

PAKISTAN'S TRIBAL AREAS: APPEASING THE MILITANTS

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PAKISTAN'S TRIBAL AREAS: APPEASING THE MILITANTS

EXECUTIVE SUMMARY AND RECOMMENDATIONS

Taliban and other foreign militants, including al-Qaeda sympathisers, have sheltered since 2001 in Pakistan's Pashtun-majority Federally Administered Tribal Areas (FATA), seven administrative districts bordering on south eastern Afghanistan. Using the region to regroup, reorganise and rearm, they are launching increasingly severe cross-border attacks on Afghan and international military personnel, with the support and active involvement of Pakistani militants. The Musharraf government's ambivalent approach and failure to take effective action is destabilising Afghanistan; Kabul's allies, particularly the U.S. and NATO, which is now responsible for security in the bordering areas, should apply greater pressure on it to clamp down on the pro-Taliban militants. But the international community, too, bears responsibility by failing to support democratic governance in Pakistan, including within its troubled tribal belt.

The military operations Pakistan has launched since 2004 in South and North Waziristan Agencies to deny al-Qaeda and the Taliban safe haven and curb cross-border militancy have failed, largely due to an approach alternating between excessive force and appeasement. When force has resulted in major military losses, the government has amnestied pro-Taliban militants in return for verbal commitments to end attacks on Pakistani security forces and empty pledges to cease cross-border militancy and curb foreign terrorists.

The government reached accords with pro-Taliban militants in April 2004 in South Waziristan and on 5 September 2006 in North Waziristan. These were brokered by the pro-Taliban Jamiat Ulema-e-Islam (JUI-F), the largest component of the Muttahida Majlis-i-Amal (MMA), the ruling six-party religious alliance in Northwest Frontier Province (NWFP) and Musharraf's coalition partner in the Balochistan provincial government. Following the September accord, the government released militants, returned their weapons, disbanded security check posts and agreed to allow foreign terrorists to stay if they gave up violence. While the army has virtually retreated to barracks, this accommodation facilitates the growth of militancy and attacks in Afghanistan by giving pro-Taliban elements a free hand to recruit, train and arm.

Badly planned, poorly conducted military operations are also responsible for the rise of militancy in the tribal belt, where the loss of lives and property and displacement of thousands of civilians have alienated the population. The state's failure to extend its control over and provide good governance to its citizens in FATA is equally responsible for empowering the radicals. The only sustainable way of dealing with the challenges of militancy, governance and extremism in FATA is through the rule of law and an extension of civil and political rights. Instead, the government has reinforced administrative and legal structures that undermine the state and spur anarchy.

FATA is tenuously governed because of deliberate policy, not Pashtun tribal traditions or resistance. Since 1947, Pakistan has ruled it by retaining colonial-era administrative and judicial systems unsuited to modern governance. Repressive structures and denial of political representation have generated resentment. To deflect external pressure to curb radicalism, the Musharraf government talks about reforms in FATA but does not follow through. Instead, appeasement has allowed local militants to establish parallel, Taliban-style policing and court systems in the Waziristans, while Talibanisation also spreads into other FATA agencies and even the NWFP's settled districts.

It is equally important to generate broad-based economic development. Neglected for decades, FATA is one of Pakistan's poorest regions, with high poverty and unemployment and badly under-developed infrastructure. Located astride the Afghanistan border and a major regional transit route, its economy is dependent on smuggling. Since the outbreak of the Afghan civil war, there has been enormous growth in drugs and weapons trafficking. Militancy and extremism in tribal agencies cannot be tackled without firm action against criminality. But for this, economic grievances must be addressed and the law of the land extended over and enforced in FATA.

RECOMMENDATIONS

To the Government of Pakistan:

1. Integrate the Federally Administered Tribal Areas (FATA), following extensive consultations with local stakeholders, into Northwest Frontier Province as a Provincially Administered Tribal Area (PATA), under executive control of the province and jurisdiction of the regular provincial and national court system and with representation in the provincial legislature.
2. Remove restrictions on political parties in FATA and introduce party-based elections for the provincial and national legislatures.
3. Respect and implement Article 8 of the constitution, which voids any customs inconsistent with constitutionally guaranteed fundamental rights.
4. Re-establish the writ of the state and counter militancy in FATA by:
 - (a) disarming militants, shutting down terrorist training camps and ending the flow of money and weapons to and recruitment and training by Taliban and other foreign or local militants on Pakistani territory;
 - (b) prosecuting those responsible for killing civilians and government officials; and
 - (c) preventing militants from establishing parallel administrative structures, demolishing those that exist and prosecuting those who are delivering private justice.
5. Generate employment in FATA by:
 - (a) creating manufacturing/industrial units and providing technical assistance, subsidies and other incentives for agricultural activities;
 - (b) developing the area's natural resources, including minerals and coal; and
 - (c) developing human resources by investing in education, including vocational training schools and technical colleges.
6. Open FATA to the media and allow independent human rights monitors to investigate possible human rights violations and abuses by the civil administration or law-enforcement agencies.

To the Government of Afghanistan:

7. Work with Pakistan and NATO-ISAF in the military-to-military Tri-Partite Commission to ensure greater coordination in curbing cross-border militancy.

To the United States and the European Union:

8. Press the Pakistan government to take action against pro-Taliban elements in FATA and publish monthly NATO figures of cross-border incursions into Afghanistan to encourage it to do more on its side of the border.
9. Make support for Reconstruction Opportunity Zones in the tribal belt conditional on steps by Pakistan to end Taliban-style parallel administrative and judicial structures and ensure participation of moderate stakeholders in identifying and implementing development projects.
10. Press President Musharraf to allow free, fair and democratic elections in 2007 and give political and economic support for the process.

Islamabad/Brussels, 11 December 2006

PAKISTAN'S TRIBAL AREAS: APPEASING THE MILITANTS

I. INTRODUCTION

In 2006 Afghanistan has witnessed the most intense and deadly insurgent violence since the Taliban's fall five years earlier. The Taliban, Hekmatyar's Hezb-e Islami and fighters linked to al-Qaeda have used Pakistan's Federally Administered Tribal Areas (FATA) bordering on Afghanistan's south eastern provinces, to regroup, re-arm and launch cross-border attacks on Afghan and international troops.¹ Local militants, who call themselves the mujahidin or Taliban, with little to distinguish them from their Afghan counterparts, harbour and actively support the insurgents and fight alongside them in Afghanistan.²

Located along Pakistan's north western border with Afghanistan, FATA consists of seven semi-autonomous agencies or administrative districts – Bajaur, Khyber, Kurram, Mohmand, Orakzai, South Waziristan and North Waziristan. It also includes tribal areas adjoining the Peshawar, Kohat, Bannu, and Dera Ismail Khan districts of the Northwest Frontier Province (NWFP).³ Pashtun

¹ Taliban presence and local support from the ruling Islamist Pashtun party, the Jamiat Ulema-i-Islam-Fazlur Rehman (JUI-F) in Balochistan, bordering on southern Afghanistan, were discussed in Crisis Group Asia Report N°119, *Pakistan: The Worsening Conflict in Balochistan*, 14 September 2006. Crisis Group examined the links between Musharraf's military government and the Islamist parties in Asia Report N°95, *The State of Sectarianism in Pakistan*, 18 April 2005, and Asia Report N°49, *Pakistan: The Mullahs and the Military*, 20 March 2003. On the cross-border nature of the Afghan insurgency, see Crisis Group Asia Report N°123, *Countering Afghanistan's Insurgency: No Quick Fixes*, 2 November 2006.

² Pakistani militants in FATA call themselves "mujahidin" or "Taliban". For the purposes of this report, they are referred to as "local militants" or "pro-Taliban militants" to distinguish them from the Afghan Taliban.

³ Article 246(c) of the 1973 Constitution of Pakistan (referred to hereafter as the "constitution") states: "Federally Administered Tribal Areas includes (i) Tribal Areas, adjoining Peshawar district; (ii) Tribal Areas, adjoining Kohat district; (iii) Tribal Areas, adjoining Bannu district; (iv) Tribal Areas adjoining Dera Ismail Khan district; (v) Bajaur Agency; (vi) Orakzai Agency; (vii) Mohmand Agency; (viii) Khyber Agency; (ix) Kurram Agency; (x) North Waziristan Agency; and (xi) South Waziristan Agency".

tribes predominantly populate these agencies, with the Durand Line of 1893, the 2,500-kilometre border drawn by the British colonial rulers of India between today's Pakistan and Afghanistan,⁴ dividing tribes on the two sides and separating the areas that now compose FATA from Afghanistan.⁵

Following the U.S.-led military intervention in Afghanistan in 2001, Pakistan deployed its military for the first time in FATA, pressured by Washington to prevent al-Qaeda and the Taliban from gaining sanctuary in the tribal belt. From 2004 to 2006, urged by the U.S. to act against al-Qaeda and Taliban there and curb cross-border attacks, the military launched what it called anti-terrorism operations in South and North Waziristan Agencies. It claims to have detained or killed scores of foreign terrorists and local militants harbouring them. The militants in turn have killed some 600 military and paramilitary personnel as well as many government officials.⁶ An information blackout makes accurate assessments difficult but the campaign to eradicate terrorists and deny them sanctuaries – key stated goals – has not succeeded.⁷ Infiltration into Afghanistan appears to have increased since the military, having suffered major losses, opted for a policy of appeasement of the FATA-based militants, signing peace accords, first in South Waziristan in April 2004, then in North Waziristan in September 2006.⁸

⁴ In the nineteenth century, the British used this strategic border area as a buffer against Russian expansion from Central Asia and to assert control over Afghanistan.

⁵ The Wazirs and Mohmands are among the many tribes that straddle the Durand Line.

⁶ Rahimullah Yusufzai, "Accord and Discord", *Newslines*, October 2006.

⁷ "Interview with ISPR [Inter Services Public Relations] chief [Major General] Shaukat Sultan", *Herald*, May 2006.

⁸ According to the report of the UN Security Council mission to Afghanistan, 11 to 16 November 2006, S/2006/935, 5 December, emphasising the cross-border dimension, "Over the past few months, ISAF had detected a 70 per cent and 50 per cent increase, respectively, in security incidents in the Afghan provinces of Paktika and Khost, which neighbour North Waziristan". The mission "encouraged Pakistan to monitor the North Waziristan agreement with a view to ensuring that the cross-border impact of this and any future agreements are positive to peace and stability".

The use of force, economic blockades and negotiations in the Waziristan Agencies have had little success in forcing the local militants to end their support for the Taliban and its allies, including al-Qaeda sympathisers, and the indiscriminate damage has alienated the local population and displaced thousands of civilians caught in the crossfire. While ill-planned and poorly implemented military operations have helped the Taliban cause, allowing exploitation of local alienation in South and North Waziristan, unconditional peace deals have proved equally counter-productive, empowering the militants who are establishing administrative and judicial structures modelled on Taliban rule. With the conflict showing no signs of abating, Talibanisation is spilling over into other FATA agencies and even into NWFP's settled districts, posing a threat to Pakistan's stability as well as Afghanistan's security.

The military government claims that it is well on its way to eliminating militancy and extremism in FATA by adopting a comprehensive approach that encompasses security, governance and development. Indeed, it is the state's failure to extend its control over and provide good governance to its citizens in FATA that has enabled the militants to mount their powerful challenge. However, the Musharraf government appears bent on consolidating colonial-era administrative, judicial and political structures that set the region apart from the rest of the country, creating, for all practical purposes, a no-man's land, without rule of law and representative institutions.

This report examines the interlinked issues of governance, militancy and extremism in FATA, while placing special emphasis on the impact of the military's strategies in South and North Waziristan. Identifying the challenges the Pakistani state faces in establishing its writ over FATA, it strongly cautions against appeasement and recommends instead broad institutional, political and economic measures to curb militancy and extremism in the tribal belt.

II. FATA ADMINISTRATION

The Durand Line has been a source of friction with Afghanistan since Pakistan's independence in 1947. Successive Afghan governments have refused to acknowledge a frontier drawn by the British as the international border and have periodically made irredentist claims on Pakistan's Pashtun-majority NWFP, FATA and the Pashtun belt in Balochistan.⁹ Pakistan has covertly supported Islamist Pashtun proxies in Afghanistan – both to counteract and dampen Pashtun ethnic nationalism within its own borders and to exercise influence over its neighbour. It is within this context that Pakistan has retained FATA's separate status, using it and the tribes that straddle the border, like India's British rulers, as a buffer against Afghan intervention and to interfere in Afghanistan.

In British India, the area that is now Pakistan's NWFP was first administered by a chief commissioner as part of Punjab province. In 1901, NWFP was granted the status of a separate province and divided into Settled Areas ("Districts") and Tribal Areas ("Agencies"). Under the Governor General of India, the NWFP governor supervised the administration of both settled and tribal areas. Pakistan retained this system of administration, with the NWFP governor administering FATA as the agent first of the governor general and then the president.¹⁰

The British policy towards the tribal belt was based on a mix of persuasion, pressure and armed intervention. To ensure control, London stationed troops in what is now FATA but also granted these areas a semi-autonomous status in return for tribal acquiescence to colonial rule.¹¹ This special status was codified in treaties that required maliks (tribal elders) to keep the border passes open for trade and strategic purposes in return for allowances and subsidies they could distribute among their tribes. The Indian Independence Act of 3 June 1947 abrogated the special treaties. Pakistan opted not to base troops in the region after the maliks of Khyber, Kurram and South and North Waziristan Agencies signed an Instrument of Accession with Governor General Mohammad Ali Jinnah in return for continued allowances and subsidies. The government also retained the region's semi-

⁹ Crisis Group Report, *The Worsening Conflict in Balochistan*, op.cit. See also Frederic Grare, "Pakistan-Afghanistan Relations in the post-9/11 Era", *Carnegie Papers*, No.72, October 2006, p.8.

¹⁰ The 1956 constitution abolished the position of governor general and replaced it by the president as head of state.

¹¹ Mumtaz A. Bangash, "Administrative and Political Development of the Tribal Areas: A Focus on Khyber and Kurram", Ph.D Dissertation, Area Study Centre (Central Asia), University of Peshawar, 1996.

autonomous status, with the governor general assuming direct administrative jurisdiction.¹²

Although Pakistan withdrew its army from FATA, it retained colonial administrative and legal structures, codified in a special legal framework, the Frontier Crimes Regulations (FCR) 1901. By doing so, it chose to treat FATA's population as separate from and unequal to other Pakistani citizens. FATA today is formally a part of Pakistan but more closely resembles a colony whose population lives under laws and administrative arrangements that set it apart from the rest of the state. It is this "process of imposed definitions, misperceptions and insensitive institutional imperatives [that] continue to hamper stability, economic improvement and self-determination" in NWFP's tribal areas.¹³

While FATA's ambiguous status has been retained, the state justifies its failure to meet its obligations to the citizens there on the grounds of Pashtun tribal customs and norms. FATA is not an ungovernable territory but the state has elected to govern it through local proxies and draconian colonial-era administrative structures and laws, depriving locals of constitutionally guaranteed civil and political rights and protection of the courts.

It is this poor governance, combined with a long history of official support for Islamist Pashtun proxies in Afghanistan, which explains the growth of militancy and extremism in Pakistan's Pashtun-majority tribal region. Yet, in the absence of international concerns about militancy and extremism in FATA engendered by the presence of Western troops on the Afghan side of the Durand Line, it is unlikely that Pakistan's military decision makers would have even changed their rhetoric, let alone their policies, towards the tribal belt.

