



# **Military Injustice in Pakistan**

Questions and Answers

December 2016

## **Military “injustice” in Pakistan: Questions and Answers**

The International Commission of Jurists (ICJ) releases the following Q and A in view of the imminent expiration of the 21<sup>st</sup> Amendment to the Constitution of Pakistan and amendments to the Army Act, 1952, which allow military courts to try civilians for terrorism-related offences.

The Q and A explains the legal provisions that allow military courts to try civilians and clarifies that the trial of civilians in military courts violates Pakistan's legal obligations to ensure people charged with criminal offences are tried by independent and impartial courts in proceedings that meet basic standards of fairness.

### **1. When did Pakistan allow military courts to try civilians?**

On 6 January 2015, less than a month after an armed attack, classed as an act of terrorism, on an army public school in Peshawar that killed nearly 150 people, most of them children, the Pakistani Parliament unanimously voted to amend the Constitution of Pakistan and the Army Act, 1952, to allow military courts to try civilians for offences related to terrorism. President Mamnoon Hussain signed the amendments into law on 7 January 2015. Both amendments have a “sunset clause” of two years, and will cease to be in effect on 6 January 2017.

### **2. How many people have military courts convicted for terrorism-related offences since January 2015?**

The military has acknowledged the convictions of at least 144 people by military courts for their “involvement” in terrorism-related offences since January 2015. Out of the 144 people convicted, 140 people have been sentenced to death. Twelve out of the 140 people sentenced to death have been hanged.

In addition, the military has announced that at least four people have been given life imprisonment sentences, but the number could be much higher.

At least 135 out of 144 people (94 per cent) convicted by military courts have allegedly “confessed” to their crimes.<sup>1</sup>

### **3. For what offences are military courts permitted to try civilians under the law of Pakistan?**

After the adoption of the 21<sup>st</sup> Amendment and amendments to the Army Act, 1952, military courts were given the jurisdiction try persons who claim to, or are known to, belong to “any terrorist group or organization using the name of religion or a sect” and carrying out acts of violence and terrorism,

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<sup>1</sup> See Annex 1 for details.

including: attacking military officers or installations; possessing, storing or transporting explosives, firearms, suicide jackets or other articles; using or designing vehicles for terrorist attacks; causing death or injury; creating terror or insecurity in Pakistan; and waging war against the state.

It is important to note that under these laws, military courts can put civilians on trial only if both these conditions apply, which means that suspects must: (1) claim to, or are known to, belong to "any terrorist group or organization using the name of religion or a sect"; and (2) be accused of carrying out certain acts of violence and terrorism.

#### **4. Are trials by military courts consistent with Pakistan's human rights obligations and international standards?**

The trial of civilians by military courts is incompatible with Pakistan's Constitution and its obligations under international human rights law.

First, international standards clarify that the jurisdiction of military tribunals should be restricted solely to specifically military offences committed by military personnel: they should not, in general, be used to try civilians, or to try people for gross human rights violations.<sup>2</sup>

Second, Pakistani military courts are not independent. Judges of military courts are military officers who are a part of the executive branch of the State and do not enjoy independence from the military hierarchy. They are not required to have judicial or legal training, or even a law degree, and do not enjoy any security of tenure, which are prerequisites of judicial competence and independence.

Third, trials before military courts fall far short of national and international fair trial standards: the right to appeal to civilian courts is not available; the right to a public hearing is not guaranteed; a duly reasoned, written judgment, including the essential findings, evidence and legal reasoning, is denied; and the procedures of military courts, including the selection of cases to be referred to them, the location and timing of trial, and details about the alleged offences are kept secret.

#### **5. What other human rights violations have been alleged by families of people convicted by military courts?**

Families of convicts have also raised concerns that some of some of the people tried by military courts had been subjected to enforced

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<sup>2</sup> For a detailed international law analysis of the trial of civilians by military courts, see *International Commission of Jurists*, Pakistan: military justice system unjust and ineffective, July 2016, accessed at: <http://www.icj.org/pakistan-military-justice-system-unjust-and-ineffective-new-icj-paper/>

disappearance and/or prolonged arbitrary detention by military authorities before their military trials.<sup>3</sup>

In at least two cases, the petitioners have also alleged that people convicted by military courts were children under the age of 18 at the time they were arrested by law enforcement agencies.<sup>4</sup>

## **6. Why is the high rate of “confessions” before military courts a concern?**

According to the military, at least 135 out of 144 (94 per cent) people convicted by military courts “admitted” to their involvement in terrorism during their trials.

Suspects tried by military courts remain in military custody at all times, even after the magistrate records their “confessions”. They also have no access to the outside world, further compounding their vulnerability not only to torture and ill treatment, but also to other forms of external pressure and coercion. And, reportedly, some suspects were secretly detained by military authorities as far back as 2010 and kept in internment centers in the Federally Administered Tribal Areas (FATA) before they “admitted” to their crimes during their military trials.

