

Brief with Technical Notes

KP –FATA Transition Dialogue Held in Peshawar for Extending Article 25 A – *a milestone for human development and right to education*

The first dialogue was initiated on the KP –FATA Transition from the perspective of Article 25 A or Right to Education by the Directorate of Elementary & Secondary Education –on June 5, 2018 ; Idara-e-Taleem-o-Aagahi (ITA) – co-moderated the dialogue.

With 50 participants present, contributions to the dialogue were lively. The participants included, Director E&SED Mr.Farid Khattak and.Director Education FATA Mr. Hashim Khan and their teams; civil society partners including Ms. Rakhsanda Naz, the social human rights activist, Nur Foundation, NCHD, Elementary & Secondary Education Foundation (E&SEF) and representatives from UNICEF, Adam Smith International (ASI), DFID, and the media.

The opening remarks set the tone for the dialogue by Mr. Farid Khattak Director E&SED Directorate. He framed the dialogue by saying that the ‘terrible line drawn between our two territories (*by colonial and post- colonial regimes*) has been demolished forever on May 31st 2018 by the 31st amendment to the Constitution of Pakistan- all fundamental rights are now extended without discrimination to what was FATA; now ladies and gentlemen, we have to work on a war footing for the integration of the two regions as the new KP!”

ITA’s CEO Baela Raza Jamil, educator and social policy activist briefed the meeting by using evidence from the well-known ASER survey data 2013 to 2016/17. She presented hard core trends/indicators on report cards for both regions over time; on demographics (Census 2017), enrolment by gender and public private providers; learning outcomes by gender; facilities in schools, attendance of teachers and students in schools and household characteristics with respect to parental education, use of technologies in communication and alternative energy, trends of BISP /Social safety nets and voter registration by gender. ITA shared district rankings for KP and FATA adjoining districts by ASER and Alif Ailaan as a strategy for accelerated planning. The KESP sector reform strands were shared as a major opportunity for fast tracking actions on integration and SDG 4 as a critical framework. The presentation provided the evidence for an informed dialogue on KP –FATA Transition (www.rtepakistan.org)

Opening the discussion, the Director Education FATA Mr. Hashim Khan reassured the participants that FATA was already working on many progressive dimensions amidst grave challenges of extremism, insecurity, limited posts and fragmented decision making across – FATA, Provincial and Federal Governments. After the 31st amendment, the decision making for FATA has moved to the provincial government of KP and the local government structures as they might emerge over the coming months and years. He reassured the participants about progressive initiatives already in place despite constraints on construction, teacher recruitment, training, extension of right to education Act 25 A/ 2012 and implementation of the existing FATA sector plan; the challenge will be to integrate and harmonize critical elements for quality education for all, and especially girls. “FATA’s identity, strengths and existing challenges must be understood well to prepare for a successful transition”

Multiple substantive suggestions emerged from the dialogue that need an action plan urgently for the 'transition' short &-medium term and also the long-term phase;

1. Hold a series of such strategic evidence based meetings immediately after Eid or end of June 2018 across KP-FATA and forming technical sub-committees for:
 - a. Collecting district/region specific data /statistics on most recent indicators – for a robust situation analysis to inform the transition, focusing on key adjacent geographic areas (KP/FATA), including merged Frontier Regions with the 7 Tribal Districts/Agencies
 - b. Strategizing important themes of inclusion, gender and equity challenges that may resonate well with the current Equity Strategy under KESP
 - c. Access to Schools for all as a key principle '**bringing the schools to the students and also taking students to schools**' as a flexi approach to reach every child so that no child (girls and boys) is left behind
 - d. Review/amendment of the current KP Right to Free & Compulsory Primary & Secondary Education Act 2017 in light of the transition taking into account the FATA RTE Act provisions, **with inclusion, protection, equity, gender, ECE and TVET as guiding urgent needs – review article 37 b of the constitution.too.**
 - e. **Exploring public private partnerships strategy for extension of innovative programs to address equity, quality and access for the most marginalized.**
 - f. Integration of systems across the following lines:
 - i. Administration /procedural/human resources
 - ii. Governance
 - iii. Finance
 - g. Addressing security challenges and peace initiatives by public and non-state actors so that schools /children are not targeted by attackers.
 - h. Rehabilitation of IDPs on an urgent footing
 - i. Exploring expansion of Elementary & Secondary Education Foundation's work in the new districts for the most difficult to reach girls, children and adolescents through accelerated education initiatives.
 - j. Affirmative Action Policy for recruiting teachers and providing access to girls /adolescents and adult women especially, victims of early child marriages
2. Addressing the polarization of society reflected in not just lifestyles but education options of madrassahs, state and non-state schools.
3. Urgent need to set priorities for the transitions in the next few weeks
4. Formally extending the scope of Sector Plan and SDGs /SDG 4 for the enlarged integrated KP under the Global Partnership for Education (GPE) support.
5. Educators and partners from FATA and KP must visit each other's sites to fathom diverse realities and human testimonies from the two regions; thus far there has been little meaningful people to people exchange.

