

Analysis of FATA Reforms Committee Report

November 2017

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Acronyms

ACS	Additional Chief Secretary
APA	Assistant Political Agent
CS	Chief Secretary
CPC	Civil Procedure Code
CSO	Civil Society Organization
CrPC	Criminal Procedure Code
DoP	Directorate of Projects
DTR	Directorate of Transition and Reforms
FATA	Federally Administered Tribal Area
FC	Frontier Constabulary
FCR	Frontier Crime Regulation
FDMA	FATA Disaster Management Authority
FR	Frontier Region
KP	Khyber Pakhtunkhwa
LEA	Law Enforcement Agency
LGO	Local Government Ordinance
MC	Municipal Committee
MIS	Management Information System
NWFP	North West Frontier Province
PA	Political Agent
P&D	Planning and Development
PPP	Pakistan People Party
PRO	Public Relation Officer
RIC	Reforms Implementation Committee
SAFRON	States and Frontier Regions

Executive Summary

Over last 40 years Governments and Civil Society have been struggling to mainstream FATA, latest being, Prime Minister's Reforms Committee to finalize recommendations for FATA Reforms constituted in November 2015. The mandate of the committee was to draft administrative and political reforms for FATA. The Committee was notified on 8th November 2015 with Advisor on Foreign Affairs Mr. Sartaj Aziz as its Chairman and Governor Khyber Pakhtunkhwa, Minister for SAFRON, Minister for Law and Justice and National Security Advisor as members. The Committee held consultations with FATA stakeholders and visited each Agency for consulting the locals on reforms in FATA. The Committee held discussions with the stakeholders including FATA Elders/Maliks, FATA parliamentarians, youth, lawyers, political parties' representatives, former senior civil servants, experts on FATA and civil society members.

Based on consultations and in-house deliberations, the Committee proposed critical reforms in FATA. The most important step for its mainstreaming, proposed by the reform committee was its integration with Province of Khyber Pakhtunkhwa, based on the notion that there are already good social, cultural, economic and administrative linkages between both. FATA is linked by roads to adjoining districts of Khyber Pakhtunkhwa which will facilitate the integration. Moreover, there is strong support amongst influential tribesman for joining Khyber Pakhtunkhwa, which has thus led the major political parties to favour integration that is of foundational significance for the whole country, and the international community.

In this connection the Committee proposed a 5-year transition period, retaining the central role of the Political Administration by continuing to function under their prevailing Rewaj and Jirgas. Similarly, Article 247 of the Constitution was retained as an enabler to bring about the suggested changes. In order to ensure acceptability of the Reforms, the best vehicle to accomplish it will be to take recourse via the Parliament.

The FATA Reforms Committee proposed 6 areas/themes under the reforms package:

- a) Rehabilitation and Reconstruction
- b) Socio-Economic Development of FATA
- c) Elected Local Bodies for FATA- 2017
- d) Legal Reforms
- e) Capacity Building of LEAs
- f) Land Settlement

This study firstly focuses on historical background of FATA followed by insights on Political and Administrative setup. Some analysis has been done on past efforts on reforming FATA since late 1970's and subsequent, analysis of the recommendations made by the committee, suggest gaps in implementation and finally provide way forward for the future discourse on this important issue. Moreover, recommendations from two separate consultative sessions which, were held in Peshawar and Islamabad, wherein findings of the study were shared with the different stakeholders which, include; members of the civil society network, FATA Student

Organization, FATA Youth Assembly, Political Party representatives, Representatives from International Organizations, Lawyers, Representative from Ministry of Law Justice and Human Rights and Print and electronic Media to get their opinion and suggestions on FATA Reform Committee Report, is incorporated in this study.

Background History:

During 19th Century, British Colonial Administration was worried about effective control of its Western Territories in India and wanted to safeguard it against the possible Russian Expansionism in Central Asia. They orchestrated the “Great Game” of imperial domination on the land, which is now known to everyone as Federally Administered Tribal Area (FATA). However, it proved difficult, for the colonial government to establish its writ in the tribal areas.

The area never saw a committed administrative system but the duo of appointed agents and local tribal elders provided control of the region. The tribal people were given pseudo autonomous space to govern internal affairs according to their tribal codes, while the colonial administration held authority over all matters related to the security of British India in the administered areas.

Despite the fact that some of the native tribes did cooperate with the British in return for the financial incentives, but these were only just make shift arrangements and never were fully successful to secure complete control of the area. During the years from 1871 to 1901 the colonial administration imposed a series of laws, such as the Frontier Crimes Regulations (FCR).

These regulations prescribed Sui Generis procedures to deal with Civil as well as Criminal cases for the tribal areas, distinct to, what was in force elsewhere in British India. These regulations, based on the idea of ‘collective territorial responsibility’, provided for dispute resolution to take place through a jirga (council of elders). These Regulations awarded wide powers, including judicial authority to administrative officials. In the same year, a new administrative unit, then North-West Frontier Province was created by carving out parts of then Punjab province and adding certain tribal territories to it. The province, as it was constituted at the time, included five settled districts (Bannu, Dera Ismail Khan, Hazara, Kohat and Peshawar), and five tribal agencies (Dir-Swat-Chitral, Khyber, Kurram, North Waziristan and South Waziristan), and was placed under the administrative authority of a chief commissioner reporting to the Governor General of India.¹

The institution of the Political Agent was created at this time. A Political Agent who was vested with wide powers and provided funds to secure the loyalties of influential elements in the area administered each agency. It was also during this period that the Maliki system was developed, to allow the colonial administration to exercise control over the tribes. Under this system, local chiefs (Maliks) were designated as intermediaries between the members of individual tribes and the colonial authorities, and also assisted in the implementation of government policies.

Despite these efforts, supported by repeated military campaigns, the colonial administration retained, what was at best, a weak hold on the area until the British quit India in 1947. Soon after Independence, the various tribes in the region entered into an agreement with the Government of

¹ Hunter et al., 1840-1900

Pakistan, pledging allegiance to the newly created state. Some 30 instruments of agreement were subsequently signed, strengthening this arrangement. Mohmand Agency was included in FATA in 1951, and Bajaur and Orakzai in 1973.

The agreement, signed at the time of independence, did not include political autonomy of the tribes. The instruments of agreement, signed in 1948, granted the tribal areas a special administrative status. Except where strategic considerations dictated, the tribal areas were allowed to retain their semi-autonomous status, exercising administrative authority based on tribal codes and traditional institutions. This unique system was crystallized in Pakistan's Constitution of 1973.

Political Administrative Setup in FATA

Constitutional Status of FATA

Under the Constitution of Pakistan 1973, FATA is included among the territories of Pakistan.² It is represented in the National Assembly and the Senate but remains under the direct executive authority of the President.³ Laws framed by the National Assembly do not apply to FATA, unless ordered by the President, who is also empowered to issue regulations for the peace and good government of the tribal areas. Today, FATA continues to be governed primarily through the Frontier Crimes Regulation (FCR) 1901. It is administered by the Governor of the 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.⁴

Administrative System

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.

Each tribal agency is administered by a political agent (PA), assisted by a number of assistant political agents (APA), tehsildars (administrative head of a tehsil) and naib tehsildars (deputy tehsildar), as well as members from various local police (khassadars) and security forces (levies, scouts). As part of his administrative functions, the political agent oversees the working of line departments and service providers. He is responsible for handling inter-tribal disputes over boundaries or the use of natural resources, and for regulating the trade in natural resources with other agencies or the settled areas.

The political agent plays a supervisory role for development projects and chairs an agency development sub-committee, comprising various government officials, to recommend proposals and approve development projects. He also serves as project coordinator for rural development schemes.

² Article 1 of Constitution of Pakistan 1973.

³ Articles 51, 59 and 247 of Constitution of Pakistan 1973.

⁴ Khan, 2005.

The FCR is a Direct Contravention of the Constitution of Pakistan 1973 as well as Juvenile Justice System Ordinance, 2000, Universal Declaration of Human Rights UDHR (1948) Covenant on Civil and Political Rights 1966 and Convention on Rights of Child 1989

An FR is administered by the district coordination officer (DCO) of the respective settled district, who exercises the same powers in an FR as the political agent does in a tribal agency. Interference in local matters is kept to a minimum. The tribes regulate their own affairs in accordance with customary rules and unwritten codes, characterized by collective responsibility for the actions of individual tribe members and territorial responsibility for the area under their control. The government functions through local-level tribal intermediaries, the maliks (representatives of the tribes) and lungi holders (representatives of sub-tribes or clans), who are influential members of their respective clan or tribe.⁵

All civil and criminal cases in FATA are decided under the Frontier Crimes Regulation 1901 by a jirga (council of elders). Residents of the tribal areas may, however, approach the apex courts (Supreme Court of Pakistan and Peshawar High Court) with a constitutional writ challenging a decision issued under the 1901 Regulation.

Political Landscape:

FATA elects members to the federal legislature through adult franchise. The system of devolution introduced elsewhere in the country in 2001 by means of provincial Local Government Ordinances (LGOs) has not been extended to the tribal areas. A separate LGO for FATA has been drafted and is awaiting promulgation. A system of partial local-level governance does, however, operate through councils in the tribal agencies and FRs. Elected councilors are involved in various aspects of development planning and decision making.

