Report – Roundtable Discussion

“Implementation of FATA Reforms: Challenges Ahead”

October 31, 2017

Compiled by: Areeba Arif Khan & Umme Farwa
Edited by: Najam Rafique
Pictures of the Event
The Institute of Strategic Studies Islamabad (ISSI) hosted a roundtable discussion on “Implementation of FATA Reforms: Challenges Ahead” on October 31, 2017. The keynote speaker at the discussion was Mr. Shehzad Arbab, former Secretary SAFRON and a member of the FATA Reform Committee Report.

The idea that the people of FATA should be at the center of the reforms prevailed as a dominant theme of the discussion, in which distinguished scholars and academicians participated. Among others, the participants of the discussion included: Mr. Khalid Aziz, former Chief Secretary KPK; Ambassador (Retd) Abdul Basit, former High Commissioner of Pakistan to India; Ambassador (Retd) Fauzia Nasreen, HoD, Centre for Policy Studies, COMSATS Institute of Information Technology; Ambassador (Retd) Ayaz Wazir; Brig (Retd) Said Nazir, Senior Associate, Institute of Policy Studies; Mr. Naveed Ahmed, founding Chief Executive and President CAMP; Dr. Saima Kiyani, Fatima Jinnah University; Dr. Ashraf Ali, Executive Director, Zcomms Centre for Research and Development; Mr. Abdullah Khan, M.D Pakistan Institute for Peace and Conflict; Mr. Iilam Khan and Rizwan Shinwari, PhD scholars at NUST, and other eminent journalists and scholars.

Welcoming the participants, Ambassador Khalid Mahmood, Chairman ISSI touched upon the history of FATA under the British colonial rule in the Sub-continent. He stated that at the time of independence, FATA was recognized as part of Pakistan under the constitution, but it has been treated quite differently from the rest of the country. He stressed that there are also some external and internal factors which are affecting the region. All these factors have resulted in bringing instability and chaos in FATA. Many operations have been undertaken by Pakistan military to improve the situation created by these factors, but unfortunately, very little incremental steps were taken to introduce reforms in the region. In November 2015, former Prime Minister Nawaz Sharif constituted a committee to hold meetings for political mainstreaming of FATA. Some Jirgas were also held with the seven agencies in FATA. Around 3000 tribal Maliks and elders were consulted and after this whole process, a reform package was introduced. This was a major step and it evoked a lot of interest. Overall, this committee got a good response, but there were some dissenting views as well. The reform package proposed the merger of FATA with Khyber Pakhtunkhwa (KPK) within a transition period of five year. The Frontier Crimes Regulation (FCR) too was proposed to be scraped, and the jurisdiction of the Supreme Court to be extended in this area. Apart from the political aspects, issues of development too have to be assured. In September 2017, the federal government decided to have consensus and all lawmakers from the tribal regions agreed to merger of FATA with KPK. The Chairman stressed that the real test is implementation of the package and this requires more attention.

Mr. Shehzad Arbab, former Secretary SAFRON, gave a brief overview of the history of the tribal areas. He stated that the administration in the tribal areas was designed under the British rule with a specific purpose to keep this area as a buffer against any aggression from Russia. Therefore, political and human development aspects of region remained a hostage to the security policies of the British Empire. This resulted in devastating military uprisings in the region. Unfortunately, even after the independence of Pakistan in 1947, the tribal areas continue to remain a special area outside the scope of the country’s judiciary and resource distribution mechanism of the government. This arrangement has led to the deprivation of the fundamental
rights of the people of FATA. According to a recent survey, 73.3% of the population of is living under the poverty line in FATA.

In November 2015, the government constituted a committee called the FATA Reforms Committee to recommend concrete steps for political mainstreaming of FATA after consulting all the stakeholders. After an extensive procedure of consultations, some recommendations were formulated and presented to the federal government in August 2016. The cabinet approved the recommendations on March 2, 2017. Major recommendations included:

- Mainstreaming of FATA in five years;
- Enabling the people of FATA to elect their representatives to the KPK assembly in the 2018 elections;
- Abolishing the FCR and replacing it with the new *Riway* Regulation for Tribal Areas;
- Extension of jurisdiction of higher judiciary to FATA;
- Holding of local body elections.

