

DISCORD IN PAKISTAN'S NORTHERN AREAS

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DISCORD IN PAKISTAN'S NORTHERN AREAS

EXECUTIVE SUMMARY

Almost six decades after Pakistan's independence, the constitutional status of the Federally Administered Northern Areas (Gilgit and Baltistan), once a part of the former princely state of Jammu and Kashmir and now under Pakistani control, remains undetermined, with political autonomy a distant dream. The region's inhabitants are embittered by Islamabad's unwillingness to devolve power to its elected representatives, and a nationalist movement, which seeks independence, is gaining ground. The rise of sectarian extremism is an alarming consequence of this denial of basic political rights. Taking advantage of the weaknesses in the imposed dispensation, religious organisations espousing a narrow sectarian agenda are fanning the fires of sectarian hatred in a region where Sunnis, Shias and Ismailis have peacefully coexisted for several centuries.

Prior to Pakistan's independence, the Northern Areas were part of the princely state of Jammu and Kashmir and a key component of Imperial India's strategic northern frontier. In 1947, the region successfully rebelled against the Maharaja of Kashmir and supported full integration into Pakistan. Almost 60 years later, Pakistan's military, the arbiter of its Kashmir policy, insists that the Northern Areas remain part of the disputed state of Jammu and Kashmir and that any delineation of the region's constitutional status will have to wait for a solution of the Kashmir dispute. As a result, the Northern Areas are not included in the Pakistan constitution and, unlike the Federally Administered Tribal Areas (FATA), are not represented in the parliament. The region has been left in a constitutional limbo.

Like the Northern Areas, Azad Jammu and Kashmir (AJK), the other part of the former princely state under Pakistan's control, is also considered disputed territory. Yet, Islamabad has granted AJK at least nominal autonomy, including its own constitution. In stark contrast, it administers the Northern Areas under the Legal Framework Order (LFO) of 1994, an administrative instrument used to strengthen its hold over the region while denying its residents basic political and civil rights. Many locals believe sectarian bias is behind the decision to maintain widely different political arrangements to the Northern Areas and AJK. Unlike AJK, which, like Pakistan, has an overwhelming Sunni majority, the Northern Areas are the only Shia-majority region under Pakistani control.

Violating a landmark verdict by the Pakistan Supreme Court in 1999, which directed Islamabad to extend, within six months, fundamental freedoms to the Northern Areas, allowing its people to be governed by their elected representatives, the region is still ruled by executive fiat from Islamabad through the federal ministry for Kashmir Affairs and Northern Areas (KANA), whose minister is its unelected chief executive. The Northern Areas Legislative Council (NALC), the region's elected legislature, is powerless, and civil and military bureaucrats run affairs. By depriving elected institutions of even a modicum of authority and marginalising moderate political forces, Islamabad has empowered sectarian groups and allowed them to secure a firm foothold in the region.

The military's patronage of Sunni jihadis has also promoted sectarian strife in the Northern Areas, first witnessed during General Zia-ul-Haq's rule (1977-1988), when the state empowered Sunni Islamists at the cost of the Shia minority. Since then, violent sectarian clashes have frequently occurred in the Northern Areas. Under President and Army Chief Pervez Musharraf, the military has retained its alliance with Sunni Islamists for multiple goals, domestic and external, further weakening moderate forces in a region where religious extremism was once unknown. Nor has the military government taken any meaningful steps to address the wider issues of constitutional neglect and political disempowerment in the Northern Areas.

With the denial of political space and basic rights under Musharraf's military government, discontent in the Northern Areas is on the rise, and the political vacuum is being exploited by extremist groups to promote their sectarian goals. Implementing the recommendations of Pakistan's Supreme Court and extending basic rights and political freedoms to the Northern Areas could restore some of the goodwill frittered away by long mismanagement. For that to happen, however, Pakistan itself must have a democratic dispensation. Democratically-elected governments in Islamabad have initiated whatever political development has taken place in the Northern Areas. At least until there is again such a government, Islamabad will resist devolving any meaningful power to a region that is perceived as a bargaining chip in its rivalry with India over Kashmir.

Islamabad/Brussels, 2 April 2007

DISCORD IN PAKISTAN'S NORTHERN AREAS

I. INTRODUCTION

The Pakistani military, the ultimate arbiter of the country's Kashmir policy,¹ has kept the strategically sensitive Federally Administered Northern Areas under central control for fear that even a modicum of autonomy would translate into political empowerment and demands for self-governance. For almost 60 years, Pakistan has tied political rights there and the larger issue of a constitutional identity to resolution of the Kashmir dispute.

The northernmost tracts of Pakistan-administered Kashmir and spanning 72,486 sq. km, the Northern Areas border the Chinese province of Xinjiang to the north, Indian-administered Jammu and Kashmir to the east, Pakistan-administered Azad Jammu and Kashmir to the south and Afghanistan and Central Asia, through the Wakhan Corridor to the west. They are divided into six districts. Gilgit region has four districts: Astore, Diamer, Ghizer and Gilgit. Baltistan region has two: Ghangche and Skardu. According to the most recent national census (1998), the population – all Muslim – was 870,347 but it is now estimated at 1.5 million.² Gilgit is the political and administrative headquarters; other important areas include Skardu, the headquarters of the army's Northern Light Infantry (NLI) regiment, and Diamer district, a citadel of Sunni orthodoxy in an otherwise Shia-majority region.³

¹ On the military's control over the formulation and implementation of Pakistan's Kashmir policy, see Crisis Group Asia Report N°35, *Kashmir: Confrontation and Miscalculation*, 11 July 2002; Crisis Group Asia Report N°68, *Kashmir: The View from Islamabad*, 4 December 2003; Crisis Group Asia Report N°70, *Kashmir: Learning from the Past*, 4 December 2003; and Crisis Group Asia Report N°79, *India/Pakistan Relations and Kashmir: Steps Towards Peace*, 24 June 2004.

² M. Ismail Khan, "Justice needed with or without chief", *The News*, 13 March 2007.

³ The people of Diamer, like the Afghan Taliban, follow the militantly puritanical Deobandi school of Sunni Islam. For more on the origins, tenets and political/sectarian dynamics of the Deobandi sect, see Crisis Group Asia Report N°95, *The State of Sectarianism in Pakistan*, 18 April 2005. The division between Shias and Sunnis dates to the death of the Prophet Mohammed in 632 and the question of who was to take over leadership of the Muslim community. Sunnis revere the first four caliphs (Abu Bakr, Umar, Uthman and Ali) as the legitimate Caliphs;

For almost two decades, the Northern Areas have been afflicted by sectarianism; in recent years Shia-Sunni violence has increased markedly. In 2005 alone, almost 100 people died, many more were injured, and property worth millions of rupees was destroyed. Even more harmful was the long-term damage to social harmony. An atmosphere of fear, hatred and suspicion pervades Gilgit, the main city, which has borne the brunt of sectarian turmoil. If the immediate catalyst of the 2005 violence was a dispute over the Islamic curriculum in school textbooks, the real causes of sectarian conflict are to be found in six decades of Pakistani misrule.

Instead of making Pakistan's grip on the Northern Areas more secure, the denial of basic rights and representative institutions through which to express grievances has led many, particularly youth, to turn in frustration to radical sectarian groups. "The denial of rights has created bitterness, frustration and resentment, emotions that have found an outlet through bigotry and fanaticism", said a young politician in Gilgit.⁴ The military's reliance on Sunni jihadi groups to fight its proxy wars in Afghanistan and Kashmir has made the Northern Areas, geographically contiguous to Indian-administered Kashmir, a base and training ground for Sunni militants, fuelling in turn sectarian tensions in the Shia-majority region.⁵

The sense of deprivation in the Northern Areas has also manifested itself, albeit less violently, in a nationalist movement that could potentially challenge Pakistan's control over the territory. The military government has chosen to counter discord and discontent not through debate and reform but through brutal suppression.⁶

Shias reject the first three (along with the institution of the caliphate) and maintain that Ali, the son-in-law of the Prophet, was not only his rightful heir but also the first of twelve divinely inspired Imams, the last of whom went into hiding and will return to usher in the end of the world. *Ibid.*

⁴ Crisis Group interview, Bashir Ahmed Khan, General Secretary, Northern Areas Pakistan Muslim League (Quaid-i-Azam) [PML-Q], Islamabad, July 2006.

⁵ Crisis Group Report, *The State of Sectarianism in Pakistan*, op. cit.

⁶ Nationalist parties complain of government harassment of their workers, including implicating hundreds in false sedition cases. Crisis Group interviews, Northern Areas nationalist leaders, Gilgit, August 2006, and Islamabad, December 2006.

This report identifies the causes of conflict in the Northern Areas. Examining their history as part of British India's northern frontier and their association with the former princely state of Jammu and Kashmir, it analyses the implications of Pakistan's policy of linking constitutional and political status to a resolution of the Kashmir dispute. Examining the governance structures put in place by Islamabad, it assesses the implications of political disempowerment on political stability and sectarian violence in the region.

II. THE HISTORY

A. THE KASHMIR CONNECTION

In 1846, the British sold the picturesque Vale of Kashmir, situated in northern India and with an overwhelmingly Muslim population, to Gulab Singh, the Hindu ruler of the neighbouring Hindu-majority fiefdom of Jammu.⁷ Gulab Singh had already annexed the Buddhist kingdom of Ladakh in the 1830s and the predominantly Muslim majority area of Baltistan in 1841. Over the next three decades, he and his successors, with British support, erected a mini-empire, penetrating the outermost reaches of India's northern frontier and establishing their suzerainty over what was then referred to as Dardistan.⁸ This predominantly Muslim region included the former principalities of Gilgit, Hunza, Nagar and other territories bordering on Chinese Xinjiang and Afghanistan.

In 1846, a Boundary Commission was dispatched to determine the frontier of the newly created state of Jammu and Kashmir. Attention focused on the Ladakh and the Gilgit routes.⁹ Because of the strategic location of this territory, the British, concerned that a Russian advance that could threaten their hold over India, were unwilling to give the maharaja a free hand in conducting relations with his neighbours. By the 1860s, Czarist Russia was not only on the brink of establishing a common border with Afghanistan but was also moving close to Chinese

⁷ A vassal of Maharaja Ranjit Singh, the founder of the Sikh Empire in the Punjab, Gulab Singh remained neutral during the first Anglo-Sikh War in 1846, facilitating British victory; the British elevated him to Maharaja of Jammu and Kashmir under the Treaty of Amritsar of 1846.

⁸ The term "Dardistan" was coined by G. W. Leitner, an Anglo-Hungarian orientalist who visited the Northern Areas in the 1860s and recorded his findings in *Dardistan in 1866, 1886 and 1893* (Karachi, 1889/1985). Some experts believe he erred by placing all tribes in the area into one category, the Dards, ignoring their differences. For more on the Dards, see John Mock, "Dards, Dardistan and Dardic: An Ethnographic, Geographic and Linguistic Conundrum", in Nigel J. R. Allan (ed.), *Pakistan: Karakoram Conquered* (New York, 1996).

⁹ Imperial India's northern frontier ran along the Karakoram and its associated ranges, which created the primary watershed between the Tarim Basin in Xinjiang and the Indus River. Two major routes ran across this watershed, the Ladakh route in the east into Xinjiang by way of the Karakoram Pass, and the Gilgit route in the west from Gilgit through Hunza to Kashgar in Xinjiang via the Khunjerab and other passes of the western Karakoram range. Because of the Kashmir dispute, in 1947 the northern frontier was partitioned. India acquired the Ladakh route; the Gilgit route went to Pakistan and eventually evolved into the Karakoram Highway. This highway, the world's highest paved international road, links Pakistan with China.

Turkestan.¹⁰ British policies towards India's northern frontier, therefore, were shaped until Pakistan and India's independence in 1947 by the need to thwart Moscow's expansionism.

The British believed that Gulab Singh's son and successor as maharaja, Ranbir Singh, was attempting to conduct his own foreign policy by establishing direct contacts with their imperial rival. They consequently monitored his activities not just in Ladakh but also in Dardistan, particularly in Gilgit.

