

Revisiting Counter-terrorism Strategies in Pakistan: Opportunities and Pitfalls

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Executive Summary

The 16 December 2014 attack on an army-run school in Peshawar, which killed 150, mainly children, claimed by the Tehreek-e-Taliban Pakistan (Taliban Movement of Pakistan-TTP), was ostensibly a game changer. A week later, the Pakistan Muslim League (Nawaz) (PML-N) government unveiled a new counter-terrorism strategy, the twenty-point National Action Plan (NAP), with Prime Minister Nawaz Sharif and Army Chief Raheel Sharif vowing to target all terror groups without distinction. Six months later, amid continued terror attacks, the NAP looks far more like a hastily-conceived wish-list devised for public consumption during a moment of crisis than a coherent strategy. Reliance on blunt instruments and lethal force to counter terrorism risks doing more harm than good when they undermine constitutionalism, democratic governance and the rule of law and provide grist to the jihadis' propaganda mill. A reformed and strengthened criminal justice system is pivotal to countering terror threats and containing violent extremism.

The militarisation of counter-terrorism policy puts at risk Pakistan's evolution toward greater civilian rule, which is itself a necessary but not sufficient condition to stabilise the democratic transition. While the report addresses the coercive side of a counter-terrorism policy and how to make it more efficient, without structural and governance reform, the root causes of terrorism and extremism will remain unaddressed, and violent jihadis will continue to exploit the absence of rule of law. The military's continual undermining of civilian authority since democracy's restoration in 2008 will remain a major challenge to meaningful and sustained reform. Yet, the political leadership also bears responsibility for failing to push back and, as a result, undermining its credibility and authority.

After inaugurating the NAP on 24 December, the Sharif government implemented two major demands of the military without delay: lifting the predecessor government's 2008 moratorium on the death penalty; and passing on 6 January 2015 the 21st constitutional amendment, empowering special military courts to try all terrorism suspects, including civilians. Yet, the vast majority of the 176 executions since late December have been for crimes unrelated to terrorism, and the military courts weaken constitutional protections and due process. Other newly-created parallel structures, including provincial "apex committees", enable the military to bypass representative institutions and play a more direct role in governance. Armed with new legal tools, the military has further marginalised civilian institutions in devising and implementing counter-terrorism policy.

Despite claims to the contrary, the military, which has almost complete control over national security and counter-terrorism policy, also still distinguishes between "bad" jihadi groups, those targeting the security forces, and "good" jihadi groups, those perceived to promote its strategic objectives in India and Afghanistan. Anti-India outfits such as Jamaat-ud-Dawa (JD), the renamed version of the banned Lashkar-e-Tayyaba (LeT), have even expanded their activities through so-called charity fronts. Military-backed Afghan insurgents, such as the Haqqani Network, have not been targeted in ongoing operations in the North Waziristan agency of the Federally Administered Tribal Areas (FATA). Instead, the Haqqanis, like the LeT/JD, have been kept off Pakistan's list of terrorist groups.

Unsurprisingly, there is little evidence of progress on many NAP targets. Groups and individuals banned in Pakistan and also blacklisted under UN Security Council (UNSC) Resolution 1267, continue to operate freely. Efforts to regulate the madrasa sector, curb hate speech and literature and block terrorist financing have been haphazard at best.

A reformed and strengthened criminal justice system could have helped to achieve NAP's objectives. The Sharif government still has an opportunity, albeit fast shrinking, to reverse course and meaningfully overhaul counter-terrorism strategy, but this necessitates revoking major policy concessions to the military. The government should take on that challenge in order to replace an overly militarised response with a revamped, intelligence-guided counter-terrorism strategy, led by civilian law enforcement agencies, particularly the police. Dismantling terror networks, detaining and trying jihadi leaders and foot soldiers, disrupting terror financing and ending radicalisation through hate speech and literature will require reallocating limited resources in order to strengthen the capacity of the provincial police forces. While the three basic bodies of law, the Penal Code, Criminal Procedure Code and Evidence Act, need to be modernised, it is even more urgent to build police capacity to enforce them. That capacity has been gravely eroded due to the inadequacy of resources, training, internal accountability and autonomy.

An empowered, resourced police force remains the most credible tool for enforcing a sustained and successful counter-terrorism strategy. The current emphasis on revenge and retribution and the emasculation of fundamental rights and rule of law are undermining citizen confidence in the state to deliver justice, a flawed approach that also fuels grievances that benefit the violent extremists the NAP is aimed at combatting.

Recommendations

To develop a civilian-led and intelligence-based counter-terrorism strategy

To the federal and provincial governments:

1. Make the expansion, modernisation and effectiveness of local and provincial police forces' investigation branches a top counter-terrorism priority, including through training and technology in crime-scene investigation and case building.
2. Disband the new parallel counter-terrorism forces and absorb their personnel and functions into regular police cadres after requisite training.
3. Reform the Evidence Act to shift focus from witness testimony to modern scientific evidence; and invest in strong state-protection programs for witnesses, investigators, prosecutors and judges in terrorism and other major criminal cases.
4. Enhance police operational autonomy and accountability, including by ensuring that the provincial police inspector general (IG) is appointed on merit and granted full authority over the force.

To the provincial police leadership:

5. Undertake a comprehensive examination of their force to determine staffing and training needs, with particular emphasis on developing effective investigation cadres; and establish career progression paths that depend on performance.
6. Review comprehensively and reform the training curriculum, in consultation with in-house and external experts, so as to create learning modules for intelligence-led counter-terrorism operations that include an emphasis on the police role in curbing hate speech and literature and enforcing the law against clerics, mosques and madrasas advocating or supporting violence.

For robust monitoring of banned groups and individuals

To the federal and provincial governments:

7. Reconcile Pakistan's list of banned groups under the Anti-Terrorism Act (ATA) 1997 with the UN Security Council (UNSC) Resolution 1267 committee blacklist; and make both lists available to the federal and provincial police, other law enforcement agencies, financial institutions and the public.
8. Develop a regularly-updated list of officers and members of banned groups, and enforce requisite curbs on travel, bearing arms, financial transactions and other proscribed activities.
9. Update periodically the ATA's Fourth Schedule, listing known suspects belonging to banned organisations, and require police stations and district police superintendents to account regularly for the individuals on the Fourth Schedule in their jurisdictions.
10. Ensure that the police investigate and monitor all madrasas, mosques and charities with known or suspected links to banned groups under the ATA or the UNSC 1267 blacklist, as well as those that maintain armed militias, or whose administrators

and/or members propagate hate and/or incite violence and other criminal acts within or from the country.

To curb terrorist financing and money laundering

To the federal and provincial governments:

11. Develop a specialised cell within the Federal Investigation Agency (FIA) to investigate terror financing and money laundering; and establish concurrent jurisdiction over such cases between the FIA and specialised provincial police units and counter-terrorism departments.
12. Make anti-money laundering and anti-terrorist financing methods an integral part of the police training curriculum, based on international standards.
13. Require banks and other financial institutions to install, with international assistance, software for crosschecking names of existing and potential clients against those sanctioned under the ATA; and ensure provincial police are given this information and information gained from comprehensive audits of madrasas, mosques and charities with known or suspected affiliations to violent jihadis.
14. Enhance the state's ability to curb terror financing within and from the Federally Administered Tribal Areas (FATA) by extending the jurisdiction of the Khyber Pakhtunkhwa (KPK) province police, FIA and other relevant civilian law enforcement agencies to the tribal belt.

To achieve a sustainable counter-insurgency strategy in FATA

To the federal government and parliament

15. Pass Senator Farhatullah Babar's constitutional amendment bill extending the jurisdiction of the superior judiciary to FATA; and follow up with another constitutional amendment that repeals Article 247, ends FATA's separate legal status and extends the jurisdiction of the police and other civilian law-enforcement agencies to FATA.
16. Abolish the 1901 Frontier Crimes Regulation (FCR), replacing it with the Pakistan Penal Code and the Criminal Procedure Code.

Islamabad/Brussels, 22 July 2015

Revisiting Counter-terrorism Strategies in Pakistan: Opportunities and Pitfalls

I. Introduction

Launched soon after the attack on an army-run school in Peshawar, Khyber Pakhtunkhwa (KPK) province's capital on 16 December 2014, Pakistan's new counter-terrorism strategy has yet to prevent violent jihadi groups from operating freely.¹ Terror attacks occur regularly, claiming scores of lives, particularly targeting sectarian and religious minorities.² Military and police personnel are injured or killed in terror attacks almost daily – from the tribal belt bordering Afghanistan to the southern port city of Karachi.³

Conceived in the aftermath of the Peshawar attack, which killed mostly children, the National Action Plan (NAP) contains important law enforcement objectives, including action against banned jihadi groups, regulating the madrasa sector and curbing terror financing. With the military given the lead, however, it focuses less on civilian law enforcement, and more on blunt tools and lethal force.

Analysing the NAP and assessing its prospects, this report identifies measures to strengthen the state's capacity to counter terror threats and contain violent extremism. It addresses the coercive side of a counter-terrorism strategy, and how to make it more efficient, while acknowledging that a long-term response requires actions that drain

¹ For previous analysis of jihadi violence in Pakistan, see Crisis Group Asia Reports N°255, *Policing Urban Violence in Pakistan*, 23 January 2014; N°242, *Pakistan: Countering Militancy in PATA*, 15 January 2013; N°216, *Islamist Parties in Pakistan*, 12 December 2011; N°196, *Reforming Pakistan's Criminal Justice System*, 6 December 2010; N°178, *Pakistan: Countering Militancy in FATA*, 21 October 2009; N°164, *Pakistan: The Militant Jihadi Challenge*, 13 March 2009; N°125, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006; and N°95, *The State of Sectarianism in Pakistan*, 18 April 2005.

² Ismailis are a minority Shia sect. Sunni extremists killed at least 45 Ismailis in Sindh's capital, Karachi, on 13 May 2015. More than 60 were killed in the 30 January bombing of a Shia mosque in Sindh's Shikarpur district; the 13 February attack on a Shia mosque in Peshawar killed at least nineteen; the 15 March bombings of two churches in Punjab's capital Lahore killed at least fifteen and injured over 70; eight Hazara Shias were killed in targeted attacks in Quetta in the last week of May and another five on 7 June. From January 1989 to March 2015, there were 2,979 sectarian attacks, including on Shias, Ahmadis, Christians and Hindus, killing 5,059 and injuring 9,713. "Terrorism of all hue", *The Friday Times*, 20-26 March, 2015; "Five Hazaras killed in Quetta firing", *The News*, 8 June 2015; "Two Hazaras killed in Quetta targeted attack", *The Express Tribune*, 28 May 2015; "Safora massacre death toll rises to 45 as Ismaili community say their last goodbyes", *The Express Tribune*, 14 May 2015; "At least 60 killed in blast at Shikarpur imambargah", *Dawn*, 31 January 2015; "19 killed, over 45 injured in explosions, firing inside Shia mosque in Peshawar", *The Express Tribune*, 13 February 2015; "15 killed in Taliban attack on Lahore churches", *Dawn*, 17 March 2015.

³ "Two cops killed, six others injured in Peshawar suicide blast", Agence France-Presse, 11 June 2015; "Seven soldiers die in suicide bombing", *Dawn*, 9 June 2015; "TTP claims responsibility for killing police officer", *Daily Times*, 21 May 2015; "Clearing operation: Landmine kills 4 troops in Waziristan", *The Express Tribune*, 23 May 2015; "Soldier killed in cross-border attack in Bajaur", *The News*, 24 May 2015; "Three policemen killed in Karachi", *The Express Tribune*, 27 May 2015; "Gunmen kill 4 cops in Quetta", *The Nation*, 6 June 2015.

the pool of potential recruits and therefore policies that go beyond law enforcement by offering more effective and inclusive governance, economic and other opportunities, particularly for youth, protecting minorities and strengthening community cohesion. It is based on countrywide interviews with police, lawyers, government officials and other stakeholders. Given the sensitivity of the information, most names have been withheld on request; locations of some interviews have also been withheld.

