

Effectiveness of Oil and Gas Regulatory Authority

Afia Malik

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**Effectiveness of Oil and Gas
Regulatory Authority**

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EXECUTIVE SUMMARY

OGRA was established on March 28, 2002, via the Oil and Gas Regulatory Authority Ordinance (2002) to regulate the midstream and downstream oil and gas sector. The objective behind establishing OGRA was 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. This report evaluates the effectiveness of OGRA. It covers the quality of work done and the level of performance at OGRA.

KEY FINDINGS

- ❖ Since its inception in March 2002, the Authority has put a regulatory framework in the form of rules, regulations, and technical standards. In preparing the regulatory framework in OGRA's 20-year history, frequent delays can be observed.
- ❖ Apart from issuing licenses, there is no effective role of OGRA in regulating oil and gas sector prices. The Authority is only computing prices based on already set parameters by the government. The enforcement mechanism of performance standards is weak.
- ❖ OGRA is financially independent, yet regulatory independence is compromised by law in its functions. Likewise, provisions in the OGRA law have curbed transparency in decision-making and limited public participation in the decision-making process. Above all, non-clarity in parental law is not allowing the regulatory Authority to improve its regulatory capacity.
- ❖ There is no evidence to suggest a proactive role of OGRA in the sector. The role of OGRA in effectively determining the level of competition in the oil sector is also vague.
- ❖ OGRA submits an Annual Report on its affairs and a State of the Petroleum Industry Report for that financial year. But evaluation of these reports has never been undertaken.
- ❖ OGRA governing body is the 'Authority', comprising a chairman and three members. The 'Authority' is statutorily empowered to approve or disapprove any decisions relating to OGRA functions. Currently, OGRA is working in a centralised manner. The regulatory decision-making and all the policymaking related to organisational affairs are at the level of the 'Authority'.

- ❖ Effective regulatory capacity demands a strong, well-qualified, and experienced governing body. OGRA, with time, has been able to find personnel (only in the governing body) that satisfies the criteria. However, disproportionate interference of law enforcement agencies in the Authority's affairs has indirectly undermined decision-making capability and regulatory capacity.
- ❖ OGRA, at present, is de jure and de facto politically independent in its human resource management. Yet, the lack of human resource development and deficiency in the dedicated workforce combined with disjointed departmental activities is hurting the organisation's overall capacity. As a result, routine activities get delayed, and the performance of regulatory duties is affected.

WAY FORWARD

- ✓ Amendments in the law can take care of some of the regulatory challenges at OGRA.
- ✓ Before issuing rules and regulations, OGRA should implement a clear and transparent consultation and public participation policy.
- ✓ More information and communication technologies are recommended for transparency, minimising delays, and improving departmental coordination.
- ✓ There is an urgent need to simplify regulatory processes and enhance federal government and OGRA coordination.
- ✓ For effective accountability of the regulator, OGRA reports (Annual and State of the Petroleum Industry) must be evaluated by independent experts regularly.
- ✓ Where a regular oversight of the performance of the governing body of OGRA is necessary, equally important is a chairman, any member, or any officer must not feel insecure about their positions and in taking tough decisions. In other words, an ability of a regulator to take independent decisions free from the influence of government, free from the fear of NAB or the Judiciary.
- ✓ OGRA should allocate adequate human and financial resources (in line with their tasks) to ensure operational independence. Insufficient resources may put the regulators' independence at risk and impact its effectiveness.
- ✓ The monitoring and enforcement department needs to be strengthened and redefined.
- ✓ Decentralising decision-making powers for effective and speedy decisions in routine matters is suggested.

1. BACKGROUND

The regulatory framework in Pakistan's energy sector has remained weak. In the 1960s, the natural gas industry was regulated by independent regulators. But they soon lost their independence, as most regulated companies were state-owned. After that, the sector remained under government control. The petroleum sector (oil and gas) was managed by the Oil and Gas Development Corporation (OGDC) (Kemal et al., 2002).

In the 1990s, it was realised that the government couldn't be a policymaker, regulator, and service provider simultaneously because of fiscal and management constraints. Efforts were made to liberalise, deregulate, and privatise. The objective was to overcome a weakness in the regulatory process and ensure efficiency in the economic systems. The policy function of the government was separated from regulation and service providers to offer a level playing field to service providers in the private sector. Independent regulatory authorities were established to supervise and develop different sectors. The Oil and Gas Regulatory Authority (OGRA) is one of these regulatory authorities.¹

OGRA was established on March 28, 2002, via the Oil and Gas Regulatory Authority Ordinance (2002). The ordinance got amended slightly in 2009, 2011 and 2021. Powers to regulate the midstream and downstream oil sector were transferred formally to OGRA in March 2006. Regulation of upstream activities and explosives department remained with the Ministry of Petroleum and Natural Resources, now Petroleum Division, Ministry of Energy.

Establishing an independent authority to regulate public utilities was a step towards restructuring and effectively regulating the midstream and downstream oil and gas industry. OGRA is a corporate body under the Cabinet Division.

1.1. OGRA Ordinance 2002

As stated in Ordinance No. XVII of 2002, the objective behind the establishment of OGRA was_

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.

¹In 2000, Natural Gas Regulatory Authority (NGRA) was established under the Gas Regulatory Authority Ordinance, promulgated in March 1995. The objective at that time was_ to promote competition and attract private investment to divest the government holdings in the gas companies and regulate the gas companies' operations.

Under Section 3 (2), the Authority is a corporate body independent in the performance of its functions. As per Section 6 of the Ordinance 2002, the Authority has the exclusive right to grant licenses for any regulated activities to promote efficiency, cost-effectiveness, best practices, high safety, service standards etc.

It has the power to regulate activities, e.g., construction of pipelines, development, storage, distribution or transportation, and marketing of oil, natural gas, Liquefied Natural Gas (LNG), Liquefied Petroleum Gas (LPG) and Compressed Natural gas (CNG). OGRA can amend or revoke licenses for regulated activities and enforce compliance with license conditions. OGRA's responsibility is to promote effective competition and develop and implement performance and service standards to create efficiencies in the activities within its jurisdiction.

Additionally, the Authority is empowered to:

- Resolve complaints
- Ensure the provision of open access and oversee investment programs and capital spending
- Make rules and regulations according to the ordinance
- Administer, and establish prices while safeguarding the public interest
- Prescribe fines for misconduct
- Determine rates for licensees
- Enforce standards and specifications for refined oil products

Box 1. Functions

- ❖ Determine revenue requirements for each natural gas licensee and advise the Federal Government to determine the prescribed price.
- ❖ Specify and enforce accounting and technical standards.
- ❖ Prescribe procedures and standards for investment programs of the gas utilities and oversee their capital expenditure to ensure prudence.
- ❖ Enforce standards and specifications for refined oil products as notified by the Federal Government.
- ❖ Implement policy guidelines of the Federal Government, issued under Section 21 of the OGRA Ordinance, subject to their being consistent with the provisions of the Ordinance.
- ❖ Computing and notifying ex-refinery price of SKO, including ex-depot prices of SKO and E-10 and Inland Freight Equalisation Margin (IFEM) for all products.
- ❖ Monitoring prices of petroleum products under the deregulated scenario.
- ❖ Computation of road and pipeline freight for transportation of petroleum products.
- ❖ Resolution of public complaints and disputes against and between the licensees.

1.2. Purpose of Evaluation

OGRA was established two decades ago. Sufficient time has passed for an organisation to get established and play an active role in the sector. This report intends to evaluate the effectiveness of OGRA. It will cover the quality

of work done and the level of performance at OGRA. It will highlight loopholes and offer suggestions, that is, the steps to improve regulation of the oil and gas sector to ensure a reliable, sustainable supply of energy for the people and economy of Pakistan. While evaluating OGRA's performance, the report will focus on OGRA's capacity needed to perform its regulatory duties effectively.

1.3. Methodology

A case study approach is adopted for this evaluation. The data (information) is collected from interviews (interactive sessions) with officials at the Authority, sector experts and government officials. Besides, the evaluation relies on secondary data sources like OGRA Annual Reports, State of the Regulated Petroleum Industry Reports, and other literature on OGRA and regulatory authorities in other countries.

Limitation: The evaluation relies only on information (both qualitative and quantitative) gathered from informal interviews/discussions and published sources; no perception survey is conducted.

Audience: Authority itself and the policymakers are the primary audiences for this evaluation, as both can influence the design of the regulatory framework and its outcomes on the sector's overall performance.

1.4. Scope of Evaluation

This evaluation is an attempt to answer the following questions:

- (a) Did OGRA achieve its objectives as stated in the OGRA Ordinance?
- (b) Is the regulatory mandate of OGRA effective in terms of strategies, various processes involved in the grant of licenses, the determination of tariffs, and the monitoring of regulated activities?
- (c) Is OGRA engaging effectively with consumers, civil society representatives and other stakeholders?
- (d) How efficient is the governance structure at OGRA in terms of the execution of its duties? Does OGRA Ordinance 2002 facilitate an effective governance structure?
- (e) What is the organisational structure at OGRA? How does OGRA carry out its functions and make its decisions?
- (f) Does the Authority have enough capacity to address systemic issues in the oil and gas sector?
- (g) How can its work be made consistent with international best practices?

