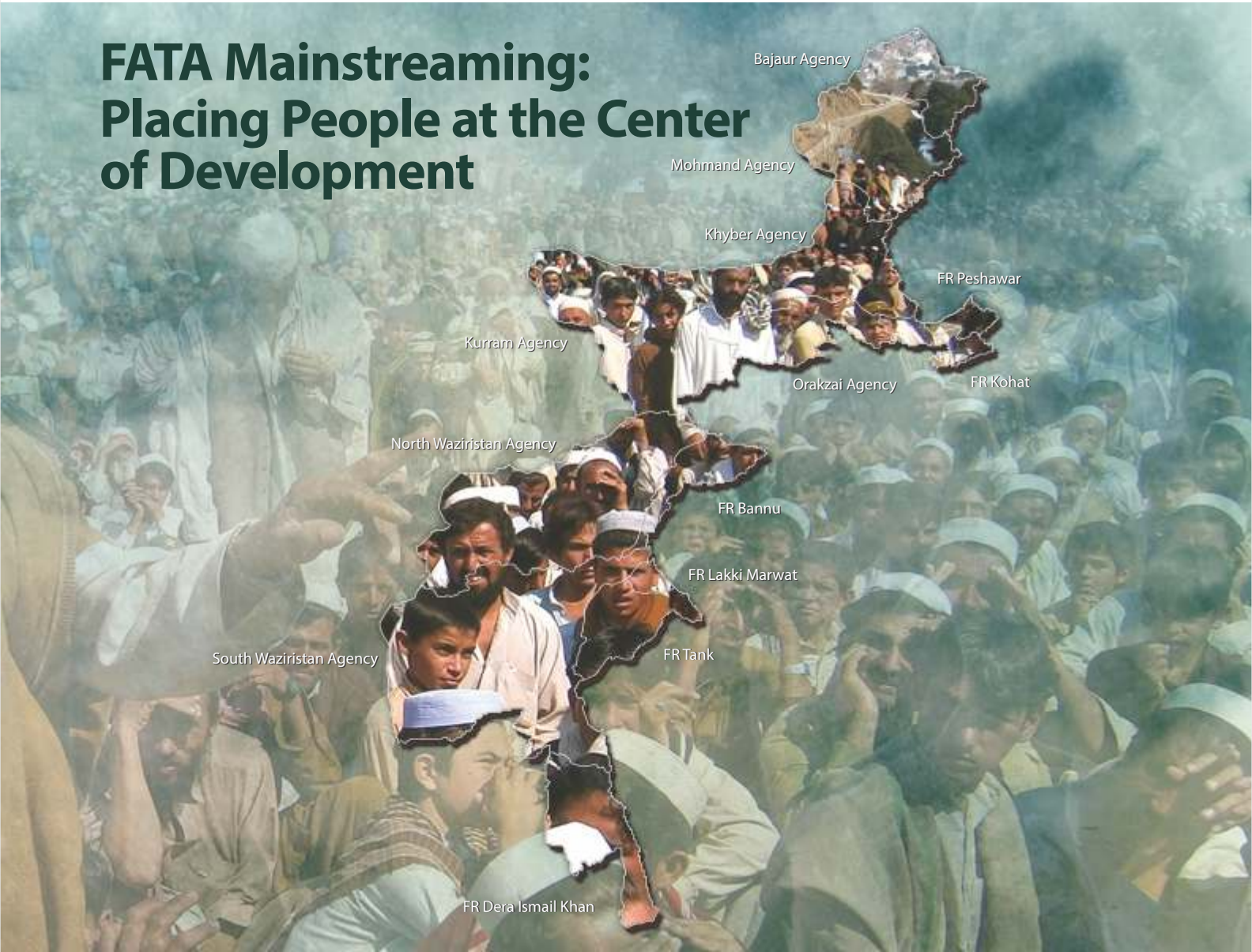


DEVELOPMENT ADVOCATE PAKISTAN

Volume 4, Issue 2

FATA Mainstreaming: Placing People at the Center of Development



**DEVELOPMENT ADVOCATE
PAKISTAN**



Pakistan



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Development Advocate Pakistan provides a platform for the exchange of ideas on key development issues and challenges in Pakistan. Focusing on a specific development theme in each edition, this quarterly publication fosters public discourse and presents varying perspectives from civil society, academia, government and development partners. The publication makes an explicit effort to include the voices of women and youth in the ongoing discourse. A combination of analysis and public opinion articles promote and inform debate on development ideas while presenting up-to-date information.

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FATA Reforms: Progress Long in the Making

Much has happened following the previous issue of the Development Advocate on FATA mainstreaming. While earlier, reforms in the Federally Administered Tribal Areas (FATA) were discussed, now the Government has begun to make those tough decisions needed to bring reform, through acting on the recommendations of the Committee on FATA Reforms.

If the quality of life of communities in tribal areas is to be improved, fundamental reforms are required, and we in UNDP appreciate the Committee's resolve to settle the political, economic, and legal issues which have kept FATA out of the mainstream, through a nationally owned and driven process. The Committee's recommendations – varying from extending the country's justice system to the introduction of elected local government and fast-track economic development – would do much to address the myriad issues faced by the people of FATA. If implemented successfully, these reforms will open a path towards social and economic development for the region and its people. Independent polls and media reports suggest that the plans have widespread support from a population currently under served by the status quo.

FATA's status as a special tribal region has weakened the functioning and legitimacy of governance mechanisms. This has provided space for militancy, illicit trade and corruption. Along with a legacy of historic instability, FATA faces extreme challenges related to human socio-economic development. Poverty is widespread and deep, and the means for livelihood are limited. About 73.7 percent of the population live in multidimensional poverty – the highest proportion in Pakistan. The region's economy is largely dependent on subsistence agriculture, livestock and transit trade. Only eight percent of the geographical area is under cultivation, and most of it depends exclusively on rainfall.

Improving the economic conditions in FATA requires substantial investment and reform. To do this, the government is preparing a 10-year socio-economic plan, which envisions significant investments such as irrigation schemes, mineral development, integrated plans for health and education, business development and special industrial zones to uplift the region's development status, and set it on course towards achieving the sustainable development goals.

There has been a healthy national debate on the elements of the reform process. Beyond the headlines, there are three basic elements of reform which aim to improve governance and people's lives.

- The first of these is effective representation from the local level to the national legislature, through the empowerment of the legislature and the introduction of an elected local government system. Elected councillors can give locals a role in the decision-making process, and the legislature can increase oversight over governance in FATA. Local councils will likely include tribal leaders as well as new faces, including youth and women, ensuring both continuity and change in the new FATA.
- Second, a separation of judicial and administrative power (presently vested in the political agent), as is the norm in the rest of Pakistan, will have a positive impact on both governance and

on delivery of judicial services.

- Third, while the tribal people have long held fundamental rights under the Constitution of Pakistan, the proposed extension of the superior courts will for the first time allow them a forum of redress. This will provide additional protection to the people of FATA and bring them at par with the rest of the country.

What looks good on paper, often struggles in implementation. There are several pitfalls that might hinder progress at the very outset. Not every actor will be content with the final package, and some stakeholders with entrenched interests may work to undermine the implementation. The process of implementation will be long and expensive; so the people, the Government, and the development community and partners, will need to have patience through the process, and when the process encounters hurdles, be determined in following it through.

Despite these challenges, I see the prospect of governance reforms in FATA as one of the brightest lights on the horizon. It has the potential to improve the lives of the people and to bring stability to both tribal areas and the rest of the country. I hope that this second issue of Development Advocate Pakistan on FATA Reforms will contribute to the ongoing debate and lead to tangible progress on the ground.

Contextual Background

A New Political Compact in the Federally Administered Tribal Areas¹

The Federally Administered Tribal Areas (FATA) covers an area of 27,200 sq. km and has a population of approximately five million (gender ratio of 104.5 and average household size 8.9)² spread across seven Agencies and six Frontier Regions (FRs). The region has been governed through a colonial-era legal framework known as the Frontier Crimes Regulation (FCR) which outlines provisions for local governance under collective responsibility of tribes and sub tribes, through their local Elders/Maliks. The law also allows the people of FATA to regulate their lives as per local customary laws and traditions (Rewaj). Under the prevailing governance structure, the Governor of Khyber Pakhtunkhwa (KP) exercises executive authority in FATA as an Agent to the President. Constitutionally, the national and provincial assemblies and superior courts have no jurisdiction over FATA.

Due to the confluence of various dynamics such as the unique political, legal and administrative status of FATA, the region has historically faced socio-economic and political development constraints alongside severe security challenges. Poverty is pervasive and private and public infrastructure and livelihood opportunities in the region have been destroyed due to decades of militancy and the subsequent counter military operations in the area, which peaked following Operation Zarb-e-Azb launched in June 2014 by the Armed Forces against militants in North Waziristan and Khyber Agency. Over a million residents of FATA were relocated as Temporarily Displaced Persons (TDPs) whilst these operations were on-going; with the majority residing in the neighboring province of KP.³

The Government of Pakistan announced that most of the previously insecure areas in FATA have been cleared from the militants by the security forces and the repatriation process for displaced families has been



sped up and almost completed. In 2015, the FATA Secretariat launched the FATA Sustainable Return and Rehabilitation Strategy (SRRS), with the technical assistance and support of UNDP, as a first step and guiding document for the coordination of the human recovery and rehabilitation efforts, and to achieve the shared vision of a peaceful, prosperous and developed FATA. The strategy not only focused on the rehabilitation and reconstruction of the damaged facilities, but also prioritized restoration of livelihood and interventions in education, health, housing and improving governance and service delivery functions.⁴ In the overall guidance of the SRRS, the government has been

executing the return and rehabilitation of the affected people. According to the FATA Disaster Management Authority (FDMA), the current return percentage of TDPs in FATA is 95.43 percent (NADRA verified displaced families were 449,218, out of which the registered return of families, as of June 2017, was 359,414 families along with spontaneous return of 66,858 families).⁵ Similarly, in line with the recommendations of the Committee on FATA Reforms, the Cabinet has already approved to complete most of the activities under the reconstruction phase in FATA by the end of 2018.⁶

Alongside these issues of instability, FATA faces extreme challenges around its socio-

1. This contextual background has been written by Hyder Yahya (Governance and Reforms Specialist), Raziq Muhammad Shinwari (Policy Development and Reforms Specialist), Ilana Paltzer (Donor Partnership Consultant) and Fazle Mateen (Monitoring and Evaluation Officer).
2. "Provisional results of 6th population census", Pakistan Bureau of Statistics, July 2017.
3. In April 2016, the Office for the Coordination of Humanitarian Affairs (OCHA) reported that a total of 5.3 million people had been temporarily displaced across FATA and a total of 4.3 million had returned in the same period.
4. FATA Sustainable Return and Rehabilitation Strategy. Available at <http://www.pk.undp.org/content/dam/pakistan/docs/CPRU/idps2014/02-R&R%20Report%20Format.pdf>
5. FATA Disaster Management Authority (FDMA), TDP statistics. Available at <http://www.fdma.gov.pk/tdps-statistics-as-of-19-06-2017>
6. Cabinet Decisions (2017). Available at <http://pmo.govmu.org/English/cabinetoffice/Pages/default.aspx>

economic development indicators (Please see chapter on Socio-Economic Development in FATA). At the national level, FATA is not part of the National Finance Commission (NFC) Award. The Federal Government has been making a budgetary allocation for FATA on an annual basis – both for recurrent as well as for development expenditures. However, it has been noted over the years that such a system of funds allocation on a per capita basis for FATA remained inadequate. The average per capita shortfall during the last few years amounts to 44.39 percent.⁷ This has constrained human development in FATA and concurrently resulted in poor services delivery. The low funds allocation led to weak infrastructural development and socio-economic deprivation and imbalance. Failure to undertake substantial development efforts have created trust deficit between the citizens of FATA and the state.⁸

Since Pakistan's foundation in 1947, and particularly since the formation of the first committee by the government in 1977 to recommend steps for FATA's mainstreaming, numerous attempts for FATA reforms with a view to gradual integration have been undertaken. Although 18 attempts to date have been unsuccessful in reaching the goal of mainstreaming FATA, several laws have been extended to the region including, but not limited to, the Adult Franchise Act, Political Parties Order, Local Government Ordinance and a series of amendments in FCR. The current proposed bill, lying with the National Assembly, suggests repeal of the FCR.

As such, it is clear that the demand for the mainstreaming of FATA is not a new one. Furthermore, the events of the last decade have significantly increased the sense of urgency around achieving fundamental reforms in FATA. The region has suffered substantially due to the emergence of militancy in the post 9/11 period. This rise in militancy, alongside the weakening of traditional governance systems in FATA, has seen the political administration of these indirect governance structures lose its significance, control and value. The extension of the adult franchise in 1997 and Political Parties Order in 2011, encouraged increased political engagement in FATA, caused ever rising political activism and a push for the region's mainstreaming. Major mainstream political parties support political reforms and FATA's integration in the national mainstream. Similarly, in September 2015, FATA parliamentarians

presented a bill to amend the Constitution to integrate FATA with KP⁹, a step which spurred the creation of the Committee on FATA reforms.

Given the urgency of reforms in FATA resulting from the issues outlined so far, the Prime Minister in November 2015 constituted a Committee on FATA Reforms, under the chairmanship of Mr. Sartaj Aziz. The Committee was tasked with charting a concrete way forward for catalyzing and enabling the mainstreaming of FATA after thorough consultation with all stakeholders in line with the Constitution of Pakistan. Other members of the Committee included Governor KP, Minister SAFRON, Minister Law and Justice, National Security Advisor and Secretary SAFRON.

Concurrent to this process, the government launched the National Action Plan (NAP) in December 2015 in which administrative and development reforms in FATA were delineated as a priority. The NAP highlighted the view that successes achieved through military operations in FATA can only be truly consolidated through complimentary political, legal and administrative reforms in the region. As such, the current approach towards stabilization in FATA has been formatted holistically.

Following its formation, the Committee on FATA Reforms held ten consultative meetings with approximately 2,000 elders/Maliks as well as dozens of representatives from political parties, traders, journalists, youth and civil society organizations from all agencies/Frontier Regions. On this basis, the Committee on FATA Reforms finalized its recommendations in the form of a report (presented to the Prime Minister on 23rd August 2016) which outlined proposals for a number of broad reforms relating to the governance and status of FATA. These included the extension of fundamental rights, elected local governments, socio-economic development, and merger with KP after a transition period of five years.

Following swift approval by the Prime Minister, the report was tabled in Parliament in September 2016 for further deliberation. It was generally met with broad cross-party support, however, some political stakeholders, voiced their significant reservations on certain aspects of reforms, namely against the government's proposal for the merger of FATA with KP. The debate continues and divergence of

opinion remains among independent FATA parliamentarians on the proposed future status of the region.¹⁰

After much speculation, the Cabinet finally in principle approved the proposals of the Committee on FATA Reforms in its meeting held on 2nd March, 2017. However, the President's endorsement and approval to that decision is still awaited which is a constitutional requirement under Article 247. The major recommendations included mainstreaming of FATA over a period of five years, granting provincial representation to the people of FATA in upcoming 2018 general elections, establishing local government bodies soon after general elections in 2018, repealing of FCR and the gradual promulgation of the Tribal Areas Rewaj Act, extending the jurisdiction of the Supreme Court and Peshawar High Court beyond the territorial boundaries of Khyber Pakhtunkhwa and developing a 10-year Socio-economic Development Plan for FATA with a financial backup of three percent NFC share for FATA.

Though the Cabinet's 2nd March decision on reforms in FATA was historic, there are certain political and administrative requirements that need to be adhered to before moving forward. The process must pass Presidential approval, legislative hurdles, and inter-provincial negotiations before implementation. Division in opinion of key stakeholders has impacted the progress on reform so far; supporters of the reforms have continued to mobilize public opinion in favor of Reforms. In May 2017, the government moved the Rewaj Bill and the 30th Constitutional Amendment Bill in the National Assembly. However, the legislative process on the bills was stalled due to stiff opposition to these bills. Nevertheless, the bills were referred to the relevant Standing Committee for discussion and the government was allowed more time for further deliberation.

On 16 July 2017, Operation Khyber-IV was launched by the Pakistan Army in the Rajgal valley of Khyber Agency.¹¹ The first phase of the operation was completed on 23rd July 2017.¹² The unstable situation in neighboring Afghanistan coupled with the protracted conflict in FATA and the need for repeated military operations to quell the insurgency, has again highlighted the importance of reforms and political and economic mainstreaming of FATA as the only viable solution in the long-run that can establish sustainable peace in the area.

7. "Position Paper on FATA Secretariat for National Finance Commission", Planning & Development Department, FATA Secretariat, June 2016.

8. The Committee on FATA Reforms Report 2016. Available at <http://www.safron.gov.pk/safron/userfiles1/file/Report%20of%20the%20Committee%20on%20FATA%20Reforms%202016%20final.pdf>

9. This bill plays an important lead role in convincing the government to constitute the Committee on FATA Reforms.

10. DAWN Newspaper (2017), "FATA Reforms". Available at http://epaper.dawn.com/DetailImage.php?StoryImage=18_05_2017_005_006

11. DAWN Newspaper (2017), "Army launches Operation Khyber-4 in Rajgal Valley." Available at <https://www.dawn.com/news/1345690>

12. DAWN Newspaper (2017), "Operation Khyber-IV: army clears terrorist strongholds in Rajgal valley." Available at <https://www.dawn.com/news/1347158>

The political upheaval in the summer of 2017 severely impacted the momentum of reforms. On 28th July 2017, Supreme Court disqualified Prime Minister Mr. Nawaz Sharif in the 'Panamagate' case. His disqualification subsequently resulted in the dissolution of the Federal Cabinet. Since FATA Reforms Committee was constituted under Mr. Sharif's Cabinet, it also stood dissolved. Mr. Sharif's successor, Mr. Shahid Khaqan Abbasi was elected as Prime Minister on 1st August, 2017¹³ and his Cabinet took oath on 4th August 2017.¹⁴ The previous Committee on FATA Reforms was revived as the National Implementation Committee (NIC) on September 8th, under the chairmanship of the Prime Minister. Its membership included members of the previous Committee, Chief Minister KP and Chief of Army Staff. The formation of the new Committee has given a fresh impetus to the process. So far, two meetings of the Committee have been held whereby it has been decided to appoint a Chief Operating Officer (COO) to oversee the implementation of reforms during the transition period. Moreover, it was decided to introduce mainstream Pakistani laws to FATA and arrange provision of funds for the 10-year Socio-Economic plan, from the NFC. Due to strong opposition to the Rewaj Bill on concerns regarding protection of human and fundamental rights, it was dropped and instead a Bill was presented to extend the jurisdiction of the higher judiciary to FATA. Whilst initially, the language of the Bill suggested extension of Islamabad High Court (IHC) and Supreme Court to FATA, the language was changed to replace IHC with Peshawar High Court (PHC). Since his election as Prime Minister, Mr. Abbasi has re-iterated the official stance of the Federal Government that FATA will be mainstreamed at par with other regions,

and assured that FATA reforms are a key agenda of his administration. With the passage of time, there seems to be convergence of opinion of Federal and KP Government on FATA reforms. Initially, the position of the Federal Government was the mainstreaming of FATA without explicitly mentioning the merger with KP. However recently this has changed and become completely explicit. Despite the fragmented opinion of different stakeholders on FATA reforms, their importance for national and regional stability cannot be ignored. It has been widely perceived that reforms in FATA are extremely necessary for peace, security and civil supremacy in the post Zarb-e-Azb environment. The approved reforms package is transformational in nature and will help in the revival of sustainable peace and development in the country and across the region. It is understood too, that the implementation of proposed reforms in FATA will be a mammoth task involving large allocation of financial resources and coordination of executive, judicial and security organs of the state. To make this happen, the return of those temporarily displaced from their homes in FATA, as well as the rehabilitation and reconstruction of infrastructure and services in the region, must be prioritized alongside the ongoing political reform debates. The mainstreaming of FATA is a historic and unique opportunity; one which will ensure the integration of millions of people in the national mainstream thus, leading to equitable and sustainable development.

Moreover, the proposed 10-year Socio-economic Development Plan for FATA with budgetary support of three percent, is another milestone that will have long lasting effects on the region's peace and

prosperity. The Plan will not only help in converging the socio-economic development indicators and SDGs in FATA towards that of national and provincial levels, but will also help and guide public policy for greater economic, social and financial inclusion of FATA.

The proposed reforms will additionally enable the provision of fundamental legal and human rights to the local populace in line with the Constitution of Pakistan. Jurisdiction of the Parliament and the Superior Courts will be extended into FATA during the process of mainstreaming while the proposed legal framework also acknowledges the importance of customary justice and Jirgas in FATA for resolving local disputes. The outcome of this will be improved access and delivery of justice in FATA.

The proposed mainstreaming of FATA with a transition period of five years along with concurrent legal, socio-economic and political reforms, including giving provincial representation to the people of FATA in the upcoming general elections and party based local bodies elections soon after the general elections in 2018, will provide a solid platform for the beginning of a new political compact in FATA. All this in turn will not only help in integrating tribal areas with the rest of the country, but will also open avenues for further prosperity, peace and development through rule of law, quick access to improved judicial processes and systems, provision of and protection of fundamental human rights and sustained human and socio-economic development in the region.

13. DAWN Newspaper (2017), "Shahid Khaqan Abbasi sworn in as prime minister of Pakistan." Available at <https://www.dawn.com/news/1348953>

14. DAWN Newspaper (2017), "New cabinet takes oath: Khawaja Asif foreign minister, Ahsan Iqbal interior minister." Available at <https://www.dawn.com/news/1349562>



Bottlenecks in FATA's Mainstreaming



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Introduction

In November 2015, the Pakistani government embarked on an ambitious program to mainstream FATA with the rest of Pakistan. The thrust to undertake such a gigantic task was to address the root causes of militant violence in FATA that had been bringing colossal destruction to the area. A Committee on FATA Reforms was setup to propose a concrete roadmap in this respect. The Committee held consultations with a broad array of stakeholders, and finally submitted its report to Prime Minister Nawaz Sharif in August 2016.¹

The Committee in its report recommended the integration of FATA with the adjoining Khyber Pakhtunkhwa Province (KP) as the "only rational choice for mainstreaming FATA."² It established its argument for merger on close ethnic, social, cultural, economic and administrative linkages between the two regions. The report further asserted that there was a popular desire within FATA to merge the region with

KP. It provided a layout to initiate critical reforms in all spheres of life in a gradual and phased manner. After a hiatus of six months, former Prime Minister Nawaz Sharif approved the recommendations of the Committee in a cabinet meeting held on 2nd March, 2017.³

Current Status of the Reforms Process

Since the approval of the Committee's report by the federal cabinet, there seems to be little headway in implementing the recommended reforms. The entire process seems to have hit a bottleneck. Various legal, constitutional, administrative, financial and political challenges, along with a lack of coordination on multiple levels within the government, are obstructing the formal launch of the mainstreaming process. This dampening of enthusiasm on part of the federal government is creating a sense of uncertainty, and raising doubts within the FATA population over the federal government's sincerity vis-a-vis implementing the much touted FATA reforms. Alarmed by a lack of progress on the reforms issue, the FATA representatives, during the first week of May 2017, warned the government of a long march to Islamabad on 20 May 2017, if the process was not initiated soon.⁴ However, the protest call was withdrawn after the government introduced two bills—the 30th Constitutional Amendment and Tribal Areas Rewaj Act 2017—in the parliament on 15 May 2017.⁵ Despite the introduction of these bills, the reformation process has been in limbo so far.

