

NON-PAPER

FATA Integration

Risks and Challenges

## 1. Socio - Historical context:

The question of integration of the Federally Administered Tribal Area (FATA) into the national mainstream has been in the attention of the policy makers since quite some time. Of late this has again come to fore, in the context of the convulsive events in FATA. The current tenuous situation in Afghanistan and our national interests in the region are also likely impinge on question of integration. The divergent approaches being debated for possible resolution of the vexing question of future status of FATA. These questions range from the desirability of total integration through an edict in one go to the adoption of a more measured or incremental approach and a dispensation for governance of these areas. FATA, since partition, have been governed under a special dispensation enshrined in the Constitution of the Islamic Republic of Pakistan<sup>1</sup>. This dispensation is a continuation of the method of governance adopted by the British during the Raj.

The recent events in Tribal Areas may have added a sense of urgency to refocus on the matter. The need for integration of these areas can be viewed from different angles – political, administrative, legal, financial and economic. Initial thinking on these alternates has shown that different perceptions generate different outcomes.<sup>2</sup> From an administrative and legal perspective integration seems to be an immediate national imperative. However, when viewed from a financial and economic perspective, the outcome is completely reversed. Here it is easy to build a case for continuing with the existing system given the paucity of economic opportunities in these areas, as well as the weak capacity of the State in the medium and short term.

Integration also has certain implications that may impinge upon the constitution, and may require amendments and changes therein.

Going into the integration process and its modalities, it is important to keep in view that it would be composed essentially of two parts – the “coercive” and the “positive”. Legally speaking the “coercive” elements of the new system are likely to be predominant in terms of effecting the population. These would be in the *form of a new taxation system as well as the criminal justice and dispute resolution mechanisms of the settled areas*. The positive effects of integration are by their nature longer term and require resources that shall need to be ensured over a relatively long period say 10-20 years. In order for the integration to be successful i.e. to have general acceptance, it is important that both the above proceed

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<sup>1</sup> Constitution of Pakistan Article, 247.

<sup>2</sup> Ambrose Dundas, (Governor NWFP). The Problems of Watch and Ward on the North West Frontier, a lecture delivered on the 5<sup>th</sup> of August, 1944 (Archives Govt. of NWFP).

simultaneously or should have a certain balance to make “change” tolerable. Unfortunately, the “negative” or coercive elements by their very nature tend to speed much ahead of their positive counterparts. This may upset the balance requiring a constant application of force to maintain status quo. Whether this is possible for a prolonged period is not that clear and needs further debate. For sure, this would require resources that would need to go much beyond those guaranteed under the various instruments (National Finance Commission, External Support )

## 2. **Geostrategic**

Federally Administered Tribal Areas (FATA) are straddled along the settled districts of Khyber Pakhtunkhwa, starting from Nawa Pass in Bajaur Agency and ending in GulKach of Zhob District in Baluchistan. It has been a gateway to the Indian Sub-Continent. Sphere of influence, over this area with varying degree of influence and control, has been alternating among the power centers of Taxila, The Persian Empire, Central Asian States, Delhi, Kabul, Lahore and now Islamabad. Governments, and the invaders, both, from the North and South, have been making political and administrative adjustments with the locals of

this area. Mughals, Sikhs and British followed the same practice. British codified the 'Tribal Riway' (Customs and Traditions) in the form of Punjab Frontier Crimes Regulation, 1872 (PFCR) and later on modified as Frontier Crimes Regulation, 1901 (FCR) when the North West Frontier Province (NWFP) was declared as Chief Commissioner Province. The entire edifice of administration was based on indirect policing, through the local levies and Frontier Scouts, with a concept of collective and territorial responsibility. This administrative system with a modicum of improvements in the form of Frontier Crimes Regulation (amendment) Regulation, 2011, albeit with a much eroded capacity, is still in vogue.

### **3 The People, Society and Customs**

3.1 The edifice of the tribal society rests on certain institutions that have evolved through centuries. These institutions not only hold the Pukhtun tribal society together but also act as instruments of conflict resolution. A brief discussion of some of the salient ingredients on which the Pakhtun tribal society rests is important to understand its intricacies.

The Pukhtuns in general, and the tribesmen in particular, as a people have unwavering belief in equality among individuals and among the members of the tribe regardless of lineage and economic status. The Pukhtun society is structured in such a manner that the Maliks or elder holds no sway or superiority over the humblest member of the tribe. The emphasis on equality is also reflected through one of their old customs of "Vesh" (the redistribution of the tribal land every thirty years) based on the concept of Nikkat.

Nikkat refers to a sacrosanct yardstick for the distribution of share in profit and loss.

Share in all profits accruing to the tribe, be that employment opportunities in the Khassadar force or government works etc. is based on a pre-determined scale of Nikkat. This distribution yardstick assumes an even greater significance when one takes into the consideration the fact that almost all lands, pastures, forests in the tribal areas are in collective ownership.

Distribution in accordance with the "Nikkat" goes beyond the pale of profit like in the case of intra tribal clashes as well as conflict with government. Even the provision of manpower, financial/logistical support and weapons are also forked out based on "Nikkat". Similarly, government tribal fines / reparations imposed under the provision of collective territorial responsibility are also apportioned on this basis.

Each section and sub-section within the tribe has its elders who are mandated to represent them. This mandate is by consent and not unbridled. These elders act as instruments of conflict resolution whether these conflicts are inter or intra tribal in nature or a running dispute with the government. It may be pertinent, however, to make a distinction between the tribal elders, commonly called Malik and the Lambardars in the Punjab or the Tumandars in Baluchistan. A Malik in the Pushtun tribal society is an attorney of sorts of his co-tribesmen, consented to represent them. He does not, however, enjoy an exalted status or undisputed authority over them.

“The Pukhtun tribesman perhaps loves nothing better than to dispense his own justice and to redress his own wrongs”. There is a sacred obligation of vendetta to avenge honor, imposed on him by the unwritten Code of Conduct commonly called ‘Pukhtunwali’. This also regulates his daily life and tribal affairs. Conflict resolution, regardless of the magnitude of the issue and the enforcement of the tenets of this code, is done via the Jirga. “Every member of the Jirga has the right to put forward his point of view. The whole issue at hand is argued out in the open”<sup>3</sup>. The verdict pronounced by the Jirga is binding, mostly honored, as it has the sanction of the entire tribe behind it.

Another important institution, which deserves our attention, is the Khassadari System. Over the last two centuries or so, the institution of Khassadar has become important. This institution predates the reign of the Durrani. It was considered a useful instrument in ensuring good conduct from the tribes and tribesmen. It also provided for a safe passage through their country and thus came to be known as ‘Protective Tribal Responsibility’. The British strengthened this system on their ingress into the tribal areas under “Forward Policy” after the boundary alignment with Afghanistan in 1893.

The principal difference between the Levies and the Khassadars is that unlike the levies the Khassadar was made a hereditary institution. The Khassadar was required to bring his own weapon. The levies personnel, however, were equipped with a service rifle and employed through a selection process. Briefly, khassadars to act as hostages, on behalf of the tribe, with the government.

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<sup>3</sup> Dr. Azmat Hayat Khan; The Durand Line, its Geo Strategic Implications pp 34-35.

**3.2** The tribal society and the various administrative instruments have metamorphosed in the form of current stakeholders. External factors, such as events in the region, have been the principal drivers of change and instability.

