FATA Reforms:
Contextual Analysis & Legislative Review

NATIONAL COMMISSION FOR HUMAN RIGHTS
Letter from Chairman, National Commission for Human Rights

FATA stands at the crossroads of the mainstream. An area the size of Belgium with a population as big as Ireland’s, FATA has been excluded from taking effective part in the affairs of the state for much too long. Consequently, the effect of exclusion is that the people of FATA have been continuously denied most of their fundamental human rights. Vested interests have barred the people in the region from reaping the fruits of the modern age and good governance but the time is ripe for reform.

The Government, including the Committee set-up by the Federal government and the KP provincial assembly along with parliamentarians, including those from FATA, the Supreme Court, the Civil Society, media all agree that FATA requires reforms that will bring it into the mainstream of Pakistani society, with the current predominant view being a merger with KP. This report has been published in order to shed a light on the current situation and to provide a way forward that is in consonance with national and international Human Rights standards.

Governed via Article 247 of the constitution and administered by the colonial-era Federal Crimes Regulation, 1901 the residents of FATA are kept at bay and have remained as such since the British Raj. It is evident, though, that those very same people have sacrificed a lot for the survival of Pakistan.

Pakhtun culture and heritage is age-old and remains deeply important, and therefore the proposed reforms by the NCHR maintain a preference for indigenous customs while ensuring that they remain in line with the Constitution of Pakistan and the assurances promised to them by the Quaid-e-Azam, Mohammah Ali Jinnah, and do not infringe upon national sovereignty.

I sincerely believe that the people of FATA have much to contribute towards success of Pakistan in the future and they must be provided adequate opportunities to realize their potential and shun off anachronism. I hope that the correct reforms are fully implemented and that we walk hand-in-hand to a brighter, more unified Pakistan.

I would also like to acknowledge Syed Haider Ali Zafar and his team for their research and development of the report.

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Chief Justice (R) Ali Nawaz Chowhan
Chairman National Commission for Human Rights
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Definitions

Jirga – Gathering of Tribal Elders (Known as Council of Elders in Frontier Crimes Regulation, 1901)
Khasaadar – Tribal Police
Lashkar – Private Militias
Levies – Tribal Militias
Lungi – Turban Holder
Malik – Tribal Leader
Melmestia – Hospitality
Nanawati – Submission or Asylum
Nang – Honour
Pakhtunwali – Pakhtun way of life
Riwaq – Customs/Traditions
Swar – Trading women for dispute resolution
Tehsil – District
Executive Summary

Federally Administered Tribal Areas (FATA), through an active process of civilian disenfranchisement by draconian laws (such as the Federal Crimes Regulation 1901 (FCR 1901)), and continued military intervention, remains in 2016 what Quaid-e-Azam called it in 1948: a “deficit province”\(^1\) – lagging behind the national average in human development indicators. Having been denied the full privileges of an autonomous province, the region continues to be governed tenuously and has never fully been brought under the ambit of the 1973 Constitution of the Islamic Republic of Pakistan (hereafter Pakistan), restricted by Article 247. The fundamental human rights of the people of FATA are not being upheld and the extension of these rights can no longer be delayed on any reasonable grounds. With rapidly increasing militancy in the region posing a threat to national and international security there remains an urgent need to fully establish the writ of the state. The Committee on FATA Reforms (hereafter Committee) set up by the Government of Pakistan in 2015 has suggested the long overdue and much needed reforms that separate executive and judicial authority, extend the jurisdiction of the superior courts, and establish local government with legislative powers.

The Committee, after almost a year-long process of consultations with Jirga members and other stakeholders, has decided on wide-ranging reform regarding the future of FATA, i.e. merge FATA with Khyber Pakhtunkhwa (KP) over the options of creating a separate province, and maintaining the status quo. The Committee must be commended for their thoroughness in creating an implementation plan, envisioning a strategy, and proposing far-reaching reforms in the 10-year socio-economic development plan, which includes building of resource utilization capacity, governmental structures, and infrastructure, among other measures.

It must be reiterated that the rehabilitation of Temporarily Displaced Persons (TDPs) and reconstruction of their homes and infrastructure remains of the utmost importance.

Currently a bill is being drafted that is intended to replace the notorious FCR with a “Riwaj Act”. The new law will make the role of the Political Agent (PA) defunct, and it seeks to institutionalize the Jirga and codify Riwaj (customs) by making the decisions of the Jirga appealable in the superior courts of Pakistan. A proportional number (pending determination) of Qazis, District and Sessions Judges, are proposed for every FATA district, who will have the power to appoint Jirga members. Once the merger is complete the residents of FATA will be allowed to vote for representatives in the KP Provincial Assembly. The Committee has recommended a 5-year transition period in which the role

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of the PA be maintained, in fact strengthened, and Article 247 be upheld. It has been proposed that during the transition period a local body be set up.

What is unclear, though, is the exact purpose of this body. It would appear that the primary goal of the elected bodies is to “address alienation of the tribesman, that will enhance his faith in the state”\(^2\). It is unclear how retaining Article 247, which gives the president and the governor of KP as his agent complete legislative authority, while at the same time initiating a local body, presumably without any legislative authority, will enhance anyone’s faith in the state. In fact, it would be more in line with the recommendations proposed by the Committee if FATA residents are granted the ability to vote for elected representatives with mandate to legislate for FATA. The National Commission for Human Rights (NCHR) strongly advocates that the reforms package be ready, a referendum be carried out, and the electorate be allowed to elect representatives in the KP Provincial Assembly or the FATA Provincial Assembly (depending on the result of the referendum) in the 2018 elections to ensure that the residents of FATA are not denied proper governance for another five years, i.e. until the 2023 elections.

Although the Committee has carried out consultations with male Jirga members and has claimed that they consulted with civil society organizations (CSOs) and Youth Organizations, it has not specified which groups. What is apparent though, is that women’s rights groups were not consulted. For if they had been a lot more thought would have gone into the process of reforming and institutionalizing the Jirga and codifying Riwaj. It is evident that the way the Jirga is composed today denies due process, particularly to women, and therefore requires a complete reformation if it is to be brought in consonance with national sovereignty. Women are excluded from the Jirga and must be represented by their male counterparts, meaning that the institution as is is not equally representative, and often fatal, for women. Alongside the Jirga and Riwaj consultations with women’s rights groups would have highlighted a different perspective on the topics of land reform and women inheritance, security, education, health, among other socio-economic and political considerations.

The NCHR believes that the Report of the Committee on FATA Reforms (hereafter Report), although a comprehensive document, does not adequately deal with the process of institutionalizing the Jirga. Inherently an intensely democratic process with the goal of promoting reconciliation within the community, the Jirga was first institutionalized by the British in order to maintain power in the hands of the Crown. The Qazi appointed Jirga members are not significantly different from the top-down, government appointed Jirga members under the FCR and therefore and is not a sufficient solution to the problem, including the self-declared objective of raising the tribal folks’ trust of the judicial system.

Furthermore, on the security front, the Report does not mention counter-terrorism efforts. It acknowledges that the issue of cross-border smuggling and kidnapping for ransom must be curtailed, and supports the need to strengthen security on the Afghanistan border, but it does not address the internal security situation sufficiently. It suggests that the Levies (Tribal militia) be strengthened and trained which would only disrupt unity between KP police structures. To ensure proper security it is imperative that a FATA counter-terrorism cell be added to the police force, that will remain under civilian control in order to ensure greater transparency and integration. Also Levies, Lashkars (private militias), Khassadars (Tribal police), and all such para-military and para-security forces should be disbanded and one, uniform provincial police force be adequately trained and strengthened.

This report published by the NCHR is intended to guide the reader into FATA’s context in order to understand the constitutional and legislative perspective of the proposed reforms. In order to keep reforms in line with Pakistan’s constitutional and international commitment to human rights, the NCHR has endeavoured to write this report to protect the human rights situation of FATA residents. At the time of writing of this report the bill is still being drafted and a review of the bill may follow at a later time as a subsidiary document.

1. Introduction

On the 14th of April, 1948 the Quaid-e-Azam, Mohammad Ali Jinnah, made a speech to tribal elders from the Northwest of Pakistan, after their commitment to accede to the new country, elaborating his vision for the future of the region and its role in the development of the country. Addressing them, he said:

*Pakistan has no desire to unduly interfere with your internal freedom. On the contrary; Pakistan wants to help you and make you, as far as it lies in our power, self-reliant and self-sufficient and help in your educational, social and economic uplift, and not be left as you are dependent on annual doles, as has been the practice hitherto which meant that at the end of the year you were no better off than beggars asking for allowances, if possible a little more. We want to put you on your legs as self-respecting citizens who have the opportunities of fully developing and producing what is best in you and your land.*

Ironically, the Quaid’s acknowledgment in the speech is often construed to justify the absence of the state in FATA, and the promulgation of the draconian and unconstitutional Federal Crimes Regulation (FCR) 1901. With justification rooted in “tradition”, the law, originally enacted by the British, maintains that the Pakhtun tribesmen are vehemently attached to their Riwaj (customs) and therefore must be

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3 Jinnah, “Frontier Policy of Pakistan”
4 Refer to section 4. FATA and the Law
administered indirectly\(^5\). The arrangement between the British and the tribesmen was one in which *Maliks* and *Lungi* (turban) holders – paid intermediaries between the tribes and the governor-general – were paid “annual doles” in return for loyalty. Quaid-e-Azam recognized this arrangement as a colonial style, regressive one by comparing it to “beggars asking for allowances”, and he vowed to not leave the people dependent on such a system. Yet, “Pakistan retained the *Maliki* system, which the British introduced to create a reliable local elite whose loyalty they rewarded with a special status, financial benefits, and official recognition of influence over the tribes”\(^6\). No reasonable justification, though, can be found in “tradition” for denying basic human rights to the people. Power, in this system, remains concentrated in the hands of the elite with very little room for social mobility, thereby, perpetuating a system of inequality.

The Frontier Policy of Pakistan, as elaborated by Mohammad Ali Jinnah, has not been realized, at least for the people of FATA\(^7\). In his address, he goes on to emphasize the need for education: “I agree with you that education is absolutely essential, and … it will certainly be my constant solicitude and indeed that of my Government to try to help you to educate your children …”\(^8\). In 1998, at the time of the last census, though, only 3% of women were educated in FATA, whereas the FATA Secretariat puts the number close to 12% in 2015\(^9\).

Read in its entirety, Jinnah’s vision is in line with the what is seen as the recipe for ensuring indigenous minorities thrive in a state: “meaningful exercise of internal self-determination and control over their own affairs in a manner that is not inconsistent with sovereignty”\(^10\). It centres around the notion that the region must manage its own affairs, with the active support of the state in making sure the vision can be realized. Under the FCR, though, it has been argued, that not only is FATA disallowed meaningful self-determination, but in fact the laws are inconsistent with national sovereignty\(^11\), too.

Self-determination, as elaborated in Article 34 of the UN Declaration on the Rights of Indigenous Peoples, maintains that:


\(^{7}\) Ibid.

\(^{8}\) Jinnah, “Frontier Policy of Pakistan”

\(^{9}\) FATA Secretariat. [https://fata.gov.pk](https://fata.gov.pk)


Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

The same Declaration, in Article 38, puts the onus on the state to promote the development of these rights. It is the state’s duty to protect and promote the rights of the people, yet, in contrast, the state suspends the rights of the people under the justification of “national security”.

Although the Quaid ordered, as a gesture of goodwill, that the army be removed from FATA, it has since returned with even more control and power in the area. FATA’s constitutional status and the FCR has been challenged in the Hon. Supreme Court, and heavily criticized in the media by human rights groups, as well as in international forums, yet, the overall structure, with certain procedural and other aesthetic modifications, continues largely unabated.

Politically it concentrates power into the hands of the president and the Governor of KP as his agent. The Governor has his Political Agents (PAs) and District Coordination Officers (DCOs) that administer Agencies and Frontier Regions in FATA, respectively. The administrators - the PAs and DCs - hold a lot of sway over the tribesmen as they (with the consent of the Governor) nominate the Maliks from the region and also reserve the power to execute collective punishment against those who are found guilty of many of the draconian provisions of the FCR and their fellow tribesmen, among other things. As described by the International Crisis Group, the PA, a:

(...) bureaucrat, heads the local administration of each FATA agency. Backed by khassadars and levies (tribal militias), as well as paramilitary forces that operate under army control, the PA exercises a mix of extensive executive, judicial and revenue powers and has the responsibility of maintaining law and order and suppressing crime in the tribal areas.

12 Refer to: Actions in Aid of Civil Powers Regulation, 2011
13 Refer to: Section 4. FATA & the Law
16 International Crisis Group, Appeasing the Militants
17 Refer to: Federal Crime Regulations, 1901
The *Maliks* too have an interest in continuing the current system as it maintains power in their hands by keeping their tribes in deference to them\(^{19}\). The process of selection is a non-democratic one and the title generally tends to be passed down on the basis of male inheritance\(^{20}\). The relationship, of rewarding loyalty and severely punishing dissent, is one that reinforces the PA to favour those that are obedient to him\(^{21}\).

The Military intervention in FATA create further obstacles to building a functional government structure in the region. On the border with Afghanistan and the West, FATA remains an operational hub for interstate military activity, with certain groups, such as the Haqqani Network, are still allowed to function in order to promote strategic interests\(^{22}\). Furthermore, the Army maintains firm control of the counter terrorism effort\(^{23}\) in FATA, with an even broader mandate under the Action (in Aid of Civil Powers) Regulation 2011.

Increasing Talibanization, cross-border smuggling in arms and drugs among other things, and a failure to adequately implement civil measures under the National Action Plan (NAP) has led to a further breakdown of the existing informal structures, creating more challenges to the writ of the state in the region.

The NCHR agrees that the perpetuation of the conflict:

> *is not the product of tribal traditions or resistance. It is the result of short-sighted military policies and a colonial-era body of law that isolates the region from the rest of the country, giving it an ambiguous constitutional status and denying political freedoms and economic opportunity to the population*\(^{24}\).

In fact, what was true in 2009, is even more pertinent in 2016:

> *While the militants’ hold over FATA can be broken, the longer the state delays implementing political, administrative, judicial and economic reforms, the more difficult it will be to stabilise the region*\(^{25}\).

Not only is the continued statelessness in FATA a complete violation of the fundamental human rights of the people of FATA as enshrined in the 1973 Constitution of Pakistan

\(^{19}\) International Crisis Group, *Appeasing the Militants*: 4

\(^{20}\) Ibid.