Financial Cost

The biggest challenge facing the mainstreaming of FATA hinges upon the availability of finances to undertake the burgeoning task. FATA has remained the most marginalized area of the country,

since colonial times, and depicts the lowest human and economic indicators. Apart from the state's deliberate neglect, violent conflict in the area, spurred by talibanization and post-September 2001 invasion of Afghanistan by the US-led coalition, has resulted in destruction on a massive scale. In 2009, the government computed that the tentative cost of conflict in FATA was around USD 2.1 billion.⁶ Since then, multiple and simultaneous military operations across FATA have increased the cost manifold. The cost of reconstruction and mainstreaming FATA is therefore enormous. According to a government official, "25 percent of the reforms in FATA require no money, but the remaining 75 percent do need funds."⁷

The federal government had proposed an amount of PKR 120 billion annually, spread over a time period of 10 years, for FATA's uplift. Until 2016, FATA received an annual amount of PKR 18.2 billion⁸ under the Public Sector Development Program (PSDP) which was funded purely by the federal government. Under the recommended reforms, the federal government wanted the provinces to partake in FATA's mainstreaming process by allocating three percent of their share from the National Finance Commission (NFC) award. Under the scheme, out of PKR 120 billion, the federal government would contribute PKR 52 billion, while the remaining PKR 69 billion would be shouldered by the four provinces. As a result, Punjab was to face the largest cut (PKR 36 billion), followed by Sindh (PKR 17 billion), KP (PKR 10 billion) and Balochistan (PKR 6 billion).⁹

The provinces, however, did not consent to budget cuts in their existing allocations. Under the Federal Divisible Pool (FDP) set during the 7th NFC award, the four

1. 'Report of the Committee on FATA Reforms', Ministry of State and Frontier Regions (SAFRON). Available at <http://www.safron.gov.pk/frmDetails.aspx?opt=events&id=41> (accessed on May 8, 2017)
2. Ibid.
3. 'FATA Reforms Approved by the Federal Cabinet', The Nation, March 2, 2017. Available at <http://nation.com.pk/national/02-Mar-2017/fata-reforms-approved-by-federal-cabinet> (accessed on July 4, 2017)
4. Amir Wasim, 'Parties Announce May 20 Deadline for FATA Reforms', Dawn, May 7, 2017. Available at <https://www.dawn.com/news/1331621>
5. 'NA to Take Up FATA Reforms Today', Dawn. Available at <https://www.dawn.com/news/1333229/na-to-take-up-fata-reforms-today> (accessed on May 22, 2017)
6. 'Cost of Conflict in FATA', Planning & Development Department, FATA Secretariat, Peshawar, April 2009. Available at <https://fata.gov.pk/cp/uploads/downloads/costconflict.pdf> (accessed on May 8, 2017)
7. Iftikhar Firdous, 'Proposed Merger: Funds Allocation Likely to be a Bone of Contention', The Express Tribune, February 19, 2017. Available at <https://tribune.com.pk/story/1331789/proposed-merger-funds-allocation-likely-bone-contention/>
8. Ismail Khan, 'Discord Over Resources May Derail FATA Reforms', Dawn, January 14, 2017. Available at <https://www.dawn.com/news/1308361> (accessed on May 8, 2017)
9. Ibid.

provinces received 57.5 percent of the total amount, while the federal government's share was fixed at 42.5 percent.¹⁰ The provinces contended that they were already short of resources and further cuts would create financial problems. Subsequently, the recently announced fiscal budget for 2017-2018 allocated only PKR 26.9 billion for FATA. It is important to mention that this allocated amount was even less than the one earmarked for the Higher Education Commission (HEC) and laptop scheme for students which received PKR 35.7 billion¹¹ and PKR 20 billion respectively for the current fiscal year 2017-2018.¹²

Apart from allocation of funds for FATA reforms, the federal government also wanted a further three percent deduction from the provinces' share to meet national security needs, which included ongoing security operations in the country, and raising 100 battalions of paramilitary force for protection of the China-Pakistan Economic Corridor.¹³ The federal government itself is also reluctant to release the amount for FATA's uplift, since it is facing other immediate requirements.¹⁴ These include dwindling federal reserves, widening fiscal deficit, growing external debt, fragile external payments position, receding foreign remittances, decreasing exports and high risks of political instability.¹⁵

FATA's recovery program, therefore, suffers from a lack of financial resources. The repatriation and rehabilitation of internally displaced tribesmen is yet to be completed. Reconstruction of basic infrastructure and strengthening of local governments in respective FATA agencies through wide-ranging administrative reforms continues to reel on a snail pace. The entire process will come to a halt if the availability of funds is not prioritized.

Disconnect within the government

There are vast differences between the federal government and the provincial government of KP regarding control over the implementation process of the proposed reforms. Since FATA is to be merged with KP, the latter desires the legal and administrative authority to oversee the mainstreaming process. However, the Committee's report bestows such authority to the Governor KP, who serves as an agent of the federal government. Similarly, a Grade-22 officer would serve as the chief executive to oversee economic development activities in the region.¹⁶ In order to somewhat address the reservations of the provincial government, KP's Chief Minister, Chief Secretary and Corps Commander XI Corps (Peshawar) have been included in the recently reconstituted cabinet-level implementation committee, a successor of the Committee on FATA Reforms.¹⁷

The federal government's reluctance to put KP at the forefront of implementing reforms stems from mistrust over the alleged misuse of financial allocations by the latter.¹⁸ According to Lt General (Retd) Abdul Qadir Baloch (Federal Minister for States and Frontier Regions, SAFRON), "They (KP) can give us suggestions, we are preparing them (for full control of FATA) and after it goes to them, they can do whatever they want to."¹⁹ Baloch further stated that it is the federal government's responsibility to take care of FATA.²⁰ The KP government, on the other hand, insists that a FATA-KP merger without giving legal and administrative authority to the provincial government is unacceptable. Though the KP government has agreed in principle to contribute its share of one percent of the NFC for the development of FATA, such differences will overshadow the reforms implementation process.

Similarly, political differences between the Pakistan Tehrik-e-Insaf (PTI)-led KP

government and Pakistan Muslim League-Nawaz (PML-N)-led central government seem to outshine any working relationship between the two regarding FATA's mainstreaming program. PTI believes that the PML-N government is conspiring to build its own political clout in the area by monopolizing the FATA reforms program. According to a provincial minister of KP, the PML-N wants 23 MPs from FATA elected to the KP provincial assembly in the general elections of 2018, in order to bring its own chief minister in the province.²¹ This suspicion has lent further credence, since these would-be-MPs will not be allowed to either utilize funds or legislate either for FATA or KP, and their membership of the KP provincial assembly would be only symbolic.²² It seems the government wants to somewhat compensate the future loss of FATA seats in the Senate by creating representation for them in the KP assembly.²³

Further, the KP government wants immediate merger of FATA into KP through a constitutional order before carrying out implementation of proposed reforms. The central government, on the other hand, wants to conclude the uplift of FATA before sanctioning the constitutional merger of the two constituents. Since KP is supposed to contribute most of the human resources towards mainstreaming FATA, differences over the implementation process will prove to be a stumbling block in smoothly carrying forward the entire process.

Apart from inter-provincial differences, two important political allies of the current Pakistan Muslim League-Nawaz (PML-N)-led federal government, Jamiat Ulema-e-Islam-Fazal (JUI-F) and Pakhtunkhwa Milli Awami Party (PKMAP), have opposed the report of the Committee on FATA Reforms on the grounds that it does not represent the wishes of the tribal people.²⁴ Given the current political challenges faced by the

10. Khaleeq Kiani, 'Centre Moots Cut in Divisible Pool: Provinces to Resist Move', Dawn, December 19, 2017. Available at <https://www.dawn.com/news/1303223> (accessed on May 8, 2017)

11. 'Highlights of the Budget for fiscal year 2017-2018', Dunya News, May 26, 2017. Available at <http://dunya.com.pk/390176-Highlights-of-the-budget-for-fiscal-year-201718>. Also, see 'Development Budget Hiked by 40 percent', The Nation, May 27, 2017. Available at <http://nation.com.pk/national/27-May-2017/development-budget-hiked-by-40pc> (accessed on July 4, 2017)

12. 'Live Updates: Dar Unveils Federal Budget With Total Outlay of Rs. 4.75 Trillion', Samaa TV, May 26, 2017. Available at <https://www.samaa.tv/pakistan/2017/05/live-updates-federal-budget-2017-18/> (accessed on July 4, 2017)

13. Ibid.

14. Miran Abrar, 'Funds Shortage led PM to Delay FATA's Merger', Pakistan Today, February 12, 2017. Available at <https://www.pakistantoday.com.pk/2017/02/12/funds-shortage-led-pm-to-delay-fatas-merger/> (accessed on May 8, 2017)

15. 'Moody's Warns Against Growing External Debt', The Economic Times, May 9, 2017. Available at <http://economictimes.indiatimes.com/news/international/business/moodys-warns-pakistan-against-growing-external-debt/articleshow/58590234.cms> (accessed on May 9, 2017)

16. Report of the Committee on FATA Reforms, op.cit.

17. 'FATA Reforms Panel Turned Into Federal Cabinet Committee', The Express Tribune, March 24, 2017. Available at <https://tribune.com.pk/story/1364653/fata-reforms-committee-elevated-federal-cabinet-body/> (accessed on May 8, 2017)

18. Riazul Haq, 'Centre Reluctant to Put K-P in the Driving Seat', The Express Tribune, April 9, 2017. Available at <https://tribune.com.pk/story/1378591/centre-reluctant-put-k-p-driving-seat/> (accessed on July 4, 2017)

19. Ibid.

20. Ibid.

21. 'KP Demands Reconstitution of FATA Reforms Panel', Dawn, March 23, 2017. Available at <https://www.dawn.com/news/1322305> (accessed on July 5, 2017)

22. 'Govt has reservations on constitutional rights of FATA: CM', Daily Times, May 17, 2017. Available at <https://www.pakistantoday.com.pk/2017/05/17/cm-kp-insists-on-empowering-his-govt-in-the-fata-merger-process/> (accessed on May 22, 2017)

23. 'Government Bills Laid', official website of the National Assembly of Pakistan. Available at http://www.na.gov.pk/uploads/documents/1494867217_395.pdf (accessed on May 22, 2017)

24. 'JUI Threatens Agitation if Decisions 'Imposed' on Fata People', Dawn, January 9, 2017. Available at <https://www.dawn.com/news/1307355> (accessed on July 5, 2017)

federal government from the opposition parties, it is hesitant to sacrifice its alliance with the two above-mentioned political parties to carry forward the reforms process in FATA. Similarly, both JUI-F and PKMPA are thought to be PML-N's potential allies in the KP and Balochistan provinces in the upcoming general elections in 2018—a fact that will make it very difficult for the PML-N's federal government to steer an independent course on FATA reforms.

Constitutional Lacunas

Under Article 247 of the Constitution of Pakistan, FATA falls under the exclusive jurisdiction of the President, and no act of parliament is applicable to it without his prior approval.²⁵ However, the current reforms process was initiated by the Prime Minister by forming the 'Committee on FATA Reforms' through an order dated November 8, 2015. The report was eventually submitted to the Prime Minister the following year, and was eventually approved in a cabinet meeting on March 2, 2016.²⁶ The entire process was a dereliction from the constitutional path, since the President was neither involved nor consulted during the entire process. Clause six of Article 247 clearly states:

“The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper: provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal jirga.”²⁷

On the other hand, a large number of tribal elders opposed the entire process. They disagreed with the report of the Committee on FATA Reforms, on the grounds that they were not consulted as per the provisions of

Article 247. Some tribal elders filed a writ petition in the Supreme Court of Pakistan in March 2017, in which they challenged the legality of the FATA Reforms Committee. In their petition, the tribal elders submitted that,

“Constitutional provisions bar the premier from taking decisions regarding FATA ... the constitution of the FATA Reforms Committee, holding of consultation meetings with people in FATA, preparation of a report by the committee and recommendations are eyewash to circumvent the mandatory requirement of holding of a tribal jirga as provided in Article 247(6). It amounts to a futile attempt to portray the so-called meetings with stakeholders as an exercise to seek opinion of public in tribal areas in order to satisfy, rather circumvent a mandatory constitutional requirement and to present its findings as an expression of the real and genuine wishes of tribesmen.”

The petitioners further claimed that the assertion that majority of people in tribal areas are in support of FATA's merger with KP, is absolutely baseless and false.²⁸ They requested that the federal government be restricted from carrying out the implementation of the report, and be urged to call for a new committee, with representation from FATA, to propose reforms through an order or direction given solely by the President of Pakistan.²⁹

While the cabinet has approved the report of the Committee, it still awaits to be put before the President for approval.³⁰ On the other hand, the government tabled the 30th constitutional amendment and Rewaj Act for Tribal Areas 2017 bill in the parliament that underwent debate on 15 May 2017, which has created apprehensions over certain aspects of the current reforms process.³¹

The constitutional mechanism adopted for undertaking the entire reforms process is

now subjected to legal overview by the Supreme Court. If the Supreme Court finds the reforms process adopted during the past two years as ultra vires to the constitution, it may render the entire effort redundant.

Proposed Rewaj Act and Current Administrative Setup

There is a pervasive ambiguity within the FATA population regarding the contours of the proposed 'Tribal Areas Rewaj Act 2017' which is being suggested as an alternate to the existing Frontier Crimes Regulation (FCR). It seems that no one within FATA was ready for this proposition,³² since tribesmen believed that legal mainstreaming would entail extending the existing legal regimes in other provinces to FATA.

On 15 May 2017, the federal government introduced a bill titled the Tribal Areas Rewaj Act 2017 in the National Assembly.³³ However, there seems to be a consensus across FATA as well as amongst political parties that the proposed legislation is just an old wine in a new bottle.³⁴ The proposed bill seems to be a reproduction of the already enforced FCR. The FATA people fear that the institutionalization of Maliks and Jirga as a mechanism to adjudicate tribal disputes will invest enormous powers in the hands of a few, which would not bring desired change.³⁵

It is speculated that the government intends to enforce the proposed Rewaj Act only in the “protected areas” of each FATA agency, while the rest of the (unprotected) areas which forms the bulk, would be governed under the reformed FCR law.³⁶ This suspicion was lent further credence by the former federal law minister, Zahid Hamid, who stated that the black provisions of Frontier Crimes Regulations should be removed, in order to ensure the effective provision of all fundamental rights.³⁷ Therefore, there is a clear ambiguity regarding the civil administrative setup

25. 'Chapter 3: Tribal Areas', Constitution of the Islamic Republic of Pakistan. Available at <http://www.pakistani.org/pakistan/constitution/part12.ch3.html> (accessed on May 10, 2017)

26. 'Federal Cabinet Approves FATA Reforms', Samaa TV, March 2, 2017. Available at <https://www.samaa.tv/pakistan/2017/03/federal-cabinet-fata-reforms/> (accessed on May 10, 2017)

27. 'The Constitution of the Islamic Republic of Pakistan', National Assembly of Pakistan, Page 157. Available at http://na.gov.pk/uploads/documents/1333523681_951.pdf (accessed on May 10, 2017)

28. Hasnaat Malik, 'Tribal leaders move apex court against FATA merger with K-P', The Express Tribune, March 10, 2017. Available at <https://tribune.com.pk/story/1351662/tribal-leaders-move-apex-court-fata-merger-k-p/>; Haseeb Bhatti, 'Tribal leaders challenge govt plan to merge Fata with KP', Dawn, March 10, 2017, <https://www.dawn.com/news/1319608>

29. 'Tribal leaders challenge govt plan to merge Fata with KP', op.cit.

30. 'PPP Lawmaker Criticizes Govt Over FATA Reforms', Pakistan Today, May 7, 2017. Available at <https://www.pakistantoday.com.pk/2017/05/07/ppp-lawmaker-criticises-govt-over-fata-reforms/> (accessed on May 10, 2017)

31. 'Parties Announce May 20 Deadline for FATA Reforms', Dawn, May 7, 2017. Available at <https://www.dawn.com/news/1331621> (accessed on May 10, 2017); Aziz Buner, 'CM KP insists on empowering his govt in the FATA merger process', Pakistan Today, May 17, 2017. Available at <https://www.pakistantoday.com.pk/2017/05/17/cm-kp-insists-on-empowering-his-govt-in-the-fata-merger-process/> (accessed on May 22, 2017)

32. 'The Proposed Riway Act To Keep FATA Status As Male Dominant Region', Tribal News Network (TNN), November 24, 2016. Available at <http://www.radiotnn.com/the-proposed-riway-act-to-keep-fata-status-as-male-dominant-region/>; 'A Rejected Riway Act', The Nation, March 6, 2017. Available at <http://nation.com.pk/editorials/06-Mar-2017/a-rejected-riway-act>

33. Amir Wasim, 'New Rewaj bill for tribal areas comes under fire', Dawn, May 17, 2017. Available at <https://www.dawn.com/news/1333611> (accessed on May 22, 2017)

34. 'New Rewaj bill for tribal areas comes under fire', Dawn, May 17, 2017. Available at <https://www.dawn.com/news/1333611>; 'Rewaj Bill Par Ikhtilaf; FATA Mein Nifaz-e-Shariat ka Mutaliba (Urdu for Differences over Rewaj Bill: Demands for Enforcement of Sharia in FATA)', Daily Mashriq, May 17, 2017. Available at <http://www.mashriqtv.pk/E-Paper/Peshawar/2017-05-17/page-1/detail-10>

35. 'No Smooth Sailing for Gov't FATA Rewaj Bill in NA', The Nation, May 8, 2017. Available at <http://nation.com.pk/national/08-May-2017/no-smooth-sailing-for-govt-s-fata-rewaj-bill-in-na> (accessed on May 10, 2017)

36. Conversation with a Senator from Bajaur Agency, FATA, in Islamabad on May 3, 2017.

37. 'Rewaj Bill Finalized as Per FATA People's Desires: Zahid Hamid', Radio Pakistan, May 7, 2017. Available at <http://www.radio.gov.pk/07-May-2017/rewaj-bill-finalized-as-per-fata-people-s-desires-zahid-hamid>

that would oversee the entire reforms process.³⁸ There is also uncertainty surrounding whether or not the government would retain the existing system of political administration in FATA for another 10 years until the area is streamlined for merger with KP.

Similarly, FATA is inhabited by dozens of Pashtun tribes, who follow a common code of Pashtunwali but practices varying Rewaj (culture) and Rewayaat (traditions), and it would be an arduous task to evolve a common code applicable to the entire region. Though jurisdiction of superior courts would be extended to FATA under the proposed reforms, the institutionalization of Maliks and Jirga at the trial stage of a civil or criminal dispute may prove to be an impediment in administering expeditious and quick justice.

Conclusion

It has been a year since the Committee on FATA Reforms submitted its report to the federal government to carry out the much-needed reforms in FATA. However, the entire process has become a victim of political wrangling, legal barriers and bureaucratic red-tapism. The urgency to carry out the proposed reforms in the wake of growing terrorist violence within FATA assumes tremendous significance. There was an increase of 72 percent in violent incidents in FATA during the first quarter of this year, compared to the last quarter of 2016.³⁹ The government spent PKR 250 billion during the fiscal year 2015-2016 on security related matters and is further

requesting PKR 283 billion to be allocated for security in the upcoming financial year.⁴⁰ FATA's mainstreaming process moves at a snail pace and repatriation of temporary displaced persons (TDPs) remains incomplete. It is therefore important that the federal government emphasizes on rehabilitation and reconstruction of FATA. It should coopt people to support the government's endeavor to safeguard the region from terrorist violence.

The following recommendations could be made to streamline the FATA Reforms process:

- The security cost of retaining FATA will continue to rise if the area is not rehabilitated and reconstructed soon. Therefore, the government should make sincere and serious efforts to arrange the finances necessary to recover FATA from violence-induced destruction.
- The federal government should either raise sufficient finances or engage with the provinces to agree to share the reconstruction cost of FATA. Similarly, the government should seriously strive to raise finances from the international community and donors since post-conflict reconstruction of any devastated area has always been a long, painstaking and capital intensive process.
- The government should bring transparency and accountability to the FATA mainstreaming program. It should engage all the relevant stakeholders,

including representatives from FATA, to educate them about the process and attempt to remove ambiguities regarding the Rewaj Act and future administrative systems for the region. Engaging important stakeholders from FATA will help in capacity building and maintaining the momentum of reforms and stability in FATA.

- The government should review its policy towards Afghanistan. An instable Afghanistan would continue to destabilize the entire South and Central Asia, and the Middle East. Since FATA is adjacent to Afghanistan, the blowback effect on it would be tremendous and could potentially jeopardize the recovery of FATA.

It is a well-recognized fact that prudent decisions taken in the early recovery period of a post-conflict reconstruction phase provides a 'window of opportunity' to ensure sustainable peace in any post-conflict zone. Similarly, this window of opportunity is limited by time and space, and therefore the opportunity must be grasped and utilized efficiently for optimum results.

The federal government's indecisiveness to carry forward the reforms may dampen people's aspirations and readiness to accept change. Pakistan is heading towards general elections in 2018 and if the process is not initiated soon, the entire reforms exercise may face a similar fate to previous efforts aimed at mainstreaming FATA.

38. 'FATA Political Alliance Rejects Proposed Rewaj Act', The Nation, March 5, 2017. Available at <http://nation.com.pk/national/05-Mar-2017/fata-political-alliance-rejects-proposed-rewaj-act> (accessed on May 10, 2017)

39. 'FATA Security Report: First Quarter 2017', FATA Research Centre, Islamabad. Available at <http://frc.org.pk/breaking/fata-security-report-first-quarter-2017/> (accessed on May 10, 2017)

40. Shahbaz Rana, 'Additional Rs250 billion spent annually since launch of Operation Zarb-e-Azb', The Express Tribune, January 14, 2017 Available at <https://tribune.com.pk/story/1294539/additional-rs250-billion-spent-annually-since-launch-operation-zarb-e-azb/> (accessed on May 10, 2017)

Interview



Sartaj Aziz

Deputy Chairman, Planning Commission of Pakistan,
Former Advisor to the Prime Minister on Foreign Affairs

What does the new political compact mean for FATA? How are the proposed reforms different than the 18 before it?