The evaluation answers these questions under two main headings:

- *Regulatory Mandate and its Effectiveness*
- *Governance and Institutional Capacity*

1.5. Structure of Evaluation

Findings in this evaluation are developed after detailed discussions and reviewing available documents.

Recommendations in the evaluation identify specific areas/ policies that can be improved or revised for effective outcomes. Recommendations will also draw lessons from international best practices wherever possible.

2. REGULATORY MANDATE AND ITS EFFECTIVENESS

The mandate of OGRA is defined in the OGRA Ordinance, 2002, which specifies its powers and functions. Rules and Regulations are fundamental to achieving the objectives and performing OGRA's responsibilities under the ordinance. The Authority has powers (under Section 41(1) to make rules but can notify after getting approval from the federal government. Whereas, under Section 42 (1), OGRA has powers to make regulations consistent with the provision of the ordinance or rules for carrying out its functions. These can be notified in the official gazette without government approval. OGRA ordinance 2002 offers the necessary procedural details.

The mandate of a regulator, apart from being specific, must be supported by other provisions of law, where the regulator can take autonomous decisions while remaining within the broad policy framework laid down by the government. Merely identifying the functions of a regulator but not granting power will not serve the purpose. Administrative autonomy is a critical aspect of a regulatory mandate. However, at OGRA (in some cases), the decision-making process, in continuation of its mandate, has practically been made subject to the approval of the federal government (details in Section 3.1).

We do not see any role of OGRA in developing the sector. Partly, it can be attributed to its omission in the statutory mandate. A law governing the oil and gas sector should be clear and conducive to the growth of the sector and overall economic growth.

In addition, although the clarity of the mandate defines a regulator's performance to a certain degree, external factors also influence the mandate's effectiveness. In the case of OGRA, the main external factor is the unwarranted influence of the court systems. In Pakistan, there has been a tendency for frivolous litigation by vested interests to delay the regulatory and administrative measures against them. So is the case in the oil and gas sector. For instance, granting a stay in matters related to the investigation or inspection hamper regulatory action by the Authority. Although judicial review is a check on the regulator, the judiciary must take great care to ensure that judicial intervention does not become an alternate for regulatory decision-making.

2.1. Regulatory Framework

OGRA Ordinance grants the Authority the exclusive power to make rules and regulations that may be required to determine rates and tariffs of regulated activities; issuance, review, modification, amendments, cancellation, revocation, renewal etc., of licenses; along with the establishment of technical standards.

Since its inception in March 2002, the Authority has put a regulatory framework as described in Figure 1. Besides, about 45 amendments have been made to these notified rules/ regulations. Maximum modifications are made to OGRA Service Regulations, 2005, i.e., twenty-four. Followed by eight amendments in LPG production and distribution rules 2001.²

Fig. 1. Regulatory Framework

<p>Rules</p> <ul style="list-style-type: none">• Natural Gas Licencing Rules, 2002.• Natural Gas Tariff Rules, 2002.• Compressed Natural Gas (CNG) Production and Marketing Rules 1992, adopted & notified in March 2003; amended in Oct. 2008; amended in April 2009.• Liquefied Petroleum Gas (LPG) Production & Distribution Rules 2001, adopted and notified by OGRA in March 2003; amended in March 2007; amended in Oct. 2008.• Pakistan Petroleum (Refining, Blending and Marketing) Rules 1971, adopted under Section 44(3) of the Ordinance, notified in March 2006.• Budget Committee Rules, 2004.• Liquefied Natural Gas (LNG) Rules, 2007.• Amendment in OGRA Ordinance, 2002 Section 43(B) in July 2009.• OGRA Natural Gas (Regulated Third Party Access) Rules, 2012.• Pakistan Petroleum (Refining, Blending and Marketing) Rules 2016, substituting Petroleum (Refining, Blending and Marketing) Rules 1971.
<p>Regulations/ Standards</p> <ul style="list-style-type: none">• Complaint Resolution Procedure (Natural Gas, LPG, CNG) Regulations, 2003; amended adding oil in December 2006.• Performance and Service Standards for Gas Utilities, 2003.• Natural Gas Uniform Accounting Regulations, 2003.• Natural Gas Transmission (Technical Standards) Regulations, 2004.• Natural Gas Distribution (Technical Standards) Regulations, 2004.• OGRA Financial Regulations, 2005.• OGRA Service Regulations, 2005; amended regulation 14, 2009; amended in 2012; .• Natural Gas (Well-head Price) Regulations, 2009• Natural Gas Measurement (Technical Standard) Regulations, 2019.• Performance and Service Standards, 2019.
<p>Technical Standards Oil</p> <ul style="list-style-type: none">• Oil Transportation (Pipeline) Technical Standard, SRO No. 622, July 2009.• Technical Standard for Petroleum Industry (Retail Outlets), SRO No. 623, July 2009.• Technical Standard for Petroleum Industry (Depot for Storage of Petroleum Products), SRO No. 624, July 2009.• Technical Standards for Oil Refineries, SRO No. 819, Sep. 2009.• Technical Standard for Petroleum Industry (Road transport Vehicles, Containers and Equipment used for the Transporation of Petroleum Products, SRO No. 900, Oct. 2009.

²Evaluating the effectiveness of these rules/ regulations is not the mandate of this study but will be touched upon while discussing OGRA's effectiveness.

Frequent delays can be observed in preparing the regulatory framework in OGRA's 20-year history. Natural Gas Theft Rules remained under preparation for several years but later shelved for a reason not mentioned in its annual reports. Pakistan Oil (Refining, Blending, Transportation, Storage and Marketing) Licensing Rules, 2005, get notified in 2016 after a delay of 14 years. Likewise, OGRA (Fines and Recovery) Rules, 2009, which remain under the preparation/approval stage for a few years, are untraceable. However, it is essential to reiterate that notification of rules is subject to government approval.

The evidence suggests a regular and adequate review of regulatory performances can improve the Authority's overall functioning, leading to better sectoral development and an improved investment climate (Khan and Qazi, 2014). It may also put pressure on the government to facilitate OGRA wherever required. OGRA submits a yearly report on its regulatory affairs for that financial year and the state of the petroleum industry in Pakistan. But independent evaluation of these reports has never been undertaken (more details in Section 3.3).

2.2. Regulatory Effectiveness

The regulatory framework is quasi-judicial for issuance of licenses; tariff setting, including determination of estimated and final revenue requirement of natural gas transmission and distribution licensees at the beginning and the end of each financial year, respectively, and its review during the year; and maintenance of proper standards and quality of services by the licensees. The Authority is vested in delivering decisions for various activities under its jurisdiction. In addition, it addresses consumer complaints.

2.2.1. Licenses

The ordinance provides OGRA with the right to exclusively exercise power in the grant of license under sections 22, 23, and 24. The licensing rule defines the criteria for granting a license, license fee, term and renewal of license, tariff, revocation, and license suspension. These rules are broadly categorised into transmission, distribution, and sales license.

Box 2. OGRA Activities Timeframe

- ❖ Application for construction or operation license of pipelines_ for natural gas, transmission, distribution, and sale of natural gas in 6 months.
- ❖ Application for LPG related licenses in 2 weeks.
- ❖ Application for CNG station licenses in one day.
- ❖ Determination of revenue requirements of a gas utility in 6 months.
- ❖ Review Motion against Authority's decision in 8 weeks
- ❖ Public Complaint in 30 days Request for dispute resolution in 4-8 weeks.
- ❖ Appeal against decision on a complaint of a Designated Officer in 90 days.

Although timelines are given for executing these actions to provide the required operational certainty (Box 2), there are delays in these activities.

As per the ordinance, the Authority has the power to consult the stakeholders in these regulatory procedures. The Authority, by law, is not bound to do it. In other words, public participation is limited. Evidence suggests negligible public hearings are held while giving licenses. Therefore, the fundamental factors considered in deciding tariff determination and subsequent grant of the license remain unclear to stakeholders and the public. Political influence in the decision-making at OGRA is also documented (CRCP, 2013).

