

Pakistan: The Worsening IDP Crisis

I. OVERVIEW

The monsoon floods in Pakistan have caused massive destruction and turned a displacement crisis in the insecure western borderlands into a national disaster of mammoth proportions. When the floods hit, almost all those displaced from Malakand had returned home and were struggling to rebuild lives in a region where much of the infrastructure had been destroyed in fighting; 1.4 million more displaced from the Federally Administered Tribal Areas (FATA) were living in Khyber Pakhtunkhwa (KPK) province. The disaster would have proved challenging under any circumstance. The fragile civilian government, already tackling an insurgency, and its institutions, neglected during nine years of military rule, lack the capacity and the means to provide sufficient food, shelter, health and sanitation without international assistance. The Pakistan government and international actors should ensure those in the flood-devastated conflict zones are urgently granted the assistance they need to survive and to rebuild lives and livelihoods. If military objectives dictate rehabilitation and reconstruction efforts, a population exhausted by conflict could become a soft target for militants, making stability in the northwest even more elusive.

In July 2009, the Pakistani military initiated the return of an estimated 2.8 million people displaced by militancy and military operations in the Malakand region of KPK. Named *Niwa-e-Seher* (new dawn), this return process supposedly affirmed the military's success against militant networks in Swat and other parts of the Provincially Administered Tribal Areas (PATA). The same principle is being replicated in FATA where some 1.4 million people have been displaced by militancy and military operations.

The humanitarian crisis in FATA has received significantly less attention than displacement from KPK's Malakand region. Many have been unable to register or receive assistance due to the military's tight control over access to humanitarian agencies in KPK's Internally Displaced Person (IDP) hosting areas and continued security threats. In parts of FATA, most notably Bajaur agency, families have been forced to flee repeatedly because of a militant resurgence. Yet relying on the pace of returns as an indicator of success in anti-Taliban operations, the military has largely determined the humanitarian agenda, with scant objection from the international community. With the mili-

tants once again escalating their campaign of violence in the tribal belt, FATA's IDPs must not be compelled to return home before the threats to their safety subside.

Deprived of resources, fiscal and human, during more than nine years of military rule, Pakistan's civilian administrative and humanitarian apparatus is now severely tested by the worst flooding in the country's history. One fifth of the country and more than 20 million people have been affected. Some of the worst damage is in Khyber Pakhtunkhwa, where the largest numbers of lives have been lost and where homes, schools, hospitals, agriculture, factories and the communication infrastructure are devastated, and crops and livestock lost. The state's response has been slow as a result of multiple factors – ill-equipped and under-resourced state relief organs, the absence of civil-military coordination and ineffective civilian control over military-led efforts.

This inadequate response has angered and alienated hundreds of thousands of returnees, making them vulnerable to jihadi propaganda and recruitment. International assistance has begun to pour in but on a scale that is still far too modest to meet the enormous needs of urgent relief. In the months ahead, civilian-led mechanisms, which include the involvement of affected communities, credible secular NGOs, professional organisations and the provincial and national parliaments, will be crucial if the massive challenges of rehabilitation and reconstruction are to be effectively tackled.

Prior to the floods, the humanitarian community had prepared the draft of a major policy document, the Post-Conflict Needs Assessment (PCNA), to identify development needs, propose political reforms in Malakand and FATA, and devise a strategy for their implementation. As this document is being rewritten to reflect the challenges posed by the floods, any post-conflict plan must reaffirm civilian supremacy and recommend PATA and FATA's integration into the constitutional, political and legal mainstream. The impact of the floods on Malakand's returnees or on FATA's IDPs is not yet clear, but as relief again becomes a top priority, all assistance, local and international, must be delinked from the military's institutional interests and directives, even granting the importance of the military's logistics capabilities during rescue and emergency relief operations. The civilian government and donors should also seize this opportunity to ensure

that rehabilitation and reconstruction efforts meet the needs of their intended beneficiaries, and bolster civilian institutional capacity and authority at the same time.

The Pakistan government should:

- ❑ Devise a rehabilitation and reconstruction policy in FATA and KPK based on broad consultation with representatives of conflict and flood-affected communities, credible local NGOs and professional organisations, and the national and provincial parliaments.
- ❑ Develop a central role for the national and provincial parliaments in maintaining oversight over government and donor expenditure, through their public accounts committees, particularly for large-scale infrastructure projects in FATA and KPK, and award contracts for such projects through competitive and transparent bidding.
- ❑ Revive assistance to FATA's IDPs, suspended in response to the floods, and demonstrate commitment to the principle of voluntary returns by continuing assistance to those who choose not to return.
- ❑ Ensure that registration and assistance for FATA's IDPs and flood-affected communities is civilian-led and based on vulnerability rather than location; and permanently remove all restrictions, including No Objection Certificates, for humanitarian agencies, as well as all requirements for such agencies to share confidential data on beneficiaries with the military.
- ❑ Implement earlier pledges to incorporate FATA into the constitutional, political and legal mainstream, with a robust and accountable criminal justice sector.

The international community should:

- ❑ Help build civilian disaster management capacity at the national, provincial and district levels – including registration of flood-affected communities, the provision of assistance and the execution of large-scale reconstruction – and oppose a military role beyond rescue and immediate relief.
- ❑ Ensure that relief and rehabilitation is non-discriminatory and based on independent assessments of local needs, with representative community-level committees exercising oversight over the disbursement of assistance, with beneficiaries identified according to civilian rather than military-determined criteria.
- ❑ Address urgent short-term needs of flood-affected communities in KPK and FATA, including shelter, health and education; revive the agricultural sector; and provide material assistance as well as cash transfers.
- ❑ Develop effective oversight and accountability mechanisms over donor funding that include affected communities and national civil society organisations and elected representatives.

II. MILITARY OPERATIONS, DISPLACEMENT AND FLOODS

While displacement in the western borderlands is nothing new, it reached massive proportions in 2009-2010.¹ Poorly targeted military operations against FATA-based militant networks, which began in 2003 and are continuing, have caused hundreds of thousands to flee the tribal agencies for the settled districts of Khyber Pakhtunkhwa.² At least 500,000 were displaced from FATA even before the military offensive in Malakand³ began in May 2009 resulting in an estimated 2.8 million IDPs. 95 to 98 per cent of Malakand's displaced⁴ have since returned home as part of the *Niwa- e-Seher* (new dawn) process. With military operations spreading to six of FATA's seven agencies since mid-2009, the majority of the displaced in KPK now are from FATA.⁵

A. FATA'S IDPs

Northern FATA – Bajaur and Mohmand: In July 2009, the collapse of a peace deal between the military and the militants led to renewed fighting and another cycle of displacement. By February 2010, there were 250,000 registered IDPs from Bajaur.⁶ In early March, the army declared it had regained control of this agency but militant violence, military operations, armed clashes and terrorist

¹ See Crisis Group Asia Briefing N°93, *Pakistan's IDP Crisis: Challenges and Opportunities*, 3 June 2009.

² For detail on military operations and militancy in the tribal belt, see Crisis Group Asia Reports N°178, *Pakistan: Countering Militancy in FATA*, 21 October 2009; N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009; and N°125, *Pakistan Tribal Areas: Appeasing the Militants*, 11 December 2006.

³ Malakand Division previously comprised the districts of Buner, Chitral, Lower Dir, Upper Dir, Malakand, Shangla and Swat; the divisional tier of government was dissolved in 2000. In this briefing, the Malakand region refers to the districts that comprised Malakand Division. Since 1975, Malakand has been administered as part of PATA, which has a separate criminal and civil code from the rest of KPK.

⁴ These figures are based on estimates by Office of the Coordinator of Humanitarian Assistance (OCHA). Crisis Group telephone interviews, OCHA officials, 2 September 2010.

⁵ "Pakistan Humanitarian Update", No. 18, OCHA, 9 July 2010. Article 246 (c) of the 1973 constitution of Pakistan states: "Federally Administered Tribal Areas includes (i) Tribal Areas, adjoining Peshawar district; (ii) Tribal Areas, adjoining Kohat district; (iii) Tribal Areas, adjoining Bannu district; (iv) Tribal Areas adjoining Dera Ismail Khan district; (v) Bajaur Agency; (vi) Orakzai Agency; (vii) Mohmand Agency; (viii) Khyber Agency; (ix) Kurram Agency; (x) North Waziristan Agency; and (x) South Waziristan Agency".

⁶ "Pakistan Humanitarian Update", No. 7, OCHA, 5 February 2010.

attacks have continued.⁷ Only a third of those in IDP camps, and only 48 out of 70,258 displaced families in off-camp households, have chosen to return.⁸ Similarly in Mohmand agency, although the army declared victory in March 2009, militant attacks have intensified in 2010,⁹ and aerial strikes by the military have resumed. While there are 180,000 registered IDPs from Mohmand, most of those displaced in 2010 are unaccounted for because the agency has not been declared a conflict zone (see below on registration processes).

The middle belt – Khyber, Orakzai and Kurram: In September 2009, the military launched major operations in Khyber agency that displaced between 56,000 to 100,000 people in less than a month.¹⁰ Displacement continued in 2010, but only a fraction is officially accounted for; only those from Tirah and Bara *tehsil* (sub-district) are being registered – and only in Jalozai camp. In December 2009, the military launched operations in Kurram and Orakzai agencies, where the presence of the Pakistani Taliban as well as Punjab-based Sunni radical groups have exacerbated sectarian tensions. Violence is on the increase between Deobandis and Shias in Kurram and Orakzai agencies, and Deobandis and Barelvis in Khyber agency.¹¹

In Orakzai, a second military offensive was launched in March 2010, with more than 328,000 people fleeing both Kurram and Orakzai. IDP registration was suspended following a 17 April suicide attack targeting displaced Shias at a registration hub in Hangu in Kohat district. In May, the military demanded that IDPs return to Kurram.¹² A month later, on 1 June, army chief General Ashfaq Pervez Kayani also declared that Orakzai had been cleared of militants and that the agency's approximately 200,000 displaced should return.¹³ Belying this declaration of victory, on 9 June militants attacked a military checkpost in Orakzai, killing seven soldiers, and scores have since been killed, including in clashes on 23 June that claimed at least 40 lives. On 28 June, two hubs opened in Peshawar

to register Kurram's IDPs, but were closed a month later because of Taliban threats. Registration of both Kurram and Orakzai IDPs was set to resume before the floods, but it remains on hold.¹⁴

South Waziristan: On 17 October 2009, the army launched a ground offensive against the Hakimullah Mehsud-led Tehrik-e-Taliban Pakistan (TTP) network in South Waziristan, causing 428,000 residents, over half of the agency's population, to flee.¹⁵ Since December 2009, the army has declared the area cleared of militants on numerous occasions, and has called on those who fled to return. But with no major Pakistani Taliban leader arrested and military operations ongoing, IDPs are understandably reluctant to return.

While the military insists that the floods have not affected its deployment in FATA, it is still unwilling to take action against Afghan militants, particularly the North Waziristan-based al-Qaeda-linked Haqqani network. On the contrary, the military is reportedly intensifying efforts to broker a deal between the Haqqani network and Kabul in a bid to force a favourable outcome once U.S.-led coalition forces withdraw from Afghanistan.¹⁶ Selective action against home grown tribal militants, and premature declarations of victory, not only undermine the sustainability of returns, but also endanger communities and risk their renewed displacement.

