

The State of Human Rights in Federally Administered Tribal Areas of Pakistan

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Abstract

The respect of human rights in a society determines the destination of that society or state. It is the level of satisfaction of citizens of a country which convinces them to work for the growth and progress of that state or society. The people of FATA are living under a draconian law which is known as Frontier Crime Regulations (FCR). There is a grave human rights violation of the people of FATA under this law. Freedom of speech, freedom of expression etc. are hampered by the FCR and the common people live under a threat of collective punishment as well. Moreover, due to military operations against the militants in the area, millions of people from FATA have been displaced. At times, there are grave violations of human rights of the displaced persons as well. This paper will explore the state of human rights in FATA in general and evaluate its impact on the Federation of Pakistan. The paper evaluates different instances of human rights violation in various agencies of FATA and their root causes as well.

Key Words: Human Rights, FATA, IDPs, FCR, Pakistan

Introduction:

The area that is called Federally Administered Tribal Area (FATA) of Pakistan played an important role in the Great Game. The colonial master of India, Great Britain, found it a tough task to control this area in the same way it had controlled the rest of Indian sub-continent. Therefore, the special law known as Frontier Crimes Regulation (FCR) was introduced in 1901 to give a semi-autonomous status to this region. Under the FCR local tribes could manage their domestic affairs according to their culture and tradition. The FCR is still being implemented in FATA and is commonly known as draconian law or black law. Ever since its promulgation in 1901, the FCR has been held responsible for human rights violation in FATA. Additionally, the Action (in Aid of Civil Power) Regulation 2011 gives immense powers to the military to curb militancy in the regions. The regulation leaves a lot of room for interpretation/ definition of threat. This

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regulation also provided legal protection to unlawful acts committed by armed forces in FATA during the War on Terror by authorizing them for arrests and detentions in tribal areas (DAWN, 2011, p. 1)

Per Article 1 of the constitution of Pakistan FATA is given the status of territories of Pakistan. It has representation in the national legislature i.e. Senate and National Assembly; however, laws passed by the national legislature are not by default implemented there without a separate order by the president of the country (247, 1973). Moreover, FATA is administered by the Governor of Khyber Pakhtunkhwa since he acts as an agent of the president of the country. Additionally, overall supervision of FATA is the responsibility of the Ministry of State and Frontier Regions (SAFRON).

Moreover, FATA has been home to different brands of international militants during the pre-9/11 era and their presence was very much there even after 9/11. On one hand, Pakistan was pressurized by the international community particularly the US to take callous steps against militants in FATA to stop their infiltration into Afghanistan while on the other hand the US started violating Pakistani air space and carried out drone attacks against its targets in FATA. Till 2015, 319 drone attacks had been carried out in which 2801 people have been killed while more than 350 have been injured (SATP, 2015). Most of the victims of drone attacks were innocent civilians. The number of casualties as collateral damage is much high than the number of actual target of these attacks. For instance, an analysis made by the Guardian in November 2014 shows that in order to eliminate 24 potential targets 874 people had been killed (Ackerman, 2014).

Due to increase of militancy and terrorism in Pakistan over the past few years, the country has waged full fledged military operations against militants in the country. Small and major operations were being carried out throughout FATA; however, a long-awaited major military operation against Haqqani Network in North Waziristan Agency (NWA) has been delayed for many reasons. Nevertheless, on 15th June 2014 operation Zarb-e-Azb was launched. It displaced millions of local inhabitants. Like few other members of the international community, Pakistan also faces internal displacement situations every now and then. Regardless of the place and time of displacement, internally displaced persons face almost same kinds of issues and problems as those faced external displacement. Though the causes of displacement also pose various problems for IDPs; however, numerous experts believe that the occurrence of displacement situation is enough to trigger many challenges for the displaced persons (Kälin, 2008, pp. 17-20). It ultimately leads to human rights violation. By the time authorities realize about the basic human rights of displaced persons- consciously or unconsciously- many of those rights are violated.

Role of FCR in Subjugating the Inhabitants of FATA

In modern statecraft, three pillars of the government i.e. Executive, Judiciary, and Legislature are kept apart from each other to ensure separation of power (Lebow, 2008, p. 47). However, the office of the Political Agent (PA) in FATA has been empowered by FCR to exercise these powers together. He is the executive and judiciary at the same time. A research scholar at the Qurtaba University Peshawar who is engaged in development of FATA informed writers that office of the PA receives funds from the government and he can spend according to his whims and wishes. The funds are normally spent to ensure the authoritarian control of the successive governments over the people of FATA through the PA. This fund, he told, was unaudited, therefore, making it very easy for the political administration to takeoutbig chunk from it for their personal use and vested interests (Saeed, October 20, 2015).

