

# 'AS IF HELL FELL ON ME'

THE HUMAN RIGHTS CRISIS IN NORTHWEST PAKISTAN

**AMNESTY**  
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Amnesty International Publications

First published in 2010 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Amnesty International Publications 2010

Index: ASA 33/004/2010  
Original language: English  
Printed by Amnesty International,  
International Secretariat, United Kingdom

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*Front and back cover photos:* Families flee fighting between the Taleban and Pakistani government forces in the Maidan region of Lower Dir, northwest Pakistan, 27 April 2009.

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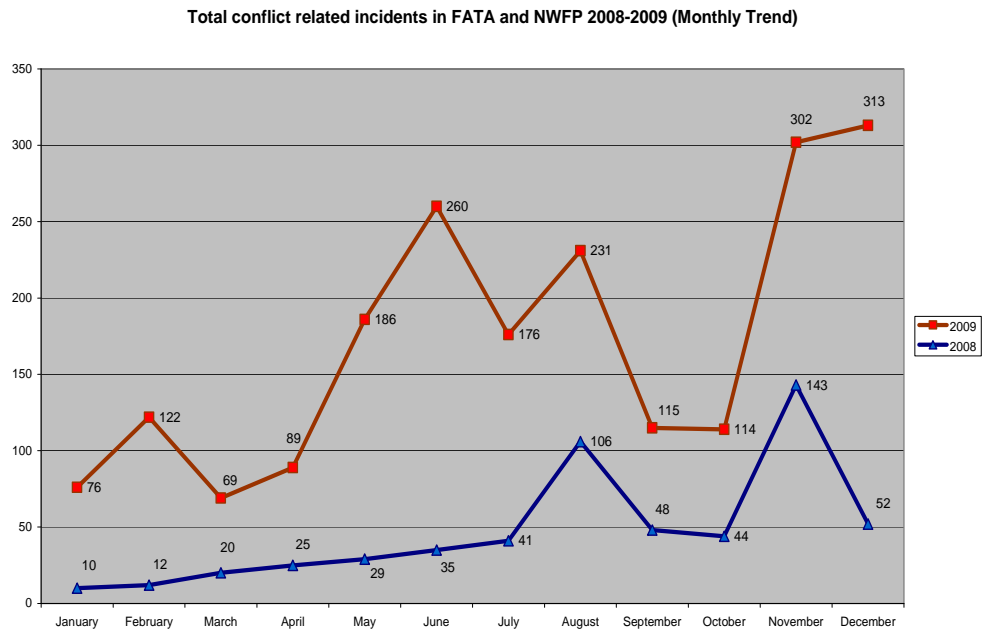
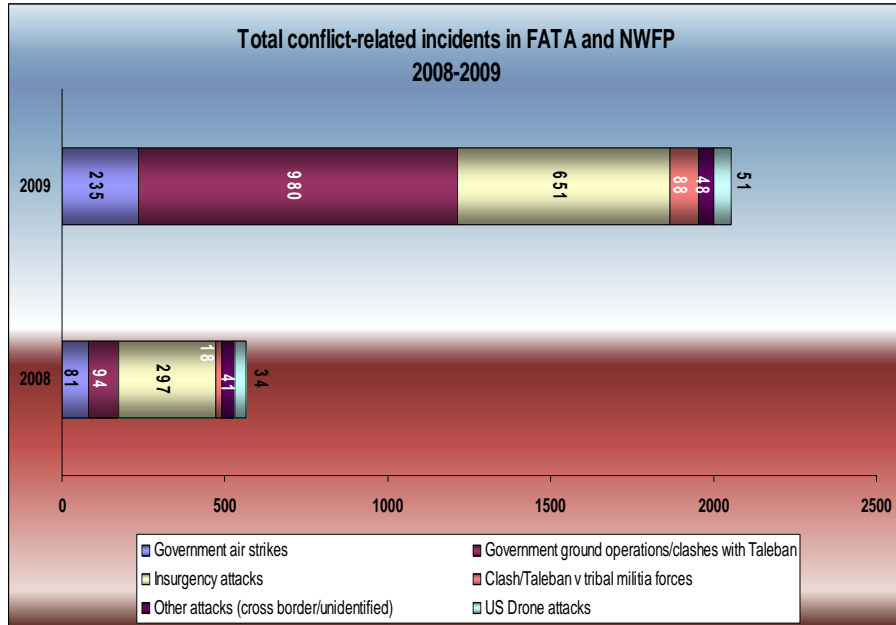
# INTRODUCTION AND SUMMARY

The Taleban came here and settled here. Now they have a dispute with the government, and the government started taking actions against them. If we stand with the government the Taleban will hit us. If we stand with the Taleban the government will target us. If we don't stand with any of them, you can see how bad our situation is. It's going from bad to worse.<sup>1</sup>

Northwest Pakistan has been in the grip of a human rights and humanitarian crisis since 2004, when groups broadly aligned with the Taleban movement of Afghanistan began asserting control in the seven 'agencies' that comprise the Federally Administered Tribal Areas (FATA), and adjoining areas in Pakistan's North West Frontier Province (NWFP). The mountainous terrain of FATA borders Afghanistan, adjoining the NWFP, which also shares some of its border with Afghanistan. (The NWFP was renamed Khyber Pakhtunkhwa in April 2010, but NWFP persists among officials, locals and observers, and is used in this report to avoid confusion.)

Based on Amnesty International's conservative analysis of credible, publicly available information, more than 1,300 civilians were killed in the course of the conflict in northwest Pakistan in 2009. The Pakistan-based Institute for Peace Studies (PIPS), and the International Institute for Strategic Studies, have both estimated more than 11,000 casualties. PIPS estimated that at least 1,565 civilians were killed in insurgent attacks alone in FATA and NWFP in 2009.<sup>2</sup> Given the lack of information from many areas of northwest Pakistan, it is quite likely that the true number of civilians killed is significantly higher. In total, more than 8,500 people have died in the violence in northwest Pakistan in 2009, a sharp escalation from the previous year.<sup>3</sup> Multiple accounts of battles and conflict zones provided to Amnesty International would suggest that this ratio of casualties understates the harm to civilians, but more detailed analyses must await better information, particularly from

the Pakistani military. What is indisputably clear is that the range and ferocity of the conflict has risen considerably in the past two years.



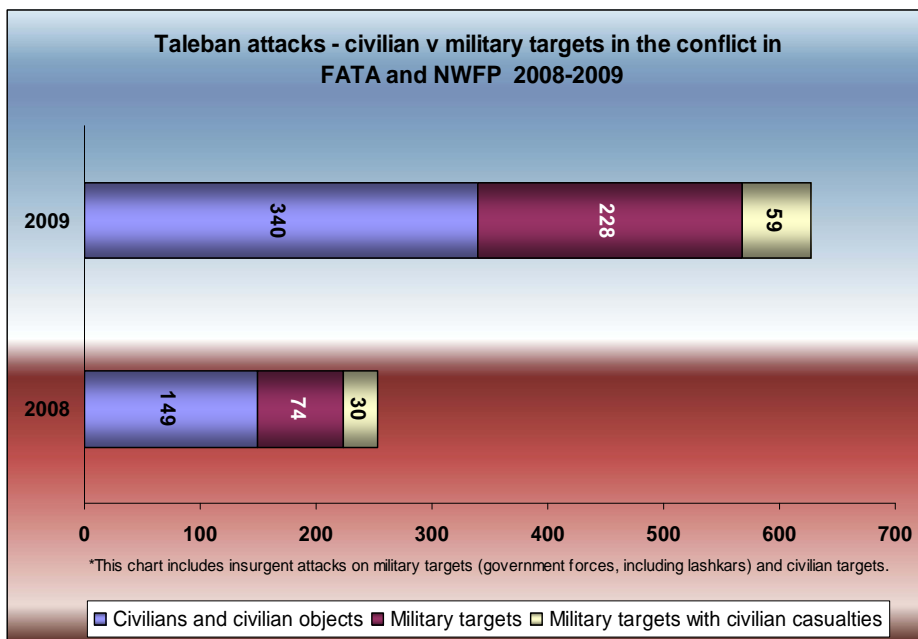
The conflict and associated insecurity have forcibly displaced hundreds of thousands of Pakistanis — at one point in May 2009, more than two million people had fled the fighting in various areas of northwest Pakistan, and as this report was being finalized in May 2010,



more than a million people were displaced from conflict affected areas in NWFP and FATA (including people displaced from the conflicts in Malakand and South Waziristan in 2009 and new displacement exodus from Orakzai and Kurram agencies).<sup>4</sup>

Many areas of northern FATA—including districts of Bajaur, Mohmand, and Khyber agencies—now resemble Taliban-ruled Afghanistan in the late 1990s. Taliban militants patrol the streets in trucks, carrying- and using -rocket propelled grenade launchers and automatic weapons. They impose strict social codes on civilians, forcing men to wear long beards and women to wear full veils or burqas. These and other actions are abuses of a whole range of human rights of local residents, including to life, to liberty and security of the person, to non-discrimination, freedom of expression, religion, association and movement, and the prohibition of torture and ill-treatment.

Many of the Taliban’s acts constitute crimes under international law. They are also crimes under Pakistan’s law but in the absence of suitable judicial structures and the Pakistan government’s inability or lack of will to protect the local population from such crimes, these crimes have been committed with impunity.



Such a crisis is particularly notable when it takes place in an area as geopolitically sensitive as northwestern Pakistan. Because of its proximity and close connection to southern Afghanistan, it has become the focus of US military and political activity (as the administration of US President Barack Obama has shifted attention away from Iraq and toward Afghanistan and Pakistan). The area is close to Kashmir, one of the main sources of ongoing tension between Pakistan and its fellow nuclear-armed neighbour, India. The two countries have fought three major wars since 1947, and in 1999 came close to all-out war in Kargil. Northwestern Pakistan also borders China’s restive resource rich and Muslim-majority Xinjiang Uighur Autonomous Region, the site of recent violent unrest. All this is only a hundred kilometres from Islamabad, the capital of a country recently contending with military

rule and serious political instability.

The strategic import of FATA and NWFP has played a major part in the ongoing misery of the millions of people living there. Various governments have treated FATA and NWFP as geostrategic assets only, without due consideration for the welfare of the people. From the time of the British Raj to the formation of Pakistan in 1947, up to the Soviet invasion of neighbouring Afghanistan and the ensuing response, much of which was based in northwest Pakistan, and to the present day, the people of this area have largely suffered from neglect or violence from their rulers and various armed insurgent groups.

With this report, Amnesty International seeks to highlight the government of Pakistan's duty to protect the people of northwest Pakistan, and promote their well-being and dignity. The whole range of human rights—economic, social, cultural, civil and political—have remained largely unfulfilled. Most discussions of the conflict ignore the fact that northwest Pakistan is heavily populated and that the majority of people who live in FATA and other areas of northwest Pakistan do not support or take part in violence and are going about the business of trying to farm, raise livestock, weave fabrics, transport goods, raise families, and build, repair, or teach. The well-being of these civilians is rarely mentioned in media reports or policy pronouncements by Taleban or US, Pakistani, or Afghan officials and there are few signs that leaders on either side of the conflict factor civilians into their policies or strategic analyses.

Addressing this historical neglect is necessary for ensuring the basic rights of the people of FATA and NWFP. Doing so could also go a long way toward removing the conditions that have led to decades of conflict and associated human rights abuses. In a place where human rights are seldom remembered, much less practiced, history has demonstrated that military force alone is not the answer to the longstanding human rights crisis in FATA and NWFP.

FATA has historically been treated with disdain by Pakistan's governments, whether civilian or military; a renegade area that the government has done little to develop or protect. The people of FATA—overwhelmingly members of the Pashtun ethnic group—already suffer from some of the lowest standards of living in Asia, and are particularly vulnerable to the impact of the conflict and insecurity caused by the Pakistan Taleban insurgency and the government's harsh response. There is an overall literacy rate of 17 percent (compared to 43 percent nationally), dipping down to seven percent for women and girls in FATA older than 10 years old. It is only marginally better in NWFP, where only 22 percent of women and girls older than 15 can read and write. . Nearly two-thirds of the population lives below the national poverty level; the health system operates 33 hospitals to cover 3 million people, and has a doctor to patient ratio of 1:5,957.<sup>5</sup> Repression, conflict, and destruction in FATA only intensify the misery of civilians who already receive insufficient government services.

The basic living conditions of the people of FATA have significantly deteriorated as the Pakistani Taleban and allied insurgent groups have consolidated their hold on the area, following the trend that began with the influx of Taleban insurgents fleeing the US-led invasion of Afghanistan in late 2001. It is important to note that the Taleban's ideology and system of rule was and remains alien to the majority of people of FATA. The Taleban undermined the semi-feudal tribal system that still legally governs FATA, and in fact used this system's manifest weaknesses and inequities (some of which are detailed in this report) to justify assuming power.

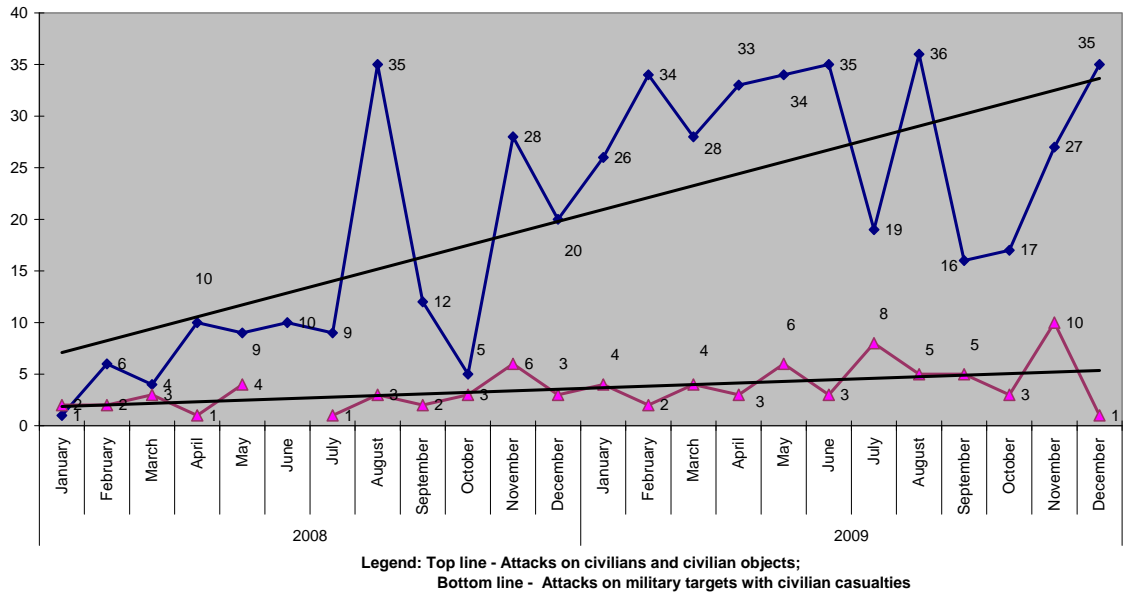
The 'Talebanization' of FATA began from the western-most areas of FATA, in South and North

Waziristan, which had received most of the influx of Afghan Taleban and allied fighters from other countries after late 2001; these areas continue to be widely viewed as one of the main operating bases for Osama bin Laden and members of Al Qa’ida. In this report, Amnesty International has used the general term “Pakistani Taleban” to refer to the federation of armed groups fighting the Pakistani government in northwest Pakistan that identify themselves as following the Taleban ideologically and with some degree of operational agreement.

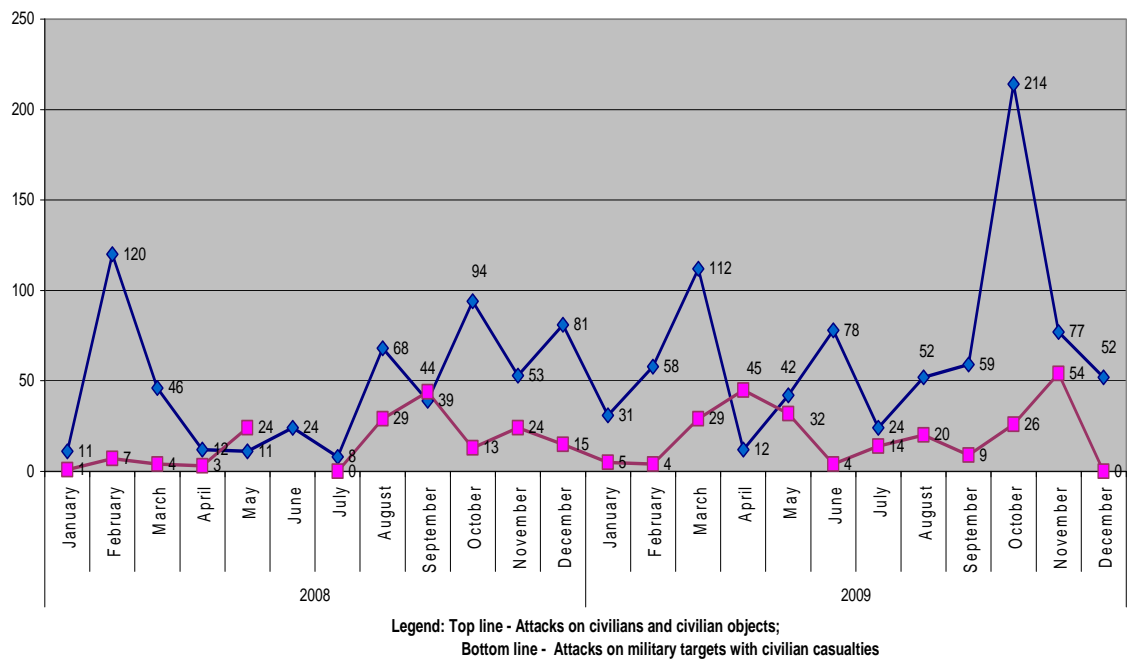
The Pakistani Taleban have combined a harsh interpretation of Islamic doctrine (distinct from the local, conservative practice of Sunni Islam), unprecedented violence (including the intentional targeting of civilians), and intimidation to drive out the already weak government institutions and fill the void with their own style and system of governance, establishing offices and “tribunals,” and meting out their own punishments: executing, publicly lashing, beating and fining people for violating new codes of conduct. Taleban forces in FATA have prohibited music, forced men to grow beards, destroyed hundreds of schools and effectively stopped the operation of all schools in the area. They have used force to enforce their dictates that both women and girls be veiled and accompanied by male relatives when going outside their homes, and have severely limited the operations of health clinics and humanitarian agencies. The Taleban have systematically abused the right to life, and to freedom from arbitrary detention, torture, gender, religious, and ethnic discrimination, and the right to free expression—among other internationally recognized human rights.

In conducting their military operations, the Pakistani Taleban have systematically targeted civilians and civilian property, including those they regard as being associated with the Pakistan government or otherwise opposed to the Taleban ideology. Even when the Taleban and their allied insurgent forces have attacked Pakistan military forces, they have used indiscriminate or disproportionate force, in violation of the laws of war, often leading to civilian deaths.

**Number of incidents of Taliban attacks on civilians and civilian objects and possible indiscriminate attacks  
NWFP and FATA - 2008-2009 Monthly Trend**



**Civilian Casualties in Taliban direct attacks on civilian targets and in possible indiscriminate attacks  
in FATA and NWFP 2008-2009**



Taleban militants have regularly positioned themselves in civilian residential areas, significantly increasing the risk to civilian lives and property. During operations in Bajaur in August 2008, and again in South Waziristan in October 2009, Amnesty International documented incidents of the Taleban blocking people attempting to flee incipient or ongoing fighting, apparently because they believed they would be less susceptible to attack if civilians remained. Moreover, both government and Taleban forces have stationed fighters in schools, which have led to the schools being targeted. Many of these acts constitute violations of international humanitarian law and abuses of human rights.

The Pakistani Taleban have a history and leadership distinct from the Afghan Taleban. But since 2005, Pakistani Taleban groups have more closely linked their activities to those of the Taleban in Afghanistan, launching cross-border military operations against Afghan, ISAF (International Security Assistance Force, comprising troops from the North Atlantic Treaty Organization as well as allied countries), and US military forces in Afghanistan (as well as on their supply routes through Pakistan). By late 2008, Taleban forces had also spread into several non-FATA areas in NWFP, including near Peshawar and in the northern districts of Chitral and Swat. This expansion was particularly notable because these areas are referred to as ‘settled’ areas, in contrast to the tribal areas of FATA, and are more heavily populated and better developed than FATA (and in the case of the Swat valley, because it is a picturesque tourist destination only 100 kilometres from Islamabad). The Pakistani Taleban’s impact on the US-led military operations in Afghanistan and infringement on the Pakistani heartland finally prompted attention internationally and domestically and goaded the Pakistani government into more serious action, at least in the short term.

The Pakistani government’s response has vacillated between appeasing the Pakistani Taleban through a series of failed ‘peace deals’ that effectively abandoned the rights of FATA’s people in exchange for short-term military cease-fires, and launching heavy-handed, often indiscriminate and disproportionate, military operations that have seriously damaged the area’s already weak civilian infrastructure and precipitated the displacement of hundreds of thousands of people. In April 2009, in one example of a ‘peace deal’ enacted by the Pakistani government that undermined the rights of its own citizens, President Asif Zardari signed into law an official agreement to transfer administrative and judicial authority over the Swat valley (in NWFP) to the Taleban in exchange for a guarantee that the Taleban would not attack government troops. There was no mention of the rights of the nearly 3 million people living in the area. As in previous instances, the peace deal was fragile, and the Taleban aggressively used the lull to push into new areas, to the consternation of the Pakistani public and Pakistan’s international supporters, chief among them the USA. Days after signing the peace deal in Swat, the government responded by launching another massive military operation in April 2009 which forcibly displaced more than two million Pakistanis from their homes.

Since 2001, Pakistan has deployed tanks, artillery, jet fighters and bombers, helicopter gunships, and thousands of regular military troops to FATA. This deployment of heavily armed troops was unprecedented in FATA’s history. The Pakistani military is trained and equipped for fighting a mechanized campaign against India, not to fight counter-insurgency in difficult terrain. Amnesty International’s research in FATA (as well as areas of the neighbouring NWFP affected by this conflict) demonstrates that the Pakistani military has not taken sufficient care to minimize the risk to civilians, often resorting to indiscriminate or disproportionate

force in its operations. Some operations have directly targeted militants, leaving civilians relatively unscathed. But in many other operations, government forces have failed to differentiate between civilians and militants, or have used disproportionate force, leaving numerous civilians dead, injured, or displaced.

Pakistani government forces have detained hundreds, if not thousands, of FATA residents on suspicion of cooperating with the Pakistani Taliban. Amnesty International has corroborated media reports that Pakistani security forces have detained Taliban fighters, as well as more senior leaders, in recent sweeps in late 2009 and early 2010 and have held them in unofficial detention facilities on military bases in the region. There is no public information on the number of insurgents detained from the operations conducted since 2008 in the northwest or their current whereabouts, but credible media reports suggest that some 2,500 people were in detention in the first half of 2010.<sup>6</sup> Amnesty International and other human rights groups believe that the numbers subjected to enforced disappearances could be much higher. These detainees are not held under any clear legal framework under Pakistan’s law, given FATA’s special legal status and the inapplicability of many laws to the region—while keeping in mind that Pakistan generally lacks a clear legal guideline for combating insurgency. These legal problems are compounded by the difficulties inherent in law enforcement in an insurgency setting. Given the well-documented record of abuse by Pakistan’s security agencies, there are ample grounds to fear that these detainees have been subjected to arbitrary detention and in some cases to torture or other ill-treatment.

Another problematic strategy adopted by the Pakistani government has been increasing support for the creation of local militias known as *lashkars* (“armies”). These militias, drawn from tribal groups, are poorly trained, subject to little oversight and monitoring, and operate without any accountability. In many instances, they have engaged in reprisals against suspected Taliban or even in tribal feuds; in other instances, they are little more than bandits. The Pakistani government can and must do more to ensure that, if they are to be permitted, any such groups are trained and monitored and held accountable to ensure that they do not add to the misery of the residents of FATA.

The consequences of all these abuses—both abuses of human rights and the conflict-related rise in deaths, injuries, destruction of property, displacement, and overall levels of insecurity and terror among civilians—have significantly harmed social and economic life in FATA and many parts of NWFP. Hundreds of thousands of FATA’s nearly four million residents have fled the increasing brutality of the Pakistani Taliban and of the government’s military response. Many houses and properties have been destroyed and scores of schools and hospitals have closed. In many areas, markets have been deserted and commerce has slowed significantly. Hundreds of thousands (ranging as high as more than two million in June 2009) of those who have fled from their homes have often left behind livestock, property, and money. These internally displaced Pakistanis face an intolerable situation. They suffer if they stay in the conflict zone, but have to brave long curfews and run an obstacle course of road blocks to flee. Even once away from the front lines, displaced civilians find themselves without sufficient assistance to fulfil their basic needs and security. Domestic and international humanitarian relief organizations had limited access to the newly displaced. Thousands of internally displaced people have sought shelter and assistance in camps once dedicated to helping Afghan refugees. But far more have shunned the difficulty and indignity of living in camps and have instead settled with friends and family or in urban areas far from the fighting—without access to regular monitoring and assistance. As the fighting waxes and wanes, including to areas inside and outside of FATA, newly displaced people take the place

of those who have been able to return to their homes.

The displacement crisis in Pakistan continues and while some are returning to their homes, for many of those who have left homes in FATA, there is no end in sight. The plight of the hundreds of thousands of Pakistanis who have become internally displaced people requires the government to meet certain minimum standards of assistance and treatment, including in line with the widely accepted United Nations Guidelines on Internal Displacement.

Many of the basic problems of the people of FATA and adjoining areas of the NWFP can be traced to the colonial-era system of regulations known as the Frontier Crimes Regulations (FCR), a legal leftover from the days of British control that limits government responsibility to citizens in the FATA areas, and permits government forces to use anachronistic methods of governance such as collective punishment, guilt by association, and disproportionate attacks and punishments. The FCR has been called “A bad law nobody can defend” by the independent Human Rights Commission of Pakistan—a sentiment widely shared by dozens of people Amnesty International interviewed, ranging from farmers in FATA to government officials, lawyers, academics, and military experts.

FATA’s lawlessness and the weaknesses of Pakistan state control enabled insurgent groups linked to the Taliban, after being chased from Afghanistan, to create a sanctuary there. And it was quite predictable that these groups would seek to expand their control into neighbouring areas in NWFP. Just as the crisis in FATA and northwest Pakistan has arisen in part because of Pakistan’s disdain for the area and the antiquated FCR, the solutions to problems will entail reform of the political and legal arrangements in FATA. The Pakistani government must thoroughly reform or abandon the FCR, allow the areas’ residents to participate without discrimination in the country’s political life, and ensure that the human rights of all the areas’ residents are fully protected.

But other concrete actions will also be necessary: increased development efforts in the long term, more political attention from Pakistan’s central government to the needs of civilians, and, in the interim, more precise military operations that are conducted with due concern for civilians.

But other concrete actions will also be necessary: increased development efforts in the long term, more political attention from Pakistan’s central government to the needs of civilians, and, in the interim, more precise military operations that are conducted with due concerns for civilians.

Amnesty International recognizes that the Pakistan government’s military operations in NWFP and FATA are part of efforts to counter an insurgency which itself operates with little regard for the civilian population. Amnesty International’s research shows that these groups carry out illegal attacks, often with little respect for civilian life. Insurgent forces have violated international humanitarian law by intentionally and unnecessarily locating themselves and their military equipment within or near densely populated areas and in the vicinity of buildings primarily used by civilians (such as schools, health clinics, and mosques), for the purposes of exploiting the presence of civilians to protect themselves from attack. Amnesty International appreciates the difficulties and complexities of military operations in the counterinsurgency context, and government efforts to establish control over areas that have historically been resistant to outside influence. It is the duty and responsibility of the Pakistani government to protect the well-being of its citizens when threatened by armed groups.

Yet at the same time Pakistani forces must recognize that the rights of the civilian residents of NWFP and FATA are not negotiable, no matter what tactics the insurgents use. The Taleban’s abuses and the underlying difficulty in addressing those abuses do not negate the Pakistani government’s obligations to uphold human rights law and abide by the laws of armed conflict. Regardless of insurgents’ unlawful tactics, Pakistani forces must take the necessary precautions, as dictated by international humanitarian law and human rights standards, to minimize injury to civilians.

A recommendations section outlining more detailed proposals is provided at the end of this report. In weighing those recommendations, both Pakistan and its international supporters should recall that the importance of curbing human rights abuses is not merely local to Pakistan or relevant only to the security of civilians living in Pakistan. The insurgent abuses described in this report have occurred as part of their efforts to carve out a safe area to recruit, organize, and train fighters—not only to launch military attacks in Pakistan and Afghanistan but also armed attacks on far-off international targets, all of which often result in civilian casualties.

Several bodies of international law apply to the conflict in Pakistan. Some rules will be examined in greater detail where relevant later in the report, but the summary below sets out a general overview. A detailed discussion of applicable international law appears below in the section on Applicable International Legal Frameworks.

As a conflict taking place within the territory of a single state between one or more armed groups and the government, the conflict in Pakistan is classified as an armed conflict of a non-international character.

International human rights law applies both in peacetime and during armed conflict and is legally binding on states and has implications for non-state actors. International humanitarian law (IHL) also known as the laws of war or the law of armed conflict, is binding on all parties to an armed conflict (regardless of whether the conflict is international or non-international), including non-state armed groups. Under international criminal law, individuals may be held criminally responsible for certain violations of international human rights law, such as torture and enforced disappearance, for crimes against humanity and genocide, and for serious violations of IHL, such as war crimes. International law also provides a framework to address the issue of the right to remedy and reparations for victims.

Establishing the rule of law, installing proper judicial and institutions and representative and responsive political processes, respecting human rights, increasing development and employment opportunities, and improving the education and healthcare systems will not only benefit the people of FATA; it could also benefit those around the world who are at risk of indiscriminate violence launched or initiated by armed groups who currently exploit the situation in FATA.

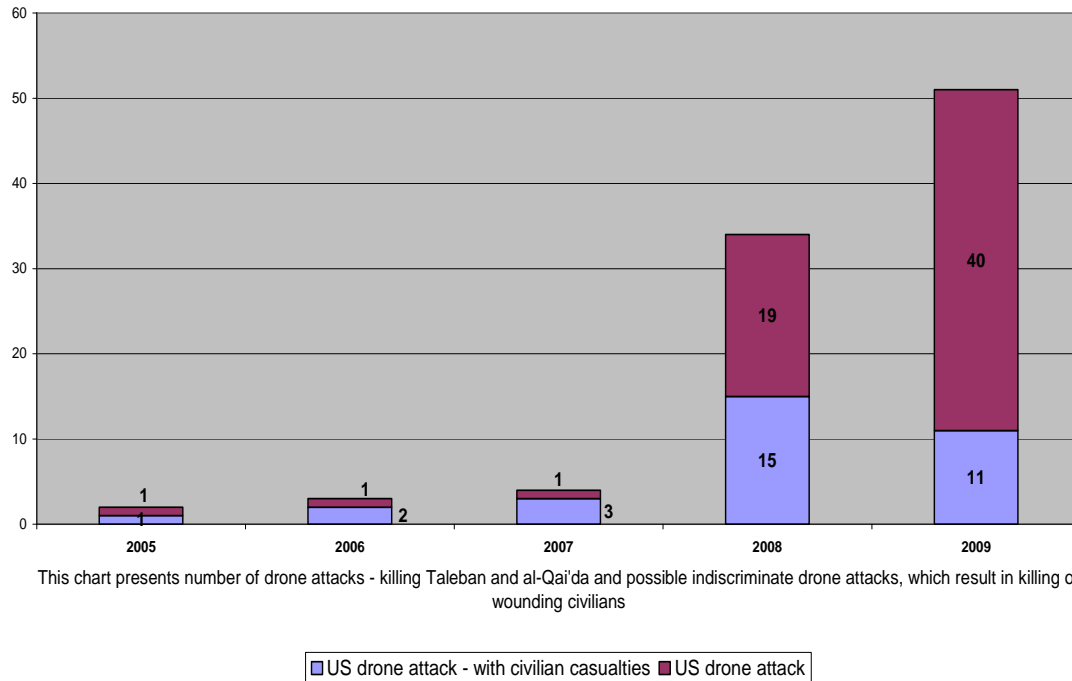
The organization urgently calls on the Government of Pakistan to address the underlying violations of economic, social, political and civil rights, which would make an essential contribution to ending the conflict-related insecurity contributing to the misery of the people in the area. The FATA reform agenda announced by President Zardari in August 2009 indicates official realization of this need, but these reforms, if implemented can only be a first step to full respect for the political and civil rights of the people of FATA.

The international community, too, and in particular the USA and China, have a role to play: they must urge Pakistan to abide by international human rights standards and to initiate



political reform that will end the area’s political isolation and deprivation of rights.

**Number of US drone attacks - FATA-NWFP 2005-2009**



## KEY RECOMMENDATIONS

### Amnesty International in particular urges the government of Pakistan to:

- Ensure that all state security forces operating in FATA and NWFP, including the Pakistani military and the Frontier Corps, the Frontier Constabulary and tribal *lashkars*, are adequately trained, equipped, and disciplined to comply with their obligations under international human rights law and humanitarian law for protecting the rights of the people of Pakistan, not simply combat duty;
- Amend the Frontier Crimes Regulation to bring it in line with Pakistan’s international human rights obligations, including as guaranteed by the constitution, or else abolish it with a view to placing the people of FATA under the protection of the regular law and judicial institutions of Pakistan;
- Incorporate benchmarks for combined military and civilian action in northwest Pakistan that focus on protecting and promoting the rights of the civilian population (including those displaced from their homes), for instance by measuring access to education and health care

(particularly for women and girls, who have been systematically targeted by the Taleban);

- Immediately transfer any detained insurgents suspected of having committed crimes to civilian law enforcement agencies and facilitate successful prosecution of crimes committed by insurgents by strengthening the capacity of law enforcement agencies in FATA, including the Frontier Corps and the Frontier Constabulary and more generally the police force in NWFP, improve their training (including human rights law training) and equipment in the areas of forensics capabilities and crime scene investigations, crime labs with modern equipment and trained scientists.

