

AID AND CONFLICT IN PAKISTAN

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AID AND CONFLICT IN PAKISTAN

EXECUTIVE SUMMARY AND RECOMMENDATIONS

International, particularly U.S., military and civilian aid has failed to improve Pakistan's performance against jihadi groups operating on its soil or to help stabilise its nascent democracy. Lopsided focus on security aid after the 11 September 2001 attacks has not delivered counter-terrorism dividends, but entrenched the military's control over state institutions and policy, delaying reforms and aggravating Pakistani public perceptions that the U.S. is only interested in investing in a security client. Almost two-thirds of U.S. funding since 2002 (\$15.8 billion) has been security-related, double the \$7.8 billion of economic aid. Under an elected government, and with civilian aid levels at their highest in decades, the U.S. and other donors can still play a major part in improving service delivery, supporting key reforms and strengthening a fragile political transition vital to internal and regional stability. Re-orientation of funding from military security purposes to long-term democracy and capacity building support is the best way to guarantee the West's and Pakistan's long-term interests in a dangerous region. But aid policies must be better targeted, designed and executed.

Historically, Pakistan's aid experience has been characterised by steep increases and sudden cut-offs around specific geo-strategic events, such as the anti-Soviet jihad in Afghanistan during the 1980s. That experience still informs Pakistani perceptions of U.S. assistance. As the end of 2014 deadline for the withdrawal of combat forces from Afghanistan approaches, U.S. relations with the military are at an all-time low because of Afghan safe havens in Pakistan's tribal borderlands, as well as the closure of the NATO pipeline after the November 2011 attack on a Pakistani border post in the Federally Administered Tribal Areas (FATA). Many Pakistani stakeholders fear that the U.S. – responding to the military's actions and policies – will again abandon its partnership with the people, and the civilian aid pipeline will be cut off.

These concerns come less than three years after the U.S. Congress passed the Enhanced Partnership with Pakistan Act in October 2009, authorising a tripling of civilian assistance to \$7.5 billion over five years. The bill's underlying goal, supported by the Obama administration, was to broaden engagement beyond a narrow relationship with

the military in order to support civilian institutions and democracy. But Islamabad and Washington will have to overcome the policy divide that has defined their relationship particularly since the 2 May 2011 U.S. raid that led to the killing of al-Qaeda leader Osama bin Laden.

The goal to provide \$1.5 billion annually for five years has fallen short by \$414 million in fiscal year (FY) 2011 and an estimated \$500 million in FY2012. Instead of scaling up its operations in Pakistan, the U.S. Agency for International Development (USAID) is trying to reduce expectations, programs and projects. As relations deteriorate, the Pakistani military, with the civilian bureaucracy's support, has intensified oversight of and interference in aid delivery. Implementing partners, particularly international NGOs, face constant harassment, threats of closure and visa delays and refusals for staff. This has severely impacted all aspects of their operations, from hiring to program implementation. Strained bilateral relations have hampered aid delivery even in areas outside the military's control. Most prominently, the Pakistan Muslim League (Nawaz) (PML-N)-led Punjab government has refused to accept U.S. assistance, suspending government-to-government programs in Pakistan's largest province.

Evolving security threats, in particular kidnappings-for-ransom, have further hampered activities and staff movements, compelling some international organisations to recall staff and scale down and in some cases close operations. In the most prominent case, the International Committee of the Red Cross (ICRC), after the beheading of a kidnapped expatriate worker in Balochistan's provincial capital, Quetta, closed offices in Peshawar, Quetta and Karachi.

The space for USAID and the international NGOs (INGOs) and Pakistani NGOs it funds is also shrinking as a result of the Obama administration's aid policy. These organisations have limited input into program designs and strategies, and their work is constrained by an abundance of rules, regulations and reporting requirements. The decision to channel significantly more funding through Pakistani government institutions is understandable, since building the state's capacity to deliver is vital to democratic transition. So, too, is the effort to go directly to local

NGOs. However, the U.S. must partner with a broader range of NGOs that have proven, credible records but lack a presence in Islamabad or the provincial capitals. The U.S. should also consider extending successful INGO-led programs. Maintaining a balance and finding ways to utilise INGO expertise is vital to fill in gaps in local capacity and would also be useful in helping train and support local government and non-governmental organisations with limited capacity. As that capacity develops, INGOs should be incrementally phased out and their projects turned over to government institutions and local NGOs.

The U.S. administration's focus on large, "signature" infrastructure projects as the top priority of its civilian assistance program has similarly limited USAID's options. The policy is based less on development goals than a bid to win over the Pakistani public through projects that have high visibility and leave an enduring legacy. It depends, however, on a sluggish bureaucracy characterised by opaque, dysfunctional public procurement processes, official corruption and lack of accountability. As a result, appropriated funds get stuck in the pipeline, with USAID consequently coming under intense pressure from Congress to disburse large, unspent funds elsewhere, which risks greater waste. While Pakistan desperately needs water, electricity, roads and telecommunications, projects have to be well designed and should be balanced with support for democratic strengthening, capacity building, public education and civilian law enforcement.

Since building state capacity is vital to the democratic transition, the U.S. and other international partners should not reduce their measures of impact to a bricks and mortar game, but instead focus on improving the state's ability to deliver not just more but better quality services. In formulating policy with major ramifications for aid delivery, they should also consult key stakeholders, including local civil society organisations and Pakistani and international NGOs with a solid track record, as well as the national and provincial legislatures.

Congress has rightly expressed strong disapproval of some of the Pakistan military's actions. It has placed conditions on security-related assistance in existing and proposed legislation, requiring the secretary of state's certification that the military does not subvert political and judicial processes, has ceased support to extremist groups and brings personnel responsible for human rights violations to account. Unfortunately, the administration has yet to apply such conditions rigorously. Its ability to rubber-stamp certifications in the future may, however, be limited given increasing Congressional scrutiny. It would be well served to follow the legislature's lead by rigorously applying restrictions on military aid. Rather than throwing good money after bad in an attempt to cajole an unreliable partner into cooperating, it should shift the focus of its counter-terrorism strategy to civilian law enforcement

agencies, which could deliver significant results if properly authorised and equipped by the civilian government.

For its part, Congress should not allow frustrations with the Pakistani military to affect either civilian assistance or more general engagement with the elected government and representative institutions. It should realise that willingness to spend money on Pakistan on the one hand but a reluctance to explore creative alternatives to existing programs on the other sends confused signals to the Pakistani as well as American publics. It also limits results. Civilian aid levels are still high, despite bilateral tensions, but if programming is guided by short-term security goals, the intended beneficiaries are likely to view the U.S. as at best oblivious and at worst hostile to their needs. Strengthening democratic institutions should not be seen solely as a political goal, but also as the means to stabilise a fragile country, addressing development priorities and shoring up peace in a conflict-prone region.

RECOMMENDATIONS

To make explicit, in policy and implementation, a re-orientation of aid from military to long-term support for civilian institutions, with a focus on democratic strengthening, capacity building, economic growth and civilian law enforcement

To the U.S. Government:

1. Apply existing conditions on military assistance and refrain from penalising civilian assistance due to the Pakistani military's actions and policies.
2. Give USAID a greater say in devising foreign policy development goals and on key decisions with regard to implementation, including aid delivery and measures of impact.
3. Give implementing partners significantly more ownership over USAID projects, including meaningful participation in designing programs, determining priorities and assessing realistic timetables and measures of performance.
4. Reset the priorities of civilian assistance to focus on democratic strengthening, capacity building, economic growth and civilian law enforcement.
5. Improve aid effectiveness and limit wastage by:
 - a) working, alongside Pakistani institutions, with local and international NGOs with a proven and credible track record in Pakistan;
 - b) assuring that investments in large infrastructure projects have strong local and national support so as to reduce the chance that their implementation will be delayed or blocked;

- c) developing accountable management tools (by adapting lessons learned in democratic transition elsewhere) so as to increase the number of small grants that reach smaller community-based NGOs;
 - d) emphasising impact assessments that measure institutional strengthening and are not a simple numbers game focused on output;
 - e) supporting public-private partnerships, many already in existence, under which the national and/or provincial governments enter into long-term contracts for service delivery with local NGOs that have a good track record;
 - f) enhancing monitoring and oversight mechanisms by adopting a multi-tiered process incorporating local civil society organisations and national and provincial parliamentary public accounts and relevant standing committees; and
 - g) conditioning FATA aid on reform of the region's corrupt and dysfunctional bureaucracy, including abolition of the FATA secretariat and the office of the political agent and transfer of their powers to the Khyber Pakhtunkhwa (KPK) secretariat, relevant provincial line ministries and district departments.
6. Enhance the state's ability to deliver services and manage projects by:
- a) building the capacity of civil service training institutions by providing instructors and teaching materials on best international practices of public policy, fiscal policy, financial management, infrastructure development, human resource management, energy and agriculture; and
 - b) leveraging assistance to stimulate dialogue on vital fiscal, energy sector and education reforms.
7. Refrain from efforts to publicise U.S. assistance that undermine rather than improve the U.S. image in Pakistan; and allow local implementing organisations more leeway in determining whether USAID branding would bolster or jeopardise individual programs, including assessments of the security of and community response to services and supplies carrying the USAID logo.
8. Terminate any funding to influence the opinions of Pakistani clerics and end any support to the madrasa sector, shifting those resources to the public education system.
9. Enhance rule of law programs by:
- a) shifting the focus of security assistance to making Pakistan a strong criminal justice partner, through support for civilian law enforcement agencies and criminal prosecution;
 - b) supporting the modernisation and enhancing the counter-terrorism capacity of the police and civilian law enforcement agencies;
 - c) balancing funding to the police with a robust policy dialogue on modernising the penal code, criminal procedure code and evidence act;
 - d) urging national and provincial legislatures to pass promised police reforms to ensure operational autonomy and empower oversight bodies such as the national, provincial and district public safety commissions and the National Police Management Board;
 - e) refraining from providing any support to alternative dispute resolution mechanisms, instead focusing resources on improving the formal justice system's capacity to dispense justice; and
 - f) sending unambiguous signals to the military that illegal detentions, extrajudicial killings and other human rights violations in the name of counter-terrorism or counter-insurgency are unacceptable, by conditioning military aid on credible efforts by the leadership to hold any persons found committing such acts to account and by vigorously implementing the Leahy Amendment with respect to units alleged to have committed human rights abuse.
- To facilitate implementation of projects, particularly by removing bureaucratic and military constraints on the activities of local and international NGOs*
- To the National and Provincial Governments of Pakistan :**
10. Send clear signals that they want to continue a relationship with international partners, by:
- a) removing restrictions on NGOs and their staff and resuming registration of INGOs;
 - b) ending the 11th Army Corps' right to approve no-objection certificates (NOCs) for NGOs and their staff;
 - c) directing the civil bureaucracy to reduce and ultimately phase out NOC requirements for INGOs; and
 - d) easing the process for foreign NGO workers to obtain residence and visit visas.
11. Honour the spirit of the eighteenth amendment to the constitution by:
- a) ending the role of the finance ministry's Economic Affairs Division (EAD) to oversee and regulate foreign donors and transferring those responsi-

- bilities to the Council of Common Interests (CCI), which is constitutionally authorised to deal with foreign assistance; and
- b) prioritising the devolution of resources to provincial governments and line departments, in accordance with the eighteenth amendment, so that resources match responsibilities.
12. Develop in all four provinces coherent development strategies that include far greater government investment in health, education and social welfare.
 13. Initiate a national dialogue, under the CCI's lead, about fiscal, energy and water sector reforms and present a reform package in parliament.
 14. Strengthen efforts to bring FATA into the Pakistani mainstream by abolishing the FATA secretariat and the office of the political agent and transferring their authority to the KPK secretariat, relevant provincial line ministries and district departments; implementing the August 2011 FATA reforms properly; and continuing the process of incorporating FATA into the federal constitutional framework, with full political, economic and human rights.

Islamabad/Brussels, 27 June 2012

AID AND CONFLICT IN PAKISTAN

I. INTRODUCTION

Pakistan's abrupt transition from a target of international sanctions to one of the largest recipients of international aid has warped rather than improved political processes, institutions and functioning.¹ Despite the transformation in February 2008 from a military regime to an elected civilian government, its international partners, particularly the U.S., continue to prioritise military-dominated counter-terrorism and counter-insurgency goals even as they pursue deeper engagement with the civilian leadership and the strengthening of civilian institutions.

In October 2009, the U.S. Congress passed and President Obama signed the Enhanced Partnership with Pakistan Act, widely referred to as the Kerry-Lugar-Berman (KLB) bill, authorising a tripling of economic assistance to \$7.5 billion over five years.² While this was a major shift, from a narrow military-to-military relationship to strengthening civilian institutions and a nascent democracy, it has yet to meet its stated goals. On the contrary, less than two years after the launching of a new strategic partnership, both countries are preparing for a far more limited alliance. Relations have deteriorated since 2011. The killing of two Pakistanis by a CIA contractor in January of that year, the 2 May U.S. raid that killed Osama bin Laden near a major military academy in Abbottabad, and NATO airstrikes in November that killed 24 Pakistani soldiers in the tribal belt bordering on Afghanistan, have stymied efforts to deepen ties.

¹ For further analysis of aid, see Crisis Group Asia Reports N°212, *Reforming Pakistan's Prison System*, 12 October 2011; N°196, *Reforming Pakistan's Criminal Justice System*, 6 December 2010; N°178, *Pakistan: Countering Militancy in FATA*, 21 October 2009; and N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009; and Crisis Group Asia Briefings N°111, *Pakistan: The Worsening IDP Crisis*, 16 September 2010; and N°93, *Pakistan's IDP Crisis: Challenges and Opportunities*, 3 June 2009.

² After principal sponsors Senators John Kerry and Richard Lugar and Representative Howard Berman. "Enhanced Partnership with Pakistan Act of 2009", Congressional Record (Senate S9813), 24 September 2009; (House H10108), 30 September 2009.

There have been some positive developments, including stricter U.S. conditions on military assistance and higher priority for the rule of law. The Pakistan Peoples Party (PPP)-led government and the elected parliament have enacted significant political and constitutional reforms. But frustrations in Washington with the Pakistani military's policies and preferences could adversely affect civilian assistance, and there are fears that Congress may drastically reduce or even cut such aid altogether, despite administration opposition.

Originally tasked to scale up its mission in Pakistan following the Kerry-Lugar-Berman bill's passage, the U.S. Agency for International Development (USAID) has been compelled to lower expectations and downsize programs and projects. For the time being, aid levels remain high. The U.S., and the donor community in general, can still play a major part in improving service delivery, supporting democratic reforms, and stabilising a fragile political transition, the future of which is vital for Pakistan's domestic stability. However, if donors do not meaningfully consult a broad range of Pakistani stakeholders when devising policies and strategies, aid programs are likely to miscarry. Hasty decisions on who gets what, informed by short-term political rather than development goals, will only result in waste, poor programming and public doubts on both sides about the benefits of foreign assistance.

To be sure, donors and their implementing partners face increasingly difficult conditions, including an abundance of state-imposed restrictions on staff and activities, as well as rising security threats such as kidnappings-for-ransom. As relations with Washington deteriorate, opponents of international, in particular U.S., aid in Pakistan are gaining ideological ground. Even mainstream political parties are seeking to exploit such sentiments, as in the Punjab provincial government's May 2011 decision, following the raid that killed bin Laden, to refuse U.S. assistance. On 12 April, Pakistan's parliament unanimously approved new guidelines for relations with the U.S., calling for an end to drone strikes. While agreeing to reopen supply lines for non-lethal goods to NATO troops in Afghanistan, it made this conditional on a U.S. apology for the November 2011 strike in the Federally Administered Tribal Area's (FATA) Mohmand Agency,³

³ FATA comprises seven tribal agencies, including South Waziristan, North Waziristan, Kurram, Khyber, Orakzai, Mohmand and

which the Obama administration, insisting that U.S. forces acted in self-defence, has refused.

The U.S. is making a more explicit appeal for Pakistani hearts and minds through development work, and significant resources are being devoted to improving its image. But any effort to better publicise USAID's contribution to development will ultimately fail if the intended recipients do not see concrete improvements to their lives.

This report examines aid policy and delivery, identifying ways to make it more effective and accountable. While it focuses primarily on U.S. assistance because of its scale and the centrality of U.S.-Pakistan relations, it also discusses other key players, such as the UK, European Union (EU), UN and international financial institutions (IFIs). It does not critique individual programs, but refers to them where they raise broader issues about aid policies and approaches. It is based on extensive interviews in the U.S and Pakistan with aid workers, officials, policymakers, local and international NGOs and other stakeholders.

II. PAKISTAN'S AID EXPERIENCE

A. SECURITY-DRIVEN INTERNATIONAL ASSISTANCE

Pakistani perceptions of U.S. assistance, and international aid more generally, are informed by the experience of abrupt swings from high levels of aid to sudden cut-offs, with aid patterns determined by geo-strategic policies and priorities rather than the needs of the people. Pakistan's alignment with the West in the Cold War brought substantial economic and military assistance. After signing a Mutual Defense Assistance Agreement with the U.S. in 1954 and the Baghdad Pact⁴ the following year, Pakistan received over \$1 billion in U.S. military assistance in 1956, the highest level of such assistance until 2002. U.S. aid continued after the military, under General Ayub Khan, staged its first coup in 1958.

U.S. assistance was over half of all international aid,⁵ even as the regime crushed political dissent and competition. In 1962, for instance, the year Ayub promulgated a new constitution, establishing unchecked executive powers in the presidency, economic aid was over \$2.33 billion.⁶ During the 1960s, this was primarily for civilian development and aimed at economic growth. Funds and technical expertise were provided to modernise the agricultural and industrial sectors. Large infrastructure projects, notably the Tarbela and Mangla dams, were financed to help meet energy and irrigation needs.⁷ The perceived success of these efforts is informing U.S. assistance strategies in 2012.

The 1965 and 1971 wars between Pakistan and India brought U.S. generosity to an end. Economic aid was reduced and most military assistance withdrawn. Following the launch of Pakistan's nuclear program in 1974 by Prime Minister Zulfikar Ali Bhutto's PPP government, economic and military aid continued to fall, and it remained at low levels throughout the first democratic transition. Bhutto was ousted in a military coup in 1977 by General Zia-ul-Haq, and executed in 1979. The same year, as Islamists ousted the Shah of Iran, a key Western ally in the region, and the Soviets

⁴ The Baghdad Pact, known after 1958 as the Central Treaty Organisation (CENTO), was a U.S.-sponsored alliance to counter Soviet expansion.

⁵ "U.S. Assistance to Pakistan – Past and Present", USAID Pakistan, www.usaid.gov/pk/about/history.html.

⁶ Adjusted to 2009 dollars. See "Sixty years of US assistance to Pakistan: Get the Data", DataBlog, *The Guardian*, 11 July 2011.

⁷ The dams' construction was agreed as part of a Settlement (replacement) Agreement under the Indus Water Treaty. The World Bank, also the treaty's guarantor, oversaw the projects with major U.S. funding. See Pakistan Water and Power Development Authority (WAPDA) website: <http://wapda.gov.pk/htmls/pgeneration-dam-tarbela.html>.

intervened in Afghanistan, Pakistan regained its geo-strategic importance, becoming a frontline state in the anti-Soviet jihad through the 1980s. In 1981, the U.S. agreed to provide \$3.2 billion in economic and military aid over five years.⁸ While economic aid more than doubled, from \$164 million in 1981 to \$400 million in 1982, military assistance increased most dramatically: almost non-existent in the 1970s, it reached almost \$500 million in 1983.⁹

Concerns about the Zia regime's human rights abuses, refusal to hold credible elections and even pursuit of nuclear capability remained muted. In 1985, Congress passed the Pressler Amendment to condition most military and economic aid on an annual presidential certification that "Pakistan does not possess a nuclear explosive device and that the proposed United States assistance program will reduce significantly the risk that Pakistan will possess a nuclear explosive device".¹⁰ Despite evidence that the Zia regime was building nuclear weapons capacity, however, Presidents Reagan and Bush provided that certification throughout the 1980s.¹¹

The military also benefited from its control over the arms and aid pipelines to Afghanistan. That entrenched its grip over foreign relations, including economic assistance, allowing Zia to further his Islamist agenda at home and in the region. The Reagan administration channelled \$3 billion to the Afghan mujahidin through the Inter-Services Intelligence directorate (ISI), the military's main intelligence agency.¹² The military government designed an aid regime that explicitly linked humanitarian assistance to the anti-Soviet jihad. The

three million Afghan refugees in Pakistan were required to register with one of seven Zia-backed Sunni mujahidin parties in order to receive relief assistance that was channelled through the military.¹³

With Zia's death in 1988, the military handed power to civilians after Benazir Bhutto's PPP won a plurality of seats in general elections and formed a fragile coalition government at the centre. This second democratic transition roughly coincided with the Soviet withdrawal from Afghanistan, the end of the Cold War and the Soviet Union's collapse. Given changed strategic calculations in which it was no longer deemed essential for U.S. national security interests to certify that Pakistan did not possess nuclear weapons capability, President Bush invoked the Pressler Amendment in 1990.¹⁴ Military aid was ceased, and economic assistance drastically reduced, from \$548 million in 1990 to \$149 million in 1991 and \$27 million in 1992.¹⁵

Economic aid remained low in the 1990s. USAID closed its mission in 1994 and the little that flowed to the country, under a humanitarian assistance regulation, bypassed the civilian government to go through NGOs.¹⁶ Following the withdrawal of Western political and economic support and facing a financial crunch, democratically-elected governments were forced to obtain high-interest loans. Already in 1988, as Western assistance began to shrink, Pakistan agreed to an International Monetary Fund (IMF) structural adjustment package. Stringent conditions, including freezing public sector wages and reducing subsidies, undermined successive civilian governments' popularity and, some analysts argue, contributed to increased poverty and inequality.¹⁷ Nuclear tests in May 1998, in response to those of India that month, and Pervez Musharraf's military coup in October 1999 further isolated Pakistan globally. A political narrative of international betrayal, alliances of convenience and abuse of Pakistani cooperation began to congeal.