Lying on the foothills of the Karakoram Mountains, Gilgit controlled access to Hunza in the north east and the passes into Chinese Turkestan. Toward the west, it was possible to travel from Gilgit to Chitral on the Wakhan Corridor, a narrow strip of Afghan territory separating British India from Russian-controlled Central Asia. Sikh rule had been extended to Gilgit in 1842. The British transferred control of the territory to the Dogra rulers of Jammu and Kashmir¹¹ by the Treaty of Amritsar of 1846. Six years later, a rebellion by local tribal leaders chafing under Dogra rule led to the ouster of the maharaja's forces. In 1860, however, Ranbir Singh recaptured it and annexed it to the state of Jammu and Kashmir as the capital of the Gilgit *Wazarat*.¹²

Seized of Dardistan's geo-strategic potential, London agreed to give Ranbir Singh military aid in exchange for the stationing, in 1877, of a British agent in Gilgit to "supervise the conduct of policy on this frontier".¹³ The existence of this agency, however, was short-lived, since relations between the maharaja and the political agent, Major John Biddulph, were strained. In 1881, the agency was withdrawn, freeing the maharaja of supervision.

To curtail the maharaja's control over the territory, the British again established a presence in Dardistan.¹⁴ In

1889, Colonel Algernon Durand reestablished the agency, with his first challenge coming from the rulers of Hunza and Nagar, who had joined forces against the Dogras and posed a threat to the maharaja's control over Gilgit as well. The rebellion was quelled, and Hunza and Nagar were absorbed into Gilgit Agency. The Gilgit garrison was manned by 2,000 Jammu and Kashmir state troops, employed by the maharaja. Locals were not recruited until 1913, when the Corps of Gilgit Scouts was formed.¹⁵ Powers and responsibilities were divided, with defence, foreign affairs and communications falling under the imperial government while the maharaja controlled civil administration through his representative, the *Wazir-e-Wazarat*.¹⁶

By the 1930s, events in the agency's neighbourhood,¹⁷ along with the maharaja's attempts to reassert his independence, led the British to again change their policy towards Dardistan. On 26 March 1935, the maharaja leased exclusive control of the part of Gilgit Agency north of the Indus to the British for 60 years. This arrangement remained in place until 1 August 1947, when the impending termination of British rule in India led to the premature dissolution of the lease agreement and the return not just of the leased area but also the rest of Gilgit Agency to the maharaja's control.¹⁸ According to one historian, the British rationale for returning the entire Gilgit Agency was based on the assumption that the maharaja would eventually accede to India, which the British, particularly Lord Louis Mountbatten, the last viceroy, hoped to see as the new guardian of the northern frontier.¹⁹

B. ACCEDING TO PAKISTAN

Britain's decision to unilaterally dissolve the lease agreement incensed Gilgit Agency's predominantly

¹⁰ Alastair Lamb, *Kashmir: A Disputed Legacy* (Karachi, 1994), p. 20.

¹¹ Gulab Singh and his successors were Dogras, a Hindu tribe in Jammu.

¹² *Wazarat*: ministry; *wazir*: minister.

¹³ Lamb, op. cit., pp. 28-29. In the 1870s, the British government considered that "as a substitute for direct British rule, its best interests lay in supporting the Maharaja of Jammu and Kashmir in establishing his influence in these northern tracts of Dardistan" to prevent Russian advances from northern Afghanistan.

¹⁴ The Russians appeared to be moving towards northern Afghanistan from present-day Turkmenistan. There was evidence of Russian contacts with the rulers of Chitral and Hunza. The British also believed that Ranbir Singh's successor, Pratap Singh, was in "treasonable correspondence" with Czarist representatives. They "could only conclude that the defence of the Northern Frontier was too grave a matter to be entrusted to the Maharaja". Ibid.

¹⁵ The Scouts comprised 600 locally recruited men, trained and led by British officers. Even though half the cost of the Corps came out of the Jammu and Kashmir exchequer, it did not buy the allegiance of the troops, who remained loyal to their British commanders. Victoria Schofield, *Kashmir in Conflict: India, Pakistan and the Unfinished War* (New York, 2000), p. 13.

¹⁶ F. M. Khan, *The Story of Gilgit, Baltistan and Chitral: A Short History of Two Millenniums AD 7-1999* (Gilgit, 2002), p. 44.

¹⁷ Bolshevik Russia was proving an even more formidable threat to British control over India's northern frontiers than its Czarist predecessor.

¹⁸ Until as late as 1941, the British government was of the opinion that Hunza and Nagar were under the suzerainty of Jammu and Kashmir but were not a part of it, nor were the areas of Chilas, Koh Ghizar, Ishkoman and Yasin. But when the plan to partition India was announced on 3 June 1947, these areas were returned to the maharaja's control. Schofield, op. cit. p. 62.

¹⁹ Lamb, op. cit., p. 107.

Muslim inhabitants, who were unwilling to be returned to Hindu Dogra rule. The Gilgit Scouts were similarly displeased at being reassigned to the maharajah's service. Their commander, Major William Brown, was aware that his Muslim-majority troops were not likely to remain loyal to a Hindu ruler but was hesitant to take any measure that could be construed as a mutinous challenge to the maharaja's authority. Brown managed to keep the Scouts under control even during the violence that accompanied British India's partition in August 1947 and took no action until the maharaja decided to accede to India.

In October 1947, Pashtun tribesmen from the Northwest Frontier Province (NWFP), setting off on a "holy war" against Kashmir's Hindu ruler, marched towards Srinagar, the maharaja's capital.²⁰ The territory they captured became *Azad* (free) Jammu and Kashmir (AJK) on 24 October. The alarmed maharaja formally acceded to India, following which India moved troops to Srinagar, precipitating the first of several wars with Pakistan.

The maharaja's decision also provoked a full-scale rebellion in Gilgit, spearheaded by the Gilgit Scouts and Muslim members of the Jammu and Kashmir state troops, with the support of the overwhelmingly Muslim local population. On 31 October, Major Brown sent a platoon of Scouts to surround the residence of the maharaja's governor of Gilgit Agency, Ghansara Singh. Other platoons took control of important locations in the city. On 1 November, Ghansara Singh surrendered, and a provisional government consisting of leaders of the victorious forces was installed and remained in place until power was transferred to the first Pakistani Political Agent in Gilgit on 16 November.²¹ Two days later, Hunza and Nagar signed instruments of accession to Pakistan.²²

On 29 July 1949, Indian and Pakistani military representatives signed an agreement in Karachi defining the ceasefire line in the state of Jammu and Kashmir. The frontline dividing the area controlled by the Indian army and AJK became the western half of the Kashmir ceasefire line. The outcome of the conflict between

Indian and Pakistani troops determined the eastern half of the ceasefire line. Pakistan had mounted an offensive through Gilgit towards Leh, Ladakh's capital, which briefly cut the main Srinagar-Leh road at Kargil. The Indian counter-offensive evicted Pakistan from Kargil and elsewhere in Ladakh, confining it to Baltistan.

As a result of the 1949 ceasefire, the state of Jammu and Kashmir was dissected into two regions of roughly similar area. Pakistan held the Gilgit Agency, Baltistan, a narrow portion of Kashmir province, Poonch and Mirpur in Jammu. India controlled Ladakh, a portion of Poonch, and the bulk of Kashmir province and Jammu.

²⁰ Crisis Group Report, *Kashmir: Learning from the Past*, op. cit.

²¹ When Brown discovered that some members of the provisional government intended to set up an independent republic of Gilgit-Astore, which had the support of the majority of the Scouts, he outmanoeuvred the pro-independence faction by securing the agreement of local leaders for accession to Pakistan. See Schofield, op. cit., p. 63.

²² The provisional government in Gilgit did not sign a formal letter of accession, opting instead to send a wireless message to the Pakistan government requesting a civil administrator. Ahmed Hassan Dani, *History of Northern Areas of Pakistan* (Lahore, 2001), p. 349.

III. SIX DECADES OF CONSTITUTIONAL NEGLECT

A. RETAINING THE KASHMIR CONNECTION

Cobbled together by a succession of Dogra maharajas, the princely state of Jammu and Kashmir was not monolithic but rather a complex mosaic of cultures, nationalities and religions. Of the areas presently under Indian control, Jammu is predominantly Hindu and Sikh and is dominated by the Dogras, who speak their own language, Dogri. The areas that constitute AJK have a Sunni Muslim majority that speaks Kashmiri, Mirpuri, Punjabi and Urdu. The Kashmir Valley is also predominantly Sunni Muslim, though with a small, affluent Hindu minority. The people of the Valley claim a separate Kashmiri identity based on the Kashmiri language and share cultural values from a Buddhist and Hindu past. Ladakh is almost completely Tibetan Buddhist, and its people speak Ladakhi.

In the present-day Northern Areas, the inhabitants of Baltistan have an ethnic affinity with Ladhakis but are Shias and speak Balti. The people of what was referred to as Dardistan, comprising Gilgit, Hunza, Nagar, Chilas and Astore, are also mainly orthodox Shias, although Sunnis are more numerous in Chilas and Astore, and Ismailis²³ dominate Hunza, Punial, Yasin, Ishkoman and Gupis. In Ghangche, an overwhelming majority belongs to the little known Nurbakhshi sect of Islam.²⁴ Thus the territory that now constitutes Pakistan's Federally Administered Northern Areas, ethnically and culturally, has little in common with the Vale of Kashmir, other than the fact that the languages spoken there also belong, like Kashmiri, to the Dardic family. This lack of affinity explains in large part local rejection of any association with Kashmir today. Yet despite the region's voluntary accession to Pakistan, Islamabad policymakers still link it with Jammu and Kashmir.

²³ Ismailism, an offshoot of Shiism, also grew out of the Sunni-Shia dispute over succession. Ismailis believe that Ismail, the eldest son of Jafar al-Sadiq, the sixth Imam, was his rightful heir; orthodox Shias believe Jafar preferred his younger son, Musa. The Ismailis are thus also known as Sevener Shias, as opposed to orthodox Twelver Shias. While Twelver Shias believe that the line of Imams ended with the twelfth, Ismailis have, from Ismail onwards, been led by a uninterrupted chain of hereditary Imams, with the current Aga Khan, Prince Karim, the spiritual leader of the world's Ismailis, the 49th in that chain.

²⁴ The Nurbakhshi movement originated in the fifteenth century in Iran and Central Asia as a mystical, messianic order founded by Muhammad Nurbakhsh and is presently found in parts of Pakistan and India.

On 28 April 1949, Pakistan and AJK signed the Karachi Agreement by which the latter agreed to place all affairs relating to the Northern Areas in Pakistan's hands.²⁵ No Northern Areas' representative was present, an omission that still rankles with many locals. "Who gave Azad Kashmir the right to determine our political destiny? The Karachi Agreement was nothing more than a sale of human beings, in which Pakistan and Azad Kashmir were customers, and we were the commodity on sale", said Asadullah Khan, a former president of the Northern Areas Bar Association (NABA).²⁶

In 1950, Pakistan's ministry of Kashmir affairs "established initially to deal with matters related to the Kashmir dispute",²⁷ later renamed the ministry of Kashmir affairs and Northern Areas (KANA), assumed administrative control over Gilgit Agency, including Baltistan. KANA retains that control. Pakistan changed the region's name to the Federally Administered Northern Areas (FANA) but still it insists it is a part of the disputed state of Jammu and Kashmir. Therefore, the Northern Areas' constitutional status must await a final solution of the Kashmir dispute. As a result, the Northern Areas were not included in Pakistan's three constitutions, nor given representation in its parliament. The region remains in constitutional limbo, with its people, who largely support integration with Pakistan, still groping for an identity and deeply resentful of their uncertain status. "Identity is a basic human need, and it is this identity that Pakistan has denied to us for so long. We acceded to Pakistan because we wanted to be a part of Pakistan, to be owned by it. Unfortunately, it has still not owned us", said a local lawyer.²⁸

1. Justification

Pakistan's rationale in linking the Northern Areas with Jammu and Kashmir and treating the region as part of the disputed territory is based on the premise that the overwhelming majority in the Northern Areas would vote in its favour if and when a plebiscite were held to determine Kashmir's future.²⁹ From the onset, Pakistan

²⁵ Text of the Karachi Agreement of March 1949 in "Malik Muhammad Miskeen and 2 others v. Government of Pakistan and 10 others", judgement of the Azad Jammu and Kashmir High Court, Pakistan Law Decisions, 1993 (PLD 1993 Azad J&K 1).

