IMPACT OF THE 18TH AMENDMENT
on Rule of Law and Drug Related Mandates in Pakistan

December 2011
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With the passing of the 18th Amendment to the Constitution of Pakistan, development assistance to the country needs to be reconfigured. This study attempts to provide a better understanding of the impact of the 18th Amendment, and is expected to benefit the Government of Pakistan, its development partners and civil society in identifying upcoming challenges as well as opportunities. The outcomes reported here are not definitive and it is likely that there may be further unforeseen changes, but it is relevant and necessary to attempt to outline the likely possibilities. Developments in coming months should not detract from the analysis and conceptual understanding of devolution.

The 18th Amendment is an important milestone in the politics and governance of Pakistan. By reinforcing the letter and parliamentary spirit of the 1973 Constitution, the 18th Amendment has given unprecedented autonomy to the provinces. It is expected that this will require a significant increase in policy development and improved programme delivery at the provincial level, given existing capacities and local needs.

The 18th Amendment will change the nature of governance in Pakistan and impact the rule of law and drug-related issues. Drugs and other forms of trafficking challenge the criminal justice system and drug use is a burden to public health services. Organized crime and related corrupt practices undercut the rule of law and inhibit the ability of Pakistan to make progress on national development priorities and towards the Millennium Development Goals.

UNODC in Pakistan has developed an integrated response to the threats posed by organized crime with a focus on three interdependent areas of work: illicit trafficking and border management; criminal justice; and drug demand reduction and HIV/AIDS. UNODC provides assistance to federal and provincial partners in the Government of Pakistan in evidence-based planning, capacity development, international cooperation and coordination, information and research as well as legislation and regulatory regimes support.

To ensure that rule of law and drug-related health assistance is properly delivered within the dynamic of changing governance framework of Pakistan following the 18th Amendment, UNODC commissioned this research from the Sustainable Policy Development Institute (SDPI).

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UNODC Pakistan

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<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>ADP</td>
<td>Annual Development Plan</td>
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<tr>
<td>ANF</td>
<td>Anti Narcotics Force</td>
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<tr>
<td>ATU</td>
<td>Anti Trafficking Unit</td>
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<tr>
<td>CCI</td>
<td>Council for Common Interests</td>
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<tr>
<td>CLL</td>
<td>Concurrent Legislative List</td>
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<tr>
<td>CNS</td>
<td>Control of Narcotics Substance</td>
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<tr>
<td>CCrP 1898</td>
<td>Code of Criminal Procedure 1898</td>
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<tr>
<td>DRA</td>
<td>Drug Regulatory Authority</td>
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<tr>
<td>EAD</td>
<td>Economic Affairs Division</td>
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<tr>
<td>FATA</td>
<td>Federally Administered Tribal Area</td>
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<tr>
<td>HEC</td>
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<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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1. EXECUTIVE SUMMARY

Significant turning points in Pakistan's political history are often closely tied to constitutional reform, either through the promulgation of a new constitution or amendments to the existing constitution. The Constitution of 1973 is widely regarded as the first legislative document to have resulted from broad consensus between Pakistan's national and provincial political parties; significantly, it introduced a multi-party parliamentary form of government. However, the system of governance was transformed in the following decades through the 8th and the 17th Amendments to the 1973 Constitution, which transferred powers from the Parliament and Prime Minister to the Presidency. In 2007 the major political parties agreed to a revival of the 1973 Constitution in its original form, in an effort to bring the country back to democratic and parliamentary track. Following this, in April 2010, the 18th Amendment was approved.

This study focuses on the implications of the 18th Amendment on the United Nations Office on Drugs and Crime (UNODC) mandates and how they operate in relation to Pakistan's federal and provincial governments. It highlights key changes brought about by devolution and evaluates their impact on the rule of law and public health mandates. UNODC's mandate areas in Pakistan and the 18th Amendment are both extensive and this study focuses on the intersections between the two. The purpose is to inform and position related development assistance in the new framework.

UNODC's assistance covers three areas in Pakistan: illicit trafficking and border management, criminal justice and drug demand reduction and HIV/AIDS. UNODC helps the Government of Pakistan (GOP) react to the challenges caused by crimes like the smuggling of illicit drugs, and human beings between countries and continents and the development of a criminal justice system that is fair and grounded on human rights values. The 18th Amendment has wide-ranging implications for the functioning of federal and provincial governments: in particular, the impact of the Amendment on rule of law and public security dimensions needs to be considered. Pakistan's vulnerability to organized crime, particularly in border areas, comes at a severe cost to governance, development and security, particularly in vulnerable provinces such as Balochistan and Khyber Pakhtunkhwa (KPK).

For the purposes of this study, the 18th Amendment has been examined in three tiers (using a governance perspective):

- legislative changes and legal implications;
- institutional changes and administrative implications; and
- fiscal changes and financial implications.

The study begins with a brief overview of literature including a historical analysis of the 1973 Constitution, the 18th Amendment, and the relationship between the federal and the provincial government. It then moves on to an institutional mapping of government ministries, agencies and departments. This mapping is aimed at profiling and assessing the existing, and if relevant, the revised roles and responsibilities. The survey of each agency/ministry is not exhaustive; and certain details, mandates and departments have been deliberately excluded as they are beyond the scope of this study.

This study has been compiled after consultations with key stakeholders and counterparts. Existing documentation on devolution and the 18th Amendment including newspaper reports and articles, were examined to provide context and clarity to the issues surrounding the 18th Amendment and to highlight some of its implications.
Legal Implications

One of the key outcomes of the 18th Amendment is the abolition of the Concurrent Legislative List (CLL) and formulation of a new legislative list requiring provinces to exclusively legislate on subjects. In the short term, provinces are unlikely to adapt or amend federal laws due to capacity shortfalls and the absence of any incentive to do so; in the medium and long term, they will be in a position to tailor laws to their needs or to challenge special provisions made for one province at the expense of others. The federal government may exercise its authority through provisions in the Constitution to counteract provincial legislation in certain cases.

Changes in legislative subjects have resulted in certain additional powers to the provinces, with certain caveats for example. Provinces can now make a case for asserting their ability to pass legislation on cultivation and manufacturing of opium, which was previously a federal subject. There are indications that the governments of Balochistan, KPK and Sindh are interested in proposing opium licensing legislation, which could contribute sizeable revenues to provincial excise and taxation departments. This is a problematic development as consultations with the federal government suggest the provincial governments are considering licensing without appreciating Pakistan’s international commitments. The federal government will resist provincial legislations if they contravene Pakistan’s obligations under international treaties and agreements and in such cases the federal laws under the Federal Legislative List 1 (FLL 1) would prevail.

Arguments and counter-arguments such as these exist for virtually every change brought about by the 18th Amendment, which makes it likely that there will be considerable interpretive work and legal debate before conventions become clear, and that much of the debate will be driven by local and international political pressure.

Another fundamental legal change is the enhanced provincial ability to amend the Code of Criminal Procedure 1898 (CCrP 1898) in addition to already existing powers of the provinces in this regard. Sindh and Balochistan have overturned the Police Order 2002 and reverted to the Police Act 1861. The replacement of Police Order 2002 with the Police Act of 1861 is under consideration in KPK. Both provincial assemblies have amended the CCrP 1898 to enhance the role of a politically appointed magistrate who will have greater oversight of the police force. This is not expected to change the relationship of police forces affiliated with the Ministry of Interior (MOI) and Ministry of Narcotics Control (MNC), but may change the nature of inter-agency coordination in the provinces.

Administrative Implications

The two main administrative implications of the 18th Amendment are related, firstly, to the devolution of several ministries, and secondly, to provincial involvement in development assistance. The formulation of clear rules of business for how the new system will work at both the federal and the provincial levels needs to be addressed as a priority. A key feature of the political process leading to the 18th Amendment included the formulation and passing of the 7th National Finance Commission (NFC) Award. The history of the NFC Awards and their administrative and financial implications are crucial to understand the incentives and challenges surrounding the 18th Amendment.

The Government has devolved 17 federal-level ministries to the provinces. This involves the delegation of functions from federal-level institutions to their provincial counterparts as well as a handover of additional resources to the provinces to facilitate the enhanced responsibilities. Drug-related health programmes will particularly be affected due to the devolution of the ministries of health, education, youth and sports. One of the primary concerns with the devolution of ministries is that the devolved programmes will now be an administrative burden for the provinces. In the immediate term, ministerial restructuring is causing delays for existing projects, and some degree of backtracking and revision in the process of devolution is expected.

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1 Now cultivation of opium is a provincial subject in the post-18th Amendment in the constitution.
2 According to Federal Legislative List 1 the federal government is bound to ensure implementation of international treaties and agreements.
The 18th Amendment provides provinces with some degree of autonomy to set and negotiate development assistance agendas. Article 167(4) enables provinces to raise domestic or international funds/loans or give guarantees on the security of the Provincial Consolidated Funds. In the medium run, provinces may be able to use constitutional provisions to exert greater control over development assistance. The Economic Affairs Division (EAD) is expected to continue to remain the legal point of contact between foreign development partners and the GOP, and provide overall guidance to development assistance.

**Financial Implications**

The 18th Amendment and the 7th NFC Award have affected the provinces to varying degrees. At the centre of the debate is the question of whether fiscal autonomy will enable provinces to make better policy decisions that are tailored to local needs. Ultimately, the rationale guiding fiscal decentralization is to enhance the provinces’ ability to demonstrate fiscal responsibility, and to improve the efficacy with which provincial budgets are made and managed.

Provinces note that while resource allocations from federal resources under the formula agreed in the 7th NFC Award have increased, the amount they received for Public Sector Development Programmes (PSDP) has decreased, forcing them to draw upon their own revenues. There is also considerable concern echoed over the fates of future expenses on development programmes still in the pipeline as well as programmes with lower priority for the provinces. An example of the latter is the vertical programme on HIV/AIDS, which may not have as high a priority in the provinces as it does under direct federal supervision.

It is also important to note that the share for provincial allocation in the 7th NFC Award cannot be reduced from where it currently stands. It may be possible for provinces such as Balochistan to bargain for a greater share of allocation in the next NFC cycle, or for the provinces to collectively through the Council of Common Interests (CCI), to negotiate a larger share of the budget.

**Conclusions**

The 18th Amendment has provided provinces with considerable financial and administrative resources, which provincial governments must be held accountable for. A system of government that allows elections to the Union Council and district level, if used effectively, might help to increase transparency and reduce monitoring costs. It would also result in additional resources to the districts where they could be targeted effectively.

The provinces now have new responsibilities for handling public health issues related to drug demand reduction, HIV/AIDS monitoring and drug rehabilitation and to some extent management of medicines containing precursor chemicals. The newly devolved ministries of health, education, youth and sports will be important for this purpose. It is necessary to raise awareness of the socio-economic impact of drug use at the provincial level. In addition, the provinces have retained powers to bring about changes in the criminal procedure and policing laws. The provinces now can improve investigation and prosecution processes; and there is a significant need for further work to assist with legal consuls, police and other entities to improve access to justice and rule of law.

Lack of economic and development opportunities (as well as proximity to Afghanistan) have increased the vulnerabilities of Balochistan and KPK to organized crime and illicit trafficking. It is important that the 18th Amendment has been welcomed by the provinces as an opportunity to move away from blanket development projects and negotiate for more tailored and custom-fit livelihood opportunities. The provinces now have more flexibility to achieve their social and economic goals.