A. FATA AGENCIES

FATA, 27,220 square kilometres in size, shares a 600-km. border with Afghanistan.¹⁴ With a predominantly Pashtun population of 3.17 million,¹⁵ according to the 1998 census, it has seven administrative agencies:

- **Bajaur**, the smallest in size, 1290 sq. km., with a population of around 595,000, borders on Afghanistan's Kunar province. Tarkani and Utmankhel are its two main tribes.
- **Khyber Agency**, 2576 sq. km. in area, draws its name from the historic Khyber Pass, which links NWFP and Afghanistan's Nangarhar province. The Afridis and the Shinwaris are the major tribes; the population is about 547,000.
- **Kurram Agency**, 2576 sq. km. in area, with a population of around 450,000, is inhabited by the Turi and Bangash tribes and borders Afghanistan's Nangarhar province in the north west and Paktia province in the south west.
- **Mohmand Agency**, 2296 sq. km. in area, gets its name from the majority Mohmand tribe. The population is some 334,000. Bajaur agency is to the north; the Malakand division of NWFP to the east. Peshawar, NWFP's capital, is to the south east and Afghanistan to the west.
- **Orakzai**, 1538 sq. km. in area, the only FATA agency that does not share a border with Afghanistan, derives its name from the majority Orakzai tribe and has a population of 225,000. Kurram agency lies to the west, Khyber agency to the north, Kohat district to the south and Peshawar district to the east.
- **South Waziristan**, the largest of the agencies, 6,620 sq. km. in area, has a population of around 430,000. The two main Pashtun tribes are the Wazirs and Mehsuds. North Waziristan Agency and Dera Ismail Khan district are to its north and east respectively, while Balochistan is to the south and Afghanistan to the west.
- **North Waziristan**, the second largest agency, 4707 sq. km. in area, has a population of about 361,000. The two main tribes are the Wazirs and Dawars. South and North Waziristan Agencies border Afghanistan's Paktika and Khost provinces.

B. INDIRECT RULE

FATA is geographically contiguous to NWFP and shares with it and the Provincially Administered Tribal Areas (PATA) a common Pashtun-majority population, history and culture, but has a separate status from both. NWFP is one of Pakistan's four federal units, governed by an elected provincial government with the centrally-

¹² Three agencies were created after independence: Mohmad in 1951 and Bajaur and Orakzai in 1973.

¹³ Robert Nichols, "The Frontier Tribal Areas: 1840-1990", Occasional Paper 34, *The Afghanistan Forum*, August 1995, p. 3.

¹⁴ Hassan Abbas, "Profiles of Pakistan's Seven Tribal Agencies", *Terrorism Monitor*, Jamestown Foundation, 4, no. 20, 19 October 2006.

¹⁵ All population figures are from the 1998 census. Unofficial estimates of FATA's population range from 3.5 to 7 million. Behroz Khan, "ANP finally wakes up", *the News*, 20 November 2006; Barnett R. Rubin and Abubakar Siddique,

"Resolving the Pakistan-Afghanistan stalemate", U.S. Institute of Peace (USIP) Special Report, no. 176, October 2006, p. 12.

appointed governor acting solely as the representative of the federal government. PATA falls under the NWFP chief minister's remit and is represented in NWFP's provincial legislature.

Article 247 of the constitution states: "Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of the province shall extend to the Provincially Administered Tribal Areas".

NWFP's provincial governor exercises executive authority in FATA as the president's representative. The president enjoys discretionary powers in the 1973 constitution to "make regulations" with respect to "the peace and good governance" of FATA.¹⁶ According to the government's official rules of business, the responsibility for the "overall administrative and political control of FATA" falls under the federal ministry of states and frontier Regions (SAFRON).¹⁷ While SAFRON, as a federal ministry, is answerable to the elected prime minister and national assembly (lower house of parliament), it is virtually irrelevant in policy implementation or execution in FATA and acts mainly as a conduit for routing federal funds. Ultimate executive authority over FATA rests with the president and is exercised through his agent, the provincial governor.

An analyst notes that the "executive authority of the president and the provincial governor is extended to the areas without any constitutional safeguards to preserve and maintain the basic human rights of people....[This] executive authority, right from the president down to the political *naib-tehsildar* is [expansive], unchecked [and not affected by] legislative provisions".¹⁸

The political agent (PA hereafter), a federal, and at times provincially recruited, bureaucrat heads the local administration of each FATA agency.¹⁹ Backed by

*khassadars*²⁰ and levies (tribal militias), as well as paramilitary forces that operate under army control, the PA exercises a mix of extensive executive, judicial and revenue powers and has the responsibility of maintaining law and order and suppressing crime in the tribal areas.²¹

Reflecting the continuity of indirect colonial rule, the state relies on the services and collaboration of paid intermediaries, such as the maliks and holders of *lungi* status to administer FATA.²² Pakistan retained the maliki system, which the British introduced to create a reliable local elite whose loyalty they rewarded with a special status, financial benefits, and official recognition of influence over the tribes. A former chief justice of the Peshawar (NWFP provincial) High Court explains: "The present system of administration embodied by the PA and the FCR is a mechanism of social control that suited the colonial needs of the British but cannot be justified by any standard of modern administration and even basic human rights".²³

The PA grants tribal elders the status of malik (with the consent of the governor) on the basis of male inheritance. But the PA can also arbitrarily withdraw, suspend or cancel malik (and *lungi*) status if he deems the individual is not serving the interests of the state. Maliks receive financial privileges from the administration in line with their tribe's cooperation in suppressing crime, maintaining social peace and in general supporting the government. Other privileges include nomination to agency councils or other local government institutions; appointment to the Jirga (council of elders) established under the FCR for adjudicating civil and criminal cases; and periodic access to the highest echelons of government, including the governor, the prime minister and the president, to represent the interests of their respective tribes.²⁴

The PA has several other tools at his disposal to divide and rule the tribes, including access to secret funds to pay informers and bribe tribesmen for information that can be used to exploit local rivalries. He can also recruit

¹⁶ Article 247 (5) of the constitution states that the "President may make regulations for the peace and good governance of the Federally Administered Tribal Areas". Article 247 (6) notes that the "President may by order direct that whole or any part shall cease to be the tribal area with the consultation of a tribal jirga".

¹⁷ The ministry is also responsible for other functions, including development plans; matters relating to the Durand Line; anti-subversion measures; administrative reforms, and payment of allowances to maliks. "Rules of Business", Government of Pakistan, made available to Crisis Group.

¹⁸ Mumtaz A. Bangash, "FATA: Towards a New Beginning", in Pervaiz Iqbal Cheema and Maqsoodul Hasan Nuri (eds.), *Tribal Areas of Pakistan: Challenges and Responses* (Islamabad, 2005), p.49.

¹⁹ An agency is normally divided into two or three sub-divisions, each under an assistant political agent. At the lowest

tier of the agency administration is the *tehsil* (sub-district), supervised by the political *tehsildar* and *naib-tehsildar*. The *tehsildar* wields police, civil and revenue powers.

²⁰ *Khassadars* are an irregular force under the PA's overall command to protect roads and other government installations and perform guard duties.

²¹ The PA also acts as each agency's development administrator and chief coordinator for provincial line departments.

²² The *lungi* is a form of official privilege and recognition granted by the political administration. It is a lower status than that of malik and is not hereditary. In practice, however, the *lungi* of a deceased is usually granted to the oldest son.

²³ Crisis Group interview, Peshawar, 13 May 2006.

²⁴ Prior to the introduction of adult franchise in 1996 maliks also were members of the National Assembly's electoral college.

khassadars from different tribes. In this way, the administration controls a source of employment which it can use to coerce recalcitrant tribes or individuals. "We can detain *khassadars* or withhold their salaries to put pressure on their families or tribes", said Azam Khan, former PA of South Waziristan.²⁵

C. REFORM?

Since the Taliban's downfall and particularly after the Pakistan military's unsuccessful operations in FATA, donors have increasingly seen governance structures there as in need of reform if militancy is to be countered in the Pashtun belt on both sides of the Durand Line. The Musharraf government has responded to pressure, initially by pledging far-reaching change, including abolition of the PA system and administrative integration of FATA with the NWFP. But its actual position, as on almost all political problems, is beset with contradictions. In April 2006, for instance, President Musharraf publicly announced his plan to end the present FATA system.²⁶ A month later, he told the All Pakistan Newspapers Society: "We want to reinvigorate the political agent institution of FATA. (The) political agent will have an agency council composed of [a] few maliks and *lungi* holders, who will make developmental plans...the political agent and FATA secretariat will be reinvigorated, and a FATA Development Authority will be created".²⁷

Instead of initiating meaningful reform, the government has taken only cosmetic steps. For instance it created a separate governor's FATA secretariat in 2002, ostensibly to eliminate bottlenecks created by multiple administrative tiers and lines of authority in administering FATA.²⁸ All line departments in FATA were brought under the purview of this secretariat, including the staff of the defunct FATA Development Corporation.²⁹ However, given its dubious legal status, the secretariat was controversial from its inception.

"Absent rules of business", said former provincial chief secretary Khalid Aziz, "the secretariat's activities and financial transactions are illegal...and a separate

secretariat casts doubt on the government's stated intention of integrating FATA with NWFP".³⁰ Academics, lawyers, journalists, politicians and former officials from FATA tell Crisis Group the secretariat is a mixed blessing at best and possibly a disaster in the making.

Some temper scepticism about the new secretariat's potential with hope the governor, who now has his own administrative machinery, can administer FATA more effectively, ending crippling dependence on a provincial bureaucracy that mainly focuses on NWFP's settled districts. "For the common tribesman who had to run from pillar to post to get even a small thing done", said a Peshawar-based former FATA national parliamentarian, "the secretariat could be a significant convenience". For others, however, the secretariat, rather than improving efficiency and coordination, has eliminated a tested system that pooled the resources of the provincial government, the governor and the FATA administration. Yet others raise the legitimate concern that the secretariat is hampered by red tape, corruption and ineffectiveness since it is staffed by regular government officials.³¹

D. JUDICIAL STRUCTURES

1. Frontier Crimes Regulations (1901)

FATA's judicial system is enshrined in the FCR (1901), a hybrid colonial-era legal framework that mixes traditional customs and norms with executive discretion.³² The British created this harsh law to manage and control their Indian Empire's restive frontier belt. Originally drafted in 1872, the FCR was promulgated with amendments in 1901 and applied by Pakistan to NWFP until 1963 and Balochistan until 1977. Unlike FATA, the Provincially Administered Tribal Areas (PATA) are subject to the jurisdiction of Pakistan's regular court system. Like the rest of the country, they have district and sessions courts from which appeals are heard in the provincial High Court and the Supreme Court of Pakistan. In 2006, there is little justification for a parallel legal system that was designed to serve colonial ends and remains outside the purview of Pakistan's judiciary.³³

²⁵ Crisis Group interview, Islamabad, 19 May 2006.

²⁶ See "FATA system to be abolished, says Musharraf", *Daily Times*, 18 April 2006.

²⁷ "Text of Musharraf's speech at APNS awards' ceremony", 26 May 2006, available at <http://www.presidentofpakistan.gov.pk>.

²⁸ The governor previously depended on the provincial chief secretary for line department personnel in FATA and on the home secretary for law and order.

²⁹ Prime Minister Zulfikar Ali Bhutto's government (1972-1977) created the FATA Development Corporation. The Musharraf government abolished it in 2002.

³⁰ Crisis Group interview, Peshawar, 11 May 2006.

³¹ Crisis Group interviews, Peshawar, May 2006.

³² Francois Teney-Renaud, "Post-Colonial Pluralism, Human Rights and the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan", *Singapore Journal of Comparative and International Law*, 6 (2002).

³³ Crisis Group Asia Report N°86, *Building Judicial Independence in Pakistan*, 10 November 2004, p.i.

The FCR concentrates discretionary police, judicial and executive authority in the political agent.³⁴ FATA is divided into three jurisdictions: inaccessible areas, administered areas and protected areas.³⁵ Inaccessible areas are those under nominal governmental authority but in which tribesmen are left to regulate their own disputes. The PA has jurisdiction, under FRC, over the administered areas, such as roads, government offices and other installations. In the protected areas, tribal jirgas deal with civil and criminal offences in accordance with *rewaj* (custom) even though the PA can take executive action to deal with offences against a public official or the interests of the state,³⁶ using force or the good offices of the maliks, depending on the gravity of the offence.³⁷

2. FCR jirga

The FCR preserves the Pashtun tribal structure of jirga (council of elders),³⁸ to which the political agent can refer civil and criminal matters.³⁹ The jirga ascertains guilt or innocence after hearing the parties to a dispute and passes verdicts on the basis of *rewaj*. However, the PA retains ultimate authority.⁴⁰

On its face, the FCR is based on the premise of cohabitation between the jirga and the political agent for the provision of speedy justice in accordance with tribal customs. But the British distorted the institution, making it subservient to the political agent and its decisions non-

binding.⁴¹ Pakistan retained this system, with the political agent initiating cases, appointing the jirga, presiding over trials and awarding punishments without even the technical possibility of revision by a regular court of law.⁴² The Senate subcommittee report on the FCR pointed out: "In its present form, the jirga under FCR though [loosely] based on Pashtun tribal customs and traditions is so designed to suit the convenience of the administration rather than meet the ends of justice".⁴³

Most FATA residents interviewed by Crisis Group supported the jirga as an efficient source of dispensing justice. In cases where neither the government nor the political agent has a stake, the process can be quicker and offer disputants more opportunity to air their grievance and negotiate than an ordinary court trial.⁴⁴ But jirga verdicts often favour those with political or economic clout at the expense of the vulnerable segments of the population, particularly women,⁴⁵ who are excluded from direct participation in the system and suffer when male members of their families are detained. Since the start of military operations in FATA in 2004, women and children have been detained under various FCR clauses to pressure tribes or individuals to hand over foreign militants.

Because the political agent handpicks members, FRC jirga verdicts tend to reflect official interests and lack public credibility. An analyst observed: "The jirga lost its credibility among the tribesmen the day it became a tool in the hands of political authorities, who converted it into a state-manipulated gathering of blue-eyed people".⁴⁶ Since the 1980s, the influence of money earned from overseas remittances and cross-border smuggling (including arms and drug trafficking) has introduced a new dimension. A lawyer pointed out: "New money is a big part of the equation. [Money] can buy anything

³⁴ See "Peshawar High Court Annual Report 2003", Peshawar, 2004, p.23.

³⁵ Shaheen Sardar Ali, "Minority Rights in Pakistan: A Legal Analysis", *International Journal of Minority and Group Rights*, 6 January 1999, pp.169-195.

³⁶ Crisis Group interview, former political agent Azam Khan, Islamabad, May 2006.

³⁷ Hamayan Khan, "The Federal Government and the Political Agent" in Cheema and Nuri, op. cit.

³⁸ The jirga relies on the Pashtun code of honour (*Pakhtunwali*), based on *melmastia* (hospitality), *nanawati* (hospitality cannot even be denied to a criminal or enemy) and *badal* (the right of revenge). The greatest tests of honour involve *zar* (gold), *zun* (women) and *zamin* (land). Settlements and punishments are derived from *narkh* (tribal precedent); the jirga can impose strong sanctions and punishments, including excommunication of a noncompliant person or clan, confiscation or *girvi* (mortgage) of property, fines and formation of a *laskhkar* (tribal militia) to punish the accused party.

³⁹ A case is referred when the political agent believes a crime has been committed or a civil dispute can lead to a blood feud or breach of peace. FCR (1901) sections 8, 11.

⁴⁰ The political agent may convict the accused in accordance with the jirga's decision, refer the case back to the jirga for review or appoint a new jirga. He may acquit or discharge the accused at his discretion in criminal cases (Section 11, clauses 3 a-c) or halt proceedings arbitrarily in civil cases (chapter III, section 8, clause 3-e).

⁴¹ Faqir Hussain, "Testing FCR on the Touchstone of the Constitution", paper presented at the FCR consultation organised by the Human Rights Commission of Pakistan (HRCP), Islamabad, 4-5 October 2004.

⁴² Crisis Group interview, Latif Afridi, lawyer and former member of the National Assembly from Khyber Agency, Peshawar, 11 May 2006.

⁴³ Report of the subcommittee of the Senate Functional Committee of Human Rights on the FCR, 31 May 2005, made available to Crisis Group. The senate is the upper house of the national legislature.

⁴⁴ Crisis Group interview, Latif Afridi, Peshawar, 11 May 2006.

⁴⁵ See "State of Human Rights in 2003", Human Rights Commission of Pakistan, Lahore, 2004, pp.33-37; also "Pakistan: The Tribal Justice System", Amnesty International, at <http://web.amnesty.org/library/index/ENGASA330242002>.

