

FATA and the Frontier Crimes Regulation in Pakistan: The Enduring Legacy of British Colonialism

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FATA and the Frontier Crimes Regulation in Pakistan: The Enduring Legacy of British Colonialism

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In early 2017, hundreds of Pashtun tribesmen gathered in Dera Ismail Khan under the banner of the organization FATA Siyasi Ittehad (FATA Political Coalition) to protest the continued enforcement of the Frontier Crimes Regulation (FCR), the colonial-era law that still governs Pakistan's Federally Administered Tribal Areas (FATA). Under the archaic FCR, an innocent individual can be imprisoned for the crimes of their kin, the government can displace entire villages without compensation, explanation, or warning, and individuals can languish behind bars for up to three years without any charges being filed.

This protest joined countless others in recent years by tribal groups across the region calling for the end of the law that severely curbs the rights of FATA residents. Nasirullah Khan Wazir, from South Waziristan Agency and a member of the Pakistan Tehreek-e-Insaaf political party, denounced the law, stating “FCR is a black law dating back to the colonial era... It is inhuman and tribesmen have consistently been rejecting it. Tribesmen no longer want to live under its tyranny.”¹ Many academics, activists, and human rights groups have similarly denounced FCR as a repressive and outdated law that undermines democracy and basic civil rights. As FATA struggles to re-build following years of conflict between the Taliban and Pakistani military, this law has been pointed to as a hindrance for FATA's development. In response, the government has recently introduced a plan to repeal the law. While many within the violence-plagued region have been calling for an end to the FCR and the administrative isolation of FATA, this transition is not without controversy. A number of groups oppose the proposed reforms, threatening to throw up a roadblock in its repeal.

Many questions emerge in light of the current debate related to why the FCR continues to exist, what has been its broader impact, and, given its unpopularity, why it is proving divisive to repeal. To address these questions, this *Policy Brief* will first give the history of the FCR—why the British Raj initially implemented the law and why it was maintained following the creation of Pakistan in 1947—followed by a discussion of how it functions and impacts the security environment in FATA. It will finish with an overview of the government's plan for reform and the controversies that surround it.

“No Patchwork Scheme”: Lord Curzon and the Indian Frontier

In early 1899, fresh from appointments as Under-Secretary of State for India and Under-Secretary of State for Foreign Affairs in London, George Nathaniel Curzon, the 1st Marquess Curzon of Kedleston, was installed as the Viceroy and Governor General of India, the senior ranking official in the crown jewel of the British Empire. He immediately faced a problem on

¹ Zukfiqar Ali, “Protest rally: Tribesmen call for FATA's merger,” *The Tribune* (Pakistan), 5 January 2017.

the northwest frontier of the British Raj—how to effectively deal with the rebellious Pashtun tribes comprising the border region between the British-controlled Punjab and the Kingdom of Afghanistan. With the capital of British administration nestled in the port of Calcutta on the Ganges Delta over 2,000 kilometers away, these localized tribal revolts and raids, the most recent of which occurred in the year prior to Lord Curzon’s appointment, served no real threat to British rule in the Subcontinent.

However, these were the days of the Great Game, a chess match between Britain and the expansionist Russian Empire over position and influence among the tribes, mountains, and steppe of Central Asia. Any unruliness in these border regions, it was feared, could be an opportunistic invitation or even a plot by the Russians to sow political discord within the British domain. In a 1904 speech given in Guildhall, London, Lord Curzon argued that with “a land frontier 5700 miles in length, peopled by hundreds of different tribes... a single outbreak at a single point may set entire sections of that frontier ablaze. Then, beyond it... are the muffled figure of great European Powers, advancing nearer and nearer, and sometimes finding in these conditions temptations to action that is not in strict accordance with the interests which we are bound to defend.”² Therefore, the machinations of these Pashtun tribes ensconced among the towering peaks of the Hindu Kush were a priority for the British Indian government.

