



NATIONAL GAS GOVERNANCE IN PAKISTAN

EVALUATION OF INSTITUTION AND PROCESSES

April 2013

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Natural Gas Governance in Pakistan
Evaluation of Institutions and Processes

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House 13, Street 1, G-6/3, Islamabad, Pakistan
Tel: 0092-51-111739739; Fax: 0092-51-2825336
E-mail: main@crdp.org.pk; Website: www.crdp.org.pk

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Foreword

Energy has a key function in economic growth of a country. Pakistan, in 2005 made a new policy that moved from a high cost electricity generation (Rs16-17/unit from furnace oil) to a relatively lower cost of electricity generation (Rs5-6/unit from gas). The incorporation of 43.5% natural gas in the energy production sector of Pakistan indicates its strong correlation with national economic development. The immediate challenge faced by the critical shortage of natural gas is of fundamental importance to Pakistan's economic growth and impedes all its efforts to raise levels of human development. Pakistan's present struggle with high prices, energy insecurity, and resource anxiety needs immediate rectification. Much of the problems associated with natural gas are attributed to poor governance as evidence mounts on the critical role good governance plays in determining well-being of the natural gas sector.

It would only be fair to state that good governance is perhaps the single most important factor in eradicating natural gas sector problems and promoting sector efficacy. However, a public policy issue where the heart of the matter is a problem of "governance" becomes defined implicitly as a problem of "government" with the corollary that the obligation for "fixing" it necessarily rests with the government. Governance, however, in its true spirit is a process whereby societies or organizations make their important decisions, determine whom they involve in the process and how they render account. Since a process is hard to observe, we focus our attention on the governance system or framework upon which the process rests- that is, the agreements, procedures, conventions or policies that define who gets power, how decisions are taken and how accountability is rendered.

Consumer Rights Commission of Pakistan (CRCP) in collaboration with Citizen Voice Project (CVP), US AID undertook the Natural Gas Governance Initiative (NGGI) in Pakistan. The initiative analyzed the governance of gas sector in Pakistan with the lens of four principles of good governance i.e. Transparency, Participation, Accountability and Capacity. Policy process, regulatory process, environmental and social concerns, and the role of CSOs and donors were analyzed during the course of this study. The findings and recommendations presented in this report would serve as benchmarks for improving gas governance in the country. Policy makers, planners, regulators, donors and CSOs may benefit from this report and align their efforts with the principles of good governance to improve the state of governance in Pakistan.

CRCP hopes that evidence generated through NGGI-Pakistan on various governance processes would greatly contribute to the effective engagement of

F O R E W A R D

civil society with the relevant ministries, government departments and regulators. This initiative is expected to facilitate improved governance leading to affordable, equitable and sustained supply of gas in Pakistan.

Abrar Hafeez

SECRETARYGENERAL

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CHAPTER | ONE

SETTING THE CONTEXT

1.1 Setting the Context

Oil and Gas, a source of great wealth for a nation, act as a catalyst for development. Over the last three decades, the unpredictable price fluctuations in oil prices have led to rapid growth in the consumption of natural gas. In Pakistan natural gas became an important component of the national energy basket. Because of this overall impact on the national economic development an effective and holistic oversight of the sector is essentially required.

Until 2002 the fuel mix in electricity generation remained in favour of imported furnace oil (oil prices in international market remained low, ranging between \$10-25/barrel). As a direct consequence of international events in 2003, the international price of fuel started rising and increased drastically. In 2007-08 heavy reliance on petroleum sector for tax revenue coupled with an unprecedented surge in international fuel prices and a sharp depreciation in exchange rate compounded difficulties for Pakistan. With a domestic production of 64,950 bbl/day of oil (in 2010) and a consumption of 410,000 bbl/day, the Country was pushed for obvious import of oil causing a burden on national revenue. For Pakistan the most probable option was to replace oil with natural gas as indigenous natural gas is considered to be the largest source of energy supply in Pakistan.

Natural gas also holds certain advantages over other indigenous fuels as it is relatively clean compared to crude oil and coal and also because the country met the demand of natural gas from its integral sources. Pakistan, in 2005 made a new policy that moved from a high cost electricity generation (Rs16-17/unit from furnace oil) to a relatively lower cost of electricity generation (Rs5-6/unit from gas). Indigenous natural gas therefore became the largest source of energy supply in Pakistan contributing 27.7 million tons oil equivalent (TOEs) (45.4%) in 2009/10, followed by oil products, mainly imports, at 21.3 million TOEs (34.9%), hydel power at 7.5 million TOEs (12.3%), coal, mainly imports, at 3.7 million TOEs (6.1%) and nuclear power at 0.8 million TOEs (1.3%). However, the share of natural gas allocated for power generation declined from 504 billion cubic feet (BCF) (43.5 %) in 2005 to 337.4 BCF (27.2 %) in 2011.

Reduction of 33.1 percent electricity in six years was observed due to an unprecedented allocation of natural gas to other sectors. The state-controlled natural gas sector was used for political leverage, resulting in over commitment of gas supply leading to natural gas shortages. Electricity generated from natural gas which stood at the peak of 43,472GWh in 2005 also declined drastically to 25,879GWh in 2011.

The importance of energy- security cannot be denied; it demands availability as well as affordability for the national economy's growth. As a direct consequence of mismatched policies Pakistan found itself in a severe energy crisis coupled with natural gas supply shortage which not only constrained present but future

economic growth as well. The present National crisis is also clearly indicative of an overall governance crisis of the natural gas sector. Debate in the technocratic circles has been going on for quite long to determine the nature of problems and suggest solutions. The same debate has been covered extensively by media in recent years but unfortunately these debates have been unable to provide a clear road map to overcome the situation. This calls for going beyond the routinely suggested technocratic solutions and having a deeper look at the overall governance of the sector. Issues like prioritization of modes of gas production, issuance of licenses, determination of tariffs, oversight by an independent and effective regulatory body, and transparency in decision making by the legislators, regulators and by the executive need to be thoroughly analyzed.

Policymakers, regulators, citizens, and the international community are grappling with the challenges of providing access to reliable and affordable natural gas , but fundamental questions of public interests and sustainable development have not been adequately addressed. The institutional norms at all levels are relatively impervious and all demands for overall sector efficacy are severely hampered by the deep rooted structural and operational impediments . Analyzing natural gas sector from the lens of good governance addresses many of these challenges.

CRCP undertook the Natural Gas Governance Initiative-Pakistan (NGGI-Pak) with the aim of critically examining the natural gas governance in Pakistan. This indicator based methodology has been devised to accurately assess the situation of gas governance in the country. The NGGI- Pak research approach enables a detailed diagnosis of key strengths and weaknesses in governance. This approach makes the case for greater attention to governance through the processes, institutions, and actors that determine how decisions are made to assess policy and regulation using a common framework to define “good governance.” The analysis presented in this report is based on EGI-toolkit a unique collaboration of civil society, policymakers, regulators, and other electricity sector actors.

1.2 Application of Indicators in Pakistan

The dichotomy of the present crisis at one end points to prudent macroeconomics management mechanism and remedial analysis focusing on government policy, expenditures and tariff issues for rectification and at the other it needs a review through the critical lens of good governance focusing on accountability and transparency of the natural gas sector that failed on the whole. In the current natural gas crisis the gravity of the mismanagement can be realized through the fact that the overall economy has stagnated. This poor governance of natural gas and power sector has now entered into stagflation, which is the worst-ever experienced by Pakistan. Pakistan Natural Gas Sector has been dominated by three main actors i.e. the legislative Committees , Ministry of Petroleum and Natural Resources (MoNPR) and Oil and Gas Regulatory Authority

(OGRA). NGGI-Pakistan carried out the assessment of all these actors on key principle of good governance i.e. 1) transparency and easy access to information 2) public participation 3) the effectiveness of public accountability and redress mechanism and 4) capacity of actors of the natural gas sector.

The toolkit weighs the processes by which decision-making is taken in the sector through prescribed elements of quality. A total of thirty three indicators have been selected from EGI framework to assess the gas governance aspects and these indicators have been divided in three sections with respect to policy processes, regulatory processes and environmental and social issues. Following four basic principles of good governance are addressed by these indicators

- Transparency and access to information.
- Public participation.
- Accountability and redress mechanisms.
- Capacity of government to practice good governance & ability of civil society to engage in decision making.

The policy and regulatory processes and relevant institutions have been examined under these thirty three priority indicators relating to Policy Process (PP) , Regulatory Process (RP), and Environmental and Social issues. The indicators were methodologically evaluated on the basis of elements of quality defined by the toolkit for each indicator. NGGI-Pak adopted a pure fact finding approach through first hand interviews and information gathering based on legal instruments, reports, websites and published materials. Assessments conducted against elements of quality of different indicators were ranked from low to high. Every indicator assessed has been graphically presented in the study on a six point scale ranging from Not Applicable (“NA”) to “High” while other rating grades being low, low-middle, medium, and medium-high. In order to discuss the initial findings, five policy dialogues were conducted in Islamabad, Karachi, Lahore, Peshawar and Quetta for wider consultations with the stakeholders, with the help of this assessment. NGGI-Pak underscores the role of different players in the policy process ranging from executives to the general public, elected representatives and Civil Society Organizations (CSOs).

The study has been organized in four chapters. First chapter gives a brief introduction to the NGGI-Pak and the toolkit used for assessment along with a summary of the institutional framework of gas governance in Pakistan offering background knowledge on the sector and setting the premise for better understanding. The second chapter gives an analysis of the policy processes in the natural gas sector in the light of fourteen indicators and their respective elements of quality. Areas like institutional mechanisms and their efficacy, policy formulation, and implementation of policies have been analyzed. Chapter three provides insights into the regulatory processes and takes into account the structure and working of the regulatory body, decision making processes

adopted by the regulator, and its operations. Fifteen indicators of the toolkit have been employed in this chapter. Moreover, four indicators have been used to study the environmental and social aspects of gas projects. Final chapter of the report draws on the analyses of earlier chapters and suggests a course of action for improving natural gas governance in Pakistan.

SUMMARY OF THE NGGI-PAK INDICATORS

Table of Indicators		
A - POLICY PROCESSES		
Capacity		
PP 1	Legislative Committee Capacity	
PP 3	Independence of Energy Department / Ministry from the Executive	Priority Indicator
PP 6	Distinct planning / policy agency	
PP 13	Capacity of Civil Society Organizations	Priority Indicator
Transparency		
PP 8	Role of donor agencies during policy reform	Priority Indicator
PP 9	Clarity on process for decision-making on reforms or policy change	
PP 10	Scope of background / supporting information available to the public	Priority Indicator
PP 18	Process of privatization and bidding	Priority Indicator
Participation		
PP 14	Quality of the public participation process during reform or policy decisions	Priority Indicator
PP 5	Advisory Committees to the Natural Gas Ministry	Priority Indicator
PP 15	Quality of participation by stakeholders and government responsiveness	
Accountability		
PP 2	Legislative Natural Gas Committee	Priority Indicator
PP 4	Annual reports of the Natural Gas Department / ministry	
PP 7	Debate on reform / restructuring law or other key policy change law	Priority Indicator
B - REGULATORY PROCESSES		
Capacity		
RP 1	Institutional structure for regulatory decisions	Priority Indicator
RP 2	Authority of the regulatory body	Priority Indicator
RP 3	Functions / Jurisdiction of the Regulatory Body	Priority Indicator
RP 11	Pro-activeness of the regulatory body	Priority Indicator
RP 16	Capacity building of weaker sections / stakeholders	
Transparency		
RP 4	Selection of regulatory body members	Priority Indicator
RP 12	Disclosure of documents in the possession of the regulatory Body	Priority Indicator
RP 13	Procedures for Public Access to Regulatory body documents	Priority Indicator
RP 10	Procedural certainty about regulatory process and decisions	
RP 20	Periodic performance reports by licensees and utilities	
Participation		
RP 14	Space for public participation in the regulatory process	Priority Indicator
RP 15	Institutional mechanism for representation of the interests of weaker sections / stakeholders	Priority Indicator
RP 17	Interventions by civil society in the regulatory process	Priority Indicator
Accountability		
RP 18	Orders and decisions of the regulatory body	Priority Indicator

RP 23	Consumer service and quality of supply	
C - ENVIRONMENT AND SOCIAL ISSUES		
ESA 1	Clarity of authority and jurisdiction to grant environmental clearances / approvals for power sector projects	Priority Indicator
ESA 6	Legislative committees' capacity to assess environmental and social issues	Priority Indicator
ESA 7	Public participation in setting minimum environmental performance standards	
ESA 12	Regulatory response to environmental and social petitions or complaints	Priority Indicator

1.3 Mapping the Natural Gas Sector

Before 1947, the petroleum industry had remained solely in the hands of the private sector and the pattern remained unchanged thereafter. Soon after independence Pakistan discovered major deposits of natural gas in Baluchistan which were rapidly developed, laying the foundation for a gas-based energy economy. The natural gas is now reaching 50% of the primary energy mix. All the four provinces contribute to production of oil and gas but there is a great asymmetry in the share of production, with Sindh dominating both oil and gas production; Balochistan produces 20% of the country's gas, which makes the commodity very important for such a thinly populated province (19 persons per square kilometer).

Ownership of petroleum on shore is implicitly with the provinces but they have almost no say regarding management control and the fiscal regime. Still in such a highly centralized federation, the provinces get all the benefits of oil and gas production that come in the form of the royalty, the excise duty on gas, and the gas development surcharge. The National Economic Council (NEC) reviews the overall economic conditions of the country and advises the federal and provincial governments to formulate plans in respect of financial, commercial, social and economic policies. It comprises the Prime Minister as Chairperson and the provincial chief ministers as members among others.

Upstream petroleum functions are managed centrally by the federal government through the Ministry of Petroleum and Natural Resources. Until 2000, the Ministry used to obtain a no-objection certificate from the concerned provinces before signing exploration licenses on behalf of the President of Pakistan. This was to keep the provincial governments in the loop and to address environmental and security concerns. This practice was changed when a free acreage map was introduced to eliminate delays in the award of licenses. Provinces are now consulted in finalizing the free acreage map and thereafter the Ministry can award licenses without seeking their no objections.

