

# **Traditional Structures in Local Governance for Local Development**

## **A Case Study of Pakhtun Residing in NWFP & FATA, Pakistan**

### **1. Background (max. 3 pages)**

#### **1.1. A brief historical account of traditional structures in the country**

Pakistan emerged as an independent country on August 14, 1947, following the divisions of India. It comprised five main ethnic groups/nationalities namely Bengali, Baluch, Sindhi, Punjabi, and Pakhtun. Bengali seceded to found Bangladesh in 1971. Currently, the remaining four major nationalities live in four provinces such as Punjab, Baluchistan, Sindh, and North West Frontier Province. These ethnic groups have their peculiar traditional structures. Punjabi have their traditional elders as *Choudris*, and *Panchayat* as their traditional institution. Sindhi in the rural Sindh are still dominated by traditional elders called *Wadera*. Baluch are heavily influenced by their *Sardar* as traditional elders. Pakhtuns have *Malik*, *Khan*, as traditional elders. *Jirga* is their traditional institution and *Pakhtunwali* their traditional code of life.

Owing to various factors, such as rural urban migration within and out of the country, globalization, emergence of newly moneyed classes, and emergence of modern democratic and bureaucratic institutions have weakened the traditional structure to varied degrees depending on the ethnic groups and the area they live in.

#### **1.2. Situation of the democratic transition process at the national level**

During 57 years history of its existence, Pakistan has been ruled by democratic governments for only 26 years, for the remaining period military ruled the country under a mix of civil and martial law governments. The democratic process could not take roots due to un-democratic practices of the feudal political leaders and frequent military interventions at critical

junctures. Foreign influences also supported the military governments for their own interests. It is ironic that during the reign of democratic government, the political leaders under pressure from members of National and Provincial Assemblies did not support the local government system at grass-root level. Almost, every military ruler from Gen. Ayub Khan, in 1958 to Gen. Pervez Musharraf (1999-onward) gave local government institutions preferential treatment by allocating enormous resources to recruit public support for their policies and legitimacy for their regimes besides undermining political parties.

### **1.3. Brief on the status of decentralization and the responsibilities of local governments**

The British introduced local government system in the Indian sub-continent in **1935**; however, they did not extend the same to the NWFP for reasons that Pakhtun were not yet ready to practice self-rule. A cursory view of the post-independence history of local government development in Pakistan reveals that local bodies remained more or less lifeless institutions with faulty framework, inadequate finances, curtailed functions and little participation of people prior to the military takeover of General Ayub Khan in October 1958. Based on his perception of ‘controlled and guided democracy’, he introduced a system of ‘Basic Democracies’ (BD) in 1959. A sum total of 80,000 BD members were elected at local level in the country to address the local development issues. These councils were headed by respective Deputy Commissioners. However, they were later transformed into an electoral college to elect the President of Pakistan in 1964. Initially, the BD System was a Federal subject unless it was declared a provincial subject in 1962. The next military ruler General Yahya Khan (1968-71), abolished the system and held general elections on adult franchise basis in 1970.

During the rule of **Zulfiqar Ali Bhutto (1972-77)**, a general framework was provided within which provincial governments could enact legislation relating to local government in 1972. A three-tiered system comprising Municipal Committees, Town Committees and District Councils for the rural areas was introduced.<sup>1</sup> However, he abolished the nomination of government officers and replaced it with an elected head, divided large municipal corporations into smaller units, liberalized the concept of controlling authority to which the provincial governments and not the district officers were to exercise necessary supervision and control over local bodies. Thus, district Co-ordination Committees were constituted with the district officer to act as its secretary.<sup>2</sup> Later, the local government institutions were made an integral part of the 1973 Constitution. Articles 7, define the state that, “means the Federal government, Parliament, a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess.” and Article 32 deals with this subject: *“The State shall encourage Local Government Institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women.”*<sup>3</sup>

Subsequently, General **Zia-ul-Haq** deposed the elected civilian government and took-over power in 1977. He revived non-party based local government system with power to approve budgets, levy taxes, making by-laws and to enter contracts without limitations. He held regular periodic party-less elections in 1979, 1983 and 1987 and provided sufficient resources to local bodies to broaden his power base. In 1985, General Zia held general elections on non party basis to national and provincial assemblies. In pursuing the policy of appeasement, he started the tradition of allocating RS. 5 millions to each and every Member of National and Provincial Assembly (MNA & MPA) for development work which adversely affected the local government system resulting into a rifts and frictions between the MNAs, MPAs and members of Local Bodies.

---

<sup>1</sup> Ahmad Hussain, Politics and Peoples Representation in Pakistan, Karachi, Ferozsons Ltd., 1972, pp. 220-22

<sup>2</sup> Mumtaz Ahmad, Local Government in Pakistan, An Analysis in Retrospect, *Journal of Rural Development & Administration*, vol. 10, no. 4, October-December 1973, pp. 26-27

<sup>3</sup> The Constitution of the Islamic Republic of Pakistan 1973, compiled by M. Rafiq Butt, Mansoor Book House, Katchery Road, Lahore, p. 5 & 16

The successive political governments of **Ms. Benazir Bhutto** and Nawaz Sharif (1988-1999) did not give importance to local government institutions, considering it the legacy of military rulers. Instead, she launched a federally funded 'People's Works Program' administered through unelected 'Development Committees' at district level. During her second tenure, she embarked upon a program of institutional re-structuring based on the concept of 'New Social Contract' in November 1993. She regarded 'strong local government' as a pre-requisite to healthy democracy because the government from the centre is 'neither efficient nor effective'. The 'New Social Contract' envisaged a balance of power between the local, provincial and federal governments. The idea of district governance, though fascinating, generated much controversy both amongst the bureaucracy that opposed drastic measures of decentralization, and the politicians, reluctant to share powers with people at the gross-root level.

The government of **Gen. Pervez Musharraf** emphasized to establish local government system to devolve power and decentralize authority at gross root, as one of his 'Seven Points Agenda' in 1999. He constituted National Bureau of Reconstruction (NRB) to prepare a comprehensive Local Government Plan (LG-Plan) in 2000, with the objectives to devolve power for the genuine empowerment of citizens, to decentralize administrative authority and professional functions, to devise a system for checks and balances to preclude autocracy, and distribution of resources to the provincial and local level.

General Musharraf also held elections on non-party basis establishing Local Government System in all districts of Pakistan in 2001. The system with its three tiers as District Council, Tehsil Council, and Union Council is still operative through out Pakistan except the FATA. Each elected council has an elected administrator called Nazim and a Deputy Nazim. The Deputy Commissioner (DC), an executive head of each district, has turned into a District Coordinating Officer (DCO). Eleven national building departments including finance and planning, budgeting, health, education, agriculture, sanitation, irrigation, public works, information technology, commerce & industries, law, environment, and magistracy fall into the ambit of District Government.

**1.4. Short description of the historical, political, economic, social, ethnic and environmental characteristics of the selected sub-national entity**

The Pakhtun residing in North West Frontier Province, FATA and Baluchistan constitute one of the major ethnic groups around 20% of the total 145 million population of Pakistan. Another 15 million Pakhtun constituting 60% of population inhabit Afghanistan. Moreover, three million Pakhtun live in Karachi and one million in Lahore, the two major urban centers of Pakistan. For centuries, Pakhtun remained as independent, autonomous tribes without the rule of any centralized authority. Ahmad Shah Abdali, a Pakhtun founded the first Pakhtun/Afghan state in Afghanistan with Kabul as its Capital in 1747. Peshawar, the capital of the NWFP and adjacent Pakhtun areas including the present FATA had an allegiance to various subsequent ruling dynasties of Afghanistan.

Maharaja Ranjit Singh, the ruler of Punjab, annexed Peshawar to Punjab in 1819. The British defeated the Sikh and captured Peshawar in 1849. The British drew a line of demarcation, the 'Durand Line' between Afghanistan and British India in 1893, and thus Pakhtun falling in British India were initially administered as part of the Punjab Province. This arrangement continued until the formation of the North West Frontier Province (NWFP) by Lord Curzon in 1901. However, the British divided the Pakhtun areas into two distinct administrative units, the 'Districts'<sup>4</sup> and 'Agencies'<sup>5</sup>. A Chief Commissioner, answerable directly to the Governor General of India, later on elevated to the Governor of the NWFP, was appointed to deal with Districts called as settled and Agencies as tribal areas. This arrangement remained

---

<sup>4</sup> A District is a basic administrative unit headed by a Deputy Commissioner (DC), which symbolizes state authority for effective administration both in India and Pakistan. "It provides a reference point to the people in an area, where governmental authority is focused. Where the people can make their complaints and address petitions for the remedy of wrongs, seek assistance, pay their taxes and where in times of emergency governmental action can be brought to bear to meet the situation."

See, Mahmood, S. K. "District Administration," *Government and Administration in Pakistan*: ed. Jameelur Rehman Khan, Pakistan Public Administration Research Centre O&M Division, Cabinet Secretariat Government of Pakistan, Islamabad, 1987, p.201

<sup>5</sup> However, in FATA the term Agency is synonymously used like a District. The term Agency Administration or Political Administration, have been used as the principal unit of field administration in Tribal Area, since British days. The officer in-charge of the Agency has been titled as Political Agent (PA), instead of Deputy Commissioner (DC) in settled districts

intact except that Governor became an Agent of Governor General, later on the President of Pakistan after the creation of Pakistan in 1947.

According to 1998 population census, Pakhtun were 74% of the total 17.736 millions of NWFP population, besides 99% Pakhtun of 3.5 millions of FATA population. Major Pakhtun tribes such as *Yousufzai, Khattak, Khalil, Daudzai, Durrani, and Bangash* etc., inhabit the NWFP. Currently the NWFP has 24 Districts, including three former princely states (Chitral, Dir and Swat) and *Malakand* Agency, collectively called *Malakand* Division. They were previously known as Provincially Administered Tribal Areas (PATA) ruled under the PATA Regulations. Now they are integrated with the NWF Province as settled districts, having elected District and Provincial Government, headed respectively by the Nazim and Chief Minister, accountable to District and Provincial Assembly in the same order.

