

Pakistan: Countering Militancy in PATA

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Executive Summary

Pakistan's Provincially Administered Tribal Areas (PATA), which include Swat and six neighbouring districts and areas in Khyber Pakhtunkhwa province (KPK), remains volatile more than three years after military operations sought to oust Islamist extremists. Militant groups such as the Sunni extremist Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM) and its Pakistani Taliban-linked Fazlullah faction are no longer as powerful in Swat and other parts of PATA as they were in 2008 and early 2009, but their leaders and foot soldiers remain at large, regularly attacking security personnel and civilians. If this once dynamic region is to stabilise, PATA's governance, security and economic revival must become a top priority for the Pakistan Peoples Party (PPP)-led government in Islamabad and the Awami National Party (ANP)-led government in Peshawar – and for their successors following the next general elections.

While the militants continue to present the main physical threat, the military's poorly conceived counter-insurgency strategies, heavy-handed methods and failure to restore responsive and accountable civilian administration and policing are proving counter-productive, aggravating public resentment and widening the gulf between PATA's citizens and the state. Meanwhile neither the federal nor the KPK provincial government is fully addressing the security concerns of residents.

Public and political support for action against the TNSM and allied Pakistani Taliban networks in Swat and its neighbouring districts remains strong, demonstrated by the outrage against the 9 October 2012 attack by Mullah Fazlullah's Taliban faction on Malala Yousafzai, a Swat-based fourteen-year-old activist for girls' right to education. That attack has also further eroded public confidence in the military's claims of having dismantled the insurgency and underscores the grave security challenges that PATA's residents face.

The military's continued control over the security agenda, governance and administration in PATA and the state's failure to equip KPK's police force with the tools and authority it needs to tackle extremist violence lie at the heart of the security and governance challenges. Some serious efforts have been made to enhance police capacity, functioning and presence on the streets, including by increasing the size of the force and the number of police stations, particularly in Swat. However, they are insufficient. The KPK police should be properly trained, equipped, and accountable. Islamabad and Peshawar, KPK's provincial capital, need to abolish parallel law enforcement entities such as Levies, dismantle state-supported tribal *lashkars* (militias) and give KPK's police the lead in enforcing the law and bringing extremists to justice.

Yet, the complexities of PATA's legal framework still make upholding the rule of law a daunting task. Unlike the Federally Administered Tribal Areas (FATA), PATA is subject to Pakistan's basic criminal and civil law framework and falls under the jurisdiction of the provincial KPK legislature (in addition to the National Assembly) and the Peshawar High Court and Supreme Court. However, under Article 247 of the constitution, laws apply to PATA, as in FATA, only if specifically extended by the governor (the federation's representative), with the president's consent.

Since formally joining KPK (then called Northwest Frontier Province) in 1969, PATA has also been governed by various parallel legal systems that have undermined constitutional rights and isolated it from the rest of KPK. More recent reforms have only expanded that isolation. Despite public opposition to Islamist militancy in Swat and neighbouring PATA districts, the ANP-led provincial government has not repealed the Nizam-e-Adl Regulation 2009, which imposed Sharia (Islamic law) in

PATA as part of a military-devised peace deal with the Taliban-allied TNSM in April 2009. In August 2011, President Asif Ali Zardari promulgated the Actions (in Aid of Civil Power) Regulation 2011 (AACP) for PATA and FATA, vesting the military with virtually unchecked powers of arrest and detention and further undermining fundamental rights and the rule of law. While the AACP provides legal cover for the military's human rights abuses, the imposition of Sharia has made effective and accountable governance elusive.

Efforts to revive a shattered economy, once heavily dependent on tourism, have also faltered, and pressing humanitarian needs remain unmet because of continued instability and short-sighted military-dictated policies and methods. These include travel restrictions on foreigners, stringent requirements for domestic and international NGOs, abrasive and intrusive questioning at military checkpoints and the military's deep economic encroachment.

To overcome PATA's rising security challenges, the national and provincial leaderships should reclaim the political space ceded to the military. Islamabad and Peshawar must develop and assume ownership over a reform agenda that ends PATA's legal and political isolation, strengthens a deteriorating justice system, revokes laws that undermine constitutionally guaranteed fundamental rights and fully integrates the region into KPK.

Recommendations

To Pakistan's Federal Government and Khyber Pakhtunkhwa's Provincial Government:

1. Integrate the Provincially Administered Tribal Areas (PATA) into KPK province fully by:
 - a) removing Articles 246 and 247 from the constitution, thereby ending PATA's tribal status and allowing all laws passed by the national and provincial legislatures to be applicable;
 - b) merging PATA into the legal mainstream by abolishing the Nizam-e-Adl Regulation 2009; and
 - c) abolishing the Actions (in Aid of Civil Power) Regulations 2011 for PATA and FATA.
2. Mitigate the impact of conflict on PATA's economy and ensure the provision of humanitarian assistance by:
 - a) lifting all curbs on travel, including No Objection Certificate (NOC) requirements for foreigners visiting Malakand Division; and
 - b) removing restrictions on international and local NGOs in PATA, easing the process for foreign NGO workers to obtain residence and visit visas and directing the civil bureaucracy to phase out and ultimately end NOC requirements for international NGOs.
3. Revise the draft Fair Trial Bill 2012 to:
 - a) empower only civilian agencies to investigate and gather intelligence, and exclude the Inter-Services Intelligence Directorate (ISI), Military Intelligence and other military-controlled intelligence agencies from the bill's list of authorised entities, making any such data they acquire inadmissible in court;
 - b) include a provision for federal and provincial parliamentary oversight and require standing committees on interior and home and tribal affairs in the National Assembly and KPK's provincial assembly, respectively, or subcommittees formed under them, to inquire into complaints of unjustified invasions of privacy under the bill; and
 - c) require the higher judiciary to oversee the provision and issuing of warrants under the law and hold lower court judges accountable if they issue warrants without justification or fail to ensure that warrants are not abused by state authorities.
4. Refocus on the basics of law enforcement and criminal justice, in addition to new surveillance measures under the Fair Trial bill, by:
 - a) enhancing protection afforded to witnesses, prosecutors and judges in terrorism-related cases;
 - b) modernising KPK's police force, including by investing in crime scene units in individual police stations equipped with forensics and other modern investigative tools;
 - c) overhauling and modernising KPK's forensic science laboratory;

- d) extending ongoing efforts to upgrade and increase the number of police stations in Peshawar and Swat to Lower Dir, Upper Dir and Chitral, focusing initially on the more conflict-prone towns;
 - e) following through on recommendations to raise the number of female police officers and ensuring all have the same career advancement prospects as their male counterparts; and
 - f) raising the number of officers relative to constables in the KPK police and then maintaining a ratio of around 60/40 of constables to officers.
5. Strengthen civilian-led law enforcement further by:
 - a) abolishing Levies and other parallel law enforcement entities in PATA and absorbing their personnel into the regular KPK police after meeting requisite training, vetting and other formal requirements;
 - b) dismantling all state-supported tribal *lashkars* (militias), terminating the practice of delegating security functions to unofficial entities; and
 - c) removing all military personnel from security checkpoints, replacing them with police, including female personnel where conditions allow.
 6. Order the closure of all military-controlled internment centres, transferring detainees to judicial custody; and end all military-run deradicalisation and rehabilitation programs for captured militants, requiring that any such programs are civilian-led and under judicial oversight.
 7. Investigate allegations of extra-judicial killings, torture, illegal detention and other human rights abuses in PATA and take disciplinary action against any security personnel, including senior officials, found responsible.

To the Peshawar High Court and Supreme Court of Pakistan:

8. Review the Actions (in Aid of Civil Power) Regulations 2011 and the Nizam-e-Adl Regulation 2009 to determine their consistency with fundamental constitutional rights and principles, if they are not repealed by the government.
9. Follow through on pledges to hold military and intelligence officials accountable for illegal detentions and other human rights abuses.
10. Review the constitutionality of jirgas (tribal councils), including consistency with fundamental rights of equality, dignity and fair trial, drawing on the 2004 judgment of the Sindh High Court that deemed these forums unconstitutional.
11. Revoke the National Judicial Policy of 2009 and end the practice of formulating policy through committees, speeches, and documents; speak instead through judicial judgments and develop case law that closes legal loopholes and holds lower court judges accountable for dismissing cases prematurely and failing to consider or order the production of evidence, such as publicly available video footage.

Islamabad/Brussels, 15 January 2013

Pakistan: Countering Militancy in PATA

I. Introduction

The October 2012 attack by a Pakistani Taliban faction on fourteen-year-old Malala Yousufzai, an activist for girls' education, and two of her school friends in Swat symbolises the security challenges in the Provincially Administered Tribal Areas (PATA) of Khyber Pakhtunkhwa (KPK) province.¹ With targeted attacks on civilians as well as state institutions and personnel still common and few militant leaders brought to justice, the region has yet to see a peace dividend from the military operations against armed militants that began in May 2009 and were declared successful two months later. Militant threats remain, while the military's abrasive and heavy-handed presence in PATA districts has failed to boost public confidence, even as it aggravates public resentment.

PATA, a group of former princely states that subsequently merged with Pakistan, cuts a large swathe across north and central KPK. Along with two of its biggest districts, Chitral and Swat, it includes Upper Dir, Lower Dir, Malakand district, parts of Kohistan, Shangla, the tribal area adjoining Mansehra district and the former state of Amb. Almost all fall under KPK's Malakand Division.² Although the KPK provincial government in Peshawar exercises executive control, PATA differs from the rest of the province, since no federal or provincial laws apply to it unless specifically extended by KPK's governor, the federation's representative, with the president's consent. Further distinguishing it from the rest of KPK, it has been governed by a parallel justice system under an array of legal frameworks, including the PATA Regulations (1975-1994), the Nifaz-e-Shariat (1994-1999) and the Nizam-e-Adl 1999. In April 2009, the National Assembly endorsed yet another legal framework, the Nizam-e-Adl Regulation 2009, which imposed Sharia (Islamic law) through *qazi* (religious) courts as part of a military-devised peace deal with Swat-based militants.

Often characterised as a response to public demand for better and swifter justice, the Nizam-e-Adl 2009 in effect ceded control over the region to the Sunni extremist Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM) and allied militants, led by Sufi Mohammed and his son-in-law Mullah Fazlullah, leader of the Swat faction of the Tehreek-e-Taliban Pakistan (TTP-Taliban Movement of Pakistan). Like other such accords in Swat and the Federally Administered Tribal Areas (FATA), this peace deal

¹ For earlier analysis of security challenges in the region, see Crisis Group Asia Reports N°237, *Pakistan: No End to Humanitarian Crisis*, 9 October 2012; N°227, *Aid and Conflict in Pakistan*, 27 June 2012; N°196, *Reforming Pakistan's Criminal Justice System*, 6 December 2010; N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009; and Briefings N°111, *Pakistan: The Worsening IDP Crisis*, 16 September 2010; N°93, *Pakistan's IDP Crisis: Challenges and Opportunities*, 3 June 2009.

² Article 246 of the constitution. "PATA" also applies to tribal areas in Balochistan, but in this report refers to KPK's tribal districts. Administrative divisions form the third tier of government below the provincial level and are subdivided into districts. The largest of KPK's seven divisions, Malakand, includes Buner, Chitral, Lower and Upper Dir, Swat, Malakand and Shangla districts.

did not lead to an end of violence.³ In April 2009, the militants entered Swat's neighbouring district of Buner, and the resultant domestic and international backlash forced the military to launch an operation the following month.

Almost three million residents were displaced during that heavy-handed operation. While almost all have since returned, the psychological, social and economic costs of the conflict, discussed below, remain inordinately high. Security, too, remains illusive, despite an overbearing military presence. Terrorist attacks are frequent not just in Swat and the TNSM's birthplace of Lower Dir, but also in hitherto peaceful districts such as Upper Dir and Chitral, which share PATA's longest border with Afghanistan. PATA's militarisation, which entails all levels of governance and administration, from policing to reconstruction and cultural affairs, has also fundamentally changed the region's social, political and economic complexion. Short-sighted military policies have complicated efforts to restore law and order and revive a shattered economy.

This report assesses the impact of the military-led response to extremist violence on PATA's security, society and economy. It identifies measures to strengthen the state's writ and to reverse the tide of religious militancy. It is based on extensive field research, including interviews with police officials, lawyers, human rights activists, NGO workers, journalists and other stakeholders across PATA, including Chitral, Upper Dir, Lower Dir and Swat, as well as in KPK's provincial capital Peshawar and the federal capital, Islamabad. Given the sensitivity of the information, some names of those interviewed and of interview sites have been withheld or changed.

³ FATA includes seven tribal agencies and six frontier regions, bordering south-eastern Afghanistan. For detailed analysis of its legal and administrative structure and security challenges, see Crisis Group Asia Reports N°178, *Pakistan: Countering Militancy in FATA*, 21 October 2009; and N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006.

II. PATA's Legal Framework and the Roots of Conflict

A. Constitutional and Legal Status

Citizens in PATA, as in other KPK districts, directly elect representatives to the national and provincial assemblies, and the region falls under the jurisdiction of KPK's provincial government.⁴ However, under Article 247 of the constitution, which applies to both PATA and FATA, no law passed by the federal or provincial legislature has effect in PATA unless it is specifically extended, with the president's consent, by the KPK governor, the federation's representative. The governor may also "make regulations for [PATA's] peace and good government", again with presidential consent. Hence, while PATA'S national and provincial assembly members can present, debate and vote on bills, those bills require both the KPK governor's and the president's assent to become law.

Originally, the jurisdiction of a high court and the Supreme Court did not extend to either PATA or FATA, but a parliamentary act in 1974 extended the higher judiciary's jurisdiction to the former. This is a critical distinction from FATA, which still lacks a formal justice system.

Until 1960, Swat, Dir⁵ and Chitral were technically self-governed princely states, ruled by *nawabs* and *walis*,⁶ with courts operating in the Persian language and presided over by *qazis*.⁷ The *nawab* or *wali* was the final appellate authority. With the integration of these princely states into Pakistan in 1960, the office of the political agent was established to head the district administration, with judicial, executive and fiscal powers. In 1969, Swat, Dir and Chitral became districts of the Northwest Frontier Province (NWFP).⁸ The office of the political agent, the senior district-level official, was converted into that of a deputy commissioner (DC). Under Article 246 of the 1973 constitution, the districts were designated Provincially Administered Tribal Areas.

During the 1970s, under Pakistan's first democratically elected government, the laws of the land were gradually extended to PATA districts, including the Evidence Act, the Criminal Procedure Code (CrPC), and the Pakistan Penal Code. However, the federal government maintained a judicial system based, along with normal courts, on Sharia and jirgas (tribal councils).

In 1975, after mass public protests over forest royalties in the region,⁹ the government introduced two separate regulations, the PATA Criminal Law (Special Pro-

⁴ Pakistan has a bicameral parliament: the National Assembly, the directly elected lower house, and the Senate, the indirectly elected upper house. Each of the four federal units has a legislature, called a provincial assembly.

⁵ Dir was divided into Upper Dir and Lower Dir for administrative reasons in 1996.

⁶ The rulers of the princely states were called *nawabs*, as in Dir, or *walis* as in Swat.

⁷ Judges ruling in accordance with Sharia.

⁸ NWFP was renamed Khyber Pakhtunkhwa (KPK) in April 2010 by the eighteenth constitutional amendment.