In addition to natural gas, the Authority is empowered to grant licenses for Oil, CNG, LPG and LNG related regulated activities. OGRA efficiency in terms of granting licenses is evident in Table 1. When natural gas resources were depleting, OGRA issued licenses in the CNG sector. OGRA issued these licenses in line with

Table 1
Licenses Issued at OGRA

Sector	Category	No. of Licenses Issued as of June 30, 2020	
Oil	Operational Oil Marketing Companies	34	
	Operational Oil Refineries	6	
	Lubricant Marketing Companies	93	
	Lubricant Plants	85	
Gas/ LNG	Transmission, Distribution & Sales_ Natural Gas	2	
	Gas Storage	1	
	Natural Gas Sale	5	
	Transmission of Natural Gas	7	
	Transmission and Sale of Natural Gas	2	
	Transmission of Natural Gas from LNG receiving Terminal	1	
	Sale of Natural Gas (RLNG) to OGRA's Licensed CNG Stations	1	
	Transmission of Natural Gas, construction and Operation of pipeline and connected facilities for transmission of natural gas	1	
	Sale of Natural Gas / RLNG.	2	
	Construction & Operation of Natural Gas Pipeline Projects	1	
	Construction and operation of pipeline for transmission of natural gas	1	
	LPG	Producers	11
		Marketing Companies	250
Auto-refueling stations		22	
CNG	Operational CNG Stations	3609	

Source: OGRA Annual Report 2019-20.

the government gas allocation policy. But, as a regulator, it was OGRA's responsibility to check whether the mushroom growth in CNG stations is in line with the existing natural gas resources. Besides, this mushroom growth in CNG stations resulted in an imbalance in the natural gas distribution sector due to the massive usage of natural gas in the transportation sector (CRCP, 2013).

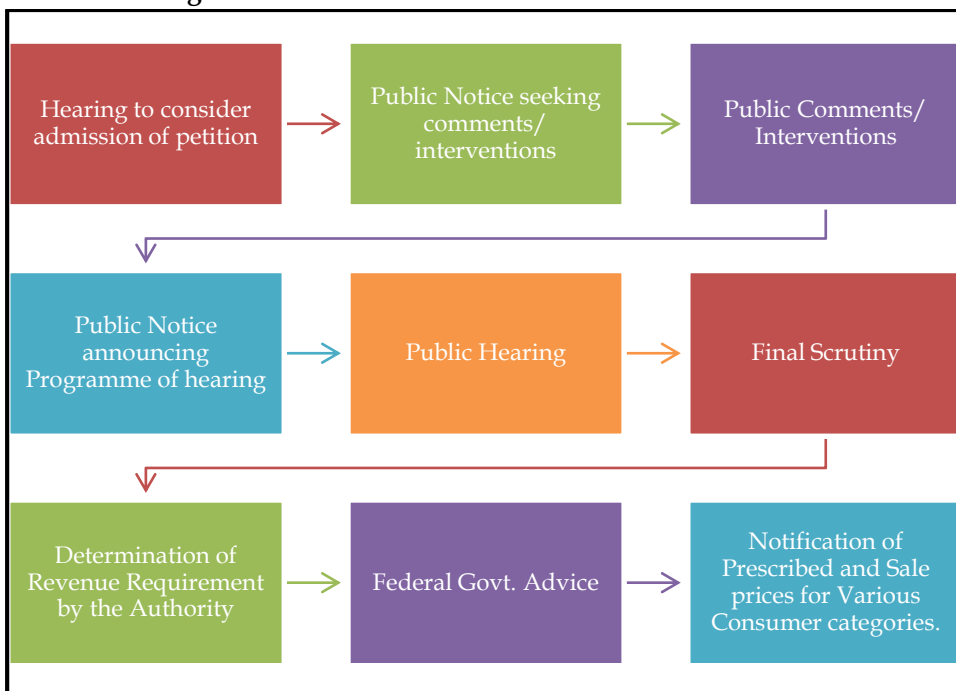
It was also OGRA's responsibility to pinpoint problems in government policy. In contrast, OGRA took credit for increased investments in the CNG sector (OGRA Annual Report 2009-10). Permission for 3395 CNG marketing licenses was allowed from 2002 to 2011. Some of these licenses were issued as political favours.

Likewise, OGRA issued licenses to oil marketing companies but did not monitor their performance effectively. Only granting licenses is not serving the purpose of competition. The enforcement mechanism is weak at OGRA (more details in Section 2.2.3).

2.2.2. Tariff

OGRA has focused on tariff determination instead of tariff regulation (Figure 2). It determines the revenue requirements of each license (for carrying out regulated activities of transmission, distribution, and sale of natural gas) as per rules and prescribed prices of natural gas utilities for various retail consumers under Section 8 (1) of the OGRA Ordinance, 2002.

Fig. 2. Tariff Determination and Notification Process



Source: OGRA Annual Report 2019-20.

The revenue requirement consists of the following major components:

- Cost of gas paid to the gas producers
- Transmission and distribution costs of SNGPL and SSGCL, including the unaccounted-for-gas (UFGs) as allowed by OGRA
- Depreciation
- Market-based rate of return (at present, 17.43 percent of the net operating fixed assets)

For determining the revenue requirements and prescribed tariffs, the gas utility companies submit their economic rate of return to OGRA for each financial year by December 1 following the OGRA Ordinance 2002 and the Natural Gas Tariff Rules 2002. These petitions are scrutinised, processed, and decided under the rules and all stakeholders' comments and suggestions. The final rate of return is determined in almost seven months by the end of the financial year.

The gas companies may also file for review against any decision of the Authority, within thirty days, under the relevant provisions of law, and they more often avail this opportunity. The Authority claims (as reported in its Annual Report 2019-20) that the process of determination of revenue requirements is transparent and ensures effective participation of consumers and the public via hearings. However, the process is lengthy, and there are frequent delays in the whole exercise. In addition, there is a wide gap in the dissemination of information. Experts believe the hearing exercise is useless from a consumer perspective, as relevant information is not easily accessible.

Apart from gas price determination, OGRA computes & notify the ex-refinery price of Superior Kerosene Oil (SKO), including ex-depot prices of SKO & Ethanol (E-10). It calculates and notifies Inland Freight Equalisation Margin (IFEM) for petroleum products (MS, HSD, SKO and LDO); monitor prices of petroleum products under the deregulated scenario; and compute road and pipeline freight for transportation of petroleum products. But the whole exercise is based on government-set parameters, making the entire regulatory exercise meaningless from an independent regulation perspective.

The federal government empowered OGRA in 2009 to determine and notify CNG consumer prices. However, deregulated CNG consumer prices on December 13, 2016, and CNG stations were allowed to charge a price in line with market forces. OGRA has been delegated the powers to determine Re-gasified Liquefied Natural Gas (RLNG) price every month (under Petroleum Products (Petroleum Levy) Ordinance, 1961 and Petroleum Products (Petroleum Levy) Rules, 1967) in line with that of other petroleum products and the same is notified by PSO. Here again, the pricing parameters are set by the federal government.

Likewise, before the LPG Policy, 2016, LPG producer and consumer prices were deregulated. As per the LPG policy 2016,³ amendments to the LPG production and distribution rules 2001. After amendments, OGRA notifies and regulates LPG prices per LPG Policy/Rules, and the Ministry of Energy determines the price. Being a regulator, it was OGRA's responsibility to monitor LPG prices in a deregulated environment and check the unnecessary hike in LPG prices. But the Authority didn't do. Consequently, there is a change in government policy.

So basically, there is no effective role of OGRA in regulating oil and gas sector prices. The Authority is only computing prices based on already set parameters by the government.

2.2.3. Quality Assurance and Enforcement

The objective behind OGRA was 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. There is little evidence to suggest that regulations in the oil and gas sector have positively impacted quality. The slow disposal of caseload and overall institutional capacity have undermined the enforcement powers at OGRA.

Ensuring reliable and high-quality uninterrupted natural gas supply and efficient services is one of the critical aspects of the regulatory process. This indicator assesses how well the regulator adopts the required mechanisms to meet this responsibility. From the consumer perspective, the quality of service is paramount. There is a procedural need within the regulatory authority operations for a systematic mechanism for monitoring the actual performance in terms of consumer service and quality of supply. OGRA must undertake periodic reviews to evaluate compliance with the performance standards. But as evident from the OGRA Annual Reports, no serious effort is taking place in OGRA regarding the enforcement of quality standards in the gas sector.

The gas distribution companies must maintain adequate pressure in the transmission pipelines and distribution networks and upgrade the system where necessary to ensure the supply of contractual volume and pressure to its consumers. The licensee must conform to the performance and service standards as specified by the Authority from time to time in respect of any aspect of the licensee's performance, including service, efficiency, and safe operation of its regulated activities. For two prominent gas distribution companies, SNGPL and SSGCL, OGRA failed to ensure efficiency benchmarks. Despite setting targets for UFGs over the years, the UFGs in these two companies have increased (Table 2).

³As per the policy, LPG is a poor man's fuel. However, it is priced much higher than natural gas. Therefore, this situation warranted immediate intervention. The Ministry of Energy considered it expedient to put a framework to regulate the LPG prices both at the producer's and consumer's level (OGRA Annual Report 2019-20).

Table 2

Unaccounted for Gas

	FY2003	FY2019
SNGPL	8.16%	11.5%
SSGCL	7.6%	17.8%

Source: OGRA Annual Report 2002-03, PIDE (2020).

In the gas sector, the two main integrated transmission and distribution gas companies obtain approval of the 'Authority' for undertaking extension in their transmission and distribution networks to cater to different sectors' demands. OGRA is doing quite effectively, as is evident from its annual reports. The gas exploration and production activities slowed down after early discoveries. Consequently, the gas produced indigenously became insufficient in FY2006 and onwards. But the expansion in T & D network continued at the same pace. From FY2007 to FY2020 gas distribution network in Pakistan expanded at about 8 per cent per annum (Table 3). The current demand-supply gap is more than 2BCD.