1.3.1 Policy Environment

The Constitution is not explicit regarding the ownership of natural resources. The Federal Legislative List Part-I gives the power to tax oil and gas exclusively to the federal government and the Federal Legislative List Part-II gives administrative rights to the federal government. While nothing is said about ownership rights, it is abundantly clear that the federal government has jurisdiction to control, manage and regulate the exploration and production of mineral oil and gas and to fix and levy taxes on their production. However, all entries in Part II of the Federal Legislative List, provinces have to be involved through the Council of Common Interests (CCI) in formulation of regulatory policies under Articles 153-155. The jurisdiction for petroleum exploration, production, development, control and regulation is exercised by the federal government through the Policy Wing of the Ministry of Petroleum & Natural Resources, which has Director Generals for petroleum concessions, natural gas, oil and special projects; together they regulate the upstream petroleum sector. Whereas the Oil & Gas Regulatory Authority, has been created under the 2002 Oil and Gas Regulatory Authority Ordinance with an aim to foster competition, increase private investment and ownership in the midstream and to regulate the downstream prices of oil and gas to consumers; it is required to carry out public hearings of the stakeholders with an aim to provide efficient and effective regulation.

Natural Gas Allocation and Management Policy, 2006

During 2005-06 the Government announced natural gas allocation and management policy to set out priorities for use of natural gas in an optimal manner and also to manage demand during short supplies in an economically efficient manner. Different sectors are prioritized as under:

Category of consumery	Priority order
Domestic and Commercial Sectors	First
I. Fertilizer	
II. Industrial	Second
Independent Power Plants as well as WAPDA and KESC's Power Plants with firm gas supply commitments under GSAs	Third

I. General Industrial Sector	Fourth
II. CNG Sector	
III. Captive Power (for export-oriented textile units)	
WAPDA and KESC's Power Plants (other than those included in Third Priority order)	Fifth
Captive Power Sector (other than that for export-oriented textile units)	
Cement Sector	Sixth

Regulatory Framework

Under the heterogeneous factors influencing the policy making process, the constant need for expertise and/or technocratic legitimacy demands the decision makers to rely on specialized regulatory agencies, which by virtue of their special technical knowledge and strategic placement are best suited to intensively and positively incorporate the relevant stakeholders, in the course of the decision-making processes. In Pakistan Oil and Gas Regulatory Authority OGRA was established in 2002 as a key element in the natural resource and energy sector paradigm

Regulatory process is an important mechanism to ensure that economic, financial, social and environmental performances are aligned into the natural gas sector's functions. One of the most important functions of the regulatory process is to balance the interests of the various stakeholders_ investors, workers and consumers

1.3.2 Powers and Functions of OGRA

Gas Regulatory Authority (OGRA) has also been mandated to foster competition, increase private investment and ownership in the midstream and downstream petroleum industry, protect the public interest while respecting individual rights and provide effective and efficient regulations.

In addition to other powers and functions, the authority is responsible to grant, issue and renew licenses for regulated activities, administer, enforce and certify standards for undertaking any regulated activity, determine rate of return for licensees and determine wellhead price for the producers of natural gas in accordance with the relevant agreement or contract etc. Exclusive power to grant, amend or revoke licenses for regulated activities and enforce compliance of license conditions to promote efficiency, cost effectiveness, best practices, high safety and service standards etc. The regulated activities are:

- **Natural Gas**
 - i. Construction or operation of pipelines or storage

facilities or other installations

- ii. Transmission
- iii. Distribution
- iv. Sale of Oil
- v. Construction or operation of refinery, pipelines, storage facilities, blending facilities and installations
- vi. Marketing and storage of refined oil products
- ***Compressed Natural Gas (CNG)***
 - i. Construction or operation of installations including testing or storage facilities
 - ii. Transporting, filling, marketing and distribution

Formulation of Rules & Regulations

OGRA Ordinance requires the Authority to formulate rules and regulations vide sections 41 and 42. The rules are to be approved and notified by the Federal Government, whereas the regulations are to be approved and notified by the Authority itself. Rules and regulations are fundamental legal instruments for carrying out the Authority's functions as provided in the Ordinance. One of the fundamental instruments i.e. the Natural Gas Licensing Rules, were framed under the former NGRA Ordinance and notified in Feb 2002.

1.3.3 Previous Policies

In 1991, GOP introduced the first petroleum Policy document. This was then followed by new Petroleum Policies of 1993, 1994, 1997, 2001, 2007 and 2009. Whenever previous policies were superseded by a subsequent Policy document, the existing rights granted under licenses/Petroleum Concession Agreements (PCAs) / Production Sharing Agreements (PSAs) were not affected.

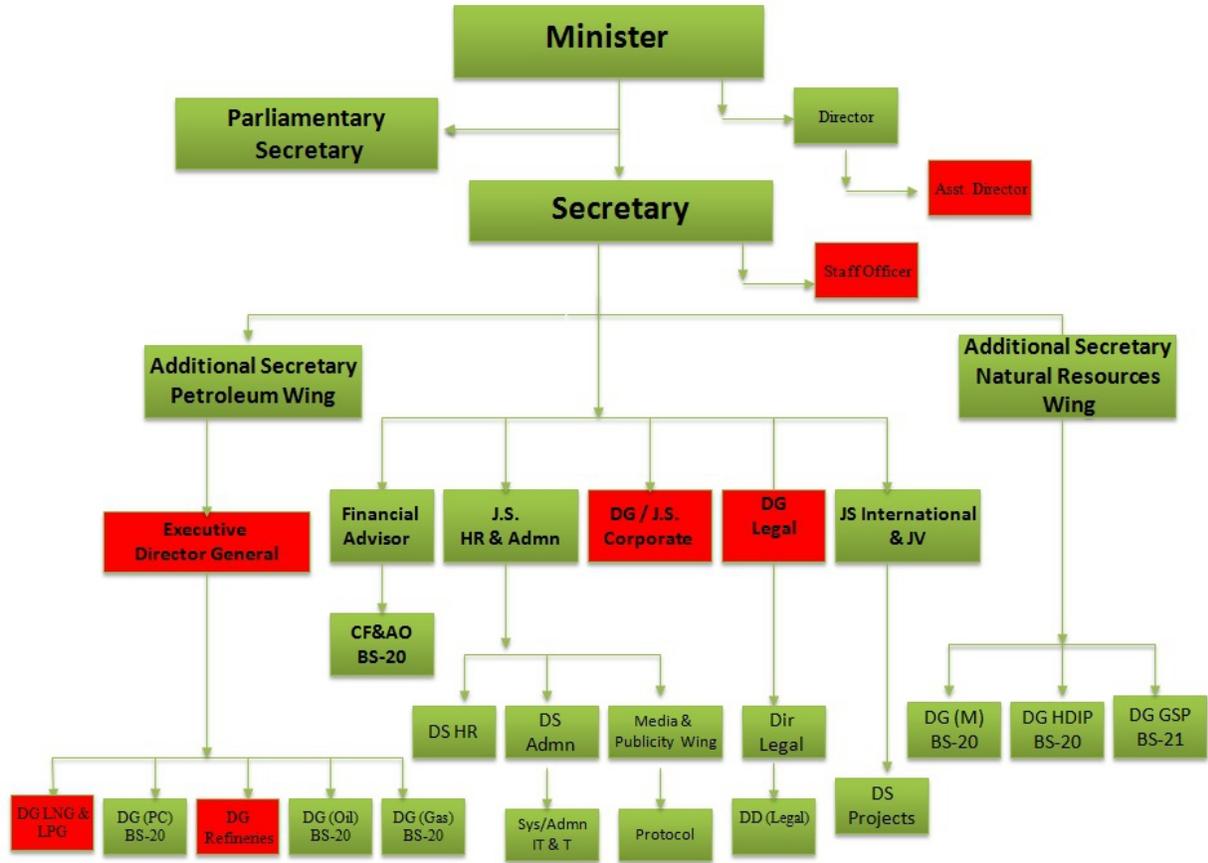
The 1997 Policy, while preserving the provisions of the 1994 Policy with respect to onshore areas, introduced a new offshore package of terms based on production sharing arrangements. Under the 1997 Policy, existing license holders in offshore areas were given an option to convert their concession agreements into Production Sharing Agreements (PSAs). The 1997 Policy was replaced in 2001 by Petroleum Policy 2001, coupled with Petroleum (Exploration and Production) Rules 2001, a model offshore Production Sharing Agreement and a model onshore Petroleum Concession Agreement. In 2003, a revised model offshore production sharing agreement was introduced complemented by the Offshore Petroleum (Exploration and Production) Rules 2003.

Policy 2009 had to be amended by the Petroleum Policy-2012 as the new market conditions warranted urgent changes required for investment promotion in view of increasing international energy prices. It also reflects the resolve of Government of Pakistan to accelerate exploitation of indigenous natural resources by attracting foreign investment with technology as well as promoting local companies to participate in E&P activities on a level playing field.

There has been paradigm shift in the natural gas scenario due to higher trend of consumption of natural gas in the country as overall energy requirement was changing so therefore there was great need to bring new policy with additives. The purpose of this Petroleum Exploration and Production Policy 2012 is to establish the policies, procedures, tax and pricing regime in respect of petroleum exploration and production (E&P) sector.

1.3.4 Institutional Arrangement

Ministry of Petroleum & Natural Resources is responsible for overall strategic planning of the Oil & Gas sector. The responsibility of planning is shared by the Planning Commission of Pakistan which in consultation with the Ministry undertakes long term plans for development in the oil & gas sector. Although recommendations made by the Planning Commission are not binding on the Ministry, yet its role as the apex planning body headed by the Prime Minister of Pakistan is important in steering the direction of development in the sector.



* NEW POSITIONS

CHAPTER | TWO

THE POLICY PROCESS

2.1 The Policy Process

Pakistan adopted an energy policy in 2005 that made natural gas as the prime energy source feeding into five highly critical sectors of national economy. Natural Gas is extensively used in the energy, agriculture and transportation sectors in addition to its wide use in the households. However, there is a wide variance in the price of natural gas in all these sectors. Some sectors are sold gas at highly subsidized rates while the same gas is sold to other sectors at much higher rates. According to the feed stock, tariff of the fertilizer sector is Rs. 60.67/mmbtu whereas the same gas is sold at a rate of Rs. 618/mmbtu to the CNG stations. The myth why the pricing of this precious indigenous resource was not based on the principle of scarcity and optimal utilization baffles experts. This scenario requires a major policy revision for the country given its state of development and existing imbalances in different energy sources and consumption patterns.

NGGI-Pak looked into gas governance right from the formulation of policies up to their implementation. Out of 33 indicators given in the NGGI toolkit, 14 priority indicators were employed to analyze the efficacy of policy process in gas sector of Pakistan. This chapter deals with the findings of application of NGGI toolkit indicators under the four principles of good governance i.e. transparency, participation, accountability and capacity.

2.1.1 Transparency in Policy Process

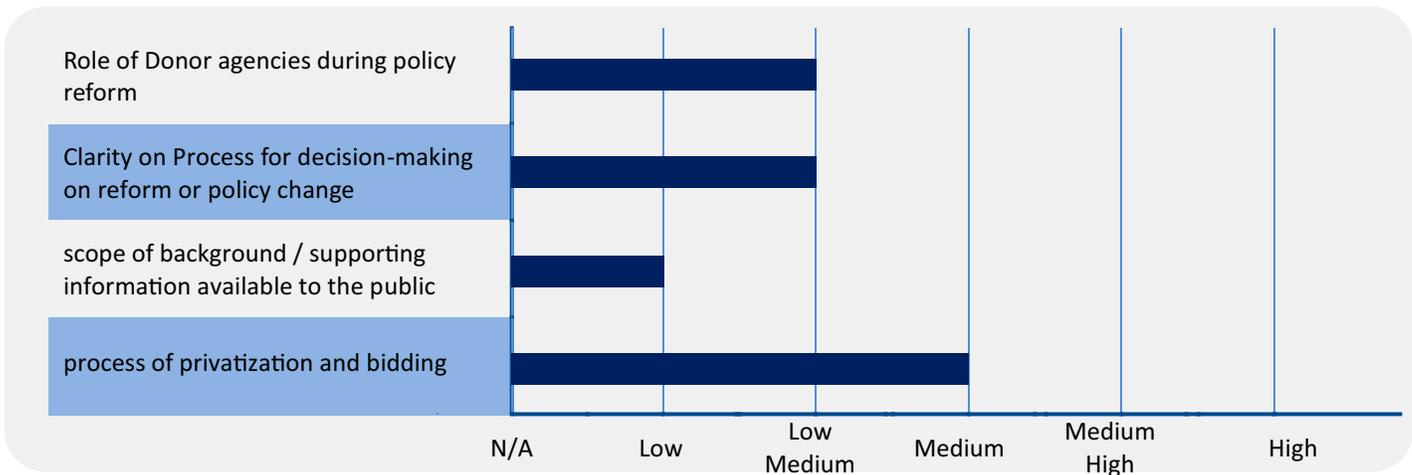
At the highest level, policies are formulated by legislature. However, in informing and shaping these policies, executive, donors, and Civil Society Organization (CSOs) also play their role. For that reason, it is pertinent to examine the role of these institutions, with respect to the principles of good governance, in policy formulation.

2.1.1.1 Transparency in Policy Formulation Process

Policy formulation process was evaluated by NGGI-Pak by three indicators, i.e. 1) Clarity on process for decision-making on reforms or policy change 2) Scope of background / supporting information available to the public and 3) Role of donor agencies during policy formulation. Results of the assessment indicated that there is no formal requirement to ascertain public opinion during any stage of policy making and consultation is only done with the concerned division of the government. Therefore, policies are largely formulated behind closed doors in Pakistan with minimal public consultation. As per provision found in rules of business, each ministry/division is only required to publicize the information on the progress made by it and its attached departments

during the year through year book. However, public access to official documents remains limited; as most of the departments neither follows the policy of proactive disclosure nor entertain information requests other than through the year book.

Fig 2.1 Transparency in Policy Process



2.1.1.2 Role of Donor Agencies during Policy Reforms

Donor agencies play an important role in initiating and promoting reforms. They may stimulate reform; require it through loan conditions; or may endorse a government’s decision to reform; and seek commitment to that decision through loan conditions. Donors typically play a larger role in initiating policy change in Pakistan. The four conditions for transparent donor engagement must include:

- Publicly availability of Information about donor positions on policies in the Natural Gas sector.
- Loan documents that include ‘binding conditions’ on loan disbursements should be publicly available at the time of decision-making and also during the period when the loan is active.
- Information about financial disbursement relating to loan conditions, amount of disbursement, whether disbursement is withheld, and why must also be publicly available.
- Availability to public of information regarding lists of projects, project documents, details of technical assistance and outreach.

