



Government of Pakistan

Report of the Committee on FATA Reforms 2016

The background of the cover is a photograph of a large, ancient stone archway spanning a river. The archway has a crenelated top and is flanked by two tall, cylindrical towers. The river flows through the archway, and the surrounding area is lush with greenery. The text 'August 2016' is superimposed on the archway.

August 2016



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**Report of the
Committee on FATA Reforms
2016**

August 2016



Ministry of Foreign Affairs
Islamabad, Pakistan

Adviser to the Prime Minister
on Foreign Affairs

08 August 2016

Mr. Mohammad Nawaz Sharif,
Prime Minister of Pakistan,
Islamabad.

Dear Mr. Prime Minister,

In November 2015, you had kindly set up a Committee on FATA Reforms to propose a concrete way forward for the political mainstreaming of Tribal areas after consulting all stakeholders, with the following composition:

- | | |
|--|-----------|
| i) Mr. Sartaj Aziz
Adviser to the Prime Minister on Foreign Affairs | Chairman |
| ii) Mr. Zafar Iqbal Jhagra *
Governor KPK | Member |
| iii) Lt. Gen. (Retd) Abdul Qadir Baloch,
Minister for SAFRON | Member |
| iv) Mr. Zahid Hamid,
Minister for Law and Justice | Member |
| v) Lt. Gen. (Retd) Nasser Khan Janjua,
National Security Adviser | Member |
| vi) Mr. Muhammad Shehzad Arbab,
Secretary SAFRON | Secretary |

* Sardar Mehtab Ahmed Khan, former Governor KPK,
was member of the Committee till February 2016.

2. The Committee visited all the seven Agencies and held detailed consultations with the Tribal Maliks, Elders, representatives of all political parties and other members of the civil society including traders, media representatives and youth. Separate meetings were also organized with representatives of 6 frontier Regions and Senior Civil Servants having FATA experience. Based on these consultations, we are submitting our findings and final recommendations in this Report. We also attach the proposed announcements, after these recommendations have been considered and approved.

3. We have also included specific and detailed recommendations on mechanisms for implementing the proposed reforms after their approval.

4. Since the FATA Reforms recommended in this Report will be implemented on basis of a gradual and phased approach, we have proposed, at the end of Chapter -4, the details of the first phase of these reforms which after approval, the Prime Minister and the President may jointly announce at a Grand Jirga in Peshawar.


5. May we take this opportunity to thank the Ministry of State and Frontier Regions and the FATA Secretariat for their active participation in the work of the Committee.



Sartaj Aziz




Mr. Zafar Iqbal Bhagra



Lt. Gen. (Retd) Abdul Qadir Baloch



Mr. Zahid Hamid



Lt. Gen. (Retd) Nasser Khan Janjua



Mr. Muhammad Shehzad Arbab

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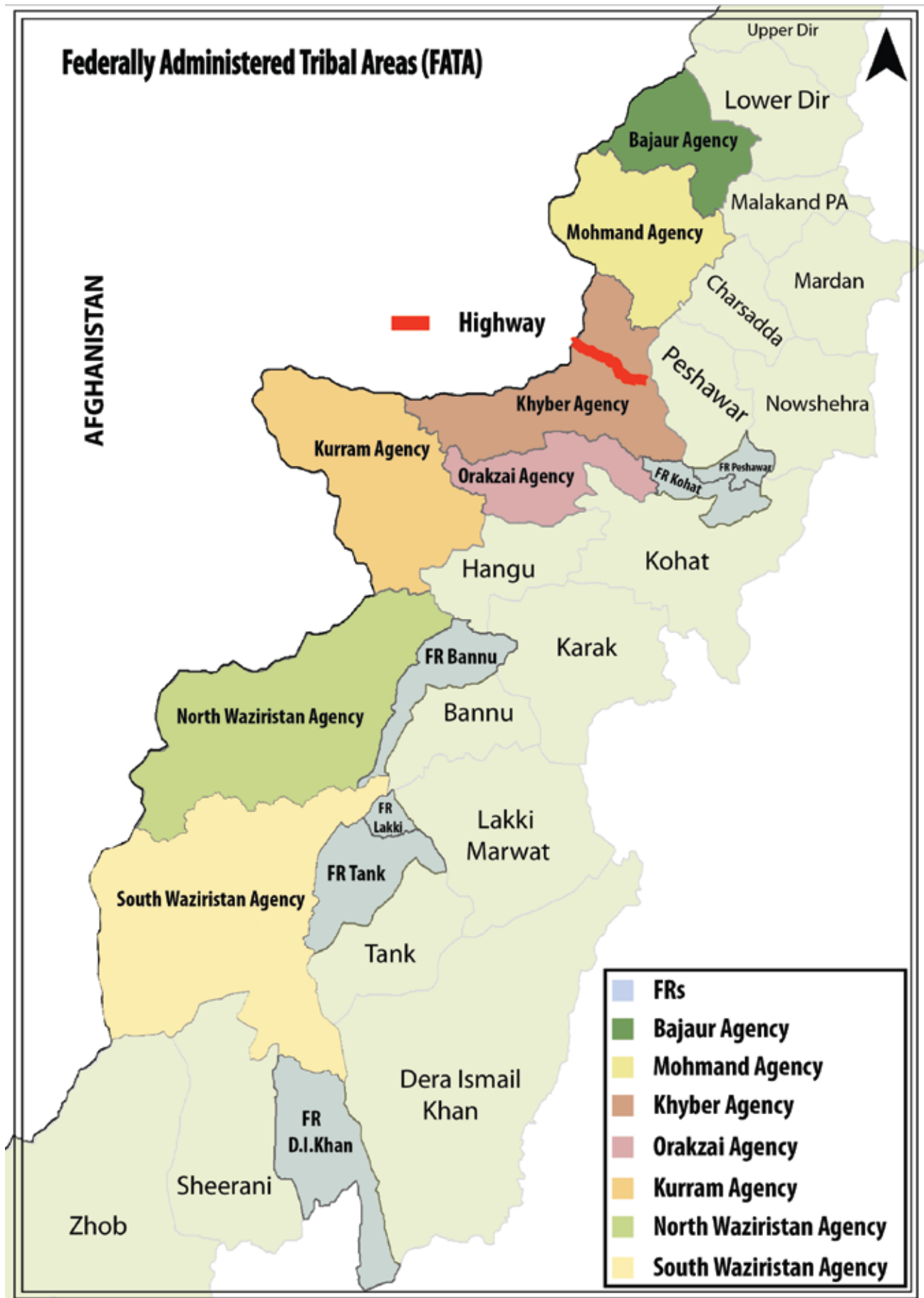
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Abbreviations & Acronyms

AI&C	Administration, Infrastructure & Coordination
APA	Assistant Political Agent
APS	Army Public School
BISP	Benazir Income Support Programme
BPS	Basic Pay Scale
CE	Chief Executive
CLCP	Citizen Losses Compensation Program
CPEC	China-Pakistan Economic Corridor
DC	Deputy Commissioner
DTR	Directorate of Transition & Reforms
FATA	Federally Administered Tribal Areas
FCR	Frontier Crimes Regulation
FC	Frontier Corps
FDA	FATA Development Authority
FDIHS	FATA Development Indicators Household Survey
FDMA	FATA Disaster Management Authority
FRC	FATA Reforms Commission
FRs	Frontier Regions
FSDP	FATA Sustainable Development Plan
FWO	Frontier Works Organisation
GB	Gilgit Baltistan
GIS	Geographic Information System
INRM	Integrated Natural Resource Management
IRSA	Indus River System Authority
JI	Jamat-e-Islami
JUI	Jamiat-e-Ulema Islam
LEAs	Law Enforcement Agencies
LG&RD	Local Government & Rural Development
L&O	Law & Order
MMR	Maternal Mortality Rate
MNA	Member of National Assembly
MPI	Multidimensional Poverty Index
NAP	National Action Plan
NFC	National Finance Commission
NLC	National Logistic Cell
NWA	North Waziristan Agency
NWFP	North West Frontier Province
PA	Political Agent
P&D	Planning & Development

PM	Prime Minister
PML-N	Pakistan Muslim League-Nawaz
PPP	Pakistan People's Party
PTI	Pakistan Tehreek-e-Insaaf
RRU	Reconstruction & Rehabilitation Unit
SAFRON	States and Frontier Regions
SBP	State Bank of Pakistan
SWA	South Waziristan Agency
TDPs	Temporarily Dislocated Persons
TNSM	Tehreek-e-Nifaze Shariat-e-Mohammadi
USSR	Union of Soviet Socialist Republics
VDCs	Village Defence Committees

Federally Administered Tribal Areas (FATA)



Executive Summary

Since the invasion of Afghanistan by the US in November 2001, Pakistan's Federally Administered Tribal Areas (FATA), have emerged as a zone of insurgency and a threat to national and international security that has caused Pakistan many problems. Insurgents have used FATA to train and recruit fighters challenging the writ of the State. In the process, Pakistan has lost approximately 60 thousand lives including civilians and martyred soldiers¹. In financial terms, the war against the militants has so far cost Pakistan more than \$ 118 billion².

2. Noting the threat that FATA constitutes to the viability of Pakistan, the Government instituted the National Action Plan (NAP) under which it is planned to transform FATA into a region free of war and where the tribesmen are enabled to live productive lives in security and with the availability of social services that are received by other Pakistanis.

3. In order to achieve the above aims the Prime Minister formed the five-member committee headed by Mr. Sartaj Aziz, Advisor to the Prime Minister on Foreign Affairs, to propose essential reforms to pull FATA back from the brink and to allow the tribesmen to lead empowered lives free from current disabilities.

4. FATA, spread over an area of 27,200 sq. km, with a population of 4.8 million people, constitutes a borderland between Afghanistan and Pakistan. The region has acted as a cradle for the advancement of two early civilizations of the world, Buddhism and Hinduism and has figured prominently in international politics and recurrent crisis for more than 200 years. Despite the tension caused by incursion of mighty forces in the past such as Alexander the Great, Babur, Mehmood of Ghazni, the British and former USSR, the region was still able to weather these great upheavals.

5. FATA situated midway along Pakistan's north western border with Afghanistan, has faced instability and disorder for the last three decades-starting with the 1979 invasion of Afghanistan by the former USSR and leading to the emergence of militancy after March 2004, and the resulting counter insurgency operations. FATA has been governed through a colonial-era designed political, administrative and judicial system that separates the residents from the system prevailing in the rest of the country.

6. FATA consists of seven agencies (Bajaur, Mohmand, Khyber, Kurram, Orakzai, North Waziristan and South Waziristan) and six tribal areas adjoining the Peshawar, Kohat, Bannu, Lakki Marwat, Tank and Dera Ismail Khan districts, known as Frontier Regions (FRs). The population of FATA, as stated earlier is 4.8 million with a gender ratio of 108.4. The average household size in

¹ "National Internal Security Policy, 2014-2018", Ministry of Interior, Government of Pakistan. <http://nacta.gov.pk/policies/NISP.pdf>

² Mr. Ishaq Dar, Finance Minister at post-budget press conference, reported on 4th June 2016; [http://www.dawn.com/news/1262750/pakistan-suffered-loss-of-188bn-during-war-on-terror-says-dar?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+dawn-news+\(Dawn+News\)](http://www.dawn.com/news/1262750/pakistan-suffered-loss-of-188bn-during-war-on-terror-says-dar?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+dawn-news+(Dawn+News))

FATA is 7.6³. The average family size in FATA overall is slightly less at 6.6⁴. The number of children under 15 years of age account for 43.3% of the population. Similarly, the urban population in FATA is only 2.7%, and the population density is 117⁵.

7. Historically, tribal areas remained at the centre of attention due to its strategic location. At the turn of the 18th century, Russia began to expand eastwards towards Central Asia. Britain foresaw that its dominion of India will be threatened if Afghanistan became a vassal state of Russia. Secondly, Britain knew that the tribesmen were in a loose relationship with the Amir of Kabul and their common boundary with the districts enabled them to launch raids for kidnapping and dacoities. Eventually, Britain fought two wars with Kabul in 1834 and 1878, before the Amir accepted British suzerainty. The Russians accepted this fact which led to formation of joint boundary commissions with Britain to demarcate the Russo-Afghan boundary in 1895 and with India between 1893-95. Moreover, the British still dissatisfied, began creating tribal agencies - Khyber agency was created in 1878, Kurram in 1892, and Malakand, Tochi and Wana in 1896 - to ensure British domination over them.

8. The British policy was designed to keep FATA as a borderland meant to stop any incursions into India from the North-West. Thus prior to the 1920's even road building was denied to the region, as it could assist the quick movement by an invading force from that direction.

9. During the 'Close Border' policy, the British attempted to maintain peace in tribal areas by encouraging tribesmen to join trade and employment. However, any violation of the peace in districts by tribal gangs of raiders was punished by fines, blockade, punitive expeditions, termination of tribal employment and destruction of homes of ring-leaders. At the same time, the British tried to influence the tribal behaviour through a mechanism of payment of conditional subsidies in return for peace and security. A persistent criticism of this method of management of the tribes was the collective punishment in which many innocents were also punished and thus destroyed the mechanism of wealth-creation that was essential for advancement of tribal individuals.

10. The creation of tribal areas was intended to act as a wall against an intervention by the former USSR or Afghanistan in the Indian Sub-Continent. Both FATA and Khyber Pakhtunkhwa were considered as strategic spaces and were administered militaristically unlike other regular provinces of India that were dealt with politically and developmentally. Until 1936 no political reforms were permitted even in Khyber Pakhtunkhwa. This was achieved by creating a legal fiction, through a declaration, that stated that although the tribal areas were a part of India but they were not a part of British India⁶. Resultantly, the region remained politically under-developed, strife-ridden and under a militarized administration; its laws and political growth was truncated and the people suffered.

³ "FATA Development Indicators Household Survey 2013-2014", Planning and Development Department, FATA Secretariat October 2015.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ PART V, *Aitchison Treaties*, Engagements and Sanads relating to the North West Frontier Province

11. It is due to these policies that the region displays signs of poor human development and slow political growth. This design of tribal control was continued up to 1947, when Britain was replaced by Pakistan as the new sovereign State.

12. It is important to note that tribal people have been following for centuries, Rewaj (custom), a strict tribal code that provides dispute resolution through Jirga, imposition of collective responsibility and mutual restraint and revenge. In 1947, the tribesmen decided to join Pakistan on an understanding that they would continue to regulate their lives according to Rewaj, as incorporated in the 1901 Frontier Crimes Regulation. The spirit of this understanding was incorporated in the terms (of accession of Tribal Areas to Pakistan) and was reiterated by the Quaid-e-Azam and thus has been enshrined in all the Constitutions of Pakistan including the 1973 Constitution.

13. The administrative set up from the colonial era for FATA was mostly retained after independence, with the NWFP (now known as Khyber Pakhtunkhwa), Governor administering FATA as an Agent first of the Governor General and when the position of Governor General was abolished, the President. The tribal areas are outside the jurisdiction of the Provincial Chief Minister, unlike other provinces in Pakistan. According to the Constitution of Pakistan, the President of Pakistan is the chief executive for FATA and the Governor Khyber Pakhtunkhwa exercises executive authority in FATA, as an Agent to the President. The national and provincial assemblies and superior courts have no jurisdiction over FATA. The overall administrative control of FATA at the Federal level falls under the Ministry of SAFRON. The FATA Secretariat (which was established in 2006) is responsible for planning, implementing and monitoring development activities in the region. The administrative head of the Secretariat is the Additional Chief Secretary (ACS) FATA, who reports to the Governor through the Chief Secretary Khyber Pakhtunkhwa.

14. FATA has been categorized into two distinct administrative areas: protected and non-protected⁷. While each of the seven agencies of FATA is headed by a Political Agent (PA), it is the protected areas that fall under the direct control of the PA. It is this area, which offers promise since this area has been gradually expanded to approximately 25% (was less than 5% in 1947). It is the ability of the government to directly take cognizance in many of the areas of FATA, which gives confidence to policy makers as well as administrators for change in the legal and administrative structure of FATA. For policing purposes, such duties are performed by the Levies in some Agencies (trained and reasonably equipped paramilitary force), and Khassadars (an irregular but traditional force), under the overall command of the PA at each Agency level. Moreover, the tribal Elders or Maliks also assist the PA in administrative as well as judicial matters including maintaining peace and control of crimes through Jirga or Council of Elders.

15. With respect to the Frontier Regions (FRs), these areas, adjoining the districts of Khyber Pakhtunkhwa, are being administered by Assistant Political Agents (APAs). These areas have no

⁷ FATA Civil Secretariat, “*Administrative System*.”

http://www.fata.gov.pk/index.php?option=com_content&view=article&id=50&Itemid=84

administrative linkage with the districts except that the concerned Deputy Commissioner performs the functions of PA in respect of such FRs.

FATA's Quest for Equity and Development

16. Presently, there is a development deficit in FATA as the region is lagging behind regarding various socio-economic and development indicators. Access to health facilities in FATA is low and results in high infant and maternal mortality rates and low immunization coverage. Similarly, the overall literacy rate is 33.3% (female adult literacy 12.7%) in FATA, as compared with the national average of 58%⁸. Moreover, most of the households are engaged in subsistence farming and livestock rearing and there are very few livelihood opportunities available. The pervasive under development of the region due to persistent neglect and failure of successive governments to either introduce meaningful reforms or undertake substantial developmental efforts have created trust deficit between the residents of FATA and the State.

17. The reasons for the above-mentioned pervasive socio-economic under development in FATA has its roots in history. After Partition of India in 1947, in the absence of adequate military resources Pakistan did not have the means to confront India's expansionism; it is speculated that these circumstances forced Pakistan not to create further tension in attempting to consolidate FATA into Pakistan's mainstream. Thus in 1948, the Quaid-e-Azam agreed to recognize the special status of FATA and it joined Pakistan on the same conditions as it had functioned under the British administration. In the Constitution, FATA was defined as a constituent part of Pakistan but not as a separate province or as a part of NWFP – these were possibilities that could have been executed then.

