

# **PAKISTAN: COUNTERING MILITANCY IN FATA**

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## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY AND RECOMMENDATIONS</b> .....	<b>i</b>
<b>I. INTRODUCTION</b> .....	<b>1</b>
<b>II. DYSFUNCTIONAL GOVERNANCE</b> .....	<b>2</b>
A. FATA’S ADMINISTRATION .....	2
B. STALLED REFORMS .....	4
<b>III. COSTS OF CONFLICT</b> .....	<b>5</b>
A. SPREAD OF MILITANCY .....	5
B. SHATTERED ECONOMY .....	7
C. CONFLICT-INDUCED DISPLACEMENT: THE “OTHER” IDPS.....	8
<b>IV. BEYOND SECURITY: CHALLENGES TO DEVELOPMENT</b> .....	<b>10</b>
A. STRUCTURAL IMPEDIMENTS.....	10
B. CIVIL BUREAUCRACY .....	11
<b>V. MOVING FORWARD</b> .....	<b>13</b>
A. CHANGING FATA’S STATUS .....	13
1. Political enfranchisement.....	13
2. Legal rights and judicial reform.....	14
B. PRIORITISING HEALTH AND EDUCATION .....	15
1. Health.....	15
2. Education .....	16
C. ACHIEVING SECURITY: STRENGTHENING CIVILIAN LAW ENFORCEMENT .....	17
<b>VI. THE U.S. ROLE</b> .....	<b>19</b>
A. GAUGING ASSISTANCE.....	19
B. RECONSTRUCTION OPPORTUNITY ZONES.....	22
<b>VII. CONCLUSION</b> .....	<b>23</b>
<b>APPENDICES</b>	
A. GLOSSARY .....	25
B. MAP OF PAKISTAN .....	26
C. MAP OF NWFP AND FATA .....	27

## PAKISTAN: COUNTERING MILITANCY IN FATA

### EXECUTIVE SUMMARY AND RECOMMENDATIONS

The military operation in South Waziristan is unlikely to succeed in curbing the spread of religious militancy in the Federally Administered Tribal Areas (FATA), unless the Pakistan government implements political reforms in that part of the country. Pakistani Taliban groups have gained significant power in the tribal agencies, seven administrative districts bordering on Afghanistan. While state institutions in FATA are increasingly dysfunctional, the militants have dismantled or assumed control of an already fragile tribal structure. This encroaching Talibanisation is not the product of tribal traditions or resistance. It is the result of short-sighted military policies and a colonial-era body of law that isolates the region from the rest of the country, giving it an ambiguous constitutional status and denying political freedoms and economic opportunity to the population. While the militants' hold over FATA can be broken, the longer the state delays implementing political, administrative, judicial and economic reforms, the more difficult it will be to stabilise the region.

Badly planned and poorly coordinated military operations, followed by appeasement deals, have accommodated militant recruitment and actions, enabling Pakistani Taliban groups to expand their control over the region. Many militants, including commanders fleeing military operations in Northwest Frontier Province (NWFP)'s Malakand division, have also relocated to FATA. Instead of a sustained attempt to dismantle and destroy the Tehrik-i-Taliban Pakistan (TTP) network – led by Baitullah Mehsud until his death on 5 August 2009 in a U.S. drone attack and now by his deputy Hakimullah Mehsud – the military continues to rely on a two-pronged approach of sporadic strikes and negotiations with militant groups. Given that such operations are, by the military's own admission, restricted, militant networks are ultimately able to absorb the blows even as indiscriminate damage alienates the local population caught in the crossfire.

The current military operation may well be a more extensive attempt to root out the Baitullah Mehsud network in South Waziristan but it remains an incomplete effort and could even prove counterproductive because of par-

allel efforts to reach or consolidate peace deals with rival TTP groups. It has yet to show that it will be directed at the Afghanistan Taliban or al-Qaeda strongholds. It has also already spurred a new round of internally displaced persons (IDPs) with little to show that the country has planned for that eventuality.

More than a million FATA residents already have been displaced by the conflict, mostly from Bajaur agency in the north and Waziristan in the south. Ongoing military operations in Khyber agency have forced as many as 100,000 to flee to safer locations in NWFP. While the military restricts domestic and international humanitarian access to FATA's conflict zones, neither the Pakistan government nor the international community has addressed the full costs of the conflict to civilians. Malakand's IDPs have justifiably received considerable domestic and international attention, but the needs of FATA's IDPs are yet to be addressed.

Militant violence and military operations have also undermined any prospect of economic development in the tribal agencies. FATA was severely underdeveloped even before the rise of militancy due to government neglect, legal barriers and structural impediments to investment and private enterprise. With no economic regulation or proper courts, a black economy has flourished, notably a pervasive arms and drugs trade. Violence is now contributing to poverty, with the lack of jobs making FATA's residents vulnerable to militant recruitment.

The military's resort to indiscriminate force, economic blockades and appeasement deals is only helping the Taliban cause. The Pakistan government could win hearts and minds and curb extremism through broad institutional, political and economic changes to FATA's governance. The government should dismantle the existing undemocratic system of patronage driven by political agents – FATA's senior-most civilian bureaucrats – as well as tribal *maliks* (elders) who are increasingly dependent on militants for protection. It must enact and the international community, particularly the U.S., should support a reform agenda that would encourage political diversity and competition, enhance economic opportunity,

and extend constitutionally guaranteed civil and political rights and the protection of the courts. Earlier attempts to counter extremism in the tribal areas had failed because they prioritised short-term gain over fundamental changes to the political and administrative set-up.

On 14 August 2009 President Asif Ali Zardari announced a reform package lifting restrictions on political party activity; curtailing the bureaucracy's arbitrary powers of arrest and detention; excluding women and minors from collective responsibility under the law; establishing an appellate tribunal; and envisaging audits of funds received and disbursed by the auditor general. The Pakistan Peoples Party (PPP)-led government has described this reform package as the first step towards mainstreaming FATA, and much remains to be done. It must now swiftly implement these measures and, more importantly, take steps to fully incorporate the tribal areas into the federal constitutional framework, with provincial representation, legal protections under the Criminal Procedure Code and the national and provincial courts.

Donors, particularly the U.S., have allocated significant money for FATA's development, but most is channelled through unaccountable local institutions and offices. This severely limits aid effectiveness and may even impede rather than encourage democratisation. The international community should recognise that the opponents of reform are not the people of FATA but the military and civil bureaucracies and the local elite, all of whom would lose significant powers if the government were to extend full constitutional and political rights to FATA.

## RECOMMENDATIONS

### To the Government of Pakistan:

1. Repeal the Frontier Crimes Regulation (FCR) 1901 in its entirety, replacing it with Pakistan's Criminal Procedure Code, in accordance with Article 8 of the constitution and internationally accepted human rights standards, including prohibition of collective punishment.
2. Extend full provincial rights to FATA by merging it with NWFP, in turn:
  - a) merging the Frontier Regions adjoining Bannu, Dera Ismail Khan, Kohat and Peshawar districts with their connected districts;
  - b) allocating seats for FATA's seven tribal agencies in NWFP's provincial assembly, with constituencies delimited by population, and devised after extensive consultations with stakeholders;
3. Establish a uniform judicial system across NWFP by repealing the Nizam-e-Adl 2009 that imposes Sharia (Islamic law) on NWFP's Provincially Administered Tribal Areas (PATA), and fully incorporating those districts into the provincial and national justice system.
4. Prioritise relief and rehabilitation to FATA's internally displaced persons and engage in broad consultation with local and provincial leaders on a plan for relief, future reconstruction and resettlement with the goal of sustainable provision of public services, economic infrastructure and citizen protection through civilian led law enforcement and judiciary.
5. Disband *khassadars* (tribal police) and levies (official tribal militias) and absorb their members, after requisite training, into the NWFP police force, while strengthening the capacity of civilian law enforcement agencies to maintain law and order in the tribal agencies and the bordering Frontier Regions as well as NWFP's settled districts.
6. Disband all *lashkars* (private militias) immediately and take action against any member guilty of abusing civilians' rights.
7. Encourage private investment and economic growth by:
  - a) developing the physical structure of the tribal agencies, including viable road networks, farm-to-market roads as well as energy and irrigation projects;
  - b) facilitating interest-free loans and removing restrictions on lending to FATA residents;
  - c) while the FCR remains in force, preventing any legal action against small and large businesses under the collective responsibility clause in FATA
8. Allow the NWFP provincial assembly and the National Assembly (lower house of the national parliament) to legislate FATA policy;
9. Eliminating the role of tribal jirgas (councils of elders) to hear civil and criminal cases, and establishing civil and criminal courts at the sub-district and district levels, presided over by civil and criminal judges;
10. Allowing defendants the right to legal representation and appeal to higher courts, and extending the jurisdiction of the Peshawar High Court and the Supreme Court to FATA; and
11. Abolishing the FATA secretariat, the FATA Development Authority, and the office of the political agent, and transferring their authority to the NWFP secretariat, relevant provincial line ministries and district departments.

- and NWFP, including forced closures, seizure of property and economic blockades against tribes;
- d) enabling private asset formation by implementing land reforms to partition collectively owned property and establish legal individual ownership through a transparent process, enforceable by regular courts;
  - e) strengthening FATA's public education system to make FATA's students nationally competitive by raising teacher salaries in tribal agencies to higher levels than elsewhere in the country, improving school facilities, and inculcating strong written and verbal English-language skills; and
  - f) Prioritise relief and rehabilitation of FATA's IDPs.

### **To the U.S. and the Broader International Community:**

8. Develop meaningful dialogue with the government on broad institutional reform to FATA's governance, without which taxpayers' money is unlikely to achieve the desired results.
9. Refrain from transferring control over development programs from international NGOs and other implementing partners to the Pakistan government until the FATA secretariat, the FATA Development Authority and the office of political agent are abolished and their authority transferred to the NWFP secretariat, relevant provincial line ministries and district departments.
10. Establish financial oversight mechanisms over donor-funded programs that do not rely on the political agents and tribal elites but instead include more representative and independent bodies such as national and NWFP-based NGOs with proven records of carrying out programs in FATA.
11. Linked to political reform, establish mechanisms for community and civil society participation along with provincial and national ministries in design of comprehensive FATA development plans covering small farm assistance, accelerated infrastructure construction, social service delivery, vocational training programs for FATA workers, particularly women, to make them more competitive in the local and national job markets and civilian police, judiciary and support for rule of law.
12. Join the Pakistan government, the Office of the United Nations High Commissioner for Refugees (UNHCR) and humanitarian NGOs in urgently preparing a comprehensive plan for IDPs in FATA expanding assistance to those displaced by conflict that assures domestic and international humanitarian access and their resettlement once citizen protection can be guaranteed.
13. Condition military aid on demonstrable steps by the military to support civilian efforts in preventing FATA from being used by extremist groups to launch attacks from Pakistani territory within its region and beyond; if the Pakistani military does not respond positively, consider, as a last resort, targeted and incremental sanctions, including travel and visa bans and the freezing of financial assets of key military leaders and military-controlled intelligence agencies.
14. Maximise the potential impact on proposed reconstruction opportunity zones (ROZs) by:
  - a) expanding the commodities identified for duty-free status to include staples of the local economy such as leather goods, wool products, carpets and furniture; and
  - b) requiring significant employment of FATA residents in companies participating in the program and where possible a preference for local FATA companies in program participation.

**Islamabad/Brussels, 21 October 2009**

## PAKISTAN: COUNTERING MILITANCY IN FATA

### I. INTRODUCTION

Belying the Pakistan military's claims of successfully countering Islamist militant networks in the Federally Administered Tribal Areas (FATA), extremists have expanded their reach and now command unprecedented influence.<sup>1</sup> Instead of disrupting and dismantling these networks, the military's sporadic operations have raised costs – human and economic – for civilians trapped in a cycle of violence between militancy and heavy-handed military force. With the militants undermining already fragile tribal structures and increasingly dysfunctional state institutions in FATA, the gulf is widening between citizens and the state. The democratically elected government must regain trust and reestablish state legitimacy through bold political reforms and a strategy that puts the interests of civilians first.

FATA comprises seven predominantly Pashtun administrative units known as tribal agencies, and six tribal areas known as Frontier Regions.<sup>2</sup> Since independence it has been tenuously governed because of deliberate policy, not because of Pashtun tribal traditions or resistance. The state has retained a colonial-era political, administrative and judicial system that denies basic constitutional rights and political representation. Reforming this exploitative system will be central to reviving state legitimacy and winning hearts and minds in FATA.

On 14 August 2009, President Asif Ali Zardari announced a FATA reform package that curtails the political administration's arbitrary judicial and financial powers and lifts restrictions on political parties. While certainly a step forward, the proposed changes would nevertheless

largely retain a repressive body of law. Further measures are needed to end FATA's ambiguous constitutional status, protect basic rights, ensure meaningful political enfranchisement and generate economic opportunity.

The civilian government faces significant challenges in implementing even this modest reform agenda in FATA since the military retains control over sensitive areas of domestic and security policy. Despite Prime Minister Yousaf Raza Gilani's declaration in June 2009 that "the time for dialogue with the militants was over",<sup>3</sup> the military still alternates between excessive force against and appeasement deals with militants. Chief of Army Staff General Ashfaq Pervez Kayani has continued former president General Pervez Musharraf's peace deal strategy, expanding it from North and South Waziristan agencies to Bajaur and Mohmand agencies in FATA's northern belt, with similarly detrimental results.<sup>4</sup> Nor has this policy been limited to FATA, as evident in military-led negotiations that culminated in the imposition of Nizam-e-Adl 2009,<sup>5</sup> which established Sharia (Islamic law) in Northwest Frontier Province (NWFP)'s

<sup>3</sup>"Time for dialogue with militants over: PM", *Dawn*, 29 June 2009.

<sup>4</sup>For example, a February 2009 peace accord in Bajaur served to further embolden the militants, before finally collapsing in July; there are ongoing attempts to revive it. In Mohmand agency, a series of peace deals followed a militant takeover in July 2007 of a mosque in the town of Lakaro; so-called "tribal leaders" pledged to prevent the presence of militants or foreign fighters. Not only did these fail but militants fleeing the 2008 and 2009 military operations in Bajaur agency were provided sanctuary in Mohmand. In September 2009, amid intensified airstrikes and heavy shelling in Khyber agency, military officials once again offered talks to militants. See "33 militants killed in Khyber Agency", *Daily Times*, 7 September 2009.

<sup>5</sup>The Nizam-e-Adl 2009 established Sharia in Malakand division. The Awami National Party (ANP) acceded to this military-devised accord with the Malakand-based Tehrik-e-Nifaz-e-Shariat-e-Mohammadi in March 2009, the National Assembly approved it in April 2009, and President Zardari signed it into law on 13 April 2009. It remains in force. Until the Nizam-e-Adl 2009, FATA residents could have cases heard in either civil courts, jirgas (councils of elders) or Sharia courts. For more detail on its impact in NWFP, see Crisis Group Asia Briefing N°93, *Pakistan's IDP Crisis: Challenges and Opportunities*, 3 June 2009.

