



Shaping a New Peace in Pakistan's Tribal Areas

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What's new? Pakistan has merged the Federally Administered Tribal Areas (FATA) along the Afghan border into an adjacent province, Khyber Pakhtunkhwa, a big step toward bringing constitutional governance and restoring peace to these lands. But the interim regulations governing FATA retain features of the colonial-era law previously in force, imperilling stability.

Why does it matter? Locals resent being in the crossfire of Islamabad's war on FATA-based militants. Millions have been displaced. FATA's civil society is more assertive than ever in demanding an end to these abuses and to militancy in the tribal belt. If Islamabad baulks, militants could exploit the ensuing popular estrangement.

What should be done? Khyber Pakhtunkhwa's legislature should repeal FATA's interim regulations and lift restrictions on freedom of movement. In consultation with locals, both the federal and provincial governments should urgently establish an administrative and judicial system that respects civil liberties, provides professional policing and delivers needed services in the territories.

I. Overview

On 24 May, Pakistan's National Assembly passed the Federally Administered Tribal Areas (FATA) Reforms Bill, merging FATA, a mountainous belt along the Afghan border, with adjacent Khyber Pakhtunkhwa province. Previously, the federal government had directly administered FATA through colonial-era laws that deprived locals of rights and subjected them to harsh punishment. Inept and repressive governance, together with the Pakistani military's use of FATA as a haven for jihadist proxies, have long made those areas vulnerable to militancy and conflict. By formally incorporating FATA into Pakistan's constitutional mainstream, the Reforms Bill took a major step forward. But more must be done to stabilise the tribal borderlands. In particular, the newly elected governments in Islamabad and Khyber Pakhtunkhwa, led by Pakistan Tehreek-i-Insaf, should establish a legal and administrative system that delivers justice and services. The military should lift arbitrary restrictions on movement within, and outside access to, FATA so that elected representatives, civil society groups and the media can monitor progress.

Under the 1901 Frontier Crimes Regulations, the political agent, the senior-most federal bureaucrat in each of FATA's seven tribal agencies, wielded unchecked

executive, judicial and revenue authority. Article 247 of the constitution gave the president discretion to “make regulations” with respect to FATA’s “peace and good governance”, which denied the judiciary jurisdiction and circumscribed the national legislature’s authority. The FATA Reforms Bill, in essence the 31st amendment to the constitution, abolished this provision, and in his final executive decision under the article, President Mamnoon Hussain repealed the 1901 regulations.

FATA’s merger with Khyber Pakhtunkhwa followed years of military operations against Tehreek-e-Taliban (TTP, Taliban Movement of Pakistan) militants. Those operations broke TTP’s hold over most of the tribal belt but also displaced millions of residents, destroyed homes and ruined livelihoods. Security in those areas has improved but remains fragile. Afghan insurgents, including Afghan Taliban factions and allied militants, maintain sanctuaries in FATA from which they conduct operations in Afghanistan. Human rights abuses, particularly enforced disappearances, continue, and the military still controls virtually every aspect of public life.

FATA’s civil society, having long chafed at Islamabad’s and local elites’ misrule and at the military’s repression, has increasingly found its voice. The youth-led Pash-tun Tahafuz (Protection) Movement flowered in early 2018, gaining strong civic support and demanding an end to militancy in FATA and to the military’s abuse of power, including enforced disappearances and extrajudicial killings, as well as curfews and other restrictions on fundamental freedoms. These demands now shape public discourse in the tribal belt, in Khyber Pakhtunkhwa and among Pashtuns countrywide. They played a major role in pressuring the civil and military leadership toward reform, culminating in the passage of the 31st amendment.

The territorial merger, the abolition of Article 247 and the extension of judicial oversight create new opportunities to make FATA truly part of Pakistan, ending its status as a no-man’s land. Yet the military’s desire to use this strategic territory as a haven for militant proxies and the civil bureaucracy’s reluctance to relinquish the power it enjoys from the status quo remain obstacles to reform. So, too, do the economic and political prerogatives of the bureaucracies’ local clientele, FATA’s self-serving tribal elite. Moreover, former President Hussain, when repealing the 1901 regulations, simultaneously promulgated the FATA Interim Governance Regulation 2018, which resembles the cancelled regulations in all but name, empowering unaccountable civil and military bureaucracies and denying residents civil liberties and protections.

Tehreek-i-Insaf, which under Imran Khan’s leadership came to power in July 2018 elections and will form both the national and Khyber Pakhtunkhwa provincial governments, has long been a strong advocate of FATA’s mainstreaming. It can now carry out that agenda, and by doing so reduce militancy and conflict risks and win local hearts and minds. The provincial government, in its very first sitting, should repeal the interim governance framework. It and the federal parliament should set up special bipartisan committees that consult local stakeholders in prioritising rehabilitation and reconstruction needs. These committees should also hold public hearings, including on human rights violations and other abuses of power.

Both federal and provincial governments should demand – and the superior judiciary should ensure – unimpeded access to the tribal belt, including to internment centres, for parliamentarians, civil society groups, human rights defenders and media outlets. The military authorities should lift all restrictions on residents’ movements

in and out of FATA. The federal government should give the judiciary the finances it requires to establish the necessary infrastructure in FATA. Since Khyber Pakhtunkhwa's 2017 police act applies to the tribal belt, the provincial government should ensure that it has the resources it needs to exercise its additional responsibilities, while disbanding the tribal levies, the official tribal militias under the FATA's administration's control, and incorporating their personnel into the regular police force.