18. As a consequence of the 1948 understanding between the government and the tribesmen, an unintended consequence was that FATA was prevented from being considered as an independent entity for purposes of fiscal equalization under the National Finance Commission (NFC) and also could not access the allocation of adequate funds on per capita basis, as was the practice accepted for inhabitants dwelling in provinces. The average per capita shortfall during the last five years amounts to 44.39%⁹. This stunted human growth, led to poor delivery of services as well as poor infrastructural development in FATA; it caused a lack of integration of the people into the State and was thus substantially responsible for the creation of insurgency since 9/11. Besides causing a sense of deprivation amongst the people when they received lower per capita development funds, it caused regional socio-economic imbalances and discontent.

⁸ “*FATA Development Indicators Household Survey 2013-2014*”, Planning and Development Department, FATA Secretariat October 2015.

⁹ “*Position Paper on FATA Secretariat for National Finance Commission*”, Planning & Development Department, FATA Secretariat, June 2016.

19. There is a general misperception that the laws of Pakistan do not apply to FATA or that no efforts have been undertaken by the government to introduce reforms in the region. There have been many efforts undertaken to introduce reforms to the region. While some of the attempts to introduce reforms were successful, many of the efforts were unsuccessful for structural reasons.

20. In the post-independence period, the Government of Pakistan followed a policy of gradual mainstreaming of FATA, however, there were many opportunities when FATA could have been mainstreamed, but unfortunately were not materialized prudently. In 1955, during the period of One Unit, tribal areas were represented in both the National Assembly and West Pakistan Provincial Assembly, and therefore it was easy to incorporate them into the NWFP on the dissolution of One Unit, but it was not done. Another opportunity for mainstreaming FATA arose in 1976, when the then Prime Minister Mr. Zulfikar Ali Bhutto formed a Committee under Gen (Rtd.) Naseer Ullah Babur, Governor of Khyber Pakhtunkhwa. The objective of the Committee was to create a framework for making FATA part of NWFP, before the general elections in 1977. This initiative would have succeeded had the 1977 military coup not occurred. In 1996, adult franchise was granted to FATA residents and for the first time they participated in the general elections for National Assembly, in 1997.

21. Attempts were also made to introduce local government system in FATA (2002 & 2012) to empower the locals to deal with their day to day developmental and regulatory affairs, however, the attempts failed due to security concerns and structural bottlenecks.

22. In 2006, Sahibzada Imtiaz Committee on FATA Reforms was constituted to comprehensively deal with reforming FATA¹⁰. The Committee's report provided in depth analysis of situation in FATA, however, it did not propose any major constitutional reforms which deviated from the existing status quo. However, the report did provide a basis for having a structured administrative set up for FATA, independent of Ministry of SAFRON and Government of then NWFP.

23. In April 2005, the Governor of Khyber Pakhtunkhwa, constituted FCR Reforms Committee under the chairmanship of Justice (Rtd.) Mian Muhammad Ajmal. The purpose of the Committee was to recommend modifications in the FCR after undertaking public consultations across FATA. The Committee thoroughly assessed the FCR and proposed major amendments to make it a humane law.

24. After the general elections of 2008, the PPP government immediately established a Cabinet Reforms Committee under the chairmanship of Mr. Farooq H. Naek, Federal Minister for Law, to examine the modifications proposed by the previous Committee. Eventually, not all the recommendations, however were incorporated in the amended FCR 2011. The amendments to FCR in 2011 were made to address the issues of protection of women, children below 16 and citizen

¹⁰ Federally Administered Tribal Areas; “*Strengthening and Rationalization of Administration Report, 2006*”.

above 65 years from collective responsibility, arrest or detention; abolishing arresting the entire tribe under the collective responsibility clause. It provided for an independent appeal and review process at FATA Tribunal level and fixing the time limit for the disposal of cases.

25. In 2014, the Governor Khyber Pakhtunkhwa notified FATA Reforms Commission (FRC) under the chairmanship of former Chief Secretary NWFP, Mr. Ejaz Ahmad Qureshi. The Commission confessed lack of consensus on major constitutional reforms including future status of FATA among the stakeholders. However, the Commission highlighted several areas for reforms and put up its recommendations which included but were not limited to establishing the Agency and Governor's Advisory Councils, strengthening of Law Enforcing Agencies (LEAs) in FATA. It also included the strengthening of the Apex Committee at the Governor's level, improving civil-military coordination and decision making at the Apex as well as at the Agency levels, reforming the judicial system by proposing an expanded and strengthened organizational structure for the FATA Tribunal while eliminating the Commissioner office as the first appellate authority and recommended separation of executive from judiciary through creation of APA-Judicial at Agency level.

The Urgency for Reforms

26. Besides the above mentioned socio-economic constraints witnessed by FATA, the region has been facing serious security challenges for the past three decades. The proscribed Tehreek-e-Taliban and a few others, formed strongholds in almost all the Tribal Agencies and challenged the writ of the Government by running parallel institutions. Resultant operations by the Security Forces were launched from 2004 onwards against the militants, due to which people in large numbers left for the settled areas as Temporarily Dislocated Persons (TDPs). In June 2014, Operation Zarb-e-Azb was launched by the Armed Forces against the militants in North Waziristan and Khyber Agency after shifting over a million people to other areas.

27. In the aftermath of horrendous act of terrorism at the Army Public School, Peshawar on 16th December 2014, there was a national uproar that prompted the Government to move against terrorism in a more forceful and integrated manner. The National Action Plan (NAP) against terrorism was launched by the Prime Minister on 25th of December 2014. FATA has figured prominently in the narrative of terrorism and has been described as the most dangerous place on earth and the factors that led to the lawlessness and the absence of writ of the Government were critically felt. Thus reforms in FATA were designated as a priority area under the National Action Plan against terrorism.

28. Moreover, several important socio-political developments were taking place on ground in FATA. The extension of the Political Parties Act and Adult Franchise to FATA resulted in greater political awareness and activism. Political and social groups including political parties, FATA diaspora, students and professionals became active and started a campaign for FATA reforms. Due to established socio-economic and trade links of FATA residents with neighboring Khyber Pakhtunkhwa, voices were raised by certain groups for FATA integration with the province. Due to impetus of the on-going pro-reform activism in FATA, on 7th September 2015, nineteen FATA

Parliamentarians jointly presented the 22nd Constitutional Amendment Bill proposing amendments to Articles 246 and 247 of the Constitution and integrating FATA with Khyber Pakhtunkhwa.

29. Besides that, the widely perceived weak governance structure in FATA was further dented by weakening state of traditional governance structure due to killing of local Elders and Maliks by militants and the continued military presence and operations against the militants in the region. The mass exodus of FATA people as a result of the military operations and their subsequent return after successful operations in Mohmand, Bajaur, Orakzai and South Waziristan agencies from 2009 to 2012, also played a decisive role in raising the demand for reforms; a younger tribal leadership with progressive mindset emerged.

30. In light of these important developments, the Prime Minister of Pakistan, constituted a FATA Reforms Committee with the mandate to draft administrative and political reforms for FATA. The Committee was notified on 8th November 2015 with Advisor on Foreign Affairs Mr. Sartaj Aziz as its Chairman and Governor Khyber Pakhtunkhwa, Minister for SAFRON, Minister for Law and Justice and National Security Advisor as members.

31. The Committee held consultations with FATA stakeholders and visited each Agency for consulting the locals on reforms in FATA. The Committee held discussions with the stakeholders including FATA Elders/Maliks, FATA parliamentarians, youth, lawyers, political parties' representatives, former senior civil servants, experts on FATA and civil society members.

32. The Committee extensively deliberated on the four options available for reforms related to the future status of FATA: (i) maintain the status quo but introduce judicial/administrative reforms and increase focus on development activities; (ii) create FATA Council on the pattern of Gilgit Baltistan (GB); (iii) FATA to become a separate province; and (iv) integrate FATA with Khyber Pakhtunkhwa.

33. It emerged from the wide ranging consultations undertaken by the Committee, that there was a wide consensus on integration of FATA with Khyber Pakhtunkhwa, however tribal elders except in Kurram, Bajaur and FR Peshawar, wanted to retain the present special status. It may be noted that political parties, youth, businessmen, educated classes were clearly in favor of integration of FATA into Khyber Pakhtunkhwa and also argued for an extension of the writ of the Superior Courts. Secondly, tribesmen at the same time wanted to retain their identity by recognition of Rewaj and the Jirga system under the new system.

34. There was wide spread criticism against toll taxes and the FCR, wherever the consultations were held.

35. Tribesmen also advocated a more gradual and phased approach to FATA reforms linked with the return of the displaced persons to their homes and the smooth transition from post conflict situation so that durable peace was ensured.

36. The tribes were not in favor of having a separate province for FATA as their economic and cultural links were deeply integrated with the adjoining districts of Khyber Pakhtunkhwa. Moreover,

the vertical links between Agencies in FATA were non-existent. Furthermore, if FATA was to become a province in its own right, it was feared that it would not be able to generate the required resources and trained manpower and will thus lose the current advantages of its connections with Khyber Pakhtunkhwa.

37. Similarly, the option of FATA Council, on the lines of the GB Council, also did not enjoy much support. It was emphasized that even as a transitional measure, it would create new vested interests that could block further reforms and lead to the demand for a separate FATA province, which as explained above, is not a viable option.

38. It was perceived that joining the Khyber Pakhtunkhwa option would offer many advantages and was the only rational choice for mainstreaming FATA, since the people of FATA would be able to elect representatives to the Provincial Assembly of Khyber Pakhtunkhwa, thus providing them with expanded opportunities for improved governance. However, it was strongly suggested that after FATA integration with Khyber Pakhtunkhwa, the administrative infrastructure, including the strength and quality of LEAs must be improved and extended throughout FATA, thus making it easier for the Armed Forces to withdraw from their security role in FATA, within the next 4 -5 years, so that tribal cohesion is re-established and tribal society begins to function smoothly.

39. In view of the above recommendations of the stakeholders, the option of integration of FATA with Khyber Pakhtunkhwa is proposed.

Recommendations of the Committee on FATA Reforms

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

41. These reforms offer hope of peace and a brighter future for FATA's population, who have witnessed only war and turmoil in the last four decades. Safeguards have been built into the reform package to ensure its success. In this connection the Committee has proposed a 5-year transition period, ensuring that the role of the Political Administration remains central to this effort so that the tribes are enabled to interact positively in the reform process by continuing to function under their prevailing Rewaj and Jirgas. It is intended to use Article 247 of the Constitution as an enabler to bring about the suggested changes. In order to ensure acceptability of the Reforms, the best vehicle to accomplish it will be to take the Parliament into confidence.

42. The following concurrent and parallel actions will be required to be taken during the transition period:

a) Rehabilitation and Reconstruction

- i) After the restoration of peace, priority should be assigned to rehabilitation of tribal people, reconstruction of tribal areas on war footing and revival of local livelihood opportunities. Wealth creation in FATA is fundamental.
- ii) The target date for return of TDPs is proposed to be 31st December, 2016 and all activities under the reconstruction phase must be completed before the end of 2018.
- iii) Reconstruction activities in FATA would be a gigantic task that would require allocation of much larger financial and administrative resources. Moreover, as multiple stakeholders would be involved in the process, there would be a requirement for seamless coordination between all the concerned including Ministry of SAFRON, FATA Secretariat, Ministry of Finance, Ministry of Planning, Development and Reform, the Army formations and Frontier Works Organization (FWO) and National Logistics Cell (NLC). FATA Sustainable Return and Rehabilitation Strategy 2015-16 should be synchronized with the above timelines.
- iv) Foreign donors will be encouraged and facilitated to contribute to the process by making available technical assistance as well as financial resources for the Reconstruction Plan.
- v) While the rehabilitation and reconstruction of infrastructure, including communications, power transmission lines, water supply schemes, education and health facilities should be undertaken by the public sector agencies, the repair or rebuilding of private houses and commercial facilities should be undertaken by the local people themselves. They can be assisted through the provision of cash grants through Citizen Losses Compensation Program (CLCP), at predetermined rates. This will not only ensure much quicker construction but also facilitate revival of local economic activities and generate employment opportunities. The rebuilding should be undertaken by relying on modern technology like provision of non-grid solar units that should be provided at subsidized rates to the locals.

b) Socio-Economic Development of FATA

- i) There is hardly any private investment in FATA, partly because of the security situation but mainly due to the absence of a legal framework that encourages and protects such investment. There is also a perception that public funds get wasted due to the absence of adequate monitoring and accountability mechanism. These constraints need to be addressed on priority basis during the current transitional period.
- ii) A Special Committee of high level experts and officials should be formed under the Governor Khyber Pakhtunkhwa, to prioritize preparation of a 10-year Comprehensive Development Plan for FATA before the end of 2016.
- iii) The 10-year Development Plan should include major infrastructure and irrigation projects, mineral development program and integrated plans for health, education,

- vocational training and establishment of industrial zones with special incentives. A major aim of this 10-year Plan will be to reduce substantially the gaps in development and per capita indicators between Khyber Pakhtunkhwa and FATA.
- iv) The NFC should make allocation of 3% of the available resources in the federal divisible pool (Rs. 90 billion) on annual basis for the implementation of the 10-year Development Plan. This will be in addition to the existing annual PSDP allocation of Rs.21 billion.
 - v) An important component of the new Development Plan would be the concept of social transformation of FATA by encouraging urbanization by setting up modern urban hubs in all Agency Headquarters and other important trading centres.
 - vi) 30% of the allocation in the 10-year Plan should be channeled through the elected local bodies. Such a decentralized system of development administration will not only cater to the needs and aspirations of the people at grass root level, but will also develop local technical and professional capacity to prepare and implement small and medium scale projects, with a focus on local employment generation and quick impact on living standards.
 - vii) FATA Development Authority (FDA) may be reorganized with enhanced powers to implement large infrastructure projects under the 10-year Development Plan.
 - viii) A position of Chief Executive (BPS-22) may be created under the Governor to assume responsibility for implementation of the 10-year Development Plan.
 - ix) A Governor's Advisory Council consisting of all FATA Senators and MNAs may be set up to assist the Governor in carrying out development and administrative functions.
 - x) The approving powers of FATA Development Committee may be enhanced from the present Rs.400 million to Rs.2 billion and that of FDWP from Rs.200 million to Rs.1 billion.
 - xi) The President's Order No. 13 of 1972 regarding service matters in FATA may be suitably revised to empower the Governor to attract competent officers from multiple sources for the transition period.
 - xii) Special incentives to private sector in education and health sectors should be given in the form of free land.
 - xiii) All posts in FATA should be upgraded and brought at par with Khyber Pakhtunkhwa.
 - xiv) Salaries for the project personnel in FATA should be 20% higher than that admissible under the project policy of Khyber Pakhtunkhwa.
 - xv) Connectivity of FATA with CPEC should be ensured at suitable locations.
 - xvi) State Bank of Pakistan (SBP) should encourage establishment of more branches of banks in FATA with special incentives for private banks.
 - xvii) Allocation for BISP, Bait-ul-Maal and microfinance schemes in FATA should be increased.

- xviii) Quota of FATA students in education and health institutions in other provinces should be doubled and retained for 10 years after integration with Khyber Pakhtunkhwa.

c) Elected Local Bodies for FATA- 2017

- i) Once the rehabilitation phase is completed, party based local bodies elections should be held in FATA before end of 2017. This would require promulgation of FATA Local Government Regulation, which should be promulgated by the Federal Government within three months. All other formalities e.g. updating the electoral rolls, finalizing the constituencies, rules and regulations should be completed by the first quarter of 2017.
- ii) A separate unit for FATA may be created in the Election Commission office, Peshawar for this purpose.
- iii) Auditor General of Pakistan should ensure that development funds and all other expenditures of local bodies in FATA are properly audited to ensure efficient utilization, and if this requires capacity building the same should be encouraged.
- iv) Permit/Rahdari system for exports from and imports into FATA should be abolished to eliminate large scale corruption and bring down prices of essential items in FATA. Correspondingly, necessary funds should be provided in the budget for operational expenditure of the political administration.

d) Legal Reforms

- i) The FCR should be repealed and a new “Tribal Areas Rewaj Act” enacted.
- ii) The “Jirga” system should be retained for both civil and criminal matters, whereby the Judge will appoint a Council of Elders to decide factual issues in accordance with Rewaj and will pass a decree in accordance with its findings in a civil reference or pass an order in accordance with its findings and applicable law in a criminal reference.
- iii) Provisions relating to collective/vicarious responsibility in the FCR should be omitted from the new Act, thereby making an individual responsible for his own acts (This would eliminate one of the major criticisms of the present FCR relating to violation of fundamental rights).
- iv) The new Act should be introduced in phases in such Agencies or their parts where it is convenient and it may be so notified. The enforcement of the law should be in stages.
- v) Jurisdiction of the Supreme Court of Pakistan and the Peshawar High Court should be extended to FATA.
- vi) The Committee has proposed retention of Jirga system in the Civil and Criminal Justice system of FATA for the reason that its repeal would be resisted and will

destabilize the social order which is undesirable. Moreover, with certain changes in procedures, the Jirga process could start resembling the “jury system” which is acceptable internationally. Simultaneously, any legal instrument, which incorporates ‘Rewaj’ as part of the judicial process, must ensure that it’s not in conflict with the fundamental rights as well as other substantive laws administered in Khyber Pakhtunkhwa.

e) Capacity Building of LEAs

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

f) Land Settlement

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

Implementation Mechanism

- i) A well-structured implementation mechanism will be necessary to ensure adequate and timely implementation of the Reforms recommended in this Report. This will include a Cabinet Level Committee including Governor Khyber Pakhtunkhwa, Minister SAFRON, Minister Law, National Security Advisor, Secretary SAFRON (as secretary) and a representative of Army to review the progress of reforms. A

- special Directorate of Transition and Reforms will be established at the FATA Secretariat level to plan, design and implement various segments of the reforms.
- ii) Quarterly review meetings may be held by the Prime Minister in the presence of the Cabinet Level Committee and other stakeholders.
 - iii) A Reform Unit should be established in the Ministry of SAFRON to oversee the entire process and also provide policy support to the Cabinet Level Committee.
 - iv) A small Reform Unit would also be necessary at each Agency to facilitate on the ground implementation.
 - v) There should be no further expansion of the FATA Secretariat except the creation of Directorate of Transition and Reforms and other reform related staff. Steps should be taken during the transition period to gradually work backwards and strengthen the linkages of FATA Secretariat with the provincial administration of Khyber Pakhtunkhwa. The ultimate objective would be to make the FATA Secretariat an integral part of the Civil Secretariat of the Province by the end of the transitional period.