Considering that the funding for consultants generally comes from the donor agencies, there is also a greater need for transparency and accountability with regard to the use of consultants.

The transparency in the role of donor agencies is rated “low-middle”. Donor agencies tend to share part of the information regarding their positions on points of engagement however very limited information is available with regard to whole extent of technical assistance and their relevant terms. Major donor agencies are found to share documents covering conditions of loans/assistance and disbursement through their websites. Conversely, no such information is disclosed to public by governmental bodies.

2.1.1.3 Clarity on process for decision-making on reforms/ policy change

Policies are expected to cater for a wide range of interests of the stakeholders. Therefore it is critical for these stakeholders to know in advance how the processes of public input are structured and how they can make positive contribution in the process of decision making. Effective participation requires that stakeholders and public must have a clear understanding as to which institutions/agencies will make decisions, the time-frame for making these decisions and the format adopted well in advance.

In order to assess the practicality of this, eight elements need to be present in a well-defined process of decision making;

Institutional Level

- Clear understanding of the institutions or agencies that make decisions.
- A proper laid out time-frame for making decisions, well in advance.
- Clearly defined format for decisions.
- Provision for a system for documenting the process.

For Public

- The time-frame for public input is communicated and provides reasonable time for comment.
- Specification of how public input will be used

Feedback Mechanism

- Anticipation of how and when will feedback be provided

- Specification of a mechanism for recourse

Information availability and consultation processes are determined on an ad hoc rather than predictable basis. When applied, this indicator suggests that, at the stakeholder level, there is asymmetric understanding of how the decision process unfolds. The stakeholders that are consulted are major interest groups, most are politically supported and well aware of the process. In the absence of any transparent, mandatory, time bound, institutional process to consult public inputs before and during the policy process, the role of input from consumers and other stakeholders remains ambiguous. The weak stakeholders/ public with insufficient understanding of the policy process are unable to put forward their inputs. Weaknesses in the decision making processes are reflected in institutional weaknesses.

The problem of insufficient opportunity for public deliberation on key policy issues is made worse by a pattern of weak information sharing.

Case Study LPG Policy

The government prepared the LPG (Production & Distribution) Policy 2012 that covered LPG production as well as its import. It also addressed the issues of LPG utilization in the automotive sector. Initially LPG draft policy was drafted on 2011 later in July 2012 a new draft Policy was made by the Ministry was Petroleum and Natural Resources. The draft policy also stated that the government will charge a Petroleum Levy from local LPG producers as provided in Petroleum Levy (Petroleum Products) Ordinance, 1961. Economic Coordination Committee (ECC) of the Cabinet approved the LPG (Production and Distribution) Policy Guidelines on January 1, 2012.. The ECC, which met under the chairmanship of Federal Finance and Economic Affairs Minister Dr. Abdul Hafeez Shaikh, approved the LPG (Production and Distribution) Policy Guidelines, 2012, submitted by the Ministry of Petroleum and Natural Resources. This was more of a closed door affair and no minutes of the meeting were circulated to stakeholders. Financial or technical data in support of the decision was also not shared with the public. There is also no record of public consultation or public review of the suggested policy.

The approval of the summary is in continuation with the decision by the ECC, which considered the draft LPG (Production and Distribution) policy 2012 at a meeting held on October 23, 2012, asking the Ministry of Law and Justice to furnish detailed comments on the draft, but no other stakeholders were involved in the process. The Ministry of Law and Justice endorsed the draft which was subsequently placed before the ECC for approval. As a result of this one sided process the government would be able to impose petroleum levy, a tax on locally produced liquefied petroleum gas under the approved LPG policy, which would increase its

prices in the country.

2.1.1.4 Scope of background/ supporting information available to the public

The need for background documents to provide the information base for decision-making is very fundamental. These documents include the documents presented by the government as well as those presented by the stakeholders in their defense. Since these documents lay the base for policy formulation, their availability for public scrutiny is important for several reasons: an assessment of whether the decision was informed; whether the knowledge base was skewed toward one or other set of interests; and whether the decision was consistent with the knowledge base or ultimately dictated by any one of interest groups over actual fact.

While there exists a legislative committee to provide oversight, it has weak internal safeguards against conflict of interest, the non transparency of the process is further compounded by a culture of secrecy which limit the scope for any external checks. The executive branch relies on advisory committees of experts, which themselves are also non-transparent in their functioning. The biggest lacuna is the use of consultants who may considerably shape policy, but whose work is not subject to external review or scrutiny. At all these nodes of information generation and policy formulation no legal or institutional mechanism compels for incorporating public or consumer perspective.

The full breath of the scope cannot be covered without incorporating government documents as well as the stakeholder and public views. The best practice requires that information should be made available to the public with reasonable lead time *prior* to decision making. There was no evidence of complete documents posted on any website, neither were they readily produced on demand from the line ministry.

2.1.2 Participation in the Policy Process

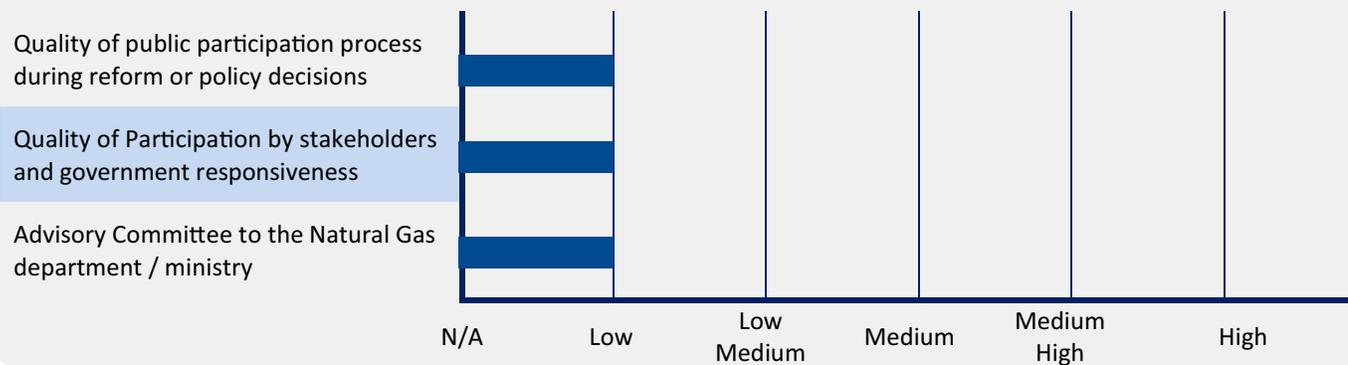
Public participation in policy process is essential for promotion of good governance. Moreover, it adds to the ownership of a policy by the relevant stakeholders, which results in more positive impact of such policies.

Understanding the Natural Gas, which has traditionally operated as a monopoly, requires a fair knowledge of certain technical concepts, as well as a grasp of the economics of a market. Other than a handful of key actors in government, the media and civil society, the time required to develop a clear understanding becomes too much to bear, as a result reliance on a few key actors among these institutions and organizations to “carry the ball” for them continues. Such are the circumstances.

Public participation allows for otherwise marginal voices to be heard and interests to be represented, provides an avenue for civil society input, and affords a check against abuses. To be effective, however, public participation cannot be symbolic alone. It must be structured carefully so as to provide a realistic mechanism for broad participation. However, impact of policies having minimal public participation in policy process is not expected to be positive.

Effectiveness of public participation process, public disclosure of information on the basis and goals of policy reform, and clarity of process for public participation in policy making are examined hereafter.

Fig 2.2 Participation in Policy Process



2.1.2.1 Advisory Committees to the Department/ Ministry

The line ministry appoints one or several advisory committees to assess particular matters of policy-making. These advisory committees may be useful vehicles to bring in additional expertise or stakeholder views. However, the same may also perpetuate bad advice and turn out to be a vehicle for undue influence, or serve simply to provide legitimacy to a decision already taken as was done in the case of Compressed Natural Gas and as is expected of Liquid Petroleum Gas (LPG). It therefore becomes important to look at the structural features of such committees to establish whether or not they are likely to serve a productive role. *Wide and balanced representation* from all stakeholders, especially public interest groups and sufficient discretion is required to avoid becoming a rubber-stamp of a decision that is already taken. In case of technical issues the need for public interest group cannot be ignored and committees should ideally include representation from technically proficient public interest groups.

An advisory committee attached to the MoPNR has two structural features for effective functioning. There is no knowledge or

announcement of the schedule of meetings of such committee and frequency of such meetings to ensure serious debate remains dubious. Public disclosure of 'minutes of the meeting' to accredit valuable discourse are usually pre-prepared and their circulation to public is avoided. Public, therefore, remains blind to the complete information about how the deliberations and findings of the advisory committee are utilized.

The financial reporting and progress, with respect to Ministry of Petroleum and Natural Resources, is available through the annual report of the Ministry. These financial reports are the singular points where details of project costs, administration / establishment charges, equipment expenses, consulting expenses, and details of subsidies and grants are made available in the budget books. Review of ongoing projects as well as future course of action are also available in the annual report of the Ministry but these do not qualify as unbiased source of information. These reports are also not prepared regularly.

2.1.2.2 Quality of Public Participation Process during Policy Decisions

The policy-making process in Pakistan retains an overwhelmingly expert driven flavor, revealing negligible elements of a transparent and participatory policy-making in the natural gas sector. Recently the draft LPG policy was available on the net however, no comments or public inputs were solicited for that. This indicator measured public participation against the following eight elements of quality :

- Public notification of the process
- Registries or records of policies, strategies, plans, programs, or laws are accessible in more than one public location.
- Communication of draft decision within one month
- Wide use of several diverse communication tools to reach a broad range of stakeholders.
- Adequate /reasonable time for public consideration and preparation of positions
- At least two or more opportunities for consultation and feedback
- Clear communication on the results of public participation within three months of the decision
- Systematic Outreach to affected and vulnerable communities

There is room for sending a policy to relevant ministry or consulting different ministries having a stake in that particular policy to get their inputs. However, inputs from public are not solicited.

No established mechanism to solicit public views was ever put in place. There is also no time limit set for policy decisions to be taken by Cabinet, which implies that Cabinet may take as much time as it requires in attending to or finalizing policy decisions.

Under Rules of Business 1973, Federal Cabinet is responsible for decision making regarding all policies. However, in the rules, there is no provision to incorporate public participation or public views in policy formulation process. Members of the committees are mostly drawn from the government departments with a few other stakeholders from private sector thrown in. However, consumer representation is usually missing. Quality of public participation was therefore rated low with missing elements of quality.

2.1.2.3 Quality of participation by stakeholders and government responsiveness.

Inclusion of a well structured public participation space is like a glass half filled. All participatory processes need to be reciprocated by the decision makers by incorporating the inputs in the final decision making. There are essentially two key elements in measuring the quality of participation; quality and breadth.

Stakeholder participation in policy is limited to state governments, regulators and occasionally a few NGOs. For a substantial piece of legislation or policy at least ten (10) submissions are considered as indicative of reasonable participation. As a rule of thumb, sufficient breadth is indicated if at least 20% of the comments or five strong comments are submitted from non-industrial groups like Public interest NGOs, labour organizations, consumer groups, and other sectoral consumers such as housewives, farmers etc. Strong interest groups usually intervene with their team of auditors and lawyers whereas the majority of stakeholders and consumers fail to present themselves adequately firstly because they are seldom consulted at the time of policy formation to discuss the case and secondly they lack the technical capacity to debate the issues and most of their argument is rhetorical comments that points to general dissatisfaction.

Official circulation of the draft document to elicit feedback is usually done within the ministry or line department as full scale participation from stakeholders is not mandatory. Discussions are often held with

state governments, utilities, regulators etc but formal notification to public for participation in the process was often missing.

Case Study

It was learnt that a complete record of the legislative debates for a particular session of National Assembly/Senate is transcribed, which are also available on the websites of National Assembly and Senate. However, these debates are not maintained on the basis of subject/sector. On the other hand, access to the record of proceedings related to standing committees was denied and the record is not available even on the websites.

2.1.3 Capacity of the Policy Process

In any democratic political framework, legislative bodies play a critical role by defining macro policies within which the executive, regulatory bodies and all other stakeholders operate. Since not all legislators can be expected to focus equally on all issues, the Legislative Committee process is an important mechanism that allows for detailed scrutiny of specific sectors and issues. Capacity of the legislature, executive, planning body and CSOs was examined under 4 indicators i.e. capacity of legislative committee, effective functioning of legislative committee, effective functioning of distinct planning body, and capacity of civil society organizations. Findings of each indicator are shared hereafter.

2.1.3.1 Standing Committees of the Parliament

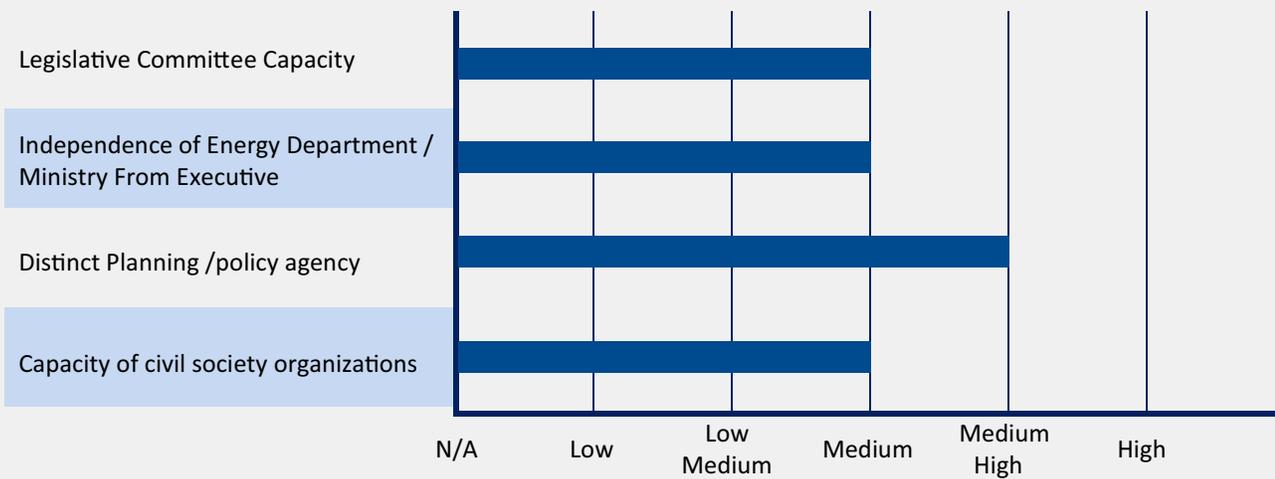
All legislators cannot be expected to focus equally on all issues, the Legislative Committee process therefore becomes an important mechanism that allows for detailed scrutiny of specific sectors and issues. The Standing Committees are constituted as soon as parliament is constituted and continues through the life of the House.

