

Pakistan's IDP Crisis: Challenges and Opportunities

I. OVERVIEW

In the wake of a conceptually flawed peace agreement, the Taliban takeover of large parts of Malakand division, subsequent military action in the area, almost three million internally displaced persons (IDPs) have fled to camps, homes, schools and other places of shelter across Northwest Frontier Province (NWFP). The challenge for the Pakistan Peoples Party (PPP)-led government and international actors is to make relief, rehabilitation and reconstruction efforts responsive to needs and empower local communities in Malakand Division. Failure to do so will reverse any gains on the battlefield and boost radical Islamist groups.

The military's use of heavy force in the ongoing operations, failure to address the full cost to civilians and refusal to allow full civilian and humanitarian access to the conflict zones has already been counter-productive. The public, particularly those directly affected, is increasingly mistrustful of a military that has, in the past, swung between short-sighted appeasement deals with militants and the use of haphazard force. While there is still broad public and political support for moving against the Taliban, it could erode if civilian casualties are high and the response to IDPs' needs is inadequate. Indeed, it will not be long before the IDPs demand greater accountability from those responsible for their displacement and assurances of a viable return.

Almost four years after they responded poorly to the October 2005 earthquake in NWFP and Azad Jammu and Kashmir (AJK), overly centralised state relief organs remain ill-equipped to deal with large-scale humanitarian crises. Likewise, despite the transition to civilian rule in February 2008, the military continues to dominate key institutions, further undermining civilian capacity. Relief and reconstruction efforts must ultimately reestablish and strengthen the link between Malakand's citizens and the state, severed by rising militancy and the military-devised accord between the Awami National Party (ANP)-led NWFP government and the Taliban-linked Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM) to impose Sharia (Islamic law) in the Malakand area, through the Nizam-e-Adl Regulation,

which President Asif Ali Zardari signed on 13 April 2009.

As they did in the aftermath of the 2005 earthquake, religious extremist groups, while opposing the military campaign, are exploiting relief efforts to advance their agenda. Communities displaced by a badly planned war may be especially vulnerable to jihadi indoctrination. The crisis, however, also presents an opportunity to win hearts and minds of millions of Pakistanis in NWFP, and more specifically in Malakand Division, who have suffered at the hands of the Taliban. Many of them fled the area even before the current operations began because of Taliban abuses, including murder and rape.

Mounting opposition from the religious lobby may give the military an opening to again enter into a compromise with the militants, as it has in earlier campaigns. The federal and provincial governments must resist any such efforts and assert civilian control over counter-insurgency policy, relief and reconstruction. Instituting civilian oversight and scrutiny is vital to retaining popular support for the struggle against violent extremism. The international community should help build civilian capacity to respond to the humanitarian crisis and also counsel the military against negotiating another deal that would again allow religious extremists more space to recruit and spread Taliban control.

The Pakistan government should:

- ❑ devise a blueprint for reconstruction efforts, including revitalising war-shattered agricultural and tourism sectors;
- ❑ develop mechanisms that will enable IDP communities to hold officials accountable for the distribution of assistance;
- ❑ prohibit jihadi groups banned under the Anti-Terrorism Law, including those operating under changed names, from participating in relief efforts;
- ❑ prioritise police training and other mechanisms to enhance the capacity of civilian law enforcement agencies to maintain security after the military operation ends and bring militant and local criminal networks and allied serving or retired district officials to justice;

- ❑ rescind immediately the Nizam-e-Adl Regulation 2009, reaffirm the jurisdiction of Malakand's civil courts, the Peshawar High Court and the Supreme Court, and abolish the Frontier Crimes Regulations and the Nizam-e-Adl 1999; and
- ❑ build on political and public support for confronting militancy in NWFP by implementing without delay long-term political and constitutional reforms in the Provincially Administered Tribal Areas (PATA), of which Malakand is a part, as well as in the Federally Administered Tribal Areas (FATA), so as to incorporate their districts and tribal agencies, respectively, into NWFP, with full provincial rights.

The international community should:

- ❑ urge a humanitarian pause in fighting to allow much-needed assistance to non-combatants in conflict zones, to permit them to flee and to account for civilian casualties, with the timeframe dependent on assessment of needs and available logistical and other resources and material support, as determined by the provincial government and international and local humanitarian agencies;
- ❑ ensure that relief and reconstruction are civilian-led and empower displaced communities to determine their own needs and priorities;
- ❑ prioritise the relief and rehabilitation of IDPs, particularly those living outside government camps, through cash transfer programs that provide income support, payment of school tuition and paid vocational training;
- ❑ support Pakistan civilian-led plans for return of IDPs to their communities with reconstruction programs that incorporate support for the provincial government and help build the capacity of civilian police and advance justice reform with new training, equipment and mentors; and
- ❑ encourage long-term political and constitutional reforms in PATA and FATA through support for comprehensive governance, stabilisation and rural development programs.

II. RESPONDING TO THE CRISIS

Less than a month after Pakistan's National Assembly and President Zardari approved a military-devised accord with the Swat-based extremists on 13 April,¹

¹ See Crisis Group Asia Report N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009. For more on Pakistan's

as the tribal militants openly defied the writ of the state and under significant international, particularly U.S. pressure, the military launched a campaign to eradicate Pakistani Taliban groups from their strongholds in the Malakand region, including Buner, Swat, Shangla, Upper Dir and Lower Dir.² The military's mandate, according to Prime Minister Yousaf Raza Gilani, was "to eliminate the Taliban once and for all".³ Its resort to massive force, described as "scorched earth policy" by a Peshawar-based member of the independent Human Rights Commission of Pakistan (HRCP),⁴ has resulted in an estimated 2.8 million persons fleeing Malakand since the start of the operations, adding to roughly 500,000 earlier IDPs from FATA. Thousands are still leaving the conflict zone.⁵

As the operation began, the lack of coordination between military and civilian institutions prevented any effective planning for humanitarian relief. The absence of such measures as transit camps at key exit points and government-provided transport to see people to safety compelled families and individuals to travel as far as 100km, often on foot, to reach the first available IDP camp.⁶ While the NWFP government has established ten new camps,⁷ primarily in the neighbouring districts of Mardan and Swabi, the vast majority of IDPs are residing outside them with host families, on school premises or in rented accommodation and other places of shelter.⁸ According to estimates by the

tribal militants, see Crisis Group Asia Reports N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006, and N°95, *The State of Sectarianism in Pakistan*, 18 April 2005.

² The Malakand Division includes the districts of Buner, Chitral, Lower Dir, Upper Dir, Malakand, Shangla and Swat. Since 1975, it has been administered as a Provincially Administered Tribal Area (PATA), with a separate criminal and civil code from the rest of Northwest Frontier Province (NWFP).

³ Zulfikar Ghuman and Irfan Ghauri, "Enough is enough!", *Daily Times*, 8 May 2009.

⁴ Crisis Group interview, Kamran Arif, HRCP, Peshawar, 21 May 2009.

⁵ "Number of displaced persons exceed three million: minister", *Dawn*, 30 May 2009.

⁶ People fleeing Swat district reported that bus fares from its capital, Mingora, to Mardan had tripled (from Rs.2,000/\$25 to Rs.6,000/\$75) since the conflict intensified. "Pakistan displacement update", press release, UNHCR, 26 May 2009.

⁷ "Population in camps", Provincial Relief Commissionerate Emergency Relief Unit, www.helpidp.org, 28 May 2009.

⁸ According to statistics provided to Crisis Group by the Mardan Commissioner, as of 19 May 2009, roughly 196,000 registered IDPs were in camps in Mardan, Swabi and Malakand, while 1.25 million resided with host families in Mardan and Swabi.