Administration of Justice

In protected areas, criminal and civil cases are decided by political officers vested with judicial powers. After completing the necessary inquiries and investigations, cognizance of the case is taken and a jirga is constituted with the consent of the disputing parties. The case is then referred to the jirga, accompanied by terms of reference. The jirga hears the parties, examines evidence, conducts further inquiries where needed, and issues a verdict which may be split or unanimous. The political agent, or an official appointed by the political agent for this purpose, examines the verdict in the presence of parties to the case and members of the jirga. If the verdict is found to be contrary to customary law or tainted with any irregularity, the case may be remanded to the same jirga for re-examination or the verdict may be rejected and a fresh jirga constituted. Where the verdict is held to be in accordance with customary law and free of irregularities, it is accepted

⁵ Naved Ahmed Shinwari, CAMP - undated

and a decree is issued accordingly. An aggrieved party may challenge the decree before an appellate court, and a further appeal may be lodged with FATA tribunal consisting of the home secretary and law secretary of the federal or provincial government. Once appeals are exhausted, execution of the verdict is the responsibility of the political administration.

In non-protected areas, cases are resolved through a local jirga at the agency level. Local mediators first intervene to achieve a truce (*tiga*) between parties in a criminal case, or to obtain security (*muchalga*) in cash or kind for civil disputes. Thereafter, parties must arrive at a consensus concerning the mode of settlement arbitration, *riwaj* (customary law) or Shariah (Islamic law). Once the mode of settlement is agreed upon, mediators arrange for the selection of a jirga with the consent of the parties to the case.

Where arbitration is selected, a jirga is nominated by consensus and given an open mandate (*waak*), with the understanding that its decision will be accepted by all parties. Here, the decision of the jirga cannot be challenged. In cases decided according to customary law or the Shariah, however, an aggrieved party may challenge the jirga decision before another jirga of their own choice. The new jirga does not hear the case afresh but only examines the original decision to see whether it deviates from customary law or the Shariah. Further appeal may be referred to a third jirga and its decision is final.

Implementation of jirga decisions in non-protected areas is the responsibility of the tribe. The jirga may mete out punishment to an offender, imposing a heavy fine. Occasionally, more serious measures may be taken such as expelling an individual or a family from the area, and confiscating, destroying or setting fire to homes and property. In such cases, the entire tribe bands together as a *lashkar* (army) to enforce the decision.

While most disputes are settled internally, more serious matters may require the calling of a larger jirga made up of maliks, elders, the political agent, members of the National Assembly and Senate, and occasionally even representatives from neighboring agencies or FRs.

Although the jirga mechanism enjoys widespread favor, corruption has begun to enter the system. It is reported that the poor and more vulnerable segments of society cannot afford to convene a jirga. There are a number of requirements for a jirga to be held, including hospitality, which are increasingly beyond the reach of most ordinary people. There is also the grievance, now voiced more frequently, that in most cases jirga decisions favor the richer or more influential party.

FATA Secretariat

Until 2002, decisions related to development planning in tribal areas were taken by the FATA section of the KP Planning and Development Department, and implemented by KP Government line departments. In that year, the FATA Secretariat was set up, headed by the Secretary FATA. Four years later, in 2006, the Civil Secretariat of FATA was established to take over decision-making functions, with an Additional Chief Secretary, four secretaries and a number of directors. Project implementation is now carried out by line departments of the Civil Secretariat FATA. The KP Governor's Secretariat plays a coordinating role between the Federal and Provincial Governments and the Civil Secretariat, FATA.

In 2006, the Civil Secretariat FATA with an Additional Chief Secretary, four Secretaries and over ten directorates were established to take over the decision-making functions. In April 2012, the FATA Secretariat was restructured with addition of 'Production and Livelihood Development Department' and 'Social Sectors Department'. Besides that the reporting line of the directorates was also rearranged.

The six departments of FATA Secretariat are as follows:

- Administration, Infrastructure & Coordination Department
- Finance Department
- Law & Order Department
- Planning & Development Department
- Production & Livelihood Development Department.
- Social Sectors Department

FATA Secretariat is providing services to the people of FATA through its directorates attached to these departments. FATA Disaster Management Authority (FDMA) and Directorate of Projects (DoP) have functional independence but report through Law & Order and P&D Departments, respectively. The services provided by the line directorates include;

- Health
- Education
- Forestry
- Fisheries
- Irrigation
- Information
- Livestock & Dairy Development
- Minerals & Technical Education
- Agriculture
- Projects
- Monitoring
- Local Government & Rural Development
- Works & Services

History of FATA Reforms:

There has been no effort to address the challenges caused by the disconnection, or poor connections, between the central government and the provincial governments, and the absence of information about federalism. Few benefits of citizenship accrue to the residents of the Federally Administered Tribal Areas (FATA). Such postcolonial subjects continue to maintain only the most fragile association with formal citizenship, and interact with a state that sustains itself by violating its own regulations. This is apparent, in the case of the remote citizenry, brought out by the near-complete unavailability of basic state services in areas like FATA.⁶

Some efforts have been, made in last few years and PPP government pursued the reforms agenda but it failed in creating a real impact. Consequently, FATA could not be, brought into the national mainstream. A lack of legal and political reforms from 1970 to 1990 not only kept FATA out of the mainstream but also resulted in exacerbating militancy and extremism in the region. The promulgation of the 1996 Adult Franchise Act was the first real reform aimed at political empowerment of the FATA residents. For the first time in history, the people of FATA were, given the right to vote. The 1997 elections were indeed unique in the history of this troubled tribal region. Unfortunately, elders and religious leaders tried to prevent female participation by threatening punishment against tribesmen whose women registered, leading to under-registration among the women population⁷. In addition, political parties were, not allowed to operate in FATA⁸. Before the introduction of the 2011 reform package, the political parties were, not allowed, to engage in any activities in the tribal belt of Pakistan and independent candidates were directly elected to the National Assembly. This system had helped the maliks (tribal elders) to exploit the situation to their advantage. It was in their interest to keep FATA away from the national mainstream so their utility continued. Moreover, the independent parliamentarians from FATA in the National Assembly could not influence any legislation regarding FATA. According to Article 247 of the Constitution of Pakistan 1973, the legislative authority for FATA rested with the president of Pakistan. However, the PPP government extended the Political Parties Act to FATA in 2011. The lifting of curbs on political campaigns in FATA not only allowed the political parties to offer their manifestos to the people, they also brought the deprived people into the national mainstream.⁹

Although the legislative authority still rests with the president of Pakistan, the parliamentarians can now influence the legislation regarding FATA by using their party platforms. Moreover, the FATA parliamentarians can now stand up for the prosperity of their people and can mobilize them over their socio-economic problems¹⁰. The role of political parties in mobilizing the FATA residents can be, judged from the fact that in 2013 the overall turnout was 36% of the total registered, voters in FATA, illustrating a 5% increase from the earlier elections with enhanced female participation.¹¹

⁶ Ethnic Crises of Federalism; The Lahore Journal of Economics 15: SE (September 2010): pp. 15-31 BY Raza Ahmad

⁷ (Talbot, 1998: 2-3)

⁸ Sajjad, 2013

⁹ ibid

¹⁰ The Express Tribune, 2012

¹¹ [http://: fatareforms.org](http://fatareforms.org).

Recent governance and political reforms in FATA started in 1996 when the people of FATA were, given the right of adult franchise. In 2011, the Political Parties Order was, extended to FATA allowing political parties to carry out activities and participate in National Assembly elections in FATA. At the same time, the President notified amendments to the FCR, which include an exemption of women, children and elderly persons from the collective responsibility clause.

Similarly, the Political Parties Joint Committee on FATA Reforms (FATA Committee) ¹²has worked since 2010 consensus proposals for further reforms for FATA. In April 2014, the FATA Committee approved eleven recommendations:

- 1) Peace in FATA, should be, guaranteed.
- 2) Article 247 of the Constitution 1973 should be, amended to guarantee fundamental rights for all FATA citizens and shift legislative powers from the President to Parliament.
- 3) Local Government (LG) elections should be, held in FATA.
- 4) A comprehensive package should be, developed for FATA and infrastructure development is initiated, with special focus on health, education and employment.
- 5) The future status of FATA should be, decided by its people.
- 6) Pakistan Electronic Media Regulatory Authority (PEMRA) jurisdiction should be, extended to FATA and media should be, provided greater access to FATA to provide tribal citizens with opportunities form media interaction and participation.
- 7) The jirga system should be, made more democratic and independent.
- 8) Actions in Aid in Civil Powers Regulation should be, abolished.
- 9) Executive and judicial powers should be, separated in FATA.
- 10) Citizens should not be, deprived of property; inheritance laws should be, extended to FATA.
- 11) Civil armed forces (khasadar and levies) should be, strengthened and professionalized.

Current Reforms Agenda:

Reforming FATA has become inevitable for the Federal Government not because it has been voiced and demanded by the people of FATA but also has become crucial for the stability of the region as well as for the state itself. Number of initiatives has been, taken by the federal government in order to stream line and bring changes into the century old administrative systems in the area.

Given the urgent need for reforms in FATA, the Prime Minister in, November 2015, constituted FATA Reform's Committee to finalize recommendations for FATA Reforms.

The Committee was mandated to propose concrete recommendations for political mainstreaming of FATA after thorough deliberations and consultations with different stakeholders in FATA.

