

**Refugee Review Tribunal  
AUSTRALIA**

**RRT RESEARCH RESPONSE**

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**Questions**

- 1. What is the situation in the NWFP in relation to the marriage between a woman not divorced under Sharia law and her new husband?**
- 2. Do fatwas issued in one province extend throughout Pakistan i.e. have persons been pursued and killed after relocating to another part of Pakistan?**
- 3. Have there been any reports of returning seamen being harmed in the NWFP because of a perceived western identity (i.e. no beard, western dress and appearance)?**

**RESPONSE**

- 1. What is the situation in the NWFP in relation to the marriage between a woman not divorced under Sharia law and her new husband?**

It should be noted that sources indicate that there are multiple legal systems, both formal and customary, operating concurrently in the NWFP: the federal judicial system, the federal Shariat courts, local interpretations of Sharia law and tribal *jirgas* or councils. These various legal systems are often interwoven, reflecting local customs and traditions as well as judicial and Islamic law. This is particularly the case with family law in the NWFP, in which federal judicial law is often disregarded in favour of local tribal customs in combination with regional interpretations of Sharia. This response will consider the question at issue in several sections: background information on divorce in Pakistani law, judicial, tribal and Shariat, with particular reference to the NWFP; information on the law of *zina*, or adultery, under which a woman not officially divorced would be charged under Sharia law; the growth of Islamist influence over law in the NWFP, with particular reference to efforts to introduce Sharia law across the region; the present situation for and attitudes toward women in the NWFP; and the current security situation in the NWFP.

There have been two previous reports of women being sentenced to death under Sharia law for remarrying without a valid divorce, although it must be noted that neither is recent. On 9 February 1993, the *Sydney Morning Herald* reported that a woman had been sentenced to death in the “Punjab provincial town” of Dera Ismail Khan for “marrying a second time without divorce from her first husband”. (The *Herald* appears to be mistaken in its location of Dera Ismail Khan in Punjab, as a map sourced from the University of Texas places it in the NWFP). *RRT Research Response PAK30628* provides information regarding a 1987 case in which a woman was found guilty of remarriage without divorce and sentenced to death, despite her claims that her husband had pronounced divorce upon her (for the *Sydney Morning Herald* report, see: ‘Wife Faces Execution’ 1993, *Sydney Morning Herald*, 9 February – Attachment 4; for the map showing Dera Ismail Khan in the NWFP, see: ‘Pakistan’ (undated), University of Texas Library website [http://www.lib.utexas.edu/maps/middle\\_east\\_and\\_asia/pakistan\\_pol96.jpg](http://www.lib.utexas.edu/maps/middle_east_and_asia/pakistan_pol96.jpg) – Accessed 9 January 2008 – Attachment 37; for the 1987 case see: Jahangir, A. 2002, ‘A law to lament’, *Dawn* website, 5 June <http://www.dawn.com/2002/06/05/fea.htm> – Accessed 17 October 2006 – Attachment 39; for more background in the 1987 case, see: RRT Research & Information 2006, *Research Response PAK30628*, 17 October – Attachment 23).

The Shirkat Gah Women’s Resource Centre reports of increasing militancy and violence against women in the NWFP and tribal areas. In October 2007 a girls’ school was bombed in Kabal, in Swat, following threats intended to force all students to wear burqas. In September 2007 the offices of two NGOs focusing on women were bombed in the Orakzai agency of the FATA. The website also reports on the beheading of two women in Bannu for “immoral activities” as part of an “anti-vice campaign” in the NWFP (for the Swat and Orakzai bombings, see: ‘Militants bomb girls’ school in Swat’ 2007, Shirkat Gah Women’s Resource Centre website, source: *Daily Times*, 1 October [http://www.shirkatgah.org/newsheet\\_3&4\\_2007.htm](http://www.shirkatgah.org/newsheet_3&4_2007.htm) – Accessed 21 December 2007 – Attachment 8; for the Bannu beheadings, see: Salam, A. 2007, ‘Women beheaded for ‘immoral activities’’, Shirkat Gah Women’s Resource Centre website, source: *Dawn*, 8 September [http://www.shirkatgah.org/newsheet\\_3&4\\_2007.htm](http://www.shirkatgah.org/newsheet_3&4_2007.htm) – Accessed 21 December 2007 – Attachment 9).

## **Background on divorce in the NWFP**

Aspects of this issue have been touched upon in two previous RRT Research responses. *RRT Research Response PAK16320* addresses the legal steps necessary to obtain a divorce for Muslims in Pakistan under Sharia (variant spellings exist – also Shariah, Shari’ah) law. The response provides information which indicates that a divorce must be approved by the area councillor of a “Village Arbitration Council”, and that the divorce is only finalised if registered by the Union Council with jurisdiction over the area. It discusses the possibility that a woman might obtain a divorce under judicial *khul* (lit. “release”), a form of divorce based upon mutual consent in which the wife is obliged to return the bride-price. However, the report also provides information which indicates that a wife must obtain a divorce through the court in all circumstances (see sources provided in RRT Research & Information 2003, *Research Response PAK16320*, 15 December – Attachment 15).

*MRT Research Response PAK31164* addresses divorce in Pakistan, setting out the means by which marriage may be terminated: through repudiation by the husband; by mutual consent; and by juridical dissolution by a court upon the request of the wife. It notes that legislation known as the *Muslim Family Laws Ordinance, 1961* (MFLO) covers marriage, polygamy, divorce (*talaq*), and maintenance, and provides information which indicates that, in theory,

the ordinance extends to whole of Pakistan, and applies to all Muslim citizens of Pakistan. The report details the relevant sections of the Ordinance, which are reproduced below:

#### 7. Talaq.

(1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in sub-section (5) talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under Sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in Sub-section (3) or the pregnancy, whichever later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under his section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.

#### 8. Dissolution of marriage otherwise than by talaq.

Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by talaq the provisions of section 7 shall, mutatis mutandis and so far as applicable, apply (*Muslim Family Laws Ordinance, 1961*, The Pakistan Lawyer website [http://www.pakistanlawyer.com/OTHERS%20LAWS/Muslim%20Law/muslim\\_family\\_laws\\_ordinance.htm](http://www.pakistanlawyer.com/OTHERS%20LAWS/Muslim%20Law/muslim_family_laws_ordinance.htm) – Accessed 16 February 2005 – Attachment 16).

The response provides information which indicates that the non-service of notice to the Council could result in there being no legal divorce. The response also notes a statement made by a former judge of Pakistan's Federal Shari'ah Court and the Supreme Court (Shariah Appellate Bench), which suggests that judicial divorce law actually conflicts with Shari'ah, under which notification of divorce does not need to be sent to any official authority for *talaq* to be effective (for opinions of judge, see Usmani, Muhammad Taqi. 2006, 'The Islamisation of Laws in Pakistan: The Case of Hudud Ordinances', *Muslim World*, 1 April, footnote 16 – Attachment 40; for more background, see: MRT Research & Information 2007, *Research Response PAK31164*, 16 January – Attachment 17).

The following information is taken from a 1999 conference paper that "presents findings from a comprehensive gender study on the effects of the interplay of formal and customary laws on women (and men) carried out in" the NWFP and Baluchistan. The report states that few marriages are contracted through individual choice of the bride and groom, and that the

determination of women's consent to marry is "extremely difficult" to determine. Marriage contracts in the NWFP are often verbal and informal, with written contracts considered as being "against honour and tradition". Consequently, verbal pronouncement of divorce without official legal notification is common, and "divorce processes as enshrined in the major schools of Islamic law and the Muslim Family Laws Ordinance are rarely practiced". While knowledge of forms of judicial divorce available for women is widespread, it "was not found to be a common practice," and the report goes on to state that "tradition and custom does not recognise a woman's right to divorce":

### 5.5 Choosing Marriage Partners

Under statutory law anyone over the age of 18 is legally no longer a minor and therefore does not need parent/guardian's permission to marry, but practices are different. About a quarter of men and women stated that women had the right to choose marriage partners. According to women in NWFP only 8 percent of rural and 37 percent of urban households were women allowed to have a 'say' in the choice of marriage partners. Traditionally women are either not allowed to select their marriage partners, or sometimes select their marriage partners with elders' consent. Interestingly young men are also not asked when brides are chosen for them.

### 5.6 Marriage Consent

Findings in NWFP revealed that women's consent in marriage was obtained in a majority of the households in both urban and rural samples. However almost half of the women in rural areas reported that consent was through the guardian (wali) or elders while half the women in urban areas reported that consent was verbal. In Balochistan a majority of the households reported women's consent at the time of marriage. However, half the women respondents said that the consent was verbal while about 25 percent said it was through guardian (wali)/elder. Under the law and the principles of Muslim jurisprudence the bride and the groom should freely consent to marry each other and there should be a proposal and acceptance (ejab-o-qabool). However, silence on the part of the bride is also taken as consent. This coupled with the fact that consents can also be through the wali/elders or witnesses, makes determination of real consent extremely difficult. Recent cases have shown that parents often insist on the rights of the 'wali' in the matter of a daughter's consent, when she chooses to marry someone they do not approve of.

### 5.7 Marriage Contract

Under the Muslim Family Laws Ordinance, 1961 the groom and bride consent by signing (or placing thumb imprint) on nikahnama in front of witnesses (who also sign). The nikahnama is to be negotiated by both parties, documenting the details of the marriage contract. Compelling a woman into an unwanted marriage is punishable with life imprisonment and up to 30 lashes, under statutory laws. In spite of this about three quarters of the marriages in the rural sample in NWFP were verbal (informal). However, in the urban sample, more than half of the marriages were registered under the Muslim Family Laws Ordinance; and in both Balochistan and NWFP a majority of the households, marriage contracts were oral agreements. It is against honour and tradition to prepare and sign documents. Many people insist that oral contracts are more Islamic and the nikahnama is not necessary.

### 5.8 Men's Rights of Divorcing Wives

Overall findings revealed divorcing wives was neither widespread nor frequent but where they did occur the most common divorce procedure was a verbal pronouncement (repeated three times in immediate succession) by the husband. The divorce processes as enshrined in the major schools of Islamic law and the Muslim Family Laws Ordinance are rarely practiced.

## 5.9 Women's Rights of Divorcing Husbands

Less than 10 percent of households in NWFP and Balochistan spoke of delegated rights of divorce (talaq-e-tafweez) for women under clause 18 of the formal nikahnama (marriage contract). Although considerably more households spoke of the right of judicial divorce (khula) available to women, it was not found to be a common practice. Talaq-e-tafweez as well as khula is fully established in Islamic laws and recognized under Muslim Family Laws Ordinance as Clause 18 of the formal nikahnama, there is a need, however, for wider dissemination of this optional clause. Tradition and custom does not recognize women's right to divorce. Verbal divorce by men and tribal or traditional forms of divorces are most commonly practiced (Kamal, S. 1999, 'Effects of the Interplay of Formal and Customary Laws on Women in Tribal Cultures', Paper Presented at The 7<sup>th</sup> Interdisciplinary Congress on Women, Women's Worlds 99, June 24 [http://www.skk.uit.no/WW99/papers/Kamal\\_Simi.pdf](http://www.skk.uit.no/WW99/papers/Kamal_Simi.pdf) – Accessed 18 December 2007 – Attachment 1).