UN High Commissioner for Refugees (UNHCR), 126,000 people are being registered on average a day in Mardan, Swabi, Nowshera, and Charsadda. More than half the displaced are children. UNHCR spokesperson Ron Redmon has termed it “the fastest major displacements we have seen in some years”.⁹

This level of displacement was by no means inevitable. Military-sponsored peace deals in Malakand, as in FATA,¹⁰ afforded tribal-based militant groups the space to establish new centres of training, recruitment and influence.¹¹ This expanded the theatre of war and, consequently, the numbers of affected civilians. The scale of the current IDP crisis is a function of failed military policies that have enabled militancy to spread for several years.

The current military campaign is unlikely to be completed before August 2009, unless the army decides to enter into another accord with the militants, which would be unwise in the extreme. With the end of the harvest season and the approach of Malakand's bitter winter, significant numbers of IDPs might have no choice but to remain in exile until the summer of 2010. With 165 projects presented by 52 of its agencies, the UN has appealed for \$543 million for IDPs up to December 2009, of which only \$114 million has been committed.¹² While the international community should respond, and urgently, to the UN's appeal, how these and other funds are spent, and how well the government provides security and basic services will determine the IDPs' long-term fate, including whether they become vulnerable to jihadi recruitment or constituencies for peace.

A. PREPAREDNESS

In response to the October 2005 earthquake in NWFP and Pakistan-administered Kashmir, President Pervez Musharraf's military regime established a Federal Relief Commission to coordinate relief operations with provincial governments, relevant line ministries, NGOs, international agencies and other organisations.¹³ An

ad hoc body, which relied principally on the military, it officially completed its earthquake mandate in March 2006. “We still don't know how effective the response to the earthquake really was”, said a former NWFP chief secretary. “What happened to those affected, how they were cared for – we still don't have answers to these questions”.¹⁴

In May 2007, the military government established the National Disaster Management Authority (NDMA) – chaired by a retired lieutenant general who had earlier headed the Federal Relief Commission – to be the lead agency for risk reduction and coordinating responses to national disasters. Its mandate includes relief to IDPs.¹⁵ Subsequently, the government created Provincial Disaster Management Authorities (PDMAs) and District Disaster Management Authorities (DDMAs) to coordinate risk reduction and response at the provincial and district levels respectively. These remain dysfunctional, including in NWFP.¹⁶ The Pakistan Muslim League (Nawaz) (PML-N)'s general secretary, Iqbal Jhagra, said, “the NDMA and PDMA are still dominated by the military, which is the primary reason why these institutions haven't responded effectively The institutions that were set up after the earthquake should have pre-planned for this. We knew this option [of a military operation] was there. So when you know this, what do you do?”¹⁷

The international community, too, should have been better prepared for the exodus of millions from the conflict-affected zones. “The writing was on the wall as early as 2007”, admitted a senior international aid officer.¹⁸ In August 2008, UN agencies identified and registered 2,000 families around Peshawar who had fled their homes. “The IDP caseload was quite limited until [the fighting in] Bajaur happened”, said an official of the UN's resident Office for the Coordination of Humanitarian Affairs (OCHA).¹⁹ By January 2009,

⁹ “126,000 fleeing conflict zones daily says UN”, *Dawn*, 27 May 2009.

¹⁰ See Crisis Group Report, *Pakistan's Tribal Areas*, op. cit.

¹¹ A week after the Nizam-e-Adl Regulation 2009's adoption in April 2009, for example, the militants occupied Buner district, 60 miles from the federal capital, Islamabad.

¹² “Press conference to launch revised humanitarian response plan for Pakistan”, UN Department of Public Information, 28 May 2009.

¹³ For analysis on the Musharraf regime's earthquake response, see Crisis Group Asia Briefing N°46, *Pakistan: Political Impact of the Earthquake*, 15 March 2006.

¹⁴ Crisis Group interview, Khalid Aziz, Peshawar, 22 May 2009.

¹⁵ See NDMA's website at <http://ndma.gov.pk/index.html>.

¹⁶ Crisis Group interviews, retired and serving federal and NWFP government officials, May 2009. See also Tariq Osman Hyder, “Helping the refugees”, *The News*, 12 May 2009.

¹⁷ Crisis Group interview, Iqbal Jhagra, Islamabad, 19 May 2009.

¹⁸ Crisis Group interview, Islamabad, May 2009.

¹⁹ Crisis Group interview, Fawad Hussain, National Humanitarian Affairs Coordinator, UN Office of the Resident Coordinator, Islamabad, 14 May 2009. Bajaur is one of the seven agencies or administrative districts of the Federally Administered Tribal Areas (FATA). The others are Orakzai Agency, Mohmand Agency, Khyber Agency, Kurram Agency, North Waziristan Agency and South Waziristan Agency. FATA also includes Tribal Areas adjoining Peshawar dis-

the military's counter-insurgency operations in Bajaur Agency, which had commenced in the fall of 2008, had forced an estimated 20 per cent of the population to flee to NWFP's settled areas, while international humanitarian aid agencies anticipated the figure would swell to 625,000 by May 2009.²⁰ UNHCR registered 265,000 IDPs, and humanitarian aid agencies provided relief in camps and public buildings such as schools.²¹

By the time international agencies, with some local partners, appealed for funds to respond to this significant caseload, however, the military had declared a ceasefire, followed by a peace accord with the militants at the end of February.²² Subsequently, most families dispersed, many returning to Bajaur to tend to land and property and to spend the month of Ramadan with their relatives. Since the crisis appeared to have subsided, the donor community ignored the appeal for further aid.²³

Attempting to justify the failure to protect civilians and prepare for the mass exodus in Malakand, the military claims to have had limited time, given the urgency of the operation. It also argues that establishing camps and other relief measures beforehand would have signalled the imminent operation, giving the militants time to plan or escape. Provincial and district government officials who defend the military nevertheless acknowledge that the response was inexcusably slow.²⁴ Said a federal official, "even if the military's explanation is accepted [with regard to establishing transit camps], it does not explain the failure to provide transport to move civilians to safety zones. They said that they would provide 150 buses to move IDPs. Those buses were never there".²⁵

The merits of setting up most IDP camps as far south as Mardan and Swabi are also questionable. "They should have had safety zones inside Malakand", said former NWFP chief secretary Khalid Aziz. "The mili-

trict; Tribal Areas adjoining Kohat district; Tribal Areas adjoining Bannu district; and Tribal Areas adjoining Dera Ismail Khan district.

²⁰ "Pakistan Humanitarian Response Plan 2008-2009", OCHA, revision ver. 1.2., 13 February 2009.

²¹ Ibid.

²² This peace accord, as earlier FATA accords, was signed between the administration and "tribal elders". Amanullah Khan, "Bajaur Taliban threaten to review ceasefire", *Dawn*, 18 April 2009.

²³ "Pakistan Humanitarian Response Plan 2008-2009", OCHA, op. cit.

²⁴ Crisis Group interviews, provincial government officials, Peshawar, May 2009.

²⁵ Crisis Group interview, government official, Peshawar, May 2009.

tancy is in the north, not everywhere. The unaffected areas could have been provided security [and the impact of displacement mitigated]".²⁶

B. KEEPING UP WITH FIGURES

The importance of registration in assessing needs, guaranteeing a fair distribution of relief assistance and ensuring the safety of vulnerable IDPs, particularly women and children, cannot be overstated. Discrepancies in registration are proving a hurdle to needs assessment and appropriate distribution of relief.

Drawing on its experience with Afghan refugees in Pakistan since the 1979 Soviet intervention in Afghanistan, UNHCR has undertaken to register the displaced families within and outside camps, with the Commissionerate for Afghan Refugees (CAR) and NWFP's Social Welfare Department, respectively. The massive scale, however, presents significant challenges to obtaining complete and accurate numbers.