FATA reforms is a very complex subject because the British left FATA at a semi-governed no mans land to prevent incursions by Russians etc into British India. That system somehow continued initially as Pakistan did not have sufficient armed forces to cover both sides of the border. In the process, of course, there were laws and systems such as the Frontier Crimes Regulation (FCR) and political agents etc.

When we talk about mainstreaming FATA, we are just not referring to political mainstreaming i.e. merger with Khyber Pakhtunkhwa (KP) and giving it a proper status. In fact, it also refers to legal mainstreaming by abolishing the FCR and extending the laws of the country to FATA, including the jurisdiction of the Supreme and High Courts. It also refers to administrative mainstreaming which means that all departments and services exist and function properly and development capacities build up. Finally, it also refers to security mainstreaming as security is either at the border or at the political headquarters in each agency. There are large areas of no-man's land which are virtually security vacuum. Therefore, juxtaposition and interaction of these different reforms cannot be separated. All these reforms complement each other and work with each other. In the past, different reforms were attempted only for a limited purpose—once it was examined if they needed to be merged, only then were they attempted to be merged. No one took the totality of all the elements of mainstreaming as a complex and then presented them in the right sequence and in a mutually enforcing manner. Hence, these were the requirements that we found necessary and that is why our report recommended those.

In your opinion, what are the major impediments hindering the implementation of reforms and how could these be addressed?

When you have a semi perfect system of governance, a lot of improvisation takes place and lot of people are delegated powers that belong elsewhere. For example, the political agent serves as a judge, the chief administrator and a political representative. So, it becomes a very powerful position. So, when you are given the power to take huge decisions for the agency in terms of what is exported and imported, all these permits carrying a premium, then you develop a large amount of vested interests, all of whom benefit from an imperfect system. Since FATA has also been a big hub for smugglers, hence this group also formed a major part of the beneficiaries of the imperfect system. In addition to this, different political parties also have their own priorities in terms of which particular system suits their objectives. For instance, there are some parties who are against the merger for their own interests. That is

say that again

"...No one took the totality of all the elements of mainstreaming as a complex and then presented them in the right sequence and in a mutually enforcing manner."

why strong political will is needed to overcome these obstacles. Then, there were also some tribal elders who were benefiting from the absence of a judicial system, who have also benefitted from this imperfect system and its glitches.

The other fact is also important, that FATA has not received the same amount of resources as the rest of the country. The level of poverty in the region is higher as compared to the rest of the country. There are several internal building capacities for the development of the region. Currently, the FATA Secretariat is managing the development budget and this experience has taught us that it is extremely difficult to manage such a huge development budget: out of the PKR 23 billion allocated, probably only half has been spent effectively. We are now recommending a fourfold increase in budget allocation so obviously it would be a major challenge to build the required capacity for dispelling this budget effectively. Hence, the administrative mainstreaming is an important dimension but it has both a legal dimension and a political dimension.

How would the proposed reforms affect the inhabitants of FATA and how soon can these be witnessed?

One of the consequences of the lack of development in FATA is that it is not a livable place for educated and professional people. Even the headquarters of each agency is as under developed as it was a hundred years ago. So anyone who acquires education in the region desires to move onto more developed urban centers to obtain jobs.

Hence, one of recommendations is to create new urban hubs in FATA which means that in each agency headquarter, you create a model town of some kind equipped with modern schools and hospitals and markets etc. In this way, during a time span of three to four years, the region can become livable. Such initiatives will encourage FATA locals and especially the youngsters, to stay within the area. And this is targeted to be a self-financing scheme.

Second recommendation is local bodies election—all local councils will undertake schemes for the benefit of the local people and we have recommended that 30 percent of the development budget should be targeted to benefit the local people, whilst also simultaneously impart training and build capacities of these people that will enable self-sustainability.

Third is the development budget itself. This budget will focus on harnessing the potential of major areas that have the scope for development such as irrigation, mineral development etc. Through this, livelihoods will be created that will enable the region and the people to become self-sustainable. Moreover, we have proposed a

10 year development budget so that even if FATA is merged with KP, the federal government will retain the responsibility of developing FATA in order to make up for the past shortcomings and inadequacies in terms of financing.

One of the dominant views is that without political and governance reforms, economic development and service provision will not be sustainable. In your opinion, how do the proposed political and governance reforms complement efforts for economic and social development in FATA?

The legal and political reforms are very important for the benefit of the people. Under the FCR, there are serious shortcomings-one is their right as being a citizen of Pakistan. So the legal and political reforms will ensure that the people of FATA get all rights as other citizens do in Pakistan. Second, under the FCR, there is a system of collective responsibility. This severely hampers development in the region. With the introduction of normal legal and political laws, the region will become credit worthy and attract more investors. In any case, the combination of all types of reforms is important.

Some of the critics say that the timeframe for the implementation of reforms is too long. What was the rationale behind the proposed timeframe?

There is a minimum time frame which arises from the ground situation. Many of the military operations and previous reforms that took place in FATA, displaced a very large number of people. Hence, the first recommendation and area of priority is to focus on the process of rehabilitation and reconstruction, which should be completed by the end of 2017-18. This is the minimum time required for this phase.

Then the legal reforms; once the law extending the jurisdiction of the courts is passed, it cannot apply from the very same day. There have to be supporting structures in place to support this including for example, physical infrastructure, appointment of judges and levies and so on and so forth. So, this phase will also take up to 12-18 months.

Finally, security infrastructure will require border management. Till last year, there was no documentation of the number of people coming and going into the region from Afghanistan. But from last year onwards, proper documentation has begun. In addition to this, several check posts are also being built and developed for border management with Afghanistan. This phase will also take up to two years or so.

You led one of the most important reform processes in the history of Pakistan. What were the obstacles you came across, how did you overcome those? If you have to share a few lessons or provide recommendations for such processes to be successfully pursued elsewhere, what will those be?

During our visits to FATA agencies, opinions were sharply divided between some traditional maliks who were happy with the status quo as opposed to the younger elements who wanted complete abolition of the FCR. To address this, we held a series of meetings with the locals, in order to reach a consensus.

The urgency of FATA reforms is very significant. Had we done these reforms twenty years ago, we would not have witnessed all that happened in the region, and the people of FATA would not have suffered as much as they did. Over the years, the region saw immense decline in terms of poverty increase, insurgency increase, violence increase etc. These were the factors that motivated us to push the process and get the job done as quickly as possible.

Interview



Dr. Syiad Ghazi Gulab Jamal

Member National Assembly (NA 39)

Orakzai Agency

What does the new political compact mean for FATA? How are the proposed reforms different than the 18 before it?

I have been involved in and with FATA since several years, but I am in favour of introducing modern new ideas for the region and the people. Every society and country needs continuous development socially, economically, politically and so on and so forth. If it is static then it slowly fades and eventually finishes. The day FATA became a 'Temporarily Displaced Region', the 'khudi' element finished, and so did its indigenous customs and traditions. For years, the region and its people waited in line for even basic necessities. And yet the same region and the local community are blamed for the spread of terrorism in the country.

There is a need for reforms but the local community is exhausted by now-physically, socially, mentally, psychologically and economically, and cannot further bear the burden of any experimental reforms to be forced onto them. It is time for the country and even the whole world, to pay back to the FATA region and its people. In this respect what is needed, is a slow process of reformation and rebuilding the community and the region. What is needed is care and nurture. And what is even more important is to view the real picture—for example, for eight years, the locals belonging to the Orakzai community have not even visited the area as the area is completely destroyed and barren. The realities depicted on paper show that the reform process is rehabilitating the area and the locals but the reality on ground, is completely a different story.

This entire process on FATA reforms began with Mehtab Abbasi who pioneered this work. When this reform package was nearing completion, the FATA parliamentarians raised hue and cry over the fact that they were not involved in the reform process. And that is where the entire problem is. The real power should lie in the hands of the people of FATA. The locals should be involved in all decision making. On the contrary, this was not the case. Neither the local people, nor even the parliamentarians were involved in the whole process. The initial draft of reforms presented to us was revised without consultation when it was presented to the cabinet and none of the FATA parliamentarians were aware or consulted for the revisions.

The FATA parliamentarians want to empower the people of FATA and place them as decision makers for the area. In the reform package, ideally we wanted a FATA council having elected members and for this council to rule FATA along with the governor. However, the package given by the FATA Reforms Committee asserted that FATA was to become a part of Khyber Pakhtunkhwa (KP) in five years keeping evolutionary changes for FATA in mind and not revolution-

say that again

"...It is time for the country and even the whole world, to pay back to the FATA region and its people."

ary-it was promised that returns and rehabilitation would be completed and reconstruction would begin followed by implementation of political changes. This was the original agreed plan that was shared with FATA parliamentarians. However, when the plan emerged from the cabinet, it was divulged that FATA would be contesting provincial elections in 2018. This meant that post the elections, the FATA Member of Provincial Assembly (MPA) would automatically come under the jurisdiction of the KP government. This would in effect mean that the FATA MPA would hold primary responsibility to the KP government and hence would have nothing to do with FATA. What then becomes of the whole 10 year socio-economic package that was originally envisaged for the region? The local people or the FATA parliamentarians do not oppose the KP merger-FATA locals are already part of KP socially, culturally etc. The only demand is to stick to the promises made in the original reforms package proposed by the committee and the government and not use us as guinea pigs for experimentation.

In my opinion, the socio-economic development package along with relief and rehabilitation efforts should first and foremost, be focused for the Temporarily Displaced Persons (TDPs). Once the TDPs are addressed, then the package should be further extended and exercised. The state needs to compensate for whatever losses the region and the local FATA community have undergone in the past 35 years.

I have been demanding that special quota should be kept for students who do their education from FATA- the government has recently started this practice for the last two years for example, in medical and engineering colleges we have separate quota for them for those who have done matric from FATA.

In your opinion, what are the major impediments hindering the reform process and how could these be addressed?

The major problem is that the committee and the government have gone against the promises made in the original reforms package that was shared with us. The revised reforms package has failed to include the local community and the FATA parliamentarians in the reform process. The rule of FATA is not in the hands of the people of FATA and this is the basic problem. Decisions are being taken at the center and at the FATA Secretariat when in reality, these people are the ones who are farthest away from the reality of the region.

Another problem is the budget allocations. Why isn't the government allocating the three percent of NFC award as per commitment, along with the promise that provincial governments would allocate some part of their share to FATA? No provincial government has as

yet allocated any resources for FATA, except Punjab.

Nothing is wrong with the system. Unfortunately, Pakistan as a society, has become a corrupt society and FATA being a remote area, one can imagine how much corruption has impacted the area. Transparency and accountability is also missing in the region and these mechanisms need to be strengthened. In this respect, it is also essential to address border issues with Afghanistan.

How would the proposed reforms affect inhabitants of FATA and how soon can these be witnessed?

These reforms consist of three major things which are going to affect the FATA area and people. The first is the development package, already discussed above. Second is the judicial and legal package. Everyone across FATA wants alterations in the Frontier Crimes Regulation. Hence, the government needs to come out with a legal package and this has been named as the Rewaj Act. The Rewaj act till date, has not been penned down in black and white and that is where the issue lies. Until and unless there is clarity in the act, it cannot be discussed with us and the local FATA community, as a consequence of which we cannot be sure on the fact that the Act might have clauses that might even be more draconian than the FCR. So, it needs to be clearly written down and discussed with us first before it is taken ahead. Even in the current reform package, FATA parliamentarians still hold no power.

The third thing is the political aspect which refers to the merger with KP. In this case, the government simply needs to stick to its original promise that in a time period of five years, the merger process will commence.

Changes are always good to begin with and there will be positive changes. However, the changes will not be overnight and will take time to unfold and implement. If implemented as originally promised, the reforms package has the capacity to bring about a huge positive revolution in the FATA belt.

Interview



Malik Muhammad Ali Afridi

Chief of Sepah Tribe
Bara Khyber Agency

What does the new political compact mean for FATA? How are the proposed reforms different than the 18 before it?

There is a lot of difference between previous reforms and the ones recently introduced. But what is of more significance is that the reforms package has not been shared with the local community in FATA. So much so, that the majority of locals are not even aware of what the term 'reforms' actually means. It is unfortunate that those whom the reforms will impact the most, have been sidelined. Thus, if one is not even aware of the reforms package, then how can one compare and contrast between the past and the present?

The local community is indeed very desirous of development in the region in terms of education, health and improved communication between the public and the government, but no development of any sort has been witnessed till now. A council comprising of elders and common people should be established and consulted for reforms. It is important to include those who have knowledge of local customs and traditions so these can be embedded in whatever new system the government intends on introducing. Moreover, the reform package needs to create employment opportunities. This is essential as the major reason for corruption in the area is that most of the locals have no source of income.

A proper policing authority is also the need of the hour in the FATA region. In the absence of a proper transparent and capable policing authority, the region's disputes see no end.

In conclusion, it is first important to involve the local community in the reform process, before asking them to conduct a comparative analysis of any sort.

In your opinion, what are the major impediments hindering the reform process and how could these be addressed?

Lack of public participation in the reform process is the biggest weakness of this new reforms package. Second, there is a big communication gap between the locals and the government. The government is aloof from the reality of the region and the condition of the locals. As a result of this, the government has failed to properly educate the locals and left them hanging in the middle.

The process itself is a big hindrance. Each agency and tribe has individual customs and traditions. How then can one single reform process be applicable throughout the region? Moreover, the reforms package does not cater well to the Temporary Displaced Persons

say that again

"...The proposed reforms are being engineered by lawmakers who are not even inhabitants of the land."

(TDPs), who are not being provided adequate funds to recover. I ask, how can a mere amount of PKR four hundred thousand rehabilitate a standard family of five persons who have lost everything and have to rebuild completely from scratch? And mind you, not all TDPs are being given this amount-some are being given even less.

Another problem in the reform process is that the initial promises made are not being lived up to. An example is the budgetary allocation: there is now talk of a reduction in budgetary allocation for the region as opposed to the budget that was initially promised. No explanations have been provided whatsoever and it is this absence of transparency that needs to finish. There should be no hidden secrets kept from the local FATA community.

How would the proposed reforms affect inhabitants of FATA and how soon can these be witnessed?

The current law of the land, the Frontier Crimes Regulation (FCR), is one of the best ways of life but the question is about adaptability. For example, what you choose to do with a lighter is up to you. You can either use the flame to ignite an even bigger fire or you can use the flame to light a stove in someone's house that will enable the family to cook food for their sustenance. Likewise, this law has been abused severely. If implemented correctly, this law is the best law for the land.

The proposed reforms are being engineered by lawmakers who are not even inhabitants of the land. As opposed to this, the 'maliks' and other elders in FATA, individuals who are actually very passionate about the region, should be empowered.

To begin with, no proper planning charting the abolition of the FCR, and transition to a new law, developed. Departments have not been streamlined for this transition either. Hence, it is easier said than done.

Some part of the reforms that refer to improving basic services and providing amenities does seem promising. And I look forward to the positive impacts that such meaningful reforms will bring.

However, all in all, the reforms system and the merger is very ambiguous at the moment. Given this confusion and the lack of public participation in the process, there are no high hopes and only time will tell the actual impact.

say that again

"...If the promises made indeed are actually implemented, it will be a leap forward towards mainstreaming FATA. But, will it be?"



Farhatullah Babar

Senator

What does the new political compact mean for FATA? How are the proposed reforms different than the 18 before it?

Despite varied and valid reservations about the FATA reforms package, almost all parties, except two, welcomed it as a step in the right direction and demanded its immediate implementation.

It was a huge disappointment, however, when the package announced with great fanfare and approved by the Cabinet on March 2nd this year, was abruptly withdrawn from the Parliament without offering any explanation.

It seems that the package has fallen victim to coalition politics as two of the coalition partners of the government opposed it for their own reasons. It seems that the government, mired in controversies and bogged down by Panama Leaks, the courts and the Joint Investigation Team, does not wish to displease its coalition partners.

The reforms promise merger of FATA in Khyber Pakhtunkhwa, extending the jurisdiction of High Courts to the tribal areas, local self-governance and replacing the draconian and outdated FCR with a new law. These are far reaching features and makes this compact qualitatively different from the previous reform packages.

If the promises made indeed are actually implemented, it will be a leap forward towards mainstreaming FATA. But, will it be?

As of today the package remains merely an expression of pious hopes, noble intentions and vague promises. No ground work was carried out and no practical measures taken to implement it. It is thus, no different from the previous packages which also made promises but were not implemented. It is likely to end up as a political stunt rather than a real effort at mainstreaming tribal areas.

I suspect that the fate of this reforms package will be no different from the fate of over a dozen reform packages previously introduced: the dustbin!

In your opinion, what are the major impediments hindering the reform process and how can these be addressed?

Traditionally, the forces of status quo oppose reforms in FATA. The greatest obstacle in mainstreaming FATA has always been the loathing of the civil-military bureaucratic complex to loosen their stranglehold of tribal areas.

The civil military bureaucracy strengthened their grip on tribal areas by using the office of the President, wielding absolute powers over

tribal areas, to impose regulations to perpetuate the status quo and not to empower people.

The civil-military bureaucratic complex is desperate to retain this colonial structure to avoid inconvenient oversight.

This iron stranglehold must be loosened by transferring the legislative powers in respect of FATA to the Parliament from the President; and genuinely elected representatives allowed participation instead of leaving everything in the hands of this complex alone.

Over the years, war in tribal areas has resulted in the creation of war economy and black economy. Thriving in the status quo, the mafia of black money is also opposed to reforms.

Finally, peace and development will elude FATA as long as peace and development eludes Afghanistan. We must revisit our Afghan policy in the light of this basic reality.

How would the proposed reforms affect the inhabitants of FATA and how soon can these be witnessed?

In theory, extending jurisdiction of High Courts would ensure protecting the fundamental rights of the tribal people. Setting up local self-governments would ensure empowering them.

Any system that would empower the tribal people on one hand and protect their basic human rights on the other, will fundamentally and qualitatively affect their lives, but again in theory. In practice however, as I said before, unfortunately it appears to be déjà vu and I do not envisage the reforms package to be immediately affecting the people of the tribal areas.

Contextual Background

Socio-Economic Mainstreaming of FATA¹

Overview

The Federally Administered Tribal Areas (FATA) is a semi-autonomous region of Pakistan, home to a dozen Pakhtun tribes, further divided into clans and sub-tribes. Geographically, Khyber Pakhtunkhwa (KP) bounds FATA on three sides while the Durand Line forms its western border with Afghanistan on the fourth. Despite the obvious importance of FATA as a result of its strategic location, the region has since independence, been governed and administered beyond the remit of the Constitution and laws of Pakistan, as a result of which it has lagged behind the rest of the country on all development indicators. According to the FATA Sustainable Development Plan 2007-2015, poor planning and skewed development priorities are at least partly to blame,² coupled with the prevailing insecurity in the region and the special administrative arrangement that prevails in the area.

Since independence, FATA has been governed and administered under the Frontier Crimes Regulation (FCR) of 1901; a colonial-era legal framework which serves as the central administrative and judicial agenda in FATA. It excludes both individual and fundamental rights, amalgamates administrative and judicial power, and inhibits the development of a responsive or participatory system of governance. Laws in force elsewhere in the country are not applicable to FATA unless specifically extended by presidential order. Judicial proceedings are conducted and decided by a tribal council under a procedural law that has little in common with the criminal and civil codes in force throughout the rest of Pakistan. All these factors in combination—the lack of local governance structures,

weakness of service delivery and accountability at the agency-level and the inability of the state to provide justice—have served as key drivers of conflict and instability, making FATA a volatile region. In the post 9/11 period, the rising militancy in the region and subsequent counter military operations led to the devastation of private and public infrastructure in the region. Since 2008, successive waves of displacement, mainly resulting from militancy, have weakened FATA's community fabric. In April 2016, the Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that a total of 5.3 million people³ had been temporarily displaced from across FATA and that a total of 4.3 million had returned in the same period.⁴ With such a high number of Temporary Displaced Persons (TDPs), the already subsistence livelihood opportunities in agencies became even more scarce, thus pushing people further down the poverty line. According to the Multidimensional Poverty Index (MPI), the region has the highest incidence of poverty, 73.7 percent, in the country.⁵

Similarly, low per capita fund allocation is another factor adding to the pervasive under development in the region. The per capita budget allotted to FATA in 2010-11 was PKR 5270.90 where as in 2015-16, the per capita budget allocation was PKR 7855.⁶ The region lacks economic integration with the rest of Pakistan and therefore FATA's dependency on the federal government reinforces a top-down decision making process with the major responsibility for execution of public development lying with the FATA Secretariat. The provision of insufficient funding for the region has caused pervasive underdevelopment, resulting in large development gaps, while

service delivery remains suboptimal in the presence of poor mechanisms of transparency and accountability with little attention to delivering with quality.⁷

FATA's productive economy is almost non-existent as majority of the population is dependent on subsistence level agriculture and livestock rearing. The conflict in the region has caused major destruction to the already fragile economic base for livelihood and job opportunities on one hand, while on the other hand, the cost of the War on Terror on the local population has been immense with considerable strains on the already limited public resources. According to government sources, repatriation of the TDPs and reconstruction of damaged infrastructure, markets and livelihood opportunities will cost the government PKR 175 billion.⁸

The geological features of FATA provide evidence of several minerals in the area; an agency wise list of minerals is provided in table 1.⁹ Although FATA is relatively rich in natural resources, the mineral sector remained untapped due to various reasons such as lack of policy framework, financial inadequacies, security and social safety, and lack of institutional arrangement for proper exploitation of mineral resources.

Further, the literacy rate in the region remained below national benchmarks as discussed further in the section on education.¹⁰ The provision of health services is also not at par with that of neighboring KP. Altogether, the lack of economic opportunities available particularly to youth, combined with low literacy rates, gender inequality, poor health facilities and the absence of strong

1. This contextual background has been written by Hyder Yahya (Governance and Reforms Specialist), Raziq Muhammad Shinwari (Policy Development and Reforms Specialist), Ilena Paltzer (Donor Partnership Consultant) and Fazle Mateen (Monitoring and Evaluation Officer).
2. FATA Sustainable Development Plan 2007-2015. Available at <http://waterinfo.net.pk/sites/default/files/knowledge/FATA%20Sustainable%20Dev%20Plan%202007-2015>
3. It may be noted that the total number of displaced reported is greater than the total population reported by the FATA Secretariat. This reflects both the possibility of multiple displacements or, more likely, the incorrect estimate of the population in the absence of a proper census.
4. Pakistan: Displacements and returns in KP and FATA 2008 - 2016 (as of April 2016). Available at https://www.humanitarianresponse.info/en/system/files/documents/files/displacements_and_returns_in_kp_and_fata_2008_-_2016_as_of_april_2016.pdf
5. UNDP, Multidimensional Poverty in Pakistan (2016). Available at http://www.pk.undp.org/content/pakistan/en/home/library/hiv_aids/Multidimensional-Poverty-in-Pakistan.html
6. Position paper of FATA Secretariat for NFC
7. Report of the Committee on FATA Reforms 2016. Available at <http://www.safron.gov.pk/safron/userfiles1/file/Report%20of%20the%20Committee%20on%20FATA%20Reforms%202016%20final.pdf>
8. The Express Tribune (2015), "Repatriation of TDPs to take 20 months, cost Rs175b". Available at <https://tribune.com.pk/story/857072/repatriation-of-tcps-to-take-20-months-cost-rs175b/>
9. Govt. of FATA Survey. Available at <https://fata.gov.pk/Global-fac.php?ild=467&fid=53&pId=389&mId=228>
10. DAWN Newspaper (2016). "Survey paints bleak picture of social indicators in FATA." Available at <https://www.dawn.com/news/1234160>

and stable governance structures, has created a facilitating environment for militant ideologies and a flourishing black economy.