It was agreed unanimously to mobilize innovative financing including enhanced federal budgets and support of development partners and parliamentarians who have long term commitment for the KP –FATA geographies in the best interest of its citizens and children. Mr. Farid Khattak thanked the participants and was happy that the first such dialogue was hosted in his directorate/E&SED with technical support of ITA and its ASER-Right to Education

initiatives; he urged that the time has come to take the dialogue to the stakeholders in the districts for 'voices of the people' to be part of consensus driven actions.

Technical Notes and Important References:

FATA extension of Right to Free & Compulsory Education Act 2012

<https://fata.gov.pk/Global.php?iId=439&fId=2&pId=355&mId=15>

Row # 154 please see

FATA Interim Governance Regulation 2018- 28th May 2018

https://en.wikipedia.org/wiki/FATA_Interim_Governance_Regulation,_2018

The **FATA Interim Governance Regulation, 2018** was a law signed by the **President of Pakistan** on May 28th, 2018 which replaces the **Frontier Crimes Regulations (FCR)** and outline how the **Federally Administered Tribal Areas** will be governed "within a timeframe of two years" as the region is merged with **Khyber Pakhtunkhwa** through the passage of the **Thirty-first Amendment to the Constitution of Pakistan**.

The regulation has been signed under Article 247 of the **Constitution of Pakistan** which stands to be repealed by the Thirty-first Amendment, which the President has signed on 31st May 2018.^[2]

Details[edit]

The regulation converts the office of **Political Agent** into the office of Deputy Commissioner, and Assistant Political Agent into Assistant Commissioner.

The tribal agencies are replaced by districts and the frontier regions are made sub-divisions.

The institution of **jirga** is maintained as the Council of Elders and as the Quami Jirga.

The regulation gives precedence to the 'rewaj' (local customs) determined by the Council of Elders. The establishment of new hamlets or villages, or the creation of towers or walled enclosures on the frontiers of the country, is prohibited without permission of the Deputy Commissioner.

The Governor has the power to relocate settlements near the border,^[3] as long as it rewards compensation to the inhabitants.^[1]

The **Supreme Court and High Court (Extension of Jurisdiction to Federally Administered Tribal Areas) Act 2018** is not mentioned in the regulation.^[3]

Thirty first Amendment to the Constitution of Pakistan

https://en.wikipedia.org/wiki/Thirty-first_Amendment_to_the_Constitution_of_Pakistan

31st Amendment Bill- chronology

Passed by the National Assembly 24th May 2018

Passed by the Senate 25th May 2018

Passd by the Provincial Assembly KP 27th May 2018

Assented by the President 31st May 2018

On December 14th, 2016, the Khyber Pakhtunkhwa Assembly adopted a resolution in favour of merging FATA with Khyber Pakhtunkhwa ^[5]

On March 2nd 2017 Recommendations to bring FATA on par to the rest of the country were approved by the **federal cabinet**

On December 26th, 2017, the federal cabinet approved the formation of the National Implementation Committee on FATA Reforms, including the **Minister of Defence** and Commander 11 Corps.^[5] At the last meeting of the National Implementation Committee, **Chief of Army Staff General Qamar Javed Bajwa** pushed the government towards a decision on the merger.^[6]

The **Supreme Court and High Court (Extension of Jurisdiction to Federally Administered Tribal Areas) Act, 2018**, assented to by **President Mamnoon Hussain** on April 18th, 2018, extended the jurisdiction of the **Supreme Court of Pakistan** and the **Peshawar High Court** to the Federally Administered Tribal Areas.^{[7][8]}

Article 246 Tribal Areas

<https://pakistanconstitutionlaw.com/article-246-tribal-areas/>

Article 37 /social justice and eradication of social evils /and 37 b of the constitution under “principles of policy chapter”

<https://pakistanconstitutionlaw.com/article-37-promotion-of-social-justice-and-eradication-of-social-evils/>

(b) remove illiteracy and provide free and compulsory secondary education within minimum possible period;

Article: 37 Promotion of social justice and eradication of social evils

37. Promotion of social justice and eradication of social evils.-The State shall-

(a) promote, with special care, the educational and economic interests of backward classes or areas;

(b) remove illiteracy and provide free and compulsory secondary education within minimum possible period;

(c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit;

(d) ensure inexpensive and expeditious justice;

(e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment;

(f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan;

(g) prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements;

(h) prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes; and

(i) decentralise the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.