The Emory Law School website states that Pakistani judicial divorce law states that a woman is entitled to seek a divorce if she has been deserted by her husband for four years, or if the husband has failed "to maintain" her for two years:

Judicial Divorce: grounds on which women may seek divorce include: desertion for four years, failure to maintain for two years or husband's contracting of a polygamous marriage in contravention of established legal procedures, husband's imprisonment for seven years, husband's failure to perform marital obligations for three years, husband's continued impotence from the time of the marriage, husband's insanity for two years or his serious illness, wife's exercise of her option of puberty if she was contracted into marriage by any guardian before age of 16 and repudiates the marriage before the age of 18 (as long as the marriage was not consummated), husband's cruelty (including physical or other mistreatment, unequal treatment of co-wives), and any other ground recognised as valid for the dissolution of marriage under Muslim law; judicial khul may also be granted without husband's consent if wife is willing to forgo her financial rights; leading case *Khurshid Bibi v. Md. Amin* (PLD 1967 SC 97) ('Pakistan' (undated), Emory Law School website <http://www.law.emory.edu/ifl/legal/pakistan.htm> – Accessed 16 October 2007 – Attachment 3).

## Background on "Zina", or Adultery, and the Hudood Ordinance

Information on the crime of adultery, or *zina*, would also appear to be of relevance. According to the Emory Law School website's interpretation of Sharia law as practiced in Pakistan, it would appear that any married woman who enters sexual relations with a man other than her husband is guilty of *zina* and liable to punishment by stoning to death, although it must be noted that this punishment has never been carried out by the state:

The Offence of Zina (Enforcement of Hudood) Ordinance 1979 introduced the concepts of fornication and adultery into criminal law. The Pakistani Penal Code had not afforded any recognition to fornication as a crime, and adultery was only defined as an offence under section 497 if a man had intercourse with the wife of another man without his permission; the woman involved bore no criminal liability. The Zina Ordinance provides for severe penalties for committing adultery or fornication, and reiterates the classical distinction between married and unmarried parties in determining punishments. Thus, the hadd punishment for a married person convicted of *zina* is rajm, stoning to death, a penalty that has not been carried out by the state, and the hadd for an unmarried person found guilty of *zina* is one hundred lashes in a public place. The Ordinance also makes a distinction between tazir and hadd punishments for

zina, as hadd punishments are generally more severe and require a more rigorous standard of proof. If the accused confesses to the crime, or if there are four pious adult Muslim male eye-witnesses to the actual act of penetration, the hadd penalty may be applied. Often the higher standard of evidentiary requirements is not met, and if there are other complications as well (appeals, retractions of confessions, etc.), the usual course has been to apply tazir punishments, defined as imprisonment for up to ten years, thirty lashes, and a fine ('Pakistan' (undated), Emory Law School website <http://www.law.emory.edu/ifl/legal/pakistan.htm> – Accessed 16 October 2007 – Attachment 3).

The Pakistan Women Lawyer's Association addresses the issue of *zina* in its discussion of its desired reforms to Pakistani law. They state that the uncertain state of marriage and unreliable recording of divorces, due to the non-official nature of traditional and *Sharia* ceremonies, results in violence against and imprisonment of women:

The Zina Ordinance has created distressing situation wall [sic] and several innocent women have gone through jail and torture. Often there is no "Mansrea", there is question of Validity of Divorce and marriage. There must be immediate amendment and complaint of Zina must be made to The Family Court after due evidence and process should decide whether there is valid divorce or marriage or whether Zina is being committed .and only when the court confirms the commitment of Zina ,the complaint can be proceeded with the Family Court Certificate to the police for criminal proceeding for Zina ('PAWLA's Project/Services' (undated), Pakistan Women Lawyer's Association website <http://www.pawla.sdnpk.org/Law%20Reforms.htm> – Accessed 21 December 2007 – Attachment 7).

On 9 February 1993, the *Sydney Morning Herald* reported that a woman had been sentenced to death in the Punjab provincial town of Dera Ismail Khan for "marrying a second time without divorce from her first husband":

A Pakistani court ordered the public stoning to death of a woman convicted of marrying a second time without a divorce from her first husband, a court official said today.

Her second husband was sentenced to a public flogging of 100 lashes in the Punjab provincial town of Dera Ismail Khan [note: Dera Ismail Khan is actually in the NWFP] on Saturday, he said.

Nasreen, 35, was found guilty of marrying Ghulam Jaffer Shah in 1989 despite her marriage to Imdad Hussain, by whom she had five children. Nasreen told Shah her first husband had divorced her verbally, which is allowed in Islam.

The couple were arrested on a complaint lodged by Hussain in November 1989 and charged under Islamic law.

Nasreen has been sentenced to five years in prison before her execution. Similar sentences have been passed in Pakistan but never carried out. The couple have a right of appeal to the Federal Sharia Court, the highest Islamic court ('Wife Faces Execution' 1993, *Sydney Morning Herald*, 9 February – Attachment 4)

The *Herald* appears to be mistaken in its location of Dera Ismail Khan in Punjab, as a map sourced from the University of Texas places it in the NWFP ('Pakistan' (undated), University of Texas Library website

[http://www.lib.utexas.edu/maps/middle\\_east\\_and\\_asia/pakistan\\_pol96.jpg](http://www.lib.utexas.edu/maps/middle_east_and_asia/pakistan_pol96.jpg) – Accessed 9 January 2008 – Attachment 37).

*RRT Research Response PAK30628* addresses issues surrounding *zina* and the death penalty. It details two previous instances of women being sentenced to death for *zina*, one in 1982 and one in 1987. In the 1987 case, the accused was found guilty of remarriage without divorce, despite her claims that her first husband had pronounced divorce upon her. The husband denied this, and the response notes sources indicate that even though it is the duty of the husband to register the divorce, it is the wife who is punished if he fails to do so. The response also provides detail regarding the Pakistani laws regarding *zina* and the Hudood Ordinance and the plight of women accused under these laws (for the 1987 case see: Jahangir, A. 2002, 'A law to lament', *Dawn* website, 5 June <http://www.dawn.com/2002/06/05/fea.htm> – Accessed 17 October 2006 – Attachment 39; for information on *zina* and the Hudood Ordinance, see: RRT Research & Information 2006, *Research Response PAK30628*, 17 October – Attachment 23).

### **The Protection of Women (Criminal Laws Amendment) Act, 2006**

The Hudood Ordinance was amended on 1 December 2006 with the introduction of the Protection of Women (Criminal Laws Amendment) Act, 2006. According to the legislation, this Act was designed “to provide relief and protection to women against misuse and abuse of law and to prevent their exploitation.” The ‘Statement of Objects and Reasons’ within the Act acknowledges the criticisms of the harm done to women through the Hudood Ordinance and the strict interpretation of *zina*, stating that “the Zina Ordinance has been abused to persecute women, to settle vendettas and to deny basic human rights and fundamental freedoms.” It also attempts to address the difficulties caused by the informal nature of many marriage and divorce arrangements, and the ability for “vengeful former husbands” to misuse this against their ex-wives. It also raises the age at which consent can be used as a defence argument in a rape case to sixteen, and claims to provide judicial legal protection for women accused of *zina*:

The Zina and Qazf Ordinances have been a subject of trenchant criticism by citizens in general and scholars of Islam and women in particular. The criticisms are many. These include the lumping of the offence of *zina* with *zina-bil-jabr* (rape) and subjecting both to the same kind of proof and punishment. This has facilitated abuse. A woman who fails to prove rape is often prosecuted for *zina*. The requirement of proof for the maximum punishment of *zina-bil-jabr* (rape) being the same as that for *zina*, it has made absolutely impossible to prove the former.

...The Zina Ordinance also defines “marriage” as a valid marriage. In rural areas, in particular, *nikahs* generally and divorces particularly are not registered. It becomes difficult for a person charged with *zina* to establish “valid marriage” as a defence. Non-registration has its civil consequences. These are sufficient. Failure to register a *nikah* or have a divorce confirmed should not entail penal consequences. This is in consonance with the Islamic norm that *Hadd* should not be imposed whenever there is any doubt about the commission of the offence. The misuse of the law in such cases has made it an instrument of oppression in the hands of vengeful former husbands and other members of society.

A triple *talaq* is pronounced. The woman returns to her parental home. She goes through her period of *iddat*. After a while the family arranges another match and she gets married. The husband then claims that sans the confirmation of divorce by the local authorities the

marriage is not over and launches a zina prosecution. It is necessary to delete this definition to shut this door.

There is no hadd for the offence of zina-bil-jabr (rape). It is a Ta'zir offence. The definition and punishment of rape is, therefore, being incorporated in the PPC in sections 375 and 376 respectively. The gender neutral definition is being amended to clearly provide that rape IS an offence committed by a man against a woman. As consent of the woman is a defence to the charge of rape it is being provided that such consent would not be a defence if the woman is less than 16 years of age. This accords both with the need to protect the weak, which the Qur'an repeatedly emphasizes, and the norms of international legal obligations.

...The definition of zina and qazf remain the same as in the Zina and Qazf Ordinances. For both zina and qazf the same punishments have been retained, as well.

Zina is a heinous crime that corrupts public morals and destroys the sense of modesty. The Qur'an regards zina an offence against public morality. The requirement of four eyewitnesses is not solely an evidentiary burden of extra-ordinary weight. It is also an assertion that if contrary to the hadith, "Allah loves those who hide their sins", one commits an act in so blatant a fashion that four people see it, the harm to society must be serious indeed. At the same time, the Qur'an protects privacy, prohibits baseless assumptions and inquisition and forbids interference in the life of others. It is for this reason that a failure to prove zina entails punishment for qazf (false accusation of zina). The Qur'an requires the complainant to bring four eye-witnesses to prove the accusation of zina. The complainant and the witnesses must be conscious of the seriousness of this offence and must know that if they make a false accusation or cannot prove the charge beyond doubt they will be punished for qazf. The conviction will follow the failure of the zina prosecution and will not be contingent on the initiation of fresh legal proceedings.

The Zina Ordinance has been abused to persecute women, to settle vendettas and to deny basic human rights and fundamental freedoms. To check such abuse both in the case of zina and qazf the Cr. P.C. is being amended to provide that only the Court of Sessions, on a complaint, may take cognizance of such cases. The offence has been made bailable so that the accused do not languish in jail during trial. The police will have no authority to arrest any one in such cases unless so directed by the Court of Sessions and such directions cannot be issued except either to compel attendance in court or in the event of a conviction ('Protection of Women (Criminal Laws Amendment) Act, 2006', December 1 <http://www.pakistani.org/pakistan/legislation/2006/wpb.html> – Accessed 8 January 2008 – [Attachment 24](#)).

However, even before the Act had been signed into law, a Human Rights Watch statement criticised the inadequate nature of the reforms:

The Pakistani government's proposed amendments to the Hudood Ordinances are grossly inadequate and fall far short of the reform required to end legalized discrimination and deter violence against women, Human Rights Watch said today.