II. Peace in FATA: Real or Imagined?

A week after an 8 June 2014 jihadist attack on Karachi's Jinnah International Airport, the Pakistan military launched an operation called Zarb-e-Azb (Quick Strike) in North Waziristan. Following earlier operations that ostensibly had cleared other parts of the tribal belt, Zarb-e-Azb's purpose was to eradicate the last vestiges of militant activity in FATA.¹ In principle, it would not distinguish between "good" militants (those backed by the Pakistani military establishment, including Afghan Taliban factions and other groups fighting U.S. and Afghan government troops across the border) and "bad" (those, like the TTP, that had turned against the Pakistani state itself).²

Even critics of the military operations recognise that they have disrupted TTP networks in FATA.³ The tribal areas are no longer the hub for transnational jihadists that they were some years ago, when militants from across the world rubbed shoulders with their Pakistani counterparts in training camps.⁴ Yet the military has neither killed nor captured all major TTP leaders. Some relocated to Afghanistan. Others moved to nearby Khyber Pakhtunkhwa districts, such as Tank and Dera Ismail Khan, and revived their networks there. These areas have seen increased extortion of local businesses, killing of leaders seen as anti-TTP and other perceived opponents, and kidnapping for ransom.⁵ Other TTP factions with close ties to the Afghan Taliban, such as those led by Gul Bahadur and Sadiq Noor, appear to have moved their militias from North to South Waziristan.⁶

Well-informed sources contend that Afghan militants, too, first relocated to other parts of the tribal belt, such as Kurram, whence they had easy access to Afghanistan's

¹ Given continuing restrictions on travel to the tribal agencies, this briefing, which analyses the process and current state of FATA reform, is based on interviews with FATA and Pashtun political and civil society stakeholders mainly in the federal capital Islamabad and in Khyber Pakhtunkhwa's capital Peshawar, the two cities where these actors engage most actively with the government, donors and each other. The interviews were conducted in the period January-June 2018. For earlier analysis of FATA's security and governance challenges, see Crisis Group Asia Reports N°178, *Pakistan: Countering Militancy in FATA*, 21 October 2009; 164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009;

² These distinctions are discussed further in Crisis Group Reports, *Countering Militancy in FATA*, op. cit., and Asia Report N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006.

³ Crisis Group interviews, opposition politicians, activists, Peshawar, April 2018.

⁴ Crisis Group Asia Report N°262, *Resetting Pakistan's Relations with Afghanistan*, 28 October 2014.

⁵ "Taliban reemerge in Tank and Dera Ismail Khan", *The Friday Times*, 3 April 2015.

⁶ Crisis Group interviews, FATA activists, Islamabad, Peshawar and Karachi, March-April 2018.

Khost province, and have now returned to sanctuaries in North Waziristan.⁷ “The Haqqani network [an Afghan Taliban faction long based in FATA] owns property worth billions of rupees in North Waziristan”, said Latif Afridi, a senior lawyer and Awami National Party leader from Khyber. “They started there and are still there. They only temporarily relocated to FATA’s Kurram and Hangu [an adjoining Khyber Pakhtunkhwa district]”.⁸

To consolidate control, the military has relied on “peace committees”. In reality, these are pro-state militias, comprising what many FATA activists refer to as “local thugs”, that have fuelled conflict (as discussed below). While the military disbanded some of these militias due to local opposition, those that remain continue to target opponents and indulge in criminal activity, including drug and arms smuggling, with few restrictions.⁹

That militant networks have revived is evident in the higher rates of violence and casualties in the past year. A FATA-focused NGO noted a 16 per cent rise in militant attacks and a 37 per cent rise in the number of casualties in 2017, compared to the year before. Many such attacks have taken place in tribal agencies that the military had supposedly rid of militants, such as Mohmand and Bajaur. Kurram, with its large Shiite population, was particularly volatile, with at least 115 people killed in three attacks in the first six months of 2017 – two of them targeting Shiites.¹⁰ Attacks have continued this year: in January, five civilians were killed in a bombing in Kurram; in February, a military convoy was attacked in North Waziristan; the same month in Bajaur, an anti-Taliban leader was killed. Militants have also resumed targeting girls’ schools and threatening families who send their daughters to school.¹¹

This increase in militant activity is no justification for stalling reform. In fact, the opposite is true: the best means of countering militancy would be for the newly empowered judiciary to enforce the law and the newly authorised Khyber Pakhtunkhwa police to replace blunt military operations with targeted, intelligence-based counter-insurgency efforts. Until the judiciary and police can fully exercise the prerogatives

⁷ Crisis Group interviews, Ghulam Qadir Khan, former FATA political agent, Peshawar, April 2018; FATA activists and NGO workers, Khyber Pakhtunkhwa politicians, Islamabad, Peshawar and Karachi, March-May 2018.

⁸ Afridi is vice chair of the Pakistan Bar Council, the highest elected body of lawyers. The Awami National Party is a Pashtun nationalist party based primarily in Khyber Pakhtunkhwa and Balochistan’s Pashtun belt. Crisis Group interview, Peshawar, April 2018.

⁹ Smuggling is a major source of funding for these militias. Crisis Group interviews, Khyber Pakhtunkhwa and FATA-based NGO workers, journalists, politicians and activists, Islamabad, Peshawar and Karachi, March-May 2018. See also “Tribesman gunned down in South Waziristan”, *Dawn*, 25 May 2018.

¹⁰ “3,904 killed in FATA suicide bombings in four years”, *The Express Tribune*, 16 February 2018; “FATA witnesses 16 pc surge in terror incidents: report”, *Daily Times*, 16 January 2018; “Army launches Operation Khyber-4 in Rajgal Valley”, *Dawn*, 16 July 2017; “Anger grows in Parachinar after three attacks in six months”, *Agence France-Presse*, 26 June 2017.