**Amnesty International also urges the Pakistani Taleban and their allied armed groups to:**

- Publicly acknowledge the obligations to comply fully with international humanitarian law and make a public commitment to respect the human rights recognised in the Universal Declaration of Human Rights and under international human rights treaties and customary international law;
- Publicly condemn, from the highest level of leadership, all attacks directed at civilians, and indiscriminate and disproportionate attacks; use of human shields, abduction, hostage-taking, unlawful killings, torture and other ill-treatment, and issue instructions to members strictly prohibiting such acts in all circumstances;
- Publicly denounce gender-based violence, whenever and wherever it occurs.

**Amnesty International urges the United States of America to:**

- Undertake proper monitoring of the impact of drone attacks on the civilian population, and clarify the chain of command and rules of engagement governing the use of drones in Pakistan; investigate, discipline or prosecute, in a credible and transparent manner any officials found guilty of violating IHL or rules of engagement in conducting drone strikes;
- Apply, without waivers, the “Leahy Law” provisions of the Foreign Operations Appropriations Act and the Defense Appropriations Act, which call for closely monitoring the conduct of military units in countries receiving US military aid to see if they have committed gross violations of human rights and, if so, to ensure that the Pakistani government has taken effective measures to provide accountability for such violations.

## METHODOLOGY

This report is based on over 300 interviews conducted by Amnesty International beginning in the second half of 2008, through 2009, and up to May 2010. The majority of the interviews were conducted with people living in five of FATA's seven agencies: Bajaur, Khyber, Kurram, South Waziristan and Mohmand, as well as in Malakand division of NWFP. Additional interviews were conducted with FATA residents in Peshawar, and in camps for people that the conflict displaced. Amnesty International also interviewed senior government officials, military officers, aid workers, academics, as well as officials of other governments.

This report focuses on the impact of the increased conflict on the human rights of the area's residents, and does not cover all types of abuses in all of the seven agencies in FATA or in NWFP. Most of the FATA residents interviewed for this report—doctors, students, tribal elders, drivers, shopkeepers, and farmers, among others—provided firsthand accounts of insurgent and government abuses. Many provided rich descriptions of day-to-day life in FATA and how their lives had changed for the worse with the increase in Taleban and government military operations.

The intense fighting since April 2009 has made access to most areas of FATA even more difficult than before. Therefore, interviews were also limited due to security and logistical restrictions. Due to security concerns in Kurram agency in particular, most of the interviews were conducted in Lower Kurram. We could not gather enough information from North Waziristan. Nonetheless, Amnesty International believes that the testimonies from the areas covered in this report are emblematic of general patterns and trends of the human rights situation in FATA.

It should be noted that people in FATA, while willing to speak out about human rights violations committed by armed forces, were more reluctant to describe human rights abuses by insurgent groups, fearing harassment or worse from them, and trusting little that the state would protect them against such retaliation. It is likely, therefore, that persons interviewed for this report underreported abuses involving insurgent groups.

**A caveat on the use of numbers and statistics:** The statistical material in this report draw on Amnesty International's database of incidents in northwest Pakistan based on publicly available English-language material, including material from the general media, specialized journals, aid agencies, and nongovernmental organizations (based on our judgement as the credibility of the source). Notwithstanding our best efforts to corroborate the information, we recognize the inherent problems with this approach, given the lack of access of independent observers to many areas in northwest Pakistan, the ambiguity and inconsistency of different accounts of even the same incident, and the lack of detail in some of the reports. In cases of ambiguous reporting, for instance about civilian casualty rates, we were extremely conservative: no casualties were registered as being civilian unless they were explicitly identified as such. Where different sources cited different figures, we used the lowest. Thus we do not present this material as definitive information, but rather as indicative of trends and comparisons.

# BACKGROUND

## THE TALEBAN IN THE FEDERALLY ADMINISTERED TRIBAL AREAS

FATA comprises seven so-called Agencies: Khyber, Kurram, Orakzai, Mohmand, Bajaur, South Waziristan and North Waziristan.<sup>7</sup> The 1998 census, the last available accurate set of data, registered close to 3.2 million people living in the Federally Administered Tribal Areas; current estimates suggest close to 3.9 residents in an area slightly smaller than Belgium at 27.22km<sup>2</sup>.

Many insurgents initially concentrated themselves in FATA's western and southernmost agencies, North and South Waziristan. Residents in Bajaur Agency, the smallest and most northern of FATA's seven agencies, began noticing an increased Taleban presence in 2006. In Mohmand Agency, to the south of Bajaur and north of Khyber agency, residents saw increasing numbers of Taleban forces during 2007. In late 2007 and early 2008 insurgents were seen in Khyber. Through the decade and into early 2009, militants increased their strongholds in the northernmost agencies, including Bajaur, Mohmand, and Khyber. By early 2009, insurgent forces had seized control of substantial parts of nearly all seven FATA agencies. This situation has continued into 2010, as this report was being prepared for publication, the Pakistani military had dislodged the Taleban from parts of South Waziristan as well as Khyber, but even in these areas, the Taleban openly contested the government's writ.

### KHYBER AGENCY

Named after the legendary Khyber Pass, the gateway to South Asia, the Khyber Agency (2.58km<sup>2</sup>, 546,730 inhabitants according to the 1998 census), is inhabited by four tribes, Afridi, Shinwari, Mullagori and Shimani and their sub-tribes. The political headquarters are at Peshawar with a sub office at Landi Kotal. The Khyber Pass has retained its historic geopolitical significance as a key transit point: Since the fall of the Afghan Taleban in late 2001, US and NATO forces in Afghanistan have shipped much of their supplies and equipment through the Khyber Pass, with few viable alternatives. In 2008 and 2009, the road, bridges and tunnels leading to the Pass were repeatedly blocked, and several hundred trucks, including US military transports, were seized, looted or burned by the Taleban, who killed dozens of truck drivers. On several occasions, the Pakistani army, under intense pressure from the US government, has conducted fierce battles to maintain this vital supply line. On 28 June 2008, Operation Sirat-e-Mustaqeem (Straight Path) targeted the Tehrik-e-Taliban (TTP, Taleban Movement of Pakistan, defined in greater detail below) but ended in early July, followed by Operation Daraghalam (Here I come) from January 2009. Another major military operation began in March 2010, including aerial bombardment, and continued as this report was prepared for publication.

The current conflict in Khyber began in late 2003, when the late Haji Namdar, a militant with an extremist interpretation of Islam, set up the group *Amr bil maroof wa nahi anil munkir*, (Promotion of Virtue and Suppression of Vice), banned music, set up an FM station

to preach and maintained his own detention facility for those whom he deemed guilty of non-Islamic behaviour.<sup>8</sup> Despite ideological affinities, Haji Namdar refused to forge an operational alliance with the TTP and the Pakistani Taliban, a factor that is widely believed to have led to his assassination in 2008. As of early 2010, two groups dominated Khyber: the Lashkar-e-Islam (Army of Islam), under the leadership of Afghan jihad veteran Mangal Bagh Afridi, which has sought to enforce the strict Deobandi form of Sunni Islam.<sup>9</sup> Afghanistan-born Pir Saif ur-Rahman, who follows the competing Barelvi Sufi tradition of Sunni Islam, leads the Ansar-ul-Islam (Soldiers of Islam).

In early 2010, the Pakistani military attempted, without clear success, to dislodge Mangal Bagh and his Lashkar-e-Islam forces, who, according to local residents, were systematically destroying girls' schools. These forces are also routinely engaging in brigandage, abductions and unlawful killing of civilians for ransom, often targeting areas in Peshawar and its suburb of Hayatabad.

### **KURRAM AGENCY**

Kurram Agency (3.38km<sup>2</sup>, 448,310 inhabitants according to the 1998 census) came under British control relatively late in 1892. Its administrative center is Parachinar. Tribes include Turi, Bangash and others; most Turi and some Bangash in Upper Kurram are Shi'a (total 42%), the rest are Sunni.

Sectarian tensions grew in Kurram for a number of reasons: the influx of hardline Sunni Afghan refugees and Mujahideen in the 1980s; the arrival of Afghan insurgents fleeing US and NATO forces in Afghanistan since late 2001 and military operations in other FATA areas; and the appearance of Sunni militant groups from the Punjab after the government banned their operations in 2002. Kurram's Shi'a tribes often opposed the activity of Afghan and Pakistani Taliban, who viewed the Shi'a as apostates. After the fall of the Taliban government in Kabul, Kurram's Shi'a tribes refused to shelter insurgents fleeing Afghanistan from late 2001 and prevented Pakistani Taliban fighters to pass through their territory into Afghanistan.<sup>10</sup>

By April 2010 the situation in Kurram was again tense as the army had launched operations in central and lower Kurram agency, using heavy artillery, helicopter gunships and jet fighter planes. The main road between Kurram and Peshawar was closed for all types of traffic which has created acute shortages of medicine, food, oil and other items of daily use. People in Parachinar were cut from the rest of the country except for a helicopter service which was subject to the weather and could carry only a limited number of passengers. Due to the ongoing operation in central and lower Kurram the route via Afghanistan was also closed, severely limiting the flow of food staples, cooking oil, and other supplies.

### **ORAKZAI AGENCY**

Formerly part of Frontier Region Kohat, the Orakzai Agency (1.54km<sup>2</sup>, 225,441 inhabitants (1998 census)) was set up in 1973, with administrative headquarters in Ghiljo; it is inhabited by Orakzai tribes and has a small population of Shi'a (around 10 percent).

In November 2001, the Orakzai tribes allied with the Taliban committed thousands of fighters against US forces in Afghanistan and offered sanctuary to other Taliban.<sup>11</sup> Over the course of the next few years, the ideological and operational links between Afghan and

Pakistani Taliban groups grew in the area so that by 2007 groups affiliated with the Tehrik-i-Taliban Pakistan (Taliban Movement of Pakistan) effectively controlled large parts of the Agency. The Pakistani government in July 2008 entered a short-lived peace pact with tribal elders under which Taliban insurgents were banned from entering the Agency or running a parallel government.<sup>12</sup> By 2009, with the Taliban firmly in control of most areas of Orakzai, Army operations intensified.<sup>13</sup> In early April 2009, the US targeted a drone attack, the first in Orakzai, on Hakimullah Mehsud but failed. As this report was being prepared for publication, the military had launched Operation Khwakh Ba De Sham (roughly translated from the Pashto as “I will fix you”) in March 2010 after blockading many of Orakzai’s entry points.<sup>14</sup>

The launch of another military operation in December 2009 precipitated another wave of displacement, as more than 23,000 families, totalling more than 130,000 people, had fled their homes by January 2010, most of them staying with host communities. According to the UN Office for the Coordination of Humanitarian Affairs, approximately 3,000 Shi’a families who have fled the area have been particularly vulnerable as they were reluctant to go to Kohat, a Sunni majority area, and most of them were not registered.<sup>15</sup>

### **MOHMAND AGENCY**

Mohmand (2.3km<sup>2</sup>, 334,453 inhabitants under the 1998 census), was carved out of the Khyber Agency in 1951; its administrative headquarter is Ghalanai. It is inhabited by the Mohmand tribe, the Safi and Utman Khel and their sub-tribes.

Mohmand, like many other FATA areas, sheltered Afghan refugees during the 1980s, but hosted relatively few training camps for Afghan mujahideen and other fighters. The Safi sub-tribe maintained links to Afghan warlord Gulbuddin Hekmatyar. Local fighters joined the volunteer force of the Tehrik-e-Nafaz-e-Shariat-e-Mohammadi (TNSM, Movement for the Enforcement of Islamic Law) of Sufi Mohammad based in Malakand (NWFP) to fight US and NATO troops in Afghanistan in 2001; amongst them was Omar Khalid, later Mohmand’s dominant Taliban leader.

In 2007, when Omar Khalid’s group joined the newly formed Tehrik-i-Taliban and began to attack government institutions, the army began low level operations. Following a May 2008 peace deal which subsequently collapsed, the army launched an offensive in October 2008, declaring in January 2009 that key Taliban leaders had been killed. Over 27,000 families (about 175,000 people) were displaced from Mohmand as a result of fighting in 2008. In September 2009, the army said it had cleared 80 percent of Mohmand of insurgents, except in strongholds along the Afghan border.<sup>16</sup> However, early 2010 witnessed renewed fighting in Mohmand agency, including in the Lakaro, Pindyali, Chaharmang, Anbar and Nawagai areas. The military used jet planes, helicopter gunships, heavy artillery and mortars against Pakistani Taliban reasserting themselves in the agency.

As of May 2010, tens of thousands of residents of Mohmand remained displaced and without sufficient assistance. Tens of thousands were in camps previously used by Afghan refugees: in early 2010 records from Jalozei camp in Nowshera alone indicated approximately 1650 families (amounting to more than 8,000 people) from Mohmand agency. But the majority of the displaced from Mohmand, like others who fled their homes in FATA, were not registered; many were living in different villages of Mardan, Charsada, Nowshera, Sawabi, and Shab Qadr.

When speaking with those displaced from their homes, Amnesty International received consistent complaints of financial hardships due to unemployment and the inaccessibility of traditional agricultural lands. Many of the displaced also complained about the difficulty of providing education for their children.

One displaced father told Amnesty International:

*“Education of our kids is another big problem as our kids are not given admission in the local schools and we are asked to bring school leaving certificates from the school last attended by our kids, you can understand that most of the schools have been destroyed by the militants and many schools were destroyed by the bombing and shelling of the security forces during the operation going on for the last two three years. How can we bring the certificates we are asked to bring in order to get our children admitted in a school. Most of the teachers are themselves now displaced, where can we find them.*

*I wish that this war ends soon and our houses, shops, schools and hospitals are rebuilt so that we can go back to our villages. We can not go back to our homes now as we are afraid for our and our family's lives.”*

### **BAJAUR AGENCY**

Bajaur, (1.3km<sup>2</sup>, 595,227 inhabitants under the 1998 census), is inhabited by three main tribes, the Tarkanai, Uthman Khel and Mohmands. In 1960, Bajaur was declared a sub-division of Malakand Agency; it became a tribal Agency on 1 December 1973 with its political headquarters at Khar.

Bordering the Afghan province of Kunar, Bajaur in the 1980s was a critical staging ground for Afghan and local mujahideen to organise and conduct raids in Afghanistan. In October 2001, the pro-Taliban Tehrik-e-Nifaz-e-Shariat-e-Mohammed (TNSM, Movement for the Enforcement of Islamic Shari'a) is believed to have sent some 5,000 fighters from Bajaur and surrounding areas into Afghanistan. TNSM leader and deputy leader of the Tehrik-e-Taliban Pakistan (TTP), Maulvi Faqir Mohammad, was instrumental in seeking to impose strict Islamic law in the area since the 1990s, prohibiting women from leaving their homes unaccompanied and banning NGO activities. One of the earliest US drone attack on 13 January 2006 targeted a dinner party hosted by him in Damadola; al-Qa'ida's second in command, Dr. Ayman al-Zawahiri was amongst the targets but escaped while 18 other persons were killed. Insurgents apparently linked to al-Qa'ida fighters in Afghanistan consolidated control over Bajaur in early 2007, enforcing their harsh interpretation of Islamic law.

In early August 2008, the Pakistan army and Frontier Corps (FC) launched Operation Sherdil (“Lion heart”), involving 8,000 troops backed by attack helicopters and fighter jets. The army in 2009 entered a peace accord under which the entire TTP leadership was to be handed over to the state. This agreement was never enforced.<sup>17</sup> Fighting continued through 2008 and 2009 as local tribes who had initially welcomed the Taliban in early September 2008 formed a 4,000-strong *lashkar* to force out remaining Taliban.<sup>18</sup> In March 2009, the army claimed victory in Bajaur stating that 1,600 insurgents had been killed, making way for the return of some 300,000 IDPs. Violent incidents continued at a lower level; in January 2010, media reported a rift between Pakistani Taliban in Bajaur. In early March 2010, the army began withdrawing after recapturing Damadola, the TTP headquarters<sup>19</sup> but remained deployed in other parts of the agency.<sup>20</sup>

Despite the army's declarations of dislodging the Pakistani Taleban from Bajaur, many of tens of thousands of residents remain displaced. Several Bajauris displaced from their homes told Amnesty International that they do not believe the government's declarations of security and stability as similar declarations have been issued at least on four previous occasions since the outbreak of Operation Sherdil in 2008. According to one Bajauri now displaced in Jalozai camp: “The Taleban commanders ... are still at large and we don't know when they will come back and the government will start another operation. We have demanded of the government to rebuild our houses and shops which got destroyed or damaged during the operations.”

As of April 2010, little redevelopment work had occurred in the agency. In particular residents of Bajaur pointed out that most of the schools in the agency were destroyed by Taleban militants or during the operation by bombing and shelling of the security forces. Displaced residents told Amnesty International that there were some boys' schools running in Khar while in some damaged schools tents had been deployed, but the education given in those schools was of very low standard.

### **SOUTH WAZIRISTAN AGENCY**

South Waziristan (6.62km<sup>2</sup>, 429,841 inhabitants per the 1998 census), the largest agency in FATA, with Tank as its winter headquarter and Wana as its summer headquarter. Waziristan first came under British control in 1849 and divided into the tribal agencies North and South Waziristan in 1895. The main tribes are the Wazirs and the Mehsuds (estimated at around 300,000 people). South Waziristan served as TTP leader Baitullah Mehsud's base until his death in August 2009. The TTP has been accused by Pakistani and American authorities of harbouring a range of insurgents from neighbouring Afghanistan, to have numerous training camps for insurgents, and to have conducted dozens of attacks on army and civilian targets in different parts of Pakistan.<sup>21</sup> The insurgents reportedly possessed rifles, machine-guns, anti-tank weapons, especially rocket-propelled grenades, mortars and longer-range rockets and used roadside bombs and mines.<sup>22</sup>

South Waziristan became the hub of Pakistani Taleban groups, with the influx of Afghan Taleban fleeing the US invasion of Afghanistan, as well as support from fighters of other nationalities and, reportedly, al Qa'ida, where they shared training and expertise.<sup>23</sup> In December 2007, Baitullah Mehsud, who had formed a local Taleban movement in South Waziristan assumed leadership of the Tehrik-i-Taliban Pakistan (TTP), an umbrella organization of dozens of Taleban groups throughout Pakistan (Baitullah Mehsud was killed by a US drone strike on 5 August 2009 and succeeded by Hakimullah Mehsud).

There have been four army operations and three peace agreements in South Waziristan since 2004.

Following a series of Taleban suicide strikes in Pakistani cities,<sup>24</sup> the fourth military intervention, Operation Rah-e-Nijat (Path to Salvation), began on 17 October 2009. Some 30,000 soldiers, supported by anti-TTP *lashkars*, initially faced stiff resistance<sup>25</sup> but eventually insurgents, including all key TTP leaders, melted away, in the general population, into the hills or into North Waziristan and Orakzai from where some continue to carry out sporadic attacks on the army.

During the operations, the military targeted the Mehsud tribe collectively. Amnesty



International documented multiple instances of the military blocking members of the Mehsud tribe from using major roads to flee the conflict zone.<sup>26</sup>

As of May 2010, the Pakistani Army claimed to have taken total control of the Mehsud area of South Waziristan, destroyed all the Taleban hideouts and training camps in the area, while continuing search operations in the area. A meeting chaired by President Zardari in mid-March 2010, announced the end of operations on 30 March, handing over control to the civil administration. In a meeting with the elders of the Mehsud tribe, army officials told the elders to get ready for going back to their homes and promised help in reconstruction and rehabilitation.

According to UNHCR the total number of people registered as displaced from South Waziristan as of early 2010 was nearly 40,000 families, amounting to an estimated 280,000 individuals.<sup>27</sup> Most of the displaced population from South Waziristan, like their compatriots from other areas of FATA, are staying not in dedicated camps but rather with host families or in rented houses—placing a serious burden on communities already suffering from high levels of poverty and low access to health, sanitation, and education. People displaced from South Waziristan by the 2009-2010 military offensive have received automatic bank cards worth 5000 rupees (US\$60) per family, an amount that the displaced told Amnesty International hardly fulfilled their needs.

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Most of the Taleban who survived the operation have fled to North Waziristan, or to Orakzai and Kurram agencies. Amnesty International has been unable to properly assess the situation inside South Waziristan as the Pakistani military as well as the Taleban have prevented independent observers, including most journalists, from entering areas where the operations are being conducted.

#### **NORTH WAZIRISTAN**

The North Waziristan Agency (4.71km<sup>2</sup>, 361,246 inhabitants under the 1998 census), was established in 1910 with headquarters at Miranshah is inhabited by Wazirs, Dawar and several smaller tribes.

Pakistani and foreign observers widely believe that North Waziristan became a refuge, training ground and base for attacks in Afghanistan as thousands of Taleban (along with Arab, Chechen and Uzbek al-Qa'ida fighters) fled US military operations after 11 September 2001. Pakistani army operations in other FATA areas added further groups of insurgents seeking refuge in the rugged mountains of North Waziristan.<sup>28</sup> A September 2007 UN report estimated that 80 percent of all suicide bombers in Afghanistan pass through training facilities in North and South Waziristan.<sup>29</sup>

Insurgents form two core groups with various affiliates: the Haqqani network, led by Jalaluddin Haqqani, a veteran Afghan Taleban leader, and his son, Sirajuddin Haqqani, based near Miranshah and deploying Uzbek and other foreign fighters, have focused on attacking ISAF (International Security Assistance Force) and US forces in Afghanistan<sup>30</sup> while sparing Pakistani targets.<sup>31</sup> On 5 September 2006 the Pakistani government signed the largely unenforced Waziristan Accord which provided for the army to cease operations and

release arrested insurgents and for the insurgents to cease cross border attacks, while foreign fighters were to leave or respect the law if unable to leave.<sup>32</sup> In July 2007 the Pakistani Taliban accused the government of violating the accord by reestablishing checkpoints but in December 2007 and February 2008 entered further peace deals reviving the 2006 Accord. The Pakistani military finally gave up on a diplomatic resolution to the situation in North Waziristan when the Taliban withdrew from another peace in June 2009 in protest of drone attacks and military action in other tribal areas<sup>33</sup> and resumed sporadic but repeated attacks on soldiers.

According to residents of North Waziristan who spoke to Amnesty International in early 2010, the dominant Taliban groups in the agency have not imposed the same kind of strict religious restrictions on residents as witnessed in other parts of FATA. But insecurity has significantly curtailed freedom of movement and economic activity has significantly slowed. According to residents, effectively all the girls' schools are closed in North Waziristan, while boys' schools remain open with relatively low attendance due to insecurity.

Several residents also told Amnesty International that the Pakistan army is present in North Waziristan but is confined to fortified barracks while there are some Frontier Corps check posts operating in different parts of the agency. Pakistani Taliban and associated groups are able to roam freely and fully armed through FC check posts; as one local told Amnesty International, not only does the FC not stop the insurgents, but on the contrary the militants and FC personnel wave at each other in a friendly manner.

With US and NATO forces facing an estimated 10,000 North Waziristan insurgents, the Pakistan army has come under persistent pressure to flush them out.<sup>34</sup> The US has increasingly resorted to drone strikes to target Taliban insurgents in North Waziristan<sup>35</sup> As this report was prepared for publication in May 2010, the Pakistani army threatened to launch a major military operation in North Waziristan.<sup>36</sup>

## **A LEGACY OF NEGLECT AND MISRULE: THE FRONTIER CRIMES REGULATION**

The residents of FATA and parts of NWFP continue to be governed by regulations dating from the British Raj: the Frontier Crimes Regulation (FCR) of 1901. The FCR, which does not provide legal guarantees for human rights in FATA and indeed effectively codifies authority for a range of human rights violations, is part of a tapestry of an antiquated and draconian system of limited government with little or no recognition of or respect for human rights, the rule of law, due process, political representation, or democratic institutions. Despite numerous recent promises by Pakistan's government to reform the FCR and improve the legal situation of the people of FATA and NWFP governed by this law, as of May 2010, the FCR continued to relegate millions of people in northwest Pakistan to second-class legal status.

The separate status of the FATA and the FCR were retained by successive governments of independent Pakistan and remained unchanged in the constitutions adopted in Pakistan in 1956, 1962 and 1973. Though Part II of the Constitution of Pakistan of 1973 lists a range of “fundamental rights”, Part XII explicitly excludes most or all of the legal, judicial and parliamentary system of Pakistan from FATA; articles 247(3) of the Constitution explicitly

excludes FATA from all acts of the Pakistani parliament and Supreme Court, respectively.<sup>37</sup>

Instead these areas are effectively placed under the direct executive control of the President of Pakistan, while the Governor of the NWFP acts as the President's representative. The President may make “regulations” with respect to “the peace and good governance” of FATA and specify which laws are or are not to be extended to FATA. Adult franchise was introduced in FATA in 1996; FATA representatives were elected on a non-party basis not to any FATA parliamentary body but to the National Assembly where they cannot exercise any legislative powers with regard to FATA. Interestingly, the President of Pakistan has the authority under the Constitution (article 247(6)) to end at any time the applicability of the FCR to any agency after consultation with a tribal *jirga*.

Under the FCR, the federal government—effectively, the President of Pakistan—appoints a Political Agent (PA) for each FATA agency who exercises extensive administrative, judicial and executive powers. In exercise of his judicial powers under the FCR, on vaguely-defined grounds he can order that individuals or entire communities be detained without trial for years at a time, seize their property, and impose fines, all without any requirement of ordinary criminal trial. Except in the case of procedural flaws, his decision is final: the FCR precludes appeal to any court outside FATA, as the jurisdiction of Pakistan's higher judiciary is explicitly barred under Article 247(7) of the Pakistani constitution. Under Chapter III of the FCR, the PA may consult a Council of Elders (in practice a tribal *jirga*) to resolve disputes, including in criminal cases; such *jirgas* are traditionally made up of at least three maliks, all men appointed and dismissed by the PA on his subjective estimation as to whether the individual concerned adequately serves the interests of the region.<sup>38</sup>

The provisions of the FCR violate many of the human rights guaranteed to all people in Pakistan in the Constitution of Pakistan; the people of FATA are deprived of the right to equality before law and equal protection of law (as provided for under article 25(1) of Pakistan's Constitution) as their human rights protection falls considerably short of that available to other people in Pakistan.<sup>39</sup> The governance system established by the FCR also violates Pakistan's international obligations assumed under ratified human rights treaties and under customary international human rights law.

The judicial system provided by FCR is severely flawed from a human rights perspective. Defendants do not have the right to be presumed innocent; the right to legal representation; the right to call or cross-examine witnesses; the presumption of innocence is absent and neither bail nor appeal against a sentence to a higher court are permitted. The right to fair trial before an independent and impartial court is a norm of customary international human rights and humanitarian law. The right to fair trial is also recognised under article 10 of Pakistan's Constitution. Neither a *jirga* arbitrarily established by a Political Agent nor the office of the PA, which combines judicial and executive functions, constitute an independent and impartial court. Pakistan government forces have utilized FCR as the basis of acts violating international human rights provisions; for instance, invoking FCR rules to detain women and children who are related to tribal leaders or elders, to pressure them to capture and hand over militants.<sup>40</sup>

A particularly problematic aspect of the FCR is its explicit authorization for the PA to mete out collective penalties against an entire community for alleged infractions by any of its members. Chapter IV of the FCR allows the PA to “blockade ... hostile or unfriendly tribe[s]”; and to assess a fine on “communities accessory to crime”.<sup>41</sup> These clauses have been frequently invoked to punish entire tribes for the alleged infractions of a few—most recently,

and notably, during the large-scale military operations in South Waziristan in October 2009, the military treated many members of the Mehsud tribe as suspects and blocked their access to crucial humanitarian aid (more details of this operation appear below in the discussion of the 2009 South Waziristan campaign).<sup>42</sup> The FCR collective responsibility clauses violate the customary international human rights and humanitarian law prohibitions on collective punishment explained more fully below in the Section on Applicable International Legal Frameworks.

The reliance on *jirgas* under the FCR in practice discriminates against women by providing them no access to the tribal councils that in the case of many disputes may decide their fate and whose procedures include few or no rights or protections for those affected. This severe curtailment of the ability of women living in FATA to represent and defend their rights violates the constitutional guarantee of Article 25(1) of Pakistan’s Constitution which states that “all citizens are equal before law and are entitled to equal protection of law of equality before law and equal protection of law” as well as of Article 25(2) which states, “there shall be no discrimination on the basis of sex alone”. The *jirga* system established under the FCR also violates Article 15 of the CEDAW, which requires Pakistan to “accord to women equality with men before the law.” Indeed, the Committee on the Elimination of All Forms of Discrimination against Women in its June 2007 observations on Pakistan’s compliance with the CEDAW stated that it was “concerned that informal dispute forums (*jirgas*) continue to function and take decisions that call for the perpetration of violence against women, despite the ruling of a superior court requiring the elimination of such forums.” It therefore urged Pakistan “without delay” to eliminate the *jirgas* and to ensure that *jirga* members who participated in decisions that constitute violence against women are held accountable.<sup>43</sup>

The FCR is also inconsistent with requirements under the Convention on the Rights of the Child that special protection be given to children in the criminal justice system. The fact that children can be and indeed have been held under the collective responsibility clause is a further violation of provisions of the CRC. The UN Committee on the Rights of the Child highlighted both of these concerns, with specific reference to the inconsistency of the FCR with the CRC, in its October 2009 observations on Pakistan’s compliance with the CRC.<sup>44</sup>

The legal regime applied in FATA under the FCR in lieu of the ordinary laws of Pakistan also appears to be inconsistent with Pakistan’s obligations under the Convention on the Elimination of all forms of Racial Discrimination. The UN Committee on the Elimination of Racial Discrimination, in its March 2009 observations on Pakistan’s compliance with the CERD, noted “with concern that the laws of the State party are not applicable” in the FATA and NWFP “to the same extent as in the other parts of the territory” of Pakistan, regretted “the paucity of information” provided to it about the territories, and “urge[d]” Pakistan “to ensure that its national laws, including in particular legislation relevant to the implementation of the Convention and other human rights instruments ratified by the State party, are applicable in its entire territory, including the FATA and NWFP”.<sup>45</sup>

The FCR has significantly contributed to an inherently unrepresentative and unresponsive system of authority that has led to shockingly high incidence of violations of civil, political, economic, social and cultural rights—and in turn created conditions ripe for an abusive insurgency and ensuing abusive government response. The inherently problematic political structure established by the FCR, in which *maliks* are remunerated in relation to their usefulness to the PA and maintaining peace in their tribal agency, has over time been further weakened by the Pakistani Taliban killing scores of *maliks* for their alleged collaboration with

the government and/or the army. The resulting vacuum has been filled by insurgent leaders who seek alliances with the PA or maliks who side with the Taleban.<sup>46</sup>

Calls for serious reform or outright abolition of this law have become increasingly louder, particularly in the last few years as the region's unrest has assumed global implications. As Afzal Khan, a former federal minister for tribal affairs (during the second administration of the late Benazir Bhutto) and member of the National Assembly, told Amnesty International in April 2009: “The people of FATA are sick of the FCR and want it to be reformed significantly, but the existing bureaucracy wants it for its selfish reasons and the central government does not have the will to tackle this challenge. But now it may have to.”<sup>47</sup> Following the extension of adult franchise to FATA in 1996, several initiatives to reform the FCR and to assimilate FATA to NWFP were announced but have stalled to date. In 2005 General Musharraf publicly acknowledged the need for reforms; in the same year the NWFP governor established a FCR Reform Committee.<sup>48</sup> With the return of civilian government in 2008, the PPP pledged to repeal the FCR and to bring FATA into the existing constitutional framework of Pakistan by either making it a separate province or assimilating it to NWFP. The Pakistan government's efforts in this regard have been halting and unclear. In March 2008, Prime Minister Yousef Raza Gilani publicly announced that the FCR had been revoked, but the government did not follow up with the necessary legal and practical steps. On 14 August 2009, President Zardari announced a reform package for FATA which, however, retained the FCR. It included permitting political party activity in FATA, curbing the PA's powers of arrest and detention, establishing the right of detainees to bail, protecting women and children from the scope of the collective responsibility provisions of the FCR and setting up an appeals process. In April 2010, President Zardari again promised to reform the FCR ‘soon’, but the proposed changes had not taken effect as this report was finalized.<sup>49</sup>

Amnesty International calls on the Government of Pakistan government to acknowledge the lack of human rights protection and failure of governance of the FCR framework and bring the legal framework applicable to FATA into conformity with Pakistan's obligations under international law, as well as ensuring it respects the human rights set out in Part II of the Constitution, as quickly as possible by either fully amending it or abolishing it, thereby placing FATA under the regular law and judicial system of Pakistan. With the widespread deterioration of the area's social fabric caused by the recent crisis, now may be the Pakistani government's best opportunity since the creation of the modern state of Pakistan to move beyond British imperial policy and correct a law that “was for state security and not human security”, in the words of the Human Rights Commission of Pakistan.<sup>50</sup>

## **ACTORS IN THE CONFLICT IN NORTHWESTERN PAKISTAN**

### **TALEBAN AND INSURGENT GROUPS**

After the 11 September 2001 attacks in the United States and the start of subsequent US-led military activities in Afghanistan, many members of the Taleban, al-Qa'ida, and other small bands of allied militants began to settle in areas in Pakistan within FATA, the NWFP, and parts of Baluchistan. Although the government of General Pervez Musharraf vowed at the time to assist US operations against the Taleban and Al-Qa'ida by helping seal the border and capture fleeing fighters, in reality the Pakistan government was largely unwilling or unable to meaningfully secure border areas in 2001 and early 2002. As a result many fighters slipped

easily into FATA, NWFP, and Baluchistan, where they were able to regroup and rearm. These fighters formed the nucleus of a new, assertive insurgency, drawing together Pakistani veterans of the Taleban movement and new recruits inspired by an ideology of resistance against what they perceive as wrongful US military incursions into Muslim lands in Afghanistan and Iraq.