⁸ Susan P. Epstein and K. Alan Kronstadt, "Pakistan: U.S. Foreign Assistance", Congressional Research Service, 28 July 2011, p. 5; Epstein and Kronstadt, "Pakistan: U.S. Foreign Assistance", Congressional Research Service, 1 June 2012, p. 6.

⁹ U.S. aid to Pakistan's military stagnated around \$1 million a year throughout the 1970s. "Sixty years of U.S. assistance", op. cit.

¹⁰ "Foreign Assistance Act of 1961 (P.L. 87-195) Sec. 620E (e) as amended", in "Legislation on Foreign Relations Through 2002", U.S. House of Representatives and U.S. Senate, July 2003, p. 316.

¹¹ Testifying before the Senate Committee on Foreign Relations in July 1992, Senator John Glenn (sponsor of the 1978 nuclear non-proliferation act) said, "I believe that the Pressler amendment was violated almost immediately after it was enacted, when U.S. assistance and arms were transferred even though our government knew Pakistan was continuing its pursuit of the bomb". "The Pressler Amendment and Pakistan's Nuclear Weapons Program: Testimony of Senator John Glenn – U.S./Pakistan Nuclear Issues", U.S. Senate, 31 July 1992, www.fas.org/news/pakistan/1992/920731.

¹² Lawrence Wright, "The double game: the unintended consequences of American funding to Pakistan," *The New Yorker*, 16 May 2011.

¹³ Including Burhanuddin Rabbani's Jamiat-e Islami; Gulbuddin Hekmatyar's Hizb-e Islami; a splinter group of the Hizb; Abd al-Rabb Al-Rasul Sayyaf's Ittehad-e Islami; Mohammad Nabi Mohammadi's Harkat-e Inqelab-e Islami Afghanistan; Sebghatullah Mujaddedi's Jabha-e Nijat-e Milli-yi Islami; and Pir Sayed Ahmad Gailani's Mahaz Milli-yi Islami-yi Afghanistan. Crisis Group Asia Reports N°175, *Afghanistan: What Now for Refugees?*, 31 August 2009; and N°210, *Afghanistan: Aid and Conflict*, 4 August 2011.

¹⁴ Epstein and Kronstadt, 28 July 2011, op. cit., p. 5.

¹⁵ "Sixty years of U.S. assistance", op. cit.

¹⁶ Murad Ali, "U.S. Aid to Pakistan and Democracy", *Policy Perspectives*, Vol. 6, No. 2, December 2009.

¹⁷ From 1987-1988 to 1998-1999, the poor increased from 24 to 30 per cent of the population, and income distribution worsened. Jamil Nasir, "IMF Programs in Pakistan (1988-2008) – an Analysis", *Criterion*, Vol. 6, No. 4, October-December 2011.

B. POST-2001 DONOR ENGAGEMENT

With the Musharraf regime pledging its cooperation in the Bush administration's war on terror and the U.S.-led intervention to oust the Taliban in Afghanistan, sanctions were lifted and international aid returned. "The reality of U.S. assistance since the September 11 attacks", it was observed, "is not money intended to transform the nature of the Pakistani state or society or to strengthen Pakistan's internal stability. In effect, it is ... a 'thank you' to Musharraf's regime for the critical role Pakistan has played in Operation Enduring Freedom".¹⁸ In September 2001, following the al-Qaeda attacks in the U.S., the Bush administration released \$600 million in emergency cash to Pakistan.¹⁹ The EU, Canada, Japan and IFIs also extended grants and loans and agreed to reschedule debt payments. Pakistan's foreign exchange reserves, then around \$700 million, were \$7 billion by August 2002.²⁰

During Musharraf's tenure, the U.S. provided over \$13 billion in military and economic aid,²¹ with military assistance accounting for over two-thirds, mostly through Coalition Support Funds (CSF).²² The approach was described by well-informed analysts as billions of dollars "provided without an overall perspective or any real sense of objective aside from support to Pakistan's military".²³ In return, Musharraf agreed to cooperate in the U.S.-led war on terror, including informal agreements to provide the primary route for supplies to NATO forces in Afghanistan. His regime, however, also gave support and sanctuary to the Afghan insurgents, including Mullah Omar's Quetta-based shura (council), the Haqqani network and Hekmatyar's Hizb-e Islami.²⁴ The military also took selective action in FATA, bordering on south-eastern Afghanistan, targeting some Pakistani militant

groups while entering into peace deals with others who were Afghanistan – rather than Pakistan–focused.²⁵

Bilateral economic aid, primarily distributed through USAID, lacked transparency and was seldom conditioned on meeting clear, mutually agreed benchmarks. According to a former U.S. National Security Council official, "the main idea was to give Pakistan something so that they would allow for all the strategic cloak-and-dagger stuff".²⁶ A former administration official described direct budget support to individual Pakistani ministries during this period as "even more opaque than CSF [Coalition Support Funds]".²⁷ Budget support, for instance, was officially intended to relieve part of Pakistan's debt repayment so that it could dedicate more resources to the social sector.²⁸ Yet, public spending on education declined from 2.6 per cent of GDP in 1990 to 1.8 per cent in 2002-2003, while the regime increased military spending, diverting billions – by Musharraf's admission – to buy arms to counter a perceived Indian threat.²⁹

The U.S. and other donors largely allowed Musharraf to determine aid priorities and, by doing so, helped the military to consolidate its hold over state institutions. Donor support for his Devolution of Power plan, for example, was drafted with technical help from and its implementation supported by the UN Development Program (UNDP). Announced in August 2000, the plan pledged to build genuine democratic institutions and empower people at the grassroots by placing local political and administrative powers under elected representatives, reversing a system that subordinated elected politicians to bureaucrats. But with elections held on a non-party basis and amid allegations of mass rigging and other critical flaws, the scheme allowed the military regime to create a pliant political elite at the local level.³⁰

Local officials were mobilised to rig the April 2002 presidential referendum and October 2002 general elections in favour of Musharraf's political allies, primarily the Pakistan Muslim League (Quaid-i-Azam) (PML-Q) and the six-party Islamist alliance, Muttahida Masjli-e-Amal (MMA).³¹ Amendments

¹⁸ Craig Cohen and Derek Chollet, "When \$10 Billion Is Not Enough: Rethinking U.S. Strategy Towards Pakistan", *The Washington Quarterly*, Spring 2007, p. 11.

¹⁹ Epstein and Kronstadt, 28 July 2011, op. cit., p. 6.

²⁰ Crisis Group Asia Report N°40, *Pakistan: Transition to Democracy?*, 3 October 2002, p. 18.

²¹ From FY2002 to FY2008, U.S. aid to Pakistan, in 2009 dollars, was \$13.397 billion. "Sixty years of U.S. assistance", op. cit.

²² From FY2002 to FY2008, Pakistan received, in 2009 constant dollars, \$9.192 billion in U.S. military assistance, including \$7.368 billion under the Coalition Support Funds. Ibid.

²³ Cohen and Chollet, op. cit., p. 15.

²⁴ See Crisis Group Asia Reports N°158, *Taliban Propaganda: Winning the War of Words?*, 24 July 2008; and N°123, *Countering Afghanistan's Insurgency: No Quick Fixes*, 2 November 2006.

²⁵ See Crisis Group Asia Reports, *Pakistan: Countering Militancy in FATA*, op. cit.; and N°125, *Pakistan Tribal Areas: Appeasing the Militants*, 11 December 2006.

²⁶ Crisis Group interview, Washington D.C., January 2012.

²⁷ Crisis Group interview, Washington D.C., January 2012.

²⁸ Cohen and Chollet, op. cit., p. 14.

²⁹ Crisis Group Report, *Pakistan: Transition to Democracy?*, op. cit., p. 18. See also "Musharraf admits U.S. aid diverted", BBC News, 14 September 2009.

³⁰ For details on the Musharraf plan and later amendments, see Crisis Group Asia Briefing N°43, *Pakistan's Local Polls: Shoring Up Military Rule*, 22 November 2005; and Asia Report N°77, *Devolution in Pakistan: Reform or Regression?*, 22 March 2004.

³¹ For more on election irregularities under Musharraf, see Crisis Group Asia Reports N°203, *Reforming Pakistan's Electoral System*, 30 March 2011; and N°137, *Elections, Democracy and Sta-*

to the Local Government Ordinance (2001) in 2005 and subsequent local polls further curtailed local government's nominal political, administrative and financial autonomy. Donors, however, continued to channel their funds to the military's devolution plan, justifying it as support for democratic governance. Similarly, the U.S., UN, EU and UK channelled significant funds to the Election Commission of Pakistan (ECP) for the 2002 national elections. By failing to condemn electoral abuses and continuing to support deeply flawed electoral institutions, they helped the military regime gain international legitimacy and consolidate its hold at home.³²

C. A NEW POLITICAL FRAMEWORK

In 2007, a movement for the restoration of democracy, comprising the legal community, political parties and civil society activists, brought about the downfall of Musharraf's military regime. After elections in February 2008, a PPP-led coalition government was formed. The fledgling democratic coalition faced a deteriorating economy and major security threats. Given the importance of Pakistan's stability for broader strategic objectives, influential international actors, including the U.S., appeared willing to support the new government as it addressed these challenges.

On 26 September 2008, Presidents Asif Ali Zardari and Barack Obama co-chaired the launch of the Friends of Democratic Pakistan (FoDP) in New York, a forum through which donors could support the government's efforts to consolidate democratic institutions and confront the myriad social, economic and security challenges. The then UK foreign secretary, David Miliband, described the meeting as sending "a very strong signal of political support and also of practical support to the democratically elected government of Pakistan".³³ Yet, FoDP's ability to facilitate dialogue between the international community and Islamabad had major limitations.

Analysts and donor representatives argued the group was too large and diverse to use its influence to press for policy reforms in Islamabad.³⁴ Moreover, the FoDP

countries did not support the financial bailout Islamabad sought. With no other choice to avoid defaulting on its foreign debt, and also in order to pursue macro-economic stability, the government entered into a Stand-by Arrangement with the IMF for a \$7.6 billion loan (later raised to \$11.3 billion) in November 2008. The IMF imposed politically difficult conditions, such as ending power sector subsidies, imposing a general sales tax on goods and services and taxing agricultural benefits.³⁵ At the April 2009 FoDP meeting, donor countries and IFIs pledged over \$5 billion in aid,³⁶ with host Japan promising \$1 billion, but "premised on the continued steady implementation of the IMF program underway since November 2008".³⁷ Implementing an austerity program, no matter how desirable, requires political will but also stability; this has eluded the government. By linking aid to IMF conditionalities, with little flexibility, donors have failed to recognise the stresses of a young democratic order.

Where the democratic dispensation has delivered results, donors have been hesitant to support tangible reforms. Recognising that federalism, superimposed on a parliamentary system, is essential for the multi-ethnic, multi-regional country, parliament unanimously passed the eighteenth amendment to the constitution in 2010, restoring parliamentary democracy, but also reinforcing the federalist structure. The amendment repealed the list of subjects on which the centre and the provinces could both legislate, but in which the federation's authority prevailed and devolved seventeen ministries to the provincial level, including health, education, and social welfare.³⁸

Pakistani lawmakers contend, with considerable justification, that donors have been at best lukewarm to, and in many instances critical of, key democratic reforms. "How do they complain about us not 'helping ourselves'?", asked Boshar Gohar, central vice president of the Awami National Party (ANP), a Pashtun majority, secular political party that heads the provincial government in Khyber Pakhtunkhwa Province (KPK) in coalition with the PPP. Until the eighteenth amendment, donors maintained links with implementing partners, as well their own consulates, in the four provinces, but these were largely managed through the federal bureaucracy in Islamabad. Gohar contended: "Donors were uncomforta-

bility in Pakistan, 31 July 2007; and Asia Briefing, *Pakistan's Local Polls: Shoring Up Military Rule*, op. cit.; also Samina Ahmed, "Pakistan: no time to lose", *The Australian*, 7 September 2011.

³² Crisis Group Report, *Reforming Pakistan's Electoral System*, op. cit.

³³ "Friends of Pakistan group pledges aid for stabilisation", Agence France-Presse, 26 September 2008.

³⁴ Crisis Group interviews, Islamabad, May 2012; "Aiding Without Abetting: Making U.S. Civilian Assistance to Pakistan Work for Both Sides", Working Group on Pakistan, Pol-

ly Nayak chair, Woodrow Wilson International Center for Scholars, 2011, p. 20.

³⁵ Syed Fazl-e-Haider, "IMF's double-edged rescue for Pakistan", *Asia Times*, 26 November 2008; Sajid Chaudhry, "Pakistan to repay \$1.2bn IMF loan in February", *Daily Times*, 15 January 2012.

³⁶ "Ministerial Meeting of the Friends of Democratic Pakistan/Donors' Conference Tokyo, 17 April 2009", press release, foreign ministry, Islamabad, 17 April 2009.

³⁷ "Statement by H.E. Mr. Hirofumi Nakasone, Minister for Foreign Affairs At the Opening Session of the Pakistan Donors Conference", Tokyo, 17 April 2009.

³⁸ Text of eighteenth amendment, www.infopak.gov.pk.

ble with devolution [under the amendment] because now they had to go out and understand the provinces”.³⁹

Devolution, by increasing bureaucratic legwork and related operating costs, has certainly added to donors’ resource constraints, including USAID’s. There are also security-related constraints, particularly in the two provinces worst hit by terrorism and insecurity, KPK and Balochistan. These were reflected in cutbacks in programming, no matter how vital. Even before insecurity became as widespread as today, implementing partners within and outside the provincial capitals complained that donors did not engage them adequately on the ground.⁴⁰ Yet, strengthening local and provincial governance and delivery capacity is critical to extending services and building democracy.

Some donors have been particularly concerned about the health programs that, post-amendment, were transferred to provincial health ministries with limited capacity. They have warned the finance ministry’s Economic Affairs Division (EAD), which oversees relations with them, that they may stop funding health programs. In response, the prime minister approved the federal government resuming the lead in many programs, despite provincial devolution, “in the interest of public health and to safeguard the vital support being provided by international agencies”.⁴¹

With much bureaucratic and some political resistance to empowering the federal units, devolution has been uneven and problematic for donors. A U.S. official said, “the baton has still not been handed off” to the provinces.⁴² Yet, donors should not use this as justification to avoid or delay engaging with provincial governments. They could also partner with Islamabad-based INGOs that had productive relationships with those governments well before the amendment. An INGO country director said, “our relationships are much better in the provinces than with the federal government, which sees us as competitors for international funds”.⁴³ But implementing agreed donor policies to strengthen national stakeholder ownership of development⁴⁴ requires clear strategies for shifting management responsibility from INGOs to the provincial and local partners – provided

there is effective oversight, bottom-up and top-down, on those institutions.

Above all, the international community, particularly the U.S., should clearly signal support for democratic transition. Engaging solely with the military in the belief it is the most effective partner against militancy and extremism has failed. A policy based on the objectives of the Kerry-Lugar-Berman bill – to broaden engagement from a narrow military-to-military relationship to the strengthening of civilian institutions and a nascent democracy, and with a development strategy and aid programs based on pursuing those objectives – would pay off in the near- as well as long-term. Democratic transition should be perceived not just as a political end, but also as the means to stabilise a fragile country, addressing development priorities and shoring up peace in a conflict-prone region.

³⁹ Crisis Group interview, Islamabad, May 2012.

⁴⁰ Crisis Group interviews, NGOs, April-May 2012.

⁴¹ Amir Wasim, “Senators protest violation by govt”, *Dawn*, 10 May 2012.

⁴² Crisis Group interview, Islamabad, May 2012.

⁴³ Crisis Group interview, Islamabad, May 2012.

⁴⁴ See “A new deal for engagement in fragile states”, International dialogue on peace-building and state-building, www.oecd.org/document/22/0,3746,en_21571361_43407692_49151766_1_1_1_1,00.html.

III. MILITARY ASSISTANCE: A FAILED STRATEGY

Almost two-thirds of U.S. assistance since 2002 (\$15.8 billion) has been for security purposes, compared to economic assistance of \$7.8 billion. CSF, which Congress began appropriating in 2002 to reimburse Pakistan and other nations for “their operational and logistic support for U.S.-led counter-terrorism operations”, are the primary source of taxpayers’ money to Pakistan.⁴⁵ Pakistan’s reimbursements are linked to the U.S.-led Operation Enduring Freedom in Afghanistan, both for military operations against FATA-based militants and NATO’s use of Pakistani airfields, seaports and ground lines of communication.⁴⁶ By May 2011, the U.S. had paid \$8.9 billion in CSF reimbursements to Pakistan, in addition to military aid channelled through other funding streams such as Foreign Military Financing (FMF) and the Pakistan Counterinsurgency Fund (PCF).⁴⁷ Yet, the military continues to support Afghan insurgents.⁴⁸

Officially, the U.S. is not withholding CSF funding, but the money has not been disbursed due to differences over a number of issues.⁴⁹ However, the disbursement has not been made contingent on the military ending such support or that to anti-India oriented Pakistani jihadi groups such as the Lashkar-e-Tayyaba and Jaish-e-Mohammed. Increasingly sceptical, nevertheless, of the military’s sincerity in countering al-Qaeda and other extremists, many in Congress have begun to question the efficacy of military assistance, particularly after bin Laden was killed in Abbottabad in May 2011. Soon

⁴⁵ About \$9.5 billion of the \$15.8 billion has been funded through the Defence Department (DoD), \$6.4 billion through the State Department. Epstein and Kronstadt, “Pakistan: U.S. Foreign Assistance”, Congressional Research Service, 10 April 2012, pp. 5, 12.

⁴⁶ Epstein and Kronstadt, 28 July 2011, op. cit., p. 12.

⁴⁷ Epstein and Kronstadt, 10 April 2012, op. cit.

⁴⁸ Crisis Group Asia Reports N°221, *Talking about Talks: Towards a Political Settlement in Afghanistan*, 26 March 2012; and N°207, *The Insurgency in Afghanistan’s Heartland*, 27 June 2011.

⁴⁹ “As part of a reported review of the aid program for Pakistan, the Obama administration in mid-2011 adjusted military aid levels. Congressional services confirmed that an indefinite hold had been placed on delivery of about \$440 million worth of counter-insurgency training and equipment due to the reduced military trainer presence in Pakistan, along with obstacles to fulfilling agreements between the two countries. In addition, according to these sources, delays in processing U.S. visa requests had led to the suspension of \$300 million in anticipated CSF reimbursements. U.S. auditors have approved \$600 million in CSF payments for the first half of FY2011 but these funds have not been transferred to date”, Epstein and Kronstadt, 1 June 2012, op. cit., p. 3.

after, the ranking House Foreign Affairs Committee Democrat, Howard Berman, said:

I don’t think our military assistance is serving the interests we are intending it to serve. What I’m asking the administration to do is focus on getting Pakistan to change its approach and go after extremist groups. If they’re not successful, we should reconsider giving them the money.⁵⁰

On 24 May 2012, a Senate appropriations subcommittee voted to cut military aid under the Foreign Military Financing Act by \$33 million of a total \$250 million for FY2013 – \$1 million for every year that Dr Shakil Afridi, the physician in Islamabad who helped trace bin Laden, was sentenced to imprisonment by a Pakistani tribal jirga.⁵¹

Even without these misgivings about the military’s intention and priorities, the U.S. and Pakistan already had major differences over how military assistance was disbursed. According to a U.S. government official, “for a while, we were giving \$80 million–\$100 million a month under CSF, and nobody was asking any questions”.⁵² According to a former U.S. official, many of the military’s claims under CSF were at best questionable, often based on “things that look like receipts”.⁵³

The scale of CSF reimbursements – as much as \$100 million a month in late 2006⁵⁴ – began raising concerns around 2007. In 2008, the U.S. Government Accountability Office (GAO) found that oversight of Pakistani reimbursement claims was lacking, concluding that the Department of Defence (DoD) “may have reimbursed costs that (1) were not incremental, (2) were not based on actual activity, or (3) were potentially duplicative”.⁵⁵ There were also concerns that Pakistan was using CSF to build its military capability against India. Efforts to scrutinise reimbursements more closely have since intensified.⁵⁶

While CSF was not subject to aid conditions, the U.S. has often withheld or delayed payments on the grounds that receipts were inadequate or still being processed. The sides also tend to differ widely on sums to be disbursed. For example, in May 2012 the U.S. insisted it owed \$1 billion in

⁵⁰ Josh Rogin, “Congress prepares options to cut Pakistani aid”, “The Cable”, Foreign Policy, 31 May 2012.

