

FATA'S MERGER INTO KHYBER PAKHTUNKHWA (KP): CHALLENGES AND WAY FORWARD

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Abstract

The history of FATA reforms can be traced back to 2009-2011 when the Pakistan People's Party (PPP) government introduced reforms in the tribal regions i.e., the extension of Political Parties Order (PPO 2000) and amendments in the Frontier Crimes Regulation (FCR). These reforms, however, have not replaced the out-dated tribal governance structure and the region's special status remains intact. The federal government has recently merged FATA into the KP province, aiming to introduce political, economic, legal, and administrative reforms and to bring the tribal areas at par with the rest of the country. The merger in itself is a bold step to be appreciated. However, the mainstreaming project has some way to go to completion. It is indeed the beginning of a cumbersome process. The major testing task is now its implementation. This article attempts to examine the FATA-KP merger, present and future challenges, and how to make the merger a success story.

Keywords: FATA, Reforms, Merger, Khyber Pakhtunkhwa, Challenges, Way Forward

Introduction

The state-centric literature underlines the importance of state capacity and the will to govern and control territories falling within its national domain. According to Lake, "In a Westphalian and Weberian form of government, the state authority should be final and indivisible within its legally recognized territories."¹ In contrast to this, some states are hosting territories, within their national domain, where the central governments are unable to control and extend their authority. They are facing difficulties to introduce a general governmental structure, imposing political control, and evenly distribute civic goods and services all over the

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¹ David A. Lake, "Hobbesian Hierarchy: The Political Economy of Political Organization," *Annual Review of Political Science* 4, no. 12 (2009): 270.

territories within their national jurisdiction.² These territories fall beyond the actual state control and are generally described as “ungoverned or poorly controlled areas.”³

However, others questioning the validity of the concept and declare it as vague and implausible. To them, ‘ungoverned spaces’ do not mean that these areas are not governable. They are actually governed but different than the universally accepted tenets of governance. According to Patrick, “These areas are alternatively governed, usually by deep-rooted tribal laws and customs devised in a way to arbitrate conflicts, exercise violence, and to meet out justice in the society.”⁴ Likewise, Lake reaches a similar conclusion and states that “political order in these areas has not disappeared. It is exercised by actors other than the state, such as traditional or religious elites, warlords, criminal gangs, and rebel groups.”⁵ However, scholars have a consensus that ungoverned areas are dangerous. It is considered “a potential security threat to the world peace.”⁶ Along with other issues, a general perception exists that these areas have provided a favourable environment for non-state actors to organise and perform indiscriminate activities.

Since its inception, Pakistan has been facing serious governance and state-building issues in some of its peripheral areas. These territories fall beyond the actual state control where the writ of the state is weak, if not fully absent. Analysts have noted that, “in these areas, the national, provincial and district governments have no significant presence and informal systems and practices often play state-like activities, with a hybrid system to give official sanction to informal authorities.”⁷ In this conjunction, a case in point is the FATA region.

Since its assimilation into Pakistan in 1948, the FATA region has been administered through the British imposed system of administration and special colonial laws. Successive Pakistani governments have continuously ignored to develop these areas to integrate them into the mainland governance spectrum. As a result, FATA remained as one of the least developed regions of Pakistan, and its governance issues multiplied many fold. Over the years, this region remained beyond the actual central

² Aurélie Campana and Benjamin Ducol, “Rethinking Terrorist Safe Havens: Beyond a State-Centric Approach,” *Civil Wars* 13, no. 4 (2011): 400.

³ Stewart M. Patrick, “Weak States and Global Threats: Fact of Fiction?” *Washington Quarterly* 29, no. 2 (2006):27–53.

⁴ Patrick, “Weak States and Global Threats,” 33.

⁵ Lake, “Hobbesian Hierarchy,” 272.

⁶ Janosch Prinz, “Pak-Afghan Border among Global High-Risk Ungoverned Spaces,” *The Express Tribune*, October 19, 2015.

⁷ Thomas H. Johnson and M. Chris Mason, “No Sign until the Burst of Fire: Understanding the Pakistan Afghanistan Frontier,” *International Security* 32, no. 4 (2008): 42.

government authority. In these areas, non-state actors and other criminals not only practiced illicit and anti-state activities but also challenged the writ of the state repeatedly. According to an estimate, during the years of 2007-2008, only 37 percent of the territory in FATA remained under the central government's regular control.⁸ Marten concludes that, "the dominance of weapons culture, unique tribal governance system, tough geographical features, ethnic tensions and the presence of militants all these direct to deduce that FATA is an ungoverned region."⁹

Because of the poor governance and law and order issues, there have been consistent calls from the international community and human rights organizations, to reform and integrate FATA into the national mainstream. Therefore, the federal government could no longer absolve itself from the situation in the tribal region. In an attempt to reform and integrate FATA, the government has merged it into the KP in 2018.