²⁶ Crisis Group interview, Islamabad, February 2007.

²⁷ Ministry of Kashmir affairs and Northern Areas, www.pakistan.gov.pk/divisions/ContentInfo.jsp?DivID+17&Path+155_156&ContentID+259.

²⁸ Crisis Group interview, Asadullah Khan, former president of the Northern Areas Bar Association (NABA), Islamabad, February 2007.

²⁹ A series of UN Security Council resolutions between 1948 and 1951 called for settlement of the dispute over Jammu

has followed a policy of “calculated ambiguity” toward the areas of the former princely state of Jammu and Kashmir under its control.³⁰ While it contests India’s claim over AJK and the Northern Areas, it also does not claim them for fear that this could negate Kashmir’s status as a disputed territory, or imply acceptance of the territorial status quo as a permanent solution.³¹

While this ambiguity is meant to strengthen Pakistan’s case for a plebiscite in Kashmir, it has given India, which has explicitly staked its claim over all of Jammu and Kashmir, a distinct psychological advantage.³² Were Pakistani troops to cross the Line of Control, the operation would be condemned by India – and in all probability by the world community – as aggression against India. However, if the roles were reversed and Indian forces were to mount a similar campaign west of the Line of Control, Pakistan, having always insisted upon the disputed nature of Kashmir and the temporary character of the Line of Control, would find it awkward to denounce this as aggression against itself. “Unlike their Indian rivals, Pakistanis have been forced by circumstances to...risk the part of Jammu and Kashmir now in their possession in order to safeguard their claim to the part that isn’t”.³³

The fragility of Pakistan’s position is not lost on the people of the Northern Areas. India treats “Kashmir as an integral part [of the Indian state]. Pakistan should do the same. By not doing so, it is making us vulnerable as well as undermining its own position”, said a lawyer in Gilgit.³⁴ Another lawyer commented: “If India decides one fine day to invade and capture the Northern Areas, what legal basis will Pakistan have to resist the invasion when it does not claim the Northern Areas as its own territory?”³⁵ To obviate the possibility of Indian aggression as well as meet demands for political and civil rights, local lawyers argue, Pakistan would be better served by granting the Northern Areas provisional provincial status. While they would still be formally considered a part of Kashmir, and thus included in any future negotiations, they would then enjoy the same level of autonomy, and have the same institutions of governance as Pakistan’s four federal units. “Pakistan gave away our land to China in the 1960s while

retaining the Kashmir proviso. The precedent is there and could be applied in our case as well”.³⁶

2. Enforcement

Pakistan’s approach to the Northern Areas’ constitutional status is beset with contradictions. It does not mention the region in its constitution, refusing to give it provincial or even provisional provincial status. Yet it also treats it, for practical purposes, as Pakistani territory. In 1977, for instance, General Zia-ul-Haq extended martial law to the Northern Areas but not to AJK. In 1982, three Northern Areas members were granted observer status in the Federal Advisory Council (*Majlis-i-Shura*), the military government-nominated, quasi-legislative body.³⁷ But the fear of weakening its case on Kashmir deters Pakistan from “committing itself flatly one way or the other in regard to the finality of Gilgit Agency’s present territorial status”.³⁸

In the case of AJK, however, Pakistan has taken a completely different position. While it insists that AJK, like the Northern Areas, is a part of the disputed territory of Kashmir, it has granted it at least the trappings of autonomy. Unlike the Northern Areas, which are administered by Islamabad, AJK has its own government.

In 1972, the AJK Legislative Assembly passed a resolution demanding the return of the Northern Areas, which had been taken over “temporarily” by Pakistan under the Karachi Agreement, a demand Pakistan has chosen to ignore.³⁹ In 1993, the AJK High Court, accepting a petition challenging Pakistan’s authority to administer the Northern Areas, ruled that Islamabad had “no legitimate cause...to keep the Northern Areas and their residents (Jammu and Kashmir state subjects) detached from Azad Jammu and Kashmir”.⁴⁰ The High Court stressed that it was contradictory to claim that the Northern Areas were part neither of AJK nor of Pakistan. It accordingly directed the AJK government to “immediately assume the administrative control of the Northern Areas and annex it with the administration of Azad Jammu and Kashmir”. Pakistan appealed to the AJK Supreme Court, which

and Kashmir’s accession to India or Pakistan through “the democratic method of a free and impartial plebiscite”.

³⁰ Robert G. Wirsing, *India, Pakistan and the Kashmir Dispute: On Regional Conflict and its Resolution* (London, 1994), p. 64.

³¹ Pakistani acceptance of the status quo would mean acknowledging the Line of Control, the ceasefire line established in 1949, as an international boundary, thereby recognising India’s claim over the Kashmir Valley.

³² Wirsing, *op. cit.*, p. 64.

³³ *Ibid.*, p. 65.

³⁴ Crisis Group interview, Ali Khan, General Secretary Northern Areas Bar Association (NABA), Gilgit, August 2006.

³⁵ Crisis Group interview, Asadullah Khan, Gilgit, August 2006.

³⁶ Crisis Group interview, Eesa Khan, senior advocate and former president of the NABA, Gilgit, August 2006. The Sino-Pakistan Border Agreement of 1963 covered a portion of China’s common border with the Northern Areas. Pakistan relinquished claims to over 1,500 sq. miles of territory, while China ceded 750 sq. miles. However, the accord was recognised by both signatories as provisional, pending final settlement of the Kashmir dispute. Wirsing, *op. cit.*, p. 102.

³⁷ *Ibid.*, p. 66.

³⁸ *Ibid.*, p. 67.

³⁹ Khalid Hassan, “Northern Areas demystified”, *The Friday Times*, 25 April-1 May 2003.

⁴⁰ “Malik Muhammad Miskeen and 2 others v. Government of Pakistan”, *op. cit.*

overturned the High Court's verdict, declaring that while the Northern Areas were an integral part of the former state of Jammu and Kashmir, they were not a part of AJK.⁴¹ Since the Supreme Court did not declare the Northern Areas a part of Pakistan, one analyst viewed the decision as indicating that Pakistan's "takeover of these areas is without legal or constitutional authority".⁴²

B. THE NORTHERN AREAS AND AJK: DIVERGENT PATHS

Should Islamabad reject other preferred options in the Northern Areas such as provincial or provisional provincial status or merger with AJK, there is support across political, ethnic and sectarian lines in the Northern Areas for the same status and privileges as AJK. "An AJK-like status would be acceptable to most locals", said Hafeez-ur-Rehman, president of the Northern Areas Pakistan Muslim League-Nawaz (PML-N), a Sunni.⁴³ Syed Jaffar Shah, president of the Northern Areas Pakistan People's Party (PPP), a Shia, concurred and questioned the refusal to deny the Northern Areas an AJK-like status. "If AJK could get so much without anything untoward happening to Pakistan and the Kashmir cause, then why should all hell break loose if the Northern Areas were given the same status?"⁴⁴

Members of President Musharraf's Northern Areas Pakistan Muslim League-Quaid-i-Azam (PML-Q), reliant as they are on the military for survival, are understandably more muted in their criticism.⁴⁵ But while they are reluctant to oppose Musharraf's policies, some Northern Areas PML-Q members call on Pakistan to treat the region on an equal footing with AJK. "If provincial status is not feasible, then we should at the very least be given the same status as AJK", said a Sunni PML-Q member of the Northern Areas Legislative Council (NALC).⁴⁶

While AJK has the trappings of statehood, it is only nominally independent; decision-making authority is formally vested in the Azad Jammu and Kashmir Council, headed by the prime minister of Pakistan, while KANA exercises supervisory control.⁴⁷ The AJK legislative assembly, although theoretically independent, is in effect

subordinate to the whims of the Pakistani military, which dictates all policy through the AJK Council.⁴⁸ The Pakistani government also retains the right to dismiss the elected AJK government.⁴⁹ But while Pakistan regards both AJK and the Northern Areas as parts of the disputed territory of Jammu and Kashmir, it has at least given AJK some autonomy, while denying the latter any civil and political rights.

1. Constitutional and administrative development

After the 1949 ceasefire, the Azad Jammu and Kashmir government saw its original role of a government in exile "overtaken by the demands of having to administer the land to the west of the ceasefire line on a day to day basis".⁵⁰ Under the 1949 Karachi Agreement, Pakistan and AJK placed the following within its purview:⁵¹

- policy with regard to the administration of AJK territory;
- general supervision of administration in AJK;
- publicity with regard to the activities of the Azad Kashmir Government and administration;
- advice to the Pakistani government on negotiations with the UN Commission for India and Pakistan; and
- development of AJK's economic resources.

It was also agreed that the pro-Pakistan Muslim Conference Party, having played a key role in resisting the maharaja's rule, would be allowed control over the following:

- publicity with regard to a plebiscite in AJK;
- fieldwork and publicity in the Indian-occupied area of the state;
- organisation of political activities in AJK and the Indian occupied area;
- preliminary arrangements in connection with the plebiscite and organisation of its conduct;
- political work and publicity among the Kashmiri refugees in Pakistan; and, shared with the AJK government,
- advice to the Pakistani government on negotiations with the UN Commission for India and Pakistan.

⁴¹ "Federation of Pakistan v. Malik Muhammad Miskeen and 8 others", reported in Pakistan Law Decisions, 1995 (PLD 1995 SC [AJ&K] 1).

⁴² Khalid Hassan, op. cit.

⁴³ Crisis Group interview, Islamabad, August 2006.

⁴⁴ Crisis Group interview, Gilgit, August 2006.

⁴⁵ See Crisis Group Asia Report N°102, *Authoritarianism and Political Party Reform in Pakistan*, 28 September 2005.

⁴⁶ Crisis Group interview, Islamabad, July 2006.

⁴⁷ For more on Pakistan's control over AJK, see Crisis Group Reports, *Learning from the Past and The View from Islamabad*, op. cit.

⁴⁸ Crisis Group Report, *India/Pakistan Relations and Kashmir*, op. cit.

⁴⁹ Ibid.

⁵⁰ Schofield, op. cit., p. 89.

⁵¹ "Malik Muhammad Miskeen and 2 others v. Government of Pakistan", op. cit.

Pakistan retained control over:

- defence;
- foreign policy;
- negotiations with the UN Commission for India and Pakistan;
- publicity in Pakistan and abroad;
- coordination and arrangement of relief and rehabilitation of refugees;
- coordination of publicity in connection with a plebiscite;
- all activities within Pakistan regarding Kashmir, such as procurement of food and other supplies, running of refugee camps and provision of medical aid; and
- the affairs of Gilgit and Ladakh.

In 1947, AJK was at a far more advanced state of political awareness and economic development than the Northern Areas, which lacked an indigenous political leadership that could fight for the region's interests. The people of AJK also shared cultural and linguistic ties with Pakistan's dominant province, Punjab. The AJK leadership was, therefore, better placed, than the Northern Areas to extract concessions from Pakistani decision-makers. The Northern Areas had little in common with the rest of Pakistan other than a shared adherence to Islam, but there were differences even on that count. While most Pakistani citizens are Sunnis, the Northern Areas have a Shia majority. Many locals are convinced that fear of empowering that Shia majority was instrumental in the refusal to allow the Northern Areas even the limited autonomy granted to AJK.

2. Azad Jammu and Kashmir

In 1950, an ordinance called "Rules of Business of the Azad Kashmir Government" became the law of the land. Full legislative and executive authority was vested in the "Supreme Head of State", in effect the leader of the Muslim Conference, who had the power to appoint the president, members of the Council of Ministers and the chief justice and other judges of the AJK High Court.⁵² The supreme head's authority was, however, exercised within the parameters framed by KANA. The position was replaced in 1952 by the position of president.