II. Counter-terrorism and Civilian-military Relations

The Peshawar attack occurred amid a four-month political crisis, begun in mid-August 2014, in which Imran Khan's Pakistan Tehreek-e-Insaf (PTI) party and the cleric-cum-politician Tahirul Qadri's Pakistan Awami Tehreek (PAT) led large demonstrations demanding Prime Minister Nawaz Sharif's resignation and parliament's dissolution. Weakened by these, the Pakistan Muslim League (Nawaz) (PML-N) government became more dependent on the military for survival. By the time of the attack, it had ceded much ground to the military, including abandoning efforts to broaden relations with India and reset them with Afghanistan, and allowed it "to lead on internal security arrangements".⁴ Parlaying public anger over the attack, claimed by the Tehreek-e-Taliban Pakistan (Taliban Movement of Pakistan-TTP), the high command successfully pressured the civilian government and legislature to endorse its counter-terrorism approach and role. The latter was expanded by the 21st constitutional amendment and the Pakistan Army Act (Amendment) 2015, empowering military courts for two years to try all terror suspects, including civilians.

The military's almost complete control over national security and counter-terrorism policy should be seen in the light of its continual encroachment into civilian affairs since democracy's restoration in 2008. The Pakistan Peoples Party (PPP)-led government completed its five-year term, the first democratically elected government to do so since the 1970s, but under constant threat of dismissal, it survived only by constant concessions to the military, including on counter-terrorism.⁵

Despite winning an absolute majority in the May 2013 elections that gave it more leeway than the PPP's fragile coalition, the PML-N government was tentative in framing a security policy in its first months. With terror attacks spiking, rather than taking the lead and/or using parliament as the forum for debate, it held an all-parties conference in September, attended by senior military officials that called for a negotiated deal with the TTP.⁶ It thus accepted a failed strategy – conceived and implemented by President Pervez Musharraf's military regime in the Federally Administered Tribal Areas (FATA) in 2004 and pursued by the high command there and in KPK since – that had given the insurgents space and time to expand.

Attempts begun in February 2014 to negotiate a peace emboldened the insurgents and were further complicated by the military's continued distinction between "bad" Taliban groups that attacked the security forces and "good" Taliban, such as the TTP's Gul Bahadur group and longstanding Afghan proxies, including Mullah Omar's Rahbari Shura, Gulbuddin Hekmatyar's Hizb-e Islami and the Haqqani Network.⁷ Amid amplified public calls for state action, talks were abandoned after the June 2014 terror attack on Karachi's international airport. The military took the lead, with little civilian input, conducting an operation (Zarb-e-Azb, sharp strike), in FATA's North Waziristan agency, where militant groups operated with impunity. Belying claims that no distinctions would be made, Pakistani Taliban that maintained peace deals with the military, as well as the Afghan insurgents, were reportedly warned well in advance; many leaders

⁴ Raza Rumi, "Charting Pakistan's Internal Security Policy", Special Report, U.S. Institute of Peace (USIP), May 2015.

⁵ Crisis Group Reports, *Countering Militancy in PATA; Reforming Pakistan's Criminal Justice System; Countering Militancy in FATA; The Militant Jihadi Challenge*, all op. cit.

⁶ "Resolution of the all-parties conference on Sept 9, 2013", *Dawn*, 9 September 2013.

⁷ Crisis Group Reports, *Countering Militancy in FATA; The Militant Jihadi Challenge; Appeasing the Militants*, all op. cit.

and foot soldiers reportedly relocated to Afghanistan, neighbouring FATA agencies, KPK's settled districts and even Karachi.⁸

The military's failure, despite warnings by intelligence agencies, to prevent the attack on the school in Peshawar's heavily-guarded cantonment led to public demands for the elimination of all violent extremists. To assuage the outrage, the government, with the military leading the process according to well-informed sources, hastily devised and launched the NAP.⁹ Even a sound strategy would likely take years to counter widespread jihadi violence, but the current approach risks aggravating rather than limiting the problem. Prime Minister Sharif still has a major opportunity, given strong public support, to overhaul this strategy, but it will require reversing concessions to the military as a first step.

⁸ Crisis Group Asia Report N°262, *Resetting Pakistan's Relations with Afghanistan*, 28 October 2014; also, K. Alan Kronstadt, "Pakistan-U.S. Relations: Issues for the 114th Congress", Congressional Research Service, 14 May 2015.

⁹ Crisis Group interviews, serving and retired police officials and others involved in conceiving NAP, Islamabad, Lahore, April-May 2015.

III. The National Action Plan

A. *Revisiting Counter-terrorism Strategies*

The National Action Plan followed two earlier expressions of the Sharif government's counter-terrorism strategy: a 64-point National Internal Security Policy (NISP), approved by the federal cabinet in February 2014; and the Protection of Pakistan Act (PPA), signed into law in July 2014.¹⁰ The NISP called for modernising all aspects of the criminal justice system, along with better oversight and regulation of mosques and madrasas, and a range of "soft" interventions. Implementation was to be led by the National Counter-Terrorism Authority (NACTA), established in December 2009 to coordinate federal and provincial governments, law enforcement and military and civilian intelligence agencies. Its remit was to oversee intelligence and data collection, analysis and dissemination through a new directorate of internal security that would bring "all grids of tactical, operational and strategic intelligence, civil and military, under one roof".¹¹

While the NISP included several constructive and practical policy prescriptions, the PPA sought quick fixes, such as empowering security agencies, including the military and paramilitary forces, to hold suspects in preventive detention for up to 90 days, detaining suspects without revealing their whereabouts except to the Supreme Court or a high court, and concealing the reasons for detention. Military and paramilitary personnel and police officers (grade BPS-15 and above) were given broad discretion in exercising shoot-to-kill authority. The PPA also called for creation of special courts to try cases in which the burden of proof would shift to the accused and proceedings would be held in-camera.¹²

Public outrage at the 2014 Peshawar attack gave the Sharif government an opportunity to reinforce and implement the NISP's more positive aspects. However, a former Punjab police inspector general said, "the impression was that the NISP was too long and [implementation] required too much time; post-Peshawar we needed to work at a faster pace".¹³ Yielding to military pressure, the government and its political opposition reinforced the PPA and developed a counter-terrorism strategy based on coercive force, deviation from constitutional norms and more quick fixes.¹⁴

On 17 December, the day after the attack, the government lifted the PPP-led government's post-2008 moratorium on the death penalty for terrorism cases. On 19 December, meeting in Lahore, serving and retired bureaucrats, military and police

¹⁰ It was based on an ordinance promulgated in January 2014 "to provide for protection against waging of war or insurrection against Pakistan and the prevention of acts threatening the security of Pakistan". Text of "The Protection of Pakistan Act, 2014" at www.na.gov.pk.

¹¹ The soft interventions included technical and vocational training and employment programs for youth; developing "a robust national narrative on extremism, sectarianism, terrorism, and militancy" through the media, educational institutions and outreach to intellectuals and religious scholars; and reintegrating the militants into the mainstream. Text of NISP, available at <http://nation.com.pk/islamabad/27-Feb-2014/text-of-national-security-policy-2014-18>.

¹² Protection of Pakistan Act, 2014; and Pakistan Penal Code (Act XLV of 1860), op. cit. "BPS" refers to Basic Pay Scale, a system of national pay grades. Those at BPS-15 and above include the highest clerical personnel, as well as superintendents and officers. For more on civil service and policing structures, see Crisis Group Asia Reports N°185, *Reforming Pakistan's Civil Service*, 16 February 2010; and N°157, *Reforming Pakistan's Police*, 14 July 2008.

¹³ Crisis Group interview, Shaukat Javed, Lahore, 9 April 2015.

¹⁴ Crisis Group interviews, serving and retired police officials and others involved in conceiving NAP, Islamabad, Lahore, April-May 2015.

officials, a prominent lawyer and civil society representative, and a member of Khan's PTI developed the NAP framework. After chairing a meeting of all political parties, Prime Minister Sharif announced the twenty-point NAP in a televised address on 25 December, saying the "Peshawar tragedy has transformed the country. We have to counter the terrorist mindset in order to curtail extremism and sectarianism".¹⁵

Most of NAP's twenty points relate to implementing existing laws and constitutional bars, including preventing banned organisations from operating and/or regrouping under new names; preventing terrorist funding; dismantling terrorist communication networks; prohibiting private militias; acting against sectarian organisations and countering hate speech and the dissemination of hate literature. Along with making NACTA effective, NAP calls for regulating the madrasa sector, rehabilitating internally displaced persons (IDPs), introducing administrative and development reforms in FATA, and empowering the Balochistan government to lead in "political reconciliation" with "complete ownership by all stakeholders". By also calling for formulation of a "comprehensive policy to deal with the issue of Afghan refugees", it implicitly scapegoats them for the spread of crime and militancy that has weakened the state's writ in FATA and KPK.¹⁶

Pressured by the military, the federal parliament moved quickly to provide constitutional cover for the most controversial point, the special trial courts. Passed on 6 January 2015, the 21st amendment empowers military courts to try, except for members of registered political parties, any person "who claims, or is known, to belong to any terrorist group or organisation using the name of religion or a sect". The military courts undermine the constitutional separation of the executive and judiciary. The PPA and the amended Pakistan Army and Air Force Acts and Pakistan Navy Ordinance have been added to Part I of the First Schedule, which exempts laws from consistency with fundamental rights provisions. Citizens are thus denied constitutionally guaranteed protections.

B. *NAP's Implementation Mechanisms*

A number of bodies have been formed to oversee NAP's implementation.¹⁷ Policy guidelines are provided by a central committee, chaired by the prime minister and including nine cabinet members, along with fifteen subcommittees to oversee specific NAP components. Eleven are chaired by Interior Minister Chaudhry Nisar Ali Khan, but little is known about their functioning and deliberations.¹⁸

The main institutional mechanism is an "apex committee" in each province. Headed by the chief minister and including provincial bureaucrats, senior military officials and representatives from military and civilian intelligence agencies, this body, among other responsibilities, sends the interior ministry cases to be tried in military courts. Formation of these committees was not included in NAP; there is no official notification establishing them or defining terms of reference. A well-informed analyst argued that their creation, "as the focal entity for decision-making pushes the federal and

¹⁵ "Nawaz Sharif unveils govt's counterterrorism strategy", *The Nation*, 25 December 2014.

¹⁶ Text of NAP at www.pmln.org.

¹⁷ Only NAP point twenty refers to the criminal justice system: "Reforms in criminal courts system to strengthen the anti-terrorism institutions including the CIDs (Crime Investigation Departments)".

¹⁸ "Over 120 days on: 70 per cent NAP agenda unfinished", *The Express Tribune*, 27 April 2015.

provincial cabinets to the sidelines, and brings the army formally into the civilian administrative domain”.¹⁹

That the Inter Services Press Relations (ISPR), the military’s media wing, announced their formation on 3 January 2015 reinforced such suspicions. The Punjab apex committee held its inaugural meeting the same day in the army corps headquarters in Lahore, attended by Army Chief Sharif and General Rizwan Akhtar, the head of Inter-Services Intelligence (ISI), among other military and civilian leaders.²⁰ Concerns that the military would use the committees to marginalise elected governments in the centre and the provinces are increasing. In February 2015, the leader of the opposition in the National Assembly, PPP’s Khurshid Shah, warned that the apex committees were fast becoming a parallel government.²¹

A retired police inspector general involved in formulating NAP believed that the committees also gave the military an opportunity to “get involved in police administrative issues. Will the police now look to the military commanders for security of their tenures or for different assignments?” Sindh’s apex committee has already reportedly decided to weigh in on all senior police postings.²² A senior Sindh police official asked: “What authority do I have to command a force if the message sent is that I need an army man next to me to ensure I’m doing my job right?”²³

According to a senior Balochistan official, the military takes all decisions in the province’s apex committee. The provincial government’s efforts to negotiate a peace with Baloch insurgents have failed, since it cannot guarantee an end or even suspension of military operations that include extrajudicial killings and enforced disappearances. Accusing the insurgents of collaborating with India’s premier external intelligence agency, the Research and Analysis Wing (RAW), the military has expanded operations against them.²⁴

¹⁹ Dr Hasan Askari Rizvi, “The civil-military hybrid”, *The Express Tribune*, 25 February 2015.

²⁰ Inter-Services Public Relations (ISPR) press release no. PR5/2015, 3 January 2015. “Apex committees formed in all provinces to implement NAP”, *The Express Tribune*, 3 January 2015.

²¹ “Implementation of NAP: apex committee’s extended role criticised”, *The Express Tribune*, 24 February 2015.

²² Tariq Khosa, “Grapes of wrath”, *Dawn*, 24 February 2015. Crisis Group interview, official involved with paramilitary operations against Karachi’s criminal and militant networks, Karachi, April 2015.

²³ Crisis Group interview, Karachi, April 2015.