⁵¹ “Senate panel slashes Pakistan aid over conviction of doctor who helped U.S. get Osama bin Laden”, Associated Press, 24 May 2012; and “FY2013 State, Foreign Operations, and Related Programs Appropriations Bill”, U.S. Senate Appropriations Subcommittee, 24 May 2012, pp. 202-205.

⁵² Crisis Group interview, Washington D.C., February 2012.

⁵³ Crisis Group interview, Washington D.C., January 2012.

⁵⁴ Cohen and Chollet, op. cit., p. 13.

⁵⁵ “Combating Terrorism: Increased Oversight and Accountability Needed Over Pakistan Reimbursement Claims for Coalition Support Funds”, GAO, June 2008, p. 1.

⁵⁶ Epstein and Kronstadt, 10 April 2012, op. cit., pp. 12-13.

CSF arrears, while Pakistan claimed it was owed possibly more than three times that.⁵⁷ According to a Congressional staffer, “the whole notion of reimbursements has never been popular”. Fixed sums are problematic, “because they cannot be tied to specific operations”.⁵⁸

With the Pakistani military also seeking alternatives to CSF because of frequent delays in payments, U.S. officials have described the fund as a “millstone around the neck” of relations.⁵⁹ However, according to informed observers in Washington, the U.S. intelligence community has opposed State Department calls for a clearer, transactional agreement on NATO supply routes, preferring informality and ambiguity to enable greater flexibility in use.⁶⁰

Since Pakistan’s closure of the NATO supply routes in November 2011, there have been several calls within U.S. policymaking circles to rethink CSF. In May 2012, Congress passed its National Defence Authorisation for 2013, which included linking CSF disbursements to re-opening of the routes.⁶¹ Even before the closure, Congress had demanded that the Defence and State Departments explain how the administration would phase out CSF as it concluded Operation Enduring Freedom.⁶² The House of Representatives’ version of the National Defence Authorisation bill for 2012 called for recommendations (if any) to create alternatives to CSF or to terminate it, given the transition in Afghanistan. “Once CSF goes away, it will allow more policy flexibility for the U.S.”, argued a former Administration official.⁶³

In 2009, Congress established a fund to build Pakistan’s counterinsurgency capacity.⁶⁴ At the same time, it has pushed for more stringent conditions, restrictions and reporting requirements. The Kerry-Lugar-Berman bill, for example, restricts all security-related assistance and

arms transfers unless the secretary of state annually certifies to relevant committees that Pakistan is cooperating in efforts to dismantle nuclear weapons-related supplier networks; the military has ceased support to extremist groups, “particularly to any group that has conducted attacks against U.S. or coalition forces in Afghanistan, or against the territory or people of neighbouring countries”; and the security forces are not “materially and substantially subverting the political or judicial processes of Pakistan”.⁶⁵

In March 2011, less than two months before bin Laden was killed near a major Pakistani military academy, Secretary of State Hilary Clinton issued the first such certification, drawing significant criticism from some Congressional circles. A U.S. official described it as “rubber-stamping the Kerry-Lugar-Berman requirements”, which considerably “harmed Secretary Clinton’s credibility. People here wish that the national security waiver was used more seriously”.⁶⁶ According to a congressional staffer, “it’s laughable that the State Department would certify Pakistan with a straight face But now, there is less tolerance in Congress. Previously they were willing to accept it, but now the message to the State Department is, ‘We’ll hold your feet to the fire’”.⁶⁷ Facing such pressure, a U.S. official said there was now less willingness to certify that the Pakistani military was taking effective action against jihadi groups.⁶⁸ It is yet to be seen, however, if the military’s perceived utility, particularly during the Afghanistan transition, will result in yet another certification, if agreement is reached to allow the supply lines to reopen.

Congress has continued to strengthen language in legislation to more specifically link military aid, including CSF reimbursements and PCF funding, to the military’s counterinsurgency and counter-terrorism performance. The FY2012 National Defence Authorisation Act, for instance, had additional limitations on security assistance, including withholding 60 per cent “of any FY2012 appropriations for the Pentagon’s [PCF] unless the Secretary of Defence reports to Congress a strategy for the use of such funds and the metrics for determining their effectiveness, and a strategy to enhance Pakistani efforts to counter improvised explosive devices [IEDs]”.⁶⁹

In 2011, the U.S. withheld \$1 billion in CSF payments due to Pakistan’s expulsion of and delays in processing visas to U.S. military trainers and blocking of Afghanistan supply lines; \$700 million under PCF were withheld due to the IED

⁵⁷ Missy Ryan, “U.S. doesn’t expect Pakistan to reopen Afghan war supply routes soon”, Reuters, 4 May 2012.

⁵⁸ Crisis Group interview, Washington D.C., February 2012.

⁵⁹ Crisis Group interviews, Washington D.C., February 2012.

⁶⁰ Crisis Group interviews, Washington D.C., January-February 2012.

⁶¹ See “National Defence Authorisation Act for Fiscal Year 2013 – Report of the Committee on Armed Services House of Representatives”, U.S. Congress, Washington D.C., 2012.

⁶² Crisis Group interviews, U.S. Congress, Washington D.C., February 2012.

⁶³ Crisis Group interview, Washington D.C., January 2012.

⁶⁴ The Pakistan Counterinsurgency Fund (PCF) under DoD was later designated the Pakistan Counterinsurgency Capability Fund (PCCF) under the State Department. During FY2011, State returned control to the DoD due to budget cuts. It is thus still referred to as PCF. Josh Rogin, “Budget deal delays State Department takeover of Pakistan fund”, Foreign Policy, 12 April 2011.

⁶⁵ “Enhanced Partnership with Pakistan Act of 2009”, op. cit.

⁶⁶ Crisis Group interview, Washington D.C., February 2012.

⁶⁷ Crisis Group interview, Washington D.C., February 2012.

⁶⁸ Crisis Group interviews, U.S. officials, Washington D.C., February 2012.

⁶⁹ Epstein and Kronstadt, 10 April 2012, op. cit.

reporting requirements and broader policy dispute.⁷⁰ But since the administration has not linked such measures to the military's support to militant groups, the withholding is generally deemed temporary, focussing more on technicalities, processes and overall tensions in relations than a change in the military's behaviour towards jihadi groups.

In May 2012, after the House Armed Services Committee approved a National Defence Authorisation bill for 2013 that called for restrictions in CSF reimbursements, a White House statement suggested that President Obama might veto it:

The Administration strongly objects to the restriction in reimbursement for Pakistan from Coalition Support Funds and the associated certification requirements.... Taken together, the reimbursement restriction and the certification restrictions – some of which require the Secretary of Defence to certify Pakistani cooperation on issues outside of his purview – are proposed at a particularly sensitive time and would severely constrict [the Defence Department's] ability to respond to emergent war-time coalition support requirements, putting at risk the success of our campaign in Afghanistan, and increasing the risk that al-Qaeda and its associates would be able to again enjoy a safe haven in Pakistan.⁷¹

However, without an explicit threat of raised costs and consequences, Pakistan's military is unlikely to end its support to the Afghanistan insurgents, which it views as a way of safeguarding strategic interests once NATO combat forces withdraw from Afghanistan by the end of 2014. A Congressional staffer asked: "At what point will the Pakistani military believe that cutting off military aid is just an empty threat, that the U.S. is just banging its fist on the table?" Another staffer added: "There is a lot of appetite for cutting off military assistance, but no one has seriously considered transitioning to an alternative. It's still a binary: either we give or we do not".⁷²

While the U.S. would be best served by demonstrable redlines for the military, it should delink military and civilian aid and reinforce its engagement with the elected leadership, representative institutions and civil society. According to a former KPK chief secretary, who now heads a Peshawar-based NGO, aid strategy should

clearly state that Washington is not "only interested in investing in a security client", and its sole focus is not merely to extricate itself from Afghanistan as quickly as possible.⁷³ Some U.S. officials acknowledge this; one said, "the leverage that we hoped for through security assistance did not materialise, but now we want to continue a relationship with the Pakistani people".⁷⁴

⁷⁰ K. Alan Kronstadt, "Pakistan-U.S. Relations", Congressional Research Service, 24 May 2012, p. 8.

⁷¹ "State of Administration policy: H.R. 4310 – National Defense Authorisation Act for FY 2013", Office of Management and Budget, Executive Office of the President, 15 May 2012.

⁷² Crisis Group interviews, Washington D.C., February 2012.

⁷³ Crisis Group interview, Khalid Aziz, Peshawar, 19 April 2012.

⁷⁴ Crisis Group interview, U.S. official, Washington D.C., February 2012.

IV. THE CIVILIAN STRATEGY

A. RESETTling PRIORITIES

Upon assuming office in January 2009, the Obama administration established a new institutional infrastructure for overall strategy towards Pakistan, encapsulated in the term, “Af-Pak”. A post of Special Representative for Afghanistan and Pakistan (SRAP) was created, with a dedicated team at the State Department “comprising Afghanistan and Pakistan experts from across the U.S. government”. USAID was reorganised accordingly, establishing an Afghanistan-Pakistan task force that eventually became the Office of Afghanistan and Pakistan Affairs. A senior position of coordinator for economic and development assistance was created at the U.S. embassy in Islamabad. Some analysts characterised the set-up as “too many cooks in the kitchen but no one person in charge”.⁷⁵ It also drew criticism in Pakistan for subordinating the country’s needs to U.S. counter-insurgency objectives in Afghanistan.

U.S. officials stress that there are no integral linkages between Afghanistan and Pakistan development policies or the respective USAID missions. Where linkages exist, they encourage stronger economic links between the two countries, especially to improve cross-border trade; and, particularly given eastern and southern Afghanistan’s dependence on trade with and from Pakistan, to build an infrastructure to support that trade.⁷⁶ USAID’s stabilisation program, moreover, it is stressed, aims to address cross-border violence and militancy, as well as to support efforts to strengthen FATA’s governance and to incorporate the region into the Pakistani mainstream. Such efforts, it is said, would become all the more urgent should security in Afghanistan deteriorate in the run-up to, and after, the withdrawal of foreign combat forces. However, the small grants program in FATA – the bulk of USAID programming in the tribal belt – relates, they insist, more to governance and services and has no direct relationship to U.S. interests in Afghanistan.⁷⁷

The October 2009 Kerry-Lugar-Berman bill, strongly supported by the administration, was the strongest sig-

nal of a shift in aid policy towards Pakistan, authorising Congress to increase U.S. civilian assistance to an all-time high. Under Obama, military aid has been around \$2.5 billion and economic aid about \$3.5 billion, although this does not necessarily reflect disbursement on the ground. The underlying purpose of this shift was to broaden U.S. engagement beyond a narrow relationship with the military, to enhance the capacity of civilian institutions and to support the democratic transition. The new strategic dialogue, elevated in March 2010 to the ministerial level, was also meant to underscore “the importance that both the United States and Pakistan attach to taking further steps to broaden and deepen their comprehensive cooperation and to further fortify the friendship between the two peoples”.⁷⁸

The revised U.S. thinking was reflected in fundamental changes in the way civilian assistance was delivered. In late 2009, responding to widespread criticism that reliance on contractors and INGOs resulted in substantial administrative costs, including high-priced consultancy fees, SRAP Ambassador Richard Holbrooke called for a new approach, centred on routing assistance through Pakistani institutions. This resulted in USAID adopting a new model that impacted on programs already underway or being negotiated. Criticising this approach, a number of stakeholders, including U.S. officials, warned that large amounts of money would now go to local organisations that lacked the capacity to absorb donor funds or use them effectively and accountably – concerns reflected in GAO reports.⁷⁹

In a later, similarly consequential change, the State Department narrowed the focus of aid to five areas in descending priority – energy; economic growth; stabilisation of the areas bordering Afghanistan; education; and health. In 2012, USAID announced it would cut projects and programs even as the aid level held.⁸⁰ Like Holbrooke’s policy, this responded to widespread perceptions in the U.S. and Pakistan that aid was not achieving desired results. A more focused

⁷⁵ Nancy Birdstall, Wren Elhai and Molly Kinder, “Beyond bullets and bombs: Fixing the U.S. approach to development in Pakistan”, Report of the Study Group on a U.S. Development Strategy in Pakistan, Center for Global Development, June 2011, pp. 11, 13.

⁷⁶ Crisis Group interviews, U.S. officials, Washington D.C. and Islamabad, January-May 2012. Islamabad and Kabul signed a U.S.-backed transit trade agreement in June 2011.

⁷⁷ Crisis Group interviews, U.S. officials, Islamabad, May 2012.

⁷⁸ “Joint statement by the United States and Pakistan on the U.S.-Pakistan strategic dialogue”, 25 March 2010, <http://islamabad.usembassy.gov/pr-10032603.html>.

⁷⁹ Subsequently, State and USAID took steps to better monitor and address weakness of local NGO management. “Planning and Documentation of U.S. Development Assistance in Pakistan’s Federally Administered Tribal Areas Need to Be Improved”, GAO-10-289, 15 April 2010, www.gao.gov/assets/100/97300.html; “Department of State’s Report to Congress and U.S. Oversight of Civilian Assistance to Pakistan Can Be Further Enhanced”, GAO-11-310R, 17 February 2011, <http://www.gao.gov/new.items/d11310r.pdf>.

⁸⁰ Alexander Thier, USAID Afghanistan and Pakistan affairs director, said, “what we’ve done is that we had 150 planned or ongoing projects. We have now narrowed that to 50 projects and by the middle of next year we’ll only be funding 35 projects in Pakistan”. Huma Imtiaz, “USAID to cut down over 100 projects in Pakistan: Thier”, *The Express Tribune*, 26 April 2012.

approach, it was believed, would demonstrate impact in key areas and give the U.S. more leverage to press for reforms.

B. THE MOOD IN WASHINGTON

Summarising attitudes of U.S. policymakers and other stakeholders towards Pakistan, a Congressional staffer said, “there is Pakistan fatigue in Washington, a sense that we’ve tried everything – we’ve tried ramping up civilian aid, we’ve tried the strategic dialogue, but it has all failed”.⁸¹ An official stressed:

We need to show a great deal of humility about what U.S. assistance can achieve. USAID’s ability to operate in Pakistan is severely constrained by much larger forces at play, including the political and economic situation in Pakistan. The only way to have impact [with economic assistance] is to encourage policy reforms, but that looks extremely unlikely.⁸²

These frustrations stem from perceptions that billions of taxpayer dollars have neither won hearts and minds nor achieved full buy-in for combating terrorism and stabilising Afghanistan. Since at least 2007, justifiable concerns have been raised in Congress about the military’s sincerity. Anger has become more acute since the raid that killed bin Laden and the resultant criticism within Pakistan of the U.S.

“Congressional support is still there but with far greater scrutiny. We spend a lot of time with outreach [to legislators]. Their support cannot be taken for granted, and we haven’t been able to show what we’re getting out of this relationship”, said a U.S. official.⁸³ Economic uncertainty, the November 2012 presidential and congressional elections campaign and hyper-partisan politics have converted a longstanding, vocal cadre of Capitol Hill supporters for broad engagement with Pakistan’s elected leadership and institutions into “silent at best”.⁸⁴ Concerns that civilian assistance could become a casualty of strained bilateral ties are well-founded.⁸⁵ At the very least, said a U.S. official, “the idea of economic assistance, under the rubric of a strategic relationship, divorced from immediate security concerns and without conditions, has fallen by the wayside”.⁸⁶

Many influential U.S. lawmakers have repeatedly called for major cuts to economic assistance. Although \$1 billion has already been appropriated for FY2012, the secretary of state still has to certify Pakistan according to the conditions discussed above, failing which Congress could block the appropriated funds even for individual civilian assistance programs. While significant money is already in the pipeline, possibly limiting the immediate financial impact of any cuts, the political repercussions would be grave. A U.S. official said, “the money that is already there wouldn’t disappear, but politically the storyline [in Pakistan] would be, ‘the U.S. abandons Pakistan again’”.⁸⁷

Congressional assertiveness can constructively ensure U.S. taxpayer dollars are used effectively, but Congress should not target civilian aid or constrain the administration’s flexibility on civilian programming, which would only further empower the military at the expense of democratic civilian institutions. As a clear signal to the military and public of U.S. commitment to supporting the democratic transition, civilian assistance would help stabilise a fragile polity. Giving USAID flexibility in disbursing that assistance, under close Congressional oversight, would minimise misuse.

⁸¹ Crisis Group interview, Washington D.C., February 2012.

⁸² Crisis Group interview, Washington D.C., February 2012.

⁸³ Crisis Group interview, Washington D.C., February 2012.

⁸⁴ Crisis Group interview, U.S. official, Islamabad, May 2012.

⁸⁵ Crisis Group interviews, Washington D.C., January-February 2012.

⁸⁶ Crisis Group interview, Washington D.C., January 2012.

⁸⁷ Crisis Group interview, Islamabad, May 2012.

V. IMPLEMENTING PROGRAMS

A. CHALLENGES TO IMPLEMENTATION

1. Security threats

Security is a major impediment to effective implementation. Through 2009-2010, militant strikes, including suicide attacks, against government, NGO and INGO personnel and facilities were the main concern. Islamabad, Peshawar, KPK's Malakand region, Balochistan's capital, Quetta, and even cities regarded as relatively safe such as Punjab's capital, Lahore, were targeted. While attacks decreased by mid-2011, targeted kidnappings-for-ransom are now the main threat for development and humanitarian agencies.⁸⁸ In January 2012 alone, five international aid workers were abducted in four incidents,⁸⁹ forcing agencies and NGOs to reduce activities and presence. Prominent cases include the August 2011 kidnapping of an American expert working on USAID-funded economic development projects, from his Lahore home; he remains missing.⁹⁰ After the April 2012 beheading of a kidnapped UK doctor working for it in Quetta, the ICRC suspended most aid programs in Balochistan, KPK and Karachi and recalled foreign staff to Islamabad.⁹¹

Some major international organisations have previously contacted militant groups such as the Pakistani Taliban – as they do in conflict situations elsewhere – to clarify the nature of their work and seek assurances that staff

⁸⁸ Eight local employees of the American Refugee Committee (ARC) kidnapped in Balochistan's Pishin district were released after two months in October 2011. ARC had been working in Afghan refugee camps in Balochistan since 2002. "Two month ordeal: Taliban release aid workers kidnapped in Pishin", *The Express Tribune*, 5 October 2011. Local NGOs have fared no better. Of the six employees of the Balochistan Rural Support Program abducted in Pishin, two were killed after the ransom was not paid; the others remain in captivity. "No end to kidnappings", *Dawn*, 28 May 2012.

⁸⁹ "Humanitarian Outcomes Pakistan 2012", Aid Worker Security Database, <https://aidworkersecurity.org>; see also, "PHF condemns targeted attacks against civilians, humanitarian agencies and staff and calls for renewed efforts by all parties to end impunity", Pakistan Humanitarian Forum, 7 May 2012.

⁹⁰ In May 2012, al-Qaeda released a video showing him appealing to President Obama to accede to his kidnappers' demands, including release of its prisoners. Richard Leiby, "Warren Weinstein, Maryland man kidnapped in Pakistan, pleads for his life in video", *The Washington Post*, 8 May 2012.