\(^{21}\) Ibid.: 5

\(^{22}\) ICG, *Countering Militancy in FATA*: 7


\(^{24}\) ICG, *Countering Militancy in FATA*: i

\(^{25}\) Ibid.
(hereafter Constitution) and in Pakistan’s international treaties, but it is also a threat to national sovereignty. In order to strengthen the proposed reforms, it is pertinent that the context and status-quo be analysed. For that purpose, the report commences with a brief overview of the history leading up to the current governmental structure in FATA. The situation is then analysed from a constitutional and an international perspective, followed by an analysis of the Report with important legislative and policy recommendations.

2. Pakhtunwali and the Ambiguous Constitutional Status of FATA

To understand the “special status” of FATA it is imperative to briefly analyse the historico-cultural factors that have influenced the region. Pakhtun history can be traced to sometime between the 12th and 15th century. Located at the frontier between the Indian subcontinent and Central Asia, the tribes in the region have had a long history of invasion and resistance, with the first and only time the tribes were unified was during the Durrani Federation in the early 18th century. Since then the progress of the tribes has diverged, shaped by the unique socio-political conditions brought about by power struggles between the British, Indian, and Western and Central Asian Empires.

Pakhtun tribes live in Pakistan in FATA, Khyber Pakhtunkhwa (KP), and Balochistan, as well as across the Durand Line in Afghanistan. The Pakhtuns share an unwritten code of honour, Pakhtunwali – the Pakhtun way of life. It is important to remember, though, that affiliations and manifestations of the Pakhtunwali vary across regions; even in areas as close to each other as FATA and KP stark differences can be seen in terms of people’s perceptions of girls education and preference for Jirgas. “The normative content of the Pakhtunwali is very fluid, and it is best thought of as a code of honor (sic.) rather than a legal code in the conventional sense”. The Pakhtunwali is a set of metarules defining legitimate ways to resolve conflict, a sort of general guideline with only “common cultural knowledge” to refer to and no written code.

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26 Sardar Ali, and Rehman, Indigenous Peoples and Ethnic Minorities
27 Shinwari. Understanding FATA
28 Ibid.
Nang (honour) is central to the life of a tribal Pakhtun. In the stateless society, as a way to mitigate or avoid conflict, and to restore harmony within the community, honour became an important characteristic, necessarily fungible, meaning it can be gained or lost. The Pakhtunwali is the code that determines how Nang is affected, guided by three main principles: melmastia (hospitality), nanawati (submission or asylum), and badl (revenge). Melmestia involves the requirement of giving shelter and protection to those who ask for it, even if the person is a foe. Badl allows, in fact encourages, one to seek retribution against the perpetrator that has caused one harm, and nanawati is a formal apology that consists of symbolic submission of the wrongdoer to the victim’s family with the stipulation that a sincere offer of nanawati is to be accepted, except in extreme cases. One’s honour depends on the degree to which these main tenets are upheld. In order to interpret the code, one has to be well experienced in the Riwaj of the community, and thus was born the concept of tribal elders deciding matters in a Jirga.

The problem though is that this equilibrium comes at the cost of half the population: women. Harming or dishonouring one’s wife is the biggest dishonour of all, for both perpetrator and victim, and must be vehemently avenged. The honour of the man is intrinsically linked to the woman’s and therefore the woman’s honour must be defended. In this scenario the woman is an extension of the man’s honour and thereby subordinate. This can be evidenced from the fact that women are not allowed to present her case in the Jirga, but instead is represented by the male. The dishonour, then, is brought onto the man by the woman.

Being a stateless society these concepts were evolved essentially to maintain law and order. The concept of revenge acts as a deterrent with the one who committed the first crime having to pay for forgiveness return, often times in women. One possible explanation is that being a resource poor society women were a much more valuable resource, and therefore a much more powerful deterrent. The central idea being that one is less likely to commit a crime if they risk losing the women in their family. Another explanation is that in order to protect women in the community the notion of dishonouring the woman as direct insult to the man became more and more stronger. However, in both scenarios it can be logically inferred that changing conditions, i.e. establishing the writ of the state, and increasing access to resources will make the notion of women as subservient slowly outdated and irrelevant.

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31 Ginsburg, “An Economic Interpretation”
32 Ibid.
33 Ibid.
34 Shinwari, Understanding Jirga
35 Ginsburg, “An Economic Interpretation”
36 Ibid.
37 Ibid.
The region that is now FATA, highly prized for its strategic location meant that the British wanted it under their control, but because of the high price of resistance they met and the dearth of potential resources they opted instead for indirect rule. The tribes were split up by the Durand Line in 1893 after an agreement between British and Afghans. On the Eastern side of the border, the British maintained an agreement with the tribes: in exchange for open access through the territory the British would pay them allowances. They found convictions were low so they decided to codify the local method of adjudication and employed that to ensure even more effective ruling of the people. In order to subjugate those adamant to maintain their systems the British had to mutate local customs to suit their need. Thus they instituted the post of the Deputy Commissioner, now called the PA, and granted him absolute powers over the Jirga, by giving him the power to nominate elders and decide cases above the Jirga. The FCR Jirga carried out today is the same. In codifying the law, they mutated it by giving the PA ultimate authority over the process in electing the Jirga members and by reserving final decision.

The FCR and the colonial-era arrangement has been maintained by Pakistan with “special status” having been granted to FATA in all home-grown constitutions. In the Constitution FATA is defined by Article 246, and its special status by Article 247, relevant sections of which are produced below:

Article 247 – Administration of Tribal Areas:
(1) Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas […]
(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions.
(3) No Act of [Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs […]; and in giving such a direction with respect to any law, the President […] may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction. […]
(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace and good Government of a Federally Administered Tribal Area or any part thereof.
(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper.

Shinwari, Understanding FATA
Ibid.
40 Ibid.
41 Ibid.
Provided that before making any Order under this clause, the President shall ascertain, in such manner as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in tribal jirga.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless [Majlis-e-Shoora (Parliament)] by law otherwise provides [...]

No justification, though, can be found in culture or tradition. Culture is a set of values that are fluid, constantly evolving: “what is identified as culture is selective and internally contested; the argument sets up culture as an intractable, static, fixed and homogenizing entity whereas it is an evolving, fluid structure that adapts to people’s lived realities”42. In contrast to the tradition argument stands the example of KP and Balochistan, where the FCR was not repealed until 1963 and 1977, respectively43. They had earlier been denied their rights on the same grounds as the residents of FATA, but since the constitution and superior courts have been extended one can see stark differences in not only development indicators but also how meanings of honour and the Pakhtunwali have changed. For example, in PATA higher female education and lower preference for Jirgas44. It is a detrimental, and short-sighted policy to suggest that culture is stagnant and therefore codify the oppressive aspects of tradition.

The NCHR is of the firm belief that extending state institutions to the people of FATA will greatly help the people break out of the current situation. The institution of the Jirga will become more and more obsolete, something that the Report acknowledges. It is true that the state institutions are not fully developed and there is a chance of greater uncertainty but there is a great need for change as can be seen amongst the youth, and various other groups in FATA.

3. Understanding the Context

FATA, as defined under Article 246 of the Constitution, is comprised of 7 Agencies and 6 Frontier Regions (FRs). The data reproduced below includes estimates of the current population by the FATA Secretariat:

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44 Ibid.
<table>
<thead>
<tr>
<th>Agency</th>
<th>Size (km sq.)</th>
<th>Population (1998 census)</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Waziristan</td>
<td>6,620</td>
<td>430,000</td>
</tr>
<tr>
<td>North Waziristan</td>
<td>4,707</td>
<td>361,000</td>
</tr>
<tr>
<td>Kurram</td>
<td>3,380</td>
<td>448,000</td>
</tr>
<tr>
<td>Khyber</td>
<td>2,576</td>
<td>547,000</td>
</tr>
<tr>
<td>Mohmand</td>
<td>2,296</td>
<td>334,000</td>
</tr>
<tr>
<td>Orakzai</td>
<td>1,538</td>
<td>225,000</td>
</tr>
<tr>
<td>Bajaur</td>
<td>1,290</td>
<td>595,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Frontier Region</th>
<th>Size (sq. km)</th>
<th>Population (1998 census)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dera Ismail Khan</td>
<td>2,008</td>
<td>39,000</td>
</tr>
<tr>
<td>Tank</td>
<td>1,221</td>
<td>27,000</td>
</tr>
<tr>
<td>Bannu</td>
<td>745</td>
<td>20,000</td>
</tr>
<tr>
<td>Kohat</td>
<td>446</td>
<td>88,000</td>
</tr>
<tr>
<td>Peshawar</td>
<td>261</td>
<td>54,000</td>
</tr>
<tr>
<td>Lakki</td>
<td>132</td>
<td>7,000</td>
</tr>
</tbody>
</table>

Totalling an area of 27,200 sq. km with a population of over three lakh in 1998, FATA makes up about 3.4% of Pakistan’s landmass and 2.1% of the population. The FATA Agencies, other than Orakzai, run along the border with Afghanistan, and the FRs are connected to their corresponding districts in neighbouring KP. It is estimated that somewhere between 7–23% of this area is protected, i.e. under direct government control administered through the Political Agent, putting 77-93% of the region in what are called the “non-protected” areas governed indirectly through Maliks. “Protected areas” and “non-protected areas” have significantly diverging levels of investment in infrastructure, medical and educational facilities and parallel, interconnected judicial structures.

FATA is lagging far behind the rest of the nation in development with 73% of the population living below the national poverty line, while per capita public development expenditure is less than one third of the national average. Constitutional guarantees have never been extended to FATA keeping inequality firmly rooted in place, as can be evidenced by the fact that FATA residents are restricted from moving within the country to the settled areas.

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45 FATA Secretariat https://fata.gov.pk/
46 Current estimates projected to be at around 500,000
47 ICG, Countering Militancy in FATA
48 Ibid.
49 Ministry of Planning, Development and Reforms “Multidimensional Poverty in Pakistan”
50 Ibid.
51 ICG, Countering Militancy in FATA
The FCR 1901 proscribes the governmental structure, as well as procedural code for criminal trial and civil disputes in FATA. Though previous governments have tried to implement some sort of reforms the overall structure of the law upholding the colonial arrangement has been maintained. In 2011, the Pakistan People’s Party government signed an order which introduced amendments to the FCR, including: adding an appellate authority; the right of bail was extended to every accused; every accused was to be brought before a judicial authority within 24 hours; women, children below 16, and elders above 65 years of age, were exempted from the collective responsibility provisions, among others.

The Actions (in Aid of Civil Powers) Regulation 2011 passed in the same year, though, gave military the authority to arrest and detain, thereby transferring civil power to the military. No access to media means that FATA residents are denied access to virtually every pillar of the state.

Many of the other reforms before 2011 were purely aesthetic. The law in its original form instituted by the British continues largely unabated till today. When Pakistan endorsed the FCR the name of Governor-general was changed to President and Deputy Commissioner was changed to Political Agent.

In order to understand the reforms that have been suggested and how far they bring the conditions of FATA in line with human rights the NCHR will give an overview of the governance and social structure as it currently exists.

3.1. Political Administration

FATA is represented in the Lower (National Assembly) and Upper (Senate) Houses of the Parliament by 12 and 8 members, respectively, but not in the provincial assembly of KP. The legislators are barred by Article 247(5): “no Act of [Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs” from legislating for FATA, creating a strange situation where the parliamentarians can legislate on the federal level but not on the provincial level.

The Governor of KP exercises executive authority in FATA as the president’s agent. The president enjoys discretionary powers in the 1973 constitution to “make regulations” with respect to “the peace and good governance” of FATA. The PAs and DCOs, acting as representatives of the Governor, operate without any check and balance, meaning unfettered power is executed by them too.

52 Refer to: Actions in Aid of Civil Powers Regulation, 2011
53 Article 247(5) of Constitution of Islamic Republic of Pakistan, 1973
Adult Franchise was introduced to FATA in 1996, before then some 35,000 Maliks selected members of the National Assembly (NA). In 2006 a council was established to promote local governance. The Council, with the purpose of proposing reforms for the future, was nominated and chaired by the PA thereby delegitimizing them in the eyes of the people. The Council was not reinstated after its dissolution 3 years later.

2011 was the first time that Political Parties Act was extended to FATA, thereby allowing political parties to campaign freely. The effect of this can be seen in that there was a 7% increase in voter turnout in the 2013 from the 2008 elections suggesting positive signs for the future.

The Federal Ministry of States and Frontier Regions (SAFRON) is responsible for the “overall administrative and political control of FATA”, but is virtually powerless in devising or implementing FATA policy. In 2002, the Musharraf government created a separate governor’s secretariat for FATA, ostensibly to eliminate bottlenecks created by multiple administrative tiers, with all line departments brought under this body. In 2006, it was restructured as the FATA secretariat. With limited resources, the FATA secretariat is dependent on its KP counterpart for personnel. The FATA Development Authority, too, is underfunded and unable to carry out concrete plans.

The PA commands Khassadars (tribal police) and Levies (Tribal militias) that allow enforcement of commands. The PA can vet out collective punishment in contradiction to Article 33 of 4th Geneva Convention and Rule 103 of Customary IHL. Chapter IV and V of the FCR define the actions the PA or DCO can take. These powers include: “blockade of unfriendly tribe”55; “fines on communities accessory to crime”56; “forfeiture of public emoluments”57; “prohibit erection of new villages or towers or frontier”58; “direct removal of villages”59; “attachment or disposal of buildings used by robber, etc”60; can ask to execute bond; among others. All of these are based on the basic premise that the PA himself – in violation the trichotomy of power – acts as judge, jury, and executioner.

The PA, in order to administer the tribes, elects Maliks that are payed annual allowances in return for loyalty:

The PA grants tribal elders the status of malik (with the consent of the governor) on the basis of male inheritance. But the PA can also arbitrarily withdraw, suspend or cancel malik (and lungi) status if he deems the individual is not serving the interests of the state.

54 ICG, Countering Militancy in FATA
55 Federal Crimes Regulation, 1901, Section 21
56 Ibid.: Section 22
57 Ibid.: Section 26
58 Ibid.: Section 31
59 Ibid.: Section 32
60 Ibid.: Section 34
Maliks receive financial privileges from the administration in line with their tribe’s cooperation in suppressing crime, maintaining social peace and in general supporting the government.\(^\text{61}\)

3.ii. Judicial Framework

Article 247 (7) of the Constitution restricts the jurisdiction of the superior court from FATA: "Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless [Majlis-e-Shoora (Parliament)] by law otherwise provides”.