The first major constitutional change in AJK, the AJK Government Act of 1970, created a presidential system, with direct elections on the basis of adult franchise for the president and legislature. This system was, however,

short-lived. The Interim Constitution Act of 1974, AJK's first constitution, modelled on Pakistan's of the previous year, created a parliamentary form of government, with a largely ceremonial role for the president.⁵³ Although it has been amended several times, the Interim Constitution of 1974 remains AJK's basic law and its chief guarantor of an internal autonomy exercised within clearly prescribed limits set by Pakistan. For instance, Article 7(2) denies elected office to any individual who "propagates against, or takes part in activities prejudicial or detrimental to the ideology of the State's accession to Pakistan".⁵⁴

3. The Northern Areas

Constitutional development in the Northern Areas has followed a markedly different route. A political agent was initially given charge of the region, following the imperial British model of centralised control. After a brief period under NWFP's administrative control, Gilgit Agency, including Baltistan, placed under KANA in 1950. As in the Federally Administered Tribal Agencies (FATA),⁵⁵ the Frontier Crimes Regulations (FCR) was applied to Gilgit Agency.⁵⁶ Local rulers were co-opted through the payment of subsidies and were allowed to retain most of the revenue collected in their domains. While the rulers of Hunza and Nagar were accorded executive, judicial and legislative powers, these were exercised in accordance with the political agent's directives.⁵⁷

In 1952, the KANA joint secretary, a mid-ranking civil servant, was given the additional responsibility of administering the Northern Areas as political resident, based, however, not in Gilgit but in the federal capital. This arrangement remained in place until 1967, when the position of political resident of the Northern Areas was created, headquartered in Gilgit. As the federal government's representative, the resident had extraordinary powers. He headed the local administration and judiciary, was responsible for enforcement of the FCR and was also the financial and revenue commissioner. Two political agents assisted the resident, one in each of the two agencies after Baltistan was given the status of a separate agency. The resident also exercised legislative powers in the Northern Areas in consultation with the federal government.⁵⁸ Pakistan's second military ruler, General Yahya Khan,

⁵² Schofield, op. cit., p. 90.

⁵³ A brief overview of AJK's constitutional development is provided in the preamble to the Azad Jammu and Kashmir Interim Constitution of 1974.

⁵⁴ See Crisis Group Report, *India/Pakistan Relations and Kashmir*, op. cit.

⁵⁵ See Crisis Group Asia Report N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006.

⁵⁶ FCR is discussed in *ibid.*

⁵⁷ Dani, op. cit., p. 409.

⁵⁸ *Ibid.*, p. 406.

created a Northern Areas Advisory Council (NAAC) in 1969 but it was devoid of decision-making powers and subordinate to the resident.

Under Zulfikar Ali Bhutto, the country's democratically elected prime minister, major administrative changes were made. The agency system, along with the FCR and the rule of hereditary princes, was abolished in 1974, and Gilgit and Baltistan were transformed into districts like those in Pakistan's settled areas. The resident became a resident commissioner, while the political agents became deputy commissioners. A Northern Areas Council (NAC) replaced the NAAC in 1974, with members elected by direct adult franchise.⁵⁹

Although Bhutto changed the Northern Areas' administrative structures, he denied them the institutions of government created in AJK by the Interim Constitution of 1974, which included its own president, prime minister, legislative assembly, supreme court, high court, public service commission and even flag and anthem. The members of the AJK assembly, as in any parliamentary democracy, are directly elected and select the prime minister from among their own members. Pakistan controls areas like defence, foreign policy and communications through the AJK Council and KANA but the AJK government has autonomy in many internal matters.

In stark contrast, the Northern Areas were denied their own constitution. Instead, the Northern Areas Council Legal Framework Order (LFO) of 1994, an administrative instrument devised by KANA and imposed on the region without any local input, supplemented by the Northern Areas Rules of Business (NARoB) also of 1994, serves as their basic law, under which the KANA federal minister heads the executive branch.⁶⁰

KANA is responsible for policy, administration and development in the Northern Areas and also for law making.⁶¹ Under the LFO, the NAC has become the Northern Areas Legislative Council (NALC). While the number of seats has been increased, and it is democratically elected, the NALC has only limited advisory functions. It lacks meaningful legislative powers and wields no control over the executive, which still consists of bureaucrats appointed by the KANA minister. Since the LFO is an administrative order, not a formal constitution, the chief executive can modify or even do away with it merely

by issuing a notification. As a result, the legislature and judicial institutions are subservient to his will.

Since the Northern Areas have no representation in any federal constitutional or political forum, stakeholders cannot articulate demands or grievances to a wider audience. The Northern Areas' executive serves the federal executive and has no local electoral constituency and hence no need to respond to local pressure. Absent from decision-making forums in Islamabad, the Northern Areas also have no voice on the budget. Federal allocations to the provinces are made on the basis of the National Finance Commission (NFC) Award. Since the Northern Areas are not represented, it is up to KANA to advance demands as it sees fit. While local wings of the mainstream national parties are in the NALC, there is little they can do to promote the Northern Areas' political or economic interests since the region is completely subservient to the federal executive. Even if they were to plead the case in the National Assembly, it would in all probability be fruitless, since President Musharraf has concentrated all powers in his person, rendering the national legislature powerless.

In January 2007, the chief executive of the Northern Areas declared that Islamabad was in the final stages of preparing a package of constitutional reforms, which would be sent to the federal cabinet for approval.⁶² The extent to which the package addresses local grievances and would constitute meaningful change is yet to be seen. But Musharraf's record in office gives scant grounds for optimism. "We have been hearing about reforms for the past seven years but nothing has happened on the ground. Why should we then be hopeful that it will be any different this time?" said Syed Jaffar Shah of the Northern Areas PPP.⁶³

In an earlier report on Kashmir, Crisis Group urged Pakistan's military government to grant the Northern Areas a meaningful measure of autonomy, a well-defined constitutional status and representation in the national legislature.⁶⁴ The military, however, is predisposed to centralising, not devolving power at the national or local levels.⁶⁵ Genuine reform in the Northern Areas is unlikely until and unless there is a democratic dispensation, not just in the region but also in Pakistan.

⁵⁹ Ministry of Kashmir affairs and Northern Areas, www.pakistan.gov.pk/divisions/ContentInfo.jsp?DivID=17&cPath=155_584&ContentID=3845.

⁶⁰ The KANA minister has the title of chief executive of the Northern Areas.

⁶¹ Ministry of Kashmir affairs and Northern Areas, [www.pakistan.gov.pk/divisions/ContentInfo.jsp?DivID=17 &Path+155_156&ContentID+259](http://www.pakistan.gov.pk/divisions/ContentInfo.jsp?DivID=17&Path+155_156&ContentID+259).

⁶² Muhammad Yasin, "N. Areas representatives to get constitutional powers", *Dawn*, 17 January 2007.

⁶³ Crisis Group interview, Islamabad, February 2007.

⁶⁴ Crisis Group Report, *India/Pakistan Relations and Kashmir*, op. cit.

⁶⁵ See Crisis Group Asia Report N°77, *Devolution in Pakistan: Reform or Regression*, 22 March 2004; and Crisis Group Asia Briefing N°43, *Pakistan's Local Polls: Shoring Up Military Rule*, 22 November 2005.

C. THE LEGAL DIMENSION

In May 1999, the Supreme Court of Pakistan delivered a landmark judgement on the constitutional status of the Northern Areas in response to Constitutional Petition 17 of 1994, which sought the following remedies:

- enforcement of fundamental rights under the constitution of Pakistan;
- declaration of the Northern Areas' constitutional status;
- declaration of the people of the Northern Areas as full citizens of Pakistan, with the right fully to participate in the affairs of the federation; and
- granting of provincial status.

Declaring that Pakistan exercised de facto as well as de jure administrative control over the Northern Areas, the Supreme Court ruled that the people of the Northern Areas were "citizens of Pakistan, for all intents and purposes".⁶⁶ As such, they could invoke constitutionally guaranteed fundamental rights. Reference was also made to Pakistan's obligations in the Northern Areas as a signatory to the Universal Declaration of Human Rights. The ruling emphasised that the people of the Northern Areas were "entitled to participate in the governance of their area and to have an independent judiciary to enforce, inter alia, the Fundamental Rights".⁶⁷

The Supreme Court decreed that the people of the region were not able to exercise their right to govern through their chosen representatives because the NALC could not be equated with provincial government. Moreover, the Northern Areas Chief Court, the primary judicial organ in the region, had no constitutional jurisdiction, and there was no forum to which to appeal its decisions. It was, therefore, "patent that the people of the Northern Areas have been denied their fundamental right to have access to justice through an independent judiciary".⁶⁸

The Supreme Court declared it could not prescribe a form of government for the region, nor could it direct that the region be represented in the national parliament since that could undermine Pakistan's stand on Kashmir. It left such issues to the government and national parliament. However, it directed the government to take "proper administrative and legislative steps" to ensure that the people of the Northern Areas enjoyed their rights under Pakistan's

constitution. It also enlarged the jurisdiction of the Northern Areas' Chief Court to include constitutional petitions, while simultaneously calling for the establishment of a Court of Appeals.

While the Court gave the government six months to implement this judgement, it took the Musharraf government almost six years to set up the Court of Appeals. According to a former president of the Northern Areas Bar Association, KANA's "non-cooperative" attitude was responsible for this delay, since an independent judiciary could challenge its unfettered powers. He added: "Matters were also not helped by the uninterested approach of the Supreme Court itself, which passed the judgement but then refused to ensure its speedy implementation, even though we ran from pillar to post to convince it of the importance of doing so".⁶⁹

The military government has yet to implement the Court's directives with regards to the fundamental rights of the people of the Northern Areas, including their right to be governed through their elected representatives. Local political institutions remain impotent, and federal control is pervasive. "A municipal committee in Pakistan continues to have more powers than our legislature, in spite of the fact that the Supreme Court has given us the right of self-rule. This is nothing less than a blatant violation of the 1999 judgement", a retired member of the Chief Court said.⁷⁰

⁶⁶ See "Al-Jehad Trust and 9 others v. Federation of Pakistan and 3 others", *Supreme Court Monthly Review*, 1999, p.1379 (1999 SCMR 1379).

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Crisis Group interview, Islamabad, February 2007.

⁷⁰ Crisis Group interview, Gilgit, August 2006.

IV. POLITICAL DISEMPOWERMENT

A. CENTRALISED CONTROL

The Pakistan military has ultimate authority over decisions not just about but also within the Northern Areas. The overall control of military forces in the Northern Areas falls under the Army's 10 Corps, headed by a lieutenant general and headquartered in Rawalpindi. The region's military command is with the Force Command Northern Areas (FCNA), headed by a major general and based in Gilgit. Tasked with defending the Northern Areas' borders, the FCNA also exercises enormous influence over internal affairs, not just law enforcement but also administrative issues such as postings and transfers. A senior police official disclosed that the police must seek FCNA permission even for routine deployments, for instance at check posts.⁷¹ According to locals, army monitoring teams supervise government departments and public sector corporations. An analyst said army officers, including majors and captains, oversee recruitment and appointments and even approve government contracts and tenders.⁷²

As noted, the KANA federal minister is the Northern Areas' chief executive, responsible for coordinating and implementing policy, including finance, such as sanctioning expenditure and reappropriating funds from the budget approved by the federal government. He also wields extensive administrative powers, including recruitment and posting of civil bureaucrats. While he is an elected member of the National Assembly in Islamabad, he is not an elected member of the Northern Areas Legislative Council. He governs from Islamabad, not the region.

The deputy chief executive (DCE) is the region's highest elected official, the leader of the house in the Northern Areas Legislative Council, the region's legislative forum, but he serves at the pleasure of the KANA minister. Under the NARoB, the chief executive, DCE and chief secretary constitute the "Government" of the region. In fact, the chief executive runs the entire administrative machinery through his chief secretary, the most senior civil bureaucrat.⁷³ The chief secretary, not the DCE, is responsible for all matters affecting "public tranquillity",⁷⁴ a term that is defined broadly enough to include anything of consequence.

Although the DCE has the status of a minister of state, with attendant perks and privileges, he exercises only powers expressly delegated to him by the chief executive.⁷⁵

The chief executive does consult the DCE on the appointment of advisers, who have the status of provincial ministers, but is not bound to follow his advice. "The fact that an elected Leader of the House is termed the 'deputy' of an un-elected chief executive is tantamount to a negation of the Supreme Court's ruling of 1999, which provided the right of self-rule through chosen representatives", said a retired member of the Chief Court.⁷⁶ Similarly, while advisers have the status of provincial ministers, they have little influence over the departments they are meant to supervise. "The advisers have been softened up by being given the status of provincial ministers. They get a car and a house and other perks so they don't complain", said an NALC member.⁷⁷ A secretary heads each department and reports to the chief secretary, who in turn reports to the chief executive. The elected representatives of the people are thus completely bypassed.