This was of particular concern for the newly appointed Lord Curzon who in the previous decade had conducted extensive tours of Russia, Central Asia, and Persia. During his travels, he developed a grave mistrust of Russian intentions in the region outlined in two books, *Russia in Central Asia* and *Persia and the Persia Question*. In addition to a rich historical, political, and ethnographic study of the regions’ peoples, these books warn of the threat that he saw Russia posing to India, the British Empire’s most valuable colony.³ Lord Curzon wrote in 1901, “As a student of Russian aspirations and methods for fifteen years, I assert with confidence—what I do not think any of her own statesmen would deny—that her ultimate ambition is the dominion of Asia... If Russia is entitled to these ambitions, still more is Britain entitled, nay compelled, to defend that which she has won.”⁴

Given this growing territorial threat and the inadvisability of outright war with the vast Russian Imperial armies, Lord Curzon pushed for the creation of defensive buffer regions along India’s borders to stymie Russian advancement and influence. The British adopted a three-tiered approach to India’s security, referred to by Lord Curzon as the “threefold frontier.” The first geographical frontier was the boundary of the Subcontinent over which the British Raj was able to exert direct control. The second zone consisted of the border region between the first frontier’s border and a demarcated international border that the Raj laid territorial claim to but were unable to impose its laws or political control from Calcutta (and later New Delhi). The third frontier lay beyond India’s international borders, consisting of protectorates, such as Afghanistan, Nepal, Tibet, and Sikkim, which remained independent kingdoms but were cemented to British interests through treaty agreements.

² Lord Curzon in *India: Being a Selection From His Speeches as Viceroy & Governor-General of India, 1898-1905* (London: Macmillan and Co., 1906), pg. 37.

³ See George N. Curzon, *Russia in Central Asia in 1889: And the Anglo-Russian Question* (London: Longmans, Green & Co., 1889); George N. Curzon, *Persia and the Persian Question* (London: Longmans, Green & Co., 1892).

⁴ Peter Fleming, *Bayonets to Lhasa: The British Invasion of Tibet* (New York: Harper, 1961), pg. 23.

This left the lingering question of how to effectively deal with the tribes in the northwest frontier of the second frontier zone, a problem that baffled various rulers dwelling in Delhi, Agra, Lahore, and Calcutta for centuries. These Pashtun tribes lived outside the control of any government institutions according to their own tribal customs, as a result of the difficulty of the terrain and the fierceness with which the tribes fought invading armies, foremost among them the Wazir and Mehsud tribes in Waziristan.

Countless attempts throughout history showed the futility of direct military intervention as a means of pacifying the region—the Mughal Emperor Akbar the Great saw his armies destroyed, with 8,000 lives lost, in 1586 to the Yusufzai of the Peshawar Valley; and Akbar’s grandson Aurangzeb dispatched an army to subdue the Afridi tribe which controlled the vital Khyber Pass, an operation which cost the lives of 10,000 soldiers with a further 20,000 captured. Britain herself saw the high costs inflicted by the Pashtun tribes of eastern Afghanistan when the entire procession of the Grand Army of the Indus, counting 18,000 souls (including 12,000 camp followers), was lost in 1842 following its hasty retreat from Kabul; save for one man, Dr. William Brydon, who staggered half-dead into the British fort at Jalalabad to announce, when questioned where the remainder of the army was, “I am the army.”⁵ In retaliation, a British army of 14,000 men, known as the ‘Army of Retribution’, descended on Kabul from forts at Jalalabad and Kandahar, defeated a force of 15,000 tribesmen, and burned large sections of the city, including the historic covered bazaar. Following this costly campaign of revenge, which included many acts of savage violence against villages and their civilian populations along the march, the British exited Afghanistan.

Understanding the patterns of history, Lord Curzon once observed, “No patchwork scheme—and all our present recent schemes, blockade, allowances etc., are mere patchwork—will settle the Waziristan problem. Not until the military steam-roller has passed over the country from end to end, will there be peace. But I do not want to be the person to start that machine.”⁶ With the difficulty of direct control, he saw the need for a new approach.