⁴⁶ Bangash, "Administrative and Political Development of the Tribal Areas", op. cit.

including a political agent and the council of elders [FRC jirga]. Justice is sold like a commodity in FATA".⁴⁷

3. Due process

Trials under the FCR do not provide the accused due process of law. There is no right to legal representation, to present material evidence or cross-examine witnesses.⁴⁸ Those convicted are denied the right of appeal to the Peshawar High Court or the Supreme Court of Pakistan.⁴⁹ The power of revising the PA's decisions rests with an FCR commissioner, appointed by the NWFP governor, who can act either on his own or in response to a petition by an aggrieved party⁵⁰ but cannot "set aside the finding on any question of fact by a Council of Elders [FCR jirga] accepted by the Deputy Commissioner [Political Agent]". Revision is allowed only if there is "material irregularity or defect" in the proceedings or on an "occasion [of] a miscarriage of justice".⁵¹

A final appeal can be made to an FCR tribunal comprising the provincial law secretary, the home secretary and the chief secretary of the province (the senior civil bureaucrat), who casts the decisive vote in case of a split verdict. Given the skeletal nature of FRC rules for granting an appeal, the scope of review is limited.⁵² Lawyers who have appeared before the tribunal said its members seemed keener to protect the PA than to provide relief to the accused.⁵³ In essence, convicted parties have no recourse to an impartial court of law and must rely on bureaucratic discretion. Since the FCR vests appellate authority in the executive, it violates the safeguard of an independent judiciary enshrined in Articles 2-A and 175 of the constitution.

4. Justice denied

Almost six decades after Pakistan's independence, tribal Pashtuns remain subject to the application of this colonial law, some of whose clauses are cruel to the point of being inhumane. Under section 40 of the FCR, the PA can preventively imprison tribesmen for up to three years "for the purpose of preventing murder, or culpable homicide....and sedition".⁵⁴ The PA can also

take other preventive measures such as stopping the construction of settlements close to the border or doing away with them on security grounds; and halting the construction of or demolishing buildings used for "criminal purposes".⁵⁵

Individuals involved in blood feuds and "dangerous fanatics" can be expelled from an agency.⁵⁶ Section 38-1 allows the private arrest of a suspect, a convenient weapon in the hands of those with economic and political power to settle scores with weaker opponents.⁵⁷ Used in conjunction with section 29, this can result in five-years imprisonment for suspicion alone.⁵⁸ Section 38-4 gives law enforcement agencies "a right to cause the death of a person" on suspicion of intent to use arms to evade arrest.

This authorisation of force by the state is particularly relevant in the context of the military operations in South and North Waziristan Agencies since 2004⁵⁹ and, most recently, the 30 October 2006 strike by the army on a madrasa in Bajaur Agency in which 82 people, including reportedly minors, deemed "terrorists" and "miscreants", were killed.⁶⁰ Expressing concern about the military's failure to minimise loss of life, organisations such as Human Right Watch called upon Pakistan to allow independent investigators access to the area to determine the legality and proportionality of the Bajaur operation.⁶¹

agent "to require a person to execute a bond for good behaviour or for keeping the peace" for a period "not exceeding three years".

⁴⁷ FCR (1901), sections 31-34.

⁴⁸ Ibid., section 36.

⁴⁹ Crisis Group interview, FATA parliamentarian, Islamabad, May 2006. See also Crisis Group Report, *Building Judicial Independence in Pakistan*, op. cit.

⁵⁰ Crisis Group interview, former political agent and retired chief secretary of NWFP, Khalid Aziz, Peshawar, 13 May 2006.

⁵¹ Crisis Group interview, Peshawar, 13 May 2006.

⁵² Justifying the attack, Inter-Services Public Relations chief Major General Shaukat Sultan said: "The operation was launched after confirmed intelligence reports that a number of miscreants were getting terrorist training in a madrasa". The militants retaliated with a suicide bomber killing more than 40 soldiers at an army base in Dargai, Malakand division, on 8 November. Anwarullah Khan, "82 die as missiles rain on Bajaur: Pakistan owns up to strikes: locals blame U.S. drones", *Dawn*, 31 October 2006; Rahimullah Yusufzai, "80 killed in strike on Bajaur seminary: students major casualties", *The News*, 31 October 2006; Ismail Khan, "Suicide attack on army base: 40 troops killed; search on for bomber's aide", *Dawn*, 9 November 2006.

⁵³ "Pakistan must end excessive use of force in counterterrorism operations: Government must allow independent investigation into bombing", press release, Human Rights Watch, 1 November 2006.

⁴⁷ Crisis Group interview, Peshawar, 13 May 2006.

⁴⁸ Crisis Group interview, former judge, Peshawar, 12 May 2006.

⁴⁹ "No appeal shall lie from any decision given, decree or sentence passed, order made or act done, under any of the provisions of this Regulation", FCR (1901), section 48.

⁵⁰ Ibid., section 49.

⁵¹ Ibid., section 50.

⁵² Crisis Group Report, *Building Judicial Independence*, op. cit.

⁵³ Crisis Group interviews, Peshawar, May 2006.

⁵⁴ The sentence can be extended by another three years under FCR (1901), section 46 (6). Section 40 allows the political

Even more problematic are FCR clauses that empower the political agent to punish an entire tribe for crimes committed on its territory by fines, arrests, property seizures and blockades.⁶² The political agent can order detention of all or any members of the tribe, seize their property or block their access to the settled districts if he has “good reason” to believe that a tribe or its members are “acting in a hostile or unfriendly manner”, have “failed to render all assistance in their power” to help apprehend criminals, “connived at, or abetted in a crime” or “suppressed evidence” of an offence.⁶³ Political agents can even seize the property or businesses of tribesmen in settled districts who do not live in a FATA agency.⁶⁴ Jurists stress that this doctrine of collective tribal and territorial responsibility violates principles of modern justice, including individual liability before the law.⁶⁵ During military operations in the Waziristans, political agents frequently invoked collective responsibility under the FCR to punish tribes for allegedly harbouring or failing to surrender foreign militants.⁶⁶

Pakistan's 1973 constitution guarantees fundamental rights for citizens residing in the entire territory of the country, which includes the tribal areas.⁶⁷ The FCR violates many of these rights, including that of individuals to be dealt with in accordance with the law (Article 4); safeguards against arrest and detention (Article 10); protection against double jeopardy and self-incrimination (Article 13); protection of property rights (Article 24); and the equality of citizens (Article 25).⁶⁸ The FCR clearly violates Article 8, which stipulates that any laws or customs inconsistent with fundamental rights are void.

The Supreme Court can enforce these fundamental rights under Article 184 (3) of the constitution;⁶⁹ and the High Court's enforcement powers are enshrined in Article 199 (1) C.⁷⁰ But their jurisdiction in FATA is barred

by Article 247 (7): “neither the Supreme Court nor a High Court shall exercise any jurisdiction under the constitution in relation to a Tribal Area, unless Majlis-e-Shura [parliament] by law otherwise provides”. Although the national parliament can technically extend the jurisdiction of the superior courts to FATA, no civilian or military government has seriously considered upsetting the status quo.

Several government officials and maliks interviewed by Crisis Group expressed the belief that locals would reject the extension of a corrupt and inefficient judiciary to FATA. They argued that Pashtun tribes jealously guard their customary laws and practices and would resist the replacement of the jirga system, with its quick justice, by an alien court system in which trials can drag on for years. However, jurists and lawyers familiar with the FCR insisted there was no legitimate cultural or political justification for denying citizens in FATA their basic rights to legal representation and appeal in a court of law.⁷¹

The Supreme Court acknowledged this logic in a case concerning application of the FCR to Balochistan. Rejecting the FCR-based justice system in which the executive, represented by a deputy commissioner, wields inordinate authority, it concluded that “mere existence of a tribal society or a tribal culture does not by itself create a stumbling block in the way of enforcing ordinary procedures of criminal law, trial and detention which is enforceable in the entire country”.⁷²

The retention of FCR (1901) in FATA reflects the arbitrary duality of judicial systems in Pakistan. The FCR is no longer operative in Balochistan and NWFP, and there is little justification for its operation in FATA. Asking how what was “good for the people of Pakistan” was “bad for the people of FATA”, a lawyer from Khyber Agency said: “If the FCR is not evidence of the perpetuation of colonial racism and injustice, then what is?”⁷³

There is no dearth of public and private studies and reports on the need for FCR reform. Even the Musharraf

⁶² FCR (1901), sections 21-24.

⁶³ *Ibid.*, section 21.

⁶⁴ Waseem Ahmed Shah, “Court order on attachment of property under FCR”, *Dawn*, 10 July 2006.

⁶⁵ Crisis Group interviews, Peshawar, Islamabad and Lahore, May 2006.

⁶⁶ Crisis Group Report, *Building Judicial Independence*, op cit.

⁶⁷ These include equality of citizens before law, equal protection of law, freedom of speech and expression, right to association, right to assemble peacefully, and right to form or be a member of a political party.

⁶⁸ Hussain, op. cit.

⁶⁹ Article 184 (3) says: “The Supreme Court shall, if it considers that a question of public importance has reference to the enforcement of any of the Fundamental Rights” have the power to make an order of the nature mentioned in Article 199.

⁷⁰ Article 199 (1-C) states: “Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law: on the application of any aggrieved person,

make an order giving such directions to any person or authority, including any government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by chapter 1 of part II”.

⁷¹ Crisis Group interview, Lahore, 22 May 2006.

⁷² See *Government of Balochistan v. Azizullah Memon*, PLD 1993 Supreme Court 341, 361. The judgment relied in part on the right to access to justice, as articulated in the Universal Declaration of Human Rights, Article 10, a right that has particular relevance for FATA. Teney-Renaud, op. cit.

⁷³ Crisis Group interview, member of the Tribal Lawyers' Forum, Peshawar, 13 May 2006.

government has recognised the need to amend the FCR as part of a broader package. In May 2005, for instance, the NWFP governor formed the FCR Reform Committee, headed by a retired chief justice of the Peshawar High Court and including former officials, journalists and lawyers to recommend such action. After extensive consultations in all seven agencies, it submitted its recommendations to the governor. While these have not been made public, committee members said they include abolition or modification of section 40, reduction in detention periods, changes in the collective responsibility clauses, prevention of the incarceration of women and children and introduction of more stringent accountability of the PA to the governor.⁷⁴ But even if a few clauses were removed or changed, the fundamentally draconian character of the law would continue to impede due process and access to justice in FATA.

E. POLITICAL ECONOMY

FATA is one of Pakistan's most economically backward areas. Per capita income is half that of the very low national per capita income of \$500; some 60 per cent of the population lives below the national poverty line. Per capita public development expenditure is reportedly one third of the national average. Social development indicators are no less dismal. The overall literacy rate is 17.42 per cent compared to 56 per cent nationally. Male literacy is 29 per cent, female literacy but 3 per cent compared to the national 32.6 per cent for females. For 3.1 million inhabitants, FATA has just 41 hospitals and a per doctor rate of 1:6,762 compared to the national 1:1,359.⁷⁵ Natural resources, including minerals and coal, are under exploited. Most locals depend on subsistence agriculture since there is little industrial development and few jobs. "FATA has been kept deliberately backward", said a former FATA national parliamentarian. "By raising the bogus threat of Pashtun separatism, the central government has denied Pashtuns their basic economic and political rights and kept a natural part of NWFP under federal control".⁷⁶

The political administration is the main vehicle for economic development and planning in FATA. Local government and non-governmental development organisations and other civil society associations have little say. The political agent is the state's chief development agent and planner, and the formal economic

system is driven by the officially-controlled and selective distribution of patronage to local elites. Rent seeking and unaccountable public decision-making distort economic incentives, resulting in a wide income and resource gap between those with access to the administration and those deprived of it.

The PA's instruments of economic control include the allotment of permits for export and import in each agency. Permits to export goods such as timber from the tribal areas are a much sought after cashable resource. Import permits for wheat and other basic necessities are another source of patronage distribution. The PA, who is also chief executive of the newly-created agency councils discussed below, approves and carries out developmental works based on political and administrative considerations. There is "almost no input from the local population or even their parliamentary representatives in development initiatives", said a FATA senator, "Every development initiative requires the approval of the political agent, who is the ex officio project director of all public sector programs".⁷⁷ In the absence of any public accountability, the PA's office is one of the most lucrative assignments in the civil bureaucracy, with enormous opportunities for personal enrichment.

Prospects are slim for normalising an economy largely based on a flourishing trade in arms and drugs, a legacy of the Afghan civil war, as well as cross-border smuggling and other illegal practices. Poor law enforcement at FATA's borders with Afghanistan in particular encourages lucrative smuggling of luxury consumer goods, causing significant revenue losses in uncollected duties and taxes. Even after its entry into FATA, aimed at establishing the writ of the state, the military has refrained from attacking smuggling from Afghanistan, including arms and drugs – not least because it is a source of personal enrichment for its members. But this trade also provides the Afghan Taliban and their Pakistani supporters, the militants in the FATA agencies, with funds and arms. Most significantly, the army has not prohibited sale of guns and ammunition in FATA, which supplies the whole of Pakistan.⁷⁸

Since its deployment in FATA, the military has proclaimed development projects worth hundreds of millions of dollars for building roads, schools and hospitals. President Musharraf has announced the government will spend

⁷⁴ Crisis Group interviews, members of the FCR Reform Committee, Peshawar, May 2006.

⁷⁵ FATA Development Statistics 2005, Bureau of Statistics, Planning and Development Department, government of NWFP, Peshawar.

⁷⁶ Crisis Group interview, Latif Afridi, May 2006.

⁷⁷ Crisis Group interview, 24 May 2006.

⁷⁸ Ahmed Rashid, "Who's winning the war on terror", *Yale Global Online*, 5 September 2003, available at <http://yaleglobal.yale.edu>.

\$16.5 million (Rs 10 billion) on development,⁷⁹ as well as \$150 million in a five-year economic initiative to integrate FATA into the national economy by “breaking [the] vicious cycle of poverty, poor social services, lack of economic opportunities, and vulnerability to the easy solutions offered by extremism”. The idea is to expand the resource base, generating economic activity and jobs and improving social indicators to meet Millennium Development Goals. The government estimates it needs to create 100,000 jobs.⁸⁰ Human development and infrastructure development would go far to counter extremism. Investment in education, including establishment of vocational training schools and technical colleges, would be welcomed. But little of the promised development has materialised. An economist said: “The government’s lofty claims notwithstanding, it has neither the capacity nor the willingness to undertake a mini-Marshall plan”.⁸¹ Anticipation is turning into alienation in FATA.

III. FORBIDDEN FRUIT: POLITICS AND POLITICAL REPRESENTATION

The British colonial system in FATA was premised on the denial of mass participation through political parties and the exercise of state control through a dependable local elite. That system of centralised control has largely remained unchanged. The director of the Human Rights Commission of Pakistan (HRCP), I.A. Rehman, says, “FATA has been deliberately denied the democratising influence of representation to blunt demands for reforms that could potentially divest the central government’s control of these sensitive strategic areas”.⁸² While it has no representation in NWFP’s provincial legislature, the constitution mandates representation for FATA in the national parliament.⁸³ Yet, parliament cannot legislate on any matter concerning FATA.⁸⁴ “It is an ironic situation”, said a member of the National Assembly (MNA) from FATA. “We are elected representatives from FATA, and we can technically make laws for the rest of the country but not for FATA”.⁸⁵

A. ELECTORAL SYSTEM

The electoral process is under the firm control of the political administration and intelligence agencies, which have, more often than not, manipulated it to ensure success of pro-government candidates. Until the introduction of adult franchise in 1996, an electoral college of some 35,500 maliks (roughly 10 per cent of the population) selected members of the National Assembly, the lower house of the national parliament. “The all-powerful political administration could usually get the maliks’ approval for virtually anything...the PA could simply withdraw their privileges and bring the maliks to their knees in no time if they dared go against his wishes during elections”, said Awami National Party (ANP) leader Afrasiab Khattak.⁸⁶

FATA legislators wield little authority in the national parliament and tend to follow faithfully the directives of the government and its allied parties. Most are affiliated

⁷⁹ “Reject personality cult politics, says Musharraf”, *Daily Times*, 20 May 2006; “Rs 10 billion to be spent on FATA projects”, *Dawn*, 6 November 2006.