⁹ Dir's *nawab* controlled the royalties of the princely state's forests and timber production. In 1975, the federal government declared them "protected forests" and empowered the forest department to prevent use for fuel, timber and other products. Timber merchants demonstrated against the decision, and the resultant violence led to deployment of paramilitary forces and the army in Dir. Shaheen Rafi Khan, "Tradition and Sovereignty: Conflicts over Forests of Dir-Kohistan" in Rucha Ghate, Narpal Jodha, Pranab Mukhopadhyay (eds.), *Promise, Trust and Evolution: Managing the Commons of South Asia* (New Delhi, 2008), pp. 307-329.

visions) Regulation and PATA Civil Procedure (Special Provisions) Regulation. These gave the local bureaucracy greater latitude in enforcing law and order and settling disputes.¹⁰ They vested judicial powers in the deputy commissioner, who constituted and referred criminal and civil cases to jirgas. Although jirgas heard the bulk of cases, a parallel system of district and sessions court judges heard three specific kinds: where the government was an interested party; minors were involved; and, after General Zia-ul-Haq's Islamisation policy in the 1980s, offences under Islamic law, such as the Hudood Ordinances and blasphemy laws.¹¹

The jirgas were chaired by a *tehsildar* (local land revenue official) or a deputy, and include two representatives from each contesting side for criminal cases; civil cases had one representative from each side. Jirgas would apply *rewaj* (customary law) as well as Sharia. The deputy commissioner had final authority but would generally delegate it to assistant commissioners (ACs) or other subordinates, who were also tasked with overseeing implementation of the rulings. Parties could appeal to the division's commissioner, the senior bureaucrat. The provincial home secretary had revisional authority. Parties could file writ petitions to the Peshawar High Court and finally the Supreme Court.

In 1990, the Peshawar High Court struck down the PATA regulations as violating fundamental rights enshrined in Article 25 of the constitution. Upholding the decision in 1994 on the grounds that the regulations undercut the objective of good governance, the Supreme Court ruled that regular civil and trial courts, manned by district and sessions judges, would hear cases in PATA. This essentially merged PATA's justice system into the mainstream legal framework.

However, PATA's judicial system again diverged from the legal mainstream when President Farooq Leghari and then-NWFP Governor Aftab Sherpao, facing a violent TNSM-led campaign for Sharia in 1994, promulgated the Nifaz-e-Shariat Regulation. It imposed Sharia in PATA, but only nominally, by renaming sessions and civil judges and judicial magistrates *qazis*, while the courts remained under the jurisdiction of the Peshawar High Court. Dissatisfied with this cosmetic change, the TNSM continued to campaign violently for a more rigid enforcement of Islamic law, gaining another concession from Islamabad in 1999: promulgation of the Nizam-e-Adl 1999, which repealed the Nifaz-e-Shariat Regulation and required judges to consult with clerics and religious scholars.

This legal framework remained in place until April 2009. Following yet another violent campaign in 2007 by the TNSM, now operating as a TTP faction, the Pakistan Peoples Party (PPP)-led government signed a military-devised peace deal that conceded the militant's demands for imposition of Sharia in Swat and adjoining PATA districts. Under Nizam-e-Adl Regulation 2009, Sharia is enforced in PATA by *qazi* courts, presided over by government-appointed judicial officers trained in Islamic law; an appellate court, the *Dar-ul-Qaza*, was established at the level of the High Court, and a final appellate court, the *Dar-ul-Darul-Qaza*, was established at

¹⁰ PATA Criminal Law (Special Provisions) Regulation, Regulation no. 1 (1975), NWFP Extraordinary Gazette, 2 July 1975, p. 1.

¹¹ For Zia's Islamisation, see Crisis Group Asia Reports N°216, *Islamic Parties in Pakistan*, 12 December 2011; *Pakistan: The Militant Jihadi Challenge*, op. cit.; N°160, *Reforming The Judiciary in Pakistan*, 16 October 2008; 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.

the level of the Supreme Court. With the enactment of this legal framework, many national laws, including ones that protect women, are no longer extended to PATA.¹²

B. *The Onset of Islamist Militancy*

1. Revolt of the elite

Most accounts of militancy in Swat since 1994 identify public disenchantment with a sluggish justice system as the main catalyst. One such study, for instance, found that: “The most commonly cited factor blamed for the rise of militancy in Swat has been access to justice. Without access to financial resources or a professional cadre of lawyers, judges and court officials, the formal legal system quickly became backed up”.¹³ Such accounts imply overwhelming popular support in Malakand for Sharia, with citizens demanding swift justice and also backing informal rather than formal dispute resolution mechanisms. There is, however, little evidence for this.

Under the PATA regulations, justice was neither swift nor fair. “The point of the PATA regulations was to make justice quick and cheap”, said Fazal Malik, president of the Lower Dir Bar Association. “But cases would get stuck on the smallest procedural points. ACs [assistant commissioners] had piles of cases 100 feet high”. Another Dir-based lawyer said, “if you wanted to drag out a case because you believed it would go against you, you could drag it on for years”.¹⁴ Indeed litigants could resort to long procedural delays to postpone or undercut anticipated unfavourable judgments. For example, they could object to the presence of one of the members on the jirga. If this was rejected, they could appeal the decision and, finally, seek revision by the home secretary. Criminal and civil cases alike often took more than ten years to be decided; some remain unresolved today.¹⁵

There is also little evidence that an overwhelming public demand for Sharia fuelled Islamist militancy in Swat and PATA’s other districts. Instead, the local elite, particularly the powerful bureaucracy and influential landlords, backed the militants’ bid to gain power through calls for Sharia. This alliance was not new. Since at least the 1970s, PATA’s large landowners, tribal leaders, local bureaucracy and clerics had formed a loose coalition that oversaw judicial affairs through the PATA regulations. The 1990 reforms that merged PATA’s justice system with the mainstream undermined that control. Opposition to the formal justice system was, therefore, a revolt less of the general public than of the elite.

Until the 1990 reforms, powerful landowners colluded with the district administration to ensure their representatives and/or allies were included in jirgas, which seldom ruled against their interests. Malakand’s landed elite, therefore, supported the TNSM campaign for Sharia because “they believed they could continue controlling affairs of the state along with the bureaucracy and the clerics”, according to Sher Mohammed Khan, president of the Swat High Court Bar Association. “They never thought [the militants] would then turn against them”.¹⁶

¹² For more detail, see Crisis Group Report, *Reforming Pakistan’s Criminal Justice System*, op. cit.

¹³ Justice Fleischner, “Governance and militancy in Swat Valley”, Center for Strategic and International Studies, October 2011.

¹⁴ Crisis Group interviews, Lower Dir, October 2012.

¹⁵ Crisis Group interviews, lawyers, Lower Dir and Swat, October-November 2012.

¹⁶ Crisis Group interview, Swat, November 2012.

The clergy's reasons for opposing the reforms and supporting demands for Sharia were equally self-serving. "From 1975 to 1994, there were never any calls for Sharia, even though the PATA regulations in some ways contradicted Sharia", said a prominent local lawyer. For example, although Islamic law prescribes the death penalty for a number of crimes, the PATA Criminal Law Regulation did not follow those guidelines. "No mullah or militant protested, because they benefited from the system", he added. "It was only when the regulations were struck down, and when the local elite lost their power, that demands for Sharia emerged".¹⁷

In any case, by 1994 the clergy's demands that the country's legal system should follow the principles of Sharia had to some extent been met by General Zia's Islamisation process. Article 2A of the constitution, inserted in 1985, provided that all laws had to comply with Islamic injunctions and could be challenged in court on that basis.¹⁸ In the same constitutional amendment package, the Zia regime established a Federal Shariat Court (FSC) to review all laws for compliance with Islamic injunctions,¹⁹ in addition to the Council of Islamic Ideology that was already authorised for this task. In 1991, Nawaz Sharif's Muslim League (Muslim League-Nawaz—PML-N) government passed the Enforcement of Shariat Act to bolster Islamic provisions. By 1994, therefore, the legal system supplied multiple avenues to ensure that laws complied with Sharia.

Likewise, the formal legal system contained provisions for informal justice. From 1994 to 2009, under first the Nifaz-e-Shariat and then the Nizam-e-Adl 1999, litigants were given a choice between a formal court process or, if both parties to a dispute agreed, settling a case through a jirga. The vast majority of litigants opted for the formal court process, according to Malakand-based lawyers. "If litigants really had no confidence in the courts, they could have gone elsewhere, but they didn't", said Sher Mohammed Khan.²⁰

The most vociferous opposition to the formal justice system came from district officials who had lost judicial powers as a result. According to an Upper Dir-based journalist and human rights activist, "after the PATA regulations were gone, ACs and DCs had their hands tied. Before, you couldn't do anything without their approval. They wanted the regular legal system to fail, whatever the cost".²¹ Unsurprisingly, many such officials and allied local elites supported the Sufi Mohammed²²-led TNSM, which had begun its Sharia campaign after the Peshawar High Court struck down the PATA regulations in 1990 and became increasingly violent after the Supreme Court upheld that decision in 1994. According to an informed source who has held key political positions in Swat and was privy to provincial cabinet proceedings in the 1990s, a 1994 official report to the provincial cabinet provided evidence of the

¹⁷ Crisis Group interview, Swat, November 2012. For example, the deputy commissioner had authority to apply the death penalty, which contradicted the manner in which Islamic law prescribed penalties for murder and other major criminal offences.

¹⁸ Article 2A made the Objectives Resolution a substantive part of the constitution. Adopted in 1949 by the Constituent Assembly to lay the foundations for a constitution based on the principles of democracy, federalism, equal rights and an independent judiciary, it also asserted that "Sovereignty belongs to Allah alone", and democratic principles were to be followed "as enunciated by Islam".

¹⁹ The FSC has, for example, struck down land reforms and tenant rights as un-Islamic.

²⁰ Crisis Group interview, Swat, November 2012.

²¹ Crisis Group interview, Upper Dir, October 2012.

²² Mohammed, an ex-member of the Jamaat-Islami (JI) who reportedly maintained links with the party, had been a district council member in Dir district.

local bureaucracy's support to Islamist militants. This allegedly included giving the TNSM government vehicles during major street agitation that May, when the militants blocked the main Malakand highway, cutting off PATA's primary access to the rest of the country.²³

2. Empowering militants

Support to the militants continued during General Pervez Musharraf's regime, particularly after the six-party Islamist alliance, the Muttahida Majlis-e-Amal (MMA), formed the government in NWFP. Musharraf had rigged the 2002 elections to ensure an MMA victory and sideline his main political moderate opposition, the PPP and PML-N. With 62 of 342 seats, the MMA also became the second biggest party in the National Assembly.²⁴ In 2003, it provided crucial votes for Musharraf's seventeenth amendment to the constitution, which undercut parliamentary democracy and centralised power in the office of the president. In return, the Musharraf regime assured the MMA of support for the Hisba Bill, which sought to introduce Taliban-style government in NWFP. The bill was passed by the provincial assembly in 2005 but struck down by the Supreme Court, which deemed many of its provisions unconstitutional.²⁵

In return for the military's patronage, the MMA's largest constituent party, the Fazlur Rehman-led Jamiat Ulema-e-Islam (JUI-F), mediated talks between the military and FATA-based militant groups.²⁶ Starting from 2004, these resulted in a series of peace deals in FATA's South and North Waziristan Agencies that provided amnesty, financial incentives and political space for the extremists.²⁷

The MMA's control over NWFP and the military regime's patronage for anti-India and anti-Afghanistan-oriented jihadis provided ample opportunities for radical Islamists to also expand their presence in PATA. After the 2005 earthquake, for instance, jihadi groups, including Lashkar-e-Tayyaba (LeT) and Jaish-e-Mohammed, relocated many of their Azad Jammu and Kashmir (AJK)-based training camps to Swat.²⁸ The MMA-controlled NWFP government reportedly issued "standing directions" to Swat's forest department not to enter the town of Peochar, where the LeT and Jaish training camps were based. This expansion of jihadi space empowered the TNSM, including the Swat faction led by Sufi Mohammed's son-in-law, Mullah Fazlullah. Allied to groups such as the Jaish-e-Mohammed and the anti-Shia Lashkar-e-Jhangvi, the Fazlullah faction embarked on a violent campaign to impose Sharia in Swat in 2007.²⁹

²³ Crisis Group interview, Swat, November 2012.

²⁴ For analysis of the 2002 elections and the Musharraf regime's alliance with the MMA, see Crisis Group Reports, *Unfulfilled Promises*, and *Pakistan: The Mullahs and the Military*, both op. cit.

²⁵ For more detail on the Hisba Bill, see Crisis Group Report, *Reforming the Judiciary in Pakistan*, op. cit.

²⁶ The JUI-F is the largest orthodox Deobandi party in KPK. With the revivalist Jamaat-i-Islam, it formed the core of the MMA-led NWFP government under President Musharraf.

²⁷ Crisis Group Reports, *Pakistan: The Militant Jihadi Challenge*; and *Pakistan's Tribal Areas*, both op. cit.

²⁸ For more on the Musharraf regime's collusion with violent Islamist groups during earthquake relief operations, see Crisis Group Asia Briefing N°46, *Pakistan: Political Impact of the Earthquake*, 15 March 2006.

²⁹ Crisis Group interview, informed source, Swat, November 2012; Report, *Pakistan: The Militant Jihadi Challenge*, op. cit.

Swat's District Coordination Officer (DCO), the senior bureaucrat at the district level, allegedly played a key role in enabling the militants to expand their presence and was instrumental in the signing of a peace deal with Fazlullah in May 2007, discussed below. According to the independent Human Rights Commission of Pakistan (HRCP):

It was common knowledge that [the DCO] fully patronised Fazlullah, Sufi Muhammad's son-in-law. While posted as DCO, he is reputed to have exhibited strong leanings towards the al-Qaeda-style ideology. He would drive from Mingora to Peochar, where Fazaullah led Friday prayers. The presence of the highest official in Swat in the congregation of the faithful led in prayers by Fazallullah was a strong incentive for others to join. It is reported that there was vigorous recruitment of local people by the militants during that period.

HRCP also found evidence of collusion between local police and Fazlullah.³⁰

Once they had established a presence, the militants tried to exploit opportunities to recruit from residents, particularly those who had been deprived of tenancy rights by powerful landlords. For its part, said a Swat-based political activist, "the MMA government saw an opportunity to swell its vote bank, believing that more Fazlullah recruits meant more supporters for religious parties".³¹ Unsurprisingly, Islamist militancy around calls for Sharia rekindled in Swat.

Propagating his message through illegal FM radio stations, Fazlullah called for jihad against the West, the Pakistani state and "infidels" at home.³² Summarising the way the militancy affected everyday life in Swat by early 2007, a journalist wrote:

It was a time when Swat's women were forced to stay inside the four walls of their houses, girls were banned from attending schools, police stations were bombed, music shops were forcefully closed, barbers were forbidden from shaving men's beards, parallel courts were established to solve private disputes, and public executions of policemen, government officials and those disobeying Taliban became the order of the day.³³

With the military's backing, the MMA government in Peshawar agreed to a nine-point peace deal with Fazlullah in May 2007 under which he would be allowed to continue propagating jihadi messages through his illegal FM stations, and all criminal cases against him would be dropped. In return, he would end his armed campaign against polio vaccination programs, girls' education, and state institutions. Fazlullah was to also help the state restore law and order in Swat.³⁴

As with similar peace deals in FATA, this accord only emboldened the extremists. In July 2007, militants killed sixteen people, most of them paramilitary troopers, in Swat. In September, Fazlullah, accusing the military of violating the ceasefire, declared that the deal had ended.³⁵ In October, a suicide bomber killed 30 Frontier

³⁰ "The Malakand IDP Crisis", HRCP, August 2009, p. 8.

