring in the significant demands that implementation of such provisions, places on the labor administration, labor judiciary and other relevant organs of the state. Governments also seem to overlook the social change that is required alongside and the change in attitudes that legislation and a serious commitment to implementation cannot achieve as quickly and effectively as it can when aided with efforts at raising awareness of the issues and educating with a view to changing attitudes.

Pakistan's labor laws generally leave out all workers in the informal sector as well as (non-corporate) farm labor. Agriculture accounts for 45% of Pakistan's labor. The share of the informal sector in the labor market has been increasing over the last three decades and stood at 73.8% of the total non-agricultural labor force (aged 14 years and older) in 2010-2011.²⁰¹ None of the social security and welfare provisions for Pakistani labor apply to those working in agriculture or the informal sector.

10.1 Historical Evolution²⁰²

Pakistan inherited full labor union rights, including the unions' right to collect funds to give to political parties of their choice, under the Trade Unions Act 1926. These rights applied only to enterprises engaged in some form of manufacturing activity, employing 10 or more workers, under the Factories Act 1934. By 1955, Pakistan was able to introduce a fairly progressive labor policy, following the ratification of two core ILO Conventions, though contrasted with regressive steps at home. However, no legislation was ever produced under this policy as the country slipped into martial law following a coup d'état by Field Marshal Ayub Khan.

The new military regime announced its own labor policy in 1959. Through amendments in the Industrial Disputes Act, the government could force unions and employers into an open-ended adjudication process. It was illegal to strike, or lock-out, while the adjudication was still in process. It further strengthened the concept of enterprise-wide unions by demanding that for a union to be able to be as the elected Collective Bargaining Agent (CBA), no more than 25% of its leadership be made up of non-employees (so-called outsiders). Unions were also prevented from collecting funds for political activities and parties.

²⁰¹ (Pakistan Bureau of Statistics, 2011)

²⁰² Much of the information in this section derives from: (Ghayur, 2009)

Important labor welfare and health and safety laws were introduced. The [Provincial] ²⁰³ Employees' Social Security Ordinance (PESSO) 1965, brought together an enhanced existing pension, medical and maternity benefits under the tripartite Employees' Social Security Institute(s) holding its own Social Security Fund made up of employers' and, originally, secured employees' contributions. The Ordinance provides the government the option to set up a Social Security Court. Several significant labor welfare laws were introduced by that military government. These include: West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968; Minimum Wage Ordinance 1961; The Companies' Profits (Workers' Participation) Act 1968; Apprenticeship Ordinance 1962; Road Transport Workers' Ordinance 1961 and the Excise Duty on Minerals (Labor Welfare) Act 1967.

Gen. Yahya Khan's regime convened a Pakistan Tripartite Labor Conference (PTLC) in May 1969 and, weeks later, produced an industrial relations policy. The Industrial Relations Ordinance (IRO) of 1969 was produced on 23 November 1969. While allowing unions freedom to strike without the restrictions imposed by the 1959 policy, the Ordinance did retain the attempts to limit union activity to within the enterprise. IRO 1969 made available a grant of Rs 100 million for the purpose. This subsequently became the starting fund for the workers' welfare scheme instituted under the Workers' Welfare Fund (WWF) Ordinance 1971.

The democratic government of Pakistan People's Party (PPP) announced a new labor policy in 1972. While a new industrial relations act was not brought forth, some important new laws and amendments to IRO 1969 did result from the policy. To IRO 1969's scheme for worker participation in relevant management decision-making using (elected or CBA-appointed) Shop Stewards and Work Councils, the democratic government added two more bilateral bodies. These were the Management Committee and the Joint Management Board. Labor courts were required to decide cases within 20 days. Lower level administrative and supervisory staff in the banking sector was also included within the definition of 'worker'.

The Workers' Children (Education) Ordinance 1972 made employers legally responsible for the funding of the education of one child of every worker through school. Companies Profits (Workers' Participation) Act 1968 was amended to increase workers' share from 2.5% of profit to 4%. Workers employed under fixed term contracts were brought under the purview of the Wages Act 1936 and West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance 1968.

Employers now had to pay the employees' share too under the PESSO 1965. The Employees' Old-Age Benefits Act (EOBA) 1976²⁰⁴ was enacted, under which employers had to pay a contribution on behalf of all insurable employees while the employees paid a small, individual share. The 1972 policy did seek to extend social security provisions to "domestic servants" but the desire was never translated into legislation.

²⁰³ Added in 1972.

²⁰⁴ The Act was developed from the original provincially enforced Employees' Old-Age Benefit Ordinance of 1972, and the federal Ordinance of the same name of 1975.

Another significant development was the institution, through an amendment in IRO 1969, of the National Industrial Relations Commission (NIRC). It was set up as a quasi-judicial body with wide-ranging powers, including those of *suo moto*, within its prescribed legal jurisdiction. Unions as well as their federations had to be registered by NIRC which also determined CBA status.

In the backdrop of its nationalization drive, pro-labor rhetoric and progressive legislation, the government was tough in dealing with labor protests and unrest. In the third round of nationalization in 1976, the government nationalized even small to medium scales industrial businesses and units in the cottage industry, in large numbers. This move is believed to have alienated the small traders of Punjab and erstwhile NWFP from the PPP. Gen. Zia ul Haq ousted the government, arrested the Prime Minister and imposed Martial Law on 5th July 1977. As had been the case with previous military regimes, Zia ul Haq junta banned strikes and student unions. Labor readers were rounded up in put in detention. Strikes remained outlawed till 1985.²⁰⁵

The regime also issued the National Training Ordinance 1980, to support technical education and vocation training (TVET). The Export Processing Zone Authority Ordinance 1980 was promulgated, backed by the Export Processing Zone (Control of Employment) Rules of 1982 which exempted these zones from IRO 1969 and all other labor laws. The Rules devised their separate labor jurisdiction instead, with its own rules. These, for example, did not allow strikes under any circumstances.

The elected government of Benazir Bhutto, following the death of Gen. Zia ul Haq, produced a draft labor policy in 1989 followed by an 18 month period of tripartite consultations. A set of recommendations was returned to the government. However, the short-lived government was unable to produce anything based on all this work.

Draft labor policies were also prepared in 1992, 1996 and 1999 but they too were never announced. A permanent body, the Workers' Employers' Bilateral Council of Pakistan, WEBCOP, was created in July 2000. Gen. Musharraf's regime convened a PTLC in 2001 which arrived at a fair degree of consensus. However, IRO 2002 that the government promulgated, diverged in certain areas from the PTLC's consensus proposals. This caused it to lose much goodwill of the unions. To that extent, it ended up wasting the employers' efforts too for their contribution towards delivering a consensus.

The labor policy of 2002 proposed the constitution of an "*inter-ministerial*" committee to devise a welfare measure for agriculture sector workers, and suggested another such committee to focus on the changes brought about as a result of globalization. While that focused on the need for businesses to change in response to changes in the global market, it also aimed to address the changes in labor markets.

IRO 2002 repealed IRO 1969. It required unions with CBA status to join one of the federations

²⁰⁵ (Candland C., 2007)

registered with NIRC in order to retain their CBA status. Only federations with at least 10 unions as its members could be registered with NIRC. The Labor Appellate tribunals were abolished and appeals from labor courts lay with the provincial high courts instead. The three worker-management decision-making bodies to be established within enterprises under IRO 1969 were replaced by the single Joint Works Councils (JWC) that establishments with 50 or more employees had to put in place. The parity between management and workers within the body was replaced with a 60:40 constitution under IRO 2002. The convener of the JWC was to be a management representative.

The government gave itself powers, without any of the qualifications, say, within ESMA 1952, to ban unions in any industry, establishment or class of workers for up to “*six months, at a time*” (s. 1, IRO 2002). IRO 2002 gave the government the power to order parties to submit to arbitration by NIRC if a strike or lockout went beyond 15 days. It was illegal for a strike or lockout to continue while arbitration or litigation was in process. Any strike or lockout lasting more than 30 days automatically became illegal.

The Pakistan Decent Work Program (DCWP) was produced in 2005 through a formally coordinated tripartite effort, facilitated by the ILO and led by its Decent Work principles and rights. It is intended to be a living document to be updated with changing labor market dynamics. Pakistan’s DCWP was last formally updated in 2010. A Labor Protection Policy (LPP) was produced in 2006 and also a Labor Inspection Policy (LIP).

10.2 Current Situation

Despite a plethora of legislation, the application of labor rights in Pakistan has been extremely weak. The laws only cover the formal sector employees and even their implementation of laws has been weak, at best. The present elected government repealed IRO 2002 in July 2008 and reinstated IRO 1969 in its place. This was done without any formal tripartite consultative process as the Government felt it necessary to respond to workers’ antagonism towards IRO 2002. Industrial Relations Ordinance (IRO) 2008 was promulgated in October and enacted as an act of Parliament in December called Industrial Relations Act (IRA) 2008. It had a built-in life of only 18 months [s.87 (3), IRA 2008]. The new law was substantially a return to IRO 1969. However, there were a few exceptions. For example, the wording within the law allowed for employers and employees reaching mutual agreement through means other than involving the CBA, arbitration or courts. This was criticized by the unions as giving employers a means of bypassing the CBAs and potentially undermining the role of the CBA and defeating its purpose. Also, provincial governments were empowered to appoint presiding officers to labor courts without requiring any input from the relative high courts. This exclusive power of the executive may be construed as a violation of the concept of separation of powers.

Despite a plethora of legislation the application of labor rights in Pakistan has been extremely weak. The laws only cover the formal sector employees and even their implementation of laws has been weak, at best.

The government convened a PTLC in February 2009. A new industrial relations policy was announced in 2010. The 18th Amendment was passed. IRA 2008 was extended till June 2011. In the months following its passage, the provinces enacted their own industrial relations laws, in response to the 18th Amendment. Sindh Industrial Relations Act (SIRA) 2010 is in fact a re-enactment of IRA 2008, without the built-in lapse clause. Balochistan and Khyber Pakhtunkhwa (KP) enacted new laws – Balochistan Industrial Relations Act (BIRA) 2010 and KP Industrial Relations Act (KPIRA) 2010, respectively – which are substantially the same as IRA 2008.

Punjab Industrial Relations Act (PIRA) 2010, however, is mostly the same as IRA 2008 but with some critical changes. It applies to establishments employing at least 50 workers, instead of the threshold of 5 in IRA 2008. It reduces the level of 'outsiders' in union leadership positions within an enterprise to 20% from the previous 25%.

With the provincial IRAs becoming the governing labor laws as a result of the 18th Amendment and a Supreme Court decision of 2nd June 2011 in *Air League of PIAC v Federation of Pakistan*, the central government issued a new ordinance in July 2011, called the Industrial Relations Ordinance (IRO) 2011. Its jurisdiction was limited to the Islamabad Capital Territory and trans-provincial labor matters. In March 2012, Industrial Relations Act (IRA) 2012 was enacted which was essentially the same as IRO 2011.

IRA 2012 re-establishes the statutory existence and empowerment of NIRC, but within the same post 18th Amendment jurisdiction as applies to IRA 2012 as a whole. It mentions no minimum threshold in terms of number of workers employed in its definition of employers that the Act applies to. While it mentions industrial processes and services as functions of establishments that the Act may apply to, it makes no mention of agriculture or agricultural activities. Charities are also excluded as are the named essential services. It reduces to 10% the minimum level of votes a union needs to achieve in a CBA election in order to be registered by the Registrar – working under NIRC – as a recognized union.

Despite the reverses, including the outlawing of unions and/or strikes during the initial years of each period of military rule, Pakistan's labor laws have been generally forward looking. The overwhelming number of Pakistan's workers has been failed by poor or, at times or in large regions, non-existent implementation. Governments seem to have been more interested in the subjective value of showcasing progressive and worker-friendly labor laws than actually intending to implement them. It is yet to be seen how the aims that the latest policy of 2010 have outlined will fare when it comes to implementation, in letter and in spirit, with reasonable levels of delivery across all classes of stakeholder covered by various labor laws.

10.3 Legal Framework

While the major failure is that of implementation, within the laws too, despite their generally progressive nature, there are at least theoretical drawbacks like the executive being given sweeping powers to reduce or enhance their areas of application in terms of classification of employer or employee. Secondly, the laws are somewhat haphazard, even after several industrial relation acts which were intended to be complete in terms of coverage and coherent and consistent in content. Yet, they too have failed to rationalize and harmonize the rules. Critical definitions and criteria to determine legal scope exist in different laws. These are not uniform across the various laws.

It's not so much that Pakistan has too many labor laws, but that legislation has taken a less organized approach. Instead of well focused, deliberated and debated labor laws, laws not normally relevant to the subject have been used, from time to time, with little or no discussion nor warning to make several significant changes to Pakistan's labor law (e.g. the annual finance bills have been used). There is a need for these laws to be rationalized, removing overlaps and multiplicity of definitions, criteria and rules spread across various laws. Government has realized this need at least since 1978 when a National Labor Commission was given the task of rationalizing, modernizing and unifying the country's 75 or more labor laws.

Instead of well focused, deliberated and debated labor laws, laws not normally relevant to the subject have been used, from time to time, with little or no discussion nor warning to make several significant changes to Pakistan's labor law

Compliance with some of the ILO Conventions that Pakistan has ratified is not as full as it could be. Some laws in force, e.g. Factories Act 1934, have in use, levels of fines as penalties for serious breaches of the law by employers that are quite out-dated, ranging from PKR 100 to a maximum of PKR 500. Penalties for employees are even lower though they potentially represent a greater inconvenience than the higher levels would for most employers. These need to be updated as soon as possible if they are to have the intended deterrent effect.

Most labor legislation has been undertaken at the federal level to bring Pakistan's labor laws in line with international commitments of the country. The subject itself fell under the 'Concurrent Legislative List' under which both the provincial and federal legislatures could make laws with the proviso that in case of a conflict the federal law will prevail. With the abolishment of the 'Concurrent List' under the 18th Constitutional Amendment a legal vacuum has been created in the provincial jurisdiction and issues of compliance with requirements of the International Labor Organization (ILO) have begun to emerge. It remains to be seen how the central government and governments of the federating units ensure and deliver equitable rights to all regions and citizens of the federation.

Freedom of association and the right to organize is one of the eight core Conventions of the International Labor Organization (ILO) and is guaranteed within the Constitution of Pakistan under Article 17(1). The recognition and protection of the right to collective bargaining is another of the ILO's eight core Conventions. The right form trade unions applies to both employees and employers, which includes the workers' right to strikes and that of the employers' to lockouts. It generally also prescribes binding arrangements for workers' representation in relevant areas

of management decision-making. The bodies to be formed for this purpose also act as forums for debate, discussion and negotiation as well as avenues of more democratic or representative decision-making for the enterprise.

Article 17(1) guarantees every citizen “the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.” It is possible to argue that, the fact that the word “unions” is mentioned in addition to associations implies a right to collective bargaining since that is what distinguishes unions from other associations and labor organizations. Laws like the Essential Services Maintenance Act (ESMA) 1952²⁰⁶ have used the grounds that may allow “reasonable restrictions” as justification for withholding union rights or the right to strike from certain classes of public sector worker. ESMA allows the government to proscribe any category of public sector employee merely on the basis of considering it “expedient” (the words “in public interest” were added in 1965). No court can hear any grievance arising out of an application of ESMA. While not an explicit right within the Constitution, both unions and their formal right to collective bargaining have been, for various periods of time, recognized under Pakistani law. At other times union rights were removed or curtailed by law.

Article 18 guarantees all citizens the freedom to enter any profession or occupation they choose. Article 25 states the following:

- (1) All citizens are equal before law and are entitled to equal protection of law.*
- (2) There shall be no discrimination on the basis of sex.*
- (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.*

25(2) above, especially when read together with Article 18, can be taken to include equal access to work and equal pay for equal work to women alongside men. Article 8 declares any law inconsistent with the fundamental rights guaranteed within the Constitution to be void.

Elsewhere in the Constitution, under “Principles of Policy”, Article 34 states that “steps shall be taken to ensure full participation of women in all spheres of national life.” Article 37(e) expects the state to ensure provision of “just and humane” conditions of work and maternity benefits for women in employment. It also requires the state to protect women and children from work environments “unsuited” to their sex or age. Article 38, through its sub-parts, lays down the following:

The State shall:

- (a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;*

²⁰⁶ This law was first introduced in British India in 1941, during the War, faced with Indian National Congress’ Non-Cooperation Movement (followed by Quit India Movement a year later).

- (b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure;*
- (c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means;*
- (d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment;*
- (e) reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan;*

The provisions in the present (1973) constitution of Pakistan were broadly also there in those of 1962 and 1956.

Pakistan has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Pakistan has also ratified Convention on the Rights of the Child (CRC) and the Anti-Slavery Convention of the United Nations (UN). In addition to explicit proscription within the Constitution of discrimination against women, Pakistan has the Employment of Children Act (ECA) 1991 and the Bonded Labor System (Abolition) Act (BLSAA) 1992. The relevant parts of The Prevention and Control of Human Trafficking Ordinance (PACHTO) 2002 provide further protection against exploitation of children (under the age of 18). However, PACHTO 2002 applies only to human trafficking into or out of Pakistan. Trafficking within Pakistan is left out of its scope. Women's Protection Bill (WPB) 2006 covers the abduction or smuggling of persons, male or female, within Pakistan or across her borders, where it is done with the intent of sexual or other illegal or immoral exploitation. It also offers stiffer penalties than the corresponding levels in PACHTO 2002.

10.4 The Formal Sector

The state of the formal sector labor depends on the sector in which it works and policy of the specific establishment. The first such bifurcation can be made at the level of private and public sector labors. The latter are more empowered as they not only have better union organization but are also protected by civil services or public service rules. They also have better implementation of the minimum wage, better wages and pensions. More of them are able to make use of social security, welfare and state, as opposed to organizational, pension and related benefits under EOBA 1976 (although outreach of Employees' Old-Age Benefits Institute (EOBI) covers a small proportion of those under the law's coverage). Public sector workers are far more likely, than their private sector counterparts, to receive their statutory share in profits. Schemes like Benazir Employees Stock Option Scheme (BESOS) are exclusively for public sector workers, where 12% of the federal government's share in public sector enterprises will gradually be transferred to workers' trusts formed especially for this purpose. Given these protections, benefits and wages higher than those in the private sector, public sector workers are typically not poor, at least while in employment.

The plight of the private sector labor is less enviable. In a weaker bargaining position due to lower level of employment protection the labor force finds it difficult to withstand the clout of the employer. Employers fail to register workers with the social security and old-age

benefits' institutions, or under-report their numbers. There are enterprises in the formal sector, reportedly, violating even basic legislation like minimum wages. The website of the 'Labor Party of Pakistan' accuses a number of known business establishments of paying their workers less than half the national minimum wage²⁰⁷. While the police or ordinary courts cannot take cognizance of breaches of most labor laws, public disorder not only requires policing but can involve cognizable offences. Employers can manipulate unions through clandestine means, i.e. bribes or threats. Unions, on the other hand, rely on public mobilization. Employers need instigate only a little trouble through bribed agents in an otherwise peaceful mobilization, say, during a strike, to have an excuse to call the police. Employers may even use so-called pocket unions as CBAs, or have them call legal or illegal strikes in order to have a picket line populated that can then be used to stir trouble, to be used as an excuse to get at genuine labor leaders. In many cases, employers using strong arm tactics in collusion with the police and union leaders have been sent to jail²⁰⁸.

10.5 Informal Sector

Around 42% of Pakistanis are under the age of 15 (see Table 10.1). This high dependency ratio not only means many children must work in order to contribute to the family's income, but also an increasing labor force participation rate. The youth bulge indicates that competition and demand for poor quality of livelihoods, that is all that is available to the general population, would grow in the coming years, possibly driving the quality of working conditions and incomes (in real terms) even lower (Ghayyur, 2009). Without the low level of skills, low literacy rate and low quality of education being addressed, alongside other measures, it would not be possible to generate new opportunities, hopefully with better work conditions and higher returns.

Table 10.1: Population of Pakistan (1999-2011); in millions

	1999- 2000	2001- 2002	2003- 2004	2005- 2006	2006- 2007	2007- 2008	2008- 2009	2009- 2010	2010- 2011
Pakistan									
Total	136.0	145.8	148.7	155.4	158.2	163.7	167.2	170.3	174.4
Urban	43.0	47.4	49.7	52.1	52.5	54.9	56.1	57.3	58.5
Rural	93.0	98.4	99.0	103.3	105.7	108.8	111.1	113.0	115.9
Population: age									
15+ years	74.3	81.2	84.4	88.7	90.5	93.1	95.9	97.4	102.1
Labor Force: age									
15+ years	37.5	41.0	42.8	47.0	47.5	48.8	50.9	52.2	54.5

(Source: *Pakistan Employment Trends 2011*, Pakistan Bureau of Statistics, March 2012)

With the rate of literacy at 58.5%, Pakistan's labor force participation rate in 2010-11 was reported to be 53.4% of the 15 years and older population (Table 10.2). Over the last 10 years, while the total population has increased by 38.4 million, Pakistan has added between one and three million new entrants to the labor force every year. It is indeed difficult to expect a poor

²⁰⁷ (Labour Party Pakistan)

²⁰⁸ (Daily Times Pakistan, 2011)

economy to provide quality employment to such high numbers of new entrants, or avoid a portion of the older low skilled or unskilled labor to not be affected as a result, by degradation in their quality of livelihood. A larger proportion of younger entrants tend to be better skilled, in terms of general skills, than their older, low skill counterparts. Regardless of issues with quality of education, the steadily rising literacy rates work in the new entrants' favor. However, when it comes to employment and employability, literacy might often be the bigger though not the only advantage the young have over the older workers. Employers can pay younger workers less and get more work out of them in more labor-intensive jobs.

