

October 2011

Governance and Militancy in Pakistan's Swat Valley¹

Justine Fleischner

Introduction and Background

In 2009, the Swat Valley became a focal point of Pakistan's war against militancy and terrorism. The government signed a peace agreement effectively ceding control of the district to the local Taliban faction, allowing it to enforce its interpretation of Islamic law. Soon, a video of a teenage girl being flogged by a Taliban commander emerged and sparked outrage within Pakistan and around the world as a symbol of a situation that had gone out of control. By April 2009, Taliban fighters had swept into neighboring Buner district and were portrayed by the international media, with some exaggeration, as being on the verge of a siege of Islamabad. The following month, Pakistan's military forces launched a campaign to regain control of Swat. The campaign succeeded, but the fighting displaced hundreds of thousands of people from Swat into nearby areas, creating a serious humanitarian crisis in the country's northwestern region. A little more than a year later, as many of those internally displaced persons were returning to a newly stabilized Swat, the worst flooding in Pakistan's history created a new crisis that threatened to undo what little progress on reconstruction the military or civilian governments had achieved.²

In early 2011, two years into the longest sustained military operation in Pakistan's history, the army began a phased withdrawal from the surrounding districts of Shangla and Buner.³ While welcomed news, the details of the plan have not been made public, and the ability of local security forces to maintain order is untested. More importantly, the capacity of local governance officials to lead reconstruction efforts and improve service delivery in justice, education, and health may be constrained by the absence of a cohesive local governance framework. While there have been some significant changes to the laws and institutions that provide justice in Swat, namely the implementation of the Nizam-e-Adl Regulation, the formal judicial system has escaped much needed reform, and there are currently 2,500 alleged terrorist suspects being illegally detained by the military. There has been no talk of community reconciliation and very little in terms of oversight reform.

Pakistan's Swat Valley was once a popular vacation destination known for its great natural beauty, pristine rivers, and the Malam Jabba ski resort. It is in no way a remote part of the tribal hinterland, sitting about 150 miles from Islamabad and about 100 miles from Peshawar, the provincial capital. Set at the base of the Hindu Kush, Swat district rests under the provincial control of Khyber Paktunkhwa (KPK) in the frontier region of northwest Pakistan. The entire population of the district is estimated to be around 1.7 million, although reliable census data is unavailable. A significant number of ethnic minorities reside in Swat, including Kohistanis, Gujars, Hindu, and Sikh minorities, but the dominant ethnic group is Pashtun (mainly of the Yusufzai tribe) and the dominant language is Pashto. The people of Swat share a common identity and history, regardless of their ethnicity or tribal background.

¹ This paper was prepared as part of a forthcoming report on governance and militancy in Pakistan. This research would not have been possible without the generous support of the Ploughshares Fund, the Henry Luce Foundation, and the Carnegie Corporation of New York.

² Salman Masood, "Video of Taliban Flogging Rattles Pakistan," *New York Times*, April 3, 2009; Carlotta Gall, "Pakistani Army Poised for New Push into Swat," *New York Times*, May 5, 2009; "Humanitarian crisis 'worsens' in Pakistan's Swat Valley," *The Telegraph*, May 7, 2009, <http://www.telegraph.co.uk/news/worldnews/asia/pakistan/5290045/Humanitarian-crisis-worsens-in-Pakistans-Swat-Valley.html>.

³ Ismail Khan, "Army starts relocating from Swat," *Dawn*, February 1, 2011, <http://www.dawn.com/2011/02/01/army-starts-relocating-from-swat.html>.

The area has a rich history that has been examined in great depth by anthropologists and local scholars.⁴ Swat was once the life-center of Vajrayana Buddhism in the region. After a period of influence by the Hindu Shahi kingdom, the Muslim forces of Mahmud of Ghazna invaded Swat at the height of the Golden Age of Islam. In the sixteenth century, the Yusufzai tribesman of Southern Afghanistan migrated into the region and settled there. The Yusufzai largely resisted any efforts to establish a formal state system up until 1915, when conflicts among the local tribesman threatened the internal stability of the area and complicated their efforts to repel incursions by the leader, or *Nawab*, of neighboring Dir state. Judging that the defense and autonomy of Swat could be best maintained under autocratic rule, the Yusufzai invited Abdul Jabbar Shah to establish a unified government. His rule was quickly undermined by Miangul Abdul Wadud, the grandson of the influential spiritual leader of Swat, Akhund Abdul Ghafur, known fondly as Saidu Baba. In 1917, Abdul Jabbar Shah was asked to step down, and Miangul Abdul Wadud became known as the first ruler, or *Wali*, of Swat.

Beginning with his rule, Swat state developed a system of roads, public education for boys and girls, and its own judicial system, based on customary codes of conduct known as *Dasturul Amal*.⁵ “The judicial system in Swat was not Islamic as is commonly believed.”⁶ Decisions were heavily influenced by local politics, but cases were often decided quickly and at low cost, so justice was widely accessible. The *Wali* often adjudicated cases personally, particularly when they involved the wealthy landowning elite, which limited their ability to capture the political system.

From 1949 until 1969, Miangul Jahanzeb, the last *Wali* of Swat, sought to build on his father’s achievements by providing improved access to higher education, hospital facilities, and modern roads in order to promote economic and social development.

Life in Swat under the *Wali*’s rule may look better in hindsight than it actually was at the time, but many people do look back on that period with nostalgia. Akbar Ahmed, Ibn Khaldun Chair of Islamic Studies at American University, gives three reasons for this nostalgia. First, the structure of the state was clearly defined, with the *Wali* at its center. Second, the system provided “swift and correct justice”: swift in the sense that cases were heard and decisions made in short order, and correct in the sense that by and large the average person felt these decisions were fair, since they were based on customary law and local Pashtun tradition. Third, law and order were fundamental attributes of the state; if any prominent person challenged the *Wali*’s authority, he would be dealt with harshly. All of these dimensions—a clear authority structure, an efficient justice system, and a predictable system of rules—have been greatly degraded in the four decades since the end of the *Wali*’s rule. This nostalgia, according to Ahmed, emerges from its comparison with the state of affairs in Swat today.⁷

Informal Governance Structures

From 1917 to 1949, Miangul Abdul Wadud ruled over Swat, which was both tribal and feudal in nature. The Yusufzai tribes practiced the traditional system of *wesh*, whereby every 10 years land was redistributed among the most powerful tribesmen. Tribes were also aligned based on two opposing *della*, or fighting groups, and there was mobility between the two. The *Wali* effectively used the *della* system to his advantage and would balance the power of one *della* against that of the other, as the need arose.⁸ Slowly, the *Wali* began to make changes to the traditional system. Between 1928 and 1932, he ended the system of *wesh*, began building schools, and established a network of roads and forts.

