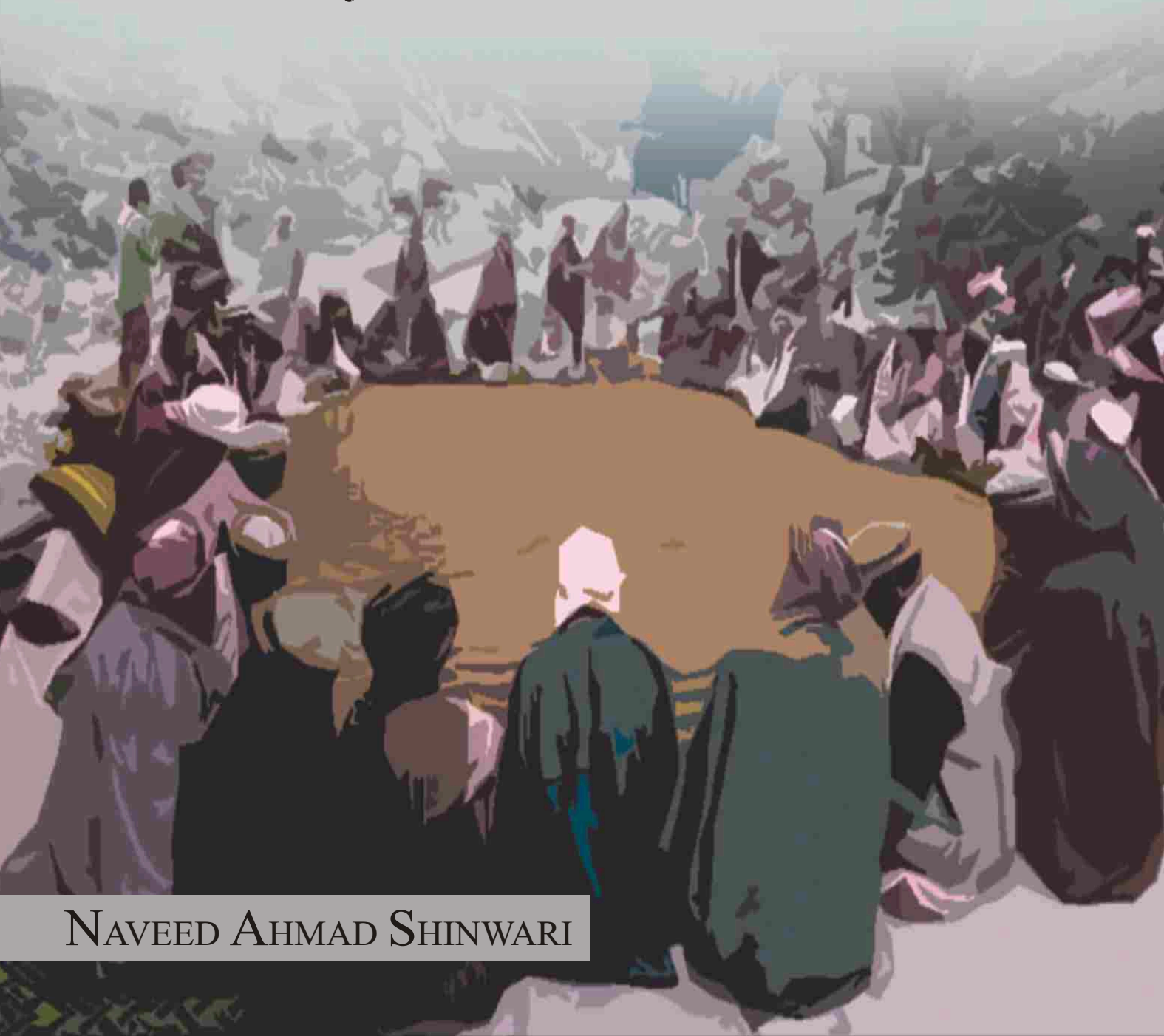




# **Understanding Jirga:**

## **Legality and Legitimacy in Pakistan's Federally Administered Tribal Areas**



NAVEED AHMAD SHINWARI

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**Community Appraisal & Motivation Programme (CAMP)**

**Understanding Jirga:**  
Legality and Legitimacy in Pakistan's Federally Administered Tribal Areas

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Naveed Ahmad Shinwari

A research study conducted by CAMP  
with the technical support from  
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# List of Acronyms

FGDs-Focus-Group Discussions

PSSM-Proportionate Satisfied Sampling Method

SPSS-Statistical Package for the Social Sciences

SAFRON-Ministry of Status and Frontier Regions

FCR-Frontier Crimes Regulation

PM-Project Manager

PT-Political Tehsildar

NT-Naib Tehsildar

DC-Deputy Commissioner

FC-Frontier Corps

APA-Assistant Political Agent

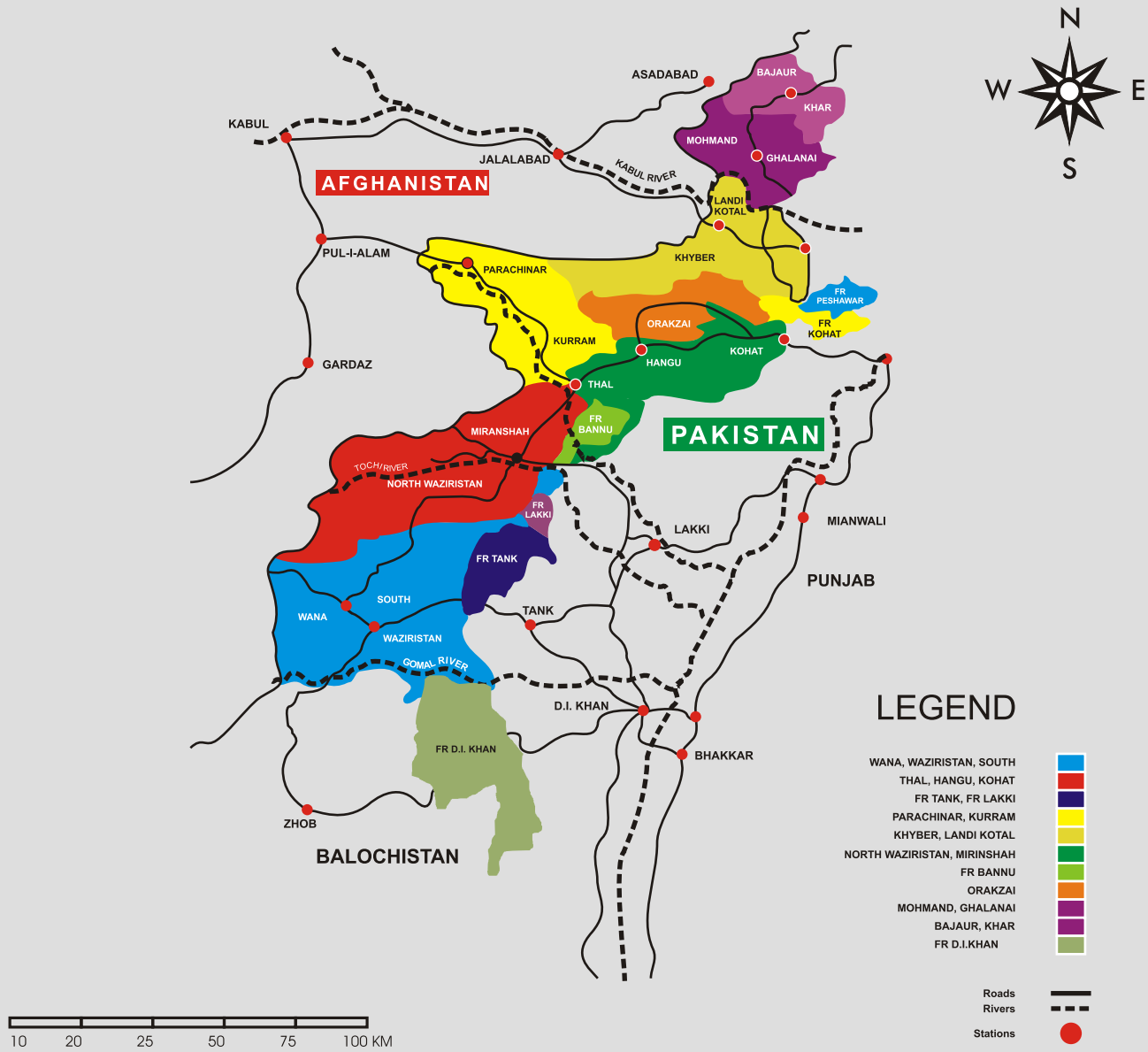
PA-Political Agent

KP-Khyber Pakhtunkhwa

FATA-Federally Administered Tribal Areas

NWFP-North West Frontier Province

# Map of Pakistan and FATA



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# Preface

This report is an expression of Community Appraisal and Motivation Programme's (CAMP) mission to understand the people of the Federally Administered Tribal Areas (FATA), in Pakistan; their way of life, and their way of resolving conflicts. In developing this understanding, many people have contributed to this report, whose compilation would not been possible without the active involvement and intellectual insight of 1500 common men and women of FATA who are most familiar with the subject. They were extremely helpful in sharing their knowledge of, and insight into the institution and dynamics of *Jirga* and the tribal way of life, which have remained a mystery to outsiders until this day. Their willingness to contribute to this report helped CAMP develop a perspective on various aspects of *Jirga* that is also the focus of this report.

I am equally grateful to the 70 key informants, 200 participants from the focus-group discussions, and around 200 participants of regional consultations, who willingly shared their knowledge and experience on the subject, without which it was not easy to acquire a perspective on the pros and cons of *Jirga* institution. The 20 enumerators from FATA, male and female, deserve special recognition for their commitment in carrying out the survey in rather difficult conditions and in some remote areas of FATA. We are extremely grateful to their contribution.

Fareeha Sultan, project manager for CAMP's Rule of Law Programme, deserves special appreciation for coordinating numerous activities and achieving some very ambitious and difficult targets for the project. I appreciate Masood Dawar, field researcher, for assisting Riazulhaq, our programme manager for research, in coordinating field activities in Islamabad as well as in Peshawar.

I am very grateful to Riazulhaq, who greatly assisted this research in terms of coordinating field work, organising regional consultations and focus-group discussions, supervising and managing the data gathering and data feeding, and, finally, providing me with cleaned data sets.

Habibullah Baig, the legal advisor on this project, deserves special gratitude for his role in giving technical input, moderating regional consultations and conducting in-depth interviews.

My special thanks go to Mariam A. Khan, CAMP's programme manager for advocacy, for doing the preliminary editing of this report, and Rabia Jahangir Khan, a project officer who helped to organise and coordinate the field work. I appreciate Marjana and Humera Khalid for taking care of proof reading. I am equally grateful to Shahid Ali our graphic designer for designing this report.

Without the generous financial support of the German Embassy [Islamabad], this research

would not have been possible; I am extremely grateful. I extend my special gratitude to Mr. Ferdinand Jenrich, Second Secretary Political and Mr. Andreas Dauth, Third Secretary Political for their constant support and encouragement.

Finally I must thank the Max Planck Institute for Comparative Public Law and International Law, Heidelberg, Germany, for partnering with us on this interesting project. At the Max Planck Institute I am especially thankful to Dr. Tilmann Roeder for his valuable feedback and technical backstopping throughout the project period, and Theodor Shulman for editing the report.

The report was reviewed by Dr. Ali Wardak at the Centre for Criminology, University of Glamorgan, UK, to whom I am very grateful.

All views expressed in this report are solely mine, as are any mistakes and errors.

Naveed Ahmad Shinwari  
Chief Executive

Community Appraisal & Motivation Programme  
(CAMP)  
Islamabad, Pakistan

# Executive Summary

Federally Administered Tribal Areas (FATA) has been described as a mysterious borderland for historians, writers, travellers and journalists. Although much has been written about it, it remains surprisingly misunderstood. When bad things happen, the Frontier fascinates the world; when wars are won, for example against the Soviets, attention falls elsewhere.

Despite of the world-wide attention on FATA, there is a complete void of any discourse on understanding its culture, tribal structure, institutions and dynamics. People across FATA know their minds. Whether illiterate or literate, they have views. Little attention has been given to underpin the widespread misperception of what prevails across FATA. Little effort has been made to understand how the archaic, colonial administrative and justice system has affected the lives of the people of FATA.

With financial support from the German Foreign Office, and technical assistance from the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany, Community Appraisal and Motivation Programme (CAMP) conducted a detailed research assessment over a period of six months: **'Assessing the Jirga System in Pakistan's Tribal Areas'**

In many parts of the world, traditional way of justice or locally integrated conflict transformation/resolution institutions are

approached to resolve conflicts and to ensure peace, stability and communal harmony within the local communities or tribes. Such institutions are often useful and suitable in circumstances in which they operate, as they satisfy the local cultural and religious sentiments. Such circumstances often make them more successful than the contemporary or modern justice system. *'Jirga'* is one such traditional or tribal justice system, being practiced by the *Pakhtun* ethnic group that lives in Pakistan and Afghanistan.

*Pakhtuns* inhabit an area of more than 100,000 square miles bisected by the Durand Line since 1893. In Pakistan, over 30 million *Pakhtuns* live in Khyber Pakhtunkhwa, Balochistan and Federally Administered Tribal Areas (FATA). When it comes to justice, the traditional *'Jirga'* is still the most preferred form of informal or parallel justice/dispute resolution mechanism in many *Pakhtun* dominated areas of Pakistan. However, *Jirga* is still the formal mechanism for dispensing justice and resolving conflicts in the FATA under the Frontier Crimes Regulation (FCR).

Although the *Jirga* may be preferred for many reasons cited in this report, it also has various inbuilt systemic issues. In cases of murder, *Jirga* may recommend direct vengeance or *badal*, or *swara*<sup>1</sup>. Thus, *Jirga* decisions may sometimes result in the violation of human rights, especially the rights of women and ethnic/religious minorities. Although *Jirga* is deeply rooted in



*Pakhtun* society and has been used since times immemorial, it is only recently that a debate on the flaws of this system has started. The traditional *Jirga* deals with varying issues in the tribal areas including conflicts on land and property, inheritance, alleged violation of 'honour' and intra-tribal or inter-tribal killings. While the complete lack of involvement of women and ethnic/religious minorities in the proceedings is one flaw, the other major drawback is the occasional violation of human rights (especially women rights) due to the decisions made by *Jirga*. Although decisions are considered objective (as the decision maker is nominated by both sides) and are based on tradition and religion, critics believe that decisions are based on what it is acceptable to society, many times going against women and ethnic/religious minorities. The Pakistani Constitution states in Article 247(7) that the jurisdiction of the higher judiciary, that is the provincial High Courts and the Supreme Court, does not extend to the FATA, which makes *Jirga* the only formal justice system available to the tribal society.

The above-mentioned facts make it quite difficult and unfeasible for the policy makers and civil society organisations to abolish *Jirga* altogether from the tribal areas; this is not only because it is rooted in *Pakhtun* history and tradition, but also because it is a widely respected and accepted form of justice and dispute resolution mechanism in the tribal areas.

On the other hand, the modern justice system is not very promising. Generally speaking, the Pakistani public lacks confidence in the justice system, which has undermined the rule of law and contributed to rising violence, including crime, terrorism and human rights abuses. For a large majority of Pakistanis, the formal justice system is seen as expensive; has no provision for compensation for victims; is slow and widely perceived as corrupt, biased and dominated by rich people making a conducive environment for *Jirga* to remain the only preferred option over

the modern justice system for the *Pakhtun* community.

Underestimating the efficiency and effectiveness of the traditional mechanism of conflict resolution would be a mistake, especially since it plays an essential role in the maintenance of social order and has proved successful in the past. It is generally acknowledged that traditional approaches to conflict resolution are able to deal with conflict before they spread.

This study is based on the outcome of material gathered through various research tools such as a perception survey of 1500 tribesmen and women in FATA, 200 respondents of 19 focus-group discussions with different groups, including women, men, youth and disputants, consultations with elders, maliks, religious leaders, and youth of FATA, some 200 participants of regional consultations and in-depth interviews with some 70 key informants, including retired and serving civil servants, retired judges, serving judges, journalists, NGOs leaders, women leaders, parliamentarians from FATA, etc.

However, there are certain limitations to this study. Very limited literature is available on *Jirga* mechanism, and most of the available literature is based on secondary information. CAMP has been operational in FATA for the last nine years, working through its seven field offices (one in each Agency). The intense fighting since April 2009 has made access to most areas of FATA even more difficult than before. However, due to its contacts in FATA, field offices in all seven agencies, engagement of locals in the survey project and local knowledge, made it possible for CAMP to undertake the field work on this survey. CAMP was able to conduct face-to-face interviews with the sample respondents in all seven agencies, including difficult areas like Upper Kurram, North and South Waziristan agencies.

Most of the FATA residents interviewed for this report went beyond simple survey responses and

provided first hand accounts of their perceptions on different aspects of *Jirga* institution, tribal way of life, justice dispensation and its costs, credibility and reliability of different *Jirga* systems, and administrative issues related to FCR *Jirga*, etc. The perception survey was presented to respondents as a project of CAMP. The poll questionnaire was labeled “*Jirga* Perception Survey 2011.” The respondents were told that the survey purpose is to gather information on their perceptions on formal and informal *Jirga* systems, state’s courts, Taliban courts, and other institutions and related issues so that it could be shared with the policy makers to properly plan strategies and programmes for the betterment of the justice system in FATA.

The following is a brief overview of the results generated from the perception survey:

- With respect to sources of information and media use, generally speaking, more people of FATA have access to Pakistan radio, friends and family, neighbours, printed press and TV as compared to foreign and private media channels. The most valued sources of information were the formal media, including the Pakistani Press, Radio and TV. Amongst newspaper publications, '*Mashriq*', an Urdu language daily newspaper, followed by the daily '*Aaj*', another Urdu newspaper, had the widest readership. Almost 40.0% of respondents did not have preference for a particular TV channel, but amongst those who did, the public PTV channel was identified as the most watched, followed by the private Pashtu channel AVT Khyber and another public channel, ATV. Radio listenership is more popular than the TV and printed press as a source of information, and respondents identified the popular Pashtu radio Dewa (Voice of America), followed by BBC Pashtu service and Radio Pakistan as the most preferred radio channels.
- The institutions and actors of which

interviewees were most aware in descending order are: FCR *Jirga* system or other informal dispute resolution mechanisms; general courts in Pakistan; religious seminary boards; Federal Sharia't Court; specialized Anti-Terrorism or Narcotics Courts; Human Rights Commission of Pakistan and Federal Ombudsman.

- With respect to their assessment of particular institutions: 41.80% of FATA respondents opined that provincial police authorities take bribes for their services, while 35.30% did not know much about the provincial police authorities; 14.40% believed that court officials and judges take bribes when deciding a case in general courts, and 14.00% respondents believed that general courts can be influenced by the powerful and the weaker party may not receive their due justice; more than half of the respondents, 59.60%, did not know about specialized Anti-Terrorism or Anti-Narcotics Courts, and the overall opinion of those who did know of them was not favorable; since Federal Sharia't Courts do not exist in FATA, 59.10%, did not have an opinion on them, but of those who did, 14.90% believed that Federal Sharia't Courts were affordable to the poor, and 7.00% believed that these courts are quick in dispensing justice to the people; with respect to religious seminary board, 32.10% believed that they are affordable and 10.10% believed they deliver speedy results; since the office of Federal Ombudsman does not exist in FATA, the majority of the respondents either did not know or had a good opinion of it; 62.90% of interviewees said that they did not know about the existence of Human Rights Commission of Pakistan; about 43.30% of respondents - much higher than for any other institution - believed that informal dispute resolution mechanisms are

affordable, and 9.50% believed it provides a quick dispensation of justice; and finally, over half of the FATA respondents, 55.90%, mentioned that the services of a religious leader in the community could be acquired without much cost, as they are accessible and affordable for all.

- Around 38.70% of respondents experienced legal issues of some form. The top ten legal issues experienced by interviewees from most common to least - were the following: victim of theft or fraud; injured in a motor vehicle accident; assault or torture by FC or army; arrested without a warrant by the political administration under FCR; found involved in tribal/family clashes; purchase or sale of movable property; victim of domestic abuse; bribery by *Khasadar* or levies force; victim of assault; and unlawful detention, search or arrest by the political administration.
- With respect to order of actions taken, the top three institutions that the respondents who had experienced legal issues approached first to resolve their problem in descending order were: *Jirga*; the local leaders (*Khans or Maliks*), and *Mullah/Imam* of their area.
- Respondents' level of satisfaction with respect to various justice actors was gauged, and they were most satisfied with the following institutions: *Jirga*; local leaders (*Khans or Maliks*); *Mullah/Imam* of their area. Their level of satisfaction with the Taliban and with state courts was quite dismal.
- Among interviewees, the most trusted type of *Jirga* for resolving disputes was *Olas Jirga* (informal *Jirga*), with FCR *Jirga* a distant second and Taliban *Jirga* being trusted by a minimal number of respondents. The respondents were more in favour of the FCR *Jirga* settling criminal cases as compared to civil cases, while the *Olas Jirga* was believed to be more effective in resolving civil cases as opposed to criminal cases. Almost three-quarters of respondents did not know or have any opinion about the Taliban *Jirga*, while a small fraction said that Taliban *Jirga* is effective in resolving civil cases.
- While the FCR *Jirga* was generally deemed to be fair by many respondents, almost 40.00% thought it was unfair and it had little credibility and acceptance within the tribal society in FATA. Comparatively, an overwhelming majority of respondents, 70.13%, believed in the fairness of the *Olas Jirga*, and a much smaller percentage of respondents felt that Taliban style Sharia<sup>12</sup> is fair.
- Three quarters of the respondents believed that *Jirga* plays a proactive role in preventing conflicts. Little over half of the respondents agreed that FCR *Jirga* decisions are influenced by the more powerful party to a dispute. Almost one third of respondents agreed with the notion that *Jirga* members take bribes. There was roughly equal agreement and disagreement with the notion that *Jirga* members are intimidated by the more powerful party to a dispute. A higher percentage of interviewees believed that *Jirga* members are influenced by local Political Administration. Almost half of the respondents believed that *Jirga* members remain impartial while one-third felt that they could be easily influenced to manipulate the *Jirga* process and decisions. The majority of the respondents supported the notion that FCR *Jirga* should be conducted under Sharia<sup>1</sup> law, while almost 60.00% supported the idea that FCR *Jirga* should be conducted under local *Riwaj* (local customs), and almost 70.00% agreed that it should be conducted under a mixture of the two. The majority of respondents opposed the idea of involvement of

government officials in *Jirga* proceedings, and disagreed with the notion that *Jirga* fails to resolve disputes effectively. Over two-thirds of respondents disagreed that *Jirga* violates women's rights while almost two-thirds disagreed with the statement that *Jirga* violates minorities' rights or basic human rights. The majority of respondents agreed that *Jirga* provides a fair and public hearing opportunity to key parties involved in the dispute, and that it makes lasting peace among disputants. On the other hand, roughly 40.00% agreed that *Jirga* has the potential to prevent violation of women and minorities' rights. Roughly half the respondents agreed that *Jirga* maintains social order and restores harmony to village/community, contributes to the rule of law, is organised, well established, transparent and an efficient institution, and is well placed to resolve civil disputes only. On the other hand half of respondents also believed that *Jirga* resolves serious crimes. Around 40.00% affirmed that *Jirga* reintegrates offenders back into the community and around 45.00% confirmed that they believe *Jirga* is well placed to resolve both civil and criminal disputes. Over half the interviewees opposed the collective punishment [under the FCR] as means to implement *Jirga* decisions. There were mixed views with roughly equal percentages of respondents agreeing and disagreeing with the idea that during FCR *Jirga* proceedings, every member of the *Jirga* has the right to express his views in a democratic way. On the other hand, when discussing the *Olasi Jirga* proceedings, the majority agreed with a similarly worded question about democratic expression in the process.

- In some parts of Afghanistan that border FATA, women are given a role in *Nanawati* as well as witnesses in the *Jirga* process. However, in FATA, women are not given any

role neither as a party nor witness or to be a *Jirga* member. On the issue of women's involvement in the process of *Jirga*, a large number of respondents believed that women should be given an equal chance to participate in the *Jirga* process. However, an equal number of respondents did not agree with the notion and believed that women can be represented through their male family members. Looking at the results, it is quite encouraging to see that a large number of respondents (including men) realised the importance of women participation in the *Jirga* process. We also received positive reaction from the respondents during the focus-group discussions. However, the participants of consultations attended by key informants were not ready to accept this and were of the view that *Pakhtun* tribal culture does not allow the participation of women in the *Jirga* process.

- On the issue of *Swara*, two-third of the respondents believed that *Swara* practice violates women's rights and should end immediately. The survey results and data from focus-group discussions reveal that the people had a negative perception of *Swara* and believed that this custom is no more in practice, while a small proportion of respondents still believed that *Swara* can resolve some very complex family feuds. Half of the respondents believed that *Swara* practice should be replaced with head money, cattle or land.
- There are a few religious minorities that have been living in FATA for a long time. They include Sikhs in Waziristan, Khyber and Orakzai agencies, while the Christian community mainly lives in Khyber and Kurram agencies. On the question of the role of religious minorities in the *Jirga* process, close to half of the respondents believed that religious minorities should be given an equal chance to participate in *Jirga*

decision-making process. This is quite encouraging and gives hope, which indicates that the tribes in FATA may allow the involvement of religious minorities in *Jirga* process. There is, however, a lack of knowledge among people in FATA on international human rights standards, the Constitution of Pakistan, democracy etc, which shows that there is a need for education on these issues.

- At present, there is no complete and independent judicial system in FATA. On the question of judicial independence, an overwhelming majority (82.67%) agreed that the judiciary should be independent in FATA.
- FCR does not allow the people of FATA to have the right to fair trial, making FCR *Jirga* more incompatible with the fundamental guarantees enshrined in the Constitution of Pakistan. On the question whether the respondents believed in the 'right to fair trial', an overwhelming majority (82.00%) agreed.
- Under Article 247 (7) of the Constitution of Pakistan, the jurisdiction of superior courts (High Court and Supreme Court) is not extended to FATA. The Supreme Court of Pakistan therefore cannot protect the fundamental rights of the people of FATA enshrined in the Constitution. The survey recorded that over half of the respondents supported the extension of superior judiciary to FATA. Support to this question is not overwhelming compared to the responses received for 'the right to fair trial', and 'the right to judicial independence'. This also reflects that people support other rights but are not very eager to see superior courts being extended to FATA.
- The Political Agent in FATA holds judicial, executive and revenue collection powers, making him very powerful. The position of a

Political Agent faces severe criticism not only from the people of FATA, but also from the civil society, including NGOs, media and human rights activists. Nearly two-third of the respondents supported the idea of curtailing the powers of the Political Agent. Compared to the level of criticism that we see against Political Agent's powers, the response is still not overwhelming. This question was raised during the focus-group discussions and consultations with FATA respondents who severely criticised the role of the Political Agent and demanded that his powers be curtailed considerably.

**Chapter 1**

# **Research Methodology**



## Chapter 1

# Research Methodology

### Research methodology and sample plan

This research paper is based on both qualitative and quantitative data. For the qualitative information, 19 focus-group discussions, four regional consultations, and 70 in-depth interviews were used to gather opinion. Minutes were recorded, analysed and utilised to write this report. Background and historical material used in the report came from a review of historical books, newspapers, reports, articles, journals, etc, which are detailed in the bibliography

The quantitative data was collected through a perception survey of 1500 respondents of FATA with the help of structured questionnaires. The objective was to sample adult males and females to ascertain their opinion on key issues related to the *Jirga* mechanism in FATA. Because gender plays such an important role in public opinion, the sample was designed to interview equal numbers of males and females in each community.

#### Research Methods and Instruments

##### I. Qualitative

##### Focus-group discussions (FGDs)

The organisation of focus-group discussions as a

qualitative research tool helped in documenting views of diverse respondents representing different age groups, gender, tribes, economic status, disputants and observers of *Jirga* proceedings, etc. Participants were chosen so that they would have knowledge and experience of *Jirga* as a problem-solving tool. Furthermore, *Maliks*, elders and *Mullahs* were also chosen to sit in all consultations and share their experience and knowledge, as they are respected people within their circles. The goal was to provide all the informants substantial opportunity of expressing their viewpoints so that they would help provide informed and representative perspectives on key issues related to the judicial system in the FATA region. An average of 10 participants attended each FGD. A total of 19 FGDs were held. (see table 01)

##### Stakeholders' consultative dialogues

Region-wise, four stakeholders' consultative dialogues were held in Islamabad to generate debate on the above-mentioned issues, document the views of the key informants from FATA, and to gather their recommendations for further reform in *Jirga* system.

These events were attended by participants from relevant backgrounds and experiences, including the government, and were briefed by some well-known speakers from FATA who had political,

Table 01. Focus-group discussions Agencies/FRs

A total of 19 FGDs were held as per the following plan (ordered according to dates)

S #	Region	Agencies/ FR	Date	Gender	Age Group	Disputant	Obs vant	Perce ption
1	Region -2	Kurram Agency	17/01/2011	Male	46-55	√		
			17/01/2011	Male	18-26		√	
			21/01/2011	Female	18-30			√
		Orakzai Agency	18/01/2011	Male	36-45	√		
			18/01/2011	Male	27-35		√	
			22/01/2011	Female	31-45			√
		FR Kohat						
2	Region -1	Khyber Agency	19/01/2011	Male	18-26	√		
			19/01/2011	Male	46-55		√	
			24/01/2011	Female	18-30			√
		Mohmand Agency	20/01/2011	Male	27-35	√		
			20/01/2011	Male	36-45		√	
			25/01/2011	Female	31-45			√
		Bajaur Agency	21/01/2011	Male	46-55	√		
			21/01/2011	Male	18-26		√	
			24/01/2011	Female	18-30			√
		FR Peshawar						
3								
3	Region -3	North Waziristan Agency	22/01/2011	Male	36-45	√		
			22/01/2011	Male	27-35		√	
		FR Lakki						
4	Region -4	South Waziristan Agency	23/01/2011	Male	36-45	√		
			23/01/2011	Male	27-35		√	
		FR D.I.Khan						

tribal, religious and technical backgrounds.

#### Desk review

As mentioned above, the research report includes the historical background of the people and the area, facts about the governance system of FATA, judicial system in FATA, constitutional standing of FATA, and analysis of FCR *Jirga*, etc. For this purpose, various books, newspapers, reports, articles, journals, articles, etc. were

consulted as reference material.

#### Themes of the qualitative discussions and dialogue

The themes included: the constitutional status of FATA; Frontier Crimes Regulation (FCR); FATA's present social, political, economic and administrative structure; development pace; participation of the people in development opportunities; FATA's current law and order



situation; an in-depth analysis of present government's decisions in the aftermath of 9/11; judicial system in FATA; trust on the type of *Jirga* systems, FCR and *Olas*; importance of *Jirga* in dispute resolution in FATA; selection of criteria for a *Jirga* member; level of satisfaction on the type of judicial system; formal and informal justice system of *Jirga*; economic incentives for *Jirga* members; customs and *Sharia* in *Jirga*; custom of *Swara* and the possibility of women and minorities involvement in the *Jirga* process; *Jirga* and fundamental guarantees, etc

## II Quantitative

Aside from the Questionnaire, the key to successful social research is in the sampling frame. If well designed, the population and segments of it will be represented by a manageable number of interviews. The objective was to sample all of FATA with a sample size so that the margin of error would be small. The desired margin of error of less than  $\pm 2\%$  was arbitrarily chosen. This number, in reference to the estimated population of less than 4 million,

called for a sample of 1,500 interviews with adult men and women. Current population statistics for FATA are not available, so the first assumption was that the 1998 census would be accurate enough.

The sample size of 1,500 was drawn from the total FATA population of 3.17 million (1998 Census Report). 1,200 people were selected from **seven** agencies and 300 from six Frontier Regions of FATA by using a Proportionate Stratified Sampling Method (PSSM) to ensure a representative sample from the entire population. The following table shows the sample size for each Agency and Frontier Region.

One of the practical advantages of quantitative methods is the use of small samples of people to make inferences about larger groups. The researcher uses information gathered from the survey to generalise findings from a drawn sample about the sampled population, and accepts planned limits of random error.

**Margin of Error** The overall margin of error with all interviews pooled under “people of FATA” for

Table 02. Sample size for each Agency/Frontier Region

Agency	Population	Sample size	Margin of error
Bajaur	595,227	243	6.30
Khyber	546,730	223	6.60
Kurram	448,310	183	7.20
Mohmand	334,453	135	8.40
North Waziristan	361,246	148	8.10
Orakzai	225,441	92	10.20
South Waziristan	429,841	176	7.40
<b>FATA Agencies Total</b>	<b>2,941,248</b>	<b>1,200</b>	<b>2.80</b>
<b>Frontier Region</b>			
Bannu	19,593	50	13.90
D.I.Khan	38,990	50	13.90
Tank	27,216	50	13.90
Lakki	6,987	50	13.90
Peshawar	53,841	50	13.90
Kohat	88,456	50	13.90
<b>Frontier Regions Total</b>	<b>235,083</b>	<b>300</b>	<b>5.70</b>
<b>FATA (Total)</b>	<b>3,176,331</b>	<b>1,500</b>	<b>2.50</b>

single questions of a “Yes/No” nature is approximately  $\pm 2.5\%$  at the 95% confidence level. That is, if a random sample were drawn 100 times, one would expect there to be less than a 2.5% plus or minus difference around a sample result in 95 of the cases.

Once the data set is partitioned, a look at specific FR or Agencies within those units shows that the margin of error increases because of the smaller population size and the proportional sample size. The right-hand column in the table 02 summarizes the margin of error.

### **Sampling Plan and Field Implementation**

#### **Accessibility**

At the beginning of this project, CAMP gathered information on the accessible areas within FATA and a list of villages, towns and *tehsils* that were not accessible because of security concerns, government imposed curfews, and/or extreme weather conditions.

Two stages were used to select the sample. In the first stage, CAMP randomly selected accessible *tehsils*. In the second stage, CAMP randomly selected 150 villages/towns in the *tehsils* that had been selected in the first stage. CAMP selected these 150 villages for *Jirga* perception survey in consultation with the local field enumerators and supervisors. CAMP's FATA-based field staff in different parts of FATA verified the list.

A total of 10 interviews were assigned to each village. The gender balance in the overall sample was achieved by setting gender quotas. In every village and town, half of the respondents were male and half were female. Because of the culture of the region, female enumerators interviewed females and male enumerators interviewed males.

The resulting sampling frame is documented in table 03.

#### **Bias due to Inaccessibility**

As pointed out in the description of the selection of villages, access to all villages was limited due to conflict and the threat of violence. Thus, the sample was created in more peaceful areas of each Agency and FATA in general. One would expect, therefore, that not including people in the conflicted areas lead to a bias in the conclusions. Unfortunately, except for the ex-IDPs, we do not know in which direction the opinion of those areas would swing the results. The characteristics of the un-sampled villages are not known, but one could assume that they are more rural and remote and would consequently change the demographics and cultural perspective of the survey.

#### **Selection of Respondents**

##### **Method of selecting starting points**

In villages, the survey universe was divided into four areas, i.e. two for male and two for female enumerators. In each area, two starting points were selected by male and two by female enumerators. Male and female enumerators interviewed three respondents from one point and two from the other point. These starting points were local landmarks such as the *Hujra* of a prominent *Malik*, famous shops, mosques, an *Imam Bargah* of *Shiite* community, schools and health facilities, etc. The enumerators (both male and female) would interview five respondents at each point.

After selecting starting points, the male enumerators selected a household on their left hand while female enumerators selected a household on their right hand. In some areas where the houses were scattered and this rule could not be properly applied, the survey enumerators made note of the difficulty on the contact sheet.

#### **Bias due to “Starting Point” Methodology**

The enumerators would interview five respondents by counting off every third door or

Table 03. Sample frame for Agency/FR

S. #	Agency/FRs	Total sample size X villages	Total sample
<b>A</b>	<b>Agencies</b>		
1	Khyber	10 X 22	223 respondents
2	Kurram	10 X 18	183 respondents
3	Mohmand	10 X 14	135 respondents
4	North Waziristan	10 X 15	148 respondents
5	South Waziristan	10 X 18	176 respondents
6	Orakzai	10 X 9	92 respondents
7	Bajaur	10 X 24	243 respondents
<b>B</b>	<b>Frontier Regions</b>		
8	Bannu	10 X 5	50 respondents
9	Tank	10 X 5	50 respondents
10	Peshawar	10 X 5	50 respondents
11	Kohat	10 X 5	50 respondents
12	Lakki	10 X 5	50 respondents
13	D. I Khan	10 X 5	50 respondents
<b>GRAND TOTAL</b>		<b>150 villages</b>	<b>1500 respondents</b>

compound. This approach biased the sample towards the centre of villages: typically, the wealthy or more established families are located at these locations (case of the *Hujra*) or in close proximity. These would be the more urban and educated citizens of the community and their status probably influences statistics such as literacy, the use of media, educational status when compared with a more general population in those same villages and, of course, other parts of FATA and Pakistan.

#### Method of respondent selection

Before selecting the interviewees, the enumerators made sure that the respondents were 18 years old or above, that they were Pakistanis belonging to FATA, and were from the Agency and from that particular village. The survey enumerators also ensured that the respondents had not participated in any survey in the last six months.

#### Guidelines for replacing respondent originally selected if unavailable (substitution)

During the respondents' selection, if a desired respondent was not available, the enumerators skipped three houses and knocked on the fourth door. Later on, the interviewer tried to contact the person who was not available initially. If the person was still not available after three attempts, the interviewer substituted the contact person by applying the selection criteria mentioned above.

In summary, the overall sampling was robust and limited the margin of error for FATA-wide statistics. When specific agencies or FRs are noted, the margin of error must be considered. Overall, the urban and accessibility biases must be kept in mind when reviewing the findings.

## Questionnaire

For this survey, CAMP used a structured questionnaire with both opened and closed response possibilities.

## Interviewer training

Prior to conducting the survey, enumerators were trained by independent consultants under the supervision of the CAMP's senior management, who observed the interviewer training and pre-test interviews. The training was conducted on the Questionnaire, methodology and pre-testing from 23-24 December 2010.

The pre-testing aimed to:

- Determine the time/length of the interview
- Check the questionnaire's content
- Check the skipping and coding patterns
- Correct and improve translation

The pre-tests were conducted with adult Pakistani males and females aged 18 and above in suburbs of Islamabad (*Pakhtun* residents areas) on 24 December 2010. The average time of the interview during the pre-tests was 40 minutes. The minimum time taken to complete the interview was 35 minutes, while the maximum time was 50 minutes. Hence, the general understanding of the enumerators on the questionnaire was found to be satisfactory. The enumerators were able to handle the questionnaire well and they read out the questions to the respondents as written on the questionnaire without introduction of bias. Enumerators were also able to comply with the

field methodology for data collection. Their understanding on house skipping pattern and following the left hand/ right hand rule was also at par. The supervisors were able to handle the field supervision through different checking methods. Feedback related to the substance and structure of the questionnaire was shared with the senior management of CAMP.

## Data entry and cleaning

Upon the completion of the survey, CAMP entered data for 1500 questionnaires in a programmed database which was cleaned and put through using SPSS.

## Survey Management and Monitoring

CAMP coordinated the survey project through a Project Manager (PM) and project officer based at the Regional Office in Peshawar. CAMP's PM

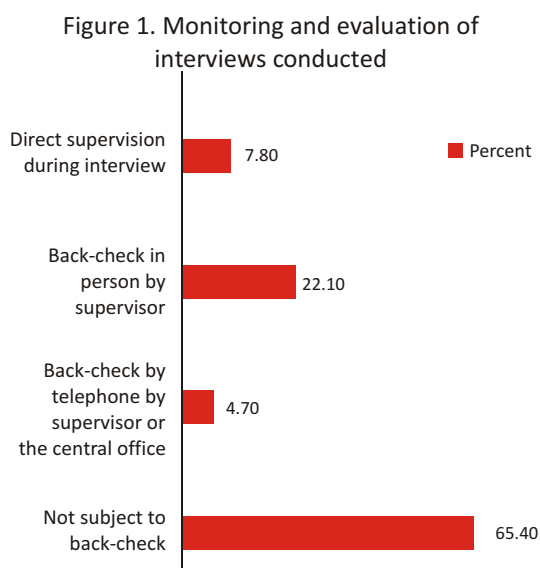


Table 04. Back-checking

Method of Back-check/Control	Frequency	Percent
Direct supervision during interview	117	7.80
Back-check in person by supervisor	332	22.10
Back-check by telephone by supervisor or the central office	70	4.70
Not subject to back-check	981	65.40
<b>Total</b>	<b>1500</b>	<b>100.00</b>

and project officer coordinated the initial training of the enumerators, the pre-tests as well as the field implementation. During the implementation of the survey, CAMP's head office regularly followed up with the PM and his project officer. The regional office, in turn, coordinated itself closely with the field teams to monitor the progress of the survey as well as to make sure that the survey and sampling plan was being implemented properly.

CAMP has field offices in Mohmand, Kurram, Orakzai, Khyber, North Waziristan, South Waziristan, Bajaur Agencies and FR Kohat of FATA. These field offices were used for supervising the survey.

Description of field team:

1. The enumerators were from the areas where they interviewed respondents.
2. The content of the questionnaire

focused mainly on *Jirga* and respondents appeared willing and happy to participate in this study.

3. As the sampling plan was based on the feedback received from the field teams, the areas where these interviews took place were relatively safe and accessible to the enumerators.

### Back-checking and method of contact

Table 04 provides the breakdown of the number of questionnaires back-checked per Agency. Back-checking was done by CAMP's five field offices in FATA as well as from CAMP's regional office in Peshawar. In table 04 is a summary based on the contact sheet used by the enumerators

Back-checking of the data collection process was conducted through different methods. 10.8% of the total interviews were personally observed by the supervisors during the interviews. 69.4%

Table 05. Number of contacts and their verification by CAMP

Name of Agency/FR	Total contacts number	Total calls	Confirmed	Telephone not responding	Not present at home	Refused
Orakzai	5	5	2	3	0	0
Khyber Agency	64	35	22	7	5	1
Mohmand Agency	19	14	10	3	1	0
Bajaur Agency	7	5	3	1	1	0
Kurram Agency	25	15	12	2	1	0
North Waziristan Agency	4	4	0	2	2	0
South Waziristan Agency	13	10	3	5	2	0
FR Peshawar	14	7	3	2	0	2
FR Kohat	10	6	3	1	1	1
FR Bannu	7	5	2	1	2	0
FR Lakki	5	3	1	0	1	1
FR Tank	10	6	2	2	1	1
FR D.I. Khan	27	15	8	3	2	2
<b>Grand Total</b>	<b>210</b>	<b>130</b>	<b>71</b>	<b>32</b>	<b>19</b>	<b>8</b>

were back-checked by the supervisors during the data collection process by revisiting the villages and obtaining a confirmation from the respondents, their family members or locals. 3.10% of the interviews were back-checked and confirmed through telephonic contacts from CAMP regional office in Peshawar. 16.70% of the interviews were not back-checked and assumed that these were really conducted.

Apart from this, CAMP Peshawar office has also monitored the field data collection through their

field offices, local elders, and other contacts.

**Note:** CAMP can provide the contact number of the local leaders/elders and other resource persons for verification.

CAMP can also call and bring randomly chosen respondents from each Agency/FR to Islamabad for verification.

#### **Back-check by CAMP on 10 February 2011**

CAMP regional office senior staff also made

Table 06. Contact sheet & reponse rate

S. #	Agency	Sample size	No response / door locked	Refused to cooperate	Age not required	Gender not required	Nationality not required	Interrupted interview	Successful interview
1	Bajaur Agency	243	44	0	0	0	0	27	243
2	Mohmand Agency	135	21	15	0	0	7	3	135
3	Khyber Agency	223	0	0	0	0	0	2	223
4	Orakzai Agency	92	3	1	0	0	0	2	92
5	Kurram Agency	183	10	13	0	20	1	0	183
6	North Waziristan Agency	148	8	11	0	0	0	0	148
7	South Waziristan Agency	176	12	0	0	0	0	9	176
8	FR Peshawar	50	1	15	0	0	0	0	50
9	FR Kohat	50	0	16	0	0	0	0	50
10	FR Bannu	50	0	1	9	3	0	0	50
11	FR Lakki	50	1	1	2	2	0	0	50
12	FR Tank	50	0	1	0	0	0	0	50
13	FR D.I.Khan	50	5	0	0	0	0	2	50
<b>Total</b>		<b>1500</b>	<b>105</b>	<b>74</b>	<b>11</b>	<b>25</b>	<b>8</b>	<b>45</b>	<b>1,500</b>

contacts with respondents through telephone on February 10-11, 2010. There are a total of 210 questionnaires carrying telephone numbers; these have been recorded in the database. Out of 210 respondents' contacts, 130 respondents were contacted. Out of these, 71 confirmed that interviews had been conducted with them. 32 respondents could not be reached because of weak network signals or because their mobile phone networks were blocked by a military operation in the area. 19 respondents were not at home at the time of the call and 8 refused to share this information because of the fear of ISI or Taliban. (Such conspiracy theories are being floated by vested interest groups to create a fear among the local population).

#### **Issues faced during back-checking**

**Network Problem:** In Kurram Agency, some people use Afghan cell companies that are also difficult to contact. Network signal strength remains the main hurdle in contacting these respondents.

#### **Contact sheet and response rate**

#### **Successful Interviews / Successful Contact as per specification**

#### **Problems during field work and data entry**

Below is a summary of major issues that emerged during field work causing some delays:

- There was a delay due to the military operation and curfew in parts of Khyber Agency, and CAMP had to wait a few extra days for things to settle down before they could complete interviews there.
- Initially, CAMP had difficulty interviewing female respondents in both North and South Waziristan. CAMP completed interviews with the male population relatively early in the project schedule. CAMP cited the deteriorating security situation, the local apprehensions regarding a possible military operation in

the near future as well as the generally more conservative environment in these two agencies as the primary reasons due to which women were not being allowed to interact with survey teams. However, in our interaction with the field staff, we kept emphasising the need to interview women without jeopardizing the security of the enumerators. The field teams were eventually able to interview women in North and South Waziristan through female enumerators.

- Although there was unrest in Orakzai Agency during the time the survey was being fielded, CAMP did not experience any delays there.
- Intermittent imposition of curfew in North Waziristan resulted in a slight delay in delivery of the completed questionnaires, while road blockades in Kurram led to a substantial delay in the delivery of questionnaires.

Chapter 2

# Political and Administrative Framework of FATA





## Chapter 2

# Political and Administrative Framework of FATA

### Introduction to *Pakhtuns*<sup>3</sup>

Any discussion of the *Jirga* system cannot be fully understood without being aware of the culture and region where it is practiced.

The *Pakhtun* roots are difficult to trace before the eleventh century AD, as the research is complicated by migration, invasions and legends associating them with Greeks, Turks, Persians, Arabs and Hebrews.<sup>4</sup> However, it is generally accepted that their culture and traditions were firmly established between the twelfth and fifteenth centuries.<sup>5</sup>

People living on both sides of the Durand line identify themselves as *Pakhtuns*.<sup>6</sup> The origin of their language, *Pakhtu* (or *Pashtu*), is not clear in spite of the tireless efforts of linguists and historians. Their history has been laboriously reconstructed and pieced together from coins, inscriptions, and occasional glimpses of fragmentary records written by envoys and geographers.<sup>7</sup> Two different theories, one based on religion and the other posited by ethnologists, are used to explain the origin of the *Pakhtuns*.

Some believe that *Pakhtuns* are descendents of Israel; for instance, James W Spain claims that *Pakhtuns* are the descendents of “Qais, the

thirty-seventh Lineal descendent of Saul of Israel<sup>8</sup>”. *Qais* was a saintly warrior who lived near Ghur in Afghanistan in the seventh century. He converted to Islam and received blessing from the Holy Prophet Mohammad (PBUH). After this, his descendents moved to Kandahar. His three sons Sarbani, Ghilzai and Ghurghusht became the three great branches of the *Pakhtun* race.<sup>9</sup>

However, most believe that *Pakhtuns* stem from the Aryans, who laid the foundation of this new culture in around 1500 B.C.<sup>10</sup> Most modern researchers of this theory agree that the birth place of Aryans lies between the Pamirs and Oxus which is known as Bakhtar.<sup>11</sup> The Dravidians, the residents of the area, were subjugated by Aryans, fled the area and migrated to other parts of India. At that time, Aryans gradually settled in parts of India, Afghanistan and Iran. It is also believed that Aryans formed three parts and that the one living in Bakhtar became the origin of *Pakhtuns* who had settled in Balkh, Hirat, Kabul and Gandhara.

### ***Pakhtun* struggle against invaders**

In order to understand present-day FATA, it is important to know the tribal *Pakhtuns*' constant struggle against invaders from Alexander the Great to the British, and their willing accession to

the present-day Pakistan. The present border is not a chance growth but has evolved through centuries of political struggle between the empire of India and those of Western and Central Asia.<sup>12</sup> The frontier region has never been stabilised due to the continuous invasions from the West, which resulted in the shifting of the region from one empire to another.

Well established records indicate that the lands that are now Afghanistan and Khyber Pakhtunkhwa have seen perhaps more invasions in the course of history than any other country in Asia or indeed in the world.<sup>13</sup> At different points of its history, the area was part of India, then Persia, then again India, then Afghanistan, and finally British India.

Over long periods of time, the line of the Indus, or the escarpment of the mountains west of it, has represented the boundary of constantly shifting kingdoms or empires.<sup>14</sup> During those shifts, the *Pakhtuns* were sometimes subjugated, but at other times they themselves formed the tribal basis for the establishment of a small empire ruling over other ethnic groups.<sup>15</sup>

When Alexander the Great invaded India in 323 B.C., he conquered Afghanistan and then advanced through the western part of the sub-continent, where he faced resistance from the *Pakhtun* tribes. Alexander's Army, under the direction of Gen. Seleucus, subdued the *Pakhtun* tribes and the region became part of the Macedonian Empire. Ashok the Great, in 250 B.C., also ruled over what is present-day Afghanistan and Western Pakistan.

In the ninth and tenth centuries A.D., there were Muslim invasions from Central Asia and Afghanistan. At that time, these areas were under the control of Hindu Rajputs. Raja Jaypal was the last Hindu to rule over the *Pakhtuns* when he was defeated by Mehmud Ghaznavi in Peshawar. Mehmud Ghaznavi had followed the traditional invading route from Central Asia through the Khyber Pass and would invade India on seventeen occasions between 1000 and 1026

A. D without ever consolidating his empire there.<sup>16</sup>

In 1186, Mohammad Gori from Afghanistan attacked Punjab and Benares, and defeated Rajputs before laying the first foundation for a Muslim state in India. The same route was followed first by Chengez Khan (Genghis Khan) in 1212 A.D., when Sultan Altutmish ruled India, and then in 1398 by Amir Timur Lane who wrought enormous destruction on the region before being expelled. In 1526, Zaheeruddin Babar, the first Mughal emperor, came from Afghanistan and defeated Sultan Ibrahim Lodhi in the battle of Panipat and laid the foundation of the Mughal Empire in the Indian Sub-continent. It lasted until 1764.<sup>17</sup>

The Mughal Empire started to erode with the death of the last powerful Mughal Emperor Aurangzeb Alamgir in 1707, as his weak successors were unequal to the task of holding the empire together. Thus began the first, modern, *Pakhtun* consolidation known as the Durrani Federation. In the early 1700s, the military leader of one of the principal *Pakhtun* groups, the *Sadozai*, led by the military leader Ahmad Shah Durrani, had brought a second *Pakhtun* group, the *Ghilzais*, into the federation. They went on to conquer and form the *Durrani* Empire that consolidated not only the other *Pakhtun* tribes on both sides of the Hindu Kush, but also went on to try to conquer and hold parts of present day Iran, Northern Afghanistan, Kashmir and South into present day Sindh and Delhi in India. This vast empire was not possible to sustain because the Sikhs, the Uzbeks, the Tajiks and others rebelled and pushed back in the late 1700s, and, internally, leaders in Kabul, Qandahar, Herat, Quetta and Peshawar always contested power.<sup>18</sup>

In 1826, Dost Mohammad of the Mohammadzai family took the throne of Kabul. According to Fraser-Tytlar, Dost Mohammad sent troops under his eldest son, Mohammad Akbar Khan, through the Khyber to attack the Sikhs<sup>19</sup> in 1837

during his struggle to regain territories lost to the Sikhs and to liberate his fellow men from the Sikh yoke.<sup>20</sup>

Aided by *Pakhtun* tribesmen, Akbar's army defeated the Sikhs under Hari Singh outside the walls of Jamrud.<sup>21</sup> The first Afghan War (1839-42) was the result of the lack of cooperation by the British with Amir Dost Mohammad in his struggle to capture Hirat from the Persians. Four years earlier, the Russians had promised Amir Dost Mohammad that they would help him in capturing Hirat as well as to regain territories of Peshawar from the Sikhs, because they belonged to Afghanistan.

### **Splitting the *Pakhtun* cultural area**

These struggles show how the *Pakhtun* areas on both sides of the Hindu Kush served as a buffer zone between the ancient cultures. Later, the *Pakhtun* culture area was not seen as a nation and only the 'Afghanistan' north of the Hindu Kush became the buffer between British India and the Russians in what became known as "The Great Game". In order to counter the Tsarist designs on 'Afghanistan' and to protect the North-Western flank of India, the British made an alliance with Sikhs and the deposed Shah Shujah<sup>22</sup> against Dost Mohammad. Shah Shujah was promised the throne of Kabul while possession of Peshawar would go to the Sikhs. In a short time, the allied forces had captured Kabul and other parts of Afghanistan, and Shah Shujah was briefly made Amir of Afghanistan. By January 1841, both the British and Shah Shujah had been completely driven from the country.<sup>23</sup>

By 1843, Dost Mohammad had returned from his exile and regained the control of his country. From then on, Dost Mohammad never cooperated with British India in relieving the pressure of the fellow *Pakhtun* hill tribes on the Frontier.

The Second Afghan War of 1878-1880 was fought under the command of Brigadier General Sir Neville Chamberlain. By that time, British India

had annexed most of the remaining independent parts of India; the subcontinent's administrative borders followed its geographical boundaries, remaining thus until the time of independence and partition in 1947.<sup>24</sup> The Second Afghan War, like the First, was considered a fiasco by many Englishmen. However, from the stand point of the Frontier, the most important result of the Second Afghan War was that the British were now in possession of the Khyber, the Kurram and the Bolan Passes.<sup>25</sup> Note that these passes continue to be links between the major routes of the old Silk Road that consisted of two routes: 1) the Kabul-to-Qandahar route and 2) the Peshawar-to-Quetta route. These routes were the highway system during the Durrani Empire and continue to be so for the *Pakhtun* culture of Afghanistan and Pakistan; they also connected the rural and urban *Pakhtun* areas.

Both the Amir<sup>26</sup> of Afghanistan and the British Government of India were desirous to settle the frontier of Afghanistan. Therefore on 12 December 1893, the Agreement was signed by Sir M. Durand and Amir Abdurehman. The agreed line, bearing Durand's name, was drawn and can be considered one result of the Second Anglo-Afghan War. The agreement brought the Khyber Pass and the highlands around Quetta within the British-Indian sphere.<sup>27</sup> The cultural area of the *Pakhtun* and the *Durrani* federation was split, and, to this day, the *Pakhtuns* have remained a buffer between nations.

### **Way of life of the tribal *Pakhtuns***

Each *Pakhtun* tribe is comprised of various clans (or *Khels*), sub-clans and finally extended families. Tribal society consists of many characteristics that provide a sense of unity and cohesion. It is based on its inter-family linkages that then unite sub-clans, clans and tribes in a web of kinship relationships. The family structure is the most complex feature of *Pakhtun* tribal society that shares family honour, property and intra-familial relationships.

Each family is headed by an elder male, who, by

ascribed status, is respected and whose decisions are obeyed by the entire family. The *Maliks*<sup>28</sup> head the sub-clans and clans. The *Malik* position is hereditary; at times, Political Agents grant this title with the consent of the Governor. *Maliks* and *Lungi* holders are responsible for maintaining peace in their areas and for providing valuable information about their areas to the Political Administration; they are responsible and accountable to the political administration in case of any conflict. The political administration pays allowances (*Mojib*) and subsidies to these *Maliks* and *Lungi* holders for their services.

These descriptions of the traditional tribal hierarchy and the FATA structure show how British colonial rule was grafted onto the tribal structure. The British used the existing structure of the society and made “*Malik*” an official title under FCR 1901, thus giving the *Maliks* considerable prominence and a substantial role in their sub-clans, clans or tribes.

*Pakhtuns* live as a pluralist community, living close to each other in *kala* (or *qala'a*), a fortress-like compound comprising of many houses occupied by an extended family. An extended family consists of an elder head of family, married sons and wives, unmarried sons and daughters plus grandchildren.<sup>29</sup> James W. Spain writes:

*“the Pathan is above all an individualist, despite the rigid behaviour standards prescribed by clan membership. Nonetheless, there are important traditional and social factors which guide community life and in many cases influence or even determine the action of individuals. These mores vary considerably in different parts of the Pathan area, and codification of them is virtually impossible. However, certain of them are almost universal, and some knowledge of these is essential to an understanding of what the Pathan is and how he got that way.”*<sup>30</sup>

This un-codified set of rules, which guides the *Pakhtun* way of life, is called *Pakhtunwali*.