At the national level, recruitment to civil service positions is through the Federal Public Service Commission, with a quota reserved for each of the four provinces on the basis of population. In addition, AJK has a quota of 2 per cent. The bureaucrats recruited are all federal employees. Each province, and AJK, also has its own local bureaucracy recruited through its provincial public service commission. The Northern Areas have neither a separate quota in the federal bureaucracy nor a share in the AJK quota. Instead, they are lumped together with the Federally Administered Tribal Areas in a combined 4 per cent quota, possibly on the grounds that FATA is also a federally administered territory. Without a public service commission of its own like AJK, it cannot recruit local bureaucrats. These are recruited by the Federal Public Service Commission and so are employees of the federal government, not the Northern Areas administration.

Non-local bureaucrats, seconded to the region, dominate the higher echelons of the bureaucracy in the Northern Areas. Since they come from outside and more often than not serve in the region for short periods, they have neither the time nor the inclination to build local government capacity. In the absence of adequate public sector capacity, service delivery is weak. Governance structures are marred by a lack of transparency and accountability, not even sharing "information proactively, either among themselves or with the general public".⁷⁸

⁷¹ Crisis Group interview, Gilgit, October 2006.

⁷² Crisis Group interview, Islamabad, December 2006.

⁷³ Rule 2 of the NARoB.

⁷⁴ Rule 9 of the NARoB.

⁷⁵ Rule 6 of the NARoB.

⁷⁶ Crisis Group interview, Gilgit, August 2006.

⁷⁷ Crisis Group interview, Haider Khan, Islamabad, August 2006.

⁷⁸ Musharraf Rasool Cyan and Afzal Latif, "NASSD Background Paper: Governance", IUCN, Northern Areas Program, Gilgit, 2003, www.iucn.org/places/pakistan/publications/3-Governance.pdf.

B. LEGISLATIVE IMPOTENCE

The Northern Areas Legislative Council has 36 members, of whom 24 are directly elected on the basis of adult franchise.⁷⁹ Six seats are reserved for women and six for technocrats, one of each from the six districts.⁸⁰ The leader of the house in the Council is appointed the deputy chief executive and is thus the region's highest-ranking elected official. Six Council members, one of whom must be a woman, are appointed by the chief executive, after consultation with the DCE, as advisers to him "for the performance of such duties and functions as may be assigned or entrusted to them from time to time".⁸¹

Although it is the elected legislature, the NALC is subordinate to the unelected and unrepresentative chief executive, whose prerogative it is to summon, prorogue and dissolve it,⁸² as well as to frame its rules of procedure. The NALC has no input in the preparation of the annual budget, which is simply placed before it by the chief executive in the form of a statement for purposes of information.⁸³ Under the 1994 LFO, the NALC is empowered to legislate in 49 areas but no bill can become law without the chief executive's assent.⁸⁴ If this is denied, the Council cannot challenge. For instance, the NALC recently passed unanimously three bills that had been pending for five years but they still require the KANA minister's approval to become law.⁸⁵

Complaining that the Council was powerless, an NALC member from Musharraf's ruling party said its bills were "not worth the paper they are written on".⁸⁶ From 1999 to 2004, the NALC passed eighteen public interest resolutions and submitted them to the KANA ministry but not a single

one was implemented.⁸⁷ In 2003, a bill for an interim constitution, similar to the AJK's, was approved by 20 of the 24 directly elected Council members. This "Northern Areas Interim Constitution Act" envisaged a president and prime minister for the Northern Areas, along with a Supreme Court, high court, public service commission, auditor-general, advocate-general and election commission, but was ignored by Islamabad.

The KANA ministry, under the Federal Rules of Business of 1973, is still authorised to legislate for the Northern Areas.⁸⁸ It also retains the right to extend any law, federal or provincial, to the region. A federal law does not automatically apply to the Northern Areas; KANA must first issue a notification to that effect.⁸⁹ If a law passed by the NALC conflicts with a federal law, the latter prevails.⁹⁰ The federal government also retains the right to legislate on topics not mentioned in the LFO.⁹¹

There are no legislative checks on the executive's authority. "We in the Northern Areas have a truly unique form of democracy in the sense that the elected members of the NALC cannot move a vote of no-confidence against the DCE, who is, after all, just one of them", said an NALC member.⁹²

C. POLITICAL MANIPULATION

Most mainstream Pakistani parties have branches in the Northern Areas and are represented in the NALC. The first party-based elections in the Northern Areas were held in 1994 by Benazir Bhutto's PPP government. Under Musharraf, however, party capacity in the region has regressed since the military government seeks to marginalise political opposition, particularly Benazir Bhutto's PPP and Nawaz Sharif's Muslim League.⁹³

Just as Musharraf's PML-Q was brought to power through rigged national elections in 2002, the PML-Q became the majority party in the NALC through Islamabad's

⁷⁹ Six are elected from Gilgit, six from Skardu, four from Diamer, three from Ghizer, three from Ghangche and two from Astore.

⁸⁰ Candidates for reserved seats must be nominated by their parties before the directly elected members elect them.

⁸¹ Rule 7 of the NARoB. The advisers monitor the functioning of administrative departments (Section 5[3] of the LFO) and hold office at the discretion of the chief executive (Section 5[2] of the LFO).

⁸² Under Schedule V, Part B, of the NARoB, the chief executive can dissolve the Council with the prior approval of the federal government. However, the power to summon and prorogue the Council is within his discretion.

⁸³ Schedule V, Part A, of the NARoB.

⁸⁴ Section 17A of the LFO.

⁸⁵ The Northern Areas Allotment of Crown Land Act, the Northern Areas Law of Pre-Emption Act and the Northern Areas Rent Restriction Act 2006, see "NALC enacts three bills for first time", *Daily Times*, 28 December 2006.

⁸⁶ Crisis Group interview, Haider Khan, PML-Q member from Diamer, Islamabad, August 2006.

⁸⁷ Sarmad Abbas, "Rites of Passage", *The Herald*, April 2006, p. 47.

⁸⁸ See "Environmental Law in Pakistan-Northern Areas", IUCN Pakistan (2004), Environmental Program, Karachi, Pakistan, www.iucn.org/places/pakistan/publications/NA%20Review%20Vol-1.pdf.

⁸⁹ Ibid.

⁹⁰ Section 17C of the LFO.

⁹¹ "Environmental Law in Pakistan-Northern Areas", op.cit.

⁹² Crisis Group interview, Bashir Ahmed Khan, Islamabad, July 2006.

⁹³ The military government's marginalising of the mainstream moderate parties is discussed in Crisis Group Report, *Authoritarianism and Political Party Reform in Pakistan*, op. cit.

manipulations of the 2004 elections. As in the national polls, the PPP is the military's main civilian contender in the Northern Areas. It has strong support partly because of Zulfikar Ali Bhutto's reforms but also because the region's Shias and Ismailis view the centre-left party as more sympathetic to minority concerns than other mainstream Pakistani parties.

In 2004, the PML-Q won four of the 24 direct seats to the PPP's seven but still managed to cobble together a majority by promising adviser positions to eleven independent members. "Records were broken in pre-poll rigging. The intelligence agencies themselves vetted candidates and distributed tickets", said Syed Jaffar Shah of the PPP.⁹⁴ Rejecting such charges, a ruling party member insisted: "Had it been so, the PML-Q would have swept the elections. Instead, we won just four seats". However, the same member conceded that independents were then won over by "being promised virtually everything".⁹⁵ A PML-N Council member said: "The independent members conducted their campaigns by criticising Musharraf but then jumped onto his bandwagon once they were elected, thereby betraying the mandate given to them by their constituents".⁹⁶ The PML-Q even accepted former office-bearers of the banned Sunni and Shia sectarian parties, Sipah-e-Sahaba Pakistan (SSP) and Tehreek-e-Jafria Pakistan, respectively.⁹⁷

The PML-Q's leadership in the Northern Areas is composed almost entirely of defectors from the PML-N, including Mir Ghazanfar Ali Khan, who was handpicked by Islamabad to become the DCE, and Malik Miskeen, an aspirant for that job who was persuaded to become the speaker instead. The deputy speaker position went to Asad Zaidi, a PPP turncoat.⁹⁸

Locals, even those who support Musharraf's party, are concerned that the sidelining of moderate parties and manipulation of the political process by the military are empowering Islamist, particularly sectarian, forces, which have benefited the most from the resultant political vacuum. "The mullahs have been strengthened at the expense of the mainstream political leadership", said PML-Q's Asadullah Khan. "People carry their problems to the mullahs instead of their political representatives because they know that the former can prevail upon the administration to get the job done while the latter have no clout whatsoever".⁹⁹

D. JUDICIAL DEPENDENCE

Despite the 1999 Supreme Court ruling, there is no judicial independence in the region. No Northern Areas court has the authority to question the validity of any action undertaken, or any order passed, under the LFO.¹⁰⁰ While courts in Pakistan and AJK have judges with the honorific "justice" preceding their names to indicate the dignity of their office, "chairmen" preside over the Court of Appeals and the Chief Court in the Northern Areas, with "members" to assist them. The higher judiciary in Pakistan and AJK have constitutional protection; the Northern Areas Court of Appeals and Chief Court have been created by KANA notifications or orders that lack the legitimacy and authority of constitutional provisions.

The Pakistan and AJK constitutions have specific provisions for the appointment of judges,¹⁰¹ including security of tenure, and regulatory mechanisms for the courts.¹⁰² In the Northern Areas, the executive appoints judges. The prime minister of Pakistan makes appointments to the Northern Areas Court of Appeals and the Chief Court on the advice of the chief executive, with the elected DCE and NALC excluded from the process. Pakistan's Federal Public Service Commission appoints judges of the subordinate courts, such as the district-level sessions courts and sub-divisional-level civil courts.¹⁰³ Regulatory powers, according to Article 2 of the Chief Court Establishment Order of 1998, are vested in a committee consisting of the chief executive, the secretary of the KANA division and the secretary of the federal law ministry.

Judges in the Northern Areas are deprived of the job security provided to their counterparts in Pakistan. Under Article 200 of the Pakistan constitution, a judge of a High Court cannot be transferred to another High Court

¹⁰⁰ Article 20 of the LFO.

¹⁰¹ Under Article 177 of the Pakistan constitution, the president appoints a judge of the Supreme Court after consulting the chief justice. Under Article 42(4) of the AJK interim constitution, the AJK president appoints a judge of the Supreme Court on the advice of the AJK Council after consultation with the chief justice.

¹⁰² Article 209 of the Pakistan constitution provides for a Supreme Judicial Council, consisting of the chief justice of the Supreme Court, the next two most senior Supreme Court judges and the two most senior judges of the four High Courts, to regulate the affairs of the superior judiciary. Article 42-E of the AJK interim constitution provides for a Supreme Judicial Council consisting of the chief justice of the AJK Supreme Court, a senior judge of the Supreme Court and the chief justice of the High Court.

¹⁰³ AJK has its own public service commission that recruits locals to serve in administrative and judicial departments, as do each of Pakistan's four provinces. The Northern Areas are denied this facility.

⁹⁴ Crisis Group interview, Syed Jaffar Shah, Gilgit, August 2006.

⁹⁵ Crisis Group interview, Gilgit, August 2006.

⁹⁶ Crisis Group interview, Hafeez-ur-Rehman, Islamabad, August 2006.

⁹⁷ Sarmad Abbas, "Turncoats to Technocrats", *The Herald*, April 2006, p. 46.

⁹⁸ *Ibid.*

⁹⁹ Crisis Group interview, Asadullah Khan, Islamabad, February 2007.

without his consent. In the Northern Areas, however, judges can be transferred by the executive not only from one judicial post to another but to any federal or provincial government position or even to a local authority or municipal corporation. The executive can even make a judge an officer on special duty, which deprives him of a position while he continues to receive his salary.