⁸⁰ “Economic Initiative for the Federally Administered Tribal Areas”, Ministry of Commerce, government of Pakistan, Islamabad, undated policy memo made available to Crisis Group.

⁸¹ Crisis Group interview, economist, Federal Planning Commission, Islamabad, May 2006.

⁸² Crisis Group interview, 22 May 2006.

⁸³ Article 51 reserves twelve seats in the National Assembly, which are elected through adult franchise. Article 59 reserves eight seats for FATA in the Senate, elected by FATA national parliamentarians.

⁸⁴ Article 247 (3) says: “No act of parliament shall apply to FATA unless the President so directs”.

⁸⁵ Crisis Group interview, Maulana Abdul Malik, Islamabad, May 2006.

⁸⁶ The ANP is a moderate Pashtun regional party. Crisis Group interview, Peshawar, May 2006.

with the pro-Taliban JUI-F, the dominant party in the MMA, the six-party religious alliance that runs the NWFP government.⁸⁷ Senator Hamidullah Jan Afridi (Khyber Agency) stressed that the federal government has invariably “kept FATA legislators completely out of the loop on whatever goes on in our constituencies, and we have virtually no representation in the federal cabinet at present”.⁸⁸ Another FATA member added: “We just sit in the national assembly; we cannot often express our opinion about FATA, let alone legislate”.⁸⁹ Integration into NWFP as a Provincially Administered Tribal Area would give FATA parliamentary representation in NWFP’s provincial assembly. This would provide participatory governance to citizens, end the present crippling dependence on the central executive and legislature and extend the protection of the regular provincial and national court system. To ensure buy-in, such a step should be taken only after extensive consultations with all local stakeholders.

B. POLITICAL PARTIES

Under the convenient pretext of preserving tribal customs and norms, the state still denies the people of FATA their fundamental rights of political association and assembly. An expert on FATA observed: “Politics and political parties are curse words in official circles; this has led to the isolation of the tribal people from the rest of the country”.⁹⁰ In interviews with Crisis Group, present and former parliamentarians from the region shared the opinion of Sahibzada Haroon Rashid, a Jamaat-i-Islami (JI)-affiliated parliamentarian from Bajaur Agency: “FATA has always been governed by a civilian or military president...this denial of our basic right to form political parties continues even after almost 60 years of our independence”.⁹¹

In 1996, Benazir Bhutto’s civilian government introduced adult franchise in FATA. While political parties are still formally forbidden from extending their activities into the agencies,⁹² this has shaped FATA politics in important ways. For one, it has significantly diluted the electoral influence of maliks. However, in the absence of parties, politicians often derive their clout from money earned through cross-border smuggling or drug trafficking

rather than their affiliation with political groupings. Moreover, while military-run or dominated governments have deliberately excluded moderate political forces, the influence of radical Islam has grown steadily since the 1980s, when the area was the launching pad for anti-Soviet operations in Afghanistan. Taliban rule in Afghanistan cemented and reinforced the political influence of the Deobandis, led by Fazlur Rehman’s JUI, the Taliban’s ideological mentor and chief patron in FATA. The situation remains unchanged. The ANP’s Afrasiab Khattak said: “The entry of secular politicians into FATA is practically banned, whereas the mullahs enjoy free entry”.⁹³

This rise in Deobandi Islamist influence has come at the expense of the moderate parties but also of traditional tribal elders. “The authority of the traditional elders was really damaged during the Afghan jihad”, said Fazle Rahim Marwat, professor of Pakistan Studies at the University of Peshawar. “Now local Taliban are trying to wipe out whatever vestiges of traditional Pashtun structures that have survived”.⁹⁴ HRCF’s Tariq Khan said: “The influence of the mullah is no surprise [since] state patronage for the mosque and repression of non-religious political forces have created a lopsided situation that is reinforced by and reinforces developments in the region, especially Afghanistan”.⁹⁵

The Musharraf government’s hostility towards the national-level and regional moderate parties and its partnership with the religious parties to counter its domestic opposition has worked in JUI-F’s favour in FATA. Unlike the moderate parties, the JUI-F has been allowed to operate freely, using its predominantly Pashtun leadership to gain support for its Deobandi agenda.⁹⁶

In the 2002 national elections, for instance, ten of the twelve parliamentarians elected from FATA were affiliated with the MMA and belonged to either the JUI-F or the Jamaat-i-Islami. While U.S.-led military operations in the Pashtun majority areas of Afghanistan were duly exploited by the MMA to gain domestic support, the military’s legal and electoral manipulations, designed to benefit the Islamists, played a major role in ensuring the religious alliance’s unprecedented gains.⁹⁷

⁸⁷ The 5 September 2006 peace agreement with militants in North Waziristan was reached with the good offices of a JUI-F MNA.

⁸⁸ Crisis Group interview, 21 May 2006.

⁸⁹ Crisis Group interview, Islamabad, 22 May 2006.

⁹⁰ Bangash, “Administrative and Political Development of the Tribal Areas”, op. cit., p. 1.

⁹¹ Crisis Group interview, 23 May 2006.

⁹² The Musharraf government amended the Political Parties Act of 1961 in 2002 to exclude FATA from its jurisdiction.

⁹³ Crisis Group interview, Peshawar, 13 May 2006.

⁹⁴ Crisis Group interview, 20 May 2006.

⁹⁵ Crisis Group interview, Peshawar, 11 May 2006.

⁹⁶ Vali Nasr, “Military Rule, Islamism and Democracy in Pakistan”, *Middle East Journal*, Spring 2004, pp. 195-209.

⁹⁷ See Crisis Group Asia Briefing N°49, *Pakistan: The Mullahs and the Military*, 20 March 2003; also Alfred Stepan and Aqil Shah, “Pakistan’s Real Bulwark”, *The Washington Post*, 5 May 2004.

The JUI-F, the dominant party in the MMA government in the NWFP, and Musharraf's coalition partner in the Balochistan government, used its extensive madrasa network to provide political and material support to the Taliban regime in Afghanistan. In 2006, JUI-F madrasas remain a source of Taliban recruitment at a time when the JUI-F leadership is also playing a crucial role as the main mediator in the military's dealings with the local militants in FATA.⁹⁸

C. NOMINAL LOCAL GOVERNMENTS

The Musharraf government drafted a FATA Local Government Regulation in 2002 on the model of the Local Government Ordinance of the previous year (LGO), which was implemented in the rest of Pakistan but was not extended to FATA on the grounds that there was local opposition. The "tribal people don't want a new system as it violates their social norms and the present system suits their genius", said a senior FATA secretariat official.⁹⁹ However, some officials believe the military's prime motive was to retain absolute, centralised control over the territory. According to a former Khyber Agency PA, "implementing the devolution plan in FATA would have meant placing, at least technically, the political administration under elected *nazims* (mayors), a situation tantamount to the government shooting itself in the foot, given FATA's geo-strategic importance to the state".¹⁰⁰

Instead of the LGO, the NWFP governor issued a notice in December 2004 to establish "provisional agency councils to facilitate local participation in development and other important matters".¹⁰¹ The councils have three-year tenure unless the governor decides to dissolve them earlier. In theory, they are to be elected "without the interference of the political administration".¹⁰² With population as the sole criteria for allocating seats in each council, 70 per cent of councillors are elected by tribal *jirgas* in accordance with *rewaj*. The remaining 30 per cent are reserved seats for tribal elders, ulema (religious scholars), technocrats, women and minorities, nominated

by the governor's FATA secretariat on the recommendation of political agents.¹⁰³

According to a former PA, the administration stage-managed elections to the agency councils in December 2005.¹⁰⁴ "There was no election schedule, no polling stations and the Election Commission was not even involved", noted a member of the FCR Reform Committee... "Council seats were virtually sold in line with the political and economic worth of each candidate".¹⁰⁵ In any case, the PA retains executive control over the councils, convenes their meetings and wields final authority in resolving procedural disputes. The PA nominates council members to serve on monitoring committees for health, education, agriculture, irrigation and forests. "The councils and committees are subservient to the PA, and it is still unclear what they are supposed to do", said an analyst.¹⁰⁶

Proponents of democratic procedure see the agency councils as an attempt by the military government to defuse local demands for representative, participatory institutions. "This is nothing but a ruse to dampen local demand for change, reforms and democratic representation. The civil-military establishment and their crony maliks are opposed to any meaningful change which would threaten the status quo from which they derive their power and influence", said a former FATA senator.¹⁰⁷

D. OPPOSITION AND DISSENT

Islamabad has attempted to forcibly suppress local movements for democratic rights and representation, including the Tehreek-e-Ittehad-e-Qabail (the Tribal Movement for Unity, TIQ), which initially focused on the demand for universal franchise. According to Sailab Mehsud, a tribal journalist and TIQ member, "our activists have had to bear the worst excesses of the state: arbitrary detentions and incarceration at the hands of the political administration under the pretext of sedition or disturbing public peace".¹⁰⁸

The FCR has turned FATA into a virtual prison for public-spirited and reform-minded individuals. Dissenting voices are quickly dubbed anti-state and silenced by imprisonment. According to a former PA, "objectors

⁹⁸ There are more than 300 madrasas in FATA. M. Ismail Khan, "The trouble with the tribal areas", *the News*, 14 November 2006.

⁹⁹ Crisis Group interview, 23 May 2006.

¹⁰⁰ Crisis Group interview, Peshawar, 12 May 2006.

¹⁰¹ See "Agency Councils: Duties and Responsibilities", Governor's FATA secretariat, Peshawar, undated, made available to Crisis Group.

¹⁰² *Ibid.*

¹⁰³ Zulfiqar Ali, "Status quo: the recent elections in FATA have not brought the areas any closer to representative rule", *Herald*, November 2004, p. 32.

¹⁰⁴ Crisis Group interview, former assistant political agent of Khyber Agency, Peshawar, 12 May 2006.

¹⁰⁵ Crisis Group interview, Peshawar, 13 May 2006.

¹⁰⁶ Crisis Group interview, Dera Ismail Khan, 14 May 2006.

¹⁰⁷ Crisis Group interview, 19 July 2006.

¹⁰⁸ Crisis Group interview, Dera Ismail Khan, 18 May 2006.

who challenge the state can be profiled as traitors, criminals or dangerous fanatics under the FCR and punished accordingly".¹⁰⁹ But over time the struggle waged by TIQ and similar groups against the denial of democratic rights to tribal Pashtuns has changed FATA politics. In fact, some analysts attribute the introduction of adult franchise to the efforts of local political activists in the tribal agencies.

Education, changes in communications technology, media exposure, migration to settled areas and the social mobility afforded by remittances from the Gulf States have created a vocal class of people keenly aware of the unbalanced political and economic development between FATA and the rest of NWFP. These social activists are in the lead in demanding democratic freedoms and participatory governance. Professional groups such as the FATA Lawyers' Forum exert a democratising influence by publicly exposing corruption, challenging human rights violations and demanding political and civil rights. The Forum has, for instance, formed fact-finding missions to expose human rights violations since the military launched its operations in the region and organised protests to create broader awareness.¹¹⁰ Similarly, the Tribal Union of Journalists has vocally protested curbs on press freedom and engaged with international press organisations to bring the plight of FATA journalists to wider attention.

There is a sharp disconnect between rising democratic aspirations and the state's refusal to mediate the demands through representative channels. Grievances fester and feed into alienation. In interviews with Crisis Group, many young, educated tribesmen expressed disdain for unelected jirgas (and the PA), which protect the traditional elites' privileges while denying locals representation and participation. Many also rejected these structures as oppressive, and some questioned their patriarchal nature, which rides roughshod over women's rights. Said Abdul Karim Mehsud, president of the Lawyers' Forum and member of the FCR Reform Committee: "The maliks are usually touts of the political administration, who are controlled and manipulated through the [state's] discretionary distribution of patronage, backed by coercion. The younger lot has no stake in the system; it is angry and disaffected".¹¹¹ The void created by the absence of democratic, participatory institutions and the suppression of moderate voices is being filled by the Islamist radicals, who are also flourishing because of state patronage.

¹⁰⁹ Crisis Group interview, 8 June 2006.

¹¹⁰ Crisis Group interview, lawyers from FATA, Peshawar, May 2006.

¹¹¹ Crisis Group interview, Peshawar, 11 May 2006.

IV. CROSS-BORDER MILITANCY

"The roots of Islamic militancy" in FATA and the conflict that now engulfs the area, a well-known regional analyst said, lie "in the regional and international patronage of religious extremists during the anti-Soviet jihad, during the [Afghan] civil war and Taliban rule which radicalised the area".¹¹² Deobandi madrassas were particularly prominent in the rise of religious extremism in the Pashtun-majority borderlands. With Pakistani backing, the network of Pakistani and Afghan militants spawned in these seminaries forged ties with Arab fighters during and after the Afghan jihad. Pakistan-backed Taliban rule in Afghanistan spurred the convergence of this transnational network of militants, turning Afghanistan into a safe haven for local, regional and global terrorists.¹¹³

The recent resurgence of militancy in FATA followed the ouster of the Taliban regime. Hundreds of al-Qaeda operatives and sympathisers as well as the Taliban moved, via mountain passes, from Afghanistan into North and South Waziristan and other bordering FATA agencies.¹¹⁴ According to Pakistani officials, some 500-600 foreign fighters (mostly Arabs, Uzbeks and Chechens) sought shelter there following U.S.-led offensives against them in Spinghar (White Mountain) near Tora Bora in December 2001 and Operation Anaconda in Shahikot valley in Paktia in March 2002.¹¹⁵ Since their retreat into FATA, the Afghan Taliban and Hekmatyar's Hezb-e Islami have, with the support of their foreign allies and Pakistani supporters, conducted cross-border attacks against international forces and Afghan security personnel and officials.

During the Afghan civil war, several hundred foreign militants had also settled and married into local tribes in FATA. Since the Taliban's ouster, many local militants and tribesmen have received generous financial support from these fugitives in return for shelter and logistical support. Local tribesmen, however, insist that harbouring the "mujahidin" is their religious duty.¹¹⁶ According to Azam Khan, former PA of South Waziristan, "it is a

¹¹² Crisis Group, Rahimullah Yusufzai, 23 May 2006.

¹¹³ Vali Nasr's testimony before the Senate Foreign Relations Committee, 14 July 2004 at available at Foreign.senate.gov/testimony/2004/NasrTestimony040714.pdf.

¹¹⁴ Grare, op. cit., p. 6.

¹¹⁵ Crisis Group interview, senior security official of the NWFP governor's secretariat, Peshawar, 12 May 2006.

¹¹⁶ These sentiments were expressed in inconclusive jirgas between tribal elders and local officials on the presence of foreign militants. Crisis Group interviews, officials, journalists, politicians, Peshawar, Dera Ismail Khan, Bannu, Islamabad, May 2006.

matter of financial resources, marital bonds as well as sympathy for their Muslim brethren".¹¹⁷

North and South Waziristan Agencies are an ideal sanctuary and base of operations for the Afghan Talibs, the Hezb-e Islami and their foreign and local allies because of their proximity to Afghanistan's Paktika and Khost provinces. They were a major staging area for the anti-Soviet jihad, reportedly Osama bin Laden's base of operations during that war. In 2004, facing intense U.S. pressure, the Pakistan military launched an operation there to deny al-Qaeda operatives and sympathisers sanctuary and to stem cross border attacks by Afghan extremists. Two years later, that operation appears to be abandoned and the Waziristans ceded to local militants, whose sympathies lie with the Taliban.

A. MILITARY OPERATIONS

In June 2002, the Pakistani army moved a division of troops into Tirah Valley in Khyber Agency and Parachinar in Kurram Agency to prevent fleeing al-Qaeda operatives and sympathisers from entering the country in the wake of Coalition operations across the border.¹¹⁸ In 2003, with many high profile al-Qaeda leaders and sympathisers at large and cross-border attacks by the Taliban and Hekmatyar's Hezb-e Islami unabated, the Musharraf government came under strong pressure from Washington to do more. South and North Waziristan agencies, bordering on Afghanistan's Paktika and Khost provinces, became the focus of an operation that has deployed some 80,000 army and paramilitary troops in FATA.