<sup>1</sup>For earlier Crisis Group analysis on the spread of militancy in FATA, see Crisis Group Asia Report N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006.

<sup>2</sup>Article 246 (c) of the 1973 constitution of Pakistan 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".

Provincially Administered Tribal Areas (PATA), which comprise the Malakand division.<sup>6</sup>

Over one million people have now been displaced by conflict, close to one third of FATA's 3.5 million residents,<sup>7</sup> adding to more than one million remaining internally displaced persons (IDPs) from PATA.<sup>8</sup> Like Malakand's IDPs, these communities could become powerful constituencies for peace if the government and international community prioritised their relief and rehabilitation. The military has so far severely restricted domestic and international humanitarian access to FATA's conflict zones and to most of its IDPs. The vast majority are denied legal and other protection. Many have been forced to return, including to conflict-hit areas such as Bajaur and Mohmand agencies where their homes, schools and places of work have been levelled by air-strikes, no significant reconstruction has taken place, and extremists continue to operate freely. Losing education and jobs, FATA's residents are increasingly vulnerable to recruitment by militant and other criminal networks.

Following earlier Crisis Group reporting on the tribal areas, this report identifies fundamental structural reforms the civilian government should implement if it is to capitalise on broad public and political support for mainstreaming FATA and address the political vacuum exploited by militants. It also examines the potential and pitfalls of international, particularly U.S., assistance to FATA. Due to a volatile security climate that prevented direct access to the tribal agencies, interviews were conducted primarily in Islamabad and Peshawar, NWFP's provincial capital, with a broad spectrum of stakeholders, including serving and retired officials, politicians, NGO representatives and FATA-based political and civil society actors.

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<sup>6</sup> PATA, comprising Malakand division, which includes the districts of Buner, Chitral, Lower Dir, Upper Dir, Malakand, Shangla and Swat, as well as the tribal area adjoining Mansera district and the former state of Amb, have been administered since 1975 under a separate criminal and civil code from the rest of NWFP.

<sup>7</sup> FATA's population, according to the 1998 census, was 3.7 million. Unofficial estimates of FATA's population range from 3.5 to 7 million. See Crisis Group Report, *Appeasing the Militants*, op. cit.

<sup>8</sup> For more detail on conflict-induced displacement in PATA, see Crisis Group Briefing, *Pakistan's IDP Crisis: Challenges and Opportunities*, op. cit.

## II. DYSFUNCTIONAL GOVERNANCE

### A. FATA'S ADMINISTRATION

The state's writ in FATA is tenuous by design. The military is averse to changing FATA's ambiguous status since it has, since Pakistan's independence, used this strategic region as a base to promote perceived interests in neighbouring Afghanistan through local and Afghan proxies. Nor is the centrally administered bureaucracy inclined to give up the perks and privileges – financial and political – of overseeing FATA's governance, absent legislative or judicial oversight. Islamabad's refusal to integrate the tribal areas into the constitutional framework has created a no-man's land where militants and criminals easily find a safe haven.

The president enjoys discretionary powers to "make regulations" with respect to "the peace and good governance" of FATA, and NWFP's provincial governor exercises executive authority as the president's representative.<sup>9</sup> Under Articles 246 and 247 of the constitution, neither the ordinary judiciary nor the national and provincial legislatures has jurisdiction over the seven tribal agencies and the six Frontier Regions. Pakistan's Criminal Procedure Code is similarly not applicable to FATA. While decreeing FATA's separate status, Article 247 of the constitution nevertheless allows for revisions. The president can direct that a parliamentary act apply to FATA; and the national parliament can pass a law extending the jurisdiction of the Supreme Court or a provincial high court to the tribal areas.<sup>10</sup>

FATA is governed by an administrative and legal framework codified in the colonial-era Frontier Crimes Regulations (FCR) 1901, under which the federally appointed political agent (hereafter PA), the senior-most civil bureaucrat in an agency, exercises extensive executive, judicial and revenue powers. Under a preventive clause that provides for "security and surveillance for the prevention of murder or culpable homicide or the dissemination of sedition",<sup>11</sup> the PA can require an individual believed to pose such a threat to provide a bond or surety "for good behaviour or for keeping the peace".<sup>12</sup> By rejecting the bond, the PA can impose a three-year jail term.

Other clauses empower the PA to punish an entire tribe for crimes committed on its territory through fines,

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<sup>9</sup> Articles 247 (5) and (6), constitution of Pakistan.

<sup>10</sup> Articles 247 (3) and (7), constitution of Pakistan.

<sup>11</sup> Sections 40 and 41, Frontier Crimes Regulations 1901 (hereafter FCR).

<sup>12</sup> Section 40, FCR.

arrests, property seizures and blockades.<sup>13</sup> In violation of international law that bars collective punishment,<sup>14</sup> the PA 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.<sup>15</sup> The PA can even seize the property or businesses of tribesmen in settled districts who do not live in FATA.<sup>16</sup> These decisions cannot be appealed in any court.<sup>17</sup>

The PA grants tribal elders the status of *malik*, with the NWFP governor’s consent, on the basis of male inheritance, but can arbitrarily withdraw, suspend or cancel *malik* status if he deems the individual is not serving the interests of the state. *Maliks* receive financial privileges from the administration if their tribe cooperates in suppressing crime, maintaining social peace and generally supporting the government.<sup>18</sup> The PA can also convene and refer criminal and civil cases to a *jirga* (council of elders), presided over by handpicked *maliks* and other tribal elites. This body’s decision can be appealed to the PA, whose judgment cannot be reviewed by a regular court.

The federal ministry of States and Frontier Regions (SAFRON)<sup>19</sup> is responsible for the “overall administrative and political control of FATA”, but is virtually powerless in devising or implementing FATA policy. The agencies’ elected representatives have similarly circumscribed powers. Until the introduction of adult franchise in 1996, an electoral college of some 35,500 *maliks* selected representatives to the National Assembly (the lower house of the national parliament), typically under directives from their benefactors in the po-

litical administration.<sup>20</sup> In the 1997, 2002 and 2008 polls, FATA legislators were directly elected to the National Assembly. The agencies’ representatives to the national parliament are elected on a non-party basis. The Political Party Order (PPO) (1962) was amended under Musharraf as the PPO (2002), but specifically excluded FATA. FATA Members of the National Assembly (MNAs) wield little authority in the national parliament and cannot legislate on the tribal areas. Today, most cannot even visit their constituencies, since militants control large areas and even interfere directly in the electoral process in some agencies.

In the run-up to the February 2008 elections, for instance, the leader of the Lashkar-e-Islami, a radical Deobandi<sup>21</sup> organisation, issued directives in Khyber agency prohibiting election processions, the use of vehicles and other canvassing methods. The group also intimidated local officials, candidates, and voters – especially women, who were “banned” from voting.<sup>22</sup> The militants deprived more than 424,000 women in FATA, out of a female population of roughly 1.5 million, of their right to vote.<sup>23</sup> In South Waziristan, elections were not held at all because of the deteriorating security environment.

The civil bureaucracy continues to dominate almost all areas of governance since FATA’s elected representatives lack both the authority and capacity to direct governance. In 2002, the Musharraf government created a separate governor’s secretariat for FATA, ostensibly to eliminate bottlenecks created by multiple administrative tiers,<sup>24</sup> with all line departments brought under this body. In 2006, it was restructured as the FATA secretariat. With limited resources, the FATA secretariat is dependent on its NWFP counterpart for personnel. FATA’s additional chief secretary, the secretariat’s top official, has to request NWFP’s chief secretary to appoint an officer to the secretariat. According to a former NWFP chief secretary, whoever holds the office “is not going to send his best officer since he wants him in his own secretariat”, so “capacity in the FATA secretariat remains low”.<sup>25</sup>

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<sup>13</sup> Sections 21-24, FCR.

<sup>14</sup> Under the 1949 Geneva Conventions, collective punishment is a war crime.

<sup>15</sup> Section 21, FCR.

<sup>16</sup> See Crisis Group Report, *Appeasing the Militants*, op. cit.

<sup>17</sup> In the event of “material irregularity or defect” or an “occasion of miscarriage of justice” in the proceedings, a PA’s decision can be revised by an FCR commissioner appointed by the NWFP governor. Section 49, FCR. A final appeal can be made to an FCR tribunal composed of the NWFP law secretary, the home secretary and the chief secretary (the NWFP’s senior civil bureaucrat), all centrally appointed officials. Section 50, FCR.

<sup>18</sup> See Crisis Group Report, *Appeasing the Militants*, op. cit.

<sup>19</sup> 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.

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<sup>20</sup> Ibid.

<sup>21</sup> Deobandis form one of the four broad Sunni sub-sects, which also include Bareilvis, Ahle Hadith and revivalist movements.

<sup>22</sup> “Elections 2008: Will Taliban get access to the parliament?”, Pakistan Institute for Peace Studies, 13 December 2007.

<sup>23</sup> Akhtar Amin, “Poll doors closed on a third of FATA women”, *Daily Times*, 17 February 2008.

<sup>24</sup> The governor previously depended on the provincial chief secretary for line department personnel in FATA and on the home secretary for law and order.

<sup>25</sup> Crisis Group interview, Khalid Aziz, former NWFP chief secretary, Peshawar, 22 July 2009.



In December 2004, the NWFP governor, at Musharraf's behest, issued a notice establishing provisional agency councils that were meant to facilitate local participation in development and other matters.<sup>26</sup> A council's seat allocation was determined by population; 70 per cent of councillors were elected by tribal jirgas, the remaining 30 per cent were reserved for tribal elders, *ulema* (religious scholars), technocrats, women and minorities nominated by the secretariat on the recommendation of political agents.<sup>27</sup> While these bodies ostensibly devolved power to communities, the military regime's actual motive was to retain centralised control while defusing local demands for representative institutions. The councils were to have a three-year tenure and were dissolved in 2007.

Dysfunctional and repressive governance has made FATA vulnerable to militancy. Local alienation resulting from an unaccountable and unresponsive administrative apparatus is readily exploited. The militants have consolidated their power by killing several hundred *maliks* while others have been forced to adjust their loyalties; many now accept the authority of local militant leaders.<sup>28</sup> Militants have also dismantled or hijacked tribal forums such as jirgas and *hujras* (tribal councils), exposing the state's weaknesses in depending on individuals, proxies and informal processes to govern, rather than strong institutions. With much of FATA transformed into a no-man's land for government officials, civil society, and local and international agencies, the PAs have ceded much of their authority to extremist groups. According to a North Waziristan-based NGO worker: "In North Waziristan all the militants and people of influence swear their allegiance to [militant leader] Maulana Nazir,<sup>29</sup> and the political agent works through that prism"<sup>30</sup> Militants, in turn, often accommodate the PA provided he does not undermine their interests. PAs and assistant political agents (APAs) are even known to channel development funds and contracts to the militants.<sup>31</sup>

## B. STALLED REFORMS

"When adult franchise was extended [in 1996] people in FATA thought that more was coming", said Adnan Aurangzeb, a former MNA from Swat. "For twelve years now, nothing has happened".<sup>32</sup> Following Musharraf's October 1999 coup, all reform came to a standstill even as the military regime's alliance with the mullahs to counter its secular political adversaries fuelled the growth of extremism. During the democratic decade of the 1990s, said Jamal Khan, a political economist focusing on FATA, "You had people like Latif Afridi [a leader of the secular, left-leaning ANP] defeating Nurul Haq, a major cleric. So there was a ray of hope that secular liberals would rise politically. But in 2002, the elections [held by the military government] were managed, liberals were sidelined, and the mullahs won. This was a major boost for militancy".<sup>33</sup> In this rigged elections, candidates affiliated to the Musharraf-backed six-party religious coalition, the Muttahida Majlis-e-Amal (MMA), won seven of FATA's twelve National Assembly seats.<sup>34</sup>

The 2008 elections in FATA yielded a deeper spectrum of political representation, including candidates affiliated to the moderate Pakistan Peoples Party (PPP) and its ANP coalition partners. Without military patronage, the religious parties won only a single National Assembly seat, reflecting the popular rejection of Talibanisation.

The incumbent PPP, Nawaz Sharif's Pakistan Muslim League (PML-N) and the ANP had all made reform a major part of their manifestos. A FATA-NWFP merger was also a key component of the Charter of Democracy, signed between the PPP and PML-N in May 2006.<sup>35</sup> On 25 March 2008, in his first speech as prime minister, Yousaf Raza Gilani promised to repeal the FCR, and the PPP-led government constituted a parliamentary committee for the purpose. By November 2008, however, amid increasing ANP resistance<sup>36</sup> and the military's pressure, the process stalled.

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<sup>26</sup> "Agency Councils: Duties and Responsibilities", Governor's FATA secretariat, Peshawar, undated, made available to Crisis Group.

<sup>27</sup> Zulfiqar Ali, "Status quo: the recent elections in FATA have not brought the areas any closer to representative rule", *Herald*, November 2004, p. 32.

<sup>28</sup> See Crisis Group Asia Report N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009.

<sup>29</sup> The military entered into a peace accord with Nazir and other North Waziristan-based extremist networks in 2006.

<sup>30</sup> Crisis Group interview, Islamabad, 4 August 2009.

<sup>31</sup> Crisis Group interviews, government officials, politicians, and FATA-based NGO workers, Islamabad and Peshawar, July-August 2009.

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<sup>32</sup> Crisis Group interview, Islamabad, 4 August 2009.

<sup>33</sup> Crisis Group interview, Islamabad, 20 July 2009.

<sup>34</sup> Supported by the Musharraf regime, the MMA swept the 2002 provincial elections in NWFP, and was a coalition partner in the Balochistan assembly with the Musharraf-backed Pakistan Muslim League (Quaid-e-Azam) (PML-Q). For analysis on military-mullah ties, see Crisis Group Asia Reports N°95, *The State of Sectarianism in Pakistan*, 18 April 2005; N°73, *Unfulfilled Promises: Pakistan's Failure to Tackle Extremism*, 16 January 2004; N°49, *Pakistan: The Mullahs and the Military*, 20 March 2003; and N°36, *Pakistan: Madrasas, Extremism and the Military*, 29 July 2002.

<sup>35</sup> See "Text of Charter of Democracy", *Dawn*, 16 May 2006.

<sup>36</sup> Targeted by the militants and pressured by the military, hoping to secure its government in NWFP, the ANP opposed the PPP's reform agenda.

Some senior ANP and PPP members had advised against major changes in FATA while the state was fighting an Islamist insurgency there.<sup>37</sup> The political leadership now seems increasingly aware of the importance of structural reforms if the state is to fill a political vacuum that has so far only benefited the militants. In October 2008, the PPP and the PML-N steered a fourteen-point consensus resolution through the National Assembly defining a broad government framework to combat extremism, including political reforms and economic development in FATA. In July 2009 the ANP's central executive committee passed a resolution calling for FATA's incorporation into NWFP; comprehensive reforms to the FCR to void any provisions that contradict the constitution and basic rights; and extension of the Political Party Order (PPO) (2002) to FATA.<sup>38</sup>

On 14 August 2009, President Zardari announced a FATA reform package extending the PPO (2002) to FATA, thus lifting restrictions on political party activity; curtailing the bureaucracy's arbitrary powers over arrest and detention; establishing prisoners' right to bail; excluding women and minors from the territorial responsibility clause; establishing an appellate tribunal; and envisaging audits of funds received and disbursed in FATA by the auditor general. For these changes to be implemented, the governor of NWFP must sign a notification on the president's directive. Most of these proposed reforms are long overdue. Broader amendments, however, are needed to change the FCR's draconian nature, to end FATA's ambiguous constitutional status and to bring the region back from the brink of social, political and economic collapse.

