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Governance Reforms in Pakistan's Tribal Areas: The Long Road to Nowhere?

Summary

- Pakistan's Federally Administered Tribal Areas (FATA) remain mired in an archaic century-old system of indirect governance that provides space in which militant movements have thrived.
- President Asif Ali Zardari recently announced the FATA Local Governance Regulation 2012, establishing a system of local councils in the troubled tribal region.
- Although the regulation is disappointingly vague, and retains the sweeping prerogatives of the central government, it appears to have been driven in part by the army's interest in building civilian governance capacity in conflict-torn areas.
- The governments of Pakistan and the United States, along with local and international stakeholders, should advocate for continuity of implementation, insist on party-based local council elections, encourage experimentation within the bounds of the regulation, link the new councils to existing development structures, press the government to articulate a longer-term political vision for the FATA, and be realistic about the necessity of the army's active involvement in shaping governance policy in the tribal areas.

“As a practical and incremental step, informed by the military's own incentives to foster political structures in the tribal areas, the new regulation may . . . have value—if and only if it has longevity.”

Introduction

On August 14, 2012, President Asif Ali Zardari announced with great fanfare the latest in a series of modest reforms to the country's Federally Administered Tribal Areas (FATA). The FATA, a century-old governance anomaly situated on the country's western border with Afghanistan, has received critical attention by scholars and policymakers over the last decade as a safe haven for militant Islamist groups of all kinds, the locus of activity for agitation against the Pakistani state, and the site of widespread humanitarian displacements.

Despite the attention devoted to Pakistan's tribal areas, remarkably little has changed over the last decade with respect to formal FATA governance systems. The FATA is still administered under the antiquated Frontier Crimes Regulation (FCR) of 1901, which established a system of indirect rule, encouraged consensus-based decision-making through tribal *jirgas*, permitted collective punishment, and provided extraordinary discretionary powers to the central government—today exercised by the governor of Khyber Pakhtunkhwa (KP), acting as the agent of the president of Pakistan. The FCR system has in recent years come under withering criticism by human rights advocates, jurists and often the residents of FATA themselves for violating fundamental principles of political and human rights.¹ Moreover, there is widespread consensus that the ongoing

governance vacuum in the FATA has allowed militancy to fester unchecked, and that reforming the outdated system is a critical step in making the tribal areas less hospitable to militant movements.

Partially in response to such criticism, Islamabad has undertaken several structural changes: it established a FATA Secretariat in Peshawar in 2006 to coordinate development and political management; it extended the Political Parties Act to the FATA in 2011, permitting candidates to contest elections on a party basis (though under the FCR they cannot legislate); and it promulgated in 2011 minor revisions to the FCR, rescinding some of the more egregious provisions. At the same time, however, the government issued the regressive Action in Aid of Civil Power Regulation 2011, which gave sweeping powers to security forces operating in the FATA.

These changes have been seen as largely cosmetic, and have done little to address the massive social disruptions experienced by FATA communities over the last decade of intermittent violence. Such disruptions—variously attributed to the Pakistan army's campaigns, the rise of disparate militant groups that targeted pro-government tribal elders and the American policy of drone attacks—have undermined the government's fragile system of indirect rule, and have left the FATA a patchwork of governance dysfunction. In some agencies, such as South Waziristan, government presence apart from the military is virtually invisible.

Local Governance Regulation 2012: Structure and Substance

The recently- promulgated FATA Local Governance Regulation 2012 (LGR) is a complex regulatory instrument that, at its core, authorizes the governor to establish elected local councils at the municipal level to be given responsibility for matters of local concern. Salient features include:

- *Coverage.* Unlike previous local government regulations in Pakistan's so-called "settled" areas, the LGR limits the establishment of local councils to urban areas, and grants the governor broad discretion in setting the geographic boundaries of local government jurisdiction.
- *Composition.* At least three-quarters of the members of the local councils are directly elected for a four-year term, with up to one-quarter of seats allocated to "special groups" elected indirectly by the council members. Each council then elects a chairman and vice chairman.
- *Staffing.* Administrative control over the staff hired by the local councils resides with the FATA Secretariat in Peshawar, which in turn reports to the governor.
- *Responsibilities.* The "compulsory functions" delegated to local councils include responsibility for sanitation and drainage, water supply, public safety, development and implementation of municipal master plans, building control, streets and traffic management, and limited cultural activities. The list of "optional functions" is more vague, including "education: As directed or authorized by the governor," and—listed but left undefined—matters pertaining to "social welfare."
- *Funding.* The LGR envisions three major sources of funding for the activities of the local councils: grants received from the governor, or provided at his direction; profits from property held or managed by the council; and taxes and fees levied by the council on the local population, final approval of which rests with the governor.

