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Executing Governance Reforms in FATA: Impediments and Challenges

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Abstract: Since the Pakistan government’s decision in November 2015 to seek to integrate the FATA into the political mainstream in Pakistan, progress has been slow. Following the then Prime Minister’s acceptance of the recommendations the Committee on FATA Reforms (CFR), centred on the integration of the FATA with the KP, the government introduced two bills – the 30th Constitutional Amendment and Tribal Areas Rewaj Act 2017 – in the parliament on 15 May 2017, but the reforms remain in limbo. This brief outlines some the key impediments and challenges to progress which account for the current hiatus and provides insight about possible ways forward for this crucially important issue of governance reform.

Introduction

In November 2015, the Pakistani government embarked on an ambitious program to mainstream FATA with the rest of Pakistan. The main driver to undertake such a gigantic task was to address the root causes of militant violence in FATA that had been bringing incalculable destruction to the area. A Committee on FATA Reforms was setup to propose a concrete roadmap in this respect. The Committee held consultations with broad array of stakeholders, and finally submitted its report to then Prime Minister Nawaz Sharif in August 2016.¹

The Committee in its report recommended the integration of FATA with the adjoining Khyber Pakhtunkhwa Province (KP) as the “only rational choice for mainstreaming FATA.”² It established its argument for merger on close ethnic, social, cultural, economic and administrative linkages between the two regions. The report further asserted that there was a popular desire within FATA to merge the region with KP. It provided a roadmap to initiate critical reforms in all spheres of life in a gradual and phased manner. After a hiatus of six months, former Prime Minister Nawaz Sharif approved the recommendations of the Committee in a cabinet meeting held on 2 March, 2017.³

Current Status of Reforms Process

Since approval of the Committee’s report by the Federal Cabinet, there seems to be a little progress in implementing the recommended reforms. The entire process seems to have hit a bottleneck. Various legal, constitutional, administrative, financial and political challenges, along with a lack of coordination on multiple levels within the government are obstructing the
formal launch of the mainstreaming process. This dampening of enthusiasm on part of the federal government is creating a sense of uncertainty, and raising doubts within the FATA population over the federal government’s sincerity in implementing the much touted FATA reforms.\textsuperscript{4} Alarmed by a lack of progress on the reforms issue, the FATA representatives, during the first week of May 2017, warned the government of a long march to Islamabad on 20 May 2017, if the process was not initiated soon.\textsuperscript{5} However, the protest call was withdrawn after the government introduced two bills - 30\textsuperscript{th} Constitutional Amendment and Tribal Areas Rewaj Act 2017 – in the parliament on 15 May 2017.\textsuperscript{6} Despite the introduction of these bills, the reformation process remains in limbo. This brief specifies the factors that are impeding progress on FATA reforms.

1. Financial Cost

The biggest challenge facing the mainstreaming of FATA hinges upon the availability of finances to undertake the burgeoning task. FATA has remained the most marginalized area of the country, since colonial times, and exhibits the lowest human and economic indicators. Apart from the state’s deliberate neglect, violent conflict in the area, spurred by \textit{Talibanization} and post-September 2001 invasion of Afghanistan by the US-led coalition, have resulted in destruction on a massive scale. In 2009, the Pakistan government assessed that the tentative cost of conflict in FATA was around US $2.1 billion.\textsuperscript{7} Since then, multiple and simultaneous military operations across FATA have increased the cost manifold. The cost of reconstruction and mainstreaming FATA is therefore enormous. According to a government official, “25 percent of the reforms in FATA require no money, but the remaining 75 percent do need funds.”\textsuperscript{8}

The federal government had proposed an amount of Rs. 120 billion [approximately £852million or $1.1billion] annually, spread over a time period of 10 years, for FATA’s uplift. Until 2016, FATA received an annual amount of Rs. 18.2 billion\textsuperscript{9} under the Public Sector Development Program (PSDP) which was funded purely by the Federal government. Under the recommended reforms, the federal government wanted the provinces to partake in FATA’s mainstreaming process by allocating 3 percent of their share from the National Finance Commission (NFC) award. Under the scheme, out of Rs. 120 billion, the federal government would contribute Rs. 52 billion, while the remaining Rs. 69 billion would be shouldered by the four provinces. As a result, Punjab was to face the largest cut (Rs. 36
billion), followed by Sindh (Rs17 billion), KP (Rs. 10 billion) and Balochistan (Rs. 6 billion).10

