



Mainstreaming Pakistan's Tribal Belt: A Human Rights and Security Imperative



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**MAINSTREAMING PAKISTAN'S TRIBAL BELT:
A HUMAN RIGHTS AND SECURITY IMPERATIVE**

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FOREWORD

This paper was submitted as a discussion paper to the Belfer Center for Science and International Affairs.

Prior to attending the Harvard Kennedy School, Ziad Haider served as foreign policy advisor to U.S. Senator Christopher J. Dodd. He spent the summer of 2008 in Lahore, Peshawar, and Islamabad conducting research on Pakistan's tribal areas while affiliated with the Human Rights Commission of Pakistan.

This paper analyzes how the colonially derived governance system in Pakistan's tribal belt has contributed to human rights violations and militancy in the region; describes historic obstacles to and key stakeholders' views on governance reforms; and proposes critical legal and political reforms to ensure the tribal belt's long-term security and integration into the Pakistani polity.

At a time when Pakistan's tribal belt has become the central front in the war on terror, this paper is both timely and valuable in delineating a governance strategy to complement ongoing military and development efforts in this pivotal region that will undoubtedly dominate the next administration's national security agenda.

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EXECUTIVE SUMMARY

Pakistan's regressive and receding tribal governance system has failed to secure the tribal peoples' constitutional rights and the tribal belt at great domestic and international cost. As extremist elements, including the Taliban and Al Qaeda, gain strength and launch attacks in and beyond South Asia from the increasingly lawless and radicalized tribal areas, the following governance reforms must be introduced to avert a swelling of *jihadi* ranks, extend the state's writ, and secure and mainstream these badlands:

1. Short-Term

- *Extend Political Parties Act:* Political parties must be allowed to operate in the tribal belt to bolster countervailing moderate political forces.
- *Overhaul Draconian Penalties:* Harsh penalties such as collective punishment and whipping must be narrowed and rescinded.
- *Deliver Speedy Justice:* Timelines must be set for cases to be heard to diminish the appeal of Taliban-style *Shariah* courts that dispense cheap and speedy justice.
- *Expand Right to Appeal:* Appeals must be heard in a timely manner by members of the judiciary – not just a panel of bureaucrats.
- *Accommodate Shariah Rulings:* Both parties must have the right to opt for a *Shariah*-based ruling to accommodate local sentiment.

2. Medium-Term

- *Establish Local Representative Bodies:* Local representative bodies must be created to develop a culture of representativeness and accountability.
- *Extend Supreme Court and High Court Jurisdiction:* Jurisdiction of these courts should be extended to hear appeals and safeguard constitutional rights.

3. Long-Term

- *Create FATA Legislative Council:* A Council will provide a forum to debate and vote on reforms and liaison with the federal government on development projects.
- *Conduct Referendum on FATA's Status:* The tribal people must ultimately vote on their preferred constitutional status within the Pakistani federation.
- *Shift Presidential Powers to Parliament:* Presidential powers over the tribal areas should be ceded to Parliament through a constitutional amendment.

INTRODUCTION

Today Pakistan's federally administered tribal areas (FATA) are the epicenter of the US-led "global war on terror." A 2008 US Directorate National Intelligence assessment states that Al-Qaeda is finalizing its next plan of attack against America in FATA.¹ While the Taliban's high command for southern Afghanistan – the "Quetta shura" – is in Pakistan's Baluchistan province, the Taliban have escalated attacks in Afghanistan from FATA with 2008 marking the highest level of violence since the Taliban's fall in 2001.^{2 3} Yet attacks well beyond the region, including the 7/7 London bombings, have also been traced to individuals who allegedly trained in FATA.⁴ Meanwhile, FATA-based militants are largely responsible for the over 56 major suicide bombings in Pakistan in 2007 alone that claimed hundreds of lives including that of former Prime Minister Benazir Bhutto.⁵

To address the domestic and global threat emanating from FATA, the Pakistani government has adopted a strategy of "dialogue, development, and deterrence."⁶ Meanwhile, the Bush administration has pushed for military operations over peace deals and pledged \$750 million over five years for FATA's development.⁷ Although security is aptly the preeminent priority, no amount of operations, deals, or aid alone will stabilize FATA unless Islamabad also addresses its regressive and receding governance system. Based on 19th century British rules and institutions, FATA's colonial administration raises serious human rights concerns and is fueling militancy in the region. One in five

¹ Government Accountability Office, *Combating Terrorism: US Efforts to Address the Terrorist Threat in Pakistan's Federally Administered Tribal Areas Require a Comprehensive Plan and Continued Oversight*, May 5, 2008, <<http://www.gao.gov/products/GAO-08-820T>>, p. 2.

² Senate Committee on Foreign Relations, *Statement by Barnett Rubin Before the Senate Committee on Foreign Relations*, September 21, 2006, <http://www.cfr.org/publication/11486/still_ours_to_lose.html>. Barnett Rubin is Director of Studies at New York University's Center on International Cooperation

³ "2008 Afghanistan's Worst Year: Minister," *AFP*, October 14, 2008, <<http://afp.google.com/article/ALeqM5hS2PIKmnKxKJC7DaLmeWLIYIv55g>>.

⁴ House Permanent Select Committee on Intelligence, *Statement by Peter Bergen Before the House Permanent Select Committee on Intelligence*, April 9, 2008, <<http://www.peterbergen.com/bergen/articles/details.aspx?id=341>>. Peter Bergen is a Senior Fellow at the New America Foundation.

⁵ Bruce Riedel, "Musharraf's Departure is Good for Pakistan but is it Too Late?" Brookings Institution, August 18, 2008, <http://www.brookings.edu/opinions/2008/0818_pakistan_riedel.aspx>.

⁶ "Carrot-and-stick plan to tackle militancy," *DAWN* (Karachi), June 26, 2008

⁷ Embassy of United States (Islamabad), "US, Pakistan Sign New \$750 Million Agreement For FATA Development," September 30, 2007, <<http://islamabad.usembassy.gov/pr-093007.html>>.

persons in FATA attributes religious extremism in the region to its flawed governance.⁸ Political and legal reforms are critical to extend the state's writ; uphold constitutional rights; prevent a pro-Taliban drift; and mainstream and secure FATA in the long-term.

Although this report focuses on internal governance, FATA's plight is inseparable from the larger conundrums Pakistan has faced since its inception including weak political and judicial institutions, the role of religious ideology, military adventurism, and hostile relations with its neighbors. This report, however, will specifically analyze how FATA's governance has triggered human rights abuses and militancy; describe key stakeholders' views on and historic hurdles to reforms; and propose an agenda for reforms.