²⁴ Crisis Group interview, April 2015. During a Quetta visit, General Sharif warned foreign governments and intelligence agencies against “supporting the Baloch insurgency”. A corps commanders conference in Islamabad on 5 May, according to ISPR, “took serious note of RAW’s involvement in whipping up terrorism in Pakistan”. On 16 May, following the Karachi terror attack on Ismailis, ISI chief Rizwan Akhtar briefed General Sharif on RAW involvement in Balochistan. “RAW instigating terrorism, says army”, *Dawn*, 6 May 2015; “Destabilising Pakistan: ISI urged to counter plans of hostile agencies”, *The Express Tribune*, 16 May 2015.

IV. NAP's Scorecard

A. *Suppressing Banned Groups*

According to NAP, “militant outfits and groups will not be allowed to operate in the country”; “defunct outfits will not be allowed to operate under any other name”.²⁵ The two main relevant lists of banned groups and individual terrorists are a national one under the Anti-Terrorism Act (ATA) 1997 and overseen by the interior ministry; and one maintained by the UN Security Council (UNSC) Sanctions Committee established under Resolution 1267 (1999), which includes Pakistan-based actors.²⁶ Instead of targeted operations against those on these lists, however, Pakistan’s counter-terrorism response has been heavy-handed, indiscriminate, ineffective, and counter-productive.

On 10 March 2015, the government said it would execute all death-row convicts who had exhausted their appeal (some 1,000 of 8,000), not just those who had committed acts of terrorism. The vast majority of the 176 people hanged before executions were suspended at the start of Ramadan (on 19 June 2015) were sentenced for crimes unrelated to terrorism. Moreover, the independent Human Rights Commission of Pakistan (HRCP) notes, “the well-documented deficiencies in law and a deeply flawed criminal justice system continue to pose threats [of] wrongful convictions”.²⁷ Instead of countering terrorism, the executions further increase the risk of miscarriage of justice; confessions are often obtained through torture, and the poor, who lack good legal counsel, are the worst affected.

That thousands have also been arrested on terrorism charges is aimed at giving the appearance of NAP having an impact, but the numbers are deceptive. From 24 December to 25 March, according to NACTA, 32,345 persons were arrested on various terrorism-related charges but few, it appears, belonged to extremist outfits. On 28 May, NACTA’s national coordinator told parliament that 49,000 suspects had been arrested after December 2014, but only 129 belonged to the TTP.²⁸

Army Chief Raheel Sharif and Prime Minister Nawaz Sharif have repeatedly stressed that action would be taken against all terror groups, without exception. Yet, the most prominent banned jihadi groups continue to operate freely under changed names and through so-called charity fronts. These “good banned groups”, as a prominent opposition parliamentarian called them, do not target the state and its security forces, and many also serve as the military’s proxies to promote perceived national security interests.²⁹ This selective approach is justified on the grounds that the clampdown is to be “sequenced”, starting with those who have targeted or are currently targeting the state, but to be followed eventually by those that have other goals, including against India

²⁵ NAP points three and seven.

²⁶ ATA’s primary objectives are “the prevention of terrorism, sectarian violence and for speedy trial of heinous offences”, ATA preamble; UN Security Council “List established and maintained by the 1267/1989 committee”, www.un.org/sc/committees/1267/1267.pdf.

²⁷ “Who has been executed?”, at <http://hrcp-web.org/hrcpweb/who-has-been-executed>.

²⁸ According to the interior ministry’s consolidated April report on NAP implementation, 292,097 persons were “picked up” in “combing operations”, but only 140 (0.05 per cent) belonged to extremist groups. The vast majority were subsequently released. “NAP report indicates little progress on key fronts”, *Dawn*, 3 April 2015; “Newly crafted anti-terrorism strategy ‘going nowhere’”, *The Express Tribune*, 29 May 2015; “COAS’s resolve”, *Daily Times*, 30 March 2015.

²⁹ Crisis Group interview, Islamabad, March 2015.

and Afghanistan.³⁰ This ignores the links between sectarian, regional and global jihadi groups, which involve sharing of resources, recruits, intelligence and, occasionally, targets.³¹ Jihadi proxies can and have also turned their guns against their military patrons in the past.³²

Although banned in Pakistan and included in the UN sanctions list, Hafez Saeed's Lashkar-e-Tayyaba (LeT, now renamed Jamaat-ud-Dawa, JD) and Maulana Masood Azhar's Jaish-e-Mohammed are among the "good banned groups", since India is their primary target. The trial of LeT/JD operative Zakiur Rehman Lakhvi, accused of masterminding the November 2008 Mumbai attacks and released on bail in April 2015, appears to be unravelling, indicating little change in the military's support for anti-India jihadi proxies.³³ According to an official monitoring the case, Lakhvi's release became a source of tension between the civilian and military leaderships: "The political government knows that this case could become a major international embarrassment, so it looked for ways to keep him in jail. But the military all of a sudden was talking about the importance of due process. The fact is Lakhvi is 'their' boy".³⁴ A prominent lawyer wrote: "The Lakhvis of our world are not bailed out because our courts are terror-friendly. They are let loose because the state has a duplicitous policy when it comes to good and bad terrorists".³⁵

The LeT/JD not only continues to operate freely, but has also expanded its activities to Karachi and elsewhere through its so-called charity front, the Falah-e-Insaniyat Foundation (FIF). The FIF is one of the few organisations with unimpeded access to Sindh's drought-prone Tharparkar district, allowing it to consolidate a growing LeT/JD presence in the province.³⁶ In Balochistan, where jihadi madrasas had mushroomed in the Pashtun-majority belt during and after the Afghan anti-Soviet jihad, LeT/JD madrasas are now expanding to Baloch-majority regions.³⁷

While continued support for Afghan jihadi proxies is evident, with the Haqqani Network also excluded from Pakistan's list of terrorist groups (see below), several home-grown Sunni extremist outfits also appear to be considered among the "good banned groups". These include the Sipah-e-Sahaba Pakistan (SSP, banned in 2002, now renamed Ahle Sunnat Wal Jamaat, ASWJ). An arrest warrant for its leader, Maulana

³⁰ Crisis Group interviews, serving and retired officials involved with NAP's implementation, Lahore, Karachi, Islamabad, April-May 2015.

³¹ According to the May 2015 report on foreign fighters, submitted to the UN Security Council by the Sanctions Monitoring Team, Afghan security forces estimated that some 6,500 foreign terrorist fighters were active in the country, most associated with TTP, but also including LeT fighters from the Islamic Movement of Uzbekistan and the Eastern Turkistan Islamic Movement. S/2015/358, 19 May 2015.

³² Some members of the anti-India Jaish-e-Mohammed, established in 2000 with military patronage and responsible for the 2001 attack on the Indian parliament, were involved in a 2003 assassination attempt on Army Chief and President Pervez Musharraf. Although banned under U.S. pressure following the 2001 attack, Jaish was allowed to re-emerge under a changed name. Stephen Tankel, *Storming the World Stage: The Story of Lashkar-e-Tayyaba* (London, 2011).

³³ After the government failed to present a strong case, an anti-terrorist court granted Lakhvi bail in December 2014, though he was detained under the West Pakistan MPO (Maintenance of Public Order) until the Islamabad High Court overturned this. The government later detained him for kidnapping, but he was released on bail by the Lahore High Court in April 2015. The MPO allows the state to "arrest and detain suspected persons" for up to six months to prevent them from "acting in any manner prejudicial to public safety of the maintenance of public order".

³⁴ Crisis Group interview, Lahore, April 2015.

³⁵ Babar Sattar, "In defence of Qadri verdict", *Dawn*, 16 March 2015.

³⁶ "Footprints: vacuum left by the state", *Dawn*, 21 November 2014.

³⁷ Crisis Group interview, senior Balochistan government official, April 2015.

Ahmed Ludhianvi, is ignored and its officers, madrasas and mosques in Islamabad have been given police protection from rival extremist factions.³⁸

According to a senior provincial government official, “the military is telling militants you guys have stepped out of line [by attacking military and other state targets]. The message [is] you can carry on if you go back to the way it was”.³⁹ That message might be aimed mainly at Sunni extremist LeJ, several of whose activists have been arrested, tried and, in the case of those convicted in the late 1990s to mid-2000s, even hanged.⁴⁰ Yet, no action has been taken against its leader, Malik Ishaq, or Asmatullah Muawiya, head of the so-called Punjabi Taliban, who announced in September 2014 that his group would end attacks on Pakistani security forces and focus on Afghanistan. He was reportedly allowed to return to his home in Punjab.⁴¹

HRCP’s secretary general said, “instead of previously good jihadis now being deemed bad jihadis, we’re seeing the reverse, as some bad jihadis are now deemed good jihadis”. A PPP senator added: “How do you claim you’ve stopped distinguishing between ‘good’ and ‘bad’ jihadis when you let people like Muawiya go free?” In a February 2015 Senate session, almost two months after the Peshawar attack, PPP Senator Farhatullah Babar cited Muawiya’s accord with the Pakistani state as evidence that “we still cherish dubious external goals” and also criticised the decision to allow Masood Azhar and his banned Jaish-e-Mohammad outfit to operate freely.⁴²

According to the ATA, individuals on its Fourth Schedule, listing known suspects belonging to banned organisations, must be closely observed, including by requiring regular appearances at police stations. Bearing arms, obtaining bank loans and foreign and even domestic travel outside their province are prohibited. Yet, local police, banks and other relevant organisations have no easily accessible database listing those on the Fourth Schedule nor is there a database of officers and other members of banned groups.⁴³ Even when an individual is known to be on the Fourth Schedule, monitoring is haphazard.⁴⁴ The schedule, with some 6,500 names, not been properly updated or verified; the names of the deceased or those subsequently cleared of suspicion are still on it. While suspected small timers against whom there is no evidence of continued criminal activity are harassed or detained for short periods, no action is taken against the leaders and members of the “good banned jihadi” groups.⁴⁵ According to a retired police official who served in the Sindh CID (Criminal Investigation Department), the

³⁸ The federal police agreed to provide protection after ASWJ activists in Islamabad protested the “target killings and kidnappings” of their officials. “Govt to provide security to ASWJ mosques, seminaries”, *Dawn*, 7 March 2017.

³⁹ Crisis Group interview, Karachi, April 2015.

⁴⁰ LeJ has warned the government of massive retaliation if these executions continue. Crisis Group interviews, senior police officials, Lahore, Karachi, April 2015.

⁴¹ Ishaq was released in July 2011, after the prosecution failed to produce sufficient evidence for a single conviction in 44 cases involving 70 alleged homicides. He has since been periodically detained under the MPO. “A plan without action”, *The News*, 25 January 2015.

⁴² Crisis Group interviews, Islamabad, Lahore, October 2014; Islamabad, April 2015; “Opposition accuses govt of failing to act against banned outfits”, *Dawn*, 3 February 2015.

⁴³ Crisis Group interviews, police, Lahore, Karachi, April 2015; telephone interviews, May 2015.

⁴⁴ A retired police official who served in senior provincial and federal posts said, “most of the time we don’t even know that a cleric [on the Fourth Schedule] has left the province until we see press reports of a fiery speech he’s given in some other part of the country”. Crisis Group interview, Karachi, April 2015.

⁴⁵ Crisis Group interview, Lahore, April 2015.

Karachi addresses for some 300 were invalid: “All these 300 people were freely moving around from province to province”.⁴⁶

Above all, there is still no clarity on the designation of terror groups. According to the January 2015 NAP implementation progress report, 72 organisations “have been declared as proscribed by the MOI [Ministry of Interior], and a comprehensive analysis/assessment review is underway to identify how many of the proscribed organisations are active [and] working under changed names”.⁴⁷ Interior Minister Chaudhry Nisar instructed the ministry to revise the national list of banned organisations in line with the UN list. This was apparently done, and the revised list, which included 60 banned under the ATA and twelve by the UN, was placed on the NATCA website just before U.S. Secretary of State John Kerry’s January 2015 visit to Islamabad.