According to the 1973 Constitution, Federally Administered Tribal Areas (FATA) are special areas which fall under the jurisdiction of the Federal Government, comprises seven *Agencies* namely Kurram, Khyber, North Waziristan, South Waziristan, Bajaur, Mohmand, and Orakzai along-with six Frontier Regions (FR), including Peshawar, Kohat, Bannu, Lakki, Tank and D.I. Khan. The President of Pakistan is the constitutional head and enjoys the powers to make regulations for the peace and good governance of FATA. However, he has delegated his authority to the Governor of the NWFP for administrative purposes.<sup>6</sup>

There is no constitutional guarantee to safeguard basic human rights. No Federal or Provincial laws apply to the areas. The Frontier Crimes Regulation, FCR-1901, popularly known as Black Law rules supreme, neither the Supreme Court nor the High Court exercises any jurisdiction over the areas. An Agency administration is the combination of Political Agent, Maliki system and rule of the FCR. Backed up by Para-and-Military forces, such as Militia, Levy, Khassadar and Army (in the rear), reinforced with the economic and administrative powers that has given, in return, great significance to the person called the Political Agent.

---

<sup>6</sup> See, 'The Constitution of Pakistan', compiled by Sheikh Ebrahim, Pakistan Educational Press, Lahore, p.135.

The social structure of Pakhtun society is based on clan and genealogical order. Mostly, kinship relationships unite its members primarily in social, political, economic, recreational and military spheres. As an acephalous society, it holds each man equal to his fellow Pakhtun. Individuals are assumed to be essentially independent actors, however, strong men compete for secular power, but the actual power of an individual is transient and undermined by the resistance of peers and the institution of *Jirga*.<sup>7</sup> Within a culture ethos of equality and autonomy, another logical possibility for validating legitimacy is the spiritual authority. They exhibit distinct characteristics, possessing sacred knowledge of the *Koran*, and following the Prophet's (PBUH) traditions, display mystical virtuosity and ascetic sanctity and an austere emulation of the life of the Prophet (PBUH), as *Sufi*, *Pir*, *Sayed* and *Mullah*. Religious leadership has always played a central role especially in the time of internal crises and external invasions.

Beside, landed aristocracy and religious leadership, a large number of people fall in the category of *Kasabgar* (professionals with certain specialization, such as carpenters, barbers, gold and blacksmiths, weavers, shoemakers, artisans etc,) mostly landless lot called *Shahkel*, the people of little traditions.

## 2. **Today's Traditionnel Structures:** (max. 7 pages)

### 2.1. Internal Governance:

- i. **Cosmic justification for the traditional structures' existence:**<sup>8</sup>
  - The Pakhtun society is broadly a traditional setting with predominantly agrarian characteristics, 70% people in Pakistan, 83% in NWFP, 97% in FATA live in rural areas. Its social system has a relative sense of unity and cohesion based on customs and traditions. In day to day transactions, it tries to resolve conflicts and disputes to

---

<sup>7</sup> See and cf. Charles Lindholm, *Frontier Perspectives; Essays in Comparative Anthropology*: Oxford University Press, Karachi, 1996, pp. 216, 207 and 216

<sup>8</sup> To understand why certain traditional authorities or institutions are still very powerful or revered despite some shortcomings in their governance capacities, it will be essential to look at the belief system underpinning their existence.

bring harmony and order through an in-built social mechanism of consultation through its *Jirga*.<sup>9</sup>

- Since time immemorial, the Pakhtun society has been functioning on the basis of traditional code of *Pakhtunwali*. This covers almost every aspect of Pakhtun society including provision of justice, conflict resolution and distribution of shared resources. In spite of the introduction of modern state institutions such as executive authority, judicial institutions, and law enforcement agencies, *Pakhtunwali* is still a living force and plays a pervasive role in Pakhtun social setting, especially in rural areas.
- As the modern institutions and practices are not evolved indigenously and seem imposed by the aliens lacking local insight and participation. The people neither understands the structure nor the laws or the language, hence, cannot relate to them, therefore, prefer to live according to their traditional way of life. The system of administration was founded with imperial motives with an exploitative, tyrannical interface and conflicted with high Pakhtun values of *Siali* (social equality) and *Khawalwaki* (self-rule). Both the British rulers and their successors erroneously believed that until the Pakhtun acquire a minimum level of skill and knowledge necessary for administering their own affairs, they should be kept away from the path of civilization. They are still placed under the same colonial system, which is negative in purpose and authoritarian in spirit. It has perpetuated a subject rather a citizen culture. This is still valid especially in FATA. These imperial bureaucratic institutions could not deliver a speedy and inexpensive justice to resolve conflicts. Therefore, traditional institution of *Jirga* continues to enjoy credibility amongst Pakhtuns. The predominant agrarian set-up of Pakhtun where 90% live in rural areas still prefer to live under their traditional system.

---

<sup>9</sup> *Jirga* is the customary social institution, which has always been ranked as one of the bulwarks of liberty and independence in the Pakhto-speaking world. It represents the essence of Athenian democracy in operation under which every individual has a direct say in shaping the course of things around him. Sitting in a circle, a *jirga* has no speaker, no president, or convener. There is no hierarchical arrangement of positions and status. All are equal and everyone has the right to speak and argue, although, regard for the age and *mushrana* (eldership) is always there without any sense of authoritarianism. Most of the community business, both public and private is settled, conflicts and disputes among individuals, clans and tribes are resolved, and punishment as well as rewards is given.

- Moreover, the state functionaries are mostly aloof, arrogant, inaccessible, coercive, corrupt and indifferent to the needs and aspirations of common people; therefore, people prefer to resolve their issues among themselves.

**ii. Traditional legal foundation (oral /written / non-codified)**

The broader principles of unwritten codes of Pakhtunwali are based on equality in lineage genealogies, retaliation/revenge (*badal*), sanctuary (*panah*), surrender/supplication (*nanawati*), hospitality (*melmasta*), shame/honor (nang/pat), solidarity/common-good (*Khegara*), courage/chivalry (*Tura/Ghairat*), which guide, control and discipline the form and character of Pakhtun way of life. It embodies all the customs, traditions, heritage, usages, social norms and mores which shape the overall behavioral pattern of Pakhtun in their social relationships, such as punishment in case of injury and death, succession and transfer of property, marriage and morality etc.

In the colonial days (1869-74), an effort was made to codify local customs regarding inheritance and transfer of property including the rights of widows and children under the title ‘customary law’ to provide legitimate guidance to the courts in settled districts of the NWFP. However, in tribal Pakhtun society, probably the sole attempt to compile a customary law (*Riwaj*) known as “*Turizuna*” with the help of selected tribal elders/*Malik* was made in Kurram Agency, in 1944.<sup>10</sup> Though a simple and rather incoherent document, it however, provided some basic principles for the settlement of criminal and civil disputes by administrative courts with the help of *jirga*. Moreover, in most cases, individual and collective disputes are generally discussed and settled through their *Jirga/Maraka* according to oral and unwritten code, *Narkh* (custom or tradition) and *Liaraha* (rule or precedent).

---

<sup>10</sup> ‘Turizuna’, or “Qanoon-i-Riwaj Kurram”, compiled by Abdul Rashid Khan, Assistant Political Officer, on request of the Lieutenant Colonel W. C. Leper, O. P. E. I. P. S., Political Agent, Kurram Valley, in 1944. It is being followed in the disposal and revisions of cases till today in Kurram.

### iii. Organizational structure

- The whole paradigm of Pakhtun tribal organization is based on the patrilineal principle based on blood relationship. Its traditional social structure is based on inter-clan linking and tribal affinity uniting the Pakhtun people in a web of kinship relationships. A family is the primary building block, making the overall social organization of the Pakhtun society. It is a far more complex and a multi-purpose social organization than mere a group of related individuals with shared family honor, property, traditions, and intra-familial hate and love relationships. The tradition of joint family system, in some cases, more than four generations living together in a perfect communion is still prevalent. Members of each family acknowledge with deep respect the authority of the elders, age is often considered to be the most important factor. Usually, grand father, father or the eldest member is the head, both in internal and in external affairs of the family. Pakhtun are always proud of their ancestors, the proverb “to be a man like your forefather” expresses this in their daily interactions. The stability and solidarity of the social structure is the continuity of their lineage and its connection to a clan, tribe or groups of tribes. For an individual, his primary duty is to that of his family and tribe. A family is usually represented by a father (*Plar*), tied together into a *Plareena*, a congregation of different families having the same lineage, represented by a grandfather/s. Thus, various *Plareena* of same ancestors make a *Kandae/Tapa*, (sub clan) giving birth to a *Khel* (clan). The sum total of various *Plareena*, *Tapa*, *Kandae*, and *Khel* constitute a *Qaum* tribe.
- Furthermore, Pakhtun society is not a close society. Since time immemorial, Pakhtun living among different ethnic groups have had imbibed various other people not necessarily Pakhtun by birth among their tribes, clans and sub-clans. Most practicable foundation of their organization is the **area, or the village** wherein they live and interact with one other on a daily basis. The term *Taal* is commonly used in case of heterogeneous families (not necessarily having the same ancestors) living together in an area or village. The tribal Pakhtun concept of democracy urgently demands an equal participation in collective village/area affairs. Instead of having one single common leader, they have to pick and choose a man from each and every major and

minor group to ensure the practice of pluralism. Each *Taal* (segment of population) is considered to be a separate unit, thus, their interests, feelings and wishes are ascertained by the community through their respective representatives in the village *Marka/jirga*.

**iv. Functions and powers → concentration or separation?**

The traditional structures of Pakhtun represent a simple and agrarian based society; therefore, there is no concept of separation of power. Jirga/Marks, their traditional social institution mostly exercise executive, judicial, and legislative powers and also act for arbitration and conciliation. Practically, all community business, both public and private is subject to the jurisdiction of the jirga. Basically, the traditional structure and institutions carry limited functions for which no specialization is needed.