⁹¹ Jacques de Maio, head of ICRC operations, South Asia, said, "[t]he recent attack against the ICRC compels us to completely reassess the balance between the humanitarian impact of our activities and the risks faced by our staff". "Pakistan: ICRC operations placed under complete review", press release, 10 May 2012.

and activities would not be targeted. However, such contacts were based on a misreading of the security challenges in Pakistan, including links between criminality and militancy, the multiplicity of militant and terrorist groups and the role of Punjab-based sectarian outfits.⁹² Representatives of those INGOs now admit the futility of trying to obtain credible guarantees of safety from militant groups in their areas of operation.⁹³

There are also suspicions of collusion between militant groups and security officials in kidnapping-for-ransom incidents. "How do they go from Lahore to North Waziristan without being detected?", asked an INGO representative. "Whatever else is lacking here, Pakistan is a country with a very strong security apparatus. The security agencies know where people are and where people are moving. So how do [kidnappers and their victims] traverse such long distances?"⁹⁴

2. Bureaucratic constraints

Since 2009, but especially since 2011 as relations with the U.S. deteriorated, the civil and military bureaucracies have impeded the activities of donors and implementing partners, including through travel restrictions, rejections of and delays in granting visas and requirements for no-objection certificates (NOCs) to conduct programs. NOCs are the primary form of constraint on work of donors and international and local NGOs. Issued variously by the interior ministry or the military and provincial authorities, they are required for visas, project approvals and even travel to areas where organisations work. NOC restrictions have become more onerous since 2011, leading some donor organisations to regard them as a deliberate form of policing rather than simple bureaucratic mechanisms. Western diplomats, including donor agency officials, must apply for NOCs to travel outside Islamabad weeks in advance. The foreign ministry must also approve any meetings with government officials above a particular rank – a cumbersome process prone to delays, miscommunication between offices and other time-consuming errors.⁹⁵

All INGOs must register with the finance ministry's EAD. Since 2011, the federal law ministry has stayed registration of any new ones, demanding that the EAD first devise a new regulatory framework. In late 2011 and early 2012, the EAD's leaked draft guidelines would have required, for in-

⁹² For analysis on the role of extremist sectarian outfits, see Crisis Group Report, *Pakistan: The Militant Jihadi Challenge*, op. cit.

⁹³ Crisis Group interviews, Islamabad and Peshawar, April-May 2012.

⁹⁴ Crisis Group interview, Islamabad, 8 May 2012.

⁹⁵ Crisis Group interviews, Western diplomats, Islamabad, 2012; also see "Diplomats' movement linked to NoC", *Pakistan Today*, 30 August 2011; and "American diplomats in Pakistan under pressure", BBC News, 8 September 2011.

stance, that INGOs obtain government approval before hiring a foreign national and imposed stringent oversight of activities, finances and movement.⁹⁶ While EAD is revising the document, because of objections raised within the federal government,⁹⁷ donors and NGO staff remain concerned. “The big question these days is: who’s in charge within the government?”, said an international humanitarian aid worker.⁹⁸

Pending revised and finalised guidelines, INGOs cannot register. Moreover, there are new restrictions on acquiring visas, particularly long-term visas, for resident foreign staff. Whereas previously one-year visas were common, they are now commonly granted for three months, after which they must be renewed in the country of origin.⁹⁹ Renewal requests are often denied or face long delays. Staff members from INGO head offices are often granted single entry, one-month visas. While these used to be granted within days, delays or denials are now common.

Processing times are often lengthy. Pakistani embassies have to send applications to Islamabad for interior ministry approval. This can take six weeks to three months and is subject to military veto. The process has had its most serious impact on INGO recruitment. A country director of one explained: “You interview people for a month, ... make an offer, and say the contract will start the day you get the visa and can move to Pakistan. But if that takes four months, the candidate has to stay unemployed for that period – and often says, ‘You keep your job’. This is killing us”.¹⁰⁰

Registered INGOs have seen their work dramatically constrained by regulations. After the 2010 floods, the government waived the NOC requirement in KPK and southern Punjab, but once restored in December the requirements were significantly more onerous. An NGO previously needed one NOC to operate in a region, for example; in KPK it now needs one for every sector of an individual program or project. As a result, a single project may require as many as six, each with extensive, usually monthly reporting requirements. Large INGOs running several projects – some as many as fifteen to twenty – have to hire “an army of people just to deal with NOCs”,¹⁰¹ adding significantly to operating costs.

These restrictions are particularly stringent where needs are greatest, in conflict-hit regions, and even where there are successful programs and abundant funding. In KPK’s conflict-hit Malakand region, for instance, NOCs must be renewed quarterly. “So, you have to apply for a new NOC before even half the time of your current NOC period is up”, said an INGO representative.¹⁰² With bureaucratic restrictions delaying implementation and effectiveness, some INGOs have ended programs in critical districts such as KPK’s Dera Ismail Khan, which received most of the internally displaced (IDPs) from FATA’s South Waziristan Agency. The reason generally given is NOC delays. Some organisations have shifted funds to Punjab, where conditions, if not official requirements, are less constraining.¹⁰³

Many smaller local NGOs and CBOs have limited capacity for reporting needed for NOCs. “This kind of monitoring is not towards improving an organisation’s work, but is a form of policing”, said an NGO worker whose organisation works across FATA.¹⁰⁴ NGOs are required to obtain project NOCs, granted by provincial authorities to approve a project document and progress, and/or “movement NOCs”, authorising staff to travel to sites.¹⁰⁵ But in conflict-hit zones, said a donor representative, “NOCs don’t guarantee access. Even if provincial authorities may have no objection to you going somewhere, that doesn’t mean the military will not stop you on your way there”.¹⁰⁶

According to an international aid worker, “before [the 2 May 2011 raid in] Abbottabad, the army’s 11th Corps would control the NOCs only for Dera Ismail Khan, Tank and FATA, but now they’re doing it for all of KPK”.¹⁰⁷ A Peshawar-based aid worker contended: “It would take a very brave [civilian] official who would by himself enter into an MOU [memorandum of understanding] with us without approval from the 11th Corps”.¹⁰⁸ The 11th Corps, acting through the Provincial Disaster Management Authority (PDMA), demands names, home addresses, phone numbers, and fathers’ names of all local staff, without which it rejects

⁹⁶ Crisis Group interviews, Islamabad, February-March 2012.

⁹⁷ Crisis Group interview, Islamabad, May 2012.

⁹⁸ Crisis Group interview, Islamabad, February 2012.

⁹⁹ INGOs in the aftermath of the 2005 earthquake received five-year instead of the previous indefinite registrations.

¹⁰⁰ Crisis Group interview, Islamabad, May 2012.

¹⁰¹ Crisis Group interview, Islamabad, May 2012.

¹⁰² Crisis Group interview, Islamabad, May 2012.

¹⁰³ Crisis Group interview, Islamabad, May 2012.

¹⁰⁴ Crisis Group interview, Peshawar, April 2012.

¹⁰⁵ KPK requires both, Sindh none. Usually only foreigners but occasionally INGO locals need movement NOCs. Crisis Group interviews, INGO workers, Islamabad, Peshawar, February 2012; Crisis Group Briefing, *Pakistan: The Worsening IDP Crisis*, op. cit., pp. 8-9.

¹⁰⁶ Crisis Group interview, Islamabad, April 2012.

¹⁰⁷ Crisis Group interview, Islamabad, June 2011. D.I. Khan and Tank are districts in KPK bordering on FATA. The Army’s 11th Corps, based in Peshawar, does counter-insurgency along the Durand Line, Pakistan and Afghanistan’s border. Crisis Group Briefing, *Pakistan: The Worsening IDP Crisis*, op. cit., pp. 8-9.

¹⁰⁸ Crisis Group interview, Peshawar, April 2012.

applications¹⁰⁹ Some NGOs have resisted providing this information with some success.¹¹⁰ Some NGO workers say the PDPA has tried to facilitate the process for organisations whose NOC approval has been blocked, but the problem remains widespread. A KPK-based international humanitarian representative described the PDPA as “a middleman to keep a check on things on behalf of the military”.¹¹¹

A Peshawar-based international humanitarian worker said:

There’s more space if you’re embedded into the UN cluster system and if you say, ‘Okay, we’ll go with the needs identified by PDMA, we’ll do this project that fits neatly into that box’. But then you work with very blunt tools of assessment. For example, in FATA, there are officially notified areas [for IDPs] – if you say you’ve been displaced from there, you’re going to get your package. When that area is de-notified, the tap is turned off. But if you want to do your own assessment of humanitarian needs, you have to seek an MOU with the FATA Secretariat, or some other government authority, and you’ll have many more difficulties.¹¹²

Strained Pakistan-U.S. relations have hampered USAID’s work even in areas outside the military’s direct control. Most prominently, following the 2 May 2011 raid, the PML-N-led Punjab government announced it would refuse U.S. assistance. Consequently, government-to-government programs in the largest province were suspended, affecting some key rule of law initiatives and a project to upgrade facilities of Lahore’s Lady Wellington hospital. Other important programs in Punjab continue, however, through either federal government support or NGOs.

B. PARTNERS ON THE GROUND

1. A shrinking base

The inability to move freely due to security threats and bureaucratic restrictions has made donors all the more dependent on implementing partners, local and international NGOs and government structures. But such constraints require more flexible engagement with those partners; government policies are instead shrinking their options.

On the basic question of who gets what, large donors like USAID and the UK’s Department for International Development (DFID) are constantly seeking the right balance between international and local NGOs and governmental and non-governmental partners. Donors have been regularly criticised for channelling aid through INGOs with their large consultants’ fees and considerable administrative costs. A Washington-based observer described USAID’s contracting system as reinforcing “beltway bandits and other large NGOs”.¹¹³

While such objections are valid, the U.S. has responded too hastily. Under the State Department’s first special representative for Afghanistan and Pakistan, the late Richard Holbrooke, the U.S. channelled significantly more aid through the Pakistan government and local NGOs, abruptly ending several INGO-led programs and narrowing USAID’s choices. More than half of all economic assistance is now disbursed this way.¹¹⁴ Some INGOs were “dumped overnight”, an international aid worker said. “Some, including us, had everything in place and were waiting for the funding to come through and were then told it wasn’t coming”.¹¹⁵ USAID decided not to renew several projects due to the new policy.¹¹⁶

While local capacity is being built, successful INGO partnerships should be legitimate contenders for follow-on funding. This would allow the administration to keep its basic objective of reducing waste while enhancing Pakistani capacity. INGOs could also be useful in helping train and support local government and NGOs with limited capacity. As that capacity develops, INGO projects could be incrementally transferred to government institutions and local NGOs.

After Holbrooke’s change of policy, C. Stuart Callison, a USAID development economist, warned in a “dissent channel” message to senior State officials that bypassing such U.S. entities and working instead through Pakistani national and local government channels and contractors “without an appropriate transition period would seriously compromise the more important requirements for quick counterinsurgency and economic impacts”. Plans to cancel successful programs run by U.S. contractors and NGOs and cancelling contracts mid-stream, he stressed:

... would set back the USAID program and delay the accomplishment of USG objectives, instead of achieving more rapid results. Such policy decisions seem to be based on an inadequate understanding of the nature of economic development activities, the requirements for local institutional capacity building, the operational requirements under which USAID must function and the

¹⁰⁹ Crisis Group interviews, Islamabad and Peshawar, February-May 2012.

¹¹⁰ Crisis Group interviews, international and local NGOs, Islamabad and Peshawar, April-May 2012.

¹¹¹ Crisis Group interviews, Peshawar, April 2012.

¹¹² Crisis Group interview, Peshawar, April 2012.

¹¹³ Crisis Group interview, Washington D.C., January 2012.

¹¹⁴ Epstein and Kronstadt, 10 April 2012, op. cit., p. 30.

¹¹⁵ Crisis Group interview, Islamabad, May 2012.

¹¹⁶ Some have, however, been granted costed extensions. Crisis Group interviews, INGOs, Islamabad, April-May 2012.

amount of time it takes to design and obtain approval for new contracts and/or project activities.¹¹⁷

It is important to build the capacity of civilian institutions, governmental and non-governmental, but it is equally important to ensure that the right local partners are identified and employed. For example, the U.S. relied on international contractors to rebuild schools and health clinics in areas affected by the 2005 earthquake, which USAID officials believe was effective. After military operations in 2009, however, it engaged local contractors for reconstruction in Malakand who “did not build to our standard”.¹¹⁸

Donors should particularly ensure that government partners are internally accountable and credible with the communities they serve. A local NGO head said, “after the earthquake, nobody was listening to us when we were pointing out the problems with ERRA [the Earthquake Reconstruction and Rehabilitation Authority]”.¹¹⁹ However, several donors channelled reconstruction funds through this military-dominated institution with little public legitimacy, accountability, or knowledge of local needs. Similarly, according to U.S. officials, there are widespread complaints of dysfunction, delays and kick-backs regarding the Provincial Reconstruction, Rehabilitation and Settlement Authority (PaRRSA), created in June 2009, which leads the KPK government’s early recovery response in conflict and flood-affected areas. The U.S. has, however, relied on it to rebuild schools and construct a \$25 million southern ring road in Peshawar. According to a U.S. official, this project has been plagued by misuse of funds and poor implementation.¹²⁰

Government agencies are vetted before receiving U.S. funds to determine that their procedures are appropriately transparent. This process does not, however, account for public perceptions of their legitimacy – a gap especially evident in FATA, as discussed below. A senior U.S. official explained: “We have competing objectives: on the one hand, we’re aiming to build the government’s capacity to deliver services but, on the other,

we want to use funds effectively and deliver an outcome The alternative is to move to private contractors”.¹²¹

Most of USAID’s energy portfolio entails government-to-government contracts; the economic growth portfolio largely involves Pakistan’s private sector; and funding for education and health is roughly dispersed in equal levels to government and non-governmental entities.¹²² Since building the state’s capacity to deliver is vital to the democratic transition, the U.S. and other donors should not use private sector and NGO actors simply to circumvent weak state institutions; nor should they seek alternatives such as ad hoc and military-dominated organisations. Instead, they should leverage government-to-government aid to advocate necessary reforms – for example, by balancing assistance to the public education sector with a robust dialogue on the need for curriculum reform.¹²³ At the same time, the ability of local NGOs to innovate and test new approaches to development and adapt quickly to changed circumstances could be used to fill gaps in state delivery.

USAID should also consider partnering with a broader range of local NGOs that have a proven, credible track record but lack a presence in Islamabad or the provincial capitals and hence limited access to donors. In the specific context of conflict-hit zones, an inability to oversee performance should not necessarily be considered an impediment. Instead, as militancy spreads, donors should enhance such partnerships and help build the capacity of local NGOs working in FATA, volatile parts of KPK and Balochistan. A KPK-based local NGO worker, whose entity, has a proven track record in the western belt, from Upper Dir to Bannu, said, “donors say, ‘If we can’t go to a particular place, then we can’t monitor implementation, so forget it’. Their interest in working with groups like ours seems to be subsiding”.¹²⁴ The answer lies in devising alternative mechanisms for monitoring and evaluation, such as using impartial, credible civil society groups to gauge performance via consultations with local communities that receive the programs.

USAID is the largest donor to the Rural Support Program Network (RSPN),¹²⁵ which works to alleviate poverty through social mobilisation.¹²⁶ Along with twelve partner organisa-

¹¹⁷ “Dissent Channel: Contradictory Objectives for the USAID/Pakistan Program”, Letter from C. Stuart Callison, Senior Development Economist, USAID Bureau for Economic Growth, Agriculture and Trade to Director of Policy Planning, 2 October 2009.

¹¹⁸ Crisis Group interview, Islamabad, May 2012.

¹¹⁹ Crisis Group interview, Ali Asghar Khan, Omar Asghar Khan Foundation, Islamabad, May 2012.

¹²⁰ Crisis Group interview, U.S. official, May 2012. See “U.S. inaugurated \$25 million Peshawar ring road”, U.S. State Department, 28 April 2010.

¹²¹ Crisis Group interview, Islamabad, May 2012.

¹²² Crisis Group interviews, U.S. embassy, Islamabad, May 2012.

¹²³ On public education reform, see Crisis Group Asia Report N°84, *Pakistan: Reforming the Education Sector*, 7 October 2004.

¹²⁴ Crisis Group interview, Peshawar, 14 April 2012.

¹²⁵ RSPN partners include the Aga Khan Rural Support Program, the National Rural Support Program and the Tharparkar Rural Support Program. Shahzada Irfan Ahmed’s interview of Shoaib Sultan Khan, honorary chairperson, RSPN, *The News*, 6 June 2012.

¹²⁶ RSPN receives \$25 million and implements four USAID projects with partner organisations that also receive separate donor funding. Crisis Group interview, Shandana Khan, CEO, RSPN, Islamabad, 8 May 2012.

tions, it reaches around 30 million people in 110 of 131 districts nationwide and in two areas in FATA.¹²⁷ The network has performed well in assessing needs and channelling relief and rehabilitation assistance to flood-affected areas.¹²⁸ Besides using it as an implementing partner, USAID and other donors should fully utilise and develop its expertise to help communities identify their development needs.

Although donors frequently design programs around the objective of building civil society capacity, a Peshawar-based NGO worker argued: “Not many donors are supporting institutions. They are funding events and activities such as seminars, or papers, instead of trying to build the capacities of organisations as a whole”.¹²⁹ Given the short life of many donor programs, smaller local NGOs are understandably cautious about hiring new staff or giving tenure to existing staff because of the financial burden if they do not quickly find the next project. Their inability to build strong teams in turn limits their competitiveness, instigating a cycle that benefits larger NGOs, which, despite fewer links and an uneven on-the-ground record, become the partners of choice. To find effective local partners, USAID could explore alternatives to program-specific funding. This could include support for public-private partnerships, under which the national and/or provincial governments enter into long-term contracts for service delivery with local NGOs that have a credible track record. Many such partnerships already exist, for example in Sindh province.

2. Expanding the role of partners and USAID

Centralised planning by donors and lack of consultation in devising and implementing programs and projects undermine aid effectiveness. According to an INGO official whose organisation is funded by USAID, DFID, and smaller donors, “previously, [the head of the organisation] could approach a donor and say, ‘This is what we’re thinking, this is the support we’d need’. Now, the donors say, ‘This is what we need, can you give us a proposal that does it?’ They’re not interested in flexibil-

ity”.¹³⁰ Both INGOs and local NGOs also contend that, during a bidding process, USAID often tries to pressure the lead group in a consortium to either add or drop particular organisations, based on “which groups are in fashion”, and that a proposal’s success can turn on such decisions.¹³¹ USAID should take into account implementing partners’ knowledge when designing programs, determining priorities and assessing realistic timetables and measures of performance.

The State Department should meaningfully consult USAID in formulating and identifying U.S. foreign policy development goals. USAID should also be given the resources it needs to meet its mandate. “The State Department treats USAID like a postman”, said an informed observer. “Decisions are made in [the State Department], and USAID’s opinion doesn’t count for anything”.¹³² A June 2011 report on U.S. development strategy in Pakistan concluded: “The USAID mission is neither empowered nor equipped to succeed”.¹³³

U.S. foreign assistance is dependent on USAID missions that often have limited capacity and are starved of resources.¹³⁴ Pakistan is a non-family posting, which limits the recruitment pool for positions; once posted, officials, as an INGO worker phrased it, “cannot be blamed for not wanting an extension after their year is up”.¹³⁵ The short (albeit renewable) tenure weakens continuity and institutional memory, so relations and credibility with partners on the ground. Some steps have been taken to address these problems, including reappointing staff with good past Pakistan service.

C. MONITORING PROGRAMS

Responding to criticism about lack of transparency, poor oversight and widespread waste, USAID has also taken several steps to enhance monitoring mechanism, including opening a State and USAID Inspector General’s office in Islamabad; establishing a Transparency International (TI) hotline for “anonymous reporting of any suspicious activity related to U.S.-funded projects”; and third-party oversight through a U.S. firm, Management Systems International (MSI). Begun in February 2011, the hotline received 489 complaints during its first quarter regarding USAID-funded and other projects.¹³⁶ In June 2012, USAID stopped funding the Rafi

¹²⁷ “Outreach #12: the Rural Support Programmes’ Social Mobilisation Newsletter”, RSPN, January-March 2010; also Nafeez Mosaddeq Ahmed, “Which Khan can save Pakistan?”, *Le Monde Diplomatique*, 20 April 2012.

¹²⁸ With six of its partners, RSPN implemented an \$8.234 million USAID emergency relief and early recovery project for flood victims (the BAHAAAL project) in sixteen districts of four provinces; RSPN website: www.rspn.org/our_projects/bahaal.html. See also “Flood 2010: Damage Assessment, Emergency Relief and Rehabilitation Efforts”, NRSP, 6 December 2010.

¹²⁹ Crisis Group interview, Peshawar, 19 April 2012.

¹³⁰ Crisis Group interview, Islamabad, May 2012.

¹³¹ Crisis Group interviews, Peshawar and Islamabad, April-May 2012.

¹³² Crisis Group interview, Islamabad, May 2012.

¹³³ Centre for Global Development report. Many U.S. and NGO officials in Pakistan and the U.S. share this view. Crisis Group interviews, Washington D.C., January-February 2012; Islamabad, January-May 2012.

¹³⁴ Crisis Group interview, Washington D.C., January 2012.

¹³⁵ Crisis Group interview, Islamabad, May 2012.

¹³⁶ “Pakistan and Afghanistan”, USAID Office of Inspector General (OIG), 31 December 2011, p. 9.