### ***Pakhtunwali***

*Pakhtuns* have preserved their centuries old culture and tradition; they are men of guns through which they protect their honour. *Pakhtunwali* is strictly observed and quoted with pride, being the *Pakhtun's* dearest value and conducting and controlling their routine lives, behaviour and attitudes. There are three main obligations of *Pakhtunwali* on a *Pakhtun* elaborated in the following lines.

***Milmastya***: This principle describes the open-handed hospitality and protection accorded to all who may or may not demand it. This custom is one of the greatest demands of *Pakhtunwali*. Sometimes, protection (or hospitality) may be extended to an enemy as long as he remains in the host community; he is provided with an escort that is called a *Badruga*. During the British times, the status of *Badruga* was officially given to local escorts called levies. According to the spirit of the term *Milmastya*, the guest is never to be hurt, both because of the obligation of the high regard for *Milmastya* and because the obligation of *Badal* (revenge) would automatically be placed upon the host if he were to lapse in providing safety. There are numerous incidents where hosts to strangers or even enemies have died or been injured when defending their guests. James W. Spain, in his book “The Pathan Borderland,” writes that a British Frontier Administrator wrote into his official reports: ‘Any person who can make his way into their (*Pakhtuns*) dwellings will not only be safe, but will be kindly received.’<sup>31</sup>

***Badal***: This concept is the set of customs and actions concerning revenge. The custom gives an offended person the right to and necessity for revenge by retaliation regardless of the consequences. Originally, *Badal* could only be taken by the victim or, in case of a murder, by the victim's family against the individual or family who had committed the hurt or insult. *Pakhtuns* are generally perceived as a martial race and therefore, believe in revenge in his own way

obligatory by the concept of *Badal under Pakhtunwali*. There have been feuds among families, clans and intra-clans due to the non-mitigated concept of *Badal*; they may last for years and sometimes for decades, going from generation to generation. In his book, Sir Wylly writes the following about the tribal blood feuds:

*The Pathan enlists freely into our services there are at present moment something like eleven thousand Pathans in the Indian Army, and probably the recruiting among the tribesmen was never brisker than during the operations in Tirah of 1897-98. One thing, however, the Pathan recruit does not give up, "but brings with him to his regiment, keeps through his service, must have leave to look after, will resign promotion to gratify, and looks forward to retiring to thoroughly enjoy and that is his cherished feud,"<sup>32</sup>*

**Nanawati:** There is a considerable confusion not only among English writers but also among writers from settled districts of Khyber Pakhtunkhwa (former North West Frontier Province - NWFP) as to the definition of this concept, which is also practised in other *Pakhtun* areas of Khyber Pakhtunkhwa, Balochistan and Afghanistan.<sup>33</sup> Although the spirit of *Nanawati* has faded in urban areas with the passage of time, it is still practised in the rural areas of *Pakhtuns*, especially in FATA and Afghanistan.

*Nanawati* literally means to enter into a house 'begging for a pardon or forgiveness'. When a person realises that he has been at fault in a killing, injury or insult of another person, he goes to the *Hujra*, house or mosque of the aggrieved family and puts himself at their mercy, confessing his fault and begging a pardon from the person or family whose sense of honour he had injured.<sup>34</sup> On such occasions, the offender brings tokens or gifts such as sheep or goats, and is accompanied by his family women as well as the Qur'an in order to show both his humility and sincerity. If

the offended person or family forgives the person, that family will also defend the offender from further punishment by both tribal and also political administrators. Thus, *Pakhtunwali* may be at odds with civil law and the formal administration of justice by the state.

**Jirga:** *Jirga* refers to a practice and to the institution. In a few words, a *Jirga* is a gathering of elders, convoked by an intermediary between contesting parties, a *Jirgamaar*, to hear the arguments of the parties. The process is similar to binding arbitration because both sides of the discussion agree to abide by the decision of the elders.<sup>35</sup> The *Jirga* is a conflict resolution process.

**Hujra:** The *Hujra* is a male social centre and a place where the unmarried males also sleep. Visitors may be housed in this space, and food and tea will be served there. The *Hujra* as a room or area within a compound has been rooted in *Pakhtun* culture and civilization forever. It is considered as a mark of prestige not only as a furnished, but as a social area. The main features of a *Hujra* are an opened patio-like area a "*Chopal*"<sup>36</sup> where bed-like seats are arranged, and a couple of rooms. Village folk singers sing *Tapa*<sup>37</sup> on winter nights and during festivities using musical instruments like *Rabab* and *Mangey*.<sup>38</sup> Nowadays, television and radio are important components of a *Hujra*, and some may include internet and computers. A *Hujra* may belong to a rich man of a village who happens to be a *Malik* or *Khan*. However, it may also be common property of the village. In the *Hujra*, any and all matters of civil affairs are discussed and may be resolved through a *Jirga*.<sup>39</sup> Marriage parties, funerals, and other rituals are celebrated in a *Hujra*. *Hujras* are also used for raising *Lakhkars*<sup>40</sup> when needed. The *Hujra* is the place where warring tribes or clans meet to agree on *Teega*<sup>41</sup> to stop further bloodshed.

#### **The political and administrative structure of FATA**

The Indian Independence Act of 3 June 1947 abrogated all the special treaties. What was later

known as Pakistan opted not to base troops in the FATA region because 200 *Maliks*, during a *Loya Jirga*, signed an instrument of accession with Mohammad Ali Jinnah, the founder and first Governor-General of Pakistan, in return for continued allowances and subsidies.

On 14 August 1947, when Pakistan was created as a sovereign Muslim state, it also recognised the semi-autonomous status of the *Pakhtun* tribes of FATA and the instrument of accession. The 1956, 1962 and 1973 Constitutions of Pakistan retained the same agreements recognising the special status of the FATA with very few changes.

In Article 1 (c) of the 1973 Constitution of Pakistan, FATA is included as one of the territories of Pakistan and Article 246 (c) stipulates some 13 tribal agencies and frontier regions (FRs) that comprise the FATA. Article 247 prescribes the manner and method of administering FATA and states that the executive authority of the Federation extends to FATA and that the Governor of the North West Frontier of Pakistan (now named Khyber Pakhtunkhwa), as directed by the President of Pakistan, shall administer it.

The other sections of Article 247 state that:

(2) The President may, from time to time, give such directions to the Governor of a Province relating to the whole or any part of a Tribal Area within the Province as he may deem necessary, and the Governor shall, in the exercise of his functions under this Article, comply with such directions.

(3) No Act of Majlis-e-Shoora (Parliament) shall apply to any Federally Administered Tribal Area or to any part thereof unless the President so directs, and no Act of [Majlis-e-Shoora (Parliament)] or a Provincial Assembly shall apply to a Provincially Administered Tribal Areas, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situated, with the approval of President, so directs; and in giving such a direction with respect to any law the

President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such exceptions and modifications as may be specified in the direction.

(4) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter within the legislative competence of [Majlis-e-Shoora (Parliament)] and the Governor of a Province, with the prior approval of the President, may with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good Government of Provincially Administered Tribal Area or any part thereof, situated in the Province.

(5) Notwithstanding anything contained in the Constitution, the President may, with respect to any matter, make regulations for the peace and good government of a Federally Administered Tribal Area or any part thereof.

(6) The President may, at any time, by Order, direct that the whole or any part of a Tribal Area shall cease to be Tribal Area, and such Order may contain such incidental and consequential provisions as appear to the President to be necessary and proper. Provided that before making any Order under this clause, the President shall ascertain, in such manner, as he considers appropriate, the views of the people of the Tribal Area concerned, as represented in the *Tribal Jirga*.

(7) Neither the Supreme Court nor a High Court shall exercise any jurisdiction under the Constitution in relation to a Tribal Area, unless Majlis-e-Shoora (Parliament) by law otherwise provides:

(8) Provided that nothing in this clause shall affect the jurisdiction, which the Supreme Court or a High Court exercised in relation to a Tribal Area immediately before the commencing day.

Most of the civil, criminal, electoral and fiscal

laws have only been extended to the 'administered areas' or 'protected areas' of FATA<sup>42</sup> through presidential ordinances; however, no serious efforts have been initiated to properly implement these laws.<sup>43</sup> Besides, as per the constitutional arrangement, the President may, subject to ascertaining the views of the tribal *Jirga*, abolish the status of a given FATA region/Agency and convert it into a settled area.<sup>44</sup> The President may, from time to time, issue directions to his agent, as stipulated in Article 145 of the Constitution. No Act of Parliament or any part thereof is extended to FATA unless the President so directs, while Clause 7 of Article 247 bars the extension of superior courts, including Supreme Court and High Court, to FATA unless the Parliament so provides under a law.

The President may make regulations with respect to any matter for the peace and good governance of FATA or any part thereof. FATA is represented in the Lower (National Assembly) and Upper (Senate) Houses of the Parliament by 12 and 8 members, respectively. However, because the parliament has no jurisdiction over FATA, it is not clear what importance the FATA representatives have. FATA is geographically contiguous with Khyber Pakhtunkhwa; however, it has no representation in the provincial parliament.

The Constitution of 1973 does not allow the people of FATA to fully participate in the political process. The Adult Franchise Act was only extended to FATA in 1996 and was exercised in 1997 general elections, while the Political Parties Act of 2002 has yet to be extended. This has kept the people of FATA away from the mainstream politics of the country. According to the government's official rules of business, the responsibility for the "overall administrative and political control of FATA" falls under the federal ministry of states and frontier regions (SAFRON).

Hence we see how the Constitution substituted the President of Pakistan for the 'Governor-

General' and then created a Secretariat headed by the Provincial Governor instead of a 'Chief Commissioner of the Punjab;' finally, the title of Political Agents replaced the 'Political Officer' as the link to the tribal *Malik*<sup>45</sup> and *Lungi* holder.<sup>46</sup> In that way, aside from the upper and lower house members with questionable powers, the Constitution retained the nondemocratic structure of appointees.

The renaming of the NWFP to 'Khyber Pakhtunkhwa' (KP)<sup>47</sup> through the 18<sup>th</sup> Constitutional Amendment of April 2010 corrects two historical perspectives: 1) the North-West Frontier perspective was based on the British Colonial view from central India as to the relative location of the area, and 2) the perspective that relegated or only recognised the *Pakhtuns* as the people living in the region. When the Pakistani National Assembly approved this name change, they recognised the extent of the culture, area and implicitly the link between the rural and urban areas of the *Pakhtuns*.

### **The structure of FATA administration**

The British moved in to the area in the second half of the 19<sup>th</sup> century with the aim to keep Tzarist Russia away from the British India. The people living in this region used to live in accordance with their own time honoured customs and traditions.<sup>49</sup>

Soon after their ingress into the region, the British realised the need for a framework of laws for a more repressive administration of the area and its people. The consensus was reached that the existing system be codified in order that there be no deviation from the manner in which the people had lived for centuries.<sup>50</sup> An important aspect of the administration system devised by the British was that the government would not come into direct confrontation with the tribes on issues that were contentious and divisive. An indirect system of administration was thus created for the FATA region.

To implement the Constitutional provisions

described above, the President must be linked to local, tribal structures through the office of the Political Agent.<sup>51</sup> In most Colonial structures where tribal societies existed, the external structure takes control of the local leadership and hence annexes the tribal structure. The region has a peculiar system of administration. The people are governed through their local chieftains called *Maliks* and through financial compensation controlled by the Federal Government and exercised by a Political Agent. It is this structure that has kept the transition from Colonial to Constitutional times intact. Each subdivision (*Tehsil*) is headed by its Assistant Political Agent. The PA performs several functions at the same time: he acts as an executive, a judge and a revenue collector. He also heads the Agency Council and oversees development projects while all line departments come under his authority.

Present day FATA comprises of seven Agencies and six Frontier Regions (FRs). They are:

- Khyber Agency
- Bajaur Agency
- Mohmand Agency
- Orakzai Agency
- Kurram Agency
- North Waziristan
- South Waziristan
- FR Peshawar
- FR Kohat
- FR Bannu
- FR Lakki
- FR Tank
- FR D.I Khan

The population of FATA is 3.17 million as per 1998 census report and its total area is 27,220 square kilometers.<sup>48</sup>

FATA is divided into the administrative categories of 'protected' and 'unprotected' areas. Protected areas are regions under the direct control of the

government, while 'non-protected' areas are administered indirectly through local tribes. Protected areas are those areas where government has invested in infrastructure such as roads, hospitals, schools, grid stations, government offices, etc.

### **Lack of participation in the process of socio-economic development**

The dated governance system in FATA does not allow for the popular participation of local communities in the political and development processes. The political vacuum paves the way for obscurantist elements to fill the gap and exercise the authority that, otherwise, belongs to the state. This is exactly what has happened in FATA. Decades of exclusion from the mainstream socio-political and economic development have alienated the people of FATA.

Socio-economic indicators remain abysmally low, with literacy level at 17.40%, the male literacy rate being at 29.50% and the female rate a pitiful 3.00%. Health indicators are unavailable, however, judging from the 1998 Census, one doctor is available for 7,670 people in FATA, which indicates poor health conditions. Where hospitals and clinics are running, they are generally low staffed, poorly equipped and unhygienic. The majority of the people turn to traditional treatment or 'quacks'. There are either no facilities for clean drinking water, and if they exist, they are mostly in a terrible condition.<sup>52</sup>

Nearly 60% of the population in FATA lives below the poverty line. With very limited economic opportunities, most of the population is engaged in primary-level sustenance activities such as agriculture and livestock rearing, or local small-scale businesses. Others are involved in trade within the tribal belt or move down to other areas of the country in the hope for better economic opportunities.<sup>53</sup>

As mentioned in the preceding chapter, policies for Federally Administered Tribal Areas (FATA) are



made at the federal level and local voices have never been properly incorporated. Although development plans exist and programmes have been implemented, most of them have been piecemeal and quick fixes. The Finance Minister announced an increase in FATA's Annual Development Plan from PKR 8.6 billion to PKR 15 billion in June 2010, and an additional PKR 30 billion were given to lawmakers from FATA in January 2011. According to a news report, "Interestingly, most corruption cases show that such projects (in FATA) are executed in such a manner that the money ultimately ends up in the pockets of parliamentarians and a few 'favourite' local contractors."<sup>54</sup>

This approach has clearly benefited the elite, leaving little or no opportunities for the majority of the population to be economically or socially empowered. Women in particular have remained out of the folds of development due to the tradition of '*Purdah*'<sup>55</sup>, while youth and minorities (both ethnic and religious) have little or no opportunity to express themselves or participate in the planning processes.

Poverty has, to some extent, made the population vulnerable to extremist tendencies and criminality. In the absence of viable options to earn a living, the lure of illicit activities such as smuggling (consumer goods across the border), local firearms production, smuggling, and drug trafficking is as difficult to resist as the call of extremist Islamist elements. (FATA Sustainable Development Plan 2006-2015).

Despite the difficult living conditions and lack of economic opportunities in FATA, there exists a strong and cohesive tribal structure that can be used to explore indigenous opportunities; the 'tradition of local ownership and control of natural resources' is a strength among the local communities in FATA that motivates them to take part in managing their own resources in a sustainable way. Locals would contribute positively if ownership were to be developed from the beginning.

Chapter 3

# Jirga and the Rule of Law in FATA



## Chapter 3

# Jirga and the Rule of Law in FATA

The following chapter deals with the mechanism of *Jirga* and its importance for the people of FATA. A historical review and detailed definition of *Jirga* system is given for its understanding in present times. Comparative studies about the legal frameworks of different types of *Jirga* are included in this chapter. The functions and organisation of FCR *Jirga*, *Oalsi Jirga* and *Loya/Grand Jirga* is an important subject of this chapter. The information includes the perception of people and the legal existing system for FATA so that an analytical view of *Jirga* in different situations can be drafted.

Over the years, there has been lot of debate on legal reforms for *Jirga* among different committees; legal experts are also included for a critical view of *Jirga* in FATA. Reports from Justice Naimat Ullah Committee, Shiekh Abdul Hamid Commission, Mr. Justice S.A. Rahman law reforms Commission, Justice Hamood ur Rehman Commission and FCR reforms Committees of 2005-2009 are part of this chapter. The recommendations in these reports are addressed to have a legal perspective of the *Jirga* system in FATA.

The agreement between Afghanistan and Britain

may have settled the international discussion, but there remained the internal problem for the British Colonial rule. The frontier area was a continuous source of trouble and a threat to the stability of British India including access to the passes through the Hindu Kush. To try to check this threat, British India formulated a policy of persuasion, control, and armed interventions in these areas. Between 1849 and 1939, there were approximately 58 military campaigns against the *Pakhtun* tribes by British India.<sup>56</sup>

Several implementing agreements were added. One important arrangement was the introduction of the Frontier Crimes Regulation (FCR) in six occupied Frontier districts of the *Pakhtuns* in 1848. Initially, the ordinary civil and criminal law, in force in British India, had been extended to such districts. However, the rate of conviction under the ordinary criminal law was too low.<sup>57</sup> This led the British administration to devise a special law for the whole *Pakhtun* region, and, in 1871, a more encompassing set of FCR was enacted. They were modified in 1873 and again in 1876.<sup>58</sup> These modifications continued through 1901 when the entire North-Western Frontier region of British India was placed under the rule of the Governor-General of

India, who governed it through the Chief Commissioner of the Punjab Province and his Political Officers of the British Civil Service. In summary, the FCR has been operative for more than a century as a special law prescribing trial procedures for offenses and civil disputes in the tribal areas. The judicial system enshrined in the FCR of 1901 has been described as a hybrid of Colonial-era legal framework and traditional customs and norms to which executive direction has been added.<sup>59</sup>

Because of its repressive set of rules that violate basic human rights such as freedom from collective punishment, the FCR is regarded as a 'Black Law' or 'Draconian Law' when judged by present-day international human rights standards and principles. Nevertheless, it is basically the system of justice in place today, which will be elaborated in detail in the coming chapters. The FATA's *Jirga* system has become institutionalised in the present Constitution of Pakistan under FCR. In order to implement the FCR, the British Colonial rule included a system of administration, that is, a system by which the Governor-General of India, through the Chief Commissioner for the Punjab, engaged the local *Pakhtun* leaders through a 'Political Officer' who dealt with the *Maliks* and *Lungi* holders of the tribes. Because the British Colonial structure was so similar to the present Constitutional structure, the parallel details will be described below.

### **Defining *Jirga***

Historically, individuals, social groups and societies have disputed and competed against one another over scarce commodities and resources - land, money, political power, and ideology.<sup>60</sup> In many parts of the world, traditional way of justice or locally integrated conflict transformation or resolution institutions are being approached to resolve conflicts, and to ensure peace and stability within local societies or tribes. Such institutions are often suitable in circumstances in which they operate, as they satisfy the local cultural and religious

sentiments. Such circumstances often make them more successful than the contemporary or modern justice system. The existing body of literature confirms that the nature and causes of conflicts and the mechanisms for resolving them are deeply rooted in the culture and history of every society; they are in many important ways unique to them.

According to the Pashtu Descriptive Dictionary (1978: 1272), *Jirga* is an original Pashtu word which in its common usage refers to the gathering of a few or a large number of people; it also means consultation according to this source.<sup>61</sup> However, in its operation, *Jirga* refers to a tribal/local institution of decision-making and dispute settlement that incorporates the prevalent local customary law, institutional rituals, and a body of village elders whose collective decision about the resolution of a dispute (or local problem) is binding (socially and morally) on the parties involved.<sup>62</sup> According to James W. Spain:

*A Jirga in its simplest form is merely an assembly..... Practically all community business, both public and private, is subject to its jurisdiction. In its operation, it is probably the closest thing to Athenian democracy that has existed since original. It exercises executive, judicial and legislative functions, and yet frequently acts as an instrument for arbitration and conciliation.*<sup>63</sup>

Mumtaz A Bangash, a professor at the Area Study Center, University of Peshawar, and a resident of Kurram Agency of FATA, describes *Jirga* in this way:

*The Jirga system ensures maximum participation of the people in administering justice and makes sure that justice is manifestly done. It also provides the umbrella of safety and security to the weaker sections of the tribal people from the mighty one.*<sup>64</sup>

*Jirga* or community-based traditional victim-

offender mediation usually leads to a deep sense of satisfaction, fairness, and ability to move on with both the parties' lives. *Pakhtun* as well as non-*Pakhtuns* in Afghanistan have preferred *Jirga* to formal justice according to recent research because it is conducted by respected elders with established social status and the reputation for piety and fairness; and because it emphasises on the compensation of victims and the reintegration of offenders back into the community.<sup>65</sup> Also, *Jirga* dispenses speedy justice and is more transparent, trusted and accessible compared to the state justice system.<sup>66</sup> Furthermore, in the process of *Jirga* proceedings, elders reach decisions in accordance with accepted local traditions and values (customary practices) that are deeply ingrained in the collective conscience of the village/tribe. They have a profound existence in the collective mind of the village and in the minds of its individual members.<sup>67</sup> Often obscured by the quasi-judicial role of the *Jirga*, its main function is to peacefully settle disputes (*Teega*) rather than to adjudicate or pass a sentence.<sup>68</sup>

In cases of disputes, the people of FATA generally prefer *Jirga* as a means to resolve criminal and civil disputes and mediate tribal or sectarian conflicts. However, they do actually have the choice to alternatively bring a case before a state court and in some areas they can even choose to refer to a court of the Taliban organisation or any other group. This “forum shopping” really indicates that there is a fierce competition between traditional, fundamentalist and state oriented forms of conflict resolution. Only the state promises (but not necessarily succeeds) to uphold human rights. If one wants to prevent the fundamentalist approach from further gaining acceptance in parts of the population, the offer of the state justice to the citizens must be carefully evaluated and ways found to improve it.

The traditional *Jirga* deals with varying issues in the tribal areas including conflicts on land and property, inheritance, alleged violation of 'honour' and intra-tribal/inter-tribal killings.

## Types of *Jirga*

### *Sarkari* or FCR *Jirga*

The FCR *Jirga* is elaborated in detail in the subsequent section (Concept and legal framework of *Jirga* under FCR 1901); however, it is briefly described below.

*Sarkari* or FCR *Jirga* refers to a *Jirga* sponsored by the government, more specifically by the political administration led by political agent or his subordinates. The FCR *Jirga* deals with all criminal and civil cases in the administered areas of any particular Agency or Frontier Region (FR). The laws are administered by the Political Agent acting as a District Magistrate. He institutes *Jirga* with the consent of the disputant parties. The *Jirga* examines all the evidence within the framework of the issues framed and submits its recommendations to the political administration.

The concerned government authority nominates two or more *Jirga* members depending on the complexity and importance of a case. It institutes *Jirga* with the consent of parties. The *Jirga* examines all the evidence within the framework of the issues framed, it calls the parties, listens to both points of view, gathers evidence; analyses the evidence and announces its verdict. The verdict is passed on to the political administration for his approval.

The political administration has the authority to enforce such decisions though its *Khasadar* or Levies force. Hassan M. Yousafzai and Ali Gohar elaborated the components of *Sarkari* or FCR *Jirga* in their book “Towards Understanding *Pakhtun Jirga*”<sup>69</sup>

- A government representative
- A case registered by one of the parties or cognizance of a situation by the government
- Written referral of the case to the *Jirga* nominated by the government official
- Recording of statements of the parties by the *Jirga*
- Visits to the disputed sites by the *Jirga*

members

- Recording of further evidence by the *Jirga* members
- Presentation of recommendations to the government agent
- Consideration, approval, or disapproval of the recommendations
- Reference back to the same *Jirga* for reconsideration in light of new facts
- Announcement of the verdict
- Right of parties to appeal
- Implementation of the verdict

In all cases, the decision of *Jirga* members is unanimous. However, in case a party is not satisfied with the verdict, it can approach the appellate tribunal of the Commissioner and revision proceedings can be initiated in the court of the Home and Tribal Affairs Secretary (or Secretary FATA).

#### ***Olasi* or informal local representative *Jirga***

*Olas* means people. Thus, *Olasi Jirga* is an assembly of the elders comprising each household of a certain village or community.<sup>70</sup> *Olasi Jirga* convenes to discuss various criminal and civil disputes and resolve them consensually so that all parties receive compensation accordingly.<sup>71</sup>

When a dispute arises, elders approach both parties and set up a *Teega* to prevent further aggravation of the situation. The monetary value of *Teega* could be either money or weapon. *Teega* is usually maintained for a certain time period and then followed by a proper constitution of a *Jirga*. The *Jirga* then takes time to collect evidence, analyse the evidence, talk to both parties and villagers, and takes *Waak*<sup>72</sup> from parties involved.<sup>73</sup>

The *Jirga* members may take time or hold as many sessions with parties as they deem necessary to take a decision. Again, Hassan M. Yousafzai and Ali Gohar elaborated the components of *Olasi Jirga* in their book "Towards Understanding *Pakhtun Jirga*"<sup>74</sup>

*Olasi Jirga* can:

- Hold as many sessions as needed
- Undertake any issue of interest or concern to the community
- Announce any interim decisions
- Make new rules for the tribe, like grazing rights, water rights, etc
- Call for other ideas
- Invite volunteers as a work force
- Raise taxes for community work
- Go as a delegation, send delegation to parties
- Send delegation to the neighbouring tribe

Decisions made by *Olasi Jirga* are rarely challenged, as it is perceived to be more credible and has legitimacy within the communities. This statement can be supported by perception survey results elaborated in Part II of this report.

#### ***Loya* or Grand *Jirga***

Although *Loya Jirga* has not taken place in the context of FATA, Afghanistan has convened this form *Jirga* for centuries. In the Afghan political culture, *Loya Jirga* means a 'grand assembly' of tribal and political leaders, religious scholar, elders and others who assemble periodically in order to discuss important national issues and to reach collective decisions.<sup>75</sup> The issues that a *Loya Jirga* focuses on are usually of vital national interest such as the selection of a new ruler, a declaration of war, the adoption of peace treaties or a new constitution, and decisions of vital regional and international issues affecting Afghanistan. The most well known of this form of *Jirga* in the history of Afghanistan is the 1747 *Loya Jirga* in Kandahar which crowned Ahmad Shah Durrani as the first king of modern Afghanistan.<sup>76</sup> More recently, examples of *Loya Jirgas* include the 2002 *Emergency Loya Jirga* and the *Constitutional Loya Jirga* in 2003. The latter decided upon the Post-Taliban Constitution of Afghanistan.<sup>77</sup>

## The legality and legitimacy of *Jirga*

At present, justice-related services in FATA operate through two modalities: the official FCR *Jirga* and community-based dispute resolution through the *Olas Jirga*. Throughout this report, the descriptions and analysis of the two disparate forms of *Jirga* operative in FATA are based upon a conceptual division between legality and legitimacy. The principle of legality is easier to define and comprises the ideal that all laws should be clear, knowable, non-arbitrary and non-retrospective. Thus, its focus is on the written rules that comprise a state's system of statutory law, and the application by decision makers of those rules which have been established beforehand - in a manner that does not entail discretionary departures from established law. In other words, the principle of legality is closely related to the formalist approach to rule of law, which tends to focus on purely formal characteristics that a legal system must possess, and shies away from assessments of the fairness of specific laws or legal decisions.

On the other hand, the principle of legitimacy is linked to the ability of a legal system to deliver justice in a form that is acceptable to the people it governs. Indeed, it is the notion of justice that makes laws meaningful to ordinary people in their day-to-day lives. But the idea of justice is different for each society, informed by its particular assessment of right versus wrong; in other words, its values and norms, and also its expectations of the legal system. As one would expect, in each society the notion of justice is not static, but rather subject to change in response to evolving social, political and economic conditions. In the end, for a particular legal system to be considered just, the present normative values, sensibilities and expectations of a society must be reflected in the legal system. In other words, social definitions of justice should coincide with the institutions, laws, and procedures of a state's justice system. In this respect, legitimacy conforms with substantive

conceptions of the rule of law, which looks to the outcome of laws against criteria such as justness or fairness.

The present assessment report supports the proposition that legality is an attribute of the FCR *Jirga*, while its legitimacy amid FATA residents is quite limited as evidenced by their negative perceptions of its ability to deliver just outcomes. By way of contrast, the *Olas Jirga* is not formally recognised by law, but is perceived as more legitimate by the population of FATA. While the FCR *Jirga* is convened under a system of rules inherited from the British colonial period, its processes, i.e. decision-making by a political agent, and its sanctions, i.e. collective punishment, are generally known to FATA residents. Moreover, it is backed by the force of law and coercive enforcement tools. Thus, by and large, it possesses legality. On the other hand, few respondents would identify FCR *Jirga* as capable of delivering justice. Alternatively, community-based dispute resolution processes are not subject to state rules. Also, their decisions cannot be legally enforced, and instead rely on the commitment of community members to a shared set of cultural values. However, this lack of legality for *Olas Jirga* has not undermined its legitimacy. Indeed, what sets the *Olas Jirga* apart from FCR *Jirga* are its timely decisions, limited costs, consistency with local notions of equity derived from customary laws, as well as promotion of community harmony and stability.

In the end, the present study lays bare that while FATA residents are able to access state and community-based dispute resolution processes to seek relief, it is due to compulsion in the former case, while in the latter it is the result of the greater legitimacy of the forum and its processes in the eyes of its adherents.

### Concept and legal framework of *Jirga* under FCR 1901

The reader of FCR cannot find the word *Jirga* in it; instead, the FCR metaphorically uses the term 'council of elders' for *Jirga*. The FCR defined the

council of elders as “a council of three or more persons convened according to the Pathan.....usage as the Deputy Commissioner may direct”.<sup>78</sup> However, the 1973's Constitution of Islamic Republic of Pakistan in article 247(6) has formally used the 'tribal *Jirga*' in the context of changing the status of FATA.<sup>79</sup>

In protected areas of FATA, civil and criminal cases are decided by the political administration vested with both judicial and executive powers. One of the ways of seeking redressal of grievances against a person or group of persons is to approach the Political Agents' courts in the concerned tribal agency.<sup>80</sup> An application in the court of Political Agent or Assistant Political Agent may be filed in order to initiate a case after fulfilling necessary inquiries and investigations, cognizance of the case is taken and a *Jirga* is constituted both for civil or criminal cases under the Frontier Crimes Regulation section 8 and section 11 respectively.<sup>81</sup>

A modified form of *Jirga* (*Sarkari*) was adopted for use by the PAs as a formal mechanism for dispensing justice and resolving conflicts in the FATA under the Frontier Crimes Regulation (FCR). The State plays a very distinct role in this case: either the aggrieved person goes to the PA, or the PA charges a person if he suspects a crime. In protected areas of FATA, political officers, vested with judicial powers, deal with civil and criminal cases. One of the ways of seeking redressal of the grievances against a person or group of persons is to approach the administrative courts in the concerned tribal agency.<sup>82</sup> The disputant parties under the FCR have the right to raise objections relating to the nominated *Jirga* members, but the political administration rarely considers any such objection in practice.<sup>83</sup> The case is then referred to the FCR *Jirga* for *Rai* (opinion) and verdict. Mostly, the *Jirga* opinion and verdict is reached as decision of the political officer. It is alleged that in most cases, *Jirga* members sign a blank paper and afterwards an opinion is written by the political administration according to their

own wishes in the form of a *Jirga* decision.<sup>84</sup>

The party that influences the political administration will easily get a favourable decision.<sup>85</sup> Under the FCR, the Political Agent or his assistant can refer and constitute the *Jirga* but in practice, these powers are mostly exercised by the Political Tehsildar (PT) and Naib Tehsildar (NT).<sup>86</sup> Implementation of the decisions of FCR *Jirga* is the responsibility of the political administration.

In non-protected areas, disputes are resolved through a traditional or *Olas* *Jirga* at the agency level. The concept or format of the *Olas* *Jirga* goes back to centuries-old traditions. Basically, the *Olas* *Jirga* is convoked by a *Jirgamaar* after the disputing parties agree that a *Jirga* be held to resolve their conflict. Usually, the weaker of the two disputing parties goes to the *Jirgamaar*, who is an elder and a wise person, to explain the complaint. The *Jirgamaar* then goes to the other party to gain their agreement to be a party to a *Jirga*. If there is agreement, both parties agree to submit to the consensus of the elders who will listen to the dispute and then decide the resolution. Note that the cultural goal is to resolve the dispute or conflict so that the parties, families, tribes etc. will return to a harmonious relationship. Conflict is as dysfunctional to tribal life as it is in non-tribal societies. Hence, culturally, the traditional '*Olas* *Jirga*' is still a preferred form of justice/dispute resolution mechanism in many *Pakhtun*-dominated areas of Pakistan.<sup>87</sup>

Local mediators first intervene to achieve a truce (*Teega*) between parties in a criminal case, or to obtain a guarantee (*Muchalga*) in cash or kind for civil disputes. Thereafter, parties must arrive at a consensus concerning the mode of settlement arbitration, *Riwaj* (customary law) or *Sharia'* (Islamic law). Once the mode of settlement is agreed upon, mediators arrange for the selection of a *Jirga* with the consent of the parties to the dispute. Implementation of *Jirga* decisions in non-protected areas is the responsibility of the



tribe.<sup>88</sup> The *Jirga* may mete out punishment to an offender, imposing a heavy fine. Occasionally, more serious measures may be taken such as expelling an individual or a family from the area, and confiscating, destroying or setting fire to homes and property. In such cases, the entire tribe bands together as a *Lakhkar* (army) to enforce the decision. If the political authorities are a party to the truce, the violation may result in addition to their displeasure, as it entitles the administration to suspend or repeal any of the economic benefits enjoyed by the offending party.<sup>89</sup>

*Pakhtun* tribes in FATA generally support the *Jirga* as an efficient source of dispensing justice. At the same time, they are of the opinion that the involvement of political administration has put its status and future at stake because the political administration hand picks the *Jirga* members.<sup>90</sup> Decisions under the FCR *Jirga* often favour those with political or economic clout at the expense of the vulnerable and weak party. Due to this situation, FCR *Jirga* has lost public credibility.

On the other hand, the survey results and views of the key informants support *Olasi Jirga* as the credible and most trusted institution providing cheap and speedy justice to the local people in FATA. The respondents of the focus-group discussions, views of the key informants and results of the survey admit the fact that money and power have also influenced the *Olasi Jirga*.<sup>91</sup>

The dynamics of tribal society have undergone tremendous changes over the last few decades; money has become the status symbol and the tribal elders could not save themselves from its influence. However, they still prefer the *Jirga* system over the formal judicial system in tribal areas (and in other parts of the country) since the latter has drastically failed to deliver justice. Moreover, common people in tribal areas are economically disadvantaged, and cannot afford the litigation expenses incurred during the formal judicial processes.

## Limitations of FCR *Jirga*

This section discusses areas of concerns of *Jirga* under FCR. These concerns pertain to FCR regulations, fundamental guarantees in the context of Pakistani Constitution of 1973 and Islamic law, equal protection guaranteed to the people of Pakistan, due process of law, absolute powers of the political agent, and finally international law and FCR.

## Regulation of Criminal Justice under FCR 1901

In a 1991 judgement, Justice Amir-ul-Mulk Mengal of the Balochistan High Court described the original purpose of the FCR:<sup>92</sup>

“As known to us all, the legal system imposed by the British [.....] was mainly intended [...] to rule the general masses through a class of loyal notables from amongst the area thus ostensibly depicting a policy of non-interference in their centuries-old system of *Riwaj*; although in fact the object was to keep them away from a universally recognised judicial system and instead give them a sugar-coated legal device.”<sup>93</sup>

Pakistan inherited FCR from the British Raj as an instrument of administration of criminal justice in FATA, and has retained it until this day. With the passage of time, it became a 'black law' or 'Draconian law' for the people of FATA due to its harsh provisions. The FCR is not actually designed to institutionalise the traditional *Jirga* system, nor to make adjudication its focus.<sup>94</sup> Article 11 of the FCR empowers the Political Agent to select, convene and announce the final verdict, and sentence those found guilty, making him virtually absolute powerful to administer criminal justice in FATA. The concentration of powers in the hands of Deputy Commissioner (Political Agent) reflects the importance given to local administrators. Thus, while the FCR provides for overall maximum punishment of fourteen years imprisonment and individual limits under several measures, it leaves the door open to arbitrary action and abuse.<sup>95</sup> Imposing collective penalties on communities accessory to crimes, imposing

collective fines on communities where murder or culpable homicide is committed or attempted, recovering fines in default and direct forfeiture of public emoluments are the powers the political agent uses to regulate the life of the people in FATA and control them.<sup>96</sup> Importantly, a political agent who has acted without regard to local justice and also without due process undermines the credibility of justice system in FATA. In sum, the FCR is fundamentally not designed to deliver justice it is essentially about controlling the people of FATA.

### **FCR and Constitutional guarantees**

The FCR, which does not provide legal guarantees for human rights in FATA and indeed effectively codifies authority for a range of human rights violations, is part of a tapestry of an antiquated and draconian system of limited government with little or no recognition of or respect for human rights, the rule of law, due process, political representation, or democratic institutions.<sup>97</sup> Nevertheless, based on the FCR, the Political Agent is a judge in addition to his other executive functions. The FCR also provides for a system of collective territorial responsibility and collective punishment. Though Part II of the Constitution of Pakistan of 1973 lists a range of “fundamental rights”, Part XII explicitly excludes most or all of FATA from the legal, judicial and parliamentary system of Pakistan: Article 247(3) of the Constitution explicitly excludes FATA from all acts of the Pakistani parliament and the Supreme Court,<sup>98</sup> respectively. A particularly problematic aspect of the FCR is its explicit authorisation for the PA to mete out collective penalties against an entire community for alleged infractions by any of its members. Chapter IV of the FCR allows the PA to “blockade ... hostile or unfriendly tribe[s]”; and to assess a fine on “communities accessory to crime”. In exercise of his judicial powers under Chapter IV and V of the FCR, the PA can order the arrest without warrant in cases under Section 498, Indian Penal Code and can detain individuals or entire communities be detained without trial for

years at a time, seize their property, and impose fines, all without any requirement of ordinary criminal trial.<sup>99</sup>

The US State Department's Human Rights Report confirms that in FATA and the less-governed areas of the Provincially Administered Tribal Areas (PATA), security forces may, under the FCR, restrict the activities of terrorism suspects, seize their assets for up to 48 hours, and detain them for as long as one year without charges.<sup>100</sup> The report further states that in many cases these prisoners were held incommunicado and were not allowed prompt access to a lawyer of their choice; oftentimes, family members were barred from prompt access to detainees.<sup>101</sup> The governance system established by the FCR also violates Pakistan's international obligations assumed under ratified human rights treaties and under customary international human rights law. The judicial system provided by FCR is thus severely flawed from a human rights perspective.<sup>102</sup>

Informal justice systems that lack the legal protections of institutionalised justice systems have continued, especially in rural areas, and sometimes resulted in human rights violations. In the FATA region, ensuring social justice is quite a daunting task. The *Jirga* is a purely (but *Nanawati* includes at least one woman) male institution and neither sanctions women as member, nor as a witness or a complainant. Women may access *Jirga* only through a male relative. In case of grievances against her male relatives, no recourse whatsoever is available. If a woman approaches (which is rarely the case) a *Jirga*, it brushes her off, saying that, 'domestic issues need to be resolved within the family'. (In Afghanistan, women prefer *Jirga* over the state courts; See: *Smith, D. (2009) Community-based dispute resolution Processes in Nangarhar Province, Afghanistan Research and Evaluation Unit: Kabul: AREU.*)

Furthermore, under international Human Rights Law, Pakistan is obligated to ensure the

enjoyment of rights to everyone living in its jurisdiction. The FCR *Jirga* in the FATA infringes these rights. In order to fulfill its obligations to all its citizens, the Government of Pakistan must ensure that if FCR *Jirga* system is allowed to function as they do today, it must 'play by the game', i.e. comply with the human rights standards enshrined in the Constitution of Pakistan and international human rights treaties which Pakistan has ratified.

### Human and women rights concerns

Many voices in FATA, particularly among the "common" people, do not accept this system. For example, Section 8 and 11 of FCR authorising the political administration to refer cases to the council of elders (i.e. a non representative hand picked *Jirga*) were challenged before the higher judiciary in Toti Khan Vs District Magistrate Ziarat and Sibi. The chief justice A. Rehman accepting the petition declared these two articles to be discriminatory.

In another similar case, Khan Abdul Akbar Khan Vs Deputy Commissioner Peshawar, the FCR's provisions were challenged on the principles of article 5 of the then Constitution of 1956 and justice Kiyani ruled them out as "discrimination between a Negro and a Whiteman." These efforts would have brought about positive results, but the 1958 martial law abrogated the Constitution, which brought an end to the law reforms process and enabled the FCR to reign supreme.<sup>103</sup>

Sharia't courts were established in 1979; the FCR was challenged before the Sharia't bench of the Baluchistan High Court under Maulvi Mohammad Ishaq Khosti Vs government of Baluchistan case. The bench declared that the FCR runs afoul of the basic principles of Islam. However, the decision was applicable to PATA only. Despite these categorical judgments by the superior judiciary against the FCR, it still remains a decisive law in the administration of justice for a population of approximately 7 million. The net result of this whole discussion is that the FCR, the

official *Jirgas*, the immense power of the PA, lack of political will and the supremacy of vested interest have viciously influenced the human rights question in tribal areas that may take even years to be remedied .

It will be interesting to mention some of the observations of the committees' formed by the government to examine the systems under the FCR.

### Women rights concerns

The reliance on *Jirgas* under the FCR in practice discriminates against women by providing them no access to the tribal councils that in the case of many disputes may decide their fate and whose procedures include few or no rights or protections for those affected.<sup>104</sup> Although decisions are considered objective (as the decision maker is nominated by both sides) and are based on tradition and religion, critics believe that what is acceptable to society sometimes violates women's and minorities' human rights.<sup>105</sup>

A *Pakhtun* woman does have an identity: a name, is someone's daughter, mother and wife; and some young tribal women are doctors, teachers, etc. Moreover, a woman is seen as the guardian of tribal/familial honour among most *Pakhtuns*. Thus, as a woman can easily bring shame to the male-dominated extended family/tribe, she does exercise a significant degree of hidden control over them. However, both the government and the civil society have been consistently ignoring women's voices in the ongoing debate on reform in FATA.<sup>106</sup> Various reform committees, for instance, the FATA Reform Committee, convened by Prof. Mumtaz Bangash in 2000, and the Committee for Amendment in FCR, constituted by the federal government, in 2005, did not include a single female member. Representatives from FATA in the National Assembly and Senate have always been men; no woman has ever contested or been elected to these seats.<sup>107</sup>

Notions, institutions and customs of *Pakhtunwali* have been interpreted and practiced to exercise, justify and reinforce patriarchal authority. *Pakhtunwali*, with an admixture of Islam, has throughout the ages been used to establish superiority of men over women in the *Pakhtun*-dominated areas generally and in FATA particularly.<sup>108</sup> *Nang/Ghairat* (Individual and family honour), the most fundamental notions of *Pakhtunwali*, revolve around women and land.<sup>109</sup> Man claims to have the right to control a woman's body, thoughts and emotions.<sup>110</sup> Any real or imagined violation of the boundaries, drawn by man, grants him the right to even kill her with impunity in the name of honour.<sup>111</sup>

Divorces are also very rare if not non-existent in FATA. Women are told at the time of wedding to bear everything in silence, as there exists no recourse for anybody not even the parents, to turn to in case of dispute with the husband or in-laws. If there is dislike and conflict between wife and husband, the husband will marry another girl if he is rich and keep his first wife as well.<sup>112</sup>

In addition to blood feuds, honour related disputes are also settled giving/taking *Swara*. A woman given as *Swara* is treated very badly by her in-laws;<sup>113</sup> however, male members of the society deny this fact and argue that *Swara* may prevent bloodshed and enmity.<sup>114</sup> However, the fact remains that an innocent girl has to pay the price for the sins of her male relatives.

Women activists severely criticised the custom of *Ghag* or *Jagh* (declaring claim by a man over a woman) for marriage.<sup>115</sup> Where males (particularly paternal cousins) have a birth right to marry female cousins, even far better proposals for girls cannot be accepted regardless of any mental or physical disability of males. This implies that if somebody has an advanced claim (*Ghag*) over a girl and if anyone else is wishing to marry her, he will have to deal with the claim. Women rights activists struggle to end the special status of FATA and suggest to bring FATA

into the mainstream of the country. They reject the notion that *Jirga* has been delivering quick and cost effective justice. *Jirga* makes a decision after several meetings and both parties have to arrange grand feasts, at times, gifts are offered to the *Jirga* members also, costing much, to get a judgment.

FCR *Jirga* seems to deliver very little justice specifically in women-related issues. Victims of domestic violence find no recourse. There is nothing to protect these women. The traditional village elders do not intervene because violence by husbands or in-laws against women is considered to be a family affair. There is no court or traditional forum where they can lodge a complaint or seek assistance. There is no inbuilt mechanism in tribal society or customary law to redress such grievances. Tribal women prefer the extension of Pakistani Courts to replace *Jirga*; however, they are concerned that men will never accept Pakistani law and courts, since, if a woman commits a crime, or brings a bad name, men prefer to kill her inside the four walls. They will never let her go to prison. In tribal culture, it is not even thinkable. In proposed reforms, no where has there been a proposal to include women in *Jirga*. Throughout the reform process, involvement of women members has never been taken into account.

There seems a dire need to articulate issues concerning tribal women such as lack of health, education and employment opportunities, restrictions on mobility, bride price, domestic violence, denial of share in inheritance, representation in parliament and *Jirga* as well as consent marriage.

### **The Right to Judicial Autonomy / Independence**

Judicial autonomy and judicial independence - terms that are used interchangeably is a slippery concept difficult to define let alone to measure, and lies at the crossroads of different perspectives.<sup>116</sup> For the sake of clarity, judicial autonomy here means separation of judiciary

from the other powers of the state. Judicial independence is the concept that decisions of the judiciary should be impartial and not subject to influence from the other branches of government or from private or political interests. In a broader sense, the concept of independence of the judiciary is not limited to the extent of disposal of cases by the judges and discharge of judicial functions; instead, it emphasises institutional independence administrative and financial autonomy and the right to a fair and expeditious trial.

Pakistan's Constitutional fabric has promised the independence of the judiciary since its establishment, something that is evident from the resolution (popularly known as the Objectives Resolution) moved by the then Prime Minister Liaquat Ali Khan before the National Assembly. The resolution laid down the "Aims and Objects of the new Proposed Constitution" and guaranteed that "the independence of the judiciary shall be fully secured".<sup>117</sup> Therefore, the Constitution explicitly laid down that the judiciary should be separated from the executive.<sup>118</sup> The Pakistani judiciary also underlined that if the judiciary of a country is stripped of its powers, the country would cease to exist as a democratic nation.<sup>119</sup>

Pakistan has committed itself to the international community for independence of the judiciary and respect for the rule of law through the ratification of international treaties. For example, the ILO Convention No. 107 adopted in 1957 was the first comprehensive international instrument relating to the protection and integration of Indigenous and Other Tribes and Semi-Tribal Populations in Independent Countries and was ratified by Pakistan in 1960. The Convention No. 107 used patronising language, referring in its Article 1 to some populations as "less advanced" and promoting an assimilationist approach. Although this convention remained under serious criticism<sup>120</sup> and was considered ineffective,<sup>121</sup> it offers some safeguards relevant here for the

purpose of the discussion.

The Convention states in article 1 that "Members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at less advanced stage than the stage reached by other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations".<sup>122</sup> Furthermore, article 8 of the Convention states that:

To the extent consistent with the interests of the national community and with the national legal system:

(a) The methods of social control practiced by the populations concerned shall be used as far as possible for dealing with crimes or offences committed by members of these populations;

(b) Where use of such methods of social control is not feasible, the customs of these populations in regard to penal matters shall be born in mind by the authorities and courts dealing with such cases.<sup>123</sup>

The ordinary meaning, context and rationale of citing these articles is that Pakistan is under obligation to give judicial autonomy to tribal judicial institutions to a certain degree. However this concept of judicial autonomy and/or independence is under transition process in other parts of Pakistan but is denied to the people of FATA. As under the FCR both executive and judicial powers are delegated to a single authority i.e. the political administration. This statutory legal cover gave licence to the executive to procure the intended results from the *Jirga*, which resulted in making the *Jirga* system corrupt, leading to a sense of alienation of the FATA people from the rest of the country.

### **FCR *Jirga* and due process of Law**

A deeply rooted principle in legal jurisprudence is the concept of the due process of law, traditionally divided into the two categories of

substantive due process and procedural due process. In general, substantive due process prohibits the government from infringing fundamental Constitutional liberties. By contrast, procedural due process refers to the procedural limitations placed on the manner in which a law is administered, applied, or enforced. Thus, procedural due process prohibits the government from arbitrarily depriving individuals of legally protected interests without first giving them notice and the opportunity to be heard. Hence, due process of the law is the right to be treated fairly and have a defending chance when facing legal action.

The concept of due process of law has been expressly, albeit recently incorporated into the Constitution of Pakistan by way of the 18<sup>th</sup> Amendment introducing article 10A: 'a person shall be entitled to a fair trial and due process'.<sup>124</sup> However, the protection of life and liberty was guaranteed by virtue of articles 4 and 9 of the Constitution before the incorporation of article 10A. These articles enunciate what the Supreme Court of Pakistan describes as being "as comprehensive as the American 'due process of law' clause in a new garb."<sup>125</sup> Article 4 states that:

(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular:

no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.<sup>126</sup>

Though Article 9 is narrow in scope, it strengthens Article 4:

9. No person shall be deprived of life or liberty save in accordance with law.<sup>127</sup>

In the case of Manzoor Elahi, the word 'Law' was interpreted by Anwar ul Haq as:

By law is most clearly intended the general law; a

law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society. Everything which may pass under the form of an enactment, is not, therefore, to be considered as law.<sup>128</sup>

So should the mechanism offered by FCR to decide the cases/disputes be regarded as 'law'? This question was first considered by the then Justice Cornelius in the administrative case of Samundar Vs. The Crown even before the introduction of the fundamental rights concept in Pakistan. Since then, whenever the issue of due process arises, the interpretation of Cornelius is cited, given its very detailed reasoning. Outlining the controversial aspects of the Regulations (FCR), Cornelius J laid down that if Article 11 is regarded as a mode of 'justice', the mechanism it creates is not in accordance with the law of procedure and of evidence.<sup>129</sup>

"In the case of *Jirgas*, no procedure of any kind is laid down. The [only] requirement is there should be such inquiry 'as may be necessary' and that the accused person should be heard. [...] [It] seems clear enough that the intention of the Regulation also is that none of the recognised rules of evidence should be binding upon the *Jirga*. The main principles which underlie the law of evidence are exclusion of irrelevant matter and of hearsay, coupled with insistence upon the production of the best evidence, and upon a strict application of these rules depends the safe administration of justice. [...] *Jirgas* sometimes declare that they have held 'open and secret inquiries', which suggests investigations of a nature entirely different from those which are permissible in a Court of Law. [...]

It is likely that some, and it may be a

considerable portion, of the evidence which is satisfied the *Jirga* received *ex-parte*, and thus without cross-examination. [...] Moreover, information gathered by putting questions in open assembly can never have the quality of judicial evidence, nor can information obtained by secret investigation be so regarded. *Jirgas* may also take 'official notice' of certain matters [...]. For an administrative agency, the taking of 'official notice' may be perfectly in order, but it is highly prejudicial to the dispensation of justice.

The process of decision provided under the Regulation is also foreign to justice as administered by the Courts. The hearing is before a *Jirga* but the power of decision is vested in the Deputy Commissioner, who does not see or hear the accused or any of the witnesses, and is not empowered by law to do so, even if he should so desire. In these circumstances, the *Jirga* is merely an advisory body, and since the Deputy Commissioner, does not have the case presented before him through counsel, it is obvious that his decision is wholly vicarious. Decisions of this nature are common enough on the administrative side, but they are obnoxious to all recognised modern principles governing the dispensation of justice. [...] The mere fact that a revision is permitted does not remedy the situation in this respect.

[Finally,] to allow an appeal would be plainly contrary to the intention of the authority which enacted the Frontier Crimes Regulation, 1901 which was to leave the Deputy Commissioner and the Commissioner practically unfettered in relation to their decisions.<sup>130</sup>

The Supreme Court in the case of Manzoor Elahi

more clearly analysed the mechanism of *Jirga* by remarking in the person of Justice Salahuddin that, "as there were no rules of procedure or evidence, no possibility of being represented by counsel and denial of any right of appeal to the superior judiciary, the FCR constituted 'a denial of fundamental fairness shocking to universal sense of justice'".<sup>131</sup> Anwar ul Haq opined that "a trial under the Frontier Crimes Regulation cannot be regarded as a trial in accordance with law, the term "law" being understood in the sense of a valid law in terms of the Constitution as well as accepted forms of legal process prevailing in Pakistan."<sup>132</sup>

The FCR was also weighed against '*Sharia*'t in the case of Muhammad Ishaque Vs. Government of Balochistan, where it was declared contrary to the spirit of due process as emphasised by Islam:

"Under Islamic laws every case is to be tried and decided by the same Court; so that the Court should see for itself whether or not the evidence adduced by the parties inspired confidence if so, to what extent. Again for testing the veracity of statements of the witnesses examined by him, the Presiding Officer was bound to follow glaring and undisputed principles of Islamic Law, such as cross-examination of a witness, Court questions watching of witness demeanour and application of any other proper method to test witness's credibility [...] There is also no rule of corroboration of the statements of witnesses upon which Islam lays much stress [...]. [The] Holy Qur'an has also expressly barred use of hearsay evidence [...]. In the light of above it is apparent that the manner in which trial is held under FCR and in particular so much of it which relates to the collection of evidence and its use is patently against the tenets of Islam".<sup>133</sup>

## Earlier reforms of FCR

### North-West Frontier Committee

In 1921, a six-member-committee of legislatures was set up to examine the civil and judicial working of the Frontier Crimes Regulation in NWFP (now Khyber Pakhtunkhwa). The committee included five non-official Indians legislature and three English civilian members of Punjab commission. The five Indians came from Utter Pradesh, Madras, Bombay, Punjab and the NWFP respectively.

In the discussion, the judicial system of NWFP system was criticised due to the excessive use of certain provisions of FCR (as opposed to the judicial system of other parts of the country). But the committee, instead of recommending some appropriate amendments in the context of the legal system, recognised the value of FCR by saying:

“To repeal its civil sections would be to inflict grave hardship on the Pathans, who rely on them for a cheap and expeditious settlement of their disputes by a *Jirga*.... To repeal the criminal sections would be to undermine the forces of law and order and to deprive the Hindus, in particular, of one of their greater safeguards, in a land where passions are hot, blood feuds are endemic, legal evidence is exceedingly difficult to obtain, and refuge from the arm of the law is close to hand across the border. To repeal the trans-frontier sections would be to paralyze our whole system of trans-frontier control.”<sup>134</sup>

### Justice Naimatullah Committee

A nine member committee headed by Mr. Justice Naimatullah of the Allahabad High Court examined the FCR again in 1931. The committee called for the elimination of the dual justice system that was being practiced in the then NWFP. The committee had serious concerns about the Deputy Commissioner's powers to exclude the jurisdiction of the ordinary courts. However, the committee recommended that if the retention of the tribunal was necessary for

the trial of offences, the session judge should preside the tribunal and if s/he needs help (for in-depth understanding of the traditions of tribals!), s/he should be assisted by jurors from a carefully selected list prepared by the government rather than by a council of elders. The parties should be allowed representation through legal practitioners. The committee also recommended that only a limited and specified nature of cases should be referred to the tribunal and the rest of the cases should be processed through the ordinary courts system. However, the government did not show any willingness to accept the recommendations of the committee.<sup>135</sup>

### Sheikh Abdul Hamid Commission

In 1958, the government of the newly independent country of Pakistan nominated a commission under the supervision of Mr. Justice Sheikh Abdul Hamid of the West Pakistan High Court. The commission was tasked to examine the judicial set up under the then FCR in the Quetta and Kalat divisions and to suggest appropriate changes in order to bring it into conformity with the Constitution and the rest of the parts of the country without failing the local requirements. The commission recommended “the withdrawal of the Frontier Crimes Regulation, 1901, in the two divisions, and the abolition of special areas (now Tribal Areas) but if for any reason, it was found necessary to retain these special areas, then the jurisdiction of the High Court and the Supreme Court should be extended to these areas”. But like the recommendations of earlier committees formed by the British rulers, the government did not pay heed.