The major questions that guide the thrust of this research are: Will the merger scheme be smoothly implemented? What are its future challenges and what should be done to make the merger scheme a success story? To address these questions qualitative-descriptive research method has been adopted, using both primary and secondary sources, with more focus on primary data like 'semi-structured in-depth interviews' and 'Focus Group Discussions' with tribal people, experts, and scholars with comprehensive knowledge on the subject. The Purposive Sampling method has been used to approach the most relevant informants and to get the relevant information. The central argument of this article is that FATA has seen decades of instability and quick fixing of its multidimensional governance and other related issues is not possible overnight. To reform the region, the merger scheme is one of the major steps ever employed which is yet to go a long way to achieve its desired objectives.

Theoretical Framework

The theory of "Political Integration and Political Stability: A Hypothesis"¹⁰ by Claude Ake fulfills the theoretical understanding as it provides a better solution to the problem of integrating the peripheral areas of a state like Pakistan. The process of political integration is defined as "how to construct a single sound political society from a fusion of traditional societies; how to develop cultural homogeneity and values harmony; and how to extort respect and attachment to the claims of the

⁸ "Military to 'Offer PDM Chai-Pani' if They Come to Pindi," *The Express Tribune*, January 11, 2021.

⁹ Kimberly Marten, *Warlords: Strong-arm Brokers in Weak States* (New York: Cornell University Press, 2012), 62.

¹⁰ Claude Ake, "Political Integration and Political Stability: A Hypothesis," *World Politics* 19, no. 3 (1967): 486-499.

state.”¹¹ The author states that the drive for successful integration highly depends on strong social communication among the civic community. It can be developed through social mobilization in society. Social mobilization is defined as “the process in which major clusters of old social, economic, and psychological commitments are broken down and community members are receptive to new patterns of socialization.”¹²

The author acknowledges that the drive for integration is not a smooth process and can generate tensions and alienations among the community. “Those whose power status is challenged in the process may seek to destroy the new order. Those compelled to leave their folk cultures may be feeling lonely, insecure, and perhaps prone to distrust the meaning of their new life.”¹³ This leads the author to a central question such as; what kind of political system is most suitable for carrying out this process? The drive for integrating the peripheral areas of a state can only be successful when a political system is authoritarian, consensual, identific, and paternal. If any of these characteristics are absent, the drive for integration will increase instability instead of stability.¹⁴

Successive Pakistani governments have attempted different strategies to reform and integrate FATA into the national mainstream, but none of them succeeded to achieve its desired results. The question arises why successive integration attempts failed and what should be done to successfully integrate the FATA region into the national mainstream? Embracing the major tenets of Ake’s theory can largely help the policy makers in designing a comprehensive strategy to effectively deal with the FATA integration problem. The merger scheme has created a suitable environment, as all the stakeholders are on the same page to complete the integration process. It demands to be vigilant support and can be used as an opportunity for taking further practical steps to reform, to successfully integrate the tribal regions in the mainland of Pakistan.

FATA Merger into KP and Future Challenges

In an attempt to reform and integrate FATA into the national mainstream, the Pakistan Muslim League Nawaz (PML-N) in 2013, resumed the FATA reform process and resolved to take some pragmatic reform steps. For the purpose to offer policy suggestions about reforms and the likely future status of the FATA, the ‘FATA Reforms Committee 2015’, was constituted. The committee, after thorough homework and consultation with different stakeholders, recommended the integration of FATA in the KP province, as a viable option to reform and integrate FATA.

¹¹ Claude Ake, “Political Integration and Political Stability: A Hypothesis.”

¹² Karl W. Deutsch, “Social Mobilization and Political Development,” *American Political Science Review* 55, no.3 (1961): 634-647.

¹³ Ake, “Political Integration and Political Stability,” 488.

¹⁴ Ibid.

According to Aziz, "The mainstreaming is officially complete and the seven former tribal agencies no longer exist. They are now part of the KP province and may be called as Tribal Districts."¹⁵

The merger scheme was hailed by many and a lot of expectations were associated with it. However, it must be admitted that the proposed reforms package is in the pipeline and is yet to be materialized. The major task is now its implementation which is not as easy as it seems to be. Some challenging factors are anticipated to create hurdles in the way of implementing the current reforms package. Thus, it may be valuable to discuss it in detail, to enlighten the policymakers about the realities on the ground and to take feasible steps to correct them. The next part focuses on internal economic, administrative, and legal challenges to the merger scheme.

