



Challenges of FATA Merger

Rahimullah Yusufzai



About the Author

Rahimullah Yusufzai is an authority on Afghan and FATA affairs. Pakistan government first awarded him Tamgha-e-Imtiaz in 2005 and then the prestigious Sitara-i-Imtiaz Award in 2010 for his achievements in the field of journalism. He was among the first journalists to report on the Taliban and visited Kandahar in 1995. He is one of the few bona fide experts on Afghanistan, having reported on the country since the 1979 invasion by former Soviet Union. He frequently appears on national and international television.

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History was made on May 31, 2018 when President Mamnoon Hussain signed the bill to complete the constitutional process for merger of the Federally Administered Tribal Areas (Fata) with Khyber Pakhtunkhwa (KP) province.

It was logical that the President of Pakistan would sign into law the piece of legislation adopted by the National Assembly, Senate and Khyber Pakhtunkhwa Assembly because he enjoyed absolute powers concerning Fata under articles 246 and 247 of the Constitution. There had been persistent demands over the years that the President's powers ought to be transferred to the Parliament in keeping with the demands of a democratic Pakistan, but the powers that be were unmoved.

The decision effectively ended the 70-year old special status of Fata, which has now been omitted as a separate administrative unit in the federation of Pakistan. It has become part of KP, the adjoining province with which it shared so much and yet was administered by the federal government under a different set of regulations since Pakistan's independence in 1947.

President Mamnoon Hussain echoed the views of all those celebrating the merger by arguing that the doors have been opened for Fata's prosperity and development as its population would now have the same constitutional rights as the rest of Pakistan. His argument that Fata's merger would bring stability in the region was clearly directed at regional and world powers that had been voicing concern in the post 9/11 period that the tribal areas were safe havens for militants threatening the region and beyond. The enforcement of Pakistani laws in the hitherto lawless tribal belt bordering Afghanistan should enable the state to prevent the re-emergence of the so-called 'no-go areas', tackle the remnants of the armed groups and improve governance and delivery of justice.

However, it would be wrong to assume that the implementation stage of the merger would be a smooth affair. Fata's merger with KP is indeed a remarkable achievement for a country that is slow

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in changing the status quo. The legislation has been done, the paperwork is almost complete and the nomenclature has already been changed by calling the seven tribal agencies the tribal districts and the political agents the deputy commissioners.

All these measures, though, won't bring major changes in the lives of the tribespeople as the bill calling for merger specified that it should happen within two years. Until then, they would have to live under the Fata Interim Governance Regulation, 2018 promulgated by the President and having some familiar sections from the past such as Rewaj (customs and traditions) and Jirga (council of elders) until the 119 mainstream Pakistani laws are extended to the tribal districts and a proper judicial system is put in place of the most criticized and controversial Frontier Crimes Regulation (FCR), which was enacted in 1901 by the British colonial rulers for serving their interests and now stands repealed. The process would definitely take more than a year and possibly extend to 2020 and beyond. In fact, the earlier federal government plan based on the recommendations of the five-member Fata Reforms Committee headed by Sartaj Aziz, then the advisor on foreign affairs to the Prime Minister and later the deputy chairman of the Planning Commission, was to pursue a five-year transition period for Fata's merger with KP. The timeline was shortened due to the pressure by political parties, civil society activists and certain tribal parliamentarians and youth groups that wanted a quick merger.

Even now, some of the proposed timelines for measures to materialize Fata's merger with KP are being questioned. There has been a growing demand that election for the 23 newly created seats in the Khyber Pakhtunkhwa Assembly for erstwhile Fata should be held on July 25 along with the general election in rest of Pakistan. Though there isn't enough time now to make this happen, Khyber Pakhtunkhwa's outgoing Chief Minister Pervez Khattak made a valid point in a letter addressed to the Election Commission of Pakistan by arguing that the delay in holding polls in areas that were part of Fata would create a complex situation because the provincial assembly would remain incomplete until the lawmakers from the tribal areas are elected and are able to take part in the election for chief minister, speaker and deputy speaker. He feared that the belated election of 23 legislators from Fata to the provincial assembly in 2019 as planned would cause uncertainty as the outcome of the polls could shift the balance of power in the KP legislature and there may also be rigging allegations against the incumbent government.

