

## PART 2: MILITARY COURTS

**NAP POINT 2: Special trial courts under the supervision of Army. The duration of these would be two years.**

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## Part 2: Military Courts

### 2.1 Introduction

#### 2.1.1 Formation of the Military Courts

The second point in the National Action Plan, and the second theme of this report, is the establishment of military courts to try terrorists under the Anti-Terrorism Act (ATA) 1997. In the first phase, nine military courts were established with three in Khyber Pukhtunkhwa (KP), three in Punjab, two in Sindh and one in Balochistan.<sup>1</sup> In 2015 there were 11 military courts functional in Pakistan, with the last two established in Karachi, Sindh, in August 2015 by the Chief of Army Staff (COAS).<sup>2</sup>

The military courts had been given legal cover through a Constitutional Amendment which was opposed by the major political parties because of victimization in the past. An All Parties' Conference (APC) was called to create a consensus, which was reached after a discussion and assurance that politicians, traders and the media etc. will not be tried in the military courts.<sup>4</sup>

Prime Minister Nawaz Sharif stated that the courts will only try hardcore terrorists. "Special courts are part of the National Action Plan and are meant to provide an extraordinary solution for an extraordinary problem. All institutions would have to carefully scrutinize cases to be sent for prosecution in the special military tribunals."<sup>5</sup>

The Federal Interior Minister, Chaudhry Nisar, mirrored the PM's statements by stating that only terrorists will be tried in military courts.<sup>6</sup> He also tried to dispel the impression that the establishment of military courts meant that the existing judicial system of the country was not delivering justice. Pakistan needs some extraordinary measures to deal with terrorism; the establishment of military courts is the need of the time, he said.

Please see [Section 9.2.1: Pending Cases in Pakistan's Courts](#).

The 21st Constitutional Amendment was passed by both the National Assembly and the Senate on

<sup>1</sup> Staff Reporter. (2015, January 10). Nine military courts set up. Retrieved February 27, 2016, from <<http://www.dawn.com/news/1156104>>.

<sup>2</sup> AFP. (2015, August 26). Army Chief Approves More Military Courts. Retrieved February 24, 2016, from <<http://newsweekpakistan.com/army-chief-approves-more-military-courts/>>.

<sup>3</sup> Questions and Oral Answers, 28th session of the National Assembly. (2016, January 15). Retrieved March 15, 2016, from <[http://www.na.gov.pk/uploads/documents/questions/1452850149\\_459.pdf](http://www.na.gov.pk/uploads/documents/questions/1452850149_459.pdf)>.

<sup>4</sup> Khalti, S. (2015, January 01). Military Courts: Old Fears, New Hopes. Retrieved February 24, 2016, from <<http://pique.pk/military-courts-old-fears-new-hopes/>>.

<sup>5</sup> Staff Reporter. (2014, December 31). Military courts will try only hardcore terrorists: Nawaz. Retrieved February 24, 2016, from <<http://www.dailytimes.com.pk/national/31-Dec-2014/military-courts-will-try-only-hardcore-terrorists-nawaz>>.

<sup>6</sup> Web Desk. (2015, January 03). Army did not put any pressure over formation of military courts: Nisar - The Express Tribune. Retrieved February 24, 2016, from <<https://tribune.com.pk/story/816609/army-did-not-put-any-pressure-over-formation-of-military-courts-nisar/>>.

January 6, 2015, providing constitutional cover to the establishment of military courts.<sup>7</sup>

### **2.1.2 Scope Extension**

During a high-level meeting in Islamabad to review the implementation of NAP, the government decided that the scope of military courts would be extended to cover Gilgit Baltistan (GB). It was decided that the Councils GB and Azad Jammu and Kashmir (AJK) would also adopt the 21st Constitutional Amendment to facilitate the formation of military courts.<sup>8</sup> But this is something that remains pending.

### **2.1.3 Sunset Clause**

The military courts are only around for two years. They formally ceased to exist on January 7, 2017.<sup>9</sup> There has, however, been a move by the government to grant these courts a more permanent status. The Interior Ministry has prepared a draft law that will integrate the Anti-Terrorism Act and the Protection of Pakistan Act and which if passed would grant military courts trying cases of terrorism a permanent status.<sup>10</sup>

At the time of writing this report, the draft law was yet to be presented before Parliament. The extension has seen significant opposition, such as from Jamaat-e-Islami (JI) Amir Siraj ul Haq, who said to instead strengthen civilian courts.<sup>11</sup> This sentiment was also echoed by Jamiat Ulema-e-Islam (F) chief Maulana Fazl-ur-Rehman in December.<sup>12</sup> Meanwhile Pakistan Tehrik-e-Insaaf's Shah Mehmood Qureshi demanded to know who would handle terrorism cases once the sunset clause was reached.<sup>13</sup>

### **2.1.4 Criticism of Military Courts and Response**

Analysts and pundits in the country were quick to label the 21st Amendment a “soft coup”, and labeled the establishment of military courts as tacit acceptance of the failure of the justice system in Pakistan, particularly when it came to trying alleged terrorists.