In 1949, Miangul Abdul Wadud abdicated to his son, Miangul Jahanzeb, who slowly chipped away at the feudal system by elevating the smaller *Khans*, the landed feudal elite, under more powerful *Khans*. Jahanzeb sought to modernize Swat state and can be credited with improving local access to education, health facilities, and justice. While the *Wali* was by no means a benevolent ruler in his dealings with the *Khans*, he looked after the poor and

⁴ Historical details in this section are drawn from Sultan-i-Rome, *Swat State 1915–1969: From Genesis to Merger* (Oxford: Oxford University Press, 2008); Miangul Jahanzeb and Fredrik Barth, *The Last Wali of Swat: An Autobiography* (New York: Columbia University Press, 1985); and other sources as indicated.

⁵ Author interview with Adnan Aurangzeb, Islamabad, Pakistan, September 2010.

⁶ Sultan-i-Rome, *Swat State 1915–1969*, 319.

⁷ Author telephone interview with Akbar Ahmed, November 2010. See also Gustaaf Houtman, “Swat in the eye of the storm: An interview with Akbar Ahmed,” *Anthropology Today* 25, no. 5 (October 2009).

⁸ Jahanzeb and Barth, *The Last Wali of Swat*, 51.

provided his people with services neighboring states did not. When Swat merged with Pakistan in 1969, it was by far the most developed state in the frontier, which made the decline in governance under Pakistani administration that much more unbearable.

Administration

In terms of administration, the power of the *Wali* was absolute. According to Sultan-i-Rome, Swat state was possibly “the only governmental machine in the world which ran without a superfluity of paper.”⁹ During the early years, the *Wali* maintained a strong physical presence in the community and was easily reached by anyone who sought his attention. As he became more powerful, particularly Jahanzeb, he relied on the use of Swat’s extensive telephone lines to make calls and maintain his position at the center of local life from his home office. The *Wali* relied on his chief secretary and private secretary in Peshawar to liaise with the colonial administration, and after 1947 with the government of Pakistan, although he maintained personal ties with both.

In Swat, the *Wali* administered the state with the support of his secretaries, *Wazirs* (ministers), and *Mashers* (advisers). Below the *Wazir*, there were two levels of local administration headed by a *Hakim*, and below that a *Tahsildar*. These officials held executive, judicial, and financial responsibilities and could be transferred or removed at a moment’s notice. The *Wali* also appointed a *Sipah Salar* (army chief), since Swat had a formidable army and cavalry to ward off any invasion by the *Nawab* of Dir. During peacetime, the army built roads, schools, and bridges.¹⁰

Swat state also had an efficient system of revenue collection, which was used to pay the army and fund public works. Since Swat has an agrarian society, the tax system was based on the collection of a one-tenth tax at harvest time. This tax, or *ushr*, was also paid on livestock, fruits, and vegetables. Each year the collection of *ushr* was auctioned off to the highest bidder, who would pay the tax in cash or gain. He would then be responsible for collecting the tax from the people at the fixed rate. If the fixed price of *ushr* came out to be more than what he had paid, he would profit, if it came out to less, he would be responsible for the loss. In this way the state was able to collect tax revenue with minimal effort. Farmers would have the right to appeal the amount of tax that was collected from them in local courts, so corruption was at least somewhat mitigated.¹¹

Justice

Justice in Swat state was perhaps the most important aspect of the *Wali*’s rule. His ability to dispense justice that was seen as “swift and correct” provided a sense of security and stability to the people of Swat. Swat did not have a uniform code of laws or a state constitution; rather, at the founding of Swat state the leaders of the various tribes agreed to be held accountable to codes of conduct, known as *Dasturul Amal*. These codes were not uniform among tribes and were thus subject to the political influence of the ruler. The *Wali* also established a system of *Qazi* courts at the village, *Tahsil*, and *Hakimi* levels of administration.¹² Disputants had the option to have their cases heard by the *Qazi* based on *Shari’a* law or *Dasturul Amal*.¹³ Decisions could be taken on appeal to the chief *Qazi*, or Islamic scholar. Outside the *Qazi* court system, disputants had the option to take their case directly to a *Wazir* or the *Wali* himself, since all administrative officials also had judicial authority. For disputes or cases that were politically consequential, the *Wali* himself would use *Dasturul Amal*.¹⁴

In terms of the hierarchy of judicial authority, Sultan-i-Rome clarifies, “The *Qazi* courts were subservient to the administrative and judicial officers, and the Islamic laws to the regional ‘codes of conduct,’ with both being subordinate to the ruler.”¹⁵ This important facet of the *Wali*’s administration is often lost or mischaracterized by contemporary analysis of the demand by Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM) for the imposition of *Shari’a* law in Swat.

⁹ Sultan-i-Rome, *Swat State 1915–1969*, 172.

¹⁰ *Ibid.*, 183.

¹¹ Jahanzeb and Barth, *The Last Wali of Swat*, 166.

¹² Sultan-i-Rome, *Swat State 1915–1969*, 198.

¹³ Adnan Aurangzeb, “Access to Justice: A Historical Perspective” (unpublished manuscript, March 2009).

¹⁴ Author interview with Adnan Aurangzeb, Islamabad, Pakistan, September 2010.

¹⁵ Sultan-i-Rome, *Swat State 1915–1969*, 199.

