

Refugee Review Tribunal

AUSTRALIA

RRT RESEARCH RESPONSE

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions

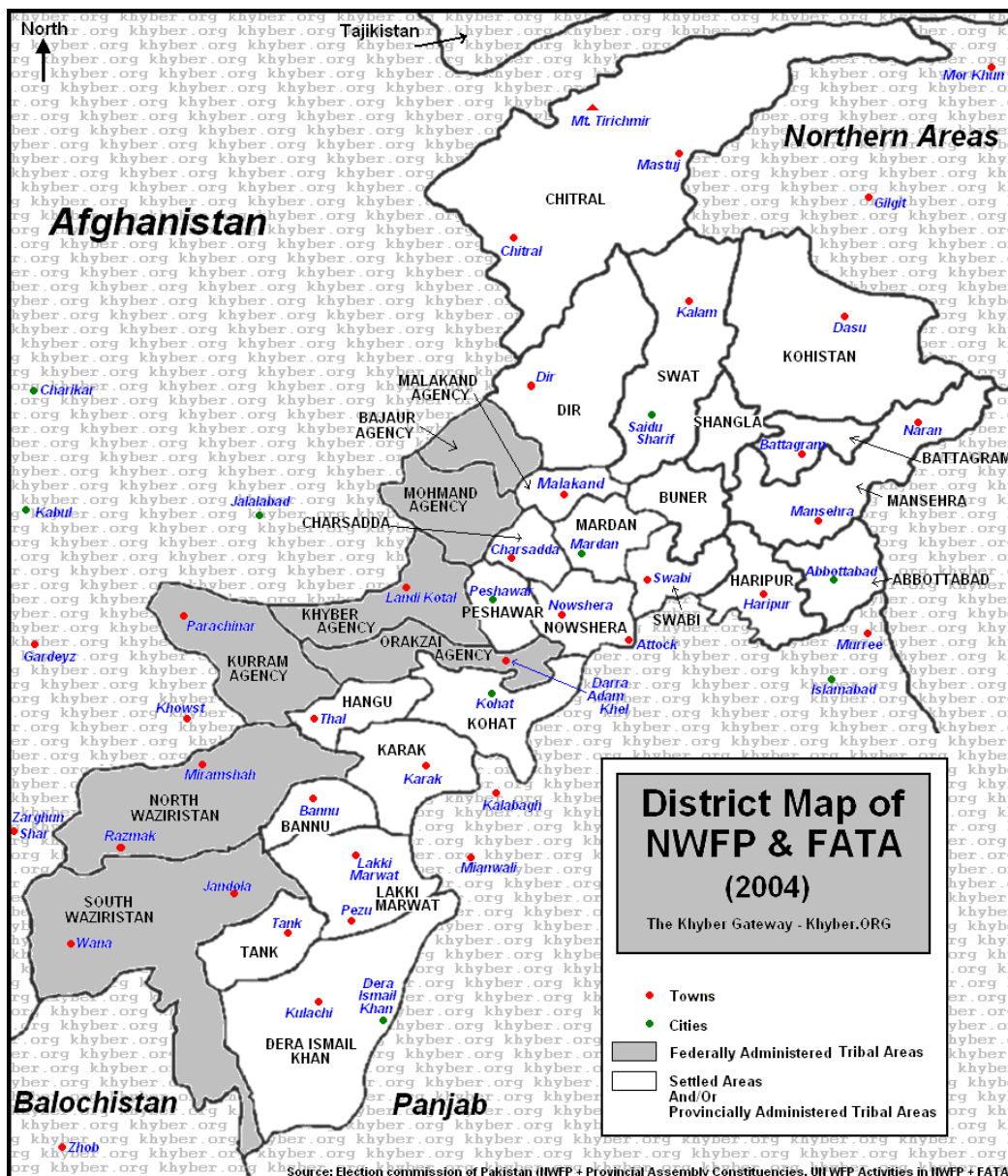
- 1. Please provide information on the location of the Khyber Agency. How is the Khyber Agency currently governed? And what is its relationship with the national government of Pakistan? Does it have separate law enforcement bodies?**
- 2. Please provide information on tribal jirgas. How do tribal jirgas operate and what is the effect of their decisions? Are they enforceable outside the tribal areas of North West Frontier and the other western areas of Pakistan? Are there any reports of persons living outside the tribal areas who have been adversely affected by decisions made by tribal jirgas?**
- 3. Please provide information on the organisation and activities of the Anti Narcotics Force.**

RESPONSE

- 1. Please provide information on the location of the Khyber Agency. How is the Khyber Agency currently governed? And what is its relationship with the national government of Pakistan? Does it have separate law enforcement bodies?**

Khyber Agency – Location

The Khyber Agency is located in the north west of Pakistan within the Federally Administered Tribal Area (FATA). The Khyber pass shares a western border with Afghanistan and an eastern border with the Peshawar District of Pakistan's North West Frontier Province (NWFP). A map follows below:



(‘District Map of NWFP & FATA’ 2004, Khyber gateway website

<http://www.khyber.org/images/maps/nwfpmap01.gif> – Accessed 4 October 2006 – Attachment 2).

Khyber Agency Governance

General information on the Khyber Agency – including details as to the area’s location, governance, tribes and forms of law enforcement – is available on the Government of Pakistan’s Federally Administrated Tribal Area (FATA) website. Extracts follow below detailing the manner in which the Khyber Agency is “bordered by the Kabul River and Koh-e-Suffaid range in the North, Peshawar District in the East and Kurram Agency in the West”. And the manner in which the Khyber Agency is administered through payments made to *Maliks* (the tribal heads who serve as councillors in the jirga system), *Khassadars* (the tribal militia whose responsibilities include law enforcement) and *Lungi* holders (other persons of influence in the area).

LOCATION AND TERRAIN

Khyber Agency is located at 33-45 and 34-20 degree North latitudes and 70-27 and 71-32 East Longitudes. It is bordered by the Kabul River and Koh-e-Suffaid range in the North, Peshawar District in the East and Kurram Agency in the West. In the North-West lies Afghanistan, Orakzai in the South and Mohmand Agency in the North-East. The total area of the Agency is 2,576 Sq: Kilometers.

The Principal streams that drain through the Agency are Bara River, Chooria River and Khyber "Nullah". All these flow into the Peshawar Valley. The Agency comprises generally a barren and rugged mountains terrain. It has also some very beautiful Valleys with plain culturable lands. The important Valleys are Rajgal, Maidan, Bara and Bazar. The Valleys lying near the sources of Bara River are generally known as Tirah. Rajgal Stream from Rajgal Valley and Shalobar Toi from Maidan Valley join up at Dwa-Toi, and thereafter it is called as Bara Valley.

...THE TRIBES

There are four main tribes which are as under:

1. Afridis 2. Shinwaris 3. Mullagoris 4. Shilmanis

The Afridis are the main tribe of the Agency. They are further divided into eight Sub-sections viz Qamber Khel, Malikdin Khels, Kuki Khels, Aka Khels, Zakha Khels, Sepah, Kamar Khel and Adam Khel.

...ADMINISTRATION

The Political Agent is the Head of the Agency. He functions as a District Magistrate and Session Judge and also as a coordinator who coordinates the functions of all the Nation Building Departments in the Agency.

The Agency has three Sub-divisions viz Landikotal, Jamrud and Bara with three Assistant Political Agents, seven Tehsildars and a number of other administrative functionaries. The Head Quarter of the Political Agent is at Peshawar but has also a Camp Office/Residence at Landikotal. The Assistant Political Agents have their Headquarters at Landikotal, Jamrud and Bara respectively.

The Administration is run through Maliks, Khassadars and Lungi holders (Sufaidresh). The tribal Administration and system of justice is based on the concept of territorial, tribal (collective) and protective responsibility. Adjudication is through the Jirga system which is something the tribesmen comprehend and accept.

...MALIKS AND SUFAID RESH

...A Maliki is hereditary and devolves on the son, and his son so on and so forth.

In Khyber there are 24 Maliks getting Rs. 1813455/- per annum as allowances. Sub-tribe-wise break-up of Maliks are as under:

Kuki Khel	4
Zakha Khel	6
Qambar Khel	3
Malikdin Khel	2
Aka Khel	2

Sepah	1
Kamar Khel	2
Shinwari	3
Mullagori	1

Lungi system, commonly known as “Sufaid Resh” in Khyber Agency is also a form of formal recognition although at a slightly lower level. A Lungi signifies the holding of a position of favour with the Government and of influence in the tribe. In Khyber there are 3713 Lungi holders (Sufaid Resh). The Lungi is for an individual and is not hereditary. In practice, however, the Lungi of a deceased Lungi holder is usually granted to his elder son. Annual Allowances paid by Govt: to allowances holder is cancelled in connection with kidnapping/death of Younis Abid, Income Tax Commissioner.

KHASSADARS

...The Khassadars are generally ill disciplined, mostly un-trained and are a loosely organized force who are armed with their own weapon and have to use their own ammunition. They are given a pair of Chapplies and a Mazri Cloth uniform once a Year. They are the representative of the tribe to whom they owe loyalties rather than to the Political Administration. Every Agency has its own rules and conventions for the Khassadari service. They are also a non pensionable force.