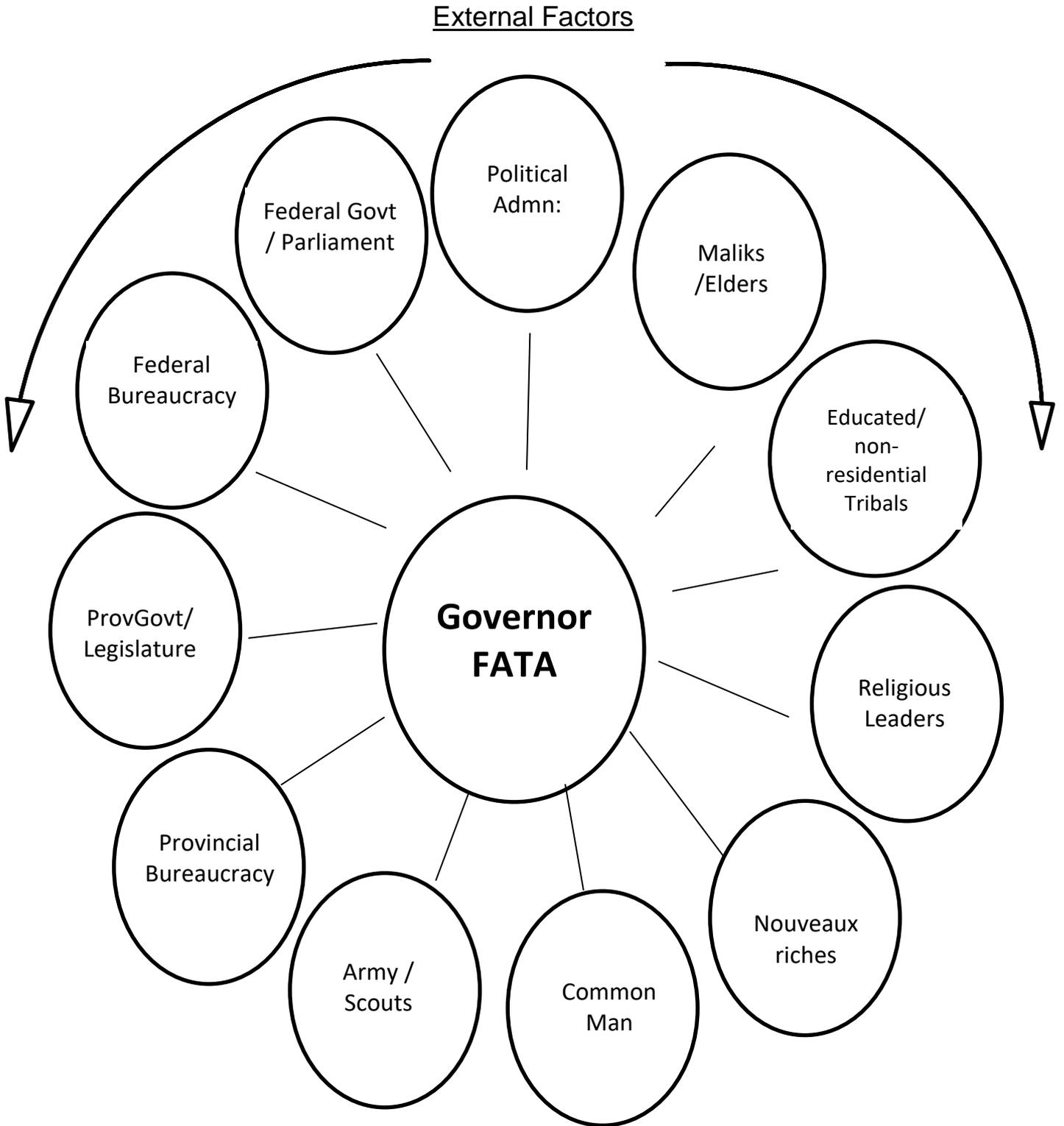
Under the British rule, especially, after implementation of Forward Policy, both the societal and administrative institutions emerged in a more crystallized form as the events of history determined the role and responsibilities of these institutions.

Governor is the pivot around which the whole system of tribal administration revolves. While acting as Agent to the President for FATA he is answerable to the federal government through the Ministry of States and Frontier Regions (SAFRON). He has to maintain harmony among all the other stakeholders. Government exercises control over tribal areas through the Political Administration. While Khassadars, Levis and Scouts remained the main law enforcement agencies the post-2002 army operation has eclipsed the role of all other stakeholders. Political administration indirect policing rests on the concept of territorial and protective responsibility exercised through the tribal elders both Maliks (Hereditary status) and Lungi holders (Personal for rendering services). Ongoing army operation and displacement of local population plus own doings of tribal elders have resulted in much diminished role and influence over their co-tribesmen. Social change is inevitable which has brought forward new players in the form of educated young and nouveaux riches. Determinants of history and external factors have catapulted the religious segment into position of prominence who have not only undermined the social institution of tribal elders but have also challenged all the other formal and informal institutions and with a ferocious tenacity.

Emerged through an historical process of change and instruments of control devised by the state the current stakeholders are summarized in the following figure (1)

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Figure 1. Current Stakeholders in FATA<sup>4</sup>:



<sup>4</sup> FATA: A Socio-Political Appraisal by Muhammad Mushtaq Jadoon, December, 1997.

#### **4 PARADOXES OF TRIBAL SOCIETY**

No society is free of internal contradictions. In FATA these paradoxes are more pronounced and apparent and has almost become a social norm. Historical, extraneous, governance, religious leanings and local leadership are some of the contributory factors in developing and consolidating these societal paradoxes

##### **4.1 Ritualistic Islam**

There is no denying the fact that the tribesmen are practicing Muslims. They are ready to wage holy war for the glory of Islam anywhere in the world. In fact they are, usually, ready to die for the religion but not ready to live for it. Any Islamic injunction running parallel to their vital interests is safely ignored. The tribesmen, in such a case, quickly revert back to their much glorified "Riwaj" (Customs/Traditions). For them religion and their traditions are inseparable.

##### **4.2 Conservative yet hedonist**

Socio - economic initiatives by the government are viewed with suspicion and conceived a threat to tribal norms. Collectively the tribal society gives an outward impression of a society deeply steeped in religion, however individually the tribes are neither ascetic nor do they have a disdain for worldly pleasures.

##### **4.3 Staunch followers of religious leaders yet Non-conformists.**

Religious leadership has always exercised great influence over the tribal society. The religious leaders are still in a position to foment agitation against the government. The tribesmen readily follow the religious leaders against the government but not in support of it. The same tribes, in spite of all the reverence for the religious leadership, do not allow them to adjudicate in the matters adversely affecting their social and economic interests. Historical evidence suggests that there has been a constant pattern of rallying behind religious leadership in case of real, or perceived, threat to their religion and culture. In fact whenever there is clear and present danger of encroachment from outside, leadership role is taken away from the tribal elders and vested in religious leadership. The motives are not always noble. Religious and tribal leadership have been exploiting each other to gain political and economic advantages.

#### 4.4 Individual action but collective reaction

Political Administration may succeed to win over individuals through arm twisting or favors or both. They remain divided among themselves but usually get united against the government.

#### 4.5 **Demand for rights albeit without obligations**

The Tribesmen clamour for grant of all economic and legal rights but hardly willing to shoulder any obligation, offering argument of their customs and traditions that they have never paid any tax to the state. Any tax to the state or even payment of utility bills is an anathema.

#### 4.6 **Resist Authority yet obey honest and strong leadership.**

In Tribal society there is collective leadership. No Prince or Chief has ever been able to subjugate them. Strongly resist ,both, formal or informal measures of control and regulations. Till extension of British rule they had never been governed effectively. In spite of their psyche to resist authority tribesmen ,at least, acquiesce to honest and strong leadership.

## 5 **Current constitutional, legal and administrative status:**

### 5.1 **Constitutional :**

Article 246 of Constitution describes Provincially and Federally Administered Tribal Areas, while article 247 deals with the administration of Tribal Areas which includes, both, Provincial and Federal Tribal Areas. As per article 247 (3) no Act of Parliament shall extend to FATA or any part thereof unless the President so directs. In giving such directions, with respect to any law, the President may direct that the law shall, in its application to Tribal Area, or to specific part thereof, have effect subject to such exceptions and modifications as may be specified in direction (emphasis added).

The President may make regulations for the peace and good government of a Federally Tribal Areas or any part thereof (Article 247 (5)).

