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Extending Constitutional Rights to Pakistan's Tribal Areas

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Supporters of the FATA youth jirga celebrate the merger of Khyber Pakhtunkhwa Province and the Federally Administered Tribal Areas in May 2018. (Photo by Bilawal Arbab/EPA-EFE/Shutterstock)

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Summary

- The inability to access formal justice has long been a driver of conflict in Pakistan's tribal communities. The merger of the former Federally Administered Tribal Areas into Pakistan's formal judicial system in 2018–19 has the potential to promote both justice and peace.
- Recent research suggests that the reform process in what are now known as the Newly Merged Districts (NMDs) of Khyber Pakhtunkhwa Province has created challenges in terms of the capacity of various justice sector institutions.
- Even though informal jirgas have been declared unconstitutional by the Supreme Court, they remain an integral (but informal) part of the justice system, providing speedy justice that resonates with local values.
- However, case files from courts established in the NMDs indicate that most litigants now enjoy much greater protection of their rights and civil liberties.
- Women's access to justice has increased dramatically, but sizable investment is needed to make legal institutions more gender sensitive.
- The population of the NMDs needs greater information about, awareness of, and access to the formal justice system, and access to legal aid and counsel needs to be improved.



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**JUSTICE,
SECURITY &
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ABOUT THE REPORT

This report assesses the provision of constitutional guarantees and protections related to the formal criminal justice system in Pakistan's former Federally Administered Tribal Areas. Commissioned by the South Asia program at the United States Institute of Peace, the report is based on an analysis of case files from the districts of Khyber and Mohmand, supplemented by surveys of and interviews and focus groups with litigants, lawyers, and government stakeholders.

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The views expressed in this report are those of the authors alone. They do not necessarily reflect the views of the United States Institute of Peace. An online edition of this and related reports can be found on our website (www.usip.org), together with additional information on the subject.

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Police officers stand guard outside the assembly building in Peshawar, Pakistan, during a demonstration against the constitutional amendment bill for the merger of Federally Administered Tribal Areas with Khyber Pakhtunkhwa Province on May 27, 2018. (Photo by Fayaz Aziz/Reuters)

Introduction

On May 28, 2018, the parliament of Pakistan passed the Twenty-fifth Amendment to the Constitution of Pakistan, resulting in the merger of the former Federally Administered Tribal Areas (FATA) with the province of Khyber Pakhtunkhwa. This merger is one of the most consequential reforms in Pakistan's constitutional history, extending constitutional rights to roughly five million citizens. The subsequent extension of the formal judicial system to the former FATA (now also referred to in government documents as the Newly Merged Districts, or NMDs) began in March 2019, but the system still faces significant organizational, political, and basic infrastructural challenges.

This study, based on field research carried out in September, October, and November 2019 in two former FATA districts—Khyber and Mohmand—explores the status of the formal justice system's expansion into these districts since March 2019 and highlights areas for further focused reform. The study assesses the effectiveness of the rollout strategies, the degree of buy-in from the local population, and the sociopolitical and resource constraints that may adversely affect the extension of constitutional guarantees.

FATA has long suffered from armed conflicts, terrorist insurgencies, and a lack of political and socioeconomic development, and it ranks lowest among Pakistan's eighteen regions in terms of human development indicators.¹ This lack of development was underlined by the fact that for over a century FATA was governed by a colonial law dating back to 1901. In recent years,



FORMER TRIBAL AREAS AND KHYBER PAKHTUNKHWA PROVINCE

Adapted from artwork by Rainer Lesniewski/Shutterstock. The boundaries shown on this map are approximate and do not imply official endorsement or acceptance on the part of the authors or the United States Institute of Peace.

FATA residents increasingly realized that they did not enjoy the same constitutional rights and safeguards as other Pakistani citizens. This awareness led in turn to the rise of sociopolitical movements demanding equal rights, especially with regard to justice and equality before the law.²

Policymakers and scholars around the world have recognized that weak rule of law and lack of access to justice can push fragile and post-conflict societies into, or back into, chaos and conflict.³ Few in Pakistan would dispute this, given the country's own recent experience in the Malakand region of Khyber Pakhtunkhwa, where the absence of an effective and efficient justice system is a key driver of conflict, not least in tribal communities.⁴ In the 1990s and 2000s, delayed, costly, inequitable, and ineffective informal and formal justice systems fueled the growth of a fundamentalist insurgency in the district that promised swift, effective, and free justice.⁵ The UN Humanitarian Coordinator calculated that the failure of the legal system in Malakand brought armed conflict, displaced 2.7 million people, and cost between \$2 billion and \$3 billion in damages.⁶

To examine the impact of the recent efforts to improve access to justice in the NMDs, this report draws on data from the districts of Khyber and Mohmand. That data was collected using a mixed-methods approach by Musawi, an independent civil society organization based in Lahore that works to document, reform, and litigate on various rights-based issues at the intersection of law and policy in Pakistan.⁷ The two districts were selected because of their relative ease of access with regard to, among other factors, security concerns. The study focused only on criminal cases, because they are directly related to some of the more pressing demands for guarantees by the local population, including due process, right to fair trial, safeguards on arrest and detention, right to life and liberty, and protection against torture and inhumane treatment. The study looked at thirty criminal cases that were decided in Khyber and fifteen in Mohmand between March and November 2019.

Additional interviews were conducted with relevant government officials, political representatives, and office bearers of the tribal bar councils to understand the administrative and resource situation pertaining to the criminal justice system in the NMDs. These interviews were supplemented by twenty-five in-depth surveys and four focus group discussions with lawyers to gauge their assessment of the levels of awareness and satisfaction among the litigants regarding the formal justice system.

Finally, fifty litigants from the selected districts were surveyed to provide insight into their interactions with the formal justice system and their perceptions of the effectiveness of the formal justice system as compared with the pre-merger system and the use of alternative dispute mechanisms.⁸

This report begins by offering an overview of the reform process. Despite the fact that the merger had overwhelming support from major political parties, citizens of NMDs, and state institutions, the extension of criminal justice institutions to NMDs did not go smoothly. The federal government and the provincial government of Khyber Pakhtunkhwa had planned this extension to be a phased one, but intervention by the Peshawar High Court and the Supreme Court of Pakistan left the government with no choice but to front-load criminal justice institutions. Against this backdrop, the next section of the report explores the readiness of criminal justice institutions and discusses whether infrastructural and capacity shortfalls have hindered their ability to provide and protect fundamental rights of citizens of NMDs. The next two sections cover findings of the research. The first of these is based primarily on litigants' perceptions of the new and the former legal systems. The second section highlights key findings from a review of case files. In its final section, drawing on district-level observational data, the report offers a series of recommendations designed to help policymakers make the reform initiative more effective.

Overview of the Reform Process

In Pakistan, the Constitution of 1973 is the supreme law of the land. It is not only the fountainhead of all laws in Pakistan but also the benchmark against which fundamental rights and protections are measured. It lays down fundamental freedoms for all citizens and persons residing within Pakistan. Even lawfully promulgated legislation is considered void to the extent that it contravenes these rights.⁹

Procedural law in Pakistan is governed by the Civil and Criminal Procedure Codes. The Code of Criminal Procedure of 1898 (Cr.P.C.) grants numerous powers to Pakistani state agencies to prevent and punish crime. These powers include, among others, the power to inquire and investigate, arrest and detain, and charge and try an accused for a criminal offense. All of these powers are subject to the fundamental rights contained within the constitution.