B. IMPACT OF FLOODS ON IDPS AND RETURNEES

The July 2010 floods in KPK and the damage caused by monsoon rains have increased the numbers of displaced and homeless, and the need for urgent relief in KPK as well as FATA. Countrywide, with the floods covering almost one fifth of Pakistan's territory, 20.5 million people have been significantly affected; at least 8 million are homeless and in urgent need of emergency assistance. Over 1.8 million houses have been either destroyed or damaged, as have power grids, roads, bridges, railway tracks,

⁷ For example, "Thirty-eight militants killed in Bajaur action", *Dawn*, 16 June 2010.

⁸ By 26 June 2010, 28,303 IDPs had returned to Bajaur agency from camps. See www.pdma.gov.pk/PaRRSA/IDP_Repatriation_Data.php; and www.pdma.gov.pk/PaRRSA/Caseload_Update_For_Malakand_Division.php.

⁹ On 9 July 2010, for example, a suicide attack on a crowded market killed over 100 people. See Fauzee Khan Mohmand, "Mohmand attack toll tops 100", *Dawn*, 11 July 2010.

¹⁰ See Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit., p. 8.

¹¹ For more on sectarian conflict in Pakistan, see Crisis Group Reports N°95, *The State of Sectarianism in Pakistan*, 18 April 2005; and *Pakistan: The Militant Jihadi Challenge*, op. cit.

¹² "Kurram tribes asked to facilitate IDPs' return", *Dawn*, 5 May 2010.

¹³ "Army declares victory in Orakzai", *Dawn*, 2 June 2010.

¹⁴ Crisis Group telephone interview, Zahid Jameel Khan, IDP project coordinator, KPK social welfare department, 2 September 2010. See also "Registration of Kurram IDPs resumes in Peshawar", *The News*, 29 June 2010; and Sadia Qasim Shah, "Threats halt registration of displaced people in Peshawar", *Dawn*, 23 July 2010.

¹⁵ "Pakistan: Millions of IDPs and returnees face continuing crisis", Internal Displacement Monitoring Centre, 2 December 2009.

¹⁶ Scott Shane, "Pakistan's push on Afghan peace leaves U.S. wary", *The New York Times*, 28 June 2010; Jane Perlez, Eric Schmitt and Carlotta Gall, "Pakistan is said to pursue an Afghanistan foothold", *The New York Times*, 25 June 2010.

schools and health facilities, along with massive damage to agricultural land, standing crops and livestock.¹⁷

Of the 1,752 deaths confirmed thus far, 1,086 occurred in KPK.¹⁸ Around 80,000 homes were destroyed in four KPK districts alone, according to a UN World Food Programme (WFP) rapid assessment.¹⁹ Communication networks, power supplies, 617km of roads and 34 bridges have been destroyed or damaged in Malakand, in many cases isolating residents, particularly in the mountains.²⁰ 71 per cent of KPK's standing rice crop, 59 per cent of vegetable crops and 45 per cent of the maize crop has been lost; agricultural land and orchards have been damaged. 5,406 irrigation structures have been destroyed and thousands of small and large livestock killed.²¹ The already inadequate health facilities in KPK and FATA have been gravely damaged, as have almost 1,000 schools, while hundreds more are being used as shelters.²² The tourism infrastructure, on which the economy of many regions in Malakand depended and which was already badly affected by militancy and military operations, is devastated.

The Pakistan Meteorological Department had warned the military-dominated National Disaster Management Authority (NDMA) as early as 21 June of the threat of flash floods hitting KPK after the monsoon rains.²³ Over the

next month, it failed to prepare for the crisis that followed. Not only did the NDMA appear to lack the capacity to manage the crisis but despite or perhaps because of the military's overwhelming presence in KPK and FATA, civil-military coordination was poor. The military, which has the logistics and the capacity for rescue operations and emergency relief, failed to respond promptly, acting only when the magnitude of the disaster became more than obvious.²⁴ That delay was mirrored in the delayed international community response. Boats and helicopters finally were used to rescue many and assistance was air-dropped to those trapped in remote areas due to the destruction of roads and bridges.

The Awami National Party (ANP)-led Khyber Pakhtunkhwa government also swung into action, removing, as discussed below, all curbs on international non-governmental organisations (INGOs) involved in emergency flood relief until mid-September 2010. The civilian administration has given affected families shelter in 500 public schools and other government buildings and district authorities are providing food and clean drinking water.²⁵

Losing their homes, their personal belongings and their livelihoods in the floods, hundreds of thousands in Malakand and FATA are relying on government departments and aid agencies for shelter, food, water and health care. They will also need help to rebuild their lives and livelihoods. Yet, as with the humanitarian crisis resulting from military operations in KPK and FATA, the failure of the military and state relief agencies to respond promptly has alienated many. A Peshawar-based labourer complained: "The government is not helping us ... the school building where I sheltered is packed with people, with no adequate arrangement for food and medicine".²⁶ A Dir-based NGO worker added: "People have no source of information like TV or newspaper to update themselves, or to know who is doing what, at [the] government and non-government level for relief. Relief work has not yet started in the area due to damaged roads and bridges [and] ... the hospitals in the area are also not accessible".²⁷

¹⁷ "Pakistan: Monsoon floods", OCHA, Situation Report No. 23, 9 September 2010; "One million more displaced by floods", *Dawn*, 27 August 2010; "With 21 million hit, flood situation worsening: UN", *Dawn*, 8 September 2010.

¹⁸ "Death toll from floods to rise 'significantly': official", *Dawn*, 27 August 2010.

¹⁹ Nowshera, Charsadda, Mardan and Peshawar were the worst affected districts along with Swat, Upper and Lower Dir and Shangla in Malakand. See "Monsoon Floods in Pakistan", OCHA, Situation Report No. 4, 2 August 2010.

²⁰ "Flood damage to road, rail network at Rs. 10 billion", *Daily Times*, 31 August 2010.

²¹ A total of 56 per cent of crops were destroyed in Swat, 61 per cent in Charsadda and 80 per cent in Nowshera. "Floods badly affect KP livestock, agriculture", *Daily Times*, 1 September 2010. See also "Pakistan-Monsoon Floods", OCHA, Situation report No. 14, 18 August 2010.

²² At www.pdma.gov.pk/Flood_2010/situation.php. See also "Pakistan-Monsoon Floods", OCHA, Situation report No. 18, 27 August 2010. Around 180 schools were also damaged in FATA. "Pakistan-Monsoon Floods", OCHA, Situation report No. 20, 1 September 2010.

²³ Established in March 2007, the NDMA is the executive arm of the National Disaster Management Commission, the apex body for managing disasters. Although headed by the prime minister, the NDMA is military-dominated. For example, NDMA's director general, Lt. General Nadeem Ahmed, is a former corps commander who also headed the military's Special Support Group for IDPs. With many former military officers in senior positions, the NDMA lacks the civilian capacity and resources needed to perform its tasks of implementing, coordinating and

monitoring disaster management. Ahmed Noorani, "As NDMA scrutinised, its record shows it has miserably failed", *The News*, 10 August 2010. See also Umer Farooq and Faizul Ameer, "Washed Away", *The Herald*, September 2010, p. 37.

²⁴ During the first two weeks of the crisis, the military concentrated more on rescuing its own than on saving civilians. Crisis Group telephone interview, local aid worker, Nowshera, 18 August 2010. M. Asif Khan, "A case of forgotten experience", *The News*, 7 August 2010.

²⁵ See "Situation Report: Floods in Pakistan", OCHA, No. 3, 1 August 2010.

²⁶ Lehad Ali, "Pakistan flood toll tops 1,100 as cholera emerges", *Agence France-Presse*, 1 August 2010.

²⁷ Ibrash Pasha, "Rains and flood affects in parts of Malakand division (District Dir upper and lower)", Khwendo Kor, draft report, 3 August 2010.

As they did in the aftermath of the 2005 earthquake and the 2009 IDP crisis, jihadi groups have been quick to exploit the situation in an attempt to win public support.²⁸ President Asif Ali Zardari has acknowledged the dangers of the jihadis using the floods to gain recruits as has the KPK provincial government, which insists that banned groups will not be allowed to provide relief.²⁹ Interior Minister Rehman Malik too has warned that activists of banned groups providing relief would be arrested. Yet the Falah-i-Insaniat Foundation (FIF), the latest incarnation of the Lashkar-e-Tayyaba (LeT)/Jamaat-ud-Dawa (JD),³⁰ has reportedly established several relief and medical camps, and operates ambulances to treat and transport victims.³¹ The group's spokesman said: "We're very much there. We're the only group that is providing cooked food to trapped people and those lying on the roadside".³² On 2 August, the Pakistani Taliban reportedly announced a ceasefire in flood-hit areas. It proved insignificant: two days later a suicide attack in Peshawar killed Sifwat Ghayur, chief of the Frontier Constabulary and four others.³³

That the military has led rescue efforts and has been providing much of the immediate relief, is unsurprising. In a natural disaster of such magnitude, militaries, with their logistical capabilities, play a crucial role. However, in the Pakistani context, the danger lies in the military continuing to take the lead, independent of civilian input and control, as priorities shift to rehabilitation and reconstruction. In KPK and FATA, the civilian relief apparatus has been hamstrung by its subordination to the military's counter-insurgency imperatives. Its ability to respond effectively

²⁸ See Crisis Group Briefings, *Pakistan's IDP Crisis: Challenges and Opportunities*, op. cit.; and N°46, *Pakistan: Political Impact of the Earthquake*, 15 March 2006.

²⁹ Zardari said: "If the political parties fail, if the NGOs fail and God forbid if the people fail, then the space will be taken by the extremists and militants". "President urges NGOs, philanthropists to supplement government's flood-relief, rehabilitation efforts", Media Office of the President, Islamabad, 17 August 2010.

³⁰ Banned in 2002 as a terrorist organisation, the LeT (renamed JD), was one of the most prominent NGOs providing earthquake relief in 2005, with the military's open support. See Crisis Group Briefing, *Pakistan: Political Impact of the Earthquake*, op. cit.

³¹ Other banned groups involved in flood relief include the al-Qaeda linked Al-Rashid Trust (renamed the Memar Foundation), the Jaish-e-Mohammad's Al-Rehmat Trust and the Sunni extremist sectarian organisation Sipah-e-Sahaba Pakistan, now renamed the Ahle Sunnat Wal Jamaat. Crisis Group telephone interview, Charsadda, 18 August 2010. See also Gulmina Bilal Ahmad, "Sleeping with the enemy", *Daily Times*, 27 August 2010; and Rob Crilly, "Pakistan flood aid from Islamic extremists", *The Telegraph*, 21 August 2010.

³² Ben Farmer and Khalid Khan, "Pakistan floods affect more than 3 million people", *The Telegraph*, 3 August 2010.

³³ The militants also attacked police posts near Peshawar and launched a suicide attack on a mosque in South Waziristan agency, killing 26 and wounding 40 others in August.

to the current and any future humanitarian crisis will be severely hampered unless, with international assistance, the civilian government reasserts itself. The dangers of a military-dominated approach are evident in the manner in which the state responded to the IDP crises in KPK and FATA.