### 5.2 **Administrative:**

As per Martial Law Order 112 of 13<sup>th</sup> April, 1972 all the employees working in FATA shall be deemed as Provincial employees on deputation to FATA without deputation allowance. Barring some regulatory entities all other national building department, both Provincial and Federal e.g. (Pakistan Telecommunication, WAPDA) operate under the same set of rules and regulation. Similarly, all audit and accounting procedures and regulations as well as development manuals are identical to the one followed in the settled districts.

### 5.3 Agency / FR

For administrative convenience FATA is divided into seven Agencies and six Frontier Regions (FR). Agencies are headed by Political Agent while the FRs report to their respective Deputy Commissioner of the district to which FR is attached.

### 5.4 **Legal**

FATA is administered under the Frontier Crimes Regulation (Amendment) 2011. It is essentially a procedural law but to some extent it also encompasses administrative, policing and judicial aspects. It is a misconception that none of the laws of Pakistan are applicable in FATA. In fact, so far, 158 Laws have been extended to FATA which includes Code of Criminal Procedure, Pakistan Penal Code, and regulatory laws relating to aviation, agriculture, mines, explosives, health and education.

6 **Reforms:**

6.1 So far the Government has constituted five Reforms Commissions on FATA, the last one being FATA Reform Commission constituted in 2015. While none of the recommendations contained in these reports have been implemented in totality, there has been some cherry picking in as for the less daunting recommendations.

Recently, the Government of Pakistan constituted yet another a high level Committee headed by Sartaj Aziz, Advisor to Prime Minister of Pakistan on Foreign Affairs (hereinafter to be referred to as Reforms Committee). Composition of the Committee is at Annexure-II.

6.2 Main recommendations of Reforms Committee, along with roadmap, are summarized as under: -

Reforms Committee has proposed the following Roadmap.

	<b>Subject</b>	<b>Timeframe</b>	<b>Remarks</b>
(i)	Extension of jurisdiction of High Court and Supreme Court	No time frame	Action in regard to (i) and (ii) expected by end of 2017.
(ii)	Enactment Tribal Areas Riway Act	do	Jirga system will be retained
(iii)	Establishment of Local Government	By the end of 2017	
(iv)	Retention of Article 247	Five years	Constitutional amendment after 5 years
(v)	Establishment of Prosecution Service	No time frame	Must be established prior to new Act
(vi)	Transition period	Five years	
(vii)	Constitutional amendments	After five years	2022
(viii)	Socio-economic package	Ten years	(2016-2025) Annual outlay Rs. 110 billion.
(ix)	Rehabilitation	No time frame	With 3% NFC allocation
(x)	Implementation	10 years	
	(a) Socio-economic		Transition period. Rest of the five years management not clear.
	(b) Delegation of approval of schemes	No time frame	
	(c) Re-Organisation of FATA Secretariat and FATA Development Authority		
	(d) Implementation mechanism		

	Cabinet Level Committee including Minister SAFRON, Law, Governor, National Security Advisor and Rep of Army. Plus Reform Units in SAFRON, FATA Secretariat and Agency.		
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6.3 **Current Status of Reforms:**

Contrary to common perception almost all the Nation Building Department are well established in FATA. The proposed reforms can be implemented by establishing new institutions, such as District/Sub-Divisional level judiciary, prosecution, capacity building of existing departments and levies.

6.4 Thus there is some foundation, and Benchmarks to build upon, few are enlisted as: -

- (i) Institutional memory and experience of nation building departments such as education, health, agriculture, public health, forest, livestock, irrigation, prisons and Municipal Committees.
- (ii) FATA Secretariat was established in 2002 in response to gathering clamor for more autonomy and accelerated service delivery. Unfortunately, post-2001 security situation, leading to military operations, has offset many intended outcomes. FATA Development Authority (FDA) which was to replace FATA Development Corporation has found itself hamstrung in carrying forward the indented development agenda. Likewise some devolution of powers from the Federal Government with regard to approval of developmental schemes and re-appropriation of budget has also taken place.
- (iii) The office of Commissioner was also resurrected as a critical link for coordination between the Districts and Tribal Areas as well as with the Provincial Government.
- (iv) As per MLO-112 of 13<sup>th</sup> December, 1972 all the employees working in the Tribal Areas have already been declared as provincial employees on deputation to FATA without deputation allowance. Inter seniority of employees, except Agency cadre, is maintained at the provincial level which would be helpful in future integration.

- (v) FATA has been declared as Zone-1, for the purpose of recruitment by the KP Public Service Commission and the tribesmen recruited even in Police and Judiciary.

Thus, a semblance of socio-economic integration with the KP is already in place. Like for instance special quota in educational institutions as well as services has been earmarked for students of FATA domicile. Unlike the British times there are no restriction on the tribesmen to acquire property or take up residence in the settled districts. However no separate data of tribesmen currently living in the settled districts of KP and other provinces is available but such population may run into millions.

## 7. **Strategic options -Challenges and Risks:**

7.1 Geostrategic position, geographic and economic disadvantages, constitutional, legal and administrative aspects are relevant in regard to implementation of recommendations of Reforms Committee. Without disputing the usual phrase of, 'let us move forward' instead of, "living in the past", it is essential to understand the sociology and geography of the area in the historical context as the state of Pakistan is about to embark upon large scale reforms in a very distinct and peculiar area.

### 7.2 **Separate Province:**

It is one of the four options Reform Committee has deliberated upon. Other being; (i) Integration with KP (ii) Maintain status quo and introduce reforms (iii) and creation of a FATA Council on the pattern of GB. Reforms Committee has admitted that the elders, except Kurram, Bajaur and FR Peshawar wanted to retain the present status. Reform Committee has opted for a Transition period of five years and integration with the KP. While reforms are under way we hear dissenting voices opposing integration with the KP and asking for a separate Province. FATA constitute 3% area and 2.5% population of Pakistan. Its location and historical, religious, and socio-economic relationship with the KP hardly justify a separate Province. All the Tribal Agencies and FRs are linked with each other through the settled districts of KP. It would not be economically and financially viable. Creation of separation Province means equal share of 26 Senators in the Senate and the rest of the Federating Units would not agree to it. There is less likelihood that such constitutional amendment would be carried through the National Assembly and the Senate. So it is not a viable option.

### 7.3 **Merger with the KP.**

#### 7.3.1 **Constitutional aspects::**

Reforms Committee has proposed a transition period of five years after which it will be merged with the Province. In case of ultimate merger with the Province of KP Constitutional amendments will be required in the following articles of Constitution of Pakistan: -

Article-1: The Republic and its territories

Article-51(3): National Assembly

Article-59(B): The Senate

Article 106: Constitution of Provincial Assemblies.

Article 246 and 247: Tribal Areas and Administration of Tribal Areas.

Since article 246 and 247 define, both, Provincially and Federally Administered Tribal Areas therefore these articles have to be amended accordingly to retain the status of Provincially Administered Tribal Areas (PATA) and if FATA is also declared as PATA of KP. Apart from PATA of KP (Article 246 (b)(i) there are tribal areas of Balochistan declared as PATA as per article 246(b)(ii). Since merger of FATA with the Province of KP, both as fully settled districts or as PATA Districts, would lead to altering the boundaries of the Province of KP therefore as per provisions of article 239(4) such constitutional amendment shall not be presented to the President for assent unless it has been passed by the Provincial Assembly of KP Province by votes of not less than two-third of its total membership. If the current reforms process goes smoothly then after expiry of five-years Transition Period such constitutional amendments will be presented in the Parliament by the end of 2022 or early 2023. It would be the last year of the next National and the Provincial Assembly of KP provided elections are held after full five year-term of current Parliament and the Provincial Assemblies, plus the next Parliament and the Provincial Assemblies also serve full term of five years. In a federal parliamentary system there is no guarantee of full five years tenure due to vote of no-confidence or early dissolution of Parliament or Provincial Assemblies on the advice of Prime Minister and the Chief Minister, respectively. There is risk of discontinuity and the change of policy. The Provincial Assembly, depending upon the political setup of that time, may either be disinclined or not muster sufficient numbers to pass the requisite constitutional amendment with two-third majority.