The people of FATA have been denied access to these courts and the due process of law, and justice is unregulated. today there is a mix of Tribal, Federal, and Islamic law operating in FATA creating a sort of check and balance scheme in which it is in the best interest of all these institutions to provide the swiftest justice in order to gain credibility and power in society. Justice by informal or Qaumi Jirga is by far the more popular. 98% people know them and 50% people trust them compared to the other 12% trust of higher courts.

In the protected areas the FCR Jirga is more dominant whereas in the non-protected areas it is a more unofficial kind of Jirga. In the FCR Jirga there is a right to appeal the decision. Two appellate authorities exist. The first one is the Commissioner in KP, and the second one is the FATA Tribunal composed of an ex bureaucrat and judges with knowledge of Riwaj. The review, though, can only overturn decision in case of material irregularity, thereby making it ineffective. Articles 50 and 52 both contain provisos that say:

\[\text{nothing in this chapter shall be deemed to authorize the Appellate Authority to vary or set aside any decision, decree or order given, passed or mad in any civil proceeding under this Regulation, unless it is of the opinion that there has been a material irregularity or defect in the proceedings.}\]

Thereby making the Appellate Authority relatively toothless in dispensing justice.

**Jirgas and Women**

The essential reasoning behind the Jirga, like any community based standard, is conflict mediation, reconciliation between the parties to conflict, and the reintegration of both perpetrator and victim into the community.

The original Jirga is one where the aggrieved party approaches the Jirgamaar and the Jirgamaar then approaches the perpetrator on forming a Jirga. The Jirgamaar tends to be a

\[\text{ICG, Countering Militancy in FATA: 4}\]
well-respected and just tribal elder, otherwise the other party may contest his nomination. Once a Jirgamaar has been unanimously agreed upon by all involved stakeholders, and a Jirga has been set-up a bond is executed between the parties after which the law can be seen as binding or it can be rejected (depending on type of Jirga), but rejection of the decision can come at a personal cost, of losing the bond, as well as facing ostracization.\textsuperscript{62} The Jirga is convened for a particular issue and usually resolved within a short amount of time.\textsuperscript{63}

Under the FCR, the PA decides the case after the Jirga without ever having witnessed or taken part in proceedings. In the case of FCR Jirga, with a review, standard of review is deferential, in that the Commissioner cannot interfere with statement of fact by Jirga.\textsuperscript{64} When the British came they mutated the existing, intensely democratic system by creating the FCR Jirga. The FCR Jirga is different from the other kind in that the Jirga is called by the PA and not by a Jirgamaar of the aggrieved parties’ choosing. Though the parties to conflict kept the option to contend the nomination, the PA is not known to overturn his original decision\textsuperscript{65}. Furthermore, the Jirga does not make the final decision under this model, in so far as the PA can decide the case without ever having proceeded over the trial.

The institutionalization of the Jirga was a major mutation to the community orientated, democratically nominated, conflict resolution process. Among other things, it led to the creation and bolstering of a local elite, and a culture of nepotism.

The Jirgas hear cases of civil as well as criminal nature. They are known to be cheap and efficient, and therefore it would be detrimental to undermine their potential. They are credible amongst the locals because of their just nature in solving civil disputes. In fact locals are more likely to seek justice through Jirgas because of the high speed and low cost of dispensing justice, coupled with a scepticism of and allegations of corruption against the higher courts\textsuperscript{66}.

Women are the ones who pay the biggest price for adjudication in the stateless society: women are tried in absentia and are often traded as compensation for the crimes of their male family members\textsuperscript{67}. Although in the Criminal Law (Offences relating to Honour) Amendment 2011 practices like Swara were banned, yet it has not been extended to FATA where practices like Swara continue openly\textsuperscript{68}.

\textsuperscript{62} Brohi, “Women, Violence and Jirgas”
\textsuperscript{63} CAMP,\textsuperscript{64} Understanding Jirga
\textsuperscript{65} Ibid.
\textsuperscript{66} Ibid.
\textsuperscript{67} Ibid.
\textsuperscript{68} Ibid.

20
Resources are paramount in incentivizing certain actions and disincentivizing others and in a society with a dearth of resources, and in Pakhtun society women are to be protected above all. A man’s honour in such a society is intrinsically linked to the honour of his woman possession, and therefore any harm to the woman’s honour is harm to the man’s honour. Though the reasoning behind it may have essentially been in protecting the woman, in today’s society with highly developed state infrastructure and a more connected global system it is against the essential notion of allowing women equal participation in all fields of life.

Today, estimates range between 300-3000 Maliks have been killed by the Taliban for their pro-government stance or dissenting opinion\(^6^9\). The problem of the lack of institutionalization and over-dependence on the individual becomes apparent in a situation like this: because judgements passed are not written down and are only a product of knowledge accumulated by the village elders the deaths of Tribal Elders has created a vacuum that the Taliban are exploiting.

This system benefits the administration on all levels, PAs, as well as the Maliks (it would appear that Maliks in non-protected regions wield more power than those in protected regions because of varying degrees of PA administrative writ), all degrees of the federation, and even the military. This is why the mutation was upheld and the NCHR believes that the structural effect of the system will remain the same even under the appointed Qazi.

Today the reforms proposed seek to further mutate the Jirga process and codify in such a way as to completely sideline women, because the all-male Jirgas it is in their interest to continue as much as possible of the current system. It is almost like self-enforcing oppression that seeks to mainstream the people by asking their unelected officials to decide on their future.

3.iii. Security

The PA commands Khassadars and Levies and is often backed by military units in enforcing executive actions which include, but are not limited to, collective punishment vetted out to male members of tribes\(^7^0\). When a member of a tribe is caught in relation to terrorist activity the whole tribe is punished through the demolition of buildings and entire marketplaces. These are done often arbitrarily, and cause more harm than good.

Maliks too command paramilitary forces to commandeer the region. These forces are mostly untrained forces that are prone to attacking in revenge. They are paid very little and the PA can also punish them by withholding salaries. Kidnapping for ransom,

\(^6^9\) ICG, Countering Militancy in FATA
\(^7^0\) Ibid.
smuggling, arms trade, and the black market is rampant proving to much more lucrative money sources for the poorly paid and untrained paramilitary forces in the region\textsuperscript{71}. It is no surprise that 83\% believe that carrying a gun is important\textsuperscript{72}.

The Army and the Frontier Corps command a lot of the region and manage most of the counter-terrorism in the region\textsuperscript{73}. It is imperative that counter-terrorism and national security remain in control of the civil government to ensure effective response.

3.iv. Economics and Land

Per capita share is 49\% below the equal share for national average\textsuperscript{74}

Not a lot of data is available explaining the economic situation of FATA. What is known is that a majority of the economy is based on agriculture\textsuperscript{75}.

PA through the Rahdari system, controls export and import permits, as well as licensing permits, thereby stifling private investment\textsuperscript{76}. Banks, too, are reluctant to loan over urban property and more likely for private properties\textsuperscript{77}.

Land is collectively owned, and without property to act as collateral for loans, sometimes interest rates in the informal market are as high as 100\%\textsuperscript{78}, and women are not allowed inheritance\textsuperscript{79}.

Furthermore, private investments are being disrupted by the conflict in FATA. The FC is known to take control of private businesses of people belonging to tribes from which a terrorist had been caught\textsuperscript{80} and also carry out collective punishment against the businesses of tribesmen whose fellow tribesmen have been charged\textsuperscript{81}.

Furthermore, there is a thriving black market comprising a large percentage of FATA’s hidden economy\textsuperscript{82}.

\textsuperscript{71} Ibid.
\textsuperscript{72} CAMP, \textit{Understanding Justice}
\textsuperscript{73} ICG, \textit{Countering Militancy in FATA}
\textsuperscript{74} Position Paper of FATA Secretariat in Committee FATA Reforms, \textit{Report: 24}
\textsuperscript{76} Ibid.
\textsuperscript{77} Ibid.
\textsuperscript{78} Ibid.
\textsuperscript{79} Ibid.
\textsuperscript{80} ICG, \textit{Countering Militancy in FATA}
\textsuperscript{81} Ibid.
\textsuperscript{82} Ibid.
3.v Health and Education

The overall literacy rate is 17.42% compared to 56% nationally\textsuperscript{83}. Male literacy is 29 percent, female literacy but 12% compared to the national 32.6% for females\textsuperscript{84}.

Social development indicators are no less dismal. For 3.1 lakh inhabitants, FATA has just 41 hospitals and a per doctor rate of 1:6,762 compared to the national 1:1,359\textsuperscript{85}.

No health system in place for transgender people. Facilities for women are close to non-existent with pervading ideology that women should not be treated by men exacerbating women’s inability to access healthcare in FATA\textsuperscript{86}.

The state of education is no less dismal. There are reports of 1000s of ghost schools that are shown on paper but are not actually functioning\textsuperscript{87}. FATA has highest child illiteracy though it is promising to see an increase in female and child literacy\textsuperscript{88}.

Births attended by skilled health personnel is 29.5% compared to national average of 86%\textsuperscript{89}. The maternal mortality ratio for FATA overall is 395 in 100,000, compared to 275 per 100,000 in KP. Fully immunized children in FATA between 12-23 months is 33.9% compared to 76%\textsuperscript{90}

Water facilities and sanitation facilities are unavailable. The main sources of drinking water for 31% of the households in FATA are canals, ponds, stream, and rainwater\textsuperscript{91}. Only 8.9% receives piped water. And only 38% of the population has flush latrines – national average: 71%. In rural area women are forced to travel long distances.

Shadow economy is booming: 33% out of 90% of the world’s opium is smuggled through FATA\textsuperscript{92}

\textsuperscript{83} In Socio-economic and Political Currents, Soherwordi
\textsuperscript{84} Ibid.
\textsuperscript{85} Ibid.
\textsuperscript{86} Ibid.
\textsuperscript{87} Mureeb Mohmand. “Education census 2015-16: 1,036 FATA schools non-functional.” Express Tribune (Pakistan: 8 Nov., 2016)
\textsuperscript{88} In Socio-economic and Political Currents, Soherwordi
\textsuperscript{89} FATA Development Indicators Household Survey (FDIHS), 2014-15
\textsuperscript{90} Committee FATA Reforms, Report: 24
\textsuperscript{91} FDIHS
\textsuperscript{92} In Socio-economic and Political Currents, Soherwordi
4. FATA & the Law

4.i. Constitution and Interpretation

In the Constitution of Pakistan, Part II describes the Fundamental Rights and Principles of Policy, and Article 25 declares that “all citizens are equal” and therefore should be able to uphold their rights equally. Interestingly, Article 8 of the same declares that: “Laws inconsistent with or in derogation of fundamental rights to be void”, and, as a Principle of Policy, Article 33 guides the states to: “discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens.” Other rights extended by the Constitution to “all” citizens, but denied by Article 247 to the people of FATA by the same Constitution, are Article 4 and 9 which declare the “right of individual to be dealt with in accordance with law, etc.”, and that “No person shall be deprived of life or liberty save in accordance with law”.

Other Articles of the Constitution worth noting are: Article 10 which provides, “safeguards as to arrest and detention” and 10A which ensures the “right to Fair Trial”. Articles 12 and 13 provide protections against “retrospective” and “double” punishment. Article 14(1) declares that, “the dignity of man and, subject to law, the privacy of home, shall be inviolable”. Articles 15, 16, 17, and 18 ensure the freedoms to: “movement”, “assembly”, “association”, and “trade”. Articles 19 and 19A protect the right to “free speech” and “to information”. And finally, Articles 23 and 24 protect the right to own and use property. The Constitution, therefore, is very clear on that fundamental rights should be extended to all people.

Article 247, though, effectively negates all of these articles. The problem arises because according to Article 184 and 199 (reproduced below) the power to enforce the fundamental rights is with the courts, but Article 247(7) restricts jurisdiction of said courts thereby making it impossible for the courts to operate there.

Article 184(3):

Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II is involved have the power to make an order of the nature mentioned in the said Article.

And Article 199(3), confers similar powers to the High Court and explicitly states that should not be curtailed: “Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II shall not be abridged”.

24
The landmark case in the Supreme Court on Article 247, focused on clause (7), was *Ch. Manzoor Elahi versus Federation of Pakistan* in which Anwar ul Haq J., points out that:

*In successive Constitutions of Pakistan, special provisions have continued to be made for the administration of these areas, so that their inhabitants are governed by laws and customs with which they are familiar and which suit their genius.*

On this basis, it was held, that Article 247(7) can exclude the jurisdiction of the superior courts in matters concerned with FATA. But aware of the tension between Article 247 and the fundamental rights enshrined in Part II of the constitution, Anwarul Haq J. interpreted it to mean that the it was excluded from matters only concerned with FATA and did not fall on events that happen outside FATA’s jurisdiction.

This has been the prevailing interpretation, as is evident in cases: *Muhammad Siddique vs. Government of Pakistan*; *Qaum Bangash vs. Qaum Turi*; *Muhammad Sharif Khan vs SDM and 7 others*; among others.

In *Manzoor Elahi*, the Supreme Court emphasized that:

*A trial under the Frontier Crimes Regulation cuts at the very root of the principle of separation of the judiciary from the executive, piously embodied in every Constitution of Pakistan, by entrusting the trial to a Council-of-Elders chosen by the executive, and by depriving the parties concerned of any right of appeal to the established Courts of the country, including the High Court and the Supreme Court.*

This interpretation was further diminished, though, in *Government of NWFP vs Muhammad Irshad*. In it the purview of the constitution is excluded even further from FATA. Though it is focused on Clause (4) of Article 247, which deals with Provincially Administered Tribal Areas (PATA), the wording is similar enough to Clause (5) allowing for an analogy. In the judgement it is written:

*Clause (4) which empowers the President and the Governor to make regulations for [the peace and good government of] the Areas contains a non obstante clause; consequently, a regulation made by them cannot be declared invalid by mere reason of the fact that it is*

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93 *Ch. Manzoor Elahi versus Federation of Pakistan* PLD 1975 SC 66
95 Ibid.
96 *Muhammad Siddique vs. Government of Pakistan* SCMR 1981 SC 1022
97 *Qaum Bangash vs. Qaum Turi* SCMR 1991 SC 2400
98 *Muhammad Sharif Khan vs SDM and 7 others* MLD 1997 SC 152
99 *Ch. Manzoor Elahi versus Federation of Pakistan* PLD 1975 SC 66
100 *Government of NWFP vs Muhammad Irshad* PLD 1985 SC 281
conflict with the other provisions of the Constitution. I, therefore, find some difficulty in holding that a law made by the President or Governor under Article 247 can be declared void on the ground that it is […] in conflict with the Fundamental Rights relating to equality of treatment […]

As is evident here the supreme court has upheld the unequal treatment countenanced by the law, and Article 247 is interpreted to override other provisions of the constitution. Of note are particular dissents in Manzoor Elahi and in Government of NWFP. In Manzoor Elahi, Salahuddin Ahmad J remarked that:

> If it was the intention of the framer […] to deny the people of the Tribal Areas or persons residing therein the benefits of the Fundamental Rights nothing was easier or simpler than to say that they did not apply in the Tribal Areas

He was of the view that the framers of the Constitution could not have intended to grant rights in one part and deny them in the next.