In this report, Amnesty International has used the general term “Pakistani Taleban” to refer to the federation of armed groups fighting the Pakistani government in northwestern Pakistan that identify themselves as following the Taleban ideologically and with some degree of operational agreement.

This term is used, despite the historical and current differences between the various armed groups, because our findings have demonstrated that this federation constitutes a well-organized armed group, with a command structure which issues clear orders and instructions. The Pakistani Taleban as a whole seem to operate with a clear chain of command and high level of discipline, and has demonstrated strong—and growing—operational and strategic cohesion over the past four years. The Pakistani Taleban also had effective control over territories in that period. According to customary international humanitarian law, military commanders and civilian superiors can be held responsible for the acts of their subordinates, if war crimes were committed pursuant to their orders or if they knew, or had reason to know, that their subordinates were committing, or were about to commit, such crimes and did not take all necessary and reasonable measures in their power to prevent their commission.

It is difficult to delineate exactly how the Pakistani Taleban and their allied insurgent groups in FATA and northwestern Pakistan are organized, who commands them, and where they get their support: the groups’ allegiances have shifted several times in recent years, and groups or parts of groups have moved from place to place, both within tribal agencies and across the border into Afghanistan. While most share an extreme religiously inspired militant ideology and a Pashtun identity, they vary widely in objectives and focus. However, many of the groups now share an operational plan, and have demonstrated that they possess effective chains of command and the ability to impose discipline on their ranks when they so desire.

The Pakistani Taleban leadership has demonstrated its ability to negotiate, conclude, and implement agreements. The decisions of the Pakistani Taleban leadership, for example when declaring ceasefires, are implemented and enforced by local fighters. A central hierarchy seems to command and control the escalation and the de-escalation of military tactics, including serious violations of IHL, such as the use of suicide bombings to target civilians, attacks on local tribal leaders, and restrictions on the operation of humanitarian aid workers. In short, the Taleban leadership clearly has the ability to respect IHL and should be held to account for a failure to do so.

**The groups include:**

- Afghan Taleban who have found refuge in FATA and other border regions in Pakistan, including the Taleban’s leader Mullah Omar, who is widely believed to have established his headquarters in Quetta (in Baluchistan) and other high-level leaders of the insurgency against the Afghan government, such as Sirajuddin Haqqani and his father Jalaluddin Haqqani based in North Waziristan. These groups are alleged (including by high level US military and civilian authorities) to continue their focus on fighting US and other foreign forces in Afghanistan

and hence not to share most Pakistani Taleban’s opposition to the Pakistani state and security apparatus.

- Tehrik-e-Taleban Pakistan (TTP, Taleban Movement of Pakistan) forms the central grouping in the loose federation known as the Pakistani Taleban. The nucleus of TTP was formed in 2002 from Taleban forces fleeing the US invasion of Afghanistan and ideologically sympathetic Pakistani tribal fighters reacting to increased pressure from the Pakistan government. In December 2007, the TTP officially formed under the leadership of Baitullah Mehsud as its *amir* (an Arabic term for leader). Many of the TTP’s constituent groups and personalities had operated independently in the past, in shifting alliances, often at odds with one another. In February 2009, responding to reports of an increase in US troops in Afghanistan, the three key Pakistani Taleban groups led by the late Baitullah Mehsud, Hafiz Gul Bahadur and Maulvi Nazir Ahmed, rivals till then, seem to have agreed to set aside their differences and focus on fighting the US - led foreign forces in Afghanistan. Pledging allegiance to Afghan Taleban leader Mullah Omar as their “supreme leader”, they formed a shura or council, called the Council of United Mujahedeen.<sup>51</sup> Not all other militant groups joined this group.

After Baitullah Mehsud’s was killed by a drone attack in August 2009, his former deputy, Hakimullah Mehsud, assumed power in the TTP (Hakimullah himself narrowly survived a drone attack in January 2010 in South Waziristan). There have also been unconfirmed reports that Malik Noor Jamal (also known as Maulana Toofan) from Orakzai Agency has now assumed interim leadership.<sup>52</sup> The group contains members from all of FATA’s seven tribal agencies as well as several districts of the North West Frontier Province, Bannu, Tank, Lakki Marwat, Dera Ismail Khan, Kohistan, Buner, and Malakand. The US-based Council on Foreign Relations estimated that the group could field 30,000 to 35,000 active fighters.<sup>53</sup>

- Waziristan-based insurgent groups led by Mullah Nazir and Hafiz Gul Bahadur. Both groups and the TTP are alleged by experts on insurgent groups in the region to be linked to the Haqqani network in North Waziristan.
- Tehrik-e-Nafaz-e-Shariat-e-Mohammadi (TNSM, Movement for the Enforcement of Islamic Law), a militant group led by religious leader Maulana Sufi Mohammad, with a strong base in Malakand (for details see section on Malakand). The group has been active since the early 1990s, campaigning for the imposition of a strict version of Shari’a, and has had some operational and ideological differences with other Pakistani Taleban groups. In 2001, Sufi Mohammad was arrested by the Pakistani government because of his role in recruiting and sending thousands of young Pakistanis—many of them children—to support the Afghan Taleban against the US -led invasion. In his absence, his son-in-law, Maulana Fazlullah, assumed control over the TNSM and continued the group’s agitations (despite signs of political and ideological discord between Sufi Mohammad and Fazlullah).
- Al Qa’ida and other affiliated foreign jihadist groups, such as the Islamic Movement of Uzbekistan (OMU);
- Various other militant groups, including Lashkar-e-Islam (Army of Islam), a militant Islamist group founded in Khyber Agency in 2004 by Mufti Munir Shakir and now led by Haji Mangal Bagh Afridi, and followers of the late insurgent leader Haji Namdar, a militant with

an extremist interpretation of Islam who set up the group *Amr bil maroof wa nahi anil munkir*, (Promotion of Virtue and the Suppression of Vice).

Many of these groups and personalities had operated independently in the past, in shifting alliances, often at odds with one another.

### GOVERNMENT FORCES

The repercussions from the attacks of 11 September, 2001 dramatically changed the power dynamics and the tradition of Pakistani government non-interference in FATA. After Taleban and al-Qa’ida forces fled Afghanistan and began filtering into Pakistan, the government, having neither adequate laws or institutions in place to address the new insurgent presence, resorted to the blunt tools available under the FCR: military operations against insurgent strongholds, political deals with tribal leaders, ad hoc national and local peace agreements, and the mobilization of a variety of regular and irregular military units and militias.

In its military operations, Pakistan has deployed a wide array of security forces, including army soldiers, Inter-Service Intelligence agents, tribal levies called *lashkars* (official tribal militias) and *khassadars* (tribal police), the Frontier Constabulary (an armed police force operating in FATA border areas), and the Frontier Corps (a paramilitary force).<sup>54</sup> The army and Frontier Corps (FC) are the two forces with the primary responsibility for maintaining law and order in FATA.

The Frontier Corps, like FATA itself, is a relic of the British Empire, dating back to 1907 when a number of Pashtun tribal militias were united as the Frontier Corps.<sup>55</sup> The FC’s current strength of 55,000 is still almost entirely composed of Pashtuns from FATA and NWFP, though the commanding officers are seconded from the regular Pakistan army. Until 2001, the FC held the chief role of maintaining order in FATA and conducting anti-smuggling operations along the border with Afghanistan. Many FC recruits were themselves veterans of the anti-Soviet war in Afghanistan, with close cultural and personal ties to the Taleban groups in that country.

After 11 September 2001, and the US-led assault on Afghanistan, the FC necessarily assumed a greater role in controlling the border against infiltration by Taleban forces and eventually, counter insurgency operations as the Pakistani Taleban established themselves as a threat to the central government. The FC’s record on both counts is decidedly mixed; numerous witnesses throughout FATA as well as military experts and government officials told Amnesty International that the FC is poorly equipped, poorly trained, and poorly motivated in conducting operations against the Taleban. As one senior NWFP official told Amnesty International in 2009: “*The FC can barely protect themselves from the Taleban. We certainly don’t expect them to protect the ordinary people.*”<sup>56</sup>

The FC’s repeated failures to curb the activity of the Pakistani Taleban and stop their cross-border operations invoked significant complaints from the United States and other members of the International Security Assistance Force in Afghanistan. Since 2008, the US government has spoken about improving the FC’s equipment and training in order to allow it to conduct a proper counter insurgency operation, unlike the regular Pakistan military, which remains focused on countering a potential military threat from India.<sup>57</sup>

The Pakistan military has been the country’s dominant institution nearly since Pakistan’s birth. Despite—or perhaps because of—a series of military defeats against the far larger Indian army, the Pakistan army controls much of the country’s economy and has for long



stretches of time directly ruled the country. Since 2001, the Pakistani military has been the chief beneficiary of billions of dollars of US aid to Pakistan, but has consistently failed to satisfy the US that it is doing enough to combat the Taleban insurgency in northwest Pakistan.<sup>58</sup> The Pakistan army is trained and equipped for fighting a mechanized war with India, and has little training (and has shown little aptitude for) the particular challenges of a counter-insurgency campaign against the Taleban. Revealingly, in October 2009, two Pakistani generals stated to the Associated Press that of some \$ 6.6 billion US military aid provided between 2002 and 2008 and intended for counter-terrorism activities, only \$500 million had been used for the designated purpose. Some of the funds were utilized instead to buy equipment better suited to fighting India, leaving troops engaged in counter-insurgency ill-equipped, short of helicopters, night vision equipment and training.<sup>59</sup> Retired General Mahmud Durrani, who was Pakistan's ambassador to the US under President Musharraf, was reported as saying, “*Pakistan said we also have a threat from other sources ... and we have to strengthen our overall capacity. The money was used to buy and support capability against India*”<sup>60</sup>

This structural weakness is compounded by political and cultural reluctance on the part of many Pakistani officers, many of whom are ethnically Pashtun (who comprise the second-largest group of soldiers and officers) and many of whom (Pashtun and non-Pashtun alike) view the Taleban as a powerful proxy and potential ally in Afghanistan and against a land offensive by India. Historically, the Pakistani military used and supported Islamic militants with training and money for fighting in Afghanistan, as well as sanctuary and training facilities for Kashmiri and Pakistani fighters to conduct Pakistan's proxy war in Indian Kashmir.<sup>61</sup> In the 1980s, Pakistan's powerful intelligence agency, the Inter Services Intelligence handled enormous US funds to recruit Muslims from around the world to fight the Soviets in Afghanistan. As a result, the ISI drew close to the Taleban, encouraged by the civilian government of Benazir Bhutto in the mid-1990s.<sup>62</sup> The Taleban maintained links with other armed groups including the nascent al-Qa'ida and increasingly radical domestic Islamist networks in Pakistan. Many observers, including US Secretary of Defence Robert Gates, have suggested that the Pakistani military and the ISI, or at least elements within these institutions, co-operated, if not actively supported, some of these groups' ideology. Robert Gates told the US television news program *60 Minutes* in May 2009 that the Pakistani military was “maintaining contact with these groups [the Taleban], in my view, as a strategic hedge. They are not sure who's going to win in Afghanistan. They're not sure what's going to happen along that border area. So, to a certain extent, they play both sides.”<sup>63</sup>

In addition to the regular uniformed forces, tribal elders have formed tribal militias or *lashkars* (literally, “armies”). The institution of the tribal *lashkar*, originally a tribal irregular volunteer militia, has undergone a transformation during the past few years; it is not a permanent defence force but is an irregular force with a localized mission and hence not accustomed to being directed by a central authority for a sustained purpose. In many instances, tribes, frustrated at insurgent operations including unlawful killings, harassment, intimidation and displacement, set up *lashkars* for their protection. The army, relying on the superior local knowledge of tribesmen, has of late encouraged and in some cases armed such militias to fight insurgents, in the FATA region as well as in NWFP. *Lashkars* have fought militants in several of the FATA's seven agencies; insurgents, in return, have targeted *lashkar* members and unlawfully killed anti-Taleban tribal elders who have ties to the *lashkars* as well as relatives of *lashkar* members.<sup>64</sup>

## PAKISTAN'S AMBIVALENT POLICY IN THE NORTHWEST

There are significant outstanding questions about the commitment of the Pakistan government, and in particular the military, to protecting the people of northwest Pakistan from abuses by the Pakistani Taliban and extending basic human rights protections to the strategically important Federally Administered Tribal Areas.<sup>65</sup>

The government of President Pervez Musharraf joined the US-led “war on terror” following the 11 September 2001 attacks, committing Pakistan to flush out al-Qa’ida. President Musharraf also publicly committed to curb militant groups espousing a strict interpretation of Islam, but at the same time forged an alliance with a grouping of six religious parties, the Muttahida Majlis-e-Amal (MMA), which formed the NWFP government after the 2002 elections, won seven of the 12 FATA seats in the National Assembly and introduced Islamic legal principles into NWFP law.<sup>66</sup> These religious parties broadly endorsed the Taliban’s interpretation of Islam and shared many of their aims. Despite a 2002 ban on militant Islamist organizations, the central and provincial governments did not curb the increasing activity of such groups and repeatedly announced, but did not enforce, reform of the Islamic seminaries, the madrassas, several of which served as primary recruiting and training grounds for religiously inspired armed groups associated with the Taliban. Not surprisingly, Taliban-related groups were able to extend their ideological and operational links in FATA as well other parts of Pakistan, in particular NWFP and Punjab.<sup>67</sup>

The US government voiced its growing concern to the Pakistani government that Taliban and foreign fighters shielded by them launched attacks on US and NATO forces in Afghanistan from safe havens in FATA. In response, the Pakistani army finally entered FATA in June 2002, first in Khyber Agency, then in North and later South Waziristan, and has been engaged in different FATA locations since then. However, its strategy vacillated between military force and appeasement, despite repeated protests by the US and Afghan governments, and ISAF forces deployed in Afghanistan that this policy dramatically increased incursions and attacks in Afghanistan.

The Pakistan Peoples Party (PPP) government, which established a civilian government in March 2008, has made several attempts to establish a different policy in northwestern Pakistan. The new government has shown some initiative in developing its counter-terrorism strategy. In his first address to a joint session of parliament, President Zardari presented a three-pronged strategy to tackle the threat posed by insurgent armed groups to the country’s security and stability: negotiations with militants who renounce violence and lay down their arms; political and social reforms in the tribal belt; and the use of force against violent extremists.<sup>68</sup> A joint session of parliament on 22 October 2008 unanimously passed a resolution calling extremism, militancy and terrorism grave threats to Pakistan’s stability, and pledged that Pakistan’s territory would not be used for attacks on other countries.<sup>69</sup> Interior Minister Rehman Malik described the Tehrik-e-Taliban Pakistan as an “extension of al-Qa’ida”, abandoning the notion that all insurgents were foreign-funded and an offshoot of the Afghan conflict.<sup>70</sup>

By mid-2009, the Pakistani government’s attitude toward the Pakistani Taliban seemed to harden in the face of the Taliban’s growing rhetorical and military challenge to the central

government. Major military offensives in Malakand and South Waziristan in 2009, and in Bajaur and Khyber in 2010, suggested that the government was committed to rooting out the insurgents. But on the other hand, these military efforts were not followed by consolidation of government control or the reimposition of the rule of law in areas taken from the Taliban; nor has the government articulated a clear long-term strategy about providing and protecting the rights of the citizens of FATA and neighbouring areas. By May 2010, as this report was prepared for publication, it remained unclear whether the Pakistani government had resolved its ambivalent strategy regarding the conflict in northwest Pakistan. Until 2008, under the rule of General Musharraf, it was the army that directly set security policy in northwest Pakistan; even after the return of civilian government in 2008, most Pakistani observers believe it is the army that controls the government policy in FATA and NWFP.<sup>71</sup>

### **PEACE AGREEMENTS WITH INSURGENTS**

Pakistan's commitment to extending basic human rights protections to FATA is undercut by government's repeatedly entering into 'peace deals' with the local Taliban groups, in each case without providing any concrete means to safeguard the rights of the local population.

The peace deals usually involved an agreement to hold a ceasefire by both army and insurgents, the release of hostages or other detainees held by the insurgents and of detainees in army custody; they required that insurgents withhold support of and deny safe haven to foreign militants though in some cases foreign fighters who had settled were allowed to stay on provided they gave up violence (for instance in one of the earliest pacts, the 2004 Shakai pact in South Waziristan). In some cases they also required insurgents to commit themselves to abstaining from attacks in Afghanistan or elsewhere. In some cases, the state also pledged to provide development funds for the regions concerned.

The government and local leaders have justified these deals for easing the threat facing civilians and curtailing armed conflicts between two sides that severely threatened civilians and their livelihoods. But in practice, these deals nearly always ignored the rights of the ordinary residents of FATA in exchange for dubious, short-term cease fires. Not only that, but these deals have invariably broken down and failed even their stated aim of stopping militant violence, instead allowing the Taliban to continue abusing the local population.

In each case, Taliban and allied insurgents consolidated their gains during these lulls and expanded their reach in Pakistan, allowing the Pakistani Taliban to further consolidate their links to other religiously inspired militant groups that target civilians for attack in other provinces of Pakistan, notably NWFP and Punjab, as demonstrated by the increasing number of roadside bombs, suicide bombings and other violent attacks that have targeted, and killed and injured, hundreds of civilian.

The temporary cessation of fighting also allowed Taliban forces on both sides of the border to conduct operations into Afghanistan that frequently targeted or endangered civilians there (as well as Afghan and international military forces).<sup>72</sup> The US government was especially critical of the 2006 Waziristan Accord, claiming that insurgents were continuing to transit back and forth from Waziristan over the border into Afghanistan.<sup>73</sup> As documented in this report, after the 2006 Waziristan peace deal, Taliban groups increasingly imposed social controls in Waziristan, resembling Taliban restrictions in Afghanistan - a precursor for what was to come in places such as Bajaur, Khyber, Mohmand, and, briefly, in the "settled areas" of Malakand, including the Swat valley.

Moreover, in practice, this policy has resulted in official impunity for many of the Taleban, as many of the insurgents benefiting from the peace agreements had committed unlawful killings, engaged in torture or other cruel, inhumane, or degrading punishment, and, in the context of the armed conflict, committed war crimes when they intentionally targeted civilians or took hostages, at the direction or with the acquiescence of the Taleban leadership. For a state to officially tolerate such crimes rather than bring those responsible to justice can never be justified and in this case amounts to a failure by Pakistan to meet its international human rights obligations, including the obligation to protect its civilian population from attacks.

In 2006 and 2007, General Musharraf set forth what he called a “comprehensive approach” to the problem of militants in the tribal areas. The approach was supposed to focus on negotiations, government development, and military action. But the efforts were derailed by Pakistan’s political turmoil in 2007-2008, set off by Musharraf’s dismissal of Chief Justice Iftikhar Mohammad Chaudhry and, subsequently, the widespread arbitrary arrests of dissenting judges and lawyers, the government’s storming of the Red Mosque (Lal Masjid) in Islamabad,<sup>74</sup> the assassination of Benazir Bhutto in late 2007, and the eventual resignation of Musharraf as President. Given the turmoil, it is little surprise that 2006 and 2007 was the period in which Taleban force increased their control in FATA’s agencies.

This appeasement policy has continued under the civilian government of President Zardari, despite repeated public denials. Prime Minister Yousuf Raza Gilani in June 2009 stated that “the time for dialogue with the militants was over.”<sup>75</sup> Similarly Foreign Minister Makhdoom Shah Mahmood Qureshi in October 2009 repeated the sentiment, “With widespread revulsion against extremist ideology dawned the realization that no amount of appeasement would pacify the violent reactionaries. The threat they posed to our national security and social fabric had to be met with a comprehensive strategy, including the application of military force where required.”<sup>76</sup>

The major peace deals entered by the Pakistani government (typically through the army) with militants were:

- The first peace agreement with the Pakistani Taleban, the so-called Shakai agreement in South Waziristan, was signed in April 2004 with Taleban commander Nek Muhammad, but abrogated after his death in June 2004. After the failure of that deal, other agreements were brokered in October 2004 and February 2005 in the agency.<sup>77</sup>
- In North Waziristan, several peace accords were entered with Taleban leaders such as Hafiz Gul Bahadur and Maulvi Nazir Ahmed and others in 2006 and 2007. These groups are linked to the Afghan Taleban led by Sirajuddin Haqqani which continues to launch attacks in Afghanistan. In June 2006, after military operations in North Waziristan, the Pakistan army and militants entered into another ceasefire. Sirajuddin Haqqani on 21 June 2006 decreed that it was no longer Taleban policy to fight the Pakistan army; this was followed by the Waziristan Accord of 5 September 2006 signed in Miranshah, North Waziristan under which the Pakistani Army was to release captured insurgents, dismantle security checkposts and return weapons and other equipment seized from insurgents while insurgents pledged not to provide safe haven to foreign fighters, though those settled were allowed to remain. The army intervention in the Lal Masjeed in Islamabad in July 2007 led to the breakdown of this accord and renewed attacks by insurgents on the army in both North and South Waziristan.

- Bajaur: The Agency hosted many Afghan insurgents before and after the rout of the Taliban. Gulbuddin Hekmatyar’s Hizb-e-Islami with links to Afghan Taliban and al-Qa’ida is believed to be based in Bajaur. Following the killing of some 70 people in a Pakistani airstrike on a madrassa in Bajaur on 30 October 2006 and retaliatory suicide attack on an army camp, a peace agreement was signed in March 2007 between Taliban leader Faqir Mohammed and the army. Following further insurgent violence, an army offensive began in August 2008 which was followed by another accord with Faqir Mohammad in February 2009; it collapsed in July 2009 and fighting continues.
- Mohmand: The government and local leaders entered several peace deals in 2007, under which domestic and foreign fighters were to be expelled; after insurgents fleeing the 2008 and 2009 Bajaur operation found safe haven in Mohmand, military operation resumed until in March 2009, the army claimed victory but fighting continues. Afghan Taliban were believed to have supported TTP leader Omar Khalid’s group.
- Khyber: Insurgents not aligned with the TTP but the Muqami Tehrik-e-Taliban (Local Taliban Movement) fought another insurgent group; the army-brokered peace deal of July 2008, collapsed in July 2009. Renewed talks with militants began during the September 2009 military operation. Hakimullah Mehsud’s TTP repeatedly forced the closure of the Khyber Pass and destroyed NATO supply convoys in recent years.

Outside FATA, too, peace deals have been made, and broken. In March 2009, the Awami National Party government of NWFP agreed to the demands of the Malakand-based Tehrik-e-Nifaz-e-Shariat-e-Mohammadi (TNSM) to introduce Islamic law and set up Islamic courts in Malakand division, with religious courts deciding all cases after 16 February 2009. The peace agreement also required that the army dismantle all checkpoints, release captured insurgents including those responsible for unlawful killings and other abuses. The National Assembly passed the Nizam-e-Adl Act, 2009 in April; it was signed into law by President Zardari, allegedly under pressure from the military leadership,<sup>78</sup> on 13 April 2009. However, in the same month, insurgents extended their operations into neighbouring Buner district, effectively breaking the peace accord. Demands for the introduction of Islamic law have a long history in Malakand and the TNSM had earlier partly achieved its aim to introduce Islamic law (see section on human rights abuses in Malakand).

# HUMAN RIGHTS ABUSES AND HUMANITARIAN CRISIS IN NORTHWESTERN PAKISTAN

We are living in constant fear. Even our children are now living in fear. We are accustomed to arms, fighting, gunfire, but we haven't seen such a situation in our past life as we are witnessing today<sup>79</sup>

This section describes several key episodes from 2008 and 2009 that led to the current crisis in northwest Pakistan. This narrative is not, and cannot be, a definitive account of the situation in FATA and neighbouring areas of northwest Pakistan, rather, Amnesty International hopes to provide a sense of the abusive rule of the Taliban as well as the government's heavy handed military responses. These conditions in turn helped set the stage for the Taliban's lunge for control over the 'settled' areas of Malakand division, in particular the symbolically important Swat valley, the military's counter offensive, and the ensuing displacement of more than two million people. This section continues with an analysis of the October 2009 military offensive against the Pakistani Taliban in South Waziristan—the first sustained effort by the Pakistani government to regain control over parts of FATA. This section also describes the sectarian violence in Kurram agency that is connected to, but distinct from, the Taliban insurgency raging across the other FATA agencies. The human misery caused by all these factors has displaced hundreds of thousands of Pakistanis, many of whom have been away from their homes for years, with no end in sight and little by way of assistance from the government.

As of May 2010, when this report was being prepared for publication, several areas of FATA and NWFP report sustained armed conflict. Military operations were in progress in Bajaur, Mohmand, Khyber, South Waziristan, Dir, Swat Malakand, Peshawar district, Kohat and Bannu districts. Taliban strongholds in Orakzai and Kurram agency have witnessed heavy bombardment, forcing thousands of civilians to flee from their homes. The Pakistani military and the Frontier Corps have launched attacks with jet planes and helicopter gunships on civilian areas in an attempt to root out Taliban fighters. In the wake of large-scale operations in 2009 (detailed below) the Pakistan army has claimed victory in Swat, Bajaur and South

Waziristan; operations against North Waziristan were imminent as Amnesty International finalized this report.

## **HUMAN RIGHTS ABUSES BY THE TALEBAN AND OTHER INSURGENT GROUPS**

### **VIOLENT IMPOSITION OF DISCRIMINATORY SOCIAL NORMS**

In each of the FATA Agencies (and some parts of NWFP), the Pakistani Taleban followed a pattern similar to the strategy employed by the Taleban in Afghanistan in the mid 1990s. First, they attempted to gain the sympathies of the people by offering an alternative to the weak and inequitable governance system (in the case of Pakistan, as established under the FCR) and combating official corruption and ordinary criminal activity. After Taleban or other insurgents initially gained effective control over an area, they used violence and public punishments to impose codes of conduct based on their own radical interpretations of Islamic law, or Shari'a.

The Taleban's violent conduct quickly shocked many locals, even though many people in northwest Pakistan adhered to conservative religious and cultural practices. Though the region has a history of insurgency and conservative religious rule, its culture was based on old tribal norms, which differed significantly from the Taleban's ideology. As discussed below, the Taleban aggressively moved to weaken the existing tribal structure by killing or intimidating tribal elders and government officials, and their interpretation of Islamic law was much harsher than that espoused by most of the residents of northwest Pakistan. The Taleban forced men to maintain long beards; wear caps; not smoke, watch television, or listen to music; attend religious teachings; and pray five times a day at mosque. They used violence to force women to stay inside if not veiled, and to be accompanied by a male relative outside the home. Girls, too, were told to attend schools, if at all, wearing all-encompassing veils. Taleban forces also began to launch attacks against the government, those believed to support the government, and other political rivals. Local tribal elders told Amnesty International that militants began attacking military look-out posts (also known as pickets), bridges, schools, hospitals, electricity and mobile telephone towers, markets, and shops, civilian and military convoys, anti-Taleban tribal elders, and so-called spies.<sup>80</sup>

As one veteran journalist from Swat explained:

*We knew and welcomed the Taleban when they were fighting the Russians [during the Soviet invasion of Afghanistan in the 1980s]. But they were strangers to us, not of us. When they came down from the mountains in 2007 we couldn't believe that they would take over so quickly. But the military seemed to be in cahoots with them because before we understood what was happening, the Taleban were our masters.<sup>81</sup>*

Residents in several FATA agencies, and areas bordering FATA, told Amnesty International how Taleban forces use violence to impose their new norms and to stifle dissent or adverse comment. Consequently, many people were also fearful of describing Taleban abuses. A 30-year-old shopkeeper said, “Thank you to [Amnesty International], that you come here to listen to the voices of needy people, but don't publish my name or otherwise [the Taleban] won't spare me.”<sup>82</sup> A 55-year-old father said of the Taleban's abuses, “Nobody can do anything at this moment. We can't say anything. We are weak people; we can't even talk.”<sup>83</sup>

When residents did talk, they told similar stories of insurgents employing violence and the threat of violence to maintain their control. A truck driver from Bajaur agency said that in 2006, when the Taleban starting making their presence known, they set up check posts on the main roads across the agency:

*In every direction they would search for music cassettes and confiscate or burn them... . Initially all the people were with the Taleban, but after the Taleban started causing problems for them and treating them in inhumane ways a lot of the people were against the Taleban.*<sup>84</sup>

The driver further explained that,

*Taleban forces would beat drivers in front of other residents and would sometimes blacken their faces [presumably with ash or kohl], as a form of humiliation.*<sup>85</sup>

A 50-year-old farmer from Bajaur Agency recalled,

*The first thing the Taleban did was to implement purda [literally a curtain, generally seclusion of women] for women and after then they imposed bans on things that people were interested in.... They banned music and banned the barbers from shaving and cutting [men's?] hair.*<sup>86</sup>

Another man from Bajaur also stated,

*As soon as the Taleban appeared they first started creating problems and difficulties for the people in the name of Islam. For example, they put a ban on shaving beards, banned women from going out, and banned music. Then they started collecting donations in the name of Islam and the jihad by force.*<sup>87</sup>

In February 2007, media reports described threatening letters left by Taleban forces in the main town of Khar, in Bajaur Agency, demanding barbers to stop shaving beards.<sup>88</sup> A month later, two bombs targeted barbershops and a music store in the market town of Inayat Kalay.<sup>89</sup> In June 2008, media reported that the dead body of a woman who was alleged to have run a brothel was found dumped beside a road near Khar, a city in Mohmand Agency, with a noose around her neck. A note found on her read, “She was killed because she was an American spy and a prostitute and those found involved in such activities will face the same.”<sup>90</sup>

In Khyber Agency, a 35-year-old man told Amnesty International in late 2008,

*Over the previous one year, strange things began occurring with religious groups who were imposing their own code of conduct on the people of our area... Armed men are forcing people to do this and avoid that. They are asking us not to smoke, not to watch television, to grow beards, pray five times daily, keep our women inside our houses, attend classes at mosques, and to ensure we are in mosque during prayer times.... They do not allow women to work in fields or move from one house to another without wearing veils. Obviously, when they stop women from working in the fields they also stop them from attending colleges.*<sup>91</sup>

Another man from Khyber, who was approximately 25-years-old, said some people were supportive of the rules, but that “many others are not supporting them but can't speak out of fear.”<sup>92</sup> He continued: *We are living in constant fear. Even our children are now living in fear. We are accustomed to arms, fighting, gunfire, but we haven't seen such a situation in*



*our past life as we are witnessing today*<sup>93</sup>

Leaders of some of the groups, such as Maulana Fazlullah and Haji Mangal Bagh Afridi, used local radio stations to broadcast sermons and their edicts. Residents dub them “radio mullahs.”<sup>94</sup> These radio broadcasts were not simply ideological or propaganda programs. These broadcasts regularly identified various individuals as *wajib ul ghatl*—that is, “necessary to murder.” Dozens of government employees, including local police officers, were targeted in this way. One measure of how seriously these threats were taken was that numerous police and FC personnel resigned from their posts, and announced such resignations in local newspapers.<sup>95</sup> A teacher from Swat described the impact of such a pronouncement:

*Even though we hated these mullahs we had to listen to the programs because every day it was a new list of people we knew. Imagine my surprise when one day they read my name! I could not believe why they had selected me out of all the other teachers, [maybe] because I had continued to teach the regular curriculum. But once they announced I am ‘wajib ul ghatl’ then there was no safety for us. My wife shrieked and we immediately had to pack up and leave for Islamabad.*<sup>96</sup>

#### **RESTRICTIONS ON THE RIGHTS OF WOMEN AND GIRLS**

The Pakistani Taliban systematically imposed restrictions on women’s activities, their movement or employment outside the home. The Taliban’s systematic discrimination against women was notable even by the standards of conservative religiosity practiced in FATA and NWFP. Dozens of people, men and women, from different FATA Agencies complained to Amnesty International that the new rules imposed on women and girls by the Taliban were a primary reason for their fleeing their homes.