### 7.3.2 Loss in Senate:

In case of complete merger with the Province of KP, the FATA would lose eight Senate seats and would have to be accommodated within the current Provincial pool of 26 Senators. With 30 plus Provincial Assembly members, and rampant use of money, the FATA number of provincial legislature may succeed in capturing a lion's share out of total number of 26 Senators.

### 7.3.3 National Assembly:

Under Article 51(5) seats in the National Assembly are allocated on the basis of population in accordance with the last preceding census officially published. The last

census was held in 1998. The new census is being held in March, 2017. Presently FATA has 12 seats in the National Assembly.

Militancy and security operations have resulted in large scale displacement of tribesmen from FATA. Full repatriation of displaced tribesmen was envisioned by the end of December, 2016 but, the situation on the ground suggests that it may not even reach the desired mark for a variety of reasons including extremities of weather. Militancy in KP and FATA has been a push factor leading to emigration of locals to other provinces. There is risk of under reporting of actual population in the forthcoming census and the Province might not be given the full twelve FATA seats for the National Assembly. In all probability the proportionate population of Provinces of Sindh and Punjab would go up;;entitling them to claim more National Assembly Seats.

#### 7.3.4 Representation in the Provincial Assembly:

Based on 1998 census FATA population is about 25% of KP province. Current strength of Provincial Assembly is 124. Thus FATA may be allocated 31 Provincial Assembly seats making it a total strength of 155. Depending upon use of instruments of influence for such indirect elections the tribal areas 31 members may elect more Senators than their due share. FATA legislators have set bad precedents of use of money in the past Senate elections. It will definitely disturb the existing power equilibrium among four Regions of KP e.g. Malakand, Hazara, Peshawar valley and Southern Districts. Due to proximity of current tribal areas, and large number of tribesmen, settled in the adjoin districts, added 31 would - be - members from tribal belt, due to common economic interests, would put their weight behind the Peshawar valley and Southern Regions and thus marginalize, both, Malakand and Hazara Regions. It may develop fissiparous tendencies in the regions holding vital future economic life line from China (Hazara) and Central Asian States (Malakand). Such sense of political deprivation may lead to demand for separate Province. Vociferous, and violent, protest in Hazara Region, in 2010, was put to rest with a lot of political sagacity. Such voices may set chain reaction, and demand for separate Provinces, elsewhere which might be more violent as majority in two Provinces of Sindh and Balochistan view demand for carving out new provinces as vivisection of their, 'mother' Province.

#### 7.4 **Legal:**

All laws of the Province shall be extended to newly merged areas of FATA which includes federal and provincial taxation laws. If FATA is retained as PATA along with already declared areas of Malakand Division, parts of Mansehra and Kohistan districts then the Government may exempt in regard to extension of certain laws.

Tribesmen traditionally equate 'Qalang' (tax, lease etc) with 'Nang' (Honour). It will take time to develop a tax culture and adherence to fees, duties, surcharge in regard to regulatory mechanism of Institutions. On the other hand the people of settled districts, at least ten out of 25 districts, have similar low development indicators such as poverty, literacy and health, may resent such tax exemptions given to the locals of tribal areas. It would take some time to develop a tax culture and full integration of Tribal Areas with the KP Province in term of rule of law. Reform Committee has proposed a road map of extension of Local Government Act by end of 2017. New Tribal Areas Riwayat replacing Frontier Crimes Regulation and extension of jurisdiction of Supreme Court and High Court. Exact timelines, except establishment of Local Government system, have not been given. The whole development plan is for ten years though. Enforcement should be in tandem with development. procedural, regulatory and substantive laws, being extended to FATA for the first time in their recorded history. The most crucial issue is how to strike a balance between the extension of coercive arm of the state and influence through socio-economic development. The current package is being offered after a decade long military operation. In 1938 British carried out analysis of 60 - year war in Waziristan and most of the experts recommended peaceful penetration through development. Most of the analysis is even relevant today. While the term, "Integration" connote more legal and administrative tenor; let it be political and economic assimilation which should, ideally, precede the constitutional, legal and administrative integration, respectively.

#### 7.5 **Administrative:**

Administration at Agency level may change to the form of District Government and Deputy Commissioner. Reforms Committee has already proposed Local Government elections by the end of 2017. Employees issues would not much complicated as all the employees above BS-15, are already provincial employees. FATA has been declared as Zone-1 for recruitment through Provincial Public service

Commission. Seats in all Professional Colleges of KP, Federal as well as other provinces, have been reserved for the locals of FATA. Reforms Committee has made no recommendation in regard to such employees but their posting back to their homeland, at least for three years, in each promotion grade, should be made part of the law and rules. Enough such human resource of FATA domicile, currently serving in the Province of KP, is available which can be effectively utilized. Let there be no administrative vacuum which in case of Tribal Areas is soon filled by the warlords, as was witnessed in case of Malakand. FATA is deficient both in law enforcement, managerial as well as technical staff. Induction and training of 20,000 levies will take, at least 2-3 years. Integration of FATA Levies with the police of KP will sent wrong signal. So levies have to be maintained as distinct entity like Malakand District.

#### 7.6 **Economic and financial integration:**

FATA development budget of Rs.20 billion and current budget of Rs.18.27 billion is met by the Federal Government and managed through Ministry of SAFRON Reforms Committee has proposed a special annual development package of Rs.110 billion (including existing development allocation of Rs.21 billion) for ten years. In pursuance of Committees recommendation the FATA Secretariat has developed Accelerated Development Strategy<sup>5</sup> (ADS). Sector wise summary of cost (FATA 2016-2025) is at Annex -I.

The Reform Committee has proposed additional allocation out of 3% share in the next National Finance Commission Award. Reform Committee has proposed additional allocation for next ten years to bring FATA at par with the KP Province. While bringing social indicators at par with KP the Reform Committee has, probably, made these recommendation on the basis of two assumptions: -

- a) KP is already in an enviable position in regard to development indicators say health and education.
- b) During the next decade the KP indicators shall remain static.

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<sup>5</sup> Accelerated Development Strategy for FATA (Planning and Development Department) FATA Secretariat, September 24, 2016.

To highlight the gravity of issues in FATA., elementary education sector is analyzed . KP overall literacy is 53%, while female literacy is just 35%<sup>6</sup>. In six districts female literacy is below 20%. Reforms Committee Report is silent about the basis of recommending an allocation of Rs.110 billion per annum for next ten years. The Committee proposal envisages allocation of Rs. 110 billion (including 20 billion rupees of current Annual Development Programme) with immediate effect. Capacity building, even if fully financed, definitely take time. KP province might not be in a position to spare more managers and technocrats. A Nurse requires four years to complete diploma/degree and at least one year on-job training and FATA is painfully difficult in such technical staff. While setting priorities the Implementation Committee will have to set priorities and in a sequential manner. Over all literacy in FATA is 31% while female literacy is just 7.8%<sup>7</sup>.

Currently the position of educational institutions in FATA is as shown in the following table;

Table-1 Educational Institutions in FATA

	Male	Female	Total
Primary Schools	2625	1879	4504
Middle Schools	338	206	544
High Schools	259	76	335
Higher Secondary Schools	11	5	16
Degree Colleges	23	12	35

At the moment 0.456 million children are out-of-school which constitute 9% of total out-of-school children of Pakistan; while FATA population is 2.5 to 3% of the country. Out of enrolled children dropout from class I to V is 68% which is the highest in Pakistan. In KP it is about 45%.

Under ADS an amount of Rs.156.75 million has been proposed over a period of ten years (2016-2025) (Annex-I). Critical analysis of ADS regarding

<sup>6</sup>Important District wise socio-economic indicators of Khyber Pakhtunkhwa (2016).Bureau of statistics Planning and Development Department.[www.kpbos.gov.pk](http://www.kpbos.gov.pk).