Chapter 1: Introduction

Geography and Population

The Federally Administered Tribal Areas (FATA), situated midway along Pakistan's North Western border with Afghanistan, have faced instability and disorder for almost four decades, starting with the 1979 invasion of Afghanistan by the former Soviet Union, then it witnessed the spread of militancy after March 2004 and subsequent military operations from 2009 onwards. FATA is still governed through a colonial-era political, administrative and judicial system that alienates the residents from the rest of the country.

2. Covering an area of 27,220 square kilometers, FATA consist of seven agencies (Bajaur, Mohmand, Khyber, Kurram, Orakzai, North Waziristan and South Waziristan) and six tribal areas adjoining the Peshawar, Kohat, Bannu, Lakki Marwat, Tank and Dera Ismail Khan districts, known as Frontier Regions. FATA Secretariat estimates that there are 4.8 million people in FATA. The population according to the 1998 census was 3.17 million with a male ratio of 108.4:100. The average household size in FATA is 7.6¹¹ and the average family size in FATA is 6.6¹². The number of children under 15 years of age account for 43.3% of the population. The profile of each Agency and the main tribes living in them are shown in *Annex-A*.

3. The 1998 census recorded 126,577 persons as migrants from FATA to other parts of Pakistan, which renders the gender ratio questionable (the migrants are mostly assumed to be men, leaving behind a higher proportion of female population). According to the 1998 census, the urban population in FATA was only 2.7%, and the population density was 117. The urban population is mostly concentrated in Khyber and Kurram agencies.

<u>S. No</u>	<u>Name of Agency/FRs</u>	<u>Population (2016)</u>
1	Bajaur Agency	875,810
2	Mohmand Agency	492,110
3	Khyber Agency	804,452
4	Orakzai Agency	331,711
5	Kurram Agency	659,638
6	North Waziristan Agency	658,800
7	South Waziristan Agency	632,463
8	FR Peshawar	79,221
9	FR Kohat	130,153

¹¹ "FATA Development Indicators Household Survey 2013-2014", Planning and Development Department, FATA Secretariat, October 2015.

¹² *Ibid.*

10	FR Bannu	28,829
11	FR Lakki	10,281
12	FR Tank	40,045
13	FR D.I. Khan	57,369
	Total	4,800,883

Source: Bureau of Statistics, FATA Secretariat.

4. FATA is severely underdeveloped. Access to health facilities in FATA is low which results in high infant and maternal mortality rates and low immunization rates. According to FATA Development Indicators Household Survey (FDIHS) 2013-2014, the proportion of births attended by skilled health personnel was 29.5% in FATA which is far below the national average of 86%. The maternal mortality ratio (MMR) for FATA overall is 395 per 100,000 – this compares to 275 per 100,000 for Khyber Pakhtunkhwa. The share of fully immunized children under 12-23 months in FATA is 33.9% while the figure for Pakistan is 76%. Most health services are offered by unregistered doctors and faith healers. Moreover, cultural norms restrict the movement of women in public and restricts them from consulting male health care providers.

5. The education statistics of FATA also paint a dismal picture. According to FDIHS 2013-2014, the overall literacy rate is 33.3% while the national figure is 58% (53% for Khyber Pakhtunkhwa). Poverty, lack of schools and the perceived low economic impact of education are major factors that explain the low literacy level. Male adult literacy rate in FATA is 49.7% while the female rate is just 12.7%. Low female enrolment can also be attributed to cultural restrictions besides lack of infrastructure.

6. The main source of drinking water for 31.4% of households in FATA is canal/pond/river/stream/spring/rain water, as per FDIHS 2013-2014. Only 8.9% of the total tribal population is being provided with tap water. 38.3% of the population has flush latrines, while the national average is 71%.

History of FATA

7. The areas that today make up FATA has been a gateway to the Indo-Pak Subcontinent for hordes of immigrants and invaders, since the times of Aryans and Alexander the Great. The Mughals, crossed this Region in the early 16th century to capture Delhi and waged relentless military campaigns in the northwest to ensure the security of their kingdom.

8. The colonial administration controlled the region through a combination of British-appointed agents and local tribal elders. The people were free to govern/manage their internal affairs according to tribal codes, while the colonial administration held authority in what were known as protected and administrative areas' over all matters related to the security of British India.

9. Although various tribes cooperated with the British off and on in return for financial incentives, this quid pro quo arrangement never translated into an effective control. Throughout the latter half of 19th century, British troops were embroiled in repeated battles with various tribes in the area.

10. At the turn of the 18th century, Russia began to expand eastwards towards Central Asia. The British Colonial administration foresaw that their Indian possession will be threatened if Afghanistan became a vassal state of Russia. Secondly, Britain saw that between the districts of the North-West Frontier and Afghanistan lay a mountainous region inhabited by fiercely independent tribesmen, who could launch fierce raids into the districts for kidnapping and dacoities.

11. Britain solved the problem by exercising her dominant position as a super-power by forcing Russia to accept that the domains of the Amir of Kabul lay within its sphere of influence. To achieve this supremacy, she had to fight two wars with Kabul in 1834 and 1878, before the Amir accepted British suzerainty. The Russians accepted this fact which led to formation of joint boundary commissions with Britain to demarcate the boundaries of Afghanistan.

12. The Afghan boundary with Russia was demarcated by a joint Anglo-Russian Boundary Commission in 1888. The Afghan boundary with Russia was finalized in 1895. The boundary with India was finalized between the Amir and government of India between 1893-95.

13. But the British were not content with restricting the expansion of Russian influence only. She began creating tribal agencies to ensure British domination over them and to exercise control over gangs operating out of agencies. Khyber Agency was created in 1878, Kurram in 1892, and Malakand, Tochi and Wana in 1896.

14. The East India Company after defeating the Sikhs in 1849 became the paramount power in India. Punjab under the Sikhs was ruled by a military oligarchy that had minimal space for a humanitarian relationship with the indigenous people they ruled. The Sikhs were only interested in garnering revenue or an equivalent number of heads through their murderous style of governance; it was a system of violence and war whose result was disastrous for the subject population.

15. From 1849 to 1890 Britain adopted a 'Close Border' policy; John Lawrence the new Governor of Punjab, based his policy on a comparative humanitarian approach in the districts and a policy of conciliation backed by military response, in case of tribal incursions into districts. At the same time British administrators tried to change the tribal mind-set by attempting to maintain peace in tribal areas by encouraging tribesmen to join trade and employment.

16. Any violation of the peace in districts by tribal gangs of raiders was punished by; (a) fines, (b) blockade, (c) punitive expeditions, (d) termination of tribal employment, and (e) destruction of homes of ring-leaders.

17. In order to control the tribal border, the British created the Punjab Frontier Force composed of Pathans, Punjabis, Sikhs and Gurkhas. The force was amalgamated into the British army in 1886. Between 1849-1890 when the 'Close Border' policy was in vogue, 42 military expeditions were launched to punish the tribes. It was observed that such military operations led to indiscriminate slaughter and laying to waste whole villages. A mode of retaliation that punished largely the

innocent, Lord Lytton the Governor General wrote his famous note in April 1877 recommending a review of the policy.¹³

18. It was argued that the ‘Closed Border’ policy failed because Britain could not conceive a long term view of their relations with Afghanistan and the tribes. It was mainly due to the frequent changes of governments in Britain, who could not allocate sufficient time to policy making in this matter, thus this region remained secondary to British priorities in Europe.

19. Thus in this period, officers tried to influence tribal behaviour by political handling of the tribes; for such a policy to succeed Britain developed the mechanism of payment of conditional subsidies to the tribes, under it the tribes were obligated to remain peaceful and to keep the routes passing through their area of responsibility safe and open. Later, other stipulations were gradually added to the conditions like returning of fugitives wanted by law.

20. A persistent criticism of this method of management of the tribes was the collective punishment in which many innocents were also punished; this mode of punishment destroyed the mechanism of wealth-creation that was essential for advancement of tribal individuals and development of abiding leadership amongst them as was happening in districts of NWFP, where the development of canal irrigation in Peshawar, Mardan and Charsadda was pacifying the region and bringing to the fore individuals, who later became leaders of their people and could participate in the political and economic growth of the province.

21. In this background the British were hard put to conceive a sound methodology for controlling the tribes. Some observers found that the Pathan tribesmen are held together by their social code called, “Pashtunwali”¹⁴. They resist any form of an imposed authority, which they find repugnant to their liberty. They are armed and are also militant, thus pacification of such people is not simple.

22. In 1899, Lord Curzon became the Viceroy of India; prior to his appointment he was immersed in studying the problem of the tribal areas; he was convinced that the problems generated required immediate response. Although he was associated with the “Forward Policy,” as distinguished from “Close-Border Policy”, but Britain had moved forward into tribal areas before his arrival. Curzon’s major contribution to tribal policy were; (a) creating the new province of NWFP in 1905 under a Chief Commissioner who as Agent to the Governor General was responsible for the daily management of the tribal areas, (b) he consolidated the military force that was spread thinly all over the frontier and was thus exposed, (c) the army was pulled back, tribal allowances were raised, the FCR was revised for tribal areas and the Political Agents made answerable to the Agent to the Governor-General, (d) he created tribal militias like the Khyber Rifles, Kurram Militia, South and North Waziristan militia, and (e) to connect them he developed lateral routes and introduced railways.

¹³ Khalid Aziz, “*Tribal Policy*,” Peshawar, 1985, P.23

¹⁴ Pashtunwali refers to a peculiar code of conduct based on a honour system that prevails amongst the Pashtun ethnic group in Pakistan and Afghanistan.

23. After the 3rd Afghan War ended, tribal areas were re-organized and the following reforms occurred; (a) an armed force of Scouts was created, they were officered by British army officers where 1/3rd of the enlistees would be from tribal areas; (b) a new force of persons recruited from districts was constituted to defend the districts from raids by tribesmen and known as the Frontier Constabulary; it was a para – military police force, officered by police officers from NWFP, (c) a force of tribesmen called Khassadars was raised, who provided protection services inside tribal areas. They were recruited on recommendation of Maliks and undertook collective maintenance of peace in areas administered by the government and that included roads and government facilities.

24. However, stabilization was not achieved and a number of military expeditions were launched against the Wazir and the Mehsud. Although the Wazirs came to terms quickly the Mehsuds remained belligerent. The worst part for Britain was that the expenditure on these two expeditions was more than the total expenditure on the 3rd Afghan War. To understand the new dynamics emerging in tribal areas, Britain formed an Enquiry Commission in 1922, to review its tribal policy and to recommend changes. This committee proposed the division of tribal areas into two parts; (a) Waziristan, (b) rest of the tribal areas¹⁵.

25. In order to enhance security in Waziristan the committee proposed raising of 12 additional battalions of army to be located in Razmak to threaten the Mehsud heartland of Makin and Kaniguram and in Wana to subdue the Wazirs.

26. These locations were to be supported by troops in adjoining districts as reserves. Roads were to be built in Waziristan, protected by forts, so that forces could be moved laterally at a short notice. This led to the construction of the Bannu, Miranshah and Datta-Khel road to control the Tochi valley, another road led from Bannu to Tank-Daraban; a third lateral ran from Tank – Manzai – Jandola that joined the road at Razmak; a fourth branch of road connected Wana to Kaniguram.

27. For other tribal areas the Enquiry Commission recommended a Close-Border policy except the occupation of Afridi Kajuri plain to prevent Afridis from raiding Peshawar.

28. These changes were termed successful by the Howell Committee of 1931, as they led to increased control over Waziristan¹⁶. This design of tribal control was continued up to 1947 when Pakistan became the new sovereign state.

29. For tribal areas Britain created a legal fiction, through a declaration it said that although the tribal areas were a part of India but they were not a part of British India¹⁷. Hence with one stroke, the tribal areas were condemned to remain an under-developed region in terms of political growth and human development; it was designed to remain as a semi governed border land meant to stop any incursions into India from the North-West. Thus prior to the 1920's, even road building was denied to the region, as it could assist the quick movement by an invading force from the West.

30. In order to consolidate their control over tribal areas, the colonial administration imposed a series of laws. The first version of Frontier Crimes Regulation was introduced in 1876, prescribing

¹⁵ Khalid Aziz, "Tribal Policy," Peshawar, 1985), P. 50

¹⁶ (Ibid 1), P. 54

¹⁷ PART V, *Aitchison Treaties*, Engagements and Sanads relating to the North West Frontier Province.

special procedures for the tribal areas, distinct from the criminal and civil laws that were in force elsewhere in British India. These regulations, based on the idea of collective territorial responsibility provided for dispute resolution to take place through a Jirga (Council of Elders), proved inadequate to control the tribes till the turn of twentieth century.

31. Frustrated in their efforts to subdue the region, Britain in 1901 issued a revised FCR, that expanded the scope of earlier regulation and awarded wide powers, including judicial authority, to administrative officials. The new province named as North-West Frontier Province (NWFP) was created in the same year by carving out part of the then Punjab province and included certain tribal principalities. The province, as it was constituted at that time, included five settled districts: Peshawar, Mardan, Kohat, Bannu and D. I. Khan and five tribal agencies: Dir-Swat-Chitral, Khyber, Kurram, North Waziristan and South Waziristan. The new Province was placed under the administrative authority of a Chief Commissioner, reporting to the Governor General of India.

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

33. While concluding the review of the British management of tribal areas, it can be summarized as a policy that had a keen interest in maintaining the region politically under-developed under a militarized administration; its laws and political growth was thus truncated and the people suffered. It is due to these policies that the region today displays signs of poor human development and slow political growth. It can be argued that the tribesmen were a victim of Britain's geo-strategic considerations, it is no wonder that one of the most well-known writer and a former Governor of NWFP Olaf Caroe wrote that, had Roos-Keepel, the formidable Chief Commissioner of NWFP (now Khyber Pakhtunkhwa), permitted political reforms to be extended to the Pakhtuns, tribalism would not have prevailed.¹⁸

34. **One of NWFP's better known Governors, Sir G. Cunningham, inquired from Dr. Khan Sahib, the Chief Minister of NWFP in 1945 as to what ought to be the future of tribal areas. Dr. Khan, replied that the only natural and right thing to do was for it to join the province of NWFP, and tribal areas and NWFP should be turned into one province, where adequate protection is provided under which tribal Jirgas and their 'Rewaj would be recognized as the accepted law.**¹⁹

¹⁸ Olaf Caroe, *"The Pathans"*, Oxford University Press, Karachi, 1958, P.425.

¹⁹ Norval Mitchell, *"Sir George Cunningham: A Memoir,"* William Blackwood, London 1968, P.113

Post-Independence FATA

35. The administrative set up from the colonial era for FATA was mostly retained after independence, with the NWFP Governor administering FATA first as an agent to the Governor General and later when the position of Governor General was abolished, the President. The tribal areas are outside the jurisdiction of the Provincial Government of Khyber Pakhtunkhwa, unlike other provinces in Pakistan.

36. According to the Constitution of Pakistan, the President of Pakistan is the Chief Executive for FATA. He can introduce regulations ‘for the peace and good governance’ (Article 247 of the Constitution of Pakistan), and the Khyber Pakhtunkhwa Governor exercises executive authority as the President’s representative. The national and provincial assemblies have no jurisdiction over FATA. *Under Article 247 (vi), “the President may at any time direct that the whole or any part of the Tribal Area shall cease to be tribal area, provided that before making any order under the clause, the President shall ascertain the views of the people of the Tribal Areas concerned, as represented in Tribal Jirga”.*

37. For certain administrative matters at the Federal level, FATA come within the purview of the Ministry of SAFRON, which is answerable to the elected Prime Minister and the Parliament.

38. The FATA Secretariat (which was established in 2006) is responsible for planning, implementing and monitoring development activities in the region. The administrative head of the secretariat is the Additional Chief Secretary (FATA) who reports to the Governor through the Chief Secretary Khyber Pakhtunkhwa.

39. In 2006, the FATA Development Authority (FDA) was also established to attract/ support private investment and development.

40. In addition to the aforementioned organizations, the FATA Disaster Management Authority (FDMA) was established in 2008 to coordinate emergency relief activities as an arm of the National Disaster Management Ordinance. The FDMA operates under the FATA Secretariat’s Law and Order Department.

41. FATA has been categorized into two distinct administrative areas, protected and non-protected²⁰. While each of the seven agencies of FATA is managed by a Political Agent (PA), it is the protected areas that fall under the direct control of the PA. It is this area, which offers promise since it has gradually expanded from being less than 5% in 2001 to more than 25% now. It is the ability of the government to directly take cognizance in many of the areas of FATA which gives confidence to policy makers as well as administrators for change in the legal and administrative

²⁰ FATA Civil Secretariat, “Administrative System.”

http://www.FATA.gov.pk/index.php?option=com_content&view=article&id=50&Itemid=84

structure of FATA. The PA is responsible for regulating trade with other agencies and the rest of Pakistan, supervising development projects and maintaining law and order under the Frontier Crimes Regulation of 1901 (FCR) in the Agency. He is supported by Assistant Political Agents (APAs), Tehsildars (administrative head of a Tehsil), Khassadars (local police force under the PA's command that is responsible for protecting roads and government installations) and Levies (security force). The PA can recruit individuals from different tribes as per tribal shares.

42. The *Maliki* system, which the British had introduced, was retained after 1947. This system created a local group of loyal tribal elders who were rewarded with a special status and financial benefits. The *Maliks*²¹ and *Lungi* (turban) holders²², selected by the PA from the local tribes (with the consent of the Governor), assist in the implementation of government's policies by acting as intermediaries between the members of individual tribes and the government. They are expected to maintain peace and ensure that roads in the region remain open. The PA can withdraw the *Maliki* or *Lungi* status if he decides that the individual is not serving the state's interest.

43. The Frontier Regions (FRs) are administered by the Deputy Commissioners (DC) of the respective settled districts. The DC in this case, exercises the same powers as the Political Agent.

FATA's Quest for Equity and Development

44. After Partition of India in 1947, Pakistan was born incapacitated; it did not receive its share of the Indian army and related military assets. However, there was a clear indication of India's intent to under-cut the right of choice by pre-partition Indian princely states to either join Pakistan or India. Two states that had expressed their indications of joining Pakistan - viz Junagadh and Hyderabad were occupied by the Indian army, while they were still under the command of Britain; it became evident that the Muslim majority state of Kashmir ruled by a Hindu ruler would opt for joining India too, in disregard of the wishes of its majority Muslim population.