Education

As with all socio-economic indicators, those for education in FATA lag behind the rest of Pakistan. The sector has been facing severe challenges in ensuring access, quality and equity of education services, whilst alongside, the recent episodes of militancy wreaked heavy damage on the education infrastructure in FATA.

According to the Pakistan Social and Living Measurement Survey (PSLM) 2015-16,¹¹ the literacy rate in FATA stands at 24 percent (national level 58 percent) with male and female literacy rates at 36 percent (national 70 percent) and 10 percent (national 47 percent), respectively. Overall, the literacy rate in FATA is not at par when compared to KP (53 percent) and Balochistan (43 percent). The Gross Enrolment Ratio (GER) and Net Enrolment Ratio (NER) data for FATA shows that GER at the primary level is 53 percent while NER at the primary level is 41 percent. The GER and NER further decreases as you move up at the secondary level; the GER is almost one-tenth (11.27 percent) of the primary level GER, and the NER is even less than one-tenth (9.58 percent) of the primary level NER. The data therefore shows a high dropout level for students moving from primary to secondary education (Figure 1). Data from the Education Management Information System (EMIS)¹² depicts that 82 percent of educational institutes in FATA are government primary schools, whereas, government middle and high schools are at three percent and eight percent, respectively (Figure 2). Female students constitute 48 percent of pupils in primary school and 34 percent in middle grade institutions (Table 2). The EMIS data reflects that female pupils constitute a greater share in degree awarding institutions (15.1 percent) as compared to the higher secondary level (12.6 percent).¹³

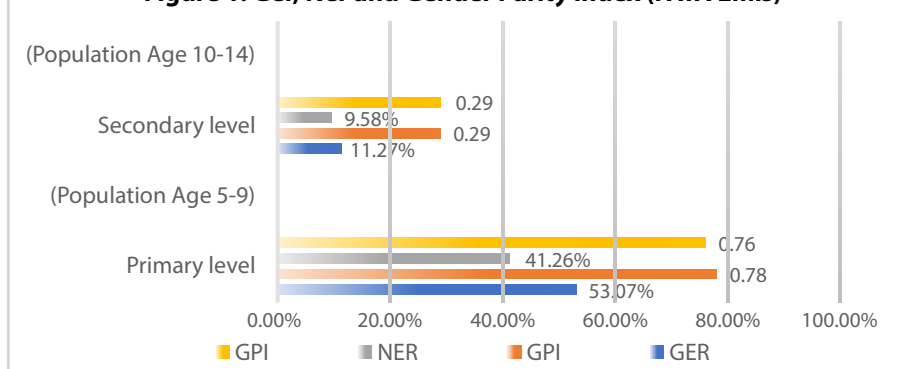
The Gender Parity Index (GPI) shows that gender equity falls as pupils move from primary to secondary education: FATA's GPI at the primary level stands at 0.78 whilst at the secondary level it declined to 0.29 (Figure 1).

In the wake of military operations in FATA which cleared the region of militants, the development of the FATA Sustainable Return and Rehabilitation Strategy (2015) has seen the FATA Secretariat implement a process of recovery that has included the reconstruction and rehabilitation of education institutions across the region. As education level increase, enrolment

Table 1: Agency wise mineral composition

Agency/ F.R	Minerals	Location	Quantity
FR Peshawar North Waziristan	Copper	Boya, Manzerkhel, Spin Kamar, DeganPaiKhel, Khaddar Khel	~35 Million tons (0.8 percent)
	Manganese	Saidgi, Shuider	~0.10 Million tons (45-50 percent)
	Chromite	Boya, ManzerKhel	~10 Million tons (32-42 percent)
Khyber Agency	Marble	Mullagory, Ghundai	>846 Million Tons
	Barite	Choravalley	Not quantified yet
	Graphite	Spinkai(Tirah)	Not quantified yet
	Uranium	Shalman	-do-
	Soapstone	Thunderi sar	-do-
	Limestone	Besai	>10 Billion Tons
	Mica	Shilman	Not quantified yet.
Orakzai	Iron ore	Kurez	Not quantified
	Coal	Mishti, Sheikhan	~82 Million Tons
Kurram	Soapstone	Daradar, Gandao, Peiwar	~3.9 Million Tons
	Lead	NeemTota	Not quantified
Mohmand Agency	Marble	Ziarat, spinkiTangi, ToraKhwa, Chinari,Shamsha, Bid Mani, e.t.c	>2358 Million Tons
	Dolomite	Ghallanai	~11.00 Million Tons
	Silica sand	Gallanai	~537 Million Tons
	Feldspar	Barankhel	Not quantified
	Quartzites		-do-
	Copper	Koh-e-Moor	-do-
	Chromite	Utmankhel	~12 MillionTons
	Emerald	Tora Tiga	Not quantified
	Jade	Utmankhel	-do-
	Serpentine	Utmankhel	-do-
	Nephrite	Ambar	-do-
	Soapstone	Prang ghar	>50 Million Ton (Low quality)
Bajaur	Marble	Nawagai, inzaraietc	>5850 M. Tons
	Manganese	Takht, charming	0.05 M. Tons
	Chromite	Kamangara	Not quantified
	Emerald	Barang	Not quantified
	Nephrite	Inzarai	Not quantified
FR D I Khan	Gypsum	Shirani	20 M. Tons
	Limestone	-do-	>50BillionTons
	Marl	-do-	>10 Million Tons
	Fossiliferous Limestone	-do-	>50 M. Tons
FR Kohat	Limestone	Dera Adam Khel	>1500 Billion Tons
	Coal	DarraAdam Khel	=20 Million Tons
FR Peshawar	Limestone	Kala Khel	>1000 Billion Tons

Figure 1: Ger, Ner and Gender Parity Index (FATA Emis)



11. Pakistan Bureau of Statistics, PSLAM publications. Available at <http://www.pbs.gov.pk/pslm-publications>

12. Govt. of FATA. Available at <https://fata.gov.pk/facility-home.php?fid=46>

13. Ibid

decreases.¹⁴ In addition, enrolment figures at the nursery level indicate that the number of admissions is higher among both boys and girls standing at 50,463 and 38,52 respectively (2010-2011). However, in 2015-16, on reaching the 5th grade, boys' admissions fell by 64 percent whereas girls' admissions fell by 74 percent¹⁵ (Table 2).

The region also houses a number of technical and vocational training institutes: 22 for men (13 vocational training centres and 9 technical training institutes), and 39 for women; imparting vocational training to 1,228 females in 2015-16. In comparison, a total of 3,421 men were enrolled in 22 institutes in 2015-16 (Figure 3).¹⁶

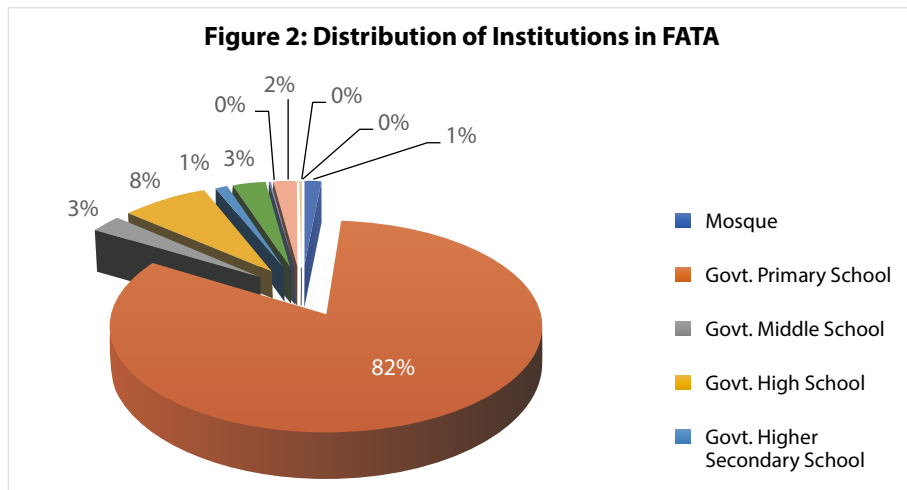


Table 2: Male and Female Enrolment Ratio

Primary School Level	Nursery (2010-11) Enrolment			Class 5 (2015-16) Enrolment			Drop-Out Rates		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
	50463	38252	88715	18226	9770	27996	64 percent	74 percent	68 percent

Health

FATA's health sector is two-tiered: a public sector with primary and secondary health facilities, and an unregulated private sector. According to the log out report of the District Health Information System (DHIS), as of February 2017, 82 Basic Health Units (BHUs), 91 Rural Health Centers (RHC's), 57 Community Health Centers and 75 Community Dispensaries in FATA are fully functional. The total bed strength of health facilities in FATA is 1,605, with a high population to bed ratio of 2,729 as compared to 1,439 in KP and 1,786 in Pakistan. Of the available health facilities, the number of functional ones are even lower on the basis of weak infrastructure, low human resource, inadequate drugs and supplies, and insufficient equipment.

Once again, indicators for basic health in FATA rank below those for KP and the country. The percentage of fertility stands at 1.2 percent, which is higher compared to the rest of the country. For indicators on immunization rate, antenatal and postnatal care, FATA scores 20-30 percent lower when compared to the national level. The lack of skilled birth attendants (29.5 percent) is also alarmingly poor (Figure 5).

Along with all this, the lack of skilled human resource for the health sector further compounds the challenges of the region. Specialized medical staff is significantly less in comparison to the general population. Furthermore, there is no means to ensure that the health staff receives regular refresher trainings in healthcare.¹⁷

Figure 3: No of Technical and vocational training institutes and Enrolment

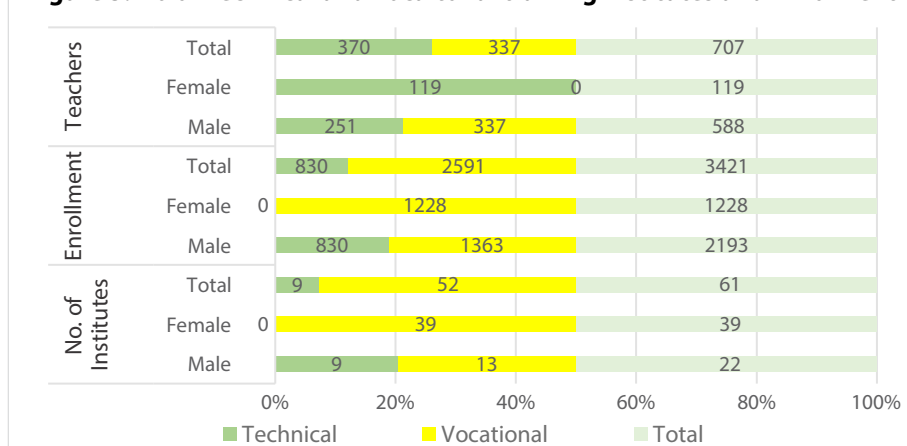
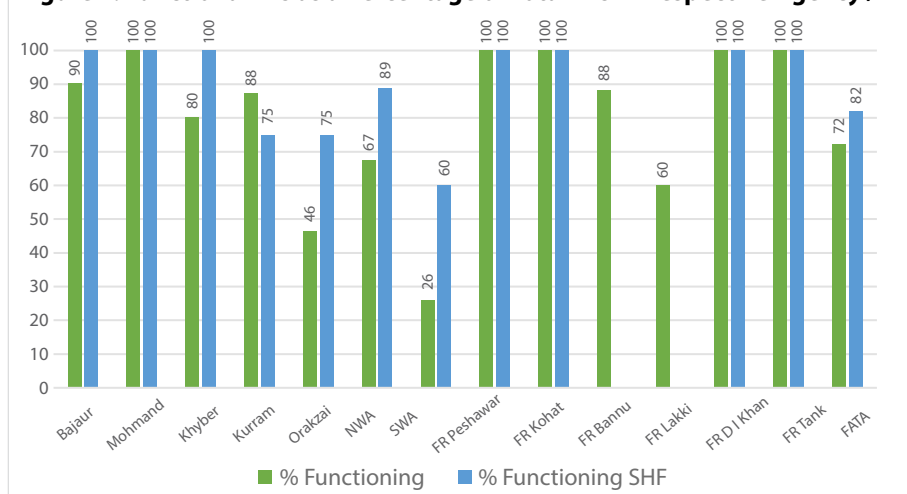


Figure 4: Functional Hfs as a Percentage of Total Hfs in Respective Agency /FR



Livelihoods

The FATA region is marred by a lack of livelihood and economic opportunities.

The economic vulnerability of the region increased during the years of conflict. The displacement of population and damage to

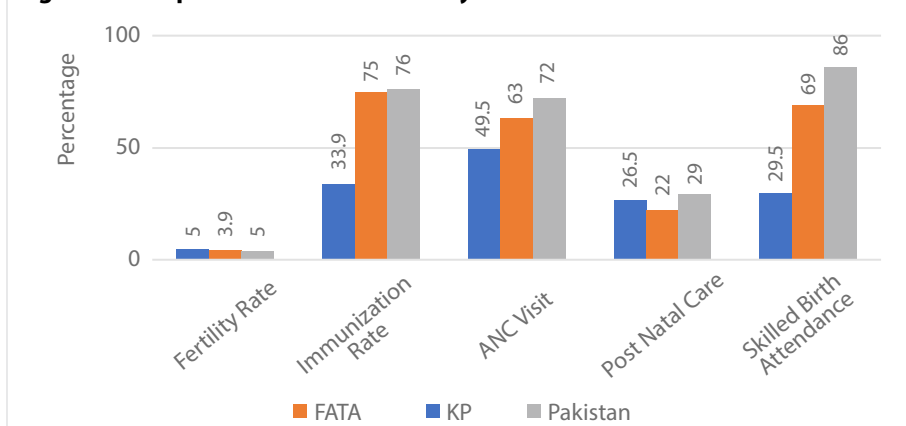
14. Ibid

15. Ibid

16. National Education Management Information System (NEMIS) 2014-15

17. Qualitative interview with staff of directorate of health FATA.

Figure 5: Comparison of health delivery indicators of FATA with KP & Pakistan



public and private infrastructure, further deteriorated the fragile economy.

FATA has a chiefly pastoral economy with agriculture as the main practice. Two-thirds of the people in FATA are engaged in primary-level subsistence agriculture and livestock rearing¹⁸ while the remaining one-third population is involved in business and trading, or find employment in small-scale commercial and industrial sectors.¹⁹ Migration to urban centers such as Peshawar and Karachi in search of employment is also high.²⁰ Women in FATA are largely excluded from the public sphere including paid work opportunities and are primarily restricted to working at home. The majority of land owners have small scale land holdings (18 persons per hectare) which is characterized by the underutilization of land, poor productivity and risk-averse behavior.²¹ Only eight percent of the total geographic area (220,900 hectares) of FATA is cultivated, with another one percent recorded as fallow. Some 44 percent (86,000 hectares) of agricultural land is under irrigation, while the remaining farms rely exclusively on rainfall. Water for irrigation is provided through a combination of delivery systems, including tube wells, dug wells, lift pumps, surface irrigation networks and traditional community-built canals. In some areas, however, entire irrigation systems have ceased to function.

The data in figures six and seven shows the average farm size in FATA and suggests the predominance of smallholder farmers. Understanding of farm size and tenancy structures is crucial for any considerations on policies or incentives to be designed for increasing land ownership or yields.

Forestry

Forests are an integral part of the rural economy, playing a significant role in local livelihoods particularly in the mountainous regions. Forests meet the fuel, fodder and timber requirements of the rural population, as well as providing critical ecological services. Reports depict that forests cover one to eight percent of the total area but the reliability of this figure is questionable.²² The level of forestation is however, facing a rapid decline owing to timber cutting practices (legally, for local use and sale, and illegally for export to areas outside FATA), prolonged drought, uncontrolled grazing, and use of wood for fuel. Furthermore, the increase in deforestation is having a detrimental impact on the delicate balance of the ecosystem. The water retention capacity of the soil has fallen, the area suffers from flash floods and the quality and quantity of fodder has diminished. Rangeland and pasture areas are in a depleted state, partly from overgrazing but also due to extended periods of drought.

Commerce and Trade

Another major source of livelihood in the tribal areas is commerce and trade. Although in the 1980s and early 1990s, the region was famous for poppy cultivation and poppy trade, today the majority of commerce and trade is in the form of wholesale and retail trade in consumer goods and transportation services, hotels and restaurants, used vehicle spare parts, vehicles, and small-scale commercial establishments providing auxiliary services. Currently, the cross-border trade with Afghanistan provides employment for the local population. The cross-border trade between both the countries is increasing with the passage of time as in

2007, the cross-border trade between both the countries stood at 0.83 billion dollars which significantly grew over a span of six years and stood at a figure of 2.35 billion dollars in the year 2013.²³ The cross-border trade also provides employment to the local population in the form of small and medium shops for cross border goods, cargo and transport services, and engagement in daily trade with bordering Afghanistan. Industrial activity mainly comprises of stone processing, textile weaving, furniture manufacture and light engineering units producing fire arms is home to approximately 10,000 workers.²⁴

In a nutshell, mainly an informal and undocumented economy, FATA remained excluded from the mainstream economic regulatory framework. Access to finance is negligible and the majority of people are financially excluded. The lack of financial infrastructure in the form of formal bank branches has been a significant factor in the limited access to financial services for the people in FATA. There are a total of 70 bank branches across FATA, of these 11 (16 percent) of the branches are dedicated to Islamic banking. A total of 13 banks have a presence in FATA. The bank presence tends to be concentrated in certain agencies, as 19 (27 percent) of the branches are in Kurram while 15 (21 percent) are in Orakzai agency. On the contrary, Mohmand agency has four banks, while South Waziristan has only two.

Similarly, access to credit including farm credit, is restricted due to the absence of collateral as private land records are almost non-existent in FATA. As per the FATA development indicators 2013-14, 76 percent of loans are taken by households in FATA from friends and family, and the proportion in FR regions was even higher at 99 percent. Bank loans constituted only 0.3 percent of loans for FATA while two percent of households borrowed from money lenders. One important thing to note is that the average size of loans from money lenders and banks was much higher than the loans taken from friends and family.²⁵ Moreover, opportunities and incentives for private sector investment in the region are lacking and the only available avenue of investment is through public sector development programmes. Therefore, the vast potential of minerals and extractives are untapped. The existing commercial activities in the mineral and extractive

18. Agriculture policy for FATA government of Pakistan and the Food and Agriculture Organization (2014-2024)

19. FATA DA survey (2010).

20. FATA Secretariat. Available at : <https://fata.gov.pk/Global.php?ild=33&fid=2&pId=29&mId=13>

21. FATA Secretariat. Available at <https://fata.gov.pk/Global.php?ild=31&fid=2&pId=27&mId=13>.

22. Ibid

23. PAJCCI (2013). "Pak Afghan Trade: Trends and issues perceptions of business community". Available at [http://www.pajcci.com/Downloads/2nd%20Trade%20Survey%20Final\(\).pdf](http://www.pajcci.com/Downloads/2nd%20Trade%20Survey%20Final().pdf)

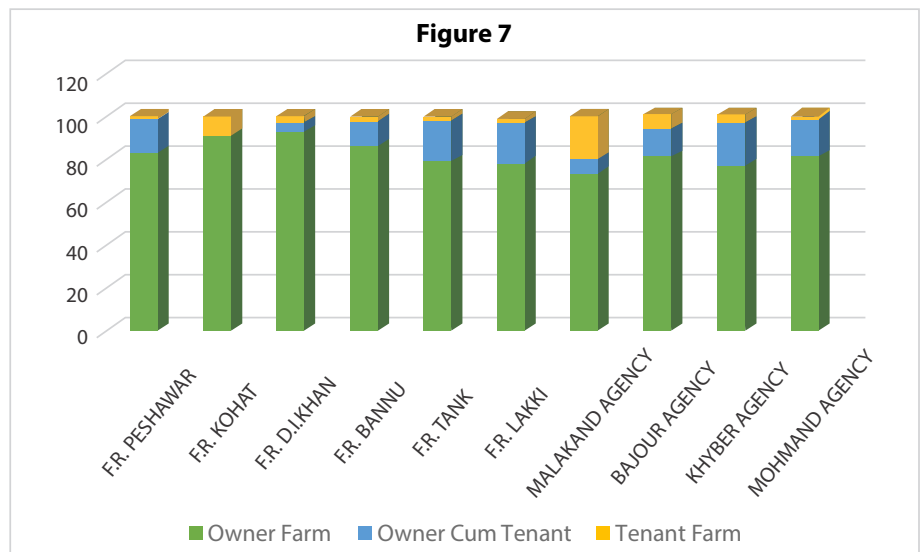
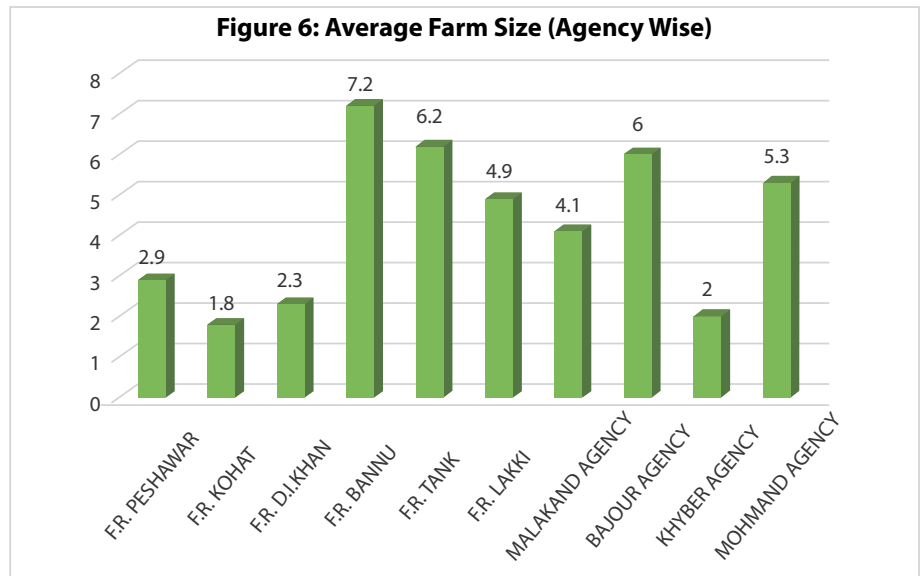
24. FATA Secretariat. Available at <https://fata.gov.pk/Global.php?ild=31&fid=2&pId=27&mId=13>

25. The average size of loans from friends was at PKR 39,812, the same for family was at 58,515. However, the same for money lenders was at PKR 252,095 while that for banks was at PKR 172,810: FATA Development Indicators (FDI 2013-14). Available at <http://www.pcnafata.gov.pk/media-top/publications/96-media/media-publications/164-fata-development-indicator-household-survey>

sector is unregulated and therefore caused rent seeking, financial leakages and natural resource wastages.