<sup>7</sup> FATA Development Indicators House Hold Survey 9FDHS) 2013-14. Bureau of statistics. P&ED FATA Secretariat October, 2015.

education sector indicates that overall thrust is towards construction of additional class rooms (22571), text books, missing facilities and training. While in education sector targets for 2025 have been set as shown in the table below: -

Table-2 Implementation imperatives for FATA.

Indicator	Level	Base Year 2015			Target 2025		
		Boys	Girls	Total	Boys	Girls	Total
GER <sup>8</sup>	Primary	94	55	77	98	82	91
	Middle	73	21	51	84	64	76
	High	60	13	40	85	76	81
NER <sup>9</sup>	Primary	62	39	52	71	70	68
	Middle	27	8	20	65	62	64
	High	14	5	10	6	6	6

ADS also talks of Sustainable Development Goals (SDG-2030) which ensure quality Primary and Secondary education for all and elimination of gender equality by the year 2030. Cost projections, to achieve the goals and targets as set in above Table, are lacking in the ADS.

FATA Constitutes about 25% population and 37% area of KP, while KP with 53% overall and 35% female literacy is far behind the National level. Out of 4.8 million children (5-9 years) only 3 million have been enrolled in primary with a dropout rate of 25% in first two years and another 20% dropout (overall 45%) up to Grade-V. ADS does not discuss about rationalization of existing Primary Schools in FATA and establishment of new, specially, female primary schools. Schools at primary level, as per culture of patronage of Tribal Areas, have been sanctioned without need assessment. There is uneven development in education. When Reforms Committee and the ADS talk of bringing FATA at par with the Province of KP, precise costing is badly lacking. Without taking into account the rugged nature of FATA, which warrants more Primary Schools, current number of Primary Schools is 4504 and that too unevenly distributed. FATA population is about 25% of KP, having 22717 Primary Schools (14357 Male and 8360 Female).

<sup>8</sup>Gross Enrollment Ratio.

<sup>9</sup>Net-Enrollment Ratio.

KP female literacy is 35%. To bring FATA at par with KP four times more female schools and double the number of boys Primary Schools is immediate requirement. Cost of one Primary school is 15 million.

The purpose is not to paint a bleak picture but to drive home the point that our socio-political, legal, administrative and development strategy must be on sound footings.

Political conscious and sensitivity towards education and development is crucial Unfortunately FATA leadership view the development as tool of patronage. In KP Province we have classic example of Chitral and Lower Dir. Both were Princely States upto March, 1969. In Lower Dir schools were non-existent while in Chitral there were four High Schools, 20 Middle Schools and 80 Primary Schools (78 boys and 2 girls) at the time of merger of princely state<sup>10</sup>.

Current position is quite encouraging as indicated in the table below;

Table 3: **Literacy comparison of 1998 and 2014-15 Census 4<sup>11</sup>**

	1998		2014-15		% increase	
	Overall	Female	Overall	Female	Overall	Female
Dir Lower	30%	12%	58%	36%	193%	300%
Chitral	40%	22%	62%	45%	155%	200%

It took about 45 years, from 1969 ,to reach at this level while 18 years to increase female literacy by 300% (Dir Lower) and 200% (Chitral).

Dir Lower is ahead of 167 years old districts of Mardan (52% overall) and DIKhan (44% Overall literacy).

Addition of another 2000 female and 1000 boys primary schools on immediate basis would require 45 billion rupees. Similarly the existing Middle Schools number is to be increased (544 to 1000), High Schools (335 to 700) and Higher Secondary Schools (16 to 32). Estimated cost will be to the tune of Rs.14 billion. The projected costs are for civil structures only excluding furniture, equipments, maintenance and

<sup>10</sup>Official data of District Education Officer, Chitral, KP.

<sup>11</sup> FATA Development Indicators House Hold Survey 9FDHS) 2013-14. Bureau of statistics. P&ED FATA Secretariat October, 2015.

pay of staff. These just preliminary estimates and to achieve the SDGS (2030) targets the number of institutions in education has to be increased by, at least, 400%.

The purpose of highlighting gravity of issues in FATA is that if, after transition period of five years, FATA is merged with the Province of KP, with half of the spending of ADS, it would be beyond the financial capacity of KP Province to carry forward the development agenda beyond 2025. It is to be noted that ADS implementation will lead to much enhanced maintenance cost due to creation of more assets and resultant increase in the current budget. The existing assets in education, health and livestock, with rationalization, would be a burden on Provincial exchequer. The economic and financial plan needs further fine tuning with roadmap, achievable targets, precise costing of developmental outlay and projected increase in the current budget.

#### 7.8 **Financial:**

Planning and Development FATA Secretariat has carried out a study through Governance Support Project (GSP)<sup>12</sup>.

Its focus is fiscal equalization of FATA in term of comparable treatment with other regions of Pakistan. The aim is to enable FATA to provide to their citizens with similar sets of public services at a similar tax burden even if incomes differ across areas<sup>13</sup>.

The 7<sup>th</sup> NFC Award (2009) fixed share of 44:56 between the Federation and Provinces. The weight age criteria is : -

Population:	82%
Poverty / backwardness	10.3%
Revenue collection/generation :	5.0%
Increase Population Density:	2.7%

Reform Committee has proposed 3% of next NFC Award with an annual out lay of 110 billion rupees (including exiting development expenditure of 20 billion).

In term of socio-economic indicators FATA is much backward than GilgitBaltistan,(GB) Azad Jammu & Kashmir (AJK) and Balochistan.

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<sup>12</sup>Revenue sharing for FATA.A case for fair and Symmetric Application of Equalization Scheme.(P&ED FATA Sectt).

<sup>13</sup>HansjorgBlockliger and Clair Charbit (2008).OECD Economic Studies No.44.

During Transition Phase annual allocation of Rs.110 billion seems appropriate as there is need to build institutional capacity. Prior need assessment and prioritization is foremost otherwise FATA is notorious for patronage, inefficiency and corruption. It is evident from manifold increase in, both, developmental and non-developmental expenditure during the last decade (2005-2015) with much less visible outcomes. In case of ultimate merger, after Transition Period of five years, the Province of KP will not benefit from existing criteria of population (82%), revenue collection / Generation 5% and Inverse Population Density of 2.7%.

It should be given priority in regard to poverty / backwardness (10.3%). Merger of FATA would lead to an increase of 2.5% in population of KP and the probable total increase up to 17% share in next NFC Award. Keeping in view the enormity of problem ranging from terrain to militancy there is need to determine and fix 4% share of FATA under NFC Award during the Transition Period and even after merger with the KP.

FATA is a Constitutional and Federal entity and its comparison with GB and AJK would be erroneous as, both, the cited entities are administered areas and shall remain so until the status of Kashmir is determined as per UN Resolutions and Similarly bilateral agreement. There is less likelihood that the other Provinces would part with their due share in the next NFC Award. So giving priority to the poverty and backwardness of FATA, the Federal Government to ensure permanent allocation of least, four percent in the subsequent NFC Awards, from its own share. Historically FATA has remained a federal entity and acceded to Pakistan at a very critical time which ensured safety of its Western Border.

#### 7.9 **Transition Period:**

Neither the Reforms Committee nor ADS Report talks about the role and association of KP Province in the developmental, legal and institutional reforms during the transition period of five years.

The whole strategy has been devised without consultation of KP Province.

It has been presumed that after successful implementation of recommendations of Reforms Committee and ADS the issues of FATA would be over. Analysis of issues in education sector, and the proposed allocation under ADS, points towards enormity of issues in FATA. It would be next to impossible for the Province of KP to take over the management of FATA after transition period of five years without preparation. It would be a great and historical change and may lead to disruption of

continuity. This vital aspect has not been taken care off. When aim is ultimate merger of FATA with the KP after five years so it is essential to consult, and associate, the Provincial Government with the whole exercise.