There are a number of chronic issues affecting the rule of law and drug-related health mandates, including low prioritization by the federal and provincial governments, institutional overlap, low coordination (inter-provincial, intra-provincial and federal-provincial) and capacity gaps. The 18th Amendment provides an opportunity to address these in a strategic change management process that can improve the efficacy of future governance arrangements and relationships. During the research phase of this study, many respondents noted that provinces lack sufficient resources for investing in the professional training of law enforcement personnel and prosecutors. These needs should be addressed as a priority in order to achieve better results through a well-coordinated functional arrangement that links up all related agencies and actors to minimize lapses and maximize opportunities.
Pakistan occupies an important geostrategic location in the transit and trade of illegal goods. The country shares a 2,450 km border with Afghanistan, the world’s largest producer of opiates. UNODC reports that nearly 40% of the heroin from Afghanistan is trafficked through Pakistan. This easy availability of opiates, as well as synthetic drugs has resulted in a growing population of drug users that pose an additional burden on the already overwhelmed public health system. Pakistan is one of the main transit countries for precursors to reach Afghanistan and is also a destination, transit and source country for both human trafficking and migrant smuggling (including from Afghanistan).

According to an opinion poll, 93% of Pakistanis surveyed consider ‘crime’ as the biggest problem they face. Organized crime in Pakistan exists in various forms, orchestrated by complex informal networks of supplier rings, wholesalers, financiers, protectors and patrons, resulting in an extensive illegal network. Balochistan, Khyber Pakhtunkhwa (KPK) and the Federally Administered Tribal Areas (FATA), on the border with Afghanistan, are particularly vulnerable. Law enforcement agencies struggle to counter these networks, which pose a serious cost to governance, development and security.

In addition, Pakistan has a diverse system of dispute resolution, reflecting diversity of its communities and the accompanying devolution of powers below the federal level. Yet, access to justice, in whatever form the processes take, is crucial to personal security and national stability. The lack of capacity to deal with growing insecurity is eroding trust of the citizens rapidly. Particularly problematic are unreformed rules of criminal evidence, and a poor investigative capacity of the police and under-developed police-prosecutor relationships and cooperation. Moreover, the probation service and prison system face challenges in working together with the community and other partners to rehabilitate offenders.

While the institutional apparatus of the government responsible for countering challenges to the rule of law and drug-related health is extensive, clarity is sometimes lacking in functional arrangements and there are often numerous overlaps in activities. Lack of coordination and information exchange has been identified repeatedly by the law enforcement agencies themselves as well as their strategic partners as a significant roadblock in the efficient implementation of operations and activities.

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4 Survey conducted by the Pew Global Attitudes Project 'Growing Concerns about Extremism, Continuing Discontent with U.S.', 13 August 2009. 'Crime' tops the list of problems Pakistanis face.
2.1 Scope of the Study

The primary aim of this study is to analyze the implications of the 18th Amendment on federal and provincial functions related to the rule of law and drug-related health challenges in Pakistan. For the purpose of this study the 18th Amendment is examined in three tiers (using a governance perspective): legislative changes and legal implications; institutional changes and administrative implications; and fiscal changes, and financial implications. The purpose is to inform and position development assistance in the new framework.

After the promulgation of the 18th Amendment, some of the legislative responsibilities of the provinces have been altered and there has also been an increase in provincial financial and human resources. The objective of this report is to identify the changes that will come about as the transition takes place, as well as subsidiary organizations and processes that will be affected by the 18th Amendment legislation.

The study provides a brief overview of selected subjects now in the exclusive jurisdiction of the provinces; identifies key legislative, policy making, regulatory and enforcement responsibilities and functions to be reallocated between federal and provincial governments; undertakes a review of the provincial and sub-provincial capacities; and identifies potential gaps in terms of institutional, human and financial requirements. Rules of business for international stakeholders and aid agencies under the new constitutional amendment have also been explored. The remainder of the study is planned as follows:

- Section 2 provides a review of existing literature on devolution in Pakistan and a historical context to the 18th Amendment;
- Section 3 presents an institutional mapping of overlap between the legislation and UNODC mandate areas; and
- Section 4 discusses the implication of these changes.
- Section 5 concludes by briefly providing a roadmap towards efficient building of the requisite capacities.

Extensive fieldwork and consultations with stakeholders and experts reveal that the implementation of the 18th Amendment is still a work in progress. The implications of the 18th Amendment are not clear, even among the key interlocutors, and it is likely that many issues that are currently being debated will be settled in the coming months. However, although the situation remains fluid and subject to change, the outcome of these debates should not impact the key conclusions of this study.

2.2 Methodology

This study has been drafted through a review process of existing documentation on devolution and the 18th Amendment as well as newspaper reports and articles. The literature review section includes a historical analysis of the 1973 Constitution, the 18th Amendment and the relationship between the federal government and provincial governments. Additionally, articles and papers discussing the National Finance Commission Award have been reviewed.

Interviews were conducted with a sample of representatives from ministries and departments at the federal and provincial level, including the Ministry of Narcotics Control (MNC), the Planning Commission, the provincial ministries and departments such as Home, Law, Health, Excise and Taxation, Police and Planning and Development. Police officials, retired and serving, were interviewed from all four provinces. Policy experts, technocrats and journalists who have worked on the 18th Amendment were also consulted. Finally, the study drew upon several seminars and focus group discussions on devolution held in Islamabad by various departments of the government and the non-profit sector.

2.3 Federal Government–Province Relations: The Historical Context

The relationship between the federal government and the provinces in Pakistan is a complex one, dominated by historical issues of resource allocation and power at the provincial and local level. These debates underpin constitutional developments in Pakistan.
The 1973 Constitution enshrines principles of federalism, which are common to many democratic federations around the world, by allowing the right to self-determination and autonomy to provinces, while retaining the ability to legislate on certain issues at the center. The Constitution of 1973 was a compromise between the major political opposition parties at the time and the incumbent government, which had to share power in order to retain credibility.

Instead of completely handing over certain legislative powers to the provinces the federal government decided to keep them ‘concurrent’, i.e., allowing both the National Assembly and the provincial assemblies to pass laws on these issues. The Concurrent List is representative of this compromise, allowing provinces to legislate as long as they did not contradict federal-level directives.

A sample of the concurrent list as it stood before the 18th Amendment includes criminal law, criminal procedure, marriage and divorce, drugs and medicines, and opium (cultivation and manufacturing). In many cases laws that were passed on each of these by the Parliament were adopted by provinces without amendment as they were considered adequate. However, it was argued that the concurrent list ended up creating federal ministries that were replicating the mandates of provincial departments (for instance, in areas such as health and education).

Legislative amendments have been frequently used by political regimes in Pakistan to centralize or decentralize powers; the most controversial amongst these have been the 8th Amendment and the 17th Amendment. Both of these aimed at concentrating powers at the federal level and prolonging a Presidential system of government, both were also passed by a non-civilian ruler. Non-civilian rule in Pakistan also tends to carry a decentralizing component. At least two legislations have implemented some form of decentralization to the local government level. These attempts consist of transferring powers from the provincial governments to the Union Council-level elected representatives, without devolving powers from the federal level to the provinces. Legislation passed during periods of civilian rule tends to focus on curtailing the powers of the President in favor of the Parliament and Prime Minister – the 13th Amendment was aimed at taking away the powers of the President to dissolve an elected Parliament, and the 18th Amendment contains a similar clause. Finally, periods of civilian rule also tend to enhance decision-making powers at the provincial level over both federal government and local government ability to make administrative and budgetary decisions.

The Charter of Democracy signed between the two largest mainstream parties of Pakistan, Pakistan Muslim League – Nawaz (PML-N) and the Pakistan Peoples Party (PPP) in 2007, marked the start of a critical phase in politics in Pakistan, and an important break from the past. An agreement was reached between the two parties to work towards the larger goal of stabilizing the political process. The 18th Amendment is a product of this political agreement; it is a legislative instrument that was passed with unanimous support in the Parliament in April 2010. In addition to reverting to a parliamentary system of government, the Amendment also abolished the concurrent list and effectively gave the provinces sole legislative authority over many of the previously concurrent legislative powers.

The debate on devolution in the developing world is informed partially by the principles of decentralization in market economies. Scholarship in Pakistan and elsewhere has argued that the ability of a large state to make informed and timely decisions at the local level is limited and that rationalizing which sectors merit local-level devolution (such as primary education and primary healthcare) as opposed to those that may be better-served at the provincial and federal level is necessary. For example, the scale of service delivery is an important constraining factor, particularly across a large and geographically dispersed and diverse population. Depending on the service being delivered it has also been argued that the devolution of the delivery of such services to a provincial level is inadequate and needs to be further extended to the local level. This is strengthened by the economies of scale argument that states that empowering communities at the local level leads to lower transaction and accountability costs, since individuals do not have to appeal to higher tiers for services.

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5 "Decentralization," as the term is used in economics, refers to the process of dispersing decision-making governance closer to citizens. "Devolution" refers more specifically to dispersing administrative and legislative authority for decision-making, finance, and management to elected representatives at a provincial and local level.

6 Khan, Khan, Sajjad (2009). Also see Khan, Kazmi, and Latif (2005) and Khan (1999). Devolution in Pakistan has been studied almost exclusively in the context of the Local Government Ordinance, which places budgetary powers in the hands of leaders elected at the Union Council (local) level.
The current devolution process has been analyzed to a limited extent, possibly because it is a relatively new development. The 7th NFC Award announced in 2009 has been subject to some scrutiny. A review of studies on fiscal decentralization shows a consistent argument for the gap in revenue generation and public expenditure by the provinces to be filled by transferring more funds to the provinces. The revenue generated by all provinces is almost 8% of total national resources while spending is 28% of total public spending. Pasha and Pasha (2010) recommend that "...the allocation of revenue sources among government tiers should follow the assignment of function;" arguing for functions of spending and revenue generation to be transferred to the provinces.

According to Shah (1994) and Pasha (1997), in most developing countries, the capacities of provinces are kept in consideration while assigning functions and taxes. Other factors that are taken into consideration while separating powers between the federal government and provinces include spatial externalities, economies of scale, administrative and compliance costs and preservation of internal common market. Revenue collection responsibility is similarly designed keeping in mind the degree of mobility of tax bases and efficiency in tax administration. In Pakistan, a strong emotive and ideological emphasis is placed on a centralized federation.

Transitions to more fiscally devolved regimes have proven to be difficult in the past: Pasha and Pasha (2010b) note that whenever financial awards have been implemented, the budget deficit tends to increase in the same year. This is primarily due to the fact that the federal government finds itself unable to curb spending, although provincial expenditures increase due to the transfer of increased responsibilities, leading to an overall increased fiscal deficit. Additionally, provincial governments have proven ineffectual in their efforts to achieve the set targets in almost all NFC awards.

Table 1: Provincial Share in NFC Awards

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<thead>
<tr>
<th>Year</th>
<th>Punjab</th>
<th>Sindh</th>
<th>NWFP / KPK</th>
<th>Balochistan</th>
<th>Total</th>
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</tbody>
</table>

Under the 7th NFC Award in 2009, provinces received the largest allocations to date, which largely balanced the fiscal decentralization as many development expenditures were also transferred to the provinces. For the first time, the NFC formula (See Table 2) contained built-in incentives for provinces to adhere to their fiscal targets, by weighting revenue collection at 5%. This is expected to improve the efficacy of budget allocations in the provinces.