Before the appointment of the new Chief of Army Staff (COAS) General Qamar Javed Bajwa, the Defense Minister Khawaja Asif announced in November that there was no change in the military

<sup>7</sup> Rasheed, P. (n.d.). Constitution (Twenty-first Amendment) Act, 2015. Retrieved February 24, 2016, from <[http://www.na.gov.pk/uploads/documents/1420547178\\_142.pdf](http://www.na.gov.pk/uploads/documents/1420547178_142.pdf)>.

<sup>8</sup> Haider, M. (2015, January 13). Govt extends scope of military courts to Gilgit-Baltistan, AJK. Re-trieved February 24, 2016, from <<http://www.dawn.com/news/1156747>>.

<sup>9</sup> Al-Jazeera. (2017, January 07). Pakistan law allowing military 'terror' courts expires . Retrieved February 18, 2017, from <<http://www.aljazeera.com/news/2017/01/pakistan-law-allowing-military-terror-courts-expires-170107154324900.html>>.

<sup>10</sup> Staff Reporter. (2016, December 29). Military courts to get permanent status. Retrieved February 18, 2017, from <<https://tribune.com.pk/story/1278239/military-courts-get-permanent-status/>>.

<sup>11</sup> Mohmand, M. (2017, January 01). Siraj opposes extension in military courts tenure. Retrieved February 18, 2017, from <<https://tribune.com.pk/story/1280930/siraj-opposes-extension-military-courts-tenure/>>.

<sup>12</sup> Geo News. (2016, December 29). Instead of forming military courts, give security to civil judges: Fazl-ur-Rehman. Retrieved February 18, 2017, from <<https://www.geo.tv/latest/125417-Instead-of-forming-military-courts-give-security-to-civil-judges-Fazl-ur-Rehman>>.

<sup>13</sup> Staff Reporter. (2016, December 18). Nisar's remarks tantamount to attack on Supreme Court, says Qureshi. Retrieved February 19, 2017, from <<https://www.dawn.com/news/1303099>>.

strategy.<sup>14</sup> "The military policy will continue and there will be no immediate change in it. The legacy of General Raheel Sharif would continue in the light of the examples he set," said Asif.

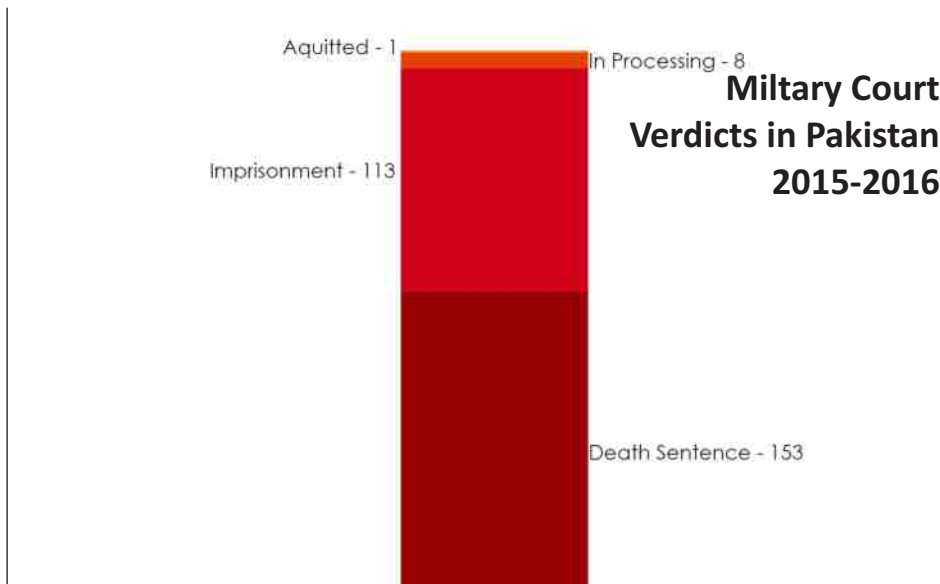
Former COAS, General Raheel Sharif, said that the military courts had helped Pakistan win the war on terror. He termed the courts the "need of the hour", which is indicative of the military's displeasure over the slow pace of the criminal justice system.<sup>15</sup> The fact that this statement came just a few days after the sunset clause on the military courts is no coincidence.

Please also see section 2.3: Controversies and Criticisms for a more detailed discussion.