### The Law Reform Commission administered by Mr. Justice S.A. Rahman

The Law Reform Commission administered by Mr. Justice S.A. Rahman of the Supreme Court of Pakistan in 1958 was formed to judge the possibility of replacing the special laws (of FCR) with a different formal legal system. The



committee suggested the abolition of special laws, but due to the existing peculiar conditions of certain parts of the province, these laws continued to exist. Some amendments were proposed in the *Jirga* System but remained without effect.<sup>136</sup>

### **Justice Hamood-ur-Rehman Commission**

Under the leadership of Mr. Justice Hamood-ur-Rehman, Judge of Supreme Court and the then chief justice of Pakistan (1967-70), another commission was formed to examine the judicial process under this special law of FCR; it gave the following observation:

“They have neither expedited the trial of criminal cases nor have they proved a deterrent in the matter of serious crime. They have not inspired public confidence and it can hardly be said that they have advanced the cause of substantial justice. On the contrary, they are open to serious objections, on principle, as being in violation of the doctrine of equality before law, and constituting the usurpation of the judicial power by the executive at all levels. Apart from this, there are strong feeling and intrinsic hatred towards the FCR, 1901, which had been applied to these areas, with ambivalent intentions of taming the tribal people.<sup>137</sup> They had the effect of supplanting the regular procedures of ordinary court and thus violation the basic human rights.<sup>138</sup>”

### **FCR Reforms Committees (2005-2009)**

In 2005, two committees were constituted relating to the FCR:

1) The Senate of Pakistan's Standing Committee on Human Rights constituted a sub-committee on the FCR which was comprised of Senator Farhatullah Baber, Senator Hamidullah and Senator Dr. Saad. In August 2005, the sub-committee submitted their final report along with recommendations to the main committee in which amendments were proposed in the

FCR.<sup>139</sup> The subcommittee's report has not been made public yet.

2) The then Governor of KP also constituted a review committee under the Chairmanship of former Justice Supreme Court, Mian Mohammad Ajmal, which submitted its report in 2006. The committee was tasked to recommend necessary amendments and modifications in certain clauses of the law. In a workshop organised by CAMP in 2009, Retired Mian Ajmal said that the Committee has proposed many changes including a change of the law's name. Besides a decrease in the powers of the Political Agent proposed by the committee, it was suggested that judicial powers should be “divided between the *Jirga* and FATA Tribunal” that will follow the pattern of Sessions Courts and will be formed of members eligible to preside High Courts or Sharia't Courts.

On 8 April 2010, the passing of the 18<sup>th</sup> Constitutional Amendment was made public, but the legislators did not amend Article 247 which would have allowed parliamentarians to legislate and the Courts of Pakistan to exercise justice for the people of FATA.

Chapter 4

# Research Findings and Analysis



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# Research Findings and Analysis

### Introduction

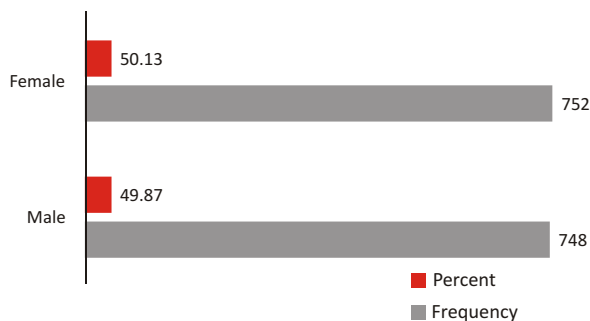
The following section gives demographic details of the 1,500 male and female respondents from FATA, aged 18 and above.

### TARGET DEMOGRAPHICS

#### Gender of the respondents

The survey was planned to incorporate men and women's perceptions on different aspects of *Jirga* affecting the life of the people of FATA. The following statistics show that the survey interviews included 49.87% men and 50.13% women.

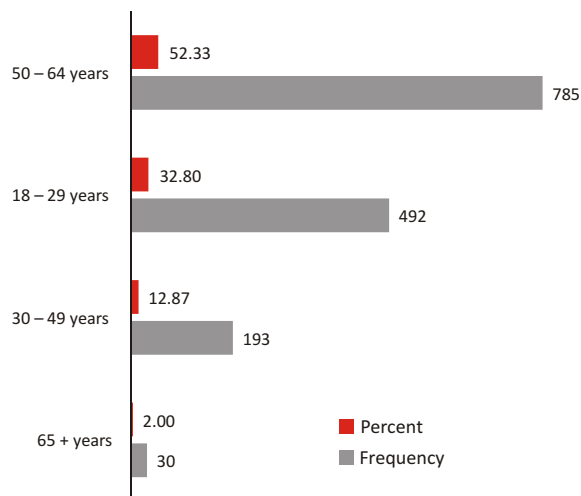
Figure 02. Gender of respondents



#### Age group

The survey aimed to interview respondents between 18 years of age and above. The data

Figure 03. Age group of respondents



shows that the survey mostly interviewed over-50-year-old respondents, compared with the youth and middle-aged respondents.

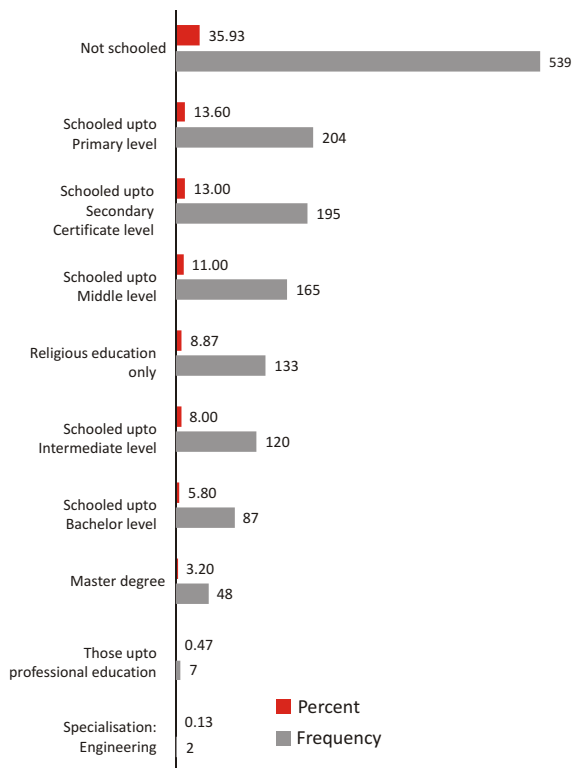
32.80% of the respondents belonged to the age group 18-29-year-olds, while 12.87% were from

the age group of 30-49 years. Age group 50 and above made up the majority of the interviewees, as this age group is the most involved in *Jirga* proceedings. The intention was to interview older people from the tribal society, under Kish Grid method, in order to understand their perception on the *Jirga* process. Another reason could be the timing of the survey, which occurred when a majority of elders were present their houses/*Hujras*. In tribal *Pakhtun* society, the elders are respected and obeyed the most; they also run the family affairs and control the purse strings. The survey also interviewed 2.00% of respondents belonging to the 65-and-above-years bracket.

### Education

The following figure 04 shows statistics for the educational level of the respondents. The survey results show that nearly 36.00% of the respondents had not attended school while only 13.60% have primary level education. The figure

Figure 04. Education level of respondents



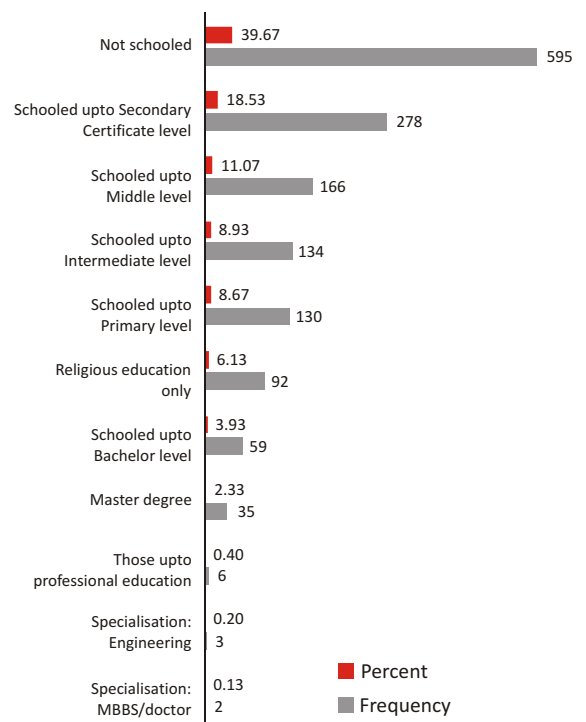
shows that only 11.00% of the respondents received Middle level schooling, while 13.60% of the respondents have Secondary Certificate level education. 8.87% of the respondents received religious education. There are other categories explained in the figure 04.

If we analyse the entire data sets, we can conclude that 55.20% of the sample is literate, even if we exclude the 'religious education only'-category. This is higher than the Census Report data of 1998 for FATA, where only 17.42% in FATA were literate, including 29.15% male and 3.00% female. This could be because the respondents gave incorrect information, and because the Kish Grid method for selection of the respondents was used without checking or verifying the authenticity of the responses with other methods or tools.

### Education of the head of the family

If the respondent was not the head of the family himself/herself, they were asked about the education level of the head of the family. (Note:

Figure 05. Education level of head of the family

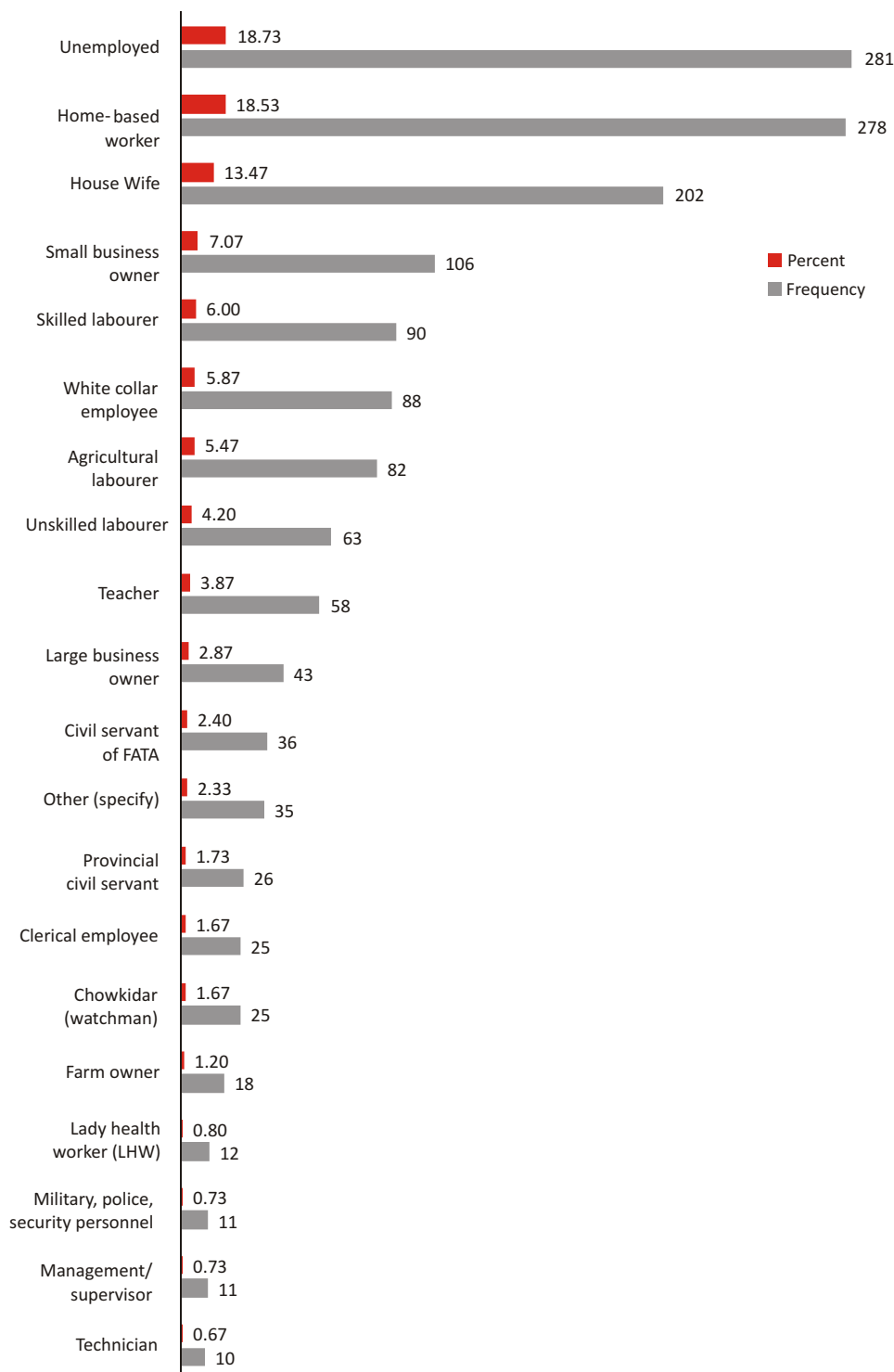


there are hardly any female heads of families in FATA). In general, the survey has sampled more educated people than the general population for the given age group.

## Occupation

The occupation of male and female respondents shows that the majority of respondents

Figure 06. Occupation of respondents

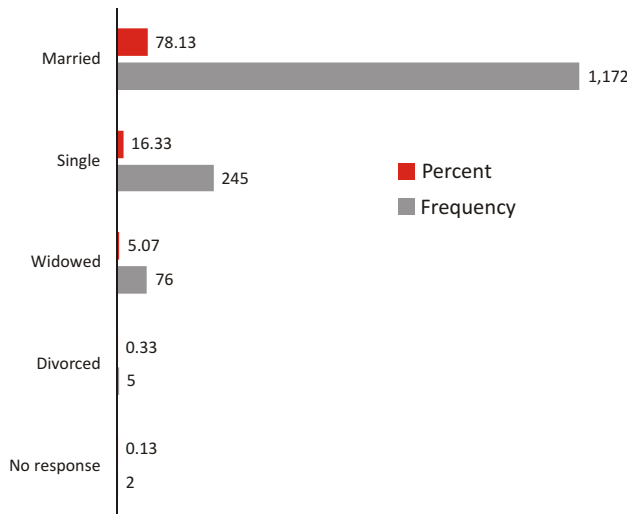


identified themselves as 'unemployed' (18.73%), followed by 'home based worker' (18.53%) and 'housewife' at 13.47%. If we compare figure 06 with the education level of the respondents, it shows that most of the respondents were educated or otherwise skilled.

### Marital status

Early marriages are common in the tribal areas. Over three quarters of respondents were found to be married, as opposed to just 16.33% who were single. The practice of divorce is very rare and considered a sin in FATA society, a fact that can also be inferred from the data results. The number of widows is also very low.

Figure 07. Marital status of respondents

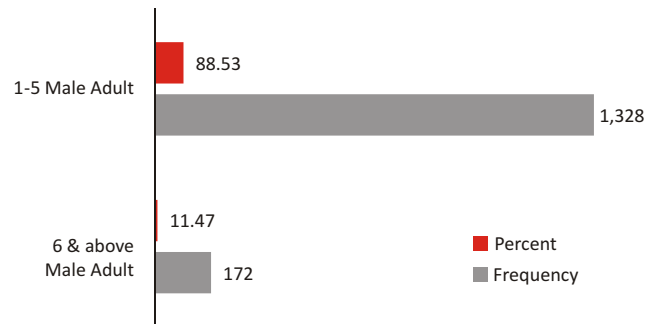


### Family size of a household

Because of the extended family structure in FATA, and the custom of living in compounds, the concept of household in FATA includes the head of the family, his sons (married and unmarried) and daughters (un-married), daughters in law, and grand children. This makes for a very large-sized household.

We have to assume that when asked the size of the family, the respondents referred to the number of people in the compound.

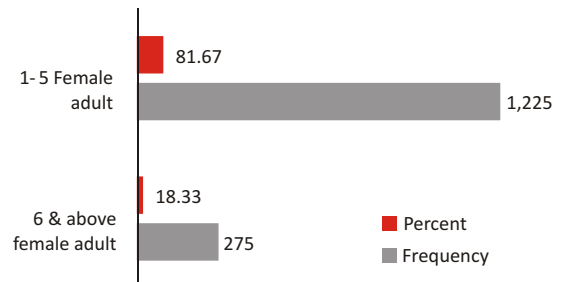
Figure 08. Family size of a household



### How many people live in your household/compound?

To know the size of female population in each household, the respondents were subsequently asked this question. Figure 09 shows that 81.67%

Figure 09. People living in a household/compound



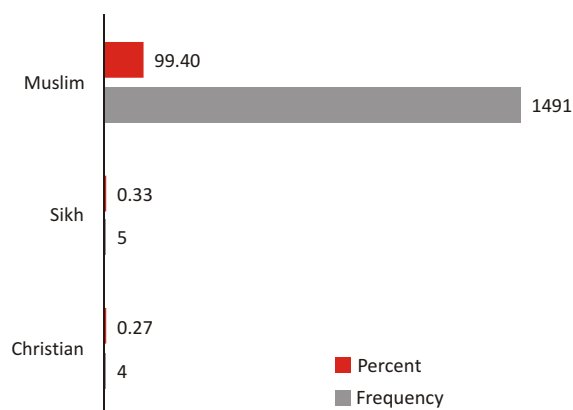
of the respondents replied that they have 1-5 adult female members in their family, while 88.53% respondents confirmed that they have 1-5 adults male in their household. Looking at both figures (for male and female), as opposed to the national men and women ratio, the survey reflects that there are more male members of a household than women members.

### Religion

FATA is a predominantly Muslim society with very few minorities. In addition to Muslims, there are Christians, Hindus, and Sikhs. Although very few in number, they may be even fewer as many became displaced during the continuing crisis.

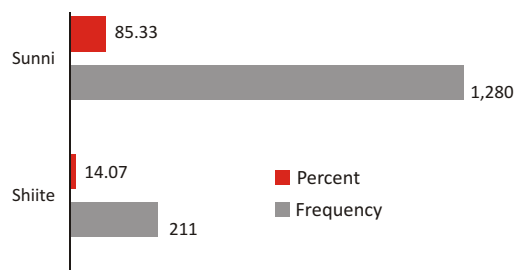
### Shia-Sunni proportion in FATA

Figure 10. Religion of respondents



Respondents who identified themselves as Muslim were subsequently asked which sect they belonged to. As per the data sets, the ratio for Shia and Sunni is 14.07% and 85.33% respectively. Shia and Sunni populations live in Kurram and Orakzai Agencies, while the rest of FATA is Sunni-dominated. Furthermore, CAMP has been undertaking perception surveys in FATA for 'Understanding FATA' since 2007 and has seen a similar ratio of Shia and Sunni respondents.<sup>140</sup>

Figure 11. Shia Sunni Proportionate in FATA



## Sources of information

The survey tried to explore how the people of FATA access and receive information. The survey examined readership of newspapers, listenership of radio, and viewership of television. The survey also assessed which sources of information the people of FATA use and rely upon.

Figure 12 is an analysis of the survey findings on the sources of information of the respondents.

## Respondents' Sources of information

With the help of a multiple response question, the survey documented male and female FATA respondents' sources of, or access to, information. Because of the multiple responses, figure 12 shows the popularity of the various media. They are not mutually exclusive responses.

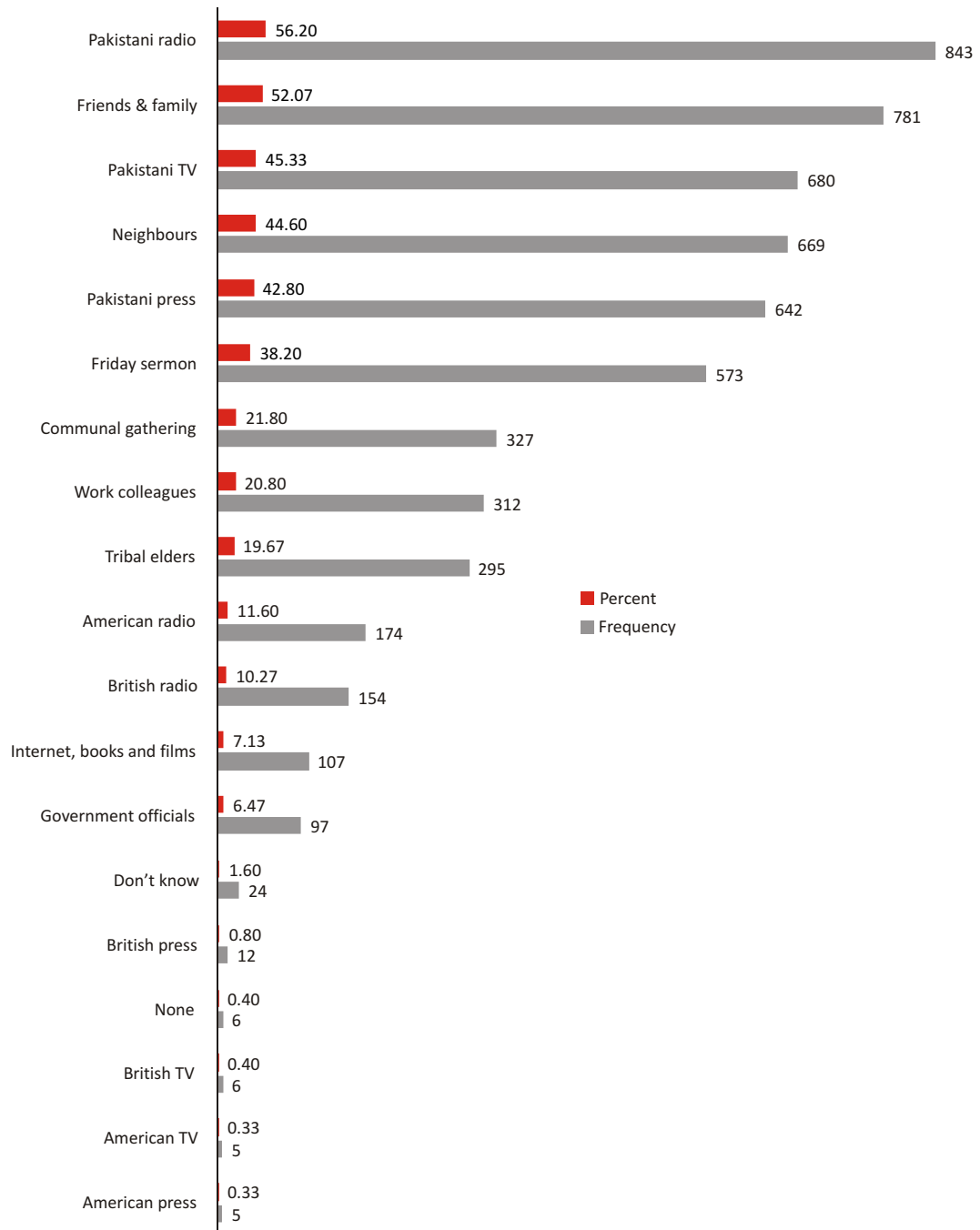
Generally, more people of FATA have access to Pakistan radio, friends and family, neighbours, press and TV as compared to foreign and private media channels.

In the survey, some 56.20% respondents have access to Pakistani radio. Because the people of FATA are faced with internal and external conflicts, the increase in radio listenership could be explained by the fact that they are keen to know about the ongoing militancy as well as national and international news on the topic. Another factor could be that a growing number of people in FATA have access to cell phones with built-in radios.

Friends and family members are another source of information for the people of FATA. 52.07% respondents, just a little lower than the radio listenership, have access to friends and family members' information. The main reason could be the forced migration of hundreds of thousands of people from FATA to other adjacent districts/areas of Khyber Pakhtunkhwa (KP), where some of them were hosted by the local communities and relatives, while others took shelter in the IDP camps where they developed closer ties with friends, relatives and neighbours.

Pakistani TV is another important source of information for the people of FATA and as the survey shows, a large number of respondents have access to it. The reason for Pakistan TV viewership being so high could be the absence of cable operators in FATA. Some well-to-do families may have access to satellite TV; however, the majority still only has access to Pakistani TV channels.

Figure 12. Respondents' Sources of Information



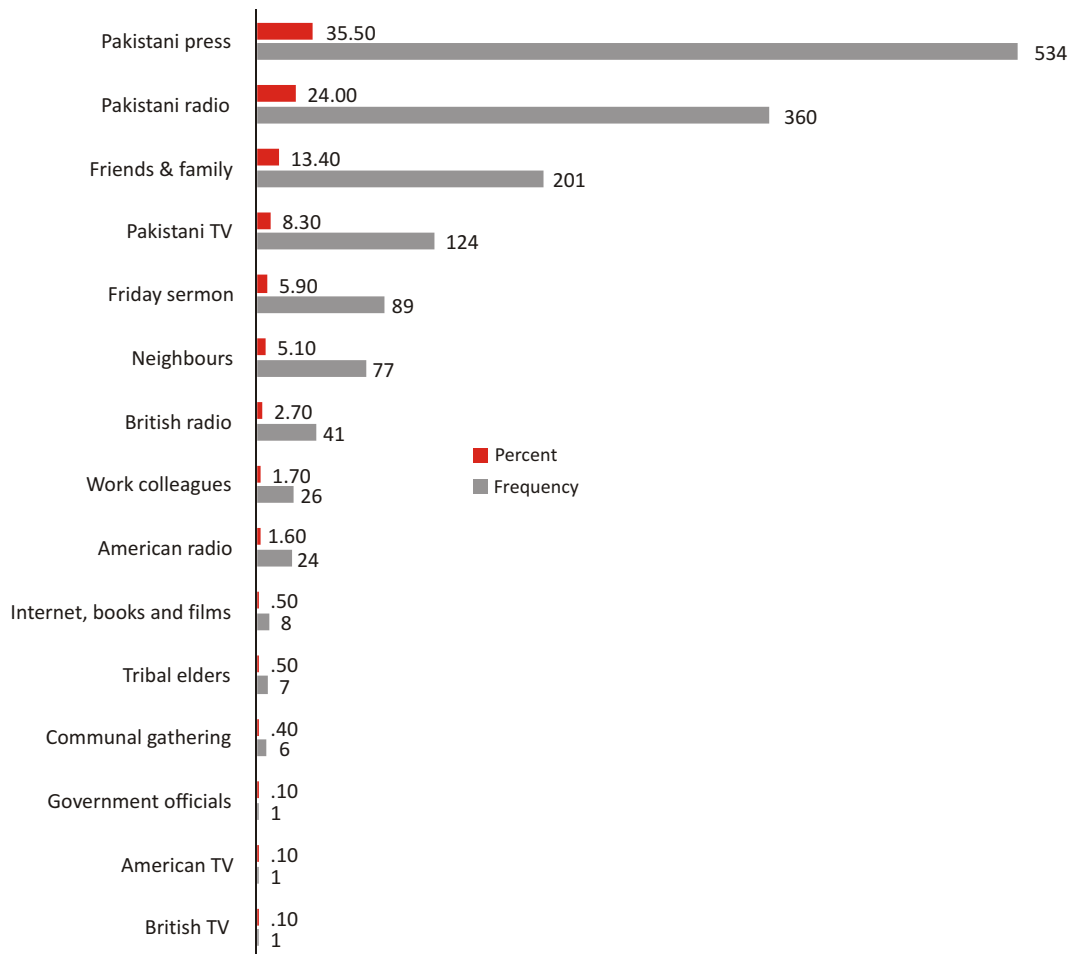
'Friday sermons' are another source of information for the respondents. Since the people of FATA are very religious and adhere to Islamic rituals, they attend and listen to the Friday sermons every week.

Other popular sources of information are communal gatherings (21.80%), interaction with work colleagues (20.80%), and meetings with tribal leaders (19.67%).

There are several other sources of information



Figure 13. Respondents' Most Valued Source of Information



mentioned in figure 12 that provides a clear picture of how people of FATA receive information from different sources.

### Respondents' Most Valued Source of Information

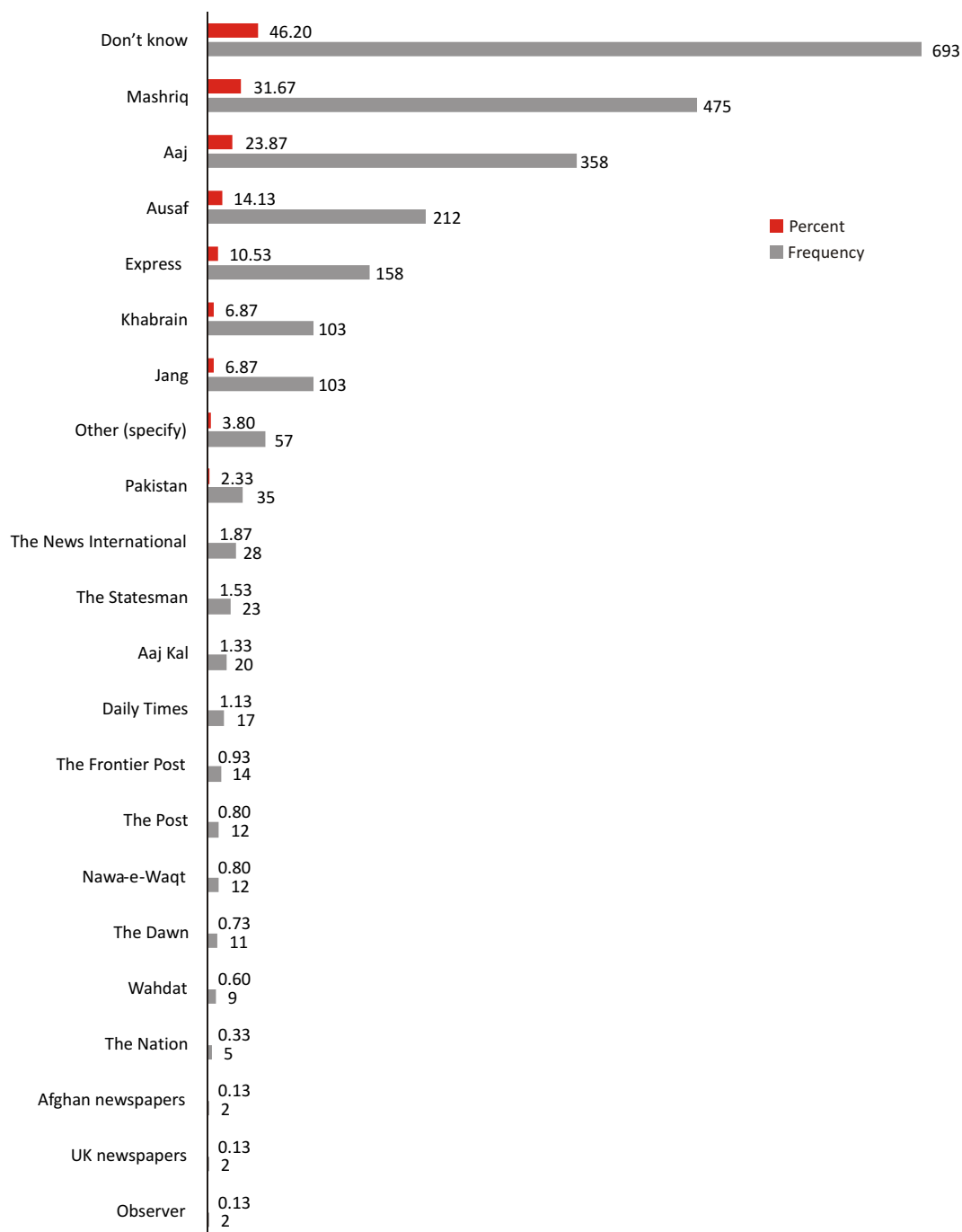
Through a subsequent single-choice question, the respondents were asked which source of information they value the most. Reading from left to right in figure 13 it is clear that the formal media is the most valued, with close to three quarters of the respondents choosing this option. The Pakistani Press, Radio and TV at 35.50%, 24.00% and 8.30% respectively, are the other most valued sources. Literacy probably plays an important role in the type of media

valued.

Among foreign sources, more respondents identified BBC radio (as opposed to press or TV) as the most valued source of information. However, the identification for BBC radio is comparatively low against the BBC listenership. Low response for British TV is mainly due to the absence of any cable network service in FATA. Very few people have installed dish satellite antennas in their *Hujras* and homes. British press readership is also extremely low, which is understandable due to low literacy and no access to foreign newspapers.

The data also reveals that very few respondents opted for American press, television and radio.

Figure 14. Newspaper readership



'Friends and family' are valued sources, and constitute the third most valued source of information (13.40%). Among other sources of information, 'Friday sermon' (5.90%) and 'neighbours' (5.10%) were chosen by the respondents as the most valued sources of information.

### Newspaper readership

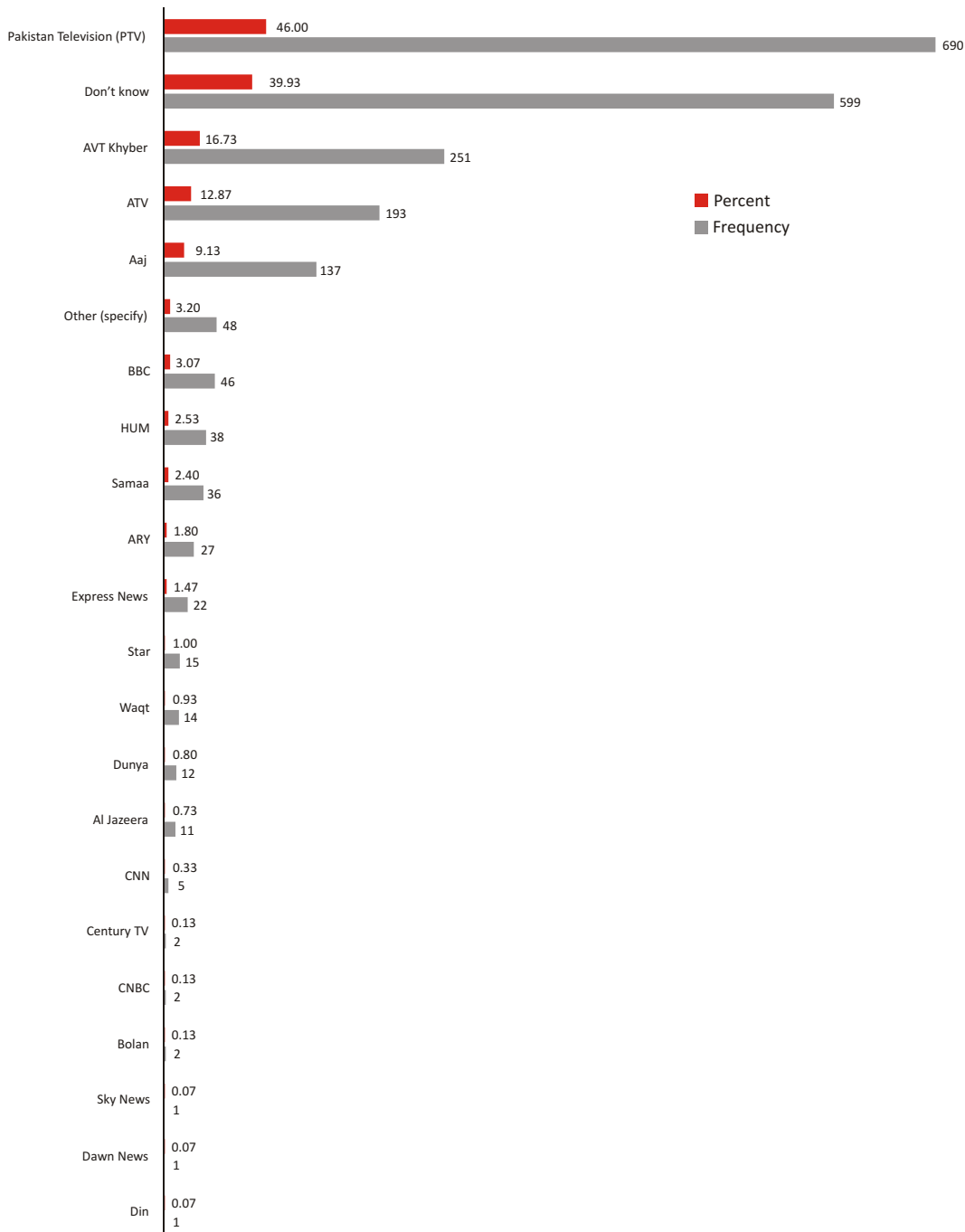
The survey attempted to identify which newspaper is widely read by the FATA respondents. The figure 14 shows that '*Mashriq*' Urdu language daily newspaper was identified by 31.67% respondents. '*Mashriq*' is followed by the

daily 'Aaj', another Urdu newspaper (23.87%).

The Urdu Daily *Ausaf* is the third most popular Urdu newspaper identified by 14.13% respondents from FATA. The Daily *Express* remained the fourth most read newspaper.

Among other Urdu newspapers, *Khabrain*, *Jang* and *Pakistan* were prominent newspapers identified by respondents as the most read newspapers. The English newspapers readership is low due to low levels of English language

Figure 15. TV viewership



literacy.

46.20% respondents said they 'did not know' or did not identify any newspaper. One of the reasons could be that these respondents were illiterate.

### TV viewership

There is no cable network facility available to the people in FATA. However, all Pakistani public TV channels are available to FATA viewers through direct transmission.

The survey asked about the preference of TV channels and out of 1500 FATA respondents, 39.93% did not know what channels they most prefer. This may be because they do not have access to television.

Khyber AVT is the only private Pashtu channel with coverage inside FATA, and was identified as the second most watched channel (16.73%) after the public PTV channel (46.00%). Another public channel, ATV, was identified as the third most watched TV channel by 12.87% of the respondents.

Respondents also identify Aaj, which could be accessed through either cable service or dish antenna. Around 9.13% respondents identified Aaj as the most preferred channel in FATA.

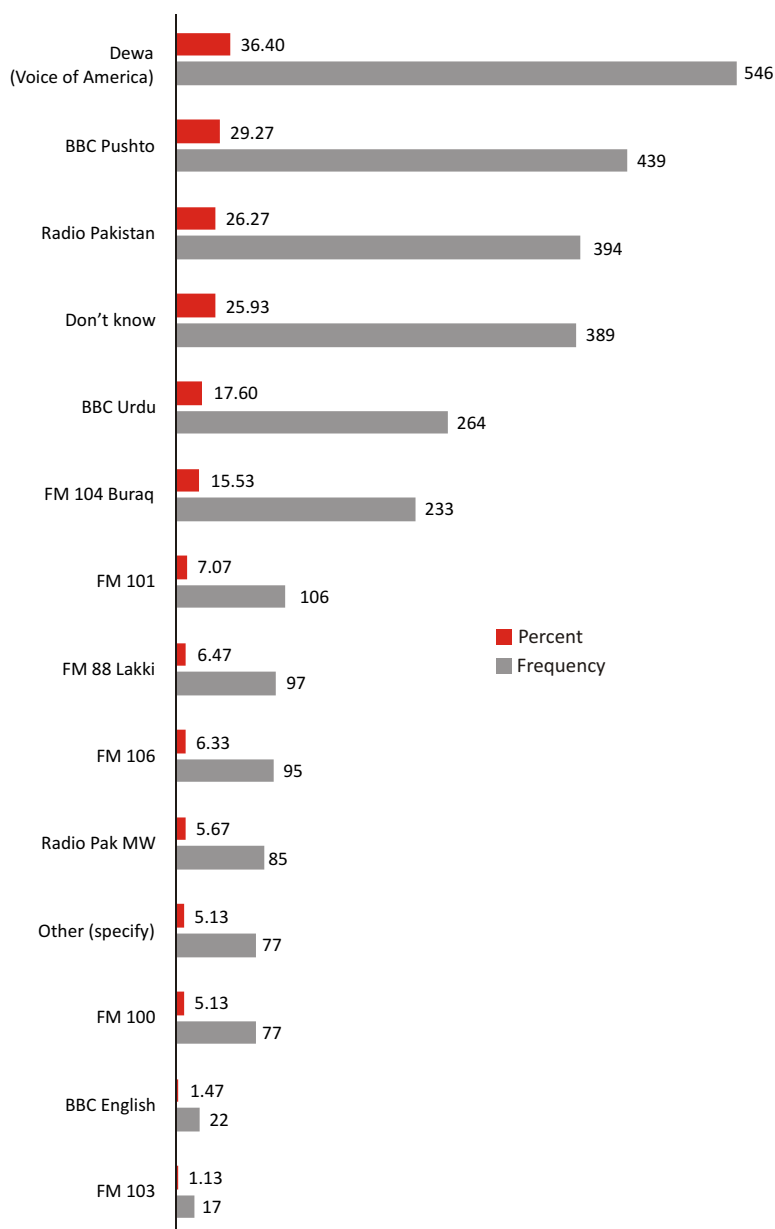
Respondents identified scores of other private and western TV channels from satellite dishes and other sources. However, those responses are too few to merit further analysis.

### Radio listenership

According to various statistics mentioned in figure 16, the radio is more popular than the TV and press as a source of information.

Through a multiple-choice question, FATA

Figure 16. Radio listenership



respondents were asked to identify radio channels they preferred. Judging by the programming source, Dewa (Voice of America) is the most popular Pashtu radio source in FATA, being identified by 36.40% of the respondents. Dewa radio channel is followed by BBC Pashtu service as the second most preferred radio channel identified by 29.27% respondents.

Until recently, BBC Pashtu service was the most

preferred radio channel for the people of FATA in several other perception surveys conducted by CAMP since 2007; however, within recent times, Dewa has received a tremendous response from the local population in FATA.

26.27% respondents identified Radio Pakistan, a public transmission radio channel, as the fourth most preferred radio source in FATA. Other popular radio sources are BBC Urdu (17.60%), FM 104 Buraq (15.53%) and FM 101 (7.07%).

25.93% respondents either 'did not know' or had no access to radio sources.

The other radio stations mentioned are, for the most part, local stations serving specific market areas or Agencies. One would not expect them to register high in a sample extending beyond their reach.

Questions related to the 'sources of information' reveal that the most common and valued sources of information among the respondents are Pakistani radio, television, family and friends, and neighbours. Among radio, perhaps the most commonly used media, the most popular channels are Dewa (Voice of America) and the BBC.

#### **Awareness of institutions and actors**

The survey intended to understand the level of awareness of the respondents about various institutions and actors involved in dispensing justice and ensuring the rule of law in Pakistan. Most of these institutions do not necessarily exist in FATA; however, it was necessary to document the perception of the respondents about these institutions.

#### **General Courts in Pakistan (Supreme Court of Pakistan, High Courts, Court of Session, Court of Magistrate, Court of District Judge, Court of Civil Judge)**

When asked about courts in Pakistan, a distinction was made between general criminal or civil courts, and specialized courts that address specific substantive areas of law such as anti-terrorism or narcotics offences. High Courts and the Supreme Court of Pakistan were constituted under the Constitution of Pakistan, 1973. They serve as appellate Courts, and are also empowered to enforce Fundamental Rights guaranteed under the Constitution. Criminal courts in Pakistan i.e. Court of Session & Court of Magistrate were created under the Criminal Procedure Code of 1898; whereas civil courts i.e. Court of District Judge & Court of Civil Judge - were created under the West Pakistan Civil Courts Ordinance, 1962.

More than half of the respondents, 53.47%, claimed that they are aware of various levels of courts. However, the survey could not judge the level and extent of awareness of the respondents, as we did not have any parameter to verify whether the respondents really had knowledge of general courts.

Close to half of the respondents, 46.53%, did not know anything about general courts of Pakistan.

#### **Specialised Anti-Terrorism or Narcotics Courts**

Specialised Anti-Terrorism courts were created by the Anti-Terrorist Act, 1997 to deal with terrorism offences under the said Act; and 'Special Courts' were constituted under the Control of Narcotics Substances Act, 1997 to

**Table 07: Awareness of General Courts in Pakistan (Supreme Court of Pakistan, High Courts, Court of Session, Court of Magistrate, Court of District Judge, Court of Civil Judge)**

Name of Institution / Actor	Yes (%age)	No (%age)	Total
General Courts in Pakistan (Supreme Court of Pakistan, High Courts, Court of Session, Court of Magistrate, Court of District Judge, Court of Civil Judge)	53.47	46.53	100.00

Table 08: Awareness of Specialised Anti-Terrorism or Narcotics Courts

Name of Institution / Actor	Yes (%age)	No (%age)	Total
Specialised Anti-Terrorism or Narcotics Courts	26.47	73.50	100.00

address narcotics offences under the Act.

The respondents were asked whether they were aware of, or had heard about specialised anti-terrorism or narcotics courts in Pakistan. Over a quarter of the respondents, 26.47%, confirmed that they were aware of specialised Anti-Terrorism or Narcotics courts, whereas three quarters of FATA respondents did not have any idea about these institutions.

### Federal Sharia't Court

The Federal Shariat Court (FSC) was established by the President's Order No.1 of 1980 as incorporated into the Constitution of Pakistan of 1973 under chapter 3A. The FSC has the power to review any law or provision of law in order to determine whether it is repugnant to the 'Injunctions of Islam' as laid down in the Holy

29.60% of the respondents confirmed that they were aware about Federal Sharia't Court, while 70.40% of the respondents did not know about these courts.

After cross-tabulation, it is clear that men are nearly two times more aware of the Federal Sharia't Court than women. Out of the 271 who did not respond to the question, 231 were women.

After cross-tabulating the data with the educational level of the respondents, it was found that of the 444 respondents who were not aware of the Federal Sharia't Court, 351 never attended school.

### Islamic Seminary Federations

Federations of Islamic seminaries which are operative in Pakistan oversee and manage

Table 09: Awareness of the Federal Sharia't Court

Name of Institution / Actor	Yes (%age)	No (%age)	Total
Federal Sharia't Court	29.60	70.40	100.00

*Qur'an & Sunnah*. Either Pakistani citizens, the Federal or Provincial Government may bring a petition to the FSC to review suspect laws, or it may exercise its *suo moto* powers. It also has revisional jurisdiction with respect to any case tried by a criminal court under the Hudood laws. An appeal of the ruling of the FSC lies to the Shariat Appellate Bench of the Supreme Court of Pakistan.

individual Islamic seminaries (Madrassah) registered under them. Religious clerics affiliated with these Federations or registered madaris often provide opinions on family law issues based on Islamic law precepts. The 'Madrassah Certificate' they issue can be brought to a general court to support one's claim. Some of the most well-established Federations in Pakistan, and the schools of thought they

Table 10: Awareness of Islamic Seminary Federation

Name of Institution / Actor	Yes (%age)	No (%age)	Total
Islamic Seminary Federation	50.60	49.40	100.00

Table 11: Awareness of the Federal Ombudsman

Name of Institution / Actor	Yes (%age)	No (%age)	Total
Federal Ombudsman	21.50	78.50	100.00

represent, include: Wafaq-ul-Madaris Al-Arabia (Deobandi), Tanzeem-ul-Madaris (Bareilvi), Rabat-ul-Madaris (Jamaat-i-Islami), Wafaq-ul-Madaris Al-Salfia (Ahl-i-Hadith), and Wafaq-ul-Madaris Ashia (Shiia).

There are thousands of *Madrassa* schools operating in FATA, most of them under the management of the above-mentioned Federations.

The FATA respondents were asked whether they are aware of Islamic Seminary Federations. Out of 1,500 respondents, half (50.60%), were aware of the Islamic Seminary Federations, while the other half did not know about them.

During the focus-group discussions and consultations, there was an overwhelming support for the religious madrassa system in FATA.

#### Federal Ombudsman

In 1983, the office of the Federal Ombudsman was established under the Wafaqi Mohtasib (Ombudsman) Order, 1983. The Ombudsman is an independent institution, established under law, to provide speedy relief to the general public in case somebody has suffered injustice due to 'maladministration' at the hands of a Federal Government Agency.

21.50% of the respondents confirmed that they knew about the office of the Federal Ombudsman, while over three quarters of the respondents responded that they did not.

#### Human Rights Commission of Pakistan (HRCP)

Human rights activists founded the HRCP in 1987. The HRCP is an independent, non-profit organisation not associated or affiliated with the government or any political party. It is mandated to spread awareness of human rights among the people, mobilise public opinion, collect information and disseminate knowledge about human rights abuses, and to monitor and defend human rights in Pakistan. HRCP also operates a Complaint Cell where individuals can call to lodge a complaint. HRCP also has branches in some FATA Agencies and frontier regions.

Only 23.93% confirmed that they were aware of the HRCP's existence in Pakistan as well as in FATA. More than three quarters of the respondents (76.10%) were not aware.

Cross-tabulation with gender showed that more than twice as many women did not know about HRCP compared to men.

#### FCR *Jirga* system or other informal dispute resolution mechanisms (e.g. *Olasi Jirga*, *shura*)

The *Jirga* and other dispute resolution mechanisms have been discussed in detail in the first as well as in subsequent chapters. The survey attempted to confirm whether the respondents were aware of the informal dispute resolution institutions.

Nearly three quarters (74.40%) confirmed that they were aware of the *Jirga* and other dispute resolution mechanisms. The high level of awareness is due to the fact that the *Jirga* is the

Table 12: Awareness of Human Rights Commission of Pakistan (HRCP)

Name of Institution / Actor	Yes (%age)	No (%age)	Total
Human Rights Commission of Pakistan	23.90	76.10	100.00

Table 13: Awareness of FCR *Jirga* system or other informal dispute resolution mechanisms (e.g. *Olasi Jirga, shura*)

Name of Institution / Actor	Yes (%age)	No (%age)	Total
FCR <i>Jirga</i> system or other informal dispute resolution mechanisms (e.g. <i>Olasi Jirga, shura</i> )	74.4	25.6	100.00

only justice dispensing mechanism in FATA both accessible and trusted by many.

It is clear that the respondents had very little idea about the justice dispensing institutions/actors in Pakistan apart from the FCR *Jirga* which is practised in FATA. There is also a huge discrepancy between male and female respondents; it is unfortunate to note that the awareness level among FATA residents relating to these institutions is so low, particularly among women.

#### Opinion/perception of the following institutions and actors

The survey attempted to document the perception/opinion of the respondents on various institutions, actors and their functions. The question tries to cover several aspects of such institutions' functions.

#### Provincial Police Authorities and their local representatives

Police authorities are responsible for maintaining law and order, registering a First Information Report [FIR], investigating crimes and arresting

offenders. The police derive their powers of search, investigation, and arrest from the Criminal Procedure Code of 1898. The police administrative structure and functions were laid down in the Police Act of 1861. However, it was replaced by the Police Order 2002, enacted by General Musharraf, which created public accountability mechanisms, and means to limit political interference in criminal cases. The Police Order was resisted by the police establishment and Provincial Governments, and therefore not properly implemented. In 2009 the Supreme Court ruled that the Police Order would have to re-adopted by the National Assembly, but this was never done. The Provincial Governments are now in the process of drafting provincial police legislation to override the Police Order altogether.

The Criminal Procedure Code, 1898, the Police Act of 1861, and the Police Order of 2002 have not been extended to the FATA region, while Khasadar and Levies force take care of the internal security in the protected areas of FATA.

It is a very common perception that the people of

Table 14: Opinion/perception of Provincial Police Authorities and their local representatives

Name of Institution / Actor	Affordable (%age)	Speedy (%age)	Bribes (%age)	Influence Peddling <sup>141</sup> (%age)	Unresponsive to Criticism (%age)	Ignores Human Rights (%age)	Gender Equality (%age)	Class Bias (%age)	Don't know (%age)	Total
Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	3.60	2.60	41.80	7.30	2.20	5.50	0.70	1.10	35.30	100.00



Table 15: Perception/opinion of General Courts in Pakistan (Supreme Court of Pakistan, High Courts, Court of Session, Court of Magistrate, Court of District Judge, Court of Civil Judge)

Name of Institution / Actor	Affordable (%age)	Speedy (%age)	Bribes (%age)	Influence Peddling (%age)	Unresponsive to Criticism (%age)	Ignores Human Rights (%age)	Gender Equality (%age)	Class Bias (%age)	Don't know (%age)	Total
General Courts in Pakistan (Supreme Court of Pakistan, High Courts, Court of Session, Court of Magistrate, Court of District Judge, Court of Civil Judge)	13.40	7.50	14.40	14.00	3.20	4.50	1.90	0.06	40.50	100.00

FATA do not like the police system and would never welcome it in their area. It is also believed that the locals would consider the system to be against their customs. The FATA respondents were asked in a qualified manner to share their perceptions or opinions of provincial police authorities and their local representatives.

41.80% opined that provincial police authorities take bribes for their services, while 35.30% did not know much about the provincial police authorities. 7.30% believed that the police department is always under immense pressure from its superiors and representative governments, thus allowing for most of the cases to go un-settled and criminals or offenders to get away. Around 5.50% believed that the police department sometimes violates human rights while dealing with cases. 2.20% believed that the police department is unresponsive to criticism.

A mere 3.60% believed that the police department is affordable and should be extended to FATA. Only 2.60% believed that the police department is quick in settling cases. 1.10% said that the police department is 'class biased' and always favours the rich and influential.

Table 14 shows that the FATA respondents do not have a very favourable view of the Provincial

Police Authorities. This view was shared by the overwhelming majority in the focus-group discussions and consultations. They believe that the police does not suit the FATA environment where people can effectively settle their issues through *Jirga*.

#### **General Courts in Pakistan (Supreme Court of Pakistan, High Courts, Court of Session, Court of Magistrate, Court of District Judge, Court of Civil Judge)**

An introduction to the General Courts of Pakistan has been provided in the previous question. This section will analyse how the respondents perceived the functions of these courts.

40.50% replied that they did not know the function of the courts.

While 14.40% believed that officials and judges take bribes when deciding a case in general courts, 14.00% believed that general courts can be influenced by the powerful, the weaker party thus not receiving due justice. Only 3.20% believed that general courts are unresponsive to any criticism and 4.50% believed that general courts ignore human rights when deciding a case.

However, 13.40% still believed that general courts are affordable, and 7.50% opined in a qualified manner that general courts are quick in

Table 16: Perception of Specialized Anti-Terrorism or Narcotics Courts

Name of Institution / Actor	Affordable (%age)	Speedy (%age)	Bribes (%age)	Influence Peddling (%age)	Unresponsive to Criticism (%age)	Ignores Human Rights (%age)	Gender Equality (%age)	Class Bias (%age)	Don't know (%age)	Total
Specialized Anti-Terrorism or Narcotics Courts	6.30	4.60	6.10	9.30	5.00	6.70	0.80	1.60	59.60	100.00

dispensing justice to the people.

Analysing the above results, one can clearly see that the FATA respondents do not have a very favourable view of the general courts in Pakistan. This view was also shared by the respondents during the focus-group discussions and consultations, while key informants of in-depth interviews also pointed out several weaknesses of general courts and suggested that *Jirga* is best suited to the local tribal environment. 40.50% replied that they did not know the function of the courts.

#### Specialized Anti-Terrorism or Narcotics Courts

A brief introduction of Anti-Terrorism or Narcotics Courts was given in the previous question. This section will examine how the respondents perceive the functions of this institution in Pakistan.

More than half of the respondents, 59.60%,

could not form their opinion, as they did not know much about these specialised courts. Only 9.30% believed that these courts can be influenced by the powerful in order to obtain favourable results. Some 6.70% believed that these courts do not consider human rights when deciding a case, while 6.10% opined that the officials of these courts take bribes and favour cases. Only 5.00% believed that these courts are unresponsive to any criticism.

6.30% believed that these courts are affordable and 4.60% opined that they are quick in deciding cases.

Overall, the opinion of FATA respondents of these courts is not very favourable. The same sentiments were also reflected in the qualitative assessment. Very few voices were in favour of these courts and extending them to FATA; and very few believed that the named courts consider all elements of globalisation, international

Table 17: Perception of Federal Sharia't Court

Name of Institution / Actor	Affordable (%age)	Speedy (%age)	Bribes (%age)	Influence Peddling (%age)	Unresponsive to Criticism (%age)	Ignores Human Rights (%age)	Gender Equality (%age)	Class Bias (%age)	Don't know (%age)	Total
Federal Shariat Court	14.90	7.00	3.10	8.30	3.30	2.40	1.10	0.80	59.10	100.00

Table 18: Perception/opinion of Islamic Seminary Federations

Name of Institution / Actor	Affordable (%age)	Speedy (%age)	Bribes (%age)	Influence Peddling (%age)	Unresponsive to Criticism (%age)	Ignores Human Rights (%age)	Gender Equality (%age)	Class Bias (%age)	Don't know (%age)	Total
Islamic Seminary Federations	32.10	10.10	1.80	2.50	3.30	1.30	2.30	0.90	45.70	100.00

human rights standards and gender sensitivities.

### Awareness Federal Sharia't Court

Given the Constitution of Pakistan has been extended to FATA, this means that the system of courts have also not been established in FATA, including the jurisdiction of the FSC. The respondents' level of understanding was gauged in the previous section; however, this question aims to document the opinion of the respondents on various functions of the Federal Sharia't Court in Pakistan.

Since Federal Shariat Court does not have jurisdiction over FATA, the majority, 59.10%, did not have an opinion. 14.90% believed that Federal Sharia't Courts are affordable for poor, and 7.00% believed that these courts are quick in dispensing justice to the people.

There was also some negative opinion about the courts; 8.30% believed that powerful people can influence these courts, while 3.30% believed that Federal Shariat Court was unresponsive to any criticism. Some 3.10% opined in a qualified manner that the Federal Shariat Court's officials receive bribes.

Let alone general courts, even an Islamic Sharia't court is not welcomed by the FATA respondents who believe that there are several shortcomings associated with this system of justice. This was also echoed during the focus-group discussions and consultations, with many respondents preferring the *Jirga* to Federal Sharia't Court.