**v. Traditional law / policy making and implementation**

Pakhtun society is governed by their customs and traditions which are working like policies. Collective and unanimous decisions (called *sareshta* as in Afridi and Orakzia tribes) are made in the Jirga. Duties and responsibilities for the executions of the decisions are assigned to the youngsters called by different names in different areas and tribes as *arbaki* in the Province of Pakteya of Afghanistan, *rapakae /ameer* as in Kurram, *chalweshtai* in North and South Waziristan, *lakhkar* in Afridi and Orakzai tribes of FATA.<sup>11</sup> These organization act as tribal policemen, having the authority to punish those who do not comply with the tribal decisions, that range from a small and nominal penalty (*nagha*) in terms of cash or kind to burning down the house/s of the guilty.

*Chalweshtai* or *lakhkar* is another form of a force raised by a tribe on a voluntary basis to make concerted efforts regarding any eventuality. Its aim and purpose is to deal harshly with anti-social elements involved in various crimes of gambling,

---

<sup>11</sup> There are various forms of the village organizations carrying different nomenclatures in different tribes and areas.

narcotics or to combat terrorism and terrorists operating in the areas, a recent phenomenon after 9/11 incident in the USA. There are several instances where Chalweshtai or tribal lakhkar have burnt down houses, inflicted severe injuries and even death on members of the same tribe, without invoking tribal or individual hostility or feuds. It is a social force which is also employed to prevent murders and other heinous offences in a tribal Agency.

*Chagha* is another form of Qaumi lakhkar raised spontaneously on the occasion of dacoity, robbery, lifting away of cattle and other offences of the sort. Previously through drum beat and now through loudspeakers, people are informed to come out of their houses fully armed to chase the offenders. These forms of organization are neither permanent nor formal. They are mostly event or situational based without any formal hierarchy or centralized leadership and substantial financial backup.

#### **vi. Traditional justice**

In traditional justice, there is an intimate connection between rights and remedies, wrongs and punishments. As Olaf Caroe rightly points out, “Pathan custom requires the satisfaction of the aggrieved rather than the punishment of the aggressor. The law as we understand it concentrates against the aggressor, and compensation for the aggrieved hardly enters the picture. The Pathan in fact treats crimes as a kind of tort.”<sup>12</sup> The administrative courts in an Agency award a variety of sanctions and remedies. They are more prohibitory, declaratory and compensatory in nature. The protagonist of the system has a point to boast of better substantive justice and simpler procedural rules. They are of the opinion that the tribal *jirga* system not only levies penalties for the crimes but also compensates the victims.

Besides, tribal set-up has an in-built system for the cessation of hostility or immediate resolution of serious disputes over property or customary rights. Most of the disputes are solved by mutual consultation or, failing that, through arbitration by impartial parties in a *Jirga/ Maraka*. An immediate effort is made to obtain a truce between the

---

<sup>12</sup> Olaf Caroe, *The Pathan*, p-355

parties. This arrangement is locally termed as placing a *Tiga*.<sup>13</sup>. Literally it means to place a stone among the parties till such time when their tempers cool down and sanity returns. Whether or not the matter can be decided on merit and principles of justice or to the satisfaction of both the parties, however, violation of truce is punishable in accordance with the terms already decided, and often there is a provision of a substantial fine or forfeiture of a right. If the political authorities are a party to the truce, the violation may result, in addition, in their displeasure, as it entitles them to suspend any of the economic benefits enjoyed by the offending party.

The questions of how does the system of customary laws and rules satisfy the needs and demands of natural and legal justice? It's an open ended question with several interpretations.

**vii. Representation mechanisms for authorities (leaders, bodies): selection/ election / inheritance**

The leadership in Pakhtun society is based on the strength of *family, clan, khel, and qaum*. The general mechanism for the selection of traditional leadership at local levels for a jirga is such that each family and clan is represented by its leader determined by age, reputation and influence. The Jirga represents the essence of democracy in operation under which every individual has a direct say in shaping the course of things around him. Democracy operates as a spiritual and moral force instead of becoming an automation of votes.”<sup>14</sup>

There are also *Malik*, and *Lungi-holders* (individuals entitled to stipend from the government), registered with the government (political administration) and are considered officially recognized leaders. This privilege enables them to act as government contractor to become a member of Electoral College, Agency Council and a Jirga, constituted under the FCR 1901 by the Agency Administration.

---

<sup>13</sup> See, Izzat Awan, *Pattern of Administration in The Tribal Areas of Pakistan*, Provincial Civil Service Academy, Peshawar, 1972. p-21

<sup>14</sup> Syed Abdul Quddus, *The Pathans*, Ferozsons Ltd, Karachi, 1987, p-101

There are three distinct types of Malik: those granted *Maliki* during British period; during 1960s in President Ayub Khan era as a result of BD membership; anyone conferred *Maliki / lungi* by the Political Agent with the approval of the Governor of the NWFP. All three types have varying perks and privileges in respective descending order. These positions of recognized traditional leaders have taken a hereditary character, in most cases, the eldest son inherits.

**viii. Destitution mechanisms, if any, for incapable leaders**

All traditional leaders are leader by inheritance; therefore, there is no mechanism to remove them from leadership in case of incapability by the tribesmen. However, Political Agent can withdraw, suspend or cancel, with the prior consent of higher authorities, the Malik and lungi. Mostly, it happens if they disobey or become hostile to the administration.

**2.2. Local Development:**

- i. For each of the following functions and in relation to traditional structures: describe the type and level of responsibility (exclusive/shared), the mechanisms to ensure inclusiveness, transparency and accountability:**

In Pakhtun society, every individual household belongs to a tribe inhabiting an area having inalienable right to a share (*barkha*) based on equity in natural resources, irrigation and drinking water, forest, and collective lands (*shamilat*). This right to inherit a share in collective property over and above personal property is because of genealogical relationships. Every household has a stake in collective loss and gain. It is evident that the very nature of traditional setup in Pakhtun society ensures inclusiveness, transparency, and accountability since every household gets involved in planning, executing, and monitoring at local level.

**- Protection, management and allocation of natural resources**

Pakhtun land is mostly subdivided along tribal subdivisions. Belonging to a tribe therefore means to have access to the land of that tribe. There are also landless tribals who have sold their inherited land to another member of their tribe. If a

member of tribe loses ownership of his land, he retains at least his right to re-acquire land if he regains the necessary means. Localized tribes also own common and undivided property: pastures and forests which every member has an equal right to use. "When a member of a tribe defends the land of his tribe, he defends his own security and future of his family."<sup>15</sup>

The community at large protects and manages its natural resources collectively by sharing the responsibility on household basis. With the exception of irrigation water which is tied with the land share, all other natural resources are allocated and distributed equally amongst all household.

#### **- Revenue collection (traditional / state)**

In traditional structure, the *Malik* and *Khan* used to collect revenue for the rulers such as Mughal, Sikh, and British. Currently in the settled areas, the revenue is collected by the functionaries of the revenue department, wealth and income tax, property, sale and excise duties are levied besides octroi and toll. In these areas, Federal, Provincial and Local taxes are paid. There is no tax culture in tribal Pakhtun areas; however, in some of the tribal areas e.g., Kurram and North Waziristan, the Maliks collect land revenues. The Political Administration has a contract system of octroi collection for incoming and outgoing goods as well as livestock. Both in settled and tribal areas, a system of indirect taxation is practiced.

Following the tenets of Islam, the Muslims are supposed to pay Usher (10% of the agricultural produce and Zakat (2.5% of the income) annually. Previously, a voluntary affair based on individual discretion, mandatory deduction of Zakat from individual bank accounts was made by an Ordinance during Zia-ul-Haq's regime in 1979. The Usher is collected by the revenue department in settled areas. However, this Ordinance has not yet been extended to the FATA.

---

<sup>15</sup> W. Steul, *Paschtunwali*: Wiesbaden, Steiner, 1981.

- **Resource mobilization:** There is no uniform and regular system of financial resource mobilization. Some financial resource mobilization do happen to meet the expenses of community work if and when need arises on the basis of household share.
  
- **Community workforce mobilization:** There is a tradition of community work force mobilization amongst Pakhtun known as [H]ashar. All working men of the village participate in public works such as construction of canals, irrigation channels, cleaning of *Kareez*, underground wells and drainage system. Those who don't participate physically may send animals such as donkeys, mules etc. Failure in both is liable to penalty in cash or kind, called *nagha*. The community workforce is also mobilized in the form of *balandra*, and *pagara*, at the time of sowing, weeding, harvest, thrashing of grain and construction of houses on cooperative and reciprocal basis.
  
- **Conflict resolution over use of resources:** The use of collective and shared resources is the perennial source of conflict and contention among individuals, clans and tribes. An effort is made to resolve these issues through Jirga. In case, the local jirga fails to resolve the issue, armed conflict may begin. To maintain law and order, the government intervenes and constitutes a Jirga under the FCR-1901 called *Sarkari* (government) Jirga. The jirga proceeding are based on customs and traditions and present their proposals to the Political Authorities in FATA, and judicial officers in settled districts. However, the Political Agent has the prerogative to accept or reject the findings of the jirga. In case of acceptance, a final verdict is given and in case of rejection, a new Jirga is constituted by the Political Agent to look into the matter.
  
- **What were the contributions of the traditional structures and of the traditional leadership?**

- **for the political stability in the transition?**

The tribal Pakhtun system provides an element of stability in times of turmoil and when state authority has disappeared. Political instability at national level, therefore, does not largely affect the rural Pakhtun society owing to the presence of traditional structure based on Pakhtun customs, traditions and kinship relationship. Bernt Glatzer rightly says, “Political entrepreneurs found kinship and tribal links most convenient as a basis for alliances or confederations in order to challenge even imperial powers and to secure areas for their clients.”<sup>16</sup>

The traditional leadership has always been used to fill the vacuum as a gangplank between the people and the state/government in tribal areas; however, in settled districts too, the traditional leaders reserve their berth in federal and provincial cabinets during transitional rule. Both in civil and military rule, the traditional leaders try to increase their influence and power to play their role according to time and space requirements.