FATA is out of the jurisdiction of the both the Supreme Court and High Courts of the country. All civil and criminal cases in FATA are handled through FCR. It is believed that FCR is not only in itself a grave violation of human rights in the region but it is also paving way forth frequent violation of human rights committed by powerful and strong individuals and groups (ICG, 2015).

Collective punishment is another prominent feature of the FCR. Under this principle, a whole village or a tribe can be punished for the crime of a single person belonging to that tribe/village. Local disputes and criminal and civil cases are resolved in *Jirgas* (Ullah, 2013, p. 67). However, these *Jirga* are normally biased in favor of the dominant group operating in the area. For instance, if the Taliban have strong control over the area the decision of *Jirga* will favor Taliban and if the area is under the control of the military the *Jirga* decision would be tilted in favor of Pakistan Army. Due to this situation, around 1000 *Jirga* elders have been eliminated in the past (Farooq, 2014). Though some changes have been made to reforms to FATA under the Frontier Crimes (amendment) Regulation 2011 (Ullah, 2013, p. 85); however, these changes are still not adequate. For instance, Mr. Fazal Saeed told that Mian Khan and his son Pir Muhammad were arrested from Bara Tehsil (sub-district) of Khyber Agency in 2011. They were accused of being members of a local militant organization named as *Lashkar-e-Islam*. The local *Jirga* comprised of elders from the area found them not guilty, however, the political agent was not satisfied with the decision of the local *Jirga* so he ordered a retrial, the *Jirga* again found them not guilty thus released; however, the political agent again ordered a retrial. Later, after two years, they were released on the directives of Peshawar High Court (Saeed, October 19, 2015).

Failure of State to protect its Citizens

Over the years, the successive governments in the country have failed to provide security to its citizens against extremists. The onslaught on soft targets i.e. noncombatants has become the norm of the day for militant organizations. Every now and then innocent lives are wasted in terrorist acts. So far thousands of civilians have been slaughtered by extremists. From 2003 to 2015, around twenty thousand innocent people have lost their lives at the hand of militants in a variety of terror incidents (SATP, 2015). While one of the worst among such terror incidents was the December 2014 Army Public School (APS) Attack in which 132 children were killed. These attacks, on the one hand, show misguided priorities of the state while on the other hand, it indicates towards the eroding capability of the country to protect its citizens.

Human Rights and Journalists in Pakistan

Reports of crimes and other updates from conflict zones do not come out easily due to two main reasons. Firstly, the Pakistan Electronic Media Regulatory Authority (PEMRA) Act has not been extended to FATA due to which no FM radio channels or television channels can operate from FATA. Secondly, the Press and Publication Ordinance ensures the freedom of speech in the whole country but again due to the special status of FATA this ordinance/act has not been extended to it. Mr. Fazal Saeed considers these two reasons as primary hurdles for the flow of information from FATA. Mr. Saeed further told that due to the collective punishment rule under the FCR families of journalists can be punished for-so called- irresponsible reporting (Fazal Saeed, personal communication, October 20, 2015). Moreover, there is no law implemented in FATA which ensures right to information of public regarding their issues of concern.

In the Amnesty International report, Pakistan is among the worst countries for journalism and media. Reporting and journalism in the war-torn areas are one of the major challenges print and electronic media is facing in the country. Local journalists working in different outlets have been targeted due to their unwanted reporting. For instance, Hayatullah a local journalist from NWA reported claimed that the killing of Hamza Rabia-member of Al-Qaeda- in 2005 was the result of US drone strike. His report contradicted the official version of the government-which informed the authors of the report that Hamza Rabia was killed due to a bomb blast inside the house. Mr. Hayatullah received many threats from tribal leaders, Pakistani security forces and Taliban leaders due to the unwanted reporting. Thus, a day after his report appeared in the local and international media he was abducted and around six months later his dead body was found Miran Shah (CJP, 2006). Likewise, in September 2010 a journalist Misri Khan Orakzai was killed just in front of Hangu Press club and the Taliban took responsibility for that. Additionally, in Dargai another journalist Mujeebur Rehman Siddiqi was killed

outside a mosque in the same month. Two more journalists Abdul Wahab and Pervez Khan Mohmand were killed at the office of Assistant Political Agent (APA) in GalanaiMohmand Agency (HRCP, 2011, p. 142).