³¹ Crisis Group interview, Swat, November 2012.

³² Fazlullah was commonly known as "Mullah Radio". See Crisis Group Reports, *Pakistan: The Militant Jihadi Challenge*; and *Pakistan's Tribal Areas*, both op. cit.

³³ Daud Khattak, "Is Swat seeing a Taliban resurgence?", *Foreign Policy* (online, Af-Pak Channel), 19 October 2012.

³⁴ Iqbal Khattaq, "Polio vaccination, girls education in Swat: Govt signs peace deal with TNSM", *Daily Times*, 23 May 2007.

³⁵ Hameedullah Khan, "Swat cleric 'ends' peace deal", *Dawn*, 22 September 2007.

Constabulary personnel in Mingora, Swat's commercial hub. The district's distinct cultural history also came under attack. For example, Swat-based militants, mirroring the Afghan Taliban, defaced a centuries-old rock statue of Buddha in October 2007. By then, the TNSM had also established parallel courts, along the line of those the Taliban had operated in Afghanistan, to enforce its interpretation of Sharia.³⁶

On 25 October 2007, as the militancy spread, the army launched an operation against the TNSM and allied Pakistani Taliban factions in Swat, but it failed to dislodge the militants, who in November captured Shangla's administrative headquarters in Alpuri. In December, a suicide bomber attacked an army convoy in Swat, killing seventeen soldiers and four others. In February 2008, a suicide bomber killed 40 and injured 75 at a police funeral.³⁷

Yet, the militants had little public support. This could best be gauged by the February 2008 elections, in which their closest political ally, the MMA, was defeated in PATA. For the first time in Pakistan's history, the secular Pashtun nationalist Awami National Party (ANP) won all seven provincial assembly seats in Swat, signifying a clear rejection of religious militancy and Islamist parties.³⁸ As the violence continued, however, and with the military still in control of security policy in NWFP, this did not produce a change of course.

In May 2008, the ANP-led provincial government signed yet another military-devised deal with Fazlullah, along similar lines to the 2007 agreement, but attacks on security personnel, NGO workers and political activists continued unabated throughout the year. On 23 August, the attack on a police station in Swat's Charbagh town killed twenty people; a 21 October attack on a security convoy in Swat's Kabal town killed thirteen security officials. Education was a particular target, as militants destroyed some 200 boys and girls schools in Swat district alone and in December "banned" Swat's 120,000 female students from attending classes, threatening to bomb schools in which any were studying. Public beheadings and killing of women who refused to stop working were also widely reported.³⁹

On 16 February 2009, the ANP-led provincial government signed another military-devised peace deal with Fazlullah and the TNSM, agreeing to impose Sharia in Malakand. All security checkpoints would be dismantled, and any military movements would have to be pre-approved by the TNSM. Captured militants would be released, including those responsible for such acts of violence as public executions and rape. In return, the militants pledged to end their armed campaign. In early April, private television channels aired footage of a seventeen-year-old girl being publicly flogged by militants in Swat's Matta valley for violating their version of Sharia. That video provoked significant public outrage countrywide, both at the incident and the peace deal that allowed the militants to police Swat. President Asif Ali Zardari and Prime Minister Yousuf Raza Gilani condemned the act and ordered the arrest of the

³⁶ Saleem Athar, "Mohmand Taliban behead 6 'criminals'", *Daily Times*, 13 October 2007.

³⁷ Jane Perlez and Ismail Khan, "Militants gain despite decree by Musharraf", *The New York Times*, 16 November 2007. Laura Roberts, "Pakistan: timeline of suicide bomb attacks 2007-2011", *Daily Telegraph*, 13 May 2011. "Pakistan: Timeline on Swat Valley turbulence", IRIN, 11 February 2009.

³⁸ For the 2008 election results, see the Election Commission of Pakistan, website: www.ecp.pk.

³⁹ "Timeline on Swat Valley turbulence", op. cit. "Taliban ban female education in Swat", *The Nation*, 25 December 2008. For example, in January 2009, militants in Swat's Mingora city killed a prominent female performer and displayed her body in a public square as a warning for other working women. Fawad Ali Shah, "Dancing to the beat of threats", *Daily Times*, 16 January 2009.

perpetrators. The Supreme Court also ordered an investigation.⁴⁰ At the military's insistence, however, the National Assembly endorsed the peace deal with the militants, with the Nizam-e-Adl Regulation 2009 coming into effect on 16 April.

Predictably, the ceasefire soon unravelled, and in late April 2009 the militants entered Buner district, a five-hour drive from the federal capital, Islamabad, once again provoking countrywide outrage and eventually forcing the military to respond. Yet, the military operation that followed in May displaced almost three million people, destroyed the region's infrastructure and gravely eroded the capacity of already fragile civilian institutions to respond to citizens' needs. It did not, however, prevent the militant leadership and many foot soldiers from fleeing the region.

⁴⁰ She was punished, said a militant spokesman, for leaving the house with a man not her husband. He also said the Taliban was right to attack inappropriately dressed women shoppers. "Girl flogged as Taliban hand out justice", *The Nation*, 3 April 2012. "Flogging incident in Swat: 17,00 girl students stage protest rally", *Daily Times*, 8 April 2012. "The state has given up", *Daily Times*, editorial, 9 April 2012.

III. The Military Operation in Malakand

A. *Scorching the Earth*

As 30,000 army and 11,000 Frontier Corps troops moved into Malakand, the militant leadership, including Mullah Fazlullah, and many of its fighters fled the area without offering resistance. Instead, civilians bore the cost of the heavy-handed operations. At the same time, the military refused to allow civilian and humanitarian organisations unimpeded access to the conflict zone. The unprecedented scale of civilian displacement, with some three million forced to leave their homes, resulted from a combination of short-sighted, military-dictated counter-insurgency strategies and “scorched earth” tactics, including the use of heavy artillery, helicopter gunships and jet fighters. Imposing and intermittently lifting strict curfews, the military warned residents to flee the region within hours or risk being considered militants. The exodus thus took place within prohibitive timeframes and without adequate logistical support.⁴¹

Justifying the failure to protect civilians and prepare for the mass exodus in Malakand, the military claimed it had limited time. Given the urgency of the operation, it insisted, establishing camps and other relief measures beforehand would have signalled the imminent operation, providing the militants time to plan a response or escape. While millions fled the region, leaving many family members and other personal attachments and commitments behind, hundreds of thousands remained in the conflict zone. Because of the curfews that were swiftly reimposed, and trapped by the fighting, those left behind faced disrupted electric supplies, severe shortages of food, medicine and water, and non-functional hospitals, schools, banks and shops.⁴² The psychological and economic aftershocks are still felt more than three years later, as discussed in detail below.

To limit the risk to troops, the military resorted to fighting from distance – including use of heavy fire into Buner district from safer neighbouring regions – destroying crops, roads, buildings and other infrastructure. Massive human rights abuses, including torture and extra-judicial killings discussed in more detail below, were also common. The militants responded with equally brutal tactics. According to the HRCP, “[t]here were credible testimonies that the Taliban had made last-minute desperate efforts to forcibly recruit children and very young men to fight for them. Others were taken to be used as human shields”.⁴³

In July 2009, the military declared the area cleared of militants. Subsequently, almost all of Malakand’s internally displaced persons (IDPs) returned home. Although the military showcased the returns as proof of a successful counter-insurgency campaign, they were not a credible gauge of counter-insurgency success. Those returning felt no more secure after the operation was over. They came back at first opportunity and even at great personal risk because they had left everything behind, including their homes, their livelihoods and in many cases family members.⁴⁴ According to a

⁴¹ For analysis of the military operation and its impact, see Crisis Group briefings, *Pakistan: The Worsening IDP Crisis*; *Pakistan’s IDP Crisis*, both op. cit.; also Crisis Group report, *Pakistan: No End to Humanitarian Crises*, op. cit.

⁴² Crisis Group Report, *Pakistan’s IDP Crisis: Challenges and Opportunities*, op. cit.

⁴³ “The Malakand IDP Crisis”, op. cit., p. 14.

⁴⁴ Crisis Group interviews, humanitarian workers, Lower Dir and Swat, October-November 2012; also Crisis Group Report, *Pakistan: No End to Humanitarian Crises*, op. cit.

former parliamentarian from Swat, “there was no military defeat or surrender in the classic sense”. Militant violence just appeared to end, which “doesn’t mean the problem was solved”.⁴⁵ Indeed, the militants soon reappeared and are again terrorising the population and targeting political leaders, NGOs and security personnel.

B. *The Morning After*

1. Security challenges in Swat and Dir

A police official in Malakand identified two categories of militants: a hardcore that includes the leadership and ideologically committed foot soldiers, and opportunists, including criminals. “During the 2009 operation, some were killed, some arrested, but the majority just withered away”, the official said. Fazlullah and other leaders reportedly found refuge in Afghanistan’s Nuristan province, which borders on PATA. Other militants with means fled their homes and bases and adopted new identities, seeking employment and new lives in urban centres countrywide – from KPK’s capital, Peshawar, to the southern port city of Karachi. According to the police official, the less affluent stayed in PATA and “simply shaved off their beards, hoping no one knew them. It is this segment that is still around and remains incognito that poses the biggest challenge. They are not known to us but may be known to some in the community, whom they blackmail to provide shelter for them and keep their identities hidden”.⁴⁶

In May 2010, reports circulated that Fazlullah had been killed in fighting in Nuristan, bringing “tears of relief”, according to an account, to families in Swat who had lived under the militants’ reign of terror. In July 2010, however, Pakistani television aired footage of him addressing militants, presumably in Nuristan, encouraging them to renew attacks on the Pakistani state and evoking fears across PATA of a possible militant resurgence.⁴⁷

The 9 October 2012 shooting of fourteen-year-old activist Malala Yousafzai and two of her school friends in Mingora – in the vicinity of a well-guarded civil-military liaison office – has renewed domestic and international attention to Malakand’s security challenges. Claiming credit, the Pakistani Taliban vowed to kill Malala if she survived. Adnan Aurangzeb, a former parliamentarian from Swat, said, “Swat is on the radar again because of Malala’s shooting. Before this, there was a sense that if it’s not broken, why fix it?”⁴⁸ But the cracks were visible well before this attack. Despite the military’s claims to have defeated the insurgency, Malakand remains an active “operation area”, according to a Swat-based security official.⁴⁹ In September 2011, for instance, after imposing a curfew, the military launched an operation in Swat’s Bishban area. Later that month, a curfew was imposed in Mingora, ahead of a clash with militants that left one soldier dead. In another search operation in Swat in Oc-

⁴⁵ Crisis Group interview, Adnan Aurangzeb, Islamabad, 18 October 2012. Aurangzeb belongs to the former ruling family of Swat.

⁴⁶ Crisis Group interview, Swat, November 2012.

⁴⁷ Owais Tohid, “Relief in Swat over reported death of Taliban Maulana Fazlullah”, *The Christian Science Monitor*, 27 May 2010. Crisis Group interviews, Upper Dir, Lower Dir and Swat, October–November 2012.

⁴⁸ Crisis Group interview, Islamabad, 18 October 2012. All the children survived. Malala Yousafzai is undergoing treatment in the UK. The other girls are back in school, defying the militants.

⁴⁹ Crisis Group interview, Swat, November 2012.

tober 2011, the military claimed it killed six militants and found heavy arms, including 35kg of explosives and fourteen hand-grenades.⁵⁰

Militant attacks have continued unabated in Swat. In December 2009, a suicide bomber killed a member of the KPK provincial legislature outside his home there. In July 2010, a suicide bomber attacked Mingora's bus terminal, killing five and injuring 60. On 2 October 2010, a prominent religious scholar and Taliban critic, who had taught at a centre for rehabilitating former Taliban recruits, was killed. On 28 May 2011, militants killed an ANP leader and two others in the Matta area. In June 2012, they killed a Swat-based PML-N leader. In August 2012, Zahid Khan, the head of the Swat Hotels Association and leader of an anti-Taliban jirga, was shot and wounded by armed militants. In December, militants killed four persons in Swat's Kabul sub-district. The same month, one woman was killed and several injured in a bomb explosion in Mingora near the home of Kianat Riaz, a survivor of the October 2012 attack on Malala Yousufzai.⁵¹

Upper Dir, which shares a long border with Afghanistan, witnessed its first major attack in mid-2009. In June of that year, 31, mostly police and Levies personnel, were killed in a cross-border attack. In 2010, the military deployed some 10,000 troops to guard the border, but sporadic cross-border attacks still occur. In June 2012, for instance, militants beheaded seventeen soldiers. A local journalist and human rights activist said that militants from Lower Dir and Malakand regularly seek refuge in Upper Dir, as do militants from FATA's South Waziristan agency, with many entering through Afghanistan despite the additional troops deployed on the border.⁵²

In Lower Dir, targeted killings are common, particularly in Maidan, the TNSM's home base, which a senior Malakand police official described as "enormously difficult to police". In September 2011, a local ANP leader was killed in a remote-detonation blast. Recent incidents include a 16 September 2012 bomb attack that killed sixteen anti-Taliban *lashkar* members and a November 2012 killing of a former Maidan *na-zim* (mayor), who was also the head of a local anti-Taliban *lashkar* (private militia).⁵³

There are regular search operations and armed clashes between security forces and suspected militants in the district. In September 2012, two policemen were injured in a bomb attack, while a police station house officer (SHO – head of an individual police station) survived such an attack in June. "All through the night, we hear guns going off", said an NGO worker and social activist in Lower Dir. "We know that it isn't celebratory firing, as you have in Islamabad. These are battles. No one in the house can sleep, especially the children". Another activist said, "at home, my children don't play cops and robbers. They play Taliban versus army. This is what

⁵⁰ "Six militants killed in Swat", *The News*, 13 October 2011; "Two militants, soldier killed in Mingora operation", *The News*, 23 September 2011; Fazal Khaliq, "Return of militancy: Army launches operation in Swat – again", *The Express Tribune*, 6 September 2011.

⁵¹ Fazal Khaliq, "Noted religious scholar shot dead in Mardan", *The Express Tribune*, 3 October 2010; "ANP leader, two others killed in Swat", *Dawn*, 28 May 2011; "PML-N leader Afzal Khan killed in Swat", *The News*, 13 June 2012; "TTP claims attack on Swat hotelier", *The News*, 5 August 2012; "Four killed in Swat attack", *The News*, 3 December 2012; "Woman killed, 7 injured in blast near Kianat's house", *The News*, 5 December 2012.

⁵² Crisis Group interview, Upper Dir, October 2012. Levies are paramilitary units, under military command. Syed Zahid Jan, "Swat Taliban claim ambush 13 killed in Dir", *Dawn*, 26 June 2012.

⁵³ Crisis Group interview, Malakand, November 2012; "ANP leader killed in blast", *The News*, 14 September 2011; "Anti-Taliban peace committee chief killed in Lower Dir", *Dawn*, 4 November 2012.

they will grow up with”.⁵⁴ Violence has spread even to PATA’s more peaceful districts, including Chitral, which has the longest of PATA’s borders with Afghanistan.