Social Services: Education and Health

Miangul Jahanzeb prioritized education, and so the number of schools in Swat grew under his rule. He encouraged the establishment of a Christian missionary school and financed its construction.¹⁶ Between 1949 and 1969, the *Wali* ordered the construction of 3 colleges, 36 high schools, 30 middle schools, and more than 270 primary and lower primary schools.¹⁷ Literacy rates were reportedly higher in Swat for both girls and boys than other parts of the frontier, but they remained low.¹⁸ Nonetheless, an emphasis on the need to create a public education system for boys and girls is closely identified with the last *Wali*'s rule.

In terms of access to modern medicine and health facilities, Abdul Wadud established three hospitals in 1947, one of which was for women. The hospitals could accommodate up to 140 patients for in-treatment and provided free medication to both inpatients and outpatients.¹⁹ According to Sultan-i-Rome, "by 1968, there were sixteen hospitals with 611 beds and forty-five dispensaries. In addition there was the Red Cross maternity home, a dental clinic, a leprosy clinic and two veterinary hospitals."²⁰

While records for infant and maternal mortality, disease, literacy, and girl-child education are unreliable, Swat state is widely held to have been the most developed in the frontier.

Informal Influence in Local Politics Today

The family of the last *Wali* remains active in politics at the local, provincial, and national level, many through elected office. Some have been outspoken against militancy in Swat. Miangul Aurangzeb, son of the last *Wali* and the former governor of KPK and Balochistan, claims the Taliban would never have gained control of Swat had the *Wali*'s system not been dissolved.²¹

Asfandiar Amir Zeb, a popular politician and descendant of the last *Wali*, was outspoken against the Taliban, and had warned the government the situation was getting out of control. "[T]he government was very inefficient in dealing with this situation—they should have dealt with the situation in time where no blood would have been spilled."²²

While campaigning for a seat in the National Assembly, Asfandiar Amir Zeb was killed by a remote-control roadside bomb the day after Benazir Bhutto's assassination. His death was mourned across the Swat Valley.²³ Former interior minister of Pakistan Aftab Ahmed Sherpao told a journalist that the "poor people say that, if this can happen to Asfandiar, it can happen to anyone. So in that way, it has demoralized the people."²⁴

Miangul Adnan Aurangzeb, grandson of the last *Wali* and former member of the National Assembly, has also been an outspoken proponent for reform against the influence of the Taliban. In the wake of the 2010 floods, he and his wife, Zainab Ayub Khan, have been active in providing humanitarian relief and development assistance to the people of Swat.

Unrelated to the *Wali*, and in fact a former adversary to his rule, Mohammad Afzal Khan Lala is a celebrated politician from Swat and vehement opponent of the Taliban. He authenticated the video of the girl being flogged by the Taliban commander and was outspoken to the media in opposition of the government's peace accord with the Taliban.²⁵ In an interview with *The Express Tribune*, Lala expressed his dissatisfaction that decisions regarding Swat

¹⁶ Jahanzeb and Barth, *The Last Wali of Swat*, 112.

¹⁷ Sultan-i-Rome, *Swat State 1915–1969*, 217.

¹⁸ *Ibid.*, 221.

¹⁹ *Ibid.*, 226.

²⁰ *Ibid.*

²¹ Carol Grisanti, "Former Swat ruler: 'revenge' motivates Taliban," *World Blog from NBC News*, August 14, 2009, http://worldblog.msnbc.msn.com/_news/2009/08/14/4376088-former-swat-ruler-revenge-motivates-taliban.

²² David Montero, "Pakistani militant attacks persist, test new leaders," *Christian Science Monitor*, February 26, 2008, <http://www.csmonitor.com/World/Asia-South-Central/2008/0226/p04s01-wosc.html>.

²³ David Montero, "Pakistan: State of Emergency," *Frontline World*, February 26, 2008, http://www.pbs.org/frontlineworld/stories/pakistan703/video/video_index.html.

²⁴ Montero, "Pakistani militant attacks persist, test new leaders."

²⁵ Kashif Aziz, "Role of Afzal Khan Lala in Swat Crisis," *Chowrangi*, May 20, 2009, <http://www.chowrangi.com/role-of-afzal-khan-lala-in-swat-crisis.html>.

continue to be made without consulting the local people and is doubtful that reconstruction efforts can be undertaken by civilian agencies in which corruption remains a significant issue.²⁶

The Formal Government

Institutions and Policies

Local Administration before Merger. In 1969, Swat was peacefully merged with Pakistan as a Provincially Administered Tribal Area (PATA), along with the neighboring districts of Dir and Chitral, under Article 246(b) of the Pakistani Constitution. Its annexation, and its status as a PATA, meant that authority to shape and form policy was no longer held at the district level; policies now had to be approved by the president and handed down to the provincial governor before they could take effect. The *Wali* ensured a peaceful transfer of power,²⁷ but once the transfer had taken place, the *Wali* was relieved of his authority and was not consulted on matters concerning the state.²⁸

Since then, the political administration of Swat has undergone considerable transformation. The most significant changes have been the enforcement of the PATA regulations in 1975, the introduction of President Pervez Musharraf's local governance ordinance (LGO) in 2002, and its subsequent repeal in 2009. The most recent controversy has arisen over the implementation of the Nizam-e-Adl Regulation, an act that formally establishes *Shari'a* law in Malakand division, approved by President Asif Ali Zardari on April 13, 2009.

According to Article 247(3) of the Pakistani Constitution, no act of Parliament or the Provincial Assembly may be applied to PATA without the prior authorization of the governor at the approval of the president.²⁹ As a result of its constitutional status, local decisions are effectively made at the national level and subject to political differences between the provincial government and president, who has the power to appoint and remove the provincial governor. While Swat holds three seats in the National Assembly and nine seats in the Provincial Assembly, there is no direct line of accountability between the office of the president or the provincial governor and the people of Swat.