Pakistan's National Assembly is meeting this week to consider amendments to the Hudood Ordinances that would introduce minor procedural changes, but fail to address fundamental problems with the laws. For example, a person charged under the Hudood Ordinances will now be able to post bail. However, the discriminatory provisions that criminalize sex outside of marriage, value women's testimony as half that of a man's, and fail to recognize marital rape remain in force. Islamic Shari'a punishments, including stoning to death, lashing and amputation for various offenses, would also remain.



“Any relief provided to those charged under these unjust laws is welcome,” said Brad Adams, Asia director of Human Rights Watch. “But the proposed amendments don’t end the discrimination. The Hudood Ordinances are fundamentally flawed and must be repealed in their entirety.”

Human Rights Watch said that Pakistan should ensure that it complies with its obligations under the Convention on the Elimination of Discrimination Against Women, which calls on states to modify or abolish laws that discriminate against women. Human Rights Watch called on Pakistan to decriminalize adultery and non-marital consensual sex and adopt rules of evidence that give equal weight to testimony given by men and women.

In addition, Human Rights Watch said that Pakistan should improve support services such as shelters and burn units for women, raise public awareness about the laws and better train police to deal with victims of sexual assault.

The Hudood Ordinances – a set of laws that, among other things, criminalize adultery and non-marital sex, including rape – were enacted in 1979 and have led to thousands of women being imprisoned for so-called “honor” crimes. The laws rendered most sexual assault victims unable to seek redress through the criminal justice system, deeming them guilty of illegal sex rather than victims of unlawful violence or abuse (‘Pakistan: Proposed Reforms to Hudood Laws Fall Short’ 2006, Human Rights Watch website, September 6 <http://hrw.org/english/docs/2006/09/06/pakist14124.htm> – Accessed 8 January 2008 – Attachment 25).

A *BBC News* report from November 2006 notes the diverging opinions toward the Act held by the Pakistani Government, Islamist groups and progressive movements. The report states that “while the Government is calling the act ‘historic’, the religious parties are calling it ‘un-Islamic’ and ‘a secular conspiracy’ against an Islamic Pakistan.” Women’s groups and liberal politicians welcomed the reforms, “but say that they don’t go far enough”, wanting “nothing less than a total repeal of the Hudood Ordinance”. “Observers and analysts” suggest that there are loopholes in the Act, that poor rural women will find them of little use, and that they may actually make the reporting of rape cases more difficult:

The vote by Pakistan’s lower house of parliament to amend laws concerning rape and adultery has been met with mixed emotions, but the bill’s likely impact is far from clear. While the government called the legislation “historic”, the religious parties are calling it “un-Islamic” and “a secular conspiracy” against an Islamic Pakistan.

The Women’s Protection Bill was passed after much wrangling and posturing between the government and the religious opposition. The new Women’s Protection Bill brings rape under the Pakistan Penal Code, which is based on civil law, not Sharia.

Liberal politicians and women’s’ rights activists have welcomed the reforms as progress – but say they do not go far enough. Most campaigners want nothing less than the total repeal of the Hudood Ordinance which covers much more than sexual morality but also matters such as drinking and theft. Nevertheless, many are calling Wednesday’s vote “a small step in the right direction”.

Iqbal Haider, general secretary of the independent Human Rights Commission of Pakistan, says: “I must emphasise that these are not a substitute for the repeal of the Hudood Ordinance. “However, this is a positive step, although much needs to be done.”

Religious hardliners are up in arms, however. “We have been against the bill from the start,” says Samia Raheel Qazi, a women MP from the conservative MMA alliance, and daughter of

senior MMA leader Qazi Hussain Ahmed. She maintains that the bill goes against articles 2a and 227 of the constitution of Pakistan, which state respectively that “Islam will be the state religion” and “No laws will be passed which are repugnant to the Koran and sunnah.”

“The Hudood Ordinance was devised by a highly qualified group of ulema (Islamic scholars), and is beyond question,” she says, adding that five elected assemblies since Gen Zia’s time have found the laws valid. She is convinced that the current legislation is part of an American agenda, and adds: “This is not the act of a sovereign parliament... It’s a military dictatorship imposing its will on the people.”

MPs from the government coalition have hailed the legislation as a “great victory”. Haider Rizvi, an MP from the MQM, a minority party in the ruling coalition, says: “This is a historic day in the fight against the forces of feudalism and fundamentalism.” The MQM has played a key part in pushing the legislation through, bearing in mind the known religious leanings of its majority coalition partner, the PML-Q. “When these laws come into effect, the false accusation which inflicts such cruelty and injustice on defenceless women will be brought under control,” says Mr Rizvi.

The new laws propose that all charges concerning rape and adultery will be heard by a sessions judge who will determine whether there is enough evidence to warrant an investigation. Reporting rape cases will now be much harder, most analysts believe. If the accusations are found to be false, then the complainant will immediately have a case registered against him or her, with a punishment of 80 lashes.

Observers and analysts feel that given that the writ of the law is hardly ever enforced, and then usually on the side of the powerful, it still remains to be seen how poor rural women such as gang rape victim Mukhtar Mai would benefit from the proposed new legislation.

Mr Haider says the “real test will come with enforcement”. Imrana Khwaja, a lawyer and former women’s rights activist says: “It’s going to change things, but not a great deal.” She says there are loopholes to be exploited. For example, someone complaining of adultery can still decide to have the case heard in an Islamic court. As in rape cases, the complainant has to produce four witnesses to back up the accusation. “Rural communities always react strongly against adultery cases, and finding four witnesses to testify on the complainants’ behalf from the community is not hard,” she says.

Another other factor is that reporting rape cases will now be much harder, most analysts believe. Complainants will have to report rapes in district sessions courts rather than local police stations, which are open round the clock. While women will feel safer in the court, many in rural areas will have to travel miles to register their cases. And they will not be able to do so during long hours when the court is closed – hours which could be crucial in gathering forensic or circumstantial evidence (Hasan, S. 2006, ‘Strong feelings over Pakistan rape laws’, *BBC News*, 15 November [http://news.bbc.co.uk/2/hi/south\\_asia/6152520.stm](http://news.bbc.co.uk/2/hi/south_asia/6152520.stm) – Accessed 8 January 2008 – Attachment 26).

In February 2007, Abira Ashfaq, an attorney who has worked in Pakistan with the War Against Rape and Lawyers for Human Rights groups, wrote in *PeaceWork* magazine that “while celebration is justified, the women’s movement in Pakistan has a long way to go.” She notes that attitudes to the Act have split the women’s movement in Pakistan, as “while some ardently favoured a complete abrogation of the laws, others were pleased with the semblance of a shift, the first in 27 years.” Ashfaq suggests that the passing of the Act provides a “safety-valve” against pressure from the international community over “Pakistan’s anti-women laws” but that it “does not really change the balance of power (mullah-military versus women).” She also addresses the clash of influences in Pakistani society, “a place

where a vibrant, urban women's movement, a largely tolerant civil society, and a liberal higher court system co-exist with the powerful Jamat-i-Islami, a robust system of right-wing religious education, and a misogynist police force”:

In November 2006, women in Pakistan and around the world celebrated the passage of the Women's Protection Bill, a rare instance of positive legislative reform offering some relief from Pakistan's infamous “Hudood Ordinances” -- a set of religious-based laws that includes extreme restrictions and punishments for women. While celebration is justified, the women's movement in Pakistan has a long way to go.

...The women's movement was split; while some ardently favored a complete abrogation of the laws, others were pleased with the semblance of a shift, the first in 27 years. The Hudood Ordinances had survived despite efforts by Nawaz Sharif and Benazir Bhutto. Their existence had seemed to be etched in stone.

Since the passage of the Bill, rape and other crimes whose punishment is not prescribed by the Quran will be covered by the Pakistan Penal Code and punishable under tazir. The complaint process is amended to discourage the filing of false accusations of zina. The complainant must take four male eye-witnesses to a sessions judge. To issue a summons, the judge must then ensure that the witnesses meet Islamic standards of morality and truthfulness and that a prima facie case exists. Lying witnesses may be punished. The term “confession” is amended to be an explicit and voluntary admission in court before a judge. Zina defendants are now eligible for bail. Most importantly, complaints of rape can no longer be turned against the victim.

...The Women's Protection Bill does function as a safety valve -- easing off some of the most intense international and domestic pressure against Pakistan's anti-woman laws -- but it does not really change the balance of power (mullah-military versus women). The Hudood Ordinances' provisions for crimes against person and property and their corporal punishments still stand. Zina and false accusations are still punishable by stoning. Arguments that the high evidentiary standard provides a safeguard do not give solace. A woman I met at the Karachi Jail said her husband filed a zina complaint against her. He conjured up sixteen witnesses, mostly family members, who claimed to have known about the affair. Under the current complaint process -- even since the passage of the Women's Protection Bill --if he is able to produce four “eyewitnesses,” she could still be sentenced to death by stoning.

Activist and lawyer Asma Jehangir writes that “[t]he level of morality in Pakistan was better prior to the promulgation of the Hudood laws in 1979.” An appeal to “morality” appears hypocritical in a country where the state immorally denies women political and economic rights, yet one can see its pragmatism. Pakistan is a place where a vibrant, urban women's movement, a largely tolerant civil society, and a liberal higher court system co-exist with the powerful Jamat-i-Islami, a robust system of right-wing religious education, and a misogynist police force. A lot of work has to be done ground-up to tip the balance toward equality. Working for women's health, education, and economic autonomy is the only way (Ashfaq, A. 2007, ‘Reform in Pakistan: Real Change, or a Band Aid?’, *PeaceWork*, Issue 372, February <http://www.peaceworkmagazine.org/reform-pakistan-real-change-or-band-aid> – Accessed 8 January 2008 – Attachment 27).

A 2007 assessment of the Act by Farooq Hassan, a Senior Advocate of the Supreme Court of Pakistan, concurs with Ashfaq's view. Hassan states that “while looking ‘progressive,’ the bill does little to advance a matter that is firmly rooted in the cultural history of this country.” Hassan goes on to say that “the label ‘Women's Protection Bill’ is patently misleading. All it does is change the forum and modalities of making accusations only in rape cases... It does not directly or indirectly protect or advance the case of women at all”:

This bill aims to essentially achieve a single objective: to make one of the most controversial and misused Hudood Ordinances lose its teeth. According to its critics, this particular law, adopted by the last military ruler, General Zia, has often banefully inflicted injustice on Pakistani women. Arguendo, it conceivably could have been repealed long ago. But such are the inscrutabilities of politics in Pakistan: Rulers have often chosen to ignore the manifest necessity for expediency. What the present military regime has done vis-à-vis by this Hudood enactment is to purportedly make it less threatening for victims to report rape incidents to the police.

The label “Women’s Protection Bill” is patently misleading. All it does is change the forum and modalities of making accusations only in rape cases; it is nevertheless a state action that has been noticed internationally in respect of Pakistan. It does not directly or indirectly protect or advance the case of women at all. This contention is amply proved and established: From the very next day, November 16, the government introduced another draft bill which aims to obtain for women other forms of “relief” from the seemly oppressive nature of the prevalent laws as well as from the machinations of a corrupt police establishment that apparently flourishes in this country.

