



Communities for Change

First Consultative Dialogue

Constitutional Status of FATA: The Way Forward

March 19-20, Islamabad



Community Appraisal & Motivation Programme

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Background:

The Past and Present of FATA

The Federally Administered Tribal Areas (FATA) is made up of seven Tribal Agencies and six adjacent Frontier Regions, with a total population of 3.1 million (figures from the 1998 Census). Peshawar is the nearest city within the North West Frontier Province (NWFP) of Pakistan, and the Governor of NWFP exercises administrative authority over the area.

It is an area of great beauty and home to a people, the Pushtuns or Pukhtuns, with an incredible history of conflict and resilience. It is also an area of extreme need, with appalling health, educational and socio-economic indicators, a hostile climate and a legacy of both internal and cross-border conflict. Although geographically and politically a part of Pakistan the region receives little support from its own government, and a lack of awareness and uncertainty regarding the security situation had left it largely ignored by the international donor community.

The majority of the largely rural population depends on forestry, livestock and crops (maize, wheat, rice and vegetables) for subsistence, but less than 10% of the total area is farmable, and the proper marketing of farm produce is limited by the lack of roads and cold storage. Due to the lack of employment opportunities many young adults migrate to cities in search of work. Poverty and illiteracy rates are high, with only 40% of men and less than 3% of women able to read. This traditional Muslim society is male-dominated, with women generally subject to strict Pardah (veiling) and restricted to their homes and agricultural work in the fields. Tribal loyalty remains strong, and the Jirga (a Pathan assembly in which all public and private affairs have

traditionally been settled) still contends with the state judiciary system.

The sixty years neglect by the successive governments has created numerous social, political, security, and economic problems in the FATA. There is widespread depression, especially among young men, because of the economic, political and security situation. Many are turning to fundamentalist religion. This might act as a safety valve except that in neighbouring Afghanistan and widely throughout the region, Islamist extremists have been viewed as opposition to state power and potentially dangerous, making the security situation volatile, with regular outbreaks of fighting between rival tribal and sectarian groups, and between government security forces and the Taliban.

Constitutional Status of FATA

The 1973 Constitution of Pakistan deals with the Tribal areas separately under Sections 246 and 247. Listing the areas that comprise the tribal belt under the Federal and the Provincial Government, the constitution proclaims that the jurisdiction of the Supreme Court and Higher Courts of Pakistan, the institutions guaranteeing fundamental rights





to the Citizens of Pakistan, will not be extended to the tribal areas. The constitution further provides that the President of Pakistan will legislate and make decisions about the area.

Under the Independence of India Act, 1947, 600 Maliks from the area announced their accession to Pakistan, while continuing the governance system under Frontier Crimes Regulation (FCR) 1901, and maintaining the status quo. FATA is being governed under an archaic and fragile system that lacks any form of checks and balances and does not hold the political administration/ruling elite accountable for its actions. The media and journalists being governed by FCR cannot monitor the development activities or bring the corruption regarding the development funds to light. Further since the development activities neither focus on, nor are in consultation with the local populace, they end up being spent at the most unproductive projects. Consequently, the people are deprived of basic health facilities, education, chances at economic uplift and infrastructure. The ongoing military operation has further demolished what sparse infrastructure the area had, at the same time forcing people to flee their homes.

The continued apathetic attitude of the national and international organizations

towards the people of the area, as well as the general perception that the locals will not be able to make decision regarding their future, has aggravated the people.

Consultative Dialogue and the Way Forward

Policies for FATA are made at the federal level and people of FATA are not given any role in this process. These policies are not demand driven but supply driven with a straight jacket approach. Development programmes and plans are developed in Islamabad and local voices have never been properly incorporated. In the 63rd year of Independence the people inhabiting this part of Pakistan are still denied the freedom of expression, association and communication, the fundamental rights as well as the right to make laws for themselves and the power to shape their own future. They still live under the same dated British colonial system. The peculiar system of administration, wherever the people are governed through their local chieftains called Maliks, through financial strings controlled by Federal Government and exercised by its official called Political Agent.