The National Database and Registration Authority (NADRA) has played a pivotal role. Since a National Identity Card (NIC) is required upon registration, it has been able to reach citizens it had difficulty reaching in the past.²⁷ As many IDPs have either lost their cards during flight or never had one, however, NADRA's mobile vans are issuing new or duplicate ones.²⁸ Nevertheless, since IDP registration only requires the head of household to have an NIC, many women remain unidentified. Even households headed by women – widows or those whose husbands have stayed behind – often have little choice but to join a male relative's household if they can. Militants and other conservative religious groups have opposed NADRA's female registration.²⁹ With insecurity and pressures from local militant groups against female registration impeding progress, women's needs for relief assistance and protection risk being overlooked.

While most IDPs in camps have been registered, an estimated 90 per cent of displaced households have settled outside the camps, making registration more

²⁶ Crisis Group interview, Khalid Aziz, Peshawar, 22 May 2009.

²⁷ This is particularly true of Bajaur Agency residents. In Malakand Division, men generally had NICs that were issued before the February 2008 elections. Crisis Group interviews, Mardan, May 2009.

²⁸ Crisis Group interview, Tariq Malik, deputy chairman, NADRA, Islamabad, May 2009.

²⁹ The objections include that male officers should not register, fingerprint or photograph women, or treat them as heads of household.

protracted and difficult.³⁰ These IDPs are often only identified when they seek relief assistance, for example at food hubs run by the World Food Programme (WFP), or during door-to-door registration. Even registration in camps has not been easy, particularly in areas where conflict has not completely subsided. According to a CAR representative in Lower Dir district, registration in camps is being done on blank sheets of paper since UNHCR forms have not reached the area due to military-imposed curfews.³¹

A number of households may, therefore, have not been accounted for; conversely, some IDPs may have registered more than once, hoping to benefit from multiple sources of aid or simply because they moved from one camp to another or left a camp to live with relatives – often as distant as Islamabad or Karachi. “There is a lot of movement between camps and surrounding areas as extended families and communities attempt to reunite, so it’s sometimes difficult to keep track of how many people are in a camp”, explained a humanitarian aid worker in Mardan.³² The extent of these discrepancies will only become apparent when computerisation of collected data is complete, and rectifying them fully may prove close to impossible.

C. CENTRALISED RELIEF EFFORTS

On 11 May 2009, at the military’s behest, the prime minister established a federal Special Support Group (SSG) to assist the provincial government in logistics, health, administration, and registration. It is headed by Lieutenant General Nadeem Ahmed, a serving corps commander.³³ As former deputy chairman of the Earthquake Reconstruction and Rehabilitation Authority (ERRA), he had overseen reconstruction and rehabilitation efforts after the 2005 natural disaster that were characterised by lack of transparency and accountability.³⁴ While he is theoretically answerable to the provincial government, in practical terms his appointment confirms the military’s influence over relief efforts.

“The military is trying to improve its image by controlling the relief process”, said the head of a Peshawar-based

war-based NGO.³⁵ A political economist added: “When you have a federal structure, with a general at the head, you’ve already lost the game. The IDPs will believe, ‘it won’t work’ and look elsewhere to make ends meet”.³⁶ There is indeed little reason to believe that the military will be willing to work any more closely with civilian institutions and elected representatives than it has in its counter-terrorism efforts.³⁷

Given a dysfunctional PDMA, the NWFP government is relying on the office of the Provincial Relief Commissioner, established under the National Calamities (Prevention and Relief) Act, 1958, for the distribution of relief items to IDP camps. On 11 May 2009, the commissioner established the Emergency Response Unit (ERU) to “ensure quick response in matters relating to IDPs”.³⁸ Echoing the military’s response to the 2005 earthquake, local civilian institutions have been marginalised. Despite systemic flaws in the Musharraf regime’s Devolution of Power Plan,³⁹ union councils, the lowest tier of local government, are better placed than provincial bureaucrats or the military for identifying IDPs settled outside the camps, since they have links with families and school administrators hosting IDPs. This tier, however, has been neglected.

Instead, relief funds are distributed to the head of the district bureaucracy, the district coordination officer (DCO), or the district commissioner, both appointed by the provincial government. As of 23 May, the ERU had dispensed Rs.99 million (roughly \$1.2 million) to district commissioners (DCOs) in NWFP, including Rs.35 million (\$434,000) to the Mardan DCO and Commissioner.⁴⁰ Said a Mardan union council *nazim* [mayor], Rahim Shah, whose Guli Bagh union council has at least 2,900 IDPs in schools and 3,200 in homes, “we hear that the district government has received all this money – but where is it? ... Local government has been left on its own. Nobody from the international community, nobody from the Provincial Relief Commission or the ERU has consulted us. All the focus is on the government camps”.⁴¹

³⁰ Crisis Group interview, Killian Kleinschmidt, assistant representative, UNHCR, Islamabad, 19 May 2009.

³¹ Crisis Group phone interview, CAR representative, 20 May 2009.

³² Crisis Group interview, Mardan, May 2009.

³³ General Ahmed is the Mangla Corps Commander.

³⁴ See Crisis Group Briefing, *Political Impact of the Earthquake*, op. cit.

³⁵ Crisis Group interview, Maryam Bibi, Peshawar, 22 May 2009.

³⁶ Crisis Group interview, Jamal Khan, Peshawar, 21 May 2009.

³⁷ For previous analysis on Pakistan’s military-dominated counter-terrorism efforts, see Crisis Group Reports, *The Militant Jihadi Challenge* and *Pakistan’s Tribal Areas*, op. cit.

³⁸ NWFP Government circular, 11 May 2009.

³⁹ See Crisis Group Asia Report N°77, *Devolution in Pakistan: Reform or Regression?*, 22 March 2004.

⁴⁰ www.helpidp.org/finances.php.

⁴¹ Crisis Group interview, Rahim Shah, Mardan, 20 May 2009.

The Mardan DCO insists that his office communicates with sub-district officers such as *patwaris* (land record clerks at the *tehsil* (town) and sub-*tehsil* level), and *tehsil* and union council *nazims* to gauge local requirements and identify those in need.⁴² But lack of meaningful consultation and disagreements are mar- rying such coordination. For example, the Mardan com- missioner at first prohibited IDPs from settling in school buildings, and had gates locked, only to have to reverse that order under local public pressure.⁴³ By other accounts, the civilian bureaucracy, cumbersome and unresponsive to IDP needs, has become a hurdle in relief delivery.⁴⁴

Engaging local NGOs is also vital to ensuring the effective delivery of relief. In line with international practice, UN agencies and a number of humanitarian organisations have attempted to coordinate their relief activities, appointing a lead agency for each sector or cluster such as health, food or education. Local NGOs have, however, felt sidelined, while an international aid officer argued that the large numbers of such organisations working in the camps have impeded coordination.⁴⁵

D. ASSESSING NEEDS AND PRIORITISING OFF-CAMP SITES

All IDP settlements must be identified and IDPs given incentives to register. According to NWFP Social Wel- fare Minister Sitara Imran, her department has estab- lished registration points in union councils where non- camp IDPs can easily register without the need for door-to-door efforts.⁴⁶ Yet, a registered IDP from Swat who was living in a school building said, “the govern- ment’s attitude is, ‘we’ve set up these camps – now if people come to them, they come, if they don’t, they don’t’”.⁴⁷ The prevailing view that those outside relief camps are generally in less need than those inside not only keeps much-needed aid from reaching some of the very vulnerable families and individuals but also ignores the fact that the vast majority of IDPs, about 90 per cent of the more than 3 million from conflict

zones in NWFP and FATA, are attempting to survive outside government-run camps.⁴⁸

Not just government authorities but also humanitarian agencies have, as yet, failed to extend assistance as effectively to those living outside camps. The WFP has set up distribution hubs where non-camp IDPs, once registered, can collect uncooked food rations.⁴⁹ While the assistance provided to IDPs by local com- munities, including shelter and material support, has been critical in preventing this massive exodus from becoming a major humanitarian disaster, many IDPs understandably question how sustainable it is. If the already limited supply of aid to off-camp IDP com- munities dries up, there is a risk of dependence on jihadi groups that are already delivering both resources and financial aid.