2. Growing violence in Chitral

After its integration into Pakistan, Chitral became an NWFP district although it was linguistically and culturally closer to Gilgit-Baltistan, then called the Northern Areas. According to Siraj-ul-Mulk, who belongs to its former ruling family, the primary motivation for merging with NWFP was to insulate the region from Pakistan’s territorial dispute with India over Kashmir, of which the Northern Areas were once a part.⁵⁵

Until 2009, Chitral was largely isolated from the rest of KPK, its only access a windy, mountainous road over the Lowari Pass into Upper Dir unusable in winter. To escape winter, residents would travel through Afghanistan before re-entering Pakistan. Due perhaps to its geographic isolation, it initially saw little of the conflict that spread through PATA’s other districts, but proximity to the Afghan Taliban stronghold of Nuristan has resulted in some cross-border spillover. This includes kidnappings-for-ransom, such as the September 2009 incident in which Afghan Taliban militants held a Chitral-based Greek missionary in Nuristan. The militants demanded \$2 million in ransom and the release of allies held in Pakistan. The hostage was returned to Chitral in April 2010. In August 2011, militants hit security checkpoints in Chitral in what was widely believed to be a cross-border attack, killing almost 40 paramilitary and border police personnel.⁵⁶

Security officials attribute cross-border infiltration by Afghanistan-based militants to the U.S. counter-insurgency strategy, specifically deployment of Afghan army troops away from the porous border.⁵⁷ The Pakistan army has moved a significant number of troops to Upper Dir and Chitral to curb infiltration from Kunar and Nuristan provinces, but movement across the border remains largely unregulated, with Pakistanis and Afghans commonly travelling without visas. According to a Chitral-based security official, Afghan army troops from Nuristan travel to Chitral for medical treatment, the only requirement being that they are “vouched for by some warlord on the other side”.⁵⁸

The August 2011 attack and a rising army presence in the district have raised security concerns in Chitral. A police official there believes that one of the most daunting security challenges in his district will result from a renewed drive by the Fazlullah-led Taliban faction to conduct cross-border attacks from Nuristan. Yet, he complained, the Chitral police have not even been given four-wheel-drive vehicles in the mountainous region. Moreover, he disclosed, the responsibility to secure an increasingly dangerous border rests principally with Chitral’s Border Police and the Chitral Scouts,

⁵⁴ Crisis Group interviews, Lower Dir, October 2012.

⁵⁵ Crisis Group interview, Islamabad, 8 October 2012. For more on the Northern Areas’ history and governance, see Crisis Group Asia Report N°131, *Discord in Pakistan’s Northern Areas*, 2 April 2007.

⁵⁶ “Kidnapping of Mr. Lerounis Athanasios, Greek national”, police first information report no. 203, 8 September 2009, police station, Ayun, Chitral. Mian Mohib Kakakhel, “40 troops dead as Afghan militants storm Pak posts”, *The Nation*, 29 August 2011.

⁵⁷ Crisis Group interviews, security officials, Chitral, October 2012.

⁵⁸ Crisis Group interviews, Chitral, October 2012.

which technically fall under the DCO's command, limiting their cooperation with the regular police.⁵⁹

Many young Chitrali men cross the border seeking jobs, including in the Afghan army. In August 2012, KPK's home and tribal affairs ministry demanded an inquiry. According to a Chitral-based human rights lawyer, the men's families were harassed and, subsequently, many youths were compelled to return. "This happened in the late 1990s as well, when dozens of young men, trained to fight, were forced to return but had no jobs", the lawyer said. "But back then, there wasn't abject poverty here. Now poverty is increasing, so obviously these men could turn to militancy".⁶⁰

Deobandi jihadi madrasas are also proliferating in Chitral's Ismaili as well as Sunni belts, many linked to Punjab and Karachi-based jihadi madrasa networks. These include Karachi's Binori Town madrasa and the Muridke-based network of the Jamaat-ud-Dawa (JD), the renamed LeT.⁶¹ In Garam Chashma, an almost entirely Ismaili sub-district in Chitral, a government teacher set up a Deobandi madrasa next to the main Ismaili mosque. According to NGO workers in the area, its students are mainly from other PATA districts, such as Swat and Lower Dir. Chitral-based NGO workers, journalists, police and community leaders are increasingly concerned about a rise in sectarian tensions and intolerance.⁶²

Ismaili-dominated areas in Chitral have seen bigger investments in education, boast higher literacy rates and are more competitive in finding well-paid jobs than the Sunni belt. NGO workers, journalists and other informed observers believe that fuels local perceptions of anti-Sunni discrimination and thus anti-Ismaili resentment. Sectarian groups attempt to exploit these perceptions, as well as the poverty of regions such as the Kalash Valley, including by forced conversions of the so-called Kalash *kafirs*.⁶³ "People in this area are the poorest of the poor in the region, so they are very vulnerable to incentives from religious groups", said the head of a local NGO who works in that valley to support marginalised communities. "They are promised the world if they agree to convert – but once they convert, they feel they've made a mistake. They feel betrayed".⁶⁴ Yet, leaving Islam once converted would be considered apostasy and so, jihadis believe, *wajib-ul-qatal* (deserving of death). A member of the same NGO described radical Islamist groups as carrying out a "cultural invasion" of the valley: "In front of every cultural centre, they've built a hardline madrasa".⁶⁵

⁵⁹ Crisis Group interviews, Chitral, October and November 2012. Scouts are individual units of the Frontier Corps.

⁶⁰ Crisis Group interview, Chitral, October 2012.

⁶¹ Karachi's Binori Town madrasa, formally known as Jamiat Uloom-ul-Islamia, has close Taliban links; its graduates founded and lead the anti-India Jaish-e-Mohammed. See Crisis Group Asia Report N°130, *Pakistan: Karachi's Madrasas and Violent Extremism*, 29 March 2007. Crisis Group interviews, Chitral, October 2012.

⁶² Crisis Group interviews, Chitral, October 2011.

⁶³ The term *kafir* (literally "unbeliever") is used to describe the Kalash community, which has a distinct religion, language and history. Numbering roughly 3,000, it is Pakistan's smallest religious minority.

⁶⁴ Crisis Group interview, Chitral, October 2011.

⁶⁵ Crisis Group interview, Chitral, October 2012.

IV. The State's Response: Progress or Regression?

A. *The Detainee Conundrum*

1. Justice denied

The military reportedly apprehended over 1,000 alleged militants during the 2009 Malakand operation, and it continues to detain more during ongoing search operations.⁶⁶ Suspected militants are kept in two KPK jails, in Kohat district and, since September 2012, Lakki Marwat district. Swat still lacks a prison, since its only facility was destroyed in the 2005 earthquake. Militants have to be transported to the two districts from other parts of KPK, including PATA, adding to security challenges and increasing the likelihood of escape.

The problems of detention in PATA are compounded by the fact that few alleged militants have been brought to trial and even fewer convicted. The conviction rate in Malakand is as low if not lower than the national average of around 3 per cent. Among other systemic flaws, Pakistan's criminal justice system places tremendous emphasis on "ocular" evidence. "If you don't have someone who saw the act, you won't get a conviction", said a Malakand police official. "In terrorism cases that's nearly impossible. Witnesses are simply not testifying against an individual; they are testifying against a dangerous organisation, and we have no protection for them".⁶⁷

Lack of success in PATA's terrorism cases is also explained by how suspects were apprehended during the military operations. A retired senior police official, who was involved with investigations in the region, said that during the 2009 operation, the Malakand police were:

... nowhere to be seen. They were virtually incarcerated in their police stations. They could not come out, because they would be attacked, kidnapped, their weapons ... snatched. They would register cases over the phone. Meanwhile, the army would detain militants, destroy crime scenes and any materiel that was incriminating, and then in some cases they would hand over the [suspect] months later to the police and say, "process him".⁶⁸

With some exceptions, the trials of top militant leaders have either been delayed or unsuccessful.⁶⁹ In August 2012, an anti-terrorism court (ATC) acquitted TNSM leader Sufi Mohammed of conspiring against the state and attacking a police station, a case that was registered almost seventeen years earlier, in 1994. In other cases against Mohammed and his associates, witnesses avoided appearing in court, forcing an ATC judge to postpone hearings. In September 2011, an ATC in Swat acquitted

⁶⁶ According Swat's district coordination officer, the military detained over 1,000 suspects, while independent sources told a Human Rights Commission of Pakistan (HRCP) fact-finding mission in July 2010 that as many as 2,600 had been detained. See report of HRCP fact-finding mission, "Swat: Paradise Regained", July 2010.

⁶⁷ Crisis Group interview, Swat, November 2012. For more on the weaknesses of Pakistan's criminal justice system, see Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.

⁶⁸ Crisis Group interview, October 2012.

⁶⁹ For example, in May 2011, an Anti-Terrorism Court (ATC) in Swat sentenced a militant to 120 years in prison for killing a government official in public view, the first such conviction in Malakand. Fazal Khalid, "Swat ATC condemns militant who publicly slaughtered a man to 120 years in prison", *The Express Tribune*, 19 March 2011.

three of his sons.⁷⁰ A main suspect in Malala Yousafzai's shooting was reportedly apprehended by the military during the 2009 operation but released. Sufi Mohammed's trials are held in Peshawar's central prison rather than in an ATC chamber due to security concerns. Prisons, however, have also come under attack, as in April 2012 when some 200 militants struck the jail in KPK's Bannu district, releasing more than 380 inmates.⁷¹

Most detainees have not even been processed through the justice system and remain in military detention. As early as September 2009, the U.S. embassy reported:

A growing body of evidence is lending credence to allegations of human rights abuses by Pakistan security forces during domestic operations against terrorists in Malakand Division and the Federally Administered Tribal Areas Revenge for terrorist attacks on Pakistan Army and Frontier Corps personnel is believed to be one of the primary motivating factors for the extra-judicial killings.⁷²

A July 2010 Human Rights Watch report said 238 "suspicious" killings had occurred in Swat since September 2009.⁷³ In October 2010, a video showing men in military uniform lining up and shooting unarmed civilians, presumably in Swat, was widely circulated. Military officials said the video was forged.⁷⁴ Although Chief of Army Staff General Ashfaq Parvez Kayani announced an internal investigation into the incident, the military has repeatedly denied involvement in extra-judicial killings. The findings of the investigation are yet to be made public. U.S. law prohibits funding "any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights", a provision widely referred to as the Leahy Law.⁷⁵ After the October 2010 video footage circulated, the Obama administration announced it would withhold training, equipment and funding from any military unit suspected of complicity in human rights abuses.

Pressured by the military, President Zardari in June 2011 provided legal cover for abuses in the name of counter-terrorism, promulgating identical Actions (in Aid of Civil Power) Regulations (AACP) 2011 for FATA and PATA. These authorised the armed forces to detain any person in the notified area on grounds as vague as obstructing actions in aid of civil power "in any manner whatsoever"; strengthening "miscreants" ability to resist the armed forces or "any law enforcement agency"; undertaking "any action or attempt" that "may cause a threat to the solidarity, integrity or security of Pakistan"; and committing or being "likely to commit any offence un-

⁷⁰ "Sufi acquitted in conspiracy against state case", *Dawn*, 12 August 2012. Akhtar Amin, "Official witnesses reluctant to appear in cases against Sufi Mohammed", *The News*, 23 October 2012. "Sufi Mohammed's sons acquitted by Swat ATC", *Dawn*, 17 November 2012.

⁷¹ "Malala Yousafzai shooting suspect released after 2009 detention", Associated Press, 18 October 2012. Fida Adeel, Zulfiqar Ali and Iftikhar Firdous, "Prison break: Taliban attack Bannu jail, nearly 400 inmates escape", *The Express Tribune*, 15 April 2012.

⁷² "Addressing concerns about Pakistan security forces' human rights abuses", U.S. embassy Islamabad cable 2074, 10 September 2009, as released by WikiLeaks.

⁷³ "Pakistan: Extra-judicial executions by Army in Swat", Human Rights Watch, 16 July 2010.

⁷⁴ "Pakistan army says 'extra-judicial killing' video faked", BBC, 1 October 2010.

⁷⁵ The Leahy Law, named for its principal sponsor, Senator Patrick Leahy, was first introduced in the 1997 Foreign Appropriations Act and has been attached to all subsequent Foreign Appropriations Acts. For the full text, see <http://leahy.senate.gov>.

der the regulation so that the said person shall not be able to commit or plan to commit any offence during the actions in aid of civil power”.⁷⁶

The regulations define “actions in aid of civil power” as measures undertaken by the military at the federal government’s request, within a “defined area” of operation, which could include but are not limited to armed action and may continue until terminated formally by the federal government. They also provide the federal and provincial governments or “any person” authorised by them with sweeping, indefinite powers of detention. Retroactively applicable to 1 February 2008, they protect the military’s detention of hundreds of suspects.⁷⁷

Contravening the Evidence Act, the regulations allow for a deposition or statement by any member of the armed forces, or any other officer authorised on their behalf, to be sufficient to convict an accused. They do not require a magistrate’s approval for detention longer than 24 hours, violating Article 10(2) of the constitution. While they provide for oversight boards, empowered to review cases within 120 days of an arrest and to prepare a report for consideration by the governor or the provincial government, detention can extend for as long as the “action in aid of civil power” continues. The constitution requires that a review board consisting of a chairman and two additional members, who have been judges of either the Supreme Court or a High Court, oversee any preventive detention. The oversight boards under the FATA and PATA regulations, however, consist of two civilians and two military officers. While misuse of force during actions in aid of civil power is prohibited, the regulations have in effect left it to the military’s discretion to identify and punish violators within its ranks.⁷⁸

The AACP was ostensibly meant to limit human rights abuses, including enforced disappearances and extra-judicial killings, by providing a legal framework for long-term detention without trial – and thus neutralise the threat of an application of the Leahy Law. U.S. officials have expressed support for it on the grounds that it would curtail enforced disappearances and other abuses of detainees,⁷⁹ but such abuses have continued. In a December 2012 report, Amnesty International (AI) warned that the Armed Forces were using these “new broad security laws” to “commit violations with impunity”. A senior AI official warned that by “enabling the Armed Forces to commit abuses unchecked, the Pakistan authorities have given them free rein to carry out torture and enforced disappearances”, as well as custodial killings, charges refuted by a Foreign Office spokesman, who dismissed the report as baseless and biased.⁸⁰

⁷⁶ According to Article 245 (1) of the constitution, the “Armed Forces shall ... subject to law, act in aid of civil power when called upon to do so”. Waseem Ahmed Shah, “New regulations give legal cover to detentions in tribal areas”, *Dawn*, 13 July 2011.

⁷⁷ “Defined area” means “the area notified by the federal government in the case of FATA, and the provincial government in the case of PATA, in which action in aid of civil power is being conducted in order to secure the territory or ensure peace in any place where armed forces have been requisitioned”. *Ibid.* Crisis Group Asia Report N°212, *Reforming Pakistan’s Prison System*, 12 October 2011, p. 4.