In Government of NWFP vs Muhammad Irshad, Shafiur Rehman J. remains of the view that fundamental rights extended to Tribal Areas, and that all provincial executives, as well as the executive authority of the Federation, are subject to them101.

It has been the prevailing view of the SC that Jirgas and the FCR are unconstitutional, as is evident in Samundar vs. Crown102. The then CJ. Cornelius declared that:

> In the case of Jirgas, no procedure of any kind is laid down. The [only requirements] are that there should be such inquiry ‘as may be necessary’ and the accused person should be heard […] [I]t seems clear enough that the purpose of the Regulation also is that none of the recognized rules of evidence should be binding upon the Jirga. The main principles which underlie the law of evidence are exclusion of irrelevant matter and of hearsay, coupled with insistence upon the production of the best evidence […] Jirgas sometimes declare that they have conducted “open and secret inquiries”, which suggests investigations of a nature entirely different from those which are permissible in a Court of Law. The process of decision provided under the Regulation is also foreign to justice as administered by the Courts. The hearing is before a Jirga but the power of decision is vested in the Deputy Commissioner, who does not hear the accused or any of the witnesses, and is not empowered by the law to do so, even if he should desire. In these circumstances, the Jirga is merely an advisory body, and since the Deputy Commissioner does not have the case presented before him through counsel, it is obvious that the decision is wholly vicarious. […] they (the decisions) are obnoxious to all recognized modern principles governing the dispensation of justice.

101 Ibid.
102 Samundar vs. Crown PLD 1954 Federal Court 228
This has remained the majority interpretation as is made evident in the recent decision by Sindh High Court to ban Jirgas in 2014\textsuperscript{103}. Since Samundar vs. The Crown the FCR has been repeatedly declared unconstitutional and un-Islamic by the courts, yet no legislation has adequately addressed the Hon. Supreme Court’s concerns.

4.ii. International Law

The NCHR contends that, contrary to what may be proclaimed by governments, the people of FATA have not been allowed to function according to the concept of self-determination in line with what Customary International Law. According to Article 8 of the ILO Convention 107 ratified by Pakistan:

\begin{quote}
To the extent consistent with the interests of the national community and with the national legal system--
\begin{enumerate}
\item the methods of social control practised by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these populations;
\item where use of such methods of social control is not feasible, the customs of these populations in regard to penal matters shall be borne in mind by the authorities and courts dealing with such cases.
\end{enumerate}
\end{quote}

The question arises about the degree of self-determination, i.e. how far the indigenous populations should be dealt with in a manner coherent with their customs. Read in conjunction with the aforementioned Article 34 of UN Declaration on Rights of Indigenous Peoples:

\begin{quote}
Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.
\end{quote}

One can begin to ascertain that in order for successful self-determination, the customs must be protected but must not directly challenge the writ of the state, as is the case in FATA. With alternative dispute resolution and inability to access the superior courts, as well as the inability to elect representative governments means that Pakistan is not fulfilling its obligation to its indigenous minority.

In FATA Pakistan is falling gravely short on its commitment to the 7 (out of 9) core UN Human Rights Treaties that have been ratified.

\textsuperscript{103} Hussain Bux vs. State 2014 YLR 665
The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) details state responsibilities towards protecting racial minorities including ethnic minorities. Article 5 describes the rights to be granted to minorities, and among those being violated are:

(a) The right to equal treatment before the tribunals and all other organs administering

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service

(d) (i) The right to freedom of movement and residence within the border of the State

The Pakhtun ethnic minority, particularly those in FATA, are not given equal treatment before the law, are not allowed to travel freely within state borders nor allowed to determine their affairs at different level.

The International Covenant on Civil and Political Rights (ICCPR) and The International Covenant on Economic, Social and Cultural Rights (ICESCR) ensures rights that are being violated including but not limited to: Freedom of movement; Freedom of political association; freedom to form labour unions; facilitation of private investment, etc.

In FATA virtually every aspect of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), None of the criminal amendments protecting women have been extended to FATA. Forced marriage, denial of inheritance and property, and unequal access to public places means the implementation of the CEDAW is seriously lacking. Women are barred from public activity.

Similarly, with the Convention on the Rights of the Child (CRC) and The Convention on the Rights of Persons with Disabilities (CRPD) the government has not fulfilled its obligation to these groups as none of the pertinent laws have been extended there, including but not limited to the Disabled Persons (Employment and Rehabilitation) Ordinance 1981, the Prevention and Control of Human Trafficking Ordinance 2002, Bonded Labour System (Abolition) Act 1992.

In addition, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is also not upheld with the military enjoying extensive powers including denying due process of law.

5. Analysis of Report by FATA Reforms Committee

The FATA Reforms Committee was set-up in November of 2015. Headed by the foreign affairs advisor to the prime minister and included the governor of KP with the minister and secretary of SAFRON, the minister of Law and Justice, as well as the national security
advisor. They set out decide the future of FATA based on four options: a) status-quo b) Gilgit-Baltistan like special status c) separate province or d) merger with KP. After a year of consultations with the Tribal Jirga and some other stakeholders they settled on option d) as the preferred solution. It is important to note that the Committee did not include women nor were women’s rights groups consulted, although the Committee has proposed the creation of a Gender Development Unit that will keep 30% employment quotas for women in the workplace.

In the report the Committee argues that a majority of those involved want a merger with KP and suggests compelling reasons for why the merger is the best option namely that there are infrastructural linkages between KP and FATA, and that FATA, which does not have enough resources or well-developed institutions to stand on its own, will benefit from solid government structure in KP.

The Report by the Committee is by far the most far-reaching set of reforms that have been proposed. It proposes to repeal the FCR, making the role of PA defunct, to be replaced by the “Riwaj Act”. Most importantly it significantly reforms and separates the judicial from the executive. The merger and new Riwaj Act would mean people choose their own representatives for the provincial government. Furthermore, the Jirga will be institutionalized in the judicial system, and the jurisdiction of the superior courts will be extended allying for an appeal against Jirga decision to the superior courts.

In an unprecedented step the Committee acknowledges that there are public funds being lost and misused, and also stresses the importance of audits for local bodies. It addresses the urgent need for social and infrastructure development, and makes a point to begin reforms after rehabilitation of TDPs. and points out the need for more budget. Furthermore, it acknowledges need for land reforms, security with border, remove collective punishment and permit system. It also proposes a 5-year transition period, which includes upholding Article 247 and role of the PA during this period to ensure security.

The NCHR greatly commends the Committee for suggesting far-reaching reforms that can have a positive impact.

Women have not been included and must be consulted on the codification of Riwaj and the institutionalization of the Jirga among other logistical and administrative measures, including, but not limited to, land, inheritance rights, and security reforms. It is imperative that such groups are invited to comment on “Riwaj Act”. Though it is commendable that a Gender Unit has been proposed that seeks to bring woman employment to 30% in each field of work, but it is not enough to engage with the structure of the problem, namely the concentration of a system around the male.
The proposed reforms also do not maintain democratization of Jirga and instead maintains power in the hands of the elite. The Rule of Law Unit that will seek to codify Riwaj needs to be significantly altered. It excludes women, and in its package to institutionalize the Jirga, it does not go far enough to democratize the process.

Furthermore, local bodies are not empowered in FATA until the merger with KP is complete thereby restricting the reforms process.

6. Recommendations by NCHR

1. Hold Referendum
   - Ensuring open media access
   - Ensuring high-security
   - Carried out before 2018 elections
   - Two options: Merge with KP or separate province
   - Adhere to recommendations regardless of outcome.

2. TDPs
   - It is evident that TDPs in Swat and Malakand were given a bigger share of the resources as compared to the TDPs in FATA. They were also not given loan waivers as those in Swat.
   - The integration of TDPs remains of the utmost importance and it is extremely difficult to continue significantly well without rehabilitation. The camps, last reviewed by NCHR, are in a dismal situation, and quality of life must be improved
   - Reconstruction of houses and infrastructure including roads, bridges, etc. is of an urgent need and the recommendations of the Committee to be followed in this regard.

3. Legislative
   - Repeal Articles 246 and 247 of the Constitution
     - Final executive action under Article 247 to merge FATA with KP and to repeal Articles 246 and 247 and the FCR.
   - Repeal FCR
     - Replace with Act, tabled after intensive consultation, that incorporates recommendations on Jirga, including perspectives of women’s rights groups.
   - Extend Khyber Pakhtunkhwa Right to Information Act 2013
• In order to address issue of tribal scepticism towards state institutions it is imperative that they be allowed information on government workings.

➢ Add 2-year sunset clause to Actions Regulation 2011
  • The counter-terrorism efforts by the military continue unabated. With the power to take punitive action without due process, the issue of counter-terrorism is unlikely to be fulfilled. Therefore, it is imperative that civilian control of counter-terrorism efforts is reinstated and strengthened. For that reason a 2-year sunset clause be added to Actions Regulation 2011

➢ Extend Prevention of Anti-Women Practices (Criminal Law Third Amendment) Act 2011
  • Practices like Swara continue unabated in FATA and it is imperative that the Criminal Law Act be extended.
  • Ensure effective policing through sensitivity trainings.

➢ Immediately extend all other applicable laws for marginalized segments in society, including, but not limited to:
  • Criminal Law (Amendment) (Offences in the name or pretext of Honour) Act 2013
  • Criminal Law (Amendment) (Offences Relating to Rape)
  • Disabled Persons (Employment and Rehabilitation) Ordinance 1981
  • Juvenile Justice System Ordinance 2000

➢ Set up 2018 elections for the people of FATA to elect representative in the KP Provincial Assembly

4. Executive

➢ Allow open access to media
  • In order to ensure transparency and accountability of elected officials and military

➢ Immediately allow FATA residents access to settled areas

➢ Close down SAFRON and integrate FATA Secretariat into KP Secretariat

➢ Increase budget as recommended by the committee to 3%
  • Conduct a thorough review within one year to assess the funds that are still lacking.
  • Increase budget incrementally every year to reach the proportional 7% for FATA.

➢ Implement National Action Plan
  • Regulate the Madrassahs operating without any registration
- Clamp down on hate-speech, particularly against Shias, by prosecuting with full force those that do so.

5. Judicial Reforms

- Inclusion of superior courts Once Article 247(7) is repealed
  - In order to improve people’s perceptions there should be increased capacity building and community level legal aid clinics designed to promote awareness and trust
- Provide free legal aid to residents of FATA.
  - The scepticism of the higher courts must be addressed through a process of improving integration and access.
- Make uniform the Judicial System across FATA and KP in case of a merger
- Repeal Nizam-e-Adl 2009 in Malakand

**Jirga**

- Make democratic process and separate from a judge appointed system. Instead make it a democratic, conflict-resolution process focused on reconciliation and not punitive measures. In any scenario, capital punishment is not conducive to conflict resolution. The Jirga maintains power to mediate civil and criminal disputes barring murder and rape, with the stipulation that everyone, including women, will be given due process including the ability to represent themselves. The lower courts may consider Jirga decision in their deliberations, but not necessarily so.
- Follow principles of Alternative Dispute Resolution, by not integrating Jirgas directly into the system. In the eyes of the Pakhtun a Malik, appointed by the Qazi will have the same level of credibility as a PA appointed Malik. It is therefore better to revert back to the roots of allowing a democratically elected Qazi or Jirgamaar, with appealable decisions in the superior courts.
- Create a 6-month unit comprised of FATA locals, tribal elders, women rights activists, students, youth groups, legal experts in judicial systems and indigenous law that will decide how to integrate.

6. Socio-economic Development

- Create 10-year development plan as highlighted by Committee, and also include CPEC considerations as mentioned.
  - The 10-year review may be developed under the FDA and after ten years the FDA may be dissolved to integrate KP Economic Zones Development and Management Company.
  - Develop after intensive consultation with experts.
• Ensure implementation
• Allow audits and conduct reviews

Health
➢ Provide water and sanitation to all houses.
➢ Conduct thorough review of current capacity and development need.
  • Improve trainings for medical staff and personnel
  • Increases resources to hospitals.

Education
➢ Reform and make uniform the curriculum across KP
➢ Investigate and address issue of ghost schools
➢ Run awareness programs to increase girls’ enrollment
➢ Increase teacher training and salaries of teachers

Economics and Land
➢ End permit/Radhari system on imports/exports to facilitate economic growth
➢ Repeal Centrally Administered Tribal Areas (Employees Status) Order, 1972
➢ Improve banking system and facilitate loans for non-agricultural investments
➢ To promote private asset formation collective land needs to be partitioned and allow for private ownership and development, as well as inheritance rights for women.
  • In order to create successful land reform a land-reforms unit should be composed of experts and concerned stakeholders.
➢ Return businesses usurped through collective punishment under the FCR

7. Security
➢ Disband LEAs and unite under KP Police force
  • Review KP Police force capacity and requirement
  • The disbanded units be incorporated fully into the police-force
    ▪ Those that are left out provided adequate resources for integration into society without arms and ammunition.
➢ Greater civilian control of counter-terrorism efforts
  • Stop funding Taliban groups like Haqqani network as that is against the national interest.
  • Allow media access to the efforts.
➢ Secure border with Afghanistan
➢ Promote internal security
  • Clamp down on kidnapping, smuggling.
  • Protect minorities, particularly Shias in Parachinar.
➢ Allow for a thorough review of the conditions of jails and detention centres.
The NCHR agrees with the Committee that reforms are only the means to an end and not the end in itself, and therefore it is important that one continues to look towards the future and part from uncertainty of it. That being said, it is imperative that the reforms themselves be solid enough to create a foundation and not risk leaving a political vacuum even after the extension of state institutions.