Incrementalism at the Army's Behest?

At first blush, the motivation behind the LGR seems puzzling. Elected leaders in Islamabad have few political incentives to cultivate elites in the tribal areas, or to bring about an increase in

government spending in the region. For his part, President Zardari stands to receive only modest reputational gains by promoting political participation in the FATA.

While the civilian leadership may have had only modest incentives, a close reading of the regulation, along with interviews recently conducted in Islamabad, seem to suggest that the army had strong reasons to support the creation of the LGR. The Pakistan military is no stranger to the business of political devolution; military rulers have a long and often sordid history of crafting local government systems to reinforce central power, bypass provincial elites or cultivate local power brokers.

In the case of the LGR, however, the military's impetus was arguably not political manipulation, but an attempt to deal with the fallout of nearly a decade of intermittent war in the FATA. Following numerous military campaigns in the tribal areas since 2004, the army finds itself in the awkward position of needing to backfill its operations with local governance infrastructure. By most accounts, it has no interest in directly serving as a political administration in the FATA (where it is, by many measures, unpopular) and has every incentive to hand off authorities to local elites. With the gradual breakdown of the longstanding system of political agents reporting to the governor, some kind of a managed local government system—one that can be stood up on an ad hoc basis as security conditions permit—is arguably the most amenable governance structure to the military.

It should therefore come as no surprise that the LGR bears all the hallmarks of being precisely such a flexible tool for the military and bureaucratic elite. Consonant with the interests of the army in promoting post-conflict stabilization in FATA, while also retaining flexibility to adapt if security conditions erode, the LGR focuses on urban locales; grants the governor high levels of discretion in terms of the timing of elections and the geographic boundaries of local councils; and enumerates numerous sources of potential funding, but retains executive control over how taxes are levied. Moreover, the regulation does not appear to give local councils control over critical development and infrastructure budgets—which currently reside with the FATA Secretariat—but is also vague enough that the governor could, at his discretion, choose to progressively delegate such authorities to a local council if he so desired.

To those who have advocated for robust FATA reforms that would substantially bring the tribal areas into the governance mainstream, the LGR is clearly a disappointment. Although some of the governor's discretionary authorities were rolled back relative to what was contained in the first public draft of the LGR, the final regulation is limited in the scope, autonomy and responsibilities granted to local councils.² Not only are the councils limited, but they must operate under the antiquated FCR and submit (in a manner that is pointedly left unspecified) to the oversight of a powerful and relatively unaccountable political agent.

With so many specifics left ill-defined, this regulation has been widely criticized by parties and civil society groups as a half-baked reform effort.³ Cautious, lacking in imagination, and carefully bounded, it does little to move the tribal areas toward a system of modern governance. It also seems disconnected from a larger strategy of FATA integration. That said, as a practical and incremental step, informed by the military's own incentives to foster political structures in the tribal areas, the regulation may nonetheless have value—if and only if it has longevity. To the extent that it allows the military and the bureaucracy to gradually build politically-invested local leadership in those areas in which the security environment is permissive, it has the potential to be a worthwhile first step in the process of rebuilding local power structures.