III. THE STATE'S RESPONSE

A. MILITARY OBJECTIVES VERSUS HUMANITARIAN CONCERNS

1. Coercing returns

IDPs, particularly from Malakand, had been forced to return home, regardless of risks to lives and livelihoods. When Malakand's population fled the military operations in May 2009, primarily to Mardan and Swabi, "people went out of their way to help them, irrespective of their political affiliation", according to senior ANP member Azam Khan Hoti.³⁴ In April 2010, a Commissionerate for Afghan Refugees (CAR) official said: "They should return now. The operation is over. Sure there are blasts but that also happens in Peshawar and Islamabad".³⁵ The remaining IDPs were characterised either as economic migrants who did not need assistance, or as terrorists who should not receive it. This overlooked individual vulnerabilities and reasons not to return.

While some may indeed have chosen to settle in the hosting districts, most were likely to wait until violence had ended and rehabilitation had begun before returning. After months of displacement, many were working to supplement the income of the household hosting them and to lessen their own burden, or simply to help finance their return. Such individuals were neither economic migrants nor militant sympathisers. Rushing returns risked ostracising people who were understandably sceptical of the military's repeated claims of having restored peace.

Yet government priorities and donor attention shifted to returning the displaced, and rehabilitating and reconstructing the conflict zones. Funds for IDPs became increasingly scarce. "The areas of displacement and ongoing displacements are the first that are going to suffer from a lack of funding", said Caitlin Brady, the International Rescue Committee's deputy director for Pakistan.³⁶ Many

³⁴ Crisis Group interview, Azam Khan Hoti, former federal minister and senior ANP leader, Mardan, 19 May 2010.

³⁵ Crisis Group interview, Peshawar, 29 April 2010. CAR was one of the agencies responsible for registering Malakand's IDPs. CAR was used because it had the experience needed in managing camps, including camps such as Jalozi where many IDPs were based.

³⁶ Crisis Group interview, Islamabad, 4 May 2010.

assistance projects, particularly those targeting off-camp IDPs, either closed down or shifted to areas of return. By 31 May 2010, the government cancelled the IDP status of Swat's displaced population. Malakand's IDPs reportedly returned to find their homes destroyed. The service economy, based on tourism, is unlikely to recover until the infrastructure damaged in military operations is repaired and tourists are no longer deterred from visiting an area where militants were on the loose.³⁷

The military, which during the fighting had impeded rather than facilitated civilian movement out of the conflict zone, led the return operation through the Special Support Group (SSG) for IDPs,³⁸ according to its own strategic interests rather than people's needs. The principle underlying returns in Malakand has set a dangerous precedent: that when the military clears an area, residents must return to hold it before public service delivery, infrastructure and the economy can be restored. In other words, return – overseen by the military – is a precondition to stabilisation, rather than the reverse. Military officials have, moreover, used the rate of returns in Malakand as one of the measures of a successful counter-insurgency operation. “In no other counter-insurgency operation in the world have the residents gone back so soon”, said Major General Tariq Khan, the head of the paramilitary Frontier Corps.³⁹ The same principle is now being applied to FATA IDP returns.

International aid agencies have urged the government to respect the principle of voluntary returns and the decisions of some displaced to remain in KPK hosting districts, or resettle elsewhere in the country. KPK's Provincial Disaster Management Authority (PDMA) claims to respect this basic right, maintaining that it does not initiate a return operation before consulting members of the humanitarian community.⁴⁰ In June 2010 the FATA secretariat also signed a “return policy framework” with the

UN committing to “voluntary, safe and dignified return” of IDPs.⁴¹

In practice, the military and the FATA administration have little regard for the Guiding Principles on Internal Displacement.⁴² For example, IDPs from South Waziristan's Mehsud tribe, based in KPK's Dera Ismail Khan and Tank districts, are being pressured to return. They are also being told, by invoking territorial responsibility and collective punishment clauses in the Frontier Crimes Regulations (FCR) 1901, to form *lashkars* (tribal militias) to prevent militants returning to ostensibly cleared areas.⁴³ A Mehsud *jirga* (tribal council) that refused to return or to be held responsible for militants' actions is now being harassed by the military.⁴⁴ “Tribal elders have received threats from the establishment to return. Some of them have even been tortured, others killed”, said a member of the Tribal Development Forum, a consortium of FATA civil society groups.⁴⁵

Very few FATA IDPs have chosen to participate in organised returns. Most make their own assessments of the security climate. Given repeated cycles of displacement, particularly in Bajaur agency where innumerable families returned only to be displaced by renewed violence, it is understandable that IDPs want to ensure they will not be forced out again. Aside from concerns about militants, they also fear the military's continuing curfews and search operations. These fears are justified. “We know the return operation to Mohmand agency was voluntary because so few IDPs actually participated”, said an international aid worker.⁴⁶ An IDP from Bajaur added: “The Taliban have made announcements on the FM radio advising us not to return our families because, they say, they have only temporarily gone into hiding”.⁴⁷

³⁷ “90 per cent of Swat IDPs back home”, *The News*, 28 August 2009.

³⁸ In May 2009, Director General Inter-Services Public Relations, Major General Athar Abbas announced the designation of a Corps Headquarters as the SSG for IDPs, headed by Corps Commander Mangla, Lt. General Nadeem Ahmed, to provide support to provincial government efforts for logistics, health, administration and registration. “Special Support Group for IDPs formed: DG ISPR”, Associated Press of Pakistan, 12 May 2009.

³⁹ Crisis Group interview, Peshawar, 13 July 2010.

⁴⁰ Crisis Group interview, Adnan Zafar Khan, deputy director Provincial Reconstruction, Rehabilitation and Settlement Authority (PaRRSA) and PDMA director, Peshawar, 29 April 2010. Policy and strategy meetings, co-chaired by director-general PaRRSA/PDMA and the UN humanitarian coordinator, are held regularly.

⁴¹ “Return Policy Framework for Internally Displaced Persons (IDPs) from the Federally Administered Tribal Areas (FATA)”, FATA secretariat and UN humanitarian coordinator, 23 June 2010. In 2002, General Pervez Musharraf's military government created a separate governor's secretariat for FATA, ostensibly to eliminate bottlenecks created by multiple administrative tiers. In 2006, it became the FATA secretariat. For more detail, see Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit.

⁴² Information on these is available at: www.idpguidingprinciples.org.

⁴³ The FCR is a draconian, colonial-era legal framework adopted in 1901 and retained after independence in 1947 to govern FATA. See Crisis Group Reports, *Pakistan: Countering Militancy in FATA* and *Pakistan's Tribal Areas*, both op. cit.

⁴⁴ See “Mehsud elders oppose conditional return of IDPs”, *Dawn*, 7 April 2010.

⁴⁵ Crisis Group interview, Peshawar, 29 April 2010. The “establishment” is a term commonly used in Pakistan for the military and intelligence agencies.

⁴⁶ Crisis Group interview, Islamabad, May 2010.

⁴⁷ Crisis Group interview, Jalozai camp, 24 June 2010.

FATA's IDPs could be forced to return if aid, as in the case of Malakand's IDPs, is tied to time-bound return operations. The assistance that was provided to Malakand's displaced was conditional on returnees accepting the military's timeline. The camp population was the first to benefit, and registered IDP households received return assistance in the form of cash grants.⁴⁸

Tying assistance to time-bound return operations discriminates against the most vulnerable IDPs, who depend on relief and are forced to return when it dries up. With the floods once again disrupting the lives and livelihoods of FATA's IDPs, the government and its international partners should provide each IDP household unconditional assistance, preferably through cash grants, as well as similar assistance to returnees, thus ensuring voluntary and more sustainable returns. So long as more than 1.4 million FATA residents are forced to remain in KPK they must continue to receive the assistance they need to survive.⁴⁹

2. Flawed registration

The government registers IDPs through the CAR in camps and through KPK's social welfare department, assisted by UNHCR and its partners. Registration is a prerequisite for all government assistance, including cash grants⁵⁰ and return assistance, and for some international aid.

FATA's IDPs face multiple challenges in registering including lost or outdated documentation. Those holding National Identity Cards (NIC) issued before 2005, for instance, have had to verify their nationality with the National Database and Registration Authority (NADRA) to prevent Afghan nationals who had received these cards prior to 2005 from registering as South Waziristan IDPs.⁵¹ Such bureaucratic hurdles impede registration and delay assistance.

To register, the head of the displaced FATA household must present an NIC indicating that both his place of origin and residence are in one of the government notified conflict-affected areas. These are limited to combat zones within tribal agencies; registration ends once the zone is

declared cleared. By initially declaring only Mehsud-inhabited *tehsils* in South Waziristan as conflict zones, the FATA and KPK bureaucracies also screened registered IDPs for potential militants but did not register other tribes in the agency.⁵² Before verification by NADRA, registration data is sent to the military's SSG. In KPK's Jalojai camp, IDPs from Khyber agency are registered only once they have been verified by Bara *tehsil's* local administration.⁵³

The registration process has therefore failed to account for the full scale of the displacement since it excludes those fleeing militant strongholds where the army has yet to intervene. For example, residents fleeing North Waziristan, from where military-backed extremists, including the Afghan Taliban-linked Haqqani network, target NATO forces in Afghanistan, and where the military still refuses to intervene, do not receive state assistance. Neither do 40,000 individuals who, according to the FATA Tribal Development Forum have left Frontier Region Peshawar where many Waziristan-based militants are now based.⁵⁴

Kurram and Orakzai agencies are segregated along sectarian lines. Kurram's Shias, who are concentrated in the agency's north, have been unable to flee the fighting since this would require them to travel through Sunni enclaves to KPK's settled districts.⁵⁵ Some have been forced to travel via Afghanistan to Khyber agency, at significant cost and personal risk.⁵⁶

Threats to sectarian and religious minorities in KPK and FATA from Sunni-Deobandi extremists have often been ignored.⁵⁷ Initially, Shia IDPs fleeing to Kohat district failed to register because they feared going into registration hubs that were all located in Sunni neighbourhoods.⁵⁸ While

⁴⁸ By mid-July 2009, 145,000 families had received ATM cards to withdraw up to 25,000 rupees (almost \$300). "Pakistan: Millions of IDPs and returnees face continuing crisis", Internal Displacement Monitoring Centre, op. cit., p. 7.

⁴⁹ With the government focusing on flood relief, aid agencies have reportedly stopped distributing food at four relief camps set up for IDP families from Orakzai and Kurram agencies. Abdul Sami Paracha, "Relief to Kurram, Orakzai IDPs stopped", *Dawn*, 29 August 2010.

⁵⁰ Registered IDPs from South Waziristan, for instance, received Rs. 5,000 (\$60) per household per month for six months.

⁵¹ "Frequently Asked Questions, 6th Edition", Mass Communication Team for Field Staff of the Humanitarian Community working in NWFP, May 2010.

⁵² See Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit., p. 9.

⁵³ Crisis Group interview, camp administration official, Jalojai camp, Nowshera, 24 June 2010.

⁵⁴ "FR Peshawar displaced people await IDP status", *Daily Times*, 30 May 2010.