Swat had elected representatives at the national and provincial levels, but political turmoil, inefficiencies in the judicial system, and problems with service delivery progressively degraded the quality of governance to which the people of Swat had become accustomed. For example, a land dispute could now take between 8 and 12 years to resolve, and agencies that delivered basic services, even those established under the *Wali*, were neglected. The consequence of this neglect was a growing inequality and a growing disaffection with the government. "The inequality that developed in Swat in the last forty years, unmitigated by inadequate nation-state provisions for law, order, or development, was an underlying factor in the recent Islamist mobilization and conflict in Swat."³⁰

The issue of revitalizing local governance in Swat is complicated by its constitutional status as a Provincially Administered Tribal Area, under which no reform can be undertaken without the prior approval of the president. For an area that was fiercely independent throughout most of its history, the lack of local control and accountability is significant. Attempts to provide better services have largely been made through a shuffling of the bureaucracy, rather than investing in the human capacity of the civil service, court officers, the police, and elected officials. These issues are applicable across Pakistan, but more acute in Swat as a result of the militancy there. Swat is a vibrant example of how gaps in service delivery, namely access to justice, have been exploited by militants looking to gain a foothold in the region.

Local Administration after Merger. After merger, the commissioner and deputy commissioner were granted full administrative authority.³¹ At the district level, the deputy commissioner held both executive and magisterial powers.

²⁶ Fazal Khaliq, "Mohammad Afzal Khan Lala: The man who stood up against militancy," *The Express Tribune*, January 26, 2011, <http://tribune.com.pk/story/109171/mohammad-afzal-khan-lala-the-man-who-stood-up-against-militancy/>.

²⁷ Author telephone interview with Akbar Ahmed, November 2010.

²⁸ The *Wali* had previously resisted any attempts to step down from power and had leveraged his personal relationship with President Ayub Khan to do so. In the years leading up to merger, there was a growing resistance movement led by the educated and landed elite, who were subject to the greatest abuses by the *Wali*, since they presented the greatest opposition to his rule. According to the *Wali's* autobiography, in the end he facilitated the merger once it became clear that it was unavoidable.

²⁹ The Constitution of Pakistan, <http://www.pakistani.org/pakistan/constitution/part12.ch3.html>.

³⁰ Robert Nichols, "Class, State, and Power in Swat Conflict" (paper presented at the conference, "Rethinking the Swat Pathan," hosted by the School of Oriental and African Studies, London, June 12, 2010).

³¹ Sultan-i-Rome, *Swat: A Critical Analysis*, IPCS Research Papers (New Delhi: Institute of Peace and Conflict Studies, January 2009), http://www.ipcs.org/pdf_file/issue/1542140255RP18-Rome-Swat.pdf.

His judicial responsibilities included “the power to issue search warrants, get public property vacated, supervise police investigations, prevent commission of crime and try and sentence accused persons.”³² The commissioner of Malakand was the key interlocutor with neighboring districts and the political agents in the tribal areas in regards to development, crime, and rule of law.³³

Both of these positions were highly lucrative political appointments and were often held by the highest bidder to the provincial government. The absence of democratic representation at the local level exacerbated class differences and left the poor powerless against the political elite in terms of access to justice, land reform, and economic opportunities.

From 2002, the local governance ordinance (LGO), also known as the devolution plan, was introduced in Swat. Envisioned by President Musharraf to increase political accountability and service delivery at the local level, the plan created three layers of administration at the district (*Zila*), subdistrict (*Tehsil*), and village or union council level. Each level of administration was headed by an elected *nazim* (mayor). Rather than increase political accountability, “more power was devolved to the local *nazims* or feudal lords.”³⁴

The LGO also did away with the commissioners and deputy commissioners, or executive magistrates, who were essentially replaced by the district coordination officers (DCOs) without any of their former judicial authority. Some scholars argue that this contributed significantly to the deterioration of law and order and the access to justice in Swat. Former KPK governor Owais Ahmed Ghani additionally notes that in subordinating the DCOs to the elected *nazim*, the devolution plan further demoralized the bureaucracy responsible for providing services at the local level.³⁵

PATA Regulation and Justice in Swat

The single most commonly cited factor blamed for the rise of militancy in Swat has been access to justice. Without access to financial resources or a professional cadre of lawyers, judges, and court officials, the formal legal system quickly became backed up with poorly understood legal proceedings, undue delays, bribery, and the misuse of *riwaj* (traditional law).³⁶ The main source of confusion was that:

All old laws, including regulations, orders, rules, notifications and customs, having the force of law, were kept enforced. This status quo created much confusion and uncertainty as there were no codified laws, rules and regulations; and it was left to the new administrative-cum-judicial officers to define and pronounce the *riwaj*.³⁷

The laws came down on Malakand one after the other without adequate improvements to the capacity of the civil administration or the judiciary. One of the most problematic laws was the PATA regulation of 1975, which abolished the *Qazi* court system in favor of a four-member *jirga* that would hear cases at the *Tehsil* level, but would meet very infrequently. As a result, cases dragged on. The PATA regulation also handed over appellate authority to the deputy commissioner, but failed to insert adequate oversight and accountability measures.³⁸

By the time Pervez Musharraf took control of the government in 1999, militancy had become increasingly hardline in their demand for *Shari'a* in response to the decline in access to justice. The situation further deteriorated under Musharraf in terms of economic development, education, and human rights, fueling local grievances that were capitalized on after 9/11 as the security situation became more precarious (see section on militancy).

Current Local Administration

After the military offensive into Swat, all administrative decisions were taken over by the military. At present, the DCO is in place and authorized to coordinate between the different institutions at the local level, but under the

³² Hussain H. Zaidi, “Should executive magistracy be revived?” *Dawn*, May 31, 2009, <http://archives.dawn.com/archives/67390>.

³³ Owais Ahmed Ghani, “Governance challenges in KP&FATA,” *Pakistan Observer*, August 23, 2010, <http://pakobserver.net/201008/23/detailnews.asp?id=48488>.

³⁴ Khalid Aziz and Helge Lurås, “Swat: Main Cause of the Rise of Militancy,” NUPI Policy Brief, Norwegian Institute of International Affairs, September, 29, 2010, <http://english.nupi.no/Activities/News/The-Rise-of-Militancy-in-the-Swat-District>.