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2 Pasha and Pasha (2010a) Fiscal equalization among provinces in the NFC Awards.
3 Pasha and Pasha (2010b) Budgetary Consequences of the 7th NFC Award.
Table 2: Revenue Sharing Formula among Federating Units

<table>
<thead>
<tr>
<th>Award</th>
<th>Tax</th>
<th>Sharing Criteria (Weight)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NFC 1990</td>
<td>Divisible Taxes</td>
<td>Population (100%)</td>
</tr>
<tr>
<td>NFC 1996</td>
<td>Divisible Taxes</td>
<td>Population (100%)</td>
</tr>
<tr>
<td>NFC 2006</td>
<td>Divisible Taxes</td>
<td>Population (100%)</td>
</tr>
<tr>
<td>NFC 2009</td>
<td>Divisible Taxes</td>
<td>Population (82%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Poverty (10.3%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Revenue (5%)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>IPD* (2.7%)</td>
</tr>
</tbody>
</table>

*Inverse population density

It is worth mentioning here that the 18th Amendment has provided that provinces with powers to raise domestic and foreign loans, either autonomously or through consultations with the inter-provincial Council of Common Interests (CCI) and the National Economic Council (NEC), both of which have also seen an increase in responsibilities under the 18th Amendment. The federal government, through EAD, continues to exercise control over provincial borrowing by extending this privilege only if the province has no outstanding loans or overdrafts, and by limiting the size of loan a province can directly take on. This issue will be discussed in detail in the next section.

2.4 The 18th Amendment

Legislative Changes

One of the key outcomes of the 18th Amendment is the termination of the Concurrent Legislative List (CLI), and the formulation of a new Legislative List (See Table 3.). Following this, the federal government had to hand over 17 federal-level ministries to the provinces.

Pakistan’s constitutional framework enables the parliament to legislate exclusively on a number of issues, which apply throughout the country. This is the Federal Legislative List (FLL), which includes matters such as defense, foreign relations and treaties and currency.

Prior to the 18th Amendment, the provincial assemblies were empowered to legislate on subjects not contained in any of the legislative lists, with certain caveats (see Article 143 below). Laws made by a province would be applicable to that province only. In addition, both the provincial assemblies and the parliament could legislate on a shared or concurrent list of subjects.

Key definitions

Federal: A subject on which only the federal government can make laws, and these laws apply across all provinces. The Federal Legislative Lists I and II (FLL I, FLL II) contain a list of these subjects.

Concurrent: A subject on which both the federal and provincial assemblies may make laws. Prior to the 18th Amendment, these subjects were mentioned in the Concurrent Legislative List (CLI), which is now in abeyance.

Residual subjects: Any issue that is not mentioned in the (pre 18th Amendment) Concurrent or Federal Legislative List; or the (post 18th Amendment) Federal List I and II.


11 Pasha and others, op. cit.

12 Before the 18th Amendment, in the majority of cases, the provinces retained the laws as formulated by the Parliament. There were several reasons for this – for instance, where parties were represented at the federal level, chances were that laws passed by the Parliament would be acceptable to party members within the provincial legislature as well. Another reason was that many laws, such as those pertaining to courts, criminal justice, preventive detention and policing, were handed down from the colonial period. These were generally incorporated into the administrative set-up of the state as accepted practice. Where there were special needs for a particular province, ministries and secretariats chose to resort to changing the rules, instead of appealing to pass legislation.
Article 143. Inconsistency between federal and provincial laws

If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Parliament which the Parliament is competent to enact, or to any provision of any existing law with respect to any of the matters enumerated in the Concurrent Legislative List, then the Act of Parliament, whether passed before or after the Act of the Provincial Assembly, or, as the case may be, the existing law, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void.

While the CLL enabled provincial legislative assemblies to make laws, or amend the laws that had been passed down from the federal legislature, the federal legislature had the constitutional ability to overturn these laws. In essence, dissolving the CLL removes the ability of the Parliament to overturn a law simply because it has concurrent rights over legislation – now it requires the body to find an instance of repugnancy.

Table 3 shows a selection of the CLL subjects, based on their relevance to the mandates of illicit trafficking and border management, criminal justice and drug demand reduction and HIV/AIDS.

Table 3: The impact of the 18th Amendment on the rule of law and drug-related health mandates

<table>
<thead>
<tr>
<th>No.</th>
<th>Concurrent Legislative List</th>
<th>Pre 18th Amendment</th>
<th>Post 18th Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Criminal law, including all matters included in the Pakistan Penal Code on commencing day, but excluding offences against laws with respect to any of the matters specified in the Federal Legislative List and excluding the use of navy, army and air forces in aid of civil power.</td>
<td></td>
<td>Article 142 b: Parliament and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence.</td>
</tr>
<tr>
<td>2</td>
<td>Criminal procedure, all matters in the Code of Criminal Procedure on the commencing day.</td>
<td></td>
<td>Article 142 b: Parliament and a Provincial Assembly shall have power to make laws with respect to criminal law. Criminal procedure and evidence;</td>
</tr>
<tr>
<td>3</td>
<td>Civil procedure, including the law of limitation and all matters included in the Code of Civil Procedure on the commencing day, the recovery in a Province or the Federal Capital of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.</td>
<td></td>
<td>Article 142 b: Parliament and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence.</td>
</tr>
<tr>
<td>13</td>
<td>Removal of prisoners and accused persons from one province to another province.</td>
<td></td>
<td>Residual</td>
</tr>
<tr>
<td>14</td>
<td>Preventive detention for reasons connected with the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.</td>
<td></td>
<td>Residual</td>
</tr>
<tr>
<td>15</td>
<td>Persons subjected to preventive detention under federal authority</td>
<td></td>
<td>Residual</td>
</tr>
<tr>
<td>17</td>
<td>Arms, firearms and ammunition.</td>
<td></td>
<td>Residual</td>
</tr>
<tr>
<td>19</td>
<td>Opium, so far as regards cultivation and manufacture.</td>
<td>Federal Legislative List, Entry 26: Opium so far as regards sales of exports.</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Poisons and dangerous drugs.</td>
<td></td>
<td>Residual</td>
</tr>
</tbody>
</table>
Even after the 18th Amendment, the CCrP 1898 remains relevant for entries listed in Table 3 related to the preventive detention and movement of prisoners. A reason for preserving the status quo of federal laws in the provinces could be the lack of provincial legislative capacities to enhance criminal justice systems. This issue will be addressed in further detail in Section 4.1, which deals with legal implications.

A significant legislative shift with the 18th Amendment has been to take “Opium, so far as regards cultivation and manufacture” from the CLL and place “Opium so far as regards sales of exports” to FLL I. In effect, this leaves the issue of “cultivation” and “manufacturing” as residual, i.e. provincial subjects. On the one hand, this reinforces the federal government’s role in curbing drug trafficking; on the other, it by default leaves cultivation and manufacturing to the provinces. The implications of this will be discussed in Section 4.1.

With regards to the criminal justice system of Pakistan, a direct impact of the 18th Amendment has been to take the following entries in the CLL and place them as part of Article 142b of the Constitution:

**Article 142b**

_Majlis-e-Shoora (Parliament) and the Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence._

Essentially, shifting this legislative right from one section of the Constitution to the other simply preserves the status quo: previously, the ability to make laws with regards to criminal law, criminal procedure and evidence was a concurrent issue. It remains as such after the 18th Amendment. The implications of this will be discussed in the ensuing sections of the study.

**Institutional Changes**

The 18th Amendment has legally enacted the revival and creation of entities such as the CCI and the NEC. The abolition of the concurrent list has resulted in the handover of the responsibilities of certain federal ministries to the provinces (dealt with extensively in Section 3 - Institutional Mapping) as well as the creation of new ones.

Prior to the 18th Amendment, the inter-provincial CCI was a supervisory body with limited functions. With the passage of the 18th Amendment, CCI’s role has been expanded to include all matters in the Federal Legislative List 2, and is bound by the Constitution to meet once every ninety days. Its main responsibilities are to formulate and regulate the policies of subjects that come under the joint ownership of federal and provincial governments, and to supervise and control the institutions associated with those policies. The CCI will act as the main forum for inter-governmental dispute resolution.

**Article 154 reads as:**

_"The Council shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions."_

The extent to which the CCI will be capable of influencing legislation at the federal level remains to be seen. Many respondents from within the Senate and the Government agree that the CCI role and powers have expanded significantly after the 18th Amendment. On inter-provincial issues such as electricity and railways, the CCI is likely to be able to draft policies that will apply to all provinces. It is also expected to take on roles in dispute resolution between provinces, particularly on issues such as royalties on hydro power and water sharing, which frequently form points of contention between two or more provinces. The CCI will ultimately report to both houses of Parliament – the National Assembly and the Senate.

Established under the 18th Amendment, the NEC is an inter-provincial oversight and review committee chaired by the Prime Minister and including the Chief Minister and representatives from each province. The NEC reports to the National Assembly and is meant to work in tandem with provincial governments on formulating economic policies. The functions of this entity are not yet clear, but it is likely to play a role parallel to that of the CCI with respect to development and economic growth.
The second major institutional impact, as mentioned above, is the devolution of ministries. The devolution process was divided into three phases by the Implementation Commission (which has now been dissolved), with the entire process completed by June 30th 2011. Initially a total of 18 ministries were to be devolved. The first and second phases took place in December 2010 and April 2011 respectively and it was decided that the devolution process would be completed by 30 June 2011 (see Annex 1 for details of the devolved ministries).

The Implementation Commission recommended five ministries to be devolved in first phase: (i) Special Initiatives; (ii) Population Welfare; (iii) Youth Affairs; (iv) Local Government; Rural Development; and (v) Zakat and Ushr. Five ministries were devolved in the next phase: (i) Education; (ii) Social Welfare and Special Education; (iii) Tourism; (iv) Livestock and Dairy Development; and (v) Culture. The third phase included: (i) Food and Agriculture; (ii) Health; (iii) Labour and Manpower; (iv) Women’s Development; (v) Sports; (vi) Statistics Division; (vii) Environment; and (viii) Minorities Affairs. The Statistics Division, will be devolved in the third phase, has yet to be devolved.

Additionally, some ministries have been partially devolved. This is where subjects have been given to the provincial governments but structures have been retained at the federal level. These include: (i) Finance (State Lottery); (ii) Revenue Division; (iii) Ports and Shipping (inland waterways); (iv) Interior (Arms Act); (v) Law, Justice and Parliamentary Affairs; and (vi) Communications. Details of partially devolved ministries can be seen in Annex 2.

Under the 18th Amendment, three new federal ministries have also been formed - Ministry of Human Resource Development, Ministry of Professional Training and Ministry of National Harmony.