- **for national reconciliation, and the demobilisation of clan-and-tribal based militias?**

Pakhtun society never had a tradition of organized and permanent militia; however, they do form *lakhkar* and *chagha* if and when the need arises. Most of the people carry arms with them like a walking stick. Lakhkar are formed for certain social cause/s such as to protect land and honour and to disperse after the event is over. The formation of such lakhkar is mostly discouraged by the Agency Administration with the connivance of traditional leaders. Efforts are made to sabotage it from within by various means such as threats, gratification, propaganda and support to contending rival traditional leaders to make it controversial amongst the people. Recently, tribal *Lakhkar* were frequently formed and used by the state to combat the menace of terrorism unleashed by the foreign militants and local insurgents in South and North Waziristan Agency, FATA. Traditional Jirga were used to

---

<sup>16</sup> Bernt Glatzer, “The Pashtun Tribal System,” G. Pfeffer & D.K. Behera (eds.), *Concept of Tribal Society: (Contemporary Society; Tribal Studies, Vol. 5)*, New Delhi, 2002, pp.265-282.

persuade the militants to disarm and register through various reconciliatory measures including payment of compensation.

- **for the democratization of the country?**

Most of the traditional leaders as members of parliament side with both the military and civil governments according to their interests. Barring honourable exceptions, they frequently change their party loyalties to promote their personal interests and to avoid persecution. Though most of the traditional leaders have stakes in the existing non-democratic and authoritarian system of administration, especially in FATA, still some of them have been raising voices in favour of introducing adult franchise, elected local government system, extension of Political Parties Act, representation in the NWFP Assembly, or creation of an independent Province, or to have an elected FATA Council for the tribal people. The Federal Government has already conceded to some of these demands such as the right of adult franchise for the elections of National Assembly members in 1996, introduction of nominated Agency Council and establishment of Governor's FATA Secretariat in 2004.

- **for the independence of the judiciary—as a central dimension of good governance?**

Equality before law and the right to fair trial, the hallmarks of the modern democratic setups, is ensured by separating judiciary from the executive in settled districts. Traditional leaders have a limited role to play in the resolutions of dispute outside the courts, however, in FATA there is no concept of separation of powers. The Political Agent is the chief judicial officer beside an executive head. Under the FCR 1901, all disputes are usually referred to a Jirga appointed by the Political Agent, whose findings are not binding on him as mentioned earlier. Traditional leaders prefer these institutions and practices instead of independent judiciary and the rule of law, which do not serve their individual parochial interests. In a transparent, fair, and accountable system, traditional leaders cannot exert their undue influence to get favourable decisions.

- **in helping the political institutions and the administration to obtain their legitimacy?**

Both traditional leaders and Agency Political Administration rely upon and provide legitimacy to each other. Traditional leadership try to reach the political institutions such as National, Provincial Assemblies and Local Government institutions with the help of administration as elected or nominated members. Even political parties in settled districts are dominated by leaders belonging to influential families and are in a better position to get party tickets of any political party of their liking, during elections.

- **in building of a “national state” administration ?**

Pakistan has a strong and powerful bureaucracy since colonial days. It exerts profound influence in the realm of policy formulation and its execution. To further and promote mutual interests, traditional leaders mostly depend on the bureaucratic support and patronage; in return, the bureaucrats look for their goodwill seeking advancement in their professional careers and to remain on lucrative posts.

A modern state administration has to abide by certain rules and regulations; however, an accountable, fair, and transparent administration does not serve the interests of the traditional elites. Traditional leaders have strong desire to induct their relatives in administrative setup to influence the government decisions both in policy formulation and decision making processes.

- **for bridging the gap between urban centres and rural societies?**

The traditional leaders generally have their influence in rural areas because; the traditional way of life is more common in rural setup. In settled areas of the NWFP, there are large urban centres. An estimated 4% annual movement from rural to urban areas has created a large number of slums, which has adversely affected the urban ways of life and can be rightly called as *ruralization* of cities. These segments of rural population have provided a role for traditional leaders in urban areas as well. FATA lacks large urban centres, however, large number of tribal people have

migrated to big urban centres of Pakistan in search of employment, trade, education and better standard of living. This phenomenon of *tribalization* has not only provided a new base to the traditional leaders but has also affected forward looking, modern, enlightened, and tolerant urban culture in promoting factional, sectarian, tribal and rural rivalries.

In order to remain closer to the power centres, the traditional leaders have their dual residences (*dwa kora*) both in urban and rural areas. This phenomenon has created a mind set, where they are enjoying all the modern amenities in the cities, and also to thwart any change happening in their rural tribal setup.

**-for protecting cultural diversity, resisting homogenizing approaches in nation building? in consolidating a bottom-up process instead of a top-down process?**

The interests of the traditional leaders lie in protecting their traditional entities, a hermit culture and way of life, eulogising their customs and traditions. Therefore, they resist homogenizing approaches in the nation building process. They always view with suspicion any change introduced from the top. They strongly advocate the preservation of local, parochial order claiming the unwillingness of the people as reason to embrace any change. In order to overcome the resistance, the bottom-up approach such as elected local government institutions is the only meaningful and practicable alternative.

**- Planning, implementation and monitoring of local development initiatives**

The traditional leaders as elected members of local government institutions in settled districts or nominated members of Agency Council, in FATA, are somehow involved in planning and implementation of local development schemes in their areas. They, along with the bureaucracy, are the major beneficiaries of the system in terms of awarding contracts, getting jobs for their near and dear ones, and thus expanding their power base.

The elected local government institutions, especially in FATA, may ensure some participation of the people in planning, implementation and monitoring of developmental activities. However, greater participation may be ensured by establishing locally elected union or village councils which in turn may also bring desirable transparency, accountability and empowerment of people.

**- Advocacy and peer-control for micro-credit schemes**

Traditional leaders are part of the community, with an easy access to them as compare to the state functionaries. They also understand the culture and speak their language. Their role is effective in addressing various social issues. In the implementation of various micro-credit schemes initiated by various development agencies and NGOs, the traditional leaders are helpful in successful launching of these schemes in terms of providing guarantees and reimbursement of loans. Besides, they can also effectively help and assist in skill development initiatives and advocacy in the areas of population planning, health, environment, and other community related issues.

**ii. Traditional structures and civic participation in the management of local development: how well do they accept / nurture it?**

The Civic participation is important in the management of local development because it gives a sense of ownership to the people. The traditional leaders and institutions such as jirga may play an important role in mobilizing civic participation in the management of local development. The community accepts any local development initiative which is beneficial and takes place with their consent. The local jirga can also be used as an instrument to resolve conflict, arising at any stage of local development.

The present Jirga is not yet a permanent and formal institution and lacks the necessary management and technical skills to oversee the developmental schemes on its own. Therefore, there is a dire need to integrate the Jirga and local government institutions with nation building departments for developmental activities at local level.

**iii. Customary laws and local development: how do they facilitate/constrain effective resource management? Are they conducive to resource creation? Are they used to sanction corruption and mismanagement of development funds?**

In Pakhtun customary law every household of a tribe has its own share (*barkha*) which has its economic and judicial implications. In some Pakhtun tribes, the law of land distribution is based on the principle of share/*barkha* according to Sheikh Mili's tradition especially amongst *Yousufzai*, whereas, in some other tribes such as *Mehsud* and *Wazir* in FATA, the *Nikat* (from *Nika*, meaning grandfather, a system of hereditary rights based on genealogical affiliation), is prevalent. It is not necessarily based on the principle of equality. The uneven distribution in terms of economic gains and losses has been a source of bitter contentions among *Mehsud* and *Wazir* tribes in *South Waziristan*. Moreover, each Pakhtun tribe has its own share in *shamilat* and even sectional share in the recruitment of paramilitary personnel such as Militias, Scouts, Levies and Khassadars.

Customary laws usually facilitate the community to effectively create and manage resources, prevent corruption and mismanagement of funds, because it is the only way Pakhtun tribes are familiar with. However, on occasions, it also hinders and creates problems in creation, distribution and management of resources on equity basis.

**2.3. Local perceptions of traditional structures:**

**i. Sources of legitimacy of the leaders and leadership bodies**

Heredity is the only source of legitimacy of traditional leaderships. Family and kinships relationships are the source of strength and influence both within the clan, tribe and state bureaucratic institutions. Besides, spiritual leadership derives authority and legitimacy from religious knowledge and personal piety has also a great influence in Pakhtun society. Both traditional and religious leaders have intimate relations and enjoy confidence of local people. They share a sense of social responsibility, assist and help common people in their happiness and grief. *Jirga*, as a social organization comprising elders, traditional leaders also enjoy legitimacy and deriving its authority from *Pakhtunwali*, customs and traditions.

## **ii. Local good governance criteria**

The criteria for good governance in terms of traditional structure revolve around a few broader principles:

- It must ensure security of life and property first.
- It must give respect and dignity to common people rather than despising them.
- It must provide quick and inexpensive justice to the people ensuring:
  - That arrest can only be made for a cause.
  - That defendants, presumed innocent until proven guilty.
  - That the accused are entitled to pre-trial freedom to aid in their own defense.
  - That the allegations of wrong doing must be submitted to the truth finding light of the adversary system.
  - That the sentence should be based on the gravity of the crime.
- Transparent and corruption free system of governance
- Efficient and effective delivery of social services
- Participative management in decision making processes

To expect all these minimum requirements to avail justice in FATA is nothing more than a dream devoid of any temporal reality. How does the system work for the poor tribesmen is just any body's conjecture.