The Committee comprised of:

¹²10 political parties are represented on and support the recommendations of the FATA Committee: ANP, JI, JUI-F, MQM, NP, PML-N, PML-Q, PPP, PTI and QWP. The Express Tribune April 14th, 2014.

- I. Mr. Sartaj Aziz, Advisor to the Prime Minister on Foreign Affairs.
- II. Lt. General (Retd) Abdul Qadir Baloch, Minister for SAFRON.
- III. Lt. General (Retd) Nasser Khan Janjua, Advisor to P.M on National Security.
- IV. Mr. Zahid Hamid, Member of National Assembly.
- V. Mr. Zafar Iqbal Jagra, Governor, KP.
- VI. Secretary SAFRON as Secretary of the Committee.

The FATA Reforms Committee constituted by the Prime Minister, has proposed broad-based recommendations to bring the tribal areas at par with the rest of Pakistan.

For the first time in history of FATA, in any reform agenda, role of Pakistan Army as a stakeholder has been, stressed and explicitly mentioned. However, clear role and extent to which the role needs to be, played by this stakeholder, is not, provided.

Astonishing fact is that, reform committee held exclusive meetings in every Agency and mentioned in the report that they have consulted representatives from the civil society as they think that FATA CSOs are important stakeholders. However, subsequently in the proposed recommendations, role of civil society has been, deliberately missed. Not even a single action is, listed in the document, which provides a slight impression that the Committee considers CSOs worthy enough to be, entrusted to play its role for reforming FATA.

The first and foremost recommendation was to merge FATA with Khyber Pakhtunkhwa. In order to mainstream, FATA will require a transition period of up to 5 years. During the proposed 5 years, transition period to prepare all the agencies of FATA and the FRs for the merger option, it is important to launch a major development programme to enhance the socio-economic conditions of the region and bring FATA up to par with the rest of the country.¹³

Similarly, for launching the development plan in letter and spirit, three-tiered oversight institutional framework has been, provided, which is, explained here under:

a. Sustained Political Engagement (Permanent Cabinet Level FATA Committee)

1. Reform Implementation Committee (RIC)

- Governor KP
- Minister SAFRON
- Minister Law
- National Security Advisor
- Secretary SAFRON
- Representative of Army

2. FATA Development Council (Under Governor KP)

- Technocrats
- FATA Parliamentarians

¹³ FATA Reform Committee Report June, 2016

- Relevant Govt Officials (FATA Secretariat)

b. A small team of committed people at the technical-level with a relentless and uncompromising focus on reform implementation and efficient delivery.

3. Small Unit of Experts in Ministry of SAFRON¹⁴

Moreover, for implementing the reforms two-tiered structure in addition to current set up of FATA Secretariat has also been proposed:

c. Directorate of Transition & Reforms

4. FATA Secretariat

d. A Special Committee to develop 10 year development plan for FATA

5. Special Committee

- Governor Khyber Pakhtunkhwa
- High level, experts
- Officials

Roles and Responsibilities:

Reform Implementation Committee (RIC). A cabinet-level committee will, throughout the transition, provide the political support and cover required to implement challenging reforms efficiently. This apex body could not only supervise the execution of the Committee's recommendations but could also suggest remedial actions as midcourse corrections. The Prime Minister should undertake a quarterly review on the progress of these reforms with all the stakeholders.

Similarly, FATA Development Council is a supervisory body, which will have oversight role and ensures the timely and proper implementation of the reform package throughout the transition period.

Small unit of Experts in Ministry of SAFRON would provide support to the Federal level Committee and would not be responsible for actual implementation of reforms.

Directorate of Transition and Reforms will report to the FATA Reforms Commission to ensure it has political support to implement tough reforms. This directorate may be headed by Additional Chief Secretary or Secretary P&D, or a any new-dedicated officer. Depending on which option availed, the reporting line to the FATA Committee would either directly or through the ACS.

¹⁴ This unit would only provide support to Reform Implementation Committee (RIC)

The terms of reference of the Directorate will include:

- To identify key policy interventions and sector wise detailed action plans for implementation in line with FATA Reforms Committee's recommendations;
- To prioritize strategies and to lead on framing detailed sector wise policies and action plans at all levels of interventions during the transition period in FATA;
- To execute sectors' implementation plans and strategies;
- To act as "the only institution" in FATA Secretariat, responsible for all internal and external coordination with respect to reforms interventions in transition period in FATA;
- Provide technical assistance to FATA Secretariat in transforming all the strategic objectives into action plans with timelines and line of responsibilities;
- To coordinate with government and non-government stakeholders and other development partners for in-time execution of the implementation plans in FATA;
- To devise communication strategies for internal and external visibility, public awareness and advocacy regarding reforms in FATA, desired targets and achieved milestones on regular basis;
- To manage and supervise all the contracts and procurement process and procedures relevant to the implementation plans;
- To develop framework for efficient performance management and monitoring the execution of the implementation plans;
- To generate required documents/reports for internal and external audiences.
- Lastly the Special Committee has to be established which would be headed by Governor and would comprise of High level experts and Officials who would prepare 10 years, development plan for FATA.

The FATA Reforms Committee has proposed 6 areas/themes under the reforms package

As time passed since the committee report was, made public in August, 2016 significant millage has been achieved to shape the recommendations into reality and as final approval from the Cabinet was also granted on March 2, 2017, which resulted in placing Rewaj Act, 2017 and 30th Constitutional Amendment Bill before the Parliament in May, 2017.

The detailed analysis of the proposed legislative initiative:**1. Rehabilitation and Reconstruction**

- The highest priority after the restoration of peace should be, assigned to rehabilitation of tribal people, reconstruction of tribal areas on a war footing, and revival of livelihood activities.
- The target date for repatriation of all TDPs should be end of 2016, and the reconstruction phase should be, completed before the end of 2018.
- This gigantic task will require much larger financial resources and coordination between all the Federal Agencies including SAFRON, FATA Secretariat, the Army formations, Frontier Works Organization/National Logistics Cell and the National Disaster Management Authority. A comprehensive rehabilitation and reconstruction plan has

been, launched by FATA secretariat, which, should be, synchronized with the above timelines.

- Foreign donors may be, approached to provide part of the financial resources for the reconstruction plan.
- While the rehabilitation and reconstruction of infrastructure, which includes roads, communications, power lines, water supply, education, and health facilities, should be, undertaken by the public sector agencies, the repair or rebuilding of private houses should be, left to the owners themselves by giving them cash compensation at prescribed rates. This will not only ensure much quicker construction but will also facilitate revival of economic activities and employment opportunities in the construction sector. Supply of non-grid solar units at subsidized rates should be an important part.

As of July 2015, there were more than 1.8 million people displaced by insurgency, counter-insurgency and other related violence in Pakistan

<http://www.internal-displacement.org/south-and-south-east-asia/pakistan/figures-analysis>

The terms of reference of the Rehabilitation and Reconstruction section will include:

- Prepare strategies and development plans for areas affected by war;
- Plan and coordinate all reconstruction and rehabilitation efforts including reimbursement of citizens' losses, reconstruction of infrastructure, provision of livelihood opportunities in FATA;
- Supervise and monitor implementing agencies;
- Coordinate and liaise with relevant departments, agencies and donors while providing one window facilitation to all national and international development partners;
- Preparation of PC-Is relevant to establishing and operationalization of reconstruction and rehabilitation efforts;
- Provide technical assistance and capacity building;
- Establishment of standards and internal controls;
- Provide ease, speed, facilitation and coordination and supervision to rehabilitation and reconstruction programs; and create linkages to all parties involved.

Analysis and Implementation Gaps:

**Housing Uniform Assistance Subsidy Project
Compensation Updates**

Compensation Amount for damaged houses in PKR	
Damaged Category	Amount
Partially (PD)	160,000
Completely (CD)	400,000

Total amount distributed so far: PKR 1,796,480,000

Total number of beneficiaries compensated: **7183 (total PD 4485+ CD 2698)**

Total Beneficiaries (Unique) of HUASP: 8764

As per the feedback from media and updates provided by FATA Disaster Management Authority 94% of IDP have been, resettled.¹⁵ Under the initiative, Housing Uniform Assistance Subsidy Project Compensation has been paid to 8764 families whose houses have been either destroyed or damaged during the Army operations. However, on the front of devising long term strategy and development plans for war affected areas is concerned, Reconstruction and Rehabilitation Unit has not been in place as yet as it comes under the Directorate of Transition and Reforms under FATA Secretariat, which has not been made. So far all the activities of rehabilitation and reconstruction are under control of “Temporarily Displaced People (TDP) Cell operating under Army 11 Corps in Peshawar.¹⁶ Targets and time line set for rehabilitation under this provision has also been missed and it is likely that reconstruction would also be delayed and go beyond, 2018. However, no date has been committed as yet from Army which has main role to play in this area.