Under Article 179 of the Pakistan constitution, a Supreme Court justice holds office until 65. In the Northern Areas, a chairman or member of the Court of Appeals, technically the equivalent of the Pakistan Supreme Court, is appointed on contract for three years. The contract can be extended by two years, subject to "performance". A retired member of the Chief Court asked: "How can one expect a judge to go against the government during those three years, knowing that the power to extend his tenure lies with the government itself? Our judges strive to remain in the good books of the chief executive and the KANA ministry to ensure their extensions".¹⁰⁴

E. RIGHTS VERSUS DEVELOPMENT

Some NALC members, particularly those from Musharraf's PML-Q, insist that Pakistan is giving the region more financial aid and undertaking more development than ever before. They argue that political rights are secondary, and development must remain the priority, at least for the foreseeable future. "I tell those clamouring for political rights that it is not rights that matter but development. Once we are developed, we can ask for rights. Until then, let us be content with the development that Pakistan has undertaken on our benefit", said an adviser.¹⁰⁵ However, political disempowerment is undeniably generating resentment against Pakistan. "Nations can only be kept together if their people are given the right to determine their destinies, not through any other factor, not even religion, as the case of Bangladesh proves. I have warned the government time and again not to create a Bangladesh-like situation in the Northern Areas", said PML-N's Rehman.¹⁰⁶

In July 2006, Musharraf spoke at length to a public gathering in Gilgit about developmental activities in the Northern Areas but was silent about political rights.¹⁰⁷ According to a NALC member, local legislators presented him with unanimously agreed amendments to the LFO, including changing the legislature's title from "Council" to "Assembly"; providing for a no confidence vote against the DCE; and creating the position of leader of the

opposition and separate opposition benches. "Musharraf said that these are very sensitive issues and that he would have to think about them very carefully. What is so sensitive in replacing 'Council' with 'Assembly'? If it is not sensitive for AJK, why is it so sensitive for the Northern Areas?", asked an opposition NALC member.¹⁰⁸ Presiding over a meeting with the DCE and his advisers in Islamabad in January 2007, Northern Areas chief executive Major (ret.) Tahir Iqbal said Islamabad was willing to give the NALC provincial assembly status but "greater homework" was needed, as there were "serious administrative and legal matters involved".¹⁰⁹

The government fails to acknowledge that rights and development are intrinsically interlinked. For instance, the proposed construction of Bhasha dam is a developmental issue with political and economic implications and has the potential to create even greater resentment towards Islamabad. A hydroelectric project, it entails the construction of a reservoir on the Indus River with a storage capacity of 7.3 million acre feet and a power generation capacity of 4,500 megawatts.¹¹⁰ The dam's location will be just downstream of Chilas in the Diamer district of the Northern Areas.¹¹¹ The dispute over the name of the dam may have been resolved¹¹² but the far more serious issue of royalties is still contested.

In Gilgit in July 2006, Musharraf said the Northern Areas would receive all royalties accruing from the dam.¹¹³ Locals, however, are sceptical, given Islamabad's history of backtracking on pledges as well as constitutional hurdles. "Musharraf's words are not enough", said a politician. "He will have to alter Article 161 of the constitution if he is to live up to his promises".¹¹⁴ According to Article 161 (2), "the net profits earned by the Federal Government, or any undertaking established or administered by the Federal Government from the bulk generation of power at a hydro-electric station shall be paid to the Province in which the hydro-electric station is situated". Although

¹⁰⁸ Crisis Group interview, Hafeez-ur-Rehman, Islamabad, August 2006.

¹⁰⁹ "Northern Areas council will be made an assembly: minister", *Daily Times*, 18 January 2007.

¹¹⁰ "Experts find Bhasha dam best choice", *Dawn*, 15 June 2004.

¹¹¹ Javed Mahmood, "Water crisis to start from 2012", *The Nation*, 19 January 2006.

¹¹² Only 1 per cent of the dam will be in Bhasha, a village in NWFP's Kohistan district; the rest will be constructed almost entirely in the Northern Areas. In February 2006 the government, accepting the demands of locals in Diamer, who will be the most affected by its construction, changed the dam's name to Diamer-Bhasha.

¹¹³ "Northern Areas to get dam royalty", *Dawn*, 6 July 2006.

¹¹⁴ Crisis Group interview, Syed Jaffar Shah, Gilgit, August 2006.

¹⁰⁴ Crisis Group interview, Gilgit, August 2006.

¹⁰⁵ Crisis Group interview, Islamabad, July 2006.

¹⁰⁶ Crisis Group interview, Islamabad, August 2006.

¹⁰⁷ "Northern Areas to get dam royalty", *Dawn*, 6 July 2006.

almost all the project's land is in the Northern Areas, the power station will be built in Bhasha, NWFP, causing locals to fear they will lose their land and gain nothing in return.¹¹⁵

Article 161 makes provinces the rightful recipients of royalties but confers no such benefit on federally administered territories like the Northern Areas, which is at a distinct disadvantage in any dispute with NWFP. "How can Pakistan apply the provisions of its constitution to a matter affecting the Northern Areas when it regards the region as disputed territory? A constitutional arrangement of some sort must be made with the people of the region before work begins on the dam", said an analyst.¹¹⁶

Haider Khan, an NALC member from Diamer, whose constituents are most directly affected by the dam's construction, warned that Pakistan must not go ahead without taking into account the Northern Areas' legitimate concerns. "We can make sacrifices if it is in the larger interest of the country but have certain conditions for the government which must be met or there will be strong and even violent protest".¹¹⁷ Those conditions include payment of all royalties to the Northern Areas, reallocation and adequate compensation for those affected by construction and recruitment of locals for all positions that do not require technical expertise. Since the federal government is unlikely to accept these demands, the project could lead to strife.

V. THE SECTARIAN MENACE

By denying the Northern Areas a constitutional identity, administering it through a highly centralised bureaucracy and depriving its residents of political rights and recourse to justice, Pakistan has created an environment in which increasing numbers, particularly youth, have no outlet to express themselves except through sectarian violence. "Sectarianism has provided a convenient outlet for releasing the frustration engendered by political neglect", said the local PML-N leader, Hafeez-ur-Rehman. "Wherever there is a lingering sense of deprivation, the eventual outcome can only be chaos and destruction".¹¹⁸ An NALC member added: "'Religious extremism always emerges from the womb of military rule".¹¹⁹

A. ORIGINS OF SECTARIAN STRIFE

The Northern Areas are the only Shia-majority region under Pakistan's control. In an estimated population of approximately 1.5 million, around 39 per cent is Shia, 27 per cent Sunni, 18 per cent Ismaili and 16 per cent Nurbakhshi.¹²⁰ Five of the six districts have populations heavily dominated by one sect. Sectarian strife in those districts is rare. In Gilgit, the region's nerve centre, the sects are far more evenly balanced. State and non-state actors have manipulated the divisions there since the 1980s, sowing the seeds of sectarian discord.

1. Zia-ul-Haq and state-sponsored sectarianism

During the 1980s, General Zia-ul-Haq made Islamisation the basis of state policy with the dual goals of legitimising military rule and promoting the military's jihads in Afghanistan and Indian-administered Kashmir. His religious allies of choice were the Sunni Islamist parties and groups, particularly the anti-Shia Deobandis. To counter the rising tide of Shia Islam in neighbouring Iran following the Islamic

¹¹⁵ Safdar Khan, "Threat to launch movement against Bhasha dam", *Dawn*, 21 January 2006.

¹¹⁶ Crisis Group interview, Afzal Shigri, Islamabad, September 2006.

¹¹⁷ Crisis Group interview, Islamabad, July 2006.

¹¹⁸ Crisis Group interview, Islamabad, July 2006.

¹¹⁹ Crisis Group interview, member of the NALC, Islamabad, December 2006.

¹²⁰ Figures obtained from Manzoor Ali, *Atlas of the Northern Areas* (Gilgit, 2004). Most locals consider this publication the most accurate account of the Northern Areas' sectarian profile. According to it, Gilgit district is 54 per cent Shia, 27 per cent Ismaili and 19 per cent Sunni; Skardu district is 87 per cent Shia, 10 per cent Nurbakhshi and 3 per cent Sunni; Diamer district is 90 per cent Sunni and 10 per cent Shia; Ghizer district is 87 per cent Ismaili and 13 per cent Sunni; and Ghangche district is 87 per cent Nurbakhshi, 8 per cent Sunni and 5 per cent Shia. The district of Astore, carved out of the Diamer district in 2005 and created after the publication of the *Atlas*, is believed to be 70 per cent Sunni and 30 per cent Shia.

Revolution of 1979, he also engineered a “dramatic shift towards extremist Sunni political discourse, orthodoxy and a heightening of anti-Shia militancy, early signs of the bloody sectarian conflict to follow”.¹²¹ The Zia era witnessed the creation of some of Pakistan's most militant anti-Shia groups such as the Sipah-e-Sahaba Pakistan (SSP). His aggressive Sunni Islamisation drive resulted in a Shia backlash, setting the stage for bloody sectarian violence.

In the Shia-majority Northern Areas, sectarian tensions transformed into violent conflict during the last days of Zia's rule. In May 1988, Sunni zealots, predominantly from NWFP's tribal areas, assisted by local Sunnis from Chilas, Darel and Tangir, attacked several Shia villages on the outskirts of Gilgit.¹²² For three days, they killed, looted and pillaged with impunity while the authorities sat back and watched. Although contingents of the paramilitary Frontier Constabulary (FC) were eventually sent in, they too looked the other way while Sunni attackers wreaked havoc. By the time army units were sent in to quell the violence, at least 150 people were killed, several hundred injured and property worth millions of rupees destroyed.¹²³

“The attack was entirely government sponsored, or how else could the invaders have been, first, allowed unhindered passage from NWFP right up to Gilgit and, secondly, permitted to commit the carnage that they did?”, asked a Shia religious leader from Jalalabad, one of the villages razed to the ground.¹²⁴ Sunnis deny government complicity and insist both sides were at fault. “The administration did nothing to prevent the riots of 1988 but to say that it was actively involved would be untrue. It was more a case of gross negligence than active complicity”, a Sunni leader maintained. However, he conceded: “Zia let the Sunni

mosques say and do what they pleased and allowed the Sunni mullahs to fill the power vacuum in the region”.¹²⁵

Sectarian tensions had increased following construction of the Karakoram Highway in 1986 and the opening of trade through the China border, which resulted in Sunni settlers from NWFP and Punjab establishing flourishing businesses in Gilgit, altering its demographic balance and incurring Shia resentment. Prior to 1988, sectarian tensions were rare and did not result in armed conflict. Shias and Sunnis had coexisted peacefully.¹²⁶ Inter-marriages were frequent, and the resultant ties of kinship took precedence over sectarian differences. Historically, too, ethnic ties and tribal loyalties were more important than sectarian identities. After 1988, however, Gilgit gradually changed from a peaceful tourist destination into a battleground for Sunni and Shia militants.

During the democratic interlude of the 1990s, Gilgit was not free from sectarian strife¹²⁷ but representative institutions and responsive civilian governments still ensured an uneasy sectarian peace. Disillusioned with Islamabad and motivated by the need to unite on a common platform to ensure their collective survival, Shias in the region supported the Tehreek-e-Nafaz-e-Fiqah-e-Jafria (TNFJ), initially a religious organisation but transformed, through sheer numbers, into a formidable political force.¹²⁸ The TNFJ, and the Shia community as a whole, boycotted elections to the Northern Areas Council in 1991, accusing KANA minister Sardar Mehtab Abbasi of redrawing constituencies in Gilgit to favour the Sunnis. In 1994, however, soon after the passage of the LFO and concerned about Shia alienation, Islamabad held early elections in which the TNFJ won ten of 24 seats and was included in a coalition government.¹²⁹ Although Islamabad's decision to make concessions to a local religious party, rather than strengthening moderate political forces, was troublesome, it did help to lessen Shia alienation.