Mr. Saeed said that so far 72 journalists have been killed in FATA and the adjacent areas while performing their professional responsibilities. However, he said that it was wrong to put the blame on either militants, security forces or some other elements because it is impossible to prove the involvement of powerful groups and security forces in such incidents. Nevertheless, he told that there is impunity against crimes in FATA due to mainly FCR and other supporting acts and ordinances, therefore, the ratio of crimes and human rights violation is high in the tribal belt (Fazal Saeed, personal communication, October 20, 2015).

A local journalist working for an international media outlet told on the condition of anonymity that most of the militant activities of Taliban are targeted to gain media popularity and serve the purpose of propaganda. Therefore, he told that whenever they carry out attacks against Pakistan military or any other soft and/or hard target they call journalists and claim responsibility for that. He further told that spokesman of Taliban Khalid Omar Khurasani had called him several times in the post-Army Public School (APS) Peshawar attack to claim responsibility for various target killings and justify their acts. The journalist told that the Taliban demanded in threatening tone that their message should be aired through electronic media outlet he was working for. Therefore, he told that journalist always feels threatened in the country. On the one hand, he argued they were under obligation to remain impartial during their reporting while on the other hand Taliban and- at times- sitting governments pressurize them to do reporting in their favor.

In 2012, armed group blew up powerhouse in Mohmand Agency which was situated near the local press club. Soon after the incident, the security forces entered the Mohmand Press Club and arrested two journalists named as Saeed Badshah and Kifayatullah (Correspondent, 2012, p. 3). This act of the security forces- Mohmand Rifles- was guided by the collective responsibility clause of FCR in which the journalists were supposed to present the culprit in order to secure their release (Farooq, 2014).

Internal Displacement Situation and Human Rights violation

An activist- Shad Begum- from district Lower Dir has actively participated in relief activities during the internal displacement situation of Malakand division in 2009. Ms. Shad Begum has also actively participated in her personal capacity for the improvement of IDPs of NWA in 2014. She believes that the situation of NWA displaced persons is not much different from the IDPs of Malakand division. She further commented that NWA IDPs have the same kinds of protection related issues as the displaced of Malakand were faced with (Shad Begum, personal communication, July 15, 2014).

The United Nations Guiding Principles on Internal Displacement (UNGPID) is a comprehensive document about guiding a polity engulfed in displacement situations. It emphasizes on providing shelter to the displaced persons (Kälin, 2008, pp. 37-42).

However, an IDP living in D.I. Khan- with his relatives- told on condition of anonymity that he was dissatisfied with his accommodation because he told that the government did not provide him accommodation rather his relatives provided him shelter, and then he said his children would remain indebted to his relative and his relative's children for the rest of their lives. There were countless displaced persons who were not happy with the government approach towards them. For instance, an IDP of South Waziristan Agency termed the government of Pakistan's response towards the civilians- non-combatants / displaced persons of Mehsud tribe from the agency was punitive towards the whole of Mehsud tribe mainly because the leadership of Tehreek-e-Taliban Pakistan (TTP) was from the Mehsud tribe i.e. Baitullah Mehsud and Hakeemullah Mehsud etc.

Protection of Internally Displaced Women

Women are about forty-eight percent of the total population of the country. Therefore, an overwhelming majority of displaced persons is also comprised of women and children. Women take care of the needs of the whole family; however, they are generally ignored. Thus, women quite vulnerable in the camps established for IDPs. The Guiding Principles have taken into consideration the condition and special needs of IDP women (Ferris, Mooney, & Stark, 2011, pp. 110- 113).

Some officials of United Nations High Commission for Refugees (UNHCR) Pakistan mainly responsible to take care of the protection needs of IDPs expressed their views on the condition of anonymity that displaced women do not get what they are supposed to get. Most of the camps established in Khyber Pakhtunkhwa had inadequate facilities for women, some of them revealed. Moreover, for the expectant mothers or mothers with young children, there were insufficient medical facilities in most of the camps. They informed told that the government and policymakers had ignored health care of the women in IDP camps. Only a few displaced women had approached the UNHCR field offices for the purpose of medical assistance, they informed. The UNHCR is doing whatever it can do for the protection of all IDPs- including displaced women. However, they told that at that moment it was out of reach of the UN agency for refugees in Pakistan to address the issues and problems of all IDPs. A huge restraint on the activities of UNHCR and other international aid agencies were the delay in getting security clearance from the government to work assist IDPs in the vicinity of the conflict zones i.e. FATA and Frontier Regions (FR); a fact also endorsed by a social activist Ms. Shad Begum (Begum, 2014).