In 1901, Lord Curzon created out of the old Punjab Province a new North-West Frontier Province (NWFP) consisting of the tribal buffer region along the Durand Line, the international border between British India and the Kingdom of Afghanistan surveyed and established in 1893 by Colonel Algernon Durand. The administrative approach he adopted for his new province was one of indirect rule, placing the tribal residents of the NWFP under the new legal framework of the Frontier Crimes Regulation (FCR). The FCR maintained the internal autonomy and customs of the Pashtun tribes and operated largely through legally recognizing the authority of the tribal *malik* (elder) and aspects of the code of honor known as *Pashtunwali* (the way of the Pashtun), which emphasized honor, revenge, and hospitality as a means of maintaining social order.

On April 26, 1902, Lord Curzon traveled north to Peshawar, the capital of the new province, and met with a *darbar* (court) comprised of some 3,000 tribal leaders to give a

⁵ Akbar Ahmed, *The Thistle and the Drone: How America’s War on Terror Became a Global War on Tribal Islam* (Brookings Institution Press, 2013), pg. 155.

⁶ Evelyn Howell, *Mizh: A Monograph on Government’s Relations with the Mahsud Tribe* (Oxford University Press, 1979), pg. 35.

complete account of the new British frontier policy. He opened his address by assuring, and warning, them:

Now the great desire of the trans-border tribesman is, I take it, to maintain his religion and his independence. The British Government have not the smallest desire to interfere with either... The policy of the Government of India towards the trans-border men is very simple, and it is this. We have no wish to seize your territory or interfere with your independence. If you go on worrying and raiding and attacking, there comes a time when we say, This thing must be put an end to: and if the tribes will not help us do it, then we must do it ourselves. The matter is thus almost entirely in your own hands. You are the keepers of your own house. We are ready enough to leave you in possession. But if you dart out from behind the shelter of your door to harass and pillage and slay, then you must not be surprised if we return quickly and batter the door in.⁷

Lord Curzon also guaranteed the British would recognize the existing political authority within the tribes, however the various tribes defined it, and deal with this leadership directly, promising “tribal allowances for keeping open the roads and passes, such as the Khyber and Kohat Passes and the Chitral Road, for the maintenance of peace and tranquility, and for the punishment of crime.”⁸

“Upon such men that our security rests”: *The Political Agent and Tribal Administration*

Society in the tribal areas largely operated through the tribe’s three pillars of authority: the lineage-based authority of the *malik* operating through the council of elders (*jirga*), the religious-based authority of the *mullah*, and the legal-based authority of the Political Agent. It was the often-fluid relationship and precarious balance between these three pillars of authority that allowed for the maintenance of law and order within a society burdened with rivalries and vendettas.⁹

In particular, much of the internal conflict derived from the traditionally subordinate position of the mullah to the elders under the FCR, as the mullah did not have an official voice within the *jirga*, being outside the genealogical charter, and often dependent on the elders for their position within the mosque or madrassa. Despite the self-consciously Islamic frame that the tribes used, the mullah’s influence ebbed and flowed with the shifting political dynamics and his personal ability to draw followers to his cause, often in opposition to the British-sanctioned position of the elders and British development projects that further interposed “kafir” ways into the Tribal Areas.

The conflict between the mullah and malik could lead to the outbreak of violence. In one example of this, when Mir Badshah, a Mehsud elder in South Waziristan Agency during British rule, opened a school, a local mullah gathered a crowd to burn it down as a symbol of British imperialism. Mir Badshah defended the school and shooting erupted between the two opposing

⁷ Lord Curzon in *India*, pg. 422.

⁸ Lord Curzon in *India*, pg. 423.

⁹ See Akbar S. Ahmed, *Religion and Politics in Muslim Society: Order and Conflict in Pakistan* (Cambridge University Press, 1983).

sides, with two people killed in the exchange of gunfire. This same Mir Badshah, when criticized by Mullah Fazal Din in 1947 over his battle tactics in Kashmir, dismissively replied that matters of war and politics should be left to the elders as the mullah's place was in the mosque leading prayers.¹⁰

While the British frontier policy under the FCR recognized the authority of tribal leadership and their internal autonomy, the key to tribal administration along the frontier, in Lord Curzon's eyes, was the Political Agent (PA), a figure who, much like his tribal counterparts, is cloaked in equal parts oriental romanticism and historical caricature.

