



# SPECIAL REPORT

2301 Constitution Ave., NW • Washington, DC 20037 • 202.457.1700 • fax 202.429.6063

## ABOUT THE REPORT

This report concerns the evolving status of Pakistan's Federally Administered Tribal Areas, a region that has been a hotbed of militancy and insurgency since 2002. Integrating this volatile region into mainstream Pakistan is vital to Pakistan's peace and security and to overall regional stability. This report is based on in-country interviews with tribal and Pakistani government officials and research reports. The United States Institute of Peace (USIP) has been working in Pakistan on various peacebuilding initiatives.

## ABOUT THE AUTHOR

Imtiaz Ali is a writer and consultant whose work focuses on political, development, media, and security issues in Pakistan and adjoining areas. Formerly he reported for Pakistan-based and other media organizations, including the *Washington Post*, BBC, and London's *Daily Telegraph*. He was a Jennings Randolph Fellow at USIP in 2009–10.

*Imtiaz Ali*

# Mainstreaming Pakistan's Federally Administered Tribal Areas

## Reform Initiatives and Roadblocks

### Summary

- FATA—Pakistan's Federally Administered Tribal Areas—is widely considered one of the most volatile regions in the world.
- Pakistan inherited FATA's "special status" from the British colonial empire in 1947, and the region is still ruled under the British-era Frontier Crimes Regulations, which differs significantly from the legal system that applies to the rest of the country.
- In the wake of 9/11, FATA became a haven for militants of all hues and thus of major concern to the international community. The emergence of the Pakistani Taliban converted FATA into an epicenter of terrorist attacks on mainland Pakistan. Though recent Pakistani military operations have dislodged the Pakistani Taliban in most parts of FATA territories, bringing relative peace to the region, there is concern that the militants could stage a comeback once the military leaves the region.
- The consensus in Pakistan is that the only lasting solution for FATA's problems is bringing the region under the legal system and governmental authority of the rest of Pakistan. However, there is disagreement over the mode and degree of integration.
- After exploring various available options, a government-appointed committee has recommended the merger of FATA with the adjacent Pashtun-dominated Khyber Pakhtunkhwa province backed by a major reforms package, an option that appears most feasible and is also endorsed by a majority of the political parties.
- Under the proposed reforms package, the people of FATA will get basic human and legal rights under Pakistan's constitution, along with robust social and economic

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development aid to help eradicate the decades-long sense of alienation and deprivation among the FATA residents.

- Despite widespread support for the reforms package, mainstreaming FATA is expected to be a long and difficult journey, with many roadblocks to be surmounted. Nonetheless, integrating FATA into the rest of Pakistan now seems inevitable.

## Introduction

The semiautonomous tribal region of Pakistan along the Afghan border, formally known as the Federally Administered Tribal Areas (FATA), has been a flashpoint since 2001, when hundreds of militants, including al-Qaeda fighters, retreated there from the collapsing Taliban regime in Afghanistan. The presence of an enormous number of militants in this neglected and economically underdeveloped region gave birth to the indigenous Tehrik-e-Taliban Pakistan (TTP or Pakistani Taliban) movement and disrupted the centuries-old tribal traditions and power dynamics of the region. FATA shortly became a sanctuary for all types of militants, including both local Pakistani militants and those from outside Pakistan, primarily Afghans, Arabs, Uzbeks, Chechens, and Uighurs. Defusing this hotbed of unregulated militancy is of vital importance to Pakistan's peace and security, regional stability, and the global interests of both East and West.

Following military operations in North and South Waziristan agencies over the past three and a half years (beginning in the summer of 2014) and the repatriation of a large portion of the population displaced by conflict, Pakistani military officials claim to have broken the back of militancy in the tribal region. The challenge now, many experts believe, is to solidify the gains of these military operations and keep the FATA region free of a Taliban resurgence, which requires a proactive investment in the region's political, administrative, and economic infrastructure and the integration of FATA into the mainstream of Pakistan.

Former prime minister Nawaz Sharif early in 2017 approved an ambitious reform agenda for mainstreaming FATA. The plan calls for FATA to be integrated into the neighboring Khyber Pakhtunkhwa (KP) province and forwards a set of constitutional, legal, political, and socioeconomic reforms. Nawaz Sharif's successor, Prime Minister Shahid Khaqan Abbasi, has also promised to reform the FATA governance system and bring the region into parity with the rest of the country. But the challenge to any proposals for reforms in FATA—and there have been many proposals—has always been implementation. This report looks at the area's unique status within Pakistan, outlines key legal and political reform tenets, and discusses the factors that have stalled progress on reform initiatives.

## Understanding FATA

### *Administrative Organization and Demography*

Pakistan's Federally Administered Tribal Areas are situated on the country's northwestern border, along the boundary separating Pakistan and Afghanistan known as the Durand Line. The 1,500-mile-long line, drawn by the British rulers of India in 1893 and named after the British diplomat Sir Henry Mortimer Durand, divided up territory inhabited by Pashtun tribes who lived in both Afghanistan and the expanding British territory in India. With Partition of India in 1947, the Durand Line ultimately separated the newly independent state of Pakistan from neighboring Afghanistan. For Pakistan it is a recognized international border; however, Afghanistan does not formally recognize the Durand Line as its international border, arguing that it was imposed by the British on the Amir of Kabul, Abdur Rahman Khan.

FATA, at 27,224 square kilometers (about the size of the US state of Massachusetts or Maryland), is subdivided administratively into seven tribal agencies, each having a different tribal complexion and administrative headquarters: Bajaur and Mohmand agencies in the north; Khyber, Kurram, and Orakzai agencies in the center; and the North Waziristan and South Waziristan agencies in the south. FATA also includes six Frontier Regions, which are on the fringe of the tribal areas, separating them from KP province.