45. Ultimately Pakistan had to rely on tribal militias to confront India's occupation of Kashmir. In the absence of adequate military resources Pakistan did not have the means to confront India's expansionism; it is speculated that these circumstances forced Pakistan not to create further tension in attempting to consolidate FATA into Pakistan's mainstream. It also suited the traditional driven tribesmen, who wanted to retrain their tribal mechanisms of administration to continue in the new state to which they had sworn allegiance. On the other hand, Pakistan wanted the military deployed in FATA to be relieved of their internal security duties so that they would be available to defend Pakistan's borders against India.

46. In a Jirga with the tribesmen in Peshawar at the Governor House in 1948, the Quaid-e-Azam agreed to recognize the special status of FATA and not to make changes in its administrative system without the tribesmen's consent. These commitments are enshrined in Article 247 of the

²¹ Representative of tribe

²² Representatives of sub-tribes or clans

Constitution. It was in the same spirit that the Quaid-e-Azam ordered in July 1948²³ the creation of the Ministry for SAFRON so that FATA could be directly managed by the Governor General. Thus, in this way FATA joined Pakistan on the same conditions as it had functioned under the British administration. In the Constitution, FATA was defined as a constituent part of Pakistan but not as a separate province or as a part of NWFP –these were possibilities that could have been executed then.

47. Amongst other implications of this decision by the Quaid-e-Azam regarding FATA, the following consequence ensued: (a) it excluded FATA from being considered as an independent entity for purposes of fiscal equalization under the National Finance Commission (NFC), a constitutional contrivance invented by the British to allocate funds from the taxes and duties collected by the Government of India; (b) it denied the allocation of available funds to FATA on per capita basis as was the practice accepted for inhabitants dwelling in provinces. Although, this was never ever the intent of Pakistani leadership, yet the end result of the policy options exercised in connection with FATA, led to the same outcomes as the policy adopted by Britain towards FATA.

48. As a result of the above policy, the following consequences ensued in FATA:

- i) The lack of funds stunted human growth and infrastructural development in FATA causing backwardness and poverty²⁴, and is explained as one of the reasons responsible for the creation of insurgency since 9/11.
- ii) Residents of FATA felt a sense of discrimination when they received lower per capita development funds from the state.
- iii) These discrepancies caused regional imbalances in the economic indicators and caused further discontent.

49. The table below is based on an exercise conducted by FATA Secretariat Peshawar to measure the shortfall in the allotment of development and non-development funds allocated to FATA owing to its exclusion from the National Finance Commission's purview on the same basis as a province.

²³ 3rd July 1948

²⁴ The incidence of poverty in FATA, as measured by MPI, is 73.7%, which is highest in Pakistan, “*Multidimensional Poverty in Pakistan*”, Ministry of Planning, Development and Reforms 2016.

S. No	Year	Per Capita derived share as in NFC (Rs)	Per Capita Budget Allotted to FATA (Rs)	Short-Fall (in %)	Total Short-Fall (Billion Rs)
1	2010-11	11,017.26	5,270.91	47.84	(-) 25.2
2	2011-12	13,346.33	5,057.27	37.89	(-) 36.4
3	2012-13	13,483.33	6,321.36	46.88	(-) 31.5
4	2013-14	15,606.98	7,492.73	48.01	(-) 35.7
5	2014-15	18,995.38	7,855.00	41.35	(-) 49.0

Source: Position Paper of FATA Secretariat for NFC.

50. It may be noted that the National Finance Commission is an institutional framework established under the Constitution that provides monetary transfer from the federal divisible pool of all the duties and taxes collected by the Federation amongst the four provinces of Pakistan; the underlying principle is that such allocations must create a symmetry in the sharing of per capita allotments to ensure equitable human development and economic growth; the table shows an almost average per capita shortfall of 44.39%.²⁵

51. Thus one of the main reasons for FATA's underdevelopment is due to its structural difficulty of not receiving due funds to which it would have been entitled had it received the same per capita allocations as were available to the provinces under the NFC dispensation. Some of the glaring figures exemplifying under-development are given below;

- i) Access to health facilities in FATA is low and results in high infant and maternal mortality rates and low immunization coverage. According to FATA Development Indicators Household Survey (FDIHS) 2013-2014, the proportion of births attended by skilled health personnel is 29.5% only in FATA which is far below the national average of 86%.
- ii) The maternal mortality ratio (MMR) for FATA overall is 395 per 100,000 – this compares to 275 per 100,000 for Khyber Pakhtunkhwa. The share of fully immunized children under 12-23 months in FATA is 33.9% while the figure for Pakistan is 76%. These figures assume an alarming shape when we note that most of the maternity and child care health services are offered by unregistered persons and faith healers. Moreover, cultural norms restrict the access of women to obtain better health services from health care providers (who are mostly male).

²⁵ "Position Paper of FATA Secretariat for National Finance Commission," Planning & Development Department, FATA Secretariat, June 2016.

- iii) The education statistics of FATA paint a similar dismal picture. According to FDIHS 2013-2014, the overall literacy rate is 33.3% in FATA- the national average is 58%. Poverty, lack of schools and the perceived low economic impact of education are major factors that explain the low literacy level. Male adult literacy rate in FATA is 49.7% while the female rate is just 12.7%. Low female enrolment can also be attributed to cultural restrictions besides lack of infrastructure.
- iv) The main sources of drinking water for 31.4% of households in FATA are canal/pond/river/stream/spring/rain water, as per the FDIHS 2013-2014. Only 8.9% of the total tribal population receives piped water. In the case of sanitation only 38.3% of the population has flush latrines, while the national average is 71%.

52. As mentioned earlier, the main cause for the underdevelopment of FATA and its people is thus the result of structural deficits related to non-availability of Constitutional processes that discriminates against FATA and provides it with lesser per capita allocation from the budget than its fair and equitable share.

Chapter 2: History of Reforms in FATA

There is a general misconception that the laws of Pakistan do not apply to FATA or that no efforts have been undertaken by the government to introduce reforms in the region. Since the creation of Pakistan, a number of laws have been extended to FATA. These include Acts such as the Passport Act 1913, the Trade Mark Act 1940, Pakistan Control of Entry Act 1952, the Public Debt Act 1944, and the Adult Franchise Act 1996 which gave the population the right to vote in general elections for the National Assembly. A complete list of laws extended to FATA from 1947 to 2015 is given in *Annex-B*.

2. Similarly, there have been many efforts undertaken to introduce reforms in the region. While some of the attempts to introduce reform were successful, many of the efforts were unsuccessful for different reasons. For example, in 1979, the Criminal Procedure Code was extended to FATA but with the provision that it would be operational only when relevant rules were missing in FCR. This effectively negated the net impact of this extension.

3. Moreover, highlighting various aspects of reforms in FATA, the National Defence University has published numerous policy and research papers.

4. This chapter highlights the major reform efforts that were undertaken in the past 40 years to mainstream FATA.

1976: General (Rtd.) Naseerullah Babar's Report

5. In 1976, the then Prime Minister Zulfikar Ali Bhutto formed a committee under Gen (Rtd.) Naseerullah Babar which included Mr. Hafeez Pirzada, Mr. Rafi Raza and Dr Mubashar Hassan. The aim of the committee was to create a framework so that FATA could become a part of NWFP for general elections in 1977. This initiative would have succeeded had the 1977 military coup not occurred.

1996: Extension of the Adult Franchise Act 1996 to FATA

6. In 1996, the government extended adult franchise to FATA, granting every adult in FATA the right to vote for their representatives in the Majlis-e-Shoora. Earlier, only Tribal Maliks chose FATA representatives to the National Assembly.

2002: Extension of Local Government Ordinance 2001 to FATA

7. In 2002, the Government introduced FATA Local Government Regulation and in 2004, some of the Agency Councillors were nominated by the PA in each Agency. However, the system was not successful because the general public had no confidence in those selected office bearers who had no powers.

2006: Sahibzada Imtiaz Ahmad's Report

8. In April 2006, Mr. Sahibzada Imtiaz Ahmad - Advisor to the Prime Minister on Tribal Affairs - submitted a report titled 'FATA Strengthening and Rationalization of Administration Report, 2006'. This was the first attempt to deal with FATA Reforms in depth and provided a detailed analysis of the existing situation in FATA. The report focused on administrative reforms which resulted in the increased independence of the FATA Secretariat and a substantial increase in development funding to FATA. The position of the Additional Chief Secretary (ACS) of the FATA Secretariat was created. Many foreign funded projects were also initiated. The report was one of the first official reports to highlight the security situation in FATA and linking it to the weak governance structure of FATA. However, the recommendations in the report did not go far enough and maintained the status quo with reference to the constitutional provisions related to FATA.

2006: FATA Sustainable Development Plan 2006-2015

9. The Government of Pakistan in 2006 formulated a 10-year FATA Sustainable Development Plan (FSDP) after a comprehensive grass root consultative process. The recommendations in the report focused on improving financial and institutional management capacities in the development sector in FATA with a focus on health, education, infrastructure, and employment generation. The implementation of this plan remained inadequate, partly due to the difficult security situation during this period and partly due to serious institutional deficiencies.

2008: Justice (Rtd.) Mian Mohammad Ajmal Report on Reforms in FCR

10. In April 2005, the Governor of Khyber Pakhtunkhwa constituted FCR Reforms Committee under the chairmanship of Justice (Rtd.) Mian Mohammad Ajmal. The Committee included tribal elders, serving and retired civil servants, lawyers, a FATA parliamentarian and a journalist. The purpose of the Committee was to recommend modifications in the FCR after undertaking public consultations across FATA. The committee found that majority of the stakeholders wished for major modifications in FCR in order to make it a humane law. After the general elections of 2008, the PPP government immediately established a Cabinet Reforms Committee under the chairmanship of Mr. Farooq H. Naek, Federal Minister for Law, to examine the modifications proposed by the previous Committee. The Cabinet Reforms Committee presented a number of modifications in the FCR. It suggested that the title of the Frontier Crimes Regulation should be replaced by FATA Regulation, 2008. A Judicial Officer i.e. a District and Session Judge should be appointed to hear appeals against the decisions of PAs. A three member FATA Tribunal, to be headed by a retired judge of the High Court, should be formed with final appellate authority against the decisions of the Judicial Officer. The authority of the PA to nominate Jirga should be abolished and the concerned parties should select members of Jirga for arbitrating a case. The discretionary power given to the PA by Section 40 of FCR, under which he can arrest a person for two years without giving any reason, should be amended and the accused should be brought before a court of law within twenty-four hours. The Committee also proposed that women, children and the elderly should be excluded from the purview

of collective responsibility clause. Not all the recommendations, however were incorporated in the amended FCR 2011.

2008: Mainstreaming FATA, Report by the Shaheed Bhutto Foundation

11. The Shaheed Bhutto Foundation, in 2008, organized three roundtable workshops, representing the Northern, Central, and Southern FATA regions. The workshops were attended by a broad cross-section of 280 FATA residents and representatives including tribal leaders, parliamentarians, lawyers, academics, youth, journalists, intellectuals, political party leaders, and current and former civil and military officials. The need for peace and security in FATA was the overriding concern. The participants called for immediate measures by the Federal Government to hasten peace and stability, including re-establishing the writ of the State. They also stressed the need for comprehensive political reforms that would empower the local people, restore human and political rights, establish democratic governance in the region, and improve economic development. Among the most pressing issues for redefining FATA, the participants highlighted a wide spectrum of constitutional changes needed vis-à-vis the FCR and that included both the jurisdiction of the High Court and the custom of Jirga in a revised judicial system. On the democratization of FATA, the participants called for an overhaul of the political administration system currently centered on Maliks and PAs by establishing representative government accountable to the people and extending the Political Parties Order to FATA.

2011: Extension of Political Parties Order 2002 to FATA and FCR Reforms

12. In 2011, the then President Mr. Asif Ali Zardari signed the Extension of the Political Parties Order 2002 to the tribal areas which allowed political parties to campaign freely in FATA.

13. Based on Justice Ajmal's report (2008), the President also signed amendments made to the FCR which restricted the ambit of certain sections like 21 or 40 FCR pertaining to collective responsibility. Moreover, through this amendment a Revision Court (FATA Tribunal) was created which was declared the second court of appeal replacing a committee comprising of Home and Law Secretary Khyber Pakhtunkhwa. Other reforms in the FCR included were protection of women, children and senior citizens from collective responsibility, arrest or detention, and fixed time limit for disposal of cases.

2012: FATA Local Government Regulation 2012

14. In 2012, the FATA Local Government Regulation 2012 was drafted, however it was not promulgated. The fragile security situation was cited as the main reason for the non-extension of LGO 2012.

2013: Political Parties Joint Committee on FATA Reforms

15. The Political Parties Joint Committee on FATA Reforms, comprising of 10 political parties (PML-N, ANP, JI, JUI-F, MQM, NP, PML-Q, PPP, PTI, QWP), adopted and endorsed an 11 point FATA reforms plan in July, 2013. The proposed reforms included, amendment of Article 247 to guarantee fundamental rights for all tribal citizens and shift legislative power from the President of Pakistan to the Parliament; the importance of holding local body elections; the need for a comprehensive package for FATA with focus on infrastructure development, health, education and employment and separation of executive and judicial powers in FATA.

2015: Ministry of SAFRON's Recommendations

16. The Ministry of SAFRON organized a seminar on FATA reforms in April 2015 in Islamabad. The seminar was chaired by the Federal Minister for States and Frontier Regions Lt. Gen (Rtd.) Abdul Qadir Baloch. The seminar generated discussion on the constitutional status of FATA, the role of Political Agents, the judicial system in FATA. The seminar found that several factors had resulted in an increased demand for change to the status of FATA. These factors included: the emergence of a new affluent class in FATA; increased interaction with outside world; maximum efforts towards Middle East for employment opportunities; impact of local Officers in Civil/ Military establishments and local educated class/expanding service sector.

17. Moreover, the forum also identified certain important impediments to development in FATA: thin spread out of population; negligible private investment; security challenges; weakening of the traditional governance system over time; especially due to militancy and the emergence of new vested interests e.g. drug mafia, smugglers, gun runners. The forum also pointed out that certain privileged groups and the state machinery who are opposed to change; but, majority of common tribesmen living within FATA have different aspirations, compared to the extremely vocal minority living outside FATA.

2015: FATA Reforms Commission

18. The Governor of Khyber Pakhtunkhwa constituted a FATA Reforms Commission (FRC) in 2014. The mandate of the FRC was to propose reforms for FATA.

19. A report was submitted by the FRC to the Governor Khyber Pakhtunkhwa in April 2015. Some of the major FRC's recommendations were:

- Creation of a Governor's Advisory Council that comprised of Agency and FRs Councils' members, technocrats/experts including women.
- Creation of Agency Council and FRs Councils with 90% elected local members and 10% nominated members (women, minorities and technocrats to be nominated by the Governor Khyber Pakhtunkhwa).

- Strengthen security in Agencies and FRs by recruiting 500 Levies per Agency and 200 per FRs.
- Increase the number of Frontier Corps wing for strengthening border security and management.
- Strengthen Apex Committee that coordinates civil-military operations in FATA by inclusion of new members and appointing Chief Secretary as secretary of the Committee.

2015: FATA Long Term Governance Action Plan 2015-2025

20. In 2015, FATA Secretariat and Post Crises Needs Assessment (PCNA) FATA Unit formulated a Long Term Governance Action Plan for FATA. This was prepared by researching all analytical work undertaken on the crises in FATA, researching past reforms in FATA and stakeholders' consultations. The action plan focused on five reform areas: political, institutional, justice, counter radicalization and fostering reconciliation, and social cohesion. Some of the key recommendations included: enacting Local Government Regulations for FATA; determining the future status of FATA; strengthening traditional society by codification of Rewaj and capacity building of Qaumi Jirgas; amending the FCR, strengthening the FATA Tribunal; and extending anti-corruption law.

2016: FATA Reforms Committee

21. The demand for mainstreaming FATA with the rest of the country is not new. Since the formation of the first committee in 1977 under Gen. (R) Nasarullah Babar, there have been several efforts to bring reforms in FATA. Similarly, the consultations held in the past by both the Government and the civil society over the last 40 years have seen a growing demand for mainstreaming FATA.

22. The events of last decade have greatly enhanced the urgency of fundamental reforms in FATA. The region suffered substantially after the emergence of militant groups in the region after 2001. The traditional governance system was weakened due to loss of Maliks. The system of political administration has been losing its objectivity over the years and is now viewed as a corrupt system based on coercion. The extension of the Political Parties Act and adult franchise to the region has increased political activism in the region as is evident from the push for reforms. Most of the major political parties such as the Pakistan Muslim League-N (PML-N), Pakistan People's Party (PPP), and the Pakistan Tehreek-e-Insaf (PTI) recommended the integration of FATA into Khyber Pakhtunkhwa.

23. In September 2015, 19 FATA parliamentarians presented a bill to amend the Constitution to integrate FATA with Khyber Pakhtunkhwa. Similarly, a large number of FATA diaspora in the Middle East, who contribute a substantial proportion to the remittances to Pakistan, have emerged as a new economic group advocating for reforms in the region. The tragic incident of the Army Public School (APS) in Peshawar led to decisive military operations in FATA (Zarb-e-

Azb) against militants who were still hiding in North Waziristan Agency. The weak governance structures that resulted in the emergence of militancy were highlighted in the National Action Plan (NAP) for security, and reforms in FATA were designated as a priority. This historic success achieved in re-establishing the writ of State in FATA as a whole, can be consolidated only through further political, legal and administrative reforms in FATA.

24. Given the urgent need for reforms in FATA, the Prime Minister in, November 2015, constituted a Committee on FATA Reforms to propose a concrete way forward for mainstreaming of FATA after thorough deliberations and consultations with different stakeholders in FATA. (*Annex-C*)

The initial composition of the Committee was as follows:

- i) Mr. Sartaj Aziz, Advisor to the Prime Minister on Foreign Affairs (Chairman)
- ii) Mr. Sardar Mehtab Ahmed Khan, Governor Khyber Pakhtunkhwa
- iii) Lt. Gen. (Rtd.) Abdul Qaudir Baloch, Minister for SAFRON
- iv) Lt. Gen. (Rtd.) Nasser Khan Janjua, Advisor to PM on National Security
- v) Mr. Zahid Hamid, Minister for Law and Justice
- vi) Federal Secretary SAFRON (Secretary)

25. During the course of Committee's proceedings, Sardar Mehtab Ahmad Khan, Governor Khyber Pakhtunkhwa, resigned from his office in February 2016 and was replaced by Mr. Iqbal Zafar Jhagra, as new Governor Khyber Pakhtunkhwa, who participated in rest of the proceedings.