The political head of the ruling alliance, Shujahat Hussain, while depositing the draft of the new proposed legislation on November 16 with the Assembly Speaker, said that

The National Assembly of Pakistan would do away with “evil customs like vani [giving the hand of women to settle murder disputes], swara [forcibly marrying young girls to members of different clans in order to resolve blood feuds] and honor-killings” in the remainder of its tenure. This is a follow-up move on the Women Protection Rights Bill which was passed by the National Assembly on Wednesday. The bill seeks to not only empower women, but also give them their due rights. The bill that we passed on Wednesday is the first step of our government towards protection of women’s rights, and the new bill is part of our agenda to ensure that their full rights are given to them.

The federal Minister for Parliamentary Affairs, Sher Afgan Khan Niazi, said the new bill, seeks to put an end to six anti-women practices, as shown in the following:

One, it seeks action against those who deprive women of their inheritance or property rights. Two, it legislates against vani or the custom of giving the hand of women, mostly under-age girls, to settle murder disputes. Third, it criminalizes forced marriages. Fourth, it proposes legal action against those who issue three divorces to their wives in one sitting. Fifth, it makes women’s marriage with the Qur’an a crime. Sixth, it puts an end to the custom of watta-satta [bartering bride for bride].

It is thus patently clear that the Women’s Protection Bill is characterized by the following:

1. It does not repeal the Zina (rape) Ordinance designed for rape victims. The new law, when it comes into effect after it has been duly enacted, would only alter the procedural formalities of handling such cases. Under this bill, rape has been taken out of the Hudood law and included in the Pakistan Penal Code (PPC) as it was before General Zia decided to equate it with adultery, since it effectively made a raped woman liable of being punished for fornication if she failed to produce sufficient evidence. Such evidence is generally considered by many local lawyers who have commented on these evidentiary rules, as outlined hereinafter (see Section 8 of the Hudood Ordinance), to be the oral testimony of four male witnesses.

2. The second major amendment is to change the procedure for registering a zina case. The offense is no longer cognizable and only a court can decide whether the case has any merit;

even if it does, the offense is bailable. Under the laws of England left as legacy in many contemporary Commonwealth countries, the police cannot embark upon jurisdiction in non-cognizable cases without the orders of a court of law. The term bailable connotes that the police and the courts have a duty to grant bail in such cases.

3. The “protection” aspects of the bill for women are exaggerated or misplaced.

4. Another provision in this bill makes lewdness (later changed to fornication, defined as consenting sex between unmarried couples) punishable under the PPC. In this provision, there is the opening of the door again to the norms and philosophy of the Hudood Ordinance, which incidentally remains, even after these amendments, the superior law to the amending bill.

... The passage of the Women’s Protection Bill in this amended form (from the original recommendations of the House-Select Committee) indicates an attempt by the government to take a middle position between the liberal lobby and the conservative elements within its fold as much as in the country generally. The critics of the controversial Hudood Ordinance enacted by General Zia have maintained that instead of protecting the victims of rape, the law in fact helps the perpetrators of the crime by putting the onus on the woman to produce four witnesses to support the claim as purportedly required by the Islamic laws) or to be sent to jail on a charge of adultery. The ordinance, they argued, needed to be repealed in its entirety. On the other hand the supporters of the ordinance maintained that its misuse could be stopped by providing a few safeguards instead of changing its basic principles. It is important to mention that neither in the Hudood Ordinance nor in the present amendments through this WPB is there any direct reference to the Qur’an or the Shari`ah rules or precedents on this point.

... A point of tremendous legal significance not really noted by most writers on this subject is that the Musharraf regime went outside of the Constitution to placate the religious elements in the country. In a panic, the government set up an extra-parliamentary committee of religious scholars to pacify such extremist “Islamists” and created a new kind of “criminal conduct.” This new section says that rape should fall under both religious and secular law. It introduced a new, very broadly defined category of “lewdness” into the penal code, and reinstated a clause giving the Hudood Ordinances pre-eminence over any law with which they might come into conflict. Liberal political parties, civil and human rights activists, and lawyers can certainly argue that these changes essentially eviscerated the “reform” and allowed influential religious lobbies to manipulate for their political aims what is seen as a weak judicial system.

Despite vociferous objections from the Islamic parties known as the Muttahida Majlis-e-Amal (MMA), the bill had been approved by a parliamentary committee with the support of the main secular opposition Pakistan People’s Party (PPP). The committee proposed removing rape from religious law and putting it instead in the secular penal code where normal rules of evidence would apply. The MMA cried foul, threatening to resign en masse from the Parliament if the bill was passed.

The political opposition to General Musharraf is split precisely along ideological lines over the bill. The PPP parliamentarians voted with the government, deciding to risk its anti-regime credentials and choosing principles over political expediency. The Pakistan Muslim League-N, never warm to the bill in any case and the most resolutely anti-government force of all, chose to abstain from voting. The MMA walked out angrily from the Assembly but, significantly, failed to resign en masse as it had threatened to do. Most significantly, it failed to put on record in the parliamentary debates a reasoned point of view.

The government was able to persuade potential supporters of the bill — most notably the PPP and the Muttahida Qaumi Movement — that it was in fact not so different from the scuttled bill approved by the parliamentary select committee some months back. It also managed to include parts of the bill approved by the Ulema Committee, but not enough to frighten away

its allies or too little to alienate the MMA altogether. In the end, it was this hybrid bill that was tabled in the National Assembly, the contents of which created just the right amount of confusion to carry the day. There will no doubt be endless debates about the merits and demerits of the bill in the days ahead. It will clearly disappoint those seeking a complete repeal of General Zia's Hudood laws of 1979. On the other end of the political spectrum, the bill will be criticized for opening the floodgates to "free sex," as Maulana Fazlur Rehman put it so colorfully.

The truth is that, as pointed out above, while looking "progressive," the bill does little to advance a matter that is firmly rooted in the cultural history of this country. The bill is at best a modest first step towards a more rational policy on sexual assault and rape and will bring relief to women who refrained from reporting such crimes in the past because they were afraid of being arrested on zina charges. For starters, it takes away the power of the police to arrest a woman accused of rape and gives this to a sessions court, and the latter too will only be able to summon a woman to attend a court hearing or in the case of conviction. Consensual intercourse between unmarried people has been made an offense punishable by up to five years imprisonment and a ten-thousand rupee fine, but the bill imposes similar punishment on those who file a complaint that such an act has taken place and then fail to prove their charge (Hassan, F. 2007, 'Women's Protection Bill: Perception and Realities', Reading Islam website

[http://www.readingislam.com/servlet/Satellite?c=Article\\_C&cid=1153698300113&pagename=Zone-English-Discover\\_Islam%2FDIELayout](http://www.readingislam.com/servlet/Satellite?c=Article_C&cid=1153698300113&pagename=Zone-English-Discover_Islam%2FDIELayout) – Accessed 8 January 2008 – Attachment 28).

The World Socialist Web Site condemned the legislation as a "cynical manoeuvre" providing a "progressive gloss" to the Musharraf regime (Peiris, V. 2007, 'Musharraf's reform of Pakistan's rape law a cynical manoeuvre', World Socialist Web Site, 24 January <http://www.wsws.org/articles/2007/jan2007/paki-j24.shtml> – Accessed 8 January 2008 – Attachment 36).

### **Islamist influence over law in the NWFP**

The following information encompasses attempts to impose Sharia law in the NWFP, an overview of the situation for women, and an overview of recent violence in the region. Radical Islamic groups in the NWFP have been fighting to impose Sharia law in the region for many years. In October 2001, the Islamic coalition Muttahida Majlis-e-Amal (MMA) achieved a majority in the NWFP regional elections. The MMA won a mandate to form government at the provincial level in the November 2002 elections, as well as achieving success in the national poll. Legislation to implement Sharia law as the legal system of the NWFP was passed by the MMA-led government in June 2003. In July 2005, additional legislation, known as the Hisbah (also Hisba or Hasba) bill was introduced to the NWFP parliament. This sought to establish the position of *mohtasib*, or ombudsman, to oversee the enforcement of Sharia and to ensure that the people of the NWFP live by Islamic values. The most controversial section of the Hisbah bill introduced a "hisba police", the enforcement arm of the office of the *mohtasib*. The legislation was passed by the NWFP government, but the Governor of the province refused to ratify the bill, and in August 2005 the Supreme Court rejected sections of the Hisbah bill as unconstitutional. In November 2006, a modified Hisbah bill was passed by the NWFP government but again it was suspended by the Supreme Court, after referral by President Musharraf. In February 2007 the Supreme Court upheld most of the modified Hisbah bill, but by the dissolution of the MMA-led government at the end of its five-year term, in October 2007, the legislation was still not in force (for an overview and history of the MMA, see: 'Muttahida Majlis-e-Amal (MMA)' (undated), GlobalSecurity.org website <http://www.globalsecurity.org/military/world/pakistan/mma.htm> – Accessed 9

January 2008 – Attachment 29; for details of the Hisbah bill, see: ‘Text of Hasba bill’ 2005, *Dawn/The News International*, Karachi, 16 July  
[http://www.karachipage.com/news/Jul\\_05/HasbaBill.htm](http://www.karachipage.com/news/Jul_05/HasbaBill.htm) – Accessed 9 January 2008 – Attachment 30; for information on the debate over the 2004 Hisbah bill, see: Anderson, P. 2004, ‘Protest at Pakistan Sharia plans’ *BBC News*, 7 July  
[http://news.bbc.co.uk/2/hi/south\\_asia/3874281.stm](http://news.bbc.co.uk/2/hi/south_asia/3874281.stm) – Accessed 9 January 2008 – Attachment 31; for an overview of the progress of the bill up to the 2006 Supreme Court suspension, see: Morgan, A. 2006, ‘Pakistan: Muslim morality bill suspended’, SperoNews website, 16 December <http://www.speroforum.com/site/article.asp?id=7069> – Accessed 9 January 2008 – Attachment 32; for the Hisbah bill in 2007 and an overview of recent Islamicist activity in the NWFP, see Kronstadt, K. 2007, ‘CRS Report for Congress: Pakistan-U.S. Relations’, Congressional Research Service, 24 August  
<http://fpc.state.gov/documents/organization/91857.pdf> – Accessed 9 January 2008 – Attachment 33; for the inability of the MMA to pass the Hisbah legislation, and general criticism of its legislative performance, see: ‘Lacklustre performance’ 2007, *Business Recorder*, 24 November  
<http://www.brecorder.com/index.php?id=655851&currPageNo=1&query=&search=&term=&supDate> – Accessed 9 January 2008 – Attachment 34, and Ali, Z. 2007, ‘Frontier PA passed 55 bills in five years: report’, *Dawn* internet edition, November 1  
<http://www.dawn.com/2007/11/01/nat19.htm> – Accessed 9 January 2008 – Attachment 35).