The tribal areas that make up FATA are inhabited almost exclusively by the Pashtuns, also known as Pakhtuns, an ethnic group living on both sides of the Durand Line in Pakistan and Afghanistan. Pashtuns also live in the neighboring KP province and in some districts of Balochistan province. More than two dozen major Pashtun tribes (with subtribes) populate FATA. Most agencies are dominated by a few major tribes. For example, Afridis and Shinwaris live in the Khyber tribal district, Wazirs and Mehsuds live in South Waziristan, and Dawars live in North Waziristan. With an estimated unemployment rate of 60 to 80 percent in the region, however, a large number of Pashtuns have migrated to the urban centers of the country to earn a living.<sup>1</sup> According to some estimates, Karachi has become the biggest Pashtun city; the Pashtun diaspora there includes scores of émigrés from various FATA agencies. Many FATA tribesmen have become quite successful Pakistani businessmen. They are especially well known for driving convoys of trucks and running the road transport businesses across the country.

The economic and, recently, the conflict-related migration of Pashtuns on a huge level has complicated census counts. According to the provisional results of Pakistan's latest census, conducted in August 2017, FATA's population is around five million people.<sup>2</sup> However, many FATA people and members of the Pashtun nationalist parties have rejected the latest census figures—which affect levels of spending and development programming in the region—and have claimed the population totals anywhere between the official figure of five million to as high as fifteen million.<sup>3</sup> Although detailed migration figures are not yet available from the new census, some analysts estimate that when FATA-origin individuals living in other parts of the country, either because of economic migration or because of forced displacement by military and police operations, are accounted for, the total number of FATA-origin Pakistanis may be between eight and ten million.<sup>4</sup>

FATA remains one of the poorest regions of Pakistan, with few prospects for residents. According to one report, more than 60 percent of the FATA population lives below the poverty line.<sup>5</sup> People in the FATA region must travel long distances to access basic health care; according to another survey, there is only one health care facility for every 4,200 people and only one doctor for every 7,800 people.<sup>6</sup> Also, the adult literacy rate in FATA is just 28 percent, which is far below the national average of 75 percent (as of 2013–14).<sup>7</sup> Net primary school enrollment for children in FATA is 52.1 percent, compared to 65 percent in mainstream Pakistan. There is a big gender gap in literacy in FATA: the literacy rate for men is 45 percent, compared to just 7.8 percent for women. Women are thus disadvantaged by lack of education as well as by the cultural and legal systems. The unemployment rate in FATA is also higher than in the rest of the country.

Life in the tribal areas is characterized by strong tribal traditions, customs, and cultural heritage. *Pashtunwali*—the code of life of the Pashtuns—still plays an important role in the day-to-day life of tribal Pashtuns.<sup>8</sup> While traditional values are honored as ideals, the contemporary behaviors in Pashtun tribal society have undergone drastic changes in the wake of the clashing extremist ideologies and violence in the region and through the erosion of traditional influence and authority among tribal elders. Younger people often feel uncomfortable in the heavily traditional context.

## ***The Colonial Legacy: Legal and Constitutional Status of FATA***

The British colonial rulers sought to control the FATA region and its people through indirect rule, and to use the tribal areas as a buffer zone against Russian expansionism in the region. Therefore, instead of expanding the administrative system of the Indian Civil Service, the British conferred a form of semiautonomy on the Pashtun tribes through the legal system known as the Frontier Crimes Regulations (FCR) and appointed political agents who collaborated with local tribal elders; together, they had unchecked power. The British relied on tribal paramilitary forces called levies<sup>9</sup> to enforce peace, rather than deploying regular military or conventional police systems in the areas, in exchange for cooperation from the tribes. If that method failed, punishment would be imposed on individuals or even entire tribes under the collective responsibility clauses of the FCR.

The FCR was aimed at controlling local tribesmen with a carrot-and-stick approach. Concessions were given to tribesmen, such as exemption from taxation and from answerability to the judiciary and police, but in return collective responsibility fell on every tribe to maintain law and order in its area. According to this clause and the arbitrary ways in which it could be administered, even the allegation of a crime committed by a tribesman could bring havoc not only for the immediate family but for the entire tribe and village.<sup>10</sup> Homes and entire villages were demolished and properties confiscated by authorities without any compensation to the poor tribesmen.<sup>11</sup> The FCR denies tribesmen the right to be dealt with in accordance with Pakistan's law and constitution, which provide for the security of person, safeguard against arrest and detention, protection against double jeopardy or self-incrimination, the inviolability of the dignity of man, the prohibition of torture for the purpose of extracting evidence, the protection of property rights, and the equality of citizens.<sup>12</sup>

Pakistan inherited this system after independence in 1947. In exchange for commitments from Pakistan's founder, Muhammad Ali Jinnah, that the state would not interfere directly in their affairs, the Pashtun tribes of FATA agreed to accession to the new state, despite opposition from some Pashtun nationalists who sought an independent Pashtun state instead. Jinnah announced the withdrawal of Pakistani forces from the FATA region and asked the tribesmen to be the defenders of the border with Afghanistan.<sup>13</sup> Pakistan continued with the separate FCR administrative system for FATA, and also continued the payment of allowances and benefits to the tribal elders they had previously received from the British.<sup>14</sup>

Legally and constitutionally, FATA is considered to be highly autonomous, operating largely outside Pakistan's constitution, governance by the defined federal and provincial governments, and the judicial and court system, which does not have jurisdiction in the agencies. The country's current and all previous constitutions have recognized the so-called special status of the tribal areas granted by the British government.