Bringing change in a region as volatile as FATA will be difficult. Yet the government's failure to do so will not only be an abdication of its obligations to its citizens in ensuring their security and constitutional rights but also to the international community in preventing the use of its soil for terrorist acts under UN Security Council Resolution 1373.⁹ Ongoing US strikes against militants ensconced in FATA are already dangerously straining Pakistani sovereignty and the bilateral relationship. That is why the government must heed the warning of Afrasiab Khattak of the North West Frontier Province's ruling Awami National Party (ANP): "the question of dismantling militant sanctuaries in FATA and taking short- and long-term measures to open up the areas and integrate it with the rest of the country needs urgent attention if we are to avoid the impending catastrophe."¹⁰

A COLONIAL LEGACY

Located along Pakistan's northwest border with Afghanistan, FATA consists of seven tribal agencies (and six frontier regions) profiled in Table 1:

⁸ Naveed Ahmed Shinwari, *Understanding FATA: Attitudes Towards Governance, Religion, and Society in Pakistan's Federally Administered Tribal Areas*, Community Appraisal and Motivation Program (CAMP), <<http://www.understandingfata.org/>> p. 43.

⁹ UN Security Council Resolution 1373 (2001), <<http://www.state.gov/s/ct/index.cfm?docid=5108>>.

¹⁰ Afrasiab Khattak, "FATA's Growing Disconnect," *DAWN* (Karachi), July 31, 2008, <<http://www.dawn.com/2008/07/31/ed.htm#5>>.

Table 1: Profile of Pakistan’s Tribal Agencies¹¹

Agency	Size (sq. km.)	Population (thousands)	Main Tribes
Bajaur	1,290	595	Tarkani & Utmankhel
Khyber	2,576	547	Afridis & Shinwaris
Mohmand	2,296	334	Mohmand
South Waziristan	6,620	430	Wazirs & Mehsuds
North Waziristan	4,707	361	Wazirs & Dawars
Kurram	2,576	450	Turi & Bangash
Orakzai	1,538	225	Orakzai

When the British annexed these areas in 1848, they sought to insulate their empire’s “settled areas” from Russia’s Great Game machinations in Afghanistan and from tribal raids. They did so by balancing the use of subsidies and force to control strategic roads and passes with granting the tribesmen autonomy in their affairs. Although the British attained a measure of stability, their rule never went unchallenged: 62 military expeditions occurred between 1849 and 1889 alone.¹²

Upon independence, FATA’s tribesmen acceded to Pakistan – a status enshrined in Article 1 of the Constitution. During his visit to the frontier in April 1948, Muhammad Ali Jinnah, Pakistan’s founder, stated his desire to not interfere with tribal autonomy yet integrate FATA into Pakistan. Agreeing to continue with pre-existing subsidies and treaties, for example, he said he did not want the tribesmen to be dependent on them. Sadly, Jinnah’s vision of FATA’s people becoming “self-respecting citizens having the opportunity of developing and producing what is best in you and your land” has not materialized.¹³ Today FATA is among Pakistan’s most underdeveloped areas with 83% of its people illiterate and 60% living below the poverty line amidst rampant extremism.¹⁴

¹¹ International Crisis Group (ICG), *Pakistan’s Tribal Areas: Appeasing the Militants*, December 11, 2006, <<http://www.crisisgroup.org/home/index.cfm?id=4568>> p. 3.

¹² Rashid Ahmad Khan, “Political Developments in FATA: A Critical Perspective,” in *Tribal Areas of Pakistan: Challenges and Responses*, Pervaiz Iqbal Cheema and Maqsoodul Hasan Nuri, eds. (Islamabad: Islamabad Policy Research Institute, 2005), p. 26.

¹³ Ibid.

¹⁴ FATA Secretariat, “Selected Development Indicators for Pakistan, NWFP, and FATA,” <<http://www.fata.gov.pk/subpages/socioeconomic.php>>.

This stagnation extends to FATA's governance as the colonial status quo remains intact. Dividing FATA into protected, accessible, and non-accessible, areas, the British navigated local customs and power centers to create a system based on three pillars that stand to this day: the political agent, the tribal elders, and the 1901 Frontier Crimes Regulation (FCR).

The political agent (PA) who administers each agency is a senior bureaucrat who serves as the chief executive, judicial, and administrative officer. He extends state policy by commanding tribal and irregular forces and co-opting influential tribal elders. His power is implicitly limited by having to balance the interests of various elders.¹⁵ The most direct check on his power, however, was his supervising authority, the Commissioner - a post scrapped upon implementation of the 2002 Devolution Plan.¹⁶ Concerns abound about the PA's centralized power, judicial involvement, and largely secret patronage funds.

The second pillar is the *maliki* system. Those influential elders who cooperate with the state are termed *maliks* and receive hereditary subsidies or *muwajibs* and special *lungi* status with additional privileges. As former NWFP Governor, Iftikhar Hussain, described it, "This system of nurturing local elites at the cost of discouraging voices of disagreement did suit the rulers of the past...[today] *maliks* jealously cut down to size anyone who tries to break the ranks."¹⁷

The third pillar is the FCR. Although the British initially extended civil and criminal laws in force elsewhere to the frontier districts, due to the low rate of conviction, they enacted the first Frontier Crimes Regulation in 1871, promulgated in current form over a century ago in 1901.¹⁸ The FCR allegedly sought to encapsulate elements of the *Pathan* tribal code, *Pukhtunwali*, and custom or *riwaj*, such as the "trial" procedure of *jirga*. While some argue this was colonial acumen in ruling through indigenous principles, others view

¹⁵ Author Interview, Additional Chief Secretary FATA Secretariat Habibullah Khan, Peshawar, July 2008.

¹⁶ In light of the vacuum created, the post of regional coordinator officer was later created to enhance supervision and coordination.

¹⁷ Iftikhar Hussain, "Inaugural Address," in *Tribal Areas of Pakistan*, p. 7.

¹⁸ Faqir Hussain, "Testing FCR on the Touchstone of the Constitution," in *FCR: A Bad Law Nobody Can Defend*, Human Rights Commission of Pakistan (Peshawar Chapter), (Lahore: Human Rights Commission of Pakistan, 2005), p. 57.

the FCR as a distortion of these principles. These divisions on the FCR's cultural relevance remain today and underpin any discussion on FCR reform.

HUMAN RIGHTS VIOLATIONS

Human rights concerns in FATA relate to select FCR provisions that violate fundamental rights enshrined in Pakistan's Constitution. These entail draconian penalties, lack of due process, and a limited right to appeal, leading human rights activists to dub the FCR black law.¹⁹

Although the FCR is more progressive than the law of the settled districts in isolated areas, for example in precluding the death penalty, it is notorious for its penalties. These include the power to blockade hostile or unfriendly tribes (section 21); demolition and restriction of construction of hamlet, village or town on frontier (section 31); and removal of persons from their places of residence (section 36).²⁰ These penalties reflect the British aim to hold their subjects responsible for the empire's security.