Table 10.2: Labor Trends in Pakistan (1999-2011); Percent

Pakistan	1999-2000	2001-2002	2003-2004	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Labor Force Participation rate									
Both Sexes	50.4	50.5	50.7	53.0	52.5	52.5	53.1	53.5	53.4
Male	83.2	82.7	82.7	84.0	83.1	82.4	82.0	81.7	81.9
Female	16.3	16.2	18.0	21.1	21.3	21.8	23.1	24.1	24.4
Employment									
Both Sexes	46.8	46.5	47.0	49.7	49.8	49.9	50.3	50.7	50.4
Male	78.6	77.6	77.6	79.6	79.6	79.1	78.5	78.3	78.0
Female	13.7	13.6	15.6	19.0	19.4	19.9	21.0	21.9	22.2
Unemployment Rate									
Both Sexes	7.2	7.8	7.4	6.1	5.1	5.0	5.2	5.3	5.7
Male	5.5	6.2	6.2	5.2	4.2	4.0	4.2	4.1	4.8
Female	15.8	16.4	12.9	9.6	8.6	8.7	9.0	9.2	9.0

(Source: *Pakistan Employment Trends 2011*, Pakistan Bureau of Statistics, March 2012)

Women's participation has increased from 16.3% in 1999-2000 to representing 24.4% of the workforce in 2010-11. The unemployment rate is at 5.7%, rising from 5.3% in 2009-10. Interestingly, the change has been mainly due to the increase in unemployment for men (increasing from 4.1% to 4.8%), while unemployment rate for women has improved slightly from 9.2% to 9%. Table 10.2 shows participation, employment and unemployment rates for Pakistan, broken down by gender, for the last 10 years.

Table 10.3 shows the pattern of GDP growth for Pakistan, over the last 10 years. The growth in GDP contribution by each of the three sectors – agriculture, manufacturing and services – is also shown. Agriculture is a mostly rural activity. 66.5% of Pakistan's population lives in rural areas. Despite the relatively higher fertility for rural women, the rural population has reduced from 68.4% in the last 10 years. Urban share of the population has increased by a comparable amount in the same period, from 31.6% to 33.5%. This seems to confirm the relatively high incidence of rural to urban migration. Industry and services tend to dominate in urban areas. The poorer rural workers, owning little or no land, are more likely to form the bulk of rural to urban migrants.

These migrants typically enter the informal economy within the towns and cities, alongside

the urban informal workforce, and move into existing informal residential areas, i.e. city slums. Often, they come from informal employment in their villages too, typically in agriculture. Additionally, they may have had little by way of security of tenure associated with their dwellings in the villages they left behind. While it is difficult to measure the size of the informal economy, different estimates consider the informal GDP to be between a third and more than half the size of the formal GDP. These estimates, due to their methodologies, tend to be worse at estimating the proceeds of crime part of the overall informal economy. On the other hand, these estimates would also include some approximate measure for tax evasion by otherwise formally registered businesses. Indeed, businesses can be partially rather than wholly informal.

Generally being made of a lot of small, and some medium-sized, low-tech, low productivity, labor-intensive businesses, the informal economy provides a far greater proportion of employment than the wealth it generates. Interestingly, **the informal economy has steadily grown over the last 30 years.** The predictions, in the 1970s, that economic growth would incentivize formalization have been proven to have been rather inaccurate. With globalized trade comes globalized competition. It has triggered development of the new model where formal businesses have shed labor and associated costs and use a variety of smaller suppliers instead. A number of these smaller suppliers may be contractors or may, in turn, use contractors who use informal businesses in their own supply chain, or use outworkers, including home-based workers.

Table 10.3: Pakistan Sector-Wise GDP Growth 1999-2010; Percent

Pakistan	GDP Growth	Agriculture	Manufacturing	Services
1999-2000	3.9	6.1	1.5	4.8
2000-2001	2.0	-2.2	9.3	3.1
2001-2002	3.1	0.1	4.5	4.8
2002-2003	4.7	4.1	6.9	5.2
2003-2004	7.5	2.4	14.0	5.8
2004-2005	9.0	6.5	15.5	8.5
2005-2006	5.8	6.3	8.7	6.5
2006-2007	6.8	4.1	8.3	7.0
2007-2008	3.7	1.0	4.8	6.0
2008-2009	1.7	4.0	-3.6	1.7
2009-2010	3.8	0.6	5.5	2.9
2010-2011	2.4	1.2	3.0	4.1

(Source: *Pakistan Employment Trends 2011*, Pakistan Bureau of Statistics, March 2012)

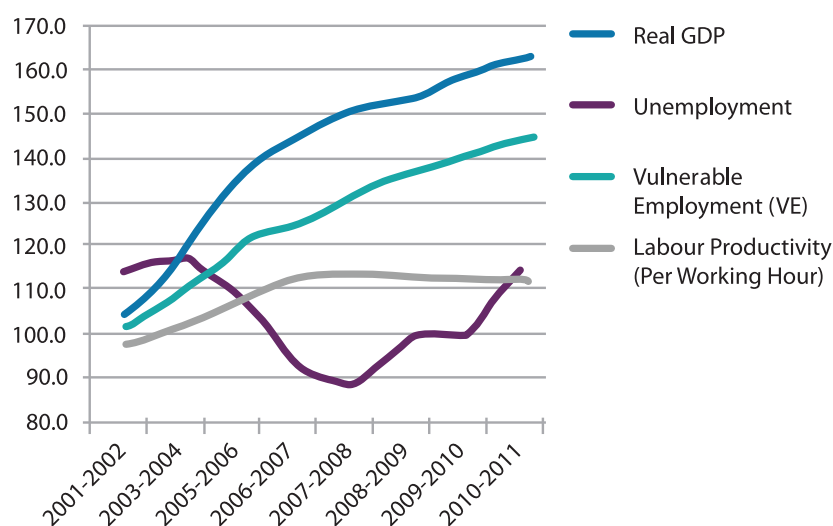
Pakistani labor laws do not extend welfare or social security to informal workers.

However, an employee who might have otherwise qualified under Employees' Old-Age Benefits Act (EOBA) 1976 can register with Employees Old-Age Benefit Institute (EOBI) and pay the employee's monthly share in order to have the same cover as those workers employed by a complying employer. Labor laws do not provide any safety net for agriculture workers. Given weaker earnings and security of livelihood and the lack of relevant legal cover, the working poor in the informal sector require greater focus, in the context of LEP, as they are typically more vulnerable than those in the formal sector. This vulnerability is most stark during periods of economic slowdown. Small and medium informal businesses are more vulnerable to volatility and slowdown. During periods of relative economic growth, there is an increase in availability of work and opportunities for informal businesses, but not necessarily the quality of work. High population growth rates, low levels of skills, literacy and quality of education and little

opportunity for skill improvement are some of the factors that mitigate potential benefits of economic growth.

Figure 10.1 below compares changes in vulnerable employment, which is aimed to encompass the working poor with the informal sector, with those in labor productivity during periods of rapid and slower GDP growth. It shows that while there was a proportionate improvement in labor productivity – which has a low base average in a poor country like Pakistan – during the period of most rapid economic growth, it struggles to keep up with even reasonably good rates of economic growth. Productivity starts to fall as the growth rate approaches more modest, though still positive, levels, despite the fact that employment was rising, albeit more slowly with growth slowing down. This loss in productivity despite employment growth suggests that with relatively large numbers entering the labor market over a period of, say, a year, the quality of employment drops or is unable to keep pace except in times of exceptionally rapid economic growth. Figure 10.1 does not show relative growth in formal employment. In the specific case of rapid GDP growth in Pakistan in the first few years after 2001, the unprecedented expansion of the telecoms and banking sectors had an important role to play in the increased productivity as higher skilled labor was hired by them. A shortage of skills, especially in banking and finance, might have required the higher skilled workforce to deliver greater productivity.

Figure 10.1: Pakistan: Labor Productivity, Vulnerability, Employment and GDP Growth



(Source: Pakistan Employment Trends 2011, Pakistan Bureau of Statistics, March 2012)

It can be seen in Table 10.4 that, in 2010-11, 73.5% of the non-agricultural labor force of Pakistan – aged 15 years or older - was working in the informal sector. Since Pakistan's labor laws do not effectively recognize informal workers or agricultural workers²⁰⁹, a large number of

²⁰⁹ Corporate agriculture could be an exception. Also, specific child labor laws and the law banning bonded labor do apply to

the agricultural labor force is also potentially vulnerable to more degrading forms of poverty. Informal employers and own-account workers are beyond legal and formal state structures and measures, by definition. The scope here is limited to business in breach of and ignoring registration, compliance and taxation laws in relation to business and commerce and not criminal enterprises or individuals engaged in criminal activities as their core competence and sole business activity. It might be thought of as the informal economy engaged in otherwise legal activities rather than the illegal economy thriving mainly on the proceeds of crime.

Table 10.4: Pakistan Labor Sectors and Status of Employment (1999-2011); Percent

Pakistan	1999-2000	2001-2002	2003-2004	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Industry:									
Both									
Sexes	18.2	21.0	20.6	21.2	21.4	20.6	21.0	21.4	21.8
Male	19.8	22.0	21.7	22.7	23.5	22.7	23.1	24.1	24.6
Female	8.4	14.8	14.9	15.1	12.6	12.2	12.7	11.6	11.5
Agriculture:									
Both									
Sexes	47.8	41.1	41.8	41.6	42.0	42.8	43.3	43.4	43.5
Male	43.4	37.2	37.0	35.6	35.0	35.2	35.7	35.2	34.9
Female	73.7	64.5	66.6	67.7	71.4	73.8	72.7	73.9	74.2
Services:									
Both									
Sexes	34.0	38.0	37.6	37.1	36.6	36.6	35.7	35.2	34.7
Male	36.8	40.8	41.3	41.8	41.5	42.2	41.2	40.7	40.5
Female	17.8	20.7	18.4	17.3	16.0	13.9	14.6	14.5	14.2
Wage & Salaried:									
Both									
Sexes	35.9	40.4	38.5	38.4	38.3	37.1	36.8	36.5	36.9
Male	36.4	40.9	39.8	41.2	41.5	40.6	40.5	40.7	41.2
Female	33.1	37.1	31.5	26.6	25.1	22.9	22.6	20.8	21.6
Own-Account Workers:									
Both									
Sexes	43.6	39.9	38.6	36.8	36.0	35.9	34.8	35.6	36.3
Male	48.0	43.7	42.9	41.5	41.1	41.2	40.1	41.3	41.8
Female	16.8	16.5	17.0	16.2	14.3	13.9	14.0	14.5	16.6
Informal Economy:									
Both									
Sexes	65.0	63.8	69.4	72.3	71.5	72.4	73.0	72.9	73.5
Male	65.0	64.1	69.9	72.2	71.6	72.4	73.1	73.0	73.9
Female	63.9	60.8	64.5	73.1	69.9	71.7	71.6	72.7	70.6

(Source: *Pakistan Employment Trends 2011*, Pakistan Bureau of Statistics, March 2012)

both agricultural and informal workers, ignoring for now the virtual absence of implementation in rural areas or for home-based workers. In law, both child employment controls and bonded labor bans apply to the informal economy too.

10.5.1 Domestic Workers

Domestic workers sector is the least regulated in the country. Working in rich households female domestic workers face the most common and severe discrimination, as they are paid low wages. They normally have low power to bargain and are often paid below the minimum wages. A large number of the domestic servants are females. In the case studies in Islamabad and Lahore (Mehrabad and Maryam Nishat Colony) the women workers claimed that they get PKR 3,000 to 5,000 per month and this wage includes support provided by their daughters. Anecdotal evidence of sexual harassment was also provided. The domestic workers are not paid minimum wages and have no security against eviction, harassment or even accidents during work.

In a 2004 study²¹⁰ of domestic labor in Pakistan, the researchers found several women in Shahdampur, a small town in Sindh, to have returned home from Karachi as a result of having been victims of sexual harassment and/or sexual abuse as domestic workers. The Protection Against Harassment of Women at the Workplace Act 2010 specifically addresses sexual harassment at the workplace. Theoretically, this includes domestic as well as any other informal workplace, provided there is an employer-employee relationship being exploited. The Criminal Law (Amendment) Act 2010 has added a clear and explicit definition of sexual harassment to the criminal code of Pakistan, to effectively replace the out-dated euphemisms used a century or more ago to describe the crime. This is not limited to a place of work but does clearly include it. It also includes explicitly the exploitation by an employer, of the vulnerable position of an employee, or a potential employee.

Child labor also forms a significant part of domestic workers. They are generally paid much lower wages than the already low-paid adult workers. In some cases, they are only provided with food and lodgings and not paid at all. The food might be inadequate but the 'lodgings' often might be sleeping space on the floor somewhere within the employer's house. Indeed, some employers prefer child domestic workers as they need no separate quarters (i.e. servant quarters). For female child domestic workers to sleep in a house where adult males are present without eyebrows raised, the child, on average, would be even younger than male child workers. This live-in arrangement means that even more than non-live-in servants, child domestic workers work all their waking hours.

Child workers even in a domestic setting are frequently exposed to hazards including lifting heavy loads, handling and using household chemicals that are unsafe for children to use, climbing ladders, and working at dangerous heights. These children do not go to school. They are also vulnerable to physical, psychological and sexual abuse with little or no access to their families, help and advice, or much to do with the outside world.

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²¹⁰ (ILO, Geneva, 2004)

10.5.2 Home Based Workers

This is an area of informal work which a large proportion of women workers engage in. A number of studies have found factors common to female home-based workers. A significant factor in addition to poverty is the presence of more children making their poverty more acute. A recent study in Lahore's Ravi Town found half the women interviewed had 5-7 members in their family; a quarter had 8-10, while some had 11 or more²¹¹. The socio-cultural roles and position of women in Pakistani society, as well as the fact that they are mothers caring for young children make home-based work an attractive proposition for them. They are usually paid piecewise and grandmothers and daughters help to increase the output.

Another fact common amongst female home-based workers is that they tend not to have control over how what they earn, little as it may be, is spent. Indeed, in many cases they don't even know what they earn as their husbands or sons might bring them raw materials and then take the finished product to market or a middleman.

Their being home-based, added to cultural norms that restrict their employment choice to home-based work, puts them in a position of increased vulnerability vis-à-vis the middleman or contractor who brings them work. He usually offers work and rates on a take-it-or-leave-it basis, and given the levels of poverty he knows he can dictate terms. The fact that these women cannot go out and find work and must rely on work coming to their doorstep, weakens their ability to negotiate a better deal. In case there is no adult male member of the family to represent them, their social position as women negotiating with a man is a significant handicap. The difficulty of a number of home-based women getting organized is immense. Even without the long hours that they must dedicate to the low paying, labor-intensive work and to tend to their homes and care for their families, the social restraints confining them to the four corners of their homes would have left them with little opportunity to organize. Indeed, household chores and motherhood duties restrict their working hours to less than the long hours that they might have put in otherwise in order to earn a little more.

There are NGOs helping home-based workers organize with a view to shared education and awareness, as well as coordination and possibly even mobilization. These organizations along with other women and labor groups also advocate for home-based workers to be recognized and extended cover of legal labor rights and social security laws. For example, if these women could arrange some form of communal childcare, ideally with state help towards costs, they could a) have more time to work if not rest and b) children could have reduced exposure to the hazardous materials that some types of home-based work use e.g. making bangles, assembling matches, incense sticks, shelling prawns etc.

There is a Home-Based Workers Social Protection Bill in Parliament, with the Committee on Labor, drafted by the Ministry of Women Development through the efforts and help from the National Commission on the Status of Women and various NGOs and women's rights groups. In addition to the law recognizing these workers and extending them social security benefits and a

211 (Mumtaz et al., 2010)

welfare safety net, the draft law suggests setting up a Social Security Court to help more workers to access what they might be entitled to.

10.5.3 Farm Labor

Since labor laws are not applicable to this sector, their workforce is unable to benefit from welfare legislation available in the industrial sector. As a first step to address this, the government has suggested providing compensation in case of injury and death to workers of mechanized farms in the rural sector via an extension of the Workers Compensation Act, 1923. Female work in the sector is the least recognized. No labor policy to date has focused on agriculture workers despite continued expansion of the scope with the 2010 policy also covering domestic and home based workers.

10.5.4 Bonded Labor

Bonded labor continues in both the urban and rural areas. In some rural areas even private jails of landlords have been discovered where workers were incarcerated. In the urban areas, the most notorious form of bondage can be found in the brick kilns. Some individuals from the sector were met with during the demand side FDGs. They revealed bondage extending over generations for loans ranging from PKR 25,000 to a little over PKR 1,000,000. As bonded labor, the entire family works on the kiln and the men-folk also provide the 'fighting force' for the owner to increase his influence. This is again a case of failure of implementation of the law of the Bonded Labor System Abolishment Act (BLSAA) 1992 legislated as a follow up of a decision of the Supreme Court of Pakistan in 1988.

Bondage extends over generations for loans ranging from PKR 25,000 to a little over PKR 1,000,000. As bonded labor, the entire family works on the kiln and the men-folk also provide the 'fighting force' for the owner to increase his influence. Demand-side FDGs

Rights groups believe bonded labor is still rampant.²¹² A worrying setback to the cause, however, has been a Sindh High Court decision of 2002, which ignored BLSAA 1992 and relied instead on Sindh Tenancy Act 1950 to dismiss the appeals of 94 bonded laborers who had petitioned the court. They were directed by the court, which accused them of borrowing beyond their means, to return to their employers, who were also their creditors, and work off the debts the laborers owed them²¹³.

Lack of even basic labor rights like the minimum wage or death or disability insurance are likely to push the poorest rural farm and non-farm informal workers into debt which could eventually lead to either migration, or bonded labor, or both. Informal debt at prohibitive interest rates, and sometimes fraudulent practices too on the creditors' part, can cause small land owners to risk becoming landless workers. Absence of local, affordable health services makes these workers' economic status even more precarious. Lack of quality education facilities or their total absence leaves them with little hope for escaping perpetual vulnerability when it comes to making a living.

²¹² (Labour Education Foundation, 2010)

²¹³ (United Nations Commission on Human Rights, 2002)

10.5.5 Child Labor

Child labor is endemic in the country despite legislation although the formal sector has been known to exclude them from hazardous occupation. Informal sector and family enterprises have higher levels of child labor in hazardous situations despite the proscription under the Employment of Children Act 1991, according to which children under the age of 14 cannot be employed in hazardous occupation. As has been the common case of weak implementation of laws, presently there are an estimated 40%-50% of child workers still working in extremely inhumane conditions under some form of bonded labor, including working in brick kilns, agriculture, domestic labor, construction and others.²¹⁴

The primary reason for children having to work is poverty. Rural regions of Pakistan share a greater burden of poverty. Families with more children, on average, tend to be poorer than those with fewer children. Children often work alongside adult family members as part of agricultural labour, brick kilns, home-based workers where payment is on the basis of piecework. Bonded labourers or those indentured under similarly unfair conditions or duress also get their children to work as well, in the hope of helping to pay off debts they owe to their 'employers'.

Poor parents also send their children to be apprentices under craftsmen and skilled tradesmen, usually in urban areas. They are often live-in apprentices, or in any case work very long hours. They are normally not paid as the free training they receive is considered to be their reward. It is typical for parents to receive a small lump sum amount in return for their child becoming a live-in apprentice. The teacher or trainer, called 'Ustaad', effectively has bought the child and becomes its 'owner'. In addition to making the children or youngsters work for long hours, for little or no reward, many Ustaads routinely use corporal punishment amounting to daily physical abuse. These children are also vulnerable to being sexually abused. Many parents look upon this as an alternative to poor schools that children drop out from as a result of low quality or even excessive use of corporal punishments or sometimes both. 'Selling' children into apprenticeship does promise them a skill at the end of their years of training. The small cash lump sum, where received, is also welcome, if partial and temporary, relief for poor families.

Child labourers in wage paying jobs are employed for their much lower cost. Child labourers are easier to manage, and exploit. They tend to be more fearful of authority. Under such conditions, they prove to be a very productive form of labour. They are employed under one or more of these circumstances in urban informal industry and the service sector.

The National Commission for Child Welfare and Development (NCCWD) was created in 1980. Since 1992, it has been the body responsible for implementation of the CRC in Pakistan and includes within its scope child labour, juvenile justice, family environment, abuse, neglect, and exploitation. There is a provincial CCWD in each province, and also in Azad Jammu and Kashmir (AJK).