They argued that Islamic Sharia't law could be practiced under the system of *Jirga*.

### Islamic Seminary Federations

Islamic Seminary Federations have been introduced in the previous section of this chapter. Here we will examine how FATA respondents opined on various functions of these Federations.

Interestingly, 32.10% believed that Islamic Seminary Federations are affordable. A considerable proportion of FATA people send their children to these institutions for education, a fact verifiable through the education level of respondents.

10.10% believed that these institutions are quick and receptive to the needs of the people. Only a small proportion, 1.80%, believed that such institutions are susceptible to bribes, while 2.50% believed that such institutions can be influenced by the powerful. 3.30% believed that Islamic Seminary Federations are unresponsive, while 1.30% opined that they are ignorant of human rights. Furthermore, there was a large number of respondents, 45.70%, who did not know the answer or had not formed any opinion.

During the focus-group discussions and consultations, there was overwhelming support for the religious *madrassa* system in FATA.

### Awareness Federal Ombudsman

Compared to other institutions, nearly two-

Table 19: Perception/opinion of Federal Ombudsman

Name of Institution / Actor	Affordable (%age)	Speedy (%age)	Bribes (%age)	Influence Peddling (%age)	Unresponsive to Criticism (%age)	Ignores Human Rights (%age)	Gender Equality (%age)	Class Bias (%age)	Don't know (%age)	Total
Federal Ombudsman	6.90	5.30	5.50	9.00	3.40	1.50	1.60	0.90	65.90	100.00

thirds of the respondents, 65.90%, were not aware of the Federal Ombudsman and his function. Of the remaining respondents, 6.90% believed that this institution is affordable, while 5.30% opined that services could be obtained quickly from this institution. However, there were some negative responses as well.

Since the office of Federal Ombudsman does not exist in FATA, the majority of the respondents either did not know or had a good overall opinion of it.

During the focus-group discussions with various age and gender groups from FATA, it was clear that the majority, especially illiterate and less educated respondents, were ignorant of these offices and therefore could form opinions of their own.

#### Human Rights Commission of Pakistan

Due to CAMP's presence in the FATA region, we are aware of the presence of HRCF local chapters and its representatives; however, the survey results show that more than half of the

respondents, 62.90%, did not know about the HRCF's existence or of its functions.

Most of the respondents in the focus-group discussions, including men and women, young and old, did not have a clear idea of the HRCF's role in their areas. Very few people, and notably those with higher education and better access to information, knew little about the institution.

#### Informal dispute resolution mechanisms

The previous chapters covered the respondents' opinion of informal dispute resolution mechanisms in Pakistan. This question lies within a general context and does not only pertain to *Jirga*, but also to other forms of *shura*, i.e. respected elder(s) or other influential person(s) within a family or community.

Comparing the responses favouring informal dispute resolution systems over other institutions, we see a very clear difference. Around 43.30% of the respondents, much more than for any other institute mentioned earlier, believed that informal dispute resolution

Table 20: Perception/opinion of Human Rights Commission of Pakistan

Name of Institution / Actor	Affordable (%age)	Speedy (%age)	Bribes (%age)	Influence Peddling (%age)	Unresponsive to Criticism (%age)	Ignores Human Rights (%age)	Gender Equality (%age)	Class Bias (%age)	Don't know (%age)	Total
Human Rights Commission of Pakistan	9.30	6.90	5.10	7.20	3.90	1.90	1.40	1.50	62.90	100.00

Table 21: Perception/opinion of Informal dispute resolution mechanisms

Name of Institution / Actor	Affordable (%age)	Speedy (%age)	Bribes (%age)	Influence Peddling (%age)	Unresponsive to Criticism (%age)	Ignores Human Rights (%age)	Gender Equality (%age)	Class Bias (%age)	Don't know (%age)	Total
Informal dispute resolution mechanisms (e.g. <i>Jirga, shura</i> , respected elder(s), or other influential person(s) in your family/community)	43.30	9.50	7.50	7.30	2.40	3.30	1.10	1.70	23.90	100.00

mechanisms are affordable. Since this was a single response question, we see that the second priority of FATA respondents was the quick dispensation of justice, 9.50%.

A majority of the respondents who had not formed an opinion were women, who do not take part in the informal justice dispensation mechanisms.

#### Religious leader in the community

During the last three decades, religious leaders received tremendous respect and prominence for their major and active role in the Afghan *Jihad* against Soviet Union and, later on, their support for the Taliban in Afghanistan. Furthermore, religious leaders are in close contact with the community; therefore, the level of trust placed in them is unimaginable.

In table 22, over half of the respondents (55.90%) mentioned that the services of a religious leader in the community could be acquired without much cost, as they are accessible and affordable for all. This is quite a high number, even higher than for informal dispute resolution systems.

About the element of bribe the religious leaders perceived to get, only 1.10% respondents believed so; while 3.70% believed that powerful players in the society could influence religious leaders in their favour. Only 3.10% respondents opined that religious leaders are unresponsive to criticism, while 1.70% believed that they ignore human rights elements when deciding a case. Only 1.90% believed that religious leaders are not gender sensitive and 2.70% thought that they are class biased.

Respondents of focus-group discussions also

Table 22: Perception/opinion of Religious leader in the community

Name of Institution / Actor	Affordable (%age)	Speedy (%age)	Bribes (%age)	Influence Peddling (%age)	Unresponsive to Criticism (%age)	Ignores Human Rights (%age)	Gender Equality (%age)	Class Bias (%age)	Don't know (%age)	Total
Religious leader in the community	55.90	14.20	1.10	3.70	3.10	1.70	1.90	2.70	15.90	100.00

Table 23: Victims of theft or fraud

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Victim of theft or fraud	192	1,155	117	36	1,500
Percentage	12.80	77.00	7.80	2.40	100.00

placed their trust in religious leaders.

Since the last section showed a low level of awareness of justice-dispensing institutions and actors, the perceptions of these actors/institutions were also not very clear. As expected, the highest number of responses related to questions on the informal dispute resolution mechanism and its actors, majority of the respondents believe it to be both affordable and speedy.

#### Experience with litigation

With *Jirga* being the prevalent and only system of justice dispensation in FATA, a vast majority does not get involved in the formal justice mechanism, and prefers to resolve disputes at the community level. In order to get a better idea of the nature of cases that respondents and/or their family members have faced, and what their experiences have been like, the survey asked detailed questions which are presented in this section with analysis.

The FATA respondents, males and females, were asked whether they or one of their household members had experienced any crime or issue during the last ten years. Respondents were provided with a list of issues so that they could share their experience on each, one by one. Following is a brief analysis for each issue/crime based on the responses we received.

#### Victim of theft or fraud

12.80 % out of 1,500 respondents is a worrisome figure. The Contract Act has not been extended to FATA, where people do business through verbal commitments, thus providing a greater chance for such litigations to happen.

#### Victim of assault

The respondents were then asked whether they or any other member of their household had been victims of assault. Out of 1,500 respondents only 43 (3.30%) confirmed that they had been victims of assault, while 1,336 (89.10%) did not experience assault. 90 respondents (6.00%) did not know whether any member of their household experienced this. 25 people (1.70%) did not reply.

The absence of any internal security apparatus makes FATA seem like a wild place where no one is safe. However, since every family is responsible for its own security, every individual in FATA knows the consequences of offences and the burden of responsibility as a result of such acts. Therefore, it is not surprising that only 3.30% had been assaulted once.

#### Victims of domestic abuse

It is generally perceived that the tribal men are violent towards women at home, especially towards their wives. However, the data shows a

Table 24: Victims of assault

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Victim of assault	49	1,336	90	25	1,500
Percentage	3.30	89.10	6.00	1.70	100.00

Table 25: Victims of domestic abuse

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Victim of domestic abuse	56	1,341	92	11	1,500
Percentage	3.7	89.40	6.1	0.70	100.00

different picture, with only 3.70% informing this survey that they had experienced domestic abuse, and 1,341 respondents (89.40%) saying that they had not.

The small percentage could originate from the fact that many respondents gave incorrect information to the enumerators, not wanting to share their domestic problems with outsiders.

When cross-tabulated, of the 56 respondents who experienced domestic abuse, 42 were women.

#### Victims of forced marriage

In the rural part of *Pakthun* areas, especially in

had experienced forced marriages, 17 were women and 11 were men.

#### Family member gone missing or disappeared

Due to the ongoing militancy and in response to the Pakistan military operation in most parts of FATA, over a million people have had to leave FATA. Maliks were kidnapped and later on killed by militants. Some innocent people were kidnapped for ransom by militant groups, while others went missing and were later found dead. On the other hand, the military also picked up locals for investigation while their family members did not have any idea of where they were. There are a number of stories where

Table 26: Victims of forced marriage

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Victim of forced marriage	28	1,367	90	15	1,500

FATA, it is believed that elders of a family generally arrange marriages and that in some cases, marriages are forced. However, the survey results are contrary.

Only 28 of 1,500 respondents experienced forced marriage. These results show that respondents were shy of sharing personal issues, while only few had the courage to share their experiences.

After cross-tabulation of the 28 respondents who

families have lost their loved ones due to the insurgency in FATA.

#### Arrested without warrant by the political administration under FCR

According to Article 10 (1) of the Constitution of Pakistan,

***No person who is arrested shall be detained in custody without being***

Table 27: Family member has gone missing or disappeared

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Family member has gone missing or disappeared	35	1,360	88	17	1,500

Table 28: Arrests without warrant

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Arrested without warrant by the political administration under FCR	85	1,313	91	11	1,500

*informed, as soon as may be of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.*<sup>142</sup>

The people of FATA are provided with all rights enshrined in the Constitution; however, there are some ambiguities as to how one can claim such rights in the absence of a superior judiciary in FATA. Article 38 (Powers of arrest) of the FCR 1901, Chapter V, says;

In any place in which all or any of the provisions of this Regulation are for the time being in force

i) Any private person may, without an order from a Magistrate and without a warrant, arrest or cause to be arrested, and make over or cause to be made over to a police officer or take or cause to be taken to the nearest police station, any Person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned; [...].

When the survey asked the respondents whether they or their family members were arrested by the political administration without any warrant,

85 respondents confirmed that they or their family members were arrested by the political administration without warrant.

The FCR gives immense powers to the political administration, who can sometimes put someone behind bars for years without presenting him/her to any court of law.

#### **Accused of an offence under the Anti-Terrorism Act**

The Anti-Terrorism Act is extended to the protected areas of FATA only. The political administration can arrest a person accused of an offence under this Act by virtue of the FCR dispositions.

When 1,500 FATA respondents were asked whether they or their household member remained accused of an offence under Anti-Terrorism Act, 19 respondents confirmed that they experienced this. The ratio of accused is quite low given that the ongoing militancy and the 'war on terror' may have caused a huge number of such arrests. One reason for such a low response could be the reluctance of respondents to share this information.

#### **Accused of committing sexual abuse/assault (under the Hudood Ordinance or the Pakistan Penal Code)**

The Hudood Ordinance is applicable in the FATA

Table 29: Offences under Anti-Terrorism Act

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Accused of an offence under the Anti-Terrorism Act	19	1,377	90	14	1,500



Table: 30. Accused of committing sexual abuse under Hudood Laws Ordinance of Pakistan

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Accused of committing sexual abuse/assault (under the <i>Hudood</i> Ordinance or the Pakistan Penal Code)	5	1,392	90	13	1,500

region; therefore, the political administration can make use of the FCR when enforcing this ordinance.

The survey attempted to record whether the respondents or their household members were accused of committing sexual abuse/assault. Only 5 respondents confirmed that they were accused of committing sexual abuse/assault.

Cases of honour killing are very rare in *Pakhtun* society and especially in FATA; however, if someone commits sexual abuse there is a high probability of him/her being killed in the name of honour. Even the comparably small number of five respondents is already extremely surprising.

committing any other crime and only 13 respondents confirmed that this had been the case. Again, this is quite a low ratio compared with the given law and order situation.

#### Unlawful detention, search or arrest by the political administration

The number of 48 respondents is not very big given the law and order situation. TV channels and national newspapers regularly report terrorists being arrested by the military during search operations in FATA. However, such arrests are effectuated by the military or other law enforcement agencies and not by the political administration. Therefore, respondents might have only referred to the political administration

Table 31: Accused of committing other crime

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Accused of committing any other crime	13	1,384	85	18	1,500

90 respondents did not have any information about their household members or were not interested in sharing this information.

#### Accused of committing any other crime

Respondents were also asked whether they or their household members had been accused of

when responding to the question.

#### Bribery by *Khasadar* or Levies force

In settled areas, the police is very notorious for taking bribes from people, while in FATA, *Khasadar* or Levies force are blamed for such acts. For instance, when transporting goods from

Table 32: Unlawful detention, search or arrest by political administration

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Unlawful detention, search or arrest by the political administration	48	1,351	86	15	1,500

Table 33: Bribery related to *Khasadar* or Levies

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Bribery by <i>Khasadar</i> or Levies force	54	1,343	87	16	1,500

settled areas to FATA or from FATA to settled areas, there are several illegal taxes or bribes that one has to pay when crossing over checkpoints in FATA.

Although not many people in FATA are involved with transportation or smuggling business, the number of affirmative answers is still quite low. Taking or giving bribes is considered a great sin in Islam and perhaps that is why many respondents found that they did not want to share their experiences.

#### Assault or torture by Frontier Corps (FC) or Army

The military operation in FATA has caused numerous issues of concerns, including assault or torture by FC or Army. Out of 1,500 FATA respondents, 89 confirmed that they or their household members experienced assault or torture by FC or Army, which makes around 5.90% of the total respondents.

military or FC, this gives a very gloomy and worrisome picture of the human rights situation in FATA, as such cases are extremely rare in settled districts of Pakistan.

#### Money recovery, or debt/obligation settlement

Since the Pakistan Stamp Act has not been extended to FATA, all agreements/commitments are concluded verbally. In case of violation, local *Jirgas* settle money recovery or debt/obligation cases. The political administration may also intervene to avoid any situation susceptible of causing violence.

#### Contract enforcement in business dealings

As stated above, neither the Contract Act nor the Stamp Act have been extended to FATA; however, there are cases where parties sign contracts in the settled districts of Pakistan. Such contracts

Table 34: Assault or torture by FC or Army

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Assault or torture by FC or Army	89	1,306	86	19	1,500
Percentage	5.9	87.10	5.7	1.3	100.00

Previous surveys by CAMP revealed that around a quarter of FATA residents had experienced forced migration. However, if 5- 6 people out of 100 have experienced assault or torture from the

fall under the FCR, and when one of the parties approaches the political administration with a complaint, the political administration has the powers to react and enforce business dealings.<sup>143</sup>

Table 35: Recovery of money or debt settlement

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Money recovery, or debt/obligation settlement	36	1,362	88	14	1,500
Percentage	2.40	90.80	5.90	0.90	100.00

Table 36: Contract enforcement in business dealing

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Contract enforcement in business dealings	13	1,385	87	15	1,500

When 1,500 respondents from FATA were asked whether they or their family members experienced contract enforcement in business dealings, only 13 confirmed that they did. The number of cases under this category is quite low for the above stated reasons.

#### Purchase or sale of movable property

Of 1,500 FATA respondents, 81 confirmed that they experienced litigation of purchase or sale of moveable property.

While a significant number of respondents (89) did not know whether their household members had experienced such cases, 14 respondents did not reply to the question. Some 40 respondents

to the question.

#### Family law issues: divorce, maintenance, child custody, guardianship, inheritance

As mentioned before, cases of divorce, child custody, inheritance or guardianship, and maintenance are very rare in the tribal society. Such issues are dealt with within the four walls of a household and are considered very much against the family honour if discussed with strangers. In response to such situations, family members resolve such issues through a family *Jirga*.

There is a high probability that the 20 respondents who responded in the affirmative

Table 37: Purchase or sale of movable property

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Purchase or sale of movable property	81	1,316	89	14	1,500

confirmed that they faced such litigations while 1,358 replied that they did not. 90 respondents did not know, while 12 respondents did not reply to the question.

#### Lease and rental issues: disrepair, eviction etc

1,500 respondents were asked through a single choice question whether they had experienced any issues related to lease and rental, which led to disrepair or eviction. Some 40 respondents confirmed that they faced such litigations while 1,358 replied that they did not. 90 respondents did not know, while 12 respondents did not reply

had resolved these issues through their family *Jirga*.

#### Dispute with employer over unpaid wages

Tribal society consists of many characteristics that provide a sense of unity and cohesion. It is based on inter-family linkages that unite sub-clans, clans and tribes and families in a web of kinship. The family structure is the most complex feature of tribal society that shares family honour, property and intra-familial hate and love relationships.

Table 38: Lease and rental issues

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Lease and rental issues: disrepair, eviction etc.	40	1,358	90	12	1,500

Table 39: Family law issues

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Family law issues: divorce, maintenance, child custody, guardianship, inheritance	20	1,378	85	17	1,500

Generally, businesses in FATA are owned by families and not by individuals. Employees are generally from within a family, at different hierarchies, depending mostly on their individual status within the family or household. First-borns usually run the show, while youngsters follow. This way, most of the workers/employees are from within that particular family and there are less chances of any such litigation.

#### Involvement in sectarian violence

Orakzai and Kurram Agencies in FATA are two tribal areas where Shiite and Sunni communities live together. Shiite population is estimated to be between 12-14% of the total FATA population; however, there are areas where local tribes are predominantly Shiite, such as in Parachinar tehsil of Kurram Agency. The last few years of sectarian

Table 40: Dispute with employer over unpaid wages

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Dispute with employer over unpaid wages	14	1,384	89	13	1,500

Thus, the response from FATA respondents is not a surprise, as only 14 respondents shared that they had a dispute with their employer over unpaid wages.

#### Debt bondage

Very few Pakistani banks have branches in FATA. Since the Recovery Act has not been extended to FATA, banks do not give loans to the locals of FATA. In the absence of such services, the people of FATA are left with no other choice but to take

violence in Kurram Agency have disrupted life in the area, and led to forced migration of thousands of families of both sects. The sectarian violence in Kurram also spilled over into the adjacent Orakzai Agency. Those who are actively involved in violent acts are arrested by the political administration, but the majority is still at large.

The question aimed to know whether any of the respondents had been guilty of or involved in

Table 41: Debt bondage

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Debt bondage	42	1,355	87	16	1,500

loans from local private companies who run currency business and provide loans on a very high credit. It is believed that the interest rate could be between 30% to 70%, higher than with banks.

sectarian violence. 10 respondents confirmed that during the last ten years, they or their family members had been charged with sectarian violence.

This number is fairly small compared to the

Table 42: Involvement in sectarian violence

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Found involvement in sectarian violence	10	1,388	86	16	1,500

magnitude of the problem; however, respondents might not have honestly disclosed this information. Furthermore, both sects blame the intelligence agencies or a 'foreign hand' for this violence. Therefore, there is a certain reluctance to share information on sectarian violence.

#### Found involved in tribal/family clashes

It is a known fact that *Pakhtuns*, especially in tribal areas, have family and tribal feuds over land, honour, water or other issues related to shared property. The media always report on such incidents within the family which leads to violence, injuries and death. The political administration's intervention leads to the arrest of people from both sides after the ceasefire (*teega*).

The survey aimed to know whether any of the respondents were found guilty or involved in

family feuds information as they are proud of these feuds. However, the number is still fairly low, as it is perceived that almost every family in FATA has a feud. This could also be taken positively and as an indication that the people of FATA are now realising the impact of the feuds which have contributed to the underdevelopment of their areas.

#### Injured in an accident (motor vehicle)

In FATA, as stated in the first chapter, the terrain is harsh and road communication is extremely poor. The highways are in better condition, but access roads are, for the most part, not asphalted, making driving extremely difficult and dangerous.

#### Have you been involved in a dispute during the past two years?

If a *Pakhtun* family member is involved in any

Table 43: Involvement in tribal/family clashes

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Found involved in tribal/family clashes	84	1,314	88	14	1,500

tribal/family clashes and as many as 84 confirmed that they or their family members had faced such litigations. This number may not include those cases of family/tribal clashes which were resolved internally by local *Jirgas*.

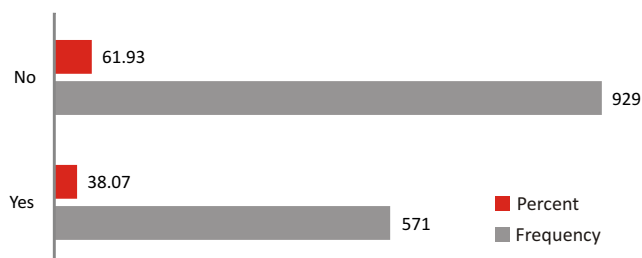
Tribal *Pakhtuns* do not shy away from sharing

litigation, the whole family gets involved, including women and children. Therefore, women respondents who confirmed that they experienced such situation did not necessarily mean to say that they were personally involved, but that their families were part of such a dispute.

Table 44: Injuries in accident

Crime/issue	Experienced	Not Experienced	Don't Know	No Response	Total
Injured in an accident (motor vehicle)	129	1268	87	16	1500

Figure 17. Involvement in a dispute during the past two years



In the previous section, around 38.70% of the respondents had experienced litigation of numerous forms, from 'victim of theft or fraud' (12.80%), to 'injured in an accident' (8.60%), 'arrest or torture by FC or Army' (5.90%) to 'arrested without warrant under the FCR' (5.70%).

Following these results, the survey attempted to find out whether the respondents had faced any dispute during the last two years and some 38.07% respondents confirmed that they had indeed experienced litigation of one or the other form. This reflects a staggering reality of tribal life; it also shows that in the absence of any security apparatus, people turn against each other easily and raise decades-old issues. Many have disputes of varying nature, leading to violence and bloodshed.

Out of the 571 respondents who had experienced litigation, 290 were women, 9 respondents more than men. However, as stated above, this does not preclude that in reality, the women's male family members had been the one to experience the dispute.

It has been observed that women, as disputants, are not allowed to become part of the *Jirga* process, their male members generally represent them.

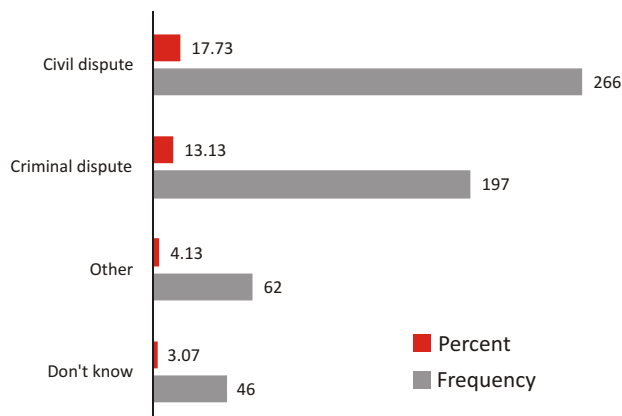
#### If yes, what was the dispute about?

571 respondents who shared this information said that they had experienced varying levels of disputes. They were subsequently asked what type of dispute they had experienced. Out of 571 respondents, 46.58% answered that they had

faced civil disputes, while 34.50% respondents said that they had experienced criminal disputes.

All 8.06% respondents who did not know the answer were women.

Figure 18. Nature of dispute



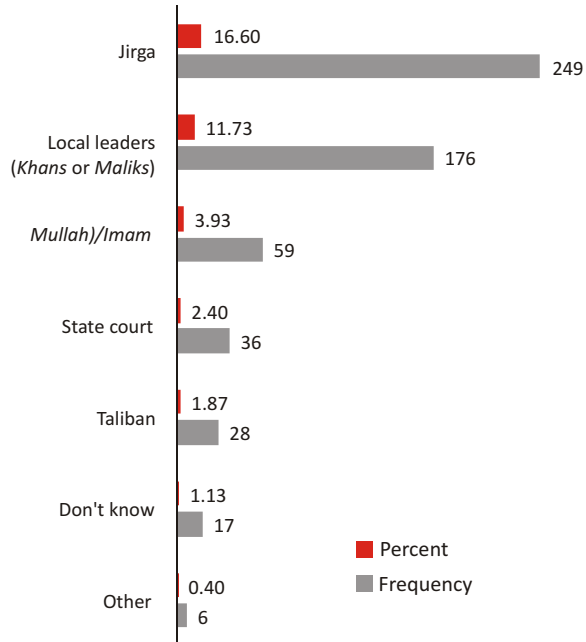
#### Whom did you take the dispute to first?

The 571 respondents who had experienced disputes were then asked whom they had first taken their dispute to for resolution. Out of 571 respondents, 43.08% said that they had taken their disputes to a *Jirga*. 30.82% respondents said that they had taken their disputes to the local leaders (*Khans* or *Maliks*) first, while 10.33% respondents said that they had taken their disputes to *Mullah/Imam* of their areas.

6.30% respondents said that they had taken their disputes to courts in adjoining districts of Khyber Pakhtunkhwa first. In such cases, a disputant can file an appeal in the court of commissioner of the adjoining district against the verdict of FCR *Jirgas*.

4.98% respondents of the sample had also accessed Taliban courts. When cross-tabulated, the data by Agency/FR shows that out of 28 respondents who had accessed Taliban courts, 18 were from South Waziristan Agency, 6 from FR Tank and 2 from FR D.I.Khan, while only one came from FR Peshawar. Taliban presence is mostly concentrated in South Waziristan, North Waziristan, FR Tank, FR Bannu and FR D.I. Khan.

Figure 19. First choice for dispute resolution mechanism



### How satisfied were you with the involvement of the following?

The 571 respondents who had experienced litigations of various nature were then asked whether they were satisfied with the institution once they had approached them.

Table 45 conveys a very clear picture of people's

level of satisfaction with various forms of justice systems in Pakistan. *Jirga* receives an overwhelming response from the respondents in terms of satisfactory delivery of justice in a manner communities in FATA aspire for. Out of 249 respondents, 227 respondents have shown their satisfaction, including 152 'very satisfied' and 75 'satisfied'. Only 22 respondents were not satisfied with the *Jirga* decisions they received in response to their disputes, including 20 'some what unsatisfied' and 2 'not satisfied'.

The results show that the people in FATA are also very satisfied with the involvement of local leaders (*Khans or Maliks*) or *Mullahs/imams* in resolving their disputes.

In the conservative tribal society of FATA, *Mullahs* and *Imams* are considered very important people and an integral part of the society. During the last three decades *Mullahs* and *Imams* have received tremendous amount of prominence and respect because of their role to gather support for Afghan jihad against Soviet Forces. Since they are perceived to be well versed in the *Sharia't* law therefore, it has been observed that sometime people take their disputes to these *Mullahs* and *Imams* to be processed under *Sharia'a* law.

Some 36 respondents took their disputes to the

Table 45. Satisfaction with justice-dispensing mechanism/actor

Response	Very Satisfied	Somewhat Satisfied	Somewhat Unsatisfied	Not Satisfied	Total
State Court	1	20	10	5	36
<i>Jirga</i>	152	75	20	2	249
Local leaders ( <i>Khans</i> or <i>Maliks</i> )	79	83	12	2	176
<i>Mullah (s)</i> <i>Imam (s)</i>	35	14	8	2	59
Taliban	13	3	7	5	28
Other	2	3	0	1	6
Don't Know					17
<b>Total</b>	<b>282</b>	<b>198</b>	<b>57</b>	<b>17</b>	<b>571</b>

state courts. Since FCR regulates the entire life in FATA, it is generally believed that cases of all nature should go to either the FCR *Jirga* or *Olasi Jirga*. Therefore, it is a little surprising that the 36 respondents accessed the state's court system. However, legal experts reported that although state courts are very expensive and time-consuming, the people of FATA still have the option to access them in their adjacent districts. Looking at the data, we see that out of 36 litigants who had accessed state courts, some 21 respondents showed their satisfaction, including 1 'very satisfied' and 20 'somewhat satisfied'. Some 15 respondents showed their lack of satisfaction, including 10 'somewhat unsatisfied' and five 'not satisfied'.

Taliban courts were quite active in the beginning of the Taliban evolution in FATA after the 9/11-incident and subsequent attacks of American and NATO forces on Afghanistan; Afghan Taliban took refuge in FATA and started their activities of gathering support, using land for training, and recruiting new local Taliban. Since FCR *Jirga* is not very trusted and the people were not satisfied with the justice dispensation, they started looking towards Taliban for social justice. At that point in time, the Taliban resolved some very complex disputes and received a tremendous amount of appreciation and trust from the local tribes. However, the justice meted out according to Taliban interpretation of Islam became unacceptable to the local people and hence, the Taliban's charm quickly started to fade.

Furthermore, since the Pakistan army and other security forces are hunting Taliban, it is not possible for them to organise their courts, etc. Therefore, the results show that a few respondents took their cases to Taliban. Out of 28 respondents, 16 showed their satisfaction, including 13 'very satisfied' and three 'somewhat satisfied', while 12 respondents were not satisfied with the judgement of Taliban courts, including seven 'somewhat unsatisfied' and five 'not satisfied'.

Table 45 shows that the *Jirga* institution remains the most trusted system, followed by local leaders and *Mullahs*. All three have been very important institutions within tribal society for a long time.

#### **What were the reasons you chose the institution/individual to deal with the dispute?**

Through a multiple-choice question, 571 were asked why they chose those institutions/individuals to deal with their disputes. The reasons that respondents shared are shown in table 46.

The data is very straight forward and tells how the respondents perceived them to be 'fair and trusted' (16.93%), 'less expensive' (11.73%), 'efficient and effective' (10.47%), 'follows accepted local norms and values' (8.60%), 'close to where I live' (8.27%) and 'less corrupt' (5.47%).

This response shows that more people look for institutions that are fair and trusted, followed by

Table 46: Reasons for choosing the institution/individual to deal with the dispute

Response	Frequency	Percent
Other (Specify)	8	0.53
Less corrupt	82	5.47
Close to where I live	124	8.27
Follows accepted local norms and values	129	8.60
Efficient and effective at resolving the dispute	157	10.47
Less expensive	176	11.73
Fair and trusted	254	16.93



its economic dimensions. The absence of corruption was their last priority, as it is believed that almost all institutions are corrupt.

### Trust placed in the types and functions of the *Jirga* systems

This section documents the respondents' perception on various dimensions of *Jirga* such as perception of respondents on different types of *Jirga* institutions, including Taliban *Shura/Jirga*, the level of trust the respondents have on various types of *Jirgas*, and their views on whether reforms can be brought in to the *Jirga* mechanism, etc.

### In your opinion, what type of *Jirga* is most trusted for resolving disputes in this area?

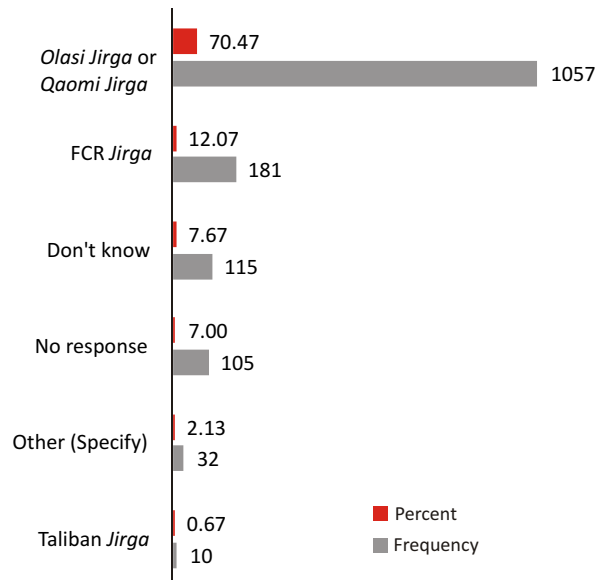
The survey attempted to gauge the level of trust the respondents have in the type of *Jirga* they have access to. The respondents were asked about the types of *Jirga* they trust the most for resolving disputes. The respondents were given options of Taliban, FCR or government and *Olas*i *Jirgas*. Well over two-third of the respondents (70.47%) identified *Olas*i *Jirga* as the most trusted one followed by FCR *Jirga* with just 12.07%. However, keeping in view the ongoing security situation and wide spread perception that FATA is under full influence of Talibanisation, the survey results for Taliban *Jirga* are quite astounding with only 0.67% support.

The overwhelming support for the *Olas*i *Jirga* conveys a clear message that the FATA respondents are quite satisfied with this system and not so much with other forms of *Jirga*.

After cross tabulation by age group for both *Olas*i and FCR *Jirga*, it was found that out of 1,238 respondents who chose both *Jirga* systems, 640 are between the age group 50-64 years and 419 between the age group of 18-29 years. This also indicates that both young and old prefer *Jirgas* to other forms of justice mechanisms.

When further cross-tabulated with education level, we see that out of 1,238 respondents who

Figure 20. Type of *Jirga* most trusted for resolving disputes in the area



chose both FCR and *Olas*i *Jirgas*, 410 were illiterate, while 664 had primary to intermediate level education. This also indicates that the majority who chose FCR *Jirga* are either illiterate or less educated and do not know much about the legal and human rights consequences associated with both *Jirga* institutions.

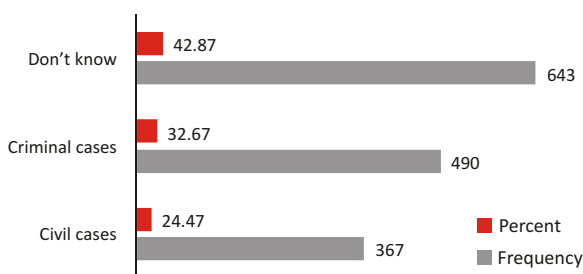
During the focus-group discussions, we found that most of the respondents preferred *Olas*i *Jirga* system to FCR *Jirga*. Regardless of gender and age, the participants of all focus-group discussions supported *Jirga*, especially *Olas*i *Jirga* and opined that *Olas*i *Jirga* is less corrupt and more transparent and accountable, less expensive, and acceptable to all parties.

Lawyers and retired civil servants also revealed that the *Olas*i *Jirga* mechanism, as a tool to dispense justice, is the most trusted institution in FATA.<sup>144</sup> They believed that the *Jirga* mechanism is a more effective and efficient tool to dispense justice within the tribal environment, as it satisfies the religious and cultural sentiments of the people.

### Effectiveness of FCR *Jirga*

FATA respondents were subsequently asked to share their perception of the effectiveness of the FCR *Jirga* system in resolving criminal and civil cases. The results indicate that respondents were more in favour of the FCR *Jirga* settling criminal cases as compared to civil cases. In various focus-group discussions, the respondents revealed that civil cases settlement under FCR *Jirga* takes more time and creates frustration for both disputant parties.

Figure 21: Effectiveness of FCR *Jirga*



When we cross-tabulated the data by gender, we found that out of 643 respondents who did not know the answer or who did not have any opinion, 503 were women. We further cross-tabulated the data by education of the respondents and found that 340 of them had never gone to school.

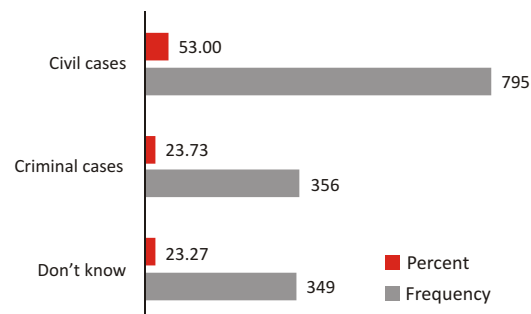
### Effectiveness of *Olasi Jirga*

Contrary to FCR *Jirga*, *Olasi Jirga* is more effective in resolving civil than criminal cases.<sup>145</sup> More than half of the respondents, 53.00%, believed that *Olasi Jirga* is more effective in resolving civil cases as opposed to only 23.73% who believed that *Olasi Jirga* is best suited for resolving criminal cases. 23.27% is still quite a high number and when we cross-tabulated this figure, we found that out of 349 respondents, 185 had never gone to school, while 38 had only received religious education, and 51 had primary level education. Further cross-tabulation showed that out of 349 respondents, 315 were women. This reflects lack of awareness among women about the *Jirga*

mechanism.

This notion is supported by the results of most of the focus-group discussions in which the

Figure 22: Effectiveness of *Olasi Jirga*



participants specifically narrated how *Olasi Jirga* is more effective in resolving civil disputes. To avoid more bloodshed or maintain law and order situation in the respective Agency, the local political administration is keener to deal with criminal rather than civil issues. However, if a civil case leads to bloodshed or violence, the political administration intervenes and resolves it before it gets worse.

### Effectiveness of other forms of *Jirgas* (Taliban *Shura*)

Taliban *Jirgas* or *Shuras* are confined to a few parts of FATA. The presence of military operation in South Waziristan, Bajaur and some parts of Mohmand, Orakzai and Khyber Agencies and FR Kohat indicate the presence of Taliban and other religiously oriented groups. Besides, there are other areas such as North Waziristan, FR D.I.

Figure 23: Effectiveness of other forms of *Jirga* (Taliban *Shura*)

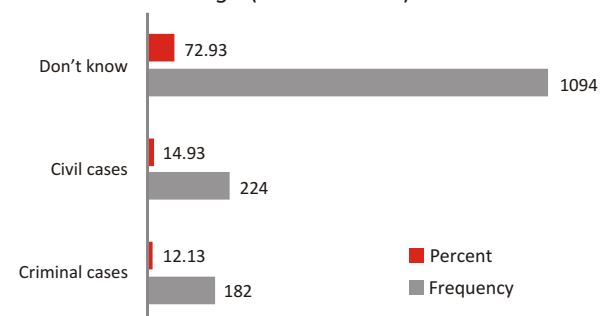


Table 47: Cross-tabulation by Agency/FR for views on Taliban *Jirga*

Response				Total
	Criminal cases	Civil cases	Don't Know	
Bajaur Agency	16	10	217	243
FR Bannu	0	1	49	50
FR D.I.Khan	2	34	14	50
FR Kohat	0	0	50	50
FR Lakki	4	0	46	50
FR Peshawar	2	2	46	50
FR Tank	0	43	7	50
Khyber Agency	6	6	211	223
Kurram Agency	3	4	176	183
Mohmand Agency	32	16	87	135
North Waziristan Agency	60	40	48	148
Orakzai Agency	1	0	91	92
South Waziristan Agency	56	68	52	176
<b>Total</b>	<b>182</b>	<b>224</b>	<b>1,094</b>	<b>1,500</b>

Khan, and FR Kohat where there has not been any military operation against militant groups, but where it is widely believed that the areas are Talibanised.

The presence of Taliban in these areas leads us to believe that Taliban and other militant groups deal with local matters through their own interpretation of Islam. However, the data provides a striking revelation. 72.93% respondents shared that they did not know or they did not have any opinion on the Taliban *Jirga*, while only 14.93% respondents said that Taliban *Jirga* is effective in resolving civil cases.

12.13% believed that Taliban *Jirga* is effective in resolving criminal cases. This shows that Taliban are unable to conduct their *Jirgas* regularly because of their engagement with the military in FATA.

When cross-tabulating the data by Agency/FR, those who believed that Taliban *Jirga* is effective in resolving criminal and civil cases were mostly from South and North Waziristan agencies where we have seen Taliban presence and support. On

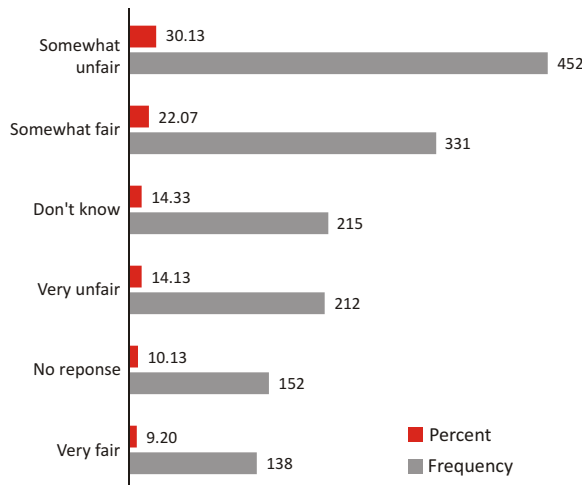
the other hand, the table 47 also shows that most respondents from Bajaur, Khyber and Kurram agencies did not have any opinion or did not know the answer. We have seen a weak presence of Taliban groups in Khyber and Kurram agencies in the past; however, the Taliban were in full control of Bajaur before the military operation there and they had organised such *Jirgas* where alleged criminals were persecuted.

#### **Fairness of FCR *Jirga***

We asked the respondents different questions with regard to the fairness of the FCR and *Olasi Jirga* mechanisms. First, we will deal with the FCR *Jirga* mechanism. Compared to other results of the subsequent questions, figure 24 shows some encouraging results for FCR *Jirga*. Nevertheless, the rest of the survey results in the subsequent sections provide a very clear indication that FCR *Jirga* has little credibility and acceptance within the tribal society in FATA.

During the focus-group discussions with disputant parties of *Jirgas*, an overwhelming majority showed their lack of trust in the FCR

Figure 24: How fair do you think the FCR *Jirga* is



*Jirga* and shared that cases had been influenced by the political administration and at times by the *Jirga* members who were hand-picked by the administration.

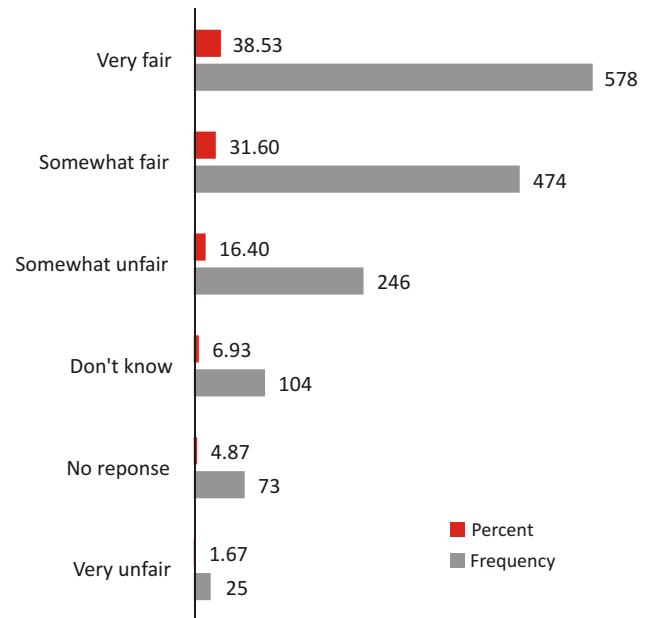
The lawyers and civil servants who were interviewed for this study were also of the view that FCR *Jirga* was not a fair institution for providing justice to the aggrieved.

#### Fairness of *Olasi Jirga*

1,500 male and female respondents from FATA were asked in a qualified manner to share their views on the fairness of *Olasi Jirga* system. In response to this question, the data reveals that only 18.07% of the respondents believed that *Olasi Jirga* was unfair, including 1.67% 'very unfair' and 16.40% 'somewhat unfair'. An overwhelming majority of respondents, 70.13%, believed in the fairness of the *Olasi Jirga*, including 38.53% 'very fair' and 31.60% 'somewhat fair'.

An overwhelming majority of the respondents in the focus-group discussion were also of the view that *Olasi Jirga* is fairer than FCR *Jirga*. As stated above, key informants from the legal profession also viewed *Olasi Jirga* as more reliable and fairer than FCR or any other form of dispute resolution mechanism in FATA.

Figure 25: How fair do you think *Olasi Jirga* is?



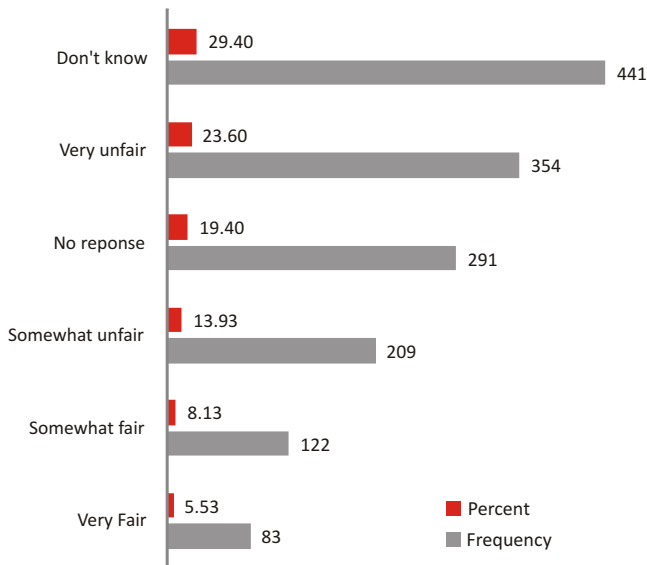
#### Fairness of *Sharia'* (under Taliban)

Figure 26 shows opposing results to the focus-group discussions and consultations. Figure 26 shows that only 13.66% respondents believed that Taliban style of *Sharia'* is fair, including 5.53% 'very fair' and 8.13% 'somewhat fair'. In all focus-group discussions and consultations, respondents expressed their full belief in the fairness of trial under *Sharia'* laws; however, in face-to-face perception surveys, one-third of the respondents, 34.53%, believed that Taliban style *Sharia'* is unfair, including 23.60% who thought it to be 'very unfair' and 13.93% who said 'somewhat unfair'. This shows the lack of trust the respondents have in the fairness of trials under Taliban style *Sharia'*.

A larger group of respondents, 29.40%, did not form any opinion, while some 19.40% did not reply. When we cross-tabulated these two options, we found that more women opted for these options than men. If we combine both options, this amounts to half of the respondents (48.80%).

Interviews with female leaders from FATA also show their lack of trust in the fairness of any of the

Figure 26: How fair do you think *Sharia'* under Taliban is?

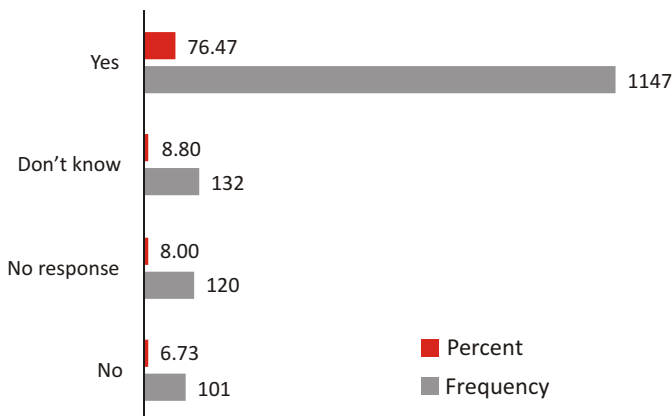


above mechanisms including *Olas*, FCR and *Sharia'*, and believed that all such tools have violated women's rights and have kept them away from the decision-making process.<sup>146</sup>

***Jirga* plays a proactive role in preventing conflicts**

It is perceived that in tribal areas bordering Afghanistan, *Jirga* (in the context of both FCR and *Olas*) plays a vital role in dispensing justice, preventing bloodshed and resolving decade-old conflicts. This question intended to learn the respondents' opinion on the proactive role of *Jirga* in preventing conflicts.

Figure 27. Is it true that *Jirga* plays proactive role in preventing conflicts?

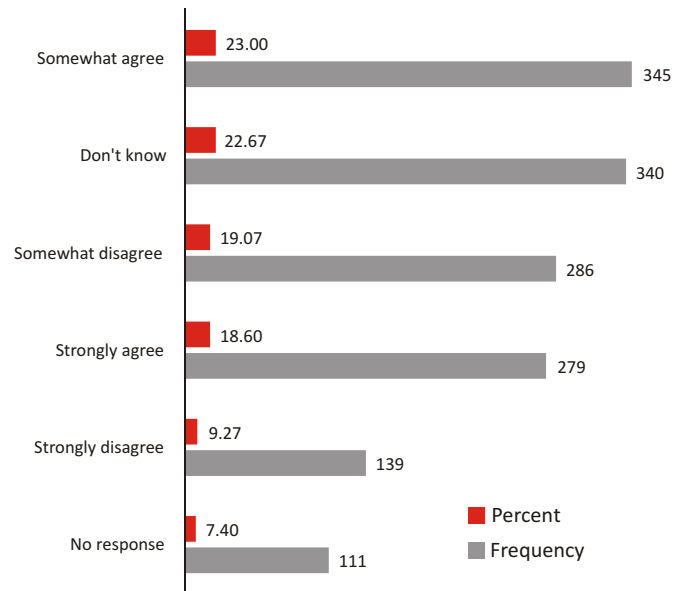


Respondents of focus-group discussions and consultations supported this notion. An overwhelming majority believed that in response to fears of conflicts getting bloody, *Jirga* intervenes and prevents bloodshed in most cases. It is also believed that the role of *Jirga* is restorative and not retributive and that it therefore brings harmony to the community.

**FCR *Jirga* decisions are influenced by the more powerful party to a dispute**

The respondents were then asked whether they would support the notion that the powerful party can easily influence FCR *Jirgas*. Some 28.00% respondents disagreed with the notion,

Figure 28: FCR *Jirga* decisions are influenced by the more powerful party to a dispute



including 9.27% 'strongly disagree' and 19.07% 'somewhat disagree'. On the other hand, majority of the respondents, 41.60%, agreed with this notion, including 18.60% 'strongly agree' and 23.00% 'somewhat agree'. Almost quarter of the respondents did not form an opinion or did not know the answer. Some 7.40% did not respond to the question.

When we cross-tabulated the results with income, we found 223 respondents from the higher income group [PKR 15,000 and above]

who agreed with the notion. This shows that this perception is stronger within the higher income groups.

During focus-group discussions with disputants, very few voices disapproved of this notion, while the overwhelming majority was against the FCR *Jirga*, which, the respondents believed, has the tendency to be influenced by the powerful party to the dispute. They believed that once the decision is made by the political administration, it is hard to challenge it in any court of law.

During the in-depth interviews, *Maliks* and religious leaders from FATA shared the perception that FCR *Jirga* decisions are influenced by the powerful who have connections inside the political administration of their respective agencies.

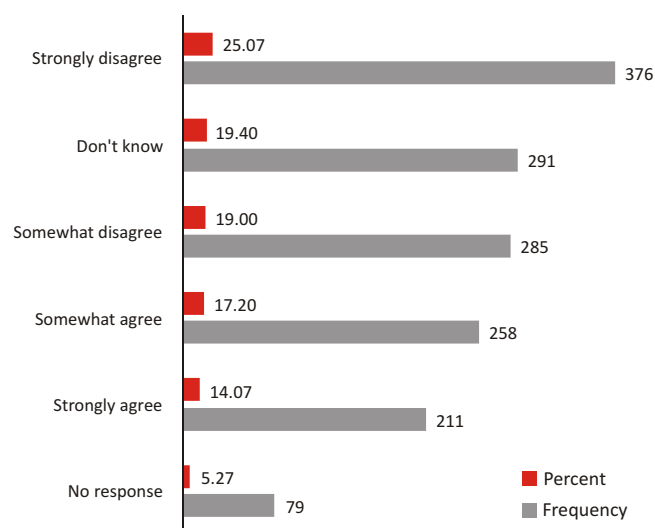
The above information leads us to believe that power can play a role in influencing *Jirga* decisions. The huge vacuum that the lack of proper justice in FATA has created has been filled by criminal elements which, by design, give more power to the already powerful. This creates an imbalance in the equation of the society and leads to unrest and chaos, a situation that is widely prevalent in FATA and other poorly governed regions of Khyber Pakhtunkhwa like Malakand Division.

### ***Jirga* elders/members take bribes**

Through a single-choice question, the respondents were asked whether they agreed or disagreed with the notion that *Jirga* members take bribes. The response is mixed and shows that there is a possibility of members being bribed by disputant parties. Some 31.27% agreed with the notion, including 14.07% 'strongly agree' and 17.20% 'somewhat agree'. A total of 44.07% disagreed with the notion, including 25.07% 'strongly disagree' and 19.00% 'somewhat disagree'.

During the focus-group discussions, majority of the respondents revealed that *Jirga* members receive bribes from the disputant parties;

Figure 29. *Jirga* elders/members take bribes



however, at the same time, respondents also suspected that losing parties usually direct such allegations against *Jirga* members.

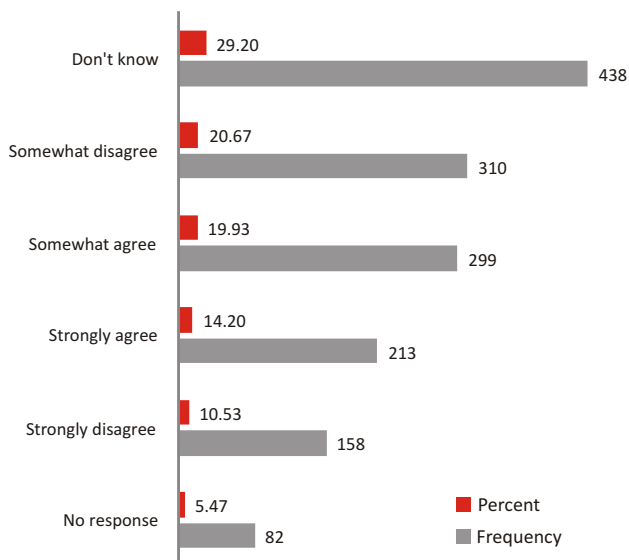
During the in-depth interviews with key informants, it was shared that *Jirga* members receive a reasonable fee for their services; however, the informants did not deny the fact that some members are corrupt and often receive bribes. They also added that such members do not have respect within their communities and subsequently lose credibility. Furthermore, the losing party in the court of political administration can always challenge such biased *Jirga* decisions. Besides, the community is always a witness to such proceedings and can react against one-sided decisions.

A large group (19.40%) did not know the answer and 5.27% did not respond; cross-tabulation showed the majority of them were female respondents.

### ***Jirga* members are intimidated by the more powerful party to a dispute**

The survey intended to know whether the respondents would agree or disagree with the notion that the more powerful party to a dispute intimidates *Jirga* members in their favour. The answers received show mixed responses.

Figure 30. *Jirga* members are intimidated by more powerful party to a dispute



Around 31.20% respondents disagreed with the notion, including 10.53% 'strongly disagree' and 20.67% 'somewhat disagree'. While 34.87% respondents agreed with the notion, including 14.20% 'strongly agree' and 20.67% 'somewhat agree'.

After cross-tabulation, we found that out of 438 respondents who did not have an answer, 360 were women.

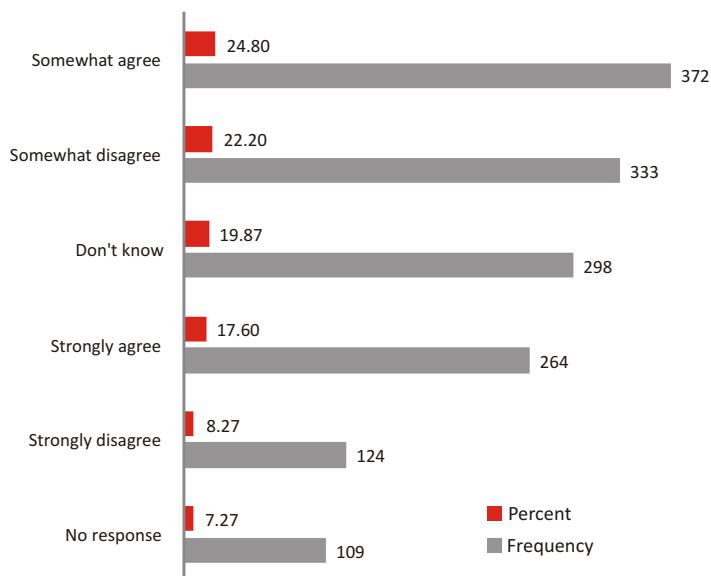
During the focus-group discussions, majority of the respondents said that possibilities of *Jirga* members being intimidated by the more powerful party exist.

### ***Jirga* members are influenced by Political Administration**

As *Jirga* members are selected by the political administration, there are more chances of members being influenced by the political administration. This perception is reflected in the survey results. As *Jirga* members are selected by the political administration, there are more chances of members being influenced by the political administration. This perception is reflected in figure 31.

Cross-tabulation showed that 239 respondents

Figure 31. *Jirga* members are influenced by Political Administration



out of 298 who did not know the answer or did not reply were women.

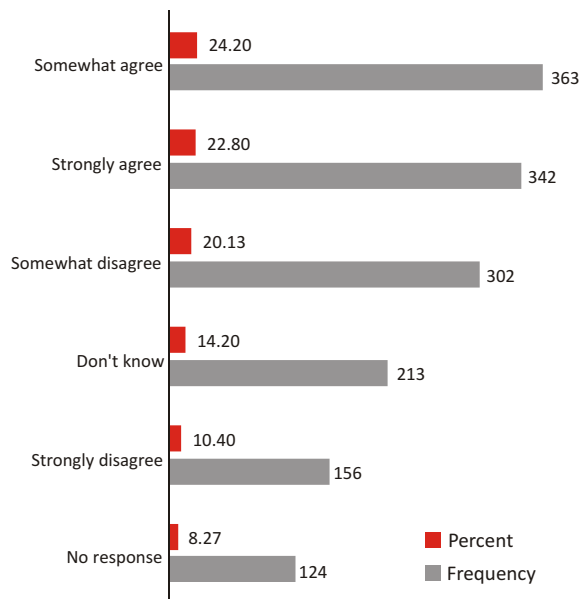
During focus-group discussions with various groups, the participants showed mistrust on the *Jirga* members' integrity. They added that the political administration could influence the *Jirga* decision through their hand-picked members. This view was overwhelmingly shared by participants of various consultations and key informants from FATA.