The NCHR vows to work closely with the people of FATA in order to ensure adequate reforms, and will continue to do so beyond the implementation of any such reforms in the future.
Bibliography


FATA Development Indicators Household Survey (FDIHS), 2014-15


Ministry of Planning, Development and Reforms. “Multidimensional Poverty in Pakistan”.


ANNEX
The Frontier Policy of Pakistan – 28th April 1948

I have been looking forward since long to meet you, representatives of the Tribes of the North-West Frontier, and it has given me very great pleasure indeed to have met you here today. I am sorry I have not been able to visit you in your own part of the country, but I hope to be able to do so sometime in the future.

I thank you for your welcome to me and for the kind personal references you have made about me. Whatever I have done, I did as a servant of Islam, and only tried to perform my duty and made every possible contribution within my power to help our nation. It has been my constant endeavour to try to bring about unity among Mussalmans, and I hope that in the great task of reconstruction and building up Great and Glorious Pakistan, that is ahead of us, you realize that solidarity is now more essential than it ever was for achieving Pakistan, which by the Grace of God we have already done. I am sure that I shall have your fullest support in this mission. I want every Mussalman to do his utmost and help me and support me in creating complete solidarity among the Mussalmans, and I am confident that you will not lag behind any other individual or part of Pakistan. We Mussalmans believe in one God, one book—the Holy Quran—and one Prophet. So we must stand united as one Nation. You know the old saying that in unity lies strength united we stand, divided we fall.

I am glad to note that you have pledged your loyalty to Pakistan, and that you will help Pakistan with all your resources and ability. I appreciate this solemn declaration made by you today. I am fully aware of the part that you have already played in the establishment of Pakistan, and I am thankful to you for all the sympathy and support you gave me in my struggle and fight for the establishment of Pakistan. Keeping in view your loyalty, help, assurances and declarations we ordered, as you know, the withdrawal of troops from Waziristan as a concrete and definite gesture on our part—that we treat you with absolute confidence and trust you as our Muslim brethren across the border. I am glad that there is full realization on your part that now the position is basically different. It is no longer a foreign Government as it was, but it is now a Muslim government and Muslim rule that holds the reigns of this great independent sovereign State of Pakistan. It is now the duty of every Mussalman, yours and mine, and every Pakistani to see that the State, which we have established, is strengthened in every department of life and made prosperous and happy for all, especially the poor and the needy.
Pakistan has no desire to unduly interfere with your internal freedom. On the contrary; Pakistan wants to help you and make you, as far as it lies in our power, self-reliant and self-sufficient and help in your educational, social and economic uplift, and not be left as you are dependent on annual doles, as has been the practice hitherto which meant that at the end of the year you were no better off than beggars asking for allowances, if possible a little more. We want to put you on your legs as self-respecting citizens who have the opportunities of fully developing and producing what is best in you and your land. You know that the Frontier Province is a deficit province, but that does not trouble us so much. Pakistan will not hesitate to go out of its way to give every possible help—financial and otherwise—to build up the economic and social life of our tribal brethren across the border.

I agree with you that education is absolutely essential, and I am glad that you appreciate the value of it. It will certainly be my constant solicitude and indeed that of my Government to try to help you to educate your children and with your co-operation and help we may very soon succeed in making a great progress in this direction.

Your desire for entering the Pakistan Service in the Civil and Military will receive my full consideration and that of my Government, and I hope that some progress would be made in this direction also without unnecessary delay.

You have also expressed your desire that the benefit, such as your allowances and khassadari, that you have had in the past and are receiving, should continue. Neither my Government nor I have any desire to modify the existing arrangements except, in consultation with you, so long as you remain loyal and faithful to Pakistan.

I know there has been scarcity of foodgrains, cloth, and sugar. You must realize that we have all been passing through difficult times all over the world and Pakistan is no exception; indeed the whole world is facing hardships, but we are not unmindful of this problem, and we are endeavouring to the utmost of our capacity, with special care for Baluchistan and the Frontier Province, and you will not be neglected in this respect. We will do our utmost to see that essential commodities reach you in time and in reasonably
sufficient quantities. I am hoping and looking forward to the time when more normal conditions may present themselves to us, so that we may be able to live with more ease and comfort in the way of food, clothing, housing and all the necessities of life.

In the end, I warmly thank you for the wholehearted and unstinted declaration of your pledge and your assurances to support Pakistan, so that it may reach the pinnacle of glories of Islam and become a great and mighty nation among other nations of the world.

Pakistan Zindabad
The Federal Crimes Regulation 1901
THE ACTIONS (IN AID OF CIVIL POWERS) REGULATION 2011

to provide for Actions in aid of civil power in the Federally Administered tribal Area.

WHEREAS there exists grave and unprecedented threat to the territorial integrity of Pakistan by miscreants and foreign funded elements, who intend to assert unlawful control over the territories of Pakistan and to curb this threat and menace, Armed forces have been requisitioned to carry out actions in aid of Civil Power;

AND WHEREAS continuous stationing of Armed Forces in territories, that have been secured from miscreants in the provincially Administrative Tribal Areas, is necessary and it is, therefore, imperative that a proper authorization be given to the Armed Forces to take certain measures for incapacitating the miscreants by interning them during continuation of the actions in aid of civil power and it is also necessary to ensure that Armed Forces carry out the said operation in accordance with law;

AND WHEREAS the miscreants are no longer loyal and obedient to the state and Constitution of the Islamic Republic of Pakistan;

AND WHEREAS to address this situation, the federal Government have directed Armed Forces to act in aid of Civil power to counter this threat to the solidarity and integrity of Islamic Republic of Pakistan while being subject to the law provided hereinafter;

NOW, THEREFORE, in exercise of powers conferred by clause (4) of Article 247 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make the following regulations, namely :

1. **Short title, application and commencement.** — (1) This Regulation may be called the actions ( in Aid of Civil Power) Regulation, 2011.
   
2. It shall be applicable to the Federally Administrative Tribal Areas of Pakistan
   
3. It shall come into force at once and shall be deemed to have taken effect from the 1st February 2008.

**CHAPTER- 1
DEFINATIONS**

2. **Definitions.** — In this regulation, unless there is anything repugnant in the subject or context —

(a) “Armed Forces” means the Pakistan Army, Pakistan Air Force and Pakistan Navy and includes civil armed forces;

(b) “Armed Action” means instances of actual fighting or military engagements or hostilities or combat of the Armed Forces against the miscreants during the action in aid of civil power;
(c) “calling in aid of Civil Power” means a direction for the requisitions of the Armed Forces made by the federal Governance under Articles 245 of the constitution of the Islamic Republic of Pakistan;

(d) “action in aid of Civil power” means series of measures that involve the mobilization of Armed Forces, in aid of Civil Power or their requisition by the Federal Government, including measures such as armed action, mobilization, stationing etc., till such time they are withdrawn by the written order of the Federal Government;

(e) “defined area” means the area notified by the Provincial Government in which action in aid of civil power is being conducted in order to secure the territory or ensure peace in any place where Armed Forces have been requisitioned;

(f) “GOVERNOR” means the Governor of Khyber Pakhtunkhwa.

(g) “internment” means restricting any person to a defined premises during the period the counter-insurgency operation is ongoing in order to incapacitate him from committing any offence or further offences under this regulation or any other law, for securing peace in the defined area;

(h) “Interning Authority” means an interning authority as provided in section 8;

(i) “internment center” means any compound, house, building, facility or any temporary or permanent structure that is notified by the Provincial Government to serve as premises where persons are interned;

(j) “interment procedure” means procedures to be prescribed by the Provincial Government in respect of the well being, food, health, treatment, religious freedom, visitation by family, counseling and psychological treatment etc. of the miscreants interned;

(k) “Orders of Interment” means a duly signed document in the form of specified in schedule-1 and includes any duly made order for intering or custody of a miscreant. The said document shall also serve as the basis to confine any person in notified lockup or jail in any settled area, if required;

(l) “miscreants” means any person who or may not be a citizen of Pakistan and who is intending to commit or has committed any offence under this Regulation and includes a terrorists, a foreigner, a non state actor or a group of such persons by what so ever names called;

(m) “requisition of Armed Forces” means whenever the Armed Forces receive direction from the Federal Government, for being requisitioned, mobilized or stationed in the Federally Administered Tribal Areas and the same shall deem to have been done in aid of Civil Power;
(n) “Register of internees” means a register containing list of all the persons interned; and

(o) “Rules” means rules made under this Regulation.

CHAPTER II

REQUISITION OF THE ARMED FORCES

3. Requisition of the Armed Forces. ——

(1) The Federal Government may requisition the Armed Forces in respect of any defined area to carry out actions in aid of civil power;

(2) Any existing direction already issued for requisition of the Armed Forces shall be deemed to have been validly issued under this Regulation and the Armed Forces already requisitioned shall conduct themselves in accordance with the provision of this Regulation.

(3) The Armed Forces requisition once issued shall deem to continue unless specifically reviewed or withdrawn partially or fully, as the case may be.

(4) The Armed Forces may also be requisitioned in aid of civil power, for law and order duties, to conduct law enforcement operations, to continue natural calamities and for rehabilitation.

CHAPTER III

CONDUCT OF ARMED ACTION

1. 4. Precautions before using Force. ——

(1) The Armed Forces may undertake, where possible, the following minimum preventive measures and precautions during the action in aid of civil power,

Namely:-

(a) warn the civilians to vacate the area;

(b) send out warning to the residents to withdraw support for the miscreants;

(c) residents may be directed to point out the miscreants in hiding to the Armed Forces personnel;
(d) take special measures in respect of the life and safety of children, women and elderly persons; and

(e) Take feasible precautions in the choice of means and methods of attach with a view to avoiding and minimizing collateral loss of civilian life and object.

(2) The commander of Armed Forces shall issue instructions to troops under their control that the Armed Forces shall adhere to the principles of proportionality and necessity and shall ensure that the collateral damages to life and property shall be minimum.

(3) Subject to above, the Armed Forces are authorized to use force, arms and ammunitions, including but not limited to firearms, weapons and air power etc., to achieve the objective during any armed action and to take any action, measures, decision that is necessary in this regard.

5. Misuse of force during actions in aid of civil power.— (1) If any abuse or misuse of the use of force during action in aid of civil power is alleged or attributed to any member of the Armed Forces, the same shall be investigated within the hierarchy of the Armed Forces.

(2) If the said act of use of force referred to in sub-section (1) is attributed to any civilian officer, the Provincial Government shall conduct inquiry and take appropriate steps against such officer in accordance with applicable law.

(3) In case any conduct attributed to Armed Forces or their individual officials is already criminalized under any existing treaty or convention, then it shall deemed to be an offence under this Regulation and the same shall be tried only by the Armed Forces pursuant to a procedure to be prescribed under this Regulation in case of such an event.

CHAPTER:-IV

POWERS DURING ACTION IN AID OF CIVIL POWER

6 Additional authorization to the Armed Forces:- In addition to the power conferred under this Regulation a member of Armed Forces, who is conducting the action in aid of civil powers or any civilian official duly authorized, shall exercise any of the following powers, namely:-

(a) At the time of taking the miscreants into internment, prepare or provide where necessary, a signed statement from any person who has any knowledge of any offence committed or admitted or confessed by the miscreants;

(b) Enter and search any property or place where there is any apprehension that miscreants may be hiding or weapons, material or other related suspicious things are kept and the same are likely to be used for any offence under this Regulation;
(c) Seize the weapons, materials or suspicious things by a memorandum of seizure as specified in schedule-II;

(d) Gather information through all means about the credentials of the miscreant, including his foreign involvement and where appropriate, disrupt covert supplies made to miscreant from the foreign countries;

(e) Establish security posts in the defined area; and

(f) Posses and occupy any property with the approval of the provincial government.

7. Conferring of any authorization. — (1) The Provincial Government may confer additional power upon the Armed Forces to achieve the purpose of this Regulation.

(2) The provincial Government may amend any schedule to this Regulation.

(3) The Provincial Government may delegate any of its powers under this Regulation to any officer.

CHAPTER-V

INTERNMENT

8. Interning Authority. — (1) The Governor or any officer authorized by it in this behalf, may issue an order of internment under this Regulation.

(2) Any officer authorized under sub-section (1) May further authorize any officer as may be expedient to issue the orders of internment and such officer shall also be the Interning Authority under this Regulation.

9. Power to Intern. —

(1) The Interning Authority shall intern any person who,—

1. May obstruct actions in aid of civil power in any manner whatsoever; or
2. if not restrained or incapacitated through internment shall strengthen the miscreants ability to resist the Armed Forces or any law enforcement agency; or
3. By any action or attempt may cause a threat to the solidarity, Integrity or security of Pakistan;
4. Has committed or likely to commit any offence under this Regulation so that the said person shall not be able to commit or plan to commit any offence, during the action in aid of civil power.
(2) If, in the opinion of the Interning Authority, the internment of any person is expedient for peace in the defined area, it shall pass an order of internment.

(3) The interning Authority may intern any person who may not be in the definite area, but is suspected of having committed acts or has nexus with actions that are referred to in sub-section (1) and (2) in the defined area.

(4) The Interning Authority shall issue an interning order in respect of each person who shall be kept in the interment center.

(5) The Provincial Government may notify an appropriate office as in charge of the interment center.

(6) The Authority in-charge of the interment center shall maintain a proper register of person interned and also maintain their record.

(7) The Governor shall prescribe internment procedure.

(8) Person detained pursuant to action in aid of civil power shall be deemed to have been validly interned under this regulation and their interment orders, in the manner prescribed under this regulation, shall also be prepared and issued accordingly.

10. Remedy for Release— (1) The interning Authority may, either on its own or on the written request of the person interned or his relatives, may withdraw the order on internment.

(2) The interning authority shall examine the request made under sub section (1) and depute a suitable officer or officers to inquire into the offence attempted or committed, previous and present conduct, impact of counseling, background and affiliation of the person interned and accordingly submit its report.

(3) The interning Authority may, based on the report referred to sub section (2) and material produced before it through whatsoever sources, pass a suitable order in writing whereby it may;—

(a) turn down the request for the time being; or
(b) direct that the person offender and after the conclusion of the actions in aid of civil power he shall be handed over to the law enforcing agencies for formal prosecution: or.