Under Pakistan's 1973 constitution, only Articles 246 and 247 deal directly with the affairs of the tribal areas.<sup>15</sup> The constitution stipulates the fundamental rights of citizens and obligates the judiciary to guard and protect these rights from violation. However, all these constitutional provisions related to fundamental rights and their protections apply only to the people of mainstream Pakistan; FATA people are exempted from them. Despite being citizens under the constitution of Pakistan, FATA tribesmen are not entitled to the basic fundamental rights enjoyed by their fellow citizens in mainstream Pakistan.<sup>16</sup>

In Pakistan's parliament, twelve assembly members represent tribal people in the National Assembly and eight more are indirectly elected to the Senate of Pakistan. These tribal members of parliament can participate in all parliamentary proceedings and vote on any issue regarding any part of Pakistan except their home region, where they have no input into the administration.<sup>17</sup> Furthermore, the laws and acts of the national parliament do not

apply to FATA unless the president of Pakistan specifically calls for their extension to the tribal areas.

### ***Administration and Governance***

The president of Pakistan is the chief executive for the tribal areas, which are administered through his agent, the governor of KP province. The provincial governors in Pakistan hold nominally constitutional positions but have limited executive authority except during emergencies. However, the governorship of KP province is a special case and carries immense importance because of the additional duties of looking after the strategic FATA region. For this reason, the selection of the KP governor is always considered to be a critical appointment involving not only the president but also the military establishment.<sup>18</sup>

In 2002, the military government of former president Pervez Musharraf established a new FATA Secretariat in Peshawar that functions as the headquarters for all tribal affairs. It is headed by a senior civil servant with the title of additional chief secretary. The additional chief secretary is assisted by four secretaries and some directors, who supervise various divisions of the FATA Secretariat. Political agents (PAs, a formal position) serve as the chief administrators of each tribal agency, assisted by assistant political agents and other staffers.<sup>19</sup> These agents are mid-career civil servants from the elite Pakistan Administrative Services or the Provincial Management Services.

The PA is the “be-all and end-all” in the tribal agency, wielding magisterial powers to arrest people without adhering to the usual standards of evidence and to try them at his convenience. The PA also holds executive, judicial, and revenue powers.<sup>20</sup> The PA’s verdict cannot be challenged even by the largely toothless FATA Tribunal.<sup>21</sup> Law and order and policing functions are performed by the tribal levies under the command and control of the PA. The lack of accountability in the FATA administrative system has been a source of corruption; local tribal members and journalists report widespread kickbacks, bribes, and commissions within the FATA Secretariat.<sup>22</sup>

### ***Tribal Leadership***

The FCR functions within the traditional *rewaj* (tribal customs and traditions), the *jirga* (council of elders for resolving disputes), and the Pashtunwali—the unwritten code that serves as the basis of the tribal Pashtuns’ collective behavior and way of life. The PA exercises his authority with the help of tribal elders, locally known as *masharan* or *malikan* (singular: *malik*). Tribal elders are the main actors in the jirga system of tribal councils, resolving disputes and deciding other important matters. Tribal elders receive their status through internal selection, mostly on a hereditary basis, and the law of primogeniture also applies.<sup>23</sup> However, the official status, privileges, and benefits conferred by the PAs can also be withdrawn when elders fail to implement government directives.

The jirga system is a decades-old conflict resolution mechanism in the tribal areas that functions as a customary judicial institution. Though youth can also attend jirgas, it is only the elders who decide the dispute or adjudicate important matters. In a fair and free jirga, most decisions are based on the consensus of the jirga members in light of local traditions. Often Islamic sharia is also invoked in such decisions.<sup>24</sup> Cases are tried and rewards and punishments assigned to parties involved in a dispute. The role of the jirga is not limited to deciding minor disputes between individuals; a jirga can also be called to resolve long-standing enmities, major conflicts between families, and intratribal feuds. If jirga decisions are violated, the perpetrators may face anything from minor punishment to severe consequences such as the torching of houses or confiscation of property.<sup>25</sup>

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Tribal Pashtuns often take pride in the jirga system and consider it a built-in conflict resolution mechanism in their society. They also consider it better and quicker than Pakistan's judicial system, where even trivial cases take years to be decided. Many Pashtun intellectuals and Western scholars also hailed it for a long time as an indigenous conflict resolution and peacebuilding institution.<sup>26</sup> However, a large number of educated tribesmen have become increasingly critical of the jirga system, pointing out that such traditional methods for dispute resolution are not compatible with modern methods of dispensing justice, which require not only a free and fair judicial system but also legally trained, neutral arbitrators.<sup>27</sup> Based on my interactions with FATA youth and on the report of the FATA reform committee, many youth complain that jirga decisions are not fair and are mostly influenced by the stronger party in a dispute.<sup>28</sup>

The jirga system has also come under criticism for its wholly male composition, with no representation of women. Women have been the prime victims of patriarchal tribal traditions. For example, the tradition of *swara* treats women as a tool for dispute settlement between two families or tribes. Even minor girls are married to older men as a means of resolving a long-standing dispute or as compensation for loss of life. Honor killing is another inhumane crime against women. Since women are not allowed to take part in the jirga, they cannot fight or defend themselves against charges in a traditional tribal jirga, and mostly they are punished.