While the Hisbah bill may not have been passed during the term of the MMA-led government, sources indicate that the situation for women in the NWFP has become steadily worse in the past five years. In June 2003, the Executive Director of the Asia Division of Human Rights Watch sent an open letter to President Bush of the United States, asking him to engage Pakistani President Musharraf in discussion about the introduction of Sharia law in the NWFP. The letter warned of harsh consequences for women under the new laws:

In early June, the provincial legislature of the North West Frontier Province passed a resolution imposing “Sharia laws” in the province. Some aspects of this law will result in de jure discrimination against women, raising fears about Taliban-style polices towards women in this and other parts of the country (Adams, Brad. 2003, ‘Letter to U.S. President George Bush: Press Musharraf on rights abuses, elections’, Human Rights Watch website, June 20 <http://hrw.org/press/2003/06/bush062003-ltr.htm> – Accessed 21 December 2007 – Attachment 4).

An August 2005 report in the *New York Times* noted that some university students in Peshawar claimed that their daily life was largely unaffected by official attempts to enforce and police Sharia law in the NWFP. While acknowledging the potential for the violation of personal freedoms guaranteed under the Pakistani constitution, those quoted in the report doubt the practical possibility of enforcing strict religious law on the ground, and some cast the arguments between local and national governments over the imposition of Sharia law as a political power play:

First, they made it illegal to play music on city buses, but that law seemed to fall flat on its face. Caravans of luridly painted buses still cruise the streets of Peshawar, tinny pop music pouring out of their windows. Then they banned mannequins in shop windows, but shopkeepers shrugged it off. The mannequins quickly returned to the bazaar, displaying stiff smiles.

The Mutahida Majlis-e-Amal, as the coalition of religious radicals is called in Urdu, did succeed in closing the two pubs that served alcohol (though only to non-Pakistani foreigners). Some of their foot soldiers went on a free-for-all vandalizing advertising billboards that displayed pictures of women. And the coalition banned musical performances at a government-owned concert hall.

But high unemployment, dysfunctional schools, a dearth of doctors in the countryside, women dying at alarmingly high rates in childbirth – those problems it has been so far unable to tackle.

Now, in the latest tussle over the influence of religious radicals in Pakistani society and politics, the Islamist-led provincial legislature has passed a bill that would empower religious police to ensure that the people of Frontier Province comply with “Islamic values and etiquettes” in everyday life. The authors of the law assure that the hisba police and a government-appointed cleric who would adjudicate cases would use persuasion, not force, though skeptics wonder how voluntary it would be.

... In Pakistan, Shariah, or Islamic law, already regulates civil matters like marriage, divorce and inheritance. But the federal Constitution guarantees personal freedoms, which, critics say, the hisba law would violate.

The most controversial provision of the “hisba” bill – roughly meaning accountability – is the appointment of a “mohtasib” – roughly meaning ombudsman – in each of the 84 counties and districts in the province. The mohtasib would have authority to regulate a broad spectrum of public and private life, from making sure Muslims offer daily prayers and children obey their parents to stopping bribery of government officials and child labor. It would be up to the mohtasib to interpret Islamic “values” in each locality. He would have a police force at his disposal. There would be no appeal.

“The law is very clear,” argued Bushra Gohar, who runs an organization here that promotes women and children’s rights. “The mohtasib does have extraordinary powers to be judge, jury and executioner. No one can appeal. No one can question.” Pakistan’s attorney general, Makhdoom Ali Khan, said he worried that such a law would allow each ombudsman to interfere in the lives of Pakistani citizens and essentially install a parallel judiciary. From district to district, he argued, the mohtasib’s interpretations could be slightly different on a range of issues, from whether women should be allowed to drive to whether mandolins can be played in public. “These are broad, vague, generalized powers to the ombudsmen to virtually regulate every sphere of human activity,” Mr. Khan said.

... At the local college radio station here the other evening, the young D.J.’s and newsreaders shrugged off the hype over the hisba bill. Shazia Irum, manager of Campus Radio FM 107, said that although she opposed the legislation, she did not fear its consequences. “There are so many provisions of this bill that can’t be implemented,” she said. “I don’t think it will be signed.” The bill, the students here argued, was merely an attempt by the governing party to show that they had made some kind of difference, ahead of elections in 2007. “It’s of no concern to anybody,” said Behzad Hussain, 24, studying for his master’s in business administration. “It’s a political thing. There’s nothing in it.”

For students of politics, the more interesting game to watch is the public tussle over the law. More than ever before, Mr. Musharraf likes to demonstrate his moderate credentials, and it would be hard for him not to speak out against hisba. On the other hand, to crush it in the federal courts could only help the Islamists declare to their constituents that their Islamic ambitions are being hurt by a pro-Western military ruler.



In many ways, observed Atif Ali Khan, a young American-trained lawyer and a supporter of the Islamist coalition, it would have been better for General Musharraf to have allowed Mr. Durrani's government to carry out hisba: It would have very likely proved too difficult on the ground. Even if the Supreme Court rules against it, he suggested, it would be a political victory for the Frontier's ruling party, the M.M.A., as it is known. "It doesn't matter now," Mr. Khan said, flashing the wry smile of an avid politics fan. "The M.M.A. has already won the round. The federal government has played into their hands" (Sengupta, S. 2005, 'Pakistan: Staunch Islam and its Many Foes (Including Apathy)', *New York Times*, August 3 – Attachment 5).

A September 2006 *Irish Times* report about the conflict over the repeal of the Hudood Ordinances notes that the MMA had passed a bill calling for the full implementation of Sharia law. It also notes the proposed Hisbah bill and the setting up of a "religious police force" to "ensure adherence to Islamic values", and comments on increasing violence against perceived anti-Islamic behaviour, regardless of whether the bill has passed into law:

In the North West Frontier Province, which borders Afghanistan, the MMA-dominated government has passed a Bill calling for the full implementation of sharia law. They talk of closing down cinemas and music shops, making the hijab compulsory for women, replacing "Western" school uniforms with the national dress of shalwar kameez, and introducing gender segregation in schools.

Another Bill proposes the setting up of a religious police force similar to that used during the Taliban regime in Afghanistan. It would be run by a cleric, the draft Bill states, whose main duty would be to "ensure adherence to Islamic values in public places".

That would involve ensuring people adhere to prayer times, preventing men and women from mixing together in public and discouraging singing and dancing.

Activists in the province have defaced billboards featuring female models, vandalised satellite dishes and burned stacks of television sets (Fitzgerald, M. 2006, 'Under the Crescent: Pakistan – A Question of Boundaries', *The Irish Times*, 1 September – Attachment 2).

The Shirkat Gah Women's Resource Centre website reports of increasing militancy and violence against women in the NFWP. In October 2007 a girls' school was bombed in Kabal, in Swat, because the students were not wearing burqas. In September 2007 the offices of two NGOs focusing on women were bombed in the Orakzai agency of the FATA. The website also reports on the beheading of two women in Bannu for "immoral activities" as part of an "anti-vice campaign" in the NWFP:

MINGORA: Militants on blew up a girls' school in Kabal, Swat. A nearby mosque was also damaged in the explosion that took place at 2:00 am. A week before the tragic incident unidentified people had warned the administration of the Kabal Higher Secondary School of "dire consequences" if the students did not wear burqas. Two people sustained injuries when militants blew up the offices of two NGOs in Orakzai Agency, police said.

The first blast occurred at around 10.50am at the Women Welfare Centre office, which destroyed the office building, damaged three vehicles and injured two people in the nearby houses. The second blast in the Sarhad Rural Support Programme office damaged the building, but no casualties were reported. Hangu DPO Ghulam Mohammad said bomb disposal squads should check all NGO offices to ensure security ('Militants bomb girls' school in Swat' 2007, Shirkat Gah Women's Resource Centre website (source: *Daily Times*),

1 October [http://www.shirkatgah.org/newsheet\\_3&4\\_2007.htm](http://www.shirkatgah.org/newsheet_3&4_2007.htm) – Accessed 21 December 2007 – Attachment 8).

BANNU: Suspected militants have beheaded two women they accused of indulging in immoral activities. The bodies of the women, who had been kidnapped a day earlier by armed people, were found in the Baran Dam area in the troubled Frontier Region of Bannu.

Witnesses said a note in Pashto was found near the bodies, warning that “women involved in immoral activities will meet the same fate”.

A local police official told Dawn it had not been confirmed that the women, Ms Mena, 45, and Ms Malki, 40, were involved in any immoral activity.

Ms Basri, a relative of the women, has lodged an FIR with the Bannu Cantonment police.

Nobody has accepted responsibility for the murders, but local people said the way the women were murdered indicated that it was the work of local militants who wielded influence in the area.

“It appears that the women were killed by militants because they had no enmity with anyone,” said the police official...

Militants have launched ‘anti-vice campaigns’ in different tribal areas and settled districts of the NWFP and have been attacking video and CD shops, internet cafes, hair-dressing salons, drug dens and girls’ schools.

Scores of people have been kidnapped and beheaded on the charge of spying for the government and the US.

However, this is for the first time that women have been beheaded. The militants have issued a warning to women against indulging in “acts of obscenity” (Salam, A. 2007 ‘Women beheaded for ‘immoral activities’’, Shirkat Gah Women’s Resource Centre website (source: *Dawn*), 8 September [http://www.shirkatgah.org/newsheet\\_3&4\\_2007.htm](http://www.shirkatgah.org/newsheet_3&4_2007.htm) – Accessed 21 December 2007 – Attachment 9).

In a further indication of the present climate for women in the NWFP, the Shirkat Gah Women’s Resource Centre website carries an October report from *The Herald* which details the closing of primary schools for girls in the province. The report also states that the employment of female teachers has been “terminated”, after they had been “unpaid for months”, and claims that the majority of primary schools are now only educating boys:

PESHAWAR: Some 14,000 children, most of them girls, have been deprived of an education following the closure of 204 community primary schools. The provincial government ordered the closure, which was put down to a shortage of funds. The last of these schools was closed in the month of August. Four hundred and eight female teachers, whose salaries went unpaid for months, were also terminated.

There are 22,281 government-run primary schools in the North West Frontier Province (NWFP). Only 7,627 of these are providing education to girls while the remaining cater to boys. Educators say that the number of educational institutions is insufficient to cope with the increasing number of children (Khan, M. 2007, ‘NWFP government deals a harsh blow to education’, Shirkat Gah Women’s Resource Centre website (source: *The Herald*), October [http://www.shirkatgah.org/newsheet\\_3&4\\_2007.htm](http://www.shirkatgah.org/newsheet_3&4_2007.htm) – Accessed 24 December 2007 – Attachment 10).

An April 2007 opinion piece in the *New Statesman* by academic, writer and broadcaster Ziauddin Sardar gives the following on-the-ground impression of life in the NWFP:

Taliban-type militias have also taken control of parts of the adjacent NWFP. In Peshawar, one of the most open and accessible areas of the province, one can feel the tension on the streets. There are hardly any women out in public. The city, which has suffered numerous suicide attacks, is crowded with intelligence officers. Within an hour of my arrival in Peshawar, I was approached by a secret service official who warned that I was being watched. It is practically impossible for outsiders to enter other NWFP towns such as Tank, Darra Adam Khel and Dera Ismail Khan. In Dera Ismail Khan, outsiders – that is, Pakistanis from other parts of the country – need police escorts to travel around. You are allowed in only if you can prove you have business or relatives there. Girls' schools have been closed, video and music shops bombed, and barbers forbidden from shaving beards. The religious parties have passed a public morality law that gives them powers to prosecute anyone who does not follow their strict moral code. Legislation to ban dance and music is being planned. Even administration of polio vaccination campaigns has been halted amid claims that it is a US plot to sterilise future generations (Sardar, Z. 2007, 'Pakistan: The Taliban takeover', *New Statesman*, 30 April <http://www.newstatesman.com/200704300025> – Accessed 24 December 2007 – Attachment 11).

