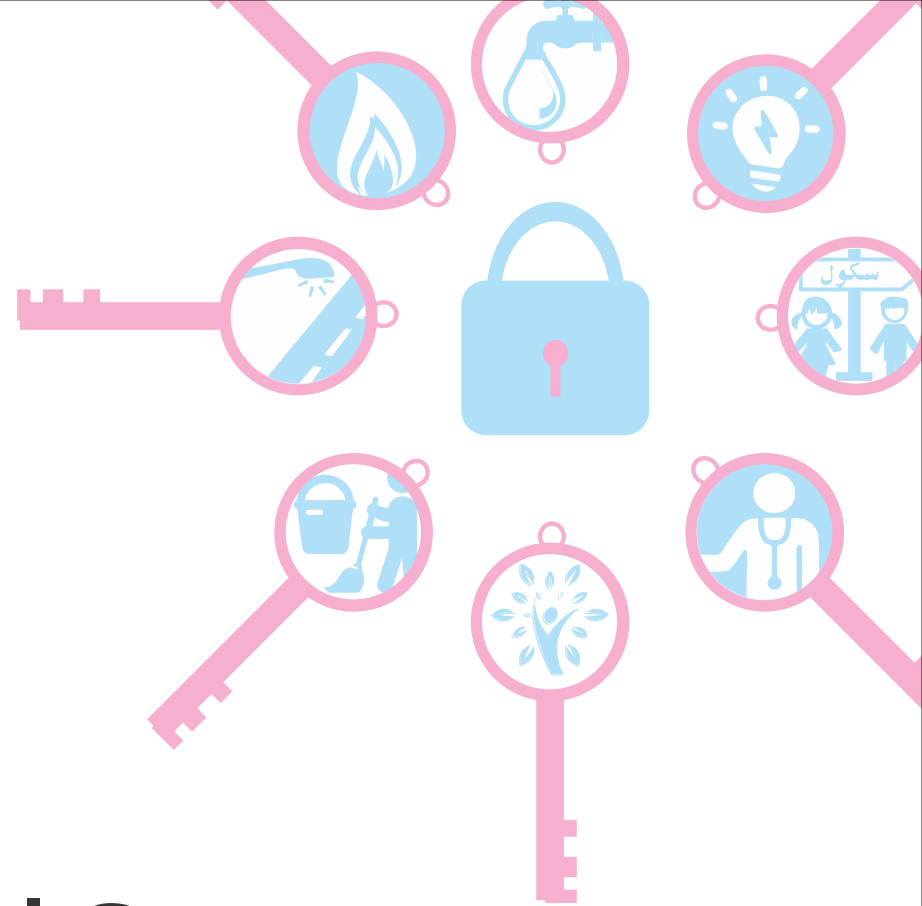




# Local Government: Towards a New Chapter

An HRCP national conference report



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**E**lected local governments are key players in guaranteeing human rights, particularly the economic and social rights of the vulnerable. Given that they are in direct contact with local constituents, receiving demands, claims and complaints from them—as well as being accountable to them—local governments are best placed to develop and enact policies that cater to their needs. Indeed, both the Covid-19 pandemic of 2020 and recent floods of 2022 have underscored the critical role that local governments could play in addressing political and social challenges, especially during a disaster.

Unfortunately, Pakistan has failed to introduce an effective local government system. The earlier experiments with local governments have been manipulated by military rulers to legitimise their regimes and undermine democratic forces in the country. Even under elected civilian governments, there has been little progress towards instituting strong and efficient local governments in Pakistan, arguably because of lack of ownership by the existing political parties. Despite the passage of the 18th Constitutional Amendment, the political elite has shied away from devolving meaningful fiscal and administrative power to the local level, in turn handicapping the local governments' capacity to ensure constituents' right to water and sanitation, decent work, education, housing and transport, among others.