The UNGPID emphasizes the protection of female-headed households (Kälin, Williams, Koser, & Solomon, 2010, p. 89); however, the situation in the most of the IDP camps in the country did not conform to this demand of the Guiding Principles. Rehman Ali (he has worked in different capacities in many international and national NGOs during the 2009 displacement situation in the Pakistan) told that needs- i.e. livelihood support and healthcare etc.- of most of the female-headed households were not fulfilled mainly due to the lethargic response from the officials deployed in those temporary settlements. Most of the displaced women are from the farthest remote parts of the country, thus, they not very much aware about their rights during displacement which makes it convenient for the officials avoid their needs and deny due rights. (Rehman Ali, personal communication, May 5, 2011).

Displaced women from NWA are also facing problems in getting registered. Normally females in those remote areas do not have identity documents because of two main reasons. Firstly, the local culture in which a woman is not supposed to make her photographs-one of the necessary ingredients for making Computerised National Identity Card (CNIC) (Fazal Saeed, personal communication, October 20, 2015). Secondly, Mr. Muhammad Raza (Ex Managing Director Bacha Khan Foundation) says that some of the clergy and militants in the region forbid women in most parts of FATA to make CNIC as they thought it was against the basic principles of Islam for women to be photographed for any purpose(Muhammad Raza, personal communication, April 21, 2014).

Educational facilities in camp for children at primary level-up to fifth grade- are there for boys and girls. However, there are no arrangements made for the education of girls study at higher levels. Nevertheless, training programs have been initiated for displaced women to get vocational training.

Violation of Children Rights in displacement Situation

The Guiding Principles is against the discriminatory approach of authorities towards IDPs. The availability of educational facilities for the nondisplaced citizens and its non-availability or availability with low quality in comparison with the facilities for non-displaced children is equal to discrimination. No denying the fact that Pakistan has weak economy, therefore, provision of quality education facilities for IDP children is a huge task. However, the provision of education for all IDPs- primary and above- should be a matter of priority for the powers that be. Protracted displacement from NWA and other areas of FATA ignores the college and university going students' educational needs; so far there is no sign of government's intent to make arrangement for college and university students to get their basic right i.e. right to education. In addition, not only the Guiding Principles but many other declarations and conventions also emphasize on the provision of education for children. For example, article 28 of the Convention on the Rights of

Children (CRC) explicitly talks about a child's right to education. CRC considers its duty of the state to provide education to a child. Moreover, for the elimination of illiteracy provision of elementary education bringing improvement in the overall quality of education is also the responsibility of the state under the CRC. Therefore, authorities should consider all its obligations and citizens' rights prior to taking the decision for the evacuation of an area and creating a displacement situation. An assessment regarding the consequences of displacement situation and educational facilities for the displaced youth and children should be made beforehand. If the findings of the assessment points in the direction that the state does not have enough resources i.e. infrastructure, money, or human resources (teachers etc.) then the government should refrain from creating internal displacement situation. Rather it should opt for alternative solutions such as surgical strikes and limited clean-up operations against the militants- based on accurate intelligence - to avoid full fledged displacement.

Girls' education in FATA is normally discouraged due to cultural constraints. Most of the displacement situations in Pakistan are created due to the displacement of people from FATA. Back home this fact remains hidden from the outside world, however, when people from FATA comes to settled areas as displaced person the non-availability of education to displaced girls become visible. Displaced women do not get a chance at all to attend formal educational institutions in temporary settlements/ camps. However, as previously mentioned briefly, internally displaced women did get vocational training. For example, emergency response unity (ERU) established several vocational skill development centers in Sheikh Yaseen IDP camp and Palosai IDP camp, Yar Hussain IDP camp in Swabi ,Shah Mansoor IDP camps in Swabi, etc. where women were given training in sewing and stitching etc. (ReliefWeb, 2009).