To address social and economic under-development in FATA on a sustainable basis, the Committee on FATA Reforms proposed a 10-year Socio-Economic Development Plan. The objective is to develop and plan for effective implementation of integrated sectoral policies in FATA which cover infrastructural development, enhancing human development parameters, women's socio-economic development and incentivize private sector investment in the region. Since FATA remained excluded from the national mechanism for financial distribution through the National Finance Commission (NFC), the Reforms Committee also proposed a three percent share for FATA under the NFC, over and above the existing public sector development allocation. Based on recent budgetary data, the proposed three percent allocation equals approximately PKR 120 billion per annum. Similarly, the Committee has also proposed to take appropriate measures to improve financial inclusion standards in FATA along with increasing the number of beneficiaries of government sponsored social welfare programmes such as Benazir Income Support Programme (BISP) etc. To incentivize the access to formal credit, besides increasing the number of commercial and farm banks in FATA, the Committee has proposed measures to record individual property rights by using modern technology such as GIS mapping and the digitization of records.

It is important to note, that the Federal Cabinet has already in principle, approved the above mentioned proposals of the Committee in its meeting held in March, 2017. However, the decision on the three percent NFC share for FATA is still pending



as it needs to be resolved in consultation with all the provinces.

The implementation of the approved social and economic development reforms agenda along with other concurrent legal

and political reforms in FATA, will pave way for a new era of inclusive growth, social development and peace and stability for the region, as well as in the country.



FATA Reforms and Socio Economic Development



Sakib Sherani

Founder & Chief Executive
Macro Economic Insights (Pvt) Ltd.,
Former Principal Economic Adviser
Ministry of Finance

Introduction

The Federally Administered Tribal Areas (FATA) consists of seven tribal agencies and six frontier regions along Pakistan's border with Afghanistan, that have been administered under a special status since 1948. Home to approx. 5.5 million people, FATA's socio-economic development indicators lag way behind when compared to the rest of Pakistan. It is estimated that nearly three in four residents of FATA are impoverished in terms of education, health or living standards.¹

To address this issue of chronic underdevelopment, which has been compounded by conflict and militancy post-9/11, and to mainstream FATA into the national polity, there has been a long standing need to reform the political and economic structure under which this part of Pakistan has been governed. Calls for reforms to the political governance of FATA have finally been heeded, and some meaningful progress appears to be within reach. It is expected that as progress on this front is made, the challenging socio-economic condition of FATA will begin to show visible and rapid signs of improvement.

Backdrop

Under the Constitution, FATA is included among the territories of Pakistan (Article 1). It is represented in the National Assembly and the Senate but remains under the direct executive authority of the President (Articles 51, 59 and 247). Laws framed by the National Assembly do not apply here, unless ordered by the President. FATA is governed mainly through the Frontier Crimes Regulation (FCR) 1901. It is administered by the Governor of Khyber Pakhtunkhwa (KP) in his capacity as an agent to the President of Pakistan, under the overall supervision of the Ministry of States and Frontier Regions (SAFRON) in Islamabad.

All civil and criminal cases in FATA are decided under the Frontier Crimes Regulation 1901 by a Jirga (council of elders). Residents of tribal areas may, however, approach the courts (Supreme Court of Pakistan and Peshawar High Court) with a constitutional writ challenging a decision issued under the FCR. FATA is divided into two administrative categories: protected areas are regions under the direct control of the government, while non-protected areas are administered indirectly through local tribes.²

In terms of area, FATA is roughly one-third the size of KP, covering an approximate area of 27,220 sq km. It has an estimated population of 5.5 million,³ which is predominantly rural as well as young. Approximately 97 percent of the population resides in rural areas, while 67 percent of the population is below the age of 24 years.

Subsistence agriculture comprises the bulk of economic activity, even though only 14 percent of the 2.7 million hectares in FATA is arable. Of this, roughly half is under cultivation. Of those employed, the predominant share is involved in construction, agriculture and transit trade between Pakistan and Afghanistan. Industrial activity is limited to small scale manufac-

ture of weapons, cloth, flour and rice etc. The absence of a legal framework protecting the conduct of business, low financial penetration, low literacy levels, combined with weak connectivity of the region with the rest of Pakistan, have been major constraints to development of formal economic activity. These structural causes have been compounded by the spill-over of conflict from neighbouring Afghanistan, and the entrenchment of militancy in many parts of FATA for several years till the army campaigns in South as well as North Waziristan, followed by Khyber and other agencies.

FATA's socio-economic indicators lag behind KP as well as Pakistan. The last published estimated Gross Regional Product (GRP) per capita is USD 663,⁴ indicating an average income level which is substantially below the national average of USD 1,629 for Pakistan. Approximately 60 percent of FATA's population is estimated to be below the national poverty line. Using the broader measure of multi-dimensional poverty, it is estimated that nearly 73 percent of the population-or nearly twice the national rate-is impoverished in terms of education, health and living standards. This compares with 49 percent for KP and 39 percent for Pakistan as a whole.

The situation of the social sectors in FATA is equally grim. The adult literacy rate is 45 percent for males (national: 70 percent) and only 7.8 percent for females (national: 48 percent). Only 29 percent of births are attended by skilled health personnel (national: 52 percent), while the under-five years mortality rate for children (both sexes) is 104 per 1,000 live births, compared to the national rate of 81 per 1,000 live births. The share of fully immunised children (12-23 months) is 33.9 percent compared to 75 percent for KP and 76 percent for Pakistan.

Overall, 46.5 percent of the population has access to improved water source (national: 91 percent).⁵

1. United Nations Development Programme (2015), "Human Development Report 2015". Available at http://hdr.undp.org/sites/default/files/2015_human_development_report.pdf

2. This section on FATA's administrative status has been sourced from the FATA Secretariat website.

3. Extrapolated from the population total and growth rate from the 1998 census.

4. Dawn, Burki, Shahid Javed (2010), "Economics and Extremism". Available at <https://www.dawn.com/news/844412>

5. All social indicators for Pakistan have been sourced from World Bank and UNICEF.

Proposed reforms

The improvement in the security situation in the tribal areas following the successful operation by the Pakistan army (dubbed Zarb e Azb) provided an opportunity to make a concerted push towards comprehensive reform in FATA. Prime Minister Nawaz Sharif constituted a Committee on FATA Reforms (CFR) which, after broad consultations, with a wide range of stakeholders, finalised its recommendations in August 2016.

The main recommendations of the committee include:

- Mainstreaming FATA over a five year period that could lead to a merger with KP, subject to on-going discussions with some government-allied political parties.
- Provisions to enable the people of Fata to elect their representatives to the KP Assembly in the 2018 elections.
- Repealing the Frontier Crimes Regulation (FCR) and replacing it with the proposed Rewaj Regulation for Tribal Areas, in which provisions related to 'collective responsibility' will be omitted.
- Allocation of three percent of the gross federal divisible pool to FATA under the National Finance Commission Award on an annual basis for the implementation of the FATA Development Plan. This would be in addition to the existing annual allotment of PKR 21 billion from the federal Public Sector Development Program.

While these recommendations were approved by the cabinet in March this year, and the legislative package for FATA reforms was to be presented in parliament in May, further progress has been stalled by continuing political negotiations.

Till now, FATA has been outside the mainstream political, administrative, fiscal, economic as well as statistical reporting framework of the national polity. Limited political representation has undermined the transparent allocation of resources, as well as spending on systematically determined development priorities. In short, it can be said that FATA has operated in the past, on the fringes of Pakistan's national consciousness. With the proposed reforms, FATA stands to benefit not only from a pre-determined share in national fiscal resources, but also from a framework of democratic accountability mechanisms.

Catalysing positive change

Addressing the development challenges in FATA and improving the socio-economic situation prevalent there requires a multi-faceted and multi-pronged approach. Along with the proposed changes to the political governance of FATA, which would

lead to greater local participation and empowerment, and the continuation of a conflict-free environment, a missing element at this stage appears to be how to deepen the 'economic integration' of FATA with the rest of Pakistan. The following measures will be important to improving the socio-economic condition of FATA as a whole, and to bring it at par with the rest of Pakistan.

Investing in physical infrastructure

(building roads, schools, hospitals/BHUs, skills development and training centres, water storage and irrigation, sports centres etc.), and **improving connectivity** with the rest of Pakistan (via highways, telecommunication facilities, airports) will facilitate commerce, create jobs, induce new investment, promote travel and tourism as well as possibly a greater flow of inward remittances from the FATA diaspora.

Investing in "soft" infrastructure

such as skills development, especially of the youth, agri-extension services to improve livestock and farming practices as well as on-farm water management, facilitation and training in new business set up and management, the facilitation of sports tournaments and exchange programs etc.

Building local capacity

in administrative, fiscal, legislative as well as in public service delivery-to fully deliver on the promise of reform.

Increasing availability of resources

for FATA via an institutionalised and stable share in the NFC Award. It has been estimated that currently FATA faces a large shortfall in availability of fiscal resources relative to its development needs. If FATA were given the same per capita allocation from the NFC Award as received by the provinces, it would receive PKR 51 billion in additional funding (nearly one and a half times more than the existing fiscal envelope).

Financial deepening and inclusion:

Access to formal financing is low with only 0.3 percent of FATA residents borrowing from banks. Nearly 29 percent of households are reported to avail credit from informal sources. Increasing the penetration of formal financing via financial deepening and inclusion will spur the development of economic activities and ultimately the development of a formal economy.

Providing institutions of economic governance:

To properly mainstream FATA into the rubric of the national polity, it is imperative that it has the requisite institutions of economic governance. First and foremost, FATA needs to be fully integrated into the National Accounts framework of the country, with a compre-

hensive periodic recording of economic activity, along with other important economic parameters such as employment levels and trends, investment flows, inflation etc.

FATA's planning function as well as its public financial management will need to be revamped and modernised. At some stage, once formal economic activity has begun to grow, a revenue authority may need to be put in place for tax administration.

Catalysing a private sector response:

To make FATA's socio-economic development sustainable, ensuring the involvement of the private sector is crucial. While the initial investment response to the improvement in the security situation in FATA and the roll out of reforms is likely to be from the local residents, ideally, in the medium term, attracting the private sector from other parts of the country will be an important boost to economic prospects for the area.

This could be in the underserved sectors with potential, such as tourism or more formal trade with Afghanistan or services. Enticing the private sector may require fiscal incentives such as tax breaks, the quantum of which could also vary and made contingent on the volume of investment and the number of local jobs to be created etc.

Commercial banks will also need to be encouraged to convert the net depositor status of FATA as a whole, and to begin lending to businesses based there. Increasing the penetration of micro-finance and micro-credit schemes would be an important supplemental effort to improving the socio-economic life in FATA, particularly of women.

Finally, setting up small and medium business facilitation centres, such as local branch offices of SMEDA, could be an important step to disseminate business start-up and management practices to potential local entrepreneurs.

It is hoped that comprehensive political as well as economic reform in FATA will not only bring fuller political representation to its people, along with a larger flow of resources and greater accountability as well as transparency in management of the same, but ultimately to higher development outcomes for all its residents.

Interview



Javed Afridi

Chief Executive Officer
Haier Pakistan

What is the economic and social outlook for FATA and how would the reform process affect these?

The reforms-if implemented-would be absolutely crucial in enhancing the economic opportunities in FATA. They will ensure a stable and secure environment that is critical to the revitalization of economic activity. The political and legal aims of the reform in integrating FATA into the national fabric of Pakistan through the merger with Khyber Pakhtunkhwa (KP), will finally grant FATA residents with the civil rights that they deserve after decades of oppression and disadvantage due to the regressive colonial Frontier Crimes Regulation.

Furthermore, the reform's main focus on integrating FATA into the legal and political structures of the country will improve the lives of people in the region as they will be able to elect leaders, seek justice through the legal court system, and access services that are necessary for lifting the region out of the devastating repercussions of conflict and underdevelopment. This is certainly a step in the right direction but it is the government's responsibility to oversee this process and ensure that it reaches completion successfully in order to benefit the people of FATA, who have been under-represented and neglected for far too long.

What role can the private sector play in delivering economic growth and social development in FATA?

I believe that the sustainability of economic changes in any society is linked to the private sector's continued involvement. Despite issues like power shortages, industrialization in Pakistan is on the rise due to a growing demand for goods and services. We are witnessing this in Haier, as well as through most of our other enterprises. FATA is no different. Mobile phone penetration has opened a window of awareness for the residents of FATA and the demand for modern consumables is increasing. However, for the region to experience economic growth, the private sector's involvement must not be limited to exporting into FATA through re-sellers only. If the government provides significant incentives through corporate tax relief for instance, to invest in physical presence and human resource in the region, FATA stands to gain a lot from private sector involvement. The private sector will therefore not only create employment and incentivize higher education but also pave the way for social

say that again

"...the sustainability of economic changes in any society is linked to the private sector's continued involvement."

development in the local communities, mainly by empowering women and youth at large. This is a cause Peshawar Zalmi is championing through the Zalmi Foundation which focuses its development activities specifically on FATA and other economically disadvantaged regions in the country. Private enterprise in sports promises a lot more economic gain from the metropolises in Pakistan. However, with our human purpose to transform communities through sport to guide us at Peshawar Zalmi, I am convinced that FATA is a potent source of talent as well as an opportune market provided the right balance of development support and business investments is made in the region. Therefore, the need of the hour is not just investment for the purpose of maximizing returns, but tempered with a conscientious approach where private enterprise is willing to forego certain profits and hire from within the region, in the interest of encouraging social development. The government can play a crucial role in this regard. Integration of FATA into KP for instance will create economies of scale for businesses and enable both federal and provincial governments to play their role in attracting the private sector to invest and develop the communities currently under FATA.

Is the reform process people centered, and how well does it cater to the demands/needs of the local community?

It certainly has people-centric ambitions but its outcomes will strongly depend on the method of implementation. There has to be a system of accountability, such as an impartial regulatory body, which ensures that the reform is actually being implemented as intended and agreed upon by all parties concerned in a sustainable manner. The reform does take the local context into account as the traditional Jirga system still holds sway and is the initial hearer of cases of justice before it is passed on to the Supreme Court-the final decision maker. Change can never be imposed abruptly and must always take the local context into account. However, matters of power and justice can be problematic everywhere, whether under a traditional system or a modern one. There must be platforms for the local community to voice their concerns and grievances-and the representation of FATA in the KP provincial assembly and the reform promises will certainly help with that. We must go a step beyond and as citizens of Pakistan, also promote the cause of the socioeconomic integration of FATA into the country through public avenues available to us, such as the media.

say that again

"...The reform process and package is not catering to the needs of the local community."



Hidayat Ullah

Senator

What is the economic and social outlook for FATA and how would the reform process affect these?

I do not believe that there has been any impact of the reform package upon the FATA region itself. This was just a proposal I believe. The government has neither allocated additional funds for development nor has the package seen any extra benefit for the people of FATA. Instead, taxes have been extended there given which, now the private sector will further be no longer interested to invest. This is paving way for further unemployment. The reason for terrorism and militancy in the region is unemployment. So there appears to be no sign of any impact in the future neither is there any in the present. The government has clearly communicated that the provinces are not ready to give a share in the NFC and if there are no finances then there cannot be any development.

The bill has not yet been passed so the question of implementation still looms. Second, finance is a major concern-unless there are no financial resources to support development, the region cannot progress. When a breakdown of all the finances that the region has received in the past six to seven years is conducted, including the PKR 26 billion received this year and the PKR 22 billion received last year, it is evident that 80 percent of these allocations is for sustaining already ongoing projects and none for future development projects. For new schemes, the allocation is only 20 percent. A mere 20 percent allocation in a region where transparency and accountability in spending is also an issue, does not leave a significant amount for development at all.

A proper economic sustainability plan needs to be constructed. A 10 year plan should be developed that clearly outlines socio-economic planning over the next decade along with proper monitoring and accountability. Supreme and High Courts should be given unconditional extension towards the region. Rewaj Act should be properly implemented given the above two pretext and then evaluation of progress and implementation be carried out. Audit should be extended to the region as well. All stakeholders should be completely involved in this process.

There is definitely room for improvement and things can be improved. Fine tune the Rewaj act and clearly identify physical milestones for each agency for example, the number of schools to be built per year etc.

What role can the private sector play in delivering economic growth and social development in FATA?

The private sector has been discouraged since the beginning. In order to attract investments, one needs to provide incentives. The government has taken back all incentives that were previously provided.

If the private sector gets more involved in the region, it will boost industry, especially the mining sector. The private sector has the potential to introduce new and innovative mechanisms in the mining industry, for example. However, major incentives are required to encourage the private sector and other players to set up their industries in the region. No guarantee of safety is provided. Likewise, the banking sector hasn't witnessed any transformation over the years. The number of banks remains inversely promotional to the amount of population. For example, in Bajaur Agency, a total of two banks exist in two towns only, given the fact that the population of the agency is approximately 14 million. This itself is testament to the 'conducive environment' that the region provides.

Is the reform process people centered, how well does it cater to the demands/needs of the local community?

The reform process and package is not catering to the needs of the local community. How can one say it is people centric when there were neither any local bodies' elections held nor three percent share of NFC was allocated. The public are neither represented and empowered, nor assisted financially. The new Annual Development Plan for the region clearly states that no new primary school can be constructed. Legal reforms also do not aid the situation. People in general were not involved in the reform process; a few representatives were handpicked and made to participate. The new legal reforms package was not even discussed with FATA parliamentarians. It is an irony that decisions being taken for FATA are being done by people who do not belong to FATA and are not aware of the ground realities in the region.

Second, the three percent NFC Award should have constitutional backup, along with proper divisional allocations to respective areas. Third, until and unless FATA does not come under the Chief Minister of KP, KP Parliamentarians should be counted separate from FATA parliamentarians, which is currently not the case as members of provincial assemblies of KP and FATA are clubbed together.

The local community does not have any problem with the merger with KP, provided that the promises of developing FATA before merging it with KP, are met. If this does not happen and the merger goes through, the area of FATA will not be able to come at par with the rest of the country.

There should be one common law of the land throughout all agencies, and not several tiers of justice such as civil judge, executive magistrate, political agent, judicial magistrate and so on and so forth. FCR is an excellent law provided it is implemented correctly. The Rewaj Act needs to be fine-tuned. The Jirga system has also been polluted owing to external influences and the old Jirga system based around cultural and family values has finished.



Contextual Background

Rule of Law¹

Rule of Law is at the center of the reforms process, with discussions surrounding it. The historical, current and future legal framework, laws and dispute resolution mechanisms directly and powerfully affect the everyday lives of FATA's citizens. The current governing law in the semi-autonomous tribal area is the Frontier Crimes Regulation, 1901 (FCR), a remnant from the British Colonial Era which covers civil, criminal and administrative law. Under the FCR, residents of FATA are not extended rights enshrined in the Constitution, fundamental rights, many human rights; and are subject to collective responsibility. The most singular component of the reforms process will be the resulting rule of law framework. This includes not only which laws are extended, repealed, or revised but also how those laws will be rolled out. Further, engagement with the citizens of FATA and ensuring their voice is incorporated within the new legal framework is important to ensure a rule of law that is perceived as legitimate.

To understand some of the complexity around rule of law within the overall reforms process, a brief background understanding to provide context is needed. There are three main components for the current rule of law system: the Jirgas, the Rewaj and the levies. The Rewaj is the local customary law within the agencies, which is applied in civil and criminal disputes. The Jirga is an assembly of local tribesman, usually from the dominant elite, who investigate and resolve disputes according to the local Rewaj. Law enforcement is the responsibility of levies and Khasadars (tribal militias).

The agencies are administered through Political Agents who have expansive judicial and executive powers which are exercised through the Jirgas. Acting upon the recommendations of the Jirgas, the Political Agents decide civil or criminal matters which are then subject to appeal before the commissioner and FATA Tribunal. The jurisdiction of the Supreme Court and High Court are not extended to FATA, as such, and so citizens have no forum available to claim fundamental rights provided in the Constitution.

Rule of Law Reforms in FATA

- Extension of the jurisdiction of the Supreme Court and Peshawar High Court;
- Gradual, phase-wise extension of mainstream Pakistani laws;
- Setting up of Agency-level courts; and,
- Capacity building of law enforcement agencies.

There have been a number of reforms which have both expanded and diminished the rights of the citizens of FATA. The 1996 Adult Franchise Act allowed FATA residents to vote in elections, where previously only Malikis were permitted to elect representatives for FATA. It should be noted that FATA representatives cannot affect any legislation relating to FATA as legislative and executive authority rests with the President of Pakistan. Section 55A of the FCR, incorporated in 1997, provided for the establishment of the FCR tribunal with powers of revision against any decision given, decree or sentence passed, or order made by the FCR commissioner. In 2011, the FATA Tribunal replaced the FCR tribunal and the Political Parties Order was passed which allowed political parties to operate within FATA. The 2011 reforms package, extended protection to women, minors and the elderly against collective responsibility, strengthened the FATA Tribunal, introduced concepts of bail and appeals, protected against the confiscation of property, and abolished the practice of arresting whole tribes on collective responsibility. At the same time, this reforms package gave enormous powers to the security agencies due to the ongoing insurgency.

Under the current reforms process, the FCR is to be abolished with discussions continuing on the role of the Rewaj, Jirgas, levies, the Peshawar High Court and Supreme Court, as well as how law will be administered. Originally, it was proposed to extend the Rewaj Bill to FATA, which would protect the institution of Jirga, and at the same time, protect the fundamental rights as enshrined in the Constitution. The Rewaj Bill was presented before the National Assembly in May 2017, however due to opposition from FATA parliamentarians,

who demanded the extension of mainstream Pakistani laws, it was decided in September 2017, to drop the Rewaj Bill and instead, introduce a Bill for the extension of the higher judiciary to FATA, while mainstream Pakistani laws and regulations will be introduced to FATA.

Traditional and Formal Justice Systems

Each of the models are variations on a theme in rule of law that we have seen in other countries: reconciling or harmonizing traditional and formal rule of law systems. There are lessons to be learnt from countries like South Sudan where the traditional justice system was incorporated into the formal sector. In South Sudan, its Jirga system and version of Rewaj was included as part of the laws in so far as they did not contradict or infringe rights preserved in the Constitution or legislative laws. As such, communities were and are able to, adjudicate minor civil disputes using local customary laws and its Jirga system. Users of the traditional Jirga forums secured the right to access the courts if they were unsatisfied with the mediation of the dispute.