There is substantial agreement on the need for reform in governance, to introduce accountability and greater political participation, and demand for Human Rights enshrined the 1973 Constitution, however, views differ on the nature, extent and pace of change. Much attention to-date has focussed on the Frontier Crimes Regulation (FCR), a product of the British colonial period still in force which is based on collective responsibility and the pre-eminence of the Political Agent, commanding executive, judicial and law enforcement powers. This has so far enormously undermined the human dignity of the local tribal society. Recently the Cabinet Committee on FCR

submitted its recommendations report on FCR amendments to the President of Pakistan, which are yet to be implemented. These recommendations aim to revise discriminatory provisions in the FCR to bring them in line with constitutional guarantees, and decrease the powers of the Political Agent. Some argue that while such amendments 'soften' the FCR, and reduce the possibilities of abuse inherent in the system, they will not remove all discriminatory measures.

Community Appraisal and Motivation Programme (CAMP) is closely working with the tribal communities and civil society of FATA on the issues of development, governance and security through various projects. The organization is working closely with the stakeholders of the area to facilitate and create a sustained and viable grassroots movement, which would assert and protect the social, political and economic rights of the people.

With support from the Embassy of the Federal Republic of Germany, Islamabad, CAMP initiated a 21 month project in May 2009, titled 'Communities for Change'. The objective of this project is to empower the people of FATA to claim and defend their social, political and economic rights, as well as actively develop their resilience to sectarian and inter-tribal conflicts and influences.

As a part of the project, CAMP has initiated a series of five dialogues, the first of which took place from 19 - 20 March, 2010. The two-day consultative dialogue focused on the basic issues facing the people of FATA. It aimed at gathering the opinions of people from different walks of life and to come to a consensus regarding the future governance structure of FATA: whether the areas should be merged into one province, and be governed by an elected council; how should

future insurgencies and their effects on development and infrastructure of FATA be dealt with, and other related issues that the locals may bring up.

The dialogue begins

Mr. Naveed Shinwari opened the discussion presenting the historical perspective and the current constitutional status of FATA. To understand the overall opinion of the people of FATA, representatives from different walks of life were invited to express their opinions. Distinguished participants included Justice (R) Mian Muhammad Ajmal, Former Ambassador Ayaz Wazir Ali, Senator Hafiz Rasheed, Abdul Wahab Toro (ANP), as well as Federal Minister for Environment Hameed Ullah Jan Afridi. Maliks and journalists belonging to FATA were also present to voice their views.

Expert Opinion

Recounting the historical perspectives of the FCR, Mr. Ayaz expressed the opinion that it was an inhuman law and continuation of it in a part of Pakistan was a reflection of the lack of governmental interest in the fate of the population of FATA. He demanded a change in the political and administrative setup of FATA and further said that FATA should be made a separate province with its own assembly,



right to amend the constitution and access to its own resources.

Justice (Retd.) Mian Muhammad Ajmal also addressed the gathering. He explained the amendments suggested in the FCR starting with the change of name to FATA Regulations. He explained that generation gap and approaches being drastically different in FATA, there were all types of opinions; some wanted FCR maintained as it is, others wanted it completely abolished. He explained that keeping in view the changing circumstances, a lot of changes have been made and provisions have been left for further changes as the views of the local population become more progressive. He specifically highlighted the decreased powers of the Political Agent and the fact that the judicial powers will be divided between jirga and FATA Tribunal that will be on the pattern of session courts and will be formed of members eligible to preside over high courts or shariat courts. Obsolete laws and sections have been completely removed and people now have a right to ask for bail. He was also of the view that people of FATA have great political awareness and supported political reforms for the area. He concluded by saying that a comprehensive development package for FATA will take the people and the area a long way forward.