³⁵ Owais Ahmed Ghani, “Governance challenges in KP & FATA,” *Pkarticlesclub.com*, January 10, 2011, <http://www.pkarticlesclub.com/2011/01/10/governance-challenges-in-kp-fata/>.

³⁶ Aurangzeb, “Access to Justice.”

³⁷ Sultan-i-Rome, *Swat: A Critical Analysis*.

³⁸ Author interview with Adnan Aurangzeb, Islamabad, Pakistan, September 2010.

authority of the military. The army has now begun to withdraw thousands of troops and hand over responsibility for security to the local police and other civilian law enforcement agencies in Shangla and Buner districts. Two army divisions remain in Malakand and Swat, but are expected to withdraw slowly over the next two years.³⁹ The proposed timeline for the transition from military to civilian control was approved by the Apex Committee for Policy Coordination, a body of senior-level civilian and military officials formed in early 2008 to improve the provincial government's ability to respond to issues of militancy and governance in a confidential forum.⁴⁰

The Apex Committee also devised a strategy for transferring governance responsibilities back to civilian control. The divisional administration was restored and strengthened, and a regional committee was established in the commissioner's office with both civilian and military representation in order to improve coordination and facilitate the transition. Efforts have also been made to bolster the capacity of the civilian government through increased manpower and training programs, but so far the transition has failed to materialize. Khalid Aziz points out that the primary task of the civilian government in the interim has been to restore public confidence in the emerging system, but so far the civilian government has been unable to do so.⁴¹

While civil society organizations, including the diaspora, have been instrumental in providing humanitarian relief in response to the floods, their ability to push for better governance has been noticeably limited by the presence of the army. One of the most prominent civil society organizations in Swat, the Swat Qaumi *Jirga*, has at times been outspoken for better government accountability and the rebuilding of schools and other key infrastructure. However, the *jirga* is not representative of the poor or women, and is heavily influenced by those who may be opposed to political reforms that may change the way land is titled, taxes are collected, or political appointments are made.

Nizam-e-Adl Regulation

At the end of 2010, the federal government was trying to implement the Nizam-e-Adl Regulation that was passed in April 2010. The regulation formally establishes *Shari'a* law in Malakand division, which includes Swat, by reinstating the *Qazi* court system. The regulation was formulated in response to the widespread demands for judicial reform that was a hallmark of the Taliban campaign against the government in Swat. The regulation is highly controversial since it is not only seen as a concession to the Taliban, but because it relies on individual interpretations of Islamic jurisprudence, for which there are no clearly defined standards in Swat.

At the inauguration of the *Darul Qaza*, the high-appellate court, Chief Minister Ameer Haider Hoti made a public statement in strong support of the Nizam-e-Adl Regulation. According to Chief Minister Hoti, 27,000 civil cases and 39,811 criminal cases have been decided since the system was inaugurated last year.⁴² Under the regulation, there are strict time limits under which cases must be heard: six months for civil cases and four for criminal cases. While the *Qazi* courts may be able to provide speedy justice, there is no indication that the quality of justice provided will be markedly different.

Social Services: Education and Health

Swat was once at the forefront for providing education and health services in the frontier. While literacy remained low, girls were encouraged to go to school and education was accessible to those that could afford to spend the day in school, rather than at home working with their families. An overall decline in the quality of governance, lack of economic development, and the rise of militancy in Swat have all had a negative impact on the ability of the government to provide even basic services to the people of Swat. While nongovernmental organizations (NGOs) and donor programs have been able to meet some of the demand for education and health services, public education in the frontier is of notoriously poor quality. Over the past few years, an even more rapid decline in education has taken place largely as the result of both natural and manmade disasters. Under the Taliban, insecurity and the closing of girls' schools made access to education nearly impossible for young people across Malakand.

³⁹ Ismail Khan, "Army starts relocating from Swat," *Dawn*, February 1, 2011, <http://www.dawn.com/2011/02/01/army-starts-relocating-from-swat.html>.

⁴⁰ Ghani, "Governance challenges in KP & FATA."

⁴¹ Author e-mail interview with Khalid Aziz, February 11, 2011.

⁴² Fazal Khaliq, "Nizam-e-Adl Regulation: Top sharia court set up in Swat," *The Express Tribune*, January 19, 2011, <http://tribune.com.pk/story/105998/nizam-e-adl-regulation-top-sharia-court-set-up-in-swat/>.

While Swat remains ahead of the provincial average in terms of adult literacy, it falls far behind on infant and maternal mortality, as an example of one health indicator available. According to survey results by Khalid Aziz, the provincial average for infant mortality is 79 deaths per 1,000 live births, compared with 95.7 deaths per 1,000 live births for Swat.⁴³ This is at least in part a result of the social status of women in Swat, which was made significantly worse under the Taliban. Women's groups in Swat are gaining traction in terms of their outreach and support from donors, yet the same factors that have made progress in education nearly impossible have also badly affected the provision of health services, particularly for women. (See section on donor programs.)

Government Programs

The key institution tasked with fostering security and development in Swat has been the army. After the destructive flooding last year, the army became an even more critical force for stability in the region. While the political administration of Swat remains to be determined, concerted efforts have been made by the army, police, and government officials to introduce new programs and institutions to counter extremism and begin the reconstruction process in Swat. These efforts include the introduction of a community-policing model, a de-radicalization school for boys, and the foundation of Swat University.

The community-policing model was established by the former inspector general of police, Malik Naveed Khan. The program recruits men from Taliban strongholds and provides them with 12 weeks of training and a 10,000-rupee (\$115) monthly salary over the course of a two-year contract. The community police are overseen by the station house officer and are posted in their own communities.⁴⁴

In September 2009, the Pakistani military began a de-radicalization program to rehabilitate young suicide bombers captured during the military offensive. Many of the boys, mostly between the ages of 13 and 19, had no formal education, came from extremely poor backgrounds, and had never known anything but the radical teachings on religion and jihad espoused by the Taliban. Project *Sabawoon* (meaning "new dawn" in Pashto) aims to provide counseling, secular and religious education, and vocational training in order to reunite the boys with their families and communities.⁴⁵

Recently, Swat University opened its doors to a semester of new students, but the achievement that the university should represent is overshadowed by allegations that politics have been the determining factor for a number of academic appointments. Common faculties, such as math and science, are being offered, but there is a real opportunity for the university to contribute more to the stabilization and reconstruction of Swat. Ziauddin Yusufzai remarked that the university should leverage the unique history and resources of Swat to open faculties in agriculture, environmental politics, forestry, archeology, and conflict resolution that would be of great interest not only students in Pakistan, but from around the world.