ECA 1991 replaced the act with the same name of 1938. It forbids children less than 14 years of age from being employed in a number of hazards occupations and processes or activities that it

²¹⁴ (PILDAT, 2009)

lists separately in its two schedules. Factories Act 1934 and other relevant laws prevent younger workers, between the ages of 14 and 18, from being employed in hazardous environments and beyond 7p.m. in the evening. The same protections apply to women workers. Factories Act, unlike ECA 1991, does not cover informal and agricultural sectors.

Children are also victims of internal and cross-border – e.g. from Afghanistan, Bangladesh, Burma - human trafficking. Many of these children end up working in conditions analogous to slavery.

In areas of the country affected by militancy and armed conflict, children may also be forced or radicalised into becoming combatants, or their helpers, or even used as suicide bombers.

10.6 Disability and Employment Rights

Pakistan became a signatory to the Convention on the Rights of Persons with Disabilities (CRPD), and its Optional Protocol in September 2008 and ratified it in July 2011. Pakistan ratified ILO Convention 159 in 1994. Pakistan's Disabled Persons' (Employment and Rehabilitation) Ordinance of 1981 fixed a minimum employment quota of one percent for disabled persons in organisations employing at least 100 people in the public, industrial or commercial sectors and created the National Council for the Rehabilitation of Disabled Persons. It advised provincial governments to set up similar councils. The National Council's added role of monitoring provincial Councils may now be reviewed after the 18th Amendment. The Ordinance also establishes a fund for the welfare and rehabilitation of disabled persons, to be financed mainly through penalties for breach of the disability quota. However, enforcement is poor, if not non-existent.

The Mental Health Ordinance (MHO) 2001 has modernised and overhauled the medically out-dated, pre-independence Lunacy Act and as a result has improved the legal situation of those affected by a variety of psychological conditions and mental illness. This better informed framework will potentially have a positive effect on the legal employability and rights of many people.

The National Policy for Persons with Disability 2002 emphasises, among other important measures, meeting educational needs of disabled children. It recommends vocational training for disabled persons. The Policy suggests incentives to firms not covered by the Ordinance of 1981 in order to encourage them to employ disabled persons. It also points out the need for advocacy and mass awareness about disability.

10.7 Safety Nets Failures

LPP 2006 acknowledges the existence and importance to the economy of the extensive informal sector, and the vast amounts of labor it employs. It recognizes the need for both employers and employees in the informal sector to be covered by labor laws. However, it is pragmatic in conceding the difficulties of enforcement and the undesirability of threatening the existence of informal or business or forcing them to 'go underground' in response to a unilateral attempt to suddenly formalize the sector. LPP sees a beneficial role, as a first step, for increasing information and awareness about health and safety and social security and its benefits for both employers

and employees. It seeks an extension of basic labor welfare and occupational safety protections to be extended as a second step. However, the current system, as it exists for the formal sector workers only, has very poor outreach even within the already small proportion of workers the relevant laws cover.

The EOBI and provincial ESSIs (Employee Social Security Institutes) schemes combined cover less than 3% of the total employed workforce in Pakistan with only a small number of setups with five or more workers registered²¹⁵. Even some established businesses have been accused of not being registered with the EOBI. In the supply side workshops some of the participants pointed out that payments deducted from the workers are not deposited with EOBI as per law.

The current minimum pension under EOBA 1976 is PKR 3,600 per month. According to EOBI's official website, it currently provides pensions to 283,765 insured persons and to the survivors of 127,357 deceased workers, mainly through branches of National Bank of Pakistan. It provides invalidity benefits to 7,241 workers or their disabled children. EOBI lets eligible workers to register themselves even if their employer does not. They will be insured as long as they pay their contribution and it would be up to EOBI to pursue the employer for its share of the contribution.

ESSIs build schools and colleges, hospitals and other health facilities and residential colonies for the benefit of registered workers. They use the WWF for their purposes. They offer scholarships to workers' children through school, college and university. There are provisions to even fund medical treatment abroad for workers who cannot be adequately treated in Pakistan. However, workers at ESSI hospitals have to buy their own medicines and pay for some medical tests, contrary to their statutory rights.

Benazir Income Support Program (BISP) is a universal, means-tested small, fixed grant with relatively better outreach. Zakat and Pakistan Baitulmaal also provide small handouts, although Zakat's resources have significantly shrunk since the Supreme Court's decision that the state could not compel people to use its scheme for Zakat.

10.8 Labor Union Issues

According to one estimate only 3% of the labor in the country is unionized, which means about 1.3 million workers are members of recognized labor unions. Even within these unions, as seen above, the ability to successfully bargain for rights varies. Employer power in the case of the private sector has made organized action extremely difficult.

Enterprise-wide unionism has enhanced the employers' ability to manipulate labor politics. The requirement for a minimum number of votes in a CBA election has stacked the odds somewhat against starting a new union. However, Pakistan has a relatively large number of unions, with largely fixed overall membership numbers, but low membership

Only 3% of the labor in Pakistan is unionized, which means about 1.3 million workers are members of recognized labor unions. Even within these unions, as seen above, the ability to successfully bargain for rights varies. Workers Party Pakistan, 2012

²¹⁵ (The Nation, 2009)

per union. Having elected CBAs means other unions can virtually be ignored by the employers. In India, for example, there is no official CBA, and employers feel compelled to engage with any union able to mobilize enough workers. Similarly, non-CBA unions have little ability to influence government as they cannot legally call strikes and use it as an opportunity to demonstrate their ability to demonstrate. This in turn makes them less attractive to political parties in opposition to the government to support and ally with. The relationships, if any, have been more opportunistic and ephemeral on the political parties' part. More importantly, repeated, long periods of military rule have meant that union power has not meant much in or to the politics of Pakistan, with the exception of a brief period in 1968-69.

Union democracy too has suffered as a result of an absence of uninterrupted evolution of democratic politics in Pakistan. Union leaders have had a patron-client relationship with individual workers, for personal favors rather than collective bargaining, often on ethnic basis, especially, in a large migrant city like Karachi, for example.²¹⁶

Unions, of course, owe primary responsibility to their paying members (even though unions are not very good at collecting regular subscriptions and suffer financially as a result). While unions - their federations, more precisely - have made the obligatory statements about the rights of informal and agricultural workers, they have left whatever actual work being done, for and amongst them, to NGOs and informal workers' and farm workers' own associations, where one might exist.

10.9 Capacity of the Labor Department

The labor department's capacity is generally considered to be inadequate to meet the requirements of monitoring and enforcement even within the smaller, non-agricultural, formal sector (which excludes designated 'essential services'). They tend to have offices in a selection of districts. Inspectors generally have to make a large number of visits to industrial premises which are generally outside or at the edge of cities where their offices are usually based. They are not provided with official vehicles and are expected to use public transport or private vehicles.

Labor inspectors lack training in technical aspects of Occupational Health & Safety (OHP). The department needs to provide in-house scientific, technical and medical expertise that inspectors can refer to in addition to help train the inspectors in hazard analyses in relation to various industrial processes and scenarios.

Employers are not only wary of corrupt inspectors but also the number of inspections each premises might receive. The Government of Punjab had banned all labor inspections since 2003 and only removed the ban in the wake of a major industrial tragedy in Lahore where an explosion in a pharmaceutical unit in a residential area claimed 25 lives. Unions had been arguing that even visits by corrupt inspectors serve as an incentive for employers to do more than in a regime where there are no inspections at all. Government of Sindh had limited inspections, since 2003, to strictly one per year provided the employer was given sufficient notice.

²¹⁶ (Candland C., 2007)

LIP 2006 introduced the radical idea of self-assessment in addition to labor inspections. Low risk sectors could be allowed to register for self-assessment rather than an inspection by the labor department. It also put forth the idea of using third-party, private sector inspectors and agencies to either augment the state's labor inspectors or transform, with retraining, the role of state inspectors into that of monitoring and regulating private inspections. The federal government had amended PESSI 1965 in order to have a self-assessment scheme since July 2001. The amended law prevents any intervention by the respective social security institutes.

10.10 Labor Courts' Issues

The law has always required labor courts to provide expedited justice. It currently requires a judgment within 7 days. There is an understandable need for workers to gain quick resolution in order to keep their costs – travelling to court and not earning in case of their employment having been terminated – to a minimum.

Labor courts are put in place by the provincial governments, ideally depending on the levels of demand. The labor court is presided over by a Sessions Judge, or an Assistant Sessions Judge. The typical case load of a Session Judge means that she can devote very little time to this added responsibility; the judge also has the responsibility to manage the courts at the district level. There is a strong case, and demand, for a dedicated Labor Court judiciary²¹⁷.

There is a need to replace the conflicting and overlapping aspects of labor laws with a more coherent and simpler body of law, as well as clear and consistent rules and procedures which are not constantly changed by the executive. For one, the confusion this creates means that litigants are approaching not just the labor courts but also service tribunals and normal courts. The backlog in the court system means that they often take months just to refuse jurisdiction. The mixed workload of a non-specialist judge presiding over a labor court extends a backlog to this court for similar reasons²¹⁸.

²¹⁷ (Daily Times Pakistan, 2011)

²¹⁸ (Pakistan Institute of Labour Education & Research, 2007)



CHAPTER 11

LEP in Urban Settings

Chapter 11: LEP in Urban Settings

As already mentioned, urban poverty remains an under-researched area in Pakistan. To cover the deficit, to an extent, and highlight some issues faced by the urban poor, in the context of LEP, three case studies were undertaken. The initial scope and purpose of the three studies were the same but the end products revealed both similarities and differences. While the case studies have not been presented as representative of even the cities from where they have been taken, they do indicate more profound issues of diversity in urban areas than rural ones. An important reason may be the relatively new social process in urban areas where people migrate from different areas and develop a new culture as against the relatively settled social structure of most rural areas.

Three cities were picked for the case studies: Karachi, Lahore and Islamabad. The former two have been mega cities for quite a few years and represent the most established urban settings in the country. Islamabad was chosen as a city which continues to grow at a fast rate, mainly due to migration, and can provide insight into early issues of poor migrants. The specific low income areas were picked in each city on the basis of convenience and security as advised by persons with local knowledge.

None of the target areas could be strictly called slums as per the UN Habitat definition, though each one displayed some of the characteristics. All three had a significant Christian population who were sanitary workers. Most of the women in these areas worked as domestic workers in neighboring affluent localities. The findings from the case studies revealed the differences across each city which re-emphasized the risk of generalization across the country. Most of the characteristics highlighted in the World Bank study on urban poverty appeared in the case studies.²¹⁹

Reliance on the cash economy meant exposure to exploitation by employers and money lenders. Even sexual harassment of female domestic workers was indicated in the FGDs by employers as well as police and other security personnel. Where money had been borrowed either from a NGO involved in microfinance, professional money lender or goods (for instance, auto rickshaw) purchased on credit, failure to meet obligations proved disastrous for the household. The dependency on cash has also led to development of innovative capital raising approaches. Groups of individuals pool money into a '*committee*', which is used as capital by each individual, as per an agreed Rota. A riskier option of committee in Lahore, was the '*bolwali committee*' where an individual bids for first use on the basis of a promised premium.

Exposure to environmental hazards also remains high. While specific issues could not be identified, sanitation issues were visible, especially in the case of Karachi's Siraj Colony, as discussed later.

Social fragmentation issues varied. While the kinship (*biraderi*) based support systems did not exist, communal support was not absent. Two factors made up for segmentation. Firstly, new

²¹⁹ (Baker, Judy, World Bank, 2004)

migrants into the locale are normally relatives of existing dwellers and secondly, in case of Christian communities, the church assisted cohesion and social support. The degree of church support varied across each of the three studies. It was the weakest in Islamabad where the dwelling has developed only over the last decade and a local church has not yet taken root. In Lahore faith could be seen as a source of support for the community but the influence of the church, in case of disputes, remained low despite major social work. In Karachi the church effectively functioned as a base for alternative dispute resolution.

Drugs and related violence and crime cut across all three localities. In case of Islamabad and Lahore it is an emerging threat. Young men addicted to drugs were said to be involved in crimes of street mugging in the neighboring affluent areas. In case of Christian communities, illegal sale and manufacture of alcohol also played a critical role.

Significantly, social hierarchies within these communities are less resistant than rural ones, essentially because of the absence of powerful elites. Drug related crime groups may pose the main threat to a change process though no evidence of direct resistance to development was found.

Females continue to be marginalized even in urban dwellings. Most women in these localities worked but their position in the society and households remains subservient. While no quantitative data was collected, the anecdotal evidence from the interviews and FGDs revealed lower literacy rates for females.

Similar to rural areas, international migration plays a significant role in poverty alleviation urban dwellings. A comparison of the Christian dominated Maryam Nishat colony with the abutting Muslim majority, Nishat colony revealed greater affluence in the latter. A critical factor in the difference was the remittance based income of the Muslim colony where, according to anecdotal evidence, at least 50 percent of the households depended on income from foreign remittances as compared to a negligible number of Christian communities.

11.1 Case Study 1: Maryam Nishat Colony, Lahore

Maryam Nishat Colony can be categorized as a low income area with a high incidence of poverty. Located in the territory of Lahore Cantonment it abuts the posh Defense Housing Society on the one side and merges contiguously with 'Nishat Colony' on the other. Majority of the population belongs to the Christian faith (mostly Catholics). The exclusively Muslim section of the settlement separates under the name of 'Nishat Colony'.

The earliest houses in the dwelling date to the late 60s though it began to take the shape of a settlement in the 1970s. Low-level government servants (mostly sanitary workers) were the earliest settlers who purchased the land from local owners. At the time, no public transport existed and the Royal Artillery Bazar (R.A Bazar), at about 2 to 3 kilometers, was the closest place for work. Families and friends of the early settlers began to trickle in and the process continues to date. Until the late 70s the settlement had many attributes of a slum: mud houses (or brick houses without plaster), unpaved streets and only a few houses with electricity connections and no gas. Most of the early settlers were illiterate.

Today Maryam Nishat colony has paved roads, almost all houses are brick built, many homes have televisions and motorcycles and according to guesstimates of the local people, about 40% of the second and third generation has graduate degrees. It has emerged from the slum condition although it still remains a low-income settlement with a hierarchy of economic strata within the community that has developed over the last 30 years. It still contains pockets of extreme poverty and approximately 300 plus beneficiaries of the Benazir Income Support Program (BISP).

11.1.1 The Development Factors

Five factors have played a key role in transformation of the community: hard work of the first generation, the Church and its role in education, development of the 'Defense Housing Society', the role of elected representatives, especially, after the shift from 'separate' to 'joint' electorate for minorities in 2002 and illegal money acquired from unlawful alcohol sale and drugs business. The latter has been an addition in the last ten years.

11.1.1.2 Defense Housing Society

Foundations of the Defense Housing Society were laid in 1978 and by the early 80s, basic infrastructure like roads had been developed. The local Church arrived in the area around the same period and set up a small school for the community. Prior to the establishment of St. Mary's school, the local government school provided the only opportunity for families to educate their children. At some distance from the community and with relatively weaker education, the government school lost students to the new missionary institution. Also, more families began to send their children to school and it also attracted more migration into the area.

Construction and property business in DHS presented job opportunities to the people and while many worked as labor, others entered the more lucrative work of estate agents (normally as an employee with a larger agency from outside) and provision of basic construction material, especially, paint. As DHS began to populate, many of the women began to work in houses as domestic workers. Even today a large number of females work in DHA residences.

11.1.1.3 Joint Electorate

Prior to 2002, the minorities elected their representatives through a 'separate electorate'. The Provincial Assembly and also the National Assembly had one Christian MP each, representing the entire provincial and national populations of their communities. This created problems of access as these representatives would not normally be approachable for resolution of problems. The local majority representative had no interest in the issues of Christian communities as they had no role in his or her election. The shift to joint electorate increased the importance of the Christian community in local politics and the elected representatives used part of their development fund for Maryam Nishat Colony.

By the late 1990s, houses had begun to transform into concrete built structures but the streets remained muddy. Also the sewerage system built in the late 70s had begun to be inadequate for the growing population. In the period from 2002 to 2008, paved streets and a new sewerage system were built through the local Member of the Provincial Assembly.

11.1.1.4 Education

In the 1990s the first set of students from St. Mary's began to complete college education and enter professional life. They began to take more white-collar jobs though normally at junior levels, in both the government and the corporate sectors. This added to the income capacity of the settlement. Local businesses like retail shops, video shops, and games shops (like snooker) began to appear. At present, a second generation of graduates of the school has begun to enter the market and at least two offices of lawyers can be found in the settlement. Both these lawyers completed their schooling in St. Mary's. A number of small private schools have also sprouted in the community, run by the younger generation.

The private sector schools have also added to inequalities in the settlement. The poorest cannot afford these schools and even if they enroll their children, they drop out due to financial reasons. The nearest public school is far and not beyond grade 8. The nearest college is about 10 kilometers away.

Original settlers purchased land from a local landowner who had announced his desire to sell it through a local system called 'munadi'. Now the property in the settlement gets transferred on stamp papers and most buyers avoid registration due to high fees.

11.1.2 Property Rights

The original settlers had purchased land from a local landowner who had announced his desire to sell it through a local system called 'munadi'. Now the property in the settlement gets transferred on stamp papers and most buyers avoid registration due to high fees. Normally, problems have not arisen but the potential remains. Around a decade ago, the progeny of the original owners pressured families who had purchased without registration, into payment of the 'current market price'. Inheritance related disputes are normally resolved through family arrangements and women seldom receive any share.

11.1.3 Funds for Investment

Finances for investment into properties, businesses and family events like weddings are procured from informal sources. The two most common forms are known as 'committee' and 'boliwali committee'. A 'committee' consists of funds pooled by members. Each member picks up the entire amount for use as per the procedure or order agreed in the group. The member later returns the entire amount. A 'boliwali committee' goes to the highest bidder. The bidder agrees to pay an 'x amount' over and above the original pooled fund. The latter normally puts families under pressure as they strain to pay back the original amount with the premium. The premium gets distributed equally among the contributing members. In some cases, families borrow from private sources at high interest rates. This adds to difficulties faced by the families when they find they cannot pay the due amount.

A non-government organization 'Kashf' also works in the area and provides micro-credit to women to start small businesses. In many cases the funds are used to pay off previous loans.

11.1.4 Health

The nearest public sector health facility costs about PKR 300 per trip on a *Rickshaw*. The two main public sector facilities utilized by the population are located around 10-15 kilometers from the settlement. Average cost per episode ranges from PKR 500 to PKR 25,000 and often plays a role in destabilizing families vulnerable to extreme poverty. Local private sector health facilities cater to the populace of the rich DHS at prices unaffordable to the poor in Maryam Nishat Colony. A retired Junior Commissioned Officer (JCO) of the armed forces trained as a paramedic has provided local services for the last 3 decades.

11.1.5 Police and Crime

Crime in the community has two sources: illegal sale of alcohol and drugs. Christians, as per law, can purchase up to 3 alcohol bottles per month through specially allocated permits. Many inhabitants of the settlement sell these bottles illegally to rich Muslim clients. Many a times they collude with sellers to purchase more than three bottles because of the high 'profit' on sale of illegal alcohol. The business has now expanded to the point where some persons brew alcohol at home. The activity becomes the main conduit of Police entry into the community. The transaction normally closes with exchange of money for protection between the perpetrators and the Police.

The Police normally 'settles' the issue after accepting money from both sides.

Drug use among young people has risen over the last decade and allegedly the suppliers pay Police a share of the profits. Increase in drug addiction threatens to overturn the stability of the settlement and may lead to migration of the relatively affluent. Many young drug addicts commit crimes to fund their habit. The nearby affluent localities have had incidents linked to young drug addicts from the area.

Apart from the above situation, Police interface with community arises at the time of disputes. The community claims that the Police normally 'settles' the issue after accepting money from both sides.

11.1.6 Alternate Dispute Resolution

Alternate dispute resolution options do not exist in the community as no social hierarchy based on power exists. The Church can be considered the only alternate but influence of the Church in social affairs continues to recede. The Church does not get involved in resolution of serious crimes or disputes and the Church officials admitted that even in smaller issues it cannot implement the 'verdict'.

11.1.7 Women

In many houses, only women earn. Ostensibly this should provide greater empowerment but in reality these women face discrimination. Physical abuse at the hands of the husband prevails and share in inheritance is denied although the Christian personal law in Pakistan provides for equal share for male and female heirs.

Women from most households work outside for pay. The settlement provides the largest number of female domestic workers to the DHS. These women belong to the poorest sections of the society within Maryam Colony and a large number are illiterate. Average payment ranges from PKR 2,500 to 3,000 per month. Most female workers claimed working for one household only (some may work for two households but even then the total wages fall below the minimum legal wages of PKR 6,000 PM). Most women have a daughter accompanying to assist in the work.

Domestic workers complained of poor treatment including incidents of physical abuse, no recompense for work related accidents and even vulnerability to sexual harassment both at the hands of members of the employing household and on the way to work.