Apart from Article 140-A in the Constitution, there is no comprehensive constitutional framework governing local bodies' roles and responsibilities or their interaction with higher tiers of government. The challenge lies in giving effective responsibility for local governance to a broadly representative group of local leaders, consistent with the parliamentary responsibility that is already constitutionally mandated for governments at the provincial and national levels.

On 23 November 2022, the Human Rights Commission of Pakistan (HRCP) held a national conference in Islamabad in partnership with the Friedrich Naumann Foundation for Freedom (FNF) to engage with political leaders, analysts, academics and legislators on these challenges to devolution. This report provides a summary of the conference, its concluding observations and recommendations from political leaders, analysts, legislators and academics. In order to take these recommendations forward, HRCP intends to draft a legislative chapter defining the guiding principles of local government and campaign for this to be incorporated within the Constitution.

*Pakistan has failed to introduce an effective local government system. The earlier experiments with local governments have been manipulated by military rulers to legitimise their regimes and undermine democratic forces in the country. Even under elected civilian governments, there has been little progress towards instituting strong and efficient local governments in Pakistan.*







## Local governments as the foundation of federalism and democracy

# SESSION 1

*Complete devolution of power necessitated trainings for citizen empowerment and government engagement with stakeholders.*

In her welcome address to the conference participants, country head of FNF Pakistan Ms Birgit Lamm said that local governments were critical in times of need, such as during the Covid-19 crisis and the recent floods. She continued by noting that complete devolution of power necessitated trainings for citizen empowerment and government engagement with stakeholders, and it 'should not become an administrative white elephant'. She concluded that local governments were schools of democracy where citizens could assess the work performance of administrators and politicians. In his introduction to the conference, secretary-general of HRCP Mr Harris Khalique said that a strong democracy or a strong sense of citizenship could not exist without effective, well-resourced local governments. He added that although Pakistan's political class had long distrusted local government, given the support it received from military governments, 'this is no reason not to have local governments'.

The panelists of the conference's first session examined the interplay of local government, federalism and democracy in Pakistan. Moderating the panel, chief executive of Ideas for Vision 2047 Mr Zafarullah Khan said that Article 140-A should be deconstructed to facilitate administrative, fiscal and political devolution, and that broader development funds had to be looked into. Local governments should be able to make their own rules of business 'since they are the nurseries of democracy', he said, citing the example of the federal capital where local representatives were elected as parliamentarians. He noted that there was no practical functioning local government in Pakistan anywhere except in cantonments.

Discussing the chequered history of local government in Pakistan, lawyer and senior vice-president of Pakistan Tehreek-e-Insaaf (PTI) Mr Hamid Khan stated that local bodies functioned well under the 1935 Government of India Act after Pakistan was founded, especially in Punjab and Sindh where municipal schools and dispensaries were common up till 1958. However, there was no mention of local government in the 1956 Constitution which outlined the roles of the federal and provincial governments. The military takeover of 1958 by Ayub Khan greatly damaged Pakistan's governance system as he introduced a



*Ms Birgit Lamm welcomed the participants*



constituency system that worked well at the local level, but became part of a pattern whereby military dictators supported local government to entrench their rule.

When a democratic government came into power in 1972, there was a certain hostility towards local government because politicians viewed the system as anti-democratic. During Zia-ul-Haq's dictatorship, local governments were again brought in to strengthen a military government. Pakistan's local government system had since been adversely affected by opportunism and neglect of elected governments. Mr Khan further noted that legislators had become unnecessary rivals to local governments in attaining development funds. He recommended that these funds should only be given to local governments, and that the legislators must be held accountable by assessing their legislative performance rather than development works they consume.