The list was then taken off the website, because it included the Haqqani Network, the LeT/JD and the FIF charity front.⁴⁸ On 20 January, a senior interior ministry official told the Standing Committee on the Interior that the LeT/JD and the Haqqani Network had not been banned. Yet, on 22 January, a Foreign Office spokesperson said they had. An editorial in a major daily noted:

If we have resolved to uproot terrorism in the country, surely the first step in this direction is to be clear on who is a terrorist and who isn’t. How can we claim to be fighting an enemy that we are even afraid to name?⁴⁹

NACTA’s April NAP implementation report reportedly said that three of the plan’s twenty points – actions against banned jihadi organisations, madrasa regulation and actions against Afghan refugees – had been removed since they were “time-consuming issues that require long term planning”. The Afghan refugees issue should never have been on the list.⁵⁰ However, removing actions against banned and renamed jihadi organisations and madrasa sector regulation negates the very purpose of the new counter-terrorism policy.

B. *Regulating Madrasas*

Progress against terrorism, including countering radicalisation and recruitment, is contingent on regulating the madrasa sector. While NGOs that are critical of the state’s failure to promote democratisation and development are often targeted by security agencies, ostensibly on the grounds of national security, propagating religious and sectarian hatred, jihadi madrasas are flourishing, filling the gaps of a dilapidated public education sector and providing an endless stream of recruits to extremist organisa-

⁴⁶ He added: “There are 112 police stations in Karachi, so how hard would it be for each police station to monitor the three or four individuals in their jurisdictions who are on the Fourth Schedule?” Crisis Group interview, Karachi, April 2015. The Criminal Investigation Department (CID) was renamed the Counter-Terrorism Department (CTD) in 2015.

⁴⁷ National Action Plan implementation progress report, Press Information Department, Islamabad, 9 January 2015.

⁴⁸ Crisis Group interview, senior government officials, Islamabad, April 2015.

⁴⁹ “Government’s confusion”, *Dawn*, 10 March 2015; “A sharp intake of breath”, *The Express Tribune*, 10 March 2015; Rumi, *op. cit.*, p. 9.

⁵⁰ Nevertheless, by mid-March 2015, some 33,000 Afghans were repatriated, either forcibly or due to security-force harassment after the Peshawar school attack. “Pakistan to register 1.4m Afghan refugees by July: minister”, Agence France-Presse, 11 March 2015; “Afghan refugees flock home amid claims of intimidation, harassment”, Radio Free Europe/Radio Liberty, 4 March 2015; “Pakistan: Stop forced returns of Afghans”, Human Rights Watch, 21 February 2015.

tions.⁵¹ According to Interior Minister Nisar, “some 90 per cent of madrasas have no connection to terrorism”.⁵² If true, this would still translate into several hundred thousand potential jihadi recruits. Exact data does not exist on the total of madrasas, the number and backgrounds of students and teachers and their finances and funding sources. NAP’s authors recommended mapping the sector to create a list of registered and unregistered madrasas and an audit of accounts, with the government assuming responsibility for routing foreign funding. The interior ministry was to lead the exercise and coordinate intelligence agencies via NACTA, but the exercise has yet to be conducted.⁵³

NATCA says it does not know the exact number of madrasas since figures from by different civilian and military intelligence agencies vary widely, from 18,000 to 33,000.⁵⁴ What is known is alarming. 11,000 Deobandi madrasas have been identified as “sensitive”. According to an Islamabad police report, at least twenty in or near the capital and Rawalpindi were being investigated for TTP links, and at least two give “jihadi weapons training classes to students”. A KPK government report identified 145 “highly sensitive” madrasas, the majority in Tank district, bordering on FATA’s South Waziristan agency. According to a 2013 Sindh home ministry survey, the province has over 12,500 madrasas, with between 120,000 to 150,000 students. Over 2,100 madrasas were deemed “dangerous”. Karachi’s central district, a hotbed of sectarian violence, has over 800 jihadi madrasas.⁵⁵ Yet, the paramilitary Rangers-led counter-terrorism operation targeting the city’s criminal gangs, political party-backed armed groups, extortion and kidnapping rackets and TTP elements has excluded jihadi madrasas.⁵⁶

Sindh’s government has taken some steps to clamp down on jihadi madrasas. In February 2015, police reportedly sealed the offices of seven in Sukkur and Badin districts. By March, the home secretary said that 72 suspected of involvement in terrorist activities were closed in Hyderabad. Yet, the vast majority remain operational, with “big nurseries” of jihad in districts such as Shikarpur, Sukkur and Khairpur.⁵⁷

⁵¹ Crisis Group telephone interview, NGO representative, 15 July 2014. For Crisis Group analysis of the jihadi madrasa sector, see Asia Reports N°s130, *Pakistan: Karachi’s Madrasas and Violent Extremism*, 29 March 2007; 257, *Education Reform in Pakistan*, 23 June 2014; *The State of Sectarianism*, op. cit. ; 84, *Pakistan: Reforming the Education Sector*, 7 October 2004; and 36, *Pakistan: Madrasas, Extremism and the Military*, 29 July 2002.

⁵² Minister Nisar has yet to identify those involved in terror-related activities. On 18 January, he appeared to ask for self-regulation: “The religious institutions are requested to cooperate with the government to identify potential terrorists”. ‘Sympathisers, supporters of terrorists live among us’: Nisar”, *Dawn*, 21 December 2014; “Campaign against ‘radical’ madrasas going nowhere”, *ibid*, 23 March 2015.

⁵³ Crisis Group interviews, serving and retired police officials and others involved in conceiving NAP, Islamabad, Lahore, Karachi, March-April 2015. The Punjab government claims to have “geo-tagged” madrasas in the province but with no follow-through on reform. “Big plan, little action”, *The Express Tribune*, 29 May 2015.

⁵⁴ Crisis Group interview, retired intelligence official, April 2015. “Seminaries seek govt support to open bank accounts”, *Daily Times*, 2 April 2015.

⁵⁵ “The madrasa networks of Sindh”, *The Friday Times*, 12-18 July 2013; “Seminaries to help Taliban attack Islamabad, say police”, *The News*, 12 April 2014; “145 KP seminaries classified ‘highly sensitive’ in govt report”, *Dawn*, 2 March 2015. Crisis Group Report, *Karachi’s Madrasas*, op. cit.

⁵⁶ An official involved with the Rangers operation said action against madrasas would be taken “at a later stage. We want to clean up elsewhere first”. Crisis Group interview, Karachi, April 2015.

⁵⁷ Crisis Group interview, retired senior Sindh police official, Karachi, April 2015. “28 prayer leaders booked, seven seminaries sealed in Badin, Sukkur”, *Dawn*, 22 February 2015; “Scanners to be installed at Sindh-Balochistan border”, *Dawn*, 25 March 2015.

Pushback by Islamist parties and madrasa managers has been effective. The general secretary of the Deobandi Wafaq al-Madaris al-Arabia, Pakistan's largest federation, has vowed to defend madrasa "sovereignty, freedom and the Islamic education system" at any cost, deeming the government's intention to regulate the sector as "actions against religion in the name of anti-terrorism".⁵⁸ Punjab Chief Minister Shahbaz Sharif replied that his government had no plans to act against madrasas.⁵⁹

Though scores of alleged militants and terrorists arrested for conducting or plotting terror attacks have been affiliated to jihadi madrasas, police rarely interrogate their teachers and administrators, who commonly help students enrol with militant outfits, for example during the summer break.⁶⁰ To evade accounting for those who have been recruited for jihad, many madrasas require parents and guardians to sign a form absolving them of responsibility if a student goes missing.⁶¹ They are often added to police lists of "sensitive" seminaries, but police rarely follow up by assigning investigators, recording lectures or monitoring those entering and exiting.

A senior police investigator in Lahore said:

There are madrasas in the big cities that we know are dangerous, but if you just go into one randomly, you probably won't find anything you can use [in court], because the terrorists and the weapons aren't there all the time. You need intelligence-based police work to connect the terrorist to the madrasa; you need knowledge of when [the jihadis] will show up to stockpile their ammunition or hide there.⁶²

Madrasas in smaller towns are frequently heavily armed, so local police, often lacking official instructions and support, generally feel compelled to negotiate with and not act against the clerics, including when they lead public rallies inciting to jihad.⁶³

To build cases against madrasas, law-enforcement agencies require, above all, strong political support and a clear policy shift at the highest level.⁶⁴ In a 3 May 2015 speech in Karachi, Information Minister Pervaiz Rasheed described madrasas as "centres of ignorance and illiteracy". Amid protests from Deobandi groups, a cleric from the city's Jamia Binoria madrasa issued a *fatwa* (religious edict) declaring him an apostate.⁶⁵ Yet, the government did not order the police to charge for incitement to violence and criminal intimidation either the cleric or ASWJ activists who put up banners in Islamabad's streets urging his hanging. Instead, criticised by the Islamist

⁵⁸ "Campaign against 'radical' madrasas going nowhere", *Dawn*, 23 March 2015.

⁵⁹ "Recapitulating 'no action plan'", *The Nation*, 11 March 2015; "Seminaries plan drive against raids, arrests", *Dawn*, 24 February 2015.

⁶⁰ Crisis Group interview, retired civilian intelligence official who investigated jihadi madrasas, Lahore, April 2015. A spokesperson of the Deobandi federation said, "we are not responsible for any terrorist, criminal or anti-social act of any individual affiliated with madrasas that are attached to us". "Campaign against 'radical' madrasas going nowhere", *op. cit.*

⁶¹ Crisis Group interview, senior home ministry official, Karachi, April 2015.

⁶² Crisis Group interview, Lahore, April 2015.

⁶³ "Otherwise they'll shoot at us the whole day", said a local police officer with postings in several northern and central Punjab districts. Crisis Group interview, Punjab, April 2015.

⁶⁴ "The provinces will keep deferring to the centre when it comes to madrasas", said Amir Rana, who heads the Islamabad-based Pakistan Institute of Peace Studies and was part of the policy discussion that conceived NAP. Crisis Group interview, Islamabad, 24 April 2015.

⁶⁵ Similar *fatwas* against Punjab Governor Salman Taseer in late 2010, after he criticised Pakistan's blasphemy laws, preceded his 4 January 2011 assassination.

parties in parliament, Rasheed implicitly apologised, telling the National Assembly he had only referred to 3 to 4 per cent of madrasas involved in “violent means”.⁶⁶

C. *Hate Speech and Literature*

Another NAP goal, preventing radicalisation and recruitment by curbing hate speech and literature, has made similarly limited progress. The use of mosques’ loudspeakers has been restricted. Provincial and Islamabad police have reportedly closed scores of printing presses and shops distributing hate literature, confiscated hate material, including books, pamphlets and CDs, and arrested hundreds of preachers for hate speech. Yet, most of those arrested were released. In Punjab, where 470 were arrested from January to May 2015 for producing hate material, 260 prosecutions produced only 24 convictions, but no key jihadi figures were among them.⁶⁷ Most influential hard-line clerics, such as Maulana Abdul Aziz of Islamabad’s Lal Masjid (Red Mosque), still run by the federal government despite jihadi links, remain untouched.⁶⁸

On 26 December 2014, an Islamabad court issued an arrest warrant after Aziz threatened civil society activists protesting his implied defence of the Peshawar school attack.⁶⁹ Although the cleric, in a Friday sermon a week earlier had threatened suicide bombings if he was harmed, Interior Minister Nisar apparently succumbed to pressure and threats. He attempted to justify the failure to carry out the arrest and also ignored a report given to his ministry by the intelligence agencies about Aziz’s and his madrasa’s links with violent jihadi groups, saying, “it is not difficult to arrest him. But we want to keep our focus on the ongoing operation against militants. Any other action at this stage will create a diversion and benefit the militants”.⁷⁰

Hate literature still circulates freely. In addition to video stores that sell DVDs of hard-line preachers glorifying jihadi organisations such as the LeT/JD and the TTP, most radical madrasas sell such material through their own shops. For many security officials tasked with confiscating such material, a PPP senator said, “this stuff, about

⁶⁶ Defence Minister Khawaja Mohammed Asif reiterated that Rasheed had specifically referred to 300 or 400 of around 22,000-28,000 madrasas directly or indirectly involved in terrorism. “Minister’s defamers’ escape after assaulting police party”, *Dawn*, 17 May 2015; “Fear of religious right overshadows madrasa reform”, *Dawn*, 22 May 2015; “Govt moves to control damage after madrasa faux pas”, *Daily Times*, 20 May 2015.

⁶⁷ “‘Post-haste’ against ‘hate’”, *Dawn*, 23 May 2015.

⁶⁸ In March-April 2007, heavily-armed extremists from several groups occupied the premises of the Red Mosque in the heart of the federal capital. They attacked citizens and incited jihadi violence against the state, with the long standoff ending after the Musharraf regime conducted a belated, and bloody, operation to control the premises. Crisis Group Report, *The Militant Jihadi Challenge*, op. cit.