The marriage of underage girls - 18 years and below- is quite common in remote parts of rural Pakistan. Therefore, among IDPs- mostly from remote areas- the practice of early marriage is quite common. One such incident is among the IDPs Orakzai Agency where Hashmat Ali was married to his cousin Zar Gulain Tughsarai IDP camp in the year 2010. The girl was only 14 years old at the time of her matrimony, Rehman Ali discloses. The reason for this marriage was that their parents fixed when Zar Gula was born. The couple was all set to get married when they were displaced from Orakzai Agency. The respondent holds the societal pressure responsible for this early age marriage (Ali, Rahman, Personal Communication, and May 5, 2011). Expressing her views on the same issues on the condition of anonymity a psychologist numbered several reasons for early marriages. She told that at times societal pressure compels families to get their children marry as early as possible. While at times the will of the boy's family to get their son married early with a young girl- not adult by law- also plays role in it. She continued the discussion by revealing that the signs of adulthood in girls appear long before the age of eighteen, therefore, people in remote areas and the

tribal belt normally do not wait for a girl to attain that age before her marriage. She thinks that implementation of laws for minimum age of marriage can be considered equal to meddling in the domestic affairs and culture of the local people, therefore; the government has no intention/capacity to work on the issue of implementation of such laws. However, she did tell that such early age marriages are a violation of CRC and UNGPID therefore; the government should work for devising a mechanism to stop the practice of early marriages.

Early marriage is a violation of women and children health rights as it leads to early pregnancy. Mr. Qabil Shah (is a development practitioner who has worked in many national and international NGOs) said that settled in Southern districts of KP, many displaced women from FATA had early pregnancy issues. He considered early marriages of girls' part and parcel of tribal culture in FATA. Early marriages bring many inbuilt issues and problems for women/children and new born health (Qabil Shah, personal communication, August 10, 2011). Normally, with no proper facilities and health problems, infants do not survive beyond five years of age. Even if they survive in some cases they get various health problems and diseases i.e. hepatitis and polio etc. which stops them from becoming a productive member of the society. According to Pakistan Demographic and Health Survey 2012-2013; out of fourteen, one child dies before attaining the age of one year. The survey further reveals that out of eleven, one child dies in the country before reaching the age of five; while, the female mortality rate also gets high with early marriages (GOP, 2013, pp. 18-23). No denying the fact government of Pakistan is facing problem in establishing its basic writ in FATA and in such situation taking care of the early marriages of girls becomes at the bottom of the priority list. However, without concrete steps for elimination of the menace of early age marriages women and children rights would be violated in the name of culture and tradition.

Right to freedom of movement

Internally displaced persons have the right to freedom of movement. Denying them freedom of movement is equal to denying them many rights such as right food, health, and right of the reunification of separated families and separated children. The right of freedom of movement includes not only free movement within the country but also the right to move in and out of the country if the individual's resources allow. Principle 14 (1) and (2) of the Guiding Principles emphasizes on the right and liberty of free movement of IDPs. The sufferings of displaced people are caused by conflict or disaster. In order to minimize their suffering authorities should play a positive role and take adequate measures and to facilitate IDPs. Breach of the right of freedom of movement increases the hardships of displaced persons. Barring IDPs from in and out movement from camp is not the only check on the right of movement; setting camps away from the main transportation routes

and outside the urban areas makes it almost impossible for IDPs to move out of camps (Kälin, Williams, Koser, & Solomon, 2010, pp. 10-46). In the 2009 displacement situation, a few camps were established in remote areas. Such as the Yar Hussain IDP camp was established around 15 to 20 kilometer away from the main road- Mardan Swabi road. The condition of the link road to the camp was dilapidated. There was no routine public transport running on that road. Similarly, the Bakakhel IDP camp is also set quite far away from Bannu, it is strictly controlled by the military and the inhabitants of the camp have to inform the camp administration at least 24 hours before arrival of their guests (Saeed, October 20, 2015).

In January 2015 outside the Bannu sports complex-known as UN distribution hub-, an IDP previously residing in Bakakhel camp told on condition of anonymity that once his younger sister was ill and he was not satisfied with medical facilities inside the camp. He told that he had to take to Bannu for weekly medical check-ups. It was difficult for him to make arrangement for travel from to Bannu therefore, he told, he decided to live in rented house in Bannu. However, he told there were many such cases in the camp, which was out of reach for all humanitarian agencies and everything is strictly controlled by the military.