Policy Recommendations

The governments of Pakistan and the United States, civil society groups and international stakeholders would be wise to consider the following as the LGR moves toward implementation:

- *Press for continuity.* Longevity is more important than getting the system exactly right. Former President Pervez Musharraf introduced a local government program in the FATA in 2004, but it was a half-hearted effort, and was soon abandoned. This recent effort runs the risk that the government will ignore the LGR, fail to fund it, or roll it out in so incremental a fashion as to signal to tribal communities that it is merely a stopgap measure, bound to be replaced as conditions evolve on the ground. Outside observers should pressure the government of Pakistan to establish, bring to scale, and maintain the system outlined in the LGR, rather than continually rework the structure from scratch every few years.
- *Insist on party-based elections.* If the goals of a local government system in the FATA include widening political participation, increasing state legitimacy and deepening local ownership of local issues, the elections should take place on a party basis. Getting political parties involved allows local constituents to aggregate interests, but also helps to tie FATA into the national political debate. Islamabad is traditionally wary of party-based local elections, but ensuring party participation in FATA should be an advocacy priority for civil society groups and international stakeholders.
- *Embrace ambiguity.* The vague language of the LGR is both a challenge and an opportunity. At its best, it could provide wide latitude for experimentation, and for gradually pushing more responsibilities to local councils as the security environment permits. The FATA Secretariat, given its institutional investments, is likely to push back on devolving developmental authorities, but the LGR will have only minimal impact if the army and bureaucracy insist on a minimalist reading of the regulation.
- *Link up existing development structures.* The local councils will only gain political traction if they receive predictable funding. This requires quickly transitioning existing local structures to the new LGR framework. USAID's Office of Transition Initiatives, for example, has supported for several years the FATA Secretariat in establishing dozens of community-driven development councils; such aid programs should be linked up with LGR local councils to provide a steady inflow of funds, and give the new structures staying power.
- *Plan for the future.* The LGR does not chart a course for bringing FATA into the governance mainstream.⁴ Stakeholders should continue to press the government to articulate a longer-term political vision for the tribal areas. A number of options such as FATA's full integration with Khyber Pakhtunkhwa, transition to a hybrid Provincially Administered Tribal Areas (PATA) model, making it a stand-alone province with its own assembly, have previously been floated. The government should initiate an open debate on FATA's future so that it could begin aligning the incentives of the new local council members with a macro-level strategy for the tribal areas.
- *Be realistic.* Any political endeavor in the FATA today faces an uphill battle. The political class has been decimated. The security situation is poor. Pakistan's civilian leadership is wary of investing time and political capital. The local population is often caught between Taliban movements and the army, neither of which they welcome. And there is little momentum for major reforms. Governance change in the FATA, if and when it happens, will be a game of aligning incentives. If there is any silver lining to the disappointingly narrow and vaguely written LGR, it is that the army's incentives for modest reforms appear to be coming into view. Increasingly wary of "owning" the governance space in the FATA, and taking lessons from its recent campaign in the Swat Valley, the military is, it seems, beginning to see value in encouraging locally-owned governance institutions. Not unreasonably, some will see this development as yet another pernicious example of a hyper-militarized state. But it is, on balance, a change that should not be dismissed out of hand. Until and unless the army feels

ABOUT THIS BRIEF

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compelled by its own incentives to address the governance void in the FATA, even a limited reform agenda is too much to reasonably expect.

Notes

1. See, e.g., Naveed Ahmad Shinwari, *Understanding FATA 2011: Attitudes Towards Governance, Religion and Society in Pakistan's Federally Administered Tribal Areas*, Volume V (Islamabad: Community Appraisal and Motivation Programme, 2012), 23.
2. In the first public draft, released July 2012, the governor had wider discretion in determining the size and composition of the councils; was designated as the “election authority” (instead of the Election Commission of Pakistan, as in the final regulation); and had nearly unchecked powers to dismiss councils at his whim.
3. See, e.g., “JI Suggests Changes in Law for Local Govt in Fata,” *Frontier Post*, August 9, 2012; “Some Qualms on Proposed Fata LG Law,” *Dawn*, August 10, 2012; Ayaz Wazir, “Eyewash and Farce,” *The News*, August 11, 2012.
4. This is not to suggest that there is only one possible path toward modernizing governance structures in the FATA. See, e.g., Joshua T. White, “The Shape of Frontier Rule: Governance and Transition, from the Raj to the Modern Pakistani Frontier,” *Asian Security* 4, no. 3 (Autumn 2008); Shinwari, *Understanding FATA 2011*, 21ff; Ayaz Wazir, “Which System for Fata?,” *The News*, June 5, 2012.



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