Fiscal Changes

The 7th NFC Award is considered a hallmark development in fiscal decentralization in Pakistan. The Award has transferred the highest-ever percentage of revenue from the federal funding pool to the provinces - from 46.75% in the previous Award to 56% in the first year of this NFC, and 57.5% in the forthcoming years. The 18th Amendment also binds the federal government to maintain this level, i.e., it may increase the funds awarded to the provinces but not reduce it:

*Article 160 (3A):*
*The share of the Provinces in each Award of National Finance Commission shall not be less than the share given to the Provinces in the previous Award.*

The new formula allocates money to provinces not simply on the basis of population, but also on poverty indicators and revenue generation. While provinces have received enhanced budgets through the 7th NFC Award, their share of responsibilities has also increased with the devolution of ministries. The portion of the federal budget that was allocated for development work in provinces – the Public Sector Development Programme (PSDP) funding – has been reduced considerably. Following the passage of the 18th Amendment, provinces are now expected to finance many of the development projects, including infrastructure and building costs, salaries and other payments, through their allocated revenue share under the Award. Section 4.3 discusses in detail the financial implications of fiscal decentralization.

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13 This information is up-to-date as of August 8th 2011.
This section identifies and profiles the key ministries, departments and agencies with rule of law and drug-related health mandates. These have been sub-divided into the three themes of illicit trafficking and border management, criminal justice and drug demand reduction and HIV/AIDS (See Figure 1). The aim is to contribute to an improved awareness and understanding of specific roles and mandates as they exist and as impacted by the 18th Amendment. There is some formal and informal overlap between the agencies and ministries, which has been highlighted where relevant.

The overview of each agency/ministry in the institutional mapping is not exhaustive and certain details, mandates and departments have been deliberately excluded due to a lack of relevance. Information on each agency/department/ministry was collected via open source research using government websites, official reports and consultations with relevant agencies.

Figure 1: Rule of Law and Public Health Structures

<table>
<thead>
<tr>
<th>Illicit Trafficking &amp; Border Management</th>
<th>Criminal Justice</th>
<th>Drug Demand Reduction &amp; HIV/AIDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Ministry of Interior</td>
<td>Federal Ministry</td>
<td>Federal Ministry of Health (devolved)</td>
</tr>
<tr>
<td>- Federal Investigation Agency</td>
<td>of Law, Justice</td>
<td>- Provincial Health Departments</td>
</tr>
<tr>
<td>- Provincial Police</td>
<td>and Parliamentary Affairs</td>
<td></td>
</tr>
<tr>
<td>- Civil Armed Forces (Frontier Corps,</td>
<td></td>
<td>Federal Ministry of Narcotics Control</td>
</tr>
<tr>
<td>Pakistan Rangers and Coast Guards)</td>
<td></td>
<td>Federal Ministry of Religious Affairs, Zakat and Ushr (devolved)</td>
</tr>
<tr>
<td>Federal Ministry of Narcotics Control</td>
<td>Province</td>
<td>Federal Ministry of Education</td>
</tr>
<tr>
<td>- Anti Narcotics Force Federal Ministry of Finance</td>
<td></td>
<td>(devolved)</td>
</tr>
<tr>
<td>- Federal Board of Revenue</td>
<td>- Prisons</td>
<td>Federal Ministry of Social Welfare and Special Education (devolved)</td>
</tr>
<tr>
<td>- Customs</td>
<td>- Provincial</td>
<td></td>
</tr>
<tr>
<td>FATA Secretariat</td>
<td>Prosecution</td>
<td></td>
</tr>
<tr>
<td>Provincial Excise and Taxation</td>
<td>Departments</td>
<td></td>
</tr>
<tr>
<td>Departments</td>
<td>State Bank of</td>
<td></td>
</tr>
<tr>
<td>Ministry of Interior</td>
<td>Pakistan</td>
<td></td>
</tr>
<tr>
<td>Provincial Home Department: Police</td>
<td>- Financial</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Monitoring Unit</td>
<td></td>
</tr>
</tbody>
</table>

Ministry of Interior
Provincial Home Department: Police

Ministry of Interior
Federal Investigation Agency
3.1 Illicit Trafficking and Border Management

Pakistan is a transit, destination, and to a lesser extent, producing country for drugs and precursor chemicals. It is also a transit, source and destination country for trafficked persons for the purposes of forced labour and sexual exploitation. Such illicit activity poses significant challenges to border management - a critical issue for economic development and security. The international perspective of Pakistan's trafficking and border issues is unavoidable, given that these issues are linked to Pakistan's neighbours and accordingly, the federal government coordinates internationally.

The main government departments and agencies in countering illicit trafficking and border management are outlined below. See Figure 2 for the impact of the abolishment of the CLL on institutions with the mandates to counter illicit trafficking and border management. The 18th Amendment has had little impact in the area of illicit trafficking and border management. That being said, the changes in legislative subjects have meant that the provinces now have the ability to bargain for certain powers, including the ability to pass legislation on opium cultivation and manufacturing, which was previously a federal subject. Cultivation is, by default, a provincial issue as a residual subject in the post-18th Amendment constitution. Drug trafficking (not opium cultivation) is now Pakistan's primary counter-narcotics challenge and the task of sale for export is a key concern for the Federal Ministry of Narcotics Control.

Figure 2: Abolishing the Concurrent Legislative List - Impact on illicit trafficking and border management institutions\(^{16}\)

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\(^{16}\) In this diagram CLL: Concurrent list; FLL I: Federal Legislative List I; FLL II: Federal Legislative List II.
Ministry of Interior

The Ministry of Interior (MOI) is a federal agency responsible for ensuring the internal security and maintenance of law and order in Pakistan. Under this overall objective, the following activities are carried out:

- Registration of the population and issuance of identity cards through the National Database and Registration Authority (NADRA);
- Nationality, citizenship and naturalization;
- Immigration, passports and the regulation of entry and exit of foreigners;
- Coordination of policy matters relating to police, police reforms and training of police officers through the National Police Academy (NPA);
- Policy coordination and training of civil defence; and
- Coordination of prison reforms with provinces and the training of prison staff.

The MOI manages the Federal Investigation Agency (FIA) as well as the civil armed forces, i.e., Frontier Corps and Constabulary, Pakistan Rangers and Coast Guards, Capital Development Authority and Islamabad Capital Territory, as well as other agencies that have specific responsibilities falling under the areas of illicit trafficking and border management. Furthermore, the MOI has a role in formulating and implementing anti-smuggling procedures. See Table 4 for the structural breakdown of MOI.

Table 4: Structural Composition of the Ministry of Interior

<table>
<thead>
<tr>
<th>Attached Departments</th>
<th>Autonomous Bodies</th>
<th>Subordinate Office</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Civil armed forces</td>
<td>• Capital Development Authority</td>
<td></td>
</tr>
<tr>
<td>• Directorate General Civil Defence</td>
<td>• National Alien Registration Authority</td>
<td></td>
</tr>
<tr>
<td>• Federal Investigation Agency</td>
<td>• National Database and Registration Authority</td>
<td></td>
</tr>
<tr>
<td>• Islamabad Capital Territory</td>
<td>• National Police Academy</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• National Academy of Prisons Administration</td>
</tr>
</tbody>
</table>

Following the 18th Amendment, there are only minor legal changes to the function of the MOI. Certain responsibilities that came under the MOI through the concurrent list, such as arms and ammunition licenses in the provinces, are no longer under its control, and the Implementation Committee report recommends changing the mandate of the MOI to reflect this. Additionally, it has been recommended that the administration of the Frontier Constabulary, and other entities that come under the MOI, such as the police force, will undergo changes in the provinces, but their relationship with the MOI is likely to remain unaffected.

Federal Investigation Agency

The FIA falls under the umbrella of the MOI and is considered the premiere investigation agency in the country. The FIA mainly investigates cases involving human trafficking, irregular immigration, and terrorism. To effectively handle crimes and criminal activities, the Agency has also started covering electronic and cyber crime under the Electronic Transition Ordinance 2002. In addition, the FIA has the authority to carry out operations throughout the country except in the FATA region under the rules and procedures of the CCrP 1898.

17 Ministry of Interior (http://www.interior.gov.pk/).
The FIA has a number of departments including immigration, anti-corruption, economic crime, technical, Interpol, Special Investigations Group (SIG) and the FIA Academy. Four of these departments are of particular importance to this study:

- **Economic Crime Wing:** This Wing is responsible for monitoring and investigating illegal monetary holdings across the country (except in FATA). In particular, the office scrutinizes illegal monetary assets and deals with cases of money laundering.

- **INTERPOL/National Central Bureau:** The National Central Bureau (NCB) is a branch of the International Criminal Police Organization (ICPO) or INTERPOL. The Bureau is headed by the Director General FIA as the ex-officio Head of NCB. The Bureau collaborates with the INTERPOL member states in order to facilitate cooperative programmes between Pakistani and foreign law enforcement organizations.

- **Anti Trafficking Units:** The FIA has established Anti Trafficking Units (ATUs) in the major cities of Pakistan and at FIA Headquarters. The tasks of the ATUs include: (i) to prevent and protect victims of trafficking, (ii) to investigate cases and prosecute culprits, (iii) to build a database of human traffickers, (iv) to liaise with donors, Non-Governmental Organizations (NGOs), provincial police etc and (v) to develop a referral mechanism for the transportation of victims to shelter homes and their repatriation to the country of their origin. The Additional Director General (Immigration) of FIA acts as the National Rapporteur on human trafficking and liaises with other ministries, agencies, international partners, the DG FIA, the ATUs, border security and other law enforcement agencies, in order to efficiently implement operational investigation and criminal prosecution of human trafficking crimes.

- **FIA Academy:** The FIA Academy trains newly recruited officers every year in subjects such as human trafficking, migrant smuggling, money laundering, cyber crimes and other offences.

**Provincial Police**

The provincial police force comes under the jurisdiction of the MOI and plays a central role in the area of criminal justice. The discussion on the police force is included in the following section, which focuses on criminal justice issues.

**Civil Armed Forces**

The civil armed forces are the field organizations of the MOI. Under the 18th Amendment, the civil armed forces will not undergo any administrative or structural changes after the 18th Amendment. The only exception to this is the Implementation Commission’s recommendation that the administrative function of the Frontier Constabulary be handed to the provinces (See Table in Annex 2).

- **Frontier Corps:** The Frontier Corps (FC) is responsible for controlling and monitoring Pakistan’s western international borders with neighboring Afghanistan and Iran. The FC has two bodies, the Frontier Corps Khyber Pakhtunkhwa (FC1) and the Frontier Corps Balochistan (FC2). The FC has the power to intercept cross-border crime and apprehend persons involved in the smuggling of weapons, ammunition, explosives, excise products, drugs, psychotropic and chemical substances. The FC has additional counter-narcotics responsibilities assigned to it under the Control of Narcotics Substances Act 1997 (CNS Act 1997).
Pakistan Rangers: Pakistan Rangers are a paramilitary force reporting to the MOI and governed by the Pakistan Rangers Ordinance, 1959. They are sub-divided into the Pakistan Rangers Punjab (with headquarters in Lahore) and the Pakistan Rangers Sindh (with headquarters in Karachi). The force is responsible for guarding Pakistan’s eastern international border, with India, focusing on anti-smuggling operations and internal security. In some cases the Rangers have been used to control law and order in restive urban areas, with Karachi being a prime example.