Members of the legislative committee were interviewed to gauge their capacity and functioning along with the examination of documents. It was learnt that Standing Committees on petroleum and natural resources are in place in both National Assembly and Senate, and these committees are empowered to go into all matters of the Ministry. A matter can be remitted to a standing committee by the Speaker. The committees have also been empowered to invite or summon before them any member or any other person having a special interest in relation to a matter under their consideration and may hear expert evidence and hold public hearings. However, the results of the assessment indicated that usually only government officials are present. This highlights the need of engaging experts from relevant fields for better understanding and evaluation of issues taken up by committees. Staff and documents:

The assessment showed two required elements that is relevant documents and resources are completely accessible for the members of parliamentary committees. They also have absolute authority to seek information on issues at hand by engaging representative and government officials. Due to availability of dedicated staff for committees other than for coordination purposes, the documents and resources are accessed through the staff of the concerned ministry. Dedicated financial resources have not been provided to any committee of the parliament.

To fulfill the research requirements of the members of parliamentary committees, a research cell has been set up in the parliament house where members submit the requests for studies and researches. Members of relevant legislative committees emphasized the need for their knowledge enhancement.

Fig 2.3 Capacity in Policy Process



2.1.3.2 Independence of Ministry from the Executive

The affairs of the Natural Gas sector come under the Petroleum and Natural Resources Ministry. The staff of this line Ministry is charged with implementing the legislative decisions. They frequently have considerable latitude in interpreting legislative mandates, raising the risk that one or other stakeholder group may unduly influence the staff. To avoid this danger, it is important that staffing policies safeguard the independence of the executive. Through this indicator four important attributes essential for independent decision-making were assessed; Criteria for Appointment, Tenure, Disclosure of interests and conflicts of interests.

The administrative post of secretary & other echelons is being posted by

Establishment division on the basis of their qualifications and experiences for tenure of at least three years but due to shortage and other commitments, they may be posted earlier. The other factor is political affiliation, which also plays a role for their posting and transfers. The technical appointments are made on the qualification and experiences in the relevant fields. The advertised posts are filled by the Federal Commission of Pakistan for permanent technical posts.

2.1.3.3 Distinct Planning Body

Given the technical complexity of the sector, it is important to have a separate agency outside the policy-making structure and outside the operational structure that looks at long-term considerations. Its scope of work would be to oversee whether investment in production and distribution capacity is adequate to meet projected needs; whether the mix of generation capacity adequately addresses concerns of risk (such as fuel price risk) and energy security. Planning Commission of Pakistan is one such agency that is dedicated to this. Planning Commission has a vital role to play. The Commission regularly undertakes studies on different sectors. When interviewed, members of the Commission informed that the Commission has sufficient resources for collecting information and conducting studies, and budget is also provided for the same each year. The presence of a Planning Commission only addresses half of the issues and its effective functioning is a matter of deep understanding.

While observing the effective functioning of planning body, it came forth that, under the rules of business, it is not obligatory for the executive to consult the Planning Commission. Therefore, formal mechanism of holding periodic meetings is absent, and meetings with executive and planning commission are held only on the basis of need. In order to consult the relevant ministries, line departments, and various stakeholders on policy formulation, the Planning Commission itself takes the initiative. Thereafter, Planning Commission issues advice in the form of recommendations to relevant ministries, which is not binding. The concerned ministries may choose to follow the course of action advised by their own departments.

Case Study

In the Rules of Business 1973, Planning Commission has not been mentioned, and all the functions assumed by the Commission have been prescribed for Planning and Development (P&D) Division. This calls for the need to clearly spell out the inter-relationship of the Commission and P&D Division as Planning Commission is headed by the Prime Minister and Secretary P&D Division is one of the members of the Commission. Projects costing up to Rs. 1 billion are approved by the Central

Development Working Party (CDWP). CDWP is headed by the Deputy Chairman of the Planning Commission. However, the projects costing more than Rs. 1 billion are recommended by the Planning Commission to the Executive Committee of National Economic Commission. The recommendation of a project by the Commission is a compulsory procedural requirement in the approval process. Moreover, the Executive is bound to abide by the advice and recommendations of the Planning Commission only regarding development projects.

As part of the Public Sector Development Program (PSDP), it includes provisions for strengthening and capacity building, feasibility studies and research in various sectors, which is approved as part of the finance bill. Therefore, at the highest level, public representatives can scrutinize it.

Absence of legal/procedural requirement for the Executive to submit information to Planning Commission is another issue. Therefore, the Planning Commission itself frequently requests information from the Executive, which is usually shared by the relevant agency with some delay. This highlights the need to adopt a formal mechanism for information sharing between the Executive and the Planning Commission.

To update the public regarding its work, the Commission publishes a monthly newsletter. No operating rules have been framed to do such work, and consultation with the stakeholders is presently arbitrary for the Commission whereas this should have been declared mandatory for the sake of efficiency and transparency. The above-mentioned observations need to be addressed to make the Planning Commission of Pakistan a more effective planning body.

2.1.3.4 Capacity of Civil Society Organizations (CSOs)

Civil Society Organizations (CSOs) have a pivotal role to play in representing the concerns and raising the voice of citizens and marginalized groups in natural gas governance. However, review of the scope of work of CSOs' revealed that not a single organization is working solely on natural gas sector. Linkages with various organizations working for consumer rights were developed by NGGI-Pak in Islamabad and provincial capitals. These organizations are eager to work for advocating the rights of consumers with respect to natural gas governance, and provided necessary support on the role of CSOs in the sector.

The exceptions to this general situation are Consumer Rights Commission of Pakistan (CRCP) and Sustainable Development Policy Institute (SDPI) that regularly undertake studies in the energy sector along with techno-economic analysis. The analysis indicates that almost all of the CSOs lack expertise to carry out the analysis of the issues in natural gas sector from technical point of view. Therefore, the policy community could be

engaged by CSOs for improvement in governance. This can be attributed to the limited financial resources of CSOs, which hinders their capacity enhancement. On the other hand, the CSOs having required expertise and financial resources raise their concerns in the form of reports and holding public forums.

CRCP has also worked in close coordination with other consumer rights organizations on various projects. However, the need is there to develop more effective networks for efficient and sustained coordination that allows for information sharing and joint strategization. Outreach of the CSOs will also improve by undertaking collaborative efforts.

2.1.4 Accountability in the Policy Process

Assessment for accountability in the policy environment of gas sector was done on the basis of three indicators i.e. annual reports of relevant ministry/ department, and effective functioning of distinct planning / policy agency.

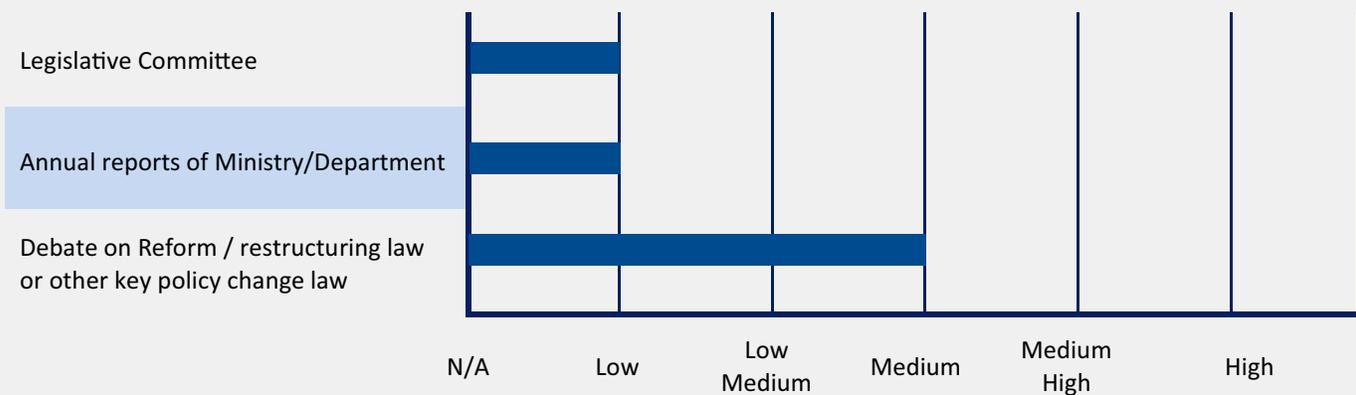
2.1.4.1 Legislative Committee

Committee Members are selected through in house voting and only another member of the National Assembly – not any member of the public – can challenge appointment of a member on grounds of conflict of interest. There is no practice for the committee members to disclose their commercial interests in the sector directly or in-directly before joining or at the time of joining the committee. However, they are required to disclose their commercial interests while taking oath on election to parliament. No one in the process of disclosure to public is involved or object from public is either sought or valued. On the Official web site of Pakistan National Assembly the web page on committees is still under construction.

There is no easy access to the documented ideas, thoughts or proposals of the legislative committees on any draft policy in any form for general public. The last publically available information of the meeting of the National Assembly Standing Committee on “Petroleum & Natural Resources” was held on 27th February, 2012 on supply and demand gap of natural gas sector. Only few lines on the issues debated are available on the web site.

Although reports of the committees are made public but the need was felt for public sharing of the documents that are presented before the committees. In the best interest of transparency, it is also suggested that the members of committees should be asked to disclose their past links and commercial interests in the oil & gas sector industry before joining the committee.

Figure 2.4 Accountability in Policy Process



2.1.4.1.1 Pro-activeness of the committee

The committee is considered active if it meets regularly and it may be proactive if it can anticipate the relevant issues and proactively debate and recommend re-evaluation of the issues relevant to Natural Gas on timely basis.

In order to gauge the capacity and functioning of the legislative committee, members of the committees were interviewed along with the examination of documents. National Assembly and Senate both have Standing Committees on petroleum & natural gas which have been empowered to go into all matters of the Ministry. A matter can be assigned to a standing committee by the Speaker. The committee has also been empowered to invite or summon before them any member or any other person having a special interest in relation to a matter under their consideration and may hear expert evidence and hold public hearings. During the assessment it was learnt that the committees hardly call experts for hearing and normally the presence of government officials is considered sufficient. Support by the executive in the form of closer coordination and active compliance with the recommendations of the committees can significantly enhance the effectiveness of parliamentary oversight.

2.1.4.2 Annual Reports of the Ministry

Preparation of an annual report by the MoPNR is necessary to ensure accountability of the executive. Good annual reports enable the general public as well as other stakeholders to understand what the ministry has done in the last year and what it plans for the future. Annual reports are also useful to assess the process made toward achieving important objectives / goals set for the department / ministry.

Annual report should enable the general public as well as other

stakeholders to understand what the ministry has done in the last year and what its plans for the future. The report has been prepared in pursuance of Sub Rule (2) of Rule 25 of the Rules of Business 1973 which provides that at the beginning of each financial year, each Division shall, for the information of the Cabinet and information of general public prepare an annual report as a permanent record.

The reports prepared by MoPNR are placed on the official website of the Ministry. The reports are produced in English language and are not prepared or translated in local languages. However, these reports are not prepared regularly. The official website of Ministry of Petroleum and Natural Resources (MoPNR) shows a wide gap between preparation and dissemination of the annual reports. The latest available report pertains to the financial year 2010-11 and the earlier report was published at end of financial year 2005-06.

Ministry of Petroleum & Natural Resources shares selective information on financial reporting and progress through their annual report. The report gave an overview of the activities, achievements and progress of the Ministry of Petroleum and Natural Resources, its attached departments and organizations/companies under its administrative control, during FY 2010-11.

The reports contain sketchy information about the public funds spent on various schemes. Break-up of MoPNR budget under various Heads of Expenditure is also not available. The annual report published by MoPNR provides information regarding various activities and achievements of not only the Ministry itself but also its constituent organizations like Hydrocarbon Development Institute of Pakistan, Geological Survey of Pakistan, Sui Northern Gas Pipelines limited, Sui Southern Gas Company limited etc. The report does not provide detailed breakdown of all the revenues / budget allocated to the ministry, however, information regarding projects funded through the Public Sector Development Program (PSDP) is available.

Chapter 2 of the annual report summarizes the activities, achievements & progress made by the ministry during 2010-11. The information is segregated as per constituent wings of the Ministry, i.e. Development Wing, Mineral Wing and Policy Wing.

2.1.4.3 Debate on key Laws Leading to Policy Change

This indicator assesses one of the most important aspects of the reform / restructuring process, i.e. enactment of laws. The overarching law governing the sector should set the policy direction, and is critical in ensuring that there is space to address public interest concerns. Moreover, the nature and characteristics of the debate during enactment

of the reform / restructuring law is often an illuminating pointer to the quality of governance in a country. This indicator was assessed through four elements of quality.

Duration of time between tabling of legislation and passage of the law: This is crucial as any legislation on a complex; dynamic sector such as natural gas requires significant time for analysis. The LPG Draft Policy remained dormant for a period of one year and was finally finalized in one ECC meeting not involving consumers as stakeholders. When the CNG crisis arose the policy was pushed forward and was approved by ECC in the shortest span of time. On one hand, the unduly delayed draft policy points to inability of the concerned individuals to understand the required issues and is a signal of ineffectiveness of legislative process. On the other hand, the quick action in less than one month points to interests of the majority at play. Duration of debate and composition of speakers is an important pointer to the importance attached by legislators to the legislation process.

The National Assembly Standing Committee of Petroleum and Natural Resources consists of twenty members of which 14 belong to the ruling party or its alliance and only five members are from the opposition whereas one member is independent. Attendance of members is considered satisfactory if significantly more members than the minimum or quorum are present from the ruling as well as the opposition parties. Transcripts of debate for post facto analysis of the positions of different legislators and political parties are not available.