2. Socio-Economic Development of FATA

- There is hardly any private investment in FATA, partly because of the security situation but mainly due to the absence of a legal framework that encourages and protects such investment. There is also a perception that public funds get wasted due to the absence of adequate monitoring and accountability mechanism. These constraints need to be addressed on priority basis during the current transitional period.
- A Special Committee of high level experts and officials should be formed under the Governor Khyber Pakhtunkhwa, to prioritize preparation of a 10-year Comprehensive Development Plan for FATA before the end of 2016.
- The 10-year Development Plan should include major infrastructure and irrigation projects, mineral development program and integrated plans for health, education, vocational training and establishment of industrial zones with special incentives. A major aim of this 10-year Plan will be to reduce substantially the gaps in development and per capita indicators between Khyber Pakhtunkhwa and FATA.
- The NFC should make allocation of 3% of the available resources in the federal divisible pool (Rs. 90 billion) on annual basis for the implementation of the 10-year Development Plan. This will be in addition to the existing annual PSDP allocation of Rs.21 billion.
- An important component of the new Development Plan would be the concept of social transformation of FATA by encouraging urbanization by setting up modern urban hubs in all Agency Headquarters and other important trading centres.
- 30% of the allocation in the 10-year Plan should be channelled through the elected local bodies. Such a decentralized system of development administration will not only cater to the needs and aspirations of the people at grass root level, but will also develop local technical and professional capacity to prepare and implement small and medium scale projects, with a focus on local employment generation and quick impact on living standards.

¹⁵ <http://www.fdma.gov.pk/>

¹⁶ Mr. Razik Shinwari-FATA Expert working with UNDP- Telephonic Interview dated May 29, 2017.

- FATA Development Authority (FDA) may be reorganized with enhanced powers to implement large infrastructure projects under the 10-year Development Plan.
- A position of Chief Executive (BPS-22) may be created under the Governor to assume responsibility for implementation of the 10-year Development Plan.
- A Governor's Advisory Council consisting of all FATA Senators and MNAs may be set up to assist the Governor in carrying out development and administrative functions.
- The approving powers of FATA Development Committee may be enhanced from the present Rs.400 million to Rs.2 billion and that of FDWP from Rs.200 million to Rs.1 billion.
- The President's Order No. 13 of 1972 regarding service matters in FATA may be suitably revised to empower the Governor to attract competent officers from multiple sources for the transition period.
- Special incentives to private sector in education and health sectors should be given in the form of free land.
- All posts in FATA should be upgraded and brought at par with Khyber Pakhtunkhwa.
- Salaries for the project personnel in FATA should be 20% higher than that admissible under the project policy of Khyber Pakhtunkhwa.
- Connectivity of FATA with CPEC should be ensured at suitable locations.
- State Bank of Pakistan (SBP) should encourage establishment of more branches of banks in FATA with special incentives for private banks.
- Allocation for BISP, Bait-ul-Maal and microfinance schemes in FATA should be increased.
- Quota of FATA students in education and health institutions in other provinces should be doubled and retained for 10 years after integration with Khyber Pakhtunkhwa.

7TH NFC AWARD

*THE DISTRIBUTION IS BASED ON
82 PER CENT WEIGHTAGE TO
POPULATION, 10.3 PER CENT TO
POVERTY, 2.5 PER CENT TO
REVENUE GENERATION, 2.5 PER
CENT TO REVENUE COLLECTION
AND 2.7 PER CENT TO AREA.*

The terms of reference of the Economic Growth Section will include:

- To devise strategic and implementation plans with respect to economic growth and development in FATA;
- To prepare strategic and implementation plans for integrated natural resource management in FATA;
- To draft various policy notes/papers for providing policy, operational and regulatory basis to various economic growth initiatives/interventions in FATA;
- To work on policy frameworks relevant to economic growth and integrated natural resource management in FATA;
- Preparation of implementation plans for approved sectorial Economic Development Plan pertinent to transition period;

- Develop various PC-I for the implementation of the economic growth and livelihood plans;
- To coordinate with relevant departments/directorates/units in FATA Secretariat for in-time implementation of action plans;
- Regular liaison with FATA Development Authority (FDA) for developing policy strategy, framework and implementation plan for integrated natural resource management;
- To liaise and supervise engagements with local partners or consultant (individuals and firms) for economic growth, livelihood and natural resource management;
- To suggest/identify different economic growth/livelihood related projects for inclusion in FATA ADP;
- Liaison with Federal and Provincial Governments and FATA Secretariat with respect to all policy, regulatory framework and process relevant to economic growth and natural resources' management in FATA;
- Regular liaison with donor and other external stakeholders.

Analysis and Implementation Gaps

Almost all other targets, except formation of Special Committee under Governor KP have been, missed under this proposed provision.¹⁷ The Committee members have been, notified by the Governor Secretariat and they have so far held only one meeting. However, with the looming uncertainty at the Federal Level about the FATA reforms, securing huge amount of 3% from the divisible pool seems, a far cry as the Federal Government seems to be stepping back from what has been proposed by the reform committee and subsequently approved by the Cabinet. The FATA's budget flows from the federal divisible pool, while federal government is now insisting the provincial governments to sacrifice their share in NFC to increase KP share in divisible pool for absorbing FATA. FATA gets its annual share of Rs21 billion under PSDP, which is not enough for the ambitious commitments needed for these reforms to take place. Moreover, no concrete steps towards working on 10 year, development plan, establishing more Banks in FATA have been, taken and exercise of having the members remains futile, which has already missed the deadline.

3. Elected Local Bodies for FATA - 2017

- The federal government and provincial governments need to find way for adjusting KP share in the new NFC award in the case of KP and FATA merger.
- Once the rehabilitation phase is completed, party based local bodies elections should be held in FATA before end of 2017. This would require promulgation of FATA Local Government Regulation, which should be promulgated by the Federal Government within three months. All other formalities e.g. updating the electoral rolls, finalizing the constituencies, rules and regulations should be completed by the first quarter of 2017.
- A separate unit for FATA may be created in the Election Commission office,

¹⁷ ibid

Peshawar for this purpose.

- Auditor General of Pakistan should ensure that development funds and all other expenditures of local bodies in FATA are properly audited to ensure efficient utilization, and if this requires capacity building the same should be encouraged.
- Permit/Rahdari system for exports from and imports into FATA should be abolished to eliminate large scale corruption and bring down prices of essential items in FATA. Correspondingly, necessary funds should be provided in the budget for operational expenditure of the political administration.

The terms of reference of the Local Government Section will include:

- Preparation of detailed action plans for the establishment and operationalization of local government set up and municipalities in FATA;
- Liaison with other government institutions for establishing proper constituencies/delimitations in each Agency;
- Liaison with Federal and Provincial Governments for setting up and operationalization of local government in FATA;
- Drafting policy concept notes/papers for establishing essential policy, legal and regulatory set up for smooth functioning of local government in FATA;
- Prepare detailed operational, administrative, financial SOPs for local government offices and municipalities for efficient public service delivery;
- Prepare and approve job description for officers and support staff;
- Regular coordination with Directorate of Local Government & Rural Development FATA Secretariat for various operational and administrative processes and procedures;
- Preparation of PC-1 relevant to establishing and operationalization of local government setup in FATA;
- Provide technical assistance and capacity building of local government offices;
- To liaise and supervise engagements with local partners or consultant (individuals and firms) for local government TA and capacity building;
- Liaison with donor and other external stakeholders.

Analysis and Implementation Gaps

As far as recommended to promulgate FATA Local Government Regulation, and further to hold local government elections in FATA, for which the time line was set for three months, back in June 2016 has not seen light of the day. It has been learned from different sources that Federal Government has prepared a draft but what is the current status of that draft law is not known¹⁸. In the absence of legislation and subsequent notification of rules, the long wish list of terms of reference TORs could not be, started. Local Government Unit (LGU) was supposed to be put in place under Directorate of Transition and Reforms to coordinate activities mentioned under TORs, which has not been formed as yet.

Moreover, other formalities, e.g. updating the electoral rolls, finalizing the constituencies, rules and regulations for which time line was set to be completed before the end of 2016 is also not

¹⁸ Information shared by elected representatives from FATA during Seminar held by Shaheed Bhutto Foundation at National Press Club, Islamabad, dated May 27, 2017

known as it was supposed to be done by Election Commission of Pakistan-Peshawar, which has neither been approached by Governor Secretariat nor by FATA Secretariat in this regard.

4. Legal Reforms

Complete list of laws extend to FATA is provided in Annex 1 at the end of report. The following new legal reforms are recommended:

- The FCR should be repealed and the criminal and civil procedures codes, as applicable in rest of Pakistan, should be extended to FATA. This should happen automatically if FATA and KP are merged.
- During the interim period, provisions relating to collective/vicarious responsibility in the FCR should be omitted, thereby making an individual responsible for his own acts (This would eliminate one of the major criticisms of the present FCR relating to violation of fundamental rights).
- Jurisdiction of the Supreme Court of Pakistan and the Peshawar High Court should be extended immediately to FATA.
- The Committee has proposed retention of Jirga system in the Civil and Criminal Justice system of FATA for the reason that its repeal would be resisted and will destabilize the social order which is undesirable. Moreover, with certain changes in procedures, the Jirga process could start resembling the “jury system” which is acceptable internationally. Simultaneously, any legal instrument, which incorporates “Rewaj” as part of the judicial process, must ensure that it’s not in conflict with the fundamental rights as well as other substantive laws administered in Khyber Pakhtunkhwa.

The terms of reference of the Rule of Law section will include:

- To establish, restructure, reorganize structures/institutions of law enforcement and justice mechanisms in FATA;
- To devise plans for the establishment of these structures and assist, capacitate and coordinate with the FS for their implementation;
- To establish/reform/reorganize the Levies as a proper law enforcement agency and raise its capacities to a policing force, while providing plans and coordinating with FATA Secretariat to ensure the provision of infrastructure, equipment, weapons and technical training;
- To establish justice delivery mechanisms, by setting up judicial complexes and instituting judges and prosecutors, in addition to codifying Rewaj and regularizing the composition of Jirga, while providing plans and coordinating with FATA Secretariat to ensure the provision of infrastructure, equipment, technical training and equipment.