### ***Security Threats***

Some analysts believe that the role of tribal elders in FATA started weakening during the 1980s and the anti-Soviet jihad in Afghanistan, as President Muhammad Zia-ul-Haq's policies enhanced the position of religious parties and mullahs (clergy) in tribal society. With foreign funds flowing into the anti-Soviet Afghan jihad, a large number of fighters from Muslim countries emigrated to Pakistan and took up residence in Peshawar and parts of the FATA region close to the Afghan border, which left a huge and lasting impact on the local society.<sup>29</sup> People from the tribal areas, particularly those from the religious seminaries, also joined the Afghan jihad.<sup>30</sup> Though many of the tribal elders sympathized with the mujahideen (holy warriors) during the Afghan jihad in their rhetoric, the overwhelming majority remained more interested in holding on to their powers and privileges than in undertaking jihadi activities themselves.<sup>31</sup>

However, the events of September 11, 2001, and the subsequent US invasion of Afghanistan accelerated the process of change in the tribal areas. The 2002 general election was the first time that an alliance of religious parties, the Muttahida Majlis-e-Amal, won a sizable victory in the national elections from the northwest. The alliance was formed after 9/11 and campaigned heavily on resisting the presence of US troops across the border. Out of twelve seats in the National Assembly from the FATA region, seven were won by candidates of the two main parties of the alliance, the Jamiat Ulema-e-Islam-Fazl (JUI-F) and Jamaat-e-Islami.<sup>32</sup> Previously the seven tribal agencies had always been represented by non-religious tradition tribal elders since political parties were not allowed to take part in elections. Only wealthy and influential tribal elders could win a place in parliament; indeed, before the introduction of the adult franchise in 1996, only tribal elders could vote.

After 2001 the FATA region became a sanctuary for hundreds of al-Qaeda-linked terrorists who fled Afghanistan to the mountainous tribal areas next door in Pakistan after the United States launched a war against the Taliban regime in the wake of the 9/11 attacks.<sup>33</sup> Pakistan initially responded by signing peace deals with local militants, but none of them lasted long enough to guarantee a durable peace in the region.<sup>34</sup> The militants took advantage of the situation and in December 2007 formalized their organizational structure as the

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Tehrik-e-Taliban Pakistan, establishing a central leader or ameer, appointing a spokesman, and forming different chapters in the region. The TTP subsequently launched a full-fledged war against the Pakistani state and carried out dozens of suicide attacks across the country, with massive casualties. Government figures often put the number of Pakistani dead at fifty thousand to eighty thousand, including civilians, members of the security forces, and militants, since the Taliban launched a war against the Pakistani state in 2004.<sup>35</sup>

While the Pakistan Army and Air Force conducted dozens of local military operations in much of FATA, the military leadership, which felt the army was already overstretched by so many engagements, was reluctant to go after the main hubs and sanctuaries of militants in the North Waziristan Tribal Agency, which would have required opening a new fighting front, despite domestic and international pressure to do so. According to the then military spokesman General Athar Abbas, the army's reluctance to go after militants in North Waziristan strengthened extremists, who seized the opportunity to increase their numbers and become well equipped. The military's temporizing exacted a heavy cost from the country, the public, the government, and the armed forces, General Abbas said.<sup>36</sup>

In June 2014 the Pakistan Armed Forces launched the joint military offensive Zarb-e-Azb (Sharp and Cutting Strike) against various militant groups hiding in North Waziristan sanctuaries. Public support and the backing of all the political parties were reinforced in the wake of the gruesome December 2014 attack by the TTP on the Army Public School Peshawar, which left 132 students and nine staff members dead and more than a hundred seriously injured. Days after the attack on the school, Pakistan announced an ambitious counterterrorism strategy known as the National Action Plan,<sup>37</sup> which also included commitments for the integration of FATA. The Pakistan Army now claims that it has cleared major areas of the FATA region of armed militant groups. The FATA Research Center, an Islamabad-based think tank, reported a 25 percent decrease in violent incidents and a 60 percent decrease in total number of casualties in 2016 compared to the previous year's figures.<sup>38</sup> While there has been a decrease in terrorist attacks in FATA and the rest of the country, FATA residents and outside experts believe that Pakistan still has a long way to go to claim a victory against the militants.

## The Long Road to Reform

Many attempts have been made to reform the FATA administration and the laws governing the region. In a 1954 ruling, Supreme Court Chief Justice Alvin Robert Cornelius described the FCR as "obnoxious to all recognized modern principles governing the dispensation of justice."<sup>39</sup> Many committees were established in the past that came up with good recommendations. However, no sustained efforts were made to implement those recommendations and effect a real change in the colonial governance system.

The FCR has in fact been amended on eleven different occasions so far.<sup>40</sup> Universal adult franchise was introduced in 1996–97, giving FATA residents the right to vote. Earlier, only privileged tribal elders had the right to vote in the general elections. The extension of the Political Parties' Act in 2011 was another significant step that gave FATA people an opportunity to engage in mainstream party politics as the rest of the country did.

Amendments approved by former president Asif Ali Zardari in 2011 also sought to drastically ameliorate the collective responsibility clause, establish a FATA tribunal to review and revise decisions under the FCR, and provide additional protections for women and children under sixteen. While some of these amendments were partially implemented, others were not, including the one related to the harshest clause of collective responsibility.

The current debate over FATA reform was triggered by an unprecedented move in September 2015 by the FATA members of parliament, who unanimously called on the government to

repeal the FCR and merge the tribal areas with the adjacent KP province. This was the first time all FATA MPs had shown such unanimity in pushing for reform of FATA governance and the agencies' integration with KP.<sup>41</sup>

In response to this extraordinary action by the FATA MPs, then prime minister Nawaz Sharif formed a special six-member FATA Reforms Committee. Headed by Sartaj Aziz, adviser to the prime minister on foreign affairs, the committee was tasked with proposing necessary reforms, identifying viable options for the future of the FATA region, and coming up with substantive recommendations and a roadmap for implementing changes in the tribal region.

The formation of the FATA Reforms Committee was strongly protested by many segments of the tribal society because no member of the committee came from FATA.<sup>42</sup> Critics charged that the committee members had no knowledge of the problems and struggles of the common tribesmen and were not familiar with the traditional lifeways and customs of the Pash-tuns.<sup>43</sup> However, government officials in background interviews defended the formation of the committee, pointing out that almost all tribal elders and FATA MPs had previously staked out their positions on issues related to the future of FATA and probably would not be able to join a clear, actionable consensus.<sup>44</sup> Hence the prime minister had deliberately omitted persons from the tribal areas in composing the committee so that it would be "neutral" and able to make unbiased decisions on various issues affecting FATA.