2.2 Recommendations

Following recommendations, based on the assessment under NGGI-Toolkit, are being made to improve the policy process in Pakistan:

1. Parliamentary oversight can be improved by the support of executive in the form of closer coordination and active compliance with the recommendations of the committees.
2. The need for public sharing of the documents presented before the committees must be made compulsory.
3. The past links and commercial interests of the members of the committees in the gas sector should be disclosed before their joining the committee.
4. The process of hiring consultants should be made transparent.
5. The findings and recommendations of the consultants should be open to public/ relevant CSOs and stakeholder debate should be ensured prior to putting it before the legislature.

6. The minutes of the discourse should be made public and widely disseminated for further scrutiny.
7. Tax Payers' concerns and sentiments should be accommodated in the final Policy.
8. The role of existing Energy Wing of the Planning Commission should be strengthened which currently exists only as an advisory body or a separate ministry of energy also advocated by the Friends of Democratic Pakistan may be established for effective and coordinated management of the Natural Gas Sector and other national sources of energy.
9. High turnover in bureaucracy affects the pace of reforms. Any new bureaucrat takes time to understand the sector being a technical subject and by the time he/she develops an understanding, his/her transfer is made. The postings and transfers considerations in the Ministry of Petroleum and Natural Resources should be guided by sector targets and goals. Tenures of area specialists need to be guaranteed .
10. In order to effectively engage civil society, the capacity of CSOs should be developed through regular trainings of concerned CSOs
11. A network of think tanks needs to be created for working as support of Planning Commission and the MoPNR for periodic assessment of implementation of policies and their level of transparency and accountability;
12. Regular and effective dissemination of year books of all concerned units and departments should be ensured. Information must be circulated with reasonable lead time (minimum three months) in advance of the initiation of the policy process.
13. Information is available mostly on internet only. There is a need for the use of one or more communication tool
14. Demonstrated systematic efforts are made by the policy community to reach out to disadvantaged communities.

CHAPTER | THREE

THE REGULATORY PROCESS

3.1 The Regulatory Process

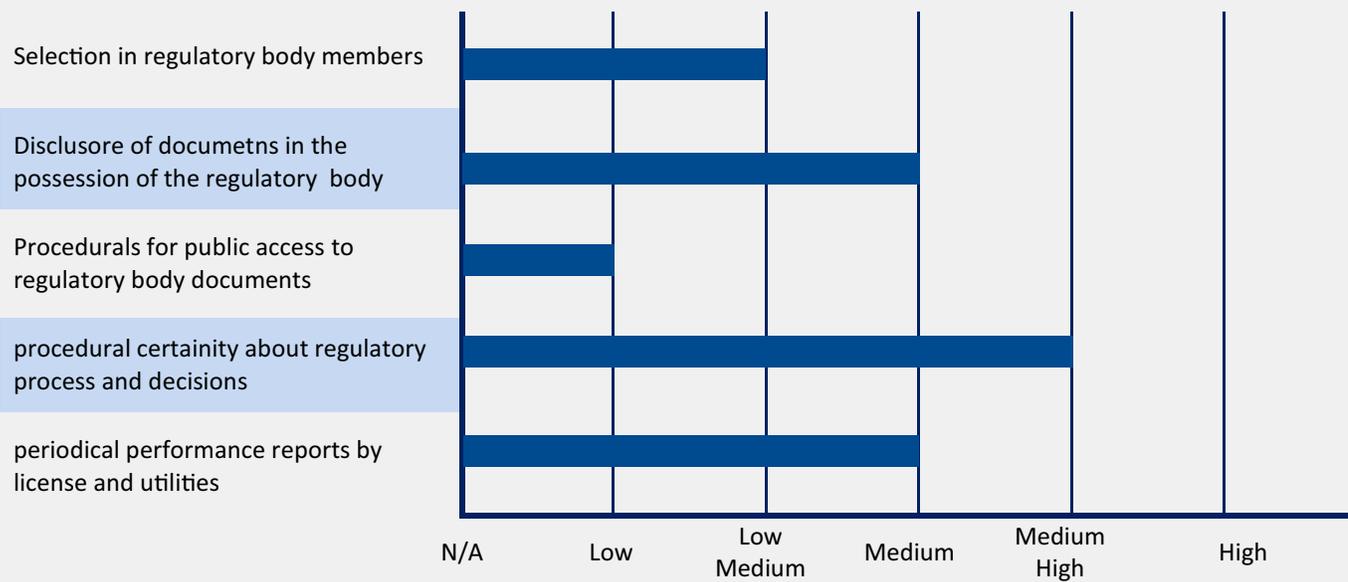
Regulatory body, Oil and Gas Regulatory Authority (OGRA), was established in 2002. There is limited systematic understanding of what “good governance” in the natural gas sector might entail and has been, therefore, thoroughly analyzed with respect to the selected indicators. NGGI-Pak examined the regulatory process in Pakistan Natural Gas Sector on the basis of fourteen indicators ranging from the institutional structure, decisions of licensing and tariff fixation by the regulatory body to the inclusion of degree of participation of weaker interest groups. These elements were assessed through specially formulated elements of quality for governance, the rating of which methodologically determines the true state of affairs. Defined procedures and rules along with the annual reports of OGRA have been taken into account to ascertain results. Interviews of stakeholders and especially those of authorities of OGRA were conducted to draw conclusions regarding practices of the regulatory body.

Findings of the assessment are given below, whereas recommendations, based on the assessment, have been laid out at the end of the chapter.

3.1.1 Transparency in the Regulatory Process

To assess the transparency in the working of Oil and Gas Regulatory Authority (OGRA) five indicators were used of which three were priority indicators. The indicators were 1) Selection of regulatory body members 2) disclosure of documents in the possession of the regulatory body 3) procedure for public access to documents of regulatory body, 4) procedural certainty about regulatory process and decisions and 5) periodic performance reports by the licensees. Findings of the assessment are shared in this section.

Fig 3.1 Transparency in Regulatory Process



3.1.1.1 Selection of regulatory body member

Decisions of the regulatory body are very crucial for the development of the natural gas sector as well for consumers and other stakeholders. Moreover, often the decisions of the regulatory body have very significant economic implications for the utilities and for democratic government. Also, as seen in the earlier indicators, for effective regulatory process it is desirable that the regulatory body has significant procedural authority and substantive functions. Hence, a proper selection process for selecting members of the regulatory body is crucial.

In the case of selection of chairman and members of the regulatory body, the section (3) OGRA ordinance specifies the composition of the OGRA members and eligibility requirements of its members. Terms of office of members are staggered but a term of four years for the Chairperson and three years for the members would not be able to avoid the possibility of all members being appointed during the term of the same administration as in Pakistan the government tenure is for five years. Further to this, the appointment of Chairman OGRA and members remains the sole prerogative of the Federal Government i.e. Prime Minister of Pakistan. There is an obvious lack of an independent, well-defined, and transparent selection process.

3.1.1.1.1 Case Study of Political Appointment

The statutes governing independent regulatory bodies Section 3(4) of the

OGRA Ordinance, 2002 expressly lay down the criteria for selection of Chairman OGRA. The said section commands that the chair of this autonomous corporation must be a person who is an eminent professional of “known competence and integrity”. Lack of transparency of the selection procedure results in appointments made on the basis of cronyism than on competence. The case of Mr. Tauqeer Sadiq as Chairman OGRA, appointed in 2008 and removed in 2012, was an example of such breach of procedure and political interference. The appointment process was fraught with serious irregularities ranging from arbitrary and lawless selection procedure.

The chairman was accused of fake degrees and unsubstantiated claims on his CV. The integrity of the selection process was also questionable, as for this important post interviews of 17 short listed candidates were all rushed in a single day, and a single field expert was deemed sufficient for examining the technical expertise and prowess of candidates from wide-ranging fields. Although the executive retains power to make appointments but it is important that it is exercised in a demonstrably fair and transparent manner keeping in view the absolute requirement of objectivity, relevance and due diligence

3.1.1.2 Disclosure of documents in the possession of the regulatory body

In order to access the fundamental requirement of transparency in decision-making it was determined whether all documents / information that form the basis of decisions / orders of the regulatory body are available to the public. It was also important to assess restrictions, if any, on making documents public, such as whether there is any system to classify documents’ confidentiality or secrecy, etc. The section 19 of OGRA Ordinance 2002 states, other than the confidential information, “the authority shall maintain public files that shall be kept open in convenient form for public inspection and examination during reasonable business hours on payment of such reasonable fees as the authority may prescribe” the subsection also states the requirement of indexation as the authority deems fit.

There are no clear provisions about which documents in the possession of the regulatory body are public or confidential, and a decision regarding the same depends on the official concerned.

3.1.1.3 Procedures for Public Access to Regulatory body documents

In the absence of a well-indexed database of documents there is very little possibility of a simple, well defined procedure for inspecting or obtaining documents. There is also a gap in the wide dissemination of information except for the annual report that is placed on the authority’s

official web site. Outside of this narrow placement of documents, discrete public information requests are hardly ever entertained. It is obvious that the procedures to access information from the authority are ambiguous and tend to be more arbitrary. The Authority despite a clear statement in the section(19) OGRA Rules prefers not to encourage the disclosure of information or documents to the public.

A separate set of information requests were also sent to the regulatory authority for relevant information from public documents which were also ignored and the required information was only retrieved through a very prolonged procedure ascribed by the right to information Act 2002. Still the information was made available only through the intervention of Federal Ombudsman.

Further to non-availability of essential information, all public hearings are held without giving the mandated time of 14 days as per section 10(4) of OGRA Rules- SRO (1)/ 2002. This procedural breach scuttles all possibilities of meaningful participation.

3.1.1.3.1 Case Study Compressed Natural Gas (CNG) Prices

Supreme Court of Pakistan, on October 26, 2012 passed an order, declaring the current CNG pricing formula presented by Ministry of Petroleum and Natural Resources (MoPNR) as unreasonable and directed OGRA to justify the pricing mechanism. Under this directive OGRA called a public meeting to debate the CNG price formula. CRCP during the preliminary stage of intervention made request to OGRA under section (21) of OGRA Ordinance to share the copies of policy guidelines from the Federal Government (GoP), instruction by Ministry of Petroleum and Natural Resources (MPNR) which dealt directly or indirectly with the tariff determination. The petition for revenue requirement/ tariff are supposed to be made available to the public on payment of fee, however, no such requests were entertained and no relevant information was shared. No public hearing that are meant to be transparent and mandatory, as per OGRA Ordinance SECTION 9 (1) subpara two, were arranged by OGRA during any pricing process either.

3.1.1.4 Procedural Certainty about Regulatory Process and Decisions

Procedural certainty assesses two main aspects of regulatory processes. Firstly it assesses the mandated provisions that contribute to the establishment of procedural certainty and secondly it determines the subsequent certainty about substantive decision making. OGRA Ordinance –2002 provides the required procedural certainty which gives OGRA the right to exclusively exercise power in the grant of license under the well laid-out set of rules as provided in the section 22, 23 and 24 of OGRA Ordinance 2002. The rules for licensing define the criteria for

grant of license, license fee, term and renewal of generation license, tariff, revocation and suspension of license etc. These rules are broadly categorized into transmission, distribution and licensing rules. However, no timelines are given in the execution of these actions to provide the required operational certainty.

In addition to this, sections 41 and 42 of the same ordinance grant the regulating authority with the exclusive power to make rules as well as regulations that maybe required in the determination of rates and tariffs of regulated activities, issuance, review, modification, amendments, cancellation, revocation and renewal etc along with the establishment of technical standards.

However, it is at the discretion of the Regulatory Authority to use its own will to decide whether or not to consult the stakeholders in these procedures, which stakeholder or public representative to consult but it is not binding. The Section 9 states, “Unless otherwise expressly provided in this Ordinance or any rule or regulation, any decision that the Authority has the power to make, may be made on its own motion or initiative after holding of a meeting of the Authority, and without giving of notice to the public, and without holding a hearing”. Therefore, it restricts the public participation through public hearing in decision making. There are negligible public hearings held while giving licenses. The critical elements for certainty of procedural requirement about substantive decision-making in tariff determination, subsequent grant of license always remain ambiguous to stakeholders and public. It is also the finding that these aspects are not totally at the discretion of OGRA and is considered to be politically dictated and carried out under the directives of line Ministry MPNR.

3.1.1.4.1 Case Study of issuance of License

6,471 applications were received by the authority for CNG stations; of them temporary licenses were issued to 6,154 and permission for 3,395 marketing licenses were allowed from 2002 to 2011. CNG licenses are reported to be issued as political favors that resulted in imbalance in the natural gas sector distribution due to the huge usage of-un estimated usage of natural gas by the transportation sector. One such case is that of Chaudhry CNG Station (MNA Mian Riaz Hussain Pirzada) , Hasilpur, Bahawalpur district that also led to Supreme Court intervention and unlawful granting of permission allegation against the previous Chairman OGRA.

3.1.1.5 Periodic performance reports by the licensees

Regulatory bodies must have a binding requirement for all the regulated operations to file periodic performance reports on regular timely basis.

The OGRA under section 35 (2) is also authorized to ask for records, to make copies of these records and to take extracts from them. Sub-section 42(2) gives the power to the regulatory Authority to monitor the design, construction, testing operations, maintenance of a regulated activity against the established technical standards but there is no for the periodic reporting requirements for all its licensees.

In the distribution sector SNGPL maintains a punctual record of annual reports which can be easily accessible by public from their official web site. SSGCL on the other hand maintains quarterly and financial reports and environmental report under separate heads. They are also accessible to public.

These reports are not available in the local language and are not considered comprehensive as they lack essential data required by all stakeholders . They are also not considered adequate and reliable for assessing the performance in terms of various cost components (manpower, interest, power purchase, fuel cost etc.), performance of generation plants, details of transmission and distribution system, transmission and distribution losses, revenue from different consumer category, connected load, demand patterns etc. Information like details of expenditure by licensee would be more substantial to evaluate the performance than a superfluous statement of incentive offered and meeting certain undefined benchmarks. There is also no accreditation by any authentic authority to check the reliability of data projected in these reports. In general they are considered as self projection of the distribution companies with very less relevance to the actual state of affairs.