Table 3

Transmission and Distribution Network (Km)

	Transmission		Distribution	
	SNGPL	SSGCL	SNGPL	SSGCL
2007	6142	3290	36919	23448
2020	9588	4126	135887	47520

Source: Pakistan Energy Yearbook, 2012 and OGRA State of Regulated Petroleum Industry Report, 2019-20.

As a regulator, it is responsible for catering to consumer demand, keeping in mind the available supplies. In the absence of any viable business model, both the gas companies are expanding their assets as their financial returns are not linked to their operational efficiency but the expansion of assets. The regulator is allowing this expansion. If the regulator allows this expansion, it must check whether all consumers are supplied with enough gas. Unfortunately, this is not happening, as several hours of gas load shedding in a day during winters is experienced by domestic and CNG consumers and export industries.

OGRA Annual Reports gives details of quality checks to various oil companies and products through the Hydrocarbon Development Institute of Pakistan (HDIP). These reports also provide details of penalties imposed (Table 4). However, there is no evidence of collecting these fines/ penalties in its financial statements. That makes the whole process irrelevant. The inquiry report on the petroleum crisis in June 2020⁴ also certified the failure of OGRA in checking the

⁴Report of the Inquiry Commission on Shortage of Petroleum Products in Pakistan, Volume I, Cabinet Division, Government of Pakistan, 2020.

quality produced in local refineries and the adulteration of petroleum products by oil marketing companies. The report also highlights the below-par performance of HDIP since 2007, “Despite all-too-often complaints from customers about the low-quality fuel containing higher Sulphur contents, HDIP cries all good. The role of HDIP, thus, has been reduced to a testing agency that only goes through the motion” (GOP, 2020, p. 126).

Table 4

Enforcement Activities at OGRA (2019-20)

	Inspections (Nos.)	Show Cause Notice (Nos.)	Penalty Imposed (Rs Million)
Oil	290	97	30.8
CNG	2636	270	6.125
LPG	No Details	No Details	No Details

Source: OGRA Annual Report 2019-20.

2.2.4. Consumer Complaints

The complaints department at OGRA is responsible to cater consumer complaints under Complaints Resolution Procedure Regulations, 2003. The designated officers decide on complaints. Initially, the complainant goes to the licensee. If there is no positive redressal in 90 days, the complaint goes to the OGRA registrar. OGRA registrar decides in ten days to accept or reject the application. If accepted, give 15 days for a response from a licensee. After that designated officer has 90 days to give his decision and notify the complainant and licensee. Within 30 days, either party may appeal against the decision to the Authority. Any person/ party unhappy with the Authority decision may appeal to the High court.

Not only complaint redressal mechanism is lengthy, but the departmental capacity for the redressal mechanism is also weak. As the annual reports show, the complaints department at OGRA is facilitating only gas consumers of utility companies (SNGPL & SSGCL) by handling complaints related to the provision of gas connection, excessive/wrong billing, meter tampering/gas theft charges etc. There is no clarity regarding the role of OGRA in redressing complaints of CNG, LPG or petroleum products consumers.

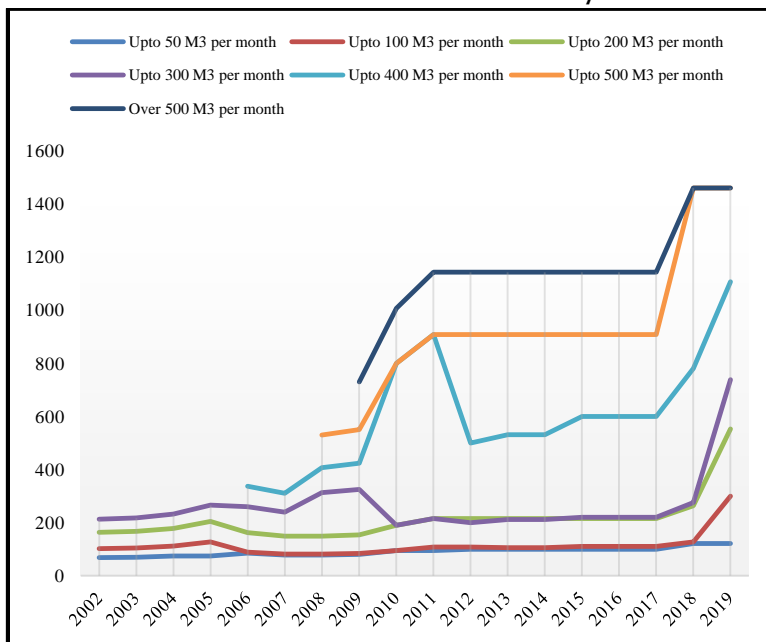
2.2.5. Sectoral Growth and Role of OGRA

Sector growth and the associated policies should be the common goal of the Ministry and the regulator, i.e., OGRA. But unfortunately, there is no evidence to suggest a proactive role of OGRA in the oil and gas sector. The role of OGRA in effectively determining the level of competition in the oil sector is also vague. OGRA, even after twenty years, is determining tariffs rather than regulating them.

As per Pakistan Oil Rule 2016, clause 35(1)(g), it is mandatory for every oil marketing company (OMC) to first uplift petroleum products produced by the local refineries before opting for import of the same. In breaking this rule, OMCs continuously avoided their responsibility to uplift their allocated quota from refineries from January to April 2020. The OMCs refused to lift a capacity of 190,892 MT of Motor Spirit from the refineries. OGRA, a Regulatory Authority, failed to apply Rules 66 & 69 against OMCs on this continuous violation. Because of this refusal of OMCs to lift glutted the local refineries. Resultantly, the government banned imports on March 25, 2020, which adversely affected the market in the coming months, and the oil crisis happened. According to one of the licensing conditions mentioned in Rule 53 (xiv), OGRA was mandated to specify minimum stock requirements of crude oil by refineries. OGRA ignored this essential duty through the years (GOP, 2020).

Besides, the government interference in service providers' affairs has led to cross-subsidy and an overall deficit in the gas sector. Delaying the revision of consumer prices has created a financial obligation (circular debt) in the sector. OGRA is not active to counter this. There was no significant increase in consumer prices from 2015 to 2018. The gas sector deficit is increasing because of the differential in consumer prices and the determined revenue requirements (ICAP, 2020). According to one recent estimate, this deficit has reached Rs 1.5 trillion.⁵

Chart 1: Domestic Consumer Gas Price Rs/MMBTU



⁵Cited from Malik and Ahmad (2022).

Chart 2: Gas Prices in Industry and Power Rs/ MMBTU

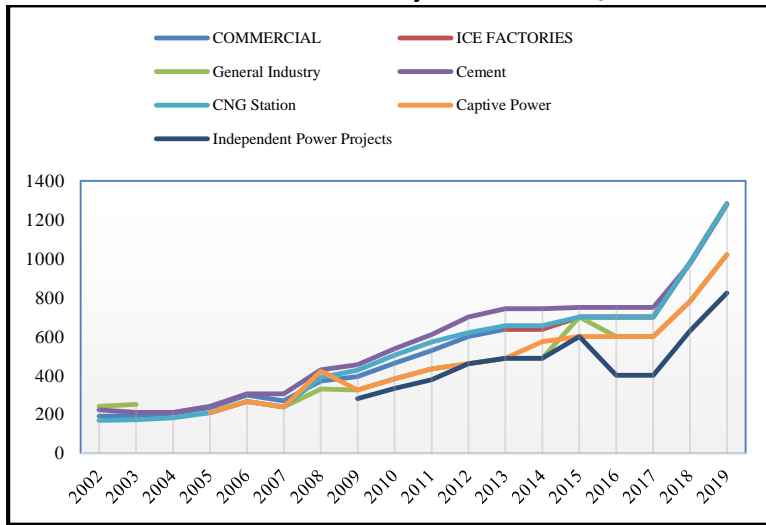
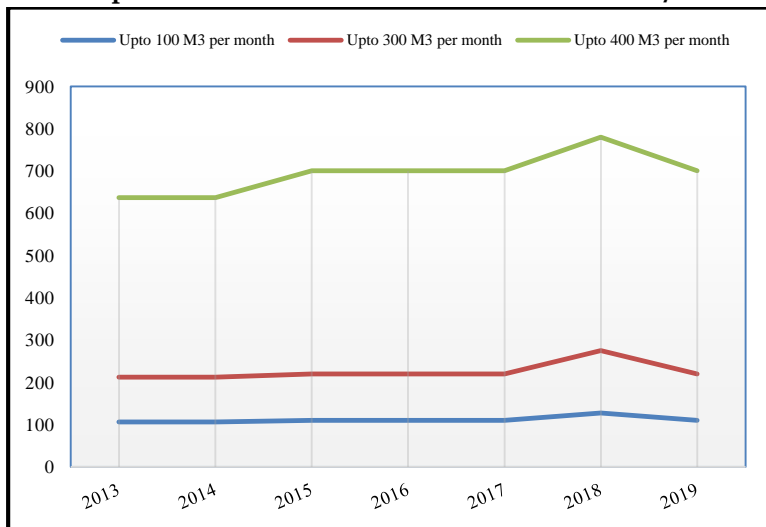


Chart 3: Special Commercial Roti Tandoor Gas Price Rs/ MMBTU



Source: OGRA (2020) & Pakistan Energy Yearbook (2020)

To give the credit where it is due!