⁷⁸ According to Section 5(1), “[i]f any abuse or misuse of the use of force during action in aid of civil power is alleged or attributed to any member of the armed forces, the same shall be investigated within the hierarchy of the armed forces”. Shah, *op. cit.*

⁷⁹ See Crisis Group Report, *Aid and Conflict in Pakistan*, *op. cit.*

⁸⁰ “‘The hands of cruelty’: Abuses by Armed Forces and Taliban in Pakistan’s Tribal Areas”, December 2012; “Report exposes ‘the hands of cruelty’ in Pakistan’s Tribal Areas”, Amnesty International,

Following the AACP's promulgation, over 1,000 detainees previously declared missing have been transferred to military-controlled internment centres.⁸¹ Nevertheless, in September 2012 and while acknowledging that the majority of such cases had not been reported to it, HRCP's KPK chapter submitted a list of hundreds of missing persons to the visiting UN Working Group on Enforced Disappearances.⁸² Over 100 such cases are pending in the Peshawar High Court. Similarly, extra-judicial killings have continued, with over 130 suspects reportedly dying in security force custody in Swat alone since promulgation. Military and civil officials claimed these deaths were caused by "cardiac arrest", though post-mortems were not conducted.⁸³

In September 2012, at a hearing on the spike in custodial deaths in Swat, the Peshawar High Court ordered the director general of the provincial health department to form a standing medical board to conduct post-mortems of all detainee deaths and submit the reports to the court's registrar. The court subsequently rejected reports that some of the deaths were from natural causes, stressing in one case that "a man whose body is recovered from a gunnysack would not have died of starvation". It also described as a "detestable and inhuman act" a case where the military's intelligence agencies had detained an individual whose body was delivered to his family two days later by the police.⁸⁴

Neither the Peshawar High Court nor the Supreme Court have addressed the legality of the internment centres or the regulations' constitutionality – though at a July 2012 habeas corpus hearing, the former "warned the intelligence agencies not to force it into declaring the [AACP] and the internment centres set up under it unconstitutional".⁸⁵ In a November 2012 hearing, it called on intelligence agencies and the interior and defence ministries to free detainees against whom there was no available evidence. It also recommended that clearly identified militants who fell under the "black" category be transferred to internment centres, if the security agencies were not to risk an adverse decision.⁸⁶ Its chief justice said, "if they were shifted ..., at least they would be detained under the law and would not be in illegal detention".⁸⁷

Rather than sending mixed messages on the legality of detentions under the AACP, the Peshawar High Court and the Supreme Court should strike down the reg-

12 December 2012; "Pakistan rejects Amnesty International's report", *Daily Times*, 20 December 2012.

⁸¹ Akhtar Amin, "UN group meets HR activists, missing persons' relatives", *The News*, 18 September 2012.

⁸² Ibid.

⁸³ "Govt, spy agencies to clear missing persons' lists on weekly basis: PHC CJ", *The News*, 28 August 2012.

⁸⁴ Crisis Group Report, *Pakistan: No End to Humanitarian Crises*, op. cit., p. 18. Akhtar Amin, "Stop 'kill-and-dump' operations or govts may fall says PHC", *The News*, 28 September 2012.

⁸⁵ Waseem Ahmad Shah, "PHC warns of outlawing internment centres", *Dawn*, 11 July 2012.

⁸⁶ In PATA and FATA, the military categorises suspects according to a three-tier colour code: "white", those released on some form of probation; "grey", in the case of PATA, detainees subject to police custody and investigation; and "black", those meant to be transferred to internment centres. The last category is believed to comprise the majority of missing person cases in KPK. Crisis Group interview, KPK police official, November 2012. Another categorisation places militants in "A" (black), "B" (yellow), and "C" (white) categories. The first includes hardcore militants, against whom there is strong evidence of involvement in terrorist activities; the second those against whom there is weak evidence; and the third those who have been picked up on suspicion. Akhtar Amin, "Lists of missing persons being prepared, PHC told", *The News*, 30 November 2012.

⁸⁷ Quoted in Akhtar Amin, "PHC chief justice gives last chance to agencies, ministries", *The News*, 14 November 2012.

ulations as violating fundamental constitutional rights, as well as international human rights standards, and follow through on pledges to hold military and intelligence officials accountable for illegal detentions and other abuses.

2. Deradicalisation efforts

The military uses some internment centres, such as Mishal and Sabaoon in Swat, to deradicalise militants through psychological treatment and guidance by “moderate” clerics and sociologists. Vocational training is provided to help rehabilitated detainees obtain jobs. According to an August 2012 report in a prominent daily newspaper, centres were out of space, and seven new facilities were planned, including one near completion in Chitral.⁸⁸

Pressed by the Peshawar High Court, a five-member team, including two army officials, the special home secretary, the prisons inspector general and an internment centre officer-in-charge, visited the Malakand centre in June 2012 to examine conditions and reduce detainees by separating suspected from confessed militants and releasing the former on bail. Subsequently, KPK’s home and tribal affairs department submitted a list of over 1,000 militants it claimed the military had released after a deradicalisation and rehabilitation program. In mid-August 2012, another 34 detainees who had undergone the army’s program were freed. Later that month, a KPK official claimed that 524 more militants were being “deradicalised” in various internment centres.⁸⁹

Despite the Peshawar High Court’s intervention in an individual internment centre, these rehabilitation programs occur outside of judicial remand, which limits how much oversight the judiciary, the civilian government and civil society groups can exert. A prominent monthly commented: “Such initiatives are operating in complete isolation from one another and there is hardly any information in the public sphere about their existence, let alone any informed debate about their work. The isolation and secrecy ... also make it impossible to judge their success or failure”.⁹⁰ In February 2012, a military official told a Peshawar High Court bench that many released prisoners were rejoining militant groups after completing army-run deradicalisation programs.⁹¹ Nevertheless, those programs continue. A senior police official in Swat admitted: “Whatever success we claim for these programs is totally overstated. How do you know that these people will behave once they leave? What kind of surveillance is possible? You tell them to report to the authorities once a month, but does that really tell you they have reformed?”⁹²

⁸⁸ Umer Farooq, “Don’t have a policy? Try a project”, *Herald*, August 2012, and “Internment centres for militants run out of space”, *The Express Tribune*, 25 August 2012.

⁸⁹ Umer Farooq, “Malakand internment centre: team to sift militants from the innocent”, *The Express Tribune*, 24 June 2012. Akhtar Amin, “1,035 militants detained, released in Malakand Division”, *The News*, 27 June 2012. “De-radicalised: second batch of ex-militants freed”, *The Express Tribune*, 15 August 2012.

⁹⁰ Farooq, “Don’t have a policy?”, *op. cit.*

⁹¹ Waseem Ahmed Shah, “Deradicalisation of militants in Swat: Army effort didn’t work”, *Dawn*, 17 February 2012.

⁹² Crisis Group interview, Swat, November 2012.

B. Outsourcing Law Enforcement

The use of informal militias (*lashkars*) has also undermined the state's writ, the rule of law and human rights in PATA. Questioning the state's approach, an NGO worker in Lower Dir asked: "How do you arm one group and say that that's okay, but then say that if this other group arms itself, it is not okay?"⁹³ These *lashkars* have been renamed "peace committees" to avoid association with terrorist groups such as the Lashkar-e-Jhangvi and Lashkar-e-Tayyaba. Regardless of the name change, *lashkars* remain state-supported militias, tasked with acting on the military's behalf to counter militants. But an NGO worker and social activist in Swat described their basic functions as "one, to do what the army says; and, two, to settle personal vendettas".⁹⁴

Anecdotal accounts of abuses by *lashkars*, including destruction of homes, revenge killings, raids and abductions, are extensive throughout PATA.⁹⁵ In mid-2012, members of a peace committee in Upper Dir kidnapped a young woman and forced her into marriage, releasing only her after public protests and government action.⁹⁶ In August/September 2012, identifying a security threat emanating from Malam Jaba, once a tourist town on the Swat-Dir border, military officials directed the local *lashkar* to mark houses with white or coloured flags to designate them as friendly or a threat respectively. The military subsequently raided those marked with coloured flags.⁹⁷

While these militias have been given considerable local power, not all those joining them do so voluntarily. Many locals are forced to form or join *lashkars* and then fight alongside the military during operations. A Swat resident said, "the army was supposed to come here to provide us with security. Now we're told that we have to provide them with security". Another commented: "They [*lashkar* members] are told to pick up a gun, but with absolutely no rules of the game".⁹⁸ Many coerced to join such militias are neither trained nor even want to use weapons but are forced to assume considerable personal risk by combating well-trained and motivated militants.

According to former Swat parliamentarian Adnan Aurangzeb, "once you attend a peace committee meeting, you're on a militant hit list".⁹⁹ Violent attacks on *lashkar* meetings and individuals in PATA are frequent. On 1 November 2012, an anti-Taliban *lashkar* leader was killed in Swat. Two days later, a suicide bomber in Buner killed the head of a local *lashkar* who was earlier a district-level ANP leader. The next day, gunmen killed the head of a local *lashkar* in Lower Dir.¹⁰⁰ Such killings will continue so long as the state continues to outsource law enforcement to poorly trained, poorly armed civilians, even as human rights abuse in PATA is likely to continue unabated so long as the state sponsors private militias in the region.

⁹³ Crisis Group interview, Lower Dir, October 2012.

⁹⁴ Crisis Group interviews, Swat, November 2012.

⁹⁵ Crisis Group interviews, Lower Dir, Upper Dir, and Swat, October-November 2012. See also Crisis Group Report, *Pakistan: Countering Militancy in FATA*, and Briefing, *Pakistan: The Worsening IDP Crisis*, both op. cit.

⁹⁶ Syed Zahid Jan, "Abducted girl handed over to family in Dir", *Dawn*, 8 June 2012.

⁹⁷ Crisis Group interviews, human rights activists, Swat, November 2012.

⁹⁸ Crisis Group interviews, Swat, November 2012.

⁹⁹ Crisis Group interview, Islamabad, October 2012.

¹⁰⁰ "Anti-Taliban peace committee chief killed in Lower Dir", *Dawn*, 4 November 2012.

V. PATA's Militarisation

A. *Controlling Malakand*

More than three years after declaring that militancy had been eliminated in PATA's conflict-hit areas, and despite pledges to transfer full authority to the police and civilian administration, the military refuses to cede power. This is most evident in its overbearing presence, which has a considerable impact on everyday life in the region. A politician in Swat described the general officer commanding (GOC) Swat and his troops as "the Lord Masters of Malakand Division, all the way down to the foot soldiers guarding checkpoints. The army's counter-argument is, 'We've told the civilians to take over'. But the fact is they want to continue controlling the area". According to the political leader, it was also hugely dangerous that the military takes "a soldier from Chakwal [in northern Punjab] and tells him, 'You police this place', and give him 'shoot to kill' orders".¹⁰¹

Harassment of drivers at military checkpoints is routine. Posted from other parts of Pakistan, mainly the Punjab, the soldiers often do not speak Pashto or any other local language, so address residents in Urdu and insist that orders are obeyed by people who cannot understand them. According to a Swat-based NGO worker, "when someone doesn't understand the question, they shout at him, 'Why aren't you answering?' What they should instead do is ask if anyone in the car can translate". Residents of Swat and Lower Dir, among the most socially conservative regions in the country, claim that vehicles carrying female passengers are stopped and inspected more aggressively than others. As a result, "more women decide they will stay at home to avoid unpleasantness", according to a Mingora-based social activist.¹⁰² Criminality, particularly kidnapping-for-ransom, is also on the rise, particularly in Lower Dir. The presence of several checkpoints in the district fuels local rumours soldiers or paramilitary personnel are involved.¹⁰³

In Chitral, too, responding to cross-border infiltration from Afghanistan's Nuristan province, the military has increased its presence – with the same complaints from residents about abrasive, excessive inquiries at checkpoints. Many in Chitral also fear that the enhanced military presence aggravates security challenges.¹⁰⁴ They are particularly concerned that the military may allow anti-Afghanistan jihadi proxies to use the region as a base ahead of the planned withdrawal of NATO troops from that country in 2013-2014. Some claim that military checkpoints are typically abandoned late at night, a more likely time for militants to move through an area.¹⁰⁵

An NGO worker who campaigns for minority rights in Chitral summarised residents' apprehensions: "First comes the military, then comes militancy – not the other way around. That has been the pattern", – suggesting that the military in effect inadvertently provides the space to allied militant groups to operate. Another Chitral-based NGO worker insisted the military was playing up cross-border threats, using "security hype" to justify a larger presence in the district. "There is an Ismaili colony off the road, which cannot be accessed from the other side because it's completely moun-

¹⁰¹ Crisis Group interview, October 2012.

¹⁰² Crisis Group interviews, Swat, Lower Dir, October-November 2012.

¹⁰³ Crisis Group interviews, journalists, NGO workers and human rights activists, Lower Dir, October 2012.

¹⁰⁴ Crisis Group interviews, NGO workers, journalists and other residents, Chitral, October 2012.

¹⁰⁵ Crisis Group interviews, Chitral, October, 2012.

tainous”, he said. “One day, we were told that 1,000 Taliban are coming to attack the colony, so they needed to set up checkpoints all over the area. But no one could get to the colony in the first place – unless you let them through”.¹⁰⁶

B. *Economic Encroachment*

In Chitral, as elsewhere in Malakand, the military’s presence has an air of permanence. Not only has it entrenched its role in policing, but it also controls every level of administration, from forest conservation to sports galas and cultural events.¹⁰⁷ This is particularly true of Swat.

The military has also become the most dominant economic actor, allegedly acquiring lucrative contracts to build bridges, roads and schools and hindering private company competitiveness as a consequence. “You cannot get anything built, whether it’s furniture or doors for your house, because all the good carpenters are working for the military”, said a Swat resident. The military has demolished or defaced historical buildings – including Swat’s first school (initially a fort, then a prison) – pledging to build new ones, “all to show that they are doing something here, that their presence is necessary – and, of course, to make money”.¹⁰⁸ It plans to build a major cantonment in Swat’s Kabal town.¹⁰⁹ A Mingora-based NGO worker said:

The community here feels that if they’re going to build a cantonment, buildings should be dispersed, as in Abbottabad, so that it feels like less of an imposition. [It should have some] development around it, such as better roads, that benefits others as well. But here, they are building a security enclave where you wouldn’t be able to go normally, where you would need your identity card, where you’ll need to show up at specific times. This will only further isolate the military from the community”.¹¹⁰

Nor is the military’s aggressive jockeying for economic space confined to PATA’s most volatile parts. For example, in 2011, the National Highway Authority (NHA) terminated a contract with a Korean company, Sambu, that had completed roughly 45 per cent of construction on the Lowari Tunnel between Chitral and Upper Dir that is Chitral residents’ only access to the rest of Pakistan in the region’s harsh winters. Reportedly failing to pay Sambu what it was owed, the NHA entered into a new agreement with the Frontier Works Organisation (FWO), the military’s construction arm, to complete the work, with a revised budget of over 18 billion Rupees (almost \$190 million). According to an official in Upper Dir close to the project, this was the result of pressure by senior military officials on the NHA. The Korean company successfully challenged NHA’s actions in court and resumed work on the tunnel in August 2012.¹¹¹

¹⁰⁶ Crisis Group interviews, Chitral, October 2012.

¹⁰⁷ Crisis Group interviews, government officials, NGO workers and social activists, Malakand, November 2012.

¹⁰⁸ Crisis Group interviews, Swat, November 2012. See also Fazal Khaliq, “Threatened historical heritage: Swat’s first school willfully destroyed by govt”, *The Express Tribune*, 3 July 2011.

¹⁰⁹ “Construction of cantonment in Swat to start soon: Brig Bilal”, *The News*, 13 November 2011.

¹¹⁰ Crisis Group interview, Mingora, Swat, November 2012.