...after partition of the Sub-Continent and with the change in the Role of the Scouts due to the withdrawal of the Army from tribal areas, the Political Administration has been left mostly to rely on the Khassadars for arrests and other such like duties. It is because, the availability of the Scouts to the Political Administration has become very difficult. Besides the reluctance of the Headquarter Frontier Corps it also depends on the whims and caprices of the local Scouts Commandant to provide force to the Political Agent. This has proved to be a great set back to the Administration in tribal areas and has made the task of the Political Agents more arduous and up-hill. Most of the operations and duties which the field officers have to carry out with the help of the Khassadars fail because of their unreliability and inherent deficiencies.

In Khyber there are 2753 Khassadars ranging in ranks from Subedar Major, downwards upto a Sepoy. They are appointed by the Political Agent who is their Commanding Officer as well. The recruitment is made from amongst the local tribes in the ratio of their tribal distribution which is known as “NIKKAT”.

The Khassadars are deployed for protection of strategic roads and other Govt: utilities. They also perform guard duty, export duty and protection of various installations. Annual expenditure on the Khyber Khassadars Force is Rs, 90338919/- including pay and various allowances etc (Khyber Agency’ (undated), Federally Administrated Tribal Area (FATA) website <http://www.fata.gov.pk/fatakhyber.htm> – Accessed 20 September 2006 – Attachment 1).

The Government of Pakistan’s FATA website also notes that “Tirah in Khyber Agency” is among the areas of the FATA which are deemed “inaccessible”. Areas deemed inaccessible are effectively operating outside and independently of the provisions which administer life in the FATA. The FATA website’s page on ‘Inaccessible Areas’ is supplied as Attachment 3 (‘Inaccessible Areas’ (undated), Federally Administrated Tribal Area (FATA) website <http://www.fata.gov.pk/inaccessible.htm> – Accessed 20 September 2006 – Attachment 3).

In 1999 an overview of governance in Pakistan’s tribal areas was published by Dr Shaheen Sardar Ali, of the University of Warwick’s School of Law (formerly Professor of Law at the

University of Peshawar). Ali's overview appears in the context of a discussion of the rights of ethnic minorities in the tribal areas and it provides extensive historical and legal background on the laws, procedures and conventions which regulate life in such areas. In regard to the specific case of the Khyber Agency, Dr Ali's study notes that it is among the Federally Administered Tribal Areas (FATA) "defined by Article 246 of the constitution" and that "[t]he Governor of the North West Frontier Province has been appointed as agent to the President of Pakistan in FATA and he exercises immediate executive authority in these areas". Ali further notes that "[n]either the Supreme Court nor a High Court can exercise any jurisdiction under the constitution in relation to a Tribal Area, unless the Parliament by law provides otherwise", and that "these territories are governed through special laws and not by the ordinary laws of the country". "In actual terms, governance in FATA is carried out through a Political Agent who governs the area by a number of measures foremost being through the 'co-operation' of the tribal leaders". Ali describes how the manner of governance in "FATA may be divided into directly administered areas, protected areas and inaccessible tribal territory":

The Political Agent uses a different mode of administration for each of these areas depending upon the amount of control that he can exercise therein. For the maintenance of law and order, the FCR [Frontier Crimes Regulation of 1901 (FCR)] is applied in the administered areas. Administered areas are those where the judicial jurisdiction of the Political Agent extends under the FCR, and any offence committed on government roads, offices or other government installations is duly registered and disposed of through a Council of Elders appointed under the Regulation (FCR). In the remaining areas, the Political Agent administers by other means at his disposal, including executive action. The tribes regulate their lives through tribal '*riwaj*' (custom) which differs from tribe to tribe and from agency to agency.

The un-administered areas are those where the tribes take cognisance of civil and criminal disputes and decide them through '*jirgas*' under tribal customs. Finally, there are large chunks of inaccessible areas in every agency of FATA which are governed indirectly by the political agents. All civil and criminal disputes in these areas are decided by the tribesmen themselves (Ali, S.S. 1999, 'The Rights of Ethnic Minorities in Pakistan: A Legal Analysis', *International Journal on Minority and Group Rights*, vol.6, p.185 – Attachment 4).

Further extracts from Dr Ali's study follow below providing greater detail on: the manner in which tribal areas are defined by Article 246; the manner in which power and funding are dispensed by Political Agents to tribes, tribal heads and other significant individuals in the tribal areas (*muwajib*, *malik* and *lungi*); and information on the Frontier Crimes Regulation of 1901 (FCR):

Tribal areas are defined by Article 246 of the constitution according to which:

- (a) 'Tribal Area' means areas in Pakistan which, immediately before the commencing day, were Tribal Areas and include
 - (i) the Tribal Areas of Baluchistan and the North-West Frontier Province; and
 - (ii) the former states of Amb, Chitral, Dir and Swat. These tribal areas are further sub-divided into:
- (b) 'Provincially Administered Tribal Areas' (PATA) which means

- (i) the districts of Chitral, Dir and Swat (which includes Kalam) [the tribal area of Kohistan district] Malakand Protected Area, the Tribal Area adjoining [Mansehra] district and the former states of Amb; and
- (ii) Zhob district, Loralai district (excluding Duki Tehsil), Dalbandin Tehsil of Chagai District and Marri and Bugti tribal territories of Sibi district; and
- (c) ‘Federally Administered Tribal Areas’ (FATA) which includes
 - (i) Tribal areas, adjoining Peshawar districts;
 - (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
 - (xi) South Waziristan Agency.

Article 247 of the constitution of Pakistan further reaffirms the separate legal status of the tribal areas, continuing in the tradition of the colonial powers of simply ‘containing’ the ‘unruly tribals’ rather than extending to them the rights and privileges which are theirs as responsible and equal citizens of an independent country. The executive authority of the Federation extends to the Federally Administered Tribal Areas (FATA), and that of the North West Frontier Province (NWFP) and Baluchistan to the Provincially Administered Tribal Areas (PATA). The President rules the tribal areas through his agent, the Governor of the province where the particular tribal area is situated and gives him directions in this regard. No act of Parliament applies to FATA or any part of it, unless the President so directs. Thus the President enjoys far-reaching legislative functions and powers in respect of making regulations for the peace and good government of a tribal area or any part thereof. The President also may, at any time, by Order, direct that the whole or any part of a tribal area shall cease to be a ‘Tribal Area’, and such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper. Such an Order, however may only be made after ascertaining the views of the people of the Tribal Area concerned, as represented in tribal *jirga* but in a manner as considered appropriate by the President himself.

Neither the Supreme Court nor a High Court can exercise any jurisdiction under the constitution in relation to a Tribal Area, unless the Parliament by law provides otherwise. Thus, despite being integral parts of Pakistan, these territories are governed through special laws and not by the ordinary laws of the country, and are denied access to judicial forums of the country.

...The following administrative, political and legal arrangements have been made for the governance of FATA:

- The Governor of the North West Frontier Province has been appointed as agent to the President of Pakistan in FATA and he exercises immediate executive authority in these areas.
- The Chief Secretary, Government of NWFP has been appointed as head of the local administration of FATA.
- The services of the provincial departments are utilised to meet the needs of FATA within their respective spheres of jurisdiction. For this purpose, each Secretary of the provincial government acts as the Secretary to the local administration. The Finance Secretary acts as Financial Adviser to the agent of the President in respect of FATA.
- Special Cells created in the provincial government departments attend exclusively to the affairs of FATA.

The department at the federal level co-ordinating these activities in FATA is SAFRON [Ministry of States and Frontier Regions].

In actual terms, governance in FATA is carried out through a Political Agent who governs the area by a number of measures foremost being through the ‘co-operation’ of the tribal leaders of the area the various mechanisms of which are discussed below. *Maliki* is an allowance for the head/s of a tribe and is hereditary, subject to ‘good conduct’ of the heir of the *Malik* (head of the tribe), and approval of the government. *Lungi* is a personal allowance for individual service and may be modified on the death of a *Lungi* holder. *Mawajib* allowances are those which are paid out to the entire tribe bi-annually.

The main objective of the *malik*, *Lungi* and *muwajib* allowances is to maintain amiable political relations with the tribes, to bind them to the government of Pakistan by excluding other ‘influences’ and hence outside interference in the area. A further objective is to preserve law, order and security of life and property within the tribal areas, and to keep mountain passes and roads open for trade and communications at all times.

The essence of political control by the mechanisms employed as described above is to maintain law and order in the tribal areas by enforcing tribal and territorial responsibility through accredited representatives of tribes i.e., tribal *maliks* and elders who are in receipt of allowances. It is intended to use the system for upholding official influence and implementing development programmes.

The *Maliks* and Elders who receive allowances of a tribe/section are perceived as the political medium and are required to restrain and control their tribesmen from committing any act hostile or subversive to the State. The government policies are implemented in the area through the *maliks* and elders. The government maintains that it is following a policy of peaceful progress through development by the opening of schools, dispensaries, roads and other development works in the tribal areas with their help. Since the creation of Pakistan, governments in neighbouring Afghanistan had been hostile and were blamed for assisting and abetting Pukhtun demands for a separate homeland for which the term ‘Pukhtunistan’ was coined. The Pakistan government sought to counteract Afghan propaganda and influence with the help of allowance holders, the *maliks* and elders.

