



MERGED TRIBAL AREAS: KHYBER PAKHTUNKHWA PAKISTAN

***MUHAMMAD MUSHTAQ JADUN
(PAS)***

Published by Governance and Policy Project-World Bank (Merged Areas)
Khyber Pakhtunkhwa



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Peshawar,
February, 2020

PREFACE

This report is outcome of interactive sessions, held in the month of November and December, 2019 in all the seven tribal districts, with the district officers, district administration and elders. These interactive sessions were held in collaboration with Governance and Policy Project-World Bank (Merged Areas) and the concerned District Administration.

Launching of Right to Public Services Commission in Merged Areas is a major step. As structural and legal changes, with processes re-engineering, are underway, there is a need to educate and build capacity of service providers. This document would help the officials and the Non-Governmental Organizations, both, local and international, to develop fair understanding of tribal areas.

Some of the views rehashed from my earlier reports on Tribal Areas. In tribal society perceptions, at times, are stronger than reality. Restructuring will impinge upon the delivery of public services, and successful reforms greatly depends on good governance.

The Merged Areas, formerly known as Federally Administered Tribal Areas (FATA), have witnessed worst militancy and sea change as a result of twenty-fifth constitutional amendment. Change in the constitutional status and merger with the province of Khyber Pakhtunkhwa would have far reaching implications as entire legal, administrative and judicial setup restructured.

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Right to Public Services Commission KP

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1. BACKGROUND

Comprising of Seven Districts and six Sub-Divisions the erstwhile FATA (Federally Administered Tribal Areas) remained a Central or Federal entity for centuries.

Due to its location, as gateway to India from Afghanistan and Central Asia, these areas remained, and are of strategic importance.

Successive Governments, due to strategic compulsions, adopted a policy of appeasement for these area.

To ensure peace and safety of communication lines, government framed strict laws such as Frontier Crimes Regulation, based on collective and territorial responsibility. Security remained primary focus of the state and infrastructure like communication was developed mainly for defense purposes.



This belt, along with districts of Khyber Pakhtunkhwa witnessed spate of insurgencies, leading to military operations.

External factors such as invasions from the North, Great Game, Cold War, Russian invasion of Afghanistan in 1979 and post 9/11 Afghan war, were some of the contributory factors with regard to deterioration of law and order. Events in Afghanistan have always, both, positive and negative effects on tribal areas. Apart from external factors, there has been cyclic wave of insurgencies against the successive governments, right from Mughals to Sikhs and lastly the British. Post 9/11 insurgency was the worst in the history of tribal areas. The locals were caught in a complicated war and use of high-tech weapons caused most of the collateral damage. Use of drones by the Americans caused damage to property and life of locals. The local population from all the seven districts and six sub-divisions was evacuated for military operation. Migration at such large scale was unprecedented, and coupled with killing of elders, has caused the collapse

of social, legal and administrative vacuum which warrants fast track reforms and revamping the administrative structures.

2. HISTORICAL CONTEXT

Term “Frontier Policy” used during Colonial period, and afterward, includes Afghanistan, former tribal areas (FATA), Khyber Pakhtunkhwa and former British Baluchistan¹. Events in Afghanistan, since centuries, have been impacting the politics and security of cited areas, having socio-economic and religious links with Afghanistan.

Merged Areas remained focus of international relations in the post 9/11 period. Tribal areas, formerly known as Federally Administered Tribal Areas (FATA), were merged in the province of Khyber Pakhtunkhwa in May, 2018 through 25th Constitutional amendment. Subsequently 26th amendment passed to retain current twelve National Assembly seats.

Anglo-Afghan war of 1843 and 1878, vaguely set the area of influence between the British and Afghan governments. Under Close Door Policy (1849-1870), the British managed the tribal areas through the Deputy Commissioners of adjacent districts. In pursuance of Open Door Policy (1870-1947), the British made advancement into the tribal areas. Durand Line Agreement (1893) set the boundaries between Afghanistan and British. It is the current boundary between Afghanistan and Pakistan.

2.1 In November, 2015 the Federal Government constituted a broad-based committee, having elected representatives from the Merged Areas, under the Chairmanship of Mr. Sartaj Aziz, the then, advisor to the Prime Minister on Foreign Affairs.

Sartaj Aziz Committee (to be referred as Committee), after intensive consultation with the elected representatives of Tribal Areas and all other stakeholders, submitted “Report of the Committee on FATA Reforms, 2016” in August, 2016. Report proposed ten years administrative, legal and constitutional reforms².

As the Government embarks upon Ten Years Development Plan (TYDP), which is in initial stage, it is pertinent to analyze the reforms and road map.

2.2 Commonly held belief is that the Merged Areas were creation of Colonial Masters. In fact Punjab Frontier Crimes Regulation (PFCR), 1873 was promulgated for the areas of the then *NWFP*, *D.G. Khan*, *Mianwali*, *Attock* and areas of *British Baluchistan*. Frontier Crimes Regulations (FCR), 1901 was framed for the Province of North West Frontier (NWFP) as well. Tribes are a socio-political entity and were not creation of a legal instrument. Since centuries, the locals have been occupying strategic passes, opening into the Sub-Continent, of Hindukush and Suleman Range. These areas remained a gateway to India for the invaders and

¹ The Pathans by Sir Olaf Caroe, Oxford University Press, 1957

² Government of Pakistan, Report of the Committee on FATA Reforms (2016). State and Frontier Regions, Islamabad

all, except British, came from the North. Thus successive rulers adopted a policy of appeasement towards the locals³.

2.3 Terrain and climate, not much human friendly though, has proved beneficial to the local tribesman against successive governments. Strategic and geographic advantages were effectively exploited by the locals. Successive governments promoted culture of patron-client relationship and patronized corruption, both, functional and financial. Tribesmen of Merged Areas have, with variations, certain paradoxes and peculiarities. Both these traits are evident from their past conduct and would be very much relevant as the government initiates Ten Years Development Plan (TYDP), legal and administrative reforms.

2.4 It is yet another misplaced perception that the British, and earlier regimes, devised special legal and administrative dispensation due to proximity of tribal areas with Afghanistan. Districts of Dir and Chitral and eight districts of Baluchistan also share long border with Afghanistan. Dir and Chitral, both, remained princely states till 1969.

British tried to enforce Sandeman Policy of Baluchistan in tribal areas, but failed. Local Society is egalitarian having collective leadership. Cyclic waves of insurgency, witnessed, right from the Mughal era to British Raj and after independence, recent one started in 2002. After independence, it is the most intense military operation in Tribal Areas, which still continues as the army remain deployed in operational position.

2.5 Externalities such as events in Afghanistan (Russian Invasion of 1979 and the American, 2001) impacted the Frontier Policy of government. During Russian invasion of 1979 the tribal and the pro-Islamic policies of General Zia were in harmony with the broader segment of society. Nationalists and progressive elements remained defensive and tried to justify the Russian invasion.

During two decades of Afghanistan Jihad:

- i. Weapons and narcotics business multiplied in Tribal Areas.
- ii. Smuggling of autos, electronics and other goods flourished, from 1990 onward. After withdrawal of Russian forces the cross border moment increased and the state policy remained vague.
- iii. Religious seminaries flourished, with the financial aid from Middle East and other Muslim Countries.
- iv. Large scale development of infrastructure and social sector led to widespread corruption among district departments and on top of all the political administration.