Domestic workers complained of poor treatment including incidents of physical abuse, no recompense for work related accidents and even vulnerability to sexual harassment both at the hands of members of the employing household and on the way to work.

11.1.8 Differences from the Muslim Section

The Muslim section known as 'Nishat Colony' has a much larger population than Maryam Colony. Greater affluence can be seen and on average it exists in a higher economic bracket than the Christian colony. Remittances from abroad constitute the main source of income. About 50% of the households have a member in the Middle East or Europe. Very few members of the Christian community work abroad. Secondly, retired soldiers were the first Muslim settlers while most of the Christians were low level sanitary workers, often illiterate. The soldiers not only received better retirement packages but were also literate. This provided the community with the initial advantage.

Most households support female education but unlike the Christian component most women do not take up employment. Teaching is the preferred occupation for those who work. Unfortunately, both communities face increased drug use among the youth and have low faith in Police. Alternate Dispute Resolution does not exist in the Muslim section as again no social hierarchy or collective system exists.

11.1.9 DHS and Maryam Nishat Colony

DHS and Maryam Nishat Colony have a symbiosis skewed heavily in favor of the former. The latter provides cheap labor (household and otherwise) to DHS. The labor cannot negotiate their wages and can be considered as 'price takers' in the local labor market. Emergence of crime induced by drug use now poses a potential threat to the current equilibrium and some incidents have already been reported. The long run interest of DHS calls for its greater involvement in development of its poorer neighbor, especially, youth engagement through provision of playgrounds and education. It will also need to re-consider the minimum wages and some mitigation of the 'skewedness' of the current symbiosis.

11.2 Case Study 2: Siraj Colony, Karachi

This case study of a slum area in Nazimabad, Karachi was conducted during 4th to 7th May 2012. Case study was done in a slum area known as Siraj Colony, which is situated in Nazimabad No.1.

The area is religiously heterogeneous where 70 % of the residents are Christians, most of whom are Catholic, though a small portion of the population belong to the Protestant faith as well as the church of Pakistan.

11.2.1 Physical Features

Siraj Colony is situated at the bank of a big drainage *nullah* which runs parallel to the colony and every year during the rainy season this *nullah* swells out of its borders and almost half of the colony is inundated in that filthy drainage water. On the other bank of this *nullah* was a big factory and the owner of that factory had raised a high embankment wall alongside the *nullah* to prevent flooding of the factory in case of rain; resultantly, leaving only one outlet for the flooding water, i.e., Siraj Colony. Residents of the area have been demanding for years, the construction of a similar embankment wall on their side of the *nullah* but without avail. When probed, residents responded that the construction of such a wall was too costly for them to do on self-help basis.

Physical features of the colony truly depict the picture of an urban slum, with extreme narrow alleys; rendering it impossible for three persons to walk parallel to each other, absence of any proper drainage system; extremely unhygienic environment; and though mortar built yet small houses closely linked with each other.

However, if judged according to the UN-HABITAT's definition of slum, according to which, '*a slum is a run-down area of a city characterized by substandard housing and squalor and lacking in tenure security*', Siraj Colony would not qualify as a slum, as most of the residents of the area enjoy tenure security. Apart from this feature, the area has all the basic characteristics of a slum, which are: urban blight, high rates of poverty, illiteracy, and unemployment. Besides, some other characteristics of urban slums including 'inadequate access to safe water; inadequate access to sanitation and other infrastructure; poor structural quality of housing; and overcrowding' are also abundantly visible in Siraj Colony.

11.2.2 Demographic Features

Siraj Colony is a low income area as most of the employed non-Muslim (Christians) residents of the colony are working in the Water Board or Karachi Municipal Corporation (KMC) as sweepers and cleaners. Muslim residents of the area are also poor though they mostly run small businesses such as small grocery shops, selling fruits or vegetables on mobile carts, small repair shops or dispensaries in the area etc. The colony consists of some 1,000 to 1,500 households and the total population of the colony is estimated to be more than 5,000 individuals.

11.2.3 History of the Colony

Present youth of the area is the third generation living in the same colony. Most of the respondents said that they are living in Siraj Colony since their birth; their grandfathers had migrated from different parts of the city as well as from other parts of the country to settle in the Colony. Some of the respondents had even migrated from Khanewal and different parts of Punjab some twenty years back and had settled there.

Initially, in the 60s and 70s, the colony mostly consisted of mud housing, which was gradually replaced with dilapidated yet solid structures made of blocks and cement. Most of the residents own these houses on the basis of long term lease from the municipality or local government of the area. Gradually, electricity and gas facilities were made available in the area. It was revealed that the houses, which do not have gas meters, have not been leased from the local municipality.

11.2.4 Basic Amenities

Of the state-provided basic amenities, electricity and gas were the facilities present almost in every house of the colony; however electricity load-shedding in the area was reported to be excessive and extensive to an extent that sometimes electricity outages continued for days. It was noted that load shedding is much more common in Siraj Colony than in any other area of the city, with more affluent residents. Clean drinking water and garbage disposal facilities had not even been contemplated by the Colony residents.

As far as education is concerned, the nearest government schools for both boys and girls are within a range of 1 KM from the colony. Almost 60 to 75 percent of the school-going age children are enrolled in these schools but there was a consistent criticism on the standard of education in those schools. Residents claimed that teachers in these government schools make students do their personal chores instead of teaching them, and resort to corporal punishments in case any student refuses to succumb to their demands. Poverty and low standards of education in government schools were quoted as the main reasons for not sending the remaining 25 to 40 percent children to schools. Residents claimed that they are too poor to afford private schools fees and there was no point in sending their children to government schools; rather, they prefer to engage their children in some kind of economic activity, to share their burden.

In terms of health facilities, Siraj Colony is considerably well placed as the famous Abbasi Shaheed Hospital is within five kilometers; and in case of any serious health issue, residents used this facility. Though no government health facility was available within Siraj Colony, there were not less than 7 private doctors' clinics in the colony, out of which at least 4 were MBBS doctors, and one of these MBBS doctors was Christian. Though small and unhygienic, these clinics were functional and catering for the immediate health related needs of the area.

The mere fact that this high number clinics were running in such a small-sized colony indicates that poor nutrition levels, severely polluted environment, lack of clean drinking water, and extremely unhygienic surroundings have had adverse effects on the health of the residents.

11.2.5 Socio-economic Conditions

As already indicated, the socio-economic status of the residents is very poor, with most of the population working on daily wages or as sanitary staff in different municipality department. Average monthly income of the day-laborers and government sweepers was reported to be between PKR 5,000 – 7,000 and PKR 7,000 – 9,000 respectively. Ironically, those who are working in the Water Board or Karachi Municipal Corporation (KMC) as sweepers are considered as the privileged ones for having a permanent government job. It was informed by the residents that to get a sweeper's job in the Water Board or Karachi Municipal Corporation, one has to pay around PKR 90,000 to 100, 000, to the Board officials. A young boy of around 17 years was the

son of a KMC sweeper who had died on the job. Despite the best efforts of his family, the teenager could not get the job in KMC at his father's vacant position.

Ancillary problems associated with slum areas, including the presence of drugs and criminal elements were also reported by residents of the area. It was informed that Jalalabad, a slum area adjacent to Siraj Colony, was notorious for drug trafficking; the local police also confirmed this fact. Residents of Siraj Colony complained that their young children, who otherwise do not have any healthy diversions, have started indulging in drug use and drug dealing. There were multiple reports of fights between the residents of Siraj Colony and the drug dealers of Jalalabad on this issue. But as the name suggests, the majority of the inhabitants of Jalalabad belonged to the Pakhtun community, who are Muslims and in case of any dispute between the Muslim and Christian community, according to the residents of Siraj Colony, the former would come out on top regardless of their occupation.

A young boy of around 17 years was the son of a KMC sweeper who had died on the job. Despite the best efforts of his family, the teenager could not get the job in KMC at his father's vacant position

11.2.6 Interaction with the State

Like many low income communities, residents of the Siraj Colony also have minimal interaction with the state. Their maximum interaction with the state functionaries is with the officials of Karachi Electric Supply Company (KESC) or the officials of the Sui gas department. Even this limited interaction was not without disappointment for the residents. There was a repeated display of a sense of resignation by the residents of the area who related that they have nothing to do with the responsibilities or functions of the state. According to them, their poverty would always deprioritize their problems for the state in favor of the rich and affluent. Their most recent experience, with the state at the community level, was the household survey of Benazir Income Support Program (BISP); which also brought mixed results for the population. Some residents claimed that despite being extremely poor they were not receiving any assistance from BISP while many other relatively better off people were getting BISP benefits. Others reported having received monthly cash grants of BISP on a regular basis.

11.2.6.1 Judicial Experience

Residents of the area seldom deal with the Police and have even rarer interaction with the state judicial apparatus. In case of internal disputes, residents prefer to settle it through alternate dispute resolution mechanisms. They have a quasi- *Panchayat* system with elders of the area as members and disputes are settled through that *Panchayat*. It was also noted that in case of a dispute within the Christian community, the church plays a role in the settlement as the senior officials of the church are important members of the dispute settlement committee or *Panchayat*.

In case of inter-community disputes, elders of both the Muslim and Christian communities constitute a combined *Panchayat* to settle the issue. However, some Christian residents explicitly complained about the partiality of the *Panchayat's* decisions in favor of Muslims in case of any

inter-community dispute. This shows that even within low income groups power structures exists, which, as between income groups, favor the more powerful segment. This power may emanate from wealth, social standing, and political connections or, as in this case, numerical superiority by virtue of being Muslim.

When probed, residents informed that the **formal justice system is too lengthy and expensive** for them. In case a dispute is not settled through the community, they take the issue to the police but in that case, both disputant parties have to pay the police and face lengthy litigation, which everyone prefers to avoid.

11.2.6.2 Property Issues

No specific property related issues were reported by the residents of Siraj Colony. One reason was that hardly anyone of them has any property; however, most of the residents owned the houses they were living in. As most of them are living in this area since multiple generations, there were no any issues related to the security of their property deeds.

11.2.6.3 Political Interaction

It was observed that the Siraj Colony area falls within the political constituency of MQM and residents of the colony also substantiated this observation by reporting that the majority of them are supporters of the same political party. Residents were reasonably 'satisfied' with the performance of their political elite as they are the only ones who have some regular interaction with the community. Political leaders of the area even participated in the religious festivals of the local Christian community. But at the same time, residents reluctantly shared, that despite repeated requests, even these political leaders have not done anything to solve their biggest problem, which is related to the adjacent *nullah* and its flooding every monsoon season.

11.2.7 Community Camaraderie

There was a sense of community camaraderie noticed within the residents of the area, who shared each other's problems and a sense of unity amongst themselves. It was also reported that in the days when half of the colony was inundated, the residents of the other half pooled resources and arranged food for the people whose houses were filled with water. This condition prevailed for many days and no state organ came to their assistance or help.

11.2.8 Researcher's Observations

It was observed that the urban poor, especially slum dwellers are living in sub-human conditions. Their environment is extremely unhygienic; lacking any system of sanitation or drainage, daunted by survival issues, and least concerned with their legal empowerment, as they have much more serious concerns to tackle. Residents do not face much discrimination because of their religious status but certainly feel under-privileged due to their economic conditions. A sense of resignation was also noticed among the residents of the area who apparently have accepted their unenviable condition as their fate from which there is no escape. Poverty and lack of education together weave a vicious web, which is marked by lack of opportunities, rendering it very difficult for anyone to redeem their condition.

11.3 Case Study 3: Mehrabad Islamabad

Mehrabad is an informal settlement in the area designated for sectors G-12 and F-12 of Islamabad where many of the city's poor dwell but it cannot be considered a slum. Even some relatively affluent persons live in the area. Historically, Islamabad has developed through land acquisition from local persons and development of 'sectors'. At present, development in sectors G-13 and G-14 has started while sector G-12's situation has been in abeyance because of a dispute that has arisen between the Capital Development Authority (CDA) and the approximately 14,000 residents of Mehrabad. Lessons from the case study are not restricted to poverty alone but it is a possible case of land grabbers using the poor to take over state land in the hope of a better deal. Some of the residents (at least one estate agent) claimed Mehrabad as one of the oldest villages in Islamabad. Evidence suggests otherwise. CDA had acquired the area after payment to the local owners in 1985.

11.3.1 Fundamental attributes of Mehrabad

It is located right on the exit from Islamabad to G.T Road and the Motorway, while lined by small shops on the front next to the main road with houses and living quarters further back. The roads are non-existent in Mehrabad and only temporary roads exist which are mostly not wide enough. Since Mehrabad officially does not fall under C.D.A (Capital Development Authority) jurisdiction, there is no infrastructure available, as in, no sewerage system, no gas supply, etc. (Basic amenities will be discussed in detail later in the report). Most of the houses are brick or cement blocks built with the latter being less expensive. Along with these, there also exists a section where red colored quarters are built all in the same way and have been rented out to people who are not able to afford a house of their own. Also, there are big warehouses here for storing cars confiscated by customs authorities and another for the ones defaulting on loan payment by the banks.

11.3.2 Inhabitants of Mehrabad

Mehrabad consists of a mix of people from different parts of Pakistan, which mostly include ethnic Nathans and Punjabis. Majority of the people living here are Muslims and there are also some minorities, mainly Christians. People of Mehrabad have various occupations and businesses, some of which are working as household help, others as taxi drivers and some own shops which they have rented them out to those running businesses such as hardware, plumbing, iron smith etc. The domestic help works across the road in G-11 and some as far as F-11 and a few in and around Islamabad. Some of the inhabitants are apparently involved in drugs business with customers in the local community. Rich upper-class clientele also visit the place to purchase drugs. The minorities which are mainly Christians are involved in bootlegging of liquor, which they deliver to the rich and influential people of Islamabad.

11.3.3 History of Mehrabad

The beginning of Mehrabad can be clearly judged from the pictures below taken from Google Earth. Contrary to claim of the local property dealer, the area probably developed as a settlement in the last few years. Mehrabad was a small village of very few houses and not a dwelling of 14,000 houses.

Picture 1(a)

Picture 1(a) depicts Sector G-12 aka Mehrabad which is almost completely barren land in 2002 proving that this is not a very old village as claimed by the people living there. The yellow indicates the sparsely developed areas.

Picture 1(b)

Picture 1(b) depicts the situation now in 2011 where it still is known as Mehrabad rather than G-12. The pace and scale of development can be clearly seen from 2002 to 2011. The red indicates all the heavily developed areas.

11.3.4 Basic Amenities

The infrastructure lacks in all facilities which are provided by the state but that does not mean people don't have any basic amenities. People who can afford it have electricity, water and gas (LPG cylinders). Depending on their income, households can opt for a transformer which is very costly and can receive electricity. The same would be true for water where boring is done and water is extracted through either a hand-pump, or where there is electricity, an electrical pump is installed. Another alternative which is also used is a tube-well. There are no hospitals in this area, the nearest one being in F-10. A few non-certified doctors are available privately in the area of Mehrabad frequented by people who can't afford hospitals. There are some schools in the area - mostly private which are expensive, and one government school for boys and another for girls. There is also a Madrassa here, where children go specifically for religious studies.

11.3.5 Property Issues

Sale and purchase of property takes place on bilateral contracts signed on 'stamp papers'. These do not constitute a right to the property under the law. As CDA has already acquired the land, no agency (CDA or the land revenue department) can mutate the ownership. The inhabitants have an idea of the risk but given the convenience of proximity to work opportunities and low prices, they are prepared to undertake the gamble in the hope that CDA will compensate them whenever an eviction process is conducted. Whether the poorest will be able to receive such future benefits is critical. Mehrabad seems relatively well off than other slums visited by the research team but most inhabitants are below average standards of living. They are all attracted by the cheaper availability of houses for rent or purchase, since there are no taxes to pay, because the houses built on the land are not registered. CDA, which should be responsible for this area, has no authority over this process though attempts were made by CDA in the past and still are on-going, to bring this sector under their de facto control, but to no avail. While G-13 has progressed under CDA, Mehrabad G-12 which comes ahead of G-13 remains still out of reach of the CDA administration.

Sale and purchase of property takes place on bilateral contracts signed on 'stamp papers'. These do not constitute a right to the property under law. As CDA has already acquired the land, no agency (CDA or the land revenue department) can mutate the ownership.

11.3.5.1 Kachi Abadis in Islamabad

According to the concerned CDA department, the Kachi Abadi Cell (KAC), an illegal settlement is not termed 'kachi abadi'. It is deemed a slum, given the deplorable living conditions.

To ascertain the difference between a *kachi abadi* and a slum, one has to go back in recent history to 1985, where the government ordered the Capital Development Authority (CDA) to recognize all the *kachi abadis* which the KAC claimed, were only ten at the time. Ten years later after the policy in 1995, it was decided that the *kachi abadis* would be rehabilitated and upgraded. A survey was conducted that same year, by an organization called 'Paidar', which was funded by the United Nations Development Program (UNDP). Consequently, the people living in *kachi abadis* covered by the survey were given ownership rights and those not covered failed to get recognition.

"In Islamabad 10 'kachi abadis' with a legal status are: Tent Colony G-7/1, G-7/2, G-7/3, G-8/1, F-6/2, French Colony F-7/4, HaqBahu I-11/4, DhokeNajju I-10/4, EssaNagri I-9/1 and Muslim Colony, Bari

Imam. Most of them are provided civic amenities such as electricity, gas and water".²²⁰

It was also decided that four of the *kachi abadis* would be relocated to Farash Town and the rest would be upgraded. The four to be relocated to a Model Urban Shelter Project were I-10/4, I-11/4, I-9/1 and Muslim Colony. The decision to relocate them was taken because some of these settlements were located in sensitive areas, some on planned CDA plots and others were in the right of way of roads. From another article in Dawn News regarding the same, *"The National Assembly Standing Committee on Cabinet Secretariat directed the civic authority to expedite action and resolve the issue of sector"*.²²¹

However a resident of the village Mehrabad, where Sector G-12 has been proposed, said locals had rejected the compensation package announced by the CDA. *"Under the compensation package, the land was being acquired at the rate of Rs 60 per kanal which was rejected by them"*. The locals demand of the CDA to pay the compensation according to the present market rate.

"According to a survey conducted by the CDA, number of houses in Sector G-12 was 8,000 and some 6,000 structures had been constructed in Sector F-12". CDA Director General Planning Sarwar Sindhu said, *"CDA cannot develop these sectors on its own because 1,400 house owners in the two sectors are demanding compensation at the rate of Rs4 million per kanal and thus their acquisition requires Rs60 billion"*. Additional secretary cabinet division said even after a lapse of 27 years, neither the price of land nor the value of structures could be given to the land owners.²²²

As the structures in the area continue to increase, the 2 sectors appear to be permanent low-income areas (due to the prohibitive cost of 'acquisition') with the problems concomitant to such informal housing.

11.3.6 Security Threats

From an article in "Dawn News", months ago terrorists had assassinated a serving brigadier at G-11 Service Road close to unplanned settlement in village Mehrabad. At that time some eyewitnesses had told the police that they had seen assassins coming out of the village before targeting the army official in the morning.²²³

Some of the slums in the outskirts of Islamabad are an easy hideout for terrorists. The disorganized settlement in Mehrabad where (G-12 & F-12) are to be developed, has become a constant source of threat and danger for the security of the people and the capital.

As mentioned in the Dawn News article *"Some shanty settlements revealed that anyone can get rooms or a house on rent, which ranges from PKR 1,500 to 5,000 per month. Nobody bothers who is living in their neighborhood and what business they do"*. This does not bode well for the capital city of a nation in the grip of an escalating terrorist insurgency.²²⁴

220 Ibid

221 (Dawn, 2012)

222 Ibid

223 (Raza, 2011)

224 Ibid



CHAPTER 12

Conclusions & Recommendations

Chapter 12: Conclusions & Recommendations

The conclusions are based on ‘triangulation’ of data collected and analyzed through the multiple methodologies described in Chapter 3. As such, they are based on a well-rounded mix of tools and the involvement of a large contingent of all stakeholder groups, from the very beginning of research work.

These are qualified by the limitations of the research described in Chapter 3, as well as throughout the report. Of particular relevance is the absence of inferential statistics, in terms of both bivariate and multivariate analysis that would more rigorously establish correlations and/or causal relationships between variables that are hinted at here. Additionally, for conclusions pertaining to certain areas, the lack of sufficient responses has been flagged earlier.

Though the study is intended to inform the development of a UNDP-LEP program, detailed program design work was not part of the mandate. In this context, the recommendations do not specify detailed activities or results for the LEP program, but do suggest coarse-grained activity components that may be prioritized for improving access to justice for the poor and providing an enabling environment for the Access to Justice & Rule of Law pillar of Legal Empowerment, as defined in Chapter 2.