From a purely legal perspective, FATA has been governed since colonial times through the Frontier Crimes Regulation of 1901 (FCR), the purpose of which was primarily to control and suppress crimes in the tribal areas and not to provide or promote justice. This practice has continued in the post-independence era. However, from time to time and after due consultation with the provincial government, tribal elders, etc. some laws are extended to the

area. To date about 365 federal and provincial laws have been extended to FATA (Ali, S.S. 1999, 'The Rights of Ethnic Minorities in Pakistan: A Legal Analysis', *International Journal on Minority and Group Rights*, vol.6, pp. 171-173, 183-185 – Attachment 4).

The June 1970 declaration which delegated the governor of the NWFP to “act as Agent to the President for the Centrally Administered Tribal Areas” in the vicinity of the NWFP, including the Khyber Agency, is included in the appendix of a 2003 study of governance in the FATA which is supplied as Attachment 5. Published by the Islamabad Policy Research Unit, this recent study provides information on the manner in which post 11 September 2001 actions have affected the area. The message is similar to that delivered by Ali in her 1999 paper insofar as the formal instruments of governance are concerned: “So far as the political agencies of Khyber, Kurram, North and South Waziristan are concerned, there has been little change in the administrative set up since their creation more than a century and a quarter ago” (Ul Haq, N., Khan, R.A. & Nuri, M.H. 2005, 'Federally Administered Tribal Areas of Pakistan', Islamabad Policy Research Unit website, IPRI Paper 10, March http://ipripak.org/papers/federally.shtml#_ftn117 – Accessed 19 September 2006 – Attachment 5).

The Current Situation in the Khyber Agency

On 27 June 2006, the Indian government funded Institute for Defence Studies and Analyses (IDSA) published the following overview of the manner in which the authority of the traditional jirga system in the Khyber agency has been destabilised by a militant Islamist group, known as the *Lashkar-i-Islam*; a movement which follows a puritanical form of Deobandi Islam and which has formed around a mullah from the Karak district, Muftis Shakir. The trouble is said to have been born from a sectarian conflict which erupted between Muftis Shakir's movement and the movement of another mullah, Pir Saifur Rahman, who propagates the Barlevi school of Islam. “Shakir has majority Afridis as his followers, while Pir has a substantial following among some Afridi khels”. According to this report, “the jirga entrusted the task of maintaining security of the area to a tribal peacekeeping force, Tanzeem-e-Ittehad Ulema”, but the “Tanzeem [has] faced serious attacks from Lashkar-i-Islami” and has not been able to restore security in the area. Relevant extracts follow in detail:

The tribal terrain in Pakistan is in a state of turmoil. As the Pakistani Taliban gradually emerge, many analysts have pointed out that the terrain has traditionally been home to orthodoxy over the centuries and nourished rebels like Sayiid Ahmad, Faqir of Ippi, Nek Muhammad, Abdul Mehsud and now Mullah Dadullah. The entire area stretching from the Khyber Pass till Chaman in the south across Waziristan and eastward up to Peshawar in Pakistan has remained immune to change, both because of lack of will on the part of the government to extend its writ to these areas and the unwillingness of the local people to abandon their tribal mode of existence.

While the Taliban have hit the headlines, certain other groups posing as counterfoils to the Taliban have received scant attention. In fact, the Deobandi-Barelvi dimension in the tribal belt has been comparatively understudied. The traditional intra-sectarian fault-lines among a variety of Islam-pasand groups in the Tribal Areas have erupted in recent years and are posing serious internal security challenges for Islamabad. The year-long clashes between two rival Mullah groups in Bara in the Khyber agency of Pakistan best illustrates this development.

For much of 2004 and 2005 groups like Amar Bilmaroof Wanahi Anilmunkar (ABWA) – which literally means promotion of virtue and prevention of vice – fought against the Barelvi-

Pirano groups in the Khyber agency. These rival groups run their own FM radio stations and mobilise popular support through active propaganda. In fact, the Pakistan Electronic Media Regulatory Authority (Pemra) reports that there are about 62 illegal FM stations in settled areas, while 49 others operate from the Federally Administered Tribal Areas (FATA) and Provincially-Administered Tribal Areas (PATA). The Human Rights Commission of Pakistan estimates that there are 67 illegal FM radio stations operating from various seminaries and mosques controlled by local Mullahs in Upper and Lower Dir, Swat, Malakand, Buner, Shangla and Swabi, Bara, Wari, Usheri Darra, Jabar and Barawal Banday.

Since it is very cheap to establish a radio station (about ten to fifteen thousand rupees), it has been difficult to effectively stop the practice. Super-orthodox Mullahs have found these radio centres convenient tools to air their views on the Quran (Dars-i-Quran) and have, through their sermons, poured venom against one another, provoking armed encounters among these groups, sometimes within the separate khels (sub-tribes) of the same tribe. This has disturbed the peace of the area and baffled the Pakistani security establishment.

The most recent case involves a tussle between Mufti Shakir and Pir Saifur Rahman at Bara, a few kilometres from Peshawar in Khyber agency. In 2004, the two Maulanas had established separate FM stations and their sermons began to progressively assume intense sectarian contours. By September 2005, the verbal duel between the Maulanas over the FM radio transmissions had crossed the limits of civility.

Pir Saif hails from Samangan province of Afghanistan and had settled down in Bara Tehsil. He is one of the many Pirs who had shifted to Pakistan during the Taliban rule in Afghanistan. Mufti Shakir is a Khattak and hails from Karak district of the NWFP. He first shifted to Sadda Tehsil of Kurram agency, where his involvement in Shia-Sunni sectarian riots led to his expulsion by the authorities. He then migrated to Bara and settled down there.

It is interesting to note that the two Mullahs were co-mujahids in the Afghan jihad. However, the commonality between them ends there. Mufti Shakir is unabashedly Deobandi in his viewpoint, while Pir Saifur is a Bareilvi. Shakir has majority Afridis as his followers, while Pir has a substantial following among some Afridi khels. The Pir's influence, however, extends into Punjab, NWFP and Karachi where he has a sizable following among the subalterns in the Pakistani army as well as bureaucrats in the civil administration. Reports reveal that on the 9th day of the 10th month of the Islamic calendar (Shawal), the Pir used to hold his durbar in Bara and more than 150,000 followers used to attend this.

Coming back to the tussle at Bara, Mufti Shakir claimed that the Pir had been promoting a perverted version of Islam and in the true tradition of the religion such vice had to be prevented. After preaching continuously against the Pir, he asked the latter to leave Bara by December 25, 2005. The Mufti even formed a militant outfit called Lashkar-i-Islam to impose a Taliban style religious code in the area. His principal follower, Mangal Bagh, who claimed to be the amir of Lashkar-i-Islam, set upon himself the task of realising the dreams of his mentor by force and issued warnings to the Pir to move out of Bara. But the Pir refused to oblige. To prevent the situation from spiralling out of control, Pakistani authorities had to send in more than 1,000 troops from Bajaur Scouts, Mohmand Rifles, Mehsud Scouts and Khyber Rifles to maintain order.

On January 31, 2006, the Khyber administration organised a jirga of Afridi sub-tribes to discuss the matter. The jirga decided to expel the Maulanas as they were not locals and had aggravated the security situation in Bara. The Pir obeyed the verdict and left Bara on February 1, reportedly for Lahore. Mufti Shakir, however, interpreted the Pir's exit as a grand victory and refused to leave Bara for quite some days. Finally, upon pressure from the administration, he too left towards the end of February reportedly for Tirah valley, where the

Deobandi-Barelvi rivalry is peaking now. Subsequently, the jirga entrusted the task of maintaining security of the area to a tribal peacekeeping force, Tanzeem-e-Ittehad Ulema.

But the sectarian temperature in the area refused to subside even after this. The Tanzeem faced serious attacks from Lashkar-i-Islami in early March 2006. On March 25, Lashkar followers led by Mangal destroyed the house of one of the Pir's followers. And on March 28, they attacked the house of the Pir's principal follower, Badshah Khan, and killed 19 supporters of the Pir, 16 of whom were Afghan nationals, and carried away women and children as hostage.

The administration's response was quick. After one shot from the Frontier Corps aimed at the Mufti's headquarters in Nullah Khajori, which destroyed the antenna of the FM station on March 30, Mangal reportedly fled to Gugrini area on the hills near Jamrud to hide in the caves there. He re-launched his radio station and started spewing venom against the Barelvi-Pirano group. In true Taliban tradition, he urged men in the area to pray five times a day, grow beards and refrain from collaborating with the political authorities. He also imposed a ban on the interest-based loan system, declaring it un-Islamic.

The efforts of the administration and the jirga to bring moderation into Mangal Bagh do not seem to have had any effect. By early May 2006, he was threatening the local administration that all routes to Tirah would be blocked, if his supporters, apprehended in April, were not released. He even persuaded the elders of the Zakhkhels – the largest sub-tribe among the Afridis – not to participate in the jirga in May. At the beginning of June, Mangal's men kidnapped a local Jamiat-Ulema-i-Islam leader from a mosque for allegedly cooperating with the administration. The Lashkar took control of the Bara bazaar on June 10. The administration responded on June 12 by blowing up of a four-storey shopping plaza owned by Mangal. The Khasadar force and Mehsood Scouts have since taken up the Bara bazaar under their control. But Mangal continues to remain defiant.