### III. COSTS OF CONFLICT

#### A. SPREAD OF MILITANCY

Although several extremist groups control large swathes of territory across FATA, militancy is not uniform. Pakistani Taliban groups are loosely aligned under the Tehrik-i-Taliban Pakistan (Taliban Movement of Pakistan, TTP), formed in December 2007 by senior leaders of some 40 militant groups. Led by South Waziristan-based Baitullah Mehsud until his death on 5 August 2009 in a U.S. drone attack, and now by his former deputy Hakimullah Mehsud, the TTP is loosely allied to Punjab-based jihadi outfits, including the Lashkar-e-Tayyaba and the Jaish-e-Mohammed, the military's jihadi proxies in Kashmir.

While the TTP has links to the Afghan Taliban and al-Qaeda, the groups that comprise it nevertheless operate independently.<sup>39</sup> Some are bent on attacking the symbols of the Pakistani state. Others, focused on attacking Western forces in Afghanistan rather than Pakistani authorities, have consolidated their position, some with the military's support in FATA agencies such as Bajaur and North Waziristan. As a result, the nature of the conflict varies from region to region in FATA, from the northern belt which includes Bajaur and Mohmand agencies; the middle belt of Khyber, Kurram and Orakzai agencies; and the southern region of North and South Waziristan.

**Bajaur agency:** In August 2008, the military launched an offensive in this northernmost agency against the militant network led by Faqir Mohammad. The conflict has displaced approximately 500,000 people. Claiming victory in its Bajaur operations, the military entered into a peace accord with the militants in March 2009, which collapsed in July 2009 as fierce fighting began anew between the militants, military and tribal *lashkars* (militias).<sup>40</sup> In addition to the TTP, Gulbuddin Hekmatyar's Hizb-e-Islami, linked to both the Afghan Taliban and international terrorist networks like al-Qaeda, oper-

<sup>37</sup> Crisis Group interviews, Bashir Bilour, ANP senior minister, Peshawar, 21 May 2009; senior PPP member, Islamabad, May 2009. See Crisis Group Briefing, *Pakistan's IDP Crisis*, op. cit.

<sup>38</sup> Tauseef-ur-Rehman, "ANP wants closure of FATA sanctuaries", *The News*, 11 July 2009.

<sup>39</sup> In an interview, Hakimullah Mehsud said: "We have respect for al-Qaeda and the jihadist organisations – we are with them". Declaring that there was no difference between the Pakistani and Afghan Taliban other than their operations in different geographic locations, he described Afghan Taliban leader Mullah Mohammad Omar as his *amir* (leader). "Hakimullah surfaces in video", *Daily Times*, 6 October 2009; Rahimullah Yusufzai, "Hakimullah shows his face", *The News*, 6 October 2009.

<sup>40</sup> "Bajaur militants given six days to surrender", *The News*, 1 October 2009.

ates in Bajaur, reportedly with the Pakistan military's support.<sup>41</sup>

**Mohmand agency:** Violence increased in Mohmand following the militant takeover of a mosque in Lakaro in July 2007,<sup>42</sup> leading to a series of peace deals ostensibly between tribal elders and the military in which the tribes pledged to deny militants, including foreign fighters, safe haven in the agency. These deals collapsed within a year as militants fleeing the 2008 and 2009 military operations in Bajaur were given sanctuary in Mohmand, resulting in resumed military action.<sup>43</sup> Local TTP leader Omar Khalid's network colluded with Afghan Taliban counterparts in attacking the military.<sup>44</sup> In March 2009, the military claimed victory against the militants in Mohmand,<sup>45</sup> although small-scale fighting still continues.

**Khyber agency:** Based in Khyber agency, the radical Deobandi Lashkar-e-Islami, led by Mangal Bagh, is one of the most violent FATA-based groups, with influence extending well into NWFP's adjoining settled districts, including the provincial capital, Peshawar. The Lashkar-e-Islami operates its own Sharia courts and prisons, and issues calls for jihad against the West, the state, and religious and sectarian minorities through illegal FM channels. Mangal Bagh claims no allegiance to the TTP, identifying instead with the rival Muqami Tehrik-i-Taliban (Local Taliban Movement). The group has particularly targeted Barelvis,<sup>46</sup> who formed their own militant group, the Ansarul Islam, in June 2006, which also operates its own Sharia courts.<sup>47</sup> As clashes between the two groups became increasingly violent in mid-2008, the military launched operations but then brokered a peace treaty between the two main militant groups in July 2008, which collapsed in 2009.<sup>48</sup> TTP leader Baitullah Mehsud's successor Hakimullah Mehsud

has also established a presence in Khyber, destroying vehicles and shipping containers and forcing the repeated closure of the Khyber Pass, a major trade route linking Pakistan with Afghanistan. The military has since launched fresh operations in the agency, which are causing large-scale civilian displacement and casualties (discussed below).

**Kurram agency:** Sunni-Shia violence has escalated since an attack on a Shia procession in April 2007 that killed over 50 people, paralysing life in Kurram. The conflict has assumed tribe-versus-tribe dimensions between the Shia Turis, the dominant clan in the agency's administrative centre, Parachinar,<sup>49</sup> and the predominately Sunni Bangash tribe that supports the TTP and is also backed by radical Punjab-based Deobandi groups including the Lashkar-e-Jhangvi (LeJ) and its parent Sipah-e-Sahaba Pakistan (SSP). TTP leader Hakimullah Mehsud, who has been described as "violently sectarian" and the "scourge of the Shias in Kurram",<sup>50</sup> is also active in this agency. The Lashkar-e-Islami too has extended its reach to Kurram. Several thousand members of both sects have been killed or injured, resulting in segregation between the Shia-dominated north and Sunni-dominated south. The road from Parachinar to Peshawar has been closed since November 2007, cutting off Kurram from the rest of the country.

**Orakzai agency:** Army operations in North Waziristan from 2004 to 2006 have pushed militants into Orakzai agency, from where they are launching attacks on military personnel in Pakistan and Afghanistan. Like Kurram, Orakzai has a sizeable Shia minority. Encroaching Talibanisation has escalated Sunni-Shia violence, with the Punjab-based SSP and LeJ swelling the ranks of the Lashkar-e-Islami and the TTP in the agency. In October 2006, violence between the two sects erupted after Sunni hardliners tried to prevent Shias from visiting a centuries-old shrine that both communities venerate. Sunni leaders issued edicts to Sunnis not to use major roads that pass through Shia-dominated areas, and prohibited Shias from using new roads constructed in the agency, essentially splitting the agency into Sunni/Shia enclaves. Militants have attacked jirgas convened to resolve sectarian conflict.<sup>51</sup> Orakzai-based militants were allegedly responsible for the 9 June 2009 bombing of the Pearl Continental hotel in Peshawar. The Pakistani military has conducted sporadic airstrikes in the agency since mid-2009.

<sup>41</sup> Candace Rondeaux and Daniel De Vise, "Aid worker with Md. firm killed in Pakistan", *Washington Post*, 13 November 2008.

<sup>42</sup> Shams Mohmand, "'Lal Masjid' in Mohmand Agency", *Dawn*, 30 July 2007.

<sup>43</sup> Fauzee Khan Mohmand, "Major offensive in Mohmand; over 40 militants killed", *Dawn*, 21 January 2009.

<sup>44</sup> Richard A. Oppel Jr. and Pir Zubair Shah, "Clashes as Afghan militants enter Pakistan", *The New York Times*, 12 January 2009.

<sup>45</sup> Jane Perlez and Pir Zubair Shah, "Pakistan regains control of remote area, for now", *The New York Times*, 8 March 2009.

<sup>46</sup> For analysis of the Barelvi-Deobandi conflict, see Crisis Group Reports, *The Militant Jihadi Challenge* and *The State of Sectarianism in Pakistan*, both op. cit.

<sup>47</sup> See Crisis Group Report, *The Militant Jihadi Challenge*, op. cit.

<sup>48</sup> "Banned outfits claim gains against each other in Tirah", *The News*, 6 July 2009.

<sup>49</sup> Shias insist that they form 80 per cent of Parachinar's population. See Crisis Group Report, *The State of Sectarianism in Pakistan*, op. cit.

<sup>50</sup> "Hakimullah as Taliban leader", *Daily Times*, 24 August 2009.

<sup>51</sup> See Sami Paracha, "Suicide blast in northwest Pakistan kills 6", Reuters, 5 December 2008.

**North Waziristan:** Militancy in North Waziristan is dominated by the Haqqani network. Led by Afghan Taliban leader Sirajuddin Haqqani, the network uses the agency as a base from which to launch attacks in Afghanistan. This organisation has been implicated in attacks on the Serena Hotel and Indian embassy in Kabul in January and July 2008 respectively, which together killed 62 people, allegedly with support from the Pakistan military's intelligence wing, the Directorate of Inter-Services Intelligence (ISI).<sup>52</sup> Pakistani Taliban groups led by Hafiz Gul Bahadur and Maulvi Nazir Ahmed also operate in North Waziristan. The military entered into peace deals with Bahadur, Nazir and other groups in the agency in 2006 and 2007. Thus provided space to operate, the Bahadur-led network has attacked Western troops in Afghanistan. In June 2009, citing repeated U.S. drone attacks in FATA, Bahadur declared an end to the peace deal, yet the military has thus far refrained from confronting his group and other North Waziristan-based militants.<sup>53</sup> Nor has any attempt been made to disrupt, let alone dismantle, the Haqqani network. Said a FATA analyst: "Is the military going to strike against the Haqqani network [in North Waziristan]? If the military attacks them it will indicate that the security paradigm has shifted".<sup>54</sup>

**South Waziristan:** Dominated by the Mehsud and Wazir tribes, South Waziristan is a hotbed of religious militancy, which served as TTP leader Baitullah Mehsud's base until his death. Maulana Fazlur Rehman's Jamiat Ulema-e-Islam (JUI-F), the largest constituent of the military-backed MMA, which at the time formed the NWFP government, had helped broker a deal between the military and South Waziristan-based militants in April 2004. One of the first and most far-reaching accords with FATA-based militants, this deal allowed local militants to establish parallel Taliban-style policing and court systems, and facilitated the spread of Talibanisation into other tribal agencies and even NWFP's settled districts. The TTP, although still a loosely organised umbrella organisation, now exerts influence across FATA and in NWFP's Malakand district, where it supports the Sunni extremist Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM). Since mid-2009, the military has sporadically launched artillery and air attacks against the TTP in South Waziristan ostensibly to "soften up" the area in preparation for a major attack but far more

likely in response to U.S. pressure to take action. Citing shortage of equipment, among other factors, it had refrained from launching a large-scale operation.<sup>55</sup>

On 17 October, following a spate of militant attacks countrywide over two weeks, including the army's general headquarters in Rawalpindi, which claimed more than 175 lives, the military finally launched the ground offensive.<sup>56</sup> However, hoping to gain their support against the Hakimullah Mehsud faction, the military also attempted to win over rival factions led by Pakistani Taliban commanders Gul Bahadur and Maulvi Nazir. A leading national daily expressed concern about the military's reliance on such "unpredictable characters", who were believed to be involved in and supporting the insurgency in Afghanistan and linked to al-Qaeda and the Afghan Taliban, and whose "ultimate objective appears to be to secure their quasi-kingdoms and rule with little or no interference from the state". Striking deals with such elements, the editorial warned, would not only strain Pakistan's relations with the U.S. and Afghanistan but there was also the danger that the military could be "effectively replacing one menace with another", creating "more problems for Pakistan in the not-too-distant future".<sup>57</sup>

## B. SHATTERED ECONOMY

As militancy in the tribal areas thrives, so does the war economy that fuels it. The arms and drugs trade is flourishing in FATA, partly a legacy of the Afghan civil war and partly because of the absence of a criminal justice system and economic regulatory laws. With many key access points at FATA's border with Afghanistan now threatened by the militants, cross-border smuggling is on the rise. "FATA's socio-economic conditions have changed a lot since the late 1990s", said a political economist. "Now resource accumulation is almost exclusively tied to the extremist cause".<sup>58</sup> Security agencies, including the Frontier Corps, *khassadars* and levies are also widely believed to benefit from such illegal activities.<sup>59</sup> While the army ostensibly clamped down on arms manufacturing in Khyber's Dara Adamkhel town in 2006, rampant illegal armament and ammunition production and sales continue, equipping militants countrywide.

<sup>52</sup> See Mark Mazzetti and Eric Schmitt, "Pakistanis aided attacks in Kabul, U.S. officials say", *The New York Times*, 1 August 2008.

<sup>53</sup> Mushtaq Yusufzai & Malik Mumtaz Khan, "NWA militants scrap peace deal", *The News*, 30 June 2009.

<sup>54</sup> Crisis Group interview, Khadim Hussain, Coordinator, Aryana Institute for Regional Research and Advocacy, Islamabad, 18 July 2009.

<sup>55</sup> Anwar Iqbal, "Pakistan launches soften-up strikes in Waziristan", *Dawn*, 19 June 2009.

<sup>56</sup> "4 soldiers killed, 12 injured in South Waziristan offensive", *Dawn*, 17 October 2009.

<sup>57</sup> "More 'deals'?" *Dawn*, 14 October 2009.

<sup>58</sup> Crisis Group interview, Jamal Khan, Islamabad, 20 July 2009.

<sup>59</sup> *Khassadars* are an irregular force under the PA's overall command to protect roads and other government installations and perform guard duties. Levies are official tribal militias.

Militancy in FATA emerged at a time when the region was witnessing new investment in sectors such as transport, coal, minerals and cross-border trade, partly due to investments by returning workers from other parts of the country and migrants from the Gulf states in the 1970s. "The [Pakistani] Taliban destroyed that important second phase of industrialisation in FATA", said Latif Afridi, a former parliamentarian from Khyber agency.<sup>60</sup> Today, militancy and heavy-handed military force are the principal impediments to economic development, destroying an already deficient infrastructure, hindering trade and business opportunities, and transportation and shipments of goods. The FATA secretariat estimates the cost of the conflict at over \$2 billion, including a tentative estimate of \$103 million in damages to infrastructure.<sup>61</sup>

Even businesses in Peshawar, given its proximity to Khyber agency, have been adversely affected. Several factory owners and managers, particularly women, are unable to go to work even in fenced-off industrial estates in the heart of the city.<sup>62</sup> Militancy and sectarian violence in neighbouring Kurram agency has caused a shortage of raw materials. Combined with a major energy crunch and the rise of electricity and gas tariffs, as subsidies are withdrawn under International Monetary Fund (IMF) pressure, the price of basic utilities and food has risen.<sup>63</sup> Further south, militant networks controlling much of North and South Waziristan are in a position to even approve or veto development projects, and often demand a cut of the funding.<sup>64</sup> Several of FATA's cottage industries have been forced shut by the violence. Small business owners who have fled are disinclined to return without some guarantee that they can resume work. "People who see their mills destroyed or taken over by militants, and receive no compensation or help from the government – how many of them will go back?" asked a NWFP politician and lawyer.<sup>65</sup>

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<sup>60</sup> Crisis Group interview, Peshawar, 22 July 2009.