### ***Reform Options***

The committee took eight months to visit tribal agencies, meet with tribal elders and other relevant people, and prepare recommendations and a roadmap for determining the future of FATA. Four major options identified by the committee were thoroughly explored in its report: (1) FATA should be merged with the adjacent KP province, (2) FATA should become a full-fledged separate province in its own right, (3) FATA should get a new autonomy arrangement with an elected council modeled on the Gilgit-Baltistan Council (the quasi-autonomy proposition), and (4) FATA should remain as it was for the time being, with minor reforms to the FCR laws.<sup>45</sup>

Sweeping changes would be mandated under some of these proposals. A separate provincial status for FATA would entail a separate provincial administrative setup, including installation of the region's own governor, chief minister, legislative body, cabinet, and a fully independent and authorized secretariat to focus on tribal affairs and the new province's own taxation system. Under the quasi-autonomy proposal, the FATA political administration would work under the autonomous council while making independent decisions in various sectors, such as health, education, industry, and job creation.<sup>46</sup> Some proponents saw the third option, quasi-autonomous status, as a middle way between the two opposing options of a merger with KP and separate provincial status for FATA. Under this option the special status for five years would give FATA people time to decide later whether to become a separate province or integrate with an existing province.<sup>47</sup>

### ***The Debate over Reform***

Though apparently all four options were considered at the outset, the discussion soon focused on just two choices: whether FATA should be a separate province or whether it should instead be integrated with the KP province. FATA residents themselves were divided into two camps, one supporting the idea of a separate FATA province and the other supporting a merger with KP. Both sides have since been busy mustering support and organizing rallies and movements in support of their respective preference for the future of the

FATA region. Both sides have claimed that the majority of tribesmen are in their camp.<sup>48</sup> A December 2016 survey by an Islamabad-based independent research center showed that 74 percent of tribesmen broadly support FATA's merger with KP, while a clear majority of 54 percent support that objective unequivocally.<sup>49</sup>

At the local level, FATA's seven tribal agencies are often more integrated with adjacent districts of KP than they are with the other FATA agencies. A significant number of FATA tribesmen have already settled in various parts of KP, and many FATA students study in KP universities, which have special quotas for students from the tribal areas. Both secondary and higher-level schools in FATA and degree-granting and postgraduate colleges are affiliated with the boards and universities of KP.<sup>50</sup>

Support for a merger with KP received the backing of many major mainstream and regional political parties, including the Pashtun nationalist Awami National Party, the Pakistan People's Party, and the ruling Pakistan Muslim League (Nawaz).<sup>51</sup> In December 2016 the KP Provincial Assembly, where the Pakistan Tehrik-e Insaaf party rules in a coalition with the Islamist party Jammāt-e-Islami, passed a unanimous resolution favoring the FATA merger.<sup>52</sup> Some of these parties have a presence in FATA and hope that if it is merged with KP, they will be able to strengthen their vote share in the KP assembly and form a government in KP.

However, at least two parties have opposed the merger: the religious party JUI-F and the Pashtun nationalist party, the Pakhtunkhwa Milli Awami Party (PkMAP), whose share of the electorate is mostly based in Pashtun-populated areas of Balochistan province. The JUI-F too has a formidable presence in FATA and fears losing its electoral support in the event of a merger. The PkMAP does not have a significant presence in FATA and risks losing support to the other Pashtun nationalist party, the Awami National Party, which has a strong support base in KP and will further strengthen its support across the border region with the merger.

The Balochistan-based PkMAP has been calling for a referendum to ascertain the opinion of the FATA people on whether they want to have a separate province or merge with KP.<sup>53</sup> Within FATA, opposition to the merger is mainly led by a group of traditional tribal elders from all tribal areas, many with stakes in the current system, who operate under the umbrella of the FATA Grand Alliance, a consortium of tribal elders from all tribal agencies.

Opponents of the merger argue that FATA needs special attention and that only the status of a separate province—with its own provincial administration, political institutions, funding, machinery, personnel, and policy—can ensure that kind of attention. They believe that a FATA province would be able to get its own provincial share of funds from the federal government and that this would not only bring an immediate end to the sense of deprivation among the FATA people but would also help resolve problems of the FATA region in the long run. For them, a small administrative unit with effective coordination at the grassroots level looks like a better option than merging with another big province.<sup>54</sup> Many opponents of the merger fear that FATA will be marginalized as part of a new, larger province.<sup>55</sup>

Some elements of the bureaucracy may also be against the FATA merger with KP because of their vested interests in the status quo, such as the PA having executive, judicial, and financial power and accountability to no one.<sup>56</sup> The military establishment, which carries considerable weight in strategic decision-making in the FATA region, reportedly supports the mainstreaming of FATA.<sup>57</sup> In August 2016 the military's media wing, Inter-Services Public Relations, released a statement by then army chief General Sharif expressing concern and dismay over the slow process of FATA reforms.<sup>58</sup> His successor, General Qamar Javed Bajwa, has also called for the mainstreaming of FATA and has given his assurances that the army will support the FATA reform process.<sup>59</sup>

***The reforms aim to provide constitutional protection to the FATA people by extending the formal justice system, introducing modern policing, establishing local government, and starting a full range of activities for economic and social development.***

## **The Government's Reform Plan**

After months of deliberation, former prime minister Nawaz Sharif's government made a landmark political decision in early March 2017, approving a series of reforms that are to culminate in the merger of FATA with the neighboring KP province. The official reforms committee ruled out the possibility of a FATA province on the grounds of questionable feasibility, lack of revenue, and poor sustainability.<sup>60</sup> The committee said in its report that the advantages of integrating FATA with KP are far greater than the disadvantages.<sup>61</sup>

The proposed reforms package brings the tribal areas into parity with other parts of the country through parallel and concurrent political, judicial, administrative, security, and economic reforms. The reforms aim to provide constitutional protection to the FATA people by extending the formal justice system, introducing modern policing, establishing local government, and starting a full range of activities for economic and social development.<sup>62</sup> The recommendations also call for the repatriation of internally displaced persons and reconstruction of the war-torn areas due to military operations by the end of 2018.