The Pakistan military's internal and external preferences, however, were to widen the sectarian divide. Despite the restoration of civilian rule, it retained absolute control over all sensitive aspects of domestic and foreign policy

¹²¹ Crisis Group Report, *The State of Sectarianism in Pakistan*, op. cit. Until 1990, the SSP and the Shia Tehreek-e-Nafaz-e-Fiqah-e-Jafria (TNFJ) were the country's primary sectarian protagonists. In 1990, following the murder of SSP founder Haq Nawaz Jhangvi, the SSP created an even more militant wing, the Lashkar-e-Jhangvi (LJ). The Shias countered by forming the Sipah-e-Muhammad (SMP) in the early 1990s.

¹²² The attack was triggered by a quarrel between Shias and Sunnis in Gilgit. On 17 May 1988, Shias celebrated Eid-ul-Fitr, the festival marking the end of the Muslim fasting month, Ramadan, a day earlier than the Sunnis. Sunnis, who were still fasting, clashed with Shias, as a result of which a Shia student leader was seriously wounded. As violence escalated, two people were killed. After news of the violence spread to other parts of the region and beyond, Sunni *mullahs* in NWFP declared a jihad against Shias and called on volunteers to join. A.H. Sorbo, “Paradise Lost”, *The Herald*, June 1988, p. 31,

¹²³ Ibid.

¹²⁴ Crisis Group interview, Sheikh Nayyar Abbas, Gilgit, August 2006.

¹²⁵ Crisis Group interview, Raja Nisar Wali, Gilgit, August 2006.

¹²⁶ In Crisis Group interviews, many locals recalled nostalgically when Sunnis in Gilgit served refreshments to Shias during the Ashura procession, which commemorates the martyrdom of Hussein, son of Ali and grandson of the Prophet.

¹²⁷ According to figures provided to Crisis Group by the Northern Areas police, there was a progressive increase in sectarian murders between 1990 and 1992, with seven in 1990, twelve in 1991, and 30 in 1992; in 1993 they decreased to twenty.

¹²⁸ Crisis Group interview, Shia educator, Gilgit, October 2006.

¹²⁹ Ibid.

in the 1990s, including relations with Afghanistan and India. Its reliance on jihadis to promote and protect Pakistan's perceived regional interests directly impacted on the Northern Areas' sectarian environment. Many local Sunnis who had participated in the anti-Soviet jihad in Afghanistan returned home to join anti-Shia sectarian groups like the Sipah-e-Sahaba Pakistan and the Lashkar-e-Jhangvi. Local Shia graduates from Iran's religious schools also returned. With Iranian financial backing and support, they joined Shia militant organisations.

The military's reliance on jihadis in its proxy war with India over Kashmir added a new dimension to sectarian conflict in the Northern Areas. In the 1990s, bastions of Sunni conservatism in the Northern Areas such as Chilas, Darel and Tangir became training grounds for the Kashmir jihad. Jihadi presence in the region increased markedly during the 1999 Kargil conflict, when then-Army Chief Musharraf sent troops from the Northern Light Infantry and jihadi fighters across the Line of Control into Indian-administered Kashmir.¹³⁰ Extremist outfits such as the Lashkar-e-Tayyaba, Jaish-e-Muhammad and Harkatul Mujahideen opened offices in the Northern Areas, which became hubs of jihadi training as well as anti-Shia activism.¹³¹ Despite the Musharraf government's ban on many of these groups, they still operate freely under changed names.

Since Islamabad is seen as incapable or unwilling to protect them,¹³² the Shias have armed themselves. Retired Shia army officers and soldiers are training young fighters to defend their community against Sunni adversaries.¹³³ Since local Sunnis, backed by non-local Sunni jihadis, are also heavily armed, sectarian conflict has assumed a particularly dangerous form. Sophisticated weaponry, including AK-47 assault rifles and rocket launchers, are pouring into an area where they were previously unknown, raising the threat and level of sectarian violence.¹³⁴

B. DYNAMICS OF THE SECTARIAN DIVIDE

Islamabad's patronage of hardline Sunnis and failure to address minority grievances in the Northern Areas still provokes sectarian violence, as demonstrated by

the follow-up to a dispute over the religious context of textbooks.

1. The textbook issue

Sectarian violence erupted in the Northern Areas in 1999 after the federal education ministry introduced amended textbooks produced by the Punjab Textbook Board which, Shias believed, contained material that promoted Sunni beliefs and practices and distorted the Shia view of Islamic history. Agha Ziauddin Rizvi, head cleric of the main Shia mosque in Gilgit, demanded the public school curriculum be purged of all contentious material or, if that was not possible, Shias be permitted their own curriculum.¹³⁵ Establishing peace committees, the local administration first gave in and then backtracked on assurances that Shia demands would be met.¹³⁶ With the federal government also ignoring Shia demands, Shia and Sunni students in a Gilgit high school clashed in 2001, followed by district-wide demonstrations, strikes and protests.

In May 2004, local communities agreed on separate Islamic Studies courses for Shia and Sunni students, signifying their willingness to resolve differences peacefully, but the federal ministry of education refused to withdraw the contentious material. Strikes and protest demonstrations by Shias soon brought Gilgit to a standstill. The government responded by large-scale arrests of school children as well as the top Shia leadership. "The FCNA (Force Command Northern Areas) commander ordered these arrests even though we had advised against it on the ground that it would lead to violence", said a Sunni member of the NALC.¹³⁷ The army was called out and a curfew imposed early on 3 June. However, thousands of Shia protestors, enraged by the arrest of their leaders, defied the curfew; violent clashes with security forces left six dead, over 40 injured and official property worth millions of rupees destroyed.¹³⁸

Islamabad then agreed on an interim formula. Shia and Sunni students would have their own curriculum in schools where they were the majority sects; in others, the religious beliefs of each sect would be respected. This temporarily dampened violence¹³⁹ but sentiments remained high, and even bureaucrats displayed partiality. "Government officials themselves were giving advance

¹³⁰ See Crisis Group Report, *Confrontation and Miscalculation*, op. cit.

¹³¹ Crisis Group Report, *The State of Sectarianism in Pakistan*, op. cit.

¹³² Some locals consider Islamabad complicit since it arrested no one after the 1988 attack.

¹³³ Crisis Group interview, Shia politician, Gilgit, October 2006.

¹³⁴ A security official said some law-enforcement personnel were complicit in the arms trade, smuggling arms from NWFP and selling them at inflated prices in Gilgit, Crisis Group interview, Gilgit, August 2006.

¹³⁵ For instance, Urdu textbooks for grades two and three described only the Sunni method of performing prayers; Sunni historical personalities, some of whom Shias considered usurpers, were exalted, while their Shia counterparts were ignored. Crisis Group interview, Shiekh Nayyar Abbas, Gilgit, August 2006.

¹³⁶ Farman Ali, "Studied Silence", *The Herald*, February 2006.

¹³⁷ Crisis Group interview, Islamabad, December 2006.

¹³⁸ The curfew remained in force for thirteen days.

¹³⁹ "N. Areas' syllabus issue resolved", *Dawn*, 6 June 2004.

warnings to the Shia mosques of every step the government was planning to take".¹⁴⁰

On 8 January 2005, Ziauddin Rizvi, the driving force behind Shia activism in the Northern Areas, was critically injured in an attack. His bodyguards killed one of the assailants, identified as Mukhtar Ahmed, a FATA resident and member of the Lashkar-e-Jhangvi. Enraged Shias took to the streets in Gilgit, destroying government and private property. A district forest officer and six others were burned alive in an attack on his house, and the Sunni director of the local health department was shot dead in his office. At least fifteen people were killed and scores injured before the government imposed a shoot-on-sight curfew. The riots spread to Skardu, where hundreds of Shias protested, attacking government property and blocking roads.

On 12 January, Rizvi succumbed to his injuries, triggering more violent protests. Although leaders of the two main religious groupings in the Northern Areas, the Shia Anjuman-i-Islami and the Sunni Tehreek Ahl-e-Sunnat Wal Jamaat, signed an agreement brokered by the NALC to restore peace, neither side was sincere. The tit-for-tat killings that followed included the assassination of Sakhilullah Tareen, the Northern Areas police chief at the time of Rizvi's assassination.

On 26 April 2005, the federal minister for education, Lt. General (ret.) Javed Ashraf Qazi chaired a high-level committee meeting that decided the Punjab Textbook Board's contentious textbooks would be withdrawn and replaced with those published by the NWFP Textbook Board and the National Book Foundation. Qazi also assured the committee, which had three representatives from the Northern Areas, that all controversial contents of Islamic Studies and Urdu textbooks would be withdrawn in the revised national curriculum.¹⁴¹ However, the education minister has not delivered on his pledge to replace the flawed national curriculum with revised textbooks from which all contentious sectarian material has been removed. The old textbooks, with minor modifications, are still used in the region, although the controversial chapters are not taught.¹⁴² And even if the textbook issue is finally resolved, this will not by itself end sectarian discord in the Northern Areas.

2. Restoring the peace

A day after the education ministry declared that the textbook issue had been "amicably" resolved,¹⁴³ four Shias were shot and injured during a religious ceremony on Eid Milad-un-Nabi, the Prophet's birthday, that was opposed by hardline Sunnis.¹⁴⁴ In less acrimonious times, Sunnis had even participated in such Shia rituals but the divide is now too wide. The military government has extended it by marginalising moderate forces, weakening even nominally elected forums, and resorting to brute force to suppress the resultant discord. The result of the military's policies is the empowerment of militants in the Northern Areas and an incremental weakening of Islamabad's legitimacy and authority.

This was amply demonstrated in October 2005, when Gilgit was again transformed into a virtual battlefield, with the Shia community pitted against the Pakistan Rangers, a paramilitary force of the federal government.¹⁴⁵ On 11 October, following an armed attack in Baseen on the outskirts of Gilgit on a bus carrying mainly Shia passengers that killed one and injured several, the Rangers took one of the assailants captured by the police into their custody, raising doubts about their neutrality. As he was being transferred from Gilgit's District Headquarters Hospital to the Combined Military Hospital, Shia students confronted the Rangers, and both sides resorted to violence.¹⁴⁶ Two Rangers were killed, as were ten innocent bystanders after the Rangers used indiscriminate force.¹⁴⁷ Another curfew was imposed, schools closed and four Shia and four Sunni leaders arrested under the Anti-Terrorism Act.

Excessive force and random arrests are unlikely to dampen sectarian violence. What is needed instead is rule of law and an end to the climate of impunity. But Islamabad has yet to hold security officials accountable for excessive force or bring those responsible for committing or instigating sectarian violence to justice. A sustainable peace is also viable only if the Northern Areas' elected institutions and judiciary are sufficiently empowered. Marginalised by Islamabad, however, the NALC and the judiciary remain

¹⁴⁰ Crisis Group interview, Gilgit, October 2006.

¹⁴¹ "NAs curriculum issue resolved; Schools open today", *Dawn*, 27 April 2005.

¹⁴² Sources in the ministry of education told Crisis Group a new scheme of studies has been prepared but would not be made public until sometime in 2007.

¹⁴³ "NAs curriculum issue resolved; Schools open today", *Dawn*, 27 April 2005.

¹⁴⁴ Sunnis in the Northern Areas resent the Shia practice of lighting fires to commemorate important religious events such as Eid Milad-un-Nabi on the grounds it takes place on hills that do not belong to Shias and often overlook Sunni localities.

¹⁴⁵ Two units of Rangers have been deployed in Gilgit since 23 March 2005 at an estimated daily cost of \$25,000 (1.5 million rupees), from the Northern Areas' annual budget. Sarmad Abbas, "Unending War", *The Herald*, November 2005, p. 32.

¹⁴⁶ After a Ranger was shot and injured, the Rangers detained and assaulted the alleged culprit, a Shia student.

¹⁴⁷ Crisis Group interview, Syed Jaffar Shah, Gilgit, August 2006.

toothless institutions. Following Ziauddin Rizvi's assassination and the subsequent violence, for instance, Islamabad convened a traditional tribal assembly (grand *jirga*), composed of representatives from the warring sects, thus sidelining the NALC and further weakening its credibility.¹⁴⁸ The *jirga* drew up a peace agreement that was signed by the regions' leading religious leaders. Those detained in October 2005 signed as well and were then released.