¹¹¹ Crisis Group interview, Lowari Tunnel, October 2012. Rahimullah Yusufzai, “Lowari Tunnel project in doldrums, woes continue”, *The News*, 15 July 2011. “Funds’ approval for Lowari Tunnel

C. *The Costs of Conflict*

The human and economic costs of the conflict in PATA have yet to be adequately assessed or addressed. A senior Swat police official observed:

The insurgency has left very deep scars. The people have been traumatised; there was a great deal of personal suffering. Militants not only attacked women, but also forced young women into marriage, whose families have had to recover them and formally obtain divorces. Every second or third home has suffered a personal or a heavy financial loss.¹¹²

The education and health sectors have been particularly badly hit. In Swat alone, militants destroyed more than 400 of some 1,600 schools, about 70 per cent of them girls' schools. Many have yet to be rebuilt.¹¹³ Efforts to rebuild the health sector have been equally uneven, a good example being the main government hospital in Kalam, a Swat tourist area. Despite major renovations after 2009, more than half the official posts remain vacant, including senior medical officer, specialists, dental surgeon, nurses and a majority of attendants. Most of the new equipment provided to the hospital is thus unused, and residents often have to travel the three-hour distance to Mingora for medical care.¹¹⁴

The deepest impact has been to the tourism sector, the mainstay of PATA's economy. Swat alone employed up to 25,000 in 2007 in the sector, which was devastated after militants took over the district. Military operations, then the 2010 floods, destroyed the infrastructure.¹¹⁵ Many destroyed hotels have yet to be rebuilt, because owners have little faith a sustainable peace will allow tourists to return in sufficient numbers. While some local tourism has resumed, many in related businesses believe that the sector will not generate an economic boost until foreigners also return.¹¹⁶ Violence and insecurity have also compelled the drivers of Swat's economic engine to migrate to Islamabad and elsewhere, depriving the district of much-needed capital. For example, silk and cosmetics manufacturers, who came from Punjab and Sindh to benefit from tax breaks in the 1960s and employed thousands, started closing their factories and moving out in 2007.¹¹⁷

Short-sighted military-driven policies have further aggravated the damage. Following the May 2011 U.S. raid that killed Osama bin Laden in the KPK city of Abbottabad, the provincial government imposed more stringent restrictions on the movements of foreigners. In addition to the No Objection Certificate (NOC) requirements on foreign and domestic NGOs in KPK that had already severely undermined the response to conflict and flood-induced humanitarian crises, it announced in June 2012 that all foreigners travelling to Malakand Division would require NOCs that can take

hailed", *Dawn*, 27 October 2011. Tahir Amin, "Payment of outstanding dues: rift between NHA, South Korean construction company resolved", *Business Recorder*, 17 August 2012.

¹¹² Crisis Group interview, Swat, November 2012.

¹¹³ Rina Saeed Khan, "Pakistan rebuilds its education network after Taliban are driven out of Swat", *Guardian Weekly*, 26 June 2012. "Rebuilt schools inaugurated in Swat", *Dawn*, 6 October 2012.

¹¹⁴ Information compiled by Swat's executive district health officer, provided to Crisis Group by local NGO, Swat, November 2012.

¹¹⁵ Mohammed Ali Khan, "Unrest destroying Swat economy", *Dawn*, 31 December 2007. For more on the impact of the 2009 military operation and 2010-2012 floods, see Crisis Group Briefing, *Pakistan's IDP Crisis*, and Report, *Pakistan: No End to Humanitarian Crises*, both op. cit.

¹¹⁶ Crisis Group interviews, Swat, November 2012.

¹¹⁷ Saeed Khan, op. cit.

weeks or months for approval.¹¹⁸ The new restrictions also apply to more peaceful areas, including Chitral, which, depending heavily on tourism like Swat, has suffered a “rude shock”, according to Siraj-ul-Mulk, a hotel owner.¹¹⁹

The counter-insurgency strategy has also undermined revival of a conflict-hit agricultural sector, another vital part of the local economy. For example, while international and local NGOs gave farmers thousands of tons of quality seed following successive floods, the military has banned cultivation within 200 metres of a residential area, claiming that militants could hide in the fields. Meanwhile, banks no longer accept property in Swat as collateral against loans, a policy shift that has destroyed microfinance schemes and devalued the land.¹²⁰

As in FATA, militant networks in PATA recruit less on ideology than the promise of money and a sense of purpose. To an extent, they have successfully tapped into villagers’ resentment toward a political and economic elite that is seen to exploit the region’s resources, both legally and illegally. There is particular resentment of what is commonly known as the “timber mafia” that thrives throughout PATA. It is involved in the highly lucrative commercial cutting of trees from large forests in Swat, Chitral and elsewhere, well in excess of what is allowed by district forest departments. In Chitral, for instance, the official cutting limit is 50 cubic feet per household for domestic use, enforced by a joint forest committee, border police, guards at forest checkpoints and the regular police. According to a police official in the town of Ayun, through which most of this timber passes, the mafia buys hundreds of thousands of cubic feet of healthy “green” trees at around 30 rupees (just over \$0.30) per cubic foot and sells it for around 3,000 rupees (\$31.50) in neighbouring districts; as much as 7,000 rupees (almost \$74) in Quetta; and some 9,000 rupees (almost \$95) in Karachi and Multan.¹²¹

Activists against deforestation in Ayun, which is now vulnerable to landslides, allege that the timber mafia pays commissions to “everyone from the provincial political leadership down to the local cleric”, a claim supported by several other residents, police and security officials and local political leaders.¹²² Deforestation has become an even more urgent political and economic issue after the 2010 floods destroyed Ayun’s pipelines, roads, bridges and additional basic infrastructure, as well as crops, orchards and other sources of livelihood. Yet, 91 villagers from the town, campaigning against the timber mafia, including by blocking routes through Ayun used to transport timber to other districts, were charged under a range of offences, including the Anti-Terrorism Act (ATA) and the West Pakistan Maintenance of Public Order (MPO) of 1960.¹²³

¹¹⁸ On the military-driven NGO policy and impact, see Crisis Group Reports, *Pakistan: No End to Humanitarian Crises*, and *Aid and Conflict in Pakistan*; and Briefing, *Pakistan’s Worsening IDP Crisis*, all op. cit.

¹¹⁹ Crisis Group interview, Islamabad, 5 October 2012. Many district hotel industry workers echoed the sentiment. Crisis Group interviews, Chitral, October 2012.

¹²⁰ Crisis Group interviews, NGO workers and activists, Swat, November 2012.

¹²¹ Villagers who campaign against deforestation supported these figures. Crisis Group interview, Ayun, Chitral, October 2012.

¹²² Crisis Group interviews, Ayun, Chitral, October 2012.

¹²³ Crisis Group examined charge sheets for the 91 in the presence of the accused and a police official, Ayun, Chitral, October 2012. Volunteers authorised by the forest department and the local community to check timber smuggling in Upper Dir said they were detained and physically abused at a checkpoint by a police officer and his constables involved in timber smuggling. The SHO denied the allegations. “Cops beat ‘checkpoint volunteers black and blue””, *The News*, 30 November 2012.

“The point of these court cases is to financially weaken us”, said a protester who was charged with terrorism and required to appear frequently before an Anti-Terrorism Court (ATC) in Mingora, Swat, at significant financial cost. A former local *nazim* in Chitral said, “if tomorrow someone comes to these people and says we’ll pay for your court cases, and we’ll pay for your fight against the timber mafia who are exploiting you, some might say, ‘Yes’”.¹²⁴ Already, the Jamaat-i-Islami has tried to gain political mileage by expressing support for the protesters.¹²⁵ According to a local politician, Fazlur Rehman’s Jamiat-e-Ulema Islam “has seen its [political] graph jump dramatically in the last two months “for similarly capitalising on such public grievances”.¹²⁶

Weak service delivery by the state could give such Islamist parties, as well as radical groups, further opportunity to expand, while the military-dictated NOC restrictions have significantly limited NGO ability to fill the gaps at a time of acute demand. With tourism in Chitral at a virtual halt and new curbs on the NGOs, many in the district fear militant groups could curry favour and recruit – concerns reinforced by the spread of hardline madrasas noted above.¹²⁷

¹²⁴ Crisis Group interviews, Chitral, October 2012.

¹²⁵ “Denouncing timber mafia: JI Chitral asks for release of protesters”, *The Express Tribune*, 26 October 2012.

¹²⁶ Crisis Group interview, Chitral, October 2012.

¹²⁷ Crisis Group interviews, NGO workers, activists, professionals and politicians, Chitral, October 2012.

VI. Moving Forward

A. *Improving Policing*

During the 2008-2009 conflict in Swat, the district police became virtually defunct. After the military declared victory, according to a senior police official, Malakand's police had three basic objectives: to reinvigorate the force and revive morale; regain public confidence; and remove widespread public fear of both the security agencies and the militants. An additional priority was to ensure the safety of tourist centres to help revitalise a shattered economy. "No matter how much we claim normalcy, it is just a claim unless we can show change on the ground, which means that visitors are coming back, and the economy is picking up again", said a senior Swat police official.¹²⁸

By mid-2010, the KPK government had approved funds to double the Malakand force, and by early 2011, recruits had filled most of the vacancies.¹²⁹ New police stations were established and those destroyed by militants rebuilt. In Swat, the focus of the provincial government's attention, their number was increased from nine to twenty, with three more planned as of November 2012. "The logic is to have smaller and more effective police stations covering a smaller area, where the SHO can have a better understanding of and liaison with the community he serves, while also being able to assert proper control over it", said a senior Malakand police official.¹³⁰

While this strategy could prove effective, political interference is undermining it. According to a senior KPK police official, the average tenure of a SHO in the province is barely a month. As elsewhere in the country, SHO appointments are highly personalised and politicised. "Previously, political appointments and meddling usually occurred at the senior level", said the official. "Now the chief minister's secretariat even tells us who the SHO should be".¹³¹ Incoming SHOs are said to have limited connection to their subordinates and limited knowledge of the areas they serve.

The Malakand police are better equipped than in 2009, with more weapons, vehicles and other items such as night vision goggles. However, a Swat police official said, this is "only 10 per cent of the game" and has not "tilted the balance in [police] favour".¹³² Over 80 per cent of KPK's police budget – rupees 19.22 billion (roughly \$202 million) out of rupees 23.35 billion (almost \$246 million) – is for salaries and almost another 10 per cent for non-salary expenses, leaving roughly 10 per cent for operations.¹³³ Stations, not reflected in the budget, are dangerously under-equipped, eg, with a two-vehicle average (senior police officials recommend at least ten to fifteen). Constables and officers, including investigators, are overwhelmed by caseloads. "Any effective police force in the world operates on a shift system", said a former KPK police inspector general. "Here, at the lower levels, police work eighteen hours a day, with no social life, no family life. They practically sleep in their uniforms".¹³⁴

¹²⁸ Crisis Group interviews, senior police officials, Malakand Division; Swat, November 2012.

¹²⁹ Crisis Group telephone interview, senior retired KPK police official, November 2012.

¹³⁰ Crisis Group interview, Malakand Division, November 2012.

¹³¹ Crisis Group interview, Peshawar, November 2012.

¹³² Crisis Group interview, Swat, November 2012.

¹³³ "White Paper 2012-2013", finance department, KPK government, 8 June 2012.

¹³⁴ Crisis Group interview, October 2012.

The current constable/officer ratio is around 89:11, against the 60:40 recommendation of many serving and retired police, as well as Police Order 2002.¹³⁵

Along with increasing the overall numbers, the KPK government should also develop policies to attract female police officers. There are currently just over 400 women in a roughly 67,000-strong force – less than 1 per cent. They are not supervisors, and their prospects for promotion are limited. Police officials have recommended increasing female officers by 2 per cent.¹³⁶ In addition, the provincial government should ensure that female officers are properly empowered and enjoy the same career advancement prospects as their male colleagues.

Other major challenges include KPK police inability to secure and effectively use evidence to build strong cases against extremists. Stations lack crime scene units, a major reason why evidence, from small crime scenes to blast sites, is often eventually discarded or contaminated by first responders.¹³⁷ There have been limited attempts to modernise the force. A retired senior police official said, “the blast site was a new thing for the police; they had no idea what to look for”. They subsequently developed standard operating procedures requiring officers to photograph the crime scene and all evidence; determine the explosives used; and create an index of the explosives to identify patterns and associate particular kinds with specific militant groups.¹³⁸ Previously, they sent samples to the U.S. Federal Bureau of Investigation.¹³⁹ They now send them to the ISI, the military’s intelligence agency. “Why should the ISI have this [technology] and not us?” asked a KPK police official. If cases are to be successfully prosecuted in court, all data analysis resources and technology should be maintained by the police, not military agencies.¹⁴⁰

Better intelligence sharing between military intelligence agencies and police, as well between civilian intelligence agencies, is also vital. Currently, the military’s intelligence agencies, as well as civilian agencies like the Federal Investigation Agency (FIA) and the Criminal Investigation Departments (CIDs), reportedly seldom cooperate with what a former KPK police inspector general described as the “end user” of intelligence: the deputy inspectors general, district superintendents of police and their subordinates.¹⁴¹ A senior police official in Swat said, “the police can be working on a suspect for months, keeping him under surveillance, seeing who his contacts are, and then one day he gets picked up by intelligence, and your whole operation is out the window”.¹⁴² Similar turf battles plague Western democracies with highly sophisticated law enforcement systems, but the resource gaps and lack of operational autonomy of Pakistan’s regular police, and the acute security threats they have to tackle, considerably raise the costs of poor coordination.

¹³⁵ Crisis Group interviews, serving and retired KPK police officials, Islamabad and Peshawar, October–November 2012. On Police Order 2002, see Crisis Group Asia Report N°157, *Reforming Pakistan’s Police*, 14 July 2008.

¹³⁶ Crisis Group interviews, police officials, Peshawar, November 2012.

¹³⁷ Crisis Group interview, former KPK police inspector general, October 2012.

¹³⁸ Crisis Group interview, Islamabad, October 2012.

¹³⁹ Crisis Group interview, former inspector general, KPK police, October 2012.

¹⁴⁰ Crisis Group interview, November 2012. For recommendations on modernising civilian law enforcement technology, see Crisis Group Report, *Reforming Pakistan’s Criminal Justice System*, op. cit.

¹⁴¹ Crisis Group interview, October 2012. The FIA and CIDs are the lead counter-terrorism agencies at the federal and provincial levels respectively.

¹⁴² Crisis Group interview, Swat, November 2012.

There is also dire need to reform PATA's peculiar law enforcement structure that beside regular police includes Levies, paramilitary Scouts,¹⁴³ the individual Frontier Corps units, the army and military intelligence agencies. Chitral also has a border police, under command of the DCO, the district administrative head, rather than the police. That these entities have overlapping roles but little cooperation undermines police functioning, casework, and institutional memory.