- ❖ The credit for increased private investments in the LPG supply infrastructure (midstream and downstream) goes to OGRA. During FY 2019-20, Rs. 29.26 billion has been made in the LPG supply infrastructure, whereas total investment in the sector to date is almost Rs. 66 billion (OGRA Annual Report, 2019-20).
- ❖ It is only under OGRA's constant pressure that oil marketing companies are increasing their storage capacity.

Table 5

Storage Capacity (MT)

	2016	2020
High Speed Diesel	270740	1011423
Motor gasoline	93141	613488

Source: OGRA State of Regulated Petroleum Industry Report 2015-16 and PACRA (2020).

3. GOVERNANCE AND INSTITUTIONAL CAPACITY

3.1. Governance at OGRA

OGRA is delegated to regulate midstream and downstream oil and gas sectors. The leading tasks of OGRA, as in the OGRA Ordinance, 2002, include granting licenses to carry out regulated activities and subsequent regulation, whether those regulated activities are per conditions of the license. Safeguarding stakeholders’ interests are among the most critical duties of OGRA. However, certain powers have been vested in the federal government regarding policy formulation, infrastructure development planning, and petroleum product pricing, including petroleum levy, creating confusion and ambiguity in roles, thus affecting OGRA’s performance.

3.1.1. The Governing Body

OGRA governing body is the ‘Authority’, which is statutorily empowered to approve or disapprove any decisions relating to OGRA functions. The ‘Authority’ comprises a chairman and three members_ member gas, member oil and member finance. The quorum for any decision must constitute at least a chairman and two members.

Box 3. ‘Authority’ under the OGRA Ordinance 2002

- ❖ Chairman_ is an eminent professional with a minimum of twenty years of experience in law, business, engineering, finance, accounting, economics, or petroleum technology.
- ❖ Each member holds a relevant degree and a minimum of twenty years of related experience in their respective fields.
- ❖ The retirement age for all four is 65 years.
- ❖ These shall not be from the civil service. But deemed to be public servants.
- ❖ The power to appoint a chairman and the three members rests with the Federal Government.
- ❖ The chairman shall be appointed for four years and eligible for reappointment for a similar term. In comparison, member oil and member gas shall be appointed initially for three years and qualified for reappointment for a four-year term. Member Finance shall be appointed initially for only two years but eligible for reappointment for four more years.
- ❖ Under Section 3(10), the Federal Government shall appoint another qualified person within a period not exceeding three months from the date the vacancy occurred for the chairman or any member.
- ❖ The Federal Government shall designate one of the members as Vice-chairman, acting as chairman in his absence.
- ❖ Any member may resign by writing to the Federal Government. The Federal Government may remove a member from his office if, on inquiry by the Federal Public Service Commission, he is found unable to perform his office’s functions or has committed misconduct.

For administrative ease, the 'Authority' is statutorily competent to delegate its powers to any individual member or officer at OGRA. In practice, no such precedence is documented nor reported by OGRA employees in discussions. Currently, OGRA is working in a centralised manner. The regulatory decision-making and all the policymaking related to organisational affairs are at the level of the 'Authority'.

Despite three months period available (in statute) to appoint a chairman or any member, there are delays by the federal government in the new appointments, thus, affecting regulatory decision-making. For instance, the (current) chairman was appointed with a lapse of about seven months. Similarly, the government appointed member oil (current) after a gap of five months. Due to these delays in appointments, OGRA Authority practically remained ineffective (non-functional) due to the lack of a quorum for about five months in the second half of the last calendar year. There are several instances in OGRA history when the Authority remained without member gas or member oil for at least two years or without a chairman for more than the specified period. Recently, member finance has been appointed after the lapse of several months.

In the ordinance, there is no provision for civil servants to be appointed at OGRA, neither in the 'Authority' nor as an employee. However, the law does not categorically bar retired civil servants' employment at OGRA as chairman, members, or officers. No cooling time for civil servants or sector professionals is specified in the ordinance. Since OGRA's establishment, by and large, retired civil servants or personnel from the Ministry of Petroleum and Natural Resources (now Ministry of Energy-Petroleum Division) have been appointed as chairman or members at OGRA. It means that the oil and gas sector regulation practically remained under the federal government.⁶ It could be because of a lack of suitable candidates in the private sector. But it raises the question: if the federal government wished to self-regulate the industry,⁷ why is there a need for an independent regulatory body?

Besides, mostly those appointed are 60 years of age or above, with little time to serve actively at OGRA. The retired persons join OGRA for another job with little knowledge of OGRA regulatory affairs. By the time they developed their understanding of the OGRA regulatory affairs, it was time for their retirement.

3.1.2. Regulatory Autonomy

The right decisions of the Authority are crucial for developing the oil and gas sector, consumers, and investors. OGRA must have significant procedural

⁶There are at least two instances where the acting charge of a member oil was given to Ministry officials (in-service civil servants), although for not more than two to three months.

⁷It must be noted here that the Ministry regulates upstream activities and explosives departments.

power and autonomy for an effective regulatory process. In the law, as mentioned in Section 1.1, OGRA is provided with powers to perform licensing; determine tariffs; specify standards, inspect, review, and assess their implementation; and regulate processes. To be effective, OGRA should be institutionally *independent* of the influence of private and public sector companies in the oil and gas sector, which it regulates. Also, independent from the influence of the Petroleum Division, Ministry of Energy, who have stakes in state-owned gas companies (e.g., Sui Northern Gas Pipeline Limited (SNGPL) & Sui Sothern Gas Company (SSGC)), oil marketing company (Pakistan State Oil (PSO)), and LNG companies.

By the provisions of the Ordinance, OGRA is an autonomous organisation under the Cabinet Division. However, the law, which has given powers in some respects, also has compromised regulatory independence in others. For instance, the OGRA ordinance empowers the Authority to investigate any matter falling under its jurisdiction and impose a penalty for violating rules and regulations made under the OGRA Ordinance. Hence, OGRA enjoys the required legal power to enforce compliance with its decisions within its jurisdiction. Likewise, Authority is vested under the law with the appellate power against the decisions of its delegates and has the power to review its own decisions.

But, under Section 22(1), OGRA must perform its regulatory duties following the government of Pakistan policies.⁸ Besides, the law requires that OGRA implement all clauses through various rules and regulations, where rules are notified in the official gazette after approval from the government. Apart from rules, the ordinance allows OGRA to make regulations not inconsistent with the provision of the law or rules for carrying out its functions. These may be notified in the official gazette as well.

On the other hand, the rules and regulations provide processes and guidelines to determine tariffs, issue licenses or monitor the company's performance. The Authority, by law (Sections 30 and 31 of the OGRA Ordinance), has *the power* to seek all necessary information from any entity involved directly or indirectly in any regulated activity. The person or the company are liable to provide the information needed, in case of failure, susceptible to a penalty. It means the regulator can take decisions objectively based purely on technical considerations. OGRA's ability to make objective assessments could be affected if such information is not provided. According to the ordinance, a person shall be liable to provide the information and subject to a fine in case of failure. While (as discussed earlier), it is not as easy to apply and collect from state-owned companies.

Regarding tariffs, OGRA is not autonomous as the government exercises considerable control over it. Likewise, in determining tariffs (Section 7), OGRA is

⁸The ordinance allows the federal government to issue policy guidelines to OGRA when it considers necessary. The Authority shall comply with the policy guidelines in exercising its powers and functions and making regulations or decisions.

bound to follow policy guidelines and rules as approved by the government. Although no formal condition or rule allows the Ministry (Petroleum Division) (Petroleum Division) to reverse OGRA's decisions, significant decisions, i.e., tariff rates, are subject to Ministry approval. The regulator determines tariffs and can only recommend what the Ministry notify. There are instances where the government does not allow the gas price increase for five to six years for socio-political reasons, creating challenges for the sector. Besides, functional authority assigned to OGRA is controlled through various predetermined parameters. For example, natural gas purchase costs/ procedures, necessary guidance of line ministry, taxation limits, efficiency standards etc. These factors directly affect the quality of OGRA's regulatory autonomy (CRCP, 2013). Such influential factors make the role of the regulator ineffective.

The regulator must act proactively as an independent entity for effective regulation. This role (as mentioned earlier) is missing in the case of OGRA. The oil and gas sector has faced many crises in the last two decades. OGRA became active only after the crisis. That's why the Authority is often criticised for its role in the sector.⁹ Although it is found that the OGRA is not independent in its functions, Authority is found complacent with it. However, the staff clearly states that OGRA is not independent in its decisions, thus affecting its effectiveness.