### ***Political and Administrative Changes***

The merger of FATA with KP would bring the tribal areas under the control of the provincial government of the neighboring KP province. The government's reform plan sets a five-year timeline for the legal and administrative integration and synchronization of various departments of FATA with KP. The territory of FATA will get new seats and representation in the KP Provincial Assembly and will elect its provincial representatives in the 2018 general elections, along with its current representation in the National Assembly.<sup>63</sup> KP currently has forty-three seats in the National Assembly, so adding the twelve FATA seats will increase its representation to fifty-five out of 272 directly elected seats in the National Assembly. However, FATA will lose its distinct Senate members and be represented instead by Senate members whose seats are designated for KP and who are responsible for the larger, merged province. With the merger, the number of KP Provincial Assembly members will also increase, after new constituencies are drawn based on the 2017 national census.

Local party-based elections will also be held in FATA as part of the reform process under the new FATA Local Government Regulations. This will aid in the devolvement of power to the grassroots level, which in the long run will not only empower FATA people but also help in establishing the full authority of the state and contribute to the effective implementation of the reforms.

As part of the merger, the administrative units of KP would change as a result of the drawing of new districts and subdivisions. Currently there are twenty-six districts in KP. According to officials, initially the seven tribal agencies could be converted into new districts of KP. However, the boundaries may be redrawn in the future, in part because of the low population density and in part for more effective administration and better governance.<sup>64</sup>

The FATA administration is already heavily dependent on the KP government: currently, about fifty-two thousand employees of the KP government work in various FATA departments. Similarly, the FATA Secretariat, which is considered to be the headquarters of FATA affairs, has around seven hundred employees who also belong to the provincial service cadre.<sup>65</sup> FATA people in various agencies also rely on the KP government machinery for numerous administrative tasks. Officials say that in some crucial sectors, such as education and health care, a merger will entail little more than synchronization because the KP government already provides the workforce.<sup>66</sup> However, synchronization will not be easy if the FATA tribal agencies are not brought into parity with the districts of KP.

The integration of FATA into KP has the potential to shift the political balance of power in the province. While most of the KP population is Pashtun, other, smaller ethnic groups are also represented in the province. The Hindko-speaking people of Hazara division (no relation to the Hazara ethnic group of neighboring Afghanistan) have previously sought the formation of a separate province and greater autonomy, and may issue a stronger call for the creation of a Hazara province.

### ***Legal Changes***

In theory, FATA's merger should also mean that the FCR will become null and void and the country's judicial system and regular court system will be extended to apply to FATA. However, it will be necessary to amend Article 247 of the constitution to extend the jurisdiction of Pakistan's Supreme Court and high courts and grant full citizenship and fundamental rights to FATA people.<sup>67</sup>

Historically, the traditional jirga system exists in the FATA region to resolve disputes and punish individual crimes in accordance with the local *rewaj*, the set of unwritten codes, customs, and traditions of the tribal areas. Changes to established tribal methods of resolving disputes are also part of the legal changes. However, to allay concerns of traditionalist tribal elders, the government reforms committee initially suggested that some elements of the jirga system as it operated under the FCR should be continued under the provisions of a new *Rewaj Act*. This move turned out to be the most contentious issue in the reform process.<sup>68</sup> Many women from the FATA region have expressed their concern that the new act will further marginalize them in the male-dominated tribal society.<sup>69</sup> According to media reports, the government has decided to withdraw this act because of widespread opposition to it.<sup>70</sup>

Once the merger is complete, responsibility for law and order in FATA should theoretically fall on the KP provincial police. However, it appears that the government may still use the existing paramilitary tribal levies forces as a means of maintaining law and order for some time. Under the proposed reforms, around twenty thousand additional levies personnel will be recruited, and new training programs and upgraded equipment will be provided. The formal police system is to be introduced later. In addition to levies, the capacity of the Frontier Corps, a border security force, would be increased, and new wings of the corps may be created for the efficient management of the Durand Line border with Afghanistan.

### **Development Plans**

In light of Pakistan's current economic condition, a merger seems to be a far more cost-effective option than making FATA a separate province or granting it special status on the model of Gilgit-Baltistan. Currently, FATA lacks any significant source of revenue generation that could sustain it as a province. As part of the reforms package the government has proposed a ten-year socioeconomic development plan for the area, to be handled by a special committee under the KP governor.<sup>71</sup> Some of the major areas of focus would include industrial development, minerals development, vocational training, irrigation projects, and integrated health and education projects. The current quota for FATA students in the educational institutions of other provinces would be increased and held steady for ten years after integration with KP. It is also proposed that around 20 percent of the socioeconomic fund be channeled through the local bodies system, the district-level governance system.