### ***Jirga* members remain impartial**

This question is linked to the previous one. *Jirga* members who are susceptible to influence by the political administration are unlikely to remain impartial. However, the figure 32 shows a different picture. Around 47.00% respondents believed that *Jirga* members remain impartial and cannot be easily influenced to manipulate the *Jirga* process and decisions including 22.80% 'strongly agree' and 24.20% 'somewhat agree'. While 30.53% respondents disagreed that *Jirga* members could remain impartial, including 10.40% 'strongly disagree' and 20.13% 'somewhat disagree'.

The focus-group discussions with various groups

Figure 32. *Jirga* members remain impartial



revealed different opinions than the survey findings. However, it is also important to mention here that majority of the respondents showed their concerns over the impartiality of FCR *Jirga* during focus-group discussions. It is interesting to note that very few voices were raised relating to the impartiality of the *Olas* *Jirga* members.

The key legal informants hailing from FATA supported the *Jirga* as an efficient source of dispensing justice; however, they were of the opinion that the government involvement through the political administration has put its status and future at stake.

### FCR *Jirga* should be conducted under *Sharia'* Law

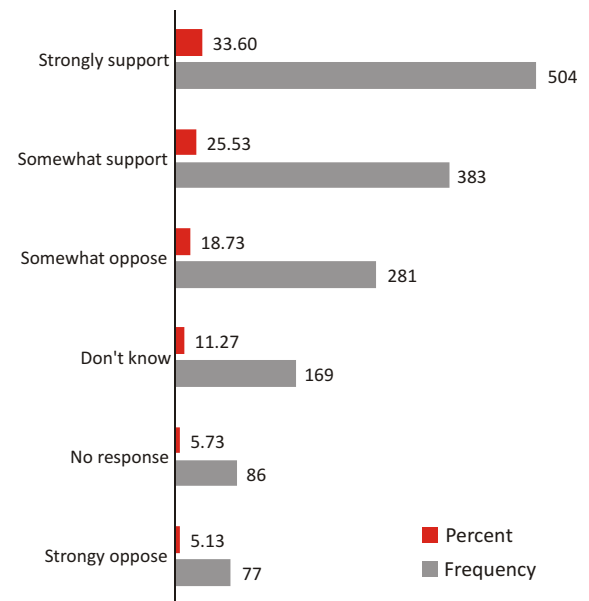
In FATA, disputing parties to the *Jirga* must arrive at a consensus concerning the mode of settlement arbitration, *Riwaj* (customary laws) or *Sharia'* (Islamic law).<sup>147</sup> During the focus-group discussions, a majority including women and youth identified *Sharia'* law [under *Jirga* process] as a mode of settlement for any of their problems, including disputes. There were very few voices that supported *Riwaj* as the mode of

dispute resolution.

When asked this question during the perception survey, a total of 23.86% respondents opposed this notion, including 5.13% 'strongly oppose' and 18.73% 'somewhat oppose'. On the other hand, majority, 59.13%, supported the notion, including 33.60% 'strongly support' and 25.53% 'somewhat support'.

On the other hand, it was observed and shared by the key informants that if things are not in the

Figure 33. FCR *Jirga* should be conducted under *Sharia'* Law



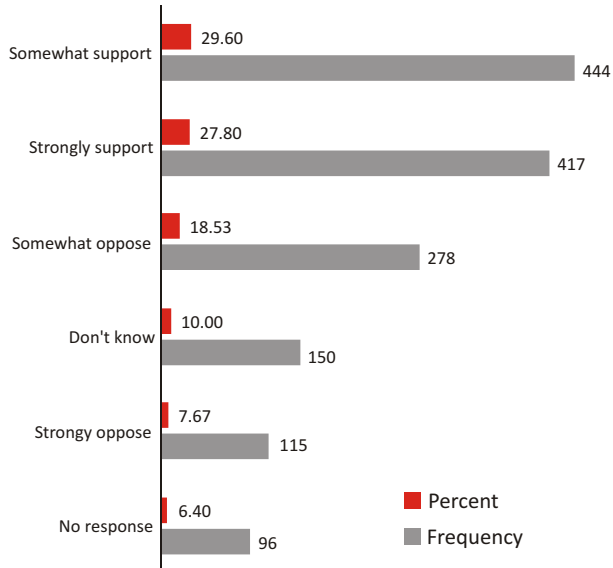
favour of tribesmen under the *Sharia'* law, they switch to their old customs. For instance, women are provided with inheritance rights under *Sharia'* as opposed to under the local customs of the tribal society. There are other bad practices such as *Swara* etc. which are discouraged under the *Sharia'* law but remain local customs that are strongly rooted in the tribal society and preferred over *Sharia'* laws.

### FCR *Jirga* should be conducted under local *Riwaj*

Contrary to the above, more than half of the responses received were in favour of *Riwaj*. Around 57.40% respondents supported the



Figure 34. FCR *Jirga* should be conducted under local *Riwaj* (local customs)

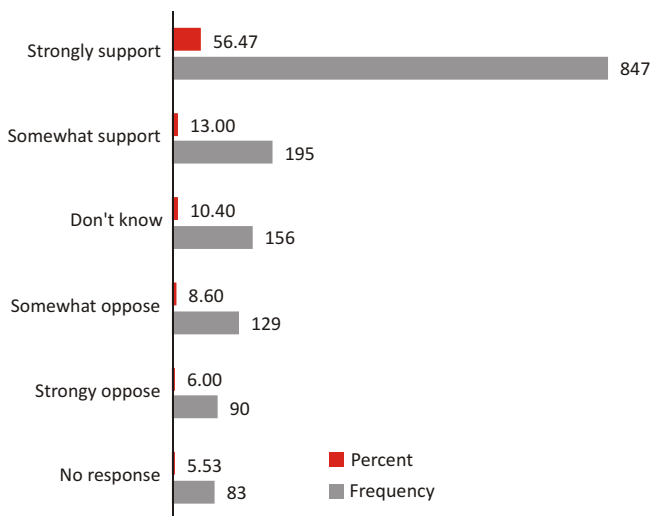


notion, including 27.80% 'strongly support' and 29.60% 'somewhat support'. More than a quarter of the respondents, 26.20%, opposed the notion, including 7.67% 'strongly oppose' and 18.53% 'somewhat oppose' the notion.

**FCR *Jirga* should be conducted under a mixture of both *Sharia*' Law and local *Riwaj***

Figure 35 shows a very authentic picture of the psyche of the tribal society in FATA. The local people usually practice both *Riwaj* and *Sharia*' as

Figure 35. FCR *Jirga* should be conducted under a mixture of both *Sharia*' law and local *Riwaj*



modes of settlement during their *Jirga* proceedings.

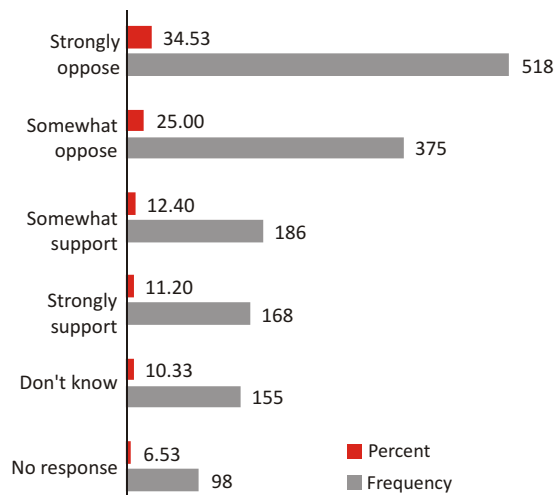
These results reflect the double standards of the local people in FATA. Parties choose whatever mode of settlement suits them. When it comes to *Badal* or *Qasas* (revenge), they will opt for *Sharia*'; however, when it comes to giving rights to women, they will prefer to follow traditions and customs.

**Government officials involvement in *Jirga* Proceedings**

The fact that people do not like the involvement of government officials during the *Jirga* proceedings was tested during the focus-group discussions, consultations and through the perception survey. The results are very similar; figure 36 shows that majority of the respondents, 59.53%, opposed the notion, including 34.53% 'strongly oppose' and 25.00% 'somewhat oppose'. While 23.60% respondents supported the notion, including 11.20% 'strongly support' and 12.40% 'somewhat support'.

The involvement of government or local administration is not welcomed by the local people who do not support the idea of members being selected by the local administration. They

Figure 36. Involvement of government officials in *Jirga* proceedings



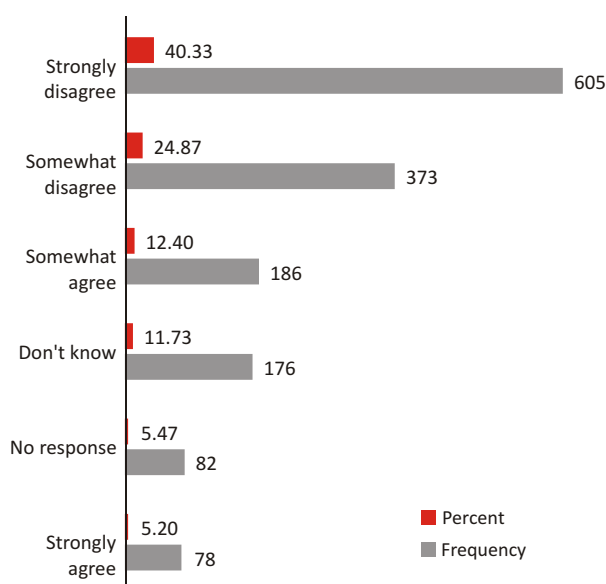
believe that the *Jirga* process should be transparent and accountable to the people involved, not to the government.

### **Jirga fails to resolve disputes effectively**

With regard to the notion that '*Jirga* fails to resolve disputes effectively', the respondents did not seem very convinced and a majority, 65.20%, disagreed with the notion, including 40.33% who 'strongly disagreed' and 24.87% who 'somewhat disagreed'. Only 17.60% supported the notion, including 5.20% who did so 'strongly' and 12.40% who 'somewhat supported' it.

The results show the true picture of the

Figure 37. *Jirga* fails to resolve disputes effectively



sentiments of the tribal society; however, some respondents blamed *Jirga* for their under-development and lack of proper justice.<sup>148</sup>

### **Jirga violates women's rights**

Human and women's rights organisations such as Amnesty International, Human Rights Commission of Pakistan, Aurat Foundation, etc. have some very negative and strong views about the *Jirga* institution and argue that *Jirga* has the tendency to violate women rights. Women activists also believe that *Pakhtunwali*, with an

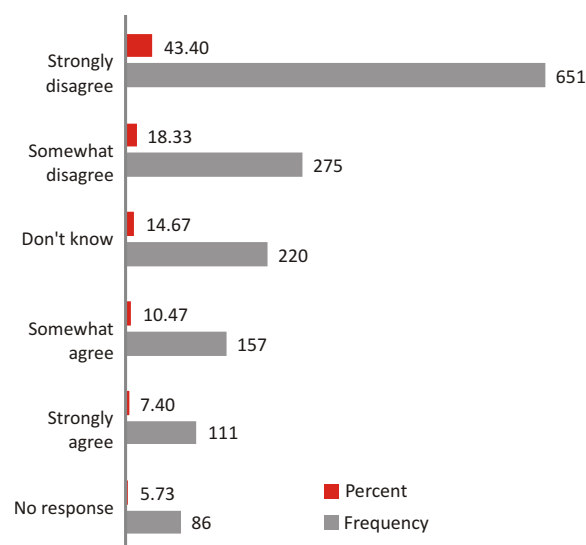
admixture of Islam, has throughout the ages been used to establish the superiority of men over women in the *Pakhtun*-dominated areas generally, and in FATA particularly.<sup>149</sup> Notions, institutions and customs of *Pakhtunwali* have been interpreted and practiced in men's favour in order to exercise, justify and reinforce patriarchal authority. *Jirga*, as an institution of *Pakhtun* society, violates women's rights.<sup>150</sup>

However, keeping in view the above-mentioned negative perception, figure 38 depicts a very different picture, given that a two-third majority, 71.73%, disagreed with the notion, including 43.40% who 'strongly disagreed' and 18.33% who 'somewhat disagreed'.

Since half of the respondents were women, cross-tabulation showed very interesting results; women of *Pakhtun* society, especially the rural and tribal women, supported the male members of the family. Nearly half of the respondents who disagreed with the notion are women. Data in table 48 by gender is self-explanatory.

During the focus-group discussions and consultations, the respondents were not ready to believe in a violation of women's rights and blamed the media for propagating against *Jirga* and tribal way of life. Surprisingly, women

Figure 38. *Jirga* violates women's rights



respondents also supported the men's argument. This shows the extreme lack of awareness among women of FATA on basic rights and issues they are faced with, as well as their dependency on male family members.

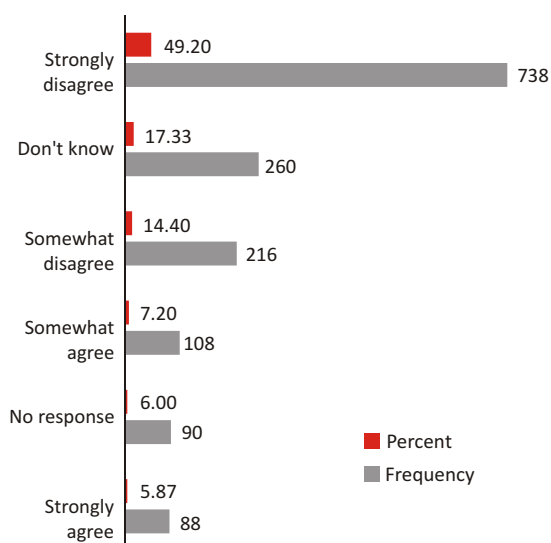
During the focus-group discussions and consultations, the topic was very carefully discussed. Some subsequent questions aiming to probe the respondents were asked. The overall results of the qualitative data shows that tribal society is not ready to accept this reality; however, some voices supported the inclusion of women in the *Jirga* process, which, they believed, would help reduce chances of violation of women's rights.

### ***Jirga* violates minorities' rights**

The survey intended to know the respondents support for the notion whether '*Jirga* violates minorities' rights'. Figure 39 provides a very clear picture of the perception of the tribal society on this account. Majority, 63.60%, disagreed with the notion, including 49.20% 'strongly disagree' and 14.40% 'somewhat disagree'. While 13.07% agreed with the notion, including 5.87% 'strongly agree' and 7.20% 'somewhat agree'.

Again, cross-tabulation showed that the overwhelming majority of those who gave no answer were female.

Figure 39. *Jirga* violates minorities' rights



During the focus-group discussions and consultations, the respondents were unable to come up with a strong argument, while some young voices were heard supporting the notion and blaming the *Jirga* institution for not providing any platform for the minorities.

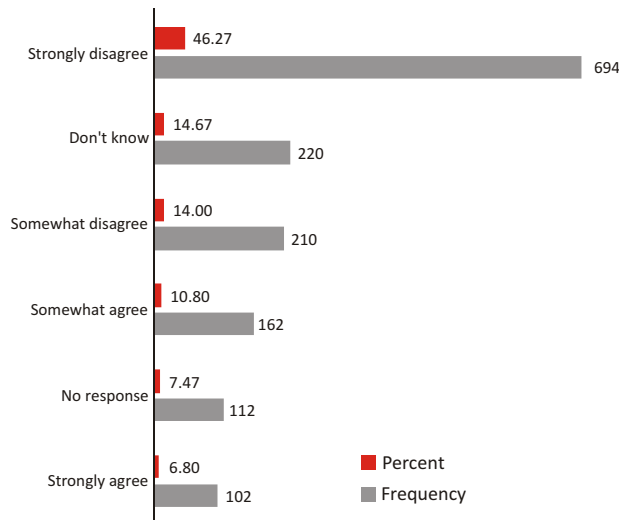
### ***Jirga* violates basic Human Rights**

It is argued that *Jirga* institution is not in conformity with the international human rights standards and with the Constitution of Pakistan.<sup>151</sup> However, the respondents' perception seems to be quite different and does not support the notion that *Jirga* violates basic

Table 48: Cross-tabulation data of tribal women supporting their males

Response	Male	Female
Strongly agree	75	36
Somewhat agree	86	71
Somewhat disagree	174	101
Strongly disagree	344	307
Don't know	59	161
No response	10	76
<b>Total</b>	<b>748</b>	<b>752</b>

Figure 40: *Jirga* violates basic Human Rights



human rights of the people living in FATA, including women and minorities. Majority, 60.27%, disagreed with the notion, including 46.27% 'strongly disagree' and 14.00% 'somewhat disagree'. 17.60% respondents supported the notion, including 6.80% 'strongly agree' and 10.80% 'somewhat agree'.

Respondents in the focus-group discussions and consultations argued that *Jirga* provided equal opportunities to all and does not violate any fundamental rights of the individual. They blamed the Western media for highlighting the negative aspects of *Jirga*.

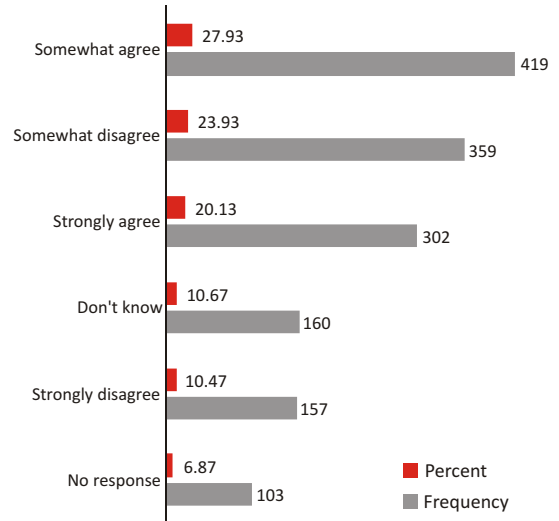
***Jirga* provides a fair and public hearing opportunity to key parties involved in the dispute**

Most of the *Jirga* proceedings take place in an open place and can be attended by anyone except women.

Respondents agreed with the notion that '*Jirga* provides a fair and public hearing opportunity to the parties involved in the dispute'. Majority of respondents, 58.06%, agreed with the notion, including 20.13% 'strongly agree' and 27.93% 'somewhat agree'.

During the focus-group discussions, the respondents were very clear about the fact that

Figure 41. *Jirga* provides a fair and public hearing opportunity to key parties involved in dispute



*Jirga*, as an open process, can easily be observed by outsiders. They argued strongly that anyone observing the *Jirga* process could raise concerns over proceedings if he was not satisfied. *Jirga* members can be replaced if found to be unsatisfactory by any party to the dispute. Furthermore, those respondents who disagreed with the notion argued that *Jirga* fails to provide a fair chance to women and minorities.

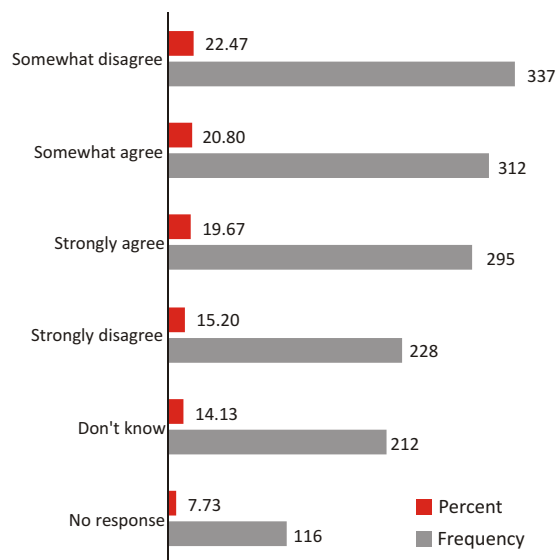
***Jirga* has the potential to prevent violation of women and minorities' rights**

In response to the notion that '*Jirga* has the potential to prevent violation of women and minorities' rights', the results are slightly different to results in figures 38 and 39 where majority disagreed with the notion that *Jirga* violates women and minorities rights.

Over one-third of the sample, 37.67%, disagreed with the notion, including 15.20% 'strongly disagree' and 22.47% 'somewhat disagree', while 40.47% respondents agreed with the notion, including 19.67% 'strongly agree' and 20.80% 'somewhat agree'.

Since this question was a subsequent one, some respondents may have changed their views slightly as the survey proceeded.

Figure 42. *Jirga* has the potential to prevent violation of women and minorities' rights



Interviews with lawyers, women activists and other groups raised the concern that *Jirga* does not have any mechanism to prevent women's and minorities' rights violations, making it an unacceptable form of justice dispensation tool for those who are against this institution.

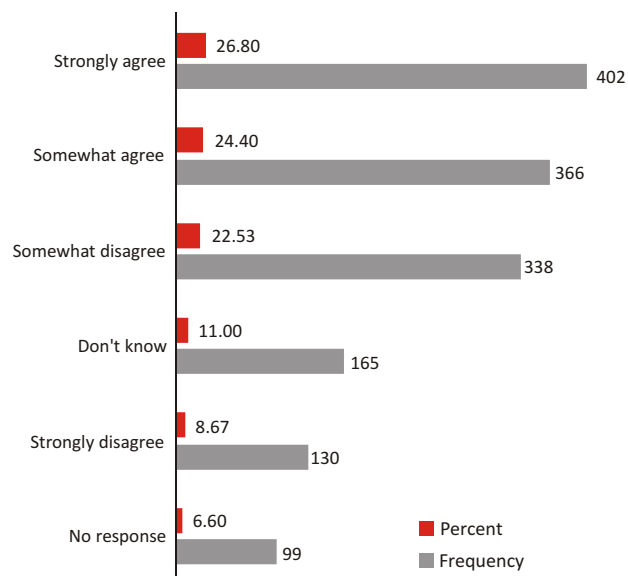
### ***Jirga* maintains social order and restores harmony in the community**

Mediating and restoring peace and harmony to the tribal society, *Jirga* is perceived to be best suited to the tribal areas' conservative environment. However, recent security and political developments in FATA have raised several questions as to the role of *Jirga*. The Taliban as well as the Pakistan army by-passed the *Jirga* institution, which has undermined its credibility, leaving doubts on the very existence of *Jirga* in FATA in recent days.

However, survey results show that respondents trust the *Jirga* as a tool to maintain social order and harmony in FATA.

During the focus-group discussions, middle-aged respondents and litigants particularly raised their concerns and said that the Pakistan army should not have bypassed the role of local administration and *Jirga*. They believed that

Figure 43. *Jirga* maintains social order and restores harmony in the community



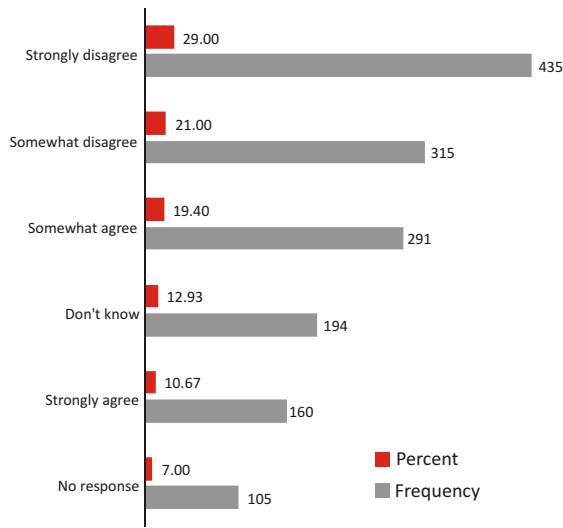
*Jirga* mediates and restores peace and order, and could harmonise the tribal society by preventing conflicts that have caused enormous bloodshed. They provided some historical instances in support of the notion. They said that it took a few days in resolving several decades long conflict over land ownership, which prevented unnecessary bloodshed.<sup>152</sup>

### ***Jirga* is well placed to resolve civil disputes only**

To know the effectiveness of *Jirga* in resolving the civil disputes only, we asked the respondents whether they would support or oppose the notion. Figure 44 shows that half of the respondents, 50%, disagreed with the notion, including 29.00% 'strongly disagree' and 21.00% 'somewhat disagree'. On the other hand 30.07% agreed with the notion, including 10.67% 'strongly agree' and 19.40% 'somewhat agree'.

This question was also discussed during the focus-group discussions and received some overwhelming responses favouring *Jirga* as a well-placed institution to resolve both criminal and civil disputes. The number of cases can be varied for *Olas* and FCR *Jirga*, as FCR *Jirga* is more involved in resolving criminal cases while the

Figure 44. *Jirga* is well placed to resolve civil disputes only

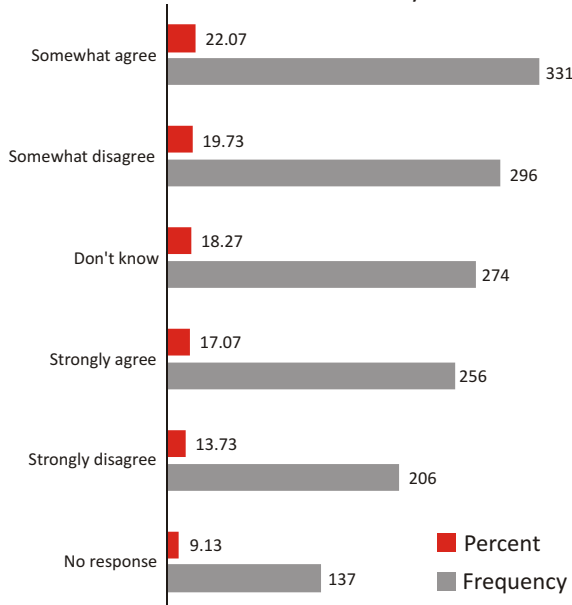


majority of litigants approaching an *Olasi Jirga* wish to resolve civil disputes.

### ***Jirga* reintegrates offenders into the community**

As stated before, *Jirga* is restorative rather than retributive in nature. The aim of a *Jirga* is to restore communal harmony, reintegrate both parties to the dispute in society and restore normalcy.

Figure 45. *Jirga* reintegrates offenders into the community



However, the survey results are slightly confusing. As per the figure 45, 39.14% respondents agreed with the notion, including 17.07% 'strongly agree' and 22.07% 'somewhat agree' while one-third of the respondents, 33.46% disagreed, including 13.73% 'strongly disagree' and 19.73% 'somewhat disagree'.

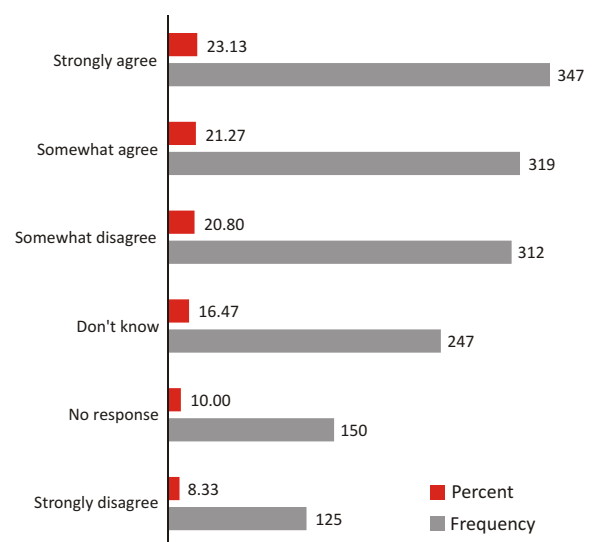
Taliban fighters are mainly from within the local communities who have killed and injured thousands of innocent people. During this time of 'Taliban militancy', it is very difficult for the local people to give amnesty and reintegrate Taliban fighters because of the concept of *Badal* under *Pakhtunwali*.

### ***Jirga* is well placed to resolve both civil and criminal disputes**

The survey intended to gauge opinion on whether the '*Jirga* is well placed to resolve both civil and criminal disputes'. The figure 46 shows that a large group of respondents, 44.40%, agreed with the notion, including 23.13% 'strongly agree' and 21.27% 'somewhat agree', while 29.13% respondents disagreed, including 8.33% 'strongly disagree' and 20.80% 'somewhat disagree'.

Quite a large group of respondents either did not

Figure 46. *Jirga* is well placed to resolve both civil and criminal disputes



know the answer (16.47%) or did not reply (10.00%).

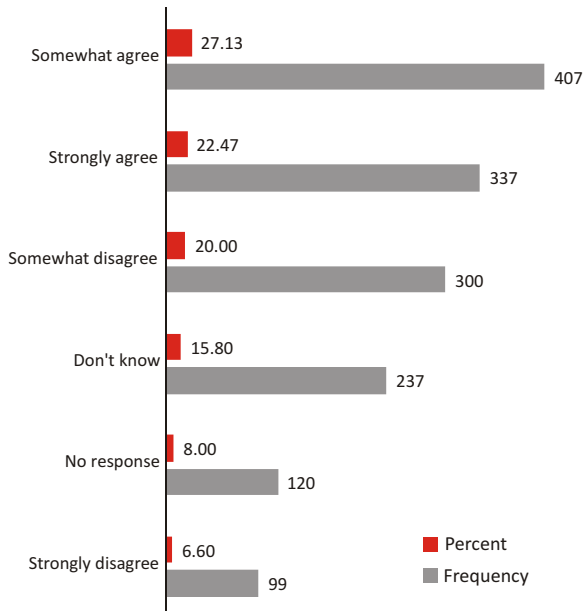
As stated earlier, both *Jirga* forms are effective in their respective realms. *Olas* is more effective in resolving civil disputes while FCR *Jirga* is approached for criminal cases keeping in view the role of political administration's role. For criminal cases the people do not have much choice, as the political administration has to intervene concerning criminal cases to maintain law and order in the area, leaving little choice for the public to approach *Olas* *Jirga*.

### Jirga contributes to Rule of Law

It is generally perceived within tribal society that in FATA, *Jirga* plays a vital role in ensuring rule of law. In the absence of any other state's mechanism to ensure rule of law, *Jirga* remains the sole institution, which provides security and justice to the people and prevents conflicts.

The figure 47 shows that nearly half of the respondents 49.60% supported the notion, including 22.47% 'strongly agree' and 27.13% 'somewhat agree'. Only a quarter of the sample, 26.60%, disagreed with the notion, including 6.60% 'strongly disagree' and 20.00% 'somewhat

Figure 47. *Jirga* contributes to Rule of Law



disagree'. 15.80% of the respondents did not know the answer while 8.00% did not reply.

An overwhelming majority of respondents during the focus-group discussions agreed with the notion and believed that *Jirga* can contribute considerably to ensuring the rule of law.

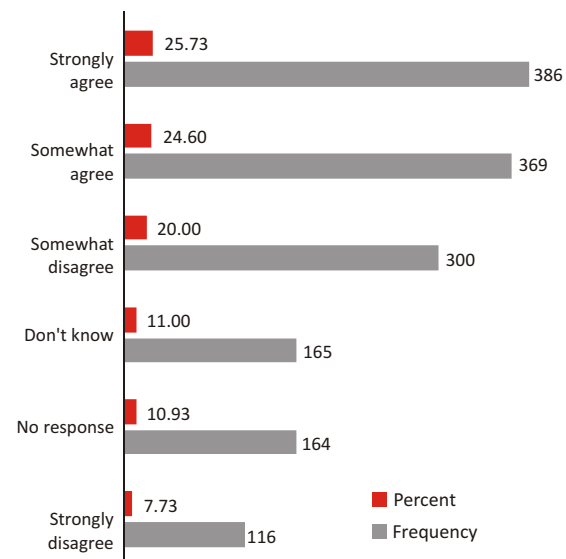
Key informants from FATA, including lawyers, retired civil servants, members of *Jirga*, etc., also were of the opinion that a 'free and fair *Jirga* mechanism can contribute to maintaining law and order and providing justice to all, [thus] ensuring the rule of law in FATA'.<sup>153</sup>

### Jirga resolves serious crimes

On the ability of *Jirga* resolving some serious crimes, half of the respondents, 50.33%, agreed with the notion, including 25.73% 'strongly agree' and 24.60% 'somewhat agree'. 27.73% opposed the notion, including 7.73% 'strongly disagree' and 20.00% 'somewhat disagree'.

Cross-tabulation showed that out of 165 in the

Figure 48. *Jirga* resolves serious crimes



'don't know' category, 142 were women, while those who did not respond included 149 women and 15 men.

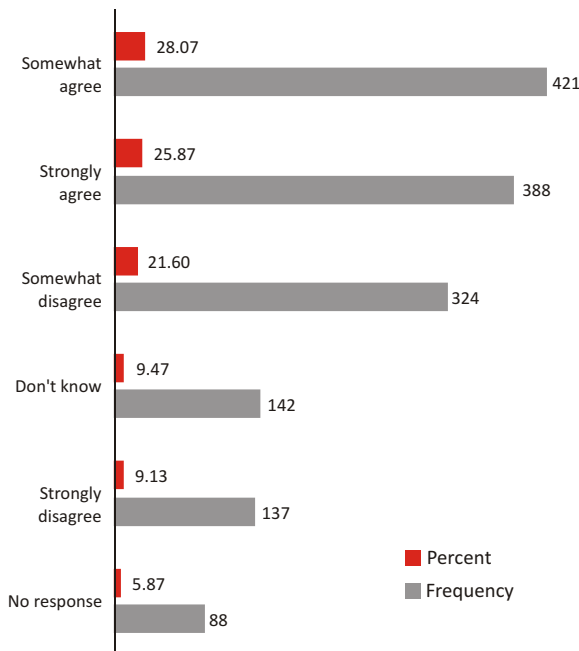
Information gathered through qualitative tools

such as focus-group discussions, consultations and in-depth interviews with key informants tell us that *Jirga* cannot resolve serious or complex issues. However, it can be improved and can form a written jurisprudence with the passage of time.<sup>154</sup>

***Jirga* is an organised, well-established, transparent and efficient institution**

Cross-tabulation of the 'don't know' and 'no response' categories by gender showed that of 142 respondents in the 'don't know' category, 131 were female, while 80 of the 88 'no response' respondents were females. Again, this reflects the lack of knowledge of women regarding the *Jirga* process.

Figure 49. *Jirga* is an organised well-established transparent and efficient institution

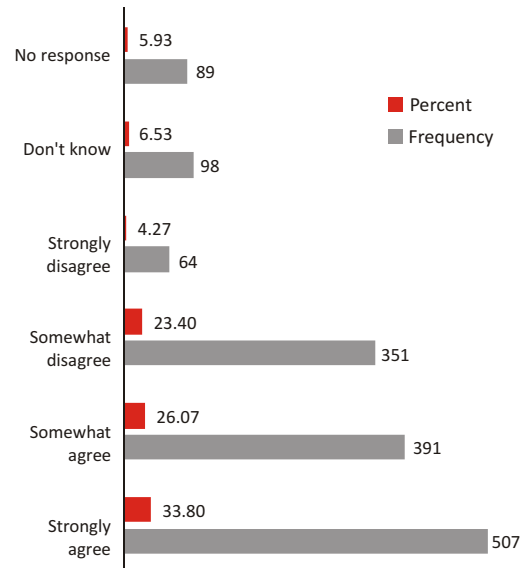


***Jirga* makes lasting peace among disputants**

Cross-tabulation by gender showed that of the 98 'don't know' respondents, 93 were women, and 82 women were part of the 'no response' category.

Men were also very vocal compared to women during the focus-group discussions.

Figure 50. *Jirga* makes lasting peace among disputants



**Do you support/oppose the punishment of collective responsibility [under the FCR] for the implementation of *Jirga* decision?**

Cross-tabulation of the data with education level showed that more respondents having no

Figure 51. Do you support/oppose the punishment of collective responsibility (under FCR) for the implementation of *Jirga* decisions?

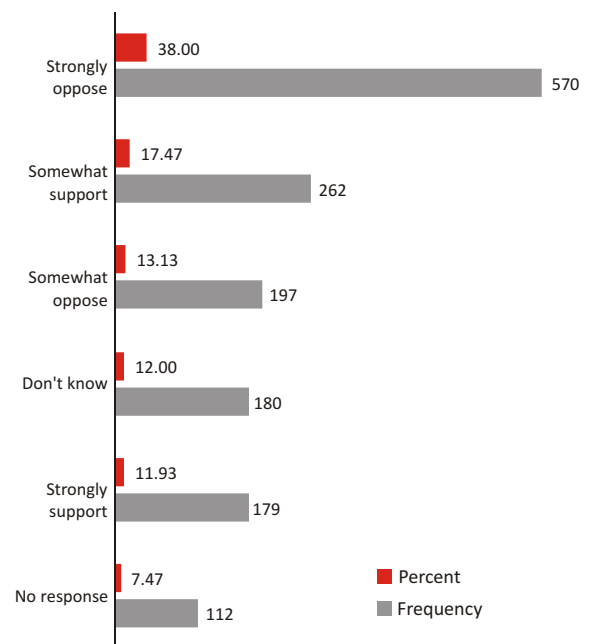




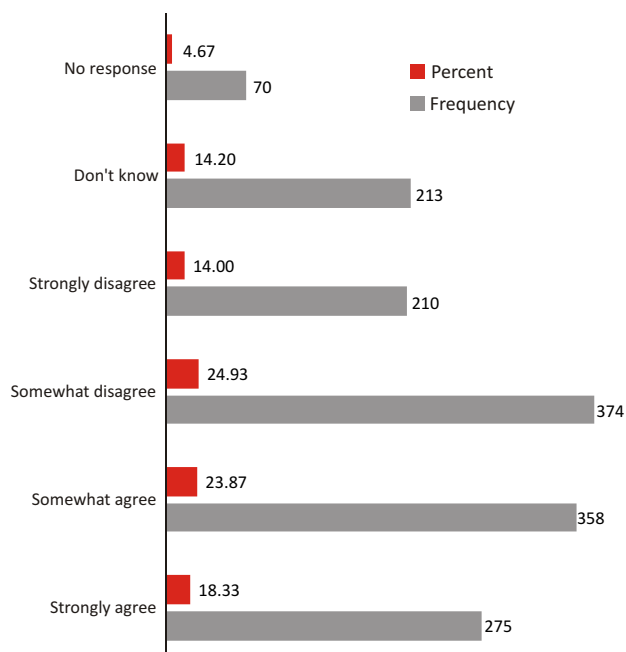
Table 49: Perception on punishment of collective responsibility [under the FCR] for the implementation of *Jirga* decision.

Response	Frequency	Percent
No response	112	7.47
Strongly support	179	11.93
Don't know	180	12.00
Somewhat oppose	197	13.13
Somewhat support	262	17.47
Strongly oppose	570	38.00
<b>Total</b>	<b>1,500</b>	<b>100.00</b>

education at all supported the FCR clause of collective responsibility for imposing *Jirga* decisions, while those who opposed it form the second largest group within the 'not schooled' group. Literate respondents mainly opposed the collective responsibility clause of the FCR. This also reflects the lack of awareness of the local people in regards to some archaic clauses of the FCR, including the collective responsibility

**During FCR *Jirga* proceedings, every member of the *Jirga* has the right to express his views in a democratic way.**

Figure 52. During FCR *Jirga* proceedings, every member of the *Jirga* has the right to express his views in a democratic way



clause. Table 49 is meant to illustrate the issue.

During the focus-group discussions, consultations with local leaders and interviews with key informants, it was revealed that a section of the tribal society supports the status quo in FATA, while educated and well-informed people argued that the current status under FCR with its inhuman clauses have kept the people and the area far behind in terms of human development.

**During *Olasi Jirga* proceedings, every member of the *Jirga* has the right to express his views in a democratic way.**

Figure 53. During *Olasi Jirga* proceedings, every member of the *Jirga* has the right to express his views in a democratic way

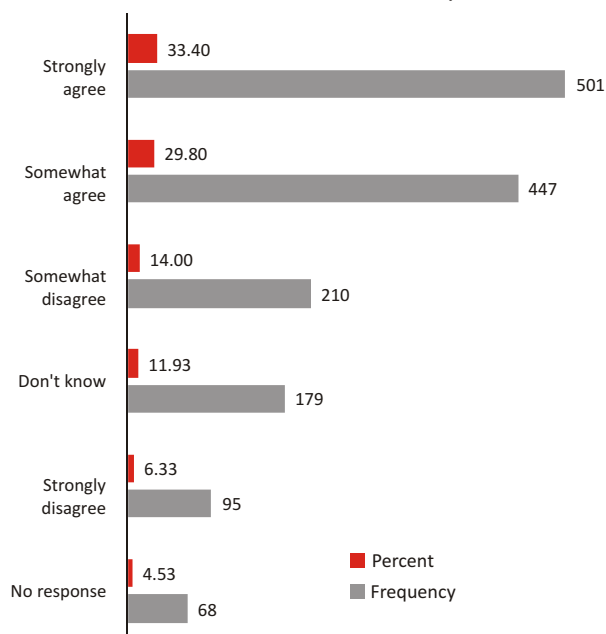


Table 50: Cross-tabulation by level of education

Education	Strongly Support	Somewhat Support	Somewhat Oppose	Strongly Oppose	Don't know	No response	Total
Not schooled	95	99	47	137	101	60	539
Religious education only	19	31	16	40	20	7	133
Schooled upto Primary level	12	40	33	69	30	20	204
Schooled upto Middle level	17	30	28	63	13	14	165
Schooled upto Secondary Certificate level	21	29	26	99	11	9	195
Schooled upto Intermediate level	9	20	22	63	5	1	120
Schooled upto Bachelor level	5	6	20	56	0	0	87
Masters degree	1	5	5	36	0	1	48
Specialisation: Engineering	0	1	0	1	0	0	2
Those upto professional education	0	1	0	6	0	0	7
<b>Total</b>	<b>179</b>	<b>262</b>	<b>197</b>	<b>570</b>	<b>180</b>	<b>112</b>	<b>1,500</b>

The outcome of various consultations with *Maliks*, youth, and other members of the society in FATA reinforced these results. The survey results can also be supported by the outcome of various focus-group discussions where men especially supported this notion.

Almost all key informants of the in-depth interviews except for women agreed with this, and argued that *Olasi Jirga* remains the only viable institution in FATA which can provide an opportunity to the people to express their voices democratically and without any fear.

#### **Credibility, victim's compensation and selection criteria of *Jirga* members**

This section deals with respondents' perceptions on various issues concerning victim's compensation, *Jirga* members' qualifications, their credibility, their selection criteria, and the enforcement of *Jirga* decisions, etc.

A level of, and relevant educational background and experience could be the prerequisites for becoming a lawyer or a judge in the formal judicial system of a modern nation state. Without these conditions it is rather impossible to hold such a position. On the contrary, to

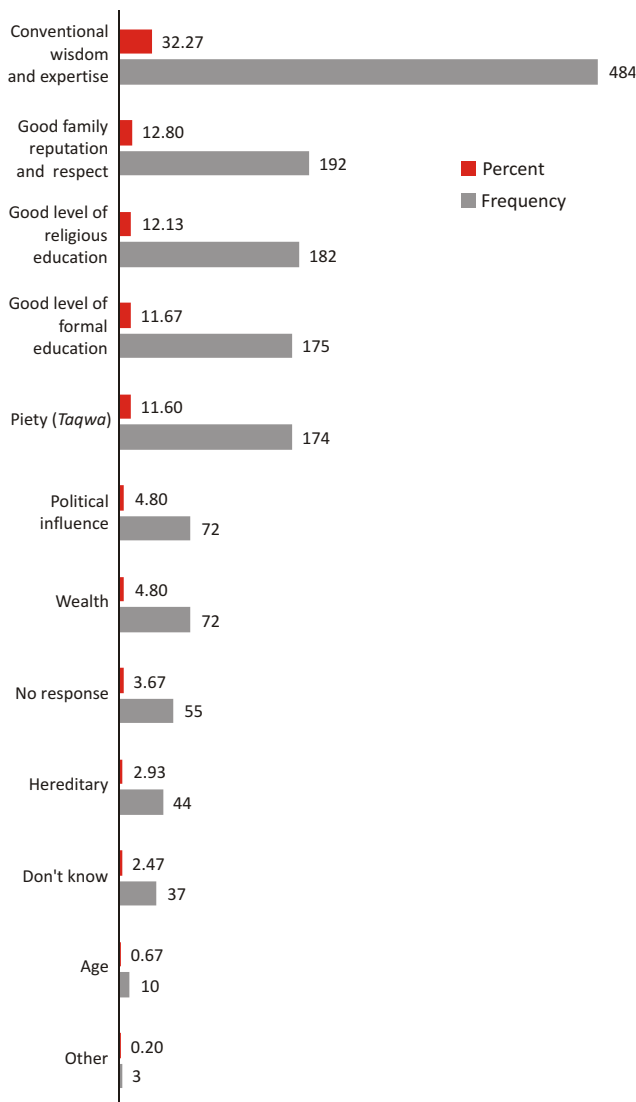
become a member of the *Pakhtun Jirga* council, education is not the pre-requisite in either FATA or any other *Pakhtun*-dominated area of Pakistan. A member should come from a noble family; he should be rich and powerful, and respected for his wisdom and past experience. Education is not a condition but can be added to his credit. In Afghanistan, members of a local *Jirga/Shura* usually have these qualities: piety, religiosity, a proven record and reputation of *Milmastiya* (hospitality), of a good family, *Nang* or *Ghairt* (honour), a large number of men in the family, verbal eloquence and a proven record of sound judgments in past *Jirgas*.<sup>155</sup>

Furthermore, it has been observed that the people of FATA prefer *Jirga* to the formal justice system of the country. They argue that *Jirga* is cheap, accessible, speedy, and that they have the choice of either *Sharia'* or *Riwaj*.<sup>156</sup>

#### **Criteria for becoming a *Jirga* elder/member**

Male and female respondents from FATA were asked about what the criteria to become a *Jirga* member should be. Out of 1,500 respondents, 32.27% identified 'conventional wisdom and expertise' as the main pre-requisite for becoming a *Jirga* member, followed by 12.80% who

Figure 54. What should be the criteria for becoming a *Jirga* elder/member?



identified 'good family reputation and respect' within their society. Some 12.13% respondents identified 'good level of education', which is obviously necessary as they have to be conversant with *Sharia'* laws. Those who identified 'good level of formal education' were only 11.67%. Some 11.60% identified 'piety' as a condition for becoming a *Jirga* member.

Lawyers from FATA were of the view that it would be an ideal situation to see educated members of a *Jirga* who have sufficient knowledge of customary laws, *Sharia'* laws, the Pakistan Penal

Code, international norms and practices related to human rights, and knowledge of the Constitution of Pakistan and other basics related to her judicial system. This will help the *Jirga* reach a decision which complies with the standards of justice; however, they argued, the present *Jirga* members only know the dictates of their society (*Pakhtunwali*).<sup>157</sup> They added that modern education will further strengthen *Jirga* to face the challenges of today's world.<sup>158</sup>

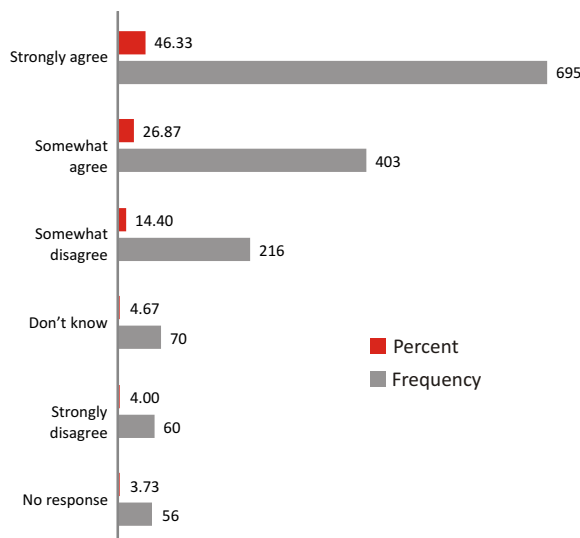
Respondents of consultations and focus-group discussions argued that conventional wisdom, respect within the tribal society as well as family status are the main pre-requisites that a *Jirga* member should bring to the *Jirga*.<sup>159</sup> They believed that members of *Jirga* know their code of conduct and take guidance from past cases.

Figure 54 indicates that people see the importance of education for a *Jirga* member, but not as the sole qualification. A *Jirga* member must also be knowledgeable of the local *Riwaj* and *Sharia'*.

### ***Jirga* is a speedy and less expensive mechanism of dispute resolution**

It is generally perceived that the state's formal justice system is very expensive, corrupt and time-consuming. People have to wait several years for a decision while paying huge amounts of money to their lawyers and officials of lower cadre. In comparison to this, *Jirga* is cheap and quick in dispensing justice. However, experts have shown their concerns and admitted that money has influenced the *Jirga* process.<sup>160</sup> Since the dynamics of *Pakhtun* society have changed during the last few decades and money has become a status symbol, the tribal elders have also become influenced by money.<sup>161</sup> Nonetheless, a majority still supports the *Jirga* system as compared to the formal judicial system in FATA, as the formal legal system has failed to deliver justice to the common man in Pakistan. Furthermore, nearly 60% of people in FATA live below the poverty line and are economically disadvantaged; therefore, they cannot afford the

Figure 55. How strongly do you agree with the statement: *Jirga* is a speedy and less expensive mechanism of dispute resolution



litigation expenses incurred during the formal judicial processes.<sup>162</sup>

*Jirga* elders usually receive money for their service, which is perceived by some as bribe while others take it as members' eligible fee. Generally, the offending party has to bear the cost of all expenses on behalf of all parties involved. At the end of the *Jirga*, the offending party has to arrange a feast for a large gathering, including the victim party, *Jirga* elders, and community members. This is a big cost for the offending party; however, the philosophy behind this act is that those who commit a crime must face the consequences. This way, the offenders learn a lesson and the entire community realises the burden of responsibility in case anyone commits crime. This may not stop people from committing crimes but is a precautionary measure.

Besides other thematic issues of *Jirga*, the study also documents the perception of 1,500 respondents regarding the *Jirga* system's ability to deliver justice, the element of compensation the *Jirga* system provides to the victim party, and financial involved aspects of the *Jirga* process.

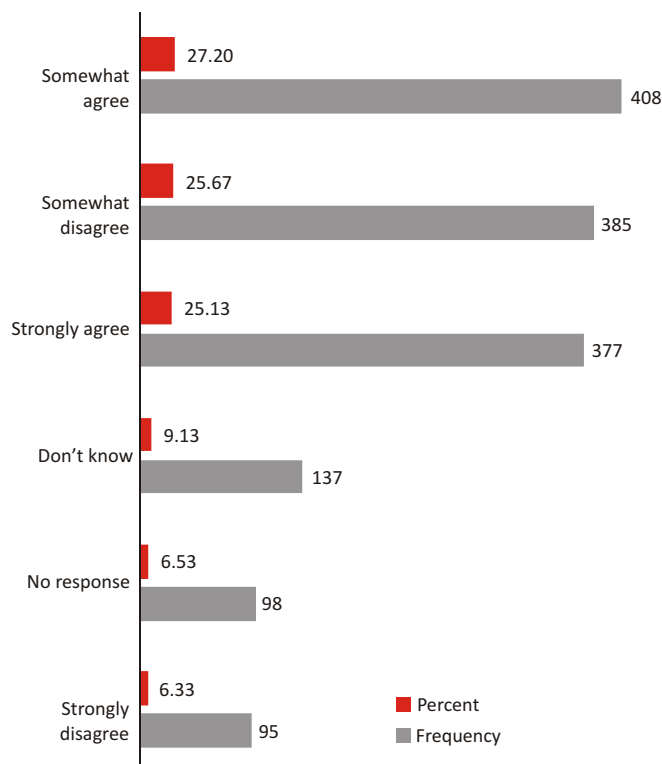
When we analysed the focus-group discussions, we saw an overwhelming support from the respondents despite all other shortcomings of *Jirga*. However, they were open to reforming the *Jirga* system.

Experts from the legal profession, *Maliks*, and other stakeholders also underlined the importance of *Jirga* on the basis of its ability to provide speedy justice at a very cheap rate.<sup>163</sup>

### One of the main outcomes of *Jirga* decision is fair compensation to victims

The *Jirga* process usually aims to reach a conclusion where a victim receives compensation while the burden is placed on the offenders. Thus, while the victim is compensated (usually in material form), the offenders are usually reintegrated into the society/community, which restores harmony. Besides, *Jirga* decisions are based on consensus, which means both the parties have to accept the decision of the *Jirga*.

Fig 56. How strongly do you agree with the statement; "one of the main outcomes of *Jirga* decision is a fair compensation to victims"?



That nearly one-third of the respondents, 32.00%, did not agree with the statement and shared their concerns shows that people have reservations over the outcome of *Jirga* process and believe that at times, *Jirga* does not provide a proper compensation to the victim party. In certain cases, we see a violation of human rights, especially women's rights, at the end of a *Jirga*. Therefore, the results are very similar to the response we saw in the focus-group discussions where respondents shared similar concerns.

The women activists' groups, legal professionals, and other government officials also agreed with the fact that sometimes, *Jirga* does not reach a good decision and that the victims thus do not receive a proper compensation.

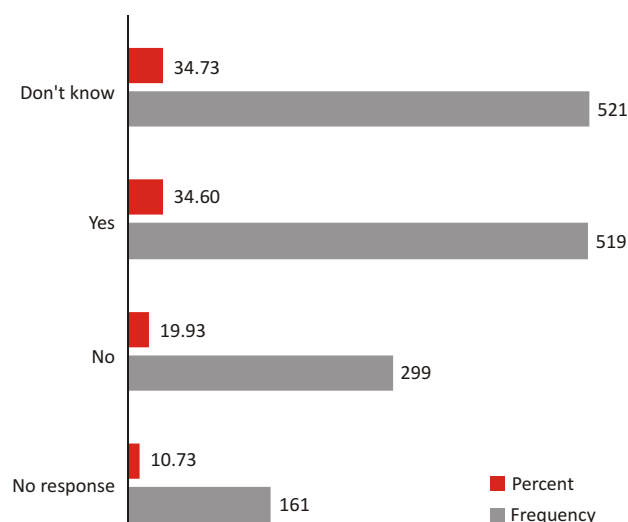
Cross-tabulation by education showed that respondents with higher education do not support the statement, as out of 57 highly educated respondents, only 22 supported the statement.

#### Fee charged by a *Sarkari (FCR) Jirga* for resolving disputes

The survey aimed to confirm whether the *Jirga* elders receive a fee from the litigants, or if this is merely hearsay. The respondents were hence asked whether disputants of *FCR Jirga* pay a fee to the *Jirga* elders. There were mixed responses from the respondents.

Cross-tabulation showed that more male than female respondents (342 to 177) confirmed that members of a *Sarkari Jirga* receive a fee from the disputant parties. However, we also see that

Figure 57. Do disputants pay a fee when their disputes are resolved through a *Sarkari (FCR) Jirga*?



more men (232) than women (67) have confirmed that members of *Sarkari Jirga* do not receive fee. A large number of respondents were undecided, which also indicates the ambiguity of the situation. Out of 521 respondents who did not have an opinion, there were 390 women, while 118 of the 161 'no response' respondents were women.

#### Fee charged by the *Olasi Jirga* for resolving disputes

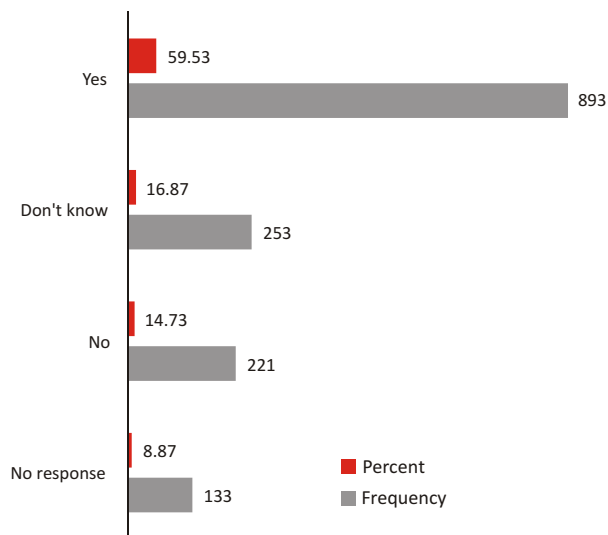
Over half of respondents, 59.53%, confirmed that disputants of *Olasi Jirga* pay fee to the *Jirga* members, while only 14.73% said 'no'. This question received a clearer response in comparison to the one for *Sarkari Jirga*.