Afghan Jihad (1979-1988), and internal war, after withdrawal of Russian forces, resulted in proliferation of narcotics, weapons, smuggled goods and religious militancy. In 1994, Frontier Corps was assigned anti-smuggling duties and empowered under Customs Act, 1969. Scouts established check posts on

³ Mushtaq Muhammad Jadun, "Commentary on The Frontier Crimes Regulations (amendment), 2011" FATA Secretariat, Peshawar (March, 2014)

Pak-Afghan border and on various routes within the Tribal Agencies. Political administration, instead of enforcement, had to resort to policy of appeasement toward the locals, mainly due to non-availability of force.

3. CONSTITUTIONAL, LEGAL AND ADMINISTRATIVE ASPECT

FATA had a Constitutional status under article 246 and 247 of the Constitution, having twelve National Assembly Members and eight Senators. Administration, Judiciary and Policing was under Frontier Crime Regulations (FCR) 1901, as amended in 2011.

Quaid-e-Azam in Peshawar and Bannu Jirga gave firm commitment to the tribal that their customs and traditions would be protected in the Constitutional framework of Pakistan⁴.

FATA remained a legal and territorial entity under all the Constitutions of Pakistan. Four Members from FATA were among the framers of 1973 Constitution. There was inbuilt mechanism under article 247(6) to de-notify any Tribal Area.

“Article 247(6): The President may, at any time, by order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper”. Provided that before making any order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal Jirga”⁵.

National Assembly through, 25th Constitutional amendment, passed on May 24th, 2018 repealed Articles 246 - 247 of the Constitution.

Very next day Senate, on 25th May 2019, passed the bill. As per provisions of article 239(4) resolution of concerned Provincial Assembly is essential to allow altering boundaries of that Province.

Khyber Pakhtunkhwa Provincial Assembly passed resolution on May 27th, 2018 and the President gave assent to the Constitutional Bill on May 31st, 2018⁶.

Thus the whole Constitutional amendment, deciding fate of five million Tribals, introduced and decided in four working days. Subsequently, 26th constitutional amendment passed on May 13th, 2019⁷. Under this amendment, the tribal areas will retain twelve seats in National Assembly of Pakistan. While the seats in the Khyber Pakhtunkhwa Assembly increased from 16 to 24⁷.

The 14th National Assembly was dissolved on 31st May, 2018 upon completing its five years term. National Assembly passed constitutional amendment during the last week of its tenure.

⁴ Quaid-e-Azam address to Tribal Jirga, 17th April, 1948. Governor House, Peshawar. Bannu Fortress, 16th April, 1948

⁵ The Constitution of Islamic Republic of Pakistan, 1973. Insaf Law House, Rawalpindi District Courts, Rawalpindi

⁶ The Constitution (Twenty-fifth Amendment) Act, 2018

⁷ The Constitution (Twenty-sixth Amendment) Act, 2019

4. THE TURNING POINT

4.1 Rise of Talibans (1994-2001)

Starting from Qandahar, in 1994, Talibans captured Kabul, and except Badakhshan held by Ahmad Shah Masood, extended their rule over Afghanistan. Taliban from seminaries of Pakistan actively participated in the rise of Talibans. All the Afghanistan Province bordering Pakistan, both in Khyber Pakhtunkhwa (then NWFP) and Baluchistan are inhabited by Pashtuns and remained stronghold and power base of Talibans. Afghan Talibans graduated from seminaries of Pakistan. Talibans were second generation Afghan refugees and born in Pakistan. Thus there was close intimacy between the Afghan and Pakistani Talibans.

Taliban government in Kabul was recognized, only, by Saudi Arab, UAE and Pakistan.

As 9/11 occurred Pakistan became the frontline state. There was, widely held, perception in the West that Afghan Taliban were creation of Pakistan. Musharraf regime, devoid of political support of major political parties and religious segment and thus lacking legitimacy, came under intense pressure. The state of Pakistan had no other option but toe the line, set by the USA and the Allies. Irrespective of long-term fallout of Afghan policy, against Russian invasion of Kabul in 1979, the Zia regime had smooth sailing as all the anti PPP elements and especially the religious parties were fully supportive of Afghan policy. The law and order situation in erstwhile Tribal Areas remained under control. In fact, flow of dollars and huge developmental expenditures resulted in expansion of businesses and creation of jobs.

4.2 Post-9/11 tribal and Afghan policy was total reversal of earlier policy and thus highly unpopular. Pakistan could not extract major economic package for extending support. Implementation of Americans policy pitched the state against its own people and series of operations were carried out to suppress insurgency not only in the tribal areas but almost in 80% districts of the province of Khyber Pakhtunkhwa. The locals lost jobs, businesses closed and sustained huge loss to life and property. More than fifteen years of insurgency in FATA was the most violent in nature and engulfed the entire province of Khyber Pakhtunkhwa and Baluchistan. Suicide attacks took place in Punjab and Sindh as well. Technological advancements further intensified the severity and gravity of sabotage activities. Origin of all the militancy traced back to Tribal Areas as, except Mullah Fazal Ullah of Swat, the majority of leader of Talibans were from Tribal Areas. Thinkers, Writers and Defense Analysts constantly focused on special status of Tribal Areas, ignoring externalities such as events in Afghanistan and rise of Islamic militancy in the Islamic world. In fact Malakand Division was in turmoil since 1994 due to movement of *Tehreek-e-Nifaz Shariat-e-Muhammadi* (TNSM), led by Sufi Muhammad.

It was concluded that constitutional, legal and administrative status of tribal areas is the root cause of all the chaos. Counter view is that why Swat became epicenter of militancy as it does not share

boundaries with the erstwhile tribal areas. It was Provincially Administrated Tribal Area (PATA) but districts like Pishin, Quetta, Buner, Tank and Hangu were equally troublesome.

4.3 During Afghan Jihad (1979-1994) the tribal and Afghan policy, of the then government, was in alignment with the overall sentiments, cultural and Islamic values of Pashtuns. Progressive political parties like Pakistan People's Party (PPP) was effectively neutralized as its top leadership was either eliminated or exiled. PPP did oppose the government Afghan Policy but could not muster enough public support to counter it. Nationalists parties like *Pakhtunkhwa Milli Awami Party* and *Awami National Party* (ANP) opposed the Afghan policy and termed Afghan issue as a war between Russia and America, but with little impact on the political and social landscape of this region. All the religious parties and other segments of society, for various reasons, supported the Afghan policy. It is now admitted fact, at the level of the state, that post-9/11 Frontier Policy was flawed. Levis, police, paramilitary, army and the public sustained huge losses to life and property.

In 2002, the Government devised a policy of Exclusive Economic Zones but the law and order situation destroyed peace and enabling environment for economic activity. Militancy has adversely affected the local businesses and the economy.

Post-9/11 Frontier Policy led to alienation of locals. It was otherwise unpopular throughout the country. Tribal used to, and still, raise simple question. If Russian invasion of Afghanistan in 1979, for whatever reasons, was wrong how the similar act by with United States, along with its Allies, can be justified? Again if waging a war against Russian invasion was a "Jihad" why not the same argument holds good now against Americans? In the war against terrorism the government coerced the tribal elders to support the Frontier Policy, which they, unwillingly, did. 'Tribal Lashkar's' and 'Aman Jirgas' were organized in tribal areas and in the settled districts.

These measures proved counterproductive. It was shabby execution of a flawed Frontier Policy. It pitched the tribal elders against the militants. All those supporting the government and its policy, were declared as 'hypocrites' equated with the infidels and thus liable to be killed. Religious edicts were issued and the militants started targeting the tribals and the levies.