Central to harmonizing traditional or customary practices with the Judiciary and formal justice sector institutions, is an understanding of where potential conflicts between the two systems exist. The Rewaj in FATA is entirely undocumented with the exception of Kurram agency. This is not unusual to Pakistan as customary law globally is largely an oral tradition and not generally documented. In many countries, traditional practices are seen as part of the community's overall culture. This culture includes resolving disputes through a council or group of elders who hear from the applicants and then confer before reaching a unanimous decision. The

1. This contextual background has been written by Shahzada Ahmed, (Senior Programme Specialist) and Arshid Jan (Legal Aid Specialist).

decisions and discussions are presented and discussed orally, generally without documented evidence.

Harmonizing customary practices with a formal justice sector is achievable once there is consensus on roles and, more importantly, the traction between the two. Customary practices can be documented or memorialized without or before being codified into law. The benefit of memorializing such practices is that it provides a basis from which stakeholders can clearly understand where traditional practices may infringe on rights protected under formal laws such as a Constitution or legislation. From there, traditional justice practices can be preserved within an agreed upon scope such as minor civil matters. Here also, consensus can be reached on mechanisms for bringing disputes from the traditional to the formal sector if the applicant wishes.

Legal Frameworks

While there are successes in harmonizing the formal and traditional justice sectors, there are also clear challenges. The success of a harmonized system lies in the traction between the two sectors. In FATA, the traditional sector includes not only the Rewaj and Jirgas, but also the levies. With the possible extension of the Peshawar High Court and Supreme Court to FATA, the relationship between the Jirgas and courts should be well defined. If the prosecution and police practices are also extended into FATA, the roles of prosecutors, Jirgas, levies and police also need to be well understood and agreed upon.

If these roles, scopes of authority, mandates and procedures are not well defined and accepted, there is a risk of creating a justice sector with two competing legal frameworks: the traditional or customary (Rewaj, Jirgas) and the formal system (Courts, prosecution, police, attorneys, levies). There are two overarching risks associated with competing legal frameworks: 1) That those who wish to use the formal sector do not have access due to physical accessibility, cost or mobility and, 2) That applicants will choose the system that most favours their case (forum shopping).

Three of the key strengths of the traditional sector are that it is; 1) Affordable; 2) Accessible and, 3) Quick. As in FATA, where there has not been a formal justice sector, communities are used to the customary practices, understand the processes well, know where they should go to access service, and know that their matter will be resolved quickly. Even if an applicant would like to use the courts system, the formal institutions would have to be physically accessible. If the institutions are physically accessible, applicants may not know how to initiate their case nor what the processes and timetables are for adjudication. Finally, the cost of accessing the courts system may be prohibitive due to court and attorney fees.

On this matter, there would be a strong need to develop and implement a strategy for raising awareness on the formal courts system and ensuring bar associations and legal aid services are available from the outset. In the initial phase of extending the formal justice sector, outreach to communities and support to establishing the physical and personnel presence of the rule of law institutions would be critical. Further, there may also be a need to expedite formal justice processes so that decisions are made more quickly, particularly in minor civil cases.

The second issue of forum shopping is more difficult to address unless there is a clear mechanism for applicants to appeal customary decisions to the courts system. Here also, the need for the physical and personnel presence of the formal sector is important as well as clearly defining roles and mandates. Further, the mechanism that refers cases to the courts system may also need to work in reverse so that minor civil cases are referred to Jirgas for dispute resolution. This would not only support continuation of customary practices that do not infringe on rights, but also can support a reduction in case there is backlog in the formal sector.

Gender Justice

Women face significant challenges in accessing justice in FATA. Currently, women are not permitted to join the councils nor

are they allowed to appear before them as disputants. If the case is related to them, they are represented by their male relatives. They face particular justice and security issues such as "honor" related crime, inheritance, land ownership and family matters. The participation of women in Jirgas, both as members of the council and as users, should be increased to ensure that their rights are protected and enforced. Both the levies and police services need to be sensitized and responsive to crimes against women with laws and regulations revised to include strong provisions for protection on 'Violence Against Women' crimes. A gender-sensitizing training for all rule of law institutions, but particularly law enforcement, should be mandatory. Better representation of women at higher levels within the Judiciary, Prosecution, Levies/Police, Prisons Service and Bar Councils is also important in ensuring the empowerment of women. To this end, there is a critical need to facilitate the recruitment and promotion of women through the ranks of all rule of law institutions.

Conclusion

The rule of law reforms process requires detailed discussion and consensus on a legal framework that is acceptable, affordable, transparent and accessible to the people of FATA. A strong rule of law system ensures the success of other recovery and development initiatives, particularly, economic reform and revitalization. A predictable and consistent system of laws that are uniformly and equitably enforced, would encourage the return of FATA citizens as well as investment by the private sector.

The primary goal of the reforms process is a stable, peaceful and economically revitalized FATA which is only possible through an established and strengthened rule of law system based upon a coherent legal framework. The full engagement and participation of FATA citizens is critical to ensure ownership over the reforms process and in particular, to ensure that whatever legal framework is selected, it will be seen as legitimate by the people it governs and who's rights it protects.

Rule Of Law



Rahim Shah

Advocate and President
FATA Lawyers Forum

For several years, FATA has been the victim of several trials. The one plausible solution to addressing the 70-year long misery of the FATA people is to merge FATA with Khyber Pakhtunkhwa (KP). Although it is asserted that efforts are underway to mainstream the region, however, this does not necessarily denote that the region is being merged with KP. In fact, mainstreaming is simply a broader term that could refer to creating a separate province of the region, something based on the structure of Gilgit Baltistan, or simply amending the current system of the region with minor alterations here and there. The sense of clarity is lost when we talk about 'mainstreaming' FATA. Different stakeholders have proposed different solutions: the parliamentary committee headed by Sartaj Aziz recommended a merger whereas, politician Maulana Fazal Ur Rehman shifted the focus from merger to mainstreaming. The Committee held Jirgas in all the seven Agencies and consulted about 3000 tribal maliks and elders. In addition, the Committee received over 29,000 comments on the Ministry of SAFRON's hotline and most of them supported the merger of FATA with KP and abolition of the Frontier Crimes Regulation (FCR).¹ It is without a doubt, that a merger is the only option for the region.

The judicial system of FATA has always been

something that has been tumultuous. A judicial system should technically refer to the identified and recognized mechanisms of justice that have been validated in the area. These can include both formal and informal mechanisms, provided there is recognition and harmony between the two processes. In the case of FATA, political authorities were responsible for a certain portion of justice, whilst the Jirga was responsible for what can be termed as the informal justice mechanisms. However, both of these failed to administer justice and maintain law and order on their own. This paved way for a vacuum that became the thriving ground for militant organizations.

The people of FATA are ordinary citizens as the citizens in the rest of the globe. They co-exist with several nationalities whether in the country or abroad, and function in complete harmony with the locals of the land. How then, is the accusation validated, that the people of FATA are unable to understand or follow a justice system? This is completely nullified and hence, the justice system of Pakistan should be extended to FATA immediately. The bigger issue is the unwillingness of the state, rather the unwillingness of the locals.

The former formal justice mechanism of the FCR was an inhumane law. It was ironic that it was the law when, in fact, it provided anything but justice to the citizens. As for the informal justice mechanisms i.e. the Jirga system, that also did not prove to go the long haul, especially after it was eroded because of social and economic factors. These factors included external influence from powerful tribal families as a result of which decisions would be biased. Moreover, the somewhat elite and patriarchal structure of Jirga settings was also another factor in its downfall. The entire Jirga mechanism was inherently too weak to tolerate any big changes. If attempt is made to revive these former systems of justice and apply them to FATA all over again, then clearly no lesson has been learnt from the past and the region will witness the same disastrous fate that it has already been victim to. The Committee on FATA reforms

has tried to propose a blended judicial system. The FCR will be abolished and the jurisdiction of the Supreme Court and High Court be extended to FATA. But the traditional Rewaj System shall be retained as a local dispute resolution mechanism. Within this system, the Rewaj Act will allow parties, if they so wish, to ask the Agency Judge (not the political agent) to appoint a Jirga, whose decision will be appealable. In addition, the new law will also ensure that the Rewaj System is consistent with fundamental rights laid down in the constitution.

Tackling the issue of law and order in FATA has a simple solution. Firstly, the Frontier Corps are already trained and can be placed as the policing authority right away. Second, with some additional training, the levies can also be employed for the same purpose. Lastly, even the locals of FATA can be picked and trained and added to the police force. The question is all about will. The issue has been blown out of proportion, but the solution will not take more than three months to streamline the law and order situation in the region. The year 2017 can witness this change. Where there is a will, there is a way.

With the military operation and now the army administering the region, the issue of weaponisation has already been resolved. The truth is that de-weaponisation was not only an issue in FATA but across Pakistan, the best example of which was the city of Karachi. In any case, now that all weapons have been taken away across the region of FATA, the question of weaponisation does not arise. If weaponisation still persists within militant organizations, then it is the responsibility of the state to address that issue.

Access to fair legal and attorney services also requires the will of the state to be implemented. There are several recommendations in this regard. There should be immediate extension of the judiciary to FATA. The posts of the political agents should be replaced with those of commissioners. FCR needs to be done away with. Tribal agencies should not exist and

1. The Nation, Aziz, Sartaj (2017), "History of FATA Reforms." Available at <http://nation.com.pk/columns/08-Mar-2017/history-of-fata-reforms>

instead, police stations should be established immediately. All these changes are not something that should take too long to establish. As aforementioned, if relevant stakeholders have a will to really change FATA for the better, then it is not a matter of time but of determination.

Transparency in the reform process is certainly a major issue. Only local bodies will be held accountable to the Auditor General. This would mean that transparency is still not accounted for in the process. The governor has been delegated all powers. The reform package also delegates increased authority to Political Agents and

the FATA Secretariat. Such decisions depict the non-serious attitude of the state and are hampering development in the region. Accountability and transparency mechanisms are not accounted for in the reforms process and these institutions still stand weak in the region where there is a dire need for audits and checking.

Likewise, equitable funds disbursement is also an issue, posed in part owing to the weak transparency mechanisms. The complete management and disbursement of these funds should be under the authority of the Provincial Government, Chief Secretary and the Auditor General.

The Provincial Government must constitute a separate cell to manage this entire process from end to end and all details must be clearly visible on their website. In effect, unless transparency and accountability is not sharpened at all levels, whatever the law of the land, it will likely not succeed in reforming the system for the better.

Law and order is a sensitive reform to master, especially in a region where the former has always seen alterations based on personal or political vested interests. If the region is ever to become economically, socially and politically stable, establishing a structured rule of law program is essential.



Interview



Afrasiab Khattak

Former Senator,
Analyst of Regional Affairs

In your opinion, do the proposed reforms ensure impartial/fair access to justice to citizens? How does it correlate with strong tribal and traditional practices of administering justice?

What distinguishes this proposed reforms package from all the previous ones is the proposal for extending the jurisdiction of the High Courts and the Supreme Court of Pakistan to the Federally Administered Tribal Area (FATA), repeal of the draconian colonial era law, the Frontier Crimes Regulation (FCR) and granting the people of FATA, representation in the provincial assembly of Khyber Pakhtunkhwa. This is the fundamental requirement for providing access to justice to the people of FATA. In actuality, the British colonial rule had circumvented the principle of the trichotomy of power by handing over power of legislation and administration of justice to the executive branch of the state for "special areas" in the then Indian sub-continent under the 1935 Government of India Act. This deformation in the state system in "special areas", which included FATA, had practically denied fundamental rights to the inhabitants of these areas. Unfortunately the same distorted system continued to exist even after independence and the creation of Pakistan. Under Article 247 of the 1973 constitution, no act of Parliament shall apply to FATA and the area remains outside the jurisdiction of a High Court or the Supreme Court of Pakistan. Under the FCR, all executive and judicial powers are invested in the office of the political agent, who runs the tribal agency (district) like a fiefdom totally outside the superintendence of the country's judiciary. But, as pointed out earlier, the proposed reforms venture to change this situation. The proposed expansion of the jurisdiction of higher judiciary to FATA will ensure access of the people of the area, to fundamental rights enshrined in the constitution and the right of appeal against the orders of the lower judiciary. This development is also expected to open doors for taking of legal and social reforms to logical conclusion.

The proposed legal reforms recommend that the Tribal Areas Rewaj Act which is to replace the FCR, shall have 'Jirga' (council of elders) as part of both the criminal and civil adjudication for providing space to local customs to be part of the judicial system. However, it has also made clear that any instrument containing Rewaj in the judicial process should not be in conflict with fundamental rights and the substantive laws of the land. It is important because any effort by vested interests to bring FCR back under a new name will defeat the purpose of reforms. These are delicate balances that would require

say that again

"...The success of the reforms will depend on the practical implementation of the proposals in letter and spirit."

careful consideration on the part of the law makers.

In the context of proposed set up of law and order administered by the local authorities, do you think the proposed reforms process will adequately deliver on maintaining peace and security in FATA?

Peace and security are a pre-requisite for political stability and socio economic development. It is particularly so for the people of FATA who have suffered a lot due to large scale and continuous terrorist violence in their area. Return of the remaining Temporary Displaced Persons (TDPs) and rehabilitation of the population uprooted during the armed conflict will create conducive conditions for social stability. But owing to its unique geographical location and ethno-cultural characteristics, FATA's peace and stability will also depend upon the situation in neighbouring Afghanistan. Successful border management and overcoming the challenge of terrorism can be achieved only through cooperation between the states of Afghanistan and Pakistan.

Be that as it may, the reforms proposals do suggest capacity building of the local law and order machinery. Levy force is the main force for policing the area. The reform proposals not only recommend an increase in its numbers, but also to provide it with specialized training, equipment and buildings for enabling it to perform to the best of its duties. There is also a recommendation for improving the capacity of the Frontier Core which is the main border force. These are important and relevant recommendations for raising the capacity of civil armed forces for effectively countering terrorism and policing the area. However, there is always room for improvement: these proposals can further be improved by an analysis of the evolution of the Levy force, to transition into a full fledge police force for maintaining law and order and conducting investigations into criminal offenses. The area would also require developing a proper prosecution department to assist the local judiciary in the administration of justice. The proposed reforms also include a proposal for establishing an elected local bodies system that will empower people in decision making on the local level, which will simultaneously cater to the disputes resolution system. The success of the aforementioned reforms will depend on the practical implementation of the proposals in letter and spirit. The implementers/practitioners will have to internalize the spirit of these reforms for really decolonizing FATA.

Is the reforms process ensuring strengthening of accountability and transparency mechanisms of state institutions? What additional measures are required to ensure smooth functioning of the system in the long term?

The proposed reforms aim at mainstreaming FATA and this objective can be achieved through ending the socio political isolation of the area by integrating it into the state system and civil society of the country. The old colonial system that has existed for more than a century and half in the area, has been one of the most unaccountable and non-transparent systems of governance on the planet. Since only one state institution, the executive, monopolized governance, there was no concept of checks and balances. In the proposed reforms, the area is supposed to ultimately merge with Khyber Pakhtunkhwa and go through multiple administrative, legal and constitutional reforms opening it to the system of checks and balances. Through its representation in the provincial assembly of Khyber Pakhtunkhwa and the federal parliament, the governance system in the area is expected to come under oversight of the elected representatives of the people. The emergence of an elected local government system will work to strengthen democracy at the grass roots, thereby bringing the service delivery system under the control of elected representatives of the people. Expansion of jurisdiction of higher judiciary to the area will make fundamental rights justiciable. This is, of course, easier said than done. Building of various state institutions and physical and material infrastructure will require huge amounts of financial resources and political determination. Inclusion of the people in the entire reform process will be of crucial importance as the level of societal ownership of the reforms will ultimately determine the fate of reforms. Human rights awareness, in general, and women rights in particular, will be crucial for the process of democratization.

Last but not the least, FATA will require a determined and consistent effort at demilitarization. The first ever large scale military deployment in FATA took place in 2002 to combat terrorism. The area saw a devastating military conflict that severely militarized and brutalized it. Women and children were the worst victims. The area that has been a no go area and black hole for such a long time will need definite measures for opening up and attaining a semblance of normalcy. The nascent civil society in the area can play an important role in the process. Apart from reforms coming from the state and government, political parties, civil society and media, in particular, has to play a significant role in properly implementing the reforms.

Interview



Bushra Gohar

Senior Vice President
Awami National Party

In your opinion, do the proposed reforms ensure impartial/fair access to justice for citizens. How does it correlate with strong tribal and traditional practices of administering justice?

From the looks of it, the state and government of Pakistan have decided to keep FATA as a strategic black hole and continue to use it for 'self-destructive strategic depth'. They are dragging their feet on implementing the reform commitments after raising hopes and evolving a strong public consensus.

Political, power, strategic and money interests are the main impediments in the reforms process. Excuses of traditions and tribal systems are being used to stall the process. The present PML-N government has lost a historic opportunity to initiate the much needed FATA reforms and bring the people of FATA out of the worst form of slavery and put them on the path of development.

The question really is whether Pakistan recognizes fundamental rights and access to justice, a constitutional right of the people of FATA. And whether it recognizes the people of FATA as equal citizens. For decades, the people of FATA have been denied fundamental rights and subjected to a life of slavery. Keeping in the footsteps of the British, FATA has been kept a colony of Pindi and Islamabad post the creation of Pakistan and used for strategic interests, and the people as cannon fodder.

There is a political consensus on extending the constitution to FATA in letter and spirit by repealing articles 246 and 247; abolishing Frontier Crimes Regulation (FCR) and merging FATA in Khyber Pakhtunkhwa (KP) before the General Elections 2018, ensuring representation in the Pakhtunkhwa Assembly; holding local government elections using the Pakhtunkhwa local government law; extending the jurisdiction of superior judiciary, and allocating a minimum of five percent share to FATA in the central divisible pool for a period of 20 years to bring it at par with the rest of the country. However, the proposed controversial Rewaj Bill has been rejected by all as it is in contradiction with the constitution and international commitments. The controversial Rewaj Bill is being supported only by vested interests to keep FATA back and continue to use it as a strategic space for personal and power interests. It is viewed as a new form of the draconian FCR. It is condemnable that in the 21st century, tribal and traditional practices are used as an excuse to deny the people of FATA their fundamental rights.

say that again

"...Political, power, strategic and money interests are the main impediments in the reforms process. Excuses of traditions and tribal systems are being used to stall the process."

In the context of proposed set-up of law and order administered by local authorities, do you think the proposed reform process will adequately deliver on maintaining peace and security in FATA?

Decades of death, destruction, displacement and devastation have weakened the political and administrative setup in FATA. Hundreds of tribal elders were targeted and killed to create a power vacuum filled by all shades of Taliban imposed on FATA. The imposition of Taliban and several military operations has destroyed the existing systems. Most families have lost their loved ones, homes and livelihoods. The people of FATA have been the worst victims of the state's self-destructive policies.

FATA should not only be viewed from the prism of strategic security interests, but from the human rights, development and peoples' perspective. The parliament must play its role to ensure timely reforms.

Is the reform process ensuring strengthening of accountability and transparency mechanisms of state institutions? What additional measures are required to ensure smooth functioning of these systems in the long run?

We have a long way to go to ensure accountability and transparency of state institutions especially vis a vis their role in bringing FATA to its present state. To start with, there is a need for a Truth and Reconciliation Commission to review the policies that led to making FATA a safe haven for taliban/terrorists of all shades, assign responsibilities for keeping FATA a black hole for decades, hold accountability of the billions of funds that came in the name of FATA and critical review of all the military operations conducted in FATA.

Independent audit of the FATA Secretariat should be conducted. FATA Secretariat should also be closed down and its assets and liabilities handed over to the KP Government.

There is also a need to form a reforms implementation commission under the supervision of the Prime Minister and the Chief Minister KP. The provincial assembly must have an oversight role to ensure transparency and accountability of the reforms implementation process.

say that again

"...all socioeconomic and political aspects need to be considered and be given their due for bringing it into national mainstream."



Justice Mian Muhammad Ajmal

Former Chief Justice
Peshawar High Court

In your opinion, do the proposed reforms ensure impartial/fair access to justice for citizens. How does it correlate with strong tribal and traditional practices of administering justice?

Back in 2005-06 when I was chairman of the FCR Reforms Committee, I visited all agencies while formulating the reforms, along with the committee. Several consultations were held with all tribes and jirgas, who were given complete freedom to voice their opinions regarding the rule of law and governance in the FATA region. Based on this, a report was formulated and another committee under Mr. Naik was constituted to review this report. The reform proposed in my report was endorsed by the committee as well as the cabinet. The Ministry of States and Frontier Regions proposed some amendments, after which the proposed reforms were enacted in 2011 by then President Asif Ali Zardari.

There were three clear divisions in the opinion held by the local community. The elders/senior citizens did not want the Frontier Crimes Regulation (FCR) to be amended. The younger generation wanted total repeal of this law. But neither of these two groups was in majority and therefore, the majority wanted the FCR to stay with major amendments repealing discriminatory clauses. However, all were unanimous on the desire that whatever the law of the land, it should respect their customs and traditions, maintain their indigenous modes of justice i.e. Jirga system, maintain their Rewaj system and treat the locals of FATA as equal citizens having equal rights as other citizens of the country. Based on these desires, recommendations were made that the name of FCR be removed and replaced by FATA Regulation. Second, discrimination based on regions and ethnicities was removed and it was enjoined that the people of FATA have as many rights as the rest of the citizens of the country. Third, it was proposed that whenever any person was arrested as an accused, he/she must be produced before the Magistrate who was the Assistant Political Agent of the area, within 24 hours, following which proper channels of justice be followed.

Likewise in civil matters, it was proposed that the party should be allowed to nominate their own Jirga members as arbitrators who should then resolve the dispute by mediation and arbitration between the parties. This was a way to maintain their indigenous Jirga system whilst also maintaining fair and impartial access to justice.

Community responsibility was also something that the locals insisted should remain, although we were not in favour of this provision. Hence, this provision was then diluted by the committee who proposed that the paternal family would be responsible to produce that person before the law enforcing authorities. If the

paternal family failed to execute the task then the sub-tribe of that tribe, was to be held responsible in tracing out the accused person, and if the sub-tribe also failed, then the responsibility would shift onto the tribe. The purpose of this process was primarily to catch the accused and hold him responsible, instead of punishing an innocent in his/her place. So, in all reforms that were proposed, the focus was to protect the indigenous modes of justice of the region while maintaining law and order by the state authorities. The womenfolk, the children less than 16 years and the senior citizens above 65 years of age could not be arrested under collective responsibility.

With the present proposed reforms, the question of them providing fair and impartial access to justice can only be concluded based upon the fact that it satisfies the complainant and the accused sufficiently enough to make both agree on the same decision.

In the context of proposed set-up of law and order administered by local authorities, do you think the proposed reform process will adequately deliver on maintaining peace and security in FATA?