1. Launching the operation

Senior Pakistani officials disclosed that the government had asked South Waziristan's political administration as late as mid-2003 to identify locals harboring foreign militants.¹¹⁹ The political administration used its standard tools – jirgas, consultations with maliks and intelligence from local informants – to identify some 72 Ahmedzai Wazir tribesmen. A series of jirgas and parleys between the tribal leaders and the political administration yielded some of the suspects. In December 2003, NWFP governor Lt. General (retd.) Iftikhar Hussain Shah announced amnesty for foreigners who surrendered to the government and lived in the agency in accordance with tribal custom.

But in March 2004, the military launched a major search-and-destroy drive in South Waziristan in the misguided belief that a quick, surgical strike against the

foreign terrorists and their local allies would succeed. Officials claimed that the decision was taken when tribal elders failed to deliver tribesmen harbouring militants.¹²⁰ Off-the-record, however, there is serious disagreement. "As [U.S.] pressure on Pakistan mounted", said a retired army general, "the military rushed headlong into an ill-conceived military operation before regular political channels could be exhausted".¹²¹ While the political administration was negotiating, the army deployed troops in Angor Adda, Azam Warsak, Kalusha and Shakai areas that are transit points for militants' crossing into Afghanistan.¹²² "We were stabbed in the back", said an Ahmedzai Wazir tribal elder. "We were promised dialogue and developmental funds, while plans for military operations against our tribes were well underway".¹²³

The March 2004 Kalusha operation concentrated on a 50-sq. km. area near Wana, South Waziristan's district headquarters, around the villages of Shin Warsak, Daza Gundai, Kalusha, Ghaw Khawa, and Kari Kot.¹²⁴ This area was under the control of five Islamist militants – Nek Mohammad, Noor-ul-Islam, Mohammad Sharif, Maulvi Abbas and Maulvi Abdul Aziz – suspected of harbouring foreign terrorists and having links with the Afghan Taliban. The operation backfired, as local and foreign militants ambushed troops, inflicting heavy losses and taking officials hostage.¹²⁵

Disclosing that the commander of Pakistani troops in the region had reported "fierce resistance" from fighters entrenched in fort-like buildings, President Musharraf claimed that "a senior al-Qaeda figure was surrounded, but at this point we are not certain who it is". He said: "The resistance that is being offered by the people there [is such that] we feel that there may be a high-value

¹²⁰ Owais Tohid, "The new frontier", *Newsline*, April 2004.

¹²¹ Ismail Khan, "Operation in South Waziristan," *Dawn*, 19 February 2004.

¹²² "Deployment of troops begins in South Waziristan", *Dawn*, 21 February 2004; "Troops move towards Angoor", *The Nation*, 21 February 2004.

¹²³ A former political administration official involved in negotiations with the tribes seconded this version. Crisis Group interview, Dera Ismail Khan, May 2006.

¹²⁴ Officials said some 400-500 "foreign terrorists" were engaged in the fighting. According to local tribal sources, there were also 2,000-2,500 local tribesmen, trained and recruited by the foreign militants. Tohid, op.cit.

¹²⁵ The militants killed sixteen military and paramilitary personnel and took nineteen Frontier Corps (FC, a paramilitary force under army command) personnel and two *tehsildars* (local officials) hostage. The bodies of the *tehsildars* and some eight FC soldiers were found a few days later. Rahimullah Yusufzai and Sailab Mahsud, "Waziristan clashes death toll rises: 16 troops, 23 military vehicles lost", *the News*, 18 March 2004.

¹¹⁷ Crisis Group interview, Islamabad, 20 May 2006.

¹¹⁸ "Pakistan steps up al-Qaeda hunt", BBC News, 18 June 2002.

¹¹⁹ Crisis Group interview, ministry of interior official, May 2006.

target". But none was found.¹²⁶ The government also claimed to have killed 24 "foreign terrorists" and their local accomplices but this, too, was unsubstantiated.¹²⁷

According to the former director general of Inter Services Intelligence (ISI), Lt. General (ret.) Asad Durrani, "military action was taken in haste. Regular channels of conflict resolution and dialogue should have taken precedence over the use of military force, which undermined the capacity of the administration and local tribesman to neutralise, contain and de-weaponise the militants through non-military means".¹²⁸ Lack of coordination between multiple security agencies, including regular army units and the paramilitary Frontier Corps, as well as military intelligence agencies, also undermined the operation. "It seems like every agency is running its own shop with constant back and forth from the corps commander to the governor and back", said Brig (ret.) A.R. Siddiqi.¹²⁹

2. Civilian costs

The use of indiscriminate and excessive force undermined the military's local standing. Retaliating against militant attacks that inflicted casualties on it, the army used heavy artillery and helicopter gunships.¹³⁰ Since these strikes were not well targeted, they resulted in civilian deaths which, combined with arbitrary arrests and indiscriminate search operations, alienated locals. "There is seething anger amongst the locals which might well be fuelling support for the militants amongst even those who were otherwise indifferent and whose support could have been critical to the success of the anti-terrorist campaign", said a former federal law minister, Iftikhar Gillani, whose home constituency is Kohat, adjacent to FATA.¹³¹

Locals also complained that the military failed to take them into confidence or consult them before attacking suspected militants. In one operation, a local official said, "the military arrived armed with helicopter gunships when negotiations were underway... a step that undermined whatever little local trust could be harnessed".¹³²

The military activity also undermined the authority and capacity of the local civilian administration. Although the governor is the president's representative, in the wake of the military operations the Peshawar corps commander began to assert his authority over FATA affairs. The military's control of even development projects raised questions of political and constitutional legitimacy. "Even though Pakistan is under military rule, it is still baffling that the corps commander is calling the shots in the tribal areas", exercising power with "no precedent or basis in the constitution", said a former interior minister.¹³³

The PA's authority had gradually eroded with the military's involvement in FATA during the Afghan war but it suffered even more. "This is hardly surprising", said a security analyst. "When the military enters any area, it destroys all existing civilian authority as it believes in unity of command and brooks no interference from civilians".¹³⁴

Senior FATA officials claimed they knew that neutralising and capturing foreign militants would require more than a surgical strike and had briefed the high command on the need for patience and a more nuanced approach. But their advice fell on deaf ears. The military regularly bypassed the governor and the political administration and as a result empowered the Islamist militants.¹³⁵ "The military has dismantled civil institutions that would provide order", observed an analyst, "so radical groups can easily stir tribal groups to unrest".¹³⁶

B. APPEASING THE MILITANTS: SOUTH WAZIRISTAN

As the conflict intensified and spread to other areas and army casualties began to mount, the Musharraf government switched gears, abandoning the military option for appeasement.

Officially the military campaign was a success, resulting in the arrest of hundreds of suspected militants. Credible estimates of the arrests or killing of foreign terrorists and local militants, however, were nearly impossible since the military censored media coverage of the conflict

¹²⁶ "Pak troops surround Al-Zawahri: Musharraf says 'high-value' al-Qaeda target besieged", *the News*, 19 March 2004.

¹²⁷ Crisis Group interview, Rahimullah Yousafzai, 23 May 2006.

¹²⁸ Crisis Group interview, Rawalpindi, 21 May 2006.

¹²⁹ Brigadier (ret.) A. R. Siddiqi's presentation on "FATA: A Politico-Military Appraisal", at a seminar on FATA organised by the Area Study Centre, Peshawar University, and Hans Seidel Foundation, Peshawar, 7-8 December 2004.

¹³⁰ Intikhab Amir, "Waziristan: no man's land?", *The Herald*, April 2006.

¹³¹ Crisis Group interview, 23 May 2006.

¹³² Crisis Group interview, agency official, 19 May 2006.

¹³³ Crisis Group interview, Major General (ret.) Nasirullah Babar, Peshawar, May 2006.

¹³⁴ Crisis Group interview, Hasan-Askari Rizvi, Lahore, 21 May 2006.

¹³⁵ Crisis Group interviews, Peshawar, May 2006.

¹³⁶ Paula. R. Newberg, "U.S.-Pakistan: An insecure alliance", *Yale Global Online*, 28 February 2006.

zone.¹³⁷ Said an analyst, “the military has shown the bodies of about a dozen ‘Tajik’ militants to the media [but] the frequent claims of capturing or killing this or that number of foreign militants remain unsubstantiated”.¹³⁸ According to informed local observers, the military was all too keen to inflate body counts and the importance of arrested foreign terrorists to demonstrate its commitment and ability in fighting terrorism to the U.S.¹³⁹ In March 2004, for instance, the army claimed to have killed the chief al-Qaeda operative in Waziristan. But it quickly withdrew the claim and admitted that the militant in question was local.¹⁴⁰ Nor did reliance on tribal *lashkars* (militias) to hunt down foreign terrorists or their local supporters pay off.¹⁴¹

The South Waziristan operation resulted in the deaths of 46 military and paramilitary personnel.¹⁴² With local alienation also high, the army opted for a deal with the pro-Taliban militants. It had little option, said an official, but to negotiate with locals who had declared a “jihad” against Pakistani security forces.¹⁴³ The deal offered the local militants amnesty and financial incentives in return for good behaviour and pledges to renounce violence. They were also asked to surrender al-Qaeda and other foreign militants or register them with the authorities and ensure that they would not use Pakistani territory for cross-border attacks.¹⁴⁴

1. The Shakai agreement

The Taliban’s political ally and ideological mentor, Maulana Fazlur Rehman’s Jamiat Ulema-e-Islam, brokered this deal between the military and the Mujahidin Shura of South Waziristan, the umbrella organisation of the pro-Taliban militants. The Peshawar Corps Commander, Lt. General Safdar Hussein, enlisted two JUI-F national parliamentarians from South Waziristan, Maulana Merajuddin Qureshi and Maulana Abdul Malik Wazir, as go-betweens.¹⁴⁵ Even as they arranged the deal with commanders like Nek Mohammad, the JUI-F interlocutors publicly backed their local allies. Said Maulana Malik, “those on the army’s

wanted list mean no harm to Pakistan, and it would be wiser to befriend them rather than turning them into outlaws”.¹⁴⁶ Criticising the military’s propensity to sideline “normal [political and administrative] channels”, a pro-government FATA senator said the military had erred by relying on its “own sources and methods or the mullahs for brokering peace with militants...this is a vicious cycle that undermines the state and reinforces the influence of the mullahs”.¹⁴⁷

The reconciliation ceremony in a madrasa in Shakai valley on 24 April 2004 was an attempt by the military to appease the pro-Taliban militants, who were garlanded and allowed to make triumphant speeches and in return showered gifts on officials including a sword, daggers and prayer mats. Describing this unwritten Shakai agreement as the first step on a slippery slope, an analyst said, “Shakai legitimised the status of the local militants as the power-brokers, thus further eroding and weakening available administrative channels”.¹⁴⁸ The corps commander’s pro-jihad speech at Shakai reinforced perceptions that the military government had surrendered to the militants.

Unsurprisingly, many militants who were party to the agreement denied and/or reneged on the surrender and registration of foreigners. Nek Mohammad, for instance, denied he had even agreed to such a condition: “There is no al-Qaeda here...Had there been a single al-Qaeda fighter here, the government would have caught one by now”.¹⁴⁹

During the following weeks, as foreign terrorists failed to register, and numerous tribal militias sought but failed to capture any,¹⁵⁰ the Shakai agreement broke down, triggering economic sanctions under the collective responsibility clause of the FCR.¹⁵¹ These were accompanied by renewed military action that involved the use of air force jets and helicopter gunships against

¹³⁷ Ismail Khan, “100 captured in South Waziristan: 13 civilians killed in attack on vehicles”, *Dawn*, 21 March 2004.

¹³⁸ Crisis Group interview, 23 May 2006.

¹³⁹ Crisis Group interviews, Peshawar and Lahore, May 2006.

¹⁴⁰ Staff Report, “Al-Qaeda spy killed was a local operative, says ISPR”, *Dawn*, 31 March 2004.

¹⁴¹ Zulfiqar Ali, “21 wanted men defy deadline”, *Dawn*, 19 January 2004.

¹⁴² Tohid, op. cit.

¹⁴³ Crisis Group interview, Peshawar, May 2006.

¹⁴⁴ “Amnesty offer renewed for foreigners in tribal areas”, *Dawn*, 21 June 2004.

¹⁴⁵ Crisis Group interview, Maulana Abdul Malik Wazir, Islamabad, 23 May 2006.

¹⁴⁶ Rahimullah Yousafzai, “All quiet on the North-Western Front”, *Newsline*, May 2004.

¹⁴⁷ Crisis Group interview, 19 May 2006.

¹⁴⁸ Zulfiqar Ali, “Militants agree to surrender”, *Dawn*, 23 April 2004.

¹⁴⁹ Dilawar Khan Wazir, “Top militant vows to continue jihad”, *Dawn*, 26 April 2004.

¹⁵⁰ “Lashkar’s failure”, *the News*, 22 May 2004; Dilawar Khan Wazir, “Lashkar ends search, says no foreign militant found: government not satisfied”, *Dawn*, 22 May 2004; M. Ilyas Khan, “Who are these people?”, *Herald* (Karachi), April 2004.

¹⁵¹ The administration closed businesses, impounded dozens of vehicles and arrested Zalikhel (sub-clan of Ahmedzai Wazir) tribesmen, including thirteen elders. “Wana bazaar sealed, more tribesmen held”, *the News*, 31 May 2004; “6,000 shops in Wana closed down”, *Dawn*, 31 May 2004.

suspected militant sanctuaries in the Shakai area.¹⁵² In June 2004, a missile allegedly fired from a U.S. predator drone killed Nek Mohammad.¹⁵³ The military then renewed its amnesty offer and even pledged not to hand over foreigners to a third country. But Haji Mohammad Omar, the acting head of the Mujahidin Shura of South Waziristan, remained defiant.¹⁵⁴

In November 2004, after Omar and other militant commanders, including Maulana Abdul Aziz, Haji Sharif, Maulvi Abbas and Mohammad Javed, finally surrendered in South Waziristan, the Musharraf government admitted to giving them \$540,000, ostensibly to repay debts they claimed they owed to al-Qaeda. Maulvi Sharif, who had spurned previous offers, accepted the government's amnesty in December 2004.

2. The spread of militancy

Militancy had also moved from the Wazir to the Mehsud tribal areas. Launching attacks on government installations and personnel, commanders Baitullah Mehsud and Abdullah Mehsud integrated militants on the run into "their re-activated local groups" and established bases, ammunition stocks, bomb-making workshops and training camps.¹⁵⁵ On 5 October 2004, they agreed to a ten-day ceasefire to allow mediators to resolve the issue of the registration of foreign militants.¹⁵⁶ Once again, the military opted for appeasement, with the Peshawar corps commander offering amnesty to Baitullah Mehsud and Abdullah Mehsud.¹⁵⁷ The offer to the latter was withdrawn after his militants kidnapped two Chinese engineers.¹⁵⁸

In February 2005, Baitullah Mehsud surrendered in Sra Rogah, with the JUI-F again playing a central role. A jirga headed by JUI-F national parliamentarian Maulana Sirajuddin mediated the deal. Baitullah reportedly endorsed a six-point peace agreement and pledged loyalty to Pakistan. According to the terms, he and his associates would not attack government functionaries or forces, would not shelter and assist al-Qaeda and other foreign terrorists and would aid the government's war on terror.

¹⁵² Sailab Mahsud, "Warplanes bomb militants' hideouts in Shakai: major military action launched in South Waziristan", *the News*, 12 June 2004.

¹⁵³ Sailab Mahsud and Rahimullah Yusufzai, "Nek Muhammad, five others killed in missile attack", *the News*, 19 June 2004.

¹⁵⁴ Dilawar Khan Wazir, "Militant leader vows jihad against the U.S.", *Dawn*, 22 June 2004.

¹⁵⁵ *Ibid.*

¹⁵⁶ "Militants agree to ceasefire", *Dawn*, 5 October 2004.