### **Current security situation in NWFP**

The current situation in Swat and in the NWFP in general is extremely volatile, with ongoing Pakistani military activity against forces loyal to Fazalullah. In December 2007 the International Centre for Political Violence and Terrorism Research stated that the “NWFP remained the most volatile in terms of terrorist activity for the second week running”, with “four CD and video shops ... destroyed in different bomb explosions...”. The weekly report also notes that the various independent groups involved in Jihad in Afghanistan have united under a single leader, with the likely result being that the position of the Taliban inside Pakistan will be strengthened:

The most significant development that took place this week was the decision made by the erstwhile independent groups involved in Jihad inside Afghanistan to unite under a single banner, and a single leader.

...On Friday 13 December 2007, a shura-consultative body comprising of 40 senior Taliban leaders established the Tehrik-i-Taliban Pakistan – the Movement of the Taliban in Pakistan – and appointed powerful South Waziristan Taliban commander, Baitullah Mehsud as its leader and Moulvi Omer as the official spokesman. The shura was made up of Taliban representatives from the seven tribal agencies of North and South Waziristan, Khyber, Orakazi, Bajaur, Mohmand, and Kurram, as well as the settled districts of Swat, Bannu, Tank, Lakki Marwat, Dera Ismail Khan, Kohistan, Buner, and the Malakand division.

The Tehrik-i-Taliban Pakistan demanded the end to Pakistani military operations in Taliban territory and release of their members. The Taliban also stated it would continue the fight against Coalition forces in Afghanistan.

The unification of independent groups under the same banner is likely to strengthen the position of the Taliban in Pakistan as it would allow them to coordinate their military and political activities both inside Pakistan and in neighbouring Afghanistan.

...Although the Pakistani security forces made considerable gains against Mulla Fazlullah led Tehrik-i-Nifaz Shariat-i-Mohammedi (TNSM) in the Swat region, N.W.F.P. remained the most volatile in term of terrorist activity for the second week running.

...In Buner district, a major disaster was averted when the bomb disposal squad was able to diffuse a 30kg bomb planted near the Educators College.

Elsewhere, four CD and video shops were destroyed in different bomb attacks in and around Peshawar... ('Weekly Country Report: Pakistan, 10-16 December 2007' 2007, International Centre for Political Violence and Terrorism Research website, December [http://www.pvtr.org/pdf/weekly\\_reports/Pakistan-10-16December07.pdf](http://www.pvtr.org/pdf/weekly_reports/Pakistan-10-16December07.pdf) – Accessed 24 December 2007 – Attachment 12).

Swat continues to endure heavy fighting, with the military attacking “hardline pro-Taliban cleric” Fazalullah and his followers retaliating with suicide attacks, as detailed in this December 24 2007 report from the *Sydney Morning Herald*:

A suicide bomber in Pakistan killed seven people and wounded almost 30 today when he rammed his car into a military convoy in the restive north-west valley of Swat, the army said.

The attack took place near the town of Mingora in the troubled valley, a former tourist haven that has become a flashpoint for violence where the military has been battling followers of a hardline pro-Taliban cleric.

“A suicide bomber in a white car struck a military convoy near Mingora,” chief military spokesman Major General Waheed Arshad told AFP.

In a separate statement, the military said four security forces personnel and three civilians were killed. It said 15 soldiers and 14 civilians were wounded.

More than 750 people have been killed in militant attacks this year -- and more than half of those since July, when the army raided a radical, pro-Taliban mosque in the capital, Islamabad, killing 100 people.

The military launched a major offensive in the Swat valley last month, looking to drive out followers of Maulana Fazlullah, a radical cleric who has been looking to establish Islamic sharia law in the region and who has since gone underground.

There have been more than 40 suicide attacks in Pakistan this year, many targeting the military and security forces.

The last attack came on Friday, when a bomber wearing a vest packed with ball-bearings blew himself up in a crowded mosque, killing 56 people but missing the intended target, former interior minister Aftab Sherpao.

Sherpao, a close ally of President Pervez Musharraf and a candidate in next month's parliamentary election, oversaw a government crackdown on militants this year while in cabinet.

He survived another suicide attack in April that killed at least 24 people.

The latest bombing came just two weeks ahead of the January 8 vote, which militants have vowed to disrupt ('Seven killed, almost 30 hurt in Pakistan attack: military' 2007, *Sydney Morning Herald*, December 24 <http://www.smh.com.au/news/world/seven-killed-almost-30->

[hurt-in-pakistan-attack-military/2007/12/24/1198344921671.html](http://hurt-in-pakistan-attack-military/2007/12/24/1198344921671.html) – Accessed 24 December 2007 – Attachment 13).

This report also refers to the bombing of a mosque in Peshawar on December 22 which killed at least fifty people and injured many more, and a report on this event, also from the *Sydney Morning Herald*, follows:

A SUICIDE attacker has detonated a bomb inside a packed mosque near the home of Pakistan's former interior minister, killing at least 50 people and wounding dozens.

The blast went off as worshippers held prayers for the Eid ul-Fitr holy day at the mosque in Aftab Khan Sherpao's residential compound in Sherpao, a village about 40 kilometres north-east of Peshawar.

In a telephone interview, Mr Sherpao said the bomber detonated the device in the row of worshippers just behind him and his family. He said he did not know the identity or affiliation of the attacker.

"My son is injured and two grand nephews are injured," he said. The former minister was unharmed.

The suspected bomber detonated his bomb just as prayers ended and people gathered around the politician to greet him, a police official who asked not to be named, said.

"We were saying prayers when this huge explosion occurred," said Shaukat Ali, a 26-year-old survivor.

"It almost blew out our ear drums. Then it was it was like a scene from doomsday."

Provincial police said authorities were still trying to determine the casualty toll. "At least 50 people have been killed and dozens were injured in the attack," the district police chief, Feroz Shah, said. "I fear the death toll may rise further."

He said injured people as well as the bodies of the dead were still being taken to hospitals in and around the Charsadda region, where the attack took place, and the nearby provincial capital of Peshawar in Pakistan's restive north-west.

"Naturally, Aftab Sherpao was the target," Mr Sherpao's spokesman, Salim Shah, said.

It would be the second assassination attempt on the former minister in eight months. In April Mr Sherpao was slightly wounded when a suicide bomber attacked a rally for his political party in the nearby town of Charsadda, killing at least 28 people.

There has been a rash of suicide attacks blamed on Islamist militants since a military assault on the Red Mosque, a militant stronghold, in Islamabad in July. More than 800 people have been killed in the ensuing violence across the country, with about half of them killed in suicide attacks.

Mr Sherpao, a close ally of Pakistan's President, Pervez Musharraf, was the interior minister – Pakistan's top civilian security official – in the administration recently dissolved for next month's January parliamentary elections.

He was interior minister when the Red Mosque assault took place and many Pakistanis hold him responsible. He is head of the Pakistan People's Party-Sherpao and is standing as a candidate for parliament in general elections next month.

An attack inside a mosque during Eid ul-Fitr, an important Muslim holiday, appears to represent an escalation of violence by militants who have carried out the record number of suicide bombings in Pakistan this year.

Many of the suicide bombers are believed to be trained in the country's lawless tribal areas, where 100,000 Pakistani troops are fighting Taliban and foreign militants.

Osama bin Laden, the leader of al-Qaeda, is believed to be hiding in the area.

Mr Musharraf, a key ally in the US-led war on terrorism, cited growing militancy as a main reason behind his imposition of emergency rule on November 3. But in a speech to the nation after he lifted the emergency, he said the threat had been contained (Khan, R. 2007 'Holy day torn apart by mosque attack', *Sydney Morning Herald*, December 22 <http://www.smh.com.au/news/world/holy-day-torn-apart-by-mosque-attack/2007/12/21/1198175342083.html> – Accessed 24 December 2007 – Attachment 14).

## **2. Do fatwas issued in one province extend throughout Pakistan i.e. have persons been pursued and killed after relocating to another part of Pakistan?**

No specific information was found on this subject. However, it may be worth noting that *RRT Research Response PAK32205* provides information on the reach of the Fazallulah and the TNSM, suggesting that although it seems unlikely that a fatwa issued by Fazallulah in the NWFP would be pursued in other provinces of Pakistan, it is not impossible. The response goes on to discuss the structure of Pashtun society, with particular regard to structures of kinship and obligation, and the ways in which this might make the pursuing of a fatwa throughout Pakistan possible (RRT Research & Information 2007, *Research Response PAK32205*, 29 August – Attachment 22).

*RRT Research Response PAK30614* provides information relating to tribal *jirgas*, and information on the reach of *jirga* rulings, which may be relevant in this case due to the interpenetration of Islamic and tribal law in the NWFP. It provides information that sources indicate that the writ of the tribal *jirga* is formally limited to the tribal territory, but also that the tribal system of asylum (*nanavati*, or *nanawatay*, or *nanawatey*) indicates that persons adversely affected by a *jirga* ruling are entitled to protection from other tribes, if requested. The response quotes sources which confirm that persons subject to adverse *jirga* rulings have been pursued and returned to their villages for punishment, and that deaths have been reported in this regard. The response also provides information suggesting that, in some tribal areas, Islamic militant groups use the authority of a tribal *jirga* to carry out abuses of human rights, including flogging and demolition of housing (for information on *jirgas* and *nanavati* see: *RRT Research & Information 2006, Research Response PAK30614*, 11 October – Attachment 38).

## **3. Have there been any reports of returning seamen being harmed in the NWFP because of a perceived western identity (i.e. no beard, western dress and appearance)?**

No specific information could be located regarding this issue. However, in a November 2007 report in the *South Asia Intelligence Review* Kanshan Lakshman refers directly to the likelihood of punishment for people in the NWFP who resist directives to comply with strict

Islamic codes of dress and behaviour. The report also provides information about Fazalullah and the TNSM, and their campaign to enforce Sharia law in the NWFP:

The pro-Taliban militants have ensured the closure of girls' schools, bombed shops selling video cassettes and music CDs and prohibited barbers from shaving beards. The extremists punish, often by killing, anyone who disregards their 'social and moral' codes. Moral policing has not spared even the polio vaccination campaign, which the forces of radical Islam consider to be an 'American conspiracy to sterilise future Muslim generations'. The pro-Taliban militants oppose education for females and are also against women working. Girls' schools have not only been closed in Peshawar but also in some Districts such as Mardan.

...Orchestrating the disorder in Swat is Maulana Fazlullah, the son-in-law of Maulana Sufi Mohammed, the imprisoned chief of the Tehreek-e-Nafaz-e-Shariat-e-Mohammadi (Movement for the Enforcement of Islamic Laws, TNSM). According to the NWFP Home Secretary Badshah Gul Wazir, Maulana Fazlullah and his 4,500 armed volunteers had set up a 'parallel government' in Swat. Fazlullah has formed an armed wing called Shaheen Force and established Sharia (Islamic law) courts. Wazir also disclosed that foreign militants and members of outlawed groups were being sheltered in the troubled area. Maulana Fazlullah is also known as Maulana Radio for the 'illegal' FM radio stations that he operates to instigate an armed uprising, urging people to "prepare for jihad".