Pakistan Coast Guard: The Pakistan Coast Guard (PCG) is responsible for the security of Pakistan’s coastline and its sphere of operation extends from 30 km to 120 km inland, depending on the location. The main responsibilities of the PCG include countering drug trafficking, preventing irregular immigration, intercepting enemy agents or terrorists using the sea route and checking weapon smuggling. To some extent its role includes counter-terrorism, internal security and flood relief operations and supplementing coastal defence during war. Under the Pakistan Coast Guard Act, 1973, PCG personnel have the powers equivalent to that of the police. Every PCG post serves as a police station under the Police Act, 1861 and every officer exercises powers of a Station House Officer and is therefore authorized to record a First Information Report (FIR) and prosecute in relevant courts of law.

Frontier Constabulary: The Frontier Constabulary supports the provincial police in carrying out their functions and guards national installations in Balochistan and KPK. The Frontier Constabulary is headed by a Commandant (equivalent to the rank of an Additional IG) who reports to the IG Police. Some forces of the Frontier Constabulary are also providing assistance to the MOI, due to personnel shortfalls and the worsening security situation.

Levies: The Levies are a paramilitary police force in Balochistan and KPK province. Historically, the Levies guarded the “unsettled” areas of the province under British colonial rule, while the police maintained law and order in the cantonment and city area. To some extent this situation continues to the present day with Balochistan being divided into settled “A-areas” and unsettled “B-areas,” (See Table 5.) based on proximity to police check posts, roads and urban settlements. The Levies are recruited mostly from local persons, with their leadership also being chosen the local tribe or community in order to facilitate dispute settlement. The Levies report directly to the federal MOI.

Table 5: The A and B Areas of Balochistan at a glance

<table>
<thead>
<tr>
<th>A-areas</th>
<th>B-areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mostly highly populated, consists of majority of the inhabitants</td>
<td>Mostly less populated and scattered</td>
</tr>
<tr>
<td>Police control the area for the maintenance of law and order</td>
<td>Levies control the area to supervise law and order situations</td>
</tr>
<tr>
<td>Although these areas are highly populated but these comprises of less than 10% area of whole province</td>
<td>B areas constituted most of the area of the province. Approximately more than 90% of the provincial area comes under the control of levies force.</td>
</tr>
<tr>
<td>These areas of both provinces are almost never reported for cultivation of poppy</td>
<td>These areas of both provinces are almost never reported for cultivation of poppy. If some quantity of poppy has been cultivated in both provinces then it is produced in this area</td>
</tr>
</tbody>
</table>
**Ministry of Narcotics Control**

The Ministry of Narcotics Control (MNC) is a federal ministry that is responsible for supervisory, advisory and coordination functions covering all aspects of drug control, including drug production, processing, marketing, import and export, and cross-border trafficking. The MNC is responsible for framing and implementing laws and drug demand reduction policies based on international conventions that Pakistan is a signatory to. The key legislation for the Ministry in this regard is the Control of Narcotics Substances Act of 1997 (CNS Act 1997).

The MNC is also responsible for issuing No Objection Certificates (NOC) for the import of precursor chemicals for pharmaceutical medicines as well as industrial units. It is involved with related legislation matters, in consultation with concerned ministries and divisions as well as bilateral and multilateral cooperation including mutual assistance. Other key activities include policies on drug awareness programmes and the rehabilitation of drug addicts and grants-in-aid to NGOs engaged in this field.

For all the precursors included in the 'Red List' of the International Narcotics Control Board (INCB), importers require authorisation from the Federal Board of Revenue (FBR). Prior to the 18th Amendment, the Ministry of Health (MOH) was responsible for determining the import quantity for pharmaceutical users and allocated quotas, based on which the MNC used to issue an NOC. Following the adoption of the 18th Amendment, given that the MOH is devolved, the MNC will continue to provide oversight for precursor imports, although the entities it receives advice from regarding the issuance of an NOC may differ to some extent.18

The role of the MNC as an umbrella authority overlooking drug trafficking, sale and use has been reinforced with the inclusion of “Opium so far as sale for export” in the FLL I of the 18 Amendment. Some of the MNC’s functions related to drug demand reduction have been devolved to the provinces. It is likely that the MNC will continue to have oversight over these functions and draw on provincial ministries as needed for assistance. Similarly, any changes to the police force, either by reverting to the Police Act of 1861 or by changing the role of the District Magistrate will likely be taken into account by the MNC but will not drastically affect its core functions.

**Anti Narcotics Force**

The Anti Narcotics Force (ANF) is Pakistan’s premier drug control agency mandated through the CNS Act 1997.19 The ANF reports to the MNC and is responsible for collecting evidence, intelligence, and apprehending anyone involved in illicit drug dealing. It is also in charge of locating and freezing drug-generated assets and restricting drug-related money laundering. The ANF has recently established its Training Academy, which aims to be a regional training centre. The ANF has not been affected by the 18th Amendment.

The CNS Act 1997 arising from an ordinance bearing the same name and promulgated in 1995, effectively covers all aspects of Pakistan’s drug control efforts. It deals with all cultivation, manufacture, production, trafficking and possession offences as well as clearly setting out the powers of search and seizure. An amendment to the law to include the term ‘agricultural land’ in section 10 of the CNS Act 1997 facilitates the prosecution of cases against illegal cultivators. It allows for the freezing and forfeiture of assets derived from drug trafficking and reverses the onus of proof and the presumption of innocence in respect of the possession to the accused.20 The CNS Act 1997 allows the government to set up special courts with exclusive jurisdiction on drugs and to establish a national fund for the control of drug abuse to be partially funded from assets forfeited under the legislation. Special courts deal with all cases related to illicit drug trade, from manufacture and possession of to the acquired assets; and essentially exist as the judicial body of the ANF.

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18 The MNC has implemented Standard Operating Procedures, in order to standardize the registration of companies importing precursor chemicals and to improve data collection on requests for No Objection Certificates.
19 Pakistan ratified the Single Convention on Narcotics Drugs, 1961 on August 15, 1965. With a view to meet its obligations under the said Convention, the Government of Pakistan, through a declaration of 8 March 1973, reorganized the PNB as Pakistan Narcotics Control Board (PNCB); in 1991, at the peak of opium cultivation in Pakistan, the Anti Narcotics Task Force (ANTF) was established. On 21 February 1995 PNCB and ANTFT were merged to constitute the Anti Narcotics Force (ANF).
Ministry of Finance and Revenue

The Ministry of Finance and Revenue (MFR) is the federal entity in charge of federal finances, collection of revenues and other financial matters of the country as specified by the Rules of Business 1973. The MFR is split into two bodies: the Finance Division and the Revenue Division. The FBR is an affixed department of Revenue Division. FBR is split into four departments: (i) Central Excise; (ii) Direct Tax; (iii) Sales Tax; and (iv) Customs. One of the main functions of the FBR is to collect taxes and by extension, control and contain smuggling operations. These powers are implemented with the help of the civil armed forces under the Customs Act 1969. The FBR is also responsible for authorizing imports for all precursors included in the red list of INCB.

Pakistan Customs

Pakistan Customs (PC) provides a major source of revenue to the GOP in the form of taxes on trade. It reports to the FBR and is divided into two divisions. The Intelligence and Investigation Division has a central intelligence function and has investigative offices throughout the country. The second division consists of the various Customs Collectorates spread over the country. The Collectorates are responsible for collecting applicable duties and ensuring that all exports and imports contain no contraband. It also has special drug units, which vary in size - the larger units are usually located at Pakistan’s international ports and airports.

Excise and Taxation

The provincial Excise and Taxation Department (E&TD) is primarily responsible for tax collection in the provinces. Before opium was declared a banned substance, the department dealt with the excise duty on opium and issued licenses for opium cultivation. While excise duties are a federal subject and are controlled by the MFR, provinces are allowed to collect taxes on certain goods. To some extent E&TD informs and participates in police raids on illegal liquor and opium sales.

FATA Secretariat

The Federally Administered Tribal Area (FATA) has a unique administrative and political status which includes a combination of Political Agents (PA) and tribal elders. An Additional Chief Secretary who reports to the Governor of KPK heads the FATA Secretariat. The FATA Secretariat is split into four departments: (i) Coordination and Administration Department, (ii) Finance Department, (iii) Law and Order Department, and (iv) Planning and Development Department. The two departments most relevant to development programmes falling under the rule of law and public health mandates are the Law and Order Department and the Planning and Development Department.

The Law and Order Department is headed by a secretary. The functions of the Department are the following: to establish the writ of the government; to ensure security and protection of tribesmen; to redress grievances of the people; to frame rules for Khassadars/Levies; to ensure a poppy-free FATA; to administer justice through courts; to ensure availability and control of essential commodities (including livestock) to the tribesmen; to deal with emergencies/natural calamities; and to provide infrastructure and training to law enforcement agencies. The Department works in coordination with the PAs/deputy commissioners, civil armed forces and Jirgas as well as other forms of local consultation.

The Planning and Development Department is headed by a secretary who looks after the affairs of planning, implementation, monitoring and evaluation of all development activities related to FATA. The major functions of this department are to facilitate the formulation of development policies. Apart from this, the department performs financial, technical, economic, social, environmental appraisal of development projects and periodic reviews to monitor progress on the implementation of projects. The Planning and Development Department negotiates foreign assistance with donors.

Ministry of Finance, Pakistan (http://www.finance.gov.pk/).
Pakistan Customs (www.cbr.gov.pk).
3.2 Criminal Justice

Systems of criminal justice in Pakistan are diverse, ranging from informal dispute resolution to formal adjudication based on common law principles. Access to justice is fundamental to the stability of Pakistan by improving trust between citizens and state. For the state to deliver services to the citizens efficiently, the entire justice system continuum, including policing, prosecutions and prisons needs to operate in coordination.

The main departments and agencies of the federal government involved in strengthening the criminal justice system are profiled and outlined below. Figure 3 gives an overview of the impact of the abolishment of the CLL on criminal justice institutions. The impact has been low as many of the devolved subjects were already part of the concurrent list and therefore under the provinces’ jurisdiction. For example, one of the changes has been to take the concurrent legislative subjects pertaining to criminal law and criminal procedure and place them as part of the text of the Constitution under section 142 b. This neither curtails nor enhances the power of the provinces. Perhaps the two most significant, indirect outcomes of the 18th Amendment is the amendment in the CCRP 1898 in Balochistan and in Sindh and as well as bringing the police force under the influence of a politically-appointed Executive Magistrate.

Figure 3: Abolishing the Concurrent Legislative List – impact on rule of law and criminal justice institutions

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In this diagram CLL: Concurrent list; FLL I: Federal Legislative List I; FLL II: Federal Legislative List II.
Ministry of Law, Justice and Parliamentary Affairs

The Ministry of Law, Justice and Parliamentary Affairs is the federal entity that advises the federal and provincial governments on legal and constitutional issues. It deals with the drafting and review of bills, legal instruments and international agreements, as well as the adoption of existing laws to bring them in conformity with the Constitution, legal proceedings and litigation concerning the federal government. It also handles activities such as consultations with the Attorney General, administrative control over income tax, appellate tribunals, sales tax and central excise including the Ehtesab Ordinance, trusts and trustees, and matters relating to insolvency and bankruptcy.