Stance of Political Parties on the Status of FATA

Mr. Shaukat Ullah Khan, the next key speaker praised the efforts of Justice (Retd.) Ajmal Mian in forming the proposal for the amendments to the FCR after consultation with the tribal people from all walks of life and then developing consensus on it. He blamed the military operation for slowing down of the process of implementation of the amended FCR, thus delaying a long-awaited change for the people of FATA. He said that while many of his parliamentary colleagues from FATA supported the idea that FATA be merged in NWFP, and the laws and constitution of Pakistan be extended to that area, he himself held a different opinion. This being the opinion of the majority, it was also extended to the President of Pakistan but as yet had elicited no response. That FATA be made a separate province with its own governing council, on pattern of Gilgit Baltistan, was the opinion held by Mr. Shaukat.

Senator Hafiz Rasheed expressed his complete agreement with Mr. Ayaz and went on to bitterly criticize the military operation and the ensuing destruction caused by it. He said the development of the area was marred by unchecked corruption. He blamed that the senators from FATA were not taken into confidence for the operation and the Constitutional Committee. Mr. Shah representing Jamat-e-Islami held US responsible for the severe plight of the tribal people.

Federal Minister for Environment Mr. Hameed Ullah Jan Afridi greatly praised the efforts of Justice (Retd.) Ajmal Mian for building consensus amongst the people of FATA on the proposed amendments to the FCR. However he held that the locals were as yet not ready for the political reforms, or from transition from FCR to the Pakistani Law. It was his suggestion that the area be made a separate province and that the

positive aspects of the tribal traditions, such as jirga, be retained while the negative aspects should be removed. Since the political parties had never taken a stand on the special status of FATA, he said that they will not be able to lead the people of the area. He said that while the implementation of the reformed FCR had been delayed due to the military operation, an elected Council representing FATA with mandate and power could soon turn things for the better.

Summary of Discussions

While the participants sought different solutions to the problems of FATA, they agreed that the present system was obsolete and should be amended. The majority held the opinion that FATA should be made a separate province with its own governing body, at par with the units of Pakistan. Opinion was also expressed that before embarking on any such measure, the

people of FATA should be taken into confidence and their opinions should be asked and valued.

Group Work and Presentations

The aim of the dialogue was to develop a consensus between the participants about the future of FATA for which they were divided into groups, so that their views could be channelized and reflected. The participants were divided into different groups according to their own wishes. The people joined the groups discussing their topics of interest, ensuring enthusiastic participation. The first group discussed the topic 'Whether FATA should be merged with NWFP?' They decided that it should and gave various reasons in favour of their stance. Group II discussed 'Should FATA be made a separate province?' They gave their opinion in affirmative. Group III discussed 'Structure of FATA Council' and made presentations regarding their suggestions. Group IV discussed the short term and long term strategies regarding 'Security and Development in FATA'.



Group Presentations

Group I: Whether FATA should be merged with NWFP

To this the group decided in affirmative. The detailed reasons, benefits and doubts were also presented by them.

	Reasons	Benefits	Doubts
Group I FATA should be merged with NWFP	<ul style="list-style-type: none"> • Sense of deprivation against tribal people • Violation of basic human rights for the last 62 years • Easy grounds for the violation by establishment • Disunity creating weakness amongst Pakhtuns • Lack of political and democratic values • Extremist forces and attitudes • Gap between Tribal and Pakhtun traditions • Lack of opportunities for higher education for Tribal students • Divided resources of FATA and NWFP • Weak position of Pakhtuns in the centre • Tribal's ruined position due to the separate status as in case of recent conflicts • Inter-tribal conflicts and enmity 	<ul style="list-style-type: none"> • Sense of deprivation will be minimized • Unity amongst Pakhtuns would stop the violation of their rights • Internal and external conflicts will be easily resolved • Unity will make them strong • Social fibre of society will strengthen and leader of national stature will be born • Democratic and peaceful sources will be stronger • Pakhtun traditions will take force instead of Tribal traditions • Students will be admitted on open merit • Pakhtun resources will be earmarked for them only • They will be better represented in the centre • Security problems will be solved like they were in Dir, Swat and Buner • Inter-tribal conflicts will end 	<ul style="list-style-type: none"> • Temporary problems with judicial system and police • Natural resources could be controlled by government • Temporary problems due to land revenue, tax and registration

Group II: Should FATA be made a separate province?