FATA, however, was governed for over a century by the Frontier Crimes Regulation (FCR), a colonial instrument that enforced a parallel and informal administrative and judicial system. The FCR was widely criticized for supporting a draconian framework that violated universal human rights (e.g., by allowing harsh and collective punishment) and the fundamental freedoms provided for under the constitution.¹⁰

From 1947 onward, FATA was recognized as a territory of Pakistan but distinguished from the “settled districts,” with its special status under the FCR legitimized by article 247 of the constitution. As a territory of Pakistan, FATA was subject to the executive authority of the federal government, with the president acting as the ultimate authority. Clause 3 of article 247 allowed for the extension of acts of parliament to FATA where authorized by the president. Through this arrangement, numerous federal laws were extended to FATA, but none addressed the parallel “legal” and administrative system or the failure of human right protections.

Passage of the Twenty-fifth Amendment was preceded by the emergence of a widely supported movement among the tribal population demanding constitutional guarantees and rights on a par with the rest of the country.

The call for reform eventually resulted in the Frontier Crimes (Amendment) Regulation of 2011. Although the amendment excluded vulnerable groups from collective responsibility, granted certain fair trial rights to the accused, and provided for oversight over executive actions, some locals and human rights experts criticized the reforms for not adequately safeguarding rights. Moreover, the amendment was compromised by the Actions (in Aid of Civil Power) Regulation of 2011. This regulation authorized the armed forces of the state to counter terrorism in FATA, which led to violations of human rights.

Passage of the Twenty-fifth Amendment was preceded by the emergence of a widely supported movement among the tribal population demanding constitutional guarantees and rights on a par with the rest of the country. A draft bill (the Rewaj Bill) to repeal and replace the FCR by providing a formal justice system to the people of FATA was proposed under the Pakistan Muslim League–Nawaz government in 2016.¹¹ However, it was withdrawn by the government amid widespread criticism that it betrayed the spirit of reforms, as it did not allow for FATA to be truly integrated within Pakistan. Ultimately, in May 2018, the Twenty-fifth Amendment was passed, which resulted in the merger of the seven agencies and six frontier regions of FATA with the province of Khyber Pakhtunkhwa.¹²

The reform process in the former FATA was initially planned as a phased extension of key government functions. Basic services such as education, health, and road infrastructure were to be extended in the first phase, but the formal criminal justice system was going to be gradually introduced over a period of five years. This time frame would have allowed the government to build the infrastructure, as well as develop the human resources, required for such a transition.

To deal with the ensuing legal situation—in which the FCR would be effectively inapplicable, but the formal justice system would not be fully established—the FATA Interim Governance Regulation (2018) was put in place. The regulation, however, was challenged in the Peshawar High Court by a lawyer through a writ petition and was declared to be in violation of the constitution in October 2018.¹³ This was reiterated by the Supreme Court in a January 2019 ruling, on the grounds that FATA had been merged into Khyber Pakhtunkhwa and there was no justification for treating the people of the NMDs differently from those settled in other parts of Khyber Pakhtunkhwa.¹⁴ The judgment noted the challenges in rolling out court systems in the NMDs, but directed the Khyber Pakhtunkhwa government to implement a uniform court system and develop infrastructure within six months from the date of the judgment.

In addition, the Supreme Court judgment declared parallel justice systems across the country illegal and in violation of the constitution. The judgment stated that jirgas and other informal systems could function only as mechanisms of mediation, arbitration, and negotiation for civil disputes.¹⁵ The Supreme Court's judgment left the provincial government unprepared to deal with the abrupt transition, which presented major challenges in terms of implementation and the development of capacity.

Capacity Shortfalls in the NMDs

Article 37(d) of the constitution holds that the state has the responsibility to “ensure inexpensive and expeditious justice.” Together with article 10-A, which provides the right to fair trial and due process, and article 25, which has been interpreted by the courts to include equal access to justice for all, article 37(d) places a burden on the state to ensure that requisite capacity exists for affordable and effective access to the criminal justice system.¹⁶ Article 19-A, which pertains to the right to have access to information, can also be considered a part of access to justice.

In the NMDs, however, significant shortfalls exist in capacity. To assess how severe they are, one needs to look at both the tangible capacity (material resources, infrastructure, legal frameworks, and organizational structures) and the intangible capacity (skills, knowledge, experience, habits, and traditions of the individuals who are a part of the system) of the criminal justice system, as well as the steps taken to fill these gaps.¹⁷

POLICING AND INVESTIGATION

Prior to the merger, policing in FATA was conducted by two paramilitary forces, the Levies and Khasadars (also known as the “tribal police”). The government had initially planned to replace these forces after the merger with the regular provincial police force. However, strong resistance from the local population to the replacement of the Levies and Khasadars with nontribal police officers forced the government to absorb both Levies and Khasadars into the regular police force. The process of absorbing almost thirty thousand individuals into the police force began in September 2019.¹⁸

The absorption of the two forces has brought its own set of challenges in terms of access to justice. As noted in key informant interviews conducted for this study, most members of the Levies and Khasadars are illiterate and lack even the most basic training, let alone the kind of professional training given to members of the regular police force. (The lack of training is reflected in the fact that membership of the Khasadars was based on hereditary ties.) Moreover, it is extremely difficult to train them all at the same time because their numerical strength is almost half the size of the entire seventy-thousand-person police force working in the rest of the province.

The newly absorbed officers also lack understanding of the criminal procedures and requirements of the formal justice system. According to interviewees, most of them are unable to write complaint reports (First Information Reports), charge a suspect under correct provisions, document evidence, or fill out charge sheets.

The most significant shortcoming—one that could jeopardize the constitutional guarantees of fair trial, due process, and expeditious justice—is the lack of trained investigation officers and a dearth of investigative capacity. All of the interviews with relevant stakeholders highlighted a distinct lack of investigation capacity among the newly absorbed officers, who have no formal investigative training. This deficiency could have a variety of damaging consequences for any case: delays, faulty investigations, mishandling of evidence, and so forth. In Khyber District, more than 75 percent of the complaints registered since the introduction of the formal justice system are still under investigation, because officers have not been trained to conduct investigations

efficiently and effectively. This lack of adequately trained investigation officers poses one of the biggest threats to the realization of constitutional guarantees in the short run.

As of March 2021, the Khyber Pakhtunkhwa government had highlighted police training as a priority and was putting in place measures to build capacity of the Levies and Khasadars. However, a considerable and sustained effort will be required for these measures to be successful.

INFRASTRUCTURE AND RESOURCES

Adequate infrastructure and material and financial resources are essential for delivering expeditious and inexpensive justice to the population.¹⁹ However, rather than developing infrastructure first and extending the substantive elements of the law later, the reform process in the former FATA followed the opposite course. This has created several challenges with regard to adequate resource allocation and infrastructural development.