National Judicial Policy Making Committee

The National Judicial Policy Making Committee (NJPMC) is a statutory body and is Pakistan’s apex judicial forum. It is headed by the Chief Justice of Pakistan and includes the Chief Justice, the Federal Shariat Court and the Chief Justices of the four high courts as members. The Secretary, Law and Justice Commission of Pakistan is designated as the secretary to the Committee. The Committee is required, inter alia, to prepare and implement the judicial policy for all courts, tribunals and quasi-judicial institutions. The functions of the Committee are:

- Improving the capacity and performance of the justice system;
- Setting performance standards for judicial officers and others with judicial and quasi judicial functions;
- Improvement in the terms and conditions of service of judicial officers and court staff; and
- Publication of the annual or periodic reports of the Supreme Court, the Federal Shariat Court the High Courts, courts subordinate to high courts, administrative courts and tribunals.

Prosecution Departments

The Public Prosecution Departments are organized under the provincial governments. Prosecutorial services are generally governed by provincial acts and sections 492 to 495 of the CCrP 1898, dating back well over a century, with necessary amendments being added on occasion. The public prosecutors are responsible for all criminal litigation where the state is a party before the Supreme Court, the High Court and the Federal Shariat Court and aim to serve the public by providing an effective and efficient prosecution service. One of the core values of the public prosecution department is to strengthen the criminal law capacity to assist relevant agencies, fight terrorism and fundamentalism.

Provincial Police

The provincial police forces are responsible for the prevention and detection of crime, the maintenance of law and the order and overall protection of citizens. All the five provinces have independent police forces, each headed by an Inspector General (IG) although the federal Minister of Interior has de facto oversight. In each province, the IG reports to the provincial home secretary, who in turn reports to the bureaucratic equivalent of the Chief Minister, the Chief Secretary.

Both national and provincial assemblies have the power to make laws with respect to criminal law, criminal procedure and evidence under the 18th Amendment. Sindh and Balochistan have overturned the Police Order 2002 and have replaced it with the Police Act 1861. The replacement of Police Ordinance with the Police Act of 1861 is under consideration in the province of KPK. The Chief Justice of Pakistan declared the Police Order 2002 a federal law on September 11th 2011. Whether this will become a binding order on provinces that choose to repeal the Order is currently unclear. So far as the Police Order 2002 remains a part of criminal law and procedure, it is a concurrent subject according to Article 142. It is likely that provinces will be allowed to amend and change police laws as needed.

The sixth police force is that of Islamabad’s Capital Territory, which being a Federal Capital Territory is entitled to its own police force. Its functions are the same as any other province.
Debates at a glance: the Police Ordinance and Police Act

**Punjab:** The police force currently functions under the Police Ordinance 2002

**Sindh:** Has repealed the Police Ordinance 2002 and have replaced it with the Police Act 1861

**Balochistan:** Has repealed the Police Ordinance 2002 and have replaced it with the Police Act 1861

**Gilgit Baltistan:** No data available

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**Prisons**

The prison system in Pakistan is organized on a provincial basis under the overall supervision the home departments in each province. At the federal level, the MOI coordinates prison reforms with the provinces and offers federal level training at National Academy for Prisons Administration (NAPA), which is the only federally managed prison service institute in Pakistan. In practice, the MOI has not had significant input to prison reforms.

The main laws and rules that directly relate to the administration of prisons and the treatment of prisoners are: the Prison Act of 1894 (Act IX of 1894); the Prisoners' Act of 1900 (Act III of 1900); the Good Conduct Prisoners Probational Release Act of 1926 (Act X of 1926); and the Prison Rules of 1978. The Pakistan Jail Manual, which is used as the basis for prison staff training, includes the Prison Rules 1978, which define prison management in the country.

The Prison Act is federal but provincial governments may amend the Prison Rules. Some rules have been amended and incorporated into the jail manual, indicating the province to which they apply. It is worth noting that most of the legislation relating to prisons, and especially the Prison Act of 1894 is outdated and not in line with the requirements of UN Standard Minimum Rules for the Treatment of Prisoners.

**National Accountability Bureau**

The National Accountability Bureau (NAB) is Pakistan's premier anti-corruption organization, established under, and mandated by, the National Accountability Ordinance 1999. In the past, NAB's role has included monitoring money laundering, as well as drugs and counterfeit currencies, with cases involving the latter being transferred back to their respective agencies and departments (the FMU and the FIA). NAB has not been affected by the passage of the 18th Amendment.

**National Police Bureau**

The National Police Bureau (NPB) is a statutory body established under Article 162 of the Police Order 2002, mandated to coordinate and monitor police organizations across Pakistan. It is headed by a Director General and functions as the permanent Secretariat for the National Public Safety Commission (NPSC) and the National Police Management Board (NPMB). The NPB performs research and development functions as assigned to it by the NPSC and the NPMB.

**Financial Monitoring Unit**

The Financial Monitoring Unit (FMU) is a department of the State Bank of Pakistan (SBP) and was established under the Anti-Money Laundering Ordinance (AMLO) 2007. The primary responsibility of the FMU is to receive, analyze and disseminate advice on suspicious transaction reports and currency transaction reports.

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Any transaction exceeding PKR 2.5 million must be reported by banks or development finance institutions as a 'currency transaction report' to the FMU. These transactions are analyzed and, as and when required, the FMU passes on suspicious transactions to the relevant law enforcement agencies. In terms of enforcement, the AMLO designates NAB, the FIA and the ANF as investigating and prosecuting agencies for money laundering, although the federal government can designate other law enforcement agencies.

The FMU maintains a database of suspicious transactions and maintains working relationship with domestic law-enforcement agencies, supervisory and regulatory bodies and reporting entities. The FMU also aims to assist the reporting entities and law-enforcement agencies in formulating training programmes and developing strategies to combat money laundering and terrorist financing.

3.3 Drug Demand Reduction and HIV/AIDS

Drug use in Pakistan is high and growing due to the easy availability of opiates and the new types of drugs, including synthetics. Existing estimates are not likely to reflect the current drug use levels in Pakistan as available information is outdated and unreliable. Evidence from HIV outbreak suggests that there is currently a concentrated but localized HIV epidemic among injecting drug users in Pakistan. Coupled with widespread risk behaviours, this could lead to an HIV epidemic among the wider population.28

The departments and agencies involved in strengthening public health systems related to drug demand reduction and HIV/AIDS are profiled and outlined below. See Figure 4 for a snapshot of the institutions working with drug demand reduction in Pakistan. The major impact of the 18th Amendment on drug demand reduction and HIV/AIDS is the devolution of the federal MOH to the provincial level. Additionally, the federally funded health programmes, which were implemented in the provinces (known as vertical programmes) have also been devolved. These include the National AIDS Control Programme (NACP), amongst others.

Figure 4: Abolishing the Concurrent Legislative List – impact on institutions that deal with drug demand reduction and HIV/AIDS29

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27 Assessment of the National Drug Treatment and Rehabilitation System of Pakistan, March 2010, UNODC.
28 The prevalence of HIV among the general public is less than 1%.
29 In this diagram CLL: Concurrent list; FLL I: Federal Legislative List I; FLL II: Federal Legislative List II.
Ministry of Health

The MOH was a federal ministry which has been devolved as a result of the 18th Amendment. The Ministry had been responsible for national planning and coordination, liaison with international donors and agencies, legislation related to drugs and medicines, administration of the Drugs Act 1976, technical backstopping, communicable disease control and financing-related issues. The MOH also carried out a number of vertical programmes - formulated and budgeted on the federal level and implemented on the provincial level, which have now also been devolved. The MOH was responsible for setting quotas for the import of precursors that are used in the pharmaceutical industry. After the 18th Amendment, a committee housed in the MNC will overlook this process, with input from the ANF and Customs.

The MOH was also responsible for drug regulation and liaison with pharmaceutical companies. With the devolution of the MOH this function now also falls under provincial control. But there is considerable pressure on the federal government to take over the regulation of drugs under a Drug Regulation Authority (DRA). The stakeholders consulted for this report anticipated that the DRA would provide oversight for manufactured drugs and raw materials that arrive in the country for use by the pharmaceutical industry. Currently, there is no decision on whether or not the DRA will be formed.

Provincial AIDS Control Programme

Vertical programmes, including the NACP have now been devolved to the provinces. According to health department officials in the provinces, the funding for vertical programmes will now be provided in lump sum by the federal government to the provincial health departments, which will be responsible for budgeting and disbursements. Overall liaison with donors will take place through the Enhanced HIV Programme (that reports directly to the Cabinet Secretary). It is likely that due to the devolution of the NACP, the Provincial AIDS Control Programme (PACP) will absorb many of the resources and functions of the programme. The provincial health department has oversight of the PACP, which is implemented through the existing provincial health care network. The PACP collaborates with other provincial departments including planning and development, finance, social welfare, police, jails and education.

Ministry of Education

The Ministry of Education (MOE) was a federal ministry that has been devolved under the 18th Amendment. The MOE was responsible for the formulation of national policies on education, collaboration with donors, setting standards for higher education and approving curricula for public schools. All these functions have been devolved to the provinces, with several important exceptions. These include retaining the Higher Education Commission (HEC) at the federal level, as well as coordinating development assistance programmes through the EAD. The provinces have already taken some concrete steps to improve their educational system. For instance, curriculum has been revised in KPK and is under process in Balochistan.

Ministry of Religious Affairs, Zakat and Ushr

The Ministry of Religious Affairs, Zakat and Ushr was a federal-level ministry that has been devolved under the 18th Amendment. It used to have six subordinate offices working as Directorates of Hajj and two autonomous bodies, i.e., the Council of Islamic Ideology and Pakistan Madrassah Education Board. Other activities also include research-based Islamic studies, the holding of conferences, seminars, training and education of Ulemas and Khateebas (religious scholars and leaders). In the past, training Ulemas and Khateebas in drug abuse awareness was carried out in cooperation with the federal-level Ministry of Religious Affairs, Zakat and Ushr, this function is now with the provinces.

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30 The Act regulates the import, export, manufacture and sale of drugs (medicines) which also include precursors used as medicines or for its manufacture. UNGASS Goals on Control of Precursors, South Asia.
31 Vertical programmes include the National Programme for Family Planning & Primary Health Care, the National Maternal, Neonatal and Child Health Programme and the National AIDS Control Programme (NACP).
Ministry of Social Welfare and Special Education

The Ministry of Social Welfare and Special Education (MSWSE) has been devolved under the 18th Amendment. It was responsible for translating international commitments to improving livelihoods into policy, in collaboration with civil society, private and public institutions. The Ministry worked with non-profit organizations and government departments at the federal, provincial, district and grassroots levels. The Ministry was responsible for the custody and protection of juvenile courts and delinquents, and has previously engaged with international partners for the protection of children who are trafficked, sexually exploited and abused. Significantly, all NGOs (including those working on drug prevention, treatment and rehabilitation and HIV/AIDS) were required to register with the MSWSE.

While the Ministry has been devolved to the provincial level, several functions have been retained at the federal level, including the coordination with international donors through the EAD. The Ministry's institutions and functions specific to Islamabad have also received special provisions due to Islamabad's status as a federal territory. Several programmes of the Ministry have been merged to make one organization under the Capital Administration and Development Division (CADD). These programmes include: (i) the National Commission of Social Welfare; (ii) the National Commission for Child Welfare and Development (NCCWD); (iii) the National Council for the Rehabilitation of Disabled Persons (NCRDP); and (iv) the National Trust for the Disabled (NTD). With the devolution of the Ministry, opportunities have been provided to the provinces to enhance their work on human trafficking, specifically in the area of child trafficking.