#### 7.10 **International:**

Integration of FATA with the KP means changing its legal and constitutional status. As per treaties with the Afghanistan like Durand Line Agreement tribals living on both side of Durand Line have easement rights. Over a period of time Tribal Areas have emerged as 'Buffer Zone' between the British and Afghanistan. Kabul will resent change of its legal status and may try to explicit the sentiments of locals.

#### 7.11 **Judicial:**

7.11.1 Reforms Committee has recommended extension of jurisdiction of Supreme Court and High Court to FATA. As per provisions of article 247(7) neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to tribal areas, unless Majlis-e-Shoora (Parliament) by law otherwise provides. Thus jurisdiction of Superior judiciary may extended to FATA under an Act of Parliament. Logically jurisdiction of High Court and Supreme Court should follow the passage of Tribal Areas Riway Act and consolidation of tribal courts at the level of Agency and FR's.

7.11.2 Except upper Kurram and Tochi Valley (Dawar Area) of North Waziristan Agency there is no land settlement. Cultivated land is demarcated and under firm possession of occupier. Disputes over water rights, community land and forests are quite common. Government, as per recommendations of Reform Committee, has drafted 'Riway Act', yet to be vetted by the Law Division. It has not been circulated for inviting comments of public and experts. Unofficial draft indicates that it would be having many provisions of Frontier Crimes Regulation 2011 minus concept of collective and territorial responsibility.

At the Agency, Sub-Divisional and FR level cases under 'Riway Act' will be tried by the judicial officers under direct control of High Court.

#### 7.11.3 **Issues**

- (i) Increase in burden of existing backlog of High Court and Supreme Court.
- (ii) Acceptance of frequent writ petitions and issuance of various writs to the executive for implementations which would not be fully geared during

Transition phase. Of late the superior judiciary has developed more inclination towards, 'Fancy litigation' accepting writs in matters where alternate forums for giving relief are available; negating the very concept of writ.

- (iii) Property disputes having inter and intra tribal sensitivity (NWA & SWA) or sectarian (Kurram and Orakzai) may lead to law and order situation in case of adjudication by the High Court under writ jurisdiction.
- (iv) Non-implementation of orders issued in writs would weaken authority of executive and the prestige of judiciary.
- (v) Protracted litigation at the level of trial and appellate stage.
- (vi) Loss of public confidence in the judiciary due to cited factors.
- (vii) Some seven district & Session Judges at the Agency Level and 24 Judicial Magistrates at the Sub-Divisional and FR level will be required.
- (viii) Historically all the six FR have remained part of the adjacent districts and concerned Deputy Commissioner exercise power of Political Agent for the FR. District & Session Judges of concerned six districts will have to be vested with the powers of trial and appellate court under the proposed 'Riwaj Act'.
- (ix) Through the judicial officers are well trained in adjudication in settled districts but the 'Riwaj Act' will require specific expertise. Acquaintance with tribal Riwaj is essential for effective adjudication, which is quite complicated. Training of judges will be pre requisite.
- (x) Lack of land settlement does not mean that the owners are without documentary evidence. Documents such as grant by the state, Political Agent, agreements and sale / purchase documents are available.
- (xi) existing court staff lacks knowledge of law and court records.
- (xii) Reporting and Monitoring mechanism have to developed. Both judicial officers and the court staff is to be trained.
- (xiii) Article 247 of the Constitution will be retained during the Transition period. It will give some breathing space to the management while establishing the courts and judicial system. As per provisions of Article 247 (3) President may specify the areas for application of law and subject to such exceptions and modification as may be specified in the direction. Provision for gradual extension of laws within the Tribal Areas does exist. It can be a useful instrument to avoid vacuum and the resultant chaos.

- (xiv) Levies / Police stations:  
Some of the Court Readers are familiar with the process of lodging First Information Report (FIR), recording of evidence and submission of court file. In fact under the British Rule lodging of FIR and reporting of crime was quite systematic but has deteriorated over the years. Large scale training of staff in: -
- a) FIR
  - b) Collection of Forensic evidence.
  - c) And submission of Challan (Investigation report and case file for the court) would be required.

Deputing police officials during Transition period may send wrong signal and the vested interests may exploit the situation to their advantage and the whole reform process may come to naught. Retired police officers, having FATA domicile, may be hired on contract for training of levies.

Levies are to be maintained without merger with the KP Police as it may entail legal, managerial and Political issues. Levis Model of Malakand District can be replicated.

Reforms Committee, and ADS, has proposed huge amount of 113.7 billion for governance. Inspire of allocation, and availability of financial resources, development of human resource capital will take time.

#### 7.12 **Prosecution:**

- a) Judicial officers would be replacing the executive officers and under much modified version of FCR. Some semblance of 'justice is there and so is the intuitional knowledge of levies and the court staff.  
Prosecution service does not exist. At the outset seven Agency/District Prosecutors will be required for the Agency and 24 Deputy Prosecutors for the Sub-Divisions and FR. Deputy Prosecutor of FR to work under the supervision of district Prosecutor of concerned district as the executive of FR is under the jurisdiction of Deputy Commissioner of district.
- b) Prosecutors cannot be recruited en-block and placed in Tribal Areas in a difficult situation. On the other hand KP is already facing shortage of Prosecutors (0.63 Prosecutor per Court). Viable option would be to depute the prosecutors from the KP and meanwhile KP make fresh recruitments

under Federal grant. KP Prosecutors are trained and would not be totally alien to tribal culture. At alternate solution lawyers from FATA can be recruited on contract and trained till regular recruitment. We need Counsels who must be acquainted with the local traditions.

#### 7.13 **Prisons:**

At the moment convicted prisoners are sent to District and Central jails of KP. The existing arrangement will continue for quite some time. Prisons in FATA lack the training and dispatch of under-trial prisoner for appearance in the Courts. Prison vans are not available. Prison record is in a rudimentary form. Large scale reforms, including Borstals and women prisons are required. Prisons and staff in Tribal Areas already linked with the KP Prison Departments. Prisons in KP are already overcrowded and accommodating prisoners beyond capacity and even in violation of Prison Rules. Infrastructure as well as human resource expansion is required. It is not only recruitment but training is also a pre-requisite ultimately District Jails in each Agency have to be established.

#### 7.14 **Probation:**

Does not exist. In spite of other demerits of tribal society it has many positive aspects such as effective informal control, strong norms and mores. In such a society it is not common to jump the bail or violate the conditions of probation. It can be a successful initiative. Staff recruitment and training required.

### 8. **Rule of Law:**

8.1 FATA, since centuries, has been an administrative enigma for the states. British, after doing a lot of experiments with much less desired results, adapted their strategy of Closed-Door Policy (1849- 1870) to mix of Closed and Opened -Door Policy and penetration through development. Pakistan continued with the same policy coupled with military operations. Post - 9/11 changed the whole scenario and now it is over fifteen years when military operations was initiated. At the moment there is some peace. During the last two decades development expenditure recorded phenomenal increase of almost 20 times from rupees one billion in 1997 to twenty billion in 2015-2016. Backwardness of FATA is a fact but main issue is not lack of allocation of resources for development but governance.

## 8.2 Main issues of governance in FATA are: -

- a) Peace and security.
- b) Lack of accountability.
- c) Withered law enforcement institutions.
- d) Lack of responsive and accountable justice. For centuries tribesmen deprived off fundamental rights and access to justice. Justice is administered by the executive without review by judicial forums.
- e) Gender issues: Women have virtually no rights and most flagrant deprivation is in regard to inheritance and family laws as enshrined in the Constitution of Islamic Republic of Pakistan.
- f) The whole concept of administration and justice is based on personal honesty of Political Agent which is a rare commodity now a days. There is hardly any institutional mechanism in place to review performance and ensure accountability.
- g) FATA is, comparatively, free of many crimes, plaguing the rest of the country. Main offences are Norco-business proliferation of weapons (1980 onward) as a byproduct of Afghan war, enmities and militancy related. Lately militancy related offences over shadowed all other categories of offences. During the last one and half decade the militants have killed hundreds of tribal elders and many fled the area for their safety. Large scale killing and migration to settled districts has torn apart the very fabric of tribal society. Still, as compared to settled areas, the crime rate, and its range, is for less.