This episode in Bara epitomises Pakistan's policy towards the local Taliban. The process of engendering sectarian hatred has been left untouched and the state has exhibited a sense of reluctance to rein in the Deobandi-Taliban elements, unless they become violent and challenge the writ of the state. Some analysts in Pakistan would argue that this is mainly because the administration is traditionally known for its sympathies towards such a puritanical viewpoint. The Barelvi viewpoint, which could perhaps provide a counter-force, stands marginalised. The authorities have also not tapped the new generation of local leadership, which wishes to get out of the tribal mould and mainstream itself. Instead, they have allowed the Deobandi strain to dominate the terrain, hoping to quarantine its influence in the tribal belt and buy peace in the bargain. However, the administration has ignored the inability of such groups to remain quiet and non-coercive. These groups have moreover repeatedly challenged the might of the state. In the absence of an imaginative plan to counter such an assertive ideology at the grassroots level, Pakistan will continue to labour under a million mutinies, which will increasingly weaken the capacity of the state in the days to come (Behuria, A.K. 2006, 'Million Mutinies in Pakistan's Tribal Areas', Institute for Defence Studies and Analyses website, 27 June <http://www.idsa.in/publications/stratcomments/AshokBehuria270606.htm> – Accessed 3 October 2006 – Attachment 6).

Recent reports indicate that, while the government and the NWFP political agent, Governor Lieutenant General Ali Muhammad Jan Orakzai, remain committed to restoring order and "the revival of the institution of maliks/elders", the tribal jirga system in the Khyber Agency remains destabilised by the conflict with the *Lashkar-e-Islami*.

19 September 2006: "PESHAWAR: Ansar-ul-Islam, Khyber Agency, has rejected reports about truce with Lashkar-e-Islami in remote Tirah valley of Khyber Agency and said that no

such cease-fire deal has been signed with supporters of Mengal Bagh after the efforts of Jama-e-Islami jirga. Addressing a press conference at Peshawar Press Club on Tuesday, leaders of Ansar-ul-Islam, Haji Ghulam Nabi and Maulana Mustamin said that the JI jirga did not strike any truce deal between the armed volunteers of the two religious rival groups in Khyber Agency and there was no truth in news reports about cease-fire” (‘Ansar Ul Islam Rejects Truce With Lashkar-E-Islami In Tirah Valley’ 2006, *Baluchistan Times*, 19 September – Attachment 7).

13 August 2006: “Landi Kotal (Khyber Agency), 13 August: At least seven more people were killed and three others injured in clashes between armed supporters of Lashkar-i-Islam and Ansarul Islam in Bara and Tirah areas on Sunday [13 August]” (‘Seven dead as rival religious groups clash in Pakistan tribal area’ 2006, *BBC Monitoring Newsfile*, source: Dawn website (14 August 2006), 14 August – Attachment 8).

15 July 2006: “PESHAWAR: The Governor, NWFP Lt Gen. Ali Muhammad Jan Orakzai has directed political administration of Khyber Agency to open Bara Bazar immediately. The Governor’s directive came in response to the request of the Grand Khyber Jirga held on July 11, 2006 at Governor’s House, Peshawar. This step has been taken in line with the Government’s over all policy of reconciliation and negotiated settlement of all issues through tribal Jirgas in accordance with the tribal customs and traditions.

The Government is committed to the revival of the institution of maliks/elders and to facilitate them in playing their due role in resolving all issues confronting the tribesmen as per past practice. The Political Administration has also been geared to restore the authority of the elders, which is of paramount importance for maintaining durable peace in the tribal areas. The Governor, on this occasion spelt out that peace was imperative for the over all development of this backward area and every effort must be made for creating conditions that are direly needed for speedy development of FATA” (‘Peshawar: Governor Directs Pa Khyber Agency To Open Bara Bazaar Immediately’ 2006, *Frontier Star*, 15 July – Attachment 9).

6 July 2006: “The Khyber Agency has the tradition of being ruled by different religious groups on different occasions. Tanzim Ittehadul Ulema was the first body that established its private prison to punish tribesmen for committing a crime. The body had the support of majority of local population. A peace committee and several other organizations also emerged in the area, with religious leaders as their heads, either to support the administration or announce their parallel administration after expressing dissatisfaction over the system” (‘Pakistan takes action to prevent tribes from supporting Islamist groups’ 2006, *BBC Monitoring South Asia*, source: *The News* website (6 July 2006), 7 July – Attachment 10).

14 June 2006: “It seems that situation will further worsen and ordinary people will be more affected and the local tribal Taleban, tribesmen and soldiers will also be harmed. A number of people have already lost their lives and situation has worsened to a greater extent. The local malik [local elder of an area] system has also been weakened by this situation and no one accepts what a local malik says. The political agent, which is a government representative and was considered to be a very powerful figure, has also lost its power now. The media is also weak and you can’t find a journalist in the region. Journalism seems to have wound up and journalists have left the area” (‘Commentator views “deteriorating” situation in Pakistan’s tribal areas’ 2006, *BBC Monitoring South Asia*, source: Pakistan AVT Khyber TV (11 June 2006), 14 June – Attachment 11).

On 23 March 2006, the Jamestown Foundation’s *Terrorism Monitor* published a report on the manner in which the agencies of the FATA have been destabilised by “al-Qaeda, Taliban and Central Asian militants”. The worst affected areas are said to be North Waziristan and South

Waziristan Pertinent (which are located to the south of the Khyber Agency). Extracts follow in detail:

...unlike the areas of NWFP, Pakistani and US intelligence agencies have been unable to penetrate FATA areas. This is mainly due to the area's unique socio-economic landscape. FATA consists of seven geographic units called agencies. From north to south, these agencies are Bajaur, Mohmand, Orakzai, Khyber, Kurram, and North and South Waziristan. The whole belt is a part of the great range of the Hindu Kush Mountains. Geographically, FATA is a part of the NWFP but the federal government directly governs through a governor of the NWFP and subordinate political agents. The predominant population is Pashtun with the exception of some nomadic tribes. Bangash tribe of Kurram agency is Shiite while the rest of the population belongs to the Sunni deobandi school. The main towns of FATA include Miran Shah, Razmak, Bajaur, and Wana.

Bajaur Agency is inhabited by Yousafzai and some local Pashtun tribes; Mohmand tribe lives in Mohmand agency; Orakzai are the native dwellers of Orakzai agency; the famous Afridi lives in Khyber agency; North and South Waziristan are inhabited by Wazir and Mehsud tribes respectively.

...Among seven, two tribal agencies – North Waziristan and South Waziristan – are suffering worst from the insurgency. In order to cleanse the areas from al-Qaeda and its local associates, the Pakistani government has employed a two-prong strategy of military operations and dialogue.

...The tribal areas have been a source of trouble in terms of assistance to al-Qaeda, Taliban and Central Asian militants. The porous border between Pakistan and Afghanistan provides corridors to militants for free movement across the border. Although tribal maliks in FATA tried to support the government, it is very easy for Islamic militants to identify them as a result. Maliks are not appointed by the government but they are essentially a product of the traditional tribal jirga system. Leadership qualities, sound financial position and good relations with the broader political administration are hallmarks of this distinct status. Such a person becomes a malik and presents the administrative and economic problems of tribes to the political administration. The government responds to the maliks' requests in return for their services such as maintaining peace, keeping the roads open, and the collection of tax. Known pro-government maliks have been killed at the hands of militants and now no one dares to openly cooperate with government agencies in North and South Waziristan. For instance, gunmen recently killed a pro-government tribal chief, Khair Badshah, in Makeen area in South Waziristan (Geo News, February 16).

...there is little the Pakistani government can do to deny the militants safe refuge in FATA. While mid-ranking al-Qaeda and other Islamic militants will continue to fall into the traps of Pakistani security, it is less likely that the same fate awaits the senior ranks of al-Qaeda in the foreseeable future. Osama bin Laden and a resurgent Taliban movement recognize this all too well and are increasing their activities in this enigmatic region (Nasir, S.A. 2006, 'Al-Qaeda's Operational Corridor on the NWFP', *Terrorism Monitor*, vol. 4, iss. 6, March 23, pp.5-7 http://jamestown.org/terrorism/news/uploads/TM_004_006.pdf – Accessed 3 October 2006 – Attachment 12).

It has since been reported that the NWFP political agent, Ali Mohammad Jan Orakzai, has on behalf of the Pakistan government signed a peace deal with "seven 'militants', who represented the local 'Taliban Shura' (Taliban advisory council)" in North Waziristan. The deal is said to effectively give up control over the area to local Taliban militants. Some pertinent extracts follow:

The deal offers amnesty to Taliban militants and “foreigners” (a reference to Afghan-Arabs who are members of al-Qaeda) in North Waziristan for a pledge that they would desist from mounting cross-border attacks into Afghanistan; assaulting Pakistani security forces, public servants, state property, tribal leaders and journalists; and carrying heavy weapons (Dawn, September 6). They will, however, be allowed to travel across the border into Afghanistan on a “business trip” or a “family visit” and carry “light” weapons such as AK-47s.