This formulation cannot hold for the modern Pakistani state that is responsible for its citizens' security. Through application of Article 8 of the Constitution, which provides that any law or customs or usages having the force of law is void if inconsistent with fundamental rights, FCR-prescribed penalties are arguably null. They violate, among other articles, the right to be dealt with in accordance with the law (Article 4); security of person (Article 9); safeguards as to arrest and detention (Article 10); protection of property rights (Article 24) and inviolability of the dignity of man (Article 14).²¹

The lack of due process is also of critical concern. The PA selects members of the *jirga* whose recommendations are non-binding on him, making him "the ultimate authority and final arbiter to initiate trial, prosecute offenders, and award punishments."²² This violates

¹⁹ See *FCR: A Bad Law Nobody Can Defend*, Human Rights Commission of Pakistan (Peshawar Chapter), (Lahore: Human Rights Commission of Pakistan, 2005).

²⁰ "The Frontier Crimes Regulation, 1901," *FCR: A Bad Law Nobody Can Defend*, p. 31.

²¹ Hussain, "Testing FCR on the Touchstone of the Constitution," *FCR: A Bad Law Nobody Can Defend*, p. 60.

²² *Ibid.*

the Constitution's preamble and Article 2-A and 175 that call for an independent judiciary. The FCR also sanctions double jeopardy in violation of Article 13. As a matter of practice, lawyers and women cannot appear before a *jirga*. In addition, section 48 of the FCR states that "no appeal shall lie from any decision given, decree or sentence passed, order made, or act done under any of the provisions of this Regulation." Only a limited revisional jurisdiction is permitted by an FCR Tribunal staffed by bureaucrats.

61 years since independence, FATA's people are judged by a system that, as one lawyer put it, permits "no *wakeel* (lawyer), no *daleel* (argument), and no appeal." They have been long deprived of their constitutionally guaranteed rights. The irony is that the Constitution cuts both ways. Even though under Article 199 and 184(3), the Supreme Court and High Courts are responsible for the enforcement of these rights, Article 247 bars their jurisdiction in FATA. Consequently, the onus to provide justice to FATA's people and protect their rights as citizens lies squarely on the shoulders of their government.

THE MILITANCY-GOVERNANCE NEXUS

Militancy in FATA is often attributed to factors such as its having been a staging ground for the Soviet *jihad*; fallout from the post-9/11 invasion of Afghanistan; Pakistan's strategic maneuvering in Afghanistan and selective support of militant groups; and rampant poverty and illiteracy. Yet FATA's flawed governance has also fueled the flames in the following four ways:

1. Political Vacuum

FATA's institutionalized democracy deficit and the marginalization of the state's traditional power centers by the Taliban and the army has created a political vacuum that the Taliban are filling. Under Article 247 of the Constitution, the NWFP Governor administers FATA on the President of Pakistan's direction. No act of Parliament applies to FATA unless the President extends it. This effectively lame ducks FATA's twelve Members of the National Assembly and eight Senators (adult franchise was only introduced in 1996). While they can make laws for the rest of Pakistan, they cannot do so

for their constituencies. Although political parties have a limited *de facto* presence, they are legally barred. An attempt to introduce grass roots democracy through appointed agency councils foundered in 2007. The result is that FATA is bereft of moderate political forces while the religious right, entrenched in FATA since the Soviet *jihad*, has accrued power, as noted in the 2006 Presidential Task Force on FATA Reforms.²³

Taliban and army offensives have also eroded the existing political system. Since 2004, the Taliban have reportedly killed over 300 *maliks*.²⁴ The story of one pro-government tribal leader, Malak Shahjahan Khan, is telling. Having opposed the presence of foreign militants in Bajaur and escaped five assassination attempts within two years, he was killed en route to a meeting with the Prime Minister.²⁵ The meeting sought to generate support among *maliks* for the government's FATA policy. As such, a mix of fear and pragmatism has led many *maliks* to turn to the Taliban - not the PA - for their orders.²⁶

Meanwhile, although the army's entry into FATA post 9/11 – the first such foray in Pakistan's history - partially extended the state's writ, it undermined the PA's authority, as conceded by Lieutenant General (retd.) Ali Jan Aurakzai who led the charge. According to him, as the army was operating in FATA for the first time, it needed to act decisively to win hearts and minds, including by controlling development funds, but this came at a political price.²⁷ Whereas “people used to wait months to see the PA, now he is the one waiting behind closed doors” noted a leading tribal journalist.²⁸ As such, the Taliban and the army have snapped the traditional links between the people and the state.

2. Justice Delayed and Denied

The state's failure to deliver fair and fast justice and imposition of harsh penalties has alienated people and led them to turn to the Taliban. The *jirga* system is widely viewed

²³ Khalid Aziz, “Agenda for FATA Reform,” <http://www.khalidaziz.com/Agenda_for_Fata_Reform.pdf>

²⁴ Khalid Aziz, “Impact of 9/11 War on Tribal Society,” *The News* (Karachi), June 1, 2008, <http://www.thenews.com.pk/daily_detail.asp?id=115921>.

²⁵ “Pro-Govt. Tribal Leader Killed in Ambush,” *DAWN* (Karachi), July 22, 2008, <<http://www.dawn.com/2008/07/22/top6.htm>>.

²⁶ Author interview with The News's Rahimullah Yusufzai, Peshawar, July 2008.

²⁷ Author interview with Lieutenant General (retd.) Ali Muhammad Jan Aurakzai, Rawalpindi, July 2008.

²⁸ Author interview with Karwan-e-Qabail's Sailab Mehsud, Islamabad, July 2008

as partisan and manipulated by the state. As one former member of the FCR Tribunal recounted, he could tell just by looking at names of the elders in the *jirga* what the outcome would be.²⁹ Another concern is the expensive and slow pace of justice due to the lengthy bureaucratic procedure of constituting a *jirga*, passing an order of reference for the *jirga*'s deliberations, and sending back the *jirga*'s proposals to the PA's office for his judgment.³⁰ If the PA agrees to the recommendations, then an award is given. If not, the *jirga* is dissolved and a new one is constituted to hear the case. In light of this protracted procedure, nearly three-fourths of FATA's people believe the state *jirga* does not provide speedy justice.³¹ More than half associate the FCR with the PA's "unchecked power."³² FCR-sanctioned blockades, home demolitions, and collective punishment during military operations, according to the International Crisis Group, have further fueled resentment and increased the prospects of militant retaliation.³³

These flaws in the colonial judicial system, as per the President of the FATA Lawyers Forum, have led to the establishment of an increasingly popular alternative: Taliban-style *Shariah* courts.³⁴ According to former NWFP Chief Secretary, Khalid Aziz, one of the first steps militants take when they gain control of an area is "the creation of a dispute resolution system dispensing quick and cheap justice."³⁵ The Taliban have established such courts in Bajaur and Mohmand Agencies with hundreds of tribesmen reportedly visiting them daily.³⁶ These courts, however, operate on regressive and nominally Islamic principles. Frequently established in converted government girls' schools, they prescribe harsh penalties including public executions. Nonetheless, locals attend them out of a mix of religious appeal and coercion and because, as per one local interviewed outside the court, the FCR system is oppressive while the *Shariah* courts provide "cheap and speedy

²⁹ Author interview with Brigadier (retd.) Mahmood Shah, Peshawar, July 2008

³⁰ Mumtaz A. Bangash, "FATA: Towards a New Beginning," in *Tribal Areas of Pakistan: Challenges and Responses*, Pervaiz Iqbal Cheema and Maqsoodul Hasan Nuri, eds. (Islamabad: Islamabad Policy Research Institute, 2005), p. 63.