In Khyber Agency, in November 2008, the Taliban threatened local women who were going to the offices of NADRA (the National Database and Registration Authority, which provides new registration for Pakistanis), as it was registering women for the Benazir Income Support Program. Taliban forces were apparently angry that the office took photographs of women beneficiaries for identification and registration. One man told Amnesty International:

*There were no women at the NADRA office to take photograph of the local women for the registration cards. All the other staff was male. And this is why the militants, and also the local tribesmen, opposed the women’s visiting the NADRA office. . .*

*Posters were pasted on walls in Landi Kotal warning people not to send women to the NADRA office. The handwritten posters said the practice of taking photographs of women is un-Islamic and males should not allow their women to visit the NADRA offices. The writings warned that they would take action if someone defied the orders.*<sup>97</sup>

The Taliban’s efforts to bar women from registering for new national identification cards meant that they were essentially outside the government’s official records — an omission that created significant problems later when many women fled conflict-affected areas but could not register to receive government relief services, including food, shelter and medical

assistance because they lacked the requisite documents, as discussed more fully below in the Section on The Crisis of Displacement, below. All of these acts clearly violate internationally recognized rights of women.<sup>98</sup>

### **TARGETING OF SCHOOLS, ESPECIALLY SCHOOLS FOR GIRLS**

The Taliban targeted schools teaching the national curriculum, and in particular, the few operating schools for women and girls both in the NWFP and FATA throughout 2008 and 2009.<sup>99</sup> According to statistics from the Human Rights Commission of Pakistan, 165 schools were destroyed in NWFP and FATA in 2008, 136 of them girls' schools; and more than 180 schools were destroyed and 318 were partially destroyed in 2009.<sup>100</sup>

In Darra Adam Khel, a Frontier Region, a 25-year-old man told Amnesty International in late 2008 that the Taliban had warned parents not to send their girls to school and later attacked the schools:

*First they warned owners of private schools to end co-education. Then they told the government's girls' schools to close. When they refused, the Taliban bombed several of them and the rest of the schools were closed for fear of bombing. At the same time, parents also stopped sending their children to schools for fear of the Taliban.*<sup>101</sup>

In early 2008, threatening letters were left at the Girls Degree College in Jamrud, located in FATA's Bajaur Agency, demanding that girls wear veils to school. Then, in April 2008, a group of around twelve unidentified armed men came to the school at night, overpowered the watchmen, and planted explosives which they then detonated. According to Khalid Mumtaz Kundi, an official of the Khyber Agency political administration, four blasts damaged the school's wall, a classroom, and windowpanes of several rooms.<sup>102</sup>

A 58-year-old man with several children from Bajaur who was interviewed in late 2008 said that a primary school for girls existed near his home but there were no teachers available due to their fear of the Taliban:

*The school has been closed for the last several months because there are no staff to run the school...It was open for one month when the children started going to school, but due to the fear of the Taliban all the teachers stopped coming and the school remains closed.*<sup>103</sup>

One of the most devastating attacks on female education came in the Swat area. There, in 2008 and early 2009, as the Taliban consolidated their grip on the area, they destroyed more than 170 schools, including more than 100 girls' schools. These attacks disrupted the education of more than 50,000 pupils, from primary to college level, according to official estimates.<sup>104</sup> The Human Rights Commission of Pakistan estimated that after the imposition of the Nizam-e-Adl Regulation in April 2009, around 4,000 schools providing education to over 40,000 girls were shut down.<sup>105</sup>

The number of attacks and other restrictions on female education in Swat was far greater than in FATA. But as FATA had far fewer schools than Swat, when an attack is carried out against one school or against a group of students, it has a devastating impact on education.

The concerted nature of these attacks and the threats to schools and teachers constitute a deliberate assault to the security of women and girls and on their right to education. The climate of fear generated by these attacks is undermining the right to education of thousands

of children, particularly girls, and violates a number of international rights as set out in international human rights law and international humanitarian law, which provides special protection to buildings dedicated to education.<sup>106</sup>

### **UNLAWFUL KILLINGS, TORTURE AND OTHER ILL-TREATMENT IMPOSED BY TALEBAN “TRIBUNALS”**

One of the hallmarks of the Taleban’s takeover of a territory has been the imposition of tribunals that apply their harsh interpretation of Islamic law. Over the past few years Taleban “tribunals” and other local systems of informal justice have been increasingly proliferating in Bajaur, Mohmand Agency, Orakzai, Khyber, and Waziristan agencies, and, at least for some time, in Swat and other areas of Malakand.<sup>107</sup> Militants openly boasted of their enforcement operations: “Yes, we have arrested people and beaten them. One person was fined 5,000 rupees for not sporting a beard. Another two doctors were beaten,” said a member of Haji Namdar’s forces in Khyber Agency. Other punishments imposed and carried out range from shaving a person’s head as a form of humiliation, to unlawful killings and public punishments such as lashing.

According to a witness who spoke with Amnesty International, in June 2008, a group of men in Khyber Agency were publicly beaten by insurgent leader Haji Namdar himself for not attending teachings of the Koran (dars). One of the men beaten, a 25-year-old man from Khyber, told Amnesty International:

*With their fingers on the trigger, they warned us to surrender. We had no option and did not resist. . . . When we were presented before Namdar, he asked us why we did not attend dars [religious instructions] . . . After grilling us for some time, Namdar announced the punishment of beating for us. We were brought out of the compound. . . . Two volunteers grabbed us and Haji Namdar himself beat us with a stick. . . . We returned to our homes with our heads down with shame because it is a great shame for a tribesman that someone beat him in public. While they arrested and beat us, the political administration officials didn’t take any action. During the whole episode, the political authorities remained silent spectators.<sup>108</sup>*

Some of the “tribunals” established by the Taleban in FATA were mobile while others permanent. Cases were often adjudicated by two *qazis*, or judges, appointed by the Taleban who were supposed to be learned scholars in Shari’ a. In reality, locals questioned the knowledge of the *qazis*; in any case, their “trial” procedures and methods of punishment were lacking in any legal basis, were arbitrary, discriminatory, and unfair, and clear abuse of the internationally-recognised human rights of those brought before them.

A business man from Mohmand Agency who moved his family to Peshawar recalled,

*The Taleban raised the slogan of Shari’a and banned the women from going out.... The Taleban also took on the local problems. The local jirgas usually decided the local problems, but the Taleban took them from the jirgas and said “we will decide it according to the Shari’a.” Approximately seven to eight months ago [in late 2008] they started their courts and ended the jirga system.<sup>109</sup>*

The proliferation of these parallel tribunals is a testament to the systemic inability of the Federal Crimes Regulation to provide justice and rule of law and effectively protect the

human rights of plaintiffs and defendants, including their right to a prompt trial. The ease with which the Taleban and associated groups established such tribunals can at least partly be explained by the fact that many locals saw them—and in some cases welcomed them—as an alternative to the corrupt and ineffective system of adjudication set out in the FCR. By establishing the “tribunals”, which made rapid decisions on complaints ranging from criminal allegations to land disputes, the militants initially filled a void in governance with a crude and brutal system of social control.<sup>110</sup> A man from Michni said, “They interfered in disputes that were going on for years and established a court.”<sup>111</sup> And as discussed below, the sidelining of tribal elders who traditionally composed the *jirgas* created additional room for the Taleban’s tribunals to exist and for the Taleban to exert their control.

A shopkeeper from FATA provided testimony reminiscent of how the Taleban gained their control in Afghanistan in 1996, describing how militants at first gained the sympathies of the people in Mohmand Agency by detaining local people alleged to be thieves and bringing them before such courts—just as Taleban forces did in Kandahar in 1996. The man described one case in his town in which Taleban forces detained several men as “thieves,” held a public trial, and then executed six of them: “The Taleban are very clever. They got the people’s sympathies by catching the local thieves and killing them and slaughtering them.”<sup>112</sup>

For many residents of FATA agencies who had lived under Taleban rule, the initial acceptance, even enthusiasm, for the Taleban’s quick and cruel system of “justice” evaporated after they saw insurgents attacking schools, forcing girls to attend schools veiled, beating drivers who listened to music cassettes in their cars, and threatening and fire-bombing barber shops. According to several locals interviewed by Amnesty International, Taleban norms soon felt more like a straitjacket on everyday freedoms than a security blanket from criminals.

Frustration with the FCR’s outmoded rules and inability to address the needs of the people of FATA was not the only basis of acceptance for the Taleban’s parallel “tribunals”. Dozens of residents of FATA told Amnesty International that they submitted to the Taleban’s governance (or the rule of their associates) simply because they were afraid to resist. A 37-year-old farmer from Upper Mohmand Agency who was interviewed in late 2008 said,

*Approximately 10 to 11 months ago [in late 2007 and early 2008], in the winter, the Taleban set up their court in Loya Shah.... The people obeyed and submitted to their decision because of fear, because it was dangerous for the people not to agree to the decisions they made.*

*I’ve never gone to any of these courts but some people from our area had gone to them. Some people say that whenever the Taleban are gone they will not accept the decisions forced on them by the courts.*

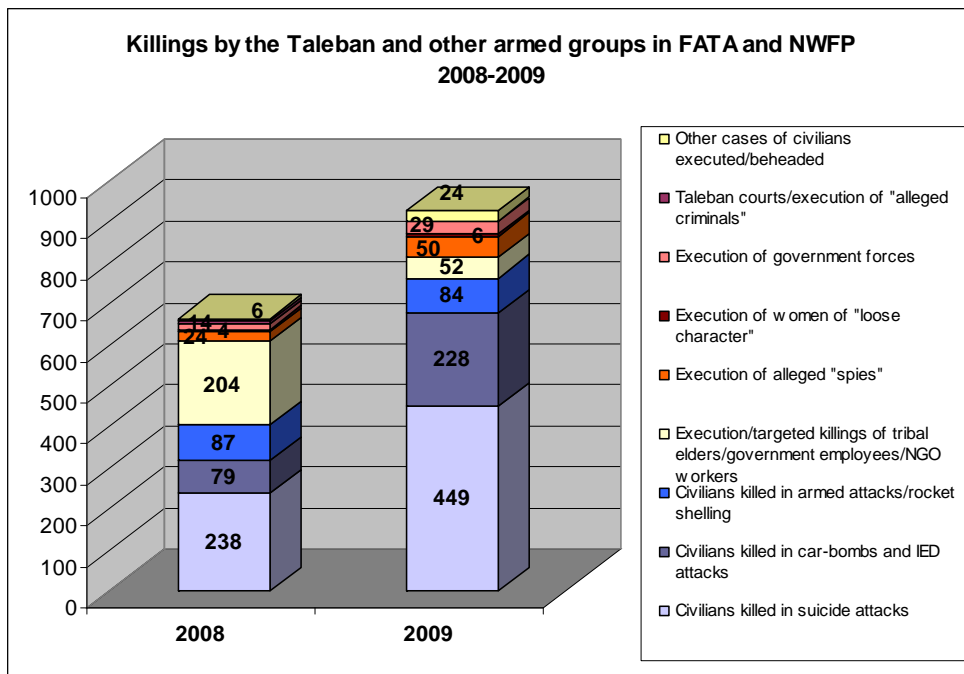
*The decision taken by the elders of the jirgas have been cancelled by the Taleban and they forced their own decisions on people.*<sup>113</sup>

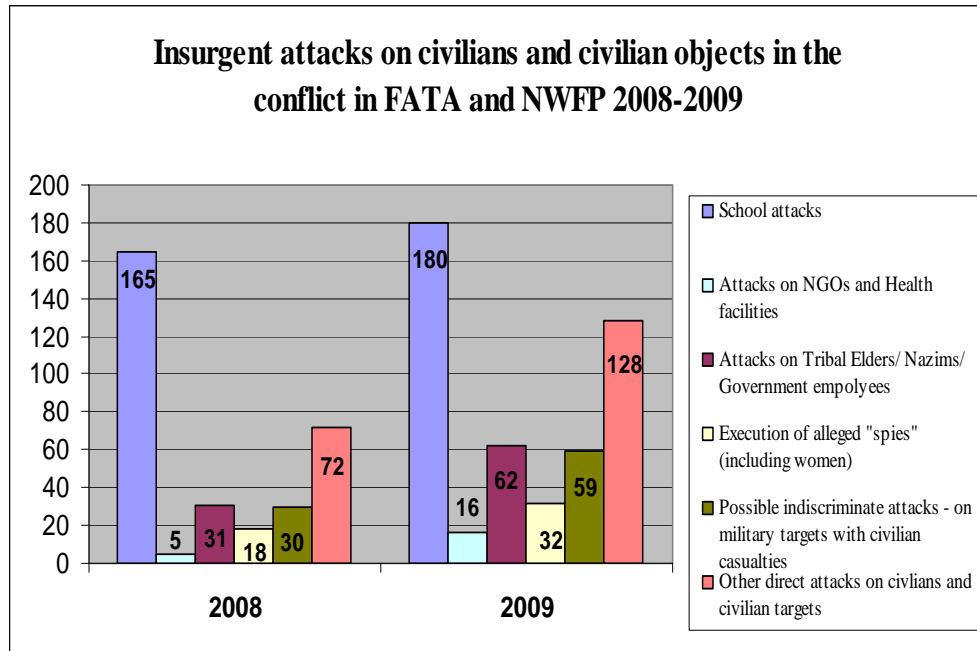
#### **DESTROYING THE OLD ORDER: ATTACKS ON GOVERNMENT AGENTS, MALIKS, AND TRIBAL ELDERS**

The Taleban have systematically used violence to weaken the existing power structure and remove challenges to their political or religious authority. In 2008 and 2009, Amnesty

International documented 114 cases of attacks by the Taleban against locally prominent persons, including government officials, tribal leaders allied with the government, and aid workers and human rights activists. These attacks resulted in at least 256 deaths of civilians belonging to the aforementioned groups. Members of the army and police were also killed in targeted unlawful attacks by the Taleban – the Taleban executed at least 43 members of the government forces. In several instances, the Pakistani Taleban targeted relatives of such figures with the justification that they were “spies” working against the Pakistani Taleban. At least 74 other civilians were killed by the Taleban in 2008 and 2009 on the accusation of “spying” and cooperating with the government.

Hundreds of members of the Awami National Party, whose secular nationalism (and popularity) directly stands in opposition to the Taleban’s ideology, were targeted; some 200 ANP members have been killed in northwest Pakistan as of August 2009.<sup>114</sup> Two ANP members of parliament have been killed by targeted bombs, while several more have been injured or barely survived attempts on their lives.<sup>115</sup> Hundreds of others have been forced to leave the area or cease their activities.<sup>116</sup>





In May 2008, armed gunmen ambushed, shot and killed four relatives of two FATA politicians in Jamrud Tehsil in Khyber.<sup>117</sup> In late 2008, the Taleban abducted and beheaded a government driver from Jolangano Kala, after accusing him of being a spy.<sup>118</sup> Two men were beheaded and another was shot dead in August 2008 in Bajaur. The men's bodies were discovered by a road near Kayrala village with notes saying, "These people were spying on Taleban."<sup>119</sup>

Members of Pakistan's security forces also have been the target of unlawful killings and torture. In May 2008, the beheaded body of a paramilitary soldier was found by locals in Khyber agency. A note was left with him signed by the TTP, warning tribal elders not to cooperate with authorities. The note suggested the soldier was killed in retaliation for a US airstrike on Damadola. In June 2008, Taleban forces captured 22 pro-government militiamen during a battle in Waziristan and summarily executed them after holding them captive for two days.<sup>120</sup>

In November 2008, a tribal elder in Bajaur, the head of a *lashkar*, was captured with some of his troops and other elders during a fight with the Taleban. In recalling his capture, he told Amnesty International.

*Taleban fighters brandished knives in front of us and said we should prepare to die, and that we would be beheaded. Later, in the evening, fighters came in and tortured us for two hours. During the mistreatment the ropes around our hands were loosened and when the fighters left me and two other men escaped; we heard gunfire as we ran away.*<sup>121</sup>

Tribal elders opposed to insurgents have been targeted for unlawful killings, either by suicide bombers or in targeted shootings. The Taleban seem to target tribal elders for two reasons: Firstly, elders potentially have power and influence to mobilize forces against the Taleban.

For instance, if or when communities come together to form *lashkars* to resist the Taleban, tribal elders are usually the ones in command. Secondly, the elimination of elders—along with the establishment of the Taleban “tribunals”—destroys or sidelines the traditional governance system and community decision making, allowing the Taleban to make and fill a leadership void.<sup>122</sup>

In October 2008, in Khyber, tribal elder Maulana Haji Juma Gul, who had supported one of the political rivals to Taleban associate Mangal Bagh (leader of the pro-Taleban group in Khyber) was murdered. Mangal Bagh claimed responsibility for the attack.<sup>123</sup> A witness to the murder told Amnesty International that Juma Gul was sitting in the front seat of a white Toyota Corolla car when armed men “pumped bullets into his body.” The witness recounted:

*It was around 9:00 am when the car filled with the Juma Gul, a driver, and two nephews was intercepted by a Surf Jeep. Around six to seven armed men came down from the car, all of them wearing shalwar kameez [traditional clothes] and most of them armed with Kalashnikovs [AK-47s]. They were wearing traditional caps while one or two men had their faces covered. One of the armed, bearded men came forward to the front seat of the car and opened fire on Juma Gul. Before opening fire on him, the gunman said, “By God, I will not let you live anymore.”<sup>124</sup>*

International humanitarian law does not prohibit parties to a conflict from attacking military objectives, which include army, paramilitary soldiers and in some circumstances local defence groups. However, those rendered *hors de combat* (i.e. unable to fight) by reason of surrender, detention, injury or any other cause, are protected against a range of violations notwithstanding that they may be members of the enemy forces. Extrajudicial executions and torture are among the explicitly prohibited acts in this regard, and constitute war crimes.<sup>125</sup>

The Pakistani government’s decision to push tribal elders to form and lead tribal *lashkars* drew them more directly into the conflict. In October 2008, a Taleban suicide bomber killed more than 80 tribal leaders and almost 100 other people attending a peace council in Orakzai Agency who were discussing a strategy to resist Taleban incursions in the area and raising a *lashkar* to fight insurgents.<sup>126</sup> On 6 November 2008, in Salarzai, Bajaur Agency, a suicide bomber walked into a meeting of tribal elders and killed approximately 22 people and injuring 30 or more. Most of the dead and injured were elders, including Malak Fazal Karim, the head of the area’s *lashkar*. A local administrator told reporters that the elders were meeting while a *lashkar* operation was underway to destroy the homes of Taleban militants.<sup>127</sup>

Another suicide attack on a tribal elder occurred on 20 November 2008, in the Badan area of Tehsil Mamond, also in Bajaur. Haji Rahmatullah, a pro-government tribal elder who headed the local *lashkar*, was the main target as he and others were performing the fourth prayer of the day in a mosque. Several months prior to the bombing, Rahmatullah’s *lashkar* began operations to oust the Taleban from over a dozen villages, reportedly arresting and killing Taleban fighters.<sup>128</sup>

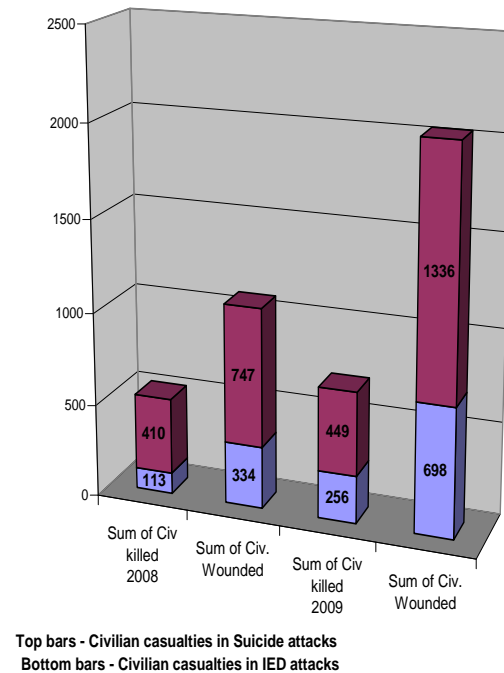
The media reported that nine men were killed by the blast, but witnesses who spoke to Amnesty International interviewed put the death count at least as high as 12. People quickly organized a rescue effort, picking up the dead and taking the injured to a hospital 17 kilometres away.<sup>129</sup> One man said the blast caused the roof of the mosque to collapse.<sup>130</sup>

A 40-year-old man who ran to the mosque after hearing the explosion remembers seeing over a dozen injured bodies:

*When we reached the mosque we saw 14 or 15 bodies; most of them were burnt; some of the organs were spread in the mosque. The people started the rescue efforts and started picking up the injured and dead bodies. Three or four vehicles were quickly arranged to take the injured to the hospital. Dozens of locals started putting the injured and the dead bodies in the vehicles. When we reached the agency’s headquarter hospital in Khar, which is 17 kilometers away, we came to know that seven men had died on the spot while five of the injured died after reaching the hospital. There were also several other people who were injured.<sup>131</sup>*

The incidents recounted above are only a few of the dozens of similar attacks that establish a systematic Taliban practice of directing attacks against civilians, launching indiscriminate or disproportionate attacks, and committing gross violations in relation to persons who were *hors de combat* and thus entitled to special protection. These acts could constitute war crimes as violations of international humanitarian law; most of these acts also constituted human rights abuses amounting to crimes under international law.

**Civilian casualties in Suicide and IED attacks in FATA and NWFP 2008-2009**





## VIOLATIONS BY THE GOVERNMENT FORCES

Taliban and allied armed groups have systematically and widely engaged in human rights abuses in FATA and neighbouring areas of northwest Pakistan. But many civilians from these areas told Amnesty International that they had no less fear of military operations, as was demonstrated in Malakand when more than two million people fled their homes at the onset of military operations in April 2009 or again in South Waziristan in October 2009, where 200,000 people fled as the army moved in. Many residents blamed the Taliban for placing military forces within civilian areas, raising the likelihood of harm to civilians during operations. But government forces are also culpable of systematic and widespread human rights violations in FATA and NWFP, both in the course of military operations and by subjecting suspected insurgents to arbitrary arrest, enforced disappearance and apparent extrajudicial execution.

Amnesty International carried out investigation and research into several military operations that took place in FATA agencies in late 2008, and later in 2009 (including the massive operation in the Swat valley) and early 2010. It found that in many cases the army had taken insufficient care to protect civilians and subjected them to indiscriminate or disproportionate force. (For definitions of these terms see section on applicable international law, below). The following sections provide details from those investigations in chronological order, in part because the conduct of the warring sides in each operation set the stage for their behaviour in subsequent campaigns, and more important, because the civilian population of FATA and NWFP became increasingly frightened of military operations as news of each devastating yet inconclusive campaign spread.

After the United States launched military operations against the Taliban in Afghanistan in October 2001, the Pakistani army took on the task of combating the growing presence of Pakistani Taliban groups. In June 2002, General Musharraf sent troops to Khyber and Kurram to help guard the border and prevent further cross border movement by insurgent forces.<sup>132</sup> By 2004, however, insurgents had gained strong footing in South and North Waziristan, and the US government openly criticised Pakistan's failed efforts. As a result, General Musharraf ordered thousands of Pakistani troops to FATA to conduct military operations to capture and kill foreign militants and members of the Taliban.<sup>133</sup>

Amnesty International and other human rights groups criticized these earlier operations as being carried out in a manner that failed to protect the rights of civilians. Amnesty International specifically documented violations committed during a two-week long operation in March 2004 which was intended to remove people believed to be associated with the Taliban and al-Qa'ida from South Waziristan.<sup>134</sup> Amnesty International's research detailed how the operation resulted in arbitrary arrest and detention, possible unlawful killings including extrajudicial executions, and the deliberate destruction of houses to punish whole families when some of their members were alleged to have harboured people associated with the Taliban or al-Qa'ida. The damage the operation caused to civilians resulted in fierce local criticism of the Pakistan government and further justified for many FATA residents the desire to keep government out of the tribal agencies and resolve problems locally. Even from a purely military perspective, the 2004 operations do not appear to have been successful, as many militants simply escaped and moved to other areas in FATA or into Afghanistan.

After the 2004 military operations, the Pakistan government vacillated between peace

negotiations and the use of military force. Continued but more limited military operations in all the FATA agencies have continued at different levels of intensity since then, coupled with a pattern of abusive practices by security agencies.

As documented by Amnesty International in reports in 2006 and 2008, Pakistan’s security agencies detained many people on suspicion of cooperating with insurgent groups or acts of ‘terrorism’ and held them in secret places of detention, by agencies not lawfully authorized to detain them, and interrogated and subjected them to ill-treatment. Hundreds were transferred into US custody and removed from Pakistan without due process in exchange for financial rewards, circumventing Pakistan’s own extradition law. The special status of FATA was exploited in that secretly detained suspects originally detained in other parts of Pakistan were transferred to this area which is effectively beyond the reach of the ordinary courts which hear habeas corpus petitions on behalf of those who have disappeared.<sup>135</sup>

When state agents (or others acting with the state’s authorization, support or acquiescence) deprive someone of liberty, and there is then a refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the “disappeared” person, which places such a person outside the protection of the law, this constitutes “enforced disappearance”, a violation of a range of human rights and humanitarian law protections, and a crime under international law. To date hundreds, if not thousands, of victims of enforced disappearances in Pakistan remain untraced. Amnesty International has corroborated media reports that Pakistani security forces have detained Taleban fighters, as well as more senior leaders, in recent sweeps in late 2009 and early 2010 and have held them in unofficial detention facilities on military bases in the region. There is no public information on the number of insurgents detained from the operations conducted since 2008 in the northwest or their current whereabouts, but the Washington Post in April 2010, citing US officials, reported that some 2,500 people mostly Pakistanis but also Uzbeks, Chechens and Arabs, were in detention in the first half of 2010.<sup>136</sup> Amnesty International and other human rights groups believe that the numbers subjected to enforced disappearances could be much higher. These “disappearances” constitute a serious violation of international human rights law—and highlight the Pakistani government’s failure to provide adequate justice mechanisms to bring to account many of the militants who face credible allegations of abusing the rights of Pakistani people.

## **GOVERNMENT VIOLATIONS IN THE OPERATIONS IN BAJAUR AND MOHMAND AGENCIES, 2008**

### **Battle of Loi Sam, Bajaur, August 2008**

On 6 August 2008, a bloody battle began between government security forces and militants in the town of Loi Sam in Bajaur Agency. This battle is notable because it signalled a new willingness by the Pakistani military to use heavy weaponry and combined air-ground operations to dislodge the Taleban. The battle was fiercer than locals had recently witnessed, and news of the massive damage it caused to civilians and their residences and livelihoods quickly spread throughout FATA. People from all over the agency, especially those in Loi Sam and the nearby villages, said this was the first time in their lives they witnessed heavy

artillery and helicopter gunships shelling them.<sup>137</sup> For thousands of people in FATA, the Battle of Loi Sam was a sign of impending and ongoing misery.

Testimonies gathered from civilians who witnessed the Bajaur operation suggest that the Pakistan military failed to adequately protect the civilian population from their shelling of the Taliban. International law is clear that the government's actions cannot be justified even if, as testimonies from locals affirm, the insurgents had scattered themselves amongst the civilian population and even tried to prevent civilians from leaving in order to seek shelter among and behind them, an act strictly prohibited by the laws of war.

The August 2008 fighting in Bajaur began when hundreds of Pakistan's security forces armed with tanks, heavy artillery, and other weapons moved into Loi Sam, a town west of the Agency's headquarter, Khar. An Assistant Political Agent, Iqbal Khattak, then made a mid-afternoon announcement to journalists explaining that the security forces had control of Loi Sam, that the forces have been deployed in the main square, and that the forces would destroy the Tehrik-e-Taliban Pakistan militants. A 48-year-old teacher who approached his home town in the early afternoon remembers seeing vehicles filled with soldiers on both sides of the road. “One of the soldiers told me to leave at once,” he told Amnesty International.<sup>138</sup>

Political administrators and local residents from Loi Sam said that after this announcement, hundreds of armed militants swiftly encircled the security forces. The government responded by indiscriminately shelling the area from different areas of the agency, including Khar, employing artillery, mortar guns, and helicopter gunships. People who fled the fighting said the government was “blindly bombing” their town.<sup>139</sup> The 48-year-old teacher remembers seeing four helicopters overhead and said that the majority of the bombs fell in residential areas on houses, killing and injuring those present. In hopes of avoiding harm, he said that a lot of people spent that night praying, as they were unable to sleep. “We were all waiting for the morning to come so that we could leave the area.”<sup>140</sup>

Fighting continued through the night and increased in intensity the next morning. The Taliban launched more attacks against the security forces and more fighters arrived in Loi Sam. The security forces also sent fresh troops, side-stepping remote controlled bombs that the Taliban had planted along the road connecting Khar and Loi Sam. A shopkeeper living in Sewai village said that during the evening of 7 August government shells fell on houses, killing three children and two women.<sup>141</sup>

By 9 August, the Pakistan forces left the town; and on the morning of 10 August the Taliban were present again in Loi Sam. According to witnesses, government security forces once again made an attack on Loi Sam using helicopter gunships, F-16 jet plans, and heavy artillery. A witness to the attack said that the security forces used “every weapon and tactic they had against the Taliban in Loi Sam.” Multiple residents told Amnesty International that people from different areas in the agency started coming out of their houses and trying to move to safer locations.

On 30 August, a Ministry of Interior official announced at a press conference that the government would enter into a ceasefire in respect of Ramadan that would last until the fifth day of Eid (approximately from 1 September to 5 October 2008).<sup>142</sup> Upon hearing this, many people returned to their homes. But the ceasefire did not hold. In addition to other incidents, in the first half of September the government shelled the Inayat Kalay market town—filled with music, mobile phone, and barber shops—after militants entered the area.<sup>143</sup>

A 25-year-old man who had just returned to the area after several weeks said that a large group of militants entered the Inayat Kalay center at around 4pm. He said that the militants took up positions in nearby houses and the market. Then, he said, government security forces found out about the militant's presence and “learned they were planning to attack a nearby security force camp. [ . . . ] To stop the militants from moving along further the government launched heavy artillery and mortars from Khar.”<sup>144</sup> Witnesses to the attack said that several shells fired by the forces fell in residential areas.

According to this man, two shells fell on his house, killing his father, mother, three daughters, two sons, two nephews as well as several neighbours. His two nieces, one nephew, and a sister were injured. Eight people in total were killed on the spot. Four died on their way to the hospital.<sup>145</sup>

The man was at a nearby shop when he heard the explosion and ran home:

*I lost my sense when I reached the door of my house and saw and heard the crying of my close neighbours and relatives—as if hell fell on me. When I saw people putting the dead bodies of my children, parents, and other relatives in bed I couldn't bear it anymore and fell on the ground. . . . I have grievances against the government because, firstly, the government had announced that there would be no firing during Ramadan and this was the reason we came back to our houses. Secondly, if the Government had operated before like it is doing now the Taleban would not have gotten so strong and there would not have been such an increase in their numbers and they could not move around in the markets in such a way.*<sup>146</sup>

By late October 2008, government officials told journalists that, in addition to some 1400 militant deaths and over 70 government deaths, 95 civilians had been killed in different areas of the agency.<sup>147</sup> But the Human Rights Commission of Pakistan estimated the number of dead civilians was higher; and the *New York Times* spoke to two government officers who said the insurgent death tally was exaggerated, with one official saying the toll may have been closer to 300.<sup>148</sup> Local people and medical staff in the area claim that around 290 civilians were killed, the majority of whom were children and elderly, and more than 300 people were injured, most (but not all) of them as a result of shelling and bombardment that locals believed came from the Pakistani military.<sup>149</sup>

The unprecedented ferocity of the fighting and the disregard for the safety of civilians demonstrated by both the Taleban and the Pakistani military prompted a massive exodus of people. An indication of the population's desperation is that some 20,000 Pakistanis actually fled across the border into Afghanistan's volatile Kunar province.<sup>150</sup> The International Committee of the Red Cross put the total number of displaced at 200,000 as of 19 September 2008.<sup>151</sup> On 14 October 2008, a spokesman for UNHCR put the figure of total displacement at around 190,000 people, which included some 168,000 Pakistanis who found their way into safer areas in NWFP.<sup>152</sup> Other estimates were higher. Government figures estimated that 275,000 fled across the district border at Toor Ghundai in the first 12 days of fighting alone. Local media and people from the area told journalists that as many as 300,000 to 400,000 people may have fled.<sup>153</sup> Given the tough terrain, lack of access, and ongoing movement of people, an accurate number of the dead, injured, and displaced may never be calculated. Some residents who fled told Amnesty International that movement by car was impossible and that most escaping civilians walked up to 60 kilometres before arriving at locations with shelter and food. Most of these people remain displaced at the time

of publication of this report; they have since been joined by tens of thousands of other FATA residents who have fled conditions similar to that witnessed initially at Loi Sam.

UNHCR collected descriptions and testimonies about the hardships people endured during the fighting and en route from Bajaur. The UN refugee agency described how fleeing people walked for six hours through the mountains before catching a bus that brought them to Charsadda district in NWFP, where they were hosted by generous strangers there and then moved on to camps in the provincial capital of Peshawar.<sup>154</sup> One man told UNHCR:

*Early this year, militants in our village started kidnapping people, extorting money and forcing civilians to join them. . . . We formed a committee to oppose them, but they killed everyone who joined. We're farmers—we never had arms, or we wouldn't have allowed them in. . . . I'm very happy the army is rooting out the militants. . . . but the aerial bombing targeted our neighbour's house. Our house was hit too. We ran out and couldn't take anything with us. We lost our wheat and cattle worth 200,000 rupees (approximately US\$2,500).*<sup>155</sup>

A college student in Bajaur encapsulated the sense of locals caught between the Taleban and the military:

*There's no doubt that the militants are the enemies of the country. The militants betrayed our people in the name of Islam and they destroyed government projects which were for the benefit of the local people: They burnt schools, destroyed hospitals, and by doing this they completely destroyed the places which were for the benefit of the people. . . .*

*The government was watching everything that the militants were doing, including destroying security forces pickets, roads, and bridges. But the government didn't do anything.*

*Then Bajaur Agency became completely under the control of the Taleban. Even then the government didn't do anything.*

*It was only after they killed security forces, destroyed their vehicles, and took hostages that the government took action. But by this time the Taleban had control.*<sup>156</sup>

### **Bombing of the Kala Pani Water Spring, Bajaur Agency, November 2008**

In November 2008, Pakistan forces expanded their offensive in Bajaur by attacking Tehsil Mamond in Bajaur Agency. The operation focused on Sparay, located some 40 kilometers northwest of Khar, where the government said the Taleban had a training centre led by senior Taleban leaders. The operations seem to have resulted in significant civilian casualties, as described to Amnesty International by victims and eyewitnesses.