Physical access to formal justice institutions. The distance to police stations and courts remains a major impediment to access to justice for the populace. At the time that this research was conducted, the courts for Khyber District were situated in the adjoining district of Peshawar.²⁰ In Mohmand District, the courts were similarly located in another district, Charsadda, although they have since been moved to a location in Lower Mohmand. Further, despite Khyber District having a population of close to a million and Mohmand nearly half a million, the two districts each had only three police stations, one for each subdivision.²¹

The survey of litigants identified distance from courts and police stations as one of the major factors constraining access to the formal justice system. More than 50 percent of the respondents believed that distance to courts limited their access to justice, while 72 percent of the respondents believed that the police stations were too far away to be accessed easily.

The interviews with the litigants revealed that distance to courts also exacts a heavy price in terms of costs. Litigants are responsible for the travel arrangements of all the witnesses, and so a long distance from courts and numerous adjournments imposes high transportation costs on a litigant. According to the litigants interviewed, even in Mohmand District, where the courts are now situated in Lower Mohmand, litigants from Upper Mohmand face travel times of four or more hours. Coupled with the district's poor road infrastructure, this makes the journey to the courts a difficult one.

Infrastructure and resource constraints for the prosecution. Khyber and Mohmand Districts each has a team of three prosecutors headed by the district public prosecutor. However, at the time this research was conducted, nine months after the prosecution services became operational, they still had received no resource allocations. As a consequence, the district prosecution offices lacked basic infrastructure such as workstations, printers and photocopiers, access to the internet and legal resources, and stationery. Most of the equipment they were using had been borrowed from other government departments or the bar councils. Similarly, the prosecution offices had not been provided with adequate support staff, including clerks and record keepers. Most of the support staff working with the prosecution office had been borrowed from the police department in an effort to keep the office operational.

A natural corollary of these shortfalls is that both the prosecution and the police services have been unable to collect and analyze even basic data on the nature of crimes committed

Trucks carry goods on their way from Pakistan to neighboring Afghanistan through the Khyber Pass on March 21, 2017. (Photo by Muhammad Sajjad/AP)

in the region, the types of cases currently under trial, the number of active versus completed trials, and so forth. The researchers helped disaggregate and analyze this data for the purposes of this study; however, resource constraints do not allow this exercise to be conducted regularly by the departments. This data is essential if the districts are to be able to conduct evidence-based decision-making

to address constraints related to infrastructural and human resources, financial allocations, and training needs for law enforcement agencies.

Even before the prosecution service started to function, a backlog of cases had emerged. The Peshawar High Court transferred 162 pending criminal cases (156 cases and six appeals) under the FCR to the Khyber courts and 38 pending criminal cases (33 cases and five appeals) to the Mohmand courts.²² Moreover, since the extension of the formal justice system, more than 160 First Information Reports have been registered in Khyber District and more than 165 in Mohmand District. Out of this total caseload, 30 cases (9 percent of the total) had been decided in Khyber District and 15 (7 percent) in Mohmand District, with the remaining cases under trial or under investigation by the time the research concluded in November 2019. Moreover, a total of 132 and 256 bail applications had been filed with the courts in Khyber District and Mohmand District, respectively; bail had been granted in 62 cases in Khyber District and 250 in Mohmand District.

CIVIL SOCIETY AND LOCAL COMMUNITIES

In the absence of strong state institutions, the legal system can be made more accessible by blending community empowerment and mobilization with legal capacity building and advocacy, using local institutions such as customary courts.²³ A number of participatory approaches have been adopted across the world, including creating local groups and committees to set up hybrid courts and promote alternative dispute resolution, launching education and awareness campaigns, training paralegals from the local communities, and facilitating the creation of community-based organizations.

A number of these approaches could have been adopted in the NMDs. Bodies similar to Case Management Committees in Uganda and Access to Justice Committees in Malawi could have been set up, bringing together members from the local community, civil society, and the formal



justice system to improve coordination and awareness regarding the new system.²⁴ Similarly, the local *jirga* and *hujra* systems could have been used to initiate awareness campaigns regarding the new system and to serve as alternative dispute resolution committees, especially given the fact that dispute resolution councils are already operational in Khyber Pakhtunkhwa and could thus also be set up in the NMDs.²⁵

Interviews with litigants and key stakeholders suggest that no such initiatives had been undertaken by the government. The *jirga* remains the first option in case of a dispute for a significant number of the people in NMDs. However, since the Supreme Court declared *jirgas* to be unconstitutional, the government has not deliberated on ways in which they could be integrated into the formal justice system without violating constitutional guarantees.²⁶ Moreover, while a number of nongovernmental organizations are working to raise awareness and build legal capacity in the NMDs—for instance, the Timap for Justice project trained local paralegals to help resolve disputes in local communities—they are not coordinating their efforts.²⁷

Perceptions of the Former and New Legal Systems

Until recently, *jirgas* were the only mechanism of dispute resolution and provision of justice in the former FATA region.²⁸ They were, moreover, a well-respected mechanism. Studies suggest that even in other parts of the country, Pashtuns (the dominant ethnolinguistic group in the province and in the NMDs) regard the *jirga* as an effective mechanism for dispute resolution due to its perceived speediness and low cost as well as its embodiment of traditional cultural practices.²⁹ It is instructive, therefore, to inquire about litigants' understanding of the new, formal legal system in the NMDs, and how they regard this new system in comparison with the *jirga* system. This section, based on the survey and focus group responses of lawyers and litigants, provides insights on these issues.

It is important to interpret the results from these surveys with caution; cultural and behavioral change is a slow process, especially when a group has been accustomed to using a particular system for centuries. It is unreasonable to expect an overnight embrace of the formal justice system in the NMDs. However, the perceptions and experiences of the litigants can serve to guide the design of reforms that make the formal system more appealing.

UNDERSTANDING AND ACCESSING INFORMATION ABOUT THE FORMAL LEGAL SYSTEM

Article 19-A of the constitution grants the right to all individuals to access information related to public matters. In this regard, the government has a responsibility to provide relevant information to raise awareness of the formal criminal justice system and how it operates.

A substantial majority (70 percent) of the respondents believed that they had a basic understanding of the role of the police. However, detailed discussions with the litigants revealed that they did not see the new police as different from the old Khasadar force. A similar percentage

Cultural and behavioral change is a slow process, especially when a group has been accustomed to using a particular system for centuries. It is unreasonable to expect an overnight embrace of the formal justice system in the NMDs.

(72 percent) said that they did *not* have an adequate understanding of the role and functioning of the prosecution service, while 35 percent of the respondents stated that they lacked an understanding of the role of the judiciary in the new system. Considering that the respondents are litigants, who have had a direct exposure to the formal justice system, it would seem that many people regard the system as alien even when they are going through it.

The litigants were also asked if they faced any problems with respect to accessing information on laws and legal processes. Two-thirds (67 percent) noted that they had encountered problems, which included insufficient information regarding criminal case procedures, appropriate grievance redressal mechanisms, and access to legal aid. Although 44 percent of respondents claimed to have knowledge about the fundamental rights enshrined in the constitution that relate to the criminal justice system, only 16 percent of respondents claimed to have an in-depth understanding of fundamental rights, while 63 percent claimed to have limited knowledge. Focus group discussions revealed that most of the respondents derived their knowledge of rights from the recent social and political movements in the region that have demanded constitutional guarantees.

COMPARING THE FORMAL JUSTICE SYSTEM WITH THE JIRGA SYSTEM

Despite evidence that people were not satisfied with the jirga system, 40 percent of respondents still felt that they would first turn to jirgas or tribal elders to settle a criminal dispute (see figure 1).