<sup>61</sup> "Cost of Conflict in FATA", Planning and Development Department, FATA Secretariat, Government of Pakistan, April 2009, p. 3.

<sup>62</sup> Crisis Group interview, Lubna Farooq, Sarhad Women's Chamber of Commerce president, Islamabad, 28 July 2009.

<sup>63</sup> For example, wheat flour in Khyber Agency rose by about 35.3 per cent in one month between September and October 2008. "Food Security Market Price Bulletin – 3", World Food Programme (WFP), 3 October 2008. Prices were already significantly more expensive in FATA than in the rest of the country. In May 2009, the most recent period covered by the WFP's Market Price Bulletin, the price of wheat flour in FATA was 24 per cent higher than the national average. "Food Security Market Price Bulletin – 10", WFP, May 2009.

<sup>64</sup> Crisis Group interviews, Islamabad and Peshawar, July-August 2009.

<sup>65</sup> Crisis Group interview, Latif Afridi, Peshawar, 22 July 2009.

## C. CONFLICT-INDUCED DISPLACEMENT: THE "OTHER" IDPS

FATA residents are the principal victims of an ongoing cycle of violence that has produced few counter-insurgency successes. Almost one third of FATA's approximately 3.5 million-strong population has been displaced by conflict. According to FATA secretariat figures released in July 2009, 550,000 people were displaced from Bajaur and Mohmand; 80,000 from Kurram; 50,000 from North Waziristan; and 250,000 from South Waziristan, more than half of this agency's population, with ongoing military operations rapidly increasing their numbers.<sup>66</sup> Fresh military and paramilitary operations in Khyber agency in September 2009 have caused an estimated 56,000 to 100,000 IDPs.<sup>67</sup> While the IDP crisis in NWFP's Malakand district has justifiably generated significant domestic and international attention, far fewer resources, local or international, have been allocated for internal displacement in FATA that has persisted for even longer. Most FATA IDPs have not received adequate assistance or any compensation for the destruction of their properties and livelihoods. Few efforts, local or international, have been made to identify their needs or to help them rebuild their homes, schools, shops and places of work once they return.

As during the military operations in Malakand in the spring of 2009, FATA residents are barely given notice of imminent airstrikes or sufficient time to leave before the imposition of curfew, resulting in high civilian casualties. Exact figures are impossible to calculate because the military denies access to local and international humanitarian agencies, or the media, to the conflict zones. "The curfews in FATA are different from curfews in normal cities", said Mukhtar Bacha, a founder and steering committee member of the Aman Tehreek (Peace Movement), a secular NWFP-based grassroots coalition that includes labour unions, political parties, professionals and other civil society groups. "There are barriers preventing access to entire areas. The militants can cross them but it affects everyone else".<sup>68</sup>

Shia residents in Kurram agency, which is practically divided between a northern Shia-majority and southern Sunni-dominated region, are unable to cross lower Kurram and are therefore cut off from access to NWFP.<sup>69</sup> They often have to travel through south-eastern Afghani-

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<sup>66</sup> "Cost of Conflict in FATA", op. cit., p. 17. See also "4 soldiers killed, 12 injured in S. Waziristan operation", *Dawn*, 17 October 2009.

<sup>67</sup> "Pakistan: Tens of thousands displaced from Khyber Agency – official", IRIN, 21 September 2009.

<sup>68</sup> Crisis Group interview, Peshawar, 23 July 2009.

<sup>69</sup> Lower Kurram Agency borders NWFP's Kohat district.

stan – since neighbouring Orakzai and Khyber agencies are equally volatile and similarly segregated along sectarian lines – at prohibitive cost, risking death and kidnapping. Orakzai's Shias also often seek refuge in or travel through Afghanistan to less violent regions of NWFP.

“There is a clear difference between the Malakand IDPs and FATA IDPs”, said Maryam Bibi, the head of an NWFP-based NGO that assists the displaced.<sup>70</sup> In the Jalozaï camp near Peshawar, which accommodates roughly 100,000 people, the IDPs from FATA and Malakand are segregated, with the latter provided considerably better care, including more food and electricity, prompting complaints of a “VIP section”.<sup>71</sup> An IDP from Bajaur claimed: “The government and the UNHCR promised to provide us compensation and food for three months, but they gave us nothing”. The people who returned to their hometowns were regretting it now.<sup>72</sup> While IDPs from Bajaur and Mohmand agencies initially received government and international aid in the fall of 2008, much of those funds were eventually diverted toward the millions fleeing Malakand after the start of operations in May 2009. Malakand's IDPs have obtained write-offs on government and bank loans, a waiver not offered to Bajaur and Mohmand's IDPs.<sup>73</sup>

In one camp for IDPs from Bajaur and Mohmand, the IDPs marked Pakistan's independence day on 14 August 2009 as a “black day”, hoisting black flags from their tents to protest the government's neglect.<sup>74</sup> The Jamaat-e-Islami (JI), one of Pakistan's two largest Islamist parties, has, as with Malakand's IDPs, been active in providing relief to Khyber agency's IDPs through its welfare wing, the Al-Khidmat Foundation.<sup>75</sup> While some international agencies such as the WFP (World Food Programme) maintain a presence in Bajaur, local and international humanitarian organisations are yet to adequately address the needs of FATA's IDPs, more often than not because the military restricts access.

According to reports from local and foreign officials in June 2009, and from a Bajaur parliamentarian,<sup>76</sup> new reg-

istration was suspended for IDPs from Bajaur, a claim the Emergency Relief Unit, a provincial body delegated to address IDP-related issues, refutes. In neighbouring Mohmand agency, “The political agent is forcing people to come back”, according to Aman Tehreek member Mukhtar Bacha: “He has been invoking the FCR, saying he will arrest everyone [in the family/tribe] if the IDPs don't come back”.<sup>77</sup>

Conditions are even worse in the southern belt, where the military has disallowed the establishment of camps for IDPs from North and South Waziristan on the unjustifiable grounds that they would offer jihadi groups pools of easy recruits. Ostensibly as a means to monitor potential militants among IDPs, the NWFP administration identifies and registers members of the Mehsud tribe, and requires them to be accommodated in private homes, with the host families assuming legal responsibility for them and thus subject to the FCR's collective punishment provision. Host families have frequently faced harassment by the security agencies, including the military, paramilitary and police.<sup>78</sup> However, the administration is not registering displaced members of tribes such as the Bhattanis and Wazirs, whose leaders include pro-military militants.

The military and civil administration in North and South Waziristan are also aggressively preventing residents from leaving by installing checkpoints at key exit points and threatening to arrest IDPs and their hosts in neighbouring NWFP districts and Frontier Regions, including Bannu and Dera Ismail Khan – again under the FCR's collective responsibility and preventive detention clauses.<sup>79</sup> These districts have been subjected to extended curfews that even prevent funerals for people killed during the fighting. The military is also restricting access to national and international humanitarian and development agencies, for example, in Dera Ismail Khan, where most of the Waziristan IDPs are located.<sup>80</sup> According to Maryam Bibi, quack doctors often dispense medical care in homes and makeshift camps because health practitioners are either unwilling or prevented from doing so.<sup>81</sup>

Returning residents face the risk of retaliatory attacks. Many return only to flee again because militant networks remain active in all FATA agencies. Given the links between militants and the PAs and APAs in some agencies such as North Waziristan, IDPs are hesitant to

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<sup>70</sup> Crisis Group interview, Peshawar, 22 July 2009.

<sup>71</sup> “Two-tier treatment in Jalozaï camp”, *Daily Times*, 20 June 2009.

<sup>72</sup> Quoted in Tahir Ali, “Left in the lurch”, *The News*, 28 June 2009.

<sup>73</sup> Crisis Group interview, Shaukat Ullah, Bajaur MNA, Islamabad, 5 September 2009.

<sup>74</sup> Khalid Kheshgi, “Fata IDPs decry government's indifference”, *The News*, 14 August 2009.

<sup>75</sup> Naseerullah Afridi and Daud Khattak, “Mass exodus continues from Bara after Mangal Bagh threat”, *The News*, 21 September 2009.

<sup>76</sup> Crisis Group interview, Shaukat Ullah, Bajaur MNA, Islamabad, 5 September 2009.

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<sup>77</sup> Crisis Group interview, Peshawar, 23 July 2009.

<sup>78</sup> Crisis Group interviews, Islamabad and Peshawar, July-August 2009.

<sup>79</sup> Crisis Group interview, Maryam Bibi, Peshawar, 22 July 2009.

<sup>80</sup> Crisis Group interview, international NGO manager, Islamabad, October 2009.

<sup>81</sup> Crisis Group interview, Peshawar, 22 July 2009.

return without credible guarantees that militant networks and their command structures have been eliminated. In Khyber agency, the latest phase of military operations reflects a recurring pattern of “scorched earth” physical force, followed by appeasement accords that allow the militants to regroup and return, in turn provoking a new stage of military action and civilian displacement.

#### IV. BEYOND SECURITY: CHALLENGES TO DEVELOPMENT

FATA was extremely underdeveloped even before the growth of militancy. It remains the least developed region in Pakistan, with 60 per cent of its residents living below the poverty line.<sup>82</sup> While roads, hospitals, electricity, irrigation and other facilities are needed for economic activity and the delivery of basic services, the government’s current development allocation for FATA is a mere \$11.30 per capita, compared to a national annual average of \$25.55.<sup>83</sup> The unreliable supply of electricity makes the growth of industry practically impossible while the lack of irrigation reduces crop productivity.<sup>84</sup>

The state’s failure to provide basic services and support economic opportunity is contributing to the growth of the insurgency. A FATA analyst argued: “Ideological recruitment is few and far between. Most of the reasons [for recruitment] are related to economic and political marginalisation”.<sup>85</sup> The Taliban’s rank and file reportedly receive a monthly salary of rupees (Rs.) 15,000 (almost \$190), much more than many other occupations – including the tribal levies who earn a monthly salary of Rs. 3,500 (roughly \$43).<sup>86</sup>

##### A. STRUCTURAL IMPEDIMENTS

Most FATA residents are pastoralists or subsistence farmers, although some also depend on commerce and industry as well as cross-border trade with Afghanistan. Many now find work in the black economy that has flourished due to the absence of the rule of law and a meaningful economic regulatory framework as well as state neglect. With job opportunities dwindling, most families have to work in the informal sector and often rely on local criminal networks. Largely absorbed by or allied to radical Islamist groups, these networks have expanded their activities, particularly in areas under militant control.

Developing FATA’s physical infrastructure should be a priority. The limited road network, connecting a tribal agency only to the adjoining agency, leaves much of

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<sup>82</sup> World Development Indicators Database, World Bank, 1 July 2009.

<sup>83</sup> “Cost of Conflict in FATA”, op. cit., p. 2.

<sup>84</sup> For example, Khyber agency has power for only two hours a day.

<sup>85</sup> Crisis Group interview, Khadim Hussain, Islamabad, 18 July 2009.

<sup>86</sup> Khalid Kheshgi, “5,000 more levies personnel being recruited to man cleared areas”, *Daily Times*, 31 July 2009.

FATA difficult to access and restricts the movement of people and goods alike. As the security situation permits, implementation of projects such as viable inter-connected road networks and farm-to-market roads will help build FATA's economy, as would irrigation and energy projects.

Banks are prohibited from extending credit to FATA residents<sup>87</sup> and generally tend to limit the money they lend against agricultural land, preferring urban properties. Both practices must be reversed if investment is to be encouraged.<sup>88</sup> Moreover, due to ambiguous collective land ownership in the FATA agencies, individuals in any case lack assets to present as collateral against loans. In the absence of the formal banking sector, an informal banking system has thrived, sometimes at an annual interest rate of over 100 per cent.<sup>89</sup> Since particular tribes own entire mountain ranges, according a retired military official from Mohmand agency: "If you want to build something on a mountaintop, unless you are a member of the tribe that owns it, you can't do so".<sup>90</sup> The government must devise schemes to partition landholdings, transfer collective to individual ownership through a transparent process and after extensive consultations with the relevant stakeholders, with deeds documenting legal ownership, enforceable by regular courts.

The FATA secretariat's Sustainable Development Plan states that the lack of economic regulation "makes the business climate uncertain, prevents small entrepreneurs from expanding their operations and deters potential investors".<sup>91</sup> Commercial contracts are currently enforced by jirgas under the FCR, and the collective responsibility clause is applied to private businesses, which "serves as a disincentive for investment in general, and particularly for corporations and large firms".<sup>92</sup> A tribal *malik* who owns a Peshawar-based business said: "Every time [the agency's administration] needs someone from my particular tribe they shut down my company in Peshawar. Collective responsibility makes legitimate business much harder".<sup>93</sup> The military campaign against militant groups has provided blanket cover to this provision's misuse. In July 2009, for example, anticipating another offensive against Baitullah Mehsud's network in South Waziristan, the agency's PA ordered arrests and "tak-

ing into custody of any person of the [Mehsud] tribe where they may be found" and "confiscation of movable/immovable property belonging to them in the NWFP".<sup>94</sup> The order led to numerous closures of NWFP businesses.

There have been some efforts to limit the FCR's impact on economic activity. For example, when industrial estates in FATA were first proposed in 2003-2004, the then-NWFP governor agreed to exempt them from the FCR.<sup>95</sup> Similarly, the U.S. government's proposed Reconstruction Opportunity Zones (ROZs), discussed below, while intended to develop FATA's economy, may be established beyond the seven agencies and the Frontier Regions so that their owners and workers are not subject to the FCR, according to sources familiar with the proposal.<sup>96</sup> However, these are at best short-term solutions and would apply only to a small segment of FATA's businesses. They would furthermore produce islands of unencumbered economic activity while enterprises in the rest of FATA would remain hamstrung.

## B. CIVIL BUREAUCRACY

The PA is FATA's chief development agent and planner, and selectively distributes funds to local elites through a patronage system. The PAs allot coveted export and import permits in each agency, and distribute money to loyalists for preferred projects. As a result, according to the FATA secretariat's Sustainable Development Plan: "Public-sector development has tended to target local elites and interest groups, with tribal leaders emerging as the prime beneficiaries. This small segment of the population has managed development investment by identifying projects, selecting sites, nominating service providers and availing of the resulting employment opportunities".<sup>97</sup> Such practices, the report argues, create "a gaping development lag in the tribal agencies that keeps these areas in a perpetual state of poverty, conflict and isolation".<sup>98</sup>

While PAs, APAs and tribal *maliks* have lost influence to religious extremists, they still control the agencies' limited development funds. In the absence of public audits, the local administration has significant leeway in raising and spending money. There are currently, for example, no audits or even recorded accounts of government stipends to the *maliks*. PAs also levy high taxes on trade and movement, ostensibly for the agency's de-

<sup>87</sup> "FATA Sustainable Development Plan (2006-2015)", Planning and Development Department, FATA Secretariat, Government of Pakistan, 2006, p. 7.