³¹ *Understanding FATA*, p. 64.

³² *Ibid*, p. 58.

³³ ICG, *Pakistan's Tribal Areas*, p. 15.

³⁴ "Taliban Courts Result of a Faulty Judicial System," *Daily Times* (Lahore), July 20, 2008.

³⁵ Aziz, "Impact of 9/11 War on Tribal Society."

³⁶ "Taliban Set Up Shariah Courts in Bajaur Agency," *DAWN* (Karachi), July 7, 2008; "Taliban Set Up Shariah Courts in Mohmand Agency," *The News* (Karachi), July 15, 2008.

justice.”³⁷ As prominent journalist Rahimullah Yusufzai put it, “the *jirgas* have lost credibility. If the *Shariah* courts succeed, it will be very hard for the government to regain the initiative.”³⁸

3. Ungoverned Areas

A third nexus between governance and militancy is that the full administrative writ of the state has never extended across FATA. This in itself helps undermine one of the major planks of the current government’s FATA strategy –negotiations: “Without the building of governance structure and monitoring capacity which scrupulously follow the implementation of the peace agreements on a daily basis, these agreements will not last as has happened in the past.”³⁹ Since the British era, inaccessible areas have existed in FATA where the state has no presence, enabling criminals and militants free reign. These elements have further benefited from the historically porous border with Afghanistan with smuggling, particularly in narcotics, filling their coffers. The state’s absence and inability to curb social ills and guarantee order across FATA partly accounts for the emergence of militant groups such as Laskhar-e-Islam in Khyber Agency that, *inter alia*, seeks to forcibly implement an agenda for social reform. Its leader Mangal Bagh, a former truck driver, though denying links with the Taliban and Al-Qaeda, claims the group was formed in response to increased crime such as gambling, drug trafficking, and kidnappings for ransom.⁴⁰ In July, however, the government was forced to conduct an operation against Mangal Bagh as he himself began to brazenly launch raids into the settled areas, including in the heart of Peshawar, triggering wide-spread fear and panic.

4. Class Conflict?

A fourth and largely unexplored manner in which FATA’s governance may be contributing to militancy has been proposed by leading FATA expert Khalid Aziz. He

³⁷ “Taliban Set Up Shariah Courts in Bajaur Agency,” *DAWN*.

³⁸ Interview with Rahimullah Yusufzai.

³⁹ Pakistan Institute of Legislative Development and Transparency (PILDAT), *Remarks by Khalid Aziz at PILDAT Conference on Rule of Law and Democracy in Pakistan: The Road to the Future*, June 17, 2008, <<http://64.233.169.104/search?q=cache:amtnQduHzjcJ:www.pildat.org/eventsdel.asp%3Fdetid%3D255+Khalid+Aziz+PILDAT&hl=en&ct=clnk&cd=1&gl=us>>. Khalid Aziz is Former Chief Secretary NWFP.

⁴⁰ Middle East Media Research Institute, “Pakistan-based Militant Group Laskhar-e-Islam Vows to Spread Islam Across the World,” April 23, 2008, <http://memri.org/bin/latestnews.cgi?ID=SD190608#_edn2>.

argues that the violence in FATA exhibits elements of a class revolt in religious ideology. “The militants organize their administration on a non-tribal basis. They are not constrained by tribal or clan distinctions or the jirga system. They just appoint their trusted men. I am now certain that tribalism based one’s position or inheritance is now dead in FATA.” As such, militants in challenging the traditional administration may potentially be reacting in part to the tribal culture of FATA that has been preserved by the patronage of the state through the *maliki* system.

In assessing FATA’s governance crisis, some analysts believe restoring the pre-9/11 status quo is key. As one former Pakistani Ambassador to Afghanistan put it, “Despite the fact that many of us have strong reservations about the system, such as the powers of the Political Agent, it was in use for a long time and people are somehow used to it. It should be restored and given full support to ensure implementation of the new policy.”⁴¹ The clock, however, cannot be rewound. Aside from rapid socio-economic changes including hefty remittances and media inroads, the confluence of FATA’s political vacuum, public resentment, and Taliban and army offensives have irreparably damaged the old system. Militants tout an alternate form of administration and dispute resolution, seductively cloaked in Islam, that offers deliverance here and in the afterlife. The government must establish its writ not just by force of arms but also by proving its relevance to the lives of FATA’s people. It must offer them a new social contract.

THE IDEA OF REFORMS

Fortunately, there is widespread recognition of the need for FATA reforms across the political spectrum and civil society. Jinnah recognized at Pakistan’s creation that ruling FATA through the *maliki* system was neither desirable nor sustainable. It has tragically taken the “war on terror” to drive home this imperative. In April 2006, Former President Pervez Musharraf announced that the current system would be abolished as part of a

⁴¹ “What to do with FCR?” *Daily Times* (Lahore), October 29, 2008, <http://www.dailytimes.com.pk/default.asp?page=2008%5C10%5C29%5Cstory_29-10-2008_pg3_1>.

comprehensive counter-terrorism approach in FATA.⁴² Similarly, all of Pakistan's major political parties have called for FATA reform to varying degrees as captured in Table 2.

Table 2: Comparison of Election 2008 Manifestoes on FATA⁴³

Party	Position
Awami National Party (ANP)	<ul style="list-style-type: none"> • Merge FATA into NWFP • Amend the FCR on a priority basis to protect human rights as enshrined in the Constitution of Pakistan • Extend Political Parties Act to FATA • Grant Tribal Areas representation in Provincial Assembly increasing total number of seats of NWFP Assembly
Muttahida Majlis-e-Amal (MMA)	<ul style="list-style-type: none"> • Immediately stop ongoing military operations in FATA and solve issues through dialogue and negotiation • Merge FATA into mainstream administration and make law of the land applicable in consultation with and consent of the people of these areas
Muttahida Quami Movement (MQM)	
Pakistan Muslim League-Quaid (PML-Q)	<ul style="list-style-type: none"> • Introduce democracy and development in FATA
Pakistan Muslim League-Nawaz (PML-N)	<ul style="list-style-type: none"> • Bring FATA into mainstream political, economic, and cultural life • Merge FATA into NWFP in consultation with tribal areas • Restore government authority in FATA
Pakistan People's Party (PPP)	<ul style="list-style-type: none"> • Facilitate extension of laws of Pakistan to FATA, including Political Parties Act. • Introduce amendments to FCR to enable right of appeal to Peshawar High Court and Supreme Court of Pakistan against all convictions

⁴² "FATA System to be Abolished," *Daily Times* (Lahore), April 18, 2006, <http://www.dailytimes.com.pk/default.asp?page=2006\04\18\story_18-4-2006_pg1_3>.