Donor Programs

There has been a great deal of sustained donor interest in investing in the rehabilitation and development of Swat over the past few years. Big donors such as the U.S. Agency for International Development (USAID), the UK Department for International Development (DFID), the UN Children's Fund (UNICEF), and the World Bank have funded projects and partnered with local NGOs and civil society organizations to provide improved service delivery. Now there is a movement for the big donors to fund public-sector agencies to carry out development projects directly in order to strengthen the image of the Pakistani government. One such project is the reconstruction of 119 schools in Swat. According to an article recently published in *Dawn*, foreign donors have set aside \$400 million for reconstruction projects in Malakand. Out of \$36 million promised by USAID, \$20 million has been allocated for schools.⁴⁶

⁴³ Khalid Aziz, "The Poverty Trap in Swat," Khalid Aziz for Global Peace, September 20, 2010, http://www.khalidaziz.com/art_detail.php?aid=390.

⁴⁴ Author interview with Malik Naveed Khan, Islamabad, Pakistan, September 2010.

⁴⁵ Author telephone interview with Ziauddin Yusufzai, November 2010; and "First Strategic Workshop on Rehabilitation and De-Radicalization of Militants and Extremists," Report on a workshop organized by the FATA secretariat, Peshawar, Pakistan, May 18–19, 2010, http://www.rsis.edu.sg/publications/conference_reports/RSIS_PakistanReport_2010.pdf.

⁴⁶ Mohammad Ali Khan, "Donor funding shifts to public sector agencies," *Dawn*, February 6, 2011, <http://www.dawn.com/2011/02/06/donor-funding-shifts-to-public-sector-agencies.html>.

The decision to go through the government, as opposed to working directly with NGOs and other local partners, is a controversial one. Projects have been delayed while government agencies try to sort out oversight and accountability mechanisms. But even before the floods hit, the government was off to a disappointing start with reconstruction efforts that had barely begun. As of November 2010, not one out of 150 schools destroyed during the military offensive was in the process of being rebuilt.⁴⁷

Local NGOs and advocacy groups have played a critical role in service delivery in Swat. PAIMAN Trust is an NGO focused on addressing women's issues at a grass-roots level in Pakistan. The organization's programming includes flood relief, community development activities, and political empowerment. In Swat, PAIMAN Trust is engaged in advocacy work to promote the status of women in public life and improve their access to education, health services, and economic opportunities.

Militants Groups and Service Provision in Swat

Rise of Militancy in Swat

Popular demand for a more efficient system of justice was exploited by local Islamists, who had been indoctrinated into Wahabi and Deobandi teachings, arguing that Islamic law, or *Shari'a*, would be more just and much faster than the government system. In 1992, Sufi Muhammad, an Islamist from Dir, founded Tehrik-e-Nifaz-e-Shariat-e-Mohammadi, or the Movement for the Enforcement of Islamic Law. While TNSM's leadership did not advocate violence at the outset, the movement resorted to violence in its confrontations with Pakistani security forces. In 2002, TNSM was banned by President Musharraf, and Sufi Muhammad was picked up by Pakistani security forces on his way back from Afghanistan, where he had sent 5,000 young boys to fight against coalition forces after 9/11. In his absence, his son-in-law, Maulana Fazlullah, known as "Radio Mullah" for his virulent radio broadcasts, took control of the group and led it in a more militant direction.

In 2007, TNSM's leadership allied itself with the al Qaeda-inspired Tehrik-i-Taliban Pakistan (TTP) and, after a good deal of armed violence in the years that followed, forced the Pakistani government to sign the aforementioned peace accord in 2009. This allowed the newly formed association to impose its interpretation of *Shari'a* in the region, which many locals welcomed as an alternative to what was widely viewed as a corrupt and inefficient government system. But the Swat Taliban, formed by the alliance between TNSM's leadership and the TTP, proved itself unwilling to disarm and unable to govern. From 2007 to 2009, the Taliban perpetrated innumerable acts of violence and intimidation against the people in the face of local opposition from political activists and civil society leaders. Finally, in May 2009, the Pakistani army launched a military offensive into Swat to regain territorial control and capture or kill the group's leadership. However, reports indicate that the Swat Taliban's leadership, including Maulana Fazlullah, was able to escape and remain at large.

Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM). Sufi Muhammad bin Alhazrat Hassan, known as Sufi Muhammad, founded TNSM in Malakand in order to advocate for the imposition of *Shari'a* law. Throughout the 1980s, he was a member of the conservative religious party Jamaat-e-Islami (JI). In 1989, Sufi Muhammad left JI to form TNSM, influenced by events taking place inside Afghanistan.

In 1992, the Pakistani government repealed the PATA regulation, which had formalized the ability of the traditional *jirga* to resolve disputes. This exacerbated the backlog of cases in the courts, and the movement first turned violent in 1994. In response, the provincial government announced it would agree to enforce *Shari'a* in Malakand, but it did not have the constitutional authority to do so. The result was sporadic enforcement, which was unsatisfactory to TNSM.

After September 11, 2001, Sufi Muhammad sent 5,000 young boys, poorly trained fighters with antiquated guns, over the border into Afghanistan to fight coalition forces. Many were killed or severely traumatized.⁴⁸ Sufi Muhammad was arrested by Pakistani security forces and imprisoned. In the absence of Sufi Muhammad's comparatively moderate leadership, his son-in-law, Maulana Fazlullah, led the movement in a more militant direction. Fazlullah was able to retain loyalty by developing a Robin Hood-like narrative for the poor, rural, marginalized people of Swat, who were badly affected by the decline in governance that took place after the merger. Fazlullah promised the redistribution of land, creation of jobs, and swift justice for the people of Swat.