<sup>88</sup> Crisis Group interviews, FATA- and NWFP-based businesspersons, July-August 2009.

<sup>89</sup> Crisis Group interview, Jamal Khan, political economist, Islamabad, 20 July 2009.

<sup>90</sup> Crisis Group interview, Islamabad, July 2009.

<sup>91</sup> "FATA Sustainable Development Plan", op. cit., pp. 9-10.

<sup>92</sup> Ibid.

<sup>93</sup> Crisis Group interview, Islamabad, 23 July 2009.

<sup>94</sup> Quoted in Joshua Partlow and Haq Nawaz Khan, "Tribe members held accountable", *Washington Post*, 21 July 2009.

<sup>95</sup> "Two industrial estates to be set up in FATA", *Daily Times*, 21 January 2004.

<sup>96</sup> Crisis Group interviews, Islamabad, July 2009.

<sup>97</sup> "FATA Sustainable Development Plan", op. cit., pp. 10-11.

<sup>98</sup> Ibid, preface.



velopment but there is similarly no accounting for that revenue.<sup>99</sup>

The FATA secretariat's rules of business likewise provide for very limited internal and external accountability.<sup>100</sup> Some international stakeholders praise the secretariat, including its current leadership, which has, for example, included FATA's parliamentarians for the first time in identifying targets and projects in its annual development plan in 2009.<sup>101</sup> While a handful of senior secretariat officers may well be proactive, the very existence of a separate secretariat reinforces FATA's separation from the rest of the NWFP state machinery, impedes the government's stated goal of integrating the tribal areas into NWFP, and prevents oversight by either the national or provincial legislative.

The FATA Development Authority (FDA), established by the Musharraf government in 2006, plans and implements development projects, in particular to encourage private investment and public-private partnerships. Headed by an army officer, the FDA provides loans to investors, but, according to a FATA MNA, it "attaches so many conditions to the loan that the other party eventually gives up".<sup>102</sup> A development contractor in FATA cited the FATA secretariat's and FDA's lack of cooperation as the second biggest impediment, after insecurity, to investment.<sup>103</sup> Another argued: "It's not that these institutions don't want development ... they want their kickbacks".<sup>104</sup> "There were huge amounts of funds funnelled to the FATA secretariat for the past five years, but nothing happened", added Khadim Hussain, coordinator of a research institute that focuses on FATA. "The excuse given was that the security situation wasn't any good. But are they doing anything in those parts of FATA that are not under direct threat of militants?"<sup>105</sup>

The security establishment adds yet another bureaucratic layer that exacerbates mismanagement and wastage. The paramilitary Frontier Corps (FC) owns numerous factories and businesses in FATA and often buys closed factories and failing businesses, restarting production. According to a retired FC official, at the time of his tenure in the mid-1990s the FC owned and operated concerns in South Waziristan ranging from petrol pumps to carpet

factories and bakeries. The official acknowledged that this was ultimately counterproductive, leading to wasted public resources. "When the government manages [an enterprise, officials have] no stake except to draw a salary", he said. "This leads to failure and also blocks competition".<sup>106</sup>

President Zardari's FATA reforms include measures for the auditor general to audit funds received and disbursed by the PA. This is an important initiative, but public auditing should not be incremental and should extend to all state institutions involved in business or security in the tribal areas such as the FATA secretariat, the FDA and the FC. Accountability should furthermore be the purview of the national as well as provincial legislatures through their public accounts committees, with elected representatives ultimately responsible for monitoring FATA's finances.

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<sup>99</sup> Crisis Group interview, Latif Afridi, former Khyber Agency MNA, Peshawar, 22 July 2009.

<sup>100</sup> Rules of business, FATA secretariat, available at [www.fata.gov.pk/subpages/downloads.php](http://www.fata.gov.pk/subpages/downloads.php).

<sup>101</sup> Crisis Group interviews, international aid workers, Islamabad, August-September 2009.

<sup>102</sup> Crisis Group interview, Shaukat Ullah, Islamabad, 5 September 2009.

<sup>103</sup> Crisis Group interview, Islamabad, July 2009.

<sup>104</sup> Crisis Group interview, Islamabad, July 2009.

<sup>105</sup> Crisis Group interview, Islamabad, 18 July 2009.

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<sup>106</sup> Crisis Group interview, Islamabad, August 2009.

## V. MOVING FORWARD

### A. CHANGING FATA'S STATUS

#### 1. Political enfranchisement

Attitudes toward a possible merger of FATA and NWFP are divided. Some stakeholders argue that the NWFP government is already overstretched, having to tackle Islamist militancy with limited resources. It would be even more constrained if it also had to govern FATA. Those who support FATA becoming a separate federal unit also argue that a smaller province would be more manageable than an even larger NWFP. Others claim that a merger would further fuel the existing animosity between tribal Pashtuns and those from the settled areas; a significant number of FATA residents would oppose being ruled from Peshawar.<sup>107</sup> Recent policies in NWFP, including the Islamisation drive under the military-backed MMA during Musharraf's military government,<sup>108</sup> and the Nizam-e-Adl 2009, signed by President Zardari under pressure from the current military leadership, have added to these misapprehensions. "After five years of the MMA, and now perhaps another five years of the ANP, the people of FATA are going say, 'anything but this province'", said Adnan Aurangzeb, a former PML-Q parliamentarian from Swat.<sup>109</sup>

Although FATA, with its Pashtun majority population, territorial contiguity to and economic links with NWFP could be easily incorporated into NWFP, such a merger finds little favour with the military, which has long been averse to any oversight by representative institutions of this strategic region. A senior Peshawar-based government official also believes that the Punjabi-dominated military opposes FATA's integration with NWFP since it would increase the number of seats from NWFP in the National Assembly, giving the province a bigger role on the national political stage.<sup>110</sup> Meanwhile, NWFP governor Owais Ghani, previously Musharraf's Balochistan governor, who formally exercises executive author-

ity over FATA as the president's representative, has yet to visit a single tribal agency, stirring resentment among tribal communities against Islamabad.<sup>111</sup>

Notwithstanding these reservations, there is an urgent need to establish the state's writ over FATA. This is only possible by instituting full provincial and constitutional rights in FATA, bringing the region under the executive control of NWFP and with representation in the provincial legislature. The modalities of such a process should however be decided after extensive consultations with all stakeholders, including tribal women who should play a major part in this process and be guaranteed representation in the provincial legislature. The integration process should include the dismantlement of the FATA secretariat and the FDA and the abolition of the office of the PA, with their authority and functions transferred to the NWFP secretariat and relevant provincial line ministries and district departments.

Deference to tradition is no justification to delay FATA's democratisation. President Zardari's reform package has received broad public and political support, including within FATA.<sup>112</sup> The decision to extend the Political Party Order (2002), which fulfils a longstanding PPP pledge, has opened the way for long overdue party-based elections to the National Assembly and is already leading to greater political mobilisation.<sup>113</sup> FATA is no longer accessible, with the military's patronage, only to the Islamist parties. Moderate political parties, particularly the PPP, PML-N and ANP now have an opportunity to establish offices, as the security situation permits, at district, *tehsil* (town) and ward levels, with internal elections to local party posts, and representation in NWFP and national party bodies.<sup>114</sup>

<sup>107</sup> Crisis Group interviews, politicians, lawyers and NGO workers, Islamabad and Peshawar, July-September 2009.

<sup>108</sup> In June 2003, NWFP's MMA-controlled provincial assembly passed a fifteen-point Sharia bill, declaring Sharia the supreme law of the province and empowering the government to set up three commissions to examine ways to Islamise education, the economy and the legal system. It later passed the Hasba bill to establish ombudsman's offices at the provincial, district and local levels to ensure enforcement of Islamic codes, which was struck down by the Supreme Court. See Crisis Group Reports, *The Militant Jihad Challenge, Unfulfilled Promises* and *The Mullahs and the Military*, all op. cit.

<sup>109</sup> Crisis Group interview, Islamabad, 5 September 2009.

<sup>110</sup> Crisis Group interview, Peshawar, July 2009.

<sup>111</sup> Ghani was appointed NWFP governor in January 2008. Crisis Group interviews, tribal *maliks*, Islamabad, September 2009.

<sup>112</sup> Daud Khattak, "Law-makers on the law", *The News on Sunday*, 23 August 2009; Yousaf Ali, "Power to the people", *The News on Sunday*, 23 August 2009; and Yousaf Ali, "Popular voices", *The News on Sunday*, 23 August 2009.

<sup>113</sup> For example, the ANP has already taken steps to start official political party activity in FATA. See Mumtaz Alvi, "ANP to launch political activities in FATA", *The News*, 9 September 2009.

<sup>114</sup> Currently, the ANP and the religious right-wing parties, particularly the JI and Fazlur Rehman's Jamiat Ulema-e-Islam (JUI-F) have functioning units in FATA. See Khalid Kheshgi, "Only two parties have active units in FATA", *The News*, 23 August 2009. For earlier Crisis Group analysis and recommendations on internal political party reform, see Crisis Group Asia Report N°102, *Authoritarianism and Political Party Reform in Pakistan*, 28 September 2005.

According to I.A. Rehman, director of the independent Human Rights Commission of Pakistan (HRCP): “Effective political parties can threaten the privileges of tribal chiefs and the new cleric-warlords”.<sup>115</sup> However, while the FCR remains in force, the political agents will still be able to curtail political party activity by restricting the right to public assembly and political expression and invoking FRC’s preventive detention clauses.

The FCR has turned FATA into a virtual prison for public-spirited and reform-minded individuals. Unless it is repealed in its entirety, dissenting voices will likely continue to be dubbed anti-state and silenced by imprisonment. Instead, FATA’s incorporation into NWFP under a uniform judicial system would not only extend legal protections to political diversity and competition, it would also help extend the state’s writ over the region.

## 2. Legal rights and judicial reform

Rejecting the FCR’s enforcement in Balochistan in 1993, the Supreme Court had concluded that the “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”.<sup>116</sup> There is no reason why tribal culture should restrict the reach of the criminal justice system in FATA. Some government officials, parliamentarians, NGO and international aid workers favour retaining an amended FCR in the short term, arguing that prematurely repealing the regulations would produce a legal vacuum comparable to the one in Malakand district that the Tehrik-e-Nifaz-e-Shariat-e-Mohammadi exploited in its demand for Sharia.<sup>117</sup> But, as the ANP’s Latif Afridi, a former FATA MNA and president of the Peshawar High Court Bar Association, argues: “The FCR, despite its so-called iron hand, and the political agent, could not prevent Talibanisation. So what can we achieve with an amended FCR? We have to abolish it”.<sup>118</sup>

Instead of abolishing the FCR and extending the Criminal Procedure Code to FATA, President Zardari’s reforms limit the PA’s powers of arrest and detention, including granting the right to bail, and requiring an accused person to be produced before an APA within 24 hours of the arrest; his or her case to be referred to a jirga within ten days; and the jirga to submit its findings to the politi-

cal administration within 90 days. The collective responsibility clause is now applicable only to an alleged offender’s family rather than whole tribe, although, in the words of a FATA parliamentarian: “The term ‘family’ is flexible. It can include in-laws ... in fact, a person’s ‘family’ can even be even bigger than the tribe”.<sup>119</sup>

The clause would also apply to women, children under sixteen and adults over 65. This is again a positive step – in 2004, for example, 70 children were reportedly imprisoned in NWFP under the clause, many for crimes committed by their fathers.<sup>120</sup> However, the proposed amendments will have a limited impact. Women will remain the indirect victims of this collective responsibility clause, supporting their family when the adult males are imprisoned in a region where jobs for females are severely limited and movement for unaccompanied women is difficult in some areas.

At present, defendants do not have the right to legal defence. The PA’s judicial decisions, including arrests and punishments, cannot be appealed to any court. Furthermore, since the PA exercises both appointing and appellate power over jirgas, FATA’s judicial system is entirely subservient to him rather than a check on his authority. The proposed amendments provide for an appellate tribunal, which would be composed of a retired high court judge, a retired bureaucrat with knowledge of the law, and a retired government official with knowledge of the tribal areas and traditions. While providing an avenue of appeal is certainly necessary, this body, whose decisions cannot be appealed further, still fails to mainstream FATA’s judicial system. The ANP’s senior vice president emphasised that: “In Pakistan, a tribunal never provides justice to people”.<sup>121</sup> There is indeed no alternative to extending a provincial high court’s – namely the Peshawar High Court – and the Supreme Court’s jurisdiction to FATA. “Extending the high court’s jurisdiction alone will have a sobering effect on the political agent”, said HRCP’s Kamran Arif. “You have to put the fear of the law into the heart of the local bureaucracy”.<sup>122</sup>

Jirgas have, for all practical purposes, become obsolete in much of FATA. Some have been taken over by militants, others have to compete with militant-run mosques and all jirgas are under constant threat of attack if their proceedings are perceived to be anti-Taliban. Yet there are still calls to revive, strengthen and mainstream the

<sup>115</sup> I.A. Rehman, “Fata: a halfway house”, *Dawn*, 20 August 2009.

<sup>116</sup> See *Government of Balochistan v. Azizullah Memon*, PLD 1993 Supreme Court 341, 361.

<sup>117</sup> Crisis Group interviews, Islamabad and Peshawar, July-August 2009.

<sup>118</sup> Crisis Group interview, Peshawar, 22 July 2009.

<sup>119</sup> Crisis Group interview, Shaukat Ullah, Islamabad, 5 September 2009.

<sup>120</sup> See Sher Baz Khan, “NWFP jails have over 70 children under FCR”, *Dawn*, 18 October 2004.

<sup>121</sup> Interview, Haji Muhammad Adeel, senior vice president, ANP, *The News on Sunday*, 23 August 2009.

<sup>122</sup> Crisis Group interview, Peshawar, 22 July 2009.

jirga system.<sup>123</sup> Supporters of these forums cite the weaknesses of Pakistan's ordinary justice system, particularly long delays in the disposal of cases. While such concerns are valid,<sup>124</sup> these local institutions are inherently flawed. Appointments to jirgas by political agents and *maliks* reflect the interests of FATA's political elite rather than of impartial justice. Moreover, according to a researcher who has extensively examined jirga proceedings, a significant majority of the jirgas in session, such as those in Khyber agency's Bara *tehsil* in mid-2009, were adjudicating disputes over profits of illegal activity, including the opium and hashish trade.<sup>125</sup> Jirgas also frequently decide cases on the basis of the evidence that would be inadmissible in a normal court. *Rewaj* (customary law), which discriminates against women, is also applied. According to HRCP's Kamran Arif: "If you want to perpetuate the lack of justice, there is no better way than the jirga".<sup>126</sup>

Piecemeal reform will only delay justice delivery. In fact, the state's tenuous grip over FATA's judicial system has helped religious extremists to usurp power. The National Assembly should immediately pass legislation to extend the national and provincial higher courts' jurisdiction to FATA, as empowered under Article 247 of the constitution. Civil and criminal courts should be established at the local level, with appellate tribunals presided by qualified district and sessions judges, whose decisions can be appealed in the higher courts. So long as jirgas remain functional in FATA – they are unlikely to be abolished in the short term – they should be prohibited from hearing criminal cases; their decisions must be appealable in a normal court; and the ordinary judiciary must maintain strict oversight over them, including review of cases and evidence.