Eyewitnesses told Amnesty International that at 7am on 14 November 2008 the government began launching artillery in the area of Kala Pani; by 2pm helicopters were flying over the area dropping bombs, followed by further bombings by airplanes.<sup>157</sup> On 15 November the bombings continued in the areas of Kass and Kala Pani. Locals provided disturbing details about civilian casualties. According to a man from Kala Pani, many people were working in the fields while others were sitting near the village mosque when, “all of a sudden just half a kilometre away, near the dry canal, bombs were dropped at an area near a water spring.”<sup>158</sup>

The man said locals ran towards the spring and saw several women lying on the ground covered with blood. Another witness, a 50-year-old man, told Amnesty International:

*We saw that the aircraft had left our area.... Then we heard bomb blasts in the area of Kala Pani, which is just 2 kilometers away. Later we came to know that the jets had dropped three bombs on a water spring in Kala Pani. Six women were killed while four were injured.*<sup>159</sup>

Due to the unavailability of vehicles, the first witness said it was difficult to bring the injured women to a hospital. “Only after a delay of one hour were the injured taken to the Khar Hospital on a tractor trolley,” the witness said.<sup>160</sup> Another local in the area said that, “the jet planes, instead of bombing the Taleban hideouts, bombarded the water springs.” He said that there were Taleban hideouts in the general area of the operation, but these were hundreds of metres from the dry canal.<sup>161</sup>

In Kass, locals spoke of the government dropping two bombs on a mosque killing and injuring civilians inside. A man recalled how government shelling drove the Taleban from their secret hideouts and, on motorcycles and four-wheel vehicles, they came to Kala Pani. This, he said, was when military airplanes appeared in the sky. According to Kass residents, bombs landed on a mosque in Kass, immediately killing two out of the ten people present near the mosque and injuring three others who were taken for treatment 30 kilometers away to Khar.

Two of the injured later died.<sup>162</sup> Another man, recalling the bombing of the Kass mosque said:

*The village people offered their third prayer, after which some older people stayed back in the mosque while the rest went to their homes. The jet planes started bombing and all the villagers were in great fear and panic. The villagers ran towards the mosque to collect the dead bodies and care for the injured.*<sup>163</sup>

After the bombings, locals requested the Taleban who were in the village to leave the area. One man told Amnesty International that the locals told the Taleban:

Because of you and the government our women died, and if you did not have your places here this tragedy would not had happened, so it would be good if you leave the area and go away.

But the Taleban refused and said that “This is not our fault. If the jets are bombing the women and the local people instead of us, what can we do?”<sup>164</sup>

#### **Bombing of Michni Area, Mohmand Agency, November 2008**

*We warn the Mohmand tribes to sever ties with Tehrik-e-Taleban’s Abdul Wali group as the government is planning action against the group.... Get all elements of Abdul Wali group out of your homes; otherwise they will be targeted by helicopters and jet bombers.*

(Government warning pamphlets distributed in the Michni area.)<sup>165</sup>

On 10 November 2008, armed men hijacked a 13-vehicle convoy near Jamrud Fort in Khyber Agency that was carrying food and other supplies heading for international military forces in Afghanistan. The Pakistani military pursued the convoy with helicopter gunships but did not attempt to retrieve the hijacked trucks, although they did shoot and injure at least one

bystander on a motorcycle who was returning from a funeral.<sup>166</sup> Some of the food items from the convoy, such as wheat, were brought to the Michni area, which borders Mohmand Agency and NWFP, the next day, 11 November, and sold at cheap rates, apparently drawing the government’s attention.<sup>167</sup>

Then, on 12 November, a large contingent of security forces began military operations in the Michni area, aimed at insurgent forces responsible for the hijacking. The operation killed civilians, destroyed houses, and caused tens of thousands of people to flee.

One man who fled the government operation told Amnesty International that mortar fire destroyed the outer wall of a house that belonged to one of his uncles. He also said that his father’s second cousin, who was a driver, and two other relatives died due to government artillery fire on the evening of 12 November.<sup>168</sup>

A 16-year-old boy who was sitting outside his house in a shop at 8:00 am in Upper Mohmand Agency, on what he believed was 16 November, said heavy artillery shells were fired from a government check post on a nearby mountain. Sitting in his hospital bed with a steel rod in his leg he described what happened next:

*When I looked to the side I saw that a shell fell very near to our house, and hit the ground with force, and blasted with a loud sound. With the sound I felt something hit my leg. When I looked down I saw there was a lot of blood oozing out of my leg. I started screaming for somebody to come and pick me up. When I saw blood I was so frightened that I cannot tell you. I was unconscious.*

*After I regained consciousness my neighbor took me to the hospital. I was the only one injured. But several shells were fired. Most of the shells fell on the open ground while some fell on houses.<sup>169</sup>*

Another man who fled the violence recalled seeing women calling their male relatives in Peshawar over the telephone telling them to come as soon as possible and get them out of the area:

*The people mostly picked up cash and gold and left everything else in their homes. Many people left their cattle inside their homes. They left the area in haste to save their lives. I saw men dragging children and women behind them. Some of the women were unable to walk fast.... ‘Come fast, or you will be killed,’ I heard them saying. I saw women and children weeping each time there was a blast.*

He explained how a curfew set by the security forces closed the land route causing people to board boats through secret routes to get to safety in Peshawar:

*Some women and children were afraid of crossing the river by boats. Their male relatives were hastily pushing them in the boats and then forcing them to walk through in the river where the water was shallow and the boat could not get through. While waiting anxiously at our house for a taxi that could drop us off at the river, we were hearing the sounds of rockets and artillery firing at Taleban positions in Shna Ghondai and Badi Koroona. My younger brothers were terrified and my mother and sisters were trying to comfort them. We crossed one part of the river in Waziro Qala by foot. We moved through other part near Baila*

*Momandan in a boat. This is how we managed to reach Peshawar.*

Testimony describing the government's operation, as well as the warning pamphlets distributed by the government, indicate that the military failed to respect a range of the obligations under international humanitarian law that were described earlier -- to take precautions in attack in order to avoid and minimize damage to the civilian population, individual civilians, and civilian objects, to distinguish civilians and civilian objects from military objectives, and to ensure that any attacks were proportionate -- by apparently operating on the basis that virtually everything in the area could be targeted due to the general presence of militants in the area. It is unclear exactly how many civilians were killed and injured or how many houses and other properties were destroyed during the operation, as the military as well as the insurgents blocked the media and human rights groups from accessing the area. But residents later told Amnesty International that they estimated that the vast majority—some saying 95 percent—of civilian damage came from the government side's actions.

Equally troubling were testimonies by locals who, while admitting that in the initial days of the operation there was a Taleban presence, said that by the time the government's operation reached its full force, when they saw helicopter gunships in the sky, many of the Taleban had escaped to the mountains. As was described earlier, attackers are required to verify that targets actually are military objectives at the time the attack is carried out and to halt attacks if it becomes apparent they are wrongly-directed or disproportionate. Based on accounts by local residents government forces did not undertake this precaution.

## **ERUPTION OUT OF FATA: HUMAN RIGHTS ABUSES IN MALAKAND, 2009**

*“We left everything behind. We have nothing now. ...The Taleban were very cruel to us, and then the government began bombing so we had to flee with whatever we could gather. So who can we turn to?”*

--a female school teacher from Mingora<sup>170</sup>

### **POLITICAL BACKGROUND TO THE MALAKAND CRISIS**

The Swat valley is normally home to around 1.5 million people, bringing the total population of Malakand district to some 2.5 million. Malakand, and Swat in particular, once boasted a strong civil society, and a higher level of education and health care than adjacent areas in FATA. The picturesque Swat valley long served as a major tourist destination for all Pakistanis tourist service industry. The spread of Talebanisation and the military operations changed all that.

By late 2008, with all of FATA effectively under their control, the Pakistani Taleban began asserting themselves across the boundaries of the Federally Administered Tribal Area, in the so-called settled areas of the Northwest Frontier Province, particularly in Swat and parts of Malakand division. The Pakistani Taleban's move into Swat shocked the Pakistani public and international observers—no longer were the Taleban confined to the “wildness” of FATA, but were now confidently parading in a major town, only 100 kilometres from Islamabad. Caught off-guard, the NWFP provincial government and the central government effectively



surrendered control of Malakand division in early 2009, but domestic and international pressure prompted them into launching their largest military operation to date in late April 2009. The local population, which was far less accustomed to violence and combat than their compatriots in FATA, were fully aware of the misery inflicted by the Taliban and by the Pakistani military, as documented earlier in this report. As a result, more than two million frightened civilians fled from their homes over the course of a fortnight.

The swift collapse of central government authority in Malakand can be understood as yet another result of the same kind of ineffective and unrepresentative governance structure established under the FCR. Although Malakand division is not part of FATA, it is regulated by regulations similar to the FCR. Swat and other districts of the Malakand Division form part of the Provincially Administered Tribal Areas (PATA) of NWFP. The PATA Regulation, introduced by Pakistan’s central government in 1975, resembled the FCR: Judicial authority, executive power and revenue control was combined in PATA in the person of the Deputy Commissioner (DC). A *jirga*, consisting of local notables and arbitrarily selected by the DC was entrusted with settling civil and other disputes under the supervision of a *tehsildar* (the revenue officer). Appeals against the *jirga*’s decision were directed to the DC and the NWFP home secretary.

While initially the Peshawar High Court in February 1990 ruled in favour of the PATA Regulation, the Supreme Court in an appeal by the federal government ruled in 1994 that the PATA Regulation was unconstitutional. This ruling should have meant that the regular judicial system would operate in the PATA areas, but in practice it was not repealed and remained in force.

Throughout the 1990s the Swat valley was the scene of a militant movement, the TNSM, led by Sufi Mohammad, a charismatic preacher with Deobandi and Wahhabi connections. In 1994, TNSM’s agitations led to the adoption of the in Nifaz-i-Nizam-i-Shari’a Regulation of by the government of Benazir Bhutto. It made it compulsory for the civil courts to ask for the advice of qazis though such advice was not binding on the civil courts. The TNSM rebellion was subsequently put down by the use of force. When further unrest ensued in 1999, the federal government under Nawaz Sharif passed a Shari’a Nizam-i-Adl Regulation of 1999 under which TNSM-approved clerics were to be consulted by the courts to ensure that their rulings were in accordance with Islamic provisions as interpreted by TNSM.

In 2001, Sufi Mohammad was arrested by the Pakistani government because of his role in recruiting and sending thousands of Pakistanis—many of them reportedly children—to support the Afghan Taliban against the US-led invasion. In his absence, his son-in-law, Maulana Fazlullah, assumed control over the TNSM and continued the group’s agitations (despite signs of political and ideological discord between Sufi Mohammad and Fazlullah). Unrest persisted as the TNSM asserted that the government was not fully complying with its commitments. A further peace agreement in May 2007 with Maulana Fazlullah in Malakand broke down within two months followed by more bloodshed; in July 2007 the TNSM took control of large areas of Swat, until the army wrested it from their control in November.

Following widespread violence in Malakand after the Lal Masjid incident, the NWFP government in 2008 negotiated the release from detention of Sufi Mohammad after he renounced violence and agreed to work towards peace in the area. In April 2008 the NWFP government signed an agreement with his group in the hope that he would persuade militants, commanded by Maulana Fazaullah, to hold the peace. By then, there were signs that TNSM had reached an agreement, if not an outright operational alliance, with the newly

formed Pakistani Taleban alliance.

The violence in Malakand continued into 2009; in January 2009, the TNSM began setting up Taleban-style tribunals in Malakand and to openly campaign against women's education. A further military operation was begun on 26 January 2009. On 16 February, the federal government said it would permit the TNSM's interpretation of Islamic law to be introduced in Malakand. In return, Fazlullah's followers agreed to observe a ceasefire negotiated by Sufi Muhammad. He then negotiated the peace deal with Fazlullah and his followers.

The 16 February 2009 agreement replaced the regular state judiciary with TNSM-approved religious courts. The agreement gave the TNSM a free hand to enforce its edicts; the TNSM ordered NGOs and many civil society actors to leave the area, and established even greater control through February and March 2009, as the NWFP government acquiesced to the Taleban edicts against 'obscenity' and the closure of music shops.

The TNSM on 24 February 2009 agreed to an indefinite ceasefire. The NWFP government sent President Zardari a draft regulation imposing Islamic courts. The Nizam-e-Adl Regulation signed by President Zardari on 13 April 2009 vested all judicial authority in qazis, TNSM-approved judges, and provided for the establishment of TNSM-approved courts in Malakand Division.<sup>171</sup> In a nod to the clear problems of the PATA governance structure, the new agreement provided for an increase in the number of courts, it also provided a timeframe to dispose of criminal and civil cases within four months and six months, respectively.<sup>172</sup> The government did manage to insist that the Pakistan Penal Code and the Criminal Procedure Code would remain enforced in Malakand, unless declared unIslamic by the Council of Islamic Ideology, a constitutional body that advises the government, parliament and provincial assemblies whether or not Pakistani law conforms to Islamic rulings.<sup>173</sup> Appeals against sentences were directed to the Federal Shariat Court, not the provincial high court.<sup>174</sup>

The 16 February peace deal and the 13 April Nizam-e-Adl Regulation (and government inaction in the face of TNSM and Taleban abuses) thus effectively handed over governance of Swat to the insurgents while turning a blind eye to the abuses they had inflicted and were continuing to inflict on the population. Emboldened by their successes, by April 2009, the TNSM/Taleban alliance signalled that they intended to challenge the legitimacy of the government not just in FATA and NWFP, but the entire country. On April 19, 2009, Sufi Muhammad told a large public gathering in Mingora that Pakistan's constitutional system was "a system of infidels".<sup>175</sup>

Later the same month, the ceasefire faltered when Sufi Muhammad, claiming that the government was deliberately stalling the implementation of Islamic courts in Malakand, withdrew his support for the peace deal. At the same time, local Taleban fighters began to expand their activities into neighbouring Buner district on the pretext that the government was not implementing Islamic law quickly enough.

This proved too much for the NWFP government as well as President Zardari, who faced significant domestic opposition to what was perceived as a policy of appeasement. Residents of the NWFP as well as Pakistani and international observers widely blamed the Pakistani central government and military as well as the provincial ANP government for the peace deal. As explained by the Human Rights Commission of Pakistan: "Almost all the [internally displaced people] and interlocutors interviewed by HRCP complained of having been let down by the government. They strongly felt that the government machinery lacked the will rather

than capacity to dismantle the militant force in the Malakand Division.”<sup>176</sup> Evidence of systematic human rights abuses by the TNSM and the Taleban began emerging from Swat and other parts of Malakand, prompting international condemnation—including from Amnesty International—of the Pakistani government, the military, and the provincial government of NWFP.

Many displaced residents of Swat told Amnesty International that they felt abandoned by the Pakistani government and were astounded by the government’s quick submission to the insurgents. The words of one teacher who fled Swat with his family in March 2009 encapsulated this common sentiment:

*The government just gave away our lives to the Taleban. What’s the point of having this huge army if it can’t even protect us against a group of brutal fanatics? They took over my school and started to teach children about how to fight in Afghanistan. They kicked out the girls from school, told the men to grow their beards, threatened anybody they didn’t like. Our government and our military never tried to protect us from this.*<sup>177</sup>

Afzal Khan Lala, a former ANP member of parliament from Swat who broke with the party over the peace deal (and former minister of tribal affairs under Benazir Bhutto), heavily criticized the federal government as well as the ANP government of NWFP for what he termed as “capitulating” to the Taleban. Speaking before the launch of the military counter-attack in Swat, he said:

*Sufi Mohammad [founder of the TNSM] says democracy is against religion, that political activists are apostates, but the ANP went into this agreement. It is because the power is entirely on the side of the Taleban. In Swat, without the [federal] military, there is no police force, no Frontier Corps, that could stand up to the Taleban. The State has to send in the army to enforce its writ. The first and foremost authority of government is to protect the life and property of civilians—what other arm of government [other than the military] can fill this vacuum? Which force is here to protect the rights of citizens?*<sup>178</sup>

A senior NWFP official from the ANP who was directly involved in negotiating the Nizam-e Adl deal explained it thus:

*We negotiated this deal out of a position of complete weakness. There is no political will at the central government. The central government has not provided us with any real support, not even the funds they have promised. We were completely outgunned. We had to divert funds earmarked for the Lady Reading Hospital [in Peshawar] to pay the police their basic salary. We had absolutely no ability to provide security for our people against the Taleban, so how could we continue to fight?*<sup>179</sup>

#### **THE HUMAN RIGHTS DIMENSION OF THE SWAT CRISIS**

By early 2009, 250,000 people had fled the Swat valley as a result of fighting between the TSNM and allied Taleban forces on one hand and the military, involving at times up to 15,000 troops backed by air support, on the other. In late April 2009, the army began another major assault against the Taleban in Malakand division, setting off what continues to remain a major humanitarian and human rights crisis. A few days before the army launched its effort to retake Swat, a senior ANP official expressed his disappointment at the military’s failure to protect the people of Swat, but pointed out that the local population also greatly

feared a military operation because of the military's poor record in recent operations in FATA:

*We asked the central government not to abandon the field. But the military would not commit to supporting us. Plus, the people of Swat were upset about government military action because it seems pointless. People would accept casualties if the army were effective. But look at Bajaur, where there were high civilian casualties, but no Talebs were hurt, and the Talebs are back in control.”<sup>180</sup>*

The military operations in 2009 and the resulting displacement of well over 2 million people launched NWFP into international headlines. The military operation was declared a success by August 2009, with the military announcing that it had routed the TNSM and Taleban. Certainly, as this report was going to press in May 2010, neither the Taleban (nor the TNSM) could assert themselves publicly as they had in early 2009. Nevertheless, Amnesty International continues to receive reports of sporadic fighting between the military and Taleban insurgents, as well as accounts of unlawful killings, abductions, and arbitrary detentions by both sides. Though most of the vast multitude of forcibly displaced people have returned to Malakand, many complain about ongoing insecurity. A businessman in Mingora told Amnesty International in February 2010: “The shadow of violence still hangs over us. We have learned our lesson. Now our valuables are packed up and we are ready to leave more quickly now.”

In the period immediately after the February 2009 peace deal in Malakand, residents of Swat, local officials, journalists, and civil society actors started to realize the full realities and consequences of what was occurring. First, they recognized that the Talebanization of their area was unprecedented both ideologically and culturally, copied from FATA and Waziristan in particular and distinct from older religious and tribal-based movements. Secondly, there was disappointment and cynicism that the Pakistani government (particularly, the military) was failing to protect the local population from the Taleban. Thirdly, there was fear that military operations would wreak havoc on civilian life while not protecting the civilians from Taleban abuses.

Following the same pattern established in FATA (as set out above), the Malakand insurgent groups consolidated control by setting up a parallel justice system with over 70 “tribunals” to administer “speedy and easy justice” in the form of publicly administered lashing, burning down of businesses deemed offensive to Islam, and the killing of people opposed to them or accused of “spying” against the Taleban. The main square of Mingora, the Swat valley's largest city, was locally dubbed Khooni Chowk, or “bloody square”, after the Pakistani Taleban publicly displayed more than two dozen dead bodies there in late 2008.

Women's rights, as in other areas under Taleban control, particularly came under attack. J. Bibi, a 60-year-old woman from the village of Pir Baba, described conditions in the village under the Taleban:

*There were a lot of Taleban present in our village and they used to kill and punish the people and didn't allow the girls to go to school. They even burned some houses in our village and used to ask for money and took our cattle, goats, chickens and hens by force and no one could say anything to them. We were all afraid and mostly we stayed in our houses. The children were especially frightened and it affected their studies a lot. The Taleban also burned some schools.<sup>181</sup>*

The Taleban systematically intimidated the local population by threatening to kill or

otherwise punish people opposed to their edicts. They used nightly FM radio broadcasts to announce “wanted” lists of local politicians and government workers to appear before their “courts” or “face the consequences,” and threatened to kill all lawyers and judges if they failed to stop working with the state judicial system.<sup>182</sup>

By April 2009, at least half of Swat’s 800 police officials, apparently too afraid to remain on duty, either took leave of absence or deserted their ranks.<sup>183</sup> Facing Taleban threats, some police officials and other government officials took out advertisements in local newspapers to publicly announce their retirement from their posts.

The Taleban also ordered air workers and activists to leave Swat.<sup>184</sup> Mohammed Ishaq, a veteran lawyer and civil society activist in Swat, was forced to flee the area after the Taleban declared him a target for execution (“wajib-ul ghatl”, or required to be murdered) on a radio broadcast in December 2008. As he explained to Amnesty International: *“To hear a threat like that is terrible. I have a family, my wife is a teacher and she was threatened, my girls’ school was shut down. Who could protect us? The police were fleeing themselves! So we had to leave our own homes.”*<sup>185</sup>

#### **THE TALEBAN EXPANSION INTO BUNER, APRIL 2009**

On 9 April, some 40 to 50 Taleban moved into Buner apparently emboldened by the “peace deal” in Swat. Buner is adjacent to Swat and also a part of Malakand district, but had not previously been heavily infiltrated by the Taleban. According to eyewitnesses, their advance was met by a *lashkar* ordered by Buner elders assisted by local police. Two policemen and three *lashkar* members died in the clash. A subsequent peace jirga called by Buner tribesmen temporarily reached a truce with the intruding Taleban in Buner.

The truce proved short-lived. Residents of Buner told Amnesty International researchers that on 21 April 2009, 400 to 500 heavily-armed Taleban moved into the district and were moving about freely. Contrary to the provisions of the Swat “peace deal”, the Taleban established a checkpoint on the main road entering Buner, at Babaji Khandao, where they checked every vehicle and began harassing anyone found with identification belonging to a nongovernmental organization or travelling in an NGO vehicle.

Local Frontier Constabulary and police officers were either unwilling or unable to curb the abuses perpetrated before their eyes. Eyewitnesses told Amnesty International that the poorly-equipped, under-paid, and untrained local police had remained in their barracks and did not challenge the Taleban’s takeover. On 22 April, two platoons of Frontier Corps troops moved in to Buner to provide reinforcement to the one existing platoon and resumed patrolling, but they did not attempt to stop the Taleban’s movement and activities, according to Buner residents who had just left the area. At the time, several people, including journalists and NGO workers, told Amnesty International that the local population was terrified both by the Taleban’s activities as well as the fear that the Pakistani army would launch retaliatory operations in Buner.

Without a strong government reaction to their advance, the Taleban began abusing the local people with impunity. The Taleban commander in Buner immediately demanded that everyone follow the Taleban’s harsh and restrictive interpretation of Islamic law. The Taleban banned music, ordered all girls over the age of seven to wear a burqa, and instructed all men to grow beards. Local NGO staff told Amnesty International that the Taleban also targeted

NGOs and warned against any action that could be construed as “cooperating with the United States of America”—understood by aid workers to refer to programs on literacy, health care for women, and work training (such as technological or computer training). The Taliban ransacked the offices of several NGOs, including Pakistani groups such as Paiman (involved in health education and hygiene to primary schools) and Rahbar (working on poverty alleviation), as well as projects associated with international groups such as ActionAid and the International Medical Corps. They also forcibly took some two dozen vehicles belonging to NGOs and government officials, including the vehicles of local health facilities, according to local aid workers who spoke with Amnesty International at the time.

The Taliban’s incursion into Buner ended the Swat ‘peace deal’ with the government. On 26 April 2009, the Pakistani military moved in force to dislodge the Taliban from Malakand. In the words of Prime Minister Yousef Raza Gilani, the military sought “to eliminate the Taliban once and for all.”<sup>186</sup>

Amnesty International’s interviews with locals who fled the fighting, as well as visits to the affected area some weeks after the fighting, indicated that the Pakistani Taliban repeated the pattern of seeking shelter in, and firing from, inhabited residential areas. For its part, though the fighting was fierce, the Pakistani military seems to have avoided indiscriminate shelling of Mingora, the main town in the Swat valley, though other villages did report indiscriminate shelling. As in operations against the Taliban in FATA, the military assault began with heavy bombardment: aerial bombardment, helicopter gunships, and long-distance artillery. Amnesty International also documented other violations of the laws of war by the military, as documented below.

The fighting began in Lower Dir, just west of the Swat valley in Malakand. Intense fighting soon spread to all six sub-districts, or tehsils, of Buner: Chagharzi, Chamla, Daggar, Gadezi, Gagra, and Totalai. As the two sides engaged in combat, the civilian population desperately tried to flee. As in previous military operations, the suddenness and ferocity of the assault did not give civilians time to leave in a safe and orderly manner. On 26 April 2009, eyewitnesses from Maidan tehsil in Lower Dir told Amnesty International that bodies were lying in the streets and fields because people were too afraid to move and bury them. Residents of several villages in Maidan, including Islam Dara, Kankot, Maidan Khas and Lal Qila, told Amnesty International they had experienced barrages from government artillery and helicopter gunships after Taliban forces fired on security forces from residential areas.

Eyewitnesses from Maidan reported at least ten houses completely destroyed while another 40 to 50 suffered partial damage within minutes of the launch of the military operations.

While tens of thousands immediately fled the area, tens of thousands of others stayed, or could not leave. Living conditions of the local people deteriorated rapidly and no provisions were made to allow people to leave the battle zone safely. Civilians from various areas of Malakand district told Amnesty International that during the first week of the military operation, electricity in the area was cut off because of the fighting, and generators stopped working because of the impossibility of providing diesel fuel, creating major problems for hospitals and food storage. Nearly all ambulance service was suspended due to a combination of insecurity, lack of fuel, and roadblocks erected by the two sides. Meanwhile, residents told Amnesty International that Taliban insurgents used health facilities, schools, and residential areas to hide and launch attacks from despite entreaties from locals to avoid such crucial civilian buildings and take the fighting elsewhere.

In turn, the Pakistani military imposed an indefinite curfew in Malakand that effectively prevented people from fleeing the fighting. The curfew was announced from local mosques and through loudspeakers mounted on pick-up trucks. As fighting raged around Mingora, authorities relaxed the curfew briefly to allow thousands of people to flee, often on foot. Several people told Amnesty International that they had to leave behind family members who could not physically flee or who lived outside Mingora, and thus could not benefit from the lifting of the curfew.<sup>187</sup>

Similar conditions prevailed in other areas of Malakand. Fleeing civilians told Amnesty International on 30 April that security forces had warned civilians to evacuate their villages during the operations. Security forces announced a curfew in all the main towns, significantly hampering the movement of civilians, and forcing many into a heart-wrenching calculus: either abandon those who could not travel quickly during the short periods when curfew was lifted, or stay with them and try to survive the fighting.

J. Bibi, the 60-year-old woman who earlier recounted hardships under the Taleban in her village in Swat, described her escape: *There was a lot of shelling and bombing on my village. One room of my house was completely destroyed in which one of my daughters got killed, so we left our village.*<sup>188</sup>

Bibi Naikzada, a 54-year-old woman from Amankot, Swat, said:

*There was heavy fighting going on in Amankot area and a lot of helicopters were shelling and firing on the area and the Taleban had killed a man near our house and because of all this we were really very frightened. The kids were crying all the time and would shiver every time we heard a bomb blast. Therefore we decided to leave our village. When we left our home we had Rs.5000 cash [US\$60] and nothing else.*<sup>189</sup>

As the Pakistani army, backed by Frontier Corps units, launched operations in and around Swat using jet fighters and helicopter gunships, first tens of thousands, then hundreds of thousands, and eventually more than two million people fled the area.

This population joined the half a million people already displaced by the conflict to form one of the largest and fastest displacement crises of modern times. By June 2009, the Pakistani government announced it had effectively pushed back the Taleban and TNSM and began encouraging the displaced residents of Swat to return to their homes, and the vast majority did so—in some cases in circumstances that were manifestly unsafe and untenable.

The conditions facing these internally displaced people will be addressed below in the Section on the Crisis of Displacement.

#### **POSSIBLE EXTRAJUDICIAL EXECUTIONS AND DEATHS IN ARMY CUSTODY IN MALAKAND**

Shortly after internally displaced persons started returning to Malakand in mid-July in 2009 after the army regained control of most of this area, some 251 bodies of suspected militants were reportedly found in Swat,<sup>190</sup> some hanging from poles with written notes attached to their bodies warning anyone supporting the Taleban of the same fate, some with torture marks and some with limbs tied together and bullet wounds in neck or head.<sup>191</sup> The exact number of such killings, as well as the exact circumstances of most individual cases, is

impossible to ascertain as the access of journalists and human rights activists is restricted. The HRCP said that in addition, at least two mass graves were found, including at least one in Kukarai village in Babozai tehsil and another in an area between Dewlai and Shah Dheri in Kabal tehsil. The HRCP said that witnesses to mass burials said at least in some cases the bodies appeared to be those of Taleban militants.<sup>192</sup>

Amnesty International's own research indicated multiple reasons behind the outbreak of killings. Some cases strongly suggested involvement by Pakistani military officials and local *lashkars*. In other cases, the killings seemed to be due to Taleban engaging in retaliation against locals who had opposed them or had assisted government forces. In other cases, local and tribal conflicts played out in an environment of ongoing lawlessness and insecurity, as the Pakistani military did little to impose ordinary policing functions and rule of law.<sup>193</sup> Amnesty International documented several instances of houses destroyed by security forces because they belonged to suspected Taleban members or their relatives.

An investigative team from the Human Rights Commission of Pakistan HRCP visited Malakand; notwithstanding early army denials, the HRCP reiterated “that it has come across credible accounts of extrajudicial killings and complaints of reprisal attacks by the security forces during the operation in Swat”.<sup>194</sup> The HRCP cited a number of such deaths which it had investigated. It said that “credible evidence shows” that militant leader Maulvi Misbahuddin “had been apprehended by the security forces and later the bodies of Misbahuddin and his son were found in Bacha Bazar”. The HRCP stated that “the government claims that they were killed in an encounter while eyewitnesses hold that they were arrested by the police in Mardan”. Similarly, the HRCP cited the case of Amir Izzat, spokesperson for the Swat militants, who was arrested from Amandara; “two days later the authorities claimed that Izzat was killed allegedly by militants trying to rescue him when they attacked the vehicle taking him to jail. Independent journalists claim that the targeted vehicle shown to them did not even have an engine”.

The army rejected these allegations as “baseless”. Army spokesperson Maj-Gen Athar Abbas said in August on the Dawn News programme ‘NewsEye’ that the army “can never respond to terror with terror and has to conduct itself in a professional and legal way” and that it had strong chain of command and control over forces in the field. He claimed that retreating Taleban had buried their dead in mass graves and that the army had itself been reporting discovery of mass graves during its operation in Malakand.<sup>195</sup>

## THE SOUTH WAZIRISTAN OPERATION, 2009

Following the conclusion of the Swat offensive, the Pakistani government signalled that it would continue to pursue military operations against the Taleban. The first step, announced in June 2009, was an announcement that it would “soon” begin an operation in South Waziristan, the original stronghold of the Pakistani Taleban. Taleban insurgents and their associates in different parts of Pakistan responded with a series of suicide and armed attacks including on heavily protected army headquarters in Rawalpindi, a UN building in Islamabad and other civilian and military establishments which cost over 175 lives in two weeks of October 2009 alone; even after the onset of the operation such attacks continue. After mid-2009, the army targeted South Waziristan with aerial and artillery attacks, supposedly to



“soften up” the region for the then forthcoming ground operation; simultaneously, residents who had left the area told Amnesty International in October 2009 that the government had imposed a blockade to restrict the inflow of goods into South Waziristan agency, intended to stop supplies to the Taliban.

A Pakistani army policy statement stated that the prime target of the operation would be ethnic Uzbek militants from Central Asia, followed by foreign fighters from the Middle East and North Africa, believed to be operating in South Waziristan.<sup>196</sup> The elimination of local fighters who refused to lay down arms was declared as the army's last priority. At a news briefing on 19 October, the army's spokesman said there were between 8,000 to 10,000 fighters in the area, including some 1,000 foreign fighters.<sup>197</sup> According to reports, the army eventually deployed two divisions consisting of 27,000 soldiers in Waziristan.<sup>198</sup>

On 17 October 2009, the ground operation began. From the first days of the operation the focus of the operations was the areas traditionally held by the Mehsud tribe, near the centre of the Agency, not directly abutting the border with Afghanistan. The Pakistani government accused some members of the Mehsud tribe, under the leadership of Baitullah and later Hakimullah Mehsud, attacking the Pakistan army (as well as civilians) and installations in different parts of the country, unlike other groups that at least rhetorically focused on the conflict against the US-led coalition in Afghanistan. At a media briefing on 19 October 2009, an army spokesperson reportedly said that “the role of the Mehsud fighters in Afghanistan has been marginal – they have exclusively focused on raids and bomb attacks in Pakistani territory”.<sup>199</sup>

Mehsud tribespeople were targeted for arbitrary arrests in measures taken under the collective responsibility provisions of the FCR. On 14 June 2009, the Political Agent of South Waziristan issued a general order to arrest and “[take] into custody ... any person of the [Mehsud] tribe where they may be found” and “confiscation of movable/immovable property belonging to them in the NWFP”.<sup>200</sup> The order has been challenged by two residents of Tank, Mohammad Nawaz and Tawkal Din, in the High Court of Peshawar, who were detained under section 21, FCR. They argued that the Political Agent has no jurisdiction outside of South Waziristan where the FCR is inapplicable and that there were no sound legal grounds for arresting and detaining members of the Mehsud tribe in any place in Pakistan.<sup>201</sup>

The order not only led to closure of Mehsud-owned property and businesses in NWFP but also prevented many Mehsuds, including women and children, from leaving the dangers of the conflict zone. A large number of people, both from the Mehsud tribe and other tribes, fled South Waziristan to escape the conflict. By late October, at least 139,400 people were reportedly displaced;<sup>202</sup> again as in previous instances, the forcibly displaced told Amnesty International that they faced serious obstacles in their escape path, imposed both by the Taliban and the military. Furthermore, despite weeks of military preparation, the Pakistani government did not adequately prepare to provide basic needs and security for the displaced.<sup>203</sup>

Amnesty International received multiple testimonies from those displaced from South Waziristan in October 2009. One Mehsud man outside the town of Tank told Amnesty International that he had left his home with his family after army bombing of his area the previous week. His family was part of a group of five families, consisting of about 20 men, 15 children and 17-18 women with their luggage, who were travelling on donkeys. They were trying to get to their relatives in Tank but were afraid of the army because of the restrictions

imposed on Mehsud tribespeople using the road.