The second group discussed the dynamics of making FATA a separate province and the related issues.

Group II:	Reasons
FATA should be made a separate province (Proposed name: Qabailistan)	<ul style="list-style-type: none"> • Article 1 (2c) of the Constitution of Pakistan declares FATA to be the fifth unit of the country • Around 15 million population of the area have the same language, culture and traditions • Elected council will legislate about administrative, judicial and social issues • Conflicts and lawlessness will end as the people will have better job opportunities • Vast Natural resources of the area will be used for the benefit of the people • Geographical dynamics of the area are of international importance since it is the gateway to Middle Eastern and Central Asian countries • 10 dams can be constructed in the area through low investments that can help cover the water and power supply for the whole nation

Constitutional Status of FATA: The Way Forward

Group III: FATA Council

The third group discussed the structure of the FATA Council and the rules of governance that it should follow.

Group III	Structure	Reasons	Benefits	Doubts
FATA Council	<ul style="list-style-type: none"> Rules of business of FATA Council should be like provincial assembly Agencies and FRs should have representation according to population Members of councils should be equal to MPAs Councillors should be equal to Ministers of Provincial Assembly Chairman Council should be equal to Chief Minister Councillors should be from Council Members Council members should be chosen based on adult franchise; other nominations should not be accepted Membership of council should not be dependent on the designation of the individual Women and minority should be represented according to the decision of the council Jurisdiction of President and Governor should be connected with the approval of the council 	<ul style="list-style-type: none"> Fata is not part of the national main stream Lack of leadership Lack of institutions Elite class controls governance Talent is not allowed to develop Poverty and underdevelopment National and international organizations do not have access to FATA Will pave way for gradual and continuous change 	<ul style="list-style-type: none"> Basic human rights will be ensured Legislation will be done at the local level Sustainable and fast development Local leadership will emerge Immediate and easy justice Powers to the grassroots and people involvement in the process Checks and balances will be introduced Equal opportunities Local resources will be better utilized Real democracy will prevail Tribal laws will be amended according to popular will Increase in awareness and wisdom People will be empowered Better opportunities of education and health 	<ul style="list-style-type: none"> Whether the council will be elected or selected Beneficiaries of the status quo will create hurdles Establishment could create hurdles Lack of education could be cited as a hurdle

Group IV: Security and Development

The group discussed the long term and short terms steps for sustained security and development of the area.

Group IV:	Short term Security Measure	Long term Security Measures	Short term Development Measures	Long term development measures
Security and Development in FATA	<ul style="list-style-type: none"> Establishment of Peace Committees at Village Level Banning all those elements who spread hatred (Sectarian and Extremist Violence) Trust Building measures between Govt. and Communities) Taking into confidence local community before starting any operation Strengthening of existing traditional institutions like <i>jirga</i>, <i>lashkar</i> and <i>salweshti</i>. 	<ul style="list-style-type: none"> Trained and well equipped Levies and <i>Khasadar</i> Force Coordination among Law Enforcement Agencies Strengthening of Law Enforcement Agencies Role description of Law Enforcement Agencies 	<ul style="list-style-type: none"> Establishment of vocational and skills development centers Recruitment of local staff at FATA level Human Resource Development Extension of Voluntary Social Welfare Act etc. 	<ul style="list-style-type: none"> Physical development (roads, buildings, dams) Natural Resources Management (forest, agriculture, livestock and minerals) Establishment of Reconstruction Opportunity Zone (ROZs) Devolution and decentralization of powers Codifying tribal customs (Rewaj) Preserving Pukhtoons' literary works