Since *FCR Jirga* members receive allowances from the political administration for their

Table 51. Cross-tabulation on payment of fee to *FCR Jirga*

Response	Gender of respondents		Total
	Male	Female	
Yes	342	177	519
No	232	67	299
Don't know	131	390	521
No response	43	118	161
<b>Total</b>	<b>748</b>	<b>752</b>	<b>1,500</b>

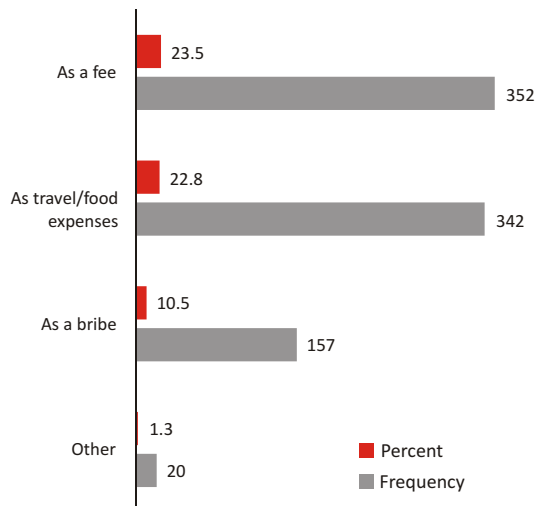
Figure 58. Do disputants pay fee to *Jirga* members, when their disputes are resolved through *Olas* *Jirga*?



services, fewer *Jirga* members may receive a fee for their services under the FCR *Jirga* process. In the case of *Olas* *Jirga*, the members depend on the disputant parties. Nonetheless, *Jirga* members seem to receive fees or contributions in different forms.

Majority believes that *Olas* *Jirga* members should receive a fee from the respondents for their services. Over one third of the respondents, 38.30%, identified that *Olas* *Jirga* members are paid for their travel and food, something that people happily pay for. Some 39.42% believed

Figure 59. Payment to *Jirga* members



that this is a widely accepted and agreed upon fee which *Jirga* members must get from the respondents.

Most of the above-mentioned ways of receiving fee against *Jirga* members' services seem to be lawful with the exception of 'bribes' (17.58%). This establishes the fact that *Jirga* members receive a fee, which keeps them motivated to take part in the *Jirga* processes.

### *Jirga* members selection

This question was asked in the context of FCR *Jirga*, as the Political Administration is vested with the powers to select a *Jirga* member. However, some lawyers said that members could be selected by the parties to the dispute as well during the in-depth interview sessions. This means that disputant parties have some say in the selection process of *Jirga* members.

The results are very self-explanatory and suggest that the Political Administration's role should be minimized considerably in selecting the *Jirga* members, and that disputants should be given a larger role which can develop trust between the government and people, leading more people to accept the *Jirga* verdicts.

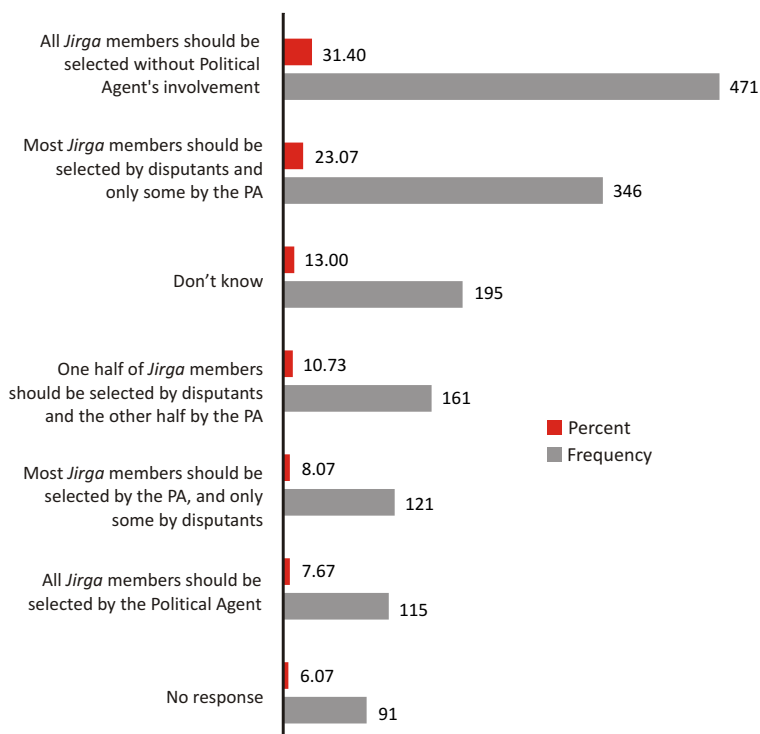
### Party to a dispute can disobey a *Jirga* decision

It is always hard to accept a decision which does not come in your favour; however, *Jirga* has the mechanism to enforce its decision.

When a party is not satisfied with the *Jirga* decision and does not accept the verdict, that particular *Jirga* becomes invalid and another *Jirga* is constituted. If the decision of the second *Jirga* is also not accepted by the party, both the parties are given a third chance. However, the decision of the third *Jirga* has to be accepted by both the parties; otherwise, the *Jirga* will have to apply other means to enforce its verdict.

In case of a FCR *Jirga*, no party can appeal to the court of commissioner after receiving a verdict from the office of Political Agent or his assistant.

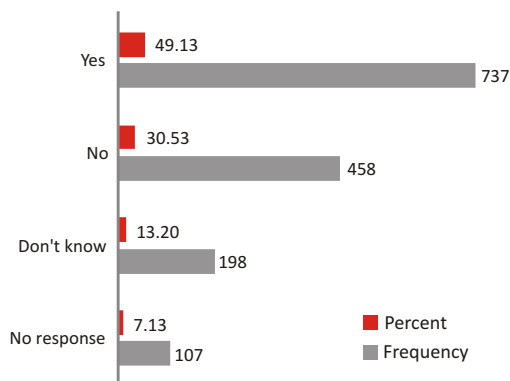
Figure 60. Selection of *Jirga* members



Furthermore, figure 61 also shows that it depends on the respondents' personal experience whether they have experienced or seen a situation where a party disobeyed a *Jirga* decision.

Those respondents who said 'yes' to the question of disobeying the *Jirga* decision, were subsequently asked 'how often does this happen?'. Out of 48.00% respondents 31.66% said that it 'rarely' happens, while some 10.53% believed that it happened 'very often'. 6.33%

Figure 61. Could any party to a dispute disobey a *Jirga* decision?

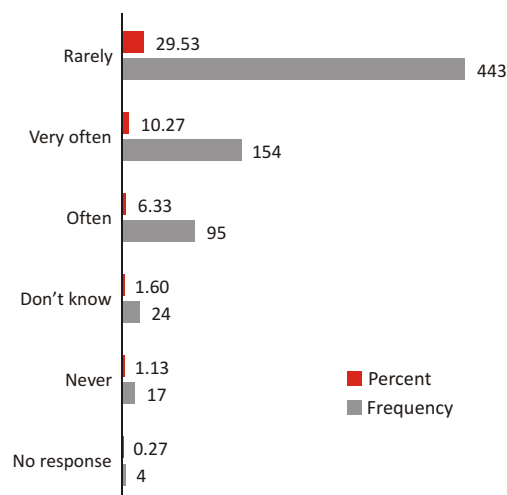


believed that it happens 'often'.

### *Jirga* enforces its decision through

In FATA, *Jirga* verdicts are reached after due process and after getting the consent of both parties. However, in a situation where one party or both the parties do not accept the decision, then other ways are adopted to enforce the *Jirga* decision.

Figure 62. If yes, how often does this happen



1500 respondents were asked in a qualified manner to share their opinion about 'how a *Jirga* enforces its decision'. A large group of respondents, 28.47%, identified that *Jirga* decisions are enforced 'through community lakhkar', followed by 23.67% respondents who believed that 'political administration' enforces *Jirga* decisions through Khasadar force. 20.53% respondents informed the survey that *Jirga* decisions could be enforced through 'social pressure'. 11.40% respondents did not know the answer and cross-tabulation by gender showed that 71 respondents of 165 were women, which reinforces tribal women's lack of knowledge on *Jirga*.

### Probing/inquiry mechanism of a *Jirga* process is satisfactory

The survey results show the level of satisfaction

Figure 63. Enforcement of *Jirga* decision

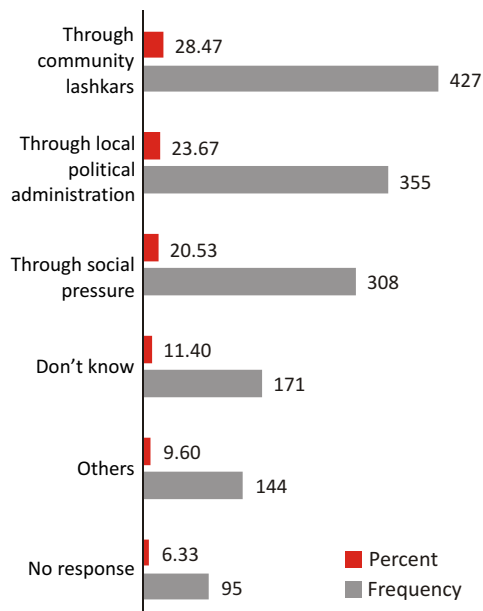
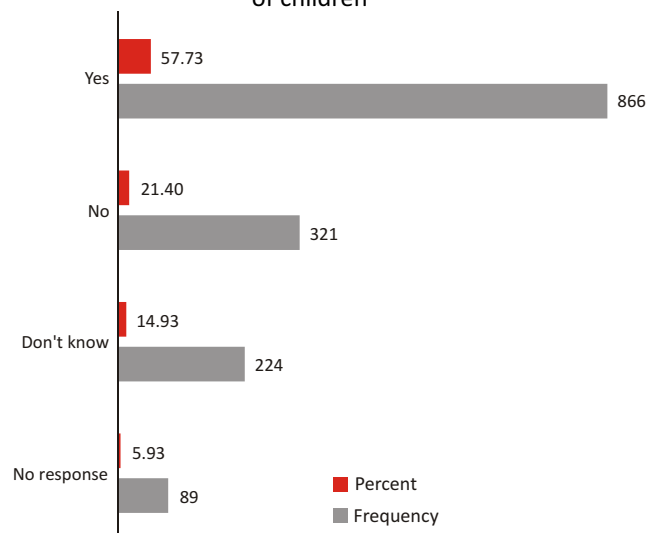


Figure 65. *Jirga* and matrimonial disputes including guardianship/custody of children



of the people of FATA on the probing mechanism of *Jirga* process. Three-fourth of the respondents, 76.33%, agreed with the notion, including 45.00% who 'strongly agree' and 31.33% who 'somewhat agree'. Only 9.27% respondents voted against the notion, including 4.47% 'strongly disagree' and 4.80% 'somewhat disagree'.

women respondents, which constitute almost half of the respondents. Out of 130 respondents, 119 are women who did not know the answer.

***Jirga* enforces its decision through**

In FATA, *Jirga* verdicts are reached after due process and after receiving the consent of both the parties. However, in a situation where one

Those who agreed with the notion included 487

Figure 64. Satisfaction over probing/inquiry mechanism of *Jirga* process

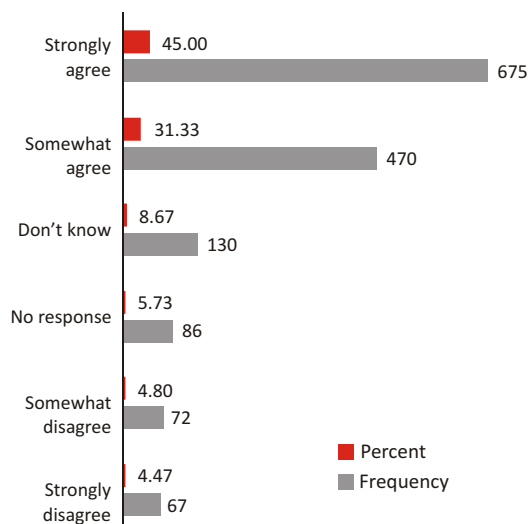


Figure 66. Women's participation in *Jirga* decision making process

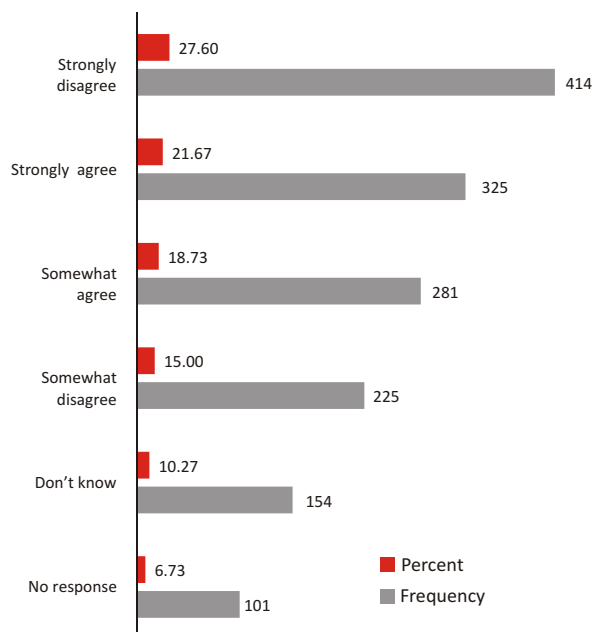




Table 52. Cross-tabulation by gender for participation of women in Jirga

	Gender of respondents		Total
	Male	Female	
Strongly agree	103	222	325
Somewhat agree	150	131	281
Somewhat disagree	139	86	225
Strongly disagree	295	119	414
Don't know	43	111	154
No response	18	83	101
	748	752	1,500

party or both the parties do not accept the decision, other ways are adopted in order to enforce the *Jirga* decision.

### Satisfaction over probing/inquiry mechanism of *Jirga* process

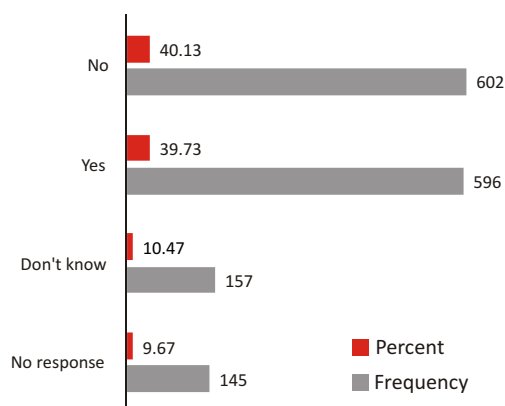
#### Human Rights and *Jirga*

Although the *Jirga* is perceived to be affordable and speedy, the complete lack of involvement of women and minorities in the *Jirga* mechanism is a flaw. The other major drawback is the violation of human rights of marginalised groups (women, youth, religious and ethnic minorities etc.) due to the decisions made by *Jirga*, which do not take into account Pakistan Constitution, the universally accepted principles of Human Rights or international instruments relevant to Pakistan.

#### *Jirga* takes cognizance of matrimonial disputes including guardianship/custody of children

In *Pakhtun*-dominated areas of Pakistan, especially rural areas, *Jirga* deals with all sorts of matters, including matters related to matrimonial disputes of guardianship/custody of children. Even in the presence of proper formal courts and a police system in settled districts of *Pakhtun*-dominated areas of Khyber Pakhtunkhwa and Balochistan, people prefer to resolve their matters through informal *Jirga*, including matters concerning divorce, custody of children, money matters, etc.

Figure 67. *Swara* and very complex disputes



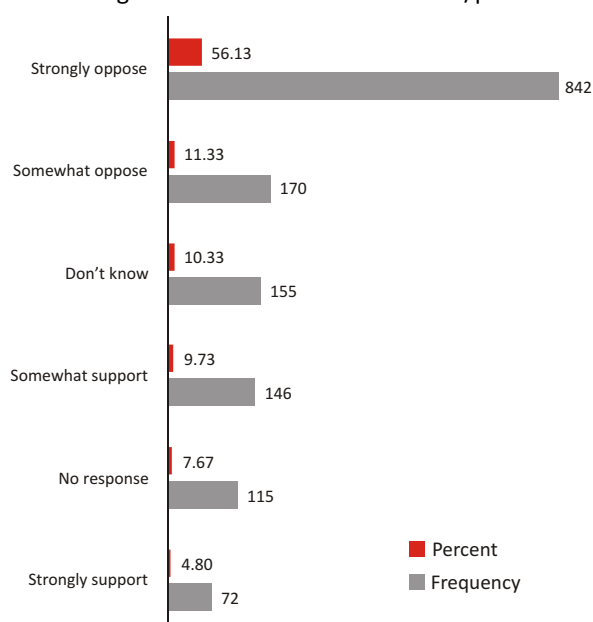
#### Women should have an equal chance to participate in *Jirga* decision-making processes

After cross-tabulation by education, we see a mixed response from both literate and illiterate respondents; however, more educated than illiterate respondents agreed with the notion and vice versa.

We also cross-tabulated the data by gender; more than twice the number of women (222) compared to men (103) 'strongly agree' with the notion, while 295 men 'strongly disagree' with the notion as compared to 119 women respondents. This also shows that tribal women are willing to become a part of the *Jirga* process.

Looking at figure 66 results, it is quite encouraging to see that a large number of respondents realise the importance of female participation in the *Jirga* process. We also

Figure 68. Support for *Swara* as a way for resolving conflicts between two families/parties



received positive reaction from the respondents during the focus-group discussions. However, the participants of consultations attended by key informants were not ready to accept this and were of the view that *Pakhtun* tribal culture does not allow the participation of women in the *Jirga* process.

Respondents of in-depth interviews with a legal background underlined the importance of women's participation so that *Jirga* complies with international human rights and women's standards.

### ***Swara* resolves some very complex disputes**

After analysing the data by gender and education, we found that out of 371 illiterate respondents who marked 'yes', the majority

Table 53. Alternatives to *Swara*

Response	Frequency	Percent
It should be continued	108	7.20
It should be replaced with money	691	46.07
It should be replaced with cattle/land	243	16.20
Don't know	290	19.33
No response	168	11.20
<b>Total</b>	<b>1,500</b>	<b>100.00</b>

(271) believed that *Swara* could resolve complex disputes. On the other hand, out of 827 literate respondents who marked 'no', including those with a religious education, more than half [448] believed that *Swara* could not resolve complex disputes.

During the focus-group discussions with men and women from all seven agencies, respondents said that *Swara* is outdated and that people don't practice this custom any more. However, some of the respondents said that this custom was still practiced in their areas.

During in-depth interviews with lawyers, elders, and other social workers, we did not receive strong arguments in favour of *Swara*, which is an encouraging sign.

### ***Swara* as a way of resolving conflict between two families/parties**

Figure 69. Do you think that *Swara* violates women's rights

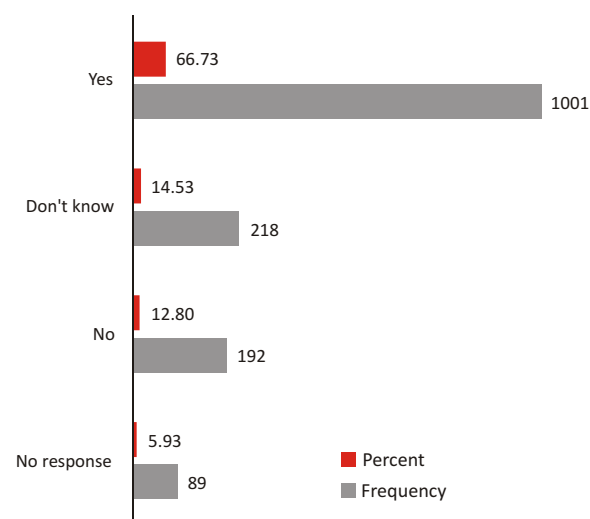


Table 54. Perception about *Swara* and women's rights

Response	Frequency	Percent
No response	89	5.93
No	192	12.80
Don't know	218	14.53
Yes	1001	66.73
<b>Total</b>	<b>1,500</b>	<b>100.00</b>

Cross-tabulation by education shows that those who opposed the notion included a majority of illiterate respondents. More female respondents opposed the notion as compared to those women who supported the notion.

The respondents of the focus-group discussions also disapproved of this view. The participants of the consultations and the key informants of the in-depth interviews admitted that the custom of *Swara* should come to an end, while some claimed that this custom died ages ago and is no longer practiced.

#### Alternative to *Swara*

During focus-group discussions, respondents suggested several alternate options, including those mentioned above, and an overwhelming majority was of the opinion that the custom of *Swara* should end and be replaced with a different material compensation.

Women activists and social workers severely criticised the custom of *Swara* and termed this practice un-Islamic, inhuman and contrary to women's rights.<sup>164</sup>

#### *Swara* and violation of women's rights

It is obvious that *Swara* is against the will of a

woman and in violation of fundamental rights of women; however, this question intends to document how respondents perceive *Swara*.

Cross-tabulation by gender showed that more male than female respondents believed that *Swara* violates women's rights. Of 192 respondents who believed *Swara* does not violate women's rights, the majority are women.

This realisation by both men and women is extremely encouraging. Although many still favour *Swara* and believe that it prevents violence and could save lives, this argument is dying as more people become aware of the fact that the ills of men should not be corrected at the cost of women.<sup>165</sup>

#### Ethnic minorities should have an equal chance to participate in *Jirga* decision-making processes

In FATA, ethnic minorities are generally families with carpentry, butchery, shoemaking, and blacksmith skills, and immigrated a long time ago. Local tribes do not have any interest in the above-mentioned trades and consider these low-cast jobs.

Local tribes in FATA seem to be in a state of denial and do not acknowledge the rights of ethnic

Table 55. Cross-tabulation about *Swara* and women's rights

	Gender of respondents		Total
	Male	Female	
No response	17	72	89
No	57	135	192
Don't know	63	155	218
Yes	611	390	1,001
	748	752	1,500

minorities who migrated to FATA many decades ago and became full citizens of FATA, as per the international standards. However, the local tribes do not accept this and consider them as second grade citizens in FATA.

The outdated system in FATA also supports the local tribes by giving ethnic minorities second-grade citizenship. The system always prefers local tribes to ethnic minorities on reserved vacancies and quota seats in educational institutions in Pakistan. These marginalised groups can hardly take part in power politics. But people of FATA argue that ethnic minorities have always been provided with equal opportunities to get education, employment, etc.

40.94% agreed that ethnic minorities should have equal chance to participate in *Jirga* decision making process, including 16.87% who 'strongly agree' and 24.07% who 'somewhat agree'. While 40.07% respondents disagreed with the notion, including 18.00% 'strongly disagree' and 22.07% 'somewhat disagree'.

There were a considerable number of

Figure 70. Ethnic minorities should have an equal chance to participate in *Jirga* decision making processes

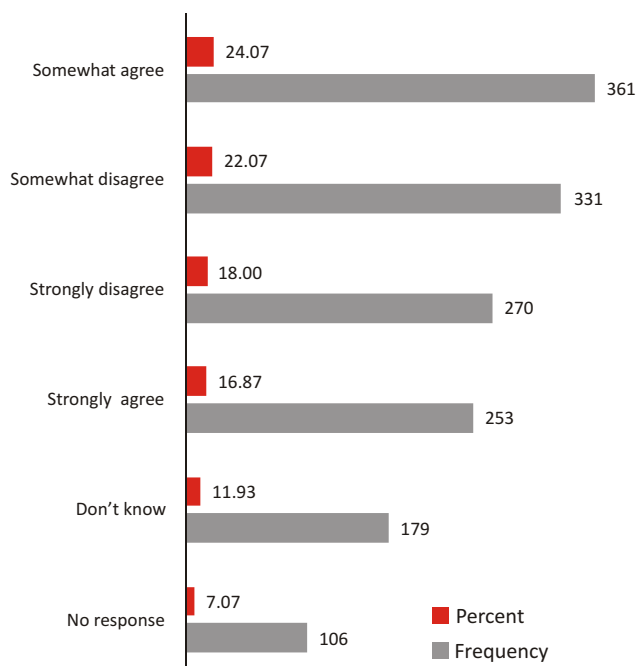
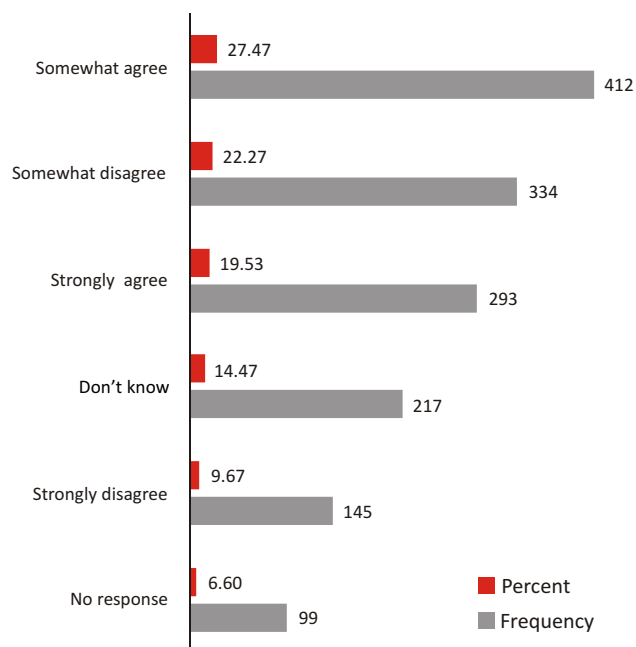


Figure 71. Religious minorities should have an equal chance to participate in *Jirga* decision making



respondents who were undecided, including 11.93% those who did not know the answer while 7.07% those who did not want to respond.

Out of 179 respondents who did not know the answer, 136 were women.

Keeping in view the data shown in figure 70, one can analyse that there is a potential for bringing reforms to the *Jirga* system by providing more space to the minorities. The data also shows that the respondents were not against the idea of letting minorities get involved in the *Jirga* process.

The respondents of focus-group discussions shared this view. After some discussions and probing they had accepted the fact that at some point, these minorities should be involved, making *Jirga* more acceptable to all.

### Religious minorities should have an equal chance to participate in *Jirga* decision making processes

There are a few religious minorities that have been living in FATA for a long time. They include

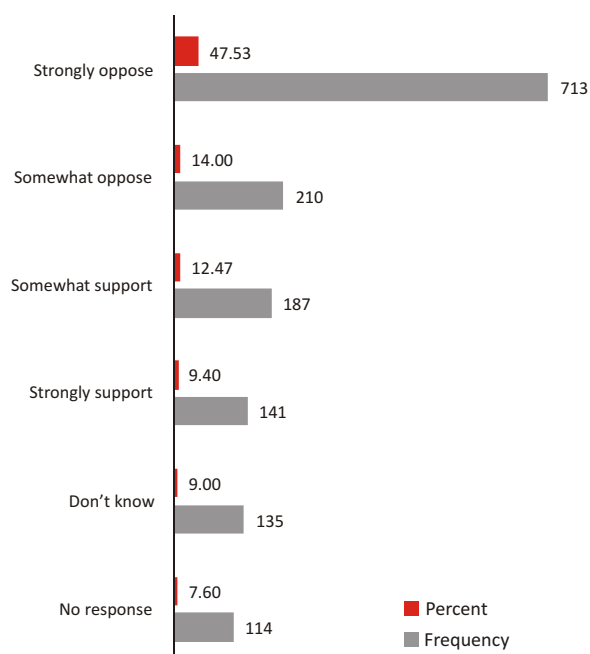
Sikhs in Waziristan, Khyber and Orakzai Agencies, while the Christian community mainly lives in Khyber and Kurram Agencies. There is also a small Hindu population in Waziristan Agency. As per the local perception, Sikh and Hindus have lived in these areas for the last few centuries and they haven't encountered any trouble from the local tribes when practicing their own religious rituals and resolving their civil disputes. Nonetheless, their criminal offences are dealt with under the local *Jirga* system both FCR and *Olas*, depending on the gravity of the crime.<sup>166</sup>

Again, the results are quite encouraging, which indicates that the tribes in FATA may allow the involvement of religious minorities in *Jirga* process. There is, however, a lack of understanding of globalisation, international human rights standards, the Constitution of Pakistan, democracy etc., which proves that there is a need for education on these issues.

### Houses of those people who disobey *Jirga* decision should be burnt

Since the police system of settled areas of

Figure 72. Houses of those people who disobey *Jirga* decision should be burnt



Pakistan is not extended to FATA therefore the local communities/tribes take the law into their own hands. In some cases, if an individual or a family does not obey the decision of a *Jirga*, the community will have to take action against them in the form of either setting fire to their houses and property or expelling that family from the community, etc., depending on the magnitude of the crime.

Majority, 61.56%, of the respondents opposed the idea of burning houses if a decision of a *Jirga* was not obeyed by a party to the dispute, including 47.53% 'strongly oppose' and 14.00% 'somewhat oppose'. Less than a quarter of the respondents, 21.87% supported the idea, including 9.40% 'strongly support' and 12.47% 'somewhat support'.

The results show that people oppose the idea of burning houses, which was also reflected during the focus-group discussions where a majority of respondents opposed this tradition.

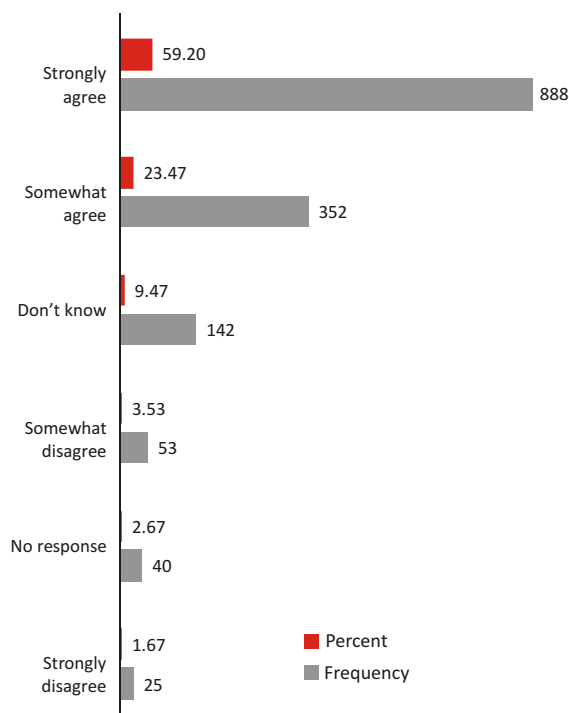
The participants of regional consultations and key informants during in-depth interviews also opposed the idea and termed it as "against all human rights norms".

### FATA should be given the right to judicial autonomy

Judicial autonomy and judicial independence are used interchangeably, as they denote a slippery concept that is difficult to define let alone to measure and that lies at the crossroads of different perspectives.<sup>167</sup>

For the sake of clarity, judicial autonomy here means the separation of the judiciary from other powers of the state. Judicial independence is the concept that decisions of the judiciary should be impartial and not subject to influence from other branches of government or from private or political interests. Hence, independence of the judiciary emphasises on institutional independence, administrative and financial autonomy and the right to a fair and expeditious trial.

Figure 73. FATA should be given right to judicial autonomy



At present, there is no complete and independent judicial system in FATA and therefore it is not autonomous at all.

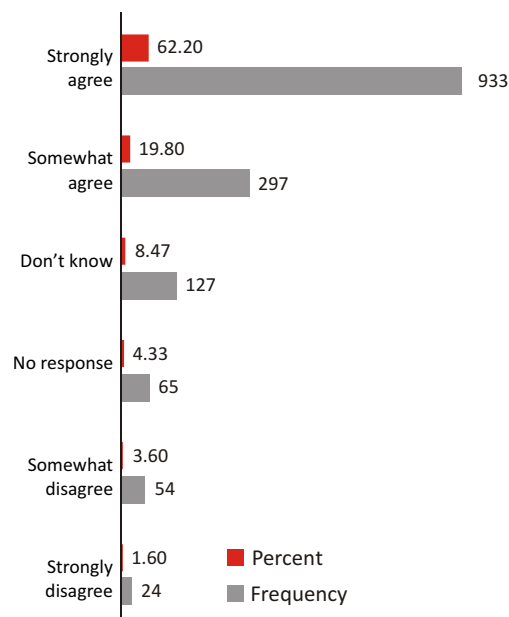
Several voices were raised in favour of this statement during the regional consultations organised for this study. During focus-group discussions, men and women both supported the idea of giving judicial autonomy to the people of FATA.

### The right to a fair trial

FCR does not allow the people of FATA to have the right to a fair trial, making the FCR *Jirga* even more incompatible with the fundamental guarantees enshrined in the Constitution of Pakistan. Since we have discussed this in detail in the first chapter, we will now focus more on what the respondents said about this issue.

Out of 1,500 men and women respondents, 82.00%, which constitutes overwhelming majority, agreed with the statement, including

Figure 74. The right to a fair trial



62.20% 'strongly agree' and 19.80% 'somewhat agree'. Only 5.20% disagreed with the statement, including 1.60% 'strongly disagree' and 3.60% 'somewhat disagree'.

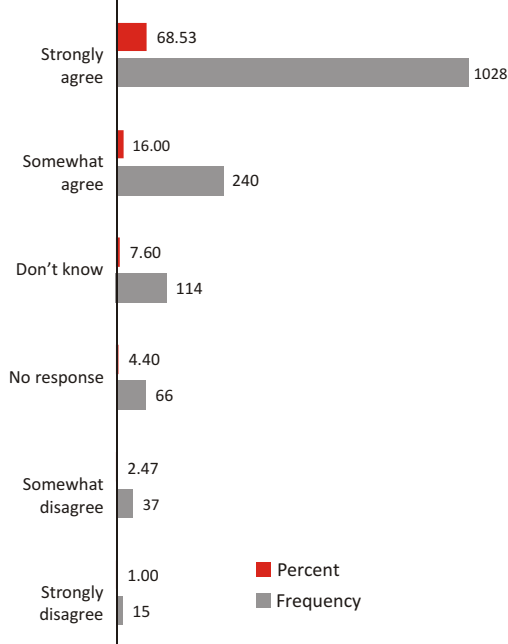
Experts and lawyers from FATA also stressed on the need for 'the right to a fair trial' for the people of FATA. The FATA Reform package announced by President Asif Ali Zardari on 14 August 2009 also provides the people of FATA with some degree of free and fair judicial autonomy.

Without any hesitation, the respondents in focus-group discussions also insisted that the people of FATA should be given this right. These facts lead us to realise that the people of FATA understand the right to fair and free trial, and that they should be given this right.

### The right to equality and non-discrimination

Analysing this aspect on technical grounds, the entire administrative and constitutional arrangement for the FATA reflects the reality that the people of FATA have no right to equality and that the response from the central government is based on discrimination.

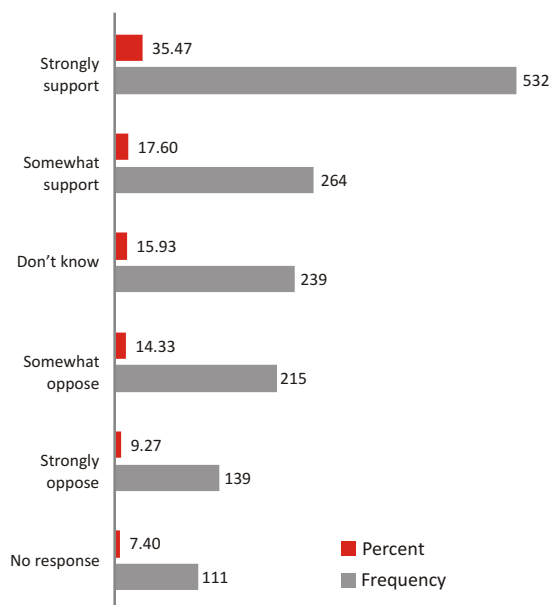
Figure 75. The right to equality and non-discrimination



### Extending the superior judiciary (i.e. High Court and Supreme Court) to FATA

As stated in the first chapter of this study, Article 247 of the Constitution of Pakistan stipulates that

Figure 76. Extension of the superior judiciary (i.e. High Court and Supreme Court) to the FATA



the jurisdiction of superior courts (High Court and Supreme Court) is not extended to FATA. Therefore, the Supreme Court of Pakistan cannot protect the fundamental rights of the people of FATA enshrined in the Constitution.

More than half of the respondents 53.07% supported the idea, including 35.47% 'strongly support' and 17.60% 'somewhat support'. Less than a quarter of the respondents, 23.60%, opposed the idea, including 9.27% 'strongly oppose' and 14.33% 'somewhat oppose'.

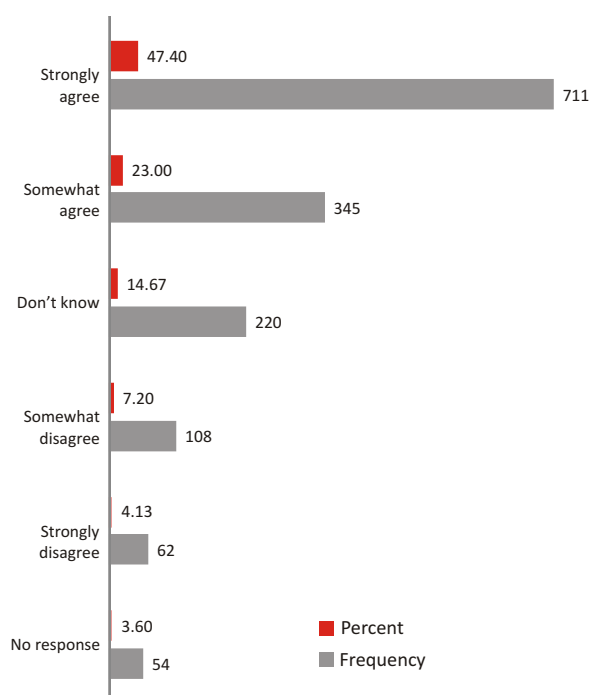
Support to this question is not very overwhelming compared to the responses received for 'the right to fair trial', 'the right to judicial autonomy' and 'the right to equality and non-discrimination'. This also reflects that people support other rights, but are not very eager to see superior courts being extended to FATA. However, half of the respondents favoured the extension of superior courts to FATA, which reflects that introducing reforms could be materialised. Lawyers and civil servants from FATA strongly recommended that the people of FATA should be given the right to appeal in the High Court and Supreme Court of Pakistan against the orders and decisions of the Political administration.<sup>168</sup> This way the people of FATA would accept the extension of superior courts to FATA at some point in the future.

### Jirga decision should be officially recorded

The participants of regional consultations with key informants as well as the respondents in focus-group discussions were not very clear as to whether *Jirga* proceedings and decisions are recorded in written form. Some said that only FCR *Jirga* decisions, but not the proceedings, are recorded, while *Olasi Jirga* decisions are not recorded at all.

Lawyers, civil servants and *Maliks* emphasised the importance of codifying of *Jirga* decisions like formal courts' decisions in order to use the judicious decisions as reference in future *Jirga* proceedings.<sup>169</sup>

Figure 77. *Jirga* decision should be recorded officially



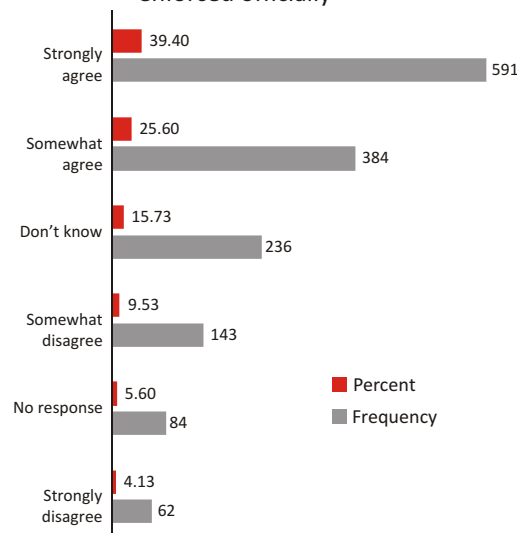
However, the respondents of consultations argued that the United Kingdom (UK) (a major power of the world) doesn't have a written constitution and runs the state's affairs on customs, conventions and traditions. Tribesmen also process *Jirga* through their unwritten constitution of *Pakhtunwali*. However, this analogy is technically not relevant.

#### ***Jirga* decisions should be officially enforced**

Nearly two-third of the respondents, 65.00%, agreed that *Jirga* decisions should be enforced officially, including 39.40% 'strongly agree' and 25.60% 'somewhat agree'.

The data could lead us to a surprising revelation of tribesmen welcoming an internal security system [such as a police system], however, one should understand what was in the back of these respondents' minds when they replied to this question. They might have supported this statement because they wanted *Khasadar*/Levies force to enforce *Jirga* decisions, since tribesmen have never

Figure 78. *Jirga* decision should be enforced officially



welcomed the idea of having a proper police system in FATA, something which is considered contrary to their freedom and culture.

The respondents in focus-group discussions did not support the idea either. They argued that the *Khasadar* force, under FCR *Jirga*, could enforce *Jirga* decisions, while they opined that the community's social pressure and *lakhkar* could be other options for enforcing *Jirga* decisions.

Keeping in view the terrain of the area and the tribal way of life, it would be quite a daunting task for the government to design a plan and then implement it, aiming at the enforcement of *Jirga* decisions through a proper and well-established security apparatus.

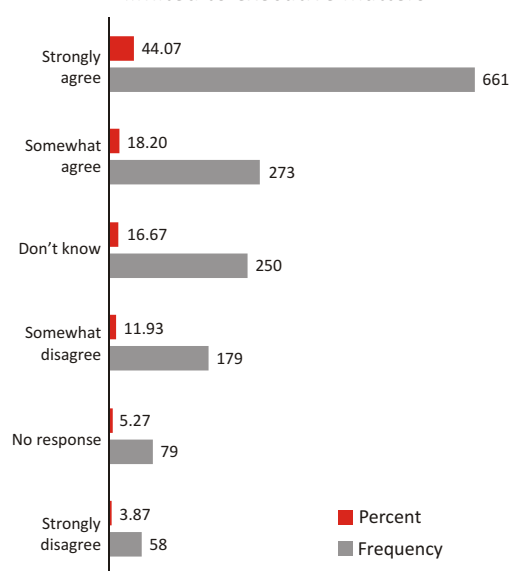
#### **Powers of the Political Agent should be limited to executive matters**

As elaborated in the introduction the Political Agent holds the judicial, executive and revenue-collection powers, making him very powerful. The position of a Political Agent is under severe criticism not only from the people of FATA, but also from the civil society including NGOs, the media and human rights activists.

Compared to the level of criticism that we see against the Political Agent's powers, the response is



Figure 79. Powers of the Political Agent should be limited to executive matters

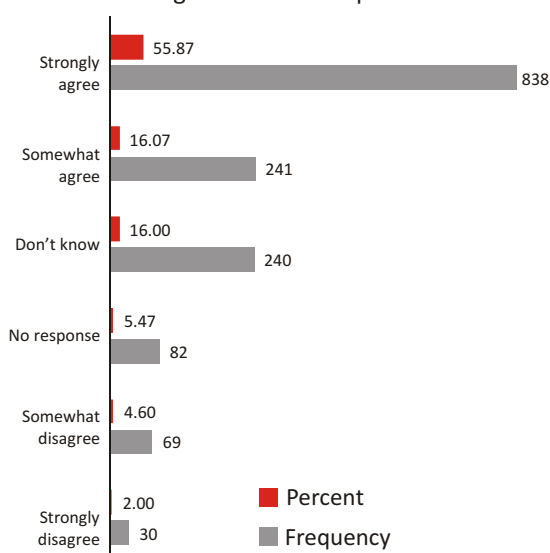


still not very overwhelming. This question was also raised during the focus-group discussions and consultations with FATA respondents, who severely criticised the role of the Political Agent and demanded that his powers be limited considerably.

### Provision of a right to appeal to the High Courts and Supreme Court

During consultations and focus-group discussions, we realised that most of the FATA

Figure 80. Provision of a right to appeal to the High Courts and Supreme Court



respondents did not know whether they had the right to appeal to the High or Supreme Court of Pakistan. In the first chapter it has been elaborated in detail how and under what circumstances a FATA resident can file an appeal in the superior courts of Pakistan.

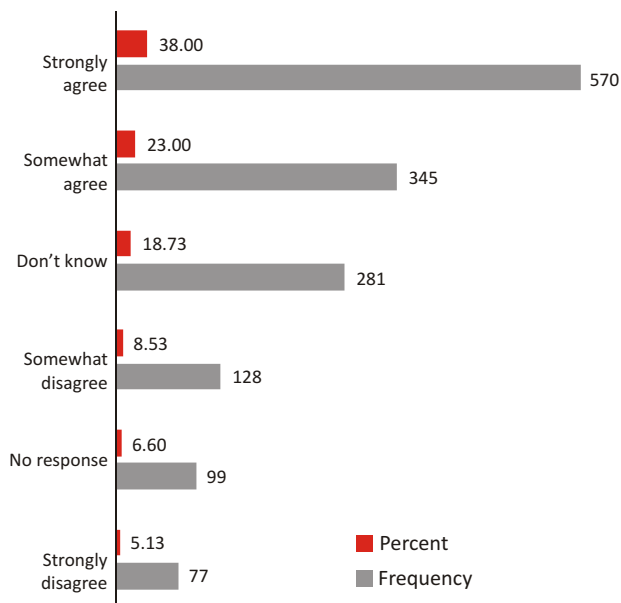
16.00%, of the respondents did not know the answer or were not very clear while 5.47% did not reply. When cross-tabulated by gender, out of 240 respondents who did not know the answer, 197 were women and, while out of 82 respondents who did not reply, 77 were women.

### Final *Jirga* decisions need to be subjected to the approval of appropriate Human Rights bodies in Pakistan

At present, *Jirga* decisions are not subject to any scrutiny by independent human rights commissions in Pakistan and therefore remain subject to severe criticism.

The results in figure 81 are quite encouraging and clearly convey the desire for due process of justice according to international human rights standards.

Figure 81. Final *Jirga* decisions need to be subjected to the approval of appropriate Human Rights bodies in Pakistan



During the focus-group discussions, we received the same level of response from both female and male respondents; however, participants of regional consultations found the idea slightly unfavourable and argued that there was no need for an independent body to review the cases, as these may not be knowledgeable of, or sensitive to the culture of *Pakhtunwali*.

The key informants and the elite of FATA were also supportive of the role of an independent human rights commission or body, which, they argued, would ensure due *Jirga* processes that follow and meet the human rights standards.

The academics of Peshawar University argued that the people of FATA have a strong sense and knowledge of human rights, but that they are not fully aware of international human rights standards and justice mechanisms.<sup>170</sup>

# Endnotes

1. *Swara* means marriage of a woman from the offender's family/tribe to the victim's close relative without her consent.
2. Here the term *Sharia'* was not very clearly elaborated by the enumerators, and therefore, the respondents might have attributed their responses to Taliban version of *Sharia'*. However, *Sharia'* is well regarded in the tribal society.
3. Most of the material in this chapter is taken from the introductory chapter *Understanding FATA: Attitudes Towards Governance, Religion & Society in Pakistan's Federally Administered Tribal Areas* Volume IV, written by Naveed Ahmad Shinwari. While this is the improved and more detailed version introducing FATA and its systems.
4. Caroe Olaf, *The Pathans*, (London: McMillan & Co Ltd 1958).
5. Tanguay-Renaud Francois, *Post-Colonial Pluralism, Human Rights & the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan*, Singapore Journal of International & Comparative Law (2002).
6. The terms *Pukhtun, Pakhtun, Pakhtoon, Pushtun, Pashtun, Pashtoon, Pathan* are used interchangeably. For the sake of clarity, *Pakhtun* is used throughout this report.
7. Caroe Olaf, *The Pathans* (1983).
8. Spain James W., *The Pathan Borderland* (1963).
9. Caroe Olaf, *The Pathans* (1983).
10. Mohmand Sher Muhammad, *FATA A Socio-cultural and Geo-Political History*.
11. Ibid.
12. Khan Dr. Azmat Hayat, *The Durand Line its Geo-Strategic Importance* (2005) p. 41.
13. Caroe Olaf, *The Pathans* (1983) p. 25.
14. Ibid.
15. Ibid.
16. LanePoole, Stanley, *Mediaeval India under Muhammedan Rule* (A.D. 712 1764).
17. Ibid.
18. Shinwari, Naveed Ahmad, *Understanding FATA: Attitudes Towards Governance, Religion and Society in Pakistan's Federally*

- Administered Tribal Areas - (Volume IV 2010)*
19. Barthorp, Michael, *Afghan Wars and the North-West Frontier (1839-1947)*, p. 18.
  20. Khan, Dr. Azmat Hayat, *The Durand Line its Geo-Strategic Importance (2005)* p. 48.
  21. Barthorp, Michael, *Afghan Wars and the North-West Frontier (1839-1947)*, page 18.
  22. Shuja Shah, *the deposed Amir of Afghanistan (1802 1809, and from 1939 until murdered in 1842)* he lived in India for 30 years after his return to Afghanistan before his death.
  23. Spain, James W., *The Pathan Borderland (1963)* p. 129.
  24. Ibid, p. 132.
  25. Ibid, p. 136.
  26. The title *Amir* means King of Afghanistan.
  27. Caroe, Olaf, *The Pathans*, (1983).
  28. It is an Arabic word which means King, or owner/headmen/chiefs.
  29. Spain, James W., *The Pathan Borderland - (1963)*.
  30. Spain, James W., *The Pathan Borderland (1963)* page 63.
  31. Ibid, page 65-66.
  32. Wylly, Sir, *The Borderland, the Country of the Pathans* ( published in 1912), pp. 10-11.
  33. Wardak, A, *Structures of Authority and Local Dispute Settlement in Afghanistan in Conflicts and Conflict Resolution in Middle Eastern Societies: Between Tradition and Modernity'*, (2006) Edited by **Hans-Jörg** Albrecht et al, Berlin: Duncker & Humblot.
  34. Hussain, S. Iftikhar, *Some Major Pakhtun Tribes Along the Pak-Afghan Border*, (Area Study Centre, University of Peshawar, Revised edition 2005).
  35. Hassan, M. Yousafzai & Gohar, Ali *Towards Understanding Pukhtoon Jirga: An indigenous way of peace building and more...* published by Just Peace International,( June 2005).
  36. *Chopal* - a wooden truss roofed with mud and hay, having pillars but no wall.
  37. Kind of poem in *Pashtu* poetry.
  38. *Rabbab* is a *Pashtu* musical instrument. *Mange* a water pot that serves as a drum or '*Tabla*'.
  39. *Jirga* is an indigenous conflict prevention/resolution tool to resolve personal, family, tribal feuds in a very speedy manner and costs very little as compared to the modern justice system.
  40. *Lakhkar* is a *Pakhtu* word which means militia or 'group of armed men' or 'war party' formed for some purpose of fighting against a common enemy or towards a common objective. A *Lakhkar* could be of any size in number and dissolves when the purpose or mission is accomplished.
  41. *Teega* or *Tiga*: In *Pakhtun* culture, *Teega* describes a truce between two warring parties following the decision taken by a *Jirga* with the consent of both the parties.
  42. Government property such as offices, hospitals, schools, grid stations, roads, water tube wells, cantonments, market areas, forts, etc. are areas where FCR is applicable. The rest is called 'unprotected areas' where local culture and traditions regulate the local life.

43. In-depth interviews with a legal fraternity from FATA (January March 2011).
44. Settled areas or districts are part of Khyber Pakhtunkhwa, which are represented in the provincial and national parliament. All normal laws of Pakistan apply to these areas and the superior judiciary is also fully functional there.
45. *Malik* means chief of a sub-clan, clan, or a tribe importance of a *Malik* depends on the size of his sub-clan, clan or tribe he represents. *Malik* is a tile, which passes to the next generation by inheritance and to the first-born male child. Women cannot be declared as a *Malik*.
46. The title of *Lungi* is not gained by inheritance but has almost equal importance as the title of the *Malik*. Political Agent has the discretionary power to award this title to his loyal.
47. Khyber is the name of one of the seven Agencies of FATA while Pakhtunkhwa means a place where *Pakhtuns* live.
48. Census Report of FATA (1998).
49. Interview with Rustam Shah Mohmand, former Ambassador to Afghanistan and Political Agent, (dated 12 May 2011).
50. Ibid.
51. Political Agent is a representative of federal bureaucracy. Unlike his counterpart in the settled districts of Pakistan, he was appropriately given this title. The incumbents of this office were drawn from the Indian civil or sometimes military service who would have acquired a certain degree of proficiency not only in Pashtu but also in administrative affairs of the area. Only the most outstanding men of very high calibre were posted as political agents. On one hand he was the representative of the Crown, charged with ensuring that the area he administered posed no serious security threats for the government and on the other hand he was an advocate of the tribes vis-à-vis the government.
52. CAMP's various baseline surveys and its presence in FATA.
53. Survey/enumeration of existing industries, service sector entities and labour force in FATA conducted by CAMP for Fata Development Authority in 2009/10.
54. 'Development Funds: Gilani doles out Rs. 30 million to FATA law makers'. The Express Tribune, (21 January 2011).
55. Veil.
56. Barthorp, Michael, *Afghanistan Wars and the North-West Frontier* (1839 1947), p. 187.
57. Constitutional Status of FCR paper presented by Dr. Faqir Hussain, Secretary Law and Justice Commission of Pakistan Report of the Consultation Proceedings on the FCR Regulations 190., organised by Human Rights Commission of Pakistan (HRCP) and TRDF (October 2004).
58. Ibid.
59. Hussain, Dr. Faqir *Testing FCR on the Touchstone of the Constitution*, (October 2004).
60. Wardak, A. *Jirga: Power and Traditional Conflict Resolution in Afghanistan in Law After Ground Zero*, Edited by John Strawson, (London: Cavendish, 2002).  
Note: The Pashtun/*Pakhtun Jirga* system is almost the same on both sides of the Afghan-Pakistan border.

61. Wardak, Ali, *Jirga: Power and Traditional Conflict Resolution in Afghanistan in Law After Ground Zero*, Edited by John Strawson, (London: Cavendish, 2002).
62. Wardak, Ali, *Structures of Authority and Local Dispute Settlement in Afghanistan in Conflicts and Conflict Resolution in Middle Eastern Societies: Between Tradition and Modernity*, Edited by Hans-Jörg Albrecht et al, (Berlin Duncker & Humblot, 2006).
63. Spain, James W, *People of the Khyber: The Pathans of Pakistan* (New York: Praeger, 1962).
64. Bangash, Mumtaz A, *Speedy Justice of Elders*.
65. Wardak, Ali (with Daud Saba, and Halima Kazem), *Bridging Modernity and Tradition: the Rule of Law and the Search for Justice* Afghanistan National Human Development Report, UNDP/CPHD, (Kabul, Afghanistan, 2007).
66. Asia Foundation, *Afghanistan in 2010: A Survey of the Afghan People* (Kabul: The Asia Foundation, 2010).
67. Wardak, Ali, *Building a Post-War Justice System in Afghanistan*, Journal of Crime, Law and Social Change, Vol. 41 (2004), pp 319 341.
68. Banerjee, Mukulika *Pathan, Unarmed* (December 2010).
69. Hassan, M. Yousafzai & Gohar Ali *Towards Understanding Pukhtoon Jirga: An indigenous way of peace building and more...* published by Just Peace International, ( June 2005).
70. Interview with Rustam Shah Mohmand, former Pakistan's Ambassador to Afghanistan, former Political Agent, dated 12 May 2011, Peshawar.
71. In-depth interviews with elders/*Maliks* January to March 2011.
72. *Waak* means taking authority from the disputants.
73. In-depth interviews with elders January to March 2011.
74. Hassan, M. Yousafzai & Gohar, Ali *Towards Understanding Pukhtoon Jirga: An indigenous way of peace building and more...* published by Just Peace International, ( June 2005).
75. Wardak, Ali, '*Jirga: Power and Traditional Conflict Resolution in Afghanistan*' in *Law After Ground Zero*, Edited by John Strawson, (London Cavendish, 2002).
76. Ibid.
77. Ibid.
78. Section 2 (a) of The Frontier Crimes Regulations, 1901.
79. Article 247(6) of The Constitution of Islamic Republic of Pakistan, 1973.
80. Interview with Mohammad Iqbal Mohmand, Deputy Attorney General of Pakistan, Khyber Pakhtunkhwa, February 2011, Peshawar.
81. Ibid.
82. Ibid.
83. Karim Mehsud Advocate, President FATA lawyers Forum, Peshawar Law College, Peshawar, 21/1/2011.
84. Interviews with lawyers from FATA (January 2011 Peshawar) and 19 focus-group discussions with respondents with men, women, youth and litigants of FATA (February-March 2011).
85. Ibid.
86. Habib-ur-Rehman Advocate, Khyber Agency, Peshawar Law College, Peshawar, 21/1/2011.
87. Hassan, M. Yousafzai & Gohar Ali, *Towards Understanding Pukhtoon*

- Jirga: An indigenous way of peace building and more...* published by Just Peace International,( June 2005).
88. Attaullah Khan Advocate, from FR D.I Khan, Peshawar Law College, Peshawar University, 26/1/2011.
89. Hassan, M. Yousafzai & Gohar, Ali, *Towards Understanding Pukhtoon Jirga: An indigenous way of peace building and more...* published by Just Peace International,( June 2005).
90. Interviews with lawyers in Peshawar, January 2011 and focus-group discussions and consultations with various groups February-March 2011.
91. In-depth interviews with legal fraternity from FATA and regional consultations with key informants from FATA, January March 2011.
92. Cited by Francois Tanguay-Renaud in his report Post-Colonial Pluralism, Human Rights & the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan, Singapore Journal of International & Comparative Law (2002).
93. Balochistan Bar Association versus Government of Balochistan, (1991) PLD 7 ar 13, Justice Amir-ul-Mulk Mengal (Balochistan High Court).
94. Tanguay Francois -Renaud in his report 'Post-Colonial Pluralism, Human Rights & the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan', Singapore Journal of International & Comparative Law (2002).
95. Ibid.
96. Ibid.
97. Amnesty International 2010 Report: "As if Hell Fell on Me" The Human Rights Crisis in Northwest Pakistan, accessed at: <http://amnesty.org/en/library/asset/ASA33/004/2010/en/1ea0b9e0-c79d-4f0f-a43d-98f7739ea92e/asa330042010en.pdf>.
98. Ibid.
99. FCR 1901, Chapter IV and V.
100. 2010 Human Rights Report: Pakistan by US Department of State <http://www.state.gov/g/drl/rls/hrrprt/2010/sca/154485.htm>.
101. Ibid.
102. Amnesty International 2010 Report: "As if Hell Fell on Me" The Human Rights Crisis in Northwest Pakistan, accessed at: <http://amnesty.org/en/library/asset/ASA33/004/2010/en/1ea0b9e0-c79d-4f0f-a43d-98f7739ea92e/asa330042010en.pdf>.
103. Shah, Dr. Babar, *Constitutional Dichotomy along the Durand Line*, (Area Study Centre, Peshawar university, unpublished), p. 274.
104. Amnesty International 2010 Report: "As if Hell Fell on Me" The Human Rights Crisis in Northwest Pakistan accessed at: <http://amnesty.org/en/library/asset/ASA33/004/2010/en/1ea0b9e0-c79d-4f0f-a43d-98f7739ea92e/asa330042010en.pdf>.
105. Hassan, M. Yousafzai & Gohar, Ali, *Towards Understanding Pukhtoon Jirga: An indigenous way of peace building and more...* published by Just Peace International,( June 2005).
106. Maryam Bibi, Chief Executive, Khwendo Kor, Hayatabad, Peshawar, 11 February 2011.
107. Fakhr-u-Nisa Advocate, F.R Lakki, Former Vice President Peshawar High Court Bar Association, Peshawar, 22 January 2011.