The 18th Amendment has had varying degrees of impact on administrative and legislative functions as well as fiscal responsibilities at the federal and provincial level. These will be discussed in this section, with an analysis of the likely outcomes in the immediate, medium and long term. The impact on rule of law and public health mandates has also been explored where relevant. It is necessary to highlight capacity gaps at the provincial level, including in inter-agency coordination, technical abilities and human resource capacity that may not have been caused by devolution, but need to be addressed.

4.1 Legal Implications

The issue at the core of the 18th Amendment is that of legal interpretation of the major provisions, not exclusively the individual entries in the Federal and Concurrent Legislative Lists. This study focuses on a fraction of these changes as they may impact the rule of law and drug-related health mandates. The breadth and depth of political, economic and social issues that the Amendment encompasses is beyond the scope of this document. It is expected that there will be considerable role for constitutional lawyers and legal experts in the federal government and provinces to understand, adapt and interpret existing laws. This section will highlight some of the debates surrounding the legal impact of the 18th Amendment.

At the federal level, there is some concern that the 18th Amendment has transferred vital functions to the provinces too quickly; on the one hand creating a vacuum as the provinces are unable to take up these responsibilities, and on the other hand, limiting the role of the federal government. Veterans of the legal profession in Pakistan that were involved in the drafting of the 1973 Constitution and its various amendments, suggest that while the 18th Amendment aims at balancing powers between the federal government and the provinces, there is a risk that it could end up having a reverse effect and weakening the federation. Proponents of the 18th Amendment are of the view that it is a necessary confidence-building measure extended to the provinces and although there may be capacity shortfalls in the short term, in the long term the legislation will prove beneficial in providing provinces with incentives to improve capacity. They argue that the principle of abolishing a list where both the provinces and federal government could legislate, based on emotive and historical reasoning, holds considerable significance.

It is clear that the issue of capacity is also one of incentives – provinces that have interests to act on certain allowances within the 18th Amendment will take full advantage of it. For example, Punjab is lobbying for a provincial drug regulation mechanism while the other provinces seem to be more indifferent to the federal government retaining this function. Under Article 147 of the Constitution, a province may entrust conditional or unconditional responsibilities over any subject to the federal government, and it is likely that in places where certain provinces lack capacity they will exercise this power. One example of this provision is with the issue of sales tax. While Sindh has opted to collect its own General Sales Tax (GST) on services, the remaining provinces have given this authority to the federal government.

34 Key informant interviews.
Debates at a glance: The Drug Regulatory Authority

• Punjab is currently lobbying for more influence over the Drug Regulatory Authority (DRA). The 18th Amendment allows for Punjab to retain this function, however, the federal government and several experts have recommended a federally-controlled DRA.
• Sindh has given authority to the federal government.
• Balochistan has also given authority to the federal government.
• Khyber Pakhtunkhwa has given authority to the federal government.
• Gilgit-Baltistan has given authority to the federal government.

Prior to the 18th Amendment, the provinces were empowered to make laws on subjects in the Concurrent List. In the case of criminal procedure laws and police laws, provinces tended to adopt the laws as handed down from the Parliament and the Supreme Court. It is likely that even after the 18th Amendment for the majority of the laws handed down to the provinces, the provincial legislatures will choose to preserve the status quo.

This does not necessarily mean that the need to amend certain laws does not exist. In the consultative process carried out for the purposes of this research, public prosecutors in KPK and Balochistan were of the opinion that preventive detention laws did not allow enough time for forensic processes, and many criminals apprehended in drug-related crimes were acquitted for lack of evidence. While they argued for better forensic processes, it is criminal procedure that also needs enhancement. Currently, there is very little debate on how individual provinces can improve criminal laws.

Opium cultivation is now no longer in the FLL as a federal subject (only the sale of opium for export is a federal subject). Opium licensing, if initiated by the provinces, will contribute sizeable revenue to the provincial Excise and Taxation Department. In Balochistan, the process of drafting legislation to this end is already initiated; and KPK and Sindh have also expressed interest in issuing licenses. Consultations with the federal government suggest the provincial governments are considering licensing without appreciating Pakistan's international commitments. The federal government will resist these provincial attempts as they contravene Pakistan's obligations under international treaties and agreements. In all such cases the federal laws under the FLL I would prevail. Interpreting these laws and weighing one against the other will be part of the process of implementing the 18th Amendment.

Finally, it has been suggested that provinces with lower legal capacities may be disadvantaged over others. This includes the dispute over reservoirs and power plants between Punjab and KPK, or natural gas royalties in Balochistan. The role of the CCI for resolving such disputes will be critical.

While in the short term provinces are unlikely to make significant changes to federal laws primarily due to a lack of incentives and capacities, in the medium and long term provinces will be empowered to tailor laws to their needs or to challenge special provisions made for one province at the expense of others. Simultaneously, the ability of the federal government to push back on issues of autonomy by using provisions of the Constitution to their advantage is likely to be exercised in certain cases.

35 Under entry 3 of FLL I, the federal government is responsible for the implementation of treaties and agreements. Similarly, entry 32 requires the federal government to uphold international treaties, conventions and agreements.
4.2 Administrative Implications

The two main administrative implications of the 18th Amendment are related to the devolution of several ministries and provincial involvement in development assistance.

Devolution of Ministries

A strong message reinforced in various consultations with the federal government is that the process of devolution took place in haste and without consultation. It is likely that many aspects of devolution that are agreed on now may be reversed or modified – within the last few months the handover of at least two entities to the provinces has not taken place – one being the HEC which was discussed in the previous section, the other is the National Commission for Human Development (NCHD) (See Box 1).

Box 1: National Commission for Human Development

The National Commission for Human Development (NCHD) is an example of the present uncertainty around certain federally-funded programmes. The NCHD was an autonomous body of the Cabinet Division that was mandated to work on poverty alleviation in the provinces, on capacity building projects and global resource mobilization (NHCD Ordinance, 2002).

Under the 18th Amendment the NCHD was to be devolved to the provinces, but the provinces expressed unwillingness to take on this responsibility due to financial constraints. KP and Balochistan said they could not undertake any aspects of the programme, Sindh said it could run a few of the projects and Punjab refused on the political grounds. Under these circumstances the CCI decided to end the NCHD programme. The NCHD employees petitioned in court and the decision is still pending. The Prime Minister recently directed the release of funds for salaries, and the government is set to evaluate the achievements of NCHD over the last nine years before making any final decision.

After the decision to end the NCHD, some of the provinces have revised their positions, perhaps after lobbying by NCHD representatives. The Balochistan Chief Minister sent a letter to the Prime Minister asking for funding of the NCHD till June 2012. Gilgit Baltistan has also recently followed suit.

Of the seventeen devolved ministries, the most significant are Education and Health due to their large budgets, staff and projects. The fundamental problem with the health and education systems in Pakistan has been one of overlap and leakages. The decentralization of these ministries in tandem with the 7th NFC Award is an important opportunity for provinces to rationalize and streamline their spending. The federal Planning Commission, for its part, has already expressed the desire to guide structural reforms instead of piecemeal programmes. Similarly, the enhanced role of the provincial governments has already seen an increase in the hiring of private consultants to advise the provinces on structural growth strategies, indicating that provinces do have the ability to make up for human capital shortfalls. The data presented here suggests that there is significant potential for gradual capacity development in the provinces. A more serious concern is of the ability of the federal government to hold provinces to standard country-wide standards for services such as health and education.

There are also concerns that some devolved federal programmes will be an administrative burden for the provinces. For instance, in Balochistan, bureaucrats expressed apprehensions that the highly successful Population Welfare Fund would be terminated. It appears that while provincial governments are satisfied with the devolution of these successful federal institutions, their secretariats tend to view them as administrative liabilities.
Foreign Loans and Aid to the Provinces

The provinces have been empowered by Article 167(4) of the 18th Amendment to raise domestic and international loans subject to certain conditions. For instance, they cannot raise loans beyond a limit specified by the federal government, or without the consent of the inter-provincial NEC. Another provision states that provinces can raise loans only if they have no outstanding loans or overdraft against borrowing from the federal government. According to some observers, this change in mandate for the NEC will affect other institutions at the federal government. The Planning Commission has already expressed interest in taking on a holistic advisory role in shaping development strategies, and in assisting provinces to implement its new growth strategy. It is likely that it will take several months for the impact of this process to be felt by institutions and on existing and new projects in the field.

Some of the provinces are already exploring options to solicit funds and loans from international donors, including through administrative facilities. For example, in KPK a newly established foreign aid section in the Economic Affairs and Planning Department will inform and advise the political leadership on development aid needs. Additionally, the office will act as a window for donors that wish to approach the province with programme proposals. Certain stakeholders have expressed a concern that donors will have much more latitude in deciding which provinces to offer development assistance to, prioritizing certain provinces over others. Conversely, others are of the opinion that there will be an increased likelihood of efficient and targeted programmes because donors will be able to approach provinces directly (and vice versa).

Prior to the 18th Amendment, the first point of contact for donors with the GOP was through the EAD, with involvement from relevant ministries at the federal and provincial levels. This will largely remain the case even after the 18th Amendment. According to the Implementation Committee report that has been issued for first two phases of ministerial devolution, the functions related to dealing with donors are retained at the federal level, with the EAD. The de jure rules of business so far seem to indicate that the EAD will continue to remain the legal point of contact between any foreign entity and the GOP, with the de facto ability of any one province to bend the central government to their will determine the ease with which new loans can be taken.

Constitutionally, there is no clause that bars development agencies from approaching provinces directly. The federal government has full discretion to interpret the provisions of the Constitution when formulating rules of business.

In the immediate term, ministerial restructuring will cause challenges for existing projects, and some degree of backtracking and amendments is to be expected. During this period, it is expected that the federal government and the EAD will continue to operate in this area as in the past. In the medium run provinces may be able to use constitutional provisions and political pressure to exert greater control over borrowing and spending. In the long term, provided that provinces manage to build capacity, they may come to a point where they are able to negotiate international contracts and MOUs entirely on their own.

4.3 Financial Implications

One of the core elements of the devolution process is the handing over of financial responsibilities for development projects to the provinces. It is envisioned that this will enable provinces to make better policy decisions that are tailored to local needs.

Prior to the adoption of the 18th Amendment, several federally-funded programmes were managed at the provincial level, but the line-item procurement, salary and other expenses were reflected in the federal budget. Following the ratification of the 18th Amendment, it is expected that the federal government will hand over programme funding as lump sums to the provinces for them to execute as they see appropriate.

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30 The Economic Affairs Division (EAD) is responsible for managing external debt, according to Schedule II of the Rule of Business 1973, the EAD provides oversight on foreign assistance including the allocation of aid and signing memorandums with donor organizations.
The provinces have expressed concern over the reduction in the PSDP under the 18th Amendment, which has forced them to tap into their own resources from the revenue pool. The PSDP is the GOP budgetary allocation that goes towards development functions in the provinces, to maintain existing programmes and to initiate new ones. This amount is crucial for the provinces in addition to the revenue they receive from the federal budget via the NFC Award. Once provincial allocations under the PSDP are announced, the provinces form their budgets and announce their Annual Development Plan (ADP).

Additionally, many of the existing projects have considerable ‘throw forward’ – the portion of funding required by projects that have passed their completion deadline (or are in the process of expanding) and require more resources as yearly costs increase. There is some concern that the burden of throw-forward on the provinces has increased beyond their capacities.