One additional reason behind the lack of a proactive role by OGRA is the lack of clarity in the Ministry and regulator roles. In the oil sector, after the notification of Pakistan Oil Rules, 2016, all oil-related functions related to the demand, supply, import, stocks etc., should have been transferred to OGRA. OGRA ordinance of 2002 and Pakistan Oil Rules 2016 specify that OGRA would ultimately handle all functions relating to the oil industry. The power to make these decisions is still with the Ministry of Energy- Petroleum division. The Ministry (DG/Oil) kept exercising the role of import, refinery quotas, and demand/supply but ignored stock maintenance; it may have left this role for OGRA. This confusion has persisted for the last five years. It is affecting the OGRA's performance. In the absence of control on demand, supply, or imports, how can the Authority regulate stock maintenance? But powers related to licensing remain exclusively with OGRA.

3.1.2(a). Financial Autonomy

OGRA is financially autonomous, with no government support or budgetary allocations for its operations. Following Section 17 (1) of the Ordinance, the Authority prepares its budget and maintains an accurate book of accounts (expenses and receipts) and OGRA funds. Section 18(1) allows OGRA to approve and maintain the annual budget of the organisation to carry out its functions, including the salary/ allowances of the Authority and other employees. In

⁹Report of the Inquiry Commission on Shortage of Petroleum Products in Pakistan, 2020.

pursuance of section 17 (3) of the OGRA Ordinance, the audit of the annual accounts of OGRA is carried out by the Auditor General of Pakistan and by some well-reputed chartered accountant firms.

The federal government provided the initial funding (Rs 50 million) of OGRA, which was later returned to the government.¹⁰ Since then, OGRA has constantly been meeting its expenses from fees (turnover, licensing, tariff determination, renewal, transfer, etc.). Under total administrative costs, salaries, allowances, and benefits account for 63 percent to 68 percent in the last five years, whereas the budget allocated for training and development remained less than 1 percent (Table 6).

Table 6
OGRA Income and Expenditure Account (Rs million)

Fiscal Year	Fee Income*	Other Income	Administrative Expenses	Finance Cost	Salary/ Allowances etc. % of Administrative Expenses	Capacity Building % of Administrative Expenses	Surplus in Federal Consolidated Fund
2016	750.29	47.49	543.48	3.4	65	0.9	NA
2017	634.73	58.14	633.34	3.4	63	0.6	NA
2018	914.25	80.52	658.79	3.3	66	0.6	66.77
2019	1401.64	193.76	724.67	3.2	66	0.2	238.31
2020	1321.59	279.61	888.85	3.1	68	0.6	619.72

Source: OGRA Annual Financial Statements (Various Years) *in Fee income the source of 0.1 % to 0.5% is not specified.

Till 2011, OGRA was independent in making decisions about surplus funds. That is, to invest or utilise surplus in any way the 'Authority' deemed fit. Yet, ensuring that OGRA meets its stated objectives. Its accounts were duly audited, and its annual report got submitted to the federal government. Through Finance Act 2012, the law gets amended. Like in many other regulatory authorities, the law compels OGRA to deposit its surplus funds, fines, and penalties with the Federal Consolidated Fund (FCF) of the Government of Pakistan. After this amendment, OGRA can only retain the amount of the fees (it charges) to manage its overheads. As informed by the 'Authority', the organisation is not facing any financial issues_ available funds are sufficient to run its affairs. Staff shared a different opinion. They didn't seem happy with the salary structure, information technology (IT) facilities and other benefits.

OGRA is performing the policy functions of the state. In future, there is a possibility that the fee amount may not be sufficient to support high human resource standards, IT systems, capacity buildings of staff, research and development activities, etc. Giving up its surplus to the FCF and asking the

¹⁰Source: OGRA Employee

government for funds for any shortfall in the future may lead to more political and bureaucratic interference in its obligatory functions.

3.1.3. Accountability

The regulator's independence needs to comply with measures to ensure that the regulator is accountable for its action. For accountability of the regulator, legislation should ensure transparency of the decision-making process; detailed justifications of decisions; opportunities for all interested parties to participate in public hearings; and provisions for removing regulators in case of proven misconduct or incapacity. Proper checks and balances can ensure that the regulator does not drift away from its mandate, engage in corrupt practices, or become grossly inefficient (Malik, 2007).

International best practices highlight the need for transparent rules and processes in regulatory authorities to build stakeholders' trust (Webster, 2006). According to Section 19(1) of the OGRA Ordinance, the Authority shall maintain public files for inspection and examination. Yet, not all, only those files it deems fit (Section 19 (2)). It is unclear from the Ordinance provisions which documents can be available for public analysis. Additionally, there is no list of documents available on OGRA's official website, making it challenging to obtain or examine any document.

Likewise, transparency at OGRA is also muted through Section 9 (1) of the Ordinance, which states that the Authority has the power to decide for holding a meeting of the 'Authority' without prior public notice or public hearing unless it is expressed otherwise in the Ordinance. This provision itself not only curbs transparency in decision-making but also limits public participation in the decision-making process. Unlike NEPRA, hardly any detailed decisions or petitions are publicly available on its website or annual reports. The only exception is the revenue requirement determination and number and name of licensees in its yearly reports. The petition for revenue requirement/ tariff determination is supposed to be publicly available on fee payment; however, difficulties are reported in accessing such information (CRCP, 2013).

Unless all stakeholders, including consumers, are informed of the basis for regulatory decisions, they will not fully judge the impact of these decisions on them. In addition, the requirements to provide reasons for decisions and respond to public comments/ objections are essential for promoting accountability within the regulatory body (CRCP, 2013).

According to Section 20(1) of the OGRA Ordinance, OGRA must prepare its Annual Reports and the State of Petroleum Industry Report and submit them to the federal government. OGRA has been publishing its Annual Reports since 2001-02. However, OGRA started publishing State of Petroleum Industry Reports separately from 2015-16. Furthermore, OGRA started sharing its audit report (in Annual Reports) in 2017-18. These reports are available on its website.

However, these reports are not evaluated at the federal level or any other forum. That's why the content of these reports has hardly improved. There is no, as such, specific provision in the OGRA Ordinance regarding evaluating these Reports (Annual or Industry). Only its financial accounts are audited by the Auditor General (via Section 17 (3) of the Ordinance). Only the financial report is submitted to both Houses of Parliament through the President_ Article 171 of the Constitution of the Islamic Republic of Pakistan, 1973. But again, such submission is only related to financial accounts and not the regulatory body's performance.

Several rules, procedures, and guidelines provide transparency to the distinct regulatory processes. For instance, the OGRA Ordinance allows removing the chairman or any member. Section 3(11) says that the federal government may remove the chairman or a member after being found incompetent or guilty of misconduct in an inquiry by the Federal Public Service Commission. Though, no such example exists where the chairman or member was removed through Federal Public Service Commission. But there is a case where the chairman was removed by the Supreme Court.¹¹

Under the Ordinance, a legally established process allows regulated companies or other affected parties to challenge or appeal decisions (Section 12). The appeal body is OGRA itself. The Authority is vested with the appellate power against the findings of its delegates (assigned to them under Section 10(1), and power to review its own decisions. There is also a provision for resorting to courts in case of dissatisfaction with the OGRA appeal system. Section 12 (2) states High Court may intervene if it finds that no satisfactory remedy is provided on the application of the aggrieved party.

On the other hand, the Ordinance provides immunity to the 'Authority'_ Chairman or any Member, employee, expert, consultant, or adviser regarding anything done or intended to be done in good faith under this Ordinance, the rules, or regulations. Despite this provision, there is always a fear of NAB and Judicial inquiries.¹² There are several instances of judicial interference in OGRA affairs_ the immunity is neither granted to the 'Authority'¹³ nor OGRA employees.¹⁴ The constant judicial interference in its affairs and unnecessary demand for previous records and files discourage independent and effective working at the organisation.

3.1.4. Participatory Decision Making

Governance is the process of decision-making and its implementation. However, the participation of all stakeholders in the decision-making process

¹¹Mr Tauqeer Sadiq was appointed Chairman OGRA in 2008 but was removed in 2012 on corruption charges. His appointment was challenged in courts on charges of breach of the procedure with serious irregularities ranging from an arbitrary and lawless selection.

¹²Sometimes asking for files as old as 19 years.

¹³Removal of Mr Taqeer Sadiq

¹⁴Officers complained about not being able to do their jobs properly as they do not have immunity in a real sense, complaints of NAB harassment.

compliments good regulatory practices. Effective public participation is critical in effective regulatory strategies. OGRA Ordinance does not realise the significance of public involvement. Section 9(1) of the Ordinance does not ensure a compulsory space for public participation. It does not necessitate the involvement of the affected groups while making decisions. It is left to the 'Authority' to decide if it considers the matter worth a hearing.