## 2.2 Number of Cases and Outcomes

Since February 2015, in the first two years of the NAP, a total of 267 individuals have been put under trial in military courts. So far, the courts have sentenced 153 individuals to death, 12 of whom have been executed, and 113 have been given jail terms (mostly life sentences). One person has also been acquitted, while eight cases remain in prosecution.<sup>16</sup>

**Graph 2.1: Military Court Verdicts**



The NAP Tracker, 2016 - The Center for Research and Security Studies, 2017

<sup>14</sup> Reuters. (2016, November 29). Pakistan's new army chief brings no change in policy: Defense minister. Retrieved February 28, 2017 from <<http://nation.com.pk/national/29-Nov-2016/pakistan-s-new-army-chief-brings-no-change-in-policy-defense-minister>>.

<sup>15</sup> Rana, S. (2017, January 18). Military courts helped win terror war: Raheel. Retrieved February 18, 2017, from <<http://herald.dawn.com/news/1153385>>.

<sup>16</sup> CRSS held exclusive interviews with the NSA in December 2016, January 2017 and February 2017. The NSA leads the National Security Decision, and is responsible for the security of Pakistan. The implementation of the NAP is one of his tasks.

## 2.3 Controversies and Criticism

The establishment of military courts has come under severe criticism. Human rights organizations have been concerned about whether the prisoners are provided due process. This was a concern which was echoed by the US State Department Spokesperson, Jen Psaki, who said Pakistan has to be careful while trying civilian terrorism suspects in military courts and assure that they will be provided due process of justice.<sup>17</sup>

### 2.3.1 Supreme Court's Verdict on Military Courts

The Supreme Court also summarily rejected appeals against military courts decisions on August 29, 2016.<sup>18</sup> A total of seventeen appeals had been filed, and a five member bench, presided by the Chief Justice of Pakistan had heard said appeals. The appeals included accusations of coerced confessions and constitutional rights' abuses.<sup>19</sup> This verdict follows an earlier landmark decision by the Supreme Court regarding the legality of the military courts, in 2015, as detailed below.

In April 2015, Rights activist Asma Jehangir filed an application on behalf of the Supreme Court Bar Association (SCBA) against the execution of the six militants convicted by the military courts.<sup>20,21</sup> This was one of the fifteen petitions taken up by the apex court regarding the legality of the 21st Constitutional Amendment.

"Military courts violate Article 10 of the Constitution which gives citizens the right to an open trial" said Kamran Murtaza, President of the SCBA. He further said that he would appeal against the Supreme Court's decision as it "violates the fundamental constitutional rights of the people."<sup>22</sup>

On August 5, 2015, the Supreme Court upheld the establishment of the military courts. The apex court reasoned that the military courts were authorized and legalized by the supreme authority in the land: the Parliament. Prime Minister Nawaz Sharif's Special Assistant for Law Ashtar Ausaf Ali called the decision "another strike against terror", labeling it a success for Pakistan.

"The European Union, the United States and other democracies need to understand that we need to make decisions according to our circumstances ... And we know best how to rid ourselves of terrorists," he said.

<sup>17</sup> Iqbal, A. (2015, January 09). Military courts: US calls for ensuring due process. Retrieved January 19, 2016, from <<http://www.dawn.com/news/1155812>>.

<sup>18</sup> Web Desk. (2016, August 29). SC rejects appeals against military courts' death sentences. Retrieved on February 26, 2017 from <<https://www.thenews.com.pk/latest/146139-SC-rejects-appeals-against-military-courts-death-sentences>>.

<sup>19</sup> Hashim, A. (2016, June 27). Pakistan's new military courts challenged over abuse claims. Retrieved March 03, 2017 from <<http://www.reuters.com/article/us-pakistan-military-courts-insight-idUSKCN0ZD2ZL>>.

<sup>20</sup> Staff Reporter. (2015, August 06). Six judges declare 21st Amendment, military courts illegal. Retrieved February 24, 2016, from <<http://www.dawn.com/news/1198632>>.

<sup>21</sup> Iqbal, N. (2015, April 05). Military courts get Supreme Court nod. Retrieved February 24, 2016, from <<http://www.dawn.com/news/1198533>>.

<sup>22</sup> Shams, S. (2015, August 07). Pakistan's military courts - a solution or a problem? Retrieved February 27, 2016, from <<http://www.dw.com/en/pakistans-military-courts-a-solution-or-a-prob-lem/a-18633959>>.