¹⁵⁷ Iqbal Khattak, "Deadline for Mehsud militants extended to January 25", *Daily Times*, 12 January 2005.

¹⁵⁸ Zaffar Abbas, "New hunt for Pakistan militants", BBC News, 23 October 2004.

If they violated the accord, they would be punished in accordance with local customs and existing laws¹⁵⁹ but they were not required to surrender foreign terrorists they had sheltered, and the ceremony reportedly ended on a disturbing note, with the militants chanting "Death to America".¹⁶⁰

Despite these deals, the militancy continued unabated, as did cross-border infiltration into Afghanistan. The government, however, repeatedly claimed success, citing as evidence the surrender of almost all the main Wazir militants, the killing or arrests of several hundred foreign terrorists and the capture of their key bases. "The militants are on the run, and they have nowhere to hide", said an official in the crisis management cell at the governor's FATA secretariat.¹⁶¹

But available evidence does not inspire confidence in official claims. Military operations have failed to yield "high value" al-Qaeda targets, and many militants in the agency have found sanctuary elsewhere. Abdullah Mehsud is at large, and Baitullah, who went underground after accepting the government's amnesty, has re-emerged and revitalised his networks.¹⁶² "Two years down the road after military operations", said Lt. General (retd.) Asad Durrani, "the situation is much worse than it was when the military entered the tribal areas...strategic errors are not always easy to correct but there is a failure on the part of the Pakistani authorities to even recognise failure".¹⁶³

C. APPEASING THE MILITANTS: NORTH WAZIRISTAN

Over time, the conflict shifted from South to North Waziristan. Said a local observer: "Following military operations in South Waziristan, militants quickly regrouped in the North, launching attacks across the

¹⁵⁹ "Pakistan pays tribe al-Qaeda debt", BBC News, 9 February 2005; Shamim Shahid, "Baitullah, supporters lay down arms", *The Nation*, 9 February 2005.

¹⁶⁰ Amir Mir, "War and peace in Waziristan", *Asia Times online*, 4 May 2005.

¹⁶¹ Colonel (retd.) Yaqub Mahsud "Unrest in Mehsud Area and the Negotiation Process", paper presented to a seminar on FATA, organised by the Asia Study Centre, Peshawar University, and Hans-Seidel Foundation, Peshawar, 7-8 December 2004.

¹⁶² In November 2006, Mullah Muhammad Nazir, closely affiliated with Hekmatyar's Hizbe Islami, was reportedly appointed Amir (leader) of the Mujahidin Shura of Waziristan. Zulfikar Ali, "Shura plans peace campaign: New militant commander named for Waziristan", *Dawn*, 6 November 2006.

¹⁶³ Crisis Group interview, Rawalpindi, 21 May 2006.

[Afghan] border and engaging Pakistan's security forces when need be".¹⁶⁴

1. Military action

Despite its military efforts, the government's writ in North Waziristan remained tenuous at best, with the local administration virtually confined to government buildings. Mirali and Miramshah *tehsils* (sub-districts) came completely under the sway of the regrouped militants. Several officials were kidnapped or killed. The Mujahidin Shura of North Waziristan banned tribal elders from meeting officials and targeted pro-government tribal elders, killing more than 150 maliks and even clerics suspected of collaborating with the government.¹⁶⁵ Beheading those they accused of spying for the U.S., they attached notes to the bodies warning that all collaborators would face the same fate.¹⁶⁶

The toll for military and paramilitary personnel also rose, as the militants attacked them at will. In March 2006, for instance, security forces targeted an alleged militant hideout in the border town of Danday Saidgi. Officials claimed that 45 people, including 30 foreigners, mostly Chechens, were killed in the attack. Two days later, pro-Taliban militants, based at the madrassa of a local cleric, Maulvi Abdul Khaliq, attacked a Frontier Corps convoy near Mirali town, and the fighting spread to Miramshah, North Waziristan's district headquarters.

Increased cross-border attacks in 2006 by the Taliban and other insurgent groups, including Hekmatkyar's Hezb-e Islami, on Coalition and NATO-ISAF troops and Afghan security personnel and officials, heightened international concerns about Pakistan's failure to act more decisively in the tribal borderlands. For Musharraf, however, the costs, in terms of casualties and morale, of the operations on the military, his sole constituency, were of far greater concern.¹⁶⁷ In May 2006, he appointed Lt. General (ret.) Ali Mohammad Jan Orakzai as the new NWFP governor.¹⁶⁸ A Pashtun from Orakzai Agency

and Peshawar corps commander, 2001-2004, he is NWFP's third governor since the upsurge of militancy in FATA.

Declaring that the restoration of law and order was his biggest challenge, Orakzai vowed "to put out the fire that has engulfed the entire Waziristan and turn it into a land of peace". In his opinion, all that was required was setting a few "misguided tribesmen on the right path".¹⁶⁹ He made little distinction between the militants supporting the Taliban and al-Qaeda and locals alienated by the military's use of indiscriminate and excessive force and the administration's reliance on the FCR.

2. North Waziristan agreement

To find a way out and minimise military costs, Musharraf again opted for appeasement of the pro-Taliban militants. Orakzai was tasked with organising a grand tribal jirga, which was ostensibly to negotiate a peace with tribal leaders.¹⁷⁰ By claiming it had gained broad tribal support to end cross-border attacks, the government could justify its agreement with the militants to its Western allies, particularly the U.S., and so ease international pressure. Domestically, it could claim it had responded to local demands for an end to military operations. In reality, the main parties to the negotiations, as in South Waziristan, were the pro-Taliban militants and the military, with the latter relying again on the JUI-F's good offices.

Maulana Fazlur Rehman's mediation produced a month-long ceasefire by the Mujahidin Shura of North Waziristan on 25 June 2006.¹⁷¹ The ceasefire was endorsed by the Taliban leadership, with Mullah Dadullah Akhund reportedly visiting the Waziristans to persuade local militants to cease attacks on Pakistani forces and focus their attention on the enemy across the border in Afghanistan.¹⁷² As a gesture of goodwill, the government

¹⁶⁴ Iqbal Khattak, "Two militants arrested in North Waziristan", *Daily Times*, 24 November 2004.

¹⁶⁵ Zulfiqar Ghumman, "Taliban killed 150 pro-government maliks", *Daily Times*, 18 April 2006. See also "Cleric killed as spy", the Associated Press, 2 April 2006; "Waziristan violence claims 4 lives", *Dawn*, 29 May 2006; "Tribal elder, soldier killed in Bajaur", *Daily Times*, 12 July 2006.

¹⁶⁶ "Two killed for spying for U.S. in Mirali," *Daily Times*, 1 June 2005.

¹⁶⁷ The militants killed more than 600 military and paramilitary personnel as well as many government officials in South and North Waziristan. Rahimullah Yusufzai, "Accord and Discord", op. cit.

¹⁶⁸ Orakzai replaced Commander (ret.) Khalilur Rehman who was removed in return for JUI-F support. Rehman's

predecessor, Iftikhar Hussain Shah was reportedly removed after he developed differences with the then Peshawar corps commander, Lt. General Safdar Hussain. "NWFP: Another policy change, another governor exits", *Daily Times*, editorial, 23 May 2006.

¹⁶⁹ "Orakzai for talks to end tribal unrest", *Dawn*, 25 May 2006.

¹⁷⁰ Ismail Khan, "Jirga set up, no word on composition, mandate", *Dawn*, 17 July 2006.

¹⁷¹ Ismail Khan, "Waziristan militants offer truce", *Dawn*, 26 June 2006.

¹⁷² Mullah Dadullah told a Pakistani journalist he had visited the Waziristans to advise local militants to cease attacks on the army. "I told the Pakistani tribal militants that fighting in Waziristan was in the interest of America. My argument was that we should fight the U.S., UK and armies of other Western countries". Rahimullah Yusufzai, "We advised Pak Taliban not to fight army: Dadullah", *the News*, 17 September 2006.

released some 50 militants arrested in its anti-terrorism operation but militant leaders insisted that all be freed. On 25 August, the militants extended the ceasefire after the government agreed to key demands, including the release of all militants and the dismantling of check posts set up during the military operation. The first jirga was held soon after, with some 500 tribal elders and ulema participating, followed by a 45-member all-agency jirga.

On 5 September 2006, the government reached a peace agreement, with Maulana Fazlur Rehman's assistance, in Miramshah, and claimed it had been signed with the tribal leaders.¹⁷³ Informed observers, however, insist that the signature of Dr Fakhar Alam Irfan, North Waziristan PA, for the government, in the presence of army commander Major General Azhar Ali Shah, was reciprocated by pro-Taliban commanders including Maulvi Saifullah, Hafiz Gul Bahadur, Maulvi Ahmad Shah Jehan, Maulana Sadiq Noor, Azmat Ali, Mir Sharaf and Hafiz Amir Hamza or their representatives.¹⁷⁴ Informed observers also say Mullah Omar, the Taliban leader, endorsed the accord and persuaded the local militants to sign.¹⁷⁵

Briefing tribesmen on its terms, JUI-F national parliamentarian from North Waziristan Maulana Syed Nek Zaman said: "Misunderstandings between the administration and [Pakistani] Taliban led to unpleasant

moments, but we are happy that a new beginning starts today".¹⁷⁶

The government agreed to "stop the ground and air operations" against the militants; release all "arrested during the operation"; and refrain from arresting them "for (their involvement) in any incident in the past". All new checkpoints would be demolished and the *khassadars* and levies redeployed to the old check posts. The government would compensate the militants for their losses, human and financial, and restore all suspended privileges and benefits to the tribesmen. Weapons, goods, vehicles and arms seized during the operation would be returned to the militants, who would also be allowed to carry arms openly "according to the tribal custom". The political administration would resolve all contentious issues in the agency "according to the FCR" and local custom. The government also called upon all foreigners to leave North Waziristan but agreed that "those who could not leave because of some compulsion" could remain provided they respected "the prevailing laws and the agreement".¹⁷⁷

The militants agreed to end attacks on law-enforcement personnel and government property and targeted killings of opponents and to "return government property in the shape of vehicles, arms, wireless sets, etc". They would not "intervene in the districts adjacent to North Waziristan" nor "would any kind of parallel administration be set up". They further pledged not to conduct cross-border attacks, while the government agreed to allow all other cross-border movement "for trade and business and for meeting with relatives ... in accordance with the traditions and the prevailing laws".¹⁷⁸ A ten-member committee of "the religious clergy, the [tribal] elders and the members of the Political Administration" was to be set up "following mutual consultations" to "review and ensure the implementation of the agreement" and take action against "any person or group (local or foreigner)" who did "not abide by this peace agreement".¹⁷⁹

3. Curbing militancy

While Governor Orakzai called the deal "historic" and "unprecedented", General Musharraf acknowledged that

¹⁷³ A translated text of the accord, provided to Crisis Group, did not include the signatories but specified that the "Peace Agreement in North Waziristan" was signed between the political agent of North Waziristan, representing the NWFP governor and the federal government, with the "Tribal elders of North Waziristan along with the local mujahidin, Taliban, ulema (religious clerics) and the Uthmanzai (Wazir) tribe".

¹⁷⁴ Ismail Khan, "Why the Waziristan deal is such a hard sell", *Dawn*, 14 October 2006; Shamim Shahid, "Government, militants 'ink' NWFP peace pact", *The Nation*, 6 September 2006.

¹⁷⁵ Claiming to have seen Mullah Omar's letter endorsing the agreement, Latif Afridi, a former FATA parliamentarian, stressed: "Had they [the militant leaders] not been asked by Mullah Omar, none were willing to sign the agreement". Massaad Ansari and Colin Freeman, "Omar role in truce reinforces fears that Pakistan 'caved in' to Taliban", *the Telegraph*, 24 September 2006. See also Zahid Hussain, "Taliban militants gain ground after deal with Pakistan", *The Times*, 29 September 2006; Zahid Hussain, "Musharraf's Doublespeak", *Newslines*, October 2006; and "Afridi claims Mullah Omar backed Waziristan truce", *the News*, 28 September 2006. The government strongly denied Mullah Omar's involvement. "It is baseless, it is totally baseless", said a government spokesperson. Raja Asghar, "Waziristan deal: Omar's role denied", *Dawn*, 26 September 2006.

¹⁷⁶ Shamim Shahid, "Government, militants 'ink' NWFP peace pact", op.cit; "A welcome move", *The Nation*, 6 September 2006; "Waziristan Taliban sign peace deal with government", *Daily Times*, 6 September 2006.

¹⁷⁷ Translated text of North Waziristan accord.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid. In the first task given to it, to judge the culpability of ten men arrested in North Waziristan following a Taliban attack in neighbouring Khost province, it freed most on the grounds of inadequate evidence.

“there is no guarantee that [it] will succeed”.¹⁸⁰ An observer warned that it might have pulled the army “out of what has proven to be a quagmire” but locals were apprehensive that “the agreement would undermine the writ of the government” and “strengthen the militants”. One commented: “Will foreign and local militants stop their ‘Jihad’? Not likely”.¹⁸¹ In its editorial, a major national daily stressed: “On the face of it, the agreement reads as a breakthrough, but if one reads the finer print, it appears that the government has all but caved in to the demands of the militants. More ominously, the agreement seems to be a tacit acknowledgement by the government of the growing power and authority of the local Taliban”.¹⁸²

While the government says it has not withdrawn, merely relocated its 80,000-plus troops, and will continue to prevent cross-border attacks, the insurgency has certainly not ended. On the contrary, according to NATO’s top military commander, General James Jones, “preliminary indications are that the movements across the border have increased since the signing of agreements”.¹⁸³ The militants, who are no longer fighting Pakistani troops, are instead using the region as a hub for cross-border attacks. This is more than evident in the deaths of local militants during clashes in Afghanistan.¹⁸⁴

Nor is there evidence that the accord has denied the Taliban and other foreign militants sanctuaries in North Waziristan. Instead, it appears to have empowered the Taliban, most likely contributing to its resurgence. The local militants are certainly not living up to their end of the bargain. In fact, soon after signature of the accord, a spokesperson for them denied the presence of foreign militants in North Waziristan and asked the government for evidence: “Why should we bother [to restrain foreign fighters] if they are not here?”¹⁸⁵

It appears that the local militants are using this period of peace to recoup their losses, rearm, reorganise and expand their influence. That militancy remains a threat to the peace is more than evident in the beheading of two persons accused of spying for the U.S. days after the accord was signed.¹⁸⁶ The militants now hold sway in South and North Waziristan Agencies and have begun to expand their influence not just in other tribal agencies such as Khyber and Bajaur but also in NWFP’s settled districts.

These militants are not merely misguided tribesmen, irked by the military’s intrusion into their semi-autonomous homelands, and supported by an alienated population that has borne the brunt of the military operation. They are jihadists with a clear goal: to assert their influence, and their version of radical Islam, within Pakistan’s tribal belt and across the border in Afghanistan. Locals are indeed alienated since the central government denies them civil and political rights and basic services. They are also angered by the imposition of harsh laws and the use of indiscriminate military force. But the local militants have little to offer them, other than a radical and distorted version of Deobandi Islam, superimposed on the Pashtun tribal code, which is eroding any progress made thus far in attaining justice and democracy in FATA.

¹⁸⁰ “Arms swapped in North Waziristan”, *Dawn*, 7 September 2006.

¹⁸¹ Ismail Khan, “Peace deal: back to square one!”, *Dawn*, 6 September 2006.

¹⁸² “Back to square one?” *the News*, 7 September 2006.

¹⁸³ “Militant infiltration up in Afghanistan since Pakistan deal: NATO”, *the News*, 28 October 2006; K. Alan Kronstadt, “Pakistan-U.S. Relations”, Congressional Research Service, Washington DC, updated 16 October 2006, pp. 12-13.

¹⁸⁴ “Bodies of four militants brought from Afghanistan”, *Dawn*, 17 October 2006; Zulfikar Ali, “Bodies of Taliban being brought back”, *Dawn*, 22 October 2006. A local militant said: “There is no doubt that we support this jihad against infidels, against these Christians who have invaded a Muslim land”. Zeeshan Haider, “Taliban-style militants roam Pakistan region after pact” Reuters, 23 October 2006.