Reaching Consensus:

Subsequent to the above group discussions and presentations, another group discussion was conducted to reach a solid conclusion regarding the future constitutional status of FATA and the development activities for the short term and long term relief of the people. Two individuals were taken from each group and under the guidance of Justice (Retd.) Mian Ajmal discussed the final recommendations. After discussing the different proposals presented by the groups earlier, the following points were agreed upon:

- The tribal areas should be given an elected, empowered legislative assembly or council with all the members elected by the tribal people themselves;
- The assembly or council should have the power to elect its own speaker and deputy speaker and the status of the leader of the house should be equivalent to that of the Chief Minister of the other provinces;
- According to Article 1(2c) of the 1973 Constitution of Pakistan, the tribal areas are a territory of Pakistan; therefore the tribal assembly or council should have all the powers of its status;
- FATA the judiciary should be separated from the administration; a civil judge or judicial magistrate should be appointed in each of the agency/subdivision, and right of appeal in the higher courts against their judgements should be provided;
- All Frontier Regions (FRs) should be merged into the agencies according to geography and nationality. Articles 246 and 247 of the present



constitution should be amended accordingly.

- The Political Parties Order 2002 should be extended to the tribal areas;
- For long term peace of FATA, better training of, and coordination between Levis and Khasadar Forces should be ensured;
- Education, technical expertise and employment for the tribal youth should be ensured on revolutionary basis;
- ROZs and excavation of Natural Resources should be ensured for economic development.

Annex I: Group Members

Group I

1. Shams Momand
2. Mairaj Afridi
3. Abdul Wahab
4. Mohammad Alamgir
5. Ghulam Khan Garbaz
6. Misar Momand
7. Syed Ahmed Safi
8. Rashid Ahmed Momand
9. Aimal Afridi
10. Liaquat

Group III

1. Mohammad Zahor Shah (Advocate)
2. Zarnoor Afridi
3. Safdar Hayat
4. Bazar Gul
5. Noor Zia Afridi
6. Rahat Shinwari
7. Aftab Ahmed Mohmand
8. Asim Shafi
9. Shah Jahan
10. Syed Rehman
11. Mukarram Khan Afridi

Group II

1. Abdul Kareem Mehsud
2. Taj Mahal Afridi
3. Shehsawar Momand
4. Ikram Ullah Jan
5. Badri Zaman Momand
6. Malik Abdur Razzaq
7. Malik Khan Marjan
8. Malik Khalid Khan
9. Ibrahim Khan Shinwari
10. Justice (Retd.) Mian Mohammad Ajmal
11. Syed Wali Shah

Group IV

1. Dr. Sher Alam
2. Nizam
3. Gul Mohammad
4. Jabbar
5. Abdur Rehman
6. Irfan Turi
7. Zulfiqar
8. Musarrat
9. Abdullah Jan
10. Noshad
11. Amir Luqman

Annex II: Press Release

PRESS RELEASE: Constitutional Status of FATA

Islamabad: A two-day consultative dialogue was held on “Constitutional Status of FATA: The Way Forward” by the Community Appraisal and Motivation Programme (CAMP) on 19 and 20 March 2010, at a local hotel.