Adjusting to the heat in ill-equipped camps and other places of shelter is taking its toll on IDPs who are ac- customed to the temperate Malakand climate. Since relief assistance is typically made available at distri- bution points instead of being brought directly to tents in the camps, people have to queue outdoors, in the scorching heat, to obtain food and other items, while long lines form at water points. Because the IDPs also belong to a socially conservative society, with gender segregation the norm, women and infants who lack any other safe and secluded area are forced to remain within their tents or shelters. They are thus especially exposed to the severe heat, exacerbated by prolonged electricity outages and too few generators. Although hand-held fans and communal sheds have been pro- vided, the heat has already started to take its toll.

There is a real prospect of epidemics caused by over- crowding, poor sanitation and soaring temperatures in overcrowded buildings and homes. Humanitarian aid agencies are concerned that the massive numbers in- volved are severely straining existing health facilities and that women, in particular, may not be able to ob- tain basic care, including reproductive health care.⁵⁰ School administrators and host families, who are al- ready experiencing acute food and medicine short- ages, do not have access to emergency health care. Many said they require female doctors and nurses.

⁴² Crisis Group interview, Mardan DCO, Mardan, 20 May 2009.

⁴³ Crisis Group interviews, Mardan, May 2009.

⁴⁴ Crisis Group interview, Islamabad, head, international NGO, 30 May 2009.

⁴⁵ Crisis Group interview, Islamabad, May 2009.

⁴⁶ Crisis Group phone interview, 28 May 2009.

⁴⁷ Crisis Group interview, Mardan, May 2009.

⁴⁸ “United Nations pleads for more cash for IDPs”, *Daily Times*, 29 May 2009.

⁴⁹ An IDP from Dir who registered in Peshawar on 12 May 2009 went to a designated food hub but was told that the packages were accessible only to IDPs who had registered on or before 11 May. Crisis Group interview, Mardan, 20 May 2009.

⁵⁰ Crisis Group interviews, Médecins Sans Frontières (MSF) Belgium, Mardan, May 2009.

One school administrator had a large stock of medicines provided by the community but said she could not dispense them without a medical practitioner's guidance.⁵¹ According to a humanitarian aid worker, "children can be seen carrying bags full of medicine. Self medication is a real danger".⁵² Mobile medical teams with female staff need to visit IDP settlements and neighbourhoods, particularly those with a high concentration of displaced people, on a regular basis.

IDP children have fled their home districts in the middle of the school year. The establishment of educational facilities – which would also provide jobs for displaced teachers – must be undertaken on a priority basis. Parents can be given an incentive to send their children to school if breakfast and lunch are provided in the classroom, reducing overall household costs. Health education must be made an integral part of the syllabus. Insufficient measures to provide education to the children who form half the IDP population may prompt families to enrol them in madrasas (religious seminaries). Overcrowding and food scarcity may also tempt many of the displaced to turn to one of the several camps run by Islamist groups.

E. ISLAMIST RELIEF ORGANISATIONS

Most of Pakistan's Islamist movements have maintained close ties to jihadi groups and organisations; prominent religious parties like the Jamaat-i-Islami (JI) and Jamiat Ulema-e-Islam (JUI) have their own jihadi wings.⁵³ While they also have ostensibly separate charity wings, the actual distinction between these intra-party elements is unclear. These groups and parties appear to have understood, far better than the civilian and military bureaucracies, the importance of winning IDP hearts and minds.

The JI has been particularly active in providing relief to IDPs through its welfare wing, the Al-Khidmat Foundation, which has been making free transportation available⁵⁴ and claims to have allocated Rs.50 million (\$625,000) for IDP relief and set up 75 camps, including five for medical purposes.⁵⁵ Together with

UNICEF, Al-Khidmat is providing education, with official sanction, in the government-run Samarbagh camp in Lower Dir, the only local NGO that offers education in any of the IDP camps under ERU purview.⁵⁶ Senior officials from the Awami National Party, NWFP's secular ruling group, have expressed concerns about these activities.⁵⁷

More overtly militant groups are also actively assisting the IDPs, most notably, the Falah-i-Insaniyat Foundation (FIF), the Lashkar-e-Tayyaba (LeT)'s latest reincarnation. A signatory to al-Qaeda's global jihad and banned in 2002 as a terrorist organisation, the LeT, renamed Jamaat-ud-Dawa (JD), was nevertheless one of the most prominent NGOs to provide earthquake relief in AJK, with the military's open support.⁵⁸ Following the Mumbai attacks, the UN Security Council designated the JD a terrorist organisation on 10 December 2008, under Resolution 1267 (1999) concerning "al-Qaeda and the Taliban and Associated Individuals and Entities". Islamabad again banned the group, detained some of its leaders, froze its assets and locked its offices countrywide. The Punjab government took over its headquarters in Muridke, near Lahore, the provincial capital.⁵⁹ Despite this, the LeT reemerged as the FIF⁶⁰ and has reportedly sent 2,000 workers to provide food aid and transport to IDPs in three camps in NWFP.⁶¹

Led by a LeT leader, Hafiz Abdur Rauf, formerly head of JD's welfare wing, the group claims to have provided roadside camps with 24-hour kitchens that, by mid-May 2009, had fed 53,000 people. It also claims to have made available 23 minibuses and seven ambulances to transport residents and the injured to camps and hospitals. A FIF camp in Sher Gur in Mardan is reportedly well funded and organised and appears to be delivering assistance far more effectively than the government.⁶²

⁵¹ Crisis Group interview, school administrator, Guli Bagh, Mardan, 20 May 2009.

⁵² Crisis Group interview, humanitarian aid worker, Mardan, May 2009.

⁵³ See Crisis Group Asia Report, *The State of Sectarianism*, op. cit.

⁵⁴ Crisis Group interview, humanitarian aid worker, Islamabad, May 2009.

⁵⁵ See Al-Khidmat Foundation website at <http://al-khidmat.foundation.org>.

⁵⁶ See ERU website, available at www.helpidp.org/who_is_doing_what.php.

⁵⁷ Crisis Group interview, Bashir Bilour, senior minister, ANP, Peshawar, 20 May 2009.

⁵⁸ See Crisis Group Report, *Political Impact of the Earthquake*, op. cit.

⁵⁹ See Crisis Group Report, *The Militant Jihadi Challenge*, op. cit.

⁶⁰ A member of the FIF claimed that his group works closely with the Islamic Medical Associate, a Jamaat-i-Islami affiliate. Omar Waraich, "Terrorism-linked charity finds new life amid Pakistan refugee crisis", *Time*, 13 May 2009.

⁶¹ "Banned Jamaat-ud-Dawa helping out IDPs", *Dawn*, 14 May 2009.

⁶² Declan Walsh, "Banned jihadi group is running aid programme for Swat refugees", *The Guardian*, 13 May 2009.

The jihadi groups' network of mosques and madrasas provide a strong infrastructure that goes beyond traditional relief and seeks to incorporate IDPs into a broader community – albeit a jihad-oriented one. With links to international terrorist groups, radical Islamists even offer the jihadi equivalent of study-abroad programs.

