



Governance and the Pandemic

Questionnaire #1: Whose Jurisdiction? Law in Books and in Action Pakistan

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Question #1: Current Measures

What are the current public health measures in place in response to the pandemic?

There are currently national and provincial lockdowns in place for two weeks now to enable social distancing, which have essentially closed down all non-essential trade, transport and public activity. Several quarantine centers have been established across the country, where COVID-19 patients are being kept in isolation. Testing and contact tracing is being expanded, albeit at a very slow pace, with only around 40,000 tests having taken place in total thus far. New labs are currently in the process of being made operational to expand testing capacity. Communications campaigns aimed at improving the citizenry's awareness around COVID-19 are underway across mainstream media and other platforms. Disinfection activities are taking place for all the major infected areas (particularly urban centers)

Question #2: Constitutional Setup

What is the body with jurisdiction over public health in the country according to its constitution?

This is a tricky matter in Pakistan, and has been a challenge for several years. In 2010 health was devolved from the federal to the provincial level through the 18th amendment to the constitution, resulting in provincial health

departments becoming the main institutions for health policy, planning and service delivery as per the constitution. However, the health ministry was reconstituted in 2013 as the Ministry of National Health Services Regulation and Coordination, with a mandate for regulating and coordinating health services and maintaining standards. However, provincial authorities tend to contest the federal ministry's jurisdiction in light of the 18th amendment. Currently, there is a split mandate between the federal and provincial governments. Provinces are still responsible for formulating and implementing health policies, and the bulk of health budgets are at the provincial level.

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The national health ministry is coordinating the health measures via a national action plan and there is a National Coordination Committee on COVID-19 chaired by the Prime Minister (who is also the Health Minister, supported by a Special Assistant to the Prime Minister on Health). The National Disaster Management Authority (and its provincial departments) is also one of the key institutions organizing the response, including for logistics, international procurement and distribution of medical equipment. District administrations, led by career bureaucrats, are also among the key actors involved in public health decisions at local levels. Overall, there is a lot of fragmentation in the response, with no clear chain of command for public health decision-making. At the same time, relatively peaceable and largely non-confrontational coordination is also occurring, creditable for a country with an otherwise difficult history of inter-provincial strife.

Question #3: Debate over Measures

Has there been any debate over the measures taken?

Yes, there has been a great deal of public debate, including in the mainstream media, across party lines and also between federal and provincial governments. The provincial government of Sindh province, ruled by the Pakistan People's Party (PPP) which initially had the most cases, was the most proactive in terms of shutting down public gatherings and initiating a lockdown. The Prime Minister and government of the Punjab province, both from the Pakistan Tehreek e Insaf (PTI) party, were slower to respond and appeared to follow Sindh's lead for the lockdown more reluctantly. The PM himself delayed for days, initially downplaying the threat of the virus and suggesting that the country and its poorer citizens could not afford to go into a full lockdown. However, upon pressure from the opposition, the military and his own party, he ultimately relented, along with initiating an economic relief package including an emergency cash transfer for the country's poorest households (about 12 million in total).

The PM continues to argue that extended lockdowns are unfeasible for poor countries like Pakistan, and there will likely be considerable pressure to ease lockdown measures in the coming days. There have also been heated debates around the question of congregational prayers in mosques, which were finally called off last week after resistance by large sections of the clergy, more than a month after cases began appearing in the country.

Question #4: Conflicting Claims over Jurisdiction

Has the pandemic generated any conflicting claims over jurisdiction on matters of public health?

There is a consistent, pre-existing tussle over jurisdiction on matters of public health (as well as many other matters of governance) between the federal and provincial governments in Pakistan. However, the present crisis has not seen an overt conflict over jurisdiction. The fragmentation of jurisdiction has come to the surface in other ways, such in the matter of information management; all provinces are managing their own data dashboards, with one of them, Punjab, using a separate information management system altogether, causing various data discrepancies and irregularities that are the emergence of a clear picture. Further, procurement of personal protective equipment (PPE) was delayed in the early stages of the pandemic, as the federal cabinet rejected the federal health advisor's request to procure a large consignment of PPE from international markets, arguing that this was the responsibility of provinces. In more recent days, as the crisis of PPE provision for health workers has gotten worse, the federal government in an about face, has said they will now provide PPEs to hospitals run by provinces directly instead of routing them through provincial governments. However, there have also been instances of creditable cooperation across federal-provincial lines.

Question #5: Overall Governance Debate

Has the pandemic generated a discussion over other governance arrangements in the country?

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There have been debates along several lines, including on the 18th constitutional amendment, which devolved authority for several matters, including health, to the provinces in Pakistan. Many of the supporters of the amendment speak of being vindicated, especially as provincial governments, including in Sindh and KP, were able to utilize provincial autonomy to take more proactive steps ahead of the federal government, which pushed both the federal and other provincial governments to act more decisively. There have also been debates about fiscal priorities, with many raising questions about Pakistan’s high levels of defense spending vis a vis low spending on health care. Many have also raised the question of the dysfunction of Pakistan’s local governments – elections for most of which have currently been held up by the federal government as it tries to introduce a new system – as hobbling Pakistan’s pandemic response, because the suspension of local governments has deprived the population of ready and mobilized local leadership that could have helped garner public support for social distancing. The federal government’s emergency cash transfer program has also opened up debate on the basis for the distribution of grants across provinces – the government has said it will do so on a population basis whereas some from smaller provinces argue regional deprivation should also be a factor in distributing disbursement. Further, the colonial era administrative

services bureaucracy as well as the military, has taken center stage in decision making and implementation regarding the lockdown, in some ways, reinforcing the power of the unelected state apparatus, sometimes even in contravention of health authorities’ advice. There has been heated debate on media and social media about the excessive use of force and violence by law enforcement authorities to implement the lockdown, and most recently, around the issue of the arrests of doctors in the province of Baluchistan, for protesting for the provision of proper PPE.

Question #6: Other Remarks

It may be too soon to say anything definitive as the crisis is still ongoing, but I think this pandemic has opened up many interesting questions about the efficacy of decentralized health systems. There are reasons to believe Pakistan’s provincially decentralized public health system has helped speed the response to COVID-19 and pushed the federal government to act more decisively. However, there is also reason to feel that Pakistan’s response has been hampered by some of the constraints imposed by a system with a weak central health ministry, which has little in terms of resources or decision-making authority, making it relatively ineffective at proposing and implementing important decisions, like the lockdown, and the procurement of PPE and testing kits. The decentralization of public health may also have hampered the easy availability, flow and use of epidemiological data. Given the enormous scale of both the public health and economic crisis at hand, perhaps it may well be time to consider re-tooling our institutions to privilege improved coordination, planning and resource allocation at a central level, with the consent of all sub-national stakeholders, as federal governments have the most tools and resources at their disposal to be able to take on the crisis. At the same time, it may be a wake-up call to truly deepen our democracy and ensure that people’s representatives are empowered at all tiers of government so resources can be better distributed and reach those who need them.

Ammar Rashid. April 2020.