In nutshell the Frontier Policy effectively alienated the progressive nationalists, national parties, religious elements (both political and seminaries), tribal elders, youth and traders.

Pakistan Tehreek-e-Insaaf (PTI) leadership strongly opposed the Frontier Policy. The purpose of highlighting the issue is to drive home the point that monumental administrative and legal reforms are being implemented in a situation of, resultant, power and social vacuum, which may be exploited by the disgruntled elements leading to law and order situation. Rise of *Pashtun Tahaffuz Movement* (PTM) is a case in point. Current power vacuum, effectively plugged by the armed forces, but continuous and frequent use of force has its own implications.

Americans, while chasing the fleeing militants, resorted to drone attacks. Tribals were caught in a three pronged war: -

- a) Americans attacks.
- b) Pakistan law enforcement agencies action against the militants, and the collateral damage.
- c) Militants counter attacks, targeting elders, levies and state installation. Loss to houses and shops, claimed by the locals, runs into billions. Locals were directed to leave their houses and belongings, on short notice of hours.

5. SARTAJ AZIZ COMMITTEE

In 2015, the Federal Government constituted a high level Committee comprising of Federal Secretary SAFRON, Governor Khyber Pakhtunkhwa and Elected representatives from Tribal Areas.

Committee paid visit to all the Tribal Agencies, held interactive sessions and submitted its report in August 2016.

5.1 Main Findings and Recommendations of the Committee

Some of the main findings and recommendations are summarized as under:

- i. Committee unanimously recommended merger of FATA with the Province of Khyber Pakhtunkhwa.
- ii. Without reforms Army may have to stay indefinitely in FATA thus affecting strategic balance on the Eastern Front.
- iii. Integration of FATA with Khyber Pakhtunkhwa would require a transition period of five years. Article 247 will be retained during the transition period.
- iv. Rehabilitation of Temporarily Displaced Persons.
- v. Retaining Jirga System, while extending jurisdiction of Supreme and High Court.
- vi. Development package of about 1100 billion Rupees out of 3% share of NFC.
- vii. Institution of Local Government in 12 - 18 months.
- viii. Tribal Elders, except Kurram, Bajaur and FR Bajaur, wanted to retain the present special status.
- ix. Replacement of FCR with the Tribal Areas Rewaj Act.
- x. Jirga System, for both Civil and Criminal matters, will be maintained whereby the judges would appoint the Council of Elders.

The Committee highlighted the location, geostrategic importance and peculiarities of Tribal Areas and thus proposed legal, constitutional and administrative reforms in a phased manner with retention of “Rewaj” (customs and traditions) both for civil and criminal matters as it was unanimous demand of the locals.

5.2 As per Commitment of the Government the Federal Government, on May 29th, 2019 issued “FATA Interim Regulation, 2018”.

This Regulation was issued in pursuance of clause (5) of Article 247 of the Constitution. By 27th of May the Constitutional amendment had already been passed by the Parliament, repealing article 246 and 247 from the Constitution.

No validation clause was provided in the 25th Constitutional amendment to give protection to such Regulations. All Powers were vested in the executive authorities like Assistant and Deputy Commissioners. Peshawar High Court, relying on Fundamental Rights, declared it as null and void. Decision of Peshawar high Court was upheld by the Supreme Court of Pakistan.

6. STAKEHOLDERS ANALYSIS⁸

i. Malaks / Elders:

Still have influence over the locals. Offered sacrifices during fifteen years of militancy. Merger has affected their interests and social status. District Administration greatly rely on tribal elders for dispute resolution and management of multiple conflicts. During the last one and a half year district administration managed and resolved conflicts with the help of tribal elders and without legal cover. It indicates role and effectiveness of elders. Both the administration and elders are working without legal cover. Tribal society is a society of “Gerontocracy” where role of elders would remain relevant. Tribals were not creation of legal instrument called “FCR” and cannot be undone through repeal of law alone. District administration, along with tribal elders and religious leaders would remain relevant in maintaining law and order, conflict resolution and implementation of security and developmental policies.

ii. Religious segment:

Still strong and wields great influence over the locals. All other segments of tribal society like political, social and militants are under the influence of religious elders. *Ulema* are integral part of tribal society and other than religious rituals social issues, settled under customs and traditions, are also solemnized by them. Religious leaders, along with the district administration and tribal elders, can play positive role in conflict resolution.

iii. Political parties:

Jamat-e-Islami (JI), *Jamiat Ulema-e-Islam* (JUI), *Awami National Party* (ANP), and *Pakistan Tehreek-e-Insaaf* (PTI), new entrant in-tribal politics, have pockets of support. Presence and activities of political parties is a positive sign in mainstreaming the Merged Tribal Areas. Till 1996, all the elections, in tribal areas, were held on non-party basis. Political parties were not allowed to work in tribal areas. Apart from other reasons, political vacuum is also one of the reason of rise of militancy.

⁸ Mushtaq Muhammad Jadun, “FATA: A Socio-Political Appraisal (December, 1997), Governor’s Secretariat: North West Frontier Province Pakistan.

iv. Educated and Non- Residential Tribals:

Most active in supporting the reforms. Demands rights but not ready to shoulder obligations like taxation laws and utilities fee. Have voting strength, but less effective in tribal disputes and law and order situation. Instrumental in moulding the opinion of policy makers, and also play active role in the politics and economy of the country.

v. Nouveaux riches:

Creation of Afghan Jihad, further enriched through smuggling of vehicles, electronics and narcotics. One of the important segment of society in destabilizing the tribal society. Have less social status except those who were already recognized tribal elders. Quite a few have attained political status both in the National Assembly, the Senate of Pakistan and hierarchy of political parties. Government and the political administration, for obvious reasons, accorded high social status to such elements and at the cost of tribal elders. Rise of this class further developed sense of deprivation among the youth pushing them into the fold of militants. At the peak of militancy this class just fled the tribal areas and were, otherwise, of little help in assisting the Government. Irony of the fact is that this class has made most of investment outside tribal areas.

vi. Youth:

Includes educated, unemployed, semi educated, laborers and political activists. Majority of educated and social workers are supporters of PTI, effective vote bank. Helpful in creating community awareness. Factors like political, power vacuum, and the large scale destruction of Tribal Areas have led the rise of *Pashtun Tahaffuz Movement* (PTM). Unemployment and frustration, plus misplaced perceptions, may push more and more young people into the fold of PTM. Deft handling is required, as coercive measures may prove counterproductive in the long run.

vii. District Administration:

For more than a Century Merged Areas were managed under the Political Administration. Assignments of custom duties to the Frontier Corps, followed by military takeover in 1999, post 9/11 army operation and now as a result of 2018 reforms new power centres have emerged. Widespread corruption by the political administration, joined by filthy rich elders and touts, coupled with extraneous factors hastened the collapse of tribal society and administration. This simultaneous decay of society and the administration created power and social vacuum. In a typical Pashtun tribal society such social and power vacuum, as the historical evidence suggests, is usually filled by the warlords. Now district administration is devoid of all the legal powers, and administering public services, maintaining law and order, performing coordination functions and dispute resolution without legal cover.

It happened in Malakand as PATA Regulation repealed in 1994. Apart from other socio economic factors and mismanagement, leading to dissatisfaction of citizens, power vacuum was a major contributory factor in rise and rise of Sufi Muhammad and later on Mullah Fazl Ullah and his Commanders in Malakand.