(c) accept the request unconditionally or with certain conditions as it may deem expedient and may also take an undertaking or guarantee from the family or the Jirga of the community.

11. **Duration of Internment:** The Power to intern shall be valid from the day when this regulation deemed to have come into force, or the date the order of the interment is issued, whichever is earlier, till the continuation of action in aid of civil power.

12. **Criminal Liability.**— (1) The internment shall not affect the criminal liability of the person interned for the acts that may constitute offences under this Regulation or under any other law.

(2) Any person or committing an offence under this regulation may be tried for the offence individually or jointly.

3) After notification of termination of the actions in aid of civil power by the Federal Government, the person interned shall be handed over to the functioning civilian law enforcement authorities along with evidence and material collected against such persons in accordance with provisions of this regulation.

13. **Power of question or collect information.** (1) The interning Authority shall designate appropriate officer question any person interned, before or after counseling, and the said designated officer shall prepare and submit a report, under his signature, with its finding to the interning Authority.

2) The Interning Authority shall designate appropriate office to collect any information or material from any government law enforcement agency, or any Government intelligence agency, department, statutory body, database, or entity in respect of the person interned and based on the said information received in accordance with the routine practice of the said agency or entity, shall submit a report, under his signature, with his findings, to the interning authority, along with the said material or information,

3) The interning Authority may also designate an appropriate officer to obtain a statement from the person interned.

4) The Interning Authority, if necessary, may designate any official to collect information in respect of the circumstances of internment of any person interned or any matter related thereto.

**CHAPTER -VI**
HUMAN RIGHTS AND OVERSIGHT

14. Oversight Board. —

(1) The Governor shall notify an Oversight Board for each interment center comprising two civilian and two military officer to review the case of each person interned with in a period of time, not exceeding one hundred and twenty days, from the issuance of the order of internment, and prepare a report for consideration of the Provincial Government.

2) The Oversight Board shall periodically review the conditions of internment Centers and recommend suitable action for consideration of the provincial Government.

3) The Oversight Board shall also take notice of any complaint or information in respect of any degrading treatment of any person interned or any torture or any indignified treatment and in this regard carry out any inquiry in the matter and where necessary recommend suitable departmental action against the official concerned.

4) The Oversight Board shall also be responsible to impart training and awareness regarding human rights standard and laws applicable on the conduct actions in aid of civil power of this nature to all the concerned officials of the interning authority.

15. Prohibition on Torture: No person interned under this regulation, shall be subject to torture.

CHAPTER VII

OFFENCES AND PUNISHMENTS

16. Offences under this regulations: 1) Whoever challenges or is suspected of an act of challenging the authority and writ of the Federal or Provincial Government or to attempt to assert unlawful control over any part of the territory of Pakistan or resorts to the acts of waging war against the State, shall be deemed to have committed an offence under this regulation.

2. Whosoever does any act or attempt to do any such act which threatens peace, safety and defense of Pakistan, or threaten the core fundamental rights of the citizens of Pakistan or commits terrorism or sabotage, shall be deemed to have committed offences under this regulation.

3. Whosoever obstructed or attempted to obstruct in any manner the action in aid of civil power or threaten in ally manner whatsoever the peace and tranquility of any area by subversion, spreading literature, delivering speeches electronically or otherwise thus inciting the people in commissioning any offence under any law shall be deemed to have committed offence under this regulation.
4) Whosoever joins or is part of or linked with any private army and an armed group or an insurrectional movement, that has expressed hostility against the state of Pakistan, its Armed Forces, officials, civilians and their properties and who have attempted to obstruct in any manner the actions in aid of civil powers shall be deemed to have committed offences under this regulation.

5) Whosoever commits or attempts to commits any offence provided for in the laws specified in schedule II during the action in aid of civil power, shall deemed to have committed an offence under the regulation, notwithstanding the application of the said law to areas where the actions in aid of civil power is going on.

6) Whosoever commits perfidy or attacks on protected persons or property or uses human beings as shields or involves in espionage or uses disguise or misuses emblem or uniform of any bona-fide organization or obstructs implementation of the relevant United Nation Security Council Resolutions under chapter 7 of the United Nations Charter, shall be deemed to have been committed offences under this regulation.

7) Whosoever support or harbors or finances or facilities or aids or abets or attempts the commissioning of the offences mentioned in sub-sections(1) to (6) shall be deemed to have committed an offence under this regulation.

8) Whosoever grant refuge to miscreants shall be deemed to have committed and offence under this regulation.

9) All offences under this regulation shall be deemed to be continuing offences.

10) Nothing prevents the prosecution to try the offender for more than one offence.

17. Punishment. — (1) Whosoever commits an offence under this Regulation shall be punished with death or imprisonment for life or imprisonment up to ten years; and may also be liable to fine. The convict shall also be liable to forfeiture of his property.

2) Whosoever is prosecuted for committing offences mentioned in the laws specified in schedule III to this Regulation shall be given the punishments provided for in the said respective laws.

18. Prosecution. — (1) Whosoever commits or attempts any offence under this Regulation shall be proceeded against under the Frontier Crimes Regulation, 1901, or Code of Criminal procedure, 1898 ( Act IV of 1898) or the Anti- Terrorism Act, 1997 (XXVII of 1997) or any applicable law, as the case may be, and shall be handed over to the prosecuting or investigating agency concerned for effecting formal arrest for effecting formal arrest after his order of internment has been withdrawn.

2) The offender may be handed over to any investigating or prosecuting agency anywhere in the province.
19. **Admissibility of evidence And its handing over,** — (1) Notwithstanding anything contained to the contrary in Qanun-e- Shahdat, 1984 (P.O 10 of 1984), or any other law for time being in force all evidence, information, material collected, received and prepared by the interning Authority, or its officials in accordance with the provision of this regulation shall be admissible in evidence and shall be deemed sufficient to prove the facts in issue or the relevant facts.

2. Notwithstanding anything contained in the Qanun-e-Shahadat, 1984 (P.O. 10 of 1984) or any other law for the time being in force, any member of the Armed Forces, or any authorized official deposing on his behalf in or any official statement or before the court to prove any event, offence or happening, shall be deemed to have proved the event, offence or happening by his statement or deposition and no other statements, deposition or evidence shall be required. Such statement or deposition shall be sufficient for convicting the accused as well.

3) The Interning Authority shall hand over to the investigating or prosecuting agency, at the time of handing over the person, any or all of the following, namely; —

1. the internment order;
2. any information, material or evidence collected pursuant to authorization under section 6;
3. report, if any, made under sub-section (2) of Section 10
4. order, if any, passed under sub section( 3) of Section 10
5. report or reports, if made by the designated official of the interning Authority under sub-section (1) of section 13;
6. report, if any, by the designated official of the Interning Authority under sub-section (2) of section 13 along with necessary information and material received or collected;
7. statement, if any, of the miscreant under sub-section (3) section 13, recorded and duly signed by the designated official in whose presence it was given.
8. The report of Oversight Board, if prepared, under sub section (1) of section 14;
9. Any recoveries made or evidence collected at any time after the commencement of this regulation; and
10. Other information collected in respect of the person from any source, duly endorsed by the interning authority.

4. The Governor may provide such security and protection to the judges of courts, the prosecutors and witnesses, as it may deem appropriate.

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**CHAPTER VIII**

**GENERAL**

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1. **Counseling.**— 1 The Interning Authority may provide psychological and religious counseling to the person interned.

2. **Transfer of Interns.**— (1) The Interning Authority may, for reasons to be recorded in writing, transfer the interned person from Provincial Administered Tribal Area to any other place in the province declared as internment center for the purpose of this Regulation.

2. A copy of the order of such transfer shall be provided to the concerned authorities.

22. **Power to make rules.**— The Provincial Government may make rules for carrying out the purposes of this regulation.

23. **Indemnity.**— No suit or other legal proceedings shall lie against any person for anything done or intended to be done in good faith under this regulation.

24. **Overriding effect.**— This regulation shall have overriding effect, notwithstanding anything contained to the contrary in any law for the time being in force.

25. **Removal of Difficulties.**— The Governor may, by order, provide for removal of any difficulty to give effect to the provision of this Regulation.

26. **Validation.** Anything done, action taken, orders passed, action taken, orders passed, proceeding initiated, process or communication issued, powers conferred, assumed or exercised, by the Armed Forces or its members duly authorized in this behalf, on or after the 1st February, 2008 and before the commencement of this regulation, shall be deemed to have been validly done, issued, taken, initiated, conferred, assumed, and exercised and provisions of the this regulation shall have, and shall be deemed always to have had, effect accordingly.

**SCHEDULE-1**

{ See regulation 2 (k)}

**Order of Internment**

**PART-1**

This order of Internment is issued in respect of:

Claims to be.
Photograph

<table>
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<th>Side</th>
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Mr. ____________________________________________

Aliases (if Applicable) ________________________________________

Son of ________________________________________________

Identity Mark __________________________________________

ID Card (if any) __________________________________________

Resident of _____________________________________________

Thumb Impression

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PART-II

Taken into custody/ internment from ______________________________________

________________________________________________________________________

________________________________________________________________________

Reason for Interning:

1. ____________________________________________

2. ____________________________________________

3. ____________________________________________

Superintendent ____________________________________________

Authorized Interning Officer ________________________________
PART III

(To be prepared in due course and attached with Part-I and II)

After necessary verification, the person identified in the paragraph, bears the following particulars.

Mr.___________________________________________________________

Alies (if Applicable)_____________________________________________________

Son of ____________________________________________________________

Identity Mark___________________________________________________________

ID Card (if any)_________________________________________________________

Resident of _____________________________________________________________

Tribe etc_________________________________________________________________

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Superintendent

Authorized Interning Officer

Interment- Center

(official Seal)

(official Seal)

SCHEDULE-11

Certified that I searched (name of Place) ____________________________________________

on (date)____________________________________ belonging to Mr._________________
S/o______________________________________ address____________________________________

________________________________________________________________________

seized the following material;

1) ________________________________________________________

2) ________________________________________________________

3)__________________________________________________________

4) Photograph of the material or place (if possible)

2) Further material listed and signed annex.

It is certified that this memorandum of seizure has been made in duplicate and a copy of
this memorandum of seizure has been left at the premises from where the material have
been seized.

— — — — — — — — — — — — — — —
(Signed)

(Full name/ details of the official carrying out the seizure)

SHEDULE III

{(see regulation 17 (2) }

1. Offences punishable under Pakistan Penal Code, 1860 (XLV of 1860)
2. Offences punishable under the Arms Act, 1878 ( XI of 1978)
3. Offences punishable under the Explosive Act 1884 ( IV of 1984
4. Offences punishable under the prevention of seditious meeting act, 1911 ( X of 1911)
5. Offences punishable under the official Secret Act, 1923 (XIX of 1923)
6. Offences punishable under the Dangerous Drugs Act 1930 ( II of 1930).
7. Offences punishable under the Foreigners Act, 1946 ( XXXI of 1946)
8. Offences punishable under the Foreign Exchange Regulation Act of 1947 ( VII of 1947)
9. Offences punishable under The Imports and Exports (Controls) Act, 1950 ( XXXIX of
1950)
10. Offences punishable under Pakistan Army Act, 1952 ( XXXIX 1952)
11. Offences punishable under the Pakistan Air Force Act 1953 (VI 1953)
12. Offences punishable under the Pakistan Navy Ordinance, 1961 (XXXV of 1961)
13. Offences punishable under the Pakistan Arms Ordinance, 1965 ( W.P Ordinance XX of
1965)
14. Offences punishable under the Customs Act, 1969 (IV of 1969)
15. Offences punishable under the High treason (punishment Act, 1973 (LXVIII of 1973)
17. Offences punishable under the Passports Act, 1974 (XX of 1974)
18. Offences punishable under the Drugs Act, 1976 (XXXI of 1976)
19. Offences punishable under the emigration Ordinance, 1979 (XVII of 1979)
20. Offences punishable under the Exit from Pakistan (Control) Ordinance, 1981 (XLVI of 1981)
22. Offences punishable under the surrenders Illicit Arms Act, 1991 (XXI of 1991)
23. Offences punishable under the Pakistan Telecommunication (Re organization) Act, 1996 (XVII of 1996)
24. Offences punishable under the Anti Terrorism Act, 1997 (XXVII)
25. Offences punishable under the control of Narcotics Substances Act, 1997 (XXV of 1997)
26. Offences under the National Data base Registration Authority Ordinance, 2000 (VIII of 2000)
30. Offences punishable under the Prevention and Control of Human Trafficking Ordinance 2002 (LIX of 2002)
31. Offences punishable under the Export control on goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and their Delivery System Act, 2004 (V 2004)
32. Offences punishable under the Anti Money Laundering Act, 2010 (VII of 2010)
33. Offences punishable under all existing applicable laws, orders, rules and regulations enforced in FATA.

The Khyber Pakhtunkhwa Right to Information Act 2013

AN
ACT

to provide for ensuring transparency and access to
information in the Province of the Khyber Pakhtunkhwa.

WHEREAS Article 19A of the Constitution of the Islamic Republic of Pakistan provides that every citizen shall have the right to access to information in all matters of public importance, subject to regulation and reasonable restrictions imposed by law;

AND WHEREAS transparency of information is vital to the functioning of democracy and also to improve governance, reduce corruption, and to hold Government, autonomous and statutory organizations and other organizations and institutions run on Government or foreign funding, more accountable to its citizens and for matters connected therewith and incidental thereto;

AND WHEREAS it is essential that citizens shall have right to information to participate meaningfully in a democratic process and further to improve their involvement and contribution in public affairs;

It is hereby enacted as follows:-

1. Short title, extent and commencement.--(1) This Act may be called the Khyber Pakhtunkhwa Right to Information Act, 2013.
(2) It extends to the whole of the Province of the Khyber Pakhtunkhwa.
(3) It shall come into force at once.