## **iii. Integration or dualism of structures → what do people feel serve better their interests?**

At local level, both modern state and the traditional structure need to be synthesized in such a way that makes people stakeholder in the realm of resource allocation and distribution. Their insight should be incorporated in policy formulation and execution. The purpose of state machinery is to sever not to rule the community and to create a citizen rather than a subject culture. It requires increased participation of the people in the process of governance.

The coordinating and advisory functions should remain with the state institutions, but decision making and implementation and control of various plans and policies should be exercised by the community itself through representative institutions. It will serve the cause of the common man and will rid the system from lethargy, corruption and indifference.

**iv. Degree of variety of opinions in the local society → who are the vectors for change?**

In Pakhtun society, there are three distinct schools of thought, the Muslim revivalists, Secular nationalist and Muslim reformists. The revivalists take their inspiration from Islamic traditions. They are skeptic of modernization, considering it westernization, thus resist the influx of western culture and its values. The *Deoband* movement, originated amongst Muslim of India in the 19<sup>th</sup> century, profoundly influenced Pakhtun society by creating a network of mosques and *madrasa* (religious schools) in NWFP, FATA and Afghanistan. Jamiat-e-Ulama-i-Islam (JUI) has been its political expression, contesting and at times winning elections in Pakhtun areas. Their main support base is students of religious seminaries, Mullahs controlling the mosques, conservative peasantry and small traders. This school got strengthened during different phases of Afghan war and played a crucial role in establishing and sustaining the Taliban regime in Afghanistan. Advocating strong anti-American stance and implementing *Islamic Shariah* (laws), it created a coalition of six religious parties, known as *Mutahida Majlis-e-Amal* (MMA) and won elections in the NWFP in 1999. They are not satisfied with the existing state of affairs and want to reenact the glorious period of Islam.

Second important and influential school of thought is that of Pakhtun nationalist movement led by a legendary red-shirts Pakhtun leader, Khan Abdul Ghaffar Khan. They subscribe to positive traditions of Pakhtunwali, and want to eliminate the harmful practices such as violence, revenge and internal feuds among Pakhtun. It is the first political expression of Pakhtun nationalism in political processes both in the united India and Pakistan by contesting elections, making political parties and alliances, and

striving for Pakhtun nationhood. The concept of the rule of law, federation, autonomy, political rights and self-rule remained the hallmarks of this movement. They drew their support from rural gentry, educated youth and professional segments of Pakhtun society.

The third reformist school drew its inspiration from *Aligarh* movement initiated by Sir Sayed Ahmad Khan in the united India in 19<sup>th</sup> century. The followers of this movement preferred liberal western system of education and established educational institutions such as Islamia College Peshawar in Pakhtun area. During the British era, modern institutions in the fields of education, health, law, revenue and politics were established, which produced a forward looking and modern educated youth favoring modern institutions and modern way of life as a preferred choice for Pakhtun society especially in the settled areas. They provided leadership in almost every walk of life. The spread of modern education, supported by electronic and information media, urbanization, migration within and outside the country, economic prosperity, social mobility, technology etc are the main factors of change.

#### **2.4. Good governance evaluation:**

##### **i. Citizen participation in decision-making**

Traditional Jirga institution in Pakhtun society ensures full participation of, at least, adults male members in all community affairs. The validity of the Jirga decisions is based on the participation of each household. They participate in this process as a duty. Though, Modern state institutions provide opportunities for participation of the people, through local government institutions, which is nearest to Jirga.

##### **ii. The role, position and constraints of identifiable groups to participate and take decisions (e.g., women, youth, elders, disabled and immigrants)**

Under the operative local government system in District Councils of the NWFP, thirty three percent seats are reserved for women, five percent for workers/peasants, and five percent for minorities. In the same proportion, seats are also reserved for the above mentioned category of people in Tehsil and Union Councils. However, no such

provision to reserve seats for elders, youth, disabled and immigrants is available in local government system in the NWFP, or Pakistan. Though huge population of Afghan refugees has been living both in settled districts and FATA, but no representation was granted to them in either traditional Jirga or local govt. In fact, they were denied the right to vote.

In the non-elected Agency Council of FATA, there are 70% general seats, whereas 30% seats are reserved for elders, religious leaders (*ulema*), women, technocrats and minorities without specifying their percentage.<sup>17</sup> The other two tiers of local government, Tehsil and Union Councils, are missing altogether. The Pakhtun traditional Jirga does not give any representation to women in their Jirga and elders of the family, clan and tribes are the major decision makers. Youth plays an active role in the implementation of Jirga decisions as and when required.

### **iii. Responsiveness, accountability and transparency in the exercise of the functions of traditional authorities**

Sharing a sense of social responsibility, traditional leaders are presumed to be responsible for the welfare of their community. However, gradually they allied more themselves with the administration and the government to pursue their personal interests, over and above the community. Thus, they lost their personal niche, got discredited and most of them lost confidence and respect which they used to enjoy in the past among the people.

Jirga as a social institution comprising credible elders of the community still has a role to play. It is the only medium by which inclusiveness, accountability, and transparency, in performing various community functions, can be ensured. It, nevertheless, needs to be transformed into a formal democratic institution, especially regarding women participation, with proper system of documentation, etc., to carryout various developmental activities at local levels.

---

<sup>17</sup> Agency Kounsil Kay Fraiz aur Zimadarian (Duties and Responsibilities of the Agency Council), Governor Secretariat, Warsak Road, Peshawar.

#### **iv. Respect of the legal order and the rule of law**

The system of justice prevailing in the FATA is based on customs and traditions. The simplicity of administrative and customary law tends to characterize the underdeveloped legal system in the areas. How and when, and to what degree, it may become desirable to shift the emphasis from law to custom, or from custom to law in a Pakhtun society, has to be resolved sooner than later. Instead of law, customs and traditions still rule the Pakhtun society from the grave that have retained greater vivacity in the administrative sense; but its capacity to deliver retributive justice has markedly declined. The customary system of justice without due process of law, is highly detrimental to the cause of formal legal system.

### **3. Evolutional Trends:** (max. 4 pages)

#### **3.1 From origins till today:**

Pakhtun society, considered tribal, hence, classless and egalitarian has gradually changed into a class society. Various social classes have emerged both in settled districts and in FATA. Their overall aspiration and social behavior towards change and reforms are often characterized by the class to which they belong. In Pakhtun society, four distinct classes comprising the aristocrats, the nouveau riches, the educated and professionals and the common masses can be easily identified.

The **aristocrats** include the traditional landed nobility, *Nawab*, big families represented by '*star* (big) *Malik*, influential *Pir* with huge followers and *Khan* (land holders, not necessarily feudal lords). They pride in status and prestige having a non-equalitarian attitude, their individual interest is important but possesses a sense of societal responsibility. Their numerical strength is insignificant, but has an ability to attract many people. Besides, their wealth and manpower enable them to exercise power and social influence, they rely heavily on their contacts within the bureaucracy and government. They are the major beneficiaries of the system mostly thriving during political and administrative crises by getting political and economic gains. Symbolic representation in

official jirga, nomination for Agency Council, meeting dignitaries and VIPs are special privileges they enjoy. They consider political forces, influences from within and outside a direct threat to their traditional leadership. They are highly conservative in political sense and have been opposing the right of adult franchise, elected agency councils, extension of local government institutions to the FATA.

**The nouveau riche** includes traders, wholesalers, contractors, timber merchants, transporters, arms and narcotics traffickers. They are versatile, efficient and very shrewd, aspiring for social and political recognition. Most of them, owing to their accumulated wealth, have acquired the status of Malik or Lungi holders to contest elections of Parliament and to register as contractor and suppliers. Proximity to international trade routes, divergent business relationships, indigenous marketing skills, undocumented financial transactions (*hundi /hawala*), and peculiar network of smuggled goods delivery distinguish them from that of other Pakistani comprador middlemen.

For a variety of business interests, the nouveau riches are sensitive and wary of a slightest change in FATA special and autonomous status. They don't have to pay any income, wealth and property tax, and dual nationality of Afghanistan and Pakistan places them in a position to extract maximum advantages from both sides. Due to lack of entrepreneurial skills in transforming their commerce and trade money into industrial capital, they invest heavily in industrial shares, foreign currency, gold, transport, construction of plazas and real estate business. To safeguard their business interests, they have not yet been able to create a lobby or political formation of their own. They are scared of investing in their own area due to the absence of rule of law, and high handedness of Agency administration under the FCR-1901.

**The educated and professionals** include doctors, engineers, school, college and university teachers, active and retired members of civil and military bureaucracy, students, political activists, media persons, and political right groups etc. They are mostly dissatisfied with the existing political and administrative system and oppose the status quo. They can be termed as opinion makers and agents of social change. Lack of employment opportunities, inadequate quota, indifferent attitude of the Federal

Government in delivery of social services, abject poverty, and frequent use of force both by state and foreign militants have exponentially increased their anxiety and restlessness. Eager to support reforms and representation to administer their own affairs, they express through inter and intra-tribal organizations and welfare associations, as political activities and formation of political parties are prohibited in FATA.

**The common masses** comprise farmers, landless peasants, share croppers, artisans, and workers in business, transport, as well as service sector. They suffer from ignorance, illiteracy, poverty, and means of economic scarcity. The fact that FATA is tax free area, the common man bears a heavy burden of direct and indirect taxes in the form of *'permits,'* and *'rahdaries,'* on most incoming and outgoing consumer goods in an Agency. The question of future is irrelevant, absurd and vague for them. They have no political and human rights, therefore, they are neither confident of their traditional leaders, nor satisfied with their existing political and administrative set-up. The use of violence, coercion and clean up operations have made life a heavy burden for powerless and voiceless people, especially in FATA.

**i. Which have been the engines / factors of change in:**  
**- the legitimacy of traditional structures**

The traditional leaders used to represent their clans and tribes and protected their community and tribal interests. Gradually, most of the traditional leaders lost their credibility and trust of the people by associating more with the rulers (invaders, colonialist, and existing administrations/governments) than defending the interests of the community. However, some of them still retain their influence because they help in maintaining law and order by resolving disputes and by dispensing justice at local level through Jirga, both in NWFP and FATA.