The man told Amnesty International:

*“We are not allowed to use the roads, the army does not allow any Mehsud to come to the road and use it...When we left our homes we took some food which we used the first two days and after that we had nothing at all and what ever was left we gave to the children, we only drank some tea and water. We had to spend the nights under the open sky. As we were not allowed to use the road we had to walk in the mountains...we lost our way twice.”*

*“When we reached Murtuza area we hired a pickup and wanted to go by road as the women and kids were very tired and it was very difficult for them to walk any more, but when we reached near Korr there was an army check post where we were stopped by the army soldiers. They asked us why we were on the road, and said that Mehsuds are not allowed on the road. They made us walk back and away from the road, they also abused the driver, who was not a Mehsud but was from the Marwat tribe. He was first beaten by the soldiers and then they told him not to drive anyone from Mehsud tribe.”<sup>204</sup>*

## **VIOLATION OF RIGHTS OF DETAINEES IN ARMY CUSTODY**

During military operations conducted since mid-2002, the army has arrested and detained an unknown number of Taleban suspects. The army has not revealed any information about their identities, time and place of arrest, place of detention or possible charges against them. In a rare public admission, an army spokesperson on 18 August 2009 stated that the army was holding 900 prisoners who, he said, “would be handed over to relevant agencies”.<sup>205</sup> The decade-long record of army operations in FATA suggest that the number of detainees in army custody may well be in the thousands. During the October 2009 operations in South Waziristan, the ICRC noted that the military operation had resulted in the “detention of significant numbers of people” whom the ICRC did not have access to monitor their condition.<sup>206</sup>

To date, the Pakistani government has not clarified what domestic legal framework it invokes as the basis for the detention and trial of Pakistanis detained during the course of military operations in FATA.<sup>207</sup> In October 2009, Interior Minister Rehman Malik stated that those arrested by the army and then in army custody would be tried by anti-terrorism courts under the Anti-Terrorism Act of 1977 (ANA). He said, “fair justice will be meted out to them during the whole process and those found guilty will be taken to task under the law of the land”.<sup>208</sup> He did not clarify how many persons were in army custody, nor if those arrested earlier since the beginning of the army operation in mid-2002 had been tried in the manner indicated.

The HRC has demanded that the government clarify whether it considers operations in FATA and NWFP as internal law and order situations, governed by human rights law, or an armed conflict governed by humanitarian law (described in detail below in the Section on Applicable International Legal Frameworks).<sup>209</sup> The Pakistani government has insisted that military operations in northwest Pakistan are not governed by the laws of war but rather are aimed at “terrorists”—whose treatment is governed by Pakistani criminal law, and specifically, the ATA.

However, the ATA does not apply to FATA, which is governed by the FCR. As pointed out by

the HRCP and various legal analysts, insurgents arrested in FATA (that is, outside the ATA's jurisdiction) have to be transferred to such areas where the ATA applies, say NWFP. But the Pakistani military lacks the mandate, training, and equipment to investigate crime scenes or to collect evidence, and law enforcement agencies in NWFP would not be able to investigate the scene of the crime, recover arms or collect other evidence. As a result, it would be almost impossible for Pakistani law enforcement agencies to independently make a case which would hold up in court and lead to a conviction.

## HUMAN RIGHTS ABUSES BY TRIBAL LASHKARS

Without reliable command and control structures in place, the *lashkars* are a law unto themselves—in some cases locals have referred to them as “government Taleban”. Many are reportedly former – and perhaps future – Taleban, fickle partners in the fight against the insurgency.

After the end of major military operations in Malakand in June 2009, *lashkars* operating in Malakand division operated with explicit support from the Pakistani military and the Frontier Corps, who often ignored even their public displays of abusive behaviour. Amnesty International received multiple reports of *lashkars* using excessive and indiscriminate force, engaging in punitive destruction of houses belonging to suspected Taleban or their families, arbitrary arrest and unlawful killings. Such acts are violations of international humanitarian law, in many cases constituting war crimes, as well as abuse of the human rights of the victims. For instance, in an incident verified by Amnesty International after it was reported in the local media, in June 2009, members of a lashkar sought out and killed six people suspected of being members of the Taleban in Upper Dir, Swat, NWFP, after a Taleban suicide bomb had killed 50 people in a local mosque; they then burned down 20 houses of people who they suspected of having sheltered the Taleban fighters.<sup>210</sup>

As reports of abuses by *lashkars* increased, with their members sometimes reportedly settling private scores, carrying out unlawful detentions and meting out unsanctioned punishments to locals, the HRCP has pointed out that “it is difficult to control the private militias and neither the government nor the military can vouch for their conduct”.<sup>211</sup> The HRCP in September 2009 warned against “outsourcing the responsibility for ensuring security ... to civilian armed bands”.<sup>212</sup>

## CIVILIANS IN THE CROSSFIRE

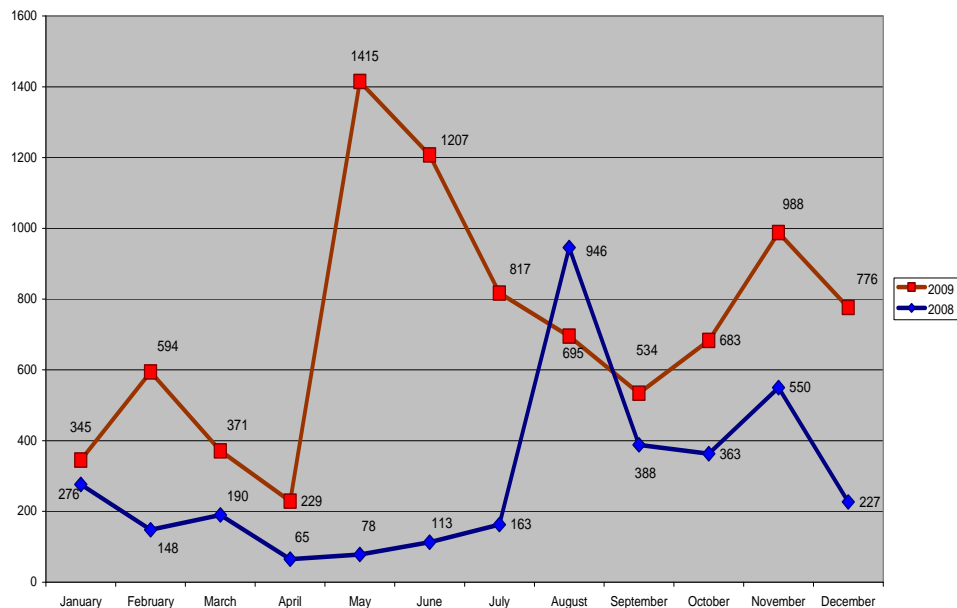
Dozens of civilians who had survived or fled the fighting between the government and the Taleban in northwest Pakistan recounted how they had been caught in the middle of the two forces. The vast majority of people who spoke with Amnesty International said that the immediate cause of their flight was government military operations, which were usually accompanied by aerial bombardment and long-distance artillery barrages that often did not discriminate between military targets and civilians—a predictable result of utilizing military forces ill-prepared and poorly suited for counter insurgency operations in a populated area. At the same time, Amnesty International's research in FATA and conflict-affected areas in

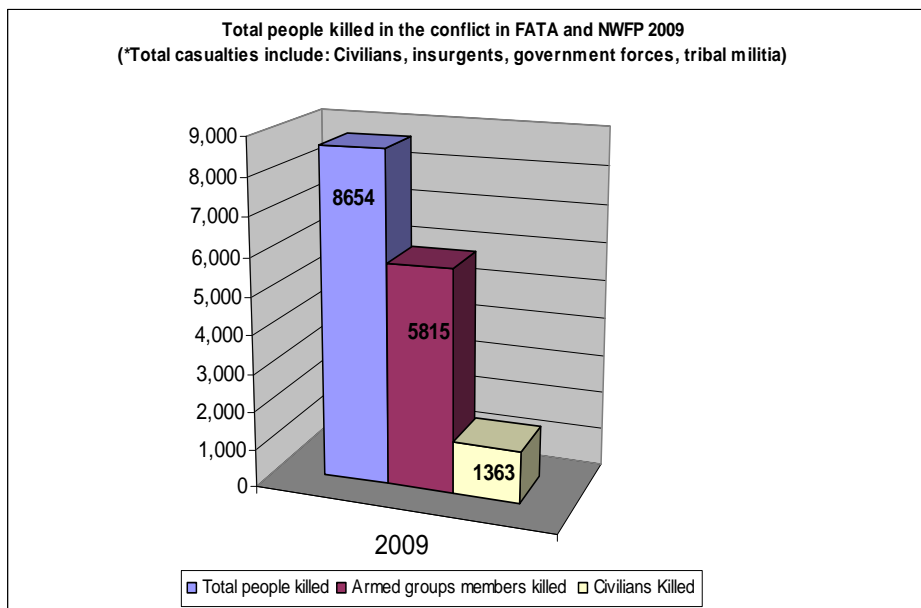
NWFP revealed a consistent pattern of Taleban fighters seeking shelter in and launching attacks from residential areas in contravention of international humanitarian law.

The staff of Peshawar’s Lady Reading Hospital, which receives numerous injured people from FATA, told Amnesty International in late 2008 that it is “mostly women and children” brought to the hospital after government military operations, usually suffering wounds from mortars, heavy artillery, and aerial bombing. The staffer recounted information from the patients that government security forces often attacked militants who have taken up positions in residential areas and that shells “sometimes fall in the houses, killing and injuring those present.”<sup>213</sup>

In many cases, there was no exact method for doctors to determine whether a particular civilian was killed by government munitions or Taleban munitions. Although the hospital could not provide any formal statistical data, a staff member from the hospital’s Accident and Emergency Department estimated that 60 to 65 percent of the injured brought to them from the battles were civilians.<sup>214</sup>

Casualties in the conflict in NWFP and FATA 2008-2009





The Pakistani military is certainly aware of its obligation to minimize harm to the civilian population, and is adequately disciplined enough to try to decrease the risk to civilians when it is so ordered (for instance, when the military is under heavy scrutiny from the media and public). For instance, Amnesty International’s visit to Swat some two weeks after the 2009 military assault displayed less damage to the civilian areas of Mingora than had been witnessed after operations in FATA. But the subsequent major military assault in South Waziristan in 2009 once again showed civilians suffering from indiscriminate attacks.

Government officials have insisted that they have tried to minimize civilian casualties during military operations by, for example, dropping instruction leaflets from planes telling Bajaur residents to raise their hands at the sight of a helicopter.<sup>215</sup> International humanitarian law requires that “effective advance warning of attacks which may affect the civilian population” be given unless circumstances do not permit.<sup>216</sup> In practice messages appear to have been not just of limited efficacy, but have frequently come too late—only just before, or even after, airplanes carried out bombings. The media reported that during the November 2008 operations, security personnel in Shabqadar, in Mohmand Agency, warned people at 11am to leave the area within 30 minutes and “helicopters started shelling the area soon after”, barely giving the population any time to leave.<sup>217</sup> It also appears that many civilians never received the messages. A man who fled the military operations in Bajaur in 2008 told the press: “We had no idea it was going to happen. The government didn’t tell us anything, and we didn’t see them anywhere.”<sup>218</sup>

The risk to civilians was significantly compounded when the Pakistani Taleban prevented the civilian population from removing themselves from proximity to the Taleban, and predictable government attacks on Taleban targets. One man who had escaped the August 2008 military operations in Bajaur and sought refuge at the Summar Bagh camp recalled:

*First, the Taleban didn't say anything when people started to leave. But later on when people were leaving in large numbers they were afraid that soon the village would be empty. After 10 August [2008], the Taleban started to stop people from fleeing. They started stopping people on the roads so that nobody could go out of the area. They even fired at people.*<sup>219</sup>

News agencies similarly reported that Taleban militants in Mamond Tehsil of Bajaur were “forcefully stopping men from leaving the area” and quoted sources in the security forces as saying, “Taleban tried to persuade civilians not to migrate. Failing on that count, Taleban set up a check post near Inyat Kalay to stop people from fleeing.”<sup>220</sup>

Amnesty International received similar accounts from South Waziristan during the October 2009 military operations against the Mehsud tribe, set out above in the Section on the South Waziristan operation in 2009.

These actions on the part of the Taleban, coupled with the pattern of their locating their defensive positions in and launching attacks from heavily populated areas, give strong indication that the Taleban were deliberately seeking to use the presence of the civilians to immunize Taleban forces from attack – in other words to use the civilians as involuntary human shields. As was mentioned earlier, such conduct is strictly prohibited by international humanitarian law and constitutes a war crime.<sup>221</sup>

Both government and Taleban forces appear to have used school buildings for military purposes.

For instance, eyewitnesses to the Loi Sam battle in Bajaur in 2008 told Amnesty International that during the government bombing in August bombs struck a school occupied by Taleban fighters in Loi Sam.<sup>222</sup> According to media reports, prior to the government's November attack on the Michni area the Taleban occupied four schools, including a high school in Sandokhel in Upper Mohmand, a middle school in Aayee Kor, and two primary schools in Aslam Kor. The Daily Times confirmed these accusations with political administration officials.<sup>223</sup> In late October, the Taleban also took over a school in the Darwaz Gai area of Mohmand while students were in class. After the children were set free, the Pakistan military and Taleban exchanged fire and the government fired mortars at the Taleban in the school.<sup>224</sup>

The Pakistan military has reportedly used schools to launch military activities. In January 2008, Pakistani troops stationed themselves in the Government Degree College in Darra Adam Khel in preparation for an attack on Tehrik-i-Taliban Pakistan fighters who had hijacked a military convoy.<sup>225</sup> On 12 November, a suicide bomber attacked a school in the village of Subhan Khwar, located about 20 miles north of Peshawar, that Pakistan forces were using as a command post; the attacker drove a bus into the school, filled with explosives, killing several soldiers and damaging the school.<sup>226</sup> In Bajaur Agency, a college student told Amnesty International that the army and Frontier Corps had deployed at his college and the local people could not get them to leave even after complaining to the Education Department.<sup>227</sup>

As was noted earlier, all parties to an armed conflict are required by international humanitarian law to take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks by the adversary; in particular, each must to the extent feasible avoid locating military objectives within or near

densely populated areas, and remove civilian persons and objects under its control from the vicinity of military objectives.<sup>228</sup> Even beyond these general obligations, “special care” must be taken by all parties to avoid damage to buildings dedicated to education, and seizure of such institutions is prohibited.<sup>229</sup> It is difficult to see, both with respect to the Taleban pattern of positioning themselves in residential areas, and the practice of both the Taleban and government forces of using schools for military purposes, how there could not have been other feasible places to locate their forces; a failure to choose those locations in lieu of residential areas or schools would constitute a clear violation of international humanitarian law.

A student at the government’s postgraduate college explained how a day after a military operation began in Bajaur Agency, in August 2008, the majority of schools in the area had closed.<sup>230</sup>

*In Bajaur Agency, almost all the educational institutes were closed since August 7 because of the fighting between the Taleban and government security forces that began on August 6. Most of the schools are government schools and the government closed them. Education closures have made the students very worried. Most of the students are very sad about this.*<sup>231</sup>

When asked if boys could study at home, he replied:

*Most boys can’t, because there’s no electricity and, secondly, how can people study when they are under the heavy firing by the security forces tanks?*

*In our class there were about 50 students but when the operation started most of the boys, including myself, shifted to safer places outside of Bajaur. After spending one month away I returned in September. From what I heard, 25 students from my class have stopped their education and have joined their parents to help them economically. They’ve gone to Karachi, Lahore and Rawalpindi and other cities where they are doing odd jobs.*<sup>232</sup>

A 40-year-old man, who said he was suffering from tuberculosis and hepatitis, said that fighting in Bajaur caused many of the hospitals and clinics to close. The ones that did remain open had few medical professionals present, he said. He also pointed out that female patients were even worse off, explaining that there were no female doctors, female nurses, or female medical staff in the hospitals to aid women with gynecological problems.<sup>233</sup> Many medical professionals had fled FATA because of insecurity and economic problems, in general, and in particular, assaults and threats from the Taleban, who often viewed modern medical treatment as inimical to their ideology.

A 34-year-old man who ran an oil shop at the Inayat Kalay business area in Bajaur said that markets, stores, and shops closed for three months starting on 12 August, the same date that his store was shelled and several oil tankers caught on fire.<sup>234</sup> A local driver expressed similar worries:

*Local transporters are facing huge difficulties. From 6 August to 20 October [2008], all the roads of the agency were closed and transport was stopped for the last couple of weeks. The administration opened a few dirt roads for some transport but it’s very difficult to drive on those roads. Many people fled so now there are very few potential passengers left, which has reduced profits. Plus, nearby diesels pumps are also closed. We have to travel 30 to 40*

*kilometers to get diesel. On top of that, the administration has taken our vehicles and is using them without any payments.*

*The trade centers in Bajaur have been closed for the last several months too. As a result the workshops for the vehicles have also been closed. In the past, there were dozens of workshops throughout the agency; but now only a few are open in Khar. The price for the repairs has increased a lot. And workshops used to repair our vehicles on credit for up to one month. But now no workshop works on credit. First they take money and then repair the vehicle.<sup>235</sup>*

When asked if there was other work he could do to survive, the man laughed, saying:

*What can we do? The markets are closed, trade center is closed. In the past, sometimes on holidays I used to sell vegetables in the market but now there's no work left in Bajaur. I'm thinking of going outside the agency but I can't leave my family in Bajaur in this situation. My mind would just remain occupied with thoughts of my home and kids.<sup>236</sup>*

A 44-year-old man drew sharp contrast between the situation before and after the three month military campaign in Bajaur in 2008:

*We used to live off of the facilities that the government provided to us in the mountainous area. If the government didn't provide paved roads, at least it brought us shingle roads. There was a dispensary for medical treatment. There was a middle school near our house for the kids and a primary school for the girls. And there was a veterinary hospital. Electricity, if not available 24 hours a day, was available 12 to 14 hours. The mobile telephones were working.*

*But then the government started killing its own people. The people who are alive now are facing huge difficulties. For the last four months we have been cut off from electricity, daily food provisions, and medicines.<sup>237</sup>*

In Mohmand, where the government launched a shorter operation in mid-November 2008, a 37-year-old farmer said he lost significant earnings since the operation began, both because of difficulties harvesting and taking produce to market. He described how he had to go to his fields “like a thief to pluck tomatoes and put them into baskets.”

*They [the tomatoes] should be picked every day [to achieve better plant productivity]. But even if I went every day I can't take them to the market because the roads are closed. So I leave them on the plants. At least they won't rot.*

The farmer said that as many as 300 other farmers in his immediate area suffered similar problems.<sup>238</sup>

Explaining the escalation of violence in Mohmand, the farmer said that once the Taliban started patrolling fewer and fewer doctors and hospital staff came to the hospitals in the area. He went on to say that the problems their presence caused were only made worse by government attacks:

*The Taliban came here and settled here. Now they have a dispute with the government, and the government started taking actions against them.*



*If we stand with the government the Taleban will hit us.*

*If we stand with the Taleban the government will target us.*

*If we don't stand with any of them, you can see how bad our situation is. It's going from bad to worse.*<sup>239</sup>

In November 2008, a doctor who works in Kurram Agency detailed how the ongoing insecurity had effectively deprived the area's entire population from medicine and medical services.

*Due to this conflict, which started two years ago, it has badly affected every aspect of life, but especially our tuberculosis patients who can't reach us and are not getting treatment or registering with us. Plus, we don't have medicine in stores.*

*Along with the tuberculosis patients, the rate of other diseases increased because people are not getting the proper medicines and treatments. Due to this conflict, lack of sanitation, and the unavailability of proper medicines, the rate of malaria and scabies has increased. In children, diarrhea, chest infections, acute respiratory infection and other disease have increased.*<sup>240</sup>

Focusing on the problems that road closures cause, the doctor said,

*Absolutely everything is affected when the roads get closed and the supplies of medicines stopped. There is an acute shortage of medicines in medical shops and in hospitals; and the prices of these products have increased many folds. Due to these problems the number of patients has increased but they are not getting proper treatment.*

*The doctors are also facing problem providing the right medicine for the patients. There's a shortage of medicine and, in addition, the doctors are scared to perform their duties due to the high risk of getting killed. Due to the road closures we aren't be able to shift the patients who need serious attention to Peshawar, so some die here.*

*I think the Pakistan government tried to send some medicines and aid. But they're also facing problems due to the tense situation. Mostly we're using old stocks that we already have. If we get a donation from some other source so we are using those medicines.*

*One big problem is treating new born children and, in some surgeries, we need oxygen. Due to the unavailability of electricity and oxygen cylinders either not working or being supplied from Peshawar due to the closed roads they didn't reach us on time. Patients were badly affected and some patients died.*

*We are also facing problems when we prescribe medicine to patients. How will they get the medicine which is not present in the market? These poor patients run from one place to another looking for the medicine.*

*We try to prescribe such medicines which were easily available in the market.... These problems would have been solved easily if the roads are opened and the supply started*

*again.... By the grace of God now roads are reopening and soon the supply of medicine will be started and people will get proper treatment.*<sup>241</sup>

One man who had been forcibly displaced from his home in the village of Balishkhel in mid-November 2007 described the effects of displacement are having on him and his family,

*In November and December 2007 in Parachinar, which sits at a high altitude, the weather was quite cold and we didn't have proper clothes and a place to live. We went to one of our friend's house, and he gave us his guest room. We've been there for one year we are living in his home guest room. It's hard for us and for him but we are tribal people and tribal people are famous for their hospitality.*

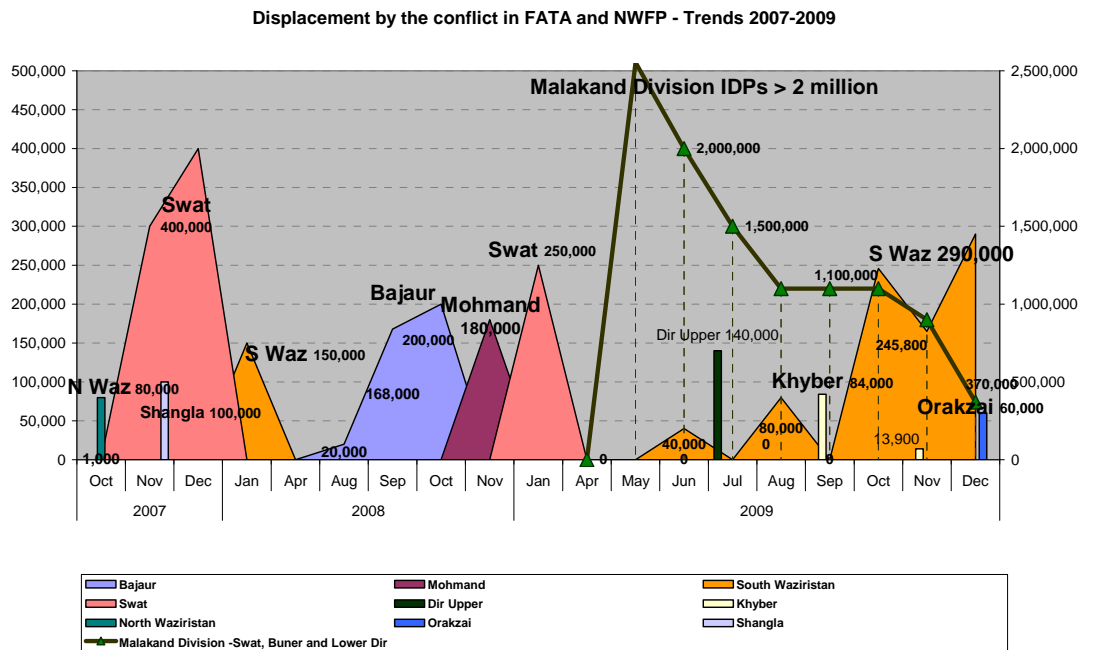
*Food is so expensive to buy. When we were in our village we grew our own wheat, rice, vegetables, and other products. But, here, it is too hard to buy something to eat. Now all food products are coming through Afghanistan because here roads are closed. Due to this the rates of every product rose 300 to 400 percent. We used to buy a 20 kilogram bag of flour for 600 or 700 [Pakistani rupees, equivalent to [US\$7 - US\$8]. Now we are buying it at 3,500 to 4,000 [US\$41- US\$47].*

*We are waiting to go back to our village.... We want to go back to our village so that our children's education can start again and also so we can make earnings from the land. All our land and corps were destroyed so we have to make a new start.*<sup>242</sup>

# THE CRISIS OF DISPLACEMENT

The human rights crisis documented above has led directly to the displacement of hundreds of thousands of people from their homes in FATA and Malakand. When the Taliban cemented their grip on various areas of FATA, many residents fled—in particular the mainstays of civil society, such as teachers, health providers, lawyers, and government employees, who were the targets of Taliban abuses. Thousands more left their homes after government military operations and widespread damage to houses, farms, and businesses. Each successive wave of conflict increased the civilians’ fear of Taliban attacks and the threats associated with government military operations. Even as the residents of one area return to their homes (at times after impermissible government pressure), conflict displaces the residents of another area. For instance, the heavy fighting in Bajaur and Mohmand in 2008, and the significant damage to civilians and their properties, documented above, sent more than 500,000 Pakistanis fleeing for their lives.<sup>243</sup> By late August 2009, over 1.5 of the over 2 million displaced persons from Malakand division had reportedly returned to their homes according to government figures, but over 280,000 persons had fled South Waziristan after the initiation of military operations in October 2009.<sup>244</sup>

Forced displacement can occur when civilians are forced to flee because parties to a conflict are terrorizing the civilian population or committing other violations, as well as when they are physically expelled. International humanitarian and human rights law recognizes a series of fundamental rights and protections for displaced persons. Displaced persons do not forfeit the rights of the rest of the population as a result of displacement. The UN Guiding Principles on Internal Displacement sets out the main rights of the internally displaced and have been recognized by the General Assembly as an important international framework for the protection of internally displaced persons.



## THE UN GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

The UN Guiding Principles on Internal Displacement are a set of widely endorsed and authoritative, but non-binding, standards which apply to the protection of internally displaced people. They reflect and are consistent with international human rights law and standards and international humanitarian law.

The overarching principle of the Guiding Principles is that the protection and assistance of internally displaced persons is the primary responsibility of the government regardless of who is responsible for the displacement.<sup>245</sup> The UN Guiding Principles on Internal Displacement addresses this situation. According to Principle 5: “All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.”<sup>246</sup>

Principle 7 of the Guidelines states:

“1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.”

Principle 18 of the Guidelines set out the minimum levels of assistance required for the displaced:

Principle 18 (1). All internally displaced persons have the right to an adequate standard of living.

Principle 18(2)...competent authorities shall provide internally displaced persons with and ensure safe access to:

(a) Essential food and potable water;

(b) Basic shelter and housing;

(c) Appropriate clothing; and

(d) Essential medical services and sanitation.

Amnesty International's research from northwest Pakistan and interviews with the displaced indicate that the government is failing to meet the obligations encapsulated in the Guidelines. As the abandoned camps once used to house Afghan refugees during the 1980s and 1990s were pressed into service again to shelter Pakistanis, aid agencies and the Pakistani government struggled to provide people with even the most basic needs. In June and July 2009, Amnesty International visited eight camps servicing the displaced, and found consistent problems of poor sanitation and insufficient distribution of food and water, despite herculean efforts by Pakistani and international aid agencies and the United Nations.

The launch of military operations in Malakand in April 2009 turned the humanitarian crisis from massive to unprecedented.<sup>247</sup> The military warned civilians to leave their houses in order to launch attacks on Taleban seeking shelter in civilian areas. But the government gave little consideration to those who were unable to flee Malakand before military operations. Some residents told Amnesty International that they escaped intense combat, much of it in civilian areas. Within a month, UNHCR had registered more than two million people displaced. According to UN figures, in some areas such as Buner, up to 90 percent of the entire population fled the fighting.<sup>248</sup>

Bibi Naikzada, a 54-year-old from Amankot Sar in Swat, described the exodus to Amnesty International through her tears in July 2009:

*From Amankot Sar to Malakand we had to walk all the way [a distance of about 40 kilometers]. We were very tired and frightened and were praying for our safety.*

*Finally we got a mini-truck and the driver took Rs.4000 [US\$47] from us and brought us to Shaidu. First we were given a house by a local man but then after a few hours he came back and told us to go back as his own guests had come. Therefore we went to the school and registered here [at the displacement camp established at Shaidu].*

*I am suffering from asthma and have no money left to buy medicine. We haven't been given anything till now. We don't have a mattress or plastic sheet or anything else. We have to sleep on the floor. Secondly it is very hot here. There are a lot of mosquitoes.*

*We thought the Taleban will bring Islam and solve all the problems but instead we are now suffering because of them. We had such a nice house in the most beautiful place and now we are living in just one room. We want to go back. Common people are suffering because of this*

*war. The government should finish this war as soon as possible and help us go back to our village.*<sup>249</sup>

Within days of the announcement of imminent army operations in South Waziristan in October 2009, the United Nations Disaster Response Office on 20 October said that 106,000 persons had already fled South Waziristan and that the number could rise to 250,000 internally displaced persons.<sup>250</sup> Most of the displaced had moved into the two neighbouring regions of Tank and Dera Ismail Khan where the army allowed access to some local non-governmental organizations that were handing out emergency supplies.

The government failed to set up camps to receive the displaced persons, to provide for their basic needs as well as security. On the contrary, the military reportedly disallowed the establishment of displacement camps arguing that they would provide insurgents with an easy recruiting ground, in contravention of Principle 24(2) of the Guidelines, which states that “Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.” The UN's Office for the Coordination of Humanitarian Affairs (OCHA) concluded, “humanitarian access remains very restricted”.<sup>251</sup>

By late October 2009, 27,000 displaced families (at different times, the average family size in Pakistan for the purposes of humanitarian aid has varied between 6 and 10 family members; Amnesty International has followed the most common recent practice of using the average number of 8 members per family) were reportedly registered in towns outside South Waziristan,<sup>252</sup> while many others were believed to have found accommodation privately. Amnesty International found that most of the displaced did not want to, and in fact did not, stay in government-organized camps, but rather found accommodations initially with relatives, friends, or as temporary tenants. These people were outside the reach of the aid agencies operating in the organized camps.

Mehsudi families who spoke with Amnesty International in late October 2009 outside Tank said that the government's security concerns about Mehsudi tribes also prompted the military to discourage, and in some instances outright ban, Mehsudi families from travelling on the main roads as they were fleeing the fighting. According to the International Crisis Groups, Mehsudis who fled the conflict areas, and not other tribesmen from South Waziristan, were required by the NWFP administration to register with private hosts, who had to assume responsibility for them--resulting in those families being subject to the FCR's collective responsibility clause.<sup>253</sup>

The Pakistani Taliban have also hindered assistance to the displaced population by targeting aid workers as well as organized camps. In early November 2009, after 11 of its personnel had died in insurgent attacks, the UN suspended development projects in FATA and NWFP, limiting its focus to emergency assistance and humanitarian relief to internally displaced persons who could be accessed safely by humanitarian personnel.<sup>254</sup> In April 2010, a banned militant group called Lashkar-i-Jhangvi, known to cooperate with the Taliban, assumed responsibility for a twin suicide attack in a camp for displaced persons in Kohat, which killed at least 41 people as they queued for relief supplies, and again curtailed the access to crucial humanitarian assistance.<sup>255</sup>

Predictably, women forcibly displaced from FATA and the conflict-affected areas of NWFP are strongly affected by the trauma of displacement. Displaced women are at greater risk of being subjected to sexual violence, including rape, or having to resort to prostitution because

their livelihoods and support networks have been destroyed. Displacement can exacerbate existing inequalities, by significantly increasing the number of female headed households and placing tremendous pressure on women as sole providers for their families, who often face limited economic opportunities and discriminatory practices. While on the move, and once they have settled elsewhere, displaced women encounter barriers preventing them from accessing goods and services, in particular because the vast majority of women in FATA are illiterate, and many lack proper government-issued identification papers. This problem is particularly acute for women and women-led households because in areas of northwest Pakistan under Taleban control many women were barred from receiving national identity documents. According to the International Crisis Group, many women remain unidentified/ undocumented as displaced people because registration requires only the head of the household—usually a man—to show an identification card, and “even households headed by women—widows or those whose husbands have stayed behind—often have little choice but to join a male relative’s household if they can.”<sup>256</sup>

The Guiding Principles do provide specific instructions about mitigating some of the specific problems likely to affect women:

Principle 4(2): protection and assistance to female heads of household and expectant mothers;

11(2)(a): protection against gender-specific violence

18(3): full participation of displaced women in distribution of basic supplies

19(2): full attention to health needs of women, including female health care providers and services ...; and

20(3): equal rights for women and men to obtain documents such as personal identification documents, birth and marriage certificates in their own names.

In practice, Amnesty International has found ample evidence that many of these guidelines have not been followed, particularly for the large majority of women who are not housed in organized displaced camps but are dispersed among other communities.

## THE INDIGNITY OF DISPLACEMENT

At Jalojai camp outside Peshawar, once teeming with tens of thousands of Afghan refugees, Amnesty International monitored conditions for those displaced from Swat. Shokat Ali, who fled Kalankaiy village in Swat, described the typical condition of the displaced:

“On 11 June, 2009 we – me, my children, and wife, and my brother – were registered in Jalojai camp. We were given a mat, a bucket for water, and a cooking pot.

Today is fifth day and today our number is 176. Today we know our number will not come and we will have to stand in line from tomorrow morning. People from (Sar Sarnai, Kabal, and village Kala) had started to leave those areas, because military operations were about to begin in the area against the Taleban. The security forces present said it is your choice if you want to stay, to go or not to go. That’s your decision.

Cannon [artillery] bombardment continued near our area. In Mohallah Landy Chowk a shell fell in the fields and burnt the ready crops, a child was killed who got hit by shrapnel. Two days ago when I came out with my

family, we left our mother at home as she was not ready to leave her home. Our wheat crop was ready for harvest I don't know what became of it.