In the absence of adequate safeguards and independent review mechanisms in military proceedings, this high “confession” rate in circumstances described above raises serious questions about their voluntariness, and even concerns about torture and other ill treatment.<sup>5</sup>

## **7. How has the Supreme Court responded to these concerns?**

The Supreme Court upheld the validity of trying civilians before military courts in August 2015. The Court ruled that individuals who claim to, or are known to, belong to “any terrorist group or organization using the name of religion or a sect” constituted a valid classification allowing for differential treatment under the Constitution.<sup>6</sup>

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<sup>3</sup> *International Commission of Jurists*, Pakistan: military justice system unjust and ineffective, July 2016, accessed at: <http://www.icj.org/pakistan-military-justice-system-unjust-and-ineffective-new-icj-paper/>. See also, Malik Asad, “Curious case of the ‘missing’ terror convict”, *Dawn News*, 29 January 2016, accessed at: <http://www.dawn.com/news/1236109>

<sup>4</sup> See, for example, *International Commission of Jurists*, Pakistan: military justice system unjust and ineffective, July 2016, accessed at: <http://www.icj.org/pakistan-military-justice-system-unjust-and-ineffective-new-icj-paper/>, page 9.

<sup>5</sup> See Reema Omer, “Suspect Confessions”, *Dawn News*, 13 November 2016, accessed at: <http://www.dawn.com/news/1295973/suspect-confessions>

<sup>6</sup> See *International Commission of Jurists*, “Supreme Court decision upholding 21st Amendment a blow to human rights and judicial independence”, 7 August 2015, accessed at: <http://www.icj.org/pakistan-supreme-court-decision-upholding-21st-amendment-is-a-blow-to-human-rights-and-judicial-independence/>

Families of sixteen civilians sentenced to death by military courts in secret proceedings challenged their convictions and sentences in the Supreme Court on fair trial grounds. In August 2016, the Supreme Court held the petitioners had failed to prove the military violated their constitutional right to a fair trial.

It is important to note that the Supreme Court did not address many of the allegations raised by the petitioners because it narrowly interpreted its review jurisdiction to mean it could only intervene where the petitioners proved malice by the military authorities or demonstrated that military courts did not have jurisdiction to hear the case under the amended Army Act. In doing so, the Court held that the circumstances in which people were arrested, even if they were forcibly disappeared and kept in secret detention for years, fell outside its review jurisdiction.<sup>7</sup>

Dozens of review petitions filed by families of people convicted by military courts are still pending before various high courts and the Supreme Court.

## **8. What steps has the Government taken to strengthen the criminal justice system since the 21<sup>st</sup> amendment was passed?**

At the time the 21<sup>st</sup> amendment was enacted, the Government had claimed that military courts would be a short-term, "exceptional" measure and the two-year period would be used to strengthen the ordinary criminal justice system to better equip regular courts to conduct terrorism-related trials. These changes, however, are nowhere to be seen.

In May 2016, the National Assembly (lower house of parliament) passed a bill to strengthen the criminal justice system and "root out the evil of terrorism with exemplary deterrence". The bill is currently pending before the Senate (upper house of parliament).<sup>8</sup>

The bill introduces a vaguely framed offence that makes certain acts done with the intention of "inciting religious, sectarian or ethnic hatred" punishable with one to three years imprisonment; increases the sentence for police officers guilty of "neglect/violation of duty"; makes convictions on the basis of "modern techniques" lawful (previously the law gave the court discretion to allow evidence based on modern techniques to be produced); and introduces a new crime of "lynching" in the Anti-terrorism Act, 1997, punishable with three years' imprisonment.

These amendments, however, fail to respond to the specific weaknesses of the criminal justice system that were used as the justification for

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<sup>7</sup> See *International Commission of Jurists*, "Supreme Court validation of military court trials a blow to the rule of law", 29 August 2016, accessed at: <http://www.icj.org/pakistan-supreme-court-validation-of-military-court-trials-a-blow-to-the-rule-of-law/>

<sup>8</sup> The bill can be accessed here : [http://www.na.gov.pk/uploads/documents/1463738605\\_158.pdf](http://www.na.gov.pk/uploads/documents/1463738605_158.pdf)

establishing military courts to try terrorism-related cases. For example, they do not respond to the issue of prolonged delays in trials before anti-terrorism and regular criminal courts; lack of adequate witness protection and security for judges; and allegations that judgments of civilian courts are influenced by external factors.

**9. Do other countries in South Asia allow military courts to try civilians?**

Since the amendments were signed into law in January 2015, Pakistan is the only country in South Asia to allow military courts to try civilians for non-military offences, including offences related to terrorism.

In the rest of the region, the trend is of narrowing the jurisdiction of military courts and more generally of bringing the procedures followed by military courts in as close alignment as possible to those followed by regular courts.