In addition to an open discussion and exchange of ideas, three proposals regarding the future constitutional status of FATA were discussed in detail. The event was attended by prominent personalities including Justice retired Mian Ajmal who also led the discussion, MNAs Kamran Khan, Noor-ul-Haq Qadiri, Hameed Ullah Jan, Shaukat Ullah and Senator Hafiz Rasheed. Sixty participants from the seven tribal agencies and frontier regions of FATA representing different schools of thought also took active part in the discussion, and presented the following recommendations at the end of the two-day dialogue:

- ◆ The tribal areas should be given an elected, empowered legislative assembly or council with all the members elected by the tribal people themselves;
- ◆ The assembly or council should have the power to elect its own speaker and deputy speaker and the status of the leader of the house should be equivalent to that of the Chief Minister of the other provinces;
- ◆ According to Article 1(2c) of the 1973 Constitution of Pakistan, the tribal areas are a territory of Pakistan; therefore the tribal assembly or council should have all the powers of its status;
- ◆ In FATA the judiciary should be separated from the administration; a

civil judge or judicial magistrate should be appointed in each of the agency /subdivision, and right of appeal in the higher courts against their judgements should be provided;

- ◆ All Frontier Regions (FRs) should be merged into the agencies according to geography and nationality. Articles 246 and 247 of the present constitution should be amended accordingly;
- ◆ The Political Parties Order 2002 should be extended to the tribal areas;
- ◆ For long term peace of FATA, better training of, and coordination between Levis and Khasadar Forces should be ensured;
- ◆ Education, technical expertise and employment for the tribal youth should be ensured on revolutionary basis;
- ◆ ROZs and excavation of Natural Resources should be ensured for economic development;
- ◆ The participants, like other people of FATA, hoped that if the above suggestions are seriously considered, it would not only ensure peace in the region, but will also enable the people of FATA to contribute to the progress and development of the nation by being a part of the national body.



List of Participants

Names	Agency
Mohd. Luqman	South Waziristan
Fazida Afridi	Hayatabad, Peshawar
Noorzia Afridi	Hayatabad, Peshawar
Habib Malik Ourakzai	
Jawad Ahmed	Kohat
Haji Gull Akbar	Kurram
Aamir Zaman	Kurram
Zulfiqar Ali	Kurram
Nauhad Ali	Kurram
Ghulam Khan	Mohmand
Said Ahmad Saafi	Mohmand
Gulistan Saafi	Mohmand
Irfan Ali	Kurram
Aimal Khan	FR Kohat
Liaqat Amin	Peshawar
Mohammad Alamgir Khan	Bajour
Mukarram Khan Atif	Mohmand
Ibrahim Shinwari	Khyber
Shams Mohmnad	Mohmand
Nawaz khan Afridi	Khyber
Nizam	Norht Waziristan
Meraj Afridi	FR Peshawar
Shahsawar Mohmand	Mohmand
Khalid Khan	Khyber
M. Abdul Razzaq	Khyber
Shabbir Sjidi	Kurram
A.Krim Mehsud	South Waziristan
Taj Mahal Afridi	Khyber
Nisar Mohmand	Mohmand
Said Wali Shah Afridi	Khyber

Names	Agency
Malik Khan Marjan	Norht Waziristan
Abdul Jabbar	Mohmand
Abdur Rehman	Mohmand
Aftab Ahmed	Mohmand
Abdul Wahab	Mohmand
Dr. Sher Alam	Mohmand
Musarrat Naz	Mohmand
Gul Mohammad	Khyber
Rahat Ullah Shinwari	Khyber
Fazal e Amin Shinwari	Khyber
Kamran Khan	Norht Waziristan
S. Ibrahim	Kurram
Badri Zaman	Mohmand
M. Riaz	Mohmand
Zahir Shah	Mohmand
Irshad Ali	Mohmand
Hafiz Rasheed Ahmed	Mohmand
Noor ul Haq Qadri	Khyber
Shaukat Ullah	Bajour
Justice ret'd . Mian Ajmal	Peshawar
Ayaz Wazir	Islamabad
Ikram Ullah Jan Kooki Khel	Khyber
Said Rehman	Mohmand
Sajjad Ali	Kurram
Rshid Ali	Kurram
Safdar Dawar	Norht Waziristan
Rasheed Ahmed	Mohmand
Abdullah Jan	Mohmand
Zarnoor Afridi	Khyber
M. Zahir Shah	Mohmand
Shahjehan	Kurram