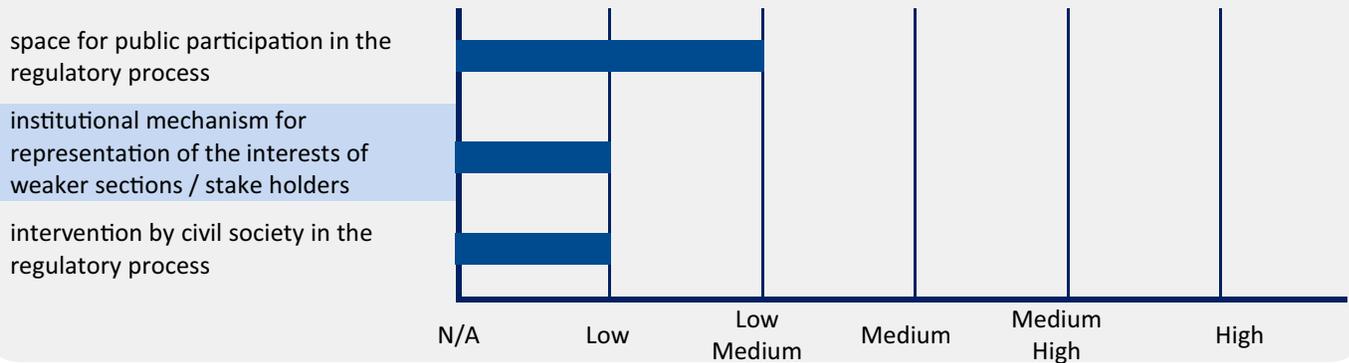
OGRA itself submits yearly report on the conduct of its affairs for that financial year, including anticipated developments for the following financial year; and report on the state of the petroleum industry in Pakistan, in so far as it relates to regulated activities, identifying the ownership, operation, management, control, efficiency and cost of regulated activities, amount of production, transportation, transmission and distribution capacity, present and future domestic demand for petroleum and other matters related to regulated activities.

3.1.2 Participation in the Regulatory Process

Governance which is broadly defined as the process of decision making and implementation is not confined to the role of formal government institutions but also important is the participation of all stakeholders in this decision making process to compliment and augment good governance practices. Therefore the role of the Regulatory process in gas sector was also assessed with regard to participation using three priority indicators, i.e. a) space for public participation in the regulatory

process, b) institutional mechanisms for representing the interests of weaker groups, and c) interventions by civil society in regulatory process. As illustrated in figure 3.2, on the average the performance of OGRA with respect to the selected indicators on participation is low. Detail of findings has been shared in this section.

Fig 3.2 Participation in Regulatory body



3.1.2.1 Space for Public Participation

Effective public participation is a crucial component of the good governance process. The openness of proceedings before the regulatory body and the public’s right to participate in the proceedings can enable the consideration of a diverse range of perspectives in regulation. With an aim to assess the availability of space to public for participation and openness of proceedings the OGRA Ordinance does not acknowledge the importance of public participation and does not provide space for public participation. In the Section 9 of OGRA Ordinance it is clearly stated that the sole authority to the regulatory body itself to make decisions on its own motion or initiative after holding meeting of the authority only, there is no requirement of giving notice to the public and without even holding a public hearing.

3.1.2.2 Institutional Mechanisms for representing the interest of Weak Group

This mechanism facilitates the capacity of the weaker groups to effectively participate. Good governance requires the views and interests of the weaker and marginalized group should be represented through some kind of institutionalized provisions within the regulatory authority. The aim is to find the existence of an institutional mechanism that has the capacity to appropriately address the decisions and directives that are likely to have a significant impact on the interests of the weaker groups. This priority indicator checks if the regulatory level acknowledges the public has a right to make submissions and filings and then it works to

assess if these submissions become part of the record of the regulatory body proceedings.

The OGRA ordinance 2002 approach towards the interest of marginalized groups is more reactive in nature than proactive. The section 9 clearly does not acknowledge the importance of public participation. It does not necessitate the Regulating Authority to involve the affected groups while making decisions as the Authority can make these decisions “without” holding a hearing and further states “Provided that if it appears to the Authority that its decision relating to a regulated activity directly and adversely affect the rights of a person ...”. This is a clear lack of an institutional mechanism as it is left at the discretion of the authority to decide if it considers the matter worth a hearing.

Section 11 and Section 12 of OGRA Ordinance 2002 are more redressal in nature by giving the right to complain and of appeal to a person aggrieved by any order or decision of the Authority or a person designated by the Authority to carry out its orders.

Effective participation also requires that the concerned government ministry / department’s (e.g. social / rural development, employment development) appropriately include the views likely to have significant impact on weaker / marginalized sections in their guideline of regulatory policies. A number of institutional arrangements could be used to enhance the weaker sections’ participation, for example through appointment of “consumer representatives” to represent the interests of consumers before the body in all proceedings, a separate government institution with a specific mandate to represent the interests of the weaker sections in proceedings before the regulatory body could be instituted

3.1.2.3 Interventions by Civil Society in Regulatory Process

In the absence of an institutional mechanism for public participation, the interventions by civil society in regulatory process were also assessed. It was learnt that on account of a deficit in the technical capacity of civil society pertaining to the natural gas sector a limited number of civil society organizations participate in the public hearings arranged by OGRA. Civil society organizations needed technical, legal and financial support in order to upgrade their capacity to intervene and somehow mitigate the wide imbalance between their capacity and that of the industry players .

The quantum depth of public participation in the regulatory process was assessed by the extent to which civil society organizations make use of the given measures. OGRA primarily deals with the complaints against the licensees and their dealers in accordance with the Complaint

Resolution Procedure Regulations, 2003 (CRPR). It is mandated to entertain the consumer's complaints without fee and with almost no formalities. The consumers are not required to come to OGRA for filing the complaint. They can file the same through e-mail, fax or with normal post. A number of information complaints were filed and information requests were also sent under the Freedom of Information Ordinance 2002 by CRCP. Initially, the requests were ignored and it was only through the intervention of Federal Ombudsman that the required information was provided.

3.1.2.3.1 Case Study Civil Society Intervention.

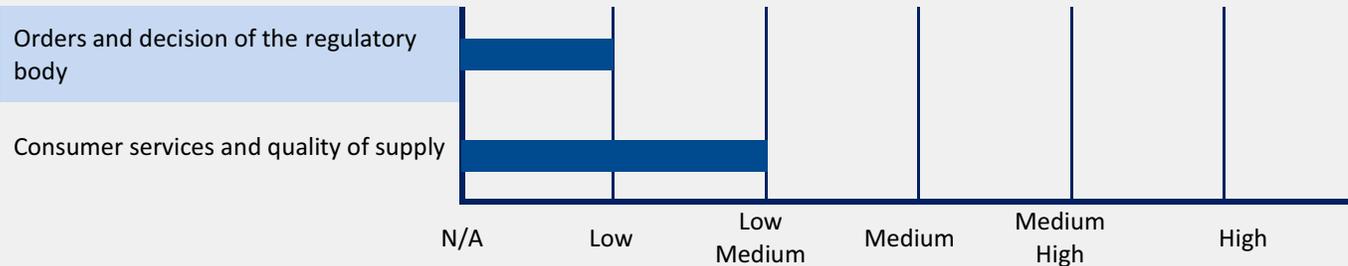
The Regulatory Authority is mandated to ensure the willingness and ability of the consumers to pay before announcing the price/ tariff. The sheer secrecy of the pricing formula by the authorities and the fact that consumers were not consulted while the pricing formula was arrived at by the regulatory authority, OGRA barred the consumers from independently reviewing the methodology. Various components of the formula remained shrouded in mystery. Logic behind the use of certain values and definition of variables remained an abstract for the consumers. The process and method of arriving at these numbers/values/ amount were not shared for scrutiny and absurd values were seen to be used for arriving at different numbers. However, CRCP was able to intervene effectively during CNG price determination process only after the clear and binding directive to OGRA by the Supreme Court of Pakistan to incorporate the views of public while determining the CNG retail price. CNG pricing dilemma resulted in costing billions to the unsuspecting consumers and imposition of outrageous and willful costs on the consumers for a product produced with tax payers' money was a clear violation of the basic norms of sound economic governance. .

3.1.3 Accountability in the Regulatory Process

The regulatory environment was analyzed for accountability and redress through the critical availability of essential information regarding decision, services and quality without which accountability and redress cannot be exercised justly. Unless stakeholders are informed of the basis for regulatory decisions they will not be able to fully judge the impact of these decisions on them. In addition, the requirements to provide reasons for decisions and to respond to public comments / objections are essential for promoting accountability within the regulatory body. The assessment covers two indicators of NGGI toolkit, which relate to:

- Orders and decisions of the regulatory body.
- Consumer service and quality of supply.

Fig 3.3 Accountability in Regulatory Process



3.1.3.1 Orders and Decisions of the Regulatory Body

This priority indicator analyzes the legal provisions (laws, rules, regulations or decrees) of the requirement for the regulatory body to give reasoned orders and responses to public comments / objections. An important aspect is to measure the ‘sufficiency’ or quality of reasoning provided by the regulatory body in its orders. Within the OGRA Ordinance 2002 there are no provisions that bound the regulatory Authority for a reasoned response.

In addition to the appeal and redress provisions under section 13, The Authority itself may review its own decision by which it can change alter or vary any decision or may rehear an application before deciding for a change. This is keeping with consideration of change in circumstances or of presence of a new decision that would materially alter the previous decision.

In context to the yearly report and returns Section 20 (2) the Federal Government may direct the Authority to supply and return, statement, estimate, statistics or other information regarding any matter under the Authority, and the Authority is to comply with such directions. Apart from this there is no legal requirement by which the regulatory body finds itself obligated to respond and provide due justification to public comments / objections under such circumstances it is therefore hard to measure the quality of reasons provided.

3.1.3.2 Consumer Service and Quality of Supply

Ensuring reliable and high quality uninterrupted natural gas supply and efficient services is one of the important aspects of the regulatory process. This indicator assesses how well does the regulatory Authority adopt required mechanisms to meet this responsibility. From a consumer

perspective, the quality of service and reliable gas supply is very important. Typical parameters for assessing the quality of consumer service include the accuracy of metering and billing, quality of bill payment facilities, the time taken and procedures for new connections etc.

In order to address this aspect, there is a procedural need within the regulatory authority operations for the existence of systematic mechanism for monitoring the actual performance in terms of consumer service and quality of supply. Periodic reviews must be undertaken for evaluating compliance with the standards of performance. Most importantly these reviews must make the base documents / data (such as actual performance levels) available to the public so that the public has an opportunity to make comments and suggestions.

According to Section 6(2) b and d of the OGRA Ordinance, the Authority is mandated to specify the performance and service standards. OGRA has specified various standards relevant to the natural gas. These standards are available on the Authority's website. These standards include;

- Standard technical specifications for equipment and materials
- Natural gas quality
- Distribution standards
- Performance standards
- Transmission standards

While monitoring for compliance to standards OGRA is authorized to ensure adherence to the Performance and quality standards as well as of procedures

3.1.3.2.1 Case Study

Here we shall focus only upon the performance standards since they are the most relevant to consumers. In the performance standards, complaints about gas smell, asphyxiation, fire, gas pipe breakage, explosion or building collapse are to be attended at the earliest i.e. within a maximum time limit of one to two hours depending upon the circumstances. Complaints not involving loss of life are to be attended within twenty four hours time. In case of pressure drop complaints a duration of thirty six hours has been defined by the Authority for the first visit. Therefore it can be stated that the regulator has adopted clear and reasonable standards of performance for consumer service and quality of supply.

With regard to the supply standards, the Authority has defined the distribution standards. These standards cover the design, construction, operation and maintenance of natural gas pipeline distribution system. The scope of this standard is limited to portions of pipeline system starting from the outlet of sale meter station (SMS) at the transmission

line to the outlet of the customer's meters but not including piping downstream of the customer's meters.

OGRA deals with the complaints against licensees and their dealers in accordance with the Complaint Resolution Procedures Regulations, 2003. OGRA has established the enforcement Department which deals with various kinds of complaints. As mentioned in the Authority's annual report for 2010-11, the illegal practices were going on unchecked before the establishment of the Enforcement Department. However, after its establishment there has been an improvement in the situation. The Enforcement Department's performance is summarized as under (source OGRA Annual report 2010-11).

Sector	No. of Inspections	SCN's issued	Outlets fined	Warnings Issued	Fine Amount (Rs.)
Oil	1,112	671	417	92	18,600,000
LPG	297	174	131	17	8,400,000
CNG	511	215	84	48	5,045,000
Gas	50	3	-	2	-
Grand Total	1,970	1,063	632	159	32,045,000

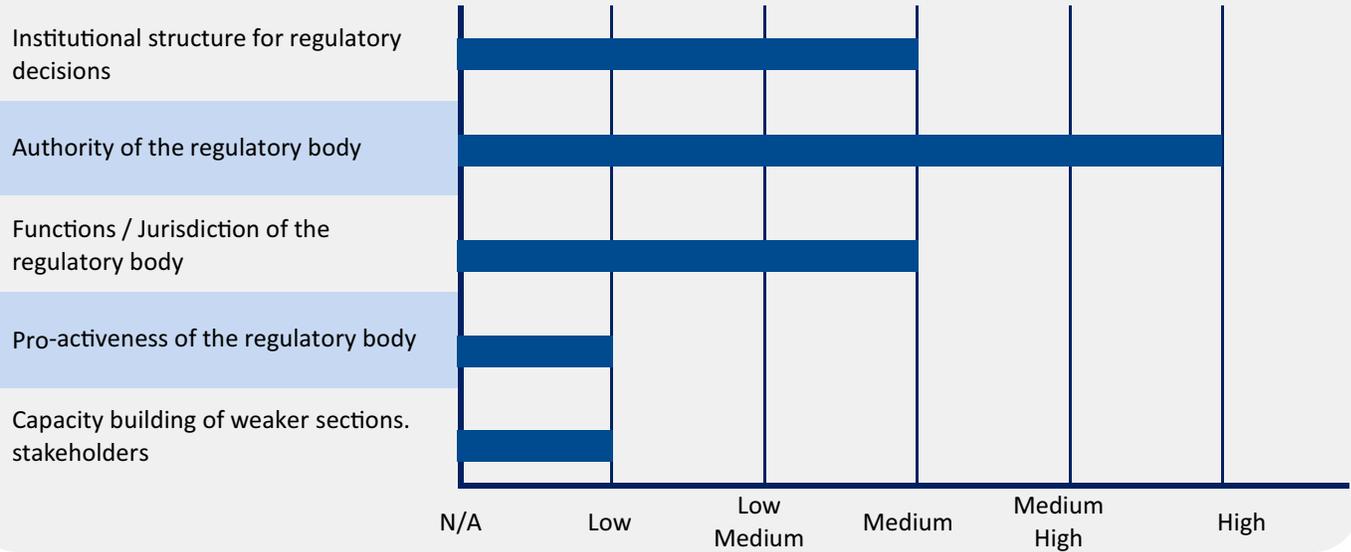
3.1.3 Capacity of the Regulator

One of the mechanisms often envisaged enhancing consistency and accountability in the decision making is to have an independent, dedicated body, responsible for regulatory decisions. Establishing an independent institutional structure does not alone create an effective regulatory regime. The tool kit evaluates the capacity of the Regulatory setup through seven Indicators. Four of these priority indicators assess the structural capacity of the regulatory authority in terms of legal authority, autonomy and remittance. The other indicators assess the non-structural aspects of capacity, such as training mechanisms to enhance techno-economic decision making capacity of the regulatory body members and staff as well as efforts undertaken by regulators to enhance capacity of weaker sections to effectively participate in the regulatory process.