Economic Challenges

The first and foremost test for any reform intervention is the availability of resources. According to a government official, "25 percent of reforms in the newly born tribal districts require no much monetary resources, but the remaining 75 percent cannot go without funds."¹⁶ As a result of successive governments' neglect, FATA is one of the least developed regions of Pakistan. According to an estimate, the poverty ratio in FATA is 73.7 percent and the majority of its inhabitants are underprivileged in terms of health, education, and other standards of living.¹⁷ The region infrastructure almost stands devastated, due to successive waves of militancy and indiscriminate activities of the militant non-state actors. It is estimated that around 19,600 commercial units got destroyed only in North Waziristan, which were providing livelihood to approximately 35,000 families from Miranshah metropolis.¹⁸

In addition, a total of 5.3 million people have been displaced from their homes as a result of counter-terrorism military operations.¹⁹ Thus, the reconstruction of destroyed infrastructure, repatriation, and rehabilitation of the internally displaced families, and establishing a brand

¹⁵ Sartaj Aziz, "History of FATA Reforms," *Pakistan Today* (Islamabad), March 8, 2017.

¹⁶ Iftikhar Firdous, "Proposed Merger: Funds Allocation Likely to be a Bone of Contention," *The Express Tribune* (Karachi), February 19, 2017.

¹⁷ "Multidimensional Poverty in Pakistan," United Nations Development Programme, June, 2016, <http://www.pk.undp.org/content/pakistan/en/home/library/aids/Multidimensional-Poverty-in-Pakistan.html.pdf>.

¹⁸ Ashraf Ali and Amna Waheeda, "Hoping for A Better Tomorrow: Aspirations of the Local FATA Community," *Development Advocate Pakistan* 4, no. 2 (June 2017): 46.

¹⁹ Claude Rakisit, "Pakistan's Tribal Areas are Brought in from the Cold," *South Asia Democratic Forum*, no. 122 (2018): 2-13.

new administrative setup in the newly born tribal districts are among the key gigantic tasks that could only be achieved with sufficient resources.

a) Resources Allocation and Redressing Provinces' Concerns

Under the banner of the current ongoing reforms package, the federal government has projected an amount of PKR 121 billion annually, to finance a comprehensive socio-economic and political development plan for the newly declared tribal districts (former agencies), which is estimated to spread over 10 years.²⁰ However, such a generous package has been made without denoting the sources to generate these funds. To keep on the commitment, the federal government is eyeing cuts to the budgets of central and provincial governments in the National Finance Commission (NFC) divisible pool.

It is suggested that out of the total PKR 121 billion, the central government would contribute PKR 52 billion, whereas the remaining PKR 69 billion would be supplied by the provincial units of the federation.²¹ In this connection, Punjab province has to contribute PKR 36 billion, Sindh PKR 17 billion, KP PKR 10 billion, and Baluchistan PKR 6 billion respectively.²² However, the smooth materialization of this formula is not an easy task. The major problem is that there is no existing commitment between the provinces and the central government.

Although most of the members of the National Assembly (MNA) and Senators from other provinces have supported the merger scheme as a viable option, but, when it comes to financing and implementing the proposed scheme they have expressed reservations to share their shares of the NFC award. They have already strongly objected to the central government for three percent cuts to their share in the divisible pool for the security of the China-Pakistan Economic Corridor (CPEC) and one percent each for climate change and sustainable development goals. Given their own needs and already scarce financial resources, the provinces have already expressed their reservations and stated that they are already going short of resources and any additional cuts would create further financial problems for them. Such a situation raises the question that whether the provinces will agree to any further cuts to their shares from the divisible pool.

It is also stated that instead of imposing the burden on the provinces, the center should take care of the newly born tribal districts. The contentions on the part of provinces have already compelled the

²⁰ Syed Adnan Ali Shah Bukhari, "Bottlenecks in FATA's Mainstreaming," *Development Advocate Pakistan* 4, no. 2 (2017): 6-11.

²¹ Ismail Khan, "Discord over Resources may Derail FATA Reforms," *Dawn*, January 14, 2017.

²² Ibid.

federal government to allocate only PKR 26.9 billion for the FATA region in the fiscal budget for 2017-2018.²³ Hence, finance and resource allocation is one of the major challenges. The entire course of the current reforms will be in jeopardy if the availability of funds is not guaranteed in the near future.

b) Integration of the Tribal Informal Economy and Halting the Illicit Businesses

Another testing task in the post-merger period is the integration of the informal economy of FATA into the mainstream and halting the illicit businesses. In comparison to other parts of the country, FATA depicts a different picture, when it comes to the regulation and monitoring of economic activities. The tribal economy has always been informal in nature and economic activities largely remained undocumented and unaudited.²⁴ Such a laissez-faire system has mostly helped in becoming this region a haven for illegal businesses, smuggling, and other undesirable economic activities.