...It binds the government to cease ground and air assaults against the Taliban and resolve all future disputes according to the Rivaaj (tribal customs). It further obligates the government to redeploy its troops from North Waziristan to their designated camps and forts, and dismantle all 12 checkpoints that were set up to hunt al-Qaeda and Taliban militants (Dawn, September 6). These checkpoints will now be manned by local tribesmen who make up the tribal paramilitary force, locally known as the Khasadar.

...Many Pakistanis of different persuasions – members of civil society, activists for democracy, liberals, leftists, nationalists and seculars – are not persuaded of the deal’s intended objective, which is “peace.” Rather, they see it as an instrument for converting North Waziristan into “a safe haven for al-Qaeda and the Taliban,” making the Taliban Shura, a signatory to the deal, “winners” (Dawn, September 6; Daily Times, September 8). Others think the government has “ceded the [North Waziristan] region to the Taliban” and that this amounts to “a total capitulation” (Dawn, September 6; Daily Times, September 9). Unnerved by the backlash, the government hid behind the semantics, claiming that it has signed the deal with the Utmanzai tribe and not with the Taliban. Yet the Taliban Shura and its seven signatories to the deal are all members of the Utmanzai tribe, which inhabits North Waziristan. The international media, however, has insisted that the actual agreement has been “signed” indirectly between Pervez Musharraf and Mullah Omar, the leader of the Taliban movement (Daily Times, September 26) (Niazi, T. 2006, ‘Pakistan’s Peace Deal with Taliban Militants’, *Terrorism Monitor*, vol.4, iss.19, 5 October http://www.jamestown.org/terrorism/news/uploads/TM_004_019.pdf – Accessed 6 October 2006 – Attachment 13).

2. Please provide information on tribal jirgas. How do tribal jirgas operate and what is the effect of their decisions? Are they enforceable outside the tribal areas of North West Frontier and the other western areas of Pakistan? Are there any reports of persons living outside the tribal areas who have been adversely affected by decisions made by tribal jirgas?

In purely legal terms the jirga system is restricted to the tribal areas. The powers accorded to a *jirga* within these areas are substantial but are modified, from one locale to another, according to whether the *jirga* is constituted in an administered area, a protected area or an inaccessible tribal territory. For instance, in government protected areas the rulings of a *jirga* will be affected by the Pakistan Penal Code (PPC) and the Frontier Crimes Regulation (FCR) in addition to *Shariat* (Islamic law) and *Riwaj* (customary law; this being the Pashtun code of *Puktunwali*). In such instances a *jirga* cannot legally enforce punitive penalties such as a house-burning or a death sentence, but must instead make use of jail terms and the state prison system. In areas beyond the protected locales, *jirgas* are, however, legally afforded the right to enforce traditional forms of local tribal justice. The government will only intervene in matters occurring in such areas when the outcome is deemed to affect the interests of the state of Pakistan (for information on the distinction between administered, protected and inaccessible areas, see Ali, S.S. 1999, ‘The Rights of Ethnic Minorities in Pakistan: A Legal Analysis’, *International Journal on Minority and Group Rights*, vol.6, p.185 – Attachment 4;

and Khyber Agency' (undated), Federally Administrated Tribal Area (FATA) website <http://www.fata.gov.pk/fatakhyber.htm> – Accessed 20 September 2006 – Attachment 1; for information on the legality of tribal punitive measures such as house-burnings and death-sentences, and use of jail terms in government influenced areas, see: Yousufzai, H.M. & Gohar, A. 2005, 'Towards Understanding Pukhtoon Jirga', Fresno Pacific University website, pp.20-22, 80 http://peace.fresno.edu/docs/Pukhtoon_Jirga.pdf – Accessed 3 October 2006 – Attachment 14).

In practice, harsh forms of tribal justice are not necessarily restricted to the inaccessible areas. As is noted above, recent reports indicate that areas of the FATA are operating outside the normative procedures prescribed by the government and there have been reports of killings and extra-legal executions carried out on the authority of local *jirgas*, "without referral to the Political Agent". The Khyber Agency does not appear to be as affected by such problems as the agencies to its south, but a number of different movements – such as the *Lashkar-i-Islam* and the *Tanzim Ittehadul Ulema* – are presently engaged in a violent conflict in an effort to enforce their own brand of governance in the Khyber Agency area. Pakistan's *The News* has observed that "[t]he Khyber Agency has the tradition of being ruled by different religious groups on different occasions"; noting that the "Tanzim Ittehadul Ulema was the first body that established its private prison to punish tribesmen for committing a crime". In its 2004 annual report for Pakistan, Reporters Without Borders has noted that "Tanzeem Ittehad-e-Ulema...has an armed wing comprising 3,000 persons in the Tribal Areas and imposes its own law in the region". In 2005 The Human Rights Commission of Pakistan's (HRCP) report for 2005 records that the "Bara Peace Committee" (which appears to be another name for, or an institution of, the *Tanzeem Ittehad-e-Ulema*) has initiated a number of human rights abuses in the Khyber Agency through the authority of a tribal *jirga*; including punishment by flogging and the demolition of housing (for reports on extra-legal punishments being carried out by *jirgas* in the FATA, see: Amnesty International 2006, 'Pakistan: Unlawful executions in tribal areas', AI Index: ASA 33/13/2006, May [http://web.amnesty.org/library/pdf/ASA330132006ENGLISH/\\$File/ASA3301306.pdf](http://web.amnesty.org/library/pdf/ASA330132006ENGLISH/$File/ASA3301306.pdf) – Accessed 3 October 2006 – Attachment 15; for *The News* report, see: 'Pakistan takes action to prevent tribes from supporting Islamist groups' 2006, *BBC Monitoring South Asia*, source: *The News* website (6 July 2006), 7 July – Attachment 10; Reporters Without Borders (undated), 'Pakistan – 2004 Annual Report' http://www.rsf.org/article.php3?id_article=10214 – Accessed 4 October 2006 – Attachment 16; Human Rights Commission of Pakistan (undated), *State of Human Rights in 2005* http://www.hrcp-web.org/images/publication/annual_report/pdf_2005/1-2.pdf – Accessed 4 October 2006 – Attachment 17; for more on the Bara Peace Committee, see: 'Peace committee formed in Bara' 2003, *Dawn* website, 30 July <http://www.dawn.com/2003/07/31/nat22.htm> – Accessed 6 October 2006 – Attachment 18).

Even where the FATA's prescribed legal procedures for the operation of tribal *jirgas* are followed, protection from human rights abuses is not guaranteed: "Amnesty International considers the law governing the FATA, the Frontier Crimes Regulation, 1901 (FCR), to be deeply flawed as it does not ensure the human rights protection afforded by the Constitution of Pakistan" (Amnesty International 2006, 'Pakistan: Unlawful executions in tribal areas', AI Index: ASA 33/13/2006, May [http://web.amnesty.org/library/pdf/ASA330132006ENGLISH/\\$File/ASA3301306.pdf](http://web.amnesty.org/library/pdf/ASA330132006ENGLISH/$File/ASA3301306.pdf) – Accessed 3 October 2006 – Attachment 15).

There have been reports of persons living outside the tribal areas being adversely affected by decisions made by tribal *jirgas*. Most of these reports concern incidents which have occurred in the Sindh province (there have also been reports of persons being adversely affected in other areas of Pakistan by the comparable Hindi tradition of *panchayat*). The tribal *jirga* system was formally banned in the Sindh in 2004 but regional communities in the province have persisted in using the institution to resolve local issues and grievances. A number of persons affected adversely by such *jirgas* have fled to Karachi to escape the enforcement of *jirga* rulings. Some have been tracked down and returned to their home villages to face punishment and some deaths have been reported in this regard. No reports could be located, however, which referred to retrievals of this kind affecting persons who had fled the Khyber Agency or the north western tribal areas generally. The Department of Foreign Affairs and Trade has advised that: “[t]he writ of the tribal *jirga* is limited to the tribal territory, and usually just to the area or village to which the *jirga* belongs because of the existence of the tribal system of asylum [*nanavati*]. A tribal *jirga*’s ruling may, in rare cases, have implications for someone residing outside the tribal areas but this would more likely be due to personal animosity or because of a family feud” (for information on the continued use of the *jirga* system in the Sindh, see: ‘An outdated system’ 2005, *Dawn* website, 21 October <http://www.dawn.com/2005/10/21/ed.htm> – Accessed 11 October 2006 – Attachment 19; and: ‘Ban on *jirgas*, changes in Hudood law urged’ 2006, *Dawn* website, 2 March <http://www.dawn.com/2006/03/02/nat9.htm> – Accessed 11 October 2006 – Attachment 20; for reports of persons being pursued in the Sindh on the authority of *jirgas*, see: ‘Archenemies of mankind’ 2003, *Dawn* website, 21 December <http://www.dawn.com/weekly/cowas/20031221.htm> – Accessed 11 October 2006 – Attachment 21; and Shah, Z. 2003, ‘In The Name Of Love’, PeaceWomen Project website, source: *South Asia Citizens Wire*, 19 November <http://www.peacewomen.org/news/Pakistan/Nov03/love.html> – Accessed 11 October 2006 – Attachment 22; Department of Foreign Affairs and Trade 2006, *DFAT Report 545 – Country Information Request 30615*, 6 October – Attachment 27).