In Former tribal areas there were many and starting with Faqir Muhammad in Mohmand and Bajaur to Ihsanullah in Mohmand, Mangal Bagh in Khyber, many in Orakzai, Hafiz Gul Bahadur and others in North Waziristan, Baitullah Masaud, Hakimullah Masaud from South Waziristan and score of others across the Province of Khyber Pakhtunkhwa. Civil Administration must lead the reforms and development process. Militancy and the resultant operation has adversely affected the lead role of Administration. Improvement of public service delivery is need of the hour. Active role of administration is essential to restore peace and confidence of locals.

viii. Federal Government and the Bureaucracy:

Under FCR all the judicial, administrative and policing powers were concentrated in the political administration. The new centres of powers have emerged in the form of:

- a. Armed Forces: vested powers under the Constitutional provisions of article 245, in aid of civil power.
- b. Frontier Corps: Invested Policing Powers under Frontier Corps Regulation, 1959.
- c. Judiciary: District and Sessions Judge and Judicial Magistrates vested with all the powers under the criminal and civil laws.
- d. Police / Khassadars / Levies: Vested with all the powers of Police under Khyber Pakhtunkhwa Police Act, 2017, Code of Criminal Procedure, Pakistan Penal Code, Minor Acts and other laws. All the *Khassadars* and levies merged in the Provincial Police and now entitled to all the pay and pension benefits of Khyber Pakhtunkhwa Police.

In Merged Areas the army has been called in aid of Civil power under article 245 of the Constitution. High Court, in such area, shall not exercise any jurisdiction under article 199, which means that writ jurisdiction with regard to Fundamental rights ousted. Federal Government has committed allocation of 1100 billion for next ten years. Thus Federal Government would be major stakeholder, both in implementation of developmental and security policy. Border policy and trade with Afghanistan are federal issues and all these federal subjects greatly impinge upon the tribesman of Merged Areas.

Sartaj Aziz Committee recommended that 3% of National Finance Commission to the tune of 1100 billion rupees must be allocated to tribal areas during the next ten years.

Last National Finance Commission (NFC) Award was announced in December 2009 and since 2015 allocations out of Divisible Pool are being made under interim formula as agreed upon under last NFC Award. Federal Government has announced that 3% share out of NFC shall be apportioned equally between KP, Punjab and Federal Government (1% each). The situation would remain uncertain unless the provinces of Punjab and Khyber Pakhtunkhwa agree to contribute 1% share out of NFC Award.

It means Federal Government to ensure 3% allocation during the next two NFC Awards.

Federal Government role would be pivotal, during the implementation of Ten Years Development Plan, Mega Projects by Federal entities. Donors' coordination is required at Federal level. Above all the federal government to ensure continuity of financial allocation.

Federal Government continuous role and supervision is essential with regard to concessions and incentives by the Federal Bureau of Revenue and Commerce Division⁹. Continuity and certainty of financial resources is required as per commitment of federal government at the time of merger of tribal areas.

ix. Provincial Assembly and the Government:

Under FCR all the judicial, administrative and policing powers were concentrated in the political administration. Now new centres of powers have emerged.

Provincial government would be responsible for maintaining law and order and implementing development plans. Merged Areas now represented by twenty four Members in the Provincial Assembly, some part of cabinet. It is good for political mainstreaming of Merged Areas. Delimitation for local government done. It will further ensure devolution of powers and participation of tribals in power structure and decision making.

Provincial Government to ensure socio- economic development, maintenance of law and order, transparency in Ten Years Development Plan and improvement of public service delivery. With merger of tribal areas now the provincial government of Khyber Pakhtunkhwa would be steering the reforms and development package.

x. Common Man:

Most deprived and marginalized. The area is otherwise not very human friendly. War against militancy has destroyed the businesses and infrastructure. Children and the women are the worst affected. So far the common man has remained voiceless in power structure and decision making. Representation in the Provincial Assembly and local bodies would ensure common man participation in decision making. Good governance and improvement in public service delivery is most crucial for marginalized segment of society so as to protect their fundamental rights and bridge trust deficit between the state and citizens.

7. PARADOXES OF TRIBAL SOCIETY

7.1 Ritualistic Islam:

Root cause of much of the current problem. In any uprising against the government, the locals promptly rally behind religious leadership. It is deep rooted in the psyche of tribals due to long history of struggle against the governments. Any religious leader supporting the policies of government is viewed as “*Sarkari Mullah*”. In their daily financial, family matters and especially fundamental rights of women, they quickly revert back to their “*Rewaj*”.

⁹ Revenue sharing for FATA – A case for fair and systematic application of fair and systematic Application of Equalization Scheme. (Position paper of FATA Secretariat, Peshawar)

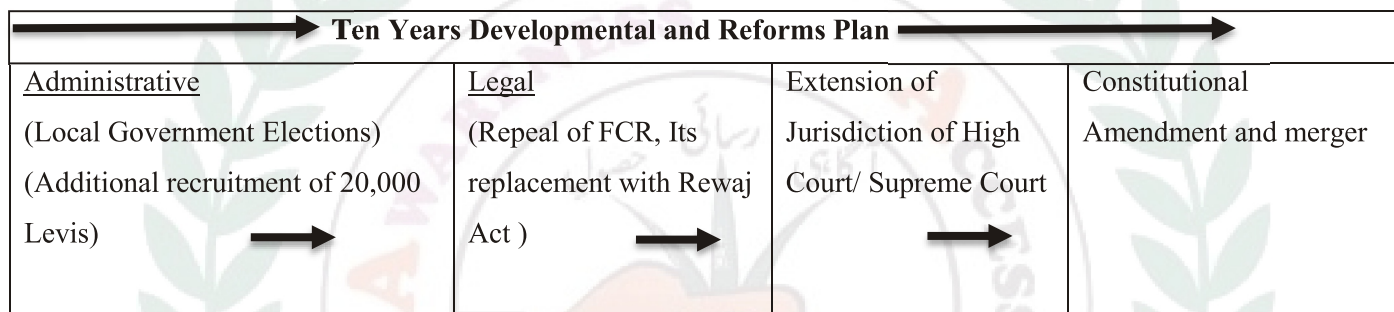
7.2 Demands for Rights but not ready to shoulder the obligations:

Taxes are equated with “*Qalang*” (Forced Charge) and “*Nang*” (Honour). Recent extension of Forest and Minerals laws met with strong resistance and the Provincial Government was forced to make exemptions.

8. THE TASK AHEAD

8.1 Interactive *Jirgas* held in each Tribal District with the Elders of all the seven districts during the month of November and December 2019. Elders were called in consultation with the District Administration. Meetings held with the District Officers in all the seven districts. Post-merger issues were discussed. Deputy, Additional and Assistant Commissioners (DC, ADC and ACs), *Tehsildars* (Revenue Officer), Police Officers and other district officers attended the *Jirgas* and the meetings.

8.2 Sartaj Aziz Committee proposed the reforms in the following sequence:



(Transition period of five years proposed for constitutional amendment such as repeal of Article 246 and 247 of the Constitution)

The reform process kicked off exactly in the reverse order.