The open proceedings with public participation can allow for diverse perspectives in regulation and ownership of these regulatory decisions. Evidence suggests public hearing is not a norm at OGRA. Some cases are decided without public hearings. Even in cases where the public hearing takes place, relevant documents are not easily accessible, making the whole exercise of public participation ineffective.

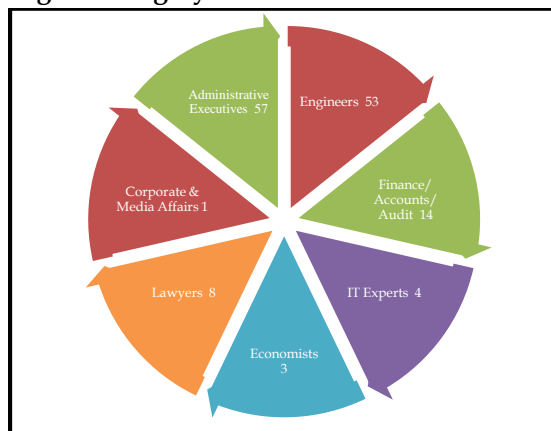
3.2. Institution Capacity

3.2.1. Employees

OGRA 'Authority' is statutorily empowered to enhance its human resources (HR), that is, to appoint employees, consultants, experts, advisers etc., on such terms and conditions as the regulator deems fit. Recruitment of employees is the sole responsibility of the 'Authority' (Section 14(1)). The ordinance also specifies a requirement of prescribing regulation for an appointment, promotion, termination, or other employment terms and conditions (Section 14 (2)). OGRA is deficient in terms of professionals for competent working at the organisation (Figure 3).

OGRA Service Regulation 2005 provides the terms and conditions of employment, and remuneration policy for staff, consultants, advisors, and the Authority (members and the chair). It is the only regulation modified 24 times since it was first notified in July 2005. The HR department at OGRA is clueless about it. Policies also get changed with a change in 'Authority', i.e., members or chairman.

Fig. 3. Category-wise Professionals at OGRA



Ideally, it should be the responsibility of the HR department to design human resource recruitment and capacity building of staff policies. Unfortunately, all these decisions are made at the top, as the law has allowed them to do so. The HR department is only informed for notification.

Informal discussions with various department officials at OGRA revealed that almost every department is understaffed. There is a lack of competent staff with regulatory knowledge, sectoral experience, and training. That is one of the main reasons for delays in executing essential functions.

In addition, OGRA has not transparently acquired professional support staff services that could establish a proper regulatory framework for the benefit of consumers and producers alike. Most of the existing professional staff have minimum exposure to regulatory concepts and functions or are coming from sectors that have no relevance to the operational requirements of the oil and gas sector.

Similarly, if the departmental head is non-professional or is from a different background, he (or she) may not be able to understand the specific requirements of that department.¹⁵ Furthermore, frequent inter-departmental transfers do not allow employees' capacity to develop. As a result, there is an inadequacy in emergency planning and preparedness to play a proactive role; in the preparation to participate in national decision-making and communiqué concerning oil and gas sector challenges. It is also noted that OGRA is not keen to improve its human resource capacity. Staff at OGRA is de-motivated because of the salary structure. Lack of transparency in appointment and promotion procedures/ criteria has created discontent among officers at OGRA. These factors do affect their performance. There is a disconnect between the 'Authority' and the staff.

OGRA, at present, is de jure and de facto politically independent in its HR management. The 'Authority' decides about the number of staff and their promotion. However, OGRA is not applying market-based wages to attract qualified personnel with the required expertise. The terms and conditions behind the employment of an officer play a critical role in ensuring that employees are motivated and committed to their functional responsibilities. While on the one hand, civil servants are governed by the provisions of the Civil Servants Act, 1973 and the rules and regulations made thereunder, on the other hand, private sector employment is entirely dependent on the terms determined by the employer. It is unclear what the status of the employees at OGRA is. Neither the pay structure of employees is under the civil service nor at par with the private market rates.

It is also noted enforcement of standards and quality checks has not been as effective as it should have been. Slow disposal of court cases¹⁶ discourages officers from doing enforcement duties. Besides, there are hundreds of entities to be

¹⁵For instance, the Information Technology (IT) department, headed by a non-IT person, may not understand the IT requirements and importance in the organisation's overall development.

¹⁶Judges don't have the technical know-how of the sector.

examined in every city, which is impossible. The regional offices are almost non-existent.¹⁷ These are understaffed. The number of complaints is far more than the staff employed there, making it difficult to dispose of these cases efficiently.

Consequently, there are delays in the resolution of complaints. In addition, the officers employed in these offices don't have the required skills and resources to monitor and enforce standards. The working environment is also not desirable. These regional offices lack not only in terms of human capital but also physical infrastructure,¹⁸ making them almost ineffective.

It is also noticed that the requisite investigative and legal skills and training to commence investigations and inspections are generally missing among professional staff at OGRA. The organisation relies on a third party for various checks, which is sometimes ineffective. That may be why enforcement activities at OGRA are not as successful as desired. Besides, the officers assigned to investigate, especially in criminal matters, learn only through experience. But once an individual acquires some skill, he is transferred to the other department at OGRA. The development of an officer as an investigator/inspector is limited.

In developed countries like the United Kingdom, regulators, as a matter of policy, employ certified/ qualified investigators in their enforcement departments to ensure that the powers and functions of the regulator relating to enforcement actions are implemented effectively and within the legal limits (Khan and Qawi, 2014). In such cases, the chances to challenge a decision in court are limited.

As mentioned in the previous section, the ordinance allows the 'governing body' at OGRA to delegate its statutory powers to its employees, including enforcement powers, administrative powers, or any other power to perform its functions. In addition, employees undertake the governing body's day-to-day work, such as providing legal support, research and development, tariff determination, enforcement of standards, monitoring or regulating sectors, and secretarial/clerical functions. The quantity, quality, and HR performance at OGRA are as significant as its 'Authority' for all these activities.

3.2.2. Departments

Regarding organisational structure, OGRA is designed with various units/ departments corresponding to each sub-sector, i.e., oil, gas, LNG, LPG and CNG. Unlike NEPRA, there is no separate license department. Gas, oil, LNG, LPG, and CNG departments perform this activity for the products under their jurisdiction. Likewise, all these departments are responsible for regulating and monitoring their respective sectors. There is no separate enforcement department. Each sub-sectoral department is responsible for taking care of enforcement activities as well.

¹⁷There are four regional offices (in Karachi, Quetta, Lahore, and Peshawar) with designated officers.

¹⁸There is no fuel testing man or equipment at OGRA.

During FY2010, OGRA set up a separate enforcement department to enforce its ordinance, rules, regulations, and license conditions for providing quality products to the public in the correct quantity at notified prices. This department was responsible for effectively implementing standards and monitoring through efficient checks and balances on the operations of the licenses and the better functioning of the regulatory framework promulgated by the Authority. This department was dissolved in FY2018 for a petty reason, i.e., required staff in other departments. It seems to have affected the enforcement of respective rules and regulations.

Then there are the legal department, complaint department, appeals department, corporate and media affairs, finance, legal and litigation, finance, and human resource (development and management) departments to support the abovementioned departments.

The IT department is vital in any regulatory authority for ensuring transparency and speedy processes. At OGRA, its IT department works under media and corporate affairs. The department is understaffed. Yet, after remaining in the infancy stages for several years, it has shown positive developments since FY2015. The department is evolving to introduce an e-office, paperless environment, online complaint and status, and file tracking system to facilitate organisation internally and check the online status of license applications. Besides, other projects like oil stock checks and CNG scanning software are on the cards.

OGRA's planning and coordination section is working under media and corporate affairs. Its primary duty is to coordinate with all departments to produce material for preparation and printing OGRA Annual Reports and Report on State of the Regulated Petroleum Industry, as per the OGRA Ordinance, 2002. However, these reports are published after the due date, as allowed in the law. OGRA is bound by law to publish these reports as soon as possible. After the end of every financial year but before the last day of December in the following year. The Annual Report and State of Regulated Petroleum Industry Report for 2019-20 were made public after a delay of almost six months, i.e., in June 2021.

The quality of these reports and delays in their publications reflect the capacity of this department. Besides, this department is also responsible for conducting/ managing training courses for capacity building of employees through the provision of local and foreign training and participation in seminars, symposiums & workshops etc., at the local and international levels. That ideally should be the responsibility of the HR department.

The HR Section has been assigned to manage the organisation's human resources affairs under OGRA Service Regulations 2005. The HR Section is responsible for facilitating the recruitment and retention of highly qualified and experienced professionals in the Authority's technical and general service groups. As informed, the department does not seem to have the power to upgrade the skills at OGRA per each departmental need. HR policies and rules are not designed in this department. They only notify or implement 'Authority' decisions.

Finance Department is another crucial department at OGRA, performing one of the critical functions assigned to OGRA, i.e., determining tariffs, as allowed under OGRA Ordinance, 2002. However, despite staff deficiencies and delays in tariff determinations, the finance department has contributed to the third-party access regime_ formulation of a new gas tariff regime. It is also providing inputs on the government’s gas sector reforms agenda.