The provinces, however, did not consent to budget cuts in their existing allocations. Under the Federal Divisible Pool (FDP) set during the 7th NFC award, the four provinces received 57.5 percent of the total amount, while the federal government’s share was fixed at 42.5 percent.11 The provinces contended that they were already short of resources and further cuts would create financial problems. Subsequently, the recently announced fiscal budget for 2017-2018 allocated only Rs. 26.9 billion for FATA. It is important to mention that this allocated amount was even less than the one earmarked for the Higher Education Commission (HEC) and laptop scheme for students which received Rs. 35.7 billion12 and Rs. 20 billion respectively for the current fiscal year 2017-2018.13

Apart from allocation of funds for FATA reforms, the federal government also wanted a further 3 percent deduction from the provinces’ share to meet national security needs, which included ongoing security operations in the country, and raising 100 battalions of paramilitary force for protection of the China-Pakistan Economic Corridor.14 The Federal government itself is also reluctant to release additional amount for FATA’s uplift, since it is facing other immediate requirements.15 These include dwindling federal reserves, widening fiscal deficit, growing external debt, fragile external payments position, receding foreign remittances, decreasing exports and high risks of political instability.16

FATA’s recovery program, therefore, suffers from lack of financial resources. The repatriation and rehabilitation of internally displaced tribesmen is yet to be completed. Reconstruction of basic infrastructure and strengthening of local governments in the respective FATA agencies through wide-ranging administrative reforms continues to move at a snail’s pace. The entire process will come to a halt if the availability of funds is not prioritized.

2. Political Differences and Disconnects

There are vast differences between the federal government and the provincial government of Khyber Pakhtunkhwa (KP) regarding control over the implementation process of the proposed reforms. Since FATA is to be merged with KP, the latter desires the legal and administrative
authority to oversee the mainstreaming process. However, the Committee’s report bestows such authority to the Governor KP, who serves as an agent of the federal government. Similarly, a Grade-22 officer would serve as the chief executive to oversee economic development activities in the region.\(^{17}\) In order to somewhat address the reservations of the provincial government, the KP’s chief minister, chief secretary and corps commander XI Corps (Peshawar) have been included in the recently reconstituted cabinet-level implementation committee, a successor of the Committee on FATA Reforms.\(^{18}\)

The federal government’s reluctance to put KP at the forefront of implementing reforms stems from mistrust over the alleged misuse of financial allocations by the latter.\(^{19}\) According to, Lt General (Retd) Abdul Qadir Baloch, Federal Minister for States and Frontier Regions (SAFRON), “They (KP) can give us suggestions, we are preparing them [for full control of FATA] and after it goes to them, they can do whatever they want to.”\(^{20}\) General (Retd) Baloch further stated that it is the federal government’s responsibility to take care of FATA.\(^{21}\) The KP government, on the other hand, insists that a FATA-KP merger without giving legal and administrative authority to the provincial government is unacceptable. Though the KP government has agreed in principle to contribute its share of 1 percent of the NFC for the development of FATA, such differences will overshadow the reforms implementation process.

Similarly, political differences between the Pakistan Tehrik-e-Insaf (PTI)-led KP government and Pakistan Muslim League-Nawaz (PML-N)-led central government seem to cloud any working relationship between the two regarding FATA’s mainstreaming program. PTI believes that the PML-N government is conspiring to build its own political clout in the area by monopolizing the FATA reforms program. According to a provincial minister of KP, the PML-N wants 23 MPAs from FATA elected to the KP provincial assembly in the general elections of 2018, in order to bring its own chief minister in the province.\(^{22}\) This suspicion has lent further credence, since these would-be-MPAs will not be allowed to either utilize funds or legislate either for FATA or the KP, and their membership of the KP provincial assembly would be only symbolic.\(^{23}\) It seems the government wants to somewhat compensate the future loss of FATA seats in the Senate – the upper house of Pakistan’s Parliament – by creating representation for them in the KP assembly.\(^{24}\)
Further, the KP government wants the immediate merger of FATA into KP through a constitutional order before carrying out implementation of proposed reforms. The central government, on the other hand, wants to conclude the uplift of FATA before sanctioning the constitutional merger of the two constituents. Since Khyber Pakhtunkhwa is supposed to contribute most of the human resources towards mainstreaming FATA, differences over the implementation process will inevitably prove to be a stumbling block in smoothly carrying forward the entire process.