The key informant interviews and focus groups with litigants and lawyers revealed two major reasons for this preference. In the first place, jirgas are an integral part of Pashtun and tribal culture. Discussions with lawyers and stakeholders suggest that even in the settled districts, apart from major cities, jirgas remain the preferred mode for dispute settlement. However, respondents differentiated between jirgas organized by state-appointed political agents, which were seen to produce biased rulings, and local community jirgas, which were seen to uphold principles of justice and fairness.

Figure 1 also shows litigants' preferences regarding dispute resolution mechanisms, based on their experiences with the two systems. More than one-third said they would opt for the jirga system, but almost all the remainder expressed a preference for the formal justice system. The results from the lawyers' survey were tilted more in favor of the jirga system, with 76 percent of the lawyers suggesting that the jirga still remains the preferred choice for dispute resolution among the local population.

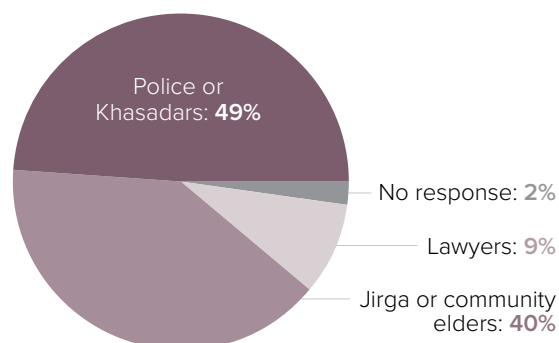
Among litigant respondents who preferred the jirga, nearly all believed that it offered speedy justice in comparison with the formal justice system, and a large majority (12 respondents out of 14) believed it was easier to access. The results from the lawyers' survey also spotlight perceived problems with the pace of the formal process, with more than half of the lawyers saying that delays are among the main issues that litigants face.

Notably, none of the respondents who preferred the formal system believed that it could lead to speedy justice, and only 37 percent believed that it was easy to access. The chief advantage of the formal system in the eyes of these respondents was that it was less likely to be illegally

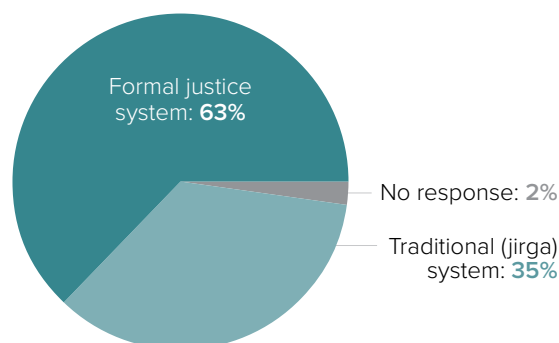
FIGURE 1.

Perceptions of the Former and New Legal Systems

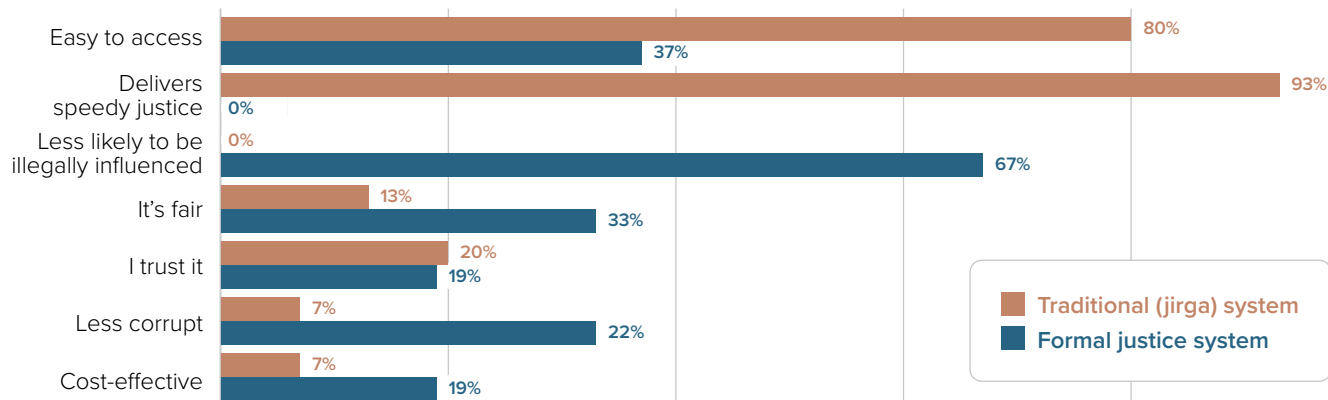
Who would you approach first to settle a criminal dispute?



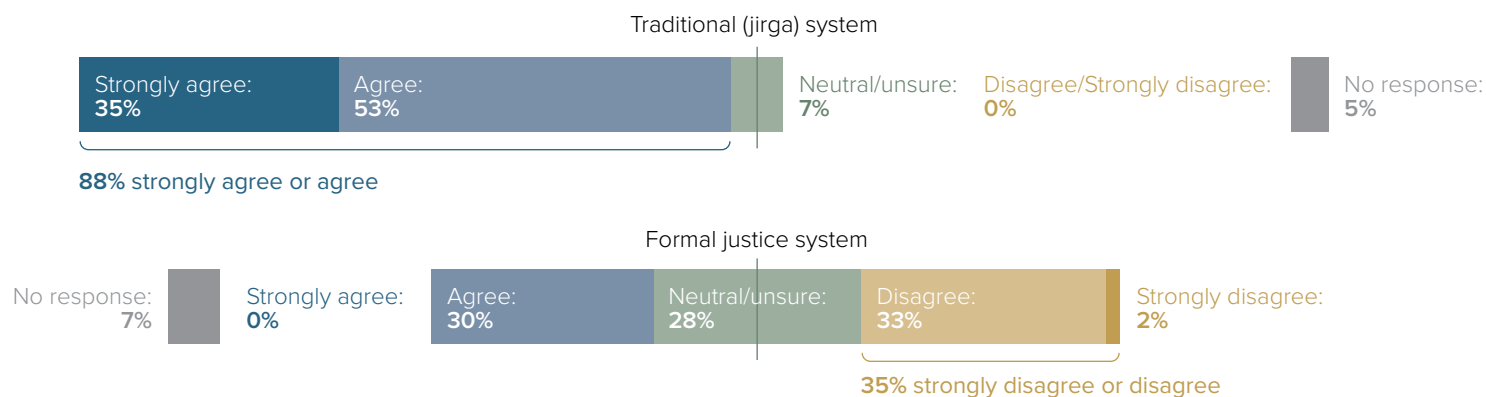
Would you prefer to use the formal or traditional (jirga) system to resolve a future dispute?



Why do you favor a particular justice system? (multiple responses allowed)



Do you agree or disagree with the following statement: "I perceive a socioeconomic bias in the formal/traditional justice system?"



influenced; none of the respondents who preferred the jirga system said the same about the traditional system. Other major reasons for preferring the formal system included its fairness and lower levels of corruption.