The TNSM, one of the five outfits proscribed by Musharraf on January 12, 2002, was formed in 1992 with the objective of a militant enforcement of Sharia. Ideologically, it is committed to transforming Pakistan into a Taliban-style state. In an August 1998-speech in Peshawar, Maulana Sufi Mohammed reportedly declared that those opposing the imposition of Sharia were wajib-ul-qatl (worthy of death). He is reported to have organised thousands of people to fight the Northern Alliance (NA) in Afghanistan after the defeat of the Taliban in 2001. However, a majority of them were either killed or arrested by the NA. Some, including Sufi Mohammed, managed to return to Pakistan, only to be arrested. The TNSM operates primarily in the tribal belt, such as Swat and the adjoining districts of the NWFP. Although well established in the NWFP, the TNSM has had only limited success in expanding its activities beyond the tribal areas. It has substantial support in Malakand and Bajaur in the FATA, and includes activists who have fought in Afghanistan at some time during the past 25 years. Since the imprisonment of Sufi Mohammed, the loss of cadres in end 2001, and its proscription, the TNSM had largely become defunct. However, the outfit began to revive after the October 8, 2005, earthquake and the subsequent relief efforts by Islamist extremist groups (Lakshman, K. 2007, 'The NWFP Meltdown', *South Asia Intelligence Review*, Vol. 6, No. 12, November 12, South Asia Terrorism Portal website [http://satp.org/satporgrp/sair/Archives/6\\_18.htm](http://satp.org/satporgrp/sair/Archives/6_18.htm) – Accessed 2 January 2008 – Attachment 21).

Information provided in question 1 above may be of interest in regard to the political and religious climate in the NWFP at present. Some of these reports detail barbers being forced to stop offering shaving services, and video and CD shops being bombed for promoting the vices of western culture. In this regard, a *Chicago Tribune* article from 12 December 2007, titled 'Taliban militants impose rule in wild Pakistan region', provides an outline of the current situation in the NWFP with regard to western influences. The report details the rise of "Islamist hard-liners" to control of the provincial government and the resulting repression of cultural freedoms, particularly those dubbed Western or un-Islamic:

In the past few months, the Pakistani army has also faced the spread of militants to new areas, such as Swat, a one-time tourist mecca described as the Switzerland of Pakistan about 100 miles from Islamabad.

Militants linked to the Taliban and an anti-government cleric known as Mullah Fazlullah set up checkpoints, reportedly beheaded men dubbed as government spies and drove out local officials. In villages in the Swat valley, militants burned records at police stations and hung signs outside proclaiming “Taliban station.” They closed down girls’ schools.

...Some analysts believe what has happened in the province could be the natural legacy of a provincial government run by Islamist hard-liners. When a coalition of six Islamist parties won election in 2002 — the first time religious parties won a majority of provincial seats in Pakistan’s 60-year history — the government’s first actions were to ban concerts and music in public buses and to rip down billboards with women’s pictures. The government-run Nishtar Hall, built for concerts and other performances in Peshawar, was shuttered.

Ban women on billboards in a place like the North-West Frontier and open the door for attacks on girls’ schools, said Shah Jehan, a professor at Peshawar University who teaches government administration. Ban concerts and music in public and pave the way for the bombing of music and movie shops, he said.

...In Peshawar now, some people are afraid to visit music and movie shops or even barber shops, as shaving off beards is also considered un-Islamic by extremists. At one Western bank branch, employees began wearing traditional Pakistani clothes instead of the Western suits they once wore. Women who once did not cover their hair are now wearing head scarves or even all-covering burqas.

“I insisted that my friends come with me,” said Mohammad Younis Siddiqui, 24, a college student shopping in a mini-mall filled with music and movie stores. “They said, ‘We would go to hell with you but we won’t go there.’”

...Music and dancing have long been a tradition with the region’s ethnic Pashtuns, even if women and men never publicly danced together because of religious and cultural restrictions. Pashtun movies, even bawdy ones, have found healthy audiences.

But at ul Haq’s video store, the attitudes of neighbors show just what kind of bullying the entertainment industry now faces. The three shops on the block have closed in the past four months — one after a stick of dynamite was tossed inside and another because the owner feared for his life.

Bakht Munir, a nearby fruit seller, said ul Haq and the other movie store owners peddled pornography.

“I support the bombings,” Munir said. “They’re ending vulgarity” (Barker, K. 2007, ‘Taliban militants impose rule in wild Pakistan region’, *Chicago Tribune* web edition, 12 December [http://www.chicagotribune.com/news/nationworld/chi-taliban\\_webdec13,1,4021085.story](http://www.chicagotribune.com/news/nationworld/chi-taliban_webdec13,1,4021085.story) – Accessed 24 December 2007 – Attachment 18)

In December 2007 Kanshan Laxman provided an updated assessment of the situation in the NFWP in the *South Asia Intelligence Review*, focusing on the Pakistani military’s operation against Fazalullah and other Islamic militants in Swat. Laxman suggests that events in the region are “entirely out of Islamabad’s control” and that the “march of radical Islam has been rapid and relatively unopposed” (this may also be of interest regarding question 1 above). It also details the targeting of “un-Islamic” institutions and individuals by the TNSM and highlights the inability of the state to offer protection. Laxman claims that “radical clerics command men to grow beards”, and claims that Fazalullah has set up Sharia courts and a volunteer police force, which have superseded tribal authority and justice:



While President Musharraf labours to manage the fallout of his 'second coup', events in the Swat and the adjoining Shangla District of the NWFP, the centre of most of the current violence, are entirely out of Islamabad's control. In fact, the situation reflects a clear failure of Musharraf's counter-insurgency strategy and provides a disturbing picture of the magnitude of Pakistan's slide into anarchy. In more ways than one, the state of play in Swat is a reflection of the crisis that afflicts Pakistan. While the march of radical Islam has been rapid and relatively unopposed, despite claims to the contrary, submissiveness and compliance has marked the character of the Pakistani state's responses.

On November 29, 2007, military authorities said they had evicted militants from most of the troubled areas in the Swat Valley while all the displaced Government officials returned to their jobs in Shangla District after the retreat of Maulana Fazlullah-led militants of the Tehreek-e-Nafaz-e-Shariat-e-Mohammadi (TNSM) from their positions in the District Headquarters of Alpuri. Major Anjad Iqbal, the military spokesman in Mingora (Swat), told reporters that the majority of militants were either killed or had escaped to the mountains after the SFs targeted them in their hideouts. He said 230 militants had so far been killed in clashes with the SFs in the Swat and Shangla Districts. The military's declaration of 'victory' is far from final – in an insurgency, holding or losing ground is of little significance, and sources indicate that the violence has merely shifted, with the militants tactically dispersed into the hills. Maulana Muhammad Alam, a close aide of Maulana Fazlullah, made a speech from his mobile FM radio in which he denied that the militants had left their positions and claimed that the real battle against the SFs had now begun, and would continue indefinitely. And at around 11:45 pm on November 27, through his FM radio channel, Fazlullah himself directed his armed followers to stop fighting and shift to safer places and wait for his other 'important messages' regarding the future line of action.

...Unsurprisingly, SF personnel, administrators loyal to Islamabad, pro-Government tribal leaders and journalists, have been the obvious targets of the rising extremist violence. The choice of targets has also expanded to include music and video shops, barber shops, internet centres, NGOs, girls' schools, and cultural targets such as ancient images of the Buddha. According to the TNSM, all of these are 'un-Islamic'.

With little evidence of state capacities to control or protect, the common people of Swat have been extraordinarily vulnerable. Indeed, thousands fled their villages in the Kabal sub-division and other areas of Swat after announcements were made by SFs asking them to leave the area, as the Army was set to launch a massive operation against what it called terrorists hiding there. Safdar Sial and Aqeel Yusufzai reported that about 60 per cent of the 1.5 million inhabitants have left the area. Unnamed officials confirmed, on November 19, that at least 500,000 people had fled the region. A majority of them had reportedly shifted to the Malakand Agency, Mardan, Charsadda, Nowshera, Peshawar and Islamabad. A majority of villagers in areas like Sangota, Faza Gat, Hayatabad, Koza and Bara Bandai, Nangolai, Kanju, Shakar Dara, Sher Palam, Behrain, Mianadam, Oshu, Gabral, Shawar and Chakrial have also reportedly abandoned their homes. On their part, the militants are said to have made announcements asking people not to leave their homes as they had arranged for suicide bombers to attack the SFs, if the latter came out of their bases to attack the militants.

The supply of food and daily utilities has reportedly been disrupted to the Swat, Upper Dir, Lower Dir and Chitral Districts and the Malakand Agency because the main approach road, the Mardan-Malakand Road, had been blocked to all kinds of vehicular traffic since November 24. Cellular-phone services have been jammed while the landline telephone network has collapsed in the Shangla, Swat and Battagram Districts. Further, a large number of people who "wanted to move to safer areas from Swat, were reportedly stranded on the roadside, in fields and gas stations and other places on the Mingora-Malakand road. The government has been slow to set up camps for the displaced people at Barikot in Swat and far away in Risalpur in the Nowshera District."

Administrative control in Swat has for long shifted into the hands of the forces of radical Islam led by the TNSM. More importantly, the “tribal system of political administration is being dismantled, both by the presence of the Army and by terrorist violence orchestrated by groups and individuals linked to the Taliban/al Qaeda.” Taliban-linked operatives have reportedly opened offices and set up check-posts at various places in the District. On October 9, Fazlullah had announced the formation of a ‘volunteer force’ to “control law and order and traffic problems” in the Matta Sub-division. He said that a Sharia court had already been set up in his native Imam Dehri village. The volunteer force called ‘Shaheen Commandos’, he disclosed, had started patrolling the area and marched through the Matta and Kabal towns.

A demoralised Police force is clearly no longer able to maintain law and order in the District. Demoralisation is now also rampant among the military, and this has been enormously augmented by the suicide attacks and demonstrative brutality of the Islamist militants. Two days after a suicide bomber targeted a vehicle carrying Frontier Constabulary personnel at Nawan Killi on October 25 and killed 18 soldiers and two civilians, the heads of two Frontier Constabulary personnel were paraded through the streets of Matta village near Saidu Sharif, the capital of Swat. Militants also publicly executed two SF personnel and seven civilians in the Swat District on October 26-27, taking the total such killings to 13. Maulana Sirajuddin, spokesman for the pro-Taliban cleric Maulana Fazlullah, confirmed that they had conducted the beheadings. There have been a significant number of surrenders by Army and Paramilitary personnel. On November 2, TNSM militants paraded 48 SF personnel before the media in Swat. The SF personnel had surrendered during a week of fierce clashes. One unnamed soldier is reported to have stated, “The militants told us that we would not be harmed if we surrender. If not, then the entire population from the village below will climb up the hill and may kill you.” The soldiers subsequently were given PKR 500 each before being released. One of the soldiers said that they do not want to fight with their Muslim brothers who are fighting for the implementation of Sharia.