After Constitutional amendment and extension of jurisdiction of Supreme and High Courts, the legal and administrative measures are being taken. There are few parallels in the history that the laws and management model, evolved in the districts since 1849, has been extended to tribal areas in one go. In Khyber Pakhtunkhwa, from 1849 to 1969, there were six tribal districts namely D. I. Khan, Bannu, Kohat, Peshawar, Mardan and Hazara. Malakand Agency was tribal area, while Swat, Dir, and Chitral were princely states. Apart from *Amb* state in Mansehra, the current districts of Torghar, Battagram and Kohistan were tribal areas. At the time of merger of princely states in 1969, PATA Regulation, 1968 was extended to these areas, which was set aside by the Supreme Court in 1994. It was followed by *Nazam-e-Adal*. The region is still unstable. Implementation of legal and administrative reforms in tribal areas is fraught with risk and constraints. Foremost would be to bridge the existing trust gap between the government and the tribals.

8.3

a. When PATA regulations was repealed in 1994, the trial of pending appeals continued under the same law.

Article 264 of the Constitution provides protection to repeal of laws (**Annexure A**). The spirit of article 264 is that, when a law is repealed by virtue of the Constitution, the repeal shall not affect the previous operation of the law or anything done or suffered under the law. It shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under such repealed law. It shall also not affect an investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any such legal proceedings may continue as if the law has not been replaced.

Similar protection has been provided to proceedings done under repealed laws. Section 4 of the West Pakistan General Clauses Act 1956. (Section 4 Effect of Repeal. (**Annexure B**).

Once a vested right has been vested in a party under a statute, which statute is subsequently repealed, such right cannot be disregarded. (2005 CLC 759).

FCR Amendment Regulation (2011) was promulgated under article 247(5) of the Constitution. In consequence of 25th Constitutional amendment, the FCR was repealed and FATA Interim Regulation 2018 promulgated which has been set aside by the Peshawar High Court and upheld by the Supreme Court.

In case of Merged Areas not only the FCR was repealed but the trial forum of Jirgas, (APA/PA) and the appellate forums Commissioner FCR and FATA Tribunal also ceases to exist. Without enabling and validation law whether a different forum can hear the appeals or continue the trial proceedings? Language of article 264, Section 4 of the West Pakistan General Clauses Act, 1956 and section 26, 27, 28 of the Limitation Act, 1908, talks about effect of repeal of law. In case of tribal areas law, as well as trial and appellate forums also ended.

b. In pursuance of Article 264 special Act may be promulgated to give protection to all the past transaction under the FCR and current proceedings.

Where all ordinance stood repealed by efflux of time when case under it has been remanded to trial court by Appellate Court, the proceedings commenced under it would continue and shall be deemed to have remained pending (PLD 1990 Karachi 27 to PLJ 1990 CrC.467 NLR 1990 Cr L.J 511)

c. In all the interactive sessions, the locals agitated this point that, both, criminal and civil matters, already settled under FCR and *Quomi Jirgas*, are being reopened and restored through filing fresh suits. It would lead to multiplication of never ending litigation. Execution of such decrees may create law and order situation. Restoration of such suits is violation of *principle of res judicata*.

Constitutional provisions and section 4 of the West Pakistan General Clauses Act, 1956 are clear.

8.4

a. Land disputes in tribal areas are chronic. For five land disputes of Kohat, Hangu, Orakzai and Kurram Special Martial Law Regulation was promulgated in 80s which is still valid. In all the other districts, except *Dawar* Areas of North Waziristan and Upper Kurram, there is no land settlement.

Now all the Civil laws, including Land Revenue laws stand extended to merged districts.

Tribals, especially non-residential and educated, are filing applications for demarcation and partition of lands. Since long tribals have been managing cultivated and waste lands as per their “Rewaj”. Rising population, colonization of waste lands due to new irrigation schemes, solar tube wells, exploration of oil and gas and minerals are some of the factors giving rise to land disputes. In all such petitions for demarcation and partition, there is main issue of title, which has to be determined by the Civil court and in the absence of land records. So the courts have to rely on other sources of evidence.

b. Construction of new roads have opened up, hither to, inaccessible areas. Non-residential, educated and other tribals have started filing civil suits for demarcation, partition, title and possession of land.

It is dangerous trend. In the absence of land record, the tribals have other resources of evidence such as possession, payment of fine to the government under territorial responsibility, allocation of developmental schemes by name, to individuals, tribe and sub tribe.

Types of land disputes range from

- a) Family dispute.
- b) Intra-tribe.
- c) Inter-tribe.
- d) Sectarian.

Intra-tribal and sectarian disputes are more dangerous as it may engulf the whole area.

c. Under section 4 of the General Clauses Act, 1956, Section 26, 27 and 28 of the Limitation Act, 1908, rights such as past decisions, possessions, easement rights and evidence under customs, tradition and usage is relevant and admissible.

Past judgments are also relevant. (Section 54,55,56,57 of the Qanun-e-Shahadat, 1984). Similarly, under section 62 and 63 of the Qanun-e-Shahadat the opinion as to existence of right, general custom usages and tenets are relevant (**Annexure C**).

In case of partition of land (Section 141, 142 of the West Pakistan Land Revenue Act, 1967) the Revenue officer may examine and concludes that there is question of title he may ask the party to:

- i. File a civil suit for determination of title and suspend the partition proceedings till decision of the Civil Court [Section 141(2)]. In case the party so required to file suit within 90 days.
- ii. Such revenue officer may proceed with the petition and decide the question of title himself [Section 141(4)] (**Annexure D**).

Revenue officers are reluctant to assume role of civil court to decide the title. In tribal areas there is issue of title in all the petitions of demarcation and partition.

Decisions by the Civil Courts without taking into account the relevant legal and social issues may lead to further complexities.

8.5 The locals also raised issue of decisions of *Jirgas*, both in criminal and civil cases. In such *Jirgas*, decisions were not recorded and the looser party is now re-agitating the cases in the Civil Courts.

8.6 Yet another issue is correction of age, name and relaxation in age. Previously, it was used to be done by the political administration as Civil Court. Now they have to file a petition in the civil court for correction of age and succession certificate etc.

8.7 Levies are reluctantly following the orders of Police officers. Mohmand, Bajaur and Malakand Levis survived the worst militancy. Levies are still relevant in maintaining law and order. Like Baluchistan. A and B areas Policing may start at the District Headquarters and Levis under special Act. Sartaj Aziz Committee recommended revamping of Levies. Extension of Police Act was not a recommendation of FATA Reform Committee.

- I. Revamping of administrative setup, equipping with legal powers. Special Law for adjudication of land disputes, determination of title and partition etc. by the Revenue officers and Collectors in the spirit of article 264, Section 4 of the *West Pakistan General Clauses Act, 1956*, Section 26,27,28 of the *Limitation Act, 1908*, Section 54,5,56,57 of *The Qanun-e- Shahadat, 1984*, and Section 141,142 of *The West Pakistan Land Revenue Act, 1967* and correction of name, age and succession certificate. Suitable changes in *land Acquisition Act, 1894* required to give legal cover to land acquisition. Fixing price on the pattern of settled areas is not possible due to non-existence of Land Revenue Record.
- II. Current power vacuum filled by the army, and very effectively, but it cannot continue for indefinite period. Resentment due to host of social, economic, legal, administrative issues is growing. Public service delivery is poor. All the disgruntled elements may join hand to exploit the situation.
- III. Protest in tribal areas, quite frequently, turns violent. Special set up for prompt implementation of Ten Years Development Plan with firm assurance of Continuity and availability of funds through NFC Award. Development Schemes should not lead to throw forward liability beyond Ten years. Over the years, development schemes used as tool of favouritism and corruption. Locals and the district officers would join hands with regard to Ten Years Development Plan. Current administration set up of departments lack capacity to handle efficient utilization of huge allocation. It would be bit difficult to shift from 'Projects and Schemes' mode to strategic development but it is need of the hour.
- IV. Compensation of losses is to be distributed through a transparent process. Sanction of 7.5 billion rupees for North Waziristan is an encouraging measure.