Analysis and Implementation Gaps:

Rewaj Bill, 2017 and 30th Constitutional Amendment Bill have been, discussed under separate heading below. Other than these two legislations there is a legal lacuna in these proposed legal reforms, which needs to be clearly rectified, which is:

1. High Court under Article 203 of the Constitution of Pakistan 1973 enjoys full authority, administrative as well as Judicial of all the Courts in the province. If Jurisdiction of High

Court is extended to FATA, all the appointments related would be made and supervised by High Court and provisions under this proposed reform regarding appointments of Judges, prosecutors by the Law Reform unit would be ultra vires to the Constitution of Pakistan 1973.

5. Capacity Building of Law Enforcement Agencies

The capacity of Law Enforcement Agencies in FATA should be, strengthened. The following measures should be undertaken:

- The Levies should be reorganized for performing agency police functions. They should have standard uniform and basic training.
- Levies should receive in-service and specialized training with the assistance of Army / FC / Police.
- Provision of specialized equipment especially arms/ammunition and surveillance devices may be provided to the Levies.
- Destroyed/damaged Levies posts should be reconstructed.
- Additional 20,000 posts in the Levies force may be sanctioned.
- Provision of additional infrastructure for Levies to ensure round-the-clock security should be undertaken.
- Surveillance and management of border with Afghanistan should be improved.
- Capacity building of FC should be undertaken and additional new wings of FC may be created for border management.

Analysis and Implementation Gaps:

There is no clear implementation structure provided under this proposed reform. Most of the, responsibilities, are being carried out, currently, by Secretary, Law and Order Unit in FATA Secretariat. Creating parallel unit with same responsibility is not feasible and hampers in achieving the targets of the reform agenda.

6. Land Settlement

- Most of the land in FATA, is held collectively and thus cannot be used for collateral or sold to create equity capital thus preventing capital formation. Property records are also important pre-requisite for banking operations in FATA and for attracting private investment.
- Land settlement should be, undertaken by using modern technology to create Geographic Information System (GIS) based computerized individual record of rights as adopted by Punjab.

The terms of reference for the Land Settlement Section will include:

- Preparing of field maps and record of Rights in each Agency;
- Collection of old land record from Patwari(s), checking rights as per Shajra Nasab;
- Lead on providing the base line and proper measurement of land points;
- Proper land demarcation in each Agency as per the standard rules and regulations;

- Overseeing the operations of land settlement and registration offices at each Agency level;
- Introduction of proper mechanism for maintaining Deed Registers, Rights Registers, Commercial building Register and implementing proper mechanism for registration of land transaction;
- Coordinate and supervise the working of third party consultants/firm to be engage for land settlement process.

Analysis and Implementation Gaps:

In most cases, the only land records in the tribal belt are verbal agreements between tribes and this has been the situation since the sixteenth century. The earliest of land records from Fata are dated back to those times when land was distributed on the basis of whether it was captured by a certain tribe. Most of these dealings were conducted verbally on the basis of the clan or *khel*, the sub-clan or *tapa* and the *plareena* or hereditary land.

The division is further made on the basis that the landowner or *davetar* leased out lands for services to working forces of tribes which included *kasabgars*, the clerics or serai and others. The *shamilat* are the collective lands of the tribes and sub-tribes and income is shared.

There are only areas where land records exist are Kurram Agency where the properties were recorded by the British once in 1905 and then a second time in 1943. In North Waziristan, the process was initiated by the British Raj in 1898. However, the rest of the tribal belt relied on verbal tradition and the jirga to settle land disputes. Under Rewaj, the local tradition of land settlement has been given priority and the jirgas will be used to settle all disputes.

Our research indicates that FATA Secretariat has completed mapping the tribal areas with the help of the Geographic Information System (GIS) and will record property rights, which would be, completed by 2021 at the cost of \$3.5 Billion.¹⁹

Once this huge task is done there would be several predictable out comes such as it would establish ownership rights and rights of inheritance. As far as inheritance is concerned, women in FATA have been denied of this fundamental human right out rightly. Traditional land distribution amongst *Pakhtun* entitles men alone ownership of property. Pukhtunwali does not allow a woman to own land independently and be known to the people on her own.²⁰ However, in the current dispensation all these seems to be a far cry as none of these issues have been addressed by these reforms.

Similarly, it would need a Statutory Regulatory Mechanism which is available elsewhere in the country, to name a few:

1. Transfer of Property Act, 1882

¹⁹ Mapping of Land for ensuring Property Rights in FATA Published in The Express Tribune, June 25th,2016
Iftikhar Firdous

²⁰ Khan, S., & Afridi, S. (2010). Patriarchal Social and Administrative Practices in the Federally Administered Tribal Areas (FATA), Pakistan: A Case for Gender Inclusive Reforms. Journal of Area Study Centre Russia, China, Central Asia, University of Peshawar (65)

2. The Land Acquisition Act, 1894
3. KP Tenancy Act, 1950
4. The Land Record Manual
5. The Land Administration Manual
6. The Settlement Manual

Some Additional Sections under Directorate of Transition and Reforms (DTR)

A. Communication Section

Every reform, especially those of the scale of what the FATA Committee is likely to propose will require extensive and ongoing communication with the people of FATA. The communication section will ensure that regular public awareness programs are conducted throughout FATA through various mediums of communication (print & electronics) to ensure understanding and support for the reform process.

The primary stakeholders which the section will need to coordinate with include the Governor's Secretariat Public Relations Office, and the Communication/Media Cell of the FATA Secretariat.

The terms of reference for the Communication Section will include:

- To devise detailed internal and external communication strategies and action plans for the section;
- Initiate regular public awareness programs regarding reforms in FATA through various mediums of communication (print & electronics);
- Launch, maintain and regularly update the website for the Directorate;
- Publish the Directorate performance with respect to desired targets, progress and targets achieved on regular basis.
- Prepare mechanism for regular reporting and communication;
- Coordination with Media Cell FATA Secretariat and with Governor PRO for communication with respect to policy matters;
- Ensure in-time publication of various reports generated by the Directorate;
- Coordination with local, provincial and national print and electronic media offices for the visibility and public awareness;
- Prepare and disseminate press releases with approval of competent authority.

Analysis and Implementation Gaps:

From the citizen perspective and in the light of Article 19A, Constitution of Pakistan 1973 (Right to Information) this section has to play a huge role to proactively disclose the information to the public. Currently, a lot of information is either missing or the relevant departments such as Ministry of SAFRON, FATA Secretariat and even Governor House has failed to provide information regarding status of reforms.

B. Large Infrastructure Section

The terms of reference of the Large Infrastructure include:

- Prepare implementation plans for large infrastructure projects in FATA;
- Hiring experts for designing large infrastructures;
- Coordinate, integrate and accelerate implementation;
- Develop a single common FATA Infrastructure Plan that will be monitored and centrally driven;
- Suggesting monitoring mechanism for the supervision of large scale infrastructure projects in FATA.

Analysis and Implementation Gaps

The mandate of this section primarily overlaps with several offices of the FATA Secretariat, currently involved directly or indirectly in large infrastructure projects. These include the DOP / P&D Department, the Finance Department and the C&W Directorate. However, it is comprehended that most of the difficulty will be resolved if a decision in principal is taken about handing over most the civil works and particularly large infrastructure to Pakistan Army (FWO, NLC, Corps of Engineers).as currently these are already performing most of these tasks in different agencies.

C. Gender Development Section

The Gender Section is a new cross-cutting Directorate to ensure that gender inclusiveness, responsiveness and mechanisms to protect women and girls are integrated into the planning and implementation of the reforms process. The Directorate will work across the transitional entity and the FATA secretariat. As it is a new Directorate, we don't anticipate any conflict with existing entities.

The terms of reference of the Gender Development Section will include:

- Ensure all sectoral Directorates have follow a gender inclusive and gender responsive approach in line with national and international conventions and protocols while developing implementation plans;
- Ensure all hiring are gender balanced/ or with a minimum 30% quota set aside for women;
- Ensure women are hired in leadership positions and not just as secretarial staff within Directorate and corresponding new institutional mechanisms;
- Ensure sex disaggregated data generation as well as a disaggregated beneficiary ratio of women;
- Develop an overarching sexual harassment policy guideline and institutional mechanisms to address these within the Directorate as well as FATA Secretariat, and other institutions created as a result of the transition directorate. Conduct awareness raising and training sessions within Directorate and FATA Secretariat on harassment;
- Ensure that women are adequately recruited while establishing LEAs, judicial complexes, MCs, etc. as well as being equal beneficiaries in reconstruction and rehabilitation efforts;
- Ensure all official buildings contain women friendly environment and safe spaces, including separate washrooms, and resting quarters etc;

- Ensure gender specific MIS, data collection, monitoring etc. in all sub sectors of the Directorate.