⁴³ PILDAT, *A Comparative Analysis of Election 2008 Manifestoes of Major Political Parties*, December 2007, <<http://www.pildat.org/publications/publication/elections/Election%202008.pdf>>, p. 29.

- Include in NWFP Assembly representatives from FATA directly elected by adult franchise, according to population of each agency

Civil society has also weighed in with institutes like the Pakistan Institute for Legislative Development and Transparency creating an eminent Citizens' Policy Panel on FATA "to produce non-partisan and independent policy options to review the current government policy towards FATA."⁴⁴ Other initiatives have provided a platform for tribal society. For example, in July 2008 the Sustainable Development Policy Institute hosted a seminar on "FATA: Viable Reforms and Modalities" that the author attended which largely consisted of people from FATA who spoke out about their state of insecurity and for reforms.⁴⁵

Indeed, despite the repressed state of civil society in FATA, tribal people have long mobilized. One notable campaign was *Ittehad-e-Qabail's* (Tribal Unity) demand for adult franchise - a struggle that lasted some thirty years. As one of its members, Sailab Mehsud recollected, "the people dared to lift their voices and they came close to death for this" with the PA breaking up protests by forces, imprisoning activists, and threatening to fire on them.⁴⁶ More recently, the FATA Grand Alliance, an umbrella organization for tribal student, lawyer, and journalist groups, has released its own blueprint for FATA reforms.

Yet enthusiasm for reform is dampened by examining the fate of previous initiatives. Former President Musharraf, for example, did an about face on his call to abolish the FATA system within a month: "we want to invigorate the political agent institution of FATA."⁴⁷ One of the most thorough studies on FCR reform was conducted by the state-sponsored FCR Reforms Committee. Chaired by Justice (retd.) Mian Ajmal, the Committee held consultations across FATA to solicit tribal input on reforms. Its report

⁴⁴ "Panel Formed to Review Government Policy on FATA," *The Nation* (Pakistan), June 13, 2008, <<http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Regional/Islamabad/13-Jun-2008/Panel-formed-to-review-govt-policy-on-FATA>>.

⁴⁵ Sustainable Development Policy Institute (SDPI), *Conference on FATA: Viable Reforms and Modalities*, July 15, 2008, <http://www.sdpi.org/help/research_and_news_bulletin/july_sept_08/in_retrospects.html>.

⁴⁶ Interview with Sailab Mehsud.

⁴⁷ ICG, *Pakistan's Tribal Areas*, p. 5

was released in 2006 yet has not been implemented. Taking a more historical viewpoint, in a series of judgments dating to the fifties and sixties, the superior courts declared various provisions of the FCR void and inconsistent with fundamental rights. In 1954, Justice Cornelius in *Sumunder v. State* labeled FCR proceedings “obnoxious to all recognized modern principles governing the dispensation of justice.”⁴⁸ Yet despite this pointed recognition and longstanding calls for reforms across over half a century, much remains the same.

HURDLES

Five reasons emerge for this failure of reform efforts: the government’s desire to control a strategic area; vested interests; the tribal people’s rejection of change and suspicion of the government; the deteriorating security situation; and broader political instability.

1. Control Over a Strategic Area

FATA is strategically important due to its being a historical entry point into the subcontinent for invaders; its proximity to Afghanistan with whom Pakistan has long clashed over the integrity of their border; its pivotal role in the “war on terror;” and fears that India, Afghanistan, and perhaps even the United States are destabilizing Pakistan in and through FATA. In separate interviews, the additional chief secretary of the FATA Secretariat and a former Chief of the Army Staff acknowledged that strategic concerns were a factor in FATA reform.⁴⁹ Moreover, from a counter-terrorism point of view, “if you amend the FCR, that means you are going soft,” according to General Aurakzai.⁵⁰

In this vein, the government’s concerns have specifically extended to the perceived pitfalls of a more representative system in FATA. The debate is nearly as old as Pakistan itself. In 1950, a prominent politician and associate of Jinnah, Qazi Isa, called for direct contact with FATA’s people to “win over the masses” instead of dealing with what he termed corrupt and dishonest *maliks*. Responding to Issa’s point in the context of dealing

⁴⁸ Hussain, “Testing FCR on the Touchstone of the Constitution,” *FCR: A Bad Law Nobody Can Defend*, p. 59.

⁴⁹ Interview with Habibullah Khan. Author Interview, Lahore, June 2008.

⁵⁰ Interview with General Aurakzai.

with *sardars* (tribal leaders) in Baluchistan, the Secretary Ministry of States and Frontier Affairs disagreed: “If the *sardars* were really a spent force as Mr. Qazi Mohammad Isa would have us believe, then the Afghan Government would not be working through them as vehicles for enforcing their authority on the other side of the Durand Line.”⁵¹

Today the concern is not just the external hand but also internal forces as reflected in the former Governor NWFP deciding not to hold agency council elections because he was afraid the religious right would win.⁵² Others, however, like the Director of the Human Rights Commission of Pakistan, I.A. Rehman, have levied a more forceful charge: “FATA has been deliberately denied the democratizing influence of representation to blunt demands for reforms that could potentially divest the central government’s control of these sensitive strategic areas.”⁵³

2. Vested Interests

Maliks and bureaucrats who have benefited from the existing system have also obstructed reform. Many *maliks* do not want an end to the patronage system that would reduce their influence and privileges. Within the bureaucracy, being a PA is among the most lucrative posts with immense powers and funds at one’s disposal. Some PAs have misused these powers and resources as one tribesman at the SDPI seminar angrily noted: “FATA is heaven for bureaucracy and hell for people.”⁵⁴ In an interview, Brigadier (retd.) Mahmud Shah who headed the FATA Secretariat similarly spoke of the presence of “mafias” in the bureaucracy that hamstrung his reform agenda.

In addition to the challenge of vested interests is that of the inherent bureaucratic resistance to change. In interviews at the FATA Secretariat, conversations would begin with a concession that reforms are necessary but then recede to arguments for the status quo. These included how the current system is misunderstood; the tribesmen’s rejection

⁵¹ Rashid Ahmad Khan, “Political Developments in FATA: A Critical Perspective,” *Tribal Areas of Pakistan: Challenges and Responses*, p. 31.

⁵² Interview with General Aurakzai.

⁵³ ICG, *Pakistan’s Tribal Areas*, p. 10.

⁵⁴ SDPI, *Conference on FATA: Viable Reforms and Modalities*.

of reforms; and the tribesmen getting the benefits of their “special status,” including free electricity, yet seeking to evade restrictions in the guise of calling for reforms.