...The social sphere has for long been the focus of radical Islam in Pakistan. The Taliban was a state of mind even before it became a regime in Afghanistan. In a mirrored evolution, moral policing and social edicts are now an accepted reality in Swat: there is a total ban on music, Internet and CD shops. Maulana Fazlullah has altered names of places that he considers un-Islamic. Schools in the District, especially for girls, have been shut down. Radical clerics command men to grow beards and veil their women, cameras are banned, and people are being forced to stop watching television or listening to music. Since the onset of clashes in October, all schools have closed down and a polio vaccination campaign for children has been abandoned

Evoking disturbing memories of the appalling destruction of the centuries-old Buddha statues by the Taliban in Bamiyan, Afghanistan, in March 2001, Fazlullah’s militant brigade in Swat twice attempted to demolish a 7th century Buddha statue in the Jihanabad village in September 2007. The militants believe such statues are ‘symbols of evil.’

...According to the NWFP Home Secretary Badshah Gul Wazir, Maulana Fazlullah and his 4,500 armed volunteers had set up a ‘parallel government’ in Swat. Wazir also disclosed that foreign militants and members of outlawed groups were being sheltered in the troubled area. The TNSM, one of the five outfits proscribed by Musharraf on January 12, 2002, was formed in 1992 with the objective of a militant enforcement of Sharia. Ideologically, it is committed to transforming Pakistan into a Taliban-style state. In an August 1998-speech in Peshawar, Maulana Sufi Mohammed reportedly declared that those opposing the imposition of Sharia were wajib-ul-qatl (worthy of death).

While most of the violence and subversion in Swat is being orchestrated by the TNSM, sources indicate that at least some of the militants killed in November were from the Jaish-e-

Mohammed (JeM) headed by Maulana Masood Azhar. In a speech he made at the Tablighi Jamaat meeting in Raiwind near Lahore on November 12, Masood Azhar had declared: “Whatever Mullah Fazalullah is doing in Swat is just according to Islam. He is teaching the infidels a good lesson – the infidel Pak Army.” There are also reports that JeM’s splinter group, the Jamaat-ul-Furqan and al Qaeda-linked militants are also supporting the TNSM. Militants of the Jamaat-ul-Furqan had set up check-posts on the main road in Shakkardarra and had taken positions on hills during the recent clashes with the Army and Paramilitary Forces, according to Safdar Sial and Aqeel Yusafzai.

Despite the recent setbacks, the TNSM militants have considerable support on the ground. Apart from the generic attraction that radical Islam now draws across Pakistan, the TNSM has been able to galvanise large sections of the Swat populace in the immediate past over the Lal Masjid (Red Mosque) issue. Since many of the Lal Masjid students were from Swat, the military assault on the mosque in Islamabad generated sympathy for Fazlullah and his band of jihadis. While he had extended wholesome support to the Lal Masjid clerics, Abdul Rashid Ghazi and Maulana Abdul Aziz, a majority of the rallies and anti-Musharraf demonstrations to protest the assault on Lal Masjid were held in Swat. A day after the military assault on Lal Masjid on July 3, 2007, four civilians were killed and two Police personnel were wounded in a bomb blast that targeted a Police vehicle in the Swat District. One Policeman was killed and four others injured during a rocket attack on a Police Station in the Mata area of Swat District on July 4. The blast followed calls on a private Islamist FM radio station in the area for launching a jihad against the Government in retaliation for the confrontation in Lal Masjid in Islamabad. NWFP Police Chief, Sharif Virk, blamed Maulana Fazlullah for both these attacks. Fazlullah, in broadcasts on his FM channel on July 3 and 4, asked his supporters to take up arms against the Government to avenge the action taken against Lal Masjid and carry out suicide attacks.

...There are sections within the Pakistan establishment who are currently celebrating the ‘success’ of their helicopter-gunship campaigns and the limited ground engagement that has followed, which have, over the past days, been reportedly inflicting an average of 25-30 daily casualties on the Islamist extremists – though there is little independent verification of how many, among these, are in fact armed militants, and how many non-combatant and ‘collateral’ fatalities. But the ‘gains’ recorded in terms of the withdrawal of the extremists from the various Police Stations and Government establishments they had seized in the towns are only indices of the widening of the theatre of conflict into the larger and more complex terrain of the Hills, where the Army will tend to lose much of the advantage of its superior technologies. The fighting in Swat has, in fact, just begun (Lakshman, K. 2007, ‘The Sledgehammer in Swat’, *South Asia Intelligence Review*, Vol. 6, No. 21, December 3, South Asia Terrorism Portal website [http://satp.org/satporgtp/sair/Archives/6\\_21.htm#assessment1](http://satp.org/satporgtp/sair/Archives/6_21.htm#assessment1) – Accessed 2 January 2008 – Attachment 21).

Earlier, in May 2007, Lakshman had written in the *South Asia Intelligence Review* about the enforcement of hardline Islamic regulations in the NWFP and the rise of religious policing of Western influences such as video shops, internet centres, girls’ schools and barbers who provide shaving services. The report also notes the establishment of “kangaroo courts” in which “Taliban-linked militants” settle “disputes”:

The NWFP is swiftly crystallizing at the core of the Islamist militant mobilisation in the Pakistan-Afghanistan region even as radical Islamists rapidly expand their presence across Pakistan’s other provinces. It is significant that the NWFP is a region where the state’s presence has been relatively strong in the past, and the situation has never been even remotely comparable to the traditionally ungoverned Federally Administered Tribal Areas. The deteriorating situation in the NWFP is also an indication of increasing political instability and

insecurity in Pakistan, and of the weakening of the embattled President Pervez Musharraf's grip on power.

...Law Minister Malik Zafar Azam, on April 18, 2007, disclosed that the NWFP Government was investigating the activities of local Taliban in some settled areas of the province to identify the leadership and masterminds behind their extremist activities. According to Azam, the Taliban were particularly active in the province's southern Districts – Lakki Marwat, Dera Ismail Khan, Bannu and Karak. Militant activity has also been reported from the Lower Dir, Upper Dir, Swat, Mardan, Malakand, Charsadda, Peshawar, Nowshera, Tank, Hangu, Kohat, Mansehra, Kohistan, Swabi and Chitral Districts. 19 of the 24 Districts in the Province are presently affected by various levels of militant mobilisation and violence. Bomb blasts, rocket attacks, forced closure of video shops, internet centres and girls' schools, attacks on NGOs employing women, attacks on singers performing at weddings and threatening calls to barbers are some of the intimidatory activities local Taliban are engaged in. The situation in Dera Ismail Khan is so grave that "outsiders – that is, Pakistanis from other parts of the country – need police escorts to travel around."

The pro-Taliban militants have ensured the closure of girls' schools, bombed shops selling video cassettes and music CDs and prohibited barbers from shaving beards. The extremists punish, often by killing, anyone who disregards their social and moral codes. Moral policing has not spared even the polio vaccination campaign which the forces of radical Islam consider to be an American conspiracy to sterilise future Muslim generations. The pro-Taliban militants oppose education for females and are also against women working. Girls' schools have not only been closed in Peshawar but also in some Districts such as Mardan.

All hair cutting saloons in Timergarah, headquarters of the Lower Dir District, and Munda have discontinued shaving services since pamphlets advising them that it was an Islamic duty to grow a beard were distributed by an unidentified Islamist group on March 13, 2007. Barbers "in both the Lower and Upper Dir districts have received pamphlets from the extremists directing them to stop shaving beards," failing which their shops would be destroyed. Fear prevails among the saloons, music and video shop owners since there have been many bomb blasts and attacks on their establishments. Threat letters and pamphlets of the Taliban-linked militants bear names such as Sunnat-e-Nabvi Movement, Islami Sunnat-e-Rasool, Amar Bil Maroof-wa-Nahi Anil Munkar and Islami Janbaaz, all unfamiliar fronts.

...Administrative control in Districts like Tank, Swat, Bannu, Dera Ismail Khan, Lakki Marwat, Kohat and in other parts of the Province, has gradually been taken over by the forces of radical Islam. Indeed, a demoralised Police force is clearly no longer able to maintain law and order in these areas. The Tank District, located on the border of the beleaguered South Waziristan area of FATA, is one of the worst affected. With the abdication of the state, it is the Taliban who patrol the streets. Taliban-linked militants have established kangaroo courts for settling disputes in the area and are also arresting 'criminals' and parading and punishing them in the streets. The police have reportedly abandoned four out of the five major police posts in Tank. On March 28, 2007, Tank town was attacked by a group of more than 200 Taliban-linked militants, the first such incident in settled areas. Two police stations, a paramilitary fort and bank branches were damaged in the attack. Again, six people were killed and 15 others injured, in clashes between security forces (SFs) and militants in Tank city on May 16, 2007. People alleged that SFs fired on civilians instead of targeting militants who were strutting freely around the city. Earlier, a paramilitary soldier and a civilian were killed and 10 people wounded in grenade and rocket attacks on troops and exchange of fire between militants and troops in Tank on May 14, 2007.

...While there is a considerable spill-over of militancy from the tribal areas to the settled areas of NWFP, the fact is that the state has itself ceded space for radical Islam. The 'peace deal' signed in Waziristan between the militants and the military regime has further

emboldened the Islamist radicals and led to a greater assertiveness with militants now operating openly and without fear. The NWFP has emerged as a safe haven and area of expansion for militants from Waziristan, which they already dominate, as well as extremist elements from other parts of Pakistan and Afghanistan. The official explanation of these developments, articulated by NWFP Governor Ali Mohammad Jan Orakzai, was that the Taliban was “developing into some sort of a nationalist movement, a sort of liberation war against coalition forces (in Afghanistan).” Moreover, the police force, according to provincial Chief Secretary Ejaz Qureshi, is “inadequately equipped in terms of manpower, logistics and weaponry, rendering the NWFP cities vulnerable.” A retired police officer noted further, “Where law and order and justice vanish there the Taliban emerge and the public response is positive because the people want protection irrespective of who provides it” (Lakshman, K. 2007, ‘NWFP: Extremist Encroachment’, *South Asia Intelligence Review*, Vol. 45, No. 5, May 21, South Asia Terrorism Portal website [http://www.satp.org/satporgtp/sair/Archives/5\\_45.htm#assessment2](http://www.satp.org/satporgtp/sair/Archives/5_45.htm#assessment2) – Accessed 2 January 2008 – Attachment 20).

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US Department of State <http://www.state.gov/>

Human Rights Watch website <http://www.hrw.org/>

#### **Region Specific Links**

Shirkat Gah Women’s Resource Centre website <http://www.shirkatgah.org/>

Pakistan Women Lawyer’s Association website <http://www.pawla.sdnpc.org/>

National Commission on the Status of Women website <http://ncsw.gov.pk/>

South Asia Terrorism Portal website <http://www.satp.org/>

#### **Search Engines**

Alltheweb <http://www.alltheweb.com/>

Altavista <http://www.altavista.com/>

Ask.com <http://www.ask.com/>

Exalead <http://www.exalead.com/search>

Google <http://www.google.com.au/>

Yahoo <http://search.yahoo.com/>

### Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Research & Information Services database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

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