National Finance Commission (NFC) would be requested to consider allocating 3% of the gross federal divisible pool on an annual basis for the implementation of the FATA Development Plan. He further added that now even after a passage of eight months, the government has not initiated the implementation of these recommendations to date. He highlighted the challenges in the implementation of these reforms.

The first challenge is the lack of ownership by the government because any reforms which are to be undertaken in the region have to be owned by the government. According to Mr. Arbab, another Cabinet level committee consisting of all the FATA Reforms Committee members, Chief Minister KPK, Chief Secretary KPK and Corps Commander Peshawar was also formed to oversee and to push the implementation process of reforms. But to date, this committee has not even been notified. Later on, on the advice of Pakistan Army, the committee was upgraded with Prime Minister as its chair and the Army Chief as its member. Two meetings of this committee were held in August and September 2017, but without any recommendations on how and when the implementation should take place.

The second challenge is political expediency. The government and all political parties have agreed on reform recommendations and some of the allies of government are pressurizing that the government should not implement these reforms. Instead, they have presented their own set of recommendations. The government has, so far, not been able to bring them on board and not willing to move ahead without them as well.

The third challenge is the issue of resource allocation. The government does not want to divert resources to FATA at a time when they need these resources to complete their own projects before elections because the major share will come from the federal government and the government of Punjab. Only KPK has agreed to give FATA a share and others are not agreed on this.

The fourth challenge highlighted by Mr. Arbab was the system of patronage in the FATA region. Tribal *Maliks* and the bureaucracy and even most of the FATA parliamentarians want the tribal
system to continue as it benefits all. This is one of the serious constrains which can only be
overcome by a strong and willing government. The existing FATA Secretariat and the existing
political agency are neither in the position, nor are they willing to undertake the reform package
which will cut their own bars and domain.

Finally, fundamental reforms can only be undertaken by a strong, stable government which has
sufficient time at their disposal. But now when elections are around the corner, any step taken in
haste primarily to gain political mileage could prove to be counterproductive, and it will have
serious law and order repercussions, because these reforms will not only change the existing
laws like the FCR, it will be the transition of the entire system of FATA which needs to be done
in a very organized and professional manner. And for this purpose, a strong, willing and
determined government is needed.

Ambassador Fauzia Nasreen highlighted that in the implementation of the FATA reforms, the
government has adopted a top down approach where the people of FATA have not been
consulted very regularly. According to her, the government needs to build a full reform
constituency within the agencies. And for that, the government should have a long-term
consultative process where it needs to identify the actors not only at the top level, but also at the
grass root level who can be mobilized to build some sort of unified solution for implementation
of the reforms.

Mr. Khalid Aziz, former Chief Secretary KPK, stated that certain things have become evident in
the implementation of the reforms. There is a deeper lack of understanding. These reforms are a
very big strategic move which Pakistan is going to undertake and we have failed to comprehend
the size of this move. What we are putting up is changing the architecture and the security
arrangements in the North West of Pakistan. Responding to Ambassador Fauzia’s concern
regarding consultation, he added that there has been lack of focus at the government level, but a
committee was formed for the consultation processes which met with all the Jirgas and they
have been given authority to decide.

Mr. Naveed Ahmad Shinwari appreciated the reform package. However, according to him,
implementation of this package in one go is not possible since it is a giant task. Also, there are
certain concerns regarding this reform package. First of all, there is no mention in the reforms
that provincial elections will be held in FATA in 2018. He highlighted two main aspects to be
kept in mind regarding the implementation of the reforms: One is mainstreaming; and the second
is the future status of FATA. On the former, broader consensus is needed where everybody
should be given the authority to develop and mainstream and to attain progress and prosperity.
But unfortunately, he said that the cart has been put before the horse, and the merger has been
put first and the mainstreaming as second, whereas is should be the other way round. Moreover,
any kind of expediency should be avoided.

Mr. Khalid Aziz, while responding to a concern regarding elections in FATA stated that it was
discussed in the Cabinet and the Prime Minister said if we want to mainstream FATA, it must
begin with the political mainstreaming. On Mr. Naveed’s recommendation of mainstreaming
first, he said that when we look at the FATA reforms package, the mainstreaming is of four
types: economic, political, legal and security. In terms of legal and constitutional mainstreaming,
many constitutional amendments are required, for instance, for changing the size of Provincial Assembly. Article 106 has to be changed, Article 1 has to be amended, and Article 239-4 which implies that if boundaries of any provincial region are going to be changed, then the Provincial Assembly must pass a resolution with 2/3 majority in its favor, which tends to be ignored. According to Mr. Aziz, these reforms should not be carried out without giving them considerable thought.