In order to review the effectiveness of OGRA's regulatory structure, five indicators were employed to assess the structural and non-structural capacity of the authority. The indicators include:

- Institutional structure for regulatory decisions.
- Authority of the regulatory body.
- Functions/ Jurisdiction of the regulatory Body.
- Pro-activeness of the Regulatory body.
- Training of regulatory body members and staff.

Fig 3.4 Capacity in Regulatory Process



3.1.3.1 Institutional Structure for Regulatory Decisions

The toolkit considers the existence of an independent regulatory body as a desirable structure to improve sector governance. The lack of an independent planning agency responsible for policy analysis and planning is a significant governance problem. The era for privatization in Pakistan started in 1994. There have been two tides of privatization in Pakistan, the first tide was from 1992 to 1994 and the second tide from July 2001 to October 15, 2002. The major privatization which took place in the second tide included sale of GOP “Working Interest” in six oil concessions. In 2002 while strengthening the private sector the need for improved regulatory frame work was felt.

OGRA Ordinance was promulgated through a special Presidential order which under section 3 (1) and subsection (2) states; “ subject to the provision of the Ordinance the Authority (OGRA) shall be a body corporate, having perpetual succession and a common seal, with power, subject to the provisions of the OGRA Ordinance, to enter into contracts, acquire and hold property, movable and immovable, and to sue and be sued in its name.” Thus an independent regulatory body for the oil and gas sector in Pakistan was established in March 2002 to foster competition, increase private investment and ownership in the

midstream and downstream petroleum industry, to protect public interest and to provide effective regulations.

3.1.3.2 Authority of the Regulatory Body

Some of the key attributes that are met in addition to the legal existence of independent regulatory authority relate to significant legal authority in terms of seeking information and enforcing decisions/orders. Relevant law / rules and regulations should clearly allow the regulatory body to exercise authority. The four well defined elements of authority for the regulatory body include:

- Full legal authority to seek information and evidence from all stakeholders.
- Authority to investigate all matters under its jurisdiction.
- Authority to penalize defaulters or parties responsible for breach of order.
- Authority to enforce or require others to comply with its decisions / orders.

OGRA Ordinance empowers the Authority to investigate any matter falling under its jurisdiction through various provisions and to impose punishment for contravention of rules and regulations made there under. Hence OGRA enjoys the required legal authority to enforce compliance to its decisions with respect to its jurisdiction.

The Authority has full powers to seek any information from any person involved directly or indirectly in any regulated activity or any other matter. The section 30 gives OGRA the 'Power to call for Information' and Section 31 authorizes OGRA with the 'Right to Access'. According to Ordinance a person shall be liable to provide the information and failing which the same shall be subject to fine.

The section 41(2) subsection (l) while enlisting the 'Power of Authority to Make Rules' ascertain the power of the Authority to enforce the terms and conditions of licenses and decisions of the Authority. Subsection (h) of the same section authorizes the Authority to assess and inspect the regulated activities along with the provision of penalty if prevented from inspection. Section 41 (2) sub section © gives the provision of fine for contravention of the Ordinance, the rules, regulations and terms and conditions of licenses.

3.1.3.3 Functional Jurisdiction of the Regulatory Body

Functional authority and jurisdictions are more substantive in nature than the legal authority. Function implies the mandate or tasks entrusted to the regulatory body, and may include: approval of tariff revision;

approval of power purchase and/or fuel cost; ensuring fair competition; prevention of market power / monopoly; setting service standards etc . This indicator assesses the extent of substantive authority (functions) and freedom of decision-making entrusted to the regulatory body.

The functional authority of OGRA is clearly defined in the Sections 6 (1) and 2 (a to y) of the OGRA Ordinance 2002. For instance some of the powers of Authority as specified in the OGRA Ordinance include aspects related to:

- Grant licenses, renew licenses, modify, amend, extend, suspend, review, cancel and re-issue, revoke, or terminate any license
- Specify performance standards
- Prescribe uniform standards of and other conditions for undertaking regulated activity
- Administer, enforce and certify standards and other conditions for undertaking regulated activity
- Specify and review the standards for the equipment and materials to be used in undertaking regulated activity
- Promote and ensure observance of efficient practices, applicable to transmission, distribution, processing, refining etc

Further, the natural gas tariff rules specified under the Statutory Relief Order (SRO) dated November 14, 2002 specify the procedures and operations of Authority related to filings, admission of petition, publication and service of notices, interventions, reply and rejoinder, comments and participation, hearings by the Authority, discovery, transcripts etc.

While assessing the extent of substantive authority (functions) and freedom of decision-making entrusted to OGRA, there are certain critical factors that render the authority of the regulator ineffective, which need to be considered. The legal instrument does entrust OGRA with a wide range of functions but we still find it limited in scope due to certain pre-decided key parameters in the complete supply chain such as natural gas purchase costs / procedures, binding influence of line ministries, taxation parameters, T & D loses and efficiency standards etc. These are some factors that directly influence the quality of functional authority of the regulatory body and the apparent role of the regulatory body remains non-transparent and non-participatory.

3.1.3.4 Pro-activeness of the Regulatory Body

For effective regulation, the regulatory body needs to work in a pro-active manner. A regulatory body, which only responds to cases / petitions filed before it, is more likely to be less effective than a

regulatory process which is pro-active and takes initiatives to address the challenges and emerging issues before the sector.

OGRA was evaluated against the following events / instances indicative of 'pro-activeness' of the regulatory body:

- *Use of penal powers:* Has the regulatory body used its penal powers to force compliance with its orders.
- *Suo-motu petitions:* Suo-motu petitions are petitions / cases initiated by the regulatory body on its own to address certain anomalies or issues before the natural gas sector.
- *Discussion papers / studies / conferences:* These are effective ways to generate public debate and consultation about issues of long term, vital importance. In order to measure the pro-activeness of the authority it is essential that such papers / studies / conferences should not be a direct fall-out of any legal requirement or case / petition filed before the regulatory body, but they should be the outcome of its own initiative.

The conditionality for this indicator required that it could only be applied after at least three years of establishment of the regulatory body as the activities in the initial period are inclined more towards meeting the challenge of building institutional capacity and it would be difficult for the regulatory Authority to be pro-active. However, OGRA has been established since 2002, in these ten years of its existence except for the exercising of the penal power that is portrayed in its fine generation OGRA is not found to be proactive enough in its functioning. Taking up suo motu petitions remains allusive as the section that does not bind the authority to involve public in its hearings renders the actions non-transparent and non participatory. No such information is available on OGRA official web site either.

As for proactively arranging conferences or papers addressing the anticipated issues or in generating public debate on issues relating to the sector, OGRA scores the lowest.

3.1.3.5 Capacity building of the Weaker Sections/ Stakeholders

Regulators have the responsibility to correct the asymmetry in civil society's knowledge and capacity. The need for creating elements of participation for the weaker sections/ stakeholders in the regulatory process is essential but this pseudo participation remains to be unfruitful if the quality of the participation is not managed or built. It is therefore imperative to develop the capabilities of such stakeholders that are weak and shy away from participation on this account. The aim would be to help build their capacity to take up their own issues independently. Unless this is done, such weaker sections will remain perpetually dependent for the support and this may compromise their interests in

the long term.

This indicator assesses two key ways of enhancing the capability of weaker sections / stakeholders:

- Firstly, whether the regulatory body or other government agency undertakes any activities such as training courses, preparation of information brochures and other literature, etc
- Secondly, whether the regulatory body or the other government agency provides technical, legal and financial support for making representations by the weaker sections.

During the Policy Dialogues, the engagement of weak stakeholders was limited and their contributions significantly lacked the elements of quality needed for effective participation. Under normal / standard / routine practice neither the regulatory body nor any other government agencies undertook any activity for capacity building of weaker sections, neither did they provide financial, technical and legal support. Hence this indicator is marked at lowest ranking.

3.2 Recommendations

Regulatory process is an important element of natural gas governance. The establishment of an independent Oil and Gas Regulatory Authority OGRA is considered a good effort; there are still several functional weaknesses and substantive gaps in the Ordinance that need to be addressed. The regulatory environment can be made more conducive, credible and transparent by building on the identified gaps. In order to improve the regulatory process, the research team proposes the policy recommendations as below.

1. The Chairman and all the members are selected for a term of four and three years respectively. This tenure is less than the five year tenure of the government and should be revised to prevent bias and political influence.
2. The Chairman and members should be selected on the basis of well-defined composition and eligibility criteria. The procedure should be transparent, to the extent of making public the background of candidates in order to prevent the conflict of interests and printing the credentials of the shortlisted candidates in the national dailies.
3. In order to bridge this widening gap and to strengthen skills, abilities, efficiency and effectiveness of the organization, implementation of "Capacity Building/Development Plan" is imperative.

4. Specialized training and capacity building mechanisms on technical, economic, and legal aspects, basic multi disciplinarily capacity building should be developed not only for regulatory commission members, staff, as well as government officials (e.g. those assisting legislative committees) but also for civil society organizations exposing to diverse perspectives and social policy approaches..
5. Mechanisms for provision of financial as well as analytical — technical, economic and legal resources to civil society groups and weaker / marginal sections of society, must be put in place to ensure effective public participation in the regulatory process.
6. It should be made mandatory for the regulatory body by adding provisions to incorporate public and stakeholder participation in all decision making and hearings. Such participation should not be left at the discretion of the regulatory authority.
7. In addition to creating a greater space for civil society participation, the quality of participation should be ensured giving due diligence to exchange of ideas and debate made there-in.
8. Regulatory orders must also justify the regulator's decision. The procedural certainty combined with the availability of reasoned regulatory orders can provide a basis for enhanced accountability in the regulatory process
9. Transparency in all decision making should be enforced through explicit institutionalized mechanisms.
10. A range of citizens', experts', and government inputs should be considered in developing gas regulatory policy and the documents that serve as the basis for this policy need to be publicly available before final decision. Making records of these debates available to the public will considerably enhance the transparency and accountability of legislative process
11. Proper indexation of the information and efficient means must be enforced to facilitate easy access to all relevant information and.
12. The regulator should be time bound to give the information
13. Quality of the reply and its relevance and seriousness must be obligated on to the regulator.
14. Annual Reports of OGRA as well as SNGPL and SSGCL should also be produced in the national language and made in a more simple manner for easy comprehension by general public.
15. Regulatory Authority should also involve in pro-active sector

studies and initiate papers, seminars and conferences on the issues relevant to the sector.

16. A regulatory performance audit should be made mandatory after every five years to undertake evaluation of regulator's performance as a regular function.

CHAPTER | FOUR

ENVIRONMENTAL & SOCIAL ASPECTS

4.1 Environmental and Social Aspects

Decision-making in the Petroleum and Natural Gas sectors clearly compartmentalizes the functional and regulatory operations of the sector from the environmental and social considerations. This compartmentalization overlooks the reality that many decisions related to petroleum and natural gas exploration, transportation and distribution have direct environmental and social aspects embedded in them.

Legislative bodies like the Standing Committee or the Ministry of Petroleum and Natural Resources define their role with respect to environmental and social issues quite narrowly. Environmental consideration is more of a provincial regulation matter than theirs. Related to this point, both the Parliamentary Standing Committees and state level oil and gas regulators have low capacity to address environmental and social issues. As a result of this narrow perspective, important issues like job losses, the fate of project affected people, and environmental impact assessments, all of which are directly related to power sector decisions, tend to be discounted.

The Pakistan Environmental Protection Agency issued Environmental Assessment Guideline package in 1997 which included both general and sectoral guidelines. The Environmental Impact Assessment (EIA), /Initial Environmental Evaluation (IEE) regulations were issued in the year 2000 regarding the environmental assessment procedures giving a firm legal status to IEE and EIA. The category of projects for which an IEE or EIA is mandatory has been issued in the Regulations.

NGGI-Pak assessed the environmental and social consideration within the institutional consideration and capacity. Four indicators were selected of which three priority indicators were used to assess the sector performance through capacity, transparency and accountability and one indicator assessed the quality of public participation in the environmental and social issues of the sector.

4.1.1 Transparency in Environmental and Social Aspects

The question of accountability for environmental clearances and approvals is very important to the public interest, because their decisions determine whether and what environmental conditions are imposed on natural gas projects. This indicator of the NGGI toolkit explores the transparency through “clarity of authority and jurisdiction to grant environmental clearances / approvals for gas sector projects”. The indicator works to measure the coordination across departments / ministries, between federal, provincial and local agencies about where authority lies and how it is exercised. The transparency of the formal

checks and balances between these institutions is of vital importance for environmental concerns.

Pakistan Environmental Protection Act , 1997 carries the provisions to provide protection, conservation, rehabilitation and improvement of environment, for the prevention and control of population, and promotion of sustainable development. The Powers of Environmental Protection Agencies (EPA's) have been delegated to provincial Ministries & Public sector organizations for effective implementation of the Pakistan Environmental Protection Act 1997. Planning & Development Division/Departments (P&D) have been advised to ask for environmental approvals issued by respective EPA's from proponents.