Tribal Jirgas in the FATA – how they operate

An extensive study of the *jirga* system was recently published by two Fulbright scholars from Peshawar, Hassan M. Yousufzai and Ali Gohar. According to this study, “[t]he nature and scope of a specific *Jirga* can vary and there is generally no clear distinction between types of *Jirga*”. Further to this, Yousufzai and Gohar observe that, “[i]n the Pukhtoon code, there is little distinction between the civil matters and the criminal matters because it presumes that all civil disputes would lead to criminal offenses”. Nonetheless, “[m]ost writers have delineated *Jirga* into four general types: *Sarkari*, *Qaumi*/ *Ulushi*, *Shakhsi*, and *Loya Jirga*”. An overview of these four types appears on pages 45 to 51 and some pertinent extracts follow below:

Sarkari or Governmental Jirga

Sarkari Jirga refers to a *Jirga* sponsored by the government. In the tribal areas of NWFP, the British established a contract with the locals allowing them to settle all issues between themselves and the government through a local *Jirga*. This contract was pronounced through the “Frontier Crimes Regulation of 1901 Act” allowing a representative of the government to regulate the formation and reformation of *Jirga(s)*.

Under Frontier Crimes Regulation (FCR) 1901, the magistrate, the political agent or his assistant can designate a group of elders to try a criminal or civil case. The FCR authorizes settlement of quarrels by this Jirga. Jirga members, two or more depending on the nature and importance of the case, are nominated arbitrarily by the concerned government official. The Jirga calls the parties, analyzes the evidence, and recommends a verdict to be considered for approval by the government authority. There is an appellate tribunal of the government that then examines the Jirga decision. This Jirga can recommend a maximum penalty of up to fourteen years imprisonment and pass awards based on the local traditions. The political agent can approve such recommendation and enforce the decision.

...Qaumi/ Ulusi or Local-Representative Jirga

Ulas means people and Qaum means community. Thus, Ulasi Jirga is an assembly of the elders comprising each household of a certain village or community. It is convened to discuss matters such as collective property, rights and distribution of irrigation water, or common concerns, like the selection of a site for a school, etc. Ulasi Jirga is announced after initial consultations of a few elderly leaders of the community, and it is announced through a Naqqara or band beat. The venue and time of such an assembly is also given. It is an open assembly in which each person is allowed to speak and all opinions are given space. The decision may be taken in one or more sessions if the issue needs private deliberations by different stakeholders.

The jurisdiction of this type of Jirga is much wider than any other type of Jirga. The Qaumi Jirga can take up any issue of national or community interest.

...Shakhsi or Third-Party Jirga

This Jirga is formulated in the case of a dispute that arises between two individuals or families. The Jirga members are chosen from both of the parties or both parties agree to the nomination of neutral members. Balance and neutrality are important in order for the members to arrive at a just settlement that is acceptable to both sides.

...Loya or Grand Jirga

Loya Jirga, or the grand assembly, is a process through which representatives of various areas organize to discuss and vote on issues at the national level (Yousufzai, H.M. & Gohar, A. 2005, 'Towards Understanding Pukhtoon Jirga', Fresno Pacific University website, pp.45-51 http://peace.fresno.edu/docs/Pukhtoon_Jirga.pdf – Accessed 3 October 2006 – Attachment 14).

Yousufzai and Gohar's study also provides extensive information on: 'Jirga Process and Procedure' (see pages 20 to 21); 'Decision Making and Implementation' (see pages 21 to 22); and an overview of some of the more significant institutions of *Pukhtoonwali* (or *Puktunwali*), the Pashtun code which has traditionally played a defining role in the *jirga* system and in the day-to-day life of Pashtun's living in the tribal areas (see pages 31 to 44). The following extracts provide an overview of the kind of procedures which a *jirga* can employ and the penalties which it can impose (it should be noted, however, that "local laws vary from place to place according to the differences in geography, climate, and patterns or structures of living"):

Traditional Jirga process is very straightforward and simple in its manner. The Jirga or Maraka is comprised of the 'Spingiris,' or white bearded elder men, and other male members. The 'Spingiris' act as judges and other participants are like jurists. All the parties involved are required to respect the Jirga members. If the parties have any reservation, those need to be shared in the pre-mediation process and stage.

...Jirga hears and examines the parties and witnesses to discover the facts of the dispute. Following a thorough discussion with the parties, Jirga members analyze the dispute, keeping in mind the traditional, religious, socio-economic, and geo-political circumstances. After probing inquiries, the Jirga makes every feasible effort to find an unbiased and adequate solution of the problem. The Jirga's pronouncement is usually based on local traditions and /or Shariat.

...Anyone who then does not abide by the decision of the Jirga is subject to punitive measures. The Jirga determines the type of punishment based on Narkh (tribal rule, or precedent). This practice varies from one part of the tribal areas to another. Anyone who rejects collective wisdom takes a grave risk – a Jirga can impose powerful sanctions to enforce its judgment. The sanctions can include ex-communication of the non-compliant person or group.

Additional punishments can include the confiscation of rifles belonging to the non-compliant party, placing them with the Jirga as 'Gravey' (bond or guarantee). The Jirga can also impose heavy fines for the non-compliant party to pay to the complying party in the dispute. If non-compliance persists, the Jirga can use force by sending men to burn down the party's house(s). If someone still remains defiant and does not comply with the Jirga's orders, he is considered to be 'Kabarjan', the arrogant one. By doing so, he loses the security promised by the Jirga, and thus may be killed by his opponents without any consequence.

A council of the tribesmen (under different names) implements the collective decisions of Qaumi or Ulusi Jirgas (see the description in the next section): these are the Salwaikhtee (40's) in Waziristan, the Lashkar in Afridi areas, and the Rapakian in Kurram Agency. Typically, this body is comprised of about forty members and its effectiveness is determined by the strength and sanctions they derive from the tribal people, whom they volunteer to serve.

The practice of Jirga is not uniform throughout the Pukhtoon belt, however, the above description relates to a fairly ideal form of practice prevalent in most parts of the Pukhtoon belt where Jirga dominates the lives of its people without any external influences. Where there is some form of governmental system in place, the processes of Jirga and its credibility will vary.

...The punishments prescribed by the Jirga fall in two categories: death, exile and house burning, or reparations.

A death sentence, which is quite common in the purely tribal places, is not permissible where there is an external governmental control over the tribal laws. Even in the tribal areas associated with an external government, however, killing or murder is taken as a right of a party seeking "Badal", a form of revenge based on justice. In the purely tribal areas, a death penalty can be announced for a variety of crimes including robbery, kidnapping for ransom, deliberate murder of an innocent person, and adultery. Other than a death sentence, a Jirga can announce the forced exile of a person and burn the house of a proclaimed offender.

The second category of punishments is that of compensatory nature where the party at fault is expected to undo the harm done to the victim, or monetary fines are imposed on the parties. Among the compensatory punishments is the much-criticized tradition of "Sawara," extending a girl in marriage to the victim family. Interestingly, in the purely tribal setup, there is no scope for announcing jail to an offender, as there are no jails in the tribal communities. In the tribal areas associated with the government, the concept of jail is present, and there the Jirga does not have any powers to announce a death penalty to any kind of offender (Yousufzai, H.M. & Gohar, A. 2005, 'Towards Understanding Pukhtoon Jirga', Fresno

Pacific University website, pp.20-22, 80 http://peace.fresno.edu/docs/Pukhtoon_Jirga.pdf – Accessed 3 October 2006 – Attachment 14).

The Government of Pakistan's FATA website provides the following information on the operation of tribal *jirgas* in the Khyber Agency, noting that such *jirgas* are affected by the Pakistan Penal Code (PPC), the Frontier Crimes Regulation (FCR), *Riwaj* (the customary law) and *Shariat* (Islamic law). It is also noted that the Administration's role in such matters is often determined by whether the offence in question has been committed in a *protected* area.

Adjudication is through the Jirga system which is something the tribesmen comprehend and accept. The substantive law is the PPC whereas the FCR is the procedural law.

In all the criminal and civil disputes two systems are followed i.e. *Riwaj* (the customary law) and *Shariat* (Islamic law), *Riwaj* is the code of tribal customs and almost all the cases are decided under the same. Even in the FCR, the council of elders (*Jirga*) base their verdict on *Riwaj*. The Administration takes cognizance of only those offenses which are committed in protected areas and does not generally interfere in the offenses occurring between the tribes in the Tribal territory of which no cognizance is taken. However, the Administration does interfere in case of offenses taking place even in tribal territory, beyond the protected area, in cases in which State interest is involved. This interference could be direct, through the use of force, or indirect, i.e. through *Maliks* and *Khassadars*, by invoking the tribal/territorial responsibility depending upon the gravity of the offense (Khyber Agency' (undated), Federally Administrated Tribal Area (FATA) website <http://www.fata.gov.pk/fatakhyber.htm> – Accessed 20 September 2006 – Attachment 1).