Only the right to the movement to IDP can ensure that he/she can take asylum. Like the rest of non-displaced citizens, displaced persons can also move in and out of the country- speaking in terms of the law. Principle 15(a) of the Guiding Principles emphasizes on the displaced persons right to seek refuge in other parts of the country. This principle has been derived from the Universal Declaration of Human Rights (UDHR)-Article 13(1). Right to freedom of movement has also been guaranteed in both the African Charter and International Covenant on Civil and Political Rights (ICCPR). The government of Pakistan should also respect the displaced persons right to freedom of movement as it has been emphasized by almost all tools and conventions of international law. For instance, in Malakand division in 2009 families and relatives of some fugitives and Taliban militants were accommodated in an IDP camp set far away from any nearby road and population. BBC Urdu radio reported that the camp was set aside with the sole purpose of keeping an eye on the movement every single individual in the hope that one-day fugitive Taliban would certainly visit their loved ones and the military would eliminate or arrest them.

Similarly, Pakistan initiated the rehabilitation process prematurely in Swat; many displaced persons found that their homes completely destroyed when they reach back to their area of habitual residence. Some analysts say that military priorities devised the rehabilitation efforts in Malakand division. Traits of collective punishment were also found in the military-led rehabilitation in Swat. For instance, the military gave tough time to families who were accused having sympathies with the Taliban or who had some relatives in the Taliban. Their houses were not only destroyed by the military but they were also stopped- for twenty to

thirty years- to reconstruct their houses (ICG, 2010, p. 10). Moreover, many families were made hostage by the military in a faraway camp-former Afghan Refugees Camp- in Dir. Initially, those families were asked to handover those relatives who had links with the Taliban and had been among the ranks and files of Taliban; they were put in the isolated camp when they failed to do. Moreover, around 250 families were asked by the military to produce their Taliban relatives or face expulsion from the area. Additionally, around 50 families were practically expelled as they could not produce their Taliban relatives (ICG, 2010, pp. 10-11).

Right to Humanitarian Assistance

All assistance which is deemed necessary for survival is termed as humanitarian assistance i.e. medical supplies, water, food, non-food items such as water containers, clothing and cooking utensils, soap, etc. or the provision of such means to right away get hold of any such items i.e. cash assistance. Moreover, it also encompasses the emergency medical assistance services etc. Along with essential non-food items, items and personnel necessary for the provision of humanitarian assistance are also included in humanitarian assistance. Humanitarian assistance personnel must have telecommunication, information technology and other logistic facilities such as vehicles to gather information about the vulnerabilities of the affected population and cater for their needs. Numerous human right treaties guarantee fundamental human rights which include right to life, clothing, food, shelter, health services and other requirements. The gap in all those laws has been filled up by soft laws such as the Guiding Principles (Kälin, Williams, Koser, & Solomon, 2010, pp. 47-50). However, examples from Pakistan conflict zones cited above are a visible violation of all these laws. Both in case of Malakand and FATA IDPs the government and military take its obligation for human rights lightly.

All over the world legal frameworks for humanitarian assistance displaced persons are rarely found at national level. Same is the case in Pakistan where a framework for humanitarian assistance is not in place which let infringement of the right to humanitarian assistance with impunity. Legislation for humanitarian assistance is a not a mammoth task, however, legislation alone cannot resolve the issues. Such as displaced persons in rebel territory would not get assistance from the government even if comprehensive legislation is in place i.e. those displaced persons of Bugti tribe who could not leave the area controlled by Baluchistan Liberation Army (BLA) and still were forced to leave their houses were unable to receive assistance due to their proximity to the core of the conflict zone and governments inability to reach out to them. Thought there are some valid arguments available in favor of not devising framework for humanitarian assistance, still the government should not shy away from its responsibility to make necessary legislation. Pakistan has witnessed and accommodated millions of IDPs over the past one decade. About a million of IDPs from NWA is still out there in

the open. However, a legal framework at the national level is still missing to take care of different needs and rights of displaced persons. The absence of legislation on the issue leaves millions of Pakistanis from conflict zones vulnerable to the human rights violation.

The IDP camp set for the IDPs of Swat, Dir and Buner in 2009 at Yar Hussain had very peculiar problem of non-availability of clean drinking water. Clean water which was supplied by the government for the inhabitants of the camp was not enough for even twenty percent population of the camp. A stream of muddy and opaque water would flow in the middle of the camp and most of the residents were using that water for their use as the government was not able to supply clean water to all inhabitants. They would fill bottles and water coolers from that opaque and undrinkable water for drinking purpose. Inhabitants would filter the water through a piece of cloth to make it usable for drinking, cooking and cleaning purpose. In-depth discussion with the residents of the Yar Hussain about issues and problems, they were facing revealed that that children and infants there were affected by the consumption unsuitable water. Stomach disorder was commonly found among them. However, I found no responsible official at the camp willing to discuss this matter. Some officials denied altogether that such problems were faced by the displaced persons.