- V. Rewaj Act, under the supervision of High Court and Supreme Court, may be given validation under the repealed Articles 245-246 or Article 8(3)(b)(ii). Parliament may add new laws to Part I of First Schedule through process of amending the Constitution (PLD 2015 SC 401). Resentment against direct policing and judicial process is growing.
- VI. Post 9/11 policy has alienated major segments of society. Current government has good political support among non-residential, educated tribals and youth. But all the three, apart from having strength of vote, have little role in defusing the law and order situation. Tribals' foremost loyalty is to its clan, can be hired but difficult to retain on continuous basis. It is only religious militancy, both in the past and current, which transcends tribal affiliation. Yet another paradox of tribal society is that they rally behind *Mullahs* (religious leaders) when they oppose the government. It would be dangerous scenario if elders, religious leadership, unemployed youth and disgruntled elements, each one having its own reasons and interests, get united against the reforms using catchy slogan of 'Protection of religion' resources and *Rewaj*.

9. MERGED AREAS AND PUBLIC SERVICE DELIVERY

9.1 Current Environment in the historical context

Since time of *Salateens* and *Mughals* to British and in post-independence era focus of successive governments remained the security and to maintain peace in the former tribal areas. External factors, geo-strategic importance and location of Merged Areas forced the government to make compromises and rightly so. Development in the form of infrastructure in Merged Areas was mainly due to Strategic interests; the locals benefited indirectly. Many external factors such as Great Game of British era, Cold War, Afghan Jihad of 1979, 9/11 and above all, the weak political and military governments are some of the factors promoting culture of patronage and the resultant institutional decay. Public service delivery in such an environment is relegated to secondary level. Brief stakeholders analysis, vide para 6, is indicative of the fact that the social and legal powers structure in Merged Areas remained complex. It remained federal entity, with defacto administrative control of provincial government. Such diarchy only suited the bureaucracy. Decision making remained complex and multi-layered.

All the district departments in the tribal areas were organized on the same pattern, as in vogue in the settled districts. The uniqueness was that all the judicial, policing, prosecution, revenue and administrative powers were concentrated in the district administration under a distinct system of collective and territorial responsibility.

The district administration had exclusive control over the recruitment, distribution of developmental funds and allocation of schemes.

In an institutionalized culture of patronage, it only led to corruption at mega scale. Governments, due to political, strategic and security compulsions, adopted a policy of appeasement. Enforcement of regulatory mechanisms compromised.

Over a period of decade's patron - client relationship emerged between District administration and elders from various segments of society. The public service delivery, including allocation of developmental schemes channelized through clients, who assumed role of 'frontmen' and siphoned off major share of government initiatives. Public services like domicile and verification of character, or attestation of documents was through 'frontmen' and mostly after illegal gratification.

9.2 Surveys and development data indicates dismal position of socio-economic indicators in the Merged Areas¹⁰.

It is not because of less allocation of funds by the state, but corruption and mismanagement are the main reasons. Educational, health and drinking water facilities concentrated in few pockets and mostly non-functional.

For the year 2017-18, the federal government allocated 27.44 billion budget under Annual Development Programme¹¹ for a population of five million. Massive funding under the foreign fundings and the road constructions by the army are over and above the Annual Development Programme. Khyber Pakhtunkhwa government allocated 125 million rupees under Annual Development Programme (2017-18) plus Foreign Aided project of 82 billion rupees¹².

9.2.1 All social indicators point towards dismal position. Overall literacy is 27% (Male 45% and Female 8%). About 55% of class 5 could not read class 2 story in Urdu or Pashto. Only 29.5% attended by Traditional Birth Attendant against national coverage of 86%¹³.

9.3 Mega projects such as hydal, forests, and mineral stalled, over the years, due to tribal disputes. Volatile law and order situation has scared away the investors. Even local tribesmen prefer investment of their capital outside the merged areas.

9.4 Female education and share in jobs remained neglected mainly due to religious and social conservancy. The locals equate their traditions with the injunctions of Islam. Although many such customs and traditions are contrary to teachings of Islam, such as female education and their share in the property.

¹⁰ Ten-Year Merged Areas Development Plan (TYMADP) Zero Draft. UNDP Decimal, prepared under Strategic Support Unit Chief Minister Secretariat

¹¹ Annual Development Programme (2017-18). FATA Secretariat, Warsak Road, Peshawar

¹² Annual Development Programme (2017-18) Planning and Development Department, Government of Khyber Pakhtunkhwa

¹³ FATA Development Household Survey 2013-14, Planning and Development Department, FATA Secretariat, Warsak Road, Peshawar (2016)

9.5 Locals have been resisting regulatory mechanisms in local government, forests, wildlife, irrigation, mining, industries. All such regulations levies, fee and taxes are considered as invasion over their freedom.

Even utility bills are equated with taxes. Lack of local government, barring three Municipal Committees, has further aggravated the public service delivery and participation of community in the power structure and decision making.

9.6 As per recommendations of FATA Reforms Committee, the Government has agreed to five times increase in allocation of development programme but without capacity building and institutional reforms the efficiency of utilization of such huge allocation would remain a question mark.

9.7 Right to Public Services Commission

9.7.1 The Beginning

a) Good Governance Strategy¹⁴

The main pillars of Khyber Pakhtunkhwa Government's Good Governance Strategy are "open government", "service delivery", "citizen participation", "innovations and technology" and "performance and accountability".

The role and mandate of Right to Public Services Commission, as per provisions of its Act and Rules, are in accordance with the Good Governance Strategy.

Large scale exercise is required prior to Ten Years Development Plan, which must include:

- i. Mapping of existing facilities in education, health, Green sector and other social sectors.
- ii. Reallocation and alternate use of over concentrated existing facilities such as health and education.
- iii. Mapping and reallocation of facilities like health, education and veterinary carried out under Ten Years Development Plan Survey, need to be integrated with the Ten Years Development Plan.
- iv. While implementing Ten Years Development Plan the capacity of existing district departments, culture of patronage and corruption must be taken due care. Locals and the district officials would try to degenerate the development strategy into 'Projectisation' mode with creation of liabilities.

- b)** Legal and administrative measures in service delivery such as domicile, Police verification, age correction, and other documents required.

¹⁴ Khyber Pakhtunkhwa Good Governance Strategy. Performance Management and Reforms unit office of the Chief Secretary Khyber Pakhtunkhwa (2019)

- c) Local Government system at Tehsil and Village Council level would improve participation in decision making at grass root level. Capacity building would be essential, both, for the elected representatives and the service providers. Since local government institutions would be established for the first time so there will be no institutional memory and inherited experience.

9.7.2 Communication Strategy

The Communication strategy already developed for the settled districts of Khyber Pakhtunkhwa and being implemented as part of Commission document, “Strategic Action Plan”.

Communication strategy would be modified in accordance with the social and religious sensitivities of tribal areas. There are certain positive traits of tribal society such as role of elders. Community forums being organized both at district and sub-divisional level in accordance with local culture and traditions. All tribes and sections are represented in such forums.