26. The Committee held seven formal meetings and several informal meetings during visits to different agencies. The gist of main points discussed in the formal meeting is given at *Annex D*.

Chapter 3: Consultations with Stakeholders

In 1948, when Quaid-e-Azam, as Governor General of Pakistan, met the first Jirga of tribesmen in Peshawar, he made a commitment that the status of the Tribal Areas would not be changed without their consent. This commitment was also enshrined in the 1973 Constitution.

2. While there is significant demand for reform in FATA, it is essential that the population of the Tribal Areas be consulted before any changes are proposed.
3. Hence, the Committee on FATA Reforms held extensive consultations with different stakeholders from FATA before proposing the way forward for FATA.
4. Specifically, the Committee prioritized the following stakeholders for consultations:
 - i) Members of Parliament from FATA
 - ii) Tribal Maliks and Elders from all seven Agencies and six FRs
 - iii) Civil society members including representatives of the political parties, traders, journalist, youth and civil society organizations from FATA.

Consultation with Members of Parliament from FATA

5. Before initiating its programme of visits to different Agencies, the Committee decided to meet members of the Parliament from FATA. At this meeting, a seven points agenda signed by all the 19 members was presented to the Committee (*Annex E*). The agenda points were:

- i) To ensure the honorable return of TDPs for peace in FATA.
 - ii) Abolish Article 247 of the Constitution to make FATA part of Khyber Pakhtunkhwa province, or create separate FATA province, or give FATA the status of Executive Legislative Council.
 - iii) Ensure the sanctity of Chadar and Chardiwari in FATA.
 - iv) Ensure representation of FATA in National Finance Commission (NFC) and Indus River System Authority (IRSA); representatives to be selected by FATA parliamentarians.
 - v) Raise FATA Regiment in Pakistan Army.
 - vi) Abolish 'Rahdari' and 'Permit System' and legalize on-border income to end corruption and terrorism in FATA.
 - vii) Planning & Development Department FATA and FATA Secretariat's Line Departments to work under FATA parliamentarians till the implementation of above mentioned reform measures.
6. Earlier, on 7th September 2015, 19 FATA parliamentarians had submitted 22nd Constitutional Amendment Bill to the Parliament to integrate FATA with Khyber Pakhtunkhwa. However, in the agenda presented to the Committee on 10th December 2015 they mentioned all three options as indicated in point (ii) above.

7. Elected representative of Hazara Division, met the Committee and opposed the integration option by pointing out that the addition of 5 million residents of FATA would alter the demographic balance in Khyber Pakhtunkhwa and further intensify the demand for a separate Hazara province.

Visit to Agencies

8. The Committee visited all 7 agencies of FATA to undertake consultations on the dates shown against each.

<u>S. No</u>	<u>Name of Agency/FRs</u>	<u>Date of Visit</u>
1	Bajaur Agency	31 December 2015
2	Mohmand Agency	1 January 2016
3	Khyber Agency	4 February 2016
4	Orakzai Agency	28 March 2016
5	Kurram Agency	28 March 2016
6	North Waziristan Agency	4 th April 2016
7	South Waziristan Agency	25 th April 2016
8	FRs at Peshawar	2 nd May 2016

Source: Ministry of SAFRON.

9. In each Agency two sessions were organized: one with around 200 to 300 tribal Elders and Maliks and another with civil society stakeholders including representatives of political parties, traders, journalists, and youth. The Committee also held a combined Jirga with Elders/Maliks and representatives of political parties, journalists, traders and youth of all the six FRs at Governor House, Peshawar on 2nd May 2016.

10. **In these consultations, the stakeholders were asked to give their views on the following four basic options:**

- i) **Maintain Status Quo with regard to main elements of the present system in FATA but introduce judicial reforms and increase focus on development activities.**
- ii) **Grant Special Status to FATA on the pattern of Gilgit Baltistan Council.**
- iii) **Create separate Province of FATA comprising of seven Tribal Agencies.**
- iv) **Integrate FATA with Khyber Pakhtunkhwa province with each Agency becoming a separate district.**

Major Findings

11. A Summary of the views and recommendations presented to the Committee in each of these consultations is presented in *Annex F*. The overall key findings emerging from these consultations are summarized below:

- i) It emerged from the wide ranging consultations undertaken by the Committee, that there was a wide consensus on integration of FATA with Khyber Pakhtunkhwa. However, tribal elders except in Kurram, Bajaur and FR Peshawar, wanted to retain the present special status. It may be noted that political parties, youth, businessmen, educated classes were clearly in favor of integration of FATA with Khyber Pakhtunkhwa and an extension of the writ of the Superior Courts. Secondly, tribesmen wanted the recognition of Rewaj and the Jirga system in the new status.
- ii) There was wide spread criticism on toll taxes and the FCR wherever the consultations were held.
- iii) They also advocated a more gradual and phased approach to FATA reforms so that displaced people can return to their homes and smooth transition from post conflict situation so that durable peace can be ensured.
- iv) The tribes were not in favor of having a separate province for FATA as their economic and cultural links were deeply integrated with the adjoining districts of Khyber Pakhtunkhwa. Moreover, the vertical links between Agencies in FATA were non-existent. Furthermore, if FATA was to become a province in its own right, it was feared that it would not be able to generate the required resources and trained manpower and will thus lose the current advantages of the connections with Khyber Pakhtunkhwa.
- v) Similarly, the option of FATA Council, on the lines of the GB Council, also did not enjoy much support. It was emphasized that even as a transitional measure, it would create new vested interests that could block further reform and lead to the next logical demand of a separate FATA province which, as explained above, is not a viable option.
- vi) It was perceived that joining the Khyber Pakhtunkhwa option would offer many advantages and was the only rational choice for “mainstreaming” FATA, since the people of FATA would be able to elect representatives to the Provincial Assembly of Khyber Pakhtunkhwa and would thus provide expanded opportunities for improved governance in the former Agencies. However, it was strongly suggested that after FATA integration into Khyber Pakhtunkhwa, the administrative infrastructure, including the strength and quality of LEAs must be improved and extended throughout FATA, thus making it easier for the Armed Forces to withdraw from their security role in FATA, within the next 4-5 years, so that tribal cohesion is re-established and tribal society begins to function normally.

12. On the basis of these findings, the Committee found that the option of integration of FATA with Khyber Pakhtunkhwa offers many advantages and is the only path for mainstreaming FATA. The people of FATA will be able to elect their representatives for the Provincial Assembly of

Khyber Pakhtunkhwa and FATA will cease to be a semi-governed ‘no-man’s land’ between Afghanistan and Pakistan.

13. Since FATA will integrate with Khyber Pakhtunkhwa, this will likely have administrative, financial, legal and security implications, that need to be discussed with Khyber Pakhtunkhwa, ideally prior to the announcement of these far reaching reforms. The Khyber Pakhtunkhwa Provincial Assembly has already passed a unanimous resolution for FATA’s representation in the Khyber Pakhtunkhwa Provincial Assembly on 7th May 2012 (*Annex G*).

Reforms Guidelines

14. The essential guidelines considered by the Committee while proposing reforms in FATA include:

- i) The reforms should lead to an improvement in the lives of the tribesmen.
- ii) FATA Reforms are aimed at a major social transformation of the region and its people and must not be permitted to fail.
- iii) Since these reforms are of a long duration, it is essential that the Government should remain committed in their implementation, as a principle of State’s policy.
- iv) It must be understood that mainstreaming of FATA is a process and not an end in itself.
- v) The government should implement a good communication strategy to shape the perceptions of the people in FATA and in the country.
- vi) The reforms process must identify risks and take timely steps for risk mitigation.
- vii) It is absolutely necessary to continue to support the retention of ‘Rewaj’ as the tribal way of life and the basis of dispute adjudication and resolution.
- viii) Implementation of the reforms will not be possible without recognizing the pivotal role of the Political Agent during the transition period.
- ix) Simultaneously, there is a need for capacity building of institutions and manpower to prepare FATA for the new dispensation during the transition period.

Chapter 4: Recommendations

Political Mainstreaming of FATA

The process of extensive consultations with all the major stakeholders i.e. Tribal Maliks and Elders, FATA parliamentarians, leader of major political parties in FATA, the business community, civil society representatives and youth organizations, clearly revealed that the advantages of the option for the integration of FATA with Khyber Pakhtunkhwa, were far greater than any disadvantages.

2. The new ground realities in terms of education, urbanization, immigration abroad especially to Middle East have greatly intensified the demand for reforms. Due to new ground realities and regional security imperatives, marginal or short term reforms measures would not serve the purpose. The existing system lacks capacity to deliver good governance. Gradual involvement of elected representatives at different levels will make the system more responsive.

3. Without reforms, the Army may have to stay indefinitely in FATA, thus affecting the strategic military balance on the Eastern front. A security vacuum after Pakistan Army withdrawal would create more space for terrorists and undesirable elements. To sustain the successes achieved by Army and LEAs, administrative, legal and security reforms are essential for 'build, operationalize and transfer phases'. The security dimension of FATA reforms should therefore be given very high priority.

4. **The Committee's recommendation to integrate FATA with Khyber Pakhtunkhwa in order to mainstream FATA will require a transition period of 5 years. Such a gradual approach, if carefully planned will greatly minimize the likely demerits of the integration option. To execute the reforms on fast track basis, Article 247 of the Constitution will be retained during the transition period.**

Merits of Integration Option

5. The main merits of the integration option can be summarized as follows:

- a) FATA already has well developed infrastructure linkages with Khyber Pakhtunkhwa.
- b) Social, cultural and ethnic cohesion with adjoining districts is much stronger than among different FATA Agencies.
- c) With Khyber Pakhtunkhwa's well established administrative structures, it will be easier to extend these structures to FATA and fulfil one of the most important element of administrative mainstreaming.
- d) A large segment of Khyber Pakhtunkhwa supports integration of FATA with Khyber Pakhtunkhwa.
- e) All major political parties in FATA, the growing middle class and youth also support integration.

- f) FATA population will come at par with the rest of Pakistan in terms of fundamental and legal rights.

Demerits of the Integration Option

6. The main demerits of the integration option can be summarized as follows:

- a) The tribal mindset committed to tribalism, Rewaj and Jirga system, may not readily accept the integration option.
- b) Tribal Maliks who have many privileges and benefits from the existing semi governed system, may oppose the integration option.
- c) Khyber Pakhtunkhwa Government may not be able to spare adequate financial resources for the speedy socio-economic development of FATA.
- d) A large portion of the population, especially in North and South Waziristan and Orakzai, want the rehabilitation and reconstruction of their houses, shops and infrastructures before any major political reforms are initiated.

7. **These demerits of the integration option can largely be overcome if the concept of mainstreaming is seen as a process and not an end in itself. This process will have to be multi-dimensional and will require concurrent attention to all the four dimensions of FATA reforms: security, political, economic and administrative.**

Security: The re-establishment of the writ of the State throughout FATA, with the successful operation Zarb-e-Azb, is a historic landmark. However, the security dimension of FATA will not be fully safeguarded unless and until effective border management mechanisms are implemented for the border with Afghanistan.

Political: By establishing elected local bodies within 12-18 months, the process of political mainstreaming of FATA can be initiated, during the transition period.

Development: The Federal Government must retain substantive responsibility for the rapid development of FATA, through additional resources, for a period of at least 10 years. Once FATA has been brought at par with the rest of the country in terms of key indicators, full responsibility for its development can be transferred to the government of Khyber Pakhtunkhwa.

Administration: While the Federal Government will retain primary responsibility for the security and development of FATA during the transition period, Khyber Pakhtunkhwa government will gradually mainstream FATA by building the administrative infrastructure and the capacity of the administrative and legal institutions to deal with the new dispensation. This will make it possible for the Armed Forces to withdraw from its security role in FATA within 5 years.

The Transition Period

8. The proposed 5-year transition period can be utilized to prepare FATA for the integration option and to accomplish the following important complementary objectives and pre-requisites:

- a) Restoration of durable peace in all parts of FATA, rehabilitation of Temporarily Dislocated Persons (TDPs) and reconstruction of infrastructure, houses and shops.
- b) Initiating a major program of socio-economic development.
- c) Establishing elected local bodies in FATA before end of 2017, would address alienation of the tribesman, that will enhance his faith in the State.
- d) Introduction of judicial reforms to extend the jurisdiction of the Supreme Court and the High Court while retaining the Jirga system.
- e) Capacity building of Law Enforcing Agencies (LEAs), especially Levies to enable them to perform normal policing functions.
- f) Carrying out Land Settlement and preparing GIS based computerized land record.
- g) Capacity building of FC for efficient border management.

9. The Committee's recommendations on these elements of the Reform Package are summarized below:

a) Rehabilitation and Reconstruction

- i) The highest priority, after the restoration of peace, should be assigned to the rehabilitation of tribal people, reconstruction of Tribal Areas on war footing and revival of livelihood activities.
- ii) The target date for repatriation of all TDPs should be end of 2016, and most activities under the reconstruction phase should be completed before the end of 2018.
- iii) This gigantic task will require much larger financial resources and full coordination between all the Federal Agencies including Ministry of SAFRON, FATA Secretariat, the Pakistan Army, FWO and NLC. A comprehensive FATA Sustainable Return and Rehabilitation Strategy has been launched by the FATA Secretariat which should be synchronized with the above timelines.
- iv) Foreign donors may be encouraged to provide part of the financial resources for the reconstruction plan.
- v) While the rehabilitation and reconstruction of infrastructure, which includes roads, communications, power lines, water supply, education, and health facilities, should be undertaken by the public sector agencies, the repair or rebuilding of private houses should be left to the owners themselves by giving them cash compensation at prescribed rates. This will not only ensure much quicker construction but will also facilitate the revival of economic activities and employment opportunities in the construction sector. Supply of non-grid solar units at subsidized rates should be an important part of the reconstruction phase.

b) Socio-Economic Development of FATA

- i) There is hardly any private investments in FATA, partly because of the security situation but mainly due to the absence of a legal framework that encourages and

- protects such investments. There is also a perception that public funds get wasted due to the absence of adequate monitoring and accountability mechanisms. These constraints need to be addressed on priority basis during the transitional period.
- ii) A Special Committee of high level experts and officials should be formed under the Governor Khyber Pakhtunkhwa, to prioritize preparation of a 10-year Comprehensive Development Plan for FATA before the end of 2016.
 - iii) The 10-year Development Plan should include major infrastructure and irrigation projects, mineral development program and integrated plans for health, education including establishment of university, medical and engineering colleges, vocational training and establishment of industrial zones with special incentives. A major aim of this 10-year Plan will be to reduce substantially the gaps in development and per capita indicators between Khyber Pakhtunkhwa and FATA.
 - iv) The NFC should make allocation of 3% of the available resources in the federal divisible pool (Rs. 90 billion) on annual basis for the implementation of the 10-year Development Plan. This will be in addition to the existing annual PSDP allocation of Rs.21 billion.
 - v) An important component of the new Development Plan would be the concept of social transformation of FATA by encouraging urbanization by setting up modern urban hubs in all Agency Headquarters and other important trading centres.
 - vi) 30% of the allocation in the 10-year Plan should be channeled through the local bodies. Such a decentralized system of development administration will not only cater to the needs and aspirations of the people at grass root level, but will also develop local technical and professional capacity to prepare and implement small and medium scale projects, with a focus on local employment generation and quick impact on living standards.
 - vii) FATA Development Authority (FDA) may be reorganized with enhanced powers to implement large infrastructure projects under the 10-year Development Plan.
 - viii) A position of Chief Executive (BPS-22) may be created under the Governor to assume responsibility for implementation of the 10-year Development Plan.
 - ix) A Governor's Advisory Council consisting of all FATA Senators and MNAs may be set up to assist the Governor in carrying out development and administrative functions.
 - x) The approving powers of FATA Development Committee may be enhanced from the present Rs.400 million to Rs.2 billion and that of FDWP from Rs.200 million to Rs.1 billion.
 - xi) The President Order No. 13 of 1972 regarding service matters in FATA may be suitably revised to empower the Governor to attract competent officers from multiple sources for the transition period.
 - xii) Special incentives to private sector in education and health sectors should be given in the form of free land.
 - xiii) All posts in FATA should be upgraded and brought at par with Khyber Pakhtunkhwa.

- xiv) Salaries for the project personnel in FATA should be 20% higher than that admissible under the project policy of Khyber Pakhtunkhwa.
- xv) Connectivity of FATA with CPEC should be ensured at suitable locations.
- xvi) State Bank of Pakistan (SBP) should encourage establishment of more branches of banks in FATA with special incentives for private banks.
- xvii) Allocation for BISP, Bait-ul-Maal and microfinance schemes in FATA should be increased.
- xviii) Quota of FATA students in education and health institutions in other provinces should be doubled and retained for 10 years after integration with Khyber Pakhtunkhwa.

c) Elected Local Bodies for FATA - 2017

- i) In 2002, the then Government extended FATA Local Government Regulation to FATA and in 2004, some Agency Councillors were nominated by the Political Agents. However, the system did not take off because general public had no confidence in those “selected” office bearers who had no powers. In 2012, FATA Local Government Regulation 2012 was drafted to establish local bodies in FATA, however, the Regulation could not be promulgated.
- ii) The Committee has recommended that once the rehabilitation phase is completed, party based local bodies elections should be held in FATA before end of 2017. This would require promulgation of FATA Local Government Regulation, which should be promulgated by the Federal Government within three months.
- iii) Similarly, all other formalities e.g. updating the electoral rolls, finalizing the constituencies, rules and regulations should be completed by the first quarter of 2017.
- iv) A separate unit for FATA may be created in the Election Commission Office Peshawar for this purpose.
- v) Permit/Rahdari system for exports from and imports into FATA should be abolished to eliminate large scale corruption and to bring down prices of essential items in FATA. Correspondingly, necessary funds should be provided in the budget for operational expenditure of the political administration.
- vi) Auditor General of Pakistan should ensure that development funds and all other expenditure of local bodies in FATA are properly audited to ensure efficient utilization.

d) Legal Reforms

- i) FCR should be repealed and new “Tribal Areas Rewaj Act” will be enacted.
- ii) The “Jirga” system will be retained for both civil and criminal matters, whereby the Judge²⁶ will appoint a Council of Elders to decide factual issues in accordance with Rewaj and will pass a decree in accordance with its findings in a civil reference or

²⁶ Judge as defined by the proposed Tribal Areas Rewaj Act.