A majority of respondents (81 percent in the case of the jirga system and 61 percent in the case of the formal system) believed both systems to be cost-effective. The focus groups and key informant interviews, however, provided anecdotal instances in which both systems proved to be extremely costly. For example, one respondent recalled that during a jirga to settle a land dispute that spanned multiple hearings, jirga members consumed more than Rs. 400,000 (about \$2,500) worth of lamb and other food; the land being disputed was worth no more than Rs. 250,000. But some respondents also decried the cost of the formal legal system, complaining that regular adjournments by the court put an unfair financial burden on the litigants. One respondent said he was responsible for paying the travel- and food-related expenses of all the witnesses he had brought with him, which totaled almost Rs. 10,000 (about \$63); the court had not decided the case and had merely set a date for the next hearing, which the same witnesses would have to attend, and for which the respondent would again incur the same expenses.

Litigants expressed their dissatisfaction with the inquiry mechanisms in both the traditional and the formal systems. Participants in the focus groups suggested that the idea of collective responsibility in the FCR and the jirga system was a major issue in terms of the fairness of the inquiry; individuals who were not responsible for an offense were put in custody so as to force the accused into handing themselves over for the jirga hearing. Some respondents also believed that the jirga system relied more on eyewitness accounts, despite their fallibility, rather than tangible evidence.

In the case of the formal system, respondents expressed their dissatisfaction with the Khasadars and suggested that there had not been much change in terms of their role. Some respondents claimed that the Khasadars still extorted victims and litigants, as was the case in the old system. For example, one respondent recounted how his brother had been picked up by the police, but a week later had still not been brought before a magistrate, even though the law mandates that someone detained by the police must be presented within twenty-four hours. Such instances fueled discontent with the inquiry mechanisms in both systems.

According to litigants, jirgas are susceptible to a strong bias related to socioeconomic class and are likely to side with the more influential party in a dispute. As shown in figure 1, while an overwhelming majority of respondents (88 percent) believed that a class bias exists in jirgas, less than one-third (30 percent) believed it exists in the formal system. However, another large majority (86 percent) of respondents felt that the formal system is too complex, and therefore, in the view of some, only people from a certain class can benefit from it effectively, because only they can afford to engage high-quality legal counsel and pay court- and case-related expenses.

The respondents were also asked about their perceptions regarding the fairness of trials conducted under the two systems. While only 37 percent of respondents believed that trials conducted by jirgas are fair, 79 percent thought that trials conducted in the courts under the formal system are fair.

Finally, the respondents were asked about accessibility of the two systems for specific segments of society, such as women, minorities, juveniles, and the poorest segments of society. There was near-total agreement (98 percent) that the jirga system is not accessible to women. A

significantly smaller, although still large (59 percent), group judged the formal system to be inaccessible to women. This finding was supported by discussions with practicing lawyers, who believed that the formal system's introduction had greatly increased access to justice for women. In the jirga system, a woman cannot lodge a complaint except through her husband or guardian; the formal system has no such constraints.

During the interviews and focus group discussions, lawyers listed various cases pertaining to family law that had been filed by female complainants in the NMDs, suggesting that the situation has improved in terms of access to justice for women. In the old system, such complaints were not entertained at all. Even though cultural barriers still persist and there is a belief that women still have restricted access to courts, the situation is believed to have changed for the better. Discussions with female lawyers practicing in the NMDs, as well as with female prosecutors in the settled districts, suggest that even in the settled districts, women only gradually began to feel comfortable in approaching the formal system. That process, however, accelerated once female judges, prosecutors, and police staff were deployed, which made the formal system more approachable for women complainants.

Constitutional Guarantees and Case Law in the NMDs

This section analyzes the extension of constitutionally guaranteed freedoms to the NMDs through an examination of cases in Khyber and Mohmand Districts that were decided between March and November 2019. A total of forty-five cases from the NMDs were reviewed—thirty from Khyber and fifteen from Mohmand. The nature of offenses in the cases analyzed include drug offenses, conspiracy, murder, waging war against the state, forced marriage, rape and sodomy, and abduction. Thirty-three of these cases (twenty-five from Khyber and eight from Mohmand) were completed after a trial, whereas the remaining twelve (five from Khyber and seven from Mohmand) were either dropped or consigned to record and hence ended prematurely.³⁰

Thirty-five of the forty-five NMD case files reviewed dealt with cases initially registered under the FCR regime. This conflict of procedural frameworks can affect the constitutional guarantees provided for under the formal justice system. While the Peshawar High Court upholds the Cr.P.C. as the applicable law for criminal cases, it does not provide clear guidance on whether it should be applied retroactively to FCR-registered cases.³¹ Previous Supreme Court rulings have upheld the principle of applying relevant procedural law (civil and criminal) retroactively.³² This principle, however, is qualified when the retroactive application of the procedure results in an unfair disadvantage for any party involved.

The key informant interviews with lawyers revealed concerns about the problems that would result from the application of the Cr.P.C. on FCR-registered cases. The majority of lawyers interviewed felt that this would lead to litigants losing trust in the criminal justice system at the outset and that some interim measures should have been provided for pending cases. They also shared the view that the application of the Cr.P.C. to pending cases would make it harder for police, lawyers, and judges to effectively dispense justice.

FAIR TRIAL RIGHTS

The rights to fair trial and to due process are enshrined in article 10-A of the constitution. These rights form an essential part of the criminal justice system and provide protection to the accused against the state's power to enforce its writ in criminal trials. There was unanimous agreement among interviewees and survey respondents that the jirga system was highly politicized and did not always provide just outcomes. But the question thus posed itself: were the formal courts, through their procedures and decisions, ensuring fair and just treatment to all? To answer this, the case files were reviewed to see what they revealed about arrest, detention, and investigation; presumption of innocence and bail; and conviction rates.

Arrest, detention, and investigation. Police officers are guided by the procedures and requirements of the Cr.P.C. and Police Rules while conducting investigations. Over the years, many of these provisions have been subjected to judicial scrutiny. As a result, most of the practices, at least in theory, are largely compatible with fundamental freedoms.

In twenty-four of the twenty-five completed cases reviewed from Khyber District, the judgment expressly noted that the procedure and mode for arrest and detention were not in compliance with the Cr.P.C.³³ One of the main reasons for this lack of compliance was that a majority of the cases reviewed were registered under the FCR. Another reason is that the arresting authority in a majority of cases was not trained to follow the Cr.P.C.³⁴ However, despite these procedural lapses, the judges, acknowledging the challenges faced by the Khasadar force, took a lenient view (see the section "Conviction rates" below). The judges, it seems, understandably viewed such leniency as a necessity to deal with these transitional cases.

In Mohmand District, the judgments did not expressly note violations of the Cr.P.C. despite a similar pattern to arrests and detention.³⁵ Therefore, it is difficult to assess the impact of these procedural gaps on the outcome of cases.

Presumption of innocence and bail. Bail is a fundamental part of the criminal justice system; the right to bail of an accused must be available in order to ensure a person's dignity and the right to be presumed innocent. Articles 9 and 10-A of the constitution protect the right to liberty and presumption of innocence, respectively, and sections 496, 497, and 498 of the Cr.P.C. safeguard this through the right to bail. Courts are directed to make decisions on bail independently and separate from questions of guilt or innocence.³⁶ Denying bail on a tentative assessment of guilt undermines the principle of presumption of innocence, because it effectively applies a punitive sanction in response to a court's prejudgment in the absence of an actual trial, thus compromising the right of liberty, due process, and fair trial.