After leaving our village, that night we spent in village Dewalayi 4 to 5 kilometres away in Aspund. And next morning due to curfew we couldn't go on the road as army soldiers were stopping the vehicles. We all approximately 50 families went through populated way routes and reached to Chakdara at noon. From Chakdara to Badawan and from there to Batkhaila we went on the way route of Aman Dara. Then we came back to Tanra because route was closed ahead. In Tanra people had made a camp. There we spent three nights. Food was given. From Tanra we reached to a school in Shergarh in the morning. There we spent a night with our uncle.

Then in the morning we came to Jalala camp. But there we registration was closed. Then from there we came to Jaloza in government vehicles. On 10 June, 2009, we were sent to a temporary tent, and due to hard and strong wind storms our tents were uprooted many times from its places. Then from the camp we came to a school in Pabbi. We spent a night in the school, on 11 June, approximately at 3:30 registration was made.

We couldn't get the number for Benazir income support scheme till now. Today our number in the line was 176 number, and when our number was near we were told forms have finished come tomorrow, this is happening for the last 5 days but if someone agrees to give bribe he gets it the same day. In camp there is no fan, and it's too hot.

There are no bathrooms and our women and children are all red with rashes and small pimples all over their bodies due to the dust, sweat and not taking regular baths, the doctor gives us some cream for it but it does not help as, as soon as we rub it on the skin dust covers it and the body is all sticky and itchy.

The vast majority of the displaced population from FATA and NWFP is not staying in camps, but rather living amongst host communities in the settled areas of NWFP and, in some cases, farther afield in Pakistan.<sup>257</sup> Most of those displaced do not have access to organized camps and live in extremely overcrowded conditions with host communities or in existing slums and abandoned buildings. Amnesty International documented numerous instances of three or four families sharing the space and resources of one household, greatly straining the ability of host communities to provide sufficient food and clean water for both themselves and the displaced.

J. Bibi, a 60-year-old woman who fled Swat in May 2009, said:

*There were a lot of families from my village who left their homes with us. There were hundreds of people including children, women and men. We couldn't take anything with us and left our homes in the clothes we were wearing. We had to walk a lot in the mountains until we reached Daggar and from there we managed to hire a truck. We paid Rs.3000 [US\$35] and reached Sawabi. From Sawabi we went to Shaidu. First we rented a house for Rs.300 [US\$3.55] per month but we couldn't afford it so we went back to the school. Here we have been given one room. We are ten people living in just one room. There are a lot of mosquitoes and the weather is very hot.*<sup>258</sup>

Kulsom, a 22-year-old woman from Malakand, described a similar situation:

*On 9 May the army started firing rockets at the mountains near our house. One rocket hit a house just behind ours and the whole house was totally destroyed and all the people living in*



*it were killed. We were so afraid after that as the rockets could have hit our house also. Then we decided together with our relatives that we should leave our village. The next morning we hired a bus and left our village and came here.*

*We reached Shaidu on 10 May. We first came to our aunt's house; she is living in Shaidu. We stayed here for almost two weeks and then we were given a room in the school because my aunt's family is very poor. We haven't received anything from the government until now.*<sup>259</sup>

UNHCR has carried out a registration of displaced people living in host communities in several large cities in Pakistan. The UN has also established distribution hubs to provide food and some basic health care to displaced people living with host communities. But these supplies are insufficient for the need, and if the fighting continues many of the displaced, as well as their host communities, will face serious problems due to lack of food, water, and health care. Amnesty International recognizes the immense difficulties involved in assisting such a large exodus, especially in a conflict-afflicted area already suffering from low levels of economic development. Nevertheless it is important for the Pakistani government and its international supporters to pay special attention to the needs of the displaced people residing among host communities as well as the burden shouldered by the hosts themselves. As explained by Walter Kalin, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons:

*“[...] donors and humanitarians [should] expand their focus and extend protection and assistance to a broader spectrum of beneficiaries. Such activities should go beyond delivering humanitarian aid and include development intervention to strengthen basic infrastructure such as water and sanitation and basic services such as health and education, and increase food security and the availability of shelter. Such interventions may be less costly in the long run and would not only help to address the needs of the displaced but, at the same time, contribute to the development of areas and communities receiving them.”*<sup>260</sup>

Conditions were particularly difficult for displaced people who have sought shelter in other provinces of Pakistan. Of particular note, Amnesty International has documented some two dozen cases of displaced Pashtuns who have been told they cannot rent property and were refused access to health care services and schools without security clearance. This is something that is nearly impossible for many people who lost their documentation as they fled. One lawyer who fled Swat in February 2009 and sought shelter in Islamabad said:

*We have become second-class citizens in our own country. When I tried to register my children in school, they demanded a certificate from their old school. But the old school was burned down by the Taleban! When I tried to rent a flat, they asked for financial papers. But our papers are all in Swat and the army will not let me go back! Even if we are walking down the street and speaking, we are treated with suspicion because we are Pashtuns.*<sup>261</sup>

Conditions seem particularly difficult in Sindh province. According to local aid groups, by July 2009, more than 200,000 displaced people had already reached various cities in Sindh, including Jamshoro, Kotri, and Sukkhar, joining millions of Pashtuns already living in Karachi, Pakistan's largest city.

Some local political groups fanned fears that the influx of Pashtuns would threaten the local

population. One leader of the Sindh Taraqi Pasand Party, a local group opposing aid to the displaced, told Amnesty International:

*All the nationalists of Sindh are against the settlement of displaced people from the NWFP or any other place as Sindhis are being turned into a minority in their own province. We are afraid that once these displaced people will come to Sindh they will not go back and will become a burden on our economy. We will not allow non-Sindhis to occupy the land which belongs to Sindh and Sindhis.*

Displaced persons have a right to return to their homes as soon as hostilities in the area have ceased; they also have a right, like all other citizens of Pakistan, to integrate into a new community or settle elsewhere. The Guiding Principles note that competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.<sup>262</sup>

## CONDITIONS OF RETURN

The Pakistani government began publicly speaking of returning some of the displaced population from Malakand to their homes as early as June 2009. Two senior NWFP government officials, who spoke on condition of anonymity, told Amnesty International that the provincial government was very eager to send the displaced at the earliest to their areas because the delay in their sending back would create more problems for the government with the advent of the monsoon season and Ramazan (22 August to 21 September 2009).<sup>263</sup> This concern was motivated more by fears of security and political problems, not the well being of the displaced population.

Principles 28 and 29 of the Guiding Principles set out four basic rules regarding the return of internally displaced persons to their places of origin. First, states must make available three alternative solutions for internally displaced persons: return to their former homes; local integration; and resettlement in another part of the country. Second, internally displaced persons, as citizens of the country, have freedom of movement and the right to choose their place of residence, like anybody else. They must have the ability to freely choose between these options and competent authorities are responsible for creating the conditions that allow displaced persons to rebuild their lives in any one of these locations, and ensure that displaced persons participate fully in the planning and management of their return, resettlement and reintegration. Third, decisions to return must be voluntary, that is free of coercion and based on an informed choice, and return must occur in conditions of safety and dignity, which would allow returnees to live without threats to their security and under economic, social and political conditions compatible with the requirements of human dignity.

As highlighted repeatedly by Walter Kälin, three elements must be in place for successful return operations: “(i) ensuring safety for the life and limb of returnees, (ii) returning property to the displaced and reconstructing their houses, and (iii) creating an environment that sustains return and reintegration, that is, which allows life under adequate conditions, including income generation opportunities, non-discrimination and possibilities for political

participation.”<sup>264</sup>

People in displaced camps were told that parts of Buner and Dir were secure enough to allow people to return—even as reports of continued fighting appeared in the media. Not surprisingly, few displaced people chose to risk their lives. Amnesty International spoke with several families who sent a member of the family to investigate conditions of return, only to give up the thought.<sup>265</sup> These “scouts” described conditions inappropriate for large-scale return of the displaced, with insecurity associated with ongoing fighting as well as problems with lack of electricity, water, and transportation infrastructure necessary for basic living and trade.

An assessment team from the humanitarian NGO International Medical Corps visited Buner in July 2009 to assess conditions for return, and found some families returning to resume their lives (though many others stayed behind due to insecurity) despite serious shortcomings in health care, education, and facility for livelihoods.<sup>266</sup> Of particular concern was the state of the health system. Even as the main health facility in Daggar continued operating, outlying clinics had ceased work due to insecurity and lack of supplies. Particularly difficult was the situation of health care for women, as only half of the required 63 female nursing staff available prior to the conflict were available.<sup>267</sup>

IMC’s assessment quoted the Executive District Health Officer for Daggar as saying: “Most of the health staff is reluctant to resume duties in the hilly areas due to the fear of Taleban backlash.”<sup>268</sup>

By late July 2009, the NWFP government was working on returning most of the people at some of the major displacement camps (Sheikh Shehzad and Sheikh Yaseen camps in Mardan, the district which hosted the highest number of displaced people) and camps in Jalala and Mazdoorabad, reporting that some 412,000 people, mostly based in displacement camps and schools and other government facilities, had returned to Swat, Buner and Dir.<sup>269</sup> At the time of finalizing this report, it was unclear how many people staying with host communities were able to return to their homes in Malakand.

Despite the ongoing risks, Amnesty International’s research in Buner and Dir in mid-July 2009 suggested that some families preferred to brave the damage to the infrastructure and ongoing insecurity at their homes rather than suffer the difficult conditions in the displacement camps. As one family elder, who said he was responsible for a group of four families totaling some 50 people from Lower Dir, told Amnesty International: “*Our crops are almost destroyed and we can not tolerate the heat at [Jalozai] camp. We know there is still some fighting but we will go back and rely on Allah.*”<sup>270</sup>

Even as some, if not all, of the displaced residents of Malakand return to their homes, there is no indication that the hundreds of thousands of Pakistanis who have fled FATA can go back. Improvements in the security situation in Malakand may ameliorate the displacement crisis in northwest Pakistan, but as of March 2010, the government had not addressed a comprehensive plan for addressing the plight of the displaced residents of FATA.

# THE ROLE OF THE INTERNATIONAL COMMUNITY

The conflict in northwest Pakistan has assumed global significance, particularly as a focus for the United States' global efforts against al-Qa'ida and the conflict in Afghanistan.<sup>271</sup> US President Barack Obama recently said: "For the American people, this border region [between Pakistan and Afghanistan] has become the most dangerous place in the world."<sup>272</sup>

The heightened significance attached to northwest Pakistan reflects the area's geographical proximity to the conflict in Afghanistan, as well as to several other long-standing conflicts and insurgencies in South Asia, Central Asia, China and the Middle East. It also reflects the simple fact that many recent terrorist attacks directed against civilians in Pakistan, Afghanistan, India, Europe and the USA have been linked in one way or another to Pakistan, and in particular, the country's northwest.<sup>273</sup> As a result, northwest Pakistan has become the focus for significant geopolitical discussion, but very little thought has been given to the actual residents of the area.

For the Pakistani government, as well as its international supporters and all others in the international community who are concerned about the waves of instability emanating from northwest Pakistan, it is crucial to place human rights, and respect for the well-being of the area's population, at the heart of any response to the conflict.

## THE USA

The USA has since 2001 cooperated closely with Pakistan in addressing mutual security concerns about militant groups based in northwest Pakistan, and FATA in particular. Pakistan remains one of the largest recipients of US aid in the world, with close cooperation between the two countries' militaries. The United States has also increasingly become aware of the need for a more holistic approach to the problems of FATA by including desperately needed development and reconstruction support. But this awareness has not been effectively translated into action, and to date, it is the use of unmanned drones in FATA by the US that has garnered the most attention (and resentment inside Pakistan).

The USA has since 2001 considered Pakistan as one of its closest allies in the so-called war on terror and has repeatedly urged Pakistan to close its borders with Afghanistan to prevent Afghan and foreign insurgents from attacking US and other international troops in Afghanistan, and to keep vital access routes to Afghanistan open so that supplies can reach NATO forces there. Despite this significance, the United States has lacked a coherent strategy for addressing the situation in FATA—in the words of an April 2008 US Government Accountability Office report on US strategy vis a vis FATA:

*Since 2002, the United States relied principally on the Pakistan military to address US*

*national security goals. Of the approximately \$5.8 billion the United States provided for efforts in the FATA and border region from 2002 through 2007, about 96 percent reimbursed Pakistan for military operations there. According to the Department of State, Pakistan deployed 120,000 military and paramilitary forces in the FATA and helped kill and capture hundreds of suspected al-Qa'ida operatives; these efforts cost the lives of approximately 1,400 members of Pakistan's security forces. However, GAO found broad agreement, as documented in the National Intelligence Estimate, State, and embassy documents, as well as Defense officials in Pakistan, that al-Qa'ida had regenerated its ability to attack the United States and had succeeded in establishing a safe haven in Pakistan's FATA.*

*No comprehensive plan for meeting US national security goals in the FATA has been developed [...]*<sup>274</sup>

Since the surge in Taliban activity in FATA, the US has widened its focus, recognizing that the security of Afghanistan and Pakistan is interlinked, that peace and stability in one cannot be achieved without security in the other. An Obama administration White Paper presented in March 2009 identified broad goals including “disrupting terrorist networks in Afghanistan and especially Pakistan to degrade any ability they have to plan and launch international terrorist attacks” but did not then spell out any details how this goal was to be achieved.<sup>275</sup> With regard to Pakistan, an increase of non-military assistance (for instance through the Enhanced Partnership with Pakistan Act) signalled an understanding that economic and social development, especially but not exclusively in the border region, was a vital condition of security and that the USA was committed to substantially contributing to it.

Increased military assistance, albeit with conditions attached, appeared to be in place as well to support Pakistani counter-insurgency efforts. In 2009, the US government expedited some of the delivery of some of the military equipment most urgently required by the Pakistani army, including 10 Russian-built Mi-17 transport helicopters, spare parts for Cobra helicopter gunships, night vision goggles, body armor and eavesdropping equipment as well as high resolution infrared sensors for F-16 warplanes.<sup>276</sup>

According to the US Congressional Research Service, since 2002, overt US aid to Pakistan has amounted to over \$17 billion, with the lion's share—nearly \$12 billion—going to security and military assistance (this amount does not include covert aid, believed to be quite significant).<sup>277</sup> In September 2009, the US Congress passed a \$7.5 billion aid package for the next five years under the Kerry-Lugar Bill, also known as the Enhanced Partnership with Pakistan Act of 2009.<sup>278</sup> Pakistan also receives around \$1 billion per year to assist it in covering the costs deploying over 100,000 troops along the Afghan border in counterinsurgency operations.<sup>279</sup> The US has increased support for law enforcement and counterinsurgency training and equipment in FATA (including \$400 million for the Frontier Corps).<sup>280</sup>

The US has combined security assistance with some \$750 million in development aid and assistance to the region's populace. However, these efforts remain seriously under financed compared with the military expenditure in the region, and have proven difficult to implement and monitor. An April 2010 report from the US Government Accountability Office noted multiple shortcomings in the non-military, development cooperation with Pakistan:

*In September 2007, USAID [the US aid agency] and Pakistan signed an agreement regarding development activities in the FATA including the creation of joint strategic implementation*

*plans for the seven FATA geographic areas. We found, however, that the US and Pakistan have not yet completed such plans.*

*The US government has implemented two efforts to track its \$750 million pledge in accordance with good management practices. ... As of the end of fiscal year 2009, the US government has reportedly allocated over \$728 million toward the pledge. ...*

*[K]ey elements, such as identification of evaluation efforts and a timeline for reviewing implementing partner reports required by USAID's regulations are missing in its performance management plan for the FATA. Also, [the US Department of] State did not collect all the required project performance documentation.<sup>281</sup>*

As the Taliban insurgency in Afghanistan intensified, the US increasingly accused the Pakistani government, and in particular the military, of supporting Taliban groups on both sides of the Afghanistan-Pakistan border.<sup>282</sup> In March 2009, US officials linked the Afghan Taliban's increased activities in southern Afghanistan to their receiving continued support, including money, military supplies and strategic planning, from Pakistani army intelligence or elements within it, with some support from elements of Pakistan's powerful security services.<sup>283</sup> Pakistani government officials have always denied such involvement. Earlier, in July 2008, CIA deputy director Stephen R. Kappes, reportedly confronted Pakistani officials with new evidence that the ISI, or members of it, had deepened their ties to groups responsible for a surge in violence in Afghanistan. This reportedly included evidence about links with the Haqqani network in Waziristan which, US officials believe maintains links with al-Qa'ida members.<sup>284</sup> In the same month, Prime Minister Gilani rejected such allegations as “not believable”.<sup>285</sup>

The Pakistan army's operational ambivalence toward Pakistan's counter-insurgency efforts and the lack of civilian control over it were recently publicly acknowledged in the Enhanced Partnership with Pakistan Act, signed by US President Obama on 15 October 2009 which provided explicit support for the civilian government.<sup>286</sup> It noted that despite contributing more than \$15 billion since 2001, including \$10 billion for security related assistance, “the FATA, parts of the NWFP, Quetta in Balochistan, and Muridke in Punjab remain a sanctuary for al-Qa'ida, the Afghan Taliban, the Tehrik-i-Taliban and affiliated groups from which these groups organize terrorist actions against Pakistan and other countries”.<sup>287</sup> It envisages the disbursement of \$1.5 billion annual assistance for democratic, economic and development over the coming five years (tripling previous contributions) as well as security assistance. The act's stated purpose is to “help strengthen the institutions of democratic governance and promote control of military institutions by a democratically elected civilian government”.<sup>288</sup>

The bill, welcomed by the Pakistan government, met with strong resistance from the Pakistan military, which saw it as an intrusion on its freedom to operate. The bill set out conditions, including prohibiting funds being used for nuclear proliferation, supporting extremist and terrorist groups or fuelling tensions with India. Pakistani military officials objected to the bill's conditions as interfering in Pakistan's national affairs and in a public statement the Pakistani military expressed “serious concern regarding the bill's clauses impacting on national security”.<sup>289</sup> After a series of meetings between US and Pakistani US officials, the originators of the bill, US Senator John F. Kerry and Representative Howard Berman, on 14 October 2009 issued a Joint Explanatory Statement which explicitly stated, “The legislation does not seek in any way to compromise Pakistan's sovereignty, impinge on Pakistan's

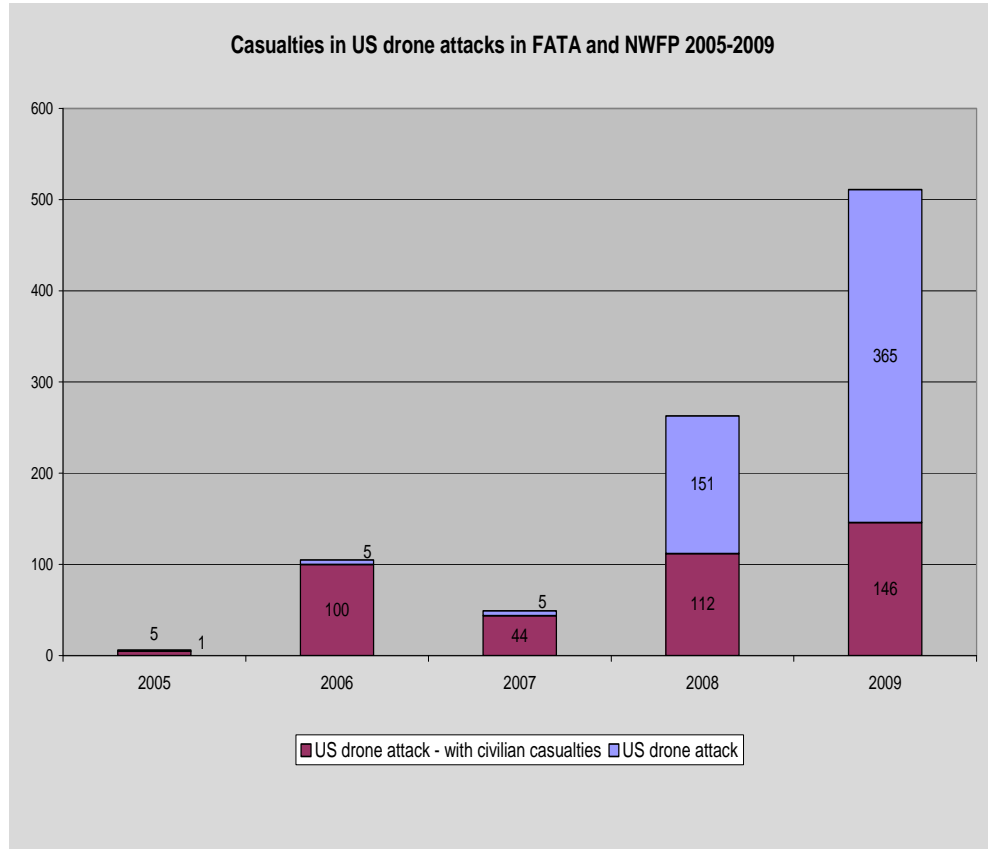
national security interests, or micromanage any aspect of Pakistani military or civilian operations”.<sup>290</sup>

Responding to perceived Pakistani criticism of US interference in Pakistani affairs, Pakistani army spokesman, Major General Athar Abbas, played down US assistance, saying the operation in South Waziristan was a purely Pakistani undertaking, unaided by the United States or anyone else. “Let us finish the job on our own,” he told reporters.<sup>291</sup> It is clear that the government of Pakistan needs US military and development assistance if it is to improve the situation for the people of FATA, but neither country has articulated, far less implemented, a clear strategy for bringing about such improvements.

As of May 2010, the focus of US-Pakistani relations in FATA remained the use of unmanned aerial vehicles operated by the United States Central Intelligence Agency against militant leaders.

## ATTACKS FROM US AERIAL DRONES

One of the few regular reminders of the ongoing conflict in northwest Pakistan is the use of unmanned aerial drones by the US to target a number of individuals believed to be leaders or active members of al Qa’ida or the Taleban—Afghan or Pakistani—in the rugged and isolated mountain regions of FATA since 2004. In many of these cases the US reported that al Qa’ida and Taleban members were killed, whereas local residents often report that civilians were also killed. As a result, these attacks have become the focus of significant political resentment in Pakistan and outside. As the insurgency in these areas strengthened, drone attacks have been ratcheted up. The Obama administration dramatically increased such drone strikes with at least 51 strikes reported in 2009, compared to 34 in 2008.<sup>292</sup>



It is, unfortunately, often impossible for independent observers to investigate the attacks due to insecurity and barriers against independent monitoring by the Pakistani Taliban as well as the Pakistan government.<sup>293</sup> Amnesty International and other human rights groups have however, repeatedly voiced serious concern over civilian casualties caused by US airstrikes, such as was the case with a 30 October 2006 airstrike, apparently by US forces, on a religious school in Bajaur that killed at least 82 people, many of whom were reportedly under 18 years old and as young as six.<sup>294</sup>

According to media reports, the Obama Administration in March 2009 tried to win support for the drone program inside Pakistan by giving President Zardari more control over whom to target. Increasingly, drones have targeted Taliban insurgents attacking Pakistani forces, not international troops in Afghanistan—suggesting greater involvement by the Pakistani government in target selection. A study by the US think tank New America Foundation showed that only six of the 41 C.I.A. drone strikes ordered by the Obama administration in 2009 targeted Al Qa’eda members while 18 targeted Pakistani Taliban targets, of which 15 were specifically aimed at Baitullah Mehsud (succeeding in killing him on 23 August 2009).<sup>295</sup> This study, relying on public source material, showed that the 114 reported drone strikes in northwest Pakistan from 2004 to early 2010 have killed between 830 and 1,210 individuals, of whom around 550 to 850 were described as militants in reliable press accounts, yielding a civilian fatality rate of approximately 32 percent.<sup>296</sup>

The use of drones, armed with guided missiles, is seen by US officials as a useful tool for eliminating insurgents hiding in the tribal areas, beyond the reach of US ground forces stationed in Afghanistan as well as



Pakistani government troops. US Secretary of State Hillary Rodham Clinton said in Islamabad in late October 2009, when questioned in a public meeting about the use of drones, “It will not be sufficient to achieve the level of security that Pakistanis deserve if we don’t go after those who are still threatening not only Pakistan, but Afghanistan, and the rest of the world. And we wanted to put that on the table. And I think it was important that we did”.<sup>297</sup> In December 2009, an unnamed US official told the *New York Times* that during a period of less than two years, about 80 missile drone attacks were carried out, in which “more than 400 enemy fighters” were killed. The official added: “We believe the number of civilian casualties is just over 20, and those were people who were either at the side of major terrorists or were at facilities used by terrorists.”<sup>298</sup>

Philip Alston, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report to the General Assembly’s Third Committee (social, humanitarian and cultural) at UN Headquarters in New York, expressed concern in late October 2009 that the increasingly frequent use of drones by the US to carry out targeted executions may violate international law. He said, “While there may be circumstances in which the use of such techniques is consistent with applicable international law, this can only be determined in light of information about the legal basis on which particular individuals have been targeted, the measures taken to ensure conformity with the international humanitarian law principles of discrimination, proportionality, necessity and precaution, and the steps taken retrospectively to assess compliance in practice.” Alston stated that unless the Obama administration explained the legal basis for targeting particular individuals and the measures it is taking to comply with international humanitarian law which prohibits arbitrary executions, “it will increasingly be perceived as carrying out indiscriminate killings in violation of international law.”<sup>299</sup>

In March 2010, Harold Koh, Legal Adviser to the United States Department of State, set out for the first time a brief explanation of the Obama administration’s claimed basis in international law for the drone attacks.<sup>300</sup> He asserted that “as a matter of international law, the United States is in an armed conflict with al-Qa’ida, as well as the Taliban and associated forces, in response to the horrific 9/11 attacks” adding that the USA “may use force consistent with its inherent right to self-defense under international law”. Harold Koh argued that this included “authority under international law . . . to use force, including lethal force, to defend itself, including by targeting persons such as high-level al-Qa’ida leaders who are planning attacks.” He further stated that “whether a particular individual will be targeted in a particular location will depend upon considerations specific to each case, including those related to the imminence of the threat, the sovereignty of the other states involved, and the willingness and ability of those states to suppress the threat the target poses”, adding that the principles of distinction and proportionality under international law were adhered to in both planning and execution of all attacks.

This explanation leaves many questions unanswered. Even after Koh’s statement, the USA has not officially acknowledged that it carries out drone attacks in Pakistan (Koh speaks only generally, of “lethal operations conducted with the use of unmanned aerial vehicles”) and refuses to provide any official information on these attacks, which is crucial to assess their legitimacy under international law and standards. These include who the targets were, what justification there was for using lethal force against them, whether non-lethal alternatives were tried or even considered, what safeguards were put in place to ensure that civilians<sup>301</sup> are not endangered, who was killed or injured, what investigations took place in cases where violations of international legal rules are suspected and more. Nor was such information forthcoming from the Pakistani authorities. In addition, the attacks have taken place in remote areas to which access is difficult. For these reasons, Amnesty International could not independently investigate conditions surrounding the planning, conduct, or consequences of drone attacks in Pakistan. The organization calls upon the governments concerned – the USA and Pakistan—to ensure that all their actions are in strict accordance with relevant rules of international law, and that sufficient information is made available to the public to ensure

accountability.

In principle, there is an ongoing internal (or “non-international”) armed conflict in Pakistan between the Pakistan government and insurgent armed groups opposed to the government, and all of the obligations of international humanitarian law applicable in that armed conflict apply equally and in the same manner to drone attacks carried out by the USA on behalf of or in support of the Pakistan government. The operators of such drones, and their commanders, are subject to the same requirements and international criminal liability for any violations of that law as are members of Pakistan armed forces.

The extent to which particular attacks are carried out on behalf of the Pakistan government, or even with its prior knowledge or consent, remain unclear. More importantly, the legal basis invoked for drone attacks more generally did not in fact refer to the specific context of the conflict in Pakistan. Rather, it invoked a theory of a *global* armed conflict between the USA and al-Qa’ida and other armed groups in which the USA seems to believe it is legally entitled to use violence *anywhere* in the world limited *only* by the laws of armed conflict (even then, no mention was made of the obligation to give warning to civilian populations).

Amnesty International and others consistently rejected the “global war on terror” theory when invoked by the previous US administration under George W. Bush, and continue to reject it now that the rationale (if not the term itself) seems to have been adopted by the Obama administration. There is no basis in international humanitarian and human rights law for recognising a category of global and pervasive but non-international armed conflict, as distinct from a series of specific geographic zones of international or non-international armed conflict. Accepting such a theory would twist international human rights and humanitarian law and other basic rules of public international law to their breaking points, and would fundamentally undermine the crucial protections of civilians that have been painstakingly developed over more than a century of international law-making.

The USA may well be able to invoke a valid basis in international law for carrying out drone attacks in Pakistan, and the lawfulness of individual attacks would then fall to be evaluated in accordance with the ordinary rules of international humanitarian law and human rights law applicable in the regions of Pakistan where the conflict is taking place. Already, information available about some attacks may permit an evaluation of whether they do or do not comply with particular rules of discrimination, proportionality, necessity or humanity. However, it remains the case that the one legal explanation provided for current drone attacks invokes a basis that does not find recognition in international law, and much of the rest of the specific information about the planning, conduct (including where, if at all, operators fit into a military chain-of-command and accountability), or consequences of attacks has not been disclosed. Amnesty International therefore repeats its prior calls on the USA to abandon the purported justification under international law for various actions including drone attacks; calls on the USA to acknowledge that attacks in Pakistan carried out within the context of the armed conflict in that country must conform to all the requirements of international humanitarian law as applicable to that specific conflict, and must respect the human rights of those in the conflict zone including as guaranteed by customary international law and the treaties to which the USA is party; and further calls upon the USA answer the outstanding factual questions about drone attacks in Pakistan.

## CHINA

China wields considerable influence in Pakistan, and has significant strategic interests (in addition to the interest in maintaining global stability in the face of insecurity emanating from the conflict in northwest Pakistan). Many observers have argued that China’s influence in Pakistan surpasses that of the United States, considering the significantly higher levels of public approval the Pakistani public has registered for China compared to the US.<sup>302</sup>

While the US-Pakistan relationship has generated much comment and controversy in both countries (as well as internationally), Pakistan’s relationship with China has been deep, stable, and out of the limelight. In diplomatic discussions, both sides frequently refer to the relationship as “all-weather” and “time-tested.”<sup>303</sup> Pakistan was one of the first countries to establish close ties with the People’s Republic of China in 1951. The two countries share an interest in countering India’s regional dominance, an interest underlined by the fact that both have fought major land wars against India (China and India went to war over a number of border disputes in 1962).

Recently, as China has contended with political instability in the Xinjiang Uighur Autonomous Region, which is quite close to Pakistan’s northwest areas, the two countries have expressed their mutual concern about the spiralling conflict in FATA and northwest Pakistan.<sup>304</sup> The Chinese government has consistently blamed Uighur discontent on outside agitation and, specifically, the East Turkestan Islamic Movement (ETIM), instead of restrictions placed on the region’s Muslim population and the disproportionate economic clout of Han Chinese migrants.<sup>305</sup> Chinese, as well as Pakistani and US authorities, have suggested (without publicly providing any evidence) that ETIM has received training and support from Pakistani groups based in northwest Pakistan, as well as Al Qa’eda.<sup>306</sup> In response, Pakistani security forces have increasingly monitored and harassed Uighur communities in Pakistan.<sup>307</sup>

In 2007, the instability in Pakistan impacted relations with China as militants targeted Chinese citizens and contractors in Pakistan. In the summer of 2007 vigilantes associated with the Lal Masjid in Islamabad kidnapped several Chinese citizens whom they accused of running a brothel in Islamabad. Pursuant to Chinese complaints, Pakistani authorities finally laid siege to Lal Masjid in July 2007, at around the same time, militants killed three Chinese officials in Peshawar.<sup>308</sup> Several days later, a suicide bomber attacked a group of Chinese engineers in Baluchistan.<sup>309</sup>

With some 3,000 Chinese workers in Pakistan, the Chinese government began discussing Pakistan’s northwest conflict more directly. Pakistan and China formed a joint task force to improve security for Chinese nationals in Pakistan, headed by Pakistan’s Interior Secretary and the Chinese Ambassador as well as inspectors general of police and Chinese consuls at the provincial level.<sup>310</sup>

The policy seemed to have worked, as attacks on Chinese nationals seem to have trailed off. Nevertheless, the two governments have continued to stress their cooperation and absolute agreement in terms of addressing the threat of Islamist militants.

During a meeting in 2009, Pakistani’s Prime Minister Gilani and Chinese President Hu Jintao again proclaimed their desire for enhanced cooperation in countering threats from religiously

inspired militants in northwest Pakistan.<sup>311</sup>

This approach has continued. In May 2010, during a visit to Beijing, Interior Minister Rehman Malik told the media, “Enemies of China are the enemies of Pakistan” and that Pakistan’s “forces have already taken action against ETIM, as we treat it [ETIM] not only the enemies of China but we treat them enemies of Pakistan too.” Malik’s remarks focused on northwest Pakistan and the operation of the Pakistani Taliban.<sup>312</sup> China agreed to provide Pakistan with \$280 million worth of military equipment and training for use in law enforcement and counter-insurgency.<sup>313</sup>

While the US has vacillated between supporting Pakistan’s military and imposing sanctions on it (most recently by US President Bill Clinton for Pakistan’s testing of a nuclear bomb), China has been Pakistan’s largest supplier of arms and military equipment. According to the US-based Heritage Foundation, China has recently sold Pakistan a range of conventional weapons, including JF-17 aircraft, F-22P frigates with helicopters, K-8 jet trainers, T-85 tanks, F-7 aircraft, small arms, and ammunition.<sup>314</sup>

More generally, China is Pakistan’s second largest trading partner, surpassing Pakistan’s bilateral trade with the US in 2006.<sup>315</sup> In 2008, this trade reached US\$ 6.98 billion (marking China as Pakistan’s largest source of imports, its 8th largest export market). Since July 2007, the countries have had a free trade agreement; in 2008, Chinese companies conducted \$16.5 billion worth of contracts in Pakistan, with Chinese investment totalling \$1.07 billion. The two countries have announced a trade target of \$15 billion by 2010.<sup>316</sup>

# APPLICABLE INTERNATIONAL LEGAL FRAMEWORKS

International legal obligations can arise not only from particular treaties that a state has entered into, but also from customary international law, a body of rules established by consistency in general state practice and opinion rather than written agreements, which therefore can bind states, and in some circumstances armed groups, independently of any treaty obligation.