*Legislators had become unnecessary rivals to local governments in attaining development funds... these funds should only be given to local governments, and that the legislators must be held accountable by assessing their legislative performance rather than development works they consume.*

Dr Umair Javed, assistant professor of politics and sociology at the Lahore University of Management Sciences (LUMS), discussed the responsibilities of national, provincial and local governments. He said that Pakistan's administrative system was untenable considering the large size of the population. Citing the Brazilian model of local governance, he explained how local government was essential to a country's political architecture, and that political representation was an inalienable right, with local governments being best positioned to protect this right. However, he considered Article 140-A an inadequate safeguard for local



*Panelists of the first session*

governance since it did not specify form or tenure. He recommended a legal and political intervention to delink provincial governments' municipal and legislative responsibilities, redefine the roles of the federal and provincial governments, and subsequently empower the local government. He also said that the civil service structure should be reformed and bureaucracies strengthened at the provincial and local government levels.

Ms Fauzia Viqar, former chairperson of the Punjab Commission on the Status of Women, discussed women's meaningful participation in local government and the need to strengthen it. She emphasised the pivotal role of citizens in engaging and participating at every level of the government, and pointed out how the absence of women in local government made the entire system particularly faulty. Citing HRCP's study on women's political participation, she said that many key legislations were put into effect when women legislators advocated for the needs of the people. However, challenges in policy making, societal and institutional barriers kept women's participation at bay, particularly in parliamentary discussion where their input was deemed unimportant.

She recommended reserved seats for women as an essential interim measure to promote women's political participation and their graduation to elected membership, including at the local government level. She also said that political parties should encourage women to hold key positions, and that women should be given the chance to speak in assemblies without having their participation tokenised. Furthermore, women in local governments should be supported to enhance their experience of public dealing, and the discourse and narrative around women's participation in politics changed in a way that girls from a young age are encouraged to participate in politics. Ms Viqar concluded, 'Civil society and government play key roles in bringing about such changes in the institutional framework, and must do so to create the space necessary for women to work and freely participate'.

Dr Aziz Ahmad, professor of economics at the Balochistan University of Information Technology, Engineering and Management Sciences (BUIITEMS), discussed fiscal empowerment for local government. He said that there was a significant asymmetry between political decentralisation, which was



*Dr Aziz Ahmed emphasised fiscal empowerment for local government*



*Ms Fauzia Viqar talked about strengthening the meaningful involvement of women in local government*

*Poverty reduction techniques and other developmental targets could best be met through effective local bodies; hence, there was a dire need to legislate on their fiscal autonomy.*

constitutionally protected, and fiscal decentralisation, which was not defined in any clause of the Constitution at the federal, provincial and local levels. When the government amassed resources to rebuild after the 1971 war, this asymmetry was reflected in the National Finance Commission (NFC). Seven NFC awards made so far, but fiscal decentralisation at the local level was always overlooked in these awards. Poverty reduction techniques and other developmental targets could best be met through effective local bodies; hence, there was a dire need to legislate on their fiscal autonomy.

Pressure groups of political elites, civil and military bureaucracies emerged as a result of this asymmetry to take advantage of the situation by claiming their share and hindering the implementation of already existing provisions regarding local government. Dr Ahmad said that constitutional amendment regarding fiscal decentralisation would reduce gender, income and rural-urban disparities, along with legislation that enforced local government provisions, so that the economic rights of vulnerable groups would not be compromised throughout this process.





Article 140-A of the Constitution of Pakistan mandates provincial governments to tailor their own local government acts as per their local needs and requirements. Despite this constitutional obligation, effective local governments remain missing.

The panelists of the second session, moderated by political analyst Mr Tahir Mehdi, focused on the efficacy and implementation of the provincial local government laws. Chief executive of Ideas for Vision 2047 Mr Zafarullah Khan stated that Islamabad's local government system was instituted during Zia-ul-Haq's dictatorship. Under this system, the local governments only controlled rural areas while the urban region came under the Capital Development Authority's jurisdiction. This division of authority initiated a tussle for control between both institutions which remained unresolved. He pointed out that Article 140-A did not mention Islamabad's local government; he recommended a constitutional amendment to rectify this. He said that local governments should be able to make their own rules of business, and called attention to the unrepresentative nature of lawmakers; out of four senators representing Islamabad, only one belonged to the

## A provincial perspective on local government: Challenges and solutions

# SESSION 2



*The Constitution mandates provincial governments to tailor their own local government acts as per their local needs and requirements. Despite this constitutional obligation, effective local governments remain missing.*

*The second panel assessed the efficacy of the four provinces' local government laws*



capital city. The previous local government of the capital city largely remained non-functional due to the delayed ratification of its rules of business. Despite these hurdles, the local government of Islamabad proved to be a nursery of democracy as numerous local representatives later became members of parliament.