Peer Theatre Workshop, under a \$20 million project after receiving allegations of fraud through the hotline, the agency's spokesperson in Islamabad.¹³⁷ The U.S. is investigating the case and has yet to determine fraud. The organisation has denied receiving official notice of an investigation.¹³⁸

USAID also conducts pre-award assessments of Pakistani government and non-governmental organisations to "ensure that an adequate level of financial and management controls are in place before any U.S. funds are disbursed".¹³⁹ These have resulted in some prospective recipients improving their mechanisms. For instance, from an ad hoc approach, with email instructions but rules neither consolidated nor formalised, a Peshawar-based NGO now publishes a compendium of rules and standard operating procedures and conducts regular external management audits.¹⁴⁰

Some U.S. officials contend that overly demanding oversight measures, by delaying disbursement of funds, can slow implementation.¹⁴¹ Many recipient organisations also complain about excessive, unnecessary paperwork and reporting requirements. Employees of several NGOs say that documentation is too time-consuming and delays and/or undermines implementation.¹⁴² Moreover, community-based organisations (CBOs) that can deliver on the ground often lack the necessary resources, including adequate English-writing skills, to prepare the documentation donors require; consequently, their reports often fail to accurately reflect actual results. Even large Pakistani NGOs and INGOs complain about excessive U.S. regulations on disbursement of funds, particularly for procurement. An INGO country director said:

The procurement process is so cumbersome; that is what delays implementation. You get nailed on technicalities: one missing document, or one missing signature, you get disallowed \$150,000 like that This is a schizophrenic way of dealing with development. On the one hand, you say you want us to respond quickly; on the other hand, you make us go through these excruciating processes and regulations.¹⁴³

While a rigorous monitoring process helps to prevent waste and lax implementation by NGOs, donors should also, to the extent possible, adopt mechanisms that focus

on improving performance and internal processes. An employee of a local Pakistani NGO suggested: "Donors should spend more time visiting sites on the ground and see how the programs are going themselves, identify weaknesses and offer advice on how to do a more effective job".¹⁴⁴

Existing monitoring measures, moreover, fail to prevent the waste that results from pressure to spend large amounts of money within a limited timeframe. Large and small NGOs alike are often unable to spend funds disbursed according to agreed dates, so are urged to use unspent funds as soon as possible, even on questionable administrative operations.¹⁴⁵ Use of taxpayers' money is thus sometimes not maximised, and local perceptions about wasteful aid are reinforced. NGOs seldom resist unrealistic commitments or overly stringent terms when negotiating with donors. An INGO worker said:

NGOs feel we need this money, we need this program, so we'll do whatever they ask, we won't argue We should never have agreed to monthly reports [in addition to quarterly reports], but we did. On the other hand, there is this fear that [if] we do resist, it could affect not just our work here, but also negotiations for programs with the same donor [in other countries].¹⁴⁶

To minimise fraud, the U.S. has considered awarding more contracts that entail reimbursements rather than upfront instalments. Other donors have also used reimbursements for more accountable funding. DFID prefers them as the "default position" of its grant programs and internationally-tendered contracts, though it considers giving funds upfront if "the argument is strong enough".¹⁴⁷ But while the rationale is cogent, such an approach puts many smaller, local non-profits at a disadvantage when bidding for such programs, since they cannot cover the period before a reimbursement. As a result, they are compelled either to factor borrowing costs into their proposals or join a consortium led by larger counterparts, reinforcing the position of a handful of big NGOs, many of which monopolise donor funding.¹⁴⁸

Instead of depending primarily on U.S. contractors (with their large overhead costs) and organisations such as TI (with limited links to communities on the ground) for monitoring, USAID should develop a multi-tiered accountability and monitoring and evaluation process. This should include credible and respected CBOs and local advocacy groups, as

¹³⁷ Rafay Mahmood, "USAID anti-fraud hotline bags first high-profile case", *Express Tribune*, 7 June 2012.

¹³⁸ "Pakistan and Afghanistan", OIG, 31 December 2011, p. 9.

¹³⁹ Epstein and Kronstadt, 10 April 2012, op. cit., p. 31.

¹⁴⁰ Crisis Group interview, Peshawar, April 2012.

¹⁴¹ Crisis Group interview, Washington D.C., February 2012.

¹⁴² Crisis Group interviews, Islamabad and Peshawar, April-May 2012.

¹⁴³ Crisis Group interview, Islamabad, May 2012.

¹⁴⁴ Crisis Group interview, Peshawar, April 2012

¹⁴⁵ Crisis Group interviews, international and national NGOs, Islamabad, April-May 2012.

¹⁴⁶ Crisis Group interview, Islamabad, May 2012.

¹⁴⁷ Crisis Group interviews, U.S. officials, Washington D.C., February 2012; U.K. government official, Islamabad, June 2012.

¹⁴⁸ U.S. officials acknowledge that fixed amount reimbursements are more appropriate for infrastructure projects that can be inspected according to agreed standards. Crisis Group interview, Washington D.C., February 2012.

well as the relevant committees of national and provincial parliaments. Donors have made no serious efforts to engage the legislatures, typically refusing requests to appear before committees. Parliamentarians inquiring into donor-funded programs thus rely on scant information from the EAD and the foreign ministry.¹⁴⁹ By their unwillingness to engage, donors neglect a key stakeholder and provoke resentment within the very bodies that not only could provide a useful layer of oversight, but would also drive policy and political reforms.

Under the current dispensation, the national parliamentary public accounts committee (PAC), chaired by the leader of the opposition until April 2012, has aggressively audited government departments and projects previously considered off-bounds to the legislature, including investigations in late 2011 into massive corruption in the military-run National Logistics Cell that implicated 88 military officials.¹⁵⁰ Members have also raised concerns about lack of transparency and oversight of FATA's civil administration. Although the committee had not seriously considered expanding its remit to donor projects, a senior PML-N parliamentarian believes it would respond favourably if donors and other stakeholders accepted such a role for it.¹⁵¹ Provincial PACs should similarly be engaged. Elected representatives are also well placed to evaluate government entity and NGO capacity and performance and to assess donor activity in their constituencies.

VI. DEMONSTRATING IMPACT: THE HEARTS AND MINDS DEBATE

A. INFRASTRUCTURE PROJECTS AND THE TEN-YEAR TEST

Driven by Secretary Clinton, the U.S. government's intended shift towards large, high visibility "signature" projects aims to emulate past successes such as the Tarbela Dam, the Lahore University of Management Sciences (LUMS) and the Karachi-based Institute of Business Administration (IBA), all USAID-funded, which provided, in U.S. perceptions, tangible results that "we can point back to in ten years".¹⁵² The U.S. should, however, be cautious in using these initiatives as standards. While LUMS has become a successful higher educational institution, it largely caters to the privileged sections of society, so has little impact on the lives of the vast majority. Tarbela is even more controversial. Although it has contributed significant hydroelectric power, it has provoked widespread criticism for water-logging, salinity and other environmental damage, as well as displacement of some 96,000 villagers, many of whom have yet, decades after construction, to receive promised compensation.¹⁵³

Dams figure prominently in the USAID energy program, with the objectives of expanding the power grid, supporting efficient use, helping the government implement power sector reforms and improving power generation and transmission. Prominent projects include support to the Water and Power Development Authority in completing the Gomal Zam Dam in FATA's South Waziristan and the Satpara Dam near Skardu, in Gilgit-Baltistan.¹⁵⁴ The highest profile component is the Diamer-Basha Dam, being built on the Indus River, in Gilgit-Baltistan. It is to produce 4,500 MW of electricity, store more than eight million acre feet of water and help control downstream flood damage. The U.S. and the Asia Development Bank (ADB) are jointly financing a validation exercise of technical and financial feasibility and of safeguard mechanisms against environmental damage and population displacement.

There are concerns in Pakistani circles that the new strategy, which is based more on public diplomacy than development needs, could prove counter-productive. "Building dams, bridges and roads ends up favouring contractors and some political actors", said a retired official. "We should instead be looking at what will generate wealth for the Pakistani

¹⁴⁹ Crisis Group interview, Bushra Gohar, Islamabad, May 2012.

¹⁵⁰ Zahid Gishkori, "Dodgy dealings: corruption taints 88 armed forces officials", *The Express Tribune*, 3 November 2011. Opposition leader Chaudhry Nisar Ali Khan stepped down as PAC chairman in November 2011. In April 2012, a member of the ruling PPP was elected to replace him.

¹⁵¹ Crisis Group interview, Khawaja Mohammad Asif, Islamabad, March, 2012.

¹⁵² Crisis Group interview, U.S. official, Islamabad, May 2012.

¹⁵³ See, for example, Riaz Nazir Tarar, "Performance of Tarbela Dam project", Pakistan Engineering Congress, 69th Annual Sessions Proceedings, Symposium on Water Crisis in Pakistan and Solutions, December 2003.

¹⁵⁴ USAID Pakistan fact sheet on its energy program, http://usaid.gov/pk/sectors/energy/docs/en_factsheet.pdf.

people and invest there".¹⁵⁵ Controversies regarding Diamer-Basha's potential ecological and environmental damage, resulting mass displacement and territorial disputes between Gilgit-Baltistan and KPK have already delayed work.¹⁵⁶ Large infrastructure projects are, moreover, prone to delays in acquiring financing and start-up due to dysfunctional and corrupt Pakistani public procurement processes.¹⁵⁷ USAID should refrain from committing to supporting projects, such as the Diamer Basha dam, that are technically problematic and internally contested.

Aid disbursement processes can also delay such projects. USAID is hesitant to obligate large amounts already appropriated for long-term infrastructure development until it is certain it has answered all the questions the Congressional appropriations committees have posed. According to a U.S. official, "they come back to us with more questions, and more questions about a project".¹⁵⁸

With such delays comes intense pressure on the USAID mission in Islamabad to clear unspent funds. The Centre for Global Development noted: "The focus on the dollar size of the aid program has raised expectations in Pakistan and created unreasonable pressure in Washington to spend quickly".¹⁵⁹ Unspent funds are typically reallocated to "low-hanging fruit", such as repairs to smaller dams already built by Pakistan – and that can still be justified by the objectives of USAID's energy portfolio.¹⁶⁰ Donors in general should avoid reducing their measures of impact to a simple numbers game; as a U.S. official acknowledged, "if you are going to measure our programs according to a high metric, you will not draw positive conclusions".¹⁶¹

In any case, major investments in the energy sector should be made contingent on Islamabad's willingness to enact long overdue reforms and to identify the most appropriate projects. USAID could benefit from the numerous task forces set up by the Friends of Democratic Pakistan to guide government policy and inform donors on the best channels for assistance, including energy

and water.¹⁶² At its third ministerial meeting in October 2010, members endorsed an Integrated Energy Sector Recovery Report and Plan listing key power sector reforms.¹⁶³ In 2011-2012, an ADB-headed water sector task force, charged with developing a water management strategy in consultation with the government, produced a similar report, which is still being finalised.¹⁶⁴ Until there is movement in Islamabad toward such reforms, the U.S. could provide support to build the bureaucracy's capacity, for instance by providing civil service training institutions instructors and teaching materials on best international practices in managing the energy sector. These could cover public and fiscal policy, financial management, infrastructure development and human resource management.¹⁶⁵

More generally, by focusing on building infrastructure, donors risk ignoring the quality of the service provided. This was evident in the ADB's \$350 million Access to Justice program, which improved court premises but did little to improve justice delivery for the poor as intended. Similarly, USAID is funding renovations to a major hospital in northern Sindh's Jacobabad district, but even improved facilities may fail to deliver good care if the hospital is managed inefficiently. If U.S. infrastructure assistance, whether for health, energy or education, is to be effective, it should be linked to tangible measures to improve the quality of service. For instance, steering committees that include skilled and dedicated professionals from the private sector could be set up to oversee management of a hospital or school.

B. BUYING LOVE

Expressing concern about the deepening scepticism in Washington concerning the efficacy of aid, an official said, "if the answer to the question of, 'Why don't Pakistanis love us?' is to throw money at them, the next question will be, 'why do they still not love us after all this money we're giving them?'. The next step will be, 'Then let's stop giving them money'".¹⁶⁶ Policymakers should understand that it is sus-

¹⁵⁵ Crisis Group interview, Khalid Aziz, former KPK chief secretary, Peshawar, April 2012.

¹⁵⁶ "Diamer-Bash boundary dispute: Gilgit rejects K-P's claim to part of dam", *The Express Tribune*, 26 October 2011.

¹⁵⁷ For more detail, see Crisis Group Asia Report N°185, *Reforming Pakistan's Civil Service*, 16 February 2010.

¹⁵⁸ A U.S. official described the process as "one step forward, two steps back". Crisis Group interview, Islamabad, May 2012.

¹⁵⁹ Many U.S. and NGO officials in Pakistan and the U.S. agree. Crisis Group interviews, Washington D.C., January-February 2012; Islamabad, January-May 2012.

¹⁶⁰ Crisis Group interview, U.S. official, Islamabad, 2012.

¹⁶¹ Crisis Group interview, Washington D.C., February 2012.

¹⁶² The group has also provided a forum to discuss humanitarian and reconstruction needs. In June 2009, for instance, at a FoDP gathering, the government drew support for the plight of those displaced by the military operation in Swat. "FoDP meeting at Ministry of Foreign Affairs", press release, foreign ministry, Islamabad, 8 June 2009.

¹⁶³ "Joint Communiqué", Friends of Democratic Pakistan, Third Ministerial Meeting, Brussels, 15 October 2010. See also "Integrated Sector Early Recovery Report and Plan", ADB, October 2010; and Sajid Chaudhry, "FoDP's task force finalizes 'integrated sector early recovery report'", *Daily Times*, 23 October 2010.

¹⁶⁴ Crisis Group interview, FoDP member, February 2012. Also see "Joint Communiqué", op. cit.

¹⁶⁵ For more recommendations on civil service reform, see Crisis Group Report, *Reforming Pakistan's Civil Service*, op. cit.

¹⁶⁶ Crisis Group interview, U.S. official, 2012.

tained, meaningful engagement and support to civilian institutions to provide better services to citizens that can deliver the desired result of stabilising a fragile polity and thus promote U.S. interests. However, a short-sighted emphasis on public diplomacy has diverted funds toward more explicit branding of programs in Pakistan.

Branding is part of USAID's approach worldwide. According to its website:

[S]ince 9/11, America's foreign assistance programs have been more fully integrated into the United States' National Security Strategy. This elevation to the so-called 'third-D' (development being added to diplomacy and defence) increased the need for U.S. foreign assistance activities to be more fully identified in the host country as being provided 'from the American People'. We have been identified as 'America's good-news story' and have been tasked to make our efforts more visible and better known in the countries where we work.¹⁶⁷

Several Pakistani and international NGOs argued that publicising an association to the U.S. puts staff and beneficiaries at risk of militant attacks. An INGO representative said, "if you put a U.S. flag on a school you build, parents might not send their kids to it, and militants might target it".¹⁶⁸ Facing greater pressure to brand their work, some organisations have chosen not to apply for U.S. funding.¹⁶⁹ A local representative of USAID funding for gender programs warned that the women participating in them were deeply concerned public association with USAID would endanger their lives.¹⁷⁰

The U.S. recognises the risks. Projects in FATA and other volatile areas are often granted waivers, but on a case-by-case basis. Nonetheless, branding is at times applied to projects in conflict zones. For instance, according to an INGO representative, "a project [for IDPs at the Jalozai camp] in Nowshera will have to bear the USAID logo even though it's in KPK".¹⁷¹ In KPK's Malakand region, according to an April 2011 working paper, USAID brands its programs with the PaRRSA,

including for schools, housing and seed distribution. It also intends to brand infrastructure programs in FATA, including road reconstruction in South Waziristan – which, as discussed below, is a military-run project and will, therefore, associate the U.S. with the military's, not the public's, interests, in an area that has endured continual heavy-handed operations and where suspicions of and alienation from the military runs high.¹⁷²

U.S. officials are, however, right when they emphasise that much of the country is safe for USAID partners, and anti-American sentiment is not as widespread as the media depicts.¹⁷³ An international humanitarian aid organisation that consults staff and beneficiaries before agreeing to brand found that communities in Sindh and Punjab seldom opposed the measure. In fact, many local staff members were keen on dual branding (USAID and the NGO's logo), believing it would raise their organisation's profile and credibility.¹⁷⁴ An INGO that gives small emergency grants to local NGOs nationwide found that some partners wanted to improve perceptions of the U.S. in their communities.¹⁷⁵

In an attempt to counter perceived anti-U.S. sentiment, the U.S. has spent considerable sums – in addition to the amount devoted to branding – to increase local awareness of USAID efforts. In 2011, it awarded a \$4.5 million one-year contract, renewable for another two years, to a Karachi-based marketing firm to produce commercials, first aired in May 2012, highlighting U.S.-Pakistan cooperation in energy, poverty alleviation, education and other areas. With the energy crisis assuming acute dimensions and riots in major cities against energy cuts, the commercials, one of which suggests that such cooperation would bring relief from electricity outages, could well be seen as another case of over-promising, likely provoking more, not less, resentment. This approach has also provoked criticism in Congress for "having a Pakistani firm do the job that the government and State Department should be doing", a congressional staffer said.¹⁷⁶

Above all, the strategy derives from a naïve, overly simplistic understanding of the polity and the roots of extremism, evident in the attempt to influence opinion among Paki-

¹⁶⁷ "USAID Branding", www.usaid.gov/branding. The website added: "Beneficiaries of U.S. aid receive billions of dollars of foreign assistance every year, often with little to no awareness that the assistance is provided by the American people".

¹⁶⁸ Crisis Group interview, Islamabad, May 2012.

¹⁶⁹ Crisis Group interviews, Islamabad, February-May 2012. See also Taha Siddiqui, "Aid to Pakistan: \$2.6 billion spent, little ability to show it", *Christian Science Monitor*, 25 April 2012.

¹⁷⁰ Crisis Group interview, Islamabad, February 2011.

¹⁷¹ Crisis Group interview, Islamabad, May 2012. Jalozai is the largest IDP camp in KPK.

¹⁷² "Pakistan Stabilisation Working Paper", USAID, April 2011, www.usaid.gov/pk/docs/sectors/Stabilization_Working_Paper.pdf.

¹⁷³ Crisis Group interviews, Islamabad, February-May 2012. See also Mark Ward, "USAID Assistance in Pakistan", USAID Impact Blog, 9 October 2010, <http://blog.usaid.gov/2010/10/usaid-assistance-in-pakistan>.

¹⁷⁴ The organisation also did so only after completing reconstruction work. "We didn't want flood-affected households to feel that they had to accept the USAID brand in order to get our assistance". Crisis Group interview, country director, Islamabad, May 2012.

¹⁷⁵ Crisis Group interview, Islamabad, March 2012. See also Ward, *op. cit.*

¹⁷⁶ Crisis Group interview, Washington D.C., January 2012.

stan's clerics. During FY 2009-2010, the State Department gave \$36,607 in public diplomacy funds to the Sunni Ittehad Council (SIC), a coalition of Bareilvi¹⁷⁷ groups, apparently in the belief that moderate Bareilvis could mobilise public opinion against Deobandi extremism. But the SIC includes the militant Sunni Tehreek, which in late 2010 spearheaded rallies opposing amendments of the discriminatory blasphemy provisions in the penal code. After Punjab Governor Salman Taseer was assassinated in January 2011 for opposing the blasphemy law and supporting a Christian woman convicted under it, the SIC held rallies in support of his killer.

In July 2011, the U.S. embassy reportedly established a unit in Punjab's Okara district, under its public affairs section, to support "moderate" clerics in the effort to counter religious extremism.¹⁷⁸ The U.S. is also considering enhancing madrasa reform programs. A U.S. official in Islamabad found it encouraging that radical Islamist parties such as the Jamaat-i-Islami were keen on engaging with the embassy, choosing to ignore that they spearheaded every major anti-American rally country-wide.¹⁷⁹ A more sceptical official warned that the metrics used to assess such programs was inappropriate. "The measurement is: 'How many mullahs are coming to us for funding for their madrasas?' The idea is that if they are coming to us, then we must be influencing them. Nobody has thought to follow up and see what these guys are teaching in their madrasas?"¹⁸⁰

Earlier donor-sponsored madrasa reform efforts have failed. Additional resources, such as internet facilities and better textbooks would only make seminaries more attractive alternatives to failing public schools. Even as they accept funding and add subjects such as science and mathematics to their curriculum, the vast majority of madrasas are not likely to change the exclusionary sectarian bent of their core teachings.¹⁸¹

¹⁷⁷ The term refers to one of four broad sub-sects of Sunni Islam, which also include Deobandis, Ahle Hadith and revivalist movements. The Bareilvi sect is influenced by traditional rites and practices associated with Sufism, often around shrines and hereditary saints. For more detail, see Crisis Group Asia Report N°216, *Islamic Parties in Pakistan*, 12 December 2011.