¹¹ Locals claimed that ten persons died in targeted killings in North Waziristan in April 2018. “Tribal elder killed in Bajaur blast”, *The Nation*, 8 February 2018; “Tribal leader killed in Bajaur Agency IED blast”, *The Nation*, 16 February 2018; “Grenade attacks kills four, injures 32 in North Waziristan”, *Express Tribune*, 27 April 2018; “HRCP wants inquiry into attack on FATA girls school”, *The Nation*, 12 May 2018; “Tribal youth to have representation in jirgas”, *The News*, 20 May 2018.

the 31st amendment grants them, the military should heed the concerns of a public deeply alienated by years of heavy-handed military operations.

For FATA inhabitants, what peace there is as the result of those operations has come at considerable cost. Many in FATA are angered by curfews, fences that hinder freedom of movement and a proliferation of checkposts.¹² Attacks by TTP factions based in Afghanistan on targets in Pakistan have raised tensions with Kabul and been used by the military to justify the repeated closure of key border crossings. These closures impede the cross-border trade that accounts for most of FATA's economic activity. "An already impoverished people, ravaged by years of war, instead of getting support and relief are further trounced into extinction without any remedial measures", wrote a former North Waziristan political agent and author of a book on FATA. "Without alternate economic activity, the government is pushing an already desperate FATA into an inconsolable situation".¹³ In Operation Zarb-e-Azb's aftermath, residents were even prevented from travelling freely to Khyber Pakhtunkhwa. "They were blocked on both sides, north to Afghanistan and down country", said the former North Waziristan political agent.¹⁴

Military operations had displaced hundreds of thousands in the tribal belt.¹⁵ Most have returned, but to destroyed homes and livelihoods.¹⁶ Although Islamabad announced the establishment of funds for cash assistance to returning internally displaced persons (IDPs) as compensation for damaged homes, reconstruction and rehabilitation, little has been spent on the ground.¹⁷ Marketplaces resemble ghost towns, their infrastructure destroyed and inventories looted, allegedly by soldiers as well as militants.¹⁸ The lack of drinking water, shelter, electricity, education and

¹² Long waits at checkposts even allegedly contributed to the death of a child in need of urgent medical care. Afrasiab Khattak, "The volcano of Pashtun unrest", *The Nation*, 25 February 2018.

¹³ Ghulam Qadir Khan, "Fencing the tribal areas", *Dawn*, 4 December 2017. The fencing and border closures also violate easement rights under the Durand Line Agreement, which allow divided tribes the right to cross the border without formal permission. For more on the Durand Line Agreement, see Crisis Group Report, *Resetting Pakistan's Relations with Afghanistan*, op. cit.

¹⁴ Crisis Group interview, Ghulam Qadir Khan, Peshawar, April 2018.

¹⁵ Within ten days of Operation Zarb-e-Azb's launch in June 2014, some 450,000 people were displaced, a large majority of them women and children, to the main IDP camp in Bannu's Frontier Region and to homes of host families, mostly in neighbouring Khyber Pakhtunkhwa districts. By mid-July, around one million had fled the tribal agency. Overall, as many as 1.5 million people were displaced, according to the UN and Pakistan's National Disaster Management Authority figures. "Pakistan: North Waziristan displacements", situation report no. 7, UN Office for the Coordination of Humanitarian Affairs (OCHA), as of 16 July 2014; "Pakistan: North Waziristan displacements", situation report no. 1, UN OCHA, as of 24 June 2014; "IDP crisis – post-operation Zarb-e-Azb", climate change division, National Disaster Management Authority, government of Pakistan, 23 June 2014. On numbers of FATA returnees, see map, "Pakistan: KP and FATA – Areas of Displacement, Hosting and Returns as of 30 May 2018", UN OCHA. For the backdrop to FATA's IDP crisis, see Crisis Group Asia Briefing N°93, *Pakistan's IDP Crisis: Challenges and Opportunities*, 3 June 2009; Asia Report N°265, *Women, Violence and Conflict in Pakistan*, 8 April 2015.

¹⁶ In South Waziristan, for example, the army removed the roofs of all houses in many areas to make it easier to spot militants. Most houses in North Waziristan's administrative headquarters, Miranshah, were demolished. "How to spot a militant: Pakistani army removes roofs in Waziristan", Agence France-Presse, 2 June 2018.

¹⁷ "Centre to blame for tribals' misery post militancy", *Dawn*, 4 January 2018.

¹⁸ Crisis Group interviews, FATA residents and senior Pakhtunkhwa politician, Peshawar, March 2018.

health care has often prompted IDPs to again relocate to Khyber Pakhtunkhwa and elsewhere.¹⁹ Soldiers continue to occupy homes and schools across the tribal belt, even in relatively safe areas such as Khyber Agency's Tirah valley.²⁰

Rights abuses, including extrajudicial killings, enforced disappearances and custodial deaths continue, as does collective punishment. For example, after a December 2017 killing of two soldiers, the military imposed a curfew in North Waziristan's Hamzoni town, preventing access to hospitals and forcing women and children out of their homes during search operations. These and other heavy-handed measures sparked local protests.²¹ A North Waziristan resident said, "they beat men, women and children and ask, 'Who does this?'"²²

The 2011 Actions (in Aid of Civil Power) Regulation, which remains in force in FATA, provides for internment centres to hold a suspect "in order to incapacitate him from committing any offence or further offences", or if internment is "expedient for peace in the defined area".²³ There are at least seventeen known internment centres in FATA and other designed tribal areas, the Provincially Administered Tribal Areas (PATA) in Khyber Pakhtunkhwa.²⁴ The military has rebuffed parliamentary committees' efforts to gain access. The Peshawar high court maintained a list of some 2,000 missing persons on its website, but removed it in early 2018, possibly under military pressure since civil society mobilisation on the issue (discussed below) was increasing.²⁵ Activists believe the number is significantly higher.²⁶ According to a well-informed senior Pashtun journalist, locals say, "knowing that your son is dead at least gives you closure. When your son is missing, it's as if he is dying every day".²⁷