⁵⁵ See Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit.; and Crisis Group Report, *Pakistan: The Militant Jihadi Challenge*, op. cit. In July 2010, the KPK government agreed with a UK-based flight club to airlift Kurram residents cut off from the rest of the country due to the presence of armed militants on the Parachinar-Tall highway. See "Accord reached for airlifting Kurram residents", *Dawn*, 20 July 2010.

⁵⁶ On 11 July 2009, for instance, eleven people were killed and three wounded when their vehicle was attacked in Afghanistan's Paktia province. They were trying to reach Peshawar from Kurram's administrative centre, Parachinar. See Hussain Afzal, "Eleven Kurram travellers slain in Afghanistan", *Dawn*, 11 July 2010.

⁵⁷ See Crisis Group Reports, *Pakistan: Countering Militancy in FATA and Pakistan: The Militant Jihadi Challenge*, both op. cit.

⁵⁸ See "Pakistan: Shia IDPs fearful of being targeted", IRIN, 11 February 2010.

registration centres were eventually set up in Kohat's Shia neighbourhoods, adequate protection was not provided. On 17 April 2010, suicide bombers attacked one such centre, killing over 40 people and injuring 65.⁵⁹ Registration in Kohat and Hangu has since been halted. As a result, most IDPs from Orakzai and Kurram are unregistered and do not receive assistance, despite registration for Kurram's IDPs resuming in Peshawar on 28 June, for a month, as discussed above.

UN agencies have linked relief assistance to government registration data. For example, registration is required for WFP food packages; similarly, UNHCR distributes non-food items only to registered IDPs. INGOs, on the other hand, have repeatedly protested the linkage and have also tried to change the criteria for registration from location to vulnerability. So long as relief is linked to military-directed registration, opportunities to reach out to constituencies that are exhausted by conflict will be lost, particularly with regard to those who oppose the Taliban and who have fled militant-hit regions. While registration, based on credible government data, certainly prevents pilferage and fraud, the military should not determine the criteria or oversee the process. This is particularly important for assistance to FATA and Malakand's flood-affected. The government database could prove invaluable in disbursing humanitarian assistance – preferably through cash grants, for example, for reconstructing damaged and destroyed houses – but the process must be non-discriminatory and civilian-led.⁶⁰

B. CIVILIAN CONTROL AND HUMANITARIAN ASSISTANCE

During the Malakand displacement, the PDMA was unable to foresee the scale of the IDP crisis and to coordinate assistance swiftly and effectively.⁶¹ Local administrations in the main IDP hosting districts also largely failed to channel relief funds transparently.

The ANP-led provincial government has tried to strengthen the PDMA. The provincial relief commissioner created the emergency response unit in May 2009 to oversee the response to the IDP crisis; it was dissolved in August 2009. Meanwhile, in June 2009 the provincial government created the Provincial Reconstruction, Rehabilitation and Settlement Authority (PaRRSA) to oversee resettlement and rehabilitation and to take over camp management

from the CAR. PDMA and PaRRSA were to lead the provincial government's response, coordinating relief and development projects and channelling funds to the affected population.⁶² UNDP and other donors provided technical assistance and funds to this joint body.

PDMA/PaRRSA, however, received funds exclusively for rehabilitation and reconstruction projects in KPK's conflict-affected areas, and therefore its role in IDP hosting areas remained largely limited to listing and authorising NGOs to provide assistance.

Before the July monsoon floods, international and local NGOs were required to present their project proposals to obtain a No Objection Certificate (NOC), allowing them to work in the region; they also had to regularly present progress reports to extend this permit. Most did not oppose these requirements, but questioned the provincial body's capacity to process the information and, given the military's control over many of the conflict-hit areas in KPK, who actually decides.

According to a humanitarian aid worker: "PDMA/PaRRSA is a good thing in the sense that it is important that the host government has the means to know what goes on in its country. The problem arises when other actors bypass it like in Dera Ismail Khan where the army's 11th Corps approves the NOCs before allowing PDMA to issue them".⁶³ After the floods, the provincial government has waived the NOC requirement for international organisations involved in emergency flood relief in KPK, including for Malakand, until 15 September.⁶⁴ Prior to the floods, and even after, the military has exercised considerable control over relief efforts, particularly as regards IDPs. The military's SSG continues to function in parallel to, rather than under, PDMA/PaRRSA. It in effect directs IDP registration, assistance and returns, and plays a central role in official data collection on the number of IDPs and returnees, and the amount of assistance provided through cash cards, rations and other channels.

The nature of the IDP crisis and the challenges posed by returns – in which the military is party to the conflict that provoked displacement while also assisting IDPs and returnees – has tested the humanitarian community's commitment to the principles of independence and neutrality.

⁶²This excludes rehabilitation and reconstruction in FATA, which is under the authority of the FATA Disaster Management Authority (FDMA) and the FATA Development Authority.

⁶³Crisis Group interview, Islamabad, March 2010.

⁶⁴INGOs are only required to coordinate their activities with the district administration. The federal government also gave permission to issue three-month visas on arrival for international aid workers involved in flood relief. Crisis Group telephone interview, OCHA senior humanitarian affairs officer, 18 August 2010. PDMA/PaRRSA notification, Peshawar, 8 August 2010; Ministry of Interior Notification, Islamabad, 18 August 2010.

⁵⁹"41 killed in twin Kohat suicide bombings", *The News*, 18 April 2010.

⁶⁰Stressing that providing shelter is his government's top priority, Prime Minister Yousaf Raza Gilani said that flood victims would be given cash to rebuild their homes.

⁶¹See Crisis Group Briefing, *Pakistan's IDP Crisis: Challenges and Opportunities*, op. cit.

As in the aftermath of the 2005 earthquake,⁶⁵ many humanitarian actors, UN agencies in particular, initially welcomed the military's lead in relief efforts. But with relief increasingly set to narrow military objectives, the risks of such an approach are clear.

In KPK's Dera Ismail Khan and Tank districts, which host the vast majority, almost half a million, of the displaced from South Waziristan, the military controls both the registration process and relief provision.⁶⁶ "We have no influence in Tank and Dera Ismail Khan. The 11th Corps, which leads the military operation in South Waziristan, rules there", said a PDMA official.⁶⁷ Even in the wake of the floods, which have devastated much of the region,⁶⁸ relief efforts may, as in the past, remain under military control, undermining the provincial government's influence in the two districts. Prior to and even after the floods, the military has also tightly restricted media and humanitarian actors' access to KPK and FATA's conflict zones. In October 2009, the International Committee of the Red Cross (ICRC) requested "better access to the areas directly affected by fighting, the areas into which civilians have fled and the facilities where those detained in connection with the violence are held",⁶⁹ expressing concern about the lack of access "to humanitarian organisations like the ICRC whose role it is to protect and assist victims of fighting".⁷⁰

Given their limited access, UN agencies and a number of INGOs have channelled assistance to KPK districts such as Dera Ismail Khan and Tank through local implementing partners and government departments. Considering the 11th Corps' control over both districts, however, local actors operate there on the military's terms, as do international aid agencies' local employees who have been granted access.

The military has, for instance, demanded beneficiary lists of IDPs as well as Malakand's returnees from international and local NGOs, and often deleted families supposedly linked to Taliban militants; these "Taliban families" are

then denied assistance. Before the NOC requirement was waived for humanitarian agencies, organisations that tried to resist sharing confidential data on beneficiaries with the military saw their NOCs revoked or, in extreme but not infrequent cases, army personnel visiting their offices and forcibly taking the data.⁷¹ An army major in Swat district's headquarters, Mingora, claimed, "there has been no resistance to giving us beneficiary lists".⁷²

Indeed, some UN agencies, as well as almost all local NGOs and some INGOs have given in to the military's demands, on the grounds that: "At the cost of some 75 people, we would be giving up on more than 2,000 people because our distribution would stop".⁷³ Yet, this willingness to bow to the military's demands not only undermines the principles of humanitarian assistance, it also endangers the lives of recipients. For example, according to a Buner-based humanitarian worker: "Roughly twenty families in Buner rejected assistance from Oxfam because they feared their private information would go to the army".⁷⁴

In late June 2010, the provincial government's policy and strategy committee, chaired by KPK's chief minister and attended by the FDMA, PDMA, SSG, UN, ICRC and INGO representatives, agreed, "nominal lists of beneficiaries will not be shared with the civil or military authorities".⁷⁵ They also agreed that the UN OCHA would assist PDMA in developing monitoring tools that would not require beneficiary lists. It is yet to be seen if this agreement will ensure impartial aid provision and protect humanitarian workers in the field as well as beneficiaries. It is a matter of concern that even after the floods, the military has asked some local and international NGO personnel working in Swat for beneficiary lists and also to limit their work to identified areas.⁷⁶

The humanitarian community's acceptance of – and in many cases, preference for – a military-led relief effort has undermined assistance provision and endangered humanitarian workers. Indeed militants, portraying the UN and INGOs as military collaborators, have frequently targeted their field staff. Local aid workers, particularly those from the conflict-affected areas, are even more vulnerable, pressured by the military even as militants target

⁶⁵ See Crisis Group Briefing, *Pakistan: Political Impact of the Earthquake*, op. cit.

⁶⁶ Crisis Group interviews, international aid workers, Islamabad, 18 August 2010; "Pakistan: Millions of IDPs and returnees face continuing crisis", Internal Displacement Monitoring Centre, op. cit.

⁶⁷ Crisis Group interview, Peshawar, May 2010.

⁶⁸ See, for example, "Rapid Assessment Report of Flood Affected Villages of Dera Ismail Khan (D. I. Khan) district, Khyber Pakhtunkhwa, Pakistan", Monitoring, Evaluation and Accountability Unit, Save the Children, Malakand Response Program, Pakistan, 6 August 2010.

⁶⁹ "Pakistan: Targeting civilians is the ultimate denial of humanitarian law", ICRC press release, 30 October 2009.

⁷⁰ See Jane Perlez, "Pakistan army captures Taliban stronghold", *The New York Times*, 24 October 2009.

⁷¹ Crisis Group interviews, Malakand-based NGO workers, June 2010.

⁷² Crisis Group interview, Major Tahir Bashir, Mingora, 26 May 2010.

⁷³ Crisis Group interview, head of a Malakand-based NGO, Islamabad, June 2010.

⁷⁴ Crisis Group interview, Islamabad, June 2010.

⁷⁵ "Action points of the policy and strategy meeting", PDMA/PaRRSA, Peshawar, 23 June 2010.

⁷⁶ Crisis Group telephone interviews, humanitarian workers, 18 August 2010.

them for working for aid agencies.⁷⁷ In the wake of the floods, with militants warning locals against accepting international, particularly Western, assistance, INGOs could be tempted once again to accept the military's preferences and priorities in exchange for security.⁷⁸

IV. REBUILDING BETTER

A. REHABILITATION AND RECONSTRUCTION

When PATA's displaced started going home in July-August 2009, they returned to find destroyed houses, schools, clinics and hospitals; damaged fields and orchards; markets crippled by food shortages; and the military's continued curfews. In its rush to return IDPs as proof of its success, the military left the civil administration no time or space to reorganise itself, reassert control over governance, and initiate rehabilitation and reconstruction. A year later, in flood-hit Malakand, any progress on reconstruction has been reversed, and the returnees are even more dependent on relief assistance. Meanwhile, the military still plays a central role in security, administration and coordinating assistance.