12.1 Justice Priorities of the Poor

12.1.1 The Poor’s Understanding of Justice

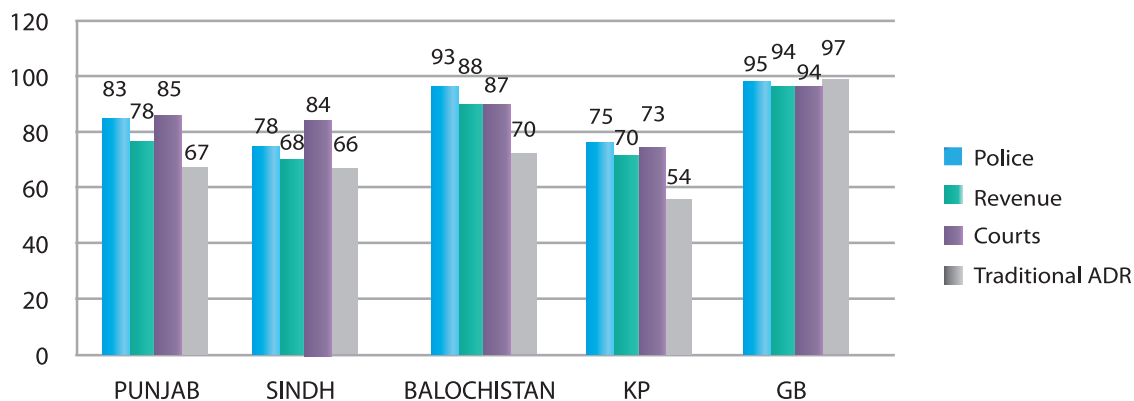
First, **the poor understand and experience justice in terms of socio-economic equity**. They express an implicit need for justice but this is blunted by the lack of resources and confidence in the state’s justice system to deliver. Therefore, inaccessibility of justice or injustice is not a pillar of their development or well-being at the household level, though it may act as an intervening variable by threatening or limiting opportunities for economic uplift and access to social services, particularly health and education, to which they attach greater importance. This conclusion holds valid across all provinces. UNDP-LEP must therefore project impacts not only in terms of legal empowerment or access to justice, but also contemplate the second-order effects of the intervention on the socio-economic development of beneficiaries.

In addition, **the poor and vulnerable have extremely low levels of legal awareness and understanding**. They are mostly unaware of their legal rights, how to access them, and what to do / who to approach when those rights are denied. This is borne out by demand-side FGDs as well as the high rate of “*Don’t know*” responses to key survey questions, particularly in Balochistan and GB. The problem intensifies among women. UNDP-LEP must conduct broad-based IEC, tailored to the education and comprehension levels of the poor and vulnerable to inform and educate them and improve legal literacy.

12.1.2 Citizen-State Relations: Security of Person and Property

Second, the poor are mostly disconnected from the state's justice infrastructure. This may be a function of distrust (although data on perceptions is not universally supportive of this fact), lack of awareness, lack of affordability in terms of time and money, or other factors which should be explored by further research. While conventional wisdom prizes traditional ADR mechanisms such as Jirga and Panchayat for their accessibility to the common man, their frequency of contact with the poor is only marginally higher than the state's justice system. This is clearly discernible in the figure below.

Figure 12.1: No Contact Populations (%)



With the exception of GB (above), in all provinces, traditional ADR has a lower “No contact” proportion of respondents than other institutions and a higher proportion in other response categories. But as concluded above, this margin cannot be described as definitive.

By implication, UNDP-LEP’s first crucial task on the demand side would not be articulation of demand but in fact *creation* of demand for justice delivery from state and non-state institutions, among the poor. This demand cannot be presumed to exist, and significant mobilization work must lead implementation to prepare a groundswell of demand for greater access to justice at the grassroots level i.e. the legal empowerment pump must be primed before it can deliver. However, without concomitant intervention to improve the supply-side situation, this demand would add to frustration and disappointment, especially among poor citizens.

Third, for issues of personal security, the poor most commonly opt for ‘*Elders of the family/ Biraderi/ area*’, excepting KP (where they opt for police more often than other institutions) and Balochistan (where traditional ADR i.e. Jirga was the first choice for most of the respondents). The figures below depict the top 5 institutions named by survey respondents for resolving threats to personal safety.

Figure 12.2: PUNJAB%

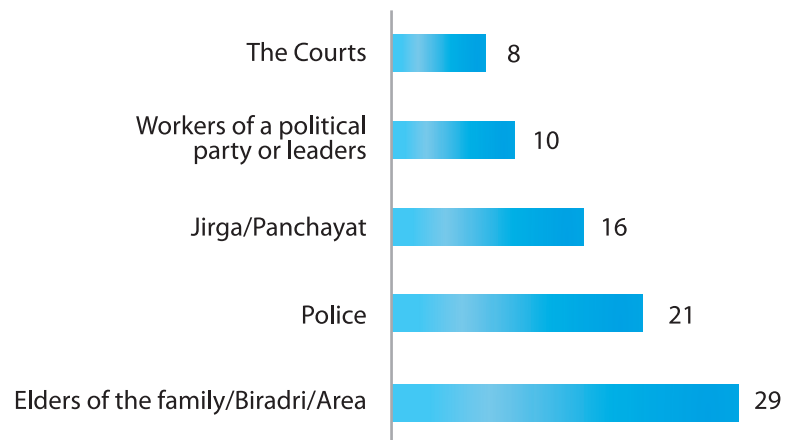


Figure 12.3: SINDH%

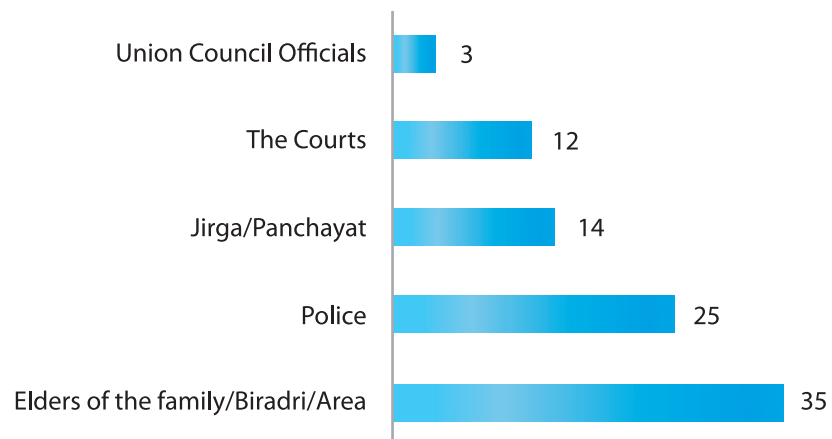


Figure 12.4: BALOCHISTAN%

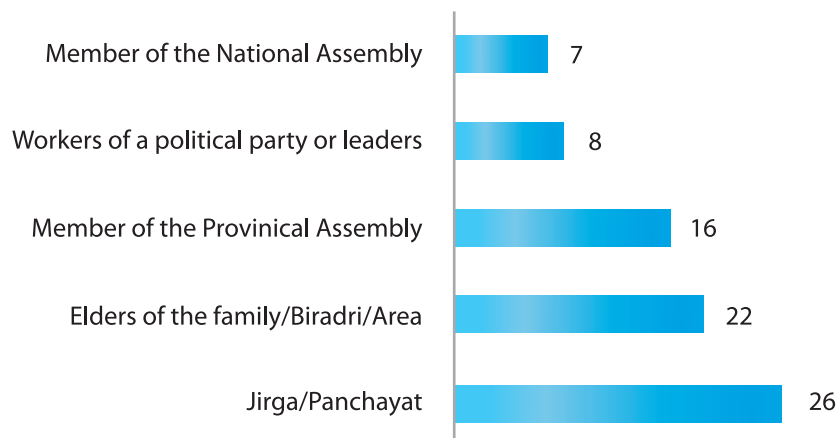


Figure 12.5: KP%

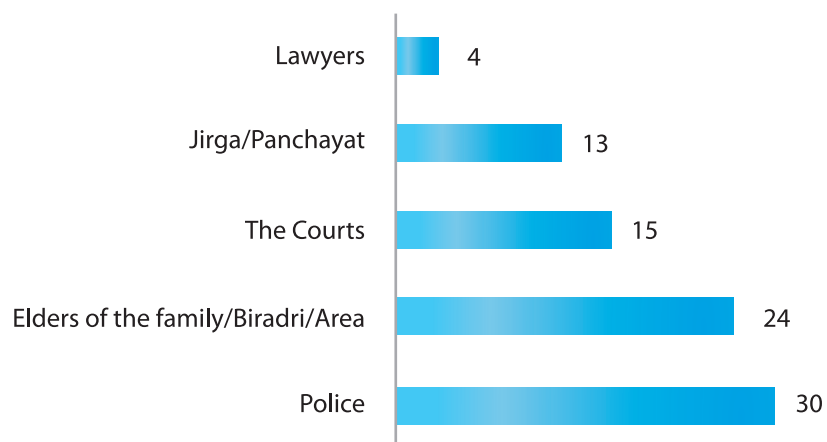
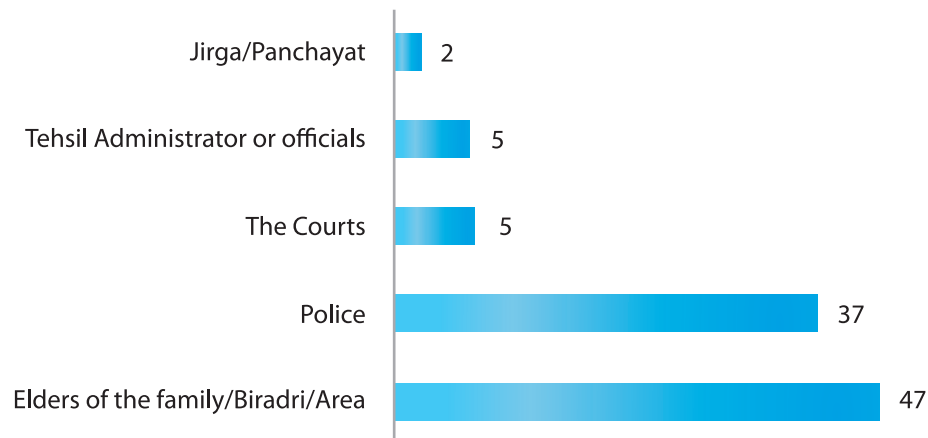


Figure 12.6: GB%



UNDP-LEP should involve this important (and as yet overlooked) pillar of the community for resolving disputes, and for public safety functions. Reflecting the poor's priorities, 'elders' may be involved through community policing models that feature the direct participation and oversight of community representatives in key police functions. These stakeholders may represent local influentials from the landed elite, political leaders, and/or intermediaries that broker interaction between citizens and the state through social capital linkages. While these dynamics will only become clear following a reconnaissance exercise conducted by UNDP-LEP, the program may capitalize on the trust and support enjoyed by such individuals/mechanisms from poor citizens to rebuild the relationship between the citizen and the police, as well as to improve public safety.

Fourth, a similar conclusion may be drawn for security of property, as shown below. The top 5 institutions for mitigating threats to property security are almost identical to the ones for personal security i.e. in KP; police is the most common choice for respondents whose property is endangered, while in Balochistan it is traditional ADR. Again, community elders lead the preferences.

Figure 12.7: PUNJAB %

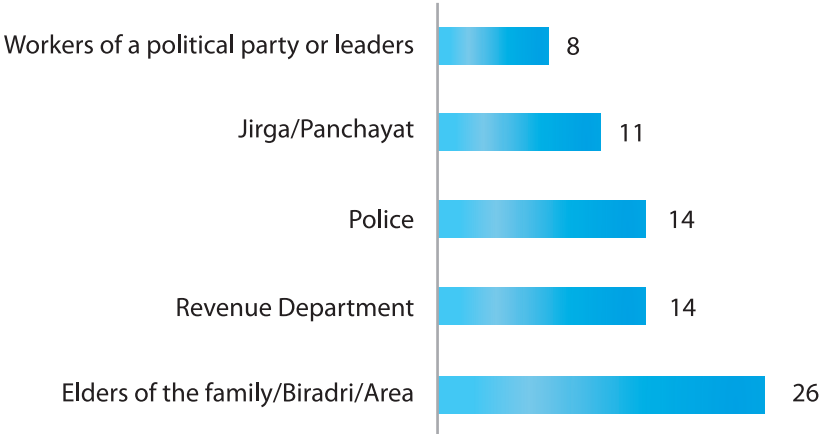


Figure 12.8: SINDH %

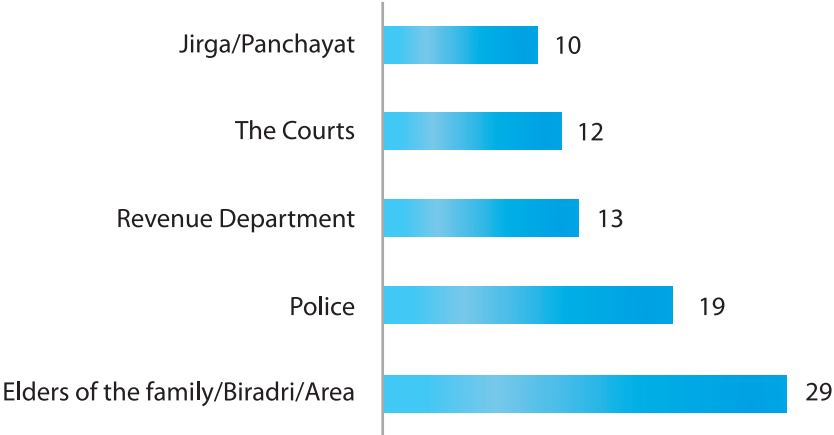


Figure 12.9: BALOCHISTAN %

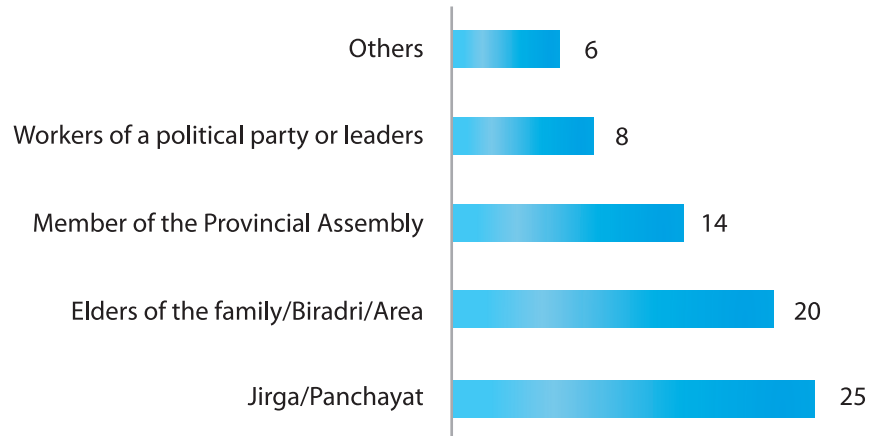


Figure 12.10: KP%

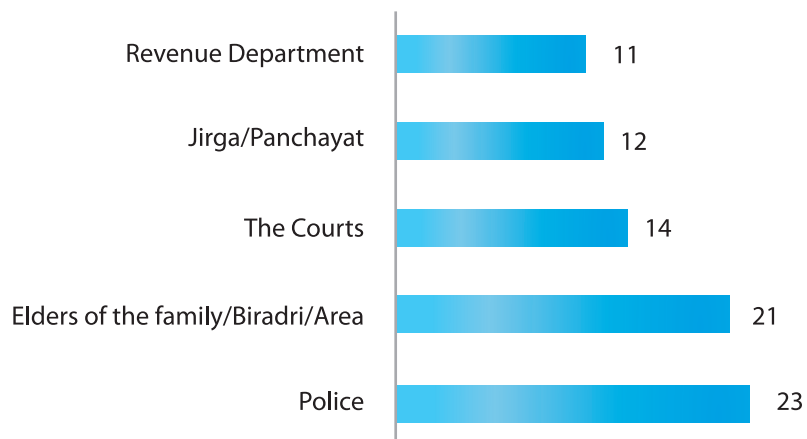
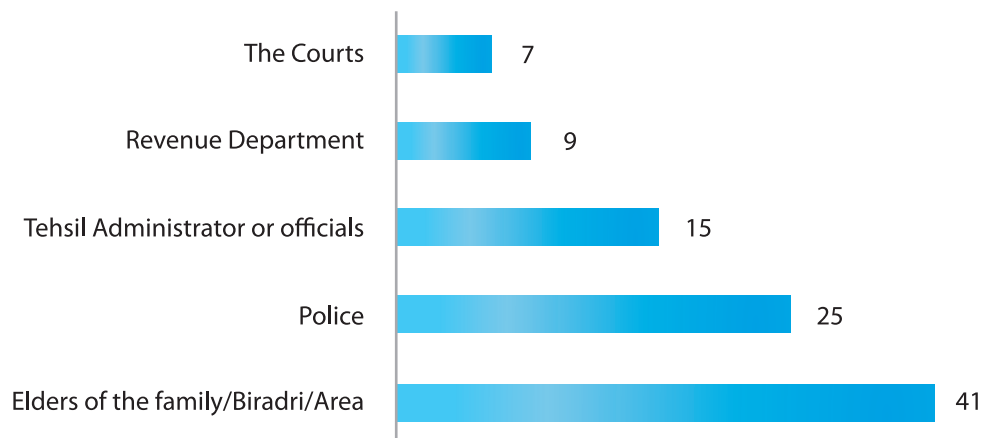


Figure 12.11: GB%



12.1.3 Service Provision Roles of Supply Side Institutions

Fifth, the typology of cases of the poor served by a particular institution (police, courts or traditional ADR bodies) differs from province to province and is not always as expected. In Balochistan, criminal cases are mostly taken to the Jirga, while the police handle more family matters than criminal. In KP, family matters mostly fall to the Jirga, while in GB they are handled by courts. In Punjab, the police handle proportionally more family matters than courts or traditional ADR bodies. In Sindh, traditional ADR bodies have a greater role in resolving family matters rather than those pertaining to criminal or civil disputes. In GB 80% of the matters referred to traditional ADR mechanisms are for criminal disputes, while no family matters are referred to them.

Figure 12.12: PUNJAB %

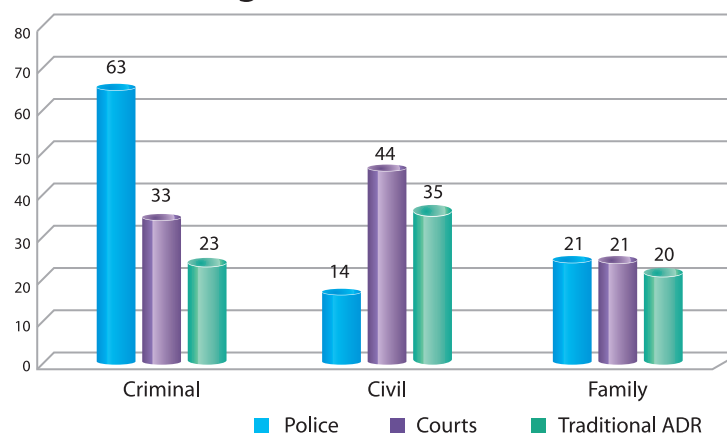


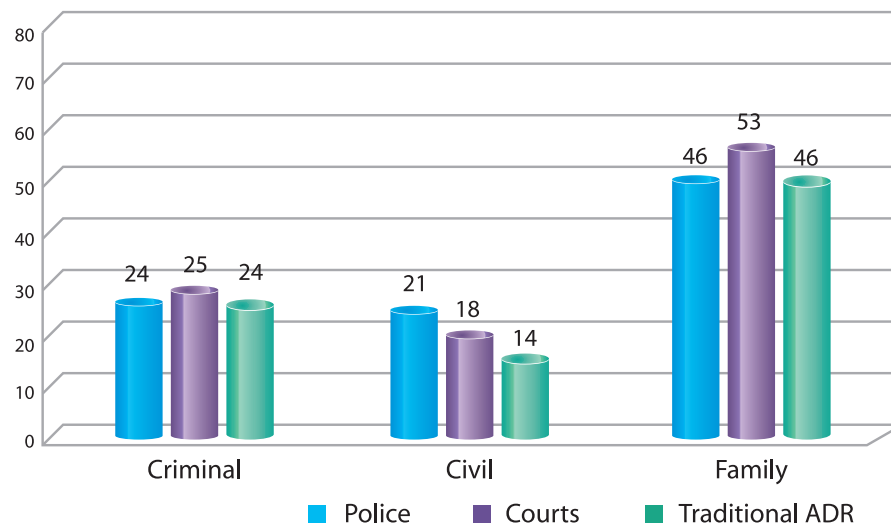
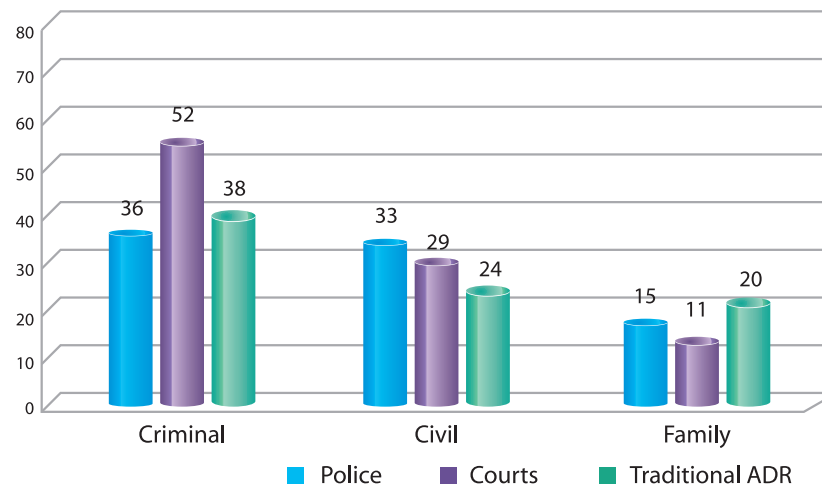
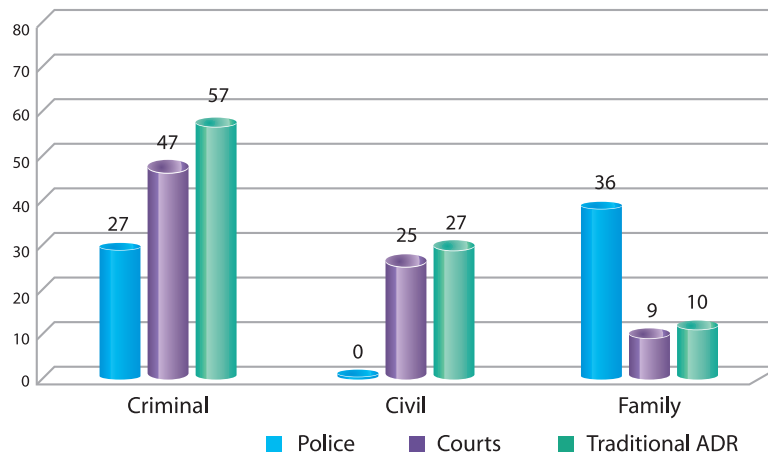
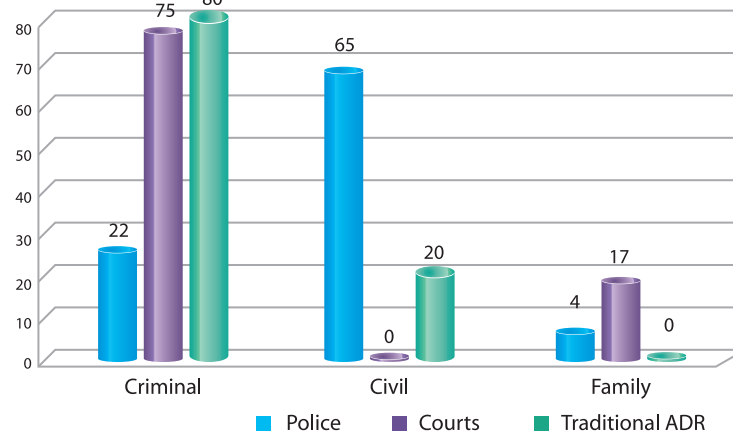
Figure 12.13: SINDH %**Figure 12.14: KP %**