Reports of jihadi indoctrination in Al-Khidmat and FIF camps and schools are widespread. A local NGO head, Maryam Bibi, said:

The big difference between this effort and the Afghan refugees was that in that case, there was a clear ideology driving it. Here, it is just relief. That gives more space to groups like Al-Khidmat and Jamaat-ud-Dawa that have a strong ideological focus If it's simply relief, you turn the people into beggars, while the radical groups are saying, "we'll turn you into fighters".⁶³

The government needs to prohibit jihadi groups, banned under the Anti-Terrorism Law, including those operating under changed names, from participating in relief efforts. While some domestic actors and international aid organisations stress that relief efforts must remain independent of ideology, they should realise that the Pakistan situation is as much a war of ideas as of armies. UN agencies and international NGOs in particular should refrain from engaging with sectarian, particularly jihadi, groups and their charity wings, and instead support moderate, local organisations, such as the Edhi Foundation.

Malakand's IDPs, who have first hand experience of Taliban atrocities, including public beheadings and floggings, and have seen their schools destroyed by an extremist movement that has issued *fatwas* (religious edicts) against female education, are potentially powerful constituencies for peace. But the mainstream secular political actors must be as proactive as the jihadis in engaging them, not just through relief but also on such issues as human rights, women's rights, equality and justice. Moderate political parties, which have largely limited their engagement to sporadic visits from party leaders to camps to distribute aid – viewed by some as mainly a public relations exercise – should mobilise their grassroots bases within IDP communities. Many workers of parties such as the ANP and the PPP have themselves been victims of militancy and could be especially effective in establishing meaningful links with IDPs. "Who's more effective to engage in relief efforts – someone who

had been directly affected by the Taliban, or a serving or retired general?", asked an NGO head.⁶⁴

III. THE MILITARY OPERATION

A. FORGOTTEN RESIDENTS

Hundreds of thousands of residents have been unable to flee Malakand's conflict zones because of military-imposed curfews, attacks by heavy artillery, helicopter gunships and jet fighters and threats from militants who have planted landmines and are intent on using civilians as human shields.⁶⁵ Those trapped by the fighting face disrupted electricity, closed hospitals, schools, banks and shops and severe shortages of food, medicine and water.⁶⁶ Without well-managed government efforts to provide safety and security to these forgotten residents, the civilian costs of the war will continue to rise rapidly, not just from direct fire, but also through illness and food shortages.

While General Ahmed, the Special Support Group's head, acknowledged the predicament of those left behind, his proposed solution – to airdrop food⁶⁷ – is significantly short of what is most urgently needed: lifting the military curfew and, even more importantly, a humanitarian pause in the fighting to allow for much-needed assistance. The duration of that humanitarian pause should be dependent on an assessment of needs and available logistical and other resources and material support, as determined by the provincial government and international and local humanitarian agencies.

The military does intermittently lift the curfew and claims that residents have ample time to leave. According to a social worker from Dir, now an IDP in Mardan, however, "the military says, 'leave home', gives us one or two hours, and then imposes curfew and starts shelling. But in those one or two hours, no help, no transport, is provided".⁶⁸ A senior international aid official added: "The army gives people a short time to leave

⁶³ Crisis Group interview, Peshawar, 22 May 2009.

⁶⁴ Crisis Group interview, Peshawar, 22 May 2009.

⁶⁵ "Pakistanis trapped in Swat face catastrophe", Reuters, 26 May 2009. See also "Pakistan: Taliban, army must minimise harm to civilians", press release, Human Rights Watch, 18 May 2009.

⁶⁶ See Salman Masood, "New exodus fuels concerns in Pakistan", *The New York Times*, 15 May 2009.

⁶⁷ Ibid.

⁶⁸ Crisis Group interview, Mardan, 20 May 2009.

and then make it clear that it will make no distinction between those who stay behind and the militants".⁶⁹

Such measures are certain to increase the civilian death toll. On 18 May, in an incident confirmed by police sources, military shelling killed several people trying to flee a Swat town, including women and children.⁷⁰ The next day military attacks destroyed seven houses in a union council in Lower Dir, one of which was still occupied, killing three and injuring two.⁷¹ While it publicises militants' and soldiers' deaths, the military has compiled no data on civilian casualties. "We have to accept the army's claim that there will be less and less collateral damage", said an ANP member of the provincial government.⁷² The exact number of civilian casualties will not be known until humanitarian groups are allowed proper access to conflict zones.

B. CIVILIAN ACCESS AND CONTROL

The National and NWFP Assemblies must demand greater civilian access to the conflict zones, including for humanitarian organisations, the media and other civil society groups. Independent verification of the military's claims to having defeated the Pakistani Taliban is also essential if those displaced are to feel safe enough to return home. The military has already implausibly declared parts of Malakand's Buner district, and FATA's Bajaur Agency, cleared of militants and ready for IDP return. "Now if people go back, and it turns out that militants are still around, who is going to believe the army the next time it says an area is cleared?", asked a government official.⁷³ Militancy indeed continues in some Bajaur towns to which IDPs returned after they were declared clear.⁷⁴

The military's long-standing links to jihadi networks and its appeasement deals with militants, the latest with the Swat-based Taliban, have also understandably provoked doubts about its intentions in the current operation. Said a Dir-based activist, "in Gula Bagh [a union council in Lower Dir], there was a military checkpost and half a kilometre away a Taliban check-

post. Why couldn't the army just go down the road?"⁷⁵ There are numerous accounts of militant leaders still patrolling roads in large vehicles in Lower Dir without being targeted by the military.⁷⁶ "The ISPR [Inter Services Public Relations, the military's public relations body] says a commander has been killed – then you hear from people in the area that that commander is still alive".⁷⁷

While it is difficult to verify individual accounts, the depth of public mistrust is clear and is unlikely to improve unless elected representatives and the public at large become partners in the fight against militancy in Malakand. Without this, the IDPs are unlikely to put their faith in ISPR's claims of military successes, and this will have significant ramifications for resettlement efforts.

Earlier military operations in FATA and in Malakand's Swat district have typically been followed by deals that have reversed any progress made on the ground and given religious extremists time and space to regroup and expand. Both the PPP-led federal government and the ANP-led provincial government in NWFP must resist any pressure from the military to renew such agreements. HRCP's Kamran Arif said:

The army plans something, then asks for civilian ownership for it. This door is still open With every military operation there is at least one political party that opposes it, and that gives the army an exit strategy. The ANP fell into that trap in Swat [in 2008-2009], now it's the religious parties. So this is a test case. If there is a peace deal, it is conclusive evidence that nothing has changed.⁷⁸

In particular the ANP, which won Malakand Division massively in the 2008 national elections, has lost much credibility because of its acquiescence to the military-sponsored peace deal there, as well as to militant demands, including, most notably, its appointment of Malakand Commissioner Syed Mohammad Javed. With alleged links to the Taliban,⁷⁹ Javed had reportedly ordered the transfers of judges without Islamic

⁶⁹ Crisis Group interview, senior international aid official, Islamabad, May 2009.

⁷⁰ "Civilians fleeing Swat come under attack", *The News*, 19 May 2009.

⁷¹ Crisis Group interviews, Dir-based IDPs, Mardan, 20 May 2009.

⁷² Crisis Group interview, senior ANP member, Peshawar, May 2009.

⁷³ Crisis Group interview, government official, Peshawar, 22 May 2009.

⁷⁴ See Nahal Toosi, "True Swat victory won't be military", Associated Press, 31 May 2009.

⁷⁵ Crisis Group interview, Dir-based IDP, Mardan, May 2009.

⁷⁶ Crisis Group interviews, Dir residents, Mardan, May 2009.

⁷⁷ Crisis Group interview, Dir-based social worker, Mardan, 20 May 2009.

⁷⁸ Crisis Group interview, Kamran Arif, Peshawar, 21 May 2009.