HRCP's vice-chair for Sindh Mr Qazi Khizar discussed the gaps in the Sindh Local Government Act 2013, stating that although the act provides for reserved seats for women, religious minorities, youth, farmers, persons living with disabilities and trans persons, these groups were barred from contesting under direct election after an amendment in 2015, which should not be the case. Numerous departments such as the Water and Sewage Board, the Solid Waste Management Board, the Karachi Development Authority, the police and traffic police remained beyond the local government's jurisdiction, reducing the efficacy of these departments. Moreover, the funds for both rural and urban union councils remained capped at Rs 500,000 per month despite a drastic difference in the populations and needs in both regions. Mr Khizar also pointed out how the voter lists for the recent elections contained errors in the names of over one lac voters which the Election Commission of Pakistan (ECP) rectified in September 2021 after the local government elections were over, and emphasised that 'correct voter lists and proper delimitation is impossible without a new census'. Mr Khizar suggested that the only way forward was political, administrative, and financial devolution to the grassroots level.

Ahmad Kundi, an MPA from Khyber Pakhtunkhwa (KP) Assembly gave an analysis of KP's local government system. He stated that the local government was best equipped to help deliver requisite services to citizens, and that 'the absence of a local tier of government burdens provincial legislators with local service delivery functions, thereby impacting the quality of laws being made'. He added that the 'one-unit' mindset persisted whereby fiscal resources were not devolved to local governments as they should be; even KP was not given royalty for its hydroelectricity projects as mandated in the Constitution. He recommended that constitutional issues and appellate function should not be dealt by the same courts; rather constitutional courts should be introduced. He also said that a local consolidated fund should be formed, on the pattern of a national consolidated fund, to enable financial autonomy.

Mr Mubeen Uddin Qazi, advocate Supreme Court, reviewed the various local government acts in Punjab leading up to the Punjab Local Government Act 2022. According to him, the 2001 ordinance for local government was the most effective one that defined the rules of business. Two elections were held under this law in 2002 and 2005, but in 2008, the new government attempted to curtail this law. When the government's term was completed in 2010, a new law was passed and implemented in

*Although the Sindh Local Government Act 2013 provides for reserved seats for women, religious minorities, youth, farmers, persons living with disabilities and trans persons, these groups were barred from contesting under direct election after an amendment in 2015.*



2017. Local government elections were held but the elected representatives were not empowered. This was challenged in the Supreme Court, leading to a landmark judgement in 2017. However, two years later, the Punjab Village Panchayats and Neighbourhood Councils Act 2019 and the Punjab Local Government Act 2019 were passed in which the panchayats (neighbourhood councils) were empowered to work as a separate institution, excluded from local government, at the grassroots level. This was an unconstitutional move, curtailing local government representation, and was challenged in the Supreme Court. The court then ruled in favour of elected representatives completing their terms, despite any changes in the law or attempts to dissolve local governments.