Figure 12.15: BALOCHISTAN %**Figure 12.16: GB%**

This would have implications for the choice of partners, their envisaged role, and the requisite capacity for collaboration with the UNDP-LEP program. For instance, if criminal justice is to be improved in Balochistan and GB, traditional ADR bodies cannot be left unengaged. Similarly, for family matters, the police must be involved to stress the rights of women and children. The priorities of the poor will need to be considered, in terms of the type of justice need served by each institution, and that will determine the mode of engagement.

12.2 Bench & Bar

12.2.1 Strategic Choices

UNDP-LEP should position itself strategically in the context of past and ongoing reforms. Particularly with reference to the ADB AJP and the National Judicial Policy, the prospective program should align itself with the latter, while differentiating itself from the former. In light of feedback received from supply side workshops, the impacts of ADB AJP were not well-received, while the National Judicial Policy enjoys a greater degree of legitimacy and credibility, while of course being the prevalent policy for the sector with support at the highest echelons. Further, LEP should learn from these reforms, focusing on key lessons. In this regard, UNDP-LEP should:

- Scale and sequence its intervention cautiously. As borne out by ADB AJP's experience, improved service delivery may by itself raise demand to unmanageable levels (as explained earlier in Section 6.3.1.2, Chapter 6). It is therefore recommended that LEP follows an 'implement, test, refine, scale-up' methodology which allows demand to be projected in practical terms.
- Focus on lower courts i.e. District and Sessions Judge level rather than the higher judiciary ala ADB AJP. While the latter are indispensable to gain policy traction, the primary unit of analysis and action should remain the district or smaller.
- Build capacity across the board, especially for district judicial officers as well as court staff. This may build on the work already done by the ADB AJP with the Judicial Academies at the Federal and Provincial levels. A structured continuous professional development program linked to career progression is required for judges and court staff needs, which focuses on case-flow management and delay reduction, substantive law (especially new laws relating to cyber-crime, money laundering, intellectual property, etc.) and case law.
- Prioritize litigant's feedback and the demand-side perspective for design and implementation of interventions in court houses. Performance measures such as '*Court Tools*' designed by US-based National Center for State Courts should be explored to capture the experience of litigants and link it to efforts for improvement in judicial administration. Lack of such a process is a key missing link for the National Judicial Policy. There is a need to shift from an input to an output and outcome based performance evaluation/accountability.

12.2.3 Backlogs & Pendency

At the structural level, a long overdue measure is a system-wide expansion of human and infrastructure resources i.e. an immediate and massive increase in the supply of judicial services to cope with the sheer volume of litigation. The number of sanctioned and filled posts for judges at the district level needs to be increased, along with a concomitant increase in courthouses and attendant facilities. To upgrade manpower, the processes for recruiting judicial officers and managing their career paths need to be revisited.

The review of criminal, civil and other procedural laws was also recommended by supply-side stakeholders to simplify and shorten judicial process. Judges suggested the establishment of Reform Support Units at the High Court level to oversee implementation of the National Judicial

Policy, in consultation with other justice sector stakeholders such as police and prosecution, as well as a significant research function to inform revisions of the Policy.

At the transactional level, ADB AJP's subscale experiment with district courts should be explored, to try and replicate its success with case-flow management and delay reduction techniques in lower courts. Unless average case durations are truncated, litigants, especially the poor cannot be pulled to the courts. Innovations such as 'mobile courts' which have been successful in Latin America as well as neighboring India may be explored to expand outreach to poor and remote populations. Court-annexed mediation as contemplated by the Small Claims and Minor Offences Courts Ordinance 2002, and stressed by the National Judicial Policy should be given due attention as possible methods of reducing litigation burden on lower courts.

The study found various other solutions to this problem which merit further consideration by LEP. These include:

- outsourcing of the process-serving function to courier services;
- development of e-courts as stressed by the Chief Justice of the Supreme Court;
- broadening use of probation laws;
- zero-tolerance detection and penalization of false or frivolous litigation, as stressed by the National Judicial Policy; and
- using Criminal Justice Coordination Committees to plug coordination gaps between justice sector institutions within target districts.

12.2.4 The Role of Lawyers

The research found considerable gaps in the role of lawyers, pertaining to both attitudes and capacity. UNDP –LEP should:

- Strengthen mechanisms such as Bench Bar Liaison Committees (BBLCs) formed under legal frameworks with ADB AJP support at the district level.
- Support the reform of legal education at the policy and institutional levels. Better policy coordination between the Higher Education Commission and the Pakistan Bar Council is required to improve the accreditation and standardization of law colleges and universities, particularly in the public sector, but private sector institutes also require focus. A broad based Training Needs Assessment exercise should be conducted to identify prevailing gaps which should then inform a broad-based implementation process for the new curriculum recently developed by HEC and piloted in LUMS, with a feedback mechanism from educational institutions to HEC and PBC for future curriculum revisions. Capacity constraints among faculty members should also be addressed through scholarships, study tours, research fellowships, and other programs. Finally, the Pakistan Bar Council intends to upgrade the process of induction into the Bar from an interview and test to a more rigorous testing system through the National Testing Service (NTS). UNDP-LEP should support this initiative to raise the bar on the level of knowledge and skill among inductees before they begin practicing.
- The coverage of legal aid provision is severely limited and needs to be broadened. Though contemplated in the laws and regulations for Bar Councils implementation is weak. Legal and regulatory provisions for legal aid need to be revised in light of international experience and to incentivize practicing lawyers, pro bono legal assistance to the poor should be tied

to the advancement of lawyers within the Bar Council hierarchy. The regulatory framework for legal aid should address problems of corruption, inappropriate attitude and capacity constraints of lawyers, which were raised by poor litigants who were dissatisfied with the legal aid they had received in the past. Public funds made available to Bar Councils should be spent on free legal aid provision. The District Legal Empowerment Committees notified by the Law and Justice Commission recently, as well as the Legal Aid Committees of Bar Councils may be useful partners in this regard. Legal aid outlets and exercises should be well-publicized in media as well as through local NGOs who can play a more substantive role for education and advocacy on both the supply and demand sides, to facilitate access to legal aid funds. Presiding officers, lawyers and other referral agents may also be involved to ensure deserving candidates are found.

12.2.5 Corruption

As confirmed by this research, corruption continues to be a problem at the district level. In this regard, the measures announced by the National Judicial Policy regarding corruption and misconduct by judicial officers need to be supported. In particular:

1. Computerization and centralization of data for monitoring by High Court Inspection Teams (Section 11, Page 44)
2. Installation of CCTV equipment (Clause 3 ii-e, Page 13) and complaint boxes (Clause 3 ii-c, Page 13) in District Court premises under the supervision of District and Sessions Judges
3. Establishment of anticorruption cells in High Courts (Section 2, Page 11)

Additionally, case management needs to become more systematic and transparent. The Case Flow Management System for District Courts of Pakistan has been developed and deployed by the Sindh High Court. Its successful implementation should be supported by UNDP-LEP. The autonomy of court staff such as Naib Courts, Readers, and process servers should be curbed and brought under professionalized court administrators rather than judges. Ministerial staff should also be regularly rotated. Measures adopted under past reforms such as the establishment of information kiosks in district court premises, publication of annual reports including case decisions, and the establishment of Citizen Court Liaison Committees should also be explored in program districts for UNDP-LEP, to increase the transparency of the judicial process.

Table 12.1: Recommendations for Bench & Bar

	Supply	Demand
Structural	<ul style="list-style-type: none"> • Expansion of human and infrastructure resources • Review of criminal, civil and other procedural laws • Reform support units at the High Court level to oversee NJP implementation in consultation with other justice sector stakeholders 	<ul style="list-style-type: none"> • Restore confidence among the poor citizens in courts
Transactional	<ul style="list-style-type: none"> • System of continuing education for judges and court staff through judicial academies • Regular and systematic capture of litigants' feedback • Introduction of case-flow management and delay reduction techniques • 'Mobile courts' initiatives • Court annexed mediation initiatives • Outsourcing of the process-serving function to courier services • Development of e-courts • Broadening use of probation laws • Zero-tolerance detection and penalization of false or frivolous litigation • Supporting CJCCs to improve coordination • Support to BBLCs to improve Bench-Bar liaison • Supporting the reform of legal education in law colleges and universities • Support implementation of NJP directives for accountability and transparency 	<ul style="list-style-type: none"> • Upgrade quality and coverage of free legal aid • Improve legal literacy and awareness of court procedures • Enhance transparency of case-flow management • Establish information kiosks in district court premises • Publish annual district court reports including case decisions • Establish Citizen Court Liaison Committees

12.3 Police

12.3.1 Structural Issues

Problems of brutalization and use of excessive force, corruption, and politicization are pervasive and originate probably from organizational *culture*, rather than organizational structure or process. To successfully address these issues, a detailed, organization wide diagnostic review must be undertaken, not simply of policy and practice, but to define the dynamics of interests, power and values that constitute the 'force' culture. Most problematic is an anti-poor bias that is systemic and rooted in historical policy choices. The Police need an 'organizational turnaround' to change perceptions about it from 'fear of interaction' to a service delivery body which supports the citizens. Transitioning to the 'service' culture would require expert input from organizational behavior and change management disciplines, rather than relying solely on practitioner's judgment.

12.3.2 Citizen-Police Relations

While police presence may impart a sense of security in KP and Sindh, overall they are not approached for threats to personal safety, and there is negligible contact with the poor citizen.

Strategically, UNDP-LEP should focus on the Thanas or Police Stations in target districts with engagement at higher levels mainly for easing intervention at the local levels. In this regard, most supply-side stakeholders, especially police officers recommended the activation and strengthening of district-level mechanisms provisioned in the PO 2002, including DPS&PCCs and CPLCs, with the caveat that the selection of members for such bodies needed to be carried out according to a criteria which should include integrity and political neutrality. This recommendation naturally applies to Punjab and KP where the PO 2002 has not been repealed / amended. As borne out by the survey, contact with these mechanisms is very low among poor citizens; which means that either they were dysfunctional or that awareness among users regarding their existence, purpose and function is very low. In either case, UNDP-LEP would need significant effort both on the supply and demand sides if these bodies are to be made effective.

Community policing models were suggested, ranging from indigenous Theekri Pehra (volunteer watchmen) to more institutionalized roles for watch & ward, intelligence gathering, complaint handling, etc. However, it was stressed that core functions such as investigation, search and seizure, and formal presentation in court could not involve private citizens.

Police officials also alluded to the Indian experiment with Rajasthan police carried out in collaboration with the Massachusetts Institute of Technology (MIT) and thoroughly documented and researched through RCTs. Measures including pre-service training on investigation and soft skills (mediation, stress management, team building) through the Police Academy, freezing of staff transfers, involvement of community observers in police stations, and introduction of rotational duty rosters were randomly distributed across police stations. It was found that training through existing institutions and increased duration of job postings had conclusive positive impact on public perception of the police and these measures may be recommended for UNDP-LEP.²²⁵ Most importantly, any and all interventions should, as far as possible, be institutionalized through legal frameworks rather than relying on pro-active individuals alone.

Finally, these measures should be accompanied by image building of the police through targeted measures to build goodwill and restore trust which may also play a positive role.

12.3.3 Service Delivery

Registering an FIR continues to be a difficult service delivery transaction for poor litigants, especially in Punjab where a higher proportion of survey respondents reported that their FIRs

225 (Abhijeet Banerjee, 2010)

were a) not registered; or b) registered with difficulty. Overall, over 19% of respondents reported that their FIRs were not registered across all provinces and GB, which represents a huge number of complainants shut out of the criminal justice system at the crucial first stage.

Secondly, investigation is weak, suffering from gaps in coordination, manpower, capacity, and infrastructure. Resultantly, investigations are drawn out, beyond the resources of poor complainants/victims. Overall over 40% of respondents were dissatisfied with police response to contacts, especially in Punjab citing corruption, inappropriate behavior and waste of time as key disappointments. Behavioral issues, particularly in dealings with the poor, undermine confidence in the police among the local communities.

Recommendations for addressing weak service delivery include the following measures proposed by supply-side stakeholders:

1. Strengthening of CJCCs (where PO 2002 is applicable) to plug coordination gaps throughout the criminal justice value chain
2. Use of IT solutions such as databases and GIS systems with significant analytical components to inform improvements in service delivery and police work
3. A community-feedback mechanism to solicit, record, and assess community perceptions and experiences related to police performance at the Thana level. This may be conducted through organized open meetings with the community. Ideally, this should transition to a regular self-review exercise for the police who should inform refresher trainings for personnel according to changing requirements in skills and knowledge.
4. Targeted infrastructure refurbishment of Thanas.

Table 12.2: Recommendations for the Police

	Supply	Demand
Structural	<ul style="list-style-type: none"> • Transitioning to the 'service' culture through change in organizational behavior • Reduce frequency of transfers of local police staff 	<ul style="list-style-type: none"> • Overcome the 'fear factor' emanating from Thana culture
Transactional	<ul style="list-style-type: none"> • Support to DPS & PCCs and CPLCs where legally valid • Training through departmental institutions on 'soft' as well as professional skills • Use of IT solutions such as GIS and databases • Targeted infrastructure refurbishment 	<ul style="list-style-type: none"> • Image building of the police • A community feedback mechanism for feedback on Thana performance • Community policing initiatives

12.4 Land Revenue

12.4.1 Policy Weaknesses

At the structural level, this study could not find any evidence of a cadastral survey conducted for Pakistan, which would document, record, and publish detailed landholdings through on-site verification for communal, private or state-owned land. Property rights have been defined in legal and constitutional terms but not established in administrative terms. Most importantly, land records do not establish ownership of property but the identity of the taxpayer. Establishment of rights naturally precludes their enforcement. A detailed, nationwide cadastral survey is a *sine qua non* for protecting property rights not only for the poor, but for all citizens. While UNDP-LEP cannot be expected to conduct or even precipitate such an exercise, advocacy may be conducted on the issue at policy forums organized for the program.

Secondly, the laws governing the entitlement of land in general and communal land in particular do not constitute an adequate legal framework leading to confusion exploited by the powerful against the poor and relatively less powerful claimants to property. Poorly defined property rights lead to skewed contractual agreements in rural areas which favor the landlord over the tenant and in urban areas, and to the proliferation of squatter settlements in urban areas. UNDP-LEP should carry out a detailed legal review of the governing legal framework to identify problems and recommend solutions for protecting and promoting property rights for the poor, particularly women. This should be followed by evidence based advocacy for necessary policy actions.

12.4.2 Service Delivery Weaknesses

First, unlike police and judiciary, there is no contradiction between experiences and perceptions of the Revenue department among the poor. They do not trust them to secure their property and there is little (if any) contact between the poor and the Department.

Second, dissatisfaction among the minority who did contact the Department is high overall, especially in Balochistan. Service delivery transactions related to entitlement and land record management are especially problematic, with complaints of corruption, time wastage and inappropriate behavior being the most common.

Third, illegal occupation is becoming a trend, enabled by protracted litigation which thwarts attempts at redress by victims, especially if they are poor. In urban areas, offending parties have evolved into full-fledged *qabza* mafias. The poor mostly seek redress from the Revenue department rather than civil courts where decisions are biased in favor of the non-poor.

Fourth, a clear gender bias in the delivery of land rights emerges across all areas, especially with regard to inheritance cases for female claimants.

To address these weaknesses, UNDP-LEP may:

1. Explore the experiences of past and ongoing computerization efforts at the national and international levels for supporting such reforms through the provision of technical, policy, and/or IT support, with 2 key conditions. First, integrity safeguards must be in place prior to any computerization exercise to ensure that the input data is accurate. Second, databases must be made publicly accessible to ensure transparency and oversight, without which the information asymmetry and the resulting monopoly of the Patwari will prevail.
2. Explore the Indian Punjab model which bypasses the Patwari and precludes rent-seeking²²⁶
3. Focus on the hierarchy of the Revenue department at the local and provincial level, rather than civil courts to improve land dispute resolution as this is where the poor turn to for resolving problems
4. Improve legal literacy among the poor focusing on their property rights, particularly inheritance rights for women.

Table 12.3: Recommendations for Land Revenue

	Supply	Demand
Structural	<ul style="list-style-type: none"> • Advocate for cadastral survey • Strengthen legal framework for land entitlement 	<ul style="list-style-type: none"> • Support land reform to reduce skewed landownership patterns
Transactional	<ul style="list-style-type: none"> • Support computerization efforts with strong quality control and transparency • Explore international experiences for reducing rent-seeking opportunities 	<ul style="list-style-type: none"> • Improve legal literacy for property rights, particularly for women's inheritance rights

12.5 Alternate Dispute Resolution

12.5.1 Policy & Programming Principles

ADR remains a contentious issue with various schools of thought among (and within) justice sector stakeholder groups, including the poor. The policy position adopted by UNDP-LEP must be defined in terms of 2 key principles:

1. Traditional, non-state ADR structures such as Jirgas and Panchayats are fundamentally different from the state-sanctioned, court annexed methods of conciliation, mediation and arbitration. Any equivocation should be avoided.
2. Non-state traditional ADR structures like Jirgas and Panchayats do violate human rights standards established by international commitments, the constitution and law. The policy

²²⁶ According to this model, lands are allotted on a passbook. The buyers and sellers of land would have to register the transfer of land by using their passbooks, thereby reducing the role of the revenue officials.

response should be nuanced i.e. these institutions cannot be eliminated or embraced as is. What is required is improvement in their human rights record (particularly women's rights), and institutionalized link with the formal justice system.

In terms of programming, the following international 'best practices' can guide UNDP-LEP engagement with ADR mechanisms²²⁷:

1. Criterion for engagement should not be the human rights track record of a particular body but "*openness to adapt to international obligations and changing societal norms*" with special emphasis on the rights of women and children
2. ADR should be placed and approached in the context of the entire justice system rather than engaged in isolation, as well as the broader social norms that underpin their structure and function
3. The type of ADR body should determine the possible "*modes and means of intervention*", not the other way around i.e. UNDP-LEP should study the target body and reverse engineer its approach

12.5.2 Perceptions & Experiences of the Poor

While mostly preferable to state institutions, traditional ADR structures such as Jirga and Panchayat are not flawless, and are themselves outranked in community priorities by more informal local elders (as mentioned earlier). These flaws include:

1. Higher than expected levels of non-coverage and non-contact for the poor.
2. Higher than expected levels of corruption and inappropriate behavior
3. Bias favoring the non-poor, including the powerful landed elites.
4. Lack of enforcement mechanisms for decisions, specifically where one party is more resourceful in a dispute

In sum, traditional ADR institutions are not the 'poor man's courts' they are held to be among certain stakeholder groups.