- pass an order in accordance with its findings and applicable law in a criminal reference.
- iii) Provisions relating to collective/vicarious responsibility in the FCR will be omitted from the new Act, thereby making an individual responsible for his own acts. This would eliminate one of the major criticisms of the present FCR relating to violation of fundamental rights.
- iv) Under the new Act the concept of individual responsibility will be extended in phases in such Agencies or their parts where it is convenient and it will be so notified.
- v) Jurisdiction of the Supreme Court of Pakistan and the Peshawar High Court should be extended to FATA.

With certain changes in procedures, the Jirga process could start resembling the “jury system” which is acceptable internationally. Simultaneously, any legal instrument, which incorporates ‘Rewaj’ as part of the judicial process, must ensure that it is not in conflict with the fundamental rights as well as other substantive laws administered in Khyber Pakhtunkhwa.

The Committee considered retention of Rewaj as an acceptable tool for criminal as well as the civil justice system. The Committee therefore wants to tread a cautious path and propose a system, which is not disruptive and at the same time is in line with the wishes of the people of the area. There are two scenarios that will emerge in the future. Firstly, judicial processes based on Rewaj will be formalized and codified in such a manner that these shall become an integral part of our judicial system having passed through the scrutiny of the Superior Courts. The other possibility is that with the passage of time, the citizens of FATA would discard it in favour of the system that is the norm in the rest of the country thus bringing it in uniformity.

e) Capacity Building of Law Enforcement Agencies (LEAs)

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

f) Land Settlement in FATA

- i) Most of the land in FATA is held collectively and thus cannot be used for collateral or sold to create equity capital thus preventing capital formation. Property records are

also important pre-requisite for banking operations in FATA and for attracting private investment.

- ii) Land settlement should be undertaken by using modern technology to create GIS based computerized individual record of rights as adopted by Punjab.

10. The success of these reforms is dependent on institutional capacity building and provision of required manpower. More importantly, the institution of Political Agent being the pivot of the reform process has to be retained and strengthened during the transition period to effectively complete the reform process.

Recommended Announcement Strategy

11. For securing broad based political consensus for initiating these reforms, it is recommended that Prime Minister may call an All Parties Conference and share the highlights of the reforms with the political leaders. Simultaneously, draft legislation under Article 247 will be made where required. It is thus proposed that the President and the Prime Minister may announce these reforms at a Grand Jirga in Peshawar.

Chapter 5: Implementation Strategy

Implementation of these reforms will be a challenging task and will require persistent attention to implementation mechanism and capacity building. One of the major differences between the earlier reforms undertaken in FATA and the proposed set of reforms is that no implementation and oversight mechanism were created in the past. The cause of failure of most such reforms could perhaps be found in the absence of an implementation mechanism, as an integral part of the recommendations for reforming FATA. This report proposes an implementation structure to ensure that the recommendations proposed by the Committee are implemented and the objectives are successfully achieved.

2. It is essential to underscore that reforms in FATA should be led by FATA legitimate authority. Experience of reform process informs that they are best accomplished when the existing legitimate authorities concerned with the subject matter are given the responsibility to carry out the reforms. If a new structure is introduced it will bring in its own dynamics of execution. For purposes of authenticity and legitimacy the two primary institutions having the requisite bandwidth for executing perhaps the most delicate reforms in our history is the Governor Khyber Pakhtunkhwa in his capacity as Agent to the President and the FATA Secretariat

3. The Governor Khyber Pakhtunkhwa, in his responsibilities pertaining to FATA is assisted by the FATA Secretariat, under whom the whole administrative structure is coordinated and funded by the Federal Government for the delivery of services and the creation of new infrastructure under the development budget. For FATA reforms it is essential that the diarchy of the Governor Khyber Pakhtunkhwa and FATA Secretariat execute the association of FATA with Khyber Pakhtunkhwa; this is a virtuous chain and its abridgement or minimization will endanger these very delicate reforms.

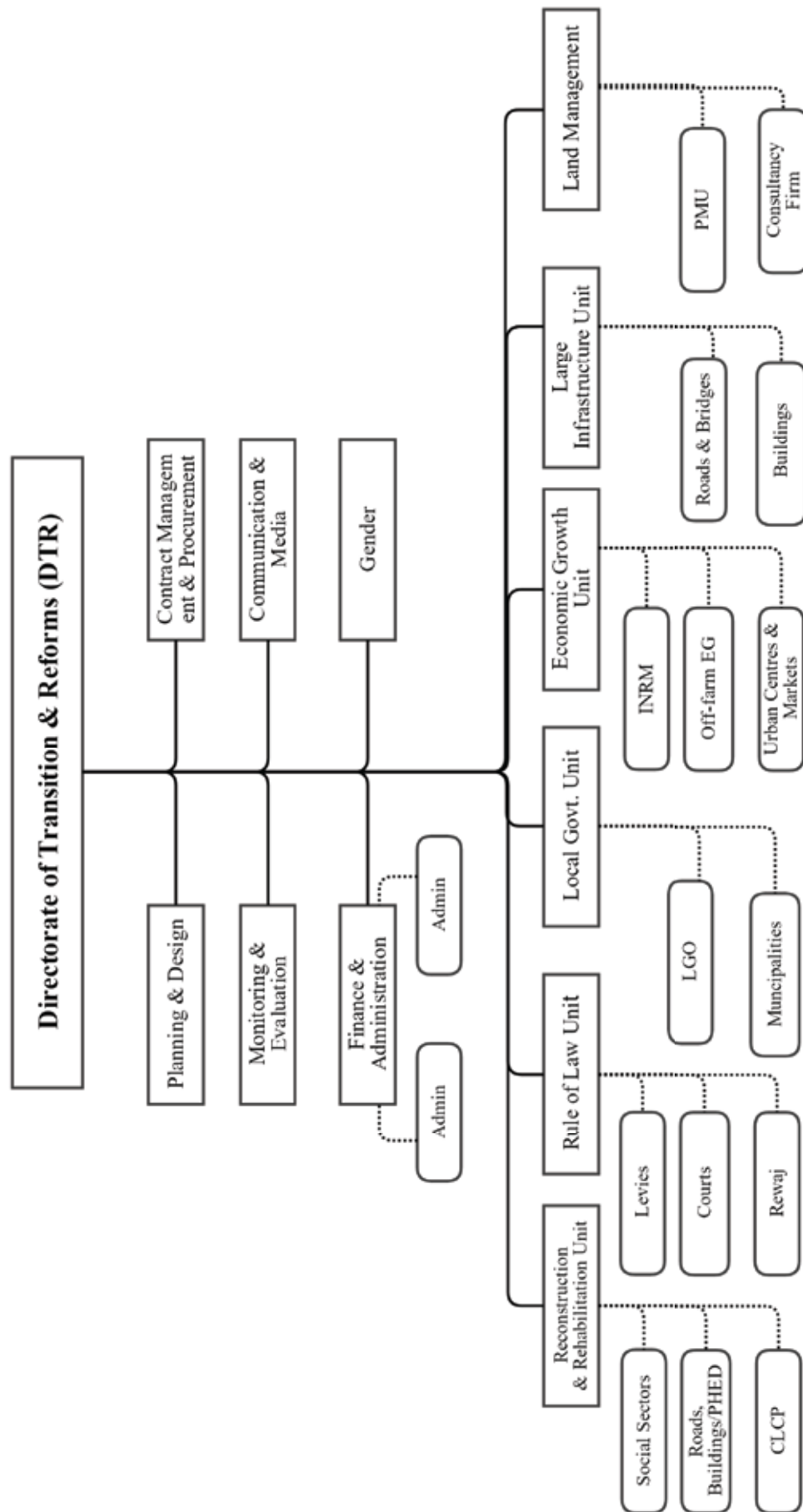
4. To achieve success in such a demanding context of far-reaching reforms will require a robust implementation strategy which can address the political as well as the technical aspects of implementation to overcome weak governance structures and entrenched resistance. Two components are therefore required for success:

- i) Sustained political engagement and oversight.
- ii) A team of committed experts at the technical-level with a relentless and uncompromising focus on reform implementation and efficient delivery.

5. These two components are inexorably linked – both are necessary and neither is sufficient on its own. A Cabinet Level Committee can provide the political support required to implement challenging reforms efficiently. This apex body would not only supervise the execution of the Committee's recommendations but could also suggest remedial actions for mid-course corrections. It is therefore proposed that a Cabinet Level Committee consisting of Governor Khyber Pakhtunkhwa, Minister SAFRON, Minister Law, National Security Advisor, Secretary SAFRON (secretary) and representative of the Army be constituted for the purpose.

6. Quarterly review may be undertaken by the Prime Minister in the presence of the Cabinet Level Committee and other stakeholders.
7. A Reform Unit should be established in the Ministry of SAFRON, to oversee the entire process and also provide policy support to the Cabinet Level Committee.
8. The operational work will be undertaken by FATA Secretariat which should be strengthened to ensure successful implementation of the reforms. For this purpose, a Directorate of Transition and Reforms (DTR) may be established at the FATA Secretariat, which will be responsible for the design and implementation of the reforms.
9. A small reform unit would also be necessary at each Agency to facilitate on the ground implementation.
10. FATA Secretariat should be strengthened without any further expansion except the creation of DTR and other reform related staff.
11. The President's Order No.13 of 1972 regarding service matters in FATA may be suitably revised to empower the Governor to attract competent officers from multiple sources for the transition period (*Annex-H*).
12. The proposed organogram of DTR is given on the next page.

Organogram



Mandate & Scope of the Directorate of Transition and Reforms

13. It is proposed that the Directorate of Transition and Reforms be the sole institution/body responsible for planning, designing, coordinating, and monitoring activities, projects and policy interventions required to implement the approved recommendations of the Committee on FATA Reforms. The implementation of reforms would either be conducted directly by the Directorate, or by other government agencies in coordination with the Directorate. The Directorate will provide technical assistance to the FATA Secretariat and other relevant institutions/departments in all sectors/areas relevant to reform interventions during the transition period. The Directorate may not be an institution in perpetuity and its existence will depend on the transition period in FATA.

14. The Directorate will be structured around the recommendations of the Committee on FATA Reforms. As an implementation unit, and with most of the work happening at the sub-divisional and agency level, the Directorate will need to have seven support offices at the Agency level, and representation in the six FRs to support the respective PAs and DCs in the implementation of reforms.

Terms of Reference of Directorate of Transition and Reforms

15. The terms of reference of the Directorate will include:

- i) To identify key policy interventions and sector wise detailed action plans for implementation in line with Committee on FATA Reforms' recommendations;
- ii) To prioritize strategies and to lead on framing detailed sector wise policies and action plans at all levels of interventions during the transition period in FATA;
- iii) To execute sectors' implementation plans and strategies;
- iv) To act as "the only institution" in FATA Secretariat, responsible for all internal and external coordination with respect to reforms interventions in transition period in FATA;
- v) Provide technical assistance to FATA Secretariat in transforming all the strategic objectives into action plans with timelines and line of responsibilities;
- vi) To coordinate with government and non-government stakeholders and other development partners for in-time execution of the implementation plans in FATA;
- vii) To devise communication strategies for internal and external visibility, public awareness and advocacy regarding reforms in FATA, desired targets and achieved milestones on regular basis;
- viii) To manage and supervise all the contracts and procurement process and procedures relevant to the implementation plans;
- ix) To develop framework for efficient performance management and monitoring the execution of the implementation plans;
- x) To generate required documents/reports for internal and external audiences.

Section-wise Terms of Reference

16. This section reviews the potential sector-wise terms of reference with reference to the implementation of the reforms under the guidance and supervision of the Directorate.

(a) Reconstruction and Rehabilitation Unit (RRU)

17. This Unit will be responsible for devising strategy and development plans for reconstruction and rehabilitation in the areas affected by war-

18. The terms of reference of the RRU will include:

- i) Prepare strategies and development plans for areas affected by war;
- ii) Plan and coordinate all reconstruction and rehabilitation efforts including reimbursement of citizens' losses, reconstruction of infrastructure, provision of livelihood opportunities in FATA;
- iii) Supervise and monitor implementing agencies;
- iv) Coordinate and liaise with relevant departments, agencies and donors while providing one window facilitation to all national and international development partners;
- v) Preparation of PC-1s relevant to establishing and operationalization of reconstruction and rehabilitation efforts;
- vi) Provide technical assistance and capacity building;
- vii) Establishment of standards and internal controls;
- viii) Provide ease, speed, facilitation and coordination and supervision to rehabilitation and reconstruction programs; and create linkages with all parties involved.

(b) Local Government Unit

19. The Local Government Unit will be responsible for the establishment and operationalization of local governments and municipalities in FATA.

20. The terms of reference of the Local Government Unit will include:

- i) Preparation of detailed action plans for the establishment and operationalization of local government set up and municipalities in FATA;
- ii) Liaison with other government institutions for establishing proper constituencies/delimitations in each Agency;
- iii) Liaison with Federal and Provincial Governments for setting up and operationalization of local government in FATA;
- iv) Drafting policy concept notes/papers for establishing essential policy, legal and regulatory set up for smooth functioning of local government in FATA;
- v) Prepare detailed operational, administrative, financial SOPs for local government offices and municipalities for efficient public service delivery;
- vi) Prepare and approve job description for officers and support staff;
- vii) Regular coordination with Directorate of Local Government & Rural Development FATA Secretariat for various operational and administrative processes and procedures;

- viii) Preparation of PC-1 relevant to establishing and operationalization of local government setup in FATA;
- ix) Provide technical assistance and capacity building of local government offices;
- x) To liaise and supervise engagements with local partners or consultant (individuals and firms) for local government technical assistance and capacity building;
- xi) Liaison with donor and other external stakeholders.

(c) Economic Growth Unit

21. The Economic Growth Unit would be responsible for strategy and planning for socio-economic growth and development in FATA:-

22. The terms of reference of the Economic Growth Unit will include:

- i) To devise strategic and implementation plans with respect to economic growth and development in FATA;
- ii) To prepare strategic and implementation plans for integrated natural resource management in FATA;
- iii) To develop on a priority basis plan for urban centres and markets in all Agency Headquarters and other major towns; along with high quality education and health institutions. These urban hubs can transform FATA's social mix;
- iv) To draft various policy notes/papers for providing policy, operational and regulatory basis to various economic growth initiatives/interventions in FATA;
- v) To work on policy frameworks relevant to economic growth and Integrated Natural Resource Management (INRM) in FATA;
- vi) Preparation of implementation plans for approved sectoral Economic Development Plan pertinent to transition period;
- vii) Develop various PC-1s for the implementation of the economic growth and livelihood plans;
- viii) To coordinate with relevant departments/directorates/units in FATA Secretariat for in-time implementation of action plans;
- ix) Regular liaison with FDA for developing policy strategy, framework and implementation plans for integrated natural resource management;
- x) To liaise and supervise engagements with local partners or consultant (individuals and firms) for economic growth, livelihood and natural resource management;
- xi) To suggest/identify different economic growth/livelihood related projects for inclusion in FATA ADP;
- xii) Liaison with Federal and Provincial Governments and FATA Secretariat with respect to all policy, regulatory framework and process relevant to economic growth and natural resource management in FATA;
- xiii) Regular liaison with donor and other external stakeholders.

(d) Communication and Media Unit

23. Every reform, especially those of the scale of what the FATA Reforms Committee has proposed will require extensive and ongoing communication with the people of FATA. The

Communication Unit will ensure that regular public awareness programs are conducted throughout FATA through various mediums of communication (print & electronic) to ensure understanding and support for the reform process.

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

25. The terms of reference for the Communication Unit will include:

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

(e) Land Settlement Unit

26. The Land Settlement Unit will be responsible for all aspects of the land settlement process from policy development to preparation of maps, collecting land records, demarcation, development of land settlement offices, overseeing third party consultants/firm, and developing dispute resolution mechanisms.

27. The terms of reference for the Land Settlement Unit will include:

- i) Preparation of computerized field maps and record of rights in each Agency;
- ii) Collection of old land record from Patwari(s), checking rights as per Shajra Nasab;
- iii) Lead on providing the baseline and proper measurement of land points;
- iv) Proper land demarcation in each Agency as per the standard rules and regulations;
- v) Overseeing the operations of land settlement and registration offices at each Agency level;
- vi) Introduction of proper mechanism for maintaining Deed Registers, Rights Registers, Commercial building Register and implementing proper mechanism for registration of land transaction;
- vii) Coordinate and supervise the working of third party consultants/firm to be engaged for land settlement process.

(f) Large Infrastructure Unit

28. The Large Infrastructure Unit will design, plan, and monitor large infrastructure projects in FATA.

29. The terms of reference of the Large Infrastructure Unit will include:

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

(g) Rule of Law Unit

30. The terms of reference of the Rule of Law Unit will include:

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

(h) Gender Development Unit

31. The Gender Development Unit is a new cross-cutting Unit to ensure that gender inclusiveness, responsiveness and mechanisms to protect women and girls' rights are integrated into the planning and implementation of the reforms process. The Unit will work across the transitional entity and the FATA secretariat.

32. The terms of reference of the Gender Development Unit will include:

- i) Ensure all sectoral Directorate follow a gender inclusive and gender responsive approach in line with national and international conventions and protocols while developing implementation plans;
- ii) Ensure all hiring are gender balanced/ or with a minimum 30% quota set aside for women;
- iii) Ensure women are hired in leadership positions and not just as secretarial staff within the Directorate and corresponding new institutional mechanisms;

- iv) Ensure sex disaggregated data generation as well as a disaggregated beneficiary ratio of women;
- v) Develop an overarching sexual harassment policy guideline and institutional mechanisms to address these within the Directorate as well as FATA Secretariat, and other institutions created as a result of the transition directorate. Conduct awareness raising and training sessions within the directorate and FATA Secretariat on harassment;
- vi) Ensure that women are adequately recruited while establishing LEAs, judicial complexes, MCs, etc. as well as being equal beneficiaries in reconstruction and rehabilitation efforts;
- vii) Ensure all official buildings contain women friendly environment and safe spaces, including separate washrooms, and resting quarters etc.
- viii) Ensure gender specific MIS, data collection, monitoring etc. in all sub sectors of the Directorate.