2. Definitions.---In this Act, unless there is anything repugnant in the subject or context,-
(a) “complaint” means any allegation in writing made by or on behalf of a requester that his request for information has not been dealt with by a public body in accordance with the rules and procedures set out in this Act, including where he has been wrongfully denied access to all or part of that record;
(b) “designated officer” means an officer of a public body designated under section 6 of this Act;
(c) “employee or official” in relation to a public body means a person employed in a public body whether permanently or temporarily and includes consultants;
(d) “Government” means the Government of the Khyber Pakhtunkhwa;
(e) “information” means material which communicates meaning and which is held in recorded form;
(f) “Information Commission” means the Khyber Pakhtunkhwa Information
Commission established under section 24 of this Act;
(g) “prescribed” means prescribed by rules made under this Act;
(h) “Province” means the Province of the Khyber Pakhtunkhwa;
(i) “Public body” means:
(i) any department or attached department of the Government;
(ii) Secretariats of Chief Minister and Governor of the Khyber Pakhtunkhwa;
(iii) Secretariat of the Provincial Assembly, Khyber Pakhtunkhwa alongwith the Members of the Assembly and the Assembly itself;
(iv) any Office, Board, Commission, Council or any other Body established by, or under, any law;
(v) subordinate judiciary i.e. Courts of District and Sessions Judges, Courts of Additional District and Sessions Judges, Courts of Senior Civil Judges, Courts of Civil Judges and Courts of Magistrates;
(vi) Tribunals;
(vii) anybody which is owned, controlled or substantially funded by one of the above, including enterprises owned by the Province; and
(viii) any other body which undertakes a public functions;
(j) “record” means information which is recorded in any form;
(k) “request for information” shall include a request for information and a request for a specific record;
(l) “requester” means any citizen, who has made a request for information under this Act; and
(m) “third party” means a person other than the person making a request for information or a record.

3. Right to information.--(1) Every citizen shall subject to the provisions of this Act and any rules made under it, have the right to access any information or record held by a public body.
(2) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, no requester shall be denied access to any information or record.
(3) This Act shall be interpreted so as to:
(a) advance the purposes of this Act; and
(b) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.

4. Maintenance and indexing of records.--Subject to the provisions of this Act and in accordance with the rules as may be prescribed, each public body shall ensure that all of the records which it holds are properly maintained, including so as to enable it to comply with its obligations under this Act, and in accordance with any relevant rules or standards established by the Information Commission.

5. Publication and availability of records.--(1) The following categories of information shall be
duly published by public bodies in an up-to-date fashion and in a manner which best ensures that they are accessible to those for whom they may be relevant, including over the Internet, subject to reasonable restrictions based on limited resources:
(a) Acts and subordinate legislation such as rules, regulations, notifications, bye-laws, manuals and orders having the force of law in the Province, including being made available at a reasonable price at an adequate number of outlets to ensure reasonable access by the public;
(b) information about the public body, including its organization, functions, duties, powers and any services it provides to the public;
(c) a directory of its officers and employees, including a description of their powers and functions and their respective remunerations, perks and privileges;
(d) norms and criteria set by the public body for the discharge of its functions, including any rules, manuals or policies used by its employees to this end;
(e) a description of its decision making processes and any opportunities for the public to provide input into or be consulted about decisions;
(f) relevant facts and background information relating to important policies and decisions which are being formulated or have been made and which affect the public;
(g) a detailed budget of the public body, including proposed and actual expenditures;
(h) details about any subsidy or benefit programmes operated by the public body, including details about the amount or benefits provided and the beneficiaries;
(i) particulars of the recipients of concessions, permits, licences or authorizations granted by the public body;
(j) the categories of information held by the public body;
(k) a description of the manner in which requests for information may be made to the public body, including the name, title and contact details of all designated officers; and
(l) such other information as may be prescribed.
(2) Public body shall also publish an annual report on what they have done to implement their obligations under this Act, which shall include detailed information about the requests for information which they have received, and how they have processed these requests. (3) The annual report under sub-section (2) shall be formally forwarded to Speaker Provincial Assembly of Khyber Pakhtunkhwa and to the Information Commission, who shall take such action on the report as they may deem appropriate.

6. Designation of official.—(1) On commencement of this Act, a public body shall within a period of one hundred and twenty (120) days, designate and notify an officer to act as designated officer for the purposes of this Act, with whom request for information under this Act may be lodged.
(2) In case no such official has been designated or in the event of the absence or non
availability of the designated officer, the person in charge of the public body shall be the designated officer.

(3) The designated officer shall be responsible for ensuring that requests for information are dealt in accordance with this Act and generally for promoting full compliance by the public body with its obligations under this Act.

7. Request for information.---(1) Subject to the provisions of this Act, every citizen may lodge a request for information with a public body through the designated officer.

(2) A request for information shall be made in writing and lodged in any manner in which the public body has the facilities to receive it, including in persons, by mail, by fax or by email.

(3) Any written request for information which identifies the information or record sought in sufficient detail to enable the public body to locate it, and which includes an address for delivery of the information or record, shall be treated as a request for information.

(4) Subject to sub-section (3), a public body may provide an optional form for making requests for information, with a view to assisting requesters to make request.

(5) In no case shall a requester be required to provide reasons for his request.

(6) Where a request for information is received by a public body, the requester shall be provided with a receipt acknowledging the request, including the date and name of the official responsible for processing it.

8. Assistance to requesters.---(1) A designated officer shall take all reasonable steps to assist any requester who needs such assistance.

(2) In particular, a designated officer shall assist any requester who is having problems describing the information sought in sufficient detail to enable the public body to locate that information, or who needs help due to disability.

(3) Where a requester is unable to provide a written request, a designated officer shall reduce the request into writing, and provide the requester with a signed, dated copy of it.

9. Where information is not held.---(1) Where a public body does not hold information or records which are responsive to a request, and it is aware of another public body which does hold the information, it shall forward the request to that public body, and it shall inform the requester of this.

(2) Where a public body does not hold information or records which are responsive to a request, and it is not aware of any other public body which does, it shall return the request to the requester, informing him of this.

10. Procedure for disposal of requests.---(1) A designated officer shall provide a written notice in response to a request for information.

(2) The notice shall indicate that:

(a) the request has been accepted and the requester is entitled to receive the information or record, subject to the payment of any applicable fee; or

(b) the request has been rejected on the basis that it does not comply with the
rules relating to such requests, but only after assistance has been offered to
the requester in accordance with section 8; or
(c) the request has been rejected on the basis that the information is already
available in published form, including in the official Gazette or in another
generally accessible form, such as a book, in which case the notice shall
direct the requester to the place where the information may be found; or
(d) the request has been rejected on the basis that it is vexatious, including
because it relates to information which is substantially the same as
information that has already been provided to the same requester; or
(e) the request has been rejected, in whole or in part, on the basis that the
information is exempt, in which case the notice shall specify the exact
exception relied upon and include details regarding the right of the
requester to appeal against this decision.
(3) Where information or a record is provided in accordance with clause (a) of subsection
(2), it shall be accompanied by a certificate, which may be affixed to the information or
record at the foot thereof, as appropriate, to the effect that the information is correct or, as the case
may be, the copy is a true copy of such public record, and such certificate shall be dated and
signed by the designated officer.

11. Time line for responding.---(1) Subject to the provisions of this Act, a public body shall be
required to respond to a request for information in accordance with section 7 as soon as possible
and in any case within ten working days of the receipt of request.
(2) The period stipulated in sub-section (1), may be extended by a maximum of a
further ten working days where this is necessary because the request requires a search through a
large number of records or records located in different offices, or consultation with third parties or
other public bodies.
(3) Information needed to protect the life or liberty of any individual will be provided
within two working days.

12. Form for providing information.---Where an applicant has indicated a preferred means for
accessing information, such as a physical copy (attested), an electronic copy or an opportunity to
inspect certain records, the public body shall provide access in that form unless to do so would
unreasonably interfere with its operations or harm the document.

13. Fees for requests.---(1) It shall be free to lodge requests for information.
(2) Fees may be charged for the actual costs of reproducing information and sending it
to the requester, in accordance with any schedule of fees which may be adopted by the Information
Commission.
(3) No fee shall be charged for the first twenty pages of information provided, or where
the requester is below the poverty line.

14. Exempt information.---A public body shall not be required to disclose information which
falls within the scope of the exceptions provided for in sections 15 to 21 of this Act, provided that:
(a) exceptions in other laws (secrecy provisions) may not extend the scope of the exceptions in this Act, although they may elaborate on an exception that is provided for in this Act;
(b) the fact that information has been classified is irrelevant to the question of whether or not it falls within the scope of the exceptions provided for in this Act, which must always be accessed directly, at the time of a request, based on clear and objective considerations;
(c) where only part of a record or the information falls within the scope of the exceptions provided for in this Act, that part shall be severed and the rest of the record or information shall be provided to the requester;
(d) even where information falls within the scope of an exception provided for in this Act, the information shall still be provided to the requester where, on balance, the overall public interest favours disclosure of the information;
(e) for the purposes of clause (d), there shall be a strong presumption in favour of the disclosure of information that exposes corruption, criminal wrongdoing, other serious breaches of the law, human rights abuse, or serious harm to public safety or the environment; and
(f) the exceptions set out in sections 15 to 18 of this Act, shall cease to apply after a period of twenty years, provided that this may be extended, in exceptional cases, for up to a maximum of another fifteen years, with the approval of the Information Commission.

15. International relations and security.---A public body may refuse a request for information the disclosure of which would be likely to cause grave and significant harm to international relations or national security.

16. Disclosure harmful to law enforcement.---A public body may refuse a request for information the disclosure of which would be likely to:
(a) result in the commission of an offence;
(b) harm detection, prevention, investigation, inquiry or prosecution in relation to an offence, or the apprehension of an offender;
(c) reveal the identity of a confidential source of information in relation to an investigation;
(d) facilitate an escape from legal custody; or
(e) harm the security of any property or system, including a building, a vehicle, a computer system or a communication system.

17. Public economic affairs.---A public body may refuse a request for information the disclosure of which would be likely to:
(a) cause grave and significant damage to the economy as a result of the premature disclosure of the proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management; or
(b) cause significant damage to the legitimate financial interests of the public body, including by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body or by revealing information to a competitor of the public body.

18. Policy making.—A public body may refuse a request for information the disclosure of which would be likely to cause serious prejudice to the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views, or cause serious prejudice to the success of a policy through premature disclosure of that policy.

19. Privacy.—(1) A public body may refuse a request for information the disclosure of which would encroach on the privacy of an identifiable third party individual, other than the requester, including an individual who has been deceased for less than twenty years.
   (2) The exception in sub-section (1) shall not apply where:
   (a) the third party has effectively consented to the disclosure of the information; or
   (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party; or
   (c) the third party is or was an official of a public body and the information relates to his function as a public official.

20. Legal privilege.—A public body may refuse a request for information which is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

21. Commercial and confidential information.—A public body may refuse a request for information if the information:
   (a) was obtained from a third party and to communicate it would constitute an actionable breach of confidence; and
   (b) was obtained in confidence from a third party and it contains a trade secret or to communicate it would be likely to seriously prejudice the commercial or financial interests of that third party.

22. Third parties.—(1) Where a request for information relates to information or a record provided on a confidential basis by a third party, the public body shall endeavour to contact that third party with a view to obtaining either his consent to disclosure of the information or record or his objections to disclosure.
   (2) Where a third party objects to disclosure, his objections shall be taken into account, but the decision as to whether or not the information falls within the scope of the exceptions in this Act shall be assessed by the public body on the basis of objective considerations.

23. Complaints.—(1) Anyone who believes that his request has not been dealt in accordance with the provisions of this Act has the right to lodge a complaint with the Information Commission to this effect.
(2) Complaints under sub-section (1) shall be free of charge.
(3) The Information Commission shall decide any complaint within a period of sixty (60) days.
(4) In an appeal, the public body shall bear the burden of proof of showing that it acted in accordance with the provisions of this Act.

24. Information Commission.---(1) On the commencement of this Act, Government shall within a period of one hundred and twenty (120) days, establish a Information Commission to be known as the Khyber Pakhtunkhwa Information Commission.
(2) The Information Commission shall be an independent statutory body, which shall enjoy operational and administrative autonomy from any other person or entity, including Government and any of its agencies, except as specifically provided for by law.
(3) The Information Commission shall be headed by the Chief Information Commissioner, who shall be a retired Senior Government Servant not below the rank of BPS-20 and shall be appointed by Government.
(4) The Information Commission shall comprise of three other Members to be known as Commissioners, who shall be appointed in the following manner:
(a) one Advocate of High Court or Supreme Court, who is qualified to be a Judge of High Court; and
(c) A person from civil society having experience of not less than fifteen years in the field of mass communication, academic or right to information.
(5) The Chief Information Commissioner and the Commissioners shall hold office for a term of three years from the date on which they assume office and shall not be eligible for reappointment.
(6) Notwithstanding anything contained in sub-section (5), the Chief Information Commissioner and Commissioners shall not hold office after they have attained the age of sixty-five (65) years.
(7) A Commissioner may not hold any other public office, or be connected with any political party or be running any business or pursuing any profession at the time of or during their appointment to the Information Commission.
(8) A Commissioner may be removed by a positive vote of not less than two of the other Commissioners on grounds of failure to attend three consecutive meetings of the Information Commission without cause, inability to perform the duties of a Commissioner, falling foul of the conditions for being a Commissioner as set out in sub-section (6), or conduct which is materially inconsistent with the status of being a Commissioner, provided that a Commissioner who has been removed pursuant to this sub-section shall have the right to appeal that removal before the courts.

25. Functions of the Information Commission.---(1) The Information Commission shall have a primary responsibility to receive and decide on complaints.
(2) The Information Commission shall, in addition to its complaints function, conduct the following activities:
(a) set rules and minimum standards regarding the manner in which public bodies are required to manage their records, in accordance with section 4 of this Act;
(b) designate further categories of information which may be subject to proactive disclosure, in accordance with sub-section (l) of section 5 of this Act;
(c) adopt a schedule of the fees that public bodies may charge for providing information to requesters, in accordance with sub-section (2) of section 13 of this Act;
(d) approve or reject extensions to the maximum period that information may be kept confidential, in accordance with clause (f) of section 14 of this Act;
(e) compile a user-friendly handbook, in Urdu and English, describing in easily comprehensible form the rights established by, and how to make a request for information under, this Act;
(f) refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Act;
(g) compile a comprehensive annual report both describing its own activities, including an overview of its audited accounts, and providing an overview of the activities undertaken by all public bodies to implement this Act, taking into account the information provided by individual public bodies pursuant to sub-section (2) of section 5 of this Act; and
(h) have an accredited accountant conduct an audit of its accounts on an annual basis, and provide a copy of its audited accounts to the Provincial Assembly and the Department of Finance.
(3) The Information Commission shall have the power to:
(a) monitor and report on the compliance by public bodies with their obligations under this Act;
(b) make recommendations to Government for reform both of a general nature and in relation to specific public bodies;
(c) make formal comments on any legislative or other legal proposals which affect the right to information;
(d) co-operate with or undertake training activities for public officials on the right to information and the effective implementation of this Act; and
(e) publicize the requirements of this Act and the rights of individuals under it.