Due to prolonged isolation from mainstream economic activities, FATA remains one of the most underdeveloped and backward region of the country where there is no proper industrialization but only a few small-scale industries. However, due to the precarious situation of law and order, most of these industries almost remain closed. According to a survey, out of 1815 small-scale industries, 92 percent have been closed in Kurram, 73 percent in Bajaur, 53 percent in North Waziristan, and 50 percent in South Waziristan, respectively.²⁵ In such situation, almost 97 percent of households remained dependent on subsistence agriculture and livestock nurturing.²⁶

However, these sectors have also been severely affected due to constant conflicts and militant activities in the near past. As a result, employment opportunities are less and the level of investment in these areas is scary. Such a situation made scores of tribal people vulnerable to different kinds of illicit economic activities and illegal means of earning. A local hailing from Mohmand Agency elaborates that, "Due to the absence of any formal economic activities and employment opportunities hundreds of

²³ Bukhari, "Bottlenecks in FATA's Mainstreaming," 7.

²⁴ Jamal Khan, "Impact of FCR on FATA Economy," Human Rights Commission of Pakistan, Peshawar Chapter, July 2005, <https://hrccp-web.org/hrccpweb/wp-content/pdf/ff/23.pdf>.

²⁵ "Survey-Enumeration of Industries, Service Sector Entities, Labour Force and Identifying Constraints in FATA," FATA Development Authority, March, 2015, <http://fatada.gov.pk/survey-enumeration-of-industries-service-sector-entities-labour-force-and-identifying-constraints-in-fata.pdf>.

²⁶ Ibid.

people are involved in smuggling and black marketing, some to meet bread earning while others for profit maximization.”²⁷

As a result, the trade of smuggled goods and other prohibited items such as smuggled cars, weapons, chemicals, marijuana, etc., have been main businesses with its trading centers in almost seven former tribal agencies. In general, the tribesmen consider smuggling as a legitimate activity and call it ‘*Tijarat*’ (Business).²⁸ According to an estimate around 40 percent of residents of Bajaur, Mohmand and Khyber have been directly or indirectly linked with Bara Market of Peshawar in businesses of non-customed goods and particles.²⁹ Similarly, around 2,200 families in Darra Adam Khel and Bara Tehsils of the Khyber region have been involved in nearly 250 weapon manufacturing industries and businesses.³⁰

Moreover, due to the absence of proper governance setup and other regulatory frameworks, the region has been a fertile ground for drugs manufacturing and associated illegal businesses since the Soviet’s involvement in Afghanistan. In this connection, cannabis plants harvesting and marketing have been rampant in the region. Interestingly, some local farmers used to cultivate it as a regular crop to meet their daily needs. An analyst elaborates it as, “since these people (mostly farmers) have no alternative source of income that is why their daily life survival revolves around the hashish/marijuana crop.”³¹ He further states that “Most of the people in these areas never have enough cash to meet their needs, so they used to get loans for everything. These loans were then paid back after yielding the annual hashish/marijuana crop.”³² Similarly, some people were involved in this activity because of its high-profit revenue generation chances. A researcher elaborates this estimation as “two-acre plot of land cultivated with cannabis is usually expected to make around one million Pakistani rupees. In comparison, the maize crop hardly yields 50,000.”³³ Addressing the issue of illegal drugs in the region is also one of the main challenges for successive governments.

²⁷ Interview from a local belonging to Mohmand Agency (Now Tribal District), July 12, 2020.

²⁸ Muhammad Tayyab Ghafoor, “Impediments Involved in the Integration of Federally Administrated Tribal Areas (FATA) in the National Mainstream of Pakistan,” (Master thesis, University of Baluchistan, 2005), 20.

²⁹ Asif Mian, “Tribal Economy in the Context of Ongoing Militancy,” *Pakistan Institute for Peace Studies* 2, no. 3 (2009): 1-9.

³⁰ Ibid.

³¹ Ghulam Dastageer, “Problems in FATA’s Merger with Khyber Pakhtunkhwa,” *Herald* (Karachi), January 2, 2019, 8.

³² Ibid.

³³ Faheem Mohammad, “Property Rights, Contracts, and Development: A Study of the Traditional Institutions of the Federally Administered Tribal Areas (FATA) of Pakistan,” (PhD thesis, The University of Auckland, 2012), 170.

c)The Extension of Economic Regulatory Frameworks to the Newly Born Tribal Districts

The extension of formal economic regulatory frameworks to the newly born tribal districts is another challenging task. These areas have long been remained excluded from the national mainstream economic regulatory frameworks and formal Banking systems to manage economic activities and monetary transactions. In FATA, as mentioned earlier, economic activities were mostly managed through illegal ways known as the *Hundi* or *Hawala* system, an unofficial way of exchanging and transacting money.³⁴ Furthermore, in the absence of formal financial institutions, the majority of the tribal population used to borrow money from the informal sources³⁵ like from friends, families and other informal markets, while only 0.3 percent was borrowed from formal institutions and banks³⁶