Annexure-A: Profiles of Agencies

Agency/FR	Area of FATA		Population 1998 Census		Tribes
	Km	%	Million	%	
Bajaur	1,290	4.74	0.595	18.7	Utmankhel and Tarkhani
Mohmand	2,296	8.43	0.334	10.5	Mohmand, Safi and Utmankhel
Khyber	2,576	9.46	0.547	17.2	Afridi, Shelmani, Shinwari and Mulagori.
Kurram	3,380	12.42	0.448	14.1	<p><u>Sunnis</u></p> <p>Maqbal, Mengal, Bangash, Para Chamkani, Massuzai, Afridi, Ali Sherzai, Kharoti, Jaji, Zadran, Zeemast.</p> <p><u>Shias</u></p> <p>Turi, Bangash, Bada Khel, Hazara.</p>
Orakzai	1,538	5.65	0.225	7.1	<p><u>Sunnis</u></p> <p>Mishti, Feroz Khel, Bizoti, Sheikhan, Stouri Khel, Utman Khel, Sepha.</p> <p><u>Shias</u></p> <p>Mani, Khel, Bar Muhammad, Sepha</p>
North Waziristan	4,707	17.29	0.361	11.4	Utmanzai, Wazir, Dawar, Saidgai, Kharasin and Gurbaz
South Waziristan	6,620	24.32	0.430	13.6	Mehsud, Ahmadzai and Wazir.

F.R. Peshawar	261	0.96	0.054	1.7	Afridi
F.R. Kohat	446	1.64	0.088	2.8	Afridi
F.R. Bannu	745	2.74	0.020	0.6	Wazir and Bhattani
F.R. Lakki	132	0.48	0.007	0.2	Bhattani and Marwat
F.R. D.I. Khan	2,008	7.38	0.039	1.2	Bhattani, Ustrana, Shirani.
F.R. Tank	1,221	4.49	0.027	0.9	Bhattani

Annexure-B: List of Laws Extended to FATA

S. No.	LAWS
1.	Action in Aid of Civil Power Regulation, 2011, extended to FATA (2011) Ministry of Law, Administration of basic democracies (Tribal Areas) Regulation, 1976.
2.	Agricultural Development Bank Ordinance, 1961 (IV of 1961).
3.	Agricultural Pesticides Ordinance, 1971 (II of 1971).
4.	Agricultural produce (Grading and Marketing) Act, 1937.
5.	Aircraft (Removal of danger to Safety) Ordinance, 1965.
6.	Amendment in FATA DC Regulation, 1970.
7.	Amendment in Shariah Nizam-e-Adl Regulation, 1999 (Shariat Bench).
8.	Anti-Narcotics Force Act, 1997, extended to FATA (1998), Ministry of Law.
9.	Anti-Terrorism (Second Amendment) Ordinance, 1999
10.	Arms Act, 1878
11.	Auditor-General's (Functions, Powers, Terms and Conditions of Service) Ordinance, 2001 (XXIII of 2001)
12.	Bankers Books Evidence Act, 1891 (XVIII of 1891)
13.	Banking Companies Ordinance, 1962 (LVII of 1962)
14.	Banking Companies Ordinance, 1962
15.	Boilers Act, 1923.
16.	Cadet College of Wana Regulation, 2011
17.	Carriage by Air (International Convention) Act, 1966 (IX of 1966).
18.	Convention Act (Application to Tribal Areas) Regulation 1972- (Regulation No. II of 1972)
19.	CATA (Employees Status) Order, 1972.
20.	Civil Aviation Ordinance, 1960.
21.	Code of Criminal Procedure (Amendment) Ordinance, 1979 (X of 1979)
22.	Code of Criminal Procedure, 1898
23.	Companies Act, 1913
24.	Companies Ordinance, 1984 (XLVII of 1984)
25.	Control of Narcotics Substances Act, 1997 (XXXV of 1997)

26.	Cooperative Societies Act, 1925 (Sind Act VII of 1925)
27.	Criminal Law (Amendment Special Court) Act, 1976 (XI of 1976).
28.	Criminal Law (Amendment) Act, 1991 (II of 1991)
29.	Criminal Law (Amendment) Act 76 (ASLI of 76)
30.	Criminal Law (Amendment) Act 1989 (III of 1990)
31.	Criminal Law Amendment (Special Court) Act, 1976 (XVII of 1976)
32.	Criminal Law Amendment (Special Court) Ordinance, 1975 (XXIX) of 1975
33.	Dangerous Drugs Act, 1930.
34.	Defense of Pakistan Ordinance 1971 (XXX of 1971).
35.	Delimitation of Constituencies (Amendment) Act, 1989.
36.	Delimitation of Constituencies Act, 1974 (XXXIV) of 1974.
37.	Delimitation of Constituencies (Amendment) Ordinance, 1978.
38.	Drugs Act 1940 and the Drugs Rules, 1945.
39.	Electoral Rolls Act, 1974.
40.	Employment of Children Act, 1991.
41.	Enforcement of the Prohibition of Hadd Order 1999 (PO No. 4 of 1979)
42.	Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order 1983
43.	Execution of the Punishment of Whipping Ordinance.
44.	Explosive Act, 1884.
45.	Extra Provincial Jurisdiction Order, 1949.
46.	FATA (Determination of Last Proceeding Census) Regulation, 1988.
47.	FATA (Exclusion of Jurisdiction of Federal Shariat Court) Order 1984.
48.	FATA Application of Financial of Financial Institutions (Recovery of Finances) Regulation, 2010.
49.	FATA Compulsory Primary Education Regulation, 2000.
50.	FATA Disaster Management Commission 2007 (Ord. No. LIII of 2007)
51.	FATA Education Foundation Regulation.
52.	FATA Foodstuff (Control) Regulation, 1994.
53.	FATA Local Government (Elections) Regulation (2002)
54.	FATA Local Government Elections Order (2002)

55.	FATA Pure Food Regulation, 1999
56.	Federal Universities Ordinance, 2002
57.	Final List of Union Councils in FATA.
58.	Financial Institutions (Recovery of Finances) Ordinances, 2001.
59.	Foreign Exchange Regulation Act, 1947.
60.	Foreigners (Amendment) Ordinance, 2000.
61.	Foreigners Act, 1946.
62.	Frontier Crimes Regulation, 1901.
63.	Frontier Crimes Regulation No. II (Amendments of 1997)
64.	Frontier Crimes Regulation No. I (Amendments of 1998)
65.	Frontier Crimes Regulation No. III (Amendments of 1998)
66.	Frontier Crimes Regulation No. III (Amendments of 2011)
67.	Further to amend the Electoral Rolls (FATA) order 1975 (I of 1975)
68.	Higher Education Commission Ordinance, 2002.
69.	House Building Finance Corporation Act, 1952.
70.	Import Export (Control) Act, 1950.
71.	Industrial Development Bank of Pakistan Ordinance, 1961.
72.	Insurance Act, 1938.
73.	Juvenile Justice System Ordinance, 2000.
74.	Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010.
75.	Labour Laws (Amendment) Ordinance, 2000.
76.	Land Custom Act, 1924.
77.	Laws in respect of people finance corporation, 1976.
78.	National Bank of Pakistan Ordinance, 1949.
79.	National Disaster Management Authority Ordinance (No. LIII of 2007).
80.	National Highway Authority, 1991 (Act No. XI of 1991 to FATA).
81.	National Registration Act, 1973.
82.	NWFP River Protection Ordinance, 2002.
83.	Offence of against Property (Enforcement of Hudood) Ordinance, 1979.
84.	Offence of Zina (Enforcement of Hadd) Ordinance, 1979.

85.	Offences against property (Enforcement of Hudood) Ordinance, 1979.
86.	Offences of Qazi (Enforcement of Hudood) Ordinance, 1979.
87.	Offences punishable under the Anti-Money Laundering Act, 2010.
88.	Offences punishable under the Anti-Terrorism Act, 1997.
89.	Offences punishable under the Arms Act, 1878.
90.	Offences punishable under the Chemical weapon convention implementation Ordinance, 2000.
91.	Offences punishable under the Custom Act, 1969.
92.	Offences punishable under the Drugs Act, 1976.
93.	Offences punishable under the Electronic Transaction Ordinance, 2002.
94.	Offences punishable under the Exit from Pakistan (Control), Ordinance, 1981.
95.	Offences punishable under the Explosive Act, 1984.
96.	Offences punishable under the Export Control on Goods Act, 2004.
97.	Offences punishable under the foreign exchange Regulation Act, 1947.
98.	Offences punishable under the Foreigners Act, 1946.
99.	Offences punishable under the Imports and Exports (Control) Act, 1950.
100.	Offences punishable under the Official Secrets Act 1923.
101.	Offences punishable under the Pakistan Army Act, 1952.
102.	Offences punishable under the Pakistan Electronic Media Regulatory Authority Ordinance, 2000.
103.	Offences punishable under the Pakistan Navy Ordinance, 1961.
104.	Offences punishable under the Pakistan Penal Code, 1860.
105.	Offences punishable under the Pakistan Telecommunication (Reorganization) Act, 1996.
106.	Offences punishable under the Passport Act, 1974.
107.	Offences punishable under the Prevention and control of Human Trafficking Ordinance, 2000.
108.	Offences punishable under the Prevention of Anti-National Activities Act, 1974.
109.	Offences punishable under the Prevention of Seditious Meeting Act, 1911.
110.	Offences punishable under the Surrender Illicit Arms Act, 1991.

111.	Offences punishable under the National Database Registration Authority Ordinance, 2000.
112.	Offences punishable under the Pakistan Air Force Act, 1953.
113.	Official Secrets Act, 1923.
114.	Pakistan (Control of Entry) Act, 1952.
115.	Pakistan Army Act, 1952.
116.	Pakistan Civil Aviation Ordinance, 1982.
117.	Pakistan Coinage Act, 1906.
118.	Pakistan Criminal Law Amendment Act, 1958.
119.	Pakistan Currency Act, 1950.
120.	Pakistan Environmental Protection Act, 1997 (XXXIV of 1997)
121.	Pakistan Penal Code.
122.	Pakistan Special Police Establishment Ordinance, 1948.
123.	Pakistan Travel Agencies Act, 1976.
124.	Passport Act, 1913.
125.	Patents and Design Act, 1911.
126.	People's Finance Corporation Act, 1972.
127.	Peshawar District and Tribal Areas (Settlement of Disputes) Regulation, 1971.
128.	Petroleum Act, 1934.
129.	Political Parties Order, 2002.
130.	Post Office Act, 1898.
131.	Preparation of Electoral Rolls (FATA) order 1975 (P.O.I. of 1975)
132.	Preparation of Electoral Rolls (FATA) (Amendment) Order.
133.	President Election Act, 1964.
134.	Prevention of Corruption Act, 1947.
135.	Protection of Pakistan Ordinance, 2013.
136.	Provident Funds Act, 1925.
137.	Public Debt Act, 1944.
138.	Punjab Minor Canals Act, 1905.
139.	Registration of Foreigners Act, 1939.

140.	Regulation of Generation Transmission and Distribution of Electric Power Act, 1997.
141.	Repeal of the Electoral Rolls Act, 1975 to the FATA of NWFP.
142.	Representation of People (Amendment) Ordinance, 1990.
143.	Representation of the People Act (Fifth Amendment), 1996.
144.	Representation of People Act (Sixth Amendment), 1996.
145.	Representation of People Act (Fourth Amendment).
146.	Representation of People Act, 1976 (Exemption of I.D card for issuance of ballot papers in FATA).
147.	Representation of the People (Amendment) Ordinance, 1979.
148.	Sea Custom Act, 1878.
149.	Section 365-A (Act of 1990).
150.	Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997).
151.	Seed Act, 1976 (XXIX of 1976)
152.	Senate (Election) (Amendment) Act, 1986.
153.	Senate (Election) Act, 1975.
154.	Senate (Elections) (Third Amendment) Ordinance, 1996.
155.	Service Tribunals Act, 1973.
156.	Soldiers (Litigation) Act, 1925.
157.	State Bank of Pakistan Act, 1956.
158.	Suppression of Terrorists Activities (Special Courts) Act, 1975.
159.	Surrender of Illicit Arms Act, 1991 Act No. XXI-2199.
160.	Traffic Act, 1934.
161.	Telegraph Act, 1885.
162.	Tolls (Army and Air Force) Acts, 1901.
163.	Trade Organization Act, 2013.
164.	Trade Marks Act, 1940.
165.	Transmission and Distribution of electric powers (XL of 1997) Power Act, 1997 (called NEPRA Act, 1997).
166.	Travel Agency Act, 1976.
167.	Travel Agency Rules, 1977.

168.	Trust Act, 1982 (Act II of 1982).
169.	Voluntary Social Welfare Agencies (Registration and Control) Ordinance 1961 (XLVI of 1961)
170.	War Injures Ordinance No. II, 1941.
171.	Weight and Measure act, 76 (NWFP Act of 76).
172.	West Pakistan Anti-Corruption Establishment Ordinance, 1961.
173.	West Pakistan General Clauses Act, 1956.
174.	West Pakistan Motor Vehicles Ordinance, 1965.
175.	West Pakistan Muslim Personal Law (Shariat Application) Act, 1962.
176.	West Pakistan Press and Publication Ordinance, 1963.
177.	West Pakistan Special Areas (Application of Laws) Regulation 1956.
178.	Wireless Telegraphy Act, 1933.
179.	Execution of the Punishment of Whipping Ordinance, 1979 (IX of 1979).
180.	Zakat and Ushr Ordinance, 1980 (XVII of 1980).
181.	Pakistan Army (Amendment) Act, 2015.
182.	Right to Education (RtE) Islamabad Capital Territory (ICT) Act, 2012.

Annexure-C: Committee on FATA Reforms 2016 Notification

PRIME MINISTER'S OFFICE ISLAMABAD

Subject: **ORDER**

Prime Minister has constituted the following Committee for finalizing recommendations for FATA Reforms :-

- | | |
|---|----------|
| 1. Mr. Sartaj Aziz, Adviser to the Prime Minister on Foreign Affairs | In chair |
| 2. Lt. Gen (Retd) Abdul Qadir Baloch, Minister for SAFRON | Member |
| 3. Lt. Gen (Retd) Nasir Khan Janjua, Adviser to Prime Minister on National Security | Member |
| 4. Mr. Zahid Hamid, MNA | Member |
| 5. Sardar Mehtab Ahmed Khan, Governor, KPK | Member |

2. Secretary SAFRON will act as Secretary of the Committee

3. The Committee noted above would start workings with immediate effect and after consulting all stake holders would propose concrete way forward for political mainstreaming of FATA areas

(Javaid Aslam)
Secretary to Prime Minister
8-11-2015

1. Sardar Mehtab Ahmed Khan, Governor, KPK
- ✓ 2. Mr. Sartaj Aziz, Adviser to the Prime Minister on Foreign Affairs
3. Lt. Gen (Retd) Abdul Qadir Baloch, Minister for SAFRON
4. Lt. Gen (Retd) Nasir Khan Janjua, Adviser to PM on National Security
5. Mr. Zahid Hamid, MNA
6. Secretary, SAFRON

NO: 3388/M/SPM/2015

CC Press Secretary to PM

Dv. No. 3952/FMO/20
Date: 09/11/2015

Annexure-D: Gist of Internal Meetings by the Committee on FATA Reforms in Islamabad

Committee on FATA Reforms Meeting 21st November, 2015

- The four proposed options, having merits and demerits, regarding FATA's future, must be thoroughly considered through in-depth analysis of past forums/works on the subject.
- Situation is still volatile because of militancy. Strengthening the committee was discussed and consultation of FATA elders and Parliamentarians was endorsed.



Committee on FATA Reforms Internal Meeting in Islamabad

- The Committee was in favour of Economic uplift of the region through CPEC, revival of Jirga system, improving law and order and Army's role and to follow an evolutionary path for the same.
- Seven points agenda of the parliamentarians was also discussed at length.
- Other issues discussed were foreign interference, women rights, TDPs rehabilitation, de-weaponization and infancy of the political parties.
- The four probable options were discussed at length.

**Committee on FATA Reforms Meeting
10th December, 2015**

- The Committee discussed the sequence of local consultation within FATA and stressed early completion of the task without hasty and abrupt decisions and to finalize modus operandi for the same.
- Consultation with all stakeholders including FATA Elders, Notables, and Parliamentarians was agreed upon. Decreasing number of FATA Elders (Maliks/Lungi holders) and revival of Jirga system were also considered.
- Other issues discussed included the impact of Army presence, access to justice, and tax collection along with loan facility to tribal people and provision of wheat subsidy to FATA like Khyber Pakhtunkhwa.



Committee on FATA Reforms Internal Meeting in Islamabad

- Governor's Council was opposed because of FATA not being a disputed area and its mainstreaming was considered by integrating Bajaur Agency to Khyber Pakhtunkhwa as a pilot project.

**Committee on FATA Reforms Meeting
On 22nd December, 2015**

- It was unanimously agreed to visit all the Agencies, though a time consuming process.
- Ambiguities to be removed regarding working with the recommendations of the tribesmen, and a flexible approach was considered for the four main options with considerable input from retired and experienced personnel and giving weightage to proposals of the Jirgas.
- To bring FATA into mainstream through a comprehensive policy and evolutionary process in order to establish writ of the government.
- Gradual withdrawal of Army troops, revival of the office of Political Agent, collective responsibility of Khawra, FATA's share in the NFC, FATA Council Elections, construction of Dams, kick starting Mega projects and industrialization through proper investment were discussed thoroughly by the Committee.
- The issue of administration's inability and un-willingness to take responsibility because of the Village Defence Committees (VDCs) was also discussed at the meeting.
- Matters relating to share in NFC award, implementation of Shariah instead of FCR, tax exemption, compensation to business community and establishment of a University.
- 11 points agenda of the 10 political parties was also presented to the Committee and bill presented by the Parliamentarians of FATA was supported by and large.