III. Mobilising FATA's Civil Society

Given the constraints on freedoms of expression and association, lack of legal recourse, widespread insecurity and the military's intrusive monitoring, FATA's civil society has long struggled to articulate public demands.²⁸ *Maliks*, or tribal elders, also obstruct political and social mobilisation. Appointed by the federal bureaucracy, and often enjoying only limited local support, they are a main beneficiary of FATA's

¹⁹ Crisis Group interviews, FATA residents and civil society representatives, and Khyber Pakhtunkhwa politicians, Islamabad, Peshawar, March-May 2018. "IDPs unwilling to return will be deregistered", *Dawn*, 6 January 2017.

²⁰ Crisis Group interviews, FATA residents and civil society activists, Peshawar, April 2018.

²¹ "Curfew remains imposed in Hamzoni for second consecutive day", *Tribal News Network*, 13 December 2017; Ghulam Qadir Khan, "Mazar-i-Miramshah", *Dawn*, 14 February 2018.

²² Crisis Group interview, protester, Pashtun Tahafuz Movement rally, Karachi, May 2018.

²³ For analysis of the Actions (in Aid of Civil Power) Regulation (2011), which also applies to Khyber Pakhtunkhwa's Provincially Administered Tribal Areas (PATA), see Crisis Group Asia Report N°242, *Pakistan: Countering Militancy in PATA*, 15 January 2013.

²⁴ Crisis Group interview, former senator and Awami National Party leader Afrasiab Khattak, Islamabad, March 2018.

²⁵ Crisis Group interviews, Peshawar high court bar association lawyers, Peshawar, April 2018.

²⁶ Crisis Group interviews, Islamabad, Peshawar, April-May 2018.

²⁷ Crisis Group interview, Islamabad, May 2018.

²⁸ Crisis Group interview, NGO representatives, Islamabad, Peshawar, March-April 2018.

status quo, including from the flourishing black economy.²⁹ But FATA's old guard – the civil and military bureaucracies and the *maliks* – now face their biggest challenge from a new generation that wants change and can mobilise society, as demonstrated by growing support for the Pashtun Tahafuz Movement.

This group has its origins in the Mehsud Tahafuz Movement, set up in 2016 by a student leader, Manzoor Ahmed, from South Waziristan.³⁰ That movement initially protested against both the persecution of Ahmed's Mehsud tribe, which had borne the brunt of collective punishment (top TTP leaders were Mehsuds), and against discrimination suffered by Pashtuns more broadly, particularly those from FATA, at the hands of state institutions and businesses.³¹ Ethnic profiling of Pashtuns extends beyond FATA. In February 2018, for example, the Punjab government issued a notification "asking the population to keep an eye on suspicious individuals who look like Pashtuns or are from [FATA], and to report any suspicious activity by them".³²

A turning point for FATA's youth activism was the Karachi police's 13 January 2018 extrajudicial killing of Naqeebullah Mehsud, a North Waziristan resident and aspiring model on social media with no links to terrorism.³³ The killing sparked national outrage. Thousands of Pashtuns participated in an Islamabad sit-in led by the Mehsud Tahafuz Movement, demanding accountability for Naqeebullah's murder, and a halt to extrajudicial killings, enforced disappearances, curfews, locals' humiliation at checkpoints and restrictions on freedoms, as well as an end to militancy in FATA. They highlighted the destruction of civilian properties during and after military operations, the hardships faced by returning IDPs, and deaths caused by unexploded ordnance and mines.³⁴ Given the fervent response among Pashtuns nationwide, the movement changed its name to the Pashtun Tahafuz Movement, with Ahmed adopting the moniker "Pashteen".³⁵ Since then, it has held massive rallies,

²⁹ Emphasising that resistance to reform did not come from FATA's residents, a well-informed Khyber Pakhtunkhwa politician commented: "The political agents [federal bureaucrats] and military commanders based in FATA and ruling it in collaboration with a small local elite" that has "a strong vested interest in the huge black economy have obviously resisted reforms under one pretext or other". Afrasiab Khattak, "Pantomime of FATA reforms", *The Nation*, 26 May 2018.

³⁰ In an opinion piece about the movement's birth, Ahmed wrote, "there was a policy to sacrifice us at the altar of strategic interests via terrorist groups allowed to operate in our homeland. Our villages were then bombed and our people forced to leave their homes in the name of counter-terrorism operations. Thousands of our youth were detained unlawfully or became the victims of enforced disappearances". Yet, he continued, "the fear is that these counter-terrorism operations failed to cause lasting damage to terrorism networks: instead, locals allege that these operations have collectively punished and humiliated the Pashtun public in these areas". Manzoor Ahmed, "The protest of the Pashtun", *The News*, 3 March 2018.

³¹ Crisis Group interviews, FATA activists, Mehsud tribals, Peshawar, April 2018. See also Ghulam Dastageer, "The making of a new nationalist movement", *Herald*, May 2018.

³² "Listen to Pakistan's marginalised Pashtuns", Human Rights Watch, 13 March 2018.

³³ "Naqeebullah Mehsud was innocent, killed in a fake encounter", says inquiry team", *Dawn*, 23 January 2018.

³⁴ "On the streets for justice", *Dawn*, 4 February 2018; "Naqeebullah protest moves to Islamabad, demands end to Pashtun 'genocide'", *Dawn*, 2 February 2018.