⁴⁷ Adam B. Ellick, "Rebuilding Lags in Pakistan Area after Offensive," *New York Times*, November 12, 2010, http://www.nytimes.com/2010/11/13/world/asia/13swat.html?_r=1&ref=swatvalley.

⁴⁸ Author interview with Malik Naveed Khan, Islamabad, Pakistan, September 2010.

Fazlullah became known as “Radio Mullah” and had a particularly powerful impact on women through his illegal FM channel radio broadcasts. He had enforced a ban on women showing their faces in public, or in the presence of their in-laws, so women were often isolated in their homes with the radio as their only link to the outside world.⁴⁹

Fazlullah spoke to the women about prayer, the Qu’ran, and *jihad*. He even reportedly told the women to “wash their private parts.”⁵⁰ Fazlullah seemed to have “his finger on the pulse of the women,” who donated their jewelry and other valuables at his mosque and encouraged their sons to join his movement.⁵¹

TNSM also had well-known political allies in Malakand. Syed Mohammad Javed, the former commissioner of Malakand, developed close ties with Fazlullah.⁵² In April 2009, he was removed from his post as commissioner.⁵³ Other local governance officials were also reportedly sympathetic with the Taliban, either for ideological reasons or because they felt they had something to gain from the Taliban’s presence.

Tehrik-i-Taliban Pakistan (TTP). After the siege of Lal Masjid (the “Red Mosque”⁵⁴) in July 2007, Maulana Fazlullah formed an alliance with the al Qaeda–inspired Tehrik-i-Taliban Pakistan (TTP). Founded under the leadership of Baitullah Mehsud, the TTP is an umbrella organization of militant groups in the frontier that are opposed to the writ of the Pakistani state and are demanding the imposition of *Shari’a* law. The group is now operating under the leadership of Hafiz Gul Bahadur and is responsible for ongoing clashes with the military in Swat.

The full extent of the relationship between TNSM and TTP in Malakand is unclear. Some sources describe a close relationship and TNSM as one of the first Taliban-style movements in Pakistan, noted for its atavistic ideology and use of violence against Pakistani security forces. Other sources describe Sufi Muhammad’s role as mediator in the 2009 peace deal with the government and reports of clashes between TNSM and Taliban fighters in Malakand throughout 2009 as evidence to the contrary.⁵⁵ While local society in Swat remains deeply conservative, the people have clearly rejected the Taliban’s ideology and its use of intimidation tactics to enforce their interpretations of Islamic law.

Criminal Networks Operating in Swat. It is safe to say with a degree of certainty that criminal elements in Swat formed mutually beneficial relationships with the Taliban. Common criminals gained protection from the Taliban, while the Taliban gained fighters.⁵⁶ It is also possible that the Taliban may have benefited financially from smuggling in arms, munitions, emeralds, and other goods by criminal networks in the area, although the extent to which this was the case is unsubstantiated.⁵⁷

Fazlullah’s Taliban Courts

In the judicial vacuum left by the Pakistani state, people turned to Fazlullah to adjudicate their disputes. By the power of the gun, Taliban decisions were enforced and their reactionary understanding of *Shari’a* put into effect. Suicide attacks, beheadings, and floggings created an atmosphere of fear and intimidation. Girls were forbidden from

⁴⁹ Robert D. Lamb interview with Khalid Aziz, Peshawar, Pakistan, March 2010.

⁵⁰ A Group of NWFP Women, “The Women of Swat and ‘Mullah Radio,’” Pak Tea House, <http://pakteahouse.wordpress.com/2009/06/09/the-women-of-swat-and-%E2%80%98mullah-radio/>.

⁵¹ Author interview with Mossarat Qadeem, PAIMAN Alumni Trust, Islamabad, Pakistan, September 2010.

⁵² Author interview with Malik Naveed Khan, Islamabad, Pakistan, September 2010.

⁵³ “Commissioner Malakand replaced for links with TTP,” *The Nation*, April 26, 2009, <http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/26-Apr-2009/Commissioner-Malakand-replaced-for-links-with-TTP>.

⁵⁴ During the siege of Lal Masjid (“Red Mosque”), the Pakistani military stormed the madrassa complex of Maulana Abdul Aziz and Abdul Rashid Ghaz, two radical clerics calling for the overthrow of the Pakistani government and imposition of *Shari’a* law, in Islamabad, July 3–11, 2007. Over 130 people were killed and 50 militants were captured. The siege also inflamed tensions with pro-Taliban militants along the border with Afghanistan and formed an alliance between TNSM and TTP in Malakand Division. See Brian Fishman, “The Battle for Pakistan: Militancy and Conflict Across the FATA and NWFP,” *Counterterrorism Strategy Initiative Policy Paper*, New America Foundation, April 2010, <http://brianhowefishman.files.wordpress.com/2010/04/militancy-and-conflict-across-the-fata.pdf>.

⁵⁵ See “Differences crept between TNSM, TTP over Sharia implementation: NWFP minister,” *Thaindian News*, June 7, 2009, http://www.thaindian.com/newsportal/south-asia/differences-crept-between-tnsmtpp-over-sharia-implementation-nwfp-minister_100201899.html; and “Taliban-TNSM clash leaves 2 dead in Bajaur,” *PakTribune*, April, 20, 2009, <http://www.paktribune.com/news/index.shtml?213853>.

⁵⁶ Daud Khan Khattak, “Who is the Swat Taliban’s commander?” *Foreign Policy*, April 21, 2010, http://afpak.foreignpolicy.com/posts/2010/04/21/who_is_the_swat_talibans_commander.

⁵⁷ Author telephone interview with Imtiaz Ali, February 12, 2011.

attending school, and women were banned from the markets. TNSM used the popular demand for swift justice to exploit the conservative elements in local culture, without actually having the means or capacity to implement the judicial and governance reforms for which they were fighting.