26. Powers of the Information Commission.---(1) The Information Commission shall have all powers, direct or incidental, as are necessary to undertake its functions as provided for in this Act, including full legal personality, and the power to acquire, hold and dispose of property.
(2) The Information Commission shall also have the power to conduct inquiries, in relation to either a complaint or other matters connected with the proper implementation of this Act, and when conducting such an inquiry, the Information Commission shall have the powers of a Civil Court under Code of Civil Procedure (CPC), 1908 in respect of the following matters:
(a) summoning and enforcing the attendance of witnesses and compelling them to give oral or written evidence under oath;
(b) requiring public bodies and to produce documents or things;
(c) inspect the premises of public bodies; and
(d) examining and inspecting information.

(3) When deciding a complaint, the Information Commission shall have the following powers:
(a) to order a public body to disclose information to a requester or to take such other reasonable measures as it may deem necessary to compensate a requester for any failure to respect the provisions of this Act;
(b) to impose a daily fine of up to Rs. 250 per day, up to a maximum of Rs. 25,000, on any official who has acted willfully to obstruct any activity which is required to be undertaken by this Act, including with a view to preventing or delaying the disclosure of information to a requester; and
(c) to require a public body to take such general measures as may be required to address systematic failures to respect the provisions of this Act, including by appointing a designated officer, by conducting training for its employees, by improving its record management, by publishing information on a proactive basis and/or by preparing and publishing an annual report.

(4) A decision of the Information Commission under sub-section (3) shall, if it has not been appealed against within 30 days, be registered with the court and any failure to respect the decision shall be dealt with in the same way as any contempt of court.

27. Funding for the Information Commission.---(1) Government shall make such a budgetary allocation to the Information Commission as it may require to discharge its responsibilities effectively, including by establishing a secretariat and hiring the requisite staff to enable it to conduct its business properly, and shall provide the funds indicated through a reasonable schedule of payments throughout the year.
(2) For purposes of implementing sub-section (1), the Information Commission shall present a budget proposal to Government.
(3) The Chief information Commissioner and Commissioners shall be entitled to such remuneration and allowances as the Government may determine.

28. Offence.---(1) It is a criminal offence willfully to:
(a) obstruct access to any record with a view to preventing the exercise of a right provided for in this Act;
(b) obstruct the performance by a public body of a duty under this Act;
(c) interfere with the work of the Information Commission; or
(d) destroy a record without lawful authority.
(e) Use the information obtained for malafide purposes with ulterior motives with facile, frivolous design.

(2) Anyone who commits an offence under sub-section (1), shall be liable to a fine not exceeding rupees fifty thousand (50000) or imprisonment for a period not exceeding two years.

29. Indemnity.---No one may be subject to any legal, administrative or Employment-related sanction for anything which is done in good faith or intended to be done in pursuance of this Act or any rules made there under.
30. Whistleblowers.---(1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

31. Power to remove difficulties.---If any difficulty arises in giving effect to the provisions of this Act, Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

32. Power to make rules.---Government in consultation with the Information Commission may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

33. Repeal.---The Khyber Pakhtunkhwa Right to Information Ordinance, 2013 (Khyber Pakhtunkhwa Ordinance No. VII of 2013) is hereby repealed.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

_____________________________________________________
(AMANULLAH)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa
Charter of Democracy

A. CONSTITUTIONAL AMENDMENTS

1. The 1973 Constitution as on 12th October 1999 before the military coup shall be restored with the provisions of joint electorates, minorities, and women reserved seats on closed party list in the Parliament, the lowering of the voting age, and the increase in seats in parliament and the Legal Framework Order, 2000 and the Seventeenth Constitutional Amendment shall be repealed accordingly.

2. The appointment of the governors, three services chiefs and the CJCSC shall be made by the chief executive who is the prime minister, as per the 1973 Constitution.

3. (a) The recommendations for appointment of judges to superior judiciary shall be formulated through a commission, which shall comprise of the following: i. The chairman shall be a chief justice, who has never previously taken oath under the PCO.

ii. The members of the commission shall be the chief justices of the provincial high courts who have not taken oath under the PCO, failing which the senior most judge of that high court who has not taken oath shall be the member

iii. Vice-Chairmen of Pakistan and Vice-Chairmen of Provincial Bar Association with respect to the appointment of judges to their concerned province

iv. President of Supreme Court Bar Association

v. Presidents of High Court Bar Associations of Karachi, Lahore, Peshawar, and Quetta with respect to the appointment of judges to their concerned province

vi. Federal Minister for Law and Justice

vii. Attorney General of Pakistan

(a-i) The commission shall forward a panel of three names for each vacancy to the prime minister, who shall forward one name for confirmation to joint parliamentary committee for confirmation of the nomination through a transparent public hearing process.

(a-ii) The joint parliamentary committee shall comprise of 50 per cent members from the treasury benches and the remaining 50 per cent from opposition parties based on their strength in the parliament nominated by respective parliamentary leaders.

(b) No judge shall take oath under any Provisional Constitutional Order or any other oath that is contradictory to the exact language of the original oath prescribed in the Constitution of 1973.

(c) Administrative mechanism will be instituted for the prevention of misconduct, implementation of code of ethics, and removal of judges on such charges brought to its attention by any citizen through the proposed commission for appointment of Judges. (d) All special courts including anti-terrorism and accountability courts shall be abolished and such cases be tried in ordinary courts. Further to create a set of rules and procedures whereby, the arbitrary powers of the chief justices over the assignment of cases to
various judges and the transfer of judges to various benches such powers shall be exercised by the Chief Justice and two senior most judges sitting together.

4. A Federal Constitutional Court will be set up to resolve constitutional issues, giving equal representation to each of the federating units, whose members may be judges or persons qualified to be judges of the Supreme Court, constituted for a six-year period. The Supreme and High Courts will hear regular civil and criminal cases. The appointment of judges shall be made in the same manner as for judges of higher judiciary.

5. The Concurrent List in the Constitution will be abolished. A new NFC award will be announced.

6. The reserved seats for women in the national and provincial assemblies will be allocated to the parties on the basis of the number of votes polled in the general elections by each party.

7. The strength of the Senate of Pakistan shall be increased to give representation to minorities in the Senate.

8. FATA shall be included in the NWFP province in consultation with them.

9. Northern Areas shall be developed by giving it a special status and further empowering the Northern Areas Legislative Council to provide people of Northern Areas access to justice and human rights.

10. Local bodies election will be held on party basis through provincial election commissions in respective provinces and constitutional protection will be given to the local bodies to make them autonomous and answerable to their respective assemblies as well as to the people through regular courts of law.

**B. CODE OF CONDUCT**

11. National Security Council will be abolished. Defence Cabinet Committee will be headed by prime minister and will have a permanent secretariat. The prime minister may appoint a federal security adviser to process intelligence reports for the prime minister. The efficacy of the higher defence and security structure, created two decades ago, will be reviewed. The Joint Services Command structure will be strengthened and made more effective and headed in rotation among the three services by law. 12. The ban on a ‘prime minister not being eligible for a third term of office’ will be abolished.

13. (a) Truth and Reconciliation Commission be established to acknowledge victims of torture, imprisonment, state-sponsored persecution, targeted legislation, and politically motivated accountability. The commission will also examine and report its findings on military coups and civil removals of governments from 1996.

(b) A commission shall also examine and identify the causes of and fix responsibility and make recommendations in the light thereof for incidences such as Kargil.

(c) Accountability of NAB and other Ehtesab operators to identify and hold accountable abuse of office by NAB operators through purgery and perversions of justice and violation of human rights since its establishment.

(d) To replace politically motivated NAB with an independent accountability commission, whose chairman shall be nominated by the prime minister in consultation with the leader of opposition and confirmed by a joint parliamentary committee with 50 per cent members from treasury benches and
remaining 50 per cent from opposition parties in same manner as appointment of judges through transparent public hearing. The confirmed nominee shall meet the standard of political impartiality, judicial propriety, moderate views expressed through his judgements and would have not dealt.

14. The press and electronic media will be allowed its independence. Access to information will become law after parliamentary debate and public scrutiny.

15. The chairmen of public accounts committee in the national and provincial assemblies will be appointed by the leaders of opposition in the concerned assemblies.

16. An effective Nuclear Command and Control system under the Defence Cabinet Committee will be put in place to avoid any possibility of leakage or proliferation.

17. Peaceful relations with India and Afghanistan will be pursued without prejudice to outstanding disputes.

18. Kashmir dispute should be settled in accordance with the UN Resolutions and the aspirations of the people of Jammu and Kashmir.

19. Governance will be improved to help the common citizen, by giving access to quality social services like education, health, job generation, curbing price hike, combating illegal redundancies, and curbing lavish spendings in civil and military establishments as ostentious causes great resentment amongst the teeming millions. We pledge to promote and practice simplicity, at all levels.

20. Women, minorities, and the under privileged will be provided equal opportunities in all walks of life.

21. We will respect the electoral mandate of representative governments that accepts the due role of the opposition and declare neither shall undermine each other through extra constitutional ways.

22. We shall not join a military regime or any military sponsored government. No party shall solicit the support of military to come into power or to dislodge a democratic government.

23. To prevent corruption and floor crossing all votes for the Senate and indirect seats will be by open identifiable ballot. Those violating the party discipline in the poll shall stand disqualified by a letter from the parliamentary party leader to the concerned Speaker or the Chairman Senate with a copy to the Election Commission for notification purposes within 14 days of receipt of letter failing which it will be deemed to have been notified on the expiry of that period.

24. All military and judicial officers will be required to file annual assets and income declarations like Parliamentarians to make them accountable to the public.

25. National Democracy Commission shall be established to promote and develop a democratic culture in the country and provide assistance to political parties for capacity building on the basis of their seats in parliament in a transparent manner.

26. Terrorism and militancy are by-products of military dictatorship, negation of democracy, are strongly condemned, and will be vigorously confronted.

C. FREE AND FAIR ELECTIONS
27. There shall be an independent, autonomous, and impartial election commission. The prime minister shall in consultation with leader of opposition forward up to three names for each position of chief election commissioner, members of election commission, and secretary to joint parliamentary committee, constituted on the same pattern as for appointment of judges in superior judiciary, through transparent public hearing process. In case of no consensus, both prime minister and leader of opposition shall forward separate lists to the joint parliamentary committee for consideration. Provincial election commissioner shall be appointed on the same pattern by committees of respective provincial assemblies.

28. All contesting political parties will be ensured a level playing field in the elections by the release of all political prisoners and the unconditional return of all political exiles. Elections shall be open to all political parties and political personalities. The graduation requirement of eligibility which has led to corruption and fake degrees will be repealed.

29. Local bodies elections will be held within three months of the holding of general elections.

30. The concerned election authority shall suspend and appoint neutral administrators for all local bodies from the date of formation of a caretaker government for holding of general elections till the elections are held.

31. There shall be a neutral caretaker government to hold free, fair, and transparent elections. The members of the said government and their immediate relatives shall not contest elections.

D. CIVIL - MILITARY RELATIONS

32. The ISI, MI and other security agencies shall be accountable to the elected government through Prime Minister Sectt, Ministry of Defence, and Cabinet Division respectively. Their budgets will be approved by DCC after recommendations are prepared by the respective ministry. The political wings of all intelligence agencies will be disbanded. A committee will be formed to cut waste and bloat in the armed forces and security agencies in the interest of the defence and security of the country. All senior postings in these agencies shall be made with the approval of the government through respective ministry.

33. All indemnities and savings introduced by military regimes in the constitution shall be reviewed.

34. Defence budget shall be placed before the parliament for debate and approval.

35. Military land allotment and cantonment jurisdictions will come under the purview of defence ministry. A commission shall be set up to review, scrutinise, and examine the legitimacy of all such land allotment rules, regulations, and policies, along with all cases of state land allotment including those of military urban and agricultural land allotments since 12th October, 1999 to hold those accountable who have indulged in malpractices, profiteering, and favouritism.

36. Rules of business of the federal and provincial governments shall be reviewed to bring them in conformity with parliamentary form of government.

(Mohtarma Benazir Bhutto)  
Chairperson  
Pakistan Peoples Party  
Dated: 14th May, 2006

(Mr. Nawaz Sharif)  
Quaid  
Pakistan Muslim League (N)
Declaration by KP Government on FATA

PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWAA.
No.PA/KhyberPakhtunkhwa/L-I/R.No.711/2012
Dated Peshawar, the 09/05/2012

To,

The Secretary to Government of Khyber Pakhtunkhwa,
Law Parliamentary Affairs and Human Rights Department.

Subject:- Resolution No. 711 Adopted by the Provincial Assembly of Khyber Pakhtunkhwa.

Dear Sir,

I am directed to say that the Provincial Assembly of Khyber Pakhtunkhwa in its meeting held on 07-05-2012 has adopted unanimously the following Resolution No. 711 moved by Barrister Arshad Abdullah, Minister for Law, Parliamentary Affairs and Human Rights, Khyber Pakhtunkhwa.

The Provincial Assembly of the Khyber Pakhtunkhwa through Provincial Government hereby recommends to the Worthy President of Islamic Republic of Pakistan and Federal Government that in order to ensure that the people of Federally Administered Tribal Areas should fully enjoy the protection and equality, under and before the law, as inalienable right of every citizen under the Constitution of the Islamic Republic of Pakistan, the following measures may be adopted:-

(I) to treat the FATA inhabitants at par with other citizens of the Islamic Republic of Pakistan;
(II) to delete clause (7) of Article 247 of the Constitution of the Islamic Republic of Pakistan, being violative of fundamental rights of the citizens of the area and to extend the jurisdiction of the Supreme Court and High Court to the said area;
(III) to abolish the newly constituted FCR Tribunal and to establish a proper Judicial Forum;
(IV) the Parliament (Majlis-e-Shoora) may enact laws for FATA and the people of FATA may also get representation in the Provincial Assembly;
(V) with the consent of the people of FATA.

Yours faithfully,

(HARIS KHAN)
Assistant Secretary-XIII
Provincial Assembly of Khyber Pakhtunkhwa.
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