In a nutshell, the mainstreaming project would not be completed without bringing substantial changes in the existing informal economic system of FATA through the extension of formal economic regulatory frameworks and halting illegal businesses. However, the task is not as easy as it seems to be. The major problem to any change will come from some vested interest groups, for whom the existing informal financial system is more profitable. The local people shared a similar concern and stated that “A huge black economy has blossomed in the status quo. It is hard to believe that the mafia of this money will easily step back, abdicate their perks and privileges. They will keep challenging reforms, as change will be a hard blow to their interests.”³⁷

Administrative Challenges

In the post-merger period, indirectly administering the newly born tribal districts and continuing with the traditional tribal governance system is neither possible nor desirable anymore. These areas now need to be governed through the regular administrative machinery of the country. In this connection, the KP province is supposed to take the lead and accept additional responsibility to administer these districts. However, governing these areas and managing its administrative affairs smoothly is going to be a testing task. An analyst endorses this supposition: “It would not have taken more than a week of the officials to complete the files work concerning merging certain departments of

³⁴ Mian, “Tribal Economy,” 7.

³⁵ Khan, “Impact of FCR on FATA Economy.”

³⁶ Sakib Sherani, “FATA Reforms and Socio Economic Development,” *Development Advocate Pakistan* 4, no. 2 (2017): 17-24.

³⁷ Group Discussion with Locals Belonging to Khyber Agency (Now Tribal District), October 10, 2019.

FATA and KP. However, its management is going to be a cumbersome task.”³⁸

a) KP Province Huge Responsibilities and Likely Managerial Issues

Currently, the administrative arrangements in the newly born tribal districts are either considerably absent or largely non-functional. Thus, the extension of regular administrative machinery and effectively managing the affairs of these districts would put additional administrative burdens and economic constraints on the KP government. Pervez Khattak, ex-chief Minister of KP, shares a similar concern that “The province (KP) was already short of resources and subjecting it to further managerial responsibilities and financial burdens would create more problems for it.”³⁹ The tribal people also see the new arrangements with suspicious eyes and they are uncertain about any improvement. An analyst noted down the tribal people's concern that “KP is a poor province that looks to international donors and the federal government to meet its own needs. There are some districts in the province (KP) that are worse-off than some tribal areas. If it cannot manage itself, how will it manage us?”⁴⁰

Another important issue is the equitable distribution of resources and other development portfolios between the newly born tribal districts and other areas of KP. The FATA merger into KP is done on the same footings as happened in the case of the Malakand region merger into mainland Pakistan in 1969. The merger scheme can possibly lead to wrangling among other divisions. It is to be noted that, except Malakand division, all the divisions of KP pay taxes while its development portfolio is equally shared. Likewise, the FATA region does not pay any tax and contributes very little to the national purse, while in the future it is expected to claim its share from the total sum of resources allocated for the KP.⁴¹ Such concessions compromise the rule of law on the one hand and public service delivery on the other hand. In this regard, it is imperative to ensure that in the post-merger period the resources meant for the tribal districts are properly spent on these regions and the other districts of KP are also given proper attention. The general concern is that any mishandling can create further issues and complexities with unprecedented consequences.

³⁸ Iftikhar Firdous, “Analysis: How Ready is K-P for Merger with FATA,” *The Express Tribune* (Karachi), March 13, 2017.

³⁹ Khan, “Discord over Resources.”

⁴⁰ Danyal Adam Khan, “Why the Most Ambitious Initiative to Change FATA’s Status is put on Hold,” *Herald* (Karachi), May 25, 2018, 11.

⁴¹ Mohammad Ali Babakhel, “Reform for Peace,” *Dawn* (Islamabad), December 20, 2017.

b) Capacity Building of the Line Departments and Appropriate Mechanism for Distribution of Powers

Among the manifold gigantic tasks ahead, capacity building of the line departments, which are responsible to administer and manage the affairs of the tribal districts in the future, is another must task. It is one of the necessary conditions to implement the said reforms package in true letter and spirit. For example, the FATA Secretariat could not even spend PKR 23 billion funds allocated for the annual development program in 2017-2018. Out of this, probably only half has been spent effectively.⁴² Similarly, there is proper auditing mechanism for the annual expenditures in the FATA region and the tribal administration has been generally known for its poor management and rampant corruption.⁴³ Thus, the past experiences hint that without efficient and workable administrative and managerial arrangements the latest set of reforms will go nowhere and can even lead to further problems and complexities. An analyst shares a similar concern and states that "In case the promised funds (PKR 120 billion) are provided, perhaps a bigger challenge would be to spend the money timely and transparently because corruption and lack of capacity of the relevant institutions have always been a problem."⁴⁴

In addition to capacity building, it will also be crucial to avoid overlapping roles and responsibilities among different institutions. Recently, the tribal region's affairs were run by three agencies—the FATA Disaster Management Authority (FDMA), the FATA Secretariat, and the FATA Development Authority (FDA) respectively. In the post-merger period, the overlapping roles and responsibilities can lead to complexities and will have negative impacts on the managerial affairs of the tribal districts. Thus, it is imperative not only to strengthen the capacity of the existing institutions but to also develop a smooth and efficient system of coordination among them.