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<sup>123</sup> For example, this was a key recommendation following a series of workshops on FATA reform, involving participants from all the tribal agencies. See "Mainstreaming FATA", summary report, Benazir Democracy Institute, Shaheed Bhutto Foundation, January 2009.

<sup>124</sup> For Crisis Group analysis of Pakistan's judicial system, see Crisis Group Asia Reports N°160, *Reforming the Judiciary in Pakistan*, 16 October 2008; and N°86, *Building Judicial Independence in Pakistan*, 9 November 2004.

<sup>125</sup> Crisis Group interview, Jamal Khan, Islamabad, 20 July 2009.

<sup>126</sup> Crisis Group interview, Peshawar, 22 July 2009.

## B. PRIORITISING HEALTH AND EDUCATION

### 1. Health

Pakistan ranked 136 out of 177 countries in the UN Human Development Index for 2007-2008.<sup>127</sup> If the country's overall human development indicators paint a bleak picture, the figures for FATA are considerably worse. The spread of disease, including through contaminated drinking water and other preventable causes, and the dearth of adequately equipped hospitals, trained doctors and other medical staff adversely impact life expectancy. The mortality rates from treatable illnesses, particularly of women and children, are particularly high. While Pakistan has some of the highest levels of maternal and newborn mortality in Asia, FATA's maternal mortality rate is more than twice the national average, estimated to be as high as 600 per 100,000 live births.<sup>128</sup> According to Save the Children, under-five mortality in FATA is 135 per 1,000 live births,<sup>129</sup> and infant mortality rate is 86.8 per 1,000 live births, compared to 76.8 nationally.<sup>130</sup>

Although around 100 seats in medical colleges country-wide are reserved for students from FATA, most graduates are unwilling to return to their region, not just due to insecurity but also because of better opportunities for professional advancement in NWFP's settled areas. Unlicensed doctors, faith healers and local prayer leaders fill the gap. Save the Children's USAID-funded Improved Child Health Project found FATA's roughly 460 health facilities to be severely under-equipped and dysfunctional. Problems included staff absenteeism because of insecurity;<sup>131</sup> poor training, with less than 3 per cent of health care providers trained to manage cases of diarrhoea and acute respiratory infections; shortage of medicines, vac-

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<sup>127</sup> "Human Development Report 2007/2008", United Nations Development Program, 2007.

<sup>128</sup> "Rapid Needs Assessment Report of FATA", WFP Pakistan, 13-19 February 2007.

<sup>129</sup> "Mid-Term Evaluation of the USAID/Pakistan Improved Child Health Project in FATA", September 2008, at [http://pdf.usaid.gov/pdf\\_docs/PDACM873.pdf](http://pdf.usaid.gov/pdf_docs/PDACM873.pdf).

<sup>130</sup> "Rapid Needs Assessment Report of FATA", op. cit. According to the UN, the world infant mortality rate for 2005-2010 is 47.3 per 1,000 live births. United Nations Population Division of the Department of Economic and Social Affairs, "World Population Prospects: The 2008 Revision: High-Lights", 2009.

<sup>131</sup> Threats by the Taliban against health workers wearing Western clothing and carrying cellphones as well as U.S. drone attacks in parts of FATA contribute to absenteeism among health workers. Ashfaq Yusufzai, "Health infrastructure a casualty of war on terror within Pakistan", *Canadian Medical Association Journal*, vol. 179, no. 9 (21 October 2008), pp. 889-890.

cinations and other supplies;<sup>132</sup> and deteriorating physical conditions, with almost half of basic facilities lacking proper boundary walls and most facilities lacking generators and hence a continuous supply of electricity.<sup>133</sup>

Conflict-induced displacement, which affects women and children significantly,<sup>134</sup> has further aggravated the crisis. Medical care for over a million IDPs in particular remains severely if not entirely deficient. The government, NGOs, and international agencies and donors must urgently address the acute shortage of basic facilities and trained practitioners, particularly female since women in this socially conservative region cannot consult male physicians.

## 2. Education

Militancy and conflict have also seriously undermined education in FATA. Large-scale displacement, as in Malakand district, has left tens of thousands of children without schools. Countless boys' and girls' schools have either been destroyed or threatened by militants. In many tribal districts, female students have stopped attending classes altogether.<sup>135</sup> In Bajaur, by mid-2008 all girls' schools were either destroyed or closed. In North and South Waziristan, 180 girls' community schools, established with international assistance, were forced shut.<sup>136</sup> In Orakzai agency, Shia schools have been the direct target of sectarian attacks. Schools have also been turned into bases for both the army and extremist groups. Returning families often see their children's schools occupied by soldiers.

Yet violence has by no means stifled education in FATA altogether, and there remain opportunities for meaningful intervention. Thousands of schools remain functional with students still attending classes. By end-2008, there were 4,664 primary schools, including roughly 2,000 girls' schools, with the student-to-teacher ratio actually lower in FATA than in other parts of Pakistan.<sup>137</sup> But literacy figures are still well below the national average.<sup>138</sup>

FATA's public education sector, as elsewhere in Pakistan, is notoriously corrupt, under-resourced and ineffective.<sup>139</sup> More than half of all children who enrol in FATA's primary schools drop out before completing class five,<sup>140</sup> triggered by poor quality of instruction, corporal punishment, teacher absenteeism, inaccessible locations and poorly maintained facilities, including shortages of furniture, clean drinking water and lavatories. Lack of transparency and monitoring allows teachers to draw salaries but avoid showing up to teach; as elsewhere, "ghost schools" are prevalent. One analyst commented: "If someone says we want to build more schools, I would ask, 'what have we done with the first 5,000 schools?'"<sup>141</sup> Low salaries for teachers foster corruption and lack of commitment. Given the threat by militants to schools in the tribal belt, teaching can indeed be regarded as a hardship post, and female instructors in particular should be properly compensated for the risks they take. Significantly better salaries in FATA than in other parts of the country could draw highly qualified teachers from NWFP's settled districts.

Public schools in FATA are built primarily on tribally owned rather than government land. The government enters into contracts with the tribe that owns the property, typically involving emoluments whereby members of the tribe are guaranteed employment as guards, office assistants and cleaners, evoking notions of a school being the tribe's turf. "If I have a school, a tribal rival will not send his child to the school because in his eyes it will make him beholden to me", said a former chief secretary. "But you cannot build a school in every sub-*tehsil* so this works against achieving literacy".<sup>142</sup> Madrasas take advantage of the ensuing vacuum, offering students basic literacy at little or no cost. Boys' schools have also become venues for jihadi preaching, receiving frequent visits from militants. Poor education leaves residents with few skills or economic prospects, furthering their dependence on tribal leaders or pushing them into the arms of militants.

Several major universities and cadet colleges<sup>143</sup> in Peshawar and other NWFP districts maintain quotas for students from FATA. Under a government program estab-

<sup>132</sup> Only 28 per cent of all health facilities offered vaccinations.

<sup>133</sup> "Mid-Term Evaluation of the USAID/Pakistan Improved Child Health Project in FATA", op. cit.

<sup>134</sup> According to UNICEF 65 per cent of people displaced by conflict in Pakistan in 2008–2009 were children. Pakistan Country Page, UNICEF. [www.unicef.org/infobycountry/pakistan\\_pakistan\\_background.html](http://www.unicef.org/infobycountry/pakistan_pakistan_background.html).

<sup>135</sup> "Cost of conflict in FATA", op. cit.

<sup>136</sup> Massoud Ansari, "The ticking bomb", *Herald*, August 2008.

<sup>137</sup> FATA's primary schools have student-teacher ratios of 31:1; the national figure is 47:1. "FATA Sustainable Development Plan", op. cit., p. 25.

<sup>138</sup> *Ibid*, p. 30.

<sup>139</sup> See Crisis Group Asia Report N°84, *Pakistan: Reforming the Education Sector*, 7 October 2004.

<sup>140</sup> Five year olds join class one in Pakistan's educational system. "FATA Sustainable Development Plan", op. cit., p. xxii.

<sup>141</sup> Crisis Group interview, Nasser Ali Khan, Islamabad, 23 July 2009.

<sup>142</sup> Crisis Group interview, Khalid Aziz, Peshawar, 22 July 2009.

<sup>143</sup> Controlled by the army and often operating through one of the military's various foundations, including the Fauji Foundation (army), Shaheen Foundation (air force) and Bahria Foundation (navy), cadet colleges produce an elite class of military officials.

lished in 2007 entitled “Quality Educational Opportunities for the Students of FATA and Balochistan”, 330 students from FATA and Balochistan receive scholarships to medical colleges, cadet colleges and other higher educational institutions. In April 2008, as 5,000 students from FATA travelled to Peshawar to sit for entrance tests, a parent of one child claimed: “This is the best program to bring reforms to FATA”,<sup>144</sup> emphasising both the priority placed on education, and the desire to see FATA’s youth out of the conflict zone.

Subsidised quotas for FATA students do improve their economic prospects but by separating them from their tribal peers. Given the more than 90,000 high school students in FATA, the quotas also at best create a small elite bracket of military officials, civil servants and professionals. Moreover, these institutions focus on higher education, while primary and secondary public schooling in FATA has received insufficient attention. In the absence of greater investment in education in the tribal areas, quotas risk perpetuating FATA’s isolation. “Whatever the interventions, they must happen inside FATA”, said Imtiaz Gilani, vice chancellor of NWFP University of Engineering and Technology. “We’ve been trying it the other way for 62 years and it hasn’t benefited FATA. [Students from FATA] become engineers in Peshawar and that’s that. The benefits are not going back to FATA”.<sup>145</sup> “Centres of excellence only serve the elite”, continued Gilani. “Our fight is in the public school sector. We can’t win this fight in cadet colleges”.<sup>146</sup>

Given the primacy of English in the national and global economy, teaching strong verbal and written English language skills would allow FATA’s students to compete in local and national job markets.<sup>147</sup> The government should make English language instruction compulsory in FATA’s public schools from class one, as it has proposed nationally, and prioritise English language teacher training and publication of high quality English language textbooks.

### C. ACHIEVING SECURITY: STRENGTHENING CIVILIAN LAW ENFORCEMENT

FATA is policed by three forces: the paramilitary Frontier Corps (FC), the dominant law enforcement actor; tribal levies (official tribal militias); and *khassadars* (tribal police). The Frontier Constabulary, an armed po-

lice force, also operates in a small area bordering FATA and the settled districts. The NWFP police does not have jurisdiction over FATA’s agencies or the Frontier Regions. Levies and *khassadars*, recruited on a tribal basis, fall under the federal government’s control, and are appointed by the PA who is also their commanding officer. While levies are provided small arms and limited ammunition, *khassadars* use their own weapons.

Although *khassadars* were originally raised by the British to open and protect strategic roads in the tribal belt, PAs have depended increasingly on them for arrests and other law enforcement roles because the PA’s control over the FC’s local contingents is limited and often depends on the whims of local commanders and FC headquarters. Reliance on this poorly equipped, trained and paid security force further undermines the rule of law and promotes human rights abuses. Levies, who are marginally better armed, are similarly underpaid and inadequately trained, with a monthly salary of Rs. 3,500 (roughly \$43).<sup>148</sup> The *khassadars* and levies are now also used to fight militants.

In July 2009 the government decided to increase the numbers and enhance the professional capacity of *khassadars* and levies to enable them to hold areas cleared by the military. Some 5,000 additional levies personnel are to be recruited, and both forces will receive more pay and better equipment and training.<sup>149</sup> Proper training, equipment and protection will certainly improve their ability to maintain law and order and confront militancy but their new responsibilities must also be balanced by effective oversight. “The *khassadars* have gone from a culture of ‘don’t shoot’ to a free-for-all”, said Shaukat Ullah, an MNA from Bajaur. “Today, you see even women slaughtered and often the suspicions are on the *khassadars*”.<sup>150</sup> “People go into the *khassadars* not for the salary, but for the perks”, added a retired military official from FATA. “Simply adding more will increase competition among them for a piece of the pie”.<sup>151</sup>

Simultaneously the military, with at least tacit support from the civilian government, is arming tribal *lashkars* (militias), and increasingly relying on them to fight militants and maintain control over cleared areas to mitigate the army’s own risk. Ostensibly contracted by the government as an anti-Taliban force, these militias are little more than militant proxies with a virtually free hand in their areas. “The military’s links in FATA are primarily

<sup>144</sup> Daud Khattaq, “FATA students sit cadet colleges’ entrance examinations”, *Daily Times*, 14 April 2008.

<sup>145</sup> Crisis Group interview, Peshawar, 23 July 2009.

<sup>146</sup> Ibid.

<sup>147</sup> For more detail on public school language policy, see Crisis Group Report, *Reforming the Education Sector*, op. cit.

<sup>148</sup> Khalid Khesghi, “5,000 more levies personnel being recruited to man cleared areas”, *Daily Times*, 31 July 2009.

<sup>149</sup> There are currently 6,779 permanent levies and 16,828 permanent *khassadars* in FATA. Ibid.

<sup>150</sup> Crisis Group interview, Islamabad, 5 September 2009.

<sup>151</sup> Crisis Group interview, Islamabad, July 2009.

with pan-Islamists”, said political economist Jamal Khan. “Everyone else is deemed to have a loyalty deficit”.<sup>152</sup> The South Waziristan-based Turkistan Bhattani group, for example, to whom the army has reportedly provided weapons, money, security guarantees and even aerial support during armed encounters against the rival Hakimullah Mehsud-led militant group, has endorsed jihad against coalition forces in Afghanistan while vowing, for the time being, not to attack the Pakistani state.<sup>153</sup> Locals in Dera Ismail Khan even refer to the state-backed *lashkar* operating there as the “government Taliban”.<sup>154</sup> Indeed, many members of this *lashkar* are former Pakistani Taliban militants.

Not only do these *lashkars* further erode law and order, their allegiance to the state may well prove as temporary as other militant groups that had signed peace accords with the military. Moreover, committed to jihad against Western forces in Afghanistan, they are likely to continue providing sanctuaries and safe havens to Afghan insurgents and their al-Qaeda allies.