³⁵ According to Pashteen, the Pashtun Tahafuz Movement has a list of 4,000 missing persons. "The protest of the Pashtun", op. cit. Pashtun activists claim that more than 35 persons have been killed in landmine explosions since 2009 in South Waziristan; the military claims that militants laid the mines. Dastageer, op. cit. See also "Govt mulling lodging case against PTM leadership", *The News*,

despite police raids and arrests of activists, in all four provincial capitals and in hard-hit Pashtun-majority areas such as Swat.³⁶

The Pashtun Tahafuz Movement does not focus directly on FATA reform. “There are other organisations and forums for FATA reforms, but what the movement is raising no one was discussing”, said Mohsin Dawar, then a top movement leader and Peshawar high court lawyer.³⁷ “Enforced disappearances are not just a FATA issue, they are also an issue in Khyber Pakhtunkhwa, and people are getting picked up in Swat and Bannu”.³⁸ Yet by highlighting the military’s role in the tribal belt and demanding an end to its use of jihadist proxies, the movement is pointing to the major impediments to stabilising those areas. As a common slogan at the movement’s demonstrations goes: “*Yeh kesi dehshatgardi hai, gis key pechey wardi hai* (roughly translated, “What kind of terrorism is this, that has the man in uniform behind it?”).³⁹ “All this generation has seen is war”, said Pashteen. “Unlike the *maliks*, it is not afraid to confront military officials”.⁴⁰

The movement’s leadership comprises educated urban youth from across the country and young professionals from FATA and Khyber Pakhtunkhwa.⁴¹ Even before it gathered steam, FATA’s youth groups, including women, were demanding the region’s merger with Khyber Pakhtunkhwa with full political and constitutional rights, and challenging the authority and legitimacy of *maliks* perceived to be “pro-Frontier Crimes Regulation”.⁴² Conflict-induced displacement has played a role in mobilising FATA civil society. Some displaced FATA youth formed or joined community-based organisations. Women IDPs participated more in the socio-economic mainstream, obtaining national identity cards and opening bank accounts for the first time to benefit from assistance packages. Many now demand access to health care, skills training and credit so that they can earn independent livelihoods and participate in local public life.⁴³

11 April 2018; Ishtiaq Ahmed, “Emergence of the Pashtun Tahafuz Movement”, *Daily Times*, 14 April 2018”; “In Pakistan, long-suffering Pashtuns find their voice”, *The New York Times*, 6 February 2018.

³⁶ “Public meeting in Mir Ali: Pashtun Tahafuz Movement demands removal of checkposts in NWA”, *The News*, 3 March 2018; “Pashtun protest leaders booked in Balochistan”, *Dawn*, 13 April 2018; “PTM rally in Lahore”, *The News*, 23 April 2018.

³⁷ After deciding to contest the July 2015 elections, Dawar stepped down from the Pashtun Tahafuz Movement leadership. He was elected to the National Assembly from North Waziristan, and vowed to continue raising the concerns of residents in parliament; another former movement leader, Muhammad Ali Wazir, won a National Assembly seat from South Waziristan. “Dawar, Wazir to remain independent in NA”, *Dawn*, 4 August 2018.

³⁸ Crisis Group interview, Peshawar, April 2018.

³⁹ Crisis Group observations, 2018.

⁴⁰ Crisis Group interview, Peshawar, April 2018. In an interview with the media, Pashteen said: “FATA has been used by the military as a safe haven and breeding ground for terrorists. Pashtuns have suffered immensely as a result”. “Caught between the military and militants, Pashtuns fight for rights”, *Pakistan Today*, 8 April 2018.

⁴¹ The Pashtun Tahafuz Movement’s top tier includes representatives of four major Waziristan tribes, Mehsud, Dawar, Wazir and Bhattani.

⁴² “FATA youth jirga to launch a series of protest till merger with KP”, *Daily Times*, 13 January 2018; “FATA’s youth steps up to fill the void”, *The Express Tribune*, 4 December 2017.

⁴³ Crisis Group interviews, women activists, FATA, Khyber Pakhtunkhwa, Islamabad, April 2018. Crisis Group discussions, Pashtun Tahafuz Movement rally, Karachi, 13 May 2018. See also Crisis Group Report, *Women, Violence and Conflict*, op. cit.

The Pashtun Tahafuz Movement's core leadership of around twenty is all men, but Pashtun women participate in its rallies in large numbers. A Pashtun woman activist said, "when the elders said that the movement is dishonouring the [Pashtun] culture by having women at the rallies, we said, 'what about the dishonour to the culture by the [Pakistani] Taliban and the military?'" Another prominent (male) activist said, "what about women who are humiliated at checkpoints and thrown out of their homes – was that not dishonourable?"⁴⁴ A movement rally in Khyber Pakhtunkhwa's Swat district was well attended by women because, according to Sana Ejaz, an activist who canvassed women to participate, "so many of them have sons and husbands missing. [There are many] conflict-affected households, and that had a big impact on women".⁴⁵ In a widely circulated speech during a March rally in Balochistan, a woman activist implored women to demand their rights and "and rise shoulder to shoulder with the men. Only then will this national movement go forward".⁴⁶

Technology, too, plays an important role. "In the old days, a person would write about a convention and activists would photocopy it and pass it around", said movement leader Dawar. "Now, everyone is connected. Without social media, the movement would have been nothing".⁴⁷ With videos of speeches circulating on social media, amid a military-imposed media blackout of movement coverage, one affiliated activist described the rallies as "alternative reporting, from the stage".⁴⁸

The military has responded with a mix of coercion and attempts at compromise, including allowing use of the national identity card for travel to and within FATA, as opposed to the Watan card (identification cards for IDP compensation), as was previously required; closing some checkpoints, removing some unexploded ordnance and demining some areas; releasing around 300 detainees from internment centres; and engaging in dialogue with the protesters.⁴⁹ The movement's leaders and activists believe that the military expected that the release of a few hundred detainees would placate it. But accounts of mistreatment of those released have fuelled demands for an end to enforced disappearances.⁵⁰

With the movement gaining strength, military leaders have accused it of being backed by anti-Pakistan countries and forces, an implicit reference to India. In April, army chief Qamar Javed Bajwa said the military would not allow "engineered protests" to reverse the gains of its counter-terrorism operations in FATA and cautioned the nation not to forget the sacrifices of "real heroes".⁵¹ A Peshawar rally the same

⁴⁴ Crisis Group interviews, Islamabad, March 2018.