⁴² Maheen Hassan and Umer Akhlaq Malik, "FATA Mainstreaming: Placing People at the Centre of Development," *Development Advocate Pakistan* 4, no. 2 (2017): 9-14.

⁴³ Mazhar Ali Khan, "Social, Political and Economic Implications of Frontier Crimes Regulation 1901, in FATA, Pakistan," *Asian Journal of Social Sciences & Humanities* 3, no. 1 (2014): 250-261.

⁴⁴ Rahimullah Yusufzai, "Challenges of FATA Merger," *Institute for Policy Reforms*, June, 2018, <https://ipr.org.pk/wp-content/uploads/2018/06/Challenges-of-FATA-Merger.pdf>.

c) Land Mapping and Land Settlements in the Newly Born Tribal Districts

Besides other administrative arrangements, land mapping and settlement in the newly born tribal districts is also a big problem due to seclusion from the mainstream regulatory frameworks. In the past, land mapping and divisions were mainly managed through informal ways and tribal customs, known as “*Wesh*” (division on inheritance).⁴⁵ Similarly, some of the lands remain un-demarcated and different tribes claim their collective ownership, called *Shamilat* (community lands).⁴⁶ These lands are owned collectively, and can be used and benefited from, but only with the consent of the concerned tribes.⁴⁷ However, due to the complex nature of these lands and collective ownership, it has rarely been utilized and has always been the major cause of enmity and conflict among different tribes and clans. Local believes that, “since there are no proper land records, thus no one knows who owns what. Its readjustment and proper official documentation will ignite tensions and can lead to communal disputes, besides activating controversies on the judicial front.”⁴⁸

During the fieldwork, the local people also shared their concerns about previous deals and commitments related to land selling and purchasing, and stated that it is leading to fresh issues and clashes. According to them, “in the past people had sold and bought lands from each other. At that time the price of these properties was very low and now, given the situation going to normalcy, the worth of these lands is manifold. After realizing the worth of the sold properties, the selling parties are now demanding the abandonment of the past deals and reclaim the ownership.”⁴⁹ A friend from South Waziristan shared a similar story and stated that “years before we had bought 45 Kanal of land from a family, with a low cost. Now the family is asking for the cancellation of the past agreement and considers it is their ‘*Nikat*’⁵⁰ and should be given back

⁴⁵ James William Spain, *The Way of the Pathans* (London: Robert Hale, 1962), 89.

⁴⁶ In Pashtun society, lands that are demarcated are assigned to individuals as private property, whereas land that is not demarcated as such is held as common property by various tribes, commonly referring to as *Shamilat* property.

⁴⁷ Mohammad, “Property Rights, Contracts, and Development,” 110.

⁴⁸ Group Discussion with tribal elders belonging to Mohmand Agency (Now Tribal District), March 1, 2020.

⁴⁹ Group Discussion with tribal elders belonging to Bajuar Agency (Now Tribal District), March 7, 2020.

⁵⁰ *Nikat* is derived from *Nikah* (grandfather). So, *Nikat* means a piece of land inherited from the grandfather. It is a well-known tradition in the Pashtun tribal regions.

to them. It has led to a serious clash between the two families and up till now six people, three from each family, have lost their lives.”⁵¹

The stories from other ex-agencies reflect a similar situation. According to the locals from Bajaur tribal district, the region is already observing disputes over land mapping and ownership. They stated that “due to the military operations in Bajaur Agency, since 2008-2013, a huge market consisted of about one thousand shops has been bulldozed in the Khar area. Now it is difficult to demarcate and identify its real ownership claims. Such demographic changes have already caused disputes among the local people and in the future, when formal municipal laws and regulations will be applied, it could ignite more tribes conflicts”.⁵² Similarly, Geo News reported a clash between two groups over land settlement in South Waziristan, which left four people dead and two injured.⁵³ *Dawn News* also reported clashes between two rival groups over land ownership in Kurram District on 29th June 2020 resulted in the killing of twelve people and getting many injured.⁵⁴ The conflict took place when one group started construction on what the local people affirmed as *Shamilat*.