FATA and PATA residents are now forced to contend with yet another unaccountable armed actor. *Lashkars* use excessive and indiscriminate force, settling scores by torching homes and resorting to reprisal killings.<sup>155</sup> According to the inspector general of the NWFP police, Malik Naveed, because *lashkars* operate on a contractual basis, the state can easily dismiss a member who violates the agreed terms, including abusing civilians’ rights, or even disband a militia entirely.<sup>156</sup> Yet these abuses continue and are under-reported. “The *lashkars* are poorly organised and attack on whim”, said Aman Tehreek’s Mukhtar Bacha. “People fear the *lashkars* but feel that if they raise issues with the political administration or the military, the *lashkars* will take revenge on them”.<sup>157</sup>

FATA’s merger with NWFP would extend the provincial police force’s jurisdiction over the Frontier Regions and the tribal agencies. A specialised unit of 7,500 is being raised within the NWFP police force specifically for counter-terrorism, of which 7,000 have already been trained.<sup>158</sup> As a first step, the six Frontier Regions,

comprising roughly 4,600 sq km, can be immediately merged with their related districts – Dera Ismail Khan, Bannu, Kohat, and Peshawar – giving the NWFP police jurisdiction over them, and thus the ability to operate closer to the tribal agencies. However, even with the proposed additions, the NWFP police remain under-manned and under-equipped. According to Malik Naveed, the NWFP police needs 4,500 training facilities, but only 1,400 exist, and his police force is short of 16,800 personnel.<sup>159</sup> Instead of spending scarce resources to strengthen the *khassadars* and levies, the government should disband them and absorb their members, after requisite training, into the NWFP police force.

The civilian government must also take over control of counter-terrorism policy from the military, which has little credibility and effectiveness as a law and order institution. It must strengthen the capacity of the civilian law enforcement agencies to maintain security in insurgency-hit areas, to investigate extremist and criminal networks, and to build cases against militants that hold up in court. Ultimately, an efficient and functional justice system that integrates the police, prosecutors and courts is as vital for successful counter-insurgency and counter-terrorism in FATA as it is in NWFP.

To ensure that the military high command accepts civilian control over law enforcement, influential external actors, particularly the U.S., should condition military aid on demonstrable steps by the military to support civilian efforts at preventing extremist groups from launching attacks from FATA within the region and beyond. If the Pakistani military does not respond positively, the U.S. should consider, as a last resort, targeted and incremental sanctions, including travel and visa bans and the freezing of financial assets of key military leaders and military-controlled intelligence agencies.

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<sup>152</sup> Crisis Group interview, Islamabad, 20 July 2009.

<sup>153</sup> See “Leader of private militia vows to take out militants”, *Dawn*, 12 July 2009.

<sup>154</sup> Chris Brummi, “Pakistan outsources part of terror war to militia”, Associated Press, 13 September 2009.

<sup>155</sup> For example, see “Lashkar torches miscreants’ houses in Kurram”, *Daily Times*, 28 August 2009.

<sup>156</sup> Crisis Group interview, Peshawar, 23 July 2009.

<sup>157</sup> Crisis Group interview, Peshawar, 23 July 2009.

<sup>158</sup> Fifteen new police stations are being established. Crisis Group interview, Malik Naveed, inspector general, NWFP police, Peshawar, 23 July 2009.

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<sup>159</sup> Crisis Group interview, Peshawar, 23 July 2009. For Crisis Group analysis of police reform in Pakistan, see Asia Report N°157, *Reforming Pakistan’s Police*, 14 July 2008.

## VI. THE U.S. ROLE

### A. GAUGING ASSISTANCE

In 2007, the Bush administration allocated and Congress approved \$750 million for FATA's development over five years, roughly \$281 million of which has been committed thus far, including: \$78 million in fiscal year (FY) 2007; \$30.5 million in FY 2008, and \$172.8 million in FY 2009. The amount actually expended in FATA however, since 2007, remains only \$75 million as conflict in some areas, transparency and oversight issues, bureaucratic hurdles and insecurity hamper assistance efforts. In testimony to the U.S. House of Representatives in June 2009, U.S. special envoy to Pakistan and Afghanistan Richard Holbrooke noted: "Americans have died [in Afghanistan] because people out of work in the FATA ... joined the Taliban, and jobs could reduce that".<sup>160</sup> The same month, Congress approved a tripling of non-military aid to Pakistan to about \$1.5 billion annually over five years. Passed by the Senate and the House of Representatives in September 2009, the final version of the reconciled bill, the Enhanced Partnership with Pakistan Act 2009, widely referred to as the Kerry-Lugar bill,<sup>161</sup> now signed into law by the president, also includes assistance for FATA development, and calls for support to legal and political reforms in FATA.<sup>162</sup>

USAID-funded programs in FATA, aimed at enhancing capacity and strengthening citizen/state ties, work primarily through the federally controlled FATA institutions and civilian bureaucracy. USAID's Office of Transition Initiatives (OTI) focuses on small rural infrastructure projects and aims to "facilitate FATA's integration into Pakistan's political and economic mainstream" by improving the "economic and social environment in the region".<sup>163</sup> OTI and USAID implementing partners work through the Pakistan government, particularly the FATA

secretariat and the PAs, who approve development contracts that are then awarded to local contractors through competitive bidding. Other programs underway include: a three-year capacity building program for FATA government institutions and NGOs run by Development Alternatives, Inc. (DAI); humanitarian relief, including to IDPs, through the USAID Office of Foreign Disaster Assistance (OFDA); and a five-year FATA Livelihoods Development Plan, run by INGOs Cooperative Housing Foundation and AED (Academy for International Development) along with their implementing partners, the International Rescue Committee, Save the Children, Merlin and JE Austin.

Donors face the same hindrances that impede FATA's development in general. Much of FATA's middle belt, for example, is inaccessible due to violent sectarian conflict in Kurram and Orakzai agencies and ongoing military operations in Khyber agency, preventing movement of goods along important trade routes and thus leading to scarcity and raising the cost of raw materials that many major aid and development programs require. During a congressional hearing of a subcommittee of the U.S. House of Representatives' oversight and government affairs committee, the chairman, Representative John Tierney, warned that "a sudden increase in resources exponentially increases the likelihood of waste, fraud and abuse". He also stressed that some U.S.-funded programs in Pakistan "have lacked basic accountability measures".<sup>164</sup> While USAID implementing partners do have local staff on the ground within FATA, as well as multiple monitoring tiers involving foreign and local staff, the volatile security climate prevents expatriate staff from directly overseeing their work.

The main obstacle to effective aid delivery, however, lies in the defective state structures through which USAID and its implementing partners have to work – the dysfunctional FATA institutions and civilian bureaucracy, including the FATA secretariat and the PAs. Local mechanisms to identify and monitor projects rely primarily on *maliks* and *jirgas*. According to an international aid worker: "You don't have access to the community. You have to go through the political agent, the *maliks*, the FATA secretariat and the FATA Development Authority. These are the people who are minting money", adding, "the system cannot absorb the money that is coming in. You've got to be ahead of the curve. You know that the money is coming in, so if there are

<sup>160</sup> Paul Eckert, "U.S. Senate approves bill to triple aid to Pakistan", Reuters, 24 June 2009. In earlier Congressional testimony Holbrooke had argued that the current allocation to FATA was a "pathetic amount of money given the importance of that area". Quoted in Anwar Iqbal, "Incorporate FATA into full political life of Pakistan": U.S.", *Dawn*, 18 May 2009.

<sup>161</sup> Senate Foreign Relations Committee chairman John Kerry and ranking Republican member Richard Lugar are the bill's co-sponsors.

<sup>162</sup> For text of the "Enhanced Partnership with Pakistan Act 2009", S. 1707, passed by both chambers of Congress, see Congressional Record – Senate S9813, 24 September 2009; and Congressional Record – House H10108, 30 September 2009.

<sup>163</sup> Creative Associates and IOM are OTI's implementing partners. USAID Transition Initiatives Pakistan page: [www.usaid.gov/our\\_work/cross-cutting\\_programs/transition\\_initiatives/country/pakistan/index.html](http://www.usaid.gov/our_work/cross-cutting_programs/transition_initiatives/country/pakistan/index.html).

<sup>164</sup> "Hearing of the National Security and Foreign Affairs Subcommittee of the House Oversight and Government Reform Committee on Afghanistan and Pakistan: Accountability Community Oversight of a New Interagency Strategy", Federal News Service, 9 September 2009.



no regulations and no accountable systems of delivery, you're only adding to corruption".<sup>165</sup>

While some USAID-funded projects, by awarding development contracts to local NGOs, potentially enhance local civilian capacity, they still have to rely mainly on PAs and *maliks* to gain access to areas and target programs. According to one senior NWFP-based international humanitarian worker, the PA enjoys virtual "veto power" over the FATA secretariat in allocating and disbursing foreign aid.<sup>166</sup> A local worker on a USAID-funded program observed: "You can't do anything without the political agent. The political agent can be a big detriment to development. Some PAs have been really good. It [however] varies from person to person. They can do all sorts of things to slow you down".<sup>167</sup>

While the current five-year USAID planning cycle permits some beneficial activities, such as farm-to-market roads, a longer commitment such as "a fifteen-year commitment" is needed according to a development contractor. "You don't just change variety – you change the soil. Trees take years to grow. The cycle is long. But the longest USAID cycles are five years".<sup>168</sup>

In August 2009 Finance Minister Shaukat Tarin argued that half of the pledged U.S. assistance would likely be wasted on administrative costs if the U.S. continued to channel funds through its own agencies in Pakistan rather than directly to Pakistani counterparts.<sup>169</sup> Tarin voiced concerns that highly paid foreign personnel and other administrative costs raise the price tag of development projects without yielding dividends on the ground. By the same token, U.S. officials are concerned about the capacity of Pakistani state institutions to use funds effectively and the potential for corruption if assistance is disbursed directly through them.<sup>170</sup> There is good reason for concern, as is evident in the military's motives and uses of U.S. assistance thus far.

In 2008 the U.S. Government Accountability Office (GAO) conducted investigations into the Coalition Support Funds (CSF) program. The CSF represents the bulk of U.S. assistance to Pakistan since the 11 September 2001 attacks, roughly \$6.7 billion to date, through which the U.S. reimburses Pakistan for expenses incurred in designated counter-terrorism operations. The GAO found

that "there were no receipts for a significant portion of the U.S. reimbursements to Pakistan ... [and] the reimbursement program isn't really designed to improve the Pakistani military's capabilities for counterterrorism and counterinsurgency operations".<sup>171</sup>

Believing the Pakistani military to be the only actor capable of reining in al-Qaeda, however, most U.S. assistance during the Musharraf regime targeted the military, even as the army pursued appeasement deals with militants and worked willingly with right-wing religious parties who patronise and endorse the Taliban's idiosyncratic interpretations of Islam.<sup>172</sup> Although the CSF is a distinct channel of assistance from FATA-related aid, it nevertheless reflects the drawbacks of partnering with an unaccountable state institution, which has, despite billions of dollars in U.S. assistance, undermined U.S. national security interests. In fact, the military's opposition to the Enhanced Partnership with Pakistan Act demonstrates that, under General Kayani's watch, the institution is as averse to abandoning its support for jihadi proxies in India and Afghanistan as it is to U.S. support for Pakistan's democratic transition.

The military high command was concerned that the bill extended substantial and unconditional assistance for democratisation, good governance and economic development while security-related assistance required certifications by the Secretary of State of Pakistani cooperation in dismantling nuclear supplier networks, combating terrorist groups, including al-Qaeda, the Taliban and associated groups such as the Lashkar-e-Tayyaba and the Jaish-e-Mohammed, and ending support by the military or its intelligence agencies to extremist and terrorist groups. The military leadership was as, if not more, concerned about the certification requirement that "the security forces of Pakistan are not materially and substantively subverting the political and judicial processes of Pakistan".<sup>173</sup>

In a blatant move to pressure the civilian government to reject and the U.S. government to revise the bill, General Kayani, presiding over the 122nd corps command-

<sup>165</sup> Crisis Group interview, Islamabad, July 2009.

<sup>166</sup> Crisis Group interview, Peshawar, July 2009.

<sup>167</sup> Crisis Group interview, Islamabad, 23 July 2009.

<sup>168</sup> Crisis Group interview, Islamabad, 23 July 2009.

<sup>169</sup> Farhan Bokhari and James Lamont, "U.S. aid to Pakistan depleted by administrative costs", *Financial Times*, 26 August 2009.

<sup>170</sup> Jane Perlez, "U.S. fears Pakistan aid will feed graft", *The New York Times*, 21 September 2009.

<sup>171</sup> "Hearing of the National Security and Foreign Affairs Subcommittee", op. cit. In October, two Pakistani generals disclosed that only \$500 million of the roughly \$6.7 billion in U.S. aid from 2002-2008 was used for the intended purpose – to enhance the military's counter-terrorism capabilities. Said one general: "The money was used to buy and support capability against India" as well as for other ends, including meeting the military government's budgetary shortfalls. Kathy Gannon, "Bottomless pit for U.S. aid", *The Washington Times*, 2 October 2009.

<sup>172</sup> See Crisis Group Report, *Appeasing the Militants*, op. cit.

<sup>173</sup> Text of the "Enhanced Partnership with Pakistan Act 2009", op. cit.

ers meeting, criticising the bill, said that Pakistan was “a sovereign state and has all the rights to analyse and respond to threats in accordance with her national interest”.<sup>174</sup> In a press statement issued after the meeting, Inter-Services Public Relations, the military’s media arm, issued a press statement in which the corps commanders “expressed serious concern regarding clauses (in the bill) impacting national security”. The commanders also, in a blatant bid to pressure the PPP government, also declared their intention to give a “formal input” on the bill to the government.<sup>175</sup> President Obama’s decision to disregard the military’s pressure by signing the bill could help stabilise Pakistan’s fragile democratic process by signalling strong support for the civilian leadership, institutions and processes.

The non-military component of the Kerry-Lugar bill is a welcome change of direction. In FATA, however, where centrally-appointed officials enjoy considerably more powers than elsewhere in the country, the Obama administration must also recognise the pitfalls of working primarily through a civil bureaucracy which is as averse to democratic reform as its military counterpart. Its lack of access to, and limited capacity in, FATA might have forced the U.S. government to rely heavily on the civil and military bureaucracy. But channelling money directly to and through these institutions will do more to alienate than win the hearts and minds of FATA’s public. Expectations will rise but aid delivery will weaken further through inefficiency, wastage and corruption.

In a “dissent channel” message to senior State officials, C. Stuart Callison, a USAID development economist, warned that plans to cancel successful programs run by U.S. contractors and NGOs and to bypass them to work through Pakistani national and local government channels and contractors “without an appropriate transition period would seriously compromise the more important requirements for quick counterinsurgency and economic impacts”. Cancelling the contracts mid-stream, the memo stressed, “would set back the USAID program and delay the accomplishment of USG objectives, instead of achieving more rapid results. Such policy decisions seem to be based on an inadequate understanding of the nature of economic development activities, the requirements for local institutional capacity building, the operational requirements under which USAID must function and

the amount of time it takes to design and obtain approval for new contracts and/or project activities”.<sup>176</sup>

Even more sceptical of the Pakistani bureaucracy’s motives in insisting on direct access to U.S. assistance, a Pakistani analyst commented: “it was proved again and again that money spent on their watch disappeared almost up to 80 per cent. There are examples in the provinces where the entire budgets in some projects were made to disappear ... without anything to show on the ground”.<sup>177</sup>

Secretary of State Hillary Clinton and U.S. special envoy Richard Holbrooke, however, appear to be giving in to Pakistani pressure to route funds directly to the government in FATA.<sup>178</sup> Instead, the U.S. should make the direct delivery of assistance contingent on reform of the region’s dysfunctional and unaccountable institutions. Until officials are made accountable and representative and effective institutions in place, the Obama administration should continue using U.S. foreign aid contractors and international NGOs, who should be encouraged, in turn, to subcontract to local organisations who can consult local communities when planning projects.