As the state begins rehabilitation and reconstruction in the flood-hit conflict zones of Khyber Pakhtunkhwa, particularly in Malakand, there are lessons to be learnt from the mistakes made in the way IDP returns were handled in 2009, particularly the delay in disbursing assistance and permitting the military's priorities to take precedence over the needs of returnees.

1. Disbursing assistance

IDPs that returned to Malakand were provided financial aid and compensation for income and material losses during the conflict. Cash assistance allowed households to prioritise their needs instead of merely receiving hand-outs. In IDP hosting areas, monthly stipends were beneficial to those living outside camps, with host families or in rented accommodation.

In November 2009, the World Bank and Asian Development Bank published a Preliminary Damage and Needs Assessment quantifying the damage and direct losses to PATA and two FATA agencies, Mohmand and Bajaur, and

outlining funding requirements. The assessment focused in particular on the number of damaged homes, with the most destruction in KPK's Swat district and FATA's Bajaur agency.⁷⁹ The provincial government agreed to implement the Damage and Needs Assessment and to provide cash assistance to affected families in KPK.⁸⁰ The same month, PaRRSA carried out a housing survey to identify potential beneficiaries. Teams composed of a *patwari* (local land revenue official), an army engineering corps member and one or two local elders, collected data on damaged and destroyed houses.⁸¹

While the World Bank agreed to release the funds in one instalment,⁸² it waited until the PCNA was finalised before releasing the assistance for housing. As a result, with the provincial government largely relying on World Bank funds, many poor households were forced to take out loans while they waited for compensation.⁸³ This added to existing debts from loans that had helped them flee in the first place. The delays meant PATA residents were still unable to rebuild damaged or destroyed houses a year after the declared end of military operations. "They were promised so much by the provincial and federal governments and by the NGOs, but when this assistance will be provided and how it will be paid for is anybody's guess", said Adnan Aurangzeb, a former parliamentarian from Swat.⁸⁴

Rehabilitation efforts in Malakand were shaped by the military's preferences – including for collective punishment. Families of alleged militants, or alleged Taliban sympathisers, were not only denied assistance, their houses were destroyed and they were prohibited from rebuilding them for twenty to 30 years. Families that had failed to surrender their Taliban relatives were moved to a former

⁷⁷ "For the Taliban, NGOs are the devil and whoever works for them a non-believer", said a local employee of an international NGO. Crisis Group interview, Islamabad, April 2010.

⁷⁸ Calling the presence of Western, in particular American relief workers, "unacceptable" and accusing them of ulterior motives, Azam Tariq, spokesman for the Pakistani Taliban, suggested that militants might attack them. Salman Masood, "In Pakistan, Taliban hint at attacks on relief workers", Associated Press, 26 August 2010.

⁷⁹ "Preliminary Damage and Needs Assessment: Immediate Restoration and Medium Term Reconstruction in Crisis Affected Areas", Asian Development Bank and World Bank, November 2009, p. 10. The assessment was based primarily on data provided by the KPK government and FATA secretariat.

⁸⁰ This assistance included \$2,000 (Rs. 160,000) for a damaged house, and \$5,000 (Rs. 400,000) for a destroyed house.

⁸¹ To ensure transparency and accountability: "We register the GPS coordinates of each house and photograph the owner on each side of his property. Data entered at the district level is randomly verified from our main office in Peshawar and once entered cannot be changed without our knowledge". Crisis Group interview, Adnan Zafar Khan, PaRRSA deputy director, Peshawar, 29 April 2010.

⁸² Crisis Group interview, Adnan Zafar Khan, PaRRSA deputy director, Peshawar, 29 April 2010.

⁸³ Now with the floods, the World Bank is similarly waiting for the revised PCNA. Crisis Group telephone interview, World Bank official, Islamabad, 9 September 2010.

⁸⁴ Crisis Group interview, Islamabad, 12 May 2010.

Afghan refugee camp in Dir where they were practically held hostage.⁸⁵

According to the independent Human Rights Commission of Pakistan (HRCP), the military expelled 52 families from Swat,⁸⁶ while another 200 families may be similarly expelled if militant relatives do not turn themselves in.⁸⁷ Many of these families had been coerced into contributing a male to the insurgency or compelled by economic necessity. The military, however, argued that it was simply acting on local desires to see militants and their allies pay for their crimes. These methods, however, were widely resented, and discredited the military's claims of counter-insurgency successes. In both PATA and FATA, the civilian government and international donors must not only ensure that assistance to the flood affected is provided in a timely and indiscriminate fashion, but also that domestic and international law are respected.

2. Rehabilitating livelihoods and reconstructing infrastructure

The mainstays of PATA's economy – agriculture and, in Swat, tourism – were yet to recover before the July floods. Although tourism was unlikely to recover until a complete return to normalcy, reviving agriculture could and should have been a priority in the early stages of the reconstruction process to provide food and income.

The May 2009 military operation had taken place at a time when crops were nearly ready to harvest and orchards, especially in Swat, were full of fruit. That harvest was largely lost to the conflict and, compounding the problem, farmers were unable to plant for the following year due to militancy and military operations. Hence, when IDPs returned they had no food stocks left and no harvest. Many households lost livestock due to lack of feed; others had been forced to sell it to finance their flight.⁸⁸ Orchards were also damaged – deliberately by the militants and inadvertently by heavy artillery and air strikes. Because seeds and fertiliser were not provided in time, spring 2010's harvest was lost. Meanwhile, the WFP reduced food distribution at the end of the winter when local produce should have been ready for harvest, introducing instead more targeted schemes such as food-for-work programs

that benefited far fewer families.⁸⁹ The region was already facing crippling food insecurity when the floods occurred in 2010.⁹⁰

The floods have exacerbated the economic crisis in KPK's conflict zones, destroying crops, eroding agricultural lands and killing cattle, the main income source for many families. The full extent of their impact on public service delivery, the economy and livelihoods is yet to be assessed. According to an official from the ministry of food and agriculture, 100,000 acres of soil along the Swat river has been washed out; the official estimated it would take up to ten years to "restore the fertility of this critical area that feeds 50,000 people".⁹¹ Prior to the floods, some NGOs had distributed seeds, tools and livestock and were also providing technical assistance to vulnerable households. There were also cash-for-work programs to restore irrigation systems or to remove rubble from roads to facilitate farm-to-market access. Yet these initiatives too created friction between NGOs, the military and the civil administration over the intended beneficiaries.

The military was directly involved in rehabilitation and reconstruction in Malakand – from rubble removal to rebuilding schools, with funds channelled through PaRRSA – the rationale being that the provincial and district administration lacked capacity and know how.⁹² Mingora's assistant commissioner argued: "The army has engineers who with a quick look at a building know what's needed and then make sure it gets done. It is fast and efficient".⁹³ Many NGOs, forced to work alongside the army, resented its role in reconstruction. "Soldiers may know how to reconstruct a school building, but they can't make sure it has competent teachers or that parents have an incentive to send their kids to class", said an international aid worker.⁹⁴

The military will likely want to retain its lead role as efforts shift from rescue and relief to rehabilitation and reconstruction of Malakand's flood-hit region. It could play an even more overt role in FATA's reconstruction given the lack of governance and accountability that make the area "a grazing ground for the [civil and military] bureaucracy", according to HRCP's Kamran Arif.⁹⁵ In the wake

⁸⁵ These families were detained till such time that their Taliban relatives surrendered. Junaid Khan, "Taliban's families expelled from Pakistan's Swat – army", Reuters, 25 May 2010.

⁸⁶ Crisis Group telephone interview, Kamran Arif, HRCP, Peshawar, July 2010.

⁸⁷ Crisis Group interviews, Malakand-based NGO workers, June 2010.

⁸⁸ These were called "distress sales" whereby livestock was sold at 10 to 25 per cent of its market value. See "Preliminary Damage and Needs Assessment", Asian Development Bank and World Bank, op. cit., p. 48.

⁸⁹ Crisis Group telephone interview, WFP field monitoring assistant, 2 September 2010.

⁹⁰ According to WFP, by April 2010, 58 per cent of households in Malakand had insufficient food consumption. "Food security and market assessment in crisis areas of NWFP and FATA, Pakistan", WFP, April 2010, p. 6.

⁹¹ Adam B. Ellick, "Floods could have lasting impact for Pakistan", *The New York Times*, 16 August 2010.

⁹² Crisis Group interviews, Adnan Zafar Khan, deputy director, PaRRSA, Peshawar, 29 April 2010; and Imran Qureshi, assistant commissioner, Mingora, 26 May 2010.

⁹³ Crisis Group interview, Imran Qureshi, Mingora, 26 May 2010.

⁹⁴ Crisis Group interview, Islamabad, May 2010.

⁹⁵ Crisis Group interview, Islamabad, 1 April 2010.

of the floods, it is essential that all rehabilitation and reconstruction is civilian-led and implemented through civilian channels – with the involvement of the provincial and national parliaments as well as credible national and international NGOs and local professional organisations and the direct participation of representative community-level committees.

B. SECURITY, RULE OF LAW AND JUSTICE

1. Parallel justice

The sustainability of returns in Malakand and FATA and the effectiveness of efforts to rebuild lives in the conflict zones will depend on the state's ability to maintain law and order and thus ensure the security of citizens. Tenuous and dysfunctional governance has allowed rampant criminality and militancy to spread in the provincially and federally administered tribal areas. While FATA's lawlessness is well known, parts of PATA too have turned into a no-man's land, where religious extremists, warlords and criminals find safe haven. Instead of ensuring the security of PATA's residents, the military's response to militancy has eroded constitutionally guaranteed fundamental rights, most notably through the imposition of a parallel system of justice, based on the Sharia (Islamic law).

Even after operations ended and the military declared it had defeated the extremists, the central demand of the Swat-based, Taliban-linked Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM) to impose Sharia in the Malakand area, through the Nizam-e-Adl Regulation 2009, remains in place. Like other peace deals between the military and the militants in FATA, this accord, subsequently endorsed by Islamabad and Peshawar in April 2009, made major concessions to religious extremists. It also encouraged further Taliban territorial incursions, with their subsequent takeover of Buner district ultimately provoking the military's response. Instead of rescinding the accord after operations finished, the provincial and federal government have repeatedly reaffirmed their commitment to enforcing Sharia in PATA "in response to grievances over a lack of access to justice ... as per the wishes of the people of the region".⁹⁶ The KPK government has budgeted Rs. 272 million (almost \$3.5 million) for the Nizam-e-Adl's implementation at the local level, and an additional Rs. 10 million (\$125,000) for the establishment of appellate courts in the 2010-2011 budget.⁹⁷

Under the regulation, Sharia will be enforced by *qazi* (Sharia) courts, run by government-appointed judicial officers trained in Islamic law. The Nizam-e-Adl laws exclude laws providing women legal protections nationally.⁹⁸ The regulation also calls for the creation of an appellate court, the Dar-ul-Qaza, and of a final appellate court, the Dar-ul-Dar-ul-Qaza. Once the appellate benches are established, they will create an unconstitutional parallel judicial system.