The position of PA was originally created for the five tribal agencies (there are now seven) established along the Durand Line in the late 1890s. His orders were to represent British interests among the tribes under his charge. Under the FCR of 1901, the PA was maintained, reporting directly to the governor general himself, and granted almost unlimited legal authority within his agency, simultaneously fulfilling the roles of chief of police, judge, and executioner. Given the extent of his authority, the tribes would often refer to the PA as *Badshah* (king).¹¹ The immense responsibility laid upon the PA within a difficult working environment led to great emphasis on the necessary characteristics and selection of the men that served in the frontier. Lord Curzon stated, "A good Political is a type of officer difficult to train. Indeed, training by itself will never produce him, for there are required in addition qualities of tact and flexibility, of moral fibre and gentlemanly bearing, which are instinct rather than acquisition... It is upon such men that our security rests, not on the number of battalions we put there."¹² Indeed, a number PAs lost their lives in the line of duty in the Tribal Areas, with five being killed in South Waziristan Agency alone during the half century of British rule.

Yet, as a result of the limitations of government authority in the frontier, the PA was forced to work through the tribe's pillars to promote the government's interests and see any results. In the Tribal Areas, it is famously said that the authority of the British Raj only existed along the main roads and a hundred yards to each side. Beyond this lay the land of *riwaj*, or tribal custom. Because of the constraints on his administrative authority and ability to take assertive and offensive actions, the PA has been referred to as "half-ambassador and half-governor" in his interactions with the tribes.¹³ A former PA in Waziristan observed, "Dissatisfaction with the PA, or his junior field officers, is expressed by sniping, explosions on government property, and even kidnapping."¹⁴ To capture the perpetrators of such acts, the PA would rely upon the threat of his wide-ranging powers, especially in imprisoning an entire clan for the actions of one of its members, as a show of force. A Mehsud proverb states, "The Political Agent should brandish his sword but not use it."¹⁵ The PA's authority was backed by the creation of a paramilitary organization comprised of local tribesmen known as Scouts. Often the PA, however, would

¹⁰ Ahmed, *The Thistle and the Drone*, pg. 51.

¹¹ Ahmed, *The Thistle and the Drone*, pg. 60.

¹² Christian Tripodi, *Edge of Empire: The British Political Officer and Tribal Administration on the North-West Frontier, 1877-1947* (Surrey: Ashgate, 2011), pg. 26.

¹³ James W. Spain, *The Way of the Pathans* (London: R. Hale, 1962), pg. 25.

¹⁴ Ahmed, *Religion and Politics in Muslim Society*, pg. 36.

¹⁵ O.K. Afridi, *Mahsud Monograph*, Tribal Affairs Research Cell, Home and Tribal Affairs Department, Government of North-West Frontier Province, 1980, pg. 49.

ultimately rely upon negotiations with tribal maliks, negotiations reliant upon *Pashtunwali* and heavy with references to honor and justice, to produce the culprit.

Despite the existence of the FCR on the Frontier and the power of the PA, which in the ideal were able to project some measure of stability, the outbreak of violence still prompted the British to pair its tribal administration with shows of military force. In the 1930s, for example, the British government had more troops stationed within Waziristan than the remainder of the Indian Subcontinent.¹⁶ The geographic and administrative isolation of the Tribal Areas, local attacks against the British imperial presence, and absence of dedicated resources all contributed to the lack of development within the region, with a striking dearth of schools, hospitals, and infrastructure by the end of British rule. Sir Evelyn Howell, a British political officer serving in Waziristan during the 1920s, summed up the British colonial efforts in the Tribal Areas: “What a record of futility it all is!”¹⁷

“Our Muslim Brethren”: The Tribal Areas in Pakistan

At the creation of Pakistan in 1947, Muhammad Ali Jinnah, the Quaid-e-Azam (Great Leader) who carved a new nation out of the map of British India, was under tremendous pressure. In the preceding years, he had been tirelessly crossing the Subcontinent to garner support for a new Muslim state built upon the majority-Muslim provinces of the Subcontinent. Following his success, there was little time for celebration as he was tasked with fostering a cohesive national identity despite the new state’s numerous ethnic, linguistic, and religious divides while simultaneously dealing with tensions with India over Kashmir that would quickly lead to war, the settlement of millions of refugees, and the creation of new government bureaucracy and administrative structures; a Herculean undertaking for any single man to bear, let alone one stricken with tuberculosis that would claim his life the following year.