The Army is primarily administering law and order in the FATA region presently. Local authorities are present but the army is overseeing the maintenance of peace and security in the region. The local community in FATA is a very peace loving community. Poverty and illiteracy are fueling the unstable law and order situation in the region. Moreover, the local community desires that their indigenous customs and practices, and traditional systems of justice are maintained. However, the solution to maintaining peace and security in the region is to provide employment opportunities, address poverty, provide infrastructure, health facilities and basic necessities to the people there. Once these factors are addressed, the law and order situation will improve itself. It is also important to educate people in the region as education is key in creating awareness in what is right and what is wrong.

Is the reform process ensuring strengthening of accountability and transparency mechanisms of state institutions? What additional measures are required to ensure smooth functioning of these systems in the long run?

Every input and output by the political agent must be recorded. And every penny must be recorded and audited by the Auditor General of Pakistan. It is very essential to ensure that any reform package for FATA ensures complete transparency, especially of, budgetary allocations and spending.

The local government system needs to be empowered which

administers check and balance in the region, along with the Auditor General of Pakistan who conducts a yearly audit. Also, owing to cross border mismanagement with Afghanistan, no proper account of incoming and outgoing resources (in terms of finance, human resource etc) is maintained. Cross border management needs to be addressed in order to reduce corruption and establish transparency in the region. Also, a proper levies system that is fully organized, disciplined and regulated should be introduced and should act as the police authority in the region. Finally, if there is an apprehension of disturbance by some person, then that person must undergo prohibitory arrest and be produced before the magistrate within 24 hours, and released on the condition that he/she will maintain peace and tranquility in the area.

In so far the future of FATA is concerned, the foremost need of the day is to restore peace, law and order in the tribal area and a lot more needs to be done in all fields to raise its standard and to bring it at par with the rest of the country. The repeal of the FCR or its substitute with any name will not be enough to satisfy the tribal people as the tribal area is the most under developed part of Pakistan. It is engulfed with poverty and more than 75 percent of its population is living below the poverty line. Literacy rate and health facilities are very poor, almost negligible. The economically backward tribal area needs a poverty alleviation programme, development schemes with employment of local people, better education and health facilities and development of infrastructure. On the political front, the demands of tribal people for a FATA Council, or merger into KP, or an independent province, or conversion into PATA from FATA, needs consideration by the executive authority of the federation after obtaining the view point of the tribes. In short, all socioeconomic and political aspects need to be considered and be given their due for bringing it into national mainstream.

say that again

"...The state, in its plan to codify the regressive and patriarchal Rewaj Act, takes away space for women rights."



Rukhshanda Naz

Executive Director
Legal Aid and Awareness Services

In your opinion, do the proposed reforms ensure impartial/fair access to justice for citizens. How does it correlate with strong tribal and traditional practices of administering justice?

The proposed reforms process itself was not an impartial and inclusive process, particularly for the tribal people. For instance, absence of tribal people and women in the Prime Minister's committee for reforms was questioned by civil society organizations (CSOs) and FATA political leadership. Recently, a mix of several FATA locals demanded the replacement of existing weak institutions that have failed to sustain the onslaught of ongoing conflict and resulted in human crises. The state, owing to the shifting perspective of the local community, revised the entire structure, proposing some significant reforms such as merging FATA with Khyber Pakhtunkhwa (KP). However, mainstreaming of FATA and integrating it in the state is the most challenging task for the local tribal community. There are serious reservations of the tribal people regarding the process, such as absence of tribal representatives from the committee devised for the re-structuring of the system, no clarity on Rewaj Act and sustaining the colonial old offices of the political agent under the control of the Governor KP. The state, in its plan to codify the regressive and patriarchal Rewaj Act, takes away space for women rights. Some reservations recorded in the context of the present ongoing reforms regarding women include:

- Absence of tribal women in the reform process: Women were neither taken onboard nor consulted during rounds of consultation by the committee, although men were involved during the process.
- There is a need for clarity on the justice system of Qanon-e-Riwaj and Nizam-e-adl. Currently, the Nizam-e-Adl is being considered, a legal framework that will repeal the Frontier Crimes Regulation (FCR) and extend the jurisdiction of the superior courts to FATA. Nevertheless, it will be a unique amalgam of the Code of Civil Procedure 1908, Code of Criminal Procedure 1898 and Rewaj-the customs, traditions and usages of tribes in FATA. According to the proposed act, the district and session judge appointed by the federal government in consultation with the high court will be referred to as the Qazi (Judicial Officer), who will be aided by a Jirga-a council of elders, with four or more members appointed by the Qazi. Again, there is no mention of women participation or any protection mechanism devised against certain traditional practices such as bride price, illegal female honour killings, women exchanged in enmity or settling disputes, female inheritance and other family rights.
- Another important issue is reserved seats for women in the local

government, provincial assembly, national assembly and the senate. Somehow, there is no clarity on ensuring this quota system as well as no plans on women registration or trainings, should they be allowed to vote and contest on reserved seats post the reforms and merger.

In the context of proposed set-up of law and order administered by local authorities, do you think the proposed reform process will adequately deliver on maintaining peace and security in FATA?

FATA, defined by diverse geographical realities, has been subject to various invasions, complex contestations and intense power plays by regional and international actors. The physical interference of both local and major powers in the geographical landscape of the region has made conflict a permanent feature of the region. Such intervention provided a 'new' form of political spatiality to the region by creating un-defined boundaries and in the process, opening it to the concept of 'modern statehood' based on territory, sovereignty and population, however isolating the tribal population from such a state system. The colonial system of complicated centralized control over these deliberately created 'ungoverned spaces' and denying these areas the benefits of social, political and economic developments, resulted in creating a space for human rights violations.

These religious-political movements not only challenged peace and security in the border region, but beyond it in the more 'central' zones, embroiling the region in a new wave of extremist and violent radicalism. The militant/military confrontation for control over the border regions and beyond has yet again made peace an elusive goal and resulted in violation of human rights. This power play has substantially transformed the area's socio-political and economic life. Such developments resulted in religious extremism in Pakistan too. The spill over of such militants to periphery not only affected tribal people all over, in fact Pakhtuns suffered badly through "racial profiling" in other provinces. The proposed institutional framework will not reduce militarisation rather it will fuel into tribal disputes under the Rewaj Act.

Is the reform process ensuring strengthening of accountability and transparency mechanisms of state institutions? What additional measures are required to ensure smooth functioning of these systems in the long run?

Following are the recommendations:

- Rewaj regulation is another form of FCR, which is based on local Rewaj, therefore Articles 1, 246 and 247 of the constitution

should be abolished and the state should ensure extension of the 1973 constitution;

- FATA representations in the KP Assembly must be considered after the population censuses and must be included in the General Election 2018;
- The state should announce immediate extension of the High Court and Supreme Court jurisdiction to FATA;
- To ensure implementation of the FATA development plan, the minimum of 10 percent of the NFC must be granted to FATA, as this area has suffered a lot due to insurgency and war against terror. This setup of financial compensations must be for a minimum of 10 years;
- The state should increase 30 percent of the budget for education to rebuild schools, especially for girls;
- To reduce disparities in education and health sectors, the state should increase the quota for FATA students from this year onwards, under the condition that this would stay effective 10 years post the merger;
- To ensure an equal share in economic development, extension of eight components of CPEC to the FATA region should be done. In addition, 20 percent of the budget should be allocated to mineral development, agriculture and agriculture products of FATA;

- The FATA Reforms plan should ensure extension of the Auditors General office to FATA to ensure accountability and transparency of financial transactions and expenditures incurred by all the departments;
- It should be made clear that the Rewaj Act is not acceptable by KP as well as FATA civil society;
- The funds allocated for the development of FATA should be audited by the office of the Accountant General of Pakistan. The ratio of allocation of funds for the social and development (infrastructure) sector in FATA should be 60:40. Transparency in the allocation of resources for FATA should be ensured;
- There should be a separate section for FATA TDPs in the ongoing census;
- There should be a policy, especially for FATA youth, as a large number of FATA youth is unemployed;
- Local government elections in FATA should be held in 2017, prior to the general elections in 2018. All the political parties should ensure that at least one seat in each agency of FATA should be reserved for women; and,
- After the census, the government should ensure delimitation of constituencies in FATA before General Elections 2018.

say that again

"...A formal system should be introduced in which institutions work under one umbrella with proper checks and balances."



Laila Shahnawaz

Program Manager
Takrah Qabilee Khwendy Network

In your opinion, do the proposed reforms ensure impartial/fair access to justice for citizens? How does it correlate with strong tribal and traditional practices of administering justice?

As far as the proposed reforms are concerned, they can ensure fair access to justice only if the available provincial laws are extended to FATA. Under the proposed reforms, FATA is subjected to a special law which is the Rewaj Act that is to replace the Frontier Crimes Regulation (FCR), which in essence, again relates to collective responsibility and retaining the 'Jirga' system for both civil and criminal issues/cases. This would therefore mean, that the tribal elders will continue to maintain the upper hand and authority in taking decisions as a result of which injustice will prevail. This is especially disastrous for women who cannot participate in Jirgas, nor have the authority to take any decisions as far the traditional customs of the region are concerned.

Moreover, each agency has differences in terms of customs and traditions. Therefore, the implementation of one single act that will be applicable throughout the region, does not make sense.

In a nutshell, in order to integrate FATA, there should be clear cut constitutional amendments through which the special states of FATA are amended. The available laws and jurisdiction of the Supreme Court of Pakistan and the Peshawar High Court should be extended to FATA to serve the purpose.

In the context of proposed set-up of law and order administered by local authorities, do you think the proposed reform process will adequately deliver on maintaining peace and security in FATA?

The people of FATA have witnessed war during the past 30 years therefore, provision of security and creating a conducive security environment is essential for the region. Peace and security in FATA can be maintained under the reforms package, provided the security reforms are implemented fully, and the levies are trained adequately and organized to operate as the police force in the area.

Moreover, border management is also crucial as the current borders of the region house a lot of ambiguity. If the political administration, local people and security agencies coordinate collectively, security and peace can be maintained.

Is the reform process ensuring strengthening of accountability and transparency mechanisms of state institutions? What additional measures are required to ensure smooth functioning of these systems in the long run?

First, it is very necessary to define accountability and transparency mechanisms under the reform process and to clearly identify the functioning and sustainability of such institutions.

Institutions in FATA are weak due to governance and transparency issues. There is virtually no competition in contracting. The political agent is the government's planner and initiator of all development projects.

A formal system should be introduced in which institutions work under one umbrella with proper checks and balances. In this way, collective efforts can improve FATA's political, social and economic situation. Moreover, women should be included at each level of the reforms process so that the voices of the most vulnerable segment of the population are heard. Following measures are suggested:

1. The communal land ownership (Qaumi Milkiat) in the tribal areas is a major impediment in the way of economic growth. An ownership system should be evolved by modern land settlement system to promote economic progress. While developing the land settlement system, special steps should be taken to ensure that women may get their fair share in land ownership (and inheritance) as per the formal legal framework of Pakistan. Settlement of land on an individual ownership basis would also help in improving socio-economic infrastructure, which is otherwise compromised due to political and tribal disputes in FATA.
2. State Bank of Pakistan should ensure opening of commercial banks' branches in the tribal areas and quota system should be introduced to provide job opportunities and micro financing to FATA women and youth. Individual ownership of land would enable the people of FATA to seek loans for running businesses by mortgaging their land.
3. Lack of access of civil society to FATA is further isolating the communities of FATA, especially women. Civil society specifically working on livelihoods, micro finance and skills training should be given easy access to FATA with simplified processes of NOC and registration.
4. In order to attract investment, the ambit of laws such as the 1984 Companies Ordinance, should be extended to FATA.

Contextual Background

Relief and Rehabilitation in FATA: An Overview¹

The marginalisation from Pakistan's wider governance, economic, social and administrative systems, has seen the FATA region lag on multiple development and security indicators. Compounding these elements, increased militancy in the region since 2008 saw over 300,000 families displaced from their homes and communities. The human cost of these has been immense: currently, FATA has an annual growth rate of 2.19 percent, a National Multi-Dimensional Poverty Index of 19.7 percent, adult literacy rate of 33.3 percent (compared to 58 percent for Pakistan as a whole) and head count poverty rate of 52.3 percent.²

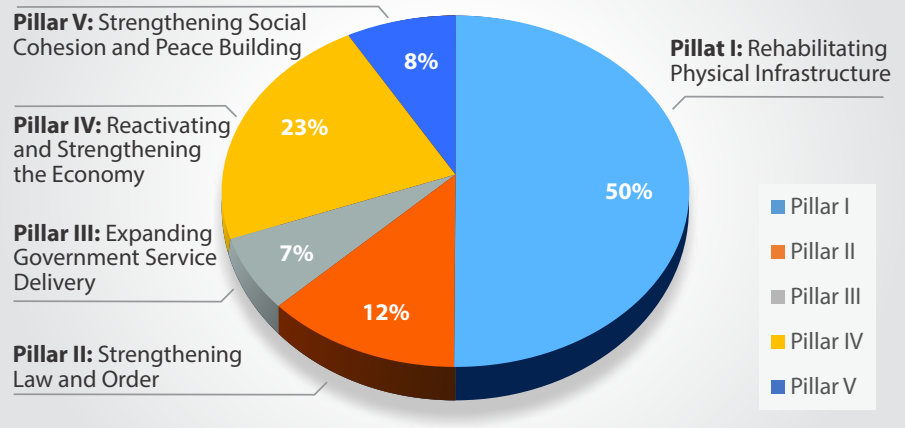
In 2015, following successful military operations that re-established effective control of the Pakistan government on the region, the FATA Secretariat has taken the lead in developing a Sustainable Return and Rehabilitation Strategy (2015-2016) to ensure the progressive and sustainable return of the entire displaced population to FATA. The strategy covered the whole of FATA (seven Agencies) and Frontier Regions. Since 2010, the total FATA displacement caseload had risen up to an estimated 310,729 families (around two million displaced people of which around 70 percent are women and children).³

The strategy itself takes inspiration from the 2010 Post Crises Needs Assessment (PCNA) strategy, which identified the inability of the state to provide justice, the weak economy, poor governance, and finally the inability of the Law Enforcement Agencies to provide Law and Order, as the four main drivers of instability in FATA.

Taking a holistic view of the limited progress made to date in these four strategic areas, the Returns and Rehabilitation (R&R) strategy aimed to establish an enabling environment in the displaced people's areas of origin in FATA, while also addressing pending infrastructure rehabilitation needs. The strategy⁴ is articulated around five pillars (Figure 1):

- **Pillar I:** 'Rehabilitating Physical

Figure 1: Sustainable Return and Rehabilitation Strategy Budget Allocations



Infrastructure' focuses on the rehabilitation of basic physical infrastructure damaged as a result of the ongoing crisis, including schools, health facilities, water schemes, access roads, bridges, irrigation systems and electrical distribution lines and plants.

- **Pillar II:** 'Strengthening Law and Order' focuses on strengthening the capacity of civil law enforcement agencies in FATA to prevent and respond to insecurity.
- **Pillar III:** 'Expanding Government Service Delivery' focuses on re-establishing trust between the population of FATA and the government and strengthen the FATA Secretariat's capacity to increase basic service delivery through improved planning, coordination and monitoring of the rehabilitation and ongoing development projects in FATA.
- **Pillar IV:** 'Reactivating and Strengthening the Economy' focuses on creating short-term and medium-term livelihood opportunities in farm and off-farm areas and on strengthening government services in areas that support the local economy.
- **Pillar V:** 'Strengthening Social

Cohesion and Peace Building' seeks to ensure that the population takes a lead role in the rehabilitation process by prioritizing their needs and implementing small projects to improve their living conditions. Furthermore, following an explicit assessment of the potential threats to social cohesion and peace building in each area, an area-based strategy will be developed together with the affected community to carry out specific actions that will help reduce the potential for conflict in the area.

The strategy is guided by a set of principles that put the Temporary Displaced Persons (TDP) beneficiaries at its core. Among these: the need for context-specific and needs-based action; the importance of capacity development to restore the existing governance structures' ability to manage the recovery processes; the participatory design of all activities under the strategy, to foster community empowerment and ownership; the need to build back better and smarter, with disaster-resilient and energy-efficient structures; the promotion of social cohesion and conflict resolution; the inclusion of youth, women and vulnerable groups in recovery planning, execution and monitoring and evaluation; gender mainstreaming and women's empowerment; and disaster risk reduction.

1. The Contextual Background has been written by Federica Dispenza (Programme Specialist, UNDP Pakistan).

2. People living on less than USD 1.25 a day at 2005 international prices.

3. FATA Secretariat, Sustainable Return and Rehabilitation Strategy, March 2015, page 7.

4. FATA Secretariat, Sustainable Return and Rehabilitation Strategy, March 2015. Available at <https://fata.gov.pk/cp/uploads/news/1429099729552e5296e0770.pdf>

It is important that rehabilitation efforts take into account the potential for future disasters or hazards.

The strategy has a total estimated budget of USD 120 million. To this, about USD 300 million need be added in estimated cost of reconstruction over three years.⁵

According to the latest data on return, as of 27 July 2017, 260,543 households (or 85 percent of all registered returnees) have returned to FATA, 15 percent of them are female headed households. The highest share of returns has taken place in Khyber and South Waziristan Agencies (92 percent and 93 percent respectively) followed by North Waziristan and Kurram Agencies (82 percent and 77 percent respectively).⁶

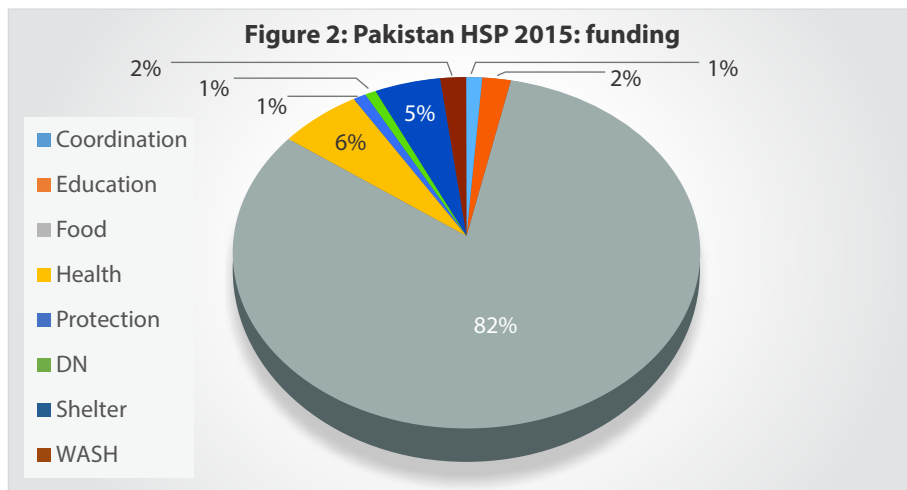
The Multi-Cluster Assessment for TDPs and Returnees (August 2016)-covering five agencies of FATA, (Khyber, Kurram, Orakzai, South Waziristan Agency and North Waziristan Agency), and five districts of Khyber Pakhtunkhwa (Peshawar, Kohat, Bannu, Dera Ismail Khan and Tank)-had identified the recovery of livelihood opportunities in the areas of return, the revitalization of health services, reconstruction of houses, the recovery of education sector, the rehabilitation of water and sanitation, and community infrastructure and targeted nutrition interventions for children and pregnant/lactating women, as the most immediate needs for the returning population.

More concerning still are the conditions of TDPs households who have returned without ever been registered for government assistance: according to FDMA data,⁷ more than 170,000 unregistered households have already returned, two-thirds of which have taken residence in Khyber and South Waziristan. Unregistered TDPs do not receive the return package.

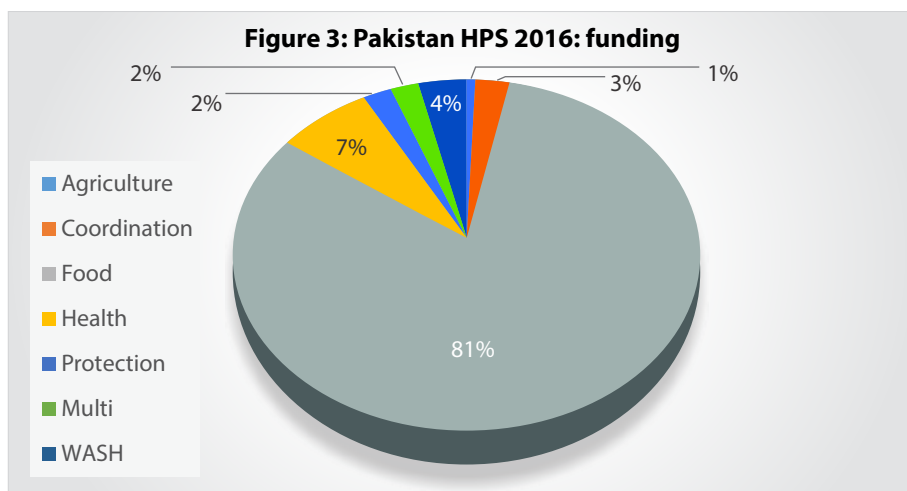
Funding and Progress

To address the humanitarian needs in Pakistan, humanitarian partners appealed for USD 434 million in 2015 and USD 442 million in 2016.⁸

In 2015, about USD 164.5 million were received for projects assisting TDPs in FATA and KP, either during the return phase or while in displacement. Approximately 82 percent of the contributions were earmarked for the food security sector, followed by contributions to the health sector (six percent) and for shelter and non-



Source: Financial Tracking Service Pakistan 2015 - elaboration for FATA



Source: Financial Tracking Service Pakistan 2016 - elaboration for FATA

food items (five percent) (Figure 2).

In 2016, little circa USD 151 million were received in funding earmarked for assisting TDPs and returnees either during displacement in hosting area or upon return. Again, about 81 percent of the funding received was allocated to improve the food security situation of TDPs and returnees; approximately seven percent was allocated to health services and four percent to support water and sanitation initiatives (Figure 3).

The 2017 Pakistan Strategic Response Plan is appealing for USD 339 million out of which USD 88.9 million have been received or committed at the time of writing. More than half of the funding (63 percent) has been committed or pledged to the food security sector, followed by multi sectorial response (20 percent).