*In Balochistan local bodies lacked control over finances as the provincial government decided the amount of the local government budget and fiscal decisions were then made by secretaries heading various government departments.*

Mr Qazi said that direct elections had been mandated for women and minorities' representatives in the Punjab Local Government Act 2022, with reserved seats for farmers, traders and differently abled persons. Development authorities and eight provincial departments had been devolved, and special provisions had been made for conflict of interest to hold elected representatives accountable. Panchayats and community councils were allowed to function in cities and villages to address human rights violations. The only question that remained was that of the elections of local bodies. Mr Qazi recommended that local elections should take place on time to protect the continuity of local government and effective local administration. He also recommended that legislative powers should be delegated to empower local government to make bylaws. The ECP should further allow electoral groups to be registered if they cannot contest individually. Noting that the existing constitutional framework was not binding, Mr Qazi suggested that there should be a constitutional structure protecting local government, including their continuity and broader functions, so that no subsequent laws or amendments could encroach on their functions.

Dr Nasrullah Khan, chief executive of the Centre for Peace and Development, spoke about the need for greater political commitment to local government in Balochistan. He said that the Balochistan Local Government Act of 2011 empowered local government to perform municipal functions only if development work was carried out by the provincial planning commission through authorities such as the Quetta Development Authority. This act was ambiguous in nature as it gave two different forms of local government for rural and urban regions. He added that local bodies lacked control over finances as the provincial government decided the amount of the local government budget and fiscal decisions were then made by secretaries heading various government departments. He suggested devolving finances to local representatives instead of provincial legislators and holding third-party audits to augment accountability. He also recommended holding direct and party-based elections for local bodies, and said that both political and financial devolution were imperative for effective local administration

and governance, with a mechanism to oversee local governments' financial accountability and capacity building of local representatives. Finally, he suggested ending the provincial government's power to single-handedly suspend the local government and proposed that such decisions should be made by a joint committee of the local government, the provincial government and the bureaucracy.

In the question-and-answer session, Dr Bashir Hussain Shah, a member of the civil society, said that there should be proportional representation of marginalised groups in the local government. He also recommended that there should be a provision mandating a two-thirds majority for elected nazims rather than a simple majority. Mr Tariq Mehmood Ghouri from the National Commission for Justice and Peace (NCJP) remarked that adequate representation of religious minorities should also be discussed, particularly the use of the term 'non-Muslim' which was not preferable for Hindu and Christian minorities. Mr Bashir Raja from Azad Jammu and Kashmir (AJK) highlighted that AJK should have representation in parliament and an empowered local government. Ms Nayyab Ali, a trans rights activist, questioned the absence of reserved seats for transgender persons in Sindh local governments. Other audience members pointed out the under-representation of women in the Punjab assembly and committees.

Mr Mubeen Uddin Qazi responded that proportional representation meant that any candidate who lost the election by a few votes could actively participate as opposition in the panel. In response to the question about minorities, he replied that the word 'non-Muslim' had been replaced by 'minority' and the representative would be decided from direct elections, not on party-based nominations. Mr Qazi Khizar responded to the objections about the Sindh Local Government Act, conceding that non-inclusive language such as 'non-Muslims' and 'chairman' had been used. He also said that there should be an equal number of seats in both rural and urban areas. Dr Nasrullah Khan agreed that transgender persons should have adequate representation in all tiers of governance.



*Mr Ahmad Kundi provided KP's perspective on local government*





The third session focused on the perspective of political parties on local government and the reason for their reluctance to institute empowered local governments. Executive director of the Centre for Peace and Development Initiatives Mr Mukhtar Ahmad Ali, who moderated the panel, opened the session with an overview of the current state of local governments. He said that although the Election Act of 2017 mandated provincial governments to hold local government elections within 120 days of the expiry of the tenure of the outgoing local government, functional local governments were not present anywhere in the country: either these bodies were non-functional or their elections remained pending in different regions.

He argued that the local government in KP was frail with no district-level governance and a non-functional provincial finance commission. Amendments to strip local governments of their powers were made after the local bodies' elections in KP and it became the provincial government's prerogative to ascribe powers to local government as it deemed fit. Local government elections were still pending in Karachi, Quetta, and Lasbela. Punjab had amended its local government act five times since 2013, and the recent amendment was made without the opposition's assent. Such frequent amendments had fatigued bureaucrats, lawmakers as well as international non-governmental organisations that supported the law-making process.