Accountability and transparency should be enhanced to the extent possible. All USAID-funded programs should include external oversight mechanisms that are not dominated either by the PA, FATA bureaucrats or by the *maliks* and other elites who benefit from the PA’s patronage. Oversight bodies should ideally include elected representatives and community-based groups. In the current dispensation, FATA’s elected parliamentarians are neither credible nor effective actors, given the lack of party-based representation in the National Assembly or representation in the provincial legislature; and absent any elected legislature, provincial or national, having jurisdiction over FATA’s affairs. Owing to the FCR’s limitations on public assembly and mobilisation, nor are there local NGOs and civil society groups, especially women’s groups, in FATA that are capable of playing an effective oversight role. Most FATA-based NGOs and local communities often have little choice but to accept the directives of the PA and the pressure of the *maliks* or the militants.

<sup>174</sup> Shakeel Shaikh, “Commanders show concern at U.S. aid bill”, *The News*, 8 October 2009.

<sup>175</sup> Ibid; Iftikhar A. Khan, “Corps commanders express concern over Kerry-Lugar”, *Dawn*, 8 October 2009.

<sup>176</sup> Text of Dissent Channel, “Contradictory Objectives of USAID/Pakistan program 2 October 2009 in *USA Today*, 11 October 2009.

<sup>177</sup> Khaled Ahmed, “Needed but ‘unacceptable’ aid”, *Daily Times*, 2-8 October 2009.

<sup>178</sup> See Ken Dilanian, “State Dept rethinks how to deliver aid to Pakistan”, *USA Today*, 2 October 2009; Zulfikar Ali, “USAID to route funding thru govt”, *Dawn*, 1 October 2009.

Instead, a greater oversight role could be given to NWFP-based NGOs with a proven track record of working in FATA as well as other credible Pakistani NGOs. The National Assembly and NWFP Assembly's public accounts committees should also be given an oversight role, even if the former has limited and the latter no legislative authority over FATA at present.

Since their projects aim to strengthen government capacity, USAID implementing partners argue that they have little choice but to work with and through the FATA bureaucracy until the Pakistan government introduces a different system of governance. An international development contractor said, "If the fundamentals don't change, you will never have the conditions that you need to get the investment that will actually bring development in FATA. The PA, the corruption, the tax system, the status of FATA, that's all part of the fundamentals".<sup>179</sup> Another development contractor argued: "We can support existing institutions and we can train and train and train, and this will affect individuals, but the institutions don't change. If you take reform off the agenda you won't see any change in the next ten years".<sup>180</sup> However FATA's bureaucracy will continue to resist reform because significant international development assistance has already been channelled their way – and all the more so should the Pakistan government succeed in persuading the Obama administration to give them direct access to such assistance.

The international community, particularly the U.S., must therefore balance development aid in FATA with robust dialogue with the federal government on long-term political reform, without which international assistance will ultimately be ineffective – or, worse, counterproductive. The sooner representative bodies are in place, the sooner the U.S. can ensure that taxpayers' money is not wasted or actually benefits militants.

## B. RECONSTRUCTION OPPORTUNITY ZONES

Until the final version of the Enhanced Partnership with Pakistan Act 2009 was passed in September, the House of Representatives' proposed legislation had called for the creation of 'reconstruction opportunity zones' (ROZs). These ROZs would give businesses in parts of NWFP, the tribal belt and Balochistan preferential access to U.S. markets, allowing them to export textile and other products to the U.S. duty free and providing additional tariff benefits to existing ones under the Generalised

System of Preferences.<sup>181</sup> Originally part of a stand-alone bill, the ROZ legislation was inserted into the House version of the Pakistan Enduring Assistance and Cooperation Enhancement Act, or Berman bill.<sup>182</sup> While this provision is not included in the final reconciled bill, this does not preclude the possibility of future steps to establish ROZs in FATA, especially since senior administration officials still support the idea and believe that failing to do so would signal a lack of commitment to Pakistan.<sup>183</sup>

While the proposed ROZ program aimed at stimulating FATA's economy, some observers warned against creating a situation similar to the Gadoon Industrial Estate in NWFP, established in the 1980s with U.S. support to help eradicate poppy cultivation and support local industry. The project extended special tax status to factories in Gadoon for a limited period, drawing industrialists from Punjab and Sindh, the two most populous and developed provinces, who, motivated by the tax benefits, established themselves in NWFP and hired better-trained workers from their home provinces, adversely affecting the growth of local industries.<sup>184</sup> When the tax breaks ended, the factories shut down, leaving what the director of a Peshawar-based business university called an "industrial graveyard".<sup>185</sup> If it still intends to establish ROZs, the U.S. government must avoid these pitfalls.

Moreover, the Berman bill had limited products qualifying for duty-free status to 38 textile and apparel categories, which, according to the Congressional Research Service, account for \$1.4 billion of Pakistan's \$2.7 billion-worth of exports. This figure was widely disputed in Pakistan, with one business manager suggesting that the exemptions would only benefit \$200 million worth of exports, and that major textile export categories were excluded.<sup>186</sup> Numerous NWFP-based businesspersons also expressed concern that the focus on textiles would

<sup>179</sup> Crisis Group interview, Islamabad, 31 July 2009.

<sup>180</sup> Crisis Group interview, Islamabad, 31 July 2009.

<sup>181</sup> See Mary Jane Bolle, "Afghanistan and Pakistan Reconstruction Opportunity Zones (ROZs), H.R. 1318/H.R. 1886/H.R. 2410 and S. 496: Issues and Arguments", Congressional Research Service, 9 June 2009.

<sup>182</sup> Representative Howard Berman, chairman of the House Foreign Relations Committee, was the bill's sponsor.

<sup>183</sup> Crisis Group interview, U.S. House of Representatives staff, Washington DC, September 2009.

<sup>184</sup> See Tom Hussain, "Jobs seen as crucial in thwarting Taliban", *The National*, 2 May 2009.

<sup>185</sup> Crisis Group interview, Nasser Ali Khah, director, Institute of Management Sciences (Peshawar), Islamabad, 23 July 2009.

<sup>186</sup> Joshua Partlow and Haq Nawaz Khan, "As violence hurts business, Pakistan debates U.S. help", *Washington Post*, 28 July 2009.

merely invite producers from Punjab and Sindh to set up shop in the region, as with the Gadoon project.<sup>187</sup>

The ROZs could indeed stimulate FATA's economy if high value commodities such as leather goods, wool products, carpets and furniture are included in a future ROZ proposal. Their production could and should include female workers, as well as strong preferences for hiring FATA workers in companies participating in the program. USAID implementing partners should also invest further in human resource development through adult education and vocational training programs, particularly targeting women, that will help build a competitive labour class in FATA.

A longer-term approach should focus on establishing specialised economic zones that tap FATA's indigenous resources, where the incentive for exploiting untapped resources is as compelling as the tax breaks. With strong agricultural and horticultural potential, and rich natural resources – including marble and other semi-precious stones, minerals, coal, and sand containing an abundance of particles that favours glass production – FATA has opportunities for real economic growth. Current mining methods, however, are archaic and small-scale, with crude forms of extraction. Marble processing is completed in Peshawar because of lack of capacity in FATA. With training and investment in modern methods of extraction, the production of marble and other semi-precious stones could become an important industry in FATA. Rich chromite and ore in Mohmand and Bajaur agencies could contribute to a viable steel and metal industry. Similarly, entire industries could emerge in Khyber's Dara Adamkhel if the illegal gun manufacturing there is replaced by the production of legitimate, non-weapon metal and steel products such as ball bearings, cycles and cutlery which draw on similar skills to gun manufacturing.

Some USAID implementing partners are already prepared to provide training and modern equipment for gem and marble extraction and production. They also offer scholarships for the FATA youth to train in various trades and skill development. By expanding such programs for both male and female workers as well as managers, and providing up-to-date equipment for these industries, the U.S. and the international community could play a constructive role in ensuring sustainable job creation and economic growth in FATA.

## VII. CONCLUSION

Fragile social and political institutions that limit the state's writ have enabled religious extremists to penetrate FATA's governing apparatus and its economy, while poorly planned military operations have aggravated both the conflict's impact on daily life and the public alienation that fuels militancy. Given the limited access of the national and international media and humanitarian organisations, the full cost of the conflict for civilians in FATA is near impossible to quantify. Yet while militancy has spread throughout the tribal areas, there are still opportunities for reform. The federal and provincial governments cannot blame the insurgency for delays in fulfilling their electoral commitments on FATA. The underlying goal in defeating militancy should not be to restore the old order, but to mainstream the tribal areas with the rest of Pakistan as part of NWFP, creating opportunities for a representative political leadership and stimulating economic development.

Any efforts to stimulate economic growth and development will fail without fundamental changes to FATA's administrative, political and legal system. Despite the FCR's supposed law and order value, the militants and their local criminal allies have benefited the most from the curbs imposed on political expression, basic rights and legitimate economic enterprise. Indeed the most significant socio-economic change in recent years has been the accumulation of wealth and other resources by religious extremists in FATA's undocumented economy, which has helped them consolidate and spread their influence.

President Zardari's FATA reform package is a welcome initiative, and may indeed reduce the political agent's administrative, judicial and financial powers. But a piecemeal approach that ultimately retains the FCR could prove counterproductive. Policymakers may think it necessary to defer serious structural and political changes until militancy has been contained. But the state can counter religious extremism and effectively stem militant recruitment by extending constitutional rights and expanding economic opportunity, thus winning crucial public support for the cause.

Eight years of military rule under Musharraf, which saw repeated use of heavy force followed by short-sighted peace deals, had undermined peace in the region. The current military high command's perpetuation of this strategy, control over security policy, and support, tacit or overt, to Afghanistan-oriented militant groups in FATA makes the civilian government's efforts to contain religious extremism all the more challenging. To turn the tide, the PPP-led government must wrest control over FATA policy by democratising the tribal areas,

<sup>187</sup> Crisis Group interviews, Islamabad and Peshawar, July-August 2009.

which would bolster the current democratic transition. Failure to do so risks reversing the gains made in the February 2008 elections that saw the mullahs routed and moderate democratic parties sweep to power at the centre and in NWFP.

The U.S. has invested significantly in FATA's development to help curb terrorist attacks in Afghanistan and the region. These investments will only yield peace dividends if FATA's population benefits. Relying on FATA's bureaucracy, including the PAs and the FATA secretariat, and on the tribal elite for implementation and oversight has only limited aid effectiveness – and U.S. government capacity in FATA's development. If this policy is not reversed, it could impede rather than encourage democratisation. The Obama administration,

and the broader international community, should target programs that will produce a labour and professional class, competitive in the job market, by prioritising vocational training and efforts to strengthen the public education sector. The U.S. and other donors must also engage in meaningful dialogue with the civilian government on the urgent need for long-term political and legal reforms that would extend the law of the land to FATA, encourage political diversity and enable economic development and competition. Otherwise FATA's bureaucracy and the tribal elite will remain the main beneficiaries of foreign funds, with those most affected by conflict marginalised.

**Islamabad/Brussels, 21 October 2009**

## APPENDIX A

### GLOSSARY

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ANP	Awami National Party, the main secular Pashtun nationalist party in the NWFP, which currently heads the provincial NWFP government, in coalition with the Pakistan People's Party.
FATA	Federally Administered Tribal Areas, comprising seven administrative districts, or agencies, and six Frontier Regions bordering on south-eastern Afghanistan.
FDA	FATA Development Authority
HRCP	Human Rights Commission of Pakistan
ISI	Inter-Services Intelligence Directorate, the military's main intelligence body.
Ji	Jamaat-e-Islami, the vanguard of modernist political Islam and the most organised and politically active religious party.
JUI	Jamiat Ulema-e-Islam, the main Sunni-Deobandi political party and successor in Pakistan to the Jamiatul Ulema-e-Hind in pre-partition India. The party is divided into three factions, denoted by the initials of their leaders: JUI-Samiul Haq (JUI-S), JUI-Fazlur Rahman (F), and JUI-Ajmal Qadri (Q). The three factions control most Pakistani madrasas. The JUI madrasas were also the main supply line of Afghan jihadis in the 1980s.
<i>Khassadar</i>	Tribal police
<i>Lashkar</i>	Tribal militia
Lashkar-e-Islami	A Deobandi extremist group based in FATA's Khyber agency.
Levies	Official tribal militias under the local FATA administration control.
MMA	Muttahida Majlis-e-Amal, an alliance of six major religio-political parties dominated by the JUI-F and Ji. During Pervez Musharraf's military regime, it formed the NWFP provincial government and was the major partner in the pro-Musharraf ruling coalition in Balochistan.
PA	Political agent, a centrally appointed bureaucrat who is the top official in a tribal agency, exercising extensive executive, judicial and financial powers.
PATA	Provincially Administered Tribal Areas, comprising Malakand division, including the districts of Buner, Chitral, Lower Dir, Upper Dir, Malakand, Shangla and Swat, as well as the Tribal Area adjoining Mansera district and the former state of Amb, administered since 1975 under a separate criminal and civil code from the rest of NWFP.
PML	Pakistan Muslim League, the founder party of Pakistan, originally called the All India Muslim League. Many politicians claim to be leaders of the "real" Muslim League in Pakistan and have their own factions. Former prime minister Nawaz Sharif heads the Muslim League's largest grouping, known as PML(N). PML (Quaid-i-Azam group), a pro-Musharraf party, formed the central government during military rule from 2002-2007.
PPP	The Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1967 with a socialist, egalitarian agenda. Since Benazir Bhutto's assassination in December 2007, the party is headed by her widower, President Asif Ali Zardari, and currently heads the coalition government in the centre.
SSP	Sipah-e-Sahaba Pakistan, a Deobandi militant organisation, which pioneered organised sectarian militancy in the country.
TNSM	Tehrik-e-Nifaz-e-Shariat-e-Mohammadi, a Swat-based Sunni radical group, responsible for sending thousands of fighters to help the Taliban after U.S.-led attacks on Afghanistan in October 2001.
TTP	Tehrik-i-Taliban Pakistan, a loose alliance of Pakistani Taliban groups and movements crusading for the implementation of Sharia law mainly in the tribal areas of NWFP, setting up private courts and prisons in areas under their influence.
Turi	A mostly Shia tribe, and the dominant clan in Kurram Agency's administrative centre, Parachinar.

## APPENDIX B

### MAP OF PAKISTAN



## APPENDIX C

### MAP OF NWFP AND FATA