¹⁸⁵ Carlotta Gall and Ismail Khan, “Pakistan lets tribal chiefs keep control along border”, *The New York Times*, 6 September 2006.

¹⁸⁶ “The Taliban threat”, *the News*, 14 September 2006.

V. THE TALIBANISATION OF PAKISTAN

A. THE ACTORS

Militants in FATA include local, pro-Taliban types as well as Islamic radicals from Uzbekistan, Chechnya, and some Arab countries. A few hardened foreign fanatics, no more than 100, and their local accomplices numbering less than 1,000, form the core of the militancy. Pakistani security forces have mainly targeted Arabs, linked to al-Qaeda, and other foreigners, some of whom settled in the tribal regions shortly after the anti-Soviet jihad in the 1980s or in the aftermath of the Taliban's ouster. Although accurate estimates are not possible, there are very few Arabs among the foreign fighters, who are mostly from Central Asia and the Caucasus, rallying around Tohir Yuldash, the head of the Islamic Movement of Uzbekistan (IMU), who reportedly offered fierce resistance to a Pakistani military attack in March 2004.¹⁸⁷ The most prominent among the foreign militants, the Uzbeks are believed to be taking a lead in managing and resolving local disputes, said a well-known local analyst.¹⁸⁸ For the al-Qaeda-linked Arabs, the key concern is survival, not combat. Analysts believe that most of the leadership has likely moved from the tribal belt to Pakistan's settled districts and urban centres.¹⁸⁹

According to one estimate, there are fifteen to twenty small, local militant groups in South Waziristan agency and ten to twelve in North Waziristan. While they may not closely coordinate their operations, local militants are inspired by and support the Taliban. Pledging allegiance to Mullah Omar, they have committed themselves to "come to each other's rescue if need be".¹⁹⁰ Militant commanders such as the late Nek Mohammad and Abdullah Mehsud participated in the anti-Soviet jihad in Afghanistan and/or fought alongside the Taliban against the Northern Alliance and the U.S.-led coalition that ousted the Taliban. Abdullah Mehsud was imprisoned for almost two years in Guantanamo Bay, until 2004. These Afghan war veterans are believed to provide a support network for al-Qaeda and the Taliban in FATA.

Many unemployed youth have joined the local militants, drawn to the jihad as a way of gaining a livelihood or enhancing their social importance and power. Other recruits include local criminals who see jihad as lucrative business and give support and shelter to Uzbek and other foreign militants in the Waziristan Agencies for a price.¹⁹¹

The main aim of Pakistan's counter-insurgency campaign was to kill, arrest or neutralise foreign terrorists, but also to wean away Pakistani militants through sticks and carrots. However, the military may inadvertently have empowered a new generation of Pakistani militants linked to the Taliban in Afghanistan.¹⁹² The militants have benefited from concessions while the local population has been the victim of excessive military force. The ill-advised decision to mount the aerial attack on the Bajaur madrasa on 30 October 2006,¹⁹³ resulting in 82 deaths, instead of a cordon, search and apprehend operation, for instance, gave the militants and their MMA allies an opportunity to whip up anti-Western, pro-jihadi sentiments in NWFP.¹⁹⁴ Denying the media access to the conflict zone has also played into militant hands, since it allows the jihadis disproportionate influence on domestic perceptions of what is happening in FATA.

President Musharraf insists: "There will be no Taliban activity [in Pakistan]. There will be no Talibanisation".¹⁹⁵ Rejecting his claims of countering militancy in FATA, however, analysts insist that militant training centres still thrive in the Waziristans. "Training camps are sprouting in and around the heavily-forested Shawal region in North Waziristan, and the [Pakistani] Taliban are recruiting, training, raising money", said a local journalist.¹⁹⁶ The militants are openly fund-raising for their jihad and distributing jihadi literature, including CDs and DVDs,

¹⁸⁷ Crisis Group interview, Rahimullah Yousafzai, May 2006.

¹⁸⁸ Ibid.

¹⁸⁹ Most senior al-Qaeda leaders, including Khalid Sheikh Mohammed, Al-Faraj Libbi and Abu Zubaida, were arrested from urban centres such as Rawalpindi, Mardan and Karachi. "Fact Sheet: United States and Pakistan, Long-Term Strategic Partners", at <http://www.whitehouse.gov/news/releases/2006/03/20060304-4.html>.

¹⁹⁰ Crisis Group interview, Sailab Mehsud, Dera Ismail Khan, 15 May 2006.

¹⁹¹ See Aamer Ahmed Khan, "Meeting Taliban's Pakistan chief", BBC, 20 April 2006.

¹⁹² Crisis Group interviews, May 2006.

¹⁹³ MMA leaders and locals in Bajaur insist the U.S. was responsible for the madrasa attack, a version strongly denied by the Pakistan military although Pakistani intelligence sources admitted the attack was based on U.S. intelligence reports about the presence of al-Qaeda fugitives. In January 2006, a U.S. Predator drone attacked a gathering of militants in Damadola village, Bajaur agency, believing al-Qaeda leader Ayman al-Zawahri was present. He was not but a number of locals died. Pamela Constable and Kamran Khan, "Pakistan strike called response to U.S. reports", *The Washington Post*, 31 October 2006.

¹⁹⁴ Maulana Faqir Mohammad, a pro-Taliban cleric, believed to be a target of the strike, told a rally of thousands of protestors in Bajaur that "Our jihad will continue". "Protests against air strike", *Dawn*, 1 November 2006.

¹⁹⁵ Zahid Hussain, "Musharraf's doublespeak", op.cit.

¹⁹⁶ Crisis Group interview, 14 July 2006.

even in NWFP's settled districts such as Bannu, Dera Ismail Khan, Dir and Kohat.¹⁹⁷ "The success of the [Pakistani] Taliban in establishing a neo-Taliban mini-state is acting like honey to the bees, as it is attracting banned militant groups like the Jaishe Mohammad to FATA", said one observer.¹⁹⁸ "Militants from all over the country, from Mardan to Multan, are converging on Waziristan", said another.¹⁹⁹

Some analysts believe the collaboration between al-Qaeda, Taliban and Pakistani militant groups has resulted in a more coordinated campaign against Afghan and international troops in Afghanistan. According to the author Ahmed Rashid, "al-Qaeda, now under the operational leadership of the Egyptian Ayman al-Zawahri, has helped reorganise the Taliban, create unlimited sources of funding from the sale of Afghan-grown opium and forge a new alliance linking the Taliban with extremist groups in Pakistan, Central Asia, the Caucasus and Iraq".²⁰⁰

The military government's FATA policy and militant actions have certainly resulted in an environment of fear and insecurity in North and South Waziristan, disrupting lives and livelihoods. Fear of the militants, combined with resentment against a corrupt administration and draconian laws, has contributed to local acquiescence of Taliban-style governance. "Military actions and policy have contributed to the anarchical situation that pro-Taliban militants are more than happy to fill. Their demonstrated ability to restore order, prosecute criminals and dispense speedy justice was welcomed by many civilians fed up with violence and insecurity".²⁰¹

B. TALIBAN-STYLE RULE

Government officials admit that the local administration in South Waziristan has to negotiate the running of the area with militant commanders who rule by night. The situation in North Waziristan is no different; particularly

after the signing of the September 2006 accord, the militants are now running the show. Despite their peace agreements with the military, militants have continued to attack and kill officials and pro-government locals in both Waziristans,²⁰² even striking a gathering addressed by General Orakzai, the architect of the North Waziristan accord, during a visit to Wana, South Waziristan's district headquarters, his first as NWFP governor.²⁰³

Militants and the military alike have threatened journalists who criticise them with dire consequences. In March 2004, the security forces beat journalists photographing destroyed paramilitary vehicles and confiscated their recording equipment.²⁰⁴ Two reporters were fatally wounded in Wana, when their vehicle was attacked as they returned from Baitullah Mehsud's "surrender" ceremony. The shootings, which were claimed ten days later by a hitherto unknown group calling itself Sipah-e-Islam (Soldiers of Islam), took place some 100 metres from the army's regional headquarters and in the vicinity of heavily guarded government buildings. No arrests were made, though the authorities claimed to have searched the entire area. Abdullah Mehsud, who had opposed the peace deal, denied involvement.²⁰⁵ Many local journalists have left the tribal agencies for fear of the militants and the security forces. A local journalist who now lives in Dera Ismail Khan said "the message is clear: leave or die".²⁰⁶

Attempting to emulate Taliban rule in Afghanistan in South Waziristan and parts of North Waziristan, especially Miramshah and Mirali *tehsils*, the militants have attacked music, video and CD stores and closed barbershops. Several government officials have been harassed or threatened. A district official said a local

¹⁹⁷ Crisis Group interview, Dera Ismail Khan, May 2006.

¹⁹⁸ Crisis Group interview, Sailab Mehsud, Dera Ismail Khan, 15 May 2006. The Jaishe Mohammad is a Deobandi jihadi group, operating mainly in Indian-administered Kashmir, which draws its manpower from Sipah Sahaba, the radical Sunni extremist organisation, and JUI madrasas. The Sipah and other radical sectarian organisations, many banned by the Musharraf government, have gained a foothold in parts of FATA, such as Khyber and Orakzai agencies, and even in NWFP's settled areas. See Crisis Group Report *The State of Sectarianism in Pakistan*, op. cit.

¹⁹⁹ Crisis Group interview, Rahimullah Yousafzai, May 2006.

²⁰⁰ Ahmed Rashid, "Afghanistan poses the real threat", *The Telegraph*, 30 May 2006.

²⁰¹ Crisis Group interview, agency official from South Waziristan, June 2006.

²⁰² For instance, the body of a local cleric was found by security agencies on 19 November in North Waziristan, with a note attached saying he "spied for the Americans". In October, militants killed another cleric accused of spying for U.S. forces. Several pro-government locals have been killed in South Waziristan. See "U.S 'spy' killed in Miramshah", *the News*, 20 November 2006; Alamgir Bhattani and Pazir Gul, "Four killed in Shakai; Mirali camp attacked", *Dawn*, 11 November 2006.

²⁰³ Dilawar Khan Wazir, "Rockets rain on Wana during governor's visit: Aurakzai not targeted: spokesperson", *Dawn*, 8 November 2006.

²⁰⁴ On 15 June 2006, local journalist Hayatullah Khan's body was found near Mirali town in North Waziristan, almost seven months after he was kidnapped following his report that a U.S. missile had killed an Egyptian al-Qaeda leader, Abu Hamza Rabia, a claim refuted by the Pakistani military which took credit for Rabia's death. Khan's family hold security agencies responsible for his death. Ismail Khan, "Missing journalist's body found", *Dawn*, 17 June 2006.

²⁰⁵ See, "Who killed Amir Nawab Khan and Allah Khan Wazir?", *Reporters Sans Frontières*, 3 March 2005.

²⁰⁶ Crisis Group interview, June 2006.

Taliban council had asked him to “grow a beard if he was a real Muslim”.²⁰⁷ The militants have also established parallel administrations in North and South Waziristan, with some wearing badges reading “appointed by the office of the Taliban, the mujahiddin of the North Waziristan Agency”. They have set up committees to raise funds, impose taxes on businesses²⁰⁸ and carry out brutal, Taliban-style punishments. “The [Pakistani] Taliban have established summary trial courts and police the area under their control under the very nose of the thousands of army and paramilitary troops”, said a former North Waziristan parliamentarian. “Do you think the government has no power over what is going on?”²⁰⁹

In December 2005, for instance, the militants accused some two dozen locals of involvement in crimes ranging from kidnapping to murder, executed them and mutilated their bodies in the centre of Miramshah town, the district headquarters of North Waziristan.²¹⁰ In June 2006, militants publicly executed a man accused of murder in a village near Miramshah in a spectacle reminiscent of Taliban executions in Afghanistan.²¹¹ While some agency officials attempted to justify the summary executions by the tribal custom of *badal* (revenge), critics pointed out that the militants had conducted the executions, not tribal jirgas. “These executions represent the wilful abdication of the state’s basic responsibility of prosecuting murder”, said HRCP Director I.A. Rehman.²¹²

Following the signing of the 5 September 2006 North Waziristan accord and concerned about vigilantism and violent attacks, including murders and beheadings by the pro-Taliban militants, Human Rights Watch called on Musharraf to stop human rights abuses in the tribal belt. “President Musharraf and the Pakistani government are still responsible for the human rights of the people of Waziristan. The Pakistan government must not allow hundreds of thousands of people, particularly women and girls, to fall under the control of groups following the abusive practices of the Taliban”.²¹³ By failing to act

against militants responsible for grave crimes and serious human rights abuses, the state is indeed abdicating its responsibility to protect Pakistani citizens who live in FATA.

C. SPREAD OF TALIBANISATION

Talibanisation is also spreading to other agencies in FATA where NGOs have been threatened. In June 2006, two women and two young girls were shot dead in a school in Orakzai Agency. The women were employed in a donor-funded vocational training program. It is believed local clerics opposed to NGO presence in the tribal belt killed them.²¹⁴ In September 2006, a woman employee of the state-run National Commission for Human Development was killed and another wounded in Bajaur Agency, forcing the organisation to suspend its activities there. Days before the attack, a religious group, Jabha-e Khalid bin Waleed, had called on all NGOs to leave the agency.²¹⁵

In Khyber Agency, adjoining Peshawar, Mufti Munir Shakir, a JUI-F-linked Deobandi cleric, enforced a parallel justice system through his militia, the Lashkar-e-Islami (Army of Islam), policing the area and airing hard-line religious and sectarian teachings through his FM radio station. Armed clashes between his supporters and those of a rival Bareilvi leader, Pir Saifur Rehman, in the Bara *tehsil* have killed scores of people since February 2006.²¹⁶ The administration belatedly evicted the rival leaders but Lashkar-e-Islami has established its new base in Baza sub-*tehsil*,²¹⁷ where it has imposed a ban on money-lending as un-Islamic. The new Lashkar head has also issued warnings to those who do not pray five times a day over his FM station from his hideout in Tirah valley.

FM stations are a powerful new medium for communicating the message of jihad and violence against the “infidels and their lackeys”.²¹⁸ According to

²⁰⁷ Crisis Group interview, Dera Ismail Khan, 18 May 2006. The official asked for a transfer.

²⁰⁸ “Taliban slap taxes in Miramshah”, *Dawn*, 23 October 2006; Zulfikar Ali, “Shura plans peace campaign: New militant commander named for Waziristan”, *Dawn*, 6 November 2006. See also Zeeshan Haider, op.cit.

²⁰⁹ Crisis Group interview, Peshawar, May 2006.

²¹⁰ Zahid Hussain, “Terror in Miramshah”, *Newsline*, April 2006; “More bandits die in Waziristan”, BBC, 9 December 2005.

²¹¹ “Murder accused executed in public”, *Dawn*, 1 July 2006; “Taliban stage public execution in Mirali”, *the News*, 1 July 2006.

²¹² Crisis Group interview, Lahore, 22 May 2006.

²¹³ The organisation’s Asia director, Sam Zarifi, quoted in “Afghanistan: Bush, Karzai, Musharraf must act now to stop

militant abuses: Human rights protections need greater priority”, press release, Human Rights Watch, 27 September 2006.

²¹⁴ Behroz Khan, “Two women, kids shot in Orakzai Agency”, *the News*, 17 June 2006; Abdul Sami Paracha, “Murder of teacher and children: four held”, *Dawn*, 20 June 2006.

²¹⁵ Mushtaq Yusufzai, “Bajaur blast victim succumbs to injuries”, *The News*, 21 September 2006.

²¹⁶ At least twenty were killed in the 16 November clash alone. “20 die in Khyber clash”, *Daily Times*, 17 November 2006.

²¹⁷ Ibrahim Shinwari, “JUI leader in Bara kidnapped,” *Dawn*, 6 June 2006; Ibrahim Shinwari, “Lashkar active in Bara again”, *Dawn*, 10 October 2006.