The following factors can be attributed to the decline of their legitimacy:

- **Corruption:** In the post colonial period, most of the traditional leaders got involved in seeking personal economic gains at the expense of community interests.

Besides, exacting *baday* (bribes) from common people has also contributed to discrediting their legitimacy.

- **Competence:** Traditional leaders are incompetent because they lack education, skills and statesmanship. They can neither exert popular will to influence decision making process, nor have they the required know-how to address and redress peoples' grievances or modern day complexities.

- **Rise of new moneyed class:** The influx of black money into Pakhtun society in general and tribal society in particular has given birth to a class of nouveau riches. These new challengers to traditional leadership have enormous resources at their disposal to make right contacts and influence the people in the corridors of power.

- **Migration:** a large number of people migrated to major urban centers of Pakistan such as Karachi, Hyderabad, and Lahore as well as to the Gulf States to earn livelihood. Their exposure to relatively different world led to significant change in their outlook, and the remittances they sent home brought changes in the socio-economic conditions of Pakhtun society which resulted in diminishing the role and legitimacy of traditional leadership.

- **Rise of educated and professional Class:** Increase in educational level of the common masses and rise of a large number of professionals sidestepped the traditional leaders by developing their own contacts and linkages with the state institutions and bureaucracy.

- **The rise of religious leaders:** During Afghan war, provision of considerable financial resources and arms by the conservative Arab States, and 'so-called' free world as well as patronage of Pakistani state authorities, to fight the Soviets, enabled religious elements to assert and dislodge the traditional leadership to a great extent. Winning a majority of National and Provincial Assembly seats during 2002 elections is a testimony of the said reality.

- **their role in local governance and local development since pre-colonial times?**

The British introduced local government system in Indian Subcontinent, however, the Pakhtun dominated settled areas were excluded on the pretext that they were not yet

ready for self-rule. After Independence, successive regimes introduced various models of local government to provide common people opportunities to elect their representatives to manage their own affairs and development work. Numerous traditional leaders managed to get elected to these institutions owing to their contacts with local population by gaining their confidence. With trickledown effects of the developmental works in terms of basic civic amenities, they bridged the gap between the administration and the people to a great extent.

**ii. Describe changes in structure, separation of powers, exercise of powers, representation mechanisms, competencies and skills in local development.**

Since time immemorial, Pakhtun have been living in their traditional way and Jirga, a social institution. It was the only forum available for the resolution of disputes among individuals, clans, and tribes at large. The Jirga was held on regular basis to review the community affairs. One type of Jirga was *Ulasi* (village) Jirga, where each household of the village was represented by one elderly member.

In the process of change from traditional to the modern institutional setup, the traditional structure was affected by different influences. Generally, the role of traditional structure is confined to local governance in the resolution of disputers and in protecting and supporting locals at *Thana* (Police Station) and *Kachahry* (Court) level. Though they are not the main players in socio-economic development; but they use their good offices in the state bureaucratic structure to gain some benefits in term of employment opportunities, contract allocation, and approval of various public developmental projects.

**iii. What have been the consequences of these changes/reforms on the performance of traditional structures in local governance and development (internal / external perception)?**

The introduction of local government system brought a parallel modern structure against traditional structure, especially in the settled districts of NWFP. These changes have significantly contributed in providing greater representation to the people as well as establishing modern institutions for self rule and developmental works. These

developments have confined the role of traditional structures only to resolution of disputes and provision of justice through Jirga in settled areas.

In FATA, however, traditional leaders and structure still play a significant role in the areas mentioned above. Besides, the administration deals with the tribes through their traditional leaders both in times of crisis and in the field of development.

### **3.2. Present challenges and trends :**

#### **i. Is the overall outlook with regards to the evolution of the role of traditional structures towards a higher or a lesser role?**

Strengthening of effective modern institutions in state and civil society has decreased the role of traditional structures in settled areas; however, in FATA the traditional structure is still strong enough and continues playing an important role in foreseeable future. The present nominated Agency council is a step in that direction.

#### **ii. Are traditional structures presently under threat of disappearance? From whom (population, government, civil society)? Is the threat global or targeted only at some of their prerogatives?**

The induction of modern state institutions, new generation of leadership, emergence of NGOs, urbanization, migration and globalization are responsible factors for weakening the traditional structure, which may gradually disappear.

#### **iii. How will likely evolve in the near future the segment of the population which questions the legitimacy of traditional structures?**

As mentioned in section 3.1, the educated, nova-riches and civil society institutions increasingly question the role and practices of traditional structure in terms of leadership skills, political representation, ability to change, failure in securing rights of women and the marginalized.

**iv. Which are the most decisive factors in pushing for change in the way traditional structures are involved in local governance and development (political / economic / security)?**

- Economic forces will play the decisive role in creating greater space for private entrepreneurs, traders and moneyed class; however, political liberalism will also provide maximum space for the challengers in the realm of political representation. Furthermore, efficient provision of services as well as quick and inexpensive justice by state institution will minimize the role traditional structure.
- In the absence of any other civil society representative institutions, the traditional structure will uphold the role and significance of traditional leaders to seek public support in combating terrorism, militancy and maintaining law and order situation in FATA. In Wana, South Waziristan, the recently Government sponsored tribal Jirga formed to combat, subdue and disarm the militants is a living example in this regard.

**v. Are there other non-state authorities that are gaining more respect and influence than traditional structures?**

Paradoxically, religious zealots have benefited much owing to inefficiency of state institutions and absence of mainstream political parties in FATA. Both in the NWFP and FATA huge electoral support was expressed for religious alliance, MMA during the last general elections.

In the process, modern civil society institution like NGOs, CBOs, various right groups, trade unions, traders' chambers, and professional associations are also gaining more respect and influence both in the NWFP and FATA.

**vi. What are the new functions that traditional structures are being asked to perform (by the people / by the government)? Are they willing and capable to perform them?**

Generally the traditional structures are used for the provision of justices and maintains for law and order. However, traditional leaders and structures may be effectively used for social awareness in the areas of advocacy for girls' education, women rights, child labor, environment, pollution, social forestry, income generation schemes, skills development, and campaign against violence, intolerance and diseases such as Polio, TB, Aids, etc., by the government, community based organizations and NGOs etc.

People expect efficient and effective delivery of services at local level and state demands to combat terrorism and maintain law and order. This requires the involvement of people through their traditional structures by enhancing their capacity and skills on the one hand and making it an integral part of elected local government system on the other.

**vii. What are the new skills that traditional structures need to master in order to maintain their present relevance and roles?**

Traditional structure needs training in

- Social organization and social mobilization of community
- Management skills including evidence based planning, managing community affairs, social auditing, monitoring and controlling.
- Conflict resolution, negotiation skills, contract negotiation
- Resource generation, financial management and allocation
- Leadership skills and participative management
- Legislative practices, codification of custom and traditions and reconciliation with rule of law.

**4. Traditional structures and local governance reform: (max. 4 pages)**

**4.1. Legal framework:**

**i. Decentralization:**

- **Describe** main characteristics of recent or upcoming legal reforms on decentralization

The system of devolution of power by the government of General Musharraf is in practice. The main objectives of this plan are:

- The devolution of power for the genuine empowerment of citizens.
- The decentralization of administrative authority.
- The de-concentration of professional functions.
- The diffusion of power for checks and balances to preclude autocracy.
- The distribution of resources to the provincial and local level.

In order to achieve these objectives, new district based political and administrative structure is in place which will help achieve the following:

- Provide social, infrastructure, and economic services to people.
- New fiscal transfer mechanism to devolve responsibility, resources, and authority at local level to reinforce provincial autonomy.
- Creation of full-fledged district government with a district as a basic government and development unit of the country and citizens community boards at the grass root level creating an enabling environment for massive people involvement in civic affairs through the close monitoring services for citizens rights and security.
- Creation of an integrated rural urban structure at tehsil level to bridge rural urban divide.
- Establishment of a politico administrative mechanism to arrest urban decay to set the stage for coherent growth of cities into potentially great urban centers.
- 100 percent representation of women in union councils and village councils

The district government elections were held in 2001 on non-party basis. Next elections are expected to be held in 2005. In previous elections, political parties participated in an indirect way. District governments are already in place. District Nazim, district assemblies, and district offices are working. The old system has been scrapped. The new district government setup has its own bureaucracy. There are offices of thirteen departments in each district. The NRB plan has brought offices of 13 departments under the authority of District Nazim. These offices of thirteen departments deal with Finance, Planning & Budgeting, Public Works, Health, Literacy, Revenue, Agriculture, Trade & Industries, Environment, Information Technology, Police, Social Development, Law and Education. This system has not yet been extended to FATA. Instead, a nominated Agency Council has recently been introduced.

**- Which kind of integration / cooperation model is proposed<sup>18</sup> for traditional structures?**

Like other provinces in Pakistan, the current system of District Government has been implemented in the settled areas of NWFP. It does not have any specific provision of integration/cooperation of traditional structure in the current District Government System. However, this system integrates modern civil society institutions such as NGOs etc. in it. The proposed District Government system for FATA has provisions for the integration of traditional Pakhtun institutions in this system. There is a proposal for allocation of seats for traditional leaders at the Union, Tehsil, and Agency Councils in FATA. In other institutions such as Agency Public Safety Commission, there is proposal of allocating reserve seats for traditional leaders. The main proposal relates to the integration of Jirga into the formal system of judiciary according to the modern requirements of the society. Moreover, the currently operative Agency Councils have 30% reserve seats for traditional elders, women, and minorities. The remaining 70% general seats have been filled through nominations which also include a large number of traditional elders.

**ii. Representation: mention legal provisions dealing with the representation of traditional structures in the executive, legislative or judiciary branch at the local level?**

There is no provision for the induction of traditional structure/leaders in executive and legislative bodies at provincial and district level in the NWFP and FATA. Nevertheless, in judicial affairs, out of court settlement is encouraged through traditional structure such as reconciliation jirga.