Given that most of the reviewed cases were registered under the FCR, it was natural that bail proceedings were not observed as per the Cr.P.C. In Khyber, six of thirty cases reviewed included a bail petition or a bail order. In one case, the court had directed a district police officer to either register criminal charges against an accused or let him out on bail. Some 16 percent of judgments from Khyber District and 37 percent from Mohmand District noted that the accused was on bail. The information in the case files reviewed is incomplete, so it cannot be determined whether bail was granted by the court after the merger or prior to the trial (i.e., under the FCR regime).

It is important to note that most of the case files reviewed were FCR-registered cases; hence, there may have been reason to provide leniency in provision of bail as the accused were brought in through an unregulated framework and were now being dealt with under the formal justice system.

Conviction rates. The conviction rate in the twenty-five completed cases from Khyber District was 100 percent. Ninety-six percent of the cases were registered under the FCR. In all of these cases, the judgment noted insufficient evidence or procedural irregularities, yet convictions were awarded. In most of the cases (68 percent), the charge was altered to a lesser offense with a correspondingly lesser punishment. Mohmand, in contrast, had a conviction rate of “only” 50 percent in its eight completed cases. But it is pertinent to note that in three of the four cases of conviction, the accused pled guilty. In other words, of the five contested trials, only one resulted in a conviction; the acquittals were based on procedural irregularities and lack of evidence.

Despite the overlap in crime types, evidentiary weaknesses, and procedural irregularities, this variation in conviction rate between the districts is significant and points to the fact that a case can be processed differently in different districts. Although the small sample size of the data does not permit any definitive conclusions to be drawn, the key informant interviews suggest that the practice in Mohmand District was the prevailing one in most of the NMDs at the time the research was conducted. According to the interviewees, some other districts were also acquitting individuals as the norm because it was impossible to deal with procedural defects.

It is noteworthy that many trial court judgments from the NMDs expressly mentioned procedural and fair trial violations, even though these did not always appear to have impacted the court’s decision. The documentation of such violations within a trial court judgment may further the development of a broader discourse on constitutional freedoms, both in the NMDs and in Pakistan generally. Some of the cases reviewed will move to appeal in the High Courts and the Supreme Court of Pakistan, which will allow for greater scrutiny of the procedural requirements laid out in the trial court judgments.

EXPEDITIOUS JUSTICE

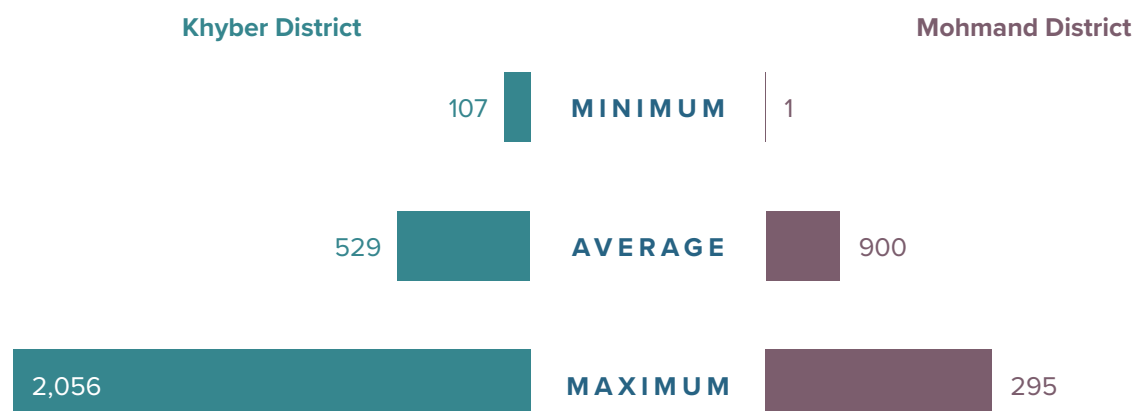
The state is constitutionally required under article 37(d) to establish and maintain institutions that provide expeditious justice to all. In addition, the Khyber Pakhtunkhwa Free Legal Aid Act (2019) provides individuals involved in the commission of an offense or a female involved in a family dispute the right to free legal counsel.³⁷ The Supreme Court decision on extending the formal justice system to the NMDs also notes the importance of protecting this right.

To discover whether the current system is able to deliver speedy justice, the case files were examined to determine the duration of cases. It proved difficult, however, to accurately assess the time it took to decide a case in the criminal courts of Khyber and Mohmand Districts between March and November 2019, because many of the cases were originally registered under the FCR, and the transition to the new system may have affected the duration of cases.

Figure 2 shows the total duration per case—that is, the time between registration of a First Information Report by the police and the court decision. In Khyber, on average it took 529 days from complaint to decision; this was almost double the average duration of cases (295 days) in

FIGURE 2.

Duration of Cases in Days, from First Information Report to Decision



Mohmand. On the face of it, the duration of cases reviewed in both districts appears reasonable when considering the capacity and infrastructural challenges described above.³⁸

One of the cases from Khyber District was newly registered and was decided within fifteen days. In the case files from Mohmand, the date of institution and date of decision for three of the newly registered cases were within one day. However, this finding cannot be generalized because in all of these reviewed cases the accused had pled guilty.

In addition to the duration of the case, the time period that an accused spent in detention was reviewed in cases where the time period was ascertainable (five cases from Khyber District). The average period of detention in these cases was 629 days. Delay and prolonged detention both infringe the accused's right to due process, liberty, and dignity enshrined in the constitution. It is important to note that these detentions may have been lengthier than normal due to the challenges faced by the NMDs after the merger. Moreover, all five judgments noted the lengthy period of detention that the accused had suffered and extended leniency by awarding the accused sentences equivalent to the period already spent in detention, thereby allowing for them to be sent back to their homes after conviction. Information on the detention period was not available in the remaining case files reviewed in Khyber or Mohmand; for this reason, the patterns observed in the five cases should not be generalized.

WOMEN'S ACCESS TO JUSTICE

Only three cases from Khyber and one case from Mohmand involved women-specific issues. The most notable was a case in Khyber in which a minor was made subject to *ghag*—an ancient tribal custom in which a man openly declares his intention to marry a particular woman, obstructing her

The hasty nature of the [FATA-Khyber Pakhtunkhwa] merger gave criminal justice institutions little time to prepare, and since the merger, many of them have operated almost on a war footing.

marriage to anyone else. In the tribal system, there would have been no relief for the victim, because such cases were decided under the tribal code of honor, *riwaj*. This case, initiated after the merger, however, was dealt with under the Ghag Act 2013 and the procedure was followed under the Cr.P.C. The woman testified in court that she did not agree with the custom of ghag and thus did not accept that she

must marry the man, who should be punished and restrained from interfering in her personal life. The accused was convicted under sections 3 and 4 of the Ghag Act, and the woman was freed from the relationship that was imposed on her by way of ghag.

The enduring influence of tribal custom, however, was seen in a domestic murder case from Mohmand District. In that case, a husband charged with the murder of his wife avoided trial after reaching a settlement with his wife's family and paying *diyat* (compensation for loss of life).