²¹⁸ Isambard Wilkinson, “FM mullahs fill the airwaves with hatred”, *The Daily Telegraph*, 3 March 2006; “Five illegal FM stations in Bajaur closed down,” *Dawn*, 23 February 2006.

the Pakistan Electronic Media Regulatory Authority, over 100 seminaries and mosques broadcast extremist and jihadi propaganda from illegal FM channels across the NWFP and the tribal areas.²¹⁹ When asked about these, a former official of the NWFP governor's secretariat replied: "What can we do? The government has closed down over 40 channels since 2005 but they resurface almost instantaneously".²²⁰

As the militants consolidate their hold in the tribal areas, Talibanisation has also crept into the settled districts. Local clerics inspired by, and with links to, local militants and the Taliban try to emulate Taliban-style rule.²²¹ "The [Pakistani] Taliban's sphere of influence has expanded to Dera Ismail Khan, Tank and the Khyber Agency, where clerics of the area have started to join them", admitted Interior Minister Aftab Ahmad Khan Sherpao.²²²

With the JUI-F governing the NWFP, the environment is more than conducive for efforts to impose a Taliban-style order in the province.²²³ Government officials, politicians and journalists said Talibanisation in the settled districts has taken the form of a campaign to enforce public morality modelled on the Taliban ministry of vice and virtue.

Said a local journalist in Dera Ismail Khan, "Talibanisation is seeping out of the tribal areas and spreading like a jungle fire".²²⁴ The fall-out is evident. In March 2006, a remote-controlled bomb destroyed a police van in Dera Ismail Khan, killing six officers. On 2 June, a suicide attack on a military convoy near Bannu killed four soldiers and wounded seven.²²⁵ On 27 June, another suicide bomb attack killed seven paramilitary personnel

and injured twelve others.²²⁶ Militants have assassinated several government officials in Dera Ismail Khan and Bannu, with Peshawar, as well as Bannu and other settled districts, coming under rocket attack.²²⁷ And Pakistani militants, beside Afghan counterparts, are responsible for attacking international forces and Afghan personnel across the Durand Line.

²¹⁹ Adnan Rehmat and Matiullah Jan, "State of Media in Pakistan Report 2005-06: The Year of Reporting Dangerously", Internews Pakistan, 3 May 2006.

²²⁰ Crisis Group interview, Peshawar, May 2006. In July the government jammed 156 FM stations, but more than 70 continue to operate illegally. "156 illegal FM radio stations jammed", *Dawn*, 20 July 2006; Rubin and Siddique, op. cit., p. 17.

²²¹ Qudsia Akhlaque, "Militants find new sanctuaries", *Dawn*, 11 December 2004; Behroz Khan, "Militants move out of troubled North Waziristan areas", *The News*, 15 March 2005; Anwarullah Khan, "Regular troops deployed on Bajaur border", *The Nation*, 17 April 2006.

²²² Zulfiqar Ghumman, "Taliban killed 150 pro-government maliks", *Daily Times*, 18 April 2006.

²²³ On 13 November 2006, the MMA government passed a bill in NWFP's provincial legislature to set up a Taliban-style department to enforce Islamic morality. Mohammad Riaz, "NWFP adopts Islamic morality bill: Opposition calls it 'maulvi's martial law'", *Dawn*, 14 November 2006.

²²⁴ Crisis Group interview, May 2006.

²²⁵ See Carlotta Gall, "Pakistan: four soldiers killed in suicide attack", *The New York Times*, 3 June 2006.

²²⁶ Shamim Shahid, "Seven troops dead in suicide hit", *The Nation*, 27 June 2006; Pazir Gul, "Suicide car bomber kills 7 troops", *Dawn*, 27 June 2006.

²²⁷ Rahimullah Yousafzai, "All quiet on the North-Western front", *Newsline*, May 2004.

VI. EXTERNAL IMPLICATIONS

As mentioned, Pakistan's relations with Afghanistan have been bedevilled from the start by mutual mistrust and interference. Pakistani intervention in the past four decades has taken the shape of support for Pashtun Islamists in Afghanistan, as a result of which the Durand Line has been all but erased. Afghan mujahidin and their Pakistani, mainly Pashtun supporters, used sanctuaries in Pakistan to organise, train, arm and launch cross-border attacks, first against the Soviet-supported government in Kabul and then to establish a Pakistani-supported Pashtun-dominated political order there, culminating in the Taliban takeover. This history of state-supported jihad now undermines Pakistan's writ over FATA.

Despite Pakistani denials, the tribal belt, particularly agencies such as the Waziristans, remains a Taliban sanctuary and a hub for attacks on the U.S.-led Coalition and NATO/ISAF forces and the Afghan government.²²⁸ Bajaur Agency, where the Jamaat-i-Islami, the other major MMA party, has a political hold, is another strategic base for the resurgent Taliban.²²⁹

While cross-border links with Pakistani Islamist radicals have helped Arab and other foreign terrorists find shelter in FATA, Deobandi parties such as JUI-F and clerics remain the Taliban's most ardent supporters. The Taliban are now mobilising local support through JUI-affiliated madrasas and other sympathetic mullahs. Ironically, the military government relied on the JUI-F to mediate its peace deals with pro-Taliban militants in South and North Waziristan which, it claimed, would end the Talibanisation of the tribal belt and curb cross-border attacks.

The precise extent of official support for or knowledge of Taliban activities is nearly impossible to determine but even if Pakistan is not directly aiding the Taliban, it is not making much effort to stop unofficial help.²³⁰ Ahmed Rashid believes Islamabad's ultimate goal is for the "Americans and NATO to concede its version of reality and give the Taliban and other Afghan extremist

factions a place at the table in Kabul".²³¹ In either case, said a moderate Pashtun leader, the "state's myopic policy of rivalry with and [attempts to gain] influence over Afghanistan is likely to remain an impediment to the peace and prosperity of the region".²³²

A. AFGHANISTAN

With the Taliban resurgence engulfing the southern provinces and attacks also increasing in the east, President Karzai has repeatedly called upon Pakistan to act against Taliban leaders and operatives, dismantle their training camps, deny sanctuary and shut down the jihadi madrasas that provide recruits from Pakistan. "I don't think the Taliban have a headquarters, but the Taliban have sanctuaries", he says. "The sanctuaries are definitely in Pakistan".²³³ Karzai also believes that Islamabad's 5 September 2006 agreement with pro-Taliban militants is fuelling further cross-border attacks.

Musharraf admits: "There are al-Qaeda and Taliban both in Afghanistan and in Pakistan....They are certainly crossing from the Pakistani side and causing bomb blasts and terrorist activities" in Afghanistan.²³⁴ However, he also insists that the problem and its solution lie in Afghanistan since the Taliban have "roots in the [Pashtun] people", who could be provoked into "national war" if Kabul fails to address their grievances.²³⁵ "The war", Musharraf says, "has to be won on the Afghan side. In Pakistan we are certainly taking action against the elements supporting the Taliban in Afghanistan".²³⁶ But the president has yet

²³¹ Ahmed Rashid, "A Taliban comeback", *Yale Global Online*, 23 May 2006.

²³² Crisis Group interview, Peshawar, May 2006.

²³³ Karzai added that Mullah Omar was in Quetta, Balochistan's provincial capital, an allegation denied by the Pakistan foreign office, which said: "We know he is in Afghanistan. The whole world knows he is in Afghanistan". Kathy Gannon, "Afghan leader: Taliban chief in Pakistan", *The Associated Press*, 17 October 2006. When asked "do you agree with the assessment of some that the Taliban headquarters is somewhere in the region of Quetta?" at a U.S. Congressional hearing, NATO Supreme Allied Commander (Europe) General Jim Jones replied: "That's generally accepted, yes, sir". "Senate Foreign Relations Committee Holds Hearing on Changing Command Structure in Afghanistan", *Congressional Transcripts*, 21 September 2006, p. 18.

²³⁴ David Ljuggren, "Afghanistan, Pakistan clash over war on terror", *Reuters*, 20 September 2006; Barry Schweid, "Pakistan urged to shut extremist schools", *The Associated Press*, 26 September 2006.

²³⁵ "Afghanistan: Taliban could spark Pashtun 'national war'", *RFE/RL*, 12 September 2006.

²³⁶ Nasir Jamal and Ahmed Hassan, "Taliban: An Afghan issue: Accord to set up anti-terror group with UK", *Dawn*, 20 November 2006.

²²⁸ See Crisis Group Report *Countering Afghanistan's Insurgency*, op. cit.

²²⁹ JI members of parliament were in the forefront in denouncing the attack on the Bajaur madrasa on 30 October, and JI has raised funds to rebuild it. A number of key al-Qaeda fugitives were captured from homes of JI workers or sympathisers. Crisis Group Report, *The State of Sectarianism in Pakistan*, op. cit., p. 24.

²³⁰ Scott Baldauf and Owais Tohid, "Taliban appears to be re-grouped and well-funded", *The Christian Science Monitor*, 8 May 2003.

to take decisive action against the Taliban presence on Pakistani territory, opting to cede much of the tribal belt to pro-Taliban militants instead of addressing Pashtun grievances and demands for justice and participatory governance in FATA.

Without external sanctuaries and support, the Taliban would be hard pressed to sustain its violent campaign in Afghanistan at current levels. However, Kabul and the international community must also address their own shortcomings. "There have been major failures by the international community and the Afghan government in their inability to provide troops, security and funds for reconstruction and nation-building to the Pashtun population in the south".²³⁷

Kabul must clean up the government, removing corrupt police and predatory officials who have undermined local trust in state institutions crucial to winning a counter-insurgency. It must also use all existing forums, including the military-to-military Tri-Partite Commission (Pakistan/Afghanistan/NATO-ISAF), more effectively to raise concerns with its neighbour and gain support for Islamabad's cooperation in curbing cross-border militancy.²³⁸

While the international community must provide the military and financial resources to meet the challenges of the insurgency, focusing particular attention on capacity building and reform of the Afghan army and police, it also needs to pressure Pakistan to clamp down on the Taliban and its local allies. In the absence of domestic reforms and a robust international commitment, Afghanistan could again become a Taliban-style, failed narco-state, a safe haven for al-Qaeda and other terrorist groups. But a zero tolerance policy by influential international actors, particularly the U.S. and the European Union (EU), towards Taliban presence in and operations from Pakistani territory is equally vital in ensuring the stabilisation of the Afghan state.

B. UNITED STATES AND NATO

With international casualties rising and the state-building process in Afghanistan seriously threatened by the Taliban insurgency, the U.S. faces a dilemma. It backs Musharraf and his military in the belief that they alone can deliver the goods on al-Qaeda. But by propping up a military regime that has little domestic legitimacy and credibility and has willingly worked with

the very Islamist parties who share and endorse the Taliban's version of Islamic radicalism, it has alienated Pakistan's moderate majority.²³⁹

While Pakistani security agencies have worked with the U.S. in apprehending and eliminating al-Qaeda fugitives, there is little meaningful cooperation in rooting out the Taliban from Pakistani territory. This overemphasis on al-Qaeda has already cost the U.S. and its NATO allies dearly in Afghanistan. For almost two years after the Taliban's ouster, the U.S. was primarily concerned with capturing or killing al-Qaeda leaders believed to be hiding in south eastern Afghanistan. Since the Taliban was considered only a local threat, it was largely ignored, and coalition and NATO troops made little effort to secure the Taliban heartland in the south. The Taliban has steadily filled the vacuum, using safe havens in Pakistan as a base and a source of funding and recruitment.

With the insurgency raging in Afghanistan, NATO's leaders reaffirmed at their November 2006 Riga summit that "peace and stability in Afghanistan is NATO's key priority", calling upon "all of Afghanistan's neighbours to act resolutely in support of the Afghan government's efforts to build a stable and democratic country within secure borders" and particularly encouraging "close cooperation between Afghanistan, Pakistan and NATO, including through the Tri-Partite Commission".²⁴⁰ Such cooperation is unlikely to pay dividends, however, unless the U.S. and its NATO allies are willing to press the Musharraf government to take action against pro-Taliban elements on its side of the Durand Line. Recognising that the Pashtun tribal belt on both sides of the Durand Line has a high incidence of poverty that feeds criminal activities as well as religious extremism, the Bush administration has proposed Reconstruction Opportunity Zones (ROZs) to strengthen and diversify its economy.²⁴¹ However, the ROZs are "almost impossible to implement in the prevailing law and order situation in South and North Waziristan, Khyber and Bajaur Agencies, which is not at all conducive to investment and industrialisation".²⁴² Moreover, a prominent analyst notes, "millions of dollars worth of public sector investment [which the Pakistan government has yet to

²³⁷ Ahmed Rashid, "Afghanistan: Taliban's second coming", BBC News, 2 June 2006.

²³⁸ See Crisis Group Report, *Countering Afghanistan's Insurgency*, op. cit.

²³⁹ See Crisis Group Asia Report N°102, *Authoritarianism and Political Party Reform in Pakistan*, 28 September 2005; and Crisis Group Report, *The Worsening Conflict in Balochistan*, op. cit.

²⁴⁰ Text of Riga Summit Declaration, 29 November 2006, at <http://www.nato.int/docu/pr/2006/p06-150e.htm>; "NATO boosts efforts in Afghanistan", NATO Update, 28 November 2006 at <http://www.nato.int/docu/update/2006/11-november/e1128a.htm>.

²⁴¹ These ROZs will be given duty free access to U.S. markets for goods manufactured in the tribal belt.

²⁴² Crisis Group interview, Peshawar, 12 May 2006.

undertake] is needed to provide the public goods essential to create an investment friendly climate".²⁴³ With the resurgence of the pro-Taliban militants, unconditional assistance to the military government for the region would only empower the very forces that the U.S. and its allies hope to counter. The U.S. should indeed help build FATA's economy and infrastructure, but make all assistance dependent on political, administrative and judicial reform which empowers the people, not the militants.

The U.S. has put all its eggs in Musharraf and his military's basket because of a belief that they are essential for holding the Islamists in Pakistan at bay, disregarding their alliance with the mullahs, including the JUI-F, the Taliban's closest Pakistani ally. As a result, the U.S. has compromised its standing with its natural allies, the vast majority of moderate Pakistanis who, represented by their political parties, would be invaluable partners in neutralising extremism within the country.

VII. CONCLUSION

Militancy in FATA clearly poses a serious threat to regional security and Pakistan's own stability. The Musharraf government's haphazard, poorly executed and unsuccessful military operations, its lack of a coordinated political-military strategy and its propensity to opt for appeasement when brute force has proved ineffective have emboldened the pro-Taliban militants. Its policy has spurred unrest and anarchy in the Waziristans, allowing militants to establish a virtual mini-Taliban-style state there and spread their influence into the NWFP's settled areas. The militants' sway means the area will continue to provide safe haven to the Taliban and its foreign allies.

FATA's repressive, colonial-era political, administrative and judicial structures and its dire poverty, including lack of economic opportunities, breed local alienation and resentment and provide the overall context in which militancy flourishes. Just as countering the insurgency in Afghanistan requires earnest reform efforts by Kabul, Pakistan can only deal with militancy and extremism by extending democratic freedoms, enforcing rule of law and promoting sustainable economic development.

The government pays lip service to institutional reforms, modernisation and economic development but has used the convenient pretext of respecting the autonomy and cultural traditions of the "unruly" tribal Pashtuns to sustain the status quo. There is no justification for retaining FCR, which treats the people of FATA as criminals and subjects, not citizens of a modern state with basic civil and political rights and access to representative participatory institutions and due process of law.

Regional security and Pakistan's political and economic development also depend ultimately on ending the military's chokehold on the state and policy-making. The international community should re-evaluate its support for military rule in Pakistan. The U.S. and the EU should link their economic aid and diplomatic support to the return to democratic rule through free and fair elections in 2007, implementation of institutional reforms and verifiable commitments to take effective steps against extremist elements, Pakistani or Afghan. Democratic reform in FATA and empowerment of moderate forces in Pakistan's mainstream politics offer the only real bulwark against extremism and terrorism in the country and beyond.

Islamabad/Brussels, 11 December 2006

²⁴³ Crisis Group interview, Islamabad, 24 May 2006.

APPENDIX A

MAP OF PAKISTAN