In regards to the Tribal Areas, Jinnah respected the internal autonomy and customs of the tribes and made the unprecedented move of reversing the British policy of “forward defense” by withdrawing the military garrisons and all regular troops. With the withdrawal of the foreign powers, he no longer saw it necessary to maintain a military presence along the border, seeing it as an unnecessary provocation, and entrusted the tribes to deal with cross-border challenges. In 1948, Jinnah traveled north to Peshawar and met with a grand *jirga* from the Tribal Areas, assuring them:

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...Pakistan has no desire to unduly interfere with your internal freedom...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...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

¹⁶ Ahmed, *The Thistle and the Drone*, pg. 59.

¹⁷ Howell, *Mizh*, pg. 95.

and with your cooperation and help we may very soon succeed in making a great progress in this direction.¹⁸

In particular, the new state of Pakistan was concerned with relations with Afghanistan, which challenged Pakistani membership to the United Nations given its claim to the Pashtun-populated Tribal Areas and North-West Frontier Province, declaring the Durand Line invalid. Afghanistan sought to take advantage of Pakistan's post-independence instability and sow discord in the region, allying with India in the process. Though the popularity of the creation of a "Pashtunistan" within the region is debatable, it was a potent enough of a threat to convince Pakistani leadership, ever conscious of protecting their newly-established borders, to maintain the status quo in FATA so as not to disrupt the precarious balance within the region and avoid pushing the Pashtun tribes further into the arms of their ethnic kin across the international border.

Therefore, Jinnah's successors kept the FCR in place, despite its anti-democratic provisions, as a vehicle to suppress lawlessness and unrest, which rival powers could exploit to their advantage. This law kept the region under direct rule from the Pakistani federal government and administratively distinct from the broader North-West Frontier Province, which possessed local government and a provincial parliament. Much like under British rule, the purpose of the FCR within Pakistan was simply to protect the interests of the state rather than ensuring any notion of justice or civil rights for FATA residents, essentially creating second-class citizens. This arrangement also nurtured loyalty to the Pakistani state among the maliks, whose position and privileges were institutionalized under the FCR.

The FCR in Pakistan maintained the position of the Political Agent as the representative of the federal government along with his extensive powers and denied FATA residents the basic rights possessed by other Pakistanis—appeal, *wakeel* (lawyer), and *daleel* (argument)—the right to appeal a conviction, the right to legal representation, and the right to present evidence in order to argue your case. It also allows for collective punishment against a culprit's entire clan, tribe, or village under the "collective responsibility clause", permitting the authorities to hold individuals for up to three years without charges. Additionally, legal punishments are decided by unelected jirgas without trial by jury with no recourse for appeal. The government can similarly seize private property at their discretion. It also limits access to the region from outsiders. Pakistan added to the FCR that residents can be arrested or ordered to be handed over to the government by tribal elders without needing to specify a crime, an order which a failure to comply with can make the elder liable for punishment. Universal suffrage was only granted to FATA residents in 1997, prior to which only recognized maliks were permitted to cast votes. Yet, political parties were not legally allowed to campaign in the region until 2013.

¹⁸ Ahmed, *The Thistle and the Drone*, pg. 63



Pakistan’s Federally Administered Tribal Areas (FATA) in dark grey and Khyber Pakhtunkhwa Province (formerly North-West Frontier Province) in light grey. Source: Wikimedia.org

The political position of FATA within Pakistan has resulted in chronic underdevelopment as access and economic opportunities are severely restricted. The reported literacy rates among the seven tribal agencies vary between 26.77% (North Waziristan) and 57.2% (Khyber) for men and 1.47% (North Waziristan) and 14.4% (Kurrām) for women.¹⁹ Many within Pakistan argue that the FCR has allowed for the spread of corruption given the privileges and powers granted to the maliks, with little benefit trickling down to the broader population and efforts at development being stymied. This inequality created much resentment between the privileged elders and the “political have nots.”²⁰ Reflecting on his time as Political Agent in South Waziristan Agency from 1978-1980, anthropologist Akbar Ahmed writes:

I found tribal elders entrenched in their status and privilege because of their access to the PA [political agent], which they were reluctant to share with the rest of the tribe. Furthermore, a younger generation—called the *kashar* (the youth) as opposed to the *mashar* (the elder)—had emerged, demanding a greater voice

¹⁹ *Multiple Indicator Cluster Survey (MICS): Federally Administered Tribal Area (FATA) Pakistan*, Planning & Development Department, FATA Secretariat, 2009, pgs. 26-27.

²⁰ Akbar S. Ahmed, *Pukhtun Economy and Society: Traditional Structure and Economic Development in a Tribal Society* (London: Routledge, 1980), pg. 144.

in the agency. Calling for change, the kashar argued that the mashar were selfish and corrupt, nothing more than stooges of the government who exaggerated the role of the genealogical charter and Pukhtunwali [the Pashtun code of honor] to further their own interests... Since Waziristan, like the rest of the Tribal Areas, elected its member of Pakistan's national assembly through votes cast by the recognized tribal maliks [elders], they could manipulate the extraordinary powers this conferred on them for personal gain. The kashar agitated for elections to be held on the basis of one man, one vote as in the rest of the country. Also of great concern was the lack of educational and medical facilities, which were appalling and, compared with the rest of the country, unacceptable. Even roads and electricity barely existed and then only to connect one government post to another.²¹

Many within Pakistan have long challenged the FCR as an outdated law that violates both the civil and human rights of the residents of FATA. Dr. Faqir Hussain, Secretary of the Law and Justice Commission of Pakistan, stated at an October 2004 consultation on the FCR organized by the Human Rights Commissioner of Pakistan, "Judging by the standards of international human rights principles, the norms practiced in civilized states and the fundamental rights guaranteed in the Constitution of Pakistan, the FCR failed to meet the test of compatibility."²² The Pakistani courts have come to the same conclusion concerning the FCR. In the 1957 ruling in *Toti Khan v. District Magistrate Sibi and Ziarat*, the courts found the use of unelected jirgas for criminal cases violated the 1956 Constitution's article on equal protection under the law.²³ Previously, the 1954 ruling of the court in *Khan Abdul Akbar Khan v. Deputy Commissioner Peshawar* found a similar rationale in challenge to the FCR.²⁴ In explanation of the court's ruling, Justice Kayani stated that the FCR was effectively "racial discrimination and is open to criticism as discrimination between a Negro and a white man."²⁵ In 1979, the *Shariat Bench* of the Balochistan High Court found the FCR and its discriminatory practices to be contrary to the teachings of Islam, arguing that "Islam invalidates discriminations on the basis of caste, creed, colour, social status, place of birth or of residence... In particular, 'Justice' as far as it concerns the decision of cases, both of civil and criminal nature, has to be administered on the basis of equality with all religiousness... Accordingly, all discriminatory law are against the injunctions of Islam."²⁶ In 2008, the Pakistani Prime Minister Yousaf Raza Gillani stated his intention to abolish the "obsolete" law, seeing it as a hindrance to economic, social, and political reform.²⁷ The turmoil of Pakistani national politics over the past sixty years and the prioritization of security along with the entrenched interests of

²¹ Ahmed, *The Thistle and the Drone*, pg. 52.

²² *FCR: A bad law nobody can defend*, Human Rights Commission of Pakistan, Peshawar Chapter, July 2005, pg. 3.

²³ *Toti Khan v. District Magistrate Sibi and Ziarat* (PLD 1957 W.P. Quetta 1).

²⁴ *Khan Abdul Akbar Khan v. Deputy Commissioner Peshawar* (PLD 1954 Peshawar 100).

²⁵ Shaheen Sardar Ali and Javid Rehman, *Indigenous Peoples and Ethnic Minorities of Pakistan: Constitutional and Legal Perspectives* (Surrey: Curzon, 2001), pg. 53.