Also in 2017, approximately USD 7.3 million

were specifically allocated, through Pakistan Humanitarian Pooled Funds, to assisting TDPs in areas of return in North Waziristan and Orakzai Agencies. Sectors prioritized for assistance are Nutrition, Health, Emergency Shelter, WASH and Education.⁹

Government support to the R&R Strategy

All registered returning families, as a prerequisite of their return, have been provided with a transport grant of PKR 10,000 (approx. USD 100) and a return cash grant of PKR 25,000 (approx. USD 250). As of 22 May 2017, USD 79 million worth of government support packages or about 70 percent of the expected budget (USD 113 million) needed to provide all returnees with their returns benefits have been disbursed.¹⁰

In addition to these benefits, the govern-

5. FATA Secretariat, Sustainable Return and Rehabilitation Strategy, March 2015. Available at <https://fata.gov.pk/cp/uploads/news/1429099729552e5296e0770.pdf>
6. UNOCHA, Pakistan: FATA Return Weekly (21-27 July 2017)- Humanitarian Snapshot. Available at <https://www.humanitarianresponse.info/en/operations/pakistan/infographic/pakistan-fata-return-weekly-21-27-july-2017-humanitarian-snapshot>
7. Data from UNOCHA and FDMA, February 2017.
8. Pakistan Humanitarian Strategic Plan 2015 and 2016. Available at: <http://reliefweb.int/report/pakistan/pakistan-humanitarian-dashboard-strategic-plan-2015-january-march-2015> and <http://reliefweb.int/report/pakistan/pakistan-2016-humanitarian-strategic-plan-overview>
9. Elaboration from Financial Tracking Service 2015 and 2016. Available at: <https://fts.unocha.org/countries/169/summary/2015> and <https://fts.unocha.org/countries/169/summary/2016>
10. UNOCHA, Pakistan: FATA Return Weekly (21-27 July 2017)- Humanitarian Snapshot. Available at <https://www.humanitarianresponse.info/en/operations/pakistan/infographic/pakistan-fata-return-weekly-21-27-july-2017-humanitarian-snapshot>

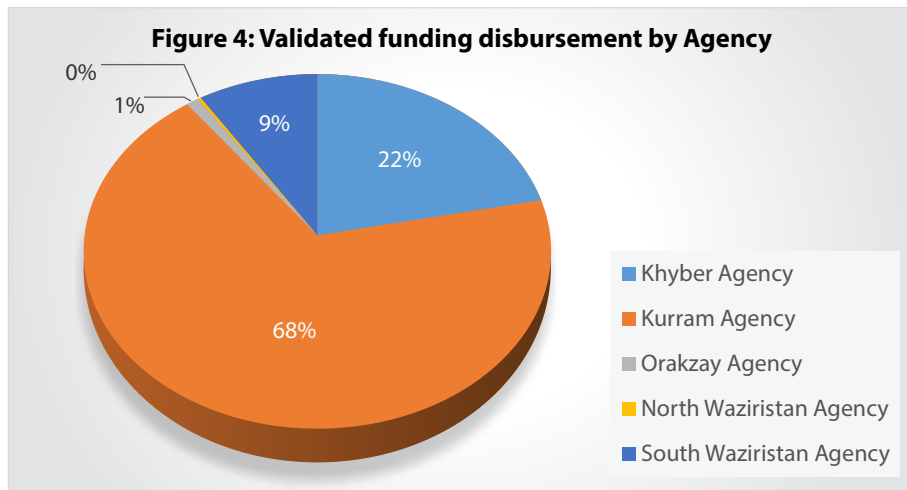
ment is running, through the Rehabilitation and Reconstruction Unit (RRU),¹¹ a housing compensation programme for households that have seen their house fully or partially damaged by the conflict. Beneficiary households would receive PKR 160,000 (approx. USD 1,500) for a partially damaged house and PKR 400,000 (approx. USD 3,800) for the reconstruction of a fully damaged house. The total budget to cover the housing compensation programme was estimated at USD 320 million.

Since 25 August 2016, the RRU has validated more than 4,000 names of beneficiaries eligible for full or partial compensation, in Khyber, Kurram, Orakzai, North and South Waziristan Agencies; the compensation amounts currently add up to PKR 1.3 billion¹² (Figure 4).

Out of these, PKR 222.72 million have already been disbursed to 660 beneficiaries mainly in Khyber Agency. A further PKR 55 million are in the pipeline to be disbursed to 156 beneficiaries. Additionally, 760 beneficiaries have been approved for payment in North and South Waziristan Agencies for a total further PKR 168 million in housing reconstruction benefits.¹³

In addition to the Citizen Losses Compensation Programme (CLCP) and the return package, the government of Pakistan has committed almost PKR 17 billion to the FATA Annual Development Program for 2015/2016 (23 percent of funds are dedicated specifically to education); and a further PKR 18 billion for the FATA Annual Development Program 2016/2017.¹⁴

While a considerable amount of resources have been invested thus far into the rehabilitation and reconstruction of FATA, including the strengthening of law and order, a lot more is needed to bring the region at par with the rest of Pakistan in terms of national development indicators.



Source: RRU Project Tracking System accessed on 13 June 2017

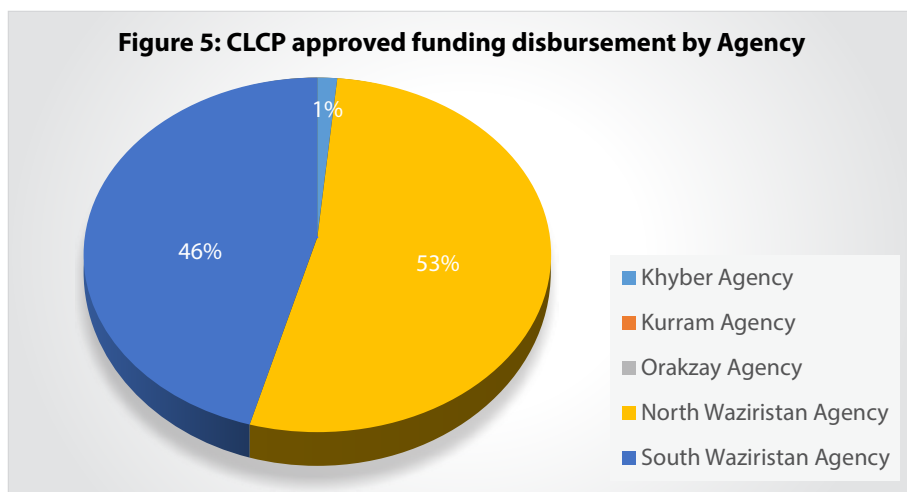


Figure 5: CLCP approved funding disbursement by Agency

Returnees to FATA are still facing an uphill struggle to rebuild their lives and future in their areas of origin: access to basic services and to stable sources of income is still limited in many Agencies, and while the FATA Reforms process is ongoing, it will still take some time for the results to materialize for the people of FATA.

The reconstruction of FATA is a very broad endeavor that cannot be accomplished by one actor in isolation: local, federal and provincial institutions as well as humanitarian and development partners must come together with the people of Pakistan to ensure that FATA can transition beyond the stabilization phase - towards equitable and sustainable development.

11. The RRU has been tasked with the overall management and coordination of rehabilitation and reconstruction works, liaising with government line departments, UN agencies and other international and national actors.

12. Data extracted from Rehabilitation and Reconstruction Unit project tracking system accessed on 13 June 2017. Available at <http://rrufata.gov.pk>

13. Idem

14. FATA Annual Development Programme 2015/2016 and 2016/2017. Available at <https://fata.gov.pk/downloads.php?id=1>



FATA Sustainable Return & Rehabilitation Strategy

Number of families returned since 16 March 2015				
Location	Total Return	Total Remain	% Female headed household in Returns	% Return
Khyber	79,760	7,391	26%	92%
NWA	87,910	17,149	7%	84%
SWA	61,326	4,229	17%	94%
Kurram	18,117	5,453	26%	77%
Orakzai	15,407	7,784	15%	66%
FR Tank	103	219	0	32%
Total	262,623	42,225	14%	86%

Source: UNOCHA, 27th September, 2017

Provided to every registered returning TDP family for encouraging the return process



Return Assistance Package



Transportation Grants
PKR 10,000
per family

Source: FDMA Annual Report 2016



Return Cash Grant
PKR 25,000
per family

Provided to the returning TDPs to aid in the reconstruction and rehabilitation of their fully or partially damaged houses



Citizen Losses Compensation Programme



Fully Damaged House
PKR 400,000

80,000 Houses
Fully or Partially Damaged

49,303 Houses
Surveyed



Partially Damaged House
PKR 160,000

37,592 Houses
Validated

28,730
Beneficiaries Compensated

Source: FDMA Annual Report 2016

Humanitarian organisations supporting the rehabilitation and return process of FATA



Interview



Muhammad Khalid

Director General
Provincial Disaster Management Authority (PDMA)
Khyber Pakhtunkhwa

In your opinion, what are the major issues that can hamper the rehabilitation of TDPs in FATA?

A dearth of funds may hamper the rehabilitation process of the TDPs in FATA, especially in Kurrum and Orakzai Agencies where many TDP return areas are still without the basic facilities of drinking water, education, health and roads infrastructure etc. Moreover, a lack of employment opportunities and non-availability of adequate livelihood opportunities in FATA can further disturb the process.

From people's perspective, what are the urgent needs of FATA returnees that need to be catered to, to ensure people resume a normal life?

According to the FATA locals as well as the government, the basics—housing, education, health, WASH and livelihood support—are sectors that require urgent attention in order to create sustainable lifestyles in the region.

say that again

"...Livelihood is the most important sector where the government, private sector and donors need to focus and contribute."

What role can both public and private sector play in this regard?

Although the government has contributed a lot towards relief, early recovery of returnees, immediate rehabilitation of affected infrastructure and long term reconstruction of facilities; yet there is a lot still required to be done on a fast track basis. Livelihood is the most important sector where the government, private sector and donors need to focus and contribute.

say that again

"...We need to promote development institutions that are flexible and responsive to people's needs that will tap the opportunities that FATA offers."



Masood ul Mulk

Chief Executive Officer
Sarhad Rural Support Programme

In your opinion, what are the major issues that can hamper the rehabilitation of TDPs in FATA?

The major issues that can hamper the rehabilitation of TDPs in FATA include any deterioration in the security situation and law and order. This has improved to a marked extent but it will have to be retained as such to give people the confidence and trust to stay in the area. Similarly, basic facilities have to be provided both, by rebuilding the infrastructure that has been destroyed, as well as building new ones that are important to improve the quality of life considerably. Finally, economic opportunities have to be created to create livelihood and jobs. Although previously there were many economic opportunities, however, these did not support the development of the state or the region, but in fact, promoted illegal activities. New economic opportunities that tap the vast potential of the area have to be created and nurtured which are within the framework of law. The most important element is sustaining the gains that have been made. This will come by changing the whole way we look at FATA. We have to give greater space to its citizens, start distinguishing between brute power that makes the citizens fear the state, to a new social contract based on trust and goodwill between the citizens and the state.

From people's perspective, what are the urgent needs of the FATA returnees that need to be catered to, to ensure people resume a normal life?

We need to create a relationship between the citizens and the state that is based on trust. We need to develop an administrative and political system that addresses the needs of its people. We also need to promote development institutions that are flexible and responsive to people's needs that will tap the opportunities that FATA offers.

What role can both public and private sector play in this regard?

Public and private institutions can work together and bring their different competencies and varied experiences to help bring about change in the region. FATA is a complex area with huge challenges for any institution that operates here. It is geographically vast, its infrastructure is poor, social development indicators low, and a livelihood pattern that cannot easily accept organized and 'rules based' systems. This requires innovation and new ways of working. The public sector can offer its huge outreach and presence in the area while the private sector can bring additional resources along with innovative and flexible ways of working to address the difficult questions.

Hoping for a better tomorrow: *Aspirations of the local FATA Community*¹

Decades of militancy have left the FATA region rot with destruction and deaths exceeding over 70,000, along with several displacements, material damages exceeding 100 billion dollars and severe traumatic impact on the locals.

Sensing the gravity of the situation, the government, as part of its National Action Plan, constituted a six member Committee on FATA Reforms in November 2015, mandating it to conduct extensive consultations with the tribesmen and other stakeholders for proposing FATA Reforms. The Committee conducted an elaborate consultation process to ascertain the wishes of the people of FATA regarding future reforms according to the process enjoined in the Constitution under Article 247 (6). After receiving the views of a large number of tribal jirgas and other stakeholders, the Committee presented its findings to the Prime Minister on 23rd August 2016. The cabinet, finally, approved the proposed recommendations on March 02, 2017.

Between hopes and fears

According to the local community, the proposed recommendations have come as a great relief because they offer freedom from the draconian Frontier Crimes Regulation (FCR). However, the delay in implementation has shifted all excitement into frustrations, resulting in anti-government drives by pro-reforms entities including political parties, socio-political movements, organizations and groups.

Return and Rehabilitation of the Temporarily Displaced Persons (TDPs)

The proposed recommendations promise early rehabilitation of the TDPs. The participants believed delays in achieving the desired objective speaks volumes of the government's lack of seriousness towards the early implementation of the reforms. The government's plea on broader consultations for mainstreaming the region was seen as backtracking on the reforms.

Lack of basic facilities-such as health, education, water supply, sanitation, markets and electricity-at the point of

return, was described as one of the basic factors that impeded the rehabilitation process. Other respondents cited lack of security as one of the major reasons for reluctance on part of the TDPs to return to their homes, whilst the rest raised fingers at the strict security measures at the security check points manned by army personnel. "We the tribals would feel happy to be killed rather than humiliated along with our women and children at the security check points", revealed one of the participants.

Lack of communication and entertainment are other hurdles that hold the TDPs back. Television and dish antenna hardly exist in the region, expresses a young student. If there is any, at all, the frequent electricity cut offs render it ineffective. No newspaper, magazine or tabloid is published from the region. Radio remains the primary source of information.

Due to the limited number (with most of them out of order) of ATM's available in the region, people in general and TDP's in particular, face difficulties in cashing the amount offered to them by the government. Interestingly, cellular companies bargain with beneficiaries so as to almost compel them to buy the company's phone set in exchange for the compensation money, expresses one unhappy TDP.

According to some members of the business community as well as some youth, lack of employment and business opportunities in FATA is another barrier to the speedy rehabilitation process. Approximately 19,600 commercial units got destroyed, just in North Waziristan, which were providing livelihood to some 35,000 families from Miranshah city. The estimated cost for rebuilding the same infrastructure is PKR 16 billion, but alternatively only 800 shops were offered to the residents, complained the participants.

Owing to the closure of the Pak-Afghan border, trade and commercial activities are equal to none. The ban on urea, the respondents added, was adding to the miseries of the farmers. No one is allowed to grow maize as government officials assert that maize fields provide shelter areas to the militants. As a result of this, the TDP's are

forced to return back from where they came from. "In such a way, whilst one may get registered as a returnee, but in reality, he or she resides outside FATA", one of the participants said, adding, "That is why a census is necessary". A participant from Mohmand Agency disclosed that in the Baizai area, 102 out of 107 houses are empty, "How can we calculate the exact population of the area without a proper census?", he questioned. They termed it vital for the economic revitalization of the area.

Rampant corruption is also an important factor slowly eating away the area. People can be seen standing upon the rubble and debris to receive their compensation amounts. However, it is a sad reality that only those who have the ability to "grease palms of the survey officials", or in other words, please the officials, stand eligible for the compensation money, which itself is hardly anything-160,000 for partially and 400,000 for fully damaged house. It was recommended that the compensation money be raised up to one million at least.

Political Reforms

Serious questions were raised on the integrity of the government for what the participants called backtracking on FATA reforms. Lack of political will was seen as the basic reason for the delaying tactic the government was applying towards the reform agenda. The lack of funds allocation in the current budget speaks volumes of the government's lack of commitment, the participants concluded. No preparations were in sight, such as demarcation of the new constituencies and other required infrastructure for local bodies' elections that the government promised to be held in 2017.

They believed, the Panama case and other mega corruption scandals on the national political theater were hardly allowing the government to pay attention towards the miseries of the locals.

The forum believed none of the provincial governments sans Khyber Pakhtunkhwa, especially the Punjab government, were ready to spare three percent of its NFC share

1. This piece is a reflection of the views of the local FATA community, acquired through focus group discussions with the tribal elders, youth, business community and womenfolk of FATA. Participants included academicians, jurists and lawyers, human rights activists, students, health professionals, media persons, economic experts, political activists, social workers and political party representatives from across FATA. The aim of these discussions was to provide an open forum for discussion in order to understand, a) The level of people's concerns b) Their fears and reservations; c) Develop a deeper understanding of the issues and challenges involved, d) Identify loopholes in the process; e) Identify impediments to the smooth sail of business and, f) Identify room for improvement. The focus groups have been conducted by Dr. Ashraf Ali (Communication Consultant, UNDP Peshawar) and Ms. Amna Waheeda (Policy Analyst, UNDP Peshawar).

towards the reconstruction of the war-torn FATA in the wake of upcoming general elections 2018.

The mention of the Rewaj Act attracted a harsh response from the participants. Most of them believed it was an amended version of the FCR that was being imposed on the people of FATA under an organized conspiracy. "Rewaj Act was a fraud in the name of reforms", said one of the women participants, and the rest opined how the Act that is nothing but a photocopy of the FCR that flatly denies women rights.

The constitutional developments in 1973, the provision of adult franchise in 1996, the local bodies elections in 2002 and the FATA reforms package in 2011, all were positive developments that opened up avenues for subsequent reforms. Let the journey continue, we will reach to the destination some day, the participants concluded optimistically.

The participants lauded the 30 percent of funds spent by the elected institutions; but at the same time, criticized audit of the local bodies only, adding that accountability

Some of the participants suggested educating people through an enhanced flow of communication and media. Others suggested Pakistan's Afghan Policy be revisited.

Socio-Economic Reforms

The multi-billion 10 years socio-economic plan promises huge socio-economic development in the war-battered FATA region. Apart from health and educational facilities, the plan includes huge infrastructure development in the agriculture and



In pictures: Participants get candid about their views

There was a general understanding that the government allies-Maulana Fazal Ur Rahman and Mehmood Khan Achakzai-were speaking the language of the government. "How can majority views be subordinated to the will of two small time leaders in a democratic society?," questioned alarmingly by one of the participants. All of the group unanimously called for unity in Pashtun leadership to counter any anti-reform move damaging the cause of the long awaited reforms in the troubled region. To that end, the participants recommended revival of the Political Party's Joint Committee on FATA Reforms-a joint forum of 11 mainstream political parties that strived for the FATA Reforms.

However, some optimism prevailed on the floor. There was general agreement that the voice emerging from FATA could hardly be pressed now. There was a consensus that the journey has already started. The government's recent move towards reforming FATA, whatever shape it is, was seen as a right step in the right direction. Everyone felt that this would be sure to lead the tribesmen towards their destination, no matter how slowly and steadily.

should be across the board. In the same tone, questions were raised on the powers and responsibilities of the elected representatives to the provincial assembly, who would be answerable to the governor.

Citing the lack of due representation on all decision making forums, the womenfolk complained that despite raising their voice on all relevant forums, it was deliberately suppressed and no attention was paid to their grievances and concerns that they have been registering from time to time. "If we are to stay at par with the rest of the world in the 21st century, women should duly be allowed to contribute to the reconstruction of the war-ravaged area," recommended one. "There should be at least 30 percent women representation on all relevant decision making forums". Women also demanded a separate women university in FATA.

Greater role was recommended for the FATA Political Alliance in leading the like-minded pro-reforms groups and individuals, in order to keep the issue alive by generating informed debates on various forums.

communication sectors generating employment and business opportunities in the region. Appreciating the government's reform agenda, some of the participants viewed the well-thought out agenda a harbinger of prosperity for the marginalized people of the war-plagued area. However, a section of participants believed it was only hoping against hope.

For economic revitalization of the neglected area, the participants recommended an incentivized relief package to the shopkeepers, traders, importers and small industries in sales tax, income tax and custom duty. The business community should be provided with easy loans to promote their business and generate employment opportunities. Enough supply of gas and electricity be ensured to the area to attract investors to the region, suggested the participants.

The participants were of the view that the mineral rich areas in FATA may generate enough employment opportunities if proper attention was paid to this sector using the latest technology. To encourage investment in the area, the Environmental Protection Act and Land Revenue Act

should immediately be extended to FATA, the forum recommended.

The rich coal deposits in Kurram Agency and Darra Adam Khel has enough potential for revenue generation, however; there is not even a single rescue center for coal miners in the area, opined a few.

Participants were of the view that the government can play a role in encouraging the private sector by establishing a chain of banks and facilitating investors for attaining easy loans. The agriculture sector

presidential order, then why was it not happening? Legal experts present in the groups briefed that any debate on the issue of FATA in the parliament will require amendment in Article 247 of the constitution, which bars the parliament to discuss and legislate about the FATA region. The constitutional need for population census was also emphasized to avoid mishaps and confusions.

The committee report called for an extension of fundamental rights and the writ of the High and Supreme courts to

as punishable crimes.

Codification of scores of sub tribes with varying features based on local norms, values, customs and traditions in a war-torn region, was seen as a major challenge. Some of the participants questioned the role and status of the army in the reformed FATA region, whilst others viewed the induction of a Grade 22 officer (possibly a retired army general in their view) as providing space to the army in the political and administrative affairs of the region.



In pictures: Women were keen to voice their views

could be developed by facilitating the farmers in acquiring quality seeds and easy loans for their cultivable lands. Womenfolk could be engaged in micro financing schemes like cosmetic industry and poultry farms etc. Some of the participants recommended increased vocational skills training programs.

The participants also suggested that FATA be linked to CPEC in order to satisfy the grievances, sense of frustration and deprivation the people of the region have developed over the years.

The discussants, citing challenges posed by a huge black economy, feared that non-state actors could hinder the process of integration even if a constitutional and political decision was made. They urged the government to act at the earliest, so as to avoid such potential impediments.

Rule of Law

Judicial reforms generated heated debate with article 247 as the dominant theme of discussion. Participants were furious over the claim that if all that was required to change the status of FATA was a single

FATA, among other legal reforms. The participants discussed at length the benefits of the extension of superior courts to FATA. The abolition of the FCR and the office of the Political Agent (PA) were seen as a welcome move.

Several participants requested that more clarity on the reforms was needed for the local community. For example under sub section 2 of section 2, the FCR is to be implemented in protected areas only. That would mean that the rest of the area would still remain under the FCR. Section 2B talks about the judge but fails to make a mention about his qualifications that may lead to ambiguities in the future. This may lead to decisions by tribal elders through a jirga that may then be influenced otherwise. The participants recommended representation of women on this forum.

It was pointed out that the powers of the PA, as district magistrate, should clearly be defined. In addition, the clause that the PA is not given any judicial powers, should be made clear, keeping past bitter experiences in mind. Moreover, the participants voiced that centuries old obsolete traditions like Nang, badal and swara, should be declared

The recruitment of 20,000 levies was seen as a good move for the improved law and order situation in the volatile tribal belt. The improved security situation would, naturally, encourage investment in the area, the participants presumed.

The provision for land settlement attracted great applause; however, it was feared that the move might result in a series of tribal feuds besides triggering controversies on the judicial front. The legal experts in the group opined that the extension of the superior courts to FATA without land settlement, was a mere dream. The womenfolk urged that they be given their due share in inheritance, be it land or otherwise.

Majority of the participants favored Jirga for speedy justice but argued that the extension of the superior courts would offer them the right to appeal, wakeel (legal counsel) and daleel (argument) in favour of their argument in case justice was not administered to them. There was a consensus that there should be a uniform law for all the residents of the country and people of FATA should not be treated differently.

DEVELOPMENT ADVOCATE
PAKISTAN