Legal Challenges

Given the fast-changing circumstances, the previous administrative and legal systems of the tribal regions cannot work properly and need improvement. It is only possible when the formal laws and regular administrative machinery of the state are extended to these areas. However, analysts have warned that the extension of a number of Pakistan laws and other regulatory frameworks may lead to complexities and insecurities among the tribal population. It can lead to a situation similar to that of Swat region, when it was abruptly merged into mainland Pakistan in 1969 without any prior preparation and proper arrangements.⁵⁵

Since the inception of Swat state in 1915, it had been mainly governed according to the local customary laws and mores, mostly made by the local *Jirga* (council of elders) or the ruler himself.⁵⁶ The situation,

⁵¹ Interview with a friend belonging to South Waziristan Agency (Now Tribal District), July 7, 2020.

⁵² Group Discussion with locals belonging to Bajaur Agency (Now Tribal District), June 8, 2020.

⁵³ “Geo Television News, “A Clash between Two Groups on Land in South Waziristan,” January 4, 2020, <https://www.geo.tv.pk>.

⁵⁴ “Kurram Tribesmen Clash over Land Ownership,” *Dawn* (Islamabad), June 29, 2020.

⁵⁵ Mohammad Ali Babakhel, “Before Merger,” *Dawn* (Islamabad), April 19, 2018.

⁵⁶ Sultan-i-Rome, *Swat State (1915-1969): From Genesis to Merger* (Karachi: Oxford University Press, 2008), 134.

however, totally changed when it was merged into Pakistan. The abrupt extension of Pakistani regular administrative machinery and formal laws led to grievances and unrest among the local population. The reason was an understanding of the local customs and unfamiliarity with the state's regular laws as well as the time-consuming courts procedure.⁵⁷ Owing to the grievances of the local population, the government introduced the Provincially Administered Tribal Areas (PATA) regulations in these areas in 1975.⁵⁸ These regulations were a blend of regular formal laws of the country and the informal customary laws which were then enforced.⁵⁹

However, the regulation proved to be a futile attempt, and instead of solving the problems and redressing the grievances of the people it created further complexities and ambiguities in their minds. A group of lawyers submitted an appeal in the Peshawar High Court and demanded the dismissal of the PATA Regulation in the late 1980s. The Court gave its judgment in February 1990 in favour of the petition.⁶⁰ Subsequently, in 1994 the Supreme Court of Pakistan ruled that the PATA Regulation was unconstitutional and that customary tribal courts, administered by local notables, were no more legal and had to be replaced all over the region by formal and regular court system of the country.⁶¹ The decision created a legal vacuum in the region, as the already in force system lost its vitality and the new arrangements had yet to take place.

Such a situation created a kind of governance and legal vacuum in these regions. It paved the way for Maulana Sufi Muhammad's movement *Tehrek-i-Nifaz-i-Shariat-i-Mohammadi* (TNSM) for the implementation of the Islamic Sharia System.⁶² Keeping in view the grievances and resentments of the people, the TNSM filled the vacuum and carefully exploited the local population, by promising them to solve their problems and issues. The attractive slogan of the TNSM was that the Islamic Sharia system will provide them with a simple procedure where cases will be decided quickly and justice will be cheap as practiced in the past.⁶³ They also chanted the slogan, "Judges in civil courts were corrupt and had little knowledge of regional mores, while state-educated lawyers were little better than jackals".⁶⁴ Gradually, they succeeded in creating a negative perception among the people about the regular law and court system.

⁵⁷ Ibid.

⁵⁸ Babakhel, "Before Merger."

⁵⁹ Khadim Hussain, "Truth about the PATA Regulation," *Dawn* (Islamabad), April 16, 2008.

⁶⁰ Rome, *Swat State*, 146.

⁶¹ Hussain, "Truth about the PATA Regulation."

⁶² Imtiaz Ali, "Militant or Peace Broker? A Profile of the Swat Valley's Maulana Sufi Mohammad," *Terrorism Monitor* 7, no. 7 (2009): 1-10.

⁶³ Ibid.

⁶⁴ Ibid.

Consequently, the TNSM capitalized on the grievances of citizens and carefully exploited the situation to their ends that resulted in a full-swing militant insurgency in Malakand and other adjacent regions during 1994, and subsequently in 2008-2009, which caused havoc to the region and inflicted violence to its people on multiple accounts.

The same situation is currently being experienced in the newly born tribal districts. In the absence of any formal governance and judicial system, the tribal people manage and resolve their issues according to the formal tribal system of governance and justice system. The people are used to this system and understand its procedures very well. In the post-merger scenario, the regular Pakistani laws are now planned to be extended to these areas. The number of these laws is 144, which include the Pakistan Penal Code (PPC), Code of Criminal Procedure (CCP), Civil Procedure Code (CPC), and *Qanoon-i-Shahadat* Order 1984, along with several other minor laws.⁶⁵ Due to the complex nature and involvement of too much formalism, technicalities, and procedural complexities of these laws, understanding these procedures for a layman without any technical support is impossible.