## 8.3 **Strategy:**

Public peace is key to rule of law. Some of the key factors leading to breakdown of law and order in FATA are: -

- a) External factors: (Border with Afghanistan and events in Afghanistan 1979 and 2001)
- b) Policy of appeasement by successive governments. Again due to external factors such as Great Game, Cold War and Afghan War.
- c) Lack of accountability.
- d) Culture of patronage promoting corruption both at the level of public and administration.
- e) Smuggling, Norco-business, militancy and the resultant criminalization of society.

- f) Property disputes both inter-intra tribal and with settled districts. Armed conflicts and chain reaction of enmity.
- g) Diarchy. Federal and Provincial sphere of control and centralization of decision making process.
- h) Cultural lag. Virtually no middle and lower middle class exists. It is either filthy rich minority class or majority of poor class having little say in decision making.
- (l) Highly polarized society on tribal, sectarian and religious lines.
- ( h) An amount of 113.7 billion rupees for governance proposed by the Reforms Committee. For women and gender a paltry sum of Rs.1.632 billion rupees over a period of ten years which is 0.15 percent of entire package.
- j) Implementation of Reforms Committee means enactment of new Tribal Areas Riway Act, establishment of District judiciary, raising of 20,000 levis and extension of jurisdiction of High Court and Supreme Court.
- k) Merger with KP after five years will require constitutional amendments.
- l) Simultaneously development package of Rs.1109.7 billion will be launched.
- m) It will be a very delicate position. As soon as FCR is repealed and new Act is put in operation it will require district and Sub Divisional judicial officers along with court staff immediately.
- n) Simultaneously prosecutors will be required for all the courts. Recruitment and training of 20,000 levis will require at least one to two years. So the courts and Prosecutors have to administer justice with the available resource of levis having bare minimum training in FCR and none in the proposed Riway Act. Development is otherwise a slow process and is further hindered by observance of codal formalities. In all probability the existing development setup would not be able to implement enormous size of development plan with a six times increase unless capacity building is undertaken prior to launch of development package. Mismatch in the coercive (legal) aspect of state and the positive (development) seems apparent on the face of record, which will not go well with the locals.
- o) With the abolition of collective and territorial responsibility Khassadars and levis role and responsibilities would multiply by manifold. Government can hardly afford to lay off some forty thousand khassadars in one go. Scouts and army engaged in security operations, otherwise also both these institutions

are not geared towards policing. One option would be to phase out khassadars by replacing them with levis. Under the new system policing and investigation would be a gigantic task. This would impinge upon all aspects of rule of law. More than hardware technical support to build capacity would be required covering the investigation, prosecution and courts. Recruitment of levis have to be bifurcated into Watch and Ward and investigation. Tribal areas would not change overnight with the introduction of new legal system, Thus territorial and broader tribal representation for watch and Ward levis is to be observed. It will ensure effectiveness of levis.

#### 8.4 **Rule of Law - Preparatory Phase:**

In case of development there will be scaling up and may be with positive impact. On administrative (Local Government) and legal side there will be paradigm shift ranging from prosecution, levis, courts, extension of jurisdiction of High Court and Supreme Court and all happening simultaneously.

It will be a monumental task for the JSSP to extend technical support. Devising a viable strategy, a ride on bumpy road, will be a monumental work and more in quantum than KP and Punjab put together. At least institutions are available in both the Provinces. In FATA establishment of new institutions and capacity building will have to go side by side. In case of Provinces there will be problem-driven approach and the institutions are available to make need assessment, prioritise and strategize. FATA depicts a dismal picture. With correct strategy JSSP can make it less chaotic and put the whole reforms process on track prior to merger with KP after five years.

As the concept of collective and territorial responsibility is done away with and levis will not be prepared to ensure security of officials and installations. It will be race against time to graft the new legal and judicial system.

There are some silver linings though. An increase in female voting trends of last three general elections is a positive sign. Female polled votes percentage was 25% in 2002 which rose to 32% in 2008 and recorded a further increase to 36%<sup>14</sup>.

Awareness among locals in regard to female education and female participation in casting votes in 2013 elections are some of the encouraging signs. Tribal Areas can

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<sup>14</sup> Election Commission of Pakistan FATA records.

prove a model for community policing and participative justice as the concept of tribal jury would continue under the new Act.

8.5 **Appetite for reforms:**

Appetite for reforms is there both at policy and local level. This opportunity can be availed for the betterment of locals.

8.6 **Political economy:**

Reforms Committee recommendations are tentative. Environment is conducive for advocacy and allocation of more resources to peace and justice. Donors assistance may be channelized towards justice systems support.

Political support is expected as policy makers are cognizant of the fact that peace and security in FATA is essential for KP and rest of the country.

Besides the implementation of entire reforms package is solely dependent upon rule of law and administration of justice. Which will ensure accountability and efficient utilization of resources for all other sectors.

9. **A word of caution:**

Judiciary works as an introvert institution and within strait jacket of law and rules.

This phenomenon was observed in Malakand Division after repeal of PATA Regulation in 1994; resulting in widespread discontentment. It ultimately led to insurgency. Tribesmen are not familiar with the intricacies, and usual delays, of our justice system.

Cultural and religious sensitivities are hard to ignore. Under FCR no women ever arrested and put in jail inside Tribal Areas. So are the tribal sensitivities regarding collection of forensic evidence specially post mortem of dead body and medical examination of female victims. Investigators, prosecutors, court and prison staff must understand the sensitive nature of local society. Any enthusiastic step, but a wrongly perceived act on part of tribals, may send wrong message which may lead to defeat of broader aim and objectives.

Repeal of PATA Regulation in 1994 in Malakand Division resulted in administrative power vacuum. Local Government could not fill the gap. In a tribal society such power vacuum is usually filled by the warlords. In Malakand Division it was filled by the religious warlords and in Balochistan by the nationalists and tribal chiefs

(Sardars). When the situation deteriorated Local Governments just evaporated and the ultimate solution was use of armed forces. Situation in FATA is too fluid and uncertain. The whole reforms agenda must be implemented without creating administrative vacuum. Local Government may cater for community and municipal services but no alternate to administration in foreseeable future. In the settled districts this experiment could not produce desired results. Comparatively developed province of Punjab has reverted back to District Councils model of 1979. FATA is too sensitive a place for experimenting, social and administrative, 'transplants'. The people of FATA are notorious to react to 'transplants' and the state cannot afford to use coercive measures over managerial issues.

Religious element may demand, "Sharia" instead of 'Riwaj Act' and other Roman Laws. Militants may regroup and stage a comeback under guise of demand for Sharia. Religious parties are quite strong in Tribal Area. There is history of cyclic waves of religious insurgency. They have been losing battles but with an eye on war which went for decades.

PirRoshan (d.1885) against Akbar The Great, Syed Ahmad Brelivi (d.1830) , Syed Akbar Shah of Swat (1910), Mad Mullah Malakand (1895), Haji Sahib Turangzai War (1897-1937), Faqir of Ippi (1937-1960) and Sufi Muhammad Movement<sup>15</sup> (1998-till date) are indicative of the fact that such cyclic wave of religious insurgency lingered on for decades.

While report of Reforms Committee has not been put to discussion and approval of Federal government dissenting voices are being raised by the Jamiat Ulema-e-Islam) Fazal-e-Rehman Group (JUI) have started a campaign against merger of FATA with KP. Extension of laws and jurisdiction of High Court / Supreme Court may send alarm bells, prompting opponents to exploit the situation and to defeat ultimate aim of merger the province of KP.