Apart from inter-provincial differences, two important political allies of the current Pakistan Muslim League-Nawaz (PML-N)-led federal government – Jamiat Ulema-e-Islam-Fazal (JUI-F) and Pakhtunkhwa Milli Awami Party (PKMAP) - have opposed the Report of the Committee on FATA Reforms on the ground that it does not representative the wishes of the tribal people.25 Given the current political challenges faced by the federal government in the “Panama Papers” Case from the opposition political parties, the former is hesitant to sacrifice its alliance with the two above-mentioned political parties to carry forward the reforms process in FATA. Similarly, both JUI-F and PKMAP are thought to be PML-N’s potential allies in the KP and Balochistan provinces in the upcoming general elections in 2018 – a fact that will make it very difficult for the PML-N’s federal government to steer an independent course on FATA reforms.

3. Constitutional Lacunas

Under Article 247 of the Constitution of Pakistan, FATA falls under the exclusive jurisdiction of the President, and no act of parliament is applicable to it without his prior approval.26 However, the current reforms process was initiated by the former Prime Minister Nawaz Sharif by forming the “Committee on FATA Reforms” through an order dated November 8, 2015. The report was eventually submitted to the Prime Minister the following year, and was eventually approved in a cabinet meeting on March 2, 2016.27 The entire process was a dereliction from the constitutional path, since the President was neither involved nor consulted during the entire process. Clause 6 of Article 247 clearly states:

“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.”

On the other hand, a large number of tribal elders opposed the entire process. They disagreed with the report of the Committee on FATA Reforms, on the grounds that they were not consulted as per the provisions of Article 247. Some tribal elders filed a writ petition in the Supreme Court of Pakistan in March 2017, in which they challenged the legality of the FATA Reforms Committee. In their petition, the tribal elders submitted that,

“Constitutional provisions bar the premier from taking decisions regarding FATA … the constitution of the FATA Reforms Committee, holding of consultation meetings with people in FATA, preparation of a report by the committee and recommendations are eyewash to circumvent the mandatory requirement of holding of a tribal jirga as provided in Article 247(6). It amounts to a futile attempt to portray the so-called meetings with stakeholders as an exercise to seek opinion of public in tribal areas in order to satisfy, rather circumvent, a mandatory constitutional requirement and to present its findings as an expression of the real and genuine wishes of tribesmen.”

The petitioners further claimed that the assertion that majority of people in tribal areas are in support of FATA’s merger with K-P is absolutely baseless and false. They requested that the federal government be restricted from carrying out the implementation of the report, and be urged to call for a new committee, with representation from FATA, to propose reforms through an order or direction given solely by the President of Pakistan.”

While the cabinet has approved the report of the Committee, it still awaits to be put before the President for approval. On the other hand, the government has tabled the 30th constitutional Amendment and Tribal Areas Rewaj Act for 2017 bill in the parliament for debate on 15 May 2017, which has created apprehensions over certain aspects of the current reforms process.

The constitutional mechanism adopted for undertaking the entire reforms process is now subjected to legal overview by the Supreme Court. If the Supreme Court finds the reforms
process adopted during the past two years as *ultra vires* [beyond legal power or authority] to the constitution, it may render the entire effort redundant.

### 4. Proposed *Rewaj* Act & Current Administrative Setup

There is a pervasive ambiguity within the FATA population regarding the contours of the proposed “Tribal Areas *Rewaj* Act 2017” which is being suggested as an alternate to the existing Frontier Crimes Regulation (FCR). It seems that no one within FATA was ready for this proposition\(^{33}\), since tribesmen believed that legal mainstreaming would entail extending the existing legal regimes in other provinces to FATA.

On 15 May 2017, the federal government introduced a bill titled the Tribal Areas *Rewaj* Act 2017 in the National Assembly.\(^{34}\) However, there seems to be a consensus across FATA as well as amongst political parties that the proposed legislation is just an old wine in a new bottle.\(^{35}\) The proposed bill seems to be a reproduction of the already enforced FCR. The FATA people fear that the institutionalization of *Maliks* and *Jirga* as a mechanism to adjudicate tribal disputes will invest enormous powers in the hands of a few, which would not bring desired change.\(^{36}\)

It is speculated that the government intends to enforce the proposed *Rewaj* Act only in the “protected areas” of each FATA agency, while the rest of the (unprotected) areas which forms the bulk, would be governed under the reformed FCR law.\(^{37}\) This suspicion has been lent further credence by the federal law minister, Zahid Hamid, who recently stated that the black provisions of Frontier Crimes Regulations should be removed, in order to ensure the effective provision of all fundamental rights.\(^{38}\) Therefore, there is a clear ambiguity regarding the civil administrative setup that would oversee the entire reforms process.\(^{39}\) There is also uncertainty surrounding whether or not the government would retain the existing system of political administration in FATA for another 10 years until the area is streamlined for merger with KP.