⁷⁹ Javed was commonly referred to as the "godfather of the Swat Taliban". See Rauf Klasra, "Slaying of SSG commandos", *The News*, 22 May 2009.

law degrees out of Malakand Division⁸⁰ even before the Nizam-e-Adl Regulation 2009⁸¹ became official. He had also reportedly supported the Pakistani Taliban's incursion into Buner and allegedly facilitated the beheading of four military officials in Swat, allegations he strongly denies.⁸²

While ANP's senior minister, Bashir Bilour, described the current counter-insurgency efforts as "do-or-die",⁸³ other party members continued to defend the peace deal with the Taliban and the imposition of Sharia in Malakand. The party must regain the electorate's confidence by embracing the secular mandate it obtained in the February 2008 elections, and the federal and provincial governments must wrest back control over the political process in NWFP.

IV. REHABILITATION, RECONSTRUCTION AND REFORM

A. CASH-BASED ASSISTANCE

The government and international community must help IDPs become economically mobile through cash assistance, particularly in the short and medium terms, which will help build capacity to generate independent sources of income in the longer term. While it was necessary to provide immediate material and food assistance when the IDPs first arrived, such assistance should now give way to cash-based programs that give the IDPs meaningful economic independence and restore their dignity.

NADRA has designed a 'smart card', with biometric features embedded, for the federal government's Benazir Income Support Program (BISP), a social welfare

program aimed primarily at the most economically and socially vulnerable women, including households with monthly incomes of less than Rs.6,000 (\$75); households headed by divorced or widowed women; and households with members who are disabled or suffer from chronic disease.⁸⁴ Beneficiaries will receive monthly cash assistance of Rs.1,000 (\$12.5) directly via their cards, in addition to free access to health care, life insurance and vocational training.⁸⁵

The federal government has given IDPs priority over the original BISP target communities, compelling NADRA to restructure the program. Under the new system, IDPs registered in a camp would obtain a smart card with the specific camp data encoded into the microchip. Non-camp IDPs would obtain a card after verification from their elected representatives or local authorities.⁸⁶ The cards would contain biometric data on the beneficiary and the details of the assistance he or she is entitled to receive. On 25 May, the government announced that it would issue the cards to 250,000 families from FATA and Malakand Division. Moreover, the government's earlier announcement of Rs.25,000 (roughly \$310) for 45,000 of the most vulnerable displaced families would be provided through the cards.⁸⁷

The creation of a similar smart card, based on the technology available to NADRA, would provide an incentive to Malakand and FATA IDPs to register, enable humanitarian aid organisations to channel assistance to non-camp IDPs and give recipients control over the aid they receive. The stipend would be determined on the basis of individual and family needs in the case of IDPs in camps and take into consideration the needs of host families for those in non-camp accommodation. If issued on a personal rather than household basis, salaries could also be transferred to the cards from assistance programs such as paid vocational training.

This program would be particularly valuable for meeting the needs of non-camp IDPs, with the cards used to collect relief assistance at distribution hubs, withdraw cash or purchase goods on the market. There is sufficient food and other supplies in the country to make the system viable, and having buyers available will spur further local agricultural production. Card recognition systems should first be provided to

⁸⁰ See "Swat Qazi courts start work, civil judges cease hearings", *Daily Times*, 18 March 2009.

⁸¹ According to the Nizam-e-Adl (Judicial Order) regulation, first enacted in 1999 and then its current form in 2009, *qazis* (religious court judges) are to decide all civil and criminal cases in order to ensure adherence to Sharia, thus abolishing regular courts. See Text of Nizam-e-Adl Regulation 2009. For further analysis on its impact on Swat, see Crisis Group Report, *The Militant Jihadi Challenge*, op. cit.

⁸² On 21 May 2009, Prime Minister Gilani ordered an investigation into allegations against Javed. See Klasra, op. cit. Denying that he had any role in the officials' deaths, Javed also claimed that any actions he took as commissioner were with provincial and federal government approval. See "Sherry takes SSG beheadings to parliament", *The News*, 30 May 2009.

⁸³ Crisis Group interview, Bashir Bilour, Peshawar, 21 May 2009.

⁸⁴ See www.bisp.gov.pk.

⁸⁵ Crisis Group interview, Tariq Malik, deputy chairman, NADRA, Islamabad, May 2009.

⁸⁶ Ibid.

⁸⁷ "Benazir smart cards will be issued soon," *The Nation*, 26 May 2009.

distribution centres and government-subsidised utility stores in those areas of the NWFP that are hosting significant numbers of IDPs. A limit on cash withdrawal could be placed to avoid abuse. The technology must, however, be secure enough to ensure the confidentiality of personal data. Moreover, to avoid theft or pressure from friends and relatives, the holder's fingerprint should be required to use the card.

If properly implemented, such a system would reduce humanitarian relief costs by channelling funds into a single aid provision mechanism. By cutting out the middleman, including civilian and military officials, it would encourage efficient delivery, even as it limited opportunities for waste and theft. The government should, in fact, develop mechanisms to enable IDP communities to hold civilian and military officials accountable for the distribution of assistance.

Cash-based incentives should also cover child and adult education. Swat, with one of the highest literacy rates in the province, has since 2008 experienced militant threats against both boys' and girls' schools. The destruction of school premises alone has deprived some 80,000 female students. By January 2009, more than 180 government schools in Swat had been destroyed.⁸⁸ Parents remain eager to return their children to the classroom but may find the costs prohibitive. Humanitarian assistance should include tuition, provided through cash vouchers, for every child that a family enrolls in school. To prevent local school-going children from being adversely affected by a system that is over-burdened by the IDPs, the international community and the Pakistan government should urgently allocate sufficient fiscal and material resources for new facilities and staff.

The adult IDP population must also not remain idle, or forced, for lack of choice, into dependency on hand-outs. "If this operation had happened a year ago, [before militancy and armed conflict destroyed the local economy], families would have actually had significantly more money to leave with than they do now", a political economist said. Nevertheless, "these IDPs have come from the heart of the provincial economy ... so it is absolutely essential that we create economic opportunities for them".⁸⁹ Livelihood programs, such as cash-based vouchers for vocational and skills improvement training would not only help displaced households become economically independent but also feed into a reconstruction phase that would have high

demand for skilled labour.⁹⁰ Drawing parallels to reconstruction after the 2005 earthquake, former NWFP Chief Secretary Khalid Aziz said, "instead of having a mason from Peshawar travel to rebuild homes for higher rates, you could turn IDPs into masons and have them do it".⁹¹

B. REBUILDING A SHATTERED ECONOMY

The head of a local NGO stressed: "The IDPs are already saying, 'don't build permanent schools for us' They feel like they've come to hell".⁹² The displaced are anxious to return to their businesses, homes, fields and orchards, any measures to ensure their survival must be accompanied by clear signals that the government is committed to rebuilding a shattered economy.

Without significant reform and investment, Swat and other conflict-hit zones of Malakand Division could likely turn into another sector of an undocumented war economy, including the warlordism, arms production and smuggling, drugs, kidnapping, human trafficking, and jihad that dictates the economy of FATA and other parts of NWFP. This criminality had in fact begun to take root in Swat in 2007-2008, as the militants gained military, economic and political clout. The current economic crisis in the conflict zones, unless adequately addressed, will accelerate the process. "If the people go back, but the jihadi economy is still intact, this operation will be a failure", and will only breed more extremism and rampant criminality, a Peshawar-based political economist said.⁹³

With high-yielding crops and a developed services industry, particularly tourism in Swat, along with tax exemptions and thus cheaper vehicles and higher car

⁸⁸ See Saeed Shah, "Five more schools destroyed in Taliban campaign", *The Guardian*, 20 January 2009.

⁸⁹ Crisis Group interview, Jamal Khan, Peshawar, 21 May 2009.