9.7.3 Institutional Infrastructure

i. Official

a) Posts of district staff sanctioned. While recruitment and training of staff, may take some time, the situation in tribal areas required immediate measures. Offices established and equipped in all the seven districts of Merged Tribal Areas and contract staff provided with the assistance of Governance and Policy Project (World Bank), Planning and Development Department.

b) Constitution of District Steering (DSC) and Sub-Divisional Steering (SDSC) Committees which is empowered under the Khyber Pakhtunkhwa Right to Public Services Commission Steering Committee (amendment) Regulations, 2018.

- District Steering Committees (DSC), headed by the concerned Deputy Commissioners, constituted in all the seven districts with district officers as its members.

- Sub-Divisional Steering Committees (SDSC), headed by the concerned Assistant Commissioners, being constituted. All the Sub-Divisional officers are members of SDSC. Local Government Act, 2019 of Khyber Pakhtunkhwa envisages abolition of District Government and devolution to Tehsil (Sub-Division) level shall take place. Thus, an official coordination forum at Sub-Divisional level would help in improvement of service delivery. Details of notified services at **Annexure E**.

ii. Community Forums

District Citizen Integration Forum (DCIF) now renamed as “Zilli Rasai Forum (ZRF)” has been constituted in one district of tribal areas. While constitution of “Zilli Rasai Forum (ZRF)” and Sub-Divisional Integration Forum (Tehsil Rasai Forum) is under process in 19 Sub-Divisions of Merged Areas. Focal person for all the districts nominated.

iii. Capacity Building

Capacity building of, both, the Commission's staff and service providers, which includes designated officers and the Appellate Authority (District Officers) is urgent need. As a result of merger, apart from structural changes in the police department and the district administration, process reengineering is underway. Local Government system does not exist. As the elections are held, for the first time for local government, capacity of, both, the elected representatives and the local government staff would be required. Officials would be recruited en bloc, all inexperienced and without having advantage of institutional memory. As the local government is devolved to Sub-Divisional level, the Sub-Divisions (19 in number) in Tribal Areas, except seven district Headquarter, are deficient in civil infrastructure as well as officials. It would be a gigantic task requiring resources and time. Commission has already developed Manual, "Administering Public Services". It contains main provisions of "the Khyber Pakhtunkhwa Right to Public Services Act, 2014", "the Khyber Pakhtunkhwa Right to Public Services Rules, 2014" and Regulations made there under.

iv. Access to Public Services

a) Physical Access

Tribal Area is a rugged terrain, lacking communication infrastructure. Some of the areas in Khyber, Kurram, North Waziristan, Orakzai and South Waziristan remain snow bound during winters. In such areas, locals migrate towards low lying areas. This is one of the limiting factor with regard to physical access to public services like police, education, health and municipal services.

b) Economic Access

Incidence of poverty in Tribal Areas is 73.7% (Multidimensional Poverty Index (MPI)¹⁵). It is the highest in Pakistan. Locals have to travel long distances to reach the District and Sub-Divisional Headquarters. Some of the public services like education, health, excise and taxation, driving license are availed from the adjacent districts. Locals avail public services with a much high cost. Militancy has further added to the miseries of locals.

a) Social Access

Tribal areas, having 8% female literacy, are highly conservative society. Gender access to services like police, inheritance and human rights is limited. Culture of corruption is further excluding the common man to have access to Public Services. Thus there is greater degree of social exclusion.

Establishment of local government, at grass root level, would greatly improve social, physical and economic access to public services.

¹⁵ "Multidimensional poverty in Pakistan", Ministry of Planning, Development and Reforms 2016, Islamabad

b) Developing Linkages

Mapping of the Non-Governmental Organizations carried out. Linkages with International Non-Governmental Organizations like Governance and Policy Project (GPP), *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ), and United Nations Development Programme (UNDP) developed local active organizations include Sarhad Rural Support Programme (SRSP), *Khwendo Kor*, Blue Veins, *Da Hawwa Lur*, the Khyber Pakhtunkhwa Commission on the Status of Women and the Khyber Pakhtunkhwa Human Rights Commission.

Local Non-Governmental Organizations (NGOs), mostly organized by the educated youth, are quite active and few engaged in gender rights. Local community organizations and being integrated with the *Zilli* and *Tehsil Rasai* Forums.

9.7.4 Redressal Forums and Awareness

- a) District Monitoring Offices established in all the districts
- b) *Jirgas* held at the District Headquarters
- c) Interactive sessions with the District officers and officials of District administration to enhance capacity. Focal person for all the District departments nominated. Capacity building sessions held.
- d) **Overseas Pakistanis Foundation (OPF)** Understanding developed. All the complaints of expatriates, received through OPF are processed by the Commission.
- e) **Prime Minister Delivery Unit (PMDU)**. It is very vital Citizen Portal and the Commission has been provided dashboard. Now complaints to PMDU can be lodged to District offices of Commission and directly on Hotline “Rasai (1800)”.
- f) **Rasai (1800)** Hotline, easy to dial, number, launched in February, 2020. Merged areas have access to all the districts of this forum. Five Call Agents, along with supervisor, recruited. Rasai (1800) provides good forum to the backward areas where locals do not have smart phones to access the PMDU’s Pakistan Citizen Portal App. A Dashboard for Merged Areas provided to the Chief Minister Secretariat so as to enable the locals to provide direct access to the Chief Executive office. As the new public services like Excise and Taxation and Welfare are being extended to Tribal Areas, Rasai (1800) is the most accessible forum for guidance and complaint redressal of locals.



g) **Reaching out** Huge number of locals of Khyber Pakhtunkhwa work in other provinces, especially in Karachi. Linkages are being developed, through Administration Department, to reach out the locals through the respective Provincial governments.

The purpose is to create awareness about the initiative and redressal mechanisms of RTS Commission. Locals face difficulties in availing police, revenue, excise and municipal services due to financial and time constraints.

The main challenges are creating awareness through large scale publicity, activation of community forums, gender rights within the conservative society and capacity building of elected representatives and the service providers.

ANNEXURE A: ARTICLE 264 OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN

Effect of repeal of laws.—Where a law is repealed, or is deemed to have been repealed, by, under, or by virtue of the Constitution, the repeal shall not, except as otherwise provided in the Constitution,—

- (a) revive anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the law or anything duly done or suffered under the law;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the law;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the law had not been repealed.



ANNEXURE B: SECTION 4 OF THE WEST PAKISTAN GENERAL CLAUSES
ACT, 1956

4. Effect of Repeal (1) Where this Act, or any other 3[Provincial] Act repeals any enactment then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and
- (f) any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act had not been passed.

(2) The provisions of sub-section (1) shall apply on the expiry or withdrawal of any Ordinance promulgated by the Governor as if it had been repealed by a Provincial Act.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

54. Previous Judgments relevant to bar a second suit or trial: The existence of any judgment, order or decree which by law prevents any Court from taking cognisance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognisance of such suit or to hold such trial.

55. Relevancy of certain judgments in probate etc., jurisdiction: A final judgment, order or decree of a competent Court in the exercise of probate matrimonial admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such Legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof—that any legal character which it confers accused, at the time when such judgment, order or decree came into operation; that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such Judgment, order or decree declares it to have accrued to that person; that any legal character which It takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

56. Relevancy and effect of judgments, orders or decrees, other than those mentioned in

Article 55: Judgments, orders, or decrees other than those mentioned in Article 55 are relevant if they relate to matters of, a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustrations

A sues B for trespass on his land, B alleges the existence of a public right of way over the land, which A denies. The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

57. Judgments, etc., other than those mentioned in Articles 54 to 56, when relevant:

Judgments, orders or decrees, other than those mentioned in Articles 54, 55 and 56 are irrelevant, unless the existence of such judgment order or decree is a fact in issue or is relevant under some other provision of this Order.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them, C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages of the ground that C failed to make out his justification, the fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife but the Court convict B of adultery

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C,

(c) A prosecutes B for stealing a cow from him, B is convicted A afterwards sues C for the cow which B had sold to him before his conviction. As between A and C. the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced, is relevant under Article 21 as showing the motive for the fact in issue.