¹⁷⁸ See "U.S. increases extremist fight in Pakistan", Associated Press, 31 December 2011.

¹⁷⁹ Crisis Group interviews, U.S. officials, Islamabad, May 2012, November 2011.

¹⁸⁰ Crisis Group interview, Islamabad, February 2012.

¹⁸¹ For more analysis on failed madrasa sector reforms, see Crisis Group Asia Reports N°36, *Madrasa, Extremism and the Military*, 29 July 2002; and N°73, *Unfulfilled Promises: Pakistan's Failure to Tackle Extremism*, 16 January 2004.

C. ECONOMIC GROWTH

The U.S. distinguishes between its energy and economic growth portfolios. Several officials, within and outside USAID, argue that the administration's emphasis on large-scale infrastructure takes resources and efforts away from the economic growth portfolio and more fundamental priorities in achieving goodwill and stability in Pakistan.¹⁸² Even before the May 2011 Abbottabad raid, many Pakistani policymakers and other stakeholders were calling for a more limited aid-based relationship with Washington, preferring better access to U.S. markets for Pakistani goods. Current benefits under trade preference programs are limited, with only 5 per cent of exports to the U.S. benefiting from the Generalised System of Preferences (GSP).¹⁸³ Although better access could yield greater economic and development dividends, the prospects of "trade, not aid" initiatives in Congress have been severely limited since that raid.

Proposals for Reconstruction Opportunity Zones (ROZs) in FATA, a free trade agreement and even a bilateral investment treaty have failed in the face of Congressional opposition, stemming partly from desire to protect domestic producers and partly from frustration with Pakistani policies. An administration official working on trade policy said, "the dilemma we face is: 'How do you give something preferential to the country that was hiding bin Laden?'"¹⁸⁴

In July 2010, Senators Kerry and Lugar introduced draft legislation for a Pakistan-America Enterprise Fund, modelled after successful post-Cold War funds in Eastern Europe, to help the private sector overcome lack of capital and stimulate economic growth. The administration initially supported the proposal but withdrew it from draft legislation due to Congressional opposition in January 2012. According to an informed observer, "nobody in Congress wanted to take responsibility for the new fund because of the security and terrorism issues".¹⁸⁵

Many U.S. officials still rightly believe that economic growth and employment are effective checks against the spread of extremism.¹⁸⁶ The U.S. mission in Islamabad is pursuing alternatives to the fund that would not require specific legislation. These include investing in private equity funds as an equal partner and to help provide capital to small and medium enterprises in sectors such as agriculture and horticulture. By putting in a guaranteed amount of funding, the U.S. hopes to leverage buy-in from other donors, as well as pri-

¹⁸² Crisis Group interviews, U.S. officials, Washington D.C. and Islamabad, January-May 2012.

¹⁸³ Birdstall, Elhai and Kinder, op. cit., p. 28.

¹⁸⁴ Crisis Group interview, Washington D.C., February 2012.

¹⁸⁵ Crisis Group interview, Washington D.C., January 2012.

¹⁸⁶ Crisis Group interviews, U.S. officials, Washington D.C., January 2012.

vate international investors who already have investments in Pakistan but are seeking diversity in their portfolios.¹⁸⁷ In June 2009, USAID launched a five-year \$30 million “entrepreneurs project”, to build capacity, particularly of female “micro-entrepreneurs” to earn higher incomes through developing value chains in four sectors: dairy production, fabrics, medicinal and aromatic plants, and honey.¹⁸⁸ It has also engaged private corporations to incorporate new value chains into their production, for example supporting a new Nestle-operated dairy project in Punjab.¹⁸⁹

Private sector involvement in economic growth initiatives has considerable potential. Public-private partnerships have had notable results. In May 2009, the Sindh government presented such a bid to build a dual carriageway between Hyderabad and Mirpurkhas districts and eventually concluding a contract with a Korean construction company that will also manage the highway for 30 years. Sindh will fund one-third, the private sector the rest.¹⁹⁰

This could be replicated elsewhere. Dr Kaiser Bengali, a former adviser to the Sindh government closely involved with the highway, envisions a similar partnership to build a railroad network from Balochistan’s south-western port district of Gwadar to Kohat in KPK’s north-western belt. The construction phase, he believes, would generate jobs in an area with critically high unemployment – provided the contract requires use of locals.¹⁹¹ Once finished, this would open communication and movement of goods through an under-developed region. Rail networks connecting Balochistan and KPK would produce development, economic growth and stability in volatile areas, reducing the appeal of extremism. The U.S. and other donors should provide funding and technical aid and serve as intermediary between the government and the private sector in such projects, if they can overcome bureaucratic obstacles in their own procurement processes.

¹⁸⁷ Crisis Group interviews, U.S. officials, Islamabad, May 2012.

¹⁸⁸ The project provides “formal and on-the-job training to partners [who], in turn, provide training to predominantly female micro-entrepreneurs in finance, product design, marketing, and quality assurance in the four sectors”. “Audit of USAID/Pakistan’s Entrepreneurs Project”, USAID Office of the Inspector General, 20 April 2012, p. 1.

¹⁸⁹ Crisis Group interviews, U.S. officials, Islamabad, May 2012.

¹⁹⁰ “Dualisation of Hyderabad Mirpurkhas Road A Public Private Partnership Project”, developer’s bid review, final report, Public-Private Partnership Unit, finance department, Sindh government, May 2009. Crisis Group interview, Islamabad, May 2012.

¹⁹¹ Crisis Group interview, Islamabad, May 2012.

Other international partners aim to improve trade access to their markets and encourage private sector involvement in development. To help the economy recover from devastating floods in 2010, the EU agreed on a trade deal, approved in February 2012 by the World Trade Organisation, to allow tariff-free entry of 75 Pakistani products for two years.¹⁹² Donors should also invest in technical aid and vocational training to help tap Pakistan’s abundant natural resources, which include minerals, semi-precious stones and oil and gas that hold considerable potential for development.

D. ISLAMABAD’S ROLE

Pakistan needs significant annual economic growth – as high as 7 per cent by some estimates¹⁹³ – to sustain a workforce that grows by millions every year. Power crises and inflation have contributed to a deficit of 6.8 per cent of GDP and a highly unstable economic environment. Massive government borrowing from banks has limited the capital available to the private sector. The national and provincial governments have yet to devise a coherent strategy to tackle these challenges. The state should be at the centre of donors’ development agendas, but the federal and provincial governments cannot afford to ignore eroding capacity and resources and must increase their investment in the country’s future. For example, Pakistan spends less than 2 per cent of GDP on education, among the lowest in South Asia.¹⁹⁴ To build stronger infrastructure, the state should partner with the private sector; to deliver better services, it should partner with civil society groups. Restrictions on donors and local and international NGOs must also be removed.

After the passage of the eighteenth constitutional amendment, the finance ministry’s EAD should no longer oversee key aspects of foreign assistance. Instead, the government should reinvigorate the Council of Common Interests (CCI).¹⁹⁵ Responsible to parliament, its role – to regulate policies related to matters on the federal legislative list¹⁹⁶ – was reinforced by the amendment. The list includes foreign aid.¹⁹⁷ The post-amendment devolution process has been uneven; many issues were unresolved before expiration of a parliamentary committee mandated to oversee its implementation. The CCI should assume responsibility for overseeing the devo-

¹⁹² “Pakistan finally secures preferential trade deal with EU”, *Pakistan Today*, 1 February 2012.

¹⁹³ Crisis Group interview, senior government official, Islamabad, April 2012.

¹⁹⁴ India spends above 4 per cent of GDP on education. Anwar Sayeed, “Demands for a welfare state”, *Daily Times*, 22 May 2012.

¹⁹⁵ The CCI consists of the prime minister, all four provincial chief ministers and three members of the federal government nominated by the prime minister.

¹⁹⁶ The federal legislative list comprises subjects on which the federal and provincial governments can legislate.

¹⁹⁷ Fourth Schedule of the constitution of Pakistan.

lution of resources to match devolved responsibilities. It has not done so in a highly polarised political environment ahead of elections, but if the elections provide for a credible and orderly political transition, it could play a critical role in the next dispensation.

Given their lead role in such areas as health, education and social welfare, provincial governments must also formulate appropriate development strategies and prioritise their implementation. “Without the architecture for development, what can the U.S., EU and the UK do?”, asked a local NGO head. “We haven’t offered a reform platform. Assistance ought to be a topping up, to help to reform a sector; it should not be thought of as core funding. We need to use our own resources for a substantive part of the funding”.¹⁹⁸ This view is widely shared by Pakistani stakeholders. Describing Pakistan as “addicted to foreign aid” at an April 2012 LUMS seminar, a former State Bank governor stressed that an “unintentional consequence of foreign aid is that it has delayed reforms”.¹⁹⁹

In May 2012, the KPK government announced it would double spending on education to 4 per cent of GDP. This is positive but needs an overall strategy, budget transparency and specifications for adequate planning. As part of a larger social and development program, it should also incorporate civil society actors. More than two-thirds of KPK’s budget is in “block” funds whose end use is not specified, allowing tremendous discretion to parliamentarians and bureaucrats.²⁰⁰ This seriously restricts the ability of civil society organisations to monitor their use. Similar conditions exist in the other provinces.

Federal public procurement processes are dysfunctional, compounded by bureaucratic corruption and a weak justice system that is unable to enforce laws, regulations and contracts.²⁰¹ This in turn impedes investment, trade and, more broadly, confidence in the state. Moreover, according to the Center for Global Development, a “weak coalition government [finds] its parliamentary

majority thrown into doubt whenever it hints at economic reform Although a broad constituency for reform exists, it presently has no effective channels to exercise its influence”.²⁰² The PPP was forced to abandon attempts to pass a Reformed General Sales Tax (RGST) law, a key IMF demand, because of opposition from its coalition ally, the Muttahida Qaumi Movement (MQM), as well as the PML-N, both pro-business parties. The PPP-led government has, furthermore, been obstructed by an interventionist higher judiciary, which has at times compelled it to reverse vital reforms such as removing power subsidies and introducing a carbon tax.²⁰³

Dissatisfied with the pace of fiscal and energy sector reforms, the IMF did not release the last two tranches of the November 2008 loan, suspending the Stand-by Arrangement in May 2010 and terminating it in September 2011.²⁰⁴ Donors have similarly stalled disbursement of pledged funds.²⁰⁵ But if there is strong international disapproval of failure to reform, Pakistani perceptions that IFI lending tends to undermine reform are justified. An ex-financial adviser to Sindh said, “twenty years ago, the World Bank gave project loans. The project would generate a source income, through which the loan could be repaid, and eventually profit generated. Now, it primarily gives budget support. The government runs up deficits, knowing someone will pick up the tab. The ballooning debt is repaid with another loan”.²⁰⁶

While the financial impact of inaction is clear, the ability of any government in Islamabad to pass difficult economic reforms will depend on political stability to provide the space and time for reasoned debate and consensus, rather than short-term political grandstanding. That political stability will remain illusive unless the democratic transition stabilises.

¹⁹⁸ Crisis Group interview, Peshawar, 19 April 2012.

¹⁹⁹ Shahid Kardar added: “Would you help an addict who refuses to help himself?”, quoted in Aroosa Shaukat, “Cost-benefit analysis: ‘foreign aid not the problem’”, *The Express Tribune*, 7 April 2012.

²⁰⁰ “Money Matters: An Analysis of Khyber Pakhtunkhwa’s Budget, 2011-12”, Omar Asghar Khan Foundation, August 2011.

²⁰¹ Corruption takes several forms, including abuse of discretionary powers, misuse of regulatory authority and widespread collusion between bureaucrats and private sector actors, particularly with respect to tax administration. For more detail, see Crisis Group Report, *Reforming Pakistan’s Civil Service*, op. cit., pp. 16-17.

²⁰² Birdstall, Elhai and Kinder, op. cit., p. 7.

²⁰³ “Pakistan court cuts new oil tax”, BBC News, 8 July 2009.

²⁰⁴ Pakistan started repaying the IMF in February 2012, and is expected to pay a total of \$1.3 billion during the year, adding significant pressure on foreign reserves. Shahbaz Rana, “Looking for IMF help, Pakistan approaches U.S.”, *The Express Tribune*, 1 November 2011.

²⁰⁵ Syed Fazl-e-Haider, “Donors halt Pakistan cash”, *Asia Times*, 1 February 2011.

²⁰⁶ Crisis Group interview, Kaiser Bengali, Islamabad, 27 May 2012.

VII. CONFRONTING EXTREMISM

A. STABILISATION

1. Humanitarian crises in KPK and FATA

Following massive displacements by military operations and floods, the September 2010 Post-Crisis Needs Assessment (PCNA) was intended as a ten-year peace-building strategy for FATA and KPK, with government and donors identifying drivers of conflict and mechanisms to address them. The document stressed: “[W]ithout true commitment to fundamental reform”, no amount of rehabilitation “can bring peace to Pakistan”.²⁰⁷ The roadmap, focusing on recommendations in such areas as infrastructure and agriculture, has a cost of \$2.7 billion; the estimated cost of necessary legal, political and administrative reforms is \$145 million.²⁰⁸ The PCNA identifies such reforms as prerequisites to the “peace-building value” of its other recommendations.²⁰⁹ Without comprehensive reforms to incorporate FATA and the KPK’s Provincially Administered Tribal Areas (PATA), including Swat and six other KPK districts, into the constitutional mainstream, the region is likely to remain marginalised, underdeveloped and unstable.²¹⁰

For FY2011-2012, the federal government had allocated \$40 million to the PCNA.²¹¹ However, a World Bank-administered Multi-Donor Trust Fund (MDTF) envisaged as a pooled funding mechanism to supplement bilateral funding for PCNA implementation and support for sectors that have received less bilateral and/or government assistance in FATA, KPK and Balochistan, has received limited donor help since its creation in 2010.²¹²

Delays in government approval for projects and slow implementation have stalled further donor commitment. By end-April 2012, only \$3 million had been disbursed, for three projects.²¹³ The approval process has since been simplified, and the pace of disbursements increased, with \$14 million disbursed for seven projects by late May 2012.²¹⁴

To meet urgent rehabilitation needs in FATA’s areas of IDP return, UNDP has suggested a smaller and shorter funding strategy, the FATA early recovery framework. “All other funding strategies for FATA are top-down”, a UNDP official explained. “This one isn’t. The framework simply brings together individual projects that donors are encouraged to finance directly”.²¹⁵ Under the \$222 million framework, 117 projects are to be implemented in four FATA agencies over eighteen months through more than 70 local NGOs, UN agencies, and INGOs, most of which already work in FATA.²¹⁶ UNDP and the FATA Disaster Management Authority (FDMA) will co-chair an early recovery working group to coordinate. By early June 2012, UNDP had obtained access guarantees for implementing organisations, but the federal finance ministry’s EAD had yet to approve the framework.²¹⁷

USAID’s stabilisation strategy aims to “support the efforts of the Government of Pakistan to ‘clear, hold and build’ through short-term development activities and some longer-term infrastructure”, closely aligned with the PCNA’s objectives, which it will coordinate with the MDTF’s activities.²¹⁸ Though the U.S. is the MDTF’s second largest donor, it disbursed \$647.6 million from its own stabilisation portfolio from October 2009 to December 2011, far exceeding the \$25 million it paid into MDTF through April 2012.²¹⁹

²⁰⁷ “Post Crisis Needs Assessment (PCNA) Khyber Pakhtunkhwa and Federally Administered Tribal Areas”, ADB, EU, UN, World Bank, Pakistan and KPK governments, FATA Secretariat, September 2010, p.14.

²⁰⁸ The PCNA was completed before the 2010 monsoon floods and does not quantify the damage caused. “Post Crisis Needs Assessment Khyber Pakhtunkhwa and Federally Administered Tribal Areas”, op. cit., pp. 7, 13.

²⁰⁹ Ibid, p. 136.

²¹⁰ On reform of FATA and PATA administrative and legal systems, see Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit. and Asia Report N°125, *Pakistan’s Tribal Areas: Appeasing the Militants*, 11 December 2006; and Briefings, *Pakistan: the Worsening IDP Crisis*, op. cit. and *Pakistan’s IDP Crisis*, op. cit.

²¹¹ “Operationalisation of the Post Crisis Needs Assessment: Engagement Strategy 2012-2017”, Khyber Pakhtunkhwa, Federally Administered Tribal Areas and Balochistan Multi-Donor Trust Fund (Khyber... MDTF), September 2011, p. 5.

²¹² By April 2012, donors had pledged \$140.2 million and disbursed \$113 million to the MDTF. Balochistan was not

included in the PCNA, but MDTF intends to fund projects there. “MDTF Update”, Khyber... MDTF, April 2012, p. 7.

²¹³ These are: KPK Emergency Roads Recovery Project, Governance Support Project for KPK and FATA and Economic Revitalisation of KPK and FATA Project. Crisis Group interview, donor representative, May 2012. See also *ibid*, p. 4.

²¹⁴ Crisis Group interview, Islamabad, 14 June 2012.

²¹⁵ Crisis Group interview, Jonathan Brooker, Early Recovery Co-ordinator, Crisis Prevention and Recovery Unit, UNDP, Islamabad, 24 April 2012.

²¹⁶ A six-month extension is possible.

²¹⁷ Crisis Group email correspondence, Jonathan Brooker, UNDP Pakistan, 4 June 2012.

²¹⁸ “Pakistan Stabilisation Working Paper”, op. cit.

²¹⁹ USAID Pakistan Disbursements – October 1, 2009 to December 31, 2011, USAID Pakistan website, www.usaid.gov/pk/; also “MDTF Update”, op. cit., p. 7. In 2007, Congress approved the Bush administration’s allocation of a \$750 million fund for FATA’s development over five years. The UK, contributing \$30.7 million out of \$45.8 million pledged, is the largest MDTF donor.

In early 2010, USAID initiated complementary programs to support KPK's rehabilitation and reconstruction of public infrastructure and services in conflict-hit areas.²²⁰ Under the March 2010-September 2012 KPK program, it is funding reconstruction of nineteen health units and 116 of 180 schools militants destroyed in Malakand.²²¹ It also intends to build PaRRSA's capacity to oversee line departments' implementation. The first school rebuilt with USAID aid was only returned to the provincial education department in March 2012.²²² Delays were due to PaRRSA's poor capacity and poor local contractor performance, resulting in construction "not up to our standards", a U.S. official said.²²³

By far the largest donor, the U.S. has also contributed 43 per cent of the UN's consolidated appeal for the 2009 IDP crisis; European Commission assistance, the second largest contribution, was for less than 8 per cent.²²⁴ By the end of 2009, USAID had obligated \$285.7 million and disbursed \$203.7 million to its IDP programs.²²⁵ In 2010, the U.S. was again the largest bilateral humanitarian aid donor, at over \$900 million.²²⁶ Between 2009 and 2010, U.S. food assistance more than doubled, from \$55 million to \$124 million.²²⁷ In

2010, its contributions topped the UN's humanitarian response plan for both the conflict-affected areas and the UN flash appeal launched in the aftermath of floods.²²⁸

Since then, however, U.S. humanitarian assistance has decreased. While it remained the largest donor in 2011, its contribution was significantly less than the previous year, and what it gave the UN appeal after the August floods was comparable with the European Commission.²²⁹ The UN flash appeal was less than 50 per cent funded, reflecting reduced donor attention in general to Pakistan's humanitarian needs.²³⁰ Nor does it appear that such funding will increase. For instance, the Obama administration has not requested any "Food for Peace" funds for Pakistan in FY2012.²³¹ Similarly, the 2011 Floods Early Recovery Framework presented by the government and UN agencies in February 2012 received no U.S. pledges.²³²

Pakistan is prone to natural disasters and will remain vulnerable to conflict-induced displacement and other humani-

²²⁰ USAID has also given \$65 million to the government's housing compensation program to assist people to rebuild houses damaged or destroyed in army operations. "Malakand & FATA Housing Support Program", USAID Pakistan website. The program is underway in Bajaur Agency, while a housing survey has been done in Mohmand Agency to determine needs. "Housing Uniform Assistant Subsidy Project Payment Lists", FDMA website.

²²¹ See "KP Reconstruction Program", USAID Pakistan website, and "The Reconstruction of 180 schools in Malakand Division complete soon, PaRRSA", press statement, Pakistan government, Islamabad, 14 February 2012.

²²² "The First Ever School Reconstructed by PaRRSA under USAID Financial Assistance", press statement, PDMA-PaRRSA, Pakistan government, Islamabad, 14 March 2012.

²²³ Crisis Group interview, Islamabad, May 2012. See also "The Reconstruction of 180 schools", op. cit., and Intikhab Amir, "Questions raised over government capability to undertake Malakand reconstruction", *Dawn*, 24 January 2012.