3. Tribal Resistance to Change

Many tribesmen view the government and potential reforms with great suspicion, further hindering reforms. The reason for these views include the ethno-centric one that Pakistan as a “*Punjabi*-dominated” state seeks to divide and control the *Pathan* people; the perception that the state has exploited FATA’s people for military and *jihadi* ventures in Afghanistan and India yet has not advanced their welfare; and anger at the state for sending troops to kill its people at what is widely viewed as America’s bidding.⁵⁵ The suspicion, however, also extends to the general concept of reform. As a recent survey in the region shows, the people of FATA want change yet continuity at the same time to preserve their customs and autonomy. One such indication: 39% of people want the FCR amended while 31% want it abolished.⁵⁶ Of course, an overarching feature of FATA’s society is rampant illiteracy which partly colors views on reform. As such, any reform effort will require laying ground work and educating FATA’s people on the issues and proposals instead of sweeping away the familiar yet flawed existing system in a vacuum.

4. Security Situation

There is a prevalent belief among Pakistani officials that due to dire security situation in FATA, many reforms at this stage are not possible. Some officials claim there was a window shortly after 9/11, when the primary preoccupation in FATA was merely dealing with foreign fighters, during which reforms could and should have been pursued. Now, however, with the rise of the Pakistani Taliban and associated groups, the focus must be on securing and then developing the areas prior to implementing reforms. Moreover, the Taliban themselves, the argument goes, will fight tooth and nail against any such changes that will marginalize them. This view, however, overlooks the role reforms can play in generating support among FATA’s people for the Pakistani government – an essential

⁵⁵ Author interview with Jamaat-i-Islami’s Deputy Provincial Head, NWFP, Zar Noor Afridi, Peshawar, July 2008.

⁵⁶ *Understanding FATA*, p. 61.

element in any viable counter-insurgency strategy. A phased approach to reforms, as outlined below, can achieve this goal while taking into account security concerns.

5. Political Instability

Pakistan's perennial political instability and weak political and judicial institutions have also hindered reform. The former has distracted attention from the issue of mainstreaming FATA with some alleging that one reason why former President Musharraf did not proceed with a comprehensive FATA reforms package is because he was concerned about his political legitimacy.⁵⁷ The latter has provided ammunition to opponents of reform who have argued that political parties and the judicial system with their dubious track record in settled Pakistan will only encumber FATA.

OFFICIAL POSTURE

After nine years of military control, Pakistan's return to civilian rule provides a critical opportunity to mainstream FATA. Prior to her party's victory in last year's Parliamentary elections, Former Prime Minister Bhutto had spoken out about this post 9/11 imperative and established a committee to draft proposals. The present government is laudably pursuing reforms; however, it has both blatantly misspoken and missed key opportunities, for example during the debate over a package of constitutional amendments last summer.

The clearest example of misspeak was Prime Minister Syed Yousuf Raza Gilani's announcement in March 2008 that the FCR would be abolished.⁵⁸ According to a member of his own cabinet, the Federal Minister for Environment from the Khyber Agency, FATA's Parliamentarians were not consulted in advance and lodged strong protest.⁵⁹ Further evidence of the state's disconnect from tribal sentiments is the previously discussed fact that a majority in FATA want the FCR amended – not repealed.

⁵⁷ Interview with Brigadier Mahmood Shah.

⁵⁸ "Terrorism Tops Gilani's Agenda," *Daily Times* (Lahore), March 30, 2008, <http://www.dailytimes.com.pk/default.asp?page=2008\03\30\story_30-3-2008_pg1_1>.

⁵⁹ SDPI, *Remarks by Hamidullah Jan Afridi at Conference on FATA: Viable Reforms and Modalities*. Hamidullah Jan Afridi is the Federal Minister for Environment.

Ironically, the announcement was primarily welcomed by two unlikely bed fellows: human rights activists who view the FCR as black law and the Taliban and religious right who in the absence of any proposed alternative called for *Shariah*.⁶⁰ As tribal activist Asad Afridi pointed out, the government failed to heed the lesson of Swat. When the prevailing legal code was rescinded there in 1994, a militant group, *Tehreek Nifaz-e-Shariat-e-Muhammadi* (TNSM), exploited the vacuum to agitate for *Shariah* – a point of ongoing combat in this erstwhile tranquil area in northern Pakistan.⁶¹ That is why in response to the Prime Minister’s announcement, the Chairman of the Senate Functional Committee on Human Rights stated, “the decision to do away with the FCR though widely welcomed is ahead of time and history of FATA which would require to be more developed and organized before FCR can be abolished.”⁶²

In the wake of the FCR flare-up, the government established the Cabinet Committee on FCR Reforms chaired by the Federal Law Minister. Describing the FCR as “outdated, overly penal, and a human rights issue,” the Minister has stated that a draft law is in its final stages and includes the following amendments: an end to collective punishment, a requirement that the party be presented before authorities within twenty four hours, and an expansive right to appeal the PA’s decision to a Tribunal that will include a retired judge.^{63 64} Despite the promise these amendments hold, there are grounds for skepticism. Concerns exist that despite the presence of some FATA Parliamentarians on the Committee, their views, let alone those of tribal civil society, will not be heeded. Similar committees have been formed in the past yet failed to deliver. Lastly, this Committee is only focusing on legal – not political - reforms. As such, although the introduction of a reforms package would be a welcome step, its timing, scope, and implementation remain in limbo.

⁶⁰ “Taliban Set Terms for Talks with Government,” *Daily Times* (Lahore), March 31, 2008, <http://www.dailytimes.com.pk/default.asp?page=2008\03\31\story_31-3-2008_pg1_1>.

⁶¹ Author interview with Asad Afridi, July 2008, Islamabad.

⁶² “Senate Body on Human Rights for no Haste to Abolish FCR,” *Pakistan Times*, April 1, 2008, <<http://www.pak-times.com/2008/04/01/senate-body-on-human-rights-for-no-haste-to-abolish-fcr/>>.

⁶³ Author interview with Federal Law Minister Farooq Naik, July 2008, Islamabad.

⁶⁴ “Law to Replace FCR Soon,” *Daily Times* (Lahore), September 12, 2008, <http://dailytimes.com.pk/default.asp?page=2008%5C09%5C12%5Cstory_12-9-2008_pg7_18>.

A REFORMS AGENDA

Prior to outlining a FATA reforms agenda, three themes bear reiteration. First, change in FATA is not a goal in itself. Instead, bearing in mind the security situation, the government must gradually replace the current system with a considered alternative, emphasizing sequencing as much as substance. The reforms agenda outlined below is accordingly divided into short-, medium-, and long-term proposals. Second, creating mechanisms through which FATA's people can engage in the reforms process and governance is key. A rhetorical question repeatedly posed during interviews was why the Pakistani state was allegedly championing self-determination in Kashmir but not in FATA. Third, proponents of reforms will have to contend with those who hold arguably romanticized notions of the autonomous tribal and the efficacy of the pre-9/11 system.