Though basic health units (BHUs) were there in the camp, however, they did not have enough qualified physicians, doctors, required equipment and medicine to take care of the health needs of the IDPs. Despite huge international support for the displaced persons from Malakand division in 2009- USD 524,809,148 in the years 2008- 2009 according to an estimate by the financial tracking services website- the government of Pakistan lagged behind to ensure hygienic environment to the IDPs and take care of their health needs. Moreover, the displaced persons of FATA in Jalozei and Tughsarai camps also faced issues like inadequate medical assistance/facilities from the government of Pakistan to cope with their health needs. International Medical Corps (IMC) took charge of Tughsarai IDP camp was later on. Mr. Rehman Ali told that since displaced persons in Tughsarai camp were not from Malakand-who were largely supported by the international community- rather they were from FATA therefore, their needs were widely ignored on different pretexts. He told that had International Medical Corps not been taking care of medical needs of displaced persons, the situation of health care in the camp would have been the worst (Ali, May 5, 2011).

Vacuum in Humanitarian Efforts and Its Adverse Effects

According to Mr. Fazal Saeed, internal displacement situations in the country itself are a violation of fundamental human rights. He thinks that displacement brings many humanitarian issues with it and most of the times the government is found unprepared to cater for the humanitarian needs of the IDPs (Fazal Saeed, personal

communication, October 20, 2015). On various occasions, it has been reported by the print and electronic media that militant outfits reach to the IDPs and take part in relief efforts mainly due to the inefficiency of the government to reach to the displaced persons in time of dire need. This inefficiency of GOP leaves space for the militants and Jihadists who in turn reach out to the displaced to provide assistance. This problem was identified during the displaced situation of Malakand division. The same issue has been observed in the IDPs crisis of NWA. The government of Pakistan asks international humanitarian agencies and their implementing partners-NGOs- to produce a no objection certificate (NOC) issued by FATA Disaster Management Authority (FDMA) or Provincial Disaster Management Authority (PDMA) to establish relief camps. However, the *Jihadi*/militant outfits are not asked to provide NOC (Siddiqi, 2014, p. 4). Recruitment of displaced youth in the banned outfits is a bi-product of these outfits' easy access to them- either living host communities or in camps. Putting it the other way round, on the one hand, military action against the militants displace people; while on the other its tacit approval for banned outfits 'relief and humanitarian efforts for the displaced communities help them recruit more people to become militants. Consequently, the vicious circle of militancy resulting in IDP situation is never broken rather it is strengthened. The GOP and military should reach out to the IDPs for their needs in a time of crisis if it wants to stop militants to reach there in the semblance relief activists as these outfits get sympathies of the displaced persons in the guise of humanitarian efforts.

Proper deliberation process before any military operation against the militants is missing in the country; resulting in the dislocation of masses without consulting them. Operation *Zarb-e-Azb*, in NWA, is considered among successful operations against militants. However, it dislocated around 1 million individuals and the ruling party in the province of Khyber Pakhtunkhwa, directly affected by internal displacement of people from FATA, holds the opinion that it has not been consulted before the government decided to go after militants in NWA. The ex-Director General of Inter-Services Public Relations (ISPR) told in an interview on June 30, 2014, General Ashfaq Pervez Kiyani the then Chief of Army Staff (COAS) was mainly responsible for the delay in military operation against Haqqani Network in NWA as the general thought it would be perceived as his personal initiative and then COAS would be held responsible for the blowback. No mention- during the interview- was made that whether the opinion of then Prime Minister Yousaf Raza Gillani or President Asif Ali Zardari about the military operation was taken/considered or not. Decision-making processes in such issues always revolve around the will of Army. Elected government and other stakeholders such as population- supposed to be displaced- are rarely taken into confidence before reaching any such decision. A process of deliberation with all stakeholders before any military operation would enable the government to evaluate all the pros and cons of military action against non-state actors before

engaging them through the use of force. It will minimize the risk of humanitarian crisis for the local population and their voices would also be heard before any decision. Moreover, it would get required support for the government to wholeheartedly go after the militants and clear the areas for a quick, safe and sustainable return of the dislocated people.