This small sample may not be representative of the overall trend in all NMDs, but it provides insights into the responsiveness of the criminal justice system to women. The case involving ghag in Khyber especially is a success of the rollout of the formal justice system in NMDs that should not be ignored. According to key informant interviews with lawyers and prosecutors, women were not part of public discourse prior to the merger and could not bring cases under the FCR. This situation has changed thanks to the introduction of the formal criminal justice system in the NMDs. But the case involving *diyat* in Mohmand highlights that there is still a long way to go before women can rely on the formal justice system to ensure the realization of their constitutional rights and access to justice, and that societal norms and traditions can still play a key role in judicial outcomes.

Conclusion and Recommendations

The FATA-Khyber Pakhtunkhwa merger is undoubtedly a step in the right direction for securing constitutional and judicial rights for the residents of Pakistan's former tribal areas. The people of the NMDs had long campaigned for a more democratic judicial order, one governed by key constitutional principles of due process and fair trial. For all its shortcomings, a formal legal justice system is now a reality in the NMDs. But it faces many challenges, not least the need to satisfy the people's expectations, and to do so quickly. The citizens of the NMDs are politically aware and active. The findings of this study highlight their awareness of fundamental rights and their understanding of key differences between the *jirga* system and the formal justice system.

While the provision of an effective justice system is a priority in post-conflict societies, it is equally important that this system is in line with constitutional rights. A human rights-based approach leads to sustainable outcomes by analyzing and addressing inequalities, discriminatory practices, and unjust power relations, which are often at the heart of development problems. The approach includes a direct and intentional linkage to human rights, transparency and accountability, participation and consultation of those affected and beneficiaries, nondiscrimination, and the needs of vulnerable and marginalized subgroups. Therefore, in post-conflict societies, it is important to look holistically at the overall functioning of all the institutions and actors.

The findings of this study are mixed insofar as they reveal some heartening trends but also identify some problematic issues. On the positive side, the findings point to at least four steps forward. First, most NMD citizens appear to be aware of the importance of fundamental rights, even when most do not fully understand what these rights entail. Second, as the review of the case files shows, the courts have identified investigative lapses and violations of provisions that are based on due process rights. Third, the formal system gives female victims a way of directly accessing justice, something they were denied in the jirga system. And fourth, although one of the biggest issues confronting Pakistan's formal justice system is a heavy case workload and a large backlog of cases, these are not problems in most NMDs. This means that a systematic and well-coordinated reform effort can yield even better results in the NMDs than it could in other areas of Pakistan.

Despite these advances, significant problems remain. The hasty nature of the merger gave criminal justice institutions little time to prepare, and since the merger, many of them have operated almost on a war footing, contending with severe administrative and capacity challenges. A variety of measures should be taken to address these challenges.

These measures fall into four categories: data collection and analysis; legal information needs; capacity building of officials, and coordination between institutions.

DATA COLLECTION AND ANALYSIS

The creation of courts and police facilities across the NMDs needs to be fast-tracked to make them more accessible to the public. The study revealed that data collection and analysis processes are still being developed by rule of law institutions within the NMDs, which is creating delays in the decision-making process. In addition, all rule of law institutions should aim to collect necessary data, disaggregated adequately, in order to ensure that decision-making is evidence based. Wherever possible, data must be cross-institutionally collected and analyzed to ensure evidence-based decision-making.

Data on citizen-centric indicators, such as the citizens' experiences and perceptions, must be collected regularly to improve service delivery and make the legal system more responsive to the demands and expectations of the population. Software-based solutions—like the Case Management and Monitoring System of the Khyber Pakhtunkhwa Prosecution Service—should be extended to the NMDs as soon as possible. These tools will enable the NMDs to consolidate and analyze disaggregated data for improved efficiency and transparency in the trial process.

Given that citizens are key stakeholders in the legal system and that article 19-A gives them a right to information, data and information should be transparent and accessible by the public. The existing terms of free legal support provided to vulnerable groups such as women need to be improved so that they also cover the cost of transportation for the litigants and witnesses.

LEGAL INFORMATION NEEDS

In a democratic society, the government can be held accountable by the people only if they have the requisite knowledge. A majority of respondents did not think that they possessed adequate relevant legal information. The provincial government should therefore ensure that modern, culturally and gender-sensitive information dissemination mechanisms (such as hujra) are

employed to provide information about fundamental rights to the citizens of the NMDs. Some citizens still consider jirgas to be their preferred means of settling disputes but are unaware that the Supreme Court has outlawed such jirgas. The Cr.P.C. and the Prosecution Service Act allow informal dispute resolution in compoundable offenses (i.e., offenses in which a compromise solution is permissible under law).³⁹ The government should operationalize existing alternative dispute resolution mechanisms and District Reconciliation Committees for the NMDs so those citizens who prefer to settle their disputes out of court have the structures with which to do so.

CAPACITY BUILDING OF RULE OF LAW OFFICIALS

A significant majority of survey respondents, key informant interviewees, and focus group discussion participants identified severe capacity gaps among rule of law officials, especially those belonging to the Khasadar force. Many of these officials are now required to investigate cases in line with the provisions of the Police Rules and the Cr.P.C. They, in turn, require a working knowledge of the law and various other skills. The government should therefore provide knowledge-based training to Khasadar officials. This is needed especially for officials who have no experience investigating or prosecuting cases under the Cr.P.C. and other special laws applicable in settled districts of Khyber Pakhtunkhwa. The government should also provide skills training and mentoring to Khasadars in areas including reading, writing, interviewing, collection and retention of forensic evidence, and management of workload.

COORDINATION BETWEEN RULE OF LAW INSTITUTIONS

Most of the major legal policy decisions of the government since the merger have been challenged in the Peshawar High Court or the Supreme Court of Pakistan. A number of these challenges have been successful. Therefore, the various provincial rule of law institutions should develop and agree upon a rule of law roadmap for NMDs at a policy level. They should then agree on an implementation plan to encourage joint ownership of the roadmap. Existing coordination mechanisms between various criminal justice institutions in Khyber Pakhtunkhwa and other provinces should also be extended to NMDs at an operational level.



If acted upon, these recommendations will help to address the challenges identified in this study. To sustain the positive attitude and response of the people of the NMDs to the introduction of the formal justice system, that system must fill existing gaps, especially those that undercut the efficacy of existing laws and impede its capacity to realize and protect constitutional guarantees for citizens. The citizens of the NMDs have long awaited the provision of fundamental rights on par with the rest of the country. The extension of the formal justice system, despite its challenges, offers them a new beginning. It also offers criminal justice institutions a chance to dispense justice in a more efficient manner. The hasty nature of the merger meant that these institutions were preoccupied with extending government to the citizens of NMDs. It is now time for attention to shift, almost exclusively, to the task of extending governance to these citizens.