108. Maryam Bibi, Chief Executive, Khwendo Kor, Hayatabad, Peshawar, 11 February 2011.
109. Ibid.
110. Ayesha Gulalai Wazir, social worker, FR Bannu, 22 February 2011.
111. Fakhr-u-Nisa Advocate, F.R Lakki, Former Vice President Peshawar High Court Bar Association, Peshawar, 22 January 2011.
112. Ibid.
113. Focus-group discussions with women groups Kurram, Orakzai, Khyber, Bajaur and Mohmand Agencies (age groups 18-30 and 31-45) February March 2011.
114. Focus-group discussions with women groups Kurram, Orakzai, Khyber, North and South Waziristan, Bajaur and Mohmand Agencies February March 2011.
115. Shad Begum, Executive Director, Association for Behaviour and Knowledge Transformation (ABKT), Peshawar, 25 January 2011.
116. Burbank, Stephen B. and Barry Friedman (eds.). *Judicial Independence at the Crossroads. An interdisciplinary Approach*, (California: Sage. 2002).
117. Khan, Hamid, *Constitutional and Political History of Pakistan* (Karachi, 2002), pp. 91-92 (quoting Objectives Resolution). Pakistan's other founding document, the 23 March 1940 Lahore Declaration, speaks of the issue of minorities and commits the unborn state to "the protection of their religious, cultural, economic, political, administrative, and other rights and interests", a project that is difficult to envisage in the absence of courts capable of enforcing constitutional rules, p. 54.
118. Article 175, Part VII, Chapter 1 of the constitution of Islamic Republic of Pakistan.
119. Constitution of Pakistan, 2000 SCMR 751.
120. Wiessner, Siegfried, *Rights and Status of Indigenous Peoples: A Global Comparative and International legal Analysis*. 12 Harv Hum Rts J 57 (1999), p.100.
121. Rehman, Javaid, 'Indigenous Rights at Risk: A Survey of the Indigenous Peoples of South Asia', in BK Roy Burman & BG Verghese, eds, *Aspiring To Be: The Tribal/Indigenous Condition* (Delhi: Konark Publishers PVT Ltd.) (1998).
122. Convention 107, Art1 of the 1973 Constitution of Pakistan.
123. Convention 107, Art 8 of the 1973 Constitution of Pakistan.
124. Article 10A inserted in the 1973's constitution of Islamic Republic of Pakistan through Eighteenth Amendment Act, 2010.
125. Manzoor Elahi Vs PLD.
126. Article 4 of the 1973 Constitution of Pakistan.
127. Article 9 of the 1973 Constitution of Pakistan.
128. Manzoor Elahi Vs. PLD.
129. Samundar versus The Crown, 1954 PLD 228 (p. 240) [then Federal Court].
130. The use of word '*Jirga*' refers to 'Council of Elders' as laid down in the FCR. The criticism is also applicable in the case of traditional *Jirga*.
131. Manzoor Elahi Vs. PLD at p. 120.
132. Ibid, at page 155.
133. Ishaque Khosti Vs PLD
134. Bangash, Mumtaz Ali, *Political and Administrative Development of Tribal*



- Area (Area Study Centre, Peshawar University, Unpublished).
135. Ibid.
136. Ibid.
137. In-depth interviews with legal fraternity from FATA January-March 2011.
138. Ibid.
139. 'Senate body finalizes amendments to FCR' accessed at: [http://www.dailytimes.com.pk/default.asp?page=story\\_28-8-2005\\_pg7\\_16](http://www.dailytimes.com.pk/default.asp?page=story_28-8-2005_pg7_16)
140. Shinwari Naveed Ahmad, *Understanding FATA: Attitudes Towards Governance, Religion and Society in Pakistan's Federally Administered Tribal Areas* (2007-2010) accessed at: [www.understandingfata.org](http://www.understandingfata.org)
141. Influence peddling is the illegal practice of using one's influence in government or connections with persons in authority to obtain favours or preferential treatment for another, usually in return for payment.
142. Constitution of Pakistan 1973, as amended by Eighteenth Amendment Act 2010.
143. This information was shared by participants of consultations organised for this study to document views of key informants on various dimensions of *Jirga* and life in FATA.
144. In-depth interviews with lawyers and civil servants, February-March 2011, Peshawar and Islamabad.
145. Consultations with tribesmen, in-depth interviews and focus-group discussions with various groups (youth, middle age, old age, women and disputant).
146. In-depth interviews with women activists from FATA, (March-April 2010).
147. In-depth interviews with lawyers and judges belonging to FATA.
148. Focus-group discussions with young respondents from FATA.
149. Interviews with women activists from FATA, Peshawar, March-April 2011.
150. Ibid.
151. Focus-group discussions with various groups (January-February 2011) and in-depth interviews with lawyers, human rights activists, retired and serving judges, etc Islamabad and Peshawar, March-April 2011.
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# Annex I

## INTERVIEW TRANSCRIPTS WITH DISPUTANTS

Interviewed in the District Courts, Peshawar premises near the FCR Commissioner (Court), Peshawar Division 12/2/2011

**Ali Akber and his son Fahim R/o Khyber Agency KA (Plaintiff/Claimant)**

**Versus**

**Shah Madar, Siraj, Imam-ud-Din (Respondent)**

**Case No. 24-I/APA-LKL/2010 (Money Dispute)**

**Briefs Facts of the Case:** There was a money

dispute that arose from a transport business transaction between the parties mentioned above. On 07/07/2008, Plaintiff Ali Akber filed a written complaint before the Political Tehsildar (PT), Landikotal against the defendants and complained that his motorcar was impounded by the defendant in connection with a money dispute between them over a truck and requested for recovery of his car from the illegal captivity of the defendants. The Line Officer was directed for recovery of the motorcar. He recovered the motorcar which was handed over to the plaintiff accordingly.

For facts finding and settling dispute between the parties, a *Jirga* was constituted for giving its opinion on 16/07/2008. The *Jirga* gave its opinion and award in favour of the plaintiff on 24/3/2010

S. #	Name	Nature of dispute	Type of <i>jirga</i>	Area
1	Ali Akber and his son	Money Dispute	FCR	KA
2	Fahim (S/o Ali Akber – above)	do	FCR	KA
3	Shamir khan Akka Khel	Arrest for Criminal Charges	FCR	KA
4	Haider Khan	do	FCR	KA
5	Nusrat	do	FCR	KA
6	Muhammad Sadiq	Property Dispute	FCR	KA
7	Zar Alam	Do	FCR	KA
8	Shaheen	Arrest for Criminal Charges	FCR	Orakzai Agency
9	Akhtar Jan	Property Dispute	Olasi – local	KA
10	Muhammad Akram Khan	Property Dispute	Olasi – local	SW
11	Sher Akber Afridi	Money and Inheritance	Olasi – local	KA

that was made the APA's court order on 4/12/2010. This order of APA has been challenged before the commissioner FCR Peshawar Division which is still pending adjudication.

Both the litigants were discouraged by the protracted period of litigation. They complained that the case was filed in mid 2008 and still is in process and will remain in process for years (if challenged before the FCR tribunal last court of appeal for FCR litigation). Though the litigants didn't allege the corruption charges against the *Jirga* members but complained (by both) that they spent thousands of money (if not in lacks) for arranging food and logistics and gifts for *Jirga* members. The litigants complained against the *Jirga* members' nomination process by the APA. They raised voice for the nomination of *Jirga* members through their own free consent. They further recommended that there should be a timeframe for decision of the cases under the FCR (starts from the office of APA till the FCR tribunal).

**Shamir Khan Akka Khel, Haider Khan, Nusrat R/o Khyber Agency**

**Case No. 14/APA. Bara 2010 (Criminal Charges)**

**Brief Facts of the Case:** The interviewees' sons and brother were arrested in the case noted. They alleged that their relatives were arrested by the security forces on the suspicion of having connection with banned terrorist organisation Tanzeem Lashkar-e-Islam and other terrorist groups. They alleged that the detainees were arrested on 19/03/2009 by the Mehsud Scouts and were handed over to the Political Administration of Khyber agency on 01/11/2009. But officially it is claimed that they were arrested on 12/01/2010. They were convicted and sentenced by the APA for 10 years rigorous imprisonment and fined PKR 100,000 and in default of payment of fine further to undergo two and half years simple imprisonment. This order of conviction has been challenged before the

Commissioner FCR, Peshawar division and still pending adjudication.

Although years have gone by the interviewees are still waiting for a fair and just decision of their relatives' fate. They complained that they are poor people and spent considerable money to come to Peshawar on each date of hearing before the Commissioner Court for pursuing their relatives' cases. They alleged that *Jirga* members didn't give any opportunity of defence to the accused and gave their award in their absentia. They said that FCR system has made them sick. We need justice, they pleaded!

**Muhammad Sadiq and Zar Alam S/o Mir Alam R/o Khyber Agency....Appellants / claimants**

**Versus**

**Saifor S/o Hussain R/o KA**

**Appeal vide diary No. 10386 dated 21-10-2010 (Land Dispute)**

**Brief Facts of the issue:** The appellants alleged that they had a land dispute over ancestral property with the respondent (their cousins) since childhood. They alleged that due to this dispute the respondent killed his father when they were minors. Their uncle resolved the dispute with the respondent through the intervention of private *Jirga* where more land than due share was given to the respondent. Moreover, arable land was given to the respondent while barren land was given to them but still they remained silent. Now the appellant started some houses construction on their own share of the land, but the respondent is not allowing them, therefore, they filed a complaint before the APA on 13/06/2010. The Political Tehsildar (PT) recorded the statements of both parties and made recommendation to APA for dismissing their application, hence APA dismissed their application on 23/09/2010 for the reason that already the matter decided by private *Jirga*.



The interviewees were alleging that without giving them an opportunity of establishing and proving their claim, the dismissal of the case amounts to denial of justice. The PT has no authority to give opinion on their case; therefore they have filed appeal before the Commissioner.

### Shaheen of Orakzai Agency

**Acquitted in 2010 after his case was remand by the FCR Tribunal**

**Charges: Kidnapping for ransom**

**Brief Facts of the Case:** The interviewee was charged for kidnapping for ransom in 2007. The APA constituted the *Jirga* after more than a year and the APA convicted him for 14 years rigorous imprisonment on the rai/award of the *Jirga*. As the *Jirga* members were nominated by the APA, the interviewee alleged that he raised repeated objections on the *Jirga* members but the political administration turned a deaf ear to those objections. The majority members of the *Jirga* were affiliated with the complainant and two of them were close relatives of the complainant. Therefore the *Jirga* gave rai/award against the interviewee. Resultantly, he was convicted by the APA without considering his objections. Against the order of APA an appeal was filed before the Commissioner but the same was rejected and order of the APA was upheld.

Against the order of the Commissioner, appeal was filed before the FCR-Tribunal, Peshawar in mid of 2008. The issue of the *Jirga* members' biasness was argued in length before the Tribunal to which the Tribunal agreed and sent back the case to the APA for retrial by constituting new *Jirga* and giving due weightage to the appellant objections. Meanwhile, the then APA was transferred from the post and new APA assumed office. The new APA renominated *Jirga* and that *Jirga* accepted his plea of innocence and gave award in his favour. The APA acquitted him from the charges in beginning of 2010.

The interviewee said that a *Jirga* decision can be

easily influenced through many sources therefore *Jirga* members along with APA should be made accountable for their wrong decisions. He emphasized for formulating timeframe for conclusion of *Jirga* proceedings and questioned that from whom I should ask to return my 3 years which I spent in prison without any guilt?

**Akhtar Jan (A retired soldier of Frontier Constabulary, aged 69 years) Khyber Agency**

**Property Dispute Resolution through *Olas* *Jirga***

**Brief Facts of the issue:** After retirement from the FC in 2005, I planned to start a business. With the advice of some elders I purchased a stone crusher machinery and installed it on our communal mountain for mining. Within a few months there was a demand in the market and I began to earn enough. Watching me do well, some of my cousins said that they have money dispute with my brother and till its recovery they stopped my business through force.

I raised the issue before the *Olas* *Jirga* and requested them for resolving the dispute. The *Jirga* called the opposite party but they bribed the *Jirga*, so instead of deciding the issue the *Jirga* keeps delaying it, listening to the rival party's false and baseless claim. Neither have I liked enmity blood-feud nor do I have the finances to bribe the *Jirga*, so I have left everything to Allah and my fate.

He is of the view that the *Jirga* system can serve the tribal community best but now *Jirga* has become corrupt [*da dalaro Jirga*- meaning *Jirga* became a commodity that can be purchased on better price]. In past *Jirga* used to resolve the dispute for the sake of Allah but now it has become a proper business. The higher you pay the more quickly you will get justice. He supports *Jirga* system for the reason that tribal people do not have an alternative system. But he does not support the formal judicial system in FATA because they don't understand the technicalities of law and also don't have the resources for

litigation expenses. He opined that *Jirga* is most viable because in most *Jirga* both sides to a conflict trust in the *Jirga* members and therefore do not lie to them. This makes it easier for the *Jirga* to settle a dispute than the regular judiciary where people lie and bribe the prosecution.

#### **Muhammad Akram Khan R/o South Waziristan - SW (aged 55)**

##### **Property Dispute Resolution through *Olas* *Jirga***

**Brief Facts of the issue:** Muhammad Akram seems quite happy and optimistic about tribal *Jirga* system since the *Jirga* has resolved their property dispute in early 1950s. His forefathers along with their entire *Khel* (clan) migrated to Afghanistan from South Waziristan after the British took tribal belt (probably 1818-1849). They left their properties unclaimed-meaning didn't handover to anyone for supervision etc. They lived almost for a century in Afghanistan and returned to their area of origin after the tribal areas had affiliated with Pakistan. The entire property of his clan was occupied by two different families of the same territory.

According to him, his father told him that their family elders claimed the property from concerned families but they denied their right over the property. Therefore they involved the local *Jirga* elders of the area for resolution of their property dispute with the respondents. Within three months the dispute was resolved without any bloodshed and enmity between the disputant parties. Therefore he strongly supports the *Jirga* system as dispute resolution mechanism since it provides quick justice compared to the formal judicial system where cases initiated by father remain in process through generations without any positive results.

Though he does not admit the factor of bribe (i.e. in cash) but he admits that most *Jirga* members now get fees (*Ujrat*) for delivering their services of mediation. Moreover, he concurs that with the passage of time *Jirga* has changed and now the

requirements of *Jirga* are not bearable for poor for example to arrange grand feasts, and at times, to offer gifts to the *Jirga* members.

#### **Sher Akber Afridi R/o Khyber Agency-KA (aged 70 years)**

##### **Money and Inheritance Dispute Resolution through *Olas* *Jirga***

**Brief Facts of the issue:** Mr. Sher has had money and inheritance dispute with his brother since 2007 which has still not been resolved. He had a vast business of importing-exporting clothing, and a travel agency in Dubai. He needed human resource for assistance and therefore in 2005 he arranged visas for his two younger brothers, along with his brother in law to Dubai. After sometime the brothers started embezzlement in business which Mr. Sher noticed but kept ignoring it since they were brothers. In mid of 2007 both his brothers collected about PKR 35 lacks of business money from the different clients in the market and returned to Pakistan without informing him. On the next day he came to know about the situation, and tried to contact both brothers but could not. The interviewee also returned to Pakistan after two weeks to know his brothers' points of view. But instead of explaining the situation to him, they even occupied the ancestral joint property.

Mr. Sher approached elders of the locality to find a solution to the problem. The local *Jirga* initially comprised of 12 members, but was later brought down to 6 members. For more than a year the *Jirga* held more than dozens of meetings and on each meeting the three of us (disputant) parties have to pay PKR 1000/- to each *Jirga* member in addition to arrangements of hospitality and logistics. But the local *Jirga* demanded a better price of bribe for the decision. According to him the *Jirga* members said that "your brothers offered us turban (*Pagri*) and if you can offer us bull (*Ghwa*) then we will give decision in your favour". However Sher refused, which is why the

*Jirga* has left the dispute unresolved.

Then Mr. Sher approached the Lashkar-e-Islam organisers and paid them PKR 7000/- but in the meanwhile military operation against militant groups started in Khyber agency, by the security forces therefore his matter couldn't be resolved. Later the above mentioned *Jirga* further advised him to resolve the dispute with his brothers on Shariat, hence he approached a famous religious leader from Peshawar Maulana Shahab-ud-Din Popalzai (Qasim Ali Khan Mosque) for *Fatwa* (religious verdict) about inheritance and resolving the dispute but his brothers denied to sit with the *Jirga* in settled area.

According to him *Jirga* has become corrupt and expensive. He is in favour of the formal judicial system for the tribal areas.

# Annex II

## Glossary of Pashto terms and expressions

Some useful words that signify individual or collective Pakhtun tribal functions are given below in Pashtu language.

- **Zmeka (land)**-A Pashtun must defend his land/property from incursions wherever he or she might reside.
- **Nang (honour)**-The various points below that a tribesman must observe to ensure his honour, and that of his family, is upheld. The preservation of honour entails the defence of one's family and one's independence, while upholding cultural and religious requirements.
- **Namus (honour of women)**-A Pakhtun must defend the honor of Pashtun women at all costs and must protect them from vocal and physical harm.
- **Hewad (nation)**-Love for one's nation in Pashtun culture is not just important, it is essential. A Pashtun is always indebted to his nation and must strive to perfect and improve it. A Pashtun considers it his obligation to defend his country *Pakhtara* ("Pakhtun-khwa" in modern colloquial Pashtu) against any type of foreign incursion. Defence of nation means defence of honour, values, culture, tradition, countrymen and self.
- **Dod-pasbani (Protecting Pakhtun culture)**-It is obligatory for a Pashtun to protect Pashtun culture from dilution and disintegration. *Pakhtunwali* advises that in order to successfully accomplish this, a Pashtun must retain the Pashtu language since Pashtu is the prime source of Pashtu culture and its understanding is therefore essential. Not being able to speak Pashtu in a Pashtun society often translates to the inability to understand the Pashtun culture, values, history and community.
- **Tokhm-pasbani (Protecting the Pashtun race)**-Pashtuns with their distinct Iranic features are often immediately recognisable. Pashtuns must take another Pashtun as a marriage partner. This stems from the general belief that 'half-Pakhtuns' do not retain Pashtun language, culture, and physical features.
- **De Pakhtunwali Perawano (Adhering to Pakhtunwali)**-In order to keep one's descendants from becoming "durvand" (Non-Pashtuns), a Pashtun must adhere to the *Pakhtunwali* principles of culture, kin and pedigree. Those who do not will ultimately face revulsion and expulsion from Pashtun society.
- **Lashkar**-The tribal army. It implements the decisions of the *jirga*.
- **Jirga or Loya Jirga**-An assembly of tribal elders called for various purposes whether waging war or composing peace, tribal or inter-tribal.
- **Salwekhti**-Derived from the word for *forty*, this refers to the tribal force that would implement the decision of a *jirga*. Every fortieth man of the tribe would be a member. A *shalgoon* is a force derived from the number twenty.
- **Badragga**-A tribal escort composed of members of that tribe through which the travelers are passing. If a *badragga* is violated a tribal feud will follow.
- **Hamsaya**-A non-Pashtun dependent group who attaches themselves to a Pashtun group, usually for protection. The Pashtun protector group is called a *naik*. Any attack on a *hamsaya* is considered an attack on the protector.

- ***Mlatar***-Literally, *tying the back* or "support". This refers to those members of the tribe who will actually fight on behalf of their leaders.
- ***Nagha***-a tribal fine decided by the council of elders and imposed upon the wrongdoer.
- ***Rogha***-Settlement of a dispute between warring factions.
- ***Hujra***-A common sitting or sleeping place for males in the village. Visitors and unmarried young men sleep in the *Hujra*.
- ***Lokhay Warkawal***-Literally means 'giving of pot'. The idea that the tribe will do everything to protect an individual from an enemy.

## Annex III

### Agency/FR-wise list of villages for *Jirga* perception survey 2010-11 (January 10 - 26, 2010)

S #	Agency/ FR	S#	List of Villages Tehsil Khar	S #	List of Villages Tehsil Utman Khel	S #	List of Villages Tehsil Salarzo
1	Bajaur Agency	1	Khar City	9	Banda	17	Khyakay
		2	Qazi Darai	10	Gandawa	18	Regghan
		3	Kala Kalay	11	Sakindro	19	Bar Raghgan
		4	Jaar	12	Qazafi	20	Pasht
		5	Mehrosa	13	Graoye	21	Brasht Gardai
		6	Slum Bagh	14	Malu Darai	22	Gasat Miytai
		7	Shah Naray	15	Karh	23	Bargamat
		8	Aman Kot	16	Bandagai	24	Shahee Qeleha

S #	Agency/FR	S #	List of Villages(Haleem Zai/Ghalanai	S #	List of Villages Prang Ghar
2	Mohmand Agency	1	Musa Kor	8	Yousaf Khail
		2	Naway Kalay	9	Naway Kalay
		3	Ghunda Khel	10	Keera Kalay
		4	Ranra Khel	11	Bawacha Abdu-ur-Rehman
		5	Ghalnai	12	Kalay
		6	Haleem Zai	13	Sra Shah
		7	Sultan Khel	14	Dew Derai

S #	Agency/FR	S #	List of Villages Jamrud/Mala Gori	S #	List of Villages Landi Kotal /Shalman
3	Khyber Agency	1	Jamrud	12	Godhar Kalay
		2	Shahkas	13	Gagra
		3	Sur Kamar	14	Kam Shalman
		4	Ghundai	15	Loye Shalman
		5	Samar Bagh	16	Ayub Kalay
		6	Chinar Kalay	17	Sultan Khel
		7	Shikhhanu Kalay	18	Kandu Khel
		8	Nehar Ghara	19	Shakai
		9	Sher Burj	20	Ali Masjid
		10	Badshah Gul Kalay	21	Piro Khel
		11	Lora Mina	22	Bagh Kalay

S #	Agency/FR	S #	List of Villages Tehsil Kalaya
4	Orakzai Agency	1	Kuriz
		2	Kalaya
		3	Kalat
		4	Ahmed Khel
		5	Mast Ali Khel
		6	Char Khaila
		7	Tagha Mela Tarangi
		8	Jameera Undi Khail
		9	Bada Khail

S #	Agency/FR	S #	List of Villages Upper Kurram Parachinar	S #	List of Villages Lower Kurram Sadda
5	Kurram Agency	1	Parachinar Main	10	Sada Main
		2	Agra	11	Khar Kalay
		3	Sultan	12	Pir Qayum
		4	Zaran	13	Kochee
		5	Malana	14	Tirak
		6	Shublan	15	Dorani
		7	Mali Kalay	16	Shahshu
		8	Luqman Khel	17	Sakhee Ahmad Shah
		9	Shalozan	18	Sateen

S #	Agency/FR	S #	List of Villages Tehsil Miransha	S #	List of Villages Tehsil Mir Ali
6	North Waziristan Agency	1	Darpa Khel	9	Tappi
		2	Miran Shah Kala	10	Mussaki
		3	Danday Darpa Khel	11	Eppi
		4	Chashmay Kala	12	Molagan
		5	Hassu Khel	13	Mirali
		6	Haidar Khel	14	Essori
		7	Eidak	15	Zarraki
		8	Hurmaz		

S #	Agency/FR	S #	List of Villages Tehsil WANA	S #	List of Villages Tehsil Birmal
7	South Waziristan Agency	1	Kari Kot	10	Zari Noor
		2	Karay Khel	11	Azzam Warsak
		3	Ashraf Khel	12	Dazza Ghodai
		4	Mughal Khel	13	Dera Ghundo
		5	Ghowa Khowa	14	Shah Alam
		6	Tanai	15	Raghzai
		7	Speen	16	Angoor Adda
		8	Taran	17	Goora
		9	Dab Kot		

S #	Agency/FR	S #	List of Villages
8	FR Peshawar	1	Jannah Kor
		2	Mattani
		3	Sama Badabera
		4	Musa Dara
		5	Arbat Baba

S #	Agency/FR	S #	List of Villages
9	FR Kohat	1	Dara bazaar
		2	Tor Chapper
		3	Suni Khel
		4	Azad Mela
		5	Shah Nawaz Kalay

S #	Agency/FR	S #	List of Villages
10	FR Bunu	1	Jani Khel
		2	Khawjadar Khel
		3	Wali Noor Wazir Kalay
		4	Tanchi Kalay
		5	Said Khel Wazir

S #	Agency/FR	S #	List of Villages
11	FR Lakki	1	Ghundi Hussain Khel
		2	Gabbar Betani
		3	Masti Khel
		4	Hussain Khel
		5	Barram Khel

S #	Agency/FR	S #	List of Villages
12	FR Tank	1	Jhandula
		2	Kariwam
		3	Sra Ghar
		4	Chini Machan Khel
		5	Manzai

S #	Agency/FR	S #	List of Villages
13	FR D.I. Khan	1	Darazinda
		2	Chudwan
		3	Mughal Kot
		4	Landi Balouch
		5	Anwar Kalay



## Annex IV

### List of participants of the four-day stakeholders consultation

S.#	Name of Participant	Agency/FR
1	Malik Razaq Afridi	Khyber Agency
2	Malik Khalid Afridi	Khyber Agency
3	Taj Mahal	Khyber Agency
4	Ikram Ullah Jan Koki Khel	Khyber Agency
5	Said Nazir	Khyber Agency
6	Hasam-ud-Din	Khyber Agency
7	Haji Badshah	Khyber Agency
8	Wahid shah	Khyber Agency
9	Malik Ibrahim Shinwari	Khyber Agency
10	M. Zahir Shah Safi	Mohmand Agency
11	Jalil Khan	Mohmand Agency
12	Haji Shahzar Khan	Mohmand Agency
13	Arshad Khan	Mohmand Agency
14	Irshad Khan	Mohmand Agency
15	Tajamul Hussain	Mohmand Agency
16	Dr. Zia-ul-Haq	Mohmand Agency
17	Yasir Khan	Mohmand Agency
18	Aftab Khan	Mohmand Agency
19	Malik Ihsan Ullah	Mohmand Agency
20	Shekh Jehan Zada	Bajaur Agency
21	Bahadar Nawaz	Bajaur Agency
22	Khan Badshah	Bajaur Agency
23	Khair Mohammad Khan	Bajaur Agency
24	Mohammad Iqbal	Bajaur Agency

S.#	Name of Participant	Agency/FR
25	Malik Dawood Khan	Bajaur Agency
26	Haji Habib Ullah Khan	Bajaur Agency
27	Qazi Abdul Manan	Bajaur Agency
28	Syed Salim Syed	Orakzai Agency
29	Khyal Meen Gul	Orakzai Agency
30	Najmal Hassan	Orakzai Agency
31	Ameenullah Khan	Orakzai Agency
32	Syed Alam Jan	Orakzai Agency
33	Wasi Syed	Orakzai Agency
34	Yousaf Jan	Orakzai Agency
35	Mehboob Ali	Orakzai Agency
36	Ibn-e- Ali	Orakzai Agency
37	Malik Gul Hussain	Orakzai Agency
38	Syed Akbar Jan	Kurram Agency
39	Ahmad Bangash	Kurram Agency
40	Atta Ullah	Kurram Agency
41	Munir Hussain Bangash	Kurram Agency
42	Haji Muhammad Ghulam	Kurram Agency
43	Saifullah Khan	Kurram Agency
44	Kabir Khan	Kurram Agency
45	Haji Syed Abbas	Kurram Agency
46	Shuiab Nabi	Kurram Agency
47	Iqbal Hussain	Kurram Agency
48	Mula Janat Shah	Kurram Agency

## List of participants of the four-day stakeholders consultation

S.#	Name of Participant	Agency/FR
49	Malik Sawab	Kurram Agency
50	M. Khan Marjan	North Waziristan Agency
51	Mr. Zabihullah	North Waziristan Agency
52	Haji Farid	North Waziristan Agency
53	Malik Salam Tappi	North Waziristan Agency
54	Haji Malik Qadreen Khan	North Waziristan Agency
55	Malik Sarfaraz Khan	North Waziristan Agency
56	Farhat Ullah	North Waziristan Agency
57	Malik Mohd Qaderun	North Waziristan Agency
58	Umar Daraz Wazir	North Waziristan Agency
59	Aurang Zeb Khan	North Waziristan Agency
60	Fakhar nishad baber	North Waziristan Agency
61	Kamal Khan Wazir	North Waziristan Agency
62	Haji Daraz	North Waziristan Agency
63	Malik Ayaz Dawar	North Waziristan Agency
64	Liqman Khan Afridi	FR Peshawar
65	Akbar Hussain Afridi	FR Peshawar
66	Sultan Hussain	FR Peshawar
67	Asgher Ali	FR Peshawar
68	Malik Habib Ullah	FR Peshawar
69	Malik Shamroz	FR Peshawar

S.#	Name of Participant	Agency/FR
70	Abdul Salam	FR Peshawar
71	Malik Waqas Sharaki	FR Kohat
72	Javed Sharaki	FR Kohat
73	Malik Zar Mohammad Bosti Khel	FR Kohat
74	Malik Shakeel Afridi, Zarghoon Khel	FR Kohat
75	Fahim Alam	FR Kohat
76	Malik Akbar Khan Afridi	FR Kohat
77	Noor Zaman	FR Bannu
78	Malik Liyaqat Ali	FR Bannu
79	Gul Andaz Khan	FR Bannu
80	Malik Taj Mohd Khan	FR Bannu
81	Zahoor Ul Islam	FR Bannu
82	Noor Muhammad	FR Bannu
83	Malik Kher Nuhammad Khan	FR Bannu
84	Riuaz Musa Khel	FR Bannu
85	Zafar Yaar Khan	FR Bannu
86	Gohar Wazir	FR Bannu
87	M shukat	FR Lakki
88	Mir dil Khan	FR Lakki
89	M Matloob Jan khan	FR Lakki
90	Dr Kifayat Khan Betnni	FR Lakki
91	Hamyun Khan	FR Lakki
92	Noor Muhammad	FR Lakki

## List of participants of the four-day stakeholders consultation

S.#	Name of Participant	Agency/FR
93	Salam Shah	F R D.I.Khan
94	Sawar Shah	F R D.I.Khan
95	Namat Allah	F R D.I.Khan
96	Malak Abdul Haleem	F R D.I.Khan
97	Maulavi Shafi Ullah	F R D.I.Khan
98	Malak Awal Khan	F R D.I.Khan
99	Haji Ghafar Shah	F R D.I.Khan
101	Sanatullah Khan	F R Tank
102	Ahmed Munir	F R Tank
103	Nazir Ahmed	F R Tank
104	Abdul Rehman	F R Tank
105	Gul Rehman	F R Tank
106	Sheer Nawaz	F R Tank
107	Hayatullah	F R Tank
108	Akbar Shah	South Waziristan Agency
109	Dilawar Khan	South Waziristan Agency
110	Alam Gul	South Waziristan Agency
111	Salam Khan	South Waziristan Agency
112	Malik Bir Mala Khan	South Waziristan Agency
113	Najib ullah	South Waziristan Agency
114	Mian Gul Khan	South Waziristan Agency

# Annex V

## Laws Extended to the Tribal Areas with *Jirga* Laws

### REGULATION NO. III OF 1901

#### THE FRONTIER CRIMES REGULATION, 1901

A Regulation further to provide for the suppression of crime in certain frontier districts

Whereas it is expedient further to provide for the suppression of crime in certain frontier districts;

It is hereby enacted as follows: \_\_\_\_\_

#### CHAPTER I

#### PRELIMINARY

#### 1. Short title, commencement and

**extent.** \_\_\_\_\_ (1) This Regulation may be called the Frontier Crimes Regulations, 1901; and

(2) It shall come into force at once.

<sup>1</sup>[ (3) It shall extend to the areas specified in the Third Schedule, but the Governor may, by notification<sup>2</sup> in the official Gazette, exempt any such area from the operation of all or any of its provisions.]

(4) Section 1 to 5, 10, 20, 21, 26 to 28, 31, 32, 36, 56 and 60 to 64 are of general application, but the remaining sections may be enforced, in whole or in part, as the case may be, only against Pathans and Biluchis, and against such other classes as the <sup>3</sup>[Provincial Government]<sup>4</sup> [...] may by notification in the <sup>5</sup>[Official Gazette], declare to the subject thereto.

<sup>1</sup>Substituted by West Pakistan Ordinance XLIII of 1963, S.2 for sub-sections (3) and (4) which were earlier substituted by Central Ordinance VIII of 1962, for the original sub-section (3).

<sup>2</sup>Exempted vide Government of West Pakistan, Home Department Notification No. Judl-1-1(72)/64(1), dated 17th December, 1964, Gazette of West Pakistan, Extraordinary, 17th December, 1964.

<sup>3</sup>Substituted for "Local Government" by the A.O., 1937.

<sup>4</sup>The words "with the previous sanction of the Governor- General in Council" omitted, *ibid*.

<sup>5</sup>Substituted *ibid* for "local official Gazette".

(5) A notification under sub-section (4) may declare a specified class only to be subject to all or any of the provisions of this Regulation in a district or a part of a district.

Explanation.\_\_\_\_\_ The word “class”, as used in sub-sections (4) and (5) includes any persons who may be collectively described in a notification under this section as persons subject to all or any of the provisions of this Regulations.

**2. Definitions.**\_\_\_\_\_ In this Regulation unless there is anything repugnant in the subject or context,\_\_\_\_\_

<sup>6</sup>[(a) “ Council of Elders” means\_\_\_\_\_

i) In relation to Quetta and Kalat Divisions and District Lasbella, a Council of three or more persons convened according to the Pathan, Biluch or other usage, as the Deputy Commissioner may in each case direct; and

ii) In relation to other areas, a Council of three or more persons whether officials or otherwise convened by the Deputy Commissioner and presided over by a Magistrate invested with powers under section 30 of the code of Criminal Procedure, 1898;] and

(b) “ Deputy Commissioner” includes any Magistrate of the first class appointed by the Deputy Commissioner by order

in writing to exercise all or any of the functions or powers specified in the first part of the first Schedule, and also any magistrate appointed by the <sup>7</sup>[Provincial Government] to exercise all or any such functions or powers;

<sup>8</sup> ( c ) “Commissioner” in relation to the Federally Administered Tribal Areas or any part thereof shall mean the Commissioner of the Division to which such areas or part thereof is attached for administrative purposes or such other officer as the Governor may appoint in this behalf; and]

<sup>9</sup>[(d) “ Governor” means the Governor of the North- West Frontier Province as Agent to the President of Pakistan under Article 145 of the Constitution of the Islamic Republic of Pakistan for the Federally Administered Tribal Areas.]

**3. Relation of Regulation to other enactments.**\_\_\_\_\_ **(1)** The Provisions of this Regulation shall take effect in case to which they apply, notwithstanding anything in any other enactment.

(2) the Powers conferred by this Regulation may be exercised in addition to any power conferred by or under any other enactment, and where the contrary is not expressed or implied, other

<sup>6</sup>Substituted for clause (a) by W.P. Ordinance XII of 1962.

<sup>7</sup>Substituted for “ Local Government” by the A.O., 1937.

<sup>8</sup>Substituted by Regulation No. II of 1997.

<sup>9</sup>Added by Regulation No. II of 1997.

enactments in force in any place in which all or any of the provisions of this Regulation are for the time being in force shall, so far as may be, apply to cases dealt with in that place under this Regulation.

## **CHAPTER II**

### **POWERS OF COURTS AND OFFICERS**

**4. Additional District Magistrate.**\_\_\_\_(1) In any district in the whole or any other part of which all or any of the provision of this Regulation are for the time being in force the <sup>10</sup>[ Provincial Government] may appoint any Magistrate or Magistrates of the first class to be an Additional District Magistrate or Additional District Magistrates, without any limit of time.

(2) Every Additional District Magistrate so appointed shall have all the ordinary powers of a District Magistrate specified in the fifth part of the third schedule to the Code of Criminal Procedure, 1898.

(3) When exercising any of the powers of a Deputy Commissioner under this Regulation, an Additional District Magistrate shall be deemed, for the purposes of this Regulation to be the Deputy Commissioner.

(4) Every Additional District Magistrate shall exercise his powers in subordination of the District Magistrate, and in such cases or classes of cases, and within such local limits as the District Magistrate may, by order in writing, direct.

**5. Power of District Magistrate to withdraw or recall Cases.**\_\_\_\_(1) The District Magistrate may withdraw any case from, or recall any case which he has made over to, an Additional district Magistrate, whether the Additional District Magistrate is exercising jurisdiction with respect to the case as a Magistrate or as a Deputy Commissioner.

(2) If the case may, under the Code of Criminal Procedure, 1898, be referred to another Magistrate competent to inquire into or try it, the District Magistrate may, instead of disposing of the case himself, refer it to such other magistrate for inquiry or the trial as the case may be.

**6. Power to pass sentences of whipping in certain cases.**\_\_\_\_ Where any person against whom, under section 1, sub- section (4), this section may for the time being be enforced is convicted by a Criminal Court of an offence punishable under any of the following sections of the <sup>11</sup>Indian Penal Code, namely, sections 304, 307, 324, 325, 326, 376, 377, 382, 392 to 399, 427, 428, 429, 435, 436, 448 to 460, the Court may, subject to the provisions of section 393 of the Code of the Criminal Procedure, 1898, pass upon him a sentence of whipping in addition to any other punishment to which he may be sentenced.

<sup>12</sup>**[7. Tender of pardon to accomplices.**\_\_\_\_ Section 337 of the Code of Criminal Procedure, 1898, shall for the purposes of this Regulation, be construed as if \_\_\_\_

<sup>10</sup>Substituted for " Local Government" by the A.O., 1937.

<sup>11</sup>Now the Pakistan Penal Code, 1860.

<sup>12</sup>Substituted by Regulation VII of 1926.

(a) The words in sub-section (1) “ triable exclusively by the High Court or the Court of Session or any offence punishable with imprisonment which may extend to ten years or any offence punishable under section 211 of the <sup>13</sup>Indian Penal Code with imprisonment which may extend to seven years or any offence under any of the following sections of the Indian Penal Code, namely, sections 216-A, 369, 401, 435 and 477-A,” and

(b) the whole of sub-section (2-A) were omitted.

### **CHAPTER III** **COUNCILS OF ELDERS**

#### **8. Civil References to Council to Elders. \_\_\_\_\_ (1)**

Where the Deputy Commissioner is satisfied, from a police report or other information, that a dispute exists which is likely to cause a blood-feud or murder, or culpable homicide not amounting to murder, or mischief or a breach of the peace, or in which either or any of the parties belongs to a frontier tribe he may, if he considers that the settlement thereof in the manner provided by this section will tend to prevent or terminate the consequences anticipated, and if a suit is not pending in respect of the dispute, make an order in writing, stating the grounds of his being so satisfied, refereeing the dispute to a council of Elders, and requiring the Council to come to a finding on the matters in disputes after

making such inquiry as may be necessary and after hearing the parties. The members of the Council of Elders shall in any case, be nominated and appointed by the Deputy Commissioner.

(2) The order of reference made under sub-section (1) shall state the matter or matters on which the finding of the Council of Elders is required.

(3) On receipt of the finding of the Council of Elders under this section, the Deputy Commissioner may \_\_\_\_\_

- a) remand the case to the council for a further finding; or
- b) refer the case to a second council; or
- c) refer the parties to the Civil Courts; or
- d) pass a decree in accordance with the finding of the Council, or of not less than three-fourth of the members thereof, on any matter stated in the reference; or
- e) declare that further proceedings under this section are not required.

#### **9. Effect of decree on finding of Council. \_\_\_\_\_ A**

decree passed under section 8, sub-section (3), clause(d), shall not give effect to any finding or part of a finding which in the opinion of the Deputy Commissioner is contrary to good conscience or public policy, but shall \_\_\_\_\_

- a) be a final settlement of the case so far as the decree relates to any matter stated in the reference, although other matters therein stated may remain undisposed of; and
- b) have, to that extend and subject to the provisions of this regulation with respect

<sup>13</sup>Now the Pakistan Penal Code

to revision, the same effect as a decree of a Civil Court of ultimate resort, and be enforced by the Deputy Commissioner in the same manner as a decree of such a Court may be enforced.

**10. Restriction on jurisdiction of Civil Courts.**\_\_\_\_\_

No Civil Court shall take cognizance of any claim with respect to which the Deputy Commissioner has proceeded under section 8, sub-section (3), clause (a), clause (b) or clause (d).

**11. Criminal references to Council of Elders.**\_\_\_\_\_

**(1)** Where, in the opinion of the Commissioner or Deputy Commissioner, it is inexpedient that the question of the guilt or innocence of any person or persons accused of any offence, or of any several persons so accused, should be tried by a Court of any of the clauses mentioned in section 6 of the Code of Criminal Procedure, 1898, the Deputy Commissioner may or if the Commissioner so directs, shall, by order in writing, refer the question to the decision of a Council of Elders, and require the Council to come to a finding on the question after such inquiry as may be necessary and after hearing the accused person. The members of the Council of Elders shall, in each case, be nominated and appointed by the Deputy Commissioner.

**(2)** Where a reference to a Council of Elders is made under sub-section (1) and the members of the Council have been nominated, the names of the members so nominated shall, as soon as may be, be communicated to the accused person, and

any objection which he may then make to the nomination of any such member shall be recorded. The Deputy Commissioner shall consider every objection made by an accused persons under this sub-section, and may, in his discretion, either accept or reject the objection, provided that, in the case, he shall record his reasons for so doing. The Deputy Commissioner shall, after disposing of any objection made by the accused person appoint the members of the Council.

**(3)** On receipt of the finding of the Council of Elders under this section, the Deputy Commissioner may\_\_\_\_\_

- a) remand the question to the Council for a further finding; or
- b) refer the question to a second Council; or
- c) acquit or discharge the accused person or persons, or any of them; or
- d) in accordance with the findings on any matter of fact of the Council, or of not less than three-fourths of the members thereof, convict the accused person or persons or any of them, of any offence of which the facts so found show him or them to be guilty;

Provided that a person discharged under clause(c ) shall not be liable to be retired for any offence arising out of the same facts after the expiry of two years from the date of such discharge.



**12. Punishment on conviction on finding of Council.\_\_\_\_\_ (1)**

Where the Deputy Commissioner convicts a person under section 11, sub-section (3), clause (d) he may pass upon him any sentence of fine.

(2) Where the Deputy Commissioner so convicts a person of an offence mentioned in the second schedule, he may, whatever may be the punishment prescribed for the offence, sentence the person, in lieu of or in addition to fine, to be imprisoned for a term which may extend to seven years, or, subject to the provisions of section 393 of the Code of Criminal Procedure, 1898, to be whipped and imprisoned for a term which may extend to five years, or to be transported for a term which may extend to seven years; and, where he so convicts a person of an offence punishable with transportation or with imprisonment for a term exceeding seven years, he may, subject to confirmation by the Commissioner, sentence the person to a term either of transportation or of imprisonment exceeding seven years but not exceeding fourteen years:

Provided first, that a sentence of whipping shall not be passed on any person so convicted of an offence under sections 121, 121-A, 122, 123, 124-A, 125, 126, 127, 144, 150, 216, 216-A, 400, 401, 402, 494, or 495 of the <sup>14</sup>Indian Penal Code; Provided secondly, that a sentence of transportation or imprisonment for an offence

shall not be for a longer term than that ( if any ) prescribed for the offence and;

Provided, thirdly, that a sentence of transportation shall not be passed for an offence which is not punishable with transportation or with imprisonment for a term which may extend to seven years or more.

<sup>15</sup>[(3) in cases of convictions under section 302 or 396 of the Pakistan Penal Code, the immovable property of the accused shall be liable to forfeiture to the Government.]

**13. Manner of enforcing sentences.\_\_\_\_\_ (1)**

Any sentence passed under section 12 shall be executed in the manner provided for the execution of sentences passed by a Court of any of the classes mentioned in section 6 of the Code of Criminal Procedure, 1898.

(2) For the purposes of sections 64 to 67 of the Indian Penal Code in reference to a sentence under section 12 of this Regulation \_\_\_\_\_

a) An offence punishable with death or transportation for life shall be deemed to be punishable with rigorous imprisonment for a term which may extend to ten years.

b) The imprisonment in default of payment of fine may be rigorous or simple at the discretion of Deputy Commissioner.

**14. Time for exercising power of reference to Council of Elders.\_\_\_\_\_**

The powers conferred by section 11 on the Commissioner and Deputy Commissioner, respectively, may be exercised by them, in cases committed to the Court of Session,

<sup>14</sup>Now the Pakistan Penal Code

<sup>15</sup>Added by W.P. Ord.XII of 1962,s.3. 15 A. Now the Pakistan Penal Code.

at any time before the trial before that Court has commenced, and, in cases pending before any Court inferior to the Court of Session, at any time before an order of conviction or acquittal has been made.

**15. Motion by Public Prosecutor in view to reference to Council of Elders.**\_\_\_\_(1) In, any trial before a Court of Session, the Public Prosecutor may, when instructed in writing in that behalf by the Commissioner or the Deputy Commissioner, at any time before an order of conviction or acquittal has been made with respect to any accused person, withdraw from the prosecution of such person in order that the case may be referred to Council of Elders.

(2) The Session Judge shall thereupon stay proceeding with respect to such person, and the Deputy Commissioner shall refer the case to a Council of Elders.

**16. Case of persons jointly accused of an offence**\_\_\_\_ The powers conferred by section 11, as limited by section 14, may be exercised against and withdrawal of a prosecution under section 15 may have reference to one or some only of two or more persons jointly accused of an offence.

**17. Powers to set aside orders making or refusing to make references to Councils of Elders.**\_\_\_\_ The Deputy Commissioner may, if he thinks fit, at any time reconsider and set aside any order of the Deputy Commissioner under this Regulation \_\_\_\_

a) directing reference to a Council of Elders, or

b) refusing to make such a reference.

**18. Recommendations of Councils of Elders.**\_\_\_\_(1) Where a Council of Elders to which a reference has been made under this Regulation, makes any recommendation to which effect might be given if it were a finding on a matter or question referred to the Council under this Regulation, the Deputy Commissioner may, if the recommendation effects a person mentioned in the order of reference and is relevant to the matter or question actually referred, deal with the recommendation or any part of it as if it were a finding under section 8 or section 11:

Provided that no decree or sentence may be passed or any such recommendation as aforesaid against any person who has not had the claim or charge fully explained to him and been given an opportunity of entering upon his defence in regard thereto.

(2) Where the Deputy Commissioner deals with a recommendation under sub-section (1), he may pass any such decree as is authorized by section 8, or any such sentence as is authorized by section 12, sub-section (1), and the decree or sentence shall have the same effect and be enforced in the same manner as if it were a decree or sentence passed under section 8 or section 12, sub-section (1), as the case may be .

**19. Record of Deputy Commissioner.**\_\_\_\_ Where the Deputy Commissioner passes, under this Chapter a sentence of fine exceeding two hundred rupees, or of imprisonment for a term exceeding three months, or of transportation, he shall make a record of the facts of the case of the offence

committed and of his reasons for passing the sentence

(2) The record shall be made by the Deputy Commissioner in English and in his own hand, unless for any sufficient reason he is prevented from so making it, in which case he shall record the reason of his inability and shall cause the record to be made from his dictation in open Court.

**20. Attendance of Parties and witnesses before Deputy Commissioner Councils of Elders.**\_\_\_\_\_ Where a reference is made to a Council of Elders under this chapter, the Deputy Commissioner may exercise all or any of the powers conferred by the <sup>16</sup>Code of Civil Procedure and the Code of Criminal Procedure, 1898, respectively, as the case may be, for the purpose of compelling the attendance, before himself or the Council of Elders, of the parties, and witnesses, or any of them, in any case and at any stage of the proceedings.

#### **CHAPTER IV** **PENALTIES**

**21. Blockade of hostile or unfriendly tribe**\_\_\_\_\_ In event of any frontier tribe, or of any section or members of such tribe, acting in a hostile or unfriendly manner towards the British Government or towards persons residing within <sup>17</sup>British India, the Deputy Commissioner may, with the previous sanction

of the Commissioner, by order in writing, direct\_\_\_\_\_

- a) the seizure, wherever they may be found, of all or any of the members of such tribe and of all or any property belonging to them or any of them;
- b) the detention in safe custody of any person or property so seized and;
- c) the confiscation of any such property; and may, with the like sanction by public proclamation;
- d) debar all or any member of the tribe from all access into British India; and
- e) prohibit all or any persons within the limits of British India from all inter-course or communication of any kind whatsoever, or of any specified kind or kinds with such tribe or any section or members thereof.

**22. Fines on communities accessory to crime.**\_\_\_\_\_ Where, from the circumstances of any case, there appears to be good reason to believe that the inhabitants of any village, or part of village, or any of them, have\_\_\_\_\_

- a) connived at, or in any way abetted, the commission of an offence; or
- b) failed to render all assistance in their power to discover the offenders or to effect their arrest;
- c) connived at the escape of, or harboured, any offender or person suspected of having taken part in commission of an offence; or
- d) combined to suppress material evidence of the Commission of an offence;

<sup>16</sup>See Now the Code of Civil Procedure, 1908 (V of 1908).

<sup>17</sup>Now to be constructed as referring to all Provinces of Pakistan, see G.G.O. 20 of 1947.

The Deputy Commissioner may, with the previous sanction of the Commissioner, impose a fine on the inhabitants of such village or part of village, or any of them as a whole.

**23 . Fines on communities where murder or culpable homicide is committed or attempted.**\_\_\_\_\_

Where, within the area occupied by a village community or part of a village-community, a person is dangerously or fatally wounded by an unlawful act, or the body is found of a person believed to have been unlawfully killed, the members of the village community or part thereof shall be deemed to have committed an offence under section 22, unless the headmen of the village-community or part thereof can show that the members thereof-

- a) had not an opportunity of preventing the offence or arresting the offender; or
- b) have used all reasonable means to bring the offender to justice.

**24. Recovery of fines.**\_\_\_\_\_ Fines imposed under section 22 shall, in default of payment, be recoverable as if they were areas of land revenue due by the members of the community or part thereof upon whom the fine is imposed.

**25. Forfeiture of remissions of revenue etc., in the case of communities and persons accessory to crime.**\_\_\_\_\_

Where a village-community or part of a village-community has become liable to fine under section 22, it shall further be liable to forfeiture, in whole or in part and for a term or in

perpetuity, any remission of land revenue of which it may be in joint enjoyment, and the members of the village-community or part thereof, as the case may be, shall in like manner be liable severally to forfeit any assignment or remission of land-revenue or allowance paid out of public funds which they, or any of them, may enjoy.

**26. Forfeiture of public emoluments etc., of persons guilty of serious offences or of conniving at crime.**\_\_\_\_\_

Where it is shown to the satisfaction of the Deputy Commissioner, that any person who is in the enjoyment of an assignment or remission of land revenue or allowance payable out of public funds, has been guilty of a serious offence, or has colluded with or harboured any criminal, or has suppressed material evidence of the commission of any offence, or has failed, on the investigation of any criminal case, to render loyal and proper assistance to the authorities, to the best of ability, the Deputy Commissioner may, in addition to any other penalty to which such person may be liable under any law for the time being in force, direct the forfeiture, in whole or in part and for a term or in perpetuity, of such assignment or remission of land- revenue or allowance, as the case may be.

Explanation\_\_\_\_\_ For the purpose of this section the expression “ serious offence” means any offence punishable with transportation or with imprisonment for a term which may extend to

three years or more.

**27. Powers to direct forfeiture.**\_\_\_\_\_ For section 25 or under section 26 may be adjudged by orders of the Deputy Commissioner for a term which may extend to three years, and by order of the Commissioner for any longer term or in perpetuity.

**28. Powers of Provincial Government saved.**\_\_\_\_\_ Nothing in sections 25, 26 and 27 shall affect the powers of the <sup>18</sup>[Provincial Government] with respect to the grant, continuance or forfeiture, in whole or in part, of any assignment or remission of land- revenue or of any allowance paid out of public funds.

**29. Preparation to commit certain offences.**\_\_\_\_\_ Where a person is found carrying arms in such manner or in such circumstances as to afford just grounds of suspicion that the arms are being carried by him with intent to use them for an unlawful purpose, and that person has taken precautions to elude observation or evade arrest, or is found after sunset and before sunrise within the limits of any military camp or cantonment or of any municipality, he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both, and the arms carried by him may be confiscated.

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<sup>18</sup>Substituted for " Local Government" by the A.O., 1937.

<sup>19</sup>Sub-Section (2) omitted in its application to the Districts of Peshawar, Kohat, Hazara, Bannu, Mardan and Dera Ismail Khan, by the West Pakistan Ordinance XII of 1962.

<sup>20</sup>Now to be constructed as referring to all Provinces of Pakistan, see G.G.O.20 of 1947.

**30. Adultery.**\_\_\_\_\_ (1) A married woman who, knowingly and by her own consent, has sexual intercourse with any man who is not her husband, is guilty of the offence of adultery and shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

<sup>19</sup>[(2) Cognizance shall not be taken of an offence under this section unless a complaint has been made by the husband of the women, or in his absence, by a person who had care of the women on his, behalf at the time when the offence was committed.]

#### **CHAPTER V** **PREVENTIVE AND OTHER AUTHORITY AND JURISDICTION**

**31. Power to prohibit erection new villages or towers on frontier.**\_\_\_\_\_ (1) No new hamlet, tower or walled enclosure shall, without the previous sanction in writing of the Commissioner, who may either grant or refuse such sanctions as he thinks fit, be erected at any place within five miles of the frontier of <sup>20</sup>British India.

(2) Where the Commissioner refuses to sanction the erection of any such hamlet, village-habitation, tower or walled enclosure, as the

case may be, he shall record his reasons for so doing.

**32. Power to direct removal of villages.**\_\_\_\_\_

Where it is expedient on military grounds, the [Central Government] may, by order in writing, direct the removal of any village situate in close proximity to the frontier of British India to any other site within five miles of the regional site, and award to the inhabitants such compensation for any loss which may have been occasioned to them by the removal of their village as, in the opinion of the <sup>21</sup>[Central Government], is just.

**33. Regulation of hujras and chauks.**\_\_\_\_\_ (1)

No building of the kind commonly known as “hujra” or “chauk”, and no building intended to be used as a “hujra” or “chauk”, shall be erected or built, and no existing building not now used as a “hujra” or “chauk”, shall at any time be used as such, without the previous sanction in writing of the Deputy Commissioner.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

**34. Demolition of buildings used by robber etc.**\_\_\_\_\_ (1)

Where the Deputy Commissioner is satisfied that any building is habitually used as a meeting place by robbers, house-breakers, thieves or bad characters or for the purpose of gambling, he may, by order in writing, prohibit

the owner or occupier thereof from so using such building, and, if the order is not obeyed, may, by a like order, direct that the building be demolished. Such further order shall be without prejudice to any punishment to which the owner or occupier of such building may, under any law for the time being in force, be liable for disobedience of the prohibitory order.

(2) No person shall be entitled to any compensation in respect of the demolition of any building under sub-section (1)

**35. Naubati Chaukidari system.**\_\_\_\_\_ (1)

Where, in the opinion of the Deputy Commissioner, the custom of providing for watch and ward by what are commonly known as “Naubati chaukidars” exists in the case of any village- community, and the village- community, or any part thereof fails to provide for the due performance of such service, or any member of the village- community fails to perform his duty of watch and ward according to the customary rotation in respect of such duties, the Deputy Commissioner may impose a fine, which may extend to one hundred rupees in any one case, upon the village- community or part or member thereof so failing as aforesaid.