⁹⁰ The non-governmental organisation Women's Refugee Commission has recently issued *Building Livelihoods: A Field Manual for Practitioners in Humanitarian Settings* (May 2009), providing practical tools for designing and implementing more effective livelihood programs in IDP and refugee settings, including employment-readiness programs like vocational training, micro-financing, animal husbandry, agriculture programs, cash-for-work and support for small and medium-sized enterprises. See www.womensrefugeecommission.org/programs/protection/livelihoods. (Footnote added to the web version of this report on 5 June 2009.)

⁹¹ Crisis Group interview, Peshawar, 22 May 2009.

⁹² Crisis Group interview, Peshawar, 22 May 2009.

⁹³ Crisis Group interview, Jamal Khan, Peshawar, 21 May 2009. Of Bajaur's 500,000 IDPs, reportedly "some 230,000 have returned since the army declared victory there in February, only to find as many as 6,000 homes and shops destroyed or damaged". Toosi, op. cit.

ownership, the Malakand region had a more productive economy than other parts of NWFP. This economy, however, has been severely hit by militancy and armed conflict, undermining productivity and depleting incomes. In Swat, for instance, more than 400 hotels and restaurants were shut down after the militants moved into the district in 2007. Today, the Taliban's landmines and the military's use of heavy artillery and airpower are causing inordinate damage to the region's crops, fields, livestock, roads and watercourses that will hamper progress long after the fighting has stopped.

The government must urgently devise a reconstruction blueprint. Islamabad and the international community should immediately begin planning development projects to follow the military operation, with a special focus on rebuilding the once vibrant tourism, agricultural and horticultural sectors. Critical to the farm recovery so that local labour can do the work will be providing access to credit and public investment for rebuilding infrastructure – from irrigation to farm-to-market roads, watershed management and marketing support.

C. ENSURING RULE OF LAW

While the military's emphasis on search-and-destroy should be replaced by the "clear, hold and build" counter-insurgency doctrine successfully pursued in similar international conflicts, an unambiguous demarcation between military and civilian roles will be critical to success. Should the military, in particular, dominate the reconstruction process as it has relief, jihadi groups will likely re-emerge.

The breakdown of governance and law and order in Malakand Division, particularly in Swat, has enabled non-jihadi criminal gangs to proliferate and partner with Pakistani Taliban groups. Local criminals have helped the militants to identify, confront and detain members of the public who oppose the Taliban's agenda, including local NGO workers, activists and journalists.⁹⁴

Ultimately, a justice system that integrates the police, courts and prosecutors is vital for successful counter-insurgency and counter-terrorism in NWFP. If and when the military clears Malakand Division of militants, security responsibilities should be quickly transferred to civilian law enforcement agencies. Reconstruction planning should, therefore, take into account

the urgent need to strengthen the provincial police force through training and much-needed equipment, including modern weaponry and ammunition, as well as expanded investigation capacity.⁹⁵ With their knowledge of the area and of the militants, the police and civilian intelligence agencies would enhance the government's ability to dismantle jihadi networks. Since the NWFP lacks sufficient police, the gap should be filled by federal and other provincial forces, along with federal intelligence agencies.

As the first point of contact between the citizen and state, a credible police force is essential to re-establish the government's writ in Malakand. "90 per cent of the problem in administration of justice [in Malakand] is the police", said HRCF's Kamran Arif.⁹⁶ Corruption within the force, combined with the lack of security, has enhanced the Taliban's recruitment capacity. Better pay and stringent oversight measures must be put in place to end abuses of power and remove inducements to bribery.⁹⁷

A strengthened judiciary is equally important. Arrest and prosecution of religious extremists and their allies in local criminal gangs who have perpetrated rape, murder and other crimes is the only long-term solution to militancy. Convictions in fair trials would have the legitimacy and public support that unaccountable and indiscriminate military force sorely lacks.

The legal fraternity, which showed potential to mobilise public support during the lawyers' movement to restore Chief Justice Iftikhar Mohammed Chaudhry,⁹⁸ must play a decisive role. The leading national and provincial bar groups did not mount any meaningful opposition to the Nizam-e-Adl Regulation 2009 even though it removed lawyers, judges and normal courts from the judicial process. To counter suspicion that the lawyers' movement was motivated by politics as much as principle, bar groups should make justice in NWFP a top priority. "Judges who don't want to follow the law are forced to do so because of independent bar associations", said Kamran Arif.⁹⁹ These associations

⁹⁴ Crisis Group interviews, Dir-based IDPs, Mardan, 20 May 2009.

⁹⁵ For earlier analysis on strengthening civilian law enforcement agencies, see Crisis Group Report, *The Militant Jihadi Challenge*, op. cit., and Crisis Group Asia Report N°157, *Reforming Pakistan's Police*, 14 July 2008.

⁹⁶ Crisis Group interview, Peshawar, 21 May 2009.

⁹⁷ See Crisis Group Report, *Reforming Pakistan's Police*, op. cit.

⁹⁸ See Crisis Group Asia Report N°160, *Reforming the Judiciary in Pakistan*, 16 October 2008.

⁹⁹ Crisis Group interview, Kamran Arif, Peshawar, 21 May 2009. For further analysis on the role of Pakistan's bar associations see Crisis Group Report, *Reforming the Judiciary*, op. cit.

are also well placed to pressure the government to enact overdue political reforms to extend the Supreme Court's and Peshawar High Court's jurisdiction over FATA and PATA by incorporating both fully into NWFP.

As they do, the U.S. and other key allies such as the European Union should provide direct support to the training, equipping and deployment of the police. This police presence will assure local citizens that they will have greater protection under the new structure than in the past.

D. IMPLEMENTING POLITICAL REFORMS

Upon entering office, the PPP pledged to repeal the Frontier Crimes Regulations (FCR)¹⁰⁰ and to bring the tribal agencies into the constitutional framework, either as a separate province or through incorporation with NWFP. Facing opposition from the ANP, its coalition partner in the federal and NWFP governments, it has failed to put its pledges into practice.

The districts of the Malakand area form part of PATA, which falls under the NWFP chief minister's remit and is represented in NWFP's provincial legislature. Article 247 of the constitution states: "Subject to the Constitution, the executive authority of the Federation shall extend to the Federally Administered Tribal Areas, and the executive authority of the province shall extend to the Provincially Administered Tribal Areas".¹⁰¹ The NWFP governor can change or extend laws to PATA only with the president's approval. The original PATA Regulation of 1975 vested judicial authority in districts' deputy commissioners, and empowered *jirgas* [assemblies] to decide civil and other disputes under the supervision of the revenue officer, thus giving the district bureaucracy and allied local traditional elites significant authority. Pakistan's Criminal Procedure Code was not applicable to PATA.¹⁰²

A 1995 Supreme Court decision declared the PATA Regulation unconstitutional, thus restoring judicial authority to regular courts and allowing appeals to the provincial High Court and the Supreme Court. The decision drew opposition from the district bureaucracy

and traditional powerbrokers, including landowners, who colluded in the emergence and consolidation of the Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM), a Sunni militant organisation allied to the Taliban,¹⁰³ and its demand for imposition of Sharia. In 1999, yielding to TNSM pressure and rising militancy in Malakand, the federal government adopted a Nizam-e-Adl Regulation, which, while maintaining ordinary district and sessions courts, required Malakand's courts to consult with clerics, thus expanding the mullahs' influence. The Nizam-e-Adl Regulation President Zardari signed in 2009 vests all judicial authority in *qazis* (Sharia court judges).

In October 2008, the National Assembly passed a fourteen-point consensus resolution defining a broad government framework to combat extremism, including political reforms, economic development and an enhanced role for civilian law enforcement agencies in NWFP and FATA. However, the failure to swiftly follow up has undermined the government's credibility and "makes people worry that we still don't have a sovereign parliament".¹⁰⁴

With the costs of poor governance in NWFP and FATA now clear even to ANP members, the PPP-led government is well placed to renew that debate. Other mainstream parties, particularly Nawaz Sharif's Pakistan Muslim League (PML-N), the main opposition party, are likely to support such reform measures,¹⁰⁵ which should also include a repeal of Malakand Division's PATA status to bring the region fully into the political, legal and administrative mainstream.