62. Opinion as to existence of right or custom, when relevant: When the Court has to form an opinion as to the existence of any general custom or right, the opinion, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation: the expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustrations

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this Article.

63. Opinion as to usages, tenets, etc., when relevant: When the Court has to form an opinion as to—the usages and tenets of any body of man or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge thereon, are relevant facts.



ANNEXURE D: SECTIONS 141 AND 142 OF THE WEST PAKISTAN LAND REVENUE ACT, 1967

141. Disposal of question as to title in the property to be divided. (1) When there is a question as to title in any property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a court.

(2) Where the Revenue Officer does not himself proceed to determine the question of title as a Civil Court, for reasons to be recorded by him in this behalf, require a party specified by him to file a suit in a Civil Court, within such period not exceeding ninety days from the date of his order as he may fix, for obtaining decision regarding the question.

(3) On the filing of a civil suit by the party required so to do within the specified Period, the Revenue Officer shall suspend further action on the application for partition till the said civil suit is decided by the Court and a copy of the Court's order is produced before him.

(4) In case the party so required fails to file a suit within the specified period, the Revenue Officer may proceed with the partition and decide the question of title himself.

(5) Where the Revenue Officer himself proceeds to determine the question, the following rules shall apply, namely:—

(a) If the question is one over which a Revenue Court has jurisdiction, the Revenue Officer shall proceed as a Revenue Court under the law for the time being in force.

(b) If the question is one over which a civil Court has jurisdiction, the procedure of the Revenue Officer shall be that applicable to trial of an original suit by a Civil Court, and he shall record a judgment and a decree containing the particulars required by the code of Civil procedure, 1908 (Act No. V of 1908), to be specified therein.

(c) An appeal shall lie from the decree of the Revenue Officer under clause (b) as though that decree were a decree of a Civil Judge in an original suit.

(d) Upon such an appeal being made, the District Court or the High Court, as the case may be, may issue an injunction to the Revenue Officer requiring him to stay proceedings pending the disposal of the appeal.

(e) From the appellate decree of a District court upon such an appeal, a further appeal shall lie to the High Court, if such further appeal is allowed by the law for the time being in force.

142. Disposal of other questions. (1) When there is a question as to the property to be divided, or the mode of making a partition, the revenue Officer shall after such inquiry as he deems necessary, record an order stating his decision on the question and his reasons for the decision.



(2) An appeal may be preferred from an order under subsection (1) within thirty days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the Revenue Officer by the authority to whom the appeal has been preferred, the Revenue Officer shall stay further proceedings pending the disposal of the appeal.

(3) If an applicant for partition is dissatisfied with an original or appellate order under this section, and applies for permission to withdraw from the proceedings in so far as they relate to the partition of his share, he shall be permitted to withdraw therefrom on such terms as the Revenue Officer thinks fit.

(4) When an applicant withdraws under the provisions of sub-section (3) the Revenue Officer may, where the other applicants, if any, desire the continuance of the proceedings, continue them in so far as they relate to the partition of the shares of those other applicants.



ANNEXURE E: DETAILS OF NOTIFIED SERVICES

<div>Right to Public Services Commission Government of Khyber Pakhtunkhwa Notified Public Services</div> <div></div>				
S.No	Type of Service	Timeline	Designated Officer	Appellate Authority
Deputy Commissioner Office				
1	All Pakistan Cartridge Increase	10 days	Deputy Secretary Home	Secretary Home
2	Attestation of Inheritance or Mutation Documents	60 days	Patwari	Deputy Commissioner
3	Demarcation of Land	28 days	Revenue Officer	District Collector
4	Domicile	10 days	Add Deputy Commissioner	Deputy Commissioner
5	Entry in Roznamcha and Revenue Record	60 days	Patwari	Deputy Commissioner
6	FARD	7 days	Patwari	Deputy Commissioner
7	Issuance of Arms License	15 days after ver	Deputy Commissioner	Concerned Commissioner
8	Issuance of Certified Copies of Registered Docment	7 days	Sub Registrar	District Registrar
9	Processing of Arms License	7 days	Deputy Commissioner	Concerned Commissioner
10	Verification of Arms Applicant	15 days	District Police Officer	Regional Police Officer
Elementary & Secondary Education				
11	Provisional or Character Certificate	5 days	Head of Institute	DEO/ Director Education
12	School Leaving Certificate Private Sector	7 days	Headmaster/ Headmistress	District Education Officer
13	School Leaving Certificate Public Sector			
Excise & Taxation Department				
14	Registration of new motor Vehicle	Same day	ETO / MRO	DG Excise and Taxation
15	Renewal of Vehicle	Same day		
16	Transfer of Vehicle	3 days		
Forest Department				
17	Grant Of Trees	60 days	Divisional Forest Officer	Conservator of Forest Concerned
18	Issuance of Wood Permit			
Health				
19	Copies of Post Mortem or Medico Legal Report	30 days	Medical Officer of Civil	District Health Officer
20	Issuance of Drug License	10 days	Drug Inspector	
Transport and Mass Transit Department				
21	Issuance of Learner HTV	Same day	Additional Deputy Commissioner / Assistant Commissioner	Secretary Transport & Mass Transit Department
22	Issuance of Learner LTV			
23	Issuance of Fresh Driving License HTV	10 days		
24	Renewal of Driving License HTV			
25	Issuance of Fresh Driving License LTV			
26	Renewal of Driving License LTV			
Local Government				
27	Birth Certificate	2 days	Secretary Village Council	AD Local Government
28	Building Plan	30 days	AMO Planning	Chief Municipal Officer
29	Death Certificate	2 days	Secretary Village Council	AD Local Government
30	Disposal of Garbage and Solid Waste	24-36 hours	Zonal Manager	CEO WSS Companies
31	Plan of Commercial Building Outside city walls	30 days	AMO (P) MC	CMO (I * S) MC
32	Plan of Commercial Building within city wall	60 days	Chief Municipal Officer	Administrator MC
33	Supply of Clean Drinking Water	As Per Govt Policy, Phase	GM Operations	CEO WSS Companies
34	Water Connection	2 Weeks	Zonal Manager	CEO WSS Companies
Police				
35	FIR	Instantly	SHO	District Police Officer
36	Issuance of Learner Motor Car Jeep and Motorcycle	Same day	District Police Officer	Secretary Transport & Mass Transit Department
37	Issuance of Fresh Driving License Motor Car Jeep	10 days		
38	Renewal of Driving Licence Motor Car Jeep			
39	Police Verification	7 days	SHO	DSP Headquarter
Zakat Service				
40	Disbursement of Zakat Funds to Mustahiqeen	20 days	Chairman Locl Zakat	Chairman District Zakat
41	Educational Scholarships	20 days	District Zakat Officer	Chairman District Zakat
42	Issuance of Istehqaq Certificate	10 days	Chairman Locl Zakat	Chairman District Zakat
43	Jahez	20 days	District Zakat Officer	Chairman District Zakat



Right to Public Services Commission
KP, Pakistan



Governance & Policy Project
(Merged Areas)



Government of Khyber Pakhtunkhwa