In FATA, there is no independent judicial system. The Political Agent and Assistant Political Agent besides executive heads also act as a session judge and first class magistrate in civil and criminal cases. Under the FCR 1901, a jirga is constituted by Political and Assistant Political Agent, comprising acknowledged traditional leaders. Keeping in view the tribal traditions and customs, the jirga submits its proposals to the PA/APA for final award.

---

<sup>18</sup> See models presented in Chapter 4.2. in Desk Study

**- Elected or appointed?**

In NWFP the members are elected, whereas in FATA, the traditional leaders are appointed as members of the Agency Council.

**- If elected: quota system in candidate lists or reserved seats in local assemblies for traditional authorities?**

In settled areas, 33% seats are reserved for women, minorities, labor, and peasants. In FATA, traditional leaders are nominated to an Agency Council, 30% seats are reserved for traditional leaders, technocrats, women, and minorities.

**- Participation of traditional leaders in political parties: is it allowed? Does it follow specific rules?**

The traditional elders can contest elections and join any political party in settled areas. The Political Parties Act is not extended to FATA and political activities are not allowed by an ordinance issued by the Governor NWFP. No elections to the National Assembly, Senate, or local Government can be contested on party basis.

**iii. Consultation: mention legal provisions for the participation of traditional structures and their representatives in consultation mechanisms with local governments**

Same as mentioned in i & ii.

**- Reserved seats in consultative boards or separate consultation mechanisms?**

In settled areas, almost all the members are elected and there are no reserve seats for traditional leaders, however, traditional leaders are selected in an Agency Council of 30% of the total seats.

**- Value given to traditional leadership's views and choices over that of other groups?**

The societal norms sanction respect for elders. The views of the traditional leaders are respected; but their roles and opinions are increasingly being questioned.

**iv. Customary law (land titles, marriage, conflict management, natural resources allocation, etc.) and national legislation:**

**1. Level of recognition (whole / partly → which provisions?)**

- During the British Rule in the united India, E. G. Hastings initially attempted in 1869-74, to compile a record of local customs about the inheritance and transfer of property and listed whether particular rights originated in Islamic 'law' or clan 'custom'. Hindu law codes had also been compiled and consulted by legal authorities to resolve personal and property disputes. Punjab 'customary law' was codified to provide guidance for the resolution of disputes according to customs and religious injunctions. All suits regarding inheritance, marriage, caste and other religious usages or institutions were to be governed by the personal laws of the Hindus and Muslims respectively under 27<sup>th</sup> Article of Regulation II of 1772.
  
- Customs and traditions have a specified role, pertaining to civil matters. Small Causes Court could decide petty cases in the light of traditions and customs prior to the civil Court Ordinance of 1972. Customs and traditions could be used for resolution of issues by Committees and bodies while assuming judicial functions under sporadic enacted laws, which is less significant in terms of subordination to enacted laws in the settled areas of NWFP. Furthermore, Jirga, a traditional organization, had the validity to resolve disputes under the Arbitration Act.

**2. Type of traditional judicial functions and mechanisms recognized**

To a great extent, the role of the customary law has been narrowed by the legislative laws over the years. Traditions and customs are in operation wherever they are recognized under the enacted laws. For instance, customs and traditions are relevant facts under the *Qanun-e-Shahadat* (Law of Evidence) Order, 1984,

whereby a custom is an admissible piece of evidence pertaining to a subject of dispute.

Similarly, under the Local Government Ordinance 2001, the Arbitration Act 1940, the Muslim Family Laws Ordinance 1961, Forest Ordinance 2002, etc., recognize customs and traditions for the settlement of disputes. The identification and use of traditions and customs are not very clearly dealt by the legislature, but these may be applied by the committee and arbitrators to settlement of dispute as per the above referred enacted laws.

After the annexation of the North-West Frontier Province by the British in 1848, the first Regulation known as the 'Frontier Crimes Regulation of 1871,' was promulgated for the suppression of crime in the frontier district. To make it more effective, "The Punjab Frontier Crimes Regulation of 1887", was issued in 1871. Under the new Regulation, the Council of Elders could award a sentence of rigorous imprisonment up to seven years. Offences punishable with death or transportation for life were deemed to be punishable with rigorous imprisonment up to ten years. Another, revised draft as 'The Frontier Crimes Regulation 1901' was brought on the statute book, which was not materially different from the earlier Regulation. Under section 8 and 11 empowered the Deputy Commissioner (DC) to refer both civil disputes and criminal cases to the Council of Elders for decision. The D.C, (the Political Agent in an Agency) and the Commissioner continued to exercise powers like blockade of hostile or unfriendly tribes, infliction of fines on communities where murder or culpable homicide was committed or attempted or where they were found accessories to the crime, forfeiture of remission of revenues, etc., forfeiture of public emoluments in cases of persons guilty of serious offences or conniving at crime, prohibition of erecting new villages or towers, order of removal of villages, demolition of buildings and regulation of *hujras* and *chauks*, etc.<sup>19</sup>

---

<sup>19</sup> "Section 8 and 11 of the FCR, 1901 which provided for reference of civil and criminal cases to Council of Elders were only applicable to Pathans and Baluchis through the provision existed that the Regulation could be extended to such other classes as the Provincial Government might by notification in the official Gazette, declare to the subject thereto. The Regulation to the first instance extended to six districts, namely Mardan, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan."

The special procedure was initially meant for the trial of persons accused of murder or other heinous offences. The scope of 1901 Regulation was enlarged; the D.C was authorized to refer all cognizable cases within the jurisdiction of a court to the decision of a Council of Elders. The power of awarding sentence of imprisonment was also enhanced by the Regulation from seven years to fourteen years.

The FCR empowers the Commissioner, DC /PA to make references to the Council of Elders even in respect of civil disputes under circumstances specified in section 8 of the regulation:

- Composition of the Jirga;- under its original provisions, the D.C had to nominate three or more persons, according to the Pathan, Baluch or other usage, to constitute a Council of Elders, whether officials or not, which was convened by D.C, and presided over by a Magistrate invested with powers under section 30 of the Code of Criminal Procedure 1898.
- There is, however, no quorum fixed for the meeting of the Council of Elders nor is it required to hear evidence in support of prosecution and the defense as enjoined by the Criminal Law Act, 1963. The Regulation only requires the Council to come to a finding after such inquiry as may be necessary and after hearing the accused person.
- Another important feature of the Regulation is that in case of conviction under section 302 and 396 of Pakistan Penal Code, the immovable property of the accused is liable to forfeiture whereas, there is no such provision in the Act.
- The Act provides that an appeal may be preferred against the order of the District Magistrate to the Commissioner. The Regulation, on the other hand, makes no provision for appeal. It only confers revision powers on the Commissioner.
- There is also a marked departure in the West Pakistan Criminal Law Act in so far as the provision relating to preventive action are concerned.

Under the Regulation, the Commissioner and the D.C enjoy much more extensive powers than under the analogous provisions of the Act.

The rationale for the introduction of these Regulation, subscribe to the notion that British judicial system, with its lawyers and its appeals and its European scale of crime values, was hopelessly out of accord with Pakhtun sentiments, not only in the tribal territory but within the districts also. The FCR authorizing settlement by customary methods, of quarrels arising out of the blood-feuds mostly related to issues such as *zun* (woman), *zar* (money), *zamin* (land) generally affecting Pakhtun honor. The magistrates were given the power to withdraw such cases from the ordinary courts and submit them for arbitration by a jirga”.<sup>20</sup>

### **3. Traditional sanctions and imprisonment**

The FCR served the purposes of an assurance to the tribal *Maliks*, *Sardars* and people in general that British Sarkar had no intention to interfere with their way of life. The greatest evidence was that they were allowed to settle their *maamilat* (affairs) in accordance with their own established customs and usages. In the name of law and order and peace in the area, these laws are still operative in FATA. The Political Administration can get hold of any individual or a group where sufficient evidence was not available to justify an order of conviction in an ordinary court of law. FCR impose Collective Territorial Responsibility on all the tribes which include heavy fines, economic blockade, imprisonment, forfeiture of movable and immovable property, burning and destruction of houses.

Besides, FCR the tribal customs also sanction social boycott in case of noncompliance with collective jirga decisions, exile of the offenders, *sawara* (in case of murder, a compromise is made to marry a daughter or sister of the aggressor to the aggrieved one, the rationale is to turn enmity with marriage relationships), *nanawati*, *qisas*, *diyat*, and killing in case of *toor* (adultery) etc, etc.

#### **4.2. Political Process:**

- i. Describe the political process which led to the proposed decentralization reform.**

---

<sup>20</sup> Olaf Caroe, *The Pathans*, pp.353, 354.

In section 1.3, brief on the status of decentralization and responsibilities of Local Government details are given.

**ii. Relationship between ruling party(ies) and traditional structures: shared interests or competing? Traditional leaders and electoral campaigning**

In the political history of the NWFP, the traditional leaders were generally the pillars of political parties since pre-independence days. On occasions, they were replaced by new leaders from new moneyed class as well as religious people. In 2002, the MMA swept the elections in NWFP. In this election, the unknown and lower middle class candidates from the religious parties replaced major prominent and influential traditional leaders belonging to various political parties.

In pre-2002 era the interests of the traditional leaders and elected representative were one and the same. While in post 2002 election period, interests of the traditional leaders and elected leaders are opposite. New religious leadership has encroached into the territory of the traditional leaders.

**iii. Influence of civil society on present or forthcoming decentralization reform**

Since the independence of the country in 1947, there have been strong political movements against the central authority which led to the breakup of the country in 1971. Later on too, the provincial rights movement has been demanding more rights to the provinces. As the NGOs phenomenon emerged in 1990s, it also played a role in the devolution of power and decentralization of authority. Moreover, NGOs advocacy groups plead for the human rights, freedom of press, women rights, child labor, etc. while the Development NGOs raise the voice in favor of the poverty stricken masses for the provisions amenities at the gross roots level.