(2) The provision of section 24 shall be applicable to the recovery of fines imposed on any village- community or part thereof under this section.

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<sup>21</sup>Substituted for “Local Government” by the A.O., 1937.

(3) Where such custom as aforesaid has not existed or has fallen into disuse in any village-community, the Deputy Commissioner may, with the previous sanction of the Commissioner, by order in writing, direct its introduction or revival, as the case may be; and thereupon the provisions of sub-section (1) shall apply in respect of the village community.

**36. Power to require persons to remove in certain cases.**\_\_\_\_\_ Where, in the opinion of the Deputy Commissioner, any person, \_\_\_\_\_

- a) is a dangerous fanatic; or
- b) belongs to a frontier tribe and has no ostensible means of subsistence or cannot give a satisfactory account of himself; or
- c) has a blood feud; or
- d) has occasioned cause of quarrel likely to lead to blood-shed;

The Deputy Commissioner may, by order in writing, require him to reside beyond the limits of the territories to which this Regulation extends, or at such place within the said territories as may be specified in the order:

Provided that, if the person has a fixed habitation in the place which the Deputy Commissioner requires him to leave, an order under this section shall not be made without the previous sanction of the Commissioner.

**37. Penalty for breach of certain orders.**\_\_\_\_\_

Whoever contravenes the provisions of section 31, or disobeys an order under section 21 or section 32, or a prohibition under section 34, or a requisition under section 36, shall be punishable with imprisonment for a term which may extend to six months, and shall also be liable to fine which may extend to one thousand rupees.

**38. Powers of arrest.**\_\_\_\_\_ In any place in which all or any of the provisions of this Regulation are for the time being in force \_\_\_\_\_

i) Any private person may, without an order from a Magistrate and without a warrant, arrest or cause to be arrested, and make over or cause to be made over to a police officer or take or cause to be taken to the nearest police station, any Person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned; and

ii) Section 48 of the Code of Criminal Procedure, 1898, shall be read as if the following sub-section were added thereto namely:-

“(4) But this section gives a right to cause the death of a person against whom those portions of the Frontier Crimes Regulations, 1901, which are not of general application, may be enforced \_\_\_\_\_

a) if he is committing, or attempting to commit an offence, or resisting or evading arrest, in such circumstances as to afford reasonable ground

for believing that he intends to use arms to effect his purpose; and

- b) if a hue and cry has been raised against him of his having been concerned in any such offence as is specified in clause (a) or of his committing or attempting to commit an offence, or resisting or evading arrest, in such circumstances as are referred to in the said clause.”

**39. Arrest without warrant in cases under section 498, Indian Penal Code.**\_\_\_\_\_ (1) Where

there is reason to believe that a person has committed or attempted to commit an offence punishable under section 498 of the <sup>22</sup>Indian Penal Code, an officer in charge of a police station may, without an order from a Magistrate and without a warrant, arrest that person on the requisition of the husband of a woman, or, in his absence of a person having the care of her on his behalf, or, in the absence of both the husband and any such person as last aforesaid from the village in which the woman resides, on the requisition of a headman of the village.

(2) A police officer making an arrest under sub-section (1) shall, without unnecessary delay, take or send the person arrested to the nearest Magistrate having jurisdiction.

(3) The Magistrate, may in default of bail being furnished to his satisfaction, detain the person arrested for such period, not exceeding fifteen days, as may be necessary to enable the husband, or, in his absence, a person who had care of the woman on his behalf to make a complaint.

**40. Security and surveillance for the prevention of murder or culpable homicide or the dissemination of sedition.**\_\_\_\_\_ (1) Where the

Commissioner or the Deputy Commissioner is of opinion that it is necessary for the purpose of preventing murder, or culpable homicide not amounting to murder, or the dissemination of sedition, to require a person to execute a bond, for good behavior or for keeping the peace as the case may be, he may order the person to execute a bond with or without sureties, for his good behavior or for keeping the peace, as the case may be, he may order the person to execute a bond with or without sureties, for his good behavior or for keeping the peace, as the case may be, during such period not exceeding three years, as the Commissioner or the Deputy Commissioner, as the case may be, may fix.

(2) The Deputy Commissioner may make an order under sub-section (1)\_\_\_\_\_

- a) on the recommendation of a Council of Elders, or
- b) after inquiry as hereinafter provided.

<sup>23</sup>[(2-A)\_\_\_\_\_ Pending the completion of an enquiry for the purposes of sub-section(2), the Deputy Commissioner may, if he considers that immediate measures are necessary for preventing any offence referred to in sub-section (1) direct the person in respect of whom the enquiry is to be held, to execute a bond, with or without sureties, for keeping the peace or maintain good behavior for a period not exceeding one month, and detain him in custody till such bond is executed.]

<sup>22</sup>Now the Pakistan Penal Code

<sup>23</sup>Subsection (2-A) of section 40 inserted by W.P. Ordinance XXXVII of 1963, S.2. shall apply to Quetta and Kalat divisions only



(3) Where a person has been convicted in accordance with the finding of a Council of Elders of an offence mentioned in section 106 of the Code of Criminal Procedure, 1898, or punishable under section 302, section 304, section 307 or section 308 of the <sup>24</sup>Indian Penal code, the Deputy Commissioner at the time of passing sentence, or the Commissioner at the time of revising the sentence, may make an order under sub-section (1) with respect to that person.

(4) Where the Deputy Commissioner makes an order under sub-section (1) on the recommendation of a Council of Elders, he shall record his reasons for acting on the recommendation.

(5) Where the Commissioner or the Deputy Commissioner is of opinion that sufficient grounds exist for making an order under sub-section (1), he may, either in lieu of or in addition to such order, by order in writing, direct that person concerned shall notify his residence and any change of residence in the manner prescribed by section 565 of the Code of Criminal Procedure, 1898, during such term, not exceeding three years, as may be specified in the order.

**41. Security from families or factions in case of blood-feud.**\_\_\_\_\_ Where a blood-feud or other cause of quarrel likely to lead to blood-shed exists, or, in the opinion of the Deputy Commissioner, is likely to arise between two families or factions, the Deputy Commissioner may, on the recommendation of a Council of Elders, or after inquiry as hereinafter provided,

order all or any of the members of both families or factions or of either family or faction to execute a bond, with or without sureties, for their good behavior or for keeping the peace, as the case may be, during such period, not exceeding three years as he may fix.

**42. Procedure in inquiry.**\_\_\_\_\_ (1) An inquiry for the purposes of section 40 sub-section(2), or section 41, may be conducted, so far as may be necessary, out of **Court:**

Provided that a person from whom it is proposed to require a bond under section 40, or the principal members of the family or faction from which it is proposed to require a bond under section 41, shall be given an opportunity of showing cause in Court why a bond should not be required, and of having his or their witnesses examined there and of cross-examining any witness not called by himself or themselves who may testify there to the necessity or otherwise for the execution of a bond.

(2) Sections 112,113,115 and 117 of the Code of a Criminal Procedure, 1898, shall not apply to an inquiry under this section, but the Deputy Commissioner shall record his order with the reasons for making it.

**43. Breach of bond.**\_\_\_\_\_ (1) A bond executed under section 40 shall be liable to be forfeited if the person bound thereby to be of good behaviour or to keep the peace, as the case may be, commits or attempts to commit, or abets the commission of, any offence punishable with imprisonment.

(2) A bond executed under section 41 shall be

<sup>24</sup>Now the Pakistan Penal Code

liable to be fortified, if the person bound thereby to be of good behaviour or to keep the peace, as the case may, commits or attempts to commit, or abets the commission of, any offence punishable with imprisonment in respect of any member of the opposite family or faction to which the bond related.

- (3) If, while a bond executed under section 41 is in force, the life of any member of either family or faction is unlawfully taken or attempted, the Deputy Commissioner may declare the bond of all or any of the members of the other family or faction and their sureties (if any) to be fortified, unless it is shown to his satisfaction that the homicide or attempt was not committed by, or in consequence of the abetment of, any member of that family or faction.

**44. Imprisonment in default of security.**\_\_\_\_\_ (1) Where a person ordered to give security under section 40; or section 41 does not give security or before the date on which the period for which the security is to be given commences; he shall be committed to prison, or, if he is already in prison, be detained in prison until that period expires, or until within that period he furnishes the required security.

- (2) Imprisonment for failure to give security under this Chapter may be rigorous or simple as the offence requiring the security directs in each case.

**45. Length of Imprisonment.**\_\_\_\_\_ Where a person has suffered imprisonment for three years for failure to give security under section 40 or section 41, he shall be released and shall not

again be required to give security unless a fresh order is passed in accordance with the provisions of this Chapter or of the Code of Criminal Procedure, 1898.

**46. Further Security.**\_\_\_\_\_ (1) where a person has, under the provision of this Chapter, given security or been imprisoned for failure to give security, he may be brought before the Deputy Commissioner, if on the expiry of the period for which security was required to be given, the Deputy Commissioner so directs.

- (2) Where the Deputy Commissioner thinks it necessary, for the purpose of preventing bloodshed, to require security for further period from any person so brought before him, he shall record proceeding to that effect.

(3) The proceedings may be founded on the facts on which the original order to give security was founded, and it shall not be necessary to prove any fresh facts to justify an order to give security for a further period under this section; but such an order, if passed shall have the same effect and be enforced in the same manner as an original order to give security under section 40 or section 41.

- (4) Notwithstanding anything in this section, no person shall suffer, for failure to give security under this Chapter, continuous imprisonment for more than six years or, without the sanction of the Commissioner, for more than three years.

**47. Modified applications of Chapter VIII and XLII, Act V of 1898.**\_\_\_\_\_ (1) Where, within the territories in which all or any of the provisions of this Regulation are for the time being in force, it is found necessary or expedient to take security under this Regulation from Pathans or Baluchis

or any other classes against whom all or any of the provisions of section 40 to 46 may for the time being be enforced, the provisions of Chapters VIII and XLII of the Code of the Criminal Procedure, 1898, shall be read as if for the words “High Court”, “Court of Session” and “Sessions Judge” wherever they occur, the word “Commissioner” were substituted, and all references to any such Courts shall be deemed to refer to the Court of the Commissioner.

(2) Subject to the provisions of sub-section (2) of section 42 and sub-section (1) of this section, the provisions of the said Chapters of the Code of Criminal Procedure, 1898, shall, so far as they are consistent therewith, be applicable to every proceeding under this Chapter relating to the taking of security; but all applications for revision in respect to any such proceeding shall be made to, and be disposed of by, the Commissioner.

## **CHAPTER VI** **APPEAL AND REVISION**

<sup>25</sup>[48. **Appeal.**\_\_\_\_\_ An appeal shall lie to the Commissioner within thirty days from the date of any decision given, decree or sentence passed, or order made by the Deputy Commissioner under this Regulation.]

<sup>26</sup>[49. **Omitted**]

**50. Powers in exercise of criminal [appellate] jurisdiction.**\_\_\_\_\_ The Commissioner may, in exercise of his <sup>27</sup> [appellate] jurisdiction in any criminal proceeding, exercise the power to direct tender of pardon conferred by section 338, and any of the powers conferred. On an

Appellate Court by sections 195, 423, 426, 427 and 428 of the Code of Criminal Procedure, 1898, and may also enhance any sentence:

Provided that nothing in this Chapter shall be deemed to authorise the Commissioner to set aside the finding on any question of fact of a Council of Elders, where such findings has been accepted by the Deputy Commissioner, unless he is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice.

**51. Sentences which may not be passed on revision.**\_\_\_\_\_ No sentence shall be passed by the Commissioner in the exercise of his [appellate] jurisdiction which the Deputy Commissioner could not have passed under this Regulation.

**52. Powers in exercise of civil revisional jurisdiction.**\_\_\_\_\_ Nothing in this Chapter shall be deemed to authorize the Commissioner to vary or set aside any decision, decree or order given, passed or made in any civil proceeding under the Regulation, unless he is of opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice or that the decision, decree or order is contrary to good conscience or public policy.

**53. Record of reasons.**\_\_\_\_\_ Where, in the exercise of his [appellate] jurisdiction in any proceeding under this Regulation, the Commissioner varies or sets aside any decision, decree, sentence or order, he shall record his reasons for so doing.

<sup>25</sup>Substituted by Regulation No. II of 1997.

<sup>26</sup>Section 49 omitted by Regulation II of 1997.

<sup>27</sup>In sections 50, 51, 53, 54, and 55 for the word “revisional” wherever occurring, the word “appellate” substituted by Regulation No. II of 1997.

<sup>28</sup>[54. Procedure where the decision, etc., to be revised was given by the officer invested with [appellate] jurisdiction as Deputy Commissioner\_\_\_\_(1) No officer shall revise any decision, decree, sentence, or order given, passed or made by himself in the capacity of Deputy Commissioner.

(2) Where any such decision, decree, sentence or order is brought to the notice of an officer invested with [appellate] jurisdiction under this Regulation with a view to the exercise by him of [appellate] powers, such officer shall report the case to the Provincial Government and it shall be disposed by the Provincial Government or by an officer, other than the reporting officer, appointed by the Provincial Government.]

**55. Enforcement of orders made on revision.**\_\_\_\_ Every order made by the Commissioner in exercise of his [appellate] jurisdiction shall be enforced as if it were an order of the Deputy Commissioner or District Magistrate, as the case may be and the Deputy Commissioner or District Magistrate shall do all acts and things necessary to give effect thereto.

<sup>29</sup> [55 A. Revision.\_\_\_\_ Subject to sub-section(2) a revision against any decision given, decree or sentence passed, or order made by the Commissioner under section 48 shall lie to the Tribunal consisting of\_\_\_\_

- a) Home Secretary, NWFP; and
- b) Law Secretary, NWFP.

(2) If the members of the Tribunal shall differ in opinion, the case shall be referred to Chief Secretary, NWFP and the case shall be decided according to the opinion of the majority.

(3) In exercise of the revisional jurisdiction in any

criminal proceeding, the Tribunal shall have powers under section 338 and any of the powers conferred on an appellate authority under sections 195, 423, 426, 427 and 428 of the Code of Criminal Procedure, 1898 (V of 1898), and may also enhance any sentence:

Provided that nothing in this section shall be deemed to authorize the Tribunal to set aside the finding or any question of fact of a Council of Elders, where such finding has been accepted by the Deputy Commissioner, unless the Tribunal is of the opinion that there has been a material irregularity or defect in the proceedings of that the proceedings have been so conducted as to occasion a miscarriage of Justice.

(4) Nothing in this Chapter shall be deemed to authorise the Tribunal to vary or set aside any decision, decree or order given, passed or made in any civil proceeding under this Regulation, unless the Tribunal is of the opinion that there has been a material irregularity or defect in the proceedings or that the proceedings have been so conducted as to occasion a miscarriage of justice, or that the decision, decree or order is contrary to good conscience or public policy.

(5) Where, the Tribunal in the exercise of its revisional jurisdiction in any proceeding under this Regulation varies or sets aside any decision, decree, sentence or order the Tribunal shall record its reasons for so doing.

(6) Every order made by the Tribunal in exercise of its revisional jurisdiction shall be enforced by the Deputy Commissioner or the District Magistrate, as the case may be, and the Deputy Commissioner or the District Magistrate shall do

<sup>28</sup>Substituted for the original section W.P. Ordinance No. XII of 1962,s.5.

<sup>29</sup>Section 55-A inserted by Regulation II of 1997.

all acts and things necessary to give effect thereto.]

## **CHAPTER VII**

### **SUPPLEMENTAL PROVISIONS**

**56. Recovery of fines , etc , from relatives of person liable .\_\_\_\_\_** Where , by a decree passed under sections 8 or by a sentence passed under section 12 , any person belonging to a frontier tribe becomes liable to pay a fine or other sum of money , the Deputy Commissioner may , on the recommendation of a Council of Elders and on satisfying himself , that such a course is in accordance with local tribal custom , by order in writing , direct that the amount shall be recovered from the property , movable or immovable , of such of the relatives of fellow tribesmen of the person so liable as may be specified in the order .

**57 Power of Deputy Commissioners to order disposal of certain fines.\_\_\_\_\_ (1)** The Deputy Commissioner may make such order as he thinks fit for the disposal of the proceeds of any fine imposed under section 18 or section 22, and subject to any order made by the Commissioner under Chapter VI , the proceeds shall be disposed of accordingly .

( 2 ) Where , in pursuance of an order made under sub section ( 1 ) , a person has received compensation for an injury out of the proceeds of a fine , no Civil Court shall take cognizance of a claim to

compensation based on the same injury.

**58. Maintenance of registers.\_\_\_\_\_** Registers shall be kept up, in forms to be approved by the <sup>30</sup>[Provincial Government], of all cases dealt with by the Deputy Commissioner and by the Commissioner under this Regulation.

**59. Jurisdiction of ordinary Courts in cases under sections 29, 30 and 37.\_\_\_\_\_** An Offence punishable under section 29 or section 30 may be tried by a Court of Session or by the Court of a Magistrate of the first class. An offence punishable under section 37 may be tried by any Magistrate of the first Class.

**60. Finality of proceeding , under the Regulation\_\_\_\_\_** Except as therein otherwise provided , no decision , decree, sentence or order given , passed or made, or act done , under Chapter III ,Chapter IV ,Chapter V or Chapter VI , shall be called in question in, or set aside by, any Civil or Criminal Court .

**61. Application of provisions of Indian Penal Code respecting fines and imprisonment .\_\_\_\_\_** The provisions of section 61 , and those of sections 63 to 74, of the <sup>31</sup>Indian Penal code , shall subject to the provisions of section 13 of this Regulation , apply to sentences passed under this Regulation .

**62. Powers to make Rules.\_\_\_\_\_** The <sup>32</sup>[Provincial Government] may make

<sup>30</sup>Substituted for the "Local Government" by the A.O.,1937.

<sup>31</sup>Now the Pakistan Penal Code

<sup>32</sup>Substituted for the "Local Government" by the A.O.,1937

<sup>33</sup>rules to carry out the purposes and objects of this Regulation.

<sup>34</sup>[62A Power to make rules for the issue and safe custody of rifles and ammunition and for the imposition and recovery of fines .\_\_\_\_\_ The 35[Central Government] may make rules for the issue and safe custody of rifles and ammunition for border village defense, and for the imposition and recovery of fines for any breach of such rules.

Fines imposed for a breach of the rules made under this section may be recovered in the manner laid down in section 386 of the Code of Criminal Procedure, 1898]

63. No suit or other legal proceeding shall lie against any person for anything done, or in good faith intended to be done, under this Regulation.

64. **Protection for persons acting under Regulation.**\_\_\_\_\_ [Repeal] Repealed by the Repealing Act, 1938 (1 of 1938), section 2 and Schedule 1.

#### THE FIRST SCHEDULE

[See section 2, clause (b)]

#### PART 1 .\_\_\_\_\_ POWERS AND FUNCTIONS WITH WHICH MAGISTRATES OF THE FIRST CLASS MAY BE INVESTED BY DEPUTY COMMISSIONERS.

(a) In the case of an additional District Magistrate - all or any of the powers and

functions of a Deputy Commissioner.

(b) In any other case all or any of the following powers, namely: -

- i) power to make orders of reference to Councils of Elders under section 8, sub-section(1):
  - ii) power to nominate and appoint the members of the Council when an order of reference to a Council has been made under section 8, sub-section(1);
  - iii) power to nominate the members of the Council when an order of reference to a Council has been made under section 11, sub section (1);
  - iv) power to consider and dispose of objection made by an accused person to members so nominated , and to appoint the member of a Council of Elders under section 11 , subsection (2); and
  - v) power to take security under section 40.

#### PART II.\_\_\_\_\_ -POWERS AND FUNCTIONS WITH WHICH MAGISTRATES MAY BE INVESTED BY THE <sup>36</sup>[PROVINCIAL GOVERNMENT]

- a) power to nominate and appoint the members of a Council of Elders where an order of reference to a council has been made under section 8, sub- section (1);
- b) power to nominate the

<sup>33</sup>For rules see

i) N.W.F.P. Gazette, dated the 11th December 1925, page 1134, and ibid, dated the 30th April 1926, page 457; and

ii) Pb. Gazette 1902, Pt.1, page 635.

<sup>34</sup>Inserted by Regulation V of 1928.s.,2.

<sup>35</sup>Substituted for the "Local Government" by the A.O.,1937

<sup>36</sup>Substituted for the "Local Government" by the A.O.,1937.

members of the Council when an order of reference to a Council has been made under section 11 , sub-section ( 1 ); and

- c) power to consider and dispose of objections made by an accused person to members so nominated , and to appoint the members of a Council of Elders under section 11 , sub section ( 2 ).

## THE SECOND SCHEDULE

[See section 12, sub-section (2)]

1. Any offence punishable under any of the following sections of the <sup>37</sup> Indian Penal Code , namely sections 121,121-A , 122 , 123 , 124-A , 125,126,127, 131, 144, 148,150,193,194,195,196,201,211,212, 2 1 6 , 2 1 6 - A , <sup>3 8</sup> 2 9 5 - B , 302,304,307,308,324,325,326,,328,354 ,363,to 369 ,376,377,379 to 382 ,386,387,392 to 399,400 401,402,411 to 414,427to429 ,435,436,440, 448 to 460 <sup>39</sup>[489-B,489-C] , 494 ,495,497,and 498.
2. Any offence punishable under section 29 or section 30 of this Regulation.  
<sup>40</sup>[2 A. Any offence punishable under any of the provision of the Customs Act, 1969 (Act No. IV of 1969) ]  
<sup>41</sup>[2AA . Any offence punishable under the Prohibition (Enforcement of Hadd) Order, 1979 (President's Order No. 4 of 1979).]

<sup>42</sup>[ 2B Any offence punishable under any of the provisions of the Employment of Children Act ( V of 1991) ].

<sup>43</sup>[2C Any offence punishable under the Control of Narcotics Substances Act, 1997]

- 3 Abetment of any of the offences aforesaid.
- 4 Attempt to commit any of the offence aforesaid which are not themselves expressed to be attempts to commit offences.

## THE THIRD SCHEDULE

[See sub-section (2) of Section 1]

1. The Divisions of Quetta and Kalat.
2. The District of Lasbela.
3. Nasirabad Sub- Division of Jacobabad District.
4. The Added Areas of the Hazara District specified in the First Schedule, to G.G.O No. 1 of 1952.
5. The Added Areas of Mardan District, specified in Schedule 'A' to G.G.O No VII of 1953.
6. The Added Areas of Hazara District, specified in the First Schedule to G.G.O No XIII of 1955.
7. The former excluded Areas of Upper Tanawal and the Baluch Areas of Dera Ghazi Khan, specified in the Schedule to President Order No III of 1961.]

<sup>37</sup>Now the Pakistan Penal Code.

<sup>38</sup>Added by Regulation I of 1982, see Gazette, Extraordinary part I, dated 5.4.1982.

<sup>39</sup>Added by Regulation II of 1983.

<sup>40</sup>Inserted by Regulation I of 1995.

<sup>41</sup>Inserted by Regulation II of 1998.

<sup>42</sup>Inserted by Regulation III of 1998.

<sup>43</sup>Added by the West Pakistan Ordinance No.XLIII of 1963,s.3.

# Annex VI

## Questionnaire

### Assessing the Tribal *Jirga* system in Pakistan's Federally Administered Tribal Areas (FATA)

#### Sources of Information

Q.1 What sources of information do you have access to? (Multiple responses are allowed)

Response	Code	Response	Code
Pakistani press	1	Friends & family	11
Pakistani radio	2	Work colleagues	12
Pakistan TV	3	Neighbours	13
British press	4	Friday sermon	14
British TV channels	5	Communal gathering	15
British radio	6	Government officials	16
American press	7	Tribal elders	17
American TV	8	None	66
American radio	9	Other (specify)	77
Internet, books & films	10	Don't know	88

Q.2 Which sources of information do you value the most?

Response	Code	Response	Code
Pakistani press	1	Internet, books & films	10
Pakistani radio	2	Friends & family	11
Pakistan TV	3	Work colleagues	12
British press	4	Neighbours	13
British TV channels	5	Friday sermon	14
British radio	6	Communal gathering	15
American press	7	Government officials	16
American TV	8	Tribal elders	17
American radio	9		



Q.3 Which newspapers do you read regularly? (Multiple responses are allowed)

Response	Code	Response	Code
Ausaf	1	Express	12
Daily Times	2	Pakistan	13
The Dawn	3	The Post	14
The Frontier Post	4	Aaj Kal	15
Jang	5	Aaj	16
Khabrain	6	Mashriq	17
The Nation	7	Wahdat	18
Nawa-e-Waqt	8	UK newspapers	19
The News	9	Afghan newspapers	20
Observer	10	Other (specify)	77
The Statesman	11	Don't know	88

Q.4 What television stations do you watch regularly? (Multiple responses are allowed)

Response	Code	Response	Code
Aaj	1	Waqt	12
ARY	2	Bolan	13
AVT Khyber	3	CNBC	14
ATV	4	Star	15
Pakistan Television (P TV)	5	Century TV	16
Hum	6	Al Jazeera	17
Dunya	7	BBC	18
Samma	8	CNN	19
Express News	9	Sky News	20
Din	10	Other (specify)	77
Dawn News	11	Don't know	88

Q.5 Which radio stations do you listen to regularly? (Multiple responses are allowed)

Response	Code	Response	Code
BBC Pashtu	1	FM 101	8
Radio Pakistan	2	FM 100	9
BBC Urdu	3	FM 103	10
FM 104 Buraq	4	BBC English	11
FM 88 Lakki	5	Dewa (Voice of America)	12
RADIO Pak MW	6	Other (specify)	77
FM 106	7	Don't know	88

## Annex VII

### LEGAL DIMENSIONS AND LEVEL OF AWARENESS OF THE INSTITUTIONS AND ACTORS

Q.6 In your view, how should *Jirga* members be selected?

Response	Code
All <i>Jirga</i> members should be selected by disputants without any say from the PA	01
All <i>Jirga</i> members should be selected by the PA without any say from the disputants	02
Most <i>Jirga</i> members should be selected by disputants, and only some by the PA	03
Most <i>Jirga</i> members should be selected by the PA, and only some by disputants	04
One half of <i>Jirga</i> members should be selected by disputants and the other half by the PA	05
Don't know	88
No response	99

Q.7 Could any party to a dispute disobey *Jirga* decision?

Response	Code
Yes	01
No	02
Don't know	88
No response	99

Q.8 If yes, how often does this happen?

Response	Code
Very often	01
Often	02
Rarely	03
Never	04
Don't know	88
No response	99

Q.9 How does a *Jirga* enforce its decision?

Response	Code
Through community <i>lashkars</i>	01
Through local political administration ( <i>Khasadars/Levies</i> ), etc	02
Through social pressure	03
Others (specify)	77
Don't know	88
No response	99

Q.10 Are you satisfied with the probing/inquiry mechanism of a *Jirga* process?

Response	Code
Somewhat agree	01
Strongly agree	02
Strongly disagree	03
Somewhat disagree	04
Don't know	88
No response	99

Q.11 Are you aware of the following institutions and actors? (Multiple choice question)

Name of Institution / Actor	Yes	No	No Response
General Courts in Pakistan (Supreme Court of Pakistan, High Courts, Court of Session, Court of Magistrate, Court of District Judge, Court of Civil Judge)	1	2	99
Specialized Anti-Terrorism or Narcotics Courts	1	2	99
Federal Sharia't Court	1	2	99
Islamic Seminary Federations	1	2	99
Ombudsman	1	2	99
Human Rights Commission of Pakistan	1	2	99
FCR <i>Jirga</i> system or other informal dispute resolution mechanisms (e.g. <i>Olas Jirga, shura</i> )	1	2	99

Q.12 What is your opinion/perception of the following institutions and actors?

Perceptions of Institutions and Actors Codes: Affordable (01) Speedy (02) Bribes (03) Influence Peddling (04) Unresponsive to Criticism (05) Ignores Human Rights (06) Gender Equality (07) Class Bias (8) Don't know (88).

Multiple choice question.

Name of Institution / Actor	Affordable	Speedy	Bribes	Influence Peddling	Unresponsive to Criticism	Ignores Human Rights	Gender Equality	Class Bias	Don't know
Provincial Police Authorities and their local representatives (e.g. S.H.O, D.S.P., etc.)	01	02	03	04	05	06	07	08	88
General Courts in Pakistan (Supreme Court of Pakistan, High Courts, Court of Session, Court of Magistrate, Court of District Judge, Court of Civil Judge)	01	02	03	04	05	06	07	08	88
Specialized Anti-Terrorism or Narcotics Courts	01	02	03	04	05	06	07	08	88
Federal Sharia't Court	01	02	03	04	05	06	07	08	88
Islamic Seminary Federations	01	02	03	04	05	06	07	08	88
Ombudsman	01	02	03	04	05	06)	07	08	88
Human Rights Commission of Pakistan	01	02	03	04	05	06)	07	08	88
Informal dispute resolution mechanisms (e.g. <i>Jirga</i> , <i>shura</i> , respected elder(s), or other influential person(s) in your family/community)	01	02	03	04	05	06	07	08	88
Religious leader in the community	01	02	03	04	05	06	07	08	88

Q.13 Have you or your household members experienced any of the following in the last 10 years - which was the one you dealt with most recently?

(Choose one response only from those identified in previous question)

Issues	Experienced	Don't Know	No Response
Victim of theft or fraud	1	88	99
Victim of assault	1	88	99
Victim of domestic abuse	1	88	99
Victim of forced marriage	1	88	99
Family member has gone missing or disappeared	1	88	99
Arrested without warrant by the political administration under FCR	1	88	99
Accused of an offence under the Anti-Terrorism Act	1	88	99
Accused of committing sexual abuse/assault (under the <i>Hudood Ordinances</i> or the Pakistan Penal Code)	1	88	99
Accused of committing any other crime	1	88	99
Unlawful detention, search or arrest by the political administration	1	88	99
Bribery by <i>Khasadar</i> or Levies force	1	88	99
Assault or torture by FC or Army	1	88	99
Money Recovery, or Debt/Obligation Settlement	1	88	99
Contract enforcement in business dealings	1	88	99
Purchase or sale of movable property	1	88	99
Lease and rental issues: disrepair, eviction etc.	1	88	99
Family law issues: divorce, maintenance, child custody, guardianship, inheritance	1	88	99
Dispute with employer for unpaid wages	1	88	99
Debt bondage	1	88	99
Found involved in sectarian violence	1	88	99
Found involved in tribal/family clashes	1	88	99
Injured in an accident (Motor Vehicle)	1	88	99

Q.14 Have you been involved in a dispute during the past 2 years?

Response	Code
Yes	1
No	2

Q.15. If yes, what was the dispute about? (Please add appropriate answer categories)

Response	Code
Civil dispute	01
Criminal dispute	02
Other (specify)	77
Don't know	88

Q.16 Who did you take the dispute to?

Response	Code
State Court	01
<i>Jirga</i>	02
Local leaders (Khans or <i>Maliks</i> )	03
<i>Mullah (s)/ Imam (s)</i>	04
Taliban	05
Other (specify)	77
Don't Know	88

Q.17 How satisfied were you with their involvement?

Response	Very Satisfied	Somewhat Satisfied	Somewhat Unsatisfied	Not Satisfied
State Court	1	2	3	4
<i>Jirga</i>	1	2	3	4
Local leaders (Khans or <i>Maliks</i> )	1	2	3	4
<i>Mullah (s) Imam (s)</i>	1	2	3	4
Taliban	1	2	3	4
Other (specify)	1	2	3	4
Don't know	1	2	3	4
No response	1	2	3	4

Q.18 Who resolved the dispute? (May select more than one)

Response	Code
State Court	01
<i>Jirga</i>	02
Local leaders (Khans or <i>Maliks</i> )	03
<i>Mullah (s) Imam (s)</i>	04
Taliban	05
Other (specify)	77
Don't know	88
No response	99

Q.19 How satisfied were you with the outcome of the proceedings?

Response	Code
Very satisfied	01
Fairly satisfied	02
Somewhat unsatisfied	03
Not satisfied at all	04

Q.20 What were the reasons you chose the institution/individual to deal with the dispute?  
(Multiple Choice)

The institution/individual is:

Response	Code
Efficient and effective at resolving the dispute	01
Close to where I live	02
Fair and trusted	03
Follows accepted local norms/values	04
Less expensive	05
Less corrupt	06
Other (Specify )	77

Trust on the types of *Jirga* systems:

Q.21 In your opinion, what type of *Jirga* is most trusted for resolving disputes in this area?

Response	Code
FCR <i>Jirga</i>	01
<i>Olasi Jirga</i> or <i>Qaomi Jirga</i>	02
Other (Specify)	77
Don't know	88
No response	99

Q.22 More specifically, what type of *Jirga* is more effective in resolving different disputes?

22a: FCR *Jirga*

Response	Code
Criminal cases	01
Civil cases	02
Don't know	88

22b: *Olasi* or *Qaomi Jirga*

Response	Code
Criminal cases	01
Civil cases	02
Don't know	88

22c: Other forms of *Jirga* (i.e. *Taliban Jirga*)

Response	Code
Criminal cases	01
Civil cases	02
Don't know	88

Q.23 How fair do you think each one of the following dispute resolution systems is?

Type of DR System	Very Fair	Somewhat Fair	Somewhat Unfair	Very Unfair	DK	NR
FCR <i>Jirga</i>	01	02	03	04	88	99
<i>Olas</i> <i>Jirga</i>	01	02	03	04	88	99
Taliban style Shari'a	01	02	03	04	88	99
Other (specify)	01	02	03	04	88	99

Q.24 Is it true that *Jirga* plays proactive role in preventing conflicts?

Response	Code
Yes	01
No	02
Don't know	88
No response	99

Q.25 How strongly do you agree with the statements listed below? Please tell me whether you, strongly agree, somewhat agree, somewhat disagree, or strongly disagree (don't read DK and NR).

Response	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	DK	NR
FCR <i>Jirga</i> decisions are influenced by the more powerful party to a dispute	01	02	03	04	88	99
<i>Jirga</i> elders/members take bribes	01	02	03	04	88	99
<i>Jirga</i> members are intimidated by the more powerful party to a dispute	01	02	03	04	88	99
<i>Jirga</i> members are influenced by Political Administration	01	02	03	04	88	99
<i>Jirga</i> members remain impartial	01	02	03	04	88	99



Q.26 How strongly do you support the ideas listed below? Please tell me whether you strongly support, somewhat support, somewhat oppose, or strongly oppose (don't read DK and NR).

Response	Strongly Support	Somewhat Support	Somewhat Oppose	Strongly Oppose	DK	NR
FCR <i>Jirga</i> should be conducted under Shari'a law	01	02	03	04	88	99
FCR <i>Jirga</i> should be conducted under local <i>Riwaj</i> (local customs)	01	02	03	04	88	99
FCR <i>Jirga</i> should be conducted under a mixture of both Shari'a law and local <i>Riwaj</i>	01	02	03	04	88	99

Q.27 How strongly do you support the involvement of government officials in *Jirga* proceedings?

Response	Code
Strongly support	01
Somewhat support	02
Somewhat oppose	03
Strongly oppose	04
Don't know	88
No response	99

Q.28 How strongly do you agree with the statements listed below? Please tell me whether you, strongly agree, somewhat agree, somewhat disagree, or strongly disagree? (Read the list but don't read DK and NR)

Response	Strongly Agree	Somewhat Agree	Somewhat Dsiagree	Strongly Disagree	DK	NR
<i>Jirga</i> fails to resolve disputes effectively	01	02	03	04	88	99
<i>Jirga</i> violates women's rights	01	02	03	04	88	99
<i>Jirga</i> violates minorities' rights	01	02	03	04	88	99
<i>Jirga</i> violates basic human rights	01	02	03	04	88	99
<i>Jirga</i> provides a fair and public hearing opportunity to key parties involved in the dispute	01	02	03	04	88	99
<i>Jirga</i> has the potential to prevent violation of women's and minorities rights	01	02	03	04	88	99
<i>Jirga</i> maintains social order and restores harmony in a village	01	02	03	04	88	99
<i>Jirga</i> is well placed to resolve civil disputes only	01	02	03	04	88	99
<i>Jirga</i> reintegrates offenders into the community	01	02	03	04	88	99
<i>Jirga</i> is well placed to resolve both civil and criminal disputes	01	02	03	04	88	99
<i>Jirga</i> contributes to rule of law	01	02	03	04	88	99
<i>Jirga</i> resolves serious crimes	01	02	03	04	88	99
<i>Jirga</i> is organised, well established, transparent and an efficient institution	01	02	03	04	88	99
<i>Jirga</i> makes lasting peace among disputants	01	02	03	04	88	99

Q.29 Do you support/oppose the punishment of collective responsibility [under the FCR for the implementation of *Jirga* decision?

Response	Code
Strongly support	01
Somewhat support	02
Somewhat oppose	03
Strongly oppose	04
Don't know	88
No response	99

Q.30 How strongly do you agree with the statements list below? Please tell me whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree.

Response	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	DK	NR
During FCR <i>Jirga</i> proceedings, every member of the <i>Jirga</i> has the right to express his views in a democratic way	01	02	03	04	88	99
During <i>Olasi Jirga</i> proceedings, every member of the <i>Jirga</i> has the right to express his views in a democratic way	01	02	03	04	88	99
Besides settling disputes, <i>Jirga</i> plays the role of a training academy for tribal youngsters about the teachings of restorative justice	01	02	03	04	88	99

Q.31 What should be the criteria for becoming a *Jirga* elder?

Response	Code
Good level of Formal Education	01
Good level of religious Education	02
Wealth	03
Piety ( <i>taqwa</i> )	04
Conventional wisdom and expertise in dispute resolution	05
Hereditary	06
Political influence	07
Age	08
Good family reputation and honour ( <i>izzet</i> )	09
Other (specify)	77
Don't know	88
No response	99

## Economic Aspects of *Jirga*

Q.32 How strongly do you agree with the statement: '*Jirga* is a speedy and less expensive mechanism of dispute resolution'? Please tell me whether you, strongly agree, agree, somewhat agree, or disagree.

Response	Code
Strongly agree	01
Somewhat agree	02
Somewhat disagree	03
Strongly disagree	04
Don't know	88
No response	99

Q.33 How strongly do you agree with the statement: 'One of the main outcomes of *Jirga* decision is a fair compensation to victims'? Please tell me whether you strongly agree, agree, somewhat agree, or disagree.

Response	Code
Strongly agree	01
Somewhat agree	02
Somewhat disagree	03
Strongly disagree	04
Don't know	88
No response	99

Q.34 Do disputants pay fee when their disputes are resolved through *Sarkari* (FCR) *Jirga*?

Response	Code
Yes	01
No	02
Don't know	88
No response	99

If yes, who are the fees paid to? Please specify .....

Q.35 Do disputants pay fee to *Jirga* members, when their disputes are resolved through *Olasi Jirga*?

Response	Code
Yes	01
No	02
Don't know	88
No response	99

Q.36 If yes, how do *Jirga* members receive fees for their services?

Response	Code
As travel/food expenses	01
As a widely accepted and agreed upon fee	02
As a bribe	03
None of the above	66
Other (specify)	77
Don't know	88
No response	99

## Human Rights and *Jirga*

Q.37 Is it true that *Jirga* also takes cognizance of matrimonial disputes including guardianship/ custody of children?

Response	Code
True	01
Not true	03
Don't know	88
No response	99

Q.38 How strongly do you agree with the statement that: 'Women should have an equal chance to participate in *Jirga* decision making processes?' Please tell me whether you, strongly agree, agree, somewhat agree, or disagree?

Response	Code
Strongly agree	01
Somewhat agree	02
Somewhat disagree	03
Strongly disagree	04
Don't know	88
No response	99

Q.39 Do you believe that *Swara* resolves some very complex disputes?

Response	Code
Yes	01
No	02
Don't know	88
No response	99

Q.40 To what extent do you support *Swara* as a way for resolving conflicts between two families/parties?

Response	Code
Strongly support	01
Somewhat support	02
Somewhat oppose	03
Strongly oppose	04
Don't know	88
No response	99

Q.41 Do you think that *Swara* violates women rights?

Response	Code
Yes	01
No	02
Don't know	88
No response	99

Q.42 How strongly do you agree with the statement that: 'Ethnic minorities should have an equal chance to participate in *Jirga* decision making processes?' Please tell me whether you, strongly agree, agree, somewhat agree, or disagree?

Response	Code
Strongly agree	01
Somewhat agree	02
Somewhat disagree	03
Strongly disagree	04
Don't know	88
No response	99

Q.43 How strongly do you agree with the statement that: 'Religious minorities should have an equal chance to participate in *Jirga* decision making processes?' Please tell me whether you, strongly agree, agree, somewhat agree, or disagree?

Response	Code
Strongly agree	01
Somewhat agree	02
Somewhat disagree	03
Strongly disagree	04
Don't know	88
No response	99

Q.44 How strongly do you support the idea that the houses of those people who disobey *Jirga* decision should be burnt? Please tell me whether you, strongly support, support, somewhat, support or do not support at all

Response	Code
Strongly support	01
Somewhat support	02
Somewhat disagree	03
Strongly disagree	04
Don't know	88
No response	99

Q.45 Do you agree/disagree that the people of FATA should be given;

Response	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	DK	NR
The right to judicial autonomy	01	02	03	04	88	99
The right to fair trial	01	02	03	04	88	99
The right to equality and non-discrimination	01	02	03	04	88	99

Q. 46 How strongly do you support the idea of extending the superior judiciary (i.e. High Court and Supreme Court) to the FATA? Please tell me whether you, strongly support, somewhat support, somewhat oppose, or strongly oppose?

Response	Code
Strongly support	01
Somewhat support	02
Somewhat oppose	03
Strongly oppose	04
Don't know	88
No response	99

Q.48 How strongly do you agree with the statements listed below? Please tell me whether you strongly agree, somewhat agree, somewhat disagree or strongly disagree.

Response	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	DK	NR
<i>Jirga</i> decision should be recorded officially	01	02	03	04	88	99
<i>Jirga</i> decision should be enforced officially	01	02	03	04	88	99
The powers of the Political Agent should be limited to executive issues	01	02	03	04	88	99
Provision of a right to appeal to the High and Supreme Courts	01	02	03	04	88	99
Final <i>Jirga</i> decision need to be subject to the approval of appropriate Pakistan Human Rights bodies	01	02	03	04	88	99



## Demographics

D 1: Gender of respondents (On observation):

Male  1 Female  2

D 2: Age group of respondent

Response	Code	Response	Code
18 – 29 years	1	50 – 64 years	3
30 – 49 years	2	65 + years	4

D 3: Education level of respondent

Response	Code	Response	Code
Not schooled	1	Schooled up to Bachelor level	7
Religious education only	2	Master degree	8
Schooled up to Primary level	3	Specialisation: MBBS/doctor	9
Schooled up to Middle level	4	Specialisation: Engineering	10
Schooled up to Secondary Certificate level	5	Those up to professional education	11
Schooled up to Intermediate level	6		

D 3a: Education level of head of the household

Response	Code	Response	Code
Not schooled	1	Schooled up to Bachelor level	7
Religious education only	2	Master degree	8
Schooled up to Primary level	3	Specialisation: MBBS/doctor	9
Schooled up to Middle level	4	Specialisation: Engineering	10
Schooled up to Secondary Certificate level	5	Those up to professional education	11
Schooled up to Intermediate level	6		

D 4: Monthly income of respondent's family in PKR?

Response	Code	Response	Code
Up to PKR 3000	1	PKR 7,001 – PKR 10,000	4
PKR 3,001– PKR 5,000	2	PKR 10,001 – PKR 15,000	5
PKR 5,001– PKR 7,000	3	More than PKR 15,000	6

D 5: Occupation of respondent

Response	Code	Response	Code
Agricultural labourer	1	Provincial civil servant	11
<i>Chowkidar</i> (watchman)	2	Skilled labourer	12
Civil servant of FATA	3	Small business owner	13
Clerical employee	4	Teacher	14
Farm owner	5	Technician	15
Home-based worker	6	Unskilled labourer	16
Lady health worker (LHW)	7	White colour employee	17
Large business owner	8	Unemployed	18
Management/supervisor	9	Other (specify)	77
Military, police, security personnel	10		

D 6:Marital status of respondent

Response	Code	Response	Code
Married	1	Single	4
Widowed	2	No response	99
Divorced	3		

D 7:How many people live in your household/compound?

Number of People: \_\_\_\_\_

Male (adult)	Code	Female (adult)	Code	Male children	Code	Female children	Code
1-5 persons	1	1-5 persons	3	1-5 children	5	1-5 children	7
6 and above persons	2	6 and above persons	4	6 and above	6	6 and above	8

D 8: Religion of respondent

Response	Code	Response	Code
Christian	1	Hindu	4
Sikh	2	Other (specify)	77
Muslim	3	No response	99

(Ask if answer is 3 in D8)

Shiite  1      Sunni  2

(Ask if Answer is 3 in D8)

D 9:Please tell me whether you regularly, sometimes, or never engage in the following religious practices?

Response	Regularly	Sometimes	Never	Not Asked	No Response
Pray five times a day	1	2	3	4	99
Fast during Ramadan	1	2	3	4	99

(Ask if Answer is 3 in D8)

D 10:How often do you pray at the mosque?

Response	Code	Response	Code
Five times a day/daily	1	Several times a year	5
Several times a week	2	Once a year or less	6
Once a week	3	Never	7
Monthly	4	No response	99

D 11:Would you be willing to participate in another survey later in this year?

Response	Code	Response	Code
Yes	1	No	2
Don't know	88		

Read Closing Statement  
to the Respondent:

"Thank you for participating in our survey. Do you have any questions about the interview, or about its results? In the next few days my supervisor may contact you to evaluate the quality of my work and answer any other questions you may have about the interview. To help him do that, could I have your telephone number, please?"

Respondent Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Tel No. \_\_\_\_\_

NIC Number \_\_\_\_ \_

Interviewer Certification:

"I certify that I have completed this interview according to the instructions provided to me.

Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

To be completed by the Supervisor:

---

Interview subject to Back-check/Control

1. Yes
2. No

Method of Back-check/Control

1. Direct supervision during interview
2. Back-check in person by supervisor
3. Back-check by telephone by supervisor or the central office
4. Not subject to back-check

Initial Questions (for Interviewer only)

Name of surveyor -----

Date of interview -----

Agency/FR -----

Tehsil -----

[1] Rural.

[2] Urban

## Annex

### In-depth interviews Legal Professionals

S.#	Name	Organization	Area	Date & Place
1	Muhammad Iqbal Momand	Deputy Attorney General of Pakistan, KPK	Mohmand Agency	10/2/2011 Office of the Deputy Attorney General of Pakistan, Peshawar High Court Building, Peshawar
2	Muhammad Rafiq Khan Momand	Deputy Advocate General KPK	Mohmand Agency	20/1/2011 Office of the Deputy Advocate General, Khyber Pakhtunkhwa Peshawar High Court building, Peshawar
3	Fida Gul Advocate	Former vice President, Peshawar High Court Bar Association and Former President District Bar Association, Peshawar	Peshawar	19/1/2011 At his chamber, Bobi Arcade, Peshawar
4	Karim Mehsud Advocate	President FATA lawyers Forum	South-Waziristan Agency	21/1/2011 Peshawar Law College, Peshawar
5	Abdul Wali Khan Afridi Advocate	Former General Secretary, High Court Bar Association, Peshawar	Khyber Agency	21/1/2011 Peshawar Law College, Peshawar
6	Habib-ur-Rehman	Advocate	Khyber Agency	21/1/2011 Peshawar Law College, Peshawar
7	Jhangir Khan	Advocate	Khyber Agency	21/1/2011 Peshawar Law College, Peshawar
8	Inyat Khan	Advocate	Khyber Agency	21/1/2011 Peshawar Law College, Peshawar
9	Muhammad Qubaiz	Advocate	Khyber Agency	26/1/2011 Peshawar Law College, Peshawar
10	Muhammad Bakhtiyar	Advocate	Khyber Agency	26/1/2011 Peshawar Law College, Peshawar
11	Saifullah	Advocate	Mohmand Agency	26/1/2011 Peshawar Law College, Peshawar
12	Behroz Khan	Advocate	Mohmand Agency	26/1/2011 Peshawar Law College, Peshawar
13	Muhammad Ismael	Advocate	Mohmand Agency	26/1/2011 Peshawar Law College, Peshawar
14	Muhammad Bashir	Advocate	Orakzai Agency	26/1/2011 Peshawar Law College, Peshawar
15	Attaullah Khan	Advocate	FR- D.I. Khan	26/1/2011 Peshawar Law College, Peshawar

## Disputants

S.#	Name	Nature of dispute	Type of Jirga	Area	Date & place
16	Ali Akber and his son	Money Dispute	FCR	Khyber Agency	12/2/2011 Commissioner FCR, Judicial Complex, Peshawar
17	Fahim (S/o Ali Akber– above)	do	FCR	Khyber Agency	12/2/2011 Commissioner FCR, Judicial Complex, Peshawar
18	Shamir Khan Akka Khel,	Arrest for Criminal Charges	FCR	Khyber Agency	19/2/2011 Commissioner FCR, Judicial Complex, Peshawar
19	Haider Khan	do	FCR	Khyber Agency	19/2/2011 Commissioner FCR, Judicial Complex, Peshawar
20	Nusrat	do	FCR	Khyber Agency	19/2/2011 Commissioner FCR, Judicial Complex, Peshawar
21	Muhammad Sadiq	Property dispute	FCR	Khyber Agency	19/2/2011 Commissioner FCR, Judicial Complex, Peshawar
22	Zar Alam	do	FCR	Khyber Agency	12/2/2011 Commissioner FCR, Judicial Complex, Peshawar
23	Shaheen	Arrest for Criminal Charges	FCR	Orakzai Agency	12/2/2011 Commissioner FCR, Judicial Complex, Peshawar
24	Akhtar Jan	Property Dispute	Olası – local	Khyber Agency	28/1/2011 Institute of Management and Professional Studies, Peshawar
25	Muhammad Akram Khan	Property dispute	Olası – local	South Waziristan	25/1/2011 Institute of Management and Professional Studies, Peshawar
26	Sher Akber Afridi	Money and Inheritance	Olası – local	Khyber Agency	4/2/2011 Bangash villa, Warsak road, Peshawar

Women Rights Activists:

S.#	Name	Organization	Area	Date & Place
27	Maryam Bibi – Chief Executive	Khwendo Kor (KK), meaning 'Sisters' Home'	Peshawar	11/2/2011 Office of the Khwendo Kor Phase-3, Hayatabad, Peshawar
28	Shad Begum – Executive Director	Association for Behaviour and Knowledge Transformation - ABKT	Malakand	25/1/2011 Office of ABKT, Old Bara road, university town, Peshawar
29	Fakhr-u-Nisa Advocate	Former vice President Peshawar High Court Bar Association, Peshawar	FR-Lakki	22/1/2011 District Court, Peshawar
30	Shakeela Ellahi	Manager Programs - Khwendo Kor (KK), Peshawar	Peshawar	11/2/2011 Office of the Khwendo Kor Phase-3, Hayatabad, Peshawar

## Tribal Community Elders

S.#	Name	Organization	Area	Date & Place
31	Malik Ghulam Rasool	Community Elder	FR- D.I. Khan	28/1/2011 Bangash property, Charsadda, Peshawar
32	Malik Inam Bangash	Community Elder	Kurram Agency	28/1/2011 Bangash property, Charsadda, Peshawar
33	Munir Bangash	Community Elder	Kurram Agency	4/2/2011 At Hotel Grand, Peshawar
34	Malik Fida Hussain	Community Elder	Kurram Agency	4/2/2011 At Hotel Grand, Peshawar
35	Malik Syed Ghafar Shah	Community Elder	FR, D.I Khan	3/2/2011 At Hotel Grand, Peshawar
36	Eng. Malik Muhammad Zaman Khan Daur	Former chief engineer WAPDA	North Waziristan	8/2/2011 Phase 4, Hayatabad, Peshawar
37	Malik Khan Marjan	Community Elder	North Waziristan	9/2/2011 Phase 3, Hayatabad, Peshawar
38	Umer Hayat Khan Umerzai	Community Elder	FR-Bannu	3/2/2011 At Hotel Grand, Peshawar
39	Haji Alla Khan	Community Elder	FR-Lakki	3/2/2011 At Hotel Grand, Peshawar
40	Malik Liaqat Ali Bettani	Community Elder	FR Bannu	3/2/2011 At Hotel Grand, Peshawar
41	Malik Jalal Khan	Community Elder	South Waziristan	4/2/2011 At Hotel Grand, Peshawar
42	Malik Pir Mullah Khan	Community Elder	South Waziristan	4/2/2011 At Hotel Grand, Peshawar
43	Malik Luqman Afridi	Community Elder	FR Peshawar	1/2/2011 Kohat road, Peshawar
44	Malik Dawood Jan	Community Elder	Bajaur Agency	2/2/2011 At his home-phase 6 Hayatabad, Peshawar
45	Malik Haji Habib Ullah	Community Elder	Bajaur Agency	19/2/2011 Peshawar
46	Malik Badshah Afridi	Community Elder	Khyber Agency	8/2/2011 Peshawar
47	Aftab Momand	Community Elder	Mohmand	9/2/2011 Peshawar

S.#	Name	Organization	Area	Date & Place
48	Ikram Ullah Jan Kokikhel	Community Elder	Khyber	8/2/2011 Peshawar
49	Malik Akbar Jan	Community Elder	FR Kohat	28/1/2011 Peshawar
50	Syed Akbar Jan	Community Elder	Orakzai Agency	17/2/2011 Peshawar

#### Mullahs (Religious leaders)

S.#	Name	Organization	Area	Date & place
51	Mufti Sanaullah	In charge of Madrassa Tawed-ul-Quran, Peshawar	Mohmand Agency	16/1/2011 at Madrassa Tawed-ul-Quran, Charssada road Peshawar
52	Maulvi Ahmad Khan	Teacher	FR-Lakki	19/1/2011 at Madrassa Pir Langot baba, Nothia, Peshawar
53	Maulana Shafiullah Sherani	Pesh Imam (Incharge of local mosque)	Dera Ismail Khan	3/2/200 At Hotel Grand, Peshawar
54	Qazi Abdul Manan	Pesh Imam (Incharge of local mosque)	Bajaur Agency	1/2/2011 At SS-club, Peshawar
55	Maulvi Jan Muhammad	Pesh Imam (Incharge of local mosque)	South Waziristan	3/2/200 At Hotel Grand, Peshawar
56	Qari Arshad	Pesh Imam (Incharge of local mosque)	FR Peshawar -	27/1/2011 Al-Qalam Bait-ul-elm school, Kohat road, Peshawar

#### Academics

S. #	Name	Organization	Area
57	Prof. (Associate) Dr Ijaz Ahmad Khattak	Chairman, Department of International Relations, University of Peshawar	31/1/2011 Department of International Relations, University of Peshawar
58	Prof. (Assistant) Muhammad Zubair	Law College, University of Peshawar	26/1/2011 Law College, University of Peshawar



## Journalist

S. #	Name	Organization	Date & Place
59	Rahimullah Yusufzai	Resident Editor, The News International, Peshawar	27/1/2011 Regional Office, The News, Bacha Tower, Qayum stadium super market Peshawar
60	Saleem Safi	Anchor/Analyst and Columnist	29/1/2011 Geo, Jang Plaza, Fazl-e-Haq Road, Blue Area, Islamabad
61	Shamim Shahid	Bureau Chief, Pakistan Today	25/1/2011 Regional Office, Pakistan Today, Al -Amir plaza, Qayum stadium super market Peshawar
62	Rokhan Yousafzai	Editorial In charge, Magazine Session, Daily Express	21/1/2011 Head office, Daily The Express Gulbahar, Peshawar

## Social Workers

S. #	Name	Organization	Area	Date & Place
63	Dr. Said Alam Mehsud	Social worker	South Waziristan	3/2/2011 Khattak Medical plaza, Dabgari garden, Peshawar
64	Sajjad Bangash	Social worker	Kurram Agency	4/2/2011 Bangash villa, Warsak road, Peshawar
65	Ayesha Gulalai Wazir	Social worker	FR-Bannu	14/2/2011 FATA Residential Colony, Warsak road, Peshawar

## Political Leaders

S. #	Name	Organization	Area	Date & Place
66	Sahibzada Haroon -ur-Rashid	Former MNA and Naib Ameer Jamat-e-Islami, KP	Bajaur Agency	12/1/2011 Jumat-e-Islami Markaz, Chamkani road, Peshawar
67	Razaullah Khan Advocate	District Peshawar President of Awami National Party (ANP)	Peshawar	10/2/2011 Bacha Khan Markaz, Pajagai road, Peshawar

## Former Judges

S. #	Name	Organization	Area
68	Justice (R) Saleem Khan	Former Justice of Peshawar High Court, former provincial Law Secretary, KP (by virtue of office, member of FC tribunal) Former Chairman Provincial Service Tribunal, KP	16/3/2011 Bar Room at the Supreme Court of Pakistan, Islamabad
69	Ameer Gulab Khan	Former provincial Law Secretary, KP (by virtue of office, member of FC tribunal)	18/3/2011 Bar Room at the Peshawar High Court, Peshawar

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