**Committee on FATA Reforms Meeting
16th February, 2016**

- The committee decided on distribution of previous reports on FATA Reforms among the members and to avoid hasty decisions.
- The Prime Minister was to be briefed about the role of the Law Enforcement Agencies and their revamping.
- It was observed that the three main features of the existing system were FCR, absence of electoral laws and non-working of the development functions by FATA Development Authority and that all administrative/judicial/ political orders are carried out through one man the Political Agent.
- It was decided that all possible options are to be thoroughly examined, which shall reflect, will of the people, to be ascertained through public invitation/notice and points of agreement and disagreement are to be considered.
- Due weightage must be given to economic prosperity and revival of Jirga system

- The committee also deliberated upon ensuring and rationalizing the real number of TDPs and to send Jirga to Afghanistan for the same reason, peace and security, negative Nexus between PA and FATA Elders, dichotomy in FCR, its strengths and weaknesses and increasing FATA's share in the divisible pool.

**Committee on FATA Reforms Meeting
31st March, 2016**

- Inclusion of civil society organizations, media persons, retired civil servants, military officers of FATA, youth and women in the consultation process and view point of Prime Minister's Secretariat regarding adult franchise may be incorporated in it.
- It was unanimously agreed that the elders of Kurram and Bajaur Agencies were against FCR and it was thoroughly debated whether referendum for integration with Khyber Pakhtunkhwa may be held in the later.
- It was highlighted that the elders were in favour while the youngsters opposed FCR.
- The role of the previous government regarding extension of adult franchise and Political Parties Act was appreciated and socio-economic uplift, revival of Jirga system and the institution of Maliks, strengthening the Tribal couture and traditions and revamping Khassadars was stressed.
- Mr. Zahid Hamid, Minister for Law and Justice proposed Administration of Justice Act, 2016, as an alternative to FCR.

**Committee on FATA Reforms Meeting
9th May, 2016**

The Committee reviewed the consultations with stakeholders after completion of visits to all Agencies and FRs. It was felt that the overwhelming majority of the people of FATA were not satisfied with the prevailing situation and expected the Government to carry out wide ranging reforms for mainstreaming FATA.

Various reforms in the political, administrative, development, security and legal spheres were discussed. It was also considered necessary to carry out settlement in FATA so that proper land and property records are created.

In the light of the above discussion held in the meeting, the Chairman asked Secretary SAFRON to start work on the report so that it could be discussed in the subsequent meeting.

**Committee on FATA Reforms Meeting
8th August, 2016**

The FATA Reforms Committee held a meeting of its members to finalize its report to the Prime Minister. During its meeting, it made the following observations and proposed policy measures that ought to be reflected in the report. The main decisions are given below:

- The Committee appreciated the report prepared by the Committee and it was found to be balanced as it covered all the aspects. This included the economic package, proposals for infrastructure development and the return and rehabilitation of TDPs, extension of the jurisdiction of the Peshawar High Court and holding of local bodies elections in FATA. It was appreciated that the report also suggested an elaborate implementation mechanism for the reforms.
- The Committee proposed that since the Reform recommendations were of immense national importance they should be announced by the President/Prime Minister.
- The Committee stressed the need to make a substantial increase in the Levies who would take over the law and order and policing functions in FATA.
- The Committee recommended that it was essential to consult FATA Parliamentarians in matters related to development and issues of administration.
- The Committee recommended that investment in the health and education sectors should receive the highest priority. In this connection, they proposed the following additionalities in the recommendations;
 - Establishment of two universities in FATA
 - Establishment of a Medical College in FATA
 - Establishment of an Engineering College in FATA
 - Special incentives for the private sector for investment in the health and education sectors in FATA, like allotment of free land
 - Incentive for private sector for opening bank branches in FATA
 - Ensuring FATA's connectivity to CPEC.
- The Committee also decided to hold a meeting with FATA Parliamentarians.

Annexure-E: Seven Points Agenda Presented by FATA Parliamentarians

فاٹا کو مین سٹریم میں لانے کیلئے فاٹا پارلیمنٹریں اور عوام کا ایجنڈا

- ۱- فاٹا میں قیام امن کیلئے IDPs کی باعزت واپسی کو یقینی بنایا جائے۔ *legislative*
- ۲- آرٹیکل 247 کو ختم کر کے فاٹا کو صوبے میں ضم کیا جائے یا فاٹا کو الگ صوبہ یا فاٹا کو الیکٹیڈ ایگزیکٹو کونسل کا سٹیٹس دیا جائے۔
- ۳- قبائلی علاقوں میں چادر اور چار دیواری کے تقدس کی پیمانی کا خیال رکھا جائے۔
- ۴- IRSA اور NFC میں فاٹا کو نمائندگی دی جائے جس کو فاٹا پارلیمنٹریں منتخب کریں گے۔
- ۵- پاکستان کے دیگر صوبوں / یونٹس کی طرح آرمی میں فاٹا کے نام سے فاٹا رجمنٹ متعارف کروائی جائے۔
- ۶- فاٹا میں کرپشن / دہشت گردی کے خاتمے کیلئے پاکستان کے دیگر حصوں کی طرح فاٹا میں بھی راہ داری اور پرمٹ سسٹم کا خاتمہ اور آن بارڈر وغیرہ کی انکم کو لیگل سز کیا جائے۔
- ۷- مندرجہ بالا اصلاحات آنے تک فوری طور پر P&D اور فاٹا لائن ڈیپارٹمنٹ کو الیکٹیڈ فاٹا پارلیمنٹریں کے ماتحت کیا جائے۔

<p>✓ ڈاکٹر غازی گل (MNA)</p> <p>بلال رحمان (MNA)</p> <p>ناصر خان آفریدی (MNA)</p> <p>غالب خان (MNA)</p> <p>مولانا محمد جمال الدین (MNA)</p> <p>محمد صالح شاہ (Senator)</p> <p>بلال رحمان (Senator)</p> <p>اورنگزیب خان (Senator)</p> <p>ملک نجم الحسن (Senator)</p>	<p>الحاج شاہ جی گل آفریدی (MNA)</p> <p>ساجد حسین طوری (MNA)</p> <p>حاجی بسم اللہ خان (MNA)</p> <p>✓ شہاب الدین خان (MNA)</p> <p>محمد نذیر خان (MNA)</p> <p>قصر جمال (MNA)</p> <p>تاج محمد آفریدی (Senator)</p> <p>سجاد حسین طوری (Senator)</p> <p>مومن خان آفریدی (Senator)</p> <p>ہدایت الرحمن (Senator)</p>
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Annexure-F: Consultations with Stakeholders

FATA Consultations in Bajaur Agency

31st December 2015

The Committee held its first meeting with the Tribal Jirga in Bajaur Agency on 31st December 2015. The Jirga in Bajaur Agency supported the FCR which according to them is based on tribal *Rewaj* and provides speedy justice. The Jirga members felt that complete abolition of FCR might be harmful for the tribal region, instead gradual changes to the FCR should be introduced. However, there were some members of the Jirga who opposed the FCR because they believed that it was outdated and suppressed the tribal people. The tribesmen who opposed FCR, supported the integration of FATA with Khyber Pakhtunkhwa and believed that the merger would preserve their tribal identity and culture. Other issues discussed were proper training of the Levies, implementation of laws, land settlement, provision of security by the state, restoration of peace, economic development through CPEC for bringing the people at par with their counterparts in the rest of the country.

The Committee held a second meeting with the civil society delegation comprising of political parties, Islahi Committee, traders' union, and media representatives. Most of them favored abolishing the FCR, which they believed was a hurdle in the socio-economic development of the tribal people. The FCR according to them did not protect rights of the population and supported only the privileged class and maliks. This segment supported integration with Khyber Pakhtunkhwa.



Jirga of Elders of Bajaur Agency

**Consultations in Mohmand Agency
1st January 2016,**

In the consultations of the Committee in Mohmand Agency, most people were in favour of minor changes in the FCR and in the current administrative system. The stakeholders stressed that it was important to preserve the culture and traditions of FATA and supported restoration of the Jirga system and revival of the institution of the Political Agent. Other issues discussed were related to the Islamic Ideology Council, extension of PATA regulation of Malakand to FATA, education and economic reforms, options of FATA Council, possible reduction in job quota owing to integration and return of TDPs. The youth in Mohmand Agency had significant reservations against the FCR.



Jirga Elders of Mohmand Agency

Consultations in North Waziristan Agency 4th February 2016

In the Committee's meetings with the tribal Jirgas in North Waziristan Agency, the tribal elders and maliks stressed the return and rehabilitation of the TDPs along with the revival of businesses and markets, and compensation for traders through the reconstruction process. The Jirga supported the restoration of tribal Jirga system and praised the consultative process of the FATA Reforms Committee.

The Committee held a second session with traders, journalists, and representatives of political parties. The participants supported both options of either an integration with Khyber Pakhtunkhwa or a separate province. Most, however, favored integration with Khyber Pakhtunkhwa and favored abolishing the FCR. The option of a FATA Council, which had been proposed by the Parliamentarians from FATA was rejected by the participants.



Malik Khan Marjan Wazir speaking in Jirga at Khajuri N.W.A

Consultations in Kurram Agency 28th March 2016

During the consultations in Kurram Agency, it was noticed that while most wanted change, they also wanted to preserve their tribal culture. The participants stressed the involvement of the youth in the reforms process and the manner in which opinion of the youth should be factored into the process.



Committee Members in Parachinar

With reference to the issues faced by the people in Kurram Agency, the problems highlighted were trust deficit between the State and citizens, low literacy level, ineffective electoral system, lack of security, and the lag between FATA and rest of the country. Other issues discussed were the developmental works, FATA Council at Agency level, restoration of local Government system, exclusive package for Kurram Agency, independence of judiciary, and share in the NFC award.



Jirga of Kurram Agency at Parachinar

During consultations of the Committee with journalists, traders, political workers, students, Ulema, and retired civil servants, the participants highlighted inequality of Kurram Agency in comparison to the settled areas of the country with respect to socio-economic indicators, and developmental works. The participants advocated increasing the education quota, establishment of a university in FATA, abolishing the FCR, implementation of laws of the settled areas, and opening of Parachinar Airport.

Consultations in Orakzai Agency 28th March 2016

During the Committee's consultation in Orakzai Agency, most of the participants advocated for amendments in the FCR. Many proposed abolishing clause number 40 of the FCR, while supporting the revival of the Jirga system and repatriation of the TDPs. Another proposal from the participants was the abolishment of Article 247 of the Constitution. The participants stressed the critical role the youth should play in bringing about changes to FATA. Many also advocated to curtail the powers of the PA and introduction of an electoral process for electing maliks. Other issues discussed included the collapse of law and order in upper Orakzai, importance of conducting local government elections, granting pension to Orakzai Levies, developing an exclusive package for the agency and increasing the National Assembly seats to two.



Reforms Committee with Orakzai Jirga at Hangu

**Consultations in Khyber Agency
4th April 2016**

In the consultations in Khyber Agency, many people favored the FCR as a legal framework for FATA and were open to the proposal of amending certain sections. The participants stressed that tribals from all walks of life should be consulted to ensure that tribal culture, values, and traditions must not be affected. Some participants wanted to abolish the FCR and stressed the importance of including women in the consultation process. The participants also stressed that it was critical to ensure the return and rehabilitation of the TDPs and highlighted the need for taking measures for loss of livelihoods because of imposing strict border controls at Torkham.



Chairman FATA Reforms Committee Being Presented Lungi in Khyber Agency Jirga at Landi Kotal

Consultations in South Waziristan Agency 25th April 2016

In South Waziristan Agency, the Committee held two separate consultations. The Committee held one session with Ahmadzai Wazirs in Wana. During the consultations, most participants were opposed to the FCR and wanted integration with Khyber Pakhtunkhwa. The option of Wana sub



Committee members in Wana

division as a separate Agency was also proposed by the participants. It was proposed that laws of Khyber Pakhtunkhwa should be extended to FATA after due consultation to bring normalcy to the area, to provide basic facilities like passport, cell phones towers, universities and to ensure development in various sectors. The participants rejected the option of the FATA Council, and a separate province, as they thought that it would further isolate the people. The issue of Mehsuds getting three times as much share than the Ahmadzai's Wazirs was also highlighted. The JUI demanded enforcement of Shariah in the area and FATA to be declared a separate province.



Jirga of Wazir Elders at Wana

A second session was held with the Mehsuds at Chagmalai, South Waziristan Agency. The importance of Elders was highlighted. It was said that the Elders have roots in the general public and difference between Jirga and Quom was highlighted. It was stressed that the FCR was codified by the British in accordance with the Tribal traditions and is highly suitable for the Tribal Areas. The request for job security of Class IV staff and postponement of the computerization process of Khassadar's salaries was also made. It was also said that any change must be in accordance with tribal customs and traditions and with due consultation of the tribal people. Other issues discussed



Mehsud Jirga at Chagmalai, S.W.A

were the repatriation of TDPs to be completed in the current year, Constitution of a Grand Jirga for South Waziristan Agency, integration with Khyber Pakhtunkhwa, a Legislative Assembly for FATA, and regularization of Political Muharrars.

**FATA Reforms Committee's Consultations with Elders of all FRs at Governor House
Peshawar, 2nd May 2016**

The Committee on FATA Reforms held two sessions with the Elders of FRs. In the first session, many participants opposed an integration with Khyber Pakhtunkhwa, while some favored a gradual association. The Jirga system stressed the importance of tribal Rewaj/customs and it was said that all the issues must be resolved through these instruments. People were against any referendum in FATA that stressed that FCR along with Jirga system may be retained as these provide speedy justice to tribal people. Transparency, good governance, TDPs repatriation, amendments in FCR, extension of National Accountability Bureau (NAB) laws to FATA and issue of low investment in the region due to absence of land records were also highlighted.

The second round of talks highlighted the importance of early TDPs rehabilitation and the participants favored integration with Khyber Pakhtunkhwa or conversion of FATA to PATA on the lines of Malakand. It was stressed that outright abolishment of FCR was not feasible, rather its collective responsibility clauses may be removed through referendum. Matters like consulting all the stake holders, granting of PATA status to FATA, right to appeal in high Court and extension of PPC to FATA were also discussed.

Annexure-G: Resolution of Khyber Pakhtunkhwa Provincial Assembly



PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA.

No.PA/KhyberPakhtunkhwa/L-I/R.No.711/2012/19566
Dated Peshawar, the 09/05/2012

To,

The Secretary to Government of Khyber Pakhtunkhwa,
Law Parliamentary Affairs and Human Rights Department.

Subject:- Resolution No. 711 Adopted by the Provincial Assembly of Khyber Pakhtunkhwa.

Dear Sir,

I am directed to say that the Provincial Assembly of Khyber Pakhtunkhwa in its meeting held on **07-05-2012** has adopted **unanimously** the following Resolution No. 711 moved by **Barrister Arshad Abdullah, Minister for Law, Parliamentary Affairs and Human Rights, Khyber Pakhtunkhwa.**

The Provincial Assembly of the Khyber Pakhtunkhwa through Provincial Government hereby recommends to the Worthy President of Islamic Republic of Pakistan and Federal Government that in order to ensure that the people of Federally Administered Tribal Areas should fully enjoy the protection and equality, under and before the law as inalienable right of every citizen under the Constitution of the Islamic Republic of Pakistan, the following measures may be adopted:-

- (I) to treat the FATA inhabitants at par with other citizens of the Islamic Republic of Pakistan;
- (II) to delete clause (7) of Article 247 of the Constitution of the Islamic Republic of Pakistan, being violative of fundamental rights of the citizens of the area and to extend the jurisdiction of the Supreme Court and High Court to the said area;
- (III) to abolish the newly constituted FCR Tribunal and to establish a proper Judicial Forum;
- (IV) the Parliament (Majlis-e-Shoora) may enact laws for FATA and the people of FATA may also get representation in the Provincial Assembly;
- (V) with the consent of the people of FATA.

Yours faithfully,

(HARIS KHAN)

Assistant Secretary-XIII
Provincial Assembly of Khyber Pakhtunkhwa.

Annexure-H: The Centrally Administered Tribal Areas (Employees Status) Order, 1972

THE CENTRALLY ADMINISTERED TRIBAL AREAS (EMPLOYEES STATUS) ORDER, 1972

PRESIDENTS'S ORDER NO. 13 OF 1972

[10TH April, 1972]

Where Clause (2) of Article 5 of the Province of West Pakistan (Dissolution) Order, 1970 hereinafter referred to the said order provides that the Centrally Administered Tribal Areas shall be administered by the President acting, to such extent, as he thinks fit, through such officers as he may appoint, and that president may, in that behalf, give such directions as he deems fit:

Now, Therefore in pursuance of proclamation of the 25th day of March, 1969, read with the proclamation of the 20th day of December, 1971, and in exercise of all powers enabling him in that behalf, the president and Chief Marshall Law Administrator is pleased to make the following Order:-

**Short Title and
Commencement**

1.(1) This Order may be called the Centrally Administered Tribal Area (Employee Status) Order, 1972.

(2) It shall come into force at once and shall be deemed to have taken effect on the 1st day of July, 1970 hereinafter referred to as the appointed day.

Definition:

2. In this Order, unless there is anything repugnant in the subject or context,____
 - (a) [Federally Administered Tribal Area] shall have the same meaning as in the said order,
 - (b) "employee" means employees serving in connection with the affairs of the [Federally Administered Tribal Areas] within or outside those area including members of the Civil Service of the North West Frontier Province and all other Government Servants not belonging to any [Federal] o Provincial Service and
 - (c) "Provincial Government" means the Government of North West Frontier Province.

**Status of the
employees of
the FATA**

3. Notwithstanding anything contained in their conditions of service, the employees shall, as from the appointment day, be the employee of the provincial government on deputation to the [Federal Government] and shall work under the overall administrative control of the Provincial Government, on the same terms and conditions of service as respects remuneration, level and pension and the same rights as respects disciplinary matters or tenure of office as were applicable to them immediately before that day.

Provided that the employee shall not be entitled to deputation allowance for their service after the appointed day.

ZULFIKAR ALI BHUTTO

President & Chief Marshall Law Administrator

**Birg: (Retd) Isia I Khan SOA
Additional Secretary**