While there has recently been a lull in violence, sporadic attacks still take place, and the *jirga*, which is monitored by a six-member committee headed by Gilgit's deputy commissioner, is not likely to keep the peace for long.¹⁴⁹ *Jirga* members accuse the government of interference¹⁵⁰ but the Sunni and Shia *mullahs* who run it have little interest in sectarian harmony and have escalated their rhetoric. Sunni Tehreek Ahl-e-Sunnat Wal Jamaat chief Qazi Nisar Ahmed has warned that "if the Shias continue to publicly hold offensive rituals and disparage our revered religious personages, then one should not be surprised if a Sunni takes up his gun and retaliates".¹⁵¹ Sheikh Nayyar Abbas, leader of the Shia Anjuman-i-Islami insists there are no moderate Sunnis in Gilgit, only Wahhabis who denounce Shias: "When we are called infidels and people who are detestable to us are publicly venerated, what do you expect us to do? We cannot abandon our core beliefs simply for the sake of peace".¹⁵² "The primary purpose of the *jirga* was to remove differences and thereby unite the people, an endeavour in which it has not been successful", says Mirza Ali, Anjuman-i-Islami president.¹⁵³

According to police estimates, there were 68 deaths in sectarian violence between June 2004 and October 2005 but independent estimates put the figure closer to 100.¹⁵⁴ While some arrests were made, there have been no

convictions. The findings of commissions of inquiry, such as those formed to investigate Ziauddin Rizvi's murder and the October 2005 events, have not been made public. The latter, led by two members of the Chief Court, submitted its report to the federal government after recording the statements of more than 220 witnesses but is not available despite demands by relatives of the victims.¹⁵⁵

The government's unwillingness to identify the perpetrators of sectarian violence has led many locals to question its will to tackle sectarianism and even to accuse it of complicity. Many Shias believe the government intentionally dragged its feet on the textbook issue to sow discord that would prevent them joining with Sunnis to seek political and constitutional rights for the Northern Areas. "The government has intentionally and consciously promoted sectarianism in order to keep us fractured and thereby prevent us from demanding our rights", said Anjuman-i-Islami's Mirza Ali.¹⁵⁶ Such criticism is far more muted among local Sunnis, many of whom believe the Shias went too far in their demands on the syllabus.¹⁵⁷ Nevertheless, most agree that the manner in which the government went about resolving the issue left much to be desired.

Many locals are critical of Islamabad's failure to prevent sectarian violence, despite the presence of multiple intelligence agencies¹⁵⁸ and security forces, including the Northern Light Infantry, Rangers, Frontier Constabulary and Northern Areas Scouts. Yet even the residents of Gilgit city could not be protected during the 2005 sectarian riots. Disarmament drives have been launched with much fanfare but little follow-through. There are weapons in almost every home in Gilgit. Despite scores of military and police checkpoints, arms and narcotics still flow unabated into the Northern Areas.

¹⁴⁸ The NALC speaker, Malik Miskeen, presided over the *jirga*. He is a Sunni hardliner believed to have played a leading role in supporting NWFP-based Sunni militants who participated in 1988 anti-Shia violence. Crisis Group interviews, Gilgit, August 2006.

¹⁴⁹ In April 2006, for instance, a Sunni judge of an anti-terrorist court in Gilgit was shot dead, reportedly by a Shia inmate he had sentenced to seven years' imprisonment for a previous offence and had escaped. After killing the judge, he surrendered.

¹⁵⁰ "Governmental interference in the *jirga* is pervasive and has been instrumental in preventing the *jirga* from securing a durable peace", a member claimed, Crisis Group interview, Gilgit, August 2006.

¹⁵¹ Crisis Group interviews, Gilgit, August 2006.

¹⁵² "Crisis Group interview, Gilgit, August 2006.

¹⁵³ Crisis Group interview, Gilgit, August 2006.

¹⁵⁴ Estimates given to Crisis Group by a senior police official in Gilgit. For independent estimates see Safdar Khan, "Gilgit's sectarian conundrum", *Dawn*, 30 October 2005; and Gulmina Bilal, "While Gilgit burns", *The News*, 22 November 2005.

¹⁵⁵ "Inquiry report on Gilgit clashes submitted", *Dawn*, 6 January 2006.

¹⁵⁶ Crisis Group interview, Gilgit, August 2006.

¹⁵⁷ A Sunni politician closely involved in the textbook issue said the Shias had 74 objections, eventually reduced to 37, but only one, relating to the Sunni method of performing prayers, was justified. Crisis Group interview, Islamabad, December 2006.

¹⁵⁸ According to a Crisis Group source, there are almost a dozen such agencies in the region, including Inter-Services Intelligence, Military Intelligence, Intelligence Bureau, Criminal Investigation Department and Special Branch.

VI. ALTERING THE STATUS QUO

A. THE NATIONALIST CHALLENGE

Pakistan's unwillingness to give the Northern Areas a constitutional identity and political rights has created a potentially powerful nationalist movement, which seeks to sever the Kashmir connection and obtain self-rule and eventually independence.¹⁵⁹ It rejects the term "Northern Areas" as an invention of Pakistani "colonialists" and favours the historical name, Balawaristan.¹⁶⁰ This movement gained momentum after the Kargil conflict of 1999, when the army failed to acknowledge publicly the contributions of local Northern Light Infantry troops, many of whom were killed, passing them off as Kashmiri freedom fighters. Since then nationalist organisations such as the Balawaristan National Front (BNF), the Karakoram National Movement (KNM) and the Gilgit-Baltistan United Alliance (GBUA) have organised and become increasingly vociferous in demanding greater political rights and diminished Pakistani control. "There should be no two opinions about the fact that Pakistan has conquered us and exploited us. The state itself has compelled us to seek our independence", stressed a nationalist leader.¹⁶¹

Most locals appear still wedded to a future with Pakistan. However, since the nationalist parties are not allowed to contest elections, it is difficult to gauge the extent to which their cause has popular support. One sympathiser maintains that if the nationalists were allowed to stand in free and fair elections under their party banners, they would secure a comfortable majority.¹⁶²

Nationalists attribute the absence of public demonstrations of support to fear of retribution. "Our leaders have been killed, forced to commit suicide and tortured", said KNM General Secretary Amjad Changezi. "People are too afraid to support us openly but our estimate is that 90 per cent of the region's youth sympathises with our cause".¹⁶³ According to another nationalist leader, hundreds of nationalists had been implicated in false sedition cases and subjected to torture, harassment and illegal detention, but the "movement for self-rule is still gaining strength".¹⁶⁴

While the vast majority in the Northern Areas might see independence as neither realistic nor desirable, the nationalists' insistence on some form of self-rule has certainly struck a chord. For instance, BNF's president Nawaz Khan Naji contested the 2004 NALC elections as an independent candidate and lost "by only 1,000 votes to a local feudal baron who has never lost an election and who commands huge financial resources".¹⁶⁵ Nationalists admit their cause has been damaged by some of its leaders, such as Muzzaffar Rellay, former KNM chairman, who was elected from Astore in 2004 as an independent candidate on a nationalist platform but left his party to join the PML-Q after being offered an adviser's post. But they insist they remain a strong force. Naji maintains they have a healthy presence in local councils and other municipal bodies, and their support base is steadily expanding.¹⁶⁶

Their opponents accuse the nationalists of internal disunity and insincerity. "Had they been sincere to their cause, they would have a single unified party. Instead, they have split up into different groups", said a Gilgit lawyer.¹⁶⁷ Nationalists, however, insist their differences are minor, and they are united in their ultimate objective of independence.¹⁶⁸ While the nationalists are still relatively weak, their challenge to Pakistan's control should not be dismissed lightly. The longer Pakistan denies the region political freedoms, the more the nationalists stand to gain.

B. OPTIONS FOR THE NORTHERN AREAS

There is vigorous debate in the Northern Areas on options to end constitutional ambiguity and political disempowerment.

Provincial Status. Those who reject the connection with Kashmir and support full integration with Pakistan advocate this. If Pakistan refuses lest its stand on Kashmir be weakened, advocates say, it should then give the Northern Areas provisional provincial status so they could enjoy the same rights as Pakistan's four provinces, while still being able to participate in any future negotiations on Kashmir. Shias and Ismailis support this option but many local Shias believe Sunni-majority Pakistan is uncomfortable with the prospect of a Shia-majority province.

Merger with AJK. Some Sunnis support merger of the Northern Areas with Azad Jammu and Kashmir. They

¹⁵⁹ A minority of nationalists, such as those belonging to the Jammu Kashmir Liberation Front (JKLF), supports the Northern Areas becoming part of an independent Jammu and Kashmir.

¹⁶⁰ In medieval times, the region was called Bolor, or Balawar. See Dani, *op. cit.*

¹⁶¹ Crisis Group interview, Amjad Changezi, General Secretary, Karakoram National Movement (KNM), Gilgit, August 2006.

¹⁶² Crisis Group interview, Farman Ali, Islamabad, December 2006.

¹⁶³ Crisis Group interview, Gilgit, August 2006.

¹⁶⁴ Crisis Group interview, Islamabad, December 2006.

¹⁶⁵ Crisis Group interview, Nawaz Khan Naji, Gilgit, August 2006.

¹⁶⁶ Crisis Group interview, Gilgit, August 2006.

¹⁶⁷ Crisis Group interview, Gilgit, August 2006.

¹⁶⁸ Crisis Group interviews, Mumtaz Nagri, chairman KNM, and Amjad Changezi, Gilgit, August 2006.

argue that Pakistan would be best served not just by retaining but also formalising the Kashmir connection. This could be best done by merging the Northern Areas into AJK, the other part of Kashmiri territory under its control. Shias and Ismailis oppose a merger with the culturally dissimilar and overwhelmingly Sunni AJK.

Independence. Advocates are divided into two categories: pro-Kashmiri nationalists, who want the Northern Areas to become part of an independent Kashmir, and anti-Kashmir nationalists, who want to sever links with both AJK and Pakistan.

An AJK-like status. Shias, Sunnis and Ismailis tend to agree the Northern Areas deserve at least the same political, administrative and judicial arrangements as exist in AJK. At the same time, there is support, across the political, sectarian and ethnic divide, for more than just a façade of autonomy. All moderate political voices strongly support the creation of governance structures that would be participatory, representative and accountable.

VII. CONCLUSION

Unless Pakistan takes steps to provide meaningful autonomy to the Federally Administered Northern Areas, extending civil and political rights to its people, grievances will mount. The federal government's failure to implement the ruling of Pakistan's Supreme Court and grant self-government is largely responsible for the mounting discord in the region. The imposition of an unelected and unrepresentative viceroy has seriously undermined Islamabad's standing. Pakistan should consult all stakeholders and ensure that political reforms are locally driven, not centrally dictated.

The Supreme Court reminded the federal government that the people of the Northern Areas are entitled to constitutionally guaranteed fundamental rights, including access to justice through an independent judiciary. Islamabad must respect those fundamental rights and remove all executive and administrative constraints that hamper judicial independence. The absence of rule of law and the climate of impunity has empowered sectarian extremists, who are also the main beneficiaries of the democratic deficit. So long as elected institutions remain impotent and moderate voices are silenced and marginalised, sectarian extremists are bound to flourish.

The democratic deficit in the Northern Areas will not, however, be redressed while Pakistan itself remains under military rule. Alienation and discord in the Northern Areas had receded under responsive, democratically-elected governments in Islamabad. In the eighth year of centralised authoritarian rule, however, Pakistan's legitimacy in the region is fast declining. So long as democracy eludes the country, political empowerment and a durable peace in the Northern Areas will remain a distant dream.

Islamabad/Brussels, 2 April 2007

APPENDIX A

MAP OF PAKISTAN



APPENDIX B

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

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.

Crisis Group's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

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Crisis Group's international headquarters are in Brussels, with advocacy offices in Washington DC (where it is based as a legal entity), New York, London and Moscow. The organisation currently operates twelve regional offices (in Amman, Bishkek, Bogotá, Cairo, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina, Seoul and Tbilisi) and has local field representation in sixteen additional locations (Abuja, Baku, Beirut, Belgrade, Colombo, Damascus, Dili, Dushanbe, Jerusalem, Kabul, Kampala, Kathmandu, Kinshasa, Port-au-Prince, Pretoria and Yerevan). Crisis Group currently covers nearly 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia,

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