In 2003, the Supreme Court ruled that the Muttahida Majlis-e-Amal's (MMA's)⁹⁹ Hisba bill, passed by the Northwest Frontier Province (NWFP) government to impose Sharia in the province, was unconstitutional. The judges said, "Islamist jurists are unanimous on the point that except for *Sallat* [prayer] and *Zakat* [alms] no other obligation stipulated by Islam can be enforced by the state". The court ruled that a state official "cannot be empowered to determine in his discretion whether any act is consistent with Islamic moral values and etiquettes or not".¹⁰⁰ This should apply equally to the Nizam-e-Adl laws.

FATA's oppressive parallel legal and administrative structures remain untouched despite broad acknowledgment by all major political parties and civil society groups of the need for comprehensive reform. In August 2009, President Asif Ali Zardari announced a FATA reforms package to amend some of the arbitrary provisions of the Frontier Crimes Regulations, which gives an agency's top bureaucrat, the political agent (PA), extensive executive, revenue and judicial powers.¹⁰¹ The amendments included lifting restrictions on political party activity; curtailing the bureaucracy's arbitrary powers of arrest and detention; excluding women and minors from collective responsibility under the law; establishing an appellate tribunal; and envisaging audits of the civil administration's funds by the auditor general. These were widely welcomed by FATA-based civil society groups.

⁹⁶ See "Malakand Comprehensive Stabilisation and Socio-Economic Development Strategy", Government of Northwest Frontier Province Pakistan, August 2009, p. 13.

⁹⁷ See Delawar Jan, "Mere promises, hopes for Malakand division", *The News*, 14 June 2010.

⁹⁸ These include the Muslim Family Laws Ordinance 1961, Protection of Women (Criminal Laws Amendment) 2006 and Protection Against Harassment of Women at the Work Place 2010. See Simi Kamal, "Nizam-e Adl – Inside Out: A study of Nizam-e Adl in the light of the constitution, women's policies and the perceptions of the Pakistani society", National Commission on the Status of Women, draft report, May 2010, p. 23.

⁹⁹ The MMA was a six-party religious alliance that formed the NWFP (now renamed Khyber Pakhtunkhwa) government and the Balochistan government in coalition with the military-backed Pakistan Muslim League – Quaid-e-Azam (PML-Q) from 2002-2007.

¹⁰⁰ See Crisis Group Asia Report N°160, *Reforming the Judiciary in Pakistan*, 16 October 2008, p. 9.

¹⁰¹ For details on the FCR and FATA's administrative structure, see Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit.

Although the proposed changes would have retained a repressive body of law, the government also vowed they would be the beginning of a process of reform that would bring citizens in FATA into the political and constitutional mainstream. Facing resistance from the military and FATA bureaucracy, the government has backtracked and is yet to pass even this modest reforms package. In July 2010, Prime Minister Yousaf Raza Gilani said the government would introduce “the gift of democracy” in FATA only once security was restored.¹⁰² The prospect of peace, however, will remain at best limited until the tribal agencies are incorporated into the constitutional, political and legal mainstream, and a functional justice system is established which includes the police, prosecutors and courts.

2. Circumventing justice

In its August 2009 development plan for Malakand,¹⁰³ the provincial government suggested easing the transition from a military to a police-led security apparatus by reforming the structure of the district police department. There will be two new forces: an elite counter-terrorism police force, for which new recruits are undergoing training, and a community police force to meet immediate security needs at the local level, which would be gradually integrated into the regular provincial police.

Although eight to ten people in each union council have been inducted into the community police, there are still no meaningful signs of a transition to civilian law enforcement in Malakand. “Most are unemployed youth that the government wants to keep away from militancy. They’ve received a quick training, and are neither properly armed nor paid to ensure security”, said an NGO worker in Mingora.¹⁰⁴

To satisfy demands for swift justice, the Nizam-e-Adl laws impose a four-month time limit for disposal of criminal cases, and a six-month limit for civil cases. A dysfunctional justice system has resulted in inordinate backlogs and delays and has also produced extremely low conviction

rates of 5 to 10 per cent.¹⁰⁵ Yet imposing strict timeframes without addressing critical gaps in investigations, prosecution and other areas of law enforcement will aggravate rather than resolve the problem. In the words of a Mingora-based lawyer: “It’s swift but it’s not justice”.¹⁰⁶ With over 1,000 militants reportedly detained by the military during operations in Malakand, the crisis in the criminal justice system is all the more acute. The prospect of religious extremists and their criminal allies being released due to rushed investigations and prosecutions makes residents less confident in the state’s ability to provide security.

Many Pakistani and international stakeholders have called for reviving and mainstreaming jirgas (councils of elders) in FATA and Malakand. “Jirgas are fast, cheap and recognised [by local communities]. They just need to be improved”, said a consultant who contributed to the PCNA.¹⁰⁷ Presided by tribal elders and local powerbrokers, jirgas apply *rewaj* (customary law), which discriminates against women, and often decide cases on the basis of evidence that would be inadmissible in a regular court. Their judgements, for instance, forgive the perpetrators of illegal acts like honour killings, and their penalties often violate basic human rights. In 2004, the Sukkur bench of the Sindh High Court declared jirgas unconstitutional.¹⁰⁸ Although the ruling addressed jirgas in Sindh, there is no reason why the same argument should not apply to KPK. “Jirgas as dispute resolution mechanisms belong to the past”, said former Swat parliamentarian Adnan Aurangzeb.¹⁰⁹ They are also largely alien to the culture and traditions of Swat and its surrounding districts.

Preferring informal to formal justice, the military is also enforcing law and order with the lack of transparency that characterised its counter-insurgency operations. The HRCP reported 286 extrajudicial killings in 2009 and the existence of mass graves.¹¹⁰ According to a July 2010 Human Rights Watch report, there have been 238 “suspicious” killings in Swat since September 2009. “Killing terrorism suspects and their relatives in cold blood is vicious, illegal, and constitutes an appallingly bad counterinsurgency practice that just creates more enemies”, said the organisation’s South Asia researcher Ali Dayan Hasan.¹¹¹ The military denies using these methods. Responding to the report, the army spokesperson Major General Athar Abbas said: “We

¹⁰² See “Only politics of reconciliation can resolve issues: PM”, *Daily Times*, 26 July 2010.

¹⁰³ In August 2009, the KPK government published a five year development strategy for Malakand region, focusing on core sectors, one of them being security, rule of law and governance. The timeline for its implementation depended then on the findings of the Post Conflict Needs Assessment. In the wake of the floods, the draft PCNA is being revised. See “Malakand Comprehensive Stabilisation and Socio-Economic Development Strategy”, Government of NWFP, op. cit.

¹⁰⁴ Crisis Group interview, Mingora, May 2010.

¹⁰⁵ Civil cases often take ten to twenty years, and criminal cases at least five years. See Crisis Group Report, *Reforming the Judiciary in Pakistan*, op. cit., pp. 15-16.

¹⁰⁶ Crisis Group interview, Mingora, 26 May 2010.

¹⁰⁷ Crisis Group interview, Islamabad, April 2010.

¹⁰⁸ See HRCP website: www.hrcp-web.org/showinter.asp?id=16; and “SHC bans all trials under Jirga system”, *Dawn*, 25 April 2004.

¹⁰⁹ Crisis Group interview, Islamabad, 12 May 2010.

¹¹⁰ “State of Human Rights in 2009”, HRCP, February 2010, p. 53.

¹¹¹ “Pakistan: Extrajudicial executions by army in Swat”, Human Rights Watch, 16 July 2010.

will have to look at the charges before we come out with a specific response. But we maintain that the army has never been involved in any such act".¹¹²

The military is also arming tribal *lashkars* in both PATA and FATA and increasingly relying on them to fight militants and maintain control over cleared areas. Ostensibly contracted by the government as an anti-Taliban force, these militias are little more than militant proxies, given a virtually free hand in their areas by the military. They carry out reprisal killings, terrorise communities in FATA and support jihad against the Afghan government and coalition forces in Afghanistan.¹¹³ By delegating law enforcement to these private actors, the state is encouraging a virtual drift towards warlordism.

V. INTERNATIONAL ACTORS

On 12 August 2010, the UN launched the Pakistan Initial Floods Emergency Response Plan, calling for \$459.7 million to meet urgent humanitarian needs.¹¹⁴ By 9 September, only 67 per cent, \$307.1 million, had been funded.¹¹⁵ The UN estimates that rehabilitation and reconstruction could take up to five years, warning: "This was the first wave of deaths caused by the floods themselves. But if we don't act soon enough, there will be a second wave of deaths" because of food shortages, and disease.¹¹⁶ Yet this calamity also offers the international community an opportunity to win Pakistani hearts and minds through providing adequate assistance and abandoning the approach adopted for the 2005 earthquake and the 2009-2010 IDP crisis. Donors should respond to this natural disaster in the context of the broader challenges to civilian rule.

Acknowledging a shift in priorities, Dr. Rajiv Shah, the USAID administrator, indicated in late August that the agency would reorient its current plans under the Enhanced Partnership with Pakistan Act 2009, reallocating a

considerable portion of the funds for flood recovery.¹¹⁷ While this is logical, the U.S. should simultaneously reinforce the underlying principle of the aid package: broadening engagement with Pakistan beyond a narrow partnership with the military by strengthening a fragile democratic transition and building the capacity of civilian institutions. One of their efforts now being debated is how to reinforce the civilian nature of NDMA.¹¹⁸

A. IMPARTIAL ASSISTANCE

The military is certainly the only actor capable of providing the logistical support needed for rescue operations and emergency relief. International donors should not, however, support a role for the military beyond rescue and immediate relief. If international agencies and INGOs, motivated by security concerns as well as mistrust of civilian institutions, view the military as their most suitable partner, relying on it to assess needs, deliver relief and set the reconstruction agenda, yet another opportunity to help build civilian capacity will be lost. Since a military-driven agenda is also unlikely to meet the needs of affected communities, jihadi groups will be given the opportunity to fill the breach and reclaim lost ground with a public that has, particularly since the Malakand crisis, strongly opposed extremism.

By working too closely with the military during the earthquake response in 2005, UN agencies and other international organisations inadvertently empowered Islamists, including military-backed banned jihadi groups.¹¹⁹ In identifying local partners now, donors must not collaborate with those linked to sectarian religious parties and jihadi outfits.¹²⁰ Several of these groups have established relief camps in an attempt to win constituents and recruits, even as they continue attacking the state and citizens.

¹¹² Syed Shoaib Hasan, "Pakistan army accused of extrajudicial killings in Swat", BBC News, 16 July 2010.

¹¹³ For more details, see Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit.

¹¹⁴ Pakistan Initial Floods Emergency Response Plan, August 2010, OCHA, 1 August 2010.

¹¹⁵ "Pakistan - monsoon floods", OCHA, Situation report No. 23, 9 September 2010.

¹¹⁶ Ellick, "Floods could have lasting impact for Pakistan", op. cit. Criticising the slow and inadequate international response to the UN appeal, former UN relief coordinator and Crisis Group Board Member Jan Egeland said: "It's been abysmal, it's been terrible. There is no relationship between the number of people in acute need of help and that has actually been provided in this first month". Colum Lynch and Griff Witte, "Floods in Pakistan affects millions; UN-led relief effort lacks financial support", *The Washington Post*, 19 August 2010.