As of now, the plan is to hold election in erstwhile Fata for KP's provincial assembly in 2019 within one year after the 2018 general election in the country. That would mean ensuring the election in the

tribal districts is held in July 2019, which seems a challenging target. Hopefully by then, the journey toward the merger would have been covered to a large extent and meeting deadlines would become possible. The tribal districts would have already experienced two elections – one for the 12 seats in the National Assembly in the general election on July 25, 2018 and then the local government polls in October 2018. Going to the polls thrice in two years would be a remarkable experience for the tribespeople who got the right of adult franchise not long ago in 1997 because until then only the maliks (tribal elders) could vote and contest elections.

Prior to that, the election for a new, party-based local government system in the tribal districts is to be organized in October 2018. The Fata Reforms Committee had recommended holding the election in 2017, but this was a rather ambitious goal. Even October 2018 appears to be unrealistic considering the fact that delimitation of constituencies would have to be done in the tribal district by the Election Commission that is already preoccupied with holding the general election to be followed by the inevitable by-elections for seats falling vacant due to a host of reasons. Another point to ponder is the fact the local governments now in place in KP would complete their tenure in May 2019 and the government may consider holding the local bodies' polls in the province and its new tribal districts at the same time to achieve compatibility as the KP government is keen to extend the KP Local Government Act 2013 to the erstwhile Fata. The Pakistan Tehreek-e-Insaf (PTI) government had earmarked its 30 percent annual development funds to the local governments and it wants the same model to apply to the tribal districts. The KP Governor in the 10-year development plan for Fata has also proposed spending 30 percent of the funds amounting to Rs300 billion through the local governments.

The lessons of failed attempts in the past to introduce local government system in Fata would have to be kept in mind before experimenting with the new plan aimed at devolution of power by empowering elected councillors at the grassroots level. One such attempt was made in 2002 by military ruler General Pervez Musharraf when the Fata Local Government Regulation was introduced, but instead of conducting direct election the all-powerful political agents were told two years later in 2004 to make nomination of tribal elders and provide them a meagre stipend instead of any powers or funds. Another feeble attempt was made in 2012 when Asif Ali Zardari was President and the Fata Local Government Regulation was drafted, but no polls were held primarily due to Fata's poor security situation.

In fact, there are other practical issues as well that would haunt the government as decisions are made to meet some of the important timelines of the merger. As there was a sudden rush to get Fata Reforms Bill adopted by the parliament before the completion of the five-year term of the PML-N government, its legal implications weren't properly considered. Already, the KP government through its chief secretary has raised a number of legal, constitutional and financial issues concerning the merger and asked the federal government to take steps to prevent negative fallout on Fata's mainstreaming. One of the issues is the abolition of Article 247 of the Constitution as the powers of the President to make regulations have been taken away, thereby creating an administrative vacuum. It was pointed out that the existing rules and regulations including those concerning security issues no longer had a legal cover.

The KP government also voiced concern that no consensus had been reached yet between the federal government and the four provinces on provision of the promised Rs1 trillion development funds for Fata for 10 years. It demanded a written and binding commitment from the federal government to make the money available without waiting for the meeting and decision of the National Finance Commission.

However, the Fata reforms' architect Sartaj Aziz claimed that the provinces initially opposed to an allocation of three percent of gross proceeds of the federal divisible pool subsequently agreed to contribute to development of tribal districts in line with their shares in the National Finance Commission (NFC) award.

In case the promised funds are provided, perhaps a bigger challenge would be to spend the money timely and transparently because insecurity and lack of capacity of the relevant institutions has always been a problem. The Fata Secretariat, which would now stand abolished and its work transferred to KP's Civil Secretariat, couldn't even spend the Rs24.5 billion funds earmarked for the annual development programme in 2017-2018 due to capacity issues. Therefore, a major capacity building initiative would have to be launched to enable the departments working in the tribal district to efficiently spend the nearly Rs100 billion a year special funds in the post-merger period.

One timely step taken by the government to reassure the tribespeople and make them stakeholders in the 'new Fata' was to offer them a number of tax exemptions and other incentives for the next five years. With the lowest socio-economic indicators in Pakistan, the tribal districts deserve such incentives to enable the tribespeople to compete with the developed areas. Pakistan had to pay a heavy price due to neglect of Fata as its security was put at stake when ungoverned space in the areas bordering Afghanistan provided ideal conditions for militants, criminals, smugglers, gun-runners, drug-traffickers and kidnappers to thrive.