On 17 May 2009, the National Assembly unanimously passed a resolution endorsing the counter-insurgency operation in Malakand. The PPP government should capitalise on the current broad political and public support for eliminating the Pakistani Taliban, including from prominent Pakistani religious scholars, to table a package of political reforms in FATA as well as Malakand Division. "What is stopping the government from institutional reforms, so that at the end of the conflict there is an improved economic and judicial structure?", asked former NWFP Chief Secretary Khalid Aziz.¹⁰⁶

As a first step, President Zardari should immediately rescind the Nizam-e-Adl Regulation 2009 and reaf-

¹⁰⁰ The FCR is a draconian, colonial-era legal framework adopted in 1901 and retained after independence in 1947 to govern FATA. See Crisis Group Report, *Pakistan's Tribal Areas*, op. cit.

¹⁰¹ Constitution of Pakistan.

¹⁰² See Shaheed Sardar and Javaid Rehman, *Indigenous Peoples and Ethnic Minorities of Pakistan: Constitutional and Legal Perspectives* (Richmond, 2001), p. 54.

¹⁰³ See Crisis Group Report, *The Militant Jihadi Challenge*, op. cit.

¹⁰⁴ Crisis Group interview, Iqbal Jhagra, PML-N general secretary, Islamabad, 19 May 2009.

¹⁰⁵ Ibid.

¹⁰⁶ Crisis Group interview, Peshawar, 22 May 2009.

firm the jurisdiction of Malakand's civil courts, the Peshawar High Court and the Supreme Court. The government should abolish the Frontier Crimes Regulations and the Nizam-e-Adl Regulation 1999. Although the PPP is now better placed than ever before to rally the two-thirds parliamentary majority required to incorporate FATA and PATA into NWFP, a fact acknowledged by a senior PPP figure, it is hesitant to "fight on too many fronts".¹⁰⁷

The PPP's ANP coalition partners in the federal and NWFP governments, in particular, still appear unwilling to risk wresting control of their province from the grip of the militants as well as the military. "Only when the insurgency is defeated can we then repeal the FCR and extend the Political Parties Act; right now, it will just cause more problems", said the ANP's Bashir Bilour.¹⁰⁸ The federal and NWFP governments must, however, understand that militants alone, by tapping into public disaffection, stand to benefit from the failure to enact political reform. Waiting for the end of the fighting will cause an unnecessary and risky delay. If the government fails to institute an effective legal structure that upholds the rule of law immediately after the area is cleared, the result will be the same legal vacuum that has previously provided openings for extremist groups like the Tehrik-e-Nifaz-e-Shariat-e-Mohammadi and its Taliban allies.

E. THE INTERNATIONAL ROLE

To address the needs of the hundreds of thousands of residents who have been unable to flee Malakand's conflict zones, the international community, led by the UN, should urge a humanitarian pause in the fighting to allow much-needed assistance to reach non-combatants and to account for civilian casualties. Said OCHA's Pakistan head, Manuel Bessler, "a humanitarian pause is a subject of discussion, and with the very good liaison we have with the armed forces, it is obviously something that we would not shy away from asking for".¹⁰⁹ Instead of waiting, however, the UN should urgently and forcefully press the army for this. Using its leverage, especially as it allocates more resources and funds to IDP relief, the international community should also pressure the military to give access to the conflict zones to international and local humanitarian agencies, as well as civilian actors, including elected representatives, media and local NGOs.

Instead of ensuring that relief and reconstruction is civilian-led and empowering displaced communities to determine needs and priorities, UN agencies in particular appear to believe it necessary to tap the military's resources, expertise and intelligence in order to channel aid to populations stranded in the conflict zones. In the belief that the army is the only institution that can ensure the safety of their staff and IDP, many international actors have even been pressing for greater military presence in the IDP camps to check the presence of insurgents and Islamist charity organisations fronting for radical groups.¹¹⁰ However, as an international humanitarian aid worker argued, "the police should ensure security in the camps, not the army. These people have been traumatised by the military operation, the last thing they need is soldiers patrolling the camps".¹¹¹

As priorities shift to reconstruction, the international community must engage and build the capacity of civilian institutions, including law enforcement agencies, to restore peace in Malakand. As the 2005 earthquake and the mismanaged response to the current crisis demonstrate, building response capacity for humanitarian crises is critical. IDP return to Malakand will require substantial planning and preparation, which needs to be done immediately, with the IDPs' involvement, so that all sides will be ready to move once full civilian control over Malakand is established.

Large-scale military operations may expand to FATA's North and South Waziristan Agencies, which could further delay the process. Yet, some international aid workers involved in the earthquake relief programs have welcomed General Ahmed's appointment to lead the Special Support Group, implausibly arguing that a body headed by a serving army officer in today's Pakistan nevertheless is under civilian control.¹¹² UN and other international aid agencies can anticipate needs and provide assistance without this unhealthy reliance on the military. An international aid worker privately confided: "The armed forces can provide some logistical support ... but should have no role in the coordination of the relief effort. The army is part of the problem, not the solution".¹¹³

¹⁰⁷ Crisis Group interview, senior PPP member, Islamabad, May 2009.

¹⁰⁸ Crisis Group interview, Peshawar, 21 May 2009.

¹⁰⁹ "UN to seek pause for access to conflict zones", *The News*, 26 May 2009.

¹¹⁰ Crisis Group interviews, international aid workers, Islamabad, May 2009.

¹¹¹ Crisis Group interview, Islamabad, May 2009.

¹¹² Crisis Group interviews, humanitarian aid workers, Islamabad, May 2009.

¹¹³ Crisis Group interview, Islamabad, May 2009.

V. CONCLUSION

While any operation against religious militants in NWFP and FATA was certain to cause major displacement, the scale of the current IDP crisis was not inevitable. As individuals and families continue to flee conflict zones, only a change from the current opaque, military-dominated approach will reduce the war's impact. The end goal must not be to return Malakand Division to conditions before the onset of religious militancy in 2007, but to address the conditions that gave rise to that militancy. Ousting the militants only to allow them new sanctuaries in other parts of the country, including the tribal areas, will not end but rather perpetuate the problem.

The military's contradictory policies of appeasement and heavy force have dramatically raised the civilian costs of fighting terrorism, but the military will nevertheless be keen to exploit any successes in relief and reconstruction to win public support and bolster its standing. As the military opens new combat fronts, however, the civilian government and humanitarian aid organisations should work together to foresee the scale of future displacements, anticipate the needs and carefully plan relief assistance. Donor nations should engage local community-based groups and NGOs and the elected government in reconstruction rather than the military and insist on independent oversight mechanisms.

Communities displaced by Taliban rule and armed conflict can become powerful constituencies for peace if properly rehabilitated and returned to home areas where rule of law is enforced and economic activity renews. But if the military controls reconstruction as it has response and relief, those efforts will likely lack accountability and transparency, not address the underlying causes of the current conflict and allow an undocumented jihadi economy to remain intact, thus preventing successful IDP returns and rehabilitation.

The elected federal government must be the focal point of reconstruction and ensure local community participation in identifying priorities, implementing projects and maintaining accountability. The IDP crisis ultimately presents an opportunity to reinforce moderate secular voices. But creating the environment for those voices will depend not on short-term military successes against jihadi combatants, but on a sound legal infrastructure that extends constitutional rights, the writ of the state and the laws of the land to all parts of NWFP, including the tribal belt.

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Regional Offices and Field Representation

Crisis Group also operates out of over 25 different locations in Africa, Asia, Europe, the Middle East and Latin America.

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