Notes

1. United Nations Development Programme (UNDP), “Pakistan National Human Development Report 2017,” 5, www.undp.org/content/dam/pakistan/docs/HDR/HDI%20Report_2017.pdf.
2. Human Rights Commission of Pakistan, “KP Reimagined: FATA’s Long-Awaited Merger with Khyber Pakhtunkhwa—An HRCP Fact-finding Report,” September 2019, 2–3, <http://hrctp-web.org/hrctpweb/wp-content/uploads/2019/09/KP-fact-finding-report-FINALTITLE.pdf>.
3. UNDP, *Strengthening Rule of Law in Crisis-Affected and Fragile Situations* (New York: UNDP, 2011).
4. Zahid Anwar and Waqar Ahmad, “Augmenting the Conflict in Swat: Loopholes in Legal Governance,” *Journal of Political Studies* 24, no. 2 (2017): 417–32.
5. On the effects of the justice system on the growth of the fundamentalist insurgency in Malakand and the Swat Valley, see Anwar and Ahmad, “Augmenting the Conflict in Swat”; Christian Dennys and Marjana, “The Jirga: Justice and Conflict Transformation,” Community Appraisal and Motivation Programme (CAMP) and Saferworld, September 2012, www.saferworld.org.uk/resources/news-and-analysis/post/532-the-jirga-justice-and-conflict-transformation; Rabia Zafar, “Development and the Battle for Swat,” *Fletcher School Online Journal for Issues Related to Southwest Asia and Islamic Civilization* (2011); Justine Fleishner, “Governance and Militancy in Swat Valley,” Center for Strategic and International Studies (2011); and Sultan-i-Rome, “Crisis and Reconciliation in Swat,” *Pakistaniaat: A Journal of Pakistan Studies* 3, no. 1 (2010): 53–79.
6. UNDP, “Assessing Rule of Law, Peace, and Security in Malakand, NWFP,” 2011.
7. For more information about Musawi, see www.musawi.org/#intro.
8. Most respondents, 62.8 percent, were from Khyber District, while 37.2 percent came from Mohmand District. Almost 58 percent of the respondents had undergone some level of formal education, with 23 percent having attained an intermediate or higher level of education. Most respondents belonged to poor households; 55.8 percent reported monthly household incomes of Rs. 15,000 or less, and 23.3 percent had incomes between Rs. 15,000 and 25,000.
9. Article 8 states that “any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.” The full text of the 1973 constitution is at www.pakistanconstitutionlaw.com.
10. Among the articles that the FCR violated were articles 9, 10, 10-A, and 25 of the 1973 constitution.
11. Altaf Ullah and Syed Umar Hayat, “The Merger of Fata with Khyber Pakhtunkhwa: An Historical Analysis,” *Journal of Political Studies* 25, no. 2 (2018): 39–53.
12. See, for example, reports in the Islamabad newspapers: *The News*, “The Fata Merger,” May 25, 2018, www.thenews.com.pk/print/321007-the-fata-merger; and Zulfiqar Ali, “KP Approves Bill for Fata’s Merger with Province,” *Dawn*, May 28, 2018, www.dawn.com/news/1410449. For the full text of the Twenty-fifth Amendment, see www.senate.gov.pk/uploads/documents/1528343985_133.pdf.
13. Suo Moto No. 01-P (2019), Peshawar High Court.
14. Civil Petition No. 773-P (2018), Supreme Court of Pakistan (January 16, 2019).
15. *Dawn*, “SC Holds Jirgas Violative of Pakistan’s World Commitments,” January 17, 2019, www.dawn.com/news/1458038.
16. On the court’s interpretation of article 25, see Constitutional Petition No. 24 (2012), Supreme Court of Pakistan (January 16, 2019).
17. See United Nations Office on Drugs and Crime (UNODC) and United States Institute of Peace (USIP), *Criminal Justice Reform in Post-conflict States: A Guide for Practitioners* (New York: UNODC, 2011), 39, www.usip.org/sites/default/files/ROL/11-83015_Ebook.pdf; and Réal Lavergne and John Saxby, *Capacity Development: Vision and Implications*, Capacity Development Occasional Series No. 3, Canadian International Development Agency, January 2001, www.researchgate.net/publication/242480268_Capacity_Development_Vision_and_implications.
18. Associated Press of Pakistan, “KP Merges Khasadar, Levies into Police,” *The Nation*, September 18, 2019, <https://nation.com.pk/18-Sep-2019/kp-merges-khasadar-levies-into-police>.
19. UNODC and USIP, *Criminal Justice Reform in Post-conflict States*, 37–38.
20. As of March 2021, the courts for Khyber District were still located in Peshawar.
21. At the time of writing, three more police stations have been added in Khyber District.
22. Akhtar Amin, “4,112 Cases, Appeals Transferred to Regular Courts in Merged Districts,” *News International*, March 25, 2019, www.thenews.com.pk/print/448293-4-112-cases-appeals-transferred-to-regular-courts-in-merged-districts-main.

23. See, for example, Stephen Golub, “What Is Legal Empowerment? An Introduction,” in *Legal Empowerment: Practitioners’ Perspectives*, ed. Stephen Golub (Rome: International Development Law Organisation, 2010).
24. UNODC and USIP, *Criminal Justice Reform in Post-conflict States*, 49.
25. *Hujra* refers to the culture of community members sitting together and sharing information.
26. On the constitutionality of jirgas, see Civil Petition No. 773-P (2018), Supreme Court of Pakistan (January 16, 2019).
27. See Open Society Justice Initiative, “Innovative Efforts, Proven Results: How Timap for Justice Provides Legal Aid in Sierra Leone,” March 2015, www.justiceinitiative.org/publications/innovative-efforts-proven-results-how-timap-justice-provides-legal-aid-sierra-leone.
28. For an in-depth assessment of the jirga system, see Tilmann J. Röder and Naveed A. Shinwari, “Pakistan: Jirgas Dispensing Justice without State Control,” in *Non-State Justice Institutions and the Law: Decision-Making at the Interface of Tradition, Religion, and State*, ed. Matthia, Kötter et al. (New York: Palgrave MacMillan, 2015), 25–49.
29. Naveed A. Shinwari and Neha Ali Gauhar, *Understanding Justice Systems of Khyber Pakhtunkhwa, FATA, and Balochistan: The Pakhtun Perspective* (Islamabad: CAMP, 2013).
30. Cases can be consigned for a variety of reasons. The most common reason is the absence of the accused (who may have absconded) or the unwillingness of the complainant to pursue a case.
31. Suo Moto No. 01-P (2019), Peshawar High Court.
32. *Air League Piac Employee v Federation of Pakistan*, Supreme Court of Pakistan (2009); and *Sui Southern Gas Company v Federation of Pakistan*, Supreme Court of Pakistan (2018).
33. Among other provisions that were not complied with were sections 60 and 61 of the Cr.P.C., which require an arresting authority to present an accused before a magistrate within twenty-four hours of arrest.
34. In 53 percent of cases, the arrests were made by the Khasadar force, and in 30 percent of cases by the armed forces. The remaining cases (17 percent) did not identify the arresting authority.
35. In five of eight cases, arrests were made by the Khasadar force. In the remaining three, arrests were made by the armed forces.
36. *Sarwar and Iftikhar Ahmed vs The State and Others* (para. 8), Supreme Court of Pakistan (2014).
37. The Khyber Pakhtunkhwa Legal Aid Act, 2019, www.pakp.gov.pk/acts/the-khyber-pakhtunkhwa-legal-aid-act2019.
38. The average duration of criminal cases in Punjab provides a point of comparison to assess the reasonableness of the duration of the cases completed in the NMDs. In Punjab, the average duration for cases was 608 days for cases in the category of “crimes against Person”; 548 days for cases in the category “crimes against property”; and 304 days for cases in the category “local and special laws.” For a breakdown of this data, see Osama Siddique, *Caseflow Management in Courts in Punjab: Frameworks, Practices, and Reform Measures* (Lahore: EU Punjab Access to Justice Project, 2016), 16.
39. 2nd Schedule of Cr.P.C. (1898).

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