⁴⁵ Crisis Group interview, Sana Ejaz, Pashtun Tahafuz Movement rally, Karachi, May 2018.

⁴⁶ The speech can be viewed on PTM's Facebook's page, at www.facebook.com/justiceforpashtuns.

⁴⁷ Crisis Group interview, Peshawar, April 2018.

⁴⁸ Crisis Group interview, Islamabad, March 2018. The editorial of a major daily said: "The Pashtun protest has been essentially blacked out in the mainstream media. But the perseverance and social media savvy of the organisers meant that ignoring them was not an option". "The Pashtun protests", *The News*, 15 February 2018. See also, "PTM's continued media blackout", *Daily Times*, 9 April 2018.

⁴⁹ "Watan cards to be replaced by CNICs in FATA", *The News*, 16 February 2018; "Pashteen not among PTM men proposed for jirga", *Dawn*, 27 May 2018; "The Pashteen question", op. cit.

⁵⁰ Crisis Group interviews, Pashtun Tahafuz Movement leaders, activists, Islamabad, Peshawar, March-April 2018.

⁵¹ Bajwa said, "it has only been a short period of time that peace has returned to FATA, and some people have already started a movement. There are people, both on the inside and outside, who are

month, widely believed to be state-backed, condemned the movement and praised the armed forces for protecting the country, amid chants of “Pakistan Zindabad” (long live Pakistan).⁵²

One Pashtun political party, the Balochistan-based Pakhtunkhwa Milli Awami Party, has strongly backed Pashteen’s movement. But the movement has created a dilemma for it and other nationalist Pashtun parties, including the Awami National Party. Large numbers of grassroots party cadres are also Pashtun Tahafuz Movement activists. “Political parties have gone into the background, and [non-party] people taken the lead”, said a senior Awami National Party leader and former senator.⁵³ Yet all major political parties, Pashtun or otherwise, and even the military, have had to respond to a galvanised civil society’s demands for constitutional protections and freedoms in FATA.

IV. Reforming FATA

FATA reform was part of the National Action Plan against terrorism formulated after the December 2014 Peshawar Army Public School attack, an implicit recognition that FATA’s tenuous governance had contributed in large part to the spread of militancy. This effort built on an existing consensus among almost all major parties on the importance of extending the state’s reach and dispelling local grievances in FATA.⁵⁴

In November 2015, then-prime minister Nawaz Sharif established a committee on FATA reforms, chaired by his foreign affairs adviser Sartaj Aziz. The committee produced a report in August 2016, recommending “a gradual and phased approach”, including abolishing the Frontier Crimes Regulations and merging FATA with Khyber Pakhtunkhwa. The five-year transitional period foresaw the return of IDPs, reconstruction, socio-economic development and local elections as precursors to legal and constitutional reforms, while retaining Article 247 of the constitution. As with past reforms, the military resisted even this modest proposal, refusing to cede control over this strategic territory.⁵⁵

Pressure from FATA’s civil society, in large part propelled by the Pashtun Tahafuz Movement’s grassroots mobilisation, produced momentum for more comprehensive reform, persuading even the military that it would have to loosen its hold on the tribal areas. According to a senior Pashtun nationalist, “without any doubt the

bent on hurting the integrity of Pakistan”. “Some people are bent on hurting Pakistan’s integrity”, *The News*, 13 April 2018; “Engineered protests’ won’t be allowed, says army chief”, *Dawn*, 13 April 2018.

⁵² Similar rallies were held in Lahore. The Pakistan Tahafuz Movement was accused of receiving Indian funding and trying to tarnish the army’s image. “Pakistan Zindabad Movement stages rally in Peshawar”, *The News*, 4 April 2018; “Pashtuns stage ‘Pakistan Zindabad’ rally in Lahore”, *The News*, 22 April 2018; “Pakistan Zindabad movement stages rallies in KP, Fata”, *The News*, 23 April 2018.

⁵³ Crisis Group interview, Islamabad, February 2018.

⁵⁴ Earlier reform efforts by Pakistan Peoples Party (PPP) governments included extending the adult franchise to FATA in 1996-1997 and allowing political parties to operate there while also removing some of the Frontier Crimes Regulations’ more egregious elements in 2011. Crisis Group Report, *Countering Militancy in FATA*, op. cit.; “Far-reaching FATA reforms unveiled”, *Dawn*, 14 August 2011.