²⁶ Tilmann J. Roder and Naveed A. Shinwari, "Pakistan: Jirgas Dispensing Justice without State Control," in *Non-State Justice Institutions and the Law: Decision-Making at the Interface of Tradition, Religion and the State*, Matthias Kotter, Tilmann J. Roder, Gunnar Folke Schuppert, and Rudiger Wolfrum, eds. (Basingstoke: Palgrave Macmillan, 2015), pg. 44.

²⁷ Abubakar Siddique, "Pakistan: New Government Announces Major Reforms in Tribal Areas," *Radio Free Europe*, 3 April 2008.

those who benefit from the status quo, however, have superseded these issues, keeping the FCR firmly in place.

Regional and international politics have time and again spilled into FATA and helped to shape its political dynamics, exacerbating local conflicts engendered by the FCR. This isolated and far away region became a focal point for foreign powers as the Soviets interjected themselves into the Afghanistan game of thrones. Beginning in the early 1980s, Pakistan and the United States, through the ISI and CIA, relied upon religious rhetoric and support of religious institutions in the region as a counter-narrative and recruiting effort in the struggle against the Soviet military across the Durand Line. The mullahs were ascendant in tribal politics as they now had the money, the guns, and the political legitimacy to lead the fight. They were thus able to bypass the traditional checks by the other pillars of authority under the FCR.

Following the American invasion of Afghanistan in 2001, Pakistan, under pressure from the United States, dispatched its military forces to FATA, the first military presence since Jinnah removed the garrisons, to catch militants fleeing across the Durand Line, an international border that only exists on maps for the local Pashtun tribes. The military presence, along with the increasing number of U.S. drone strikes after 2004, was a catalyst for the violence committed by various Pakistani Taliban groups, largely emerging behind the very mullahs disadvantaged by the FCR. Many of their targets were the recognized tribal elders, with 800 elders killed in FATA by 2012 in increasingly brazen attacks.²⁸ The PAs, whose power was already diminished by the presence of the military as local tribesmen turned to the local brigade commanders as the source of political authority, were similarly in danger with many forced to live and work outside their agencies. As the tempo of violence increased in FATA, local residents were similarly forced to flee their homes. In this chaos, the foundational structures of the FCR were devastated, underlying the need for a new approach to governance in the region.

“Go, FCR, Go”: The Debate on the Repeal of the FCR

In 2016, the Pakistani government began working to re-settle FATA residents displaced from the conflict, a process largely completed by the end of the year. As people returned to their homes after over a decade of violence with the Taliban, they faced many challenges to rebuild their lives. Pakistani journalist Rehmat Mehsud, upon returning to his homeland of South Waziristan Agency in September 2017, likewise saw the impact of the over decade long war with the Taliban—“South Waziristan’s infrastructure has been ravaged by war. People’s houses are hardly fit to live in after years of incessant shelling... The problems don’t end here... The area is still scattered with hidden or disguised Improvised Explosive Devices (IEDs) which have killed or maimed scores of children.”²⁹ The government similarly faced the challenge of building trust between the government and displaced persons and to bring FATA into the mainstream as a means of preventing future unrest and conflict. Government efforts included compensation for homes destroyed and an increase in development spending for the region.

Yet, as many human rights activists, local tribesmen, and even the superior judiciary of Pakistan have long pointed out, the greatest hindrance towards integrating FATA into Pakistan

²⁸ Khalid Aziz, “Conflict & Fata Institutions,” *Dawn* (Pakistan), 16 March 2012.

²⁹ Rehmat Mehsud, “Return to South Waziristan,” *Daily Times* (Pakistan), 26 September 2017.

is the structural constraint of the FCR. There have been previous attempts at amending the FCR within the current framework of the law. In 1997, universal suffrage was finally extended to FATA. In 2011, President Asif Ali Zardari amended the FCR through presidential order, which placed limits on the collective action clause and the powers of the political agent. However, the underlying framework of the law still remained, leading to a string of protests under the “Go, FCR, Go” movement calling for the repeal of the British-era law.