Similarly, the FATA is inhabited by dozens of Pashtun tribes, who follow a common code of *Pashtunwali* but practice varying *Rewaj* (culture) and *Rewayaat* (traditions), and it would be an arduous task to evolve a common code applicable to the entire region. Though jurisdiction of superior courts would be extended to FATA under the proposed reforms, the
institutionalization of *Malik* and *Jirga* at the trial stage of a civil or criminal dispute under the proposed *Rewaj* Act may prove to be an impediment in administering fair and transparent justice.

While public opinion within FATA is divided over various issues, such as the debate on the future constitutional status of FATA, there is a near consensus within FATA over opposition to the proposed *Rewaj* Act. On 25 August 2017, a special consultative session of the FATA parliamentarians, serving and retired senior civil servants was held in Islamabad, which was chaired by Ghalib Khan, Minister of State for the Ministry of States and Frontier Regions (SAFRON). The session unanimously rejected the *Rewaj* Act by terming it as even more dangerous than the existing FCR. Towards the end, a committee was formed to introduce a new draft bill in the parliament to replace the existing proposed Tribal Areas *Rewaj* Act Bill 2017. The meeting sent a strong signal to the government *viz* the pitfalls of introducing the proposed *Rewaj* Act.40

**Conclusion**

It has been more than one year since the Committee on FATA Reforms submitted its report to the federal government in August 2016 to carry out the much-needed reforms in FATA. However, the entire process has become a victim of political wrangling, legal barriers and bureaucratic “red-tapism”. The urgency to carry out the proposed reforms in the wake of growing terrorist violence within FATA assumes tremendous significance. There was an increase of 72 percent in violent incidents in FATA during the first quarter of this year, compared to the last quarter of 2016.41 The government spent Rs. 250 billion during the fiscal year 2015-2016 on security related matters and is further requesting Rs. 283 billion to be allocated for security in the fiscal year 2017-2018.42 FATA’s mainstreaming process moves at a snail pace and repatriation of internally displaced persons (IDPs) remains incomplete. It is therefore important that the federal government emphasizes on rehabilitation and reconstruction of FATA. It should co-opt people to support the government’s endeavor to safeguard the region from terrorist violence.

The following recommendations could be made to streamline the FATA Reforms process:
1. The security cost of retaining FATA will continue to rise if the area is not rehabilitated and reconstructed soon. Therefore, the government should make sincere and serious efforts to arrange the finances necessary to recover FATA from violence-induced destruction.

2. The federal government should either raise sufficient finances or engage with the provinces to agree to share the reconstruction cost of FATA. Similarly, the government should seriously strive to raise finances from international community and donors since post-conflict reconstruction of any devastated area will always be a long, painstaking and capital intensive process.

3. The government should bring transparency and accountability to the FATA mainstreaming program. It should engage all the relevant stakeholders, including representatives from FATA, to educate them about the process and attempt to remove ambiguities regarding the Rewaj Act and future administrative systems for the region. Engaging important stakeholders from FATA will help in capacity building and maintaining the momentum of reforms and stability in FATA.

4. The government should review its policy towards Afghanistan. An unstable Afghanistan will continue to destabilize the entire South and Central Asia and have implications for the Middle East. Since FATA is adjacent to Afghanistan, the blowback effect on it would be tremendous and could potentially jeopardize the recovery of FATA.

It is a well-recognized fact that prudent decisions taken in the early recovery period of a post-conflict reconstruction phase provides a ‘window of opportunity’ to ensure sustainable peace in any post-conflict zone. However, this window of opportunity is limited by time and space, and therefore the opportunity must be grasped and utilized efficiently for optimum results.

The federal government’s indecisiveness to carry out the reforms may dampen the people’s aspirations and readiness to accept change. Pakistan is heading towards general elections in 2018 and if the process is not initiated soon, the entire reforms exercise may face a similar fate comparable to previous efforts aimed at mainstreaming FATA.
2 Ibid.
10 Ibid.
14 Ibid.
17 Report of the Committee on FATA Reforms, op.cit.,
20 Ibid.
21 Ibid.