Conclusion

Gross violation of human rights in FATA and other conflict zones in the country are largely due to the presence of special laws such as FCR which gives authoritative powers to individuals. The presence of such primitive laws has in the first place created space for militants and non-state actors to make their way into the tribal areas from across the western border. The local population has suffered from human rights violation at the hands of militants and non-state actors in the first phase. During the second phase when the government of Pakistan was not willing to take direct action against those non-state actors the US drone strikes against its targets killed many innocent civilians in FATA and destroyed their properties. In the third phase full-fledged military operations in different areas of FATA killed hundreds of civilians who were already suffering from the excesses committed against them by either Taliban or US drone strikes. Finally, when millions were displaced they faced countless issues and problems and in the process either consciously or unconsciously they were denied their fundamental human rights by none other than the government and their own military.

References

- 247, A. (1973, August 14). The Constitution of The Islamic Republic of Pakistan. *The Constitution of The Islamic Republic of Pakistan*. Islamabad, Islamabad Capital Territory, Pakistan: Parliament of Pakistan.
- Ackerman, S. (2014). 41 men targeted but 1,147 people killed: US drone strikes – the facts on the ground. *The Guardian*, Online.
- Begum, S. (2014, August 29). *Association for Behavior and Knowledge Transformation (ABKT)*. Retrieved October 21, 2015, from National Policy on Internally Displaced Persons (IDPs) in Pakistan: http://abkt.org/cms/blogs_all/110

- CJP. (2006, June 16). *Hayatullah Khan*. Retrieved October 21, 2015, from Committee to Protect Journalists: <https://cpj.org/killed/2006/hayatullah-khan.php>
- Correspondent. (2012). Forces arrest two Mohmand journalists. *The News*, 3.
- DAWN. (2011). New regulations give legal cover to detentions in tribal areas. *Dily DAWN*, 1.
- Farooq, U. (2014, March 22). *Pakistan's FATA: Lawless no more?* Retrieved October 18, 2015, from Aljazeera: <http://www.aljazeera.com/indepth/features/2014/03/pakistan-fata-lawless-no-more-2014321111550828897.html>
- Ferris, E., Mooney, E., & Stark, C. (2011). *From Responsibility to Response: Assessing National Approaches to Internal Displacement*. London: The Brookings Institution – London School of Economics- Project on Internal Displacement.
- GOP. (2013). *Pakistan Demographic and Health Survey, 2013*. Islamabad: National Institute of Population Studies / MEASURE DHS International Calverton.
- HRCF. (2011). *State of Human Rights in 2010*. Lahore: Rashid Ahmed Chaudhry Maktaba Jadeed Press.
- ICG. (2010). *Pakistan: The Worsening IDP Crisis*. Islamabad / Brussels: International Crisis Group.
- ICG. (2015). *Women, Violence and Conflict in Pakistan*. Islamabad/ Brussels : International Crisis Group.
- Kälin, W. (2008). *Guiding Principles on Internal Displacement: Annotation*. Washington DC: The American Society of International Law.
- Kälin, W., Williams, R. C., Koser, K., & Solomon, A. (2010). *Incorporating Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges*. Washington, D.C: The American Society of International Law.
- Lebow, R. N. (2008). *A Cultural Theory of International Relations*. New York: Cambridge University Press.
- ReliefWeb. (2009, June 13). *Pakistan: Vocational training centers opened in IDPs camps - ERU*. Retrieved July 11, 2011, from Relief Web:

<http://reliefweb.int/report/pakistan/pakistan-vocational-training-centers-opened-idps-camps-eru>

- SATP. (2015, October 11). *Drone attack in Pakistan: 2005-2015*. Retrieved October 20, 2015, from South Asia Terrorism Portal: <http://www.satp.org/satporgtp/countries/pakistan/database/Droneattack.htm>
- SATP. (2015, October 11). *Fatalities in Terrorist Violence in Pakistan 2003-2015*. Retrieved October 19, 2015, from South Asia Terrorism Portal: <http://www.satp.org/satporgtp/countries/pakistan/database/casualties.htm>
- Siddiqi, T. (2014). Footprints: Extremist bodies run IDP relief efforts. *Daily Dawn* .
- Ullah, A. (2013). Federally Administered Tribal Area (FATA) of Pakistan: Study of a Special Model of Governance. *Pakistan Journal of History and Culture*,, XXXIV (No.2), 67.