In November 2015, former Prime Minister Nawaz Sharif created the FATA Reforms Committee, headed by Adviser to the Prime Minister on Foreign Affairs Sartaj Aziz, in order to provide recommendations for reforming the FATA’s administration and political status within the nation. Nine months later, the committee released its report that outlined a five-year transition period to repeal the FCR and merge FATA with the Khyber Pakhtunkhwa (KP) Province, placing FATA residents under the regular judicial system of Pakistan with full legal and civil rights guaranteed under the constitution. The FCR would be replaced by the Riwayat Act that would maintain the jirga system for local dispute resolution but with elected elders comprising the council. This plan would also ensure additional funds for development projects and allow for an increase in security forces in FATA to assist with security issues until the integration process is complete. In a bid to restrict uncontrolled entry into the region that has been exploited by Afghan militants, Pakistan is strengthening border security with the construction of fencing along the 2,600 border with Afghanistan supported by 420 small forts. The Pakistani federal cabinet officially approved this plan in March 2017.

While there has largely been consensus on the need to repeal the FCR, the process to do so has not been without controversy. Local tribesmen complained that this committee did not include local representatives from FATA, creating resentment among the tribesmen towards government efforts to repeal the FCR who feel the committee should have consulted more with tribal representatives. Iqbal Afridi, the general secretary of the All FATA Political Parties Alliance, stated, “FATA is not a laboratory where you keep carrying on experiments to know what kinds of reforms are working.”³⁰ In March 2017, a group of tribal elders expressed opposition to the plan put forth by the government, similarly arguing that it is an imposition from the government without referendum or consultation with the local population.³¹ The leadership of the JUI-F and Pakhtunkhwa Milli Awami Political Parties have also been against the merger with KP Province, given their entrenched electoral interests and history of electoral success within FATA that a merger with KP would threaten. They have advocated for FATA being given the status of a separate province. The JUI-F chief, Maulana Fazlur Rehman, stated in early November 2017, “Outsiders should not be given the right to decide the fate of tribal people. I am of the firm opinion that a referendum should be held to decide the future status of FATA instead of merging it with KP.”³² The All FATA Political Parties Alliance has similarly expressed doubt about the Riwayat Act, fearing that it could become simply another version of the discriminatory FCR as it maintains the jirga system. This group is also pushing for an expedited merger that

³⁰ Rehmat Mehsud, “Tribesmen press for merger of FATA with KP,” *News Lens Pakistan*, 12 August 2016.

³¹ Abuzar Afridi, “Tribesmen oppose FATA merger plan,” *The Express Tribune* (Pakistan), 6 March 2017.

³² Rehmat Mehsud, “Referendum should decide FATA’s fate: Fazlur Rehman,” *Daily Times* (Pakistan), 5 November 2017.

would allow FATA residents to elect representative the KP Provincial Assembly in the 2018 elections.³³

What all parties can agree on is that the FCR must go. In order to move beyond potential gridlock over disagreements on how it is repealed, it is necessary that the government work closely with affected communities within FATA as partners within the period of transition. This will allow them to effectively gauge the potential impact of proposed reforms and give the plans greater legitimacy among the population, helping to secure a lasting peace. Failure to do so will work against the government's goal of bringing stability to the region by building greater resentment and opposition from segments of the population toward the government and its plan for reform.

The interests of the Tribal Areas have historically been neglected with decisions made from distant capitals for broader political or security concerns. This focus has led to the perpetuation of the status quo under the FCR and the disregard for local political voices and desires. Many local FATA residents today similarly feel as though their voices have been neglected by the Pakistani government during the formulation of plans for reform. The repeal of the FCR needs to therefore be paired with a re-start in Pakistan's working relationship with this long-suffering region to integrate them into the nation as citizens with their full civil rights. By working closely with the local communities in both shaping and implementing reforms, the government will be abiding by the vision of the Quaid-e-Azam who assured the tribesmen at Pakistan's founding: "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."³⁴

³³ "Fata alliance fears Riway Act to prove another FCR," *Dawn* (Pakistan), 5 March 2017.

³⁴ Ahmed, *The Thistle and the Drone*, pg. 63