Dr Shaheen Sardar Ali's 1999 study provides an overview of the *jirga* system as an informal structure of governance. According to Ali, and "[c]ontrary to popular belief, the *jirga* does not have a monolithic, uniform identity but is functioning in different forms under different sets of laws, both statutory and customary". The *jirga* can function, first of all, according to the traditional Pashtun code of *Puktunwali* but the *jirga* may also function as a judicial mechanism of the FCR. Ali cites the 1962 account of James W. Spain:

The *jirga* as it operates today, has three main functions. In its broadest and purest form, it regulates life at all levels within a tribal society requiring community attention, e.g., the choice of a site for a new mosque, punishment for domestic infidelity, settlement of a blood feud, or a decision to take up arms against a neighbouring tribe. Secondly, the *jirga* provides a mechanism by which the decisions or opinions of the tribe are communicated to the Government and the decisions of the government passed to the tribe. In this sense, the *jirga* handles the foreign relations of the tribe and has the authority to commit it to a course of action. A third form, the so-called 'official' *jirga*, composed of men appointed by an officer of the Government of Pakistan, has little to do with *Puktunwali* in the traditional sense. It acts as an advisory jury to an officer in trying crimes under the Frontier Crimes Regulations.

There is seldom any voting in a *jirga*. The 'sense of meeting' is usually abundantly apparent, although its import would frequently curdle the souls of the peaceful Friends who coined the term. The armed membership of the *jirga* is its enforcing agency if enforcement is needed (Spain, J.W. cited by Ali, S.S. 1999, 'The Rights of Ethnic Minorities in Pakistan: A Legal Analysis', *International Journal on Minority and Group Rights*, vol.6, pp.187-188 – Attachment 4).

Ali states that Spain's "account of the traditional jirga...remains essentially valid". Of the *jirga* in its role as an institution of the FCR at the present-moment, Ali comments as follows:

A jirga constituted under the FCR must thus be distinguished from the traditional jirga applying customary laws of the area.

Unfortunately, the FCR was retained and applied to the tribal areas even after independence and emerged as the first parallel judicial system in Pakistan. It is based on the premise of suppression of crime by infliction of the severest possible punishment. The administration of justice is neither its aim nor purpose.

The FCR, denies the accused due process of law. The entire procedure is based on a system of inquiry conducted by the jirga rather than a process of presenting evidence, examination and cross-examination of witnesses etc. It also is not permitted to engage counsel. Appeals to the superior judiciary i.e. the Supreme Court and High Court which are the constitutionally guaranteed right of every citizen of Pakistan, are denied to persons subject to the FCR (Ali, S.S. 1999, 'The Rights of Ethnic Minorities in Pakistan: A Legal Analysis', *International Journal on Minority and Group Rights*, vol.6, p.190 – Attachment 4).

Amnesty International has recently voiced its concerns about the manner in which the *jirga* system is currently operating in the FATA areas, finding that, in a number of recent incidents, "even the minimal protection afforded by the FCR has been ignored and tribal councils have arrogated criminal justice functions to themselves, 'trying', 'convicting' and ordering the punishment of alleged offenders". Such punishments have included the death penalty even when, "if the FCR had been applied, the death penalty could not have been imposed". Some pertinent extracts follow:

Amnesty International remains gravely concerned at the execution of Hayatullah Gul, 25, on 26 March 2006 on the orders of a shura, or council of persons described in Pakistani media as "local Taleban", in Tiarza, South Waziristan. He was shot dead by the father of a taxi driver whom Hayatullah Gul is alleged to have murdered around two weeks earlier. The "trial" reportedly took only a few hours to complete. The accused had no legal counsel to assist him and no possibility to challenge the conviction and punishment.

...Amnesty International considers the law governing the FATA, the Frontier Crimes Regulation, 1901 (FCR), to be deeply flawed as it does not ensure the human rights protection afforded by the Constitution of Pakistan, or Pakistan's international obligations as a state party to the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women. For example, under the FCR, people suspected of having committed a criminal offence are heard, without legal representation, by a formally constituted tribal jirga or council which submits its recommendations regarding conviction or acquittal to the Political Agent. The Political Agent makes a decision regarding conviction or acquittal but is not bound by the jirga's recommendations. Punishments which the Political Agent can impose include fines, house destruction and imprisonment but not the death penalty. There is no possibility of appealing against conviction or punishment under the FCR as the jurisdiction of Pakistan's higher judiciary, which has appellate powers in Pakistan, does not extend to the FATA

...Hayatullah Gul was not afforded even the flawed protection offered by the FCR. He was not brought before a duly constituted jirga, his case was not decided by the Political Agent for South Waziristan and, if the FCR had been applied, the death penalty could not have been imposed him.

Amnesty International has been informed of other instances in which even the minimal protection afforded by the FCR has been ignored and tribal councils have arrogated criminal justice functions to themselves, “trying”, “convicting” and ordering the punishment of alleged offenders. These include:

- On 14 March 2004, eight men were publicly executed in Orakzai Agency. Five of the men had allegedly been involved in kidnapping and looting in Mamoonzai area; three had been caught a few days earlier for alleged robbery. The eight men were “tried” together by an informal council of elders and executed immediately after the “verdict”.
- In mid-June 2005, two men were shot dead by firing squad on the orders of an informal tribal council of elders in Orakzai Agency. They had allegedly killed a taxi driver a few weeks earlier, the victim’s family petitioned the tribal elders and named the alleged culprits. The “verdict” was immediately carried out without referral to the Political Agent (Amnesty International 2006, ‘Pakistan: Unlawful executions in tribal areas’, AI Index: ASA 33/13/2006, May [http://web.amnesty.org/library/pdf/ASA330132006ENGLISH/\\$File/ASA3301306.pdf](http://web.amnesty.org/library/pdf/ASA330132006ENGLISH/$File/ASA3301306.pdf) – Accessed 3 October 2006 – Attachment 15).

The Human Rights Commission of Pakistan’s (HRCP) report for 2005 records that the “Bara Peace Committee” has initiated a number of human rights abuses in the Khyber Agency through the authority of a tribal *jirga*; including punishment by flogging and the demolition of housing. Information sourced from a 2003 *Dawn* news report suggests that the Bara Peace Committee is another name for, or is an institution of, the *Tanzim Ittehad-i-Ulema*. The *Dawn* report also provides information which suggests that the Bara Peace Committee/*Tanzim Ittehad-i-Ulema* institution is a vehicle of the *Jamiat Ulema-i-Islam*. The *Dawn* report notes that “[t]he committee was banned by the administration due to its creation of parallel courts even allegedly awarding death sentences to murderers”:

HRCP: The Bara Peace Committee (Khyber Agency) assumed the power of a *jirga* and had the house of Sedak Zakakhel demolished for his alleged role in a dentist’s abduction and then had Sedak’s brother flogged for attacking the committee’s deputy chief. According to a press report the committee established a jail also. ...Three persons, including an accused, were killed in exchange of firing during a *jirga* session in Bara, Khyber Agency. The Malik Deenkhel *jirga* was trying to resolve a money dispute between the Daulatkheles and one Mujahid, described as a notorious criminal. Heated arguments led to a shoot-out in which Mujahid and two Daulatkheles were killed. It was said that Mujahid had surrendered to the Bara peace committee and promised good behaviour only a short time earlier (Human Rights Commission of Pakistan (undated), *State of Human Rights in 2005* http://www.hrcp-web.org/images/publication/annual_report/pdf_2005/1-2.pdf – Accessed 4 October 2006 – Attachment 17).

Dawn: The Jamiat Ulema-i-Islam, Khyber Agency, formed a peace committee of Bara citizens on Tuesday to help improve the law and order situation in the area.

...The *Tanzim Ittehad-i-Ulema* Amn Committee is the fourth of its kind formed during the last 10 years.

...The committee will have a 70-member Shura, presided over by Sheikhul Hadith Maulana Siraj Din. A JUI activist, Alam Said, was appointed its commander. Mr Said was recently released from Bara jail after remaining in custody for his alleged involvement in unlawful activities.

...The committee was banned by the administration due to its creation of parallel courts even allegedly awarding death sentences to murderers ('Peace committee formed in Bara' 2003, *Dawn* website, 30 July <http://www.dawn.com/2003/07/31/nat22.htm> – Accessed 6 October 2006 – Attachment 18).

The effect of tribal *jirgas* beyond the tribal areas

As is noted above, there have been reports of persons being adversely affected by *jirga* rulings in the vicinity of the Sindh province there have also been reports of persons being adversely affected in other areas of Pakistan by the comparable Hindi tradition of *panchayat*). A number of persons affected adversely by such *jirgas* have fled to Karachi to escape the enforcement of *jirga* rulings. Some have been tracked down and returned to their home villages to face punishment and some deaths have been reported in this regard. No reports could be located which referred to retrievals of this kind affecting persons who had fled the Khyber Agency or the north western tribal areas generally. Some examples of the reporting on incidents in the Sindh province follow below:

***Dawn*, 2 March 2006:** Incidents of violence against women and karo-kari cases were increasing due to illiteracy, feudal domination, poverty, disputes and unemployment.

This was the consensus of the seminar held here on Wednesday on "violence against women and the role of lawyers".

The speakers demanded a ban on *jirgas* and an amendment to the Zina Hudood Ordinance. Lawyers, scholars and social workers spoke at the two-day seminar organized by Sindh Development Society (SDS) in the Gymkhana ('Ban on *jirgas*, changes in Hudood law urged' 2006, *Dawn* website, 2 March <http://www.dawn.com/2006/03/02/nat9.htm> – Accessed 11 October 2006 – Attachment 20).