**Vertical Programmes and the Development Funds**

The federal government has earmarked PKR 7.7 billion in expenditure for all provinces under vertical programmes. The costs of procurement, training, capacity building and monitoring will be borne by the provincial governments. This has given rise to challenges in human resource management, amongst other things: for example in some cases the provincial government has expressed unwillingness to retain federal employees. Salaries and jobs are useful political tools at the local level, and there is currently apprehension amongst stakeholders that widespread layoffs and corruption will adversely affect successful programmes and politicize provincial service delivery. This applies equally to the vertical programme on HIV/AIDS, which may not have as high a priority in the provinces as it does at the federal level.

There are indications that provinces are identifying and prioritizing development priorities. In the budget for the next fiscal year KPK has earmarked a total of PKR 40 billion for operating devolved functions, including vertical programmes. Breaking from the convention of previous development priorities, the province has emphasized the need to enhance its productive sector, which includes mines and minerals, transport, technical education and skills development. On the other hand, in provinces such as Balochistan, infrastructure is a major priority, and this is likely to come up in future discussions.

Challenges remain - in many instances funding is slow to come from the federal government and in some cases, the provinces do not view the shift in budget as an increase in budget. For example, in Balochistan, the overall share of the province in the federal budget has increased from 7.19% to 9.09% under the 7th NFC Award. This seems to have been offset by the decrease in the share of the province in the PSDP from PKR 50 to PKR 30 billion. The provincial Annual Development Plan (ADP) has increased from approximately from PKR 18 billion to PKR 30 billion. The bottom line for some observers is that the increased responsibilities (notwithstanding the increased budgets) will leave provinces as strapped for resources as they were before. This situation, they argue, is exacerbated by increasing future costs or throw-forward over the next few years.

Core productive capacity-building functions such as education and health need increased levels of investment. Where fears exist that provinces may prioritize certain sectors over others (for example, at the expense of drug demand reduction), there is an expanded role for advocacy on part of the civil society and non-profit sector. The provinces will doubtless benefit from the autonomy they have received under devolution by coming up with a system of accountability at the local and at the federal level.

In the immediate term, there continues to be ongoing debate on federal funding, particularly regarding salaries and projects with considerable throw-forward. In the medium term, it is expected that budgetary control in the provinces will allow certain allocations to be rationally assigned, particularly with a view to minimize overlap. It is also important to note that the formula for the NFC Award cannot reduce the share of the provinces from where it currently stands. It may be possible for provinces such as Balochistan to bargain for a greater share of allocation in the next NFC cycle, or for the provinces to collectively, through the CCI, negotiate a larger share of the budget. Finally, provinces that bear the brunt of economic losses, due to illicit trafficking or organized crime, should be encouraged to lobby for increased resources.

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37 A programme that respondents frequently referred to was the Lady Health Workers programme, which many feared would face challenges by virtue of being devolved to the provincial level.

38 Over 60 projects under various ministries will be devolved to their respective ministries/departments. Additionally, 148 projects under PSDP have been devolved. The province expects to receive 4.5 billion for these projects, although there seem to be delays in releasing funds to the provinces.
5. CONCLUSION

It may be too early to draw definitive conclusions of the impact of the 18th Amendment. This study has attempted to highlight some possibilities, although the political impetus behind these reforms makes the nature of some of the legislative, institutional and fiscal changes somewhat arbitrary. It is possible that the very institutions that have been empowered under the 18th Amendment — such as the CCI and the provincial legislatures — will spend some time debating the merits of this process. The involvement of civil society and other stakeholders in this process is crucial at this stage.

Provincial governments must be held accountable for the increased financial and administrative resources that they now have at their disposal. A system of government that allows elections to the Union Council and district level, if used effectively, may help reduce monitoring costs and increase transparency. Additionally, it would result in additional resources to the district-level where they could be targeted effectively.

The 18th Amendment places provinces at somewhat of an advantage in terms of their capacity to negotiate development assistance with foreign donors. Similarly, it places responsibilities for handling issues such as drug demand reduction and HIV/AIDS monitoring and drug rehabilitation on the provinces. It is necessary to raise awareness at the provincial level of the severity of the drug problem in Pakistan, from a social and economic perspective. In addition, the provinces have retained powers to bring about changes in the CCrP 1898 and policing. The provinces now can improve investigation and prosecution processes; and there is a significant need for further work to assist with legal consuls, police and other entities to improve access to justice and rule of law.

There are a number of chronic issues affecting rule of law and drug-related health mandates, including low prioritization by the federal and provincial governments, institutional overlap, low coordination (inter-provincial, intra-provincial and federal-provincial) and capacity gaps. There is an opportunity to address these in a strategic change management process that can improve the efficacy of future governance arrangements and relationships.

In the light of the economic impact of rule of law and security challenges, it is important that the 18th Amendment is welcomed by the provinces as an opportunity to move away from blanket development projects and negotiate for more tailored and custom-fit livelihood opportunities. The 7th NFC Award is not exclusively a population-based formula; it is a poverty-based formula and even if provincial budgets have not received significant increases, the provinces are able to control budgetary allocations. If additional resources have been given based on poverty and development levels then it is likely that the provinces will be encouraged to use these resources to meet their specific needs. A significant gain through this process has been the flexibility that the provinces can use to expand their influence and exercise genuine autonomy in achieving their social and economic goals.
Almeida, Cyril, “Abolishing the concurrent list,” April 08 2010


UNODC, "Govt. of Pakistan Security Sector: Strategic Coordination and Crime Agendas” March 2010


Interprovincial Coordination Division, Government of Pakistan “Report by the Implementation Commission” 4th May, 2010 to 5th April, 2011.


Pakistan. Federally Administered Tribal Area (http://fata.gov.pk/).


UNODC Pakistan (http://www.unodc.org/pakistan/).


Pakistan. Control of Narcotic Substance Act (XXV 1997).


Institute of Public University Grant Commission Act, 1974.

## Annex 1: Devolution of Federal Ministries

### First Phase
**Deadline: December 2010**

<table>
<thead>
<tr>
<th>No.</th>
<th>Ministry</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ministry of Special Affairs</td>
<td>Devolved</td>
</tr>
<tr>
<td>2</td>
<td>Ministry of Population Welfare</td>
<td>Devolved</td>
</tr>
<tr>
<td>3</td>
<td>Ministry of Youth Affairs</td>
<td>Devolved</td>
</tr>
<tr>
<td>4</td>
<td>Ministry of Local Government and Rural Development</td>
<td>Devolved</td>
</tr>
<tr>
<td>5</td>
<td>Ministry of Zakat and Ushr</td>
<td>Devolved</td>
</tr>
</tbody>
</table>

### Second Phase
**Deadline: April 2011**

<table>
<thead>
<tr>
<th>No.</th>
<th>Ministry</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ministry of Education</td>
<td>Devolved</td>
</tr>
<tr>
<td>2</td>
<td>Ministry of Social Welfare and Special Education</td>
<td>Devolved</td>
</tr>
<tr>
<td>3</td>
<td>Ministry of Tourism</td>
<td>Devolved</td>
</tr>
<tr>
<td>4</td>
<td>Ministry of Livestock and Dairy Development</td>
<td>Devolved</td>
</tr>
<tr>
<td>5</td>
<td>Ministry of Culture</td>
<td>Devolved</td>
</tr>
</tbody>
</table>

### Third Phase
**Deadline: June 2011**

<table>
<thead>
<tr>
<th>No.</th>
<th>Ministry</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ministry of Food and Agriculture</td>
<td>Devolved</td>
</tr>
<tr>
<td>2</td>
<td>Ministry of Health</td>
<td>Devolved</td>
</tr>
<tr>
<td>3</td>
<td>Ministry of Labour and Manpower</td>
<td>Devolved</td>
</tr>
<tr>
<td>4</td>
<td>Ministry of Women Development</td>
<td>Devolved</td>
</tr>
<tr>
<td>5</td>
<td>Ministry of Sports</td>
<td>Devolved</td>
</tr>
<tr>
<td>6</td>
<td>Ministry of Environment</td>
<td>Devolved</td>
</tr>
<tr>
<td>7</td>
<td>Ministry of Minority Affairs</td>
<td>Devolved</td>
</tr>
<tr>
<td>8</td>
<td>Statistics Division</td>
<td>Devolution proposed, ultimately not devolved</td>
</tr>
</tbody>
</table>
## Annex 2: Partially Devolved Ministries

<table>
<thead>
<tr>
<th>Entry No.</th>
<th>Functions</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Federal control (in consultation with the information and media development division) over the administration of press and publication laws by the provinces.</td>
<td>Be deleted</td>
</tr>
<tr>
<td>17</td>
<td>Administration of funds raised by public subscriptions or donations which may be lying dormant.</td>
<td>Be deleted</td>
</tr>
<tr>
<td>37</td>
<td>Administrative control of Frontier Constabulary</td>
<td>Be merged with entry 21 of their list</td>
</tr>
<tr>
<td>16</td>
<td>Naming of institutions in the name of Quaid-e-Azam and other distinguished personages.</td>
<td>Be transferred to the cabinet division</td>
</tr>
</tbody>
</table>

### Finance Division
- The entry “State Lottery” appeared at Sr. No. 33 of the Federal Legislative List. This has been omitted.
- Entry at Sr. No. 19 under Finance Division in Schedule-II to the Rules of Business has to be deleted.

### Revenue Division
- The entry “Estate duty in respect of property” at Sr. No. 46 of the Federal Legislative List has been omitted.
- The words “Tax Policy” appeared at Sr. No. 1 under Revenue Division in Schedule-II to the Rules of Business could be reworded as “Federal Taxes Policy.” Federal Board of Revenue had observed that the Tax Policy itself related to federal taxes only.
- The entry at Sr. No. 49 of Federal Legislative List has been amended to exclude “sales tax on services”
- The entry at Sr. No. 50 of Federal Legislative List has also been amended to exclude “on capital gains”

### Interior Division
- The entry “Arms Act” appearing at Sr. No. 22 under the Interior Division has to be amended to restrict its jurisdiction to federal areas.
- The decision of Implementation Commission taken in its 34th meeting with respect to other entries under the Interior Division are also reproduced below;

### Law, Justice and Parliamentary Affairs Division
- Following entries appeared at Sr. No. 6, 7, 8&10 of the Concurrent Legislative List since abolished:
  6. Wills, intestacy and succession, save as regards agricultural land.
  7. Bankruptcy and insolvency, administrators-general and official trustees.
  8. Arbitration
  10. Trusts and trustees.
<table>
<thead>
<tr>
<th>5</th>
<th><strong>Ports and Shipping Division</strong></th>
<th>The entry &quot;Shipping and navigation on inland water-ways as regards mechanically propelled vessels, and the rule of road on such water-ways; carriage of passengers and goods on inland water-ways&quot; appeared at Sr. No. 32 of Concurrent Legislative List which has been omitted.</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td><strong>Communications Division</strong></td>
<td>Corresponding entry appearing at Sr. No. 4 under the Communications Division in Schedule-II to the Rules of Business has been deleted.</td>
</tr>
</tbody>
</table>

Source: Report by The Implementation Commission, (4th May, 2010 to 5th April 2011), Inter Provincial Coordination Division, Secretariat of Implementation Commission, Pakistan.