EPA laws and policies cover a national/ provincial framework law. In all cases, both the law and procedure are sector specific. Regardless of how EPA laws and policies are defined, there is a great deal of variation with regard to legal requirements or guarantees relating to public disclosure and consultation at all levels.

For new development projects, the Act directs that an initial environmental examination, or where the project is likely to cause an adverse environmental effect, an environmental impact assessment be filed with agency for review and approval prior to project construction.

4.1.2 Legislative Committees' Capacity to Assess Environmental and Social Issues

Objectives the government seeks to achieve through investment in and development of the sector services and infrastructure at the macro level are set in the sector-level development plan. Legislative or parliamentary committees are responsible for drafting laws and setting the orientation of policies of natural gas sector reforms or reviewing the sector policies. They play a crucial role in laying the essential framework for the institutions that govern the natural gas sector. Since all the overarching priorities of the sector originate from here this indicator assesses the capacity of the legislative committee to balance or ensure the required oversight by executive decision-making.

The Legislative Committee has resources available at its disposal to hire consultants but the level of public participation for social issues does not exist. While exploring opportunities for public participation to benefit from the environmental considerations we found that there was no provision available to ensure public participation in the legislative processes. Public awareness of the established environmental standards about equity and environment impacts is also very low. Since most sector policies also do not suggest to implement this attribute, therefore it becomes hard for the legislation to ensure its application.

There is no evidence to support that committee members or their staff have relevant expertise, including specialized higher education and past experience/work on both environmental and social issues / problems.

Legislative debates are available on the websites of National Assembly and Senate. The debates have been transcribed as complete record of proceedings for a particular session of National Assembly / Senate. As the standing committees does not keep the record of proceedings on the basis of subjects it hard to assess the capacity of the legislative committees with reference to environmental and social issues.

Like in all other cases the responsibility for decision making regarding all policies clearly rests with the Federal Cabinet under the Rules of Business 1973 but as already stated, there is no provision in the rules to solicit public views or participation in policy formulation process. Moreover, policy decisions to be taken by the cabinet have no time bearing limitation. implying that a decision on policy may take as long as the cabinet takes to attend to it or finalize it. A policy may be sent to the relevant ministry for reconsideration or a different ministry having a stake in that particular policy may be consulted as many times as needed but there is no room for inputs by the public. In general, very little information about the basis for new policy initiatives is shared with the public.

4.1.3 Public participation in setting minimum environmental performance standards

This indicator attempts to measure the existence of environmental performance standards for the natural gas sector and the degree of public access to the regulations themselves as well as the public's influence over this standard-setting process. Environmental performance standards for the natural gas sector can include: limits on emissions; pollution control measures; targets for reduction of distribution losses etc. These standards are often technically complex, yet they are also very significant to local environmental quality, human health, and economic efficiency. The ability of the concerned authority to explain the relevance and importance of such standards to a non-technical audience, reflects the government's institutional or structural commitment to public access and public participation.

4.1.3.1 Public Participation in IEE and EIA

Public participation has been institutionalized by the Environment Protection Act 1997. While conducting IEE and EIA, the relevant EPAs are required to invite the general public to attend their proceedings through advertisement in the print media. The advertisements are to be given in

English and Urdu to inform maximum number of people. EPAs also try to adopt more than one public participation mechanism by asking the public to submit comments in writing or by participating in the meetings. Comment period ranging from fifteen to thirty days is given to the public and comments are received within this time.

To assess the quality of public participation, it is imperative that summary report of EIA on any project and its environment consideration should be released to the public before the approval of a project. The extent to which these comments inform the findings / recommendations varies from project to project and heavily depends on the value of concerns raised thereof. Proceedings of public hearing or comments of public on environmental issues should be in writing and must identify the name and detail of the public participant. It should be made mandatory to circulate this information in the minutes of the public hearing and the record should be available to civil organizations on request. The EPA reports are available on their web site, however there is no report made after 2007.

4.1.4 Regulatory response to environmental and social petitions or complaints

The Petroleum and Natural Gas sector can have potentially far reaching effects (both positive and negative) on the environment and on human welfare. It is important that public agencies overseeing the sector recognize these claims as relevant to sector performance. This indicator is intended to assess whether the regulatory body in the natural gas sector (or the closest equivalent) recognizes the relevance or legitimacy of environmental and social claims.

Oil and Gas Regulatory Authority Ordinance 2002 does not separately address the need to regulate the social or environmental issues as areas of relevance to the operations of the sector. While assessing the natural gas prices the need to address the negative externalities caused by the operation of the sector utilities may be required to balance environmental and social impacts.

Pakistan Environmental Protection Agency established under section (5) of the Pakistan Environmental Act 1997 (PEPA, 1997/ The Act), was to establish the National Environmental Quality Standards that are to provide for the protection, conservation, rehabilitation and improvement of the environment for the prevention and control of pollution and promotion of sustainable development.. Environmental Protection Departments/ Agencies exist in all the four provinces.

4.1.4.1 Jurisdiction and Authority

Jurisdiction and authority of EPA is very clearly defined by law which clearly states that “no proponent of a project shall commence for construction or operation unless it has filed with the Government Agency designated by Federal Environmental Protection Agency or Provincial environmental Protection Agencies, as the case may be, or, where the project is likely to cause an adverse environmental effects an environmental impact assessment and has obtained from the Government Agency approval in respect thereof.” All projects submitted for approval have to have the Initial Environment Examination (IEE) or Environmental Impact Assessment (EIA) report from the relevant agency and in case of complete application, the agency is bound bylaw to grant approval or otherwise within 4 months.

However, if a decision is not taken and communicated by the agency then the project stands approved. Law does not impose any restriction in terms of time to disclose the decision taken on application but it has been learnt that the practice exists to communicate the decision within a week's time at the most.

4.1.4.2 Findings of the Case Study

Public Hearing of EIA Reports for Sinjhoru Block, Sindh, was advertised by the EPA Sindh and information to this regard was also placed on the website of Oil and Gas Development Company limited. According to the EIA report for the same project, OGDCL employed methods like informal meetings, which were attended by men and village elders and focus group discussions were also attended by the women. Therefore different mechanisms are employed by the relevant authorities to ensure public participation in the EIA and IEE processes.

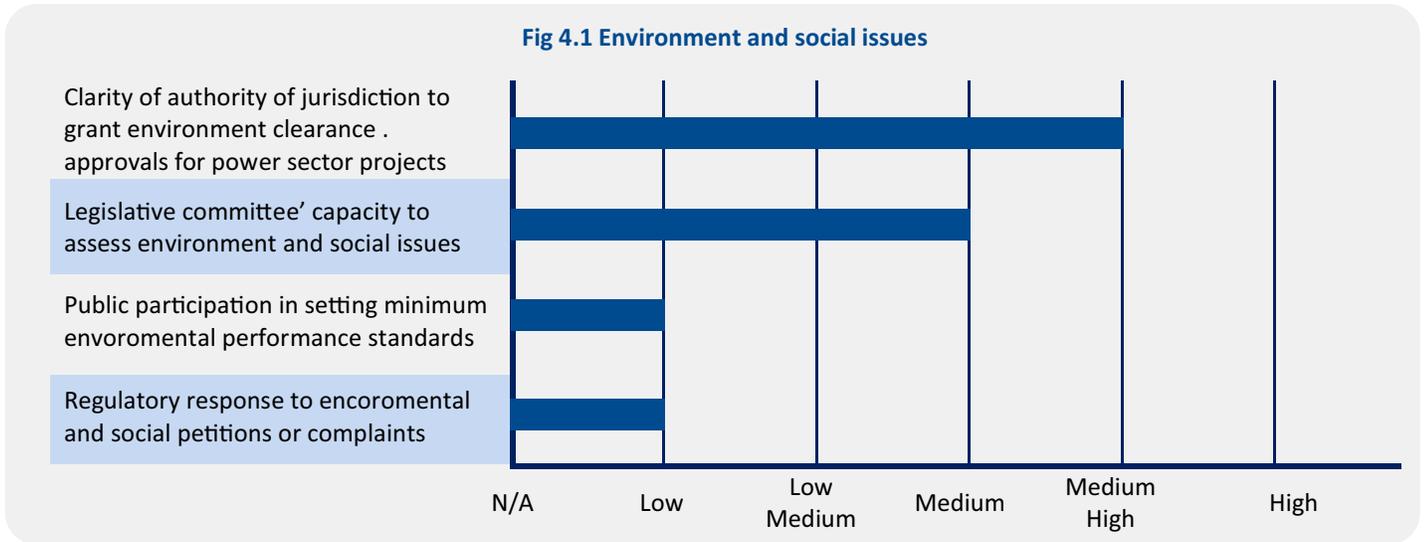
Final EIA report for Sinjhoru Block is available on the internet. The EIA report also discloses the comments received from the participants of the consultation and also confirms that necessary measures have been incorporated in the Environmental Mitigation Plan accordingly.

4.1.5 Accountability in Environmental And Social Aspects

The ability of ordinary citizens to gain access to and rely on the judicial system to hear legitimate claims is as important as the quality of the system. If it is too costly to file claims, or the forum is so distant that it is too costly to travel there, or if claims take too long to be heard by the forum, this effectively means that there is no access to redress for those without significant resources. This indicator is intended to assess whether the regulatory body in the natural gas sector (or the closest equivalent) recognizes the relevance or legitimacy of environmental and social

claims.

OGRA Ordinance 2002 does not separately address decision-making on account of social or environmental issues as areas of relevance to the operations of the natural gas sector. However, it is only mandated to keep the welfare of the weakest stakeholders and consumers while making decisions. NGGI-Pak did not find any evidence of any formal case based on environmental and Social concern.



4.2 Recommendations

Based on the assessment under the NGGI toolkit, following recommendations are made to improve the policy & regulatory processes in Pakistan with respect to environmental and social effects of oil & gas sector projects:

1. There is a need to broaden the mandate of core institutions to internalize social and environmental considerations
2. The mandate of regulatory Authority must also be expanded to include attention to trade-offs with social and environmental aspects;
3. Efforts should be made for sensitization of the policy makers, planners and regulators on environmental and social issues through awareness campaigns.
4. There is a need for the environmental provisions for any project to be printed during the process of approval in the official gazette.
5. Dissemination of the provisions of these acts in the form of brochures, posters, information sheets etc to Public Interest

Organization and the general Public is not observed, which needs looking into.

6. The need is there for developing the capacities of provincial environmental regimes after the 18th constitutional amendment so that they are able to properly address the environmental challenges posed by the gas sector projects.
7. Solicitation of views of the project affectees during planning, policy making and licensing and tariff determination of public projects by the Federal Government should not only be made compulsory but also needs to be taken into account accordingly.
8. Recommendations made in the EIAs need to be followed by the concerned companies and governmental organizations as they are critical in addressing the environmental issues
9. Civil society organizations need to build their capacity to play the role of an effective watchdog so that marginalized communities also have representation.
10. Capacity building of provincial environmental departments after the 18th constitutional amendment is of crucial importance, so that they are able to properly address the environmental challenges posed by gas projects and establishment of CNG stations

CONCLUSION



5.1 Conclusion

Oil & Gas sector governance in Pakistan has undergone significant changes within the past decade and some improvements like the establishment of an active regulatory body and focus on redress of environmental and social aspects of oil & gas projects can be witnessed. However the sector is still unable to meet the demand of consumers, both at macro and micro levels. Lack of transparency throughout the sector governance and the rigid practice of non participatory and non-accountable policy making have led to several issues that hamper the smooth operations and further development of the sector. This report highlights the weak areas of governance that need to be addressed if a transformation of the sector, favoring consumers, is really desired. These weak areas exist in every institution of energy sector i.e. legislature, executive, planning body, regulatory body and CSOs. The overarching areas of good governance, like transparency, accountability and wider public participation are yet to be adopted as a culture.

The Parliamentary Committees are yet to play an effective and proactive role in matters related to gas governance. One element of concern is the quality of legislative debate which to date remains generic in nature without addressing the core issues of the sector. It may be attributed to lack of sectoral expertise on the subject and lack of desire to make use of the available research facilities. It is only through informed debate in the committees of the parliament that they would be able to steer the gas sector policies in the right direction. Further the recommendations of committees are not binding on the government and the executive may choose to completely ignore their recommendations. It has also been noted that wider public participation in the policy formulation process is also required for transparency and subsequent ownership by the stakeholders.

The authority of Planning Commission needs to be clearly defined through changes in the Rules of Business 1973. The Planning Commission is apex planning body in the country, however, its plans and policy recommendations are not a binding on other ministries / departments. The Planning Commission is consulted by the ministries as a mandatory requirement only during the approval of projects funded by the Government or international donors. Apart from this requirement the ministries are free to give their own recommendations and formulate plans / policies as deemed suitable by them. The apex planning body of the country needs to have clearly defined linkages with the executive for effective governance.

In order to ensure effective participation by the civil society, there is a

need to strengthen the civil society organizations so that they can effectively engage with the policy makers, planners, regulators and service providers. Capacity of CSOs emerged as a serious concern. Majority of CSOs were found deficient in taking up the issues with relevant stakeholders effectively as they lacked technical and financial analysis capability. Another area of concern was the lack of representation of weaker groups in the processes of policy making and regulatory affairs. No specific mechanism exists to ensure the participation of weaker groups in the processes for gas governance. The study concludes that the CSOs need to build their capacity so that they are able to represent citizens' voice in an effective manner for improved governance of the gas sector.

OGRA has well defined procedures for licensing and other operational aspects in the areas of generation, transmission and distribution. However, it needs to address the issues of compliance with the defined procedures pertaining to utilities and other organizations. Through strict enforcement of regulatory measures, they can be made accountable for improving their performance. Moreover, in order to increase the capacity of OGRA, appointment criteria of its members needs to be well defined with respect to experience and expertise in oil & gas sector. Their regular training along with that of the staff members needs to be ensured so that they develop multiple perspectives to address the issues faced by the regulatory body.

Increasing population and improper management of natural resources have always been a great threat to Pakistan's environment. Like other developing countries Pakistan always strived hard for economic growth, controlling population growth and meeting the ever increasing energy demands rather than catering for concerns about the output of such processes in the form of environmental hazards. As a result, "green" concerns have never been up on the agenda. Due to more focus on economic growth and lowering the poverty rate with limited resources, the country's environmental record is quite poor. Although Pakistan was among one of the first countries to introduce environmental laws in 80's but it has yet not been able to back up its commitments on environment protection.

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