Analysis and Implementation Gaps

The women living in FATA don't have any say in those affairs which regulate rather governing their lives let alone in general matters. They lead a life of virtual bondage. They are implicitly regarded as a property of their men. The customs of Swara and Vulvar are its best examples. The much-criticized custom of Swara is still a living reality in FATA. Under the practice of the profoundly-abhorred custom, girls of the killer(s) family, clan or even tribe are given as 'compensation' to settle blood feuds. Similarly, under Rewaj Ghag is another instrument used whereby a man without consent of female announce in public that such girl (by naming) is her form today and nobody can marry her or ask for hand from that day onward. The Sword of Damocles in the form of Swara continues to hang on the head of every girl of FATA.

Instead of addressing the issues related to women through comprehensive legislation or as a matter of fact even under proposed Rewaj Bill, creating a section on gender development seems to be a joke played by the reform committee. Most of the TORs of this section is about recruiting and hiring of women for this section under FATA Secretariat. However, what was needed at this point in time was to provide more protection, autonomy and representation of women as larger faction of society in tribal areas.

Some General Observations:

It seems that the whole idea of reforms revolves around saving and making the current administrative setup of FATA more strong and permanent. Analysis of the Committee report shows that there is no provision or step, which signifies that in future or in five years down the line, any of these departments would merge in KP, the step, which is, considered as significant achievement of the current reform committee. Instead of strengthening, the current setup in FATA Secretariat, which is working under Ministry of SAFRON for almost a decade with more or less similar responsibilities a huge institutional setup, in addition has been, proposed. This institutional setup under the Directorate of Transition and Reform (DTR) provides a parallel and conflicting mechanism the way currently FATA secretariat is working. Similarly, a three tiered oversight mechanism has also been, recommended to be convened at the top from Cabinet level down to Special Committee in Governor Secretariat provides the opportunity for significant political interference, to which most of our government departments are prone to and have rendered inefficient rather than be productive. All these arrangements would be operating in support of each other thus making the "status quo" stronger and in no way any of these would be working with KP Government Departments in order to streamline their roles to, eventually achieve objectives of merger. Moreover, Financial cost of having this huge institutional arrangement in terms of salaries, perks and privileges would be another burden on the already small amount of money available for FATA development.

The whole reform agenda revolves around 6 thematic areas for which an ambitious implementation mechanism backed by creation of Directorate of Transition and Reform (DTR) under FATA Secretariat and three tiered oversight mechanism by creating some committees of

experts and Government officials, has been proposed with certain deadlines. At this point, in time, creation of DTR seems to be a far cry. Prime Minister has put the whole reform agenda on hold for the time being even though it has been, approved by the Cabinet in Principle.

Tribal Area Riwaj Act, 2017²¹

While moving the reform agenda further and after much wait of almost 8 months, Minister SAFRON on May 15, 2017 introduced a Bill in National Assembly namely “Tribal Areas Rewaj Act, 2017” while repealing the existing Frontier Crimes Regulation (FCR). The Bill attracted a lot of controversy within the house as well as outside the house from wide diaspora of FATA. However, the Minister maintained the argument that during the consultations all stakeholders expressed unanimity on the Rewaj Act, terming it part of their age-old tradition. He also dispelled the impression that it would be in conflict with the existing laws of the country.

The Riwaj bill is somewhat hybrid of traditional jirga and contemporary judicial system. It focuses on introduction of legal system, which will provide for retaining the ‘Rewaj’ or traditions of the tribal people. Under the proposed Bill the judge will not be the political agent but will be a judicial officer. Some amendments to Code of Criminal Procedure (CrPC) and Code of Civil Procedure (CPC) for customization and shaping them to incorporate the traditional jirga system for adjudication in Fata have been proposed and incorporated in the Bill. Jurisdiction of the Superior Courts have been, extended to the restive tribal areas. The Bill, is designed to be, promulgated, in the protected areas of Fata in a gradual manner.

Observations:

“Riwaj” is a set of various tribal traditions under which tribal society on one hand resolve their disputes and on the other, the whole tribal system is led under the umbrella of “Riwaj”. It is, implemented, by tribal elders and religious clerics through the medium of Jirga. Riwaj as well as Jirga is still, considered to be, part of FCR.

In the “Riwaj”, tribal woman, is not allowed to go out of home freely and work anywhere. Women cannot participate in any Jirga and men make all the decisions. Tribal women are completely ignored under ‘Riwaj’ (traditions).” Moreover, SWARA, GHAG, Badal, WANI are the age old customs/riwaj prevalent in the tribal society which are again incorporated under the cover of Rewaj in the proposed legislation.

At the legal front, fate of the Rewaj Bill and 30th Constitutional Amendment is not, known, as both have been referred to NA Standing Committee on SAFRON for further deliberations where it would be scrutinized and would meet the same treatment laid down in Rules and Procedure for enacting the law. Therefore, time line for implementation is not, known now as to when all this is going to happen.

Section wise observations:

²¹ Bill Moved in NA on May 20th 2017

Section 1: This Section lays the territorial jurisdiction of the Law, which, as per sub clause 2 is, defined under First Schedule as Protected Areas only, leaving thereby a vacuum for non-protected areas where in the current form this law is not applicable.

Section 2(a): Lower limit for members of the “Council of Elders” has been defined but the maximum number is not defined. Similarly, qualification of the members is missing. It also fails to ensure participation of Women as members in “Council of Elders”.

Section 2(f): Qualification of Judge or Judicial Officer is not provided. Moreover, the appointment authority remains with Federal Government.

Section 2(j): Definition of Rewaj is not conclusive as Rewaj varies from tribe to tribe and clan to clan. It even varies from sub clan to sub clan. Moreover, Rewaj as defined has huge implication under this Bill, as there is no distinction made between Rewaj, which are against Human Rights, Child Rights and Human Dignity being members of the larger community. How this law would consolidate this for administration of justice under the proposed Act is anybody’s guess.

Section 4 & 5: Under Section 4 civil reference could be filed to Judge Appointed under this Act, However, under section 5 criminal reference could only be made to Political Agent first therefore there is ambiguity as the role of PA as defined in FCR has not inherently changed as far as criminal procedure is concerned, thus dogma is retained.

Section 14: Jurisdiction of the High Court and Supreme Court is, extended to FATA under this section. However, it has inherent problem, as it is not in conformity with the provision of Section 1 as this Act is only applicable to Protected Area defined in First Schedule, thus leaving un-protected areas from the jurisdiction of the Superior Courts. Moreover, without amending Article 247(7) of the Constitution of Pakistan 1973, jurisdiction of Superior courts cannot be, extended to FATA.

Section 16. Under this section, Federal Government has retained enormous and unprecedented powers to change the nomenclature of FATA. It can whenever want declare certain area protected and others as non-protected and vice versa.

Section 17: Following the age old practice of leaving some steps open ended this section fails to provide the time line to bound the Federal Government to notify Rules to carry out purposes and object of this Act.

Section 18: Not needed. As this section provides outright immunity to the Public Servants.

Section 19: For removal of any difficulty, time line of 2 years has been, provided. This time line is too long.

30th Constitutional Amendment Bill, 2017

Observations:

As per this amendment bill only Article 106 has been amended up to the extent that seats of KP Assembly has been increased from current 124 to 147 by adding 18 general seats, 4 women seats and 1 minority seat from FATA. However, in the absence of confirm population figures how this division of seats is made is not known. Moreover, under Article 247 these members would be able to legislate for rest of the province but not for their own people, hence sitting without any powers to legislate for their own people would be meaningless.

Recommendations

- There is no need to establish Directorate of Transition and Reforms (DTR) at FATA Secretariat. Creating parallel system, which instigates conflict within the department would hamper the performance and would not achieve any tangible results further down the line. It is recommended that FATA Secretariat should be restructured. By providing, more competent and efficient human resource with clear planning and time line to achieve clear objectives is the solution, which should be, considered.
- Special Committee under Governor KP, which includes experts, responsible Government Officials, representatives from Civil Society should come up with 10 year workable plan with clear roles and responsibilities, time lines, targets to be achieved and monitoring and evaluation, should be finalized on immediate basis.
- Ministry of SAFRON should come up with time line to secure budgetary allocation to jump start the reforms starting from next financial year. As recommended by committee efforts should be made for securing 3% from Divisible Pool starting from current financial year.
- FATA Secretariat must provide clear time line along with detail work plan to hold Local Bodies Election by the end of 2017 as committed in the reform package.
- Rewaj Bill should be Amended in the light of the observations made earlier in this study. In addition to those it is also recommended to include the provision where by parties to the dispute in any case weather civil or criminal should be given choice to either proceed with the Rewaj Act or under the provisions available to other citizens in Pakistan such as CrPC or CPC in Courts. For the latter option, Judge²² could refer the case to the nearest Courts in the settled area for further perusal.
- Sunset Clause must be added, just like the one in the Security of Pakistan Act, which ensures the life and time line till it expires. This would provide clear time line of the transition period after which merger would take effect.
- Provision in Rewaj Act to elaborate mechanism in which women participation in administration of justice is ensured must be added.
- Provisions in Rewaj Act to extend all women protection Laws to FATA to ensure women protection, with immediate effect.
- Legislation pertaining to Child Protection should be, extended to FATA with immediate effect.

²² Judge referred to under Rewaj Bill, 2017 Section 2 (f)

- It is recommended that for extending Jurisdiction of the Supreme Court and High Court, Article 247(7) should be amended.
- Amend Article 247 up to the extent that the members of the Provincial Assembly from FATA could introduce new legislation for the benefit of the people of FATA during the transition period of 5 years. This would ensure that once elected to the Assembly under the 30th Constitutional Amendment at least they could legislate for their own people.