⁶⁹ Aziz called the attack a response to the deaths of militants in military operations. Justifying the failure to act against Lal Masjid’s Shohada (martyrs) Foundation and students of the linked female Jamia Hafza after they pledged allegiance in a December 2014 press release to Islamic State (IS) and invited it to avenge those killed in the 2007 anti-terrorism operation, an official said, “taking legal action against supporters and followers who had pledged allegiance to Daesh [IS] would lead to panic and the issue would be unnecessarily highlighted”. “Arrest warrant issued for Lal Masjid cleric Maulana Abdul Aziz”, *Dawn*, 26 December 2014; “Jibran Nasir is crusading on our behalf”, *Newsweek*, 10 January 2015; “Govt reluctant to book seminary students over Daesh pledge”, *Dawn*, 30 March 2015.

⁷⁰ “Lal Masjid’s expansionism, militant links alarm agencies”, *Dawn*, 4 January 2014; “Indispensable”, *The Friday Times*, 27 February-5 March, 2015. Nisar’s remarks were in February.

the Afghan and anti-India jihads doesn't count as hate speech". Police officials echo his view.⁷¹

The LeT/JD and the Jaish-e-Mohammad, among others, still produce daily, weekly and monthly publications extolling jihad. LeT/JD's seven periodicals include the Urdu-language *Tayyibaat* for women, *Rozatul Atfal* for children and *Zarb-e-Taiba* for younger readers, and *Babul Islam* in Sindhi. Leaders often write under pseudonyms; Hafez Saeed of LeT/JD reportedly uses "Abu Shams". The Jaish-e-Mohammed publishes a major weekly, *Al-Qalam*, in Urdu and English and a monthly for children, *Musalman Bachay*, as well as a publication for women and young readers. The pseudonym of its leader, Masood Azhar, reportedly is "Saadi". A textbook he authored is widely taught in madrasas. The banned Al Rasheed Trust (renamed Al-Amin Trust) produces a daily and a weekly publication, with circulation reportedly in the hundreds of thousands.⁷²

Jihadi groups such as LeT/JD are also active on social media, using Facebook and Twitter in English and Urdu to spread their messages within Pakistan and abroad. FATA-based militant networks have their own publications, though military operations there have impeded circulation, according to an analyst who monitors jihadi literature.⁷³ Several religious TV channels glorifying Islamic sects and promoting intolerance operate with little oversight by the Pakistan Electronic Media Regulatory Authority (PEMRA) despite a regulatory framework that prohibits inciting violence in the name of Islam. Mainstream news channels have allowed hate speech and exhortations to violence, including on primetime talk shows, without censure.⁷⁴

Nor has the government prevented external actors, particularly Saudi Arabia (both government and private individuals), from supporting propagation of hate speech and jihadi indoctrination, even in Islamabad. According to an intelligence report, the administration and faculty of the Saudi-funded International Islamic University "is intentionally promoting (sectarian) Salafi, Takfiri and Ikhwani doctrines, whereas Pakistan is fighting the demon of terrorism, incubated and abetted by the same doctrines".⁷⁵

D. Terrorism Financing

To meet commitments under UN Security Council resolutions 1267 and 1373 (28 September 2001), Pakistan must combat terrorism financing by imposing a travel ban, arms embargo and asset freeze on listed individuals and organisations linked to al-Qaeda. These include, among others, LeT/JD and its FIF charity front, Jaish-e-Mohammed, LeJ, the TTP, Al Rashid Trust and Harkat Ul Jihad Islami (HUJI). The

⁷¹ Crisis Group interviews, Islamabad, March 2015; Islamabad, Lahore, Karachi, April-May 2015.

⁷² "Militant media: writers stymie action on hate literature", *The Express Tribune*, 23 January 2015. Crisis Group interview, retired intelligence official who surveyed Punjab's madrasa sector, Lahore, April 2015.

⁷³ Crisis Group interview, Amir Rana, executive director, Pakistan Institute of Peace Studies, Islamabad, 24 April 2015; "Religious groups changing PR tactics to keep up with the times", *Dawn*, 11 May 2015.

⁷⁴ On 22 December 2014, a guest cleric on prominent televangelist Amir Liaquat Hussain's talk show on Geo, arguably the most popular cable news channel, denounced the Ahmadi community as blasphemers and enemies of Pakistan. Facing intense public criticism, particularly after gunmen killed an Ahmadi in Punjab's Gujranwala district on 27 December, and a PEMRA show-cause notice, Geo issued an apology on 30 December, saying the program had violated its code of conduct. "Ahmadi man gunned down in Gujranwala", Reuters, 28 December 2014.

⁷⁵ The president of the university, which has over 20,000 students, is a Saudi national. "IIUI promotes extremist doctrines, Intelligence Agency", *The Express Tribune*, 13 May 2015.

UN sanctions list also includes TTP leader Mullah Fazlullah, LeT/JD's Hafez Saeed, LeJ's Malik Ishaq, HUJI's Matiur Rehman and several Haqqani Network leaders.

Law enforcement officials' estimates of convictions in cases either directly related to terrorism financing or in which financing is a major component of a terrorism prosecution range between zero and 1 per cent.⁷⁶ In February 2012, the international Financial Action Task Force (FATF) put Pakistan on its "grey" list for not fully complying with Resolution 1267.⁷⁷ In March 2013, the PPP-led government amended the ATA to strengthen law enforcement agencies' authority to act against terrorism financiers, including by confiscating their properties. In February 2015, the finance ministry gave FATF information on new anti-money laundering and anti-terrorism financing measures, and FATF removed Pakistan from the grey list.⁷⁸ Yet, concerns about the willingness or capacity to implement Resolution 1267 remain high, with the FATF still demanding close monitoring of Pakistan's compliance, particularly with regards to LeT/JD.⁷⁹

By late March 2015, the government claimed to have frozen some \$100 million in accounts used to channel terrorism financing from abroad and to have recovered over \$1 million from clerics and workers of banned jihadi organisations. Citing the \$100 million figure, NACTA said in its April NAP implementation report that the State Bank had frozen 120 accounts of banned organisations. Yet, according to bank sources the same month and later acknowledged by NACTA's national coordinator, those accounts were frozen over more than a decade, not due to NAP.⁸⁰

Pakistan's response to terrorism financing has mainly focused on low-hanging fruit, such as some informal *hawala/hundi* money transfer services, mainly used by migrant workers, importers and traders. Yet, terrorism-related transfers are also made by Europe-based donors through formal channels which get little scrutiny.⁸¹ Charities in the Middle East have reportedly channelled an estimated \$100 million a year to Sunni extremist madrasas in Punjab alone, through informal channels, mostly couriers. In a February 2015 report to a Senate committee, the Punjab police, contradicting earlier claims that no Punjab madrasa received foreign funding, disclosed that at least 950 received hundreds of millions of rupees (millions of dollars) from Qatar,

⁷⁶ Crisis Group interviews, Islamabad, Lahore, Karachi, April-May 2015.

⁷⁷ The list includes "jurisdictions with strategic AML [Anti-Money Laundering]/CFT [Combating the Financing of Terrorism] deficiencies that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies". FATF website, www.fatf-gafi.org.

⁷⁸ These included enforcing bans on extremist groups, greater scrutiny of non-profit groups and charities and building the capacity of agencies responsible for combatting terrorism financing. ATA (second amendment), at www.na.gov.pk; "FATF removes Pakistan from list of terror financiers", *Dawn*, 28 February 2015.

⁷⁹ Crisis Group interview, international official familiar with Pakistan's counter-terrorism financing efforts, April 2015. Also, "UN body to monitor Pakistan's compliance of sanction on Dawood, Lakhvi", *The Express Tribune*, 30 June 2015.

⁸⁰ Crisis Group interviews, national and international officials, April 2015; "Nacta's claim fails scrutiny", *Dawn*, 10 April 2015; "Newly crafted anti-terrorism strategy 'going nowhere'", *The Express Tribune*, 20 May 2015. Authorities also claimed to have arrested over 80 for channelling illegal funds through informal (*hawala* and *hundi*) channels; 50 for laundering money; and seventeen for "suspicious transactions". *Hawala* or *hundi* (the terms are used interchangeably) are informal domestic and international money transfer mechanisms widely used in South Asia and the Middle East. "National Action Plan: Over Rs 10 billion in foreign terror and AML funds frozen", *The Express Tribune*, 26 March 2015.

⁸¹ Crisis Group interviews, counter-terrorism officials, Lahore, Karachi, April 2015.

Kuwait, Saudi Arabia and fourteen other Muslim and non-Muslim countries. In February 2015, the government raised the issue with the Saudi embassy in Islamabad, and the foreign ministry acknowledged: “We do know the funding is coming through private sources, not just from Saudi Arabia but also from several other countries”.⁸²

Because madrasas and mosques are not audited, the volume is speculative. Madrasas and mosques also receive generous donations from wealthy domestic donors as *zakat* (obligatory religious tax) or to buy local influence. Such donors seldom keep track of how the money is spent. Since income from *auqaf* (mosques and shrines) lands, shops and business investments is also not audited, there is no way of ensuring that it does not contribute to terror causes.⁸³

The anti-money laundering and anti-terrorism financing regime is deeply flawed. In December 2010, the PPP-led government transferred money-laundering case authority from the National Accountability Bureau (NAB), a Musharraf regime creation, to the Federal Investigation Agency (FIA), which has sole jurisdiction.⁸⁴ Financial institutions report suspicious transactions to the Financial Monitoring Unit (FMU), which refers cases to the FIA to investigate and initiate legal action, but it is only a nominally autonomous cell within the State Bank. The FMU also refers corruption-related cases to NAB and information of suspicious narcotics-related transactions to the Anti-Narcotics Force (ANF), but the limited coordination between federal agencies compartmentalises activity that should be investigated jointly.⁸⁵

Major banks use software that crosschecks clients’ names against the UNSC 1267 list, and most are reportedly responsive to alerts. However, crosschecking domestically banned individuals is significantly less efficient, since the interior ministry provides hard copies of names. Another hurdle is the absence of systematic mechanisms to convey information about suspicious transactions between banks. As a result, “banks don’t know as much as they should”.⁸⁶

Investigation is also undermined by institutional weaknesses and low capacity. The FIA’s sole jurisdiction over money laundering is hampered by institutional constraints, even as it undermines the ability of provincial law enforcement to curb terrorism financing. Most terrorism cases are in provincial police jurisdiction; the FIA investigates only a small proportion – 1 per cent according to a former senior FIA official⁸⁷ – specifically those of national significance and/or an international dimension, such as the 2008 Mumbai attacks. Its provincial footprint is thus light, and

⁸² Crisis Group interview, retired senior FIA official, May 2015; and telephone interview, Amir Rana, executive director, Pakistan Institute of Peace Studies, 21 June 2015. “Survey launched to identify ‘sponsored’ seminaries”, *The Nation*, 11 February 2015; “Punjab police disclosure: 1,000 madrasas foreign-funded”, *The Nation*, 17 February 2015; “About face: Punjab admits foreign funding to seminaries”, *The Express Tribune*, 11 February 2015. “FO distances itself from madrasa funding row”, *The Express Tribune*, 11 February, 2015; “Saudi government informed of Pakistan’s concern on madrasas funding”, *The Nation*, 5 February 2015.

⁸³ Crisis Group interviews, counter-terrorism officials, Lahore, Karachi, April 2015; Crisis Group Report, *Madrasas, Extremism and the Military*, op. cit.

⁸⁴ The FIA inquires into and investigates a broad range of offences at federal government behest. For the list of offences, see www.fia.gov.pk. “FIA to deal with cases of money laundering”, *Dawn*, 11 December 2010.

⁸⁵ Crisis Group interviews, State Bank official; Sindh police official, Karachi, April 2015; retired FIA official, April 2015.

⁸⁶ Crisis Group interview, foreign official familiar with Pakistan’s anti-terrorism financing efforts, April 2015.