⁵⁵ Article 247 of Pakistan’s constitution said, “no act of parliament shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs”.

movement's pressure has been the most decisive factor in forcing all players to stop blocking reforms ... the security establishment, which was initially hesitant about the merger of FATA in Pakhtunkhwa, reconsidered in view of the ever-deepening alienation among the Pashtun youth of FATA. It was afraid of the backlash to the flawed state policies".⁵⁶

In late May 2018, the week they were ending their five-year term, the national and Khyber Pakhtunkhwa assemblies passed the 31st amendment that repealed Article 247 of the constitution and merged FATA with Khyber Pakhtunkhwa.⁵⁷ Article 247's repeal allows those assemblies to legislate for FATA and extends the jurisdiction of the higher judiciary to the tribal areas, with any new government action, law or regulation reviewable by the Peshawar high court and Supreme Court.⁵⁸ Elections in the tribal agencies (renamed "districts") for the Khyber Pakhtunkhwa legislature are to be held within a year of the 25 July general elections. Local polls are planned for October this year.⁵⁹

FATA's merger with Khyber Pakhtunkhwa appears now to be irreversible; no party is likely to propose an amendment to turn back the clock because of the broad-based support the reform enjoys. But the region's incorporation into the political, legal and constitutional mainstream has been adversely affected by the final presidential ordinance promulgated under Article 247, replacing the Frontier Crimes Regulations with an equally draconian FATA Interim Governance Regulation. The differences between the two are cosmetic. The senior-most federal bureaucrat in a tribal district (formerly tribal agency) is now called a deputy commissioner, rather than a political agent, but retains many of the same powers, including the authority to arrest men between the ages of sixteen and 65 who "are acting in a hostile, subversive or offensive manner towards the State or any person residing within the settled area of Pakistan".⁶⁰

The government has started building judicial complexes – consisting of courthouses, bar councils and other facilities – in all tribal agencies. The Peshawar high court has set a requirement for 52 judicial officers to be deployed in FATA within six

⁵⁶ Khattak, "Pantomime of FATA reforms", op. cit. Crisis Group interviews, lawyer activists, FATA, Khyber Pakhtunkhwa, Islamabad, Peshawar, May-June 2018. Fahad Ikram Ghani, "A step towards progress", *The News on Sunday*, 10 June 2018.

⁵⁷ Constitution (Thirty-first Amendment) Act, 2018 at www.na.gov.pk. "KP-Fata bill sails through Senate", *The News*, 26 May 2018; "KP assembly approves landmark bill merging Fata with province", *Dawn*, 27 May 2018. Khyber Pakhtunkhwa's Provincially Administered Tribal Areas (PATA) were also merged with the province. Until the passage of the 31st amendment, laws in PATA only applied if specified by the governor – the federation's representative – and consented to by the president. See Crisis Group Report, *Countering Militancy in PATA*, op. cit.

⁵⁸ On 13 April 2018, the Senate had approved the National Assembly's 12 January bill extending the jurisdiction of the Supreme Court and Peshawar High Court to FATA. Yet, until the repeal of Article 247, this jurisdiction could only be extended to those areas notified by the federal government. "Bill extending PHC, SC jurisdiction to Fata passed by National Assembly", *Dawn*, 12 January 2018; "Senate approves bill extending SC, PHC powers to Fata", *The News*, 14 April 2018.

⁵⁹ National Assembly members elected from FATA in July 2018 are to serve until the next general elections in 2023, when 23 legislators are to be elected from the tribal districts. FATA senators will continue to serve until the end of their terms. Senators serve for six years but by law half of them must retire every three years. A ballot is held to determine which will retire and which will serve their full terms.

⁶⁰ FATA Interim Governance Regulation, 2018. Text provided to Crisis Group.

months of its merger with Khyber Pakhtunkhwa.⁶¹ Yet, according to the interim regulation, federal bureaucrats and deputy and assistant commissioners will continue to perform judicial functions, a provision which violates the constitution. Assistant commissioners will rely on their handpicked “council of elders” to adjudicate civil cases, on the basis of *rewaj* (customary law), a patriarchal set of rules that affirms group, not individual, rights. Customary law can even justify violence against women, such as in Kurram, where the codified *rewaj* permits the sale or exchange of women to settle disputes.⁶² Assistant commissioners designated as “judges” will also try criminal cases, with the authority to detain or pardon alleged offenders.⁶³

Political parties, backed by civil society, had thwarted an earlier bid in parliament (proposed by the Aziz-led FATA Reforms Committee) to replace the Frontier Crimes Regulations with a Rewaj Act.⁶⁴ Mohammad Ali Wazir, a Pashtun Tahafuz Movement leader whose immediate family members were killed for opposing the TTP, said: “There are so many different power centres – *maliks*, political agents, militants, army, Frontier Corps, FCR, *rewaj*, each with a different set of rules – and all we get is chaos. Give us one system. Don’t have us running around like wild cats”.⁶⁵ The onus of repealing the Interim Governance Regulation is now on the Pakistan Tehreek-i-Insaf-led Khyber Pakhtunkhwa assembly since the president, after signing the 31st amendment, no longer has jurisdiction over FATA.⁶⁶

Since Khyber Pakhtunkhwa’s 2017 police act now applies to the tribal belt, the federal government should disband the tribal levies. Tehreek-i-Insaf’s provincial government should incorporate their personnel into the provincial police force, and also provide the police with the resources it needs for its additional responsibilities in the tribal belt. FATA residents, who will now vote for the Khyber Pakhtunkhwa assembly, will hold the provincial government accountable if they do not see improvements in the security of the tribal areas. Indeed, delaying FATA’s full political, administrative and legal integration into Khyber Pakhtunkhwa will further estrange many inhabitants of the tribal areas, who have little patience left after decades of living as second-class citizens in Pakistan. Failing to respond to FATA’s civil society demands for full citizenship rights and protections will erode the authority of the national and provincial governments and could allow militants to profit from the resultant alienation.

⁶¹ The Peshawar high court has started setting up districts and sessions courts in each former FATA district. “Jirga to judiciary”, *The News*, 3 June 2018. See also “The economics of mainstreaming FATA”, *Dawn*, 4-10 June 2018.

⁶² “FATA’s forgotten women”, *Dawn*, 23 May 2018; FATA Interim Governance Regulation, op. cit.