Latest Developments and Way Forward

Fata Reforms involved four different dimensions — political mainstreaming, legal mainstreaming, and economic mainstreaming. For the purpose of this study it is imperative that implication of all these should be discussed in order to arrive at some logical way forward.

1. Political Mainstreaming

For political mainstreaming of FATA this is an important step. Under the current dispensation, political representation is somewhat not effective and failed to deliver any concrete change for the people of FATA. In Senate, eight Senators represent the whole of FATA, however, they can take part in legislative business for rest of Pakistan but cannot legislate for their own constituencies or for that matter for FATA, rendering them ineffective as far as FATA is concerned. Similarly, 12 members from FATA in National Assembly cannot legislate for FATA while sitting in National Assembly. Unless and until FATA parliamentarians are given their due right to legislate for FATA any reform agenda would not have proper representation of the people and would remain in flux. For the time being during the transition period, this vacuum could be filled through Presidential Order under which the FATA parliamentarians could take part effectively and have some level of over sight on the implementation of the reform agenda. This would on one hand ensure that time lines and required steps are strictly followed and on the other would represent the will of the people. Latter through Constitutional Amendment this arrangement could be made permanent.

Moreover, under the reforms package, for ensuring political mainstreaming of FATA, it was recommended by the committee that Local Government would be in place within 12 to 18 months and elections would be held by the end of 2017. Enactment of Local Government Regulation within three months' time was also recommended in the report. Not a single step has been taken so far neither by Ministry of SAFRON or FATA Secretariat in this regard, where as almost a year has passed since the reform Committee report has been made public, which, shows non serious attitude of the government towards achieving political mainstreaming of FATA. To jump start the process of mainstreaming it is recommended that Local Government Regulation should be enacted and elections should be held with immediate effect.

2. Legal/Administrative MS

Abolition of FCR

Unfortunately, even after 70 years of independence, FATA is still ruled through an out-dated administrative and legal system. Despite the fact that the FCR lost its validation decades ago, but for ones' utter astonishment the federal government of Pakistan has yet to come up with a rational thesis regarding FCR and FATA

smaller provinces such as KP and Balochistan who already are getting less under 7th NFC Award. Secondly, even if the agreement is reached the issue of transparency and accountability on how these funds are spent would remain there, especially when the citizen oversight, such as role of FATA parliamentarian in the whole dispensation is not visible. Evidence suggests and it is also highlighted in the committee report that funds allocated for FATA development are prone to corruption, mismanagement and often being used for other political or security reasons by state institutions, in the past.

Moreover, since the report is made public last year, no step in this regard has been taken despite the fact that recommendation was made to prepare 10 years development plan till the end of 2016, making this commitment more doubtful for the people of FATA.

The state of confusion through which the federal government has been passing on this issue is evident from the fact that in an earlier bill; Tribal Areas Rewaj Bill, 2017 as discussed above, which was tabled in the assembly on May 15, 2017 had proposed to extend the jurisdiction of Peshawar High Court to FATA. However, on October 16, 2017 moving under pressure from the people of FATA and parliamentarians, an amended version was moved by the government. However, fingers are crossed across the board when this Bill would see the light of day and citizens from FATA could bear some sort of relief to ensure protection of their fundamental rights.

Land Reforms

This situation is more aggravated as in FATA there is no Patwar system and people possess lands under the Qabza system (Owing something through force). Whenever there is a dispute between two parties over a piece of land, for resolving the dispute no law is available. In most cases, the only land records in the tribal belt are verbal agreements between tribes and this has been the situation since the sixteenth century. The earliest of land records from Fata are dated back to those times when land was distributed on the basis of whether it was captured by a certain tribe. Most of these dealings were conducted verbally on the basis of the clan or khel, the sub-clan or tapanand the plareena or hereditary land.

The division is further made on the basis that the landowner or davetar leased out lands for services to working forces of tribes which included kasabgars, the clerics or serai and others. The shamilat are the collective lands of the tribes and sub-tribes and income is shared.

There are only areas where land records exist are Kurram Agency where the properties were recorded by the British once in 1905 and then a second time in 1943. In North Waziristan, the process was initiated by the British Raj in 1898. However, the rest of the tribal belt relied on verbal tradition and the jirga to settle land disputes. Under Rewaj, the local tradition of land settlement has been given priority and the jirgas will be used to settle all disputes.

In order to ensure land rights to the people of FATA there is a strong need to develop digital mapping of the entire FATA and link it with Geographic Information System (GIS) and prepare record of property rights. Since, land revenue and records are an integral part of political and economic development of the people of FATA, it is extremely important to settle the issue as soon as possible. The process however; is not a easy one as there are several disputed territories throughout FATA, nevertheless, requires concrete steps to be taken.

3. Fiscal/Economic MS

FATA reforms committee addressed the issue of fiscal and economic mainstreaming by recommending some concrete steps, one of which was to secure allocation of 3% of the available resources in the federal divisible pool, which, comes to around (Rs. 90 billion) on annual basis for the implementation of the 10-year Development Plan. This will be in addition to the existing annual PSDP allocation of Rs.21 billion, rounding it to rupees 121 billion per annum. On papers, this seems to be pretty simple, but in reality requires a huge commitment, moreover, a lot of issues are looming around it. The foremost is that 3% reduction in federal divisible pool would mean reduction in the provincial share, which also means instigating a conflict, especially by the

smaller provinces such as KP and Balochistan who already are getting less under 7th NFC Award. Secondly, even if the agreement is reached the issue of transparency and accountability on how these funds are spent would remain there, especially when the citizen oversight, such as role of FATA parliamentarian in the whole dispensation is not visible. Evidence suggests and it is also highlighted in the committee report that funds allocated for FATA development are prone to corruption, mismanagement and often being used for other political or security reasons by state institutions, in the past.

Moreover, since the report is made public last year, no step in this regard has been taken despite the fact that recommendation was made to prepare 10 years development plan till the end of 2016, making this commitment more doubtful for the people of FATA.

Consultative Sessions

A. Consultative Session on FATA Reforms and Way Forward

20th July, 2017 – Hotel Grand, Peshawar

Participants of the Session:

Event was attended by, representatives from FATA Student Organization, FATA Youth Assembly, members from FATA based Civil Society Network, Political Party representatives, Lawyers and print and electronic media representatives.

Issue wise Discussion and Suggestions:

1. Consultations by FATA Reforms Committee:

Participants of the session said that the consultations held by FATA Reforms Committee in FATA were not authentic. They said that the committee only held session with influential persons from FATA and did not take into consideration the point of views of common people of FATA. This reflects the non-serious attitude on behalf of the committee. The opinion of common people has been neglected; hence there have been many problems in the report submitted by committee.

2. Riwaj Act:

Participants said that Parliamentarians are of the view that Riwaj Act is mandatory for merging FATA with KP. Parliamentarians think that if judiciary is directly extended to FATA, then it will create problems and authority will be misused. They also believe that without proper steps, such merger will result in the same crisis that happened in Swat's merger. Parliamentarians say that there is room for suggestions in the committee's report as it is not yet finalized.

Participants said that Riwaj Act is worst than FCR. The Jirga will have full authority to take decisions regardless of how it affects both the parties. Riwaj act will also affect all walks of life for people of FATA. Women do not have a quality life in FATA due to lack of basic human rights. Participants voiced their fear that only Riwaj Act will be implemented instead of complete merger of FATA with KP. There should be an alternative for Riwaj Act which could positively change the miserable life



of people of FATA.

3. Extending Judiciary to FATA:

Participants said that people of FATA have to come to settled areas for legal issues that they face. People from Bajaur Agency come to Mardan district, from Khyber Agency to Peshawar and from South Waziristan Agency to Tank and D.I.Khan to submit their cases to district courts. This has doubled the efforts for them. If Judiciary is extended to FATA, things will start moving towards betterment.

4. FATA and KP Merger:

Participants of the session were of the views that for merger of FATA with KP to take place, Article 246 and 247 of the Constitution of Pakistan have to be amended. Without this constitutional amendment, merger of FATA with KP holds no meaning. If the Resident of Pakistan wants, this merger can take place today with only one notice from his office. For any law to be extended to FATA, constitutional amendment is necessary for its sustainability and effectiveness.

If Government considers us stakeholders, we'll put forward our one point agenda for them to consider. It is very simple as we only want the merger to take place.

The merger of FATA is not an administrative issue; rather it is a political issue. So far, more than 200 decisions have been taken against the FCR by Pakistan's Judiciary but it is still intact. Rumors about holding referendum regarding merger are being heard. It is not about referendum, it is our right to be merged with KP. Everyone from FATA wants a merger with KP, no one wants to waste more time in referendum etc.

5. Representation in KP Assembly:



According to the report of FATA Reforms Committee, 23 elected members will represent FATA in KP Assembly. These members of KP assembly will sit in the assembly after 5 to 10 years. These representatives will be under the Governor of KP. Working under the Governor means there will be no change in the system. What is the use of representatives who cannot legislate for their people in the Assembly? This step will reinforce the idea of the administrative structure of Political Agents, only the names will changes.

6. Sustainable Programs/Role of CSOs & Students:

Participants also added that for any changes to be, introduced in FATA, it is necessary for the government to take all stakeholders on board. For merger and changes to be sustainable, Government shall consider involving the students and Civil Society Organizations of FATA.