Against this backdrop, analysts have warned that the extension of formal laws into the tribal regions and its indigestion by the tribal population will probably be problematic. It may lead to confusion among the locals and ultimately the rejection of the formal laws and other legal frameworks. Furthermore, they may face difficulties in how to initiate their cases and what timelines and procedures to follow. In this regard, Khattak says; "Majority of the tribesmen even cannot spell out their names. They are even extremely unaware of what joining with the KP province means for them."⁶⁶ The expensive and time-consuming procedures in the formal court system may also ignite unrest among the tribal population, as the informal tribal system of justice was less expensive and speedy. Mohmand endorses this supposition that "in tribal regions, the *Jirga* system usually resolved disputes at low cost, with a simple procedure and within a time frame of not more than six months, while in the rest of the country cases linger indefinitely."⁶⁷ Given this ground reality, there are serious concerns among the tribals. They see the merger scheme and other associated new arrangements with suspicion. The general tribal perception is that the extension of regular laws and formal administrative machinery would be nothing more than replacing

⁶⁵ Waseem Ahmed Shah, "The Proposed Rewaj Act: A New FCR," *Dawn* (Islamabad), May 24, 2018.

⁶⁶ Abdur Rauf Khattak, "Reforms to the Federally Administered Tribal Areas (FATA): An Unresolved Problem," *Asian Affairs* 48, no. 3, (2017): 529-543.

⁶⁷ Rustam Shah Mohmand, "Manifold Challenges Lie ahead after FATA Merger with Khyber Pakhtunkhwa," *The News* (Karachi), July 9, 2018.

the corrupt system of a political agent with a more corrupt police and regular court system.⁶⁸

Conclusion

In comparison to the previous reform initiatives, the merger scheme is a bold step and must be appreciated. However, it does not complete the mainstream project. It must be admitted that the proposed reforms package is in the pipeline which is yet to be materialized. The full-scale integration of the region is complex and involves various dimensions. It entails the political, legal, administrative, social, security, and economic aspect of mainstreaming. Therefore, developing the newly born tribal districts, improving the key indicators of good governance, the provision of basic constitutional rights to its population, the extension of legal and economic regulatory frameworks to these regions, and guaranteeing better rule of law are some of the gigantic tasks that the current and upcoming governments are supposed to deal with. It requires huge resources, serious commitments on the part of the government, and above all great patience and perseverance in the face of various issues and challenges.

Bringing change into an area as volatile as the FATA region is indeed challenging, but doing this will have its paramount significance for this region and the country as a whole. The current reform package has created a suitable environment. It demands to be vigilantly cashed and used as an opportunity for taking further practical steps, to meaningfully materialize the mainstream project and transform these areas into a normalized territory. FATA is rich in natural resources but largely remains unexplored. If the situation in these areas gets normal and the natural resources are properly explored and extracted, the region has the potential to play its role in national development. To overcome the aforementioned challenges the article offers the following future guidelines for policymakers which essentially may not provide a complete solution to the issues, but can help in laying a foundation for building a viable structure.

Way Forward

1. For any reform intervention and its successful implementation, winning the battle of the minds and hearts of the tribal people is a necessary condition. For this purpose, the government should work closely with tribal people and give them the impression of goodwill, kindness, and care.
2. Introducing developmental projects and reconstruction of the destroyed infrastructure and community life must occur on a priority basis. For this purpose, the government must set aside

⁶⁸ During the field work majority of the tribal people expressed this concern.

- its entire low level and non-productive development works in the rest of the country for at least three years and divert maximum funds for the reformation and development of the newly born tribal districts on the model of German unification.
3. The tribal people see the merger scheme and other associated reforms with suspicious eyes. It is suggested to exploit the tribal social standards and customs and blend them with the regular laws. Initially, the tribal people's response to these laws and regulations might be a big 'no'. But under the changing circumstances, and by educating them about its importance and usefulness in the long run they will accept reforms and regulations.
 4. In the post-merger period, since the KP province is taking all the additional responsibility, therefore, it needs to be supported and provided with all the required resources. Therefore, both the provincial and federal governments, irrespective of their political differences and regional interests, should come forward and play their part in materializing the merger scheme.
 5. The government should engage these people in productive economic activities, by offering jobs and other alternative sources of income. If the tribal people are given job opportunities and alternative economic activities then they will have no reason to continue illegal economic activities and drug trafficking.
 6. To ensure realistic development planning in the post-merger scenario, the existing census statistical data about the FATA region must be rectified and updated. It will help in accurately allocating the due share of the newly born tribal districts in the total sum of resources allocation to the KP province and to avoid any kind of further confusion.
 7. The inter- and intra-tribe disputes and the periodic militants' attacks are some of the issues that are likely to jeopardize the prospects of peace and stability in the tribal society. Therefore, it is recommended that permanent military cantonments should be created in FATA, to effectively deal with any future disturbing situation.