Pakistan's military was cognizant of this dire security situation as it had to undertake 14 major operations from 2003-2017 at the cost of blood and treasure to recapture territory lost to local and foreign militants and establish the state's writ. It was thus not surprising that the military was pushing the elected civilian government to implement reforms in Fata and merge it with KP. The military also played a key role in formulating the 20-point National Action Plan in January 2015 a month after the horrendous terrorist attack on the Army Public School in Peshawar in which 147 persons, including 122 schoolchildren, were martyred. One of the points in the plan recommended expediting administrative and development reforms in Fata and keeping the rehabilitation of the internally displaced persons as the topmost priority.

As the jurisdiction of the Supreme Court of Pakistan and the Peshawar High Court has already been extended to the tribal region and the latter has even started hearing appeals against the verdicts of Fata's previous political agents, building the new judicial system in the tribal districts has become a top priority. The Peshawar High Court has come up with a plan costing Rs14 billion for building courthouses, setting up district and sessions courts and hiring staff. The estimated time of putting in place the judicial system was mentioned as 10 to 14 months. The implementation of this plan could encounter resistance, face hurdles and require timely availability of funds.

There has been an ongoing debate on the new policing system for the tribal districts and a final decision about it is awaited. The Khyber Pakhtunkhwa Police has prepared a plan under which police officers posted in the tribal districts would directly report to the Central Police Office in Peshawar like the settled districts in the province. It doesn't want a 'hybrid system' of policing in which the cops serving in the tribal districts aren't accountable to the Central Police Office that is working under the Inspector General of Police (IGP). The provincial bureaucracy, however, is in favour of establishing a central Levies force office in Peshawar under the home department to supervise policing not only in all the seven tribal districts and six Frontier Regions (now called sub-divisions), but also Malakand district

where the Levies in place of the police have been performing duty. The differences have persisted but should be sorted out in due course of time. As there are plans to recruit 20,000 Levies personnel for security duties in the erstwhile Fata, it is possible the civil bureaucrats would prevail in the end and their policing model may be implemented. Presently, there are 11,739 sanctioned posts of Levies personnel in old Fata, though 2,234 are vacant. The members of the Khassadar Force, a tribal community police force, total 17,965.

It is true that mainstreaming Fata and merging it with KP would pose challenges, but the direction for achieving this goal has been set. The PML-N government deserves credit for undertaking this onerous task in November 2015 by forming the Fata Reforms Committee and finally taking steps towards the end of its rule in May 2018 to implement its recommendations despite opposition by two of its staunchest allies, Maulana Fazlur Rahman's JUI-F, and Mahmood Khan Achakzai's PkMAP. Both had demanded a referendum to seek the opinion of the tribal people whether they wanted merger with KP or a separate Fata province. The JUI-F, which has a sizeable vote-bank in the tribal districts, termed it as a 'black day' when the merger bill was adopted. It is possible the JUI-F would make it an issue in the coming general election and seek votes in the tribal districts from those against the merger and in favour of a separate province. Almost all other political parties, human rights groups and political and youth activists from Fata backed the reforms process and the merger and it is now up to them to mobilize the tribal voters in support of the plan for integration with KP.

It is also reassuring that there is a strong government commitment to integrate this hitherto neglected tribal region spread over 27,222 square kilometres and having a population of five million with mainstream Pakistan. Though Fata looks insignificant with just 2.38 percent of Pakistan's population, 3 percent of the country's area and 1.5 percent share in the national economy, its strategic importance due to its location on the border with Afghanistan have been universally accepted. The US fighting an unwinnable war against the Afghan Taliban next door in Afghanistan for the last 17 years despite spending more than a trillion dollars used to describe Fata as the most dangerous place on earth as it alleged the militants attacking Nato and Afghan forces had established safe havens in the Pakistani tribal belt.

Besides dealing with internal opposition to the Fata reforms, Pakistan has to contend with Afghanistan, which termed the merger with KP as violation of the 1921 agreement signed between Afghanistan and the British government. It even threatened to approach the United Nations, the International Court of Justice and other world forums against the decision. However, Kabul may not take this step considering its inability despite occasional threats to take the issue of Durand Line to the world forums because it realized there wasn't any real support for its stance not to recognize it as an international border.

The Fata reforms process following the merger with KP would be largely dependent on the security situation in the tribal districts. Pakistan would have to keep its nearly 170,000 troops in the tribal districts and in Malakand division for the foreseeable future not only due to the threat posed by the presence of Pakistani militants just across the border in Afghanistan, but also for completing the unprecedented development projects that have been undertaken. The old Fata would take time to become a normal place, but it is on course to transition from a tribal to a settled area.