The National Finance Commission, which sets revenue-sharing formulas between the federal government and the provinces, would be requested to consider a special annual allocation of 3 percent of the gross federal division pool for the development plan. However,

there are reports that the allocation of 3 percent of the federal divisible pool for FATA development would be a sticking point, and the central government and other provinces may not agree to allocate such an amount.<sup>72</sup> While many officials have expressed optimism that KP is capable of integrating FATA without assistance, it remains the case that KP itself has been hard-hit by terrorism in the past decade. The province would need generous financial help from the center and other provinces for a successful merger.<sup>73</sup>

There is already a special job quota for FATA residents, which the government has hinted will be retained for another ten years. However, many beneficiaries of the current system have moved to other urban centers and have only tenuous connections to their home area. This has been particularly the case in the most sought-after civil service competitive examinations, where mostly the tribal candidates get positions through the FATA quota, even though their families have been living in settled areas outside FATA for decades.<sup>74</sup>

## The Way Forward

Since the announcement of the reforms package in March 2017 by former prime minister Nawaz Sharif, the process has been stalled. It has been reported that the merger issue was presented in a cabinet meeting for discussion and approval but was dropped at the last minute. Afterward, Sharif showed little interest in speeding up the process. His government delayed implementation in part because of the opposition of two allied political parties, the JUI-F and the PkMAP, which have opposed FATA's merger with KP.<sup>75</sup>

Sharif's successor, Prime Minister Shahid Khaqan Abbasi, has also promised to move ahead with the reforms, saying that "change in FATA is a must and the status quo must end."<sup>76</sup> In the short time since Abbasi became prime minister, in August 2017, some steps toward integrating FATA have been taken. First, in a major step forward, the government decided to put in place an administrative mechanism headed by a chief operating officer to oversee the reform process and fast-track the mainstreaming of the region.<sup>77</sup> Though no chief operation officer has been appointed yet, there are rumors the appointment may go to a serving military officer, which would give the military more power in tribal affairs.<sup>78</sup> However, officials have refuted such media reports, and it is likely that the government will instead appoint a retired senior civilian bureaucrat to the position.<sup>79</sup>

Second, the National Assembly in January 2018 passed a bill to extend the jurisdiction of the Supreme Court and Peshawar High Court to FATA, a first attempt at bringing FATA under the umbrella of the national judiciary.<sup>80</sup>

Third, the government decided to withdraw the controversial Rewaj Act.<sup>81</sup> The act was supposed to represent a compromise between the interests of traditionalists and reformers, as it allowed tribal people to be ruled by their own tribal ethos.

## Implementing FATA Reforms

Pakistan needs a holistic and multipronged approach to the security and political challenges posed by FATA. Mainstream Pakistan must restore the trust of the FATA people and must be willing to make some sacrifices for the people of FATA as fellow Pakistanis. Unfortunately, for the overwhelming majority of Pakistanis, the tribal areas are portrayed as a medieval, even a primitive culture. Mainstream Pakistan needs to know that while thousands of people across the country have been killed in acts of terrorism, it is the FATA tribesmen who have been on the front line in the war on terror and the chief victims of this protracted conflict.<sup>82</sup>

A primary concern, as with all previous FATA reform efforts, is a lack of implementation. Many committees and task forces have been formed and have produced recommendations quite similar to those developed by the latest FATA Reforms Committee. The issue has always been implementation.

Yet another important question mark about the FATA reforms concerns the role of the military. The FATA region has long been used by the military establishment for strategic objectives, which may explain why the army initially had reservations about mainstreaming FATA.<sup>83</sup> However, the military is now publicly supporting the reform process.

And with the army's public support for the reform process, it is now up to the political leadership to move forward promptly and wisely with implementing reforms. The current Abbasi government and its allies have a great opportunity because of broad support on the issue of FATA. There will be hurdles to overcome along the way. However, the government must not surrender to the vested interests of groups that wish to derail the process. The government should move ahead with a plan that the majority of Pakistanis endorse and that realistically can be implemented with available resources.

The government also needs to take a sober look at its own role. It needs to understand that providing justice to the masses is not only a matter of state responsibility, it is also part of the state's writ. The state needs to stop appeasing tribal chieftains seeking a continuation of traditions that eviscerate human rights. Instead, the state needs to strengthen the modern legal framework for dispute settlement and apply federal law uniformly across the country without discrimination.

Specific groups whose rights have been routinely violated in the absence of an effective modern system of laws include journalists and women. Many journalists working in FATA have been killed, beaten, or intimidated, and the threats have come not only from the Taliban but also from the Pakistan military establishment and the civilian political administration in the tribal agencies. For the successful implementation of the FATA reforms, including creating awareness among the FATA people about their legal and political rights, insisting on grassroots-level accountability of officials and keeping an eye on public expenditures in the tribal areas, a free and impartial press must be able to function. In this regard, the government must not only include media freedom in the reforms package, it must also take measures to ensure the safety and security of tribal journalists.

Similarly, the government must ensure the participation of women in the reform process. Women constitute more than half of the total FATA population. However, they have been assigned a subservient role in tribal society, partly because of local traditions but also because of the indifference shown by successive governments toward all issues in political, economic, and social spheres affecting the FATA people in general and women in particular.<sup>84</sup> As part of a successful reforms package, not only should seats be reserved for women in the National and Provincial Assemblies, the government should also take solid steps to ensure the participation of women in the electoral process.

Finally, government cannot implement all these reforms on its own. Responsibility for implementation also falls to the FATA people and tribal elders, many of whom still cling to older traditions. They need to understand that too many disruptive things have happened just in the past decade that stand in the way of continuing past ways. That is not realistically possible, nor is it any longer an aspiration of the overwhelming majority of the tribespeople. The preservation of an older system at the expense of modern governance in the twenty-first century harms FATA and its people. Cultural relativism aside, the old guard of the tribal society needs to give space and role to the new guard, the tribal youth, in day-to-day affairs. The tribal elders must look to the future for the sake of their own coming generations. Most tribal young people are not comfortable with the older traditions. Instead

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of forcing them to conform to a tribal ethos, it is better to give them space in the tribal society and a pathway into modern society.