The Government of Gen. Musharraf in 1999 also appointed NGOs representatives in Federal and Provincial cabinet as ministers. The Local Government Plan 2000 had two components, first the devolution of power, which aimed at devolving the political power at gross root level and empowering the citizen to make political and economic decisions, secondly, the decentralization of authority which aimed at the

decentralization of government functions at district level. The idea of district government proposed at that time gave high priority to provision of civic facilities at the gross-roots level. This system also incorporated demands of NGOs into the system. This suggested inclusions of NGOs representatives at different levels in district and above all, reservation of 30% seats for women and certain number of seats for minorities and laborer at the district assemblies. Because of this, women and disadvantage groups such as laborers, and minorities can fight for the rights at district level.

#### **4.3. Global factors:**

##### **i. Influence of foreign institutions on present or upcoming decentralization process and the roles of traditional structures played in it.**

The international development institutions (both bilateral and multilateral) played a key role in supporting the decentralization program in Pakistan. Their support was both financial and technical. They supported this program through capacity building approach with the help of training programs and advisory services both at political such as Nazim, Naib Nazim, councilors level as well as at the level of government functionaries.

These Agencies supported this program in order to promote good governance, and to bring transparency, and accountability at governmental level. As it was a bilateral or multilateral arrangement between government and institutions, therefore, the traditional structure did not have any role in it.

##### **ii. Decentralization and country-wide economic reform program: link / rationale / risks**

The country wide economic reform program of the present government consists of increasing economic growth rate, accelerating denationalization and privatization program, increasing foreign reserves, reducing poverty and bringing economic stability to the country. At macro level, this program has no link between the economic reforms and decentralization. However, the poverty alleviation program is directly linked to the district government system. The district government program

has provided a platform for the government, foreign development agencies, NGOs, etc., to make poverty reduction interventions in poverty stricken areas at the grass roots level through the district government. A Major thrust of the decentralization program has been social in nature as it tends to provide social services such as education, health, clean drinking water, sanitation facilities etc, at district level.

The decentralization program has challenged the monopoly and interests of certain vested groups such as there is a tug of war between bureaucracy and members of the National and Provincial assemblies, the provincial government and the representative of district government especially the Nazim and the members of the local government. Since the ruling party at the provincial level does not have sizable share of its party members at district level, it has created tension between the MNAs and MPAs against the district Nazim. This tug of war hampers smooth functioning of district government in terms of allocation of resources, provision of development schemes, and transfer of government officials to unattractive positions.

Only four or five districts among the 24 districts of the NWFP generate some revenues, the remaining districts are resources deficient and depend on grants from the government; therefore, it can cause disparities among the districts in terms of development.

**iii. Decentralization and regional political stability: how would integration of traditional structures in local government have an effect on regional ethnic tensions, if any?**

In settled areas, due to a long history of political process of around 100 years, the electoral process has gained strength and all members in all representative bodies are elected. However, in FATA the tribal structure is strong, therefore, the traditional representing their tribes and clans. If brought together at any forum, it will help in the overall dispute resolution among tribes, and different groups. This certainly reduces conflicts, disputes, and tension and will bring stability in the region. This approach has been successful in FATA for centuries.

## 5. Conclusions (max. 2 pages)

### 1.1. Prospects and main challenges for transformation of the internal structures, the functions and roles of traditional administration in local governance and development.

Traditional Pakhtun society is at two distinct stages of development; the settled districts have achieved a modern statehood where modern institutions such as legislature, executive, judiciary, and elected local government are functioning. The Constitution ensuring political representation, fundamental human rights, and rule of law has created a civil society that has replaced the traditional structure to a great extent. The inefficient and ineffective delivery of services such as justice, health, education, and security etc., are the major concern and has created not only discontentment amongst people but also contempt towards rampant corruption, lack of transparency, bureaucratic lethargy and alienation. Delay, especially in delivery of justice, has made the system more vulnerable to challenges such as the armed insurgency of Tehrik-Nifaz-i-Shariat-i-Muhammadi, TNSM (the Movement for Implementation of Muhammadan Shariah) in Malakand Division in 1990s, and other religious organizations in the name of speedy and inexpensive justice, advocating the implementation of Islamic Sharia Laws instead of modern courts and democracy in NWFP and FATA.

The delay in justice (*Thana* and *Katachery* culture) has made FATA people more skeptical to adopting justice system prevalent in the settled areas. They prefer to live under their traditional system of customs and traditions which ensure quick and inexpensive justice through their traditional Jirga. However, the prevailing system of bureaucratic rule supported by the FCR, denying basic human and political rights have forced the people to raise their voices in favor of political, legal, administrative and social reforms. It includes amendments in provisions of the FCR violating basic human rights, extension of elected local government, introduction of Political Parties Act, representation in the NWF Provincial Assembly, accountability, subordination of bureaucracy to popular will and jurisdiction of superior courts.

The role of traditional structure in Pakhtun society has been mostly confined to the provision of justice and maintenance of law and order through Jirga. This traditional institution could only deal with the needs and demands of the simple life, not complex issues, such as state security, provision of justice, socioeconomic development, and political participation, generally considered to be the domain of modern state institutions. Moreover, the intermediary role between the state and the people, the domain of the traditional leaders, has increasingly been performed by civil society organizations, such as right groups, professional and welfare associations and NGOs involved in advocacy as well as socioeconomic development.

The challenge is to synchronize the functioning of jirga to cater to the needs and wants of modern times in terms of protecting human rights, especially women rights, managing natural resources, planning, implementing and monitoring developmental schemes at local level. In this way, the transformation of the internal structures, the functions and roles of traditional administration in local governance and developmental may have a mix of both modern and traditional. It requires change in the composition of Jirga in terms of introducing new, educated and professional leadership, inclusion of women, marginalized sections besides the traditional leaders.

Moreover, the legitimacy of traditional leadership based on age, family, and kinship relationships has become increasingly irrelevant in the face of formidable changes in the field of education, information technology, economics, culture, urbanization, migration, social mobilization and rise in democratic values. This demands new legitimacy based on principles of representation through elections, professional competence, merit, transparency and inclusiveness to transform their traditional institutions. It will unleash the creative energy of people and strengthen their resolve for better quality of life and empowerment.

## **5.2. Lessons learned for external support to changes of traditional structures and their relationship with local governments.**

Settled districts have moved from traditional to relatively well established, well manned, elected modern state institutions, having required financial and technical support. However, FATA is still a traditional setup, devoid of elected local government institutions, though these institutions are very near to tribal culture and traditions. There is, therefore, an urgent need to introduce local government system, elected Council, including Union and Tehsil with elected Nazims and Naib Nazims, instead of nominated Agency Councils. It will provide a desired breeding ground for the growth of future leadership and a training pitch for the development and enrichment of democratic culture in the area.

**The** traditional structure and leadership is still a living force, which requires integration by making it more formal and an integral part of the modern state institutions. Its representative characteristics will provide the desired legitimacy, formalism durability and continuity. To develop Jirga as a formal institution, there is a strong need to study the institution of Jirga and to recommend its new structure and functions. The proposed structure can be supported through skill development programs in the areas of justice, conflict resolution, community mobilization, community welfare, and natural resource management etc.

The integration of both these structures will not only empower the people in managing their own affairs but also facilitate the delivery of services in an efficient and effective manner. All development schemes are currently carried out by state machinery and the real stakeholder are not involved in any development initiatives. It will ensure ownership of the people and overcome the sense of alienation to a great extent.

An elected Agency Councils must be fully revitalized in order to strengthen democratic values and traditions to ensure maximum participation of the tribal people in decision-making processes. No efforts have ever been made to promote a formal culture of self-government.

State institutions are the vehicle of change and development. All resources are channeled through the state departments, though, recently external donors and aid

agencies have funded some NGOs. Agency administration is the sole medium of development at local level. FATA practically stands excluded from the political life of the country and cannot be leftover to the exclusive discretion of the federal, provincial and local bureaucracy. The recently introduced Agency Council, with relentless dependence on the administrative and economic powers of the Political Agent's office has created a jeering among the tribal people.

- The controlling functions of the bureaucracy are to be replaced by the public participation through the institution of local government.
- The role of the district and agency administration needs to be strictly defined about policy implementation, monitoring and documentation.

### **5.3. Contributions and limitations of traditional administration to a more responsive, accountable and inclusive local governance and local development.**

The traditional institutions and leadership can play a vital role in local governance and local development because they are connected with the people of the area. They can be used as a strong link for an intermediary role between the people and local government institutions. People prefer to respond to the voice and verdict of Jirga as a binding force. The community people will have a strong sense of ownership of all the activities performed through their Jirga.

There should be a Jirga at village level as a symbol of people assembly. The Jirga as a representative institution of families, clans, khel and tribes provide validity and legitimacy to decisions binding on all. This is an additional strength of the traditional Jirga as compared to elected institution of the local government where Khel and clans are not accountable and thus lack a sense of ownership. The involvement of traditional institutions and leadership will appeal to the community and will also act as deterrence in case of non compliance by individuals and state functionaries.

There are some inherent limitations associated with the traditional structure and institutions as already mentioned including:

- The role of traditional jirga is informal and lack standardized practices. It may be made effective if formed of credible people and its practices are geared towards the interests of the community. All the affairs of the Jirga have to be open, accountable, transparent and inclusive.
- The non inclusive character, especially in case of women and marginalized people is an obvious limitation.
- Jirga members are mostly illiterate and lacking skills and are not adequately trained to undertake the overall affairs of community ranging from dispensation of justice to local development.
- Abject poverty in rural areas is a great hurdle in generation of required financial resources.
- The traditional structure and institutions are not an integral part of local governance, thus, they are not consulted regarding local community issues.
- Traditional institutions mostly rely on age old customs and traditions which do not necessarily cater to the needs and demands of the present times. It requires an effective policy of planned obsolescence to get rid of some of the ossified practices.