*The panel for the third session examined how political parties viewed local governments in practice*

## Local government and reluctant political elites: Where do political parties stand?

# SESSION 3

*Punjab had amended its local government act five times since 2013, and the recent was made without the opposition's assent. Such frequent amendments had fatigued bureaucrats, lawmakers as well as international non-governmental organisations that supported the law-making process.*

*Local government was better suited to cater to the needs of marginalised communities, many of which live in localised clusters, than their representatives on reserved seats in the provincial or federal legislature. Minorities should not be restricted to reserved seats and should be allowed to contest elections on general seats.*

Ms Samar Haroon Bilour, the first female elected member of the KP assembly from the Awami National Party (ANP), called attention to the fact that the provincial government bulldozed the KP Local Government Act 2013 in the assembly to eliminate the district tier, and transferred powers to deputy commissioners. Elected officials were disenfranchised to strengthen the bureaucracy. She added that there should be a national consensus on how to move forward and institute efficient local government, and that 'without financial autonomy there is no devolution', thus the Council of Common Interest should summon a session on redistributing resources to bridge developmental disparities among federating units. She also called attention to the bureaucratisation of the service delivery mechanisms by pointing towards Peshawar's water and sanitation services: not only did this department burden the exchequer by drawing huge funding, but its officials also remained inaccessible to the public. She recommended devolving its function to the local level so that people could voice their grievances and concerns to the local stakeholders.

Ms Bilour further recommended that at least 30 percent of provincial developmental work should be carried out by local bodies to enhance their utility. Legal provisions should also be made for local councils and police liaisons for better policing. She argued that local government was better suited to cater to the needs of marginalised communities, many of which live in localised clusters, than their representatives on reserved seats in the provincial or federal legislature. Minorities should not be restricted to reserved seats and should be allowed to contest elections on general seats. She also recommended holding local elections directly and on a party basis so that constituents were aware of the broader political values of the representatives they voted for. She suggested amending the Local Government Act to discourage gerrymandering by disallowing the frequent redistribution of constituencies and shuffling of polling stations without a fresh census. She also called for the implementation of the 18th amendment in true letter and spirit, and constitutional amendments to empower marginalised groups to contest elections on general seats.

Mr Sibtul Haider Bukhari, incharge Pakistan People's Party (PPP)'s central secretariat, pointed out lapses in Islamabad's local government set-up, stating that incumbent local government representatives had no offices and the ECP had yet to publish the final voter lists for the local government elections scheduled for January 2023. Initially, a call for nominations for the said election was issued in June 2022 and the ECP published a voter list then. Later, another voter list was published as a call for nominations was issued again towards the end of 2022. He recommended that the publication of voter lists should be made in a timely manner with a proper delimitation of constituencies so that prospective candidates were aware of their constituencies. He also highlighted how the absence of local government forced national and provincial legislators to expend their energies in service delivery instead of lawmaking.

A recommendation for constitutional cover to prevent provincial assemblies from encroaching on local governments' functions was made by PTI's party election committee member Ms Fatima Haider. She also called attention to the conflict of interest whereby provincial governments were empowered to make laws regulating local bodies when the former stood to lose the most if the latter were empowered. Mr Ali Khurshidi, a Sindh Assembly member from Mutahida Qaumi Movement (MQM), said that powers had been centralised at the provincial level after Pakistan passed the 18th amendment. For devolution to



*The audience at the conference*

be effective, the census should be rectified so that voter lists and delimitations were more accurate.