Fed up with the state of affairs in their home region, youth from FATA and other Pashtun areas are struggling for their rights in a new wave of activism, which should serve as a wake-up call to both the tribal elders and the Pakistani elite. As an example, thousands of FATA residents staged a huge protest in Islamabad in early February 2018 that lasted more than a week. The protest, led mostly by FATA youth, was triggered by the killing of a FATA-origin resident in Karachi in a fictitious encounter made up by a policeman. Some analysts termed the protest the awakening of Pashtuns to their rights; others called it “Pakistan’s FATA Spring.”<sup>85</sup>

### ***Security Challenges***

For more than a decade, the tribesmen of FATA have been boxed in on three sides—by Taliban militants (both local and foreign), the Pakistan military, and US drone strikes. Hundreds of thousands have been displaced by fighting. Already poor, they have become poorer. Illiteracy was already prevalent, and militancy and military operations have further deprived FATA’s children of an education. An entire generation of children has grown up in makeshift camps as a result of prolonged conflict in their hometowns and villages, and thousands of families have lost their sources of livelihood.

Reforms in FATA will require the effective implementation of peace and security measures. It is good that Pakistani military forces have pushed the Taliban out of the tribal areas, but coordinated military efforts and public support are necessary to prevent the militants from regrouping and retaking ground in the border region. Civilian security agencies must ultimately assume responsibility for upholding general law and order in FATA. The government plans to recruit twenty thousand local residents to join the paramilitary forces for this purpose. While the proposal seems commendable in the short term, additional measures are needed to create a permanent employment structure and train security personnel in FATA. The first task would be to make the transition from the traditional tribal system of levies to a modern law-enforcement system. The existing tribal system for maintaining law and order must be absorbed into a formal police system.

### **Economic Development Priorities: Recommendations**

The FATA people deserve peace, security, and prosperity for themselves and their coming generations. Integrating the tribal areas into mainstream Pakistan and expanding the benefits of economic development, including creating job opportunities and easy access to public education and health care facilities, would be the best means of achieving these goals. An economic uplift program to repair the damage from conflict and reduce poverty in the region is crucial. Something akin to a domestic Pakistani version of the famous Marshall Plan will be needed. Pakistan has to follow that kind of approach. Money allocated to FATA from the Pakistani exchequer or by foreign governments and donor agencies will also need vigilant audit and accountability, with auditors granted unrestricted access to the area for monitoring and oversight.

Some priorities for development initiatives include the following:

- Development reforms should focus on creating job opportunities for FATA residents. In particular, the development of industry would be an important step toward creating jobs for the tribal youth. The FATA people have demonstrated success in trade and transportation; this capacity could be augmented by providing entrepreneurship training and more business opportunities.

- Since FATA is basically a rural tribal society with just a few small towns serving as the headquarters of each tribal agency, efforts should be made to develop urban centers to function as hubs for economic activities, ultimately offering all the basic civic amenities and services near the tribespeople, including hospitals, colleges and universities for boys and girls, commercial centers, bus terminals, and so forth.
- FATA lacks communications and transportation infrastructure to interconnect its far-flung areas with each other. There is no single highway linking all seven tribal districts. Therefore, communications networks should be improved to connect all parts of FATA with each other and the rest of the country.
- Geological surveys have identified reserves of such economically valuable minerals as copper, coal, limestone, chromite, lead, barite, soapstone, gypsum, marble, dolomite, emerald, and manganese in many parts of FATA.<sup>86</sup> These sources of useful minerals have not been properly explored, in part because of the government's disregard of the region and in part because of ongoing violence and militancy. These natural resources can be exploited for the betterment of the region and its people.
- Some parts of FATA could be developed into agricultural zones. In Waziristan, for example, pine nuts are the main source of income for thousands of families, and this market, if properly developed, could play a greater role in the local economy.
- The government should adopt stricter measures in filling job quotas for the FATA people in governmental and semigovernmental organizations so that only those candidates who are reliably living inside FATA are considered.

## Regional Implications of Reforms

Pakistan's tribal areas are not only key to the country's peace and stability, they are also vital to US interests in the region and, more broadly, the interests of other regional powers, East and West. In addition to the United States and its Western allies, China has expressed deep concern over the threat emerging from FATA as a result of militant outfits seeking safe haven there. China has also conveyed its apprehensions over the presence and hiding of Chinese Uighur militants in the FATA region.<sup>87</sup> China's "deep friendship" with Pakistan is mostly connected to its own economic interests and its economic stake in the country, which is growing through the billion-dollar China-Pakistan Economic Corridor project. However, the materialization of such an economic route is highly dependent on peace and security.

In light of Pakistan's historically acrimonious relations with Afghanistan and past concerns over the issue of "Pashtunistan" (a Pashtun land combining Pakistan and Afghanistan Pashtun areas), the anticipated FATA merger with KP is expected to temper such fears in the minds of Pakistan's strategic thinkers because it will integrate the disputed border into Pakistan's formal legal and political system. "The merger should also settle the issue of the Durand Line once and for all. It is a landmark achievement that will end terror through development," a security official has been quoted as saying.<sup>88</sup> Perhaps that is why the military establishment seems to be backing both the reforms process and the merger of FATA with KP.<sup>89</sup> Moreover, economic activity in FATA can contribute to bilateral and legal trade with Afghan cities across the border. And increased trade activity may put an end to suspicions and conflicts between the two countries and lead to stability and economic prosperity in the region.

Above all, FATA is Pakistan's problem, and Pakistan has to solve it for itself. Outsiders, especially the United States and its allies, cannot solve this issue. Outsiders can be helpful,

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but their efforts are unlikely to be productive unless Pakistan makes tough decisions and begins solid implementation of steps to mainstream FATA.

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