The litigation department at OGRA is responsible for handling court cases for and against OGRA before various courts throughout the country. As reported in OGRA Annual Reports, the litigation department has represented the Authority through counsels and in-house counsel in more than 9323 cases. A significant number of pending cases and the engagement of counsels indicates a shortage of a sound in-house legal capacity at OGRA.

Table 7

Litigation Activities at OGRA

	Cases			Counsels
	Received	Disposed Off	Pending	Engaged
FY2018	784	194	375	174
FY2019	756	237	352	173
FY2020	582	182	-----	207

Source: OGRA Annual Reports, difference between cases received, disposed off and pending are those cases in which OGRA was not directly involved.

There is a disconnect between the ‘Authority’ and the employees and between various departments. This disconnect makes it difficult to understand the issues/ challenges faced by the staff, thus affecting the overall organisational capacity. Thus, causing delays and affecting the overall departmental performance. One more issue noticed in the organisational structure of OGRA is the misallocation of functions.

3.3. Regulatory Capacity

Adequate human capital resources are essential for quick and effective decision-making. The personal qualification of a regulator is also crucial in independent decision-making. Section 3(clauses 4 to 7) states the experience requirements and qualifications for the chairman and three members. As in law, their association with the petroleum industry is not compulsory. The focus is on experience and competence in any related field. That is, in favour of an individual’s capabilities based on their length of service. As mentioned above, the ordinance blocks the appointment of civil servants, but no bar on retired civil servants.

As evident from the publicly shared profiles, (for the first time) the current chairman and none of the members are retired civil servants. However, in the past,

OGRA leadership had problems with regulatory expertise as people from the bureaucracy didn't have a sectoral background. When the regulator (or member) may develop some understanding of the sector's complexities, his tenure is over.

Concerning other staff, OGRA has not been able to build expertise in relevant areas that may facilitate effective interventions. In the past, due to the lack of expertise, OGRA could not reduce unaccounted-for-gas (UFGs) in gas distribution companies to enforce quality and safety standards (more examples discussed in Section 2.2.5). There are several instances where companies remained unsatisfied with OGRA decisions and often went to courts against OGRA determinations (as evident from numerous court litigations).

Effective regulatory capacity demands a strong, well-qualified, experienced governing body and a support staff (professionals). Lack of regulatory experts and insufficient funding may hamper the regulatory process (Aryeetey and Ahene, 2005). OGRA, with time, has been able to find personnel (only in the governing body) that satisfies the criteria. However, disproportionate interference of law enforcement agencies in regulatory affairs has undermined decision-making capability and regulatory capacity.

The quality of the governing body directly impacts the execution of regulatory functions. Therefore, the regulatory authority must develop its governance systems to a degree where the personality change can have a limited influence on the 'Authority' performance and overall institutional capacity. In OGRA, frequent changes in personality at the top have led to changes in overall governance and institutional policy. It creates uncertainty and discontent among the staff and their effective performance. OGRA is still lacking in other qualified staff. OGRA lacked human resource policies that can encourage competitiveness rather than bureaucracy. Inadequate training and R&D for the personnel are evident from the funds allocated for capacity building (Table 6).

Lack of human resource development and deficiency in the dedicated workforce, in combination with disjointed departmental activities, is hurting the organisation's overall capacity. Above all, non-clarity in parental law prevents the regulatory authority from improving its regulatory capacity. OGRA does not enjoy adequate governance power to perform its regulatory duties effectively.

4. WAY FORWARD – RECOMMENDATIONS

The creation of OGRA and its regulatory framework has not kept pace with the changing oil and gas market dynamics. Based on our discussions, review of available documents, and literature on regulatory authorities in other countries, it is concluded that amendments in OGRA Ordinance can handle some of the regulatory challenges at OGRA. The law allows too much mandatory government involvement in the current oil and gas regulatory system. That has made the 'Authority' unable to disagree or unwilling to risk their job.

- ✓ There is a need for a clearly worded law with provisions for OGRA's autonomy in decision-making. That is the law that bars any government interference in the Authority's decisions. For example, regarding the tariff, OGRA should be responsible for both the consumer-end tariff and for setting its underlying parameters/ methodology. The current lack of clarity on roles and functions can open the door to undue government interventions in OGRA operations. Like European countries (EU, 2019), OGRA statutes should explicitly determine adequate criteria to ensure the regulator's independence from politics and the petroleum industry.

Periodical reviews of the appropriateness of the regulatory regime are compulsory for effective outcomes in the oil and gas sector.

- ✓ There is an urgent need to simplify regulatory processes and enhance federal government and OGRA coordination. Maintaining good communication with the government departments would be helpful for effective sectoral outcomes. All upstream, midstream, and downstream activities should be under one window operation for better coordination in the sector, i.e., OGRA. The federal government only provide policy guidelines.
- ✓ OGRA should implement a clear and transparent consultation and public participation policy. All these steps will increase OGRA's credibility.
 - Before issuing rules and regulations, OGRA should make efforts to hold stakeholder consultations. Interaction with the stakeholders will give them a sense of ownership of the legislation, and they are less likely to feel threatened by new rules/regulations. OGRA may seek the opinion of regulated entities on a half-yearly or yearly basis to obtain data on existing rules/regulations. Regular interactions with the sector entities are common in the United Kingdom and even at NEPRA.
- ✓ The ordinance allows reliance on a third party for inspections. It is ineffective and sometimes counterproductive to the goal of quality assurance. There is a need to build the capacity of OGRA for decreasing, if not eliminating, such reliance on thirty parties for various inspections, quality checks etc.
 - OGRA has quasi-judicial powers, such as setting fines and penalties for non-compliance or acting arbitrators in disputes among industry participants. These processes should be published. The financial statements should mention the amount when a penalty is applied.
 - Certified enforcement officers should be inducted to fulfil this function effectively and efficiently.

- ✓ For effective accountability of the regulator, OGRA reports (Annual and State of the Petroleum Industry) must be evaluated by independent experts regularly.
 - There is a need for establishing a systematic approach for monitoring work done at OGRA; self-assessment at the level of an organisation is required.
- ✓ OGRA, a regulator, must play a proactive role in the sector. It must send a timely advisory to the government in all relevant fields. Besides, OGRA's recommendations and the government response must be publicly available. It will ensure OGRAs' integrity.
- ✓ Where a regular oversight of the performance of the governing body of a regulator is necessary, equally important is a chairman, any member, or any officer must not feel insecure about their positions and in taking tough decisions. In other words, an ability of a regulator to take independent decisions free from the influence of government, free from the fear of NAB or the Judiciary.
 - Courts should take great care to ensure judicial intervention does not deter regulatory decision-making. Besides, a strong in-house litigation team at OGRA that can proactively defend stay orders or other inquiries is required.
 - The provision of the Appellate Court (just like NEPRA) may provide a forum to check or review OGRA decisions. It may be considered accountability, as the orders and determinations of the Appellate Tribunal shall be binding on the Authority. The formation of an Appellate Court is prevalent in other countries (USAID, 2018). However, the only thing which needs to ensure is that this provision may not compromise the independent decision-making of the Authority.
- ✓ Extensive use of IT is recommended to minimise delays and improve coordination among the departments
- ✓ For effective and speedy decisions, decentralising decision-making powers in routine activities is necessary.
- ✓ OGRA should ensure adequate human and financial resources (in line with their tasks) to ensure operational independence. Capacity building is required by employing more tariff specialists, regulatory economists, IT specialists, and analysts, equipped with better and more advanced techniques and sufficient background knowledge of Pakistan's and international oil and gas sector.
 - To enable qualified experts from the sector while avoiding conflict of interest, an adequate cooling-off period (e.g., six months) should apply

to key staff and ‘Authority’ members. A short cooling-off period may jeopardise OGRA independence, and a long cooling-off period may limit the interest of highly qualified candidates from the industry to apply for a mandate (as it narrows post-employment opportunities).¹⁹

- Negligible expense by OGRA in training and development, in the presence of surplus accounts, emphasised the need to invest more in the training and development of its staff. It is compulsory to ensure that the regulator evolves with changing times.
- The HR department should conduct an in-house study on workload analysis to aid in developing the quantity and quality of the human resources required in each department.
- The hiring of fresh graduates should be encouraged. Such candidates can be hired at the lowest cadre of employment or as interns and put through a six-month to a year’s training before being confirmed as permanent employees.
- For an effective organisational structure, appointment and promotion through transparent procedures limits nepotism and will not create bad feelings among staff. A transparent evaluation procedure based on objective and published criteria should be applied for key OGRA staff members appointed by the Authority. It will allow OGRA as an institution to grow. Each department has its requirements; the staff of each department should be evaluated accordingly.
- To increase HR capacity, employees must develop professionally over time. Financial gain is significant to encourage an employee. It is the responsibility of an institution to provide opportunities and mechanisms where an employee’s professional, personal, and economic growth takes place.

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¹⁹In Italy, the cooling-off period is four years, and in Serbia, it is two years.

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