¹¹⁷ Widely referred to as the Kerry-Lugar-Berman bill, it is a five-year \$7.5 billion aid package to help strengthen civilian institutions and promote development in Pakistan.

¹¹⁸ Crisis Group interview, U.S. government official, Washington DC, 12 September 2010.

¹¹⁹ See Crisis Group Briefing, *Pakistan: Political Impact of the Earthquake*, op. cit.

¹²⁰ During a visit to a Save the Children and WFP-run food distribution site, USAID Administrator Raj Shah, meeting with flood victims, was informed by his security detail that newly-erected banners at the site showed that the Jamaat-ud-Dawa, renamed the Falah-e-Insaniyat Foundation, was also claiming activity at the camp. He left immediately and USAID made clear that "at no time during his visit did Dr. Shah encounter or meet any members of a banned extremist organisation". Nevertheless, the incident shows that jihadi groups are active in the camps. Crisis Group interview, Washington DC, USAID official, 11 September 2010. Also see "USAID: Rajiv Shah did not visit a terrorist camp in Pakistan", *Foreign Policy*, 26 August 2010; Karin Brulliard, "U.S. to divert some Pakistan aid to flood recovery, official says", *The Washington Post*, 25 August 2010.

Given the flawed IDP registration and selective provision of assistance, international organisations should also insist on conducting independent assessments of community needs and reconstruction priorities in KPK and FATA. Where security concerns and threats to staff are likely to impede their work, these organisations should find credible partners, particularly local and national NGOs, as well as some INGOs with a proven track record of working in KPK and FATA.¹²¹

The international community should also develop coordination mechanisms to ensure a united approach in extending impartial humanitarian assistance to the flood affected in KPK and FATA. “When WFP and UNHCR officials don’t see a problem with getting in a helicopter with Lieutenant General Nadeem Ahmed, [former head of SSG, now retired from the army and head of the NDMA], how can anyone uphold a principled approach?” said an international aid worker.¹²²

OCHA, which is relatively new in Pakistan, has tried to ensure the humanitarian community abides by internationally accepted principles in engaging with the military. In March 2010, it drafted guidelines for civil-military coordination, calling for much more regulation of the relationship between soldiers and humanitarian aid workers in complex emergencies. They call for a “strategy of co-existence” by which humanitarian agencies, the military and police would avoid joint interventions and maintain a clear distinction in their activities and communication. The guidelines emphasise that military or police should not attend humanitarian coordination meetings, contacts should be kept to a minimum and information shared, if necessary, only through civilian government institutions.¹²³ This policy will be tested in the international response to the floods.

OCHA considers the floods in KPK a “complex emergency” rather than a “disaster in peacetime”, which means it still advocates a strategy of coexistence rather than of cooperation with the military. For instance, UN agencies such as the WFP that want to use military helicopters have been told to ensure that there is no camouflage and that military personnel do not distribute the assistance.¹²⁴

UN agencies cannot afford to again be viewed as a complacent partner of the military in delivering humanitarian assistance. The military, moreover, is unlikely to limit its role in relief and reconstruction unless UN agencies and the international community insist on civilian ownership of these processes.

B. IDENTIFYING NEEDS AND ENSURING COST-EFFECTIVENESS

Before the monsoon floods, the U.S. Senate Committee on Foreign Relations, among other U.S. congressional committees, had stressed the importance of transparency and accountability of civilian assistance, warning against channelling vast amounts of aid to the Pakistan government and local groups before they had the capacity to absorb it. In an official note to Ambassador Richard Holbrooke, the Obama administration’s special representative to Pakistan and Afghanistan, dated 25 May 2010, the Senate committee said, “The potential for misuse [of U.S. assistance] is significant enough to raise warning flags about the pace of funnelling funds through institutions without a strong track record of transparent, accountable, and effective money-management – or significant experience in the successful delivery of projects”.¹²⁵

That warning was clearly on the mind of U.S. officials as they responded to the flood of relief requests. USAID Administrator Shah stated, “the fact that we do that auditing and compliance ensures that I’m able to stand here and say that I know, with certainty, that we work with only partners that are validated We can track our money and our commodities quite closely”.¹²⁶ The European Commission is providing €70 million in humanitar-

¹²¹ Some international NGOs have long worked in Pakistan and have qualified local staff in KPK and even in FATA. Save the Children, for instance, runs clinics in every FATA agency with staff trained among the local population. Crisis Group interview, Hassan Noor Saadi, team leader, emergency response team, Save the Children, Islamabad, 19 March 2010.

¹²² Crisis Group interview, Islamabad, May 2010.

¹²³ “Draft guidelines for civil-military coordination in Pakistan”, OCHA, March 2010.

¹²⁴ Crisis Group telephone interview, OCHA, senior humanitarian officer, Islamabad, 18 August 2010.

¹²⁵ “Observations on civilian assistance funding to Pakistan for FY2010”, United States Senate Committee on Foreign Relations, 25 May 2010. An internal USAID review of its IDP programs found that its Islamabad office had not verified if the funds disbursed in November 2009 for IDP cash grants to the Ministry of Economic Affairs had reached the intended beneficiaries. Ibid. An April 2010 U.S. Government Accountability Office inquiry into development assistance to FATA concluded that in the absence of complete documentation on programs’ performance, it could not “fully and accurately assess the status of current assistance efforts or accountability of funds”. The report also found that some of the mechanisms put in place by USAID to monitor its programs were inadequate. See “Combating terrorism: planning and documentation of U.S. development assistance in Pakistan’s Federally Administered Tribal Areas need to be improved”, Report to Congressional addressees, United States Government Accountability Office, April 2010, p. 33. In 2007, the U.S. pledged \$750 million for FATA for 2007-2011. More FATA development assistance will be available under the Kerry-Lugar-Berman bill.

¹²⁶ Statement by Administrator Rajiv Shah at the Washington Foreign Press Center, 27 August 2010. www.usaid.gov/press/speeches/2010/sp100827.html.

ian assistance, all channelled through international non-governmental relief organisations, UN agencies and the Red Cross/Red Crescent movement. Added to individual member state contributions, this assistance amounts to over €230 million, thus making the EU a major donor.¹²⁷ The EU should ensure that its own principles of efficiency and transparency, which form the basis of its framework agreements with implementing partners, are strictly observed by these organisations and their own local partners.

The U.S., the EU and other donors should not only provide adequate assistance,¹²⁸ they must not bypass the civilian government. They should use this opportunity to build the state's disaster management capabilities, particularly at the provincial and district levels. The bulk of \$261 million in USAID and State Department civilian aid has gone to WFP, UNHCR and other UN agencies along with NGOs. Only \$7.6 million has gone to NDMA, with U.S. aid officials agreeing that strengthening civilian capacity is critical for future disaster preparedness.¹²⁹

For all their weaknesses, the government and its administrative machinery have managed thus far to prevent a natural disaster from turning into a major humanitarian crisis. Their efforts, along with international aid, have prevented widespread starvation and epidemics thus far, even as the floods extended across the entire country.¹³⁰ As an analyst

notes: "Without government almost none of the current pace and scale of the relief would be possible", adding that provincial, district and local officials "have risked their lives to do what the government should do – to protect and serve Pakistanis" affected by the floods.¹³¹

A cost-effective relief, rehabilitation and reconstruction process should also include a broad range of national-level NGOs and professional organisations, as well as elected and civilian-led institutions, such as representative community-level committees, that will be accountable to the public and responsive to public needs. In the wake of the floods, for instance, in Malakand, local and international NGOs responded far more quickly to the needs of the flood affected than the military, redirecting their assistance and coordinating efficiently with each other and with district authorities.¹³²

Donors should work through the civil administration at all levels rather than military-led structures, while identifying and helping the government to fill gaps in civilian capacity – in the registration of affected people, with the criteria based primarily on vulnerability, in delivering assistance and executing large-scale reconstruction. Effective oversight and accountability mechanisms should be established that include affected communities, for instance, through locally elected monitoring committees; local and national civil society organisations; and elected representatives and institutions.

Recipients should, above all, be given ownership over relief, recovery and rehabilitation. Cash-based programs, for which NADRA already has the technology in a tested system of "smart cards" created for the Benazir Income Support Program (BISP), and later used to assist Malakand's IDPs. Using the same technology, the government has started a process of providing assistance, albeit modest, through smart cards to flood-affected families.¹³³ Cash

¹²⁷ Address by Kristalina Georgieva, European Commissioner for International Cooperation, Humanitarian Aid and Crisis Response, on the humanitarian situation after floods in Pakistan before the European Parliament Plenary in Strasbourg, 7 September 2010. Available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/412&format=HTML&aged=0&language=EN&guiLanguage=en>.

¹²⁸ According to the government's chief financial adviser, Sakib Sherani: "If you look at the damage and compare that to pledges we have received, so far there's a big asymmetry", adding: "Several billion dollars will be required just to feed and house the population temporarily. So clearly, the international community needs to step up". Griff Witte, "As Pakistanis flee the flood zone, officials decry shortage of international assistance", *The Washington Post*, 11 August 2010. Donors had committed \$301 million to OCHA's emergency appeal by 9 September, but that was still only 67 per cent of the appeal. Funding was uneven with the water, sanitation and hygiene cluster facing a 70 per cent shortfall. "Pakistan-monsoon floods", OCHA, Situation report No. 23, 9 September 2010.

¹²⁹ Crisis Group interview, Washington DC, 11 September 2010.

¹³⁰ As of 13 September, the U.S. has provided \$261 million, excluding in-kind and technical assistance. USAID's largest grants were \$54m to WFP, \$10m to WHO, \$15m to IOM, \$98m directly from the Office of U.S. Foreign Disaster Assistance (OFDA) through mostly international NGOs in shelter materials, drinking water and transport. The State Department has sent another \$49m to UNHCR. The U.S. military by the same date had moved 4.7m tons of food supplies with 25 helicopters, five C-130s troop, medical evacuation and cargo planes and two naval ships offshore and also had rescued 13,200

stranded victims. Crisis Group interviews, USAID, State Department, National Security Council, Defense Department officials, Washington DC, 10-11 September 2010. "Update: U.S. Response to Pakistan's Flooding Disaster", Office of the Spokesperson, U.S. Department of State, Washington DC, 13 September 2010.

¹³¹ Mosharraf Zaidi, "It's the government, stupid!", *The News*, 31 August 2010.

¹³² Crisis Group telephone interviews, humanitarian workers, Malakand, 18 August 2010.

¹³³ Preliminary cash grants of Rs. 2,000 (around \$240), the first instalment of a total of Rs. 100,000 (approximately \$1,180) for every flood-affected family are now being distributed through "Watan Cards", smart cards issued by NADRA. BISP is also disbursing cash assistance, albeit modest (Rs. 1,200 per family, \$140) as a livelihood grant to the most vulnerable, with the task made easier by some six million female heads of households already registered in the program. "BISP starts paying grants to flood victims", *The News*, 31 August 2010; "PM for cash com-

grants give recipients more control over how to meet their needs and restore their livelihoods, particularly if representative community-level committees are formed that can exercise oversight over the disbursement of assistance. Cash-based assistance was relatively effective in helping Malakand's IDPs become more economically mobile and less dependent on handouts.¹³⁴ Such assistance, disbursed through the national and provincial governments, should target vulnerable populations, such as children, women-led households, the elderly and the ailing.