***Dawn*, 21 October 2005:** In Sindh, the High Court's ban on *jirgas* in April last year continues to be flouted with few prosecuted for their defiance. The government will have to display will and tenacity of purpose if it wants to abolish this antediluvian legal system which has long outlived its purpose ('An outdated system' 2005, *Dawn* website, 21 October <http://www.dawn.com/2005/10/21/ed.htm> – Accessed 11 October 2006 – Attachment 19).

***Dawn*, 10 May 2004:** Yet again, a *panchayat* in southern Punjab has gone ahead and meted out barbaric punishment in the form of ordering the rape of two women, allegedly by a landlord who felt he had been humiliated by the women's family.

While some of the *panchayat* members have been arrested and are now claiming that they ordered no such thing, the fact is that firm steps need to be taken to weed out this system of tribal justice, which holds particular sway in the rural hinterland.

The members of this *panchayat* claim that they did not have any such punishment in mind and that the girls had "just" been beaten up to avenge the other family's humiliation.

The Supreme Court needs to take notice of the growing incidence of cases with a parallel system of adjudication doling out all kinds of gruesome and misogynist punishments to the 'guilty'.

The recent judgment of the Sindh High Court banning *jirgas* and their primitive system of justice needs to be followed all over the country so that at least a legal prohibition is placed on bodies which seek to take the law into their own hands ('Banning *panchayats*' 2004, *Dawn*

website, 10 May <http://www.dawn.com/2004/05/10/ed.htm> – Accessed 11 October 2006 – Attachment 23).

Dawn, 21 December 2003: Last September we read of the plight of a newly married couple of Pano Aquil, Shaista Almani and Balaksher Maher, whose marriage was not to the liking of the ‘elders’ of their tribes (amongst whom Sardar Ali Gohar Maher and Sardar Khalid Ahmad Lund), and who, under threat of death, were in hiding anticipating that a jirga would impose upon them the karo kiri death penalty.

...Fearing for their lives, the legally married couple fled up north where friends gave them shelter. However, tribal predators, at the bidding of the tribal elders, tracked them down, and physically dragged them back to their village in Sindh where they were subjected to a forced divorce, and then each delivered to his/her parents. (‘Archenemies of mankind’ 2003, *Dawn* website, 21 December <http://www.dawn.com/weekly/cowas/20031221.htm> – Accessed 11 October 2006 – Attachment 21).

South Asia Citizens Wire, 19 November 2003: Shaista Almani and Balakh Sher Mahar, a young couple from Ghotki in Sindh, who dared to marry against their families’ wishes and reportedly fled the country fearing for their lives, have now been forcibly brought back to Ghotki to face a tribal jirga (Shah, Z. 2003, ‘In The Name Of Love’, PeaceWomen Project website, source: *South Asia Citizens Wire*, 19 November <http://www.peacewomen.org/news/Pakistan/Nov03/love.html> – Accessed 11 October 2006 – Attachment 22).

3. Please provide information on the organisation and activities of the Anti Narcotics Force.

The “Anti Narcotics Force (ANF)” is Pakistan’s “Premier Law Enforcement Agency in the field of narcotics control”. Information on the ANF, sourced from the Pakistan.Gov website, follows below:

The Pakistan Narcotics Board (PNB) was established in the Revenue Division in 1957 to fulfil Pakistan’s obligations under the International Opium Convention of 1925. The Pakistan Narcotics Board consisted of representatives from the provincial governments and some federal ministries and divisions. Pakistan ratified the Single Convention on Narcotic Drugs 1961 on August 15, 1965. To meet its obligations under the said Convention, the government, through a declaration dated March 8, 1973, renamed Pakistan Narcotics Board as the Pakistan Narcotics Control Board (PNCB).

The Anti Narcotics Task Force (ANTF) was established in December 1991. In February 1995, PNCB and Anti Narcotics Task Force were merged to constitute the Anti Narcotics Force (ANF), which is now the Premier Law Enforcement Agency in the field of narcotics control. The ANF is assigned to:

- Streamline coordination procedures among law enforcement agencies for the implementation of international obligations.
- Make earnest endeavours to attain a drug-free society.
- Translate the government’s objectives into reality on issues pertaining to narcotics control. At present, ANF is operating with around 1,500 personnel as against an authorized strength of 2,552.

Other organizations associated with narcotics control are: Airports Security Force, Pakistan Coast Guards, Customs, Provincial Excise and Taxation, Frontier Corps (NWFP and Balochistan), Frontier Constabulary, Pakistan Rangers (Punjab and Sindh), Political Levies/Khasadar Force, Provincial Police (NWFP Punjab, Sindh and Balochistan) and Pakistan Railways Police ('Anti Narcotics Structure of Pakistan' (undated), Pakistan.Gov website, Last updated: 28 January 2006
http://www.pakistan.gov.pk/divisions/ContentInfo.jsp?DivID=11&cPath=101_106_269&ContentID=2995 – Accessed 4 April 2006 – Attachment 24).

In its *International Narcotics Control Strategy Report for 2003*, the US Department of State was concerned by the fact that “[i]n the FATA, the traditional cultivation region, the ANF has very limited jurisdiction”. Similar concerns are not, however, expressed in the US Department of State’s more recent *International Narcotics Control Strategy Report for 2006*. Information on the ANF’s activities, sourced from this more recent report, follows below:

GOP [Government of Pakistan] counternarcotics efforts are led by the Anti-Narcotics Force (ANF) under the Ministry of Narcotics Control, but also include several other law enforcement agencies and the Home Departments of Northwest Frontier Province (NWFP) and Balochistan Province. Counternarcotics cooperation between the GOP and the United States remains strong. US assistance programs in counternarcotics and border security have strengthened the capacity of law enforcement agencies and have improved their access to remote areas where some of the drug trafficking takes place, evidenced by a nearly 61 percent increase in opium seizures in 2005.

...The ANF is the lead counternarcotics agency in Pakistan. Other law enforcement agencies with counternarcotics mandates include the Frontier Corps (FC), the Coast Guards, the Maritime Security Agency, the Frontier Constabulary, the Rangers, Customs, the police, and the Airport Security Force. The GOP recently approved significant personnel expansions in both the ANF and FC Balochistan.

...From January to December 2005, GOP security forces reported seizing 24.3 metric tons of heroin (including morphine-base), and 6.4 metric tons of opium, a 61 percent increase from 2.5 metric tons in 2004. In particular, ANF’s opium seizures increased from .677 metric tons to 3.7 metric tons, and FC’s opium seizures increased from .064 metric tons to 1.2 metric tons.

...Other drugs seized by ANF in 2005 include over 2438 kilograms of opium poppy straw, 38 kilograms of opium liquid, .683 kilogram of Pseudo-Ephedrine, 210,000 of Buprenorphine Injections, ecstasy tablets and other synthetic drugs.

From January to November 30, 2005, GOP authorities reported arresting 33,932 individuals on drug-related charges. As of November 30, 2005, the ANF had registered 437 narcotics cases in the GOP’s court system over the course of 2005, 387 of which were decided with an 89 percent conviction rate. The great majority of narcotics cases that go to trial are uncomplicated drug possession cases involving low-level couriers and straightforward evidence. The problematic cases tend to involve more influential, wealthier defendants. ANF continues to work appeals for seven long-running cases in the Pakistani legal system against major drug traffickers, including Munawar Hussain Manj, Sakhi Dost Jan Notazai, Rehmat Shah Afridi, Tasnim Jalal Goraya, Haji Muhammad Iqbal Baig, Ashraf Rana and Muhammad Ayub Khan Afridi. The ANF has made commendable efforts to address reversals of convictions by hiring its own special prosecutors, who have had admirable results despite limited resources, and by adding attorneys as part of its expansion.

...Although counternarcotics agencies in Pakistan generally need more resources, Prime Minister Shaukat Aziz made a significant decision in 2005 to approve 1,166 new positions in

ANF (500 positions filled in 2005 and 666 which will be filled in 2006), and increase ANF's budget by 15.5 percent to cope with emerging narcotics challenges. The GOP also approved a 10,264 personnel increase in the Frontier Corps Balochistan to enhance the force on Pakistan's border with Afghanistan and Iran.

The US has trained and equipped ANF's Special Investigative Cell (SIC), a vetted, 62-member unit that was established in 2000 to target major trafficking organizations. In 2005, the performance of the SIC continued to improve in intelligence collection and investigations. In particular, the SIC took the critical step of developing a joint High Value Target list with DEA to identify and dismantle the most significant drug trafficking organizations in the region. As of December 10, 2005, the SIC had arrested 101 persons, and conducted a number of joint operations with other national and international law enforcement agencies (US Department of State 2006, *International Narcotics Control Strategy Report for 2006*, 'Pakistan', March, pp.226-231 <http://www.state.gov/documents/organization/62379.pdf> – Accessed 11 October 2006 – Attachment 25; for the earlier 2003 report, see: US Department of State 2004, *International Narcotics Control Strategy Report for 2003*, 'Pakistan', March <http://www.state.gov/p/inl/rls/nrcrpt/2003/vol1/html/29836.htm> – Accessed 11 October 2006 – Attachment 26).

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