In assessing FCR reforms, the agenda below relies on the 2006 FCR Reforms Committee report - a largely sound blueprint that takes a gradualist approach and, importantly, was produced after comprehensive consultations across FATA.⁶⁵ It is promising that the Cabinet Committee is reviewing the report with the FCR Reforms Committee chair heading a key subcommittee. The report renames the FCR Regulation 1901 as FATA Regulation 2008; its opening, contrasted with the FCR's in Table 3, strikes an aptly progressive introductory tone in dealing with FATA's people as citizens – not subjects.

Table 3: Declaration of Purpose⁶⁶

FCR Regulation 1901	FATA Regulation 2008
“whereas it is expedient further to provide for the suppression of crime in certain frontier districts,”	“Whereas, in the changed socio-economic and political scenario in the Federally Administered Tribal Area, it is necessary to make a tribal system of administration judicious and accountable, it is expedient to further amend the Frontier Crimes Regulation 1901 for the peace and

⁶⁵ FCR Reforms Committee, *Frontier Crimes Regulation 1901: Amendment As FATA Regulation 2008*. (2006). The report, for example, retains a provision that bars any or member of tribe from access into settled areas of Pakistan by public proclamation if they act in a manner “hostile, subversive or offensive” to Government of Pakistan, a criteria that seems open to manipulation and abuse.

⁶⁶ Id.

1. Short-Term

The following short-term reforms entail changes in laws and procedures that do not require significant ground intervention; they largely hinge on political will and Presidential approval. Even as implementation issues will remain, these changes will signal to FATA’s people that their concerns are being heard and that the government is seeking a new course for FATA.

- **Extend Political Parties Act**

The Act must be extended to FATA to bolster moderate political forces there. In 2007, the PPP filed a petition seeking this extension in the Supreme Court but the Court has yet to rule on it. Contrary to popular perception, political parties have a *de facto* presence in FATA. In the last election, they put up banners while party leaders came and addressed gatherings. Yet they face considerable restrictions including the religious parties with the deputy provincial head of the Jamaat-i-Islami in NWFP recounting his arrest on several occasions for political activities.⁶⁷ Notably, the only senior bureaucrat or official this author interviewed who opposed extension of the PPA was the Federal Minister of Environment who himself hails from FATA. His reasoning: “people are not ready for this.” 50% of FATA’s people, however, want the act extended while a sizeable 44% oppose it.⁶⁸ Those who oppose the extension accuse political parties of corruption and double speak in talking up reforms when in opposition but not acting on them when in power. This reflects the need for not just the government but all mainstream parties to earn the trust of FATA’s people and get them to buy into the Pakistani polity

- **Narrow And Eliminate Draconian Penalties**

The FATA Regulation prohibits whipping; narrows the scope of collective punishment from the entire tribe to the *plareena* (male descendants of the accused’s grandfather and of the grandfather’s brothers and cousins); precludes women and children less than

⁶⁷ Interview with Zar Noor Afridi.

⁶⁸ *Understanding FATA*, p. 76.

sixteen years from being arrested or detained; and rescinds the right to cause death of a *Pathan* based on reasonable suspicion that he intends to use arms to commit a crime. Narrowing and phasing out these particularly egregious penalties is especially critical from a human rights perspective.

- **Curb PA's Judicial Powers**

The PA has become the symbol of FATA's repressive system. Some blame individuals instead of the institution, bemoaning the absence of a well-trained cadre of officers.

Others believe the current crisis requires empowering an already weak PA.⁶⁹

Nonetheless, curbs on the PA's judicial powers are long overdue. The FATA Regulation requires the PA to, *inter alia*, appoint elders to the *jirga* in civil cases with the parties' consent (currently no consent is required) and to submit a monthly list of detainees to the Governor or his surrogate accounting for the detention. The latter is meant to address incidents heard by the FCR Reforms Committee regarding the PA locking up an individual only for him to languish there indefinitely upon the PA's transfer with his successor being unaware of the detention. The goal should be to ensure the integrity of the judicial process in FATA and check any manipulation of it by the PA.

- **Deliver Speedy Justice**

Unlike the FCR that is largely devoid of time lines protracting the judicial process, the FATA Regulation states that in criminal cases, persons must be produced within twenty four hours of arrest; the PA shall appoint members of *jirga* within fifteen days from the date of arrest; and the PA shall require the *jirga* to submit findings within forty five days. In civil cases, disputes must be referred to the *jirga* within fifteen days. Such fixed timelines, if upheld, will accelerate decision making and decrease the appeal of Taliban-style *Shariah* courts.

⁶⁹ Interview with Arbab Arif.

- **Expand Right to Appeal**

The Regulation calls for a judicial officer to hear appeals within thirty days of the decision and for the FATA Tribunal to also include a judge of the high court - a proposal that the Cabinet Committee is reportedly considering.

- **Accommodate Shariah Rulings**

Although the Taliban and religious right have been the most vocal in their demand for *Shariah*, many of FATA's people wish to live their lives in accordance with Islamic principles. How *Shariah* is understood is a complex question beyond the scope of this paper. What is clear, however, is that FCR reforms must accommodate this desire otherwise the law will remain open to charges of being un-Islamic and prove a rallying point for militants. The FATA Regulation speaks to this by allowing for parties in civil and criminal cases to elect a panel of *qazis* or Islamic judges so long as both parties desire a finding in accordance with *Shariah*.

2. Medium-Term

- **Establish Local Representative Bodies**

Local representative bodies must be created to develop a culture of representativeness and accountability in FATA. Two potential models exist. The first is to resurrect agency councils that recently expired. A key problem with the previous councils, however, was that they consisted of appointed figures “with one king replacing another.”⁷⁰ They were never given a chance to perform due to their circumscribed powers and unelected membership. They must instead be made to serve as a legitimate link between the state and the people. One way to proceed is to “test-run” an elected council in one agency and extend it elsewhere based on performance and security.

A second model would emphasize existing tribal leadership by formalizing the FCR-prescribed Council of Elders and granting it legally defined powers while scaling back

⁷⁰ Interview with Sailab Mehsud and General Aurakzai.

the PA's executive, judicial, and fiscal powers.⁷¹ Indeed, any effort to stabilize and govern FATA must undoubtedly carry the tribal elders who hold sway in their community. Recognizing this role yet perpetuating the existing system, in July, Prime Minister Gilani announced 100 new *lungi* holders in each tribal agency at a gathering with tribal elders in Peshawar. Nonetheless, invoking the sentiments of Jinnah and Qazi Issa, subsidies cannot remain the inducement for cooperation.⁷²

Whether through agency councils or a Council of Elders, the Pakistani government needs to co-opt *maliks* through a political and legal system – not a financial one – that limits abuses of power and ensures that people's voices are heard and needs are met.