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<sup>15</sup>Mad Mullah, opportunist, and family connections: The violent Pashtun cycle (2009). Cultural and Geographic Research Tribal Analysis Centre. ([www.tribalanalysiscenter.com](http://www.tribalanalysiscenter.com))

## 10. **Conclusion**

10.1 The whole reforms initiative is geared towards integration after five years. It should not lead to shifting of economic burden to KP which has already faced militancy and the resultant economic stagnation. KP Province will be the ultimate custodian of FATA and to take forward the reforms agenda. It would be appropriate to associate the KP with the reform process. For the year 2016-17 FATA current budget is Rs.18 billion. With 20,000 additional levies and implementation of Rs.110 per annum development package would lead to creation of more assets which means more recurring cost and salary budget. KP Province current establishment is 460,000 employees with annual pension allocation of Rs.41 billion<sup>16</sup>.

Addition of 50740 FATA employees may add<sup>17</sup> pension liability of about five billion rupees.

JSSP can set a good precedent by contributing towards aim of rule of law which is one of recommendation of Reforms Committee. Prior to 2002 and establishment of FATA Secretariat, the then NWFP, Home and Tribal Affairs Department was the parent department for FATA regarding law and order and justice. In KPK Rules of Business it is still reflected as such. Institutional knowledge does exist; thus during the Transition Period Rule of Law Programme may be initiated in FATA under overall coordinating role of KP Home and Tribal Department and JSSP KP. Success, or failure, of entire reforms process hinges on devising and implementation of new alternate legal system. Without rule of law, and peace, development of locals shall remain an elusive dream no matter how heavily we invest. Historical evidence suggests that the locals are the worst lot in , "self inflicting" injuries if a an initiative is not made palatable to them.

There are recommendations such as development package (ten years), Local Government (one year) and constitutional amendments for merger (after five years) which are sequential in nature. But other initiatives such as legal, administrative, capacity building, Human Resource Management will be taken simultaneously and that too without prioritization, precise costing and time frame. Reforms Committee

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<sup>16</sup> Financial Management Information Unit (FMIU) Finance department Government of KP ([www.financekpp.gov.pk](http://www.financekpp.gov.pk))

<sup>17</sup> Administration Department FATA Secretariat, Peshawar.

has proposed that the Prime Minister may unveil the reforms in an All Parties Conference; to be followed by grand Jirga by the President and the Prime Minister with the tribal elders. Report has narrated the would- be - benefits accruing to FATA but , 'benefits" to be accrued to the KP Province, if any, not even mentioned.

Every Political Party is vying for political space which the FATA merger would be offering to them. There is every likelihood that religious parties, specially JUI, may gain further political ascendancy and the tribal belt may become their power base. Administrative, managerial, economic, financial, legal and service matters hurdles, if not crystallized prior to launching the reform agenda may lead to frustration both for the FATA and KP Province. The ensuing chaos may defeat the broader noble aim of integration of Tribal Areas.

10.2. Logical Sequence:

It is important to decide about sequence of reforms. Quite a few reforms may be initiated simultaneously; others in a sequential manner. Some of the reform modules;-

- (a) Administrative  $\implies$  Socio-economic  $\implies$  legal  $\implies$  Constitutional  
 (capacity building) (Focus on Development) (ext of laws) (Change of status)
- (b) Constitutional  $\implies$  Legal  $\implies$  administrative  $\implies$  Socio-economic
- (c) Reform Committee Module:



Legal  $\implies$  administrative  $\implies$  constitutional  
 (Riwaj Act) (Local Govt) (merger)

As per module of Reform Committee coercive measures mostly precedes the socio-development, which would be long- drawn process and may go even beyond ten years.

Reforms in FATA are inevitably required. Major issue is its mode and manner and taking into account all the future implications so as to ensure, somewhat, smooth sailing.

Table 29. Summary of Sectoral Costs (FATA 2016-25)

**Annexure: I**

	<b>Sector</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>Total</b>	<b>%</b>
1.	Agriculture	4,753	4,741	4,050	4,050	4,050	4,050	3,706	3,705	4,705	5,705	43,515	<b>3.921</b>
2.	Cost of planning systems	17	26	26	26	26	26	26	26	26	26	260	<b>0.023</b>
3.	Education	19,174	12,429	13,625	14,430	14,444	15,453	15,979	16,750	17,064	17,403	156,751	<b>14.125</b>
4.	Fisheries	332	327	317	315	315	310	410	408	508	608	3,850	<b>0.346</b>
5.	Forestry	2,448	2,948	2,448	3,278	3,278	3,278	3,278	3,110	3,610	4,610	32,286	<b>2.909</b>
6.	Governance	13,880	12,401	11,358	10,702	10,490	11,194	11,194	10,504	11,004	11,004	113,731	<b>10.248</b>
7.	Health	10,296	10,610	10,940	11,066	12,111	11,346	13,173	11,479	10,361	9,875	111,257	<b>10.025</b>
8.	Irrigation	11,636	12,636	11,626	9,541	9,521	9,521	10,021	8,437	6,437	8,437	97,813	<b>8.814</b>
9.	LGRRD	8,918	12,021	14,922	16,020	15,016	14,814	13,914	13,013	12,912	7,332	128,882	<b>11.613</b>
10.	Livestock & Dairy	3,612	3,611	2,558	2,558	2,558	3,058	3,034	3,034	3,534	4,034	31,591	<b>2.846</b>
11.	Minerals	7,852	8,365	8,861	8,861	7,863	7,858	8,857	8,859	8,857	9,857	86,090	<b>7.757</b>
12.	Roads	17,366	18,362	20,361	20,356	20,354	19,354	18,354	20,353	19,927	17,350	192,137	<b>17.313</b>
13.	Sanitation	1,477	2,547	2,471	2,416	2,416	2,416	2,383	3,383	3,383	3,883	26,775	<b>2.412</b>
14.	Social welfare	3,921	3,986	2,523	2,512	3,068	2,565	2,555	3,041	4,053	5,048	33,272	<b>2.998</b>
15.	Sports and Culture	1,643	1,713	1,938	1,840	2,130	2,112	2,110	2,110	2,610	2,610	20,816	<b>1.875</b>
16.	Water Supply	4,053	4,498	2,511	2,500	2,995	2,995	2,255	2,254	2,254	2,754	29,069	<b>2.619</b>
17.	Women & Gender	102	102	102	103	203	203	204	204	204	204	1,632	<b>0.147</b>
	<b>Total</b>	<b>111,489</b>	<b>111,323</b>	<b>110,637</b>	<b>110,574</b>	<b>110,838</b>	<b>110,554</b>	<b>111,453</b>	<b>110,670</b>	<b>111,449</b>	<b>110,740</b>	<b>1,109,727</b>	

## Annexure: II

Mr. Sartaj Aziz,  
Advisor to the Prime Minister on Foreign Affairs.

Chairman

Mr. Iqbal Zafar Jhagrra,  
Governor KP

Member

Mr. Zahid Hamid,  
Minister for Law & Justice

Member

Lt General (Retd) Abdul Qadir Baluch,  
Minister SAFRON

Member

Lt General (Retd) Naseer Khan Janjua,  
National Security Advisor

Member

Mr. Muhammad Shahzad Arbab,  
Secretary SAFRON

Member

## Annexure: III

### Basic Facts:

Area 27220 square kilometers (37% of KP Province).

Population (1998 census): 3.5 million

Estimated (2015): 5.0 million (About 25% of KP Province)

### Social Indicators<sup>18</sup>:

	<u>FATA</u>	<u>National</u>	<u>KP</u>
Overall Literacy Rate	33% (2013-14) Male (45%) Female (7.8%)	58%	53%
Adult Literacy Rate	28%	57%	48%
Maternal Mortality Rate per 100000	395	-	275
Fully immunized children (under 12-23 Months)	34	76	75

Cultivated area: 7%, Irrigated 3%. Another 6% can be brought under cultivation.

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<sup>18</sup> FATA Development Indicators House Hold Survey (2013-14)