## INTERNATIONAL HUMAN RIGHTS LAW: PROTECTING RIGHTS IN TIMES OF WAR AND PEACE

Pakistan is a state party to some of the major international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR, ratified in April 2008); the International Convention on the Elimination of all forms of Discrimination against Women (CEDAW, acceded in 1996); the Convention on the Rights of the Child (CRC, ratified in 1990); and the International Convention on the Elimination of all forms of Racial Discrimination (ratified in 1966). Pakistan is legally bound by its obligations under these international and regional treaties, as well as by relevant customary international law. In April 2008 Pakistan also signed, but has not yet ratified, the International Convention on Civil and Political Rights (ICCPR) and the UN Convention against Torture (UNCAT). Customary international law requires states to refrain from acts which would defeat the object and purpose of a treaty that the state has signed but not yet ratified.<sup>317</sup>

The 1948 Universal Declaration of Human Rights (UDHR), though not itself a binding treaty, articulates some of the most basic rights that all UN member states (including Pakistan, which voted for the Declaration in the UN General Assembly) pledge to promote and protect pursuant to the Charter of the United Nations. A number of the UDHR provisions, including the prohibition on discrimination and the right to equality before the law,<sup>318</sup> prohibition on torture and other ill-treatment,<sup>319</sup> the right to life, liberty and security of person,<sup>320</sup> and the right to fair trial by an independent and impartial tribunal,<sup>321</sup> also constitute rules of customary international law.

The International Court of Justice as well as the UN Human Rights Committee have affirmed that international human rights law applies in time of armed conflict as well as peacetime; some (but not all) rights may be modified in their application, or “derogated from” or limited in situations of armed conflict, but only to the extent strictly required by the exigencies of the particular situation and without discrimination.<sup>322</sup>

Among the international human rights law obligations most relevant to the conflict in Pakistan are:

- the right to life,
- the prohibition on torture and other ill-treatment,
- the prohibition on enforced disappearance,
- the prohibition on arbitrary detention,
- the right to fair trial
- the right to adequate food and housing,
- the enjoyment of the highest attainable standard of physical and mental health,
- the right to water,
- the right to education, and
- the prohibition of discrimination against women.

Actions that are aimed at or are likely to result in the destruction or impairment of infrastructure necessary for the enjoyment of these rights, including hospitals and schools, may constitute violations for which the state can be held responsible. In particular, deliberate destruction of homes as a form of punishment or retribution, particularly when perpetrated without judicial process, is not only inconsistent with the right to housing, it can also constitute cruel, inhuman or degrading treatment or punishment.<sup>323</sup> Certain abuses, such as torture and enforced disappearance, amount to crimes under international law and states are required to make such violations a criminal offence in domestic legislation.<sup>324</sup> States are also obliged to bring to justice those responsible for these and other serious crimes, including summary and arbitrary killings.<sup>325</sup>

Under the Convention for the Elimination of All Forms of Discrimination Against Women, Pakistan is required to implement a range of effective legal, policy, and practical measures aimed at eliminating discrimination (whether by purpose or effect) against women, whether by state authorities or by “any person, organization or enterprise”.<sup>326</sup> This includes, for instance, ensuring that women enjoy equal rights and access as are provided to men in a range of fields such as holding public office, education, employment, health care, other areas of economic and social life (family benefits; the right to bank loans, mortgages and other forms of financial credit; the right to participate in recreational activities, sports and all aspects of cultural life).<sup>327</sup> Particular attention is to be given to the situation of women in rural areas.<sup>328</sup> CEDAW requires Pakistan to accord to women equality with men before the law, including a legal capacity in civil matters identical to that of men and the same opportunities to exercise that capacity, and equal treatment in all stages of procedure in courts and tribunals.<sup>329</sup> The CERD requires similar measures against discrimination based on race, colour, descent, or national or ethnic origin.<sup>330</sup> The CRC requires Pakistan to respect

and ensure a range of rights for children, without discrimination, including on the basis of sex, origin, birth or other status; among the rights provided for is the right to education, and a right to special treatment where the child is deprived of liberty or subject to criminal or other judicial proceedings.<sup>331</sup>

## **INTERNATIONAL HUMANITARIAN LAW: PROTECTING INDIVIDUALS IN ARMED CONFLICT**

International humanitarian law (IHL) applies only in situations of armed conflict. It contains the rules and principles that seek to protect primarily those who are not participating in hostilities, notably civilians, but also certain combatants, including those who are wounded or captured. It sets out standards of humane conduct and limits the means and methods of conducting military operations. Its central purpose is to limit, to the extent feasible, human suffering in times of armed conflict.

The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are among the principal IHL instruments. Pakistan is a state party to the 1949 Geneva Conventions, and has signed but not yet ratified the Protocols. Many of the specific rules included in these treaties, and all of those set out below, in any event also form part of customary international law and are thus binding on all parties to any conflict.<sup>332</sup> Violations of many of these rules may amount to war crimes.

The application of IHL to non-state armed groups in non-international armed conflicts does not in itself constitute recognition of any authority or legitimacy on their part. Government authorities may take lawful action against them and their members by any means provided for by domestic laws that are consistent with international obligations (including human rights obligations), and members of non-state armed groups can be prosecuted, tried and sentenced for participating in armed hostilities. Consequently, and unlike in international armed conflicts, under international law there is no privileged combatant, or prisoner of war (POW) status, for captured members of the security forces or of non-state armed groups, by which they would generally be exempted from criminal responsibility for the fact of taking up arms. However, detainees must be treated humanely at all times, as outlined in Geneva Conventions Common Article 3, Protocol II, and customary international law,<sup>333</sup> and should be given treatment equivalent to that accorded to POWs. Civilians are defined in IHL as those who are not combatants. In the context of the non-international armed conflict in Pakistan, Amnesty International uses civilians to describe people who are taking no direct part in hostilities.

One of the primary rules of international humanitarian law is that Parties to any conflict must at all times “distinguish between civilians and combatants”, especially in that “attacks may only be directed against combatants” and “must not be directed against civilians.”<sup>334</sup> A similar rule requires parties to distinguish between “civilian objects” and “military objectives”.<sup>335</sup> These rules are part of the fundamental principle of “distinction”.

For the purposes of distinction, anyone who is not a member of the armed forces of a party to the conflict is a civilian, and the civilian population comprises all persons who are not

combatants.<sup>336</sup> Civilians are protected against attack unless and for such time as they take a direct part in hostilities.<sup>337</sup>

“Civilian objects” are all objects (i.e. buildings, structures, places, and other physical property or environments) which are not “military objectives”, and “military objectives” are “limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralisation, in the circumstances ruling at the time, offers a definite military advantage.”<sup>338</sup> Civilian objects are protected against attack, unless and for such time as they become military objectives because all of the criteria for a military objective just described become temporarily fulfilled.<sup>339</sup> In cases of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling, or a school, is being used for military purposes, it is to be presumed not to be so used.<sup>340</sup> Intentionally directing attacks against civilians not taking direct part in hostilities, or against civilian objects (in the case of non-international conflicts, medical, religious or cultural objects in particular), is a war crime.<sup>341</sup>

The concept of “military advantage” may not be interpreted so broadly as to render the rule ineffective. In particular, any attempt to justify on grounds of “definite military advantage” attacks seeking to harm the general economic well-being of the adversary, or to demoralize civilians perceived to support one’s adversary, in order to weaken the ability of the adversary to fight, would distort the legal meaning of military advantage, undermine fundamental IHL principles, and pose a severe threat to civilians. The principle of distinction also includes a specific rule that “acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”<sup>342</sup>

The corollary of the rule of distinction is that “indiscriminate attacks are prohibited”.<sup>343</sup> Indiscriminate attacks are those which are of a nature to strike military objectives and civilians or civilian objects without distinction, either because the attack is not directed at a specific military objective, or because it employs a method or means of combat that cannot be directed at a specific military objective or has effects that cannot be limited as required by international humanitarian law.<sup>344</sup> “Area bombardments”, meaning attacks by bombardment of any kind which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects, are particularly prohibited.<sup>345</sup>

International humanitarian law also prohibits “disproportionate attacks”, which are those “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”<sup>346</sup> Intentionally launching an indiscriminate attack resulting in death or injury to civilians, or a disproportionate attack (i.e. knowing that the attack will cause excessive incidental civilian loss, injury or damage) constitute war crimes.<sup>347</sup>

The protection of the civilian population and civilian objects is further underpinned by requirements that all parties to a conflict take precautions, both in attack and in defence. In



the conduct of military operations, then, “constant care must be taken to spare the civilian population, civilians and civilian objects”; “all feasible precautions” must be taken to avoid and minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.<sup>348</sup> Everything feasible must be done to verify that targets are military objectives, to assess the proportionality of attacks, and to halt attacks if it becomes apparent they are wrongly-directed or disproportionate.<sup>349</sup> Parties must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.<sup>350</sup> Warring parties also have obligations to take all feasible precautions in defence to protect civilians and civilian objects under their control against the effects of attacks by the adversary.<sup>351</sup> In particular, each party must to the extent feasible avoid locating military objectives within or near densely populated areas, and remove civilian persons and objects under its control from the vicinity of military objectives.<sup>352</sup> All parties to any conflict must take “special care” in military operations to avoid damage to buildings dedicated to certain purposes such as religion or education, unless they are military objectives, and “all seizure of or destruction or wilful damage done to institutions dedicated to...education” is prohibited.<sup>353</sup> Intentionally directing attacks against such buildings in a non-international armed conflict, when the building is not a military objective, is a war crime.<sup>354</sup>

In addition to the rules above regarding attacks and defence, international humanitarian law applicable in non-international armed conflicts also prohibits more generally any “destruction or seizure of the property of an adversary” unless such destruction or seizure is “required by imperative military necessity.”<sup>355</sup> This provision would cover, for instance, any deliberate destruction of privately-owned houses that is not rendered absolutely necessary by military operations.<sup>356</sup> Violation of this rule constitutes a war crime.<sup>357</sup>

International humanitarian law applicable in non-international armed conflicts also provides fundamental guarantees for civilians as well as fighters or combatants who are captured, injured or otherwise rendered unable to fight (“hors de combat”). Between them, common article 3 of the 1949 Geneva Conventions and customary international humanitarian law include the following rules: humane treatment is required; discrimination in application of the protections of International Humanitarian Law is prohibited; torture, cruel or inhuman treatment and outrages on personal dignity (particularly humiliating and degrading treatment) are prohibited, as is enforced disappearance, the taking of hostages, the use of human shields, and arbitrary detention; no-one may be convicted or sentenced except pursuant to a fair trial affording all essential judicial guarantees; and collective punishments are prohibited.<sup>358</sup> Depending on the particular rule in question, many or all acts that violate these rules will also constitute war crimes.<sup>359</sup>

International humanitarian law also prohibits parties to an armed conflict from exploiting the protected status of persons or objects in order to shield themselves from attacks or to carry out treacherous attacks against others. As noted above, “use of human shields” is prohibited: this means intentionally bringing civilians or persons hors de combat into proximity with a military objective, or locating a military objective in proximity to civilians or persons hors de combat, with the specific intent of trying to prevent the targeting of the military objective.<sup>360</sup> (Use of human shields does not automatically immunize an otherwise valid military objective from attack, but the people being used as human shields must be taken into account in determining whether any attack is proportionate, and in the obligation to take precautions to

avoid and minimize their death or injury). Killing, injuring or capturing an adversary by resort to “perfidy” is also prohibited: perfidy means “acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord, protection under the rules of international law applicable in armed conflict”, for instance by pretending to be disabled by injury or to be a civilian, “with intent to betray that confidence”.<sup>361</sup> Violations of these rules can constitute war crimes.<sup>362</sup>

A party to a non-international armed conflict can in no circumstances invoke violations of international humanitarian law by its adversary as justification for committing violations on its own part.<sup>363</sup>

## **INTERNATIONAL CRIMINAL LAW**

Serious violations of IHL are war crimes, some of which have been mentioned above. The list of war crimes in Article 8 of the Rome Statute of the International Criminal Court, which covers both international and non-international armed conflicts, basically reflected, in most cases, customary international law at the time of its adoption. That list is not, however, exhaustive.<sup>364</sup> Even though Pakistan is not party to the Rome Statute, it remains bound by customary international law.

Individuals, whether civilians or military personnel, can be held criminally responsible for violations of international law.<sup>365</sup> Commanders and other superiors are criminally responsible for the acts of their subordinates taken pursuant to their orders, or where they knew the acts would occur or were occurring and did not take all necessary and reasonable measures in their power to prevent their commission or, if the crimes had already been committed, to punish those responsible.<sup>366</sup> Superior orders cannot be invoked as a defence for IHL violations, but they may be taken into account in mitigation of punishment.<sup>367</sup> This principle has been recognized since the Nuremberg trials after the Second World War and is now part of customary international law.

Like war crimes, certain violations of international human rights law, such as torture, enforced disappearance, crimes against humanity, and genocide, also constitute crimes under international law; in respect of these, even if the violations were perpetrated in Pakistan, other states are entitled to (and in some circumstances, obliged to) exercise criminal jurisdiction over those responsible.<sup>368</sup>

A range of treaties relating to terrorism also render acts such as hostage-taking, bombings of public places, and hijacking of aircraft, as crimes under international law for which universal jurisdiction may be exercised.<sup>369</sup> These treaties do not, however, typically apply in the absence of any transnational element (i.e. in case where the offence is committed in a single state, the victim and alleged offender are nationals of that state, and the alleged offender is found in the territory of that state).<sup>370</sup>

# RECOMMENDATIONS

The current crisis of violence and displacement in FATA and the NWFP has arisen against the historic backdrop of the Government of Pakistan’s neglect and disdain for these border areas and the people who live there as well as the army’s expedient use of the border areas for its own perceptions of national security. Many of the inequities, the lack of development, weak structures of governance and a judicial system that violates both the human rights guarantees of the Pakistan constitution and international human rights standards have festered for far too long and need to be addressed urgently because they are wrongs in themselves but also because they have fed a conflict that poses an acute danger to people in Pakistan, Afghanistan and beyond. All of these issues need urgent attention by the Pakistani government and its key international allies.

Pakistan’s current government has made several promising moves toward improving the situation in its northwest areas, including much-needed reforms of the Frontier Crimes Regulation. In August 2009, President Zardari announced a platform of political reforms in FATA including allowing political parties to operate there. He repeated this pledge in April 2010 as part of a series of Constitutional reforms. As of May 2010, however, Pakistan’s central government and the provincial government of NWFP (recently renamed Khyber Pukhtunkhwa) have failed to implement these reforms.

The Pakistani government has also failed to take effective measures to protect its citizens from abuse by non-state actors, including by failing to ensure that abuses are investigated and duly punished. Insurgent groups as well as government agencies have abused the human rights of the people of FATA and adjoining areas of NWFP in the context of the insurgency and counter-insurgency operations.

Based on its research in northwest Pakistan, as well as consultations with the area’s residents, activists, legal experts, and political figures, Amnesty International issues the following recommendations intended to address the human rights crisis in northwest Pakistan in addition to the Key Recommendations highlighted at the beginning of this Report.

## RECOMMENDATIONS TO THE GOVERNMENT OF PAKISTAN

### **Amnesty International calls on the government of Pakistan to:**

- Urgently amend the FCR to bring it into conformity with international human rights law; or else to abolish it and place the people of FATA under the protection of the regular law and constitutional protection of Pakistan, including enabling them to have their fundamental rights enforced through the higher judiciary;
- Implement promised legal reforms to integrate FATA into the ordinary constitutional

framework of Pakistan immediately, and extend the Political Parties Act to FATA to enable party-based, full adult franchise elections for local and national assemblies, in keeping with pledges made by President Zardari;

- Incorporate benchmarks focusing on protecting and promoting the rights of the civilian population in any civilian and military strategy for addressing the crisis in FATA and NWFP, for instance by measuring access to education and health care (particularly for women and girls);
- Ensure that any agreement with Pakistani Taleban and other insurgent groups does not include any amnesty for those implicated in serious human rights abuses and grave breaches of the laws of war;
- Ensure that any peace talks with the Pakistani Taleban and other insurgent groups include clear and robust commitments, concrete and effective mechanisms, and meaningful benchmarks on respect for human rights and IHL;
- Ensure that women are represented adequately in any conflict resolution efforts and peace agreements, pursuant to UN Security Council Resolution 1325 (2000) and 1820 (2008), which call for increased participation of women in conflict resolution and peace-building processes, as well as development and reconstruction.

#### **PAKISTAN GOVERNMENT’S FAILURE TO PROTECT AGAINST ABUSES BY INSURGENTS**

Pakistan’s obligations to ensure the human rights of everyone on its territory require it to protect individuals, not just against violations of human rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of human rights. Indeed, permitting or failing to take appropriate measures or to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities could constitute a violation of those rights by Pakistan itself.

The evidence collected in this report shows that the Government of Pakistan has failed to adequately protect the population of FATA as well as of adjoining areas in NWFP by failing to take available measures to prevent a whole range of human rights abuses committed by insurgents and to subsequently hold the perpetrators accountable. Such abuses included: unlawful killings; torture and ill-treatment; unlawful detentions; deprivation of the rights to equality, freedom of movement, association, and education of girls and women; and deliberate destruction of civilian residences, farms, and places of business. Most, if not all of these acts are criminal offences under Pakistan law. While primary responsibility for these abuses clearly rests with the perpetrators, the government must share some of the responsibility where it has failed to deploy adequate measures to prevent these abuses from happening and to hold those responsible to account.

Moreover, to the extent that state agencies, including elements of the military, have supported such groups, or condoned their acts (for instance through giving them official sanction in a series of peace deals), and released insurgents suspected to have been involved in such crimes without adequate investigation or, where warranted, trial, they carry further and more direct responsibility for such acts. All of these crimes should be prosecuted by

regular courts of law in order to bring those responsible to justice.

Amnesty International calls on the Government of Pakistan to take effective measures to prevent human rights abuses committed by insurgents and to ensure that abuses that amount to crimes under national or international law are prosecuted in fair trials, without recourse to the death penalty. Under no circumstances should strategic considerations be invoked as an excuse for impunity for crimes under international law or a failure to implement available measures to protect the population from human rights abuses by non-state actors.

### **VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW BY PAKISTANI SECURITY FORCES**

Pakistan's security forces (as well as anti-government armed groups) are bound by international humanitarian law (IHL) which comprises principles and rules governing the conduct of all parties to international and non-international armed conflicts. Key provisions of international humanitarian law include the four Geneva Conventions of 1949 (which Pakistan signed in 1951) and customary international humanitarian law applicable to non-international armed conflict.

The current conflict in Pakistan is a non-international armed conflict. All parties to a non-international armed conflict are obliged, as a minimum, to apply Article 3 common to the four Geneva Conventions. Common article 3 of the 1949 Geneva Conventions, for instance, emphasizes that its prohibitions apply “at any time and in any place whatsoever” with respect to anyone who is “taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause.” Further, the fact that insurgents may not themselves respect the rules of international humanitarian law is not a valid reason for Pakistan government forces to violate those rules, and does not to any degree deprive the civilian population of the protections of international humanitarian law to which they are entitled from their government.

Insurgents, including those accused of engaging in acts of terrorism, and counter-terrorism operations are subject to no special exceptions to the rules of international humanitarian law.

The Pakistan government is further bound by international human rights treaties and customary international human rights law. Finally, it is worth recalling that members of the Pakistan government or army and the insurgency movements may be subject to criminal prosecutions under international criminal law, in relation to war crimes, crimes against humanity, or other crimes under international law. The 11 November 2009 UN Security Council Resolution 1894 on the protection of civilians in armed conflict emphasised the need to ending impunity for human rights violations and reiterated that “States bear the primary responsibility to respect and ensure the human rights of their citizens, as well as all individuals within their territory as provided for by relevant international law.”

The testimonies gathered in FATA and NWFP by Amnesty International indicate that insurgent groups and the Pakistan security forces have systematically ignored the principles of humanitarian law governing the conduct of war.

The prohibition of indiscriminate attacks has clearly been violated by the army during operations in FATA and Malakand. In researching this report, Amnesty International also found little evidence that government forces gave adequate or effective pre-attack warnings to the civilian population in the attacks documented in this report. Once government forces did attack, they often failed to target with adequate precision insurgent fighters and military objects, for instance in aerial attacks. Instead, entire areas that were populated with civilians, or with both civilians and insurgents, were the subject of attack. Given the physical harm to civilians and mass displacement that the military operations caused, the attacks were not only indiscriminate but also appear to have been disproportionate. As regards the practice of government forces, like that of the insurgents, of using schools for military purposes, failure to use alternatives would violate the obligation to take all feasible precautions to protect civilian objects under their control (and especially buildings dedicated to education) against the effects of attacks by the adversary.

It is also apparent from the humanitarian crisis and displacement crises that has ensued during operations that the Pakistan government did not take adequate measures to mitigate the predictable consequences of its attacks on the civilian population.

#### **Amnesty International calls on the Government of Pakistan:**

- To ensure its forces, including the Pakistani military, the Frontier Corps, the Frontier Constabulary, and officially recognized tribal *lashkars* (local militias), are fully aware of and comply with their obligations under international humanitarian law;
- Ensure prompt, impartial and thorough investigations, in accordance with international standards, of evidence indicating that any of its forces, including local militias, committed serious violations of international human rights and humanitarian law during the conflict;
- Ensure that perpetrators of human rights abuses, war crimes and crimes against humanity are brought to justice, in accordance with its obligations under international law;
- Make every effort to keep a record of all civilian casualties in the ongoing armed conflict in northwest Pakistan;
- Ensure that the military comply fully with the duty to take precautionary measures when carrying out attacks, as well as in defence, and do not carry out attacks as a form of collective punishment; and
- Enhance and periodically refresh the training of all forces, including local militias, involved in counter-insurgency measures about their obligations under international humanitarian and human rights law.

### **ARBITRARY DETENTION BY THE MILITARY**

The Government of Pakistan has failed to protect the human rights of hundreds of people suspected of links to insurgent groups reportedly detained by the army in unknown places of detention. In many of the cases, neither their identity, number, charges against them or places of detention have been made public.

Amnesty International believes that there must be no prolonged detention in army custody as Pakistan law does not presently set out a specific legal framework for such army detentions, including, for example, establishing clearly the grounds for detention, mechanisms for judicial review, time for trial, and other important legal protections. The army is not entitled or trained to conduct investigations that could lead to criminal prosecutions of insurgents. To end the abuses committed during the insurgency requires convictions in fair trials which are also seen to be fair.

#### **Amnesty International calls on the government of Pakistan to:**

- Investigate and reveal any information regarding the fate and whereabouts of all individuals who have been subjected to enforced disappearance and rendition (whether within Pakistani detention or following transfer to another State);
- Immediately transfer any detained insurgents suspected of having committed crimes to civilian law enforcement agencies;
- Ensure that all detainees in army custody, or those who are held by other government agencies, are immediately transferred to recognized civilian places of detention and provided all the safeguards guaranteed under Article 10 of the Constitution, domestic law and international human rights standards relating to arrest, detention and fair trial. If there are no recognizable criminal charges against them, they should be released forthwith. Those who are criminally charged should be tried by a regular court of law in accordance with fair trial provisions contained in Pakistan’s law and constitution and international human rights law
- Investigate criminal charges against insurgents and present the evidence in a competent court of law, which may then decide whether the suspect should be tried;
- Facilitate successful prosecution of crimes committed by insurgents by strengthening the capacity of law enforcement agencies in FATA , including the Frontier Corps and the Frontier Constabulary and more generally the police force in NWFP, improve their training (including human rights law training) and equipment in the areas of forensics capabilities and crime scene investigations;
- Establish an effective witness protection programme to protect anyone agreeing to testify against insurgents;
- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance. The ratification of the Convention would constitute an unmistakable signal that the Government of Pakistan is committed to ending this grave human rights violation. It should also promptly ratify the International Covenant on Civil

and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and enact implementing legislation to ensure that these treaties become part of Pakistan’s domestic law;

- Incorporate the *lashkars* into the regular framework of security and law enforcement organizations, including through introducing strict and transparent chain of command, strict codes of conducts which subject members to standards at least as high as these of other law enforcement services, defined command and control mechanisms, and oversight and accountability mechanisms;
- Ensure that all members of *lashkars* undergo training in human rights and international humanitarian law;
- Bring to justice any members of *lashkars* suspected of responsibility for crimes under national or international law;
- Ensure that *lashkars* do not keep suspects in detention and immediately hand over any suspects to properly authorized law enforcement authorities;
- Disarm and disband specific groups that consistently fail to comply with human rights and IHL obligations.

## **ABUSES BY THE PAKISTANI TALEBAN AND ALLIED ARMED GROUPS**

Armed groups are directly bound by the rules of international humanitarian law described earlier, including: the prohibition on attacks against civilians or civilian objects; the prohibition on violence aimed at spreading terror among the civilian population; the prohibition of indiscriminate or disproportionate attacks; and the obligation to take measures to protect the civilian population and civilian objects (including buildings dedicated to religion or education) from the effects of armed attack.

As this report has documented, most if not all of these rules have been violated by the Pakistani Taleban in a systematic or widespread manner. These acts are explicitly prohibited by treaties, international customary humanitarian and human rights law, and international criminal law. These acts constitute crimes either under national or international law, many amounting to war crimes if not crimes against humanity.

Armed groups should also refrain from committing human rights abuses, and they are bound by Pakistan’s domestic laws which, like the laws of most nations, criminalize a range of acts that constitute human rights abuses, including torture, abduction and unlawful killing.

Amnesty International calls on the Taleban and other insurgent groups to strictly abide by the provisions of international humanitarian law and ensure that civilians are not exposed to violence.



**Amnesty International calls on armed groups in Pakistan to immediately:**

- Cease attacks targeting civilians and civilian objects; attacks that do not attempt to distinguish between military objectives and civilians or civilian objects; and all disproportionate attacks;
- Cease attacks on teachers, students, education officials, and school buildings (particularly those that are not in the course of being used by government armed forces);
- Cease locating military objectives within or near densely populated areas when other locations are feasible, and take all other necessary measures to protect the civilian population and objects from the dangers arising from military operations, whether in defence or in attack;
- Cease actions designed to prevent civilians from leaving the areas around military objectives and all use of human shields;
- Cease unlawfully killing or otherwise subjecting anyone to any form of criminal punishments, including as a result of quasi-judicial procedures; and cease holding all such procedures;
- Cease all abductions and hostage-taking;
- Immediately instruct from the highest levels of leadership that all of their combatants are bound by all provisions of applicable international humanitarian law;
- Remove any members suspected of abuses from positions and situations where they might continue to perpetrate abuses;
- Publicly acknowledge and enforce an end to attacks on humanitarian organizations providing assistance to the civilian population of FATA and NWFP, particularly regarding health care, food provision and education;
- Publicly denounce gender-based violence and discrimination, whenever and wherever it occurs, in particular confining women to the home, denying equal access to health care and education, work, freedom of expression and association, and denial of legal status documents and access to social supports.

**HUMAN RIGHTS OF INTERNALLY DISPLACED PERSONS**

The Pakistan government as well as the Pakistani Taleban and other armed groups have failed to respect the rights of those displaced by the armed conflict.

Amnesty International calls on the Government of Pakistan to fully implement the guidelines for the internally displaced and to:

- Promptly prepare a timetable for the return process and ensure all displaced people return voluntarily and with adequate information, given in a timely manner, about the security and material conditions to which they return;
- Clarify government commitments to provide infrastructure to returnee communities, including electricity, water, sanitation, telephone connection, road access and access to health care and education without discrimination on grounds of sex;
- Ensure that women who have been deprived of identification cards by the Taleban or otherwise, single women, and women who are heads of families, have their status recognised and be able to apply for and receive social assistance.
- Ensure that internally displaced persons are fully informed as to their rights to return or to resettlement or integration with local society if they so wish;
- Prioritize ensuring safe, timely, unconditional and unimpeded humanitarian access, including for delivering humanitarian goods to all the displaced, as well as assessing and monitoring of the displacement situation; ensure the safety of humanitarian personnel and respect their integrity, protect humanitarian transports and supplies, and refrain from diverting humanitarian goods;
- Strengthen the protection of women and girls from rape, domestic violence and other gender-based violence, including by providing protective shelter and better policing of high-risk areas. Women, in particular heads of households, should be empowered through programmes that support them to establish independent livelihoods. Victims of sexual and gender-based violence need to be provided with health care, psycho-social and rehabilitation support;
- Promptly coordinate government efforts, including at the ministerial and local level, to provide protection and assistance to internally displaced persons;
- Enhance reception capacities of host communities, strengthening basic infrastructure, in particular water and sanitation, as well as basic services such as health and education, upgrading of shelters, education programmes and generation of livelihood opportunities;
- Strengthen reception capacities for new internally displaced persons to reduce the burden on host communities, and ensure sustainable livelihoods, access to economic opportunities, and supporting local integration.

## **ASSISTANCE BY THE INTERNATIONAL COMMUNITY**

Amnesty International calls on Pakistan's donors and partners, particularly the USA and China, to encourage and assist the Government of Pakistan to fulfil its human rights obligations and to ensure that it is adequately equipped to do so, in protecting civilians from abuses by non-state armed groups, in conducting counter-insurgency operation in a

way that complies with international obligations, in developing FATA and other areas in the Northwest, and in coping with the crisis of the internally displaced. In particular:

- Provide financial and logistic support to civilian law enforcement agencies to expand their capacity, including in forensics and crime scene investigations, through provision of equipment and training, in a manner consistent with international human rights law;
- Provide sufficient financial and logistical support to aid Pakistani and international agencies assisting the displaced population in northwest Pakistan, including education and healthcare for women and girls deprived of such services under the Taliban;
- Put in place oversight and accountability controls to ensure that aid for the residents of FATA and NWFP is disbursed to those who need it and in line with local conditions and demands and in a manner consistent with international human rights standards, including by ensuring that women who were deprived of documentation by the Taliban are provided with ID and receive social assistance, and that single women and female heads of household are not denied assistance.

**In particular, Amnesty International calls on the US Government to:**

- Publicly condemn practices in Pakistan that violate human rights, including arbitrary detentions, enforced disappearances, torture and other ill-treatment, and cooperate with the Pakistani government in ending these practices;
- Incorporate human rights training and proper law enforcement procedures in training for the Frontier Corps and Pakistani law enforcement agencies;
- Improve disbursement and monitoring of US development efforts (by the USAID and the State Department) to the residents of FATA and NWFP, and improve efforts to minimize corruption.

**Further, Amnesty International calls on the government of the People’s Republic of China to:**

- Publicly condemn practices in Pakistan which violate human rights, including arbitrary detentions, enforced disappearances, torture and other ill-treatment, and cooperate with the Pakistani government in ending these practices;
- Monitor the use of weapons and military equipment provided by China to the government of Pakistan to ensure that they are used in a manner consistent with international human rights law and humanitarian law;
- Provide training and equipment for civilian law enforcement in northwest Pakistan in a manner consistent with international human rights law.

**APPENDIX 1: GLOSSARY**

ANP: Awami National Party

FATA: Federally Administered Tribal Areas

FC: Frontier Corps [could also mean Frontiers Constabulary, as noted], armed police force in the areas bordering FATA areas.

FCR: Frontier Crimes Regulation, 1901

HRCP: Human Rights Commission of Pakistan, an independent non-governmental organization.

Jirga: Tribal council of elders

Khassadars: Tribal police

Lashkar: Tribal volunteer militia

Levies: Official tribal militias

Malik: Tribal leader or chieftain

Nazim: Mayor

Nizam-e-Adl: Order of Justice

NWFP: North West Frontier Province, capital Peshawar

PPP: Pakistan Peoples Party

Political Agent: Represents the President of Pakistan and the appointed Governor of NWFP.

Tehsil: Second-lowest tier of local administrative units; each tehsil is part of district.

Tehsildar: Revenue officer responsible for collecting taxes in a tehsil

TNSM: Tehrik-i-Nifaz-i-Shariat-i-Mohammadi, Movement for the Enforcement of (the Prophet) Muhammad's Sharia - TNSM, banned in January 2002.

TTP: Tehrik-e-Taleban Pakistan, Taliban Movement of Pakistan, since December 2007

## ENDNOTES

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## **'AS IF HELL FELL ON ME' THE HUMAN RIGHTS CRISIS IN NORTHWEST PAKISTAN**

Some four million Pakistanis have been caught in a human rights and humanitarian crisis that has gripped northwest Pakistan since 2004, when the Pakistani Taliban asserted themselves in the seven “agencies” that comprise the Federally Administered Tribal Areas (FATA). FATA straddles the mountainous terrain between Pakistan and Afghanistan, and adjoining areas in Pakistan’s North West Frontier Province (NWFP).

More than 8,500 people died in the violence in northwest Pakistan in 2009. The conflict and associated insecurity have displaced hundreds of thousands of Pakistanis. Many of them suffer from serious food and water shortages, and have insufficient access to other basic needs such as health care and education. Although some of the displaced are returning to their homes, for many there is no end in sight.

This report, based on hundreds of interviews with people inside FATA and conflict-affected areas of the NWFP, documents how this crisis was precipitated by violations of international humanitarian law, as well as human rights law, by both the Pakistani government and insurgent groups.

The human rights of the people of northwest Pakistan – economic, social, cultural, civil and political – have largely remained unfulfilled. Addressing this historical neglect is necessary for providing the basic rights of the people of FATA and the NWFP. Doing so will also go a long way towards removing the conditions that have led to decades of conflict and associated human rights abuses.

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Index: ASA 33/004/2010  
June 2010

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