While the military's intelligence agencies regularly interfere in law enforcement, the Levies are inadequately trained, particularly with respect to constitutional and human rights. Their poorly paid and equipped personnel have at times proved susceptible to militant influence and coercion.¹⁴⁴ Previously, their duties were largely confined to protecting VIPs, but since 2010, they have guarded the Afghan-Pakistan border against possible militant infiltration. An equally poorly equipped and paid Frontier Constabulary polices the border area between FATA and KPK, including between Upper Dir and FATA's Bajaur Agency. In an 18 October 2012 hearing in the Senate's standing committee on the interior, the Frontier Constabulary's KPK commandant warned that lack of proper funding and equipment could result in the paramilitary "giving up the fight" against extremists, while the interior secretary disclosed that eighteen Frontier Constabulary platoons could not be deployed on the frontlines because they lacked adequate weapons.¹⁴⁵

In June 2012, President Zardari signed the Federal Levies Force regulations for PATA and FATA, which revised service and salary structure, providing the same pay, benefits, training and equipment as the Frontier Constabulary, and gave the same responsibilities to police the region between KPK's settled districts and FATA agencies. They also decentralised command, making the PATA Levies answerable to the DCO, rather than the police or provincial-level authority such as the home ministry or a federal entity such as the states and frontier regions ministry (SAFRON) that previously oversaw the force.¹⁴⁶ Rather than delegating responsibility to the Levies or the Frontier Constabulary, the government should absorb their personnel into the regular police, provided they satisfy training and vetting procedures.

In 2009, after the military declared victory in Malakand, yet another special body, the Community Police Force, was created, with some 7,000 personnel, mostly youth and retired low-level police and army, trained for two months by the army, and, in theory, selected by local communities. Members serve for one year and can be extended by six months.¹⁴⁷ Creating more parallel bodies is unlikely to promote law and order in conflict zones. Instead, the focus should be on meaningful reform of the regular police. However, the overall emphasis of reform thus far, in addition to creating new forces, has been on enhancing the KPK police's coercive tools rather than the "softer" aspects of policing that would boost public confidence in and cooperation with the institution. Nor has there been sufficient investment in improving investigative tools and skills.¹⁴⁸

¹⁴³ In the districts of Chitral, Upper Dir, Lower Dir, and Swat.

¹⁴⁴ Crisis Group interviews, KPK police officials, October-November 2012.

¹⁴⁵ Zahid Gishkori, "Ill-equipped, underpaid, FC may give up fight", *The Express Tribune*, 19 October 2012.

¹⁴⁶ Zia Khan, "Tribal areas: new service structure approved for Levies", *The Express Tribune*, 19 October 2012.

¹⁴⁷ Tahir Ali, "Community care", *The Express Tribune*, 19 June 2012.

¹⁴⁸ Crisis Group interviews, serving and retired KPK police officials, Islamabad and Peshawar, October-November 2012.

Serving and retired KPK police officials describe the force as replicating heavy-handed army tactics, including torture and extra-judicial executions, thus undermining rule of law.¹⁴⁹ In 2009, the U.S. embassy noted: “NWFP police have also been implicated in the abuse and extra-judicial killing of terrorist suspects that they believe responsible for attacks on police stations and individuals in the run-up to the conflict. This is a separate problem set from those detained in combat by Frontier Corps and Pakistan Army units”.¹⁵⁰ Such methods will not bring more terrorists to justice.

B. *Legal Reforms*

1. Parallel Legal Systems

PATA’s parallel legal system delivers poor justice. Since federal or provincial laws only apply if notified by the governor, with presidential assent, criminal and civil court proceedings are often weighed down with disputes about particular provisions. For example, while the Criminal Procedure Code extends to PATA, many subsequent amendments do not simply because they were not specifically extended. “There is no easily accessible database to check which laws have been extended”, said the president of the Lower Dir Bar Association.¹⁵¹ This often gives state agencies an excuse for inaction against extremists. For instance, before 2009 neither the MMA nor the ANP-led provincial governments had closed illegal FM stations used by extremists such as Fazlullah to incite jihadi violence, ostensibly because the Pakistan Electronic Media Regulatory Authority (PEMRA) Ordinance (2002) was never extended to PATA. While this justification looks threadbare – the KPK government failed to act against illegal radio stations even in Peshawar, where the ordinance certainly applies – it nonetheless has the semblance of a legal argument.

The parallel system created through the Nizam-e-Adl 2009 is even more problematic. The Nizam-e-Adl imposes a four-month deadline for courts to decide criminal cases (six months for civil cases). Given PATA’s criminal jurisprudence challenges, rushed justice could see many more militants and their criminal allies released than convicted. Strengthening criminal justice requires comprehensive rather than selective reform, focused on ensuring access to justice and due process, and improving the quality of investigations and prosecutions, instead of reducing justice delivery to a simple numbers game, without reference to the quality of judicial decisions.

Moreover, successes under the Nizam-e-Adl for swift disposal are over-stated. Under normal practice in both criminal and civil cases, litigants have 30 days to appeal after the judge produces the written order. The Nizam-e-Adl, however, sets the deadline as 30 days after the judge’s oral announcement of a decision, not the written order that can take weeks to publish. Yet, in practice, parties can formulate a robust appeal only after scrutinising the written judgment, and hence ascertaining the underlying legal rationale. Parties to a dispute typically have to bribe the court readers to obtain a written order, on the basis of which the appeal is filed, within the required time. Several appeals have lapsed, and several have failed because litigants

¹⁴⁹ Police officials described the force as “hardened”, even “radical” in how it enforced the law. Crisis Group interviews, Islamabad, Peshawar, October-November 2012.

¹⁵⁰ “Addressing concerns about Pakistan security forces’ human rights abuses”, *op. cit.*

¹⁵¹ Crisis Group interview, Fazal Malik, Lower Dir, 10 October 2012.

could not obtain the written order within the 30-day limit, or obtained it with insufficient time to file a strong appeal.¹⁵²

In Lower Dir, for instance, not a single land revenue case has been settled since the Nizam-e-Adl's adoption. A human rights activist in Upper Dir said, "judges are admitting they are making errors, but they say, 'How do we handle 200 cases in such a short amount of time?'"¹⁵³ In July 2011, a joint meeting of the KPK Bar Council and KPK's district bar associations demanded that the chief justice of the Supreme Court review the Nizam-e-Adl because the timeframes for civil and criminal cases were unworkable. The lawyers also demanded a review of the National Judicial Policy (NJP), adopted in June 2009 by the National Judicial (Policy Making) Committee, headed by the chief justice, which similarly imposes pressure on lower courts to dispose of cases within strict timeframes.¹⁵⁴

With a view to ending parallel legal systems in PATA, the National Assembly should amend the constitution to remove Article 247 and repeal the Nizam-e-Adl 2009. President Zardari should revoke the Actions in Aid of Civil Power Regulations. In their place, both federal and provincial governments should pursue legal reforms to modernise the criminal justice system.

2. Anti-Terrorism laws

The Anti-Terrorism Act (ATA) of 1997 and the Anti-Terrorism Courts (ATCs) established under it provide the legal foundations of the state's response to terrorism.¹⁵⁵ Passed by the Nawaz Sharif government in its second tenure during the 1990s to counter intensifying sectarian terrorist violence, the ATA requires ATCs to conduct trials on a daily basis and complete them within seven days. It provides procedural shortcuts that ostensibly make it quicker and easier to gain convictions. The ATCs' performance, however, has proved no better than regular courts.

In 2009, provincial officials recommended over 30 amendments to the ATA, with input from the FIA, Pakistan's lead civilian counter-terrorism agency, to make it more "prosecution-friendly", in the words of a former KPK home secretary.¹⁵⁶ The amendments, passed by presidential ordinance in October 2009 and renewed in February 2010, included enhanced powers to act against individuals who preach through FM stations without government approval; possess explosives; and disseminate material that "glorifies terrorists or terrorist activities". They also facilitated police access to telephone, email and other electronic data; authorised longer detention periods, including preventative detention of terrorist suspects for 90 days that could not be challenged in court; and action against banned groups that emerged under new names.¹⁵⁷ The amendments were extended to PATA.

¹⁵² Crisis Group interviews, lawyers and litigants, Lower Dir and Swat, October-November 2012.

¹⁵³ Crisis Group interview, Fazal Malik, Lower Dir Bar Association president. Crisis Group interview, Lower Dir, October 2012.

¹⁵⁴ The NJP's purpose was to make the justice system more responsive to citizens, but it over-emphasises speed rather than addressing structural and other critical weaknesses. For analysis of it, see Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.; also Akhtar Amin, "KP lawyers want NJP, Nizam-e-Adl law reviewed", *The News*, 10 July 2011.

¹⁵⁵ For analysis of the weaknesses of the ATA and its application, see Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.; and Asia Report N°86, *Building Judicial Independence in Pakistan*, 9 November 2004.

¹⁵⁶ Crisis Group interview, October 2012.

¹⁵⁷ "Ordinance No. XXI of 2009", *Gazette of Pakistan*, Part I, 1 October 2009.

Under the eighteenth amendment to the constitution (April 2010), presidential ordinances, which are valid for three months, cannot be renewed more than once. The amendments, therefore, lapsed in May 2010. In July 2010, the government presented the amended ATA in parliament, where it was blocked by the Senate's standing committee, with members objecting to provisions that could be manipulated for political ends. In September 2012, the federal government urged the provinces to recommend new amendments to the ATA.

The objections to the ATA are valid. The law is indeed used to quell dissent, as the example of the Ayun villagers protesting the timber mafia, discussed above, demonstrates. Moreover, offences such as jihadi preaching and dissemination of material glorifying terrorism should be added to the Penal Code rather than the ATA. Similarly, the government should seek changes to the Explosive Substances Act to proscribe and/or regulate the use and sale of substances like ammonium nitrate and potassium chloride that can be used to make explosives, as parliamentarians have considered doing in the past.¹⁵⁸

In September 2012, the federal cabinet approved the Investigation for Fair Trial Bill 2012, which would allow the government access for surveillance to "data, information or material in any documented form ... still photography, bugging, observation or any mode of modern devices or techniques obtained under the Act ... documents, papers, pamphlets, booklets". The government would also be authorised to intercept "emails, SMS, Internet protocol detail record, call detail record and any form of computer based or cell phone based communication", as well as "any means of communication using wired/wireless/internet protocol-based media/gadgetry". In addition to the police, the FIA, the Intelligence Bureau (IB), the Anti-Narcotics Force (ANF) and other civilian agencies, the bill would also give the military's main intelligence agencies, the ISI and Military Intelligence (MI) and other military-dominated entities access to such data.¹⁵⁹ These civilian and military agencies would be able use the intercepted data for first information reports (FIRs) and evidence in trials.¹⁶⁰ Its admissibility in court would reduce over-reliance on witness evidence.

To acquire such data, these agencies would require warrants issued by a judge for interception and surveillance of those suspected of planning an offence under the ATA, Official Secrets Act 1923, Explosive Substances Act, Pakistan Nuclear Regulatory Authority Ordinance 2001, Prohibition of Private Armies Act 1974 and five other laws.¹⁶¹ An authorised officer of the relevant state agency must first submit a report on reasons to suspect a potential offender and obtain approval to make the request from a superior no lower than the rank of Basic Pay Scale (BPS)-20.¹⁶² A judge would then decide based on an assessment of "reasonable threat and likelihood of attempt

¹⁵⁸ Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit., p. 20.

¹⁵⁹ Text cited in Saba Imtiaz, "Pakistan's Patriot Act?: How fair is the new trial bill", *The Express Tribune*, 22 October 2012. The full list includes Customs, the Frontier Constabulary, the Maritime Security Agency, Civil Armed Forces, Field Investigation Units, Air Force Intelligence, Naval Intelligence, the Airport Security Force and the Strategic Plans Division.

¹⁶⁰ Ali Sultan, "Investigating terror", *The News*, 28 November 2012.

¹⁶¹ The five additional laws are the Prevention of Anti-National Activities 1974; Security of Pakistan Act 1952; Surrender of Illicit Arms Act 1991; Arms Act 1878; and National Command Authority Act 2010. Ibid.

¹⁶² BPS (Basic Pay Scale) refers to the civil service rank hierarchy, comprising 22 national pay grades that cover workers performing unskilled tasks (BPS-1-4); various categories of clerical personnel (BPS-5-15); superintendents (BPS-16); and officers (BPS-17-22). See Crisis Group Asia Report N°185, *Reforming Pakistan's Civil Service*, 16 February 2010.

to commit a scheduled offence”. If a warrant is approved, the judge would be required to exercise oversight to “ensure that the warrant shall not unduly violate the privacy or property of any person and that the sole purpose for issuing the warrant is to collect evidence by a duly authorised officer”. The judge would also be empowered to order departmental action against the authorised officer in case of “insufficient application or arbitrary interference in any person’s privacy”.¹⁶³

The bill has understandably raised concerns about invasion of privacy and abuse of civil liberties.¹⁶⁴ Coercive laws such as the ATA and Maintenance of Public Order (MPO) Act, which allows detention without trial for up to 90 days, have been used to silence dissent, restrict political parties and victimise political opponents country-wide, including during Musharraf’s 2007 emergency rule.¹⁶⁵ Even many police officials acknowledge the public’s concern about extending broad powers to the police and other agencies in the name of countering terrorism. A senior KPK police official said, “terrorism must be understood as local phenomenon, in a specific area, which requires special provisions for that situation and for a limited period of time”.¹⁶⁶

The Fair Trial Bill is a departure from earlier measures such as the Actions in (Aid of Civil Power) Regulations 2011 in its incorporation of robust judicial safeguards. Even these, however, risk being ignored by the military’s intelligence agencies, which regularly flout constitutional provisions and judicial oversight. They already enjoy such access unofficially, but the government should not legalise it. It should instead revise the draft to empower only civilian agencies with a clear legal mandate to investigate and gather intelligence and in so doing should include the provincial CIDs. The revised bill should exclude the military intelligence entities from the list of authorised agencies and explicitly make any data they acquire inadmissible in court. Moreover, copies of warrants and information obtained should be provided to the legal defence of a suspect.

In addition to the judiciary, parliament should require oversight by the federal and provincial parliaments’ standing committees on interior and home affairs (in KPK’s case home and tribal affairs), respectively, or subcommittees formed under them specifically to inquire into complaints of unjustified invasion of privacy. The higher judiciary should hold any lower court judge accountable if warrants are issued without a strong case or are abused by state authorities.

Any counter-terrorism legislation will, in any case fail, if the government does not reform the more basic aspects of the criminal justice system. These include enhancing protection of witnesses, investigators, prosecutors and judges in terrorism and other major criminal cases, strengthening forensic capabilities of police investigation branches and building the capacity of the prosecution services.¹⁶⁷ The Criminal Procedure Code (CrPC) and Evidence Act should be updated, requiring investigators to incorporate scientific methods and data in investigations and charge sheets, includ-

¹⁶³ Ali Sultan, *op. cit.*

¹⁶⁴ See for example Imtiaz, *op. cit.*

¹⁶⁵ During the emergency, hundreds of lawyers and political party members were held under the MPO. An Amnesty International statement at the time commented: “People detained under [the MPO] or other preventive detention laws are usually arrested arbitrarily, often held incommunicado and are at risk of abuse by law enforcement officials”. “Fear of torture/ill-treatment/possible prisoner of conscience”, 5 November 2007.

¹⁶⁶ Crisis Group interview, Malakand Division, October 2012.

¹⁶⁷ For detailed recommendations and analysis to strengthen Pakistan’s criminal justice sector, see Crisis Group Report, *Reforming Pakistan’s Criminal Justice System*, *op. cit.*

ing DNA analysis, fingerprinting, ballistics and other forensics. The KPK and federal governments should prioritise recruitment to the investigation branches, requiring all candidates to serve first as understudies to senior investigators, enrolling those who show potential, and providing specialised training in fields such as homicide, counter-terrorism, and counter-narcotics. The federal and provincial governments should also develop and provide funding for better human intelligence, including programs to persuade, process, protect and adequately reward informants.