Final Recommendations:

- **Merger of FATA with KP**
- **Timeline should be reduced, instead of 5 years, it shall be immediate.**
- **Local government bodies elections to take place in 2017**
- **Involve the people of FATA in the merger process**

B. Consultative Session on “FATA Reforms and Way Forward”

July 26, 2017 at Hill view Hotel in Islamabad

Participants of the Session:

Event was attended by representatives from Civil Society Organizations, Representatives from International Organizations, Lawyers, Representative from Ministry of Law Justice and Human Rights and Print and electronic Media.

Issue wise Discussion and Suggestions:

1. Members of Reform Committee

There was consensus among the participants that not a single member of the reform committee is from FATA. Participants were of the opinion that they worked on the pre planned agenda which in reality in no way reflect the true wishes of the citizens of FATA. They were also of the opinion that recommendations and plan provided by this committee would also meet the same fate which the earlier committees have met. The process of bringing reforms in FATA started back in late 70's and many we have seen many reports, however, and each has inherently accepted FCR as draconian law but when it comes to abolishing the same, not a single step has been taken except some cosmetic amendments. Most of the participants highlighted the issue of halting the implementation upon recommendations of the committee by the current government, despite the fact that it was principally agreed by the cabinet, as a justification to support their arguments.

2. Merger of FATA into KP

Regarding the debate on merger of FATA into KP the foremost issue brought into lime light was the current stand taken by Ministry of SAFRON which is ‘Mainstreaming’ of FATA not the ‘Merger’.

Participants were of the opinion that government has actually taken a U-turn upon its own recommendations and want to put these at back burner. One of the participants commented that this shows non serious attitude of the government. At this point role of Pakistan also came under



discussion upon which participants commented that apparently it looks like that even army seems to be in favour and supports of implementing reform in FATA. However, how long it would stay in FATA is not known. Participants also highlighted the issue that KP government so far has no role and the reform agenda has nothing to show what role KP government has to play during the transition period mentioned many times in the reform report of the committee. Most of the participants were of the opinion that FATA should be immediately merged into KP and in this regards President can do it with a simple Notification issued from his office, which he can do under the current dispensation under the Constitution of Pakistan. One of the participant raised the issue of time lines as to when this whole procedure would

start? He said that already one year has passed since this report has been made public, but unfortunately, not even a remote step has been taken so far.

3. Political Engagement Structure under the reform agenda

Highlighted during the discussion was the constitution of an apex body; Reform Implementation Committee (RIC), whose prime task is to provide political support to implement the reform agenda, upon which participants commented that not a single FATA parliamentarian is considers as member, which makes it controversial and futile. They were of the opinion if representation of FATA is not ensured at the top level how these reforms could be implemented in true letter and spirit.

4. Other mechanisms and structures recommended in the report

Participants commented that it seems that all these efforts are being made to strengthening the two institutions; Ministry of SAFRON and FATA Secretariat. They were of the opinion that all these institutional mechanisms does not in any way define steps of merger rather they are here to stay for long. Upon Governor team which comprises of technocrats and experts, participants were of the opinion that the team has been on board for last couple of months but not started working and there is no information available as to when they would start in future hence, causing unnecessary delays on implementation. However, some of the participants informed that as far as some information is concerned individuals hired in the team are competent but of no use unless they start working as per the TORs mentioned in the report.

5. Directorate of Transition and Reforms (DTR)

Participants were of the opinion that DTR is in direct conflict with the current set up in FATA Secretariat. There seems to be no boundary or clear demarcation regarding the roles and responsibilities of the DTR. This situation would create confusion among the current Directorates and departments and the ones to be created under DTR. Moreover, one of the participants also commented that functioning of DTR is such that it gives impression that it is going to stay for long

and in no way working along side KP government departments which provides some sense that they would be moving towards merger with KP in future.

6. TORs

Commenting upon TORs participants were of the opinion that committee has come up with huge agenda in support of their recommendations to reform FATA, however, not a single step has been taken to move from the current status. There was consensus among the participants that we would not see anything in near future to be happening or to move some steps forward.

7. Rewaj Bill

Discussing Rewaj Bill, all the participants seemed to be on same page. They said that there is no need to have this week and controversial legislation. It has many legal and political lacunas and more or less is same as FCR. At this point during the discussion one of the participant highlighted Court Judgments to abolish FCR from FATA which are:

- Late Supreme Court Chief Justice Alvin Robert Cornelius, said that the 1901 Frontier Crimes Regulation is “obnoxious to all recognized modern principles governing the dispensation of justice” (Sumunder vs State, PLD 1954 FC 228).
- In 1979, the Baluchistan High Court (the Shariat bench) held that the **FCR is “discriminatory and un-Islamic”**. On 29 July 2002, the Lahore High Court ruled that the Frontier Crimes Regulation had ceased to exist following the Baluchistan High Court judgment and hence, detention under the **FCR is “illegal”**.

Participants suggested that in the light of the judgements FCR should be, abolished immediately as FATA cannot be, reformed until the time this law stays enacted. No other law which, has even an iota of FCR shadow in it, is not acceptable. They were of the opinion and suggested that as for now, the committee recommendations and reforms agenda is on hold we should lobby for complete and immediate merger of FATA into KP and there would be no need or space for any kind of lame legislation when FATA is merged into KP. One of the participant commented that instead of ensuring fundamental rights mentioned under Constitution of Pakistan 1973, we keep on getting FCR like new legislations since time immemorial. Need of the hour is to ensure fundamental rights enshrined in the Constitution for the citizens of FATA if anyone wants to start reforming this area. Commenting upon Article 246 and 247, participants were of the opinion that Constitution must be amended and these provisions must be removed as no other arrangement can change the fate of FATA unless these are part of the Constitution. While discussing Jurisdiction of the Superior Courts extended in FATA, participants had divided opinion. Some were of the opinion that under the light of the Judgements of Courts there is no bar that they can extend their jurisdiction even now and some were of the opinion that it needed constitutional amendment. However, there was consensus that it should be done immediately.



Final Recommendations

The house unanimously agreed on the following:

- **Immediate Merger of FATA and KP**
- **Extension of Superior Courts to FATA**
- **Ensure Fundamental Rights to Citizens of FATA**
- **Awareness raising among people of FATA**

Annex 2

Participant List of Consultative Session - Peshawar

S NO	NAME	Designation	Organization
1	Shaukat Aziz	President	FSO
2	Irfan Afridi	CE	Awaz Development Program
3	Rahim Shah	Lawyer	High Court
4	Abdul Rahim	Lawyer	High Court
5	Rab Nawaz Khan	Member	PTI
6	Abdul Hadi	general Secretary	FYA&DA
7	Ameer Hamza	Press Secretary	CSDR
8	Ahmad	Member	MYC
9	Zeeshan Ahmad	Vice President	POHA
10	Saifullah	Member	Fata Youth Assembly
11	Asad ullah	Coordinator	CSDR
12	Arshad Khan	Member	Afridi Youth Org
13	Najeeb Ullah	General Secretary	BWO
14	Abdullah Jan	Member	MYSS
15	Islam Gul	Secretary	RPS
16	Naveed	Member	MYSS
17	Rifaqat Khan	Vice President	Shamla Welfare Org
18	Khubab Ali	Member	FYEDA
19	Imtiaz Ali	Organizer	PWO
20	Yad Wazeer	Member	PML(N)
21	Mushtaq	Member	JI
22	Arshad	General Secretary	LAIMPS
23	Zia Rehman	Member	PTI
24	Fazl-e-Malik	Researcher	Peshawar University
25	Asghar ullah	FATA Student Organization	MSC
26	Muhammad Noor	FATA Student Organization	FATA Student Organization
27	Ahmad Nazir	Member	FATA Student Organization
28	Lal Hussain	General Secretary	Afridi Development
29	M Idrees	Member	FSO
30	M Humayun	Coordinator	Fata Youth Assembly
31	Aziza Mehsood	Member	Fata Student Assembly

Annex 3

Participant List of Consultative Session - Islamabad

S #	NAME	ORGANIZATION	DESIGNATION
1	Tabish Mujahid	CPDI	Coordinator
2	Riaz-ul-Haq	CAMP	Snr. Manager Research
3	Malik Waseem	British Council	Project Manager
4	Kamran Arif	FOSIP	Legal Adviser
5	M. Imran	Mashaal Radio	Reporter
6	Imran Younis	Mashaal Radio	Cameraman
7	Khan Zeb	CIPS – NUST	PhD Scholar
8	M Anwar	CGPA	ED
9	Muddassar Alam	CGPA	GC
10	Umar Bin Tahir	PCE	Policy Advocacy Coordinator
11	Abid Khan	PILDAT	
12	Komal Khalid	CGPA	
13	Khuda Noor Naser	BBC	Reporter
14	Samreen Khan Wazir	FATA Lawyers Forum	Lawyer
15	Aftab Alam	IRADA	Consultant
16	Zeeshan Sidique	OXFAM GB	Manager
17	Maryam	CAMP	
18	Umar Sajjad	MO Law Justice & Human Rights	Lawyer
19	Sharafat Ali		Lawyer
20	Waqar Kiani	GEO News	Research Assistant
21	Komal Tariq	SRDI	Research Fellow
22	Asma Khan	The Nation	Reporter



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