⁸⁷ Crisis Group interview, April 2015.

coordination with provincial counterparts, including counter-terrorism and other police departments, weak.⁸⁸ The FIA and provincial police officials should have concurrent jurisdiction over money-laundering cases, and the capacity of specialised provincial police units and counter-terrorist departments to investigate money laundering should be developed. During the PPP-led government, some efforts were made to build such capacity in Sindh and Punjab, but today the units exist only in name.⁸⁹

The FIA's capacity to pursue money laundering and terrorism financing, and build strong cases for prosecution is hampered by the absence of a specialised unit. Sessions (district) judges often deny its investigators approval to access details of suspicious money transactions because of insufficient evidence.⁹⁰ On 13 January 2014, the FIA and State Bank signed a memorandum of understanding for improved coordination in enforcing "financial sector regulations with special emphasis on anti-money laundering and prevention of terrorist financing".⁹¹ It was partly aimed at circumventing the requirement for a sessions judge's authorisation, so FIA could directly ask the SBP for information when reasonable grounds for suspicion existed. Within a month, the finance ministry changed the proactive SBP governor (for unrelated reasons); the document is not being meaningfully implemented.⁹²

Even if anti-money laundering and terrorism financing regimes are reformed, little can be done so long as the state fails to suppress violent-extremist groups and their affiliates. Though Pakistan is obliged to impose curbs, including on LeT/JD's finances, the ambulances of its charity front, FIF, can be seen on Karachi and Lahore roads.⁹³ Since "there's no way to run that ambulance service on cash", the FIF must have access to a bank account, thus be in violation of Resolution 1267.⁹⁴ LeT/JD leader Hafez Saeed is often seen at rallies protected by armed men, more evidence of failure to implement 1267. UN member states can propose groups and individuals names to the Security Council for the 1267 sanctions committee to blacklist. A U.S. official said, "it wouldn't be hard [for Pakistan] to identify who's in charge of running FIF's ambulance service and submit that person's name. It also wouldn't be hard to identify FIF and JD recruiters".⁹⁵

The asset freeze and travel ban called for in Resolution 1267 are fundamentally linked. Pakistan's travel ban should be informed by the 1267 list, as well as the domestic list of banned groups and individuals. The UNSC resolution does, however, have a loophole allowing exemptions for travel to Saudi Arabia for the *hajj* and *umra*. Many sanctioned individuals are believed to use this travel to the Middle East to raise

⁸⁸ According to a former Sindh CID official, during his tenure, he "sent the FIA a list of some 50 individuals who had each made around 350 trips from Karachi to Peshawar within a six-month period. I said let's at least question them, or monitor them, but nothing happened, and technically we didn't have the authority". Terrorism funds are often transferred domestically by couriers. Crisis Group interview, Karachi, 2015.

⁸⁹ Crisis Group interviews, serving and retired law enforcement officials, Lahore, Karachi, April 2015.

⁹⁰ Crisis Group interviews, police and retired FIA officials, Islamabad, Lahore, Karachi, April 2015.

⁹¹ "State Bank of Pakistan and FIA sign MOU to further strengthen mutual coordination and cooperation", State Bank of Pakistan statement, 13 January 2014.

⁹² Crisis Group interviews, State Bank official and retired senior police official, Karachi, April 2015.

⁹³ Crisis Group observations, Karachi, Lahore, April 2015.

⁹⁴ Crisis Group interview, foreign official familiar with Pakistan's anti-terrorism financing efforts, April 2015.

⁹⁵ Crisis Group interview, April 2015.

or acquire funds.⁹⁶ In Pakistan's case, the loophole is hardly necessary, since the UN list is not accepted or respected there, and many local groups on it have yet to be domestically banned.

E. *Tackling Criminality*

With transnational funding channels coming under greater scrutiny, violent extremists increasingly rely on criminal activity for money, including kidnapping-for-ransom, extortion, narco-trafficking, smuggling and petty theft. In Punjab's Jhang district, the birthplace of the LeJ, a senior police official said, "no one notices that day-to-day crimes like motorcycle theft is how these sectarian groups also raise funds". In KPK, too, according to a former police inspector general, "prevention of regular crime" which often funds terrorist activities, "is out the window".⁹⁷

The one area where the government has acted is the deactivation of mobile telephone SIMs registered under fake identities. Mobile phone companies were required to link SIMs with biometric data, and to cancel or block those obtained illegally. Since kidnapping-for-ransom and extortion cases have involved untraceable or stolen SIMs, this is a step forward. However, because of technological progress, including a new generation of smart phone applications that can function even with a blocked SIM, criminals are finding ways to circumvent the ban, underscoring the importance of comprehensive rather than piecemeal measures.⁹⁸

The penal system also needs reform. While conviction rates remain around 5 to 10 per cent at best, detention periods are getting longer, including the PPA's 90-day preventative remand, resulting in overcrowded jails from which most prisoners are released after a year or two without conviction. Prisons have thus become a dangerous breeding ground for all kinds of criminality, "the place where Criminal A gets connected to Criminal B and C", said a city police chief.⁹⁹

The weak penal regime and the proliferation of arms is also a major challenge. "The most minor crimes are non-bailable", a Punjab police official said, "and yet keeping an unlicensed Kalashnikov is a bailable offense, and the average punishment is 500 rupees (around \$5). If criminals are better armed than the police, how can we be expected to maintain law and order?" Several police officials argued that the punishment for carrying an unlicensed weapon should include a hefty fine and prison term.¹⁰⁰ There is also no dearth of licensed weapons, which are often used in assassinations. In addition to the large underground market in arms, even licensed gun shops commonly allow customers to rent weapons without background checks.

Sindh's northern districts of Shikarpur, Sukkur and Khairpur are saturated with weapons: handguns, automatic assault weapons, even light machine guns. A high-profile raid by the paramilitary Rangers on 13 March 2015 at Muttahida Qaumi Move-

⁹⁶ Crisis Group interviews, Pakistani and foreign officials with anti-money laundering and terrorism financing expertise, April 2015.

⁹⁷ Crisis Group interviews, Islamabad, March 2015.

⁹⁸ By the 15 May deadline, 75.5 million SIMs were validated through biometric verification systems; 27.5 million were blocked. "75.5m SIMS verified through BVS", *The News*, 17 May 2015. According to the data provided by the Sindh police, around 900 extortion phone calls within three months could not be traced to identifiable SIM users.

⁹⁹ Crisis Group interview, April 2015; and Crisis Group Reports, *Reforming Pakistan's Prison System*, and *Policing Urban Violence*, both op. cit.

¹⁰⁰ Crisis Group interviews, Lahore, April 2015.

ment (MQM) headquarters in Karachi, also known as Nine Zero, reportedly seized a large weapons cache.¹⁰¹ Yet, a security official in the city said, “in interior Sindh, every *mohallah* (neighbourhood) has a Nine Zero [large weapon depot], but because there’s no attention paid, there’s no action”.¹⁰² Sindh police and home ministry officials have called for modern scanners to be installed at the province’s borders to scan all vehicles entering and exiting for weapons. However, technology will only be effective if civilian law enforcement agencies are both empowered and held accountable for enforcing the law. Yet, much-needed resources that could have been invested in strengthening local policing are being diverted to paramilitary operations country-wide, from Sindh to KPK, and in creating parallel militarised policing structures.

¹⁰¹ “Nine-zero raid: another 32 suspects remanded into Rangers’ custody”, *The Express Tribune*, 14 March 2015.

¹⁰² Crisis Group interviews, law enforcement officials, Karachi, April 2015. These weapons are believed to be smuggled into Sindh from Iran via Balochistan.

V. Militarising Counter-terrorism

A. Militarised Policing

A new counter-terrorism force (CTF, alternatively called Anti-Terrorism Force or ATF), which was already being trained before December 2014, is now part of NAP. To be created in all provinces, its personnel will be trained by the military, counter-terrorism experts from Turkey and others. Two batches of recruits, reportedly more than 800, completed training by April 2015 in Punjab, with a third batch expected to do so in August. Balochistan graduated its first CTF batch in February.¹⁰³ On a three-year contract, CTF corporals or units are to be deployed in special counter-terrorism police stations that will register terrorism cases. They are paid 50,000 rupees (\$500) more per month than their regular counterparts, which is already a source of resentment that could undermine cooperation.¹⁰⁴ Their added value, moreover, is debatable. They are trained to confront heavily-armed groups and operate in high-risk contexts such as barricaded buildings, something regular police could do with specialised, trained units along the lines of U.S. SWAT teams. Moreover, the CTFs will lack the long-term training and strategic planning of regular police, as well as the institutional memory and knowledge-base for an effective counter-terrorism role.¹⁰⁵ A former intelligence bureau official said:

You need a lot of background knowledge for an interrogation to be successful. The in-service [police] cadres know the individual suspect; they know the town or neighbourhood that he's from; they know where and how he's been trained; they know the names of his associates and relatives. You use all of that to extract information from the suspect.¹⁰⁶

The ongoing Rangers-led Karachi operation shows how reliance on parallel forces, with a separate chain of command, undercuts accountability and transparency, while marginalising and undermining civilian institutions. Ostensibly supervised by the Sindh government, the Rangers have taken control of most areas of policing, from having an alternative dial-in complaints centre to developing an ISI-supported counterpart to the Citizen-Police Liaison Committee (CPLC).¹⁰⁷ Sidelining police and provincial government, operation review meetings are held at Karachi's army corps headquarters, often chaired by Army Chief Sharif in the chief minister's absence.¹⁰⁸

¹⁰³ "Security concerns: passing-out parade of second CTF batch delayed", *The Express Tribune*, 23 March 2015; "PM, COAS attend passing-out parade of Balochistan ATF in Quetta", *Dawn*, 19 February 2015.

¹⁰⁴ Crisis Group interviews, police and other officials involved with CTFs, Lahore, April 2015.

¹⁰⁵ According to a former Punjab police inspector general (IG) who remains engaged with provincial policing and counter-terrorism, "normally, you go into an elite force after years of service. You serve there for a few years, and then go back into the regular service. Here, they'll do three years and that's it, there's no career progression. What happens to them when they complete their three years?" Crisis Group interview, Shaikat Javed, Lahore, April 2015.

¹⁰⁶ Crisis Group interview, Lahore, April 2015.

¹⁰⁷ Crisis Group interviews, Sindh home ministry, Karachi, April 2015. The CPLC was established in Karachi in 1989 as a non-political statutory body to improve citizen-police cooperation, particularly in kidnapping and extortion cases. It is managed by citizens on a voluntary basis. www.cplc.org.pk.

¹⁰⁸ "Karachi operation to be taken to its logical end: army chief", *Dawn*, 30 April 2015.

Extrajudicial and custodial killings by the Rangers and police (called “encounters”) are increasingly common in Karachi.¹⁰⁹ Often little is known about the alleged terrorists/criminals; human rights activists and even serving police claim the Punjabi-dominated Rangers have specifically targeted some communities, particularly recent Pashtun migrants, who are accused of membership in or supporting the TTP. Serving and retired Sindh police worry that such killings might generate sympathy for criminal and militant gangs among targeted communities. Moreover, a senior serving Karachi officer said, “when you have the Rangers running the show and ... encounter killings, we [the police] think, ‘why bother doing any investigation? Why bother doing our job?’” The numbers of sectarian, gang-related and other targeted killings may have declined, but this is more likely the result of violent extremists, extortionists and other criminals keeping a low profile than the disruption or dismantling of their networks. Police, activists and other civil society stakeholders in Karachi believe that once the operation is over, the violence will likely resume.¹¹⁰

B. *Completing the Circle: Military Courts*

Well before the December 2014 Peshawar school attack, the military had urged the government to authorise its courts to try civilian terrorist suspects, ostensibly to process the thousands of alleged militants it had detained in the 2009 operations in Swat and neighbouring KPK districts. Concerned about rising domestic (including judicial) and international scrutiny of extrajudicial killings and enforced disappearances, the military had also pressured the PPP-led government to provide legal cover for prolonged detentions of suspected militants. In August 2011, President Asif Ali Zardari promulgated the Action in Aid of Civil Power (AACP) ordinances in FATA and KPK’s Provincially Administered Tribal Areas (PATA), giving the military broad, unchecked authority to arrest and detain suspects in KPK-based internment centres. These centres were justified on the grounds that hardened militants were often freed because a dysfunctional criminal justice system had extremely low conviction rates. Providing legal cover for such detentions, said some supporters, would also remove incentives for enforced disappearances and extrajudicial killings.¹¹¹

The rationale for the nine military courts set up since January 2015 under the 21st amendment is the same: to prevent a flawed justice system from releasing suspected militants due to weak cases by investigators, as well as frequent threats to the lives of prosecutors, judges and witnesses. The military is now empowered in effect to court martial all suspects, including civilians, under the Pakistan Army (Amendment Act) 2015, the legal frameworks of the other military services and the PPA. Though the right to legal defence exists, secret trials and the absence of public or media oversight, information about charges and available written judgments may make convictions easier, and the potential for abuse far outweighs any potential benefits.¹¹² As the courts fall

¹⁰⁹ According to HRCP data, Rangers and police killed 144 people in January-March 2015, compared to 115 over that period in 2014. Statistics given Crisis Group by HRCP, Karachi, April 2015.