Mr Attaullah Tarar, special assistant to the prime minister, from Pakistan Muslim League Nawaz (PML-N) attributed the failure of the evolution of local government systems to takeovers by unrepresentative forces. He said that devolution was nothing without evolution, and to date, there was a lack of conceptual clarity as to what were the functions of local government. Local governments had also failed to flourish owing to their inability to deliver. He recommended capacity-building training and exercises of an international standard to empower local governments. He added that there should also be an incentive-based, professional government service at the local level to augment the work of local governments. Highlighting that empowered local governments needed security of tenure, Mr Tarar further recommended that any legislation regarding local government should require a two-thirds majority in the provincial government so that local bodies were not easily suspended. Moreover, the degree of urbanisation in Pakistan mandated revisiting the nature of constituencies and changing them from rural to urban where needed. He recommended making these changes on the basis of the needs of the region and not the vested interests of decision-makers. Finally, political parties should empower grassroots representatives to rise to the top in local governments, rather than only people with connections to the provincial governments.





Former senator of Pakistan and HRCP Council member Mr Farhatullah Babar delivered the concluding address in a press conference. He said that local elections had long been overdue and were critical in times of need, such as during the Covid-19 crisis and recent floods. Adding that the legitimacy of the system depended on how it was implemented, he said that 'if citizens do not feel it is being implemented seriously, it loses credibility'.

He then summarised the recommendations discussed during the conference for empowering local governments and addressing the challenges to devolution as follows:

- Article 140-A is an inadequate safeguard for local governments. It should be more elaborately explained. Political parties must consider a constitutional amendment that envisages a separate chapter on local governments, determining their guiding principles.
- Provincial governments should not have the right to suspend local governments. The continuity of local governments should be protected by the constitution.
- Local elections should take place on time. The census must also be rectified so that voter lists and delimitations are more accurate.
- Local governments should be able to make their own rules of business.
- Provincial governments' municipal and legislative responsibilities should be delinked. Their mandate is legislation, not service delivery.
- Women should be part of local body policymaking committees. Parties should encourage them to stand for office. Women in local government need support and capacity building to enhance their experience of public dealing.
- Women, religious minorities, youth, farmers, persons living with disabilities and trans persons should not be barred from direct election to local governments.
- Only local governments should be entitled to receive and use development funds. This will stop corruption and bring in more genuine representatives.
- Financial devolution should be tied to the devolution of functions so that local governments have enough funds to efficiently perform their functions.

*Political parties must consider a constitutional amendment that envisages a separate chapter on local governments, determining their guiding principles.*







The conference was significant in that it marked the first time that all major political parties agreed on the need for a constitutional amendment to determine the guiding principles for local governments. Such reform is likely to be piecemeal. As momentum builds towards such an amendment, HRCP plans to capitalise on the gains achieved at the conference in the following ways:

*HRCP will conduct an in-depth legislative review of Article 140-A of the Constitution of Pakistan.* This will highlight lacunae in the existing legislative framework at the national level and its impact on local government laws at the provincial level. On the basis of this review, a constitutional amendment will be drafted and presented in the national legislatures to be debated in the House. HRCP aims to empower local governments and make them more inclusive and representative through the prospective constitutional amendment to Article 140-A.

*Using gender-sensitive language in legislation is instrumental in combatting stereotypes and bridging the gender gap.* To this end, HRCP's Legislation Watch Cell plans to conduct a detailed review of the language used in the Sindh Local Government Act 2013 and recommend amendments to make it gender-sensitive. This can serve as a blueprint for similar reforms to other provincial local government laws.

*HRCP will disseminate this report among national and provincial lawmakers and policy stakeholders.* This will apprise them of the importance of local government for a vibrant and truly representative democracy, constraints to the development of efficient, well-functioning local governments, and the stances adopted by various political parties on the issue. It will also lay the groundwork for developing future amendments to local government laws where required.

*HRCP plans to hold lobbying meetings with lawmakers at the national and provincial levels to rekindle debate on the need for immediate constitutional amendments.* This will call attention to the importance of local government for better governance and stronger democracy. This will prepare the ground for a constitutional amendment by sensitising lawmakers to the issue.

## The way forward

*This marked the first time that all major political parties agreed on the need for a constitutional amendment to determine the guiding principles for local governments.*





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