²²⁴ The UN launched a \$55 million appeal to respond to conflict-induced displacement in September 2008 that was revised in May 2009 to reflect the IDP increase. The \$680 million appeal, ending December 2009, was 77 per cent funded. "Consolidated Appeal – Pakistan Humanitarian Response Plan (Revised) 2008-2009: Total Funding per Donor", Financial Tracking Service and "Requirements, Commitments/Contributions and Pledges per Cluster as of 21 March 2012", Financial Tracking Service, <http://fts.unocha.org>.

²²⁵ "Pakistan and Afghanistan", OIG, 31 December 2011, p. 55.

²²⁶ "Pakistan emergencies for 2010: Total Humanitarian Funding per Donor in 2010 as of 22 March 2012", Financial Tracking Service, <http://fts.unocha.org/>.

²²⁷ Epstein and Kronstadt, 28 July 2011, op. cit., p. 7.

²²⁸ The UN's \$661 million Pakistan Humanitarian Response Plan for projects in conflict- and displacement-affected areas (February to December 2010) received over \$102 million (30.8 per cent of total funding) from the U.S. "Pakistan Humanitarian Response Plan (February-December 2010): Requirements, Commitments/Contributions and Pledges per Cluster as of 22 March 2012", Financial Tracking Service, <http://fts.unocha.org>, and "... Total Funding per Donor", op. cit.

²²⁹ The U.S. has a significant stand-alone emergency relief delivery capacity and shifted a substantial portion of its first-year funds for KLB for humanitarian relief, making it the largest donor for flood relief, even though only a small portion went through the UN. Epstein and Kronstadt, 1 June 2012, op. cit., p. 8. Overall U.S. humanitarian assistance to Pakistan in 2011 was \$143 million (30 per cent of the total received that year). The U.S. contributed \$37.26 million to flood relief projects from September 2011 to March 2012 (the second largest response to the appeal was the European Commission's \$35.15 million). "Pakistan Emergencies for 2011: Total Humanitarian Funding per Donor as of 26 March 2012", op. cit. and "Flash Appeal – Pakistan Rapid Response Plan Floods 2011...", Financial Tracking Service, <http://fts.unocha.org>.

²³⁰ "Flash Appeal", op. cit. and "Requirements, Commitments/Contributions and Pledges...", op. cit.

²³¹ Under Food for Peace Title II, USAID donates U.S. agricultural products to promote food security. In a humanitarian emergency it can divert funds from other accounts. Epstein and Kronstadt, 28 July 2011, op. cit., p. 23. See also "Food for Aid programs: Food for Peace", U.S. Food Aid and Security, <http://foodaid.org/food-aid-programs/food-for-peace>.

²³² The appeal received almost \$11 million from the UK and around \$450,000 from Sweden. "Humanitarian Bulletin Pakistan", UN Office for the Coordination of Humanitarian Affairs (OCHA), Issue 4, April 2012, pp. 1-2; "Pakistan Early Recovery Framework 2012: Total Funding per Donor...", Financial Tracking Service, <http://fts.unocha.org>; also "Pakistan Floods 2011: Early Recovery Framework", Pakistan government/UN, January 2012.

tarian emergencies as long as the military conducts heavy-handed operations in the tribal belt, as the crisis in Khyber Agency demonstrates.²³³ A comprehensive donor response is vital for stabilisation. Moreover, while FATA's conflict-hit population is in dire need of immediate assistance to rebuild homes, develop sustainable livelihoods and repair public infrastructure, the effectiveness of any assistance is contingent on political reform.

2. Aid to FATA

According to the document approved in March 2011, USAID's sectoral strategy for stabilisation in FATA and KPK is part of the overall counter-insurgency strategy:

USAID will endeavour to provide the specific mix of interventions in a given agency/district that will maximise progress along the stability continuum, so that areas outside the reach of the Government of Pakistan (GoP) come under the writ of the State, and that areas already within government influence are then anchored on the path to longer-term economic and social development.²³⁴

A basic goal of its stabilisation program is to build the capacity of the FATA Secretariat. It additionally seeks to strengthen relations between FATA's residents and the civil administrations of individual tribal agencies, headed by political agents (PAs),²³⁵ to build public confidence in the state and counter the appeal of militancy. It has developed a "stabilisation index", entailing a combination of assessments of "hold" strategies, state spending, media access and public response to the FATA Secretariat and other institutions.²³⁶

Programming in FATA is a mix of small-scale community-based infrastructure and service delivery projects, overseen by OTI, and big infrastructure projects, channelled through the FATA Secretariat. A February 2012 audit of FY2011 by USAID's inspector general con-

cluded that "each project we tested" in the Pakistan Transition Initiative program "identified basic community needs in areas suffering from instability and extremism and implemented small-scale projects to meet those needs". The program was "implemented promptly; met basic community needs; and, as a result, improved people's attitudes toward the Government of Pakistan".²³⁷ This assessment, however, seems excessive, given that monitoring and evaluating on the ground is difficult in FATA, even for locals hired by foreign firms such as USAID-contracted MSI. Anecdotal accounts offer a less glowing picture, such as paying FATA residents to build retaining structures to prevent flooding that disintegrated after the first rains, or giving training in polishing gemstones to FATA youths who then lacked jobs to put their new skills into practice.²³⁸

In 2010 and 2011, the inspector general's office (OIG) investigated allegations of construction fraud on two flood-protection walls in FATA, received through its own hotline and the TI-run anti-fraud hotline, resulting in disciplinary action against the project's contractor.²³⁹ "This really helps point out specific problems to the FATA Secretariat and improves the level of transparency with which funds are spent. But it doesn't seem to change how the secretariat operates", said a U.S. official.²⁴⁰ Yet, this was a rare case where a corrupt contractor was held accountable, although scores of others were involved in the same practices.²⁴¹

Nor do USAID's monitoring bodies appear to have exercised meaningful oversight of the FATA Secretariat's functioning. Critical INGO and local NGOs say the secretariat interferes in project monitoring and beneficiary selection. An aid agency representative disclosed that it had, on several occasions, insisted on monitoring its own donor-funded projects but declared its findings confidential. Although it allowed the donor to consult the results, it insisted that it do so only at secretariat headquarters in Peshawar – to which agency staff was restricted from travelling.²⁴² The secretariat is unaccountable to any federal ministry and, based in Peshawar, has little legitimacy with the FATA public. According to the central vice president of the ANP, the ruling party in KPK that in the past exercised control over FATA:

²³³ "Pakistan: Khyber Agency Displacement Situation Report, Number 5", OCHA, 25 April 2012, p. 1.

²³⁴ Annex II – USAID Pakistan Management Comments: Information Memorandum to the Director of the OIG, Pakistan, 23 January 2012, "Audit of USAID's Pakistan Transition Initiative Program", OIG, 3 February 2012.

²³⁵ The political agents and assistant political agents are federal bureaucrats.

²³⁶ USAID has done an initial survey using the stabilisation index, to serve as a baseline for future evaluations. The index uses among other tools focus group discussions and keyword monitoring in media. Crisis Group interview, U.S. official, May 2012. See also "Audit of USAID's Pakistan Transition Initiative Program, Annex II, USAID Management Comments", op. cit., p. 11.

²³⁷ "Audit of USAID's Pakistan Transition Initiative Program", op. cit. In May 2012, the program completed its 2000th quick impact stabilisation project. Crisis Group interview, U.S. official, May 2012.

²³⁸ Crisis Group interviews, Peshawar, November-December 2011.

²³⁹ "Audit of USAID's Pakistan Transition Initiative Program, Annex II", op. cit., pp. 11, 67.

²⁴⁰ Crisis Group interview, Islamabad, May 2012.

²⁴¹ Crisis Group interview, INGO employee, Islamabad, January 2012.

²⁴² Crisis Group interview, Islamabad, March 2012.

There is no way to monitor the FATA Secretariat. At least previously [before its creation], when we went through the [then-NWFP] line ministries, there was some level of monitoring. How can the FATA Secretariat now monitor itself? It has to come under a [provincial parliament's] standing committee – right now there is nothing.²⁴³

In January 2010, USAID granted \$55 million for road and infrastructure reconstruction, water supply and hydro-electricity repair projects in South Waziristan, channelled through the FATA Secretariat. After an open process, the latter awarded contracts for two road construction projects to the Frontier Works Organisation (FWO), the army's construction agency, even though it made the highest bid.²⁴⁴ Implementation has been flawed.²⁴⁵ A June 2011 audit found that the FWO had completed 215km of road in South Waziristan and that, "the use of fixed-amount reimbursement agreements [had] reduced financial risk to the program".²⁴⁶ Examining outcomes in this way, however, evades broader stabilisation objectives by failing to account for a fundamental anomaly in USAID's approach: that channeling large amounts of money through FATA's bureaucracy and the military entrenches the positions of the two institutions that stand to lose the most from political reforms in FATA and have, in the past, blocked those reforms.

The U.S. must realise that any stabilisation strategy in FATA, based on development or other tools, is unlikely to succeed without reform of FATA's governance structure. Political agents and assistant political agents (PAs and APAs) preside over an administrative system governed by a colonial-era legal framework, the Frontier Crimes Regulations (FCR) of 1901, which denies residents basic constitutional rights and political enfran-

chisement and the region a formal legal and economic system.²⁴⁷ The result is extreme poverty, alienation and the lawlessness that provides both sanctuaries and ideal breeding ground for militant groups.²⁴⁸

PAs and APAs have wide, largely unchecked executive, judicial and financial powers. Thus, in May 2012 an APA in Khyber Agency sentenced Shakil Afridi, the doctor who helped the CIA trace bin Laden, to 33 years in prison and a \$3,500 fine. While an official spokesman in Khyber Agency initially said he had been convicted of treason, following strong U.S. criticism, including proposed aid cuts, another said the conviction was based on alleged links with Khyber-based militants.²⁴⁹ The episode is one example of the consequences of a tribal justice system that undermines the rule of law.

USAID officials claim that PAs and APAs have been more responsive to citizen needs than officials elsewhere.²⁵⁰ But it is as likely that they support donor-funded initiatives because they give access to resources and power. According to an NGO representative, for example, the PA in a tribal agency arbitrarily terminated irrigation schemes that did not benefit the communities he wanted assistance to go to. "We've been forced to accept this interference for fear of losing access to these areas that has been so difficult to obtain", said the representative.²⁵¹

By working through the FATA Secretariat's unaccountable and dysfunctional bureaucracy, donors risk aggravating corruption and delaying reforms vital to bringing FATA into the political and constitutional mainstream. So long as the bureaucracy and the military, the two institutions most averse to reform, continue to receive considerable foreign aid, they will likely obstruct any attempts to reform FATA's governance structures. In August 2009, President Asif Ali Zardari lifted restrictions on party activity and curtailed the

²⁴³ Crisis Group interview, Islamabad, May 2012.

²⁴⁴ The then-inspector general of the paramilitary Frontier Corps, justifying the higher bid, claimed that historically the other contenders, such as the National Highway Authority (NHA), failed to adhere to timeframes and budgets outlined in their proposals and demanded more money and time once projects were underway. Crisis Group interview, Major General Tariq Khan, inspector general, Frontier Corps, Peshawar, 13 July 2010. According to the FATA Secretariat, however, the final cost of these South Waziristan projects exceeded initial estimates presented in the FWO's proposal. Crisis Group telephone interview, Faisal Qureshi, assistant to additional director of projects, 3 August 2010; also Crisis Group Briefing, *Pakistan: The Worsening IDP Crisis*, op. cit.

²⁴⁵ Crisis Group briefing, *Pakistan: The Worsening IDP Crisis*, op. cit.

²⁴⁶ "Audit of USAID/Pakistan's road rehabilitation and reconstruction activities under the quick impact projects in South Waziristan", OIG, 20 June 2011.

²⁴⁷ Among other measures, the FCR empowers the PA to collectively punish an entire tribe for crimes committed on its territory, including through fines, asset seizures, economic blockades and detention. There are no regular police or courts. Under Articles 246 and 247 of the constitution, Pakistan's laws do not apply to FATA unless the president directs otherwise, nor do any other constitutional clauses, including those protecting fundamental rights of speech, assembly, fair trial and dignity. Crisis Group Report, *Pakistan: Countering Militancy in FATA*, op. cit. Since the president's approval of a FATA reform package in August 2011, women, children, and people above the age of 65 are exempt from collective punishment.

²⁴⁸ Ibid.

²⁴⁹ "Bin Laden informant: Dr. Shakil Afridi sentenced to 33 years", *The Express Tribune*, 23 May 2012; "Dr. Afridi convicted for militant links", *The News*, 29 May 2012.

²⁵⁰ Crisis Group interviews, Washington D.C. and Islamabad, February and May 2012.

²⁵¹ Crisis Group interview, February 2012.

bureaucracy's arbitrary powers of arrest and detention, exempted women and minors from collective responsibility under the law, established an appellate tribunal and held out the possibility of auditing funds received and disbursed by the auditor general. The military blocked these modest reforms for two years; they were finally passed in August 2011. Implementation of these and future reforms depends on federal government political will and follow-through, but USAID and other donors must not obstruct reform by supporting the institutions that, by impeding FATA's political and economic development, allow lawlessness to reign.

B. CIVILIAN LAW ENFORCEMENT

The absence of the rule of law is one of the most critical tasks facing the civilian government. Although counter-insurgency remains the focus of international engagement, thus favouring a military rather than civilian-led strategy, it is a welcome sign that support for the rule of law is increasingly a priority for key donors, including the U.S., UK and EU. Their assistance should, however, learn from past mistakes and become more carefully conceived and targeted. For instance, the ADB-funded \$350 million Access to Justice Program (AJP), beginning in 2001 and concluding in mid-2008, while delivering some positive results, disproportionately focused on building infrastructure without addressing fundamental gaps in justice delivery. It also diverted considerable funds to irrelevant reforms, such as an anti-defamation bill that several prominent lawyers have described as a waste of money, because defamation was neither an urgent issue nor one likely to gain traction in the courts.²⁵²

The challenge for donors now is not just to better target funds but to also use their leverage to ensure security sector reform. The U.S. has taken a step in the right direction by increasing support for civilian law enforcement. Yet, donor support could go to waste unless the national and provincial legislatures pass promised police reforms to ensure operational autonomy and empower oversight bodies such as the national, provincial and district public safety commissions and the National Police Management Board.²⁵³

U.S. support for civilian law enforcement capacity, particularly within the powerful defence establishment, is also hampered by continued preference for the military

as the counter-terrorism partner of choice. An informed Congressional staffer said, "people in the Pentagon see the Pakistan army as the most trustworthy, in that it is a professional force with a pre-existing level of competence. Shifting to civilian law enforcement agencies is seen as too risky".²⁵⁴ A former administration official added: "We need to move away from the Afghanistan/Taliban/al-Qaeda focus before we really start talking about a shift to civilian law enforcement".²⁵⁵

Even the funds that the U.S. allocates to law enforcement focus primarily on stabilising the tribal borderlands through the military's paramilitary agencies, such as the Frontier Corps and FATA's Levies.²⁵⁶ The 2011 appropriations bill required security-related assistance to Pakistan to be linked to counter-insurgency and counter-terrorism. While confronting FATA-based militants and denying them safe havens in the tribal belt is important, Pakistan's domestic and indeed regional stability depend equally on dismantling sectarian terrorist outfits in the heartland, including southern Punjab and Karachi. Sectarian conflict is the primary source of terrorist casualties and violence, the ramifications of which have gone largely ignored.²⁵⁷ According to a former U.S. official, "there is a sense that if it's just sectarian groups killing each other, let Pakistan deal with that".²⁵⁸

Yet, organisations like the anti-India oriented Lashkar-e-Tayyaba (LeT), renamed the Jamaat-ud-Dawa (JD), and Jaish-Mohammed also support jihad against the West and Afghanistan and are linked to sectarian organisations such as Sipah-e-Sahaba and Lashkar-e-Jhangvi. The strength and goals of this syndicate of local, regional and international jihadi organisations reach well beyond Pakistan to threaten U.S. security. Some, especially the LeT/JD, which enjoy Pakistani military patronage, now partner with Afghan insurgents even as they indoctrinate and train anti-Western jihadis.

Within Pakistan, even groups that lack the military's backing continue to operate in a legally permissive environment, characterised by poor policing, haphazard investigations, dysfunctional prosecution and, in general, dysfunctional criminal justice. With civilian law enforcement starved of resources and working with blunt tools and woefully outdated legal frameworks, it is unsurprising that the conviction rate is no more than 5-10 per cent.²⁵⁹ Radical extremists

²⁵² Crisis Group interviews, lawyers, April-May 2012. For a detailed USAID assessment of the AJP, see "Pakistan rule of law assessment – final report", USAID, November 2008.

²⁵³ See Crisis Group Reports, *Reforming Pakistan's Criminal Justice System*, op. cit.; *Reforming Pakistan's Civil Service*, op. cit.; and *Reforming Pakistan's Police*, op. cit.

²⁵⁴ Crisis Group interview, Washington D.C., February 2012.

²⁵⁵ Crisis Group interviews, Washington D.C., January 2012.

²⁵⁶ FATA Levies are official tribal militias.

²⁵⁷ On the jihadi, including sectarian, landscape, see Crisis Group Reports, *Islamic Parties in Pakistan*, op. cit., and *Pakistan: The Militant Jihadi Challenge*, op. cit.

²⁵⁸ Crisis Group interview, Washington D.C., January 2012.

²⁵⁹ For detailed analysis of the rule of law sector, see Crisis Group Reports *Reforming the Judiciary in Pakistan*; *Reforming Paki-*

thus face limited risks. Leaders are frequently arrested, only to be released by the courts for lack of evidence, undermining police morale and public confidence in the state's ability to confront extremist and terrorist threats.

1. INCLE and INL programming

U.S. justice sector and rule of law-related programs grew out of earlier ones on detainees in KPK and FATA that have since been stopped by the military after relations with the U.S. deteriorated in 2011. Under the International Narcotics Control and Law Enforcement (INCLE) fund, the U.S. supports efforts against militants and criminal elements in the border areas, anti-narcotic operations and law enforcement training, particularly in the provinces. It also supports prosecutor and judicial training under the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) and the Justice Department. In April 2012, the ambassador announced renewal of support in these areas, with \$110 million for the year.²⁶⁰

The largest component of INL's work, absorbing more than half the \$110 million, is policing, followed by support to the interior ministry's 50th Air Wing squadron to enhance law enforcement aviation operations in FATA and KPK. INL also works on counter-narcotics, prosecutorial training and support for the judiciary and, for the first time, the prison system.²⁶¹ Goods and services provided include commodities, infrastructure and training. Most funding goes to KPK, followed by Sindh (principally Karachi). Although Balochistan is also included, the deteriorating security environment, along with bureaucratic restrictions on travel and access, severely limit programming.

U.S. officials, who support greater engagement with civilian law enforcement, stress that the problem is not low funding levels, but absorptive capacity and bureaucratic impediments. Because of pushback, mainly from the military but also the bureaucracy, U.S. police advisers face long delays for visas or receive short-term visas and have to leave the country to reapply every three

months.²⁶² The military also obstructs the provision of equipment for the police.²⁶³

Various donors say they have found receptive, dynamic partners at the level of police superintendent (SP) or senior superintendent of police (SSP),²⁶⁴ but identifying champions of reform is far more challenging at senior police levels, which are heavily politicised and where officials often do not want to be perceived as too close to Western governments – particularly the U.S.²⁶⁵ These might be factors behind resistance at the police leadership level, but military pushback is more likely. While continuing to engage with senior police, whose support is essential to implement any reforms within the service, U.S. and other donor aid should also target lower levels; most investigations, after all, happen at the local station level. At the same time, donors should support ongoing efforts by provincial governments, filling gaps where needed and addressing requirements identified by both the police and political leadership.

KPK's 2012-2013 police budget, for example, is 23.35 billion rupees (roughly \$260 million), making the police its costliest department.²⁶⁶ The provincial government identified resource gaps at station level, as part of a DFID-supported program to establish specific performance targets for expenditure ahead of the 2013 budget. Some individual stations were selected as potential pilots to pinpoint and fill resource and other gaps; if successful, the program could be expanded in future. A former KPK chief secretary and consultant to the program said:

The police [in KPK] have lost their focus on the community, and have taken the military route, merely equipping themselves [with more lethal weaponry] There is a link between so-called local crime [and] overall security. Also, information from small crime leads you to bigger crimes. ... APCs (armoured personnel carriers) completely cut the police off from the public. We need to shift our focus to police stations.²⁶⁷

The U.S. has added local policing to its rule of law agenda, for example helping develop training courses for district officers at the National Police Academy. In Sindh, U.S. and

stan's Prison System, op. cit., *Reforming Pakistan's Police*, op. cit. and *Reforming Pakistan's Criminal Justice System*, op. cit.

²⁶⁰ "\$124 million for Pakistan in the FY2013 request", U.S. embassy press release, Islamabad, 16 April 2012.

²⁶¹ For analysis of the prison system and donor opportunities, see Crisis Group Report, *Reforming Pakistan's Prison System*, op. cit.