To address these problems, it is recommended that UNDP-LEP may:

1. Conduct a broad-based mapping exercise to document and define the typology of ADR mechanisms across Pakistan, which are extremely diverse in structure, function, complaints served and complainants entertained. This should include ascertainment of customary law at the local levels which guides adjudication by these bodies.
2. Subsequent to this field-based research, advocate for an evidence based, comprehensive, legislative framework to institutionally link non-state ADR mechanisms with the state justice system and to regulate their structure and function in line with existing national laws, as well as international human rights guarantees, particularly the rights of women and children. This may include registration of institutions and individuals with local government authorities,

²²⁷ (UNDP, UNICEF & UNWOMEN, 2012)

vetting / endorsement of decisions by district judiciary and referral of criminal matters to the latter, link with local police for enforcement of decisions, record keeping for decisions and procedures, etc. Overall, this will improve adherence to international human-rights standards in ADR procedures through state regulation, democratize the selection of adjudicators in ADR bodies, and increase the transparency and accountability of ADR functions through better state oversight. Linkage with the formal justice system is also recommended by research on international experiences with human-rights based programming for ADR.²²⁸ While the Musalihat Anjuman experiment may be studied to document and use lessons learned in this regard, its current weaknesses should be considered. These include:

- a. Far lower coverage and usage than non-state ADR mechanisms
 - b. Lack of enforcement mechanism and enabling provisions within procedural law
 - c. Biased behavior, capacity constraints, waste of time, and corruption in dealing with poor litigants
3. Advocate for the harmonization and usage of legislation for state-sanctioned ADR which is at the moment, fragmented across various substantive and procedural laws
4. Conduct field-based exercises to sensitize non-state ADR institutions on human rights, particularly the rights of women and children. Education of adjudicators is also recommended by research on international experiences with human-rights based programming for ADR.²²⁹
5. The following initiatives have been collected from international experiences with ADR programming,²³⁰ as deemed relevant to the Pakistan context. These may also be explored by UNDP-LEP to firm up intervention in this area (in line with the policy and programming principles mentioned earlier):
 - a. Supplement knowledge of ADRs used by local citizens among formal justice system actors.
 - b. Ascertain and codify local customary law at the community level, which governs adjudication by ADR mechanisms.
 - c. Package ADR intervention with IEC for users on legal rights, as well as the "*institutions, mechanisms and procedures*" available to citizens for recourse where rights are denied

²²⁸ Ibid

²²⁹ Ibid

²³⁰ Ibid

Table 12.4: Recommendations for ADR

	Supply	Demand
Structural	<ul style="list-style-type: none"> Support evidence-based legislative framework for ADR which consolidates existing laws and regulations and links ADR bodies with the state 	<ul style="list-style-type: none"> Support land reform to reduce skewed land ownership patterns
Transactional	<ul style="list-style-type: none"> Conduct field mapping exercise to catalogue the diversity of ADR mechanisms across Pakistan, including ascertainment of customary law at the community level 	<ul style="list-style-type: none"> Sensitize non-state ADR institutions on human rights, particularly women's rights Conduct IEC for ADR users on legal rights and remedies

12.6 LEP in Urban Areas

Focused primary research on LEP in urban settings is limited to three case studies developed under this report and as such, they do not suffice as representative for inferences. More focused work may be required in the urban areas to fill in research gaps. With this caveat in mind, key conclusions that can be drawn from the case studies include:

1. Social dynamics develop differently for each locality and generalization may be even more difficult for urban areas even within the same province or possibly the same city.
2. The social hierarchy in poor urban settlements does not depend on 'kinship groups' as heavily as in rural areas. While an element of cohesion may exist in terms of family linkages of incoming migrants with the original settlers, they did not appear to be strong.
3. In the absence of this social hierarchy, formal state institutions have the potential to make a more significant impact in urban areas, as there are no social gatekeepers barring access to state services for the poor and disempowered, or their impact is more contained. In at least two cases, the impact of local schools and the responsiveness of the elected representatives contrasted positively with those of their rural counterparts. Absence of 'kinship groups' changes the dynamics for elected leadership, as their following depends more on delivery than social influence.
4. The main emerging threat in these areas is crime, especially, related to drugs. The potential for cartelization and state capture by the criminals exists in the long run, though the more immediate effect has been involvement of youth in crimes ranging from mobile snatching to car theft.

UNDP-LEP must include some poor urban settlements for intervention. Not only is it a growing

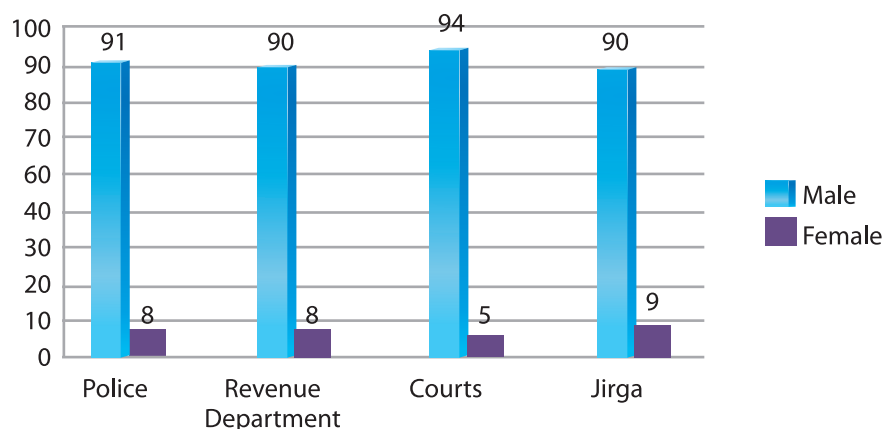
concern but the potential for results of a well designed and executed program is also higher than in rural areas. Basic education and health interventions can help build credibility among communities, which can subsequently be scaled up to include more traditional LEP areas.

12.7 Cross-Cutting Recommendations

The following recommendations represent strategic considerations for UNDP-LEP which should inform thinking and practice for the program when it is rolled out.

1. Women constitute the most disempowered sub-set of any given group of vulnerable and poor citizens. While the study has highlighted special concerns, particularly the denial of inheritance rights, their marginalization remains a 'constant' in terms of contact with all service providers – police, judiciary, land revenue, ADR, health and education. The stark disparity in the contacts made by men in comparison with women, to these service providers, illustrates this phenomenon below.²³¹

Figure 12.17: PUNJAB%



²³¹ This is based on the proportion of respondents who reported that they or someone from their households had contacted the institution in question. They may not add up to 100% since some respondents refused to answer the question regarding gender of the household member who made the contact.

Figure 12.18: SINDH%

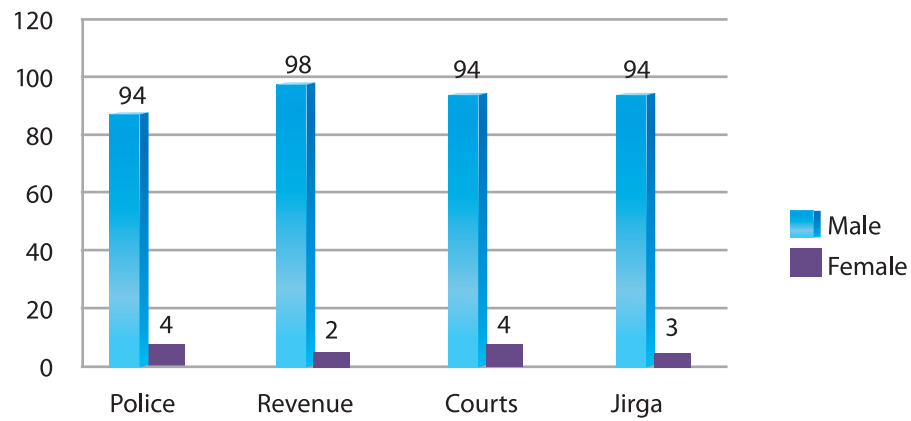


Figure 12.19: BALOCHISTAN%

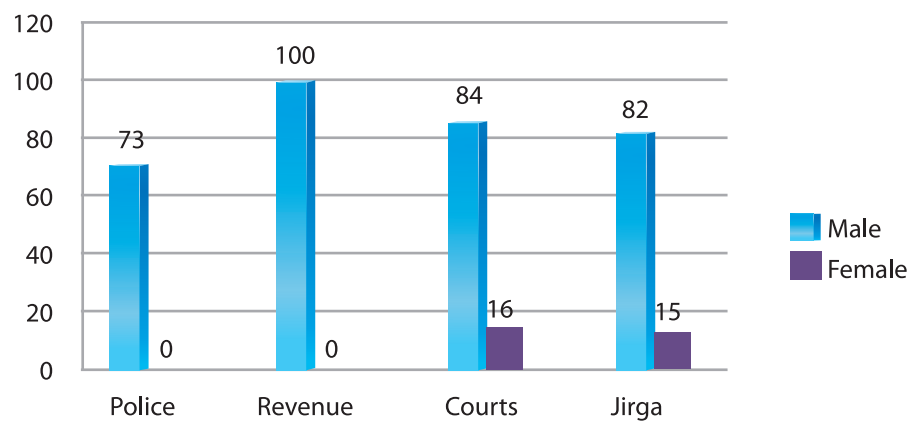


Figure 12.20: KP%

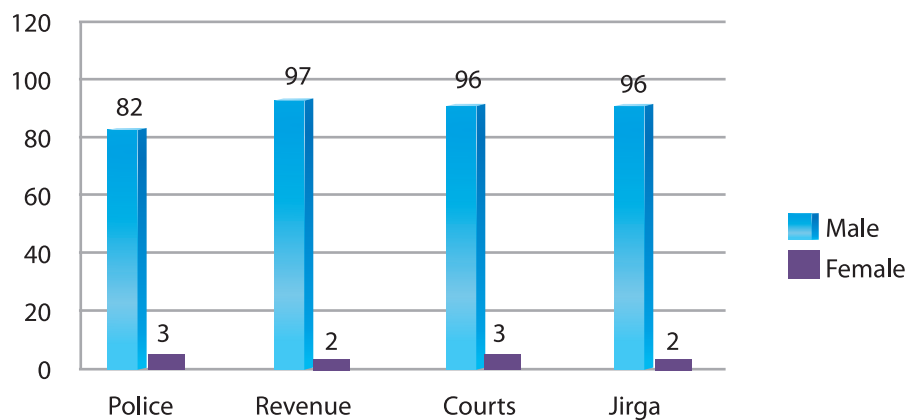
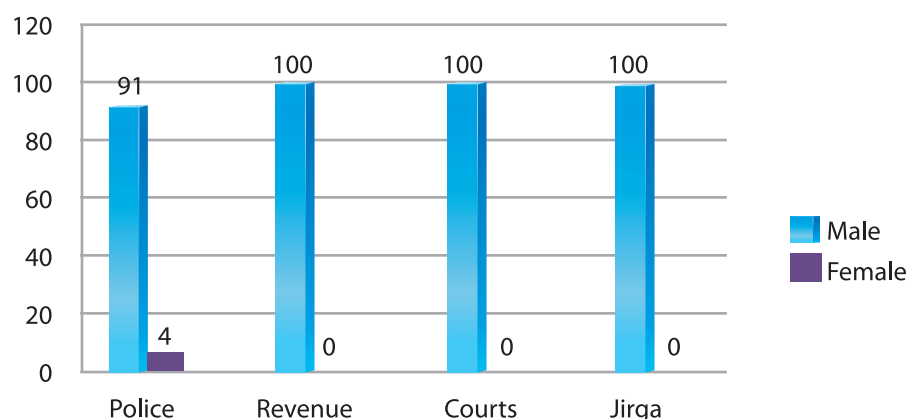


Figure 12.21: GB%



UNDP-LEP must therefore make a consistent effort to remain cognizant of the special concerns of women in each target district, while at the same time mainstreaming gender equity considerations across all interventions undertaken, whether on the supply or demand sides. Impact *must* trickle down to the most legally disempowered group – women.

2. There was universal consensus among supply-side stakeholders on the immediate and long-standing need for devolution of fiscal, administrative and political authority from the central to provincial and from provincial to local levels. While this endorsement does not apply specifically to recent devolution reforms per se, it underscores that the need for devolved local governments is real – and more importantly – this need is recognized by governance practitioners across the board. While this is tangential to UNDP-LEP's core mandate, the program's policy position should be pro-devolution and it should be presented as such at appropriate policy forums organized by the program.
3. Recognition of diversity is the key. Intervention must be 'retailed' rather than 'wholesaled' which necessitates focusing on the district level or below for *delivery that is tailored to local conditions*.
4. This aligns well with the second recommendation: UNDP-LEP should **opt for an 'islands of change' strategy rather than attempting to subvert the status quo at large**. This latter is a 'generational project' and such expectations should be managed and redefined from the very beginning. The lackluster performance of previous reforms in the justice sector, have left multiple stakeholders disillusioned and skeptical, none more so than the poor. UNDP-LEP should therefore avoid making promises they cannot keep.
5. The program must cast the broadest possible net for partnerships. The political economy environment for governance interventions in general, and access to justice interventions in particular are fraught with vested interests. To make a dent in the status quo, a critical mass of political will and ownership must be created if UNDP-LEP interventions are to gain any headway or to make impacts sustainable. In this regard, the program should go beyond legislatures (the traditional donor advocacy zone) to **engage directly with political parties**.
6. Given the extraordinary investment made by the international donor community in the Pakistani justice sector, through past and ongoing programs, UNDP-LEP should attempt to

coordinate as far as possible with other agencies, both within and outside of the UN system to avoid duplication of effort and pool resources.

7. The natural consequence of a legal empowerment approach to 'access to justice' should be the pro-poor delivery of justice services. However, the development of an identifier to target the poor as distinct from the non-poor has proved to be difficult when choosing respondents for the baseline and is expected to prove just as difficult when choosing beneficiaries for the program. Various program activities would need to grapple with this problem at some stage – for waiving court fees, prioritizing FIRs, delivering free legal aid, or issuing property titles – the need to find deserving beneficiaries is crucial. A criterion must be developed along with some mechanism of enforcement in consultation with concerned stakeholders. In any case, the difficulty of the task should not become a pretext for ignoring it outright.
8. Finally, a bird's eye view of justice sector institutions reveals three basic problems which will either constitute the basis for UNDP-LEP interventions or will affect the degree to which they are successful. These include:
 - a. Severe path dependence – As explained earlier, most current institutional weaknesses originate in their colonial and pre-colonial history, as well as post-independence misgovernance. This holds true for formal structures and processes as well as the informal culture. The weight of history cannot be unburdened within a 3-5 year program horizon. UNDP-LEP should therefore prioritize transactional 'wins' over structural battles.
 - b. Implementation paralysis – The problem lies at the implementation rather than policy levels. UNDP-LEP should be conservative in pushing for new laws, regulations and rules for 3 essential reasons. First, proper implementation entails costs for detecting, adjudicating, and penalizing offenses. Second, non-implementation undermines the legitimacy and credibility of the state. Third, laws invariably create rent-seeking opportunities which are part of the problem – not the solution. In particular, changes in laws that have aged over long periods require extensive, deliberate and technical study. UNDP-LEP should prioritize the implementation of existing laws higher than amendments or introductions.
 - c. Lack of result-orientation – Justice sector stakeholders are preoccupied with planning and following through for inputs (man, money, manpower) and outputs (cases disposed, arrests made, warrants issued, etc.). Both action and analysis are not oriented to focus on outcomes or impacts in terms of benefit to the citizen. UNDP-LEP should contrast this phenomenon, by emphasizing in all activities with the government, those outcomes and impacts which affect the poor citizen, at the planning, budgeting, execution, and reporting stages.

Cross-cutting Issues:

1. Women most vulnerable segment
2. Need for decentralized local governance
3. Broad-based stakeholder engagement, especially political parties
4. Donor coordination
5. Ensure delivery is pro-poor
6. State characterized by severe path-dependence, implementation paralysis and lack of results-orientation

Bibliography

1. Abbas, H. (2009). Police & Law Enforcement Reform in Pakistan: Crucial for Counterinsurgency and Counterterrorism Success.
2. Abhijeet Banerjee, E. D. (2010). *Making Police Reform Real: The Rajasthan Experiment*.
3. ADB. (2008). *Key Indicators for Asia and the Pacific*.
4. ADB Operations Evaluation Department. (2007). *Pakistan Country Assistance Program Evaluation*.
5. ADB. (2009). *Pakistan: Access to Justice, Completion Report*.
6. Ahmad, M. (1964). *Civil Servant in Pakistan*. Oxford University Press.
7. Ali Cheema, A. I. (2005). Decentralization in Pakistan: Context, Content and Causes. Harvard University.
8. Ali, S. S. (2000). *Gender and Human Rights in Islam and International Law: Equal before Allah, Unequal before Man?*
9. Anwar Shah, W. B. (1998). Balance, Accountability and Responsiveness: Lessons about Decentralization.
10. Armytage, L. (2011). *Judicial Reform in Asia, Case Study of ADB's Experience: 1990-2007*.
11. Arnold, D. (1986). *Police Power and Colonial Rule. Madras 1859-1947*. Oxford University Press.
12. Asian Development Bank. (2008). *Poverty Assessment Update*.
13. Asian Development Bank, World Bank, DFID. (2004). *Devolution in Pakistan: An Assessment and Recommendations for Action*.
14. Asian Human Rights Commission. (2004). Recent Cases of 'Honor Killing' in Sindh Province, Pakistan.
15. Azfar, O. S. (2001). Conditions for Effective Decentralised Governance: A Synthesis of Research Findings. University of Maryland.
16. Azhar Malik and Usama Bakhtiar Ahmed, D. T. (2005). A Study on Community Empowerment and the Role of CCBs vis a vie Local Government Ordinance and DTCE.
17. Baker, Judy, World Bank. (2004). Analyzing Urban Poverty: A Summary of Methods and Approaches.
18. Bano, A. (2011). *National Judicial Conference 2011*.
19. Baras, A. (2004). The Mechanics of Honor in Pakistan. *AHRC*.
20. BBC. (n.d.).
21. BBC. (2011 йил 21-April). *Pakistan: Acquittals in Mukhtar Mai gang rape case*. Retrieved 2012 from BBC: <http://www.bbc.co.uk/news/world-south-asia-13158001>
22. Benda-Beckmann, F. v.-B. (2006). The Dynamics of Change and Continuity in Plural Legal Orders.
23. Blue, R. a. (2008). *Pakistan Rule of Law - Final Report*.
24. Building and Woodworker's International. (2012). *Pakistan - Industrial Relations Ordinance 2011 passed by Senate*. From <http://www.bwint.org/default.asp?Index=3992&Language=EN>
25. Burki, S. J. (1980). *Pakistan Under Bhutto: 1971-77*. London: Macmillan.
26. Candland, C. (2007). *Labor, Democratization and Development in India and Pakistan*. Routledge.
27. Candland, C. (2007). Workers' Organizations in Pakistan: Why No Role in Formal Politics?

- Critical Asian Studies* .
28. CEDAW. (n.d.). From <http://www.ncwnz.org.nz/assets/Uploads/CEDAW-Articles.pdf>
 29. Center for American Progress. (2008). *Partnership for Progress: Advancing a New Strategy for Prosperity and Stability in Pakistan and the Region*.
 30. CGAP. (n.d.). Country-level Effectiveness and Accountability Review with a Policy Diagnostic (Pakistan).
 31. CGAP. (2012). *What Is a Microfinance Institution (MFI)?* From <http://www.cgap.org/p/site/c/template.rc/1.26.1308/>
 32. Chaudhree, A. I. (2006). *International Judicial Conference 2006*.
 33. Chemin, M. (2007). The Impact of the Judiciary on Entrepreneurship: Evaluation of Pakistan's Access to Justice Programme.
 34. Citizen's Voice Project, Asia Foundation. (2012). *Accountability Mechanisms in Law & Order, Security and Justice - A research Study*.
 35. Commonwealth Human Rights Initiative. (2008). *Feudal Forces: Reform Delayed, Moving from Force to Service in South Asian Policing*.
 36. Consumer Rights Commission of Pakistan & ADB. (2005). *Police Reforms: New Legal Framework and Implementation Issues*.
 37. Conyers, D. (1984). Decentralization and development: A review of the literature. *Public Administration and Development* .
 38. Critchley, T., & Peel, R. a. (1977). The British Model of Urban Police, A Police System in the Ancient World. In P. J. Stead, *Pioneers in Policing*.
 39. Daily Times Pakistan. (2011). Prison Sentence to Labourers by Anti Terrorism Court.
 40. Daily Times Pakistan. (2011). Problems of labour courts highlighted at conference on judiciary and labour laws.
 41. Daniel, T. (1998). Decentralization and Inflation in Developed and Developing Countries. Los Angeles, California .
 42. Danish Ministry of Foreign Affairs. (2000). *Evaluation: Danish Support to Promotion of Human Rights and Democratization*.
 43. Daud, K. (2008 жыл 6-March). Government Ignored Jirga System in Lakki Marwat. *Daily Times* .
 44. Dawn. (2012, May 12). NA body takes up G-12 Issue. *Dawn* .
 45. Devolution Trust for Community Empowerment (DTCE). (2010). Annual Progress Report .
 46. Devolution Trust for Community Empowerment (DTCE). (2009). Taking Charge of their Destinies: Results of the Research Survey on Working of Village and Neighbourhood Councils in Pakistan.
 47. Dia, M. (1994). Civil Service Reform: The African Experience. *World Bank Technical Paper no.259* .
 48. Dr. Faqir Hussain, R. S. (2011). *Judicial System of Pakistan*.
 49. Dr. Nasim Hassan Shah. (1986). *Constitution, Law and Pakistan Affairs* .
 50. Federal Judicial Academy. (n.d.). From <http://www.fja.gov.pk/>
 51. Federal Shariat Court. (1989). Qazalbash Waqf v. Chief Land Commissioner, Punjab and others.
 52. Fernandes Fdes, Lincoln Institute of Land Policy. (2011). *Regularization of Informal Settlements in Latin America (Policy Focus Report)*.