The judiciary, too, must play its part. Judges often exploit legal loopholes and other gaps to dismiss cases without a proper hearing.¹⁶⁸ Under the CrPC, they have seldom invoked authority to “order the production of any document or things and neither the parties nor their agents shall be entitled to make any objection to any such order or question”. In May 2010, for example, female officers in a Punjab police station assaulted a woman in an attack captured on video and circulated on YouTube. The judge dismissed the case when the victim reversed her testimony, possibly under pressure, claiming the attack did not happen. Neither prosecution nor court sought to enter the video in evidence.¹⁶⁹

Such problems have been aggravated by the NJP emphasis on swift justice. The National Judicial (Policy Making) Committee should revoke the policy. Instead of formulating a course of action through committees, speeches, and documents such as the NJP, the higher judiciary should speak through its judgments, developing case law that closes legal loopholes and holds lower court judges accountable for dismissing cases prematurely and failing to consider or order the production of such evidence as publicly available video footage.

C. *Political Ownership*

As the civilian government comes close to being the first since the 1970s to complete a full term, an urgent task for the next parliament should be to reclaim political and legal space conceded to the military during and after the Malakand operation, and in particular since promulgation of the AACP regulations. The continuation of the democratic process is necessary but insufficient to strengthen moderate voices in KPK, and countrywide. The political leadership must also propose and adopt meaningful solutions to counter the numerous and grave security challenges the country faces.

Early in its tenure, in October 2008, the National Assembly passed a fourteen-point consensus resolution supporting a broad governmental framework to combat extremism, including political reforms, economic development and an enhanced role for civilian law enforcement agencies in KPK. Even as the 2009 military operation began, the PML-N general secretary warned for the main opposition party that parliament’s failure to follow up on such resolutions “makes people worry that we still don’t have a sovereign parliament”.¹⁷⁰ There have been numerous similar resolutions subsequently, most recently unanimous condemnation on 10 October 2012 of the attack on Malala Yousafzai and her school friends.¹⁷¹ But the national and provincial parliamentary follow-up leaves much to be desired.

¹⁶⁸ For more detailed analysis, see *ibid.*

¹⁶⁹ *Ibid.*, p. 13

¹⁷⁰ Crisis Group interview, Iqbal Jhagra, Islamabad, 19 May 2009; Crisis Group Briefing, *Pakistan’s IDP Crisis*, *op. cit.*, p. 13.

¹⁷¹ “NA passes resolution to condemn attack on Malala”, *The Nation*, 10 October 2012.

The PPP and the PML-N have successfully collaborated in passing major constitutional and legal reforms regarding provincial autonomy, judicial independence, human rights and protection of women. In recalculating the National Finance Commission (NFC) award to account not just for population but also relative levels of development, the PPP-led government increased KPK's share of the award, starting with a phased two-year 24 billion-rupee (then \$291 million) transfer in 2009-2010, half of which Peshawar allocated to strengthening its police force.¹⁷² A former KPK police inspector general said this was an important opportunity to enhance law enforcement capacity and strengthen governance.¹⁷³

In August 2011, President Zardari introduced reforms in FATA that, while modest, were a step in the direction of improving accountability and stability.¹⁷⁴ Establishing the state's writ over PATA should also be a top priority for the PPP-led federal government and its successor. But the KPK government and assembly must play their role in building the capacity of civilian law enforcement agencies in the province.

A senior KPK official in Peshawar expressed frustration that the provincial government has not been as proactive as its Punjab counterpart in modernising the police, particularly forensics. Punjab "is soon to complete a world-class, independent forensics science lab, because the chief minister there was very committed and was driving it forward", he said. "We still have a rotten old lab", while the scientific resources budget remains "meagre".¹⁷⁵ The provincial government has shown some signs of assertiveness. The 2012-2013 police budget is 23.35 billion rupees (roughly \$260 million), the highest of any department. The government has also identified resource gaps at the station level, as part of a DFID¹⁷⁶-supported program to establish specific performance targets for expenditure ahead of the 2013 budget. Some individual police stations were selected as potential pilots to pinpoint resource and other gaps. However, the government should not only focus on stations in and around Peshawar, as at present, or even in Swat but also pursue similar efforts in Lower Dir, Upper Dir, and Chitral, focusing on more conflict-prone towns such as Maidan in Lower Dir.

The KPK government has also committed 334 million rupees (over \$3.5 million) of its own funds to the three-year \$15 million UN Development Programme (UNDP) Strengthening Rule of Law in Malakand program launched in September 2012 to enhance district courts' capacity; access to justice; legal aid and representation, including for vulnerable communities; police capacity and accountability; and investigation and prosecution. It also supports strengthening informal justice systems (jirgas), "in accordance with the Pakistan Constitution and human rights standards".¹⁷⁷

UNDP funding and support for jirgas, no matter how limited, should be excluded from the program, and the KPK provincial government should reject such assistance.¹⁷⁸ Unaccountable local bureaucrats control PATA's jirgas, using landlords,

¹⁷² "NWFP plans to finance security and reconstruction", U.S. consulate Peshawar cable, 3 September 2009, as released by WikiLeaks. The NFC award is the annual federal resource distribution to provincial units.

¹⁷³ Crisis Group interview, October 2012.

¹⁷⁴ For more detail, see Crisis Group Report, *Aid and Conflict in Pakistan*, op. cit., pp. 27-28.

¹⁷⁵ Crisis Group interview, Peshawar, November 2012.

¹⁷⁶ DFID is the UK's Department for International Development.

¹⁷⁷ The program's official website, <http://undp.org.pk/strengthening-rule-of-law-in-malakand.html>. See also, "Agreement inked to improve justice system in Malakand", *The News*, 4 September 2012.

¹⁷⁸ See Crisis Group Report, *Aid and Conflict in Pakistan*, op. cit., p. 32.

tribal leaders and other local elite as proxies.¹⁷⁹ No donor-funded programs aimed at training their members to abide by constitutional and human rights standards is likely to succeed, since jirga composition is based on local power structures, their proceedings and judgments are not recorded, and they cannot be reviewed to ensure that rights are protected. Moreover, jirgas apply *rewaj* (customary law) that discriminates against women and often decide cases on the basis of evidence that would be inadmissible in a regular court. In 2004, the Sukkur bench of the Sindh High Court deemed jirgas unconstitutional.¹⁸⁰ The Peshawar High Court should similarly declare that KPK's jirgas violate fundamental rights of equality, dignity and fair trial. Human rights activists, women's rights groups and many key bar associations oppose donor efforts to mainstream this informal justice mechanism.¹⁸¹

Instead, the political parties should invest the necessary political and other capital to redress women's increasing marginalisation in PATA. Through informal agreements between local chapters of various parties, including the ANP, the PPP and the Jamaat-i-Islami, women have been prevented from or pressured against voting in districts such as Lower Dir and Upper Dir, ostensibly on the grounds of local culture and tradition.¹⁸² During the 2008 general elections, the six or seven female polling stations in Swat's more remote areas, beyond the economic and administrative centres of Mingora and Saidu Sharif, were closed, ostensibly on the grounds that militants, disguised in *burkas* (full-length *hijab*), could attack them.¹⁸³

In September 2012, the Election Commission of Pakistan (ECP) proposed a law requiring re-voting in any polling station with less than 10 per cent of female ballots. Some parties rejected the proposal as impracticable, but they have proposed no alternative mechanisms for mobilising the female vote.¹⁸⁴ They must develop such mechanisms and also take strong disciplinary action against members and local party chapters that prevent women from exercising their franchise. If the democratic transition continues, the moderate parties, particularly the ANP and PPP, would gain the most from women's enfranchisement in PATA. More importantly, since women have been the primary victims of militancy in PATA, their empowerment would be one of the most tangible signs of success against Islamist extremism.

More broadly, the political leadership must adopt and uphold a policy of zero tolerance toward all forms of extremism and incitement to violence, including by holding its own to account. On 22 September 2012, amid street protests against crude anti-Islam messages in a film, the federal railways minister, ANP's Ghulam Ahmed Bilour, announced a \$100,000 bounty to anyone who murdered the U.S.-based filmmaker, specifically calling on al-Qaeda and the Taliban to act. A spokesman for Prime

¹⁷⁹ Crisis Group interviews, lawyers and social activists, Lower Dir and Swat, October–November 2012.

¹⁸⁰ "SHC bans all trials under Jirga system", *Dawn*, 25 April 2004.

¹⁸¹ Crisis Group Report, *Aid and Conflict in Pakistan*, op. cit., p. 32.

¹⁸² In March 2004, HRCP condemned these parties for preventing women from voting and criticised the Election Commission of Pakistan for failing to protect women's right to vote. See "HRCP lashes out at political parties", *Dawn*, 6 March 2004. Subsequently, the former HRCP chairperson and ANP member Afrasiab Khattaq recommended criminalising any impingement on a woman's right to vote. Ghafar Ali, "Civil rights alliance: NGOs demand protection for women voters", *Daily Times*, 11 August 2005. His party, however, took no action against members who agreed to prevent women from voting.

¹⁸³ Crisis Group interview, Adnan Aurangzeb, Islamabad, 18 October 2012.

¹⁸⁴ Irfan Ghauri, "Parties shoot down pro-women voters proposal", *The Express Tribune*, 28 September 2012.

Minister Raja Pervez Ashraf said the federal government had “nothing to do with the statement”. Disassociating itself from Bilour’s bounty, the ANP said it reflected his “personal views”, though an ANP lawmaker, Bushra Gohar, described it as a “criminal act”.¹⁸⁵ Yet, neither the federal executive nor the ANP have disciplined Bilour, who remains railways minister.¹⁸⁶ By failing to hold him accountable, the political leadership has lost an opportunity to send a strong signal that it will not tolerate any kind of extremism.

¹⁸⁵ Sumera Khan, “Bilour under fire for his bounty offer”, *The Express Tribune*, 24 September 2012.

¹⁸⁶ On 22 December 2012, Bilour’s brother and senior KPK minister Bashir Ahmed Bilour, a staunch opponent of the Taliban, was killed in a suicide attack in Peshawar. The Taliban claimed responsibility for the attack, which also killed eight others, including ANP party workers and a police SHO. “Suicide attack kills senior minister Bilour, eight others in Peshawar”, *Dawn*, 22 December 2012.

VII. Conclusion

Since July 2009, the military and many in the media have hailed the Swat operation as Pakistan's most successful counter-insurgency operation ever. Yet more than three years later, pledges that the TNSM, Pakistani Taliban and other militant leaders would be brought to justice are unfulfilled. The military has used the pace of IDP returns as the main gauge of success. Most have indeed returned, but their lives have fundamentally changed for the worse, with the conflict and continued militancy radically transforming the region's economic, social and political complexion.

Even as the military suggests that the civilian leadership's unwillingness to assume responsibility over Malakand has undermined the "clear, hold, build" strategy, it shows no signs of wanting to extricate itself from the region. But the longer PATA's militarisation continues, and the deeper it goes, the greater the costs of the conflict. The key to overcoming governance challenges and rebuilding public confidence lies in transferring authority to accountable and responsive civilian institutions. That requires comprehensive reform to end PATA's constitutional and legal ambiguities and to ensure that fundamental rights and the rule of law are not sacrificed for short-term political or military objectives.

At a time of broad public and political consensus to eliminate militancy in PATA, the national and KPK governments should invest the resources and political capital to modernise the police force. There has been some improvement since the conflict began, but it is still not adequately equipped with the resources, properly trained personnel and operational autonomy necessary to bring extremists to justice. Reversing the region's militarisation also requires a police force that abjures coercion for modern methods of investigating crime and improved links with the people it serves.

On 19 November 2012, President Zardari addressed a special session of the KPK Assembly, urging the provincial government to mobilise the police and other civilian agencies to tackle security challenges rather than rely on the military. Citing KPK's "rich culture, great traditions and huge deposits of natural resources", he said, "the only thing it lost was law and order".¹⁸⁷ That is accurate, but to overcome the challenges and seize the opportunities in PATA, Islamabad and Peshawar will have to pursue fundamental and meaningful reforms. The state must restore the trust of PATA residents by convincing them of its sincerity, effectiveness and accountability. Helping them to rebuild their lives and livelihoods, free of the fear of militancy, would go a long way toward inoculating them against extremism and should be at the heart of counter-terrorism strategy.

Islamabad/Brussels, 15 January 2013

¹⁸⁷ Zulfiqar Ali, "Zardari urges end to reliance on army", *Dawn*, 20 November 2012.

Appendix A: Map of Pakistan



Appendix B: Map of Khyber Pakhtunkhwa Province and FATA



Appendix C: Glossary of Acronyms

AACP	Actions (in Aid of Civil Power) Regulations 2011, applicable to PATA and FATA, promulgated in August 2011.
ANP	Awami National Party, which heads a coalition government in KPK with the PPP.
ATA	Anti-Terrorism Act (1997).
ATC	Anti-Terrorism Court.
CID	Criminal Investigation Department, the lead counter-terrorism agency at the provincial level.
CrPC	Criminal Procedure Code.
DCO	District coordination officer, the senior bureaucrat in a district administration.
ECP	Election Commission of Pakistan.
FATA	Federally Administered Tribal Areas.
FIA	Federal Investigation Agency, the lead counter-terrorism agency at the federal level.
HRCP	The independent Human Rights Commission of Pakistan.
IG	Inspector general of police.
ISI	Inter-Services Intelligence Service directorate, the military's main intelligence agency.
KPK	Khyber Pakhtunkhwa province, formerly known as Northwest Frontier Province.
MMA	Six-party Islamist alliance that formed the government in NWFP during General Musharraf's regime.
LeT	Lashkar-e-Tayyaba, renamed Jamaat-ud-Dawa (JD), responsible for the 2008 Mumbai attacks.
NHA	National Highway Authority.
NJP	National Judicial Policy, adopted in June 209 by the National Judicial (Policy Making) Committee, headed by the Supreme Court chief justice.
NOC	No Objection Certificate.
NWFP	Northwest Frontier Province, now KPK.
PATA	Provincially Administered Tribal Areas, which, along with two of its biggest districts, Chitral and Swat, includes Upper Dir, Lower Dir, Malakand, Shangla, parts of Kohistan district, the tribal area adjoining Mansehra district and the former state of Amb.
PML-N	Pakistan Muslim League-Nawaz, headed by former Prime Minister Nawaz Sharif, the main party in opposition nationally and the ruling party in Punjab province.
PPP	Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1967. Since former Prime Minister Benazir Bhutto's assassination in December 2007, her widower, Asif Ali Zardari (currently Pakistan's president), and son, Bilawal Bhutto Zardari, head the party. It leads the coalition government in the centre and is a coalition partner of the ANP in KPK.
TTP	Tehreek-e-Taliban Pakistan (Taliban Movement of Pakistan), an umbrella organisation of predominantly Pashtun militant groups in KPK and FATA.

- TNSM Tehrik-e-Nifaz-e-Shariat-e-Mohammadi, a banned Swat-based Sunni radical group founded in the early 1990s by Sufi Mohammed; it led a violent campaign for the imposition of Sharia (Islamic law) in PATA in 1994. It was responsible for sending thousands of fighters to help the Taliban in Afghanistan after the U.S.-led intervention in October 2001, but subsequently returned to Pakistan, launching another violent bid to take over parts of PATA. An extreme faction, now a part of the TTP, is led by Sufi Mohammed's son-in-law, Mullah Fazlullah.
- SHO Station House Officer – the head of a police station.

Appendix D: About the International Crisis Group

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 150 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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