### 2.3.2 Human Rights Watch

Human Rights Watch's Deputy Director Asia Division, Phelim Kine said, "Pakistan's Prime Minister, Nawaz Sharif, claims to have a silver bullet to rid the country of terrorism: military courts. A constitutional amendment was signed into law on January 7, 2015 permitting military courts to prosecute terrorism suspects. The amendment justifies the use of military courts as a means "to permanently wipe out and eradicate terrorists from Pakistan". Nawaz Sharif's hyperbole has been no less extravagant, describing military courts as the antidote to "overcome 60 years of unrest". Although the constitutional amendment stipulates a two-year time limit on their use, it poses a long-term threat to legal due process and rule of law."<sup>23</sup>

### 2.3.3 International Commission of Jurists

The International Commission of Jurists (ICJ) published a briefing paper in 2016 where it claimed that "the government and military authorities have failed to make public information about the time and place of their trials; the specific charges and evidence against the convicts; as well as the judgments of military courts including the essential findings, legal reasoning, and evidence on which the convictions were based".<sup>24</sup>

Additionally, many claim that the establishment of military courts is indicative of the country's judicial system having failed to provide justice. Military courts have also been called a parallel system. Oddly, one justification offered for the existence of the military courts is the speedy trial of terror suspects, as well as shunning perceived ambiguities and shortcomings of the criminal justice system in Pakistan. The country's civilian courts have a well-earned reputation for prosecutions undermined by corruption, violence against prosecution and witnesses, and glacial service delivery.

## 2.4 Military Courts around the World

### 2.4.1 Military Tribunals in the United States

The Army Public School incident in Pakistan is sometimes referred to as the 9/11 of Pakistan. While a crude comparison, it does illustrate the fact that the incident marked a major policy shift in the country, much like it did in the US. While the American stance on the death penalty is driven in-part by the majority of the public favoring the punishment for a crime such as murder,<sup>25</sup> its history of military courts and orders is a separate matter altogether.

Post 9/11, President George W. Bush signed a new military order in the war on terror, intended to detain non-citizens accused of terrorism. The Secretary of Defense was given the power to establish

<sup>23</sup> Kine, P. (2015, January 17). Are military courts the best way to fight terror? Retrieved February 24, 2016, from <<https://www.hrw.org/news/2015/01/17/are-military-courts-best-way-fight-terror>>.

<sup>24</sup> Military Injustice in Pakistan. A Briefing Paper. (2016, June). Retrieved February 20, 2017, from <<https://www.icj.org/wp-content/uploads/2016/06/Pakistan-Military-court-Advocacy-Analysis-brief-2016-ENG.pdf>>.

<sup>25</sup> Gallup. (n.d.). Death Penalty: Gallup Historical Trends. Retrieved February 24, 2016, from <<http://www.gallup.com/poll/1606/death-penalty.aspx>>.

military tribunals to try the accused within, or even outside of the United States, and to determine the rules and procedures, different from regular courts of law, to ensure a full and fair trial. Three to seven military officers would be commissioned to act as both judge and jury, and not all elements of the normal due process were to be afforded to the accused.<sup>26</sup>

In the war of 1812, a British spy was tried by a military commission constituted by General Andrew. Committees of War, a fancy name for military tribunals, was utilized during the Mexican-American War (1846-48). The Union also leveraged military tribunals during and after the American Civil War. After the 1862 Dakota War, thirty-eight individuals were executed after being sentenced by military courts. The alleged Lincoln conspirators were likewise tried by a military commission in the spring and summer of 1865. Post the Spanish–American War, military tribunals were used in The Philippines. A tribunal was also set up by President Franklin D. Roosevelt during WWII to try eight German citizens accused for espionage and sabotage in the United States.<sup>17</sup>

#### 2.4.2 Military Courts in United Kingdom (The Military Court Service)

Military courts also exist in the United Kingdom in the form of the Military Court Service or MCS, granting criminal court administration to the Royal Navy (RN), Army and Royal Air Force (RAF) in the Court Martial, Summary Appeal Court (SAC) and Service Civilian Court (SCC). The MCS is headquartered in Upavon, Wiltshire, and there are five permanently manned MCCs in the UK. However, the courts are “portable” and can hold proceedings anywhere in the world. Their function is to deliver a criminal court service for the three branches of the armed services.

### 2.5 Conclusion

The government of Pakistan has declared military courts to be a success despite widespread and damning criticism that these courts are a parallel judicial system with a lack of openness and due process. The first half of the first year was marked by significant blowback and overshadowed by the proceedings of the Supreme Court. However, in the second half of the year, the verdicts picked up pace. In fact, the rate of convictions from military courts has gone up by nearly 600% in the second year.

With the absence of any progress on the criminal justice sector reforms, the argument against military courts can also be a difficult one to make. As it stands, military courts reached their sunset clause, and will take another vote from the parliament to be reinstated.

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<sup>26</sup> Constitutional Rights Foundation. (n.d.). America Responds to Terrorism: Military Tribunals. Retrieved February 24, 2016, from <<http://www.crf-usa.org/america-responds-to-terrorism/military-tribunals.html>>.