- **Extend Supreme Court and High Court Jurisdiction**

The jurisdiction of the Supreme and High Court should be extended to FATA to hear appeals and uphold fundamental human rights enshrined in the Constitution – a privilege accorded to the rest of Pakistan's citizens. Under Article 247(7) of the Constitution, jurisdiction can be granted by Parliamentary law that would then have to be extended to FATA by the President. An accessible high court bench should be established in either one of the agencies or Peshawar to further facilitate the judicial process.

3. Long-Term

- **Create FATA Legislative Council**

The establishment of a FATA Council, similar to that in the Northern Areas, with a clear mandate is necessary to provide a forum for FATA's people to debate and vote on reforms; liaison with the government on development projects; and facilitate mainstreaming FATA for example by introducing a tax culture. Critics fear that the Council will be hijacked by militants and impinge on control of a strategic area or that inter-tribal disputes will preclude cooperation.⁷³ The merits of these arguments aside, as

⁷¹ Joshua T. White, "The Shape of Frontier Rule: Governance and Transition, from the Raj to the Modern Pakistani Frontier," *Asian Security* 4:3, p. 232.

⁷² "Gilani Seeks Elders' Help to Curb Militancy," *DAWN* (Karachi), July 21, 2008.

⁷³ Interview with Habibullah Khan.

the initiative requires pan-agency participation, some of which remain the scene of fierce fighting, the Council's establishment should be postponed. Near-term efforts should instead focus on driving power downwards in individual agencies where possible.

- **Conduct Referendum on FATA's Status**

Proposals for FATA's constitutional status include integrating it into the NWFP; making it a separate province or unit; and retaining its current status. According to the Federal Minister for States and Frontier Regions, the government is considering the first two proposals.⁷⁴ Public opinion in FATA is divided with only 34% wanting a separate tribal province, 28% wanting reforms in existing governance, and 21% wanting to merge with the NWFP.⁷⁵ Ultimately, the mechanism for ascertaining this status is a referendum; however, formalistic integration should not be a priority at this stage. The focus should be on substantive integration by changing laws and institutions on the ground.

- **Transfer Powers from President to Parliament**

Through a constitutional amendment, the President's administrative and legislative powers over FATA ought to be transferred to the Parliament to increase political accountability and representative decision making. As this will require a constitutional amendment, entailing expenditure of time and political capital, this transfer should be deferred. Indeed, in the short- and medium-term, the President's retention and exercise of his direct power under Article 247(5) to "...with respect to any matter, make regulations for the peace and good government of a Federally Administered Tribal Area or any part thereof" may prove a more efficient instrument of change over Parliamentary procedure.

US ASSISTANCE

Although the implementation of reforms is largely an internal issue, the United States can play a limited yet constructive role in advancing this agenda. Despite its significant engagement with Pakistan, it has thus far not done so. Since 9/11, the US has provided

⁷⁴ "Najumuddin Hints Constitutional, Political & Administrative Reforms in FATA Soon," *Associated Press of Pakistan*, August 23, 2008, <http://www.app.com.pk/en_/index.php?option=com_content&task=view&id=50011&Itemid=2>.

⁷⁵ *Understanding FATA*, p. 95.

over \$10 billion in bilateral aid to Pakistan with over 80% going to the military.⁷⁶ Only in 2007 did the US pledge \$750 million for FATA though largely for development.⁷⁷

USAID efforts in FATA, bedeviled by security concerns, have not entailed traditional rule of law and democracy programming. Indeed, according to some analysts, the US has deliberately kept governance reforms “off the table” deferring to the status quo.⁷⁸

The US can no longer afford to continue ignoring governance issues in FATA. As described above, FATA’s flawed governance has yielded space to Al Qaeda and the Taliban directly impinging on US security. In addition, without a more accountable system of rule, US development aid in FATA, which may likely increase under the next administration, will incur waste, fraud, and abuse and reinforce existing power structures.

As such, the US should promote reforms in three key ways. First, it must strategically leverage aid to encourage good governance. For example, to incentivize the development of progressive political institutions and behavior, a limited amount of aid should be funneled through local representative bodies contingent on their meeting certain standards of transparency.⁷⁹ Second, the US should quietly push for select reforms such as the Political Parties Act and FCR amendments.⁸⁰ Third, the US should provide technical assistance for judicial and legal reforms, capacity building, and civic awareness.

BURNING QUESTIONS

As violence in FATA continues, on a scorching summer day in June 2008, angry residents of Kurram Agency protested outside the Parliament House in Islamabad. One banner labeled “Appeal” spoke volumes:

⁷⁶ Craig Cohen and Derek Chollet, “When \$10 Billion is not Enough: Rethinking US Strategy Toward Pakistan,” *The Washington Quarterly* 30:2 (Spring 2007), <http://www.twq.com/07spring/docs/07spring_cohen-chollet.pdf> p. 11

⁷⁷ Embassy of United States (Islamabad), “U.S., Pakistan Sign New \$750 Million Agreement for FATA Development,” September 30, 2007, <<http://islamabad.usembassy.gov/pr-093007.html>>.

⁷⁸ White, “The Shape of Frontier Rule: Governance and Transition, from the Raj to the Modern Pakistani Frontier,” p. 235.

⁷⁹ Id.

⁸⁰ Daniel Markey, “Securing Pakistan’s Tribal Belt,” *Council on Foreign Relations*, Special Report No. 36 (August 2008), p. 35.

“Is Parachinar part of Pakistan? If so, then for the past 14 months: why has Parachinar continuously been in Taliban control? Why is the Tal-Parachinar road continuously closed and in Taliban control? Why is the government silent on fundamental human in Parachinar? God have mercy on the weak and defenseless people and children of Parachinar.”⁸¹

These are questions of grave domestic and international consequence. Part of the answer is FATA’s antiquated and ineffective governance – a glaring example of how a local ill can affect global security. Arms and aid alone cannot cure it. The onus is on Islamabad to politically and legally mainstream this region into Pakistan. For it is painfully clear that one of the Taliban’s greatest strengths in FATA today is the government’s simultaneously overbearing and underwhelming presence. The longer FATA remains beyond the full and responsible control of the Pakistani government, the greater the alienation of its people, the greater the threat from within and without.

The current civilian government seems to recognize the crisis it faces in FATA – one that President Asif Zardari has aptly described as political and not just military in nature.⁸² With the international spotlight on FATA, the government must implement phased reforms leveraging foreign aid and technical assistance. The opportunity to chart a new course for FATA’s people – one that respects the individual’s voice, ensures peace, and dispenses justice – must not be squandered. It is a human rights and security imperative.

⁸¹ “Protests Held Against Violence in Kurram Agency,” *DAWN* (Karachi), June 23, 2008.

⁸² “Strategy to Combat Militancy Worked Out: Zardari,” *DAWN*, 21 July 2008.