Mr. Shehzad Arbab also added to Mr. Shinwari's comment. He agreed to the fact that certain steps are needed before entering into the implementation phase. Regarding the question over election, he said that 2018 elections were not part of the Reforms Committee’s recommendations. This came about when members of the FATA Reform Committee went to Peshawar to have a discussion with the KPK government. The KPK government suggested that the elections in FATA should not be postponed till 2023, and the KPK government is ready to give seats to the people of FATA in the Assembly. According to the government of KPK, if this reform is implemented, then integration will be irreversible. This issue has been discussed twice in the Cabinet.

Rizwan Shinwari, in his brief remarks appreciated the efforts of the FATA Reforms Committee. Raising his concerns over the reforms, he said that in the consultation processes, 60% of the youth in FATA has been extremely sidelined, and minorities were also not taken into these processes. He also criticized the recent FATA Secretariat online survey for merger, because 72% of the population is living below the poverty line. They do not have any accesses to internet and so many people are living outside of FATA, so it is impossible to conduct any online survey.

Ambassador Abdul Basit questioned the feasibility of the FATA merger and the wishes of the people in this regard. He also proposed holding of a referendum in FATA, if possible. Mr. Arbab, in response to the Ambassador Basit’s concern responded that one of the Cabinet meetings was exclusively held to discuss this issue about the referendum for a separate province. Most of the members thought that this is not a viable option. Because if we get into these issues of making smaller provinces, than we would have demands from other areas as well like Southern Punjab, Karachi and Hazara.

Mr. Khalid Aziz also clarified that the draft of the Riwaj Bill or Riwaj Act is no longer valid because the government has decided to withdraw it. However, there are certain amendments that have taken place in the law recently, for example addition of a provision in the Civil Procedure Code under Section 85-A has been incorporated under Alternative Dispute Resolution (ADR) which permits party to a dispute to approach the judge and give in writing a precondition that they would accept the decision of the court as a final jurisdiction.

To another question regarding the land settlement, he said that if you read the report and see it as an asset, it can be seen that a great deal of wealth has been locked up. Moreover, since individual rights in those lands have not been determined, they cannot utilize this land to their benefit such as marketing. He went on to say that the idea of including land settlements in the FATA reforms is specifically for wealth creation and urban and sub-urban development.
Ambassador Ayaz Wazir put forward some serious concerns. In his opinion, throughout recent history, FATA has always been deprived of participating in decisions that are directly linked and impacting it. For instance, when FCR was decided it was decided by few Maliks guided by the some political agents. Though the FATA Commission Report has described the region as a zone of insurgency and a threat to national security, the report, however, does not elaborate who are the main culprits. Rather, it implies that the people of FATA are responsible for all the upheaval and chaos.

Brig. (Retd.) Said Nazir furthered the discussion by deploring the fact that barely any representation has been given to FATA in the federal cabinet. Also, the FATA Reforms Committee does not have a single person from FATA. This became more ironic when the Reforms Committee declared that a separate province is not a viable option, and not a single person from FATA was consulted. The people of FATA must be consulted and given their democratic rights, otherwise it can create a terrible situation in the region. Therefore, he recommended not to carry out these reforms without due consideration.

Mr. Abdullah Khan, M.D Pakistan Institute for Peace and Conflict, supported Said Nazir’s argument that the people of FATA should be given proper rights and proper representation and they should be allowed to decide the fate of FATA rather than giving this right to people from outside the region. He suggested that FATA should be made a model province and that a new system should be introduced in FATA rather than bringing in the old system.

Mr. Miraj ul Hameed, Institute of Policy Studies suggested that there is dire need of trust building, disseminating of information and sequencing and privatizing the reform steps. These steps should be in conformity with constitutional requirements. In case of merger, the Constitution should be amended in order to implement the reforms. Any hostility should be avoided.

Chairman ISSI, Khalid Mahmood concluded the discussion by proposing that hasty decisions should be avoided, and suggested to work on a well thought-out plan for fixing the long-troubling issue.