¹¹⁰ Crisis Group interviews, Karachi, April-May 2015.

¹¹¹ Crisis Group Report, *Pakistan: Countering Militancy in PATA*, op. cit.

¹¹² In February, the Pakistan Army Act 2015 was further amended to allow in-camera trials by military courts. In June, parliament extended the ordinance. “Security for military court judges and prosecutors”, *Dawn*, 25 February 2015; “Terror trials: army ordinance extended for four months”, *The Express Tribune*, 16 June 2015.

far short of national or international fair-trial standards, the risk of miscarriage of justice is unacceptably high.

The interior ministry is authorised to send cases it receives from the provincial apex committees to military courts, but in practice the military determines what cases are tried. It now controls what a senior lawyer described as “the entire assembly line” – arrest, prosecution, conviction and execution – thus undermining any chance of fair trial.¹¹³ The accumulation of coercive laws, such as the PPA, culminating with the 21st amendment, has also eroded the presumption of innocence. There is no right of appeal to a civilian court under the Army Act; the appeals court is also presided over by a senior military officer, defeating, a former judge said, the purpose of the exercise.¹¹⁴ There is also concern that the military courts could be extended beyond the 2016 limit set by the two year-sunset clause, on grounds that the criminal justice system remains incapable of countering the terror threat.¹¹⁵ Instead of undermining the judiciary by setting up military courts, HRCP’s chairperson said, there is a “need to reform and strengthen the system of investigation and prosecution”.¹¹⁶

The military courts are meant to overcome the problems experienced by another parallel court system, the anti-terrorism courts (ATCs), established in 1997 by Nawaz Sharif’s previous government. It came with lower evidence thresholds, procedural short-cuts and other measures to ensure speedy trials but has either failed to obtain convictions or seen them overturned on appeal due to weaknesses of the criminal justice system, including inadequately trained and resourced investigation agencies, prosecution services, and trial judges and negligible protection for witnesses, prosecutors and judges.¹¹⁷ The expectation of easier and quicker convictions, combined with the vague definition of terrorism under the ATA and categorised in the Penal Code as offenses against the state, led complainants, police and prosecutors to swamp the ATCs with cases, resulting in the very delays they were meant to resolve. Military courts are likely to face similar problems, also given the vague definition of terrorism and long list of offenses under the PPA.¹¹⁸

On 2 April 2015, Army Chief Sharif approved the first sentences issued by a military court: six for death, one for life imprisonment. Little is known about the cases or even the identity of the convicted other than a tweet and subsequent statement from ISPR Chief General Asim Bajwa.¹¹⁹ After a petition against the 21st amendment by the Supreme Court Bar Association, the Supreme Court stayed the death sentences on 16

¹¹³ Crisis Group interview, Lahore, April 2015.

¹¹⁴ Lawyers can still challenge judgements by petitioning the Supreme Court, but whether this will be effective remains to be seen. “Military courts’ secrecy unnerves experts”, *Dawn*, 6 April 2015.

¹¹⁵ Crisis Group interview, lawyer, Islamabad, May 2015.

¹¹⁶ “Decision to set up military courts undermines judiciary: HRCP”, *Dawn*, 26 December 2014.

¹¹⁷ Crisis Group Report, *Reforming Pakistan’s Criminal Justice System*, op. cit.

¹¹⁸ “[I]f committed with the purpose of waging war or insurrection against Pakistan or threatening the security of Pakistan”, PPA offences include kidnapping and attempted kidnapping; “wrecking, disrupting or attacking mass transport systems including trains, buses, cars and their stations and ports”; and a broad range of crimes categorised in the Penal Code as offenses against the state, including defiling or removing the national flag from a government building without authorisation. PPA (2014), op. cit.; Pakistan Penal Code (Act XLV of 1860).

¹¹⁹ The tweet read: “Army chief confirms death sentences of 6 hardcore terrorists tried by the recently established military courts”. The statement read: “Seven hardcore terrorists involved in committing heinous offences relating to terrorism, men slaughtering, suicide bombing, abduction for ransom, colossal damage to life and property were tried by military courts”. “Military courts sentence six hardcore terrorists to death”, *Daily Times*, 3 April 2015.

April 2015. It has struck down earlier laws empowering military courts to try civilians, and this case will be a defining one, as it has expanded beyond the specific constitutional amendment to address the judiciary's powers to review not just regular legislation, but also the parliament's right to amend the constitution in a way that undermines parliamentary democracy, federalism, judicial independence and Islamic principles.¹²⁰

¹²⁰ This is referred to as the basic structure doctrine. Crisis Group Asia Report N°160, *Reforming the Judiciary in Pakistan*, 16 October 2008.

VI. Mapping a New Counter-terrorism Policy

Rather than rethinking flawed strategies after the Peshawar attack, there is a renewed reliance on the failed and blunt instruments of coercion and military force.¹²¹ Instead, efforts and limited resources should be reoriented toward an intelligence and investigation-based strategy based on a rule-of-law approach. A senior investigator from Lahore said: “The only way to delegitimise terrorists is through a transparent judicial process, so that the public has confidence when someone is convicted”.¹²² Combatting terrorism requires reforming the criminal justice system, building the capacity of civilian law enforcement agencies, particularly the police, and extending the law of the land to regions such as FATA.

A. Policing Priorities

1. Building police capacity

NAP has proposed legal and constitutional amendments to improve the criminal justice system, but with no clarity about priorities, timelines, and resources. Its militarised approach to countering terrorism also neglects a vital resource: police officers who, unlike paramilitary or military forces, have a permanent presence in cities, towns, villages and neighbourhoods. With better human intelligence, most police are familiar with the presence and behaviour of violent extremists and allied criminal groups and individuals in their jurisdictions.¹²³ Yet, starved of resources, deprived of authority and autonomy and facing political interference and pressure, the police have more incentive for corruption than serving and protecting communities.

Although the police are understaffed, simply increasing numbers is insufficient. After over a decade of military rule had hollowed out Sindh’s force, elected provincial governments recruited thousands of new officers in the 1990s.¹²⁴ Yet, recruitment without revised training and other capacity building merely created a larger, still underperforming force. Since 2005, police numbers have almost doubled countrywide, from around 220,000 to 430,000, but without specialised training, adequate resources and operational autonomy, there is little visible impact on law and order.

Since democracy’s restoration in 2008, the federal and provincial governments have taken some steps to enhance the capacity of civilian law enforcement agencies, including giving them better technology. But such upgrades, while necessary, are ineffective without adequate training of investigators and rank and file. Though the Punjab government has committed significant financial and other resources to a forensic science laboratory, prosecution rates have scarcely improved, because crime-scene investigators are poorly trained, and evidence is often already compromised by the time it reaches the laboratory.

If provincial governments are to build police counter-terrorism capacity, they should undertake a comprehensive examination to determine both staffing and training needs,

¹²¹ On 28 May, the interior secretary told the Senate “performance (on NAP) has been unsatisfactory”. “Newly crafted anti-terror strategy ‘going nowhere’”, *The Express Tribune*, 29 May 2015.

¹²² Crisis Group interview, Lahore, April 2015.

¹²³ Crisis Group interviews, senior investigator, Lahore, April 2015; local district police commander, Punjab, April 2015; Ihsan Ghani, National Police Bureau chief, Islamabad, March 2015.

¹²⁴ In 1977, on the eve of General Muhammad Zia-ul-Haq’s coup, the Sindh police were some 32,000-strong; by the end of his regime in 1988, they were down to around 27,000 even as criminality rose. Statistics provided to Crisis Group by Sindh police, Karachi, April 2015.

particularly for investigators. Police leadership should also comprehensively review and reform the curriculum, in consultation with retired officers, criminologists, the legal community, foreign experts and other stakeholders, to create learning modules for intelligence-led counter-terrorism. It should include modules for investigating terrorism financing and money laundering, and the curriculum and training should also emphasise countering radicalisation by curbing hate speech and literature and acting against clerics, mosques and madrasas advocating violence.

There should be corresponding procedural and legal reforms, aimed at closing the loopholes that allow judges to dismiss cases at early stages of trials. For example, the investigating officer's case brief should become the primary evidentiary document, replacing the First Information Report (FIR) filed in the police station, which often is a basis for dismissal due to discrepancies between its narrative and evidence provided in court.¹²⁵ Use of the FIR should be limited to establishing the basic facts of time, location and general circumstances of a crime.

The system's overdependence on witness testimony, coupled with the absence of witness protection, is largely responsible for the low prosecution rate.¹²⁶ The National Assembly should amend the Criminal Procedure Code to establish a robust witness protection program, and make the protection of witnesses, investigators, prosecutors and judges a major counter-terrorism priority.¹²⁷ The Evidence Act should be reformed to require investigating officers to base their case briefs on forensic and other documentary evidence rather than witness testimony alone.¹²⁸ "Internationally, eye-witness testimony is considered the weakest part of a case, because people can say anything", said Salim Vahidy, a retired senior police official.¹²⁹ The police have also proposed several amendments to the ATA to improve the conviction rate, such as including forensic evidence and call data and amending the Fourth Schedule to encompass, besides the names of members or affiliates of proscribed organisations, persons who have received training or are responsible for propagating hate speech and distributing hate literature.¹³⁰

2. Depoliticising the police

If the government "is not willing to depoliticise the police or give them sufficient autonomy and resources" as a former senior officer observed, "the military will keep calling the shots in internal security matters".¹³¹ Political and judicial interference, especially in appointments and transfers, has sapped morale and effectiveness. "The police is not innovating, and it's not interested in maintaining professionalism because

¹²⁵ A FIR is the first written document prepared after commission of a crime. It can be filed by a victim of the crime or a police officer.

¹²⁶ When the prosecution obtains witness testimony in a sectarian killing, witnesses are often members of rival splinter groups, as in the December 2013 murder of the ASWJ Punjab chapter president, when ASWJ members testified against extremist rivals allied to LeJ leader Malik Ishaq. Crisis Group interviews, senior investigators, Lahore, April 2015.

¹²⁷ Crisis Group Report, *Reforming Pakistan's Criminal Justice System*, op. cit.

¹²⁸ Forensic evidence is admissible but not required.

¹²⁹ Crisis Group interview, Karachi, 23 April 2015.

¹³⁰ The proposed amendment, 11-EE (1), reads: any person "who has received or has been receiving any kind of training that may aid in committing terrorist acts" or "those who are found to be involved in the dissemination or propagation of hate literature against any specific community or sect irrespective of their affiliation with any proscribed organisation". Cited in "Police want changes to ATA to tackle terror cases", *Dawn*, 18 May 2015.

¹³¹ Tariq Khosa, "Inaction plan", *Dawn*, 28 May 2015.

the government of the day has made professionalism irrelevant”, a retired inspector general (IG) said.¹³² Instead, an increasingly marginalised and politicised force has failed to outgrow its reputation for ineptitude, corruption and abuse of authority.¹³³

While the 2002 Police Order, still valid in KPK and Punjab, mandates a three-year term for station house officers (SHOs, who head police stations), their average tenure nationally is an estimated 28 days, with appointments and transfers made on the basis on nepotism and bribery.¹³⁴ This severely undermines the functioning of a basic policing unit. Because of political interference, resulting in premature transfers or, in some case, dismissals, police leadership hesitates to exercise its authority. The judiciary, too, regularly summons police IGs to account for lapses in security, amounting to what many police consider is scapegoating for broader policy failure.¹³⁵

These multiple layers of formal and informal “accountability” amount to giving police leaders responsibility without authority. If the force is to have operational autonomy, the provincial executive’s appointment authority should be limited to the IG, the interface between the government and the force in overseeing policy implementation.¹³⁶ Appointed on merit, the IG should have full authority over the force he commands, including appointments and transfers, and career progression should depend on performance, not patronage.