⁶³ FATA Interim Governance Regulation, op. cit.; “The proposed Rewaj Act: a new FCR?”, *Dawn*, 23 May 2017; “FATA’s forgotten women”, *Dawn*, op. cit. A Khyber Pakhtunkhwa lawyer has challenged the notification allowing bureaucrats to act as judges in the tribal belt. “Notification allowing commissioners to act as judges in Fata challenged”, *The News*, 14 June 2018.

⁶⁴ Ismail Khan, “The final frontier”, in “The Fata merger: Towards a brave new world”, *Dawn*, 12 December 2017.

⁶⁵ Crisis Group interview, Islamabad, March 2018.

⁶⁶ FATA Interim Governance Regulation, 2018, op. cit.

V. Moving Forward

The 31st amendment is a welcome step forward. In the words of one major daily newspaper's editorial: "History has been made. FATA is no more ... the people of the region now have formal access to the constitutional and political rights that are legally available to all citizens of Pakistan".⁶⁷ Yet much more needs to be done to end FATA's political and economic isolation, reverse policies that have eroded rights and livelihoods, and prevent militants from taking advantage of disaffection.⁶⁸ So long as the military maintains arbitrary restrictions on movement, elected representatives, journalists and civil society activists will be unable to assess the implementation of reforms.

The military and civil bureaucracies still seem unwilling to allow such access or even to let locals assemble freely, and instead appear bent on suppressing peaceful dissent. In early June, Pashtun Tahafuz Movement leader Mohsin Dawar was banned from visiting his hometown in North Waziristan for three months on the grounds that he was "acting in a manner prejudicial to public peace and tranquillity". But the protesters at his rally had been peaceful, unlike the pro-state militia that attacked movement activists in South Waziristan's administrative headquarters, Wana, killing two and injuring 25. Rather than discipline the militiamen, the state temporarily banned peaceful protests.⁶⁹

Superior court jurisdiction will likely check FATA's unaccountable civil bureaucracy, whose actions can now be challenged before independent judges rather than executive tribunals. But the judiciary will have to prove it is capable of upholding the constitutional rights and protections now extended to FATA's residents, including freedoms of movement, speech and association.

Moreover, the federal and Khyber Pakhtunkhwa governments should take urgent steps to develop the region, which has the worst socio-economic indicators in the country, and has been devastated by conflict. There is a major plan for multi-year funding of FATA's development but no guarantee that the money will arrive. The incoming National Financial Commission should quickly reach agreement on such funding.⁷⁰ Islamabad and Peshawar should also consult FATA stakeholders on

⁶⁷ Editorial, "Fata's historical transition", *Dawn*, 29 May 2018.

⁶⁸ A member of FATA's youth forum said, "at least if we're now asked where we are from, we can say Pakhtunkhwa and not a region that lay beyond the pale in Pakistan". Crisis Group interview, Islamabad, June 2018.

⁶⁹ The militia reportedly belongs to Maulvi Nazir's "good" Taliban faction. The South Waziristan notification said, "reports have been received that certain elements are resorting to objectionable, prejudicial hate speeches against state institutions". Cited in "One-month ban on public gatherings, rallies in South Waziristan following 'anti-state' speeches", *Dawn*, 10 June 2018. See also "2 PTM activists killed in firing by local Taliban", *The News*, 4 June 2018; "PTM activist Mohsin Dawar banned in North Waziristan", *The Express Tribune*, 8 June 2018; "PTM leader banished from N. Waziristan for three months", *The News*, 9 June 2018.

⁷⁰ In its last meeting in May, the National Economic Council agreed on a ten-year, multi-billion-rupee development plan (based on a 3 per cent share of the National Finance Commission award for FATA), to be implemented in three phases. The federal government would provide 43 per cent of finances and the provinces would provide the rest through their share of the Commission's award. Thirty per cent would be spent through elected local bodies. As yet there are no legal or written guarantees of such funds. Ghani Ghazan Jamal, "Developing FATA: Where are the funds?",

reconstruction, rehabilitation and development, and ensure the availability of fiscal resources.

VI. Conclusion

The previous federal and Khyber Pakhtunkhwa governments fulfilled a major commitment to ending FATA's constitutional limbo. Their successors cannot blame insecurity or seek other justifications for delaying FATA's integration into the mainstream. To be sure, the task will require resources, further reforms and, above all, stamina in the face of bureaucratic resistance. Though the principle of integration is now firmly established, the civil and military bureaucracies and the tribal elite will likely seek only partial reforms that retain the current governing structure. Yet, as the Pashtun Tahafuz Movement's popularity demonstrates, those bureaucracies' authority in FATA has waned. With public expectations raised by the merger and the repeal of Article 247, stalling would likely provoke significant backlash.

If the civil bureaucracy is averse to losing the benefits of the status quo, the military is averse to loosening its grip upon a territory that it still uses to promote what it perceives as Pakistan's national security interests, including through support for the Afghan Taliban and local militant proxies. But opportunities for breaking its hold are greater today than at any time before, given the 31st amendment, and civil society's demands for an end to conflict in the tribal belt, which have broad backing in Khyber Pakhtunkhwa and indeed countrywide.⁷¹ If the Tehreek-i-Insaf government prevaricates, it will squander a critical opportunity to strengthen its own standing in FATA and to stabilise the conflict-prone region.

Brussels, 20 August 2018

Dawn, 10 June 2018; Rahimullah Yusufzai, "Is the euphoria of the historic merger over?", *The News*, 10 June 2018.

⁷¹ Addressing a rally, Pashteen said, "since 2014, due to terror and in the name of terror, the common people have suffered in our land [FATA].... The constitution and the law of this country needs to be respected". "Young activists, fed up with alleged abuses, challenge Pakistan's military", *Wall Street Journal*, 11 May 2018.

Appendix A: Map of Khyber Pakhtunkhwa





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