53. Free and Fair Elections Network (FAFEN) Media and Publications. (2012, February 20). Police stations in Punjab, Sindh and ICT understaffed, Police Stations Monitor.
54. Gazdar, H. (2011). The Fourth Round, and Why They Fight On: the History of Land Reform in Pakistan. In P. S. Asia, *Leveling the Playing Field: A Survey of Pakistan's Land Reforms*. Karachi.
55. Gender Justice Through Musalihat Anjuman Project-UNDP. (n.d.). *Consolidated Data of MAs and Cases 2006*. From http://www.gjtmap.gov.pk/reports_documents/files/1201259800Consolidated%20Data%20of%20MAs%20and%20Cases%202006%20-%20December%202007.pdf
56. Ghayur, S. I. (2009). *Evolution of the Industrial Relations System in Pakistan*.
57. Gourp D, Mushtaq Ahmed Sukhera, NIPA Lahore. (2003). Police Reforms: Emerging Issues and Challenges.
58. Government of Punjab. (2002-03,2003-04). *Provincial Finance Commission Report*.
59. Gupta, A. (1979). *The Police in British India(1861-1947)*.
60. Haris Gazdar, ADB. (2007). *Rural Economy and Livelihoods in Pakistan*.
61. Haroon Jamal, Social Police and Development Center. (2003). *On the Estimation of an Absolute Poverty Line: An Empirical Appraisal*.
62. Hussain, S. Z. (2006). *International Judicial Conference, 2006*.
63. ICG. (2010). Reforming Pakistan's Criminal Justice System.
64. Iffat Idrees, U. (2008). *Legal Empowerment in Pakistan*.
65. ILO, Geneva. (2004). *A Rapid Assessment of Bonded Labour in domestic Work and Begging in Pakistan*.
66. Imam, K. (2011). Police and the Rule of Law in Pakistan: A Historical Analysis. *Berkely Journal of Social Sciences* .
67. Industrial Metalworker's Federation. (2012). *Industrial Relations Act 2012 passed in Pakistan National Assembly*. From <http://www.imfmetal.org/index.cfm?c=29376&l=2>
68. Institute of Strategic Studies. (2012). *Feminization of Poverty in Pakistan*.
69. International Crisis Group. (2008). *Reforming Pakistan's Police*.
70. J, T. J. (1977). The British Colonial Police; An Alternative Police Style. In P. J. Stead, *Pioneers in Policing*.
71. Javed Hasan Aly, M. o. (2007). *White Paper on Education*.
72. Kamal, S. (2010). *Nizam-e-Adl: Inside Out – A Study of Nizam-e-Adl Regulation in the Light of the Constitution, Women's Policies and the Perceptions of Pakistani Society*.
73. Kenneth Davey, W. B. (1989). Strengthening Municipal Government.
74. Khalid, A. (2009). Subordinate negotiations: Indigenous staff, the colonial state and public health. In B. P. (eds.), *The Social History of Health and Medicine in Colonial India*. London : Routledge. .
75. Khan, A. (2010, October 11). Land Reforms in Pakistan. *Dawn* .
76. Khan, I. (2012, August 23). Supreme Court asks NAB: Probe ex-PM, others over \$124m contract. *Dawn* .
77. Khan, S. S. (2010 йил 23-September). *Land Reforms – History, Legal challenges and how Shariat Courts abolished them*. Retrieved 2012 from Secular Pakistan : <http://secularpakistan.wordpress.com/2010/09/23/land-reforms-history-legal-challenges-and-how-shariat-courts-abolished-them/>
78. Labour Education Foundation. (2010). Retrieved from http://lef.org.pk/images/Final_

- Labour%20Report%202010_draft.pdf
79. Labour Education Foundation. (2010). *Status of Labour Rights in Pakistan*.
 80. *Labour Party Pakistan*. (n.d.). Retrieved from <http://www.laborpakistan.org/news11.htm>
 81. Lahore High Court. (2003). W.P.NO.16244/2002, Judgement.
 82. Law and Justice Commission of Pakistan. (2010). *Annual Report, 2010*.
 83. Law and Justice Commission of Pakistan. (2010). *Judicial Statistics of Pakistan 2010*.
 84. Law and Justice Commission of Pakistan. (2011). Report of the National Judicial Conference, 2011.
 85. Law and Justice Commission of Pakistan. (n.d.). *Summary Report on Ad hoc Law Reform Commissions*. From <http://www.ljcp.gov.pk/Menu%20Items/Ad%20hoc%20law%20reform%20commission/Law%20Reports%20Final/>
 86. Law Commission of India . (1958). *14th Report*.
 87. Maliha Hamid Hussein, Institute of Microfinance. (2009). State of Microfinance in Pakistan.
 88. Mumtaz et al. (2010). *Informal Economy Budget Analysis in Pakistan and Ravi Town Lahore, Women in Informal Employment Globalizing and Organizing (WIEGO) / Inclusive Cities Research Report Series, Budget Briefing Note No. 4*.
 89. Merry, S. E. (1988). Legal pluralism. *Law and Society Review*.
 90. Mezzera, M. (2010). Devolution Row: An Assessment of Pakistan's 2001 Local Government Ordinance. Netherlands Institute for International Relations.
 91. Microfinance Hub. (2010). *Microfinance Problems – 8 Challenges for Micro Entrepreneurs (Part 1)*. From <http://microfinancehub.com/2010/02/09/problems-faced-by-microfinance-%E2%80%93-micro-entrepreneurs/>
 92. Microfinance Hub. (2010). *Microfinance Problems – 9 Challenges for Microfinance Providers (Part 1)*. From <http://microfinancehub.com/2010/02/09/problems-faced-by-microfinance-institutes/>
 93. Ministry of Labour and Manpower, Government of Pakistan. (2010). *Labour Policy 2010*.
 94. Mohmand S. and Ghazdar. H, A. D. (2007). *Social structures in rural Pakistan*.
 95. Muhammad Shoaib Suddle, United Nations Asia and Far East Institute for the Prevention of Crime. (2001). *Reforming Pakistan Police: An Overview*.
 96. Musgrave, R. A. (1983). Who Should Tax, Where and What? *Tax Assignment in Federal Countries*.
 97. Mushtaq Ahmed Sukhera et al., NIPA Lahore. (2003). *Police Reforms: Emerging Issues and Challenges, Syndicate Research Paper*.
 98. National Accountability Bureau (NAB), Government of Pakistan. (2002). *National Anti-corruption Strategy (NACS)*.
 99. National Accountability Bureau. (n.d.). *About Us*. Retrieved August 29, 2012, from <http://www.nab.gov.pk/>
 100. National Accountability Bureau. (2002). National Anti Corruption Strategy. Government of Pakistan.
 101. National Judicial Policy Making Committee. (2009). National Judicial Policy (Revised 2011).
 102. National Judicial Policy Making Committee. (2011). Report of the National Judicial Conference 2011. Islamabad.
 103. National Reconstruction Bureau. (n.d.). Retrieved from http://www.nrb.gov.pk/local_

- finance/index.html
104. National Reconstruction Bureau, Government of Pakistan . (2001). Provincial Local Government Ordinances .
 105. National Reconstruction Bureau, Government of Pakistan. (2002). *Police Order 2002*.
 106. News, T. (2012 йил 16-March). 24 Lahore judges opt for transfer over lawyers' attitude. *The News* .
 107. NIPA, Karachi. (1965). *Fraser Law Commission Report 1902-03*.
 108. Oates, W. E. (1972). *Fiscal Federalism* . New York: Harcourt Brace Jovanovich.
 109. Pakistan Bureau of Statistics. (2011). *Labour Force Survey 2010-11*. From - <http://www.pbs.gov.pk/content/labour-force-survey-2010-11>
 110. Pakistan Bureau of Statistics, Government of Pakistan. (2010-2011). *Pakistan Social and Living Standards Measurement Survey (PSLM)*.
 111. Pakistan Institute of Labour Education & Research. (2007). *Denial and Discrimination: Labour Rights in Pakistan*.
 112. Pakistan Policy Working Group. (2008). *The Next Chapter: The United States and Pakistan*.
 113. Pakistan Press Foundation. (n.d.). From <http://www.pakistanpressfoundation.org/governance/35017>
 114. Pakistan Today. (2011).
 115. Paul Petzschmann, Norwegian Institute of International Affairs. (2010). *Pakistan's Police Between Centralization and Devolution*.
 116. PILDAT. (2009). Understanding Labour Issues in Pakistan.
 117. Planning Commission of Pakistan . (2007). *Vision 2030*.
 118. Planning Commission of Pakistan. (2011). *New Growth Framework*.
 119. R. S. Deshpande, ADB. (2007). *Emerging Issues in Land Policy*.
 120. Rabinovitch, J. (1999). From Urban Management to Urban Governance: Towards a Strategy for the New Millennium. *City Development Strategies* .
 121. Rana, S. (2011 йил 2-August). Labour Force Survey 2011: Official unemployment rate at 6%. *Express Tribune* .
 122. Raza, I. (2011, May 29). A perfect hideout One inspector for 500 drug stores. *Dawn* .
 123. Razvi, N. A. (1961). *Our Police Heritage: Saga of the Police Forces of Pakistan and India*. Wapda Printing Press.
 124. Roberts, S. (1998). Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain.
 125. Rubinfeld, R. I. (1996). Political Economy of Federalism. In D. Mueller, *Perspectives on Public Choice* .
 126. Santos, D. T. (2006). *Introduction: The Third Movement in Law and Development Theory and the Emergence of a New Critical Practice*.
 127. Sattar, B. (2012 йил 19-May). Looking in the Mirror. *The News* .
 128. SDPI. (2003). A Benchmark Study on Law and Order and the Dispensation of Justice in the Context of Power Devolution.
 129. Shahzad Arif, William Cartier, Andrew Golda & Ritu Nayyar-Stone, USAID-Urban Institute. (2010). *National Survey October 2008 and March 2010*.
 130. Sharma, B. (1989). *Judiciary on Trial*. New Delhi: Deep & Deep Publications.
 131. Siddiqui, K. (1992). *Local Government in South Asia* . Dhaka: University Press Limited.
 132. Sindh Judicial Academy-UNICEF. (2009). *Study on Informal Justice System in Pakistan*.

133. Singh, N. (2009, April). *Presentation to the UN Committee of Experts and Public Administration, Making the Law Work for Everyone, Commission on Legal Empowerment of the Poor*. Retrieved from <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan030041.pdf>
134. Stephen Golub, C. E. (2003). *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*.
135. Syminvest. (2010). *Pakistan: Floods Cost MFIs Over Rs 10.7 Billion*. From <http://www.syminvest.com/news/pakistan-floods-cost-mfis-over-rs-107-billion/2010/9/21/2523>
136. The Dawn. (2012, August 2nd). Retrieved from <http://dawn.com/2012/07/16/will-land-record-computerisation-end-corruption/>
137. The Economist. (2012). *Pakistan Tops Microfinance Regulatory Framework Ranking: EIU*. From <http://pkeconomists.com/pakistan-tops-microfinance-regulatory-framework-ranking-eiu>
138. The Frontier Post. (2011 йил 30-November). Qazi Ashraf to Assist SC in ZABhutto Case. *The Frontier Post*.
139. The Nation. (2009). Pakistan lags behind in skilled women labour force.
140. The Secular. (2010). *Land Reforms – History, Legal challenges and how Shariat Courts abolished them*. Retrieved 2012 йил 5th-July from <http://secularpakistan.wordpress.com/2010/09/23/land-reforms-history-legal-challenges-and-how-shariat-courts-abolished-them/>
141. Tinker, H. (1968). *The Foundations of Local Self-Government in India, Pakistan and Burma*. New York : Praeger.
142. Transparency International. (2011).
143. Transparency International, Pakistan. (2009). *National Corruption Perceptions Survey*.
144. UN Commission on Legal Empowerment of the Poor . (2008). *Making the Law Work for Everyone*.
145. UN Secretary General. (2009). *Legal Empowerment of the Poor and Eradication of Poverty*.
146. UNDP. (2011). *Access to Justice Assessments in the Asia Pacific: A Review of Experience and Tools from the Region*.
147. UNDP. (2011). *Recognizing the Role of Informal Justice in Pakistan's Laws: A Legal Review*.
148. UNDP. (2011). *Social Audit of Local Governance and Delivery of Public Services*.
149. UNDP, UNICEF & UNWOMEN. (2012). *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement*.
150. UNHABITAT. (2012).
151. United Nations Commission on Human Rights, S.-C. o. (2002). *Bonded agricultural labourers in lower Sindh Province - Pakistan*. Retrieved July 29th, 2012, from anti-slavery: <http://old.antislavery.org/archive/submission/submission2002-pakistan.htm>
152. USAID. (2007). *Legal Empowerment of the Poor*.
153. USAID. (2010). *Pakistan Court Efficiency Report*.
154. USAID. (2008). *Rule of Law Assessment*.
155. USAID-Aurat Foundation . (2011). *Women's Empowerment in Paistan: A Scoping Study*.
156. USAID-Aurat Foundation, Gender Equity Program. (2011). *Gender-Based Violence in Pakistan*.
157. Vaqar Ahmed, G. S. (2010). *Remittances and Household Welfare: A Case Study of Pakistan*.
158. Vincent Palmade, A. A. (2005). *Rising Informality*.

159. Walmsley, R. (2009 , January). World Prison Population List (eighth edition). Kings College London .
160. Wasim, J. N. (2008). The Province of Sindh as a Case Study on the Prosecution Service. *Fourth Asian Human Rights Consultation on the Asian Charter of Rule of Law*. Hong Kong .
161. Wilder, A. R. (1999). *The Pakistani Voter: Electoral Politics and Voting Behavior in the Punjab*. Karachi: Oxford University Press.
162. World Bank. (2009, May 8). Project Appraisal Document on a Proposed Credit in the Amount of SDR 40.2 Million to the Islamic Republic of Pakistan for a Social Safety Net Technical Assistance Project.
163. World Bank. (2006). *Urban Land and Housing Markets in the Punjab, Pakistan*.
164. Zaid, A. S. (1997). *Issues in Pakistan Economy*. Oxford.

Annexure I

Name	Designation	Organization
Daniyal Aziz	Chairman, Board of Directors	Devolution Trust for Community Empowerment (DTCE)
Ahmer Bilal Soofi	Advocate, Supreme Court of Pakistan	Ahmer Bilal Soofi & Company (ABS & Co.)
Naeem-ul-Haq	Senior Civil Servant	Government of Pakistan
Sajid Qazi	Registrar of the Supreme Court	Supreme Court

Annexure II

Partner Organizations	Districts
Centre for Peace and Development Initiative (CPDI) House 409-B, Main Nazim ud Din Road, F-11/1, Islamabad www.cpd-pakistan.org Ph:051-2108287	<ul style="list-style-type: none"> Layyah (Punjab) Jhang (Punjab)
Society for Human Empowerment and Rural Development (SHER) Village & P.O. Mitha Tiwana, Tehsil & District Khushab Punjab Ph: 0454-730201-2-3-4	<ul style="list-style-type: none"> Khushab (Punjab) Bhakkar (Punjab)
Farmers Development Organization House No. 1, St. No. 28, Zakariya Town, Bosan Road, Multan Ph: 061-6512046-47	<ul style="list-style-type: none"> Lodhran (Punjab) D.G.Khan (Punjab) Rajanpur (Punjab)
Women Association for Social Transformation and Alliance (WASTA) Near Chaudry Brothers Flying Coach, Old Hasilpur Road, Bahawalpur, Punjab Ph: 062-2449836	<ul style="list-style-type: none"> Bahawalpur (Punjab) Bahawalnagar (Punjab) Lahore (Punjab)
Khwendokor (KK) Khwendokor Operations Office, Street Ashiqabad, Opposite Khyber Grammar School, Warsak Road, Peshawar. Ph: 091-5602483-4 www.khwendokor.org.pk	<ul style="list-style-type: none"> Upper Dir (KP) Chitral (KP) Lower Dir (KP)
Schunaizia Relief & Development Organization (SRDO) B-20, St.# 2, Canal Town, Nasir Bagh Road, Peshawar, KP www.srdopakistan.org Ph:091-5703931, 091-5854151	<ul style="list-style-type: none"> Lakki Marwat (KP) Tank (KP) D.I.Khan (KP) Peshawar Nowshera
Sungam Development Organization (SDO) Shoukat Plaza, First Floor, Main GT, tehsil & District Haripur, KP Ph:0995-614446,0995-614402	<ul style="list-style-type: none"> Mansehra (KP) Kohistan (KP) Battagram (KP) Torgarh (KP)
Community Development Program (CDP) H. 365/C, Mohalla Bhatia inside, Kachehary Gate, Bannu City, NWFP Ph: 0928-620193 www.cdporg.net	<ul style="list-style-type: none"> Karak (KP) Kohat (KP) Bannu (KP)
Marvi Rural Development Organization (MRDO) Bungalow No. 20, Opp. City School, Sindhi Muslim Cooperative Housing Society, Sukkur, Sindh Ph: 0243-620134	<ul style="list-style-type: none"> Khairpur (Sindh) Tharparkar (Sindh) Sanghar (Sindh) Umar Kot (Sindh)
Balochistan Foundation Development (BFD) House No. 285, Block No. 4, Line No. 4, Satellite Town, Quetta, Balochistan Ph:081-2443493, 081-2024494	<ul style="list-style-type: none"> Dadu (Sindh) Thatta (Sindh) Jacobabad (Sindh) Shikarpur (Sindh)
Social Organization for Care of Humanity (SOCH) H# 2, Opposite Edhi Centre, Patel Bagh, Quetta Ph:081-2843402	<ul style="list-style-type: none"> Chaghi (Balochistan) Kharan (Balochistan) Zohb (Balochistan) Qila Abdullah (Balochistan) Pishin (Balochistan) Noshki (Balochistan)
CHIP Plot 5, Street 9 (Fayaz Market), Opposite National Institute of Medicine and Reha- bilitation, G-8/2, Islamabad Ph: 051-2280151, 111-111-920 www.chip-pk.org	<ul style="list-style-type: none"> Skardu (GB) Ganchi (GB) Ghizer (GB)

Annexure III

Event Title	Date; Venue	Number of Participants	Stakeholder Groups
Seminar with Supply side officers	2 February 2012; Islamabad Chateau Royal	16	NGOs, UNDP (Donor), Consultants
Seminar with Supply side officers	4 February 2012; Lahore Hotel One	12	NGOs, Consultants
Seminar with Supply side officers	6 February 2012; Karachi Carlton Resort	17	Police, UNDP (Donor), NGOs, Lawyers, Pvt Firm
Seminar with Supply side officers	10 February 2012; Quetta Serena Hotel	19	Judges, Govt. Organization, NGOs, Consultants, Police, UNESCO
Seminar with Supply side officers	16 February 2012; Peshawar Pearl Continental	16	Police, Govt. Organization, Consultants, NGOs,
LEP Partners Meeting	23 February 2012; Insaf Network Pakistan Office	5	5 LEP and INP partners
LEP Workshop	27 - 29 February 2012; LEP Office Premises	11	LEP and INP partner NGOs
Debriefing session with LEP partners	28 - 29 February 2012; Le - Royal The Guest House Islamabad	34	LEP and INP Partner NGOs, UNDP (Donor)
Peer Review	2 April 2012; Insaf Network Pakistan Office	9	LEP, Research team, Govt. Organization, NGO, UNDP (Donor)
Meeting with Key partners	9 May 2012; Insaf Network Pakistan Office	37	LEP and INP Partner NGOs, Donors, Lawyers, Judges, Govt. Organization, Police, UNDP (Donor), Consultants
BCPR Mission Meeting	9 May 2012; Insaf Network Pakistan Office	14	LEP and INP Partner NGOs, Police, Govt. Organization