Setting priorities for the reconstruction of infrastructure such as roads, bridges, irrigation systems, buildings and power grids, will require a comprehensive evaluation once the rains and floods have subsided. Urgent short-term challenges, however, should be addressed now, including immediate relief, shelter, particularly winterised shelter for KPK and FATA, as well as health and education facilities. It is equally important that farmers can purchase seeds and fertilisers, preferably through cash grants and also bank credits on easy terms, before it is too late for the sowing season (September-November), otherwise the spring harvest will be lost.¹³⁵ The World Bank and Asian Development Bank are conducting a Damage and Needs Assessment (DNA) to be completed by mid-October 2010. It will be submitted to a special envoys meeting preliminary to a November Pakistan Donor Forum in Islamabad where some additional funding may be announced based on the DNA.¹³⁶ In 2009, the assessment for Malakand was finalised after the sowing season was over; as a result, farmers could not obtain seeds and fertiliser to sow for the following harvest. Repeating this mistake will increase the risks of food shortages in Malakand and FATA.

In the long term, the UN, the U.S. and other donors should ensure that reconstruction helps rebuild KPK's shattered economy and creates new sources of income and jobs in Malakand and FATA. Major reconstruction in the region, as elsewhere, could in fact boost Pakistan's private sector, but only if funds are allocated through tenders and competitive, transparent bidding to local contractors, companies and businesses, avoiding the mistakes of the past.

pensation for affected to build homes", *The News*, 31 August 2010; "Nawaz inaugurates 'Watan Card' distribution", *Dawn*, 10 September 2010; and Ahmed Hasan, "Payment to compensation begins in Thatta, Mianwali", *Dawn*, 11 September 2010.¹³⁴ For earlier Crisis Group recommendations for cash-based assistance, see Crisis Group Briefing, *Pakistan's IDP Crisis: Challenges and Opportunities*, op. cit.

¹³⁵ A senior Food and Agriculture Organisation official warned: "Unless people get seeds in the next few weeks, they will not be able to plant wheat for a year. Food aid alone will not be enough. Unless the next wheat crop is not salvaged, the food security of millions will be at risk". "FAO calls for more international funds", *The News*, 2 September 2010.

¹³⁶ Crisis Group interview, U.S. official, Washington DC, 12 September 2010.

In January 2010, for instance, USAID had granted \$55 million for road and infrastructure reconstruction, water supply and hydro-electricity repair projects in South Waziristan.¹³⁷ This money went directly to the FATA secretariat, which after an open bid, awarded contracts for two road construction projects to the Frontier Works Organisation (FWO), the military's construction arm, although it had the highest bid. According to the inspector general of the Frontier Corps: "FWO won the bid because none of the other contenders can guarantee the timeframe and budget outlined in their proposals".¹³⁸ Unlike the FWO, he stressed, other bidders like the National Highway Authority typically demanded more money once projects were underway. According to the FATA secretariat, however, the cost of the FWO projects is likely to exceed \$60-70 million because of damage to roads by military operations.¹³⁹ If funding for flood hit areas is again channelled through unaccountable state institutions such as the FATA secretariat that award contracts to bodies like the FWO, donors will merely reinforce military monopolies.

The international community, the PPP-led government in Islamabad and ANP-led provincial government in Peshawar should include the national and provincial parliaments, which have active public accounts committees, in efforts to ensure accountability over donor and public expenditure, particularly with regard to large-scale reconstruction projects. Absent civilian input and oversight, donor-funded reconstruction might benefit the military, civil bureaucracies and local elites rather than a population devastated by violence and now a natural disaster.

VI. CONCLUSION

Even as Pakistan faces an unprecedented natural disaster, it also confronts the twin challenges of stabilising a fragile democratic transition and countering violent extremism. Given the scale of the flooding and the urgency of relief and rehabilitation, donors may be tempted to circumvent fragile civilian structures. They could instead opt to collaborate with a military that is attempting to regain the credibility it lost during nine years of military rule by depicting itself as the only institution capable of providing assistance.¹⁴⁰ Although the military certainly

¹³⁷ "U.S. to support South Waziristan reconstruction with \$55 million (Rs. 4.5 billion) in grants", press release, U.S. embassy, Islamabad, 31 December 2009.

¹³⁸ Crisis Group interview, Major General Tariq Khan, inspector general, Frontier Corps, Peshawar, 13 July 2010.

¹³⁹ Crisis Group telephone interview, Faisal Qureshi, assistant to additional director of projects, FATA secretariat, 3 August 2010.

¹⁴⁰ An analyst commented that journalists, taken to the flood-hit zones by military helicopters, were "projecting the army's role in rescue and relief activities as a separate entity rather than

should, in support of the civilian government, use its resources to provide logistical support, the international community must not allow it to dictate the humanitarian agenda or the reconstruction process. If it does, current efforts will fail to meet the needs of affected communities, just as the military-controlled relief for FATA's IDPs and rehabilitation of Malakand's returnees have excluded many affected by the armed conflict.

Once the floods have subsided, undoing the damage could take five years or more. The pace and success of recovery will depend on a well-planned and well-executed rehabilitation and reconstruction policy. Community-based civil society groups, national NGOs and professional organisations as well as elected representatives should lead the process of devising this policy. Donors should give them key roles – from planning to implementation to monitoring expenditures and ensuring transparency. The political leadership, in particular, must lead the reconstruction phase, ensuring that local communities help identify priorities and strategies, and that projects are cost-effective and appropriate. The national and provincial parliaments should oversee these efforts, including maintaining accountability over donor and government funds through their public accounts committees.

Domestic agencies and institutions have yet to acquire and donors have yet to provide sufficient resources even for immediate relief, and far more vital tasks lie ahead – rebuilding lives and livelihoods, restoring a devastated infrastructure and reviving a damaged economy. The IDP experience in KPK and FATA provides critical lessons. A year after that crisis began, the Pakistani state and the international community's failure to address IDP and returnee needs in an adequate and timely fashion threatens to undermine the goodwill that the initial response produced. If FATA and KPK's flood-affected communities too believe that the government and humanitarian community are indifferent to their needs, they may look to others to fill the gap, including jihadi organisations.

The floods may also make the challenge of combating extremism in Pakistan even more complex. The military will continue to exploit the situation to maintain its control over major policy areas, particularly in KPK and FATA, and will also likely impose earlier restrictions on humanitarian activity once the floods have subsided, justifying them on security grounds. It is also likely to continue trading human rights for counter-insurgency dividends. If the international community wants to win Pakistani hearts

and minds, it should send unambiguous signals that this is no longer acceptable.

The PPP-led government must also follow through on its pledges to incorporate the tribal belt into the constitutional and legal mainstream. Crises and conflict are no justification to avoid extending the law of the land to FATA and parts of KPK whose residents remain second-class citizens. On the contrary, by promoting fundamental rights for all, the government would gain public goodwill and create the environment in which the moderate majority could gain ascendancy over the forces of extremism.

Islamabad/Brussels, 16 September 2010

treating it as part of the state response towards calamity-hit people". Furthermore: "It should be remembered that it was the armed forces' constitutional duty to respond when called in to assist the civil administration in calamities". Zulfikar Ali, "How the media muddled through the deluge", *Dawn*, 29 August 2010.

APPENDIX A

GLOSSARY

| | |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ANP | Awami National Party, the main secular Pashtun nationalist party, which currently heads the provincial Khyber Pakhtunkhwa (KPK) government, in coalition with the Pakistan People's Party |
| BISP | Benazir Income Support Program |
| CAR | Commissionerate for Afghan Refugees, tasked with managing Afghan refugee camps is now involved in managing IDPs |
| FIF | Falah-i-Insaniat Foundation, ostensibly a charity, the latest incarnation of Jamaat-ud-Dawa (JD), the renamed Lashkar-e-Tayyaba (LeT) |
| FATA | Federally Administered Tribal Areas, comprising seven administrative districts, or agencies, and six Frontier Regions bordering on south-eastern Afghanistan |
| FC | Frontier Corps, a federal paramilitary force involved in counter-insurgency operations in FATA and Balochistan. It falls under the Interior Ministry but is headed by a serving army officer |
| FWO | Frontier Works Organisation, the construction organisation of the Pakistan Army Corps of Engineers |
| FCR | Frontier Crimes Regulations, a draconian, colonial-era legal framework adopted in 1901 and retained after independence in 1947 to govern FATA |
| FDMA | FATA Disaster Management Authority |
| HRCP | Human Rights Commission of Pakistan |
| IDP | Internally Displaced Person |
| <i>Jirga</i> | Tribal council |
| KPK | Khyber Pakhtunkhwa, formerly known as the Northwest Frontier Province (NWFP) |
| <i>Lashkar</i> | Tribal militia |
| MMA | Muttahida Majlis-e-Amal, an alliance of six major religio-political parties dominated by the JUI-F (Jamiat Ulema-e-Islam Fazlur Rahman faction) and JI (Jamaat-e-Islami). During Pervez Musharraf's military regime, it formed the NWFP provincial government and was the major partner in the pro-Musharraf ruling coalition in Balochistan |
| NADRA | National Database and Registration Authority |
| NDMA | National Disaster Management Authority established in May 2007 by Pervez Musharraf's military government to be the lead agency for risk reduction and coordinating responses to national disasters |
| NIC | National Identity Card |
| NOC | No Objection Certificate |
| PA | Political agent, a centrally appointed bureaucrat who is the top official in a tribal agency, exercising extensive executive, judicial and financial powers |

| | |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PaRRSA | Provincial Reconstruction, Rehabilitation and Settlement Authority created by the KPK government in June 2009 to oversee resettlement and rehabilitation in the conflict affected areas of the province |
| PATA | Provincially Administered Tribal Areas, comprising the districts of Buner, Chitral, Lower Dir, Upper Dir, Malakand, Shangla and Swat, as well as the Tribal Area adjoining Mansera district and the former state of Amb, administered since 1975 under a separate criminal and civil code from the rest of KPK |
| PCNA | Post-Crisis Needs Assessment, conducted by the UN, World Bank and Asian Development Bank to identify long term needs in reconstruction and development and costs, as well as suggest policy recommendations to avoid renewed conflict |
| PDMA | Provincial Disaster Management Authority |
| PIFERP | Pakistan Initial Floods Emergency Response Plan, launched on 11 August 2010 |
| PML-N | Pakistan Muslim League-Nawaz, main party in opposition, headed by former prime minister Nawaz Sharif |
| PPP | Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1967 with a socialist, egalitarian agenda. Since Benazir Bhutto's assassination in December 2007, the party is headed by her widower, President Asif Ali Zardari, and currently heads the coalition government in the centre |
| SSG | Special Support Group for Internally Displaced Persons, established by the military in May 2009 to provide support to provincial government efforts for logistics, health, administration and registration |
| TNSM | Tehrik-e-Nifaz-e-Shariat-e-Mohammadi, a Swat-based Sunni radical group, responsible for sending thousands of fighters to help the Taliban after U.S.-led attacks on Afghanistan in October 2001 |

APPENDIX C

MAP OF KHYBER PAKHTUNKHWA AND FATA