In terms of service provision, TNSM did not provide humanitarian relief, development assistance, education, or health services, or engage in any other type of public work. Unlike many of the Kashmiri groups, TNSM did not have the organization or resources to provide services, which is why the movement actually became more violent against the population after it signed the peace accord with the government in May 2008.

Recommendations

The following recommendations are intended as options to help community leaders and local officials improve communication and cooperation with the military administration during this transitional period in Swat's history.

- *Form a transitional civil-military review board* of influential community leaders and local officials to facilitate discussions with the military and police on local security concerns and development priorities. The body should also be responsible for presenting a development agenda for review to the provincial and federal governments or Apex Committee. The civil-military review board should actively engage with civil society groups, educators, local NGOs, as well as local and international experts on development, education, and rule of law to draft informed local policies to present to the provincial and federal governments.
- *Form village councils* to assess development priorities and audit development projects using tools such as community mapping, participatory rural appraisals, and other tested models for leveraging local knowledge and expertise. Under the devolution plan, the union councils included 13 members, 6 of whom were women. While the new village councils do not have to follow this model, the inclusion of women on the councils in determining development priorities is critical. International development professionals and even officials from Islamabad rarely have the opportunity to survey village-level development needs and often do not have access to women. The village councils could also be given oversight responsibility over village-level development projects. A useful model for this is the Agha Khan Foundation's "social audits," which have been used in Afghanistan to monitor the use of donor funds.⁵⁸ Currently over 150 schools in Swat are awaiting reconstruction, yet donors are hesitant to begin funding projects with inadequate oversight. The added advantage of village-level oversight is that communities take greater ownership over the use of development funds to bring the greatest benefit to their villages.
- *Form a human rights commission* to develop a reconciliation and reintegration strategy for low-level Taliban fighters and sympathizers currently living in the community or being held in detention by the Pakistani military. Similar to the situation in Rwanda after the genocide, young Taliban recruits were often community members of the areas they were fighting in. Yet out of a population of roughly 1.7 million, there were reportedly between 5,000 and 10,000 Taliban fighters in Swat at the time of the military offensive. Unlike hardcore elements of Tehrik-i-Taliban (TTP), Tehreek-e-Nafaz-e-Shariat-e-Mohammadi (TNSM), which was linked to the TTP only by TNSM's leadership, consisted mostly of illiterate or unemployed young men who had no religious education. Many of these young men have been severely traumatized by intimidation tactics used by the Taliban, but they are fully capable of being reunited with their families and employed through reconstruction projects. The commission should push for the resolution of the detainee issue and hold public hearings on human rights abuses committed by security forces and the Taliban. Pakistani human rights organizations, lawyers, and religious leaders could be instrumental in developing a reconciliation and reintegration strategy.
- *Establish a judicial review board of legal and religious experts* to evaluate the implementation of the Nizam-e-Adl Regulation. Without adequate expertise on Islamic jurisprudence or built-in guards against human rights violations, the *Qazi* courts will not correct the imbalances that currently exist in the judicial system. A review board of Islamic and legal experts should take up this issue and examine in depth how the *Qazi* court system could best provide justice that is low cost, timely, and consistent with Islamic teachings. Furthermore, these findings should be made public, unlike other assessments of the Nizam-e-Adl.

⁵⁸ "Social Audits in Afghanistan: Making Local Governance More Transparent," Aga Khan Development Network, August 6, 2009, <http://www.akdn.org/Content/765>.

An earlier publication identifies a number of ways donors, the diaspora, and community members can partner to implement public safety projects that focus on the provision of early warning, timely justice, and safer streets.⁵⁹ Early warning is the ability of communities to access and share information about the security situation on the ground. Mobile phones have become a powerful tool for information sharing, and there are a number of existing NGO platforms already in use in India, the Congo, and Afghanistan that provide locals with up-to-date information on the location of mobile health clinics, local weather forecasts, and security updates, just as some examples. As for timely justice, greater connectivity with lawyers, court officials, and disputants in KPK and Islamabad may prove useful in restoring law and order in Swat. Such connectivity may be provided by a conflict resolution center that uses web-based technologies to collect legal documents, keep track of court proceedings, and improve access to pro bono legal advice and representation by lawyers in Islamabad, Lahore, and the diaspora. Literacy training for police, victims' services, and civilian review boards are all examples of initiatives that could be taken up in partnership with donors, the Pakistani government, and community members in Swat, as well as the diaspora, to markedly improve public safety and gain the confidence of the local people. A model program already exists in Karachi, the Citizen Police Liaison Committee (CPLC), an online tool that allows users to track crime in their neighborhood, report a crime, and find out information about public safety projects and victims' services.⁶⁰

Not enough is being done to leverage new technologies and innovation to improve public safety in Swat. Traditional security sector reform has stalled, and the people of Swat are some of the most literate and well educated in the frontier. Swat is an ideal place to test such innovative projects, as it has a long history as a source of progress and stability in the frontier.

Justine Fleischner is an independent research consultant with the CSIS Program on Crisis, Conflict, and Cooperation. She wishes to thank Adnan Aurangzeb, Ziauddin Yusufzai, Mossarat Qadeem, Akbar Ahmed, Malik Naveed Khan, Khalid Aziz, Imtiaz Ali, and Shiza Shahid for their insights and assistance.

This paper is produced by the Center for Strategic and International Studies (CSIS), a private, tax-exempt institution focusing on international public policy issues. Its research is nonpartisan and nonproprietary. CSIS does not take specific policy positions. Accordingly, all views, positions, and conclusions expressed in this publication should be understood to be solely those of the author(s).

© 2011 by the Center for Strategic and International Studies. All rights reserved.

⁵⁹ See Justine Fleischner et al., *Homebound Security: Migrant Support for Improved Public Safety in Conflict-Prone Settings* (Washington, D.C.: CSIS, December 2009), http://csis.org/files/publication/091203_Fleischner_Homebound_web_1.pdf.

⁶⁰ See the Citizen Police Liaison Committee (CPLC) website at <http://www.cplc.org.pk/index.php>.