B. *Overhauling Counter-insurgency and Counter-terrorism Strategies*

The military regularly cites counter-insurgency successes in FATA, particularly North Waziristan and Khyber agencies, but deadly attacks on security personnel, politicians and pro-government locals continue throughout the tribal belt. Attacks in North Waziristan show that the militants have already returned, as elsewhere in FATA, such as Bajaur Agency, where militant incidents have continued years after the military declared the agency cleared.¹³⁷ Restrictions on journalist and other independent observer access also make it nearly impossible to verify the military’s claims. A senior investigator in Lahore said, “when you drop bombs from the sky, how do you know that the 30 people you’ve killed were all militants”.¹³⁸ Even FATA parliamentarians

¹³² Crisis Group interview, Islamabad, March 2015. A highly respected officer, Shahid Hayat, was appointed additional IG, Karachi, in September 2013 and removed on Supreme Court orders in May 2014. Similarly, in July 2014, the Sindh government removed another respected officer, Iqbal Mehmood, as Sindh police IG after only three months. In both cases, the reasons for removal were tenuous. “AIG Karachi removed on SC orders”, *The Express Tribune*, 22 May 2014; “Sindh govt removed Iqbal Mehmood as police chief”, *The Express Tribune*, 3 July 2014.

¹³³ Crisis Group Report, *Reforming Pakistan’s Police*, op. cit.

¹³⁴ Crisis Group interview, National Police Bureau official, Islamabad, March 2015.

¹³⁵ Crisis Group interviews, retired and serving police officials, Islamabad, Lahore, Karachi, March-May 2015.

¹³⁶ The provincial IG is technically a federal appointment, made via notification of the federal Establishment Division, but after the provincial government chooses among three recommended names. The provincial government may also remove the IG at any time. Police Order, 2002; Police Act, 1861; Crisis Group Report, *Reforming Pakistan’s Police*, op. cit.

¹³⁷ “Two soldiers, four militants killed in Kurram clash”, *The News*, 26 June 2015; “Seven soldiers die in suicide bombing”, *Dawn*, 9 June 2015; “Clearing operation: Landmine kills 4 troops in Waziristan”, *The Express Tribune*, 23 May 2015; “Soldier killed in cross-border attack in Bajaur”, *The News*, 24 May 2015; “PPP leader from FATA attacked in Bajaur”, *The Express Tribune*, 2 May 2015. “Seven security personnel injured in South Waziristan clash”, *Dawn*, 22 April 2015; “Four soldiers, 12 militants die in Orakzai clashes”, *The Nation*, 6 April 2015.

¹³⁸ Crisis Group interview, Lahore, April 2015.

have been denied permission by the military to visit areas that it claims have returned to normalcy.¹³⁹

So long as the state retains an archaic governance structure in FATA, it will remain a haven for criminal and militant networks. The 1901 Frontier Crimes Regulation (FCR) and Article 247 of the constitution disallow the police and courts jurisdiction over FATA and deny its residents fundamental political, legal and economic rights.¹⁴⁰ The PML-N government appears to give low priority to reviving a moribund FATA reforms process, and the military appears bent on reinforcing the very system that has, by fuelling local alienation, fed into militant recruitment.

As civilians displaced by the military operation in North Waziristan return home, they are asked to first sign the “Social Contract North Waziristan, 2015”. Among other undertakings, it says, “[w]e as responsible citizens of Pakistan will be loyal to the constitution of Pakistan, the FCR [Frontier Crimes Regulations 1901] and local customs ... all the anti-Pakistan elements will be completely eliminated by our tribes”. Non-compliance could mean cancellation of identity cards and passports, and “seizure of property, expulsion from the area and destruction of residence”.¹⁴¹ A resident asked: “If people could capture militants [by themselves], what was the purpose of Zarb-e-Azb [the North Waziristan military operation]?”; a legal expert noted: “The ground reality is that FCR is supreme in FATA, not the constitution”.¹⁴²

The “social contract” reflects the military’s failure to understand that reforming FATA to grant its residents the full rights and protections enjoyed by the rest of Pakistan’s citizens is an essential first step toward sustainable stabilisation. The political leadership has failed to push back against the military’s reluctance to end FATA’s status as a no-man’s land. Even modest reforms, such as the previous PPP-led government’s extension of political party activities to FATA took almost two years to enact.¹⁴³ Yet, many political stakeholders understand that the spread of religious extremism in the tribal belt can only be stemmed through fundamental changes to its governance structure.

PPP Senator Farhatullah Babar’s private member’s bill, which calls for the extension of Supreme Court and Peshawar High Court jurisdiction to FATA, approved unanimously by the Senate standing committee on law and justice in February 2015, is particularly significant.¹⁴⁴ Parliament should pass it and follow up with a broader constitutional amendment to repeal Article 247 in its entirety, thus ending FATA’s separate legal and judicial status. The government should also repeal the FCR in its entirety, replacing it with the Penal Code and the Criminal Procedure Code, allowing the KPK police, FIA and other relevant civilian law enforcement agencies unimpeded access to the tribal belt.

¹³⁹ During a parliamentary discussion of the military operations in the tribal belt, a FATA senator said, “this is beyond comprehension why the military is hesitant to allow the elected representatives of people from visiting the areas”. “Zarb-e-Azb has cost Rs. 144tr to national kitty, Senate told”, *Daily Times*, 20 May 2015.

¹⁴⁰ For FATA’s political, legal and administrative system and its impact on conflict, see Crisis Group Reports, *Countering Militancy in FATA and Pakistan’s Tribal Areas*, both op. cit.

¹⁴¹ Other pledges include: “we will be responsible” for handing over “local individuals who have been part of any terrorist activities whether by the name of Taliban or Mujahid ... to the government”, and “are bound to give protection” to the “people of the government’s departments working in our locality”. “Social Contract North Waziristan 2015”, provided to Crisis Group.

¹⁴² “Burden that doesn’t end”, *Dawn*, 19 April 2015.

¹⁴³ Crisis Group interview, senior political leader, Islamabad, May 2015.

¹⁴⁴ “Bill moved in Senate to extend jurisdiction of courts to FATA”, *Daily Times*, 12 August 2014.

Nevertheless, no amount of reform will pay counter-terrorism dividends so long as distinctions are still made between “good” and “bad” jihadi groups. Representative institutions, particularly parliament, must take the lead in debating and assessing the costs of this flawed strategy. The Sharif government should also regain the initiative from the military by devising a civilian-led and implemented security policy in the tribal belt. Until a militarised approach is replaced by the rule of law, stability in FATA will remain elusive.

VII. Conclusion

The post-Peshawar response to internal security threats demonstrates more continuity than change in the state's counter-terrorism approach. For the most part, the problem with NAP is not in the vast majority of its stated objectives but in a heavy-handed, opaque approach favouring retribution and lethal force. "Enacting draconian counter-terrorism legislation and carrying out executions and arbitrary arrests deprive citizens of fundamental rights, while failing to make them any safer".¹⁴⁵ Nor will a militarised approach bring FATA peace. Without structural and governance reform, the root causes of terrorism and extremism will remain unaddressed and violent jihadis will exploit the absence of rule of law, the police and courts.

Trying and sentencing civilians in military courts and hanging them without transparency and right of appeal to a civilian court, while starving civilian law-enforcement agencies of resources and bypassing the judiciary, are among the most ineffective and counterproductive ways to fight terrorism. Representative institutions, particularly parliament, must take the lead in debating and assessing the costs of this flawed strategy. Instead of bypassing and further weakening the criminal justice system, the federal and provincial governments should prioritise building police capacity to detect, prevent and investigate crime and dismantle parallel military-dominated structures that have added to turf battles and confusion and diverted limited resources.

Reversing concessions to the defence establishment will require considerable political will. Since democracy's restoration in 2008, the main ruling and opposition parties in both parliaments closed ranks to ensure continuity of the constitutional order. The two largest parties within and outside parliament should show similar resolve and unity by resisting pressure from the military and Islamist parties and formulating a civilian-led counter-terrorism strategy based on zero tolerance, as the prime minister has repeatedly pledged, toward all violent extremists without distinction.

Islamabad/Brussels, 22 July 2015

¹⁴⁵ "Pakistan: Arrest, Prosecute Sectarian Killers", Human Rights Watch, 13 May 2015.

Appendix A: Map of Pakistan



Appendix B: Glossary of Terms

ASWJ – Ahle Sunnat Wal Jamaat, the renamed Sipah-e-Sahaba Pakistan, an extremist Deobandi group, the parent organisation of the Lashkar-e-Jhangvi.

ATA – Anti-Terrorism Act of 1997.

ATC – Anti-Terrorism Court(s), established in 1997 under the ATA.

CID – Criminal Investigation Department, lead investigation and civilian counter-terrorism provincial-level agency, renamed Counter-Terrorism Department, CTD, in 2015.

CPLC – Citizen Police Liaison Committee.

CTF – Counter-Terrorism Force, also known as the Anti-Terrorism Force.

FATA – Federally Administered Tribal Areas, comprising seven administrative districts or agencies and six Frontier Regions bordering on south-eastern Afghanistan.

FATF – Financial Action Task Force, international inter-governmental body established in 1989 “to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system”.

FCR – Frontier Crimes Regulations, a draconian, colonial-era legal framework adopted in 1901 and retained after independence in 1947 to govern FATA.

FIA – Federal Investigation Agency.

FIF – Falah-e-Insaniyat Foundation, the charity front of the Lashkar-e-Tayyaba/ Jamaat-ud-Dawa.

FMU – Financial Monitoring Unit, an autonomous cell of the State Bank of Pakistan.

Hawala or hundi – informal domestic and international money transfer mechanisms widely used mainly in South Asia and the Middle East.

HRCP – The independent non-governmental Human Rights Commission of Pakistan.

IG – Inspector General.

ISI – Inter-Services Intelligence directorate, the military’s main intelligence agency.

ISPR – Inter-Services Press Relations, the military’s public relations wing.

JD – Jamaat-ud-Dawa, the renamed LeT.

KPK – Khyber Pakhtunkhwa, formerly known as the Northwest Frontier Province (NWFP).

LeJ – Lashkar-e-Jhangvi, an extremist Deobandi organisation, responsible for major sectarian killings and other terrorist violence, headquartered in Punjab but with a countrywide network.

LeT – Lashkar-e-Tayyaba, anti-India jihadi group led by Hafez Saeed, banned and renamed Jamaat-ud-Dawa in 2002, responsible for the November 2008 Mumbai attacks.

MQM – Muttahida Qaumi Movement, a Karachi-based political party; earlier the Mohajir Qaumi Movement.

NACTA – National Counter-Terrorism Authority, established in December 2009 and revived after parliamentary endorsement in March 2013.

NAP – National Action Plan, to counter terrorism and extremism, formulated in December 2014 in response to the attack on Peshawar’s Army Public School.

NISP – National Internal Security Policy, a 64-point policy outline to counter terrorism and extremism, adopted by the federal cabinet in February 2014.

PATA – Provincially Administered Tribal Areas, which, along with two of its biggest districts, Chitral and Swat, includes Upper Dir, Lower Dir, Malakand, Shangla, parts of Kohistan district, the tribal area adjoining Mansehra district and the former state of Amb.

PEMRA – Pakistan Electronic Media Regulatory Authority.

PML-N – Pakistan Muslim League-Nawaz, led by Prime Minister Nawaz Sharif, currently heading a majority government at the centre and in Punjab.

PPA – Protection of Pakistan Act, signed into law in July 2014 “to provide for protection against waging of war or insurrection against Pakistan and the prevention of acts threatening the security of Pakistan”.

PPP – Pakistan Peoples Party, founded by Zulfikar Ali Bhutto in 1967. Since Benazir Bhutto’s December 2007 assassination, the party is headed by her widower, former President Asif Ali Zardari, and son, Bilawal Bhutto Zardari. It led the coalition government in the centre from 2008 to 2013 and is currently the largest opposition party in the National Assembly. It also heads the Sindh provincial government.

PTI – Pakistan Tehreek-e-Insaf, founded by Imran Khan, currently heading the Khyber Pakhtunkhwa provincial government.

SBP – State Bank of Pakistan.

SHO – Station house officer, head of a police station.

SIMs – Subscriber Identification Modules

SSP – Sipah-e-Sahaba Pakistan, a radical Deobandi group and Lashkar-e-Jhangvi's parent organisation; renamed Ahle Sunnat Wal Jamaat.

TTP – Tehreek-e-Taliban Pakistan (Taliban Movement of Pakistan), an umbrella organisation of predominantly Pashtun militant groups in FATA and KPK.

UNSC 1267 – United National Security Council Resolution 1267, adopted in October 1999, to establish a sanctions regime targeting individuals and groups associated with al-Qaeda, Osama bin Laden and the Taliban.