²⁶² Crisis Group interviews, Islamabad, May 2012

²⁶³ Crisis Group interview, U.S. officials, Washington D.C., February 2012.

²⁶⁴ For more details on police structure, see Crisis Group Report, *Reforming Pakistan's Police*, op. cit.

²⁶⁵ Crisis Group interviews, Islamabad and Peshawar, April-May 2012.

²⁶⁶ 19.22 billion rupees going towards salaries (roughly \$213 million), leaving only 4.13 billion (\$45 million) for non-salary and operational expenses "White Paper 2012-2013", finance department, KPK government, 8 June 2012, p. 13.

²⁶⁷ Crisis Group interview, Khalid Aziz, former KPK chief secretary, Peshawar, 19 April 2012.

other donor initiatives train constables and assistant superintendents. The new U.S. strategy aims to design programs at the neighbourhood level, focusing on Karachi.

Yet, national-level dialogue should not be ignored. Along with support for local policing, donors should continue to advocate for the federal legislation needed if the police are to be effective. In particular, they should leverage increased aid to lobby for fundamental changes to the three basic bodies of law governing the criminal justice system – the penal and criminal procedure codes and the evidence act – all woefully outdated. Without this, the impact of donor interventions on local policing and the criminal justice system in general may ultimately be limited. Training programs, too, will only work if they accompany more comprehensive reforms that reward new skills with career advancement. All police trained under the EU's Civilian Capacity Building for Law Enforcement (CCBLE) program,²⁶⁸ for example, have returned to the frontline rather than use their new skills, because of the poor career path for trainers.²⁶⁹

Donors should also enhance their engagement with the investigation branches at the national, provincial and district levels. This should include the provincial criminal investigation departments (CIDs), the lead province-level civilian counter-terrorism agencies that have achieved critical success against extremists in the past, for example, the late 1990s counter-terrorism operations that compelled the Lashkar-e-Jhangvi, the most powerful sectarian militant outfit, to relocate to Afghanistan. They are particularly interested in donor support to modernise their forensics, data analysis and related capabilities.²⁷⁰

In Karachi, the U.S. should regularly consult the Citizens-Police Liaison Committee (CPLC) on its rule of law programs. It was created by law in 1989 as a non-political statutory body to improve citizen-police cooperation. 80 per cent of its funding comes from the private sector, 20 per cent from government. Operationally independent and managed by citizen volunteers, it has successfully plugged many critical gaps in police investigations, including data preservation and analysis, while serving as a bridge between the force and the community.²⁷¹

²⁶⁸ CCBLE was an EU-supported €11.5 million program to support the government's counter-terrorism efforts, including by building the capacity of the KPK and Punjab police to handle criminal investigations; improving investigation standards; and strengthening prosecutorial functions in Punjab. It concluded in March 2012.

²⁶⁹ Crisis Group interviews, international rule of law officials, Islamabad, May 2012.

²⁷⁰ Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.

²⁷¹ Ibid.

2. Human rights

The international community should emphasise the links between policing and fundamental rights. Kamran Arif, a Peshawar lawyer and provincial vice president of the independent Human Rights Commission of Pakistan, argues: "The first step to improving investigations in Pakistan is to eradicate torture. This has to go side by side with new investigative techniques".²⁷²

The PPP-led government ratified the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) in June 2010. While not yet applied in practice, they give an opening to press Islamabad and the provincial capitals to create the infrastructure and financial and human resources to meet the new obligations. All UN member states must report on their human rights record to the UN's Universal Periodic Review (UPR) once every four years. Pakistan's next report, in July, to be reviewed in October, will cover steps toward implementing the ICCPR and UNCAT. Previously, the EU met annually with the government on human rights, governance and migration. It will now hold an annual discussion solely on human rights.²⁷³ The U.S. engages in a somewhat similar exercise in connection with its annual human rights report to Congress. These seem useful steps, but annual human rights dialogues tend to favour form over substance.

Key players, including the U.S., UK and EU, have yet to publicly raise concerns about the military's human rights abuses, including torture, collective punishment and extra-judicial detention and killings during operations in FATA, KPK and Balochistan. U.S. law prohibits funding "any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights".²⁷⁴ In October 2010, after video footage circulated of extra-judicial killings by soldiers in the Swat Valley, the administration announced it would withhold train and equip funding from units suspected of complicity in human rights abuses. But abuses in the name of counter-terrorism are not confined to insubordinate units. They constitute a deeper, darker aspect of the military's strategy, against not just alleged Islamist militants but also perceived political foes, especially in Balochistan, where indiscriminate force is used to suppress demands for political, economic and social rights.

A Human Rights Watch report gave details of "45 cases of alleged enforced disappearances, the majority of which were

²⁷² Crisis Group interview, Islamabad, May 2012.

²⁷³ Crisis Group interview, Islamabad, May 2012.

²⁷⁴ The Leahy Amendment, for the text of which see Senator Leahy's website: <http://leahy.senate.gov>.

reported in 2009-2010". According to the report, which was based on over 100 interviews in Balochistan:

These cases show that Pakistan's security forces, particularly its intelligence agencies, targeted for enforced disappearance ethnic Baloch suspected of involvement in the Baloch nationalist movement. Evidence of a broader campaign by the authorities includes detailed accounts of the released detainees and their relatives, witness accounts describing the circumstances of abductions and the identity of the perpetrators, and admissions by government officials. In a few cases representatives of the intelligence agencies admitted responsibility to the families, or during court hearings. None of the victims, their relatives or eyewitnesses to the alleged disappearances interviewed by Human Rights Watch blamed armed Baloch groups. Most blamed Pakistan's intelligence agencies or the paramilitary Frontier Corps.²⁷⁵

Donors, including the U.S. are concerned that abuses are likely to aggravate local resentment and spur militant recruitment in KPK and the tribal belt, the key focus of their stabilisation strategies. But they mostly turn a blind eye to enforced disappearances, torture and the military's "kill and dump" operations in Balochistan even though Baloch alienation is unlikely to provide political space for anti-Western extremists. The U.S. Congress, however, has now taken up the issue. The Senate Appropriations Committee reported that it "remains concerned with the apparent lack of progress in credibly investigating and prosecuting Pakistani military personnel for human rights violations, including torture and extra-judicial executions, and expects [the Leahy amendment] to be rigorously applied".²⁷⁶ The administration would be well served to follow its lead. Beyond enforcing U.S. law, supporting the largely secular, moderate and anti-Taliban Baloch would yield counter-terrorism dividends.

The administration should also follow Congress in addressing military-imposed restrictions on humanitarian access in KPK's and FATA's conflict zones. In 2009, the ICRC requested "better access to the areas directly affected by fighting, the areas into which civilians have fled and the facilities where those detained in connection with the violence are held".²⁷⁷ Concern was expressed at the lack of access "to humanitarian organisa-

tions like the ICRC whose role it is to protect and assist victims of fighting".²⁷⁸ The Supplemental Appropriations Act of 2010 stipulated that Foreign Military Financing (FMF) and PCCF funds be made available "in a manner that promoted unimpeded access by humanitarian organisations to detainees, internally displaced persons, and other Pakistani civilians adversely affected by the conflict".²⁷⁹ On 24 May 2012, the Senate Appropriations Subcommittee approved a bill that would subject economic, law enforcement and military aid to certification by the secretary of state that Pakistan is "providing humanitarian organisations access to detainees, internally displaced persons, and other Pakistani civilians affected by the conflict".²⁸⁰

Even in FATA and KPK's tribal areas, U.S. officials are still inclined to support the military, arguing that the Action in Aid of Civilian Power regulations allowing the military to detain anyone in notified areas of conflict on grounds as vague as obstructing actions in aid of civil power "in any manner whatsoever", and giving retroactive legal cover to military detentions,²⁸¹ are improvements on a weak judicial process that fails to convict militants.²⁸² But these regulations violate international humanitarian law and undermine the legitimacy of the state and its security agencies in the eyes of the local publics.²⁸³

Influential INGOs, too, have avoided publicly criticising the military's human rights abuses, even as they condemn them privately, to avoid ruining their relationship with the armed forces and thus hindering their ability to work. So long as the costs to the military of violations is limited, they are likely to persist, harming not just the rule of law and Pakistan's standing in the community of nations, but also efforts

²⁷⁸ Jane Perlez, "Pakistan army captures Taliban stronghold", *The New York Times*, 24 October 2009. For earlier analysis on these restrictions, see Crisis Group Briefing, *Pakistan: The Worsening IDP Crisis*, op. cit.

²⁷⁹ Epstein and Kronstadt, "Pakistan: U.S. Foreign Aid Conditions, Restrictions, and Reporting Requirements", Congressional Research Service, 15 December 2011, p. 2.

²⁸⁰ "FY 2013 State, Foreign Operations and Related Programs Appropriations Bill", op. cit., p. 202.

²⁸¹ Waseem Ahmed Shah, "New regulations give legal cover to detentions in tribal areas", *Dawn*, 13 July 2011. See also Crisis Group Report, *Reforming Pakistan's Prison System*, op. cit.

²⁸² Crisis Group interviews, U.S. officials, 2012.

²⁸³ Commenting on the regulations, a prominent Islamabad-based lawyer argued: "With few narrow exceptions, every crime is a combination of two necessary components: *actus reus* [guilty act] and *mens rea* [guilty mind]. The Action [in Aid of Civil Power] Regulation, 2011, has turned this conventional wisdom on its head by declaring that intent without any act meant to carry it out is enough to constitute a crime, that an act without being backed by guilty intent can also be deemed an offence, and, further, that suspicion alone, without any corresponding act or intent, might be enough to complete a crime". Babar Sattar, "Criminalising justice part II: legal eye", *The News*, 7 March 2012.

²⁷⁵ "'We Can Torture, Kill, or Keep You for Years': Enforced Disappearances by Pakistani Security Forces in Balochistan", Human Rights Watch, 25 July 2011.

²⁷⁶ "FY 2013 State, Foreign Operations and Related Programs Appropriations Bill", op. cit., p. 17.

²⁷⁷ "Pakistan: Targeting civilians is the ultimate denial of humanitarian law", ICRC press release, 30 October 2009.

to combat extremism and terrorism in the country and the region.

3. New opportunities

Under the eighteenth amendment, rights to a fair trial and to information have become fundamental constitutional rights, a key development demonstrating support for equitable justice. While implementation will likely be imperfect and protracted, as with the treaties discussed above, this provides important opportunities for the international community, in particular to work with the government and civil society groups to provide legal aid to the poor.

The Public Defender and Legal Aid Office Act (PDLAOA, 2009) aims to “promote justice throughout Pakistan by providing quality and free legal services, protecting individual rights, and advocating for effective defender services and a fair justice system; and to ensure equal protection of law to such persons through free legal assistance, advice and representation in the Courts or outside”. It calls for creation of a chief public defender’s office, assisted by additional chief public defenders, district public defenders and public defenders, all to be appointed by and accountable to the federal government, which can direct them to represent any needy person in court or provide the person free legal assistance or advice. This authority also extends to any court of law.²⁸⁴

Although passed two and a half years ago, it has yet to be implemented; no appointments have been made to the new positions. Similarly, the Punjab Public Defender Service Act (2007), a provincial equivalent, has yet to be implemented. In April 2011, a writ petition was filed complaining that the law was buried in “the dead files of the bureaucracy” and pleading with the Lahore High Court to direct the Punjab government to implement it in the public interest.²⁸⁵ U.S. support for this effort through KLB-authorized funds – while requiring matching funding from the state – would be a forceful way of demonstrating support for the rule of law and the justice system, while also promoting internal reform.

Donors should also identify and help enhance the capacity of national and local groups that are effective

human rights advocates, including bar associations such as Swat’s. Many Rural Support Program partners avoid espousing controversial issues such as human rights that they fear could alienate powerful sections of their communities. But some – the Sarhad Rural Support Program (SRSP) in particular – have been willing to build on their track record in their community and expand into new advocacy areas. In SRSP’s case, this includes legal rights and legal aid, supported by the U.S.-based Open Society Institute (OSI). If such efforts prove promising, donors should explore replicating them in other districts.

However, donors should give no support, and end any now given, to informal systems of justice. Alternative dispute resolution (ADR), bypassing the judicial process, has been usually justified either on the grounds that similar models have been successful in other countries, or that they are consistent with tribal or Islamic traditions in Pakistan. But such donors have failed to account for the flaws of jirgas (councils of elders) and other Pakistani ADR forums, which are strongly opposed by human rights activists, women’s rights groups and other key domestic constituencies.

For example, UNDP funds a \$7.44 million Gender Justice Through Musalihat Anjuman (GJTMA) project to support alternative forums for arbitration, mediation and reconciliation of disputes relating to gender-based violence and abuse at the union council level in all four provinces.²⁸⁶ These forums were established under Musharraf’s 2001 local government ordinance. According to an informed KPK-based lawyer and human rights activist, “power structures vary from village to village. Because of those structures, people will accept unjust solutions to cases . . . jirgas do not write judgments, so you never know what law or procedure is applied. How do you ensure that rights are protected? You cannot just focus on resolving disputes, but also on whether they are resolved justly”.²⁸⁷

²⁸⁴ If the person is in prison, the application is to be submitted through the superintendent. Where the accused is under eighteen, insane or otherwise unable to make an application, any other person may do so on his or her behalf. Each application must be accompanied by an affidavit confirming the applicant is indigent, together with details of all income sources. Crisis Group Report, *Reforming Pakistan’s Prison System*, op. cit.

²⁸⁵ Ibid.

²⁸⁶ Other donors include DFID, the Royal Norwegian Embassy and the Swiss Agency for Development and Cooperation. For more detail, see the UNDP website: <http://undp.org.pk/gender-justice-through-musalihat-anjuman-gjtmap.html>.

²⁸⁷ Crisis Group interview, Peshawar, May 2012.

VIII. CONCLUSION

Many billions of dollars have failed to close a trust gap between Pakistan and the international community – particularly its largest donor, the U.S. Without a conscious focus on bolstering democratic institutions and civilian capacity building, and a shift from the military to civilian law enforcement in its counter-terrorism strategy, post-2001 aid could be remembered in Pakistan more for failed ideas and strategies than effective support to democratisation and in the U.S. for failing to deliver on strategic goals of stability and counter-radicalism. Ultimately, Pakistan and the West must overcome a policy divide that has defined their relationship, particularly since 2011. In the words of a senior USAID official: “USAID and the Pakistani government have developed good individual programs, but collectively this does not speak to a real strategy”.²⁸⁸

The U.S. State Department acknowledges that making “a long-term investment in a stable, secure, tolerant, prosperous, and civilian-led Pakistan is in the national security interests of both the United States and Pakistan”.²⁸⁹ But two-and-a-half years after it was passed, the \$7.5 billion Enhanced Partnership with Pakistan Act has yet to achieve intended results and is hostage to both a security-driven agenda and deteriorating relations. It is promising that despite serious misgivings across the Washington policy spectrum about the relationship, some influential voices believe the U.S. still has vital national security interests in continuing its engagement. The options appear, however, to be narrowing.

That the intended shift to a deeper relationship bolstered by economic assistance to the democratically-elected civilian government has not materialised disappoints stakeholders in both countries. Even with substantial non-military aid, ties continue to be defined by perceived security imperatives. Nevertheless, U.S. aid, and international aid in general, can still yield substantial development and political gains if better targeted, monitored and administered. On the other hand, should Congress cut or even limit civilian help because of frustrations with the military, it would reinforce Pakistani perceptions that the U.S. turns off the aid tap once Pakistan stops serving an immediate security agenda.

If power is transferred in Pakistan through a free, fair, transparent and democratic election – either when the PPP government completes its full term by March

2013, or calls the elections earlier – the democratic transition will enter its second phase, stabilising the polity. Democratic institutions and civil society will strengthen and civilian capacity will increase, creating new opportunities for meaningful political and economic reform. If it is to take advantage of those resulting opportunities, the U.S. must not allow short-term security objectives to limit its civilian partnership or programming options.

Hasty decisions also on who gets what, based on short-term political goals to curry favour with the military and civil bureaucracies would only increase the chances of corruption, misuse and waste. Along with targeted and monitored assistance to the government, USAID should continue to work with civil society groups, as well as local NGOs and INGOs with a proven track record to deliver services to socially, economically and politically marginalised citizens. If it wants to be a force for positive change, USAID must remain as flexible as possible in ensuring local ownership over development. The administration must end a willingness to defer to the military’s counter-insurgency agenda. But all this will require the State Department to consult more closely with USAID as it identifies the most appropriate development goals for U.S. foreign policy toward Pakistan.

Islamabad/Brussels, 27 June 2012

²⁸⁸ Crisis Group interview, Washington D.C., January 2012.

²⁸⁹ “Status report: Afghanistan and Pakistan civilian engagement”, Office of the Special Representative to Afghanistan and Pakistan, U.S. State Department, November 2011, p. 17.

APPENDIX A

MAP OF PAKISTAN



APPENDIX B

GLOSSARY OF ACRONYMS AND TERMS

ADB

Asian Development Bank.

ANP

Awami National Party (ANP), heads a coalition government in KPK with the PPP.

CCI

Council of Common Interests, a constitutional body responsible to parliament, tasked with regulating policies related to matter on the federal legislative list, foreign aid included.

CID

Criminal investigation department, the lead civilian counter-terrorism agency at the provincial level.

CPLC

Citizens-Police Liaison Committee, established as a non-political statutory body to improve citizen-police cooperation.

CSF

Coalition Support Funds, U.S. reimbursements to the Pakistan army for counter-insurgency support.

DFID

Department for International Development, U.K. government foreign aid agency.

EAD

Economic Affairs Division of Pakistan's federal finance ministry, overseeing foreign aid.

FATA

Federally Administered Tribal Areas.

FDMA

FATA Disaster Management Authority.

FoDP

Friends of Democratic Pakistan, group of donor countries and international financial institutions.

FWO

Frontier Works Organisation, Pakistan army's construction wing.

GAO

U.S. Government Accountability Office.

HRCPI

Independent Human Right Commission of Pakistan.

IBA

Institute of Business Administration, Karachi-based institute established in 1955 with technical assistance from U.S. universities.

ICRC

International Committee of the Red Cross.

IFI

International financial institutions.

IMF

International Monetary Fund.

INCLE

International Narcotics Control and Law Enforcement fund, part of U.S. law enforcement and stabilisation funding to Pakistan.

INL

International Narcotics and Law Enforcement Affairs, a bureau of the U.S. State Department.

ISI

Inter-Services Intelligence directorate, the Pakistan army's main intelligence arm.

KLBB

Kerry-Lugar-Berman bill, passed by the U.S. Congress in 2009 – also known as Enhanced Partnership with Pakistan Act (EPPA) – authorising \$7.5 billion in economic assistance over five years to strengthen Pakistan's civilian institutions and fragile democracy.

KPK

Khyber Pakhtunkhwa, formerly known as the Northwest Frontier Province (NWFP).

LUMS

Lahore University of Management Sciences, established with USAID funding in 1985.

MDTF

Multi-Donor Trust Fund.

MQM

Muttahida Qaumi Movement, PPP coalition partner in government, with strong constituencies among Karachi's business community.

NOC

No-Objection Certificate, a requirement placed on foreign nationals in order to travel and/or implement aid projects in Pakistan.

OIG

USAID Office of Inspector General.

OTI

USAID's Office of Transition Initiatives.

PA

Political Agent a centrally appointed bureaucrat who is the top official in a tribal agency, exercising extensive executive, judicial and financial powers.

PAC

Federal and provincial parliamentary public accounts committee.

PaRRSA

Provincial Reconstruction, Rehabilitation and Settlement Authority, created by the KPK government in June 2009 to oversee resettlement and rehabilitation in the conflict-affected areas of the province.

PCF

Pakistan Counterinsurgency Fund, U.S. Department of Defense fund created by Congress in 2009.

PCCF

Pakistan Counterinsurgency Capability Fund, U.S. State Department fund created by Congress in 2009.

PCNA

Post-Crisis Needs Assessment, conducted by the UN, World Bank and Asian Development Bank to identify long-term needs in reconstruction and development and costs, as well as suggest policy recommendations to avoid renewed conflict.

PDMA

Provincial Disaster Management Authority.

PML-N

Pakistan Muslim League-Nawaz, headed by former Prime Minister Nawaz Sharif, the main party in opposition and lead party in Punjab assembly.

PPP

Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1967 with a socialist, egalitarian agenda. Since Benazir Bhutto's assassination in December 2007, the party is headed by her widower, President Asif Ali Zardari, and son, Bilawal Bhutto Zardari. It currently heads the coalition government in the centre.

RSPN

Rural Support Programs Network (the umbrella structure assists its twelve partner RSPs in capacity building, policy advocacy and donor relations).

UNDP

United Nations Development Programme.

USAID

U.S. Agency for International Development.

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

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Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

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